The Table

BEING

THE JOURNAL OF
THE SOCIETY OF CLERKS-AT-THE-TABLE
IN COMMONWEALTH PARLIAMENTS

EDITED BY

R. W. PERCEVAL AND C. A. S. S. GORDON

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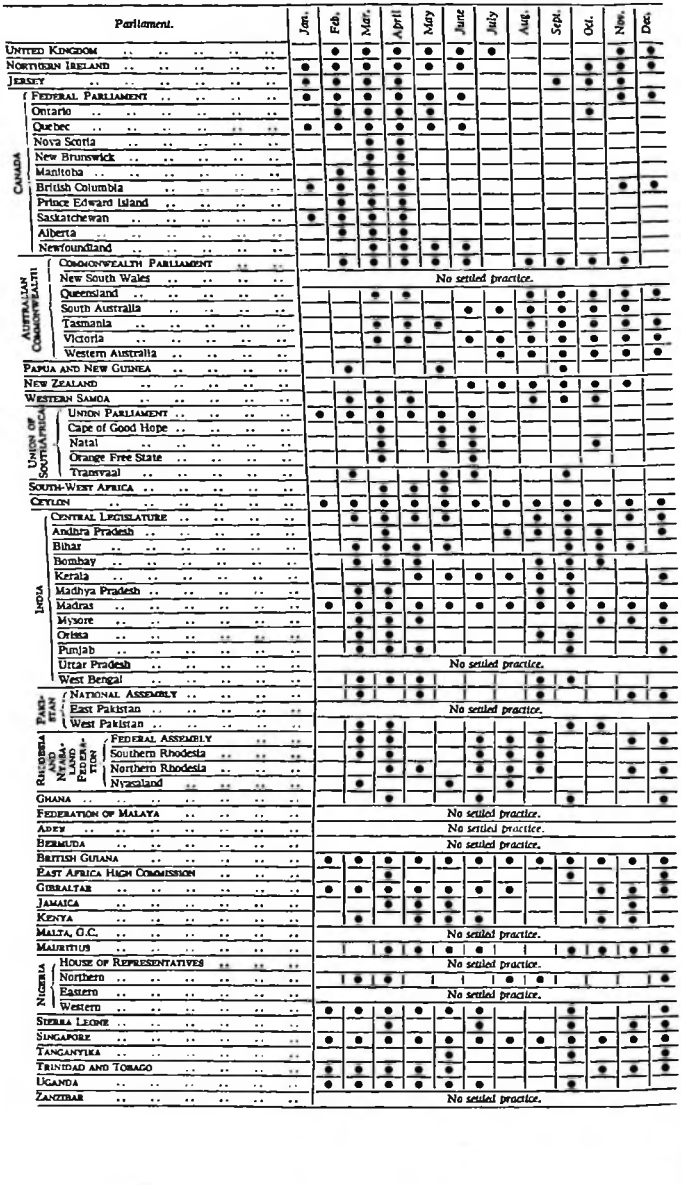

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THE SOCIETY OF CLERKS-AT-THE-TABLE

IN COMMONWEALTH PARLIAMENTS

I. EDITORIAL

Introduction to Volume XXVII.—In October, 1958, for the first time in history, broadcasting apparatus was admitted into the Palace of Westminster and many millions of television viewers had the pleasure of seeing and hearing Her Majesty deliver her Gracious Speech at the opening of the new session. The Article immediately following describes the nature and complexity of the administrative arrangements which made this possible, and records the moving words with which Her Majesty signalised the event.

Although the production of the Official Report does not always fall within the control of the Clerk of the House, the finished product is never without its impact on the working of his department, and close liaison between the writer of the Votes and Proceedings on the one hand and the Editor of *Hansard* on the other is a necessity. We are indebted to Mr. Moore, who edits the *Hansard* of the Federal Assembly of Rhodesia and Nyasaland, for an Article describing the existing organisation and operation of his department, and also a suggested scheme for the use of tape recorders.

Shri S. L. Shakdher, the Joint Secretary of the Lok Sabha, whose work is well known to the Society, has written a detailed and instructive account of the functioning of the Estimates Committees in the House of Commons and the Lok Sabha which appears as Article IV. In the course of this account light is also thrown on certain general differences of procedure between the committee systems of the two Houses, not the least of which is the extensive power vested in the Speaker of the Lok Sabha to intervene in the day-to-day work of Committees. Nevertheless, for all the divergences in detail, the two Estimates Committees appear to perform similar functions with broadly similar effect.

An attempt has been made, in an article on Leave of Absence and

Life Peerages, to give a general view of two recent reforms, which may in time effect considerable variations in the composition of the House of Lords. Women are now for the first time members of that body; a number of peers for life have been created; and something has been done to discourage peers from attending only at very rare intervals.

This year there are no less than five Articles from Australian contributors. Two of them deal with the machinery which has existed since 1956 for a continuous parliamentary review of the constitution. The Joint Constitution Committee of the Commonwealth Parliament is treated by Mr. K. O. Bradshaw, Usher of the Black Rod in the Senate at Canberra; and the Clerk of the Parliaments in New South Wales carries further the description, begun in an Article in Vol. XXV (p. 61) by Mr. L. C. Bowen, of the work of the similar Joint Committee set up in that State. Mr. Bowen himself contributes an Article dealing with the power of the Houses of the New South Wales Parliament to control the attendance of Members and Officers of the House as witnesses before courts and Commissions. Mr. A. G. Turner, the Clerk of the House of Representatives at Canberra, describes briefly the difficulties which were encountered by the Government in securing the passage of important banking legislation through an evenly divided Senate. Finally, Mr. J. B. Roberts, the Clerk of the Parliaments in Western Australia, writes of the procedure employed to facilitate the passage, over several sessions, of a Local Government Bill of 681 clauses by empowering the Committee on the Bill in the Legislative Council to incorporate without further discussion all the amendments to which it had agreed in the previous session, but which the other House had not had time to consider.

Besides his annual list of precedents and unusual points of procedure which occurred in the South African House of Assembly during the year, Mr. J. M. Hugo has also written an Article on the recent institution of Deputy-Ministers in the Union. As will be seen from the retirement notice on p. 13 these are the last Articles which we shall receive from him in his capacity as Clerk of the House of Assembly; we would take this opportunity of assuring him that any comments he may care to make upon the parliamentary scene during his retirement will always find a welcome within these pages.

The year 1958 saw in Ceylon a serious outbreak of violence between the Sinhalese majority and the Tamils, the main minority community of the island, of such a nature as might well have brought an end to less firmly grounded parliamentary institutions. Mr. Deraniyagala, in his Article, describes how Parliament nevertheless continued its functions; with characteristic modesty, he makes no reference to his own part in this, but those who know him will have little difficulty in assessing its weight.

We are indebted to the Clerk of the Mysore Legislature for having drawn our attention to a most illuminating ruling by the Speaker of

the Legislative Assembly, Shri S. R. Kanthi, on the conventions governing the making of statements in Parliament by outgoing Ministers. In view of its interest, this ruling is published *in extenso* as an Article.

Recent constitutional developments in widely sundered parts of Africa are treated in illuminating detail by Mr. Norval Mitchell, the Clerk of the Legislative Council of Northern Rhodesia, and Mr. S. V. Wright, the Clerk of the House of Representatives of Sierra Leone.

In December, 1958, a party of Members of the House of Commons presented a Mace, on behalf of that House, to the House of Representatives of the Federation of The West Indies. The preliminaries in the Commons and the ceremony itself in Trinidad are described by Mr. D. W. S. Lidderdale, who accompanied the delegation; his Article also contains wise words of advice for those called upon to play a part in other such ceremonies.

Readers will also find the usual Article on Applications of Privilege (in which Westminster, for the first time since we have had the honour of editing this Journal, occupies less than a page), the Miscellaneous Notes, the List of Rulings made from the Chair in the House of Commons during Session 1957-58, a table of expressions in Parliament in 1958, and a list of books suggested for inclusion in the Library of the Clerk of the House. Several books are reviewed, of which Shri A. R. Mukherjea's work on Parliamentary Procedure in India is especially deserving of attention by Members of the Society.

F. L. Parker, F.R.G.S.A.—It is with deepest regret that we have to record the sudden death at his home in Millswood, South Australia, on Friday, 12th June, 1959, of Mr. Ferdinand Lucas Parker, former Clerk of the House of Assembly and Clerk of Parliaments of the Parliament of South Australia.

Mr. Parker retired from these offices on 31st March, 1953, after 35 years' service as an officer of Parliament. He was a Clerk at the Table of the House of Assembly for the impressive period of 30 years, being Clerk of the House for 28 years. He was widely acknowledged as an eminent authority on parliamentary procedure and practice.

Mr. Parker was the Honorary Secretary-Treasurer of the Empire Parliamentary Association since the inauguration of the Branch in South Australia in 1925 until his retirement. He accompanied the Australian and New Zealand delegations to the United Kingdom and U.N.O. Conference in Paris in 1948.

Mr. Parker was a Foundation Member of the Society of Clerks-at-the-Table in Empire Parliaments. He had been

an invaluable contributor to our Journal and a very keen advocate of the Society.

Mr. Parker served with the Australian Imperial Force in World War I in Egypt, Gallipoli and Palestine, attaining the rank of captain.

Our deepest sympathy goes to his wife and family in their grievous loss.

(*Contributed by the Clerk of the House of Assembly.*)

A. A. Tregear, C.B.E., B.Comm., A.A.S.A.—On 31st December, 1958, Allan Tregear retired from the Clerkship of the Australian House of Representatives.

Complimentary references were made in the House on 1st October, 1958, the last sitting day prior to his retirement.

Mr. Speaker (Hon. J. McLeay, M.M.) said:

I have to announce to the House that it is the intention of Mr. Tregear, the Clerk of the House of Representatives, to retire at the end of the year. Mr. Tregear joined the Public Service in 1911, and in 1920 he transferred to the staff of the Senate. In 1925, he transferred to the staff of the House of Representatives, and from that time onwards with the exception of the period during which he was seconded to the Department of Munitions in World War II, he has continuously served on the staff of this House. Mr. Tregear was appointed to the office of Clerk in 1955, at which time he was appointed also as honorary secretary of the Commonwealth Parliamentary Association.

I think we can say that Mr. Tregear, as Clerk of the House, or in any other office, always has discharged his responsibilities with very great credit to himself, and with very great distinction. I am sure that honorable members on all sides of the chamber will miss his friendly advice, his guidance, his tolerance and his co-operation. I am sure that he will leave this place carrying with him the goodwill, and the best wishes for the future, of every honorable member associated with him in this place.

He was followed by the Prime Minister (Rt. Hon. R. G. Menzies), who said:

You, Sir, referred to the fact that the Clerk, Mr. Tregear, is leaving us. I do not want to embarrass him by saying too much, because, being the Clerk of the House, he cannot, beyond reading out those dull lists of papers that are to be filed, speak for himself. He can neither praise himself nor defend himself. But I hope I shall be allowed to say that Mr. Tregear has brought to his office all the great qualities that one expects—complete integrity, complete capacity in his job, and complete impartiality. There cannot be a member of this chamber who is not indebted to him. Through you, Sir, we say to Mr. Tregear, who can neither acknowledge this nor do anything else about it: Thank you very much indeed for your work. You have contributed great service to the Parliament, and added much to the history of this country. We hope that you will live long enough to see most of the prophecies falsified, most of the attacks defeated and most of the forecasts proved wrong. As an onlooker you have seen most of the game. We all want to say " Thank you".

Similar tributes were paid by the Leader of the Opposition (Rt.

Hon. H. V. Evatt) and the Deputy Leader of the Country Party (Hon. C. W. Davidson) (H.R. *Hans.*, Vol. 21, pp. 1894-7).

His retirement will be of interest to officers of the United Kingdom Parliament as in 1951-52 he spent 12 months attached to the House of Commons.

In 1952 and again in 1957 as Secretary, he accompanied the Australian delegation to Commonwealth Parliamentary Conferences in Canada and India. On his retirement, a special presentation was made by the Commonwealth Branch of the Commonwealth Parliamentary Association to Mr. Tregear in recognition of his outstanding service to the Association.

His membership of the Society of the Clerks at the Table extends over many years, and his contributions to THE TABLE have been both useful and interesting.

A farewell function was arranged by Mr. Speaker at which the Prime Minister, the Leader of the Opposition, the Leader of the House, the Chairman of Committees and the Temporary Chairmen of Committees were present, together with officers of the House.

We wish him well in his retirement and congratulate him on his enviable record of service to Australia, which culminated in his being included in the New Year's Honours List on the 1st January, 1959.

(*Contributed by the Clerk of the House of Representatives.*)

J. M. Hugo, B.A., LL.B., J.P.—Mr. Hugo retired as Clerk of the House of Assembly on the 31st July, 1959, after 33 years of service to Parliament of which no less than 19 were spent at the Table. He was born on the 3rd June, 1898, and completed his scholastic education at Worcester in the Cape Province. He obtained his B.A. degree at the University of Cape Town in 1922, and in 1931 the LL.B. degree by private study from the University of South Africa. He was appointed to the Cape Provincial Administration in December, 1922, and on the 1st January, 1926, as Assistant Translator in the Union House of Assembly. He was promoted Chief Translator on the 16th November, 1937; Second Clerk-Assistant on the 1st December, 1940; Clerk-Assistant on the 1st April, 1946, and Clerk of the House on the 1st July, 1950.

On the 1st July, 1959, the last sitting day prior to Mr. Hugo's retirement, appreciative references were made to him in the House. The Prime Minister moved the following unopposed motion:

> That, in view of the pending retirement of Mr. Jacobus Malan Hugo, the Clerk of the House of Assembly, this House desires to place on record its appreciation of the distinguished services rendered by him as an officer of Parliament since 1926.

After giving particulars of Mr. Hugo's service, he went on to say:

> It is fitting therefore that we should pay tribute to the Chief Clerk of the House who has carried out his duties with such competence and with such helpfulness. In a body such as this, everything depends on following the correct procedure. If this requirement is to be met, it is necessary that the

Clerks at the Table, and especially the Chief Clerk, should approach all matters calmly and objectively. We can pay this tribute to Mr. Hugo that he has certainly approached all matters in this calm and objective way. When split-second decisions are called for, the ordinary person is apt to become flustered and excited. One of the important characteristics revealed by the Clerk is that he has not allowed himself to become flustered.

Then there is a further aspect, namely the duties which a Clerk has to carry out in respect of all the members of the House. All members require advice and guidance at times in respect of something they want to do. To be able to carry out such duties competently other qualities are required, that is to say, courtesy and impartiality in providing such assistance to members, and approachability and helpfulness at all times—qualities which Mr. Hugo has also revealed to the highest degree. I think that none of us has any doubt as to whether the Clerk possesses these qualities. It has been his earnest desire never to give offence and at the same time to help every member, no matter to which side of the House such member may belong.

Then there is a further requirement which the Clerk of the House is expected to fulfil. Speakers and Chairmen come and go and they above all others also require the assistance of a Clerk who must have certain qualities if he is to give them the support they need. A very comprehensive knowledge of parliamentary procedure and practice, which is of such great value in ensuring the smooth functioning of the House, is required. The ability to convey this expert knowledge instantly to others is a valuable quality and is one which Mr. Hugo has revealed to the highest degree. Devotion to his work, thoroughness in carrying out his duties, the maintenance of parliamentary traditions—these are all qualities revealed by Mr. Hugo.

Now that Mr. Hugo is retiring we convey to him, together with our appreciation of his services and our tributes for the competent way in which he has carried out his duties, our wish that he will enjoy good health and a long life.

Sir de Villiers Graaff, the Leader of the Opposition, who seconded e motion, said:

We on this side of the House would like to associate ourselves with the words which have fallen from the lips of the hon. the Prime Minister in moving this unopposed motion. We are taking leave today of someone who goes not because he has to, but who goes of his own free will, after what is virtually a lifetime of service to Parliament. We would like to say to the gentleman concerned that we have admired him for the manner in which he has carried out his duties, because of his devotion to those duties, his attention to detail and above all because of his thoroughness. He has shown that in so many ways; he has always revealed a painstaking care in regard to every aspect of the work which he has had to do. He found time, despite his other duties, to take his LL.B. degree as a student of the University of South Africa in his spare time. He has revealed a great knowledge of the procedure of this House and its usages which has stood us all in good stead on many occasions. We have respected him because of his objectivity and his calmness. I do not think we have ever seen him rattled in this House despite the many difficult situations with which he has had to deal. I think we have admired also his concern for the members of his staff, all his staff in this House, and the way he has fought for them and for their welfare. I want to tell him that he has earned a warm place in our hearts because of his impartiality, his helpfulness to everybody regardless of who they are and what they are, and because of his approachability. No matter what the time of day, no matter how difficult things were, he has always found time to give a helping hand and if necessary guidance and direction to members. We

have appreciated particularly the unfailing courtesy under all circumstances. Those circumstances have not always been easy. I think as a Parliament we owe him a particular debt of gratitude, firstly, perhaps the least importantly, because of his kindly work as Secretary of Fernwood, the Parliamentary Sports Club, and the attention he has given to that institution and his effort to make it a success. More lately we thank him for his assumption of the Secretaryship of the Commonwealth Parliamentary Association. There too he has done a work for this Parliament. But I think, above all, we as a Parliament owe him a debt of gratitude for the dignity with which he has conducted his duties in this House. It is hard for us younger members—I count myself among them still—to imagine the Table without our Clerk, Mr. Hugo. I think there must be few members in this House who can think of the Table without him and I think I speak for all tonight when I say that today we are saying goodbye not to an official of the House but to an old and trusted friend who has performed his task with humility and modesty, great personal charm and great patience towards all members no matter how difficult they have been. I want to say that we shall miss him. We shall miss him greatly. He belongs to that little band of gentlemen who have done so much to maintain the traditions of our Parliament as we would see it run in South Africa.

Tribute was also paid by the Deputy-Speaker and Chairman of Committees, Mr. Klopper, in the following terms:

Mr. Speaker, will you allow me to convey to Mr. Hugo on behalf of yourself and our colleague who cannot be here tonight, our thanks and our tributes for the assistance and the support he has given us in carrying out our duties. One only learns to know Mr. Hugo well when one sits next to him and when one has to work with him every day. He is a pillar of strength; he is a man who is very modest by nature; he is reserved, he is conservative by nature, but he is a man of admirable character and a man with a very strong will, a very fine characteristic. We have learned to know Mr. Hugo intimately at the Table, and Mr. Hugo has always been a source of inspiration and a source of strength to us. I believe that any Parliament in the world would be fortunate to have an official of his calibre at its disposal, and I do believe that we in South Africa are fortunate that we can still produce such men to serve us, a man who has revealed unfaltering devotion to his duties and has placed his services so generously and so modestly at the disposal of the representatives of the people and of Parliament.

Mr. Hugo has not only served us well; he has served our country and Parliament well by training officials in a way for which I have often admired him. The efficiency of our officials at the Table, of the officials who serve the entire House of Assembly, is admirable. I have worked with officials for many years; for more than 30 years I exercised control over thousands of officials, but I have never encountered more capable officials anywhere than those we have in the House of Assembly today, and particularly the officials we have at the Table. They are never at a loss. For every problem which arises—and many problems do arise in this Parliament—they have the answer, and the fact that the deliberations of this Parliament proceed so peacefully, so well and so amicably, the fact that there is such a brotherly and friendly spirit—I am almost tempted to say—the back-scratching that we find at times across the floor of the House, is due to the excellent spirit and the goodwill which Mr. Hugo and his assistants are continually spreading day after day, from hour to hour and from moment to moment amongst the members of this House.

At difficult times, when we sit at the Table and the storm breaks loose in this House—which must inevitably happen; it is only right that it should—

Mr. Hugo is a tower of strength at one's side. Mr. Hugo always has an answer to every situation which presents itself.

Messrs. Stanford and Bloomberg, representing the Native and Coloured people, respectively, in Parliament, also associated themselves with the sentiments expressed in the motion (*Hansard*, 1st July, 1959, cc. 9785-90).

(*Contributed by the Clerk of the House of Assembly.*)

Honours.—On behalf of our Members, we wish to congratulate the undermentioned Members of our Society who have been honoured by Her Majesty the Queen since the last issue of THE TABLE:

K.C.B.—V. M. R. Goodman, Esq., C.B., O.B.E., M.C., Clerk of the Parliaments of the United Kingdom.

C.B.E.—A. A. Tregear, Esq., B.Comm., A.A.S.A., former Clerk of the House of Representatives of the Australian Commonwealth.

M.B.E.—L. R. Moutou, Esq., Clerk of the Legislative Council of Mauritius.

Mr. Speaker Umaru Gwandu.—Once more we have the great pleasure of announcing the elevation of one of the Society's Members to the position of Speaker. The occasion is all the more auspicious in that Alhaji Umaru Gwandu has achieved the Speakership of the House of Assembly of the Northern Region of Nigeria, not by appointment, but by unanimous election of the House. It is difficult to imagine a more substantial compliment which a House could pay to its Clerk.

At the meeting of the House of Assembly on 18th May, 1959, Mr. Speaker Niven handed to the Clerk a letter announcing his resignation, in view of the attainment of Regional self-government, and thanking the staff for their past assistance. After tributes had been paid, to which Mr. Niven replied, he left the Chair, which, after a short suspension, was resumed by the Deputy Speaker.

Alhaji Muhammadu Danmallam (Katsina East) rose to move "That Alhaji Umaru Gwandu, M.B.E., do take the Chair of this House as Speaker". He said:

Certain posts can be held by most persons, other posts can be held by some people but there are few posts which can only be filled efficiently by the very few selected persons. The post of the Speaker of the House of Assembly belongs to this last category, which can only be efficiently filled by persons possessing certain exceptional qualities. The post of Speaker requires among other things a deep knowledge and a clear understanding of the Parliamentary system. It requires concentration and tolerance and it also requires trustworthiness and integrity of the highest order and, above all, the person to fill this post must command respect. Alhaji Umaru Gwandu possesses all these qualities to the very high degree and perhaps more than any other person we can think of. As the Clerk to the Legislature from the beginning up to the present moment, he has worked exceedingly well and to the satisfaction of everybody. He has set a high standard which every Northerner should follow in different branches of the Government service. The post of the Speaker will not be new to Alhaji Umaru Gwandu, for all these years he has been closely associated with the outgoing Speaker, a Gentleman who

appreciates our way of life and always trying for the progress of our people and of the Region as well.

He was followed by Mallam Bala Keffi (Kaduna Capital Territory), who said:

We on the Opposition Benches always support things which are worthwhile and give our support immediately as occasion permits. I strongly support the Motion that Alhaji Umaru Gwandu should be made the Speaker of this House. We of the opposition have tried Alhaji Umaru Gwandu on so many occasions to see whether he is partial but have found him a man of good standing and impartiality and we did not find him lacking in any way. We found that he was doing his work honestly and earnestly. Also, if we refer to the history of Alhaji Umaru Gwandu, we will find that he is the most suitable person for the post. Alhaji Umaru Gwandu has two qualities which make him most suitable to be the Speaker of this House. Firstly, he has Arabic education through which he learnt a lot about the people and their way of life and, secondly, he has Western education and he is the first Northerner to hold the post of the Clerk to this House. He knows how to run the House very well and therefore, Mr. Deputy Speaker, he deserves the post. If we trace the history of this Region we shall find that originally it was Shehu Usman Dan Fodio and Shehu Abdullahi who ran the affairs of this country and if we can turn our face on the other hand we shall find that it is somebody from that family who is now the Premier of the Northern Region, and scrutinising this most critically, we shall also find that the man proposed to hold this post of the Speaker also comes from the same family. We people of this country are always proud (*Applause*) of the administrative foundation laid by these people. Those people had Eastern education only, but this time we have both Arabic and Western education, and that is why I feel that somebody who has both will be most suitable for this post.

The question was then put, and unanimously agreed to. Mr. Speaker-Elect was conducted to the Chair, and took and subscribed the oath; tributes were then paid to him by several Members from both sides of the House, to which Mr. Speaker-Elect replied:

A few minutes ago you have passed a Resolution electing a Northerner, myself, as your first African Speaker. I am proud that I am the first Northerner to be appointed the Speaker of this House as I was also the first to be appointed the Clerk to the Northern Legislative Houses. This is indeed a very rare occasion, it is the first of its kind at least in this country. I am therefore grateful to the Members of this Hon. House and the Government for initiating the proposal.

With regard to the Members who have spoken on my qualities, I would like to assure them and all the rest of the Members that I will endeavour to the best of my ability to discharge my duties with the strictest impartiality (*Applause*). But I cannot do so properly unless I have the support of the Members of this House, no matter to which party they belong. . . . Honourable members, I thank you once more for your patience for having stayed too long to see me take the Chair of this House. I wish you very safe return to your respective homes. *Allah ya sadamu da Alheri.* (*N.R. Assem. Deb.*, 2nd Legislative, 3rd Session, 2nd Meeting, pp. 8-26.)

On behalf of the Society we offer to Mr. Speaker Umaru our heartfelt congratulations, and express the hope that he may long continue to occupy the Chair to which he has so deservedly been called.

Acknowledgments to Contributors.—We have pleasure in acknowledging Articles in this Volume from Mr. L. B. Moore, *Hansard* Editor, Federal Assembly of Rhodesia and Nyasaland; Shri S. L. Shakdher, Joint Secretary, Lok Sabha Secretariat; Shri S. R. Kanthi, B.A., LL.B., Speaker of the Mysore Legislative Assembly; Mr. K. O. Bradshaw, Usher of the Black Rod and Clerk of Committees of the Australian Senate; Mr. A. G. Turner, J.P., Clerk of the Australian House of Representatives; Major-General J. R. Stevenson, C.B.E., D.S.O., E.D., Clerk of the Parliaments of New South Wales; Mr. L. C. Bowen, Clerk-Assistant of the Legislative Council, New South Wales; Mr. J. B. Roberts, M.B.E., E.D., Clerk of the Parliaments of Western Australia; Mr. J. M. Hugo, B.A., LL.B., J.P., formerly Clerk of the House of Assembly, South Africa; Mr. R. St. L. P. Deraniyagala, M.B.E., B.A., Clerk of the House of Representatives, Ceylon; Mr. A. Norval Mitchell, O.B.E., Clerk of the Northern Rhodesia Legislative Council; Mr. D. W. S. Lidderdale, Second Clerk-Assistant of the House of Commons; and Mr. S. V. Wright, Clerk of the House of Representatives, Sierra Leone.

For paragraphs in Articles XVIII ("Applications of Privilege") and XIX ("Miscellaneous Notes") and for book reviews we are indebted to Mr. D. J. E. Englefield, Senior Library Clerk, House of Commons; Mr. G. Stephen, M.A., Clerk of the Legislative Assembly, Saskatchewan; Major-General J. R. Stevenson, C.B.E., D.S.O., E.D., Clerk of the Parliaments, New South Wales; Mr. R. Dunlop, Clerk of the Parliament, Queensland; Mr. I. J. Ball, A.A.S.A., A.C.I.S., Clerk of the Parliaments, South Australia; Mr. G. D. Combe, M.C., A.A.S.A., A.C.I.S., Clerk of the House of Assembly, South Australia; Mr. C. K. Murphy, C.B.E., Clerk of the House of Assembly, Tasmania; Mr. J. B. Roberts, M.B.E., E.D., Clerk of the Parliaments, Western Australia; Mr. B. L. Clare, Clerk of the Legislative Assembly, Western Samoa; Mr. J. M. Hugo, B.A., LL.B., J.P., formerly Clerk of the House of Assembly, South Africa; Mr. T. F. B. Massingham, Clerk of the Natal Provincial Council; Shri B. N. Banerjee, Deputy Secretary, Rajya Sabha Secretariat; Shri M. N. Kaul, Secretary of the Lok Sabha; Shri S. H. Belavadi, Secretary, Bombay Legislative Department; Shri T. Hanumanthappa, B.A., B.L., Secretary to the Madras Legislature; Shri G. S. Venkataramana Iyer, B.Sc., M.L., Secretary of the Mysore Legislature; Mr. J. R. Franks, B.A., LL.B., Clerk of the Southern Rhodesia Legislative Assembly; Mr. R. C. Lowe, Clerk of the Nyasaland Legislative Council; Mr. E. H. Davis, Clerk of the Gibraltar Legislative Council; Mr. A. W. Purvis, formerly Clerk of the Kenya Legislative Council; Mr. L. R. Moutou, Clerk of the Mauritius Legislative Council; Mr. B. A. Manuwa, Clerk of the House of Representatives, Nigeria; and Mr. S. V. Wright, Clerk of the House of Representatives, Sierra Leone.

II. UNITED KINGDOM: TELEVISING THE STATE OPENING

In July, 1958, a number of questions were asked in both Houses about the possibility of televising the next State Opening of Parliament by Her Majesty. To these the Government returned non-committal replies, until on 29th July it was announced in both Houses that the Government had decided, with the consent of the Queen, that the State Opening should be televised. Particular care was taken, in announcing this decision, to make it clear that the Queen's Speech was a purely political document, composed by the Cabinet, and that the fact that Her Majesty uttered the Speech was not to be taken as involving her in the policies of the party in power. This would, no doubt, be emphasised by the commentators at the time of the broadcast.

The Home Office (presumably on the grounds that it is the department responsible for any matters not specifically allotted to other departments) were responsible for making the initial general co-ordinating arrangements; but thereafter most of the burden fell on the Lord Great Chamberlain, as the official responsible for the Palace of Westminister as a whole, particularly when Parliament is not sitting. The Ministry of Works were responsible for the erection of the necessary camera booths, etc.; and they charged the B.B.C. for this work, who (it is understood) shared the cost between themselves and the other television, newsreel and photographic agencies taking part.

Television cameras were set up along the processional route between Buckingham Palace and the House of Lords; and the outside procession was also covered, in the usual way, by the newsreels and still photographers. Inside the House, a television booth was set up inside the Royal Entrance; there was one over the doorway between the Royal Gallery and the Prince's Chamber, and one on the east side of the Royal Gallery; and in the Parliament Chamber itself there was a series of boxes mounted over the royal gallery, and one over the east gallery. These four positions were, in general, used both by the television cameras and the newsreel cameras; and, in addition, there were still cameras in some of the booths and one, in the open, in the front of the press gallery of the House of Lords. The B.B.C. was responsible for all television cameras; and the newsreel services were pooled so as to make one common film, which each of them edited subsequently as they desired. Besides the B.B.C. sound and television commentators, there was one Independent Television commentator; all three worked from boxes over the north

gallery of the House, but were able to see the pictures from the other position on monitoring screens. The television cameras were, of course, completely silent; but the newsreel cameras, and some of the still cameras, gave—as will be expected by those familiar with these affairs—a good deal of trouble owing to the noise they made.

The overhead lighting in the Queen's Staircase, the Royal Gallery, and the Parliament Chamber was considerably reinforced for the occasion; and in addition, searchlights were mounted high up on the walls of the Royal Gallery and the Chamber, directed towards the door of the Queen's Robing Room and the Throne. These searchlights were of very great power and must have been a considerable inconvenience to Her Majesty and her entourage. In the days before the State Opening, the Royal Gallery, the Prince's Chamber and the House of Lords were littered with wires and carpenters' materials; and on the day itself an immense amount of stand-by apparatus stood ready in odd corners of the building.

One of the problems of the broadcast was how to occupy the time while Black Rod was fulfilling Her Majesty's command to fetch the Commons to the Bar of the Parliament Chamber. The B.B.C., and certain other parties, were much in favour of installing extra cameras so that Black Rod could be followed on his journey, at least as far as the door of the House of Commons; but the Government would not allow this, and the interval had accordingly to be filled in by the commentators with descriptions of the scene in the Chamber, etc.

It was generally agreed that the broadcast had been a great success. There were, of course, a few minor mishaps, but these were probably noticed only by the initiated. A careful rehearsal had been carried out on a previous day, and considering the complication and technical difficulties of the whole operation, it can be claimed that it went off extremely well. The ceremony was broadcast in many parts of the world, and the newsreels were extensively shown; and photographs, both plain and coloured, appeared in all the Press. It was the first time that any of this had happened; but there can be little doubt that the experiment has been a success and will be repeated.

At the end of her Speech, the Queen said:

My Lords and Members of the House of Commons

Today, for the first time, this ceremony is being watched not only by those who are present in this Chamber, but by many millions of My Subjects. Peoples in other lands will also be able to witness this renewal of the life of Parliament. Outwardly they will see the pageantry and the symbols of auththority and state; but in their hearts they will surely respond to the spirit of hope and purpose which inspires our Parliamentary tradition. In this spirit I pray that the blessing of Almighty God may rest upon your counsels.

III. THE PRODUCTION OF HANSARD IN AN OVERSEAS PARLIAMENT

By L. B. Moore,
Hansard Editor, Federal Assembly of the Federation of Rhodesia and Nyasaland

Until recently the Federal Assembly of the Federation of Rhodesia and Nyasaland consisted of 35 Members and a Speaker, who was not a Member. As a result of the provisions of the Constitution Amendment Act, 1957, the membership was increased with effect from the general election held in November, 1958, to 59 Members, and a Speaker who is not a Member. The following notes on the arrangements for the production of Hansard in an overseas Parliament may be of interest to members of the Society.

In February, 1956, the Federal Assembly decided to institute an "over-night" Hansard (*i.e.*, a Hansard which would be available by 8 a.m. on the day following that to which it relates, taking in all speeches made up to 6 p.m.). This was introduced on a trial basis during the series of sittings of the Federal Assembly which were to take place during February and March.

The organisation for the "over-night" Hansard was as follows. Three shorthand writers were employed from the meeting of the House at 2.15 p.m. daily, with a fourth shorthand writer joining this team from 4.15 p.m. The shorthand writers took it in turns to report the proceedings for approximately fifteen minutes at a time; the shorthand note was dictated to a typist who produced an original and one carbon copy of the debates. In dictating their note, the shorthand writers produced a substantially verbatim report but left out repetitions and obvious redundancies. The transcript was handed to the Hansard Editor as soon as it was completed (usually about one hour after the shorthand writer had completed his turn in the Chamber). The Editor then checked the carbons for errors in procedure, spelling of names, etc., and made corrections where necessary, while the originals were made available in a room nearby in the custody of a Messenger, for any Member who so desired to check the transcript of his own speech. Corrections which Members were allowed to make were limited to actual errors in reporting and grammatical mistakes. On no account were Members permitted to alter the sense of what was actually said.

Members were allowed approximately one hour from the time their transcripts were available to make corrections. At the end of this period the Editor checked the Members' corrections, if any, to see that they were in order and, if so, inserted them on the copy to be

sent to the Printer, to whom the first despatch of copy was usually sent at about 4.30 p.m.

From that time onwards, at about 40-minute intervals, corrected copy was sent to the Printer, the last batch of copy being sent not later than 7.30 p.m. on those days on which the House adjourned at 6 o'clock. (The Federal Assembly sits from 2.15 p.m. to 6 p.m. from Mondays to Thursdays and, in addition, from 8 p.m. to 11 p.m. on Mondays and Wednesdays.) When the House sat after dinner, the final batch of the afternoon's copy was sent to the Printer by 8.30 p.m. which gave Members an opportunity for checking their speeches made later in the afternoon.

Speeches made up to about 9.30 p.m. were transcribed and, after checking, sent to the Printer at 11 p.m. when the House rose. The balance of copy relating to the evening's proceedings was available to Members for checking until 10 a.m. the following morning, when it was sent to the Printer. The Hansard relating to the evening's sittings was included in the following afternoon's Hansard. Thus, for example, Monday evening's debates were available in print together with Tuesday afternoon's debates at 8 a.m. on Wednesday morning.

After this "trial run" in February and March, 1956, it was decided that the "over-night" Hansard was such a success and had proved so useful that it should continue on the lines indicated above.

As from the beginning of 1959 the Federal Government Printer is to take over all Parliamentary printing. One immediate advantage of this change will arise from the fact that the State Printing works are geographically much closer to the Federal Assembly than the commercial printers hitherto employed, and there will not, therefore, be nearly as great a delay in getting copy to them.

The number of Hansards ordered has remained fairly constant over the past three years. During the last session 1,500 copies of the daily Hansard were delivered each morning at 8 a.m. to the Federal Assembly. Of these, approximately 800 copies are to meet annual subscriptions of 15s. each. Copies of the daily Hansard are also available for purchase by the public from the Publications Offices of the Printing and Stationery Department in the principal towns throughout the Federation at a cost of 3d. per copy.

The daily Hansards have the word "Unrevised" on the cover and Members have seven days from the appearance of the daily Hansard to draw the Editor's attention to any error or inaccuracy in their speeches. Only the correction of definite errors is accepted at this stage. The Editor makes the necessary corrections which Members have suggested and corrects any printing errors in a master copy which is sent to the Printer. The corrections are then made by the Printer in the type, which has been kept standing, and the necessary number of copies for the bound volumes of the sessional Hansard are run off.

(*a*) Organisation required for the production of an over-night Hansard, using shorthand writers.

From my experience over the past few years in the production of Hansard, I consider that if optimum results are to be obtained it is essential that:

(1) If possible six competent shorthand writers should be employed. This would ensure that each shorthand writer had time after his "take" was transcribed to check carefully the transcription of his notes. This is, to my mind, very important as the shorthand writer is in a much better position than the Editor—who is not in the Chamber and has not therefore heard what was said—to make corrections where necessary in Members' speeches so that, while nothing of importance is left out, the speeches read grammatically and, if possible, express the style of the Member concerned. Where fewer than six shorthand writers are employed the speed at which the transcriptions must be produced is so great that errors are almost bound to occur. Naturally the shorthand writer should not waste time checking such things as quotations, names, etc., since this can be left to the Editor who has the necessary facilities available. A good reference library is a great help to the Editor.

(2) The duration of each shorthand writer's turn in the Chamber should be as short as is reasonably possible and in no case longer than 15 minutes. Turns of ten minutes each would probably be ideal with a reduction to five minutes towards the end of the day's sitting. If this is done transcripts will be available for checking with the least possible delay. Needless to say, it is absolutely essential that shorthand writers transcribe and check each turn before returning to the Chamber for their next turn, and this is possible only if an adequate number of shorthand writers are employed.

(3) Close liaison with the Printer must be maintained and it is important to ensure that copy reaches him as early as possible. The Printer can be very helpful in picking up errors which, in spite of careful checking, have evaded the shorthand writers and the Editor; but under no circumstances must the Printer make corrections without first checking with the Editor. During the session it is by no means uncommon for the Editor to be telephoned by the Printer two or three times during the night.

(4) A very strict watch must be maintained in order that Members' corrections are kept within the proper lines. If a Member claims that he has been misreported Mr. Speaker should be the final judge, after hearing the shorthand writer and the Member concerned. In my experience this has hardly ever been necessary.

(*b*) A recorded Hansard.

The use of tape recorders has been considered from time to time and I have had the opportunity of seeing a recorded Hansard pro-

duced in the Senate of the Union of South Africa and in the Northern Rhodesia Legislative Council.

The Federal Assembly is equipped with an amplifier system consisting of four microphones suspended from the ceiling on each side of the Chamber, with additional microphones on the Table and in front of the Speaker and the Chairman and, as from the beginning of the next session, a small loud-speaker will be placed on the Hansard writers' table. Debates are relayed to various rooms in the Federal Assembly building. It is not at present intended that the amplifier system should be used in the production of Hansard. However, I consider that it would be a great assistance to the Editor and to the shorthand writers if a complete recording were made of debates. I understand that this is done in the South African House of Assembly and is of assistance to the Hansard reporters.

Owing to the world-wide shortage of shorthand writers who are of the high standard required for Hansard reporting, many Parliaments may well be faced in the future with the choice of either a recorded Hansard or no Hansard at all. For a recorded Hansard I suggest the following organisation:

STAFF: An Editor; two assistant editors; six competent typists; one official to work recording machines.

EQUIPMENT: Four good tape-recording machines for recording in the Chamber (one monitor, two recording alternate takes of say 10 minutes each, the fourth spare); eight smaller tape-recorders for transcribing and checking; six typewriters.

An official, possibly relieved from time to time, would sit in the Press Gallery and operate the switches of the microphones in the Chamber. He would also note the business under consideration (*e.g.*, Second Reading: Cats and Dogs Bill; Committee Stage: Abolition of Income Tax Bill, etc.); the names of each speaker; interjections, together with the name of the interjector; and on each sheet the time of the period covered (*e.g.* 3.25 to 3.35 p.m.). These brief notes would be sent at roughly ten-minute intervals to the typists.

In a room away from the Chamber the recording machines would be housed. One machine would be recording for a period of not more than ten minutes with an over-lap of, say, half a minute, when the second machine is switched on. The third machine monitors by keeping a continuous record and the fourth machine would be kept in reserve ready to be switched on should any break-down occur in either of the first two machines.

Each ten-minute spool of tape would be given to a typist for transcribing. At the beginning of each day's sitting the recording should be for a period of five minutes, so as to get all the typists working as soon as possible.

As each typist finishes transcribing her spool it would go to one

of the assistant editors, who would check the typescript against the actual recording and make corrections where necessary. When this has been done the transcript will be ready for checking by Members, if they so desire, and then sent to the Printer.

IV. TWO ESTIMATES COMMITTEES

By S. L. Shakdher,
Joint Secretary, Lok Sabha Secretariat

Among all the countries which follow the Commonwealth parliamentary system of procedure, the United Kingdom, Canada and India* appear to be the only countries which have the institution of Estimates Committee in their parliamentary system; although in New Zealand, the Committee called the Public Accounts Committee is more akin to an Estimates Committee, since its main duty is to examine all estimates prior to their consideration by the Committee of Supply.

Although the main conception behind the establishment of an Estimates Committee in the United Kingdom and India is the same (viz., that a representative committee of Parliament should examine the details of estimates of expenditure of Government thoroughly from year to year in a selective way) the procedure and functions of the two committees differ in many respects. It is the purpose of this article to show how each one of the two committees has taken a path of its own and is functioning.

Historical development

In the United Kingdom a Select Committee on Estimates was first formed in 1912. The Committee was re-appointed in 1913 and 1914. The outbreak of the war in 1914 brought to an end this short experiment and it was not till the end of July, 1917, that a Select Committee on National Expediture was formed from year to year. In 1921, the Select Committee on National Expenditure was not reappointed and a Select Committee on Estimates was revived in its place. The Committee was re-appointed every year from 1921 till the outbreak of the last war. During the war years, 1939-45, a Select Committee on National Expenditure was appointed every year. In 1946, a Select Committee on Estimates was again appointed.

If one delves deeper, one finds it interesting to note that *ad hoc*

* In India, beside an Estimates Committee in the Lok Sabha, a majority of State Legislatures have formed Estimates Committees on the same model as the Centre.

committees, more or less the early counterparts of the Estimates Committee, have been in existence[1] since 1828. In 1828, a Select Committee was appointed to consider what further regulations and checks should be adopted for establishing an effective control upon all charges incurred in the safe custody and application of public money and this committee was required to consider measures for reducing public expediture. In 1848, three Select Committees were appointed to consider various classes of estimates. These Committees were appointed from year to year, and in war periods, *e.g.* during the Crimean War and Boer War, other committees to enquire into the condition of departments supplying the War Office contracts were formed. During the Boer War also, a Select Committee on National Expenditure was appointed in 1902 and re-appointed in 1903.

In India, following a memorandum[2] by Shri M. N. Kaul, then Secretary of the Constituent Assembly of India (Legislative), which was strongly commended for adoption by the then Speaker, Shri G. V. Mavalankar, the Estimates Committee was set up for the first time in 1950, after the present Constitution came into force. The Committee has been set up every year since then. There had been, however, a demand for the establishment of a Committee like the Estimates Committee since 1938. The non-official members of the then Central Assembly had regularly voiced a demand for a Committee with sufficient powers to examine the expenditure of the Government; but the Government of the day always shelved the proposal on one pretext or another.[3]

Constitution, powers and functions

In the United Kingdom, the Committee on Estimates is a sessional committee[4] appointed on a Government motion from session to session. The motion contains the terms of reference of the Committee and also the names of members to be appointed to the Committee. Unlike the Public Accounts Committee, there is no mention of it in the Standing Orders of the House of Commons.

In India, the Estimates Committee is a standing committee whose scope of functions, method of appointment and other ancillary matters are provided in the Rules of Procedure and Conduct of Business in the Lok Sabha.[5] The motion for the election of the Committee for the following year is moved in the Lok Sabha by the Chairman of the Committee some time (usually a fortnight) before the term of the current Committee comes to an end. The rules provide for election of members to the Committee by a system of proportional representation by single transferable vote. At the commencement of a new House, the first motion is made by a Minister of Government.

In the United Kingdom the number of members of the Committee is 36, and the quorum to constitute a meeting of the Committee is

fixed at seven. The Indian Committee consists of 30 members and the quorum is one-third of the number of members.

In the United Kingdom the Chairman of the Committee is elected by the members of the Committee after it has been constituted. In India, the Chairman is nominated by the Speaker, provided that if the Deputy Speaker is a member of the Committee he becomes the Chairman of the Committee automatically. No Member who is a Minister (which includes a Deputy Minister and a Parliamentary Secretary), can be appointed a member of the Committee, and if a member after appointment to the Committee is appointed a Minister, he ceases to be a member of the Committee.[6] In the United Kingdom there is no such rule; but by convention, Ministers are not appointed Members of the Committee, and similarly, if a member of the Committee is appointed a Minister, another member would normally be appointed to the Committee in his place.

In India, the functions of the Committee are laid down in the Rules of Procedure and Directions by the Speaker issued from time to time, while in the United Kingdom the main terms of the Committee are stated in the motion, and their amplitude and scope have been determined by conventions and practices from time to time. One of the interesting matters which has engaged the attention of the critics of the Indian Committee is that its terms of reference and their interpretation go possibly a little beyond its counter-part in the United Kingdom so far as questions of policy are concerned. There is no doubt that in the case of the Indian Committee, the functions have been set out in the Rules of Procedure and the Directions issued by the Speaker, while in the case of the United Kingdom Committee one has to infer them mostly from the reports of the Committee and also from the descriptions of the various authors who have described the work and functions of the Committee in the United Kingdom.

The functions of the Indian Committee are laid down as below:

(*a*) to report what economies, improvements in organisation, efficiency or administrative reform, consistent with the policy underlying the estimates, may be effected;
(*b*) to suggest alternative policies in order to bring about efficiency and economy in administration.
(*c*) to examine whether the money is well laid out within the limits of the policy implied in the estimates; and
(*d*) to suggest the form in which the estimates shall be presented to Parliament.

The Speaker by a direction has defined the amplitude of the term "policy" referred to in clause (a) above. The direction states that the term "policy" relates only to policies laid down by Parliament* either by means of statutes or by specific resolutions passed by it from time to time.

* Shri C. D. Deshmukh, the then Finance Minister, said in the course of his speech on 23rd May 1952, in Lok Sabha: "I look forward to continuing assistance from the labours of the Estimate Committee in securing that, within the four corners of the *policy laid down by Parliament*, the money authorised to be spent by it are utilised to the best possible advantage without avoidable waste."

The Direction further provides that—

It shall be open to the Committee to examine any matter which may have been settled as a matter of policy by the Government in the discharge of its executive functions.*

With regard to clause (b)

the Committee shall not go against the policy approved by Parliament; but where it is established on evidence that a particular policy is not leading to the expected or desired results or is leading to waste, it is the duty of the Committee to bring to the notice of the House that a change in policy is called for.†

The fundamental objectives of the Committee are economy, efficiency in administration and ensuring that money is well laid out; but, if on close examination, it is revealed that large sums are going to waste because a certain policy is followed, the Committee may point out the defects and give reasons for the change in the policy for the consideration of the House.†

* In 1958 a question was raised in Government circles and it was widely discussed in the press that the Estimates Committee had criticised policy matters: attention was in particular drawn to para. 21 of the 21st Report of the Estimates Committee on the Planning Commission. In this para. the Committee had *inter alia* stated as follows:

> ". . . while the Prime Minister's formal association was absolutely necessary during the formative stages and while he would still have to provide the guidance and assistance to the Planning Commission so as to facilitate the success of planning, it is a matter for consideration whether it is still necessary for him to retain a formal connection with the Planning Commission. Similarly, it would also have to be considered whether it is necessary to continue the formal association of the Finance Minister and other Ministers of the Central Government with the Commission. . . ."

It is not correct to say that the Committee has criticised a policy laid down by Parliament. There has never been any formal parliamentary approval of the Planning Commission. The first announcement regarding the constitution of the Planning Commission was made in the President's Address to Parliament on 31st January 1950. Later during his Budget speech, the then Finance Minister, Dr. John Matthai, made an announcement about the personnel of the Commission.

It is interesting to note that Dr. John Matthai stated that Shri Jawaharla Nehru (*sic*)—not "the Prime Minister"—would be the Chairman of the Commission. None of the other members who were appointed to the Commission was a Minister of the then Government of India. It is thus clear that the intention was to constitute the Commission purely with non-officials and Prime Minister's association was in his individual capacity and not as the Prime Minister of Government. No resolution nor a Bill was brought before Parliament to define the strength of the Commission, the qualifications for membership, the proportion between Minister and non-Minister members or functions of the Commission. They were all settled by a Government Resolution dated 15th March 1950.

The strength of the Commission was changed from time to time, and all these changes were made by Government in its executive discretion and were never placed before Parliament for their approval. Therefore there can be no policy approved by Parliament in so far as this matter is concerned. It can best be a policy settled by executive Government in the discharge of its executive functions to conduct the economic planning of the country. It is relevant to point out here that in U.K. such a body would have been constituted by an Act of Parliament, *vide*, for instance, The Atomic Energy Authority Act.

† Speaker Shri M. A. Ayyangar, inaugurating the Estimates Committee in May 1959, said: "Your function is not to lay down any policy. Whatever policy is laid down by Parliament, your business is to see that that policy is carried out—not independently or divorced from its financial implications. You must bear in mind constantly that you are a financial committee and you are concerned with all matters in which finances are involved. It is only where a policy involves ex

In the United Kingdom, as stated above, the motion[8] which is brought before the House every session for the appointment of the Committee states the terms of the Committee in the following words:

ESTIMATES.—That a Select Committee be appointed to examine such of the Estimates presented to this House as may seem fit to the Committee and to report what, if any, economies consistent with the policy implied in those Estimates may be effected therein, and to suggest the form in which the Estimates shall be presented for examination:

Earlier writers who have written on the Estimates Committee in the United Kingdom have, broadly speaking, stated that the Committee avoids all questions of policy. None of the writers has, however, made it clear in a detailed manner as to what is intended by them by the term "policy". Clearly a Committee of Parliament can only be bound by the policy laid down by Parliament. It cannot be limited in its work by the policy that Government may have laid down in the discharge of its executive functions subordinate to the policies laid down by Parliament. It is also to be noted that much of the procedure in the House of Commons is regulated by conventions, and that the written rules are always to be read as modifications of unwritten practices. It takes a long time for the conventions and practices to find their way into the text books. However, Professor K. C. Wheare, a distinguished writer on constitutional matters, writing in 1955 described the position in the United Kingdom in the following terms:[9]

It is not possible to argue in detail here the case for and against allowing or encouraging the committees to consider policy or merits. It may be asserted, however, that much of the usefulness and reputation of the Public Accounts Committee, which is regarded as the model of the scrutinising committees of the House of Commons, comes from its interest in questions of wastefulness, which certainly trespass upon questions of policy. It is certain, too, that a great part of the usefulness of the Estimates Committee comes from its freedom in interpreting its terms of reference. There has been too much theoretical dogmatism about the proper functioning of these committees. Policy does not necessarily mean party policy, nor high policy. There are many questions of policy which members of a select committee, of differing parties, could investigate without dividing themselves into Government supporters and Opposition supporters. The experience of the National Expediture Committee has demonstrated that already. It is wise, no doubt, not to widen the terms of reference of the committees by empowering them in express terms to consider policy. It is much better that these discussions of policy should arise necessarily from discussions of economy and value for money and efficiency, rather than that they should be raised directly.

The author further says:[10]

. . . some part of the interest which the Estimates Committee has aroused since 1945 is due to the fact that, in spite of the limitations in its terms of reference, it does in fact encroach, from time to time, upon the field of

penditure and while going into the expenditure you find that the policy has not worked properly, you are entitled and competent to go into it. Where the policy is leading to waste, you are entitled to comment on it in a suitable way."

" policy ". It is difficult, of course, to know where policy begins. It has long been accepted that the Public Accounts Committee is entitled to scrutinise expenditure not only from the strict point of view of audit but also from the point of view of waste and extravagance. Does not that lead them into questions of policy? It must be admitted that it can. Even more likely is it that the Estimates Committee in considering proposals for expenditure is likely to be led into judgments upon waste and extravagance, which are bound to lead to judgments upon the wisdom of the policy which led to this expenditure.

Also Sir Gilbert Campion (later Lord Campion), Editor of May's *Parliamentary Practice* for many years, summed up the position before the Select Committee on Procedure (1945-46) as follows: [11]

Committees of the House of Commons on administrative matters are, in fact, advisory bodies used by the House for inquiry and to obtain information, and they generally inquire into definite happenings and criticise after the event, though as a result of the lessons they have learnt they may make suggestions for the future. It is difficult to see how such bodies could impair ministerial responsibility, even if matters of " policy "—a very indefinite word—were assigned to them. If the House is not free to use them as it wishes, it is deprived, or deprives itself, of the most natural means of obtaining information and advice.

The above statements are amply borne out if a detailed study of the reports of the Estimates Committee in the United Kingdom is made. A statement prepared at random showing some of the recommendations made by the Estimates Committee of the House of Commons, which in this writer's opinion touch upon policy matters, is given in an Annexure to this Article (p. 47).

In the United Kingdom, the Estimates Committee normally works through its Sub-Committees. A number of Sub-Committees—usually five or six—are appointed and the subjects which the Committee has taken up for consideration during the year are divided among the Sub-Committees by a Steering Sub-Committee (Sub-Committee " A ") which also considers the procedural and other matters relating to the working of the Committee. The Sub-Committees take evidence and formulate their reports, which are then considered by the whole Committee.

In India, so far, the Sub-Committee system has been adopted only in one case, *viz.*, consideration of the estimates relating to the Ministry of Defence. In that case, the Sub-Committee was authorised to take evidence and formulate its report, which was then considered by the whole Committee. Otherwise, the Estimates Committee itself considers all the matters which it has taken up for consideration during the year. The Committee usually appoints Study Groups and divides the subjects among the Study Groups. The Study Groups make an intensive study of the subjects which have been allotted to them, and the members of the Committee may generally acquaint themselves with all subjects before the Committee. The Committee as a whole takes evidence and then comes to conclusions. It may then entrust the work of formulating the first draft of a report

to the Study Group. The draft of the Study Group report is submitted to the Chairman of the Committee, who may accept it or make such further changes in it as he may like. The draft report is circulated to the members of the whole Committee as the Chairman's report; it is then considered in detail by the whole Committee.

In the United Kingdom, there is a separate Select Committee on Nationalised Industries* which has its own terms of reference. Its scope is quite distinct from that of the Select Committee on Estimates, since no estimates on these industries are laid before Parliament, and is more comparable with (and indeed intentionally to some extent overlaps) that of the Committee of Public Accounts.

In India, however, the functions of examining Public Undertakings† which include nationalised industries, are at present discharged by the Estimates Committee itself. Until recently the Committee as a whole selected subjects for examination and dealt with them in the same manner as the estimates of any other department or Ministry; this has been changed by a direction, issued by the Speaker, constituting a Standing Sub-Committee of the Estimates Committee on the Public Undertakings. This Sub-Committee will take evidence and formulate its report which may then be considered by the whole Committee. In effect, the Sub-Committee on Public Undertakings will work as an independent entity, except that the selection of subjects to be considered by the Sub-Committee will be made by the whole Committee and the draft report of the Sub-Committee will be considered by the whole Committee. The members of the Sub-Committee will also be selected by the Chairman of the Committee from amongst members of the Estimates Committee and the Sub-Committee will work under the guidance and directions of the Chairman of the Estimates Committee. This Committee will work on the same model as the Sub-Committee on Defence, and it is to be seen how the experiment will work out in practice.

Programme of work

Both in the United Kingdom and India, work of the Estimates Committee begins after the estimates of expenditure have been presented to the House. But in the United Kingdom, the Estimates Committee frequently reports before the final vote on the estimates

* There are only eight such Nationalised Industries. The terms of reference of the Select Committee on Nationalised Industries are: "That a Select Committee be appointed to examine the reports and accounts of the Nationalised Industries established by statute whose controlling Boards are appointed by Ministers of the Crown and whose annual receipts are not wholly or mainly derived from moneys provided by Parliament or advanced from the Exchequer."

† A public undertaking for the purposes of examination by the Estimates Committee has been defined in a direction of the Speaker as follows: ". . . a public undertaking means an organisation endowed with a legel personality and set up by or under the provisions of a statute for undertaking on behalf of the Government of India an enterprise of industrial, commercial or financial nature or a special service in the public interest and possessing a large measure of administrative and financial autonomy."

takes place, so that the House may be in possession of the views of the Estimates Committee before it has finally accepted the proposals of the Government in relation to those matters which the Estimates Committee has taken up for consideration during the year. This is possible because the estimates are voted nearly 5 or 6 months after they have been presented to Parliament. (They are presented sometime in February and finally voted in July or August.) It must, however, be pointed out that the consideration of estimates in the Committee of Supply is in no way contingent upon their previous consideration by the Estimates Committee.

In India, the reports of the Estimates Committee are submitted throughout the year irrespective of the fact that the House has voted the estimates. This is so because the estimates are presented to the House on the last day of February and they are passed before the end of April. In practice, the Estimates Committee has found it difficult to complete its work within the two months at its disposal. Legally and constitutionally, the reports of the Estimates Committee are not binding on the House or the Government. They are recommendations which the Government may accept or may feel bound not to accept because of various difficulties. Since the estimates are voted by Parliament in the shape of authorisations not exceeding certain upper limits, it is always open to Government to spend less and to accept the recommendations of the Estimates Committee and effect economy. In any case, the views of the Estimates Committee would have been reflected in the next year's estimates, and the House can always draw attention to the previous reports and call for explanations from the Minister concerned as to why the estimates have not been prepared after taking into account the recommendations of the Estimates Committee. In practice, therefore, there is sufficient time for the Estimates Committee to investigate thoroughly into the matters and make considered recommendations and for Government to examine the recommendations of the Committee with care and for the House to give its considered opinion after taking into account the views of the Committee and Government.

In India, it is open to the Committee to call for details in respect of expenditure charged on the Consolidated Fund of India. The Speaker has also directed the Committee to scrutinise whether the classification of estimates between "voted" and "charged" has been done strictly in accordance with the provisions of the Constitution and Acts of Parliament.

In the United Kingdom, the Estimates Committee as a whole does not undertake any tours or study on the spot of the organisations which are being examined. Sub-Committees are, however, given power to adjourn from place to place, and have on occasions even travelled overseas (*e.g.* to Nigeria). The Sub-Committees would not normally visit the central offices of Ministries, but frequently visit outstations.[12] In India, the Study Groups or the Sub-Committee or the

whole Committee make frequent visits throughout the year to the central or outstation offices of the various organisations, departments or Ministries which are under examination by them. They obtain a visual impression of the organisation as well as information from the officers on the spot. This is of course done informally and only with a view to making a thorough study of the subject. The formal evidence is taken, and formal discussions take place, later in the Committee room in Parliament House, at which the information obtained as a result of the Study Tour is exchanged with top officials of the organisation and their considered views obtained. The report of the Committee is based on the formal evidence and formal discussions that have taken place in the Committee room. When Committees are on a Study tour, informal meetings may be held at the place of visit but at such meetings no decisions are taken or minutes recorded.

In the United Kingdom, the sub-committees frequently call non-officials to give evidence if in their opinion the advice of a non-official is germane to the inquiry. In India, too, non-officials may be invited to appear before the Committee to give evidence on any matter before the Committee.[13]

In the United Kingdom, the meetings of the Committee or Sub-Committees are generally held on days when the House is sitting, although by the Committee's order of reference Sub-Committees can meet during a recess. The Committee or Sub-Committee generally meets for about 2 hours at a time. In India, on the other hand, the Committee, the Study Groups and the Sub-Committees customarily meet throughout the year, whether the House is in session or not. There is no obligation on the part of the Committee to seek any authorisation from the House. The duration of the sittings of Committees varies from 3 to 6 hours a day.

Reports

In the United Kingdom, the report is from the Committee to the House, and the Committee refers to itself as "Your Committee". The report is not signed by the members of the Committee; it represents the conclusions of the majority of the members, and the minutes of proceedings of the Committee show how the members voted and what their differences were. In India, the report is signed by the Chairman and is presented by him on behalf of the Committee. The mode of presentation of report is "I, the Chairman, having been authorised by the Committee to submit this report on their behalf, present the report." The proceedings of the Committee indicate the manner in which the report was considered and the names and the number of members who were present when the report was approved. So far the Estimates Committee has obtained unanimity on the conclusions which it has embodied in its reports. In one case only, with regard to a particular matter in a report, a member wished

that his alternative view should be recorded in the proceedings of the Committee, which was done. Sometimes in India, the Committee itself may indicate in the report that there was another view in the Committee which was not accepted or there was a majority view for a particular matter without indicating who were in the minority or majority (this would not be in order in a report by a House of Commons Committee). The Committee does not work on party lines and therefore there is a spirit of compromise and give and take, the matters not being pressed to division and no votes being recorded.

Neither in India nor in the United Kingdom are minutes of dissent appended to the reports. In the United Kingdom the proceedings of the Committee indicate whether more than one draft report was presented and, if so, which one was taken up for consideration. The evidence given before the Committee is normally presented to the House along with the report, although the Committee is not obliged to report all the evidence taken before it. The report also gives indications as to the part of the evidence on which the particular observations or recommendations contained in the report are based. The minutes of proceedings are therefore written very briefly, and give no indication about the gist of evidence or trend of discussions in the Committee. In India, on the other hand, the evidence is not presented to the House, nor is it printed, or made available to anybody; it forms part of the record of the Committee. Consequently, minutes are written elaborately and they indicate the gist of the discussions that took place in the Committee. Such minutes are impersonal and may only indicate the salient features of a particular point of view or an observation. They are presented to the House along with the report, or a little later. There has been some discussion about the merits and demerits of presenting verbatim evidence given before the Committee to the House and thus making it available to the Government and the public. The advantages are of course obvious, inasmuch as it will give a complete background to the readers of the reports of the Estimates Committee as to the trend of discussion in the Committee and the volume and strength of opinion and the level at which it was expressed before the Committee. But those who advocate that the evidence should not be divulged argue that the officials of the Government and others who appear before the Committee should speak freely and frankly and give their opinions and observations on the various matters before the Committee. If it were known that the evidence would be made public or made available to their superiors the officials might perhaps refrain from expressing their candid opinions, and only give formal replies, which might prevent the Committee from coming to correct conclusions. Secondly, the evidence is so voluminous that it might be very costly to get it printed and circulated. Furthermore, most of the evidence given by the officials is based on voluminous written material so that the evidence by itself may not be

quite fully explanatory unless the other documents are also printed along with it and this may raise questions of editing and also questions of infringing the secrecy of documents. This difficulty appears to be discounted in the United Kingdom, where written memoranda as well as oral evidence are frequently published along with a report.

In India, after the report has been finalised by the Committee, it is sent to the Ministry or Department concerned for verification of facts contained therein. A copy is also sent to the Financial Adviser concerned for a similar purpose. The idea is that the factual statements made in the report should be correct in all respects so that there may be no dispute between the Committee and the Department as to the facts later on. The Ministries, while communicating corrections of facts, sometimes do give their comments on the recommendations contained in the report. The Committee may also consider the comments of the Ministry, and if any new facts have been brought to their attention even at that stage the Committee may review its recommendations and amend or modify its earlier conclusions. The occasions on which the Committee has reconsidered its recommendations in the draft report have been very few. Firstly, the Ministries did not give their comments on proposed recommendations; and secondly, only in very few cases were any new facts brought to the attention of the Committee to necessitate revision of its earlier conclusions. The Ministries are enjoined by a letter every time that the draft report should be kept secret before it is presented to the House. This direction of the Committee has always been followed by the Ministries and Departments.

In the United Kingdom the draft report is not sent to the Ministry for verification. The Committee finalises its report on the basis of the evidence given before it, and the draft report is not shown to anybody before it is presented to the House. After the report has been presented to the House, the Ministries are at liberty to give their minutes or comments on the reports. These are usually communicated direct to the Committee (see p. 38), but in special cases a department may present them direct to the House. In some cases it has happened that Government has disputed the facts contained in a report of the Estimates Committee.[14]

In India the recommendations of the Estimates Committee are, since 1958, classified at the end of each report in an Appendix under the following heads:

(*a*) Recommendations for improving the organisation and working of the Department.
(*b*) Recommendations for effecting economy—an analysis of more important recommendations directed towards economy is also given. Where possible, money value is also computed.
(*c*) Miscellaneous or General recommendations.

It is, however, to be noted that the Committee does not proceed to analyse the figures comprising the Estimates with a view to seeking

justification for each sum included in the Estimates just as a Budget Officer of the Government will do. Since the figures represent the activities of the Ministry or Department, and the Committee is interested in examining those activities, it scrutinises them from the following points of view:

(*a*) whether most modern and economical methods have been employed;
(*b*) whether persons of requisite calibre on proper wages with necessary amenities and in right numbers have been put on the job;
(*c*) whether duplication, delays and defective contracts have been avoided;
(*d*) whether right consultation has preceded the execution of the job; and
(*e*) whether the production is worth the money spent on it.

In the United Kingdom the reports do not contain any similar classification of recommendations. In other respects the examination of the Estimates is conducted on the same lines as in India.

In India, no member of the Estimates Committee can be a member of a Committee appointed by Government for examination of a matter which is concurrently under the examination of the Estimates Committee, unless he has taken the permission of the Speaker before accepting nomination on the Government Committee. The Speaker, after consultation with the Chairman of the Committee, may either allow a member to be a member or Chairman of a Government Committee or advise him to decline[15] the offer. The member may, if he is keen on accepting nomination on the Government Committee, resign[16] from the Estimates Committee. Where, however, the Speaker has permitted a member of the Estimates Committee to be a member[17] or Chairman of a Government Committee on the same subject which the Estimates Committee had been examining then, he has always stipulated that the report of the Government Committee should be made available to the Estimates Committee and that it should not be released for publication without the permission of the Estimates Committee or before the Estimates Committee has presented its own report on the same matter.[18]

In the United Kingdom there are no such restrictions on the appointment of members of the Estimates Committee to Committees appointed by Government for investigation of the same subject which is under the examination of the Estimates Committee.

Both in India and the United Kingdom the Committee has full powers to send for persons, papers and records, and the Government have the discretion to decline production of any paper if in their opinion its disclosure is prejudicial to the safety or interest of the State. In India, however, there is a further proviso that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Speaker, whose decision shall be final. Occasionally also the Government has pleaded that, certain information being of a secret nature, papers and records relevant thereto might not be produced before the Committee. The Committee has in-

sisted that unless the Government certify that the disclosure of any paper is prejudicial to the safety or interest of the State, all papers of confidential or secret nature should be produced before the Committee. In recent years, a convention has been established that if a witness says that a particular paper is secret, he may show it to the Chairman. If the Chairman is satisfied, it would not be produced before the Committee and the Chairman may explain the position to the Committee; if, however, he directs that the paper should be produced before the Committee, the Government may either do so or refer the matter to the Speaker for his guidance. So far the question of production of secret papers has arisen only in a few cases, and the matter has been settled to the satisfaction of the Committee and the Government by discussion and no case has come up to the Speaker. In the United Kingdom the Speaker has no such powers in the matter. If the Committee should feel that a paper which has been withheld should be produced before it, the only course left open to it is to refer the matter to the House for its decision.

Action by departments

In India, after the report has been presented to the House, it falls to the Ministry or the Department concerned to take action on the various recommendations and conclusions contained in the report, which are summarised at the end of the report and consecutively numbered. After a lapse of some reasonable time, the Ministry or department concerned is required to intimate to the Committee the nature of action taken on the recommendations and suggestions. The replies received from the Ministries and Departments concerned are analysed by the Committee in three Statements:

(i) Statement I shows the recommendations and suggestions, etc., agreed to by the Government and implemented.
(ii) Statement II shows the recommendations, which it has not been possible for the Ministry or Department to implement for reasons stated by them and which the Committee on reconsideration thinks should not be pressed.
(iii) Statement III shows the recommendations which the Government are unable to accept for the reasons given by them but which the Committee feels should be implemented.

These three statements are presented to the House in the form of a further report from the Committee, and then it is left to the House to take such further action as it may like.

In India the action taken by Government on the reports is sifted, analysed and considered by a Standing Sub-Committee of the Estimates Committee which is appointed at the beginning of each year. The Sub-Committee goes into every recommendation thoroughly and may sometimes call the departmental witnesses to amplify the written

statement supplied by the Department. The report of the Sub-Committee is then placed before the whole Committee, and it is only after the Committee has deliberated on it and approved it that the final report is presented to the House. Sometimes this process of watching the implementation of recommendations is spread over many years,* and the successive Committees consider them. This method has proved effective because the Ministries are answerable to the Committee for every recommendation and different Committees have had an opportunity of examining the same matter at different periods, so that the soundness of the recommendation made by the Committee is open to test subsequently by different persons at different periods. So far there have been no cases when there has been a conflict between the views of successive Committees. The Committee may, through lapse of time and in the changed circumstances, agree not to press a recommendation; but there has been no case where the Committee has fundamentally disagreed with its predecessors on the merit or value of any recommendation.

In the United Kingdom there is no regular machinery whereby the implementation of recommendations is watched. Each Member is left to spell out the Government's attitude to a recommendation of the Committee either from the memoranda written by the Government departments, or from the White Papers placed before the House of Commons, or from answers to Parliamentary questions or Government statements made in debate or otherwise from time to time.

In India the House does not discuss the report of the Estimates Committee as such; but during the discussion on the budget and the demands for grants copious references are made to the reports of the Estimates Committee by members of the Opposition as well as Government Party, and the Minister concerned is required to answer most of the criticisms made in the reports of the Estimates Committee indirectly in such debates. Reports of the Estimates Committee are also referred to during Question time, when members seek information on the implementation of recommendations.

In the United Kingdom the Estimates Committee itself ceases to have any formal concern with the reports after they have been presented to the House. The same Committee or the successor committee is not required by its order of reference to report the progress of the implementation of recommendations. In practice, however, after the presentation of a report, the Ministry or Department concerned usually sends its reply to the Committee which then publishes it as a

* The Committee is conscious of the fact that it should not prolong a matter unnecessarily so that it may not have to deal with a large accumulation of arrears as years roll on. The delays are at present due to the slackness on the part of Government Departments in furnishing replies. Such belated views of the Government sometimes throw the recommendations of the Committee out of focus, and it is waste of time and energy to pursue such recommendations. In such cases the Committee would do well to close the matter by making a report to the House on the delays in receiving replies and leave the matter to be settled by the House in such manner as it deems fit.

separate report (when convenient, several replies may be published together). In such reports the Committee frequently comments on the departmental observations, and sometimes calls for a further reply after taking evidence on the reply itself from departmental witnesses. Members do refer on supply days to the reports of the Estimates Committee and ask the Minister what he has done in regard to the implementation of its recommendations. In recent years there have been a few instances[19] where the reports of the Estimates Committee have been discussed by the House on a specific motion.

Procedure of the Committee

In India, the Rules of Procedure of the House provide that the Speaker may from time to time issue directions to the Chairman of the Committee as he may consider necessary for regulating its procedure and organisation of work. Also the Chairman may, if he thinks fit, refer any point of procedure to the Speaker for his decision. In pursuance of this power, the Speaker has issued a number of directions from time to time regulating the procedure of the Committee. These directions have been issued by the Speaker after considering concrete cases that have been brought to his notice by the Chairman or the Committee. By the rules and directions, the Committee is bound to refer certain matters of procedure to the Speaker for his decision or guidance, in case any need arises. This is done to avoid references to the House. The Committee by convention shows its draft reports to the Speaker before they are presented to the House. However, the Speaker has merely perused these reports and has never referred any matter to the Committee for reconsideration, amplification or elucidation.

In the United Kingdom, as stated earlier, the Speaker is not concerned with the day-to-day functioning of the Committee and therefore no power is vested in him to give directions to the Committee. The Committee does not inform him privately of the progress of the matters under consideration by the Committee, nor is he officially cognisant of any matter until the Committee makes a report to the House.

In India, sometimes specific matters[20] have been referred by the Speaker or the House to the Committee for investigation and report. In the United Kingdom there is no such practice unless the matter pertains to the internal functioning of the Committee; *e.g.*, on 27th June, 1951, a complaint that written evidence submitted to a subcommittee of the Estimates Committee had been prematurely published was referred by order of the House to the Estimates Committee itself for investigation, and the Committee reported thereon.[21]

In India, the Speaker may on a request being made to him and when the House is not in session[22] order the printing, publication or circulation of the report of the Committee before it is presented to the House. In such a case, the report must be presented to the House

during its next session at the first convenient opportunity. Any business pending before the Committee does not lapse by reason only of the prorogation of the House, and the Committee continues to function notwithstanding its prorogation. A Committee which is unable to complete its work before the expiration of its term or before the dissolution of the House may report to the House that the Committee has not been able to complete its work. Any preliminary report, memorandum or note which the Committee may have prepared or any evidence that the Committee may have taken is made available to the new Committee.[23] If a Committee has completed the report but is not able to present it to the House before its dissolution, the report is laid on the Table[24] by the Secretary of the House in the new House.

In the United Kingdom no such provision exists. The Committee becomes *functus officio* on prorogation and there is no provision whereby a successor Committee can take up the unfinished work of the previous Committee, unless the House authorises the new Committee to take up the work by specifically mentioning it in the motion[25] for the appointment of the new Committee or by a separate *ad hoc* motion. There is also no provision for the printing, publication or circulation of the report of the Committee before its presentation to the House.

Witnesses and advisers

In India, written questionnaires are sent to the departmental witnesses for written replies before they are called to give oral evidence. Even during evidence, when questions are asked, the witness may not give an answer immediately, but suggest that a written memorandum will be supplied later. Consequently much of the work of the Committee is carried on in writing and less reliance is placed on or use made of the oral evidence because it is only in amplification of the written replies. While the Committee calls for one or two witnesses from a Ministry, a practice has grown for the heads of Ministries and Departments to bring with them a large number of subordinate Officers and records to the Committee. During the evidence, very little use is made of the records brought by the subordinate officers and there is very little consultation between the heads of Departments and Junior Officers in the Committee. For most of the time, therefore, the junior subordinate officers are merely present there to watch the proceedings. The Committee has time and again brought it to the notice of the Ministries that only principal witnesses should come; but it has not excluded the other junior and subordinate officers from the meeting, lest departmental witnesses should feel that they had not the necessary assistance at their disposal while giving their evidence. In the United Kingdom, although the Departments concerned are asked to send whatever witnesses are most suitable, only a few witnesses who are intimately connected

with the subject matter of discussions appear before the Committee. Much of the material is collected in oral evidence. The witnesses give as much information as possible orally, and there is very little left to be given in writing. Consequently, the Committee gets a more vivid picture and is able to appreciate the background better and its report is largely based on such evidence. This is not to say that written evidence is not placed before the Committee. Usually in the first instance Departments do send written memoranda, and later may also supply further documents in amplification of oral evidence, which are then printed along with oral evidence, but the volume of such written evidence is very small compared to the practice in India in this regard.

In the United Kingdom the Committee often works on party lines, as is evident from the divisions in the Committee on more important matters under discussion by the Committee. In India, on the other hand, the Committee works on non-party lines and there has been no division so far in the Committee on any matter before the Committee. Members of the Opposition have frequently testified to the non-party character of the Committee.[26]

In India, while the Committee is deliberating or taking evidence, refreshments are served. The Members also smoke, and there is a good deal of informal atmosphere. The Committee also sits for a number of hours at a stretch. In the United Kingdom the Committee and Sub-Committees generally sit for not more than two hours at a time, and there is a formal atmosphere. No refreshments of any kind are served, though members do smoke during deliberations; but that too is prohibited during the taking of evidence.

Both in the United Kingdom and India the Estimates Committee has been working without the aid of the experts, unlike the Congressional Committees of the United States of America; that is to say, the Committee does not have the assistance of whole-time servants who are experts technically in the subjects which are under its examination. The Committee has not even the assistance of the Comptroller and Auditor General. It has always been held that the Committee is a layman's committee and it must bring to bear the point of view of the layman on the matters under examination. If the Committee were to be assisted by experts it might well happen that the Committee would be dominated by those experts, and ultimately it might lead to putting up experts on the Committee against the experts of the Government. Thereby there would be a danger of conflict between the Committee and the Government, and Parliament would lose the benefit of the advice of its own members assembled in the Estimates Committee. If an expert enquiry is wanted it should best be left to the department to constitute such an enquiry, and the experts should be left to themselves to make suggestions. The Estimates Committee should not become a vehicle for expert examination which properly speaking is the sphere of the executive government.

In the United Kingdom the question of association of experts with the Committee has been raised in the past now and again, but the House of Commons, wisely, has always decided against it. In India, on the other hand, the Committee has never raised any question of expert assistance, as during the years of its existence it has felt quite confident of dealing with the matters that have come before it in its own way. The previous Chairman of the Committee has, however, sometimes raised the question of associating experts with the Committee on a temporary basis, but on the above considerations being pointed out to him he agreed that it was not correct in the long run to press for such assistance. The Committee should call, and in fact the Indian Estimates Committee has often called, official and non-official experts as witnesses and gathered their opinion about the various matters under its examination and then the Committee, after having sifted such evidence, has come to its own conclusions without in any way basing its reports on direct reference to such evidence save in a few isolated instances.[27]

Both in India and the United Kingdom the Committees have been very much alive to the need for keeping separate the Parliamentary and executive responsibilities. The Committees have in various ways tried to steer clear of executive responsibilities, that is, they have avoided all such steps which might involve them at the stage of formulation of policy or in the execution of the policy. For this reason the Indian Committee has, despite suggestions made to it from time to time, always turned down the proposal that it should examine the supplementary estimates before they are presented to the House. Since the supplementary estimates before presentation to the House are still in the executive field, the Committee has thought it unwise to begin examination of the estimates at that stage. The Committee has always held that it could be fully seized of the supplementary estimates after they are presented to the House. Similarly, whenever the Committee has watched the implementation of its recommendations, it has endeavoured to keep itself aloof from executive responsibility in watching the actual implementation. It is enough for the Committee if the Government say that they have accepted the recommendation or that necessary steps are being taken by them to implement a suggestion. The Committee has not gone further, to see whether in fact the recommendation has been implemented. Of course, when the Committee takes up the examination of the estimates of the Ministry in the second or subsequent round it may examine generally the effect of the implementation of previous recommendations, and so on, but the Committee has not pursued the actual implementation in individual cases.

It has sometimes been said[28] that the officers who attend before the Estimates Committee are required to defend the policy of the Government. This is not a fact. Neither in India nor the United Kingdom has the Committee ever asked the official witnesses to

explain the reasons behind or merits or the demerits of the Government's policy. The Committee has always thought that that lay in the sphere of a Minister and the House. The Committee has asked the departmental witnesses to explain how a policy is being implemented in practice by the executive officers. That is perfectly within the competence of the officers to say and to explain. Even if a question borders on a policy matter and the departmental witness says that that was a matter which lay in the sphere of the Minister to explain in the House the Committee has left the matter there and not tried to probe into it further. The idea behind calling departmental witnesses to appear before the Committee is that since the expenditure is authorised by the Civil servants and is actually incurred by them it is they, properly speaking, who should be answerable for any wastes or mismanagement or mis-spending of funds in the execution of the policy laid down by Parliament. Therefore there is a rule that the Committee should not ask the Ministers to appear before the Committee, because firstly, the Ministers are concerned with policy matters which the Committee does not enquire into, and secondly, the Ministers do not sanction day-to-day expenditures under the rules of business of Government, and therefore they would not be able to explain why particular expenditures have been incurred. It is therefore the civil servants and (in India) more particularly the Head of the Ministry or Department or Undertaking who are called upon to justify the expenditures incurred by the Ministry or department.

Value of the Committee

It is also said[29] that the value of the recommendations made by the Committee is detracted from because the Government do not accept them. This impression is erroneous, firstly, because in the majority of cases the Government do accept recommendations, as is clear from the reports on the implementation of recommendations submitted by the Estimates Committee to the House from time to time. In some cases where the Government has difficulties in accepting a recommendation, and has reasons for that view, it generally places the matter again before the Committee for its reconsideration. The Committee has in many cases accepted the Government's difficulties and dropped its earlier recommendations or it has insisted on the implementation of the recommendation. It is only in some cases that the Government has not been able to implement the recommendations at once. It should, however, be noted that the Committee's main task is to influence the Government in its long-term thinking and plans, and it will be difficult for any Government to come forward immediately with the acceptance of all the recommendations. The Government has naturally to consider each matter carefully and to consult the various interests involved before it can accept a recommendation. Sometimes the Committee's recommendations are of a far-reaching

character, and even though the Government has in the beginning demurred in accepting a recommendation, it has eventually done so.[30] Successive Finance Ministers and other Ministers of Government in India have always acknowledged the usefulness and influence of the Committee.[31]

The Indian Committee has come to play an important role in the Parliamentary system and this has been widely acknowledged in India and abroad.[32] For an objective appraisal of the Committee's work it will be necessary to go through the numerous editorials and articles in the daily papers and journals, the debates in Parliament and individual letters written by knowledgeable persons and experts on the work of the Committee. Barring an occasional criticism here and there on the merits or details of a recommendation or observation of the Committee there has been uniform appreciation of the work of the Committee and its useful role[33] in the financial administration of the country.

Similarly in the United Kingdom the Committee has won appreciation of its work from M.P.s, Press and Government. During wartime the Select Committee on National Expenditure (counterpart of the peace-time Estimates Committee) did valuable work and earned the praise of the then Prime Minister, Mr. (now Sir) Winston Churchill. The following letter, dated 20th September, 1942, to the Minister of Production, extracted from his memoirs of the Second World War, will show the extent to which the Committee succeeded in exerting an influence on the Government.

> I have today read the report of the Select Committee on National Expenditure about tanks and guns. It is a masterly indictment which reflects on all who have been concerned at the War Office and the Ministry of Supply. It also reflects upon me as head of the Government, and upon the whole organisation.
>
> So far only a formal acknowledgment has been sent to Sir John Wardlaw-Milne and his Committee. A very much more detailed and reasoned reply must be prepared, and should be in the hands of the Committee before Parliament meets on 29th September. Let me know therefore before Wednesday next what you have done and are going to do in this field, and how far you are able to meet the criticisms of the Committee. Give me also the materials on which I can base a reply to the Committee, who have certainly rendered a high service in bringing this tangle of inefficiency and incompetence to my notice. It is now more than a fortnight since this report was put in your hands and those of the Ministry of Supply.
>
> I must regard this matter as most serious, and one which requires immediate proposals for action from yourself, the Secretary of State for War, and the Minister of Supply so that at any rate the future may be safeguarded.[34]

In the text of his memoirs, Sir Winston also states:

> Sir John Wardlaw-Milne was the Chairman of the powerful all-party Finance Committee whose reports of cases of administrative waste and inefficiency I had always studied with close attention. The Committee had a great deal of information at their disposal and many contacts with the outer circle of our war-machine.[35]

[1] A complete review tracing the origin and development of the Estimates Committee in the U.K. through the centuries is contained in the Eleventh Report of the Committee on National Expenditure for the session 1943-44.

[2] See the memorandum by Shri M. N. Kaul, Secretary, Constituent Assembly of India (Legislative), on the Reform of Parliamentary Procedure in India and the Notes thereon by Shri G. V. Mavalankar, Speaker, Constituent Assembly of India (Legislative). (Published by the Lok Sabha Secretariat.)

[3] On 25th August 1937, in reply to a Question in the Central Legislative Assembly, the then Finance Member said that he did not propose to set up an Estimates Committee.

On 8th April 1938, during the discussion on a motion regarding the appointment of a retrenchment committee, in the Central Legislative Assembly, the then Finance Member showed his willingness to appoint instead an Estimates Committee provided a Government official was appointed its Secretary and the subjects to be examined by the Committee were selected by the Finance Department of the Government. The House rejected the proposal because they did not like the Committee to work in an "official atmosphere".

On 14th March 1944, during the debate on a cut motion in the Central Legislative Assembly, the then Finance Member agreed in principle to the appointment of an Estimates Committee, but said that he could not agree to its functioning immediately. (*See L.A. Debates*, 1937, Vol. IV, pp. 506-7; 1938, Vol. III, pp. 2865-7; and 1944, Vol. II, p. 1072.)

[4] *See* May (16th Ed.), pp. 680-1. [5] *See* Rules 310-12 of the Rules of Procedure and Conduct of Business in Lok Sabha (5th Ed.) [6] *See* Proviso to Rule 311 (1) of the Rules of Procedure and Conduct of Business in Lok Sabha (5th Ed.). [7] Direction No. 98 (3) issued by the Speaker. [8] 561 *Com Hans.*, cc. 1645-6. [9] *Government by Committee* p. 238. [10] *Ibid.*, p. 237.

[11] H.C. 189—I (1945-46), p. 244. [12] For example, in 1957-58 Sub-Committee "B" visited three research establishments of the D.S.I.R. and the premises of the British Coal Utilisation Research Association and of the Printing, Packaging and Allied Trades Research Association. (Fifth Report (1957-58) from the Select Committee on Estimates on the Department of Scientific and Industrial Research.)

[13] Since 1953-54, the Indian Estimates Committee has called many non-official witnesses to give evidence. In 1958-59 alone about 15 such witnesses were called. They included retired Government servants, representatives of private industry, experts, outstanding public men and M P.s. [14] The Estimates Committee presented to the House of Commons on 10th December 1954, its Seventh Report on the Foreign Service. On 13th December 1954, in answer to a question the Foreign Secretary referred to certain errors in the report. The Government subsequently presented a White Paper. (536 *Com. Hans.*, cc. 682-3; Appendix I of the Second Special Report of the Estimates Committee, 1954-55.)

[15] There has been no such case so far.

[16] (*a*) Shri Mahavir Tyagi, Member, Estimates Committee, resigned from the Committee on his appointment as Chairman of Government Committee regarding Direct Taxes Administration Enquiry (1958). The Estimates Committee had decided earlier to take up the examination of the Income-Tax Department. (*b*) Shrimati Renuka Ray, Member, Estimates Committee (1958-59), resigned from the Committee on her appointment as a member of the Study Team on Social Welfare.

[17] In cases where the Estimates Committee was not considering the same subject, the stipulation that the report of the Government Committee should be made available to the Estimates Committee was not made. [18] (*a*) Zaidi Committee report on Land Reclamation Project, 1953. (*b*) Rau Committee on Damodar Valley Corporation, 1954. (*c*) Enquiry Committee on Banaras Hindu University, 1957-58. (*d*) Direct Taxes Administration Enquiry Committee, 1958. [19] 23rd July 1951—Debate on the Third Report (on rearmament). 1st July 1953—Debate on the Eighth Report (on school buildings). 20th February 1959—Debate on the First Report (on the police in England and Wales). [20] 24th March 1951—Matter relating to loss in Railway collieries arising out of discussion on the relevant Supply Demand was referred by the Speaker to the Estimates Committee. 21st February 1958—Matter relating to Dandakaranya Scheme arising out of a discussion on a cut motion was referred by the Speaker to the Estimates Committee. 10th March 1959—Matter relating to shortfall in production at the Bharat Electronics arising out of supplementaries to questions was referred by the Speaker to the Estimates Committee. [21] 489 *Com. Hans.*, cc. 1381-6; H.C., 227 (1950-51). [22] 45th

Report (First Lok Sabha) on the Ministry of Community Development and 68th Report (First Lok Sabha) on the Ministry of Defence (Ordnance Factories).

[23] 6th Report of 1953-54; 7th Report of 1953-54; 10th Report of 1953-54 (Minutes dated 14th May 1953—Vol. III); 33rd Report (Second Lok Sabha); 36th Report (Second Lok Sabha). [24] 67th Report (First Lok Sabha) Ministry of Defence—Hindustan Aircraft. 68th Report (First Lok Sabha) Ministry of Defence—Ordnance Factories. [25] The following paragraph from the motion appointing the Estimates Committee for 1956-57 is relevant: "That the Minutes of the Evidence taken before Sub-Committees D, E and F appointed by the Select Committee on Estimates in the last Session of Parliament, which were laid before the House on 5th November, be referred to the Committee" (561 *Com. Hans.*, cc. 1645-6).

[26] *See* "A Review of the Financial Committees, 1959". [27] 33rd Report of the Estimates Committee (Second Lok Sabha) on Steel. [28] Address by Shri A. K. Chanda on Parliamentary control over national expenditure to the members of the Madras Legislature (Madras Legislature Information, March 1959, Vol. I, No. 1). [29] Address by Shri A. K. Chanda on Parliamentary control over national expenditure to the members of the Madras Legislature (Madras Legislature Information, March 1959, Vol. I, No. 1). [30] Nationalisation of the Imperial Bank *vide* para. 38, 9th Report. [31] Shri C. D. Deshmukh, Finance Minister, in a speech delivered in the House on 10th April 1951 said: "All I can say is that we have every intention of treating the Estimates Committee as an ally and of seeing to what extent they will help us to conserve and apply our resources to the best possible advantage." Winding up the debate in connection with the voting of Demands for Grants relating to the Ministry of Irrigation and Power, Shri Gulzari Lal Nanda, Minister for Irrigation and Power, said on 7th April 1954: "I may also pay a special tribute to the work of the Estimates Committee. . . . I must say that their work in totality was exceedingly useful and of great assistance, and I must acknowledge it." [32] In "Public Finance Survey: India", issued by the Department of Economic Affairs, United Nations, 1951, the following passage appears: ". . . Many of these reforms have been taken on the suggestion of the new Select Committee on the Estimates which started work in April 1950, and before the end of the year had issued three reports, conspicuous for the range of their coverage and constructive criticism. The Committee is following a method of investigation by sub-committees which deal with particular problems or projects as a whole, rather than stick closely to the estimates of a particular ministry. Their major contribution has been advice on the reorganisation of ministries, which the Government has already taken up for early implementation." [33] *See* "Recent Political Developments in India—II", by W. H. Morris-Jones. (*Parliamentary Affairs*, Winter 1958-59, Vol. XII, No. 1.) [34] *Second World War*, Vol. IV, pp. 795-6. [35] *Ibid.*, p. 352.

ANNEXURE

RECOMMENDATIONS CONTAINED IN U.K. REPORTS OF ESTIMATES AND NATIONAL EXPENDITURE COMMITTEE INVOLVING CRITICISM OF POLICIES

Year.	*Report.*	*Para. No.*	*Summary of Recommendations.*
			A—Recommendations Criticising Government Policies
1939-40	4th (NEC)	68-72	Referring to Government's policy of subsidising food prices, the Committee stated that the adoption of the policy had opened a range of problems for enquiry which might otherwise possibly have been considered to be outside their terms of reference and also remarked that some accurate factual records were required in order that the Ministry might be able to review the facts of its operation and consider future policy.
1940-41	6th (NEC)	20	Referring to the significance of price policy in carrying out the programme of agricultural production, the Committee pointed out that action had not been based on a preconceived and clearly defined plan and had been of a tentative nature. The Committee further stated as follows: "Considering our terms of reference, we do not feel entitled to say more than that, if waste is to be avoided and expenditure of money and resources is to be directed into the most fruitful channels it is of great importance that a continuous planned price policy should be evolved."
1940-41	24th (NEC)	10	The Committee recommended reconsideration of the release of miners from the Services. (According to Government's reply *vide* page 48 item (*d*) of First Report of 1941-42, this recommendation affected Government policy.)
1955-56	5th	45	Referring to two major policy decisions taken by Government in regard to certain building operations, the Committee proceeded to remark as follows: "It is not the function of your Committee to comment on decisions of policy. Nevertheless your Committee recommend that where such a decision necessarily involves, as this decision did, abandonment of the productive use of money already spent, the department concerned should estimate the probable extent of the loss to the public together with the financial factors making up this loss."
1953-54	3rd	2-5	After pointing out that they were not empowered to comment on the policy which had given rise to certain votes, the Committee recommended that no more public money should be

Year.	Report.	Para. No.	Summary of Recommendations.
			invested in or lent to the British Field Products, Ltd.
1955-56	7th	72	Referring to the general policy of the naval research establishment to have as many tools as possible made outside, the Committee stated as follows: "Your Committee do not suggest that the policy should be reversed, but they recommend that it should be left entirely to the discretion of the superintendents whether the tools which they require are made in their own tool rooms or not."
			B—Recommendations touching upon Government Policies
1955-56	4th	—	Legal Aid Scheme — The Committee did not criticise the policy but only suggested a better implementation of the policy.
1956-57	3rd	—	Stores and Ordnance Depots of the Service Departments — The Committee did not criticise the policy but only suggested a better implementation of the policy.
1951-52	6th	66	Referring to the satisfactory advances made in child-care services since the Act of 1948, the Committee suggested a re-examination of the existing policy when they recommended that each Secretary of State should appoint a Committee investigating every aspect of the service for which he was responsible and particularly the financial practice and policy.
1955-56	1st	27	The Committee recommended that municipalities should be encouraged to own and operate airports, and to this end the Ministry should restate its policy on the municipal ownership of aerodromes and the conditions upon which agreement should be based.
1953-54	2nd	21	*Abolition of the Road Fund.*—The Committee suggested that it would lead to greater clarity of the estimates if the Road Funds were abolished and the expenditure on roads provided for in a normal departmental vote, and added— "They, therefore, recommend that subject to there being no reasons of policy for the continuance of the present system, consideration should be given by the Treasury to the introduction of the necessary legislation."
			C—Recommendations tending to affect Policy
1939-40	3rd (NEC)	30	The Committee recommended the formation of Local Committees consisting of representatives of organisations and associations connected with land and its management, to give advice on the requisitioning of lands for Defence Purposes.
1941-42	8th (NEC)	9-11	The Committee recommended the setting up of Regional Executive Board consisting of a whole-

Year.	*Report.*	*Para. No.*	*Summary of Recommendations.*
			time paid Chairman and the regional representatives of the Ministry of Labour and the three Supply Departments to perform various functions.
1941-42	8th (NEC)	24-30 & 39	The Committee also made recommendations on general aspects such as devolution of responsibility to industrial organisations, methods affecting the spirit of the workers employed in industry and the question of taking workers into confidence about matters affecting Production.
1941-42	12th (NEC)	—	An enquiry into the appointment of two persons from private industry to positions in Government Departments, with which their own firms had contractual relations, was made, and a report was presented by the Committee, without any change having been made in their terms of reference.
1941-42	16th (NEC)	109	The Committee remarked that they were not satisfied that the existing arrangements for ministerial control of establishments in the Treasury were adequate and recommended the creation of a new post of Parliamentary Secretary exclusively concerned with civil service questions. In their reply in the Seventh Report of 1942-43 (page 15, item 'q', and page 16, item 's'), the Government simply stated that fundamental changes in the machinery of Government were matters for ministerial decision.
1952-53	13th	12	The Committee recommended the appointment of a Board of Trade Attaché to the Foreign Office as a commercial diplomatic representative.
1951-52	4th	26	After criticising the layout of the sales areas of a company financed from public funds, the Committee suggested a re-organisation from the existing system of geographical sales divisions to a system of product divisions.
1955-56	7th	6	The Committee recommended an immediate examination to be made of the possibility of merging naval research and development establishment with research and development establishments working in other Government Departments. The Committee, however, added that the final decision on the exact establishments to be merged should rest with the Ministry of Defence.
1956-57	2nd	69 103	The Committee suggested that the military aircraft programme should be critically examined against the future background with a view to ensuring that the number of projects is the absolute minimum consistent with security. It also suggested that the question of co-ordination between guided weapons and aircraft should be carefully watched as there was clearly a sharp conflict of interest between the two fields.

V. HOUSE OF LORDS: LEAVE OF ABSENCE AND LIFE PEERAGES

In a previous Volume (XXVI, p. 174), we noticed the introduction of an attendance allowance of three guineas a day for members of the House of Lords. This was only the first part of a scheme which had two other elements—namely, the enactment of a statute providing for the creation of Life Peers, and the inauguration of a scheme for granting leave of absence to those peers who were unwilling or unable to take up their parliamentary duties. The general purpose of these three reforms was to improve the working of the House by making attendance easier for those who were willing to come, and whose counsel would be of value; to remove what may be called the "bogey of the backwoodsmen"; and enable certain men and women, who might, for various reasons, not wish to accept hereditary peerages or contest a seat in the House of Commons, to give Parliament the benefit of their wisdom and experience.

Leave of Absence

The House of Lords nominally consists of rather more than 850 members, of whom perhaps 300 never attend, and perhaps a further 100 come very rarely. For fifty years or more it has been alleged that there is a danger of these three or four hundred "backwoodsmen", as they are called, descending upon the House and taking part (to the detriment, it is implied, of progress) in some important division. In practice, the number of "backwoodsmen" who have voted, even in the most numerous divisions, has been very small; but the Government and the House have nevertheless thought it worth while, by the arrangements now made for leave of absence, to do something towards preventing their unexpected appearance in the House, and so to refute the allegation that they might play a dangerously reactionary part in politics. Accordingly, on 21st June, 1955, a Select Committee was appointed to inquire into the powers of the House in relation to the attendance of its members. This inquiry was intended to be purely factual, and to discover whether the powers of the House included any means whereby the attendance of those who rarely or never perform their parliamentary duties could be prevented or discouraged. The Committee's Report contained an interesting historical review of the various methods by which the attendance of peers had been enforced or prevented in the past, and came to the conclusion that a scheme whereby peers might apply for leave of absence, and thereafter be not expected to attend without notice, would be within the powers of the House.[1] On 10th Decem-

ber, 1957, the House agreed to the Committee's Report, and on 30th January, 1958, appointed a second Select Committee to draw up Standing Orders regulating the grant of leave of absence. The following Standing Order was drafted by this Select Committee:[2]

21. Attendance of Lords.

(1) Lords are to attend the sittings of the House or, if they cannot do so, obtain leave of absence, which the House may grant at pleasure; but this Standing Order shall not be understood as requiring a Lord who is unable to attend regularly to apply for leave of absence if he proposes to attend as often as he reasonably can.

(2) A Lord may apply for leave of absence at any time during a Parliament either for a session or the remainder of the session in which the application is made or for the remainder of the Parliament.

(3) On the issue of Writs for the calling of a new Parliament the Lord Chancellor shall in writing request every Lord to whom he issues a Writ to answer whether he wishes to apply for leave of absence or no.

The Lord Chancellor shall, before the beginning of any session of a Parliament other than the first, in writing request—

(*a*) every Lord who has been granted leave of absence ending with the preceding session; and

(*b*) every Lord who, though not granted leave of absence, did not during the preceding session attend any sitting of the House (other than for the purpose of taking the Oath of Allegiance)

to answer whether he wishes to apply for leave of absence or no.

A Lord who fails to answer within twenty-eight days of being requested to do so may be granted leave of absence for the remainder of the Parliament.

(4) A Lord who has been granted leave of absence should not attend the sittings of the House until the period for which the leave was granted has expired or the leave has sooner ended, unless it be to take the Oath of Allegiance.

(5) A Lord to whom leave of absence has been granted may give notice in writing to the House for the purpose of terminating the leave before the period for which it was granted has expired; and at the end of three months following the notice, or sooner if the House so direct, the leave shall end.

This Standing Order was adopted by the House on the 12th June, with amendments, the most important of which were that the words "should not" in paragraph 4 were replaced by "is expected not to" and that the period of notice for the revocation of leave of absence (para. (5) of the Standing Order) was reduced from three months to one. In the debate,[3] an amendment was moved by a Law Lord (Viscount Simonds) to leave out paragraph (4), on the ground that every peer who had received a Writ was entitled and expected to attend the sittings of the House, and anything, therefore, which tended to prevent his doing so was unconstitutional. The House however, disagreed to this amendment, holding that although a peer who had been granted leave of absence had a perfect right to attend, yet the House was equally entitled to expect that, if he had been granted leave of absence (either by applying for it, or by failing to answer a letter informing him of the terms of the Standing Order), he would not turn up without notice.

The scheme was put into force at the end of July, 1958, and the

House was informed on the 15th December[1] that 135 peers had applied for leave for the remainder of the Parliament; 64 had applied for the current session; and 35, not having answered the Lord Chancellor's letter, had been granted leave by default. About 330 peers had not, except for the purpose of taking the Oath, attended during the current session, and letters had accordingly been written to them by the Lord Chancellor, quoting the new Standing Order, and inquiring whether they wished to apply for leave of absence. Such letters are to go out to all peers in future at the beginning of every Parliament.

The practical effect of this scheme upon the working of the House has been nil, except that it has enabled the clerks to "clear the books" (that is, division lists, etc.), of rather more than 200 names. The reason, of course, is that only those peers applied for, or allowed themselves to be granted, leave of absence, who had no intention of attending the House in any case.

Life Peerages Act, 1958[5]

On 3rd and 5th December, 1957, the Life Peerages Bill came up for Second Reading in the House of Lords.[6] The Opposition objected to the Bill on the ground that the Government had received no mandate for it, and that the Labour Party had not agreed to its provisions, either during the inter-party conference on the reform of the House held in 1948, or at any other time. A few peers objected to the introduction of women into the House; but on the whole the House gave a blessing to the Bill. This debate, and the proceedings in Committee,[7] were notable for declarations by the Lord Chancellor that, in his view, amendments conferring a seat in the House on hereditary peeresses and enabling peers to renounce their peerages would be foreign to the subject-matter of the Bill, and therefore out of order. (The Lord Chancellor did not, of course, put it quite in this way, since he has no power to rule amendments out of order, but his view nevertheless prevailed and these amendments were not pressed.)

The Bill was debated for two days on Second Reading in the Commons,[8] being treated rather flippantly by some Members; it received the Royal Assent on the 30th April.

The Act provides that Her Majesty shall have power to confer on any person a peerage for life, and that a life peerage

> shall, during the life of the person on whom it is conferred, entitle him—
>
> (*a*) to rank as a baron under such style as may be appointed by the letters patent; and
>
> (*b*) . . . to receive writs of summons to attend the House of Lords and sit and vote therein accordingly,
>
> and shall expire on his death.
>
> A life peerage may be conferred . . . on a woman.

Eighteen Life Peers have so far (up to August, 1959) been created; and it is probable that the results of the Act have lived up to expectations. Four of the Life Peers are women; six may be taken to be non-political, and eight are members of the Labour Party. One of the objects of the Government in securing the passage of the Act was to enable members of the Labour Party, in particular, who might not wish to take up a hereditary peerage, to come and reinforce the rather meagre number of that party in the House of Lords; and accordingly, in the first creation of Life Peers the rather unusual step was taken of announcing that certain peerages had been conferred by the advice of the leader of the Labour Party. (Normally, of course, political peerages are only conferred upon supporters of the Government in power.)

Ever since the idea of Life Peerages was first mooted, rather more than 100 years ago, a wealth of learning and ingenuity has been expended upon efforts to prove that such peerages were permissible within the existing law; but the House, by its decision in 1856 not to allow Lord Wensleydale to sit as a Life Peer, has twice compelled the Government to resort to legislation—first, in 1876, to enable Law Lords to sit as Life Peers; and secondly, in the Act described in this article. Rather similar attempts were made in 1922 to prove that the Sex Disqualification (Removal) Act, 1919, enabled women who were peeresses in their own right to sit in the House; but these efforts, too, were frustrated by the decision of the House, taken in 1922, after two conflicting Reports from the Committee for Privileges, not to allow Lady Rhondda a seat. More general proposals for the reform of the House have constantly been under discussion since the end of the war; and it seems likely that these, too, have been terminated by the Act of 1958. It is probable, therefore, that the arrangements now in force whereby peers attending the House can be repaid their travelling and other expenses; whereby those peers who are unable or unwilling to attend can be excused; and whereby women, and those who do not wish to accept a hereditary peerage, can be admitted, will stabilise the composition of the House for some little time to come. And it certainly appears at the moment that each of these arrangements has played some part in improving its performance and enriching its debates.

[1] H.L. 66 of 1956. [2] H.L. 60 of 1958. [3] 309 *Hans.*, 891.
[4] 213 *Hans.*, 318. [5] 6 & 7 Eliz. 2, c. 21. [6] 206 *Hans.*, 609 and 843.
[7] 206 *Hans.*, 1205 and 1284. [8] 582 *Hans.*, 404 and 585.

VI. AUSTRALIAN COMMONWEALTH: THE CONSTITUTION REVIEW COMMITTEE

By K. O. Bradshaw,

Usher of the Black Rod and Clerk of Committees of the Australian Senate

On 15th February, 1956, the occasion of the Opening of the Twenty-second Parliament of the Commonwealth of Australia, His Excellency the Governor-General said—

The election has left my Government with a substantially larger majority in the House of Representatives but with a Senate in which the Government will by July not have a majority. This brings into sharp relief the very important constitutional problem of the relationship between the two Houses—the problem of producing a workable Parliament. The present position is that any conflict between the two Houses can be resolved only by the slow, cumbrous and not very satisfactory procedure of a double dissolution such as occurred in 1951. My advisers believe that the relations between the two Houses should be reviewed. They are of opinion that a government requires a reasonable term of office and a reasonable period of stability in which it may give effect to its long-range plans for the nation. They will, therefore, propose the setting up of an all-Party committee of both Houses to investigate the constitutional problems which may be referred to it. One of these problems is that of the Senate and its powers and the procedure to be followed in the event of a dispute between the two Houses. My advisers believe that such matters are not merely Party matters; they can readily affect any Party at any time in the future; they can be solved only by securing some agreement between the Parties upon the proper course to be followed. They are of opinion that should agreement be reached by the suggested committee the electors may be more disposed to vote for any constitutional amendment which would subsequently be submitted to the electors by referendum.[1]

A Joint Committee of members of the Government and Opposition parties in the Senate and the House of Representatives was appointed by the Parliament on 24th May, 1956.[2] The resolutions setting up the Committee, which were initiated by the Prime Minister and supported by the Leader of the Opposition, were as follows:

(*House of Representatives*—Message No. 30)

(1) That a Joint Committee be appointed to review such aspects of the working of the Constitution as the Committee considers it can most profitably consider, and to make recommendations for such amendments of the Constitution as the Committee thinks necessary in the light of experience.

(2) That the Prime Minister and the Leader of the Opposition in the House of Representatives be *ex-officio* members of the Committee.

(3) That in addition, the following Members of the House of Representatives, namely, Mr. Calwell, Mr. Downer, Mr. Drummond, Mr. Hamilton, Mr. Joske, Mr. Pollard, Mr. Ward and Mr. Whitlam, be appointed to serve on the Committee.

(4) That the Senate be requested to appoint four members of the Senate to serve on the Committee, and to appoint one of those members to be the Chairman of the Committee.
(5) That the Chairman of the Committee may, from time to time, appoint another member of the Committee to be the Deputy Chairman of the Committee, and that the member so appointed act as Chairman of the Committee at any time when the Chairman is not present at a meeting of the Committee.
(6) That, in the absence of both the Chairman and the Deputy Chairman from a meeting of the Committee, the members present may appoint one of their number to act as Chairman.
(7) That the Committee have power to appoint sub-Committees consisting of four or more of its members, and to refer to any such sub-Committee any matter which the Committee is empowered to examine.
(8) That the Committee or any sub-Committee have power to send for persons, papers and records, to adjourn from place to place and to sit during any adjournment of the Parliament and during the sittings of either House of the Parliament.
(9) That the Committee have leave to report from time to time, and that any member of the Committee have power to add a protest or dissent to any report.
(10) That six members of the Committee constitute a quorum of the Committee and two members of a sub-Committee constitute a quorum of the sub-Committee.
(11) That, in matters of procedure, the Chairman, or person acting as Chairman, of the Committee, have a deliberative vote and, in the event of an equality of voting, have a casting vote, and that, in other matters, the Chairman, or person acting as Chairman, of the Committee have a deliberative vote only.
(12) That the foregoing provisions of this Resolution, so far as they are inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders.

(*Senate*)

(1) That the Senate concurs in the Resolution transmitted to the Senate by Message No. 30 of the House of Representatives relating to the appointment of a Joint Committee to examine Problems of Constitutional Change.
(2) That Senators Kenelly, McKenna, Spicer and Wright be members of the Joint Committee.
(3) That Senator Spicer be the Chairman of the Joint Committee.
(4) That the Resolution, so far as it is inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders.

Shortly after the Committee commenced its deliberations, its Chairman, the then Attorney-General, Senator Spicer, was appointed Chief Judge of the newly formed Commonwealth Industrial Court. Senator O'Sullivan succeeded Senator Spicer as Attorney-General, and subsequently, on 24th October, 1956, by a resolution of the Senate, he was appointed to fill the vacancy in the place of Senator Spicer and to be the Committee's Chairman.[3]

When the Parliament was prorogued on 7th March, 1957, the Committee had not completed its inquiry nor had it presented a Report to the Parliament. As the Governor-General stated when he

opened the Second Session of the Twenty-second Parliament on 19th March:

> That Committee was set up and has made substantial progress in the work of reviewing the Constitution. Much still remains to be done. You will therefore be asked to reconstitute this Committee immediately in order that its work may suffer as little interruption as possible.[4]

The Committee was again appointed by Resolution on 28th March, 1957,[5] the relevant Standing Orders of both Houses being suspended to enable the appointment of the Committee to be made before the Address-in-Reply to His Excellency the Governor-General's Opening Speech had been agreed to.

The terms of reference of the new Committee were similar to those of the Committee of the previous Session. However, a provision was inserted in the new Resolution which empowered the Committee "to consider the Minutes of Evidence and Records of the Joint Committee on Constitution Review appointed in the previous Session relating to any matter on which that Committee had not completed its inquiry". The new Committee was further empowered to sit during a recess of the Parliament. This power was agreed to by the House of Representatives after the Senate had made a modification to this effect to the Resolution of the House of Representatives.

All members of the previous Committee were appointed to the new Committee, Government and Opposition parties having equal membership and each State being represented through a member of the Commonwealth Parliament.

The Committee of the Second Session of the Twenty-second Parliament did not submit a report to Parliament.

Early in 1958, the Committee was again constituted, its terms of reference and its membership being the same as those of the Committee of the previous year.

On 1st October, 1958, the Committee submitted a Report to Parliament setting out its recommendations only.[6] The Committee had been unable to complete the writing of a full report, but indicated that should the Committee be again appointed in the new Parliament, a report showing the recommendations in detail, draft amendments and the considerations which were responsible for the making of the recommendations would be presented to the Parliament.

A Committee for this sole purpose was set up in May, 1959.

[1] 1956 *Sen. Hans.* (First Period), 6. [2] *Ibid.*, 981; 1956 *H.R. Hans.* (First Period), 2453. [3] 1956 *Sen. Hans.* (Second Period), 896. [4] 1957 *Sen. Hans.* (First Period), 6. [5] *Ibid.*, 271; 1957 *H.R. Hans.* (First Period), 339. [6] 1958 *Sen. Hans.* (Second Period), 770; 1958 *H.R. Hans.* (Second Period) 1850-2.

VII. AUSTRALIAN COMMONWEALTH: PROCEDURE ON BANKING LEGISLATION

By A. G. Turner, J.P.,
Clerk of the House of Representatives

From 1957 to 1959 major Banking reform legislation was before the Australian Parliament on several occasions and gave rise to some novel and interesting procedure. This was attributable largely to the Party strengths in the two Houses in 1957-58 which were—

House of Representatives	Government Parties	75
" "	Opposition Party	47
Senate	Government Parties	30
"	Opposition Parties	30

The legislation was drafted in the form of four major bills plus ten subsidiary bills affecting other statutes. The Bills were first introduced in the House of Representatives on 24th September, 1957,[1] and, after being strongly contested by the Opposition, were passed and transmitted to the Senate for concurrence. That House, in which the Government was unable to command a majority, took the unusual course of negativing the first reading of each of the fourteen bills. Voting was equal and in accordance with Section 23 of the Constitution the questions were resolved in the negative.

Considerable public interest was aroused when the Opposition, in order to defeat the Bills, arranged for a very ill Senator to be brought into the Chamber in a wheel chair specially to cast his vote.

The rejection of the Bills by the Senate centred interest upon the disagreement provision in Section 57 of the Constitution, viz.:

> If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

The Government proceeded with the re-introduction of the legislation in the House of Representatives in identical form soon after the commencement of the new session in 1958.

On the grounds that the legislation had been fully debated in the

previous session, the Government then adopted the novel procedure of suspending the Standing Orders to enable the 14 Bills to be considered together during all stages, and also applied the "guillotine" (limitation of debate) to all the Bills in one motion.

The forms of motions moved were:

(A) That in relation to the proceedings on the following Bills, *viz.*:— Reserve Bank ..... so much of the Standing Orders be suspended as would prevent—

(*a*) one motion being moved without delay and one question being put in regard to, respectively, the introduction, the first readings, the second readings, the Committee's report stage, and the third readings, of all the Bills together, and

(*b*) the consideration of all the Bills as a whole together in a Committee of the whole.[2]

(B) That, in relation to the proceedings on the following Bills, *viz.*:— Reserve Bank, ... so much of the Standing Orders be suspended as would prevent the Minister for Labour and National Service making one declaration of urgency and moving one motion for the allotment of time in respect of all the Bills together.[3]

As a consequence the Bills were again transmitted to the Upper House. The evenly divided Senate was once more able to thwart the Government's legislation, this time by negativing the second reading of each Bill. By so doing it provided the necessary constitutional grounds upon which the Government could seek a dissolution of both Houses, a situation which had arisen only twice previously in the history of the Commonwealth since 1901. This led to considerable speculation, but the Government chose not to take steps in this direction and allowed the matter to rest until after a normal election for the House of Representatives and for half of the Senate took place late in 1958.

As a result of the election the Government parties retained their majority in the House of Representatives and also secured a slender majority of two in the proportionately represented Senate.

Early in the new Parliament in 1959 the Government again presented its banking legislation to the House.[4] The Bills were considered separately to the second reading stage, but thereafter the Standing Orders were supended to—

(*a*) consider each of the major Bills as a whole in Committee and to pass the remaining stages without delay, and

(*b*) consider the ten subsidiary Bills as a whole together in Committee, and without delay consider them together on one motion for the report stage and one motion for the third readings.[5]

For a third time the legislation was transmitted to the Senate wherein the Government's newly won majority saw the Bills passed, the Standing Orders being suspended to enable the ten minor Bills,

from and including the second reading, to be taken through all stages together.[6]

[1] V. & P., 1957, pp. 245-6; H.R. *Han.*, Vol. 17, pp. 1764-82. [2] V. & P., 1958, p. 19; H.R. *Hans.*, Vol. 18, p. 277. [3] V. & P., 1958, p. 27; H.R. *Hans.*, Vol. 18, p. 442. [4] V. & P., 1959, pp. 23-4; H.R. *Hans.*, Vol. 22, p. 261. [5] V. & P., 1959, p. 45; H.R. *Hans.*, Vol. 22, p. 726. [6] Sen. J., 1959, p. 60; Sen. *Hans.*, Vol. S. 14, p. 790.

VIII. NEW SOUTH WALES: JOINT COMMITTEE ON COMMONWEALTH CONSTITUTION

By J. R. Stevenson, C.B.E., D.S.O., E.D.,
Clerk of the Parliaments and Clerk of the Legislative Council, New South Wales

An article published in Vol. XXV[1] under the title "New South Wales: Composition of a Joint Committee", by L. C. Bowen, dealt with the appointment of a Joint Committee of the State Parliament on the Commonwealth Constitution.

This Committee was primarily set up as the State considered that the Commonwealth Parliamentary Committee on the same subject did not adequately represent the cross-sections of the community and that the States, as sovereign bodies, had no voice in the deliberations. The appointment of a Federal Committee was contrasted with the conventions held originally by the States to frame the Commonwealth Constitution.

Although the members of the Committee were representative of the three major political parties in New South Wales—Labour, Liberal and Country Party—they managed to make unanimous recommendations[2] on all but one of the matters on which recommendations were made.

This unanimity, or near unanimity, is not surprising when it is remembered what the Committee said in paragraph 2 of its Report:

> The Committee has been influenced in its deliberations by the belief that the problem of recommending alterations to the Constitution is not an academic but a practical one; that there is little profit to be had in making recommendations which, while approximating more or less to some real or supposed ideal, have little or no chance of being sponsored by the major political parties and for that or some other reason have little or no chance of being carried at a referendum of the people. These considerations explain why on some matters the recommendations are less far-reaching than might otherwise have been expected and why the number of matters on which recommendations are made is no indication of the number of matters in fact considered by the Committee.

It is pertinent to point out here that the Australian Constitution is a federal one and that a proposed law for the alteration of the Constitution only becomes law if in a majority of the States a majority of all the electors voting also approve the proposed law.

The Committee made recommendations concerning uniform taxation, free trade between States, and the organised marketing of primary products, which are not described in detail here, since they are outside the purview of the Society.

The Committee also recommended that the High Court should be able to give advisory opinions on the validity of Commonwealth or State legislation. At present the High Court can only pronounce on the validity of legislation in regard to a concrete case in litigation.

Under the Constitution where the formation of a new State involves the separation of territory from an existing State the consent of the Parliament of the existing State must be obtained. The Committee recommended that this consent should not be necessary if a majority of the electors in the existing State approve the formation of the new State and a majority of electors in the area of the proposed new State also approve it. The Committee also recommended that the territory of any new State should not be less than the territory of the State of Tasmania or alternatively that the population of the territory of the new State should not be less than that of the State with the smallest existing population.

Finally, the Committee recommended that certain aspects of the Constitution on which the Committee refrained from making extensive recommendations or any recommendations at all—aspects that involve fundamental principles in the policies of the various political parties—could be more profitably considered by Commonwealth convention than by a body constituted as the Committee was of representatives drawn solely from the three main political parties. The Committee felt that

> the members of a popularly elected convention fairly representative of the main cross-sections of the community might reach some solution to these matters which might be more readily acceptable at a referendum than proposals not fashioned and devised by representatives specially chosen by the people for the purpose.[3]

During the life of the Committee the prorogation terminating the Session in 1957 was covered by Act No. 24 of 1957, empowering the Committee to sit during the period commencing on termination of the second Session to the termination of the third Session, consequently the necessity of reappointing the Committee in the third session did not arise.

Similarly, Act No. 13 of 1958 empowered the Committee to function from the termination of the third Session to the termination of the fourth Session.

The report was tabled during the fourth Session but, as yet, has not been debated in the House.

[1] P. 61. [2] Report from the Joint Committee of the Legislative Council and Legislative Assembly on the Australian Constitution (No. 49 of 1958).
[3] *Ibid.*, para. 3.

IX. NEW SOUTH WALES: DEFAMATION ACT, 1958, AND PRIVILEGE

By L. C. Bowen,
Clerk Assistant of the New South Wales Legislative Council

We read with interest and sympathy of the predicament in which the Secretary of the Lok Sabha (Shri M. N. Kaul) was placed in 1957, when presented with a direction from the Additional Magistrate 1st Class, Tiruchirapalli, to produce certain correspondence passed to the Speaker on the floor of the House, and then again later when he received a request from the Registrar, City Sessions Court, Bombay, for the attendance of a responsible officer to give evidence in Court.[1]

We say with sympathy as, had it not been for the Standing Orders of the Legislative Assembly and Legislative Council of New South Wales, which were drawn up in 1894 and 1895 respectively, the Clerks of these two Houses could have, on occasions, found themselves in a similar predicament. Whether the two Standing Orders relevant to this article were the product of foresight or born of embarrassment the records do not reveal, but the fact remains they were a wise precaution for which the Clerks have since been duly grateful.

It might be advisable here to mention that neither the Legislative Council nor the Legislative Assembly of New South Wales has a Privileges Committee, but that each House, at the commencement of every session, elects, among other Sessional Committees, a Standing Orders Committee comprised of ten Members, five from each side of the House, to which would be referred any occurrence not provided for in the Standing Orders or any proposed amendment to them. Any suggested alteration arising from the deliberations of the Committee would have to be submitted to the House concerned for its concurrence and subsequently to the Governor for his approval, which approval, needless to say, has never been nor is ever likely to be withheld.

The two Standing Orders relevant to the substance of this article are:

Legislative Council S.O. No. 17: The custody of the Minutes of Proceedings, Records, and all documents whatsoever laid before the House, shall be in

the Clerk, who shall neither take, nor permit to be taken, any such Minutes, Records, or Documents, from the Chamber or Offices, without the express leave or Order of the House.

Legislative Assembly S.O. No. 53: The custody of the Votes and Proceedings, Records, and all documents whatsoever laid before the House, shall be in the Clerk, who shall neither take, nor permit to be taken, any such Votes and Proceedings, Records or documents from the Chamber or Offices, without the express leave or order of the Speaker.

Readers will notice a fundamental difference in these two Standing Orders. Whereas in the Assembly only the Speaker's authority is required, in the Council the permission of the House is necessary, which means that if a request for the production of a document or the appearance of an officer is required when Parliament is not in Session, or during a long adjournment, the Speaker can give the necessary authority, whereas the President of the Council has no such power. This would not matter greatly if the document required was one that had been laid on the Table of both Houses, or the officer whose attendance was required was an Assembly officer, as the request could be complied with immediately, as was instanced in 1935 when the Principal Reporter was summoned. On that occasion the Speaker said:

> I have to inform the House that since the adjournment on Thursday last the Principal Reporter received a subpoena to appear at the Supreme Court in the case of the New South Wales Fresh Food and Ice Co., Ltd., *versus* Truth and Sportsman Limited, for the purpose of giving evidence as to the authority which *Hansard* is printed, and, as Speaker, I authorised the giving of such evidence.[2]

If, however, the document was peculiar to the Council, or the officer a Council officer, the Court, or whoever the parties might be, would have to wait the convenience of the Council. To some it may appear that the framers of the Council Standing Orders were guilty of oversight or laxity in drafting; we, however, prefer to believe that the wording was the serious intent of men who were Parliamentarians rather than politicians, men who regarded as inseparable from their Parliamentary duties their trusteeship of the dignity and sovereignty of Parliament and foresaw that occasions would arise when the undesirability of delaying or interrupting the course of justice would be overshadowed by the necessity for giving laymen and lawyers alike and even the Courts, a salutary reminder of the supremacy of Parliament.

The following instances of the application of Legislative Council S.O. No. 17, with the relevant entries in the Minutes of Proceedings, may not prove of great assistance but may be of interest:

> 1895. GEORGE DEAN—THE CLERK SUMMONED:—The President informed the House that the Clerk had received a summons to appear before the Court of Petty Sessions at the Water Police Office, on Wednesday, the 30th day of October instant, in the case of Hinds against W. P. Crick and others, to produce the Petition of George Dean, praying for particulars with

reference to an Answer given by a Minister of the Crown relative to his case, And having reminded the House that such summons could not be complied with without leave of the House,—put the question—That the Clerk have leave to comply with the summons personally or by one of the Officers of his Department, as may be most convenient to the business of this House,—which was passed in the affirmative.[3]

1895. GEORGE DEAN—THE CLERK SUMMONED:—The President informed the House that the Clerk had received a summons to appear before the Court of Petty Sessions at the Water Police Office in the case of *Regina* against Dean and others, to produce Sir Julian Salomons' statement, laid upon the Table of the Legislative Council and read by the Honourable Attorney-General on the 26th day of September last,—

And having reminded the House that such summons could not be complied with without leave of the House—put the Question—That the Clerk have leave to comply with the summons personally or by one of the officers of his department, as may be most convenient to the business of this House,—which was passed in the affirmative.[4]

1895. THE CLERK SUMMONED:—The President informed the House that the Clerk had received a summons to appear before the Supreme Court, at Darlinghurst, in the case of Regina *v.* W. P. Crick and others.

And having reminded the House that such summons could not be complied with without leave of the House—put a Question—That the Clerk have leave to comply with the summons personally, or by one of the officers of his department, as may be most convenient to the business of this House—which was passed in the affirmative.[5]

Again, in 1905 and 1906, the Clerk was summoned to appear before the Supreme Court of New South Wales to produce certain records (C. L. Garland *v.* J. L. Williams), and on both occasions the House, by resolution, granted the necessary permission.[6]

Two unusual cases of Parliament being involved in legal proceedings come to mind, which, although not on all fours with the foregoing, nevertheless may be of interest. These are—

1930. INJUNCTION AGAINST PRESENTATION OF CONSTITUTION (AMENDMENT) BILL, AND CONSTITUTION FURTHER AMENDMENT (LEGISLATIVE COUNCIL ABOLITION) BILL FOR ASSENT:—The President reported to the House the receipt of a communication, dated 11th December, 1930, from Messrs. Allen, Allen and Hemsley, solicitors, intimating that His Honor Mr. Justice Long-Innes had this day granted an injunction against the President of the Legislative Council and all other defendants in the matter of A. K. Trethowan and Another *v.* the Honorable Sir John Beverley Peden, K.C.M.G., President of the Legislative Council, and Others, until Monday next, the 15th instant, presenting to the Governor for His Majesty's assent the abovementioned Bills.[7]

In 1930 the Government succeeded in passing through both Houses of Parliament a Bill, viz., Constitution (Amendment) Bill, the purpose of which was the abolition of the Legislative Council, and proposed presenting it to the Governor for the Royal Assent without submitting it to a referendum of the electors of New South Wales.

It was strongly contended that this action could contravene the New South Wales Constitution Act of 1902. Certain members of the Legislative Council, headed by the Honourable A. K. Trethowan, M.L.C., obtained from the Supreme Court of New South Wales an

injunction restraining the President of the Legislative Council (Sir John Peden) from presenting the Bill to the Governor for the Royal Assent.

A subsequent appeal by the Attorney-General, representing the Government, to the High Court of Australia against the verdict of the Supreme Court, was dismissed, whereupon the Government appealed to the Privy Council, which appeal was in turn dismissed by their Lordships.

Those interested will find a fuller summary of the previous actions and the judgment of their Lordships in *Privy Council Appeal No.* 68 *of* 1931. The Bill was subsequently dropped.[8]

The other unusual occurrence was in 1933—

LEGAL PROCEEDINGS RELATING TO THE VALIDITY OF CERTAIN LEGISLATION AFFECTING THE LEGISLATIVE COUNCIL:—The President informed the House that he had been served with a Statement of Claim in the suit *Doyle* v. *The Attorney-General and others*, relating to the validity of certain legislation affecting the Legislative Council, instituted in the Equity Jurisdiction of the Supreme Court of New South Wales, in which suit the Honorable T. P. Doyle, M.L.C., is the plaintiff, and the Ministers of the Crown of the State of New South Wales, the President of the Legislative Council, the Speaker of the Legislative Assembly, and the Clerk of the Parliaments, are the defendants.[9]

The Honourable T. P. Doyle, M.L.C., launched an action in the Supreme Court of New South Wales in Equity complaining, firstly, that the Constitution Amendment (Legislative Council) Act, 1932, was *ultra vires* the New South Wales legislature in the provisions with regard to the election of the new Legislative Council; secondly that the referendum on the Bill was not properly submitted to the electors in that the attention of each elector was not brought to the contents of the Bill, and it was therefore no Act at all. The respondents demurred to the statement of claim and the demurrer was upheld, against which decision the Honourable T. P. Doyle appealed to the Privy Council. Their Lordships dismissed the appeal and advised His Majesty accordingly.[10]

In 1939 the death of a Member of the Legislative Council was made the subject of enquiry by the Coroner's Court, and that Court requested the production of evidence of the deceased Member's attendance at the House, but on that occasion the President of the Legislative Council exercised his unwritten discretionary powers and decided that the information required was not subject to S.O. No. 1 and permitted the attendance of the Clerk and the production of the document without reference to the House.[11]

In 1940 a Member of the Legislative Council was found guilty by the Court of Quarter Sessions of an infamous crime and application was made by the House to the Court of Disputed Returns to have his seat declared vacant. The Court called for proof of the Member's election to the House, and here again the President exercised his

right of discretion and ruled that the evidence called for did not come within the ambit of S.O. No. 17.[12]

In 1953 the House exercised its authority in anticipation. An allegation of corrupt or improper association between a former Minister and a certain citizen was made the subject of inquiry by a Royal Commission. The motion for the adoption of the terms of reference of the Royal Commission concluded with the following words:

> And this House accordingly authorises and directs all Members and Officers of this House and all employees of the Parliamentary Establishment under its control to attend as witnesses before such Royal Commission, if required.

The motion was agreed to.[13]

In 1956 the requirements of S.O. No. 17 were observed and blanket approval given for purely departmental or internal purposes. The fading ink of some of the highly valued historical documents of New South Wales and the additional ever-present risk of fire and the extraordinary taste and insatiable appetite of the *lepismatidæ* prompted the decision to have these records microfilmed. This necessitated enlisting the aid of the Public Library, which, in turn, necessitated the removal of the documents from the Parliamentary premises, such action necessitating obtaining the leave of the House and the following entry in the Minutes:

> TEMPORARY REMOVAL OF RECORDS OF THE HOUSE:—Mr. Downing moved, *by consent, and without previous Notice,* That the Clerk be authorised to arrange for the records of the House to be microfilmed by the Trustees of the Public Library of New South Wales and, for that purpose, is granted leave for the temporary removal from time to time of records to the Public Library building.[14]

Question put and passed.

Although it has no direct bearing on Shri Kaul's predicament, which gave rise to this article, the following may provide food for thought by members of the Society. After a stormy passage, during which it was assailed by gales of indignation and gusts of indignity, the New South Wales Government in 1958 steered to the haven of Royal Assent a codifying Act, intituled, "An Act to state and amend the law relating to defamation; to repeal the Defamation Act, 1912, and certain other enactments and for purposes connected therewith",[15] section 40 of which lays down that—

> (1) If the defendant in any civil or criminal proceeding commenced or prosecuted in respect of the publication by the defendant, or by his servants, or any report, paper, votes, or proceedings of the Legislative Council or of the Legislative Assembly, brings before the court in which the proceeding is pending, or before any judge thereof, first giving twenty-four hours' notice of his intention to do so to the prosecutor or plaintiff in the proceeding, a certificate under the hand of the President or Clerk of the Legislative Council or the Speaker or the Clerk of the Legislative Assembly, as the case may be, stating that the report, paper, votes, or proceedings, as the case may be, was or were published by the defendant, or by his servants, by order or under the authority of the Council or Assembly, as the case may be, or of a com-

mittee thereof, together with an affidavit verifying the certificate, the court or judge shall immediately stay the proceeding, and the proceeding shall be deemed to be finally determined by virtue of this section.

(2) The Government Printer is deemed to publish the reports of the debates and proceedings in the Legislative Council by order or under the authority of that Council and to publish the reports of the debates and proceedings in the Legislative Assembly by order or under the authority of that Assembly.

This subsection (2) is practically a repetition of the amendment that was made to the original Act by section 2 of the Defamation (Amendment) Act of 1940,[16] which reads:

The Legislative Council shall be deemed to have authorised the Government Printer to publish the reports of the debates and proceedings in the Legislative Council, and the Legislative Assembly shall be deemed to have authorised the Government Printer to publish the reports of the debates and proceedings in the Legislative Assembly.

It may interest our Indian *confrères* to read the following extracts from a speech made by the Honourable Asher Joel on the second reading of the 1958 Bill:

. . . I ask the House to listen most carefully to what the Minister had to say next. He said, "Let it be said immediately that Sir Samuel Griffith set out to provide a definition which reflected the position of defamation at common law." He then read the definition contained in the bill. I say to the House now that this was not an original concept of Sir Samuel Griffith. It was merely an adoption of a code of laws existing in, at that time, another imperial colony, India . . .

At least we know now how the word irony got into the Act which the Minister brings down as something so original and necessary for the protection of citizens, not in India 100 years ago, but in New South Wales in 1958. Some years later—towards the end of 1882—the learned and distinguished Sir Frederick Pollock prepared for the Government of India a draft bill to codify the law of civil wrongs, or so much of it as might appear to be of general practical importance in British India. He submitted these alternative clauses, and if we examine them we will see again how Sir Samuel Griffith resorted to the Indian code to draft the law that he felt might be applicable to Australia sixty years ago . . .

In 1882 Sir Frederick Pollock prepared these particular proposals. It is salient to the debate to know what members of the British Committee on the Law of Defamation thought of this Indian code upon which the bill now before this Parliament is based . . .[17]

[1] *See* THE TABLE, Vol. XXVI, pp. 112-4. [2] N.S.W. *Hans.* 1935), 146. p. 1660. [3] 54 Leg Co. Journal, p. 80. [4] *Ibid.*, p. 85. [5] *Ibid.*, p. 120. [6] 68 *ibid.*, p. 171; 69 *ibid.*, p. 13. [7] 107 *ibid.*, p. 38. [8] S.R. 31. p. 183, O/C (N.S.W.); C.L.R. 44, p. 394, O/C (N.S.W.); A.C. 1932, p. 526, 48. W.N. 36. [9] 111 Leg. Co. Journal, p. 14. [10] S.R. 33, p. 484; A.C. 12. 1934, p. 511. [11] 118 Leg. Co. Journal, 208; N.S.W. *Hans.* (1939), 159, p. 5271. [12] 118 Leg. Co. Journal, pp. 377, 383; 119 *ibid.*, pp. 7-11; N.S.W. *Hans.*, (1940), 161, p. 3683; *ibid.*, 162, p. 12. [13] 135 Leg. Co. Journal, p. 14; N.S.W *Hans.*, (1953), 4, p. 6. [14] 141 Leg Co. Journal, p. 6; N.S.W. *Hans.* (1956), 16, p. 5. [15] Act No. 39, 1958. [16] Act No. 4, 1940.

X. WESTERN AUSTRALIA: AN INSTRUCTION TO A COMMITTEE: PROCEDURE ON THE LOCAL GOVERNMENT BILL

By J. B. Roberts, M.B.E., E.D.,
Clerk of the Legislative Council and Clerk of the Parliaments, Western Australia

For some years the Parliament of this State has had before it the Local Government Bill.

This Bill is a consolidation of existing statutes, The Municipal Corporations Act, The Road Districts Act, and other related Acts and is designed to codify the law relating to the conduct of municipal districts.

The Bill is printed in two volumes on 536 pages and contains 681 clauses plus 26 schedules.

Given its initial first reading in the Legislative Assembly in December, 1948,[1] with the second reading moved in June, 1949,[2] it was subsequently made the subject of a Royal Commission.[3] Re-drafted in accordance with the Commissioners' recommendations it was introduced in its present form in 1953.[4] Since then it has been re-introduced or re-instated in five successive years; but despite the fact that the principle of new and up-to-date legislation appears to be generally acceptable it has not yet (January, 1959) been passed.

The size of the Bill and the time needed for a full debate and Committee consideration has been the stumbling block on several occasions. However, at the beginning of the twenty-second Parliament (1956) it was expected that a determined effort would be made to pass it through both Houses. In the session of that year the Legislative Assembly dealt with it in detail and at the end of the session allowed it to lapse. It was then restored to the Notice Paper at the commencement of the 1957 session, passed, and sent to the Legislative Council.[5]

Following the second reading debate in the Council[6] a total of forty-eight hours during sixteen sittings were spent in Committee and the Bill was returned to the Legislative Assembly with 184 amendments.[7] These were rejected by the Assembly and the Bill was referred to a conference of managers. The managers failed to agree[8] and the Bill was lost.

In 1958 the Bill was re-introduced in the Legislative Assembly in the form it had passed that House the previous year.[9] It was expeditiously passed and sent to the Legislative Council. In the Council members were anxious to avoid a repetition of the long and tedious hours which had previously been spent in Committee and informal

consultations were held with a view to curtailing the committee proceedings and ensuring the early passage of the Bill. At these discussions a metropolitan member (Hon. H. K. Watson) put forward the suggestion that an Instruction might be used to facilitate the passage of the Bill through the Committee stage.[10]

This suggestion was accepted and the Minister in charge of the Bill accordingly gave notice of an Instruction and then, also on notice, moved—

> That there be and hereby are suspended so much of the Standing Orders as may be necessary to enable the Instruction on the Local Government Bill, notice of which Instruction appears on Addendum No. 1 to the Notice Paper, to be carried into full and complete effect.[11]

The Instruction was moved by the Minister in the following terms—

> That it be an Instruction to the Committee that it has power to deal with the Local Government Bill in the manner following:—
>
> (1) By the Chairman putting the question (without reading the clauses of the Bill and the schedules thereto) " That the Bill stand as printed "; and
>
> (2) by postponing until the recommittal of the Bill, for consideration by the Committee in the usual manner—
>
> (*a*) any and all proposed amendments to the Bill, other than the one comprehensive amendment; and
>
> (3) by any member desiring so to do, to move a comprehensive amendment to the Bill in the terms stated in Appendix A of this Instruction and not otherwise; and (in the event of the Bill being so amended) by the Chairman then putting the Question: " That the Bill stand as amended " or (in the event of the Bill not being so amended) by the Chairman again putting the Question " That the Bill stand as printed."[12]

The comprehensive amendment referred to contained all the amendments previously made to the Bill by the Legislative Council and, following the passing of the Instruction, a member moved, That the Bill be amended *en bloc* in accordance with the appendix to the Instruction.

This motion was carried and the Chairman of Committees then reported that the Bill had been considered by a Committee of the whole House and had been agreed to with amendments.[13]

At a subsequent sitting the Bill was recommitted[14] and several new amendments were agreed to in normal Committee proceedings, following which the Bill was given a Third Reading and returned to the Legislative Assembly for concurrence on the Amendments.[15] It remained on the Notice Paper at that stage until the end of the session when it was allowed to lapse.

The Instruction has not been widely used in this Parliament, and on this occasion every care was taken to ensure that the procedure adopted could not subsequently be questioned.

It should be noted that the Bill was an exact reprint of the 1957 measure (with the exception of the change of date in the Title) and this procedure, while returning it to the stage where it had passed the Committee the previous year, allowed for new amendments and for further amendments to those previously made.

[1] L.A., V. & P., 1948, p. 296. [2] *Ibid.*, 1949, p. 322. [3] "Report of Royal Commission on Local Government Bill" (Report No. 2 of 1950). [4] L.A., V. & P., 1953, p. 371. [5] *Ibid.*, 1957, pp. 20, 27. [6] L.C., Min. of Proc., 1957, pp. 24, 41. [7] *Ibid.*, p. 202. [8] *Ibid.*, p. 308. [9] L.A., V. & P., 1958, p. 131. [10] For references to this suggestion in subsequent debate, *see* 1958 *Hans.*, pp. 1482, 1592. [11] L.C., Min. of Proc., 1958, p. 108. [12] *Ibid.*, p. 118. [13] *Ibid.*, p. 134. [14] *Ibid.*, p. 168. [15] *Ibid.*, p. 169.

XI. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE SOUTH AFRICAN HOUSE OF ASSEMBLY, 1958

By J. M. Hugo, B.A., LL.B., J.P.,
Formerly Clerk of the House of Assembly

Limitation of speech.—As the Minister of Justice was performing the duties of the Prime Minister who was unable to attend the session owing to illness, Mr. Speaker, in a private ruling during the debate on a motion of no-confidence, decided to allow the Minister of Justice the privilege under paragraph (*a*) (i) of S.O. No. 63 (1) of speaking for an unrestricted length of time. This privilege will be allowed to the member who acts on behalf of the Prime Minister or the Leader of the Opposition during illness or absence caused by a similar circumstance. The Minister of Justice did not avail himself of the privilege.

Notice of Motion not printed.—On the opening day of the First Session of the Twelfth Parliament notice of a motion was given on behalf of the hon. member for Florida (Mr. Tighy) who had not yet made or subscribed to the oath or affirmation of allegiance. In a private ruling Mr. Speaker held that such a notice was out of order and could not be printed.

Limitation of speech.—

(*a*) On 11th August, after the Minister in charge had moved the Second Reading of the *Electoral Law Amendment Bill*[1] and the Leader of the Opposition had spoken under paragraph (*a*) (i) of S.O. No. 63 (1), Mr. Higgerty was accorded the privilege of speaking for one hour under paragraph (*b*) of S.O. No. 63 (1).[2]

(*b*) In Committee of Supply on the Prime Minister's Vote the Chairman in a private ruling decided to allow the Minister of Justice, who performed the duties of the then Prime Minister during his illness, unlimited time under S.O. No. 107 (2). After a statment by the Minister of Justice about the Prime Minister's health and a reply by the Leader of the Opposition, the Vote was agreed to without any further discussion.[3]

Amendments foreign to subject-matter of Bill.—In a private ruling Mr. Speaker held that the following amendments would be foreign to the subject-matter of the *Electoral Law Amendment Bill,* the object of which was to extend the franchise to Europeans of eighteen years of age, and could not be moved even on an instruction to the Committee of the Whole House, viz.:

(i) providing that Parliamentary voters under 21 years of age be not included in Liquor Act quotas;
(ii) providing that certain protective privileges under the Criminal Procedure Code for persons under 21 years of age be not applicable to Parliamentary voters; and
(iii) providing that Europeans of 18 years of age may apply for South African citizenship without assistance of parents or guardians.

Eighteen year old franchise as principle of Bill.—In a private ruling the Chairman held that, as the qualifying age of eighteen years constituted the principle of the *Electoral Law Amendment Bill,* amendments which proposed to substitute some other qualifying age would be out of order. (The ruling distinguished this case from that of the *Women's Enfranchisement Bill,* 1930, the principle of which was the enfranchisement of women, when an amendment which proposed 25 years as the qualifying age for women was allowed.)

Clause cannot be debated after amendment at end of Clause negatived.—After debate and a division on an amendment *at the end* of a clause, the Deputy-Chairman ruled that, as the Committee had taken a decision on the Clause up to the point where the amendment had been proposed and disposed of, the Committee could not go back and again debate the Clause.[4]

Consolidation bill amended by House in consequence of amendment to principal Act after report of Select Committee tabled.—The Post Office Bill, a consolidating measure, was, in terms of Standing Order No. 185 (1), referred to a Select Committee. The Government Law Adviser who drafted the bill pointed out in evidence that in view of an announcement by the Minister of Finance in his budget speech regarding post office saving bank deposits, the Post Office Act would have to be amended and that it was proposed to do this in the Finance Bill, which was usually introduced towards the end of the session. He therefore suggested that the further consideration of the consoli-

dation measure stand over until the Finance Bill had been passed. The Select Committee therefore adjourned *sine die*, but owing to the imminent prorogation of Parliament it met again a few days before the end of the session (before the Finance Bill had been passed) and reported the bill in its original form. After the Finance Bill (amending *inter alia* the Post Office Act) had been passed, assented to by the Governor-General and published in the *Gazette*, the bill to consolidate the laws relating to the Post Office was amended in Committee of the Whole House to bring it into conformity with the law as it then existed.

[1] *See* p. 134. [2] 97 Deb., c. 1887. [3] *Ibid.*, c. 2353. [4] *Ibid.*, c. 1182.

XII. UNION OF SOUTH AFRICA: DEPUTY-MINISTERS

By J. M. Hugo, B.A., LL.B., J.P.,
Formerly Clerk of the House of Assembly

Appointment.—Deputy-Ministers are appointed by the Governor-General in terms of section 14 of the South Africa Act, 1909, as amended by the South Africa Act Further Amendment Act, 1958 (see p. 134), which provides that their number shall not exceed one-half of the number of Cabinet Ministers. There are 16 Ministers, but up to the present only four Deputy-Ministers have been appointed. Deputy-Ministers cannot hold office for longer than three months without being members of either House of Parliament. They are not deemed to hold an office of profit under the Crown.

Oath of allegiance for Deputy-Ministers.—The following oath is taken by the Deputy-Ministers on appointment:

I, ... being appointed as a Deputy-Minister under section 14 of the South Africa Act, 1909, do swear that I will, to the best of my judgment, at all times when thereto required, exercise and perform, in accordance with my instructions, the powers and duties lawfully assigned to me by the Minister concerned; that I will freely assist the Minister with my advice; and that I will not directly nor indirectly reveal such matters as are committed to my secrecy. So help me God!

Status.—Deputy-Ministers hold office during the pleasure of the Governor-General but are not members of the Cabinet or of the Executive Council. As in the case of a Minister, a Deputy-Minister who is a member of either House of Parliament may sit and speak in both Houses, but may vote only in the House of which he is a member. They are classified immediately after the Speaker in the Official Table of Precedence and are styled "Honourable" during their term of office.

Duties.—Deputy-Ministers exercise such powers and perform such functions and duties as the Ministers to whom they have been appointed may from time to time determine. In the House of Assembly they reply to questions, lay papers upon the Table and introduce Bills in the absence of their Ministers. They may also take charge of all or some of the stages of Bills on behalf of their Ministers.

When a Minister is in charge of the business before the House, his Deputy is in the same position as a private member, except that he has precedence over all private members on the Government side. Where a Deputy-Minister takes charge of the business before the House, he enjoys the same rights as a Minister.

Allowances and Privileges.—In addition to the Parliamentary allowance of £1,400 p.a. and a travelling and subsistence allowance of £3 per day during a session as members of Parliament, Deputy-Ministers receive an allowance of £1,750 per annum. The whole of the last-mentioned amount is taxable.

Official residences are not made available to Deputy-Ministers as in the case of Cabinet Ministers and they are not entitled to private secretaries or other personal staff. Clerical assistance is, however, placed at their disposal by the Department concerned whenever they have official duties to perform.

Deputy-Ministers are not entitled to the free use of Government motor-cars for themselves and their families, but they are permitted to travel at Government expense on official business. Ministerial railway carriages are not placed at their disposal and aircraft of the South African Air Force can only be used by them for official purposes with the consent of the Ministers concerned. Their families enjoy the same travelling facilities as those of other members of Parliament.

XIII. CEYLON: PARLIAMENTARY PROCEEDINGS ARISING FROM THE EMERGENCY CONDITIONS PREVAILING IN MAY, 1958

By R. St. L. P. Deraniyagala, M.B.E., B.A.,
Clerk of the House of Representatives

The enactment in 1956 of the Official Language Act,[1] whereby the Sinhalese language became the only official language of Ceylon, resulted in a condition of tension arising in the relations between the Sinhalese and the Tamils, the two major communities in the Island. The condition was partially eased by an agreement arrived at be-

tween the Government and the Tamil Federal Party whereby Government was to introduce legislation to enable the use of Tamil in the Tamil areas of Ceylon for official purposes. However, there was delay in the introduction of this legislation, and relations between the two communities became strained again when the Tamils objected to the Ceylon Transport Board (a Government Corporation enjoying a monopoly in public passenger transport) sending for use in Jaffna certain new buses with "Sri" numbers.* A campaign was started in Jaffna to stop these buses and to black-out the Sinhalese lettering. A point in the campaign was reached on 9th April, 1958, when the Prime Minister announced that the Agreement with the Federal Party had lapsed. It is alleged that two Sinhalese were shot and killed on 15th May by Tamils in the Eastern Province. Soon after this, crowds at Polonnaruwa stopped a train on its way from Batticaloa to Vavuniya, and assaulted the Tamil passengers in it who were on their way to attend a Congress of the Federal Party in Vavuniya where a proposal to launch a non-co-operation movement in August was down for discussion. A day later, a train leaving Batticaloa was derailed a short distance out of the town and a number of Sinhalese lives were lost; it was alleged that this was the work of Tamils. These incidents gave rise to widespread rioting in many areas of the country causing much damage and suffering. The 26th and 27th May witnessed the peak of this rioting, with the Police in many places unable to take any effective action. A discussion of the situation in Parliament was not immediately possible as Parliament had been prorogued on the 15th May for the 12th June.

On the evening of the 27th May, the Public Security Ordinance No. 25 of 1947 was brought into operation by Proclamation,[2] and action was taken under the Army, Navy and Air Force Acts, to call out the Services. Section 2 of Ordinance No. 25 of 1947, as amended by Act No. 22 of 1949, provides, *inter alia*:

> Where a Proclamation is made under the preceding provisions of this Section, the occasion thereof shall forthwith be communicated to Parliament. and, if Parliament is then separated by any such adjournment or prorogation as will not expire within ten days, a Proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by that Proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

In accordance with this Section, a Proclamation was also issued[3] summoning Parliament for the 4th June.

The wording of Section 2 of Act 25 of 1947 made it clear that the meeting fixed for the 4th of June was, in effect, the commencement of a new session. A formal Opening of Parliament with an Address to both Houses, however, was altogether impracticable in the time available and the conditions prevailing. Accordingly, the two

* A Sinhalese character which had replaced English letters on the registration plates of motor vehicles.

Houses met in their respective Chambers, where the Proclamation summoning Parliament was read, followed by a Message from His Excellency the Governor-General communicating to Parliament the bringing into force of the Public Security Ordinance. Thereafter an Adjournment Debate on the Emergency ensued, which was resumed on the next day, 5th June.

The meetings of the Houses on the 4th and 5th June were accompanied by strict security measures. The roads going past the Houses were closed to all traffic and no strangers were permitted in the precincts. This action was taken by the Police and the Military in consultation with Mr. Speaker and the Prime Minister. On the departure of Members at the conclusion of the Adjournment Debate on the 5th June, the cars of Members of the Tamil Federal Party were stopped by the Police outside the precincts of the House of Representatives and the Members taken into custody. They were thereafter detained, some at the Galle Face Hotel, others, whose normal residence was in Colombo, at their residences. It was also decided in the interest of tranquillity by Mr. Speaker, after a discussion with the Leader of the House, the Leader of the Opposition and the Prime Minister, that *Hansard*, normally produced the next morning, should be delayed. In accordance with this decision the proceedings of 4th and 5th June were transcribed by the Reporters and kept in safe custody by the Chief Reporter, pending an Order for printing by Mr. Speaker.

The House, as already stated, had originally stood prorogued for 12th June, and arrangements had been under way for a formal Opening of Parliament on that date. This original prorogation was, of course, formally suspended by the emergency proclamation and consequent new Session; nor was it found convenient for Parliament to meet again on 12th June. The date of the next meeting was, in fact, 24th June. Since there was no further prorogation after the conclusion of the debate on 5th June, the meeting on 24th June did not constitute the beginning of a new Session; it was, however, decided that the Governor-General should deliver an Address to Parliament on that day, and a message was sent to both Houses on 5th June requesting them to attend in the Assembly Hall* at 10 a.m. on 24th June. For the Sovereign or her representative to address Parliament in person, except at the Opening or Prorogation of Parliament, is not nowadays a usual proceeding, and was indeed unprecedented in Ceylon;[4] but if this had not been done on the present occasion, it would have been necessary to devise some other procedure for the making of the Governor-General's demand for money, upon which the subsequent Budget proceedings were founded.

On 24th June, the Governor-General accordingly addressed the

* In Ceylon the Speech from the Throne is not delivered in the Chamber of the Upper House. To preserve equality between the two Houses they are summoned to the Assembly Hall which is regarded as common ground.

two Houses of Parliament in a Ceremony identical with a formal Opening of Parliament. His address took the form of the usual Throne Speech. Thereafter, a proposal for an Address of thanks gave rise to a Debate which extended over three days. The Leader of the Opposition, on the morning of the 24th, informed Mr. Speaker that he would raise, as a matter of privilege, the arrest of the Federal Party Members and the delay in the publication of *Hansard*. He was, however, referred to the case of Captain Ramsay in the House of Commons and the Privilege Report on that case[5] as a result of which it was clear that the detention of a Member on security grounds is not a breach of privilege. He then stated he would complain against Mr. Speaker not being informed of the arrest of the Members of the Federal Party. However, the Prime Minister had in point of fact, addressed a communication to Mr. Speaker which was due to be read out on the 24th when the House met. In the end, he raised as a matter of privilege the delay in Mr. Speaker being informed of the arrests and the delay in the publication of *Hansard*.[6] Mr. Speaker gave a considered Ruling the next day[7] in which he stated that there was, in fact, no obligation for the Speaker to be informed of the arrest of a Member and that the delay in *Hansard* was due to action taken by him in the exercise of his discretion and for security reasons.

The proceedings commencing on the 24th June were also held under security conditions, and, while there was no restriction on the publication of *Hansard*, Press publication of Debates was subjected to strict censorship. The resentment of the Press was expressed by a refusal to submit copy relating to Parliamentary proceedings to the Censor. They demanded instead a daily hand-out by the Censor for publication, a demand which was granted, but which threw a very great strain on the Censor and his staff. After a few days the Censor agreed to Press Reporters being allowed to report all proceedings freely other than those relating to the Emergency. As regards the latter, an Officer of the Censor was to be in the Press Box, who would indicate to the Press Reporters what passages in a Member's speech should not be reported. This arrangement was approved by the Prime Minister and Mr. Speaker, but the Press refused to accept it and insisted on the hand-out continuing. As a result of complaints by Members, another arrangement more acceptable to the Press was devised by the President of the Senate and brought into force with the agreement of the Prime Minister. An unofficial committee of Senators was to censor *Hansard* as soon as it came out, and such censored copies were to be handed to the Press by the Clerk, entire responsibility for censorship being then taken away from the official Censor. A request arose in the House of Representatives for a similar arrangement to be made, the argument being adduced that it was an invasion of the rights of the House for restrictions to be placed by the Censor on the publication of Debates in the Press. Mr. Speaker agreed to adopt the arrangement in the Senate for the proceedings of

4th July alone, on an undertaking being given by the Prime Minister that the entire question of censorship would be reviewed and altered before the next Sittings of the House which were fixed for the 15th July. By the latter date the censorship over the publication of Parliamentary proceedings in the Press had been removed.

[1] No. 33 of 1956. [2] Ceylon Government Gazette Extraordinary of 27th May 1958. [3] *Ibid.* [4] But *see* THE TABLE, Vol. XXIV, p. 151, for a recent instance in Nigeria, where special constitutional provision exists. [5] *See* THE TABLE, Vol. IX, pp. 64-79. [6] 31 *H.R. Hans.*, cc. 258-84. [7] *Ibid.*, cc. 327-30.

XIV. INDIA: STATEMENTS BY OUTGOING MINISTERS ON A CHANGE OF MINISTRY*

BY S. R. KANTHI, B.A., LL.B.,
Speaker of the Mysore Legislative Assembly

On 29th of October, which was the first day on which the present Session of the Assembly commenced, the Leader of the Opposition (the Hon. Sri Kenchappa) raised a matter of what he called a convention. He referred to the fact that during the previous session of the Assembly there had been a change in the Ministry and immediately thereafter the Assembly adjourned. He observed that the Chief Minister was also the Leader of the House and when any such change in the office of Chief Minister and the entire Ministry took place, it was a convention that the outgoing Chief Minister and the new Chief Minister should both make statements indicating the reasons which led to the change. He stated that it was due to the House that such statements should be made. On this issue several Hon. Members spoke at some length and I stated that I would give a considered ruling later.[1]

I have now examined all the available precedents on this subject. I have also obtained valuable information from the Lok Sabha and the various State Legislatures. The Secretary-General to the Commonwealth Parliamentary Association has also furnished very useful material on this subject. I am thankful to all of them.

The position in the United Kingdom is stated to be that while the Speaker of the House of Commons would certainly permit a resigning Minister to make a statement about the resignation of himself or the Government of which he has been the Head, it does not seem that

* This Article comprises the entire text of a ruling given by the Speaker of the Mysore Legislative Assembly on 2nd December 1959 (Mysore L.A. Deb., Vol. V, No. 25, pp. 1225-8).

the House has any power to demand such a statement, but at Westminster such matters tend to be governed by political rather than procedural considerations and would, therefore, be discussed in the Press rather than in the House although references might frequently be made to the change or changes in the course of debate. A perusal of the House of Commons Debates indicates that when Mr. Stanley Baldwin, Sir Winston Churchill and Sir Anthony Eden resigned the Prime Ministership of the United Kingdom in May, 1937, April, 1955, and January, 1957, respectively, tributes were paid to the retiring Prime Minister and speeches were made welcoming the new Prime Minister in the House of Commons immediately after the question hour on the 31st May, 1937, 6th April, 1955, and 22nd January, 1957, respectively. On all these aforesaid three occasions, the new Prime Minister replied to the felicitations offered to him by members after himself joining in giving tributes to his predecessor. It is evident from these events that neither the Prime Minister who resigns nor his successor makes a statement informing the House of the reasons for the change in the Ministry. However, so much would depend in any particular case on the circumstances of the change of government that they cannot be regarded as precedents. It would, therefore, appear that so far as the House of Commons is concerned, though the House never compels a statement to be made, individual Ministers normally follow themselves the practice which permits them an opportunity to make a personal statement. But in the case of a whole Ministry political expediency or prior public knowledge often makes a statement in the House either impolitic or superfluous and it cannot be enforced by the Opposition. The Government of the day have only volunteered a statement when it seemed advantageous from its point of view to do so.

Coming to the Legislatures in India, it may be mentioned at once that there is no precedent at the Centre on this point. So far as the State Legislatures are concerned, I may refer to two cases in which such statements were made. One occurred in Bengal in 1943. Mr. Fazlul Haq resigned his office as Chief Minister and the Ministry as a whole, therefore, became *functus officio*. Mr. Fazlul Haq wanted to make a statement, but the succeeding Chief Minister Sir Nazimuddin and other members of the Government Party of the time strenuously opposed on the ground that the rule did not allow a Chief Minister to make a statement in circumstances when there was a wholesale change of Ministry. Mr. Speaker Naushir Ali ruled that the relative rule was not limited to the case of an individual Minister resigning from the Ministry and he, therefore, permitted Mr. Fazlul Haq and the other Ministers to make statements regarding the cause of their resignation. In giving the ruling he stated:

> I do not think the language of the rule warrants any conclusion to the effect that when the entire Ministry resigns, the members of the Ministry will have no right to make any personal statement. The fact that the entire

Ministry has resigned will by itself be no ground for refusing consent to an ex-Minister who may be willing to make a statement.

Speaking of the duty of the Speaker in such cases, he stated:

I am, therefore, clearly of opinion that in every case of resignation, whether of the entire Ministry or of individual Ministers from the Ministry, the outgoing Minister or Ministers may, if they so choose, ask for the consent of the Speaker to make personal statements in explanation of their resignations, and on each occasion it will be the duty of the Speaker either to give consent or to withhold consent according to his discretion which, as I have already stated, will be exercised in a way so as not to curtail the privilege of the members of this House.

I may, however, state that in a more recent case which arose in West Bengal when Dr. P. C. Ghosh resigned because the Party wanted to choose another Leader and Dr. B. C. Roy was elected Leader and formed a Ministry, neither of them made any statement regarding the resignation.

The other case in which a resigning Chief Minister sought permission of the Chair to make a statement and was permitted to do so, occurred in Madras when Sri Prakasam who was the Chief Minister resigned his office. On 25th March, 1951, he proceeded to make a detailed statement regarding the resignation of his Government. He spoke on the 25th and continued his speech on the 26th. On that day the Hon. Leader of the House, Dr. P. Subborayan, made a speech in reply at the request of the new Chief Minister.

In the Travancore-Cochin Assembly in identical circumstances which occurred in 1951, though a request was made by the Opposition, neither the out-going Chief Minister nor the new Chief Minister offered to make any statement. On that occasion, Sri A. Thanu Pillai who made the request made it very clear that he did not base it on any convention. He stated as follows:

I do not say that it is incumbent upon a Minister to make a statement, but courtesy, propriety, ordinary decency requires that the House should be enlightened about the circumstances which led to all these transformations and migrations.

The Speaker observed as follows:

I do not think that there is anything improper or irregular in the request for information made by the Leader of the Opposition on a matter which vitally concerns the House. It resulted in a change of the programme placed before the House and also led to an adjournment of the meeting. Information is asked about the announced change of Ministry which the member points out has resolved itself into a change of some of the former Ministers. This is certainly a matter, on which if elucidation is forthcoming, it will not be out of place and will be welcomed by the House.

Later, he proceeded to give the following ruling:

Rule 31 provides that a member who has resigned the Office of Minister may make a personal statement in explanation of his resignation and with reference to such a statement a Minister holding Office may also make a state-

ment, but there is no provision making it obligatory on the part of either to offer any explanation or to make any statement as to the circumstances which led to the resignation. The House is free to draw its own inference from the statement, if one is made, or from the omission to make any statement.

In addition to these two types of cases, one in which statements were made and the second in which a statement was requested but was not made, there is also a third type of case in which there was a change in the Ministry, but no statement was either asked for or made.

In Orissa the Chief Minister Sri Nabha Krushna Choudhry resigned and Dr. Hare Krushna Mahatab became Chief Minister, but neither of them made any statement nor was any statement demanded from either of them.

Our Rules of Procedure provide on this subject that a member who has resigned the office of Minister may with the consent of the Speaker make a personal statement in explanation of his resignation and any Minister may thereafter be entitled to make a statement pertinent thereto. As observed by Speaker Naushir Ali in the Bengal ruling to which I have already referred, the rule applies not only to a Minister who resigns from the Cabinet but also to every ex-Minister in the case or resignation of the entire Cabinet. Such being the case, as in the case of an individual Minister, so too in the case of a Cabinet, it is for the Minister concerned, whether he is an individual Minister or an ex-Chief Minister, if he feels like making a statement, to approach the Speaker for permission to do so, and the Speaker will exercise his discretion in such a way so as not to curtail the rights and privileges of the members of the House. Normally, I may state that in such cases consent will be automatically given unless the Speaker is convinced that to give consent will lead to an abuse of the privilege.

Of course, there are any number of cases in which an individual Minister who has resigned from the Cabinet has sought the permission of the Chair to make a statement explaining the reasons which led to his resignation. He has been usually permitted to do so in fairness to the member concerned and the Ministry is also permitted to offer remarks pertinent thereto. Such cases have occurred in the House of Commons, in the Parliament of India and in several State Legislatures. But Hon. Members will see that these are cases where an individual Minister has differed from the rest of his colleagues on some important matter of policy and has, therefore, resigned. The conditions and circumstances which exist in such a case are naturally absent when the entire Cabinet resigns. Secondly, even in such cases the Minister concerned cannot be compelled to make a statement, but only if he approaches the Speaker is he permitted in proper circumstances to make his statement. In the old Mysore Assembly, when Sri T. Siddalingaya resigned from the Ministry, Sri Imam, who

was the Leader of the Opposition, desired that he should make a statement of the circumstances leading to his resignation. The Speaker observed that he could not compel the member to make a statement, but if a request came from Sri T. Siddalingaya to make a statement he would consider the same. No such request was forthcoming and the matter, therefore, rested there.

From a review of all these cases it becomes clear that there is no convention whatever requiring an outgoing Chief Minister or any Minister to make a statement in the House or the new Chief Minister to do so. It is entirely within the discretion of the outgoing Chief Minister whether he should or should not make a statement about the reasons which led to his resignation. Neither any member nor any section of the House nor the Speaker can compel him to do so. Speaking generally, it may be said that if the outgoing Chief Minister breaks away from his Party he would perhaps choose to make a statement, but if he remains within the Party it becomes obvious that he would not make his differences within the Party public and would, therefore, refrain from making any statement. It is perhaps this circumstance as well as the fact that such matters tend to be governed by political rather than procedural considerations that accounts for the absence of any instance in which an out-going Chief Minister who remains within the Party has made or sought to make any statement about the circumstances that led to his resignation.

Finally, I would like to acknowledge the assistance that I have received from the Secretary Sri Venkataramana Iyer. He has taken great pains to collect all the available references both from books as well as from the other Legislatures and from the Secretary-General of the Commonwealth Parliamentary Association in order to enable me to reach a conclusion on this important and interesting point.

I am also grateful to my two friends—namely, the Speaker of Kerala Assembly and the Speaker of the Madras Assembly—who were incidentally here and helped me to come to definite conclusions in this respect.

[1] *Mysore L.A. Deb.*, Vol. V, No. 1, pp. 30-35.

XV. NORTHERN RHODESIA: CONSTITUTIONAL CHANGES

By A. Norval Mitchell, C.B.E., M.A.,
Clerk of the Legislative Council of Northern Rhodesia

Discussions on constitutional changes in Northern Rhodesia had been going on for over a year before, on 28th March, 1958, a White Paper was laid upon the Table containing detailed proposals.[1] This

White Paper,[2] after briefly tracing the history of the Legislative Council, summarising the existing constitutional framework, and tracing the course of recent discussions, proceeded to outline the principles on which it was intended that constitutional changes should be based. It emphasised that politics in Northern Rhodesia should be encouraged to develop on party and not on racial lines. It followed that there should be a move away from the existing system of racial representation in the Council. In particular the existing method whereby African Members, elected exclusively by Africans from the African Representative Council, were appointed by the Governor to the Legislative Council must give way to a system under which all elected Members were elected from geographical constituencies for the direct representation of all qualified voters. This must involve a broadening of the franchise, though it was not held that the time was yet ripe for the introduction of universal adult suffrage. It was declared, therefore, that provision should be made for a common roll, which would eventually be based on a single set of qualifications for the vote. But in order to ensure during the next ten years that all races might be properly represented, it was held to be necessary that there should be, temporarily, a set of lower qualifications in addition to the fixed and permanent higher qualifications.

The White Paper then proceeded to set out in detail its proposals for the composition of the Legislative Council and the Executiv Council, and for the qualifications for voters and candidates. Th Legislative Council was to consist of the Speaker and thirty Mem bers. Of these thirty Members twenty-two would be elected, six would be official, and two nominated. The twenty-two elected Members would represent four different types of constituency. First, there would be twelve "ordinary" constituencies covering approximately the Crown Land areas adjacent to the railway line which runs north and south through the Territory, an area which contains the main part of the European population of Northern Rhodesia. There would further be six "special" constituencies covering the rest of the Territory. In these the population would be predominantly African and the nature of the constituencies almost entirely rural. The remaining four constituencies may be imagined as being superimposed upon the map of the other eighteen. Thus the six special constituencies would be regrouped to form two comprehensive constituencies which would be reserved for European Members; and the twelve ordinary constituencies would be similarly regrouped to form two comprehensive constituencies reserved for African Members.

The Executive Council would continue to be under the presidency of the Governor and be composed of four *ex officio* Ministers and five other Ministers, of whom four must have been "ordinarily qualified" candidates successful in the elections. There were in addition to be two Assistant Ministers, the equivalent of Parliamentary Secretaries, not Members of the Executive Council but working under the

instructions of Ministers and bound by the same oaths of secrecy, allegiance and office as Members of the Executive Council. Further, the total figure of eleven Ministers and Assistant Ministers must include two Africans, of whom one must be a Minister.

As regards the franchise, there was to be a common voters' roll containing, however, two grades of voter—namely, ordinarily qualified voters and specially qualified voters whose qualifications would be lower in terms of both means and education. As a basic test of literacy all claimants must be able to fill in the claim form for registration as a voter unaided in English. It was further provided that in ordinary constituencies the total of special votes should be devalued to one-third of the total of ordinary votes cast, if the number of special votes cast should exceed one-third of the total of ordinary votes; that in the six special constituencies the total of ordinary votes should similarly be devalued to one-third of the total of special votes cast; and that there should be corresponding devaluation in the reserved seat constituencies according to whether they were reserved for European Members or for African Members.

Candidates in ordinary constituencies would require to be ordinarily qualified voters, in special constituencies either ordinarily or specially qualified voters, and in reserved seat constituencies ordinarily qualified voters. Finally, any prospective candidate possessing only special qualifications would be required to obtain certificates from two-thirds of the chiefs in his constituency that those chiefs had no objection to his candidature.

The full details of the White Paper can be studied either in the White Paper itself or in the *Hansard*[3] of the Fifth Session of the Tenth Legislative Council, 1st July to 3rd October, 1958. From the constitutional point of view, however, it is of interest to note, first, that in paragraph 59 it was stated as follows:

> The constitutional instrument would provide that the two nominated Members were to be nominated by the Governor after the results of the elections were known, and after consultation with the leader of the party returned with the greatest number of seats.

A similar pronouncement was made in paragraph 66 in the words—

> The two nominated Members . . . would be nominated by the Governor after the results of the election were known and after consultation with the leader of the majority party.

Secondly, the Appendix to the White Paper set out detailed proposals according to which the means, property and educational qualifications of special voters would be progressively raised until, after the expiry of ten years, all new applicants for registration must have the qualifications at present required for registration as ordinary voters.

The White Paper was not debated immediately it was laid upon the Table, since it was the view of the Government that a substantial period of time should elapse in which its terms might be fully appre-

ciated and considered both by Members and by the general public before the views of the Legislative Council were taken on it. The debate was ultimately inaugurated on 4th July[4] by means of a Government Motion agreeing with the proposals contained in the White Paper, which were summarised in the motion under twenty-three main heads. These main heads were debated in groups, but voted on separately, so that in effect each received its own full measure of discussion, and the debate was by far the longest that the Northern Rhodesia Legislative Council had ever conducted. Discussion lasted for a total of 44 hours; 62 amendments were moved; 44 divisions took place; and the debate covered 765 columns of *Hansard*, which was more than some entire meetings of the Council had done in the past. Of the 23 clauses 8 were amended and 1 negatived. Three new clauses were added, and two proposed new clauses showed an equality of votes on divisions, Mr. Speaker in each case giving his casting vote with the noes on the grounds that by so doing he was giving opportunity for further consideration later. The debate concluded on 18th July immediately after which a delegation went to London for further discussions with the Secretary of State for the Colonies.

On the 11th September there was published a despatch from the Secretary of State in which he gave his conclusions and comments on all that had gone before. The despatch re-affirmed the view that political parties in Northern Rhodesia should be encouraged to develop on non-racial lines. The first corollary of this was that there should be a common voters' roll based upon a qualitative franchise. In view, however, of the fact that a common roll with high qualifications would at first result in so great a preponderance of European voters as to render some additional interim measures inevitable, two sets of qualifications were prescribed. These qualifications were the same as those previously set out in the White Paper. At that time Ministers of Religion had been included automatically among ordinary voters, subject to their having undergone certain stipulated courses of training and periods of service; and to these were now added sisters and lay-brothers of religious orders on the same conditions. It was emphasised that no person once registered as a voter would ever be disenfranchised as the result of the progressive raising of the franchise qualifications, the effect of which would be that in the course of time those initially registered as special voters would automatically become ordinary voters. Another important element in the franchise provisions, which had also been proposed in the White Paper, was now finally prescribed. This was that in the ordinary constituencies, and in the two European reserved seat constituencies, the total votes cast by special voters should not count for more than one-third of the total ordinary votes cast; but, contrary to the original proposal in the White Paper, it was now laid down that there should be no corresponding devaluation of ordinary votes in the

special constituencies or the two African reserved seat constituencies. Again, candidates in all but the special constituencies were required to be qualified as ordinary voters, but in the special constituencies candidates might be qualified only as special voters, provided, however, that in those special constituencies all prospective candidates must first obtain certificates of approval from two-thirds of the chiefs in their constituency.

As regards the Executive Council, it was laid down that it should consist of four *ex officio* Ministers and six unofficial Ministers, of whom two should be Africans and four Europeans. The White Paper proposal for the appointment of Assistant Ministers was dropped.

On 17th September there was published an Order in Council described as the Northern Rhodesia (Electoral Provisions) Order in Council 1958,[5] enabling the work of enrolling voters and making other preparations for a general election to be begun. On 25th September a Bill entitled the Legislative Council Bill received its first reading in the Legislative Council.[6] The Bill was read the third time on 3rd October.[7] It embodied all the provisions governing qualifications and registration of voters, elections, and so on which had been adumbrated in the White Paper and in the Secretary of State's despatch; and in accordance with these provisions an electoral roll was prepared by the middle of January, 1959, and a general election was held on the 20th March, 1959.

Meanwhile the final legislative stage in these constitutional changes took place with the publication on 20th January, 1959, of a further Northern Rhodesia (Legislative Council) Order in Council, 1959.[8] This revoked a number of previous Orders in Council from 1945 up to the date of its coming into operation, and comprised all the provisions of preceding Orders in Council which were in accordance with the latest constitutional proposals. It went further than its immediate predecessor, which was primarily concerned with the elections, in implementing the proposals for the composition of the Legislative Council; and it was accompanied by Royal Instructions prescribing the constitution of the Executive Council and other matters.

The new Legislative Council, constituted in accordance with all the legislation outlined above, was formally inaugurated by His Excellency the Governor on 7th April, 1959. Of its thirty Members six were Africans elected from the special constituencies, two were Africans elected from the African reserved seat constituencies, one was a nominated African who was also appointed as a Minister, and one was a nominated Asiatic. To the constitutional observer it was interesting to note that all the European Members belonged to established political parties; and that the nine African Members comprised four who were also members of those parties, one who was a member of the African National Congress, and four Independents. These figures provided the first indication that the policy was being

fulfilled whereby politics should be encouraged to cut across racial considerations.

[1] 94 N. Rhod. *Hans.*, cc. 471-7. [2] Unnumbered; published by Government Printer, Lusaka. [3] Vol. 95. [4] *Ibid.*, c. 215. [5] S.I., 1958, No. 1520. [6] 95 N. Rhod. *Hans.*, c. 2424. [7] *Ibid.*, c. 2845. [8] S.I., 1959, No. 105.

XVI. THE WEST INDIES: PRESENTATION OF A MACE BY THE HOUSE OF COMMONS TO THE HOUSE OF REPRESENTATIVES

By D. W. S. Lidderdale,
Second Clerk-Assistant of the House of Commons

Although experts have sometimes disagreed as to the exact significance of the Mace, it is generally agreed that it is a symbol of authority. It is no doubt for that reason that up till last year the House of Commons had never presented a Mace to any House of Parliament other than one of an independent state. Last year, however, the Mother of Parliaments exercised her feminine privilege of inconsistency, when the House of Commons presented a Mace to the House of Representatives of the newly formed Federation of The West Indies. The gesture was, perhaps, an earnest of the desire of the House of Commons to see the Federation rapidly achieve that independence which is its acknowledged goal.

The idea was first publicly expressed on 3rd December, 1957. On that day, in reply to a question by the Rt. Hon. James Griffiths (a former Secretary of State of the Colonies), the Rt. Hon. R. A. Butler, M.P., Leader of the House of Commons, made the following statement to the House:

> Her Majesty's Government have authorised me to propose to you, Mr. Speaker, that you should, on behalf of this House, offer to the West Indies the gift of a Mace for use in the House of Representatives. The gift would be a token of our good will and welcome to the new Legislature, and it would carry with it our warm congratulations to the peoples of the West Indies and our best wishes for their future happiness and prosperity.

In what those who have attended question time in the House of Commons will recognize as technically a supplementary question, Mr. Griffiths then said:

> May I associate my right hon. and hon. Friends with that suggestion and commend it to you, Sir? The gift will carry with it our very best wishes to all the West Indian people and our hopes for the success of this very interesting and great venture in the West Indies.

Mr. Speaker said that he would be happy to do as the House desired and it was taken that the House had given its general approval to Mr. Butler's proposal.[1]

Steps were then taken to arrange for a limited competition for the designing of the Mace to be conducted by the Worshipful Company of Goldsmiths. Thirteen designs were submitted. On 24th February, 1958, a distinguished jury consisting of one representative of the West Indies (Mr. Garnett Gordon, C.B.E., Commissioner for the West Indies in London), one from the House of Commons (Major-General I. T. P. Hughes, C.B., C.B.E., D.S.O., M.C., the Serjeant at Arms), one from the Colonial Office (Mr. John Profumo, M.P., Parliamentary Under-Secretary of State), and four expert judges appointed by the Wardens of the Company, met at Goldsmiths' Hall to judge these designs. They selected that of Mr. A. G. Styles, to whom was awarded the winner's fee of one hundred guineas. The work of carrying out this design, with certain minor detailed alterations suggested by the jury, was entrusted to Messrs Garrard and Co., Ltd. The Mace was finished and made available for inspection by Members in the course of the summer of 1958.

The design of the West Indies Mace is based on that of the House of Commons Mace and embodies its essential features, notably a head, surmounted by Orb and Cross and the Royal Arms, with the Arms of the West Indies, alternating with the Royal Cipher. Of the special features of the Mace, mention may be made of the head which is supported on the shaft by four brackets in the form of pelicans; and of the shaft which is decorated with engraved representations of various West Indies activities such as oil and bauxite mining, tobacco, cotton, rice and sugar. The foot of the Mace is terminated by a group of four lions symbolising support and guardianship of the Federation. The work was carried out in silver gilt, the Mace measuring some four feet and weighing 220 ounces.

To enable the presentation to be made, certain formal steps were necessary similar to those taken on previous occasions of the same kind. On 20th March, 1958, on the motion of the Chief Government Whip, the House resolved that upon the following Tuesday it would resolve itself into a Committee—

> to consider of an humble Address to be presented to Her Majesty, praying that Her Majesty will give directions that there be presented on behalf of this House a Mace to the House of Representatives of the West Indies, and assuring Her Majesty that this House will make good the expenses attending the same.[2]

In this Committee, on 25th March, the Leader of the House proposed the motion:

> That an humble Address be presented to Her Majesty praying that Her Majesty will give directions that there be presented, on behalf of this House, a Mace to the House of Representatives of the West Indies, and assuring Her Majesty that this House will make good the expenses attending the same.

In moving the motion, Mr. Butler referred to the birth of the new Federation the previous January, and to the forthcoming inauguration of its Legislature by H.R.H. Princess Margaret on 22nd April. It was to mark this historic event that the gift of the Mace was to be made. The gift would be "a token of the good will of the House of Commons and of the people of the U.K." and would bear their best wishes for future happiness and prosperity. The Leader of the Opposition, the Rt. Hon. Hugh Gaitskell, supported the motion. Noting the fact that the presentation was being made in advance of independence, he said that in this case "federation, although not identical with self-government, is an essential step towards it". Short speeches were also made by the Leader of the Liberal Party, Mr. Joseph Grimond, and by two back-benchers not unknown to the West Indies, Mr. Nigel Fisher (Conservative) and Mr. Charles Royle (Labour). The Committee agreed to the motion without any dissentient voice;[3] and the resolution was reported to the House and similarly agreed to on 27th March.[4] On 2nd April the Vice-Chamberlain of the Household (the Hon. Peter Legh, M.P.), reported the Queen's answer to the Address, in which Her Majesty was pleased to say that she would gladly give directions for carrying the proposal into effect.[5]

On 13th November, 1958, the Leader of the House announced the composition of the Delegation which was to make the presentation.[6] It was to consist of the Rt. Hon. Sir Thomas Dugdale (now Lord Crathorne) as Leader, Sir Henry Studholme and the Rt. Hon. J. Chuter Ede, accompanied by the writer of this article. The first two members named are Conservatives, the third belongs to the Labour Party. On 19th November leave of absence was formally given to them on the motion of the Leader of the House.[7] Before leaving the United Kingdom the Delegation had a meeting with the Secretary of State for the Colonies, the Rt. Hon. Alan Lennox-Boyd, and were most pleasantly entertained to lunch by the West Indian Commissioner.

The Delegation left on 27th November by B.O.A.C. Britannia, and arrived next morning, dead on time, at Piarco Airport, Trinidad. They all survived this startling climatic transformation remarkably well, and were already at work the same afternoon, rehearsing the ceremony of the presentation. This was a necessary and useful precaution, as described below. Thanks, however, to the excellent preparations made by Mr. G. E. L. Laforest, Clerk of the House of Representatives, with the help of the Deputy Clerk, Miss Joan Darcheville, and by the other authorities concerned, little difficulty was experienced, and all involved were soon confident of the part which they would have to play.

The presentation was made on Monday, 1st December, 1958. The House of Representatives met at 11 a.m., and immediately after Prayers the Serjeant at Arms, Mr. John R. Ashmead, announced

the attendance of the Delegation and, after asking the wish of the House, the Speaker, the Hon. E. R. L. Ward, directed him to conduct the Delegation to the Bar. The Delegation then entered and took up positions facing the Chair, Sir Thomas Dugdale being in the middle, with Mr. Ede on his right and Sir Henry Studholme on his left, and the writer behind him, carrying the Mace covered. The Speaker, after extending a very warm welcome to the Delegation, called upon Sir Thomas Dugdale to address the House. Sir Thomas, after thanking the Speaker for his welcome, explained that the Delegation had come "by order of the House of Commons and in fulfilment of the Queen's direction". He went on to describe the Mace and how it had been designed and made. Maces, he remarked, were not unfamiliar symbols in the West Indies, and he mentioned those of Jamaica, Antigua and Grenada. Finally he referred to the staunch support afforded by the West Indies to the United Kingdom in time of war, and their gifts which helped to beautify the rebuilt chamber the House of Commons. "Such," he concluded, "are the links of gratitude and affection which bind our people to yours and our Chamber to this House, and it is in this spirit that the House of Commons offers you this gift."

Mr. Ede followed Sir Thomas Dugdale; when he had concluded his remarks Sir Thomas Dugdale took the Mace from the writer (who then removed the cover) and handed it to the Serjeant at Arms, placing it upon the latter's right shoulder. The Serjeant at Arms then advanced to the Table and placed the Mace upon it. An Address of Thanks was then moved by the Prime Minister and seconded by the Leader of the Opposition, Mr. Sinanan, both of whom spoke both entertainingly and eloquently; the former stressed the devotion of the West Indies to parliamentary government, and the latter their determination to play an active part in the British Commonwealth of Nations and to show to the world "a matchless example of all races living together in unity". The Serjeant at Arms then rejoined the Delegation and, after they had bowed thrice to the House, conducted them from the Chamber.

So ended a ceremony which, though straightforward and simple in its procedure, was both dignified and moving. It may be of interest to the readers of THE TABLE, some of whom may one day themselves be responsible for organising such a ceremony, to mention one or two of the things which go to make such occasions successful. First of all, of course, there is careful preparation by those on the spot, well in advance, and in consultation with the visiting side . On this occasion Eric Laforest had been in correspondence with Sir Edward Fellowes about the order of procedure several months in advance. But however thorough such preparations may be, it will still be essential to hold a rehearsal on the ground when the Delegation has arrived. It may be difficult to squeeze this rehearsal into the generous programme which the host country wishes to design for its

guests, but squeezed in it ought to be. There are so many points which can hardly be imagined before, and are rapidly forgotten afterwards if all goes well, but which, if neglected, might produce a moment of indignity liable to spoil the whole ceremony. You cannot, for example, until you have tried it, imagine the expertise involved in getting a Mace handed from Mr. A. to Mr. B. and then from Mr. B. to Mr. C., so that it ends up on Mr. C.'s right (not left) shoulder, and is neither dropped nor turned upside down in the process.

After the presentation the Delegation remained five days in Trinidad, as the guests of H.E. The Governor-General, and enjoyed a most interesting programme arranged for them partly by the Federal Government and partly by that of Trinidad. They made their way home as individuals, and some of them were able to extend their knowledge of the Federation by visiting Antigua, Barbados and Grenada. I think I can speak for each of us in saying that we all hope for the day when we can again visit that vigorous and democratic, warm-hearted and hospitable part of the British Commonwealth, the Federation of the West Indies.

[1] 579 *Com. Hans.*, cc. 217-18. [2] 584 *ibid.*, c. 1444. [3] 585 *ibid.*, cc. 249-51. [4] *Ibid.*, c. 599. [5] *Ibid.*, c. 1189. [6] 595 *ibid.*, cc. 572-3. [7] *Ibid.*, c. 1155.

XVII. SIERRA LEONE: A FURTHER CONSTITUTIONAL STEP

By S. V. Wright,
Clerk of the House of Representatives

In 1958 Sierra Leone took a further constitutional step by the coming into force of the Sierra Leone (Constitution) Order in Council, 1958,[1] on 14th August, 1958.

The main effect of this Order was to reconstitute both the Executive Council and the House of Representatives by removing from each of these bodies the four government officials (the Chief Secretary, Chief Commissioner of the Protectorate, Attorney-General and Financial Secretary) who previously sat as *ex-officio* members, and by increasing the minimum number of Ministers in the Executive Council from four to eight.

Whilst under the former Constitution[2] the House of Representatives contained, besides the Speaker, 57 members of whom 4 were government officials; in the present House these 4 officials have disappeared leaving 53 members. The Quorum is reduced from 20 to

18. Incidentally one seat has remained vacant since 1957, for want of a literate chief in one of the Northern provincial districts who can be elected to fill it.

Under the Revised Constitution the Governor retains the power to prorogue or dissolve the House of Representatives at any time by Proclamation. Also, although the Speaker normally presides at all meetings of the House the Governor may, in his discretion, address the House at any time he thinks fit and may for that purpose require the attendance of members. The Constitution also reserves to the Governor responsibility for the subjects of external affairs, defence, appointments to offices in the public service, the dismissal or disciplinary control of officers in the public service, internal security, the organisation, use and operational control of the police.

The 1958 Constitution has also introduced changes in the composition of the Executive Council. Under Article 4 of the 1956 Royal Instructions[3] the former Executive Council, of which the Governor was President, consisted of 4 *ex-officio* members, viz.:

(i) the Chief Secretary,
(ii) the Chief Commissioner of the Protectorate,
(iii) the Attorney-General,
(iv) the Financial Secretary,

and not less than four persons, being elected members of the House of Representatives, selected by the Governor according to his discretion, who were styled Ministers. Article 3 of the new Constitution now provides for an Executive Council consisting of the Governor as President, a Premier and not less than seven other Ministers. The Premier and other Ministers shall be elected members of the House, appointed by the Governor by Instrument under the Public Seal. After any general election of members to the House of Representatives or after the occurrence of a vacancy in the office of Premier, the Governor shall appoint as Premier the person who appears to him to be best able to command a majority in the House and who is willing to be appointed. The other Ministers are appointed by the Governor on the recommendation of the Premier.

The Governor may assign to any Minister responsibility for any subject and may charge that Minister with responsibility for any department of government. Thus as against 9 ministers appointed under the 1956 Constitution there are in the present government twelve Ministers, ten of whom are charged with responsibility for the following subjects:

(1) Internal Affairs and Development.
(2) Finance.
(3) Education and Welfare.
(4) Lands, Mines and Labour.
(5) Communications.

(6) Trade and Industry.
(7) Works and Housing.
(8) Health.
(9) Natural Resources.
(10) Information and Broadcasting.

The other two are Ministers without Portfolio.

No changes were made in the electoral system, nor has the revised Constitution necessitated fresh elections or a dissolution of the House. Transitional Provisions are made in s. 54 by which the Speaker, and any person who was either an elected member or a nominated member before the appointed day are deemed to be Speaker, elected member and nominated member, respectively, of the reconstituted House. At the same time s. 51 also provides for dissolution of the House at the expiration of five years from the date of the return of the first writ at the last preceding general election, which was in 1957.

To mark the introduction of the new Constitution, the former House was prorogued and a new Session of the reconstituted House was opened by the Governor on 19th August, 1958.

The occasion was marked with official ceremonial including the firing of a salute of guns.

In the Chamber the Government front bench assumed a new appearance: the former 4 officials had disappeared and in their places, following a reshuffling of seats, there were seated African Ministers of the reconstituted government.

At that meeting, the Governor prefaced his Speech with the following message from the Secretary of State for the Colonies:

It gave me great pleasure at the end of last month to recommend to Her Majesty in Council that proposals for Constitutional changes in the Executive, submitted by your Government in March this year, should be carried out. We can all look back with pride and a sense of real achievement at the progress made in so short a time in the transfer of responsible Government to fully elected representatives of Sierra Leone. The responsibilities of office are heavy but I have watched with admiration the way that the Ministers have shouldered them. I trust that the people of Sierra Leone may, over the next few years, enjoy a period of stability to enable them to build soundly on the foundations of good government and administration which have been constructed and that all Members will contribute positively and constructively to this end.

I should not wish this moment to pass without a word of recognition for the devoted labour of those officials who will now cease to attend but who I know share with me my heartfelt wish for the prosperity and well-being of Sierra Leone. May wisdom attend your deliberations.

In his speech, the Governor, Sir Maurice Dorman, said:

It is right and fitting that we should mark this historic occasion by the opening of a New Session of the House with traditional ceremony. I shall not keep you long as we are in the middle of the financial year and this is not the time for the annual review of Government's activities and policy. It

is the Minister's intention to change the financial year so that in future it will run from April to March. This has advantages which I need not go into now, but in consequence the annual review of Government activities and its statement of new policy will be deferred until the Budget Session which will be held early next year.

First Premier and First Minister of Finance

The changes in our constitution are so well known as not to require elaboration. But this is an occasion of historic importance. For the first time Sierra Leone has a Premier, for the first time he alone has had the responsibility of choosing his own team of Ministers, for the first time the control of taxation and the Treasury is placed in the hands of a Minister and a Sierra Leonean, and for the first time officials will no longer be members either of the Executive Council or of this House. I emphasise these developments to indicate the measure of responsibility, authority and power now devolving upon popularly elected Ministers and upon this House.

Newly appointed Ministers

It has been my honour and privilege to invite one among you, elected by the ordinary people of this country, to become the Premier. I offer my honourable friend my warmest congratulations, my admiration and whatever I can do to help. He has chosen the Minister of Finance on whose shoulders will lie a great responsibility—it is a post which at this juncture offers a challenge to and an opportunity for his highest abilities. He has created one other new Ministry, that of Information, which is of importance at any time, but of special significance at this stage of our development. Since this House last met two other of its members have been appointed to Ministries. To all my Ministers I offer congratulations and my fullest co-operation. I can say with confidence that the Public Service will do its best to serve you well and through you this House and the country, in accordance with its highest traditions.

Tribute to former officials:

The principal changes relate to Executive Council, but the changes made in the Executive Council have their effect on this House. It has fallen to me to recommend proposals which withdraw from this House the officials who have served in it so long. I want to say thank you to them. Those who now withdraw come of a long line and the development of the House and their departure from it is in a sense of fulfilment of their work. It is right that they should step aside now and leave the House. I offer my warm congratulations to Mr. Waddell who has been appointed my deputy and will, I know, be of the greatest help to me. The Attorney-General will still be available to the House whenever required and I hope that there will be no hesitation in asking him to attend whenever it is thought that he could assist. The Financial Secretary becomes responsible to his Minister who I know will be able to rely on his tireless industry and care. The Chief Commissioner has a long record of distinguished and honourable service in and for Sierra Leone which will be remembered in history. Next month he proceeds on leave prior to retirement and I take this opportunity of publicly bidding him farewell and expressing my appreciation of the high quality of his service to the people of the country.

Discharge of new Responsibilities:

These changes not only lay responsibility on and place power in the hands of the Premier and his Ministers, but they lay a correspondingly greater responsibility on this House. The success of the new constitution will depend equally on how you discharge your responsibilities and how you

conduct your business. I would like to draw your attention to three matters of importance relating to the proceedings of the House, all of which require attention.

Standing Orders:

First, the Standing Orders require modernising not only to take account of the changes in the constitution recently made, but so as to bring them more into line with procedure in other Commonwealth Legislatures. Draft revised Standing Orders have been prepared by Mr. Lidderdale, the Fourth Clerk at the Table in the House of Commons. His draft provides many radical changes in the present procedures which have the general effect of offering to backbenchers and opposition more opportunities to take part in the regulation of the House's business and to raise matters by debate and by question at times of their own choosing. But there is not unlimited time provided and this will call for greater discrimination about what is important and what is not. I hope that you, Mr. Speaker, and the House will take an early opportunity to consider this new draft which is, in my view, of unusual importance in the working of the new Constitution.

Public Accounts Committee:

Secondly, the Public Accounts Committee is an instrument of public control of government departments and government expenditures of which much greater use should be made. We have become accustomed to the functions of the Finance or Votes Committee which approves the expenditure of moneys before it is incurred. But it is equally important to see that the moneys which the House has provided from the public revenue are spent on what they were voted for, and with proper regard for economy. In the first place the Auditor reports on this. But the recommendations in his report, particularly if inconvenient in some respects, could be evaded without much notice unless the Report is in fact considered by the House.

This is the job of the Public Accounts Committee. The Committee may call for the Treasury and for Departments to appear before them to answer for and justify their conduct in financial matters. As a result of their examination they report to the House and their recommendations should carry great weight with the Government. This is not a thankless and laborious routine but a vital and constructive check upon the executive—an essential development in parliamentary democracy. I understand that the Audit Reports from 1954-1956 have only recently been considered and that is why I have felt it right to bring this to the attention of the House.

The Official Record:

Thirdly, reporting of the debates of the House has for long left much to be desired although endeavours have been made to bring the publication of the record up to date. What is required is accurate reports of debates quickly produced and widely distributed. Without this the public cannot follow intelligently what goes on in the House, and if they cannot do that, in the long run the House will risk losing the interest and respect of the man-in-the-street. This is a matter which is largely within the House's own competence to remedy. It should be possible and should be the present aim to produce within a fortnight of the end of the meeting the printed report of the debates. I would ask particularly that Honourable members give their officials every help in this.

I mention these matters, Mr. Speaker, because people sometimes forget that constitutional change is not complete when the instruments enshrining it have been brought into effect. Lord Radcliffe has said, "Constitutional forms and legal systems are very well in their way, but they are the costumes of the men who wear them." Constitutions take life from the persons who

work them. Those who work them are not only the Ministers of the Government but also the Honourable Members of this House. I pray that my Premier, Ministers and Honourable Members of this House may respond to the stimulus of great authority, and may use their authority for the benefit of the people. So they will bring honour to Sierra Leone. May God bless your deliberations and guide your decisions.

On completion of the Speech His Excellency left the House. Mr. Speaker, in the Chair, congratulated the House on the forward step the country had taken towards managing its own affairs. He also congratulated Dr. M. A. S. Margai, Leader of the Government, on his elevation from the position of Chief Minister to that of Premier, thus becoming Sierra Leone's first Premier. Mr. Speaker also thanked the outgoing Official Members for their services to the House and congratulated the Chief Secretary on his appointment as Deputy Governor.

The Leader of the Opposition followed in like vein, and with a touch of humour concluded by saying—

Mr. Speaker, much as I have congratulated him (the Premier) for his achievement in being the first Premier of Sierra Leone, he will agree with me when I say that I am not in a position to wish him a very long term as Premier of Sierra Leone and that very shortly he and his government will be giving place to me and my colleagues.

[1] S.I., 1958, No. 1259. [2] *See* THE TABLE, Vol. XXVI, p. 138. [3] Public Notice No. 74 of 1957.

XVIII. APPLICATIONS OF PRIVILEGE, 1958

At Westminster

Party meetings in the Palace of Westminster.—On 17th March Mr. Arthur Lewis (West Ham, North), before the commencement of public business, raised as a matter of privilege a report in the *Sunday Express* that two rooms in the House of Commons had been searched for hidden microphones as "part of an intensive effort to solve the mystery of how accurate verbatim reports of secret Tory meetings have reached the press". Although aware of previous rulings to the effect that party meetings were not subject to privilege, he asked what could be done to have an investigation made. While Mr. Lewis was developing his argument that the allegation that Committee rooms were wired for microphones, and that every hon. Member was under suspicion, was surely a breach of privilege, Mr. Speaker interposed as follows:

I cannot see any point of Privilege in this matter at all. If the hon. Member wishes to probe further into this story about microphones he ought to put down a Question to the responsible Minister. It is a matter for him and not for me. If the hon. Member still persists that this is a matter of Privilege he can put down a Motion to that effect. I am bound to say that the hon. Member has disclosed nothing at all which would enable me to regard it as a *prima facie* case where I ought to give it precedence at this time.[1]

UNION OF SOUTH AFRICA: HOUSE OF ASSEMBLY

Contributed by Mr. J. M. Hugo, formerly Clerk of the House of Assembly

Threatening note sent to Member.—On 4th September an hon. member drew attention to a note, signed "D. E. Ellis", threatening the hon. member for Florida (Mr. Tighy) and sent to him during the proceedings in Committee of Supply.

The hon. member for Ventersdorp (Mr. Greyling) thereupon informed the House that he had written and sent the note, intending it to be a joke, and had already tendered his apologies to Mr. Tighy.

After a suggestion had been made that a Select Committee should be appointed to enquire into the alleged breach of privilege, the Deputy-Speaker (Mr. Klopper) indicated that, having regard to the circumstances, such action did not seem warranted. He however expressed his disapproval of the hon. member's conduct and directed him to apologise to the House.[2]

INDIA: RAJYA SABHA

Production of Evidence in the possession of the House.—An election petition challenging the election of Shri Biren Roy, a Member of the Lok Sabha elected from the Calcutta-South-West constituency in West Bengal, was referred for trial to an Election Tribunal. One of the important points that the Tribunal had to decide was if Shri Biren Roy was disqualified under section 7 (*d*) of the Representation of the People Act, 1951, for being chosen as Member of the Lok Sabha for his connection, if any, with a firm "Indo-German Trade Centre" which had entered into a contract with the appropriate Government for installation of automatic vote recording device in the Rajya Sabha and the Lok Sabha Chambers. One of the issues framed by the Tribunal for trial ran thus:

Is the answering respondent Biren Roy disqualified for being chosen as a Member of the Lok Sabha because of his connection with firm under the name and style "Indo-German Trade Centre."

On 3rd April the Tribunal issued a writ of commission and directed the commissioner to proceed to New Delhi to examine three witnesses —namely, the Secretary, Rajya Sabha, the Secretary, Lok Sabha, and the Director-General of Supplies and Disposals. On the same day, the Commissioner sent a telegram to the Secretary, Rajya

Sabha, intimating his appointment as commissioner and requesting him to produce before the commissioner, when he reached Delhi, the Rajya Sabha files regarding the automatic vote recording system. In reply, the commissioner was informed by a telegram by the Rajya Sabha Secretariat on the same day that it was not possible to comply with his request without the orders of the Chairman, who was then absent from India. After this telegram was issued, another telegram was received by the Rajya Sabha Secretariat from the commissioner that the commission would commence sitting on 7th April, 1958, at 11 a.m. No reply was sent to this telegram in view of the telegram previously sent by the Secretariat. When the commissioner sought instructions of the Tribunal after receiving the telegram from the Rajya Sabha Secretariat, the Tribunal held the writ in abeyance.

On 10th April the Tribunal, addressed a letter to the Secretary, Rajya Sabha, forwarding therewith a copy of its order dated 9th April and a summons issued to the Secretary, Rajya Sabha, requesting him—

to produce by a competent person the file containing the correspondence with the Indo-German Trade Centre, Behala, Calcutta, regarding the installation of the automatic vote recording system in the Rajya Sabha during 1956-57.

Since the jurisdiction of the Tribunal under section 92 of the Representation of the People Act, 1951, for enforcing the attendance of the witnesses was restricted by the Explanation to that section to the limits of the State in which the election was held, in this case the State of West Bengal, any witness residing outside the State of West Bengal had the privilege that his attendance before the Tribunal in West Bengal could not be enforced. The Tribunal, therefore, requested the Secretary of the Rajya Sabha to waive this privilege and to send a competent person before the Tribunal on 25th April at 10.30 a.m. with the documents mentioned in the summons. If the privilege was not waived and a competent person was not sent before the Tribunal with the documents, the Tribunal proposed to issue a fresh writ of commission for taking evidence in New Delhi after the Chairman had accorded permission for production of the papers needed at the trial. In such a contingency the Tribunal desired to know when its commissioner should report to New Delhi for collecting the necessary evidence.

The papers relating to the case were placed before the Chairman for orders. As the matter involved a question of privilege, the Chairman, under rule 178 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, referred the following questions for examination and report by the Committee of Privileges—namely:

(i) what procedure should be followed when a request is received from a court of law for the production of documents connected with the proceedings of the House or any Committee of the House or in the custody of the officers of the House or for the

giving of oral evidence by any officer of the House in respect of any such proceedings or documents; and

(ii) whether in the present case permission should be given for the production of the documents before the Election Tribunal as requested by the Tribunal.

The Tribunal was informed that the Chairman had referred the matter to the Committee of Privileges of the House and that, after the Committee of Privileges reported and the House took a decision thereon, a further communication would be sent to the Tribunal.

The Committee of Privileges, in its First Report (laid on 1st May), observed that there was no specific rule in the Rules of Procedure and Conduct of Business in the Rajya Sabha regarding the production of documents relating to the proceedings of the House or any Committee of the House before a court of law. Rule 383 of the Rules of Procedure and Conduct of Business in Lok Sabha relating to custody of papers of Lok Sabha read thus:

> The Secretary shall have custody of all records, documents and papers belonging to the House or any of its Committees or Lok Sabha Secretariat and he shall not permit any such records, documents or papers to be taken from the Parliament House without the permission of the Speaker.

There was no such rule in the Rules of Procedure and Conduct of Business in the Rajya Sabha.

The practice obtaining in the United Kingdom had been described by May as follows:

> The rights of the House are emphasised by the resolution of session 1818 which directs that no clerk or officer of the House, or shorthand writer employed to take minutes of evidence before the House, or any committee thereof, shall give evidence elsewhere, in respect of any proceedings or examination had at the bar, or before any committee of the House, without the special leave of the House. Parties to a suit who desire to produce such evidence, or any other document in the custody of officers of the House, must accordingly petition the House, praying that the proper officer may attend and produce it; and the term " proper officer " includes an official shorthand writer. The motion for leave may be moved without previous notice. During the recess, however, it has been the practice for the Speaker, in order to prevent delays in the administration of justice, to allow the production of minutes of evidence and other documents, on the application of the parties to a private suit. But should the suit involve any question of privilege, especially the privilege of a witness, or should the production of the document appear, on other grounds, to be a subject for the discretion of the House itself, he will decline to grant the required authority. During a dissolution the Clerk of the House sanctions the production of documents, following the principle adopted by the Speaker . . . The practice of the Commons regarding evidence sought for outside the walls of Parliament touching proceedings which have occurred therein also conforms to Article 9 of the Bill of Rights. This fact is well recognised by the courts, which have held that Members cannot be compelled to give evidence regarding proceedings in the House of Commons without the permission of the House . . . On the presentation of a petition for the production of evidence in the possession of the House, unless objection be taken, a motion is made to carry out the object of the petitioners.[3]

In the United States of America, the practice was as follows:

> . . . in maintenance of its privilege the House has refused to permit the Clerk to produce in Court, in obedience to a summons, an original paper from the files, but gave the court facilities for making copies . . . No officer or employee, except by authority of the House, should produce before any court a paper from the files of the House, nor furnish a copy of any paper except by the authority of the House or a statute.[4]
>
> The Secretary of the Senate being subpoenaed to produce a paper from the files of the Senate, permission was given to him to do so after a discussion as to whether or not he was exempted by privilege from the process.[5]

Similarly, in the House of Representatives of Australia, the House of Assembly of South Africa, the House of Representatives of New Zealand and the Dail Eireann of Eire, no document relating to a proceeding of the House or in the custody of officers of the House could be produced before a court of law without the leave of the House or during recess without the leave of the Speaker.

The Committee of Privileges of the Lok Sabha had recently an occasion to consider the question as to what procedure should be adopted for producing documents connected with the proceedings of the House before courts of law.[6]

The Committee deduced that the general parliamentary practice was that any documents relating to the proceedings of the House or any Committee of the House or in the custody of the officers of the House could be produced elsewhere by a Member or officer of the House without the leave of the House being first obtained, and that the leave was generally granted by the House unless the matter involved any question of privilege. They were therefore of the opinion that no member or officer of the House should give evidence in respect of any proceedings of the House or any Committee thereof or any document relating to or connected with any such proceedings or in the custody of officers of the House or produce any such document, in a court of law without the leave of the House being first obtained.

The Committee considered that when the House was not in session, the Chairman might, in emergent cases in order to prevent delays in the administration of justice, permit a member or officer of the House to give evidence before a court of law in respect of any of the above matters or allow the production of the relevant documents, and he would inform the House accordingly of the fact when it assembles. If however the matter involved any question of privilege, especially the privilege of a witness, or should the production of the documents appear to the Chairman to be a subject for the discretion of the House itself, he might decline to grant the required permission and refer the matter to the Committee of Privileges for examination and report.

The Committee recommended that whenever any document relating to the proceedings of the House or any Committee thereof was required to be produced before a court of law, the court should re-

quest the House stating precisely the documents required, the purpose for which they were required and the date by which they were required. It should also specifically be stated in each case whether only a certified copy of the document should be sent or an officer of the House should produce it before the court. Similarly, when the oral evidence of an officer of the House was required, the court should request the House stating precisely the matters on which and the purpose for which his evidence was required and the date on which he was required to appear before the court.

Further, when a request was received during a session for the production before a court of law of documents relating to or connected with the proceedings of the House or a Committee or in the custody of officers of the House or for oral examination of any Member or officer of the House in respect of any such proceedings or documents, the case should be referred by the Chairman to the Committee of Privileges. On a report from the Committee a motion might be moved in the House by the Chairman or a member of the Committee to the effect that the House agrees with the report and further action should be taken in accordance with the decision of the House.

In regard to the case referred to them for consideration, it appeared to the Committee that the Rajya Sabha Secretariat had no hand in the matter of placement of the contract with the Indo-German Trade Centre. The Committee however noted that the firm had had some correspondence with the Rajya Sabha Secretariat. The Tribunal had requested for production of the file containing the correspondence with the Indo-German Trade Centre regarding the installation of the Vote Recording system in the Rajya Sabha during 1956-57. The file in question contained not only the correspondence which the firm had with the Rajya Sabha Secretariat but also other papers consisting of departmental correspondence and office notes. The Committee were of the view that the whole file need not be produced before the Tribunal, but were of the opinion that it would not be proper for the Committee to decide whether any such correspondence which the firm had with the Rajya Sabha Secretariat was relevant or material for determining the issue before the Tribunal. That was a matter for the decision of the Tribunal. The Committee considered that there should be no objection to the production of such correspondence before the Tribunal.

The Committee therefore recommended that the Secretary, Rajya Sabha, should designate an officer of the Rajya Sabha Secretariat to produce before the Election Tribunal the correspondence between the Indo-German Trade Centre and the Rajya Sabha Secretariat regarding the installation of the automatic vote recording system in the Rajya Sabha during 1956-57.

The Report was presented to the House by the Chairman of the Committee of Privileges on 1st May. On 2nd May the House agreed to the following Motion:

That the First Report of the Committee of Privileges, laid on the Table of the House on 1st May, 1958, be taken into consideration, and having considered the same the House agrees with the recommendations contained in the Report.[7]

Defamatory article in the Press.—On 8th September Shri Bhupesh Gupta gave notice under rule 164 of the Rules of Procedure and Conduct of Business in the Rajya Sabha of his intention to raise a question involving a breach of privilege in the House. He alleged that certain observations in an article entitled "In Parliament" appearing in the weekly journal *Thought*, dated 6th September, amounted to "wilfully unfair and mendacious reporting" of the proceedings of the House and, therefore, amounted to a breach of privilege of the House. He also sought the consent of the Chairman under rule 163 of the said Rules to raise the question in the House. On a perusal of the relevant proceedings of the House and the writings contained in the offending article, the Chairman was satisfied that there was a *prima facie* case for investigation of the complaint of the breach of privilege made by Shri Bhupesh Gupta, and he accordingly referred the matter under rule 178 of the said Rules to the Committee of Privileges for examination, investigation and report.[8]

The Committee held four sittings. The Secretary was asked by the Chairman of the Committee to write to Shri Bhupesh Gupta requesting him to specify in writing the particular passage or passages in the offending article which in his opinion constituted a breach of privilege of the House. On Shri Bhupesh Gupta's own request the Committee agreed that as the offending remarks made personal references to Shri Bhupesh Gupta, it would not be proper for him to take part in the deliberations of the Committee as a member thereof.

At the first sitting held on 16th December the Chairman of the Committee read a letter received from Shri Bhupesh Gupta in reply to the letter written to him by Secretary in which Shri Gupta specified the following passage to be the offending passage in the article in question:

When a Congress member, Mr. H. P. Saksena (U.P.), did a bit of skin-peeling that exposed the spots on the Communist friends of the Nagas, Mr. Gupta did the obvious: he flew into a rage. "This was", he shrieked (Mr. Gupta's voice is too shrill to permit a thunder), "fatuous, fantastic, untrue."

Shri Gupta, who was present at the meeting, confirmed that his complaint primarily related to this passage and the comments in the article that flowed therefrom. Thereafter Shri Gupta retired and the Committee discussed the procedure to be followed. The Committee decided that Shri Bhupesh Gupta and Shri Ram Singh, the Editor of *Thought*, should be invited to be present at its next meeting in order to enable the Committee to examine them on matters arising out of the complaint.

At the second sitting held on 14th February the Committee agreed to Shri Ram Singh's request (made through a letter) that he might be

permitted to appear before the Committee on a subsequent date as owing to prior engagements he was unable to appear before the Committee at its meeting on that day. The Committee decided that the Editor should be asked to appear before the Committee at its next meeting.

At the third sitting held on 2nd March Shri Ram Singh appeared before the Committee and made a statement. In the course of the statement, Shri Ram Singh said that at the time the offending article was written in the issue of *Thought*, he or his columnist had not taken into consideration the latter portion of the proceedings of the Rajya Sabha of the 27th August, 1958, wherein Shri H. P. Saksena had stated that he did not suggest that Shri Bhupesh Gupta or the Communists were misleading the Nagas. Shri Ram Singh further said that if this had been taken into consideration, the report of the columnist and his conclusions might have been different. He expressed regret for this inadvertent inaccuracy. He also expressed regret for his references to Shri Bhupesh Gupta which were of a personal character. Thereafter Shri Ram Singh withdrew from the meeting. The Committee deliberated and came to its conclusions.

At the fourth sitting held on 6th March, the Committee adopted its Third Report, expressing the opinion that, in view of the explanations offered and the regrets expressed before the Committee by Shri Ram Singh, the Editor of *Thought*, no further time should be occupied by the House in consideration of this matter.

INDIA: LOK SABHA

Contributed by the Secretary of the Lok Sabha

Alleged misleading statements made by a Minister in Answer to Questions.—*Facts of the Case.*—On 11th February Shri A. K. Gopalan and three other Members gave notice to raise a question of contempt of the House, alleging that the Minister of Finance (Shri T. T. Krishnamachari), while making certain statements in the House in answer to Starred Questions Nos. 1476 and 659 on 4th September, and 29th November, 1957, respectively, regarding certain investments made by the Life Insurance Corporation had "distorted facts and also indulged in prevarication which clearly amounted to a contempt of Parliament as it is understood in the House of Commons, United Kingdom".

The Members further stated that since no question of contempt had so far been raised in Lok Sabha, they had necessarily to borrow the procedure of the British House of Commons in view of Article 105 (3) of the Constitution. The Members had also cited in support of their contention the following passage from p. 109 of May's *Parliamentary Practice* (16th Edition):

that any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any

Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.

On 12th February the Speaker (Shri M. Ananthasayanam Ayyangar) informed the House of the notice and observed that a regular procedure had been laid down in the Directions* issued by the Speaker under the Rules of Procedure for pointing out the particulars of the mistakes or inaccuracies in the statements made by the Minister on the floor of the House. Further, the Speaker must be satisfied that *prima facie* there was some evidence that the statement made in the House was inaccurate. Mere statement in the Press or elsewhere was not enough.

He, therefore, stated that he would consider the matter and give his ruling later.

Shri A. K. Gopalan stated that it was not a question of mistake or inaccuracy but a question of calculated distortion of facts given to the House. No procedure had been laid down in the Rules of Procedure for raising such questions. No precedents on the subject were also available either in Lok Sabha or in the House of Commons. He, therefore, reiterated that as it was an important matter affecting, *inter alia*, the very functioning of the House, necessary permission to raise the matter might be given.

The Speaker reserved his ruling.

Ruling by the Speaker.—On 13th February, 1958, the Speaker gave the following ruling:

> The point that was raised yesterday by Shri A. K. Gopalan and others was regarding certain answers to certain questions relating to the L.I.C. and these questions have been referred to in the notice.
>
> There have been since proceedings before Mr. Justice Chagla and his report has also been laid on the Table. The hon. Member says in his notice that the evidence that was given there is inconsistent with the answers given on the floor of the House, and as such, it is not an ordinary incorrect statement, but goes to the root of it and, therefore, it is a breach of privilege of the House, or if not a breach of privilege of the House, it is a contempt of the House.
>
> This consists of two portions. The portion that he refers to in the evidence

* Direction 115 lays down:

"(1) A Member wishing to point out any mistake or inaccuracy in a statement made by a Minister or any other Member shall, before referring to the matter in the House, write to the Speaker pointing out the particulars of the mistake or inaccuracy and seek his permission to raise the matter in the House.

(2) The Member may place before the Speaker such evidence as he may have in support of his allegation.

(3) The Speaker may, if he thinks fit, bring the matter to the notice of the Minister or the Member concerned for the purpose of ascertaining the factual position in regard to the allegation made.

(4) The Speaker may then, if he thinks it necessary, permit the Member who made the allegation to raise the matter in the House and the Member so permitted shall, before making the statement, inform the Minister or the Member concerned.

(5) The Minister or the Member concerned may make a statement in reply with the permission of the Speaker and after having informed the other Member concerned."

given before the Commission by way of contradiction to the statements made on the floor of the House—these details have not been given. Of course, they could have been gathered from the newspaper reports.

I have not been convinced about the admissibility of the notice. I am going to rule that it is not admissible. No contempt proceedings can be started on this allegation, even assuming this allegation to be true. Inconsistent statement is a mere irregularity, even if deliberately made. This is not the procedure to be adopted. On that issue, I am disposing of it and therefore it is not necessary to call for any details of the inconsistency. If I agree that it is admissible as a case of contempt, then alone the question of calling for details of inconsistency may arise. Even if a Minister should have made one statement here and deliberately omitted to state or deliberately made an incorrect statement, that may be a matter of misconduct as there may be a matter of misconduct on the part of any Member. Misconduct on the part of a Minister ought not to be raised by way of contempt of the House. There are other means such as censure, etc.

Wherever some mistakes are committed, there is a provision by way of Direction 115 by the Speaker that mistakes may be brought to the notice of the House. Any Member may point out these mistakes and the Minister may correct them and he may be given an opportunity to do so. The hon. Members who have tabled this notice say that it ought not to be treated as a mere mistake, that it is a serious matter and that it ought to be taken notice of by way of contempt. They referred to page 109 of *May's Parliamentary Practice* relating to privileges and contempts.

It says:

" . . . any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence."

So far as the House of Commons is concerned, I have looked into *May's Parliamentary Practice* and it is also admitted by Shri A. K. Gopalan that they have not been able to trace any precedent where any Minister in the House of Commons or in the British Parliament made a wrong statement or even deliberately gave an answer on the floor of the House which was not correct and where he was charged for contempt. Therefore, there is no precedent from the House of Commons practice.

So far as this House is concerned, there is an earlier case which is directly in point. Another case occurred in the Delhi State Assembly. It may not be an authority, but in the absence of any authority from *May* or any other precedent, we have a precedent here and that may also be referred to for the purpose of throwing light on this matter. In the first case, Shri C. Subramaniam and Shri Ramnath Goenka, M.P.s, gave notice on the 23rd March, 1951, of an alleged breach of privilege to the effect that in the Statement of Objects and Reasons of the Indian Tariff (Amendment) Bill, 1951—this is after the Constitution came into force and article 105(3) had become applicable—it had been stated that sago globules, calcium lactate, etc., industries were to be given protection for the first time for which Parliament's sanction was sought, whereas in the Administrative Report of the Ministry of Commerce and Industry issued in February, 1951, it had been stated that the Government had accepted the Tariff Board's recommendations and granted protection to sago globules, calcium lactate, etc., industries. In this case, the Statement of Objects and Reasons which was supposed to inform the House regarding this matter stated that for the first time protection was sought for, whereas in the Administrative Report issued by the same Ministry it was stated that it had already been granted and acted upon. And then hon. Members, as Shri Gopalan has done now, brought this discrepancy to the notice of the Speaker.

Shri Mavalankar, my predecessor, recorded the following note on that notice:

"I have not been able to appreciate as to how there is any breach of privilege of Parliament. The substance of the allegations seems to be that the Minister concerned, or the Government have not made the fullest disclosure, or have made misleading statements. This may be regrettable, but I do not understand how this constitutes a breach of privilege, even if it be assumed that the failure to give full or correct information was intentional."

There is another case of the Delhi State Assembly. A question of privilege was raised on 2nd April, 1956, by Shri Kanwarlal Gupta, a Member of the Delhi Vidhan Sabha, on the ground that the Chief Minister of Delhi had made a wrong statement in the House regarding a letter written by him to the Chief Minister of Bihar. After the Member and the Chief Minister had explained the position, the Speaker gave the following ruling:

"We have the same privileges as are enjoyed by the House of Commons and we cannot create any new privilege. In order, therefore, to determine whether a wrong statement made in the House even deliberately constitutes a breach of privilege, I have to see whether such a question has ever been raised in the House of Commons. I have gone through all the references, *May's Parliamentary Practice*, and other persons dealing with the question of privilege in the House of Commons, and I have not been able to lay my hands on any such precedent. It is thus clear that a question has not been raised or decided as a breach of privilege of the House on this issue. I admit that there is some inconsistency in the Chief Minister's statement in the House in reply to the point raised by Shri Kanwarlal Gupta and the letter written by him to the Chief Minister of Bihar, but as I have stated, it does not involve any breach of privilege of the House. The hon. Member can seek other remedies provided under the rules if he is not satisfied with the explanation and apology of the Chief Minister."

Therefore, it is neither a case of privilege nor even a case of contempt. There have been no cases, so far as this particular matter is concerned, in the House of Commons. So far as we are concerned, it is pointed out by Shri Gopalan that it is not only a breach of privilege, but it may also be treated as contempt, if possible. Shri Mavalankar said that even if it should be deliberate and intentional he did not consider it to be a breach of privilege or contempt of the House.

The general provision in *May's Parliamentary Practice* refers to obstruction. Many things obstruct. I do not know how in this case any obstruction was caused. Therefore, in the case of some statement made here, even deliberately, which is inconsistent with a statement already made, or which even amounts to a suppression or distortion of particular facts, this is not the remedy. There are other remedies.

I remember a case where Shri Gopalan himself was involved here. I will ask him to remember that matter. The Member from Salem made a remark that during the elections Shri Gopalan was present and made all sorts of statements. At that time Shri Gopalan was not present, but Shri Anandan Nambiar was present. Shri Gopalan had been to Calicut. Shri Gopalan wanted to bring this to the notice of the House and also wanted to know what could be done in the House. I only said that if the statement was made outside, he could prosecute the Member for defamation or for any other thing, but so far as this House was concerned all that I could do was to allow Shri Gopalan to make a statement in reply to the Member from Salem.

The Misconduct of a Member can always be brought up, as we have dealt with misconduct of Members or Ministers.

This is misconduct of a Minister at best. Therefore, this is not a matter of privilege or contempt. Therefore, I am sorry I am not able to grant permission to raise this matter.

Production of certain documents in the custody of the Secretariat of the House before Election Tribunal, Calcutta.—*Facts of the case.* —The Election Tribunal, Calcutta, in a letter[9] dated 10th April, 1958, addressed to the Speaker, requested the House to accord permission for production, " by a competent person of the file containing the correspondence with the Indo-German Trade Centre, Behala, Calcutta, regarding the installation of the automatic vote recording system in the Lok Sabha during 1956-57 " before the Election Tribunal, Calcutta, on 25th April, 1958.

The Election Tribunal, as an alternative, requested that if the course suggested by it did not commend itself to the House, permission for the production of the relevant papers before the Commissioner to be appointed by it, might be accorded.

The relevant file was required to be produced before the Election Tribunal in connection with the Election Petition No. 439 of 1957 in which Shri Biren Roy, Member, Lok Sabha, was the Respondent. According to the Election Tribunal, the production of the file was relevant for the purpose of deciding the following two issues:

(i) Whether the respondent, Shri Biren Roy, is disqualified under section 7(*d*)* of the Act, for being chosen as a member of the Lok Sabha for his connection, if any, with a firm under the name and style " Indo-German Trade Centre "—a firm which is alleged to have entered into a contract with the " appropriate Government " for installation of automatic vote recording device in the Rajya Sabha and the Lok Sabha.

(ii) Is the answering respondent Biren Roy disqualified for being chosen a a member of the Lok Sabha because of his connection with the firm under the name and style " Indo-German Trade Centre."

On 14th April, the Speaker referred the matter to the Committee of Privileges in accordance with the procedure laid down in the First Report of the Committee of Privileges, which was adopted by the Lok Sabha on 13th September, 1957 (see below, p. 106), and the Election Tribunal, Calcutta, was informed that the Committee would consider the matter shortly and submit its report to the House and that the decision of the Lok Sabha in the matter would be communicated to the Tribunal in due course.

Report by the Committee.—The Committee of Privileges considered the matter at their sittings held on 23rd and 24th April. The Second Report of the Committee was laid on the Table on 24th April.

The Committee made the following recommendations:

* Section 7 (*d*) of the Representation of the People Act, 1951, reads as under:
" *Disqualifications for membership of Parliament or of a State Legislature.*— A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State . . .

(*d*) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government."

(i) that the replies sent by the Lok Sabha Secretariat to the Indo-German Trade Centre in response to their letters appear to be of no material importance so far as the question of establishing facts in this particular case is concerned. The Lok Sabha Secretariat were at no time concerned with the question as to who were the partners of the Indo-German Trade Centre as such details are primarily the concern of Director-General Supplies and Disposals who placed the order on the Indo-German Trade Centre.

(ii) The Committee in para. 10 of their First Report, adopted by the House on 13th September, 1957, had recommended that:

"When a request is received during sessions for producing in a Court of Law a document connected with the proceedings of the House or Committees or which is in the custody of the Secretary of the House, the case may be referred by the Speaker to the Committee of Privileges. On a report from the Committee, a motion may be moved in the House by the Chairman or a member of the Committee to the effect that the House agrees with the report and further action should be taken in accordance with the decision of the House."

(iii) that in the present case, the Speaker may authorise the Secretary to designate an officer of the Lok Sabha Secretariat to produce before the Election Tribunal, Calcutta, the correspondence with the Indo-German Trade Centre, Behala, Calcutta, regarding the installation of the automatic vote recording system in Lok Sabha during 1956-57.

Action taken by the House.—On 25th April, the Chairman of the Committee of Privileges (Sardar Hukam Singh) moved:

That this House agrees with the Second Report of the Committee of Privileges laid on the Table on 24th April, 1958.

Shrimati Renu Chakravartty, a member, stated that in the unanimous opinion of the Committee there was nothing in the records of the Lok Sabha Secretariat which was relevant to the sections referred to in the proceedings of the Election Tribunal. She, therefore, suggested that the files in the Lok Sabha Secretariat might not be produced, and the Tribunal asked to refer the matter to the Director-General of Supplies and Disposals who probably had the relevant papers.

Shri Naushir Bharucha, another member, stated that it was not necessary to refer every case of request for production of documents in courts to the Committee of Privileges and the House might revise the procedure approved earlier. He thought that, like any other Head of Department, the Speaker, and in his absence, the Deputy Speaker and even a Chairman on the Panel of Chairmen, should be authorised to sanction the production of documents in courts in order to avoid delay in the administration of justice and speedy disposal of election petitions.

Shri Mahanty, another member, stated that it would not be proper to spare officers of the Secretariat to run about from one end of India to the other with documents. He thought that it would be better if a Commission was appointed by the Tribunal to take evidence in Delhi.

Shri Kasliwal, another member, stated that it was not open to the Committee of Privileges to go into the question of relevancy or other-

wise of the documents. It was for the Tribunal to decide that question. He thought that in accordance with the past precedent, an officer of the Secretariat might be sent to produce the documents.

Shri A. K. Sen, the Minister of Law, stated that on the basis of the procedure obtaining in the House of Commons, United Kingdom, the House had already decided that in cases where records or papers in the custody of Parliament were required to be produced before any court of law or Tribunal, it was for the Speaker to nominate a person who would produce them, with the leave of the House. The procedure could not be varied in the absence of any law being made by Parliament under Article 105 (3) of the Constitution.

So far as the relevancy of the document was concerned, it was for the competent authority under the Evidence Act or any other Act obtaining in the particular matter to decide it. It would also not be proper for Parliament to accept such an odious task of deciding in each particular case which document was relevant to the proceedings in a Court.

The privilege of Parliament attached to the production of the document and not in deciding whether the document was, in fact, relevant or not.

The Speaker, thereupon, *inter alia*, observed as follows:

Under the Evidence Act, no one shall be permitted to give any evidence derived from any public official records relating to any affair of the State except with the permission of the officer or the head of the department concerned who shall give or withhold such permission as he thinks fit. That is according to section 123 of the Evidence Act. According to section 124, no public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by their disclosure.

These are matters in which some kind of discretion has to be exercised and some enquiry has to be made. Therefore, the Speaker naturally sends it, as soon as it comes up, to the Privileges Committee to examine what has to be done so far as this matter is concerned. Therefore, I do not propose taking the responsibility of saying whether this ought to be disclosed or not, whether you should claim privilege so far as this document is concerned, whether this document is in public official record or relates to an affair of the State. All these are matters in which I would certainly like to have the advice of the competent authority—the Privileges Committee of the House. It has made a report. It could have said: "withhold" . . . It is for them [*sc.* the Tribunal] to decide whether that particular document is relevant or not relevant, necessary or not necessary. As a matter of fact, nowhere it is stated that the Tribunal should state for what purpose it is required. The document is called for. They need not have even said that they wanted this file for examining how far it was useful. It is for them to decide.

I shall see if in future automatically the Speaker or the Deputy Speaker may take the responsibility of sending the documents except in cases where they want the advice of the Privileges Committee. That will be for the future. I will consider that. So far as this report is concerned, I shall place it before the House for its acceptance.

The motion was then put and agreed to.

Attendance of a member of the House as a witness before another

House or a Committee thereof.—*Facts of the Case.*—On 16th April the Secretary of the Bombay Legislature Department requested the Speaker to permit Shri L. V. Valvi, Member, Lok Sabha, to appear as a witness before the Committee of Privileges of the Bombay Legislative Assembly at their sitting to be held on 23rd April at 10 a.m. in the Council Hall, Bombay.

The evidence of Shri L. V. Valvi was required by the Committee of Privileges of the Bombay Legislative Assembly in connection with a question of breach of privilege in that Assembly arising out of the alleged failure on the part of police authorities in Bombay State to intimate the Speaker about the fact of arrest of Dr. R. B. Chaudhri, Member, on 13th February, at Vadjai village in Dhulia Taluka of West Kandesh District.

The Secretary of the Bombay Legislature Department also intimated that Shri Valvi had agreed to appear before the Committee of Privileges of the Bombay Legislative Assembly to tender his evidence.

On 21st April the Speaker referred the matter to the Committee of Privileges, and the Secretary of the Bombay Legislature Department was informed telegraphically that the decision of Lok Sabha in the matter would be communicated to him as soon as it was reached.

Report by the Committee.—The Committee of Privileges consided the above-mentioned case at their sittings held on 23rd and 24th April. The Third Report of the Committee was laid on the Table on 24th April.

The Committee came to the following conclusions:

According to *May's Parliamentary Practice*, " attending as a witness before the other House or any Committee thereof without the leave of the House of which he is a member or officer " would be regarded as a contempt of the House.

In all such cases, therefore, permission of the House is necessary before a member of the House can appear as a witness before the other House or a committee thereof.

The procedure to be followed in such cases in the United Kingdom has been described by *May* as under:—

" If the attendance of a Peer should be desired, to give evidence before the House, or any Committee of the House of Commons, the House sends a message to the Lords, to request their lordships to give leave to the Peer in question to attend as a witness before the House or Committee, as the case may be. If the Peer should be in his place when this message is received, and he consents, leave is immediately given for him to be examined, his lordship consenting thereto; if the Peer be not present, the House gives leave for his lordship to attend ' If he think fit.' Exactly the same form is observed by the Lords, when they desire the attendance of a member of the House of Commons. . . .

" Whenever the attendance of a member of the other House is desired by a Committee, it is advisable to give him private intimation, and to learn that he is willing to attend, before a message is sent to request his attendance."

The Committee recommended that as in the present case the Secretary, Privileges Committee of the Bombay Legislative Assembly,

had formally requested the Speaker, Lok Sabha, to permit Shri L. V. Valvia, Member, to tender evidence before the Committee of Privileges of the Bombay Legislative Assembly, Shri Valvi might be permitted to appear before that Committee if he thought fit.

Action taken by the House.—On 25th April, the Chairman of the Committee of Privileges moved:

> That this House agrees with the Third Report of the Committee of Privileges laid on the Table on the 24th April, 1958.

The motion was put and agreed to.

Alleged attempt to handcuff a Member arrested on a criminal charge by the Police, and withholding of his letter addressed to another member by Jail Authorities.—*Facts of the Case.*—Shri Kansari Halder, M.P., in a letter addressed to the Speaker, complained:

I was kept in police custody in Delhi for four days, and was produced before Additional District Magistrate on 24th August. At that time, however, attempts were made to put handcuffs on my wrists. I vehemently objected and pointed out that as I was being prosecuted on a political charge, handcuffing was extremely improper and I would not tolerate it. I added that as a Member of Parliament I was certainly entitled to expect the courtesies ordinarily extended to political offenders. The Additional District Magistrate, Mr. S. Hossain, however, appeared to take a different view and said that handcuffing of accused persons was part of " the law of the land ". I was astonished to hear this and protested strongly. Perhaps fearing I might resist further and the repercussions might be unpleasant, the handcuffs were not actually put on my wrists, but I feel I was deliberately humiliated, and that humiliation affected not me personally so much as the dignity of Parliament to which my people elected me with a very large majority.

When I was in police custody and these extraordinary humiliations were being poured on me, I wrote a letter to the Deputy Leader of my party in Lok Sabha, Shri Hiren Mukerjee, M.P., detailing the incidents and requesting that the matter be taken up with you or in any manner conformable with Parliamentary practices and conventions. I did not write to you directly at that time because I thought that you would come to be informed of my predicament by Shri Hiren Mukerjee. I have now learnt that the said letter never reached Shri Mukerjee. This means that the authorities must have held it up. I feel this is unwarrantable interference with the rights of a Member of Parliament who writes from prison to one of his leaders in the House in order that his privileges are not disregarded by the executive.

On the 21st October, 1957, the Speaker, under rule 227 of the Rules of Procedure and Conduct of Business in Lok Sabha, referred the matter to the Committee of Privileges for report.

Findings of the Committee.—The Committee of Privileges considered the matter and after examining Shri Kansari Halder came to the following conclusions:

(i) The provisions relating to handcuffing of prisoners in Delhi are laid down in Chapter XXVI of the Punjab Police Rules, 26.22. Rule 26.22 lays down as follows:

Conditions in which handcuffs are to be used

26.22 (1) Every male person falling within the following category, who has to be escorted in police custody, and whether under police arrest, remand or trial, shall, provided that he appears to be in health and not incapable of offering effective resistance by reason of age, be carefully handcuffed on arrest and before removal from any building from which he may be taken after arrest:—

(*a*) Persons accused of a non-bailable offence punishable with any sentence exceeding in severity a term of three years' imprisonment.
(*b*) Persons accused of an offence punishable under section 148 or 226, Indian Penal Code.
(*c*) Persons accused of, and previously convicted of, such an offence as to bring the case under section 75, Indian Penal Code.
(*d*) Desperate characters.
(*e*) Persons who are violent, disorderly or obstructive or acting in a manner calculated to provoke popular demonstration.
(*f*) Persons who are likely to attempt to escape or to commit suicide or to be the object of an attempt at rescue. This rule shall apply whether the prisoners are escorted by road or in a vehicle.

(2) Better class under-trial prisoners must only be handcuffed when this is regarded as necessary for safe custody. When a better class prisoner is handcuffed for reasons other than those contained in (*a*), (*b*) and (*c*) of sub-rule (1) the officer responsible shall enter in the Station Daily Diary or other appropriate record his reasons for considering the use of handcuffs necessary.

(ii) The Committee noted that Shri Kansari Halder had been arrested in execution of a non-bailable warrant to stand a charge for criminal offence under sections 120B/302/436, Indian Penal Code, punishable with imprisonment for a term exceeding three years. His case therefore fell in the ambit of part (*a*) of Rule 26.22 (1) of the Punjab Police Rules.

The Committee are, therefore, of opinion that the police officers had committed no irregularity under the law in attempting to handcuff Shri Kansari Halder.

(iii) As regards the question whether a Member of Parliament who is under arrest on a criminal charge should be exempt from being handcuffed, the Committee reiterate the stand taken by the Committee of Privileges in the Deshpande Case wherein they observed:

" It has to be remembered that the fundamental principle is that all citizens including Members of Parliament have to be treated equally in the eyes of law. Unless so specified in the Constitution or in any law a Member of Parliament cannot claim any higher privileges than those enjoyed by any ordinary citizen in the matter of the application of the laws."

(iv) As regards the complaint of Shri Kansari Halder about the withholding of his letter addressed to Shri H. N. Mukerjee. M.P., by West Bengal jail authorities, it may be mentioned that Shri Halder was at the time of writing the letter an under-trial prisoner. Rule 682 of the Bengal Jail Code is therefore pertinent. Rule 682 of the Bengal Jail Code reads as follows:

" Unconvicted criminal prisoners and civil prisoners shall be granted all reasonable facilities at proper times and under proper restrictions for interviewing or otherwise communicating either orally or in writing with their relatives, friends and legal advisers."

The term " proper restrictions " occurring in this rule has not been defined in the section dealing with the " Special rules relating to under-trial and civil prisoners " in the Bengal Jail Code. It appears that the intention of the

West Bengal Government in quoting Rules 676 and 1073 was perhaps to throw light on the interpretation of this term. In the absence, however, of any specific definition of the term " proper restrictions " being given in the Code, it becomes necessarily a matter of discretion with the executive authority to decide as to what are the " proper restrictions " in such cases.

(v) Under Article 105(3) of the Constitution, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, have been equated, until defined by Parliament by law, with those of the British House of Commons, and of its members and committees as on 26th January, 1950. No such legislation has so far been undertaken by Parliament in this country.

(vi) The following precedents pertaining to the British House of Commons may be mentioned:

(*a*) In the Ramsay case of the British House of Commons, Captain Ramsay who was in detention under Defence Regulation 18B of the Defence (General) Regulations, 1939, wrote the following letter to the Speaker of the House of Commons, which was read out by the Speaker to the House on 5th June, 1940:

" Dear Mr. Speaker,—I have now been for nearly a fortnight under preventive arrest with no charge whatever preferred against me. I claim, Sir, that this preventive arrest constitutes a grave violation of the privileges and vital rights of Members of this Honourable House, and beg that you will convey this my appeal to the House of Commons.

Yours sincerely,

(Sd.) ARCHIBALD RAMSAY."[10]

This case was subsequently referred to the Committee of Privileges and Captain Ramsay was given "every facility in preparing his case and in sub mitting his case to the Committee ". In fact, he was given " the wides opportunity of making his representations ".[11]

It may, however, be stated that Sir John Anderson, Secretary of State fo the Home Department, U.K., in answer to questions in the House and in his evidence tendered before the Committee of Privileges in Ramsay Case, deposed " there was no difference in the treatment of Captain Ramsay from that which would have been accorded to any other person in similar circumstances ".[12] He also submitted that the " exceptional treatment in the matter of coming up to the House of Commons to study documents in the Library and so on " was " as a result of action taken by the Committee ".

(ii) On 3rd February, 1908, in the House of Commons, U.K., Mr. Swift Macneill, M.P., asked the Speaker as to whether Mr. Ginnell, M.P., who was in prison under a sentence of contempt of court, could have " free access to Parliamentary Papers and Reports, and whether he might communicate with the officials of the House in respect of putting down questions on the Paper, the Questions to be sent to the officials without the supervision of any prison officials reading them ".

The Speaker thereupon observed:

" The ordinary Papers which are issued to every Member of the House will be issued to the hon. Member for North Westmeath in the usual way. Whether he will be permitted to receive them, or whether he will be entitled to carry on any correspondence is a matter over which I have no control. That must be a matter of prison discipline. If the authorities of the prison in Ireland have no objection to the hon. Member sending Questions to the Table of the House, I have no objection to their appearing on the Paper, provided that it does not presuppose or necessitate the appearance of the hon. Member here. The House has been officially informed that the hon. Member cannot be present in his place for some little time, and therefore, it will be carrying things to an absurdity if his name appeared on the Paper and I should be

asked to call upon him when it is known that he cannot be here to respond. But in other respects, as far as the Chair is concerned, there is no objection to him enjoying the usual privileges."[13]

Mr. Swift Macneill thereupon referred to Unstarred Questions, and pointed out that personally he had asked several when he had been in Dublin. He thought that the same privilege should be given to Mr. Ginnell. Again, he had seen frequent notices of letters having been addressed to the Speaker from prisoners arrested for contempt of court. If Mr. Ginnell chose, therefore, to address a letter to the Speaker, he asked that the letter should not pass through the ordinary supervision of the prison officials.

The Speaker observed:—

"I have no control over the prison officials. If the letter reaches me I shall presume that the officials have passed it; in fact, I have received one letter from the hon. Member."[14]

(vii) The following cases from India are pertinent:

(i) In the case of Shri K. Anandan Nambiar, the Madras High Court upheld the right of a detenu who is a member of legislature to correspond without let or hindrance with the Speaker and the Chairman of the Committee of Privileges. The Court observed:

"As long as a detenu continues to be a member of a legislature, drawing the emoluments of his office, receiving summons to attend, he is entitled to the right of correspondence with the legislature, and to make representations to the Speaker, and the Chairman of the Committee of Privileges and no executive authority has any right to withhold such correspondence. * * This right, as it appears to us, flows not merely from principles of natural justice, which will be violated by such letters being withheld, but as a continuing member of the House, he would also appear to be entitled to this privilege under Art. 194(3) of the Constitution under which English Parliamentary Practice has to be followed until a law is enacted by the Legislature defining the powers, privileges, and immunities of the House, its Committees and its Members. Capt. Ramsay was permitted to correspond with the House of Parliament while under detention and was also given a personal hearing in an elaborate enquiry conducted by the Committee of Privileges. It is true that some early letters of the petitioner were forwarded to the House who sent him a reply but he is entitled to continue making further representations.

"We accordingly declare the right of the petitioner as a Member of Legislative Assembly to correspond without let or hindrance with the Speaker and the Chairman of the Committee of Privileges through the Secretary of the Legislature during his period of detention and issue a writ by way of *mandamus* directing the Chief Secretary to Government and the Superintendent of the Central Jail to forward to the House any letters from the petitioner held up on executive orders so that the Legislative Assembly may deal with them in accordance with Parliamentary law and practice prevailing in England by which the Legislature is bound."[15]

(ii) As a sequel to the above quoted judgment, it is understood, the Madras Government have incorporated the following provisions in rule 11(4) of the Madras Security Prisoners Rules, 1950:

"All communications addressed by a security prisoner who is a member of the State Legislature or of Parliament, to the Speaker or Chairman of the House of which he is a member, or to the Chairman of a Committee (including a Committee of Privileges) of such House, or of a Joint Committee of both Houses of the State Legislature or of Parliament, as the case may be, shall be immediately forwarded by the

Superintendent of the Jail to the Government so as to be dealt with by them in accordance with the rights and privileges of the prisoner as a Member of the House to which he belongs."

(iii) The Speaker of the Punjab Vidhan Sabha, in a ruling given by him on 25th October, 1957, in connection with a privilege issue, observed:

"The only privileges that a detained Member has are the privileges of having the factum of his arrest or detention communicated to the Speaker and of corresponding representations to the Speaker, etc., and no executive authority can withhold such correspondence."

(viii) It would be seen from the above that while the precedents in the British House of Commons indicate that a letter addressed by a Member in detention to the Speaker was passed on to the latter authority, there are no instances in respect of letters addressed by a Member in detention to another Member.

Similarly in the case of Shri K. Anandan Nambiar, the judgment of the Madras High Court mentions specifically only the right of a Member in detention to correspond "without let or hindrance with the Speaker and the Chairman of the Committee of Privileges through the Secretary of the Legislature". It however makes no mention of correspondence by a Member in detention with another Member of the House.

The Committee were of opinion that no breach of privilege was committed by the authorities concerned of West Bengal Government in withholding Shri Kansari Halder's letter to Shri Hirendra Nath Mukerjee, M.P. They recommended that the ministry of Home Affairs might be moved to arrange for incorporation of provisions on the lines of Rule 11 (4) of the Madras Security Prisoners' Rules, 1950, in the Jail Codes, Security Prisoners' Rules, etc., of State Governments and Centrally administered areas in respect of all communications addressed by a Member of Parliament, under arrest or detention or imprisonment for security or other reasons, to the Speaker of Lok Sabha or Chairman of Rajya Sabha, as the case might be, or to the Chairman of a Parliamentary Committee, or of a Joint Committee of both Houses of Parliament.

It might also be considered by the Ministry of Home Affairs whether in the interest of uniformity State Governments might be requested by that Ministry to make similar provisions in respect of Members of State Legislatures.

Report of the Committee and Orders of the Speaker thereon.—On 16th April the Chairman of the Committee of Privileges submitted the Report of the Committee to the Speaker, who on 5th May ordered that:

The Committee may reconsider whether it would be desirable to provide that a Member of Parliament, who is under arrest on a criminal charge, should ordinarily be exempted from being handcuffed.[16]

The Committee of Privileges considered the matter thus referred to them at their sittings held on 4th and 5th September, and came to the following conclusions:

(i) The maintenance of public order is a State responsibility under the Constitution (List II of the Seventh Schedule, Entry No. 1). Accordingly, the subject of provision of handcuffing of prisoners by the Police

comes within the purview of a State Government. The State Governments have made provision in their Police Rules/Manuals, etc., for it.

The State Governments were requested to supply for the information of the Committee, certified copies of the relevant extracts from their Police Rules/Manuals as also any other instructions issued by them on the subject. The State Governments were also requested to state specifically whether any exceptional treatment was provided for in the Police Rules or through executive instructions or otherwise in actual practice, so far as handcuffing of Members of Parliament/State Legislatures was concerned.

(ii) The Committee note that no State Government has so far framed any specific rules or regulations or issued any executive instructions providing any special treatment in so far as handcuffing of Members of Parliament/State Legislatures is concerned. The Government of Madhya Pradesh have, however, intimated that " the question of issuing instructions for special treatment to Members of Parliament and State Legislatures in the matter of handcuffing is under examination of the State Government ".

(iii) The Committee find that the instructions issued by the Government of Orissa to the effect that " . . . in cases where under-trial prisoners happen to be members of the Legislative Assembly, they should ordinarily be classified as prisoners of the superior class ",[17] are of interest, since, according to rule 241(*a*)(ii) of the Orissa Police Manual: " Under-trial prisoners classified as superior . . . by the Magistrate or by the officer-in-charge (or any convicted prisoners classified in Divisions I and II) should not be handcuffed unless it is suspected that they may attempt to escape ".

(iv) The general policy of the Government of India, in the matter of handcuffing of persons in Police custody and prisoners, whether under-trial or convicts, is laid down in a circular letter,[18] dated 26th July, 1957, issued by the Ministry of Home Affairs to all State Governments and Union Territories. The Circular, *inter alia*, states:

" . . . instances have recently come to the notice of the Government of India in which persons arrested by the police were handcuffed although the circumstances did not seem to justify this course. Handcuffs are normally to be used by the police only where the prisoner is violent, disorderly, obstructive or is likely to attempt to escape or to commit suicide or is charged with certain serious non-bailable offences. It is, however, observed that in actual practice prisoners and persons arrested by the police are handcuffed more or less as a matter of routine. The use of handcuffs not only causes humiliation to the prisoner or arrested person but also destroys his self-respect and is contrary to the modern outlook on the treatment of offenders. I am accordingly to suggest for the consideration of the State Government that the use of handcuffs should be restricted to cases where the prisoner is a desperate character or there are reasonable grounds to believe that he will use violence or attempt to escape or where there are other similar reasons. If the State Government have no objection, necessary instructions may please be issued to the police and other authorities."

(v) The Committee observe:

(i) That the Police Rules/Manuals in all States generally provide that the status and the probability of their attempting to escape should be taken into account in deciding the necessity or other-

wise of the use of handcuffs in respect of under-trial prisoners, and that under-trial prisoners who are classified in superior class or convicted prisoners who are classified in Divisions I and II, should not be handcuffed, unless there is reason to suspect that they may attempt to escape;

(ii) That the Jail Codes in all States generally define better class prisoners as those prisoners who " by social status, education and habit of life have been accustomed to a superior mode of living ".[19] They also include prisoners " who have been arrested/convicted for offences in connection with political or democratic (including working class or peasant) movement " provided they have not been arrested-convicted for certain offences " involving elements of cruelty, moral degradation, or personal greed ", etc.

(iii) That the classification of prisoners is generally done by the trying courts subject to " any general or special order of the State Government ";

(iv) That Members of Parliament, who happen to be under arrest or in imprisonment, would generally be eligible for being treated as better class prisoners in view of their high status and therefore ordinarily may not be handcuffed.

(vi) The position in the United Kingdom is:

> " A constable is not only justified but is bound to take all reasonable steps to prevent a prisoner from escaping. What is reasonable depends upon circumstances, such as the nature of the charge and the temper and conduct of the person in custody. Recourse should be had to the use of handcuffs only if a prisoner has attempted to escape or if it is necessary to prevent him from escaping or if his demeanour is violent or gives rise to apprehension of violence."
>
> " A prisoner who is handcuffed without reasonable need has a right of action for damages."[20]

(vii) The Committee have not come across any privilege or legal provision in the United Kingdom specifically exempting Members of Parliament from being handcuffed.

Recommendations of the Committee.—The Committee observed that the Police Rules/Manuals of the various States and the executive instructions issued by the State Governments, particularly the circular letter dated 26th July, 1957, issued by the Union Ministry of Home Affairs to all State Governments and Union Territories already provided that persons in police custody and prisoners whether under-trial or convicts, should not be handcuffed as a matter of routine and that use of handcuffs should be restricted to cases where the prisoner was a desperate character or where there were reasonable grounds to believe that he would use violence or attempt to escape or where there were other similar reasons.

The Committee recommended that the Ministry of Home Affairs might be requested to again bring the contents of their circular letter, dated 26th July, 1957, to the notice of the State Governments and to stress upon them the desirability of strictly complying with them, especially in the case of Members of Parliament, in view of their high status.

It might also be considered by the Ministry of Home Affairs whether in the interest of uniformity, State Governments might be requested by that Ministry to make similar provisions in respect of Members of State Legislatures.

Further Report of the Committee and Orders of the Speaker thereon.—On 11th September the Chairman of the Committee of Privileges submitted the Report of the Committee to the Speaker, who on 16th September ordered:

Seen. Further action as recommended by the Committee may be taken.[21]

Action taken by the House.—On 27th September the Chairman of the Committee of Privileges laid on the Table the Fourth and Fifth Reports of the Committee of Privileges.

Permission of the House necessary for giving evidence by a Member before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof.—*Facts.*—The Committee of Privileges, while considering the request made by the Secretary, Bombay Legislative Assembly for permitting Shri L. V. Valvi, Member, Lok Sabha, to appear before the Committee of Privileges of Bombay Legislative Assembly to give evidence[22] had desired that the question of evolving general procedure when a member of Lok Sabha had to appear before the other House or a Committee thereof a Legislative Assembly or a Committee thereof should be examined greater detail and the opinion of the Attorney-General be obtained.

Findings of the Committee.—The Committee, after considering the opinion of the Attorney-General, came to the following conclusions:

2. (i) Under Article 105(3)/194(3) of the Constitution, the powers, privileges and immunities of each House of Parliament/State Legislature and of the members and the Committees of each House have been equated, until defined by Parliament/State Legislature by law, to those of the House of Commons, U.K., and of the members and the Committees thereof, at the commencement of the Constitution, that is, on 26th January, 1950. Since no legislation on the subject has so far been enacted either by Parliament or by the State Legislatures, their powers, privileges and immunities continue to be equated to those of the House of Commons, U.K.

(ii) In the United Kingdom, "attending as a witness before the other House or any committee thereof without the leave of the House of which he is a member or officer would be regarded as a contempt of the House".[23]

The following procedure has to be followed if the witness, whose attendance is required, is a Member of the other House:

"If the attendance of a Peer should be desired, to give evidence before the House, or any Committee of the House of Commons, the House sends a message to the Lords, to request their lordships to give leave to the Peer in question to attend as a witness before the House or Committee, as the case may be. If the Peer should be in his place when this message is received, and he consents, leave is immediately given for him to be examined, his lordship consenting thereto; if the Peer be not present, the House gives leave for his lordship to attend 'if he thinks fit'. Exactly the same form is observed by the Lords when they desire the attendance of a Member of the House of Commons."[24]

As to the extent and nature of the Privilege or immunity of the Member the practice has been summarised thus in Hatsell:

"The result of the whole, to be collected either from the Journals or from the History of the Proceedings in the House of Commons is, 1st, That the Lords have no right whatever on any occasion to summon, much less to compel the attendance of, a Member of the House of Commons. 2ndly, That, in asking leave of the House of Commons for that attendance, the message ought to express clearly the 'cause' and 'purpose' for which the attendance is desired; in order that, when the Member appears before the Lords, no improper subject of examination may be tendered to him. 3rdly, The Commons, in answer to the Lords message, confine themselves to giving leave for the Member to attend, leaving him still at liberty to go or not, 'as he shall think fit'. And, 4thly, the later practice has been, to wait until the Member named in the message is present in his place; and to hear his opinion whether he chooses to attend or not, before the House have proceeded even to take the message into consideration."[25]

(iii) The reasons for this practice in British Parliament have been described in some detail by Hatsell in the following terms:

". . . the Commons have been always extremely jealous of admitting any proceeding which might seem to allow an authority in the Lords, to command the attendance of any of their Members, for any purpose whatever. They have, therefore, always required, that the Lords should, in their message, express the cause for which the attendance is desired; and even then the House proceed no further than to give leave for the Member to attend; and he is still at liberty to attend or not, as he shall think fit . . . One object of the jealousy of the House of Commons, and which has made them particularly careful that the Lords should express in their message the cause for which the Member is desired to attend, has been that the Lords might not, on any pretence, call a Member before them, to give an account either of the vote he had given in the House of Commons, or the motives that had inclined him to take a part in any Bill, or other matter, then pending in Parliament . . . The Commons, on 18th May, 1675, resolved, 'That it is the undoubted right of this House, that none of their Members be summoned to attend the House of Lords, during the sitting or privilege of Parliament'."[26]

Hatsell further states:

"The leading principle, which appears to pervade all the proceedings between the two Houses of Parliament, is, that there shall subsist a perfect equality with respect to each other; and that they shall be, in every respect, totally independent one of the other. From hence it is, that neither House can claim, much less exercise, any authority over a Member of the other; but if there is any ground of complaint against an act of the House itself, against any individual Member, or against any of the officers of either House, this complaint ought to be made to that House of Parliament where the offence is charged to be committed; and the nature and mode of redress, or punishment, if punishment is necessary, must be determined upon and inflicted by them. Indeed any other proceeding would soon introduce disorder and confusion; as it appears actually to have done in those instances, where both Houses, claiming a power independent of each other, have exercised that power upon the same subject, but with different views and to contrary purposes."[27]

Recommendations of the Committee.—The Committee were of the opinion that the House should not permit any one of its Members to give evidence, before the other House of Parliament or a Committee

thereof or before a House of State Legislature or a Committee thereof, without a request desiring his attendance and without the consent of the Member whose attendance was required. Further, such requests from the other House of Parliament or a Committee thereof or by a House of State Legislature or a Committee thereof ought to express clearly the cause and purpose for which the attendance of the Member was desired.

The Committee recommended that no Member of the House should give evidence before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof, without the leave of the House being first obtained.

When a request was received seeking leave of the House to a Member to give evidence before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof, the matter might be referred by the Speaker to the Committee of Privileges. On a report from the Committee, a motion might be moved in the House by the Chairman or a Member of the Committee to the effect that the House agreed with the report and further action should be taken in accordance with the decision of the House.

Report of the Committee and orders of the Speaker thereon.—On 25th November the Chairman of the Committee of Privileges (Sardar Hukam Singh) submitted the Report of the Committee to the Speaker who, on 29th November, ordered:

> Seen. The Report may be laid on Table of the House.[28]

Action taken by the House.—On 12th December the Chairman of the Committee of Privileges laid on the Table of the House the Sixth Report of the Committee of Privileges. On 17th December he moved:

> That this House agrees with the Sixth Report of the Committee of Privileges laid on the Table on 12th December, 1958.

The motion was put and adopted.

Evidence given by a Member before a Select Committee of a State Legislative Assembly without the permission of the House.—*Facts of the Case.*—On 19th December the Speaker informed the House that he had received the following letter, dated 17th December, from Shri Liladhar Kotoki, a member:

> Being ignorant of the rules of Privileges of the House, I submitted a Memorandum on the Assam Panchayat Bill, 1958, and gave evidence before the Select Committee on the Bill on 16th October last at Shillong. In both submitting the memorandum with certain amendments suggested by me and giving evidence I took the initiative and volunteered to do so, which was agreed to and accepted by the Select Committee.
>
> From the Sixth Report of the Privileges Committee of Lok Sabha circulated to us, I realised that I committed a grave mistake in omitting to seek your previous permission and referring the matter to the Privileges Committee and the House. Yesterday, I approached the Deputy Speaker and told him about

it and sought his advice. He was kind enough to direct me to submit a petition. In course of placing the Report in the House today both the Deputy Speaker and yourself have explained the future course to be taken in the matter of giving such evidences.

I submit that I never meant any breach of privilege of the House, and all that I did was prompted by my interest in the Bill in question, and my ignorance of the rules, as submitted above.

I hereby tender my most unqualified apology to you and through you to the Privileges Committee and the House and most humbly beg that I may kindly be pardoned for this first and unintentional mistake on my part.

I assure, Sir, that I shall not commit such a mistake in future.

Premature disclosure of the proceedings of and casting reflections on the Joint Committee on a Bill.—*Facts of the Case.*—(i) Rani Manjula Devi, M.P., in a notice of question of privilege dated 5th September drew the attention of the Speaker to an article under the title "The March of Indian Shipping", published in the name of Dr. Nagendra Singh, I.C.S., Joint Secretary and Director-General of Shipping, Government of India, in the Independence Day Supplement of the *Statesman*, New Delhi, dated 15th August. The Member had invited particular attention to the following passages occurring in that article:

Revision and consolidation which was taken up a few years ago has now been completed, and a new Merchant Shipping Bill which was introduced during the last Budget Session of Parliament is now under scrutiny by a Select Committee.

It has never been the intention of the Government to deviate from the 1947 Policy Resolution. In short, coastal shipping would continue to be reserved for vessels of companies having 75 per cent. Indian capital.

The Member had contended that "the article . . . is clear violation and involves a breach (of privilege) of the Committee. . . . The Joint Committee on Merchant Shipping Bill, 1958, considered the report only on 18th August, and this report along with the minute of dissent was presented to this House on 21st August, but the article under question, marked portion, gives clear indication about the trend and decisions of the Select Committee."

(ii) Shri S. A. Matin, M.P., in a notice of question of privilege dated 8th September, drew the attention of the Speaker to an article under the title "Story of the Merchant Shipping Bill", from a special Correspondent, published on page 4 of the *Hindustan Standard* (Calcutta Edition), dated 15th August. The Member had invited particular attention to the following passages occurring in that article:

A fascinating inside story of how the battle was fought out before the Select Committee has recently come to light. . . . With the help of a few Indian brokers and other stooges, they managed to get a Draft Indian Merchant Shipping Bill. . . . When the Select Committee met on 22nd July, a compromise plan was pushed through whereby foreigners were permitted to own and control a third of the shares of an Indian ship. . . . The Prime Minister had to personally intervene to curb the enthusiasm of those whose

weakness has been the biggest factor in favour of British interests. . . . The Select Committee met again on 24th July and foreign participation was reduced to the existing level, namely, to one-fourth of the Capital. . . . And let us also watch the steps of the Directorate General of Shipping.

The Member had contended that the aforesaid article was a breach of privilege of the Lok Sabha, the Joint Committee and the Members of Lok Sabha, because in his opinion "very sweeping allegations have been made against this sovereign body of the Indian Republic that different interests managed to get the Bill drafted in Lok Sabha, and various other allegations have been made".

The Member had also alleged that:

the Joint Committee on (Merchant) Shipping Bill considered the report on 18th August and this report along with the minute of dissent was presented to Lok Sabha on 21st August. The article under question gives all the decisions of the Committee taken on 22nd and 24th July.

Subsequently, Rani Manjula Devi, M.P., also drew the attention of the Speaker to the above article *vide* her letter, dated 9th September, to the Speaker.

(iii) Shri Laxmi Narayan Bhanja Deo, M.P., in a notice of question of privilege dated 11th September drew the attention of the Speaker to both the articles "The March of Indian Shipping" and the "Story of the Merchant Shipping Bill", published in the *Statesman*, New Delhi and the *Hindusthan Standard*, Calcutta, respectively, dated 15th August. The Member had invited attention to the same passage to which Rani Manjula Devi and Shri S. A. Matin, respectively, had referred in their earlier notices raising questions of breach of privilege. He also drew attention to the following observations made by Shri Harish Chandra Mathur, M.P., in his Minute of Dissent to the Report of the Joint Committee on the Merchant Shipping Bill, 1958:

This Bill as it has emerged out from the Select Committee has completely changed its complexion and also its purpose. I feel that existing Private Shipping interests had their way.

Reference to the Committee.—The Speaker, under Rule 227 of the Rules of Procedure and Conduct of Business in Lok Sabha, referred the above matters to the Committee of Privileges on 5th, 8th and 14th September respectively.

Findings of the Committee.—The Committee came to the following conclusions:

Re: Publication of the article, "The March of Indian Shipping," by Dr. Nagendra Singh, in the Statesman.

(i) The Committee, after perusing the explanation of Dr. Nagendra Singh and examining him in person, are satisfied that he had not referred to the proceedings or decisions of the Joint Committee on the Merchant Shipping Bill, 1958, in his article in question. Moreover, he has also expressed his sincere regret if the wording of his article has given any such impression.

Re: Publication of the article, "Story of the Merchant Shipping Bill," in the Hindusthan Standard.

(ii) Under article 105(3) of the Constitution, the powers, privileges and immunities of each House of Parliament and of the members and the Committees thereof have been equated, until defined by Parliament by law, to those of the House of Commons, U.K., its members and Committees, as on 26th January, 1950. In the United Kingdom, speeches or writings reflecting on the House, its members or Committees are treated as a contempt of the House. As May has stated:

"In 1701 the House of Commons resolved that to print or publish any books or libels reflecting on the proceedings of the House is a high violation of the rights and privileges of the House, and indignities offered to their House by words spoken or writings published reflecting on its character or proceedings have been constantly punished by both the Lords and the Commons upon the principle that such acts tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them.

"Reflections upon Members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House."[28]

The Committee have carefully considered the passages of the article, "Story of the Merchant Shipping Bill," published in the *Hindusthan Standard* dated 15th August, which are the subject matter of the complaint. The passages contain statements which, in the opinion of the Committee, are defamatory of Members of the House in their capacity as Members and cast reflections on the character and proceedings of the House and the Joint Committee on the Merchant Shipping Bill, 1958, and are therefore a breach of privilege

(iii) The article also professes to disclose the proceedings of the Joint Committee when it says: "A fascinating inside story of how the battle was fought out before the Select Committee has recently come to light."

(iv) The Committee have gone through the Minutes of the sittings of the Joint Committee on the Merchant Shipping Bill held on 22nd and 24th July, and find that the following passage occurring in the article in question involves a premature disclosure of the proceedings of the Joint Committee on the Merchant Shipping Bill:

"When the Select Committee met on 22nd July, a compromise plan was pushed through whereby foreigners were permitted to own and control a third of the shares of an Indian Ship. . . . The Select Committee met again on 24th July and foreign participation was reduced to the existing level, namely, to one-fourth of the capital."

(v) According to the practice obtaining in the United Kingdom, a premature publication of a Parliamentary Committee's proceedings or evidence constitutes a breach of privilege. As May has stated:

"By the ancient custom of Parliament 'no act done at any Committee should be divulged before the same be reported to the House'. Upon this principle the Commons, on 21st April, 1837, resolved, 'That the evidence taken by any select Committee of this House, and the documents presented to such committee, and which have not been reported to the House, ought not to be published by any member of such Committee or by any other person'. Where the public are admitted this rule is usually not enforced. The publication of proceedings of the Committees conducted with closed doors or of draft reports of committees before they have been reported to the House will, however, constitute a breach of privilege."[30]

May has further stated:

"It is a breach of privilege for any person to publish any portion of the evidence given before, or any document presented to, a select committee before such evidence or document has been reported to the House. . . ."[31]

(vi) The Committee are, therefore, of the opinion that the publication of the article in question constitutes a breach of privilege in another respect also, inasmuch as it involves a premature disclosure of the proceedings of the Joint Committee on the Merchant Shipping Bill, 1958.

(vii) The Committee note that the Editor of the *Hindusthan Standard*, Calcutta, in his letter dated 26th September, 1958, has offered his "unqualified and sincerest apologies" and has stated *inter alia* as under:

"I have myself re-read the article, and I must confess it contains a number of very, very unfortunate improprieties. I, therefore, offer my unqualified and sincerest apologies for the publication of this article in the *Hindusthan Standard*. It is my hope that the Committee of Privileges will accept my apologies with which remains on record my assurance that greater caution will be exercised in the future in regard to this particular contributor's copy. The Committee will, I hope, believe me when I say that this newspaper has the highest esteem for the Lok Sabha and would never be guilty of any deliberate contempt of Parliament or breach of privilege of any member or members thereof."

(viii) As regards the observations of Shri Harish Chandra Mathur, M.P., in his Minute of Dissent to the Report of the Joint Committee on the Merchant Shipping Bill, 1958, the Committee feel that no notice need be taken of the matter.

The Committee were of the opinion that no breach of privilege was involved in the publication of the article under the title "The March of Indian Shipping" by Dr. Nagendra Singh, in the Independence Day Supplement of the *Statesman*, New Delhi. They were of the view that the publication of the article under the title "Story of the Merchant Shipping Bill", in the *Hindusthan Standard*, Calcutta Edition, dated 15th August, constituted a breach of privilege and contempt of the House. But having regard to the "unqualified and sincerest" apologies offered by the Editor of the *Hindusthan Standard*, Calcutta, the Committee recommended that no further action be taken in this case.

Report of the Committee and Order of the Speaker thereon.—On 25th November the Chairman of the Committee of Privileges submitted the Report of the Committee to the Speaker, who, on 29th November, ordered:

Seen. The Report may be laid on the Table of the House.[32]

Action taken by the House.—On 12th December, 1958, the Chairman of the Committee of Privileges laid on the Table of the House the Seventh Report of the Committee of Privileges.

BOMBAY: LEGISLATIVE ASSEMBLY

Contributed by the Secretary, Legislative Department

Arrest of a Member.—On 11th March Shri V. D. Deshpande, a Member of the Bombay Legislative Assembly gave a notice of a motion[33] for leave to raise the question of breach of privilege of the House alleging that another Member, Dr. R. B. Chaudhary, had been arrested on 13th February, 1958, at the village of Vadjai in

Dhulia Taluka of West Khandesh District and that the fact of the Member's arrest had not been intimated to the Speaker.

The allegations made by Shri V. D. Deshpande[34] may be briefly stated as follows. On 13th February Dr. R. B. Chaudhary and some other members of the Legislative Assembly had gone to the village of Vadjai to attend a meeting held for election of his party's nominee for the Local Board's Presidential election. While Dr. Chaudhary was leaving the village after attending the meeting, he learnt that a police officer was drawing up a panchnama* in the house of one Barku Chaudhary in connection with some offence. Dr. Chaudhary accosted the police officer and inquired of him as to why some persons not connected with the offence were present at the site of the panchnama. The police officer asked Dr. Chaudhary not to interfere in his work. After some exchange of words the police officer put him under arrest at 5.30 p.m. and took him to Dhulia. Later, the deputy superintendent of police brought Dr. Chaudhary back to Vadjai and released him at about 8 p.m.; Shri Deshpande, therefore, stated that as the fact of the arrest of Dr. Chaudhary was not intimated to the Speaker, a breach of privilege of the House had been committed.

The House granted leave to raise the question of privilege, but the Speaker observed that before he referred this matter to the Privileges Committee, he would ask the police officer concerned to give an explanation as to why the fact of Dr. Chaudhary's arrest was no communicated to him. He added that the case would be referred t the Committee if, after scrutiny of the reply from the police, the was a *prima facie* case of breach of privilege. On 8th April, 195 the Speaker informed the House that he had decided to refer the matter to the Privileges Committee. The matter thus stood referred to the Privileges Committee.

On examination of the evidence tendered before it, the Committee arrived at the conclusion that the fact of arrest of Dr. Chaudhary on the day and at the time in question was not established. The Committee also observed that even assuming that Dr. Chaudhary was under some kind of detention—and he was never under detention, even according to him, for more than 2½ hours—when the House was not sitting and when he was not on his way to the Assembly, there was no breach of privilege as he could not in these circumstances be said to have been *detained from the service of Parliament*. The Committee recommended that no action against any person was necessary in this case. Three members of the Committee submitted their minutes of dissent to the Report.

The Report was considered by the House on the 22nd October, on a motion moved by the Chief Minister (Leader of the House) that the

* A panchnama is a record of what has been seen and observed, at any place, or in respect of a thing concerning an offence, drawn by an Investigating Officer and attested by two respectable persons of the locality, called Panchas.

House do agree with the findings of the Committee. Shri D. B. Tamhne, a Member of the Opposition, moved an amendment to the motion that the question be referred back to the Committee with a view to enabling the Committee to go through the police officer's Personal Diary which was withheld from it on a privilege claimed by the police officer under section 123 of the Indian Evidence Act that such Diary was an unpublished official record relating to the affairs of the State. The House rejected the amendment by a majority of votes. The House then discussed the report and the Chief Minister's motion accepting the findings of the Committee was carried by 130 votes against 90.[35]

BOMBAY: LEGISLATIVE COUNCIL

Contributed by the Secretary, Legislature Department

Premature publication of motions.—The Bombay Legislative Council had before it two cases of breach of privilege during 1958.

In one case the *Jantantra*, a Gujarati daily of Ahmedabad, published in its issue of 11th October the text of an adjournment motion tabled by Shri D. N. Mehta, M.L.C., on 7th October before it was admitted by the Chairman. Such publication offended rule 24 of the Bombay Legislative Council Rules.

Shri P. B. Patwari, M.L.C., therefore raised a question of privilege by a notice of motion on 16th October in the Legislative Council.[36] Before, however, referring the matter to the Privileges Committee, the Chairman decided to call for explanations from the persons concerned. Accordingly, explanations from the Editor, Printer and Publisher and Shri D. K. Mehta, M.L.C., who gave the information, were called for. In reply, the Editor, the Printer and Publisher and the Member expressed their regrets unconditionally and without any reservation. The Chairman, therefore, decided to drop the matter and he informed the House accordingly on 23rd February, 1959.

In another case of breach of privilege, the *Janasatta* and *Sevak*, two Gujarati dailies of Ahmedabad, prematurely published in their issues of 10th October the same adjournment motion tabled by Shri D. K. Mehta, M.L.C., on 7th October.

Shri D. V. Deshpande, M.L.C., gave on 24th October a similar notice to raise a question of privilege in the Legislative Council.[37] Before, however, referring it to the Privilege Committee, the Chairman decided to call for explanations from the persons concerned. Accordingly, explanations from the Editors, Printers and Publishers of the two dailies and from Shri D. K. Mehta, M.L.C., were called for. In reply the Editors, the Printers and Publishers of the two dailies and Shri D. K. Mehta, M.L.C., expressed their regrets unconditionally and without any reservation. The Chairman, therefore,

decided to drop the matter and informed the House accordingly on 23rd February, 1959.

MADRAS

Contributed by the Secretary to the Legislature

Alleged Misrepresentation of Facts.—On 16th November, 1957, a Member of the Assembly belonging to an opposition party raised a point of privilege that the publication of a pamphlet in Tamil entitled "What Happened in Mudukalathur?" by the Director of Information and Publicity of the Government constituted a breach of privilege of the House as it contained a lot of distortions and wilful mis-representations calculated to scandalise the opposition parties. As the question was raised on the last day, the Speaker said that he would give his ruling when the Assembly met next. On the 10th February, 1958, the Speaker ruled that a *prima facie* case had been made out and referred the matter to the Committee of Privileges *suo motu* for examination and report.

The facts of the case are as follows:

There were certain disturbances in Mudukulathur, Ramanathapuram District. The Director of Information and Publicity brought out a pamphlet under the title "What Happened in Mudukalathur?" containing a Tamil version of a statement made by the Home Minister and a speech made by the Minister for Finance in the Assembly on the above subject with a Preface by himself, in Tamil. It was stated in the Preface that, for personal ends, some people misrepresented the facts about what happened in Mudukalathur and created wrong impressions in the minds of the public and that the pamphlet, which contained the statement and speech of the Ministers was issued with a view to acquainting the public with the true facts of the situation. Objection was taken to the above portion as in the opinion of the Member, it gave the impression that what the two Ministers spoke on the floor of the Assembly alone were true, which meant that what other members spoke on the floor of the Assembly were untrue, and hence it was an insinuation against other members of the House who spoke contrary to what was spoken by the Ministers.

The Committee presented its Report on the 31st March, 1958.

The Committee accepted the statement of the Director of Information and Publicity that the pamphlet in question was published only in the course of the discharge of his official duties and not intended to cause any reflection on the veracity of the speeches of the members who took part in the debate to which the Minister for Finance replied and that in fact that he had not in view such speeches when he wrote the preface. The Committee was convinced that the publication of the pamphlet was not intended to scandalise the opposition parties and that no wilful distortions or mis-representations were made out. The Committee accordingly felt that no further action was called for and recommended that the case should be closed.

The House adopted the Report on the 5th April, 1958.[38]

Publication of False News.—On 1st November, 1957, a Member of the Assembly raised a point of privilege regarding the publication of a false news in a Tamil daily called *Dina Thanthi*. The Speaker postponed his ruling to the next day. On the 2nd November, 1957, another news item on the subject was published in the paper. The Speaker after considering the second publication, ruled that a *prima facie* case of breach of privilege was made out and the matter was referred to the Committee of Privileges.

The facts of the case are as follows:

There was a murder in Ramanathapuram District. During the discussion in the Assembly, when a member referred to the above murder, the Minister for Finance intervening said that the details regarding the murder need not be spoken in the House, because the Government had decided to file a case in the Court. While publishing the proceedings in *Dina Thanthi*, there appeared a full-page eight colum heading with two smaller headlines below it, which appeared as though the Minister for Finance announced in the House that a case regarding the murder would be filed in the Court against one Muthuramalinga Thevar.

The Committee held that the publication was false and constituted a breach of privilege of the House. The Editor, however, expressed his regret specifically for the publication of such a heading and assured the Committee that he would publish an apology expressing regret and accordingly the apology was published. The Committee considered that the apology tendered was sufficient and recommended that no further action in the matter be taken.

The Report of the Committee was approved by the Assembly on 15th February, 1958.[39]

Misreporting of a Member's speech.—On 7th March a Member raised a point of breach of privilege regarding the reporting of his speech in a Tamil daily by name *Janasakthi*. On 12th March, the Speaker held that in the speech reported in the daily there was a slight difference and ruled that there was a *prima facie* case. At this stage another Member produced a letter from the Editor of the daily inviting the attention of the House to an authoritative version of the speech of the Member published in the newspaper and the regret expressed therein for the incorrect version published earlier. The Home Minister then moved that in view of the expression of regret by the Editor, the matter might be dropped and the House adopted that motion.[40]

Comment in a Tamil weekly.—On 5th September a Member raised a point of breach of privilege that a Tamil weekly by name *Kalki*, in its issue dated 31st August had made a statement which was derogatory to the House. Objection was taken to the portion which referred to the members of the Assembly having unjustifiable influence. The Speaker held that that did not refer to the conduct of any Member in

the Assembly nor did it refer to any business conducted or to be conducted in the House, and that the matter pertained only to the activities of the Members outside the Assembly. He held that though that comment was not in good taste, no *prima facie* case of breach of privilege had been made out.[41]

Misreporting of the Proceedings of the House.—On 10th September the Home Minister raised a point of breach of privilege relating to a report in a Tamil daily by name *Dina Thanthi* of 9th September on certain answers which he gave during question hour to certain supplementaries relating to registration of marriages. The report had headlines and other statements attributed to the Home Minister. The Speaker said that he had gone through the proceedings and found that the Home Minister had not stated anything of the kind stated in the headlines and held that a *prima facie* case had been made out. On a motion being moved by the Minister for Finance, the matter was referred to the Committee of Privileges.

The Committee presented its report on 5th February, 1959, recommending that all facilities given to the daily and the Press Gallery Card issued to its Reporter for covering the proceedings of the Assembly be suspended for a week during the next session. On the Editor submitting an apology in writing the matter was dropped on a motion moved by the Minister for Finance on 16th February, 1959.[42]

Comment on the Conduct of the Speaker.—On 15th February, the Speaker referred to a statement in a Tamil daily by name *Nam Nadu*, dated 11th December, 1957, containing a speech of the leader of the Dravida Munnetra Kazhagam Party in the Assembly in which he had stated that he had influenced the Speaker to ask the leader of the Communist Party in the Assembly to withdraw his resignation from the Business Advisory Committee, resulting in the leader of the Communist Party replying to that in a publication and giving expression to it in a public meeting. The Speaker said that two things were involved in that—*i.e.*, the inaccuracy of the statement and a comment on the conduct of the Speaker outside the House, and expressed that he did not intend to pursue the question of breach of privilege involved in the matter, but the dignity of the House and its Speaker was a matter of great concern in the working of the Parliamentary system of Government and as one interested in the building up of sound traditions he considered that members should not refer to the conduct of the Speaker especially on public platforms and appealed for the co-operation of the members in that respect.[43]

Service of summons on the Members.—On 11th September the Speaker referred to the summons sent to him by the Collector of one District to be handed over to a particular Member of the House and said that it could not be denied that to request the Speaker to serve a summons on a Member when the House was in session would constitute a breach of privilege, and that he would not take action against the officer concerned, as he felt that the officer might not

perhaps be aware of that. He requested the Government to see that such things did not recur and to impress upon the Collector or whoever was responsible not to ask the Secretary to the Legislature Department or the Speaker to serve summons on a Member when the House was in session. The Home Minister said that the Government would look into the matter and issue instructions to the officers.[14]

India: Mysore

Arrest of a Member.—On 1st December the Speaker announced that Shri C. M. Arumugham had given notice of a motion in the following terms:

> I desire to move a matter of breach of privilege under Rule 177 pertaining to the arrest of one of the Honourable Members of this House, Shri B. R. Sunthankar, as the matter tells seriously on the privilege of the Honourable Member from attending this House and thereby preventing him intentionally from participating in the business of the Legislative Assembly. The arrest of the Honourable Member, Shri B. R. Sunthankar, during the session of the Legislative Assembly has created a sense of alarm, frustration, and the feelings of the members are severely strained. The arrest of Shri B. R. Sunthankar is in contravention to the article 194 of the Constitution of India.

Mr. Speaker quoted Article 194 of the Constitution, to the effect *inter alia* that until the State Legislature makes a law on the subject, the powers, privileges and immunities of the House and of its members and committees shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of the Constitution. He observed that in the House of Commons, where the parliamentary privilege of freedom from arrest was of great antiquity, it had been clearly laid down from the very beginning that what amounted to a breach of privilege was arrest in civil proceedings, and that arrest on a criminal charge was not a breach of privilege. These rulings of the House of Commons had been followed without exception in all the State Legislatures in India. This question had also been the subject of examination by a Committee of Privileges of the old Mysore Legislative Assembly in 1953, when the Committee had reported that arrest in circumstances as the one under consideration would not amount to a breach of privilege.

In the circumstances, he had to rule that no case of privilege arose, and that Shri Arumugham's motion could not be accepted.[15]

India: Uttar Pradesh Legislative Assembly

Contributed by the Secretary of the Legislative Assembly

Insinuations by a Member.—On 10th February Shri Genda Singh M.L.A., gave notice of certain short notice questions. The Secretariat has to examine such questions first and see if they satisfy the

conditions of admissibility set out in the Rules of Procedure regarding questions. The questions, with the Secretariat note, are then submitted to Shri Speaker or Deputy Speaker for orders on their admissibility. After Shri Speaker or Deputy Speaker has admitted a question, the Minister concerned is asked as to whether he is prepared to answer the question as *short notice question*. If he is prepared to answer, the question is tabled for answer as early as possible on the day meant for the Minister concerned.

In the case of Shri Genda Singh's questions, after scrutiny by the office about their admissibility the orders of the Deputy Speaker were obtained on 17th February, 1958, and they were tabled for answer on 21st February, 1958. Shri Genda Singh's complaint was that his questions after admission had been sent to the Minister on 11th February and that the Minister intentionally delayed giving the reply of the said questions till the 21st February. When the questions were answered on 21st February, Shri Genda Singh said that the Minister defied the Rule and deliberately delayed answering of questions. He was told by the Speaker that there had been no delay on the part of the Minister, that the question of admissibility itself had been decided up to 17th February by the Deputy Speaker and that they were tabled for answers on 21st February, which was the day meant for the Minister. Shri Genda Singh, however, insisted that his questions were admitted on 11th and had been sent to the Minister concerned for answers on the 11th and that the Minister, who was in the habit of delaying answers, intentionally delayed giving answers till the 21st and that the answers given were evasive. He persisted in his allegation that the Revenue Minister intentionally delayed the replies to the questions and was guilty of violation of rules.

He added a request that the matter be referred to the Committee of Privileges, where many things would come to light (the implication being that there had been some tampering with the records).[16] The Speaker thereupon referred the matter to the Privilege Committee for inquiry and report under Rule 67.[17]

The Committee investigated the case and in their Report[18] came to unanimous decision that the questions had been sent to the Revenue Minister on 17th February and that there had been no manipulation whatsoever of any kind in the records of the Assembly Secretariat. The Committee was further of the opinion that if a member deliberately makes a wrong statement and tries to mis-lead the House, he should be held to be guilty of the breach of privilege of the House. The Committee, therefore, came to the conclusion that the conduct of Shri Genda Singh in the House, in persisting in his charge against the Revenue Minister of his deliberately delaying the reply to his questions and his obvious insinuations that there was some tampering of records in the Assembly Secretariat, was contumacious and disrespectful and that he was thus guilty of a breach of privilege of the

House. By his conduct Shri Genda Singh had committed a contempt against the Revenue Minister Shri Charan Singh. The Committee, therefore, recommended to the Speaker that Shri Genda Singh be admonished, but that if he tendered an apology he should be pardoned. The report of the Committee was discussed in the House and adopted.[49] Shri Genda Singh was also given another opportunity to explain, but he did not tender any apology. He was therefore admonished by Shri Speaker on 2nd April, 1959, in the following words:

> By saying as you did that a mystery would be exposed, you insinuated that officials of the Assembly Secretariat had committed such grave crimes as forgery, etc. You did not even attempt to prove these charges, nor did you disclose the source and basis of your information.
>
> From this conduct of yours, the House holds that you exceeded the limits of freedom of speech without justification by levelling the charges that you did. The Privileges Committee gave you an opportunity of expressing regret, but you failed to avail yourself of this opportunity.
>
> It is, therefore, my painful duty to carry out the order of the House and to admonish you for making an unwarranted charge, a punishment that is the least that this House can mete out to you. Accordingly I admonish you and hope that in future you will not repeat what you did and conduct yourself in an exemplary manner.[50]

KENYA

Inaccurate press report of proceedings.—On 25th February the Acting Chief Secretary invited the Council's attention to two articles which had appeared in recent issues of the *East African Standard*. The first, on 22nd February, reported as having been concluded a debate on a Motion which had not in fact been so concluded, and the second, on 25th February, was a leading article, the substance of which was based on this misapprehension.

He informed the Council that the Editor of the paper had since admitted the error, concerning which he was proposing to publish a correction on the following day. In view of this, and at the suggestion of Mr. Speaker, no further action was taken by the Council.[51]

Imputation of improper motives to the Chair.—On 14th November the following motion was moved under S.O. No. 32 (j) without notice by Sir Charles Markham:

> That the Sessional Committee be required to enquire into and report to Council on the report appearing in "Uhuru", dated 11th November, 1958, on the suspension of certain Members of this Council; and that for this purpose, the Sessional Committee is hereby authorised in pursuance of section 9 of the Legislative Council (Powers and Privileges) Ordinance, 1952, to order persons to attend before it and produce documents as provided in the said section.

The report concerned, which was read out by Sir Charles Markham, was as follows:

> Some people ask why the African Members went back to Legislative Council

the next day, and suffered the humiliation of being suspended. The answer is simple: when walking out, they exercised a right which is ours, and similarly, their seats in Legislative Council are a right and not a privilege. The suspension of our Elected Members is a challenge to the Africans' right to be in that Legislative Council. The settlers have done it to demonstrate their so-called power and domination. Here is an intolerable humiliation suffered because of being a subject people. To say that the Members planned to show disrespect to the Queen is nonsense. Those who say this plan a political blackmail, to influence public opinion in Britain on a sentimental issue. The Governor must bear full blame and not bring the Queen in it.

The Motion was agreed to.[52]

In their Report to the House[53] the Committee stated that the Editor of *Uhuru*, Mr. E. Omolo Agar, had sent in a letter to the Committee, in which he had said that it had been suggested that his article had been construed by some people to impute improper motives to the Speaker. He denied that such had at any time been his intention, but in the event of any words in the article being capable of such interpretation, he expressed his apologies and unreservedly withdrew them. Mr. Agar subsequently gave evidence before the Committee.

Considering the words of the Article, the Committee came to the conclusion that they could only be understood to mean:

(*a*) that the Speaker's ruling, that the African Constituency Elected Members' conduct in withdrawing during the Communication from the Chair was insulting to H.M. The Queen, was nonsense;
(*b*) that in making such ruling the Speaker was guilty of political blackmail;
(*c*) that the decision of the Legislative Council to suspend those Members was not a *bona fide* exercise of the Council of its disciplinary powers, but was done for the ulterior purpose of humiliating the African Constituency Elected Members because they belonged to a subject people.

They then recorded the following facts:

On 4th November, 1958, the 14 African Constituency Elected Members rose and walked out of the Council Chamber when His Excellency the Governor was making the Communication from the Chair, when opening the new session of the Legislative Council.

On 5th November, 1958, Mr. Speaker ruled that such conduct "amounted to calculated, grossly disorderly and insulting behaviour—insulting not only to the dignity of this House and its Members, but what is far worse, insulting to Her Majesty the Queen", and he named them. The Council then suspended the Members in accordance with the provisions of Standing Order No. 73.

Mr. Agar obtained his information concerning the incidents from reports appearing in other newspapers. He alleges that he did not intend to say that Mr. Speaker was guilty of political blackmail, and that he had intended to be insulting neither to the Legislative Council nor to Mr. Speaker. He had not published an apology because he did not know whether that was the proper course. He agreed to publish an apology in the following terms in the next issue of "Uhuru" on Tuesday, 25th November, 1958, on the front page in English and in Swahili:—

SUSPENSION OF AFRICAN ELECTED MEMBERS
APOLOGY

In our editorial article of 11th November, we referred to the decision of the Legislative Council to suspend the African Constituency Elected Members, implied that this decision of the Legislative Council was taken with ulterior motives, implied that the ruling of Mr. Speaker on which that decision was taken was nonsense, and accused Mr. Speaker of political blackmail.

Insofar as the objectionable part of our editorial consisted of statements of fact, it was untrue. Insofar as it consisted of expressions of opinion, it was unjustified.

We therefore humbly apologise to Mr. Speaker and to the Legislative Council, and withdraw what we said.

.....
Editor.

The above apology was so published in the issue of "Uhuru" for 25th November.

In view of the apology published, the Committee recommended that no further action be taken.

[1] 584 *Com. Hans.*, cc. 924-6. [2] *Assem. V. & P.*, p. 245; 98 *S.A. Deb.*, cc. 2982-8. [3] May, 16th Ed., pp. 63-4, 398. [4] Jefferson's Manual, 1957, p. 122. [5] Hind's Precedents, Vol. III, 2666. [6] *See* THE TABLE, Vol. XXVI, p. 112. [7] XXI *R.S. Deb.*, No. 10, cc. 1290-5. [8] XXII *ibid.*, No. 16, cc. 2316-8. [9] No. 27 (IV Extra) E/T. [10] 361 *Com. Hans.*, c. 825. [11] 367 *ibid.*, c. 933. [12] H.C. 164 (1939-40), p. 34, Qs. 187-95; 361 *Com. Hans.*, c. 994; 363 *ibid.*, c. 611; *see also* THE TABLE, Vol. IX, pp. 64-79. [13] 183 *Com. Hans.* (4th Series), c. 539. [14] *Ibid.*, c. 540. [15] A.I.R., 1952, Madras, p. 119. [16] 2 L.S. Committee of Privileges, Fourth Report, pp. 1-13. [17] Letter No. 473(13)-C, dated 15th March 1955, from the Deputy Secretary to the Government of Orissa, Home Department, Special Section, to all District Magistrates. [18] No. F.2/13/257, p. iv. [19] Ss. 617 and 910 of the Bengal Jail Code, Vol I. [20] Halsbury's Laws of England, 2nd Ed., Vol. 25, p. 325 [21] 2 L.S. Committee of Privileges, Fifth Report, pp. 44-9. [22] 2 L.S. Committee of Privileges, Third Report, p. 4, Minutes, para. 4 (*see* p. 108 above). [23] May, 16th Ed., p. 117. [24] *Ibid.*, p. 669. [25] Hatsell's Precedents, 2nd Ed., Vol. III, pp. 20-1. [26] *Ibid.*, pp. 18-19. [27] *Ibid.*, pp. 61-2. [28] 2 L.S. Committee of Privileges, Sixth Report, pp. 1-7. [29] May, 16th Ed., p. 117. [30] *Ibid.*, p. 119. [31] *Ibid.*, p. 627. [32] 2 L.S. Committee of Privileges, Seventh Report, pp. 1-11. [33] Report of the Privileges Committee in the matter of the alleged arrest of Dr. R. B. Chaudhary, M.L.A. (unnumbered), App. A, p. 35. [34] *Ibid.*, App. B, p. 35. [35] 6 *Bomb. L.A. Deb.*, No. 33, pp. 1912-66. [36] *Ibid.*, No. 15, pp. 812-3. [37] *Ibid.*, No. 20, pp. 1029-30. [38] XIII *Madras L.A. Proc.*, No. 2 (dated 5.4.1958). [39] VIII *Ibid.*, No. 6 (dated 15.2.1958). [40] X *ibid.*, No. 3 (dated 12.3.1958). [41] XIV *ibid.*, No. 3 (dated 5.9.1958). [42] *Ibid* (dated 16.2. 1959). [43] VIII *ibid.*, No. 6, (dated 15.2.1958). [44] XIV *ibid.*, No. 7, (dated 11.9.1958). [45] IV *Mysore L.A. Deb.*, No. 49, p. 1174. [46] 192 *U.P. Deb.*, pp. 708-13, 816-20. [47] 193 *ibid.*, pp. 40-54. [48] 198 *ibid.*, p. 498. [49] 203 *ibid.*, pp. 932-83; 204 *ibid.*, pp. 32-56. [50] 204 *ibid.*, pp. 237-40. [51] LXXXV *Kenya Hans.*, cc. 393-4. [52] LXXXVIII *ibid.*, cc. 376-7. [53] Leg. Co. N/304/VII/A/16.

XIX. MISCELLANEOUS NOTES

1. CONSTITUTIONAL

Tasmania (Constitutional).—In the Session of 1958 amendments were made to the Constitution Act and the Electoral Act providing for an increase in the membership of the House of Assembly from 30 to 35. (See Constitution Act, No. 91 of 1958, and Electoral Act, No. 79 of 1958.)

In the Constitution Act the "deadlocks" provision inserted by the Constitution Act (No. 2) 1954 (Act No. 88) (see THE TABLE, Vol. XXIII, p. 145) was repealed. Although a similar provision was included in the Bill which passed the House of Assembly, the Legislative Council deleted this provision and this amendment was accepted by the House of Assembly. The Premier, however, informed the House that consideration would be given to the necessity of some provision for deadlocks during the recess and that a Bill would be introduced in the next Session. However the House of Assembly was dissolved, and a General Election took place on 2nd May, 1959. As a result of this, the state of the Parties in the House was 17 Labour (Government Party), 16 Liberal, and two Independents. Since the Opposition Party took the view that they were not under any statutory obligation, and that it was the Government's responsibility to find the Speaker and Chairman of Committees, two members of the Government Party were nominated and (unanimously) elected to these offices. The Government must therefore rely, in cases of a division on party lines, on the vote of at least one of the Independents. Students of parliamentary procedure and politics generally await results with considerable interest. One thing is certain; whatever the result, the House will obviously consider Constitutional amendments designed to overcome such difficulties in the future.

Another amendment of the Constitution agreed to in the 1958 Session was to provide that the Governor may call Parliament together for the despatch of business at an earlier date than the date of prorogation. Many authorities considered that the Governor already had this power, but it was provided by an amendment to the Act to remove any doubts in this respect. (See Constitution Act, No. 11 of 1958.)

(*Contributed by the Clerk of the House of Assembly.*)

Union of South Africa (Constitutional Changes).—The following amendments were made in 1958 to the South Africa Act, 1909:

S. 14 (Appointment of Ministers and Deputy-Ministers): The

number of Ministers who may be appointed by the Governor-General has been increased from fourteen to sixteen.

New sub-sections have been added which provide that the Governor-General may appoint Deputy-Ministers (see also pp. 71-2), not exceeding one-half the number of Ministers, to hold office during his pleasure and, on behalf of the Ministers to whom they have been appointed, to exercise such powers and perform such functions and duties as such Ministers may determine from time to time. They are not members of the Executive Council. No person can hold office as Deputy-Minister for longer than three months without being a member of either House of Parliament. In addition to their Parliamentary and travelling and subsistence allowances as members, Deputy-Ministers may be paid an allowance determined by the Governor-General. (See South Africa Act Further Amendment Act, No. 49 of 1958, s. 1.)

S. 35 (Qualification of Voters): This section provides that—

"Parliament may by law prescribe the qualifications which shall be necessary to entitle persons to vote at the election of members of the House of Assembly."

An amendment of constitutional interest in regard to the qualifications of voters, as laid down in the Electoral Consolidation Act, 1946, has been made extending the franchise to white persons of or over the age of 18 years and under 21 years. (See Electoral Law Amendment Act, No. 30 of 1958.)

S. 53 (Disqualification for being a member of either House): Deputy-Ministers shall not be deemed to hold an office of profit under the Crown. (See South Africa Act Further Amendment Act, No. 49 of 1958, s. 2.)

S. 56 (Allowances of Members):

(*a*) When a Deputy-Minister is absent from the House (of which he is a member) on official business in connection with his office, no deductions shall be made from his Parliamentary allowance for such absence. (See South Africa Act Further Amendment Act, No. 49 of 1958, s. 3.)

(*b*) Prior to 1958 members were exempted from deductions for absence under sub-section (2) (*d*) of this section for a period not exceeding 25 days only in respect of a session at which the estimates of expenditure for the ordinary administrative services of a financial year were considered. An amendment to the section now also exempts members from deductions for a period of absence not exceeding 7 days in respect of any other session. (See South Africa Act Amendment Act, No. 1 of 1958, s. 1.)

(*Contributed by Mr. J. M. Hugo, formerly Clerk of the House of Assembly.*)

Southern Rhodesia: petition to governor to set aside Constitution.

—Southern Rhodesia's Electoral Amendment Act of 1957 provides for the use of the preferential or alternative vote, but the indication of the second or third preference on the ballot paper is not compulsory (see THE TABLE, Vol. XXVI, p. 168). During the campaign which preceded the general election of June, 1958, the Dominion Party, who had strenuously opposed the amendment the previous year, contended that the operation of this provision could lead to a number of anomalies and even illegalities. In pursuance of their argument, on 18th May, 1958, about three weeks before election day, the Southern Division of this Party petitioned the Governor of Southern Rhodesia to suspend the Colony's Constitution " to facilitate the enactment by Her Majesty the Queen in Council of an Order in Council which shall restore the Electoral Law of Southern Rhodesia as it existed before the enactment of the Electoral Amendment Act of 1957 ".

The petition stated that the Electoral Law gave rise to a considerable amount of uncertainty. It was not known how the votes to be cast in the election were to be counted, and it was therefore uncertain how the returning officer would decide which candidate should be declared elected in some instances. It was also uncertain how the question of forfeiture of deposits would be decided. In some cases, according to some interpretations of the law, the only result of the elections could be a " no-result " verdict, and no machinery existed for calling another election in such circumstances. This could result in many constituencies being unrepresented in Parliament. It was vital that the Electoral Law should be clear and unambiguous before the election was held, and there was no machinery available for effecting the necessary amendments constitutionally before that date. The petition suggested that the Electoral Amendment Act of 1957 could first be disallowed in terms of section 31 of the Constitution.

On 21st May, 1958, it was announced that the Governor had rejected the Dominion Party's petition. In a statement to the Press, the Prime Minister, Sir Edgar Whitehead, remarked that had the petition been acceded to it would have meant the end of responsible government for as long as the suspension lasted. In effect, he said, it asked for the intervention of the British Government in the internal affairs of Southern Rhodesia on a matter concerned purely with the interpretation of an Act of the Southern Rhodesia Parliament, and had the petition been successful it would have been open to any political group to take similar action in order to secure the abrogation of any legislation with which it disagreed. Regulations setting out how the preferential votes were to be counted were published immediately.

It was to be expected that after the elections one or more election petitions would be presented to the courts, but there were no such petitions. Soon after the new House met, however, a member of the Opposition moved a motion seeking to have the 1957 Act changed to

eliminate the provisions for "special voters" and those for the preferential or alternative vote. The motion was defeated (41 *Hans.*, cc. 711, 998).

To revert to the disallowance question, while section 31 of the Southern Rhodesia Constitution Letters Patent, 1923, provides that Her Majesty may within one year from the date of the Governor's assent disallow any law, this power his not been exercised in the 35 years which have elapsed since the grant of responsible Government.

With regard to the request to suspend the Constitution, this is the first occasion such a petition has been presented in this Colony, as far as the writer knows.

(*Contributed by the Clerk of the Legislative Assembly.*)

Aden (Constitutional).—On 11th November, 1957, there was published in the Aden Colony Gazette Extraordinary (No. 52) an exchange of dispatches between the Governor and the Secretary of State for the Colonies, together with a statement of proposals for constitutional advance in the Colony.

The Statement first set out a short history of the constitutional development of the Colony since its separation from British India in 1937, and described the existing composition of the Legislative Council as follows:

The President (the Governor), with an original vote, and a second or casting vote.

Four *ex-officio* members (the Air Officer commanding, the Chief Secretary, the Attorney-General, the Financial Secretary).

Five nominated official members.

Five nominated unofficial members.

Four elected members (one of whom is elected by the Councillors of the Aden Municipality from among their number).

It then set out proposals for reconstituting the Legislative Council as follows:

(i) The Governor would no longer preside. A Speaker, who would have no vote, would be appointed by His Excellency the Governor, normally for the life of each Council.

(ii) There would be twelve elected members who would be elected to represent twelve single member constituencies in the Colony. The Aden Municipality would no longer elect a representative. The geographical boundaries of the twelve constituencies would be decided by the Governor in Council and would be announced by Proclamation under section 8 of the Legislative Council Elections Ordinance, 1955.

(iii) There would be five *ex-officio* members who would be the Air Officer Commanding, the Chief Secretary, the Attorney-General, the Financial Secretary and one other Government official.

(iv) There would be six nominated members who would be nomin-

ated by His Excellency the Governor in his absolute discretion.

It was also proposed that the life of the Legislative Council should be four years (Statement, para. 7).

The following proposals were also made for the institution of a ministerial system:

With the creation of an elected majority in the Legislative Council it is considered that the time has come for the elected representatives of the people of the Colony to assume a degree of responsibility for the day to day working of some of the Departments of Government and that the base of executive government in the Colony should be broadened. While the Chief Secretary, the Attorney General and the Financial Secretary as *ex officio* members of the Legislative Council will continue to be responsible for certain departments of Government, it is proposed that from the unofficial members of the new Legislative Council, five (of whom not less than three shall be elected members) shall be appointed by the Governor to be in charge of other departments.

The grouping and allocation of departments under Members in Charge will be decided by His Excellency the Governor. It is contemplated that initially the five members referred to in paragraph 12 above shall be responsible for the following groups of services:

(i) education
(ii) public works
(iii) communications
(iv) labour and social welfare, and
(v) medical.

It is proposed that the functions of the Members in Charge of departments should include:

(*a*) general administration of the department or departments assigned to them by His Excellency the Governor,
(*b*) responsibility in Legislative Council for replying to questions relating to departmental subjects and services, and the sponsoring of legislation on departmental matters,
(*c*) the formulation of departmental policy and its presentation to Executive Council for approval,
(*d*) departmental responsibility for carrying out the policy approved in Executive Council.

It is proposed that the composition of the Executive Council of the Colony should be revised and its membership increased to consist of the *ex officio* members of the proposed new Legislative Council and the five Members in Charge of departments, under the Presidency of His Excellency the Governor. It is not proposed to make any material alteration in the instructions contained in the Royal Instructions dated 3rd March, 1937, regarding the functions of the Executive Council or the manner in which it should continue to advise His Excellency the Governor on all matters referred to it by him. (*Ibid.*, paras. 12-15.)

The proposed changes in the composition of the Legislative Council were brought into effect by the Aden Colony (Amendment) Order, 1958 (S.I. 1958, No. 1747), made on 22nd October, 1958. In this Order was included the additional provision that the Governor might appoint a Deputy-Speaker as well as a Speaker (s. 6). Unlike the

Speaker, who was in no case to be a Member of the Council, the Deputy-Speaker might be appointed either from within or outside the Council's membership; if the latter, he would become a Member by virtue of his appointment.

Kenya (Constitution).—The implementation of proposals made in a White Paper entitled "Kenya: Proposals for new Constitutional Arrangements" (Cmnd. 309), which was laid following the visit of the Secretary of State for the Colonies in 1957, was completed in 1958 in the following way:

The Legislative Council (African Representation) (Amendment and Transitional Provision) Bill was passed in January, 1958, enabling elections to be held for six additional African Members, making the total number of African Elected Members up to 14.

On 5th April, 1958, the Kenya (Constitution) Order in Council, 1958 (S.I., 1958, No. 600), came into operation. This Order replaced all previous Constitutional arrangements and incorporated the following changes:

(*a*) the Executive Council has ceased to exist, its functions being assumed by the Council of Ministers;

(*b*) the composition of Legislative Council has been altered. The changes made are indicated in the following table, showing in column 1 the composition prior to the coming into operation of the Kenya (Constitution) Order in Council and in column 2 the new composition:

The Governor—President	A Speaker
The Speaker—Vice-President	*Ex-officio* Members (being Ministers not otherwise Members)
8 *ex-officio* Members	36 Constituency Elected Members:—
20 Nominated Members	14 Europeans
29 Elected Members:—	14 Africans
1 Arab	6 Asians—2 Muslim
8 Africans	4 Non-Muslim
14 Europeans	2 Arabs
6 Asians—2 Muslim	12 Specially Elected Members
4 Non-Muslim	4 European
1 Arab Representative Member	4 African
Substitute and temporary Members	1 Arab
	1 Asian—Muslim
	2 Asian—Non-Muslim
	Nominated Members
	Subsidiary Elected and Temporary Members.

(*c*) provision is made for the creation of a Council of State consisting of a Chairman and not less than ten and not more than 16 other Members. The functions of the Council of State are set out in Sections 53 and 54 of the Order in Council as follows:

General function of Council

53. It shall be the general function of the Council of State to give to the Governor or the Legislative Council, if the Governor or the Legislative Council, as the case may be, so requests, any assistance which the Council of State can provide in relation to the study of matters affecting persons of any racial or religious community in Kenya and, in particular, assistance in the form of information or advice relating to any such matter.

Particular function of Council with respect to differentiating measures.

54 (1). It shall be the particular function of the Council of State to draw attention to any Bill and to any instrument which has the force of law and is made in exercise of a power conferred by any law of the legislature of Kenya if that Bill or instrument is, in the opinion of the Council of State, a differentiating measure; and for that purpose the Council of State shall have the powers conferred by the following provisions of this Part of this Order.

(2) In this section and in the following provisions of this Part of this Order the expression " differentiating measure " means any Bill or instrument any of the provisions of which are, or are likely in their practical application to be, disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities, either directly by prejudicing persons of that community, or indirectly, by giving an advantage to persons of another community.

Legislation (Ordinance No. 28 of 1958) making the necessary changes in the Legislative Council Ordinance and the Legislative Council (African Representation) Ordinance to give full effect to the new Order in Council were passed on 26th June (LXXVI *Hans.*, cc. 2343-4).

An Ordinance (No. 11 of 1958) dealing with Election Offences, based on a form common in England and elsewhere in the Commonwealth, was passed on 28th February (LXXV *Hans.*, c. 602).

(*Contributed by Mr. A. W. Purvis, formerly Clerk of the Legislative Council.*)

Mauritius (Constitutional Changes) (*see* THE TABLE, Vol. XXV, p. 135, and Vol. XXVI, p. 136).—The Report of the Mauritius Electoral Boundary Commission was laid on the table of the Council on the 4th March, 1958. The Commission recommended that the island be divided into forty single-member constituencies, and considered that this system, combined with nominations by the Governor, would be the best means of ensuring that no important section of the community would be deprived of an adequate opportunity to be represented in the Legislature. The Report subsequently formed the subject-matter of a debate in Council (Debates 4 to 6 of 1958).

The recommendations of the Commission were accepted by the Secretary of State for the Colonies and were embodied in the Mauritius (Constitution) Order in Council 1958 (published on 13th August, 1958) which gave effect to the new constitutional proposals which were the subject of agreement in London in 1957.

The main features of the new Constitution are briefly as follows:

(1) An Executive Council consisting of three *ex-officio* Members and nine appointed Members all of whom are styled Ministers.
(2) A Legislative Council consisting of a Speaker, three *ex-officio* Members, forty elected Members and such nominated Members, not exceeding twelve in number, as may be appointed by the Governor.
(3) The Speaker may not be an *ex-officio*, nominated or elected Member of the Legislative Council, nor may he be the holder of a public office.
(4) The division of the island into forty electoral districts, each returning one Member.
(5) Universal adult suffrage.

Elections under the new Constitution are to be held in 1959.

During the year a Representation of the People Ordinance (No. 14 of 1958) was enacted making provision for the registration of electors and the conduct of elections for the Legislative Council, the Municipal Council of Port Louis and Town Councils. With the coming into force of this Ordinance, the conduct of all elections is now placed into the hands of an Electoral Commissioner.

(*Contributed by the Clerk of the Legislative Council.*)

Nigeria (Ministerial system of Government in the Southern Cameroons).—As a result of decisions reached at the London Constitutional Conference of 1957, a new constitution for the Southern Cameroons was introduced on 15th May, 1958 (S.I., 1958, No. 429, s. 66), which marked the beginning of Ministerial system of Government in the Territory. Under the new arrangement the elected membership of the House of Assembly has been increased from 13 to 26 and the three *ex-officio* members together with the two Special Members in the Assembly retain their seats. The Executive Council now has an unofficial majority. It consists of the Commissioner of the Cameroons as President, three *ex-officio* members and five unofficial members, one of whom is designated Premier and the others Ministers. Ministers are appointed by the Commissioner on the recommendation of the Premier. The Executive Council becomes the principal instrument of policy for the Southern Cameroons, and the Commissioner's reserved Powers become equivalent to those of Regional Governors under the 1954 Constitution. The Commissioner still has to be responsible to the High Commissioner (the Governor-General of the Federation) in the interests of the Federation or because of the United Kingdom Government's responsibilities under the Trusteeship Agreement.

(*Contributed by the Clerk of the House of Representatives.*)

2. General Parliamentary Usage

House of Commons (Adjournment debates: Change of subject chosen by private Member).—On the motion for the adjournment at

the end of business on 12th November, Mr. Rupert Speir (Hexham), who had given notice that he would speak on the topic of violence in Cyprus, offered to address the House instead on the subject of transport in rural areas. Objection was taken to this at some length by Mr. George Wigg (Dudley), and Mr. Speaker made the following statement:

So far as I can understand the point of order of the hon. Member for Dudley it is wrong for the hon. Member for Hexham to raise a subject different from that which appears on the notice behind my Chair and in the memoranda circulated with the Votes and Proceedings. The truth of the matter is that before the war there was no such system at all. An hon. Member gave notice that he would wish to raise a matter on the Adjournment and a convenient date was fixed for that to be done. It was by no means every night that we had an Adjournment Motion. Owing to the truncation of private Members' time during the war, there was such a large demand for these half-hour Adjournments that my predecessor, Colonel Clifton Brown, introduced the system of a ballot by which hon. Members put down their names in advance, with the subject which they intended to raise, and then there was a ballot taken and days allocated to them according to the ballot.

That has been varied in my time to this extent only, that the House has allowed me to choose subjects myself on Tuesdays and Thursdays, but on Mondays, Wednesdays and Fridays the issue of what hon. Member has the Adjournment is decided by ballot, as it was in my predecessor's time. This is a Wednesday. As to whether the Adjournment should belong to the Member or to the subject which he announces my predecessor, Colonel Clifton Brown, under those aegis this system was inaugurated, was quite definite on the point. He had been asked for a ruling on this subject several times and this one was given on 10th February, 1944.

"Mr. Speaker: I think it is perfectly clear"—

I think that exactly the same point as that raised by the hon. Member for Dudley was then raised by Mr. Driberg—

"that the Adjournment is given to an hon. Member as an individual. It is for the convenience"—

This is the point of the hon. Member's point of order—

"of the House that a list is put up showing what will be the subjects. It might not be convenient for a Minister to attend on a particular day and the hon. Member who has that day would be entitled to change the subject; but I do hope that hon. Members, having once stated the subjects which they wish to raise, and the list having been put at the back of the Chair, will do their best—and Ministers, too—to abide by the decision to raise that subject and not change it."—[Official Report, 10th February, 1944; Vol. 396, c. 1916.]

I have carried on that system entirely with regard to the days decided by ballot, but I have frequently had the experience of an hon. Member on either side of the House putting down a subject which he thinks he wants to raise and then, before he is successful in the ballot, finding that owing to ministerial action or some other cause, there is no further necessity for him to raise it. Either the grievance has been settled or some other circumstance has taken place. He then comes to me, and asks me if he can change his subject, and as the hon. Member has the Adjournment, and if he can get the Minister responsible to reply to him—because I think that it is for the convenience of the House to hear both sides—I allow it.

I have acted no differently in this case from what my predecessor did, or

from what I have done all along, and it seems to me to be quite clear that that is correct.

In spite of this ruling, Mr. Wigg and other Members continued to raise points of order in such a way that Mr. Speir was able to speak for less than a minute on his chosen subject before the adjournment of the House without question put at the expiration of half an hour from the moving of the motion (595 *Hans.*, cc. 527-38).

On the following day, at the end of Questions, Mr. Hale (Oldham), while making it clear that he was not attempting to challenge Mr. Speaker's ruling, suggested that the implications of the matter might be further examined. Mr. Speaker agreed, and expressed the opinion that this might well be undertaken by the Select Committee on Procedure, which was sitting at the time, and of which Mr. Hale was a Member. (*Ibid.*, cc. 581-2.)

The matter was in fact so examined by the Select Committee. Their Report, a lengthy document, will be the subject of an Article in Vol. XXVIII; but it may be convenient here to quote their recommendation on this particular subject:

> It was indicated recently in the House that our order of reference would enable us to consider whether Members should retain the right to change the subject of an adjournment motion for which they had ballotted successfully. We have considered this point. We agree that as a result of an altered situation, it may no longer appear either necessary or desirable to raise a subject of which notice has been given. On the other hand, where a subject is of interest to a large number of Members, it is inequitable that they should attend the debate, only to find that the subject has been changed at short notice. We therefore recommend that:—
>
> (i) Forty-eight hours notice be required for a change of subject of a ballotted adjournment motion, and that the change of subject be notified in the notice paper;
>
> (ii) When a Member does not wish to pursue the subject of a ballotted adjournment motion and cannot give forty-eight hours notice, his right to the adjournment should lapse. (H.C. 92, 1958-59, para. 33.)

At the time of writing (April, 1959), no action upon this recommendation has yet been taken by the House.

House of Commons (Bells rung at Divisions and Counts).—On 15th May Mr. Speaker made the following communication to the House:

> I have a short statement to make to the House about Division bells.
>
> Difficulty has been experienced in distinguishing between a Division and a Count. The following system has, therefore, been arranged as an experiment. For a Division, the bells will ring continuously for 55 seconds, followed by a pause of 10 seconds, followed by another continuous ring of 55 seconds.
>
> For a Count, the bells will ring intermittently for a period of one minute. Each ring will be for four seconds, followed by a pause of two seconds. This new system will take effect next Monday, 19th May, 1958. (588 *Hans.*, cc. 615-16.)

This experimental system has continued in use up to the time of going to press.

House of Commons (Circulation of matter in the Official Report.—On 4th November, towards the end of a speech concluding the debate on the Address, the Leader of the House (Mr. R. A. Butler) said:

I will, with permission, circulate in the Official Report the companies, 512 of them, which evidently are to be either taken over, messed about or in some way interfered with by the Socialist Party, as appears from its pamphlets entitled " Industry and Society " and " Plan for Progress ". Does the House, and do right hon. Gentlemen opposite, really think that that sort of programme, imposed on a record such as hon. Members opposite have, would be likely to create confidence or increase production?

Mr. Bowles (Nuneaton) asked whether it was in order for such a list, to which no previous reference had been made in Mr. Butler's speech, to be circulated with *Hansard*, and Mr. Speaker suggested that a question might be tabled (594 *Hans.*, c. 907).

On the following day, at the end of Questions, Mr. Bowles asked Mr. Speaker whether he would give a further ruling. Mr. Speaker replied:

It is the usual practice for Ministers, in answering Questions, to say that they will seek permission to circulate in the Official Report a matter which forms part of the Answer, such as a table of figures or a list of names of people who are to form a Departmental inquiry. That has been the practice of the House and it is for the convenience of the House, but it is not our custom to print in the Official Report either undelivered speeches or parts of speeches.

I may say that when the hon. Member for Nuneaton (Mr. Bowles) asked me last night about this I said that perhaps the right hon. Gentleman—that is to say, the Leader of the House—might arrange to have a Question put down which would bring this practice within the parliamentary practice on Questions. I put it in that tentative way because I could not at the moment see how such a question would come within the right hon. Gentleman's Departmental responsibility. I am, however, very slow to underrate the ingenuity of right hon. and hon. Members in framing Questions and I prefer to see the text of the Question before I give a definite answer.

The right hon. Gentleman has neither sought permission nor intends to seek permission to circulate the matter in the Official Report.

After some further exchanges, during the course of which Mr. Butler said that he accepted the ruling in every respect, Mr. Speaker added:

In the way he (Mr. Bowles) framed his question, he asks whether the pages of the Official Report should be used for party propaganda. I have known a lot of party propaganda to creep into our Official Report from time to time, but I would say that the Official Report is, in general, a record of what is said, with the one exception of the parliamentary Question to which I have alluded. (*Ibid.*, cc. 947-8.)

House of Commons (Deposition of documents in Vote Office by Parliamentary Agent).—On 2nd July, at the end of Questions, Sir John Barlow (Middleton and Prestwich) drew Mr. Speaker's attention to the fact that a statement on behalf of the Manchester Corporation (who at that time were sponsoring a private bill that had aroused much controversy) was being handed out from the Vote Office. Mr.

Speaker replied that he had seen the document, which differed in certain respects from the usual form of statement by an accredited Parliamentary Agent, had given instructions that it should not be issued for the time being, and was making an examination of the prevailing practice (590 *Hans.*, cc. 1341-2).

On 7th July, Mr. Speaker made a statement, from which the following is an extract:

This [the document in question] was a statement by the Manchester City Council with regard to their Bill. . . . The hon. Member asked whether it was in order for this document to be made available to hon. Members in the Vote Office.

The Vote Office distributes to Members a wide variety of papers published by the authority of this House or presented to Parliament by Ministers. Most of these are printed by H.M. Stationery Office, but not all. Other documents published by bodies such as the boards of nationalised industries, dock boards and the like, are distributed by the Vote Office at the request of Ministers who think they may be of use to hon. Members in view of a pending debate. But all these documents are deposited by persons who are directly responsible to the House, or over whom the House exercises some direct control.

In the case of Private Bills, the practice has been to allow the deposit in the Vote Office by Parliamentary Agents not only of copies of the Bill but, when a Bill comes on to the Floor of the House for debate, copies of statements on behalf of the promoters and the petitioners on the points which have caused the Bill to be taken on the Floor of the House. These statements are succinct in character and confined to facts. They are, I believe, of assistance to hon. Members from constituencies remote from the locality in question, in enabling them to form an opinion on the gist of the question at issue. I see no reason to interfere with the proper exercise of this practice. Normally, Parliamentary Agents send these documents by post but, when time presses, they may seek the services of the Vote Office. . . .

A Parliamentary Agent is . . . a person over whom the House, through me, exercises a direct control, and it is no doubt for this reason that they have been given the privilege of depositing documents in the Vote Office. Hon. Members will find the rules which govern the conduct of Parliamentary Agents set out in the latest edition of *Erskine May* at pages 908 to 910. Among those rules is No. 18, which says:

> " No written or printed statement relating to any bill shall be circulated within the precincts of the House of Commons without the name of a parliamentary agent attached to it, who will be held responsible for its accuracy."

The document in question did not bear the name of a Parliamentary Agent attached to it, though it has been circulated within the precincts of the House.

I asked the Agent to come to see me on Thursday. He explained that his clients, the Manchester City Council, had prepared their case on the point in dispute some time ago. When, however, the case was referred to the Director of Public Prosecutions, they considered, I think properly, that they should not distribute it, either through the post or through their Agent, until the Director had decided what he should do. The Attorney-General gave a reply to a Question for Written Answer which stated that the Director saw no grounds for a prosecution. This appeared in the " Official Report " on Tuesday last.

The Manchester City Council then felt that they had little time to lose. They sent a copy of their statement by post to every hon. Member. At the same time, they sent a number of copies to their Agent. This gentleman, also, I gather, felt that time pressed him. He, in the result, asked an Hon.

Member for Manchester who supports the Bill to hand these extra copies to the Vote Office. This the hon. Member, I am sure in all good faith, did. The Clerk in the Vote Office telephoned to the Parliamentary Agent's office and understood that the documents had been placed there by the authority of the Agent. They were then made available to hon. Members.

It is clear that this was a breach of Rule 18, because the document did not bear the name of the Parliamentary Agent. He had realised his mistake and had apologised for it to the Chairman of Ways and Means. He repeated his apology to me and I have no doubt at all that he was sincere.

In all the circumstances, I feel sure that there was here no deliberate attempt to evade the rules of the House. This error was due to inadvertence and a sense of haste, which is a frequent source of error. I therefore think that I have no need to take any further action with regard to the incident.

(591 *Hans.*, cc. 31-4.)

House of Commons (Omission of material from written answer to question).—On 6th November, Mr. Ernest Davies drew Mr. Speaker's attention to the fact that the Minister of Transport, in giving a written answer to a question put down on the previous day, had printed in extenso a Report, 13 columns in length, made to him by the Chairman of the British Transport Commission, but had failed, in spite of an indication that he would do so, to publish the text of his reply to the Chairman. He suggested that a document of this length ought to have been published as a White Paper. Mr. David Jones also drew Mr. Speaker's attention to a footnote in the written answer to the effect that Appendix B to the Chairman's report was not reproduced in *Hansard* because it contained graphs. Mr. Speaker undertook to look into the matter. (594 *Hans.*, cc. 51-64 and 1115-16.)

On 10th November, Mr. Speaker made the following statement:

The Editor of the Official Report was told by the Ministry of Transport and Civil Aviation, on Wednesday morning, that there was an Answer coming which was rather long and containing tables and figures. The Editor asked for an advance copy of the Answer and this was sent to him. He then considered it and suggested to the Ministry a rearrangement of the tables to facilitate printing. This was agreed to and the advance copy was sent to the printers so that they could start setting up the type at once.

This advance copy did not contain the Minister's Answer. A duplicate copy containing both the report and the Minister's answer was sent to the Official Report later in the day, but the staff on duty, thinking that the whole matter had been in the printers' hands for some hours, took no further action. However, the error was detected and an *erratum*, giving the Minister's answer, appeared in the next issue of *Hansard*. It will appear in its proper place in the bound volume.

Having read the Answer, with its tables of figures, I do not think that it could conveniently have been given as an answer after Oral Questions. As to whether it should have been published as a Command Paper, that is a matter of opinion dependent on the Minister's judgment of the relative importance of the subject. I can find no Ruling as to the length of the material circulated in the Official Report, but I have known many long statements besides this one, although this was a long one.

The hon. Member for The Hartlepools (Mr. D. Jones) raised the question of a graph which formed part of the report of the Chairman of the British Transport Commission. A footnote to the original Answer stated that this

had been omitted. We have never included graphs in the Official Report. The reason for this is the great speed with which the Official Report is produced. I am told that it would take at least 48 hours for the printers to make the block necessary for a graph. I understand that copies of the graph were made available in the Library.

(595 *Hans.*, cc. 33-4.)

Canada (Dissolution of Parliament announced in the House of Commons).—At the close of the Sitting on Saturday, 1st February, 1958, the Prime Minister rose and stated that he had called that day upon the Governor-General, then in residence in the city of Quebec (a distance of 280 miles from Ottawa).

Several hon. Members observed that six o'clock (the normal hour of adjournment) had passed; the Prime Minister nevertheless went on to describe in some detail the difficulties confronting a minority government in the House, and the Speaker ruled that if the Prime Minister was making an announcement in respect to the business of the House, he ought to be heard. The Leader of the Opposition asked whether the leaders of all parties would be given an opportunity to reply to the Prime Minister's statement; on this Mr. Speaker replied that he would have to make his decision after the statement was concluded. He observed, after further interchanges, that he would not consider it proper for the Prime Minister to give more than a factual foundation for his statement, and that in order for him to make it it was not necessary for the House to revert to motions.

The Prime Minister accordingly observed that he would abbreviate his remarks, and concluded by announcing that the present Parliament had been dissolved by proclamation dated that day. Mr. Speaker then said that in view of that announcement the House of Commons had no further existence, and that it only remained for him to leave the Chair. Amid protests that the Prime Minister himself should not have been allowed to speak, in view of the dissolution having already been ordered, Mr. Speaker left the Chair at 6.13 p.m. (*Can. Com. Hans.*, IV (1957-58), pp. 4199-4202).

Mysore (Important Statements by Ministers at Press Conferences.—On 6th March, Shri J. B. Mallaradhya raised a question about the desirability of Ministers making important statements in the House rather than at Press Conferences outside. He drew the attention of the House to a Press Conference held by the then Minister for Revenue on 5th March, 1958, in regard to the revenue policy of the Government. He stated that in matters of this kind, the House should be first taken into confidence, particularly when the Assembly was in session. Both on that day and on subsequent days, several Members spoke with reference to this point; on 7th May, Shri M. P. Patil, the Minister concerned, also spoke with reference to the point raised by Shri J. B. Mallaradhya. He stated that so far as the particular Press Conference was concerned it related to no new matter

of policy but was in respect of matters which had been settled long before the Conference and that at the Conference he did not disclose anything that was new. Mr. Speaker stated that he would give a ruling later.

On 1st December, accordingly, Mr. Speaker said:

I have examined the point at great length and I find no instance where any convention has been asserted or any principle laid down that invariably all ministerial statements should be made in the House. It is desirable that as far as possible ministerial statements in respect of important matters involving a change in policy should be made in the House when the House is in session, since this will enable the matter to be brought to the notice of the Legislature, which ultimately controls the policy of the Government.

Mr. Speaker then proceeded to quote *in extenso* certain exchanges which had taken place in the House of Commons on 25th May, 1950 (see THE TABLE, Vol. XIX, p. 27), and concluded:

It will therefore be seen that opinion is divided as to the desirability of making all statements in the House. We may perhaps safely state that it is desirable that Ministers should, as far as possible, make statements in relation to policy in the House rather than outside it, when the House is in session. Generally speaking, this rule should be followed but cannot be claimed as a matter of convention. The matter assumes a different character when the Assembly is not in session. In such a case, it may be necessary for a statement to be made immediately and cannot wait for the next session of the Assembly.

In the particular case in question, I am satisfied that the Minister's Press Conference did not relate to any important matter of policy. It related as a matter of fact, to Government Orders which were long in existence and he merely clarified the existing position. In such a case there is no point in insisting that the Minister should make a statement in the House. (*Mysore L.A. Deb.*, Vol. IV, No. 49, pp. 1174-6.)

Northern Rhodesia (Hours of Sitting).—On 1st July, 1957, on a motion moved by the Chief Secretary, the Council agreed to a Sessional Order varying the hours of sitting. Its main effect was to bring forward the hour of meeting from 11 a.m. to 10 a.m., with a normal hour of adjournment of 12.45 p.m. (provision being made on Wednesdays and Thursdays for a resumption of the sitting, if necessary, from 3.30 p.m. to 6.30 p.m.) (92 N. Rhod. *Hans.*, cc. 375-8).

On 17th March, 1958, Mr. Speaker, in a Report brought up by him as Chairman of the Standing Orders Committee, recommended that the new hours should become permanent. Three further innovations were suggested—namely (i) a provision (which had been included in the sessional order) enabling Mr. Speaker to suspend business at any time, (ii) a provision that if business was concluded earlier than 11.15 a.m., motions for the adjournment to discuss a definite matter of urgent public importance might be moved forthwith instead of waiting for 11.15 as prescribed in S.O. No. 31, and (iii) a clarification of S.O. No. 33 relating to the disposal of notices of motion given after the lapse of the number of days from the begin-

ning of a meeting prescribed to ensure their discussion during that meeting (95 N. Rhod. *Hans.*, Appendix E).

The Report was tabled on 18th March (*ibid.*, c. 6) and the amendments to the Standing Orders were agreed to on the same day (*ibid.*, cc. 9-11).

3. Privilege

House of Commons (Members' letters to Ministers—"Strauss Case").—On Thursday, 10th July, after the Leader of the House (Mr. R. A. Butler) had made his routine announcement of the business for the following week, he was asked when the House would be able to consider the situation which had arisen from the decision of the House on 8th July in respect of the Strauss case (see THE TABLE, Vol. XXVI, pp. 50-2). He replied that the House should have time to consider the matter, and said that he would like to have the opportunity of a discussion with Mr. Speaker (591 *Hans.*, c. 584). A similar reply was made by the Prime Minister on 15th July in response to eight questions asked by five Members on various aspects of the matter; the questions were various enough in content to include a request that Ministers be instructed not to disclose the contents of Members' letters to them without the Member's express agreement, and a suggestion that legislation be introduced to amend the Ninth Article of the Bill of Rights. (*Ibid.*, cc. 1005-7.)

On 30th July the Leader of the House, at the end of Questions, asked Mr. Speaker for a statement of his opinion on the advice which should be given by Clerks at the Table to hon. Members who approached them on subjects affecting the day-to-day administration of the activities of nationalised boards. Mr. Speaker replied:

> The advice tendered to hon. Members by the Clerks at the Table is unofficial and is offered in a spirit of helpfulness to hon. Members. Hitherto, an hon. Member submitting an inadmissible Question has been advised to write to the board concerned, or to try to raise the matter on the Adjournment. Since the decision of the House on 8th July it has been thought prudent for the Clerks not to say anything to hon. Members about writing to Ministers or boards. This is merely a precaution against the possibility, however remote, of the Clerks being involved in any dispute. It is not intended to convey any advice against writing letters, and no doubt hon. Members will exercise their own discretion as hitherto.

Mr. Butler then went on to make the following statement:

> As to Members' letters to Ministers, a recent vote of the House decided one particular question, namely, that the letter from the right hon. Member for Vauxhall (Mr. G. R. Strauss) was not a proceeding in Parliament, but it reminds us of the individual responsibility that we all have as Members to exercise the greatest care in writing to Ministers and to the chairmen of nationalised boards, and I hope that no Member will see fit to forward for investigation allegations which he believes are merely mischievous or frivolous.
>
> It may also be helpful to the House if I say, on the legal position, that I have been advised that no matter how mischievous a constituent's allegations

may be the Member who forwards them in good faith is adequately protected.

Now as to what Ministers do with the letters they receive. It is in the interests of everyone that the public and hon. Members should feel free to make a proper complaint about the administration of our public services, but many criticisms cannot be satisfactorily investigated without passing on the letter or the contents of such a letter to the bodies immediately responsible. Hon. Members should understand clearly, therefore—and I emphasise this—that in the absence of an expressed request to the contrary, Ministers may pass on the contents of their letters and, if necessary, the letters of their constituents to bodies outside the Government service. I can assure the House that Ministers use every care in investigating complaints.

As my right hon. Friend the Member for Woodford (Sir W. Churchill) said in an earlier discussion on this matter, at the time when he was Prime Minister, it is not one which can be dealt with by general rule. Departments are, however, being reminded by my right hon. Friend the Prime Minister of their responsibilities and of the need which is enjoined on them to exercise great discretion and to handle the letters in the most circumspect manner appropriate to each case.

The Leader of the Opposition then observed that Mr. Butler's statement appeared to leave matters where they were, in that it was unlikely that any Member would forward an allegation which he believed to be frivolous. He asked for a further definition of the protection alleged to be enjoyed by a Member, and asked whether advice might be given before the summer adjournment regarding some suitable form of words which might incur such protection. Mr. Butler replied:

I am aware that Members do attempt to forward their letters after investigating whether they are malicious or mischievous. They do their best. It is impossible to be absolutely sure, but they certainly do their best. The sole reason for my using that language was that as this position is a difficult one, I thought it right, as Leader of the House, to use language which might seem rather pompous but which, at the same time, is a useful warning to hon. Members in the situation which now prevails. I think it is important to realise that there is a danger in Members forwarding letters which are in themselves malicious.

On the second point raised by the right hon. Gentleman, when he asked whether an hon. Member is adequately protected if he should forward a letter in good faith, my answer is that, in my opinion, he would be covered by qualified privilege in the courts; to that extent he is covered. I should make this general observation, that I do not think there is any change in the position which has prevailed over a number of years in relation to Members' letters and their correspondence.

As to whether there is a danger of hon. Members appearing in court, that is a matter which I cannot control and upon which I cannot comment; and I think it fairer to say that in answer to the right hon. Gentleman.

The right hon. Gentleman then asked whether there would be any protection for Members, or whether any advice could be given to them for the Summer Recess. I can only say again that it is possible to attempt to frame, and to put in the Library, if necessary, a form which might be regarded as a suitable form of words, and if the right hon. Gentleman as Leader of the Opposition wishes to consult me on that matter I will do my best to produce such a form of words; but I could not give an absolute guarantee that that form of words would be satisfactory. If that would help hon. Members I should be glad to do so. That is as far as I can go.

A number of other questions were asked, and in the course of answering them Mr. Butler made it quite clear that he saw no prospect of the successful passage at present of any legislation extending the scope of parliamentary privilege in such a way as to remove all risk of proceedings against Members in respect of letters passed on by them to Ministers. To a suggestion that privilege might automatically be conferred if Members stated, when forwarding letters, that in so doing they were acting in a way preliminary to raising the matter in the House, Mr. Butler replied that he did not think that it would be possible so to define parliamentary privilege as to use the words "a preliminary to action in Parliament" and then to presume that that would be covered by the defence of a proceeding in Parliament. In conclusion he said:

> I did take the care last week to warn the House that my statement was not likely to be very constructive, because I knew that we were in a difficult position; although it is not different from the position in which we have been for years. I therefore did not want to raise any false hopes from my statement.
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> (592 *Hans.*, cc. 1361-9.)

Natal (Exclusion of representatives of newspaper).—On 27th May a resolution was taken by the Council (1958 Minutes, p. 23) regarding the action of Natal teachers who had suspended their extra-curricular duties. The debate was reported in the *Natal Witness* on 29th May. The language used in the report was such that Members of the Provincial Council took strong exception to the terms contained therein, and on 3rd June the privilege extended to the newspaper's representatives of attending sittings of the Council was withdrawn by the Acting Chairman (Mr. Lester E. Hall) because he considered that the newspaper's comments reflected adversely on the dignity of the Council and brought it into ridicule and contempt.

On 5th June (1958 Minutes, pp. 56-7) the Acting Chairman in a statement to the Council explained the action that he had taken. The action of the Acting Chairman evoked much criticism and comment in the Press. In the meantime, however, he had held discussions with representatives of the *Natal Witness* with a view to their apologising or retracting the statements made in the article complained of.

On 26th August the ban on the paper was lifted by the Acting Chairman, whose reasons for so doing were publicised by means of the following statement issued to the South African Press Association:

> On 29th May, 1958, the *Natal Witness* published a leading article which stated, *inter alia*, "it is hoped that the Provincial Council is by now feeling thoroughly ashamed of itself. For seldom, if ever, can there have been a more lamentable display of ignorance, folly, hysteria and sheer disingenuousness than was revealed by most of the speeches made on Tuesday about the dispute over teachers' salaries". The article then went on to accuse the

Provincial Council of making " entirely unscrupulous use of the ban on extra-curricular activities ". As these and other statements were a reflection on the Provincial Council of Natal and its proceedings, I requested the Managing Director of the newspaper, at a personal interview, to publish a retraction.

On 2nd June a further editorial appeared in which the leader writer, whilst admitting that he might have written his previous article with a little more restraint, refused to " retract a tittle of the substance of his criticisms ". I therefore considered that I was in duty bound to protect the dignity of the House by withdrawing, in conformity with well established Parliamentary practice, the privilege which the Provincial Council extends to representatives of the *Natal Witness* to attend sittings of the Council. Nevertheless, I continued my endeavours to find an amicable solution to the problem and arranged three further meetings with the representatives of the newspaper. The only tangible result was the publication of a leading article by the *Natal Witness* on 10th June which contained the statement that " the leading article of May 29th was written in anger and anger betrayed us, we acknowledge, into stronger language than we would normally use ". Whilst acknowledging a very unfortunate choice of words, this admission did not constitute a retraction, and could not be regarded by me as a satisfactory expression of regret, because serious issues were involved affecting the very institution of government in this Province. I therefore had no alternative but to continue the ban as the only effective expression of censure available to the Chairman of a Provincial Council.

I have now received a letter from the *Natal Witness* dated 20th August, reading as follows:—

" The *Natal Witness* having been informed by the then Acting Chairman of the Provincial Council of Natal that the ban on the attendance of its representatives at meetings of the Council was imposed because he (the Acting Chairman) took the view that certain sentences in the leading article of 29th May expressed contempt of the Provincial Council as an institution, is happy to assure the Chairman that it did not intend to hold the Provincial Council as an institution up to ridicule or contempt.

" The *Natal Witness* therefore expresses its regret if the use of the words complained of led to a misunderstanding of its real intentions."

As the remarks to which I objected specifically attacked the Provincial Council in addition to individual members thereof, there seemed to me little room for misunderstanding. Nevertheless, I am prepared to accept the explanation which the *Natal Witness* has now given and the apology expressed in the foregoing letter, without prejudice to the legal rights of individual Provincial Councillors. I have accordingly restored the privileges of the House to the representatives of the *Natal Witness* believing that the ban has now served its purpose.

(*Contributed by the Clerk of the Provincial Council.*)

Madras (Definition of the Precincts of the House).—Since the venue of the Assembly was shifted, on 15th February, the Speaker referred to the Committee of Privileges to consider and report on what constituted the " precincts of the House " with reference to the Legislative Assembly at Fort St. George. The Committee in its report to the Assembly expressed that—

(1) In the case of Members of the Legislative Assembly, " Precincts of the House " shall mean—

"(i) the entire Secretariat Buildings in the Fort St. George including the Assembly Chamber, and the rooms in which the associated offices are situ-

ated, the Ministers' rooms, the Library, the Canteen and the Lounge rooms; (ii) the Committee Room in the Old Legislators' Hostel; and (iii) the Library in the Government Estate, Mount Road, and such other places or buildings as might be named by the Speaker from time to time together with the verandas and steps to these buildings and the pathways leading from the Assembly Chamber to the other aforesaid buildings and shall be applicable only while the Assembly or any of its Committees or Sub-Committees sits and one hour before and after such a sitting."

(2) In the case of strangers "Precincts of the House" shall mean the Assembly Chamber with galleries, its verandas and steps, and shall be applicable only to those to whom tickets have been issued by the office for admission to the galleries.

(3) In the case of persons summoned by the Committee of the House for any purpose whatsoever, they shall be deemed to be within the "Precincts of the House" so long as they are within the Committee Room, its verandas and its steps.

The Report of the Committee was approved by the Assembly on 5th April.

(*Contributed by the Secretary to the Legislature.*)

4. The Chair

House of Commons (Refusal of closure by the Chair).—On 21st November, a Friday allocated to Private Members' motions, Mr. Francis Noel-Baker (Swindon) moved a motion on the advertising industry. Having drawn first place in the ballot he moved the motion at 11.4 a.m., four minutes after the meeting of the House, and continued to speak until 12.40 p.m. The Member seconding spoke for 26 minutes, so that it was not until 1.6 p.m. that the question upon the motion was proposed to the House by the Chair.

Shortly before 4 p.m., Mr. Noel-Baker asked whether Mr. Speaker would accept a motion for closure; but he declined to do so, and said:

I have to have regard to the hour at which the Question was proposed from the Chair and the number of hon. Members who want to speak. I would direct the hon. Member's attention to what he said himself in the course of an intervention at one o'clock, when he said there was not time enough for hon. Members to speak, and he asked whether there was any way in which the debate could be prolonged. I have given that matter thought. If the debate is now adjourned, the Question will remain on the Order Paper and may be revived in more favourable circumstances. The debate now stands adjourned.

On being asked whether it was not normal for closure to be granted after a full day's debate on private Members' day, Mr. Speaker added:

It has been refused before, I am informed. It is quite true that normally on a Friday I would grant the Closure, but in a debate which ran the normal course and occupied the whole day; but I have to take into account all the

circumstances of the matter. I do not think that it makes any practical difference actually, but I feel that I ought to say that in order to maintain the position of the Chair.

(595 *Hans.*, cc. 1503-1608.)

House of Commons (Use of casting vote).—On 12th March, during the report stage of the Maintenance Orders Bill, the House decided by 158 votes to 155 that a new clause proposed by the opposition should be read a second time. In the ensuing vote on the question "That the Clause be added to the bill" the voting was equal (153 votes each), and the Deputy Speaker (Sir Gordon Touche) gave a casting vote for the "noes" so as to preserve the *status quo*. (589 *Hans.*, c. 521.)

Shortly afterwards, when Mr. Speaker had returned to the Chair, Mr. Eric Fletcher (Islington), rising to a point of order, said that he had understood that the Deputy Speaker had given his casting vote with a view that in preserving the *status quo* he would vote in such a manner as not to make the decision of the House final. There would, however, normally be no further opportunity for debating the matter in the House before the bill was sent to another place, and Mr. Fletcher accordingly asked the Speaker to rule that there might be another opportunity, by the matter being put on the paper for another date, of discussing whether the new Clause was to be added to the bill or not.

Mr. Speaker replied:

I think that the hon. Member, if he will excuse my saying so, is mixing up two things. It is indeed one's duty in giving a casting vote so to cast it, if possible—if possible—so that the House shall have another opportunity of considering the matter. On the other hand, at this late stage in the progress of a Bill that is not always possible, and in this case it is not possible.

In these circumstances, another equally valid rule, supported by precedent, for the casting vote comes into play, and that Mr. Deputy-Speaker followed, and I myself should have followed it. It is that when a Bill has emerged from Committee in a certain form which is printed and in the hands of Members, and the House does not agree to alter that form, it is the duty of the occupant of the Chair, if there be a tie, to give his vote in favour of the Bill as it has emerged from Committee, because the House has not positively agreed to change it. That, I think, is the answer to the hon. Member.

Mr. Arthur Woodburn (Clackmannan and E. Stirlingshire) made the point that the Deputy Speaker, by voting as he did, had not left the matter as it had been previously, but had actually reversed a decision which the House had reached a few minutes earlier. To this Mr. Speaker replied:

The right hon. Member is, if I may say so, not correct in that. The first Question was, "That the Clause be read a Second time." On that, I understand, the Government were defeated. So that left the Clause read a Second time. But the point at which the House had to decide whether the Bill was to be altered or not was on the second Question, namely, "That the Clause be added to the Bill." That was the Question on which there was a tie. To have voted "Aye" would have altered the Bill, but to vote "No" was in

favour of the Bill as it had emerged; and that was what Mr. Deputy-Speaker did.

(*Ibid*, cc. 556-8.)

Nyasaland (Installation of Speaker).—On Monday, 10th February, the Legislative Council assembled at 9.30 a.m., whereupon the Speaker, Mr. Henry Wilcox Wilson, Q.C., B.A., LL.B., entered the Chamber preceded by the Clerk who escorted him to a seat on the Floor of the House on the right of the Chair. (Having been appointed with effect from the 17th January, 1958, and having taken the Oath of Allegiance, Mr. Speaker entered wearing his full-bottomed wig and Robes.)

His Excellency the Governor, the President of Legislative Council, was then announced, and having mounted the dais read the Prayer. The President then formally advised Council of the institution of the office of Speaker and of the appointment of Mr. Wilson, whom he introduced to Council with the following address:

As you will be aware, I have, under the provisions of Clause XIVA, subclause (1) of the Royal Instructions, appointed Mr. Henry Wilcox Wilson to be Speaker of the Legislative Council of the Nyasaland Protectorate for a period of three years from the 17th day of January, 1958.

The creation of the post of Speaker is, I know, generally welcome to you all, and it is my agreeable duty today, to introduce Mr. Wilson to you as your first Speaker. Mr. Wilson is a barrister-at-law who was appointed as a Magistrate in Tanganyika in 1929 and transferred to British Somaliland in 1935 as Legal Secretary. He was appointed Attorney General to the Northern Rhodesia Government in 1937 and served in that post until 1944, when he was transferred to Trinidad as Attorney General. In 1950 he was appointed to be a Puisne Judge in the Federation of Malaya, from which office he has recently retired and come to us. He is therefore a man who combines considerable judicial experience with an equally appreciable experience of service as Attorney General in Legislatures of the Commonwealth.

You will, I feel sure, be able to rely on him to preside over your deliberations not only with the firm impartiality which is essential to the performance of his duties but also with that sense of sympathy which stems from a true appreciation of your problems and aspirations.

I commend him to your confidence and wish him a most successful period of office as Speaker.

The Chief Secretary, Mr. C. W. Footman, C.M.G., then welcomed Mr. Speaker in the following words:

Sir, I feel sure that I speak on behalf of all the Honourable Members present when I say that we welcome Mr. Speaker's appointment, and we join with Your Excellency in wishing him every success.

The appointment of a Speaker represents a significant step forward in our deliberations of this Council, and as a Legislature we look to him to protect the rights of individual members and to foster in this Council those traditions of Parliamentary practice which we inherit from the Mother of Parliaments. We have every confidence that Mr. Speaker will not only most ably fulfil the duties of this office but in every way assist us individually, and on our part we offer him our very willing co-operation and such assistance as each one of us can give in the performance of the important duties which he has undertaken.

The Senior Unofficial Member, Mr. A. C. W. Dixon, then said:

Your Excellency, on behalf of the Unofficial Members of Legislative Council, I wish to extend to Mr. Speaker our very hearty welcome.

Mr. Speaker then replied as follows:

I am very conscious of the honour conferred upon me by my appointment as the first Speaker of this Honourable Council, and I am deeply grateful for the very kind expressions of welcome which have been addressed to me this morning.

I am equally conscious of the responsibility of the duties which will fall upon me and I trust that I may earn your confidence, both in me and the office, because confidence in the impartiality of the Speaker is an indispensable condition of the successful working of the Council.

I desire to add that in the course of my duties in serving this Council I shall always be ready and willing to give advice to any Honourable Member who seeks to consult me privately upon any action he may propose to take in the Council or upon any questions of order which are likely to arise in its proceedings. I thank you.

Council adjourned at 9.40 a.m., and the President then withdrew. Council re-assembled at 9.50 a.m., Mr. Speaker in the Chair. Normal business ensued.

(*Contributed by the Clerk of the Legislative Council.*)

Gibraltar (Appointment of Speaker).—By virtue of the Gibraltar (Legislative Council) (Amendment No. 2) Order in Council, 1956 (see THE TABLE, Vol. XXV, p. 133), the Governor is empowered to appoint a person to be Speaker of the Legislative Council, which is thereby reconstituted as follows:

(*a*) The Governor, who shall be the President of the Council;
(*b*) the Speaker, if any;
(*c*) three *ex-officio* members;
(*d*) two Nominated Members;
(*e*) seven Elected Members;
(*f*) such Temporary Members as may be appointed under Section 13 of the Gibraltar (Legislative Council) Orders in Council, 1950 and 1956 (see THE TABLE, Vol. XIX, p. 238).

The new Section 14 of the Order in Council provides that

there shall preside at sittings of the Council—

(*a*) the Governor;
(*b*) in the absence of the Governor, the Speaker; or
(*c*) in the absence of the Governor and the Speaker, such member of the Council as the Governor may appoint.

The first Speaker—The Honourable Major Joseph Patron, O.B.E., M.C., J.P.—was appointed for a period of one year with effect from 24th May, 1958. He first presided over a meeting of the Council on 27th June, when he was welcomed by the Senior Elected Member and by the Colonial Secretary on behalf of the Unofficial and Official Members respectively.

Major Patron, who is 63 years of age, rendered valuable services in an honorary capacity during the war years in connection with the Gibraltar Evacuation Scheme, being appointed by the Governor as Commissioner for Gibraltar Evacuees in the United Kingdom and also corresponding member of the Board of District Commissioners in Gibraltar.

In 1944, after his return to Gibraltar, he was appointed an Unofficial Member of Executive Council, in which capacity he served until 1947. During the period prior to 1950 he twice led delegations to London on local matters, particularly in relation to finance.

He successfully stood for election to Gibraltar's first Legislative Council in 1950, but did not stand for re-election when the Council was dissolved, prior to re-election, in 1953.

(*Contributed by the Clerk of the Councils.*)

5. Order

House of Commons (Restrictions on debate on a supply day).—On 27th March a ballot was held for notices of amendments to be moved by private Members to the question "That Mr. Speaker do now leave the Chair" on first going into Committee of Supply on the Civil Estimates. The first Member successful in the ballot was Mr. Lagden (Hornchurch), who announced that he proposed "to call attention to the powers of chief constables". (585 *Hans.*, c. 598.) The exact terms of the amendment subsequently handed in by Mr. Lagden were as follows:

> That an inquiry is desirable into the personal powers, capacities and previous training which influence the selection and appointment of chief constables, having regard to their far-reaching authority and their relations with Her Majesty's inspectors of constabulary and the public in general.

On 25th April (the sitting day previous to that on which the debate was due to take place) Mr. Lagden, rising to a point of order, said that he had received a communication from the Speaker to the effect that his motion went beyond the terms of his oral notice; he asked whether, if he rephrased his motion so as not to go beyond its original terms, he could then expect that it would not be ruled out of order. Mr. Speaker replied:

> The hon. Member was successful in the Ballot and gave notice that he would draw attention to the powers of chief constables. At that time, I had doubts whether that would be an appropriate subject to discuss on Supply because of the possibility of legislation, but I had to wait until the hon. Member expanded his Motion. This he has done with great ingenuity, I must say, but, nevertheless, he has expanded it to deal with matters about the appointment and selection as well as the powers of chief constables. The Motion also deals with their personal qualifications. These matters go beyond the terms of his notice.
>
> In a Motion of this sort that the hon. Member seeks to move as an Amendment in Supply there are three hurdles which he must surmount. The first is that the terms of the Amendment which he proposes to the House must be

within the terms of the notice which he has given. If it exceeds those terms, it is out of order. The second hurdle is that, this being Supply, the subject raised must be one for which a Minister is responsible. The third hurdle is that the grievance must not involve legislation for its remedy.

The hon. Member fell down on the first of these hurdles. He now asks me how he can deal with the matter which he wishes to raise and, at the same time, keep in order. I know the subject matter, because the hon. Member made a most gallant but unsuccessful effort to raise it on the Adjournment on 29th May last. I remember the circumstances perfectly well.

The crux of the hon. Member's difficulty is that the control of local police forces and chief constables is in the hands of the local authority. It is a question of considerable controversy whether that should be changed so as to make a Minister in this House responsible for them. That would mean legislation. At present, the Home Secretary's powers do not include responsibility for local police forces.

The Speaker then suggested that it would be in order for Mr. Lagden to raise the matter either by bringing in a bill to amend the existing law or by moving a substantive motion on a day when private Members' motions had precedence. (586 *Hans.*, cc. 1293-5).

New South Wales: Legislative Council (Parliamentary Expressions).—A motion for the appointment of a Judge of the Supreme Court to inquire into allegations against the New South Wales Police Force was made by the Honourable Gertrude Melville, M.L.C. An hon. member opposing the motion, in the course of his speech, said:

All they are seeking—like the Hon. Gertrude Melville—is consciously or unconsciously to assist those who would destroy Labour.

Mrs. Melville took a point of order and asked the hon. member "to withdraw that statement as she had done nothing of the kind". The President ruled that the hon. member should withdraw the word "consciously". The hon. member said: "I apologise if I said 'consciously'—if I used the term I humbly apologise."

Later, in the same debate, an hon. member said:

After listening to the speeches of the learned gentlemen opposite I am beginning to agree with them. This debate has clearly upheld the views expressed by the bishops at the Lambeth Conference in London, who made a certain pronouncement along certain lines. My only regret is that that pronouncement had not been made many years ago and practised much more extensively. . . .

Here an hon. member took a point of order, stating:

I ask . . . (the hon. Member) to withdraw his remark. He has made a suggestion that the bishops of the Anglican Communion spoke about birth control and that their views should have been applied years ago. I consider that that is conduct which is most unworthy of a . . . (Member) and ask that he withdraw his remark immediately because it reflects upon the religion to which I belong.

The President called for Order and said:

The . . . (Member) has been asked to withdraw the statement that he made on the grounds that it offends the religious beliefs of an hon. Member.—(*N.S.W. Parl. Deb.*, Vol. 24, 1958, pp. 496-7.)

(*Contributed by the Clerk of the Parliaments.*)

6. Procedure

House of Commons (Count on a Friday).—On 16th May, a Friday devoted to the consideration of private Members' bills, Captain Hewitson (Hull, West), rose at 12.59 p.m. to draw the attention of the Chairman to the fact that there was not a quorum present. The Chairman (Sir Charles MacAndrew) replied:

> I am sorry, but a count cannot be called before One o'clock.

Reference to this incident being made by another Member in a speech in the debate on a subsequent bill, Sir Charles MacAndrew observed:

> I think I should make it clear to the House that I made a mistake. A count was called at one minute to One o'clock. After a lapse of two minutes. I could have counted the House, which would have brought it after One o'clock. I think that it was my mistake in not allowing it. I apologise.
>
> (588 *Hans.*, cc. 817, 843.)

House of Commons (Exclusion of Strangers).—On 18th November, during the committee stage of the Representation of the People Bill, Mr. George Wigg, having failed to secure the acceptance by the Chair of a motion to report progress, drew the Chair's attention under S.O. No. 105 to the fact that strangers were present. In accordance with the provisions of that Standing Order the Chairman at once put, without debate, the question "That strangers do withdraw", which, no dissentient voice having been heard by the Chair, was agreed to. The Chairman accordingly ordered the galleries to be cleared.

The Leader of the House, rising to a point of order, averred that one of the government whips had in fact said "No" when the question was put; this matter was still being discussed at 8.27 p.m. when the Official Reporters left the box, and the record of the debate ceased. (595 *Hans.*, cc. 1116-8). The decisions of the House during the remaider of the sitting were, of course, published in the normal manner in the Votes and Proceedings (pp. 60-62).

After their first withdrawal, the Official Reporters were readmitted into the Gallery for a few minutes, but then again excluded; no report of the debate during this readmission was published in *Hansard*.

On the following day, Mr. Speaker confirmed, in answer to a question by Mr. Shinwell, that the Official Reporters had been correctly excluded, according to the procedure adopted on the last occasion, on 2nd December, 1925 (188 *Hans.*, c. 2462). He said:

> If the *Hansard* reporters were here after the Committee had decided that strangers should withdraw, they were here improperly and against the order of the House. It was proper that any notes which they took should not be printed in the Official Report. . . . I am obliged to the hon. Member for making that clear. I was not here myself, but I understand that the Official Reporters came back at the invitation of the Committee, or of the Chairman or someone, but that that was speedily corrected as an error. It was no fault

of the reporters. I am glad to make that perfectly clear. (595 *Hans.*, cc. 1149-51.)

On 25th November, in answer to questions by Members suggesting that S.O. No. 105 might be amended in various respects, the Prime Minister answered that he thought that this was a matter which might well be considered by the Select Committee on Procedure then sitting (526 *Hans.*, c. 220).

The matter was so examined by the Committee, and their recommendation was as follows:

> We have been asked to consider Standing Order No. 105 in the light of the operation of this order during the current session. It has been suggested that the Chair should no longer be required to put the question for the withdrawal of strangers "forthwith", but that some preliminary conditions, perhaps on the lines of Standing Order No. 9, might be required to be satisfied before the question is put. We are, however, satisfied that the provisions under the present standing order, if applied, are adequate to meet emergencies of this kind. (H.C. 92, 1958-59, para. 54.)

House of Commons (Interruption of debate by opposed private business).—On 3rd March, the second reading of private bills to which objection had several times been taken, was set down by the Chairman of Ways and Means under S.O. No. 7(4) for seven o'clock. At that hour a Minister had just concluded his speech on an opposition motion relating to the Rent Act, 1957, and, no one else then offering to speak, Mr. Speaker put the question and the motion was negatived on division. The first of the two bills was then read a second time after less than twenty minutes debate; but the Manchester Corporation Bill, which was by far the more controversial of the two, was given its second reading without debate, and the House thereupon proceeded to a debate on the adjournment. (583 *Hans.*, cc. 908-22.)

On the following day, before the commencement of public business, Mrs. Braddock (Liverpool, Exchange) observed that at five minutes to seven on the previous day many Members on both sides of the House had still been desirous of speaking on the consequences of the Rent Act, and asked whether on future occasions, when it was known by the Chairman of Ways and Means before seven o'clock that debate on a bill which he had set down for that hour would not be prolonged, the standing orders might not be suspended and the previous debate allowed to continue. Mr. Speaker replied:

> The duty of putting down opposed Private Business for discussion at seven o'clock is entirely a matter for the Chairman of Ways and Means, and not for me. The duty is laid on him by the Standing Orders. The hon. Lady will realise that any sort of criticism of the Chairman of Ways and Means must be made in the form of a substantive Motion and cannot be raised in this way, or on the Adjournment. All I can tell the hon. Lady is that when I rose at the conclusion of the speech of the Secretary of State for Scotland last night . . . I looked round to make certain that no other hon. Member was waiting to speak. Out of the corner of my eye I saw an hon. Member

standing in the Gangway by the door. It was, in fact, the hon. Member for Bothwell (Mr. Timmons), but when I looked more carefully, I found that his erect posture was due not to his desire to speak, but so that he might be in a favourable position to enter the Division Lobby. Therefore, there being no hon. Member offering to speak, it was my duty to put the Question, which I did. That is all I am concerned with, and there is nothing more I can do about it.

May I say, also, that when we came to the Manchester Bill and I put the Question "That the Bill be now read a Second time," it was a great surprise to me that no one rose to oppose the Bill. (*Ibid*, cc. 974-6.)

Southern Rhodesia: Provision for earlier meeting during adjournment.—For many years, when the House adjourned for a period of months, a motion was adopted adjourning until a specified day, with a proviso that if he were satisfied the public interest so required Mr. Speaker, after consultation with the Prime Minister, could advance or postpone the day for resumption. The request for a change in this date, when it was made, always came from the Government.

A new Standing Order No. 251A has been adopted to provide only for meeting on an earlier day, on the lines of the House of Commons Standing Order No. 112 (V.P., 1958, p. 71).

(*Contributed by the Clerk of the Legislative Assembly.*)

Nyasaland (Closure).—By an amendment to S.O. No. 72, made on 1st December, an alternative form of closure was introduced—namely, a motion "That the mover be called upon to reply", to be used in all cases except when the Council was in Committee or the mover has no right of reply. On such a motion being carried, the mover is called on immediately to reply to the debate, and the question is put either at the conclusion of his speech or, if he signifies that he does not wish to reply, forthwith.

The same amendment also provides that a majority consisting of not less than eight Members is necessary to make a closure motion effective. (Nyasaland Government Notice No. 208.)

Nyasaland (Procedure on Divisions).—By an amendment to S.O. No. 62A, made on 30th June, discretion is given to the Speaker or Chairman to direct the closing of the Bar of the Chamber and the taking of a division forthwith, if satisfied that all Members of the Council were present. A lapse of at least five minutes had previously been mandatory in every case. (Nyasaland Government Notice No. 105.)

7. Standing Orders

Saskatchewan (Revision of Standing Orders).—A Select Special Committee of the Legislative Assembly was appointed on 8th March 1957:

to consider with Mr. Speaker the Standing Orders and procedures of the Assembly for the purpose of suggesting any changes therein which may be

desirable to assure the more expeditious dispatch of public business. (Journals, 1957, p. 73.)

The Committee, reporting to the Assembly on 5th April, 1957, recommended major changes as follows: (1) placing time limits on the duration of the debates on the Address in Reply and the Budget; (2) according precedence to the debates on the Address and the Budget until their conclusion, as the first order of business after Questions on the daily Order Paper. The Committee recommended further that, should the revised Standing Orders be approved by the Assembly, they become effective at the next ensuing (1958) Session of the Legislature (Journals, 1957, p. 154).

Following consideration in a Committee of the Whole, the Committee's recommendations were adopted without amendment, and the revised Standing Orders went into effect with the opening of the 1958 Session.

The limitations on the duration of the two major debates followed those of the relevant Standing Orders of the Canadian House of Commons which, adopted at the 1955 Session of Parliament, became effective in 1956.

The new Standing Order 30 provides:

(1) that proceedings on the Order of the Day for resuming debate on the motion for the Address in Reply to the Speech from the Throne, and on any amendments proposed thereto, shall not exceed seven sitting days;
(2) that thirty minutes before the ordinary time of daily adjournment on the fourth day, Mr. Speaker shall interrupt proceedings and put the question on any sub-amendment then under consideration;
(3) that thirty minutes before the ordinary time of adjournment on the sixth day, Mr. Speaker shall put the question on any amendment or amendments then before the Assembly;
(4) that thirty minutes before the ordinary time of adjournment on the seventh day, unless the debate be previously concluded, Mr. Speaker shall put forthwith every question necessary to dispose of the main motion.

The debate on the Budget is limited to eight sitting days, not including the day on which the Provincial Treasurer delivers his annual Budget Address. The relevant Standing Order 46 provides that, on the eighth day, at thirty minutes before the ordinary time of daily adjournment (unless the debate be previously concluded), Mr. Speaker shall interrupt proceedings and forthwith put every question necessary to dispose of the motion, That Mr. Speaker do now leave the Chair (the Assembly to go into Committee of Supply). The Standing Order further provides that, subsequently, on the Order being called for Committee of Supply, Mr. Speaker shall leave the Chair without question put. It should be noted that, under Standing Order 37, only one amendment and one sub-amendment may be made to the motion for Mr. Speaker to leave the Chair for the Assembly to go into Committee of Supply or of Ways and Means.

Other considerations besides that of "expediting public business" influenced acceptance of these Standing Orders by the Assembly. Perhaps most cogent of these was (and is) the fact that the first seventy-five minutes of each day's proceedings after Questions are broadcast province-wide by radio for the duration of the two major debates of each Session. That is to say, the Legislative Assembly is "on the air" from 2.45 p.m. to 4.30 p.m. daily from the commencement of the Throne Speech debate to the end of the Budget debate. It had become normal procedure, therefore, for both debates to be treated as Special Orders and, by general consent, accorded priority next after Questions on the Orders of the Day. This applied on Private Members' days as well as on Government days. Radio time is apportioned on the basis of Party standings in the House, the Party Whips being responsible for allocation of time to individual members (Journals, 1957, p. 45).

Broadcasting of part of the daily proceedings has had other than procedural effects. It tended to make each Session follow a fairly well-defined pattern, which the new Standing Orders tend to make more rigid. Heretofore, the terminal day of the Budget debate was a variable, a fact which had to be considered in making arrangements with the broadcasting companies. Now, however, the terminal day may be calculated fairly accurately in advance of the Session, and thus firm contracts for radio time may be made. These contracts more or less dictate the pattern of the Session. If (as is customary) the House opens on a Thursday, the Throne Speech, barring the unexpected and unforeseen, must end on the Wednesday of the second week thereafter, the Budget Address will be delivered on the Friday following, and thus must terminate on the Wednesday of the fourth week at 5 p.m., since the House adjourns at 5.30 p.m. on Wednesdays under Standing Order 5 (2).

Whether or not it will be possible to maintain the rigidity of pattern imposed by this *quasi* "guillotine", particularly with respect to the Budget, already is a moot question. A future Provincial Treasurer might find the commitment irksome that he deliver his Budget Address on the Friday of the fourth week of each Session. It has become evident, too, that an astute Opposition can so take advantage of the fixed hour of the fixed day for termination of the Budget debate, as to deprive the Provincial Treasurer of any opportunity to exercise his right to reply to criticism of his Budget (Journals, 1959, pp. 111, 119).

Again, other pressures, already manifest, may distort the "perfection" of the pattern. Normally, the Assembly meets an average of 40 sitting days from mid-February, and there are those who advocate that the House should meet in November, dispose of the Throne Speech debate before a Christmas recess, and reassemble in February for the Budget and legislative session. They argue that thus the House will have more time for consideration of the estimates and of

proposed legislation, and to devote to the Committee work which increasingly becomes more arduous with the expansion, and growing complexity, of Government activities (Debates and Proceedings, 1959, No. 24, p. 2; No. 26, p. 2).

(*Contributed by the Clerk of the Legislative Assembly.*)

India: Lok Sabha (Amendments to Rules of Procedure).—The following further amendments (L.S. Bulletin, Part II, No. 1443) were made to the Fifth Edition of the Rules of Procedure and Conduct of Business in Lok Sabha:

(1) The term "Lok Sabha Secretariat/Secretariat" was defined in rule 2 as follows:

> "Lok Sabha Secretariat/Secretariat" means and includes the Lok Sabha Secretariat at Delhi and any Camp Office set up outside Delhi for the time being for, or under the authority of, the Speaker.

The definition was based on the consideration that it might sometimes be necessary to set up a Camp Office of the Secretariat outside Delhi with the approval of the Speaker.

(2) Rule 214 made it obligatory upon the Speaker to allow discussion on vote on account. An amendment was made to this rule in order to give a formal basis to a well-established convention that such discussion may be permitted in the discretion of the Speaker.

(3) Certain drafting changes were made in some of the rules relating to Business Advisory Committee and Committee on Private Members' Bills and Resolutions and they were also brought in conformity with the prevailing practice and procedure.

(4) By an amendment to Rule 367 provision is made for an alternative method of recording votes—namely, by automatic vote recorder. A new Rule 367 A sets out the details of this procedure as follows:

> (1) Where the Speaker directs under clause (*c*) of sub-rule (3) of rule 367 that the votes be recorded by operating the automatic vote recorder, it shall be put into operation and the members shall cast their votes from the seats respectively allotted to them by pressing the buttons provided for the purpose.
> (2) After the result of the voting appears on the indicator board, the result of the Division shall be announced by the Speaker and it shall not be challenged.
> (3) A member who is not able to cast his vote by pressing the button provided for the purpose due to any reason considered sufficient by the Speaker, may, with the permission of the Speaker, have his vote recorded verbally by stating whether he is in favour of or against the motion, before the result of the Division is announced.
> (4) If a member finds that he has voted by mistake by pressing the wrong button, he may be allowed to correct his mistake, provided he brings it to the notice of the Speaker before the result of the Division is announced.

A new Rule 367B sets out the details of the ordinary division procedure which were formerly contained in Rule 367.

(5) It was considered necessary that power should be specifically given to the Speaker to proceed initially against any stranger who was seen, or was reported to be, in any part of the precincts of the House which was reserved for the exclusive use of members, or who having been admitted into any portion of the precincts of the House, misconducted himself or wilfully infringed the regulations made by the Speaker to be observed by strangers in the galleries while the House was sitting or who did not withdraw when the strangers were directed to withdraw. Accordingly, a new rule 387A was incorporated providing that " an officer of the Secretariat authorised in this behalf by the Speaker shall remove from the precincts of the House or take into custody " any such stranger.

(*Contributed by the Secretary of the Lok Sabha.*)

Madhya Pradesh (Modifications to the Rules).—By a Notification (No. 276/B/LA/58) dated 9th January, the Speaker further modified the Rules of the Vidhan Sabha in the following respects:

(1) *Questions:* By an amendment to Rule 33 Members are now restricted to eight Questions per day, of which not more than three may be oral (there had previously been no restrictions on the number of written questions). A new Rule 35A provides that questions called for oral answer, but not asked owing to the Member's absence, shall be given a written answer on that day. Additional paragraphs to Rule 37 provide that questions shall not (i) be asked about matters pending before statutory tribunals, (ii) suggest their own answer or convey a point of view and (iii) purport to make a suggestion.

By an amendment to Rule 53 the Speaker, when deciding to allow a discussion on a matter of public importance arising out of an answer to a question, is restrained from admitting a notice which seeks to revise the policy of the Government.

An amendment to Rule 176 provides that notices of questions may no longer be carried over from one Session to another.

(2) *Adjournment Motions on matters of urgent public importance:* Notice of such motions must now be given two hours (instead of one hour) before the commencement of business (Rule 55), and must not canvass matters pending before a statutory tribunal (Rule 56).

(3) *Petitions:* By an amendment to Rule 94, petitions may now be related to matters other than bills, provided that they are not matters falling within the cognisance of a court of law or a statutory tribunal, or which can be raised on a substantive motion, or for which a remedy is available under the law. A new Rule 96A provides that letters, affidavits or other documents may not be attached to petitions. The Committee on Petitions is enjoined by an amendment to Rule 105 to report to the House on the substance of complaints appearing in petitions and to suggest remedial measures.

(4) *Resolutions:* Resolutions may not have reference to matters pending before statutory tribunals (Rule 116).

(5) *Calling Attention:* A new Chapter (XI) was added, entitled

"Calling Attention", and consisting of one new Rule (No. 127A), as follows:

(1) A Member may, with the previous permission of the Speaker, call the attention of a Minister to any matter of urgent public importance and the Minister may make a brief statement or ask for time to make a Statement at a later hour or date.
(2) There shall be no debate on such statement at the time it is made.
(3) Not more than one such matter shall be raised at the same sitting.
(4) In the event of more than one matter being presented for the same day, priority shall be given to the matter which is, in the opinion of the Speaker, more urgent and important.
(5) The proposed matter shall be raised after the questions and before the list of business is entered upon and at no other time during the sitting of the House.

(6) *Rules Committee:* Rule 230 was completely redrafted so as to provide that all recommendations of the Rules Committee shall be deemed to have been approved by the House unless amendments thereto are proposed within seven days of the tabling of the Committee's report. Any such amendments are considered and reported on by the Committee, and its subsequent Report must be agreed to by the House on a motion.

Mysore (Revision of Rules of Procedure).—A new edition of the Rules of Procedure and conduct of Business in the Mysore Legislative Assembly was adopted by the Assembly on 17th November 1958, and published the following day in the Mysore Gazette Extra ordinary (Part IV, 2A, No. 161).

In the new Rules the Procedure regarding questions has been changed. The practice of receiving questions throughout the year as in the past has been given up. According to the new rules, questions will relate only to each Session and no member can give more than 10 starred questions for a Session. The number of unstarred questions will be unlimited. A duty is cast on the Government to furnish replies within 15 days from the date of their receipt by them. In special cases, where the delay is inevitable, Government have to communicate to the Speaker the reasons for the delay and in no case should the answer be delayed beyond 30 days.

The procedure regarding resolutions has also been simplified and we have followed Lok Sabha Rules in this regard. Notice of resolutions has to be given in respect of each day allotted for non-official resolutions instead of for an entire Session as in the past.

The provisions relating to Committees have now been brought under one chapter. Provision has been made for the constitution of the Subordinate Legislation Committee which was not in existence before.

We have also tried to improve the arrangement of the several provisions in the rules, closely following the Lok Sabha Rules.

(*Contributed by the Secretary of the Legislature.*)

Kenya (Standing Orders: Amendments).—With the coming into

force of the new Constitution in April, 1958 (see p. 138), certain amendments became necessary. The principal of these related to the action to be taken on receipt of a statement by the Council of State with respect to any Bill under section 56 of the Kenya (Constitution) Order in Council, 1958.

The opportunity was also taken later in the year to bring the Standing Orders in respect of Private Bills into line with those in respect of Public Bills so far as was possible having regard to the necessity to ensure that, with regard to Private Bills,

(*a*) citizens who might be affected should be given notice,
(*b*) the Council retained control over Private Bills by means of the petition for leave, and
(*c*) security was given to cover the costs of printing.

In view of the considerable changes which have taken place in the Constitution of the Council a new issue of the Standing Orders has been prepared which has incorporated in it the full text of all legislation touching upon the Legislative Council and its Members.

(*Contributed by Mr. A. W. Purvis, formerly Clerk of the Legislative Council.*)

Nigeria: Northern House of Assembly (Amendments to Standing Orders).—On 13th December the House agreed to a number of amendments to its standing orders (5 *Nigeria N.R. Assem. Hans.*, cc. 965-7). Their purport was as follows:

Speaker: The word "Speaker" was substituted for "President" throughout, in consequence of the recent constitutional provision for an elective Speaker.

House Committee: By an amendment to S.O. No. 56, the House Committee, whose function is to advise the Speaker upon all matters connected with the comfort and convenience of Members, including matters concerning the Library, is now obliged, on any matter of mutual concern, to consult with the House Committee of the House of Chiefs.

In a recess, and at times when it was impracticable for the House Committee to meet, that Committee's functions were formerly exercised by the Joint Standing Committee on Finance. This latter Committee, owing to the passing of the Control and Management of Public Finances Law, 1958, is now shorn of most of its functions and rarely meets; amendments to S.O.s Nos. 56 and 67 therefore provided that the function of the House Committee during recesses should instead be performed by a committee of one Minister and three Parliamentary Secretaries, nominated by the House Committee at the beginning of each Session.

Sierra Leone (Revision of Standing Orders).—A revised edition of Standing Orders was introduced in February, 1958, but this served only as an interim measure, for although these Rules were a considerable improvement on the previous ones, they still needed much

extension and clarification. Accordingly a complete redraft of Standing Orders for the Sierra Leone House of Representatives was undertaken by Mr. D. W. S. Lidderdale, Fourth Clerk at the Table in the United Kingdom House of Commons. This new draft was adopted by the Sierra Leone House of Representatives on the 11th December, 1958, after it had been passed, almost in its entirety, by the Standing Orders Committee. The new Orders were approved by the Governor and brought into force as from 1st January, 1959, pursuant to Article 38 of the Sierra Leone (Constitution) Order in Council, 1958 (S.I., 1958, No. 1259; see also p. 89). About the only major point of difference between the Lidderdale draft and the final version of the Standing Orders now in use is in the procedure for voting supplementary financial expenditure. In the draft (S.O. 69) proposals for such expenditure were to be discussed in the House —*i.e.*, in Committee of Supply. This procedure was similar to that for ordinary annual expenditure, and would involve the disappearance of the Standing Committee on Finance. Local opinion, as shown in the current S.O. No. 70(7), weighed in favour of retaining the provision for a Supplementary Financial Provisions Committee as a more workable procedure in present circumstances.

(*Contributed by the Clerk of the House of Representatives.*)

8. Financial Procedure

Tasmania (Financial privilege of lower House).—In the Constitution Act of Tasmania (1934, Act No. 94) the following provisions exist concerning money bills and the relations between the two Houses:

37. *Money Bills to originate in the Assembly.*—(1) A vote, resolution, or Bill for the appropriation of any part of the revenue, or for the imposition of a tax, rate, duty or impost, shall originate in the Assembly.

(2) . . . . . .

38. *All money votes to be recommended by the Governor.*—It shall not be lawful for the Assembly to originate or pass any vote, resolution or Bill, for the appropriation of any part of the revenue, or of any tax, rate, duty or impost, for any purpose which shall not have been first recommended to it by the Governor during the session in which such vote, resolution or Bill shall be passed.

45. *General powers of the Council and the Assembly.*—Except as otherwise expressly provided in this Part, the Council and the Assembly shall, in all respects, have equal powers.

The interpretation of these provisions was called into question during the session of 1958 as a result of the passage by the Legislative Council of the Administration and Probate Bill, 1958 (Bill No. 94).

On 27th November the House of Assembly, having received the Bill, came to the following Resolution on a motion by the Premier:

That in the opinion of this House the Administration and Probate Bill, 1958 (No. 94), received from the Legislative Council, constitutes a breach of the privileges of this House in that such a Bill should have originated in this House because its effect would be to reduce the incidence of tax in respect to certain deceased persons' estates and consequently could operate in such a manner as to reduce the amount of revenue to be derived by the State from that source of taxation; but having regard to the intent of the Bill, this House agrees to waive its privileges without thereby establishing a general precedent.

The House then ordered the transmission of the Resolution by Message to the Legislative Council (Assem. V. & P., p. 261).

When the Message was received by the Legislative Council on 2nd December, the President (Mr. G. H. Green) made the following statement:

Before putting the Question that the Message be taken into consideration, I feel it my duty to inform the Council of certain matters relating to the Bill.

After Bill No. 94 had been introduced by the Honourable the Member for Derwent, I considered whether there was any valid objection to the measure originating in the Council.

I came to the conclusion that because Section 45 of the Constitution Act defined the Council's powers and Section 37 only applied to Bills, etc., to appropriate revenue or impose taxes, duties, etc., the Bill referred to could be proceeded with.

I would mention that Bill 94 amends an Act relating to the " Administration of Estates of Deceased Persons ", in which Act there is not one reference to tax, rate, duty, or impost.

After the Bill was transmitted to the House of Assembly I had knowledge of discussions in the Lobbies on the subject, and I then decided to obtain an opinion from the Crown Law Department in case I had overlooked some aspect restricting the Council's functions.

I will ask the Clerk to now read the Crown Law opinion dated 24th November, furnished to me.

The opinion, signed by the Solicitor-General, was then read by the Clerk of the Council, as follows:

Mr. Dixon, M.L.C., has brought in a Bill to amend the Administration and Probate Act, 1935. The purpose of the Bill is to amend Section 44 of the Principal Act by raising the amount that will go to a surviving spouse from the residuary estate of an intestate from £1,000 to £5,000. Should this Bill become law the result would appear to be that in relation to some estates there would be a reduction in the amount of duty that would otherwise go to the State Treasury under the Deceased Persons' Estates Duties Act, 1931. In these circumstances the question arises whether it is constitutionally lawful for the Bill to originate in the Legislative Council.

There is a passage in *May's Parliamentary Practice* (16th Edn.) at p. 806 which *prima facie* appears to be in point and I quote in full:—

" Stated generally, the Commons claim privilege in respect of national taxation and expenditure, and in respect of local rates and charges upon them. They do not claim privilege in respect of sectional funds, such as Church revenues, even if publicly administered. But with regard to those charges in respect of which they claim privilege, the Commons treat as a breach of privilege by the Lords not merely the imposition or increase of such a charge but also any alteration, whether by increase or reduction, of its amount or of its duration, mode of assessment, levy, collection, appropriation or management; and, in addition, any alteration in respect of the

persons who pay, receive, manage, or control it, or in respect of the limits within which it is leviable. In short, any interference by the Lords in matters, in respect of which privilege is claimed, is treated by the Commons as an infringement of privilege."

The question is whether the United Kingdom practice stated above has any application in Tasmania on the question of the House in which the Bill should originate, having regard to the provisions of the Constitution Act, 1934 .

Except as otherwise expressly provided in Part IV, the Council and the Assembly have equal powers in all respects (Section 45).

Section 37 provides that a vote, resolution or Bill for the appropriation of any part of the revenue or for the imposition of a tax, rate, duty or impost shall originate in the Assembly. Mr. Dixon's Bill is clearly not a Bill for the appropriation of any part of the revenue. Can it be said to be a Bill " for the imposition of a tax, rate, duty or impost?" I do not think it can.

Mr. Dixon's Bill is a Bill to amend the Administration and Probate Act, 1935, and the effect of it is to raise the amount which a surviving spouse shall be statutorily entitled to from the residuary estate of an intestate. Any diminution of duty payable to the Treasury under the Deceased Persons' Estates Duties Act, 1931, is an indirect result only.

In an opinion given to the Secretary to the Attorney-General's Department on 12th October, 1954, my predecessor (the present Chief Justice) expressed the view that Section 38 (which also deals with Bills for the imposition of any tax, rate, duty or impost) should be construed as applying only where it is intended to impose a new tax or increase an existing tax. On this basis he advised that Section 38 does not constitute a bar to a private member introducing a money Bill if its effect is to reduce an existing tax. His opinion supports the view that I am taking but in any event in the case of the Bill that you have referred to me the effect upon the duty is a indirect one only and I do not think the " imposition " of a duty is involved within the meaning of Section 37. (L.C., V. & P., pp. 150-1.)

On 3rd December the Message of the House of Assembly was formally considered by the Council, and the following motion was moved by Mr. Dixon:

That this Legislative Council firmly holds the opinion that it was within its Constitutional rights in originating a Bill in the Council to amend the Administration and Probate Act, 1935, it not being a measure in any way coming within the restrictive sections of the Constitution Act.

Secondly, that as the Council acted within its Constitutional rights as defined by statute, no breach of privilege can arise, or has arisen, as claimed by the House of Assembly.

Thirdly, that this Council accepts with complete confidence the opinions furnished by the present and former Solicitors-General confirming the Council's action.

During the course of the Debate Mr. Dixon was granted leave to amend his motion by the omission of the final paragraph, and the motion, so amended, was agreed to (*ibid.*, p. 157).

Nyasaland (Financial Procedure).—Amendments made to Standing Orders on 30th June made certain modifications to financial procedure. An added function was given to the Finance Committee—namely, the examination of the reports of the Accountant General and the Comptroller and Auditor General on each year's accounts (S.O.s 136 and 137A). Provision was also made for the Estimates to

be presented in two parts, relating respectively to Revenue Account and Development Account, with a separate Appropriation Bill in respect of each (S.O.s 142, 148). Minor consequential amendments were also made to S.O.s Nos. 137, 139, 143, 145, 146 and 147. (Government Notice No. 105).

Nigeria: House of Representatives (Financial Procedure).—Two changes were made in 1958 to the Standing Orders of the House of Representatives which concerned financial procedure. The first was the repeal, on 9th August, of S.O. No. 66 and the consequent abolition of the Standing Committee on Finance, which had formerly been set up to consider any proposals for supplementary expenditure. Secondly, on 27th November, S.O. No. 67 (which relates to the initiation of financial measures by the recommendation of the Governor-General) was amended in such a way as to define more clearly the measures involved and to provide explicitly that the judgment as to whether any measure falls in that category rests with Mr. Speaker or other person presiding.

9. Bills, Petitions, etc.

House of Commons (Motions for leave to introduce bills).—(i) *Extent of notice:* On 5th February the House, on division, refused leave to bring in a bill modifying in certain respects the Rent Act, 1957, a measure passed earlier in the Session. On a point of order Mr. John Hay (Henley) observed that the House had received less than a day's notice of this motion, and asked whether it was not in accordance with the practice of the House that longer notice should be given of motions of this kind. Mr. Speaker replied:

> The hon. Member raises a point on which the Standing Orders give no guidance at all. A Motion of this sort, which is taken at the commencement of public business, or before public business, requires no notice, except that notice shall be given in time for it to appear on the Order Paper for that day. Even Government Motions to be debated at that time appear only that day for the first time. That is the position under the Standing Orders. As far as I recollect off-hand, the only Standing Order which makes provision for definitely longer notice is Standing Order No. 8, with regard to Questions. I know of no other one. . . . While it may be convenient for hon. Members to have as long notice as is feasible and proper, I do not want to say anything which seems to throw any doubt at all on the perfect right of hon. Members to put down Motions in accordance with the rules of the House. (581 *Hans.*, cc. 1202-3.)

(ii) *Effect of previous decision of the House:* Before a motion to introduce another such bill was moved on 11th February, Mr. Speaker directed the attention of the House to a passage in Erskine May (16th Ed., p. 401), which read:

> No question or bill shall be offered in either House that is substantially the same as one on which its judgment has already been expressed in the current session.

Observing that during the last two weeks the House had twice decided against Motions for leave to bring in bills suspending for different periods the operation of s. 11 of the Rent Act, Mr. Speaker asked the Member moving for leave to confine himself strictly to the content of the Motion (*i.e.*, exempting certain categories of tenant from the operation of s. 11), and not to traverse the operation of the section generally.

On being asked whether there was any objection to a motion for leave to introduce a bill simply on the ground that it related to the same statute as another Motion previously refused, Mr. Speaker made it quite clear that this ground was not a sufficient objection provided that the two motions were substantially different. He went on to say:

> What I was pointing out to the hon. Member who is about to move his Motion—when he gets a chance—is that in these Ten Minutes Rule Bills the House relies entirely on the Member's description of the contents of his proposed Bill, because there is at this stage no Bill before us. Therefore, if the hon. Member moves his Motion and produces an argument which traverses matters already decided, that would be a description by himself of his Bill as one that was out of order. Consequently, I was warning the hon. Member to keep strictly to his notice and to describe his Bill as one that is limited to the categories I have mentioned. (582 *Hans.*, cc. 208-25.)

South Australia: Legislative Council (Instruction to Committees of whole Council on Bills).—During 1958 the Standing Orders Committee considered the Orders relating to Instructions to Committees of the Whole Council on Bills. The Committee reported as follows:

> The Committee recommends no amendment of the Standing Orders but suggests that in cases where motions for instructions comply with the Standing Orders in all respects other than relevancy, the President direct the attention of the Council to decide whether the instruction should be given to the Committee.

(*Contributed by the Clerk of the Parliaments.*)

Union of South Africa: Senate (Publication of Bills).—By an amendment to S.O. No. 76, adopted by the Senate on 17th July, the publication of the text of a Bill in the Gazette, which was previously mandatory, was made contingent on the request of the Senator introducing the Bill and the approval of the President. The previously existing condition that a bill might not be read a second time until it had been published for twenty-one days in the Gazette was accordingly abolished.

10. Electoral

South Australia: Legislative Council (Nomination of Women Candidates for Election).—Prior to the recent election (7th March, 1959) no woman had been elected to either House of the Parliament.

An application was made to the Supreme Court of South Australia for a writ of mandamus directing the returning officer for Central No.

2 District of the Legislative Council to reject any nomination papers of any woman candidate for the Council at the State Elections on 7th March, 1959.

The applicants contended that the word "person" in Section 12 of the Constitution Act setting out the qualifications for Council membership did not include women. The returning officer contended that women had the right to nominate.

The Full Court found it had no jurisdiction to decide whether women could contest seats in the Legislative Council and in giving the reasons for such decision, two of the Judges felt that the Court should not endeavour to determine the qualifications of a person elected to Parliament as such a matter was one for decision exclusively by the House and for the Court of Disputed Returns which Parliament had constituted to deal with such matters.

Amending legislation will be introduced to remove all doubts regarding the eligibility of women to sit in either House of this Parliament.

(*Contributed by the Clerk of the Parliaments.*)

India (Electoral Amendments).—The Representation of the People (Amendment) Act, 1958 (Act No. 58 of 1958) introduced a number of changes in the Representation of the People Act, 1950 (Act No. 43 of 1950), and the Representation of the People Act, 1951 (Act No. 43 of 1951) in the light of further experience gained by the Election Commission and the Government in the working of the said two Acts since their last amendments in 1956. Some of the more important of these changes are noted below:

(i) Under s. 19 of the 1950 Act, ordinary residence in a constituency on the qualifying date was a condition precedent to the inclusion of a person's name in the electoral roll of that constituency. In actual practice it was found hardly possible for the electoral registration officer to satisfy himself that an elector was a resident on a particular date in a constituency. Under article 326 of the Constitution, only the age of the citizen is related to a particular date, that is to say, a citizen who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under law (that is, the qualifying date) is entitled to be registered as a voter. There is, however, no such provision in the Constitution in relation to ordinary residence. S. 19 has accordingly been amended under the present amending Act so as to make only the age of an elector relatable to the qualifying date but not his residence in the constituency. S. 19, as so amended, reads thus:

> 19. Subject to the foregoing provisions of this Part, every person who—
> (*a*) is not less than twenty-one years of age on the qualifying date, and
> (*b*) is ordinarily resident in a constituency,
> shall be entitled to be registered in the electoral roll for that constituency.

(ii) S. 20 of the 1950 Act provided that subject to the exceptions stated therein "a person shall be deemed to be ordinarily resident

in a constituency if he ordinarily resides in that constituency, or owns, or is in possession of, a dwelling house therein". This section has been amended by the present Act to provide that a person shall not be deemed to be ordinarily resident in a constituency on the grounds only that he owns, or is in possession of, a dwelling house therein. The amended s. 20 also contains two new provisions—namely:

(1A) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.
(1B) A member of Parliament or of the Legislature of a State shall not during the term of his office cease to be ordinarily resident in the constituency in the electoral roll of which he is registered as an elector at the time of his election as such member, by reason of his absence from that constituency in connection with his duties as such member.

Sub-section (1B) referred to above was inserted because it was felt that as members of Parliament and State Legislatures had to remain away for long periods from the places where they are registered in the electoral rolls in connection with their duties as such members, provision should be made by law so that they would continue to be treated as ordinarily resident in those constituencies.

(iii) A new S. 31 has been added to the 1950 Act (Act No. 43 of 1950) so as to make punishable false statements and declarations made by persons in connection with the inclusion or exclusion of names in or from electoral rolls. The new section reads thus:

If any person makes in or in connection with—
(*a*) a claim or an application for the inclusion in an electoral roll of his name, or
(*b*) an objection to the inclusion therein, or an application for the exclusion or deletion therefrom, of the name of any other person,
a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(iv) The language of clause (*d*) of s. 7 of the Act of 1951 (Act No. 43 of 1951) relating to disqualification for membership of Parliament or of a State Legislature was considered to be very wide and capable of bringing any kind or category of contract with the appropriate Government within its scope; it had been a fruitful source of election disputes in the past. Persons who only occasionally broadcast any talk from the radio station or contribute any article to any Government publication, it was felt, might also come within the mischief of this clause. The clause has accordingly been amended by s. 15 (*a*) of the present Act in a simpler and more rational way so as to bring within its purview only two categories of contracts entered into by a person with the Government in the course of his trade or business.

These two categories are contracts for the supply of goods and contracts for the execution of any works. The amended clause reads thus—

> (*d*) if there subsists a contract entered into in the course of his trade or business by him with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

(v) Under s. 55A of the Representation of the People Act, 1951 (inserted by Act No. 27 of 1956) a contesting candidate was given the right to " retire " from the contest on any day not later than ten days before the date of poll in the constituency, or, where there are more polling dates than one in the constituency, not later than ten days before the first of the dates fixed for the poll. The experience of the working of this provision proved most unsatisfactory both from the point of view of purity of elections and from the point of view of administrative convenience. In recommending the deletion of this provision from the Act, the Election Commission made the following observations:

> The Commission is of the opinion that the main object for which S. 55A of the Representation of the People Act, 1951, was inserted by the amending Act has not been achieved. No doubt in a very few cases, the retirement of some contesting candidates resulted in uncontested elections and avoided the actual holding of a poll. It may be reasonably argued, however, that if there has been no provision in law allowing the retirement of contesting candidates, the candidates who are not serious and ultimately retired would have mostly withdrawn their candidatures at an earlier stage and these very elections would have turned out to be uncontested in any case. Even assuming that the provision has yielded a few uncontested elections, it stands condemned in the Commission's opinion as it has merely created serious practical and administrative difficulties in the actual conduct of the poll in addition to giving rise to an even more objectionable feature, namely, widespread allegations—legitimate or otherwise—that one or the other of the remaining candidates took recourse to unfair or dishonest means in order to prevail upon these particular rival candidates to retire from the contest. (Report on the Second General Elections in India, 1957, Vol. I, p. 135.)

The amending Act of 1958 has accordingly omitted 55A (s. 22 of Act No. 58 of 1958).

(vi) Under s. 61 of the 1951 Act, provision had been made for the marking with indelible ink of the thumb or any other finger of every elector with a view to preventing personation of electors at the time of poll. In practice, however, this was not found to be a sufficient check for prevention of personation, especially in constituencies in big cities. This section has, therefore, been amended by s. 25 of the present amending Act by introducing further provisions enabling rules to be made for the production by every elector of an identity card before the delivery of any ballot paper to such elector if under rules made in that behalf electors of the constituency have been supplied with identity cards. The amended s. 61 reads thus—

Witn a view to preventing personation of electors, provision may be made by rules made under this Act,—

(*a*) for the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such papers to him;

(*b*) for the production before the presiding officer or a polling officer of a polling station by every such elector as aforesaid of his identity card before the delivery of a ballot paper or ballot papers to him if under rules made in that behalf under the Representation of the People Act, 1950, electors of the constituency in which the polling station is situated have been supplied with identity cards with or without their respective photographs attached thereto; and

(*c*) for prohibiting the delivery of any ballot paper to any person for voting at a polling station if at the time such person applies for such paper he has already such a mark on his thumb or any other finger or does not produce on demand his identity card before the presiding officer or a polling officer of the polling station.

(vii) The Supreme Court, in a case that went up to it on an interpretation of sub-section (1) of s. 123 of the 1951 Act, held that acceptance of gratification was not included in the definition of the corrupt practice of bribery. Formerly, acceptance of gift or gratification was a minor corrupt practice under s. 124(3) of the 1951 Act as originally enacted; but that entire section was omitted by the amending Act of 1956 (Act No. 27 of 1956), with the result that such acceptance became no longer a corrupt practice. S. 36 of the present amending Act has accordingly amended sub-section (1) of s. 123 of the 1951 Act so as to include acceptance of gratification within the corrupt practice of bribery.

Sub-section (1) of section 123, as amended, reads thus—

(1) " Bribery ", that is to say,—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(*a*) a person to stand or not to stand as, or to withdraw from being a candidate at an election, or

(*b*) an elector to vote or refrain from voting at an election,

or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(*a*) by a person for standing or not standing as, or for withdrawing from being, a candidate; or

(*b*) by any person whomsoever for himself or any other person for voting or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw his candidature . . .

Explanation.—For the purposes of this clause the term " gratification " is not restricted to pecuniary gratifications or gratifications estimable in money

and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses, *bona fide* incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

(*Contributed by Shri B. N. Banerjee, Deputy Secretary, Rajya Sabha Secretariat.*)

11. Emoluments and Amenities

Saskatchewan (Allowance to Members of Inter-Sessional Committees).—The Legislative Assembly Act was amended by Chapter 85 of the Statutes of Saskatchewan, 1958, to provide:

(1) For payment (without disqualification) of a per diem allowance of $25 plus actual disbursements for transportation and hotel accommodation to members, while absent from home, serving on a Committee appointed by resolution of the Assembly, or by the Lieutenant-Governor in Council pursuant to a resolution of the Assembly, to act during the interval between Sessions (Statutes of Saskatchewan, 1958, c. 85, s. 4).

This amendment was made pursuant to a resolution of the Assembly recommending appointment by the Lieutenant-Governor in Council of a Committee of its members to inquire into the matter of Liquor Retail Sales Outlets in the Province, during the inter-Sessional period, and to report its findings directly to the Government, on behalf of the Assembly, in order that any legislation arising therefrom might be presented at the next ensuing (1959) Session of the Legislature (Journals, 1958, p. 101).

(2) For an increase in the sessional indemnity of members (including the non-taxable one-third allowable for expenses) from $3,600 to $4,800, and, in the case of three northern constituency members, from $4,100 to $5,300, the increase to apply from 1st January, 1958 (Statutes, 1958, c. 85, ss. 2 and 3).

(*Contributed by the Clerk of the Legislative Assembly.*)

Queensland (Parliamentary Superannuation).—The Parliamentary Contributory Superannuation Fund Acts Amendment Act of 1958 (see *Hansard*, 28th November, p. 1758, and 3rd December, p. 1884) provides for the contribution by present Members of the Legislative Assembly to be increased from £4 to £8 per fortnight.

The benefits are to be increased as follows:

Service of 9 years, but less than 12 years, increased from £5 to £12 10s. per week.

Service of 12 years, but less than 15 years, increased from £6 to £15 per week.

Service longer than 15 years increased from £7 to £17 10s. per week.

Widows to receive pension at two-thirds the rate for which deceased Member was qualified.

(*Contributed by the Clerk of the Parliament.*)

South Australia (Members' Salaries and Allowances).—By the Payment of Members of Parliament Act Amendment Act (No. 52 of 1958), the rate of payment to all Members (other than Ministers) was increased by £250 per annum, operative from 27th November, 1958.

A basic salary of £1,900 per annum was fixed, to which was added an electorate allowance varying in amount according to the location of a member's district.

A table showing comparative remuneration for such Members before and after the passing of the 1958 Act is set out hereunder:

	Previous rate	*New rate*
If no part of Member's electoral district more than 50 miles from Adelaide	£1,900	£1,900 plus electorate allowance of £250 p.a. = £2,150
If any part of district more than 50 miles but no part more than 200 miles from Adelaide	£1,950	£1,900 plus electorate allowance of £300 p.a. = £2,200 p.a.
If any part of district more than 200 miles from Adelaide	£1,975	£1,900 plus electorate allowance of £325 p.a. = £2,225 p.a.

Under the amending legislation each Minister of the Crown receives, in addition to his remuneration as Minister, an electorate allowance of £250 per annum, irrespective of the location of his district.

(*Contributed by the Clerk of the House of Assembly.*)

Tasmania (Parliamentary pensions).—In the 1958 Session the Parliamentary Retiring Allowances Act, 1955, was amended. The principal effect of this was to provide an additional pension for the Premier of the State—for a Premier who holds office for a continuous period of not less than 15 years—and to overcome some difficulties in the original Act regarding the voluntary retirement of a Member. The amending Act also provided that the widow of a deceased Member would receive a pension at the rate of two-thirds instead of one-half of the sum which would have been paid to the Member if he had lived after retirement (see Parliamentary Retiring Allowances Act, No. 32 of 1958).

(*Contributed by the Clerk of the House of Assembly.*)

Western Australia (Expenses of Members on official visits).—An amendment (Act No. 2 of 1958) to the Constitution Acts Amendment Act authorises the payment of expenses to a member who is approved by the Governor as a representative of either House or of the Commonwealth Parliamentary Association in connection with official visits, conferences and tours. The rate of expenses is fixed by regulation (Leg. Co. Min. of Proc., p. 42; 1958 *Hans.*, p. 582).

(*Contributed by the Clerk of the Parliaments.*)

Western Australia (Superannuation).—The Parliamentary Super-

annuation Act was amended (Act No. 51 of 1958) to provide increased pensions for persons who ceased to be members after the 31st December, 1958. These benefits range from £A13 10s. per week for a person with fifteen years of contributions to his credit to £A6 per week for a person who has been a contributor for not less than seven years. Where a person who has contributed for less than seven years ceases to be a member he receives the amount of his contribution plus interest (Leg. Co. Min. of Proc., p. 209; 1958 *Hans.*, p. 2700).

(*Contributed by the Clerk of the Parliaments.*)

Union of South Africa (Pension Scheme for Officers of Parliament).—Under the Pension Scheme for Officers of Parliament, any pension benefits to which an officer or his widow became entitled were provided for in the annual *Pensions* (*Supplementary*) *Bill*. This procedure caused considerable hardship in the past particularly when an officer or pensioner died during the Parliamentary recess, as the Bill granting relief was only passed towards the end of the next ensuing session and a widow had frequently to wait for as long as 12 months after the date of her husband's death before receiving any benefit. In terms of section 4 of the Finance Act, 1958, a certificate signed by the President of the Senate or the Speaker of the House of Assembly stating that an officer or his widow had become entitled to certain benefits, and containing particulars of such benefits and the terms and conditions subject to which they are payable, constitutes the requisite authority for the payment of such benefits.

This means that a beneficiary will in future receive payment of the benefits to which he or she is entitled as soon as the Commissioner of Pensions receives a certificate signed by the President of the Senate or the Speaker of the House of Assembly, as the case may be.

(*Contributed by Mr. J. M. Hugo, formerly Clerk of the House of Assembly.*)

India: Lok Sabha (Salaries and allowances to Members).—The Salaries and Allowances of Members of Parliament Act, 1954, was amended in 1958 (by Act No. 55 of 1958) so as to provide for the following:

(*a*) Reimbursement of the cost of travel equal to one first-class fare by rail to a member for his first journey from his usual place of residence to attend Parliament before receiving a railway pass and his return journey to his place of residence after surrendering the pass. A member is also now entitled to use the pass for attending a session of the House to take his seat where such pass is already issued to him.

(*b*) Payment of travelling allowance to members going abroad with Parliamentary delegations for journeys by sea otherwise than by regular steamer service.

(*c*) Quantum of daily allowance to a member when he is provided

free board or lodging by the Central or a State Government or local authority.

(*d*) Extension to the families of members of such medical facilities as are available to members themselves.

(*e*) Provision of free railway first-class passes also to Ministers and Officers of Parliament.

(*Contributed by the Secretary of the Lok Sabha.*)

Northern Rhodesia (Pensions, grants and gratuities).—On 18th April, Mr. Speaker, as Chairman of the Standing Orders Committee, brought up a Report (94 N. Rhod. *Hans.*, Appendix B) on a suggestion which had been made at a meeting of unofficial Members for the setting up of a sessional Committee to be known as the Committee on Pensions, Grants and Gratuities. The Standing Orders Committee expressed itself in favour of appointing such a committee to consider and report on all questions of benefits to Members, ex-Members and their dependants, and in particular the grant of pensions and gratuities to the dependants of Members (including Ministers) who died in service and the grant of retiring pensions or gratuities for Ministers. They considered that the Committee should be guided by the follow ing principles:

(i) in considering the grant of a pension to a Minister no account shoul. be taken of his general financial circumstances;

(ii) any grant to a dependant should take into account the nature of the service rendered by the Member, and any loss which he might have incurred during his service as a result of that service. The grant should also be related to the length of such service and to the Members' emoluments at the time of his death;

(iii) any grant to a dependant should take into account any straitened financial circumstances in which the recipient might be.

The Report then went on to suggest an order of reference for such a committee; but a further Report, dated 12th May, rescinded this suggestion and proposed instead that the duty should be laid on the already existing sessional Finance Committee, to whose order of reference (contained in S.O. No. 141(1)) suitable words might be added. This proposal was made in view of the fact that the composition and constitutional position of the Finance Committee and the proposed committee would have been identical (*ibid.*, Appendix C).

The two Reports were tabled on 13th and 14th May respectively (*ibid.*, cc. 785, 797), and the proposed amendment to S.O. No. 141(1) was agreed to on 15th May (*ibid.*, cc. 937-8).

Nigeria: Northern Region (Salaries and emoluments).—The Officers of the Legislative Houses (Salaries) Law was passed in the House of Assembly on 13th December (5 *Nigeria N.R. Assem. Hans.*, c. 970). Its main object is to fix the minimum salaries of the principal officers of the Regional Legislature and thereby give them as far as possible a status independent of the Executive. The

salaries provided are charged on the Consolidated Fund, and are as follows:

President of the House of Chiefs	£2,000
Speaker of the House of Assembly	£2,500
Deputy President	£1,200
Deputy Speaker	£1,200
Clerk to the Regional Legislature	£2,310
Sergeant at Arms	£310

The payment to the Speaker cancels the latter's right to receive any salary as an elected Member of the House of Assembly.

Provision is made for the President, Speaker and their deputies to continue to receive the allowances to which they were entitled at the time, and for the Clerk and Sergeant at Arms to receive such allowances as are payable for the time being to officers in receipt of an equivalent salary or of similar status.

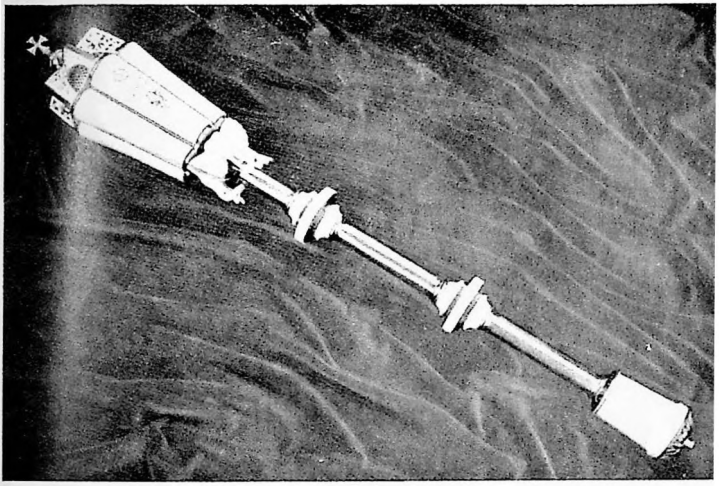
12. The Mace

Western Samoa (Presentation of a new Mace).—A very impressive ceremony took place in the Legislative Assembly of Western Samoa when a new Mace was presented to that Assembly by the House of Representatives of New Zealand at a special meeting held on 21st March, 1958. The presentation was made by the Hon. Mr. R. M. Macfarlane, C.M.G., Speaker of the House of Representatives of New Zealand and Leader of the Parliamentary Delegation.

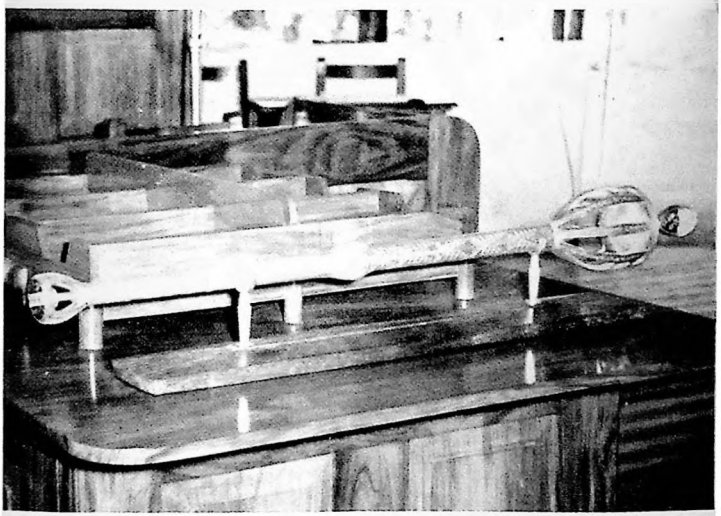
At the commencement of the ceremony the Delegation were admitted by the Sergeant-at-Arms and upon being welcomed by Mr. Speaker, took their places to the left of Mr. Speaker's dais. The Hon. R. M. Macfarlane then addressed the Assembly and at the conclusion of his speech formally presented the Mace by uncovering it as it lay on its silver brackets on the Table of the House. The Leader of Government Business, the Hon. E. F. Paul, then addressed the Assembly and concluded his remarks, which were supported by the Hon. Tualaulelai, a Member of the Executive Council, by moving the following motion:

> Sir, I move that we, the Members of the Legislative Assembly of Western Samoa assembled, express our thanks to the House of Representatives of New Zealand for the Mace which has been presented to this Assembly. We accept this generous gift as a token of the friendship and goodwill of the House of Representatives and people of New Zealand towards the Legislative Assembly and people of Western Samoa. This Mace will always be cherished by us in recognition of the spirit which has prompted the gift as well as of its intrinsic value and of the authority and privileges of which it is the emblem.

When the question was put upon the motion and carried unanimously, Mr. Speaker then requested the Clerk to hand the text of the Resolution to the Leader of the Delegation. The Delegation and Members of the Assembly then rose in their places, bowed to the right



KENYA: THE IVORY AND GOLD MACE FIRST BROUGHT INTO USE BY THE LEGISLATIVE COUNCIL IN APRIL 1958 (*see page* 181)



WESTERN SAMOA: THE NEW MACE OF THE LEGISLATIVE ASSEMBLY (*see page* 180)

and bowed to the left and upon being acknowledged, retired from the Chamber, preceded by the Sergeant-at-Arms.

The Mace, which was handmade by the jeweller's craft in London, incorporates in its design, which is typically Samoan, the Samoan Arms and the Arms of New Zealand. The head is in the form of a raised Kava bowl which is topped by a forged loop engraved with four crosses and a Samoan motto. Within the loop are the Samoan Arms, enamelled and parcel-gilt. The eight arms, engraved with hibiscus and forming the head, are both the legs of the kava bowl, and a group of coconut palms around a Samoan hut. A diaper pattern of coconut palms and frangipani trees are engraved on the shaft and the knop is in the shape of a coconut leaf basket. The terminal, a smaller version of the head and inset to the bowl, is an enamelled panel of the Arms of New Zealand.

(*Contributed by the Clerk of the Legislative Assembly.*)

Nyasaland (Mace).—During the course of the year Her Majesty, through the Secretary of State for the Colonies, signified her gracious approval to the proposal that the Legislative Council should use a Mace.

The design, which has also received approval, is as follows:

Sterling silver gilt Mace of traditional shape, after the style of the House of Commons Mace. Length 42 inches.

Royal Arms embossed on cushion of head.

Royal Monogram brought on to obverse panel of head, and arms of Nyasaland on reverse.

One side panel of head embossed with representation of *Ilala I*, the first steamship used on Lake Nyasa, standing against a background of Lake Nyasa.

Opposite side panel embossed with a representation of the Church of Scotland Mission Church in Blantyre.

Base of head, Heraldic suggestion of the great rivers and lakes of Nyasaland.

Upper half of shaft chased with representations of maize, tobacco and groundnuts, and lower half chased with representations of tea and cotton, as symbols of the products of Nyasaland.

Knops chased with rays of the sun, emblem of Nyasaland.

Heel of shaft chased ornament Tudor Rose of England, as well as Widdringtonia Whytei (Mlanje Cedar) and Erythrina Livingstoniana, typical of Nyasaland.

(*Contributed by the Clerk of the Legislative Council.*)

Kenya (Presentation of a Mace).—On Wednesday, 30th April, 1958, a new mace was presented to the Kenya Legislative Council by the Governor, Sir Evelyn Baring, G.C.M.G., K.C.V.O. His Excellency said:

Mr. Speaker, hon. Members, the idea of an ivory Mace as befitting this part of the world is original. The design is entirely that of Mr. H. R. Thompson of the Kenya Ministry of Works. It has received the approval of Her

Majesty the Queen, and there is no other Mace like the Kenya Mace in any part of the British Commonwealth. The new Mace has been provided partly by a gift from the Kenya Branch of the Commonwealth Parliamentary Association and partly from funds provided by the Kenya Government. It is a happy augury that this ceremony should take place today at the first full meeting of the Legislative Council under the new Constitution.

The Mace, Mr. Speaker, is a symbol of our connexion with the Parliamentary institutions of Great Britain and with the great and famous tradition which flows from those institutions. These institutions and the principles on which they rest represent the distilled human experience of nearly seven centuries of trial and error, of wise adaptation and of the fruits of the common sense and the calm sanity of the British people. The Mace is also a symbol of power, but of power used rightly and used with discretion. The position today of Parliament in Britain was not achieved by violent means, not by defiance of the law, but by peaceful evolution and by gradual reform. The position represents, therefore, a blend of liberty and of tradition, and that is what we in Kenya have inherited. We need to defend that inheritance, to defend it against licence, against abuse and against false ideas which may appeal to the emotions but which, if accepted, are bound to destroy the blend of liberty and authority and, in so doing, are equally bound to lead to violence.

I will say, too, with great emphasis, that the Mace is a torch indicating our allegiance to the Queen. The genius of the British people has built that personal allegiance and that warm loyalty into a system of free institutions. We admire this achievement and we share those warm feelings of loyalty.

Now, Mr. Speaker, I have much pleasure in asking you to receive the Mace.

(LXXV, *Hans.*, cc. 24-5.)

The mace, weighing just under 27 lb., measures just over 4 ft. 6 in. and is made of Gold and Ivory.

XX. SOME RULINGS BY THE CHAIR IN THE HOUSE OF COMMONS, 1957-58

The following index to some points of Parliamentary procedure, as well as Rulings by the Chair, given in the House of Commons during the Third Session of the Forty-first Parliament of the United Kingdom (6 & 7 Eliz. II) is taken from Volumes 577 to 592 of the Commons *Hansard*, 5th Series, covering the period from 5th November, 1957, to 23rd October, 1958.

The respective volume and column number is given against each item, the figures in square brackets representing the number of the volume. The references marked by an asterisk are rulings given in Committee of the whole House.

Minor points of procedure, or points to which reference is continually made (*e.g.*, that Members should address the Chair) are not included, nor are isolated remarks by the Chair or rulings having

reference solely to the text of individual Bills. It must be remembered that this is an index, and that full reference to the text of *Hansard* itself is generally advisable if the ruling is to be quoted as an authority.

Amendments
—member seconding, forfeits his right to speak [590] 328

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—legislation, mention of proposed, not permitted in debate on [578] 1538
—*under S.O. No. 9 (Urgency)*
—refusal by Minister to answer a Question cannot be raised under S.O. No. 9 [579] 1077
—*subjects accepted*
—asylum to political refugee, Ministerial refusal to grant [583] 1346
—*subjects refused (with reason for refusal)*
—arms deliveries to Tunisia (no urgency) [578] 39-40
—London Omnibus Dispute, non-intervention by Minister in (not urgent) [587] 853-8
—refusal by Government to undertake that forces will not be used in Lebanon or Iraq without consultation with House (Ministerial refusal to make undertaking not within terms of S.O.) [591] 1021
—refusal of Minister to make a statement on overtime ban operating in hospitals (Minister's refusal not within scope of Standing Order) [578] 207-10

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—*Motion for leave to introduce*
—bill placing charges on public funds cannot be brought in under ten-minute rule until there has been Resolution of a C.W.H. sanctioning the expenditure [579] 1270, 1272, 1276
—explanatory statement should be short [583] 1175
—*Committee of the whole House*
—*manuscript amendment accepted [581] 1239-40
—*Report stage*
—seconder required for amendment if not moved by a Privy Councillor [584] 482
—*Third Reading*
—Member should confine himself to what is in the Bill [591] 1608

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—criticism of, should be by substantive motion [584] 556

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—question for, must be put forthwith without any intervening point of order [583] 156

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—cannot be made between 7.30 and 8.30 p.m. [579] 307

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—adjourned, Member entitled to resume interrupted speech on resumption of [588] 785
—*dilatory motion not permitted when Allocation of Time Order operating [588] 660

Debate (*continued*)
—official letter to a Member need be produced by Minister only if quoted from [590] 801
—reference to proceedings in select committee not in order until Committee has reported [581] 1146
—Welsh language should not be used except in quotation [583] 1146-7

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—merits of parent Act cannot be discussed on a "prayer" [582] 1341, [584] 747-9, [587] 1556-7

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—too late to record vote when divisions is over and figures have been declared from the Chair [581] 1203

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—disorderly for, to remain standing if Member who has the floor does not give way [591] 1247
—*may leave Standing Committees to attend a division in the House [584] 239
—may not finish interrupted sentence if it is out of order [582] 1345
—motion for a new writ for election of, if objected to, must be left over until after questions [588] 1270
—must see that his language conforms to the high standard of parliamentary behaviour [579] 378
—not entitled to impute discreditable motive to another Member [581] 882-4, 888-90
—on the same side of the House, should not play into each other's hands by continually giving way to each other [591] 639
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—pecuniary, must be direct to invalidate a vote [581] 1204-5
—should be declared in order to avoid misconstruction of motives [581] 1197
—personal statements by, not debatable [584] 824
—*should not call one another names across the floor of the Chamber [578] 153
—should not seek to take part in the debate without first rising to his feet [591] 442, 451

Minister(s)
—cannot be made to speak [579]* 726, 1460.
—entitled to make statement with leave of House, but not to answer a Question which has not been reached unless he has given previous notice that he proposes to do so [592] 1151

Order
—injurious epithets in order if applied to a number of people but not to a particular person [586] 959-51
—matter of discretion what language Members use about other people outside the House [586] 1228
—personal aspersions always to be deprecated [589] 1225
—point of
—*cannot be raised when a question is being put from the Chair under provisions of standing order [584] 728
—*Government Front Bench Members as entitled as any other Member to raise [578] 620

Order (*continued*)
—only one can be dealt with at a time [579] 1078
—prolonged applause is of an obstructive character [591] 1371
—speech made in other place by a Lord not Member of the Government, quotation out of order [588] 851, [591] 981
—but may be summarised [585] [365]
—reading of speeches, out of [529] 921, [591] 480, 482-3
—sitting to be suspended if grave disorder continues [581] 863

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—paraphrasing parts of, not the same as quoting verbatim [591] 1441

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—by private notice, disallowed as not urgent [578] 32-3
—ironic, not in order [583] 376-7
—Minister cannot be compelled to answer [590] 414
—on Order Paper, matters arising from, are proceedings in Parliament [591] 808-9
—supplementary
—cannot be asked concerning a Question that has been passed [583] 539-40
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—should be put in interrogative form, not as statement of facts [583] 972, [591] 807
—should be put without making any personal imputation [586] 609
—should be worded concisely [584] 398-9
—transference of, outside control of Speaker [583] 1172

Supply
—*discussion on policy must be related to the Estimate [581] 583
—supplementary Estimate(s)
—if of same order of magnitude as original Estimate, policy may be discussed thereon [584] 947, 979-80
—*savings made in, cannot be discussed in Committee [581] 552

Standing Orders
—motion to suspend with a view to obtaining immediate statement from Prime Minister, would require notice [591] 1405-6

XXI. EXPRESSIONS IN PARLIAMENT, 1958

The following is a list of examples occurring in 1958 of expressions which have been allowed and disallowed in debate. Expressions in languages other than English are translated where this may succinctly be done; in other instances the vernacular expression is used, with a translation appended. The Editors have excluded a number of instances submitted to them where an expression has been used of

which the offensive implications appear to depend entirely on the context. Unless any other explanation is offered, the expressions used normally refer to Members or their speeches.

Allowed

"blather". (584 *Com. Hans.*, 458-9.)
"bulldozed". (1958 *W. Aust. L.C. Hans.*, 965.)
"ca'canny". (41 *S. Rhod. Hans.*, 144.)
"clown" (of a party leader). (*Can. Com. Hans.*, 23rd June, p. 1534.)
"deception" (of a party). (195 *U.P.L.A. Deb.*, p. 474.)
"deliberate misunderstanding". (588 *Com. Hans.*, c. 745.)
"deliberately twisted and distorted". (*Can. Com. Hans.*, 26th June, pp. 1644-5.)
"don't get shirty". (1958 *W. Aust. L.C. Hans.*, 1405.)
"fellow-traveller" (not applied to an individual). (586 *Com. Hans.*, 949-51.)
"gloating". (*Can. Com. Hans.*, 6th June, p. 906.)
"hypocrisy and humbug, amounted to" (of a Member's arguments in committee). (589 *Com. Hans.*, 1227.)
"kerfuffle". (1958 *W. Aust. L.C. Hans.*, 1364.)
"making a show". (*Madras Assem. Hans.*, 4th Nov., 1958.)
"name does not indicate whether he is a male or a female". (198 *U.P.L.A. Deb.*, p. 437.)
"preaches the communist doctrine in this Senate at every possible opportunity". (1958 *Aust. Sen. Hans.*, pp. 66, 101.)
"puppet government". (XII *Madras Assem. Hans.*, pp. 445-6.)
"revile". (200 *U.P.L.A. Deb.*, p. 58.)
"should be offering himself to Boswell's circus as an animal trainer". (41 *S. Rhod. Hans.*, 194.)
"stool-pigeon". (*Can. Com. Hans.*, 14th August, p. 3549.)
"thillumullu" (vagaries). (XV *Madras Assem. Hans.*, p. 2.)
"unsavoury". (94 *N. Rhod. Hans.*, c. 907.)
"urger". (1958 *Aust. Sen. Hans.*, p. 112.)
"you will not be chucked out on the Bill, but on your ear". (1958 *W. Aust. L.C. Hans.*, 1304.)

Disallowed

"absurd and perverse" (of a Supreme Court decision). (XI *Madras Assem. Hans.*, p. 402.)
"adventurism". (*India L.S. Deb.*, 1st April.)
"afraid". (1958 *N.Z. Hans.*, 786, 1214.)
"arrogant and completely false". (*Can. Com. Hans.*, 26th June, p. 1639.)
"ballyhoo". (*B. Columbia*—no *Hansard*.)
"betrayal". (1958 *N.Z. Hans.*, 454, 455, 538.)

"biased". (*Bombay L.A. Deb.*, Vol. 6, Pt. II, No. 33, dated 22nd October.)
"blackmail". (*Can. Com. Hans.*, 16th August, p. 3674.)
"bloodsucker". (*Nyas. Hans.*, 17th March, p. 29.)
"bogus". (*India L.S. Deb.*, 12th March.)
"bonsellas" (gratuities). (41 *S. Rhod. Hans.*, 93.)
"bribe". (1958 *N.Z. Hans.*, 22, 43, 226, 825, 1172, 1458.)
"bumf". (LXXVI *Kenya Hans.*, c. 1518.)
"can't you tell the truth". (1958 *N.Z. Hans.*, 674.)
"challenge" (sc. the Ministry to resign). (*Madras Assem. Hans.*, 5th Nov., 1958.)
"character assassination". (1958 *N.Z. Hans.*, 874, 1589.)
"cheating". (XIV *Madras Assem. Hans.*, p. 32.)
"cheeky boy". (1958 *N.Z. Hans.*, 1075.)
"chicanery". (1958 *N.Z. Hans.*, 873.)
"circus barker". (B. Columbia—no *Hansard.*)
"climb out of the gutter". (1958 *N.Z. Hans.*, 1468.)
"Communist". (1958 *Aust. Sen. Hans.*, First Period, p. 812.)
"conceal". (198 *U.P.L.A. Deb.*, p. 754.)
"confidence trick". (B. Columbia—no *Hansard.*)
"confusion in his mind". (*Madras Assem. Hans.*, 4th Nov., 1958.)
"contempt for cleanliness'". (1958 *Queensland Hans.*, 2332.)
"contemptible". (1958 *S. Aust. Assem. Hans.*, p. 887.)
"cunning", "cunningly". (1958 *N.Z. Hans.*, 558, 854.)
"dastardly". (1958 *N.Z. Hans.*, 627.)
"deliberate attempt to mislead". (1958 *S. Aust. Assem. Hans.*, p. 433.)
"deliberate distortion". (1958 *N.Z. Hans.*, 222, 251.)
"deliberate misrepresentation". (1958 *S. Aust. Assem. Hans.*, p. 341.)
"deliberately misled". (*Can. Com. Hans.*, 26th June, p. 1639; 1958 *N.Z. Hans.*, 417.)
"deliberately misquoting". (97 *S.A. Assem. Hans.*, 1556, 1558.)
"despicable". (1958 *N.Z. Hans.*, 417.)
"dirty dog". (1958 *N.Z. Hans.*, 636, 1240, 1241.)
"dirty hands". (1958 *N.Z. Hans.*, 315.)
"dishonest", "dishonesty". (1958 *N.Z. Hans.*, 58, 79; 98 *S.A. Assem. Hans.*, 4185.)
"distorted mind". (1958 *N.Z. Hans.*, 646.)
"distorts the truth". (1958 *N.Z. Hans.*, 646.)
"dunderheads". (1958 *N.Z. Hans.*, 1899.)
"expert in running a disorderly House" (of the Prime Minister). (1958 *N.Z. Hans.*, 1809.)
"fabricating stories". (96 *S.A. Assem. Hans.*, 1043.)
"false". (*Bombay L.A. Deb.*, Vol. 5, Pt. II, No. 8, dated 26th Feb.; *Madras Assem. Hans.*, 5th Nov., 1958.)

"false pretences". (B. Columbia—no *Hansard*; 1958 *N.Z. Hans.*, 123.)
"fiasco" (applied to Parliament). (97 *S.A. Assem. Hans.*, 2185).
"financial sharks". (*India L.S. Deb.*, 16th April.)
"fool". (1958 *N.Z. Hans.*, 1912.)
"fraud". (VIII *Madras Assem. Hans.*, pp. 145, 158.)
"frightened". (1958 *N.Z. Hans.*, 1937.)
"gang". (1958 *N.Z. Hans.*, 1202.)
"gangsters". (1958 *Queensland Hans.*, 1592.)
"granny". (1958 *Aust. Sen. Hans.*, Second period, p. 667.)
"half-truth". (1958 *N.Z. Hans.*, 544.)
"high faluting". (41 *S. Rhod. Hans.*, 551.)
"humbug". (1958 *N.Z. Hans.*, 312.)
"I will see you outside". (591 *Com. Hans.*, 485.)
"idiotic noises". (1958 *N.Z. Hans.*, 884-5.)
"imbecile". (1958 *N.Z. Hans.*, 99.)
"impudence". (196 *U.P.L.A. Deb.*, pp. 67-8.)
"incapable of decency". (1958 *N.Z. Hans.*, 1938.)
"iniquitous Act". (97 *S.A. Assem. Hans.*, 1951.)
"insincere filibuster". (*Can. Com. Hans.*, 8th Aug., p. 3261.)
"intellect not up to standard". (1958 *N.Z. Hans.*, 84.)
"kowtow". (41 *S. Rhod. Hans.*, 727.)
"lack of courage". (1958 *N.Z. Hans.*, 418, 1709.)
"lack of knowledge". (1958 *N.Z. Hans.*, 1694.)
"larrikin". (1958 *N.Z. Hans.*, 109.)
"lavishness". (199 *U.P.L.A. Deb.*, p. 973.)
"liar", "lie", "lying". (584 *Com. Hans.*, 536; 1958 *Queensland Hans.*, 211, 550, 676, 773, 1543, 1591, 2131; 1958 *S. Aust. Assem. Hans.*, pp. 105, 341, 1019; 1958 *N.Z. Hans.*, 544, 556, 1174, 1180; 195 *U.P.L.A. Deb.*, 274; LXXVIII *Kenya Hans.*, c. 776.)
"mad". (1958 *N.Z. Hans.*, 690.)
"made a statement that he knows is incorrect". (1958 *N.Z. Hans.*, 1808.)
"Member knew how empty was the prefix in the title by which Members were required to address him". (1958 *N.Z. Hans.*, 251.)
"mentality is impaired". (1958 *N.Z. Hans.*, 1586.)
"Minister should have the decency". (1958 *N.Z. Hans.*, 1764.)
"miserable thing". (1958 *Aust. Sen. Hans.*, First Period, p. 39.)
"monger". (1958 *Ast. Sen. Hans.*, First Period, p. 111.)
"mongrel". (1958 *Queensland Hans.*, 773, 1655.)
"mouthing hypocrisy". (1958 *N.Z. Hans.*, 874.)
"muckraker". (1958 *N.Z. Hans.*, 1841.)
"Ned Kelly" (comparison of government with). (1958 *N.Z. Hans.*, 1218.)

"neither sensible nor practical". (1958 *Malaya Leg. Co. Proc.*, 22nd October, c. 5081.)
"not game". (1958 *N.Z. Hans.*, 1232, 1772, 1854.)
"not honest". (96 *S.A. Assem. Hans.*, 791.)
"obstructing". (98 *S.A. Assem. Hans.*, 4547.)
"old gossip". (97 *S.A. Assem. Hans.*, 1008.)
"paranoiac". (1958 *N.Z. Hans.*, 1863.)
"p.k." (colloquial expression for lavatory). (41 *S. Rhod. Hans.*, 987.)
"political courtiers" (of High Court Judges'. (*India L.S. Deb.*, 25th September.)
"political machinations". (B. Columbia—no *Hansard.*)
"pretension". (195 *U.P.L.A. Deb.*, p. 367.)
"profanity". (1958 *N.Z. Hans.*, 633.)
"provided with a brief and read from it". (1958 *Queensland Hans.*, 550.)
"purloined". (1958 *N.Z. Hans.*, 465.)
"put pressure". (196 *U.P.L.A. Deb.*, p. 669.)
"queer". (1958 *N.Z. Hans.*, 1062.)
"rabble". (*N.Z. Hans.*, 1116.)
"ratted". (1958 *N.Z. Hans.*, 1226.)
"renegades". (1958 *N.Z. Hans.*, 1759.)
"repressive legislation". (97 *S.A. Assem. Hans.*, 95.)
"requires medical examination". (*India L.S. Deb.*, 21st February.)
"sadly obscured by some of his recent performances in this House". (1958 *Malaya Leg. Co. Proc.*, 18th March, c. 5081.)
"senile". (1958 *N.Z. Hans.*, 720.)
"shut up, you mug". (1958 *Queensland Hans.*, 2409.)
"sing the songs of your masters". (9 *Fed. Rhod. Nyas. Hans.*, c. 888.)
"smells to high heaven" (of legislation). (1958 *N.Z. Hans.*, 1225.)
"sneered". (1958 *N.Z. Hans.*, 1091.)
"snide". (1958 *Queensland Hans.*, 1545.)
"Sooriyanae Udikkamal, Indha ulagam authakara nilaiyil irukkavendumenru ennubavargal kalvargalum, karpai kadaipporulaga akkavendumenon karuthunbavargalum than" (It is only thieves and those who want to make chastity a bazaar commodity, who would not like the sun to rise at all and who would like the world to be plunged in a state of darkness). (XIV *Madras Assem. Hans.*, p. 44.)
"soullessness". (97 *S.A. Assem. Hans.*, 2117.)
"speak the truth". (1958 *N.Z. Hans.*, 812, 1667.)
"stinker". (595 *Com. Hans.*, 1210.)
"stonewalling". (1958 *N.Z. Hans.*, 1470.)
"stooge". (*Nyas. Hans.*, 1st July, p. 40.)

"stranger to the truth". (97 *S.A. Assem. Hans.*, 88.)
"stretching the truth". (1958 *N.Z. Hans.*, 44.)
"stupid", "stupidity". (594 *Com. Hans.*, 1042; 1958 *N.Z. Hans.*, 1227; 97 *S.A. Assem. Hans.*, 2759.)
"sucker". (1958 *N.Z. Hans.*, 626.)
"swindle". (1958 *N.Z. Hans.*, 670.)
"sycophant, courtier or follower". (200 *U.P.L.A. Deb.*, p. 280.)
"this House should go on bended knees before the Treasury benches". (XXVIII *Madras Council Hans.*, Bk. 7, p. 480.)
"tizzy". (95 *N. Rhod. Hans.*, c. 2283.)
"touts". (*India L.S. Deb.*, 7th April.)
"twist". (1958 *N.Z. Hans.*, 2093.)
"twitching, squirming, jumping jack-in-the-box". (*Can. Com. Hans.*, 1st July, p. 1813.)
"two hoots". (41 *S. Rhod. Hans.*, 1077.)
"under the influence of liquor". (1958 *N.Z. Hans.*, 222.)
"ungovernability of the Upper House". (195 *U.P.L.A. Deb.*, p. 759.)
"unprincipled". (96 *S.A. Assem. Hans.*, 716.)
"unscrupulous". (1958 *N.Z. Hans.*, 346.)
"untrue". (1958 *N.Z. Hans.*, 87, 97, 251, 252, 527, 559.)
"vicious". (1958 *N.Z. Hans.*, 1078.)
"zoological approach to a human problem". (*India L.S. Deb.*, 11th April.)

Borderline

"behave properly and honestly" (exhortation to opposition). (XIV *Madras Assem. Hans.*, p. 681.)
"blackmailing". (XL *Madras Assem. Hans.*, 151.)
"filthy, dirty trick" (withdrawn before Chair made any observation). (582 *Com. Hans.*, 1599.)
"hell". (597 *Com. Hans.*, 703.)
"madness". (*Madras Assem. Hans.*, 5th Nov., 1958.)
"stooge". (583 *Com. Hans.*, 216.)
"ungal Kumbakonatthil than indha Kumbakonatthai seithergal" (They did this in Kumbakonam? Only in your Kumbakonam). (XIV *Madras Assem. Hans.*, p. 675.)
"without any nerve in the tongue". (XIII *Madras Assem. Hans.*, p. 441.)

XXII. REVIEWS

An Introduction to the Procedure of the House of Commons. By the Lord Campion, G.C.B. (Clerk of the House, 1937 to 1948). Macmillan, 1958. 24s.

This is a straightforward account of the procedure of the House of Commons, written by a House of Commons man primarily for House of Commons men. The skill with which the late Lord Campion has woven into readable form an immense mass of intractable material makes the book, in one sense, very much more suitable for the general reader than Erskine May, whose later editions are pure text-books and works of reference, and are obviously not expected to be read continuously by laymen. Lord Campion, on the other hand, after a fairly extensive opening part on the history, privileges, officers and ceremonial of the House of Commons, devotes the middle part of his book to a more or less chronological description of the business of a session, and of a day's sitting, with concluding chapters on separate matters, such as Public Bills, committees and finance. This logical arrangement, with the omission of many matters of detail, and the clear style of the work, make it the best possible introduction to the procedure of the House for Members, students and the general public.

But this very logic and clarity entail certain inevitable disadvantages, for the book is focussed throughout upon the House of Commons, which is thereby brought too much into the centre of the British Constitution. The Crown, the Lords and the Government are considered only in their relation to the Commons, and this concentration upon one House sometimes leads to distortion. A constitutional lawyer, for example, might not wholly agree with the statement, on page 98, that "the principle of the continuous existence of Parliament is recognised by the form of the Royal Proclamation itself, which in the act of dissolving a Parliament summons its successor and appoints the day for its meeting". It is also a little surprising to be told, on page 146, that the first recorded question, "Whether there was any ground for a certain rumour", asked by Lord Cowper in 1721 in the House of Lords, would now be out of order. His Lordship could perfectly well ask a similar question today: but not, of course, in the House of Commons. In the historical section, again, we find that very little use is made of records not peculiar to the Commons. Thus Select Committees are stated to be first recorded in the Commons' Journals of 1571; but there is evidence that they were a common parliamentary form a century and more before that.

All this results, of course, from the form of the book, and from its exclusive concentration upon the House of Commons, without which it could not be the clear, simple and readable guide to the main features of the procedure of that House which it sets out to be. The present edition has been brought up to date to about the end of 1957, and contains at the end an appendix on delegated legislation, and tables showing in detail how the time of the House was divided between various classes of business in the three periods, 1919 to 1926, 1929 to 1936 and 1946 to 1955.

Parliamentary Procedure in India. By A. R. Mukherjea. Oxford, 1958. Rs. 25 (India).

No reader of THE TABLE can have failed to notice the regular appearance, in the "Miscellaneous Notes", of descriptions of amendments made during the year to the Rules of Procedure of one or more Indian legislatures. Despite the great number and variety of these amendments, it has always been possible to detect a certain uniformity of development, usually on the initiative of the Central Parliament. For example, that excellent institution the "Committee on Government Assurances", whose duty it is to record all promises of future action made by Ministers in Parliament, and to report from time to time on the extent to which such promises have been fulfilled, was initiated in the Lok Sabha in 1953 and taken up, within a very short space of time, in Bihar, Madras and Uttar Pradesh. This is, indeed, no matter for surprise. Conferences of Presiding Officers and Secretaries of Indian legislatures have been regularly held since 1946, and at the conference of Secretaries in 1953, Shri M. N. Kaul, the Secretary of the Lok Sabha, observed that all the legislatures in India could be said to constitute "one grand Parliament of the country. . . . We have to see that each part of this Grand Parliament functions effectively. We have to see that there is uniformity of procedure, organisation and administration of these various parts".

Shri Mukherjea's book, excellent in itself, is also the best possible indication of the success of his colleague's aim. The procedural edifice it describes is imposing and homogeneous, founded in large measure upon the practice of the United Kingdom (one of the author's self-appointed tasks, fully and expertly discharged, is to "show the Indian correspondence to British procedure as described in May") but adapted in its form to the divergent features of Indian polity, such as its federal system and its written constitution. In some respects the achievement of independence brought Indian procedure nearer to that of the United Kingdom than it had been before; in the matter of privilege, for instance, the 1950 constitution conferred upon all legislatures the powers, privileges and immunities of the House of Commons as they existed at that date, and a description of these forms a large portion of Shri Mukherjea's chapter on privi-

lege. On the other hand, the considerable differences in legislative procedure are the fruit of a long and fertile Indian development, going back in some instances to procedures of the Legislative Council of 1853 (these being founded on the principle, enunciated by the then Governor-General, that legislative forms should be kept as simple as possible, which precluded the adoption of the House of Commons as a model at that epoch).

The arrangement of books on parliamentary procedure is largely imposed by the nature of the subject. Inevitably, Shri Mukherjea devotes separate chapters to such matters as the arrangement of business, the rules of debate (which includes a list of unparliamentary expressions almost as exhaustive as that compiled by Shri Krishnamoorthy, and reviewed immediately below), legislation, financial procedure and privilege. Less usually, a separate and most valuable chapter is devoted to the duties of the Comptroller and Auditor General. The one notable omission is a chapter on the committee system; there are, of course, incidental descriptions (*e.g.*, in the chapter on legislation) of committee procedure, but a combined account of the types, functions and procedure of committees would undoubtedly be of value in future editions. This is, however, a very minor criticism of Shri Mukherjea's work, which is distinguished throughout by its lucidity and scholarship, and which has placed all those who are interested in Indian affairs, parliamentary procedure, or both, most heavily in his debt.

Unparliamentary Expressions: (Expressions Declared Unparliamentary by the Various Legislatures in India and in the Countries of the Commonwealth). By V. Krishnamoorthy. Kerala Government Publication. Unpriced.

It has long been apparent that one of the most widely read and popular Articles in this Journal is the annual list of expressions allowed and disallowed in the Parliaments served by members of the Society. Every year the length of the list seems to increase, and the expressions themselves appear more colourful and varied; and although each individual example cannot, at the time of its use, be considered as other than reprehensible, the totality bears witness to the liveliness of our parliamentary institutions. It is, indeed, the reverse side of that coin whose obverse is the freedom of debate and the refusal of democratically elected Members to be thwarted in the discharge of their duties towards their electors.

The Secretary of the Kerala Legislature has collated some hundreds of these expressions, from various Parliaments, in a brochure of 36 pages. Quite a number have appeared previously in THE TABLE, to which acknowledgment is constantly made (though not, alas! in respect of this reviewer's own most cherished anathema, "bigbellied, flat-nosed, Yankee-speaking pilot fish", which was faithfully recorded in Vol. XXI of this Journal). In reading through them in

the mass, one's previous impression, gained from looking at the annual Articles in THE TABLE, is confirmed—this is, that one neither can nor should expect consistency of application in every legislature. Few occupants of the Chair in any part of the world would ever permit the use of the word "liar", but it is inconceivable that exception would be taken in the House of Commons (for instance) to a description of a Member's speech as "building castles in the air", which was ruled out of order in 1942 in the Mysore Legislative Council. Indeed, it is not unusual, during the same year, to find an identical or almost identical expression allowed in one Assembly and disallowed in another; readers will find examples of this on pp. 186 and 187 of this Volume.

One very much hopes that in the years to come Shri Krishnamoorthy will find time to compile a companion list of expressions to which objection has been taken but which the Chair has allowed; a study of the two lists together would provide endless and fascinating opportunity for speculating on the impact of different climates and national traditions (not to mention the temperaments of individual occupants of the Chair) upon the basic respect for order and decency in debate which all our Parliaments proudly share.

Representative Government in Ireland. By J. L. McCracken. Oxford, 1958. 30s. (U.K.).

Dr. McCracken's book is a useful piece of work, and though it could not be called exhaustive it can be welcomed immediately as a "standard work". It recounts the growth of the Dáil from 1919-48, not so much in terms of the personalities who took part in the building of representative government in Ireland but more as a study of the system created.

It is remarkable that a country where government was born in revolution and civil war should have been so conscious of individual rights when planning a system of representative government. Proportional representation and the referendum, the latter recently used for the first time in order to maintain proportional representation, are often thought of as textbook entries for an ideal system. But in Ireland they have been accepted and used from the beginning. The historical background may have ensured that the individual could wield this political power, but it also meant that the Dáil (Lower Chamber) would never allow the Senate (Upper Chamber) to be a real check. It is a mark of Dr. McCracken that he shows us clearly how Irish history has affected even the details of representative government.

The first third of this short book outlines, in a detached way that is to be welcomed, the stormy beginnings of parliamentary government in Ireland during and after the First World War. Then comes a series of chapters dealing with the relationships of the Dáil and Senate, the Dáil and Executive, the working of the Dáil itself (similar

to the House of Commons, though Standing Committees are not used for Bills and the office of Speaker with its tradition is not followed in detail), and with the composition of the Lower Chamber. With regard to this composition the author comments on their education: "Even when allowances are made for inaccuracies arising out of incomplete information it can safely be said that the members of the Dáil have a more varied educational background than the members of the House of Commons, where the higher levels of education are so heavily represented." The work concludes with a series of maps that elucidate the voting under proportional representation. The whole is well indexed.

It would be wrong to consider this work, a slim octavo volume, as a detailed history of Dáil Éireann between 1919 and 1948, as the author would doubtless agree. It would be equally wrong for anyone interested in or involved with either the history of modern Ireland or of representative government not to have it on his shelves.

(*Contributed by Mr. D. J. Englefield, Senior Library Clerk, House of Commons.*)

XXIII. THE LIBRARY OF THE CLERK OF THE HOUSE

The following books, recently published, deal with parliamentary and constitutional matters and may be of interest to Members:

Parliamentary Sovereignty and the Commonwealth. By *Geoffrey Marshall*. Oxford. 35s.

The Machinery of Local Government. By *R. M. Jackson*. Macmillan. 30s.

Bureaucracy in New Zealand. Edited by *R. S. Milne*. Oxford. 20s.

The Foundations of Political Theory. By *H. R. G. Greaves*. Allen and Unwin. 21s.

The Cabinet in the Commonwealth. By *H. V. Wiseman*. Stevens. 50s.

The Essentials of Public Administration. By *E. N. Gladden*. Staples Press. 21s.

Nationalization in Britain: The End of a Dogma. By *R. Kelf-Cohen*. Macmillan. 25s.

Outlines of Central Government. By *J. J. Clarke*. Pitman. 21s.

Anonymous Empire: A Study of the Lobby in Great Britain. By *S. Finer*. Pall Mall Press. 12s. 6d.

The Imperial Idea and its Enemies. By *A. P. Thornton*. Macmillan. 30s.

The House of Lords in the Age of Reform, 1784-1837. By *A. S. Turberville*. Faber. 50s.

Labour and Politics, 1900-1906. By *Frank Bealey* and *Henry Pelling*. Macmillan. 30s.

The Constitution and What it Means Today. By *E. S. Corwin*. Princeton. $3.50.

Free Elections. By *W. J. M. Mackenzie*. George Allen and Unwin. 15s.

Nineteen Thirty-one: Political Crisis. By *R. Bassett*. Macmillan. 42s.

Towards a European Parliament. By *Kenneth Lindsay*. Council of Europe. 7s. 6d.

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XXV. MEMBERS' RECORDS OF SERVICE

Note.—*b.* = born; *ed.* = educated; *m.* = married; *s.* = son(s); *d.* = daughter(s).

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat individual records on promotion.

Mitchell, Alfred Norval, O.B.E., M.A.—Clerk of the Legislative Council, Northern Rhodesia; *b.* 1906; *ed.* Shrewsbury School and Balliol, Oxford; *m.* 1930; 3 *s.*, 1 *d.*; joined Indian Civil Service, 1929; transferred to Indian Political Service, 1934, serving in various positions in the Indian States and the North-West Frontier Province, and finally as Chief Secretary, North-West Frontier Province, 1947; present appointment, 1957.

Sidiki, Mahomad Hanif, B.A.(Hons.), LL.B.—Secretary of the Provincial Assembly of West Pakistan; *b.* 19th April, 1904; Bachelor of Arts (Honours) and Laws of the Bombay University; practised at the Bar; Public Prosecutor; entered service in November, 1950; member of former Sind Judicial Service, District and Session Judge; Secretary to the former Sind Legislative Assembly and Secretary tc the former Sind Government Legal Department and Remembrancer to Legal Affairs; now Secretary to the Government of West Pakistan, Law Department, holding the additional charge of the post of Secretary, Provincial Assembly of West Pakistan.

van Zyl, Willem Petrus Lubbe, M.A.—Second Clerk-Assistant, House of Assembly, Parliament of the Union of South Africa; *b.* 11th October, 1912, Clanwilliam, Cape Province; *ed.* Clanwilliam High School and University of Cape Town; *m.* 1944, Daphne Gordon Dunningham; 2 *d.*, 1 *s.*; Public School, 1928-30; University 1931-34; Assistant Translator, House of Assembly, 1935-46; Chief Translator, 1946-59; appointed to present position, 1st August, 1959.

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NOTE.—*The detailed entries under the names of Countries relate only to such constitutional matters as need entries separate from those appearing under Subject headings; cross-references to the latter are given, but without details of sub-headings or page numbers.*

ABBREVIATIONS

(Com.) = House of Commons.
Jt. = Joint.
S/C = Select Committee.
C.W.H. = Committee of the whole House.
Q = Question(s).

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