The Table

BEING

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

EDITED BY

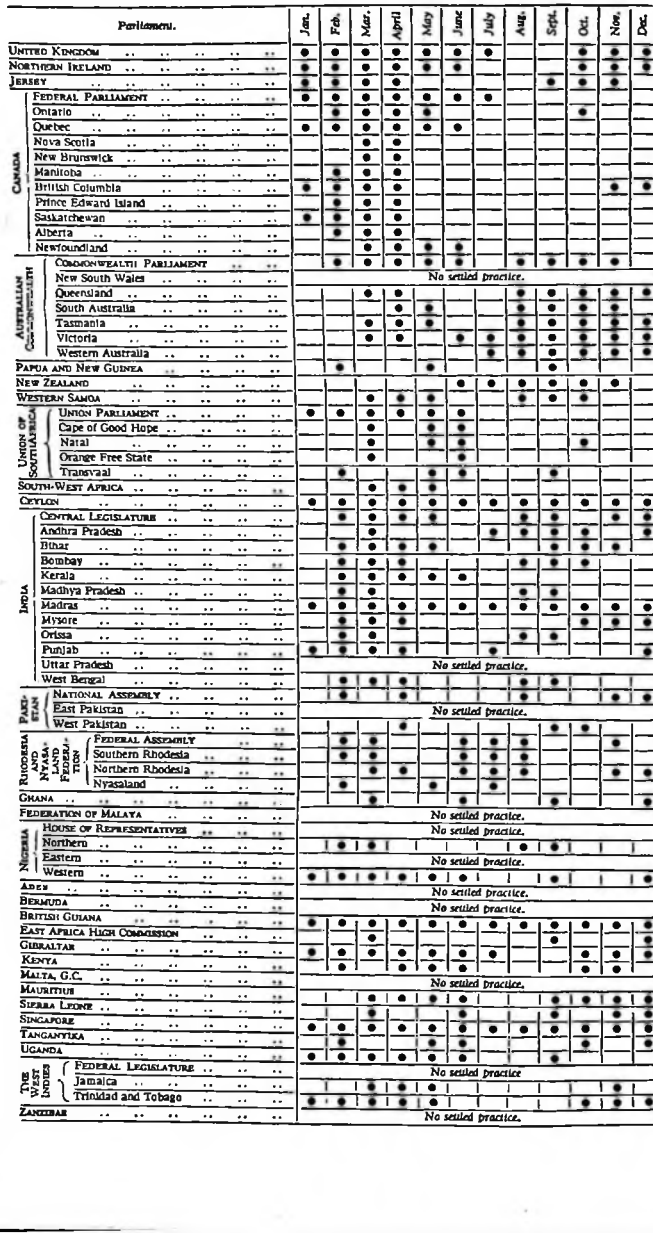
R. W. PERCEVAL AND C. A. S. S. GORDON

VOLUME XXVIII

for 1959

LONDON
BUTTERWORTH & CO. (PUBLISHERS) LTD
88 KINGSWAY
and at
SYDNEY · MELBOURNE · BRISBANE · TORONTO
WELLINGTON · AUCKLAND · DURBAN
1960
Price 35 Shillings

USUAL PARLIAMENTARY SESSION MONTHS



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THE JOURNAL OF

THE SOCIETY OF CLERKS-AT-THE-TABLE

IN COMMONWEALTH PARLIAMENTS

I. EDITORIAL

Douglas John Gordon, C.B.—We regret to announce the death, on 30th August, 1959, of Mr. Douglas Gordon, Clerk-Assistant of the House of Commons.

Born in 1900, he entered the service of the House in 1924 and took his seat at the Table in 1948, becoming Clerk-Assistant in 1954. After a severe illness in the autumn of 1956 he made a strong recovery and resumed with vigour his work and manifold private interests; but a sudden relapse deprived him of the attainment of the highest rank in his profession, and those who survived him of a wise colleague and loyal friend.

A Memorial Service was held in St. Margaret's, Westminster, on 22nd October, at which an address was given by Canon J. McLeod Campbell, Chaplain to the Speaker.

The following tribute is written by the Clerk of the House of Commons:

Douglas Gordon's sudden death in Warsaw attending the plenary session of the Association of Secretaries-General was a cruel blow. Yet the fact that his death occurred abroad and in the course of duty (half an hour before he collapsed he had been reading a paper to the Association) typified the two great interests of his life. An insatiable traveller in Europe, travel to Douglas was not simply a method of selfishly absorbing impressions; far more important was the receiving and communicating of ideas, and the formation of lasting friendships. His great-

est affinity was for Austria and Germany. In the years following the Second World War, he was tireless in explaining to his innumerable German friends the essence of parliamentary democracy and the part which it could play in re-uniting a torn continent. In this he was greatly helped by his ability to expound even the most abstruse and technical parliamentary problems in the German language. Douglas Gordon also played his full part in the activities which link Westminster and the Commonwealth. His talks to the C.P.A. Course on Questions, of which his knowledge was unrivalled, will long be remembered by those fortunate enough to hear them. Many visiting clerks, too, will recall his kindness and hospitality. For above all Douglas loved people. He loved, too, the House of Commons, and allowed no personal considerations of health or convenience to stand before his duty. He was intensely proud of being the servant of the House; that he died in its service, a martyr to that strong sense of duty derived from his Scottish ancestry, would have been as he wished. Our sympathies go to his brother Strathearn Gordon, Librarian of the House of Commons.

George Stephen, M.A.—Mr. Stephen, the retiring Clerk of the Legislative Assembly, was honoured by the Members of the Assembly at the 1960 Annual Meeting of the Saskatchewan Branch of the Commonwealth Parliamentary Association.

The Honourable J. A. Darling, Speaker of the Assembly, was in the Chair; The Honourable T. C. Douglas, Premier of Saskatchewan, paid tribute to Mr. Stephen's long service and valuable assistance to the Assembly; Mr. W. J. Patterson, former Premier of the Province, and Mr. Tom Johnston, former Speaker of the Assembly, added their personal tributes and reminiscences of Mr. Stephen's service.

Mr. Stephen received an engraved desk set from the Members representing their thanks for his past services and their wishes for a happy retirement.

Later in the year, Mr. Stephen received the customary compliments from the Government and senior members of the Public Service at a dinner in his honour, and the staffs of the offices with which Mr. Stephen's duties brought him into close contact entertained him at a tea.

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

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

C.B.E.—F. C. Green, Esq., M.C., formerly Clerk of the House of Representatives of the Australian Commonwealth.

C.B.E.—Alhaji Umaru Gwandu, Speaker of the Northern Regional House of Assembly, Nigeria.

II. SUSPENSION OF STANDING ORDERS

Answers to Questionnaires

The Questionnaire for Volume XXVII contained the item:

Please describe (i) any special procedures or forms of motion which must be used in order to suspend or dispense with standing orders, sessional orders and written or unwritten rules of practice and (ii) the circumstances in which such suspensions most often take place (see also Questionnaires IV, V, VII).

and the following information has been received.

United Kingdom

It is the general and convenient custom of both Houses that any motion, other than ancillary or dilatory, requires notice, which must be given not later than the rising of the House on the sitting day before that on which it is intended to debate the Motion. In the *House of Lords* this is made explicit, where motions to suspend standing orders are concerned, in the terms of S.O. No. 75, which reads:

No Motion shall be granted for making any new Standing Order, or for dispensing with a Standing Order of the House, unless notice shall have been given in the Order Paper to consider the said Motion.

The only circumstances in which the House of Lords normally finds it necessary to suspend its Standing Orders are those obtaining before a recess, in order to enable the Government to finish its bills. The two Standing Orders mainly affected are No. 35, which lays down the order in which public bills take their place on the Order Paper, and No. 41, which lays down the rule that no two stages of a bill may be taken on the same day.

In the *House of Commons* any Standing Order may be suspended upon notice being given. The Standing Orders relating to Private Members' Business (Nos. 4 to 6) are invariably suspended, at the beginning of every Session, by a Sessional Order which lays down an entirely different system (which has been enforced since session 1950-51, and will doubtless in time be enshrined in a new Standing Order).

It is interesting to note, however, that the Sessional Order does not provide, in terms, that the Standing Orders which it replaces be suspended; it is accepted, in practice, that any order or resolution of the House containing provisions repugnant to those of a Standing Order takes precedence over that Standing Order during the currency of the business to which it refers. Another example of this can be seen in the motion, moved shortly before every recess when the House is to be adjourned on a day other than a Friday, that on the day of the adjournment the House meet at eleven o'clock, that no questions be taken after twelve o'clock, and that the House be adjourned at five o'clock; the effect of this is to suspend the relevant provisions of S.O.s No. 1 (Sittings of the House) and No. 8 (Questions).

Standing Order No. 16 (Business of Supply) provides, *inter alia*, that on an allotted supply day no business other than business of supply be taken before ten o'clock; these provisions are frequently suspended by Ministerial motion which, being foreseen in the terms of the Standing Order itself, can be neither amended nor debated, but must be decided forthwith.

Standing Order No. 1 (Sittings of the House) which lays down the hours of sitting, also contains machinery for the exemption of any specified business from its provisions; notice of a motion for such exemption is required, under the terms of the Standing Order, to be placed on the Order Paper among the proceedings "at the commencement of public business." It is not, however, moved until the moment of interruption, by which time, if the business to which it relates has been dispatched more speedily than was expected, it may no longer be necessary to move it at all (*see* p. 39). No debate or amendment is permissible on such motion.

Jersey

Procedure in the States is governed largely by custom, and the paramount rule of procedure is laid down by an Order in Council of 28th March, 1771, which provides as follows—

> And His Majesty doth further order, That when any thing is proposed to the Assembly of the States, it Shall be wrote down in the Form in which it is meant to be passed, and there Shall be debated; after which it Shall be lodged au Greffe for fourteen Days at least before it Shall be determined, in order that every individual of the States may have full time to consider thereof, and the Constables to consult their Constituents if they judge necessary; and that this Delay be only dispensed with in case of Emergency, in which the Safety of the Island may happen to be immediately concerned.

The Order in Council is considered to be mandatory in the case of propositions for the adoption of legislation; any member of the States can, however, require that it be applied in the case of any other proposition.

The Order in Council has to the present time been applied to all motions for the suspension of Standing Orders.

Canada

In the *House of Commons*, Standing Orders or unwritten rules of practice are suspended frequently and almost daily by unanimous consent of the House. However, the prescribed practice requires that forty-eight hours' notice be given of a debatable motion to effect the suspension of any standing order.

In the Legislative Assembly of *British Columbia*, standing orders are frequently suspended for the expedition of business or in order to allow a departure from the arrangements on the Order Paper.

Australia

Commonwealth Parliament.—In the *Senate*, Standing Order 448 provides that any Standing Order of the Senate may be suspended without notice, provided that the motion is carried by an absolute majority of the whole Senate. In cases where notice is given for the suspension of any Standing Order, the provision with regard to an absolute majority is not observed; only a simple majority of those Senators present is required.

When it is desired to suspend any particular Standing Order, the number of such Standing Order and its purport is usually mentioned in the motion for suspension. In other cases the motion covers the suspension of so much of the Standing Orders as would prevent the action it is desired to take from being taken.

Standing Orders have from time to time been suspended for the following purposes:

To enable Bills to be passed through all stages—or some stages—without delay.

To enable the appropriate questions in relation to a number of (Sales Tax) Bills to be put as for one Bill and to allow the Bills to be taken together in Committee of the Whole. (These were Bills dealing with cognate matters.)

To enable new Business to be taken after 10.30 p.m.

To enable a Member to continue his speech beyond the prescribed time.

To enable a motion to be moved without notice.

In the *House of Representatives*, the Standing Orders contain the following provisions relating to the suspension of the Standing Orders:

Motion for suspension without notice: In cases of urgent necessity, and Standing or Sessional Order or Orders of the House may be suspended for the day's sitting, on Motion, duly moved and seconded, without notice:

Provided that such Motion is carried by an absolute majority of Members having full voting rights (S.O. No. 400).

Motion for suspension with notice: When a Motion of the suspension of any Standing or Sessional Order or Orders appears on the Notice Paper, such Motion may be carried by a majority of votes (S.O. No. 401).

Limitation of suspension: The suspension of Standing Orders is limited in its operation to the particular purpose for which suspension has been sought (S.O. No. 402).

Motions are usually in the following forms:

"That so much of the Standing Orders be suspended as would prevent ....." or "That Standing Order No. ..... be suspended for the remainder of this sitting."

Motions may be moved in the following ways:

(*a*) Without notice (absolute majority of all members required).
(*b*) With notice (including contingent notice).
(*c*) By leave of the House.

In the case of (*b*) and (*c*) a simple majority of members present is required.

The circumstances in which such suspensions most often take place are:

To enable—

(*a*) Stages of Bills to be taken without delay (usually on contingent notice).
(*b*) Time limits for speeches to be extended.
(*c*) Consideration of related Bills together.
(*d*) Motions for the introduction of certain Bills to be moved without notice.
(*f*) Ministers to make Ministerial Statements without notice.

New South Wales.—Standing Order 395 of the Legislative Assembly makes provision for Suspension, Notice of Motion for which may be given at a previous Sitting (this has not been done for years now), or the *consent* of the House may be obtained for moving such a Motion without Notice (this is done occasionally in the case of Financial Bills: the proposals having been well discussed in Committee) or by the device known as "Urgency".

This is a cumbersome method. It is most often used by the Government to pass urgent Bills through all stages at one Sitting, and by the Leader of the Opposition to secure immediate consideration of (usually) a Motion calculated to embarrass the Government.

Urgency Motions may be moved at any time when no other business is before the House—all that is necessary is that a Member catch the Speaker's eye. Private Members do this during Question Time (when the Chair might be led to believe the Member merely wished to ask a Question); a Minister secures the call by arrangment. Having secured the call the formula for the Motion is: "That it is a matter of urgent necessity that this House should forthwith consider the following Motion, viz. . . ." (Substantive Motion follows).

The mover, if a Private Member, is allowed ten minutes to indicate

why immediate consideration is urgent: a Minister is then allowed ten minutes *in contra*. The House then divides and if the "Ayes" have it, the Member moves, That so much of the Standing (and "Sessional", if necessary) Orders be suspended *as would preclude* consideration forthwith of the following Motion: (Substantive Motion re-stated). To this Question any Member may speak for ten minutes with the right reserved to the Chair to put the Question when the debate shall have exceeded one hour. Next, the Member moves his Substantive Motion.

An interesting precedent occurred on 25th March, 1952, when a Member sought to move an Urgency motion with a view to discussing forthwith a Motion on the paper relating to the abolition of the Legislative Council.

Rising to a point of Order, the Attorney-General submitted that Standing Order No. 395 provided that the Standing Orders could be suspended without notice only in cases of urgent necessity. It was a condition precedent to the requirement of the second paragraph of the Standing Order, viz., that the question of urgency should be decided by the House, that the motion must possess in itself the essential element of urgent necessity, but as that element was absent in this case the Motion of Urgency was out of order.

Mr. Speaker upheld the Point of Order, but retracted his ruling in a statement the following day. He reminded the House that immediately prior to the Attorney-General rising to order, he had been compelled to have two Honourable Members of the Opposition ejected from the Chamber, an incident that had greatly disturbed and upset him. He had realised, he said, that if the motion had gone to a vote of the House, it would have been defeated because of his action in having had two Honourable Members removed from the Opposition side, and he had further realised that he would then have been guilty of an act of gross partisanship, and one which, as Speaker, he could not have countenanced for a moment. In his dilemma, and believing that there had been merit in the point taken by the Honourable the Attorney-General he had upheld his Point of Order.

Mr. Speaker said further that when the incident had passed and in the calmer atmosphere of his room he had been poignantly aware that, whilst he had saved himself the odium of partisanship, he had transgressed Standing Order No. 395, and that his position had become quite untenable. He had thereupon resolved that when the House met that day, he would admit his error, tell the House that he had been wrong, and say that the motion moved by the Honourable Member for North Sydney had been in order. He had further resolved that he would inform the House that, should the same matter come before him again, he would give a different decision from that which he had given the previous day.

Mr. Speaker added that he had made his mistake under most extenuating circumstances, but he would say that the man who had

never made a mistake had never made anything. If, upon making a mistake, he were not man enough to admit it, he would be no man. He had made a mistake. He admitted it.

Queensland.—S.O. No. 332 provides that any Standing Order may be suspended or dispensed with by a majority of the House. The Standing Orders are usually suspended for the following purposes:

1. To expedite the passage of Bills by taking all stages, or more than the allowed stages, in the one day. (The customary Motion being: "That so much of the Standing Orders be suspended as would otherwise prevent the passing of Bills through all their stages in one day.")

2. To receive Resolutions of Supply and Ways and Means on the same day as they have passed in those Committees, and to pass the Appropriation Bill. (The Motion being: "That so much of the Standing Orders be suspended as would otherwise prevent the receiving of Resolutions from Committees of Supply and Ways and Means on the same day as they shall have passed in those Committees, and the passing of an Appropriation Bill through all its stages in one day.")

3. To enable a Private Bill to be introduced and passed through all its stages as if it were a Public Bill. (A typical Motion being: "That leave be given to introduce a Bill to Transfer to and Vest in the University of Queensland the Lands and other Property of the Acclimatisation Society of Queensland; and that so much of the Standing Orders relating to Private Bills be suspended as to enable the said Bill to be introduced and passed through all its stages as if it were a Public Bill.")

4. Temporary Supply Bill—before Address in Reply to Governor's Opening Speech has been adopted. (The Motion being: "That so much of the Standing Orders be suspended as would otherwise prevent the constitution of Committees of Supply and Ways and Means, the receiving of Resolutions on the same day as they shall have passed in those Committees, and the passing of an Appropriation Bill through all its stages in one day.")

South Australia.—In the *Legislative Council*, any Standing Order or Sessional Order may be suspended on motion after notice with the exception of those Standing Orders dealing with the same question twice in one session, the six months' postponement of the second or third reading of a bill and the passing of certain Constitution Act Amendment Bills at the second and third reading stages (S.O. No. 463).

In cases of urgent necessity, Standing or Sessional Orders may be suspended without notice provided the motion for so doing has the concurrence of an absolute majority of the whole number of members of the Council (S.O. No. 464).

The mover of such a motion is limited to ten minutes in stating his reasons for seeking such suspension and the Minister of the Crown

speaking to such a question is subject to a like limit of time, but no further discussion is allowed (S.O. No. 465).

The suspension is limited in its operation to the particular purpose for which it is sought and, unless it be otherwise ordered, to that day's sitting of the Council (S.O. No. 466).

No motion for suspension, without notice, is entertained until the consideration of Orders of the Day is concluded, except it be for the purpose of expediting the progress of a bill or the business of the Council (S.O. No. 467).

Suspensions of Standing Orders take place most frequently to facilitate the business of the Council; and near the end of the Session, it is usual for Ministers to give notice that, contingently on bills reaching certain stages, they will move for the suspension of Standing Orders to enable the bills to pass through their remaining stages without delay. In this way, the motion for suspension requires only a simple majority.

The Standing Orders of the *House of Assembly* provide that in cases of urgent necessity, any Standing or Sessional Order may be suspended on motion without notice, provided that such motion has the concurrence of an absolute majority of the whole number of members of the House of Assembly (S.O. No. 459). When such a motion is moved, Mr. Speaker stands and audibly counts the House and if a majority of the whole number of Members be not present, the motion lapses (S.O. No. 460). If notice is given of a suspension motion, such motion may be carried by a simple majority of the voices (S.O. No. 461).

Additional provisions contained in S.O.s Nos. 462, 463 and 464, are almost wholly identical with those of S.O.s Nos. 465, 466 and 467 of the Legislative Council (described above).

The foregoing provisions relate specifically to Standing and Sessional Orders, but they have also been applied to the suspension of rules of practice.

The most frequent use of the machinery for suspending standing orders is made to expedite the passage of bills through the House; in particular, to enable the member in charge of a bill either to put it through the preliminary stages of introduction and first reading and to move the second reading in the one day; or to take a bill through the Committee, Report and third reading stages on the one day.

Tasmania.—The procedure adopted in the *House of Assembly* for the Suspension of Standing Orders or Sessional Orders in this House is as follows:

A Motion is made: "That so much of the Standing Orders as prevents ..... be suspended." If this Motion is moved without Notice it requires a two-thirds majority of the Members present (S.O.s Nos. 451 and 452).

The most frequent occasions for the Suspension of Standing Orders in this House occur in the last week or so of the Session when the

Government is endeavouring to complete its business before the end of the Session. In most cases this procedure is adopted to expedite the passage of an urgent Bill through both Houses.

Western Australia.—In the *Legislative Council*, Standing Orders may be suspended if in the opinion of the President an urgent necessity exists. A motion for the suspension of Standing Orders, without notice, must be agreed to by an absolute majority (S.O. No. 422). When notice has been given of such it can be carried by a simple majority (S.O. No. 423). Each suspension is limited in its operation to the particular purpose for which it has been sought (S.O. No. 424).

Standing Orders are suspended in the Council for various reasons, such as the following:

(*a*) To pass an urgent Bill (*e.g.*, Supply) prior to the adoption of the Address-in-Reply to the Governor's Opening Speech which normally takes precedence.
(*b*) To facilitate the passage of legislation through several stages towards the end of a Session.
(*c*) To enable the times of sitting to be varied and to allow the House to sit on additional days.

Forms of motions are as follows:

(*a*) That so much of the Standing Orders be suspended as is necessary to enable a Supply Bill to pass through its stages at any one sitting; and the aforesaid Bill to be dealt with before the Address-in-Reply is adopted.
(*b*) That during the remainder of the session so much of the Standing Orders be suspended as is necessary to enable Bills to be passed through all stages in any one sitting, and all messages from the Legislative Assembly to be taken into consideration forthwith.
(*c*) That for the remainder of the session, the House, unless otherwise ordered, shall meet for the despatch of business on Fridays at 2.15 p.m. in addition to the ordinary sitting days.

In the *Legislative Assembly*, S.O.s Nos. 418 and 419 contain provisions similar to those of S.O.s Nos. 422 and 423 of the Legislative Council (described above).

The Legislative Assembly frequently finds it necessary to suspend Standing Orders during each session to facilitate business. An urgent measure at the beginning of each session is the passing of a Supply Bill. Standing Orders are suspended on notice, to enable resolutions from the Committee of Supply and of Ways and Means to be reported and adopted on the same day on which they shall have passed those Committees, to enable a Supply to be introduced and passed through all its remaining stages in one day, and to enable the business aforesaid to be entered upon and dealt with before the Address-in-Reply is adopted.

Towards the end of each session, Standing Orders are generally suspended to enable Bills to be introduced without notice and to be passed through all their remaining stages in one day, all Messages from the Legislative Council to be taken into consideration on the day they are received, and all resolutions from the Committee of Supply and of Ways and Means to be reported and adopted on the day they shall have passed those Committees. The Government of the day usually assures the House that ample time will be given, when required, to discuss Bills, etc., and adjournments of debates are usually allowed. This general suspension does enable non-contentious matter to be quickly cleared.

Wednesdays are usually devoted to private members' business, but when the end of the session is in sight, a motion is moved, "That on and after Wednesday, ..., Government business shall take precedence of all Motions and Orders of the Day on Wednesdays as on other days."

If the House, under its sessional Orders, is to meet the following day at 4.30 p.m., and it is desired to meet earlier, or later, for some particular reason, the Leader of the House, prior to moving the adjournment motion, will move, "That the House, at its rising, meet at 2.15 p.m. tomorrow."

Should an additional sitting day each week be required, the motion is, "That the House shall meet on Fridays at ... a.m./p.m. in addition to the days already provided."

New Zealand

House of Representatives.—Standing Order 400 provides:

1. Any Standing Order or other Order of the House may be suspended wholly or in part on Motion with or without notice: Provided that such Motion shall not be moved without notice unless there be forty Members present at the time of moving the Motion.

(2) Such Motion shall not interrupt any debate, and shall state the object of or reason for the proposed suspension, and no amendment may be moved to such Motion.

(3) No Member of the House other than a Minister shall move the suspension of any Standing Order or other Order of the House either wholly or in part, except for the purpose of allowing some Bill, clause, or other matter in charge of such Member to proceed or be dealt with, without compliance wholly or in part as the case may be with such Standing Order or other Order.

Following are examples of the purposes for which this procedure is used:

1. To enable Local Bills to be introduced and to proceed despite the non-compliance with some of the Standing Orders relating thereto.

2. To enable Select Committees to sit during the recess or during an adjournment.

3. To enable a Private Bill to proceed in accordance with the

procedure prescribed for Public Bills instead of that prescribed for Private Bills; waiving the prescribed fees in certain cases.

4. To set up the Committees of Supply and Ways and Means to enable an Imprest Supply (*i.e.*, temporary supply) Bill to be passed as a matter of urgency. NOTE: These Committees are normally set up for the session after conclusion of an Address-in-Reply debate.

5. To allow discussion of certain formal business to be continued at 7.30 p.m. (the hour fixed for proceeding to Orders of the Day).

6. To extend the sitting beyond the time prescribed for the adjournment.

7. To enable a Bill or Bills to be passed through their remaining stages in the one day.

In addition to the above procedure, which is not uncommon, the work of the House is greatly facilitated by the expedient of obtaining leave of the House, by which is meant leave granted without a dissentient voice. The Speaker merely puts the matter before the House by asking, "Is it the pleasure of the House that this course be followed (whatever may be the course suggested by the Minister or Member). There would appear to be no objection." If no dissent is raised the proposal is either dropped or the Standing Orders involved are suspended on motion. The expedient of obtaining leave of the House is used very frequently. A common illustration is the taking by leave of certain business out of its usual course or the brief extension of a sitting beyond the time fixed for its inclusion to enable certain business to be completed.

Western Samoa.—Standing Orders may be suspended by simple motion, the terms of which must include the purpose for which the suspension is desired. One day's notice is required if the motion is to be moved by a Minister, three days if it is to be moved by a private Member.

South Africa

Union Parliament.—In the *Senate*, Standing and Sessional Orders may be suspended by substantive Motion in terms of S.O. Nos. 223, which requires that notice be given, and 224, which limits the operation of the suspension to the particular purpose for which the suspension is sought.

Suspension is sought most often in respect of S.O. No. 75, requiring that not more than one stage of a Bill be taken at the same sitting, and S.O. No. 90 requiring notice of amendments at the Report Stage of a Bill, in order to hasten the passage of a Bill at the end of a Session or in circumstances where its passage is being or is likely to be subjected to protracted delaying tactics. For this purpose S.O. No. 224 is also usually suspended.

Suspension of portions of Standing Orders is most often sought in the following circumstances:

(*a*) in respect of S.O. No. 32, in order to enable the House to give precedence to Government Business on private Members' days (usually after the first few weeks of a Session); and

(*b*) in respect of S.O. No. 15 in order to enable the House to meet earlier or later than 2.30 p.m.

The form of motion in these instances is: "That, notwithstanding the provisions of Standing Order No. ....."

In the *House of Assembly*, the suspension of Standing Orders is governed by the provisions of S.O. No. 291, which reads as follows:

(1) Any Standing or Sessional Order or Orders of this House may be suspended upon motion made after notice, such motion being carried by a majority of voices: Provided that in cases of urgent necessity (of which Mr. Speaker shall be the judge) any such Order or Orders may with the consent of the whole House be suspended upon motion made without notice.

(2) The suspension of Orders is limited in its operation to the particular purpose for which such suspension has been sought.

Specific provision is also made in S.O. No. 26 (2) for the House to dispose of any particular business which would not normally be completed before the application of the automatic adjournment rule at 10.25 p.m. This Standing Order, which has frequently been resorted to, provides—

26 (2) A motion may be made by a Minister at the commencement of public business, to be decided without amendment or debate, "That the proceedings on *(naming the specified business)*, if under discussion at twenty-five minutes past ten o'clock to-night, be not interrupted under Standing Order No. 26.

(*See V. & P.*, 1958 (2), p. 194.)

The undermentioned Standing Orders have frequently been suspended in the past by sessional orders—

(*a*) *Stages of bills* (S.O. No. 162): This Standing Order provides that not more than one stage of a bill shall be taken at the same sitting if objection to a further stage is made by more than two members. It has sometimes been suspended in respect of specific bills, but on other occasions it has been suspended for the remainder of the session—*e.g.*, V. & P., 1946-47, p. 989.

It may be remarked that there is only one case where the Standing Orders specifically provide that a further stage of a bill may be taken forthwith—namely, the committee stage of an appropriation bill (other than a part appropriation bill). *See* S.O. No. 167.

(*b*) *Automatic adjournment rule* (S.O. No. 26): In addition to the procedure followed in the specific cases referred to above, this Standing Order has also been suspended on several occasions for the remainder of the session—*e.g.*, V. & P., 1955, p. 761.

Cape Provincial Council.—S.O. 193 (Public Business) permits suspension of standing or sessional orders " upon motion made after notice, or with the consent of the whole Council, without notice ".

The ordinary practice and procedure as for motions is applied. Usually the form is: " That from (for) ..... (date) Rule ..... be suspended for ..... (purpose or time)."

S.O. 276 (Private Draft Ordinances) applies Standing Orders relating to public draft ordinances. S.O. 193 could therefore be invoked. S.O. 288, however, specifically states:

> No motion to suspend any Rule in connection with a Private Draft Ordinance shall be made except after notice.

No precedent is known for procedure under S.O. 288.

Natal Provincial Council.—The following is the Standing Order on the subject:

> 30. Any Standing Rule or Order may be suspended upon Motion, with or without Notice, provided that two-thirds of the Members be present and that a majority of at least two-thirds of those present shall assent thereto: Provided always that no Motion to suspend any Standing Order in connection with a Private Draft Ordinance shall be made until after the Second Reading.

Advantage is taken of this Rule fairly frequently in order to facilitate business—*e.g.*:

(*a*) On the first day of the Session the Public Accounts, the Pensions and Sessional Committees are usually appointed, which means that the ordinary notice is dispensed with.

(*b*) When an Ordinance has been passed through Committee sometimes the Third Reading is taken immediately.

Orange Free State Provincial Council.—Any Standing Order may be suspended on motion made after notice, such suspension being limited in its operation for the particular purpose for which such suspension has been sought (S.O. 171).

The usual procedure taken to suspend certain standing orders, mostly on the stages of draft Ordinances and others for the fixing of session hours, other than by Resolution of the Council, is for the Leader of the House to introduce a motion, as set out hereunder, at the beginning of a Session. As the Council at present is a one-party House it has never happened yet that there were any votes cast against the motion.

The terms of the motion are:

> That unless otherwise ordered
>
> (1) Business be suspended on each sitting day at four o'clock p.m. and resumed at half-past four o'clock p.m.
>
> (2) Section 83 of the Standing Rules and Orders (Stages of Draft Ordinance) be suspended for the duration of the session.
>
> (3) Under Standing Order No. 21, business be suspended at six o'clock p.m. and resumed at eight o'clock p.m.

Ceylon

In the House of Representatives, Standing Orders are suspended or dispensed with only on motion after notice. Such a motion is usually moved at the commencement of public business, and S.O. No. 132 provides that no such motion is effective if less than 20 Members vote in the majority, unless it has been proposed by a Minister.

Action of this nature is resorted to usually in order to determine sitting days outside those prescribed by the Standing Orders, and to waive the necessity for notice in respect of motions.

India

The following Rule:

Any member may, with the consent of the Chairman, move that any rule may be suspended in its application to a particular motion before the Council and if the motion is carried the rule in question shall be suspended for the time being.

occurs, *mutatis mutandis*, in the Rules of Procedure of the *Rajya Sabha* (No. 227), *Lok Sabha* (No. 388), *Bihar Legislative Council* (No. 288), *Mysore Legislative Assembly* (No. 322) and *Uttar Pradesh Legislative Council* (No. 56) and *Legislative Assembly* (No. 315).

Comments on its operation have been received from the following:

Lok Sabha.—Motions for suspension of Rules have so far been moved to permit (*a*) reference of a financial Bill to a Joint Committee of the Houses, which under the Rules cannot be so referred; (*b*) reintroduction of a Bill on which the House had given a decision during the same session; (*c*) extension of discussion on a matter of urgent public importance for which a time limit has been laid down in the Rules; and (*d*) moving of amendments to a Bill which are outside the scope of the Bill.

So far suspensions have usually taken place under the circumstances referred to in (*a*) above; but the following instance, of category (*c*), is of interest.

Under Rule 194 of the Rules of Procedure discussion on matters of urgent public importance cannot exceed two and a half hours. On 20th November, 1958, a discussion took place in Lok Sabha under this Rule on the "Closure of Banaras Hindu University". After the matter had been discussed for two and a half hours there was a demand from members for allotment of more time for its discussion. The Deputy Speaker who was in the Chair, observed that the rule on the subject was clear and that the time could not be extended unless a motion was made to suspend the Rule. Thereupon the following motion was moved by the Minister of Parliamentary Affairs and adopted by Lok Sabha:

That the provision regarding time limit in Rule 194 be suspended with reference to the discussion on the closure of Banaras Hindu University and

the time already allotted be increased from two and a half to three and a half hours.

There are no sessional orders in Lok Sabha; nor is there any procedure for the suspension of written or unwritten rules of practice.

Mysore.—No recent case of suspension of rules has occurred in this Legislature.

Uttar Pradesh.—In the *Legislative Council*, apart from Rule 56 quoted above, certain other rules according to which a member has to give 15 days' notice for asking questions, 7 days' notice for moving a resolution and 2 days' notice for consideration of Bills are also waived or suspended by the Chairman, simply on the request of the mover in consultation with the Minister to whose department the subject matter of the motion relates.

On such occasions the mover of a motion moves that the period of notice prescribed under certain rule may be waived or suspended. The Chairman, after taking the sense of the House and the circumstances of the case, waives or suspends the relevant rule.

In the *Legislative Assembly*, no such motions are ordinarily made except on grounds of urgency. The usual occasion for them arises when the Government wish the Assembly to sit on a Saturday, or want to take a non-official day for official work.

Federation of Rhodesia and Nyasaland

Federal Assembly.—Certain standing orders provide specially for their provisions to be relaxed "by leave of the House", "with unanimous concurrence" and other such terms.

S.O. No. 215 reads:

(1) Any standing or sessional order may be suspended upon motion made after notice: Provided that in cases of urgent necessity (of which Mr. Speaker shall be the judge) any such order may with the leave of the House be suspended upon motion made without notice.

(2) The suspension of any such order shall be limited in its operation to the particular purpose for which such suspension was sought.

Under this standing order, although no notice has been given, if a member is able to satisfy Mr. Speaker that it is a case of "urgent necessity", the leave of the House is sought for suspension. Leave must be unanimous. In practice, such applications rarely succeed in satisfying Mr. Speaker.

Special provision exists in the case of Private Bills. Under S.O. 25 (Private Bills) if the Examiners report that the relevant standing orders have not been complied with, their report is referred to the Committee on Standing Rules and Orders which is required to recommend to the House whether or not compliance with the standing orders should be dispensed with. The decision then rests with the House.

The standing order (No. 127) which lays down that only one stage of a bill may be taken at a sitting is frequently suspended towards

the end of a session, by motion after notice. Otherwise, the suspension of standing orders is very rare indeed. When suspension is necessary great care is taken to word the motion in such a way as to confine the departure within strict limits in its application.

Sometimes, when a member has reached the end of the prescribed 40-minute period for his speech (under S.O. No. 60), an attempt is made to suspend the standing order as a matter of "urgent necessity" to enable him to continue, but this very rarely succeeds.

In cases where there is no established practice and standing orders are silent on their meaning, in doubt recourse is had to relevant practice in the House of Commons, under Standing Order No. 216, and the matter decided by Speaker's ruling. There is no special provision for suspending a rule of practice established in this way though the ruling could of course be reconsidered and, if necessary, a new one given.

Southern Rhodesia: Legislative Assembly.—Standing Order No. 253 lays down that any Standing or Sessional Order may be suspended upon motion made after notice, such motion being carried by a majority of voices. The procedure adopted is the same in the case of sessional as it is for standing orders and the notice usually takes one of the following forms—

That Standing Order No. 67(1) (Limitation of Speech) be suspended during the debate on the motion on the Territorial Capital.

or

That, notwithstanding the provisions of Standing Order No. 26, on Wednesday, 9th July (unless the House is sooner adjourned) business shall be suspended at six o'clock p.m. and resumed at eight o'clock p.m.; and that Government business shall have precedence after six o'clock p.m.

In cases of urgent necessity (of which Mr. Speaker is the sole judge) the standing order (No. 253) provides that any standing or sessional order may be suspended *without notice*, if the House unanimously agrees. There are consequently two obstacles to the suspension of a standing or sessional order if no notice has been given—acceptance by the Speaker and the unanimity of Members. An exception to this rule was brought about by a recent amendment to S.O. No. 67 (1), which relieves Mr. Speaker from the responsibility of deciding on the spur of the moment whether there is any "urgent necessity" for a member to speak for longer than the 40 minutes permitted. In consequence of the amendment to S.O. 67 (1) this is now left to the House to decide, the procedure being that on the expiration of a member's time limit another member may without notice propose that the member interrupted be permitted to speak in excess of 40 minutes. The Speaker puts this question at once. No amendment or debate is permitted and one voice objecting is sufficient to negative the question. The effect is to save time.

A sessional order worthy of comment is one which has been

adopted each year since Federation came about. The Federal Assembly sits on four days a week, Monday to Thursday. The Legislative Assembly of Southern Rhodesia is required by its standing orders to sit on five days a week, from Monday to Friday. As these two Parliaments are in the same centre, Salisbury, the Territorial Legislative Assembly has adopted an order at the commencement of each session to sit on only four days each week, Tuesday to Friday, the main reason being to relieve the pressure of work on the parliamentary printers. In time the standing order may be amended to provide for a four-day sitting week.

The circumstances under which such suspensions must often take place are (i) extension of the 40-minute time limit on speeches, (ii) sitting beyond the normal hour of adjournment, (iii) taking more than one stage of a Bill at a sitting, the last named being often agreed to without notice and with the unanimous concurrence of the House.

Northern Rhodesia Legislative Council.—The suspension of Standing Orders or Sessional Orders in the Council is governed by Standing Order No. 157. Any such Order may be suspended upon motion made after due notice; and Mr. Speaker has the authority to admit such a motion without notice if he sees fit. The suspension of any such order is limited in its operation to the particular purpose for which such suspension was sought. Up to the end of 1958 any such suspension required the recommendation or consent of the Governor in accordance with Section 25 of the Northern Rhodesia (Legislative Council) Orders in Council 1945-54.

The commonest occasions for suspending Standing Orders are those on which it is necessary to permit Bills to pass through several stages in one day, a procedure which is not permissible under Standing Order No. 94, and which therefore requires the suspension of that Standing Order.

There is no special procedure other than the leave of the Council for departing from unwritten rules of practice. The only provision which might be described as a written rule of practice is Standing Order No. 158, which lays down that the practice of the House of Commons is to be followed, first, in cases of doubtful interpretation of any Standing Order and, secondly, in any matter for which the Standing Orders do not provide. It follows that the procedure for dispensing with this written rule would involve the suspension of the Standing Order.

Nyasaland Legislative Council.—There are no special procedures or forms of motion which must be used in order to suspend or dispense with Standing Orders. Suspension of Standing Orders is governed by S.O. No. 169, which provides that any Standing Order may be suspended on motion with or without notice. Such notice must state the reason for the proposed suspension, and no amendment may be moved to it. No Member other than an *ex-officio* Member is permitted to move the suspension of a Standing Order ex-

cept in application to some item of business of which he himself is in charge.

There are no sessional orders or written or unwritten rules of practice. In the event of these coming into being the Council would be guided by the rules, forms and usages of the House of Commons in force for the time being, so far as the same could be applied to the proceedings of Council.

Aden

The provisions of S.O. No. 73 are identical to those of S.O. No. 169 of the Nyasaland Legislative Council described above.

East Africa High Commission

S.O. 95 of the Central Legislative Assembly reads as follows:

Motion for suspension: Any one or more of these S.O.s may, with the leave of the Speaker, be suspended for a specified purpose after question put and carried on a motion made by any Member; and any such motion shall be decided without amendment or debate.

These provisions are used mainly to enable the Assembly to begin early or sit late, and to provide for second and third readings of bills on the same day.

Mauritius

The procedure for suspending Standing Orders is laid down in Standing Order 111, which reads as follows:

On motion made with permission of the Speaker and question put and carried, any one of these Standing Orders may be suspended at any sitting to enable any special business to be considered or disposed of.

Standing Orders were suspended during 1958 on two occasions. Standing Order 35, laying down the order in which Private Members' Motions shall be taken, was suspended in order to allow a motion of special urgency and importance to be debated. (Debates, No. 28, of 14th October, p. 1260.)

The second occasion was on the last sitting but one of the Session. On the day of that sitting the half-hour adjournment time would normally have been confined under Standing Order 10 (9) to a single matter raised by a Member who had obtained the right to do so. But as no Member had claimed this right; and as it was the last occasion during the session on which there would be an adjournment debate, the Speaker permitted a motion to be made to suspend Standing Order 10 (9) in order to use the time for raising various matters. (Debates, No. 36, of 9th December.)

Nigeria

The Standing Orders of the *House of Representatives* (No. 68), and of the *Northern* (No. 69), *Eastern* (No. 71) and *Western* (No.

74) *Regional Houses of Assembly* all lay down that the question on a motion to suspend a Standing Order may only be proposed with the Speaker's consent, either after notice or, if no notice has been given, with the general assent of the House.

In the *Eastern House of Assembly* we are informed that this procedure is mainly used (*a*) to vary or extend the hours of sitting, (*b*) to sit on a Saturday, and (*c*) to allow discussion of an item of business to be prolonged beyond the usual hour.

In the *Western Regional Legislature*, the only Standing Order which is suspended very frequently is No. 4 (2) and (3), which relates to hours of sitting. The procedure is always invoked in the form of a Business Motion moved by the Leader of the House, who is also Minister of Home Affairs and Midwest Affairs, and in the House of Chiefs by a Minister without Portfolio. The form of the motion is as follows:

> Suspension of Standing Order 4(2)—That Standing Order 4(2) be suspended this day to allow the House to continue sitting after 1.00 p.m. if necessary.

Sierra Leone

Standing Order No. 82 provides for the suspension of any of the Standing Orders of the House by motion, after notice or with the leave of Mr. Speaker.

III. UNITED KINGDOM: PUBLIC BILLS INTRODUCED INTO THE TWO HOUSES BEFORE AND AFTER THE WAR

The table on pp. 28-29 shows the numbers of Public Bills of various types introduced into and passed by the two Houses in the United Kingdom for the periods 1930 to 1938 and 1950 to 1959. Certain of the figures have been reduced to percentages in the last four columns of the table; this has been done in an attempt to measure how far the incidence of the financial element in legislation has altered since before the war. The method of measurement chosen for Lords Bills has been to show what proportion of the Government Bills introduced into the Lords has contained one or more provisions so obviously financial as to require a "privilege amendment"; since any obvious financial provision in a Lords Bill, however trivial, gives rise to a privilege amendment, this is a fairly sensitive form of measurement. In the case of Commons Bills, however, it has only been possible to employ a very much cruder method of measurement —namely, the proportion of Public Bills certified by the Speaker as Money Bills under the Parliament Act, 1911. Since only Bills deal-

ing exclusively with financial matters can be certified as Money Bills, this method of measurement is much less sensitive, in that it takes no account of many Bills which do contain substantial financial provisions, but also contain other matter which prevents them from being certified as Money Bills—the annual Finance Bill, for example, is quite often not certified as a Money Bill.

The main conclusions which may be drawn from the table are very much what one would expect—namely, that the financial element in Government Bills has gone up considerably since the war, and—perhaps as a consequence of this— slightly fewer Bills have been introduced in the Lords. Other conclusions which may be drawn are that the output of Government legislation is remarkably stable; that the number of Consolidation Bills has considerably increased since the war; and that although fewer Private Members' Bills are introduced nowadays in the Commons, more are enacted from that House, though the chances of a Lords Private Member's Bill being enacted are in these days very slight. This last fact is, of course, the result of pressure of time in the Commons in the second half of the session; and the difficulty has on occasion been circumvented by introducing the same Bill, either later in the same session or in a later session, as a Commons Private Member's Bill.

IV. HOUSE OF COMMONS: REPORT OF THE SELECT COMMITTEE ON PROCEDURE, SESSION 1958-59

By R. D. Barlas, O.B.E.,
Fourth Clerk at the Table, House of Commons

The Select Committee on Procedure which was first appointed by the House of Commons in Session 1957-58 is unique by comparison with other recent Select Committees in that it owed its origin to a Private Member's motion. During the present century successive governments have moved to appoint procedure committees with general terms of reference every ten or fifteen years, and on this basis a government-sponsored committee would have been approximately due, but not overdue, at the time, the last such committee having reported in 1946. There had, however, been some sense of frustration expressed by back-bench Members both in the House and the Press; many Members had spoken of their concern at the increasing pressure of government business in the House, and the dwindling opportunities for Private Members to make their voices heard and

Session	Government Bills Introduced into House of Commons					Private Members' Bills Introduced into House of Commons			Total Commons Public Bills Enacted (excluding Charity and Provisional Order Bills)
	Introduced	Certified as Money Bills under the Parliament Act, 1911	Not passed by Commons	Not passed by Lords	Enacted	Introduced	Not passed by Commons	Enacted	
1	2	3	4	5	6	7	8	9	10
1930–31	50	13	9	2	39	94	88	6	45
1931–32	33	9	1	—	32	23	18	5	37
1932–33	30	7	2	—	28	60	48	12	40
1933–34	40	9	4	—	36	57	50	7	43
1934–35	36	7	5	—	31	10	7	3	34
1935–36	32	6	2	—	30	40	33	7	37
1936–37	46	11	1	—	45	49	38	11	56
1937–38	45	5	3	—	42	74	58	16	58
Average of pre-war sessions,	39	8	3	—	35	51	42	8	44
1950–51	50	10	1	—	49	30	22	8	57
1951–52	47	12	3	—	44	30	18	12	56
1952–53	29	8	1	—	28	25	15	10	38
1953–54	50	12	2	—	48	30	17	13	61
1954–55	28	6	4	—	24	33	29	4	28
1955–56	55	10	2	—	53	30	20*	10	63
1956–57	38	13	1	—	37	28	16	12	49
1957–58	36	8	—	—	36	40	21	19	55
1958–59	35	10	—	—	35	38	21	17	52
Average of post-war sessions,	41	10	2	—	39	32	20	12	52

Government Bills Introduced into House of Lords							Private Members' Bills Introduced into House of Lords				Total Lords Public Bills Enacted (including Consolidation, etc., Bills)	Percentages			
Introduced (excluding Consolidation Bills)	Subject to Privilege Amendment	Not passed by Lords	Not passed by Commons	Enacted	Consolidation, etc., Bills introduced	Consolidation, etc., Bills not passed by Lords	Introduced	Not passed by Lords	Not passed by Commons	Enacted		Column 2 as percentage of sum of columns 2 and 11	Column 3 as percentage of column 2	Column 11 as percentage of sum of columns 2 and 11	Column 12 as percentage of column 11
11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
14	9	—	5	9	—	—	6	4	1	1	10	78	26	22	64
16	4	—	1	15	1	—	4	—	1	3	19	67	27	33	25
12	5	—	—	12	1	—	8	5	2	1	14	71	23	29	42
17	7	1	3	13	1	—	9	1	5	3	17	70	23	30	41
14	4	—	2	12	1	—	9	6	3	—	13	72	19	28	29
6	3	—	—	6	6	—	7	—	3	4	16	84	19	16	50
12	6	—	—	12	2	—	6	2	4	—	14	79	24	21	50
12	4	—	1	11	1	—	10	3	3	4	15	79	11	21	33
13	5	—	1	11	2	—	7	3	3	2	15	75	22	25	42
6	5	—	1	5	4	—	1	—	1	—	9	89	20	11	83
10	4	1	2	7	5	—	2	1	1	—	12	82	26	18	40
8	4	—	—	8	5	—	1	1	—	—	13	78	28	22	50
10	8	1	1	8	5	—	3	3	—	—	13	83	24	17	80
7	4	3	3	1	—	—	2	2	—	—	1	80	21	20	57
10	6	1	1	8	4	2	5	3	1	1	13	85	18	15	60
8	3	1	1	6	8	1	5	5	—	—	14	83	34	17	38
8	4	—	—	8	8	1	5	2	2	1	17	82	22	18	50
10	7	1	1	8	12	—	4	1	2	1	21	78	29	22	70
9	5	1	1	7	6	—	3	2	1	—	13	82	25	18	59

* Including one not passed by House of Lords.

their influence felt. The opportunity was therefore taken by an opposition back-bench Member successful in the ballot to move for the appointment of a select committee on a Private Members' motion day.

The motion was supported on both sides of the House, and during the debate the Leader of the House announced the government's concurrence; the motion was agreed to without a division. The nomination of Members, eventually agreed after discussion through the usual channels, took account of the Committee's origin. It had been the usual practice with former committees to include a high proportion of senior Members of the House and Privy Councillors who reflected front-bench opinion; the Committee on this occasion comprised only two Privy Councillors and a high proportion of Members representative of back-bench opinion. It is interesting, however, to note that the Committee came to much the same conclusions on general issues as their predecessors, despite the difference in composition of the membership. They did, however, cover a somewhat wider field than the majority of former committees and made a greater number of recommendations on miscellaneous points of detail. They were unable to complete their inquiry during the session in which they were appointed, and a committee composed of the same Members was again appointed in Session 1958-59.

The Chairman elected by the Committee was the Rt. Hon. James Stuart (now Viscount Stuart of Findhorn), a former Cabinet Minister and Sir Winston Churchill's Chief Whip during the 1939-45 war. The Committee were able to use as a starting point for their scrutiny of procedure two memoranda from the Clerk of the House designed to meet the complaints put forward in debate. Some of the Clerk's proposals proved too novel for acceptance by the Committee; but many of the reforms suggested by his predecessors, notably Sir Thomas Erskine May, have met with a similar fate, having been initially rejected by a committee, only to be adopted by the House at a later stage when further experience of the existing procedure had shown that a change was inevitable.

In a general introductory memorandum of evidence the Clerk of the House stated that he was convinced that sooner or later the House of Commons would have to approach legislation from the angle that Parliament lays down very general principles and that it is the business of the Executive to administer the law inside those principles. He did not believe that the House was yet ready for such a delegation of its detailed legislative power, and that in consequence further efforts must continue for the present to be made in more orthodox forms of delegation. With this in view a further memorandum by the Clerk made proposals for considerably reduced standing committees, a committee of four members on unopposed public bills, a revised programme for sittings of the House including morning sittings, and a reformed procedure for Supply and Ways

and Means. Consideration might also be given, he suggested, to taking parliamentary questions in grand committees.

The memoranda of the Clerk were supplemented by oral evidence given by him at four further sittings of the Committee when he explained his own proposals and gave the committee guidance on suggestions made from other quarters. He was succeeded by two former Leaders of the House who each appeared as a witness. Oral evidence was also taken from the Speaker, the Chairman of Ways and Means, the present Leader of the House, the Leader of the Opposition, the Leader of the Liberal Party and the Government and Opposition Chief Whips. Numerous written memoranda were submitted by other members of the House, and students of parliamentary procedure.

The inquiries of the Committee as shown by the evidence and minutes of proceedings may be conveniently divided into three categories. In the first place they considered a number of relatively minor proposals for "revising procedure so as to give it a more modern and businesslike aspect, while paying due respect to tradition"; in this they achieved a remarkable measure of unanimity in their recommendations and an equally remarkable success in getting the majority of their recommendations adopted by the Government and confirmed by the House. Secondly they made recommendations designed to remove as much detail as was practicable from the floor of the House. Under this latter head their efforts can only be described as moderately successful; they appear to have realised that there is a limit to the economies that can be achieved without recourse to more drastic measures of reform on the lines suggested by the Clerk of the House; and even so, many of the more modest recommendations made by the Committee for the relief of the time of the House proved too radical for the House itself to accept.

The third category of recommendations was concerned with the use of time saved by reform of procedure and the provision of further opportunities for parliamentary debate and back-bench activity. The Committee were in general agreement that any time saved on the floor of the House should be set aside for the purpose of general debates; the spirit of this recommendation has been met by the Government, who have appointed an additional four half-days of government time during the current session for debates initiated by private members. On the extension of facilities beyond the present sitting hours of the Commons, there appeared to be a division of opinion in the Procedure Committee regarding the extent to which sittings of the House should monopolise the time of Members. In the words of the Report—

> there are bound to be differing views as to whether membership should demand full-time service, or whether the House of Commons would be served better by retaining a number within her ranks who bring to her deliberations the benefit of their knowledge and experience derived from other fields during

such hours of the day as their attendance can be spared from the precincts of Westminster.

This difference of opinion was nowhere more apparent than in the section of the report dealing with morning sittings, where the Minutes record a division on an amendment of principle. The normal sitting hours of the House are at present 2.30 p.m.-10.30 p.m. on the first four days of the week, and 11 a.m.-4.30 p.m. on a Friday. It was suggested to the Committee that the House might sit in the morning during the first four days of the week in order to hold further debates on subjects of general interest. The Committee reviewed the arguments for and against the proposal. It was argued in favour of such sittings that they would provide an opportunity for many issues to be debated which at present remained undiscussed owing to the pressure of government business and the lack of adequate private members' time. Divisions would not be allowed in the morning and there would therefore be no obligation for Members to attend if they did not wish to. Attractive though the proposal might seem, however, the Committee found many cogent arguments against morning sittings. The choice of day presented the first difficulty. Tuesday and Thursday mornings were virtually reserved for meetings of standing committees; and Mondays would prove unpopular since Members from distant constituencies would be unable to arrive at the House in time for the debate. Wednesday appeared to be the only practicable day, and this would only provide one morning in the week. In the Committee's view a morning debate would in any event place an unjustifiable burden upon Ministers and would interfere with their administrative duties. As regards back-bench Members, the Committee observed that although they would not be obliged by their Whips to attend in the absence of divisions, yet if the subject to be debated were of any importance they would consider it their duty to be present in the chamber.

This would reduce still further the opportunities open to members to pursue other interests, and restrict even more narrowly the field from which membership of the House would be recruited.

The Committee found that the weight of the evidence was against morning sittings and recommended to that effect.

It should be noted here that morning sittings were a feature of the suggestions made by the Clerk of the House. His proposals in this regard were however coupled with more wide-ranging suggestions which would have afforded relief to Members in other directions; morning sittings under his scheme might not therefore have placed the added burden on Ministers' and Members' time which they would have done if put into effect as a relatively isolated reform in procedure.

Such economies in time as the Committee did recommend were almost entirely in the sphere of legislation. Notwithstanding earlier

reforms which had made it easier for the committee stages of bills to be taken in a standing committee rather than on the floor of the House, the Procedure Committee were of opinion that too many bills were still being considered in Committee of the Whole House. Satistical tables compiled for the Committee's use and included as an Appendix to their Report showed that, for example, in Session 1956-57 some 40 bills had had their committee stages taken "upon the floor", and that upwards of 25 days of the time of the House had been occupied with committee proceedings upon bills. While accepting that Consolidated Fund bills, bills of major constitutional importance and bills where the committee stage was a formality should be kept on the floor, the Procedure Committee were of the opinion that if the House wished seriously to provide more time for general debates, other bills, however urgent, must always be committed to standing committees. Their proposals were designed to facilitate this by altering the procedure for standing committees within the existing framework. While the maximum and minimum size (20-50 members) would remain unaltered, it was recommended that the size of a committee to consider minor bills need not exceed 20-25; and the numbers required to form a quorum and to render the majority effective for closure were reduced to the figure of a third of the membership of the committee. These proposals were adopted by the House.

A separate section of the Report was devoted to the committee stage of the Finance Bill. Over the last few sessions some 8 or 9 days had been taken on average to pass the Finance Bill through committee, and it was evident that the greatest single economy that could be produced in the time spent on the floor of the House would be if the bill were to be committed in future years to a standing committee. The Procedure Committee acknowledged, as did the Leader of the House in his evidence, the existence of a tradition that matters of taxation should be dealt with on the floor of the House; but they also agreed with his opinion that, as conditions changed, tradition ought not to stand in the way of reform. They therefore examined the proposal to commit the Finance Bill to a standing committee in the light of its procedural practicability.

An initial difficulty was that it would almost certainly prove impossible for one standing committee to deal with the entire bill. Standing committees meet in the mornings between 10.30 a.m. and 1 p.m.; the Finance Bill has, up till now, taken some 70 hours in committee, and its progress has to comply with a strict time-table imposed by the requirements of the Provisional Collection of Taxes Act, 1913. On this basis it would require two committees sitting three or four times a week, or three committees sitting at least twice a week, if the committee stage were removed entirely from the floor.

The Committee considered alternative methods of dividing the Finance Bill either between two or more standing committees, or

between standing committees and a committee of the whole House. They rejected a suggestion that clauses containing the more important changes in taxation should remain on the floor, while clauses involving complicated detail should go to standing committee, as being administratively impracticable. After taking evidence from the Treasury, however, they saw no objection to dividing the bill according to the "parts" (*i.e.*, customs and excise, Income Tax, Estate duty, etc.) in which it is customarily drafted. They recommended that a division along these latter lines would be procedurally practicable. They concluded that if the House were unwilling to accept the committal of the entire Finance Bill to standing comittees, an experiment should be initiated by committing a part or parts to a standing committee, and leaving the remainder on the floor; this might not save much time in that particular year, but it would serve as an invaluable guide to the possibilities of an extension of the practice.

The recommendations of the Procedure Committee on the Finance Bill met with a mixed reception both in the House and in the Press; and there was a considerable body of opinion which thought the proposal constitutionally undesirable. The House was not of course called to vote directly upon the proposal since the form of the recommendation left it to the government of the day to initiate such action as it thought fit in the case of individual bills. The entire committee stage of the Finance Bill of 1960 has in point of fact remained upon the floor of the House; and since a somewhat shorter amount of time was taken in committee this year than has been usual—perhaps as a result of the Procedure Committee's appeal for brevity in speeches—it may well be that future governments will hesitate before deciding to conduct an experiment in committing the bill to standing committee.

Voluntary time-tables for other bills where an allocation of time for the various clauses of the bill had been agreed by the parties had proved such a success that the Procedure Committee considered suggestions for an extension of the practice so as formally to recognise the existence of such time-tables within the procedure of the House. It is however evident that the Committee were in two minds about how the problem should be approached. The Minutes of Proceedings show a series of divisions concerning the extent to which the House and its committees should be obliged to abide by the time-table once it had been agreed by voluntary means. One group of Members were willing to see machinery imposed for voluntary time-tables not far removed from the provisions of the guillotine or compulsory time-table; another group preferred greater emphasis to be placed upon freedom to negotiate. The result was a compromise which did not satisfy the House and has not been adopted. It is therefore to be expected that the system of voluntary time-tables will continue as before, though perhaps as a result of the report greater

efforts will be made to reach agreement on the allocation of time for a wider range of bills.

Several proposals were also considered in relation to the report stage of bills. The report stage in the House of Commons is a more formal repetition of the committee stage with the rules of debate which are proper when the Speaker is in the Chair; the stage also serves as a review by the House of proceedings in standing committee. Members can in general only speak once to the same question; and no new clause or amendment may be moved which imposes a tax or a charge, or which increases a tax or charge beyond what was agreed to in the committee stage. The Procedure Committee recommended that this latter restriction should be removed in order to obviate the necessity for recommittal whenever it is desired to move such an amendment after the committee stage had been completed; but their recommendation was not accepted. A more radical proposal to take the report stage of minor bills in standing committee was rejected by the Procedure Committee and was not pressed thereafter in the House. The Procedure Committee objected to this suggestion on constitutional grounds since it would involve a departure from the principle that the whole House assumes responsibility for the details of legislation; and they did not consider that their objection would be met by allowing Members, who were not members of the standing committee concerned, to attend to move amendments but not vote. They also considered that the composition of a standing committee appointed to consider a report stage would present difficulties.

The recommendations on the procedure for public bills introduced by Private Members went some way to meeting various grievances. The Committee recommended alterations in the programme for the introduction and second readings of such bills, designed to bring them on rather earlier in the session, and thus give them a better chance of reaching the statute book before the end of the session; these proposals are still being considered by the government. Another recommendation dealt with obstruction in the standing committee which considers Private Members' bills. It had been the practice on occasions, when a contentious bill was preceded by a non-contentious bill which did not arouse much interest, for obstruction to occur on the first bill in order to delay the taking of the second bill. The obstruction had usually taken the form of withdrawing the quorum after the bill had progressed for a few minutes. The Committee's recommendations on this score were met by a resolution of the Chairmen's Panel (which consists of all Members appointed to act from time to time as Chairmen of Standing Committees) that in future if at any two meetings of a committee on a bill the committee were adjourned for lack of a quorum before 12 noon, the bill concerned should go to the bottom of the list of bills before the committee. Finally, the Committee noted that it had been represented that

Private Members experienced great difficulty not only in drafting their own bills, but also in drafting amendments to public bills in general. They considered that it would be a convenience to Members if an officer of the House could be appointed to provide assistance. Reference to the Minutes of Proceedings will show that this paragraph was only included in the Report after a division in which the Committee was divided 8 to 7; and it may be conjectured that the minority had in mind the administrative difficulties of the scheme. It is not certain what will be the eventual fate of this recommendation; but the Leader of the House has undertaken to look at the matter.

There can scarcely be a parliament where every Member who wishes to speak is satisfied with his opportunities on every occasion. At Westminster the presence of 630 Members makes it inevitable that there should be a fair proportion of Members who " fail to catch the Speaker's eye " in big debates. The Procedure Committee declined to make any recommendation for the formal curtailment of speeches in general so as to allow more Members to speak, although they added that they thought many speeches could be shorter and hoped that—

> Members on both sides of the House would continue to show their approval of Front-Benchers who could compress their points well within the compass of half an hour.

They did however recommend that an hour might be set aside in major debates for five-minute speeches to enable members to make brief points. This suggestion had originally received the support of all the witnesses who had been asked to comment on it. Subsequently in the debates upon the Committee's Report, a considerable amount of opposition was displayed—and perhaps the suggestion was damned by one Member's objection to it as a " Parliamentary Children's Hour ". No final decision has as yet been reached, but it appears unlikely to be implemented in the form in which it was recommended by the Committee. One further proposal was rejected by the committee out of hand. This was that Members disappointed in debate should be allowed to print their undelivered speeches in *Hansard*. As the Committee observed, the practice would be undesirable, if only because the House would have no control through the Chair over the relevance or orderliness of the contents of such speeches.

The Procedure Committee took the view that time is often wasted by the requirement of seconders on certain occasions, mainly on moving substantive motions and amendments thereto in the House. Seconding was often done formally and to that extent seemed unnecessary; where the seconder made a speech, the result was often to unbalance debate and protract proceedings, since two speeches were made expressing similar points of view before the motion was

placed before the House. They therefore recommended that the requirement of seconders should be abolished, but that motions should continue to be seconded if desired on ceremonial occasions—*e.g.*, on the occasions of the address in reply to the Queen's Speech. This recommendation has been put into effect by a new standing order.

Privy Councillors' rights in speaking constitute a feature unique, so far as is known, in Commonwealth Parliaments. All senior Ministers are sworn of the Privy Council, and thereupon acquire a traditional right to precedence over other members in catching the Speaker's eye; this right is retained even after they have surrendered their office, and irrespective of whether their party is in power or opposition. At any given moment therefore there will be a few Privy Councillors who sit on the back-benches, and in the last Parliament there were a large number. Considerable attention was focussed on these rights during a recent debate of some importance when only two Members who were not Privy Councillors managed to speak. The Procedure Committee were urged to recommend the abolition of this rule and, after a search for a compromise, reported that there was no alternative between the retention of the rule and its virtual abolition; in view of this they recommended its abolition, while expressing the expectation that the Chair would give due weight to the experience and standing of Privy Councillors. No formal action has as yet been taken to implement this recommendation; and indeed the government have indicated that they would be adverse to supporting the abolition of the right altogether. It may well be that the solution will eventually be found in further self-imposed discipline by Privy Councillors (which has to some extent always existed) coupled with momentary attacks of blindness on the part of Speakers when faced with too long a succession of members of the Privy Council who wish to speak.

It is a rule of the House (and a rule of many Commonwealth Parliaments) that matters involving legislation may not be discussed upon the motion for the adjournment; the reason for the origin of the rule is the desire of the House to consider legislation only with proper formality and after due notice has been given. Undue relaxation of the rule might also derogate from the principle that only matters within the responsibility of a Minister may be discussed on the adjournment; for it would be idle to rule out a topic on the grounds of absence of ministerial responsibility, if it were open to a Member to argue that the Minister concerned could introduce legislation to make himself responsible. The Procedure Committee, however, considered that the operation of the rule was too strict; they observed that Standing Order (Public Business) No. 17 (2) allowed incidental reference to legislative action at the Speaker's discretion on going into Committee of Supply, and recommended that a similar practice as regards incidental reference to legislative action be

adopted for motions for adjournment of the House. This recommendation was endorsed by the House in a new standing order. The extent of the operation of the new order is as yet uncertain. The Speaker may under the order only relax the prohibition when in his opinion its enforcement would unduly restrict discussion of the matter. It has been made clear by a subsequent ruling of the Speaker that the Standing Order cannot be invoked so as to allow discussion of a matter completely outside the sphere of ministerial responsibility.

The procedure for adjournment motions was also criticised as regards the interpretation of Standing Order (Public Business) No. 9 which concerns the moving of the adjournment by a Private Member to discuss a definite matter of urgent public importance. Here the Procedure Committee offered some words of sympathy for the Speaker and his predecessors—and no doubt they would have wished to offer their sympathy to the Speaker's colleagues in Commonwealth legislatures. "Of all the manifold and onerous duties of a Speaker," they remarked, echoing the views of the Clerk in his evidence, "these are perhaps the most invidious." The problem was to reconcile minority rights with the need for certainty and despatch in the conduct of the appointed business of the House. The opinion of witnesses, both government and opposition, differed when considering whether the rules for allowing such adjournment motions were too strictly applied at present. In the Committee's view the main difficulty lay in the cumulative effect of a long series of restrictive rulings from the Chair over the last sixty years which so tied Mr. Speaker's hands that there was "scarcely any matter which could qualify for debate under the Standing Order". They recommended a relaxation of the rules and a return to Mr. Speaker Peel's test (quoted at p. 369 of Erskine May's *Parliamentary Practice*, 16th edition) that what was contemplated by the order was "the occurrence of some sudden emergency either in home or foreign affairs". They considered that the chair might well be guided by this general observation in future, rather than by later glosses upon the original rule. In particular they recommended that the rules of anticipation should not apply to S.O. No. 9 adjournments, and that the test of public importance ought to be left to the decision of the House under that part of the order which requires the motion to be supported by 40 members, rather than decided by the Speaker; and finally they recommended that in assessing government responsibility in the field of foreign affairs, motions should be in order if they raised matters which came within the sphere of possible government action notwithstanding that the government might not have been initially involved or responsible (as, *e.g.*, in the case of a possible outbreak of hostilities between two foreign countries which might eventually involve U.N.O. obligations).

It appears likely that the Committee's recommendations on S.O.

No. 9 procedure will remain expressions of back benchers' hopes, and will not be implemented except perhaps in connection with the point concerning responsibility in foreign affairs which the government have agreed to discuss further with the Speaker.

Complaints had been not uncommon about the number of divisions held at inconvenient hours, particularly on formal motions. One of the most irritating of these occasions was the division on the "business motion" which used to be moved at 3.30 p.m. whenever pressure of business obliged the exemption of proceedings from the operation of Standing Order No. 1; this order provides for the interruption and conclusion of opposed public business at 10 p.m. The Committee recommended that the motion should be moved at 10 p.m. if required, and the Standing Order has now been amended to that effect. The method of taking a division itself was also scrutinised, as several Members had thought that it would be more business-like if the House adopted some mechanical system of voting, as practised in certain Commonwealth Parliaments and elsewhere, instead of the current method of dividing into two division lobbies to be counted. Much helpful information was provided for the Committee by the Clerk of the Lok Sabha; but the Committee concluded that the particular physical limitations of the Palace of Westminster would make it unlikely that mechanical voting would save any time, and it might indeed cause some confusion. A division at present takes 8-11 minutes; but of this period 6 minutes are necessary to allow Members to assemble from the more distant parts of the building; the assembly interval would still be necessary even with mechanical voting, and the maximum time available for saving would thus only be between 2 and 5 minutes. The Committee were also impressed by arguments that the interruption of business by divisions served some useful purpose in allowing tempers to cool.

A suggestion that proxy voting should be allowed in order to permit Ministers and Members to attend to their other duties was summarily dismissed. The Committee remarked:

> A Member's duty in voting is one that must remain personal to himself. It cannot be transferred.

It is a matter of common knowledge that the number of questions answered during the question hour has decreased progressively in the House of Commons since the war. The reason for this, as was pointed out by the Committee, is undoubtedly that the number and length of supplementary questions has increased considerably. The Committee believed that the House would support a reduction in the number of Members called by the Speaker to ask supplementaries and any action taken by the Speaker to check the length of supplementaries; and they appealed to the House to support the Speaker in his task. They also recommended that the number of oral questions allowed to each Member each day should be reduced from 3 to 2;

this has now been done. The Prime Minister's questions, which were formerly taken at No. 45 and seldom completed, they recommended should be taken at the fixed hour of 3.15 p.m. on Tuesday and Thursday so as to allow a quarter of an hour for this important category of questions; this recommendation has not been implemented, but instead by way of compromise questions to the Prime Minister have been adjusted so as to begin at No. 40 instead of No. 45 on Tuesdays and Thursdays.

The Committee were faced with an almost insuperable task in dealing with Supply and the Estimates. They were required to deal with two lines of complaint. The first was that since the Estimates are not presented until the spring, Supply debates (the subjects of these debates are by convention chosen by the Opposition) tend to be bunched together during early and late summer instead of being spread over the financial year. The second complaint was that insufficient attention is nowadays paid to the detail of the Estimates. On the first point the Committee contented themselves with recommending that the Opposition should be given a right to a fixed number of days before the Estimates were presented, provided that they surrendered an equivalent number of days, allotted at present by Standing Order, at a later stage in the session. Conversations are still proceeding on this proposal between government and Opposition; but it is difficult to see how any closer scrutiny of finance will result from the suggestion since debates in the autumn must be of necessity confined to general administrative matters, in the absence of any Estimates for consideration.

It is on the score of closer scrutiny that the recommendations of the Committee have been subjected to criticism in certain quarters. Supply debates in the House tend, even when votes or subheads are being considered, to be concerned with larger issues of policy; and the Procedure Committee agreed with the Clerk of the House in thinking that a Committee of the Whole House was no longer capable of conducting a more detailed examination of the Estimates. Detailed examination is indeed conducted by the Estimates Committee which reports to the House; but such is the complexity of modern government and public finance, that the Estimates Committee as at present constituted cannot hope to examine more than a small proportion of the total Estimates. In the words of the Procedure Committee:

> The Select Committee on Estimates can admittedly do little more than select certain votes for close scrutiny; but what the Committee does, it does thoroughly. Its power of selective examination acts as a very real check on extravagance.

The Procedure Committee concluded that they could best perform their own duty by drawing attention to the work of the Estimates Committee, and by recommending that that Committee should be

given every encouragement and facility that it was within the power of the House to grant.

Excellent though the work of the Estimates Committee is, there is no doubt that some Members and sections of the public feel that the report of the Procedure Committee was defective in failing to make wider proposals for a closer scrutiny of expenditure. To do this, however, it would be necessary to increase the size of the Estimates Committee or perhaps to appoint additional *ad hoc* committees on the lines suggested by the Clerk of the House. Further examination of such proposals would seem to be indicated if the pressure grows for an increased parliamentary control of public spending.

A suggestion which had aroused some interest before the Procedure Committee was appointed was the establishment of specialist committees to debate and pass resolutions on the work of government departments or groups of Departments. The Clerk of the House had put forward suggestions for the manner in which a Defence Committee could be organised, principally to examine the expenditure of the defence departments (and thus of course to assist in the task of scrutinising the Estimates more closely). The Procedure Committee considered the general proposal mainly in relation to a specialist committee on the Colonies. While admitting the possible advantages of such a scheme, the Committee decided that they could not recommend it, and they commented that it would constitute "a radical constitutional innovation". Notwithstanding that the order of reference might be drawn in general terms without conferring any express powers of direct interference, there was little doubt in the Procedure Committee's mind that the activities of such a committee would ultimately be aimed at controlling rather than criticising the policy of the department concerned. In so doing, it would be usurping a function which the House itself had never attempted to exercise.

The Committee's close interest in Commonwealth affairs is shown by their selecting a Colonial Committee in preference to any other as being the specialist committee in whose favour the strongest arguments could be put. They added to the other reasons for rejecting the proposal, however, the fact that it might seem more appropriate that colonial affairs in view of their undoubted importance should be discussed on the floor of the House; and they expressed the hope that major debates on the colonies might be more frequent as the result of their other recommendations which would release more parliamentary time. To this they could have added that the parliamentary question hour provides an opportunity for examining Ministers directly in the House, which is denied in those constitutions (*e.g.*, America and France) which have developed the specialist committee. Certainly Members have shown no lack of initiative in putting questions to the Secretary of State for the Colonies; for the last two sessions the Colonial Office have held pride of place as the department with the longest list of questions.

Of the many miscellaneous points dealt with, two may be of particular interest. The government business for the succeeding Monday to Friday is announced in the House by the Leader each Thursday, in reply to a private notice question by the Leader of the Opposition. This advance notice is less than in some Parliaments, but considerably longer than in many other Commonwealth legislatures where complaints have been made of the short notice on which government business is arranged. The Committee recommended that the "business statement" should in future cover an extra day's government business—*i.e.*, that it should run from the Monday of the following week to the Monday of the week after that; and this practice has now been followed. This may seem a modest innovation; but it emphasises the importance which Members attach to foreknowledge of business so that they may both prepare themselves for debate and arrange their own affairs to fit in with the business of the House.

"Some Members", remarked the Procedure Committee, "find the Order Paper and Notice Paper extremely confusing." This is an experience not confined to Members of the House of Commons; there are other legislatures both within and without the Commonwealth where the complexity both of procedure and public administration results in a somewhat esoteric aspect being given to the Order Paper. The Procedure Committee pointed to what they considered to be anomalies in the layout of the paper and recommended that a revision be undertaken. Alternative forms have now been suggested by the department of the Clerk of the House and these are being considered by the Publications and Debates Committee. It may well be that by the time this article appears, the Order Paper of the House of Commons will have received a new look.

The final recommendation of the Procedure Committee was that a small drafting committee provided with technical assistance should be appointed, both to consider any amendments to the Standing Orders consequential on their report, and for the purpose of a comprehensive review of the orders in general. This has received the approval of the government, although certain amendments to the Standing Orders have been made in advance of the committee's appointment; but it is to be anticipated that the drafting committee will be set up in the near future.

Lack of space has precluded a complete review of all the recommendations of the Select Committee on Procedure. It may, however, be noted that of the 37 recommendations of detail for alteration in practice and procedure listed as a summary in the final paragraph of the Report, 28 have been adopted, or are in course of adoption; and in the case of the 11 suggestions (also listed in the final paragraph of the Report) which the Committee had examined but rejected, the House has acquiesced in their view. There is much in the Report of the Committee and in the debates which preceded and followed the

Report which would be of interest to Commonwealth Clerks; and for their benefit references to the relevant documents are given in an appendix.

If there is a lesson to be learnt from the activities of the Procedure Committee it is, first, that there is always room for minor improvements in any legislative assembly; the procedure of a House is a living thing, and it must always be capable of adaptation both to satisfy the changing circumstances of the nation which it represents and to meet current economic and political development. The second observation is of more restricted concern to the House of Commons at Westminster; and it is that the limit appears to have been more or less reached in what can be done to economise in the time spent on public business on the floor without a more radical reform than the House itself is at present prepared to concede. It may well be that the House will be content for some time with what has been achieved so far, and that the present reforms will, as the Procedure Committee hoped, go some way towards removing the causes of the sense of frustration which had on occasions been voiced by members on both sides of the House. They admit, however, that "too much cannot be expected"; and there could be no more appropriate postscript than a quotation of the views of the Committee in their concluding remarks on the duties of a member in regard to attendance at the House:

> In a deliberative and legislative assembly of some 630 Members, the occasions for speaking cannot but be relatively rare, and the requirement of attendance often more demanding than some Members would wish. Yet this requirement of attendance, provided that it is kept within reasonable bounds, is not without profit even when business is of only specialised appeal. The House would surely agree that a Member's duty in Parliament is more than a mere matter of speaking and voting. Apart from listening to debate, Members have always spent and should spend a considerable proportion of their time in private discussion in the lobbies away from the formal atmosphere of the House and its committees. It is time thus spent that has built up the corporate spirit of the House over the centuries; and if it were not so, the House of Commons would have become an institution weaker in body and poorer in spirit.

APPENDIX

References to documents relating to the appointment and recommendations of the House of Commons Select Committee on Procedure, Session 1958-59.

(References to the column numbers in *Hansard* are to the column numbers in the *bound* volumes.)

Subject	*Reference*
Debate on motion to appoint Committee.	581 *Hans.* (31st January, 1958), cc. 667-771.
Report of the Select Committee on Procedure (with minutes of proceedings and evidence).	House of Commons Paper No. 92-I, Session 1958-59.
Debate on motion to take note of Committee's Report.	609 *Hans.* (13th July, 1959), cc. 36-168.

APPENDIX—*continued*

Subject	*Reference*
Statement of Government policy on Committee's recommendation.	615 *Hans.* (16th December, 1959), cc. 1456-1466.
Debate on Government motion to implement certain of Committee's recommendations.	617 *Hans.* (8th February, 1960), cc.
Statement by Speaker on implementation of certain other Committee recommendations.	617 *Hans.* (9th February, 1960), cc.
Statement of Government policy on procedure relating to control of expenditure.	627 *Hans.* (26th July, 1960), cc. 1292-1302 (Daily Edition).

V. NEW SOUTH WALES: BILL TO ABOLISH THE LEGISLATIVE COUNCIL

By Major-General J. R. Stevenson, C.B.E., D.S.O., E.D.,
Clerk of the Parliaments and Clerk of the Legislative Council

The question of the abolition of the Legislative Council of New South Wales is once again in the forefront of politics.

The Honourable J. J. Cahill, M.L.A., delivered Labour's policy speech on 24th February, 1959, for the election to be held on the 21st March, and, in the course of his remarks, he had this to say with regard to the Legislative Council:

> From time to time the future of the Legislative Council has been the subject of discussion and controversy and many different views have been expressed as to its usefulness and effectiveness. Queensland is the only Parliament in Australia which functions with one legislative chamber, but the absence of a second chamber does not appear to have occasioned any difficulty.
>
> The Government proposes to give the people of New South Wales an opportunity, by referendum, to determine whether the Legislative Council should remain part of our Legislature.[1]

The Government (Labour Party) was re-elected, winning fifty seats in the Assembly (a House of ninety-four members), the Liberal Party winning 29 seats, the Country Party 14 and one Independent.

The Labour Party has held a majority of seats in the Legislative Council since April, 1949, and, at the present time (1959), holds thirty-four seats in a House of sixty. The President is a member of the Labour Party, thus reducing the voting strength to thirty-three, as opposed to twenty-six, a majority of seven.

The abolition of the Legislative Council has been part of the Labour Party's policy since 1893, and various attempts have been made to abolish it from time to time. But the inclusion of it in the

last policy speech was the result of a resolution carried at the June Australian Labour Party Conference held in 1958. At this Conference the policy to be followed by the Party during the following year is laid down and the implementation is in the hands of an Executive Committee consisting of forty members, plus five Officers who have full voting rights, with an additional five Members representing the Federal and State Parliamentary Labour Parties, who have a vote on all matters excepting pre-selection ballots. The motion was moved at the Conference by the General Secretary of the Australian Workers' Union, the Honourable T. N. P. Dougherty, who had been elected a Member of the Legislative Council in September of 1957 and who, on his election, had stated his main purpose in being elected was to have the Council abolished.

Mr. Dougherty had already made an unsuccessful move for a resolution in favour of abolition at the A.L.P. Conference in June, 1952, but, on that occasion, he did not get sufficient support to carry the motion.

The Legislative Council was reconstituted in 1934 to provide for a House of sixty Members of which fifteen retire every three years and Members are elected for a term of twelve years.

The method of election is an indirect one, Members of both Houses voting in their respective Chambers and the counting being carried out according to the proportional system.

The Constitution of the Legislature of New South Wales is set out in the Constitution Act, 1902,[2] and the Legislative Council in particular is covered by section 7A, which is known as an entrenched section, which provides that the Council shall not be abolished nor shall its constitution or powers be altered except in the manner provided in that section.[3] Subsections (2) and (3) read:

> (2) A Bill for any purpose within subsection one of this section shall not be presented to the Governor for His Majesty's assent until the Bill has been approved by the electors in accordance with this section.
>
> (3) On a day not sooner than two months after the passage of the Bill through both Houses of the Legislature the Bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly.
>
> Such day shall be appointed by the Legislature.

In effect, this section ensures that the Legislative Council cannot be abolished nor can its constitution or powers be altered unless, at a referendum, a majority of the electors approve; nor can this section be removed from the Act without a majority of electors approving.

When the Council was reconstituted, provision was made in the Constitution Act to deal with deadlocks between the two Houses by the insertion of sections 5A, 5B and 5C.

Section 5A deals with an ordinary Appropriation Bill which, if the Council fails to pass it within one month, may be submitted to the

Governor for the Royal Assent notwithstanding that the Council has not consented to the Bill.

Section 5B deals with "any other Bill" and states: [4]

> If . . . the Legislative Council rejects or fails to pass it or passes it with any amendment to which the Legislative Assembly does not agree, and if after an interval of three months the Legislative Assembly in the same Session or in the next Session again passes the Bill with or without any amendment which has been made or agreed to by the Legislative Council, and the Legislative Council rejects or fails to pass it or passes it with any amendment to which the Legislative Assembly does not agree, and if after a free conference between Managers there is not agreement between the Legislative Council and the Legislative Assembly, the Governor may convene a joint sitting of the Members of the Legislative Council and the Members of the Legislative Assembly.
>
> The Members present at the joint sitting may deliberate upon the Bill as last proposed by the Legislative Assembly and upon any amendments made by the Legislative Council with which the Legislative Assembly does not agree.
>
> No vote shall be taken at the joint sitting.
>
> (2) After the joint sitting and either after any further communication with the Legislative Council in order to bring about agreement, if possible, between the Legislative Council and the Legislative Assembly, or without any such communication the Legislative Assembly may by resolution direct that the Bill as last proposed by the Legislative Assembly and either with or without any amendment subsequently agreed to by the Legislative Council and the Legislative Assembly, shall, at any time during the life of the Parliament or at the next general election of Members of the Legislative Assembly, be submitted by way of referendum to the electors qualified to vote for the election of Members of the Legislative Assembly. . . .
>
> (4) For the purposes of this section the Legislative Council shall be taken to have failed to pass a Bill if the Bill is not returned to the Legislative Assembly within two months after its transmission to the Legislative Council and the Session continues during such period.
>
> (5) This section shall extend to any Bill whether it is a Bill to which section 7A of this Act applies or not.
>
> And in the application of this section to a Bill to which section 7A of this Act applies—
>
> (a) the submission of the Bill to the electors by way of referendum in accordance with this section shall be a sufficient compliance with the provisions of section 7A of this Act which require the Bill to be submitted to the electors;
>
> (b) the referendum under this section shall, notwithstanding anything contained in section 7A of this Act, be held upon a day which shall be appointed by the Governor in such manner as may be provided by law; and
>
> (c) the day so appointed shall, notwithstanding anything contained in subsection two of this section, be a day during the life of the Parliament and not sooner than two months after the Legislative Assembly has passed a resolution in accordance with the subsection for the purposes of such referendum. . . .

It will thus be seen that the deadlock section (5B) is designed to deal with a Bill that originates in the Legislative Assembly but is also extended to cover a Bill which affects the Legislative Council under section 7A, the main point of difference being that section 7A pro-

vides that the referendum day will be appointed by the Legislature, which will require an Act of Parliament, whilst under section 5B the referendum can be held upon a day appointed by the Governor, which merely requires an Executive Council Minute and proclamation, as provided in the Constitution Further Amendment (Referendum) Act. No. 2 of 1930, as amended.

The Government accordingly introduced the Constitution Amendment (Legislative Council Abolition) Bill in the Legislative Assembly on 12th November, 1959.[5] On the motion for leave to introduce, the Leader of the Country Party (Mr. Cutler) took a point of order on the grounds that, by practice, the Bill, which affects the rights and privileges of another Chamber, was not normally introduced in the other House. He further submitted that in cases not specially provided for in the Rules and Orders of the House resort may be had to the Rules, forms and usages of the Imperial Parliament.

After observations by two Ministers, Mr. Speaker ruled that the point taken was most involved, but, on the matter of courtesy, he said that if the rules and privileges of Honourable Members of another Chamber were affected, the point could be raised there. He agreed with the submission that this was a matter of constitutional reform and therefore one to be originated in the House responsible to the people. Mr. Speaker further stated that the House had received a Message from the Governor, recommending the Bill in accordance with section 46 of the Constitution Act, which provides that measures that require expenditure must be originated in the Assembly. He therefore ruled against the point of order.

Mr. Cutler then moved,[6] That the question be amended with a view to appointing a royal commission "to inquire into and report upon the wisdom of abolishing the Legislative Council". After limited debate, the question, That the words proposed to be left out stand part of the question, was put. The House divided, the result being Ayes 46, Noes 39. And so the amendment was lost.

The original question, for leave to introduce, was then put and the House divided—Ayes 70, Noes 15. It will be noticed that this question split the Opposition parties, the Liberal Party Members—who assert they are in favour of the bicameral system but do not approve of the present method of election of Members to the Legislative Council—voting with the Government, with the exception of Mr. Storey, Liberal Party Member for Hornsby, and the Independent Member (Mr. Purdue) also voting against the question, with the Country Party.

The second reading debate was moved by the Premier (Mr. Heffron) on 18th November, 1959,[7] and the Leader of the Opposition obtained the adjournment of the debate, which was continued on 1st December[8] and further adjourned until 2nd December.[9]

The House divided on the second reading, the result being Ayes 71, Noes 15, the Liberal Party again voting with the Government—

except for Mr. Storey; Mr. Purdue also voted with the Country Party against the second reading.

The Bill passed without any further division or amendment and was forwarded to the Legislative Council.

The Message was reported in the Legislative Council and,[10] immediately it was read, Colonel Clayton moved, as a matter of Privilege, That the Bill be returned to the Legislative Assembly with the following Message:

> Mr. Speaker,—
>
> The Legislative Council, in acordance with long established precedent, practice and procedure, and for that reason, declines to take into consideration a Bill which affects those sections of the Constitution Act providing for the constitution of the Legislative Council unless such Bill shall have originated in this House, and returns a Bill, intituled *"An Act to abolish the Legislative Council; to provide that another Legislative Council shall not be created, constituted or established nor shall any Chamber, Assembly or House, other than the Legislative Assembly, designed to form part of the Legislature or the Parliament in New South Wales, be created, constituted or established until a Bill for the purpose has been approved by the electors on a referendum; to amend the Constitution Act, 1902, and certain other Acts; and for purposes connected therewith,"*—without deliberation thereon, and requests that the Legislative Assembly will deem this reason sufficient.

The grounds of Colonel Clayton's motion were based on a case on 2nd April, 1873, when a Bill, intituled "The Legislative Council Bill", which originated in the Assembly, was forwarded to the Legislative Council for concurrence, when the then President gave a ruling on the question of privilege and put the question, "That this Bill be now read a first time." An amendment was proposed, to omit the words with a view to inserting "this House declines to take into consideration any Bill repealing those sections of the Constitution Act which provide for the constitution of the Legislative Council unless such Bill shall be originated in this Chamber". This amendment was agreed to.[11]

On a subsequent occasion, on 4th November, 1896,[12] the House declined to take into consideration the Referendum Bill, which had originated in the Assembly and was forwarded to the Council for its concurrence on that date. The Bill purported to make provision, by means of legislation, for cases of disagreement between the Legislative Council and Legislative Assembly. The debate hinged on the point, that it was a restriction on the powers of the Legislative Council, whereas the Assembly powers were left unimpaired. On the motion for the first reading, an amendment was moved,

> That this House declines to take into consideration the Bill mentioned in the Message now read by the President as it concerns the privileges and proceedings of the Council, and therefore should have originated in this Chamber, the Bill being against the spirit of a resolution of this House passed on 2nd April, 1873, declining to take into consideration any Bill repealing sections

of the Constitution Act which provide for the constitution of the Legislative Council, unless such Bill shall be originated in this Chamber.

The amendment was carried on a division—Ayes 30, Noes 9.

Again, on 16th August, 1916,[13] on the motion for the second reading of the Members of Parliament (Agents) Bill, which had been introduced in the Assembly and forwarded to the Council, a point of order was raised, that the Bill was improperly before the House, it being a Bill that concerned the privileges of this House as it sought to impose further disqualifications than those mentioned in the Constitution Act.

The then President (The Honourable Fred Flowers) deferred giving his ruling until the following day. He ruled, *inter alia*, that the disqualifications mentioned in the Constitution Act hon. Members would find set out in sections 13 to 19, Part III, of that Act. It therefore followed that any additional disqualifications must mean an alteration to the provisions of the Constitution Act which directly affected the privileges of Members of the Council. Mr. Flowers went on to state that the rulings given by his predecessors and the practice of the Imperial Parliament as set out in May's *Parliamentary Practice* were very clear upon the point that any measure affecting the privileges of Members of either House of Parliament to any degree whatsoever must be introduced in the House immediately affected by that measure. Therefore it seemed clear to him, from a perusal of the Bill before the House, that it undoubtedly sought to impose a fresh restriction upon Members and consequently indirectly involved an extension of the disqualification provisions of the Constitution Act. For these reasons he therefore upheld the point raised. The Bill was then withdrawn and the Order of the Day discharged.

Another case occurred on 28th November, 1918,[14] in connection with the Women's Legal Status Bill, when, on the motion, That the Bill be read a first time, the President drew attention to the fact that the Bill infringed on one of those undoubted rights that are the common prerogative of both Houses of Parliament—namely, that "any Bill concerning the privileges or proceedings of either House should commence in that House to which it relates". The President ruled that the Bill should not be considered and he ruled it out of order. Again the Order of the Day was discharged and the Bill withdrawn.

Colonel Clayton also referred to the remarks made by the late Sir Daniel Levy, when Speaker of the Legislative Assembly, on 21st December, 1920,[15] which were as follows:

> . . . There is, however, another and a very serious point to which, as the custodian of the rights and privileges of this Chamber, it is my duty to direct the attention of hon. members. It is a well-known rule, for which there is abundant authority, that neither of the two Houses of Parliament should initiate legislation affecting the proceedings or functions of the other Chamber; or, to put it in another way, any bill concerning the privileges or proceedings of either House should commence in that House to which it relates. This

is not a musty rule, culled from the archives of parliamentary antiquity. It is a rule which is in full force and vigor at the present day. . . .

Proceeding, Colonel Clayton enumerated a number of Bills which directly affect the constitution of the Legislative Council which had been originated in that House.[16]

In rebuttal, the Honourable R. R. Downing, Attorney-General and Representative of the Government in the Legislative Council, quoted "May" by drawing attention to the passage:

Bills affecting the privileges of the other House have, nevertheless, been admitted without objection,[17]

and went on to illustrate that the Parliament Bill was introduced in the House of Commons in February, 1911, as was the Parliament Act of 1949.

Mr. Downing argued that section 5B of the Constitution envisaged the introduction of a Bill in the Assembly affecting section 7A and as its provisions had been endorsed by a majority of the electors at a referendum in 1933 they were of stronger validity than the rulings and precedents previously quoted. Again, in 1943, when the Legislative Council Reform Bill which was introduced in another place was sent to the Council for concurrence, objection was not taken on that occasion on the grounds of privilege.

The Honourable C. E. Begg, who followed, referred in particular to the Bill of 1943, and pointed out that as the Attorney-General had quoted the passage from "May" to the effect that Bills have been admitted without objection, some had not been admitted without objection, and this was one that was not being admitted without objection.

Mr. Begg omitted to point out that the Life Peerages Bill, which extended the Royal Prerogative for the appointment of peers by creating life peerages carrying the right to sit and vote in the House of Lords and including women to such appointment, was introduced in the House of Lords in 1957 (a Bill affecting in particular the privileges of the House of Lords).

Mr. Begg further pointed out, in regard to the point raised in the Assembly, of a Message under section 46 of the Constitution Act, stating that the Bill was an Appropriation Bill, that the House had recently passed the annual Appropriation Bill, which provided for £112,000 for the taking of a referendum.

The House divided on the question, resulting in Ayes 33, Noes 25, majority 8, and the Bill was returned to the Legislative Assembly (which at that time stood adjourned) with the Message as stated in the motion.

The following Labour Party Members had voted with the Ayes: The Hons. C. J. Cahill, D. Cochrane, T. P. Gleeson, P. R. Grace, C. Hackett, J. L. Kenny and Mrs. A. E. Press. (The Honourable G. B. Rygate, another Labour Member, had entered hospital the

previous day. Prior to his entering hospital, however, it is understood he informed the Attorney-General that he was opposed to the abolition of the Legislative Council.)

Most of these Labour Members come from country districts of New South Wales. The Honourable C. J. Cahill is resident in Tamworth; T. P. Gleeson comes from Gunnedah; P. R. Grace from Yanco; J. L. Kenny from Port Macquarie; and Mrs. A. E. Press from Condobolin. Certain Members have considerable influence in their districts, such as the Honourable T. P. Gleeson, whose district is represented in the Legislative Assembly by the Minister for Agriculture (The Honourable R. B. Nott); the Honourable P. R. Grace, who is widely respected in the Murrumbidgee Irrigation Area and whose representative in the Assembly is the Honourable A. G. Enticknap, Minister for Transport, and Mrs. Press, who is well known and respected in the Western District of New South Wales and whose representative in the Assembly is the Minister for Conservation (The Honourable E. Wetherell). The Honourable G. B. Rygate is resident in Canowindra. All have had years of experience in membership of the Australian Labour Party. It will be noted that these Members do not come from the industrial wing of the Labour Party, but have their association through the local Labour Leagues.

The terms of service in the Legislative Council of the seven Members expire as follows: The Hons. Gleeson, J. L. Kenny and Mrs. Press on 22nd April, 1970; Hons. Cochrane, Grace and Hackett on 22nd April, 1964; Hon. C. J. Cahill, on 22nd April, 1961. The Hon. G. B. Rygate's term will expire on 22nd April, 1967.

Prior to being elected to the Legislative Council a member of the Labour Party must be approved by the Executive and is required to sign a pledge as provided for in Rule 142 of the Australian Labour Party, New South Wales Branch, which reads:

> No candidate for the Legislative Council is regarded as a Labour nominee unless he has been approved by the Executive and has signed and forwarded to the General Secretary the following pledge:
>
> PLEDGE
>
> I hereby pledge myself on all occasions to do my utmost to ensure the carrying out of the principles embodied in the Labour Platform, including the abolition of the Legislative Council. I acknowledge that, if appointed to the Legislative Council of N.S.W., I am appointed to carry out Labour's policy to abolish the Legislative Council of N.S.W., and I further pledge myself to support and to be in attendance to vote fully and loyally, without equivocation, for whatever measure or measures are placed before the Legislative Council of N.S.W. by the Labour Government in the form submitted by the said Government without any amendment, alteration or addition, unless such amendment, alteration or addition shall be accepted by the Government.([14])

The argument used by the Members was that they voted on a technical matter of procedure and did not oppose the actual Bill as intro-

duced by the Government, but that if and when the Bill is introduced in the Legislative Council they would consider it.

The A.L.P. Officers requested the attendance of the seven Members for an interview on 10th December. The Members attended, at the same time offering an apology for the absence of Mr. Rygate, although he had not been invited to attend. No statement was issued after the interview and the matter was referred to the meeting of the Executive of the A.L.P. to be held on 11th December. However, the Press reported as follows: The *Sydney Morning Herald* of 11th December stated that one Member said: "We said we believe that what we did was in the best interests of the Labour Party, the Trade Union Movement and the citizens as a whole. We said that we had taken an oath to uphold the Constitution." The *Daily Telegraph* stated: "Mr. Gleeson said that they made two things clear to the Officers. These were that (1) they would vote with the Opposition again if the Government re-submitted the Abolition Bill from the Lower House; (2) they did not regard A.L.P. conference decision as mandatory on the Government but considered Parliament the supreme authority."

A report by the A.L.P. Officers was submitted to the meeting of the Executive on Friday, 11th December, and the seven members were expelled from the Party. The eighth Member—Hon. G. B. Rygate—asserting that he stands with the seven, the number of Government supporters in the Legislative Council is reduced to twenty-six, including the President.

The Bill itself is simply worded and is very similar to the 1930 Lang Government Bill, which was passed by both Houses but was not submitted to a referendum and against which an injunction was taken by A. K. Trethowan and Others against its presentation for the Royal Assent, and, on an appeal by the Government to the Privy Council, was held to be invalid. However, the present Bill has certain unusual features, the first being the enacting formula which reads:

> Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, with the approval of the electors as required by the Constitution Act, 1902, as amended by subsequent Acts, and by the authority of the same, as follows:

This wording, it will be noted, varies from the normal wording, which is as follows:

> Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Whilst provision is made in section 5C of the Constitution Act for a different enacting formula in cases where an Act had not been consented to by the Legislative Council, the proposed formula follows

the pattern of Act No. 2 of 1933 (Constitution Amendment (Legislative Council) Act, 1932, which was approved by the electors on the 13th May, 1933).

In the Body of the present Bill there is no reference to a referendum to be taken or that the Council is abolished, the majority of the electors approving.

Provision is made in the Bill that the Act will not commence until proclaimed. A further feature is the fact that it proposed to insert a new section—7B—in the Constitution Act, providing that a new Legislative Council will not be established or created without a referendum being taken for that purpose. This particular clause has confused the Liberal Party as this Party asserts it believes in bicameralism but is opposed to the present method of election of Members of the Legislative Council. This accounts for the different view taken by Members of the Liberal Party in the Assembly as compared with that taken by Members of the Liberal Party in the Council. The latter consider that if they endorse the Bill and allow it to go to the people in its present form it could be argued that they themselves consider they should be abolished and the House should not be reconstituted without a further mandate from the people by way of referendum. Furthermore, the question as proposed to be put to the people was a complex one and was limited by the proposed new section 7B, thus confusing the minds of the electors.

The Message from the Legislative Council was duly reported in the Legislative Assembly on 1st March, 1960.[19]

On 31st March the Government again introduced the Bill in the Assembly.[20] On this occasion the Liberal Party, with the exception of the Member for Coogee (Mr. Kevin Ellis), voted with the Country Party against the Bill. The Leader of the Country Party (Mr. C. B. Cutler) took a point of order, submitting that the interval of three months had not run since the disposal of the first Bill. The Speaker ruled against this point of order. On 5th April Mr. Cutler moved dissent from the Speaker's ruling, such motion being lost on a division.[21] The Bill was duly passed and sent to the Council on the 6th April.

As a matter of privilege, the Council adopted and forwarded to the Assembly a Message similar to the one forwarded on the previous occasion.[22]

On the following day (7th April) the Government took action in the Assembly to appoint managers for a free conference, and nominated ten Ministers.[23]

On receipt of this Message in the Council the Attorney-General (Mr. Downing) moved, that the Message be considered forthwith, to which the House agreed. Mr. Downing then moved, that this House agrees to the free conference—upon which Colonel Clayton moved an amendment, omitting certain words and inserting the words:

does not consider that any situation has arisen whereby a free conference between managers of the Legislative Council and the Legislative Assembly is either necessary or proper, and accordingly it refuses the request.

The amendment was carried on a number of divisions.[24]

The next round was on 13th April when both Houses received Messages from the Governor convening a joint sitting of Members for Wednesday, 20th April. The Message read:

I, Lieutenant-General Sir Eric Winslow Woodward, in pursuance of the power and authority in me vested as Governor of the State of New South Wales, do hereby convene a joint sitting of the Members of the Legislative Council and the Members of the Legislative Assembly to deliberate upon a Bill to abolish the Legislative Council; to provide that another Legislative Council shall not be created, constituted or established, nor shall any Chamber, Assembly or House, other than the Legislative Assembly, designed to form part of the Legislature or the Parliament in New South Wales, be created, constituted or established until a Bill for the purpose has been approved by the electors on a referendum; to amend the Constitution Act, 1902, and certain other Acts; and for purposes connected therewith and do hereby announce and declare that such Members shall assemble for such purpose on the twentieth day of April, 1960, at eleven o'clock in the forenoon, in the buildings known as the Legislative Council Chamber situate in Macquarie Street, in the City of Sydney; and the Members of the Legislative Council and the Members of the Legislative Assembly are hereby required to give their attendance at the said time and place accordingly.

In order that the Members of both Houses of the Parliament may be duly informed of the convening of the joint sitting a like Message is this day being addressed by the Governor to the Speaker of the Legislative Assembly.

In the Assembly, the Message was merely read, no action being taken by the Government as regards a reply or the setting down of an Order of the Day.[25]

In the Council, a motion was carried on division, that a reply be sent to His Excellency,

that the Council does not consider that a situation has arisen pursuant to section 5B of the Constitution Act, 1902, as amended, conferring constitutional power upon Your Excellency to convene a joint sitting, and for this constitutional reason the Members of this House respectfully advise Your Excellency that they deem it their duty not to nor will they attend at or participate in such joint sitting.

A copy of this resolution and address to His Excellency the Governor was forwarded to the Legislative Assembly.

A move by the Attorney-General for an amendment, to insert the words "majority of" before the word "Members" was defeated on division.

The address was duly presented to His Excellency by the President on the following day.

During the course of the debate, the Attorney-General stated that Government Members of the Council would attend at the time and place stated in the Governor's Message.

The opposition to the Bill so far has been based on legal technicalities on the method of procedure and there has been little debate in the Assembly, and certainly no debate in the Council, on the merits or otherwise of the question of abolition.

On Wednesday, 20th April, most of the Assembly Members attended in the Council Chamber at 11 a.m., together with Government supporters in the Council. In the absence of the President (who had received legal advice to the effect that, as the presiding officer of the Council, he was bound by the earlier resolution embodied in the address to the Governor, and therefore should not attend), the Speaker presided.

In debate there were five speakers. The Premier (Mr. Heffron) commenced deliberations and in his speech referred to the fact that the question of placing the abolition before the people was in the policy speech for the general election and that for over one hundred years there had been various abortive attempts to abolish the Council. He outlined the machinery provisions of the deadlock provisions and stated that, although section 5B provided that, *after* a free conference—and although a free conference had not been held—he considered the joint sitting was valid.

The Member for Manly (Mr. E. D. Darby) raised the question as to the urgency of the measure and asked who wanted the Upper House abolished, claiming that he had not had one request either for or against, not even a letter—to which an honourable member interjected to the effect that Mr. Dougherty would write to him next week.

To show that the Council was not blocking a referendum, the leader of the so-called "rebels" (The Honourable T. P. Gleeson) introduced, on 30th March, 1960, a Public Bill providing for a referendum on four questions dealing with Australian Labour Party policy in regard to the abolition of State Parliaments.[26] His argument was that it was a referendum bill and that Government Members are pledged to support the policy and should therefore vote for it. The adjourned debate on the motion for the second reading of this Bill remained on the Business Paper until prorogation, but unless he can get the co-operation of the Liberal and Country Party Members in the Council to assist him to have the Bill restored in the new Session, it looks unlikely that Mr. Gleeson will succeed in having it passed.

A further step was taken by the Premier on 12th May, 1960, when, in the Assembly, he moved that the House resolve itself into a Committee of the Whole to consider a resolution. The resolution, which was agreed to and was communicated by address to His Excellency the Governor, is as follows:

That this House directs that the Bill intituled "An Act to abolish the Legislative Council; to provide that another Legislative Council shall not be created, constituted or established nor shall any Chamber, Assembly or House,

other than the Legislative Assembly, designed to form part of the Legislature or the Parliament in New South Wales, be created, constituted or established until a Bill for the purpose has been approved by the electors on a referendum; to amend the Constitution Act, 1902, and certain other Acts; and for purposes connected therewith," as last proposed by this House shall during the life of this Parliament upon a day to be appointed by His Excellency the Governor in accordance with the provisions of sub-section (5) of Section 5B of the Constitution Act, 1902, as amended, but not sooner than two months after the passing of this resolution be submitted by way of referendum to the electors qualified to vote for the election of members of the Legislative Assembly.[27]

At 2.30 p.m. on the same day an *ex parte* injunction, expiring at 10 a.m. the following day, to restrain the defendants from issuing the writ and proceeding with the referendum, was issued out of the Supreme Court of New South Wales in the Equity division on behalf of certain plaintiffs—namely, The Honourable Hector Joseph Richard Clayton, E.D., M.L.C., the Honourable Arthur Dalgety Bridges, M.L.C., the Honourable Harry Vincent Budd, M.L.C., the Honourable Robert Christian Wilson, C.M.G., M.L.C., the Honourable Sir Edward Emerton Warren, K.B.E., C.M.G., M.S.M., M.L.C., the Honourable Frank William Spicer, M.L.C., the Honourable Michael Frederick Bruxner, D.S.O., M.L.A., and Francis Armand Bland, C.M.G., M.P.

The defendants are the Honourable Robert James Heffron, M.L.A., the Honourable John Brophy Renshaw, M.L.A., the Honourable Robert Reginald Downing, M.L.C., the Honourable Christopher Augustus Kelly, M.L.A., the Honourable Patrick Darcy Hills, M.L.A., the Honourable William Francis Sheahan, Q.C., M.L.A., the Honourable Francis Harold Hawkins, M.L.A., the Honourable Ambrose George Enticknap, M.L.A., the Honourable Abram Landa, M.L.A., the Honourable Ernest Wetherell, M.L.A., the Honourable Roger Bede Nott, M.L.A., the Honourable James Joseph Maloney, M.L.C., the Honourable James Brunton Simpson, M.L.A., the Honourable John Michael Alfred McMahon, M.L.A., the Honourable Phillip Norman Ryan, M.L.A., the Honourable Norman John Mannix, M.L.A., and Edward Bennetts. (The latter is the State Electoral Commissioner, the others being Ministers of the Crown.)

On 13th May the injunction was extended and certain undertakings were given to the Court by both parties. The Chief Judge in Equity (Mr. Justice McLelland) referred the matter to a full bench of five Supreme Court Judges on an application under section 6 of the Equity Act, and the case was set down for hearing on the 30th May, 1960.

After eight days of hearing judgment has been reserved and will be duly reported in the State Reports, Clayton and Ors. *v.* Heffron and Ors. It is understood that whichever party loses, an appeal will be made to the Privy Council.

[1] Labour's Policy Speech, p. 16. [2] Parliamentary Handbook, 17th ed., p. 245. [3] *Ibid.*, p. 252. [4] *Ibid.*, p. 248. [5] Assem. V. and P., No. 35, p. 164; Proof Parl. Deb., No. 34, p. 1982. [6] Assem. V. and P., No. 35, p. 165. [7] *Ibid.*, No. 37, p. 171; Proof Parl. Deb., No. 36, p. 2086. [8] Assem. V. and P., No. 42, p. 199; Proof Parl. Deb., No. 41, p. 2500. [9] Assem. V. and P., No. 43, p. 204; Proof Parl. Deb., No. 42, p. 2596. [10] Council Minutes, No. 29, p. 137; Proof Parl. Deb., No. 42, p. 2549. [11] Council Minutes, No. 35, p. 111. [12] *Ibid.*, No. 50, p. 203; Parl. Deb., Vol. 86, p. 4678. [13] Council Minutes, Vol. 85, Nos. 8 and 9, pp. 34 and 40; Parl. Deb., Vol. 64, pp. 848 and 905. [14] Council Minutes, Vol. 88, No. 36, p. 114; Parl. Deb., Vol. 74, p. 3067. [15] Parl. Deb., Vol. 82, p. 3998. [16] Proof Parl. Deb., No. 42, p. 2551. [17] May, 16th Edition, p. 492. [18] Australian Labour Party (N.S.W. Branch) Rules and Constitution, 1958-59, Ed., p. 37. [19] Assem. V. and P., p. 210; Proof Parl. Deb., No. 43, p. 2620. [20] Assem. V. and P., p. 282; Proof Parl. Deb., No. 57, p. 3507. [21] Assem. V. and P., p. 286; Proof Parl. Deb., No. 58, p. 3552. [22] Council Minutes, p. 203; Proof Parl. Deb., No. 59, p. 3631. [23] Assem. V. and P., p. 302; Proof Parl. Deb., No. 60, p. 3838. [24] Council Minutes, p. 213; Proof Parl. Deb., No. 60, p. 3797. [25] Assem. V. and P., p. 313; Proof Parl. Deb., No. 60, p. 3936. [26] Council Minutes, p. 191; Proof Parl. Deb., No. 56, p. 3419. [27] Assem. V. and P., p. 324; Proof Parl. Deb., No. 62, p. 4038.

VI. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE SOUTH AFRICAN HOUSE OF ASSEMBLY, 1959

By R. J. McFarlane,
Clerk of the House of Assembly

Notice of instruction not printed on Order Paper.—The *Extension of University Education Bill* provided *inter alia* for the establishment, maintenance, management and control of university colleges for non-white persons; for the admission of students to and their instruction at university colleges and for the limitation of the admission of non-white students to certain university institutions. After the Bill had been read a Second Time, a member gave notice of an instruction to the Committee of the Whole House on the Bill for leave to consider the advisability of making provision in the Bill for non-white persons, other than Bantu persons, to be registered with or to attend as students at universities established by Act of Parliament. Later the same day the member was informed privately by Mr. Speaker that the proposed instruction was in conflict with and destructive of the principles of the Bill as accepted at the Second Reading and consequently he could not allow the notice of the instruction to be printed on the Order Paper.

Half-hour speeches in Committee of Supply.—In terms of Standing Order No. 107 the Chairman in Committee of Supply on the main estimates of expenditure from the consolidated revenue and the railway and harbour funds may, in respect of each ministerial portfolio,

permit two speeches not exceeding thirty minutes each in addition to that of the Minister in charge of the Vote who is unrestricted in regard to the length of time he may speak. During discussion on the Prime Minister's Vote, the Leader of the Opposition was granted the privilege of the first half-hour and on the following day, the Vote being still under discussion, he requested the privilege of the second half-hour as well. The Chairman stated that if the Leader of the Opposition had consulted him he would have had an opportunity of considering the matter as there was no precedent in the Union for such a request, but after the Prime Minister had proposed that the Leader of the Opposition be given the privilege of the second half-hour as well, the request was granted by the Chairman.[1]

Deputy-Minister allowed unrestricted time in Committee of Supply when acting for Minister.—During discussion in Committee of Supply on the Vote "Coloured Affairs" which falls under the portfolio of the Interior, the Minister, in making a few general observations in regard to the policy of the Department and of the Government in connection with Coloured affairs, indicated that the Deputy-Minister would deal with all matters raised in connection with that Vote and would act on behalf of the Minister. Subsequently, when the Deputy-Minister was addressing the Committee, a point of order was raised as to whether, in view of the provisions of Standing Order No. 107 and the fact that the Minister in charge of the Vote was present in the House and had already participated in the debate, the Deputy-Minister should not be restricted to ten minutes when addressing the Committee. After a number of members had addressed the Committee on the point of order the Chairman stated that a Minister who was assisted by a Deputy-Minister was empowered by law to delegate certain duties to such Deputy. If the Minister was present while his Vote was under discussion he should state clearly whether he or his Deputy was going to take charge of such Vote. Whoever took charge of the Vote enjoyed the privilege accorded to the Minister in charge, but both could not have unlimited time. As the Minister had not exceeded ten minutes in addressing the Committee, the Chairman allowed the Deputy-Minister the privilege of speaking for an unlimited time.[2]

Oral replies to questions.—During question time on Tuesday, 24th March, the Minister of Transport proposed, with leave of the House, to lay upon the Table the reply to a question to which an oral reply was desired. A member having objected to this procedure being followed, the Minister pointed out that it had always been the practice, with leave of the House, to lay lengthy replies to questions upon the Table, and asked Mr. Speaker what was intended by the expression "leave of the House". Mr. Speaker, who had been informed that the matter was to be raised, gave the following ruling:

During the term of office of Mr. Speaker Jansen the matter was frequently raised as to when a Minister should give an oral reply to a question and when

he could lay a reply upon the Table of the House, and in 1939 Speaker Jansen summarised the rules and practice as follows:

(1) The rule is that a Minister should reply orally to a question.
(2) With leave of the House a Minister may lay the whole of a lengthy or complicated reply on the Table for publication in *Hansard*.
(3) When part of a reply is lengthy or in tabular form the Minister should read as much as possible and lay the whole upon the Table for publication in *Hansard*.

In 1954, however, a new Standing Order was adopted[3] to limit the number of oral replies to questions in order to save the time of the House at question time. This Standing Order, No. 46 (2), provides:

"(2) Every member who desires an oral reply to a question shall distinguish it by an asterisk, but not exceeding three questions in respect of any one question day. Replies not given orally shall be handed to the Clerk for publication in the Debates and for the information of the members concerned."

From the statement by Speaker Jansen it is obvious that the underlying intention of a question had always been to obtain an oral reply, and Standing Order No. 46 now clearly requires replies to questions marked with an asterisk to be read out and not merely laid upon the Table, but I am sure that members in the case of a lengthy or complicated reply will always readily agree to allow it to be laid upon the Table. The co-operation of all members is essential for the smooth functioning of the business of the House.

The term "leave of the House" used in paragraph (2) of Speaker Jansen's statement could not mean "leave of the majority of the House" as such an interpretation would defeat the intention of Standing Order No. 46 (2). I feel, therefore, that the expression was merely intended as a courtesy gesture towards those members who would be interested to hear the reply read out.

The Minister of Transport thereupon gave an oral reply to the question.[4]

Limitation of number of oral replies per member on any one question day.—Standing Order No. 46 (2) provides that every member who desires an oral reply to a question shall distinguish it by an asterisk, but not exceeding three questions in respect of any one question day. On 19th May a member, who had already given notice of three questions to which oral replies were desired, proposed, with leave of the House, to put a further urgent question to a Minister. Mr. Speaker, upon being informed thereof, ruled privately that as the Standing Orders limited each member to three oral questions on any one question day, he could not allow the member to put a further question for oral reply on that day. The proposed question was then asked by another member.

Limitation of debate on introduction of bills.—Standing Order No. 161, which was adopted in 1957, provides that the debate on the motion for leave to introduce a bill shall be limited to one hour and that no speech shall exceed ten minutes. During the session the introduction of three bills was opposed, and prior to the debate on the motion for leave to introduce the first measure, Mr. Speaker's opinion was sought in regard to a number of points not specifically

dealt with in the Standing Order. In private rulings he laid down that—

(*a*) on the conclusion of the period of one hour allotted for the debate, no reply shall be allowed to the mover of the motion;
(*b*) if the mover proposes to reply to points made, he should participate in the debate during the allotted period of one hour;
(*c*) the mover, when addressing the House, shall be limited to ten minutes; and
(*d*) the reply of the mover shall not be regarded as closing the debate.

It may be mentioned that in terms of the above Standing Order both the Prime Minister and the Leader of the Opposition when participating in debates on motions for leave to introduce bills are also limited to ten minutes each.

Consideration of report of Committee proposing time-table limiting debate on certain bills.—In terms of Standing Order No. 81, adopted in 1954, the Committee on Standing Rules and Orders may, at the request of the Leader of the House, propose a time-table limiting the debate on a bill or motion, and when the Committee's Report is under consideration by the House, no speech shall exceed ten minutes except that of the mover and the first member in opposition who may speak for thirty minutes. After considering a request from the Leader of the House, the Committee proposed a time-table limiting the debates on four bills, but before the Committee's Report was considered by the House, Mr. Speaker's opinion was sought by members in regard to certain aspects on which the Standing Order was silent. In private rulings Mr. Speaker held that when the Committee's Report was under consideration by the House—

(*a*) the Prime Minister and the Leader of the Opposition could not speak for longer than ten minutes unless either was the mover of the motion or the first member speaking in opposition;
(*b*) in terms of Standing Order No. 66 the mover of the motion had the right of reply but his reply was limited to ten minutes; and
(*c*) when the closure had been moved and agreed to by the House, the mover, in terms of Standing Order No. 79 (4), would have the right of replying to the debate but his reply would also be limited to ten minutes.

Use of both official languages in same speech.—During discussion on a private member's motion Mr. Speaker ruled privately that a Minister replying to the debate on behalf of the Government may use both official languages when addressing the House and pointed out that this had been the practice since 1943 when Mr. Speaker Jansen in a private ruling stated that any member in charge of the business

before the House or a Minister speaking on behalf of the Government could speak in both official languages either to repeat or to add to what he had said.

It is interesting to record that the first ruling in regard to the use of both official languages in the same speech was given during the 1915-16 session by Mr. Speaker Krige, who stated:

> I wish to inform the House that as the question of the practice in regard to the application of the two official languages in debate has recently on more than one occasion been raised, I would like to state that I have acted on the rule that a member be allowed to speak in one of the official languages only in one and the same speech, but that Ministers of the Crown, having spoken in one of the official languages, be allowed to repeat their remarks, if so desired by them, in the other official language. I propose to continue to act on these lines until the House gives a direction to the contrary.[5]

The next occasion arose in 1927 when a Minister who was participating in the debate and had been speaking in one of the official languages proposed to continue in the other official language. Mr. Speaker immediately informed him that only the Minister in charge of a Bill could make use of both official languages.[6]

During the 1936 session, however, Mr. Speaker Jansen, when asked whether the Minister who was participating in the debate on a private member's motion could speak in both official languages, stated that the Minister *was replying on behalf of the Government* and should be permitted to reply to questions raised during the debate in the language in which such questions had been raised.[7]

Amendment to short title of Bill at Third Reading Stage.—During discussion on the Third Reading of the *Extension of University Education Bill* a member proposed to move an amendment to the short title clause. Mr. Speaker informed the member privately that such an amendment should be moved immediately after the Order of the Day for the Third Reading of the Bill had been read by the Clerk and before the member in charge of the Bill actually moved the motion "That the Bill be now read a Third Time". Mr. Speaker also indicated that whenever such a proposal was intended to be made he should be consulted in advance.

Adjournment of House on matter of urgent public importance.—During the session Mr. Speaker was consulted by a member who proposed to move a motion for the adjournment of the House on a definite matter of urgent public importance as contemplated under Standing Order No. 33. After considering the matter Mr. Speaker ruled privately that in future he would only consider such a request from a private member if the member was accompanied by a Whip of the Party to which such member belonged.

Quorum of Select Committee on hybrid bill permanently reduced.—Standing Order No. 187 (Public Business) provides that hybrid bills are subject *partially* to the Standing Orders governing private bills. During the 1931-32 session, however, after difficulties had

arisen in connection with the procedure to be followed by Select Committees to which *hybrid bills* had been referred, Mr. Speaker de Waal decided that the rules of the House of Assembly relating to private bills were from then on to be applied to all Select Committees on hybrid bills.[8]

During the past session the *University College of Fort Hare Transfer Bill* was introduced and proceeded with as a hybrid bill and after second reading was referred to a Select Committee in terms of Standing Order No. 189. Four petitions in opposition to the Bill were duly presented to the House and referred to the Select Committee.

Standing Order No. 59 (Private Bills) provides that—

(1) no committee on an *opposed* private bill shall proceed to business if more than one of its members be absent, unless by special leave of this House; and
(2) no member of a Select Committee on an *opposed* private bill shall absent himself from his duties thereon, except in case of sickness or by order of this House.

As eleven members had been appointed to serve on the committee it became apparent immediately that it would be very difficult, if not impossible, to maintain at all times the quorum laid down in the Private Bill Standing Order referred to above. At the first meeting of the Committee a member intimated that he would not be able to attend the next meeting and the Committee thereupon decided to request the House to reduce the quorum permanently to seven members. This proposal was agreed to by the House.[9]

Notwithstanding this resolution leave of the House was obtained thereafter whenever a member proposed to absent himself from sittings of the Committee.

Incompetency of Select Committee to enquire into propriety of proceedings of House.—At the first meeting of the Select Committee on the *University College of Fort Hare Transfer* (Hybrid) *Bill* the chairman laid upon the Table a letter from the Parliamentary Agents for one of the petitioners in opposition to the Bill, addressed to the Parliamentary Agents for the Promoter, intimating that they proposed to submit *in limine* to the Committee that the Second Reading of the Bill as passed by the House of Assembly was out of order for certain reasons enumerated in the letter.

The Chairman in a considered ruling outlined the various steps in the passage of the Bill from its introduction up to its being referred to the Select Committee, and then went on to say:

> The resolution of the House appointing the Committee, read with the Standing Orders relating to Private Bills, defines the functions of the Committee and the scope of its enquiry, beyond which it would not be competent for the Committee to go. As it is clearly not competent for the Committee to enquire into the propriety of the proceedings of the House, I cannot allow arguments to be adduced before the Committee on the submission set out in

the letter referred to above, namely, that the Second Reading of the *University College of Fort Hare Transfer Bill*, as passed by the House, is out of order, and I rule accordingly.[10]

Exemption of State-aided institutions from Private Bill procedure.—In the past, whenever individuals or institutions approached Parliament in order to obtain benefits or rights for themselves, the practice was for such individuals or institutions to proceed by way of Private Bills for which special rules of procedure are laid down.

During the last session, however, the question was raised in the Committee on Standing Rules and Orders whether institutions such as universities, which receive considerable financial assistance from the State, should in future have to resort to the cumbersome and expensive Private Bill procedure whenever they propose to apply to Parliament for additional powers in connection with the administration of their activities. The Committee, after carefully considering the position, adopted the following resolutions:

(*a*) That, where amending legislation is proposed on behalf of an institution originally incorporated by Act of Parliament and receiving financial assistance from the State, and the object of such legislation is to confer powers which are intended solely for the purpose of ensuring the smooth functioning of the administrative machinery of such institution, without in any way detrimentally affecting the rights or interests of other persons or bodies, and the Government is prepared to sponsor such legislation, Mr. Speaker is authorised to allow the bill to be introduced and proceeded with as a public measure; and

(*b*) that if an institution referred to above desires to consolidate the laws governing its activities and if the Government is prepared to sponsor such legislation, Mr. Speaker should permit the bill giving effect thereto to be introduced and proceeded with as a public measure.

It is interesting to record that, although certain universities immediately availed themselves of the facilities thus afforded them to consolidate the existing laws governing their activities by means of public bills (*see* below), other universities have given notice that they propose to ask leave for the introduction of private bills during the 1960 session of Parliament both to amend and to consolidate their existing private Acts of Incorporation.

Legislation relating to the Universities of Cape Town and Stellenbosch.—In 1916 notices of motion were given for the introduction of two public bills dealing with the proposed Universities of Cape Town and Stellenbosch. These measures sought to repeal private Acts of the Colony of the Cape of Good Hope governing the two educational institutions concerned and to set up entirely fresh machinery for controlling their activities.

Before the notices of motion were reached Mr. Speaker in a considered ruling pointed out that every bill for the particular interest or benefit of any person or persons as distinguished from a measure of public policy shall be treated by the House as a private bill; and that the question whether a bill should be introduced as a public bill or as

a private bill was a matter for Mr. Speaker and not for the House, but after giving the most serious attention to all the circumstances connected with the introduction of the bills, he was not able to rule that they could be proceeded with as public measures. He came to the conclusion, however, that he would best discharge his duty to the House, to the institutions concerned and to the public by leaving it to the House to decide whether the bills were of such an urgent character as would render expedient the suspension of the Standing Orders relating to private bills under the particular circumstances. He went on to say that the notices relating to the introduction of the two bills could be discharged from the Order Paper and thereafter it would be competent for the Minister concerned to move, after notice, that the Standing Orders relating to private bills be suspended for the purpose of enabling the two bills in question to be introduced and proceeded with as public measures.[11] Mr. Speaker's suggestion was followed and the bills were subsequently introduced and passed as public measures.

Since that time the Acts of Incorporation of these two institutions have been amended by public bills on a number of occasions, and whenever new universities have been established by private legislation, consequential amendments have also had to be made to these public Acts.

During the 1925 session, however, the Government introduced the *University Schools Transfer Bill* which sought to amend both the University of Cape Town Act, 1916, and the University of Stellenbosch Act, 1916, but before the order for the second reading of the Bill was reached, Mr. Speaker gave the following ruling:

> . . . I would like to point out that the *University Schools Transfer Bill* cannot be proceeded with as a public bill. The Bill involves a question of public policy but it proposes *inter alia* to divest the Universities of Cape Town and Stellenbosch of certain property belonging to them. Although these two universities were constituted as such by public Acts they cannot, in my opinion, be regarded as Government bodies but are bodies corporate possessing rights, powers and privileges. It must be pointed out that it was only for special reasons that Parliament passed Acts Nos. 13 and 14 of 1916 (the Acts of Incorporation of the two Universities referred to above) as public measures, and that these universities correspond in every way with the Witwatersrand University, Johannesburg, which was constituted by private Act. Consequently, as these two universities are not Government institutions, it is not competent to disposses them of property by ordinary public bill procedure. The Bill should therefore be regarded as a hybrid measure and the Order for the Second Reading must be discharged.[12]

The *University Schools Transfer Bill* was re-introduced in the following session and passed as a hybrid measure.

Early in the last session a bill was introduced amending the University of Stellenbosch Act, 1916, by *inter alia* empowering the University to extend the area in which it could pursue its academic activities. It also contained provisions aimed at facilitating the

GHANA. THE SPEAKER'S CHAIR OF THE NATIONAL ASSEMBLY, PRESENTED BY THE HOUSE OF COMMONS, BEING CARRIED INTO POSITION BY THE PRIME MINISTER OF GHANA AND SOME OF HIS COLLEAGUES (*see page* 65)

smooth functioning of the administrative machinery of the institution. This bill was introduced and passed as a private measure.

Subsequently, in terms of the resolutions adopted by the Committee on Standing Rules and Orders on 16th March, referred to above, consolidating bills in respect of both the University of Stellenbosch and the University of Cape Town were, with the approval of Mr. Speaker, introduced and passed as public measures.

[1] 101 *Assem. Deb.*, 5364. [2] *Ibid.*, 7027-31. [3] *See* THE TABLE, Vol XXIII, p. 160. [4] V. & P., 356-7. [5] V. & P. (1915-16), 420. [6] 8 *Assem. Deb.*, 914. [7] 26 *Assem. Deb.*, 2481-2. [8] Clerk's Report (1930-32), 30-3. [9] V. & P., 580. [10] S.C. 15-'59, pp. viii-ix and App. E. [11] V. & P., (1915-16), 150. [12] V. & P. (1925), 1012.

VII. PRESENTATION OF A SPEAKER'S CHAIR TO THE GHANA NATIONAL ASSEMBLY

BY K. B. AYENSU, M.A.,
Clerk of the National Assembly

On 20th February, 1959, a Delegation from the British House of Commons presented, on behalf of their House, a Speaker's Chair to the Ghana National Assembly in commemoration of Ghana's Independence. The Delegation consisted of the Rt. Hon. R. H. Turton, M.C., M.P. (leader), the Rt. Hon. Arthur Bottomley, M.P., Sir Roland Robinson, M.P., Mr. Donald Wade, M.P., and Mr. T. G. B. Cocks, O.B.E., Second Clerk-Assistant.

The National Assembly met at ten o'clock that morning, one hour later than usual. Prayers were read and Mr. Speaker took the Chair. The new Chair, suitably covered, was brought in by Ushers and placed outside the Bar. The Sergeant-at-Arms left the Chamber and, returning, reported as follows:

Mr. Speaker, I have the honour to report that a Delegation sent by the honourable the Commons of Great Britain and Northern Ireland to present a Speaker's Chair to the National Assembly of Ghana is outside the Chamber inquiring if this honourable House will be pleased to receive it.

Upon Mr. Speaker enquiring, the House expressed its pleasure to receive the Delegation. At Mr. Speaker's bidding the Sergeant-at-Arms, bearing the mace, went out and conducted the Delegation to the Bar. As the Delegation came in and took their places on either side of the new Chair, Members rose. The Delegation bowed to Mr. Speaker, who bade them sit down. When they had done so, Members resumed their seats.

In welcoming the Delegation, Mr. Speaker said that he was proud that he would be the first Speaker to sit in the Chair, and that he was sure he would find it a source of inspiration to guide him in the conduct of the business of the House. He then invited the leader of the Delegation to address the House.

Mr. Turton began his address by expressing the thanks of the Delegation for the warm welcome they had received in Ghana. He said that in the seven hundred years of the history of the House of Commons only on rare occasions had the House sent delegations overseas to give gifts. "Mr. Speaker," he observed, "it is, I think, remarkable and even inspiring that in a materialistic age the symbols of Parliament have a great and indeed an increasing value."

Mr. Turton recalled how some years ago Mr. Grenfell, the present Father of the House of Commons, had taken a present to another Parliament and how, upon arriving at the port of entry and being asked by a customs officer to declare the value of the gift, he had merely written down: "Priceless".

Mr. Turton quoted some words of Edmund Burke, who used to represent his constituency, which very words had been quoted by the Ghana Prime Minister in moving his "Motion of Destiny" on 10th July, 1953—

> To bring the dispositions that are lovely in private life into the service and conduct of the Commonwealth, so to be a patriot, as not to forget that we are gentlemen.

Mr. Bottomley, upon being invited by Mr. Speaker to address the House, remarked that Ghana, now fully independent, had a great past. He said:

> Ancient Ghana, founded about 300 A.D., grew and expanded until it extended from the Niger westward to the Atlantic seaboard and north to the Sahara. This area was centre of great civilisation and culture as in the writing of El Bekri, Ibn Haukal and Ibn Battuta. Added to this has been the impact of Western civilisation, modern scientific and technological developments. What we are doing together in this land of yours is the blending of two civilisations, and upon the success of this depend the future and hope of mankind and the peace of the world.

Mr. Turton then unveiled the new Chair, saying:

> Mr. Speaker, in the name and by order of the Commons House of the Parliament of the United Kingdom, and in fulfilment of the Queen's direction, and on behalf of the 630 Members of the British House of Commons, and of the whole people of England, I join with my colleagues of this Delegation in asking you, Mr. Speaker, to accept this gift.

After the cheers had died down the Prime Minister moved the following Motion—

> We, the Speaker and Members of the National Assembly of Ghana in Parliament assembled, express our most sincere thanks to the Commons House of the Parliament of the United Kingdom for the Speaker's Chair which it has presented to this House.

He began his speech by asking to be allowed to add his own words to Mr. Speaker's in the warm welcome he had extended to the Delegation.

The Prime Minister said that by its kindness in making to the House a gift of a Chair the House of Commons had, perhaps unintentionally, dealt another serious blow against colonialism. The existing Speaker's Chair had inevitable connections with the colonial period and it was proper that all vestiges, however insignificant, of the old days of colonial rule should be removed from Parliament and, indeed, from Ghana's national life.

And, Mr. Speaker, how characteristic of the British Parliament to assist in this process in this delightful manner!

Mr. Speaker's Chair and the Mace are important insignia of parliamentary democracy. In the rather uncertain times in which we live it is reassuring for the legislative institution which—ignoring the claim of the legislative of Iceland—is the oldest in the world to have conceived the idea of making a gift to this House of one of these insignia.

In the absence of the Opposition the Motion was seconded by Mr. Cobina Kessie (Independent). He said that it appeared that the British were aware of the custom of presenting a stool to a person when he is made a chief.

The mystical symbolism of chiefship is well known. It shows the special relationship between the people who give a stool to a chief, and the chief who receives the stool. This gift, in some manner, shows the special relationship between the British people and the people of Ghana, the Commonwealth relationship.

It having been agreed that there would be no more speeches, the question was put and agreed to *nemine contradicente*. An illuminated copy of the Resolution was signed at the Table by Mr. Speaker and the Clerk. As the Sergeant-at-Arms handed it to Mr. Turton, Mr. Speaker said—

Members of the Delegation, please accept this Resolution of the House and be kind enough to convey it to the honourable the Commons of Great Britain and Northern Ireland.

To this Mr. Turton replied—

Thank you, Mr. Speaker; we shall be pleased to do so.

Then the unexpected happened. Before the Ushers could proceed to the New Chair and solemnly carry it to the Dais, the Prime Minister, accompanied by some of his colleagues and Back Benchers, rushed to the Bar and carried the new Chair, shoulder high, to the Dais. They then, with all due care for Mr. Speaker's person, sat him in the Chair.

The Delegation rose and Members rose. The Delegation bowed to Mr. Speaker and were conducted out of the Chamber by the Sergeant-at-Arms. As it had been agreed that no other business should be taken on that day the adjournment was moved, the question was put and agreed to, and the House was adjourned at forty-five minutes after ten o'clock.

VIII. CONSTITUTIONAL REFORM IN BASUTOLAND

By Owen Clough, C.M.G.,
Honorary Life President of the Society

PART A: INTRODUCTION

Africa, the second largest Continent and the greatest world peninsula, is still full of fascination and mystery for students of her history, her peoples, their customs and the conditions under which they live. "Darkest Africa" is becoming an expression of the past, for the dawn of civilisation can now be said to have definitely broken for her indigenous races; and its searching rays are penetrating even what were once the remoter regions of the Continent, where darkness was black indeed.

The actual Continent of Africa covers an area of over 11 million sq. m., and its total population, so far as statistics are available, numbers about 216 million, of whom only about 5 million are European.[1]

Basutoland, the subject of this article, covers an area of 11,716 sq. m.—*i.e.*, roughly the size of Switzerland; and the Census figures (1956) showed a population of 1,926 Europeans, 638,856 Africans and 891 Asiatics and persons of mixed race.

Basutoland, together with the Bechuanaland Protectorate* and Swaziland,† constitute the High Commission Territories which are all under the High Commissioner for South Africa—an officer appointed by the Imperial Government, who has authority over all these Territories.

The Basuto are composed of the remnants of several tribes broken up in wars by Moselikatze, the King of the Matabele, in the early years of the last century. These remnants were united under Moshesh (Moshoeshoe), a Chief of great ability, who ruled for many years. Between 1852 and 1883 there were numerous instances of hostilities between the Basuto and the adjoining Territories under European government. These continued even while Basutoland was a dependency, and reached a climax during the period of Basutoland's annexation to the Colony of the Cape of Good Hope. Eventually, in 1883-84, after the so-called "Gun War", the Basuto ex-

* 275,000 sq. m.; its population (1946 Census) was 2,325 Europeans; 292,754 Africans; 1,804 Coloured people of the mixed blood and Asiatics.

† 6,705 sq. m.; its population (1956 Census) was 5,919 Europeans; 229,744 Africans; 1,378 Coloured.

pressed a desire to come under the protection of the Imperial Government. Thereupon the Colony of the Cape of Good Hope disannexed Basutoland, and the territory was placed directly under the jurisdiction of Great Britain.

Until the recent introduction of the constitutional reforms which are summarised in this article, Basutoland was governed under a system, resembling indirect rule, by a Resident Commissioner subject to the directions of the High Commissioner as abovementioned. At the same time, in the exercise of legislative and executive powers, the British Government gave the Basuto a measure of opportunity to express their wishes, mainly through the medium of a body known as the Basutoland Council. This body, which has been in existence for some fifty years, consisted of 100 members under the Presidency of the Resident Commissioner; the majority of the members were nominated by the Paramount Chief (some were also nominated by the Government), while a minority (36 per cent.) were, since 1945, indirectly elected by District Councils. The Basutoland Council was, however, purely consultative and advisory, dealing with Chiefly and domestic affairs, and had no executive powers.[2]

PART B: THE COWEN REPORT

The new Constitution is the outcome of proposals put forward by the Basuto people themselves after the fullest consideration. These proposals are embodied in a comprehensive Report, entitled the Report on Constitutional Reform and Chieftainship Affairs,[3] colloquially known as the Cowen Report.

The Report was published by the Basutoland Council, and embodies the views of two committees comprising in all 14 Basuto members, drawn from the ranks of both Chiefs and commoners. These two committees, known respectively as the Constitutional Reform Committee and the Chieftainship Committee, had the services of two European administrative officers who acted as secretaries. Shortly after the two Committees were set up they decided to invoke the help of an expert in constitutional matters, and invited Professor D. V. Cowen, Professor of Comparative Law in the University of Cape Town, to act as their Constitutional Adviser. Following Professor Cowen's appointment, the two Committees worked together under his Chairmanship with a view to producing one comprehensive report covering all aspects of their terms of reference. His guiding hand can clearly be seen throughout the Report.

The Constitutional Reform Committee

Motion 90 of the Basutoland Council which was passed on 21st September, 1955, in the 51st Session of the Basutoland National Council requested:

that the Basutoland Council be given power to make Laws in all internal matters, such Laws to be confirmed by the Paramount Chief.

The Motion also proposed that the Resident Commissioner and the Departmental heads of his Staff should guide and advise the Council in policy and concluded with a statement that:

the Resident Commissioner, Heads of Departments and District Commissioners should deal with external affairs on behalf of her Majesty's Government.[4]

The following Councillors were then appointed to a Committee which came to be known as the Constitutional Reform Committee:

Sekhonyana H. Molapo of Butha Buthe
Leabua Jonathan of Leribe
Makhabane B. Peete (Ward Chief) of Berea
Gabriel C. Manyeli of Maseru
Edwin Leanya of Mafeteng
Makoae Shoapane of Mohale's Hoek
Sekhonyana 'Maseribane of Quthing
George Bereng of Qacha's Nek
Mabina Lerotholi of Mokhotlong.[5]

On 3rd December, 1956, the Committee elected Chief George Bereng as Chairman; and invited the Government Secretary, Mr. G. M. Hector, O.B.E., to be its Secretary and Councillor Gabriel Manyeli to be Assistant Secretary.

The Chieftainship Committee

The other Committee subscribing to the Report came to be known as the Chieftainship Committee. It originated in a debate in the Ordinary Session of Council in September, 1955, when it was decided to go into the whole question of Chieftainship in Basutoland.

At a Special Session in May, 1956, it was decided to appoint to this Committee the following 3 Members:

Leabua Jonathan
Samuel Seephephe Matete
Kelebone Nkuebe, M.B.E.

together with an additional 3 Members nominated by the Regent Paramount Chief—namely:

Leshoboro Majara (Ward Chief)
Mopeli Jonathan Molapo
Molise Tsolo,[6]

and at a meeting held on 29th November, 1956, Councillor Mopeli Jonathan was elected Chairman.

This Committee was to consider:[7]

1. The functions and remuneration of the Chieftainship in Basutoland.
2. The status of the Chieftainship of the Batlokoa.
3. Advisers for Principal and Ward Chiefs.
4. Absentee Headmen.

5. Bewyswriting (*i.e.*, certificates for controlling the movement of cattle).
6. Any other matters relevant to Chieftainship Affairs.

The combined Report of the two Committees, signed by all the members and by Prof. Cowen, was submitted to His Honour the Resident Commissioner, A. G. T. Chaplin, C.M.G., in his capacity as President of the Basutoland Council, and to Chieftainess Amelia 'M'antsebo Seeiso, O.B.E., Paramount Chief of Basutoland, in July, 1958.

Report: Historical Introduction

The Report contains an historical introduction which is divided into the three following periods:

1. *The Formative Period, 1868-1910.*[8]

The origin and development of the Basutoland Council may be traced back to 12th March, 1868, when Sir Philip Wodehouse, Governor of the Colony of the Cape of Good Hope and High Commissioner, in order to restore peace and maintain tranquillity and good government on the N.E. border of the Colony of the Cape of Good Hope, announced that Her Majesty the Queen had been graciously pleased to comply with the request of Moshoeshoe the Paramount Chief and other Headmen of the Tribe of the Basutos to be admitted to the allegiance of Her Majesty. Her Majesty had consequently authorised the Governor to take the necessary steps for giving effect to Her Pleasure. Whereupon the Governor proclaimed and declared that, from and after the publication of the Proclamation, the said Tribe of the Basutos shall be taken to be, for all intents and purposes, British Subjects: and the Territory of the said Tribe taken to be British Territory—and all British Subjects in South Africa were required to take notice thereof.

The Territory was annexed to the Colony of the Cape of Good Hope by an Act (No. 12 of 1871) of its Parliament, thus beginning an uneasy association which was to last until 1884.[9]

Internal discord in Basutoland, rising tensions against the administration and an unsuccessful attempt to disarm the people, eventually led the Cape Government to request that it be relieved of its charge; and in 1883 the Government of Great Britain, again not without reluctance, agreed to reassume the administration of the Territory. In September of that year the Cape Parliament passed the Basutoland Disannexation Act (No. 34 of 1883), followed on 18th March of the following year, by a Proclamation embodying an Order-in-Council of 2nd February, 1884, giving effect to the decision of the British Government to reassume administration.[10]

A Resident Commissioner was put in charge of the Territory and amended Regulations were issued along the lines of indirect Rule.[11] The Report states:

From the earliest days it had been the practice of Governers' Agents and Resident Commissioners to consult tribal gatherings (pitsos) of the Chiefs and people before arriving at any decision of importance. We may discern in this practice both administrative wisdom and the implementation of a basic desire on the part of the Basuto concerning the government of Basutoland. Perhaps the best known statement of this desire is Moshoeshoe's communication to the Cape Statesmen, Messrs. Burnet and Orpen, in 1862:

> " . . . What I desire is this—that the Queen should send a man to live with me, who will be her ear and eye and also her hand to work with me in political matters. He will protect the Basuto and gradually teach them to hear magistrates while he is helping me in political matters. . . .
>
> . . . The Queen rules my people only through me. The man whom I ask from the Queen to live with me will guide and direct me. . . When the agent and I agree as to what is right I shall carry it out.
>
> I wish to govern my people by native law, by our own laws, but if the Queen after this wishes to introduce other laws into my country, I would be willing, but I should wish such laws to be submitted to the Council of the Basuto; and when they are accepted by my Council I will send (a message to) the Queen and inform her that they have become law. . ."[12]

The Basutos say, " We have a proverb which says that a man who makes a mistake in a public assembly cannot be killed," which contains the germ of the English " Privilege of Parliament ".[13]

The question of the ownership of Basutoland has often caused confusion; and there is a valuable elucidation of the position in the early sections of the historical introduction.

2. *Changes in Society and the Need for Reform—1910-38.*[14]

This period is dealt with in Paragraphs 52 to 58.

The early success of the policy adopted by the British Administration in Basutoland was due largely to the moral influence of the men concerned.[15]

With the change from a subsistence to a money economy, Chiefs became absorbed in the effort to improve their own incomes, and found it more difficult to discharge traditional responsibilities.[16]

Increasing labour migrations led to absenteeism and the breakdown of local administration.[17] Chiefs who received posts were permitted the privilege of " placing their own offspring and favourites in positions of Native Authorities ".

There was dissatisfaction with the conduct of justice in the Chiefs' Courts which it was not possible to supervise because of their great number.[18]

In 1934 proposals for reform were put forward in the Pim Report. This report pointed out that " Indirect Rule " as understood in other parts of Africa, implies not only the acceptance and the preservation of the recognised tribal institutions but making the Native Authorities a living part of the machinery of the Government, and directing the

political energies and ability of the people to the development of their own institutions. The Pim Report went on to say:

> Those institutions are, however, a means and not an end and they cannot be left to work out their own salvation without guidance. It is the duty of the Administration to educate the Native Authorities in their duties as Rulers of their people according to civilised standards and to assure the moral and material well-being and social progress of the people.
>
> This implies such a degree of supervision as will place the Government in a position to assure justice and fair treatment to the people, as well as to provide for such a development of the native institutions as will adapt them to meet the new problems raised by the changing conditions. *The control from below which previously operated to secure at any rate a minimum of just government must largely disappear under a system of protection and must be replaced by control from above.*
>
> In no other way can indirect administration be a living and healthy growth fitted to preserve itself under the complex conditions of modern times.
>
> The history of Basutoland presents a very different picture and the policy followed with reference to it has little in common with indirect rule. It has been a policy of non-interference, of proffering alliance, of leaving two parallel Governments to work in a state of detachment unknown in tropical Africa, while under indirect rule native institutions are incorporated into a single system of government and subjected to the continuous guidance, supervision and stimulus of European officers.

The Cowen Report takes a very different view as to the virtue of trying to introduce a thoroughgoing system of indirect rule in Basutoland. "What was needed", says the Report, "was less emphasis on indirect rule and control from above, and more emphasis on encouraging the growth of responsibility and initiative in the hands of Basuto organs of self-government."[19] Much of the Chiefs' loss of authority and of contact with the people is attributed by the Report to attempts at Indirect Rule.

3. *Attempts at Reform: 1938-53.*

During this period, many attempts at reform were made along lines foreshadowed in the Pim Report, principally dealing with the powers of the Paramount Chief, the Chiefs and Headmen; the salaries paid to them; finance and its control; general administration; representation on the Basutoland Council and District Councils; the powers and duties of the Resident Commissioner; and the relationship between him and the Paramount Chief.[20]

Here again the Report states that the reforms failed to take adequate account of the growing influence of the Basutoland Council; and the opinion of Lord Hailey is quoted in support of the contention that the Basuto themselves should be given a greater share of legislative and executive power.

Report: Statement of the Problem

The Report[21] states that the essentials of the problem of constitutional reform now facing Basutoland may be summarised under four heads. First, it is right and proper that the desire of the Basuto for

a greater share in their own government be satisfied, compatible with the present capacity of the Basuto and with the retention by the British Government of the powers necessary for it to discharge its obligations in Basutoland. Many instances are given of requests for constitutional reform, along these lines, during the past 86 years.

The second head deals with the problem of dualism, which was aggravated rather than solved by the reforms of 1938-55. This problem is graphically illustrated by the analogy of a plough drawn by two oxen. Basutoland is the plough and the oxen are the British Authorities and the Basuto Nation who would naturally work more effectively when pulling together.

The third head is the establishment of a broad framework of local government, for the Nation as a whole desires some decentralisation of governmental functions to the district level.

. The fourth head is the problem of Chieftainship, which is a vital factor in the government of Basutoland and is in need of reform by better adapting it to the emerging patterns of modern Basuto society. The Chiefs are needed as guardians of law and order and as a channel of communication for the directives of government.

Report: Proposals for Reform

The general principles of the proposals for constitutional reform advocated by the Committees are: [22]

(*a*) To put forward a fully considered plan, calculated within reason as we see it, to satisfy the desire of the Basuto for a greater share in their own self-government. This aim we feel may best be achieved by:
  (i) modifying the composition of the Basutoland Council and increasing its powers from those of an advisory body to those of a Legislative Council;
  (ii) giving adequate Basuto representation on a properly constituted and powered executive and policy-making body;

(*b*) To minimise the effects of dualism, in so far as it is possible to do so by constitutional reform, by linking together into one system of government the authority of Her Majesty's representatives and the authority of the Basuto Nation, as embodied in the Paramount Chief, the Chiefs and the people;

(*c*) To foster the growth of efficient institutions of local Government;

(*d*) To integrate the Chieftainship into the emerging patterns of Basuto society.

In a significant section the Report states that: [23]

It should be accepted that the proposals which we are advocating for Basutoland will gradually evolve in the direction of further advances towards self-government. Indeed, we would say that the value of the present proposals should be judged precisely by the capacity they may have for facilitating sound and steady progress. . . .

It is obvious that Basutoland—by virtue of its geographical and economic position—cannot in the foreseeable future become a completely independent state. But this is merely to say that the realities of the situation must always be kept in mind. We see no reason why Basutoland's institutions of govern-

ment should not be allowed to evolve naturally so as to become increasingly more representative and more responsible.

We are convinced that the new constitution should, as far as possible, contain within itself provision for its own natural development. It should not lay down too rigid or uniform a plan, but should allow for natural growth; for constitutional progress should be the outcome of practical experience.

The plan recommended may be outlined as follows:

Report: Central Government

A. *THE LEGISLATURE*

It is recommended that the Legislature be unicameral[24] and composed of:

(i) an official element, consisting of 3 senior members of the Civil Service who would serve on the Executive body;
(ii) a Chiefly element consisting of 22 Principal and Ward Chiefs *ex officio*;
(iii) an elected element, of 40; and
(iv) a nominated element of 15 members nominated by the Paramount Chief,

—with a voteless Chairman.

Each District would be represented by 3 members irrespective of population; for the rest it is recommended that representation be on the basis of one seat for every 5,000 taxpayers so as to ensure a Council of 80 members.[25]

Method of election to the National Council.

It is recommended that the main institutions of Local Government be used as Electoral Colleges for the Legislative Council, the vote being confined to elected members on such Councils.[26]

Qualifications for Members of Council and Electors.

These should be: membership of the Basuto Nation; minimum age of 21; literacy in Sesuto; residence in Basutoland for 6 months immediately preceding the election; and payment of tax.

Nominated members, Civil Servants and Principal and Ward Chiefs should have the same qualifications as elected and nominated members with no discrimination on the score of sex.

No person may be elected a member or if elected sit or vote who: by his own act owes allegiance to a foreign power; is an unrehabilitated insolvent; has been under sentence of death; has suffered imprisonment exceeding 6 months (unless 5 years have elapsed since the termination of his imprisonment); has been convicted for dishonesty; has been certified insane; has been disqualified by law for an offence connected with an election; or holds any permanent office in the Public Service of Basutoland.[27]

Seats are to be vacated in event of any disqualification as above;

upon death; by written resignation to the Chairman; absence without leave of the Chairman from Council meetings for a continuous period of 3 weeks throughout the Session, or ceasing to be qualified as a voter.[28] Questions of membership should be determined by the Executive Council.

Sessions are to be held as determined by the Paramount Chief on advice of the Executive Council with at least one Session a year.

Prorogation or Dissolution is to be by the Paramount Chief on advice of the Executive Council, and the Council may adjourn from time to time; 4 years is recommended as the life of the Council. Elections are to be held within 3 months after every dissolution.

Quorum: It is recommended that this be not less than 25 members.

Questions are to be decided by a majority of members present and entitled to vote.

The Chairman is to have neither a deliberate nor a casting vote; in the event of an equality of votes, a motion is deemed to be lost.

In a lengthy section, arguments are put forward explaining how experience has shown that it is unsatisfactory to have a government official as Chairman; and it is proposed that the office be filled by an experienced Parliamentary Official, until the Council elects its own Chairman.[29]

No Colour Line.

In regard to the powers of what it is proposed to call the Basutoland National Council, the Secretary of State's reply to Motion 90 contained two restrictive conditions—namely, that the Council's legislative powers should not extend to:

(*a*) people other than the Basuto, and
(*b*) countries other than Basutoland.

The Basutoland Council was, however, unable to accept the first of these conditions. And the Committees, in their Report, were convinced that the Basuto Nation desires that the new Council should have power to make laws affecting the population of Basutoland generally; a "colour line" would be wholly objectionable.[30]

Powers.

The other paragraphs relating to the powers of the Basutoland Council deal with the legislative field, which is divided into High Commissioner's and Basutoland Council, or self-governing, matters. It is proposed that the general power to make laws for the good government of Basutoland should be exercised with the concurrence of the Basutoland Council.

The following topics are reserved to the High Commissioner (who is, however, to seek the advice of the Council even in these matters): external affairs and defence of Basutoland; internal security; cur-

rency, customs and excise; copyright; patents and posts and telegraphs.

Other paragraphs relating to the legislative field deal with the Civil Service; the administration of justice; power of the purse; land tenure; the Harlech Declaration; and decisions as to whether a matter is a High Commissioner's matter or a Basutoland Council matter.

Under the heading "Agencies of Control" the Report deals fully with:

(*a*) A Non-Responsible Executive;
(*b*) The High Commissioner's Power of Veto;
(*c*) Reservation for the Queen's Assent;
(*d*) The Crown's Power of Disallowance;
(*e*) A Power of Delay;
(*f*) Reserve Power or the Power of Certification; and
(*g*) Legislation in Whitehall.[31]

Assents, Enacting Formulæ, the Initiation of Legislation, the Committee System and Constitutional Guarantees, are dealt with in paragraphs 123 to 127 of the Report.

B. *THE EXECUTIVE*

Chapter 2 of the Report deals with the Executive and furnishes information in regard to: the position of Paramount Chief and Resident Commissioner; the balance between official members; the appointment of members; and tenure of office.

Under the heading "Powers" the following subjects are dealt with: General Principles; and relationship with the High Commissioner and the Paramount Chief.[32]

Consultation in Exercise of Paramount Chief's powers.

In paragraphs 141 and 142 of the Report the Committees envisage that the following acts will be performed by the Paramount Chief on the recommendation of the Executive Council:

(i) Suspension of Members of the Basutoland Council.
(ii) The summoning, proroguing and dissolving of the Basutoland Council, or the extension of its life.
(iii) Certain powers in regard to Courts to which reference will be made later.

The following acts would be performed in consultation with the Resident Commissioner:

(i) The nomination of some of the members of the Basutoland Council.
(ii) The nomination of a member of the Executive Council.
(iii) The nomination of a working Chairman of the College of Chiefs, to whom reference will be made later.

The following acts would be performed by the "Paramount Chief in Council": *

* The Paramount Chief in Council is the Paramount Chief acting after consultation with a small body of advisers, including the Resident Commissioner.

(i) Decisions that a bill be reserved for the Queen's Assent on the score of discrimination.
(ii) Decisions that recommendations of the Executive Council be referred back for consideration.
(iii) Decisions to delay Bills passed by the Legislative Council.
(iv) Decisions that recommendations of the Executive Council be referred to the Legislative Council in cases where the Constitution makes provision for such references.

The purposes and duties of General Secretary and Legal Adviser to the Paramount Chief are dealt with in paragraphs 143 and 144 of the Report, while the submission of questions to the Executive Council and associating unofficial members with Heads of Departments and their work are respectively dealt with in paragraphs 145 and 146.

The proposals in regard to the Executive Council are interesting because the ordinary standard pattern of British Colonial Executive has been adapted to take account of the special position occupied by the Paramount Chief in Basutoland. Understandably, for reasons stated at some length in the Report, the Paramount Chief is not to be a member of the Executive Council, but he is given certain defined powers in relation to it.

Report: Local Government

District Councils as Primary Local Government Bodies.[33]

The Committees envisage District Councils as the primary organs of local government. They are to be bodies composed of elected members in the proportion of 1 per 2,000 taxpayers, with a minimum of 15 members in such Council, and with the Principal and Ward Chiefs members *ex officio*.

Activities and Powers.

The Committee recommend, subject to revision from time to time by the Basutoland Council, that the District Councils be responsible for the following: the construction and maintenance of bridle paths; the maintenance of local roads; and the regulation of the use of roads and bridle paths; Public Health, including the provision of health and sanitary services and first-aid posts; dams and water supplies; the planting and preservation of trees; markets; grazing control; soil conservation; recreational and cultural facilities; burial grounds; famine and pauper relief; local veterinary services; pounds; slaughter houses; fish protection; bewyswriting; licences (café, butcher, miller, traders, restaurant, dog, fruit hides and skins); and the imposition of local rates and taxes.[34]

Such District Councils are to work on the Committee system.

Provision is also made for Central Government supervision and incidental matters.

Report: The Chieftainship

Provision is made for a College of Chiefs consisting of the Principal and Ward Chiefs of Basutoland. Later these Chiefs may add to their membership by a process of election, with a small Action Committee. The College of Chiefs is to hold office for 4 years.

The object of such College of Chiefs is to deal with discipline, recognition and remuneration, as well as to become at one and the same time the repository and guardian of the custom, lore and traditions of the Chieftainship. It is to have the aid of an Action Committee doing the day-to-day work and functioning as an administrative Tribunal. The proceedings of the College of Chiefs are to be subject to review by the High Court only in case of *mala fides*, gross irregularity or failure to have regard to the principles of Natural Justice. Full reports of the work of the College are also to be submitted to the Legislature.[35]

The proposals concerning the College of Chiefs are original suggestions to help adapt the Chieftainship to modern conditions. These proposals, which are worked out in more detail in the Order-in-Council referred to below, seem capable of useful imitation elsewhere in Africa.

Report: The Judiciary and the Civil Service

The Committee state that they were informed that an undertaking had been given to confer power on the Paramount Chief to establish or suspend Basuto Courts as soon as the relationship between the Paramount Chief and the Resident Commissioner is satisfactorily settled in any new constitution. The Committees feel that such a power conferred on the Paramount Chief should be exercised in consultation with the Executive Council.[36]

Chapter 7 of the Report deals with the Civil Service.[37]

Report: General Survey and Conclusions

The Committees are supported in their recommendations by evidence both written and oral of 350 Basuto and 8 Associations.[38]

Part III of the Report deals with the scope and inter-relations of the proposals; and paragraphs 167 and 168 read:

167. The constitutional scheme which we have recommended should be judged as a whole, and it must not be assumed that we would be prepared to recommend some part of it without regard to its relation to other parts. Thus, to mention one example, if the powers accorded to the proposed Executive Council were to be substantially less than we have envisaged, our views in regard to the composition of that body, the initiation of legislation, and the abolition of the Basuto National Treasury, would all require revision. At the same time we realise that even if our general conceptions meet with approval, further discussion with the Secretary of State may result in modifications consistent with the basic framework. It appears to us, therefore, to be expedient to state that in our view the basic framework within which any worthwhile advance in Basutoland's constitutional position can take place is:

(*a*) the establishment of a Legislative Council of the kind described in this report;
(*b*) the association of Basuto in the work of an effectively powered Executive Council;
(*c*) the establishment of Local Government.

168. In singling out these three aspects of government, it must not be thought that we underestimate the great importance of such matters as the problems of Chieftainship and the correction of the present difficulties of dualism. The recommendations in this report, should, indeed, be sufficient to show the contrary. We do feel, however, that there can be no solution of these and other administrative problems now facing Basutoland unless more power and responsibility is placed in Basuto hands. Given the right constitutional structure, then with goodwill and trust the present difficulties should gradually be overcome.

The financial implications of the suggested reform are dealt with in paragraphs 169 and 170.

In the concluding paragraph (171) of the Report the Committee express:

deep gratitude to all those who in their several spheres have made our task possible: members of the public, whose evidence and memoranda have been most valuable, Civil Servants of all ranks, translators, interpreters, printers, and those who typed the manuscript. From all these we have had the fullest co-operation.

The Report was signed at Maseru, July, 1958, by:

George Bereng,
Chairman of the Constitutional Reform Committee

Sekhonyana H. Molapo
Leabua Jonathan
Makhabane B. Pete
Gabriel C. Manyeli
Edwin Lenaya
Sekhonyana 'Maseribane
Mabina Lerotholi

Mopeli Jonathan Molapo,
Chairman of the Chieftainship Committee

Leabua Jonathan
Samuel Seepheephe Matete
Kelebone Nkuebe, M.B.E.
Leshoboro Majara
Molise Tsolo

D. V. Cowen,
Constitutional Adviser

G. M. Hector, O.B.E.,
J. P. I. Hennessy,
Secretaries.

The Annexures to this very thorough and comprehensive Report deal with:

1. Alphabetical List of Individuals and Associations tendering evidence to the Committees number 330, each one being marked O—Oral, or W—Written, or both. The Associations and other bodies were:—The Association of Chiefs and Headmen; Basutoland African Congress; Basutoland Chamber of Commerce; Basutoland Farmers' Association; Basuto Traders' Association; Indian Community; Religious Missions—P.E.M.S., R.C.M., E.C.M., and the Sons of Moshoeshoe.
2. Basutoland Council Proclamation, Chapter 28 of 1949.
3. Rules of Procedure of the Basutoland Council.
4. Rules of Procedure of District Councils; and
5. Financial Implications.

PART C: THE LONDON TALKS AND QUESTIONS IN THE IMPERIAL PARLIAMENT

In July, 1958, the Report outlined above was unanimously approved by the Basutoland Council, which recommended that a delegation be appointed from among its members to present the Report to the Secretary of State for Commonwealth Relations, and to try to ensure the implementation of its provisions. And the Council further recommended that Prof. Cowen should accompany and lead the delegation.

A delegation of five Basuto members, drawn from the two Committees which had been associated in the preparation of the Report, was then appointed, and together with their Constitutional Adviser, the delegation arrived in London on 14th November, 1958.

On the same day the Under-Secretary for Commonwealth Relations was asked a Question[39] in the House of Commons as to the composition of the Deputation from Basutoland, the subjects to be discussed at the forthcoming London Conference and the scope of the coming discussions. To this the Minister replied that in September, 1955, the Basutoland Council, at present an advisory body, passed a Motion that it should be given power to make laws in all internal matters and in May, 1956, the Council was invited by his noble Friend (the Secretary of State, the Earl of Home) to submit detailed proposals. The Council working through two Committees which had the assistance of Professor D. V. Cowen as Constitutional Adviser, had prepared a Report (*see* Part B of this Article) which in July, 1958, was unanimously approved.

A Delegation from the Basutoland Council was then invited to visit London to discuss the Report. The Delegation was due to arrive that day and discussions would begin on 18th November. Her Majesty's Government looked forward to fruitful discussions.

The Delegation was constituted as follows: Chiefs George Bereng, Kelebone Nkuebe, Mopeli Jonathan, Leabua Jonathan, Samuel Matete and Professor Cowen. In addition, the Paramount Chief Regent of Basutoland, who was paying a private visit to the United Kingdom, would also attend the discussions.

In reply to a further Question in the Commons on 4th December,[40] as to whether he had any statement to make on the implementation of the recommendations in the Report of the Constitutional Committee of the Basutoland National Council, the Minister said that the two Delegations had had 10 meetings at which there was full and frank discussion on all points, both Delegations being anxious to bring the talks to an early and successful conclusion.

On 18th December,[41] replying to Questions in the Commons, the Minister said that the talks with the Basutoland Delegation had been successfully concluded and that his noble Friend would be making a full statement that day in another place which would concern itself

with the constitutional progress of Basutoland. The conclusions reached would be laid before Parliament where there would be full opportunity to study the details. The talks, which were very full, had taken a month to conclude.

The same day,[42] in the Lords, the Secretary of State for Commonwealth Relations made an important statement on the constitutional discussions he had been having with the Basutoland Nation, the full text of which is given in Part I of the White Paper appearing later in this Article.

In reply to a Question,[43] the Secretary of State said it was proposed that the Legislative Council would be in existence towards the end of next year.

The noble Earl said there was no intention to have any racial discrimination in the new constitution: indeed, the Secretary of State would always be there in the background to ensure that there was no discrimination against any person or group on racial grounds.

PART D: THE WHITE PAPER

In January, 1959, a Report on the Constitutional Discussions held in London was presented to Parliament by the Secretary of State for Commonwealth Relations by command of Her Majesty.[44]

The White Paper is divided into three parts: (I) an introduction, setting out some historical facts and the steps leading to the London talks; (II) an *aide-mémoire*, containing the matters in respect of which agreement was reached between Her Majesty's Government and the Basutoland Delegation; and (III) a statement by the Earl of Home summing up the essential features of the agreement.

I. Statement by The Rt. Hon. The Earl of Home, Secretary of State for Commonwealth Relations, in the House of Lords on 18th December, 1958

It is convenient to begin with the Earl of Home's summary, which gives a very clear picture of the essential features of the new constitution. The text reads as follows:

My Lords, with the leave of your Lordships, I should like to make a statement on constitutional discussions which I have been having with the Basutoland Nation. On 18th November, 1958, I began discussions with the Delegation from the Basutoland Council, led by Professor Cowen, of Cape Town University, on the proposals for constitutional reform and of chieftainship affairs contained in the able and comprehensive report on these subjects which was unanimously approved by the Basutoland Council in July, 1958.

I am happy to say that agreement has been reached on all the essential features of a new Constitution with the object of placing more power and greater responsibility in the hands of the Basuto Nation. Before giving your Lordships an outline of the proposals which have been agreed I should like to pay a tribute to the skill and diligence which the Basuto Delegation have displayed throughout our long and complicated negotiations. It has been a great pleasure to me to conduct these negotiations on behalf of the United Kingdom with representatives of the Basuto Nation who have shown both

moderation and wisdom in matters which affect Basutoland directly and have at the same time shown themselves fully conscious of the significance of the matters which we have discussed.

The Report, on which our agreement is largely based, is an historic document in the relations between Her Majesty's Government in the United Kingdom and the Basuto Nation. In accordance with the proposals in the Report, I intend to recommend to Her Majesty the Queen, subject to certain legislative and reserve powers remaining with the High Commissioner, the Constitution should establish a Legislative Council for Basutoland to be called the Basutoland National Council. This Council would be given power to legislate for all persons in Basutoland and would have the right in addition to discuss those matters which remain in the High Commissioner's legislative sphere. Its financial powers would include the right to vote the estimates on Council matters and to discuss those relating to the High Commissioner's matters. The High Commissioner would be instructed to observe a specific ratio of expenditure in relation to the total Basutoland budget in any one year and would not exceed this ratio by more than 49 per cent. of the total budget without the prior agreement of the Basutoland Council.

The Council would consist of eighty members, of whom half would be elected by the District Councils. There would be an Executive Council, established broadly along the lines of the Report, comprising four unofficial members and four official members of whom one would be the Resident Commissioner, who would preside. Local Government would be organised on the lines proposed in the Report.

A decision with regard to the franchise was reached only after both Delegations had discussed with great care the special needs and circumstances of Basutoland. Both Delegations recognise that the proposal to base the franchise upon membership of the Basuto Nation was put forward by the Basutoland Council in the sincerely held belief that it would operate effectively an without discrimination. In addition, however, there were many other im portant aspects relative to the problem; and both Delegations are satisfie that the best solution is to establish a single roll for Basuto and non-Basut British Subjects and British Protected Persons. They have also agreed on the qualifications proposed in the Report with regard to age, presence in an electoral area for a specified period and the payment of tax—it being accepted by the United Kingdom Government, respecting the last of these, that a revision of the present tax system will be undertaken with a view to removing any features apparently discriminatory on the score of race.

Her Majesty's Government also recognise that the agreement on the franchise involves some amendment in the existing law governing the residence of non-Basuto in Basutoland, and the giving of assurances regarding land, entry and residence. These latter subjects are dealt with in the particularly valuable and thorough historical section of the Report. I am glad to note that this section, which has of course been fully endorsed by the representatives of the Basuto Nation, restates the privileges which traders and missionaries have enjoyed, and should continue to enjoy in Basutoland. On these matters a number of declarations have been made by previous High Commissioners, which are quoted in the Report, and I am happy to state that these still accurately represent the attitude of Her Majesty's Government.

To summarise the main points: it is our understanding that the land of Basutoland is legally vested in the Paramount Chief in trust for the Basuto Nation, and that Basutoland is not open to colonisation by non-Basuto. It is not the intention of Her Majesty's Government to effect a change in this position. I also confirm that persons who are not members of the Basuto Nation and who are made eligible for the franchise or are admitted to the franchise will not, as a result, acquire any right, or a claim to any right, respecting land in Basutoland, or any right to reside there. Agreement has been reached with regard to the Chairmanship of the Legislative Council

broadly in accordance with the Report. In principle the Chairman should be elected by the Council as soon as practicable and the Constitution would make provision accordingly.

Both Delegations were at all times anxious that the special position of the Paramount Chief should be recognised in relation to the new Constitution. The powers which he will exercise correspond to those set out in the Report and it has been agreed that to assist him in the execution of his duties he should have the advice of the Resident Commissioner, one person nominated by the Paramount Chief and the Paramount Chief's nominee to the Executive Council. Both Delegations fully recognise the important part which the Chieftainship plays in the administration and in the general life of Basutoland and here again the proposals of the Report were agreed with relatively minor changes.

It has not been my purpose, my Lords, to set out in this statement all the detailed conclusions which have been reached in the course of our lengthy but fruitful discussions. These will be laid before Parliament in the form of a White Paper. But I may say that I have agreed that work should start on the modification of the present Council building to meet the requirements of the new Council and that a beginning should be made of the training of the Basuto officials who will play an important part in its affairs. It is, moreover, the policy of Her Majesty's Government to increase the number of Basuto civil servants as soon as suitable candidates become available. I hope and believe that this new Constitution for Basutoland will make a real advance in the political development of the Basuto Nation and will redound to the credit of all those who have had such a significant share in making this advance possible.

My Lords, that has been a long statement, but I was very anxious that the Delegation from the Basutoland Nation, who have been here now for one month, should have that statement made to Parliament before we retire for the Christmas Recess.

II. The "aide-mémoire"

So much of the *aide-mémoire* is substantially in accordance with the Report that its repetition is unnecessary here. But it is proposed to quote certain extracts from it which deal with important precedents and principles, or when the White Paper deviates materially from the Report.

Emergency Powers.—Paragraph 16 of the White Paper states that the Emergency Powers Order in Council, 1939, will be extended to include Basutoland in the Schedule of Territories to which it applies.

The Chairmanship of the Council.

Paragraphs 17 and 18 of the White Paper read:

17. (*a*). In principle the Chairman should be a Mosuto elected by the Council, but for the first year the Resident Commissioner will be appointed as a temporary appointment only. At the end of the first year there will be appointed as Chairman either the Resident Commissioner or an outside person or a Mosuto, who would not necessarily be a member of the Council. As from the end of the second year a Mosuto will be appointed as Chairman for the life of the Council if this is requested by a majority of the Council. The formal act of appointing the Chairman will be by the High Commissioner.

(*b*) A Deputy Chairman should be elected by the Basutoland National Council immediately to preside in the absence of the Chairman. In the interval between Sessions the Deputy Chairman will be given the opportunity of training in his duties in the United Kingdom.

(*c*) The Mosuto Chairman, when elected, and the Deputy Chairman, can both be chosen from outside the membership of the Council if the latter so desires.

(*d*) If a Chairman is elected from the members of the Council his place will be filled by by-election or a new nomination as appropriate. The Deputy Chairman when presiding will have a vote.*

18. Acceptance of the provisions in paragraph 17 by the Basutoland Delegation involves a compromise on an important matter.

Privileges and Immunities.

The White Paper fully endorses the recommendation in the Report that the new Basutoland Legislature should have Powers and Privileges, and Standing Orders, modelled on standard Commonwealth precedents. It is satisfactory that yet another African Legislature will be added to the family.

The Franchise.

The proposal in the Report that membership of the Basuto Nation should be a qualification for the franchise was amended in the White Paper. After pointing out that the proposal (as defined in the discussions) was not intended to be racially discriminatory, nor need it be so in effect, the White Paper states that the proposal was "liable to misinterpretation".[45] Accordingly a single roll for Basuto and non-Basuto British subjects was agreed upon.

Assurances regarding land, entry and residence.

The important and, in the past, sometimes controversial question of land rights, entry and residence, are dealt with in paragraphs 32 and 33 of the Report. Her Majesty's Government there make the following declarations:

32.(*a*) With regard to paragraphs 31 and 32 of the Report, Her Majesty's Government confirm their understanding that the land in Basutoland is legally vested in the Paramount Chief in trust for the Basuto Nation.

(*b*) With regard to paragraphs 32, 33 and 34 of the Report, Her Majesty's Government confirm their understanding that Basutoland is not open to colonisation by non-Basuto persons.

(*c*) With regard to paragraph 35 of the Report, Her Majesty's Government confirm the following statements concerning the privileges enjoyed by non-Basuto traders in Basutoland:—

(i) "His Excellency can only say, as Lord Milner said, that he does not think that any civilised government would ever take steps to deprive people of sites which they have beneficially occupied, or deprive them of improvements which they have created on these sites." (Lord Selborne, 19th March, 1906.)

(ii) His Excellency cannot "conceive that any Government of Basutoland would ever disturb them in the enjoyment of their privileges or of the buildings they had erected on the land, which had been, so to say, lent to them for the purposes of business by the tribe,

* In order to maintain the balance between elected and non-elected members, this will only be the case if the Deputy Chairman is a member of the Council (*vide White Paper*, para. 17 (*d*)).

but that he could not regard any leasing of land to Europeans as an infringement of the cardinal principle of the inalienability from the Basuto of the land of Basutoland ".

(iii) " Traders have always been allowed to register their buildings and fixed property, but, as businessmen, have always clearly realised that they possess no title of any description to the sites. . ."

(SIR HERBERT SLOLEY.)

Her Majesty's Government appreciate the view expressed in paragraph 35 of the Report that these declarations also accord with the wishes of the Basuto Nation.

(*d*) Her Majesty's Government have noted with pleasure the statement in paragraph 35 of the Report that the Basuto recognise that the European and Asian trading communities have for long enjoyed certain privileges which the Basuto, seeking the path of civilised government, would never wish to take away in haste, or without reasonable compensation, in accordance with normal civilised practice. Her Majesty's Government have noted too that the Basuto are " not unmindful of the real advantages which the traders have brought to Basutoland; in addition to supplying material needs, they have greatly assisted in opening roads and communications, and have earned gratitude through oft-repeated acts of generosity in times of drought and stringency ".

(*e*) Her Majesty's Government has also noted with satisfaction the following statement in paragraph 33 of the Report:—

> " One hundred and twenty-five years ago the Paris Evangelical Mission began its work in Basutoland, to be followed by the Roman Catholic Mission in 1864 and by a Mission of the English Church in 1875. The story of the introduction of the Missions, and of their noble work, has been told more than once. We shall not attempt to summarise; but we do wish to repeat in full gratitude and sincerity the words of the Resident Commissioner, Sir Herbert Sloley, on the 75th anniversary of the Parish Evangelical Mission in 1908: 'If one influence more than another has helped the Basuto, it is the missionary influence.'
>
> That influence has continued to the everlasting honour of a devoted band of men and women, and to the permanent benefit of our Nation. It is our earnest desire to create conditions in which the Missions may flourish; for it is only with men and women of good Christian education in the Civil Service, the professions, trade and agriculture that our country can face the future with confidence and courage.
>
> We wish to record our very special debt to the Missions for the stimulus which they have given to education in Basutoland. It was a wise and profitable decision which led to the practice, now well-established, of consulting the Missions in matters of government educational policy; and we believe that in adopting new constitutional arrangements the Nation would wish this practice to be confirmed and continued."

(*f*) Her Majesty's Government confirm that it is not their intention to effect a change in the position, as set forth above, concerning land and the presence of non-Basuto in Basutoland. With particular reference to the agreement concerning one voters' roll for both Basuto and non-Basuto British Subjects and British Protected Persons, Her Majesty's Government confirm that persons who are not members of the Basuto Nation and who are admitted to the franchise along with members of the Basuto Nation or are made eligible for the franchise, will not as a result acquire any right respecting land in Basutoland or any right to

reside therein, nor will admission to the voters' roll imply any claim to the right to acquire land, or to reside, in Basutoland.

(*g*) If there should be a desire among the Basuto to alter the existing system of land tenure or the conditions under which Non-Basuto may remain in the Territory, the Constitution would provide means for the Basuto themselves to initiate the appropriate legislation.

33. Her Majesty's Government confirm that it was never the intention of the High Commissioner by means of the Entry and Residence Proclamation to afford non-Basuto persons entering Basutoland any greater rights or privileges in regard to residence than they had previously. It is therefore agreed that the Proclamation should be amended to remove all doubts with regard to its legal effect and to ensure that it complies fully with the intentions referred to in the previous sentence."

The Paramount Chief and the Chieftainship.

Paragraphs 43 to 49 of the White Paper contain the proposals in the Report relating to the Chieftainship generally, which are accepted on the understanding that:

(*a*) the High Commissioner will retain the right to confirm the appointment of the Paramount Chief.

(*b*) The High Commissioner will approve the delimitation of principal chiefdoms but will not have the right to initiate any action to delimit the chiefdoms himself.

(c) The placing and removal of Chiefs will be vested in the Paramount Chief, acting on the advice of the Working Committee of the College of Chiefs[16] and after consultation with the Resident Commissioner.

Amendment of the Constitution.

Paragraph 57 of the White Paper states that:

The recommendations on this subject in paragraph 84 of the Report are endorsed generally. The Basutoland National Council will be consulted on any proposed amendments to the Constitution. It is agreed that it would be better not to specify any particular majority for carrying any motion relating to such amendment. The legal power to amend the Constitution should, in accordance with standard practice, be reserved to Her Majesty The Queen. It was agreed, however, that the Executive Council and the Basutoland National Council will be consulted on any proposed amendment unless, in the opinion of the Secretary of State, great urgency makes such consultation impracticable, or the amendment is too unimportant to make such consultation necessary.

Enacting Formula and Oaths of Allegiance.

All Bills are to be "Enacted by the Legislature of Basutoland" and the Oath of Allegiance to be taken by all members of the Basutoland National Council as follows: [17]

I.....do swear (or do solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Her heirs and successors according to law and I hereby recognise the authority of the Paramount Chief of Basutoland under the Constitution.

There is also an official Oath to be taken by all members of the Executive Council.

The *aide-mémoire* is signed:

On behalf of Her Majesty's Government in the United Kingdom.
HOME
C. J. M. ALPORT

Commonwealth Relations Office.
17th December, 1958.

On behalf of the Basutoland Council.
D. V. COWEN
LEABUA JONATHAN
S. S. MATETE
C. KELEBONE NKUEBE
M. J. MOLAPO
T. G. BERENG.

PART E: THE BASUTOLAND (CONSTITUTION) ORDER IN COUNCIL

The Agreement on the new Constitution for Basutoland was duly implemented in September, 1959, by the Basutoland (Constitution) Order in Council,[48] the Office of High Commissioner Order in Council,[49] and the Royal Instructions to the High Commissioner for Basutoland, Bechuanaland Protectorate and Swaziland.[50]

It is not proposed to set out the provisions of these documents in full. They are long, complex and detailed. The (Constitution) Order in Council itself is divided into eight parts and contains five schedules. It is possible, however, to gain a comprehensive picture of the new Constitution from Parts II, III, IV and VI of the Constitution Order in Council. And as these parts, especially Part VI on the Chieftainship, contain much interesting material on the adaptation of Colonial precedents, as well as much that is capable of adaptation elsewhere, it is proposed to set them out in full, together with one of the relevant schedules.

PART II.

EXECUTIVE COUNCIL.

Establishment and Constitution of Executive Council.

3. (1) There shall be an Executive Council in and for Basutoland.

(2) The Executive Council shall consist of—

(i) the Resident Commissioner;
(ii) the *ex officio* Members;
(iii) four Members appointed in pursuance of sub-section (1) of section 5 of this Order who shall be known as " Council Members ".

(3) The High Commissioner, when present, shall preside in accordance with section 13 of this Order.

Ex Officio Members.

4. The *ex officio* Members of the Executive Council shall be the Government Secretary, the Finance Secretary and the Legal Secretary.

Council Members.

5. (1) The Council Members of the Executive Council shall be persons who are Members of the Basutoland National Council, not being Official Members of that Council and shall be appointed by the High Commissioner by instrument under the public seal. One Council Member shall be appointed on the nomination of the Paramount Chief, after consultation with the Resident Commissioner, and three on the nomination of the Basutoland National Council. The persons to be nominated as Council Members by the Basutoland National Council shall be determined by ballot in accordance with Standing Orders and in such manner as not to disclose how any particular Member shall have voted.

(2) The High Commissioner shall without delay report to Her Majesty through a Secretary of State, every appointment made under sub-section (1) of this section.

Tenure of Office.

6. (1) Subject to the provisions of this Order, the Council Members shall hold their seats in the Executive Council during Her Majesty's pleasure and, subject thereto, the seat of any such Member shall become vacant—

(*a*) if he shall by writing under his hand addressed to the High Commissioner through the Resident Commissioner resign his seat in the Executive Council; or

(*b*) if he shall cease to be a Member of the Basutoland National Council: Provided that if a Council Member vacates his seat in the Basutoland National Council by reason of a dissolution of that Council, he shall not on that account vacate his seat in the Executive Council until the date of the first sitting of the Basutoland National Council after such dissolution; or

(*c*) if without the written permission of the Resident Commission he shall be absent from Basutoland for a continuous period of fourteen days or more; or

(*d*) if he is appointed to any public office.

(2) Any person vacating his seat as a Council Member of the Executive Council may, if qualified, be appointed again from time to time.

Suspension and Incapacity of Members of Executive Council.

7. (1) The High Commissioner may by instrument under the public seal, declare any Member of Executive Council to be incapable, by reason of illness, absence or other cause, of discharging his functions as a Member of the Council, and thereupon such Member shall not sit or vote in the Executive Council until he is declared, in manner aforesaid, again to be capable of discharging his said functions.

(2) The High Commissioner may, by instrument under the public seal, suspend any Member of the Executive Council from the exercise of his functions as a Member of the Council. Every such suspension shall forthwith be reported by the High Commissioner to Her Majesty through a Secretary of State, and shall remain in force, until it shall be removed by the High Commissioner by instrument under the public seal or by Her Majesty through a Secretary of State, or the person suspended ceases to be a Member of the Executive Council.

(3) Before exercising his powers under sub-section (1) or (2) of this section in relation to a Council Member, the High Commissioner shall first consult with the Paramount Chief.

Temporary Members.

8. (1) Wherever there shall be a temporary vacancy in the number of persons sitting as Members in the Executive Council by reason of the fact that—

(*a*) an *ex officio* Member, though continuing to hold his office, is unable temporarily for any reason (including absence from the Territory) to discharge the functions of his office, or

(*b*) one person is lawfully holding more than one of the offices specified in section 4 of this Order; or

(c) no person is for the time being the holder of one of those offices; or

(*d*) a Member is declared by the High Commissioner under sub-section (1) of section 7 of this Order to be, by reason of illness, absence or other cause, temporarily incapable of discharging his functions as a Member; or

(*e*) a Member is suspended from the exercise of his functions as a Member under sub-section (2) of section 7 of this Order; or

(*f*) a Council Member is temporarily disqualified for sitting in the Basutoland National Council by reason of the provisions of sub-section (3) or (6) of section 40 of this Order,

a person may be appointed a temporary Member of the Executive Council for the period of such vacancy. Where a temporary vacancy occurs in respect of a Council Member, the High Commissioner shall cause the Paramount Chief or the Basutoland National Council, as the case may be, to be notified of the occurrence of such vacancy.

(2) The said person—

(*a*) in the case of a vacancy in respect of a person sitting in the Executive Council as *ex officio* Member, shall be a public officer and shall be appointed by the High Commissioner by instrument under the public seal;

(*b*) in the case of a vacancy in respect of a person sitting in the Executive Council as a Council Member, shall be qualified for appointment as a Council Member in terms of this Order and shall be appointed by the High Commissioner by instrument under the public seal on a nomination made by the Paramount Chief after consulting the Resident Commissioner, or on the nomination of the Basutoland National Council, as the case may require:

Provided that the person to be nominated by the Basutoland National Council shall be determined by ballot in accordance with Standing Orders and in such manner as not to disclose how any particular Member shall have voted.

(3) Every person so appointed shall, as long as his appointment shall subsist, be to all intents and purposes:—

(*a*) In the case of a vacancy in respect of a person sitting in the Executive Council as an *ex officio* Member, an *ex officio* Member;

(*b*) in the case of a vacancy in respect of a person sitting in the Executive as a Council Member, a Council Member;

and, subject to the provisions of this section, the provisions of sections 6 and 7 of this Order shall apply accordingly.

(4) The High Commissioner shall forthwith report every appointment made by him under this section to Her Majesty through a Secretary of State, and every person so appointed shall hold his appointment during Her Majesty's pleasure. Any such appointment may be revoked by the High Commissioner by instrument under the public seal and the High Commissioner shall forthwith report every such revocation to Her Majesty through a Secretary of State.

(5) Any appointment made under this section shall cease to have effect on notification by the High Commissioner to the person appointed of its revocation by the High Commissioner or by its supersession by the definitive appointment of a person to fill the vacancy, or when the vacancy shall otherwise cease to exist.

Determination of Questions as to Membership.

9. All questions which may arise as to the right of any person to be or to remain a Member of the Executive Council shall be referred to the High Commissioner and shall be determined by him.

Oath to be Taken by Members of Executive Council.

10. No Member of the Executive Council shall be permitted to take part in the proceedings of the Council (other than proceedings for the purposes of this section) until he has made and subscribed before the Council an oath in the form set out in the First Schedule to this Order. Where, on a previous occasion, a person has complied with the requirements of this section as a Member or Temporary Member of the Executive Council, it shall not be necessary for him, on again becoming a Member of the Council, to make and subscribe the said oath.

Precedence of Members.

11. After the High Commissioner and the Resident Commissioner, the Members of the Executive Council shall have seniority and precedence as may be specially assigned by Her Majesty.

Summoning and Quorum.

12. (1) The Executive Council shall not be summoned except by authority of the High Commissioner or of the Resident Commissioner.

(2) No business except that of adjournment shall be transacted if objection is taken by any Member present that there are less than four Members present besides the person presiding.

Presiding in Executive Council.

13. (1) The High Commissioner may, so far as he considers it to be necessary for the exercise of his powers and the performance of his duties, attend any meeting of the Executive Council when he is, from time to time, present in the Territory; and, whenever he shall so attend, he shall preside.

(2) The Resident Commissioner shall, so far as is practicable, attend at all meetings of the Executive Council; and, whenever he shall so attend in the absence of the High Commissioner he shall preside.

(3) In the absence of both the High Commissioner and the Resident Commissioner, such Member of the Executive Council as the High Commissioner or Resident Commissioner may appoint, or, in default of such appointment or in the absence of any Member so appointed, the senior Member of the Executive Council actually present shall preside.

High Commissioner to Consult with the Executive Council.

14. Subject to the provisions of section 16 of this Order, the High Commissioner shall, in the exercise of his powers and the performance of his duties, consult with the Executive Council and whenever he does not consult with the Executive Council in person on any matter, he shall in writing authorise and instruct the Resident Commissioner to consult with the Executive Council on such matter on his behalf; and the Resident Commissioner, having done so, shall forthwith communicate the advice of the Council to the High Commissioner.

Resident Commissioner to Consult with Executive Council.

15. In the exercise of his powers and the performance of his duties the Resident Commissioner shall, subject to the provisions of section 16 of this Order, consult with the Executive Council.

Cases in which High Commissioner or Resident Commissioner Need Not Consult with Executive Council.

16. The High Commissioner or the Resident Commissioner, as the case may be, shall not be obliged to consult with the Executive Council in any case—

(*a*) which is of such a nature that, in his judgment, Her Majesty's service would sustain material harm by such consultation:

Provided that the Resident Commissioner shall not be excused from consulting the Executive Council in any case in pursuance of this paragraph unless the High Commissioner certifies in writing that, in his opinion, the circumstances are such that the provisions of this paragraph apply; or

(*b*) in which the matters to be decided are, in his judgment, too unimportant to warrant such consultation; or

(*c*) in which the matters to be decided are, in his judgment, too urgent to admit of such consultation by the time within which it may be necessary for him to act. In such case, the High Commissioner or Resident Commissioner, as the case may be, shall, as soon as is practicable, communicate to the Executive Council the measures which he shall have taken together with the reasons therefor.

Notwithstanding the provisions of paragraphs (*a*), (*b*) and (*c*) of this section, the High Commissioner or the Resident Commissioner shall consult with the Executive Council in every case which relates to the allocation of any right to occupy or use land in Basutoland for public purposes.

Paramount Chief to Consult with Executive Council.

17. In the exercise of his powers and in the performance of his duties, the Paramount Chief shall, subject to the provisions of section 18 of this Order, consult with the Executive Council.

Cases in which the Paramount Chief Need Not Consult with Executive Council.

18. (1) The Paramount Chief shall not be obliged to consult with the Executive Council in any case—

(*a*) in which he is required or permitted by the provisions of any law for the time being in force to consult with any person or body of persons instead of with the Executive Council; or

(*b*) in which the matters to be decided are, in his judgment, too unimportant to warrant such consultation: or

(*c*) in which the matters to be decided are, in his judgment, too urgent to admit of such consultation by the time within which it is necessary for him to act.

In every case falling within paragraph (*c*) of this sub-section, the Paramount Chief shall, as soon as is practicable, communicate to the Executive Council the measures which he shall have taken together with the reasons therefor.

(2) In particular, but without prejudice to his obligation to consult other persons in pursuance of section 82 of this Order, the Paramount Chief shall not be obliged to consult with the Executive Council in the exercise of his powers and the performance of his duties—

(*a*) under sub-section (1) of section 5 or paragraph (*b*) of sub-section (2) of section 8 of this Order, to nominate a person for appointment as a Council Member of the Executive Council;

(*b*) under section 34 of this Order, to nominate persons for appointment as Nominated Members of the Basutoland National Council; or

(*c*) under sub-section (2) of section 21 of this Order, to request that any advice tendered by the Executive Council be reconsidered at a subsequent meeting; or

(*d*) under sub-section (3) of section 21 of this Order, to express concurrence with the opinion on any matter of all the Council Members of the Executive Council; or

(*e*) under sub-section (2) of section 56 of this Order, to request the High Commissioner to reserve for the signification of Her Majesty's pleasure any Bill whereby persons of a racial or religious community are, in the opinion of the Paramount Chief, made liable to disabilities or restrictions to which persons of other such communities are not also subjected or made liable or are granted advantages not extended to persons of other such communities; or

(*f*) under sub-section (3) of section 56 of this Order, to withold his consent to any Bill and to state his reasons therefor; or

(*g*) under sub-section (1) of section 72 of this Order, to allocate or grant, subject to the provisions of sub-section (2) of that section, any right or privilege to occupy, use or enjoy any land in Basutoland for any purpose not being a public purpose; or

(*h*) under sub-section (3) of section 72 of this Order, to request that where the High Commissioner is of the opinion that the right to occupy or use any plot of land for a specified public purpose should be allocated, the matter shall be referred for consideration to the Basutoland National Council; or

(*i*) under sub-sections (1) and (2) of section 75 of this Order, to appoint or terminate the appointment of the Chairman of the Standing Committee of the College of Chiefs; or

(*j*) under section 76 of this Order, to approve the Standing Orders of the College of Chiefs; or

(*k*) under sub-section (1) of section 78 of this Order, to notify provisional acceptance of or to refer back to the College of Chiefs or the Standing Committee of the College of Chiefs for further consideration, any finding, decision or recommendation arising from any proceedings under sub-section (1) of section 74 of this Order; or

(*l*) under section 80 of this Order, to give a final decision on any matter within the competence of the College of Chiefs or the Standing Committee; or

(*m*) under paragraph (*c*) of sub-section (2) of section 82, to appoint a member of the Basuto Nation with whom to consult.

Decision as to Matters to be Discussed in Executive Council.

19. (1) Questions for the advice or decision of the Executive Council may be submitted to the Council only by the High Commissioner, the Resident Commissioner or the Paramount Chief.

(2) If the High Commissioner or Resident Commissioner declines to submit any question to the Council when requested in writing by any Member thereof so to do, it shall be competent to such Member to require that there be recorded upon the minutes his written application together with the answer returned by the High Commissioner or Resident Commissioner thereto.

Voting

20. Where in any matter the Members of the Executive Council are not unanimous in their opinion, the advice of the Executive Council shall be that

of the majority of the Members to be determined by the votes of the Members present and voting. In the absence of the High Commissioner, the Resident Commissioner shall have an original and a casting vote. The High Commissioner, if present, shall have no original vote but in the event of an equality of votes he and not the Resident Commissioner shall have the casting vote.

Paramount Chief to be Informed of Proceedings in Executive Council and His Right to Request Reconsideration of Decisions.

21. (1) As soon as practicable after each meeting of the Executive Council, the Resident Commissioner shall cause the Paramount Chief to be informed in such manner as may be convenient of the advice tendered by the Council to the High Commissioner, the Resident Commissioner or the Paramount Chief, as the case may be, in regard to matters considered by the Council.

(2) The Paramount Chief may by writing under his hand request that, for reasons to be specified by him, the advice tendered by the Executive Council on any matter be reconsidered at a subsequent meeting thereof and thereupon the High Commissioner or Resident Commissioner, as the case may be, shall take the necessary steps to comply with such request. Any decision on that matter reached at such subsequent meeting shall be final:

Provided that for the purpose of complying with this sub-section, the said subsequent meeting shall not be held until a period of at least seven days, or such lesser period as the Executive Council may in a special case decide, has elapsed since the advice to be reconsidered was originally tendered.

(3) Where in any matter the High Commissioner or the Resident Commissioner decides to act in accordance with the advice of the Executive Council but contrary to the opinion of all the Council Members thereof, the High Commissioner or Resident Commissioner, as the case may be, shall inform the Paramount Chief of his decision. In such case the Paramount Chief may, if he thinks fit, by writing under his hand, inform the High Commissioner or the Resident Commissioner, as the case may be, that he is of the same opinion regarding the matter as all the Council Members of the Executive Council and thereupon the High Commissioner shall comply with the requirements of sub-section (2) of section 22 of this Order.

(4) The provisions of sub-sections (2) and (3) of this section shall not apply to any case where the Executive Council has tendered advice in regard to the exercise of the prerogative of mercy.

Cases in which High Commissioner or Resident Commissioner May Act in Opposition to Executive Council.

22. (1) The High Commissioner or the Resident Commissioner may act in opposition to the advice given to him by the Members of the Executive Council if he shall in any case consider it right to do so; and when the Resident Commissioner so acts he shall report the matter in writing to the High Commissioner, at the first convenient opportunity, with the reasons for his action. In any case in which the High Commissioner or Resident Commissioner so decides to act in opposition to the advice of the Executive Council, the High Commissioner shall, at the first convenient opportunity, report the matter to Her Majesty through a Secretary of State with the reasons for such action.

(2) The High Commissioner shall in like manner report to Her Majesty through a Secretary of State in any case where the High Commissioner or Resident Commissioner, though conforming with the advice of the Executive Council, nevertheless acts contrary to the opinion of all the Council Members of the Executive Council and the Paramount Chief:

Provided that the provisions of this sub-section shall not apply to any case where the Executive Council is consulted in regard to the exercise of the prerogative of mercy.

(3) Whenever the High Commissioner or the Resident Commissioner shall

act against the advice of the Executive Council or the opinion of all the Council Members and the Paramount Chief, any Member of the Executive Council may require that there be recorded upon the minutes any advice or opinion which he may give upon the question at issue and reasons therefor.

Paramount Chief to Act According to the Advice of Executive Council.

23. (1) The Paramount Chief shall act in accordance with the advice of the Executive Council in all matters in regard to which he is obliged by the provisions of section 17 of this Order to consult with the Executive Council.

(2) Nothing in sub-section (1) of this section shall be construed as preventing the Paramount Chief, after consulting the Executive Council, from exercising the powers conferred on him by sub-section (2) of section 21 and sub-section (3) of section 72 of this Order.

Minutes.

24. Minutes shall be kept of all the proceedings of the Executive Council; and at every meeting of the Executive Council the minutes of the last preceding meeting shall be confirmed with or without amendment, as the case may require, before the Council proceeds to the despatch of any other business.

Executive Council May Transact Business Notwithstanding Vacancies.

25. The Executive Council shall not be disqualified for the transaction of business by reason of any vacancy among the Members thereof and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Executive Council or otherwise took part in the proceedings.

PART III.

THE LEGISLATIVE COUNCIL.

Interpretation.

26. In this Part of this Order, unless the context otherwise requires—

"Chief" means a Chief who is a Member of the Basutoland Council in right of his Chiefdom as provided by section 32 of this Order;

"the Council" or "the Basutoland Council" means the Basutoland National Council established and constituted under section 27 of this Order.

Establishment and Constitution of Basutoland Council.

27. (1) There shall be a legislative council in and for Basutoland which shall be known as the Basutoland National Council.

(2) The Basutoland National Council shall consist of—

(*a*) four Official Members;
(*b*) twenty-two Chiefs;
(*c*) forty Elected Members; and
(*d*) fourteen Nominated Members.

(3) There shall be a President of the Council who shall not be a member of the Council by virtue of his office but shall have all the privileges and immunities of a member. Any fit person may be appointed or elected as the President in pursuance of the provisions of section 28 of this Order and if, at the time of his appointment or election, such person is a Member of the Council, he shall vacate his seat as such member.

President of Council.

28. (1) Subject to the provisions of sub-section (4) of this section, the President of the Basutoland Council shall be appointed by the High Commissioner by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State.

(2) A President appointed under sub-section (1) of this section shall hold office during Her Majesty's pleasure and, subject thereto, for such period as may be specified in the instrument by which he is appointed.

(3) A President appointed under sub-section (1) of this section may, by writing under his hand addressed to the High Commissioner, through the Resident Commissioner, at any time resign his office and any appointment of any such President may, in pursuance of any instructions conveyed to him through a Secretary of State, be revoked at any time by the High Commissioner by Instrument under the public seal. When any such resignation or revocation of the appointment takes effect the office of President of Council shall be vacant.

(4) Notwithstanding the provisions of sub-sections (1), (2) and (3) of this section, the Basutoland Council may in pursuance of a resolution passed by a majority of all the members of the Council, at any time after the expiration of two years from the date of the first meeting of the Council, elect a person to be President of the Council and such person shall, subject to the provisions of sub-section (6) of this section, hold office during the remainder of the lifetime of that Council. Thereafter, before the despatch of other business at the first sitting after every dissolution or whenever the office of President shall otherwise be vacant, the Council may in like manner elect a President.

(5) As from the date of the passing of a resolution in pursuance of sub-section (4) of this section, sub-sections (1), (2) and (3) of this section shall cease to be of effect save that if at any time the Basutoland Council does not elect a President as provided by sub-section (4) of this section, the provisions of sub-sections (1), (2) and (3) of this section shall continue to apply.

(6) A person holding the office of President shall, unless he earlier resigns, vacate his office—

(*a*) if he accepts nomination as a candidate for election to the Council or accepts appointment as a Nominated Member or becomes a Chief; or

(*b*) if any circumstance arises that, if he were an Elected Member of Council, would cause him to vacate his seat by reason of paragraph (*a*), (*d*), (*e*), (*f*) or (*j*) of sub-section (1) of section 40 of this Order or would require him, by virtue of sub-section (3) of that section, to cease to exercise any of his functions as a Member; or

(*c*) if, being elected to office under the provisions of sub-section (4) of this section, the Council is dissolved.

(7) Before entering upon his duties, the President of the Council shall, unless he has already done so in pursuance of section 48 of this Order, take and prescribe (*sic*) before the Council the oath of allegiance in the form set out in the Fourth Schedule to this Order.

Deputy-President.

29. (1) When the Basutoland National Council first meets after being constituted or after its dissolution at any time, it shall as soon as practicable elect a person, not being the holder of any public office, to be Deputy-President; and whenever the office of Deputy-President becomes vacant, otherwise than by reason of a dissolution, the Council shall as soon as may be convenient elect another person to that office.

(2) If the person elected as Deputy-President is not a Member of Council, he shall not be deemed to be a Member of Council by virtue of his office as Deputy-President except when officiating as President under the provisions of paragraph (*b*) of section 49 of this Order.

(3) The Deputy-President shall, unless he earlier vacates his office under the provisions of this Order, hold office until some other person is elected as Deputy-President under sub-section (1) of this section.

(4) The office of Deputy-President shall become vacant—

(*a*) if he becomes the President or the holder of any public office; or

(*b*) if he resigns by writing, under his hand, addressed to the President, or in the absence of the President, to the Clerk of the Council; or

(*c*) if, being a Member of Council, any of the provisions of sub-section (1), (2), (3) or (6) of section 40 of this Order apply to him; or

(*d*) if, not being a Member of Council, any circumstances arises that, if he were an Elected Member of Council, would cause him to vacate his seat by reason of paragraph (*a*), (*d*), (*e*) or (*f*) of sub-section (1) of section 40 of this Order or would require him, by virtue of sub-section (3) of that section, to cease to exercise any of his functions as a Member; or

(*e*) on a dissolution.

Elections of President and Deputy-President.

30. In any election of a President or a Deputy-President, the votes of the Members of the Basutoland Council shall be given by ballot in accordance with Standing Orders and in such manner as not to disclose how any particular Member shall have voted.

Official Members.

31. The Official Members of the Basutoland Council shall be the Government Secretary, the Finance Secretary, the Legal Secretary and the Commissioner for Local Government.

The Chiefs.

32. The Chiefs who shall be Members of the Basutoland Council in right of their Chiefdoms shall be the persons who are from time to time duly recognised in pursuance of the law for the time being in force as the holders of the office of the Principal or Ward Chief of the areas of Basutoland specified in the Second Schedule to this Order.

Elected Members.

33. The Elected Members of the Basutoland Council shall be persons who, being qualified for election as such in accordance with the provisions of section 38 of this Order, shall be elected in accordance with such law as is enacted in pursuance of sub-section (4) or (5) of section 44 of this Order.

Nominated Members.

34. The Nominated Members of the Basutoland Council shall be persons qualified for appointment as such under the provisions of this Order and shall be appointed by the High Commissioner, by instrument under the public seal, on the nomination of the Paramount Chief, after consultation with the Resident Commissioner:

Provided that no appointments of Nominated Members in pursuance of this section shall be made prior to the first meeting of the Council or the first meeting of the Council after a dissolution, until the elections for Elected Members have been held.

Summoning of Persons to Assist Basutoland Council.

35. The President or other person presiding in his absence may summon any public officer or invite any other person to attend any meeting of the Basutoland Council notwithstanding that such officer or person is not a Member of

the Council when, in the opinion of the President or other person presiding, as the case may be, the business before the Council renders the presence of such officer or person desirable. Any officer or person so attending shall be entitled to take part in the proceedings of the Council relating to the matters in respect of which he was summoned or invited as if he were a Member of the Council save that he shall not be entitled to vote.

Tenure of Office of Nominated and Elected Members.

36. Every Elected or Nominated Member of the Basutoland Council shall cease to be a Member at the next dissolution of the Council after his election or appointment, or previously thereto if his seat shall become vacant under the provisions of this Order.

Suspension of Chiefs and Nominated Members.

37. The High Commissioner may, after consultation with the Paramount Chief, by instrument under the public seal, suspend any Chief or Nominated Member from the exercise of his functions as a Member of the Council. Every such suspension shall remain in force until it shall be removed by the High Commissioner, after consultation with the Paramount Chief, by instrument under the public seal or until the person suspended ceases under the other provisions of this Order to be a Member of the Basutoland Council.

General Qualifications for Elected and Nominated Members.

38. Subject to the provisions of section 39 of this Order, no person shall be qualified to be elected as an Elected Member or appointed as a Nominated Member of the Basutoland Council or, having been so elected or appointed, shall sit or vote in the Basutoland Council, unless he—

(i) is either a British subject or a British protected person; and
(ii) possesses the other qualifications and none of the disqualifications of a voter specified in the law relating to elections to District Councils for the time being in force; and
(iii) is literate in the Sesuto language,

and, in the case of an Elected Member, is also an elected Member of a District Council.

Disqualifications for Elected and Nominated Membership.

39. No person shall be qualified to be elected as an Elected Member or appointed as a Nominated Member of the Basutoland Council or, having been so elected or appointed, shall sit or vote in the Basutoland Council, who—

(*a*) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State; or
(*b*) holds any public office in a permanent capacity: or
(*c*) is an unrehabilitated insolvent or undischarged bankrupt, having been adjudged or otherwise declared an insolvent or a bankrupt under any law in force in any part of Her Majesty's dominions; or
(*d*) is under sentence of death or is serving, or has within the immediately preceding five years completed the serving of, a sentence of imprisonment (by whatever name called) of or exceeding twelve months imposed in any part of Her Majesty's dominions and has not received a free pardon; or
(*e*) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law for the time being in force in Basutoland; or
(*f*) is disqualified for membership of the Council under any law for the time being in force in Basutoland relating to offences connected with elections; or
(*g*) is not qualified to be registered as a voter under any law for the time being in force in Basutoland relating to elections to District Councils.

Vacation of Seats.

40. (1) Subject to the provisions of section 36 of this Order, the seat of an Elected or Nominated Member of the Basutoland Council shall become vacant—

(*a*) upon his death;
(*b*) if he is appointed or elected President of the Council; or
(*c*) if he shall be absent from two consecutive meetings of the Council, without having obtained from the President, before the termination of either of such meetings, permission to be or to remain absent therefrom; or
(*d*) if he shall cease to be a British subject, or shall cease to be a British protected person without becoming a British subject or shall take any oath, or make any declaration or acknowledgment of allegiance, obedience or adherence to any foreign Power or State; or shall do, concur in or adopt any act done with the intention that he shall become a subject or citizen of any foreign Power or State; or
(*e*) if he shall be adjudged or otherwise declared an insolvent or a bankrupt under any law in force in any part of Her Majesty's dominions; or
(*f*) if he shall be adjudged to be of unsound mind or shall be detained as a criminal lunatic under any law for the time being in force in Basutoland: or
(*g*) if he shall cease to be qualified to be registered as a voter under any law for the time being in force relating to elections to District Councils; or
(*h*) if he shall become disqualified for membership of the Council under any law for the time being in force in Basutoland relating to offences connected with elections; or
(*i*) if he shall by writing under his hand addressed to the President resign his seat in the Council; or
(*j*) if he shall be appointed permanently to any public office; or
(*k*) if, being an Elected Member, he shall cease to be an elected Member of the District Council by which he was elected.

(2) The seat of a Chief shall become vacant—

(*a*) if any of the circumstances mentioned in paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*) and (*j*) of sub-section (1) of this section shall apply to him; or
(*b*) if, for any reason, recognition as a Chief be withdrawn temporarily or permanently from him.

(3) Subject to the provisions of sub-section (4) of this section, if any Chief, or Elected or Nominated Member is sentenced by a court in any part of Her Majesty's dominions to death or to imprisonment (by whatever name called) for a term of or exceeding twelve months, he shall forthwith cease to exercise any of his functions as a Member of the Basutoland Council and his seat in the Council shall become vacant at the expiration of thirty days thereafter:

Provided that the President may, at the request of the Member, from time to time, extend that period for further periods of thirty days to enable the Member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred days shall not be given without the approval of the Council signified by resolution.

(4) If at any time before the Member vacates his seat in pursuance of sub-section (3) of this section, he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat shall not become vacant under sub-section (3) and he may resume the exercise of his functions as a Member.

(5) For the purposes of sub-sections (3) and (4) of this section, two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

(6) If any Chief or an Elected or Nominated Member shall be appointed temporarily to, or to act in, any public office, he shall not sit or vote in the Basutoland Council so long as he continues to hold, or to act in, that office.

(7) A person whose seat in the Basutoland Council has become vacant may, if qualified, again become or be appointed or elected as a Member of the Council from time to time.

Temporary Appointments of Official Members or Chiefs.

41. (1) Whenever there shall be a temporary vacancy in the number of persons sitting as Official Members or Chiefs in the Basutoland Council by reason of the fact that—

(*a*) one person is for the time being lawfully discharging the functions of more than one of the offices the holders of which are specified in section 31 or section 32 of this Order; or
(*b*) no person is for the time being lawfully discharging the functions of any one of those offices; or
(*c*) a Chief is suspended from the exercise of his functions as a Member under the provisions of section 37 of this Order; or
(*d*) an Official Member or a Chief is temporarily absent from Basutoland; or
(*e*) a Chief is temporarily appointed to, or to act in, a public office; or
(*f*) the seat of a Chief is temporarily vacant in circumstances in which no other person is recognised as substantive Chief in his stead;

a duly qualified person may, subject to the other provisions of this section, be appointed by the High Commissioner by instrument under the public seal as a temporary Member for the period of such vacancy.

(2) If the vacancy is in the number of Official Members, the person appointed as a Temporary Member shall be a public officer.

(3) If the vacancy is in the number of Chiefs, the person appointed as a Temporary Member shall be the person duly recognised as having authority temporarily to carry out the duties of the Chiefdom concerned or to represent the Chief.

(4) A person appointed under this section shall hold his appointment during Her Majesty's pleasure; any such appointment may be revoked by the High Commissioner by instrument under the public seal.

(5) So long as their appointments shall subsist, persons appointed as Temporary Members under this section shall, for the purposes of this Order, but subject to the provisions of this section, be deemed to be Members as Official Members or as Chiefs; and subject as aforesaid the provisions of section 40 of this Order shall apply accordingly.

(6) Any appointment made under this section shall cease to have effect on notification by the High Commissioner to the person appointed of its revocation by the High Commissioner or by its supersession by the definitive appointment of a person to fill the vacancy or when the vacancy shall otherwise cease to exist.

Notification of Appointments, Report and Filling of Vacancies.

42. (1) The High Commissioner shall by writing under his hand notify the President of the Basutoland Council of every appointment of a person to be a Nominated Member of the Council.

(2) Whenever the seat of a Member of the Council shall become vacant under the provisions of section 40 of this Order, the President shall, by writing under his hand, report such vacancy to the High Commissioner, through the Resident Commissioner.

(3) Whenever the seat of an Elected Member becomes vacant, the vacancy shall be filled by election in accordance with the law for the time being in force.

(4) Whenever the seat of an Official Member, a Chief or a Nominated Member becomes vacant, the vacancy shall be filled by the High Commissioner in accordance with the provisions of this Order.

Decision of Questions as to Membership.

43. (1) All questions which may arise as to the right of any person to be or remain a Member of the Basutoland Council other than an Elected Member shall be referred to and shall be determined by the High Commissioner.

(2) All questions which may arise as to the right of any person to be or remain an Elected Member shall be determined in the prescribed manner.

Election of Elected Members of the Council.

44. (1) The Elected Members of the Basutoland Council shall be persons who, being qualified for election as such in accordance with the provisions of section 38 of this Order, are elected by the Elected Members of the District Councils in pursuance of sub-sections (3) and (4) of this section.

(2) Any law for the time being in force in Basutoland relating to the establishment of District Councils shall provide for nine such Councils having the designations specified in sub-section (3) of this section and their several areas of authority in the aggregate shall extend to the whole of Basutoland.

(3) The number of Elected Members to be elected by each District Council shall be as follows:—

(*a*) Butha Buthe District Council	Three Members.
(*b*) Leribe District Council	Six Members.
(*c*) Berea District Council	Four Members.
(*d*) Maseru District Council	Eight Members.
(*e*) Mafeteng District Council	Six Members.
(*f*) Mohale's Hoek District Council	Four Members.
(*g*) Quthing District Council	Three Members.
(*h*) Qacha's Nek District Council	Three Members.
(*i*) Mokhotlong District Council	Three Members.

(4) Subject to sub-section (3) of this section, provision may be made by or in pursuance of a law enacted under this Order for the election of Members by District Councils including (without prejudice to the generality of the foregoing power) the following matters:—

(*a*) The fixing of a time within which such elections shall take place;
(*b*) the regulation of the manner in which elections shall be conducted;
(*c*) the holding of elections to fill vacancies;
(*d*) the determination of all questions that may arise as to the right of any person to be or remain an Elected Member of the Basutoland Council.

(5) Before the first meeting of the Basutoland Council, it shall be lawful for the High Commissioner, with the prior approval of a Secretary of State, to make and publish a Proclamation providing for the matters referred to in sub-section (4) of this section. Any such Proclamation shall be deemed after the appointed day to be a Law enacted under the provisions of this Order and may thereafter be amended or revoked by Laws made under the powers conferred by sub-section (4) of this section.

(6) This section shall come into operation forthwith.

PART IV.

Legislation and Procedure of Legislature.

Power to Make Laws.

45. (1) Subject to the provisions of this Order, it shall be lawful for Her Majesty with the advice and consent of the Basutoland National Council and the consent of the Paramount Chief to make laws (which shall be styled "Laws") for the peace, order and good government of Basutoland in regard to all matters (in this Order referred to as "Council matters") which are not High Commissioner's matters as hereinafter defined.

(2) Subject to the provisions of this Order, it shall be lawful for the High Commissioner to make laws (which shall be styled "Proclamations") for the peace, order and good government of Basutoland in regard to the matters specified in the Third Schedule to this Order (in this Order referred to as "High Commissioner's matters").

(3) Notwithstanding the provisions of sub-sections (1) and (2) of this section, but subject to the other provisions of this Order, the High Commissioner may make Proclamations and the Legislature of Basutoland may make Laws in regard to the establishment, constitution, powers and jurisdiction of courts in Basutoland.

Provided that any provision of any such Law which is in any respect repugnant to the provisions of such Proclamation shall be read subject to the provisions of such Proclamation and shall to the extent of such repugnancy, but not otherwise, be void and inoperative.

(4) Notwithstanding the provisions of sub-sections (1) and (2) of this section, any Law may, with the concurrence of the High Commissioner, contain provisions in regard to High Commissioner's matters and any Proclamation may, with the concurrence of the Basutoland Council, contain provisions in regard to Council matters.

(5) The High Commissioner may signify his concurrence in pursuance of sub-section (4) by notification to the President or other person presiding over the Basutoland Council and the Council may signify their concurrence by resolution.

(6) The High Commissioner or the Council, as the case may be, shall be deemed to have given their concurrence for the purposes of sub-section (4) of this section unless they shall have made objection to any provisions of a Bill or Proclamation or Draft Proclamation, as the case may be, in accordance with section 46 or 57 of this Order and such objection has not been withdrawn or decided by a Secretary of State to be unfounded.

(7) Subject to the provisions of this Order, the High Commissioner in the making of Proclamations and the Basutoland Council in the making of Laws and in the transaction of business shall conform as nearly as may be with the directions contained in any Instructions under Her Majesty's Sign Manual and Signet which may from time to time be addressed to the High Commissioner in that behalf.

Legislative Procedure in Regard to High Commissioner's Matters.

46. (1) Subject to the provisions of this section, the High Commissioner shall not make any Proclamation under this Order without first causing a draft of such Proclamation to be laid before the Basutoland Council and considering any observations which the Council may make thereon within such time and in accordance with such procedure as may be prescribed in that behalf by Standing Orders:

Provided that where, in the opinion of the High Commissioner, the im-

mediate enactment of a Proclamation (not being a Proclamation relating to the use of land in Basutoland for public purposes) is necessary in the public interest, he may make such Proclamation and, as soon as practicable thereafter, for the purpose of complying with the other requirements of this subsection, the High Commissioner shall cause a copy of such Proclamation to be laid before the Basutoland Council.

(2) If the Council, under sub-section (1) of this section, raise objection to the draft Proclamation or Proclamation on the ground that it contains any provision whereby persons of a racial or religious community are made liable to disabilities or restrictions to which persons of other such communities are not also subjected or made liable, or are granted advantages not extended to persons of other such communities, the High Commissioner shall refer the matter for consideration to the Secretary of State and the High Commissioner shall conform with any directions which a Secretary of State may see fit to give in regard to the matter.

(3) If the Council, under sub-section (1) of this section, raise objection to the draft Proclamation or Proclamation on the ground that it contains any provision in regard to Council matters, the High Commissioner shall—

(*a*) if he considers the objection well-founded, take such steps as may be necessary to meet the objection;

(*b*) if he is satisfied that the objection is illfounded, so notify the Council stating the reasons for his opinion.

(4) If, within seven days of receiving a notification referred to in paragraph (*b*) of sub-section (3) of this section, the Council so request, the High Commissioner shall submit the question to a Secretary of State for decision.

(5) The decision of a Secretary of State on any question submitted to him under the provisions of sub-section (4) of this section shall be final; and if a Secretary of State shall decide that the Draft Proclamation or Proclamation contains any provisions in regard to Council matters, the High Commissioner shall amend the Draft Proclamation or Proclamation, as the case may be, to conform with the decision of the Secretary of State.

. . . . . .

Oath of Allegiance.

48. (1) Subject to the provisions of sub-sections (2) and (3) of this section, no Member of the Basutoland Council shall be permitted to take part in the proceedings of the Council (other than proceedings necessary for the purposes of this section) until he has made and subscribed before the Council an oath of allegiance in the form set out in the Fourth Schedule to this Order.

(2) Where, in pursuance of sub-section (4) of section 28 of this Order, the Council is empowered to elect a President of Council, such election may, when the Council reassembles after a dissolution, take place before the Members of Council take and subscribe such oath.

(3) If, between the time when a person becomes a Member of Council and the time when the Council next sits thereafter, a meeting takes place of any committee of the Council of which such person is a member, such person may, in order to enable him to attend and take part in proceedings of the committee, take and subscribe the oath of allegiance before a judge of the High Court and the taking and subscribing of the oath in such manner shall suffice for all purposes of this section. In any such case the judge shall forthwith report to the Council through the President that the person in question has taken and subscribed the oath of allegiance.

Presiding in Basutoland Council.

49. There shall preside at any sitting of the Basutoland Council—

(*a*) the President; or
(*b*) in the absence of the President, the Deputy-President; or
(*c*) in the absence of both the President and Deputy-President, a Member of the Council elected by the Council for the remainder of the sitting or until the President or Deputy-President becomes available to preside during that sitting.

High Commissioner, Resident Commissioner and Paramount Chief May Address Council.

50. (1) The High Commissioner and the Resident Commissioner may attend and address the Basutoland Council at any time.

(2) The Paramount Chief may, if he thinks fit, attend and address the Basutoland Council on a convenient occasion during each session of the Council.

Voting in Council.

51. (1) Save as may be otherwise provided by any law in force for the time being or by Standing Orders, all questions proposed for decision in the Basutoland Council shall be determined by a majority of the votes of the members present and voting.

(2) The President, and the Deputy-President, if he is not a Chief or an Elected or a Nominated Member of Council, when presiding, shall have neither a deliberative nor a casting vote.

(3) When the Deputy-President is a Chief or an elected or Nominated Member of the Council, he, when presiding, or any other Member of the Council elected to preside at a sitting under paragraph (*c*) of section 49 of this Order shall retain his original vote as a Member but shall not have a casting vote.

(4) If, upon any question before the Council, the votes are equally divided, the motion shall be declared to be lost.

Quorum of Council.

52. (1) If at any sitting of the Basutoland Council any Member who is present draws the attention of the President or other person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in Standing Orders, the President or other person presiding at the sitting ascertains that a quorum of the Council is still not present, he shall thereupon adjourn the Council.

(2) If at any sitting of the Basutoland Council it appears to the President or other person presiding that a quorum of the Council is not present when the votes of the members on any question proposed for decision are counted, the voting on that question shall be invalid, that question shall stand over until the next sitting of the Council and the attention of the President or other person presiding shall be deemed to have been drawn to the absence of a quorum for the purposes of the last foregoing sub-section.

(3) A quorum of the Basutoland Council shall consist of twenty-five Members besides the President or other person presiding at the sitting.

Council May Transact Business Notwithstanding Vacancies, etc.

53. Subject to section 52 of this Order, the Basutoland Council shall not be disqualified for the transaction of business by reason of any vacancy among the Members thereof; and any proceedings therein shall be valid notwithstanding that some person who was not entitled so to do took part in those proceedings.

Introduction of Bills, etc.

54. (1) Save as is provided in sub-section (2) or (3) of this section, and subject to the other provisions of this Order and of Standing Orders, any Member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council and the same shall be debated and disposed of according to Standing Orders.

(2) Except on the recommendation of the High Commissioner, the Basutoland Council shall not—

(*a*) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the President or other person presiding, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of Basutoland or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to Basutoland;

(*b*) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the President or other person presiding, is that provision should be made for any of the purposes aforesaid: or

(*c*) receive any petition which, in the opinion of the President or other person presiding, requests that provision be made for any of the purposes aforesaid.

(3) Except on the recommendation of the High Commissioner or in pursuance of the provisions of sub-section (4) of section 86 or of sub-section (2) of section 88 of this Order, the Basutoland Council shall not proceed upon any Bill or motion (including any amendment to a Bill or motion, as the case may be) which, in the opinion of the President or other person presiding would effect any alteration in the salary, allowances or conditions of service (including leave, passages and promotion) of any public officer or any alteration in the law, regulations or practice governing the payment of pensions, gratuities or other like benefits to any public officer or former officer or his widow, children, dependants or personal representatives.

High Commissioner's Reserved Power.

55. (1) If the High Commissioner shall consider that it is expedient in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of Basutoland as a territory within the Commonwealth and all matters pertaining to the creation or abolition of any public office or to the appointment, salary or other conditions of service of any public officer) that any Bill introduced, or any motion proposed in the Basutoland Council should have effect, then, if the Council fail to pass such Bill or motion within such time and in such form as the High Commissioner may think reasonable and expedient, the High Commissioner, at any time that he thinks fit, may notwithstanding any provisions of this Order or of any Standing Orders but subject to the provisions of section 89 of this Order, declare in writing that such Bill or motion shall have effect as if it had been passed or carried by the Council, either in the form in which it was so introduced or proposed, or with such amendments as the High Commissioner shall think fit, that have been moved or proposed in the Council including any committee thereof; and thereupon the said Bill or motion shall be deemed to have been so passed or carried at the time when such declaration shall have been made.

(2) Where any declaration is made by the High Commissioner in pursuance of sub-section (1) of this section, the provisions of this Order (and, in particular, the provisions relating to the consent of the Paramount Chief, and the Royal Assent to Bills and the disallowance of laws) shall continue to have

effect save that in the case of a Bill, the Paramount Chief shall not be entitled to exercise his powers under sub-section (3) of section 56 of this Order.

(3) The High Commissioner shall forthwith report to a Secretary of State and to the Basutoland Council every case in which he shall make any such declaration and the reasons therefor.

(4) If any Member of the Basutoland Council objects to any declaration made under this section, he may, within seven days of the making thereof, submit to the High Commissioner through the Resident Commissioner a statement in writing of his reasons for so objecting, and a copy of such statement shall, if furnished by such Member, be forwarded by the High Commissioner as soon as practicable to a Secretary of State.

(5) Any declaration other than a declaration relating to a Bill may be revoked by a Secretary of State, and the High Commissioner shall cause notice of such revocation to be published in the *Gazette;* and from the date of such publication any motion which shall have been deemed to have been carried by virtue of the declaration revoked shall cease to have effect; and the provisions of sub-section (2) of section thirty-eight of the Interpretation Act, 1889, shall apply to such revocation as they apply to the repeal of an Act of Parliament.

Consent of the Paramount Chief and Powers in Relation Thereto.

56. (1) When a Bill has been passed by the Basutoland Council, it shall be presented to the Paramount Chief for the signification of his consent which shall be expressed in the following terms under his hand and seal:—

"I, ..., the Paramount Chief of Basutoland, hereby consent to this Bill."

(2) If, when a Bill is presented to the Paramount Chief in pursuance of sub-section (1) of this section, he is of the opinion that it is a Bill whereby persons of a racial or religious community are made liable to disabilities or restrictions to which persons of other such communities are not also subjected or made liable, or are granted advantages not extended to persons of other such communities, it shall be lawful for the Paramount Chief to make a request in writing to the High Commissioner through the Resident Commissioner that the Bill be reserved for the signification of Her Majesty's pleasure, and if when the Bill is reserved under sub-section (2) of section 58 of this Order, Her Majesty shall signify Her assent thereto, the consent of the Paramount Chief under this section shall be deemed to have been duly given.

(3) Subject to the provisions of sub-section (2) of section 55 of this Order, when a Bill is presented to the Paramount Chief in pursuance of sub-section (1) of this section, it shall be lawful for him within one month of the Bill being presented to him to decide to withhold his consent in which case he shall inform the High Commissioner in writing of his reasons for so doing and the Bill shall be returned to the Basutoland Council together with a statement of the Paramount Chief's reasons for withholding his consent to the Bill and the Council shall subject to the provisions of sub-section (4) of this section take such action in regard to the Bill as may be specified in Standing Orders.

(4) Where a Bill is returned to the Basutoland Council in pursuance of sub-section (3) of this section, the same Bill may, at any time after the expiration of six months from the date of the Bill being returned, be passed and again presented to the Paramount Chief for his consent and thereupon the Paramount Chief shall signify his consent in accordance with the provisions of sub-section (1) of this section.

(5) For the purposes of sub-section (4) of this section, a Bill shall be deemed to be "the same Bill", if the President or other person presiding certifies that in his opinion the Bill—

(*a*) is identical with the former Bill; or
(*b*) is in its tenor and probable effect substantially the same as the former Bill; or
(*c*) does not meet the objections of the Paramount Chief to the former Bill.

(6) If, within one month of a Bill being presented to him, the Paramount Chief does not either consent to the Bill under the provisions of sub-section (1) of this section or decide to act in pursuance of the provisions of sub-section (2) or (3), the Paramount Chief shall be deemed to have signified his consent and the High Commissioner shall sign an endorsement on the Bill to that effect.

Power of High Commissioner to Refer Bills Back to the Basutoland Council.

57. (1) When any Bill has been passed by the Basutoland Council and the provisions of section 56 of this Order have been complied with, it shall be presented to the High Commissioner for assent who may thereupon return the Bill to the Basutoland Council for further consideration on the ground that it contains provisions in regard to High Commissioner's matters which are not acceptable to him. In such case, the High Commissioner shall send to the Council a statement explaining his objections to such provisions and stating the manner in which the Bill might be amended to meet his objections.

(2) When a Bill is returned to the Basutoland Council in pursuance of sub-section (1) of this section, the Council may—

(*a*) amend the Bill to meet the High Commissioner's objections and cause it to be presented again to the Paramount Chief for consent and thereafter to the High Commissioner for assent; or
(*b*) resolve that no further proceedings be taken upon the Bill.

Royal Assent to Bills.

58. (1) No Bill shall become a law until either the High Commissioner shall have assented thereto in Her Majesty's name and on Her Majesty's behalf and shall have signed the same in token of such assent or Her Majesty shall have given Her assent thereto through a Secretary of State.

(2) When a Bill is presented to the High Commissioner for assent, he shall, subject to the provisions of this Order and of any Instructions addressed to him under Her Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents or refuses assent thereto, or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that—

(*a*) if the High Commissioner shall decide to refuse assent to any Bill, he shall cause a full statement of his reasons therefor to be laid before the Basutoland Council;
(*b*) the High Commissioner shall reserve for the signification of Her Majesty's pleasure—
  (i) any Bill by which any provision of this Order is affected or which is in any way repugnant to, or inconsistent with, the provisions of this Order; or
  (ii) any Bill which determines or regulates the privileges, immunities or powers of the Basutoland Council or of its Members; or
  (iii) any Bill that has been requested in writing by the Paramount Chief so to reserve on the grounds that, in the opinion of the Paramount Chief, it is a Bill whereby persons of a racial or religious community are made liable to disabilities or restrictions to which persons of other such communities are not also subjected or made liable or are granted advantages not extended to persons of other such communities; or

(iv) any Bill relating to entry into, or residence in, Basutoland; or
(v) any Bill which varies the qualifications or disqualifications for voters in elections for District Councils.

(3) A Law assented to by the High Commissioner shall come into operation on the date of its publication in the *Gazette* or, if it shall be enacted, either in such Law or in some other law (including any law in force on the appointed day), that it shall come into operation on some other date, on that date.

(4) A Bill reserved for the signification of Her Majesty's pleasure shall become a Law as soon as Her Majesty shall have given Her assent thereto through a Secretary of State and the High Commissioner shall have signified such assent by notice published in the *Gazette*. Every such Law shall come into operation on the date of such notice or, if it shall be enacted, either in such Law or in some other Law (including any Law in force on the appointed day), that it shall come into operation on some other date, on that date.

Validity of Proclamations and Laws.

95. (1) The validity of a Proclamation made and published in pursuance of sub-section (2) of section 45 of this Order shall not be questioned in any legal proceedings on the ground that it contains a provision in regard to any Council matter.

(2) The validity of any Law assented to under the provisions of section 58 of this Order shall not be questioned in any legal proceedings on the ground that it contains a provision in regard to any High Commissioner's matter.

Disallowance of Proclamations and Laws.

60. (1) Any Proclamation made by the High Commissioner or any Law assented to by the High Commissioner may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever any Proclamation or Law has been disallowed by Her Majesty, the High Commissioner shall cause notice of such disallowance to be published in the *Gazette*.

(3) Every Proclamation or Law so disallowed shall cease to have effect as soon as notice of such disallowance is published as aforesaid; and thereupon any enactment repealed or amended by or in pursuance of the Proclamation or Law disallowed shall have effect as if such Proclamation or Law had not been made. Subject as aforesaid, the provisions of sub-section (2) of section thirty-eight of the Interpretation Act, 1889, shall apply to such disallowance as they apply to the repeal of an Act of Parliament.

Sessions of the Council.

61. (1) There shall be a session of the Basutoland Council once at least in every year so that a period exceeding twelve months shall not elapse between the last sitting of the Council in one session and the first sitting thereof in the next session.

(2) Each session of the Council shall commence at such time and be held at such place as the Paramount Chief with the authority of the High Commissioner may, by notice in the *Gazette*, appoint.

Prorogation and Dissolution of the Council.

62. (1) The Paramount Chief, with the authority of the High Commissioner, may at any time by notice in the *Gazette* prorogue or dissolve the Basutoland Council.

(2) On dissolution, all Members of the Council shall vacate their seats and the Council shall be reconstituted by election, appointment and otherwise in accordance with the provisions of this Order at such time within three months

of dissolution as the Paramount Chief, with the authority of the High Commissioner shall, by notice in the *Gazette* appoint.

(3) Unless the Council be sooner dissolved, the Council shall be dissolved in the manner provided in this section at the expiration of four years from the first sitting of the Council and thereafter from the first sitting of the Council after each dissolution.

Privileges of Basutoland Council and Members.

63. (1) It shall be lawful, by Laws enacted under the provisions of this Order, to determine and regulate the privileges, immunities and powers of the Basutoland Council and its Members but no such privileges, immunities or powers shall exceed those of the Commons' House of Parliament of the United Kingdom of Great Britain and Northern Ireland or the Members thereof.

(2) Prior to the first meeting of the Basutoland Council it shall be lawful for the High Commissioner, with the prior approval of a Secretary of State, to make a Proclamation exercising the powers conferred by sub-section (1) of this section and such Proclamation shall come into force on the appointed day and shall be deemed to be a Law enacted under the provisions of this Order and may thereafter be amended or revoked by Laws made under the preceding sub-section.

(3) Sub-section (2) of this section shall come into operation forthwith.

Penalty for Sitting or Voting in Council when Unqualified.

64. (1) Any person who sits or votes in the Basutoland Council knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding fifty pounds for every day upon which he so sits or votes.

(2) Any such penalty shall be recoverable in the High Court at the suit of the Attorney-General for the High Commission Territories.

PART VI.

The Chieftainship.

The Paramount Chief.

70. (1) The Paramount Chief of Basutoland shall be the person who is for the time being duly recognised as such by the High Commissioner.

(2) During any minority, illness, absence or incapacity of the Paramount Chief or in the event of a vacancy in the said office, any person duly recognised by the High Commissioner as Regent or as Acting Paramount Chief shall and may exercise all the power of the Paramount Chief.

The Land in Basutoland.

71. (1) It is hereby confirmed and declared that, subject to sub-section (2) of this section, the land in Basutoland and all rights in respect thereof are legally vested in the Paramount Chief in trust for the Basuto Nation.

(2) The confirmation and declaration in sub-section (1) is without prejudice to such rights and privileges in respect of land in Basutoland as may have been lawfully allocated, granted or acquired under any law for the time being in force.

The Allocation of Rights in Land.

72. (1) As from the appointed day and until such time as other provision is made by a Law enacted under the provisions of this Order, the power to allocate or grant any right or privilege to any person to occupy, use or in any

way enjoy land in Basutoland for any purpose not being a public purpose shall remain vested in the Paramount Chief who, subject to the provisions of any statutory law for the time being in force, shall exercise his powers in this regard after consultation with the persons and in the manner prescribed by sub-sections (2) and (5) of section 82 of this Order.

(2) As from the appointed day and until such time as other provision is made by a Law enacted under the provisions of this Order, the allocation or grant of any right or privilege to occupy or use or in any way enjoy land to any person belonging to the Basuto Nation, shall continue to be governed by Basuto law and custom for the time being in force and the provisions of sub-section (1) of this section shall not apply to such allocation or grant.

(3) As from the appointed day and until other provision is made by a Law enacted under the provisions of this Order, the Paramount Chief shall allocate the right to occupy or use any plot of land in Basutoland which, in the opinion of the High Commissioner, is required for a specified public purpose save that the Paramount Chief may, if he thinks fit, before allocating such right request that the matter be submitted for the consideration of the Basutoland National Council. Thereupon the Resident Commissioner shall cause the matter to be submitted to that Council and if such Council shall by motion resolve that such right be allocated for the public purpose specified, the Paramount Chief shall act accordingly. Where, in any such case, the Basutoland National Council fails to pass such a motion, the High Commissioner may, if he thinks fit, take any further appropriate action in terms of this Order.

Establishment and Constitution of the College of Chiefs.

73. (1) There shall be in and for Basutoland, a College of Chiefs (hereinafter in this Part of this Order referred to as " the College ").

(2) The College of Chiefs shall consist of—

(*a*) the holders of the offices of Principal and Ward Chiefs set out in the Second Schedule to this Order; and

(*b*) such other persons as may from time to time be elected by name or office by the College to be additional Members of the College in such manner as may be prescribed by Standing Orders made under section 76 of this Order:

Provided that any Chief or Headman who is a member of the College under the provisions of paragraphs (*a*) or (*b*) of this sub-section, may be represented in the College by the person duly recognised as acting for him in the event of his minority, illness, absence, incapacity, removal or suspension.

(3) The Paramount Chief shall be the President of the College and, when present, shall preside over it.

(4) The College shall elect one of its members to be Chairman, who shall preside over the College in the absence of the President. The Chairman shall hold office for such period as may be prescribed by Standing Orders made in pursuance of section 76 of this Order.

Powers and Duties of the College and Law to be Administered.

74. (1) The College of Chiefs shall have the following powers and duties:—

(*a*) The presentation for recognition by the High Commissioner of a person as the Paramount Chief or of a person as Regent during the minority of the Paramount Chief or of a Chief to act as Paramount Chief during the illness, absence from the Territory or incapacity of the Paramount Chief.

(*b*) The recommendation for recognition by the Paramount Chief, of Chiefs and Headman, or for an acting appointment during minority, illness, absence, incapacity, removal or suspension of a Chief or Headman.

(*c*) The settlement of disputes concerning the succession to the offices of Paramount Chief, Chief or Headman or concerning other matters relating to the powers and duties annexed to the offices of Paramount Chief, Chief or Headman which are regulated by Basuto law and custom.

(*d*) The definition and adjustment of the territorial boundaries of areas within which Chiefs and Headmen exercise their powers and perform their duties:

Provided that the definition or adjustment of the boundaries of the area of jurisdiction of a Principal or Ward Chief shall be subject to the approval of the High Commissioner.

(*e*) The investigation of allegations of misconduct, inefficiency or absenteeism of any Chief or Headman, and, as a result of such investigation, the making of recommendations to the Paramount Chief for the suspension or removal of any Chief or Headman by the Paramount Chief.

(*f*) The review and amendment of the grading or classification of Chiefs and Headmen.

(*g*) The review and amendment of the lists of persons holding the appointment of Chief and Headman.

(2) Subject to the provisions of this Order, the College of Chiefs and the Standing Committee established under section 75 of this Order shall exercise their powers and perform their duties in accordance with Basuto law and custom regulating Chiefs and chiefdoms in Basutoland subject to any statutory law for the time being in force.

Composition of Standing Committee and its Powers and Duties.

75. (1) There shall be a Standing Committee (hereinafter referred to as "the Standing Committee") of the College of Chiefs which shall comprise four members of the College elected in such manner as may be prescribed by Standing Orders made in pursuance of section 76 of this Order. The Standing Committee shall be presided over by a Chairman who may be a person who is not a member of the College. Such Chairman shall be appointed by the Paramount Chief after consultation with the Resident Commissioner. If the Chairman of the Standing Committee is not a member of the College, he shall nevertheless be deemed to be a member of the College whilst holding his appointment. The decision of the Standing Committee on any matter shall be that of the majority and if there be an equality of votes, the Chairman shall have a casting vote. Three members, including the Chairman, shall form a quorum.

(2) The Chairman of the Standing Committee shall hold office during the pleasure of the Paramount Chief and subject thereto for such period as may be specified at the time of his appointment, unless he shall sooner die or resign his office by notice in writing to the Paramount Chief:

Provided that the Paramount Chief shall not terminate the appointment of the Chairman of the Standing Committee except after consultation with the Resident Commissioner.

(3) The powers of the College of Chiefs specified in paragraphs (*c*), (*d*) and (*e*) of sub-section (1) of section 74 of this Order shall be exercised by the Standing Committee but it shall be competent to the College by resolution to delegate to the Standing Committee such other of the powers or duties of the College as may be specified in the resolution.

Standing Orders of the College.

76. Subject to the provisions of this Order, the College of Chiefs may, subject to the approval of the Paramount Chief after consultation with the Resident Commissioner, make, amend or revoke Standing Orders for the orderly

conduct and prompt despatch of the business of the College and the Standing Committee. Without prejudice to the generality of the foregoing power, the Standing Orders may provide for the following:—

(*a*) The summoning and holding of meetings;
(*b*) the election and tenure of office of additional members of the College in pursuance of paragraph (*b*) of sub-section (2) of section 73 of this Order;
(*c*) the election, tenure of office, powers and duties of the Chairman of the College;
(*d*) the election and tenure of office of the members of the Standing Committee;
(*e*) the procedure to be adopted in exercising the powers of the College under paragraphs (*a*) (*b*), (*f*) and (*g*) of sub-section (1) of section 74 of this Order; and
(*f*) the decisions of questions by ballot or otherwise.

Rules of Procedure of Standing Committee.

77. With the concurrence of the Chief Justice, the College may make Rules of Procedure for the fair and equitable regulation of any proceedings held by the Standing Committee for the purpose of exercising the powers of the College under paragraphs (*c*), (*d*) and (*e*) of sub-section (1) of section 74 of this Order. Without prejudice to the generality of the foregoing, such Rules may authorise or require that the proceedings shall be held in public, that due notice shall be given to all interested parties, that witnesses may be summoned and examined on oath and that adequate records of the proceedings be kept.

Decisions of College or Standing Committee to be Sent to Paramount Chief and Afterwards to the Parties.

78. (1) Any finding, decision or recommendation arising from any proceedings under the provisions of sub-section (1) of section 74 of this Order held by the College or Standing Committee shall be communicated to the Paramount Chief who shall either notify his provisional acceptance of the same to the College or Standing Committee or, if he thinks fit for reasons which he shall state, refer the matter back to the College or Standing Committee for further consideration. In any such case the College or Standing Committee shall reconsider the matter and shall without undue delay confirm or vary its previous finding, decision or recommendation, which, subject to the provision of section 79 of this Order shall then be final.

(2) When the Paramount Chief has notified his provisional acceptance of any finding, decision or recommendation of the College or Standing Committee in pursuance of sub-section (1) of this section or when the College or the Standing Committee has reconsidered its finding, decision or recommendation at the request of the Paramount Chief in pursuance of that sub-section, all parties to the proceedings shall be informed of such finding, decision or recommendation in the prescribed manner.

Review of Proceedings of College or Standing Committee by High Court.

79. (1) Any person aggrieved by any finding, decision or recommendation of the College or the Standing Committee may, within thirty days of it being communicated to him, apply to the High Court to review the matter on the grounds that the College or Standing Committee has acted without authority, or in bad faith, or has committed a serious irregularity. Where, on any such review, the High Court finds that the College or the Standing Committee has acted without authority, or in bad faith or has committed any serious irregularity in the course of any such proceedings, the High Court shall—

(*a*) confirm, vary or reverse the finding, decision or recommendation as the justice of the case may require; or

(*b*) if the record of the proceedings does not furnish sufficient evidence or information for a determination of the matter, itself take additional evidence or remit the case to the College or the Standing Committee to take additional evidence or supply further information; or

(*c*) take such other course as may lead to the just and speedy settlement of the case.

(2) The Chief Justice may make Rules of Court regulating applications to the High Court under sub-section (1) of this section and prescribing fees for the refiew by the High Court of any proceedings conducted by the College of Chiefs or the Standing Committee.

Paramount Chief to Give Decision which is Final and Binding.

80. After the expiration of thirty days from the date on which any finding, decision, or recommendation shall have been communicated to the parties in pursuance of sub-section (2) of section 78 of this Order or, if there is a review of such proceedings, after the High Court has determined the matter, the Paramount Chief shall give his final decision in accordance with the finding, decision or recommendation of the College or the Standing Committee or, in the case of a review, in accordance with the judgment of the High Court. Any such decision shall be made public in such manner as may be prescribed and thereupon shall be conclusive and binding upon all persons affected thereby:

Provided that the Paramount Chief shall not exercise in pursuance of thi· section, any authority to recognise, suspend or remove any Chief or Headma except after prior consultation with the Resident Commissioner.

Half-yearly Report.

81. Twice in every year a full report of the work and proceedings of the College of Chiefs and the Standing Committee shall be compiled and considered by the College which, without undue delay, shall transmit it with such relevant observations as the College may see fit to make to the President of the Basutoland National Council who shall cause the report and the observations of the College to be laid before that Council.

Obligation to Consult Certain Specified Persons in Regard to Matters Enumerated in Section 18(2).

82. (1) Before exercising the powers mentioned in paragraphs (*a*), (*b*), (*i*) and (*j*) of sub-section (2) of section 18 of this Order, the Paramount Chief shall consult with the Resident Commissioner.

(2) Before exercising any of the powers or duties enumerated in paragraphs (*c*), (*d*), (*e*), (*f*), (*g*), (*h*) and (*k*) of sub-section (2) of section 18 of this Order, the Paramount Chief shall consult with the following three persons:—

(*a*) the Resident Commissioner;

(*b*) the Council Member of the Executive Council appointed on the nomination of the Paramount Chief; and

(*c*) a Member of the Basuto Nation appointed by the Paramount Chief.

(3) The person appointed under the provisions of paragraph (*c*) of subsection (2) of this section shall be appointed by the Paramount Chief by writing under his hand and seal and such person shall, unless he shall sooner resign or be incapable of discharging his functions by reason of illness, absence or other cause, hold his appointment during the pleasure of the Paramount Chief. Whenever a vacancy shall occur in the appointment, the Paramount Chief

shall, without undue delay, appoint another member of the Basuto Nation to fill the appointment.

(4) The Paramount Chief shall, from time to time, inform the Resident Commissioner of the name and description of the person appointed by him under the provisions of paragraph (*c*) of sub-section (2) of this section and upon receipt thereof the Resident Commissioner shall cause a notification of the same to be published in the *Gazette*.

(5) In consulting the persons specified in sub-section (2) of this section, the Paramount Chief may follow such procedure as he deems appropriate and may consult such persons collectively or individually.

Nothing in this section contained shall prevent the Paramount Chief, if he so wishes, from consulting any persons other than those mentioned in sub-section (1) or (2) of this section, as the case may be, but no decision of the Paramount Chief in regard to the exercise of any of his powers or duties referred to in paragraphs (*a*) to (*k*) of sub-section (2) of section 18 of this Order shall be valid unless the persons mentioned in sub-section (1) or (2) of this section have been consulted though the Paramount Chief may, if he thinks fit, act in opposition to any advice given to him by such persons.

THIRD SCHEDULE.

Sections 45 (2) and 85.

HIGH COMMISSIONER'S MATTERS WITHIN THE MEANING OF SECTION 45 (2) OF THIS ORDER.

(*a*) External Affairs and Defence.
(*b*) Internal Security.
(*c*) Currency, Public Loans, Customs and Excise.
(*d*) Copyright, Patents, Trade Marks and Designs.
(*e*) Posts (including Post Office Savings Bank), Telegraphs, Telephones, Broadcasting and Television.
(*f*) The Recruitment, Appointment, Conditions of Service, Promotion, Discipline and Retirement (including Pensions) of officers in the Public Service.

Parts I, V, VII and VIII, which are not included in this Article, deal respectively with preliminary matters, the judicature, finance and miscellaneous matters.

[1] U.N. Year Book. [2] The Constitution and powers of the Basutoland Council, before the recent reforms, is set out in Annexure 2 of the Report, together with the Rules of Procedure of the Basutoland Council and District Councils (in Annexures 3 and 4). See note 3 below. [3] Morija Press, Maseru; obtainable also at H.M.S.O., London. [4] Report, para. 2. [5] *Ibid.*, para. 6. [6] *Ibid.*, para. 8. [7] *Ibid.*, para. 7. [8] *Ibid.*, p. 15. [9] *Ibid.*, para. 23. [10] *Ibid.*, para. 25. [11] *Ibid.*, para. 27. [12] *Ibid.*, para. 36. [13] *Ibid.*, para. 39. [14] *Ibid.*, pp. 35-7. [15] *Ibid.*, para. 52. [16] *Ibid.*, para. 55. [17] *Ibid.*, para. 56. [18] *Ibid.*, para. 57 [19] *Ibid.*, para. 58. [20] *Ibid.*, pp. 38-47. [21] *Ibid.*, paras. 74-8. [22] *Ibid.*, paras. 80-5. [23] *Ibid.*, para. 84. [24] *Ibid.*, para. 86. [25] *Ibid.*, para. 87. [26] *Ibid.*, para. 95. [27] *Ibid.*, paras. 96-100. [28] *Ibid.*, para. 102. [29] *Ibid.*, paras. 105-10. [30] *Ibid.*, para. 112. [31] *Ibid.*, paras. 113-22. [32] *Ibid.*, paras. 131-8. [33] *Ibid.*, paras. 147-57. [34] *Ibid.*, para. 151. [35] *Ibid.*, paras. 158-64. [36] *Ibid.*, paras. 160-4. [37] *Ibid.*, para. 165. [38] Annexure I. [39] 595 *Com. Hans.*, c. *84*. [40] 596 *Com. Hans.*, c. 164. [41] 597 *Com. Hans.*, c. 1280.

[41] 213 *Lords Hans.*, cc. 472-80. [42] *Ibid.*, c. 477. [44] Cmnd. 637 [44] *Ibid.*, para. 27. [46] The other provisions in regard to the powers of the Paramount Chief dealt with in paras. 44-9 of the White Paper are substantially in accordance with the Report. [47] White Paper, paras. 58-9. [48] At the Court at Balmoral on 14th September, 1959. [49] S.I., 1959, No. 1620. [50] At the Court at Balmoral on 14th September, 1959.

IX. ZANZIBAR: CONSTITUTIONAL AND POLITICAL DEVELOPMENTS

By K. S. Madon,
Clerk of the Legislative Council

Zanzibar was placed under British protection by the Sultan, Seyyid Ali bin Said, on 1st July, 1890. The Protectorate was proclaimed in that year and a regular form of government was set up in the following year. The Government is administered by the British Resident, who exercises his functions under the Zanzibar Order in Council, 1924.[1]

In 1956 there were constitutional changes[2] which resulted in the formation of a Privy Council, an enlargement of the Executive Council by the addition of 3 Representative Members, and the introduction of common roll elections for some of the Representative Members on Legislative Council.

The Privy Council is presided over by the Sultan with the British Resident, the Heir Apparent to the Throne, the Chief Secretary and the Attorney-General. This Council is to advise His Highness on any matter, including the exercise of prerogative of mercy, on which he may require advice.

The Executive Council is presided over by the British Resident, and comprises four *ex-officio* Members, three official and five Representative Members. Up to this year there were three Representative Members, but in an announcement made on 16th April by His Excellency the British Resident,[3] two more seats of Representative Members were added. The five Representative Members are appointed by His Highness the Sultan with the advice of His Excellency the British Resident, from among the Representative Members of the Legislative Council. These five Members do not have ministerial powers. Three of these five occupy offices in the Beit-el-Ajaib adjacent to the offices of the central Government secretariat and are consulted and asked to advise on all matters of policy concerning subjects within their portfolios. The two newly appointed members,

one of whom represents the Island of Pemba, are at present without portfolio. The ultimate development from this stage will probably be towards some system of ministerial responsibilities. It may be explained that the use of the term "unofficial members" is now discouraged as some misconception has arisen from the use of that term which tends to become synonymous with "opposition". It is the intention of the Government to associate the local people with the work of the Government and with the Parliamentary idea.

The Legislative Council, which is presided over by the British Resident, is composed of 13 official Members and 12 Representative Members. Up to this year 6 of the 12 Representative Members were elected, and 6 were nominated by His Highness the Sultan on the advice of the British Resident from applications by individuals each of which being supported by at least 100 voters. The election of the Representative Members is on a common roll basis. In the announcement for constitutional advance recently made by His Excellency the British Resident, 2 more seats of elected Members were added with the result that out of the 12 Representative Members, 8 will now be elected. It may be of interest to know that at the last election in the year 1957 of the 6 members elected, 5 were sponsored by the Afro-Shirazi Party of whom 4 are Shirazis and one African. The remaining one seat was won by an Indian from the Zanzibar town and he was sponsored by the Muslim Association. The Nationalist Party was not successful in securing any seats at that election.

In His Excellency's recent announcement of constitutional advance mention was made about franchise to women. A Committee has been appointed to consider whether franchise should be extended to women. At present this Committee is working actively and is taking evidence from the members of the public. The Report of the Committee is being awaited anxiously by many people in Zanzibar as, this being a Muslim country, some people hold strong views on this question.

There are several political parties of which the most important are the Afro-Shirazi Party and the Nationalist Party (otherwise known as Hizbul-Watan). The leader of the Nationalist Party is Sheikh Ali Muhsin Barwani, who in 1958 resigned his seat as an Appointed Representative Member of Legislative and Executive Councils. This Party claims to be non-racial and its membership is open to all persons who are Zanzibaris. According to our Nationality Decree, of 1952, persons born within the dominions of His Highness the Sultan are Zanzibar subjects by birth; this does not apply to subjects or citizens of certain states. The Afro-Shirazi Party is a combination of two associations, the African Association and the Shirazi Association. The Shirazis originally came from Shiraz (Persia), and claim to be the indigenous population of Zanzibar. These two Associations were quite different bodies, but some time before the last elec-

tions they combined themselves into one Party and the leader is Sheikh Abeid Karume, an elected member of the Legislative Council and a Representative Member (without portfolio) of the Executive Council. Recently, due to some difference in policy, a section of the Afro-Shirazi Community have formed themselves into a separate party called the "Zanzibar African Youth Movement" (shortly called ZAYM). This party consists of younger members, and is of the opinion that independence ("Uhuru" in Swahili) must come gradually. The Afro-Shirazi Party, on the other hand, claim for an early independence and the Nationalist Party for independence as early as 1960.

In preparation for the next election in 1960 the revision of electoral rolls has just commenced. It is hoped that the next election will be as peaceful and orderly as the last one.

[1] S.R. & O., 1924, No. 1401.
[2] Leg. Co. Minutes, 1959, pp. 224-6.
[3] *See* THE TABLE, Vol. XXV, p. 138.

X. APPLICATIONS OF PRIVILEGE, 1959

AT WESTMINSTER

Expulsion of a Member from a British-protected territory.—On 2nd March the Under-Secretary of State for the Commonwealth Relations (Mr. C. J. M. Alport) made a statement to the effect that Mr. John Stonehouse (Wednesbury), at that time on a visit to the Federation of Rhodesia and Nyasaland, had been declared a prohibited immigrant by the Federal Government; it was apparently that Government's intention that he should leave the Federation at the conclusion of his current tour of Northern Rhodesia.

The statement gave rise to prolonged questioning, which included two attempts to obtain the leave of the House to debate the matter under S.O. No. 9 (Adjournment on definite matter of urgent public importance). During the course of this discussion, Mr. Speaker observed that he had looked at the matter, as reported in the Press, in relation to the possible outcome of a question of privilege, and observed:

> Privilege belongs to the House and not to the individual Member; he does not carry it about with him wherever he goes. Privileges generally are concerned with seeing that an hon. Member has free access to this place and free speech when he is here. I know of nothing that has been done against that.
>
> The real position, as I see it, is that if the House had sent the hon. Member for Wednesbury on its own business to Salisbury, Northern Rhodesia, or wherever it may be, then any refusal to facilitate his progress by the authori-

ties there might have been regarded by the House, in certain circumstances, as approaching a contempt of the House because he was a delegate of the House. The facts in this case are that the hon. Member has undertaken the journey upon his own volition and with no authority from the House. I really do not see any way in which the hon. Member, as a Member of Parliament, on his journey, can be considered as being different from any other British citizen.

No attempt was, in fact, made by any Member to raise the question of privilege on that day;[1] but on the following day, Mr. Wedgwood Benn (Bristol, South-East) drew attention to the principle, stated on p. 43 of Erskine May,[2] that certain rights and immunities, such as freedom from arrest or of speech, belonged primarily to the individual Members of the House and only secondarily and indirectly to the House itself; he considered, therefore, that Mr. Stonehouse was entitled in his own person to freedom from arrest, save on a criminal charge, during the Session. With regard to jurisdiction, although conceding that the United Kingdom Government had no administrative responsibility for the acts of the Federal Government, he considered that supreme legislative authority was retained by the United Kingdom Parliament, and that the privilege of Members to go and travel about the area where this legislative authority existed must be absolute.

Mr. Speaker, in stating his view that no *prima facie* case of breach of privilege was involved, said:

> The origin of the doctrine of freedom from arrest which attaches to all Members of Parliament during a Session of Parliament lies in the fact that this House is entitled to have a first claim upon their services and that any person who, by any action of arrest or hindrance, prevents a Member from attending in his place to do his duty is guilty of contempt of the whole House.
>
> I made inquiries to find out whether or not the hon. Member for Wednesbury was under arrest—because I am concerned, naturally enough, in what happens to any hon. Member of this House—and I am told that he is not. He has been deported, if that is the proper word, in consequence of non-compliance with an order declaring him to be a prohibited immigrant. I am told that he is now in Dar-es-Salaam and free to go wherever he likes. I cannot see that the Federal Government have done anything to prevent or hinder the attendance of the hon. Member for Wednesbury in his place here. On that ground, I should say that they have not acted in contempt of Parliament.

Mr. Speaker then pointed out that arrest on a criminal charge was not the only form of arrest to which the privilege did not apply, and drew Mr. Benn's attention to the case during the Second World War in which a Member was detained under Regulation 18B.[3] To this Mr. Benn replied that there was no Federal state of emergency in Rhodesia and Nyasaland, such as had obtained in the United Kingdom in 1944, but did not actively pursue his argument, beyond suggesting that the protection of Members proceeding to and from Parliament extended from 40 days preceding to 40 days following the Session.[4]

This aspect of the matter was raised again on the following day (4th March), by Mr. Benn and also by Mrs. Castle (Blackburn), who

that morning had spoken to Mr. Stonehouse on the telephone and obtained an exact description of the way in which, he alleged, he had been prevented by the Federal authorities from making such travel arrangements as would have enabled him to be back in London in time for the debate, later that day, on a motion censuring the Government for failure to take the appropriate action to protect Mr. Stonehouse in this matter. Mr. Speaker again declined to rule that a *prima facie* case had been made out, and referred to the case of Mr. John Lewis in 1951.[5] He observed that the Committee of Privileges which had considered that case had

found, in the first place, that the policeman had not obstructed Mr. Lewis in that sense. The Committee stated:

"The general privilege is one which has no geographical limits within the United Kingdom of Great Britain and Northern Ireland." That statement about the limits of the jurisdiction of Parliament for the purpose of Privilege is the first clear statement which we have had as to how far the matter of access goes. The Committee limits it within the United Kingdom. I have made it my business to make a search to discover whether the privilege of Parliament has ever been claimed for events happening outside the United Kingdom, and I have found none.

If the House considers this matter, then there is the difficulty that it must also consider how we should make any decree on Privilege effective. I am sure that hon. Members would not wish the House to engage in any controversy unless they had a remedy to see that their own will was carried out. That is the first point.

The second point is that the Committee stated, in its conclusions:

"Such privileges do not exalt the Member above the ordinary restraints of law which apply to his fellow-citizens."

I think that that is agreed on both sides of the House.

It therefore seems to me that in this case, and in the circumstances which have followed from it, the question whether the order was properly made will no doubt be discussed this evening. I take the view that it was certainly legally made and that, as the hon. Member for Wednesbury did not comply with it by leaving the country, which he could have done, and perhaps reached home in time, they deported him in accordance with their own law; but it was within their jurisdiction, not within ours. Therefore, in all these circumstances, this is a matter which the House should consider carefully.[6]

Advance communication to Press of substance of answer to Question.—On 2nd December the following Question by Mr. Lipton (Brixton) stood upon the Order Paper:

To ask the Postmaster General when he received the signed authority of a Secretary of State to permit interception of a telephone conversation at Reading on 20th April last.

The Postmaster General replied that this was not a case in which such authority was necessary, since the party concerned had given permission to the police to listen-in to a conversation on her own installation.

At the conclusion of the supplementary Questions and answers, Mr. Lipton, rising to a point of Order, drew attention to the following words which had appeared in *The Times* of 2nd December—

. . . it was made clear in Government quarters yesterday that no warrant was issued by the Home Secretary to Reading Police to authorise the interception. . . .

He contended that this anticipation of the answer to his question constituted a dangerous precedent and was not in accordance with the respect which should be given to the House.

Mr. Speaker observed that no point of order was involved, and, without sitting down, called the Prime Minister to move a motion standing in his name on the Order Paper. It was argued by several Members that Mr. Lipton's point was one of privilege, but Mr. Speaker was at first unwilling to receive it as such, since the time for raising matters of privilege had passed at the moment when he had called the Prime Minister to move his motion. However, after Mr. Speaker had considered representations that his failure to sit down between dismissing Mr. Lipton's point of Order and calling the Prime Minister had effectively prevented Mr. Lipton from raising a matter of privilege, he relented and allowed the point of privilege to be raised.

Mr. Lipton brought an extract from the newspaper to the Table, but Mr. Speaker observed that the rules compelled him to require the whole paper. When this had been brought in, Mr. Speaker ruled, without giving any reason, that no *prima facie* breach of privilege was involved. When pressed to give the reason for this decision, Mr. Speaker replied:

I think, with respect, that it better serves the interest of the House that the Chair should not give reasons for its rulings, not because I feel that they would not bear exposure to the light of day or because I feel that some magic power of infallibility rests in the Chair, but because I feel that if the Chair's reasons come to be debated the time of the House is occupied in an irregular discussion when there is no Question before it.

In spite of numerous requests, from the Leader of the Opposition and others, that he reconsider his attitude, Mr. Speaker remained firm in his refusal to assign any reason for his decision, and the House passed to the business of the day.[7]

Australian Commonwealth: House of Representatives

Contributed by the Clerk of the House of Representatives

Circulation of allegations and threats against a Member.—On 17th March Mr. Pearce (Capricornia) raised a matter of Privilege[8] concerning the circulation of copies of a lettergram which had been forwarded by a Mr. John Somerville Smith to the Leader of the House (Mr. H. E. Holt).

Mr. Pearce claimed that Mr. Smith had caused a copy of the lettergram to be circulated in the Commercial Travellers' Club, Melbourne, and had also posted a copy to the editor of a local newspaper circulating in Mr. Pearce's home city. The lettergram alleged that Mr.

Pearce had engaged in professional lobbying for certain firms and that he had, as a Member, improperly influenced the Government in granting a particular firm a large construction contract.

Mr. Pearce also claimed that Mr. Smith had issued threats against him, principally through the Government Whip (Mr. Opperman).

On the motion of Mr. Pearce the matter was referred to the Committee of Privileges.[9]

A prepared statement on the constitutional provisions and law relating to Privilege, having particular application to the case under investigation, was submitted to members of the Committee by the Clerk of the House (Mr. A. G. Turner). In addition he appeared before the Committee and discussed the statement with them.

After hearing evidence from Mr. Holt, Mr. Opperman and Mr. Pearce, the Committee reported[10] that it was of the opinion that the threats and imputations against Mr. Pearce did not affect him in the discharge of his duties in the actual transaction of the business of the House, and that therefore the matter disclosed no breach of Parliamentary Privilege.

As no breach was involved the Committee further reported that it felt itself precluded from investigating Mr. Smith's allegation, but thought it proper to record that Mr. Pearce, appearing before the Committee on Oath, had completely denied all imputations of improper conduct and displayed willingness to provide any information required by the Committee.

No action was taken by the House on the presentation of the report.

UNION OF SOUTH AFRICA: HOUSE OF ASSEMBLY

Contributed by the Clerk of the House of Assembly

Interference with members in the performance of their Parliamentary duties.—On 18th February a member drew attention to the following extract from a statement by the Commissioner of the South African Police, as reported in the *Cape Argus* of 17th February, 1959, under the heading " Police Chief's Warning on Girl ' Spy ' at University ":

> Questions are to be asked in Parliament about newspaper reports, and I understand that representatives of the university have flown to Cape Town to listen to the answers.
>
> They will not get very far, for this appears to be a matter involving Communistic activity and the Security Police. Anyone trying to make a political issue out of it will end up by getting a kick in the pants.

He asked Mr. Speaker whether this statement did not constitute a breach of privilege in that it appeared to be an interference with the freedom of members in the performance of their Parliamentary duties.

After several members had addressed the House, Mr. Speaker stated that he had carefully read the report in the newspaper referred

to and that after having listened to the arguments of members on both sides of the House he had come to the conclusion that a *prima facie* case for an investigation had not been established and that no further action in regard to the matter appeared to be necessary.[11]

UNION OF SOUTH AFRICA: CAPE PROVINCIAL COUNCIL

Contributed by the Clerk of the Council

Offensive expressions by a Member.—On 28th May, for the first time in the history of the Council, a member having declined to obey an order of the Council was ordered to withdraw from the Council for the remainder of the day's sitting. The circumstances arose from a statement made in debate the previous day by the Member, and published in the local press, to which another member had drawn attention, asking—

whether the statement did not constitute a breach of privilege in that it cast a reflection on the character and integrity of certain members of this Council.

The passage from the newspaper handed in, read—

I have long had a great disgust for municipal affairs in this country, he said. The type of councillor we have had in Cape Town has been a disgrace. The Finance Committee is a disgusting committee. All sorts of racketeering goes on.

The member whose conduct was in question, having been heard in his place, withdrew from the Chamber on the direction of the Chairman. Without intimating whether the statement referred to constituted *prima facie* a breach of privilege, the Chairman allowed discussion and the motion by a member of the Executive Committee—

that the honourable member for Cape Western be called upon to apologise to the Council and to withdraw unconditionally the words used by him.

This was agreed to. The member being present and having declined to obey the order of the Council, a motion was agreed to ordering him to withdraw from the Council for the remainder of the day's sitting. The member withdrew.[12]

INDIA: RAJYA SABHA

Reflection on Members.—The following remarks contained in a letter dated 12th January, 1959, addressed to the Prime Minister by Shri M. O. Mathai, Special Assistant to the Prime Minister, were referred, under rule 178 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, to the Committee by the Chairman on 11th February, 1959:

But the evermounting tendency in our Parliament and our Press to attack public servants without caring to verify facts is having a devastatingly demoralising effect. Under such deplorable conditions very few self-respecting persons will care to enter Government service or public life.

This letter was released to the Press by the Prime Minister's Secretariat through the Press Information Bureau of the Government of India, and on 17th January it was published in the newspapers. On 9th February Shri Bhupesh Gupta and certain other members of the Rajya Sabha gave notices under rule 164 of the Rules of Procedure and Conduct of Business in the Rajya Sabha of their intention to raise a question "involving a breach of privilege of the House and contempt of Parliament". They also sought the consent of the Chairman under rule 163 of the said Rules to raise the question in the House. The Chairman referred the matter under rule 178 of the said Rules to the Committee of Privileges for examination, investigation and report.

The Committee held three sittings. At the first sitting, held on 14th February, the Committee decided that the Secretary should write a letter to Shri Mathai drawing his attention to the notices of breach of privilege and enquiring whether he had anything to say in the matter. In his letter dated 22nd February, in reply to the letter written to him by the Secretary of the Rajya Sabha, Shri Mathai expressed his regret and offered his unqualified apology in the following terms:

I deeply regret that certain remarks contained in my letter of resignatio addressed to the Prime Minister referred to in your communication have give the impression that I meant to cast aspersions on Parliament. I should lil to assure the Committee that it was never my intention to do so. Since my remarks seem to have given such an impression, I offer my unqualified apology for the same.

At the second sitting held on 27th February the Committee deliberated and came to their conclusions. At the third sitting held on 2nd March the Committee adopted its report.

In view of the regret expressed and unqualified apology tendered by Shri Mathai, the Committee formed the opinion that the House would serve its own dignity if it proceeded no further in the matter, and therefore recommended that no further action be taken by the House.

The Report of the Committee was presented to the House by the Chairman of the Committee on 2nd March and the House adopted the following motion on 3rd March, agreeing with the recommendation contained in the Report:

That the Second Report of the Committee of Privileges laid on the Table of the House on the 2nd March, 1959, be taken into consideration and having considered the same the House agrees with the recommendation contained in the Report.[13]

See also pp. 126-30.

INDIA: LOK SABHA

Contributed by the Secretary of the Lok Sabha

Alleged leakage of Budget proposals.—*Facts of the case.*—On 10th March Shri S. M. Banerjee drew the attention of the House to a

photostat copy of the following letter stated to have been written by a Delhi cigarette firm to its branch office at Bangalore on 21st February, 1959:

I have come to know that there are chances of enhancement of excise duty on Players and Gold Flakes. As such, please make arrangements to keep stocks for 2/3 months.

Shri Banerjee added:

This particular letter is clear proof that they knew that the excise duty was going to be increased after the placing of this Budget here. I feel that while the Budget is kept so secret from us and we knew it only at about 6.30 p.m. on 28-2-1959; these speculators and hoarders knew it on 21-2-59. I want that there should be a judicial enquiry into the conduct of these hoarders who are actually antinational. I feel that this is not only a case of a question of privilege, but a question of anti-social activity. I submit that there is a clear case of leakage and the hon. Speaker should give a ruling or allow an investigation to be made by the Home Minister.

The Minister of Finance (Shri Morarji Desai) observed *inter alia*:

the letter says, I have come to know that there are chances that there will be an enhanced duty on two brands of cigarettes. It does not say how much enhancement there will be. If he had come to know of anything particularly he would have stated it; there could be any intelligent anticipation of many excise duties.

Then again, . . . he mentioned only two brands. As a matter of fact, it is on all brands that the duty has been enhanced. He is wrong.

Ruling by the Speaker.—The Speaker ruled *inter alia* as follows:

I have heard the hon. Member and also the hon. Finance Minister. Some time ago in 1956, as the hon. Members may be aware, some cyclo-styled or typed copies of the provisions in the Budget or the proposals in the Finance Bill were circulated to various institutions and businessmen in Bombay. The matter was brought up here, when Shri C. D. Deshmukh was the Finance Minister. We went into that question elaborately, and this was my ruling[14] then:

In the matter of determination of the privileges of the House, we are governed by the provisions of article 105(3) of our Constitution, which state that the powers, privileges and immunities of the House are such as were enjoyed by the House of Commons in the United Kingdom at the commencement of our Constitution. The precedents of the United Kingdom should guide us in determining whether any breach of privilege was in fact committed in the present case. So far as I can gather, only two cases occurred in which the House of Commons took notice of the leakage of the Budget proposals. They are known as the Thomas case and the Dalton case. In neither of these cases was the leakage treated as a breach of privilege of the House nor were the cases sent to the Committee of Privileges for enquiry. The prevailing view in the House of Commons is that until the financial proposals are placed before the House of Commons, they are an official secret. A reference of the present leakage to the Committee of Privileges does not therefore arise.

Though the leakage of Budget proposals may not constitute a breach of privilege of the House, the Parliament has ample power to enquire into the conduct of a Minister in suitable proceedings in relation to the leakage and the circumstances in which the leakage occurred. In the two English cases aforesaid, matters were brought to the notice of the House of Commons by a

resolution or a motion for appointment of special committees or tribunal to enquire into the matter and report the facts thereon to the House.

So far as the other matters are concerned—the appointment of a committee, etc.—there is no proper resolution here as was the case in the House of Commons. It is unnecessary for me to proceed further. Not a word has been alleged that there is any default on the part of the hon. Minister. Various persons get into speculation. Possibly this may be or may not be a case of speculation. It is not necessary for me to pronounce one way or the other. So far as the breach of privilege motion is concerned, I withhold my consent to raising the matter as there is no breach of privilege.

Alleged leakage of Budget figures for 1959-60 relating to Manipur. —*Facts of the case.*—On 10th March Shri L. Achaw Singh, seeking to raise a question of privilege, said that:

A local daily called *Simanta Patrika* published the detailed Budget figures for the Union Territory of Manipur under the Ministry of Home Affairs in its issues of 24th and 25th February, 1959. Generally, these figures cannot be given out in the Press before the Budget is actually presented to the House. The article had actually a heading like this: "Rs. 3·50 crores Budget for Manipur passed for this year." The same paper gives details of a Press Conference where the Chief Commissioner of Manipur announced these details. Further, the paper says that the Budget estimates had been approved by the Manipur Advisory Committee which met recently.

. . . the publication of these figures under the different heads of expenditure, such as land revenue, excise, registration, forest, veterinary, co-operation, and Scheduled Castes and Scheduled Tribes, is deliberate and intentional and is meant for lowering the dignity and prestige and the authority of this House.

. . . the Budget estimates were discussed in the meeting of the Manipur Advisory Committee which consists of the Chief Commissioner and Members of Parliament and the Committee . . . approved them. But the meetings of the Committee are secret and confidential and no detail can be given out in the Press without the consent of the Central Government or the Home Ministry. It is unfortunate that these estimates are published under the very nose of the Home Ministry.

It has been held by May the authority on Parliamentary procedure that the publication of proceedings of committees conducted with closed doors or draft reports of committees before they have been reported to the House, will constitute a breach of privilege. So, I humbly submit that the act of the Chief Commissioner of Manipur is a clear case of a breach of parliamentary privilege.

The Minister of Home Affairs (Shri G. B. Pant) observed *inter alia*:

. . . I am utterly at a loss to understand how a question of privilege can arise in a case of this type. The Chief Commissioner, I believe, has even now no idea of the Union Budget or even of its salient features. He never saw the Budget and he cannot possibly have disclosed the Budget. So, the question of his disclosing the Union Budget is inconceivable. . . .

So far as this particular matter is concerned, the Central territories have not got any legislatures of their own, and the entire executive authority is vested in the President. So an advisory committee has been appointed for each one of the Central territories. Matters of policy and matters relating to legislation and others concerning these territories are placed before these consultative committees which consist mostly of Members of Parliament and representatives of the Territorial Council . . . so that they may be able to consider matters of common interest among themselves.

. . . no one has revealed the Budget figures. Before any figures are placed in the Budget there is a lot of discussion among the Ministries, between the Finance Ministry, between the Administration and so on. They are the subject of scrutiny and examination for a long time. We feel that whenever any changes are called for in the Budget they ought to be communicated to the Finance Ministry; but it is their right to accept them or not accept them, we cannot force them.

The Home Minister also cited a few instances to illustrate the difference between the figures published in the *Simanta Patrika* and the actual Budget figures presented to the House.

Ruling by the Speaker.—The Speaker ruled as follows:

Two things have been raised. One is that there is a breach of privilege because these are Budget figures. As soon as the hon. Member gave me notice of this motion I asked him to give a tabular statement showing the Budget figures and also those figures that have been made public by the Chief Commissioner in his Press Conference. He gave me the statement. The hon. Minister has already referred to those figures. There has been substantial change. So far as " Home " is concerned, Rs. 59 lakhs were sought to be asked for by the Commissioner or that Council, but Rs. 54 lakhs alone were given. As a matter of fact, so far as " Public Health " is concerned, Rs. 9,000 were asked for and Rs. 10 lakhs have been provided. The respective figures for " Education " are: Rs. 30 lakhs and Rs. 31 lakhs. Thus there have been very substantial differences. After all, it is open to the Council to give its demands. The Council's opinion is invited. The Commissioner and the various departments first of all make up their minds as to what amount ought to be asked for. It is for the Home Ministry in this particular case, and finally the Finance Ministry to decide, taking all these matters into consideration, as to what amount ought to be provided. The proposals themselves do not constitute the Budget.

Now, I would only advise for future consideration by the Commissioner, that he need not hold a Press Conference a few days before the presentation of the Budget.

Except for this matter of indiscretion, I do not think there is any question of privilege here.

The other question that he raised was that the proceedings of the Council were secret. If it is intended to be secret, it is right that it is kept so. But any absence of secrecy, so far as that matter is concerned, is not a breach of privilege of this House. The Council is not a Committee of this House.

I am sorry I am not able to agree with the hon. Member that there is any question of privilege involved. I have nothing more to say except to add that on such questions a wise practice may be adopted in future by the Commissioner.

Casting aspersions on Parliament.—*Facts of the case.*—On 10th February Shri A. B. Vajpayee sought to raise[15] a question of privilege in the House on the ground that Shri M. O. Mathai, former Special Assistant to the Prime Minister, in the course of his letter[16] to the Prime Minister had made certain remarks which constituted a serious breach of privilege of the House. The said remarks were as follows:

But the ever-mounting tendency in our Parliament and our Press to attack public servants without caring to verify facts is having a devastatingly demoralising effect. Under such deplorable conditions very few self-respecting persons will care to enter Government service or public life.

Shri Vajpayee contended that:

. . . Shri Mathai has made a wild charge against this House. . . . He has accused the House of growing tendency to attack public servants without even caring for facts. . . . And that letter has been circulated by the Press Information Bureau of the Government of India and with the permission of the Prime Minister who is the Leader of the House and is expected to safeguard the dignity and honour of this House. . . .

I think the statement is quite clear, self-evident, and it amounts to a breach of privilege of this House. . .

The Prime Minister (Shri Jawaharlal Nehru) stated:

I should like to distinguish, if I may, between an impropriety and a question of privilege.

Speaking for myself, I think that the wording referred to is regrettable and not proper. That is a different matter. And, as a matter of fact, I am given to understand that Shri Mathai some time ago addressed you on this question expressing his deep regret that in a moment of whatever it was he wrote something without ever intending anything against the dignity of this House. . .

. . . while these remarks are unfortunate and regrettable, and for my part, I regret them, and Mr. Mathai also is deeply sorry, as he has expressed it to you, Sir, yet, so far as the question of privilege is concerned, I do not think that is raised, and as far as I know, whenever something even much stronger than this has been said on these lines, it has been held elsewhere that no question of privilege is raised. I merely make this submission to you; it is for you to decide.

The Speaker gave his consent to the raising of the question of privilege and asked those members who were in favour of leave being granted to rise in their seats. As more than 25 Members rose in their seats, the Speaker announced that leave was granted.

Shri H. N. Mukerjee then moved the following motion:

That the attention of the House having been drawn by some honourable Members on 10th February, 1959, to a letter written to the Prime Minister by his Special Assistant Shri M. O. Mathai and made public on 17th January, 1959, through Press release through the Prime Minister's Secretariat and the Press Information Bureau of the Government of India in which the said Shri M. O. Mathai, *inter alia*, remarks:

"But the ever-mounting tendency in our Parliament and our Press to attack public servants without caring to verify facts is having a devastatingly demoralising effect. Under such deplorable conditions very few self-respecting persons will care to enter Government service or public life."

The House resolves that the matter be referred to the Committee of Privileges for investigation and report whether the above mentioned remarks of Shri M. O. Mathai made public through the Prime Minister's Secretariat and the Press Information Bureau of the Government of India constitute an adverse reflection on the dignity of the Members of Parliament and the Speaker of the Lok Sabha and whether they constitute a contempt of Parliament and also to recommend what further steps the House may take in the matter.

In support of his motion, Shri Mukerjee stated, *inter alia*:

. . . This is a very serious reflection, indirect but extremely positive and categorical, in regard to the conduct of proceedings in this House by yourself.

It is very clear that Mr. Mathai implies that the proceedings of this House are not regulated as they ought to be, that public servants are criticised, without their having an opportunity to refute the allegations made here, that Members of Parliament who are under the discipline which the Speaker imposes, attack public servants with impunity, without caring to verify facts. This, I submit, is a very clear reflection on the conduct of the Chair, and the Chair being the repository of the privileges of this House, it is a very serious matter of which cognisance should be taken. . .

Apart from this reflection on your conduct in regulating the proceedings of this House, there is a very serious imputation that Members of Parliament are habituated to attacking public servants without caring to verify facts.

. . . he suggests very clearly that certain deplorable conditions are created by Members of Parliament which make it impossible for self-respecting persons to care to enter government service. . . .

Shri Braj Raj Singh moved that:

This House decides that Shri M. O. Mathai be called to the Bar of the House to answer the charge of breach of privilege brought against him and be punished.

Shrimati Parvathi M. Krishnan supported the reference of the matter to the Committee of Privileges and said:

. . . the remarks that have been made by Shri Mathai . . . amount exactly to contemptuous insults, gross calumny and foul epithets, because he says that due to the "ever-mounting tendency in our Parliament" to make charges against officers "without verifying facts" no honest person, no "self-respecting person" in this country will come forward to take service under Government.

Raja Mahendra Pratap suggested that the matter might be dropped and it was not necessary to refer it to the Privileges Committee or any other Committee.

Shri R. K. Khadilkar supporting the dropping of the matter *inter alia* stated:

. . . A certain remark had been made by a person who was a Special Assistant or an Under Secretary while he was in Government Service. No doubt, they constitute essentially a contempt of the House. But the question is whether we, as Members of this House, should attach so great an importance to the remarks made by this person. . .

It need not be given that importance to be referred to the Committee.

Shri Khushwaqt Rai supported reference of the matter to the Committee of Privileges and said:

The Committee of Privileges should be given the right to enquire in respect of those persons also who have aided in committing this breach of privilege, because they have also committed a breach of privilege . . . the Director or officer-in-charge of the Press Information Bureau has also committed a breach of privilege. This should also be considered.

The Prime Minister did not oppose the reference of the matter to the Committee of Privileges and stated *inter alia* that:

After all the dignity of the House may suffer in various ways and it may suffer even by attaching too great an importance to trivial matters. It is not merely a question of another person or other persons saying. What other

persons say may affect the dignity of the House but how we treat it also affects the dignity of the House.

I beg you leave to read a few lines from what I said on a previous occasion[17] because a reference has been made to that. On that occasion when the telegram from the Chief Minister of Kerala became the subject of argument here, I said this and I hold by it today:

> "I am a little anxious that we should not enter into a path of conflict in such matters, because this kind of thing might be overdone. There are things said, often enough, which are not desirable and things said in the heat of the moment which a person thinking more coolly would not have said. If we pursue every person who makes a statement like that, I do not know how many of us will be completely innocent of never making any remarks which might not be held up against us. We are all human beings, and I know that I err sometimes, Sir, though I hope not too often. So, from that point of view, if my mind was quite clear that it was a deliberate flouting of the dignity of Parliament or of any individual Member of Parliament, then, of course, there can be no doubt that that challenge has to be met. But where in other contexts in the heat of the moment or in a controversy something is said, I would personally prefer this House not to take too much notice of it. But, as I said, this is my personal reaction which I place before this House."

I hope I have been consistent in this matter, not with any idea of avoiding this reference because I support this reference to the Privileges Committee; but, quite apart from this, for the future, I may submit that it is a matter of maintaining the dignity of the House by not attaching too much importance to every odd word that some outsider says.

The amendment moved by Shri Braj Raj Singh was put to vote and negatived.

The motion moved by Shri H. N. Mukerjee referring the matter to the Committee of Privileges was then put and adopted by the House.[18]

Findings of the Committee.—The Committee of Privileges, in their Ninth Report presented to the House by its Chairman (Sardar Hukam Singh) on 6th March reported *inter alia* as follows:

(1) The Committee have carefully considered the remarks made by Shri M. O. Mathai in his letter of resignation to the Prime Minister, which are mentioned in the reference, made by the House to the Committee. The Committee are of the opinion that such remarks which cast aspersions and attribute irresponsibility tend to diminish the respect due to Parliament. Strictly construed, they would amount to a breach of the privileges of the House. The Committee, however, feel that it is not consistent with the dignity of the House to take notice of every such statement which may technically constitute a contempt of the House. The House would best consult its dignity if it ignored such improprieties and indiscretions.

(2) The Committee have also noted the expression of regret by Shri M. O. Mathai in his letter dated the 11th February, 1959, to the Speaker, Lok Sabha, which reads:

> "I deeply regret that my letter of resignation to the Prime Minister recently published in the Press should have given the impression that I meant to cast any aspersions on Parliament. I should like to assure you that nothing was farther from my thoughts and I am sorry if I said anything that could have been thus interpreted."

(3) The Committee are of the opinion that there is no reflection on the Speaker in the words used.

Recommendation of the Committee.—The Committee recommended:

That, in the circumstances, no further action be taken by the House in the case.

Action taken by the House.—No further action was taken by the House in the case. (*See also* pp. 122-3.)

Alleged attribution of the motive of slander to certain Members of Lok Sabha by the Chief Minister of a State.—*Facts of the case.*—On 22nd September, 1958, Shri M. R. Masani sought to raise a question of alleged breach of privilege arising out of a telegram reportedly sent by the Chief Minister of Kerala to the Union Minister of Home Affairs in the course of which the Chief Minister of Kerala, according to him, had attributed the motive of slander to certain Members of the House. The Speaker observed that he would bring it before the House the next day if he was satisfied that there was a *prima facie* case of privilege.[19]

On 23rd September Shri M. R. Masani, while seeking to raise the question, referred to a news report issued by the *Press Trust of India* from Trivandrum on 20th September and published in the *Times of India*, Delhi, and the *Amrita Bazar Patrika*, Calcutta, on 21st September, which *inter alia* stated:

The Kerala Chief Minister, Mr. E. M. S. Namboodiripad, has sent a telegram to the Union Home Minister, Pandit Pant, . . . according to official sources here.

The telegram, the sources said, contended that a State subject could not be discussed in Parliament without the concerned State getting an opportunity to explain its position, especially when some members of Parliament who raised the question " tried to slander the State Government in the name of explanation ".

Shri M. R. Masani contended that:

. . . In the course of that telegram, the Chief Minister is reported to have attributed the motive of " slander " to certain Members, unnamed, of this House.

" Slander " is a very serious charge to make against hon. Members engaged in the pursuit of their duties to the country. If members can be attacked like this and their *bona fides* questioned, freedom of speech in this House is in danger. " Slander " involves two things; it involves a lie or mendacity and in addition, according to the law and the dictionary, it also involves malice. In other words, the charge is that certain Members of this House are *mala fide* misusing their position here to slander against party. . .

. . . I request your permission to raise this matter, so that the House may be able to take a decision, either to summon Mr. Namboodiripad to the bar of this House to account for his conduct, or to refer this matter to the Committee of Privileges where this matter can be investigated and a report presented to this House. . .

Shri H. N. Mukerjee said that the forum of the House should not be utilised for making " observations in regard to the conduct of the

Chief Minister of a State of the Indian Union, without having gone, in the Privileges Committee or elsewhere in your Chamber, into the authenticity of the telegram, the authenticity of the report and so many other things".

Dr. K. B. Menon contended that the reference in the reported telegram was to himself and Shri Asoka Mehta, who had earlier sought to move an adjournment motion in regard to the situation in Kerala. He appealed to the Speaker to protect Members' right of freedom of speech in the House.

Sardar Hukam Singh expressed the following views:

. . . I feel that only the press report should not form the basis for an indictment by this august House. . . . Without the document, it would not be safe to take any action upon the report that has appeared in the Press.

Shri Frank Anthony was of the view that in the absence of the original document, the press report alone was a sufficient basis for referring the matter to the Committee of Privileges.

The Minister of Home Affairs (Pandit G. B. Pant) said that:

I received a telegram from the Chief Minister of Kerala, I think, on the 21st morning or thereabout. In that telegram, he had referred to two matters. One of them was Shri Asoka Mehta's adjournment motion. I had requested him to send me his own reactions to what had been said here and let me have his views as directed by you on the incidents that had been quoted. . .

The other matter was Dr. K. B. Menon's motion. There he referred to th report that, I think, had appeared in the meantime in the papers that he wa presumably to make a statement. He asked me to request the Speaker not to accede to that request at this stage and to let the State Government have the opportunity of stating what they had to say in this connection, so that the whole position may be before the House. I showed that telegram to the Speaker. . .

I have received another telegram from the Chief Minister today about the telegram that he had sent me previously. I have brought that telegram too to the notice of the Speaker, as desired by him. He has stated therein that there was never any intention of casting aspersions on anybody and so on.

As members wanted to know the contents of both the telegrams, the Speaker asked the Home Minister whether he was willing to place them on the Table. Pandit G. B. Pant replied that he had already sent a copy of the second telegram to the Speaker. As regards the first telegram, he said that the Chief Minister of Kerala in his second telegram had stated that his first telegram was confidential.

The Speaker then read out the second telegram to the House which was in the following terms:

Trivandrum 23 Steexp 220 Union Home Minister New Delhi

Refer my telegram dated twentieth and the motion in Parliament for breach of privilege as reported in Press. I wish to mention that the telegram read as a whole brings out the main point pressed before you namely that you should persuade Honourable Speaker not to permit discussion or explanation by Member without affording Kerala State opportunity to state facts and present case. Telegram was purely private and confidential communication urgently made in official confidence with a view to enable you to present Kerala point

of view before Honourable Speaker. I never intended to publish this telegram. On the contrary meant for your consumption only. Moreover never intended cast aspersions of reflections on any Member of Parliament or his conduct or proceedings of House. Context makes clear my meaning that if State not allowed to present correct facts an one sided version from a Member may appear as slander on Kerala Government. Never meant to make imputation on Member but pleaded that if Kerala Government's case not before House impression would be damaging to my Government. Pray explain position to Honourable Speaker and my complete absence of intention to cast aspersion on Member or House.

Chief Minister Kerala.

A lengthy discussion thereafter took place on the question whether in view of the assertion of the Chief Minister of Kerala that his first telegram to the Home Minister was confidential, the said telegram might be laid on the Table or not. Shri A. K. Sen (Minister of Law) expressed the following views in the matter:

The presumption relating to official communications is that they are *prima facie* confidential.

. . . it will be impossible to transact official business if communications between the Chief Ministers of States with the Home Ministry or the Prime Minister or the President are subjected to scrutiny on the barest of allegation or on its being reported, assuming correctly, in the papers. They are *prima facie* confidential and unless there is evidence before you to show *aliunde* that these communications were meant to be communicated to you *qua* Speaker, these communications should not be forced to be brought on the Table of the House. . . . I do not think any evidence has been offered to the contrary to rebut the contention in the latest telegram of the Chief Minister, namely, that he did not intend it to be communicated to any one else. There is no evidence before you to rebut that allegation. I humbly submit that the dignity of the House will be best served if you accept that statement as it is, without trying to question it.

At the end of the discussion, the Speaker observed that he would consider the matter and give a ruling later.[20]

On 27th September, 1958, the Speaker referred to the question of privilege sought to be raised by Shri M. R. Masani and observed:

I hold under rule 225(1) that the matter proposed to be discussed is in order and I give my consent under rule 222.

Shri M. R. Masani, while asking for leave of the House to raise the question of privilege, recapitulated developments leading to the issue of telegram by Chief Minister of Kerala State. Shri Masani referred to the second telegram sent by the Chief Minister of Kerala to the Union Minister of Home Affairs and contended:

. . . May I quote a sentence from that telegram to show that there is no denial that the word "slander" had been used against the hon. Members of this House although an attempt has been made to explain away the use of that word? What Mr. Namboodiripad says in his second telegram is—I am quoting from the proceedings of the House:

"Context makes clear my meaning that if State not allowed to present correct facts an one-sided version from a Member may appear as slander on Kerala Government.". . .

The second telegram says that no aspersion was cast on anybody. But I

may submit there is not any kind of apology or expression of regret for a wrong committed.

Since objection to leave being granted was taken, the Speaker after ascertaining that more than twenty-five Members were in favour of leave being granted, declared that leave was granted.

Reference to the Committee of Privileges.—Shri M. R. Masani then moved the following motion:

That the attention of the House having been drawn by an hon. Member on 23rd September to the telegram sent by Mr. E. M. S. Namboodiripad, Chief Minister of Kerala, to Pandit G. B. Pant, Home Minister, extracts from which are contained in a report based allegedly on official sources, issued by the *Press Trust of India* from Trivandrum on 20th September and published in the *Times of India*, Delhi, and *Amrita Bazar Patrika*, Calcutta, on 21st September in the course of which Mr. Namboodiripad has attributed the motive of slander to some hon. Members of this House;

and having taken note of the subsequent telegram from Mr. Namboodiripad to Pandit G. B. Pant, which was read to this House by the Hon'ble the Speaker on 23rd September;

This House resolves that the matter be referred to the Committee of Privileges for investigation as to whether a breach of privileges of the House and of the Hon'ble Members concerned has been committed; and whether any contempt of the House thus committed has been adequately purged; and that the Committee be requested to present its report and recommendations for appropriate action at the first day's sitting of the next Session of the Lok Sabha.

Thereupon, Shri V. P. Nayar raised the following objections by way of point of order:

1. That the House had no jurisdiction to consider the matter as the mandatory requirements of Rule 223 had not been complied with. Rule 223 required that "If the question raised is based on a document, the notice shall be accompanied by the document." Inasmuch as the motion was based on a mere press report and the original telegram had not been produced the matter could not be raised in the House.

2. The document consisted of a telegram sent in official confidence by the Chief Minister of a State to the Minister of Home Affairs and in view of the oath of secrecy the Minister of Home Affairs could not disclose it to the House.

3. The telegram sent by the Chief Minister of Kerala to the Minister of Home Affairs was a document with a constitutional, statutory and conventional obligation within the meaning of Rule 41(2) (xx) of the Rules of Procedure and could not be disclosed.

4. Under Rule 42 of the Rules of Procedure, "In matters which are or have been the subject of correspondence between the Government of India and the Government of a State, no question shall be asked except as to matters of fact. . ."

After hearing views from all sides of the House, the Speaker ruled out the above point of order and observed:

. . . the document on which this motion of privilege has been brought is the report of the *Times of India*. He (Shri M. R. Masani) has filed that document . . . he has satisfied the requirements of rule 223. Hence it was that under rule 225, I said that the notice was in order. . . . Therefore, technically, the requirements of rules 222, 223 and 225 have been satisfied.

When once the matter goes to the Committee of Privileges, the procedure to be adopted for the production of a document before the Committee is laid down under Rule 270.

Rules 41 and 42 . . . as I have already explained, . . . did not apply to this. Under those circumstances, I do not find that there is any point of order.[21]

Dr. K. B. Menon then moved the following amendment to the privilege motion moved by Shri M. R. Masani:

That for the last paragraph of the original motion, the following be substituted, namely:—

"This House resolves that a contempt of the House has been committed by Shri E. M. S. Namboodiripad, the Chief Minister of Kerala State and that he should be called to the Bar of the House on the first day of the next session."

The discussion was not concluded on 27th September, the last sitting of the Fifth Session of Lok Sabha as the Private Members' Business commenced at 14.30 hours. The Speaker, therefore, declared in the House that the matter would stand over to the next Session.[22]

On 27th November, when the House resumed discussion on the motion of privilege, Shri T. C. N. Menon moved the following substitute motion:

The attention of the House having been drawn by a member on 23rd September to the report of a telegram alleged to have been sent by Mr. E. M. S. Namboodiripad, Chief Minister of Kerala State, to Pandit G. B. Pant, Home Minister, extract from which is contained in reports in two newspapers;

and having taken note of the subsequent telegram from Mr. Namboodiripad to Pandit G. B. Pant which was read to this House on 23rd September by hon. the Speaker;

and having taken note of the fact that the original telegram sent by Mr. E. M. S. Namboodiripad itself was a confidential document and intended by the sender to be such;

and being satisfied that it would be improper and inappropriate to initiate any action relating to the privilege of this Hon. House basing upon a confidential document never intended to be published;

the House decides that no further action be taken in respect of the telegram above referred and that the whole matter and any proceedings thereto be dropped.

Speaking on his motion, Shri T. C. N. Menon said that Shri Masani's privilege motion was "an affront to the real spirit and letter of our Constitution", inasmuch as no action should be taken which would "promote any sort of ill-feeling or war between the States and the Centre". He added that the first telegram sent by the Chief Minister of Kerala to the Union Minister of Home Affairs was a confidential telegram and, therefore, a privileged document. He contended that any discussion in the House on such a document "will not be helping the relations between the State and the Centre and it will be undermining the very nature of the confidence that the Government holds on behalf of the State Governments".

Speaking on his amendment, Dr. K. B. Menon contended that the second telegram from the Chief Minister of Kerala to the Union Minister of Home Affairs was "not an apology" but "an effort to explain away the situation". He added that he was interested "in

getting at the truth " and not " in getting after persons " and that, therefore, he had no objection if the House rejected his amendment and accepted the main motion referring the matter to the Committee of Privileges.

Shri Asoka Mehta supported the motion for referring the matter to the Committee of Privileges and said that the Chief Minister of Kerala had used the word " slander " " not in the heat of the moment ".

Shri S. A. Dange said that the " question of privilege should not be pushed too far " and that the " privilege motion should not be allowed ".

Shri Frank Anthony supported the motion for reference of the matter to the Committee of Privileges and contended that the Chief Minister of Kerala in his second telegram to the Union Minister of Home Affairs had admitted that he had used the word " slander " in respect of Dr. K. B. Menon.

The Prime Minister said that he " would have preferred if this motion had not been brought ". He added that:

> . . . There are things said, often enough, which are not desirable and thing said in the heat of the moment which a person thinking more coolly woul not have said.
>
> . . . if it was a deliberate flouting of the dignity of Parliament or of an individual Member of Parliament, then, of course, there can be no doubt tha that challenge has to be met. But where in other contexts, in the heat or the moment or in a controversy something is said, I would personally prefer this House not to take too much notice of it. . .

Shri R. K. Khadilkar thought that the Chief Minister of Kerala in his second telegram to the Union Minister of Home Affairs, had given an " explanation " of his former telegram and thus stood " exonerated ". He felt that the " best course " was " to drop the motion as it has served the purpose ".

Shri A. K. Gopalan contended that after the receipt of the second telegram, it was quite essential to end the matter there if they wanted to restore the dignity and privilege of the House.

Shri Surendra Mahanty contended that a breach of privilege had been committed but that the House might condone that action as the motion of privilege had served its purpose.

After some more discussion, the substitute motion moved by Shri T. C. N. Menon was put to the House and negatived. The amendment moved by Dr. K. B. Menon was then put and negatived. Thereafter, the original motion moved by Shri M. R. Masani, referring the matter to the Committee of Privileges, was put and adopted by the House by 138 to 32 votes.[23]

Findings of the Committee.—The Eighth Report of the Committee of Privileges dealing with the above question of privilege was presented to the House by the Chairman of the Committee on 20th February, 1959.

The Committee, in the first instance, decided that the telegram, dated 20th September, 1958, from the Chief Minister of Kerala to the Union Minister of Home Affairs, which was referred to in the news report issued by the *Press Trust of India* from Trivandrum on the 20th September and published in the *Times of India*, Delhi, and the *Amrita Bazar Patrika*, Calcutta, on the 21st September, might be obtained from the Minister of Home Affairs for the consideration of the Committee. The said telegram was accordingly supplied by the Union Minister of Home Affairs.

The Committee also examined Sarvashri M. R. Masani, Asoka Mehta and Dr. K. B. Menon, Members of the House.

In their report, the Committee made *inter alia* the following observations:

11. The Committee have compared the said news report with the text of the telegram, dated the 20th September, 1958, from Shri Namboodiripad to the Union Minister of Home Affairs and find that the following statement occurring in the news report does not appear in the telegram received by the Union Minister of Home Affairs:—

> ". . . some members of Parliament who raised the question ' tried to slander the State Government in the name of explanation '."

12. The Committee, however, find that the word " slander " occurs in the following sentence in the said telegram:—

> " Pray persuade Honourable Speaker that State subject may not fairly be discussed in Parliament without State getting opportunity because explanation of Member become mere slander on State Government."

The Committee note that Shri Namboodiripad, in his subsequent telegram, dated the 23rd September, 1958, to the Union Minister of Home Affairs, has given the following clarification in respect of the above statement:—

> " Never intended cast aspersions or reflection on any Member of Parliament or his conduct or proceedings of House. Context makes clear my meaning that if State not allowed to present correct facts a one-sided version from a Member may appear as slander on Kerla Government. Never meant to make imputation on Member but pleaded that if Kerla Government's case not before House impression would be damaging to my Government. Pray explain position to Honourable Speaker and my complete absence of intention to cast aspersion on Member or House."

13. The Committee feel that the reasonable construction of the relevant sentence occurring in the telegram, dated the 20th September, 1958, should be as follows:—

> State subject may not fairly be discussed in Parliament without State getting opportunity otherwise explanation of Member may become mere slander on State Government.

The Committee, after careful consideration of the matter referred to them, are satisfied that Shri Namboodiripad has not attributed the motive of slander to any Member of the House in relation to his conduct in the House.

15. The Committee are of opinion that the matter, referred to them, does not involve any breach of privilege. The Committee did not feel called upon to consider to decide whether any other matter, not referred to the Committee by the said Motion, involved any breach of privilege or not. The Committee recommended that no further action be taken in the case.

Action taken by the House.—On 24th February the following motion was moved by Shri Naushir Bharucha and was adopted by the House:

That the Eighth Report of the Committee of Privileges presented to the House on the 20th February, 1959, be taken into consideration.

Shri Naushir Bharucha then moved the following motion:

While adopting the Eighth Report of the Committee of Privileges presented to the House on 20th February, 1959, and recommending that no further action be taken in the case, this House regrets that unfortunate expressions such as " hitting below the belt " and " political propagandist hoax " should have been used in the telegram dated 20th September, 1958, in connection with the legitimate expression of views by some hon. Members of this House.

The Speaker observed:

. . . This motion may be split up into two parts. The latter part which refers to other matters in the telegram is outside the scope of the original motion.

. . . It is not as if the whole telegram is before us. Only one part of it was brought to the notice of the House by that Motion.

. . . Only one part of the telegram which has been referred to as bringing this House into contempt and in regard to which the Committee has found that there is no breach of privilege can be taken note of and we cannot take note of any other part of the document once it was not the subject matter of the motion adopted by the House. . .

So, I disallow that portion as I find it out of order. So far as the other portion of the motion is concerned, it may be relevant. As regards other matters, the hon. Member may table a separate motion. . .

Shri Surendra Mahanty then moved an amendment to the motion moved by Shri Naushir Bharucha to the effect that . . . " it be an instruction to the Committee of Privileges to review its recommendations in the light of the Kerala Chief Minister's telegram dated 20th September, 1958, in its entirety ".

The Speaker, while ruling the above amendment out of order, observed:

The rule [rule 315(3)] here says:

" After the motion made under sub-rule (1) is agreed to, the Chairman or any member of the Committee or any other member, as the case may be, may move that the House agrees, or disagrees or agrees with amendments, with the recommendations contained in the report."

There is no provision here for sending the report back to the Committee.

Shri Radha Raman, another Member, then moved the following motion which was adopted by the House:

That after taking into consideration the Eighth Report of the Committee of Privileges the House is of the opinion that the matter may not be proceeded with.

Alleged reflections on Members of Parliament in a State Legislative Assembly.—*Facts of the case.*—On 26th March Shri P. K. Deo drew the attention of the House to the following news item appearing

under the caption " Who does not give false accounts " in *Samaj*, an Oriya daily newspaper of Bhubaneshwar, in its issue of 18th March:

In reply to the criticism of some members that Block Development Officers have been using Government jeeps for their own work and have been submitting false accounts so that they may not be caught, Dr. Mehtab, the Chief Minister, replied in a realist manner. Aiming at the critics, the hon. Chief Minister said that Members of the Legislative Assembly and Members of the Parliament also furnished false accounts (false vouchers). The Chief Minister further sought the advice of others for its remedy.

Shri Deo contended that passing of such sweeping and general remarks against Members of Parliament constituted a reflection on the House and said that the Chief Minister of Orissa (Dr. Hare Krushna Mehtab) had selected the most opportune time to hit the Members of Parliament below the belt, thinking that he would get the protection of Article 194 (2) of the Constitution under which any action or proceedings in the Legislative Assembly of a State could not be questioned in any court of law. Shri Deo felt that a *prima facie* case had been established and, therefore, Dr. Mehtab and the editor of the *Samaj* might be called to the Bar of the House to explain their conduct or, in the alternative, the matter might be referred to the Committee of Privileges for investigation and report by a specified date.

The Minister of Home Affairs (Pandit G. B. Pant) in opposing the point of privilege raised by Shri Deo observed:

I do not at all think this report is correct. If any statement like that has been made, it is unfortunate and I would be sorry that any responsible person should have made such a statement. But so far as the motion of Privilege is concerned, the proceedings of all Legislatures and Parliament are privileged and no action can be taken in one House for anything that is said in another House. It may be right, it may be wrong, it may be something trivial or small. We may not like that at all. But, still, this is not the remedy. So, while I would be sorry if such a statement has been made, no question of privilege arises.

Ruling by the Speaker.—The Speaker ruled as follows:

I merely brought it up for the purpose of finding out what exact jurisdiction we will have, before I give consent to raise it in the House itself. This is a preliminary stage. I am not giving my consent just now. . . . First of all, we do not have the statement of the hon. Chief Minister, what exactly he said, because people who are sitting in the Galleries may understand it in a different way. . .

I agree with the views of the hon. Home Minister. I am not going to give my consent for the reason that each House is supreme as far as its own proceedings are concerned. The immunity that we have in this House for being charged for defamation or any other charge by any other person or any other Legislature, the same immunity applies to him also. If really the hon. Chief Minister has said what he is alleged to have said, it is regrettable, as the hon. Home Minister has said. I am sure that if any hon. Minister or any member in any other House takes advantage of the immunity there, the other fourteen States with the Legislatures, including Upper Houses, will also take advantage of it. Now, if it is really true, this ought not to be continued. I hope and

trust that this wholesome principle will be followed everywhere—no House will cast any aspersion and no Member will cast any aspersion on any member of the other House or any other House in this way. I do not give my consent to this. I will treat it as closed.

Alleged reflection on a Member by another Member outside the House.—*Facts of the case.*—On 7th May Shri Frank Anthony sought to raise a question of privilege arising out of the following report of a speech alleged to have been made by Shri Joachim Alva, another Member, outside the House and published in the *Times of India* of that date:

Mr. Alva suspected that some foreign powers were behind Mr. Anthony's move.

Shri Anthony stated that the reference was to his Resolution for inclusion of English in the Eighth Schedule to the Constitution which was before the House. He contended that the allegation that they were functioning in the House virtually as foreign agents was a deliberate, malicious untruth and a wanton breach of privilege of the House.

The Speaker observed that he had not given his consent to the raising of the matter as a question of privilege, but had only allowed Shri Frank Anthony to mention it because the Member had said that it was an urgent matter and it could not brook any delay. The Speaker added that the Member had come to him just at the nick of the moment and he had not had time to go into it. He, therefore, reserved his ruling.

Shri Joachim Alva, the Member concerned, stated that:

I may tell the hon. House that I would be the last person to attack the personal character of any fellow-Member of Parliament. I would be ashamed of myself to call an hon. Member a dog; then I shall have to prepare myself to be called a dog. I only said that this agitation for the English language may assume dangerous proportions; foreigners may take advantage of this. This is all I said. I never used the words " foreign agents ".

Ruling by the Speaker.—On 9th May the Speaker observed *inter alia* that:

Hon. Members may be aware that the other day Shri Anthony came to me post-haste inside the Chamber and wanted an opportunity to raise a privilege motion. He said that Shri Joachim Alva is reported to have said—in the *Times of India*—that Shri Anthony's motion for the inclusion of English was inspired by some foreigners and so on. Shri Joachim Alva immediately got up and said that it was not what he said and that he spoke something else. After that I thought there was nothing more to be done and that it need not be pursued.

Some hon. Member suggested that there was a report in the Press and as against it the hon. Member has now made a statement in the House. I always prefer the statement of hon. Members of this House to what appears in the newspaper. Therefore, I thought it was not necessary to pursue the matter at all.

But Shri Anthony came to me and said that I must ask the *Times of India* as to why they have reported like that and so on. I thought of asking them

independently of this. In the case of such statements the veracity of any hon. Member who has made a statement should not depend upon the veracity or otherwise of the Press correspondent. Hon. Members must themselves give respect to one another and to Parliament as a whole. There is no meaning in trying to pursue this matter. However, I will get the explanation* from the *Times of India* correspondent. But I do not want to make this question dependent upon that and so I refuse to give my consent to moving this motion.

Dr. Ram Subhag Singh and certain other membe s stated that there was no need to ask the Press correspondent to explain how he reported the alleged statement. The Speaker then observed:

If the House does not want me to ask the Press why it was reported like that I will drop it.

Statement by a Minister expressing inability to lay on the Table of the House a document claimed to be confidential.—*Facts of the Case.*—On the 7th August the Speaker informed the House that he had received notice of a question of privilege from Shri V. P. Nayar regarding the statement made by the Minister of Home Affairs in the House on the 3rd August, 1959, expressing his inability to lay on the Table of the House a copy of the Governor's Report[24] to the President on the situation in Kerala, claiming it to be confidential. The Speaker added that he would like to hear Shri V. P. Nayar and representatives of various Groups in the House, before deciding the admissibility of the question of privilege.

Shri V. P. Nayar said that the Home Minister's statement that he was not prepared to lay on the Table of the House a copy of the Governor's Report constituted a breach of privilege of the House. He contended that the Governor's Report was necessary for the due discharge of the functions of Parliament, inasmuch as the President's Proclamation in respect of Kerala, which was before the House and was required to be approved by Parliament, could not be properly considered without knowing the contents of the Governor's Report. He added that according to May's *Parliamentary Practice*:[25]

The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are " absolutely necessary for the due execution of its powers ".

Quoting further from May's *Parliamentary Practice*,[26] Shri Nayar said that on page 270 it was stated:

Parliament is invested with the power of ordering all documents to be laid before it which are necessary for its information.

* The following correction was published by the *Times of India* of its own accord in its issue dated 13th May, 1959:

" In the *Times of India* of 7th May, a report appeared of what Mr. Joachim Alva, M.P., said at a meeting organised by the Delhi Pradeshik Hindi Sahitya Sammelan at Darbar Hall, Delhi, on Wednesday, 6th May. This was an erroneous report.

" What Mr. Alva actually said was that if the agitation for English assumed dangerous proportions, some foreigner might take advantage of it. The error in reporting is deeply regretted."

He contended that a similar right must necessarily accrue to Lok Sabha by virtue of Article 105 (3) of the Constitution.

Shri Nayar said that the matter might be referred to the Committee of Privileges for investigation and report.

Shri Easwara Iyer said that the question as to whether the disclosure of a document was detrimental to the public interest should be decided by the House and not by any individual Minister.

Shri Nath Pai felt that no question of breach of privilege was involved in the matter as the House had not ordered the Home Minister to produce the document. It might have been different if the House had ordered him to produce the document and then he had refused. He, however, added that the House should be taken into confidence and all the relevant material and information that Government had in their possession be made available to the House.

Shri Naushir Bharucha said that Shri V. P. Nayar had failed to show what particular or specific privilege was involved in the matter and how the breach had occurred. The proposition that the House was supreme was not disputed. If the Minister claimed that that wa a State confidential document and in the public interest he would n like to place it before the House, he was not overriding the authorit of Parliament, because the House, in its wisdom, had made a rul that in such cases the Minister should have the power not to lay on the Table such a document. It was for the Government to produce before the House such information as they liked to convince the House of the justification for issue of the President's Proclamation. If the Government did not place before the House all the material and the House was not convinced, it was open to the House not to approve the Proclamation. There was, however, no question of privilege involved in the matter.

Shri P. K. Deo, while recognising the inherent power of the Government to withhold the production of any document which they might deem fit, contended that Government should not seek protection behind that pretext and they should make all the documents available to the House before the House was asked to give its approval to the President's Proclamation.

The Minister of Law (Shri A. K. Sen) observed *inter alia* as follows:

> The privileges are well-defined and ascertained and those who want to introduce a new visitor in the gallery of privileges must establish its right as a pre-existing one. We do not find any such privilege anywhere cited or referred to or recognised. On the contrary, the law has been quite well settled, and it is embodied in our rule 368. I may read rule 368, which, in my opinion, fully sets out the law on the point.
>
> "If a Minister quotes in the House a despatch or other State paper which has not been presented to the House, he shall lay the relevant paper on the Table:
>
> Provided that this rule shall not apply to any documents which are stated

by the Minister to be of such a nature that their production would be inconsistent with public interest."

The rule is quite clear that even where I quote a paper, if I claim protection under public interest I cannot be compelled to produce it.

> " Provided further that where a Minister gives in his own words a summary or gist of such despatch or State paper it shall not be necessary to lay the relevant papers on the Table."

I suppose the rule makes it perfectly clear. . . . The hon. Home Minister, when he dealt with the telegram last time, in his own precise way, put the law exactly as it is. He said, " I claim privilege but if the House so desires I shall have to obey." That is the law but that again is not a question of privilege. If such an order is made on a Minister by the House notwithstanding the claim of privilege—it rarely happens anywhere either here or outside—then, it is a case of contempt if the Minister disobeys it; it is not a question of privilege.

Ruling by the Speaker.—The Speaker gave, *inter alia*, the following ruling:

I have been anxious to see whether a *prima facie* case has been made out. Therefore, at the outset, I said that it must be shown to me first of all that there is an obligation cast upon the Home Minister to place the document on the Table of the House whether an individual Member asks for it or whether the whole House collectively asks for it. . . . If the hon. Minister cannot withhold it and if he is bound to place it on the Table of the House then if he refuses to do so, certainly, there could be a breach of privilege. . .

Shri Nayar who tabled this motion mentioned Rule 368 of our Rules of Procedure which lays down that even in cases where a Minister refers to a particular document and reads it out in the House, ultimately, when the House insists upon its being placed on the Table of the House, it is open to the Minister to say that in public interest he is not placing it on the Table of the House. That is the clear wording of Rule 368. It does not admit of any doubt so far as that matter is concerned.

Therefore, Shri Nayar, at the outset, wanted to say that this Rule is *ultra vires* of the Constitution and referred to Article 105(3) of the Constitution which says that in other respects our privileges will be those of the House of Commons until a law has been made by Parliament relating to privileges.

It is true that no Bill or Act has been passed by Parliament. But Rules have been framed. Therefore, he wanted to say that the Rules which are in conflict with or are inconsistent with the general provisions of the Constitution are to that extent not valid. He referred to Article 105(3) and said that it must be read along with the procedure in the House of Commons as laid down in May's *Parliamentary Practice* or otherwise. He referred to page 270 of May's *Parliamentary Practice* and said that in general it is open to Parliament to call for any papers. Then, on page 460, something is said specifically in relation to documents which are referred to in the House under the heading " Citing documents not before House." There it is said that it has also been admitted that a document which has been cited ought to be laid on the Table of the House if it can be done without injury to the public interest. Now, therefore, he admits that this is proper. The provision which has been made under Rule 368 imports the substance contained in May's *Parliamentary Practice* under the heading " Citing documents not before the House." Even if the Minister cited some documents, he may say: " No, no; in the public interest I am not going to place them on the Table of the House." There is nothing *ultra vires* in these rules. Reading May's *Parliamentary Practice*[1] and Rule 368 together, it is open, even in a case where the Minister refers to a particular document, for him to say *a fortiori:* " I am not going to place it

on the Table of the House." *A fortiori,* when the Minister does not refer to a document at all, I cannot compel nor can the House compel him to place on the Table of the House that document. I do not see how a Minister refuses to discharge the duty imposed upon him or how it is open to the House to call upon him to produce such document.

There is absolutely no breach from the point of view of privilege. So far as law is concerned, I am not satisfied that there is *prima facie* a case of breach of privilege for which I should give consent.

Request by the Police authorities for certain documents in the custody of the Lok Sabha Secretariat in connection with investigation of a case.—*Facts of the case.*—On 12th August the Superintendent of Police, Special Police Establishment, Ministry of Home Affairs, in a letter addressed to the Lok Sabha Secretariat, made the following request:

We are investigating a case against Acharya R. H. Dube, who is alleged to have got a suite of rooms allotted to himself in the Constitution House on the strength of a letter purported to have been addressed by Shri Ganpati Ram, M.P., to the Estate Officer. In course of investigation, it has transpired that a similar letter was addressed to the Chairman, Housing Committee of the Lok Sabha, on 9th May, 1959, and that the Chairman had entered into correspondence with Shri Ganpati Ram in this behalf.

As these letters are alleged to have been forged, a reference has to be made to the Government Examiner of Questioned Documents. I shall be grateful if you kindly make these letters available to us for this purpose.

I further request that some documents containing the admitted writings of Shri Ganpati Ram, M.P., may also kindly be made available to us.

In a subsequent letter dated 24th August the Superintendent of Police specified the following documents which were required by him:

(i) A letter purported to have been addressed by Shri Ganpati Ram, M.P., to the Chairman, House Committee of the Lok Sabha, on the 9th May, 1959, regarding allotment of a suite of rooms in the Constitution House to Acharya R. H. Dube.

(ii) Arrival and departure reports submitted by Shri Ganpati Ram, M.P.

Reference to the Committee of Privileges.—On 19th August the Speaker referred the matter to the Committee of Privileges under rule 227 of the Rules of Procedure and Conduct of Business in Lok Sabha.

Report and recommendations of the Committee.—The Committee of Privileges, in their Tenth Report laid on the Table on 4th September, recommended as follows:

(1) The Committee in paragraph 10 of their First Report, adopted by the House on the 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."

(2) It is quite possible that the documents in question in the present case may have to be produced in a Court of Law, the Committee, therefore, recommend that the following documents may, with the permission of the House, be made available to the Superintendent of Police, Special Police Establishment, Ministry of Home Affairs:—

(i) Letter dated 9th May, 1959, purported to have been addressed by Shri Ganpati Ram, M.P., to the Chairman, House Committee of the Lok Sabha, regarding allotment of a suite of rooms in the Constitution House to Acharya R. H. Dube.

(ii) Two arrival and departure reports submitted by Shri Ganpati Ram, M.P.

Action taken by the House.—On 7th September Shri Shivram Rango Rane moved and the House agreed:

That this House agrees with the Tenth Report of the Committee of Privileges laid on the Table on the 4th September, 1959.

Statements by Prime Minister outside the House when the House is in Session.—*Facts of the case.*—On 4th December Shri Hem Barua, a Member, complained in the House that the Prime Minister had on the previous day stated at a Press Conference that he had received a reply from the Prime Minister of China to India's protest against the ill-treatment of Indian prisoners, although he had ample opportunity to make a statement in the House. He added that when the House was in session, an important statement should be made on the floor of the House before it was made anywhere outside the House.

The Prime Minister stated *inter alia* as follows:

. . . In fact, I do not see any question of policy involved or any question in which the House or the country is agitated. Here is a correspondence going on. I wrote a letter and received a letter in reply to which I am going, no doubt, to reply in time, but just to inform the House that I have received a letter, rather a formal letter from there, seems to me of no specific or great importance. I would certainly have informed it always if a proper request or a suggestion for that was made. . . . I did not make any statement there. A question was asked and I gave an answer that I have received a letter.

Ruling by the Speaker.—The Speaker observed *inter alia* as follows:

. . . I have said that whenever any statement of policy has to be made or is made by a Minister when the House is in session he must take the House into confidence first. If a letter has been received and no specific question has been put here to the hon. Prime Minister, you cannot take it as a breach of privilege of this House if he does not state it here. No doubt, the hon. Member tabled yesterday an adjournment motion. . . . I did not allow it. . . It is not as if I called upon the Prime Minister, he refused to disclose that information here and then went to the Press Conference and disclosed it there. In that case it would have been a different matter. . . . Every matter which is not placed before the House is not a matter of such great importance. It is not a breach of privilege.

Statement by a Minister outside the House when the House is in session.—*Facts of the case.*—On 17th December the Speaker informed the House that he had received notice of a question of privilege stating that the Minister of Defence had made an important policy statement regarding the expansion of NCC outside the House while the House was in session.

Ruling by the Speaker.—After hearing the Minister of Defence, the Speaker ruled as follows:

I am clear in my mind that there is no breach of privilege in this matter. Even if a matter of policy were to be announced outside the House while the House is in session, it was ruled[28] in the House of Commons that there was no breach of privilege; it may be a breach of courtesy. When the House is in session all matters of policy ought to be announced first to the House. That is the rule that has been adopted for several years in this House also.

So far as this matter is concerned, the hon. Minister has explained that it is only an expansion of the NCC for which he need not come before the House for any particular sanction from time to time. So far as the announcement of the new policy is concerned, the hon. Minister says that there will be a Resolution and he will discuss it here. Even if he had made a statement, that is not a breach of privilege and no consent should be given to raise it as a matter of privilege. But all the same, I am sure the hon. Ministers will observe this decorum and courtesy to this House. So far as this matter is concerned, I am satisfied that the hon. Minister has not said anything outside the House which, even as a matter of courtesy, he ought to have placed before the House before saying it outside.

Publication of expunged proceedings of the House by a newspaper.—*Facts of the case.*—On 21st December Shri Surendranath Dwivedy sought to raise a question of privilege stating that the *Free Press Journal* of Bombay, in its issue dated 17th December, had published a portion of the proceedings of the House dated 16th December, which had been expunged by the Speaker. Shri Dwivedy contended that the publication of the expunged proceedings appeared to be intentional because after publishing the expunged portion it was added in the newspaper that it was later expunged by the Speaker.

The Speaker observed *inter alia* as follows:

I have drawn the Editor's attention to it and I have asked for an explanation. . . . After the receipt of this reply, I will bring it before the House for such action as it may deem proper.

On 9th February, 1960, the Speaker informed the House as under:

The Editor of the *Free Press Journal* has since expressed unconditional apology for the oversight in a letter dated 21st December, 1959, which reached me on 23rd December, 1959, that is, after the House had adjourned *sine die* and was therefore published in Bulletin* Part II dated the 23rd December, 1959.

In view of this unconditional apology, the matter may be closed.

The House agreed and the matter was closed.

* The text of the letter dated the 21st December, 1959, from the Editor, *Free Press Journal*, Bombay, published in para. 3237 of Lok Sabha Bulletin, Part II, dated 23rd December, 1959, was as follows:

MADRAS: LEGISLATIVE COUNCIL

Contributed by the Secretary to the Legislature

Reflection on one House by Member of another.—On 12th December a Member of the Madras Legislative Council raised a matter of privilege with reference to the remarks alleged to have been made by a Member of the Madras Legislative Assembly in the course of the General Discussion on the Governor's Address in the Legislative Assembly on 9th December, which in his opinion cast aspersions on the proceedings of the Council. The Chairman reserved his ruling and said that he would call for the official report of the proceedings of the Assembly and examine it.

On 18th December the Chairman referred to the privilege issue raised on 12th December, and said that he had since then obtained the official copy of the report of the proceedings of the Assembly in question, and that, on a careful consideration of the speech of the Member concerned, he was satisfied that no *prima facie* case of breach of privilege existed and that he had decided to drop the matter. In that connection, the Chairman said that he fully endorsed what the Speaker had quoted from Sir Erskine May's *Parliamentary Practice* in regard to the principle and procedure applicable to a complaint of breach of privilege of one House against a member or an officer of the other House. When a breach of privilege was initiated in one House, the Chairman or the Speaker of that House had to decide whether under the rules a *prima facie* case existed. If it was decided that no *prima facie* case existed, the matter ended there and in case it was ruled that there was a *prima facie* case of breach of privilege, then the matter with all facts and evidence was to be referred to the Speaker or the Chairman of the other House who shall deal with the matter in the same way as if it were a case of breach of

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"Our Delhi Office has communicated to us late on Saturday afternoon the text of an urgent and confidential letter, No. 797-CI/59, dated the 18th December, 1959, addressed by the Deputy Secretary, Lok Sabha, to the Editor, *Free Press Journal*. I have not still received the said letter, but I do not wish to delay my reply to it and therefore hasten to send this reply.

"In fact, immediately my attention was drawn to the report of the Lok Sabha proceedings in the *Free Press Journal* of the 17th December, 1959, I myself intended to write to you, regretting the mistake made.

"I may add that I am informed that the expunging of the objectionable portion was not announced by the Hon'ble Speaker in the House but was subsequently communicated to the P.T.I., who communicated the same to the Press.

"It appears that, due to pressure of work, the Sub-Editor overlooked the matter. I may further add that I have taken stern action against the Sub-Editor concerned. I deeply regret the error and express my unconditional apology for the same. I can assure you that the *Free Press Journal* is, as it has always been, anxious to uphold the highest traditions of parliamentary practice, and I have issued instructions to see that utmost care is exercised in the sub-editing of the parliamentary proceedings.

"I hope the Hon'ble Speaker will be good enough to accept my unconditional apology for the oversight."

privilege of that House and communicate the action taken thereon to the House in which the matter was raised. He also said that he fully agreed with the view of the Speaker that the above procedure should be strictly followed in the interest of good and cordial relationship between the two Houses.[29]

MADRAS: LEGISLATIVE ASSEMBLY

Contributed by the Secretary to the Legislature

Reflection on Members.—1. A question of breach of privilege amounting to contempt of the House was raised in the Assembly on 10th February by Shri M. Kalyanasundaram, against a Tamil Journal *Kumudam* of that date, which had published an article under the caption "This is our M.L.A.", in which the author, in paying encomia to a member of the Legislative Assembly had stated that "thanks to the presence of that Member, a lifeless House was enlivened", thus causing an aspersion on the Legislative Assembly. An unconditional apology was tendered both by the Editor and by the author of the concerned article. In view of this the matter was dropped.[30]

2. Shrimathi C. Kolanthaiammal and Shrimathi P. K. R. Laksh mikantham invited the attention of the House to a report in the Tam daily *Dina Thanthi*, dated 15th February, of a speech stated to hav been made by a member of the House; it was alleged that it affectec the dignity of the House and of the Lady Members in particular. The English version of the portion of the speech, taken exception to by the Members, is as follows:

TOYS CLAD IN SAREES

All the Congress M.L.As. are toys. Among them are toys clad in sarees. Whenever Minister Subramaniam looks at them, thoughts of marriage come to his mind.

As the speech, the report of which was taken exception to by the lady members, was not part of the proceedings of the House, Hon. the Speaker ruled out that no *prima facie* case has been made out and that the publication did not involve a breach of privilege of the House.[31]

Incorrect reports of proceedings by newspapers.—1. On 4th March Shri M. Kalyanasundaram raised a question of privilege against the incorrect publication in the Tamil daily, *Dina Thanthi*, of proceedings of the Assembly relating to a ruling given by the Speaker on 3rd March. The English version of the newspaper report had attributed the following statement to the Speaker, and it was alleged that the report was incorrect and therefore it involved a question of privilege of the House:

The Hon. Speaker stated that there was nothing in the newspaper report to substantiate the charge that it had affected the dignity of the House.

The newspaper thereafter published the correct version of the proceedings, in view of which, further action in the matter was dropped.[32]

2. Shri K. Anbazhagan raised a question of privilege, on 3rd March, against an incorrect publication in the Tamil daily *Dinamani* of that date, of the proceedings of the Assembly. The point raised by the Member was that the headline and the report published thereunder did not conform to the actual proceedings of the Assembly and was also misleading. Further, the word "treachery" used in a particular context did not appear to be a fair comment. On the newspaper concerned publishing the correct version of the proceedings, further action in the matter was dropped.[33]

3. On 18th March Shri R. Srinivasa Iyer raised question of privilege against the incorrect publication in an English daily *The Mail*, dated 17th March, of his speech in the Assembly. The newspaper attributed the following statement to Shri R. Srinivasa Iyer, which was in the opinion of the Member grossly incorrect and was likely to affect his fair name and reputation:

> Shri R. Srinivasa Iyer (Congress) said, people in Villages had the feeling that to get into a Co-operative Society was like getting into a jail and this impression should be removed.

Further action in the matter was however dropped in view of the publication by the newspaper of the correct version of the proceedings.[34]

Service of subpœna on Member.—On 17th December Shri A. A. Rasheed raised a privilege issue regarding the service of subpœna on a member to attend the Court when the House is in session.

The Speaker thereupon observed that the Members are now granted leave of absence for attending the Court as witnesses. He also observed that whenever a member had to appear in a Court as a witness, the proper procedure would be for the Courts to apply to the House for permission to enable the member to appear as witness.

Boycott of Governor's Address.—On 11th December Shri S. Lazar raised a matter of privilege relating to the boycott of the Governor's Address on 5th December by the members of the Assembly belonging to Dravida Munnetra Kazhagam and contended that it amounted to a breach of privilege and therefore it should be referred to the Committee of Privileges of the House. As this question involved some substantial issues, the Speaker informed the House that he would give a ruling on a later date.

A ruling was subsequently given by the Speaker, on 11th March, 1960, to the effect that the matter raised did not involve a *prima facie* question of breach of privilege.

India: Uttar Pradesh Legislative Assembly

Contributed by the Secretary of the Legislature

Obstruction of Officers of the House by Members.—On 8th September, 1958, the Speaker informed the House of the arrests of certain Members. Shri Raj Narain, Leader of the Socialist Party, stood up and began to speak on the said arrests without the permission of the Chair. The Speaker asked him several times to stop speaking and resume his seat, but he did not do so and continued to speak. The Speaker then ordered him to leave the House. Shri Raj Narain persisted in disregarding the order of the Speaker, whereupon Shri Speaker named him. The Leader of the House immediately moved that Shri Raj Narain be suspended from the service of the House for a period of 15 days. The question was put to vote and carried. Shri Raj Narain even then did not leave the House and continued with his speech. The Speaker ordered the Marshal of the House to request Shri Raj Narain to leave the House. The Marshal accordingly conveyed the orders of Shri Speaker to Shri Raj Narain, but he did not pay any heed to it and refused to leave the House. At this time there was an uproar in the House and the Speaker adjourned the meeting for ten minutes. During this period, the uproar continued and Shri Raj Narain did not go out and began to speak from the dais. In view of the continued disorder in the Hall the Speaker by order from his Chamber further adjourned the House till lunch. During this period of adjournment, Shri Raj Narain and some members of the Socialist Party were removed from the House forcibly by the Marshal with the aid of the Provincial Armed Constabulary by the order of Shri Speaker.[35]

The Secretary of the Assembly, in accordance with Rule 54 of the Rules of Procedure, lodged a Report with the Speaker against twelve Socialist Members to the effect that these members were guilty of contempt of the House as they had tried to obstruct the Marshal in the discharge of his official duties by offering physical resistance. This Report was read to the House on 9th September, 1958, by the Secretary with the permission of the Speaker.[36]

The Question whether the Report was in order was taken up in the House at its sitting held 9th February, 1959. On hearing the views of certain members the Speaker referred the report to the Committee on Privileges and directed the Committee to investigate the case and submit a Report.[37]

The Committee asked the Members reported against to submit their explanations in writing. They did so. The Committee examined their explanations and framed a questionnaire to examine the Members. The Members complained against appeared before the Committee and answered questions put to them.

Evidence of the following persons was taken and they were also cross-examined:

1. Shri D. N. Mithal, Secretary, Legislative Assembly (the complainant);
2. Shri S. S. Misra, Marshal of the House;
3. Shri Dharam Datt Vaidya, M.L.A.;
4. Shri Malikhan Singh, M.L.A.;
5. Shri Sripati Sahai, Superintendent, Legislative Assembly;
6. Shri Lila Singh Bisht, Senior Superintendent of Police, Lucknow (who had reported the incident to the Government).

It was decided to take judicial notice of the Journal of the Assembly of 8th September, 1958. The Committee also decided that what had happened during the period when the sitting was suspended by order of the Speaker was the proceedings of the House and the record relating to it was rightly entered in the Journal of the House. After the deliberations the Committee came to the conclusion that all the Members charged were guilty of obstructing the Marshal in the execution of his official duty as they were members of an unlawful assembly formed with the intention of obstructing the Marshal in removing Shri Raj Narain from the House and under Section 149 I.P.C. every member of an unlawful assembly is guilty of the offence committed by any member of the unlawful assembly in prosecution of the common object of the Assembly.

Taking into consideration the observation from Erskine May[38] that "it is a contempt to obstruct officers of either House, or other persons employed by, or entrusted with the execution of the orders of either House, while in the execution of their duty", the Committee held that all the twelve Socialist Members mentioned in the Secretary's report were guilty of contempt of the House and recommended that all of them be suspended from the Service of the House for a period of one week. The Committee also mentioned that though Shri Raj Narain was the main cause of this untoward incident, no further action against him was called for because he had already been punished by the House for the offence committed by him.

This Report of the Committee was presented to the House on 22nd December, 1959,[39] and was considered by the House on 29th April and 2nd May, 1960. The House accepted the recommendations of the Committee that the twelve Socialist Members were guilty of committing contempt of the House. However, at the instance of Mukhya Mantri the House decided only to admonish the charged Members for their conduct in the hope that the said Members would learn a lesson from the opinion expressed by the House and in future would behave in a manner which would add to the dignity of the House as well as their own.

Southern Rhodesia: Legislative Assembly

Contributed by the Clerk of the Legislative Assembly

Reflection on impartiality of Chairman of Committees.—During an adjournment of about six weeks, the then Deputy Speaker and Chairman of Committees, Mr. Harper, who was a member of the Opposition party in the House, was elected Leader of the Opposition and there was speculation in the newspapers as to who would be elected to the office of Deputy Speaker and Chairman of Committees, from which it was stated Mr. Harper would resign when the House met again.

In an article discussing his possible successor as Chairman, one of the daily newspapers, *The Chronicle*, published this paragraph—

> Mr. Aitken-Cade still has sufficient prestige among his colleagues—and Government M.P.s for that matter—to make him odds-on favourite for this job, which he could probably fill rather more satisfactorily than Mr. Harper, who is occasionally inclined to overlook the complete impartiality required, and to launch into major expositions of policy.

When the House next met, on 13th October, a Member drew its attention to this paragraph, claiming it alleged partiality on the part of the Chairman in his conduct as a Presiding Officer and as such was a contempt punishable by the House. A copy of the newspaper was produced by the Member (Mr. Grey) and read by the Clerk whereupon Mr. Speaker invited debate on the question.

The Prime Minister (the Hon. Sir Edgar Whitehead, K.C.M.G., O.B.E., M.P.) and another Member from the Government side, Mr. Pittman, that day elected as the new Deputy Speaker and Chairman of Committees, spoke, strongly deprecating the criticism and expressing the full confidence of all members on the Government side in the complete impartiality of Mr. Harper. The Prime Minister described the statement as false and scandalous libel on the Chairman of Committees, and concluded by suggesting that the editor of the newspaper concerned be given a reasonable time to make a complete apology to the House, and that if this were received and its terms considered satisfactory, it be accepted. Failing the receipt of a suitable apology, he felt the matter should be taken further.

Mr. Speaker then stated his view on the question, expressing the opinion that there was a *prima facie* case of contempt and referring to the provisions of section 10 of the Powers and Privileges of Parliament Act (Cap. 4) as well as to precedents quoted in May's *Parliamentary Practice*. He ended his statement—

> I feel, however, that I will be interpreting the wishes of honourable members if I suggest that the editor of the newspaper concerned be given an opportunity to convey to the House an early and suitable apology. If this is done within the week, the House will then have an opportunity of deciding what further steps, if any, it wishes to take in the matter.

On 15th October Mr. Speaker read a letter, dated the 14th, expressing the Editor's sincere apologies for the inadvertent contempt and breach of privilege contained in the article.

The terms of this apology satisfied the House, for the motion moved at once by Mr. Harper himself, that the apology be accepted and that no further action be taken, was agreed to.[40]

NIGERIA: WESTERN REGION

Inaccurate report by a newspaper of proceedings in House of Assembly.—On 6th May the Leader of the House (Chief Enahoro) acquainted the House that on 30th April the Attorney-General had informed him of a report which he had furnished to Mr. Speaker, under s. 27 of the Legislative Houses Powers and Privileges Law, stating that there was sufficient evidence to warrant the taking of steps against the *Southern Nigeria Defender*, which, in its issue of 30th April, had published an article entitled "Uromi Court Issue: NCNC Member gagged from speaking". In his report, the Attorney-General expressed the view that the publication constituted a false and perverted report of the proceedings of the House, and gave the following grounds for his opinion:

(*a*) The heading on the publication suggesting that one of the hon. Members of this House was "gagged from speaking" seems to me to be calculated to impute that there was a deliberate attempt not to hear the hon. Mr. Abioro. In actual fact, what happened was that the Leader of the House, Chief Enahoro, took the objection that the question which the hon. Member intended to raise on the adjournment had not been properly raised and he thereupon moved that "the question be now put". You then proposed the question and the question was put and agreed to thereby, by implication, upholding the objection by the hon. the Leader of the House.

(*b*) The publication complained of alleged that "immediately Mr. Abioro started to say that rumour had it that the Uromi Court Grade B Customary Court had been suspended, Chief Rotimi Williams, Minister of Justice and Attorney-General jumped up and warned the hon. Member to only speak on the suspension of the said Customary Court and not to attack the office of the Judge". In point of fact what happened was that Mr. Abioro, after referring to the alleged rumour that the Uromi Grade B court was suspended by the Local Government Service Board, went on to say: "we on this side of the House believe that there is some truth in that rumour, taking into consideration the alleged partial attitude by this Judge to members of the Uromi community." The point of order taken by me was that Mr. Abioro cannot criticise the Judge in his judicial capacity which I thought was what he was doing by reference to the alleged "partial attitude" of the Judge. The publication was therefore calculated to suggest, falsely, that objection had been taken to the mere mention of the fact that it was rumoured that the court in question was suspended.

(*c*) The publication alleged that after the objection raised by me, Mr. Abioro "cleared his voice and was getting set on the topic when a point of order came from the Parliamentary Secretary to the Ministry of Finance, Mr. Idowu, to the effect that Mr. Abioro should not base his question on newspaper publication". In point of fact, Mr. Abioro had proceeded to say that his allegation was based on a rumour and it was at this stage that the Par-

liamentary Secretary to the Ministry of Finance took the objection referred to in the publication. The publication was obviously intended to convey the impression that the objection of the Parliamentary Secretary to the Ministry of Finance was made after a previous objection and at a time when Mr. Abioro had not said a word following such previous objection.

(*d*) The newspaper alleged that I supported the Parliamentary Secretary's objection with the words, " yes, Mr. Speaker, irresponsible people are fond of giving opinion to irresponsible newspapers ". This part of the publication is in fact false and what I actually said can be found at page 454 of the *Hansard*. It was further clear from the report that I got up in order to press for a ruling from you.

(*e*) Following from the objection mentioned in the preceding paragraph you did make a ruling which was in fact a ruling in favour of the hon. Mr. Abioro. That ruling was in effect that the hon. Mr. Abioro had not at that stage said that he based his opinion on a newspaper report. If I may say so with respect, your ruling is certainly borne out by the text of the proceedings in the House. In spite of this the publication complained of stated that you asked the Hon. Member to tell the House from where he got his information. You made no such statement. Mr. Abioro in fact appeared to take advantage of your ruling by proceeding to state that the source of his information was from " a section of the Uromi Community ".

(*f*) The publication asserted more than once that Mr. Abioro denied the allegation that he got his information from a newspaper. In point of fact there was no such specific denial by Mr. Abioro although he did say that he got his information from a section of Uromi Community.

(*g*) Before Chief Enahoro moved " that the question be now put " he asked the Hon. Member to see him next day and that he would try and teach him how he could best raise the question he had in mind. The publication, however, stated that Chief Anthony Enahoro said that " if Mr. Abioro wanted to hear the facts he should come to him, and moved that the House be adjourned ". The obvious intention of this part of the publication is to show that Chief Enahoro did not want the facts to be stated openly on the floor of the House. In truth and in fact, Chief Enahoro stated quite clearly that he would assist the Hon. Member (as indeed it is his duty as the Leader of the House) to see that the question was raised in the House in a manner that would not be open to objection. There can be no doubt also that it is intended that readers of the paper should find it easy to draw this inference from the fact that the Uromi Grade B Customary Court concerned is a court over which the father of Chief Enahoro presides, a fact which has been prominently displayed in bold types in the publication complained of.

It was accordingly agreed, after some debate, on a motion by the Leader of the House,

That this House, after consideration of the Report by the Attorney-General regarding a publication in the *Southern Nigeria Defender* of Thursday, 30th April, 1959, and headed " Uromi Court Issue, NCNC Member Gagged from Speaking ", do hereby order, in pursuance of section 27(1) (*b*) of the Legislative Houses (Powers and Privileges) Law, 1956, that the Director of Public Prosecutions be requested to make the necessary application to the High Court under section 25 of the aforesaid Law.[41]

In the subsequent proceedings before the High Court the Editor and Proprietors of the newspaper were found guilty and fined £5 and £100 respectively.

[1] 601 *Com. Hans.*, cc. 40-59. [2] 16th Ed. [3] *See* THE TABLE, Vol. IX, p. 64; XIII, p. 44. [4] 601 *Com. Hans.*, cc. 223-7. [5] *See* THE TABLE, Vol. XX, p. 239. [6] 601 *Com. Hans.*, cc. 454-60. [7] 614 *Com. Hans.*, cc. 1182-94. [8] V. & P., 1959, p. 37; 22 *H. Reps. Hans.*, pp. 643-4. [9] V. & P., 1959, p. 45; 22 *H. Reps. Hans.*, pp. 724-5. [10] V. & P., 1959, p. 76. [11] V. & P., p. 146; 99 *Assem. Hans.*, cc. 1015-29. [12] Minutes, p. 53. [13] XXIV *R.S. Deb.*, No. 18, cc. 2517-8. [14] *L.S. Deb.*, Pt. II (19th March, 1956), cc. 2911-3. [15] *L.S. Deb.*, Pt. II, cc. 140-72. [16] Reported in the Press on 17th January, 1959. [17] *L.S. Deb.*, Pt. II (27th November, 1958), cc. 1710-1. [18] *Ibid.* (10th February, 1959), c. 172. [19] *Ibid.* (22nd September, 1958), cc. 7728-9. [20] *Ibid.* (23rd September, 1958), cc. 8053-84. [21] *Ibid.* (27th September, 1958), cc. 9026-7. [22] *Ibid.*, cc. 8987-9035. [23] *Ibid.* (27th November, 1958), cc. 1669-1756. [24] Referred to in the President's Proclamation under Article 356 (1) of the Constitution in respect of Kerala. [25] 16th Ed., p. 42. [26] *Ibid.*, p. 270. [27] *Ibid.*, p. 460. [28] 500 *Com. Hans.*, cc. 390-1. [29] 35 *Madras L.C. Proc.*, No. 8, p. 395. [30] 18 *Madras Assem. Proc.*, Nos. 2 and 3. [31] 20 *Madras Assem. Proc.*, No. 2. [32] *Ibid.*, No. 4. [33] 21 *Madras Assem. Proc.*, No. 4. [34] 22 *Madras Assem. Proc.*, No. 1. [35] 19 *U.P. Assem. Proc.*, pp. 712-5. [36] *Ibid.*, pp. 780-1. [37] 200 *U.P. Assem. Proc.*, pp. 625-32. [38] 16th Ed., pp. 126-7. [39] 208 *U.P. Assem. Proc.*, pp. 90-1. [40] 1959 *S. Rhod. Hans.*, cc. 1947, 1989. [41] 1959 *W. Nigeria Assem. Hans.*, cc. 823-40.

XI. MISCELLANEOUS NOTES

1. CONSTITUTIONAL

South Australia (Women not disqualified as Members).—In order to remove any legal doubts that might be considered to have existed regarding the validity of the election of two women to the membership of the two Houses of this Parliament, the Constitution Act Amendment Act, 1959 (No. 39 of 1959), was passed to provide that

> A woman shall not be disqualified by sex or marriage for being elected to, or sitting or voting as a member of, either House of the Parliament.

The Act was made retrospective to 1st January, 1959, so that it covered the issue of writs for the last election.

The Act was reserved for Royal Assent on 15th October, and the Royal Assent was proclaimed on 17th December.

(*Contributed by the Clerk of the Parliaments.*)

Western Samoa (Cabinet Government).—The Samoa Amendment Act, 1959 (Act No. 21) which was enacted by the New Zealand Government as the administering authority of the Trusteeship Territory of Western Samoa provided for the establishment of Cabinet Government in Western Samoa as from 1st October, 1959. The Cabinet of Ministers, which consists of a Prime Minister and eight other members, one of whom shall be a European member of the Legislative Assembly, is collectively responsible to the Legislative Assembly

for the general direction and control of the Government of Western Samoa and advises the Council of State in the exercise of its functions, powers and authorities. The Council of State, which was also established by the same enactment, consists of the High Commissioner and the Samoans holding the office as Fautua or Advisers are now the head of the Executive Government and exercise all the powers previously exercised by the High Commissioner with the exception of those powers exercised by the High Commissioner as representative of the Government of New Zealand.

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

Union of South Africa (Constitutional Changes).—The following amendments were made during 1959 to the South Africa Act, 1909:

S. 10 *bis* (Pension payable to Governor-General or his widow): The pension payable to the Governor-General's widow was increased from one thousand pounds per annum to two-thirds of the pension payable to the Governor-General, with effect from 1st July, 1959. (*See* South Africa Act Further Amendment Act, No. 48 of 1959, s. 1.)

S. 52 (Members of either House disqualified for being member of other House): Deputy-Ministers were given the right to sit and speak in both Houses. (*See* South Africa Act Amendment Act, No. 3 of 1959, s. 1.)

S. 53 (Disqualifications for being a member of either House): Members of statutory bodies who receive remuneration for their services not exceeding an allowance of five guineas per day and reimbursement of travelling expenses incurred in the course of such services, shall not be deemed to hold offices of profit under the Crown. The Offices of Profit Amendment Act, 1943, and section 14 of the Public Health Amendment Act, 1946, were repealed. (*See* Offices of Profit Amendment Act, No. 49 of 1959, ss. 1 and 2.)

S. 89 (Constitution of provincial revenue fund): The Governor-General-in-Council was empowered to make regulations for the administration of the provincial fund in order to have uniformity in the financial regulations of the four provinces. (*See* South Africa Act Further Amendment Act, No. 48 of 1959, s. 2.)

S. 92 (Audit of provincial accounts): The power of surcharge against employees of a provincial administration was granted to the provincial auditor concerned, and the relative provisions of the Exchequer and Audit Act, 1956, were made applicable. This amendment was made retrospective to 1911, as doubt had been expressed as to the legality of surcharges recovered under the regulations framed in 1911. (*See* South Africa Act Further Amendment Act, No. 48 of 1959, s. 3.)

S. 110 (Quorum for hearing appeals): The quorum of the Appellate Division was reduced from five to three judges in criminal matters not arising out of proceedings before a special criminal court. This amendment was subsequently incorporated in the Supreme

Court Act. (*See* Appellate Division Quorum Act, No. 1 of 1959, s. 1; and the Supreme Court Act, No. 59 of 1959, s. 12.)

Part VI, ss. 95 to 116 (The Supreme Court of South Africa): This Part of the Act was repealed (except s. 115, dealing with the admission of advocates and attorneys) and incorporated in the Supreme Court Act. (*See* Supreme Court Act, No. 59 of 1959, s. 46; and also summary of the Act below.)

So much of the Representation of Natives Act, No. 12 of 1936, as was unrepealed was repealed and the representation of Natives in the Senate, the House of Assembly and the Cape Provincial Council was consquently abolished. The repeal did not, however, affect the members of these legislative bodies who were in office at the commencement of the Promotion of Bantu Self-Government Act. (*See* Act No. 46 of 1959, s. 15.)

The Supreme Court Act, No. 59 of 1959, consolidates and amends the laws relating to the Supreme Court of South Africa. It embodies the provisions formerly contained in the South Africa Act, Part VI (except for s. 115), as well as of all the pre-Union legislation of the four provinces, and the laws of South-West Africa and the Union relating to the Supreme Court.

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

Union of South Africa (Constitutional Changes relating to Provincial Councils).—The South Africa Act, 1909, was amended in 1959 in so far as the Provincial Councils of the Union of South Africa are directly concerned, viz.:

Section 89: By s. 2 of Act 48 of 1959, empowering the Governor-General-in-Council to make regulations prescribing, *inter alia*, "the form of estimates required for presentation to the provincial council".

Note: Such regulations have not yet been published. Hitherto, in terms of s. 5 (4) of the Financial Relations Consolidation and Amendment Act, No. 38 of 1945, the form of the estimates has been indicated by the Treasury; the sub-section of that Act has now been repealed by s. 2 of Act 48 of 1959.

The Financial Relations Act, No. 38 of 1945, was in 1959 amended, in so far as the Provincial Councils are directly concerned, viz.:

Section 18: By s. 1 of Act 28 of 1959, enabling the Council to provide for expenditure for training of teachers and nurses as a charge on provincial revenue.

Second Schedule: By s. 2 of Act 28 of 1959, authorising the Governor-General to extend the Council's power to legislate in respect of drive-in theatres and the provision of insurance cover for Administrator and members of the executive committee of a province in respect of injury, disablement or death resulting from accident occurring in the course of the performance of their official duties.

(*Contributed by the Clerk of the Cape Provincial Council.*)

India (Alteration of State Boundaries).—The Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 (No. 56 of 1959), provides for the alteration of boundaries of the States of Andhra Pradesh and Madras and for matters connected therewith.

Sections 3, 4 and 5 of the Act read with the First, Second and Third Schedules thereto provide for the transfer of certain territories between the States of Andhra Pradesh and Madras and make certain changes of territorial divisions in the two States. Section 6 of the Act amends the First Schedule to the Constitution in so far as it defines the territories of the said two States to give effect to the alterations made by the Act in the boundaries of those States.

By section 8 of the Act, the representation of the State of Madras in the Council of States (Rajya Sabha) has been increased from 17 to 18 in accordance with the formula for the fixation of seats which is applicable in the case of the Council of States. The Fourth Schedule to the Constitution which provides for the allocation of seats in the Council of States has accordingly been amended. Section 9 of the Act has provided that a bye-election shall be held to fill the additional seat allotted to the State of Madras in the Council of States and that the term of office of the member so elected shall expire on the 2nd April, 1962.

Section 10 of the Act read with the Fourth Schedule thereto makes provision for the alteration of the extent of certain constituencies by amending the Delimitation of Parliamentary and Assembly Constituencies Order, 1956, consequent on the transfer of territories between the two States under the Act, and section 11 of the Act has provided that every sitting member of the House of the People (Lok Sabha) representing a constituency the extent of which has been so altered shall be deemed to have been elected to the said House by that constituency as so altered.

(*Contributed by the Secretary of the Rajya Sabha.*)

India (Offices of Profit).—Article 102 (1) (*a*) of the Constitution of India provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder. In pursuance of this article, Parliament had passed three Acts—namely, the Parliament (Prevention of Disqualification) Act, 1950 (No. 19 of 1950), the Parliament Prevention of Disqualification Act, 1951 (No. 68 of 1951), and the Prevention of Disqualification Act, 1953 (No. 1 of 1954).

The Parliament Prevention of Disqualification Act, 1951, which had exempted certain offices for specified periods became spent as soon as the said periods expired. The Parliament (Prevention of Disqualification) Act, 1950, and section 3 of the Prevention of Disqualification Act, 1953, exempted permanently the offices of—

(i) Ministers of State and Deputy Ministers,
(ii) Parliamentary Secretaries and Parliamentary Under Secretaries,
(iii) Deputy Chief Whips in Parliament,
(iv) Vice-Chancellors of Universities,
(v) Officers in the National Cadet Corps and the Territorial Army, and
(vi) the Chairman and members of Advisory Committees or of Committees for inquiring into or collecting statistics in respect of any matter of public importance set up by the Government, when they are not entitled to any fee or remuneration other than compensatory allowance.

Section 4 of the Prevention of Disqualification Act, 1953, further exempted for a temporary period—

(i) the offices of Chairman and member of any other Committee set up by the Government, whether under a statute or by executive order; and
(ii) the offices of Chairman, director, member and officer of a statutory body, where the power to make any appointment to any such office or the power to remove any person therefrom is vested in the Government.

The exemptions provided in section 4 mentioned above were considered to be very wide in scope, and consequently their operation was limited in the first instance up to 30th April, 1954, and was thereafter extended from time to time by amending Acts and was due to expire on 31st December, 1957. This period was further extended up to 31st December, 1958, by the Prevention of Disqualification (Amendment) Act, 1957 (No. 64 of 1957), and again up to 31st December, 1959, by the Prevention of Disqualification (Amendment) Act, 1958 (No. 54 of 1958).

A Bill entitled the Parliament (Prevention of Disqualification) Bill was introduced in Parliament towards the close of the year 1957 seeking to repeal the three aforesaid Acts on the subject and to replace them by a consolidated, comprehensive and permanent measure. In framing the provisions of this Bill, the Government had before it the report submitted by a Joint Committee of the Houses of Parliament which had been constituted to study the question of disqualification contemplated under article 102 (1) (*a*) of the Constitution and make recommendations as to the offices which might be declared by law not to disqualify the holders thereof for membership of Parliament. This Bill after a detailed consideration by the Joint Committee of the Houses of Parliament (to which it had been referred by motions passed in the two Houses) and subsequently by the two Houses themselves was passed into law in April, 1959, and was enacted as the Parliament (Prevention of Disqualification) Act, 1959 (No. 10 of 1959).

This Act has repealed the earlier enactments on the subject (*see* section 5 of the Act). Some of the important provisions of this Act are noted below.

Section 3 of the Act has declared that "none of the following offices, in so far as it is an office of profit under the Government of India or the Government of any State, shall disqualify the holder

thereof for being chosen as, or for being, a member of Parliament—namely—

(*a*) any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether *ex officio* or by name;

(*b*) the office of Chief Whip, Deputy Chief Whip or Whip in Parliament or of a Parliamentary Secretary;

(*c*) the office of a member of any force raised or maintained under the National Cadet Corps Act, 1948 (No. 31 of 1948), the Territorial Army Act, 1948 (No. 56 of 1948), or the Reserve and Auxiliary Air Forces Act, 1952 (No. 62 of 1952);

(*d*) the office of a member of a Home Guard constituted under any law for the time being in force in any State;

(*e*) the office of Sheriff in the city of Bombay, Calcutta or Madras;

(*f*) the office of Chairman or member of the syndicate, senate, executive committee, council or court of a university or any other body connected with a university;

(*g*) the office of a member of any delegation or mission sent outside India by the Government for any special purpose;

(*h*) the office of chairman or member of a committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance;

(*i*) the office of chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (*h*), if the holder of such office is not entitled to any remuneration other than compensatory allowance, but excluding (i) the office of chairman of any statutory or non-statutory body specified in Part I of the Schedule and (ii) the office of chairman or secretary of any statutory or non-statutory body specified in Part II of the Schedule;

(*j*) the office of village revenue officer, whether called a *lambardar, malguzar, patel, deshmukh* or by any other name, whose duty is to collect land revenue and who is remunerated by a share of, or commission on, the amount of land revenue collected by him, but who does not discharge any police functions.

Explanation.—For the purposes of this section, the office of chairman or secretary shall include every office of that description by whatever name called.

The Schedule mentioned in clause (i) of section 3 of the Act follows the model of the British House of Commons Disqualification Act, 1957. In framing the Schedule, it was recognised that in the very nature of things such a Schedule could not be exhaustive or complete at any time, and accordingly Parliament accepted a recommendation made by the Joint Committee of the Houses on the Bill that a Standing Parliamentary Committee composed of members of both the Houses of Parliament should be constituted for the purpose of undertaking the work of continuous scrutiny in respect of all existing and future committees with a view to recommending to the Government which of them ought or ought not to disqualify so that legislation for amending the Schedule might be brought forward by Government

from time to time. Such a Parliamentary Committee has since been set up.

"Compensatory allowance" has been defined in section 2 of the Act as "any sum of money payable to the holder of an office by way of daily allowance (such allowance not exceeding the amount of daily allowance to which a member of Parliament is entitled under the Salaries and Allowances of Members of Parliament Act, 1954 (No. 30 of 1954), any conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office". The same section (section 2) has also defined—

(i) "statutory body" as meaning any corporation, committee, commission, council, board or other body of persons, whether incorporated or not, established by or under any law for the time being in force, and

(ii) "non-statutory body" as meaning any body of persons other than a statutory body.

The Act has further made provision in section 4 thereof for a temporary suspension of disqualification for a period not extending beyond six months from the commencement of the Act in the case of any Member of Parliament who held immediately before such commencement an office of profit declared by any law repealed by the Act not to disqualify its holder for such membership but has become so disqualified by reason of any of the provisions contained in the Act.

(*Contributed by the Secretary of the Rajya Sabha.*)

India (Reserved Seats).—Article 334 of the Constitution of India as originally enacted laid down that the provisions of the Constitution relating to the reservation of seats for the Scheduled Castes and Scheduled Tribes and the representation of the Anglo-Indian community by nomination in the House of the People and the Legislative Assemblies of the States would cease to have effect on the expiration of a period of ten years from the commencement of the Constitution. These provisions were accordingly due to expire on the 26th January, 1960. By the Constitution (Eighth Amendment) Act, 1959 (*see Gazette of India*, Extraordinary, Part II, S. 1, No. 1 dated 6th January, 1960), the reservation of seats for the Scheduled Castes and Scheduled Tribes and the representation of the Anglo-Indian community by nomination were continued for a further period of ten years by the substitution of the words "twenty years" for the words "ten years" in article 334 of the Constitution.

(*Contributed by the Secretary of the Rajya Sabha.*)

Federation of Rhodesia and Nyasaland (Constitutional).—The Constitution Amendment Act (No. 27 of 1959) amended the second schedule to the constitution, which relates to matters with respect to which the Federal Legislature may make laws, by repealing item 40 and substituting a new item. The original item 40 did not set out with sufficient clarity or certainty the nature and extent of the power

conferred upon the Governor-General to designate the regulation of professions as being subject to Federal control.

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

Northern Rhodesia (Constitutional Changes: Corrigendum).—In the Article on Constitutional Changes in Northern Rhodesia contained in Vol. XXVII of THE TABLE, on p. 83, lines 39 and 40, a despatch published on 11th September, 1958, by the Secretary of State was described as having stated that in the course of time those initially registered as special voters "would automatically become ordinary voters".

We have been advised by the author that this statement should be amended by the substitution, for the words in inverted commas, of the words "would remain as such on the Roll".

Nyasaland (Constitutional).—The Constitution of the Legislative Council at the beginning of 1959 was as follows:

(*a*) the Governor, who was also the President of the Council;
(*b*) a Speaker, who was also the Vice-President of the Council;
(*c*) four *ex-officio* Members;
(*d*) eight Official Members;
(*e*) eleven Elected Members of whom six (referred to as "non-African Elected Members") were persons who are not Africans and five (referred to as "African Elected Members") were persons who are Africans; and
(*f*) such Temporary Members as might from time to time be appointed.

Additional Royal Instructions passed under Royal Sign Manual and Signet to the Governor of the Nyasaland Protectorate in August, 1959, altered the composition of the Legislative Council which now comprises the following:

(*a*) the Governor, who shall be the President of the Council;
(*b*) a Speaker, who shall be the Vice-President of the Council;
(*c*) four *ex-officio* Members;
(*d*) ten Official Members;
(*e*) thirteen Elected Members of whom six (referred to as "non-African Elected Members") shall be persons who are not Africans and seven (referred to as "African Elected Members") shall be persons who are Africans; and
(*f*) such Temporary Members as may be appointed.

At the same time these Additional Royal Instructions enable the Governor on a temporary basis because of the difficulty of holding elections during the State of Emergency, to nominate Africans qualified for election as African Elected Members of the Legislative Council for appointment as Members to occupy the seats of any

African Elected Members which became vacant. Four such nominees were appointed in October and November, 1959.

(*Contributed by the Clerk of the Legislative Council.*)

Nigeria: Federal Parliament (Establishment of Senate).—As a result of the 1958 Constitutional Conference, a second Legislative House, styled the Senate, was established. Although its establishment was effective from the 1st of November, 1959, it did not meet until the 11th of January, 1960.

The composition of the Senate is as follows:

(*a*) forty-eight Senators, of whom twelve represent each of the three Regions and the Southern Cameroons;
(*b*) two Senators who are chiefs from Lagos—namely—
  (i) the Oba of Lagos; and
  (ii) a chief elected from among their own number by the White Cap Chiefs and War Chiefs of Lagos;
(*c*) two Senators appointed to represent Lagos;
(*d*) four Senators appointed by the Governor-General, acting in his discretion;
(*e*) those members of the Council of Ministers who have been appointed as such from among the Members of the House of Representatives.

The powers of the Senate with regard to money Bills and Bills other than money Bills are restricted (*see* S. I, 1959, No. 1772).

The President of the Senate is elected; he may be a Senator or a person who is not a member of the Senate.

Membership of the House of Representatives has been increased to 320—all elected; this includes 8 members from the Southern Cameroons who have not been elected by that territory. The Southern Cameroons have not sent any representatives to the Senate and the House of Representatives. A plebiscite is to be held in that territory some time after Nigeria has attained its independence to determine whether it will join an independent Nigeria or the independent Cameroon Republic.

The general supervision of the preparation of a Register of Electors and of the conduct of an election is now vested in an Electoral Commission, members of which are appointed by the Governor-General acting in his discretion. For the first time direct elections on adult male suffrage were held in all the constituencies in the Northern Region where formerly the electoral college system was in operation in all but urban constituencies.

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

East Africa High Commission (Constitutional).—The East Africa (High Commission) (Amendment) Order in Council, 1959 (S. I, 1959, No. 2203), came into operation on 31st December, and provided for the following changes:

(1) The Assembly is to continue in operation until the 31st December, 1962;

(2) Among the *ex-officio* Members, the Economic Secretary is replaced by a Chief Administrative Secretary;

(3) Where previously the Unofficial Membership of the Assembly included "three persons elected from among Members of the Legislative Council of Tanganyika by the Representative Members of that Council" these three persons are now elected as follows: "three persons elected from among their own number by the Representative Members of the Legislative Council of Tanganyika";

(4) Persons elected under (3) above previously held membership for a period specified by the Governor. A proviso has now been added that such period shall terminate if and when the person elected ceases to be a Representative Member of the Legislative Council of Tanganyika;

(5) Members of the Assembly whose membership was for a period ending after the 31st December, 1959, can continue their membership accordingly.

(*Contributed by the Clerk of the Central Legislative Assembly.*)

Gibraltar (Duration of Legislative Council).—By the Gibraltar (Legislative Council) (Amendment) Order in Council, dated 28th July, 1959 (*Gibraltar Gazette*, No. 608, 21st August, p. 5), the life of the Legislative Council was extended from three to five years.

(*Contributed by the Clerk of the Councils.*)

Gibraltar (Removal of disqualifications).—The Legislative Council (Public Offices) Ordinance, 1959 (No. 12 of 1959) enabled the holders of the following posts, formerly considered "public offices", to stand for election to the Legislative Council:

1. Any office of emolument under a Department of the Government of the United Kingdom which is classified as industrial employment by the employing Department.
2. Any office of emolument under a Department of the Government of the United Kingdom which is classified as clerical employment by the employing Department and which is of or below the rank of Grade I Clerk or its equivalent.
3. Any office of emolument under the City Council which is classified as clerical employment by the City Council and which is of or below the rank of Grade I Clerk or its equivalent.
4. The office of Deputy Coroner.

(*Contributed by the Clerk of the Councils.*)

Tanganyika (Composition of Legislative Council).—The composition of the Legislative Council (*see* THE TABLE, Vols. XXIV, p. 152, and XXVI, p. 139) was further altered by the Tanganyika (Legislative Council) Order in Council, 1959 (S.I., 1959, No. 1048), which came into operation on 1st July. Its principal effect was to make the number of 34 *ex-officio* and nominated Members combined a maximum, instead of a prescribed, number, and to leave it to the Governor's discretion whether to appoint all or any of the Repre-

sentative Members representing interests rather than constituencies (formerly prescribed at three).

After the Order in Council had come into force, five Members representative of Constituencies were appointed Ministers, so that at the end of the year the Council was actually composed of 53 Members, 28 on the Government Benches and 25 on the Representative Benches (no Members representative of interests having been appointed).

2. General Parliamentary Usage

House of Commons (Disclosure of personal interest by Chairman of Ways and Means).—On 12th June, the Chairman of Ways and Means (Sir Charles MacAndrew) made the following statement to the House:

I wish to inform the House that as I have a personal interest as a Petitioner against the Stopping up of Highways (Ayrshire) Order, 1959, made by the Secretary of State for Scotland, I yesterday delegated under Standing Order No. 238, all my duties as Chairman of Ways and Means in connection with this Order to Sir Gordon Touche, the Deputy Chairman of Ways and Means. The Statutory Orders (Special Procedure) Act places certain duties upon the Chairman and by taking this action the House may be assured that there is no possibility of conflict between my duties as an Officer of the House and my personal interests. (606 *Hans.*, c. 1355).

House of Commons (Personal statements on matters not connected with the House).—On 16th December, Mr. John Harvey (Walthamstow, East) sought Mr. Speaker's guidance on the action which a Member could take if, through accepting an official invitation to a dinner in his constituency, he became the subject of certain insinuations, arising out of legal proceedings, which he wished to deny. Mr. Speaker replied:

While saying nothing as to sympathy with an hon. Member so placed, unless the matter raises some point of order or a breach of Privilege, it would not be right to allow the House to be used as a place in which to produce a public statement in denial.

To the suggestion of the Leader of the Opposition (Mr. Gaitskell) that Mr. Harvey might be allowed to make a personal statement, Mr. Speaker replied:

I understand the difficulty about that is that there must be something to do with some matter arising from, or connected with, the House in a personal statement. The difficulty about this matter, so far as I know, is that that could not be said with regard to it. I only hope that what has been said here today may indirectly have been of assistance.

(615 *Com. Hans.*, cc. 1447-8. It is understood that the embarrassment in which Mr. Harvey found himself was caused by the fact that a defendant in a criminal case had alleged in evidence that, at the time when the crime was being committed, he had been present at the aforementioned dinner, and had claimed that Mr. Harvey would vouch for this, since they had sat at the same table.—*Ed.*)

3. Privilege

Tanganyika (Powers and Privileges).—The Legislative Council (Powers and Privileges) (Amendment) Ordinance, 1959 (Supplement No. 1 to the *Gazette*, Vol. XL, No. 62, dated 20th November) made the following additions to the law relating to the privileges of the Council:

(1) *Definition of "Precincts":* During any day when the Council is sitting, the precincts consist of "the entire building within which the Council sits", and "any forecourt, yard, garden or enclosure appurtenant thereto". Mr. Speaker is authorised to issue orders declaring specified adjacent land to be within the precincts, apart from highways and roads over which there is public right of way.

(2) *Defacement of notices:* A maximum penalty of one hundred shillings, one month's imprisonment, or both, is imposed for the defacement, destruction or removal of notices designating the precincts of the Council.

(3) *Exemption from obtaining licences:* The sale of refreshments and intoxicating liquors may be carried on under the authority of the Council and within its precincts without the holding of a licence under the Trades Licensing Ordinance or the Intoxicating Liquors Ordinance.

4. The Chair

House of Commons (Mr. Speaker Morrison's Pension).—Mr. Speaker Morrison's Retirement Act, 1959 (8 Eliz. 2, c. 1), which made provision for a pension for the former Speaker of £4,000 per annum, charged on the Consolidated Fund, such as is customarily accorded to retiring Speakers of the House of Commons, contained one unprecedented feature—namely, a provision that if his wife survived him, she should receive an annuity of £1,333.

The Act did not secure the entirely uncontested passage normally secured by similar bills, owing to the fact that shortly before it was introduced the retired Speaker (who had been elevated to the peerage as Viscount Dunrossil) had accepted appointment as Governor-General of Australia. In the debate on the Second Reading of the Bill in the Commons (613 *Hans.*, 1170-1218), certain points of principle were called into question by the Leader of the Opposition and other Members on both sides of the House. In the first place, it was argued that there was room for doubt whether it was right and desirable that a retiring Speaker should be offered and accept offices of this kind; in this context, the following remarks of the first Lord Baldwin, then Prime Minister, were quoted:

> The Speaker is almost the only man in politics—I include the Prime Minister in the list—who is completely debarred from entering any kind of business or from seeking to promote his own welfare, and it has always seemed, and

rightly seemed, that in the Speaker's case, as in my view in the Prime Minister's case, when his term of office is done he should not enter into the ordinary competition of the market-place with other people, but should preserve for the rest of his life the dignity of the great office to which he had been called. That is the reason undoubtedly why those who went before us decided on giving such a pension as was thought in those days sufficient to maintain the Speaker in a position of dignity and in a position where he would be completely relieved of all anxiety as regards the future. (219 *Com. Hans.*, 546-7.)

A second point of principle arose in respect of the provision, normally included in all such bills, that half of the annuity should be abated during any period in which the retired Speaker held any place, office or employment under Her Majesty of equal or greater amount in salary than the amount of the annuity; the opinion was voiced that the Governor-General's salary was of such magnitude (£A10,000) as to justify the abatement of the whole, not half, of the pension.

For these reasons the second reading of the bill was divided against (613 *Hans.*, 1214); but the only amendment which was formally moved during the committee stage was the suggested omission, from the provision regarding abatement, of the words "under Her Majesty". This amendment was negatived without a division (614 *Hans.*, 219-34).

Nigeria: Western Region (Motion of no confidence in the Speaker).—A motion of no confidence in the Speaker, Mr. A. Adedoyin, was debated in the House of Assembly on the 22nd April, 1959. The motion was moved by Mr. A. Adisa (N.C.N.C.) and seconded by Mr. Fakayode (N.C.N.C.).

Mr. Adisa alleged that the Speaker

contrary to the Conventions of the Constitution, now takes active part in politics and employs questionable means and tactics in that pursuit and has therefore lost the confidence of the House.

He said further that the Speaker "made a remarkable contribution to the Fools' Who is Who" when "he crossed the carpet to join the Action Group". Prince Adedoyin, it will be remembered, resigned his membership of the N.C.N.C. Party and joined the Action Group Party in 1952.

Mr. Fakayode who seconded the motion said all the opposition intend by the

motion is to let the Speaker know, . . . that he has engaged himself prominently in active politics. I think, Sir, he will be able to check himself from this time on.

The Minister for Home Affairs and Leader of the House, Chief Anthony Enahoro, moved an amendment to the Motion. He said that

there has been not a single allegation against the Speaker in this House in the discharge of his duties. It is quite evident from the speeches of the hon. Mover and the hon. Seconder that there is no question whatever of Mr.

Speaker's competence and impartiality and . . . these are the only two attributes of which this House is entitled to take notice.

Chief Rotimi Williams, Attorney-General and Minister of Justice, seconded the amendment.

The debate was adjourned and resumed on the 28th April, 1959.

On a free vote the motion was lost and the amendment carried.

The question

That this House expresses its utmost confidence in the Speaker, Mr. A. Adedoyin, and compliments him on his efficiency and impartiality in the discharge of his duties and functions,

was put and carried.

The Speaker resuming his seat after a brief adjournment said:

I am grateful indeed for the vote of confidence in me, that has just been passed and I repeat once again that I am fully aware of the honour, dignity, authority and the impartiality of my high office and shall continue to uphold the noble traditions of the Speaker as I have been doing hitherto. (1959 *Assem. Hans.*, cc. 247-70, 396-418.)

(*Contributed by Mr. Akin-Williams, Clerk-Assistant of the House of Assembly.*)

5. ORDER

Cape (Suspension of a Member).—On 10th June for the first time in the history of the Council a Member was suspended for having declined to submit to the Chairman's ruling. During the Third Reading debate on a Draft Ordinance the Member had declined to submit to the Chairman's ruling that he should accept the word of another Member, and thereupon had left the Chamber. A Member of the Executive Committee then moved that the Member "be ordered to withdraw from the Council for the remainder of the day's sitting".

This was agreed to and the Member withdrew (Minutes, page 96, of 10th June).

(*Contributed by the Clerk of the Council.*)

6. PROCEDURE

House of Commons (Disallowance of private notice question).—At the end of question time on 22nd July, Sir Charles Taylor (Eastbourne) asked whether Mr. Speaker would allow a question by him to the Minister of Transport, which had not been reached, to be answered forthwith on the ground of its urgent nature; it had, indeed, been submitted two days previously for answer by private notice, but had not then been allowed. Mr. Speaker replied:

I am sorry I could not do that without breaking the rules. I am sorry for the hon. Member. He submitted a Private Notice Question to me addressed to the Air Ministry and, as the Air Ministry Questions came on today very

early, I thought that there was not sufficient urgency in the Question to allow it, as a Private Notice Question, to justify taking up the time of the House at the end of Questions. Now I find that it has been transferred to the Ministry of Transport and Civil Aviation. The hon. Member should have a look at the Written reply to the Question and then he could come and see me about it. (609 *Hans.*, cc. 1278-9.)

House of Commons (Limitation of scope of debate on adjournment motion).—Mr. Champion (Derbyshire, S.E.) had given notice that on the motion for the adjournment on 4th February he proposed to discuss the activities of the British Marketing Research Bureau, a publicity organisation.

Before calling Mr. Champion, Mr. Speaker said:

I ought to say that the subject which he has chosen for this Adjournment puts me and the House in some difficulty. As I informed the hon. Member, it is a rule of the House, as he knows very well, that to be in order a subject to be raised on the Adjournment must relate to some administrative responsibility of the Minister. The Board of Trade has informed me that it is not responsible for the activities of the British Marketing Research Bureau. Therefore, it would not be in order, *prima facie*.

I may say that I have tried to see whether there is any other Minister within whose Department this subject falls. I have been unable to find any. That is the position. If it is a fact that there is no power to control, or responsibility, existing at the moment, to confer such power would involve legislation, and that would be out of order equally. Nor would asking for an inquiry serve the purpose, if the ultimate remedy of the hon. Member's grievance were legislation.

I thought it right to make that statement, and I ask the hon. Member, before he gets on to the merits of his case, to satisfy me, if he can, that this subject is in order on the Motion for the Adjournment of the House.

Mr. Champion then adduced four arguments. In the first place, the firm concerned was employed by certain steel companies in which much government money had been invested. Second, the payments made to the firm by the steel companies ranked for tax remission. Thirdly, the President of the Board of Trade had powers, under the Companies Act, 1948, to appoint inspectors to investigate the affairs of companies in certain cases, and he considered that the use by government-subsidised steel companies of their funds for political purposes was just such a case. Lastly, he alleged that employees of the Research Bureau had informed persons whom they were interviewing that the matter was related to Ministry of Labour inquiries.

Mr. Speaker then ruled:

There are Questions down for answer tomorrow as to what, if any, allowance will be made for the cost of this inquiry as a legitimate charge on the profits of the company. But that is a separate matter altogether. It does not concern the activities of this bureau, of which the hon. Member gave notice, and that no doubt will be the answer by the Chancellor of the Exchequer tomorrow.

As regards the Board of Trade and its inquiries, my recollection of the Companies Act—though I stand ready to be corrected—is that that applies in the case of some financial irregularity, when the shareholders can petition

and so on to get an inquiry into the affairs of the company. I doubt whether that covers the activities of this bureau. I suppose it is a company which exsits for the purpose of carrying out market research.

As to the third part about the Ministry of Labour, I do not think the fact that some of the interviewers on behalf of this bureau have represented themselves as Ministry of Labour officials when in fact they were not, or as acting on behalf of the Ministry of Labour when they were not, places any responsibility on the Ministry of Labour. . .

I asked the Treasury if they had any responsibility in this matter. They assured me not. I have to take their point of view on it, because they know their responsibilities better than I do; and I doubt whether loans and subscriptions to capital, which Governments of both parties have made from time to time to assist these enterprises, give them any direction over this matter. I do not know, but I should not think so.

Mr. Fletcher (Islington, E.) suggested that there might be constitutional implications in the fact that the questionnaires used by the bureau asked the persons questioned to record their names and the party for which they voted, since the possible subsequent communication of the investigation to one or other of the political parties could involve questions about electoral expenses. Mr. Speaker replied:

It occurred to me that possibly there was some oblique duty with regard to the Representation of the People Act. I inquired into that, but I found that the Home Office had no responsibility in the matter. What use may be made of these results when they are ultimately collected must be hypothetical in the meantime.

Mr. Mulley (Sheffield, Park) then observed that where questions of ministerial responsibility were involved, it would be fairer to allow a Member who could make a *prima facie* case for assigning such responsibility to make his speech, after which the Minister himself could disclaim responsibility in detail. Mr. Speaker said:

I have my duty to do in the House, and that is to prevent breaches of the rules of order. When I see a subject down for the Adjournment and it strikes me that there is some doubt about Ministerial responsibility, I feel it my duty to the House to inquire so that the House should not be misled into a breach of order through my ignorance. I have made the usual inquiries in this case, and the replies are entirely negative.

Interventions were made by several Members, but the only further point of substance was raised by the Deputy Leader of the Opposition (Mr. James Griffiths), who observed that the debate on the adjournment was a traditional opportunity for ventilating the grievances of constituents; the Home Secretary, he averred, was responsible for the good conduct of people in this country, and for dealing with grievances of people who felt that they had been victims of misrepresentation. To this Mr. Speaker replied:

It is true that the Home Secretary has a general supervision over law and order, but he acts through certain well-known organs to secure that end. I do not know that the Home Secretary, for example, could be made the subject of a debate on the Adjournment because someone does something wrong in

the country. We could be stretching his Ministerial responsibility beyond the proper limit.

Mr. Champion was accordingly unable to discuss the activities of the bureau on this motion (599 *Hans.*, cc. 531-42).

House of Commons (Premature action by Tellers during a division).—On 11th December, while a division was in progress, a Member pointed out that certain Members had passed out of one of the lobbies and been counted before the question had been put for the second time from the Chair and the doors locked.

Mr. Speaker accordingly directed that the division should be started again; but another Member then objected that some of the Members who had prematurely left the division lobby in the first instance might well have left the House before the second vote was called, and would therefore find the following day that they had not been counted, with a possible effect on the result of the vote. He therefore asked whether the result of the second division was valid.

Mr. Speaker replied:

> The obligation is upon hon. Members to be here and not to go away. (615 *Com. Hans.*, cc. 1004-6.)

Union of South Africa: House of Assembly (The Guillotine).—Standing Order No. 81, adopted in 1954, provides that a member in charge of a bill or a motion may at any stage through the Leader of the House request the Committee on Standing Rules and Orders to propose a time-table limiting the debate on such bill or motion (*see* THE TABLE, Vol. XXIII, p. 161). During the session a request was made to the Committee through the Leader of the House to propose time-tables limiting the debates on the various stages of four bills introduced by the Government. Time-tables in respect of all four measures were considered and agreed to by the Committee at the same meeting and reported to the House in one resolution. This was the first occasion since the adoption of the Standing Order that the Committee had submitted a time-table and it was also the first occasion on which the House had to consider a proposal providing for the limitation of the debates on the various stages of more than one measure. (V. & P., p. 401.)

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

Cape (Seconders).—The Report from the Select Committee on Standing Rules and Internal Orders, which was considered by the Council on 10th June, contained the following recommendation in addition to those described under another heading on p. 191:

> 3. *Procedure on Motions Requiring a Seconder*
>
> The Committee having considered the application of Standing Rule No. 46 to the procedure in the Council, has agreed that the Chairman should not in future allow the mover of a motion requiring a seconder to address the Council before it has been formally seconded.

In agreeing to the Report the Council made the reservation that this paragraph " be referred to the Administration's Legal Adviser for an expression of opinion on its validity and that its enforcement be deferred until then " (Minutes, 10th June, p. 92).

On 27th October the Chairman laid on the Table the Legal Adviser's Opinion, to the effect that the Council could not legally adopt the recommendation of the Select Committee (Minutes, 27th October, p. 11). The recommendation was accordingly not enforced.

The Legal Adviser's opinion read as follows:

2. Rule No. 55 of the Rules of Procedure of the Provincial Council of the Province of the Cape of Good Hope provides that:—

> " A Member may speak to the question before the Council and upon any amendment proposed thereto, and upon a question or amendment to be proposed by himself, and upon a question of order arising out of the debate, but not otherwise. . . "

This rule thus confers a right on a member to speak *upon a question to be proposed by himself*. The import of this depends on the meaning to be assigned to " question " as used in this rule. Now " question " can signify inquiry by a person seeking information or it can mean the subject for discussion, the matter before the council, the measure to be voted upon. It is used in both senses in the rules and it is left to the interpreter to determine what its connotation in any particular instance is.

3. However confusing this may be, we do think that it is clear that in Rule 55 " question " is not used in the sense of enquiry. Such a question is " put " (Rule 39(1)) or " asked " (Rule 41) and no argument, opinion or debate is permitted thereon (Rule 41). On the other hand, the " question " referred to in Rule 55 is one which is to be proposed and on which a member can speak. This can lead one only to the conclusion that " question " is used in the sense of subject for discussion, etc. Now we do not think there can be any doubt that a motion is a subject for discussion. It seems to follow that if a member is entitled to speak to a *matter for discussion to be proposed by him*, it means that he has a right to speak to a motion *to be moved* by him. Now in terms of Rule 46 any motion not seconded is forthwith dropped. In other words, if a motion is not seconded it is dropped. But before a motion can be seconded it must be moved, otherwise there is nothing to second. The effect of Rules 55 and 46 is thus that a member can first speak to his motion and then move it; thereafter a seconder is called for and if there is none the motion drops.

4. Standing Order 62 of the House of Assembly is in terms practically identical to those of Rule 55 of the Provincial Council. As regards the practice of the House of Assembly, Kilpin in his book *Parliamentary Procedure* in South Africa (3rd Edition) says at p. 61:

> " When the day arrives for which a notice of motion has been given Mr. Speaker . . . calls upon members to move their motions. The member may then rise in his place and speak to the motion if he intends to move it. . . . When he does move it and resumes his seat, Mr. Speaker says, ' who seconds the motion?' "

This clearly indicates that a member can first speak to his motion and then move it, and that a seconder is required and called for only after the motion has been moved. Although the author does not say that this practice is dictated by Standing Order 62, it certainly is in accord therewith, if our view set out in paragraph 3 above is correct.

In a discussion with Mr. Schreve he mentioned that he was aware of an

instance where the Speaker in the House of Assembly had asked a member addressing the House on his motion, whether he had a seconder for his motion. There is nothing to suggest that this has become " practice " in the House of Assembly. In fact, I understood that it happened in special circumstances. But, to ask a member whether he has a seconder, is one thing. To deny a member the right to speak because he cannot beforehand produce a seconder, is quite another matter.

5. But even if Standing Order 62 and Rule 55 do not confer a right on a member to speak to his motion before moving it, one cannot get away from the fact that in the House of Assembly the practice is followed that the member first speaks to his motion and then moves it. Now Rule 194 provides as follows:—

> " In all cases not herein provided for, the Standing Rules, Orders and practice of the House of Assembly as in force or applied from time to time shall be followed as far as they can be applied to the proceedings of the Council."

If then the problem as to whether a member may speak to his motion without first producing a seconder is not provided for elsewhere in the rules, it follows that the practice of the House of Assembly " shall be followed ". In other words, it becomes obligatory to follow the practice of the House of Assembly. Moreover, a procedure which in the House of Assembly is merely practice without being based on any Standing Rule or Order, is by Rule 194 given the force of a rule when applied to the proceedings of the Provincial Council.

6. We are, therefore, of opinion that a member of the Provincial Council has a right, if not under Rule 55, then by virtue of Rule 194, to speak to his motion before moving it and without first producing a seconder. The Select Committee's recommendation adopted by the Provincial Council is therefore in conflict with the Council's rules. The argument that the Select Committee's recommendation was prompted by the fact that under the existing procedure ' considerable time of the Council could be taken up to no other purpose han for a member to have made a statement which, as such, would have been ut of order ", cannot alter the position and does not justify the resolution. Members have the right to speak provided they comply with the rules, and that right cannot be taken away or curtailed except in the manner provided in the rules. And as far as we are aware there is nothing in the rules authorising the contemplated procedure.

7. In *De Kock and Others* vs. *Terblanche*, 1950 (1) S.A. 87, the Transvaal Provincial Division of the Supreme Court held that a resolution of the Provincial Council which had the effect of interfering with the rights of speech of Members was *ultra vires* because it was in conflict with its rules, and that such rules can be departed from only to the extent to which and in the manner in which such departure is authorised by such rules. We respectfully agree with this decision and can see no reason why the same principles would not apply in respect of the Cape Provincial Council and its rules.

8. The question arises whether the abovementioned resolution of the Provincial Council does not amount to a *de facto* suspension, in terms of Rule 193, of some or other rule. To have the effect of a suspension, the first requirement is that the resolution should be " upon motion made after notice or, with the consent of the whole Council, without notice ". In the abovementioned case it was contended that a resolution in conflict with the rules amounted to a *de facto* suspension of a particular rule, in terms of Rule 167 of the Transvaal Provincial Council which is very similar to Rule 193. In regard to this Roper, J. says at pp. 99 and 100.

> " In my view there is in the Standing Rules of the Council no room for a *de facto* or implied suspension such as is contended for. . . . If Mr. *Retief's* contention were correct every motion which transgressed some

Rule of the Council would be a motion for the *de facto* suspension of the Rule with which it was in conflict, and would therefore be permissible under Rule 167.

I do not consider that this is the position. Where a member proposes to follow a procedure which is not permitted by the Rules it is of great importance that the attention of other members should be specifically directed to the point that the procedure is contrary to the Rules and that it is proposed to depart from them for a particular purpose, and this, in my view, is the reason why Rule 167 requires notice of the motion to suspend. . .

In my opinion, therefore, Mr. *Retief's* contention that the concluding portion of Rule 168 was lawfully suspended by implication when the guillotine resolution was passed has no substance."

We can only say that here again we respectfully agree.

9. We come to the conclusion that the resolution of the Provincial Council adopting the Select Committee's recommendation is *ultra vires* the Provincial Council and therefore invalid.

(*Contributed by the Clerk of the Provincial Council.*)

7. STANDING ORDERS

Western Samoa (Revision of Standing Orders).—On the 9th September (4 *Assem. Deb.*, Vol II, p. 356) the Legislative Assembly resolved:

That in view of the early establishment of Cabinet Government the Standing Orders Committee give immediate consideration to the revision of the Standing Orders adopted by this Assembly or any amendments which the Committee may deem necessary.

The provisional Standing Orders adopted by the Legislative Assembly on 17th March (*ibid.*, Vol. I, p. 241) were modelled on the procedure followed in the House of Representatives, New Zealand and various Colonial Legislatures whose autonomy is similar to that of Western Samoa. It was necessary for the Standing Orders Committee completely to redraft various parts of the Standing Orders to facilitate transmission of business in the Assembly, Committees of the whole Assembly and Select Committee.

The final Report of the Select Committee on Standing Orders (No. 48 of 1959) was adopted without amendment on 29th September (4 *Assem. Deb.*, Vol. II, p. 592); the important amendments made thereby to the Standing Orders are summarised as follows:

No. 41: Provides that notices of motion shall have precedence according to the Order in which they appear on the Order Paper.

No. 43: A motion or amendment to which an amendment has been moved may not be withdrawn until the later amendment has either been disposed of or withdrawn.

Nos. 46 and 47: Gives the procedure for dealing with amendments.

No. 50: A Member should pass between Mr. Speaker's Chair and any other Member when speaking in such a way as not to interrupt the Speaker's view of the Member speaking.

No. 52: Provides that a Member shall be responsible for the accuracy of any facts which he alleges to be true and may be required to substantiate any such facts or to withdraw his allegation.

No. 58: Limits the debate on any particular motion by allotting a period of time for the debate or limiting the time during which Members may speak in such debate. A motion to limit a debate which does not require notice must be moved by a member of the Business Committee.

No. 79: Provides that when the progress of a Public Bill has been interrupted when the last meeting in each year is adjourned *sine die* (end of Session) or by prorogation (but not dissolution) such Bill may on motion be revived in the following Session. The revived Bill may be proceeded with at the commencement of the stage which it had reached during the previous session, unless the Motion otherwise provides.

No. 80: A Private Member's Bill shall be automatically withdrawn if the Member either ceases to be a Member of the Assembly or becomes a Minister. The Government with the consent of the Member-in-charge of the Bill may adopt same as a Government Bill.

No. 94: The Committee of the whole Assembly may upon Motion require any Government department concerned to submit a report explaining any bill, Motion or other matter which may be under consideration or to depute a representative to appear as a witness.

No. 137: Provides for the appointment of a Public Accounts Committee to examine the estimates of expenditure and accounts, the Controller and Auditor General's report and to advise on any changes considered desirable in the annual estimates.

No. 138: Provides for the appointment of a Bills Committee to consider all Bills referred to it from time to time.

The Report went on to say:

In the Committee's Report to the Legislative Assembly on 9th March, 1959, reference was made to the question of making provisions in the Standing Orders relating to the privilege of members and persons. Your Committee stated, however, that this could not be satisfactorily done, until the Legislative Assembly Privileges Ordinance 1950 was repealed and a new Ordinance enacted in accordance with the provisions of S.30 of the Samoa Amendment Act, 1957. It is strongly recommended that the Government introduce a Legislative Assembly Powers and Privileges Bill at the next meeting of the Legislative Assembly.

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

Madhya Pradesh (Amendments to Rules).—On 20th April two amendments to the Vidhan Sabha Rules were promulgated by Mr Speaker (No. 8023-V-SB):

Number of Questions: Rule 33 laid down an overall limit of eight notices of questions per Member for any given day, of which not more than three could be oral. An amendment to the rule raises these limits to ten and four respectively, but makes provision that out of the questions so given notice of for any one day, not more than three oral and five written questions shall be included in the list of questions when the day arrives.

Discussion on a matter of Urgent Public Importance: A new Chapter XIIA (Rules 128A-D) makes provision for the raising, after

notice, of discussion of a matter of urgent public importance, without any formal motion or vote, and with discretion on the part of Mr. Speaker to prescribe a time limit for speeches.

Madras: Legislative Assembly (Amendments to Rules).—The following changes were made in the Rules of Procedure of the Assembly in 1959 (New edition of Rules, correct up to 1st June, published by authority):

Definitions.—The definition of the expression "Member in charge of a Bill" has been enlarged to mean, in the case of Official Bills, any Minister.

Prorogation.—Sub-rule (*b*) of rule 9, which originally provided that, if a Member in charge of a Bill made no motion regarding the same during two complete sessions, the Bill should lapse, has been amended to the effect that pending Bills shall not lapse by reason of the prorogation.

Panel of Chairmen.—Rule 14 has been amended so as to enable the Speaker to nominate a panel of Chairmen *from time to time*, if necessary instead of at the commencement of a session only.

Hours of Sitting.—Rule 20 has been amended by changing the hours of sitting of the Assembly to 8.30 a.m.-1.30 p.m. instead of 11 a.m.-5 p.m.

Questions.—As several Members have adopted the practice of giving notice of identical questions, at the same time, a new rule has been incorporated to the effect that when a question has been admitted, if other Members give notice of questions on the same subject, the names of other Members shall be bracketed with the name of the Member whose question has already been admitted (Rule 32).

List of Questions.—The period within which questions should be sent to the Departments of the Secretariat and the period within which they should be answered in the Assembly have been prescribed. The rule as amended provides the questions shall ordinarily be forwarded to the Departments concerned within seven days of the receipt by the Secretary and the Departments shall furnish the replies thereto to the Secretary within fourteen days from the date of receipt by them (Rule 34).

Half-hour Debate on Question.—It was originally provided that half an hour's debate on a matter which has been the subject of a question could be allowed only on the day on which it was asked for. Rule 40 has now been amended, so that the discussion can be had on any other day also as may be fixed by the Speaker.

Adjournment Motion.—There was a provision that a Member who wanted to move an adjournment motion should hand to the Speaker a copy of a statement in writing of the matter proposed to be discussed. This has been amended to the effect that Members should hand to the Secretary three copies of the statement (Rule 43).

Time for taking up the Adjournment Motion.—If an adjournment motion was admitted it could be taken up for discussion on the same

day or at the request of the Leader of the House at 4 p.m. on the next day. This rule has been amended so as to provide that an adjournment motion may be taken up for discussion on the same day or, at the request of the Leader of the House, on the next day one hour before the appointed time of the rising of the Assembly or at the conclusion of the business of the day, if earlier (Rule 48).

Publication of Bill by order of the Speaker.—Originally the Governor might order the publication of any Bill even before it was introduced in the House. This has been amended vesting such power in the Speaker (Rule 93).

Constitution of the Committee on Public Accounts and the Committee on Estimates.—The Estimates Committee and the Public Accounts Committee had the Finance Minister as an *ex-officio* Member. In addition the Chairman of Public Accounts Committee has been made an *ex-officio* member of the Estimates Committee and the Chairman of the Estimates Committee has been made an *ex-officio* member of the Public Accounts Committee.

Provisions have also been made in the respective rules for associating some members of the Legislative Council with the Committee on Public Accounts and the Committee on Estimates (Rules 163 and 171).

Committee on Subordinate Legislation and its functions.—The Committee on Subordinate Legislation has been empowered to scrutinise not only the rules, sub-rules, by-laws, regulations, etc., made by the State Government in pursuance of the powers delegated by the State Legislature but also the rules made in pursuance of the provisions of the Constitution and the Parliament. Some members of the Legislative Council also have been associated with the Committee on Subordinate Legislation (Rule 200).

Petitions to the Assembly.—It was originally provided that a Petition to the Assembly should relate to some matter actually under the consideration of the Assembly. It has since been amended to provide that a Petition might relate to any matter which was within the competence of the Assembly to consider. A new rule has also been incorporated providing that petitions should be presented after question hour, subject to prior consent for such presentation by the Speaker (Rule 224).

Rules Committee.—The rules originally prescribed an elaborate procedure in regard to amendments to the Assembly Rules. A chapter (XX) has since been added in regard to the constitution of a Standing Committee of the House to consider matters of procedure and conduct of business of the House and to recommend any amendment or addition to the rules (Rules 228-33).

Absence of Members from Meetings of Committees.—A new rule has been added to the effect that if a member absents himself from three consecutive meetings of any Committee, the Chairman of that Committee should bring it to the notice of the Speaker, who may

discharge such member from the Committee. For the purpose of this rule, a meeting of the Committee held on consecutive days will be reckoned as one meeting (Rule 241).

(*Contributed by the Secretary to the Legislature.*)

Federation of Rhodesia and Nyasaland (Amendments to Standing Orders).—On 9th April the following amendments were made to Standing Orders with effect from 17th April, and will remain in force for the first three sessions of the Second Parliament. During this period of trial they can be made permanent; or repealed; or be allowed to lapse (V. & P., 1959, pp. 23-5).

S.O. No. 29: Wednesday afternoons (up to 6 p.m.) are set aside for private members' business, instead of Tuesday afternoons. A consequential amendment in S.O. No. 32 makes Mondays and Wednesdays the days for questions, instead of Tuesdays and Thursdays.

S.O. No. 38: The amendment makes it necessary to give one clear day's notice of any motion, except those which relate to the business of the House.

S.O. No. 111: The amendment does away with the appointment of a Committee to bring up bills introduced by order of the House, such as appropriation bills. A Minister now does this.

S.O. No. 124: Bills are normally presented after notice. In order to build up the business more rapidly at the beginning of a resumed session after a long adjournment, bills may be introduced without such notice provided Mr. Speaker is satisfied that a copy of the bill was posted to each Member not later than fourteen days before the commencement of the meeting. Another amendment (to S.O. No. 217) defines a "meeting" as

> a period during which sittings take place, commencing when the House first meets for a new session or after an adjournment for a period of more than one month and ending when the House is adjourned for a period of more than one month or at the conclusion of a session.

S.O. No. 181: The Select Committees on Public Accounts and on Pensions were set up regularly each session on motion. The amendment makes them sessional committees to be set up automatically at the commencement of each session. The members of these committees are nominated by the Committee on Standing Rules and Orders.

The only other change of importance in this S.O. is that Mr. Speaker is no longer a member of the House Committee.

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

Southern Rhodesia (Amendments to Standing Orders).—Various Standing Orders have been amended to achieve the following objects—

(1) To provide for a four-sitting week, from Tuesday to Friday. (S.O. 25 with consequential changes in S.O. 42 and 43, and Appendix F.)

(2) To set out the routine of daily business more fully than was formerly set out, in accordance with the practice observed over many years (S.O. 40).

(3) To provide for two days a week for which Questions may be set down instead of only one (S.O. 48) (V. & P., 1959, p. 157).

Since 1954 the Southern Rhodesia Legislative Assembly has found it convenient to sit on only four days a week and has adopted sessional orders accordingly each year. This practice has now been confirmed by an amendment to the Standing Orders. One of the reasons for this permanent change is that the Federal Government Printer has since 1959 executed all the parliamentary printing (Votes and Proceedings, Bills and Debates) for both the Federal Assembly and the Legislative Assembly, both situated in Salisbury. With both Parliaments frequently in session at the same time, one not sitting on Mondays and the other not sitting on Fridays, and both producing a daily *Hansard* overnight, for administrative reasons this change in the sitting days has become necessary.

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

Northern Rhodesia (Amendments to Standing Orders).—The Tenth Legislative Council of Northern Rhodesia was dissolved on 19th January, 1959. Immediately prior to the dissolution the Standing Orders Committee conducted a review of the Standing Orders which had been adopted with effect from June, 1956, and came to the following conclusions:

(*a*) *Notice of, and debate on, Private Members' motions:* Standing Order No. 33 then read as follows:

> (1) Every member, in giving notice of a motion, shall deliver at the Table or to the office of the Clerk before twelve noon a copy of such notice fairly written, subscribed with his name.
>
> (2) No meeting of the Council may be adjourned until all motions have been considered and decided of which notice has been given within the first sixteen sitting days of the meeting in which the Annual Estimates of Expenditure are considered or within the first eight sitting days of any other meeting of Council, unless such motion has been withdrawn. Motions of which notice has been given later in the meeting shall be considered only if the Council so decides on question put without amendment or debate.

It was considered that this Standing Order had not worked in the best interests of the Council, and that further restrictions were necessary. The Committee could not at that stage bind its successor to any definite decision; but it placed on record its opinion that in future Private Members' notices of motion should be signed not only by the Member giving notice, but also by two seconders. It was also considered that Private Members should have the right to state the day on which they wished their motions to be debated, that day to be not less than one week or more than three weeks ahead.

Provided that the Council were sitting on that day, such notices of motion must be placed on the Order Paper. The implications of this recommendation were clear—namely, that it would no longer be possible for Private Members to retain the right of having all their motions debated before the Council adjourned, provided that the notices were within time; but that they would have the right to have them put on the Order Paper on any day which they might name. In practice a Member would always put his motion down for a Wednesday, on which day, under Standing Order 23 (2), Private Members' notices of motion have precedence. But if a Member should put his motion down for some other day, and if it were not reached on that day, it would continue to appear on the Order Paper until disposed of in accordance with the provisions of Standing Order 17 (3) (now 17 (4)).

(*b*) *Division claimed by less than four Members:* Standing Order 58 made it mandatory that a division should take place "if the opinion of Mr. Speaker as to the decision of a question is challenged". There had been occasions when, in a House consisting of thirty Members, a single dissentient Member had repeatedly called for divisions on motions, proposed amendments, motions as amended, and so on. It was clear that in such cases there was no serious challenge to the correctness of Mr. Speaker's decision when interpreting the voices. The Member would only be seeking to express his continued opposition. Much of the time of the Council was thus being wasted. The Committee considered, therefore, that a proviso should be added to Standing Order 58 as follows:

> Provided that Mr. Speaker may immediately call upon those who, in his opinion, were in the minority to stand in their places; and if fewer than four so stand he shall forthwith declare the decision of the Council; but if four or more so stand he shall order the division bell to be rung and a division shall take place.

At the same time the proviso to Standing Order 62 should be deleted according to which, if less than four persons stood, when called upon by Mr. Speaker, after the closing of the Bar, the names of those persons should not be recorded in the Division list.

(*c*) *Adjournment debates after conclusion of business:* Adjournment debates arising when the business of the Council had been finished before the normal hour of interruption had always been a source of difficulty to the Government. There might, of course, be no such debate for several weeks at a time. On the other hand, especially towards the end of a meeting, they might be relatively frequent. On such occa-

sions Members could give expression in quick succession to a wide variety of grievances, for which, owing to the absence of notice, the Government would be quite unprepared. It followed that Members themselves could rarely obtain satisfactory answers, and the debate would develop into little more than a series of questions without notice. To some extent such debates may be inevitable; but in order to reduce them to a minimum it was considered that in future a regular opportunity for adjournment debates should be granted. This should be provided by altering the hour of interruption on Wednesdays from 6.30 to 6 p.m., the half-hour so provided to be occupied by a debate on the motion for the adjournment confined to subjects of which notice had been handed in to the Clerk by 3.45 p.m. on the previous day.

(*d*) *Recall of Council when adjourned* sine die: Standing Order 160 provided for the recall of the Council either earlier or later than the day to which it stood adjourned. There was no provision for the resummoning of the Council when it adjourned *sine die*. A new sub-Clause 160 (1) was therefore considered necessary as follows:

> When the Council stands adjourned *sine die*, it shall be recalled by the Speaker at the instance of the Chief Secretary by means of notice published in the *Gazette*.

These recommendations were embodied in a Government motion for their adoption and debated in the new Council on 9th April, 1959. All were accepted, except that, in respect of the proposal that Private Members' notices of motion must be supported by the names of two persons, an amendment was made making it only necessary for such a motion to have one seconder. At the same time the Council approved a number of minor amendments to Standing Order 17 arising out of a decision to adopt what had previously been only a sessional order on the subject of the hours of sitting. A further amendment (to Standing Order 137 (1)) was also recommended and adopted whereby the Standing Orders Committee itself was increased by one Member, so that it now consists of Mr. Speaker and five Members.

Quorum: In July, 1959, the Standing Orders Committee considered a curious anomaly in Standing Orders Nos. 19, 20 and 71 and reported to the Council as follows. There was no clear definition in the Standing Orders of what constituted a quorum of the Council, although Standing Order 71 did provide that the quorum should be seven, exclusive of the Chairman, in Committee of the whole Council. Standing Order 19 provided that

> Mr. Speaker shall take the Chair as soon after the hour appointed for the meeting of the Council as there shall be a quorum present. If at the expiration of half an hour after the hour appointed there is no quorum, Mr. Speaker shall take the Chair and adjourn the Council to the next sitting day.

A footnote to that Standing Order referred to section 14 (A) of the previous Legislative Council Order in Council, by that time superseded. Even there, however, the word "quorum" only occurred in a marginal note; and the section was restricted to providing that no business should be transacted if objection were taken by any Member that there were less than seven Members present. Since there was nowhere any explicit definition of quorum, it was debatable whether the Speaker at the beginning of the day, or on the report of a division, could *suo motu* adjourn the Council as it was clearly intended that he should do under Standing Orders 19 and 20. The position had become still more obscure with the introduction of the Northern Rhodesia (Legislative Council) Order in Council, 1959. There the word quorum nowhere appears. There is only a provision in section 19 (4) that any Member may draw attention to the fact that less than seven Members are present. The Committee recommended, therefore, and the Council subsquently adopted a new Standing Order 19 (*a*) as follows:

> The quorum of the Council shall be *seven* Members exclusive of the Speaker.

(*Contributed by the Clerk of the Legislative Council.*)

Kenya (Amendments to Standing Orders).—On 26th May, Standing Order No. 9 (2) was amended by substituting 7.30 for 6.15 p.m. as the hour of interruption of an afternoon sitting.

Standing Order 20 was amended to allow Private Members' business to be taken on Fridays instead of Thursdays.

Standing Order 139 relating to the exemption of business from the provisions of Standing Orders, was amended by adding a new paragraph as follows:

> (4) A Motion under this Standing Order may be moved at any time and any other business may be interrupted therefor. (80 *Kenya Hans.*, Pt. II, c. 1189.)

On 19th November, Standing Order 9 (1) was altered by doing away with Wednesday morning sittings and by extending the hours of afternoon sittings to commence at 2.15 p.m. and to end at 6.30 p.m., with Friday morning sittings commencing at 9.00 a.m.

The Speaker was also given discretion to direct earlier or later interruption of business for the convenience of the House (83 *Kenya Hans.*, cc. 402-10).

(*Contributed by the Clerk of the Legislative Council.*)

Tanganyika (Amendments to Standing Orders).—The following amendments were made during 1959 to the Standing Orders of the Legislative Council:

Meetings: An amendment to S.O. No. 6 removes the previous obligation to hold meetings at fixed quarterly intervals, giving the Council discretion to meet whenever it so orders subject to the necessity of holding at least three meetings every Session.

Duties of the Clerk: The attendance of the Clerk in person at the sittings of Select or Special Sessional Committees, which could

formerly be required by the respective Committee Chairman, can now only be required by the Speaker himself (S.O. No. 24). Amendments to the same and other Standing Orders also terminate the existence of the Council's Minutes as a separate publication, the information which they contained being inserted in the Official Report (which remains, as formerly, under the direct supervision of the Clerk).

Financial Provisions: By an amendment to S.O. No. 54 the Governor's recommendation (signified through a Minister) is now only required for bills, motions and petitions imposing or increasing a tax or charge; it was formerly required also for any such measures reducing or repealing them.

Quorum: Machinery for counting the Council, and adjourning it if a quorum is not present after the lapse of three minutes, is provided by a new S.O. No. 72. The quorum remains at twenty, but the Speaker or Member presiding no longer forms part of it.

Public Accounts Committee: This Committee, formerly consisting of not more than five Members nominated by the Speaker, now consists under an amended S.O. No. 78 (2) of a Chairman and not more than eight other Members, similarly nominated. The Speaker is obliged to nominate the Chairman and the majority of the Members from among the non-Government side of the Council. A quorum is laid down, consisting of the Chairman and four other Members.

Private Bills: Minor additions were made to the rules requiring publication of notices and advertisements relating to private bills (S.O. No. 81).

Official Report: Under an amended S.O. No. 93 discretion is given to the Speaker to lay down instructions regarding the admissibility of Members' corrections to their speeches in the Official Report; the previous interval of 21 days within which a Member had a right to make corrections is abolished.

As a result of the changes described above, consequential amendments were made to numerous other Standing Orders. (35 *Tanganyika Hans.*, 20th-23rd October, pp. 4, 55, 115; *ibid.*, 15th-16th December, pp. 8, 52.)

8. Bills, Petitions, etc.

House of Commons (Withdrawal of Private Bill involving questions of public policy).—On 23rd February, on the order being read for the second Reading of the National Association of Almshouses (Investment) Bill, Mr. Speaker said:

I have had to give careful consideration to the question whether this Bill should proceed as a Private Bill or whether it should be a Public Bill. The Bill is promoted by the National Association of Almshouses to enable the trustees of any almshouse in the country, who are, or may be in the future, members of the Association, to transfer their funds to a central body which shall have power to invest in equities as well as trustee stocks.

I think that there are two grounds of objection to the Bill proceeding as a Private Bill. In the first place, on the ground of public policy, in that it extends the powers of investment of an indefinite number of trust funds beyond those of the general law. In the second place, on the ground that the Bill is promoted by an association on behalf of its members, the number of whom is not fixed, and could include every almshouse in the country. The Bill therefore is one of general application.

I am therefore ruling that, as a result of the questions of public policy which it raises and the general application of the Bill to all almshouses, this Bill is not proper to proceed as a Private Bill, and it must be withdrawn.

The Order for Second Reading was accordingly discharged, and the Bill withdrawn (600 *Hans.*, cc. 787-8).

Jersey (Petitions).—On 29th January an Act was passed (R. & O. No. 4013) approving a series of Standing Orders relating to the presentation of Petitions.

By No. 1 of these Standing Orders it is provided that petitions shall be deposited with the President three days before presentation; they must be presented by a Member (although the President may dispense with this provision), but not on his own behalf.

The form of petitions is different only in detail from that of those presented to the House of Commons (S.O. No. 2); they may, however, be either handwritten or mechanically reproduced, provided that there are no erasures or interlineations. The rules regarding signatures (S.O. No. 3) are similar to those of the House of Commons. Petitions are to be either in English or in French with an English translation appended (S.O. No. 4). They must be decorous and temperate in language, unaccompanied by attached documents, and countersigned after perusal by Members presenting them (S.O.s Nos. 5-8).

S.O. No. 9 reproduces, with slight variations, the provisions of S.O.s 91 and 93 of the House of Commons.

On presentation, petitions are to be referred under S.O. No. 10 to such Committee as the States may consider appropriate, which may recommend, if any petition is not in conformity with the rules of order, that it be returned to the Member presenting it. If the petition is in order, the Committee is to inquire into its substance and report thereon, with any appropriate recommendations, to the States.

9. ELECTORAL

Western Australia (Electoral).—The Electoral Act Amendment Act (No. 3), 1959 (8° Eliz. II, No. LIX) effected a number of amendments, such as: the appointment of an Assistant Chief Electoral Officer; an increase from 14 to 21 days as the minimum between nomination day and polling day; polling day to be a Saturday, but not the Saturday preceding or succeeding Easter Saturday.

The main amendment related to postal voting. Electors enrolled, who have reason to believe they will not be within seven miles of

a polling place on polling day, or are seriously ill or infirm may apply for a postal ballot paper. The Act sets forth a list of officials to whom such application may be made. The application must be received before 6 p.m. on the day preceding polling day. If the application is in order, the elector is issued with a ballot paper, an envelope marked "Ballot Paper" and a further envelope addressed to the Chief Electoral Officer. The elector votes on the ballot paper, places his vote in the envelope marked "Ballot Paper", and then encloses it in the envelope marked "Chief Electoral Officer" and posts it in time to reach that officer before the poll closes.

Another provision is for a mobile ballot box, in charge of an electoral officer, who may move around a hospital or similar institution to take votes from those confined to bed or too ill to attend a polling place. Scrutineers may accompany such officer and mobile box.

The failure, on occasion, of presiding officers at booths to initial ballot papers, has resulted in a number of informal votes. To obviate this, ballot papers will be printed on paper with a watermark to be prescribed by regulation. If a presiding officer neglects to initial a ballot paper, it will still be valid, under the amending Act, if the ballot paper has the watermark.

The final amendment reduced from 50 yards to 20 feet the distance from the actual entrance of a polling booth at which canvassers can operate. The Bill passed both Houses and was assented to on 3rd December, 1959.

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

Ceylon (Electoral qualifications, etc.).—The law relating to parliamentary elections in Ceylon is contained in the Ceylon (Parliamentary Elections) Order in Council, 1946 (*see* THE TABLE, Vol. XV, p. 236). This Order in Council provided that amendments to it shall be made by Acts of Parliament.

Numerous amendments to the original Order in Council have been made by Acts of Parliament from time to time. The Ceylon Parliamentary Elections (Amendment) Act (No. 11 of 1959) was enacted in order to give effect to the recommendations of a Select Committee of the House of Representatives appointed to review the law relating to elections in Ceylon, whose report was published in 1957 as Parliamentary Series No. 6 of the Third Parliament.

The following are the chief provisions of this Amendment:

(1) The age of qualification of a voter has been reduced from 21 to 18 years.
(2) All persons whose names are, on a revision of the register of voters, either added to or removed from the register will be individually informed of such addition or removal.
(3) All electors, after a date to be appointed by the Minister concerned, will be supplied by the Commissioner of Elections with an official identity card bearing a photograph of the

voter and specifying his name, address and electoral district.

(4) The Secretary of any political party may apply to the Commissioner for his party to be a "recognised" political party, and if the Commissioner is satisfied that such party has been in existence for at least five years or that at least two members of such party have been Members of Parliament, he may grant such party recognition. Upon such recognition being granted, candidates of such a party at an election may make a reduced deposit of Rs. 500 instead of the usual deposit of Rs. 1,000.

(5) Every elector is entitled to receive a notice from the Returning Officer showing in which register of electors his name, polling number and address are registered, at what polling station he should vote and the date and hours of the poll.

(6) Postal voting will be permitted, on application, to members of the Army, Navy and Air Force as well as to officers in the Public Service who will be unable to vote in person at the polling station assigned to them owing to the circumstances of their employment.

(7) The display, for the purpose of promoting the election of a candidate, of any handbill, poster, notice, flag or banner across a public road, in a vehicle used for public transport or any vehicle other than one used for the conveyance of a candidate or his election agent on election day or in any premises belonging to the Crown or a local authority is forbidden.

(8) A person shall be guilty of the offence of undue influence if, between nomination day and the day following the date of the poll, he utters at any religious assembly any words for the purpose of inducing an elector to exercise his vote in favour of or against a particular candidate, or if he distributes or displays at such an assembly any handbill, poster or flag for that purpose.

(9) The use of vehicles and animals for the conveyance of electors to the poll is forbidden.

(10) Election petitions will be tried by an election judge nominated by the Chief Justice from a panel of election judges appointed by the Governor-General.

(11) Provision has been made to safeguard the tenure of office and the remuneration of the Commissioner of Parliamentary Elections.

(12) Every candidate at an election is entitled to send by post, free of charge, one postal communication to every elector in his electoral district containing matter relating to the election.

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

10. EMOLUMENTS

Australian Commonwealth (Members' and Ministers' Allowances).—The rates of parliamentary allowances to Members and Ministers, which were described in Vol XXV of THE TABLE (pp. 57-61), were increased during 1959 by the enactment of the Ministers of State Act (No. 18) and the Parliamentary Allowance Act (No. 19).

Under the Ministers of State Act, the Special Allowance for Ministers (formerly £1,000 in all cases) was increased to £1,500 in respect of not more than eleven Ministers (nominated by the Prime Minister) and £1,250 in respect of the rest.

The effect of the provision of the Parliamentary Allowances Act is set out in the following table:

Office	*Former rate* £	*New rate* £
Senator	2,350	2,750
Expense Allowance	700	800
Member of House of Representatives	2,350	2,750
Expense Allowance	600 *or* 800	850 *or* 1,050
President and Speaker	1,750	2,250
Expense Allowance	250	500
Chairman of Committees	900	1,000
Leader of Opposition (Senate)	750	1,500
Expense Allowance	250	500
Leader of Opposition (House)	1,750	3,250
Expense Allowance	1,000	1,500
Deputy Leader of Opposition (Senate)	375	500
Expense Allowance	250	unchanged
Deputy Leader of Opposition (House)	750	1,500
Expense Allowance	250	500
Leader of Third Party	500	750
Expense Allowance	None	250
Government and Opposition Whips (Senate)	275	400
Government Whip (House)	325	500
Opposition and Third Party Whips (House)	275	400

Australian Commonwealth (Parliamentary Retiring Allowances).—The provisions for retiring allowances for Members of both Houses (*see* THE TABLE, Vol. XVII, p. 30; Vol. XXIV, p. 180) were amended by the Parliamentary Retiring Allowances Act (No. 20 of 1959).

The contribution of each individual Member to the Pension Fund was increased from £234 to £260, and the age beyond which no member is deemed to have retired voluntarily (with consequent reduction of benefit) was reduced from 70 to 60. The minimum age at which benefit can be obtained was reduced from 45 to 40, the new basic rate at 40 being £10 per week, with a sliding scale up to £18 a week for 45 and over. The basic rate of pensions to widows (or widowers) was increased from £10 to £15, and additional provision was made for orphaned children under 16 after the death of the

widow (or widower) of the deceased Member, at a rate determinable by the Trustees of the Fund up to a maximum of £3 for each child concerned. A sliding scale of benefits for retired Prime Ministers was also provided, varying from £2,000 (after two years' service as Prime Minister) to £3,000 (after six or more years' service) and replacing a former fixed rate of £1,200; and the widow of a Prime Minister, whose pension was formerly fixed at £750, is now entitled to half the rate applicable to her deceased husband.

Western Australia (Members' Expenses).—Members of both Houses of the Parliament of Western Australia receive allowances under the Parliamentary Allowances Acts. In 1953, a further Act was passed granting in addition to the parliamentary allowance, a further allowance for reimbursement of expenses incurred during the course of parliamentary duties. This Act did not apply to Ministers who receive extra allowances as such under the Parliamentary Allowances Acts.

The Members of Parliament, Reimbursement of Expenses Act Amendment Act, 1959 (8° Eliz. II, No. LXXIII), raised the reimbursement allowance from £200 to £450 for metropolitan members; from £400 to £700 for north-west members; and from £300-£350 to £600-£650 for country Members. The Act also provided for these payments to be made to Ministers. Further additional allowances were provided for certain office-bearers. New allowances appeared for the Whips, £200 for the Government Whip, and £150 for the Opposition Whip. This amending Act was passed through both Houses and assented to on 14th December, 1959.

The complete salary range at present is shown in the following schedule:

SCHEDULE OF ALLOWANCES RECEIVED BY MEMBERS OF PARLIAMENT OF WESTERN AUSTRALIA

Office	*Parlty. Allowance*	*Official Allowance*	*Reimburse. of Expenses*	*Total*
	£	£	£	£
Premier	2,230	1,900	900	5,030
Deputy Premier	2,230	1,450	800	4,480
Leader of Government in Council	2,180	1,450	650	4,280
Other Ministers	2,180-2,230	1,300	620-820	4,100-4,350
Leader of Opposition	2,230	700	750	3,680
Leader of Opposition in Council	2,230	400	790	3,420
Deputy Leader of Opposition	2,180	400	540	3,120
President of Council	2,230	450	720	3,400
Speaker of Assembly	2,230	450	720	3,400
Chairman of Committees	2,230	250	675	3,155
Government Whip	2,230		800	3,030
Opposition Whip	2,230		750	2,980
Members—				
Metropolitan	2,180		450	2,630
Country	2,230		600-650	2,830-2,880
North-West	2,230		700	2,930

Allowance is made for the Leader of a third party, if in opposition and of at least 8 members. This does not obtain at the present day.

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

Union of South Africa (Parliamentary Allowances).—As a result of the amendments to s. 56 of the South Africa Act, 1909, relating to leave of absence of Members which were described in Volume XXVII of THE TABLE (p. 134), the following addition should be made to the schedule showing Parliamentary and Special Allowances granted to Members of the Union Parliament since 1910, which was set out on pp. 68-9 of Vol. XXVI:

	Parliamentary Allowance		*Special Allowances*	*Deductions*	*Remarks*
	Amount	*Authority*			
1958	do.	South Africa Act, 1909, as amended by Acts Nos. 51 of 1926, 43 of 1935, 19 of 1940, 21 of 1946, 66 of 1951, 2 of 1957, 1 of 1958 and 49 of 1958	do.(1)	(*a*) £6 per day absence in excess of: (i) 25 days during session when main estimates of expenditure are considered, and (ii) 7 days during any other session (*b*) do. (1), (2)	(1) do. (2) do. NOTE: Deputy Ministers are exempt from deductions if they are absent on official business.

Federation of Rhodesia and Nyasaland (Ministers' and Members' Salaries and Allowances).—The Ministerial and Parliamentary Salaries and Allowances Act (No. 33 of 1959), repealed the existing legislation relating to the payment of Ministers, Members and the elected Officers of the Federal Assembly. So far as Members' pay and allowances is concerned, the new Act made no change. Part I of the new Act deals with the salaries and allowances of Ministers and Parliamentary Secretaries, and S. 8 exempts from income tax the value of any benefit, right or advantage relating to the occupation of quarters or a residence which is enjoyed by virtue of service as a Minister or Parliamentary Secretary. This exemption is in addition to that provided in S. 20, which exempts all allowances paid in terms of the Act from income tax.

The rates of pay laid down are:

Prime Minister:	Salary: £4,000 p.a. Allowance £1,000 p.a.
Minister:	Salary £3,250 p.a. Allowance £500 p.a.
Parliamentary Secretary:	Salary £2,250 p.a. Allowance £500 p.a.

In addition, Ministers and Parliamentary Secretaries may be paid such travelling and subsistence allowances in respect of journeys on official duties as the Prime Minister may by regulation prescribe.

Part II deals with the salaries and allowances of the Speaker, the Acting-Speaker, the Deputy Speaker, the Leader of the Opposition, the Chairman of the African Affairs Board and Members. No change was made in the salaries and allowances of the Members or of the Chairman of the African Affairs Board. The other salaries and allowances prescribed are:

Speaker: Salary £2,000 p.a.
Entertainment Allowance £500 p.a.

(By virtue of S.10, these emoluments continue to be payable to the person who was the Speaker at a dissolution, until the Federal Assembly next meets after the dissolution, or until he relinquishes or becomes unable to perform the functions referred to in Article 16 of the Constitution.)

Deputy Speaker: Salary £1,700 p.a.
Leader of the Opposition: Salary £2,000 p.a.
Allowance £500 p.a.

The Deputy Speaker and Leader of the Opposition also receive the Committee, Constituency and Non-residence allowance payable to Members. As in the case of a Minister, the Speaker is exempted by S. 15 from liability to income tax in respect of the value of the benefit derived from the quarters he occupies as Speaker.

Part III deals with Committee, Constituency and non-residence allowances of Members. This re-enacts the previous law in this respect.

Part IV lays down that all allowances payable in terms of the Act are exempt from income tax. This does not represent a change in the law.

The Schedule sets out the rates of the constituency allowances payable to Members. These remain as they were under the previous Act.

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

Southern Rhodesia (Members' Emoluments and Expenses).—By the Ministers', Speaker's and Members of Parliament Amendment Act (No. 65 of 1959) the changes enumerated below became effective from 1st October, 1959:

	Former rate p.a.	*New rate p.a.*
Minister's Salaries		
Prime Minister	£3,000	£3,500
Other Ministers	2,750	3,250
Parliamentary Secretary	Unchanged at £2,250	
Mr. Speaker's Salary	1,500	1,750
Residential Allowance (in lieu of official residence)	-	400
Special Allowance	150	-
Members' Salaries	750	1,000

These increases were introduced in consequence of a Report of a Select Committee appointed to examine the question of Members' emoluments.

The Act referred to above provided also for the payment of the emoluments due to the Speaker to be continued between dissolution and the first meeting of the new Parliament.

A subsistence allowance (at present £3 3s. a day) has for many years been paid to Members living more than 25 miles from the seat of Parliament, and since 1956 an allowance of £1 1s. a day has been paid to those living within 25 miles.

Those who live within 25 miles and over 10 miles from Parliament now receive a transport allowance of 1s. a mile for every mile over 20 for a return car journey (Resolution of House, V.P. 1959, p. 261). It should be noted that there is not a convenient public transport system serving the extensive peri-urban and farming areas round Salisbury.

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

11. Committees

Ceylon (Parliamentary Staff Advisory Committee).—The Parliamentary Staffs Act, No. 9 of 1953, provided for each House a Staff Advisory Committee consisting—

(*a*) in the case of the Senate, of the President, the Leader of the Senate and one other Senator nominated by the Minister of Finance; and

(*b*) in the case of the House of Representatives, of the Speaker, the Leader of the House and the Minister of Finance.

The Act, while preserving to the Clerks of the two Houses the right conferred on them by the Constitution to appoint (in consultation with their respective Presiding Officers) the staffs of their respective Houses, enacted that the number and designation of the posts in the cadre of the staff of each House and the scales of salary to be attached to such posts shall be determined by the Staff Advisory Committee. It further provided for the respective Staff Advisory Committees to make financial regulations to regulate the conditions of service and remuneration of the Staffs of the two Houses. The Act also provided that the annual estimates of expenditure of each House shall be prepared by the Staff Advisory Committee of that House and sent direct to the Minister of Finance, and that such estimates shall, subject to such alteration as may be made by the Cabinet, be included in the Appropriation Bill.

As a result of representations made by the Opposition that the Leader of the Opposition should also be a member of the Staff Advisory Committee of the House of Representatives, the Parliamentary Staffs (Amendment) Act, 1959 (Act No. 20 of 1959) was passed which provided that, in the House of Representatives, the membership of the Committee shall be enlarged by the addition of one Mem-

ber of the House nominated by the Prime Minister and one Member of the House from the Opposition nominated by the Speaker in consultation with the Leader of the Opposition.

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

Nyasaland (Committees on financial matters).—The whole of Part XIV of the Standing Orders of the Legislative Council was replaced by resolution of the Council on the 16th December, 1959. Previously the Standing Committee on Finance of the Legislative Council had performed the duties of—

(*a*) examining the annual budget and reporting thereon;
(*b*) recommending supplementary financial provision during the course of the financial year;
(*c*) examining the public accounts and the audit report thereon and reporting the results of this examination to the legislation.

2. The new Part XIV provides for the appointment of three Committees:

(i) the Standing Committee on Finance consisting of the Financial Secretary, three non-African Elected Members (one of whom at least shall be a member of the Executive Council) and four African Elected Members (one of whom shall be a member of the Executive Council) all of whom are appointed by the President (*i.e.*, the Governor);
(ii) the Public Accounts Committee consisting of the Senior Elected Member as Chairman, one non-African Elected Member (who shall not be a member of the Standing Committee on Finance) and three African Elected Members (none of whom shall be members of the Standing Committee on Finance and one of whom shall be a member of the Executive Council). All such members are appointed by the President; and
(iii) the Budget Advisory Committee consisting of the Financial Secretary and all Elected Members.

(*Contributed by the Clerk of the Legislative Council.*)

12. Accommodation and Amenities

Cape (Accommodation and Amenities).—On 10th June the Council considered a Report from the Select Committee on Standing Rules and Internal Arrangements, which contained, *inter alia*, the following paragraphs, which were agreed to (Minutes, 10th June, pp. 92-3):

1. *Broadcasting of speeches of the Administrator from the Council Chamber.*
The Committee recommends that until the Council otherwise resolves, arrangements may be made, without obtaining leave from the Council,

but with the approval of the Administrator, for the broadcasting of the opening and budget speeches from the Council Chamber.

2. *Revision and reprinting of pamphlet on privileges and facilities of Members.*

The Committee has to report that it has requested the Clerk, under the direction of Mr. Malan, M.E.C., and Mr. Timoney, to revise the pamphlet on the privileges and facilities of Members and to have it reprinted as soon as possible.

4. *Provision of a sound amplification system and verbatim recording of discussions in the Council Chamber.*

In view of the need for sound amplifiers at several places in the Chamber, and the desirability for such a system to permit the use of automatic recorders, the Committee recommends that the Administration be requested to take steps—

(*a*) to have a system of controlled hearing-aids, with provision for the connection of a recorder, installed in the Chamber to the satisfaction of the Executive Committee; and

(*b*) to provide for the verbatim recording of discussions in the Chamber during sittings of the Council.

5. *Reservation of seats in the public gallery.*

The Committee has given instructions that the front row of seats in the public gallery be reserved for Members of the Council.

The object of the first recommendation was to give standing leave where previously leave had had to be obtained for each occasion.

The revised edition of the pamphlet on privileges and facilities was brought out later in the year. It is divided into eight parts. Part I (Allowances to Members and Term of Office) contains particulars as to the rate and payment of allowances, Members' term of office, forfeiture of seats and deductions. Part II relates to travelling facilities. Part III (Correspondence, Telephones and Printed Matter) sets out provisions relating to such matters as franking, telephone calls, lockers, stationery and free publications. Part IV deals generally with accommodation. The remaining sections deal respectively with privileges accorded to ex-Members, the status of the Clerk and Clerk Assistant as Commissioners for Oaths, exemption from jury service and the publication of lists of Members.

With regard to the paragraph numbered 4, the plan for hearing aids has been dropped, but a *Hansard* service (only in the language spoken) is to come into operation in the Session of June, 1960.

The final instruction is an innovation, in that all the 36 seats in the gallery have hitherto been available to the public. 26 of these are now available, but 6 seats in a special bay are also available for distinguished strangers. (*See also* p. 170.)

(*Contributed by the Clerk of the Provincial Council.*)

XII. SOME RULINGS BY THE CHAIR IN THE HOUSE OF COMMONS, 1958-59

The following index to some points of Parliamentary procedure, as well as Rulings by the Chair, given in the House of Commons during the Fourth Session of the Forty-first Parliament of the United Kingdom (7 & 8 Eliz. II) is taken from Volumes 594 to 610 of the Commons *Hansard*, 5th Series, covering the period from 28th October, 1958, to 18th September, 1959.

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.

Acts

—public Act always supersedes private Act [600] 1497, 1499-1500

Adjournment

—*of House*
—legislation should not be suggested in debate on [597] 442, [599] 960
—matters entailing amendment of regulations may be raised in debate on, but not of statutes [600] 919
—Ministerial responsibility must exist for subjects raised in debate on [599] 531-42
—*under S.O. No. 9 (Urgency)*
—*Subjects refused (with reason for refusal)*
—Arms exported to Cuba (facts not definitely known) [597] 770-5.
—exclusion of Member from Nyasaland (responsibility of Government of Federation of Rhodesia and Nyasaland) [601]53-59
—orders for reopening military operations in Cyprus (full information not available) [598] 1257-66

Amendment(s)

—cannot be moved until it is reached [607] 521, 528-9
—Member moving or seconding unable to speak again on the main Question after amendment has been withdrawn [603] 982
—must be withdrawn before original motion can be withdrawn [599] 811
—seconder of, exhausts his right to speak [608] 337
—takes precedence over main Question [599] 819-20

XIII. EXPRESSIONS IN PARLIAMENT, 1959

The following is a list of examples occurring in 1959 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

"craftiness". (207 *U.P. Assem. Deb.*, pp. 694-7.)
"deliberate filibuster". (601 *Com. Hans.*, 796-7.)
"deliberate, malicious interpretation". (99 *S.A. Assem. Hans.*, c. 2022.)
"escaped with the boodle". (607 *Com. Hans.*, 221.)
"insidious, malicious and dishonest questions" (asked by members of a party). (1959 *Can. Com. Hans.*, p. 788.)
"one of design" (of another Member's motion). (*N.S.W. Hans.*, Vol. 27, p. 2557.)
"oodharithanam" (extravagance). (20 *Madras Assem. Deb.*, 213.)
"phony statistics". (1959 *Can. Com. Hans.*, p. 5849.)
"shamelessness" (not reflecting on an individual). (207 *U.P. Assem. Deb.*, p. 620.)
"untrue statement". (1959 *Can. Com. Hans.*, p. 6103.)
"vendetta". (610 *Com. Hans.*, 487.)
"yenna yogyathai irukkirathu" (How is he competent to talk?). (20 *Madras Assem. Deb.*, 461.)

Disallowed

"abasa oonachi" (foul feeling). (19 *Madras Assem. Deb.*, 129.)
"absurd". (200 *U.P. Assem. Deb.*, p. 362.)
"agitator(s)". (100 *S.A. Assem. Hans.*, c. 4032; 102 *ibid.*, c. 9557.)
"ashamed". (1959 *N.Z. Hans.*, 316, 1770.)
"bamba zonke" (meaning "grab everything", used as a nickname for Salisbury, the Federal Capital). (10 *Fed. Rhod. Nyas. Hans.*, c. 905.)

"beastly". (100 *S.A. Assem. Hans.*, c. 2637.)
"be honest". (206 *U.P. Assem. Deb.*, p. 913.)
"betrayal". (100 *S.A. Assem. Hans.*, c. 3083.)
"betrayal of trust bordering very closely on treason". (1959 *Can. Com. Hans.*, p. 6015.)
"biggest joke in the Services". (1959 *N.Z. Hans.*, 299.)
"blood shocking". (11 *Fed. Rhod. Nyas. Hans.*, c. 3690.)
"bloody". (11 *Fed. Rhod. Nyas. Hans.*, c. 2407.)
"booze". (10 *Fed. Rhod. Nyas. Hans.*, c. 857; 1959 *S. Rhod. Hans.*, 1744.)
"brains were in a nutshell". (1959 *N.Z. Hans.*, 526.)
"brother-in-law" (used insultingly). (201 *U.P. Assem. Deb.*, p. 266.)
"buck has been passed". (1959 *S. Rhod. Hans.*, 583.)
"buffoonery". (1959 *N.Z. Hans.*, 1209.)
"calculated to mislead". (1959 *N.Z. Hans.*, 1344-8.)
"challenge". (20 *Madras Assem. Deb.*, 289.)
"chaps". (11 *Fed. Rhod. Nyas. Hans.*, c. 2481.)
"charged with misappropriation". (27 *India L.S. Deb.*, 25th Feb., 3062.)
"clearing the deck to join the Anglo-American bloc". (32 *India L.S. Deb.*, 3rd August, 125.)
"clown". (1959 *Aust. Sen. Hans.*, First Period, p. 1417.)
"conspiracy". (*Punjab L.C. Deb.*, 3rd January.)
"deceive". (201 *U.P. Assem. Deb.*, p. 364.)
"decrepit old man". (1959 *Aust. Sen. Hans.*, First Period, p. 50.)
"deliberate attempt to sow suspicion". (100 *S.A. Assem. Hans.*, c. 4636.)
"deliberately misleading". (1959 *N.Z. Hans.*, 840.)
"deprived of debate by trickery". (1959 *Can. Com. Hans.*, p. 3971.)
"de-protectorised". (10 *Fed. Rhod. Nyas. Hans.*, c. 604.)
"dictator". (100 *S.A. Assem. Hans.*, c. 4164.)
"dishonest", "dishonesty". (99 *S.A. Assem. Hans.*, cc. 710, 2362, 4610; applied to a political party, *ibid.*, c. 185.)
"dishonesty and falsehood". (207 *U.P. Assem. Deb.*, p. 302.)
"dishonourable Member". (1959 *N.Z. Hans.*, 1842.)
"distorted", "distorting". (99 *S.A. Assem. Hans.*, cc. 856, 1623; 100 *ibid.*, cc. 4189, 4283; 102 *ibid.*, c. 9468.)
"dud". (10 *Fed. Rhod. Nyas. Hans.*, c. 1236.)
"dunderhead". (599 *Com. Hans.*, 837-8.)
"Dyer of 1959" (with reference to alleged repressive action by the Chief Minister of a State). (27 *India L.S. Deb.*, 12th March, 5894.)
"exprotectorated". (10 *Fed. Rhod. Nyas. Hans.*, c. 748.)
"false statement". (1959 *N.Z. Hans.*, 1051, 1209.)

"falsified". (1959 *N.Z. Hans.*, 1843.)
"filthy, despicable propaganda". (100 *S.A. Assem. Hans.*, c. 3388.)
"filthy stuff". (1959 *N.Z. Hans.*, 2611.)
"fivers". (10 *Fed. Rhod. Nyas. Hans.*, c. 896.)
"fool". (1959 *N.Z. Hans.*, 2630; 99 *S.A. Assem. Hans.*, cc. 2334-5.)
"fool at forty is a fool for ever" (with reference to Speaker). (7 *W. Nigeria Assem. Hans.*, 250.)
"foxed". (1959 *S.R. Hans.*, 1981.)
"full of special pleading for the prosecution" (of report by a Committee). (204 *U.P. Assem. Deb.*, p. 33.)
"funky". (100 *S.A. Assem. Hans.*, c. 3623.)
"fraudulent". (1959 *N.Z. Hans.*, 2490.)
"frightened". (1959 *N.Z. Hans.*, 1129.)
"gang". (102 *S.A. Assem. Hans.*, c. 9671.)
"get out of the ditch". (1959 *N.Z. Hans.*, 500.)
"get out of the gutter". (1959 *N.Z. Hans.*, 172, 500.)
"getting the bird". (10 *Fed. Rhod. Nyas. Hans.*, c. 1461.)
"go and have a wash". (1959 *N.Z. Hans.*, 2631.)
"God forbid". (615 *Com. Hans.*, c. 739.)
"government bought their way in". (1959 *N.Z. Hans.*, 50.)
"great injustice" (used of a decision of the Chair). (20 *U.P. Assem. Deb.*, p. 364.)
"half-witted". (1959 *N.Z. Hans.*, 397.)
"hypocrisy", "hypocrites". (99 *S.A. Assem. Hans.*, c. 2194; 100 *ibid.*, cc. 3222, 3445.)
"hypocritical arrogance". (100 *S.A. Assem. Hans.*, c. 5069.)
"I walk out as a protest against your policy of favouritism" (spoken to the Chair). (202 *U.P. Assem. Deb.*, p. 548.)
"idiot". (206 *U.P. Assem. Deb.*, p. 911.)
"if the cap fits, wear it". (1959 *N.Z. Hans.*, 1842.)
"improper" (used of a decision of the Chair). (200 *U.P. Assem. Deb.*, p. 736.)
"in league with someone" (used in reference to the Chair). (204 *U.P. Assem. Deb.*, p. 66.)
"insincerity". (1959 *N.Z. Hans.*, 1835.)
"intended to be misleading". (1959 *N.Z. Hans.*, 1017.)
"intrigue". (101 *S.A. Assem. Hans.*, c. 6146.)
"irresponsible". (203 *U.P. Assem. Deb.*, p. 552-3; with reference to election of Deputy Speaker, 7 *W. Nigeria Assem. Hans.*, 245-6.)
"kitty" (referring to Government finance). (1959 *S. Rhod. Hans.*, 2135.)
"knows what he says is incorrect". (1959 *N.Z. Hans.*, 47.)
"kookaburra". (1959 *N.Z. Hans.*, 840, 1496.)
"legalised theft". (102 *S.A. Assem. Hans.*, c. 8687.)

"legislation which was designed to rob". (1959 *N.Z. Hans.*, 655.)
"lie", "lies", etc. (602 *Com. Hans.*, 178-9; 1959 *Can. Com. Hans.*, 2987, 3438; 1959 *N.Z. Hans.*, 1451-3; *Punjab L.C. Deb.*, 3rd January, 18th December.)
"lust for blood". (10 *Fed. Rhod. Nyas. Hans.*, c. 1838.)
"made a statement knowing it was incorrect". (1959 *N.Z. Hans.*, 435, 2437.)
"make propaganda". (35 *India L.S. Deb.*, 673.)
"manipulation of threats". (*Punjab L.C. Deb.*, 3rd January.)
"matta ragam" (descend to a low level). (17 *Madras Assem. Deb.*, 219-20.)
"misrepresenting the words of the Speaker". (1959 *Can. Com. Hans.*, p. 4774.)
"mongrel". (1959 *N.Z. Hans.*, 638.)
"muck-raking". (1959 *N.Z. Hans.*, 770.)
"my foot". (10 *Fed. Rhod. Nyas. Hans.*, c. 1029.)
"no sense of fair play or decency". (1959 *N.Z. Hans.*, 326.)
"nobbled". (11 *Fed. Rhod. Nyas. Hans.*, c. 2275.)
"non compos mentis". (1959 *N.Z. Hans.*, 1209.)
"not fit to lick the shoes of the Prime Minister". (1959 *N.Z. Hans.*, 289.)
"not game". (1959 *N.Z. Hans.*, 1929.)
"not giving the facts to the House" (of a Ministerial statement). (1959 *N.Z. Hans.*, 107.)
"not true", "not speaking the truth". (1959 *N.Z. Hans.*, 1142, 2500.)
"notorious". (208 *U.P. Assem. Deb.*, p. 317.)
"numbskull". (1959 *N.Z. Hans.*, 526.)
"of no significance" (applied to an address by the Governor). (*Punjab L.C. Deb.*, 20th February.)
"oh, Christ". (10 *Fed. Rhod. Nyas. Hans.*, c. 1666.)
"one can even stand on his head in this House". (208 *U.P. Assem. Deb.*, p. 323.)
"paradise for favourites" (with reference to Rajya Sabha). (26 *India L.S. Deb.*, 2nd March, 3737.)
"persecution mania". (102 *S.A. Assem. Hans.*, c. 9647.)
"piracy". (102 *S.A. Assem. Hans.*, c. 8746.)
"poda" (slang word meaning "go"). 23 *Madras Assem. Deb.*, 277.)
"policies which bred corruption". (1959 *N.Z. Hans.*, 261.)
"political motive" (with reference to a Minister). (36 *India L.S. Deb.*, 4434.)
"politically insane people". (100 *S.A. Assem. Hans.*, c. 4626.)
"prevarication". (20 *Madras Assem. Deb.*, 309.)
"ribald". (607 *Com. Hans.*, 1038.)

"robbery" (alleged against a public servant). (30 *India L.S. Deb.*, 29th April, 13942.)
"scoundrel". (32 *India L.S. Deb.*, 4th September, 6418.)
"scurrilous". (100 *S.A. Assem. Hans.*, cc. 3248, 3260.)
"shamelessness". (205 *U.P. Assem. Deb.*, p. 859.)
"shut up". (608 *Com. Hans.*, 1695.)
"smackers" (as a term for currency notes). (11 *Fed. Rhod. Nyas. Hans.*, c. 3211.)
"smart alec". (603 *Com. Hans.*, 623.)
"smells pre-Victorian". (10 *Fed. Rhod. Nyas. Hans.*, c. 1564.)
"snake in the grass". (10 *Fed. Rhod. Nyas. Hans.*, c. 1843.)
"sneer". (1959 *N.Z. Hans.*, 84, 809; 1210, 1211.)
"stinking" (with reference to Speech from Throne). (7 *W. Nigeria Assem. Hans.*, 94.)
"stooges". (10 *Fed. Rhod. Nyas. Hans.*, c. 1716.)
"sycophantic executive". (100 *S.A. Assem. Hans.*, c. 4151.)
"takes flesh thirteen times" (with reference to Dalai Lama). (31 *India L.S. Deb.*, 1st May, 15939.)
"tell the truth", "stick to the truth". (1959 *N.Z. Hans.*, 299, 833.)
"there are three features common about all pigs: they smell . . .". (83 *Kenya Hans.*, 528.)
"tiddly". (10 *Fed. Rhod. Nyas. Hans.*, c. 1080.)
"time of the House is being wasted". (203 *U.P. Assem. Deb.*, p. 142.)
"tinker's cuss". (1959 *S. Rhod. Hans.*, 829.)
"torrent of verbiage". (79 *Kenya Hans.*, 80, 82.)
"totally wrong statement". (203 *U.P. Assem. Deb.*, p. 84.)
"trained animals". (1959 *S. Rhod. Hans.*, 391.)
"treachery". (26 *India L.S. Deb.*, 3062.)
"twisting". (99 *S.A. Assem. Hans.*, cc. 2164-5; 100 *ibid.*, cc. 3389, 4190.)
"ugly Senate". (99 *S.A. Assem. Hans.*, cc. 1221-2.)
"unfit to be the Leader of the House". (38 *India L.S. Deb.*, 16th December, 5382.)
"unfit to represent any body of people in a democratic community". (1959 *N.Z. Hans.*, 747.)
"unholy multi-racial bastard" (of a proposed constitution). (83 *Kenya Hans.*, 121.)
"unqualified admission that the Tory party were a great bunch of liars". (1959 *Can. Com. Hans.*, p. 4077.)
"untrue", "not true". (99 *S.A. Assem. Hans.*, c. 2362; 100 *ibid.*, c. 3746; 102 *ibid.*, c. 9655.)
"valatta mudiyathu" (cannot wag the tail). (26 *Madras Assem. Deb.*, 297.)
"very sorry specimen". (81 *Kenya Hans.*, 483.)
"wicked". (605 *Com. Hans.*, 1533.)

"wicked lie". (1959 *S. Aust. Assem. Hans.*, p. 242.)
"wilfully misrepresented". (1959 *N.Z. Hans.*, 948.)
"will have the guts to stand". (80 *Kenya Hans.*, Pt. I, 988.)
"you couldn't tell the truth". (1959 *S. Aust. Assem. Hans.*, p. 313.)

Borderline

"card sharper and confidence trickster". (610 *Com. Hans.*, 392-3, with observation by Mr. Speaker that this was "not an expression the use of which raises an hon. Member in the eyes of his fellows").
"cooking figures". (602 *Com. Hans.*, 620.)
"deliberate and dangerous half-truths". (608 *Com. Hans.*, 104.)
"nebulous nonsense" (Speaker would have intervened had he heard the expression). (80 *Kenya Hans.*, Pt. II, 1618-9.)

XIV. THE LIBRARY OF THE CLERK OF THE HOUSE

The following volumes, recently published, deal with parliamentary and constitutional matters and may be of interest to Members:

Elections Abroad. Edited by *D. E. Butler*. Macmillan. 25s.
Elections and Party Management. Politics in the Time of Disraeli and Gladstone. By *H. J. Hanham*. Longmans. 50s.
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XVI. MEMBERS' RECORDS OF SERVICE

Note.—*b.* = born; *ed.* = educated; *m.* = married.

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.

De Wet, Dion Marius, B.A.(Law), T.E.D.—Clerk-Assistant of the Transvaal Provincial Council, Pretoria; *b.* 1926; *ed.* Hofmeyr High School, Pretoria University and Pretoria Normal College; joined the S.A. Civil Service, 17th March, 1944, as Clerical Assistant in Department of Native Affairs; Assistant Native Commissioner, Barberton, 1953; Teacher in English and Afrikaans at Sir John Adamson High School, 1953; Teacher in Afrikaans and Latin at Fakkel High School, 1954-55; Clerical Assistant I, Transvaal Provincial Administration, 1955-56; O. and M. Officer, 1957-59; appointed to present position 1st August, 1959.

Koester, Charles Beverley, C.D., B.A.(Honours), B.Ed.(Sask.).—Clerk of the Legislative Assembly of Saskatchewan; *b.* 13th January, 1926; *ed.* Regina Central Collegiate, Royal Canadian Naval College, University of Saskatchewan; *m.*, four children; served in Royal Canadian Navy and Royal Canadian Navy (Reserve) from 1942, retiring in 1960 with rank of Lieutenant-Commander; teacher and Head of History Department, Sheldon-Williams Collegiate, Regina, 1956-59; Clerk-Assistant, 1959; appointed present position, 1960.

Yao Ping Hua.—Clerk of the Council Negri (Legislative Council), Sarawak; *b.* 1923; *ed.* in St. Thomas's School, Kuching; joined Sarawak Civil Service, 1940; appointed Assistant Clerk of Council Negri, 1957; appointed to present position, 1st April, 1960; also holds the post of the Clerk to the Executive Council.

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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

(*Art.*) = Article in which information relating to several Territories is collated.
(Com.) = House of Commons.
S/C = Select Committee.
3R = Third Reading.

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PRINTED IN GREAT BRITAIN BY BILLING AND SONS LIMITED, GUILDFORD AND LONDON

H9881