The Table

BEING

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

EDITED BY

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

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USUAL PARLIAMENTARY SESSION MONTHS

Parliament.	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
United Kingdom		●	●	●	●	●	●				●	●
Northern Ireland	●	●	●	●	●	●				●	●	●
Jersey	●	●	●	●					●	●	●	
Canada — Federal Parliament	●	●	●	●	●	●	●					
Canada — Ontario	●	●	●	●							●	●
Canada — Quebec	●	●	●	●	●	●						
Canada — Nova Scotia			●	●								
Canada — New Brunswick		●	●	●							●	
Canada — Manitoba		●	●	●								
Canada — British Columbia	●	●	●	●							●	●
Canada — Prince Edward Island		●	●	●								
Canada — Saskatchewan	●	●	●	●								
Canada — Alberta		●	●	●								
Canada — Newfoundland			●	●	●	●						
Australian Commonwealth — Commonwealth Parliament		●	●	●	●	●		●	●	●	●	
Australian Commonwealth — New South Wales		●	●					●	●	●	●	●
Australian Commonwealth — Queensland			●	●				●	●	●	●	●
Australian Commonwealth — South Australia				●	●			●	●	●	●	
Australian Commonwealth — Tasmania			●	●	●			●	●	●	●	●
Australian Commonwealth — Victoria			●	●	●	●		●	●	●	●	●
Australian Commonwealth — Western Australia							●	●	●	●	●	●
Australian Commonwealth — Northern Territory	No settled practice.											
Papua and New Guinea		●			●			●				
New Zealand						●	●	●	●	●	●	
Western Samoa			●	●	●			●	●	●		
Ceylon	●	●	●	●	●	●	●	●	●	●	●	●
India — Central Legislature		●	●	●	●			●	●		●	●
India — Andhra Pradesh			●				●	●	●	●		●
India — Bihar		●	●	●	●				●	●	●	
India — Bombay		●	●	●				●	●	●		
India — Kerala		●	●			●					●	●
India — Madhya Pradesh		●	●					●	●			
India — Madras	●	●	●	●				●	●			
India — Mysore		●	●	●				●	●	●	●	●
India — Orissa		●	●	●					●			
India — Punjab		●	●	●	●	●				●	●	
India — Uttar Pradesh	No settled practice.											
India — West Bengal		●	●	●					●	●		●
Pakistan — National Assembly		●									●	●
Pakistan — East Pakistan	No settled practice.											
Pakistan — West Pakistan				●					●	●		
Rhodesia and Nyasaland Federation — Federal Assembly		●	●				●	●	●		●	
Rhodesia and Nyasaland Federation — Southern Rhodesia		●	●				●	●	●	●	●	
Rhodesia and Nyasaland Federation — Northern Rhodesia			●	●			●	●	●		●	●
Rhodesia and Nyasaland Federation — Nyasaland	No settled practice.											
Ghana		●				●			●			●
Federation of Malaya	No settled practice.											
Nigeria — House of Representatives	No settled practice.											
Nigeria — Northern			●	●						●	●	
Nigeria — Eastern	No settled practice.											
Nigeria — Western	●	●	●	●	●	●			●			●
Sierra Leone			●			●			●		●	●
Tanganyika		●			●	●				●		●
Jamaica			●	●	●						●	
Trinidad and Tobago	●	●	●	●	●					●	●	●
Uganda	●	●	●	●	●	●			●		●	●
Aden	No settled practice.											
Bermuda	No settled practice.											
British Guiana	●	●	●	●	●	●	●	●	●	●	●	●
British Solomon Islands	No settled practice.											
East African Common Services Organization				●					●			●
Gibraltar	●	●	●	●	●	●	●			●	●	●
Kenya		●		●	●	●					●	
Malta, G.C.	No settled practice.											
Mauritius			●	●	●	●		●	●	●	●	●
Sarawak	No settled practice.											
Singapore	●	●	●	●	●	●	●	●	●	●	●	●
Zanzibar	No settled practice.											

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BEING

THE JOURNAL OF

THE SOCIETY OF CLERKS-AT-THE-TABLE

IN COMMONWEALTH PARLIAMENTS

I. EDITORIAL

Sir Edward Abdy Fellowes, K.C.B., C.M.G., M.C.—The end of 1961 marked the retirement of Sir Edward Fellowes as Clerk of the House of Commons. Certain proceedings of the House in this connection are recorded below.

On Monday, 18th December, 1961, Mr. Speaker made the following announcement to the House:

I have to acquaint the House that I have received a letter from the Clerk of the House of Commons in the following terms:

"Sir,

I have the honour to inform you that I desire as from the 31st December to resign the patent of Clerk of the House of Commons which I have been privileged to hold for the past seven-and-a-half years. Although my acknowledgements must, in many cases, be retrospective, I cannot lay down my office without expressing to you, Sir, my gratitude for the support and encouragement so generously given to me by yourself, your three immediate predecessors below whom I sat at the Table and by all the other occupants of the Chair during this period.

To the Members of all parties in the twelve Parliaments I have known, and to my colleagues, past and present, of all ranks and grades in the service in the House, I tender my warmest thanks for the many marks of courtesy, kindness and consideration which they have shown me.

I shall never forget the warm welcome which, as a servant of the House of Commons, I received from the Members and officials of many Parliaments of the Commonwealth.

After forty-two years, of which nearly twenty-five have been spent at the Table, it is with great regret that I leave the service of the House, but I am proud that my working life has been passed in the service of Parliamentary democracy of which the House of Commons stands as model to the world.

I am, Sir,

Your obedient servant,

EDWARD FELLOWES."

The Chancellor of the Duchy of Lancaster and Leader of the House (Mr. Iain Macleod) then said:

I am sure that all of us will have heard with sincere regret of the decision of the Clerk of the House. I shall not add anything more now, because there will be an opportunity of expressing our thanks to him tomorrow, when a Motion will come before the House.

On the following day, Tuesday, 19th December, Mr. Iain Macleod moved the following resolution:

That Mr. Speaker be requested to convey to Sir Edward Abdy Fellowes, K.C.B., C.M.G., M.C., on his retirement from the Office of Clerk of this House, an expression of Members' deep appreciation of the service which he has rendered to this House for forty-two years, their admiration for his profound knowledge of its procedure and practice, their gratitude for the help constantly and readily given to them, and their recognition of the great work he has done in spreading in and beyond the Commonwealth knowledge and understanding of the traditions of the British Parliament.

Mr. Macleod said:

It is very pleasant, Mr. Speaker, to turn aside for a moment—in a day that has already seen a good deal of controversy, and before we take up a Bill that is admittedly controversial—briefly to propose a Motion that is sure of universal acceptance by the House.

Sir Edward Fellowes will go down in history as one of the great Clerks of this House of Commons. He succeeded a great man, and that is always a particularly difficult thing to do, but he has won his own place in our estimation by his outstanding ability, by his devoted service and—and this, perhaps, we will remember most—by his courtesy and friendliness to us all.

I do not propose to rehearse the details of a remarkably varied career but, instead, just to mention two or three highlights. He entered the service of this House in 1919—forty-two years ago; or, to put it in another way, before about half of the Members of this House were born. For twenty-five years he has been at the Table. If I pick out just one of the tremendous changes those years have seen it is the one referred to in the last words of the Motion, the evolution of an Empire into a Commonwealth, during which time he has been adviser to many Commonwealth countries in which national Parliaments were emerging.

Sir Edward Fellowes has been a prominent figure in the Inter-Parliamentary Union. From 1956 to 1960 he was President of that world trade union of clerks, the Association of Secretaries General of Parliaments. In Europe, too, his influence has been felt in the Consultative Assembly of the Council of Europe and the Assembly of Western European Union.

One final point I should like to mention. Sir Edward Fellowes' services to this country have been as distinguished in war-time as in peace. During the First World War he was awarded the Military Cross. During the Second World War he commanded perhaps the most remarkable unit in the country —the Westminster Company of the Home Guard. I believe that the right hon. Member for Colne Valley (Mr. Glenvil Hall) was his second in command. Members of both Houses served in many different ranks. It really must have been a splendid company to belong to and, if I may say so, it must have required a great deal of tact to command. I am told that the last entry in its official record, made by its commander, reads:

"We were jolly good, Fellowes."

By this Motion, we, old Members and new Members alike, of all parties in this House, join in our thanks to Sir Edward, but, beyond these personal tributes, I think that we should like to say, representing as we do, between us,

the people of the country, that the Clerk of the House has served his country and ours nobly in peace and in war, and that we wish him and Lady Fellowes a long and happy life.

Hon. Members: Hear, hear.

Mr. Hugh Gaitskell, Leader of the Opposition, in supporting the Motion, said:

I have great pleasure in supporting the Motion which has been moved in such felicitous terms by the Leader of the House.

It was a shock to me when, quite recently, in the course of a conversation, Sir Edward Fellowes told me of his impending retirement. It had not occurred to me that he had reached that point. He still looks, I am glad to say, extremely well and very healthy, and he still has all the intellectual vigour which we have so often seen displayed over these years. But the years pass, and these things have to happen.

When I was first elected as a Member of this House, Mr. Fellowes, as he then was, used to sit on the left-hand or Opposition side of the House. Over the years, he has moved over to the right-hand or Government side of the House, while, unhappily, we have moved over from the Government side to the Opposition side. But I do not wish to suggest that this has ever affected his impartiality as between the two sides.

Nor has another connection, which Sir Edward Fellowes has with the Government Front Bench. I understand that he and the Home Secretary were at school together, but that Sir Edward was a prefect while the Home Secretary was a very junior figure indeed. Sir Edward has never told us what he thinks of his junior now; if he were not the discreet man that he is I should be looking forward to reading this in his memoirs.

The relations between the Clerks of the House and the Members of this House have always been extraordinarily good. It is one of the remarkable features of this Assembly. Sometimes we criticise even the Chair, sometimes we criticise the Chairman of Ways and Means—but I cannot recollect an occasion when any Member of the House has had any friction with any Clerk of the House; not since I have been here, at any rate.

In the case of Sir Edward Fellowes, however, hon. Members will agree that there was something more. We really did look upon him as a personal friend, and there were several reasons for this. He was always a most accessible man; one never had any difficulty in finding him. He was always willing to give advice, however inconvenient the occasion might be to himself. He was immensely courteous to those of us who were somewhat ignorant of the rules of procedure; he never gave the impression of having superior knowledge. He was very fair-minded, and was basically very full of common sense. He was decisive and he was genial. All these things made up a man for whom we have a great affection.

It is one thing to give advice on the rules of procedure; it is another to contribute to their improvement. Sir Edward Fellowes displayed both those qualities abundantly. Apart from the normal functions he performed in the House, I would especially like to refer to the evidence he gave on a number of occasions to the Committee of Privileges. It was of great value to us, and of very great interest. On the question of innovations, we can recall the "Fellowes Schedule" as it is called, whereby a single debate in Committee of Supply can now range over many different Departments.

I suppose, though, that Sir Edward is better known for his evidence to the Select Committee on Procedure, in 1958. There, in a very far-reaching and imaginative series of proposals, he sketched out how he thought our procedure should be changed. Much of what he then suggested proved to be too radical for the Committee, but there have been occasions when Clerks of the House

have made suggestions which have been rejected at the time, but which, in later years, have been adopted. This may well prove to be the case with the evidence that Sir Edward gave to that Committee.

Be that as it may, one of the most attractive features of Sir Edward Fellowes has been the freshness of mind which he has always brought to bear upon our problems. He was not a dull bureaucrat in any conceivable sense of the word, but a man, as I have said, full of common sense, intelligence and experience, and one who was always willing to see what could be done to bring about improvements.

The Leader of the House has referred to Sir Edward's notable services with the Commonwealth, and I do not doubt that in a great many Commonwealth countries, both Speakers and Clerks must feel that they owe a great deal to him. Perhaps I might be allowed to refer to the Commonwealth Parliamentary Association's annual courses, which take place here, and to which Sir Edward Fellowes contributed so much.

It only remains for me now, on behalf of my right hon. and hon. Friends, to express our regret that Sir Edward Fellowes is leaving us, but to wish him very good health and great happiness with Lady Fellowes in his years of retirement.

Then there followed other tributes from the Liberal party and the back benches, after which the Resolution was agreed to *nemine contradicente*.

On 21st December, the day the House rose for the Christmas Adjournment, Mr. J. E. B. Hill, one of the Government Whips (who normally do not speak in the House) intervened to pay a final tribute. He said:

I intervene briefly because I think that the House would wish to place on record that this debate is also the last occasion on which our Clerk, Sir Edward Fellowes, will sit in his Chair at the Table of the House. Notwithstanding all the well-deserved tributes which have already been paid to him, I should like to cite one final example of his wise judgment and good taste.

Sir Edward and Lady Fellowes have chosen to live in my constituency. I am sure that the whole House wishes them a long and happy retirement. I shall welcome this most distinguished constituent. May his retirement begin with a happy Christmas.

Hon. Members: Hear, hear.

Mr. Speaker then adjourned the House.

When the Clerk of the House left his place at the Table just after Five o'clock that evening, all the Clerks and other members of his Department on duty attended behind the Chair, as a mark of respect.

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

Hugh Kennedy McLachlan, J.P.—On 11th September, 1961, Mr. H. K. McLachlan retired from the office of Clerk of the Victorian Legislative Assembly. Tributes were paid to him on 1st August in the Victorian House of Assembly, in the course of which the following speech was made by Mr. Bolte, the Premier and Treasurer:

Before the House reassembles in September, the Clerk of the Parliaments and Clerk of the Legislative Assembly, Mr. McLachlan, will have retired. I

am sure that honourable members generally wish Mr. McLachlan a most happy retirement. He has had a long, honourable and worthy career in the Public Service during the past 47 years, 44 of which he has served in this Parliamentary institution. He has been Clerk of the Parliaments and Clerk of the Legislative Assembly for ten years, and for the same period he has been secretary of the Commonwealth Parliamentary Association. He has a wealth of experience and knowledge of this institution. He has had to sit "dumb" through the debates, lisen to the *faux pas* of honourable members and keep his own counsel.

I want him to know that he has had the understanding and confidence of all honourable members. We all appreciate the great contribution that he has made to this institution in assisting all members. There are 66 members in this House now, and I venture to suggest that at least 56 of them have been elected since 1951. Only about ten were members when Mr. McLachlan took up his present position. The remainder could be defined as his "new boys". He had interiewed them and told them the routine and methods used in this institution.

Now that he is retiring, I should not like him to think that he will disappear from the scene without our recognising the wonderful way in which he has assisted us. I know that the Leader of the Opposition and the Leader of the Country party hold the same opinion as I do on this matter. I have known only two Clerks of the Parliaments, and I believe their length of service in Parliamentary life is much greater than that of Parliamentarians. I am sure that Mr. McLachlan's period of service is far greater than that of the Leader of the Country party, who is the father of this House. Unless the members of this institution had his guidance, understanding and direction, they would be at a loss on many occasions. I ask him to wish his wife the very best on our behalf. We know that Mr. McLachlan has not been in the best of health lately, but it is pleasing to know that, although three or four years ago we were really concerned about his health, today we are, fortunately, not so concerned. We think he is fit enough to carry on even on the eve of his retirement and that he will have many years of happy and productive life ahead of him. We wish him the best.

Mr. Stoneham (Leader of the Opposition) then said:

I am delighted to support the Premier in the remarks that he has made concerning our very good friend, Hugh McLachlan. I do not think there is one member of this Chamber who does not regard him as a personal friend. It is true, as the Premier has stated, that he has a distinguished record in the Public Service. He has always been efficient, obliging and absolutely tireless. There are times when I have marvelled at the endurance of the officers at the table. They sit there for many hours during long debates, and then in a split second they have to be ready to give advice to the Speaker, the Deputy Speaker, or the Chairman of Committees. They more or less determine the control of some complicated and difficult proceedings that develop.

We are deeply indebted to Mr. McLachlan and those associated with him for the high standards that they have set. The best test of any institution is to study the types of men that it has produced. If we apply that test, I am sure that we will all agree that in the case of Mr. McLachlan and those assisting him this Parliamentary institution has produced men of whom we are indeed proud. Mr. McLachlan has served under fourteen Speakers, in nineteen Parliaments and has seen twenty-five Governments. From my position I can observe his good lady, Mrs. McLachan, within the precincts of the House, I was pleased to see in tonight's press that Mr. McLachlan acknowledged the great debt he owes to his wife for the success that he has achieved in his high calling. I join with the Premier in warmly wishing him

a long and happy retirement. We hope that Mr. and Mrs. McLachlan will have many years of happiness and good health.

Sir Herbert Hyland (Leader of the Country party) said:

On behalf of the Country party, I desire to join with the Premier and the Leader of the Opposition in paying tribute to our friend, Mr. McLachlan, who has done a wonderful job over the years. He has been quite impartial, irrespective of which Government has been in office or who was Mr. Speaker. He has carried out his job to the best of his ability in a most commendable way. We regret that ill health has laid him aside for some time and we were particularly sorry to learn that he became ill in Western Australia. If one has to be sick it is better to be at home where one's friends and relatives are close at hand. I consider that any illness that he has suffered has been brought about to a great extent by the enormous amount of work he has undertaken for this Parliament and the Commonwealth Parliamentary Association. He carried out the work of the Association in a remarkable manner. He has been most keen and always willing to entertain visitors from other parts of the Commonwealth. I assure him that he will be sadly missed in this connexion.

I pay tribute to Mrs. McLachlan, because without her assistance Mr. McLachlan could not have carried on in the way he has. He has had to give so much of his time to the Commonwealth Parliamentary Association and this institution that she has been at home on her own for long periods. We pay a great tribute to her and we ask Mr. McLachlan to tell his good lady of our thoughts when he gets home tonight. We wish Mr. McLachlan the very best in his retirement, and we urge him to have a good holiday so that his health may be restored and he may feel his old self again.

Further tributes followed from several back-bench Members; and n conclusion the Speaker (Sir William McDonald) said:

Gentlemen, I wish to associate myself with the remarks of the Premier, the Leader of the Opposition, the Leader of the Country party and, particularly, with the expressions of the honourable members for Albert Park and Ivanhoe. I suppose that we three, either individually or collectively, owe a great deal more to Mr. McLachlan than the majority of members individually. I have always been amazed not only at the procedural knowledge that Mr. McLachlan has shown, but also the detailed knowledge that he has displayed. I had not realised it until I was given the information by the Second Clerk-Assistant this evening that he had had such enormous experience in parliamentary posts. It is only through such experience that one can gain knowledge of parliamentary procedure. If one starts off in this institution as Clerk of the Papers, then is promoted to Serjeant-at-Arms, Clerk of Committees, Clerk-Assistant, Clerk of the Assembly and Clerk of the Parliaments, one gains in those years an enormous amount of knowledge. It is because of the experience gained by Mr. McLachlan that my two friends and I have been able to lean so heavily on him during our respective terms of office.

I do not think I shall ever forget the night I learned that I might be invited to be Speaker of the Legislative Assembly. I had come from my home about 300 miles away and was feeling fairly tired, having had a sheep sale at home the day before. When I eventually reached Melbourne, I suggested to my wife that I should go to bed and then have a meal. The Attorney-General may remember that he left a telephone message for me, and I was nearly asleep when my wife suggested that I should look at it.

The message was to the effect that I might next day be elected Speaker. Such a suggestion is a bit frightening on the first occasion, so I got up, dressed and went to see Mr. McLachlan. I did not return to my hotel until about 2.30 a.m. During the period I was at his home, Mr. McLachlan, with the assistance of Mrs. McLachlan, rehearsed with me the procedure for the next day. I shall not forget that and shall not ever fail to be grateful for the enormous service they both rendered to me on that occasion.

Honourable members have expressed themselves concerning Mr. McLachlan's goodness and his ability in the House. I shall not repeat what has been said. I feel that we are all losing an adviser and a great friend. We all join in wishing Mr. McLachlan and Mrs. McLachlan all possible happiness during his retirement. We express the hope that they may long be spared to enjoy this leisure. Mr. McLachlan has asked me to express on his behalf his pleasure at the remarks made by honourable members and to wish them well in the years that lie ahead.

On Tuesday, 19th September, the following Motion was made by the Premier, and carried unanimously:

That this House places on record its high appreciation of the valuable services rendered to it and to the State of Victoria by Hugh Kennedy McLachlan, Esquire, J.P., as Clerk of the Parliaments and Clerk of the Legislative Assembly, and in the many other important offices held by him during his forty-seven years of public service, of which forty-four years were spent as an officer of Parliament, and its acknowledgment of the zeal, ability and courtesy displayed by him in the discharge of his duties.

Tributes were also paid to Mr. McLachlan at meetings of the Australian Area Conference of the Commonwealth Parliamentary Association (on 12th April) and of the Victoria Branch of the Association, at whose Annual General Meeting on 14th November Mr. McLachlan was presented with a silver coffee service.

Mr. Rex Moutou.—On 26th June tributes were paid in the Mauritius Legislative Council to Mr. Rex Moutou, whose retirement as Clerk had been announced. The Chief Minister (Dr. S. Ramgoolam) said:

Sir, I would like to say a few words on the transfer and promotion of the Clerk of the Legislative Council, Mr. Rex Moutou, who is leaving us after ten years of service in this Legislative Council as Clerk of Council.

As Hon. Members know, he has had a varied career in the Civil Service. He was appointed some time in 1931 and served in the Secretariat; and now, after ten years of service and devotion to this Legislative Council, he has obtained promotion elsewhere. We are sorry that he is leaving us, but at the same time we are glad that his services have received the necessary reward. During the ten years that he has been serving us, he has seen many changes brought about in the present Legislative Council, including the appointment of a Speaker and the ministerial changes, and he has had to cope with the increased number of Members of this Council. He has always acted in the best interest of the Legislative Council; he has always given the right advice to Members and he has always been courteous and very friendly. I myself, I am glad to say, since I have become Leader of the House, have had plenty of occasions on which to get his advice on matters of procedure and parliamentary practice, and his advice was always available. I would therefore

like to pay our tribute to the services he has rendered and to the kindness he has always shown to one and all in this House.

Mr. Koenig (Beau Bassin) said:

Sir, May I be allowed to join in this well-deserved tribute which has just been paid by the Chief Minister to the Clerk of the Legislative Council and to stress mainly one point, and that is the great impartiality and devotion to duty which have always inspired our Clerk. I am sure that everybody will agree that he was precisely the right man in the right place for such delicate functions. May I also extend to his staff and, in particular, to his assistant, our thanks on that particular occasion and our hope that we shall retain the same personnel with the same devotion and impartiality.

In conclusion, Mr. Speaker said:

I should like to associate myself heartily with everything that has fallen from the lips of the Hon. the Chief Minister and the Hon. Member for Beau Bassin.

Mr. Moutou is among those who can claim the good fortune of having succeeded in imparting the benefit of his knowledge and experience of the highways and byways of the procedure of the House to anyone who sought to obtain them. Our pleasure in seeing him called to still more important duties is no less great than our regret at seeing him go. I am confident, however, that he will be of matchless service elsewhere as he has in fact been to the House as a whole. (*Applause.*)

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

Imperial Service Order.—S. V. Wright, Clerk of the House of Representatives, Sierra Leone.

II. STATE OPENING OF THE FIRST PARLIAMENT OF TANGANYIKA BY H.R.H. THE DUKE OF EDINBURGH

By G. W. Y. Hucks, O.B.E.
Clerk of the National Assembly

The last official function performed by H.R.H. The Duke of Edinburgh during the Tanganyika Independence Celebrations was, on behalf of the Queen, to open Tanganyika's first Parliament on Monday, 11th December, 1961. The constitutional instruments had been presented by His Royal Highness to the Prime Minister on Saturday, 9th December, and the Governor-General and Ministers had been sworn in on that day. 9th December had thus been celebrated as "Independence Day".

The last exercise of the Royal Prerogative of the Administering Authority under the United Nations Trusteeship Agreement had been to provide a Constitution with which Tanganyika could start its independent existence. This, known as the Tanganyika (Constitution) Order in Council, 1961,[1] had been published in Tanganyika on 1st December. The last National Assembly under the Administering Authority's régime had met from 30th November to 2nd December and passed the various Ordinances necessary to make this constitution locally effective. On 4th December the Governor had prorogued the National Assembly. But before doing so he had already exercised his extra-ordinary power under Clause 1 (2) of the Constitution Order in Council to summon the first Parliament of Independent Tanganyika to meet on 11th December. The power of summoning Parliament was, of course, normally reserved for the Governor-General, but it had to be granted to the Governor for this singular occasion in order to enable the constitution to function.

The proceedings for the State Opening had been thoroughly rehearsed on no less than four previous occasions and were timed to the minute. By nine o'clock, the hour for which they had been summoned, all Members except the Prime Minister were in their seats. At 9.05 a.m., punctual to the minute, the Prime Minister made his entrance and received his usual ovation from Members, thunderously augmented by some five hundred distinguished guests and strangers who filled every seat available in the Chamber and overflowed extensively on to the side verandah which had been especially widened for the occasion.

The Speaker's procession entered at 9.07 precisely as scheduled, in its normal turn-out for ceremonial occasions. Led by the Serjeant-

at-Arms (actually a former Sergeant-Major of the King's African Rifles) bearing the Mace, the Speaker is in Tanganyika followed by the two Clerks-Assistant, with the Clerk bringing up the rear. All wear black with white jabots trimmed with lace at their necks, black knee-breeches, hose and patent leather shoes with silver buckles. The Serjeant-at-Arms wears a chain of office similar to a Mayor's chain over the shoulders of his jacket, and is bare headed. The Speaker, Clerk and Clerks-Assistant are wigged and gowned, the Speaker in a full-bottomed wig. In Dar es Salaam's hot season with temperatures around 90 degrees, humidity over 95 per cent. and no air-conditioning in the Chamber, such attire tends to make its wearers uncomfortably hot.

The Mace having been laid on the Table and with Members and Strangers standing, the Clerk read the Proclamation summoning the Parliament while the Speaker stood with the Clerk and Clerks-Assistant at the head of the Table. The Speaker then read the Prayers from this position with all still standing. The Speaker then mounted to his chair, bowed right and left and took his seat. Members and Strangers became seated. The procedure so far had been entirely normal for the opening of a new Session and it continued to be so when the Clerk next called "Election of Deputy Speaker".

Since the Governor-General was scheduled to arrive in the forecourt of the Chamber at 9.17 a.m. and to be met there by the newly-elected Deputy Speaker, while the reading of the Proclamation and Prayers had occupied several minutes after the Speaker's procession entered at 9.7 a.m., it may be wondered how it was hoped to complete the election in time, especially as Standing Orders require it to be by secret ballot. However, the TANU party, holding 70 of the 71 Elected Members' seats and claiming the allegiance of 5 of the 9 nominated Members, having decided beforehand on the Member of their choice for Deputy Speaker, the proceedings in the Chamber were purely formal. Moreover, in order to save time the Clerks had supplied Members with Ballot Papers and pencils before 9 a.m. that morning. So when this Order of the Day was called the Clerks immediately circulated the Ballot Boxes which were promptly filled with completed Ballot Papers and as expected it did not take long to discover that practically every Ballot Paper was marked for the same candidate, the Member who had been chosen Deputy Speaker for the previous Session.

Nevertheless the time allowed for this exercise was a little short and by the time the Speaker had announced the name of the elected Deputy Speaker, sounds of the Governor-General's arrival could be heard from outside. So the Deputy Speaker rose and bowed his thanks and went with the maximum speed compatible with dignity to meet His Excellency, leaving unspoken his carefully prepared speech of gratitude for his re-election.

The Governor-General's arrival was signalled by the playing of the

Tanganyika National Anthem, "Mungu ibariki Afrika", by the band of the Tanganyika Rifles which had, from the start, been on parade in the precincts of the Chamber together with a Guard of Honour of the same Regiment. The Guard gave the Royal Salute, which was taken by His Excellency, but instead of inspecting the Guard, His Excellency then retired to the forecourt of the Chamber to await the arrival of His Royal Highness.

Five cars brought the Royal procession to the entrance of the Council Chamber punctually at 9.20 a.m. The Guard gave the Royal Salute, the Band played the British National Anthem and His Royal Highness inspected the Guard. The Governor-General then received His Royal Highness at the top of the entrance steps to the Chamber and the procession was then formed in the vestibule as follows:

His Royal Highness leading

then in double file

The Governor-General and Lady Turnbull

H.R.H.'s Private Secretary and the Lady-in-Waiting to Lady Turnbull

The Tanganyikan Equerry and The Equerry with the Governor-General's A.D.C. in the rear centre.

Meanwhile within the Chamber the Deputy Speaker had returned to his seat after receiving the Governor-General and Members and Strangers had been seated, quietly awaiting the Royal arrival. The one departure from normal precedent for the opening of a Session which had occurred had been that the doors of the Chamber had been closed after the entry of the Speaker's procession and there had been no entry into or exit from the Chamber by any Stranger or Member other than the Deputy Speaker.

But now the Speaker moved to the Bar of the Chamber and the Serjeant-at-Arms covered the Mace. Members and Strangers stood and three knocks, delivered by the Tanganyikan Equerry, on the door of the Chamber were heard. The door was opened by an usher, a fanfare of trumpets sounded from the rear of the building and the Serjeant-at-Arms moved forward to precede the Royal procession from the door to the Bar of the Chamber.

His Royal Highness was wearing the full dress tropical uniform of an Admiral of the Fleet. He halted briefly at the Bar where the Speaker bowed and took his place in the procession between the Serjeant-at-Arms and H.R.H. The two files divided at the Table, His Royal Highness and the Governor-General's file moving along the Government Front Bench side and Lady Turnbull's file including the A.D.C. moving along the "Opposition" Front Bench side. Each file mounted its separate steps to the dais. His Royal Highness

after bowing to the House took his seat on the Throne and said "Pray be seated".

All sat except the Speaker, who then read the Letters Patent authorising His Royal Highness to open Parliament. The Speaker's chair was at the foot of the dais in the centre with its back to it. Turning at right angles to his chair he recited the 500 word "Letters" couched in their archaic English addressed to "Our trusty and well beloved" Governor-General, Speaker, Members of National Assembly and People of Tanganyika and after numerous other recitals:

> Commanding also by the tenor of these presents as well all and every the said Governor-General and Commander-in-Chief the said Speaker and Members of Our said National Assembly as all others whom it concerns to meet in Our said Parliament that to the same Prince Philip they diligently intend in the premises in the form aforesaid

The writer was by no means the only Englishman who had to read this several times before realising that the word "intend" in this context was simply the French "entendre" and that "premises" did not refer to the National Assembly Chamber.

The Speaker read from a typescript copy while the actual "Letters Patent" on vellum with the Great Seal attached were on display in a scarlet leather case on the Table.

After recital of the "Letters", His Royal Highness who had been uncovered since his entry into the Chamber, replaced his headdress and received from the Prime Minister the text of the Speech from the Throne which he, seated and covered, then read.

Its main points were:

(1) Regard for the principles which inspired the Charter of the United Nations.

(2) Concern with the problems confronting the countries of the African continent.

(3) The harmonious development of relations with other members of the Commonwealth.

(4) The three year plan for economic development.

(5) The intention to form a unified local Government service.

(6) The improvement of educational facilities.

(7) The maintenance of an independent and impartial Civil Service.

At the conclusion of the Speech the Prime Minister again mounted the dais and received from His Royal Highness the text of the Speech which he then placed upon the Table. The Prime Minister standing in his customary place at the Table by the despatch box then delivered an Address of Thanks for the Speech from the Throne, in

which he pledged that his Government would strive by might and main at all times to be worthy of the high sentiments that had been expressed from the Throne. After this Address His Royal Highness followed by the Governor-General and Lady Turnbull with their attendants left the Chamber in procession, being escorted by the Speaker as far as the Bar. The Serjeant-at-Arms preceded the procession through the doors of the Chamber into the vestibule, whence its members entered their cars and drove away to the accompaniment of the British National Anthem and the Royal Salute given by the Guard of Honour outside. The Serjeant-at-Arms then returned and uncovered the Mace again, the Speaker resumed his Chair and adjourned the Assembly until 13th February, 1962, without question put. This step, which was commented on by some Members and some distinguished Strangers, was in accordance with Standing Order No. 17 which states that at the first sitting of a New Session, at the conclusion of the Governor's speech, the sitting shall stand suspended or adjourned as the Speaker may direct until such day and time as may be specified by him. It was held to apply *a fortiori* to such proceedings at the conclusion of a speech by Royalty. The Speaker had, of course, previously ascertained that 13th February, 1962, was the date on which Government wished to resume the sittings.

The whole ceremony took less than an hour but was colourful and dignified. There were full dress naval and military uniforms, Judges in scarlet robes and full bottomed wigs and a wide variety of National Dress not only amongst Strangers from other parts of the world but also amongst Tanganyika's own Members of Parliament for whom uniformity of male attire is not an objective. Television and film cameras were mounted in the gallery and the whole proceedings were broadcast "live" by the Tanganyika Broadcasting Corporation. For the first time in Tanganyika's history a "closed circuit" television apparatus was installed enabling people to view the proceedings from the adjacent Municipal Council Chamber.

[1] S.I. (1961), No. 2274.

III. THE EAST AFRICAN PARLIAMENT

By P. Bridges, M.B.E.

Clerk of the Central Legislative Assembly

In 1948 there was set up in East Africa the East Africa High Commission which dealt with certain subjects common to Kenya, Uganda and Tanganyika. At the same time there was set up a legislative body known as the East African Central Legislative Assembly which could pass legislation and debate matters relating to the various services rendered by the High Commission.[1]

When the decision was made that Tanganyika should become independent in 1961, it became necessary to consider new means of controlling the services then rendered by the High Commission. These services are numerous but include the East African Railways and Harbours Administration, the East African Posts and Telecommunications Administration, the East African Customs and Excise Department, the East African Income Tax Department, the East African Directorate of Civil Aviation, the East African Meteorological Department, the Royal East African Navy, and many Research Services. In June, 1961, the Secretary of State for the Colonies convened a meeting in London at which representatives of the East African Governments were present, and it was there decided to revoke the East Africa High Commission and set up in its place the East African Common Services Organization, headed by an Authority consisting of the Prime Minister or Principal Elected Minister of each territory.[2] This was done because the delegations representing Tanganyika, Kenya and Uganda affirmed their desire that common services should continue to be provided for those territories by a single organisation, notwithstanding the constitutional changes proposed in respect of Tanganyika or other constitutional changes that might occur in those territories. As a result, the three Governments signed an Agreement establishing the East African Common Services Organization in accordance with the Constitution annexed to the Agreement.[3] The Organization thus came into being on 9th December, 1961.

In terms of the Constitution, there was established a Central Legislative Assembly,[4] and here it is worth remarking that although this legislature has much the same title as its predecessor it is in fact a completely different and new body. The Constitution also provided for the establishment of an Authority[5] as the head of the Common

Services Organization, which at present consists of Mr. Kawawa, the Prime Minister of Tanganyika, Mr. Obote, the Prime Minister of Uganda, and, for Kenya, the Ministers of State, Mr. Ngala and Mr. Kenyatta, take it in turn to sit as members of the Authority. No member of the Authority is a member of the Central Legislative Assembly.

The Assembly consists of a Speaker, twelve Ministerial Members, two Ex-Officio Members, that is to say the Secretary-General and the Legal Secretary of the Common Services Organization, and twenty-seven Elected Members.

The Speaker is appointed by the Authority by instrument in writing, and in fact the Authority appointed Sir Amar Maini to be Speaker with effect from 15th January, 1962. In terms of the Constitution, the Speaker may be removed from office by the Authority for inability to discharge the functions of his office (without arising from infirmity of mind or body or any other cause) or for misbehaviour, but he cannot otherwise be removed from office.[6]

Strictly speaking, there is no Deputy Speaker in the Assembly, but the Authority is empowered by the Constitution to appoint some other member of the Assembly to preside at any sitting in the absence of the Speaker. In fact the Authority has appointed the Legal Secretary. Should both the Speaker and the Legal Secretary be absent, then the Assembly is empowered to elect an Elected Member to preside for the sitting.

The Ministerial Members of the Assembly are Ministers of the Governments of the territories who are for the time being members of the four Ministerial Committees to whom the Authority may assign responsibility for the administration of certain of the services administered by the Common Services Organization. Each Ministerial Committee has a Minister from each of the territorial Governments. The four Committees are concerned with Communications, Finance, Commercial and Industrial Co-ordination, and Social and Research Services. The Authority has directed that the Leader of Official Business shall be the senior Minister from the territory in which the Assembly happens to be sitting.

Of the Elected Members, nine are elected to represent each territory. Any person who is not an officer or servant of the Common Services Organization, but who is qualified in accordance with the laws for the time being in force in the territory for election as an elected member of the territorial legislature, is qualified to become an Elected Member of the Assembly. The elected members of the legislative house of each territory become an electoral college to elect Elected Members to the Assembly in the manner which that legislative house may prescribe by its rules of procedure.

The new Central Legislative Assembly held its first meeting in Nairobi on 22nd May, 1962. The meeting was officially opened by the current Chairman of the Authority, the Hon. Mr. J. Kenyatta,

who in his address stressed that the membership of the Assembly now reflected public opinion in East Africa and should direct its attention to business on the lines of what was best for East Africa and not necessarily best for the territory from which the Member originated. Debates throughout the first meeting made it abundantly clear that Members had taken this point. On the motion for the adjournment at the last sitting, and immediately prior to putting the question, Mr. Speaker said:

> The eyes of East Africa have been upon us. . . . Sitting in this Chair and taking an objective view of the proceedings, my heart is full of joy at seeing the promotion of an East African community of interests in the practical way it has been done during your deliberations. I have always said that the development of an East African community of interests is a grass roots movement. The participation of you all as Elected Representatives of the Parliaments and Governments of these three territories is a wonderful example of the growth of the cause of East African common understanding.

It is at present proposed that the Central Legislative Assembly will continue to hold its meetings in the three capitals, Nairobi, Kampala and Dar es Salaam.

The previous legislative body suffered from the fact that by the constitution of the High Commission it did not have any permanence. The present Assembly, in terms of the Common Services Organization Constitution, is so permanent that there is no provision for prorogation. This permanence could, however, be upset by one of the contracting Governments to the Agreement, or the Government of the United Kingdom so long as it remains responsible for the Government of Kenya or Uganda, giving not less than one year's notice to terminate the Agreement.

This Article was headed "The East African Parliament", and purposely so. Political leaders in East Africa have used this expression, but it remains to be seen whether the East African Governments will achieve a closer political association in the future; if they do, there would seem to be little doubt that it will be the Common Services Organization and the Central Legislative Assembly on which they will build.

[1] *See* THE TABLE, Vol. XXVII, p. 278. [2] For report of the discussions, *see* Cmnd. 1433, "The future of East Africa High Commission Services".
[3] Printed by the Government Printer, Kenya (G.P.K. 5820-200-12/61).
[4] Constitution, Part III, Arts. 16-33. [5] *Ibid.*, Arts. 5-7. [6] *Ibid.*, Art. 21.
[7] *Ibid.*, Arts. 8-14.

IV. THE STANSGATE CASE

By M. A. J. Wheeler-Booth
A Clerk in the House of Lords

Preliminary.—On 12th January, 1942, William Wedgwood Benn, a Labour Member of Parliament, was created Viscount Stansgate. Previously, in the announcement of the peerage from 10 Downing Street, the following announcement had been made:

> The King, on the advice of H.M. Government, has been graciously pleased to confer peerages upon four members of the Labour party.
>
> These creations are not made as political honours or awards, but as a special measure of State policy. They are designed to strengthen the Labour party in the upper House, where its representation is disproportionate at a time when a coalition Government of three parties is charged with the direction of affairs.[1]

Lord Stansgate, before accepting the peerage, had consulted his eldest son, the probable heir, who had no objections to becoming a peer. Unfortunately, he was subsequently killed in the war on active service. The second son, Anthony Neil Wedgwood Benn, became, as a result, the heir to the viscounty. In 1950, Mr. Wedgwood Benn became Member of Parliament for Bristol South-East and began soon after to try and devise a method to evade the disability which would follow from his father's death. In 1953 Mr. Paget (Member of Parliament for Northampton) presented a Bill in the Commons which would have allowed peers to stay in the Commons. It was defeated on First Reading, following Mr. Walter Elliot's contention that a constitutional change should not be made by means of a ten minute rule Bill.[2]

In November, 1954, Mr. Wedgwood Benn drew up the "Stansgate Titles Deprivation Bill" (based on the Titles Deprivation Act of 1917) which he submitted to the Commons' Public Bill Office, who referred him to the House of Lords on the argument that it was really a Personal Bill.[3] On 16th December, 1954, he presented a Petition to the House of Lords, the object of which was to bring in a Bill to enable the Petitioner to renounce his succession to the Viscounty of Stansgate.[4] The Bill would have provided that the title would be deemed to be in abeyance for the period when the Petitioner would otherwise have held it, and that at his death the next in line of succession at that time should succeed. This Petition was referred to the Personal Bills Committee and Mr. Wedgwood Benn presented

his case before it. The Committee reported that it was "of opinion that the object of the Bill raises questions of general importance and is not proper to be enacted by a Personal Bill". In the Explanatory Memorandum presented to the Committee,[5] the Petitioner expressed himself in these terms:

> The Petitioner submits that his relief can only be granted by Act of Parliament. Briefly his submission is based on the following points of law and practice:
>
> (*a*) The Crown may issue, but may not cancel, Letters Patent. Therefore the Crown alone cannot grant relief.
> (*b*) A peer may not renounce his title nor surrender it to the Crown.
> (*c*) An heir to a peerage may not renounce his rights of succession.
> (*d*) An heir to a peerage of the United Kingdom on succeeding to the title is debarred from the House of Commons by the practice of that House.
> (*e*) No Act of Parliament allows a peer or heir to exercise rights of renunciation, although Parliament, and only Parliament, may deprive a peer or the heir to a peerage of his rights.

The next stage—a logical sequel to the previous one—was the presentation of a Public Bill in the Lords by Lord Stansgate on 17th March, 1955.[6] Before the Second Reading debate, the Bishop of Ripon presented a Petition from the city of Bristol in favour of the Bill. Lord Stansgate introduced his Bill, which was supported on various grounds by Lords Winterton and Samuel. Despite this, the Bill was rejected by 52 votes to 24. This rejection resulted from the Government's opposition to it as expressed by the Lord Chancellor because "the remedy must be a remedy which is general in character. It must, in the view of Her Majesty's Government, be arrived at not by a side wind but by full, frank and free consideration of all its implications."

On 29th April, 1955, Mr. Wedgwood Benn presented the Bristol Petition to the House of Commons, but no action was taken.[7]

In 1957, the Life Peerages Bill was brought forward by the Government in the House of Lords following a two-day debate in that House on its reform.[8] Attempts were made by the Labour party, with some support from the Conservative back benchers, to include in it a clause to enable holders of peerages to renounce them. Arguments by the Government that these amendments were outside the scope of the Bill, and therefore out of order, did not prevail; they were accordingly discussed in Committee, and there defeated by handsome majorities (25 to 75 and 22 to 105). In the Committee stage in the Commons, the amendment for allowing the resignation of peerages was not called.[9]

After the passing of the House of Commons Disqualification Act and the succession of Mr. Lambert, M.P., to the peerage of his father, Mr. Wedgwood Benn tabled a motion in the House on 19th February, 1958, asserting there was some dubiety in the law and suggesting a Select Committee.[10] As an early day motion it was never debated.

On 17th November, 1960, the first Lord Stansgate died. Though

he was succeeded by his son, Anthony Neil Wedgwood Benn, second Viscount, for convenience we shall continue to refer to the latter as Mr. Wedgwood Benn. He returned the Letters Patent of his father's creation to the Lord Chamberlain on the 22nd November, but they were returned to him through the Clerk of the Crown in Chancery. Mr. Wedgwood Benn also signed an Instrument of Renunciation, a document which purported to renounce his peerage, but which was of no legal validity.[11]

Report from the Committee of Privileges on the Petition concerning Mr. Anthony Neil Wedgwood Benn.—On 29th November, 1960, a Petition was presented in the House of Commons by Sir Lynn Ungoed-Thomas concerning Mr. Wedgwood Benn for a redress of grievance and for the appointment of a Select Committee, but because the Petition contained the words "A Writ of Summons to attend the House of Peers from the Crown addressed to the said Anthony Neil Wedgwood Benn would raise *prima facie* questions of privilege in depriving him of his seat in the House", the Petition, on the motion of the Leader of the House, Mr. Butler, was referred to the Committee of Privileges.[12] This Committee, which had been set up as usual at the beginning of the session, consisted of twelve members: the Attorney-General (Sir Reginald Manningham-Buller), Mr. George Brown, Mr. Secretary Butler, Mr. Clement Davies, Mr. Ede, Mr. Gaitskell, Mr. Geoffrey Lloyd, Mr. Mitchison, Mr. Molson, Sir Richard Nugent, Sir Hendrie Oakshott and Mr. Turton; Sir Kenneth Pickthorn was added on 25th January, 1961, in the room of Mr. Molson, who was made a Life Peer in the New Year Honours. The Committee sat on eleven occasions between 1st December, 1960, and 14th March, 1961. The Petitioner appeared before the Committee on two occasions. On 14th March the Report from the Committee of Privileges (with Minutes of Evidence and Appendices) was laid before the House of Commons and ordered to be printed.

During the inquiry, evidence was given by Mr. Wedgwood Benn, Mr. Dingle Foot, M.P., Mr. Dick Taverne, the Clerk of the House of Commons (Sir Edward Fellowes) and Mr. G. D. Squibb, Q.C. The full Report is recommended to anyone wishing for a complete picture on this complicated question and what follows is only a summary.

Mr. Wedgwood Benn produced evidence that he was the heir male lawfully begotten of the first Viscount, but did not claim the viscounty. However, the Committee held that "as soon as succession is established, he (the heir) must be a peer in the eyes of the law". Mr. Wedgwood Benn tried to show that peers are not disqualified from sitting in the House of Commons. He contended that the statement in Erskine May[13] and the ruling of Mr. Speaker Onslow in 1760 that "the attendance in both Houses of Parliament is considered as a service, and the two services are incompatible with each other" was not a true exposition of the law.[14] He submitted

that the disqualification occurred at the moment when the peer received a Writ of Summons to sit in the House of Lords and not merely on his succession to the peerage. However, the Committee held that though the law was not founded on any statute or on any decision of a court of law, it was, nevertheless, agreed by all legal authorities to be part of the Common Law of England. As such, it was binding on both the Committee and on each House acting separately; it could be altered only by an Act of Parliament.

The very question whether disqualification from membership of the House of Commons arose on succession or on the issue of a Writ had been considered in 1895 in the case of Viscount Wolmer, then Member of Parliament for West Edinburgh, who succeeded to the Earldom of Selborne.[15] The Select Committee appointed on that occasion reported:

> 2. That the fact of succession to a Peerage of England, or of Great Britain, or of the United Kingdom, disables the persons so succeeding from being elected to, or from sitting or voting in, the House of Commons.
>
> 3. That it has been the general practice of the House of Commons to abstain from declaring the seat of a Member vacant, and ordering a fresh election in his room, on the ground of succession to a Peerage entitling the holder to sit in the House of Lords, until the Member has been called up to the House of Lords by receiving a Writ of Summons from the Crown to sit in that House. The reason for the practice appears to your Committee to be, not that the mere fact of succession does not in itself disable the Member so succeeding, but that the occurrence of that fact with its disabling consequences ought not to be assumed and acted upon without clear proof, and that the writ of summons, in cases in which such a Writ can be issued, is the best and safest proof of which the circumstances admit. The rule, in other words, is a rule not of law but of evidence. Where, as in the case of a Scotch peerage, the succession does not entitle the holder to sit in the House of Lords, and there can therefore be no Writ of Summons, the House of Commons has (since the Act of Union with Scotland) been accustomed to declare the seat vacant upon such evidence of the death of the predecessor, and of the succession of the Member affected, as it thought fit and sufficient.
>
> 4. That when a Member has succeeded to a Peerage entitling him to a seat in the House of Lords, and delays or refuses to apply for a Writ of Summons, the House of Commons is entitled, and may, in the interest of the constituency, be bound to ascertain the fact of the succession by such inquiry and upon such evidence as it considers appropriate to the case.
>
> 5. That your Committee do not think that the Order of Reference requires them to express any opinion upon the question whether, and under what conditions (if any), a person succeeding to a peerage ought to be allowed to divest himself of the disability arising from the status of a peer for membership of the House of Commons. It follows, from the propositions above stated, that the existing law and practice of Parliament do not, in their opinion, admit of such a proceeding.[16]

The House of Commons in that case accepted the Select Committee's Report and caused a new Writ to be issued for Lord Selborne's constituency without any Writ of Summons as proof of his succession.

The Committee of Privileges could find no support for the proposi-

tion that one person is in law entitled to be a member of both Houses of Parliament at the same time, or that a Member of the House of Commons who succeeds to a peerage has any choice as to the House in which he will sit. They concurred with the statement in Halsbury's *Laws of England*:[17]

> Every peer of the United Kingdom or Scotland, whether he is a Lord of Parliament or not, and every representative peer of Ireland, is disqualified for sitting in the House of Commons.

Members of Parliament who succeed to Scottish peerages have, since the Act of Union, been regarded as disqualified on succession to the peerage. On the creation of a new peerage, the Member ceases to belong to the Commons the moment the Letters Patent pass the Great Seal, or when the Lord Chancellor places his receipt on a warrant to issue the Letters Patent.

Evidence was presented by Mr. Taverne of fourteen cases in the fourteenth and fifteenth centuries in which peers "or sons of peers" sat after receiving a Writ of Summons in the Commons House, but Mr. Squibb reminded the Committee that the legal doctrine is that a peerage was only created by Writ when there was proof that the peer actually took his seat in the upper House.[18] And in thirteen out of Mr. Taverne's cases there was no evidence for this. Further, the Committee considered that even if the law was not clear in the Middle Ages on this point, it had since become so by practice.

While considering whether the Instrument of Renunciation had any force in law, the Committee held that a long series of peerage cases from 1626 until the present century had established that "no peer of this realm can drown or extinguish his honour (but that it descend to his descendants) neither by surrender, grant, fine nor any other conveyance to the King". This view is supported by the opinion of Doddridge, J., given in 1626, the Resolution of the House of Lords in the *Grey de Ruthyn* case in 1640, the conclusion of the Select Committee in 1895, the unanimous opinion of all the members of the Committee for Privileges in the *Norfolk Earldom* case in 1907 and the statement of Lord Birkenhead in the *Rhondda peerage* case in 1922.

The Committee rejected the suggestion that the House of Commons could, by a simple Resolution, establish that peers were not disqualified from membership. Mr. Wedgwood Benn contended that the House of Commons Disqualification Act, 1957, had conferred a right not to accept a "place" which would disqualify from the Commons. The Committee considered that a peerage was not an office or "place" in the sense used in section 1(4) and 8(1) of that Act, and that it had not in any way affected the position of peers.

The Committee rejected Mr. Wedgwood Benn's suggestion that a Writ of Summons to attend the Lords would raise questions of

privilege by depriving him of his seat in the Commons. They accepted the words of Sir Edward Fellowes:

> The privilege is to attend upon Parliament, and if you are summoned to attend one House or the other, I do not think you can say it was a breach of privilege.

Mr. Wedgwood Benn had asked the Committee to recommend legislation to enable him to remain a Member of the Commons. The Committee held that "if any change in the law is to be made, so as to enable those who succeed to peerages to remain members of, and to be eligible for election to, the House of Commons, that legislation should be general and not be retrospective".

The Report concluded:

> Your Committee have thus reached the following conclusions:
>
> (*a*) Mr. Wedgwood Benn was disqualified from membership of the House of Commons on the 17th November, 1960, by succession to the Viscounty of Stansgate.
>
> (*b*) The Instrument of Renunciation executed by Mr. Wedgwood Benn has no legal effect. A peer cannot surrender or renounce his peerage.
>
> (*c*) The House of Commons Disqualification Act, 1957, does not give any option to Mr. Wedgwood Benn to renounce the Viscounty.
>
> (*d*) The issue of a Writ of Summons to attend the House of Lords to Mr. Wedgwood Benn would not raise any question of privilege.
>
> (*e*) They do not recommend the introduction of a Bill to enable Mr. Wedgwood Benn to remain a member of the Commons House of Parliament.
>
> (*f*) The terms of the Petition referred to them do not require them to express any view on whether legislation to enable those who succeed to peerages to remain members of, and to be eligible for election to, the House of Commons is desirable.[19]

However, during the Committee's deliberations on the Report, the Labour Members had proposed a number of amendments to modify the uncompromising tenor of the Report. Those amendments were defeated in a number of divisions, the Liberal Member voting with the Conservatives. Only on the question to leave out paragraphs (*e*) and (*f*) of the conclusions (quoted above) did one Conservative (Sir Kenneth Pickthorn) side with the Labour Members and thus the Committee only included them on the casting vote of the Chairman (Mr. Butler). The Labour Members voted against the Report as a whole.

On 22nd March, Mr. C. Pannell asked the Speaker if Mr. Wedgwood Benn would be allowed to address the House on the subject of the Report of the Committee of Privileges. On 23rd March, the Peerage (Renunciation) Bill was introduced into the Commons by Sir Lynn Ungoed-Thomas, supported by eleven back benchers from all three parties. This Bill aimed at allowing peers to put their peerages into abeyance for life and thereafter to be eligible for the Commons. It was never debated for Second Reading. On 12th April, Mr. Wilkins (Bristol, S.) presented a petition to the

House of Commons from 10,357 electors of the constituency of Bristol, South-East, "to safeguard their right to choose their own Member to serve in the Commons . . .".

Debate on the Report from the Committee of Privileges.—On 27th March, Mr. Speaker informed the House that unless the House otherwise decided, Mr. Wedgwood Benn could not occupy any seat reserved for Members in the House or galleries, and that whether he would be allowed to address the House from the Bar would be a matter for the House to decide.

On 13th April, the Speaker told the House that he had received a letter from Mr. Wedgwood Benn in the following terms:

13th April 1961.

Sir,

The Committee of Privileges having now reported on the Petition which I submitted to the House of Commons on 29th November last I ask that the House will allow me to be admitted and heard, on the subject of that Report.

I am, Sir,

Your most obedient servant,

ANTHONY WEDGWOOD BENN.

Mr. Speaker,
House of Commons, London.

Mr. Gaitskell then moved:

That Mr. Anthony Neil Wedgwood Benn be admitted in and heard.[20]

Mr. Gaitskell supported his motion by appealing to the precedents of Daniel O'Connell (1829), Charles Bradlaugh (1880-3) and Mr. MacManaway (a clerk in holy orders of the Church of Ireland) (1950). He added that though Mr. Wedgwood Benn had given his evidence before the Committee of Privileges, he had not had an opportunity of commenting upon the Committee's report, and appealed to the House, because of the Petitioner's "passionate sincerity", and because of Members' "sense of fair play", not to look at the issue in any way as a party matter.

Mr. Butler (Secretary of State for the Home Department and Leader of the House) advised the House to reject Mr. Gaitskell's motion. He urged that Mr. Wedgwood Benn had had every opportunity of putting his views to the Committee. It was many years since the House of Commons had heard a Petitioner at the Bar of the House. Before 1832, they were often heard, but with the increase of public business in the nineteenth century this had ceased to be possible and he knew of no case since the East India Maritime Officers Bill (1837). In 1849, an ex-Member of Parliament, convicted of high treason, petitioned to be heard at the Bar but the motion was rejected.* In 1923, Mr. Speaker gave a ruling to the effect that

* Smith O'Brian (M.P. for Limerick). He was in prison and applied to be heard through his Counsel at the Bar. The Attorney-General argued that he was a convicted felon and so should not be heard at the Bar.

Petitioners have no right to be heard at the Bar.* Turning to the argument that "Never before has the House of Commons denied a hearing to a Member whose seat has been in jeopardy", Mr. Butler said:

> The truth is that Mr. Wedgwood Benn ceased to be a Member of this House on the death of his father on 17th November, 1960 . . . we must respect what the Committee of Privileges found to be settled law, and what is important, settled law which the House established in 1895 and which has never been questioned. . . . It is not, therefore, a case of Mr. Wedgwood Benn's seat being in danger. He is no longer a Member of Parliament.

To this various Opposition Members objected that "if there is no question, what was referred to the Committee of Privileges?"

Mr. Butler rejected the analogies of the cases quoted by Mr. Gaitskell (O'Connell, Bradlaugh, MacManaway) because "they were all Members of Parliament, and Mr. Benn is not a Member of Parliament". He explored the suggestion that Mr. Wedgwood Benn should appear as a peer, but rejected it, partly because Mr. Wedgwood Benn would not wish to, and partly because, though there are cases of peers who are "peers of Parliament" addressing the Commons,† there is no case of a peer not a "peer of Parliament" addressing the Commons, except to give evidence (which Mr. Wedgwood Benn had already done).

An acrimonious debate continued from the conclusion of Mr. Butler's speech until a division at 6.56 p.m., in which a number of Conservative Members of Parliament (despite a two-line Whip) voted for the motion, which was defeated (Ayes 152—Noes 221).‡

After this division, Mr. Butler moved:

> That this House takes note of the fact that Mr. Anthony Neil Wedgwood Benn on succession to the Viscounty of Stansgate on 17th November, 1960, ceased to be a Member of this House and agrees with the Committee of Privileges in their Report.

Mr. Butler divided his speech between "the law, not so much established, as confirmed, by the Committee of Privileges' Report" and "the question which was the subject of the Division in the Committee, namely, the possible future action". He summarised

* In this case, 110 English subjects petitioned to be heard at the Bar after a wrongful imprisonment.

† M. Butler instanced Melville in 1805, and said, incorrectly, that before him it was necessary to go back to 1701 for a peer appearing at the Bar of the House (cf. Hatsell's *Parliamentary Precedents* (1818) iii, pp. 1-9).

‡ A feature of the case was the apathy shown by sections of the Labour Party, both in the House and in the division lobby (see the article "Member for the Queen's Bench" in *The New Statesman*, 14th July, 1961, and Mr. Charles Pannell's letter on 21st July, 1961). *The New Statesman* and *The Guardian* both gave Mr. Wedgwood Benn continued support in his campaign. *The Times* was more reserved (*e.g.*, leader, 22nd March, 1961). On the other hand, he had some Conservative support throughout his campaign. Some 23 Conservative Members of Parliament, on one occasion or another, voted in his favour and see Lord Anglesey's letter in *The Times* (1st August, 1961).

the main conclusions of the Committee[21] on which he claimed that there was "general agreement". He continued that the Government had decided not to set up a Joint Committee to deal with the case, though they might consider further reform of the House of Lords. He said that "the debate through which we have just passed I have found one of the most disagreeable in the whole of my time in Parliament. . . . We are facing frankly the problem of the hereditary principle in the House of Lords".

Mr. Gaitskell moved an amendment, in line 1, to leave out from "the" to the end of the Question and to add instead:

> Report from the Committee of Privileges and is of the opinion that legislation should be introduced forthwith to provide for the renunciation of peerages and to allow those who have renounced a peerage to vote in and to be candidates at Parliamentary elections and, if elected, to be members of the Commons House of Parliament.

He devoted his speech to an examination of the concluding words of Mr. Wedgwood Benn's Petition, that the Commons should "grant him such relief as it may think fit and proper", and argued, on merits, for a change in the law. In the debate that followed the arguments were all on this point, and not on that of the Committee of Privileges' interpretation of the law. The House divided, the Opposition amendment was rejected (Ayes 207—Noes 143) and the Government motion carried (Ayes 204—Noes 126). In both cases some Conservative Members voted with the Opposition.

The By-election.—On 18th April, 1961, a new writ was issued for Bristol, South-East, "in the room of Anthony Neil Wedgwood Benn, esquire (commonly called the honourable Anthony Neil Wedgwood Benn), who by a Resolution of the House of 13th April ceased to be a Member[22] [Mr. Bowden]". The Attorney-General (Sir Reginald Manningham Buller) did not oppose the notice, though he pointed out that he did not accept that Mr. Wedgwood Benn ceased to be a Member on 13th April, but that the House of Commons had then recognised that he had ceased to be a Member on the death of his father on 17th November, 1960. The motion was agreed to. On 24th April, 1961, Mr. Anthony Wedgwood Benn (Labour) and Mr. Malcolm St. Clair (Conservative) were nominated as candidates in the by-election.[23]

The proposed Joint Select Committee.—On 26th April Mr. Butler made a statement to the House of Commons about the Joint Select Committee on the House of Lords, the possibility of which had been suggested during the debate on 13th April. He said that although the Government were not in favour of a Committee to deal with the single issue of the Stansgate case, it was in favour of a "broader inquiry". The 1948 conference of party leaders on House of Lords

reform had reached general agreement on the need to maintain an efficient second Chamber, and on its composition. It was only the question of the powers to be retained by the upper House that prevented a general agreement.

The inquiry should not only concern itself with composition but with certain "anomalies" in the Constitution. For instance, Scottish peers have no right to stand or vote for the Commons, but Irish peers can be elected to the Commons but cannot (unless they are M.P.'s) vote in elections and are unable to sit in the House of Lords. A peeress in her own right has the right to vote in elections, but cannot sit in the House of Lords and is generally considered to be disqualified from membership of the Commons.

There were also problems concerning surrender of peerages which would involve a number of complex considerations, as, for example, whether the surrender of a hereditary peerage should be for life or for ever; and whether it should be possible to surrender the right to sit in the Lords, and to both keep the title and sit in the Commons.

Finally, the Committee should consider whether members of the reformed House of Lords should have "assistance" to enable them to play an active part in the business of the House without "unreasonable personal sacrifice".

For these reasons, he announced the intention of the Government to move for the appointment of a Joint Select Committee with the following terms of reference:

> *House of Lords Reform:* That it is expedient that a Joint Committee of both Houses of Parliament be appointed to consider, having regard among other things to the need to maintain an efficient Second Chamber,
>
> (*a*) the composition of the House of Lords,
> (*b*) whether any, and if so what, changes should be made in the rights of Peers and Peeresses in their own right in regard to eligibility to sit in either House of Parliament and to vote at Parliamentary elections and whether any, and if so what, changes should be made in the law relating to the surrender of peerages, and
> (*c*) whether it would be desirable to introduce the principle of remuneration for Members of the House of Lords, and if so subject to what conditions.

and to make recommendations.[24]

Mr. Gaitskell, following this statement, asked Mr. Butler if the terms of reference could not be altered so as to deal only with the second point—the most urgent one on which there was likely to be general agreement. If the terms of references were to be wider, he asked, should they not also include the functions and powers of the second Chamber?

Mr. Butler would not undertake to alter the terms of reference of the Joint Select Committee, despite some pressure from the Opposition. "The Government have decided," he said, and as a result they were unable to get the participation of the Opposition in the

Committee.[25] For this reason the whole project was stillborn for that session.*

On 4th May, 1961, Mr. Wedgwood Benn was returned in the by-election with an increased majority.[26]

Debate of 8th May on Mr. Wedgwood Benn after the by-election.— On 8th May Mr. Wedgwood Benn made a formal attempt to enter the House of Commons and was told by the Principal Doorkeeper "You cannot enter, sir".

The Speaker told the House that he had been informed in the ordinary way that Mr. Wedgwood Benn desired to take his seat.[27] However, the Resolution of the House of 13th April was binding on him, and for that reason he could not allow Mr. Wedgwood Benn to be admitted unless the House otherwise ordered. The directions he had given to the Serjeant at Arms were in accordance with this. He had heard from Mr. Wedgwood Benn as follows:

8th May, 1961.

Dear Mr. Speaker,

On Friday last, in Bristol, the Returning Officer, acting in pursuance of an Order of this House for a fresh election, made a Statutory Declaration that I had been duly elected to represent the constituency of Bristol, South-East, in the present Parliament.

Just after Prayers this afternoon, on my way to the Bar of the House, I was stopped at the door and informed that you, Mr. Speaker, had given instructions that physical force should, if necessary, be used to prevent my entering.

As a duly elected Member of Parliament I request you to countermand that order for which I can find no parallel in parliamentary history.

I ask to be heard at the Bar as to why I should be permitted to take the Oath, following my election by an overwhelming majority of the people of Bristol, South-East, whose servant I am.

Yours sincerely,
ANTHONY WEDGWOOD BENN.

The decision whether to hear Mr. Wedgwood Benn at the Bar was for the House to decide. He also said that despite the *sub judice* rule, "since this is a matter relating solely to our Constitution, we should by common consent waive the application of the rule to this day's debate relating to Mr. Benn's case".

The House debated first Mr. Gaitskell's motion "That Mr. Anthony Neil Wedgwood Benn be admitted in, and heard". Mr. Gaitskell regretted the Speaker's decision not to allow Mr. Wedg-

* Mr. Macleod (the new Leader of the House) tabled the following motion on 9th February, 1962:

House of Lords Reform: That it is expedient that a Joint Committee of both Houses of Parliament be appointed to consider whether any, and if so what, changes should be made in the rights of Peers of England, Scotland, Ireland, Great Britain or of the United Kingdom, and of Peeresses in their own right, to sit in either House of Parliament, or to vote at Parliamentary elections, or whether, and if so under what conditions, a Peer should be enabled to surrender a peerage permanently or for his lifetime or for any less period having regard to the effects and consequences thereof. [Order Paper, p. 1741.]

wood Benn to enter and wished he had copied Speaker Peel who, after Bradlaugh's further election at Northampton, told the House:

> I know nothing of the Resolutions of the past. They have lapsed, they are void, they are of no effect in reference to this case. It is the right, the legal statutable obligation, of Members when returned to this House, to come to this Table and take the Oath prescribed by Statute. I have no authority, I have no right, original or delegated, to interfere between an hon. Member and his taking of the Oath.

Mr. Gaitskell argued that the votes in the by-election had radically changed the position since the last debate and that Mr. Wedgwood Benn should be heard, not only in his own right, but because of the rights of his electors. He suggested that the Government's intransigent attitude was dictated by fear of Lord Hailsham.

Mr. Butler said that though there might be a change in the law made by statute, the arguments against hearing Mr. Wedgwood Benn, a peer, were convincing. Disputed elections since 1868 had been removed by statute from Parliament for determination by the Election Court (of two High Court Judges). The House had not concurrent jurisdiction on election Petitions. It would be improper for them to seek to exercise jurisdiction in respect of matters which were the subject of an election Petition now before the Court. The Court was the appropriate place for Mr. Wedgwood Benn to say what he wished to say.

Debate continued with much repetition of argument (and only one other speech in support of Mr. Butler's view—the Attorney-General's) until a vote was held, and Mr. Gaitskell's motion was rejected (Ayes 177—Noes 250).

Then Mr. Butler moved:

> That this House, taking note that Anthony Neil Wedgwood Benn ceased to be a Member of this House on succession to the Viscounty of Stansgate on 17th November, 1960, and that a new writ was issued for the election of a Member in the room of the said Anthony Neil Wedgwood Benn, orders that the said Anthony Neil Wedgwood Benn, otherwise Viscount Stansgate, be not permitted to enter the Chamber unless the House otherwise orders.

Mr. Butler said that the Committee of Privileges had reported that it was settled law that the fact of succession to the peerage disqualified from membership of the House of Commons, and this disqualification did not depend, where there was succession, on receipt of a Writ of Summons to sit in the Lords. The Committee had reported that it could be altered by Act of Parliament but not by Resolution of either House. The right course was to preserve the *status quo* until the judgment of the Election Court was received. Mr. Butler said it was not the Government, but the law, which was keeping Mr. Wedgwood Benn from sitting in the Commons. He hoped that the law could be examined by a Joint Select Committee of both Houses. In reply to a question by Mr. Shinwell, Mr.

Butler agreed that by section 124 of the Representation of the People Act, 1949, the decision of the Election Court would be final.

Mr. Gaitskell then asked if Mr. Butler would be willing to alter the terms of reference for the Joint Committee, as requested by the Opposition, so as to refer only to the resignation of peerages by those seeking to stand for the Commons—as opposed to the more general terms of reference wished for by the Government.

Mr. George Brown moved as an amendment to Mr. Butler's motion:

> Line 1, to leave out from the word " that " to the end and add the words " the electors of South-East Bristol have returned Mr. Anthony Neil Wedgwood Benn as their Member, resolves that, notwithstanding the Resolution of this House of 13th April last, the oath be administered to Mr. Benn and that he do take his seat ".

He said that nothing about the Election Court procedure as set up in 1868 prevented a Member sitting in the House while the Petition was under way. A recent case had been in 1959 (Kensington—Mr. George Rogers and Sir Oswald Mosley—see THE TABLE, Vol. XXIX, p. 32), another in 1923 of Mr. Frank Grey (Oxford City).

Sir Frank Soskice said that where they had a case where it was imperative to alter convention, there was no reason why they should not do so by Resolution. There was no binding law in the sense of a statute or a court decision which placed any obstacle in the way of Mr. Benn sitting in the House during the interim period until a decision was reached by the Election Court.

The Attorney-General (Sir Reginald Manningham-Buller) said that the object of the Government's motion was to preserve the *status quo*. They would in no way prejudice the position of Mr. Benn. The decision of the electors had not altered the legal position.

The amendment was rejected by 259-162.

The motion was carried by 254-160.

Trial by Election Court—In re Parliamentary Election, Bristol, South-East.—Immediately after the by-election, on 8th May, a Petition was filed. On 9th June, Mr. St. Clair's Petition to the Election Court (under section 110(3) (*a*) of the Representation of the People Act, 1949) was referred by the Divisional Court for trial in the High Court in London.

The trial, before Mr. Justice Gorman and Mr. Justice McNair, opened on 10th June. The Petition was by Mr. Malcolm Archibald James St. Clair (the defeated Conservative candidate) and Mr. John Harris (an elector of Bristol, South-East), and asked for a declaration that the respondent (Mr. Wedgwood Benn, the second Viscount Stansgate) was not duly elected or returned and that the petitioner (Mr. St. Clair) was duly elected and ought to be returned as Member of Parliament for the constituency.

Sir Andrew Clark, Q.C., Mr. Helenus Milmo, Q.C., and Mr. David

Widdicombe, M.B.E., appeared for the petitioners; the respondent (Mr. Wedgwood Benn) appeared in person; and Mr. Robin Dunn appeared for the Director of Public Prosecutions (under section 159 of the Act of 1949).

Sir Andrew Clark opened for the petitioner and said that the respondent was the second Viscount Stansgate of Stansgate and a peer of the United Kingdom. He had been Labour candidate in the by-election caused by the acceptance of the House of Commons of the Report of the Committee of Privileges by Resolution on the 13th April, 1961. He claimed that the respondent was, and had been since his father's death, a peer of the United Kingdom and, as such, entitled to a Writ of Summons to the House of Lords. For this reason he had been disqualified both for nomination and election as a Member of the House of Commons. Sir Andrew further said that his disqualification was " notorious and common knowledge " in the constituency at the time of his election, and that express notice of this had been given to the electorate before nomination day and repeated before polling day. In these circumstances, he claimed that the votes given for the respondent should be treated as void and that the petitioner should be declared the duly elected Member of Parliament for Bristol, South-East.

Counsel submitted five points of law which had been raised in the Petition for the decision of the Court:

(1) Was a peer of the United Kingdom disqualified by the common law of Parliament from being a Member of the House of Commons?
(2) Can a peer under the common law effectively renounce his peerage? He submitted that it was settled that no peer of the realm could by any means alienate, surrender or destroy his right to a Writ of Summons.
(3) If their Lordships decided that a peerage could be renounced, had this been effectively done by the respondent? He submitted that the Instrument of Renunciation was wholly without legal basis.
(4) Had the House of Commons Disqualification Act, 1957, altered the common law in any way?
(5) In the circumstances of the case, had the petitioner (Mr. St. Clair), the only other candidate, the right to be declared duly elected? He submitted that the law was settled by previous decisions of Electoral Courts on this matter, which were binding on their Lordships.

Sir Andrew submitted a large quantity of evidence in support of his case, but as much of it was repeated in the judgment of the Court, it is unnecessary to paraphrase it here.

Mr. Wedgwood Benn submitted that the case was unusual, firstly,

because there were no charges of bribery or corruption; secondly, because it was the first that had been brought on the ground of disqualification by peerage; and thirdly, because the facts were agreed and the argument would be centred on the true interpretation of the law. He continued by giving a résumé of the facts of the Stansgate case up until that day, as related in this article. He stressed the point that the Committee of Privileges was a lay Committee with no authority to establish the law. There was one real issue before the Court, " Was he disqualified from Parliament or not? " (presumably meaning the Commons House). He said that there was no statute governing the disqualification of peers, the question had never been judicially determined and that they should turn for guidance to the common law of Parliament as it could be ascertained from the study of its history and many old cases and statutes. The basic issue was whether it was the status of peerage which disqualified or the Writ of Summons to the upper House. He indicated that he did not wish to argue on the basis of his Instrument of Renunciation or on the House of Commons Disqualification Act of 1957. He submitted fourteen points in his support:

(1) The law governing disqualification from the House of Commons showed that the disqualification arose either from inherent unfitness or from incompatibility of service.
(2) All authority, practice, history and reason showed that disqualification of peers was based on incompatibility of Parliamentary service and not on status.
(3) United Kingdom peers' incompatibility of Parliamentary service arose on the issue of a Writ of Summons and could not rise before.
(4) Writs of Summons must be claimed from the Crown.
(5) Writs of Summons could not be imposed by the House of Lords.
(6) His own particular case showed him not to be in any danger of acquiring a duty to perform an incompatible service.
(7) He would produce further evidence to support the proposition that it was the Writ which disqualified.
(8) The House of Commons could not produce a Writ of Summons to the House of Lords from him and should not disqualify him without one.
(9) He would try to show that the House of Commons began to go wrong when they departed from the strict reasons of incompatibility as a basis for disqualification.
(10) That was demonstrated by the report of the 1895 Committee which was wrong and ought not to be followed.
(11) The Committee of 1961 repeated those errors, added some of its own, and should not be followed either.
(12) The categories of incompatibility should be considered in

the context of the constitution as it had evolved, in order to relate them to the realities of the modern constitution.

(13) The Court was not bound by the decisions of 1895 and 1961 and had the power and duty to declare that Parliamentary disqualification depended on incompatibility and hence on the Writ.

(14) The effect of such a judgment, basing disqualification on the Writ, though it would involve a microscopic clarification and amplification of the disabling characteristics of the peerage, would have a very narrow effect indeed.

The main argument put forward by Mr. Wedgwood Benn was that it was not the status of peerage which disqualified from the House of Commons, but incompatibility of service, which only arose when a Writ of Summons was issued.

The judgment of the Court follows: [28]

On the hearing before us the submissions advanced by the petitioners were, in outline, as follows: (1) A peer of the United Kingdom cannot be a Member of the House of Commons. The disqualification for membership of the House of Commons arises on the succession to the peerage and does not depend in any way on an issue of a writ of summons to the House of Lords in a case such as this where the succession is by descent. (2) The respondent succeeded to the peerage on the death of the first Viscount Stansgate of Stansgate on 17th November, 1960. (3) The respondent was disqualified for membership of the House of Commons on such succession and was accordingly disqualified from being a candidate at the election. (4) A peer can neither alienate, renounce, surrender nor extinguish his peerage by any means. (5) By reason of the circumstances of this by-election the court should declare that Mr. Malcolm St. Clair be the Member for this constituency.

The submissions advanced by the respondent were, in outline, as follows: (1) The disqualification of peers for membership of the House of Commons is based on the incompatibility of Parliamentary service. (2) The writ of summons to the House of Lords transforms an inherent right or privilege conferred by the Letters Patent on United Kingdom peers into an incompatible duty. (3) The writ of summons is the condition precedent to the disqualification of a Member of Parliament on the grounds of United Kingdom peerage, for until the writ of summons has issued no incompatibility of service arises. (4) The writ of summons is also the only way of establishing in law the fact of succession to a United Kingdom peerage for male persons of full age. (5) The writ of summons is also the indispensable legal pre-requisite to establish the right of a United Kingdom peer to sit in the House of Lords as Lord of Parliament. (6) There is a well-established convention of the constitution that writs of summons are not issued to any person in such a way as to disqualify them involuntarily from the House of Commons. (7) The courts of law have no original jurisdiction in peerage matters even when incidentally arising in course of litigation. (8) The respondent on 4th May, 1961, was not in receipt of a writ of summons and was therefore not disqualified from standing as a candidate nor from sitting and voting as a Member of Parliament. (9) This court should not declare Mr. St. Clair as Member of Parliament for this Division.

The submissions were amplified in the course of the hearing before us.

It will be observed that the main difference between the petitioner and the respondent as to the disqualification for membership of the House of Commons

and for standing as a candidate was: Did such disqualification arise on succession to the peerage or did it arise on the granting of a writ of summons to the House of Lords?

In the course of the hearing before us certain evidence was called by the petitioners of the circumstances relating to the conduct of the election which, they submitted, gave this court the right in law to declare that Mr. St. Clair was the Member of Parliament for this constituency.

The respondent did not contend that the instrument of renunciation which he had signed in this case amounted to a renunciation of the peerage. The respondent said: "It is really not for me to say whether I think a peerage can be surrendered. All that I can say is that in this case I am placing no reliance whatsoever upon the instrument of renunciation which I have executed. It is not for me to say whether or not a peerage can be surrendered."

It is nevertheless appropriate to consider whether in law a peer has the right to renounce or surrender a peerage. We have stated earlier in this judgment that the petitioners submitted that it was settled law that a peer can neither alienate, renounce, surrender nor extinguish his peerage.

The Committee for Privileges of the House of Lords considered this matter in the *Earldom of Norfolk Peerage Claim*.[29] In this case the Committee for Privileges considered three earlier decisions which were referred to in Collins on Baronies, Proceedings Precedents and Documents on Claims and Controversies concerning Baronies by Writ and other Honours. There were the cases of the *Earldom of Oxford*,[30] *Baron Grey de Ruthyn*,[31] and *Viscount Purbeck*.[32] In the case of *Viscount Purbeck*[33] Lord Shaftesbury, who gave the leading opinion, said: "Forasmuch as upon the debate of the Petitioner's case who claims the title of Viscount Purbeck a question of law did arise whether a fine levied to the King by a peer of the realm of his title and honour can bar and extinguish that title? The Lords Spiritual and Temporal in Parliament assembled, upon very long debate, and having heard His Majesty's Attorney-General, are unanimously of opinion and do resolve and adjudge that no fine now levied nor at any time hereafter to be levied to the King can bar such title of honour or the right of any person claiming such title under him that levied or shall levy such fine."

The *Norfolk* Peerage case[34] is of very great importance in considering the right of a peer to renounce his peerage. The headnote to the case is: "A peer cannot surrender his peerage to the Sovereign in any manner; and this law must be applied to a surrender made in 1302.

"In 1302 Roger le Bygod, Earl of Norfolk, surrendered the earldom to Edward I. In 1312 Edward II granted to Thomas de Brotherton and to the heirs of his body the earldom so surrendered. Thomas de Brotherton was frequently summoned by writ to Parliament and sat there; Lord Mowbray, having proved his pedigree as senior co-heir of Thomas de Brotherton, alleged that the earldom had fallen into abeyance, and claimed that the abeyance should be determined in his favour as senior co-heir:—*Held*, that the surrender by Roger le Bygod was invalid; that the Charter of 1312 was consequently invalid; that the sitting in Parliament under the King's writ could not create an earldom; and that Lord Mowbray had not made out his claim."

The Earl of Halsbury stated:[35] "My Lords, in this case the claimant seeks to establish his right to the Earldom of Norfolk, an earldom created in the person of Hugh le Bygod in 1135. It may be assumed that he has satisfactorily established his pedigree, but in the course of it he is compelled to admit that he is not heir to the earldom so created, but has to rely on a surrender of the earldom to the King in 1302 and a grant in 1312 to Thomas de Brotherton of the earldom so surrendered. Now the claimant has undoubtedly proved his descent from Thomas de Brotherton, but the fatal blot in his case is that the surrender upon which he relies is invalid in law. It is settled law 'that no peer of this realm can drown or extinguish his honour (but that it

descend to his descendants) neither by surrender, grant, fine nor any other conveyance to the King'. This has been repeatedly held to be the law for some centuries, and finally in the Report on the Dignity of a Peer it is stated that such must now be held to be the law: Volume 2 of the Third Report on the Dignity of a Peer, pp. 25, 46." Lord Ashbourne and Lord Davey[36] delivered opinions to the like effect.

We were further referred to *Viscountess Rhondda's Claim*.[37] Lord Birkenhead, L.C.,[38] said: " Of the two views, I adopt without hesitation the latter. A peerage held by a peeress in her own right is one to which in law the incident of exercising the right to receive a writ is not, and never was, attached. A right to sit and vote is personal to the holder of a peerage who possesses it. It is a right which can neither be denied nor surrendered nor exercised by deputy. The right really consists in the exercise, and a common law right to do something which the common law forbids to be done is, when so defined, a contradiction in terms."

Lord Wrenbury said:[39] " A peerage is an inalienable incorporeal hereditament created by the act of the Sovereign which, if and when he creates it, carries with it certain attributes which attach to it not by reason of any grant of those attributes by the Crown, but as essentially existing at common law by reason of the ennoblement created by the grant of the peerage." Lord Wrenbury dissented in the decision [of the Committee for Privileges of the House of Lords] but not on this matter.

We have considered the submissions made to us on this question and we are of the view that the submissions of the petitioners are right in law.

The main question of law which this court has to determine is (subject to the procedural point taken by the respondent that no civil court—including this court—has jurisdiction to determine the fact of succession) whether the respondent, if in fact he succeeded to the Viscounty of Stansgate on the death of his father, the first Viscount, is disqualified from being a candidate at a Parliamentary election or from sitting in the House of Commons notwithstanding he has not applied for or received a writ of summons to attend the House of Lords.

This is a pure question of law to be determined according to the common law of Parliament, namely, that branch of the common law which relates to Parliament. The common law of Parliament is to be found in the decisions of the courts, the opinions of writers of authority, the reports of the Committees of both Houses, particular emphasis being placed on the opinions of the legal members of the House of Lords Committees when advising on matters of privilege (see *per* Lord Birkenhead, L.C., in the *Viscountess Rhondda's Claim*[40]) and in the reports of the Election Committees before the appointment in 1868 of the Election Judges. But it must be emphasised that neither the Reports of Committees of the two Houses nor resolutions of either House can alter the law. To use the trenchant phrase of Lord Campbell in 1858 (128 Hansard, 3rd ser., at p. 928), " The resolutions of the House of Lords or of the House of Commons affecting to alter the law of the land would in Westminster Hall be regarded as so much waste paper."

Furthermore, though the court accepts without hesitation the sincerity of the respondent's claim that as a devoted House of Commons man he would suffer hardship in being deprived of his opportunity of rendering further service to the House of Commons and to the constituents of Bristol, South-East, if by the fact of succession he were debarred from the House of Commons, these considerations cannot affect the duty of the court to apply the law once it has been ascertained. It is not the function of this court to express any view at all as to whether or not the law should be changed.

Before considering the authorities in detail one general observation may be made. The hereditary principle is still firmly embodied in the constitution. Though by legislation starting with the Parliament Act, 1911, the powers of the House of Lords have been curtailed, it still remains the law that the

composition of the House of Lords is largely based on the hereditary principle, namely, that persons of a certain class, that is to say, persons who by creation by letters patent or by succession have become peers of the realm have the right and duty to sit in the House of Lords. A peerage (and for this purpose we confine our consideration to United Kingdom peers) constitutes a complex of rights, privileges and duties. As stated above in *Viscountess Rhondda's* case,[41] Lord Wrenbury used these words: "A peerage is an inalienable incorporeal hereditament created by the act of the Sovereign which, if and when he creates it, carries with it certain attributes which attach to it not by reason of any grant of those attributes by the Crown, but as essentially existing at common law by reason of the ennoblement created by the grant of the peerage." If then a peerage as a whole is inalienable, it would seem strange that a peer should be entitled by his own act in refusing to apply for a writ or summons to disembarrass himself from part of the attributes assigned by the common law to the incorporeal hereditament to which he has succeeded.

How then does the matter stand on authority? It is true, so far as the researches of those who appeared before us go, that no court has expressly decided whether or not a person who has become a peer of the United Kingdom by succession can by refraining from applying for a writ of summons save himself from disqualification to sit in the House of Commons. Throughout the authorities there has been, at any rate until the case of Lord Wolmer in 1895, the fundamental assumption that a peer will automatically apply for a writ of summons. This is in our view the true explanation of the fact that in many of the early authorities the expression "Lord of Parliament" is used rather than "peer of the realm"; but the expression "Lord of Parliament" is not used for the purpose of drawing a distinction between lords of Parliament and peers of the realm. But, subject to this reservation and with this explanation, it seems to the court that the authorities, whether embodied in decisions of the courts or in the writings of authors of authority, are all one way, with one possible exception to which we shall refer later.

In Coke upon Littleton (Vol. 1, p. 166) one finds Lord Coke stating the position as follows: "The true division of persons is that every man is either of nobility, that is, a lord of parliament of the upper house, or *under* [italics inserted by the court] the degree of nobility amongst the commons, as knights, esquires, citizens and burgesses of the lower house of parliament commonly called the house of commons, and he that is not of the nobility is by intendment of law among the commons." To which passage the Chairman of the House of Commons Committee of 1894 on the Vacating of Seats, Mr. Curzon, in a memorandum handed in on 19th July, 1894, added the following comment: "And surely the converse must necessarily be true that he who by succession becomes a peer belongs to the nobility and is by the intendment of law amongst the Lords."

A further passage in Lord Coke's Institutes Part IV (Ch. I, p. 2) (on which the respondent strongly relied) may here be quoted: "And the King and these three estates are the great corporation or body politic of the Kingdom and do sit in two houses, viz. the King and Lords in one House called the lords' house and the knights, citizens and burgesses in another house called the house of commons. . . . And whosoever is not a lord of parliament and of the lords' house is of the house of the commons either in person, or by representation, partly coagmentative, and partly representative."

It is in our judgment quite plain that in these passages Lord Coke is not drawing any distinction between peers of the realm who acquire nobility by creation or succession and Lords of Parliament, but is indeed emphasising the fact that by acquiring nobility a person acquires a special status by virtue of his entitlement to a seat in the House of Lords, and that this status distinguishes him from that class of person who is entitled to be a member of or represented by a member of the House of Commons.

Sir John Simeon in his work on Elections (2nd ed., 1795) in dealing with disqualification from sitting in the House of Commons states as follows: "Another general disqualification is being bound to serve the state in another capacity incompatible with the character of representative of the people. Thus peers of Parliament who compose a distinct and separate part of the constitution were always deemed ineligible and incapable of sitting in the House of Commons." This passage is quoted textually and adopted by Male in his Treatise on the Law and Practice of Elections (1818).

In the Third Report of the Lords' Committee touching the Dignity of a Peer of the Realm published on 29th July, 1822, and known as the Redesdale Report, the following definition of "Peer of the Realm" is to be found: "The term 'Peer of the Realm', during a long Period, and until the Legislative Union of the Two Kingdoms of England and Scotland, by which they became one Kingdom, was used as the distinguishing Appellation of each of the Temporal Lords of Parliament; forming, as for many years before that Union they had formed, with the Spiritual Lords, a distinct House of Parliament; that House having a Character, and Powers, and Privileges, different, in many points, from those which belong to the other House, now called 'The Commons House of Parliament'; and the Temporal Lords having also a Character materially distinct from that of the Spiritual Lords; that distinct Character being peculiar to their Character of 'Peers of the Realm'. The Union of England and Scotland first, and the Union of Great Britain and Ireland afterwards, have had the Effect of creating a clear Distinction between the Character of Peer of the Realm and that of Temporal Lord of Parliament; but a Distinction previously existed, in some Degree, in the Cases of Minors, and of Women claiming to be Peeresses in their own Rights; and with respect also to such persons as, being Peers of the Realm by Right, might not have thought fit to qualify themselves to sit and vote as Lords of Parliament."

Subsequent passages of the same report, however, make it plain that the distinction between peers of the realm and lords of Parliament which arose after the legislative Union of England and Scotland by the Act of Union of 1706 into the new Realm of Great Britain and the legislative Union between Ireland and the Realm of Great Britain by the Union with Ireland Act, 1800, into the Realm of the United Kingdom of Great Britain and Ireland arose from the fact that by the terms of these legislative Unions not all peers of Scotland and Ireland respectively became entitled to sit in the House of Lords as lords of Parliament. So far as peers of the realm of England were concerned no change was made except that they became peers of the two new realms successively. With regard to the last sentence in this definition relating to "such persons as, being Peers of the Realm by right, might not have thought fit to qualify themselves to sit and vote as Lords of Parliament", there is nothing in the report which we have been able to find which elucidates the meaning of this passage, and it would in our judgment be unsafe to infer that the author of this report intended to refer to those peers who had not applied for a writ of summons. It may equally refer only to cases in which the peer had not thought fit to attempt to establish his succession or identity or who may have been under some other disability such as alienage or bankruptcy or incapacity to take the oath imposed as a bar by 30 Car. 2, c. 1, of which he had not thought fit to free himself.

In Sir William Anson's famous work on the Law and Customs of the Constitution, first published in 1886, it is stated (ch. V, section I, subsection 4, at p. 73) as follows: "A peerage is a disqualification. An English peer may not be a member of the House of Commons nor may a Scotch peer even though he be not one of the representative peers of Scotland. But an Irish peer may sit for any county or borough of Great Britain so long as he is not one of the twenty-eight representatives of the Irish Peerage in the House of Lords. (39 & 40 Geo. 3, c. 67, art. 4.)" The same passage occurs in the

2nd edition published in 1892. In the third edition published in 1897, also written by Sir William Anson, there is a footnote to the following effect: "It has been contended that a peer of the United Kingdom is not disqualified as such, and that until he has received a writ of summons as a Lord of Parliament he may sit in the House of Commons. In 1895 this point was raised by Lord Wolmer, member for West Edinburgh, on succeeding to the Earldom of Selborne; but the house, upon receiving a report from a Select Committee that Lord Wolmer had succeeded to a peerage of the United Kingdom, at once directed that a new writ should be issued. Hansard 4th Ser. xxxiii 1058, 1728." But there is no suggestion that Sir William Anson (or any of the distinguished lawyers who have been responsible for the preparation of subsequent editions) expressed any dissent from the conclusions of the Select Committee of 1895.

In Erskine May's Parliamentary Practice (1st ed. 1844) the following passage occurs: "An English or Scottish Peerage is a disqualification but an Irish peer unless elected as one of the representative peers of Ireland may sit for any place in Great Britain. English peers are ineligible for the House of Commons as having a seat in the Upper House: and Scottish peers, as being represented there by virtue of the Act of Union." In Sir T. Lonsdale Webster's 11th edition (1906), the first edition published after the 1895 Select Committee's Report of 1895, there was added (at p. 194) a passage dealing with Lord Wolmer's case and the Report of the Committee of 1895 substantially to the same effect as the note in Anson above quoted, and again in this edition and in the current edition of 1957 no suggestion is made that the decision of 1895 was wrong in law.

Finally, in all editions of Halsbury's Laws of England dealing with the disqualification of Members of the House of Commons (see 3rd ed., Vol. 28, s. 547), it is stated that "every peer of the United Kingdom or Scotland, whether he is a Lord of Parliament or not, and every representative peer of Ireland is disqualified from sitting in the House of Commons". Though this sentence is grammatically not very clear, we consider without doubt that it should be read as if the words "whether he is a Lord of Parliament or not" should be taken as referring to Scottish peers and intended to make the point that Scottish peers whether or not elected as representative peers are disqualified from membership of the House of Commons.

We now turn to the one passage in the textbooks which seems to us to be out of line with this current of authority.

In the Simonds' edition of Halsbury's Laws of England (3rd ed., Vol. 14, Elections, Part I, s. 2 (13)), the following passage occurs dealing with the closely related question of the right of peers to vote at parliamentary elections: "A peer of Parliament is legally incapable of voting at a parliamentary election even though his name may have been placed upon the register without objection. The writ of summons to the House of Lords must be issued before the disqualification attaches." The first sentence is to be found in the 2nd ed. (Vol. 12, s. 302), but not the second sentence.

The authority for the second sentence is stated to be the *Bedford (Borough)* case, *Marquis of Tavistock's* case.[42] (The case is also more fully reported in Perry and Knapp's Reports.)[43] The facts of this case may be shortly stated. A parliamentary election for the Borough of Bedford was held on 12th and 13th December, 1832, and an election petition by the unsuccessful candidate was in due course referred to an Election Committee of the House of Commons. Among the votes challenged was the vote of the Marquis of Tavistock. On 11th December the King issued to the Lord Chancellor his warrant to make out a writ of summons to Francis Russell, the eldest son of the Duke of Bedford, who had the courtesy title of the Marquis of Tavistock. Included in the dignities of the Duke of Bedford was the barony of Howland of Streatham in the County of Surrey. The writ of summons so directed to the Marquis of Tavistock was in law a writ of acceleration, namely, a writ

by which the eldest son of a living peer could be called to the House of Lords in advance of his father's death by a writ in respect of an inferior dignity held by the father. In ignorance of the fact that the warrant for the issue of the writ of acceleration had been published in the London Gazette on the 11th, the Marquis of Tavistock voted at the election, but on his return to Woburn he became aware of the entry in the London Gazette; he applied in writing to the returning officer to have his vote struck out. The returning officer did not in fact strike out the vote; but when the election petition was heard the Marquis himself intervened to have his vote struck out. Mr. Russell on behalf of the party interested in maintaining the validity of the vote argued that " the Marquis was not a peer at the time he voted for no writ had then issued but, even if it had, he could not have been considered a peer until he had taken his seat in the House of Lords ". In support of this argument he relied upon *Lord Abergavenny's* case,[44] which was a straightforward case of barony by writ and sitting. The committee ruled that the vote was good but gave no reasons for their decision. If they decided on the ground that a person called up in the barony of his father was not ennobled until he sat, on the analogy of the case of the baronies by writ of summons and sitting, their decision may or may not have been correct. But it is, in our view, no authority at all for the wide proposition stated in Halsbury, or for the submission founded thereon by the respondent, that on succession to a peerage the disqualification does not attach until the writ of summons has been issued.

We now turn to the decisions of the courts. Of these, the most important is the case of the *Earl Beauchamp* v. *Overseers of Madresfield*.[45] The actual point for decision was whether a peer who had in fact taken his seat in the House of Lords was entitled to vote at a parliamentary election. The revising barrister, having decided that he was not entitled in law to have his name inserted in the register, expunged it. A Divisional Court consisting of Bovill, C.J., Keating, Brett and Grove, J.J., upheld the decision of the revising barrister. Seeing that the Earl Beauchamp had actually taken his seat in the House of Lords, and therefore must have been in receipt of a writ of summons, it clearly does not as a matter of decision cover the present case even though it is conceded, and in our judgment rightly conceded, that so far as disqualification by peerage is concerned the same principles must govern the question of disqualification from sitting as a Member of the House of Commons as govern the question of disqualification from voting at a parliamentary election. But though the point in issue is not the same as in the present case, it may be found on an examination of the arguments and the judgments that the *ratio decidendi* of the judgment is to be found in the wider proposition that no English peer may vote at a parliamentary election. Counsel for Lord Beauchamp, having stated that the question intended to be raised was whether a peer of Parliament was entitled to be placed on the register, was constrained to admit that every principle of the constitution and all the authorities upon the subject were opposed to such a right. He referred to the resolution of the House of Commons in 1699 in the case of the Earl of Manchester that " No peer of this kingdom hath any right to give his vote at the election for any member to serve in parliament ", to the resolution of the House in 1700 that " If a peer or lord-lieutenant of a county concerns himself in elections, it is an infringement of the liberties of the Commons ", and to two resolutions of the House of 27th April, 1802 (that is to say, two years after the Union with Ireland Act, 1800), to the following effect: (1) " That no peer of this realm, except such peer of that part of the United Kingdom called Ireland as shall for the time being be actually elected and shall not have declined to serve for any county, city or borough of Great Britain hath any right to give his vote in the election of any member to serve in Parliament "; and (2) " That it is a high infringement of the liberties and privileges of the Commons of the United Kingdom for any lord of Parliament

or other peer [italics inserted by the court] or prelate, not being a peer of Ireland at the time elected and not having declined to serve any county, city or borough of Great Britain, to concern himself in the election of members to serve for the Commons in Parliament except only any peer of Ireland at such elections in Great Britain respectively where such peer shall appear as a candidate or by himself or any other be proposed to be elected. . . ." Bovill, C.J., after setting out the effect of the resolutions of 1699 and 1700, continued as follows:[46] " It is not now necessary to enter into the reasons for the exclusion of peers from voting at or interfering in elections for members of the other House: there were, no doubt, constitutional reasons to justify it. These resolutions were passed, not for the purpose of determining who should in future be allowed to vote, but for the purpose of declaring what was the law upon the subject. The House of Commons alone could not, without the assent of the other branch of the legislature, make a law to determine its own constitution: but it was competent to the House, sitting as a court, as it undoubtedly was, to determine as to the right of voting; and they were bound to declare the law. Acting upon these resolutions, the House of Commons and the election committees have decided in one uniform stream of authorities from that time to the present that peers have 'no right' to vote." Later he added:[47] " Whenever a peer has voted at an election, upon a scrutiny before the House his vote has invariably been disallowed. . . ." Keating, J., holding that there was abundant authority, including that of Lord Coke, to justify the resolution of 1699, continued:[48] " above all, we find it clothed with the strongest of all authority, viz. uninterrupted usage for more than a century and a half; and no single authority of any weight is to be found the other way." Brett, J., though reluctant to give any judgment in view of the admission by counsel, was prepared[49] to " hold that, independently of the resolution, we are justified by the current of decisions in holding that peers have no right . . . to be upon the register ". Grove, J.,[50] contented himself with saying that " the total absence of authority in favour of the claim, and the concessions made by counsel for the appellants, abundantly justify the conclusion at which we have arrived, quite irrespectively of the constitutional reasons which might be advanced in opposition to the claim ". We find it quite impossible to believe that judges of this eminence could *per incuriam* have stated that peers of the realm were disqualified when they meant only to say that peers of the realm who have sat in the House of Lords were so disqualified. We accordingly conclude that the true *ratio decidendi* of this case is that no English peer may vote at a parliamentary election. Finally, in the case of *Viscountess Rhondda's Claim*, a decision of the Committee for Privileges of the House of Lords, Lord Birkenhead, L.C., in the leading judgment, after an exhaustive review of the precedents, including the resolutions of 1699, 1700 and 1802, stated in terms that[51] " These resolutions are declaratory of the common law and without any doubt they embody the law of Parliament ". This judgment was expressly concurred in by Lord Buckmaster, Lord Sumner, Lord Carson and Lord Atkinson. Though Lord Haldane and Lord Wrenbury dissented on the actual motion before the committee, there is no suggestion in their speeches that they dissented from Lord Birkenhead's statement as set out above.

Against this consistent stream of authority the respondent sought to show that the disability of a peer to sit in the House of Commons arose not from his status as a peer but from the incompatibility of duties imposed by the issue of a writ of summons to serve in the House of Lords. This submission involved a historical survey of the origin and function of the writ of summons. Shortly stated, this historical survey showed that in the early days before the division between the two Houses was established the writ of summons was everything. By the writ of summons the King summoned to his Council those whom he chose as best fitted by reason of their standing in the country to advise him upon matters of state. The writ of summons originally con-

ferred no status. The fact that a man was called to one Council did not confer upon him, still less upon his descendants, a right to be called to subsequent Councils. It was only as the power of the barons increased that the position was established that the issue of a writ of summons followed by sitting in the House of Lords conferred a hereditary right for the person obeying the summons and his heirs general to sit in the House of Lords. But it is, we think, clear that with the institution of the system of creating peers of the realm by letters patent issued by the Crown (the first letters patent being issued in 1387), it was the letters patent that conferred the right upon the holders of the letters patent and upon the specific class of heirs named in the patent—generally heirs male of the body. "The letters patent require the supplement of a writ. But they give a right to demand that writ, and impose a liability to receive it and to act upon it": see *per* Lord Birkenhead in the *Rhondda* case.[82] The writ of summons also performed the function of notifying the recipient of the place and time of his commanded attendance. A further development is to be noted. Whereas the writ of summons could originally be issued by the King to whomsoever he desired to attend, by a firmly based constitutional convention it was established that letters patent with the accompanying writ could only be issued to a consenting party. The historical origin of this convention is obscure, but it may well be that it was founded in part at least on the claim enforced by the emerging powers of the two Houses that the King should not be able at will to withdraw members from the House of Commons or to place his own men in the House of Lords. A further interesting instance of the emerging power of the House of Commons is to be found in the cases of *Onslow* (1563), *Jeffreys* (1585), and *Popham* (1580), cited in George Petyts Lex Parliamentaria (1689). Each of these being already elected members of the House of Commons was summoned by writ of summons to attend and advise the House of Lords. The House of Commons successfully claimed them back for service in the House of Commons.

The respondent also relied upon the fact that the Long Parliament, after the abolition of the House of Lords as a legislative chamber but not of the dignity of peerage, admitted to the House of Commons three undoubted peers, the Earl of Pembroke, Lord Howard and the Earl of Salisbury, after their election to the House of Commons. From this it was argued that the House of Commons could not have taken the view that the status of peerage alone disqualified from sitting in the House of Commons. Interesting as this historical survey has been, it does not seem to the court to afford any sound basis for the contention that by the law of Parliament today it is incompatibility of service arising from obedience to the writ of summons which imposes the disqualification rather than the status of the peer. Indeed it may well be that the idea underlying the disqualification by status is that the status itself, comprising as it does the right if not the duty to attend in the House of Lords, gave rise to incompatibility. But we think that there was great force in Sir Andrew Clark's submission that while, no doubt, the incompatibility of service in both Houses was the original reason for the rule of common law for which he contended, namely, that status disqualifies, it is essential not to confuse the reasons for a rule coming into force with the rule itself. We refer in this connection to a passage in the Report from the Select Committee on Peerages in Abeyance 1926 (9th para.) to the following effect: "Whether the conclusions of modern historical research are or are not correct we are neither concerned nor competent to decide. We have been assured and we believe it to be the case that they are now accepted by the great majority of historical scholars. The law, however, if settled, cannot be unsettled in this way."

We have referred earlier in this section of our judgment to the decline in the importance of the writ of summons. This has been a progressive movement, and without going into the detail of Speaker Onslow's Opinion ex-

pressed in May, 1760, to Lord Egmont, as reported by Hatsell (2nd ed., 1818) as to the practice of the House of Commons relating to the vacating of seats of peers "called to the Upper House" or to the adoption of their view by the Select Committee of the House of Commons appointed in 1894 to inquire into the law and practice of Parliament in reference to the Vacating of Seats in the House of Commons, it is sufficient to state that by at least the early years of the nineteenth century it had become part of the common law of Parliament that the writ of summons, though the best evidence of succession, had ceased to be the only method by which the disqualification by status could be established.

The respondent further sought to support his argument as to the continued validity of the writ of summons as the sole means of establishing the right to sit in the House of Lords by reference to two statutes from which it was argued inferences to that effect could properly be drawn. The first was the Recess Elections Act, 1784, which (omitting immaterial words) provides by section 2 that "it shall be lawful for the speaker of the house of commons for the time being, during any recess of the said house . . . and he is hereby required to issue his warrant to the clerk of the crown to make out a new writ for electing a member of the house of commons in the room of any member of the said house . . . *who shall become a peer of Great Britain*" [italics inserted by the court] ". . . as soon as he shall receive notice . . . that a writ of summons hath been issued under the great seal of Great Britain to summon such peer to parliament . . ." In our judgment no such inference can properly be drawn. We accept as accurate the comment made by Mr. Curzon in his Memorandum to the 1894 Committee already referred to above that "the Act, in providing for the issue of writs during the recess, prescribed the same cautious procedure which the House habitually observed during sessions but it in no way dealt with or circumscribed the ancient privilege of the House in matters of Election".

Reliance was also placed on section 134 of the Representation of the People Act, 1949, which provides that "(1) If before the trial of an election petition a respondent other than a returning officer . . . (*b*) where the petition questions a parliamentary election or return, is summoned to Parliament as a peer of Great Britain by a writ issued under the Great Seal of Great Britain or the House of Commons have resolved that his seat is vacant . . ." certain consequences shall follow. This is an obscure and ungrammatical provision, and it would in our view be unsafe to draw any inference in favour of the respondent from its terms. It may be—though we express no opinion on it—that the last few words, "or the House of Commons have resolved that his seat is vacant", were expressly designed to cover the case where the House had so resolved as they did in Lord Wolmer's case that the seat was vacant notwithstanding that no writ of summons had been issued.

We fully appreciate the force of the respondent's argument that in order to avoid any possibility of conflict between the decision of the House of Commons and the decision of the Crown on the advice of the Lord Chancellor or the Select Committee of Privileges as to the fact of succession it would be convenient to lay down as a matter of law that the issue of the writ of summons was the sole determining factor: but we are unable, for the reasons stated above, to hold that this is the law.

Our conclusion on this branch of the case accordingly is that, if the respondent has in fact succeeded to the Viscounty of Stansgate, and it is open for us so to find, he became by that succession disqualified from being a candidate at the election or from sitting in the House of Commons notwithstanding that he had not applied for or received a writ of summons to attend the House of Lords.

We think it right to say that this conclusion seems to us to be in accordance with sound constitutional doctrine. So long as the hereditary principle is

maintained as part of the fabric of the constitution—and we express no opinion as to whether it should be so maintained—it would seem to us to be wholly inconsistent with that principle that the successor to a hereditary peerage should have a free option as to which House he desires to sit in. By the fact of succession he has entered a particular class of persons upon whom the duty of attending the House of Lords (unless granted leave of absence) is imposed by law and immemorial usage; and no modern constitutional convention to the contrary has in our view been established.

We now turn to the point which we reserved earlier, namely, the procedural point taken by the respondent that no civil court—including this court—has jurisdiction to determine the fact of succession.

The respondent's broad submission on this point was that as the Crown is the sole fountain of honour, questions of succession can only be determined by the appropriate constitutional machinery, viz. the Lord Chancellor or in disputed cases a reference from the Crown to the Committee of Privileges, upon whose determination the writ of summons issued and that, as he had taken no steps to prove to the Crown his succession and, consequently, no writ of summons had been issued, the court had no jurisdiction to determine this fact.

It will be appreciated that, if this submission is correct, in law, it would be impossible for this court to determine the question which it is charged with the duty of determining. For this submission, however, the respondent relied on the decision of the House of Lords in *Earl Cowley* v. *Countess Cowley*[53] to which we shall now direct our attention.

The headnote of this case is as follows:[53] "Where the marriage of a commoner with a peer of the realm has been dissolved by decree at the instance of the wife, and she afterwards, on marrying a commoner, continues to use the title she acquired by her first marriage, she does not thereby, though having no legal right to the user, commit such a legal wrong against her former husband, or so affect his enjoyment of the incorporeal hereditament he possesses in his title, as to entitle him, in the absence of malice, to an injunction to restrain her use of the title. Only the House of Lords can try questions of right in matters of peerage or dignities connected therewith."

Lord Macnaghten stated the facts of the case in these words:[54] ". . . And then he claims an injunction from a court of law to prevent his late wife using that designation [Countess Cowley] on the ground that it is an invasion or disturbance of the dignity which belongs to him as an incorporeal hereditament. The answer seems to be two-fold. If it be a disturbance of a dignity, that is a matter not within the cognisance of a court of law. The right to a peerage can only be tried before the peers. . . . There is another answer which to my mind is equally conclusive. It is that Lord Cowley has not suffered either legal wrong or damage."

Lord Halsbury, L.C., said:[55] ". . . I do not know what jurisdiction the Divorce Court had in dealing with this matter at all. It seems to have been assumed that it had reference to the divorce; but Mr. Haldane has very candidly admitted that it is not a question of divorce at all, nor has the Divorce Court by any stretch of its jurisdiction any right to determine this question simply because there has been a divorce suit." Lord Halsbury had earlier said in speaking of the right claimed by the wife:[56] "It seems to be absolutely clear that no such suit could be entertained."

Lord James of Hereford said:[57] "To establish the alleged disturbance I understood Mr. Haldane to argue at the bar that the respondent by virtue of her marriage with a commoner has lost her right to bear the title of nobility. It will be observed that this proposition in no way calls in aid the fact of a divorce having been decreed. If the respondent had been a widow, the same question as that now before your Lordships would have arisen." Lord James of Hereford further said:[58] "I further concur with the views which have

been expressed by my noble and learned friend on the Woolsack and Lord Macnaghten, that the jurisdiction to try all questions of right connected with peerage and all dignities connected with peerages lies in this House and not in a court of law."

In reliance on this case the respondent submitted that the judgments placed an indubitable bar on this court's deciding the question of succession.

In our judgment it is clear that the question at issue in the *Cowley* case[58] to which the observations upon which the respondent relied were directed was the question of the disturbance of the dignity held by Earl Cowley. No such issue arises in the matter before us, and we accordingly reject the respondent's submission based on this case.

There being no bar in our way, we have reached the clear conclusion on the facts of this case and on the letters patent that the respondent did succeed to the peerage, the Viscounty Stansgate of Stansgate, on the death of his father on 17th November, 1960. Accordingly, the respondent was disqualified from being a Member of the House of Commons and from being a candidate at the parliamentary election.

We therefore declare that the respondent was not duly elected or returned at the parliamentary election for the constituency of South East Bristol held on 4th May, 1961.

The next question we have to consider is whether Mr. St. Clair is entitled to the seat.

It was submitted to us on his behalf that in the circumstances of this case, he, the candidate with the next highest number of votes to the respondent, and in fact the only other candidate, was in law entitled to be declared to have been duly elected as a Member of Parliament for the constituency. The respondent, on the contrary, submitted that the circumstances of the case did not in law justify the declaration sought by the petitioners. We were referred to a number of cases on this question: *Rex* v. *Hawkins*;[60] *Rex* v. *Parry*;[61] *Gosling* v. *Veley*;[62] *Reg.* v. *Tewkesbury Corporation*;[63] *Drinkwater* v. *Deakin*;[64] *Etherington* v. *Wilson*;[65] *Cox* v. *Ambrose*;[66] *Beresford-Hope* v. *Sandhurst*;[67] *Hobbs* v. *Morey*;[68] *Ulster By-Election*;[69] *Fermanagh and South Tyrone Election*.[70]

We have taken all these cases into our consideration and, before considering the facts proved or admitted in the present case, we propose to consider some of these cases in a little detail.

The facts as stated in the headnote *Rex* v. *Hawkins*[71] are as follows: "One who has not taken the sacrament within a year, being incapable of being elected into a corporate office by statute 13 Car. 2, c. 12, his disqualification was held not to be removed by the annual act of indemnity (47 Geo. 3, st. 2, c. 35); . . . the fact being, that the defendant and another were candidates at the time of election, when forty electors were assembled; and after two electors had voted for each candidate, the candidates were asked whether they had previously taken the sacrament; to which the defendant answered in the negative, and the other candidate in the affirmative; whereupon notice of the defendant's incapacity was publicly given to the electors, and was heard by all who afterwards voted for the defendant, being twenty in number, except two or three; and sixteen afterwards voted for the other. . . ."

Lord Ellenborough, C.J., said:[72] "On this state of facts it is clear, that at the time of the election, namely, on 18th December, 1806, the defendant Hawkins was incapable of being elected into the office of alderman of the borough by the express prohibition of the statute 13 Car. 2; it having been admitted by himself at the time, and it being now stated as a fact by the special verdict, that he had not taken the sacrament within a year next before such day of election."

And later he said:[73] ". . . Was he, Spicer, then duly elected on 10th December, 1806? That question depends on the effect of the notice given

to the electors of the incapacity of the other candidate, Hawkins, to be elected. There is no objection to the due holding of the assembly to elect: forty persons duly qualified to vote are stated to have been present, viz. the mayor, the justice, four aldermen, and thirty-four free burgesses: Hawkins and Spicer are proposed as candidates; and after two persons had voted for Hawkins, and two for Spicer, notice is given of the fact creating Hawkins' incapacity (which fact he at the time himself acknowledges), and that all votes given for him after that notice would be void and thrown away; and the incapacitating clause of the statute of Car. 2 is publickly read: and all this is found to have been in the presence and hearing of all who afterwards voted for Hawkins, except two or three. After this notice, twenty persons voted for Hawkins, and sixteen for Spicer; these numbers, with the two votes before given to each of the candidates, making up the full amount of forty. If the law be, that at the election of corporate officers, the votes given for an incapable candidate, after notice of such incapacity, are to be considered as thrown away, *i.e.*, as if the voters had not given any vote at all; then this will be a good election of Spicer; unless the time when notice of his incapacity was given, namely, after two persons had given their votes for each of the candidates, can be considered as making any difference. The general proposition that votes given for a candidate, after notice of his being ineligible, are to be considered the same as if the persons had not voted at all, is supported by the cases of *The Queen* v. *Boscawan*,[74] Easter, 13 Anne; *The King* v. *Withers*,[75] Easter, 8 George 2; *Taylor* v. *Mayor of Bath*,[76] M. 15 Geo. 2, all of which are cited in Cowper 537, in *The King* v. *Monday*."[77]

It is not necessary to deal in detail with the case of *Gosling* v. *Veley*[78] except to quote a passage from the judgment of Lord Denham, C.J., as follows:[79] " Where the disqualification depends upon a fact which may be unknown to the elector, he is entitled to notice; for, without that, the inference of assent could not be fairly drawn, nor would the consequence as to the vote be just. But, if the disqualification be of a sort whereof notice is to be presumed, none need expressly be given: no one can doubt that, if an elector would nominate and vote only for a woman to fill the office of mayor or burgess in parliament, his vote would be thrown away: there the fact would be notorious; and every man would be presumed to know the law upon that fact."

Drinkwater v. *Deakin*[80] is an important case. The headnote is in terms: " There being two candidates at a parliamentary election, one of them was guilty of a corrupt practice by giving leave, on the day of nomination, to his tenants to kill rabbits on his estate, for the purpose of influencing their votes at the election. A notice was given to the electors on the morning of the polling day, before the polling, by the agent of the other candidate, in the following terms: ' Colonel D. having, for the purpose of influencing voters at this election, given to all his tenants on the Warrington estate and voters in this borough a right to trap and shoot rabbits, has, I believe, been guilty of a corrupt practice, and, as agent of H. C. D., Esq., a candidate at this election, I hereby give you notice that, under these circumstances, the said Colonel D. is disqualified from being a candidate, and that all votes given for him will be thrown away.' Colonel D. obtained the majority, and was declared elected, but, being petitioned against, was unseated, on the ground of the above-mentioned corrupt practice. The petitioner claimed the seat on the ground that the votes given to the respondent being given with knowledge of his disqualification, were thrown away, and consequently the petitioner was in a majority:—

" *Held*, that bribing by a candidate at an election, though it renders his election void if he be found guilty of it on petition, does not incapacitate the candidate at that election in the sense that the votes given for him by voters with knowledge of it will be thrown away, and that no disqualification arises in that sense of the term until after the candidate has been found guilty of

bribery on petition, and consequently, that the petitioner was not entitled to the seat."

Lord Coleridge, C.J., said:[81] "The real matter we have to determine is, whether the petitioner, Mr. Drinkwater, is or is not entitled to be declared elected for the borough of Launceston. Three propositions have to be made out in order to arrive at this conclusion,—1. That Colonel Deakin was at the time of the election in point of law disqualified; 2. That, notice of that fact having been conveyed to the voters in a form sufficiently definite, any vote given after such notice was in law thrown away. The peculiar circumstances of this case made it necessary to contend farther, that—3. The uncertainty or obscurity of the legal question on which the disqualification depends makes no difference:—Given the fact of legal disqualification, as the result of argument however elaborate and decisions however conflicting, and given the fact of notice, the voter gives his vote at his own risk and on his own responsibility.

"The law as to the disqualification of the candidate, and the notice of such disqualification to the voter, is to be collected from the decisions of Courts of law and of parliamentary election committees, which latter, if not binding upon this Court, by section 26 of 31 & 32 Vict. c. 125 are yet to be treated with respect as expositions of the law of parliament, which is part of the common law itself. And, if there be any difference discoverable in the authorities between the rules applied to parliamentary elections and the rules applied to elections of other sorts, there seem to be reasons of good sense why a somewhat less rigid and technical rule as to the throwing away of votes should obtain in the case of parliamentary constituencies."

Brett, J., summarised his views as follows:[82] "I accept that which seems to me to have been always admitted to be the law before the case of *Reg.* v. *Mayor of Tewkesbury*,[83] viz. the proposition which I have expressed, as generally applicable to all cases where notice of the law as affecting any subject-matter is material, that is to say, where by the law, if certain facts exist incapacity exists, and where by the law, if the law were known to the elector, his vote would be thrown away if he persisted in voting for the disqualified candidate, he cannot, if the facts exist to his knowledge, or if he have notice of the facts equivalent to knowledge, which by law produce incapacity for election in the candidate, render his vote valid by asserting that he did not know that the facts by law produced such incapacity, or that his vote would be thrown away if he voted for such candidate. Applying those principles to the present notice, if it were the law that personal bribery rendered the person guilty of it incapable of being a candidate I should have thought that the notice was sufficient."

The case of *Etherington v. Wilson*[84] was merely an application of these principles.

Cox v. *Ambrose*[85] was a further case in which the principles of *Drinkwater v. Deakin*[86] were applied in the case of a municipal election.

We now come to the decision of the Court of Appeal in *Beresford-Hope* v. *Sandhurst*,[87] which dealt with the claim of a woman to be entitled to be elected to a county council.

The headnote of the case is in terms:[88] "At an election of members of a county council under the Local Government Act, 1888, the respondent obtained a majority of votes over the petitioner and was declared to be elected. On a petition claiming the seat on the ground that the respondent, being a woman, was disqualified:—*Held*, that an appeal lies in such case, by special leave, from the Divisional Court to the Court of Appeal:—*Held also* (affirming the judgment of the Queen's Bench Division) that women are incapacitated from being elected members of a county council:—*Held further*, that the votes given to the respondent were thrown away and that the petitioner was duly elected." But it is only the third finding that is relevant in the present case.

The judgment of the first court, the Divisional Court, was given by Stephen, J., and he said:[89] "A second question in the case is whether the votes for Lady Sandhurst were thrown away, so that Mr. Beresford-Hope was duly elected, or must there be a new election? The following facts were proved to us upon this subject. In the first place it was admitted that all those who voted for Lady Sandhurst knew that she was a woman. In the second place it was shown to our satisfaction that the question whether as a woman she was incapacitated from election was a subject of common public discussion at the time and place of her election. It was not proved specifically that notice was given to the individual voters. We think, however, that it must be taken that the fact which, if we are right, constituted the disqualification was known to all, and that the voters were also aware that the legal consequence might, though they may not have been aware that it actually did, constitute disqualification. The question whether in such a case the voters voted at their peril, or whether there should be a new election, is not altogether clear. The general principle is laid down in the case of *Gosling* v. *Veley*,[90] and is there stated as follows:

"'Where the majority of electors vote for a disqualified person in ignorance of the fact of disqualification, the election may be void or voidable, or, in the latter case, may be capable of being made good, according to the nature of the disqualification. The objection may require ulterior proceedings to be taken before some competent tribunal, in order to be made available; or it may be such as to place the elected candidate on the same footing as if he never had existed and the votes for him were a nullity.' To this general principle the judgment proceeds to add an illustration so apposite to the present case that in quoting it we wish distinctly to state that we do not regard it as more than a singularly pointed illustration: 'But, if the disqualification be of a sort whereof notice is to be presumed, none need expressly be given: no one can doubt that, if an elector would nominate and vote only for a woman to fill the office of mayor or burgess in Parliament, his vote would be thrown away: there the fact would be notorious, and every man would be presumed to know the law upon that fact.'

"This case has been to some extent departed from in the case of *Reg.* v. *Mayor of Tewkesbury*,[91] decided in 1868. The effect of this case is not unfairly represented by saying that a vote is not to be taken to be thrown away because the voter knows of a disqualifying fact, but does not know that it is by law disqualifying. This decision, however, appears to have been discredited to some extent by *Drinkwater* v. *Deakin*,[92] decided in 1874, in which the present Master of the Rolls says: 'When the validity or invalidity of an act depends on a question of law, no one can make such act valid in law when it would otherwise be invalid by saying that he did not know the law.' Denman, J., agreed in this judgment, and Lord Coleridge said:[93] 'I entirely agree . . . in the general law laid down as to the throwing away of votes in the judgment in *Gosling* v. *Veley*.'[94]. *Etherington* v. *Wilson*[95] is a further authority on this subject.

"Upon these grounds we think that the votes given for Lady Sandhurst were thrown away, and that Mr. Beresford-Hope was duly elected."

The decision of the Divisional Court was upheld by the Court of Appeal. In the Court of Appeal Lord Coleridge, C.J., said:[96] "This case comes before us upon appeal from a decision of my brothers Huddleston and Stephen [J.J.] in the court below, that, under the circumstances which I will very shortly mention, the respondent in this appeal is entitled to the seat for the county council, in the contest for which he received a minority of votes, on the ground that the candidate who received the majority of votes was incapacitated by law from being a candidate for the office of county councillor, and that votes given for her were thrown away, and the ground upon which she was incapacitated, is, that she was a lady." Later he said:[97] "Then comes the second question, whether the result of unseating the respondent is

to seat the appellant, although he had the minority of votes against her. Now that is a matter which has been disputed upon two grounds. First of all, it has been said, that having the right to draw inferences of fact, we must draw the inference that everybody who voted for Lady Sandhurst was aware of her incapacity, so that their votes were thrown away. I do not think it is necessary to decide that. If it were necessary, I should say that upon the whole we had the power of drawing inferences of fact, but I do not think, for the purpose of this judgment, it is necessary to decide that question, because it appears to me to be undisputed, and the facts of the case are sufficient to show, that the incapacity was an incapacity of status. The fact from which the incapacity arose must have been known to every one who voted for Lady Sandhurst; therefore every one voted at his peril, because there existed that fact to which the law annexes the incapacity of being elected. I apprehend that both in *Gosling* v. *Veley*[98] and in *Drinkwater* v. *Deakin*,[99] and in other cases it has been laid down over and over again, that if the fact exists which creates an incapacity, and it is known, and must be known, to those persons who voted for a candidate who is so incapacitated, votes given under those circumstances are thrown away. As it is put in one of the judgments, such votes are fairly enough thrown away, because the persons would not do the only thing they ought to do to give effect to their votes, namely, to vote for a properly qualified candidate. The distinction which is drawn in the case of *Drinkwater* v. *Deakin* and in other cases is not a subtle one, it is a perfectly plain one. Where the incapacity is an incapacity of status so annexed by law to the candidate, it requires no proof; the fact of its being an incapacity to which the law annexes the legal consequence is known to every person who votes, and the persons who vote, and who are aware of the fact to which incapacity is attached, must in reason be held to be aware of the consequence which attaches to their voting. The case of *Drinkwater* v. *Deakin* and other cases of the same kind are cases where the fact of incapacity had to be ascertained. In the case of *Drinkwater* v. *Deakin* the fact of the incapacity was not, in the judgment of the Court, ascertained. In that case it was held that there must be sufficient and conclusive notice given to a sufficient number of people to invalidate the election and to seat the rival candidate. On that case I decide without hesitation, that the votes given for Lady Sandhurst were thrown away. I accept to the fullest degree the conclusions of the Clitheroe Committee. I thought in the course of the argument, and think still, that the conclusions of the Clitheroe Committee are binding upon us, and as regards the statement of that conclusion, or the reasons given for it, the law has been stated by judges of great authority in almost the same language time after time. I think therefore that for these reasons, and upon those authorities which I have alluded to, the votes given for Lady Sandhurst were thrown away, and that the petitioner is entitled to the seat."

Lord Esher, M.R., said:[100] "As to the second point, I think the case is absolutely determined by the express decision of both the judges who decided the case of *Drinkwater* v. *Deakin*.[101] The words cannot be plainer as used by both, and it would be necessary to overrule that decision unless we hold that all that is necessary to be made known to the electors to determine whether their votes are thrown away or not, is to make out clearly that the facts are known to a sufficient number of them; the facts upon which the law determines that the person for whom they did in fact vote was a person incapable of being elected. I think, therefore, on both points, the decision of the Divisional Court was right, and that this appeal ought to be dismissed."

Lindley, L.J., said:[102] "On the second point I have nothing to add but this, that on considering the earlier cases on that point, I think they are considerably qualified by the late case of *Drinkwater* v. *Deakin*.[103] The facts are told to the elector of the incapacity of being elected on the part of the respondent, I will not say told to him, but he must be taken to know them,

and really does know them. The question as to whether he really knows the law on the subject or not is another thing."

Lopes, L.J., said:[104] " With regard to the second point, I think the present case is well within the decision in *Drinkwater* v. *Deakin*."[105]

At the hearing of this present petition evidence was called, which we accept, in support of the allegation made in paragraph 7 (i), (ii) and (iii) of the petition. It was further proved that the first-named petitioner issued to the Press a notice in the following terms:

" The following statement was issued today by Mr. Malcolm St. Clair, prospective Conservative candidate for Bristol South East:

" ' I would naturally prefer to become Member of Parliament for Bristol South East by securing the largest number of votes at a properly contested election. But in view of the reported intention of the former Member, now Viscount Stansgate, to offer himself for election, I feel it is my duty to make my attitude clear in the event of his nomination.

" ' I am taking steps to fight the by-election in the normal way, on the assumption that only candidates properly qualified to sit in the House of Commons will be nominated. Should Lord Stansgate be nominated, however, I shall give formal notice to the electorate during the by-election campaign that he is a disqualified person and that any votes for him will be votes thrown away.

" ' If Lord Stansgate were nevertheless to gain the largest number of votes, and I came second, I should then present an election petition, seeking my return as the legitimate Member. My reasons for this are those advanced by such authorities as Sir Lionel Heald, Q.C., M.P., the former Attorney-General. As Sir Lionel has put it: " Whatever views may be held as to the desirability of new legislation relating to the House of Lords, it is now beyond doubt that Mr. Anthony Wedgwood Benn succeeded on 17th November, 1960, to the Viscounty of Stansgate and is consequently disqualified from membership of the House of Commons." Whether Lord Stansgate can bring himself to sign the statutory form of consent of a candidate for nomination stating that to the best of his knowledge and belief he is not disqualified for membership of the House of Commons is, of course, a matter for himself.' "

With reference to the facts admitted by the respondent as to paragraph 8 of the petition, it was admitted by the petitioners that the respondent had circulated notices in the Press, and in a document styled " The Bristol Campaigner " in reply to the document dated 28th April, 1961, and referred to in paragraph 7 (i) of the petition.

We are satisfied on the evidence before us that it was made known to the electors of the constituency of South East Bristol before they cast their votes that the respondent, on the death of his father on 17th November, 1960, was the eldest surviving son of his father, and that it was claimed by the first petitioner that the respondent was disqualified from being a member of the House of Commons (a claim which the respondent disputed), and that the House of Commons had accepted the report of their Committee of Privileges which had so decided.

Accordingly, applying the decision of the Court of Appeal in *Beresford-Hope* v. *Sandhurst*,[106] by which we are bound, and having reached the decision that the respondent was so disqualified, we have no option but to declare that the votes cast for the respondent were thrown away and that Mr. Malcolm James St. Clair was duly elected at the said election.

On 31st July, 1961, Mr. Speaker read the certificate of the Election Court to the House (the certificate was ordered to be entered in the Journals and the shorthand writer's notes[107] were laid on the Table by the Speaker). The Speaker further ruled (in reply to a point of order raised by Mr. Silverman) that the motion to be

moved by Mr. Redmayne (Parliamentary Secretary to the Treasury) was not debatable. It was carried by 235-145 votes and was in these terms:

> That the Clerk of the Crown do attend this House forthwith with the last return for Bristol, South-East, and amend the same by substituting the name of Malcolm Archibald James St. Clair for that of Anthony Neil Wedgwood Benn as Member returned for the said constituency.

The Clerk of the Crown thereupon attended at the Table and amended the return.[108]

Mr. St. Clair took the Oath, and his seat in the Commons for Bristol, South-East, on 31st July, 1961, and has since continued to act as a Member.

On 14th August, Mr. St. Clair issued a statement to the effect that he would apply for the Chiltern Hundreds if Mr. Wedgwood Benn would publicly pledge himself not to accept nomination as a candidate "at any future by-election or election for the constituency unless he should become qualified to become a Member of Parliament".[109] Mr. Wedgwood Benn would, however, give "no assurance whatsoever".

[1] *The Times*, 13th January, 1942. [2] 511 *Com. Hans.*, cc. 424-5. [3] In the evidence of Mr. Wedgwood Benn in *Report from the Committee of Privileges*, H.C. 142 (1961), p. 3. [4] cf. *Report from the Personal Bills Committee* on the Wedgwood Benn (Renunciation) Bill, H.L. 1955 (23). [5] H.L. (23) 1955. [6] 191 *Lords Hans.*, c. 1197; 192 *Ibid.*, cc. 561-94. [7] 540 *Com. Hans.*, c. 1249. [8] 205 *Lords Hans.*, cc. 581-678, 683-774 and Vols. 206, 207, 208, *passim*. [9] *Parliamentary Debates* 585, *Com. Hans.*, cc. 585, 300-90. *Supplement to the Votes and Proceedings of the House of Commons*, Session 1957-8, pp. 1153-4, 1174. [10] *Notices of Motion*, 1957-58, ii, p. 1873. [11] *The Law Quarterly Review*, Vol. 77, pp. 485-6, by A. L. Goodhart, and the respondent's statement in the trial "I shall be making no issue whatsoever of the validity or otherwise of the Instrument of Renunciation." [12] 631 *Com. Hans.*, cc. 171-4. [13] 16th edition p. 194, "An English or Scottish peerage is a disqualification". [14] Hatsell: *Precedents of Proceedings in the House of Commons*, ii (1818), 394. [15] 33 *Com. Hans.* (4th Series), (13th May, 1895), c. 1058. [16] *Parliamentary Papers*, 1895, *Commons*, Vol. 10, p. 561. [17] 3rd edition (1959), Vol. 28, p. 337. [18] H.C. 142 (1961), pp. 59-66, 81-2. [19] H.C. 142 (1961), p. xi. [20] *Parliamentary Debates, Commons* 638, 499-642. [21] Given above, p. 28. [22] 638 *Com Hans.*, cc. 939-40. [23] *The Times*, 25th April, 1961. See Representation of the People Act, 1949, Second Schedule, para. 13, for the circumstances in which a returning officer may hold a nomination paper invalid. [24] 639 *Com. Hans.*, cc. 420-32; Order Paper, 5th May, 1961. [25] *The Times*, 27th April and 6th May, 1961. [26] Mr. Wedgwood Benn, 23,275; Mr. St. Clair, 10,231; majority, 13,044. The figures in the general election were: Mr. Wedgwood Benn, 26,273; Mr. St. Clair, 20,466; majority, 5,827. [27] 640 *Com. Hans.*, c. 34. [28] [1961] 3 W.L.R., pp. 585-609. [29] [1907] A.C. 10; 23 T.L.R. 114, H. L. [30] (1626) Collins, 190. [31] (1640) Collins, 195. [32] (1678) Collins, 293. [33] *Ibid.*, 306. [34] [1907] A.C. 10. [35] *Ibid.*, 11, 12. [36] [1907] A.C. 10, 13, 16. [37] [1922] 2 A.C. 339; 38 T.L.R. 759, H.L. Committee for Privileges Report. [38] [1922] 2 A.C. 339, 362. [39] *Ibid.*, 393. [40] [1922] 2 A.C. 339, 380. [41] *Ibid.*, 393. [42] (1883) Cockb. & Rowe, 37, 95. [43] Per. & Kn. 112, 143, 146. [44] (1610) 12 Co. Rep. 70. [45] (1872) L.R. 8 C.P. 245. [46] L.R. 8 C.P. 245, 251. [47] *Ibid.*, 251. [48] *Ibid.*, 252. [49] *Ibid.*, 255. [50] *Ibid.*, 255. [51] [1922] 2 A.C. 339, 368. [52] *Ibid.*, 359. [53] [1901] A.C. 450; 17 T.L.R. 725, H.L. [54] [1901] A.C. 450, 455-456.

[54] *Ibid.*, 453-454. [56] *Ibid.*, 453. [57] *Ibid.*, 457. [58] *Ibid.*, 458. [59] [1901] A.C. 450. [60] (1808) 10 East 211. [61] (1811) 14 East 549. [62] (1847) 7 Q.B. 406. [63] (1868) L.R. 3 QB 629. [64] (1874) L.R. 9 C.P. 626. [65] (1875) L.R. 20 Eq. Cas. 606, C.A. [66] (1890) 60 L.J. 114; 7 T.L.R. 59, D.C. [67] (1889) 23 Q.B.D. 79; 5 T.L.R. 472, C.A. [68] [1904] 1 K.B. 74; 20 T.L.R. 50, D.C. [69] (1955) 105 L.J. 482. [70] (1955) 105 L.J. 594. [71] 10 East 211 [72] 10 East 211, 215. [73] *Ibid.*, 216-217. [74] (1777) 2 Cowper 530, 537. [75] *Ibid.* [76] *Ibid.* [77] *Ibid.*, 530. [78] (1847 7 Q.B. 406. [79] *Ibid.*, 439. [80] L.R. 9 C.P. 626. [81] *Ibid.*, 633. [82] L.R. 9 C.P. 626, 642-643. [83] (1868) L.R. 3 Q.B. 629. [84] (1875) 20 Eq. Cas. 606. [85] (1890) 60 L.J. 114. [86] (1874) L.R. 9 C.P. 626. [87] 23 Q.B.D. 79. [88] *Ibid.*, 79. [89] *Ibid.*, 84. [90] (1847) 7 Q.B. 406. [91] L.R. 3 Q.B. 629. [92] L.R. 9 C.P. 626, 642. [93] *Ibid.*, 641. [94] (1847) 7 Q.B. 406. [95] L.R. 20 Eq. Cas. 606. [96] 23 Q.B.D. 79, 90. [97] *Ibid.*, 93-95. [98] 7 Q.B. 406. [99] L.R. 9 C.P. 626. [100] 23 Q.B.D. 79, 97. [101] L.R. 9 C.P. 626. [102] 23 Q.B.D. 79, 98. [103] L.R. 9 C.P. 626. [104] 23 Q.B.D. 79, 99. [105] L.R. 9 C.P. 626. [106] 23 C.B.D. 79, C.A.

[107] The shorthand notes of the trial are now in the Library of the House of Commons, and Mr. Wedgwood Benn's evidence contained much curious parliamentary history. [108] 645 *Com. Hans.*, cc. 942-6. [109] *The Times*, 15th August, 1961.

V. SOUTHERN RHODESIA CONSTITUTION: ORDER IN COUNCIL, 1961

By L. J. Howe-Ely
Clerk of the House

The Southern Rhodesia (Constitution) Order in Council, 1961, which was made on the 6th December, 1961, granted to Southern Rhodesia a new Constitution, the major portion of which will come into operation on "the appointed day", which, in effect, is the date of the dissolution of the present Parliament. The effect of the new Constitution is to give Southern Rhodesia wider sovereign powers than this country has enjoyed in the past, and confers virtual autonomy on the Government. It is anticipated that the new Constitution will come fully into force early in the year 1963.

The Order in Council provides that the new Constitution will not come into operation until the electoral laws of the country have been amended to bring them into line with the provisions of the Constitution itself. These matters include a provision that at the first general election held after the coming into force of the new Constitution the franchise qualifications shall be those set out in the Constitution; provision for a general election to be held for the purpose of constituting the new Parliament, which will be composed of 65 members elected from 50 constituencies and fifteen electoral districts which are to be delimited in the manner prescribed by the Constitution; and provision for the conduct of elections for members of the Legislative Assembly in terms of the New Constitution. It is also laid down that provision shall be made in regard to the registration of voters, the preparation and keeping of the two electoral rolls to be known as the "A" Roll and the "B" Roll and other matters in this connection. These matters were duly enacted in the Electoral Amendment Act of 1961 and the Electoral Amendment (No. 2) Act of 1962. The Order in Council provides that all laws in force in Southern Rhodesia immediately prior to the appointed day shall remain in full force and effect on and after the appointed day subject to the exercise of any power vested in the Legislature to amend or repeal such laws. Provision is also made for the Standing Orders of the existing Parliament in force immediately prior to the appointed day to continue to be the Standing Orders of the new Parliament until otherwise provided by the Legislative Assembly. In this latter connection advantage was taken of the fact that it was necessary to

incorporate the many new provisions of the Constitution into the Standing Orders to revise the whole of the procedure of this Parliament. The work has been completed and the new Standing Orders will be ready to come into operation with effect from the date of the meeting of the new Parliament.

A major feature of the new Constitution is the Declaration of Rights which prescribes the fundamental rights and freedoms to be enjoyed by the people of Southern Rhodesia. The Constitution lays down that after the coming into force of the new Constitution any new law, regulation, bye-law or other subsidiary legislation will be invalid if it contravenes the provisions of the Declaration of Rights, and it will be open to any person claiming to be adversely affected by any such law to question its validity in the High Court of Southern Rhodesia.

The Declaration of Rights commences with a preamble setting out what are commonly called the fundamental rights and freedoms of the individual, but stating that these are subject to respect for the rights and freedoms of other persons and for the public interest. The rights and provisions for the protection of those rights are set out in detail in the Constitution and provision is made for enforcement including provision that an aggrieved person in a proper case, on a certificate from the Constitutional Council, may be paid from the public revenue such costs as the appropriate court may certify to have been reasonably incurred by that person in establishing his claim. The Declaration of Rights also contains provisions intended to afford protection from discriminatory laws or discriminatory action. This protection will be afforded to persons of any race, tribe, colour or creed. Under the present Constitution this protection is given only to Africans.

The new Constitution will bring into being a body to be known as the Constitutional Council which will consist of a Chairman and eleven members. The Chairman is required to have been either a Judge of the High Court of Southern Rhodesia or of the Federal Supreme Court or of a superior court of a country in which the common law is Roman-Dutch and English is the official language or to have been an advocate or attorney of the High Court of Southern Rhodesia of not less than fifteen years' standing and who has retired from practice as such. Qualifications for a member of the Constitutional Council are that he shall be not less than thirty-five years of age, a citizen of Rhodesia and Nyasaland, and shall have resided in Southern Rhodesia for a period of not less than ten out of the fifteen years immediately prior to his election. In addition to the ordinary disqualifications for persons seeking election to the Legislative Assembly the Constitution also provides that no person may seek election to the Constitutional Council who, within five years prior to his election, is or has been a member of the Legislative Assembly, the Federal Assembly or is or has been a candidate for election thereto.

The Constitution lays down that the proceedings of the Council shall be conducted in private and that the Council shall not be entitled to hear objectors or to examine witnesses in regard to any bill or law which is being considered by it. If the Governor has reason to believe that a member of the Constitutional Council has disclosed, without the authority of the Chairman, any proceedings of the Council to any person who is not a member of the Council he may cause the matter to be inquired into under the provisions of the Commissions of Inquiry Act and may thereupon suspend such member from the exercise of his functions as a member of the Council pending his decision on the findings of the Commission of Inquiry. Provision is made for the functions and procedure of the Constitutional Council and for the duties of the Chairman. The Council, the Chairman and Members will have the same immunities and privileges *mutatis mutandis* as the Legislative Assembly and the members thereof.

The sole function of the Constitutional Council is to act as the watch-dog of the people for safeguarding their rights under the Declaration of Rights by examining any bill passed by the Legislative Assembly which is submitted to it or any subsidiary legislation enacted after the coming into operation of the Constitution and by reporting to the Legislative Assembly whether, in its opinion, any such bill or subsidiary legislation contains any provision which is contrary to or inconsistent with any of the provisions of the Declaration of Rights. Any such law (including any subsidiary legislation) which is found by a court to be contrary to the Declaration of Rights may be pronounced to be invalid.

Under the new Constitution the powers of the Governor are curtailed. While his appointment will continue to be made by the Sovereign on the advice of the Secretary of State, the Southern Rhodesia Government will have a constitutional right to be consulted before any name is submitted to Her Majesty. The Governor is required to act in accordance with the advice of his Ministers in all matters except in regard to (*a*) the dissolution of the Legislative Assembly; (*b*) the choice of the Prime Minister; and (*c*) the appointment of the Chairman of the Constitutional Council where he will be required to act on the advice of the Chief Justice. In regard to the choice of Prime Minister and the dissolution of the Legislative Assembly the Governor will act in accordance with his own discretion, but he will be required to exercise that discretion in the same manner as does the Sovereign in the United Kingdom in similar circumstances.

The "reserved powers" vested in the Secretary of State will now disappear. In contrast to the present position, under the new Constitution the Legislative Assembly will have power to amend or repeal any of the provisions of the new Constitution except those relating to the functions of the Sovereign and the functions of the

Governor as the Sovereign's representative. The power of disallowance by the Sovereign is retained only in respect of any act which may be inconsistent with any international obligations imposed on the Sovereign in relation to Southern Rhodesia or which alters to the injury of the stockholders or departs from the original contract in respect of any stock issued under the Colonial Stock Acts by the Southern Rhodesia Government on the London market. Such laws may be disallowed within six months of their being passed. Certain provisions of the new Constitution will, however, be specially entrenched; that is to say, they will require a special procedure for their amendment. These provisions are those which relate to the Declaration of Rights, appeals to the Privy Council, the Constitutional Council, the Judiciary and the provisions for amending the Constitution, securing civil service pensions and giving effect to the restriction on the amendment of the franchise and also provisions in regard to lands.

One interesting point is that although the existing Constitution has provision for the setting up of a Second Chamber there is no such provision in the new Constitution.

A further important provision contained in the new Constitution is that the Legislative Assembly is specially empowered to make laws having extra-territorial effect. The legislative powers will continue to be vested in the Legislative Assembly which will now comprise 65 members elected in accordance with the electoral law for the time being in force relating to elections. Qualifications and disqualifications of voters will continue to be governed by the electoral laws of the country and the legislature will have power to amend the franchise and the electoral laws generally. Any proposed amendment of the franchise which would have the effect of rendering ineligible for inclusion in the " A " Roll or the " B " Roll, as the case may be, any person who would have been entitled to be included in the Roll on the basis of the proposed new qualifications will require for its enactment the special procedure referred to above for the entrenched clauses of the new Constitution.

Under the existing Constitution the native reserves are set aside for the sole and exclusive use and occupation of the indigenous native inhabitants of the Colony, and the land comprising the reserves is vested in a Board of Trustees whose chairman is nominated and appointed by the Secretary of State, and the Secretary of State exercises general control and supervision over the administration of the Trust. All land in the Colony, other than the land comprising the native reserves, is governed by the provisions of the Land Apportionment Act. This Act is entrenched in the present Constitution to the extent that any bill which repeals, alters or amends or is in any way repugnant to or inconsistent with that Act must be reserved for the approval or consent of the Secretary of State. The new Constitution provides that the existing native reserves and the Special Native

Areas established under the Land Apportionment Act will together comprise "Tribal Trust Land" and will be set aside for the exclusive use and occupation of those people in the Colony who live as a community under the control and leadership of a chief and whose tenure of land is on a communal basis. A new Board of Trustees will be established, the Chairman of which will be the Chief Justice. The land and the trust will be vested in a new Board of Trustees who will be responsible for ensuring that the land is used and occupied in accordance with the trust.

The Government of Southern Rhodesia will be responsible for providing and controlling the services required for the administration of the land and for securing its proper development. Provision is also made for the conversion in certain circumstances and subject to certain conditions of Tribal Trust Land into freehold tenure. There is also special provision for the carrying out of irrigation schemes on Tribal Trust Land.

The Land Apportionment Act will cease to apply to the Special Native Areas, and the Legislature will have the power to withdraw land from the operation of the Land Apportionment Act and to amend or repeal the Act itself.

The new Constitution makes provision for certain changes in regard to the judicature. Under the existing Constitution, judges of the High Court are appointed by the Governor in Council and may not be removed from office except on an address from the House praying for such removal on grounds of misbehaviour or incapacity. Their remuneration is such as may be prescribed by law and such remuneration may not be diminished during tenure of office. The new Constitution entrenches the existing High Court. In future the Chief Justice will be appointed by the Governor on the advice of the Prime Minister and puisne judges will be appointed by the Governor on the advice of the Prime Minister with the agreement of the Chief Justice. Each judge will have the right to retire on attaining the age of sixty-five years, but may elect to retire on attaining the age of seventy years. No judge will be removable from office except on the recommendation of an independent tribunal appointed by the Governor. Changes in regard to the ministry are also provided for in the new Constitution. Under the existing Constitution the ministry is limited to seven Ministers, including the Prime Minister, all of whom are appointed by the Governor in his discretion. The new Constitution provides that the Governor will appoint, in his discretion, and in the manner referred to above, a Prime Minister and, on the advice of the Prime Minister, will appoint other Ministers not exceeding eleven in number. The Governor will also be empowered, on the advice of the Prime Minister, to appoint Parliamentary Secretaries from among the Members of the Legislative Assembly.

Under the existing Constitution there is an Executive Council which consists of such Ministers or other persons as the Governor

may from time to time appoint, and Members of this Council hold office during the Royal pleasure. The new Constitution provides that the Council will be known in the future as the "Governor's Council" and will comprise the Prime Minister and such other Ministers as the Governor may appoint on the advice of the Prime Minister. Any Member of the Governor's Council will cease to hold office as such when he ceases to be a Minister.

Reference was made earlier in this article to the transmission of bills passed by the Legislative Assembly to the Constitutional Council. Certain categories of bills, however, are excluded from this provision in the Constitution and they are Money Bills, Bills certified by the Prime Minister to be of so urgent a nature that it is not in the public interest to delay their enactment, and Bills which amend, add to or repeal any specially entrenched provision of the Constitution or which under the provisions of the Constitution are made subject to the same procedure as if they were such bills.

It may be of interest to Officers of other Legislatures to know that the new Constitution provides for the appointment of a Clerk of the House and such number of other staff as the Speaker, subject to any wishes expressed by the Assembly, may from time to time consider necessary. The appointment of the Clerk of the House is subject to the prior approval of the Assembly and the person so appointed may not be removed from office except in pursuance of a resolution of the Legislative Assembly. The staff of the Legislative Assembly are appointed by the Speaker on terms of service to be approved from time to time by the House. All Officers of the House are deemed to be holders of public office but shall not form part of the civil service of the Government of Southern Rhodesia.

Franchise Qualifications

	(1) *Income.*		(2) *Property.*	(3) *Other qualification.*
"A" Roll				
(*a*)	£720	*or*	£1,500	—
or				
(*b*)	£480	*or*	£1,000	*and* course of primary education.
or				
(*c*)	£300	*or*	£500	*and* 4 years' secondary education.
or				
(*d*)	—		—	Chief or Headman.
"B" Roll				
(*a*)	£240	*or*	£450	—
or				
(*b*)	£120	*or*	£250	*and* 2 years' secondary education.

Franchise Qualifications

	(1) *Income.*		(2) *Property.*		(3) *Other qualification.*
"B" ROLL (*continued*)					
or					
(*c*)	£120	*or*	£250	*and*	course of primary education and being over 30 years of age.
or					
(*d*)	£120	*or*	£350	*and*	being over 30 years of age.
or					
(*e*)	—		—		Kraal Heads with a following of 20 or more families.
or					
(*f*)	—		—		Ministers of religion.

Any adult literate person with an adequate knowledge of English, who is a citizen of Rhodesia and Nyasaland with two years' residence in the Federation and three months' residence in a constituency or electoral district, and who possesses one of the above alternate qualifications, may be registered as a voter.

VI. TANGANYIKA: CONSTITUTIONAL DEVELOPMENTS IN 1961

By G. W. Y. Hucks, O.B.E.
Clerk of the National Assembly

1961 saw Tanganyika, with virtually no change in its legislature, win its freedom from British Administration under United Nations Trusteeship and join the British Commonwealth as a fully independent nation. The metamorphosis was achieved by the grant of ever wider powers to the Executive until it had complete and independent control over the country while remaining responsible to the legislature which has been elected in 1960.

The 1960 Government continued in power for the first four months and the one Parliamentary change took place on 1st May when by Order in Council[1] the category of "ex-officio" Members was abolished. The only two ex-officio Members were the Attorney-General and the Minister for Information Services. Their retirement left the legislature with 80 Members (excluding the Speaker), 71 of whom were elected and 9 nominated. As from 1st May the Legislative Council was re-named the National Assembly and this National Assembly without any further change of membership continued for the remainder of the year. Upon Independence in December, however, it underwent a change of status through clause 14 of the Constitution[2] which read:

> There shall be a Parliament which shall consist of Her Majesty and the National Assembly.

Members promptly put "M.P." after their names in place of the lesser-known "M.N.A." and carried on as before. One-quarter of them, holding the seats especially reserved for Asians or Europeans, were now aliens and though they could apply for Tanganyika citizenship if they wished, they were under no immediate obligation to do so.

The Constitution provided for sweeping changes in the electoral system and in the law concerning Parliament but the amount of administrative work necessary to effect these changes was so large that an "interim period" had to be provided during which Parliament was to carry on as before until the Constitution could be made effective.

The greatest single task was created (in clause 20 of the Consti-

tution) by the introduction of universal adult suffrage. The registers of voters compiled for the General Elections of 1960 had yielded an electorate of 900,000 but only persons possessing certain education, income or office-holding qualifications, had been entitled to register. It could be calculated with some accuracy that universal suffrage should yield an electorate of at least 4 million.

If Parliament were dissolved before the new voters' registers were ready, a General Election could only be held using the former registers. It would take the best part of a year to complete a fresh registration.

Clause 18 of the Constitution likewise reduced the qualifications for candidates for election to National Assembly to three, namely, age of 21 or over, citizenship of Tanganyika and ability to speak and read enough English to take an active part in National Assembly proceedings. Clause 26(2) provided that each constituency should return only one Member to Parliament and there was no provision for "reserved" seats either for citizens or non-citizens. The continuance of aliens as Members of Parliament was thus limited to the "interim period".

The Constitution enabled Parliament itself to decide how many elected and nominated Members it should have in future but stipulated that "until Parliament otherwise provides" there should be 71 elected and up to 10 nominated. It provided that the Speaker should be elected and, furthermore, that any Tanganyika citizen over 21 and knowing enough English for National Assembly proceedings could be elected by Members as their Speaker whether he was an M.P. or not. The position of the existing nominated Speaker was however safeguarded during the "interim period".

An Electoral Commission was created by the Constitution, with the duties of delimiting the boundaries of constituencies and directing and supervising the registration of voters and the conduct of elections.

There were various other parliamentary provisions of lesser importance including a general permission for the National Assembly to regulate its own procedure subject to the Constitution. There was also the power in clause 30 for Parliament to alter the constitution provided that the Act for doing so was passed by a majority of at least two-thirds of all the Members of the National Assembly.

Tanganyika became independent on 9th December and during the remaining three weeks of the year the National Assembly did not sit except for an hour on 11th December when H.R.H. The Duke of Edinburgh performed a ceremonial opening of Parliament and read the speech from the Throne.

The change in the Executive also took place on 1st May when, with the retirement of the last two expatriate civil servant Ministers, the Council of Ministers was superseded by a Cabinet comprising the Prime Minister and eleven other Ministers, all but one of whom

were elected Members of Parliament. The single exception was Sir Ernest Vasey, K.B.E., C.M.G., a Nominated Member who retained his former position of Minister for Finance. Sir Ernest had had a distinguished career outside Tanganyika in business and in politics but had never been a civil servant. At the same time the post of Parliamentary Secretary was established and various appointments to it were made. The Order in Council establishing the Cabinet[3] required the Governor to act in general in accordance with its advice, reserving for himself only such subjects as defence, external affairs and the public service. This step was hailed as the attainment of "internal self-Government". The Deputy Governor, who had been the leader of the Council of Ministers, was not appointed to the Cabinet but remained the administrative head of the public service.

On 1st July, however, the office of Deputy Governor was abolished and responsibility for the Public Service was vested in three Commissions—the Public Service Commission, the Police Commission and the Judicial Service Commission.[4]

There was no change in the composition of the Cabinet between 1st May and 31st December, but the Constitution made it fully responsible for the government of the country as from Independence Day.

[1] S.I., 1961, No. 740. [2] S.I., 1961, No. 2274. [3] S.I., 1961, No. 738.
[4] S.I., 1961, No. 1190.

VII. MINISTERIAL REPRESENTATION IN THE HOUSE OF LORDS SINCE 1859

By R. M. Punnett

Table I[1] appended to this Article shows the representation of members of the House of Lords in the Governments since 1859.

Though the size of Cabinets has varied over the past hundred years, the total number of posts in existence, Cabinet and non-Cabinet, has increased from less than fifty before 1914 to eighty in 1962.

The Palmerston and Russell Governments of 1859-66 are the only ones where members of the Lords held, for a while at least, more than half of the Cabinet posts, but Disraeli (1874-78), Gladstone (1882-85), Salisbury (1885-86 and 1900-02), and Balfour (1903) had half of the Cabinet posts filled by Peers.

Only two Prime Ministers, Salisbury and Balfour, have formed Cabinets that contained more than eight Peers, the greatest number being between 1900 and 1902 when Salisbury had ten Peers in a Cabinet of twenty. Only in 1942-43, in the small War Cabinet, has there been no Peer in the Cabinet. In all, of the thirty-five Governments since 1859, eight have had Cabinets that at some time contained eight or more Peers, and seven have had Cabinets that contained three or less Peers. The remaining twenty contained no more than seven and no less than four members of the house of Lords.

Though the number of Ministerial posts, Cabinet and non-Cabinet, held by Members of the Lords has not decreased since 1859, the increase in the number of posts in existence means that the proportion of Peers in office today is much lower than it was in 1859. Before 1914 Peers generally held about one-quarter of all posts, and in the Salisbury Government of 1895 to 1902 the proportion was about one-third. Between 1919 and 1939 the proportion of Peers in office was usually about one-fifth, and since 1945 the proportion has been about one-sixth.

Ten of the thirty-five Governments have had thirteen or more Peers in office, nine have contained eight or less Peers, and the remaining sixteen have had from nine to twelve Peers in office. Churchill, Macmillan and Salisbury are the only Prime Ministers to include more than thirteen Peers in the Government, and Macdonald is the only one to have included less than seven Peers in the Government. Labour Governments have never included many Peers, and up to 1950 the number was always below ten. Up to 1886 Liberal

Governments had as high a proportion of Peers in office as did Conservative Governments, but since 1886 it has been Conservative Prime Ministers who have made the greatest use of the House of Lords as a seat for Ministers.

Table II shows the Ministerial posts in existence today and the total number of years since 1859 and since 1935 that Peers have held these posts.

Some Government posts are always held by Peers. The Lord Chancellor is always a Peer and is nearly always in the Cabinet. So long as the post existed, the Lord Lieutenant of Ireland was always a Peer. Since the posts were created in 1951 and 1958 the Ministers of State for Scotland and Wales have always been Peers, and the post of Minister for Science has been held by a Peer since it was created in 1959.

A number of other posts have been held by members of the Lords more often than by members of the Commons. The Lord President of the Council, the Lord Privy Seal, the Foreign Secretary, and the Under Secretary of State for War have all been held by members of the Lords for a total of more than fifty years out of the last one hundred. In addition, the Paymaster-General, the Foreign Under Secretaries, the Colonial Under Secretary, the Parliamentary Secretaries to the Ministry of Agriculture, and the Commonwealth Secretary have been, since 1935, at least, more often members of the Lords than of the Commons, and until the post was eliminated in 1948, the Secretary of State for India was more often than not a member of the Lords.

The type of post that is most frequently held by Peers is the post that involves few or no departmental duties. Of the various Ministries, those that deal with external relations, Foreign, Colonial, or Commonwealth, are the ones most often held by Peers, while the service departments also have had strong connections with the Lords. On the other hand, the financial and trade departments, the home affairs departments, and the legal posts, other than the Lord Chancellorship, have only rarely been held by Peers.

[1] Both Tables are based on the lists of Governments contained in *Whitakers Almanack* 1869 to 1961 and the *Annual Register* 1859 to 1960.

TABLE I.—REPRESENTATION OF THE HOUSE OF LORDS IN GOVERNMENTS 1859 TO 1962

Date	*Prime Minister*	*Number in the Cabinet*	*Number of Peers in the Cabinet*	*Total number of all posts*	*Total number of posts held by Peers*
1859-65	Palmerston	15 to 16	6 to 8	38	7 to 10
1865-66	Russell	15	8	41	10
1866-68	Derby	15	5 to 7	42	10 to 12
1868	Disraeli	14	5	39	10
1868-74	Gladstone	15 to 16	6	40	9 to 11
1874-80	Disraeli	12 to 13	6	39 to 41	8
1880-85	Gladstone	14 to 16	6 to 8	40 to 41	9 to 10
1885-86	Salisbury	16	8	41	13
1886	Gladstone	13 to 14	6	40 to 41	10 to 11
1886-92	Salisbury	14 to 18	7 to 8	41 to 42	11 to 13
1892-94	Gladstone	17	5	43	7
1894-95	Rosebery	17	6	44	9
1895-1902	Salisbury	19 to 20	9 to 10	44 to 45	13 to 15
1902-5	Balfour	17 to 20	7 to 9	42 to 46	12 to 13
1905-8	Campbell-Bannerman	19 to 20	6	44 to 46	9
1908-15	Asquith	19 to 20	4 to 7	44 to 46	8 to 11
1915-16	Asquith	22 to 24	5 to 6	50	9 to 11
1916-18	Lloyd George	6	1 to 2	64	9 to 10
1919-22	Lloyd George	18 to 20	4 to 6	57 to 58	9 to 13
1922-23	Bonar Law	16	7	57	11
1923-24	Baldwin	19	8	56	12
1924	Macdonald	20	5	53	6
1924-29	Baldwin	21	6	56 to 57	9 to 11
1929-31	Macdonald	19 to 20	4	57	7 to 9
1931	Macdonald	10	2	50	8
1931-35	Macdonald	20	4 to 5	58	8 to 10
1935-37	Baldwin	22	4 to 5	58 to 60	9 to 10
1937-39	Chamberlain	21 to 23	6 to 7	60 to 62	10 to 12
1939-40	Chamberlain	9	3	64	12
1940-45	Churchill	8 to 9	0 to 2	71 to 88	10 to 15
1945	Churchill	16	4	82	16
1945-51	Attlee	17 to 20	2 to 4	72 to 75	7 to 11
1951-55	Churchill	16 to 19	4 to 7	74 to 76	13 to 14
1955-57	Eden	18 to 19	3 to 4	74 to 75	12 to 13
1957	Macmillan	17 to 21	3 to 4	72 to 80	10 to 15

TABLE II.—MINISTERIAL POSTS HELD BY MEMBERS OF THE HOUSE OF LORDS 1859 TO 1962

Column A. Ministerial post.
B. Total number of years since 1935 that it has been held by a Peer.
C. Total number of years since 1935 that it has been held by a Peer in the Cabinet.
D. Total number of years since 1859 that it has been held by a Peer.
E. Total number of years since 1859 that it has been held by a Peer in the Cabinet.

A	*B*	*C*	*D*	*E*
Non-Departmental Posts				
Prime Minister	0	0	22	22
Lord Chancellor	27	21	102	93
Lord President of the Council	14	14	82	82
Lord Privy Seal	11	8	75	68
Paymaster General	18	4	47	4
Chancellor of the Duchy of Lancaster	7	3	37	24
Minister Without Portfolio	8	1	11	4
External Affairs Departments				
Secretary of State for Foreign Affairs	4	4	53	53
Minister of State	3	0	3	0
Parliamentary Under Secretary	16	0	21	0
Secretary of State for Commonwealth Affairs	14	9	16	10
Minister of State	0	0	0	0
Parliamentary Under Secretary	3	0	7	0
Secretary of State for Colonial Affairs	5	0	41	36
Minister of State	4	0	4	0
Parliamentary Under Secretary	14	0	38	0
Defence Departments				
Minister of Defence	2	2	2	2
Parliamentary Secretary	3	0	3	0
First Lord of the Admiralty	12	2	37	27
Civil Lord	3	0	18	0
Secretary of State for War	0	0	22	20
Parliamentary Under Secretary	9	0	63	0
Secretary of State for Air	7	2	13	8
Parliamentary Under Secretary	4	0	9	0
Minister of Aviation	7	0	7	0
Parliamentary Secretary	0	0	0	0
Finance and Trade Departments				
Chancellor of the Exchequer	0	0	0	0
Junior Secretary	0	0	8	0
Lord Commissioner	0	0	0	0
President of the Board of Trade	0	0	7	7
Minister of State	0	0	0	0
Parliamentary Secretary	0	0	10	0

TABLE II.—MINISTERIAL POSTS HELD BY MEMBERS OF THE HOUSE OF LORDS 1859 TO 1962—(*Continued*)

A	*B*	*C*	*D*	*E*
Home Departments				
Secretary of State for Home Affairs	0	0	0	0
Minister of State	0	0	0	0
Parliamentary Under Secretary	6	0	8	0
Minister for Science	2	2	2	2
Secretary of State for Scotland	1	1	17	16
Minister of State	10	0	10	0
Parliamentary Under Secretary	0	0	0	0
Minister of Housing and Local Government	0	0	1	0
Parliamentary Secretary	0	0	1	0
Minister for Welsh Affairs	0	0	0	0
Minister of State	3	0	3	0
Minister of Education	4	4	8	8
Parliamentary Secretary	0	0	0	0
Minister of Agriculture, Fisheries and Food	0	0	10	9
Parliamentary Secretary	27	0	44	0
Minister of Labour	0	0	0	0
Parliamentary Secretary	0	0	0	0
Minister of Transport	0	0	1	1
Parliamentary Secretary	3	0	6	0
Minister of Pensions and National Insurance	0	0	0	0
Parliamentary Secretary	1	0	1	0
Minister of Power	2	2	2	2
Parliamentary Secretary	0	0	0	0
Minister of Works	5	0	22	14
Parliamentary Secretary	3	0	3	0
Postmaster-General	6	0	22	8
Assistant Postmaster-General	0	0	0	0
Minister of Health	0	0	0	0
Parliamentary Secretary	0	0	4	0
Legal Posts				
Attorney General	0	0	0	0
Solicitor General	0	0	0	0
Lord Advocate	0	0	0	0
Solicitor General for Scotland	0	0	0	0
*Posts Not Now in Existence**				
Secretary of State for India	8	8	45	45
Under Secretary	5	0	26	0
Lord Lieutenant of Ireland	0	0	61	10
Lord Chancellor of Ireland	0	0	18	17
Co-ordinating Minister	2	2	2	2
Minister of Supply	1	1	1	1
Parliamentary Secretary	1	0	1	0

* In addition there were a number of temporary posts created during the wars of 1914 to 1918 and 1939 to 1945 and filled by members of the Lords.

VIII. INDIA: ALLEGATIONS IN RESPECT OF INDIVIDUAL GOVERNMENT OFFICERS*

By S. R. Kanthi, B.A., LL.B.

Speaker of the Mysore Legislative Assembly

The system of Government as set out in the Constitution under which we are working is that of Parliamentary Democracy. This system of Government envisages a Council of Ministers who are responsible to the Legislative Assembly in respect of the administration. One of the fundamentals of this system of Government, to quote from Herbert Morrison's book on *Government and Parliament*,[1] is that some Minister of the Crown is responsible to Parliament and through the Parliament to the public for every act of the Executive. He proceeds further to state:

> This is a corner-stone of our system of Parliamentary Government. There may, however, be an occasion on which so serious a mistake has been made that the Minister explains the circumstances and processes which resulted in the mistake, particularly if it involves an issue of civil liberty or individual rights. Now and again the House demands to know the name of the officer responsible for the occurrence. The proper answer of the Minister is that if the House wants anybody's head, it must be his head as the responsible Minister and that it must leave him to deal with the officer concerned in the department.[2]

During the debate in the House of Commons on 20th July, 1954, on the Report of Sir Andrew Clark on the public enquiry into the disposal of land at Crichel Down, the Minister for Agriculture and Fisheries, whose department was the subject of the enquiry, stated as follows:

> First I should like to say a word about the conduct of civil servants concerned. General issues of great constitutional importance arise in this regard. My Rt. Hon. and learned friend the Secretary of State for the Home Department and Minister for Welsh Affairs will deal with them when he speaks later in this debate. I am quite clear that it would be deplorable if there were to be any departure from the recognised constitutional position. I as Minister must accept full responsibility to Parliament for any mistakes and inefficiency of officials in my department, just as when my officials bring off any successes on my behalf, I take full credit for them.[3]

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* This article comprises the greater part of the text of a ruling given by the Speaker of the Mysore Legislative Assembly on 30th April, 1958 (Mysore L.A. Deb., Vol. IV, No. 49, pp. 2408-14), arising out of allegations of corruption which had been made on the floor of the House in respect of a particular government official.

Later on he did refer to the disciplinary action that he had taken against the civil servant as a result of the public enquiry, and he finally announced that he had tendered his resignation to the Prime Minister in view of the fact that he had to take responsibility for the action of his subordinate.

Mr. Herbert Morrison, who participated in the debate, also referred to this intimate relationship between the Minister and the Civil Service and observed that they all had responsibility to the public, both the minister and the civil servants through the Minister. He continued:

> I remember one or two cases where it was thought that we had done something wrong and where I had admitted it and had said that the responsibility was mine. I said that if the House wanted anybody's head, it was my head it wanted. Hon'ble Members wanted to know who was the officer who had gone wrong and I stated that I was not disposed to say, that I would deal with him—and I did—and that if the House wanted anybody's head on a charger, mine was the head it should have, that is the right constitutional doctrine. If we get away from it, we shall go wrong. Therefore, at the end of the day, the Minister is responsible.[4]

The Secretary of State for the Home Department and Minister for Welsh Affairs, Sir David Maxwell Fyfe, also spoke about the relationship between the Parliament, the Ministers and the Civil Services.[5]

I do not want to quote his speech at length except to say that he also expressed the view that constitutionally the Minister remains responsible to Parliament on the one hand and, on the other hand, the Minister has the power to control and discipline his staff.

I have referred to this constitutional principle at some length because this is one of the principles which will help us in determining the point at issue.

The second principle which is also relevant and will assist us in reaching a decision is one which is more in the nature of a convention. This principle is to the effect that the best usage of a legislature is to refrain from making attacks in the House on people who cannot answer back, that is, who are not in the House, and therefore not in a position to defend themselves.

On 24th March, 1952, in the House of Commons, Mr. Baker White asked the Secretary of State for Foreign Affairs for how long he proposed to retain Mr. H. D. Walston as an unpaid Agricultural Adviser of his Department. Mr. Eden, who was replying, said:

> Mr. H. D. Walston holds no position of any kind in the Foreign Office. He was the Agricultural Adviser to the Chancellor of the Duchy of Lancaster, who was then responsible for the German Section of the Foreign Office from 1947 to 1949. The appointment was on a part-time, unsalaried basis and lapsed on 20th May, 1949.

The following supplementary was then asked:

Would my Rt. Hon. Friend bear in mind that if he requires any similar advice for his department in the coming months or years, there are many Cambridgeshire farmers far more qualified than Mr. Walston.

At this stage an objection was taken in the following terms:

Is it not most undesirable that the order paper of the House of Commons should be used for the purpose of a quite grotesque attack on a gentleman who has given service in the past under the Government in an unpaid position and that such slurs should be made by the Hon. Member.

The Speaker thereupon ruled:

The question on the order paper contains no attack on anyone. It is in the supplementary question that some suggestions were made and it is, I ought to say, not in accordance with the best usage of this House to make attacks in Parliament on people who cannot answer back.[4]

This principle, that persons who are not in a position to defend themselves should not be subjected to attack, has been laid down repeatedly in the Lok Sabha also with reference to officers of the Government as well as others. I would like to refer only to one or two of them.

On 30th March, 1953, an Hon. Member of the Lok Sabha was commenting on certain reports that she had received from her women friends in Delhi that Police got into their houses at dead of night, broke open their bedrooms and the like. A point of order was raised asking whether the Member was talking from personal knowledge or from reports. The member stated that the information was from her friends. The Deputy Speaker then observed that the Hon. Member was making serious charges, to which the Lady Member replied, "I am asking whether they are true". The Deputy Speaker thereupon ruled as follows:

There is no question of making such statements merely on the floor of the House and asking whether they are true. With respect to those matters, I always expect of every hon. Member here, that before he or she wants to make such allegations, the hon. Minister should be informed of them, that "those are points that I am going to refer to" so that he may be able to reply to them on the floor of the House. Otherwise, it creates an impression here. It may be true or it may be false. The hon. Member proceeds on the basis of some information, while the Government have some other information. Therefore let not allegations be made which may not have a foundation. I do not say that the hon. Member has not got that, but for the hon. Minister to be able to reply, he should be informed beforehand, saying "these are the points, one, two, three, that I am going to raise" not with respect to the general points, but with respect to charges against individuals or with respect to the manner in which officials have conducted themselves. I always expect that the Minister may be given some notice regarding these points, so that he may be able to find out and say whether the information is wrong or not, and we need not have in the proceedings information which is exaggerated or wrong.

When a member asked whether it would not amount to a new procedure, the Deputy Speaker proceeded to state:

True. I am here to see that the procedure adopted in this House is fair and proper. We are watched not only here in this House but outside in the whole country as well. There need be no hesitation to make any representation or any allegation against Government which is true. After all, the hon. Members are here to correct the Government, and expose whatever weaknesses there are, but any exaggeration would prove dangerous. Under these circumstances, I would like, so far as facts are concerned, whatever be the inferences with respect to those facts, that the other side also may have an opportunity. There are precedents for this, and if the hon. Member wants to see them, I will show them.

Later on the same day, when the Deputy Speaker was asked to give a ruling as to whether it was in order to attack officers by name who were not in the House to defend themselves because an hon. Member could attack a Minister, but it was not fair nor proper nor consistent with the dignity of the House that officers should be singled out and their names mentioned and all sorts of baseless charges made against them, the Deputy Speaker ruled as follows:

Again and again such matters come up before the House, with respect to the public conduct of an officer in his public capacity. The House has, no doubt, the supreme right to go into that matter, but before doing so, the usual practice is to write to the hon. Minister in charge beforehand, because he cannot be expected to know everything. An officer may be generally good, but in a particular matter may be bad. But all these matters must be brought to the notice of the Minister first, and if even then redress is not obtainable, then, of course, this is the last forum for it, and all such things can be brought in.[7]

Similarly, on 8th April, 1954, when an hon. Member wanted the Speaker to give a ruling as to whether it was in order to make references to individuals who are not present in the House, the Speaker stated as follows:

There seems to be some misapprehension, perhaps on my part. I have said many times that it is wrong and it is not fair that any member of this House should refer to names of individuals who are not present in the House and who have no opportunity, therefore, of either explaining the facts to the House or replying to the charge made. I do not know what names were referred to. But, whatever defects were found or were believed to exist by the speaker who spoke, he could criticise the Minister without mentioning the names. It is the Minister who is responsible to this House and the officers who are acting under him must not come into the purview of the discussions in the House. If that has been done, I wish it was stopped there and then. If it was not stopped and it has gone out, I do not see how to avoid again something to be said in defence of those people. . . .

There is a rule also on this question. But it appears members are forgetful of the rules, and sometimes in the heat of the debate some allegations in speeches are made. All that I would like to do again is to appeal to members not to refer to any names and—I do not mean it is a threat; I give it as a

notice to members—in case this is violated the hon. Member who does that will not be able to catch the Speaker's eye so long as I am in the Chair. . . .

I am making a distinction between allegations made which refer to the administration and persons who were responsible for such a kind of thing in respect of which the allegations were made. I think a Member while criticising the policy of the Government is entitled to give out his views and make the allegations he thinks are well-founded. The mistake lay in mentioning names of particular officers and associating them with these allegations. That should not be done.

A Member then asked whether, in criticising the Minister, a person would be precluded from saying that the Minister had appointed such and such a person because he was related to him, thereby avoiding making any charge against the person, but making the charge against the minister. Mr. Speaker replied:

The hon. Member does not know that I have overruled such questions. He must first come to the Speaker if he wants to make a charge like that. He must be satisfied about the facts and then the allegation can be made. I am not going to permit mere relationship as a charge or a matter of insinuation that mere relationship gives a ground for believing that there has been nepotism. But it should be the unanimous effort of the Members of this House to see that the prestige of the administration by giving names like that is not lowered and the level of the debate does not go down. That is the whole point.[8]

I would also refer to a ruling by the Speaker of the West Bengal Legislative Assembly given on 31st July, 1952, to the following effect:

It is a long standardised parliamentary practice that because a gentleman named is deprived of defending himself by making a reply in the House, he should not be named. There are a thousand other ways, say, by means of sending questions to the department concerned, by which you can raise the matter. It is most unparliamentary to name a particular officer who is not present in the House. That is a standard parliamentary practice.

There is no doubt that hon. Members have the fullest right to debate. Since the ministry is responsible to the House, every member has a right to criticise the administration or any aspect of it. But this right of debate is subject to rules of procedure and conventions. These conventions, as I have indicated by the varied quotations above, require that while on the one hand any defects in the administration should be brought home to the Minister concerned who is in a position to defend himself, personal attacks against the officers who are not in the House should not be usually made. There may, however, be cases where, in order to bring home certain defects in the administration, it may be necessary to refer to the official misconduct of any particular officer. In such a case, we have to consider the consequences of an attack against an officer on the floor of the House which is sprung as a surprise, as it were. In such a case, the Minister will not have had notice of the fact that such an attack is going to be made against his own officer. He will not have

relevant material with him. He will, therefore, not be in a position either to defend the officer and refute the charges or admit that after enquiry, such allegations are true. There will, therefore, appear in the proceedings and in the Press a one-sided report of the allegations against the particular officer. I have no doubt that every hon. Member who makes such allegations speaks with a sense of responsibility. But it is conceivable that there may be cases of some error in the information received by the hon. Member on which such allegations are based. There may be cases of *bona fide* mistake. Then what happens is that the reputation of an honourable or respected officer will be dragged into the lime-light, in circumstances which subsequently turn out to be incorrect. After all, we have got to presume that when hon. Members attack officers, they do so solely and exclusively with a view to improving the administration and not merely for the sake of attacking the individual as such.

In this view, it becomes necessary to examine whether there is not some other expedient by which the same purpose of the hon. Member would be served. If the purpose that an hon. Member has in view in attacking an officer or making allegations against him, viz., that the administration and administrative efficiency should improve, could be secured by a different method or by a different procedure, then that procedure has to be adopted. As observed by the Speaker of the Lok Sabha, in the rulings I have already cited, the procedure evolved in all such cases is to inform the Minister concerned or the Government that the member is in possession of material that a particular officer is not discharging his duties properly. If, as a result of the complaint, the Minister finds that a particular officer has been guilty of dereliction of duty and the Minister takes suitable action, the purpose of the Member would be served without any publicity. On the other hand, it is equally possible that the Minister may convince the hon. Member from the records that the charges are baseless, in which case the Member would, I am sure, be the first person to agree that such allegations should not be made in public or on the floor of the House. But if in any particular case an hon. Member has sufficient material either by personal experience or by reliable evidence that an officer has been guilty of misconduct in his official duties, it becomes necessary, before he raises it on the floor of the House, that he should give previous intimation to the Minister concerned so that the Minister in turn may call for records and find out what attitude he should adopt on the floor of the House when the matter is taken up. He may have material to refute the allegations, or he may be convinced that there is sufficient basis for the allegations, in which case he may order an enquiry or take departmental action. This procedure, while achieving the purpose which a Member has or should have in raising this matter, also safeguards the interests of officers who are not Members of the House and who are not in a position to defend themselves.

It has been far from my intention to stifle debate or interfere with the rights of Members. I am merely anxious to evolve a procedure which will give fullest rights to the Members, but will also safeguard the interests of persons who are not in a position to defend themselves.

When I stated that before making allegations an hon. Member should go to the chambers of the Minister, what I meant was that he should give notice beforehand to the Minister, after having exhausted all the other courses I have set out earlier, so that the Minister would be in a position on his side to equip himself with relevant information to assist in the debate and either set out to the House facts refuting the allegations or, in case he finds they are true, informing the House of the steps he proposes to take to rectify the defects in his department.

As observed by the Minister for Agriculture in his speech in the Crichel Down debate in the House of Commons which I referred to earlier, hon. Members on all sides of the House should help in keeping the Civil Service outside the political arena and as far as possible avoid exposing officials to public criticism, since the Minister is there in the House to take full constitutional responsibility for the acts of his officers. Any correction of misconduct of an official or failure in the discharge of his official duties must be left to the Minister, who has the fullest power to control and deal with his staff. If the Civil Service is demoralised, to that extent administration suffers.

Of course, in attacking the Minister for misconduct in the affairs of his department, it may be necessary to refer to misconduct or dereliction of duty on the part of officers, since it is through the officer that the Minister administers his department. Even in such a case, the procedure I have outlined above, if followed, would serve the purpose in view as well as conform to the principles I have referred to. There may also be cases where the Minister may have to reveal the facts relating to any particular incident to the House and in doing so, publicly criticise the civil servants. This aspect of the matter has also been referred to by Mr. Herbert Morrison in his book on *Government and Parliament* as well as in his speech on the debate on Crichel Down. He, however, speaks of these as extreme cases, where in fairness to the Minister he has to criticise civil servants because specific ministerial orders have not been carried out by them. He is, however, clear that even in such cases the principle of ministerial responsibility will apply and the Minister cannot escape from the consequences of the action of his civil servants.

There are also cases where an enquiry has been conducted into the conduct of officers and it is proper that the House should be taken into confidence. These are all, however, in the nature of exceptions which are necessitated by the circumstances of the case and do not take away from the principles that have been uniformly

laid down in the several rulings. While the public conduct of officers can, therefore, in these very special and extraordinary circumstances come up on the floor of the House, I am quite clear that the private conduct of an officer cannot be questioned, nor can any attack be permitted against the personal character of an officer except in so far as these matters directly and intimately affect his public conduct and, even then, they can be referred to only within the self-imposed restrictions that I have indicated.

I have given a somewhat lengthy ruling because this question has been coming up often and I am anxious that we should all together evolve, by means of healthy conventions, a procedure which will not affect the supreme right of the hon. Members to be fully informed of matters relating to public administration, which will not affect the rights of the hon. Members to watch over and be critical of affairs relating to the administration; but at the same time afford protection to officers who are not in a position to defend themselves and also establish the notion of ministerial responsibility by which it is the Minister who is answerable in this House for all acts or omissions of the departments under him rather than the officers who are answerable to this House only through the Minister.

[1] *Government and Parliament*, by Herbert Morrison (Oxford University Press: Second Edition, 1959). [2] *Ibid.*, p. 323. [3] 530 *Com. Hans.*, cc. 1185-6. [4] *Ibid.*, cc. 1276-7. [5] *Ibid.*, cc. 1284-94. [6] 498 *Som. Hans.*, cc. 24-5. [7] *India L.S. Deb.*, 30th March, 1953. [8] *Ibid.*, 8th April, 1954.

IX. SINGAPORE: MOTION FOR THE CONDEMNATION AND SUSPENSION OF A MEMBER, AND ITS SEQUELS

By Loke Weng Chee
Clerk of the Legislative Assembly

On 14th December, 1960, when the Legislative Assembly, in the Committee of Supply, was considering the 1961 Annual Estimates of Expenditure for the Public Services, the Deputy Prime Minister as Leader of the House interrupted the proceedings at 7.34 p.m. and sought to move a motion to censure and suspend the then Member for Hong Lim (Mr. Ong Eng Guan) unless that Member apologised for certain misdemeanours committed in the Assembly.

Mr. Speaker suggested that the Deputy Prime Minister make the request at 7.45 p.m. when the consideration of the Annual Estimates would have come to an end. This suggestion was accepted by the Deputy Prime Minister.[1]

Accordingly, at 7.47 p.m. the Deputy Prime Minister informed Mr. Speaker that he proposed to move, without notice under Standing Order No. 30, a motion in the following terms:

That this House condemns the Member for Hong Lim for his dishonourable conduct unbecoming of an elected representative of the people, in that he repeatedly used his privilege in this Assembly as a cloak for spreading malicious falsehoods to unjustly injure innocent persons both inside and outside this Assembly.

That he be suspended from the service of this Assembly until such time as:

(1) he apologises to this Assembly for his dishonourable conduct;
(2) he unreservedly withdraws his unfounded allegations against the Prime Minister and the Minister for Labour and Law; and
(3) he assures the Assembly that he will not persist in abusing his privilege in this Assembly for uttering malicious falsehoods; or
(4) be prepared when challenged to repeat outside the Assembly the charges he makes inside the Assembly.

Standing Order No. 30 states *inter alia*:

Unless Standing Orders otherwise direct, notice shall be given of any motion which it is proposed to move with the exception of the following:

* * * *

(*e*) A motion for the suspension of a Member.

Mr. Speaker stated that before he could permit the motion to be moved without notice, he must be satisfied on two points: (1)

whether or not the motion could be taken on a day allotted for the business of Supply; and (2) whether the Standing Order invoked by the Deputy Prime Minister (which is quoted above) could be applied to the motion. He thought that that Standing Order would apply only to a motion to suspend a Member after he had been named by the Speaker under Standing Order No. 56. However, he undertook to give a considered ruling the following day.[2]

On 15th December, 1960, Mr. Speaker ruled that the Deputy Prime Minister's motion could not be taken on any day allotted for the business of Supply between 3 p.m. and 8 p.m., but could be taken before 3 p.m. and/or after 8 p.m.; in the latter case, upon a resolution that the proceedings thereon be exempted in order that the motion could be debated after the moment of interruption (8 p.m.). In his view, the motion sought to be moved by the Deputy Prime Minister was more than merely a motion to suspend the Member for Hong Lim, because it also sought to condemn that Member for certain conduct alleged to be dishonourable and unbecoming of an elected representative of the people. The matter was clearly one which called for appropriate notice to be given not only to the Member concerned, but also to other Members of the House. He therefore ruled that the motion could not be proceeded with forthwith and required the requisite notice.

Mr. Speaker declared that on the notice already given (on 14th December), the motion would accordingly be set down for 19th December, 1960.[3]

On 19th December, 1960, Mr. Speaker made an announcement to the Assembly, in the course of which he stated *inter alia* that the Deputy Prime Minister's motion, in his view, should on no account be considered as a motion of censure and punishment moved in the interests of the Government or of individuals in the Government, but should be treated as a motion which related to the dignity and prestige of the Assembly.

He stated that with regard to the first part of the motion, there had been some misunderstanding as to whether the proceedings were tantamount to an endeavour to curtail freedom of speech in the Assembly. In his view, that was not the case. Section 3 of the Legislative Assembly (Powers and Privileges) Ordinance, 1955 (Immunity from proceedings), meant that a Member was free of any legal restraint in regard to words spoken before the Assembly or written in relation to the proceedings in the Assembly, and that he could not be prosecuted or sued in any court of law in respect of those words. It did not mean that a Member was free from restraint in so far as the Assembly was concerned: he must always remain accountable to the House, *inter alia*, for any words uttered in the House or written in relation to the proceedings in the House. The privilege of freedom of speech did not mean that Members were granted an unrestrained licence of speech in the Assembly; nor did

it mean that the House would permit him to abuse that privilege with impunity.

Referring to the second part of the motion seeking to suspend the Member for Hong Lim, Mr. Speaker considered that the Assembly's powers of punishment were a matter of law on which he was not called upon to pronounce. Although there was an undoubted power inherent in any House to suspend or even expel Members, he sounded a note of warning that Members would be well-advised to inquire into with care and, if need be, to seek legal advice whether the provisions of law and of the Standing Orders had not, in fact, abridged the inherent power of the Assembly to suspend a Member in the circumstances which had arisen in this particular matter.[4]

The Deputy Prime Minister then moved the following motion:

> That this House condemns the Member for Hong Lim for his dishonourable conduct unbecoming of an elected representative of the people in that he repeatedly used his privilege in this Assembly as a cloak for spreading malicious falsehoods to unjustly injure innocent persons both inside and outside this Assembly; that he be suspended from the service of this Assembly until such time as (i) he apologises to this Assembly for his dishonourable conduct; (ii) he unreservedly withdraws his unfounded allegations against the Prime Minister and the Minister for Labour and Law; (iii) he assures the Assembly that he will not persist in abusing his privilege in this Assembly by uttering malicious falsehoods, unless he be prepared when challenged to repeat outside the Assembly the charges he makes in the Assembly.

In the course of doing so, he tabled a list of three specific allegations made by the Member for Hong Lim in the Assembly when the Annual Estimates were considered in the Committee of Supply—

(1) On 10th December, 1960:

> I wonder if this is the way to get away from the Public Service Commission in order to give a job to this particular officer who happens to be a brother-in-law of a Minister.[5]

(2) On 12th December, 1960:

> Mr. Speaker, Sir, I do not wish to put it to the Minister that many of these recommendations—which I have read myself—are meant for the purpose of fixing up certain things.[6]

(3) Also on the 12th of December:

> In my opinion, there is nothing, as far as I know, to merit this transfer other than the fact that he is the brother-in-law of the Prime Minister.[7]

On the basis of these allegations he charged that the Member for Hong Lim was using the Assembly and the privilege of freedom of speech to propagate falsehoods. If the Member for Hong Lim believed his allegations were true, then he should substantiate them or be prepared to repeat them outside the Assembly without the protection of privilege. Alternatively, he should withdraw them.

Mr. Speaker indicated that the Deputy Prime Minister's motion consisted of two distinct parts: the first part sought to call upon the House to condemn the Member for Hong Lim, and the second part suggested the punishment to be meted out to him. In accordance with parliamentary practice, he would propose the Question on the first part only and would deal with the second part after the first part had been disposed of. Accordingly, he proposed the Question as follows:

> That this House condemns the Member for Hong Lim for his dishonourable conduct unbecoming of an elected representative of the people in that he repeatedly used his privilege in this Assembly as a cloak for spreading malicious falsehoods to unjustly injure innocent persons both inside and outside this Assembly.

Thereafter he called upon the Member for Hong Lim, if the latter so desired, to make a statement in explanation or exculpation in regard to the charges made against him.

The Member for Hong Lim, in speaking to the motion, questioned whether or not the motion was in order and contended that the Assembly was not competent to proceed with it. Whereupon Mr. Speaker suggested that if the Member for Hong Lim questioned his decision to admit the motion, the Member was at liberty to give notice of a substantive motion for reviewing the decision. The sitting was then suspended for an hour.[8]

When the sitting was resumed, the Member for Hong Lim gave notice of the following motion, which was set down for 23rd December:

> That the ruling of the Speaker admitting the motion of the Deputy Prime Minister in regard to the Member for Hong Lim be rescinded and that this Assembly has no jurisdiction to deal with the matters raised therein.

The debate on the first part of the Deputy Prime Minister's motion was adjourned to 23rd December.[9]

On 23rd December, 1960, on the Member for Hong Lim moving his motion, a Member on the Opposition sought to move an amendment to the motion by leaving out the words from "be" to the end and inserting "referred to Sir Ivor Jennings or other leading counsel on constitutional law for an opinion".

The amendment was ruled by Mr. Speaker as inadmissible on the ground that it posed an entirely different proposition.

After a lengthy debate, the motion of the Member for Hong Lim was negatived on a division, all Members of the Opposition voting for the motion.

The Assembly then resumed debate on the first part of the Deputy Prime Minister's motion, viz.:

> That this House condemns the Member for Hong Lim for his dishonourable conduct unbecoming of an elected representative of the people in that he repeatedly used his privilege in this Assembly as a cloak for spreading mali-

cious falsehoods to unjustly injure innocent persons both inside and outside this Assembly.

The Member for Hong Lim, when asked by the Chair, stated that he wished to substantiate the allegations, that he did not wish to withdraw them and that he had nothing to apologise for. In the course of his speech the Member for Hong Lim indicated that he needed more time to prepare his case and asked for an adjournment of the debate.

In the circumstances, Mr. Speaker advised that the Member for Hong Lim be heard in a Committee of the whole Assembly in which evidence would be taken from the Member and from witnesses to be called.

Accordingly, it was resolved (on motion made by the Deputy Prime Minister):

That the debate on the motion be adjourned and on the resumption of the debate the Assembly do resolve itself into a Committee of the whole Assembly to consider the matter raised in the first part of the motion moved by the Deputy Prime Minister and that the Committee do have power to send for persons, papers and records.[10]

On 29th December, 1960, when the Assembly met at 2.30 p.m., Mr. Speaker announced that at 2.13 p.m. that day he had received a letter from the Member for Hong Lim tendering his resignation from the Legislative Assembly with immediate effect.[11]

At a later stage of the proceedings of the day, upon the order being read for the resumption of the debate on the first part of the Deputy Prime Minister's motion, the debate was adjourned *sine die*.

When moving the adjournment of the debate, the Deputy Prime Minister indicated that as the Member for Hong Lim had resigned his seat and was no longer a Member of the Assembly, a Commission of Inquiry would be set up soon to investigate that Member's allegations.[12]

On 31st December, 1960, a Commission of Inquiry with a High Court Judge as Commissioner was set up. The Commission's Report was presented to the Assembly on 22nd February, 1961.[13]

In the meantime, the opinions and advice of the Fourth Clerk at the Table of the House of Commons (Mr. R. D. Barlas, O.B.E) were sought with regard to the issues involved in the Deputy Prime Minister's motion for the condemnation and suspension of the Member for Hong Lim.

On 22nd February, 1961, Mr. Speaker made an announcement to the Assembly[14] which *inter alia* gave excerpts of the views of Mr. Barlas, some of which are reproduced below.

. . . the Speaker would not be justified in directing that a notice of motion be returned, even if he is of the opinion that the motion seeks to request the Assembly to do something which is *ultra vires*. He has in my view no right or status to prejudge the issue in this way; it is for the Assembly to decide.

(i) To the best of my knowledge no Speaker of the House of Commons has ever ruled out of order a notice of motion on the ground that it suggested a course of action which was *ultra vires*.

(ii) Section 54 of the Constitution Order in Council puts the matter fairly clearly. If a motion does not conflict with the constitution itself or with the Standing Orders (which it does not appear to do) and if it does not impose a charge, etc. (which it does not), it may be moved.

There seems to be nothing indeed to prevent any deliberative body (such as for example the Council of a Trade Union) doing this, provided that the motion does not contain a libel. In the case of the Legislative Assembly, the question of libel does not arise in view of Section 3 of the Powers and Privileges Ordinance, 1955. Furthermore the words " except upon a substantive motion moved for that purpose " contained in Standing Order 46 (10) would appear expressly to envisage the moving of a motion condemning a Member for his personal conduct.

The real crux of the matter, as Mr. Speaker Oehlers realises, is whether the Assembly has power to suspend a Member otherwise than in accordance with paragraph (1) of S.O. No. 56. My own opinion is that it has, but I would hasten to add that my answer is not given with as much certainty as I would wish.

The key to the problem seems to lie in Standing Order No. 56 (5). I think that this paragraph can be taken to confer a power upon the Assembly to suspend a Member otherwise than in accordance with paragraph (1) of the Order. The parallel provision in the Commons Standing Orders, as was noted in the course of your debate, is No. 22 (6) which reads " nothing in this order shall be taken to deprive the House of the power of proceeding against any Member according to ancient usage ". It is clear that the Commons may still suspend a Member otherwise than as a result of his being named by the Speaker. . . . The Commons practice in this regard is relevant to the interpretation of Singapore S.O. No. 56 (5) by virtue of Singapore S.O. No. 103 (1) . . .

I cannot help thinking that a conditional suspension of the type in question may be wrong since it in fact disenfranchises the constituency for an unlimited period.

Mr. Barlas added that it was doubtful whether the House of Commons possessed the power to suspend a Member beyond the end of a Session.

Mr. Speaker's announcement then went on to say:

The Fourth Clerk at the Table also touches on the jurisdiction of the Courts of Law in these matters.

He points out that if this Assembly had wished to pursue the matter raised by the Deputy Prime Minister to a conclusion, it would have had to vote on the Deputy Prime Minister's motion after listening to the arguments for and against the *vires* of its proposed action, bearing in mind that its action—if it resulted in suspension of the then Member for Hong Lim—might be tested in a Court of Law.

It is further pointed out by the Fourth Clerk at the Table that any decision of this Assembly that a matter is *intra vires* cannot be regarded as final in so far as there may exist an opportunity for testing its legality in a Court of Law. This would be so even if, as suggested during the debate, the Assembly had sought and agreed to abide by the opinion of so eminent a constitutional lawyer as Sir Ivor Jennings; but the fact that the Assembly acted on that opinion would not in itself persuade the Judicial Committee of the Privy Council if the issue came before them that the Assembly's action must have been *intra vires*. And, of course, Honourable Members are aware

that there is judicial provision whereby a decision of a Court of Law in Singapore could under certain circumstances be taken on appeal to the Judicial Committee of the Privy Council.

In regard to any decision which may have been taken by this Assembly to condemn the then Member for Hong Lim, as distinct from any decision to suspend him, the Fourth Clerk at the Table is of the opinion that the question of a test as to the legality of that decision in a Court of Law does not seem to arise, for there is nothing for which a Member who has been condemned by resolution could sue. He cannot sue for libel, since there is a statutory bar to this, and no other right of his has been infringed.

To my mind, and perhaps, I venture to state, to the minds of some if not all Honourable Members, the difficulties, procedural and constitutional, which faced this House in the whole proceedings stemmed mainly from the present Ordinance declaring and defining certain of the powers, privileges and immunities of this Assembly. This Ordinance was passed in 1955 before our present Constitution came into operation, and does not, as I think it should do, truly reflect the plenary authority which a legislature in an internally self-governing State, such as ours, ought to possess.

The dignity and prestige of this Assembly demands that it should always be in the position to assert itself positively and it should never, on any occasion, find itself in an atmosphere of uncertainty and indecision in matters affecting its powers, privileges and immunities.

These powers, privileges and immunities are matters concerning the whole House, and I would, if I may, suggest that consideration be given to the setting up of a Sessional Committee of Privileges with the primary duty of enquiring into, considering and making recommendations on all matters relating to or affecting such powers, privileges and immunities, including the question of the revision of the present Legislative Assembly (Powers and Privileges) Ordinance, 1955.

At the sittings of the Assembly on the 1st and 2nd of March, the following motion of the Deputy Prime Minister was debated:

That this Assembly takes note of the Report of the Inquiry Commission into certain allegations made by Mr. Ong Eng Guan in the Legislative Assembly on the 10th and 12th December, 1960, as contained in Paper Cmd. 7 of 1961, and condemns Mr. Ong Eng Guan for his dishonourable conduct unbecoming of an elected representative of the people in that he repeatedly used his privilege in this Assembly as a cloak for spreading malicious falsehoods to unjustly injure innocent persons both inside and outside this Assembly.

After a lengthy debate,[15] the motion, on a division, was agreed to. The voting was as follows: Ayes, 31 (Members of the Government benches); Noes, 2 (Members of the Opposition); Abstentions, 4 (Members of the Opposition); Absent, 13 (Members of the Government as well as Opposition benches).

A by-election for the Electoral Division of Hong Lim was held on 29th April, and the former Member for Hong Lim was returned. He was sworn in on 24th May.[16] Up to date (October, 1961) no further move has been made to suspend him.

[1] 14 *Singapore Hans.*, c. 663. [2] *Ibid.*, cc. 667-70. [3] *Ibid.*, cc. 673-6. [4] *Ibid.*, cc. 773-6. [5] *Ibid.*, c. 354. [6] *Ibid.*, c. 407. [7] *Ibid.*, c. 408. [8] *Ibid.*, cc. 777-805. [9] *Ibid.*, cc. 805-7. [10] *Ibid.*, cc. 811-84. [11] *Ibid.*, c. 887. [12] *Ibid.*, cc. 929-30. [13] Paper Comd. 7 of 1961. [14] *Sing. Hans.*, cc. 990-6. [15] *Ibid.*, cc. 1059-1116, 1119-78. [16] *Ibid.*, c. 1457.

X. LEGISLATIVE ASSEMBLY OF SASKATCHEWAN: RESERVATION OF A BILL

By C. B. Koester

Clerk of the Legislative Assembly

The usually simple prorogation ceremonies of the Saskatchewan Legislature were enlivened somewhat when, on 8th April, 1961, at the prorogation of the First Session of the Fourteenth Legislature, the Lieutenant Governor, The Honourable F. L. Bastedo, reserved a Bill for the signification of the pleasure of the Governor General of Canada. The Bill, the Mineral Contracts Alteration Act, 1961,[1] had been introduced by the Government in a final attempt to secure the modification of certain mineral contracts, the terms of which, as described by the Hon. A. E. Blakeney on second reading, were "unconscionable",[2] and it had passed through the House with divisions that cut across party lines on both second and third reading.

In reserving the Bill, the Lieutenant Governor was acting under the provisions of sections 55 and 90 of the British North America Act, 1867,[3] by which, upon the presentation of Bills passed by the Legislature, he had the power, subject to the provisions of the Act and the instructions of the Governor General, to assent, to withhold assent, or to reserve.

In addition to the political aspects of the case which do not concern us in this context, there are both procedural and constitutional considerations of some interest. The procedural steps, outlined with reasonable clarity in the British North America Act, 1867, and the Statutes Act,[4] were quite straightforward. To the Clerk's usual formula for announcing Royal Assent were added these words:

> . . . with the exception of Bill No. 56—an Act to provide for the Alteration of Certain Mineral Contracts—which Bill His Honour reserves for the signification of the pleasure of the Governor General of Canada.[5]

A certified copy of the Bill with the notation "Reserved for the signification of the Governor General's pleasure—8th April, 1961", was then forwarded to the Secretary of State at Ottawa. By an Order in Council of 5th May:

> . . . His Excellency the Governor General, by and with the advice of the Queen's Privy Council for Canada . . . [was pleased] . . . to declare his assent to the said Bill.[6]

The next step, in accordance with sections 57 and 90 of the British North America Act, required the Lieutenant Governor to issue a proclamation announcing that Royal Assent had been given to the Bill, and this was done on 29th May, the proclamation appearing in *The Saskatchewan Gazette* of 2nd June, 1961.[7] Had the Legislature been in session at the time, the Lieutenant Governor's announcement could have been made by speech or message.

The same sections 57 and 90 of the Act required that:

> an entry of every such speech, message or proclamation shall be made in the journal of the House and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the records of [the province].

This was done at the opening of the next ensuing Session when the Speaker announced that the Clerk had received a copy of the Lieutenant Governor's proclamation which became Sessional Paper No. 1 of the Second Session of 1961.[8]

The action of the Lieutenant Governor in reserving Bill 56 immediately drew the attention of those interested in the operation of the Canadian constitution. Professor Norman Ward of the University of Saskatchewan pointed out in a radio address of 14th April, 1961, that the Lieutenant Governor is both Her Majesty's representative and a Dominion officer, and that it is in this latter capacity that he can reserve Bills.[9] On this same point another authority describes the condition under which Bills have usually been reserved in Canada:

> During the early days of Confederation, the Lieutenant-Governors sometimes reserved controversial Bills relating to provincial matters on the advice of the provincial ministers or in their own discretion. The Federal Government has, however, always maintained that the Lieutenant-Governors should exercise this power in their capacity as Dominion officers and on instruction.[10]

Professor J. R. Mallory of McGill University, in commenting on the reservation of Bill 56, stated his opinion to the effect that:

> . . . a lieutenant-governor who reserves a bill on his own authority is acting within the scope of his legal powers, but not within the spirit of the constitution.[11]

Prime Minister J. G. Diefenbaker, in answer to a question in the House of Commons, made it quite clear that the Lieutenant Governor had not received instructions from the Federal Government:

> . . . There was no consultation in advance in any way, and any action in this regard would be taken by the lieutenant governor himself.[12]

Canadian editorial comment on the action of the Lieutenant Governor varied. The Regina *Leader-Post,* in an editorial entitled "Let the courts decide", suggested:

After considering all the circumstances, it is difficult to envisage Lieutenant-Governor Bastedo taking a course other than the one he chose, the reserving of royal assent.[13]

Ignoring the fact that it was the Bill that was reserved and not the Royal Assent, the *Leader-Post* went on to suggest that "the wisest procedure would be for Ottawa to refer the matter to the Supreme Court for its decision".[14]

On the other hand, the Winnipeg *Free Press* of 18th April, under the title "Mr. Bastedo's Curious Act", questioned the reasons, modern communications being what they are, why the Lieutenant Governor did not see fit to confer with his superiors in Ottawa before taking action.

The Ottawa *Journal* of 17th April commented on the incident under the heading "Governors Must Consult":

The right is there and must remain, for the Dominion to ensure that a province does not make effective legislation beyond its authority. In cases of doubt, the lieutenant-governor is expected to consult the Governor-in-Council, that is the Federal Cabinet, and be guided by that advice. . . . To seek Ottawa's opinion only after he has reserved assent is contrary to a custom which the years have made as authoritative as a law.

The Ottawa *Citizen* of the same date had this to say:

Indeed, there is nothing particularly heinous about the Lieutenant-Governor's action. He is understood to have based his decision upon doubts of the bill's constitutional validity and also on doubts whether the measure was in the public interest. A mistake in judgment there may have been, but certainly no usurpation of power.

Academic comment on this point varied considerably from the view expressed by the *Citizen*. Professor Ward took the position that:

if the Bill is invalid we have the courts to say so. If the Bill is not in the public interest, it is curious that the legislature passed it by a huge majority, with several opposition members supporting the government,[15]

and Professor Mallory curtly pointed out that if the Lieutenant Governor had doubts either about the constitutional validity or the public interest involved, "there are other remedies in the constitution which are less reminiscent of the prerogative powers of the Crown as they existed in the days of the Stuart kings".[16]

In view of this difference of opinion, the preamble of the proclamation by which the Governor General announced his assent to the Bill is of some significance, for here it was asserted that the Bill was within the competence of the Saskatchewan Legislature to enact, and that the Minister of Justice, having examined the Bill, having considered the reasons given by the Lieutenant Governor for reserving the Bill, and having considered the authorities and precedents on the subject:

is of the opinion that the expression "conflict with national policy or interest" does not relate solely to a difference of principle or point of view, but must include matters of practical or physical effect ,and that in this sense the Bill is not in conflict with national policy or interest; . . .[17]

Thus another precedent has been added to the constitutional practice of Canada, and while opinion and emphasis appear to differ, further weight seems to have been given to the view that Lieutenant Governors should reserve provincial legislation only upon instruction from the Federal Government where matters of "practical or physical effect", and not merely differences of "principle or point of view", will be taken into consideration in determining the "conflict with national policy or interest".

[1] Statutes of Saskatchewan, 1961, Chapter 79. [2] Legislative Assembly of Saskatchewan, *Debates and Proceedings*, 5th April, 1961, page 11. [3] 30 Victoria, Chapter 3 (U.K.). [4] Revised Statutes of Saskatchewan, 1953, Chapter 2. [5] *Journals of the Legislative Assembly of the Province of Saskatchewan*, 1961, page 227. (Hereinafter cited as *Journals*). [6] P.C. 1961-675 dated 5th May, in *The Canada Gazette*, Part I, 13th May, 1961, p. 1647. [7] pp. 517-18. [8] *Journals*, Second Session, 1961, pp. 7-8. [*Note:* Aside from the technicalities involved in reservation, this particular Act contained a clause by which it would come into force on a day set by proclamation of the Lieutenant Governor in Council. The proclamation referred to above merely announced the Royal Assent and did not, in this case, bring the Act into force.] [9] Norman Ward on the Canadian Broadcasting Corporation, 14th April, 1961. [10] G. V. La Forest, *Disallowance and the Reservation of Provincial Legislation*, Department of Justice, Ottawa, 1955, p. 35. [11] J. R. Mallory, "The Lieutenant-Governor's Discretionary Powers: The Reservation of Bill 56," *The Canadian Journal of Economics and Political Science*, Vol. 27, No. 4, November, 1961, University of Toronto Press, p. 520. [12] Canada, *House of Commons Debates*, 10th April, 1961, p. 3484. [13] 11th April, 1961. [14] *Ibid.* [15] Ward, *loc. cit.* [16] Mallory, *op. cit.*, p. 521. [17] P.C. 1961-675, dater 5th May, *loc. cit.*

XI. SIERRA LEONE: PRESENTATION OF A MACE BY THE HOUSE OF COMMONS TO THE HOUSE OF REPRESENTATIVES

By H. R. M. Farmer

Clerk of Committees in the House of Commons

Sierra Leone achieved independence within the Commonwealth on 27th April, 1961. H.M. Government decided that the House of Commons should be asked to commemorate the achievement by a presentation, and on 4th August, 1961, in answer to a question from Mr. Gaitskell, the Leader of the Opposition, the Prime Minister announced that H.M. Government proposed that a Mace should, on behalf of the House of Commons, be presented to the House of Representatives of Sierra Leone. Accordingly, the Ministry of Works were requested to obtain designs.

The mace was designed by Mr. Roy Mitchell and made by William Comyns and Sons of London. It is in traditional form but modern in conception. The head in silver gilt is mounted with the coat of arms of Sierra Leone carved in relief, and the upper part is formed by a representation of St. Edward's Crown, the apex being an orb surmounted by a cross. The modern and unusual feature is that the central staff is of solid ebony, a wood which is grown in Sierra Leone. The lower knob, also in silver gilt, is mounted with cast and chased acanthus leaves.

Before the presentation could be made, certain formal moves had to be made in the House of Commons. After notice had been given the previous day, Mr. Iain Macleod, the Leader of the House, moved on 12th December, 1961, in Committee of the Whole House, the following motion:

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

He said that the purpose of the gift was to mark Sierra Leone's attainment of independence within the Commonwealth and that it would bring with it "our best wishes for Sierra Leone's happiness and prosperity". Mr. Denis Healey, on behalf of the Opposition, warmly supported the Motion and said that the House of Commons was "always especially proud that so many Commonwealth coun-

tries had chosen to model their legislative procedures on the precedents set by the Mother of Parliaments" and that there was no more suitable symbol of the authority of Parliament than the Mace. The motion was agreed to unanimously, and was reported to the House the next day, and similarly agreed to. On 14th December, the Vice-Chamberlain of the Household (Mr. Graeme Finlay, M.P.) reported Her Majesty's Answer to the Address, in which she said that "it gave me the greatest pleasure to learn that your House desires to make such a presentation and I will gladly give directions for carrying your proposal into effect".

On 19th December, the Leader of the House announced the composition of the delegation which had been arranged in consultation with Mr. Speaker. The members were the Rt. Hon. Sir John Vaughan-Morgan, who was to be Leader, the Rt. Hon. James Griffiths, an ex-Secretary of State for the Colonies, Mr. David Gibson-Watt and Mr. Donald Wade, accompanied by the writer. Thus, there were two Conservative Members, one Labour Member and one Liberal Member. Formal leave of absence was granted on 20th December, and the party left this country on 5th January, 1962, after first having been received by the High Commissioner for Sierra Leone in London, Dr. W. H. Fitzjohn.

The delegation flew to Freetown by way of Accra, and were met at the airport by Paramount Chief R. B. S. Koker, Leader of the House, and Mr. J. B. Johnston, British High Commissioner. The airport being on the far side of the estuary, the delegation's first view of Freetown was from the Governor-General's launch, and a more beautiful introduction to a country new to all of them cannot be imagined. As the delegation arrived on Saturday afternoon and the ceremony of presentation did not take place until Tuesday morning, there was plenty of time for members to adapt themselves to the startling change of climate, from deep snow to high summer, and to rehearse the exact drill to be adopted.

This is always necessary on such occasions, however carefully prepared they are, and never more so than on this occasion, as the new Parliament House in Freetown is built in a circular form, with the result that some preconceived ideas had to be radically altered. However, thanks largely to the careful plans made by Mr. S. V. Wright, the Clerk of the Parliament, everything was soon arranged satisfactorily, and all members of the delegation knew the parts they would have to play.

The presentation was made on the morning of Tuesday, 9th January, 1962. The delegation arrived at the House of Parliament at 9.30 a.m. and were met by the Clerk of the Parliament, who conducted them to the Lower Terrace, where they were introduced to the Speaker (the Hon. H. J. L. Boston) and Members of Parliament. The House met at 10 a.m., and after Prayers the Serjeant-at-Arms, Mr. A. C. Forde, informed the House of the attendance of the dele-

gation, and the Speaker, after asking the wish of the House, directed him to conduct the Delegation into the House. The Delegation then entered in single file, the writer carrying the new Mace covered, and proceeded to seats on the dais to the left of Mr. Speaker.

The Speaker warmly welcomed them, and then Sir John Vaughan-Morgan and Mr. James Griffiths addressed the House. Sir John, after thanking the Speaker for his welcome, said that in the last 700 years this was only the sixth occasion on which the House of Commons had ever sent a delegation overseas. It was a modern custom —as modern as the Commonwealth itself. What more appropriate gift could there be than a Mace, the symbol of sovereign power, and it was surely right that that gift should come from the Parliament which is ceding power to the Parliament which is acquiring it. "Sir," he concluded, "the ties of friendship between Sierra Leone and Great Britain are very old, very close, and very precious; the change in our relationship has strengthened those ties and not broken them. May this Mace be for ever to you a reminder of that friendship."

Mr. James Griffiths followed with a tribute to the virtues of Parliamentary democracy, in which governments are answerable to Parliaments and Parliaments are answerable to the people, in whom the sovereign power rests. "It is in the spirit of democracy . . . that we ask you to receive with our fervent good wishes . . . the gift which it is our privilege to bring from our House of Commons to you."

The Delegation then rose and processed round the back of the benches and down the centre gangway to the Table, where they stood in line facing the Speaker. The Leader then took the Mace from the writer, at the same time uncovering it, and handed it to the Serjeant-at-Arms, placing it on his left shoulder. The later then placed it on the brackets already in position on the Table, and covered the old Mace. The Delegation then bowed to Mr. Speaker and returned to their seats on the dais.

The Prime Minister, the Rt. Hon. Sir Milton Margai, then moved:

> This House accepts with sincere thanks the generous gift of a Mace from the United Kingdom House of Commons to mark Sierra Leone's attainment of independence in April, 1961, and to serve as a visible symbol of those ties of goodwill which has existed between this Legislature and the Mother of Parliaments in the United Kingdom and as a constant reminder of those high ideals of Parliamentary Government and the democratic way of life in which this Legislature has been nurtured over the years.

The motion was seconded by the Hon. Paramount Chief R. B. S. Koker, and they both expressed their welcome to the Delegation and their thanks for the gift in very warm terms.

The Delegation were then conducted from the Chamber by the Serjeant-at-Arms (who carried the old Mace covered), bowing to the Speaker as they left.

So ended a dignified and moving ceremony, which will always remain vividly in the memory of those who took part in it. The Delegation spent another four days in Sierra Leone, and thanks to the invention of the aeroplane were able to see many different parts of the country and the various activities which are being undertaken. Diamond mining and rice-growing stand out in one's memory. They were also entertained three times by displays of dancing which were most enjoyable. Indeed, the arrangements made by the Government of Sierra Leone, both for their instruction and for their entertainment, were outstanding, and I am sure I can speak for the whole delegation in saying how grateful we all were for the friendly welcome which was everywhere extended to us, from H.E. the Governor-General to the inhabitants of the smallest villages.

At the end of the week the delegation split up and returned home independently. Some were able to pay short visits to other parts of West Africa. When all members had returned, one final ceremony took place in the House of Commons. On 30th January, Sir John Vaughan-Morgan reported to the House of Commons that the Mace had been duly presented and expressed the thanks of the delegation for the kindness and hospitality shown to them. He read the Resolution which had been passed unanimously by the Sierra Leone Parliament and asked Mr. Speaker to give instructions that that Resolution should be recorded in the Journal of the House. The Speaker gave instructions accordingly.

So ended a visit, which will live long in the memory of those who were privileged to take part in it. I am sure that it is the wish of each member of the Delegation to be able one day to return to such a beautiful and hospitable country.

XII. A TOAST TO "BIG BEN"*

By E. V. Viapree

Assistant Clerk of the Legislature, British Guiana

Tonight I invite you to join me in "A Toast to Big Ben". Why? Well, the 31st of May, just two days from today, is Big Ben's hundredth birthday. His first day of service as a timekeeper is reckoned as the 31st of May, 1859, and as a striking clock, 11th July, 1859.

The term "Big Ben" has been extended in ordinary speech to include the chimes, the dials, and even the Clock Tower; but strictly speaking the name applies to the hour bell, although the name now includes everything.

The tallest tower in England stands at one end of the Palace of Westminster; it is called the Victoria tower.

At the other end of the building is a tower on which the Victoria tower looks down, but which is more celebrated for two reasons. First, it is the Clock Tower, which contains the clock with the striking bell known as Big Ben, after Sir Benjamin Hall, responsible for its installation. Secondly, it is the tower in which Members or strangers, who have offended against the House of Commons, may be imprisoned if the House so orders.

Since broadcasting began, the chimes of Big Ben have become known all over the world. Many people think that these chimes are played from a record at the B.B.C. Actually, this was only done for a short while during the war, in order to prevent the enemy from locating the Parliament buildings which were a special target. But today the chimes heard on the radio are broadcast from within a few feet of the hammer which beats out the famous peal on the great bell above the clock face.

The guide who conducts visitors to the Clock Tower points out that, after a hundred years, the clock is so accurate that its loss or gain of time can be measured by so many seconds a year. Then he explains that when bombs and anti-aircraft shrapnel hit the tower during the war the clock face was torn, yet the clock itself did not stop, but one day a Member of Parliament explaining to a party how the wheels went round, pointed with his umbrella and got it caught in the works. *Then* Big Ben stopped.

* Editorial Note: Script of a broadcast made over Radio Demerara on 29th May, 1960.

Perhaps you would like to hear some of the details of this famous clock. Well, the bell, which weighs 13½ tons, strikes the hours in the Clock Tower. The four dials are 23 feet in diameter, the figures are 2 feet long, the minute hands are 14 feet long and weigh about 2 cwt., while the hour hands measure 9 feet long and weigh about 6 cwt. The minute spaces are 1 foot square, while the pendulum is 13 feet long. The mechanism of the clock weighs 5 tons.

In *An Encyclopædia of Parliament*, by Norman Wilding and Philip Laundy, it is recorded as follows:

> No other public clock has ever kept such accurate time as Big Ben. Twice a day since 1859 it has automatically telegraphed its performance to the Royal Observatory at Greenwich for checking, and for weeks it has remained correct to within one tenth of a second. Apart from a few stoppages it has never deviated more than four seconds from Greenwich time.

Big Ben was first broadcast at midnight on 31st December, 1923, and now its voice is known and welcomed in the remotest parts of the world. Since 1885, a light has burnt at the top of the Clock Tower when the House of Commons is sitting at night but, with all the other lights of London, this was extinguished during the last war.

When the late Mr. Speaker Clifton Brown, afterwards Viscount Ruffside, pressed the switch on the 24th of April, 1945, in the Commons Chamber to relight the lantern, he said:

> I pray that with God's blessing, this light will shine henceforth not only as an outward and visible sign, that the Parliament of a free people is assembled in free debate, but also, that it may shine as a beacon of sure hope in a sadly torn and distracted world.

The chimes of Big Ben are the same as those which were created in the Church of St. Mary the Great at Cambridge. They are traditionally associated with the lines: "Lord, through this hour, Be Thou our guide, That by Thy power, No foot shall slide." The tune is based on a phrase in the accompaniment of Handel's: "I know that my Redeemer Liveth."

Big Ben was tolled for the first time for the funeral of King Edward VII in 1910 and again for the funerals of King George V and King George VI in 1936 and 1952 respectively.

Big Ben, as I have said, was first broadcast at midnight on 31st December, 1923, and has been heard daily on the wireless ever since, except for a few months in 1934 when it was being overhauled and "Big Tom" of St. Paul's deputised for it. Now, as the 31st of May approaches, my mind goes back to those cold months of November and December, 1956, when I was attached to the House of Commons. There, in my office, I would draw the blinds away and gaze with great awe and admiration at this majestic and historic Clock as it struck the hour—particularly the hour of 2.30 p.m., for then, almost simultaneously, one could hear the words resounding

in the lobbies and corridors of the House of Commons: "Mr. Speaker in the Chair."

Now, I feel sure that every one of you who are listening tonight, especially those of you who have been privileged to visit that beautiful and historic city of London, will join me in toasting the health of Big Ben (or shall I say, Sir Big Ben?) thus: "A happy, happy Birthday and very many happy returns of the day to you, Big Ben."

XIII. EFFECTING ECONOMIES IN THE PRINTING COSTS OF "VOTES AND PROCEEDINGS" AND "JOURNALS"

By Erskine Grant-Dalton

Clerk Assistant, Federal Assembly, Rhodesia and Nyasaland

The Votes and Proceedings of the House of Commons are published on the authority of a sessional order passed regularly, on the first day of the session since 1680. Nowadays, they record[1] all that is, or is deemed to be, *done* by the House, but they ignore everything that is *said* unless it is especially ordered to be entered.

The forms used in the Votes were originally similar to those of the Journals; that is, each issue was a continuous narrative of the day's proceedings. By 1817, the volume of the Votes had grown to such an extent that a year's issues sometimes amounted to more than two thousand sheets and at least four days were needed for the preparation of each issue.

On 26th March, 1817, Speaker Abbott unfolded to the House his plan (said to have been prepared by the then Second Clerk Assistant, John Rickman) for a more expeditious method of preparing and distributing the printed Votes. A Select Committee was set up immediately after this announcement and ordered to meet the following morning. On the afternoon of the 27th, this Committee reported to the House; its report was printed and considered next day. Owing to the ill-health of the Speaker, the final adoption of the report was delayed to 24th April.[2]

When Speaker Abbott retired and went to the Lords, he instituted a similar reform in that House. Abbott was, rightly, very proud of these and other reforms which, in the face of much opposition from some of the Clerks, he effected in the administration of the Houses of Parliament. A reference to these and other past battles appears in May:[3]

> Much learning and loyalty have been lavished in the past in defending and maintaining forms and rules which had little intrinsic value. . . . The true standard for measuring the relative importance of a form or rule is the extent to which it is essential or serviceable to the exercise by each House of its parliamentary functions.

As a result of Abbott's reforms, the daily Vote was cut down to a series of minutes, based on the former marginal notes or headings, giving the required information in the fewest possible words. The

Commons Votes have continued in this form, with changes of detail only, to the present day. They are a model of concision and clarity.

The Votes were reformed in 1817 because they had become more voluminous than the Journals which were supposed to be the more detailed record. Yet even then many of the Commons Votes forms were briefer than those now used in some of the legislatures of the Commonwealth.

In most Parliaments (particularly in those where there is a daily Hansard) the daily Votes and Proceedings are rather like the sun: they appear with unfailing regularity, they are never looked at (except by the Clerks and the Speaker) and it never enters anybody's mind that they are, in form, sometimes susceptible of improvement, particularly in the shortening of certain entries, which will in turn lead to a substantial saving in printing costs.

In a Parliament which has a reliable daily Hansard, there is no need for the Votes to do more than record the deeds of the House in simple language, using the least possible number of words consistent with clarity. Where Hansard does not exist, or where it appears some days after the events it reports, then possibly there is some reason to have somewhat more detailed entries in Votes.

A study of the Commons Votes made clear to me how verbose were the Votes of my own House. Before putting forward proposals for new briefer forms, I decided to analyse in detail the Votes of as many Commonwealth Parliaments as I could. All the Clerks to whom I wrote for samples of the Votes most kindly sent me what I required. I also obtained from several of the State Legislatures in the United States copies of their minutes. To understand the reason for some of the entries, I had, in some cases, to study the Standing Rules and Orders of the Legislature concerned. This, in turn, led me on to seek out books describing the procedure in the various Legislatures. It is surprising how very few detailed, authoritative works there are in this field. What a tragedy it was that Campion died before his projected comparative study of procedure in the Commonwealth was complete. My studies finally led me to compile a commentary upon our own Standing Orders, with notes on the Standing Orders of each of the Legislatures in our Federation, to explain such differences as existed between our orders and our procedure, and theirs. Constitutional changes in the Territories have since caused changes in their Standing Orders which have now made this aspect of my manuscript out of date. However, the detailed analysis of each of our Standing Orders, and the comparison of every aspect of our procedure and practice with what is done elsewhere, was a most illuminating exercise.

So far as devising briefer Vote forms for use in our Legislature was concerned, the result of my survey was to convince me that it would be best to adapt the forms used in the House of Commons to our purposes.

The examples set out below show clearly what a very great variety of forms is in use in Legislatures in the English-speaking world, for describing a simple procedure, in this case the second reading and committal of a public bill, short title "Cats Bill", long Title "An Act to permit the keeping of domestic cats", No. 29. It is a Bill which originated in the lower House (where there are two). The examples are set out exactly as they would appear in their parent Votes, except that I have not shown the variations of type—capitals, small capitals and italics, black, etc., which appear in many of the originals. Nor have I (for reasons of economy) shown the extravagant spacing of the parts of the entry used in at least two of the Votes examined. They are culled from the Votes (in two cases, where there are no Votes, from the Journals) of one American and eight Commonwealth Legislatures. I have not identified them, because the merits of any particular entry should not be judged by the fame or age of the House which employs it.

A. Second Reading and Reference of Bill

The following Bill was read the second time and referred to a Committee of the Whole:
HB 29.

(24 words. If several Bills were read 2°, they would all appear under the one heading.)

B. First Order Read (2.44 p.m.):
Second Reading: Cats Bill (A.B. 29, 1956).
The Minister of Justice moved: That the Bill be now read a Second time.
After discussion, the motion was put and agreed to.
Bill read a second time.
The Minister of Justice moved, seconded by the Minister of Lands: That the House go into Committee on the Bill on Tuesday, 21st April.
Agreed to. (66 words.)

C. Cats Bill—read a second time.
Bill *committed* to a Committee of the whole House.—(Mr. Ewart.)
Committee upon *Tuesday*. (20 words.)

D. The Order being read for a second reading of Bill No. 29, An Act to permit the keeping of domestic cats; Mr. Ewart moved,—That the said Bill be now read the second time.
After debate thereon, the question being put on the said motion; it was agreed to.
The said Bill was accordingly read the second time and committed to a Committee of the whole House. (66 words.)

E. Cats Bill: Order for Second Reading read.
The Minister of Justice moved,—That the Bill be now read a second time.
Question put, and agreed to.
Bill accordingly read a second time.
The Minister of Justice moved,—That the Bill be referred to a Committee of the whole House.
Question put, and agreed to. (54 words.)

F. Cats—Order read for the second reading of "The Cats Bill"—
The Minister of Justice proposed, and the hon. William Smith, Federal Minister, seconded the motion:
"That the Bill be now read a second time."

Question proposed.
Question put, and agreed to.
Bill accordingly read a second time. Bill committed to a Committee of the whole House.
Committee, Friday, 19th August. (60 words.)

G. *Cats Bill.*—The Order of the Day being read for the second reading of the Cats Bill;
The Bill was read a second time accordingly, and ordered to be committed next sitting day. (33 words.)

H. The following Bill was read a second time, and ordered to be committed at the next sitting after today:—
Bill (No. 29) intituled "An Act to permit the keeping of domestic cats".
(30 words. If several Bills were read 2°, they would all appear under the one heading.)

I. First Order Read (2.17 p.m.):
Second Reading: Cats Bill (F.B. 29, 1956).
The Minister of Justice moved: That the Bill be now read a second time.
After discussion, the motion was put and agreed to.
Bill read a second time.
House to go into Committee on the Bill on Tuesday, 21st April.
(52 words.)

The Commons (U.K.) Journals are (incorrectly) supposed to be very verbose. A comparison of Journal entries with those shown above demonstrates that this superstition is baseless. The forms used in the Commons Journals have changed over the centuries, but slowly, as procedure and standing orders changed, or convenience required. Here is how the Journal recorded the second reading and committal of a bill in 1557:

L 2. The Bill for permitting the keeping of domestic cats.—Mr. Cecil.
(11 words.)
(Note: The name indicates the Member to whom it was committed for drafting.)

In 1642, a typical Commons Journal entry for a second reading was:

2da vice lecta est Billa, An Act for legalising the keeping of domestic cats; and, upon Question committed . . . (names of committee members) and are to meet this Afternoon, at four of the Clock in the court of Wards.

Over a hundred years later, in 1756, the form was:

A Bill to legalise the keeping of domestic cats was read a second time.
Resolved. That the Bill be committed.
Resolved. That the Bill be committed to a Committee of the whole House.
Resolved. That this House will, tomorrow, resolve itself into a Committee of the whole House upon the said Bill. (51 words.)

After another century, by 1856 the form had become:

The Cats Bill was, according to Order, read a second time; and committed to a Committee of the whole House, for Wednesday the 9th day of April next. (28 words.)

By 1956, the number of words required had increased, because of the rule that a bill, other than a financial bill, goes to a Standing Committee unless it is specifically committed to a Committee of the whole:

> The Cats Bill was, according to Order, read a second time.
> *Ordered.* That the Bill be committed to a Committee of the whole House. —(Mr. Ewart.)
> *Resolved.* That this House will, tomorrow, resolve itself into the said Committee. (38 words.)

It will be perceived that even 200 years ago the Journals, recording much more unwieldy procedure than exists anywhere today, used fewer words than some of the votes examples quoted; and that the modern Journal entry is almost as terse as the shortest—but by no means uncommunicative of the facts that matter.

In these days of ever-rising costs, it pays to examine simple ways of reducing expenditure. Researches into the different forms used in the Parliaments of the Commonwealth for recording Votes and Proceedings are extremely interesting and instructive. Apart from the light they throw on variations in procedure, they enable the researcher to consider the forms used in his House dispassionately, thus enabling him to perceive where improvements and economies can be effected. In my own House, the adoption of certain proposed reforms will lead to a saving of not less than a third in the cost of printing the Votes each year.

[1] *Vide.* May, 16th ed., p. 264. C.J. (1817), 188, 191, 194, 206.

[2] 35 *Com. Hans.* (1st Series), 1273-4, 1275.

[3] May, 16th ed., p. 224.

XIV. APPLICATIONS OF PRIVILEGE, 1961

At Westminster

Alleged Statements by a Member to a Select Committee.—On 8th March Mr. Thorpe (North Devon) informed the House of a report in the *Daily Express* of that day which alleged that he, in the course of his duties as a member of Sub-Committee G of the Select Committee on Estimates, had made certain specific statements about the purchase of a Rolls Royce car by the High Commissioner for Nigeria and the price which had been paid for it. He drew attention to the first report of the Estimates Committee, which contained a full summary of the evidence which had been taken and questions which had been asked by members of that Committee, and observed that no statement of such a nature was then reported to have been made either by him or by any other member of the Committee. To an inquiry by a *Daily Express* Reporter the previous evening he had replied that so far as the proceedings of the Select Committee were confidential, save for such matters as it thought fit to publish in the form of a report, no comment could or would be forthcoming from him. He accordingly submitted that the report which had appeared was wilful misrepresentation and an attack upon the privileges of the House.[1]

In accordance with his usual practice, Mr. Speaker deferred giving a ruling upon this matter until the following day. On 9th March, however, before any such ruling had been given, Mr. Thorpe rose to explain that he had received a letter from the Editor of the *Daily Express* admitting that the answers given by a witness appearing before the Committee had mistakenly been attributed to Mr. Thorpe, expressing regret for this error and promising a full correction in the *Daily Express;* such correction had in fact appeared that morning, and Mr. Thorpe suggested that the House might therefore wish to take the matter no further. Mr. Speaker said:

> The position is that there is no complaint before the House at the moment, and I must consider what the hon. Member says as an expression of a wish on his part, subject to others concerned, not to take the matter further. In those circumstances, I do not rule.
>
> I think, in fairness, I should say to the House that I myself received by hand last evening a letter from the editor of the newspaper corresponding with that described by the hon. Member, containing an apology and an explanation. Had circumstances required it, I would have communicated it to the House.[2]

Allegations by one Member against another.—On 7th June Mr. Peter Rawlinson (Epsom) raised as a matter of privilege an allegation which had been made in a question by Mr. Pargiter (Southall) to the Attorney General, to the effect that an officer in the Attorney General's department had deliberately delayed an investigation into the affairs of a certain company "in order to make it impossible to take legal action against the company".[3] From the answer published to this question it had appeared that the named official was not an officer in the Attorney General's department, had not been concerned with the investigations at any stage, and that there had been no delay in the investigations, which had been completed in time to permit the institution of criminal proceedings. Moreover, Mr. Pargiter, who was at that time abroad, had precluded himself from taking the earliest opportunity of withdrawing and apologising for the baseless allegations in his question. In Mr. Rawlinson's submission privilege meant the protecting of the rights of members solely in order that members could properly perform their functions, and that these rights carried responsibilities not to set out matters recklessly. In his submission Mr. Pargiter's conduct was a *prima facie* case of an abuse of the privilege of the House. Various other members then intervened, alleging that Mr. Rawlinson had himself abused the privilege of the House in that he had made no attempt to postpone this accusation until Mr. Pargiter was in a position to answer it.

Mr. Speaker ruled:

> Supposing there was a case—I am not saying that it is this one—where an hon. Member knowingly and deliberately put a false and defamatory allegation about a citizen into a Question, and thereby used the procedure and paper of this House to give publicity to the allegation while he himself was protected, I imagine that it might well be that the House would think that there was an abuse of procedure such as to constitute a contempt, and that the House would undoubtedly think it right to deal with it, because such a statement could only be challenged here in the House, and the House would want to look after the rights of its Member, on the one hand, and the rights of the citizen, on the other. That is what I would feel about it.
>
> It seems to me that what I have to do is to rule whether or no the hon. and learned Gentleman's complaint raises a *prima facie* case of contempt, a breach of Privilege in the form before me. All I have is the allegation against the individual which the hon. Member put in his Question, and for which he takes responsibility, and the assertion of the Attorney-General in his Answer that there was no evidence to support that allegation.
>
> I cannot judge between the hon. Member and the Attorney-General—only the House can do that—so I am quite unable to rule whether or no the statement was *prima facie* untrue or not, and even if I had material on which I could say that the statement was *prima facie* untrue, I have, of course, no material whatsoever on which to say that the hon. Member, in making that assertion in the Question, did so knowing its falsity, and deliberately, in such a way as to constitute an abuse of the procedure of the House.
>
> I therefore rule that the complaint does not raise a *prima facie* case of contempt or breach of Privilege. The House and all else will understand that my so ruling has no more effect than this: that the complaint cannot take

priority over the Orders of the Day. Whether or no the House thinks fit in due course to investigate the matter further by any means it thinks fit is left quite unrestricted by my Ruling. For my own part, I must say that I would be astonished if the House were to do anything about it before the hon. Member was back and present.[4]

Confiscation of letter arising out of proceedings in Parliament.—On 6th July Mr. George Thompson (Dundee East) drew the Speaker's attention to a report in that day's *Guardian* to the effect that Mr. Kenneth Kaunda, the Northern Rhodesian African Leader, had on arriving by air in Salisbury from London (where he had been having talks with the Colonial Secretary) had his documents, including a letter from Mr. Thompson himself, confiscated by Federal Government Immigration officials. Mr. Thompson submitted that this was a matter which came within the jurisdiction of the House of Commons, since Mr. Kaunda was a prohibited immigrant not of the Federation of Rhodesia and Nyasaland, but of Southern Rhodesia, which was still in the legal sense a Colony. Moreover, the letter to which the report referred arose out of proceedings in Parliament, since it had followed from Questions which had been asked in the House. He accordingly submitted that the seizure of private correspondence on parliamentary matters by officials of a colonial administration was a *prima facie* case of breach of privilege.

Mr. Speaker deferred his ruling to the following day, when he ruled as follows:

> The facts seem to be that immigration and custom officials in Salisbury, Southern Rhodesia, confiscated the documents of Mr. Kenneth Kaunda, he being a British-protected person, and the hon. Member submits that such confiscation involved a breach of the Privilege of the House of Commons. He does so on the ground that among the documents confiscated was a letter, written by the hon. Member to Mr. Kaunda, relating to some Questions addressed to Ministers in this House and forwarding to Mr. Kaunda a letter written by a Minister.
>
> I have carefully considered this matter, and, in my view, the hon. Member's complaint does not disclose a *prima facie* case of breach of Privilege of this House.[5]

New Zealand: House of Representatives

Contributed by the Clerk of the House of Representatives

Publication of Evidence tendered to a Select Committee.—Mr. McKay, Chairman of the Local Bills Committee, on 31st October drew the attention of the House to the fact that evidence relating to a Local Bill, to be considered by his Committee on 25th October, had appeared in the *New Zealand Herald* newspaper on the morning of that day. After contributions to the discussion by various Members, the House resolved that the publication constituted a breach of the Privileges of the House and that the report complained of be referred to the Committee of Privileges.

The Committee of Privileges reported on 22nd November, and found that the newspaper report was published prior to the meeting of the Local Bills Committee, and appeared to contain in a summarised form the principal points set out in three separate Departmental Reports presented as confidential documents to the Committee. In a letter to the Committee, the acting editor of the *New Zealand Herald* acknowledged that the report had been written by a staff reporter in Wellington some 24 hours before the Local Bills Committee had considered the Bill. The acting editor explained that the information published had not been thought to have been irregularly obtained or to have been confidential to the Committee, and had given his assurance that it had not been furnished by the chairman or any member of the Local Bills Committee; and that the breach of privilege had been quite unintentional and unwitting. He had tendered his unreserved apologies to the House and had given his assurance that it had been and always would be the policy of the *New Zealand Herald* to uphold by all its means the rights, privileges and dignity of Parliament and to conform to its usages and rules. The reporter concerned who had appeared before the Committee in explanation had also expressed his regret and had apologised for the breach of privilege, and had given his assurance that there would be no further breach. Therefore the Committee had recommended that no further action be taken.[7]

INDIA: LOK SABHA

Contributed by the Secretary of the Lok Sabha

Publication of comments in a newspaper casting reflections on the conduct of a Member.—*Facts of the case.*—On the 4th April, 1961, Shri Hem Barua, a member, sought to raise in the House a question of privilege regarding the following comments published in the *New Age*, dated the 2nd April, 1961, in reference to his statement in the House on the 28th March, 1961, regarding oil well No. 1 at Rudrasagar:

> One can only say that prejudice makes some people so utterly blind sometimes that sense of proportion is completely lost, and to defame certain policies and persons connected with them they can stoop to the lowest mendacity.

The Speaker (Shri M. A. Ayyangar) observed that before giving his consent to the raising of the matter, he would call for an explanation of the Editor, *New Age*.

On the 2nd May, 1961, the Speaker informed the House that he had received the following letter from Shri P. C. Joshi, the Editor of *New Age*:

> Regarding the matter raised in your letter, I must at once submit that I had or have no intention whatsoever to commit any breach of privilege of the Lok Sabha, nor do anything which would hamper any hon. member of the House from discharging his duties in the House.

The comments quoted in your letter and which appeared in the *New Age* dated 2nd April were made in the context of expressing honest and *bona fide* opinion on the statements made by Shri Hem Barua regarding the Rudrasagar Oil well. I may also submit that the portion quoted in your letter only means that there was a tendency to distort facts and I consider that as an editor of a responsible newspaper it was my duty to bring to the notice of the public such matters involving national interest. I felt the Government in the present case was not being criticised fairly and correctly.

I once again assure you that in making the above publication there was absolutely no bad intention at all and no disrespect was meant to the House or to any of its hon. Members.

Thereupon, Shri Hem Barua stated *inter alia*:

I would have very much liked the editor to have come out with a straightforward expression of regret. That he has not done. On the other hand, he tries to justify what he has said. But I think I should show my magnanimity after saying all these things, since he says that he has not meant any disrespect to the House. But at the same time, I would say a hundred times that he has tried to cover up or camouflage these ill-founded attacks against me by wrong statements. But in spite of that, I cannot be bullied, I cannot be threatened. I have that amount of courage. In spite of these allegations and charges I will be going on discharging the responsibilities entrusted to me by my people.

But whatever that might be, since he has said that he did not mean any disrespect—he has not expressed any regret—but since he has said that he did not mean any disrespect, I do not want to press the privilege motion. I withdraw the privilege motion.

Closing the matter, the Speaker observed:

. . . I thought, so far as the reply is concerned, that the reply might have been more unequivocal. Using expressions against a Member that he is "stooping to mendacity" and so on and so forth—not only in this case but against any Member—is likely to detract from his legitimate duties. . . . I am happy that Shri Hem Barua has shown an amount of magnanimity and that he does not want to press the motion.

No further action will be taken on this.

Casting reflections on a Member on account of his speech and conduct in the House by a newspaper.—*Facts of the case.*—On the 20th April, 1961, Shri Khushwaqt Rai, a member, raised a question of privilege regarding the following despatch and a photograph of Shri J. B. Kripalani, a member, with the caption "Kripaloony" underneath, published in the *Blitz*, a weekly news-magazine of Bombay, dated the 15th April, 1961:

The Kripaloony Impeachment

BAD, BLACK, BALD LIES

From A. Raghavan: BLITZ's Delhi Bureau

NEW DELHI: In its content, tenor and style, Acharya Kripalani's performance during the defence debate on Tuesday could be the envy of any American Senator who has not yet over-come his McArthian Moorings. He made it easy for the Prime Minister and the Defence Minister to demolish an impotent impeachment of our Defence built upon bad, bald and black lies and uttered in the hysteric manner of a violent epileptic.

In the lousiest and cheapest speech ever made since he was elected to Parliament by the courtesy of the Congress and Mr. Nehru, he demanded the head of the Defence Minister on a charger and made an impotent appeal to the Congressmen opposite to turn him out of the Government as the British Tories turned out Joseph Chamberlain.

By making a cocktail of plain hearsay, ancient Defence irregularities not even remotely connected with the tenure of the present Defence Minister and violence of speech, the senile Acharya overshot himself so much so that even his usual backers in the Congress ranks were heard saying in the lobbies that his was a self-defeating performance.

After Mr. Nehru and Mr. Menon tore his indictment into shreds, the whole House, with the exception of a few rabid PSP and Swatantra supporters, shouted him down like some bazaar-buffoon.

Reference to Committee of Privileges.—After a brief debate, Shri Nath Pai, another member, moved and the House agreed:

That this matter be referred to the Committee of Privileges for consideration and report by the 30th April, 1961.

Preliminary Report of the Committee.—The Committee of Privileges in a preliminary Report recommended that the time for presentation of their final Report to the House should be extended to the last day of the first week of the next session. The House agreed with this Report on 1st May, 1961, and the Speaker (Shri M. A. Ayyangar) announced that he did not propose to re-constitute the Committee and would allow the existing Committee to proceed and dispose of this matter.

Final Report of the Committee.—The Committee, in their Thirteenth Report, presented to the House on the 11th August, 1961, reached the following conclusion:

. . . the Committee have come to the conclusion that the impugned despatch read as a whole, including its heading and the photograph of Shri J. B. Kripalani, M.P., with the caption "Kripaloony" underneath, in its tenor and content, libels Shri Kripalani and casts reflections on him on account of his speech and contempt in the House. The language of the despatch is such that it brings Shri Kripalani into odium, contempt and ridicule by referring to him in a contemptuous and insulting manner and by using foul epithets in respect of him. The Committee are, therefore, of the view that the impugned despatch constitutes a breach of privilege and contempt of the House.

In the opinion of the Committee, both Shri R. K. Karanjia, the Editor, and Shri A. Raghavan, the New Delhi Correspondent of the *Blitz*, under whose name the libellous despatch appeared in the *Blitz*, dated the 15th April, 1961, are guilty of committing a gross breach of privilege and contempt of the House.

. . . Having reached the conclusion that both Shri R. K. Karanjia and Shri A. Raghavan are guilty of a gross breach of privilege and contempt of the House, the Committee gave careful consideration to the question as to what course of action they should recommend to the House. In the opinion of the Committee, the final responsibility for the publication of the impugned despatch rested with Shri R. K. Karanjia and therefore his offence is graver. This offence has been further aggravated by the type of explanation he has chosen to submit to the Committee. The Committee therefore recommended that he should be summoned to the Bar of the House and reprimanded.

As regards Shri A. Raghavan, the Committee feel that the ends of justice will be adequately met by awarding him a somewhat milder punishment. The Committee accordingly recommend that the Lok Sabha Press Gallery Card and the Central Hall Pass issued to him be cancelled and be not issued again till he tenders to the House a full and adequate apology.

Action taken by the House.—On the 19th August, 1961, after some debate, the House adopted the following motion moved by Dr. Ram Subhag Singh:

That this House agrees with the Thirteenth Report of the Committee of Privileges presented to the House on the 11th August, 1961.

The Speaker then announced:

I will now take the necessary steps to summon Shri R. K. Karanjia to the Bar of the House to carry out the sentence pronounced upon him by the House. I will also cancel the Lok Sabha Press Gallery Card and the Central Hall Pass issued to Shri A. Raghavan, and the same will not be issued to him again till he tenders to the House a full and adequate apology.

On the 25th August, 1961, the Speaker informed[8] the House in the afternoon that he had received the following letter dated the 23rd August, 1961, from Shri R. K. Karanjia:

Sir,

I am in receipt of the summons [the text of which is given below—Ed.] dated the 21st day of August, 1961, issued by you, calling me to appear at the Bar of the Lok Sabha on 29th August, 1961, at 12.15 hours.

I should have been happy to be able to respond immediately to your summons and appear at the Bar of the Lok Sabha as directed by you. However, I have been legally advised that irrespective of the personal consequences to me, I should make an application to the Supreme Court requesting the hon. Judges of the Supreme Court to reconsider the judgement given by them in the *Searchlight* case. As a consequence, an application is being filed by me in the Supreme Court today or tomorrow in this behalf.

Allow me to assure you that this application is being filed only with a view to getting a proper decision from the highest judicial tribunal of the land on questions of principles which affect the citizen as well as Lok Sabha equally. As I have stated before, I am completely in your hands and willing to take the consequences of the article published on 15th April, 1961, in *Blitz* which, to my great regret, has become the subject matter of the Privileges Committee's adverse report on me.

I, therefore, pray that the date for my appearance in the Lok Sabha be extended by a fortnight.

SUMMONS TO RECEIVE REPRIMAND

WHEREAS the Committee of Privileges of Lok Sabha, in their Thirteenth Report presented to the Lok Sabha on the 11th August, 1961, in the matter of a despatch, published in the *Blitz*, dated the 15th April, 1961, were of Opinion that both Shri R. K. Karanjia, the Editor, and Shri A. Raghavan, the New Delhi Correspondent of the *Blitz*, were guilty of committing a gross breach of privilege and contempt of the House;

AND WHEREAS the Committee in their said Report recommended that Shri R. K. Karanjia "should be summoned to the Bar of the House and reprimanded";

AND WHEREAS the Lok Sabha has on the 19th August, 1961, adopted the following motion:

" That this House agrees with the Thirteenth Report of the Committee of Privileges presented to the House on the 11th August, 1961 ";

NOW, therefore, in pursuance of the decision of the House, you, Shri R. K. Karanjia, are hereby summoned to appear in person to receive the reprimand at the Bar of Lok Sabha in the Parliament House, New Delhi, on Tuesday, the 29th August, 1961, at 12.15 hours.

Herein fail not.

Given under my hand and seal at New Delhi, this 21st day of August, 1961.

Sd/- M. Ananthasayanam Ayyangar,
Speaker, Lok Sabha.

New Delhi, dated the 21st August, 1961.

SEAL OF
LOK SABHA

Sardar Hukam Singh stated that information had been received that Sarvashri Karanjia and Raghavan had since filed a writ petition in the Supreme Court and that it would be taken up for preliminary hearing on the 28th August, 1961. He added that there should be some arrangement to represent the case in the Supreme Court on behalf of the House and on behalf of the Speaker, as the Speaker, the Secretary and an Under Secretary had been made parties to the writ petition. He then moved and the House agreed:

That the Attorney General be instructed to arrange for appearance and representation on behalf of the Speaker, Secretary and Under Secretary of Lok Sabha in the matter of the writ petition filed by Shri R. K. Karanjia and Shri A. Raghavan in the Supreme Court against the decisions made by this House on the 19th August, 1961, on the 13th Report of the Committee of Privileges presented to this House on the 11th August, 1961.

The House decided to consider the request of Shri Karanjia for extension of time on the 28th August, 1961.

The writ petition of Sarvashri Karanjia and Raghavan, filed under Article 32 of the Constitution, came up for preliminary hearing before the Constitution Bench of the Supreme Court, consisting of seven Judges, on the 28th August, 1961. In the writ petition, the petitioners had prayed for reconsideration of the earlier decision of the Supreme Court in the *Searchlight case*.[9] The Supreme Court, after hearing Shri N. C. Chatterjee, the Advocate for the petitioners, and the Attorney General (Shri M. C. Setalvad) for the respondents, dismissed the petition.

The House considered the request of Shri Karanjia for extension of time in the afternoon of the 28th August, and decided not to grant him the extension, in view of the fact that the ground on which he had asked for extension of time no longer existed.

On the 29th August, 1961, at 12.13 hours, the Speaker made the following observations:

The House is, of course, well aware that the moment we take up this matter we will, in a sense, be functioning as the High Court of Parliament.

This will be a solemn occasion, and we do not deliberate then. It emphasises the authority and sovereignty of Parliament. I need hardly emphasise that when Shri Karanjia is being reprimanded there should be pin-drop silence, so that the dignity and authority of this House is maintained and the significance of the reprimand and the solemnity of it is emphasised.

Immediately thereafter, at 12.15 hours, the Speaker asked the Watch and Ward Officer if Shri Karanjia was in attendance. The Watch and Ward Officer replied in the affirmative. The Speaker then directed the Watch and Ward Officer to bring him in. Shri Karanjia was then brought to the Bar of the House by the Watch and Ward Officer, where Shri Karanjia bowed to the Speaker. The Speaker then (seated in his Chair) reprimanded[10] Shri Karanjia as follows:

R. K. Karanjia, the House has adjudged you guilty of committing a gross breach of privilege and contempt of the House for publishing in the issue dated the 15th April, 1961, of the *Blitz*, of which you are the editor, a libellous despatch under the heading "The Kripaloony Impeachment". That despatch, in its tenor and content, libelled an honourable member of this House and cast reflections on him on account of his speech and conduct in the House and referred to him in a contemptuous and insulting manner. As editor, you had a high responsibility to exercise utmost caution and discretion in commenting on the speech and conduct of an honourable member of Parliament in his capacity as such member, yet you published words calculated to bring him into odium, contempt and ridicule. This offence of yours was further aggravated by the type of explanation you chose to submit to the Committee of Privileges.

In the name of the House, I accordingly reprimand you for committing a gross breach of privilege and contempt of the House.

I now direct you to withdraw.

Shri Karanjia then bowed to the Speaker and withdrew as directed.

Delay by a magistrate in sending to the House intimation regarding conviction and release on bail of two Members.—*Facts of the case.*—On the 14th August, 1961, the Speaker (Shri M. A. Ayyangar) informed[11] the House as follows:

On the 7th August, 1961, Sarvashri S. M. Banerjee and Indrajit Gupta gave notice of a question of privilege on the ground that information regarding their conviction on the 26th July, 1961, and their subsequent release on bail the same day had not been communicated to the House by the Magistrate, First Class, Jamshedpur, as required under Rule 230. In this connection, a reference was made to the Minister of Home Affairs.

In the meanwhile, I received the following telegram, dated the 9th August, 1961, from the Magistrate, First Class, Jamshedpur:

"Sarvashri S. M. Banerjee and Indrajit Gupta, Members, Lok Sabha, were put up on trial under Section 27 of the Industrial Disputes Act, on the charge of instigating and inciting workers of the Tata Iron and Steel Company Limited, Jamshedpur, to go on illegal strike on 12th May, 1958. They have been found guilty and convicted by me on the above charge on the 26th July, 1961, and have been sentenced to undergo simple imprisonment for a term of six months and to pay a fine of Rs. 500/-, in default simple imprisonment

for one month more each. Both of them were also granted bail on the same date and filed petition that they would prefer appeal before the Sessions Judge. The information was not sent before through oversight for which I express deep regrets and apologise."

The Ministry of Home Affairs have also intimated that the Bihar Government had expressed regret that this lapse should have occurred and had stated that they would take steps to ensure that it was not repeated.

In view of the regret expressed by the Magistrate, First Class, Jamshedpur, as well as by the Bihar Government, the matter may be closed.

MADRAS: LEGISLATIVE ASSEMBLY

Contributed by the Secretary, Legislative Assembly

Contemptuous report of proceedings.—On 25th March Shri K. Anbazhagan raised a matter of privilege regarding the publication of a news item in the Tamil daily *Dina Seithu*, dated 17th March, relating to the proceedings of the Assembly on 16th March under headings, translation of which are as follows:

CONSEQUENCES OF THE ARROGANT SPEECH OF A D.M.K. MEMBER

When Sri K. Anbazagan (D.M.K.) spoke in the Assembly today, confusion and noise prevailed in the House.

The member was of the view that the above news item brought into contempt the members and cast reflection on the House.

The Speaker held that the word "Thimir" (a Tamil term) which would mean "haughty" or "arrogant", and calling a speech or a member haughty, might not amount to attributing improper motives to the member. The other words "confusion" and "noise" were not objectionable words at all. He therefore ruled that no *prima facie* case had been made out.[12]

Adverse reflections on Members.—On 11th March Shri M. Kalyanasundarum raised a matter of privilege that certain passages in the Editorial of the English daily *The Mail*, dated 10th March, under the caption "Madras Police" (i) were calculated to distort the speeches made by hon. Member Shri K. Anbazhagan and himself, inasmuch as a fair account of their speeches had not been published, (ii) amounted not only to insinuations attributing motives to the speeches made by them but also amounted to censure, (iii) amounted to action being taken against the Members of the House for the speeches made by them, (iv) brought the proceedings of the House into disrepute, (v) prevented Members from discharging their duties without fear or favour, and (vi) amounted to an unwarranted interference with the privileges and rights of Members.

The passages objected to by the Member were as follows:

(1) . . . but to allege, as Mr. Anbazhagan did in the Assembly, that the police have failed to do their duty by the people in general and the Opposition parties in particular, is trying to malign a Force that has done its best to maintain law and order without fear or favour.

(2) The Legislature is the ultimate watch-dog of public interest and if, as another D.M.K. leader alleged, some "influential members of the ruling party" were trying to utilise the police to their own advantage, it is better to quote chapter and verse and seek redress instead of indulging in vague generalities and, in the process, attempting to defame the hard-worked guardians of law and order.

(3) That political motives have been imported into this mud-slinging campaign against the police is obvious and is a development to be deeply regretted.

(4) Irresponsible generalisations that the Government is, in connivance with unsocial elements, exploiting the police to suppress other political parties, or that the Government is using the police as a tool of the Congress Party, should be avoided.

On 16th March the Hon. Speaker ruled that there was a *prima facie* case of breach of privilege and by a motion the matter was referred to the Committee of Privileges.

The Committee, after hearing the Editor of *The Mail* in person, came to the conclusion that the comments made in the Editorial had transgressed the limit of fair comment and that it was regrettable that the Editor had made those comments in the Editorial, and held that the Editor had committed a breach of privilege of the House by exceeding the limit of fair comment.

In view of the statement made by the Editor that he had no intention to commit breach of any privileges of the House or its Members whose speeches were commented upon, and this being the first case of its kind, the Committee recommended that no further action be taken. The Report of the Committee was presented to the Assembly on 31st August and adopted on 21st September.[13]

Committee of Privileges—Complainant not to sit on.—On 28th September, Shri R. Srinivasa Iyer raised a matter of privilege to the effect that the members of the Madras Communist Party, led by Shri M. Kalyanasundaram, M.L.A., and five others, obstructed the Minister for Home, the Minister for Electricity, other Members and himself between 19th and 23rd September while they were proceeding to the Assembly and thereby committed contempt of the House. The Deputy Speaker ruled that a *prima facie* case of breach of privilege had been made out and the matter was referred to the Committee of Privileges for enquiry and report on a motion moved to that effect.

Shri M. Kalyanasundaram, M.L.A., was a member of the Committee of Privileges. The Committee felt that in the interests of justice, the hon. Member should not attend the meetings of the Committee. It also felt, however, that it had no power to prevent a member from attending the meetings of the Committee. It therefore recommended in its preliminary report that the House might—

(i) discharge Shri M. Kalyanasundaram from the membership of the Committee of Privileges;

(ii) appoint another member in his place; and
(iii) give such further and other directions as it might deem fit under the circumstances of the case.

The Report was presented to the House on 13th December and was taken up for consideration on 15th December. The Leader of the House made a statement that suitable provision should be made in the Rules of the Assembly, wherein, if the Chairman of a Committee of the House felt that a person was interested in a matter, and therefore it would not be desirable for that person to participate in the proceedings of the Committee, he could report to the Speaker and take the decision of the Speaker as final with regard to the participation of the concerned Member in the proceedings of the Committee. No further action was taken in the matter.

INDIA: MAHARASHTRA

Contributed by the Secretary, Maharashtra Legislative Department

Committee Meetings held simultaneously with session of the House.—On 13th March a Member of the Assembly raised the following two questions in regard to the meetings of certain Government Committees of which Members of the Legislature were *ex-officio* members:

(1) whether the convenor of such Committee meetings must necessarily agree to the M.L.A.'s demand to adjourn the meeting to a future date on the ground that it interferes with the Member's attendance at a session of the House; and

(2) whether the convenor commits any breach of privilege of the Member or of the House by failing to adjourn the meeting accordingly and holding it even when the demand for its adjournment is made by the Member in time.

It was held that there was no breach of privilege involved in these cases. Members of the Legislature, when they work on Government Committees either in their capacity as Members or otherwise, cannot be deemed to have been prevented from rendering service to the House owing to such Committee meetings being held simultaneously, because the attendance of the Members at such meetings is absolutely voluntary. Members, however, must consider duty to the House and its Committees as of paramount importance and should act accordingly.[14]

Premature Publication of a Motion before Admission.—On 22nd March a Member of the Assembly gave a notice of his intention to raise an issue of breach of privilege of the House committed by another Member by giving a news-item to a daily newspaper of Bombay in respect of a notice given by him (under Rule 99 of the Legislative Assembly) before the same was admitted by the Speaker.

The said notice sought to raise discussion on a matter of urgent public importance.

The Editor, the Printer and Publisher of the concerned newspapers and the member concerned (against whom the breach was alleged) tendered apologies to the Speaker for premature publication of the motion. The matter was, therefore, treated as closed. The Speaker, however, warned the members and the Press against such premature publication.[15]

Casting aspersions on speeches made by Members in the House.—On 7th December a Member of the Assembly gave a notice of his intention to raise a question of breach of privilege arising out of certain alleged objectionable versions appearing in a local Marathi daily of Bombay, dated 5th December. The remarks were alleged to be derogatory and accused certain members of having delivered foolish speeches on the floor of the House.

It was held that the criticism cast aspersions on the speeches made by the Members in the House and it constituted a breach of privilege. The Speaker having granted consent, the issue was raised in the House on 8th December. After the editor of the paper, who also happened to be a Member of the House, expressed regrets for having published the impugned matter in the paper, the Member concerned (who gave the notice) expressed his desire not to pursue the matter any further. The matter was, therefore, treated as closed.[16]

MYSORE: LEGISLATIVE ASSEMBLY

Contributed by the Secretary to the Legislature

Observations by the Speaker.—On 14th April, 1961, the Speaker informed the House that he had received notice of a question of privilege from two Members, Shri C. J. Muckannappa and Shri M. C. Narasimhan, regarding remarks passed by the Chair, which it was alleged cast " serious reflection on all the Members of the House ".

Ruling by the Speaker.—The Speaker, disallowing the question of privilege, ruled[17] *inter alia*:

> In view of the fact that there are any number of rulings of this House as well as of other Legislative bodies that there can be no question of breach of privilege against the Speaker, I wanted to disallow this notice in the Chambers and communicate the same to the Hon'ble Members. This in fact is the practice that has been followed in the past. However, it is not usual that allegations of breach of privilege should be made against the Speaker who is the custodian of the privileges of the House collectively and of the members individually, and where such allegations are made, I thought it was desirable that I should set out at some length the circumstances which necessitated my making the observations which are now in question.
>
> Every Hon'ble Member who was present in this House will remember that for the past few days quite a considerable time is taken up every day after question hour in discussion or debating matters of day-to-day procedure, which by now have become well established in this House. It was this deterioration in the standards of our conduct which compelled me to make these observations on the 13th instant. . . .

. . . Hon'ble Members, know that only one Member can hold the floor at a time. If five or six Members rise and start speaking at the same time, orderly conduct of the business of the House becomes impossible. . . .

. . . I must make it clear that it can never be the intention of the Speaker who is the custodian of the privileges of the House to himself commit a breach of privilege. I have always been conscious of the responsibilities which Hon'ble Members in the House and more so, the Presiding Officer, carry in the discharge of their duties. I have been extremely pained at the way our proceedings are going on during the last few days. As I said on the 13th, it is a matter of great distress to me that after four years of experience in the working of this Assembly, we should have resorted to so many interruptions in regard to matters of procedure which are very well settled, or give more importance to matters of not much consequence. It was this distress which forced me to make these observations. Nothing will give me greater happiness than to find that there is never any need for a presiding officer to make observations of this character or to draw the attention of the Members to settled procedure and practice, because Members of experience in this House are well aware of the same.

So far as the notices are concerned, they are not in order and are disallowed.

There is another notice of Privilege relating to the Report in the *Samyukta Karnataka* of the 14th April. The portion referred to relates to the very matter which was the subject of the notice in relation to myself.

In view of what I have said earlier and because what has appeared in the paper is a fair report of the proceedings, I regret I cannot give my consent to move in the matter and I therefore disallow that notice also.

UTTAR PRADESH: LEGISLATIVE ASSEMBLY

Contributed by the Secretary of the Legislative Assembly

Allegation of conspiracy by Members.—In continuation of the information supplied for Vol. XXIX[18] with regard to Shri Bhup Kishore's case of tearing the Ramayana, it is to be stated that the Speaker considered the report of the Committee on Privileges and dropped the case.

Reflection on statements made in Assembly.—In continuation of the information supplied for Vol. XXIX[19] with regard to the Lucknow University Teachers' Association Case, it is to be stated that the Committee on Privileges considered the case and presented a report to the House on 11th August, 1961. The Committee in their Report held the teachers guilty of contempt of the House but, realising that the action on the part of the teachers was taken in haste and in an agitated state of mind, recommended to the House that the matter should be dropped and no action should be taken against the teachers.

[1] 636 *Com. Hans.*, 482-3. [2] *Ibid.*, 693-4. [3] 641 *ibid.*, 62. [4] *Ibid.*, 1087-91. [5] 643 *ibid.*, 1676-7, 1875. [6] 636 *ibid.*, 260-6, 477. [7] 1961 *N.Z. Journals* (*H. of R.*), 31st October and 22nd November, *Appendices*, 1-6; 1961 *N.Z. Hans.*, pp. 3235, 3712-3. [8] *L.S. Debs.*, 25.8.1961, c. 5049. [9] A.I.R., 1959, S.C. 395. [10] *L.S. Debs.*, 29.8.1961, c. 5502. [11] *Ibid.*, 14.8.1961, cc. 2081-2. [12] 1961 *Madras Assem. Debs.*, Vol. 43, No. 1, p. 28. [13] *Ibid.*, Vol. 44, p. 358. [14] *M.L.A. Debs.*, Vol. 3, No. 42, pt. 2, pp. 1-2. [15] *Ibid.*, No. 37, pt. 1, p. 1. [16] *Ibid.*, Vol. 5, No. 10, pt. 2, pp. 1-2. [17] 1961 *Ibid.*, *Mysore L.A. Résumé of Business*, pp. 24-6. [18] THE TABLE, Vol. XXIX, p. 119. [19] *Ibid.*

XV. MISCELLANEOUS NOTES

1. Constitutional

India (Representation of Dadra and Nagar Haveli).—Dadra and Nagar Haveli, which were Portuguese occupied territories in India, were liberated by the people of those territories from the Portuguese rule some years back. In deference to the desire and request of the people of Free Dadra and Nagar Haveli embodied in a formal resolution adopted by the Varishta Panchayat (the local authority there), the Government of India decided that these territories should form part of the Union of India. Thereafter these areas were integrated with the Union of India by constituting them as the Union Territory of Dadra and Nagar Haveli by the amendment of the First Schedule to the Constitution by the Constitution (Tenth Amendment) Act, 1961.

The Dadra and Nagar Haveli Act, 1961, which came into force on the 11th August, 1961, made provision, among other matters, for the representation of the Union Territory of Dadra and Nagar Haveli in the House of the People. It has been provided in section 3 of that Act that one seat shall be allotted to the Union Territory of Dadra and Nagar Haveli in the House of the People to be filled by a person nominated by the President.

(*Contributed by the Secretary of the Rajya Sabha.*)

India (Constitutional).—Clause (1) of article 66 of the Constitution provided that the Vice-President of India was to be elected by the Members of both Houses of Parliament assembled at a joint meeting. The requirement that Members of the two Houses should assemble at a joint sitting for the election of the Vice-President, it was considered, was unnecessary and might also cause practical difficulties. Under article 54 of the Constitution, the President of India is elected by the members of an electoral college consisting of the elected members of both Houses of Parliament and of the Legislative Assemblies of the States. It was, therefore, decided that clause (1) of article 66 should be amended to omit the reqiurement as to joint meeting therefrom by substituting the words "members of an electoral college consisting of the members of both Houses of Parliament" for the words "members of both Houses of Parliament assembled at a joint meeting", and thereby to bring the language of

the clause in conformity with the language of article 54 relating to the election of the President. Section 2 of the Constitution (Eleventh Amendment) Act, 1961, has made provision accordingly.

Further, in view of the vastness and geographical conditions of India it might happen that sometimes the elections to the two Houses of Parliament might not be completed before the President or the Vice-President was elected. In fact, in a case before the Supreme Court of India (Narayan Bhaskar Khare *v.* the Election Commission of India, reported in 1957, S.C.R. 1081), a point was taken that for a valid election of the President all elections to the Houses of Parliament should be completed before the date of the Presidential Election, as otherwise some Members would have been denied the right to take part in the election. The Supreme Court, however, did not express any opinion on the point as it was not necessary to do so to determine the issue before it. In the case before the Supreme Court, when the notification for the election of the President was issued, elections in certain snow-bound areas in the north of India had not been completed. There might be vacancies in the electoral college for the Presidential and Vice-Presidential elections for other reasons also. It was, therefore, thought desirable to make it clear that the election of a President or Vice-President could not be challenged on the ground that there were vacancies in the appropriate electoral college for whatever reasons. Accordingly the following new clause was added to article 71 of the Constitution by section 3 of the Constitution (Eleventh Amendment) Act, 1961—

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

(*Contributed by the Secretary of the Rajya Sabha.*)

India (Abolition of Two-Member Constituencies).—In pursuance of articles 330 and 332 of the Constitution, seats had been reserved for the Scheduled Castes and the Scheduled Tribes in Lok Sabha and the State Legislative Assemblies. Such reservation had generally been made in two-Member constituencies, though in a few cases, seats had been reserved in single-Member constituencies also. In each two-Member constituency, one seat was reserved for the Scheduled Castes or, as the case may be, for the Scheduled Tribes.

The Two-Member Constituencies (Abolition) Act, 1961, provides for the abolition of two-Member parliamentary and assembly constituencies and for the creation of two single-Member constituencies in their place. It also provides that one of the two single-Member constituencies so created shall be reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(*Contributed by the Secretary of the Lok Sabha.*)

Nyasaland (Constitutional).—Constitutionally 1961 was an eventful year for Nyasaland, since during its course effect was given to the recommendations of the Constitutional Conference held at Lancaster House in July-August, 1960.

The following legislation affecting the Legislative Council was enacted during the year:

1. *Legislative Council (Registration of Voters and Delimitation of Constituencies) Regulations,* 1961

These regulations, which were made in January and amended in February and April, provided for such matters as the qualifications and disqualifications of voters and their registration, the handling of claims and objections and the delimitation of constituencies. The Protectorate was divided into eight franchise and twenty lower franchise constituencies. Qualifications common to both rolls were:

(*a*) that the applicant for registration should be
  (i) a British subject; or
  (ii) a British protected person by virtue of his connection with the Protectorate; or
  (iii) an African who had paid, or was exempt from paying, tax as a "Nyasaland African";
(*b*) that he should have been ordinarily resident in the Protectorate for a continous period of two years and at the time of application be ordinarily resident or have a prescribed connection with the registration district concerned;
(*c*) that he should have attained the age of 21 years, and
(*d*) that he should not be disqualified.

Disqualifications common to both rolls were:

(*a*) foreign allegiance;
(*b*) insanity;
(*c*) imprisonment or detention;
(*d*) disqualification by reason of electoral offence.

Additional property and educational qualifications were prescribed for each roll and a number of special qualifications for the lower franchise roll.

In January the registration period was proclaimed to be 13th February to 13th March and in March this period was extended by further proclamation to 18th March.

In May the names and boundaries of the 28 constituencies were proclaimed as settled by a Constituencies Commission appointed under the Regulations.

2. *Legislative Council (Elections) Regulations,* 1961

These regulations, which were made in May and amended in June, prescribed the qualifications and disqualifications for candi-

dates and the manner in which elections should be conducted; they also dealt with such matters as corrupt practices and election petitions.

Rules for the hearing of election petitions were made by the Chief Justice under the regulations in June.

3. *Nyasaland (Constitution) Order in Council,* 1961 (*S.I.,* 1961, *No.* 1189)

This Order in Council was made by Her Majesty on 26th June, laid before Parliament on 30th June and brought into operation by order of the Governor on 5th July.

Until then the Legislative Council had consisted of:

The Governor—(President).
A Speaker—(Vice-President).
4 *ex-officio* officials.
10 nominated officials.
7 African unofficials—3 elected and 4 nominated.
6 non-African unofficials—all elected.

Under the new constitution the Legislative Council was to consist of:

A Speaker (or acting Speaker).
3 *ex-officio* officials.
2 nominated officials.
20 members elected on the lower franchise.
8 members elected on the higher franchise.

Provision was also made for the nomination of additional members by the Governor on the instructions of the Secretary of State.

The Order in Council provided that the Speaker or acting Speaker should preside, but that the Governor might attend and address the Council at any time at his discretion. It also gave power to the Governor to amend the existing Standing Orders of the Legislative Council at any time before the first sitting of the new Council so as to conform with the new constitution. In addition, reserved powers in relation to Bills introduced or motions proposed in Legislative Council were conferred upon the Governor, to be exercised only in the interests of public order, public faith or good government.

The old Legislative Council was dissolved on 5th July, *i.e.,* the date on which the Order in Council came into operation, and a General Election was proclaimed to be held on 20th July.

4. *Legislative Council (Repeal) Ordinance,* 1961

The Legislative Council Ordinance (Cap. 52) which had been in force since 6th September, 1955, was repealed with effect from 11th July, 1961, its provisions having been replaced by the legislation described above.

5. *Nyasaland Royal Instructions*, 1961

Royal Instructions, relating *inter alia* to the enactment of laws by the Nyasaland Legislative Council, were given on 26th June and were brought into force on 17th August.

6. *Legislative Council (Emoluments) Ordinance (Cap.* 58)

Orders were made under the above Ordinance as follows:

(1) On 20th August, to give legal force to the practice of not paying duty allowances to members during their absence from the Protectorate otherwise than on the business of the Council.
(2) On 31st August, to provide that the salaries and allowances prescribed for members should not be made payable to Ministers or to Parliamentary Secretaries.

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

Malta (New Constitution).—Following the resignation of the Government on 21st April, 1958, and the subsequent dissolution of the Legislative Assembly three days later, the Governor declared a state of public emergency for the purposes of the Malta (Emergency Powers) Order in Council, 1953, and took complete control of the administration of the Islands.

The 1947 Constitution was revoked by the Malta (Constitution) Order in Council, 1959, which came into operation on 15th April, 1959 (THE TABLE, Vol. XXIX, p. 127). Fifteen months later, on 27th July, 1960, Mr. Macleod, Colonial Secretary, announced in the House of Commons (627 *Com. Hans.*, cc. 1648-53) the appointment of a three-man Commission for Malta under the Chairmanship of Sir Hilary Blood, G.B.E., K.C.M.G., Hon. LL.D. "The Commission", said the Colonial Secretary, "will have to take account of Her Majesty's Government's intention that Malta's people should be given the widest measure of self-government consistent with Her Majesty's Government's responsibility for defence and foreign affairs and their undertakings in respect of the public service, the police and human rights generally."

The Report of the Malta Constitution Commission was published on 8th March, 1961, in London as Command Paper 1261, and the Secretary of State for the Colonies in a statement in the House of Commons finished by saying (636 *Com. Hans.*, cc. 471-7):

> Her Majesty's Government believe that, given the necessary degree of mutual confidence between the two partners, the Constitution proposed by the Blood Commission provides the best way in which elected Government and self-Government can be restored to Malta.

A new Constitution, based principally on the Blood Commission recommendations, was worked out and published as a supplement to the Malta Government Gazette No. 11344 of 24th October, 1961.

This Constitution is subdivided into 13 parts dealing, amongst other things, with the "Protection of Fundamental Rights and Freedom of the Individual". It differs in many features from the old Constitution of 1947. Malta is now known as "The State of Malta". The Maltese elected Government has concurrent powers in the field of external affairs by specific delegation and in that of defence. The long-established diarchy is done away with. A United Kingdom Commissioner represents the Government of the United Kingdom while the Governor's duties are analogous to a constitutional Head of State. It provides for a Legislative Assembly of 50 members as against 40 under the old Constitution, and the Speaker may be elected from persons who are not members of the Assembly.

The new Constitution did not find favour with the local political parties and many were the protests made. A general election was held on 17th, 18th and 19th February, 1962, which gave the following result: Nationalist Party 25 seats; Labour Party 16; Democratic Nationalist Party 4; Christian Workers Party 4; and Progressive Constitutional Party 1. Five parties are represented as against two in the last legislature. The Nationalist Party, led by the Hon. Dr. Giorgio Borg Olivier as Prime Minister and Minister of Economic Planning and Finance, forms the present Government. The new legislature was inaugurated on 26th April last with the usual splendour and solemnity. In the morning elected Members heard Mass of the Holy Ghost celebrated by His Grace the Metropolitan Archbishop in the historic co-Cathedral of St. John. They met later in the Tapestry Chamber where they elected their Speaker, a person not being an elected Member of the Assembly but who had served as Deputy Speaker in a former legislature, and took the Oath of Allegiance. They proceeded then in procession to the Hall of St. Michael and St. George, where the Governor delivered the Speech from the Throne in the presence of a distinguishing gathering. After the Speech, the Members returned to the Tapestry Chamber and after the usual formalities were carried out the House adjourned.

Since then a delegation of the Government, led by the Prime Minister, has been to London and certain amendments to the Constitution have been agreed to by the United Kingdom Government. These amendments have still to be published and brought into force.

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

Mauritius (Constitutional Changes).—At the invitation of the Secretary of State for the Colonies, representatives of the Mauritius Labour Party, the Independent Forward Bloc, the Muslim Committee of Action, the Parti Mauricien and two Independent Members of the Mauritius Legislative Council met in London from 26th June to 7th July to exchange views on the present constitution and to discuss the extent, the form and timing of any changes. Sir Colville Deverell, the Governor, and Professor S. A. de Smith, the Constitu-

tional Commissioner, were present throughout the talks. As a result of the discussion Her Majesty's Government decided on two stages of advance. The first stage provided for the appointment as Chief Minister of the Leader of the Majority Party in the Legislature, who would be consulted by the Governor on such matters as the appointment and removal of Ministers, the allocation of portfolios and the summoning, proroguing and dissolution of the Council. An additional unofficial Ministerial post would be created, responsible for Posts and Telegraphs, Telecommunications, the Central Office of Information and the Broadcasting Service. The Colonial Secretary would be re-styled Chief Secretary. The second stage of constitutional advance envisaged represented the broad basis of the constitution which might be adopted after the next General Election and in the light of that Election if, following an affirmative vote by the Legislative Council, it was recommended to the Secretary of State by the Chief Minister. Before the end of the year steps were taken to implement the first stage of the agreed reforms. On the resumption of the Third Session of the Legislative Council at the end of September Dr. the Honourable S. Ramgoolam, the Leader of the Majority Party in the Legislative Council, assumed the title of Chief Minister. At the end of December the Governor signed Proclamations bringing the Mauritius Letters Patent, 1961, the Mauritius (Constitution) (Amendment) Order in Council, 1961, and the Colonial Secretary (Change of Title) Ordinance, 1961, into force from the 1st January, 1962. Plans were made to appoint an additional unofficial Minister, and to establish the new Ministry of Information, Posts and Telegraphs and Telecommunications as soon after the New Year as possible.

(*Contributed by Mr. L. Rex Moutou.*)

Uganda (Constitution).—On the 27th February, 1961, additional Royal Instructions were issued to the Governor and Commander-in-Chief of Uganda the effect of which was to require the Governor's consent before the Legislative Council could proceed on any Bill, Motion, or could receive any petition, which made provision for imposing or increasing taxation, for imposing any charge on the revenues or other funds of the Protectorate or for imposing or remitting any debt due to the Government. The Instructions also required a similar consent to be obtained before the Legislative Council could proceed upon any Bill or Motion, which related to or affected any matter relating to external affairs, defence or the use or operational control of the Police. At the same time the Instructions introduced safeguards concerning alterations in salary, allowances or conditions of service of public officers and the payment of pensions and gratuities.

On the 23rd March, 1962, the Legislative Council (Specially Elected Members) Regulations, 1961, were published in the Uganda

Gazette under Clause 17A of the Uganda Royal Instructions. The Regulations set out the detailed procedure for the election of Specially Elected Members to the Legislative Council and made provision for Members of the Legislative Council, with the exclusion of the Speaker, to elect 9 Members to sit in the Legislative Council as Specially Elected Members in addition to the 82 directly elected Members.

On the 26th June, 1961, additional Royal Instructions were issued to the Governor and Commander-in-Chief of Uganda dealing with the composition of the Council of Ministers. On the same day the Uganda (Amendment No. 2) Order in Council, 1961, was issued, constituting the office of the Deputy Governor and providing for the succession to Government in the absence of the Governor.

On the 31st October, 1961, the Buganda Agreement, 1961, was signed by the Governor and by the Kabaka of the Kingdom of Buganda revoking all previous Buganda Agreements and re-defining the relations between Her Majesty's Government, the Uganda Government and the Kabaka's Government. One of the provisions of the 1961 Buganda Agreement laid down that Buganda was to be represented in the National Assembly by 24 members, that is to say, 21 members elected within Buganda (excluding the Municipality of Kampala) and 3 members elected within the Municipality of Kampala; and that the said members were to be directly elected to the Assembly. It was, however, further stated in the Agreement that if the Lukiko (Parliament of Buganda) declared by resolution after any dissolution of the National Assembly, but not less than 14 days before the date fixed for the nomination of candidates at the next General Election, that it desired the said 21 members for Buganda (excluding the Municipality of Kampala) to be indirectly elected by the Lukiko, then the said 21 members were to be indirectly elected. A new Buganda Constitution was set out in a Schedule to the Agreement, whilst another Schedule defined the procedure for the election by the Lukiko of persons to the National Assembly in case the Lukiko decided that the 21 members for Buganda should be indirectly elected.

(*Note.*—Shortly before the date fixed for the nomination of candidates for the General Election held in March, 1962, the Lukiko declared by resolution that the 21 members for Buganda should be indirectly elected by the Lukiko.)

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

Trinidad and Tobago (Constitutional Changes).—A new Constitution came into effect on 19th December, 1961 (S.I., 1961, No. 1192). This provided for a fully elected House of Representatives of thirty members, and a Senate composed of twenty-nine members of whom the Governor appoints twelve on the advice of the Premier, two on the advice of the Leader of the Opposition and seven to rep-

present religious, economic and social interests after consultation with appropriate Bodies and Associations.

A new election law (the Representation of the People Ordinance, No. 33 of 1961) also came into existence which provided for personal registration of each citizen. This also provided for the casting of votes by the use of Voting Machines instead of Ballot Boxes.

(*Contributed by the Clerk of the Legislature.*)

Papua and New Guinea (Reconstruction of Legislative Council).—The Papua and New Guinea Act was amended in October, 1960, to provide for the re-construction of the Legislative Council, following the dismissal by the High Court of the Commonwealth of Australia of the action to challenge the validity of the Act.

Meanwhile the election for the Council as formerly constituted which had been set down for 27th August, 1960, was held. The election was contested only in the New Guinea Mainland Electorate, the nominees in the other two electorates being returned unopposed.

Under amending provisions of the Papua and New Guinea Act 1949-60, which were brought into operation on 9th December, 1960, the Council has been re-constituted as follows:

	New Council.	*Old Council.*
(*a*) The Administrator	1	1
(*b*) Fourteen officers of the Territory to be known as official members, appointed by the Governor-General on the nomination of the Administrator	14	16
(*c*) Twelve elected members, for the time being to consist of—		
(i) Six persons elected by electors of the Territory	6	3
(ii) Six persons elected by the indigenous population	6	—
(*d*) Ten persons, to be known as appointed members, appointed by the Governor-General on the nomination of the Administrator ...	10	3 representing missions, 3 non-official indigenous, 3 other non-official
	37	29

The Act thus provides for a non-official instead of an official majority. All members, except the twelve elected members, are appointed by the Governor-General on the nomination of the Administrator, and under Section 36 (2) of the Act the Administrator is required to exercise his powers of nomination to ensure that not less than five of the appointed members are residents of the Territory of New Guinea and not less than five are Papuans or New Guineans. The statutory provision for representation of the Christian missions

has been removed, but in addressing the House of Representatives on the provisions of the amending legislation the Minister for Territories stated:

> . . . the Administrator will be asked to consider the nomination of two persons from the Christian missions in the Territory, having regard to the fact that since the inauguration of the council, the missions have had three statutory places. Until such time as all the native people are fully represented by their own members, one hopes that the missionaries will be additional spokesmen for them. With all respect to the mission representatives, I think it is doubtful whether the retention of special seats for missions could be justified for members who were only spokesmen for missions and defenders of the interests of missions; but there is a recognisable case for voices that will be raised for sections of the population who missions can claim to know more closely and understand more clearly than others do.

An appointed member may at any time be removed from office by the Governor-General; normally, unless re-appointed, he vacates his seat at the end of three years from the date of his appointment. Official members of the Legislative Council hold office during the pleasure of the Governor-General.

Section 36 (3) of the Act provides for the election of the twelve elected members as under (*c*) (i) and (ii) above " until a date to be fixed by or under an Ordinance as the date on and after which natives are eligible to be enrolled as electors subject to the same conditions as apply to other persons". Thus the provisions for separate elections are only a temporary expedient; a single election and a common roll are the ultimate objectives and will be able to be brought into effect without further amendment of the Act.

In the new council all appointments, whether of official or non-official members, will be open to indigenous as well as non-indigenous persons. Out of a total of twenty-two non-official members at least eleven (six elected and five appointed) must be indigenous persons. This represents the bare minimum of indigenous representation on the Council, and the establishment of a common electoral roll and the growth of indigenous membership of the Territorial Public Service will open the way to increasing participation by the indigenous people in the functioning of the Council.

In relation to the elected members the Act provides that they shall be elected as provided by Ordinance and that " an ordinance relating to the election of members of the Legislative Council by natives may provide for a system of election under which the natives who vote at the election are themselves elected or chosen by natives".

The Legislative Council Ordinance, 1951-60, provides that elections shall be held at intervals not exceeding three years and lays down the qualifications and methods of election, together with electoral boundaries. Under an amendment to the ordinance brought into operation on 12th December, 1960, the number of electorates was increased from three to the following six, each to be represented by one indigenous and one non-indigenous member:

New Britain Electorate;
New Guinea Islands Electorate;
New Guinea Coastal Electorate;
Highlands Electorate;
Western Papua Electorate; and
Eastern Papua Electorate.

The amendment provided for "Elections by enrolled electors" (*i.e.*, those referred to under (*c*) (i) above as "the electors of the Territory") and "Elections by unenrolled electors" (*i.e.*, the indigenous population).

A candidate for election by enrolled electors must—

(i) be an elector;
(ii) have resided continuously in the Territory during the three years immediately preceding the lodging of his nomination as a candidate; and
(iii) not be an officer or employee of the Public Service of the Territory or of the Commonwealth or an officer or employee of an instrumentality of the Administration or of the Commonwealth.

A candidate for election by unenrolled electors must be—

(i) an indigenous inhabitant of the Territory;
(ii) at least sixteen years of age; and
(iii) a resident of the electorate for which he is nominating.

In relation to elections by unenrolled electors it is provided that:

(i) individual indigenes wishing to present themselves as candidates for an electorate may lodge a nomination on the prescribed form signed by six indigenous residents of the electorate;
(ii) where an election is necessary, each native local government council in the electorate shall appoint a representative or representatives (according to the number fixed by the Administrator by notice in the Gazette) to vote in the election and shall forward their names to the Returning Officer for the electorate;
(iii) the Administrator may, by notice in the Gazette, declare "a class or classes of natives living in an area which is not within a Council area to be an electoral group" for the purposes of an election by unenrolled electors; he may also declare the number of representatives to be nominated by the group and the manner in which they are to be nominated and the names of such persons also shall be notified to the Returning Officer;
(iv) the Returning Officer shall convene and preside over a meeting of the representatives of local government councils and electoral groups in the electorate, at a time and place fixed by the Administrator by a notice in the Gazette, and such a meeting shall elect one of the candidates to be the member for the electorate;
(v) voting shall be by secret ballot, each representative having one vote, and the candidate receiving the most votes shall be deemed to be elected.

The first election for the re-constituted Legislative Council was held on 18th March, 1961.

For about three months before the election the system for electing their representatives was thoroughly explained by Native Affairs officers to native local government councils and other advanced groups, and special measures for disseminating information about government in general and the history of government in the Territory, the composition and functions of the Legislative Council and procedures for electing its members were undertaken by the recently established Division of Extension Services. These included the preparation and distribution of booklets, radio broadcasts in English, Pidgin and Police Motu and the holding at Port Moresby of an eleven days' course of study in electoral procedures for men of understanding and authority among their people, who were also fluent in English, a lingua franca and one of the vernaculars spoken in an electoral group. A total of 40 men representing over 30 linguistic areas attended the course, at the end of which the majority returned to their areas equipped with various forms of teaching aids and information material to explain matters relating to the forthcoming elections to their people.

On 18th March, delegates representing 500,000 indigenous inhabitants of the Territory of Papua and New Guinea elected six members from a total of 108 candidates.

The official language of the Council is English. Minutes are kept and a verbatim record is made of the proceedings and debates.

Simultaneous translation of Council proceedings is carried out in Motu, Pidgin and English by a corps of interpreters and is of particular value to those members of the Council who are not fluent in English.

There are fifteen observers from the various districts, and the simultaneous translation system is so arranged that facilities are available to each observer to enable him to follow the Council proceedings in either English, Pidgin or Motu.

The Council is empowered to make ordinances for the peace, order and good government of the Territory, which, however, do not have any force until assented to by either the Administrator or the Governor-General as provided in the Act.

The initiation of legislative proposals in the Council is governed by sections 47 and 48 of the Papua and New Guinea Act, 1949-60, and by the Standing Rules and Orders regulating the order and conduct of the Council's business and proceedings. Subject to these requirements, and particularly the restriction on any ordinance involving government expenditure, non-official members are competent to introduce legislation.

The Council met three times during the year: from 17th October to 22nd October, 1960; from 10th April to 14th April, 1961; and from 5th June to 9th June, 1961.

Observers.—The scheme under which indigenous observers attend meetings of the Legislative Council has been continued. Observers now number one from each district, making a total of fifteen—nine from the Trust Territory and six from the Territory of Papua.

Observers arrive approximately a week before meetings. An assistant district officer attends all meetings with them to ensure that they understand proceedings. Instruction is given on the purposes and organisation of the Council and its procedures and debates are interpreted for them. A recapitulation of proceedings is given at the end of each day.

The Administrator's Council.—The 1960 amendment to the Papua and New Guinea Act provided for an Administrator's Council to replace the former Executive Council. (This provision was brought into operation on 10th April, 1961.)

The Executive Council, whose function was to advise and assist the Administrator, consisted entirely of officers of the Territory and was presided over by the Administrator, who alone submitted matters to it and who was not bound to accept its advice. Despite its title it was not an executive body except in a very limited sense.

The new Administrator's Council consists of the Administrator three official members of the Legislative Council and three other members of the Legislative Council, none of whom may be an official member and at least two of whom must be elected members. The Council's function is to advise the Administrator on any matter which he refers to it and on any other matter as may be provided by ordinance. In the latter case, while the Administrator is not bound to act in conformity with the advice of the Administrator's Council, if he fails to act in accordance with that advice he must provide the Legislative Council, not later than the first sitting day of its next meeting, with a statement of his reasons. The *Administrator's Council Ordinance*, 1960, provides that regulations may be made by the Administrator-in-Council.

As only Legislative Councillors can be members of the Administrator's Council, its establishment directly associates the Legislative Council with the daily tasks of administration and through the membership of elected members of the Legislative Council it introduces the first measure of representative government to the Territory.

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

2. Privilege

Australia: Northern Territory (Privileges Ordinance).—The Legislative Council (Privileges) Ordinance, 1961 (No. 20 of 1961), was introduced as the "Legislative Council (Privileges and Powers) Bill" and was modelled on the Legislative Council (Privileges and Powers) Ordinance of the Colony of Aden.

All those clauses dealing with powers were omitted during the committee stages on the advice of the Crown Law Officer that the Council as a subsidiary legislature could not enlarge or alter the powers granted to it by the creating body which in this case was the Commonwealth Parliament (N.T. Leg. Co. *Hans.*, 7th Council, 1st Session, pp. 1282-7).

The powers of the Council remain as they are set out in the Northern Territory (Administration) Act, 1910-61—the power to " make Ordinances for the peace, order and good government of the Territory ".

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

Kenya (Amendments to Privileges Ordinance).—During 1961 the Kenya Legislative Council passed the Legislative Council (Powers and Privileges) (Amendment) Ordinance (No. 36 of 1961), which made several amendments to the existing Ordinance of 1952 (see THE TABLE, Vol. XXI, pp. 133-5).

Perhaps the chief reason for these amendments was to define clearly the powers of the Speaker to make orders governing the admittance of strangers to the precincts of the Council. During the year Kenya saw an organised opposition in operation for the first time, and the enthusiasm of party officials and supporters was such that progress through the crowds in the main hall of Parliament Buildings on days when Council was sitting was wellnigh impossible. The Members' Car Park was also crowded out by supporters and hangers-on who had no right to be there and who, frequently, refused to move.

Another matter which had caused considerable worry to the Serjeant-at-Arms was the failure of certain Members to pay their bar and catering accounts within a reasonable time, so that it became necessary to give the Speaker power to deduct such amounts at source from a Member's salary.

The relative amending section read as follows:

> 5. Section 7 of the principal Ordinance is amended:
>
> (*a*) by substituting for subsection (1) thereof the following subsection—
>
> (1) The Speaker may from time to time issue orders as he may in his discretion deem necessary or expedient for the better carrying out of the purpose of this Ordinance, and, without prejudice to the generality of the foregoing power, may by such orders make provision for—
>
> (*a*) regulating the admittance of strangers to and the conduct of strangers within the precincts of the Council or any part thereof;
>
> (*b*) the deduction from any moneys due to a Member in pursuance of the provision of the Members of Legislative Council (Salaries and Allowances) Ordinance, 1956, of any amount payable by the Member in respect of refreshment or other facilities made available to Members within the precincts of the Council. (63 of 1956.)

Previously no process issued by a Court of the Colony in the

exercise of its civil jurisdiction could be served or executed within the precincts of the Council while the Council was sitting or through the Speaker or the Clerk or any officer of the Council. This, in practice, meant that the salaries of Members and the salaries of staff in Council's employ could not be attached in respect of a civil debt.

Opportunity was taken to amend this provision which, obviously, gave Members and Legislative Council staff an unfair advantage. The amending Ordinance substituted for the words "or through the Speaker, the Clerk or any officer of the Council", the words "nor shall any such process be served through the Speaker or any officer of the Council unless it relates to any person employed within the precincts of the Council or to the attachment of a Member's salary".

Before the Ordinance was amended, it was an offence to publish any false or scandalous libel on the Council. In order to bring the Ordinance into conformity with the law in the United Kingdom, this was extended to include "the proceedings of Council", and by a new clause it became an offence to "speak words defamatory of the Council or its proceedings".

Many other tidying-up Amendments were made to the Ordinance, perhaps the chief of which was to define the penalty for the offence of accepting bribes, which penalty was laid down as imprisonment for a term not exceeding two years, or to a fine not exceeding ten thousand shillings, or to both such imprisonment and fine.

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

3. ORDER

House of Commons (Position of Mace at Suspension of Sitting).—On 6th December, during the course of the Committee stage of the Commonwealth Immigrants Bill, an amendment was called, the purpose of which was to except citizens of Ghana from the operation of Part I of the Bill. In calling this amendment, the Chairman of Ways and Means signified his willingness that several other amendments excepting the citizens of certain other countries from this provision should be discussed simultaneously; nothing was said, however, implying that the other amendments would be called for division after the disposal of the first amendment.

The controversial nature of the bill led to the heated discussion of this amendment, as it had already to that of others, and numerous points of order were raised concerning the scope of the debate. After a prolonged debate the closure was moved, and the question upon the amendment itself was then put to a division. By an unfortunate mischance the Teller who announced the result of the division confused the numbers, and whereas in fact there were 268 votes for the Noes (that is, against the amendment), and 193 for the Ayes, a precisely contrary result was declared. The Chairman, in reporting to

the Committee the result announced by the Tellers, only partially corrected the mistake; his words were:

"The Ayes were 268, the Noes 193, so the Noes have it."

Needless to say, this situation was not resolved without considerable argument; and no sooner had it been resolved than further dispute arose as to whether the Chair should allow those other amendments which had been discussed during the debate on the previous amendment to be divided upon forthwith. In resisting this suggestion the Chairman said:

> This is the usual procedure. One Amendment is selected and the Chair will say that other Amendments may be debated with it but it is not proposed to call the other Amendments. The other Amendments in this case have not been selected by me and cannot be moved or be divided upon . . . if one looks at the notice which I had placed in the "No" Lobby, one will see that the Amendments to be discussed together are shown in brackets, and separate from those which are not selected. The Committee cannot give a decision as to which Amendments were not selected. They have not been selected, cannot be moved and, consequently, cannot be voted upon.

Various members were, however, still unsatisfied even by such a succinct ruling, and repeated attempts by the Chair to call the next amendment for discussion were continuously frustrated. In view of the fact that the list of selected amendments to which the Chairman had referred had been headed "Provisional selection of Amendments" attempts were made to persuade the Chairman, as an act of grace, to revise his provisional decision and now allow the other amendments to be voted upon, but he declined to do so; nor would he accept a motion for the Committee to report progress.

In the end, the disorder which arose was so grave as to make further debate impossible, and the Chairman left the Chair. He immediately ascended to the Upper Chair and in his capacity as Deputy Speaker declared the sitting suspended under Standing Order No. 24 for half an hour, and forthwith left the Chair. The interval between his leaving the Lower Chair and arriving in the Upper Chair was not sufficient to allow the Serjeant-at-Arms to come to the Table and remove the Mace from the lower bracket, where it is placed when the House is in Committee, to the upper bracket; and this fact was at once referred to by the Deputy Leader of the Opposition, Mr. George Brown, when the Committee resumed at the end of the suspension.

Mr. Brown and other Members maintained that as long as the Mace was under the Table the House was still in Committee, and therefore that any purported action by the Deputy Speaker in occupation of the Upper Chair was invalid; the Chairman, on the other hand, maintained that the House ceased to be in Committee at the moment at which he left the Chair. There followed considerable argument concerning the significance of the Mace and its effect upon

the constitution of the House, in which numerous members, including the Leader of the Opposition (Mr. H. Gaitskell) and the Leader of the House (Mr. Iain Macleod), took part. A motion to report progress was accepted by the Chair, and during the course of the debate upon this motion it was suggested by the Home Secretary (Mr. R. A. Butler), who was the Minister in charge of the Bill, that the whole matter should be referred to Mr. Speaker for a considered ruling tomorrow, and that on that understanding further progress might now be made with the Bill. Mr. Gaitskell, however, said that if Mr. Speaker were ultimately to rule that there had been an irregularity, this would in effect vitiate any subsequent proceedings that evening, which would therefore be time wasted. It was accordingly agreed by Mr. Butler that the Government would not oppose the motion to report progress, which was in consequence agreed to without a division (650 *Com. Hans.*, cc. 1399-1500).

On the next day, at the end of Questions, Mr. Speaker gave the following considered ruling:

I have to steer my course, picking my way between two difficulties. First, as Speaker, I know nothing about what happens in Committee. Secondly, I do not wish to breach our wise rule that the Chair does not rule on hypothetical situations, and if I get beguiled into doing that I ask the House to regard it as a lapse in attempting to help the House rather than as a precedent.

The facts are these. I see by the Votes and Proceedings that the Chairman of Ways and Means left the Chair of the Committee on the Commonwealth Immigrants Bill to report that grave disorder had arisen in the Committee, and that he resumed the Chair of the House as Deputy Speaker and suspended the sitting for half-an-hour under Standing Order No. 24.

I understand that it is contended that the Deputy Speaker suspended the House before the Mace was replaced upon the Table, and I am now asked what is the constitutional position if that contention is correct.

I am not prepared to accept the theory that no proceedings can take place when the Speaker is in the Chair and the Mace is not on the Table, since, for instance, when an offender is brought to the Bar of the House, the Mace is on the shoulder of the Serjeant-at-Arms. But I think it likely that, though certain proceedings can be taken without the Mace being on the Table, no Vote of the House, even if it were arrived at unanimously, could be properly taken in these circumstances.

The House will understand that I have had only limited time, in relation to other duties that had to be performed also this morning, and I know of no precise precedent. But it is my view that suspension upon grave disorder, arising pursuant to Standing Order No. 24, is not an operation which would be invalidated just because the Mace was in the wrong position. It has the characteristic of being an act of the Chair in isolation as the servant of the House rather than an act of the whole House itself, like a Vote is. My view, as I say, is that in these circumstances suspension is not invalidated by the Mace being in the wrong position. (Ibid, cc. 1544-5.)

House of Commons (Reflections upon conduct of members).—On 7th March, during the course of questions following upon a statement made by the Secretary of State for Scotland on Hydro-Electric Development, Mr. G. H. Thompson (Dundee, East) alleged that a publicity organisation entitled "Aims of Industry" employed another

member Mr. Nabarro (Kidderminster) as one of its paid propagandists. Mr. Speaker at once required Mr. Thompson to withdraw that observation, which was done; but Mr. George Brown, the Deputy Leader of the Opposition, in view of the fact that Mr. Speaker had not required evidence that the allegation was true or untrue before inviting this withdrawal, asked whether he had ruled that the term "paid propagandist" was unparliamentary. Mr. Speaker replied:

> The imputation, I thought, was of an unavowed motive, and whether it be true or not is, for this purpose, quite irrelevant, because if such an imputation was to be made it would require a specific Question before the House. It was on the basis that on the particular issue at the moment—which is nothing at all, and we shall have to come to an end of it soon—that I ruled that at this particular moment it is not proper to make an imputation, whether true or no. . . . For me to say that an hon. Member is a paid propagandist in this place contains at least the tang of saying that he is paid for expressing the views that he expresses here. Of course, if others interpret the English language in a different way, and do not feel that it has that implication, I am wrong, but this is the principle on which I have acted in relation to a question.

Nevertheless, in view of the fact that the matter was largely one of interpretation, Mr. Speaker gave an undertaking that he would give further consideration to the implications of his ruling; and accordingly, on the following day after questions, he made the following statement:

> There are two rules which the House has, both of which I have to enforce. The hon. Member for Dundee, East, was asking a question. In a question it is out of order to introduce the names of persons invidiously—that is the first matter—and, secondly, it is out of order, in a question, to reflect upon the character or conduct of *inter alios*, Members of this House.
>
> On the first rule to which I referred, I think that there is no doubt that the hon. Member's question was out of order. With regard to the second one, the House will recall that this House has resolved in these terms:
>
> > That it is contrary to the usage and derogatory to the dignity of this House that any of its Members should bring forward, promote or advocate in this House any proceeding or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward.
>
> I considered that as the hon. Member referred to had just been intervening and had referred in his intervention to his parliamentary conduct, that the words used by the hon. Member for Dundee, East, carried an implication of unparliamentary conduct. The hon. Member, with his usual courtesy, at the earliest possible moment intervened and said that he never had such an intention at all. The House would understand anyhow, but I should like to make it plain to everybody here and outside that I absolutely and completely accept that assurance and feel no possible doubt about it.
>
> On the other hand, that does not help me, because I have to rule on what I conceive to be the meaning of the words in their context, regardless of the intention of the person speaking them at the time. Hon. Members will understand, and I want to emphasise, that I was not making any general ruling. I was ruling upon my conception of the meaning of those words in a question, in the context in which that question was asked, and nothing else at all, and I do not intend to make a general ruling about it. (636 *Hans.*, cc. 260-6, 477.)

Kenya (Disorderly Expression of dissent to Speaker's ruling).— On 7th June, during a debate on the Adjournment, the Speaker had occasion to call certain Members to order. Finally, as Members persisted in interruptions, the Speaker ruled that if any hon. Member of the Opposition interrupted again, the offending Member would be ordered to leave the Chamber. An Opposition Member immediately interrupted, whereupon he was ordered by Mr. Speaker to leave the Chamber. The Member did so, but was followed by the whole of the Opposition and by all their supporters in the Galleries.

The Government reply to the point raised by the Opposition was given to empty benches.

The following day, the Speaker made the following ruling:

Hon. Members, there are some matters of Order which I think that I must explain, in view of certain incidents in this Chamber yesterday. I do not want any possibility of misunderstanding.

First, as regards interjections. These are not *strictly* in order at all; but occasional and well-pointed interjections are allowed and even encouraged, because they enliven debate and often serve to stimulate the Member who is speaking. If, however, they develop into running commentary or anything like " barracking ", they spoil the debate and cannot be allowed. On such occasions, if offending Members do not respond to the first rebuke, and if they are too numerous for individual attention, it may be necessary for the time to prohibit interjections altogether, so that order is maintained.

As regards maintenance of Order in general, hon. Members are requested to study Part XIII of our Standing Orders . . . which shows what may happen if they disregard directions from the Chair.

Next, there is the matter of walking in and out of this Chamber. Hon. Members are of course free, in ordinary circumstances, to walk in and out of the Chamber either individually or collectively, as they please; but there are certain solemn occasions during which no Member should enter or leave the Chamber, and there are other occasions when collective departure constitutes disorderly conduct. One such occasion is the Governor's Speech; and some hon. Members will recall that, some three years ago, those who left this Chamber in a body during the Governor's Speech, were named and suspended. Another such occasion is when a Member is ordered to leave the Chamber on account of disorderly conduct, collective departure by other Members at that point can only be interpreted as a show of support or sympathy with his misconduct, which is in itself grossly disorderly conduct and will, in future, be treated as such.

Next, there is a matter of conduct of strangers in the Galleries. Strangers are only admitted to these Galleries on the understanding that they will behave as spectators only, without any sign whatsoever of partisan interest. Any stranger who abuses his privilege of admission by manifestation of approval or disapproval of the conduct of hon. Members will be removed from the Building and will not be re-admitted for a long time thereafter. This applies, in particular, to strangers who show sympathy with any demonstrative departure of Members by themselves leaving the Galleries. Hon. Members are also reminded that they are responsible for the behaviour of any guests whom they bring into these Galleries.

Lastly, there is the matter of discussions on Adjournments. The sole purpose of every such discussion is to ventilate a matter of administration for which the Government is responsible, and to hear the Government's reply. The particular Member who has been personally privileged to raise a matter in this way must, therefore, not only make his point, but also wait to hear

the reply; and any Member who, having raised a matter on the Adjournment, does not wait to hear the reply, will not easily obtain the privilege again.

I trust that hon. Members will not forget these things.

It is to the credit of the Opposition that when Council adjourned on that day, they went in a body to Mr. Speaker's Chambers and offered to him their profound apologies. (87 *Kenya Hans.*, cc. 1040, 1046-7.)

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

4. Procedure

House of Lords (Closure).—On the 16th May, 1961, at the conclusion of a debate on an amendment in Committee of the Whole House, a Government back bench Peer said:

I suggest that all that can usefully be said has already been said on this amendment. I think that we should start a little self discipline, and I hope that I am in order in moving, That the Question be now put.

A noble lord began to speak against this motion, but was interrupted by a point of order. The Leader of the House (Viscount Hailsham) said that he had never known the closure to be put in the form of a motion, but that he hoped that the manifest feeling of the Committee would prevail; and on Question, the motion, "That the Question be now put", was agreed to.

Instances of any form of closure being moved in the Lords are extremely rare, and no formal procedure has ever been evolved to meet them. On the 8th July, 1926, the Government suspected that the Opposition was embarking on a filibuster to hold up the Royal Assent on the Coal Mines Bill, on which feelings ran very high. The closure was therefore applied to Lord De La Warr, who was speaking. On the 14th July, the Liberal and Labour Opposition protested against this proceeding, and though the Government won a formal victory, yet it is very clear from Hansard that the Opposition, who contended that there was not and should not be any such thing as a closure in the House of Lords, had the best of the debate.

The recent instance was accordingly referred to the Select Committee on Procedure of the House, who in a Report dated 18th July, 1961 (H.L. 129), recommended that the following should be accepted as describing the procedure of the House, and should be inserted in the next edition of the *Companion to the Standing Orders*.

The Motion "That the Question be now put" is a most exceptional procedure and the House will not accept it save in circumstances where it is felt to be the only means of ensuring the proper conduct of the business of the House: further, if the Motion "That the Question be now put" is proposed, the practice of the House is that the Question be put without Debate.

This was agreed to by the House on the 1st August, 1961.

House of Lords (Wording of Questions).—There being no Speaker with power to make rulings in the House of Lords, the question of what, if any, restriction should be imposed upon the wording of Questions comes up occasionally. On the 21st February, 1961, Lord Boothby had put down a Question "to ask Her Majesty's Government whether the Minister of Aviation still contemplated raising the landing fees at London Airport on 1st April to a point which will make it not only the worst, but by far the most expensive, international airport in the world".

On a point of order being raised, the Leader of the House (Viscount Hailsham) said he thought the practice of the House was that no steps could be taken to compel any peer to alter the form of his question. The matter had on a previous occasion been referred to the Select Committee on Procedure, whose opinion, however, had never been published. On that occasion the Committee had recognised that:

> The occasions upon which peers refused advice to bring their Questions within the bounds of propriety were extremely rare, and that occasional impropriety was the price which had to be paid for the preservation of a valuable privilege . . . no change should be made in the practice with regard to Questions.

Lord Boothby then withdrew his Question. (228 Hansard, c 944.)

House of Commons (Action of Chair on a motion for Closure).—In the early part of 1961 the Government announced their intention of introducing legislation to increase the rates of contributions to the National Health Service; this action had not been foreshadowed in the Queen's Speech, and aroused the strongest resentment among the Opposition. Accordingly, on 8th February, a motion of censure was moved by the Opposition deploring the Government's action as clearly indicative of their determination to undermine the National Health Service and to place heavy burdens on those least able to bear them. Immediately after the conclusion of this debate, during the course of which feeling had run very high, the House resolved itself into Committee of Ways and Means in order to consider a resolution upon which the bill was to be founded. After the debate had continued for two hours, the Financial Secretary to the Treasury (Sir Edward Boyle) was called by the Chair and rose to speak; whereupon Mr. George Brown, the Deputy Leader of the Opposition, rising to a point of order, suggested that it was clear, from conversations which had been seen to take place between the Chief Government Whip (Mr. Martin Redmayne) and the Chair, that it was the Government's intention to move the closure as soon as the Financial Secretary had spoken. He maintained that there were many other members desiring to speak, and sought an undertaking from the Chair that it would not regard the end of this ministerial intervention as a suitable opportunity for the closure. Numerous

other points of order were raised by other members in the same sense, and although the Chairman of Ways and Means (Sir Gordon Touche) repeatedly called upon Sir Edward Boyle to speak, the points of order which were raised prevented him from making any utterances of substance. Eventually Mr. George Brown rose to move that the Chairman report progress, and once more referred to the open manner in which, he alleged, the Chief Government Whip was endeavouring to arrange for the moving and acceptance of the closure. The Chairman indicated that Mr. Brown's speech was going outside the permissible scope of such a motion, and consequently refused to accept the motion itself, a refusal which led to numerous further points of order, during which the Chief Government Whip himself felt compelled to intervene. Sir Edward Boyle was again called, but members of the Opposition strongly indicated their unwillingness to hear him. The Chief Government Whip, observing that it was obvious that at that moment no progress could be made, then moved the closure before the Minister had replied to the debate.

What happened immediately after this was recorded in the Votes and Proceedings as follows:

> Mr. Martin Redmayne rose in his place, and claimed to move, That the Question be now put:
>
> Question put, That the Question be now put: The Committee proceeded to a Division:
>
> Mr. David Gibson-Watt and Mr. Chichester-Clark were appointed Tellers for the Ayes; but no Member being willing to act as Teller for the Noes the Chairman declared that the Ayes had it.

Thereafter, according to the record, the Main Question was put; and the Votes and Proceedings continue:

> The Committee proceeded to a Division:
>
> Mr. Paul Bryan and Mr. J. E. B. Hill were appointed Tellers for the Ayes; but no Member being willing to act as Teller for the Noes the Chairman declared that the Ayes had it.

Since the day's business was now concluded, the Adjournment of the House was then moved; but the customary debate initiated by a Private Member did not take place. Mr. Brown, rising again to a point of order, referred once more to the conversations which had taken place between the Chief Government Whip and the Chair, and endeavoured to move that the Chairman of Ways and Means, who had now taken the Upper Chair as Deputy Speaker, should leave the Chair and send for Mr. Speaker. During the course of the raising of this point of order, there was considerable noise and confusion in the House, and the Deputy Speaker pronounced that the motion which Mr. Brown was endeavouring to move was not in order and declared the House adjourned under S.O. No. 24 (which relates to the power of the Chair to adjourn the House on grave disorder having arisen). (634 *Hans.*, cc. 570-91.)

On the following day Mr. Gaitskell, the Leader of the Opposition, at the end of Questions, rose and made certain observations about the record of the previous night's proceedings which had appeared in the Votes and Proceedings. He said that he had consulted a large number of his friends and had not found a single one who had heard the Chair put the Question on the Ways and Means resolution itself after the determination of the Closure Motion. He said:

> I have not heard a single hon. Member say that he collected the voices on either of the two occasions on which he is required to do so. We are bound to be guided by the evidence of our own ears. We do not believe that this Question was ever put and, even supposing the Chairman did put it in a low voice—muttering, so to speak, to those around him—we regard it, frankly, as an abuse of the proceedings of the House.
>
> It is surely necessary that the Question be put in such a manner that it can be heard and so that the voices can be properly collected. We are, therefore, bound to challenge the whole record as being incorrect. In our opinion the Ways and Means Resolution was never put correctly and, therefore, never carried.

Mr. Speaker, while making clear that he did not officially know what had happened in Committee, and had no appellate jurisdiction from the rulings of the lower Chair, considered that he had no power to amend the Minutes, and believed that the only right course for the Opposition would be to vote against the proposition that the House agreed with the Committee's resolution when it was reported. Mr. Gaitskell, however, expressed the opinion that this was no remedy for the Opposition, since they would probably have done so anyway, and thought that it was an extraordinary position that it should not be open for any hon. Member to challenge the Minutes with any hope of getting any satisfaction. Mr. Speaker therefore suggested that a method might be found by substantive motion to challenge the Minutes, and undertook to look into the matter again; and the Leader of the House (Mr. R. A. Butler) indicated that the Government would consider the possibility of not taking the report stage of the resolution until it had been decided what further action could be taken.

In fact, the report of the resolution was not considered that day; and on the following day Mr. Speaker announced that he thought it was generally agreed that the proper course now for the Leader of the Opposition was to put down a motion inviting the House to expunge from the Journals those entries which he desired to challenge. (634 *Hans.*, cc. 642-52, 795.)

Accordingly, on 13th February, the following motion was moved by Mr. George Brown:

> That the entries of Wednesday, 8th February, on the Question on the Motion in Committee of Ways and Means relating to National Health Insurance being put accordingly; that the Committee proceeded to a Division; that Mr. Paul Bryan and Mr. L. E. B. Hill were appointed Tellers for the Ayes;

but no Member being willing to act as Tellers for the Noes the Chairman declared that the Ayes had it; that the Resolution be reported; that the Report be received this day and that the Committee do sit again this day be expunged from the Journal of the House.

The debate lasted for nearly four hours, and was almost wholly concerned with statements and contradictions on matters of fact (although in his opening speech Mr. Brown quoted the most impressive array of precedents for motions of the sort). This was referred to by the Leader of the House in his reply, with the observation that in all the precedents quoted the House had changed its mind upon an issue previously decided; in no case had the accuracy of the Minutes in the Votes and Proceedings been impugned. Dealing with the actions taken by the Clerks at the Table, upon whose records the Minutes of Proceedings were based, Mr. Butler said:

> I am sure that it is not in the mind of either side of the House to criticise the Clerks. They are the servants of the House. They perform their duties impartially and to the satisfaction of the House. They record our proceedings at the Table in close proximity to the Chairman. They are in an advantageous position when the Chamber is noisy, to know what occurs. Why, I ask the House, should they wish to invent the proceedings of the House? No one, I am sure, would suggest this for a moment, but it is as well for me to make this point and to say that we have the utmost confidence in the Clerks in the performance of their duties at the Table.

Mr. Butler then described in considerable detail the actions which took place at the Table in the event of a division, which description, on account of its interest, is here recorded *in toto*:

> First, when the Chairman rises to put any Question to the Committee, the Clerks at the Table and the Sergeant at Arms' Doorkeepers at the various doors and entrances, and the Serjeant at Arms himself in the Chair, all remain on the alert but take no action until the Chairman has collected the voices, and—in the event of voices opposing the Question—has declared "Clear the Lobby". The purpose of collecting the voices is to ascertain whether the House desires to divide or to assent to a Question without a Division.
>
> On the words "Clear the Lobby", and on those words only, the Clerk at the Table presses a lever to set the automatic time-clock running. This time-clock is in a wooden frame, which I have inspected, built into the Table and is regularly tested by Messrs. Dents, the clockmakers of Big Ben. I have ascertained, too, that it was last tested for accuracy by Messrs. Dents on 1st February, 1961, that is, a few days ago. At the same time the Serjeant at Arms in his Chair at the other end of the Chamber directs the Division bells to be rung in all parts of the House and his Doorkeepers to lock the Tellers' doors in the Lobbies. What is, I think, a vital check and balance is that there is no communication of any kind between the Clerks at the Table and the Serjeant at Arms or his Doorkeepers during this procedure.
>
> Nobody questions that the bells did work. It was quite clear, therefore, that the Serjeant at Arms acted as he is expected to do, and there is no doubt the machinery was operated and the machinery was operating for both Divisions after contact by eye only between the Serjeant at Arms at the end of the Chamber and the Chairman seeing and doing his duty at this end. These two parts of the Chamber act completely independently in carrying out

their duties. At the end of two minutes the clock of the Clerk at the Table stops and a red light comes on, which is clearly visible to all at or behind the Table, including the Chairman. The Senior Clerk of the Table thereupon prompts the Chairman with the single word "Tellers", and not until the Chairman has acted upon this prompting is the next stage entered upon. . . . The Chairman must then stand and put the Question a second time. If the Tellers from one side have not been previously nominated the Division cannot proceed. The Chairman, without collecting the voices, forthwith announces the decision of the Committee in favour of the party which put in Tellers' names. . . . It is at this stage—in regard to which I have been cross-examining all the parties in question—that the Clerks at the Table are for the first time in possession of information which enables them to record the decision of the House, for it is not until the Chairman has announced the names of the Tellers that the Clerks are in a position to record their names. Equally, the Chairman must stand at this point, as a signal to the doorkeepers to proceed with their duties. If, therefore, it is claimed that the Minutes are incorrect, it will be necessary to show and prove a number of things. The first is that the Division bells throughout the building were rung by accident. Let it be repeated that these bells are not controlled from the Table. That is impossible to prove, so our case is one point up. The second is that the doorkeepers proceeded to the Tellers' doors in error; the third is that the two Clerks at the Table wrongly depressed the special control lever of the electric clock; the fourth is that the red light flashed without purpose after two minutes, and the final one is that the Serjeant at Arms' men, on the second occasion, erroneously thought they saw the Chairman rising and giving the normal signal for them to proceed with their duties, without which signal they could not have done so.

Only after all these events have taken place could the Clerks proceed to enter in their Minutes the names of the Government's Tellers, whose identities, if we believe the record to be wrong, must have been invented. It is submitted that this circumstantial evidence confirms the personal assurance given not only by the Chairman and his Assistants at the Table but by these two hon. Members that their names were announced to the House in due form by the Chairman standing up in his place, and that he then declared, in the absence of any Tellers put forward from the Opposition side of the House, that the Ways and Means Resolution had been carried.

At the conclusion of the debate the House divided and the Motion was lost by 301 to 221. (*Ibid.*, cc. 938-1020.)

Thereafter a further division was immediately taken on the Ways and Means Report itself (the question upon which, under the provisions of S.O. No. 86, was put forthwith without debate). After this, the final chapter of the story unfolded in the shape of a motion of censure upon the Chairman of Ways and Means, which was moved by Mr. Gaitskell in the following terms:

That this House regrets the action of the Chairman of Ways and Means in accepting a Motion for closure of debate on the Ways and Means Resolution during the sitting of Wednesday, 8th February, and thereby infringing the rights of minorities by such acceptance when large numbers of Members still wished to speak and the Minister had not yet replied to points made during the debate.

This motion, the debate on which lasted for just over two hours, was defeated on a division by 302 votes to 211. (*Ibid.*, cc. 938-1020.)

House of Commons (Dissent from Speaker's Ruling on a Question relating to a capital sentence).—On 7th February Mr. Sydney Silverman (Nelson and Colne), at the end of Questions, drew the Speaker's attention to a Question which he had handed in the previous day but which had been disallowed by the Table; the purport of the Question had been to ask the Home Secretary to order an inquiry into the case of George Riley, who had recently been convicted of capital murder, in order to see whether there had been any miscarriage of justice.

Mr. Silverman understood that the Clerk's objection had been based on the paragraph in Erskine May dealing with inadmissible questions, and in particular the sentence which read:

> A capital sentence cannot be raised in a question while the sentence is pending. (16th Ed., page 358.)

Mr. Silverman went on to say:

> It was my submission, and it remains my submission, that my Question did not offend against that rule. It did not raise a capital sentence or any sentence. The Question would have been in exactly the same terms if the man had been fined 2s. 6d. or placed on probation for twelve months. The sentence was not involved and the Prerogative of mercy was not involved. All that was involved was the question of setting up an inquiry to see whether there had been a miscarriage of justice such as the Home Secretary has in the past on several occasions ordered and which the Court of Criminal Appeal has laid down as the proper method to pursue in relevant circumstances.
>
> The sentence in Erskine May quotes only one authority, that is to say, House of Commons Debates (1946-47), columns 2179-82. That is the only authority quoted. I have that authority here, Sir, and I submit that it establishes beyond reasonable controversy that the rule relates strictly and solely to Questions relating to the exercise of the Prerogative of mercy. It was, as a matter of fact, a Ruling given by Mr. Speaker Clifton Brown in response to a Question by me following certain events which had taken place in the House in which my hon. Friend the Member for Oldham, West (Mr. Hale), and I were closely concerned. It amounted to a restatement of the position in the House with regard to Questions directed to the Home Secretary, or, indeed, to anybody else, involving the exercise of the Prerogative of mercy.
>
> The passage, nearly three columns of it, is headed in Hansard, " Prerogative of Mercy ". Without quoting from it or reading from it at all, I submit that it is perfectly clear that in what Mr. Speaker Clifton Brown had to say he was confining himself solely and absolutely to the limited question of what one can do about the Prerogative of mercy before sentence has been executed.

Mr. Speaker replied in the following terms:

> I understand fully the distinction that the hon. Gentleman is making between an inquiry into what happened at the trial, or the like, and the exercise of the Prerogative of mercy. The difficulty is that on the Rulings the two points are so closely interrelated—I hope to illustrate in a moment why I think that the point is covered by previous Rulings—no doubt for the very obvious reason that the mind of the Home Secretary of the day, in tendering such advice as he would have to give, would necessarily be affected by the propriety or impropriety of the conviction or other proceedings at the trial.

Looking back at the Ruling given by my predecessor on 10th March, 1947, in a case in which the hon. Member for Nelson and Colne was personally involved, and taking some words out of it to show the extent of the protection, as it were, which is laid by our practice around the head and conscience of the Home Secretary from Parliamentary pressure pending the execution of sentence, there came these words:

> " Moreover, it is obvious, as was laid down by Mr. Secretary Matthews in 1887 and 1889, in the Lipski and Maybrick cases, and has been consistently upheld by the Chair, that "—

then there is a quotation in my predecessor's Ruling in these terms:

> " it is . . . injurious to the administration of justice that the circumstances of a criminal case, on which the exercise of the Prerogative of mercy depends, should be made the subject of discussion or of Questions in this House."

That is the end of the contained quotation. My predecessor's Ruling then goes on:

> " The House would, in such case, be claiming to be a court of appeal from the sentences pronounced by the courts, if it allowed itself to discuss and decide on the circumstances of these cases."—(Official Report, 10th March, 1947; Vol. 434, c. 959.)

In view of that Ruling and contemplating the only purpose of the inquiry for which the hon. Member's Question asks, I am forced to the conclusion, however reluctantly, that I am bound to rule his question out of order on the Rulings of my predecessors. It may be that the House one day would want to alter its practice, but that I could not do myself.

In the course of further submissions Mr. Leslie Hale (Oldham) called Mr. Speaker's attention to three things which had occurred since the ruling of Mr. Speaker Clifton Brown—namely, (i) the appointment of an inquiry by the Home Office into a case of murder in 1949, which had been a departmental and not even a quasi-judicial inquiry; (ii) the fact that the appointment of this inquiry had been virtually at the express invitation of the Court of Criminal Appeal; and (iii) the passing of the Homicide Act, which had resulted in two kinds of sentence for murder. He submitted that it would be an absurd position if they could ask a question and ask for an inquiry about a man convicted of murder, but not about a man convicted of capital murder. He concluded his observations with a salutary reminder of a fact which Clerks, being human, have occasionally tended to forget, in the following words:

> Fourthly, may I humbly submit with great respect that Erskine May is neither a Solon nor a Hammurabi, and that, when the House accorded to one of its servants its gracious permission to write a most useful commentary on its rules and procedure, it did not entrust him with the task of formulating a new constitution.

During the course of his replies to various points which were raised, Mr. Speaker declined in any way to modify his ruling, and stated that it was open to the House, if they wished to criticise it, to do so in the normal manner; accordingly, on 16th February, the following motion was moved by Mr. Silverman:

That this House respectfully regrets and unhesitatingly dissents from the Ruling given by Mr. Speaker that a question sought to be put down by the hon. Member for Nelson and Colne asking the Secretary of State for the Home Department to order an inquiry into whether a miscarriage of justice had occurred in the case of George Riley was not in order; and expresses the view that this Ruling is not in accordance with the precedents and practice of this House and imposes new, unnecessary and undesirable limitations on the ability of hon. Members to discharge their public duties.

To this motion an amendment was moved by the Secretary of State for the Home Department and Leader of the House (Mr. R. A. Butler), to leave out from the word "House" to the end of the question and to add instead the words:

upholds the well-established rule under which in any case involving a capital sentence the circumstances on which the exercise of the prerogative of mercy depend should not be made the subject of question or discussion in this House while the sentence is pending.

At the end of a debate lasting over three hours, the amendment was agreed to on a division by 253 votes to 60, and the question as amended was then agreed to without any division. (634 *Hans.*, cc. 214-20, 1173-1841.)

House of Commons ("Sub Judice" Rule).—On 4th December Mr. John Strachey (Dundee, West) asked the Minister of Aviation the following question:

Whether he is aware that a pilot employed by Tradair Ltd. was offered the alternative of demotion or resignation as a consequence of his cancellation of a flight from Pisa to Perpignan at 16.30 hours on 6th October, 1961, and of two other incidents in which the operator considered that he should have flown at a time when the pilot thought for safety reasons that he should not; whether he is satisfied that his safety regulations are adequate to ensure that a pilot should not be penalised for caution; and what action he proposes to take for the safety of the travelling public.

The Minister (Mr. Peter Thorneycroft) replied:

I understand that a writ in an action for libel has been issued in this case and, in the circumstances, the House may feel that it should be regarded as *sub judice*. Investigations have, however, shown nothing requiring action on safety grounds. My Director of Aviation Safety has adequate powers in connection with the operator's certificate if action were necessary.

Objections were made by the questioner and several other Members that the effect of this reply was to stifle all discussion of a matter which affected the public safety simply because a writ had been issued in a libel action. Mr. Speaker took the view that only part of the question was covered by the rule against discussion of matters *sub judice*, and made the following observations:

My view is that in those circumstances it would be right that the House should not expect any answer to this Question, down to the end of the

matters relating to the pilot, that is, down to a colon or a semi-colon. I think that the Minister gave some answer with regard to the rest of the Question, but that is my view as to the extent covered by the *sub judice* rule . . . I think that the issue of a writ in this case, and I say so, makes it inadvisable for the House to discuss matters relating to this pilot which clearly arise in the case in the ordinary way. I did not say anything about the rest of the Question regarding safety and matters of that kind . . . I imagine that inevitably in this action, if it be tried, among the issues which would have to be tried are what was the nature of that incident and what, if any, connection did it have with whatever happened to the pilot, and so on and so forth. I cannot see how our rule regarding *sub judice* can be applied in such a way as to avoid that consequence. That is my difficulty. (670 *Com. Hans.*, cc. 911-4.)

Mr. Paget (Northampton), one of the Members who had taken part in these exchanges, reverted to the matter on 11th December when, after questions, he made the following request to Mr. Speaker.

I desire to ask whether you can be of some assistance over a problem which we feel may arise with reference to the application of the rule against *sub judice*, and the danger that it may unduly interfere with the performance by the House of its duties to the public.

Since the days when this rule came into being, which was in 1844, when the Government were prosecuting Daniel O'Connell, circumstances have changed quite a lot, in particular with the main disappearance of the jury system. It is, therefore, not very easy to see that the purpose of the rule, which is to avoid prejudicing the trial of a matter awaiting adjudication in a court of law, can today, with seldom a jury at all or with quite different juries, have the same reality that it once had. I do not think that it had previously been realised—at least it had never occurred—that this rule applied to a civil action.

If it had been realised, and if it had been realised that anybody by issuing a writ could stop the action of this House, one can only think that the Marconi Company, on a famous occasion, could have stopped the agitation that gave rise to a famous inquiry simply by the issue of a writ, or that Mr. Sydney Stanley, on a more recent occasion, by the issue of a writ, could have done the same thing. Again, in a mining disaster, where people have great fears about the safety regulations, the issue of a writ might have halted it.

Perhaps the latest case is where a Minister is responsible for safety in the air. There is nothing more vital to that safety than the mind of the captains of aircraft and their feelings about liberty to take decisions which they regard as necessary to safety where that is in question. It seems strange and highly inconvenient that the issue of a writ, which need never be brought to trial, and, in any event, could probably not be brought to trial for a year, should halt the proceedings of this House and its performance of its duty to the public to demand an inquiry in the name of safety.

Therefore, I should be most grateful if you could give us your guidance, or suggest how it might be possible to bring this old rule up to the modern requirements of the House and the convenience of the public.

To this Mr. Speaker replied:

I am obliged to the hon. and learned Member for Northampton (Mr. Paget) for giving me warning about this, so that I could be sure that my advice was well-founded.

Supposing that it is thought, for instance, that the rule as it exists does not leave the Chair any or any adequate discretion on this or other matters which the hon. and learned Member was urging, the proper procedure is for

him to put down a Motion expressing what he believes our rule should be. Then, if it finds favour with the House, that becomes our operative rule on which we can all work, and by which we will all be bound.

The Leader of the Opposition (Mr. Gaitskell), in thanking Mr. Speaker for his ruling, suggested that this was a matter which might well be discussed between himself and the Leader of the House with a view to getting an agreed motion put before the House. To this suggestion the Leader of the House expressed agreement. (651 *Com. Hans.*, cc. 45-7.)

Saskatchewan ("Special" Sessions).—An interesting series of procedural problems arose in the Saskatchewan Assembly when the Government decided to call the House into Session for a second time in 1961. While the practice for many years has been to have one Session a year, usually in February and March, there is of course nothing to prevent the Assembly from meeting a second or even a third time in any one year, the only statutory provision in this regard being that:

> there shall be a session of the Legislature at least once in every year, so that twelve months shall not intervene between the last sitting of the Assembly in one session and its first sitting in the next. (*The Legislative Assembly Act*, Section 3, Revised Statutes of Saskatchewan, 1953, Chapter 3.)

In the popular mind, however, conditioned by common practice and to a certain extent by the implications of certain standing orders and statutory provisions, there was a marked distinction between the "regular" Session held annually in February and March, and any other Session, which thus became a "special" or an "extra" Session. It was understood, for example, that the Standing Orders did not apply to a "special" Session; it was expected that documents which were required by statute to be tabled at each Session of the Legislature would not be tabled at a "special" Session.

While practical considerations indicated the desirability of special rules for "special" Sessions, legal and parliamentary considerations required that adjustments in the rules and orders be made consciously, in a formal manner, rather than simply on the erroneous assumption that there was a distinction between the first and subsequent Sessions held in any one year.

The difficulty was overcome by an order of the Assembly (*Journals of the Legislative Assembly of the Province of Saskatchewan*, Second Session, 1961, p. 22) suspending, for the duration of the Session, certain standing orders applicable to a first Session, but not to subsequent Sessions in the same year. In addition, two Acts were passed: one postponed the tabling of a variety of documents which were essentially annual and not sessional reports (*The Tabling of Documents (Postponement) Act*, 1961, Statutes of Saskatchewan, 1961 (Second Session), Chapter 4); the other, notwithstanding the

indemnity set in the Legislative Assembly Act, provided for the payment of a special indemnity in respect of the "present session of the Legislature" (*The Sessional Indemnity Act*, 1961, Statutes of Saskatchewan, 1961 (Second Session), Chapter 5).

While not eliminating the term "Special Session" from the Saskatchewan parliamentary vocabulary, these arrangements did achieve a reconciliation of the popular and practical considerations of the House on the one hand, and the parliamentary and legal considerations of the Standing Orders and the statutes on the other.

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

5. Standing Orders

New Brunswick (Amendments to Rules).—On 23rd November Rule 1 of the Legislative Assembly was amended to provide that the normal hour of sitting on Fridays be 2.30 p.m. Previously the Rule had provided a meeting hour of 3 p.m. for each regular sitting day (Tuesdays, Wednesdays, Thursdays and Fridays); however, in recent years it was the almost invariable practice for the House each Thursday to order that adjournment that day be until 2.30 p.m. on Friday. Presumably the practice arose from a desire on the part of members returning to their constituencies for the weekend to be able to leave Fredericton as early as possible on Friday. The amendment, therefore, had the effect of bringing the Rule in line with the practice and eliminated the making of a special order each Thursday.

On the same date Rule 84 was amended to double the scale of fees payable on the introduction of Private Bills. The fees had last previously been increased in 1915.

On 29th November the House defeated on a recorded division (30-21) a motion to amend Rule 2 by providing for adjournment without order at 10 p.m. Rule 2 provides for a dinner recess from 6 p.m. to 8 p.m., but there is no fixed hour for adjournment. In practice the House sits until the business of the day is completed or until a motion to adjourn is agreed to. This results in prolonged sittings in the dying days of sessions. For example, on the second last sitting day of the 1960-61 session, the House adjourned at 5.21 a.m.

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

Western Australia (Legislative Council: Amendments to Standing Orders).—Several Standing Orders were amended during 1961. The amendments were mainly of a minor nature to remove uncertainty in the interpretation and to conform to accepted practice. The more important amendments are as follows:

S.O. Nos. 29 and 30: Amendments to these Standing Orders were made to allow the Chairman of Committees automatically to take the Chair in the absence of the President.

S.O. No. 48: This was amended to provide for the House to meet at 2.30 p.m. on Thursdays instead of 4.30 p.m. as previously.

S.O. No. 381: This was amended to permit the reading of speeches when introducing a Bill, or by leave of the President.

S.O. No. 390: An amendment was made to make it clear that although a member could not read extracts from newspapers or other documents referring to debates, quotations could be made from Hansard.

(*Contributed by the Clerk of the Parliaments.*)

Western Samoa (Revision of Standing Orders).—A number of amendments were made to the Standing Orders in view of Western Samoa becoming an Independent State on 1st January, 1962. In accordance with the Constitution, Parliament consists of the Head of State and the Legislative Assembly and Members of the Legislative Assembly are now called Members of Parliament. The important amendments made to the Standing Orders are as follows:

No. 42—Provides that a mover of any motion may speak on the principle and merits of his motion before formally moving, but if it is not seconded it shall lapse forthwith.

No. 58—Limits the debate on motions. The Assembly may impose a limit in respect of the debate on any particular motion by allotting a limited period of time or by limiting the time during which Members may speak or by imposing both such limitations. The debate on any such motion if the question is not put and decided, shall lapse upon the expiry of the time limit or the adjournment of the sitting. A further provision is that the debate on a Private Member's motion shall not exceed two hours' duration and shall lapse upon the adjournment of the sitting.

No. 77—The original Standing Order provided that the Council of State could propose amendments to Bills presented for assent by referring the Bill back to the Assembly with a Message containing the proposed amendments. This provision has now been revoked and the Head of State acting on the advice of the Prime Minister can either assent or refuse to assent to the Bill.

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

Madhya Pradesh (Amendments to the Rules of Procedure).—The Madhya Pradesh Vidhan Sabha Rules were amended in two respects during 1961, on the recommendation of the Rules Committee made on 7th April and promulgated in the Vidhan Sabha Patrak Part II, No. 62, dated 25th April, 1961.

A series of rules (numbers 21-A to 21-E) were inserted, laying down the constitution of a Committee on Private Members' Bills and Resolutions, the functions of which are to decide upon the allocation of time for Private Members' Bills, to scrutinise such bills ir

order to determine whether the proposed legislation is within the legislative competence of the House, and to recommend time-limits for the discussion of Private Members' Resolutions and other ancillary matters. Procedure is also laid down for the consideration of the Committee's reports by the House and the implementation of the allocation of time orders.

A new paragraph (3) was added to Rule 147 (which relates to the duties of the Committee on Public Accounts) conferring on the Committee the additional duty of scrutinising and making recommendations on all excesses incurred during a financial year.

Maharashtra (Amendments to Rules).—The following amendments were made during 1961 to the Rules of the Legislative Council and Legislative Assembly:

Legislative Assembly.—An amendment to Rule 20 removed the previous exemption of notices of oral questions from lapsing on a prorogation.

Both Houses.—By amendments to Rules 71 and 72 of the Council and 72 and 73 of the Assembly the period of notice of questions was increased from 37 to 45 days, and the previously existing discretion of the Chair to fix a date for the answering of questions of which notice had been given at a time when the date of the commencement of the next session had not been notified, was abolished (Notifications Nos. 2/Com./61 and 3/Com./61, dated 12th and 24th April).

Mysore (Legislative Council: Amendments to Rules of Procedure).—The following amendments were made during August, 1960, and May and September, 1961, to the Rules of Procedure of the Mysore Legislative Council. (Notifications Nos. 2981—L.C., dated 31st August, 1960; 463—L.C., dated 1st May, 1961, and 1811—L.C., dated 18th September, 1961.)

Correction to errors in Bill.—A new Rule 88A gives power to the Chairman to correct errors and make consequential amendments to a bill after it had been passed by the Council.

Bills passed by both Houses.—Power is given to the Secretary by a new Rule 108A, in cases of urgency, to submit a bill passed by both Houses to the Governor for assent in the absence of the Chairman from Bangalore.

Joint Committees.—An amendment to Rule 112 alters the proportions of the number of members of a Joint Committee from the Council and the Assembly respectively from 1:2 to 1:3. The Quorum of a Joint Committee is, by an amendment to Rule 115, reduced from one half of the members of each House on the Committee to one-quarter of the members of the whole Committee, and another to Rule 116 lays down that the procedure of a Joint Com-

mittee should be governed by that of the Assembly rather than by that of the Council.

Uttar Pradesh (Legislative Council; Amendments to Rules of Procedure).—The following amendments were made to the Rules of Procedure and Conduct of Business of the Legislative Council during 1961:

Language of the Council.—In Rule 38 the existing provision permitting any member to use English was deleted.

Committees of the Council.—An amendment to Rule 75 conferred the power of appointment of annual committees of the Council upon the Council itself instead of the Chairman, and in particular left the Council free to determine the number of members of the Committee of Assurances.

Ordinances.—Rule 141 was amended so as to provide for the moving of a resolution disapproving an ordinance already disapproved by the Assembly, and for the forwarding of such a resolution to the Governor and the Assembly.

Federation of Rhodesia and Nyasaland (Standing Orders).—During the 1961-62 Session, certain amendments which had been in operation for a trial period (see THE TABLE, Vol. XXVIII, p. 177) were adopted permanently, with certain modifications, viz.:

S.O. No. 32.—Makes Mondays and Thursdays the days for questions; makes provision for oral and written replies and limits the number of questions each member is permitted to ask for oral answer to four.

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. When any bill is so presented, a motion may be made immediately after first reading for the second reading thereof.

S.O. No. 181.—To the existing Sessional Committees has been added a Committee on delegated legislation, with the same terms of reference as the equivalent Committee in the House of Commons.

(*Contributed by the Clerk Assistant of the Federal Assembly.*)

Nyasaland (Amendments to Standing Orders).—A proviso to Section 37 (2) of the Nyasaland (Constitution) Order in Council, 1961 (S.I., 1961, No. 1189), gave power to the Governor to amend the existing Standing Orders of the Legislative Council at any time before the first sitting of the new Council so as to conform with the new constitution.

In exercise of these powers the Governor made amendments on 25th July for the following purposes:

(*a*) to take account of the fact that the Governor would no longer preside in the Council;
(*b*) to take account of the introduction of a ministerial system; and
(*c*) to take account of the new composition of the Council as it would affect the quorum of the Council and the composition and quorum of Standing Committees.

During 1961, with the able and experienced assistance of Mr. R. D. Barlas, O.B.E., then Fourth Clerk at the Table in the U.K. House of Commons, completely new Standing Orders for the Nyasaland Legislative Council were drafted. These were considered by the Standing Orders Committee of the new Council on 1st and 2nd November, laid on the table of the Council on 28th November, adopted by resolution of the Council on 7th March, 1962, and approved by the Governor on 24th March, 1962.

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

Nigeria (Northern Region: Amendments to Standing Orders).—The Standing Orders of both Houses of the Northern Regional Legislature were revised during the course of 1961, largely in order to conform with the provisions of the new Independence Constitution (S.I., 1960, No. 1652, 3rd Schedule), but also in order to incorporate various improvements. The revised orders were agreed to by the House of Chiefs and House of Assembly on 14th October and 4th October respectively.

In the description of the amendments which follows, the Standing Orders are referred to by their new numbers as they appear in the revised version.

Both Houses.—Provision is made by new Standing Orders 2 to 4 in each House for the election of the President, Speaker and their Deputies, setting forth also their duties in the Chair. Other provisions relating to the Chair are:

(*a*) Amendments to Standing Orders Nos. 16 and 17 of both Houses, which put the onus of deciding whether the answer to a question should not be given in the public interest on the Minister rather than the Speaker.

(*b*) An amendment to S.O. 39 of both Houses, which takes away from the Chair its original vote but gives it a casting vote in conformity with the new constitutional provisions.

(*c*) Amendments to S.O. 40 of both Houses, which give power to the Chair to order a fresh division in case of error.

(*d*) An amendment to S.O. 50 of each House, conferring the power to select amendments to bills.

Other amendments stemming directly from the Constitution are those which provide for the swearing of members immediately after the election of Speaker or President (S.O. 5, both Houses), for a Quorum of one-sixth of the total membership, and for the definition of the financial business which can only be initiated in the House of Assembly on the Recommendation of a Minister (Chiefs S.O. 72, Assem. S.O. 74).

House of Chiefs.—An alteration to Standing Order 8(1) provides that the House of Chiefs shall sit right through from their hour of meeting at 10 a.m. until their adjournment at 2 p.m., instead of suspending the sitting from 1 p.m. till 3 p.m. and thereafter continuing until 6 p.m., as formerly. A new Standing Order 70 considerably simplifies the procedure of the House in dealing with money bills, eliminating the committee stage.

House of Assembly.—An amendment to Standing Order 38(5) limits the period of suspension of a named member in the first instance to ten days only. A new Standing Order 66 makes detailed provision for the appointment of a Business Committee to decide upon the allocation of time to the Appropriation and Supplementary Appropriation Bills, to decide upon the order of taking Private Members Motions, and to advise the House on such matters relating to business as may be referred to it.

Kenya (Amendments to Standing Orders).—During 1961 a number of amendments were made to the Standing Orders. Perhaps the most important was the introduction of the Vote on Account System in connection with the Estimates, which system follows practically identically the procedure adopted in the House of Commons. One great advantage of the new method was that it did away with the fevered rush which took place after the Budget Speech as the Council attempted to fit in the prescribed number of "days" on the Financial Statement and Estimates before the new financial year commenced on 1st July.

Now the Estimates may be considered at leisure and need not be passed until October or November, thus giving everyone adequate time to consider them and at the same time allowing other business to be fitted in. To achieve this two new Orders were inserted, 104(a) and 112, which read as follows:

Standing Orders (5*A*)

104(*a*). The Annual Estimates shall be laid on the Table of the Council not later than the last day of May.

112(5*a*). Any Vote on Account shall be put down as the first business on the first of the allotted days, being a day before the 7th June; and if on the last allotted day before the 7th June the question with respect to any Vote on Account shall not have been put, then the Chairman shall, one half hour before the time for the interruption of business, forthwith put that question.

Other amendments effected early in the year regularised the position of the Deputy Speaker and altered the starting time of the Council on Tuesdays, Wednesdays and Thursdays from 2.15 p.m. to 2.30 p.m. and Private Members Day from Friday to Thursday (*Standing Orders 7 and* 8).

Extensive amendments to Standing Orders were made by Council on the 20th October, 1961. The amendments were tabled in Sessional Paper No. 8 and had been in embryo for some time. They all arose out of the operation of the existing Standing Orders and endeavoured to correct and improve those Orders for the greater convenience of Members.

Standing Order 10(2) relating to Adjournment Motions read as follows:

> Any Member who wishes to raise a matter under the provisions of this Standing Order shall give notice of the matter in writing to Mr. Speaker before the sitting at which he wishes to do so. Subject to the giving of such notice Mr. Speaker may allot the right to raise a matter to one Member on any sitting day by such method as he may think fit.

The words "before the sitting at which he wishes to do so" were deleted. Those words seemed to suggest that the Member who wishes to raise the matter had a right to dictate the sitting at which he wished to raise the matter—a procedure which was found to be impracticable as the whole purpose of the adjournment Motion is to seek information from Government, and unless Government can be forewarned so that it is in a position to reply to the question which has been raised, the point of an adjournment Motion might very well be completely lost. It was therefore proposed to delete those words.

The second sentence of the above quoted Standing Order was found to conflict with the words which it was proposed to delete because it was implied that the Speaker had the power to allot the right to raise the matter on a day which he proposed. The Standing Order was therefore further amended by adding after the words at the end "as he may think fit", the words "but shall not allot such right on more than two sitting days in any week". The purpose of this being to limit Adjournment Motions to two days in any one week.

Standing Order No. 23, which relates to questions previously read—"notice of questions shall be given in writing to the Clerk"—this was amended to read:

> 23 (1) Notice of questions shall be given by Members in writing to the Clerk and such notice shall state whether the Member desires an oral or written answer.
>
> (2) Every question shall be submitted by the Clerk to Mr. Speaker.
>
> (3) If Mr. Speaker is of opinion that any question of which a Member has given notice to the Clerk is one which infringes any of the provisions of these Standing Orders he may direct:

(*a*) that it be not asked save with such alterations as he may direct, or

(*b*) that the Member concerned be informed that the question is inadmissible.

(4) When Mr. Speaker directs that a question is in order the Clerk shall, as soon as possible, forward the question to the Minister of whom it is asked and the question for oral reply shall be placed on the Order Paper for reply not later than ten days after the day upon which it is so forwarded to the Minister or, if Council is adjourned before the expiry of such period of ten days, on the day on which Council next meets after such adjournment.

The latter amendment "(4)" as designed to overcome, as far as possible, a complaint which had all too frequently been made by hon. Members of the Opposition, that replies to questions are unnecessarily delayed. The effect of the amendment will be that every question will have to be placed on the Order Paper ten days after being submitted to the Minister concerned. If at that time the Minister is unable to reply he will have to get up in Council and say so and the question will then be put down again at the expiry of a further period of ten days.

The Standing Order further makes it clear that a Member may have his question answered either orally or in writing and that he should state which method of reply he requires.

Standing Order 24 stated that "a question shall not refer discourteously to any friendly country". This was found to be too narrow and hardly capable of working as questions very rarely referred to countries, they more frequently referred to persons and, consequently, that paragraph was amended by adding: "nor to any Ruler or the Government or to any Representative in Kenya of any friendly country."

Standing Order 27 relating to Notices of Motion was re-written as follows:

(i) Save as otherwise provided in these Standing Orders, Notice shall be given by a Member of any Motion which he proposes to move.

(ii) Before giving Notice of Motion the Member shall deliver to the Clerk a copy of the proposed Motion in writing and signed by himself and the Clerk shall submit the same to Mr. Speaker.

(iii) If Mr. Speaker is of the opinion that any proposed Motion is one which infringes, or the debate on which is likely to infringe, any of the provisions of these Standing Orders he may direct:

(*a*) that the Notice of it cannot be given save with such alteration as he may direct, or

(*b*) that the Member concerned be informed that the Motion is inadmissible.

(iv) A Member giving Notice of Motion shall state its terms to the Council.

Circumstances had occurred in the past when Notice of Motions, which were clearly out of order, had been given (Motions which the

Speaker could not possibly have allowed to be debated, but which brought the Member concerned publicity). The new Standing Order will prevent the giving of Notice of Motions which are inadmissible.

Standing Order 32, which lists the Motions which may be moved without notice, was amended by adding thereto

(*k*) a Motion for the Orders of the Council under these Standing Orders.

There are a number of places in the Standing Orders which allow of exception to a particular order using some such phrase as "save as otherwise ordered by the Council"; it has never been very clear how the orders of the Council were to be obtained, although, in practice, it could only be by a Motion. It was therefore proposed to add to Standing Order 32 a further exception to the Motions which do not require notice.

A further sub-paragraph was added to Standing Order 32 as follows:

(*l*) A Motion made under Standing Order 151 (Exemption of business from Standing Orders).

The Standing Orders state that such a Motion may be moved with or without the giving of Notice. It should therefore rightly be listed under Standing Order 32.

Standing Order 40, dealing with divisions, provides that Mr. Speaker shall direct a division to be taken in two circumstances: either when he considers there is a reasonable doubt of the outcome of the vote, or if five or more Members rise in their places and support the Member claiming a division. It had been found in practice that there were many divisions on purely procedural matters such as on a question that the question be now put. It was therefore proposed to amend the second limb of the existing Standing Orders by inserting the words: "on a question other than a question of procedure." It will therefore not be possible to enforce a division on a question of procedure.

Standing Order 58 sets out a list of persons whose conduct may not be referred to except upon a specific substantive Motion moved for that purpose. To that list was added the name of "the Speaker" and "the Ruler or the Government or the Representative in Kenya of any friendly country".

Standing Order 59, which provides that no Member shall refer to any matter which is *sub judice*, was amended by adding thereto the words "or to any matter which is in its nature secret".

Standing Order 64 deals with the closure of debate. The closure being achieved by a Member moving "that the Mover be now called upon to reply". There are, of course, certain Motions in which the Mover has not got a right of reply—namely, the Mover of an amend-

ment to a question. This Standing Order was, therefore, amended by providing in such cases that the Member should move "that the question be now put".

Standing Order 74 specifies the time during which a Member shall be suspended, and provides that it is three days on the first occasion, seven days on the second occasion and twenty-eight days on the third occasion. Some slight difficulty has been occasioned by determining what is a "day". To clarify the matter, a new definition has been added to the Standing Order as follows: "for the purpose of this Standing Order, a day means a day upon which the Council sits."

Standing Order 79 was re-written from a purely drafting point of view. This Standing Order deals with the introduction of Bills. Previously, it had a certain amount of duplicity: it has merely been re-written without in any way changing its effect.

Standing Order 80 provided that when a Bill seeks to amend a section of an existing Ordinance, the text of the relevant part of that section had to be printed in the Bill. At that time, when Kenya was revising her laws, this section led to very considerable extra expense and work of doubtful value. It was therefore agreed to re-write the Standing Order so that it should have added to it the words, "unless in the opinion of Mr. Speaker, the amendment is formal, minor or self-explanatory".

Standing Orders 93, 94 *and* 95, dealing with the process of a Bill when it is reported from a Committee of the Whole Council, have been re-written. As previously worded, the procedure was vague as it left open the possibility of following the extremely complicated procedure adopted in the House of Commons on the Report Stage of a Bill such as allowing amendments to be moved. This was felt to be unnecessary because this Council is able to re-commit a Bill if it is desired to have second thoughts after a Bill has been through the Committee Stage. The re-writing of these Standing Orders merely streamlined the procedure to bring it into line with what has actually been the practice in the past.

Standing Orders 105 *to* 117 have been re-written. These Standing Orders deal with money grants and taxation, and again no change of any substance was actually made. What was done was simply to put the whole matter in its right order—that is, putting the Committee of Ways and Means before the Committee of Supply, re-writing the amendment which was made at the beginning of the session regarding the Vote on Account and bringing the procedure on Report from the Committee of Ways and Means and Supply into line with the procedure for the Report on a Bill, subject to the differences between the two matters.

Standing Order 112 as it existed provided that ten days should be

allotted to the business of the annual estimates, provided that on a Motion made after notice such additional time, not exceeding five days, as may be proposed may be allotted. In the new Standing Order it has been accepted that 15 days are, in fact, necessary for the estimates and are always used, and therefore 15 days have been inserted in the Standing Order.

Two very small and entirely formal amendments were made to *Standing Orders 122 and 127* respectively. They substituted words which are used apparently inconsistently, to ensure consistency. Standing Order 122 begins with the words "save with the leave of the Council". Standing Order 127 refers to a question of a select committee "consisting of three members unless otherwise ordered". In both cases the words "unless the Council otherwise ordered" have been substituted—a phrase used elsewhere in Standing Orders.

Another small amendment was to substitute the word "nominated" for the word "appointed" in *Standing Order* 119(1).

Finally, the Council agreed that the Standing Orders in which there were now many changes, omissions and additions should be numbered consecutively throughout and reprinted in booklet form. This was done and the new Standing Orders came into force on 28th November, 1961.

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

Sarawak (Amendments to Standing Orders).—The following amendments were made on 5th December to the Standing Orders of the Council Negri (Amendment Circular No. 3 dated 6th December, 1961):

(1) Standing Order No. 59 was completely redrafted in such a way as to remove the necessity for the Governor's Recommendation to such bills, motions and petitions as had the effect of altering charges by reducing them; at the same time, it made clear the necessity for the Governor's Recommendation to any amendment which had a charging effect.

(2) A new paragraph 4 added to Standing Order No. 60 exempted the Appropriation Bill from the general provisions of the Standing Orders relating to procedure on bills.

(3) An amendment to Standing Order No. 63 (Procedure in Committee of Supply) set out in detail the form in which the question is put from the Chair on each head of the Estimates, and provided that the total sum incurred under all the heads shall form part of the question put upon the whole schedule to the Appropriation Bill.

Tanganyika (Revision of Standing Orders).—The Standing Orders were thoroughly revised early in 1961, on the basis of advice given by Mr. R. D. Barlas, O.B.E., Fourth Clerk at the Table in the House of Commons, who had visited Tanganyika in 1960 with a

delegation from the U.K. branch of the Commonwealth Parliamentary Association. The principal changes introduced were a daily Order Paper and daily Votes and Proceedings, the requirement that notice must be given before any business of substance is debated, including notice of amendments, permission to interrupt a Member speaking—if he agrees to give way—in order to correct a misapprehension or elicit an explanation, and provision for policy debates on the various votes of the Annual Estimates to be initiated in Assembly (not in Committee) by the Ministers responsible for them, thus relieving the Minister for Finance from going into Ministerial policy subjects in the Budget Speech and allowing him to concentrate on the financial and economic position of the country as a whole.

A large number of minor amendments were made at the same time, and the amended Standing Orders were reprinted. They were approved by the National Assembly on 16th May (*Hans.* c. 26-27) and assented to by the Governor on the same day (*ibid.*, c. 35).

One further amendment of the newly printed Standing Orders was approved by the National Assembly on 11th October (*ibid.*, c. 103) for the purpose of exempting Supplementary Appropriation Bills from prior publication in the "Gazette". In this connexion it must be mentioned that there is a misprint in Hansard, the figures of the relevant Standing Order having become transposed as "47" while they should read "74". The Governor's assent to this amendment was reported by the Speaker on 17th October (*ibid.*, c. 253).

The attainment of Independence in December made further amendments to Standing Orders necessary, but these had not been made by the end of the year.

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

Uganda (Amendments to Standing Orders).—On the 17th May, 1961, a number of amendments were made to the Standing Orders of the Uganda Legislative Council. One amendment (Order No. 40) laid down specifically that:

(i) No member shall, without the consent of the Speaker, bring into the Council anything other than papers, books or other documents directly connected with the business of the Council.
(ii) Clapping shall not be permitted in the Council.

Another amendment (Order No. 44) relating to voting by the presiding officer, provided that "the Governor, the Speaker, or any other person when presiding over the Council or in committee of the whole Council, shall not have a vote, but such other person when presiding over any committee, shall have an original, but not a casting, vote."

A third amendment (Order No. 77) removed the requirements whereby the Clerk had to keep a list of members attending a sitting; nor does the Clerk any longer have to record the name of members who abstain from voting in a division.

Yet another amendment resulted in the simplification of the formula by which amendments to motions are proposed from the Chair. As Lord Campion stated in his *Introduction to the Procedure of the House of Commons:* "The rules for putting the question on an amendment are peculiar, and more worthy of imitation in the spirit than in the letter . . . the form is the perennial stumbling-block to the inexperienced (who, if they wish to vote against the amendment, find that they have to vote 'Aye'). . . ." In Uganda the strict interpretation of the House of Commons formula had invariably created confusion and uncertainty and the amendment now introduced purposely omits any provision purporting strictly to prescribe a formula or method to be followed in proposal of a question from the Chair upon motions to amend. In practice, it has generally been found most convenient to propose questions such as "That the words . . . be added to the motion"; "That the words . . . be deleted from the motion"; or "That the words . . . be substituted for the words . . . occurring in the motion."

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

6. Financial Procedure

Jersey: (Financial Powers of Committees).— During 1961 two Acts were passed amending the procedure with regard to the financial powers of Committees.

The first (Act No. 4207), dated 7th February, provided that where the Finance, Housing and Natural Beauties Committees were of opinion that any land should be acquired by the public for purposes of development or housing, the contract of acquisition of such land might be passed by the Attorney General, the Solicitor General and the Greffier of the States, or any two of them, under the authority of an act of the Finance Committee without the consent of the States being necessary.

Secondly, by an Act (No. 4260) of 1st June it was provided that where the amount of a vote of credit granted to any Committee was insufficient to meet the proper debts and liabilities of that Committee, the Finance Committee would be empowered to transfer to that vote a sum sufficient to make good the deficiency from the unexpended or uncommitted balance of any other vote granted to the same Committee; but if the sum required exceeded £1,000, the prior approval of the States was necessary.

7. Electoral

New South Wales (Sale of liquor during elections).—The Parliamentary Elections and Liquor (Amendment) Act (No. 48 of 1961) Act, 1912, which provided:

contained a provision for the repeal of Section 57(1)(c) of the Liquor

57. (1) No holder of a publican's license or Australian wine license shall keep his licensed premises open for the sale of liquor, or shall sell or supply or deliver any liquor, or permit the same to be consumed, on the said premises—

(*a*) * * * *
(*b*) * * * *
(*c*) upon any day upon which any general election of members of the Senate or of the House of Representatives of the Parliament of the Commonwealth or of the Legislative Assembly of New South Wales is being held:

The repeal of this provision brought the practice in New South Wales into line with that of the other Australian States.

(*Contributed by the Clerk of the Parliaments.*)

Tasmania (Indemnity for Disqualification).—Section 33 of The Constitution Act, 1934, provides that a person who within the terms of that Section is interested in certain contracts or agreements for or on account of the Public Service is rendered incapable of being elected or sitting or voting as a member of either House of Parliament.

Section 32 makes similar provision regarding the holding of an office of profit.

Section 35 provides, first, that the election of any person declared by the Constitution Act to be disqualified or incapable of being elected or to sit or vote in either House shall be void and of no effect, and second, that if any person so elected or any member who becomes subject to any disqualification imposed by this Act shall presume to sit or vote in either House he shall for every such offence forfeit the sum of £500 to be recovered by any person suing for the sum in any Court of competent jurisdiction.

During the Session of 1961 it became apparent that two Members of the Legislative Council and four Members of the House of Assembly, because of certain contracts for advances made by them under the State Advances Act of 1935 in the case of the Legislative Council Members and one of the House of Assembly Members and the Homes Act, 1935, in the case of the other Members, had rendered themselves liable to disqualification.

The Bill to remove any disqualification which these Members had incurred was passed by both Houses and received the Royal Assent on 31st October, 1961, and is cited as the Constitution (Disqualification Removal) Act (No. 28 of 1961). During the Second Reading Debate in the House of Assembly the Attorney-General, who introduced the Bill, explained that in all cases the Members concerned had entered into these contracts quite innocently and that there was no reason to suggest that any of them had exerted any pressure to obtain these loans, in fact some of them had entered into the contracts before they became Members of Parliament. One important

condition attached to the removal of the disqualifications was that in each case the advance was repaid.

Section 8 of the Act provided that the Auditor-General was to certify to the President of the Legislative Council or the Speaker of the House of Assembly, as the case may be, that the advance had been repaid, although in two or three cases this meant some hardship. All the advances were repaid and the Auditor-General was able to certify accordingly (V. & P., 1961, pp. 166-7).

At a later stage of the Session the Leader of the Opposition introduced a Bill to provide that candidates for election to either House must declare that they are aware of the provisions of Sections 32 and 33 of the Constitution Act, which are the relevant Sections in respect of office of profit or contracting with the Crown. This Bill passed the House of Assembly but was held up in the Legislative Council so that it could be referred to a Joint Committee of both Houses, which has been appointed to inquire into and report upon the provisions of the Constitution Act and if considered necessary the Electoral Act, with power to draft such amendments as it might consider necessary or desirable. The Report of this Committee is awaited with considerable interest, as not only will it consider the question of office of profit and contracting with the Crown, but will consider many other aspects of the constitution, including the financial powers of both Houses.

There is general recognition that legislation similar to the House of Commons Disqualification Act, 1957, is needed in this Parliament. The changing state of society will always be the cause of members of Parliament running the risk of disqualification if the present provisions governing these matters are not brought into line with modern conditions.

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

Victoria (Elections and Qualifications).—It has always been the practice to hold elections for the Legislative Council at a different time to elections for the Legislative Assembly in order to avoid any of the hysteria sometimes associated with Assembly elections. The only exception to this rule occurred during the last war when on one occasion the Council and Assembly elections were held on the same day, but it was purely a wartime economy measure.

Periodical elections for the Council (*i.e.*, when half the Members retire by effluxion of time) are held every three years, but last year it so happened that the Assembly election became due at about the same time. The Government was desirous of holding both elections on the same day and brought down a Bill to authorise the holding of conjoint elections in the future. The Council opposed the principle and by amendment limited the operation of the Bill to a conjoint election to be held on or before 1st August, 1961, and it was held on 5th July, 1961.

The same Bill (Act No. 6764) abolished the Elections and Qualifications Committee of the Council. This Committee was appointed each Session pursuant to the provisions of our Constitution Act Amendment Act and dealt with all Council election disputes, irregularities, etc. The Bill provided instead that in future such matters would be determined by the Supreme Court under the jurisdiction of a single judge sitting as a Court of Disputed Returns as has been the practice of the Legislative Assembly since 1934.

(*Contributed by the Clerk of the Parliaments.*)

India (Electoral).—The principal changes made in the electoral system made by the Representation of the People (Amendment) Act, 1961, are mentioned below:

Under a new section, substituted for section 58 of the 1961 Act, the Election Commission has been vested with a greater discretion in ordering a fresh poll.

The function of notifying the names of all elected members in a consolidated form after the general elections will be performed by the Election Commission instead of by the President in the case of Lok Sabha, and by the Governor in the case of State Legislative Assemblies as at present (Admt. of section 73 of the 1961 Act).

A petitioner alleging any corrupt practice in any election petition will be required to file an affidavit in a prescribed form in support of his allegation (Amdt. of section 83 of the 1961 Act).

The amount which a petitioner is required to deposit along with an election petition has been increased from Rs. 1,000 to Rs. 2,000 (Amdt. of section 117 of the 1961 Act).

Promotion of feelings of enmity or hatred, in connection with elections, among different classes of people on grounds or religion, race, caste, community or language has been declared a new corrupt practice and a new electoral offence punishable with imprisonment for a term which may extend to three years, or with fine, or with both (Amdt. of section 123 of the 1961 Act).

Public meetings within any polling area have been prohibited within twenty-four hours before the date of commencement of the poll. (Amdt. of section 126 of the 1961 Act).

(*Contributed by the Secretary of the Lok Sabha.*)

Madras (Increase in number of constituencies).—By the Two Member Constituencies (Abolition) Act, 1961 (Central Act 1 of 1961) the thirty-eight double-member constituencies have been abolished in this State and an equal number of single-member constituencies have been reserved for Scheduled Castes and Scheduled Tribes as before. Consequently the number of territorial constituencies in Madras has increased to 206.

(*Contributed by the Secretary, Legislative Assembly Department.*)

Maharashtra (Delimitation of Constituencies).—Under the provisions of the Two-Member Constituencies (Abolition) Act (No. 1 of 1961) which was passed by the Parliament of India and which received the assent of the President on 9th March, all two-Member constituencies in the State were divided into single-Member constituencies. Under Section 7 of the said Act the Election Commission amended and revised the Delimitation of Parliamentary and Assembly Constituencies Order, 1956, by issuing the Delimitation of Parliamentary and Assembly Constituencies Order, 1961. Similarly, by the Delimitation of Council Constituencies (Maharashtra) Amendment Order, 1961, Local Authorities Council Constituencies were delimited. The delimitation of Parliamentary, Assembly or Council Constituencies mentioned above does not affect the number of seats allotted to Maharashtra State in either House of Parliament, nor does it affect the number of seats in either House of the State Legislature.

(*Contributed by the Secretary, Maharashtra Legislative Department.*)

Gibraltar (The Elections (Amendment) Ordinance, 1961).—Up to the time of the last elections, elections for the Legislative Council and the City Council took place in the same year, every three years. With the extension of the life of the Legislative Council from three to five years, the elections for the two bodies will not coincide in future. An Ordinance (No. 17 of 1961) was accordingly passed in November, 1961, to provide for a register of electors to be prepared in every year in which either a City Council or Legislative Council election is likely to be held instead of, as formerly, only in years when a City Council election was to be held.

The Ordinance also altered the date of publication of the register from 1st May to 1st August, so as to make the register up to date as possible before an election.

(*Contributed by the Clerk of Councils.*)

8. EMOLUMENTS

Saskatchewan (Members' Superannuation and Disqualification, and Salary of Leader of Opposition).—At the 1961 Session the Members of the Legislative Assembly Superannuation Act, 1954, was amended to delete a provision which would discontinue the pension payable to a former Saskatchewan M.L.A. in cases where he later becomes a Member of the Senate or House of Commons of Canada.

Another amendment would enable a Member to participate in the Saskatchewan plan even if he were entitled to receive an allowance for former service in the House of Commons. (*Statutes of Saskatchewan,* 1961, Chapter 72.)

Also in the Session of 1961 the Legislative Assembly Act was

amended to enable Members of the Legislative Assembly to participate in certain Government-sponsored programmes without being disqualified from sitting in the House. This does not represent any departure from principle in Saskatchewan; rather, it brings up to date a list of exceptions to disqualification which have long been accepted, and a Member may now, for example, purchase Saskatchewan Government bonds "on terms common to all persons", and enter into an insurance agreement with the Saskatchewan Crop Insurance Board without being disqualified from sitting in the House.

The Legislative Assembly Act was further amended to provide a statutory basis for payments made to the Leader of the Opposition. The position is now defined and statutory provision is made for the payment of an allowance to the Leader of the Opposition, and a grant to his office to cover such items as staff, equipment, and supplies. (*Statutes of Saskatchewan*, 1961, Chapter 52.)

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

Queensland (Accident Insurance).—As from the 1st July, 1961, the Members of the Queensland Legislative Assembly (other than Ministers of the Crown) are covered by Accident Insurance against bodily injury caused solely and directly by violent accidental external and visible means, including aircraft accident, and resulting solely and directly and independently of any other cause in:

1. Death	£3,000	Each Member
2. Permanent and total loss of sight of both eyes ...	£3,000	
3. Permanent and total loss of sight of one eye ...	£1,500	
4. Total loss by physical severance of the whole of both hands or the whole of both feet or the whole of one hand and the whole of one foot	£3,000	
5. Total loss by physical severance of the whole of one hand or the whole of one foot together with the total and irrecoverable loss of all sight in one eye	£3,000	
6. Total loss by physical severance of the whole of one hand or the whole of one foot	£1,500	
7. Total disablement—£20 per week so long as total disablement continues but not exceeding altogether 156 consecutive weeks for any single disablement—such payment to be effective from the date on which Parliamentary pay to the Member ceases.		

Compensation under Item No. 7 above shall not be payable in addition to any amount paid or payable under Items 1, 2, 4 and 5, but compensation shall be payable in addition to any amount paid or payable under Items 3 and 6, in accordance with Item No. 7 above.

An amount of £558 (Premium and Stamp Duty) shown in the Legislative Assembly Estimates for the financial year 1961-62 was voted by Parliament and paid to the State Government Insurance Office.

(*Contributed by the Clerk of the Parliament.*)

Queensland (Members' Superannuation).—The Parliamentary Contributory Superannuation Fund Acts Amendment Act, 1961, provided for three additional benefits for contributors and dependants of contributors to the Parliamentary Superannuation Fund as from 1st January, 1961.

1. The current pension scale of £12 10s., £15, and £17 10s. per week for 8½, 11½ and 14½ years' service, respectively, will, in each case, be increased by an amount of £2 10s. to £15, £17 10s. to £20 per week.
   Widows of such contributors who qualify for an annuity will receive two-thirds of the increased scale of pensions.
2. Contributions refunded to ex-members, members' widows or personal representatives will attract simple interest at the rate of 3 per cent. per annum. Previously the contributions were repayable free of interest.
3. A new provision authorises the payment of an annuity to dependent children in the case where a member, annuitant, or an ex-member whose widow would be entitled to receive an annuity on his death, dies and leaves dependent children but no widow. (Premier's Speech—*Hans.*, 22nd November, pp. 1769-1770.)

(*Contributed by the Clerk of the Parliament.*)

9. ACCOMMODATION AND AMENITIES

House of Commons (Parliamentary Papers: Supply to Members).—The announcement made on 17th July, 1956, by the Financial Secretary to the Treasury (see THE TABLE, Vol. XXV, pp. 141-2) relating to the availability of papers to which reference was likely to be made in debate was the subject of further comment in the concluding months of 1961. The matter arose during a debate which took place on 29th November on a motion to approve a new Licence and Agreement dated 6th November, 1961, between the Postmaster General and the British Broadcasting Corporation. In the course of a speech, references were made by a Member to a former Licence and Agreement dated 12 June, 1952, which the new Agreement was replacing. A complaint was thereupon made by another Member that no copy of the 1952 Agreement was available in the Vote Office and that he had been unable to obtain a copy of it in the Library; since, in his submission, it was not possible to follow the speech which was being made without reference to the earlier Agreement, he asked the Chair to accept a motion for the Adjournment of the Debate. This motion was not accepted, and the debate continued, during the course of which a further complaint was made by another Member to the effect that the new Licence and Agreement itself contained a reference to the B.B.C.'s Charter, which was also unobtainable. There was no solution to the difficulty in the suggestion made

by a third Member to the effect that the Postmaster General should be called upon to lay these papers before Parliament, since that had already been done on the date on which they had been promulgated. During this discussion, one of the Deputy Speakers had been in the Chair; and on the resumption of the Chair by Mr. Speaker the problem was stated to him afresh. Mr. Speaker then ruled extempore regarding the existing practice in the following terms:

> In practice, we—that is, the Chair and the Vote Office; the machinery of the House of Commons—carry in the ordinary way, I think, responsibility for having available documents which would be relevant for debate in the ordinary way arising from the last two Sessions. One cannot carry more than that in any practical manner. Documents which would be relevant in debate —a proposition which I shall endeavour to define in a moment off the cuff— otherwise depend on the responsible Ministry or Department, which has to make sure that they are available, roughly speaking.

After subsequent discussion, in order to avoid further embarrassment to the House and particularly to the Chair, the Leader of the House moved that the debate be now adjourned (650 *Com. Hans.*, cc. 585-86).

On 12th December, Mr. Speaker gave a considered ruling in the following terms:

> On 29th November, I twice spoke of the responsibility of the Ministry or Department for making documents " available ". It is the word " available " which is susceptible of misunderstanding. If hon. Members will look at the statement of the then Financial Secretary to the Treasury on 17th July, 1956, they will see that in the case of a document more than two years old, which is out of print, reprinting will be undertaken if the demand for copies is sufficient to justify the expenditure involved. The decision whether or not to reprint must be made by Ministers. If a reprint is made, then the document is available in the Stationery Office and can be obtained by a Member free of charge on application to the Vote Office, subject to the necessary physical delay and provided that the Stationery Office is open.
>
> To make documents available in the Stationery Office is, therefore, the only obligation which the Government have publicly undertaken, and in fairness to the Government I wish to make it plain that I now know that which I did not know on 29th November, not having been so informed, namely, that the Government had faithfully discharged that obligation in relation to the Licence which would be superseded by the Licence which the House was then invited to approve.
>
> In practice, some Departments have gone further and made available in the Vote Office such documents as they thought necessary for a particular debate. When I gave my Ruling on 29th November I was under the mistaken impression that all Government Departments did this, and, under that impression, used the expression " available " as meaning available in the Vote Office.
>
> Since then, however, the Leader of the House has been good enough to consult me and has agreed to the following suggestion: that a Minister in charge of an item of business will in future:
>
> (*a*) in the case of documents which may fairly be deemed to be needed for that debate and which are held by the Stationery Office, be responsible for having a reasonable number of copies put in the Vote Office; and

(*b*) in the case of similar documents which are out of print be responsible for deciding whether or no to reprint, and, if the document is reprinted, for having a reasonable number of copies put in the Vote Office.

I hope that this suggestion will prove greatly to the advantage of the House and I am most grateful to the Leader of the House for agreeing to it.

This arrangement is an advance on the 1956 position for the convenience of the House; it does not replace it. An individual Member, therefore, may apply to the Vote Office for any paper exactly as before.

I am sure, however, that an hon. Member, when told that a document is out of print, will, in the interests of economy, see if his needs can be met from the considerable resources of our own Library before pressing for a reprint. (651 *Com. Hans.*, cc. 221-3.)

Western Australia (Completion of the Houses of Parliament).—Reference has previously been made in THE TABLE to the uncompleted Parliamentary building in this State (Vol. XXV, p. 124 and Vol. XXVI, p. 177), and it is pleasing to be able to report that during 1961 and 1962 much progress has been made towards a finished structure.

At the end of March, 1958, earthworks were commenced for the completion of the Legislative Assembly portion of the building. Work on this section was very gradual and it was not until July, 1961, that it could be occupied. This, however, permitted temporary accommodation, which had been used for nearly sixty years, to be demolished, thus clearing the way for further work.

The next portion of the project is now nearing completion and this work, carried out by the Public Works Department, embraces services such as Dining Room and Bar, improved toilet facilities, air-conditioning plant, storage space and a cleaning up of many out-of-date features of the original portion of the building.

To complete the whole work the Government has now let a contract for a sum between £400,000 and £500,000. This involves completing the frontage facing the City of Perth, including main hall, stairs, lifts, and all associated services, together with the construction of the Legislative Council section of three floors. Air conditioning is to be used in the Dining Room and other selected points.

The foundation stone was laid on 31st July, 1902, and until now has not been included in the permanent building. This will be rectified as the work proceeds. The project is due to be completed by the end of 1963.

(*Contributed by the Clerk of the Parliaments.*)

XVI. SOME RULINGS BY THE CHAIR IN THE HOUSE OF COMMONS, 1960-61

The following index to some points of Parliamentary procedure, as well as Rulings by the Chair, given in the House of Commons during the Second Session of the Forty-second Parliament of the United Kingdom (9 & 10 Eliz. II) is taken from Volumes 629 to 646 of the Commons *Hansard,* 5th Series, covering the period from 1st November, 1960, to 24th October, 1961.

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.

Adjournment
—*of House*
—debate
—out of order if only Ministerial responsibility is for a legislative remedy [638] 1352-4
—rests on question of Ministerial responsibility [629] 609, [640] 1684-6
—going back to a previous proceeding dealt with by the House in Committee, not in order [636] 1708
—Members wishing to raise matters on, should adhere to the traditional formula [630] 359, 962, [633] 312, [641] 406, 879
—ministerial responsibility, Member must explain where lies [631] 714
—raising matters on without due notice to Ministers, deprecated [631] 712-3, [636] 1706
—*under S.O. No.* 9 (*Urgency*)
—*subjects accepted*
—Bahraini prisoners detained in St. Helena, refusal to grant political asylum to [632] 1085-9
—dispatch of 19th Brigade to Portugal, Government's refusal to countermand [642] 647-8
—*subjects refused (with reason for refusal)*
—arms to Portugal, supply of (not definite) [643] 207-9

Adjournment (*continued*)

—counter-espionage measures, need to strengthen (not within the S.O.) [640] 224-5
—deteriorating situation in Congo (no reason given) [635] 1763
—dispatch of 19th Brigade to Portugal, Government's refusal to countermand (not at that time definite) [642] 425-30
—European Common Market, need for a conference of Commonwealth Prime Ministers in respect of (no reason given) [642] 217-20
—failure to maintain convention of non-interference in internal affairs of other Commonwealth member states (no reason given) [636] 1772
—Ford Motor Company at Dagenham, refusal of debate on prospective sale of, and danger of such sale taking place without House having had opportunity to discuss (no application for consent yet received by Minister; refusal of debate not within S.O.; Ministerial responsibility not at present apparent) [630] 214, 217, 773
—H.M.S. "Victorious", forthcoming visit to South Africa (not within the S.O.) [633] 608-14
—invasion of Cuba, neglect to take steps to secure end to (not sufficient information available) [638] 974-5
—Mandate of South-West Africa, refusal to undertake to raise question at Commonwealth Prime Minister's Conference (no reason given) [636] 478-9
—military aid to Israel by France (not within the S.O.) [632] 891-3
—Northern Rhodesia constitutional conference, breakdown of (no reason given) [635] 333-5
—quoted document, Ministerial refusal to table (not within the S.O.) [643] 1675
—sale of securities held by Iron and Steel Holding and Realisation Agency, refusal to postpone (no reason given) [635] 1388-9
—threat to peace in Laos (not within the S.O.) [637] 959
—United Nations Committee on S.W. Africa (decision by Government to suspend facilities in Bechuanaland flowed from a previously attached condition, and not therefore within the S.O.) [644] 42
—visit of H.M.S. "Leopard" to Angola (opportunity for debate would shortly occur) [640] 925-40

Amendments

—*intentions of Members in putting down, not for Chair to decide, but for Chair to decide whether an Amendment is in order or not [641] 62

Bills, public

—*Motions for leave to introduce*
—interruptions not allowed [635] 1391, [637] 1202, [644] 1257
—second reading speeches not in order when moving [644] 1261
—*Second Reading*
—during time for unopposed business, after objection taken, cannot be moved [640] 884
—*Committee*
—enacting formula of consolidated fund bills different from that of other bills, cannot be revised by Committee, and no question is put thereon [635] 805-6
—*Third Reading*
—Member entitled to say that he is dissatisfied, but not to say what will satisfy him [635] 1624
—*Lords Amendments*
—amendments to, cannot be proposed after question for agreeing to Lords Amendment has been put from the Chair [645] 838

XVII. EXPRESSIONS IN PARLIAMENT, 1961

The following is a list of examples occurring in 1961 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

"are you speaking of the Lager Lovers' Club?" (1961 *W. Aust. L.C. Hans.*, 2036.)
"ashamed". (1961 *N.Z. Hans.*, 42.)
"attempted to misrepresent". (1960-61 *Can. Com. Hans.*, 1555.)
"blackmail". (636 *Com. Hans.*, 671.)
"blowing its bags or blowing its trumpets" (of the Government). (1961 *W. Aust. L.C. Hans.*, 160.)
"by God". (1961 *N.Z. Hans.*, 895.)
"despicably". (1961 *N.Z. Hans.*, 450.)
"eyewash". (1961 *W. Aust. L.C. Hans.*, 119.)
"flying a kite". (1961 *W. Aust. L.C. Hans.*, 1861.)
"forced". (1961 *N.Z. Hans.*, 1289-90.)
"I would not lie". (1961 *N.Z. Hans.*, 861.)
"irresponsible" (applied to a stranger). (224 *U.P. Assem. Deb.*, 711.)
"lie" (not applied to a Member's statement). (224 *U.P. Assem. Deb.*, 712.)
"obstruction". (635 *Com. Hans.*, 792.)
"pass prickly remarks". (226 *U.P. Assem. Deb.*, 367.)
"Queen Street farmer". (1961 *N.Z. Hans.*, 2341.)
"quibble". (1961 *W. Aust. L.C. Hans.*, 973.)
"skite". (1961 *W. Aust. L.C. Hans.*, 1753.)
"snigger". (1961 *S. Rhod. Assem. Hans.*, 437.)
"statement is false". (1960-61 *Can. Com. Hans.*, 4523.)
"stinks". (1961 *W. Aust. L.C. Hans.*, 2595.)
"trash". (1961 *W. Aust. L.C. Hans.*, 1543.)

Disallowed

"an Hon. Senator may not reflect in any way on the Vice-Regal representation". (1961 *Aust. Sen. Hans.*, 122.)
"ashamed of themselves". (1961 *N.Z. Hans.*, 1323.)
"associates with Communists". (1961 *N.S.W. Hans.*, c. 1064.)
"band together and blackmail the Government" (of advice which a Member was alleged to have given to other Members). (1961 *N.S.W. Hans.*, c. 535.)
"before he was honest". (1961 *N.Z. Hans.*, 128.)
"Bengal cobra". (5 *W. Indies H. Reps. Hans.*, c. 519.)
"bluffing us, cheating us". (1961 *Tanganyika Hans.*, c. 332—18th October.)
"booze and betting boys". (1961 *Queensland Hans.*, 886.)
"boozing". (640 *Com. Hans.*, 1286.)
"cheat" (with reference to a political leader). (*India L.S. Deb.*, 29th August, 1961.)
"clowns". (1961 *Queensland Hans.*, 358.)
"communist". (1961 *Aust. Sen. Hans.*, 181.)
"conventions are not being respected in the House". (218 *U.P. Assem. Deb.*, 666.)
"criminal proposals". (4 *W.Indies H. Reps. Hans.*, 702.)
"darn sight". (1961 *S. Rhod. Assem. Hans.*, 823.)
"defeated rabble" (referring to Opposition). (1961 *S. Rhod. Assem. Hans.*, 693.)
"deliberately misquoting". (1961 *N.Z. Hans.*, 451.)
"deliberate misrepresentation". (1961 *N.Z. Hans.*, 586, 588.)
"deliberately false". (1960-61 *Can. Com. Hans.*, 7282-3.)
"dirty or dishonest" (of a motion). (4 *W. Indies H. Reps. Hans.*, 598.)
"disgraceful" (with reference to Government). (*India L.S. Deb.*, 14th August, 1961.)
"disgusting". (1961 *Uganda Hans.*, 1342.)
"dishonest". (650 *Com. Hans.*, 37-8.)
"dishonourable". (641 *Com. Hans.*, 46-7.)
"does not behove" (applied to action of Speaker). (222 *U.P. Assem. Deb.*, 866.)
"don't you feel ashamed?" (addressed to a Minister). (226 *U.P. Assem. Deb.*, 32.)
"egotistical gas". (1961 *N.Z. Hans.*, 1585.)
"eyewash". (1961 *S. Rhod. Assem. Hans.*, 1442.)
"fascist". (1961 *Aust. Sen. Hans.*, 181.)
"filtered foolishness". (42 *Madras Assem. Deb.*, 251.)
"fluke". (1961 *S. Rhod. Assem. Hans.*, 369.)
"fool". (1961 *N.Z. Hans.*, 2933.)
"fraud perpetrated on this country". (1960-61 *Can. Com. Hans.*, 878).

"getting round the ruling". (635 *Com. Hans.*, 251.)
"go back to the gutter". (651 *Com. Hans.*, 1128.)
"guts". (1961 *S. Rhod. Assem. Hans.*, 164.)
"hero". (4 *Mahavashtra Deb.*, Pt. II, 22nd August, 1961).
"hypocritical". (1960-61 *Can. Com. Hans.*, 2284-6.)
"I pity the understanding of the hon. Member". (4 *Mahavashtra Deb.*, Pt. II, 21st July, 1961.)
"incompetent leaders". (226 *U.P. Assem. Deb.*, 163.)
"indulging in favouritism, nepotism and slavery of the capitalists". (220 *U.P. Assem. Deb.*, 148.)
"insincere". (1961 *N.Z. Hans.*, 1899.)
". . . it has more curves than Marilyn Monroe . . ." (referring to a road). (1961 *S. Rhod. Assem. Hans.*, 834.)
"Kadala" (Bantu expression meaning "long time ago"). (1961 *S. Rhod. Assem. Hans.*, 941.)
"kafuffle". (1961 *S. Rhod. Assem. Hans.*, 104.)
"knew some of the statements he made were incorrect". (1961 *N.Z. Hans.*, 3962.)
"lack of courage". (1961 *N.Z. Hans.*, 925.)
"lack of intestinal fortitude". (1961 *N.Z. Hans.*, 925.)
"liar", "lie", "lies", "lying". (651 *Com. Hans.*, 1391; 1960-61 *Can. Com. Hans.*, 22145, 7051; 1961 *Aust. Sen. Hans.*, 1258; 1961 *N.S.W. Hans.*, 630; 1961 *Queensland Hans.*, 807, 873, 1431, 1607; 1961 *N.Z. Hans.*, 181, 3035; *Orissa Assem. Deb.*, Vol. I, No. 2, Part II, 35—22nd August; 218 *U.P. Assem. Deb.*, 772; 1961 *Uganda Hans.*, 1354.)
"lift the commode for somebody" (in the sense of flattery). (220 *U.P. Assem. Deb.*, 247.)
"lousy". (636 *Com. Hans.*, 1373-4.)
"maintaining astonishingly high standard of imbecility". (1961 *S. Aust. Hans.*, 252.)
"*mala fide*". (225 *U.P. Assem. Deb.*, 751.)
"Members who have carried the camouflage so well up to now". (1961 *W. Aust. L.C. Hans.*, 2062.)
". . . Minister has a duty . . . to make a truthful statement . . .". (1961 *S. Rhod. Assem. Hans.*, 255.)
"misled this House deliberately". (1960-61 *Can. Com. Hans.*, 6889-90.)
"must go to hell" (of the Commonwealth). (1961 *Tanganyika Hans.*, 333—18th October.)
"nirlaja" (Oriya for "shameless"). (*Orissa Assem. Deb.*, Vol. I, No. 8, Part II, 39—30th August.)
"no confidence in the Chair". (635 *Com. Hans.*, 172.)
"nonentities". (87 *Kenya Hans.*, Pt. I, 671.)
"nonsense". (87 *Kenya Hans.*, Pt. II, 2032.)
"not an honest Government". (1961 *N.Z. Hans.*, 2299.)
"not correct and you know it". (1961 *N.Z. Hans.*, 3504.)

"not true". (1961 *N.Z. Hans.*, 2342, 3206.)
"nothing could be further from the truth; the Minister knows it". (1961 *N.Z. Hans.*, 1069.)
"obstructionists". (1960-61 *Can. Com. Hans.*, 4459-60.)
"paid propagandist". (636 *Com. Hans.*, 260.)
"parrot". (1961 *N.Z. Hans.*, 1576.)
"pinching" (stealing). (1961 *S. Rhod. Assem. Hans.*, 1180.)
"pinhead". (1961 *Queensland Hans.*, 249.)
"political blackmailers". (4 *W. Indies H. Reps. Hans.*, c. 612.)
"politically dishonest". (1961 *N.Z. Hans.*, 752.)
"possesses the skill of a lady who is adept in setting right a disorderly house". (222 *U.P. Assem. Deb.*, 451.)
"probably fabricated". (1960-61 *Can. Com. Hans.*, 1542.)
"prostitution of this Parliament". (1961 *N.S.W. Hans.*, 126.)
"purring cataclysmic cat". (1961 *S. Rhod. Assem. Hans.*, 190.)
"quasi-apartheid". (87 *Kenya Hans.*, Pt. II, 1432.)
"rabble". (1961 *Queensland Hans.*, 865, 1481.)
"rank idiot". (42 *Madras Assem. Deb.*, 142.)
"rascal". (218 *U.P. Assem. Deb.*, 693-4.)
"ratbag". (1961 *Queensland Hans.*, 249, 1643.)
"rats". (1961 *N.Z. Hans.*, 3531.)
"red-faced Members". (1961 *N.Z. Hans.*, 752.)
"rogue". (1961 *Queensland Hans.*, 775.)
"scallywag". (87 *Kenya Hans.*, Pt. II, 2067.)
"shamelessly conceal one's foul actions". (218 *U.P. Assem. Deb.*, 856.)
"sit down". (4 *Mahavashtra Deb.*, Pt. II, 27th July, 1961.)
"slippery". (639 *Com. Hans.*, 1599.)
"sneered". (1961 *N.Z. Hans.*, 1031.)
"so-called honourable Members". (87 *Kenya Hans.*, Pt. II, 1815.)
"sounds like a cracked gramophone record". (1961 *S. Rhod. Assem. Hans.*, 94.)
"squib". (1961 *Queensland Hans.*, 429.)
"stooge". (87 *Kenya Hans.*, Pt. II, 2301.)
"stump up" (pay up). (1961 *S. Rhod. Assem. Hans.*, 376.)
"sultan" (applied ironically to a party leader). (218 *U.P. Assem. Deb.*, 369.)
"talking through his hat". (1961 *S. Rhod. Assem. Hans.*, 380.)
"tell the truth for a change". (1961 *N.Z. Hans.*, 2932.)
"these fellows" (referring to Members). (87 *Kenya Hans.*, Pt. I, 1010.)
"to buck" (oppose). (1961 *S. Rhod. Assem. Hans.*, 169.)
"totally false and he knows it". (1960-61 *Can. Com. Hans.*, 5100.)
"treacherous". (1961 *N.Z. Hans.*, 3864.)
"tummies". (1961 *S. Rhod. Assem. Hans.*, 90.)

"tummy". (1961 *S. Rhod. Assem. Hans.*, 403.)
"twist", "twisting". (1961 *N.Z. Hans.*, 670, 1297-8, 1927, 2165.)
"uncivilised". (649 *Com. Hans.*, 736.)
"underhanded or scurrilous remark". (1960-61 *Can. Com. Hans.*, 1929-32.)
"untrue". (635 *Com. Hans.*, 986-7; 636 *ibid.*, 1651.)
"untrue statement and the Minister knows it". (1960-61 *Can. Com. Hans.*, 7883.)
"villain". (4 *Mahavashtra Deb.*, Pt. II, 22nd August, 1961.)
"vomit things from his mouth". (1961 *Uganda Hans.*, 1255.)
"when he has his mouth shut, is quite handsome that way". (1961 *S. Rhod. Assem. Hans.*, 438.)
"white-livered". (651 *Com. Hans.*, 1395.)
"why don't you do it like a man and not like a worm?" (1961 *Queensland Hans.*, 524.)
"why the Hell?" (635 *Com. Hans.*, 964.)
"wide of the truth". (1961 *N.Z. Hans.*, 3179.)
"you are too red". (1961 *N.S.W. Hans.*, 1016.)
"you robbers". (1961 *N.Z. Hans.*, 2615.)
"you should have been locked up". (1961 *S. Rhod. Assem. Hans.*, 1209.)
"you shut up". (1961 *N.Z. Hans.*, 3152.)

Borderline

"anti-national activities" (not used of Member). (37 *Madras Assem. Deb.*, 141-2.)
"blacklegs" (not used of Member). (37 *Madras Assem. Deb.*, 141-2.)
"challenge" (by one Member to another). (46 *Madras Assem. Deb.*, 308.)
"false propaganda" (applied to a party). (48 *Madras Assem. Deb.*, 179.)
"irresponsible". (48 *Madras Assem. Deb.*, 287.)
"low type of men and some having rowdyism have infiltrated into the Congress". (40 *Madras Assem. Deb.*, 613.)
"Mr. Box and Mr. Cox" (not out of order if reference not made in a derogatory manner). (87 *Kenya Hans.*, Pt. I, 911.)
"standard of debate has gone down". (42 *Madras Assem. Deb.*, 342.)
"very bad thieving business" (with reference to pawnbroking). (45 *Madras Assem. Deb.*, 63.)
"wrong judgments" (of judges presiding over Labour Courts). (41 *Madras Assem. Deb.*, 521.)

XVIII. REVIEWS

Questions in Parliament. By D. N. Chester and Nona Bowring. O.U.P. 35s.

It occasionally falls to your reviewer to procure, for a friend or friend's friend, a ticket to the gallery of the House of Commons; when such a ticket is handed over, the appropriate expression of thanks is nearly always followed by the query: "Will this get me in for Question Time?" Hardly any other single aspect of the work of the House arouses such curiosity, which is reflected in the press and periodicals besides; it is for this reason all the more extraordinary that up till now there has been no standard work on the subject. Despite its comprehensive title, Patrick Howarth's *Questions in the House*, published in 1956, went little beyond a description of the topics raised during the century and a half that followed the first question asked (in the Lords) in 1721, and did not attempt to lay bare the rationale of questions; the present work, however, fully lives up to the note on the dust-cover, which describes it as the "first full-length history and contemporary study" of this important institution.

After a dramatic introduction describing in detail the salient points of Question Time in the Commons on 28th April, 1960 (a day selected at random as an example), the earlier chapters deal with the almost accidental origins of the Question procedure, the increasing amount of the time of the House taken up by it, and the radical reforms in 1902, which confined the answering of questions to a particular period in the Parliamentary day. All this is a matter of record, albeit interpreted with clarity and insight; but in the later chapters Mr. Chester and Mrs. Bowring have collated much statistical and procedural information which has not before been publicly accessible. The annual statistics which are kept in the Department of the Clerk of the House have not been published since 1905; conversely, although the existence well before 1924 of a rota of Ministers answering questions is deducible from the order in which the questions were set out on the Order Paper, no official list exists earlier than the typewritten one, dated 14th November, 1924, which the authors' researches uncovered. From all the evidence so painstakingly collected, the conclusions emerge that although more questions are tabled now than in the early years of the century, the increase is not nearly so great as might be expected in proportion to the

enormous expansion of the scope and complexity of Government operations. This can be ascribed in large measure to the fact that the actual amount of the time allotted to questions has remained unchanged since 1906; but attention is also particularly drawn to other factors such as the increased use of direct correspondence between Members and Goverment Departments, and the fuller advantage taken of procedures such as debates on the adjournment.

The official publications of the House give little guidance to a Member concerning the rules of order governing questions; and a neophyte who, in drafting a question, decided to base himself wholly and exclusively on the rules set out on pp. 357-61 of Erskine May (16th Edition), would soon find unimagined obstacles in his path when it came to their interpretation. This point has been well taken by the authors. For example, the bald precept on p. 359 of May to the effect that a question is out of order if "dealing with the action of a Minister for which he is not responsible to Parliament", while entirely accurate, is almost maddeningly unhelpful; it is brilliantly expanded and expounded in Appendix II of this book ("Ministerial responsibility and answerability"), a detailed scrutiny of which would save Members an enormous amount of trouble in their dealings with the Table Office.

In describing a subject which is so overlaid with case-law, and which has given rise to such complicated administrative provisions, it would be strange if one or two errors did not creep under the net. One is surprised to find, on two successive pages, the statements that a questioner has "more inducement now than ever before to omit the asterisk" which marks his question for oral answer, and that there is "little or no inducement for him" to do so (pp. 112-13). Questions put down to Ministers on a day on which they do not answer are not, as stated on p. 151, set down on the Paper strictly in the order in which they have been handed in; nor does the Prime Minister now, even in theory, answer Questions each day (p. 162). But these are minor blemishes indeed upon a work which has not only broken new ground, but has also built upon it an edifice of the soundest construction, and which is unlikely to need any extension or replacement until the House decides upon one of those major alterations to Question procedure which, as the authors have convincingly demonstrated, it has always had the utmost reluctance to make.

The Elimination of Corrupt Practices in British Elections, 1868-1911. By Cornelius O'Leary. Oxford at Clarendon Press, 1962. 35s.

Professor Gash has shown that many features of the unreformed parliamentary system in Britain could still be observed after the passing of the Act of 1832. Amongst these features were electoral malpractices which actually became more prevalent since the impetus given to the party organisation by the Act inevitably tended to in-

crease the number of electoral contests. The fact that the enlarged electorate that participated in these contests was, in many instances, uneducated and without any kind of scruple in election matters meant that a whole range of the activities which had previously had rather a limited scope were able to flourish in a much wider field. Neither party favoured the continuance of these activities but, equally, neither could afford to dispense with them. However, the House of Commons as a whole became increasingly concerned with the evidence which was accumulating in this connection.

Mr. O'Leary's book is concerned with the measures taken to eliminate these corrupt activities. His first chapter gives an account of the rather ineffectual attempts in this direction up to 1868. His detailed treatment begins with the proceedings that led to the passing of the Parliamentary Elections Act of 1868, which was largely occasioned by revelations of corruption at the General Election of 1866. The most important provision of this Act was to transfer the jurisdiction over controverted elections from the House of Commons to the courts. After the ensuing General Election, it was shown that this new tribunal was superior to the House Committee in its ability to unearth the facts. However, it was impossible to undertake an investigation unless a petition had been presented, and many constituencies that were subsequently shown to be corrupt escaped scrutiny.

Many had high hopes that the Ballot Act of 1872 would prove a panacea for all election ills. However, the Reform Act of 1867, while increasing the electorate by 88 per cent., had done nothing to reduce the basic residuum of venal electors without political education or interests to whom a vote was simply a marketable commodity. The fact that, with the ballot, the effectiveness of bribery could no longer be guaranteed did not prevent its continuance.

The extent of the failure of the Ballot Act and other measures to rectify the prevailing evils was measured at the General Election of 1880, to which the author devotes the longest section of his book. The proceedings in the courts and the Reports of the Royal Commissions appointed to consider allegations of corrupt practices showed in a startling way that in at least eight boroughs bribery and treating still persisted and that the law relating to election expenses could be virtually disregarded. The outcome also revealed the fact that, even on the basis of the official returns of expenses, the election had been excessively costly. These revelations so impressed the House of Commons that in just over three years the Corrupt and Illegal Practices Act was passed. Given current social and moral attitudes, this was an astonishingly draconian measure. By greatly increasing the penalties for corrupt and illegal practices, instituting a far stricter system of accounting and setting up expenses maxima it aimed to eradicate what previous less drastic measures had failed effectively to curb. Offences which previously had been widely committed with

impunity, and were in most cases only theoretically regarded as immoral, were now to be visited with the most serious consequences. Doubts were expressed as to whether the Act would be workable, but in the event it proved significantly successful in reducing election costs and, if the incidence and content of petitions after 1883 is a reliable guide, electoral malpractices were only trivial after this date. As the author points out, the activities of the national party organisations, in familiarising their candidates with the provisions of the Act, had an important influence in this direction.

Almost all Mr. O'Leary's evidence is derived from the reports of election petition trials and Royal Commissions. These, of course, only provide information about those constituencies where petitions were presented. Consequently, as he admits, it is difficult to assess the real extent of corrupt practices during this period, particularly in county constituencies. In order to do this, one would need much fuller information about individual constituencies than is available at present. However, the author's main concern is with the legislative attempts to eliminate corrupt practices and to this end he reconstructs with admirable clarity the progress of the various measures. He shows in a most interesting way the extent to which campaigns for greater purity in parliamentary elections were undertaken on the initiative of Members themselves without external prompting and also the way in which the two parties co-operated wholeheartedly in almost all cases to bring reforming measures to the Statute Book. The book's value is supplemented by the impressive knowledge of the contemporary press displayed by the author. It is written with great care and particular attention is paid to providing accurate references. Two small errors have slipped in. On page 134 the Liberal Chief Whip is called "Lord Robert Grosvenor". He was in fact Lord Richard Grosvenor, and is correctly described on page 139. On page 163 a confusion appears to exist between Private and Private Members' Bills.

(*Contributed by Mr. J. Sainty, a Clerk in the House of Lords.*)

The Substance of Politics. By A. Appadorai, M.A., PH.D. Ninth Edition. O.U.P., 1961. 15s.

Now in its ninth edition, Mr. Appadorai's guide to the theory and practice of politics continues to occupy a useful place on the list of required reading for students of politics up to B.A. level.

The book is wider and more ambitious in scope than such standard works as Sabine's *History of Political Theory*, for Mr. Appadorai not only examines the history of political thought and institutions, but also attempts to establish the connection between the past and the practical politics of the twentieth century. If this relationship is not always clearly demonstrated, the fault is not the author's. He does, however, succeed in providing a link when he states the paradox of Man as both a gregarious and a solitary animal. Mr. Appadorai

never attempts to avoid the difficulty, which has occupied so much political thought, of Man's wish to be free and his need to be governed.

The book falls into two main parts: the first dealing with the history of political theory and of various forms of government, and the second with government in the present century. Both parts might have profited had they been less strictly separated, and in the second part a greater number of references and illustrations from the past, at present restricted to the earlier chapters, would have been particularly valuable.

The first part of the book is divided into two sections: the first devoted to an examination of the history of political theory, and the second to a brief account of the history of government from the Greek City State to the post-war period. Mr. Appadorai's analysis is clear, concise and accurate. We are told briefly what Politics are about, and are shown various theories of the origin of the State and told about its purpose. Mr. Appadorai is not afraid to attempt to sum up Law, Liberty and Equality in seven or so pages each, and he does it well. But he does not altogether avoid the pitfalls that attend attemps to compress complex ideas within so short a space. While all that he says is factually accurate, there is a danger that such brevity may occasionally give rise to misleading impressions. But on the whole Mr. Appadorai has, in the first half of his book, managed to give a lucid idea of some of the fundamental ideas behind such widely used words as "The State" or "Politics".

The second part of the book is much more satisfactory. Here the author analyses in some detail the present constitutions of a number of countries and gives some account of their constitutional history. In a section entitled "Totalitarian States", he describes Nazi Germany and Fascist Italy and, as a modern instance, the U.S.S.R. The longest sections are those describing the constitutions of Great Britain, India and Pakistan, but in others Mr. Appadorai has much to say about France, America, Switzerland and the Dominions. In this last section the few pages devoted to the Union of South Africa have become out-dated by recent events and will have to be revised for the next edition.

Mr. Appadorai is at his strongest in these chapters, and in all of them he succeeds in registering with force and clarity his passionate conviction that the State is the servant of its People rather than the People the servants of the State.

The book concludes with a section which returns to some extent to theory, covering the merits and defects of certain types of state and constitutional organisation, and from there Mr. Appadorai goes on to consider in general terms such themes as the Separation of Powers, the Electorate and the Legislature, Executive and Judiciary in their various forms in different countries. Once again the author warns that words like Liberty must not be used without understanding of

their meaning, and that the various rights and liberties that he has shown to exist in differing constitutions can only be preserved with the assistance and understanding of the people for whom they were designed.

Unfortunately, apart from his few pages on the Union of South Africa, Mr. Appadorai has nothing to say about the new States and Nations emerging in Africa; an examination of some of the new African States would fit well into the pattern of the book, and it is to be hoped that Mr. Appadorai will find a place for them in his tenth edition.

(*Contributed by Mr. D. Dewar, a Clerk in the House of Lords.*)

XIX. THE LIBRARY OF THE CLERK OF THE HOUSE

The following volumes, recently published, may be of use to Members:

The British Constitution. By *Sir Ivor Jennings*. Fourth Edition, Cambridge. 21s.

A Short History of the Labour Party. By *H. Pelling*. Macmillan. 21s.

The Constitution and Government of Ghana. By *L. Rubin* and *P. Murray*. Sweet and Maxwell. 50s.

The Bored Electors. By *C. Martin*. Darton, Longman and Todd. 21s.

Nigeria—the Prospects for Democracy. By *Chief H. O. Davies*. Weidenfeld and Nicolson. 18s.

Parliament at Work: A Case-book of Parliamentary Procedure. By *A. H. Hanson* and *H. V. Wiseman*. Stevens. 35s.

A Breviate of Parliamentary Papers, 1940-54: War and Reconstruction. By *P. and G. Ford*. Blackwell, Oxford. £4 15s.

The Growth of Public Expenditure in the United Kingdom. By *A. T. Peacock* and *Jack Wiseman*. Oxford. 30s.

The Political Kingdom in Uganda: A Study in Bureaucratic Nationalism. By *D. E. Apter*. Princeton and Oxford. 60s.

An Introduction to the History of East Africa. By *Z. Marsh* and *G. W. Kingsnorth*. Cambridge. 17s. 6d.

The Kenyatta Election: Kenya, 1960-61. By *G. Bennett* and *Carl Rosberg*. Oxford. 30s.

The American Tory. By *W. H. Nelson*. Oxford. 30s.

Party Politics. Volume III: the Stuff of Politics. By *Sir Ivor Jennings*. Cambridge. 45s.

Parliament through Seven Centuries: Reading and its M.P.s. By *A. Aspinall* and others. Cassell, for the Hansard Society. 25s.

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7. One copy of every publication of the JOURNAL shall be issued free to each Member. The cost of any additional copies supplied to him or any other person shall be 35s. a copy, post free.

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*Shri D. K. V. Raghava Varma, B.A., B.L. (Madras).
Colonel G. E. Wells, C.B.E., E.D. (Rhodesia and Nyasaland).
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A. A. Tregear, Esq., C.B.E., B.Comm., A.A.S.A. (Australia, Commonwealth Parliament).
Alhaji Umaru Gwandu, M.B.E. (Nigeria, North) (*Speaker of the Northern Regional House of Assembly, Nigeria*).
T. Williams, Esq., O.B.E., E.D. (Northern Rhodesia) (*Speaker of the Northern Rhodesia Legislative Council*).

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XXI. MEMBERS' RECORDS OF SERVICE

Note.—*b.* = born; *ed.* = educated; *m.* = married; *s.* = son(s); *d.* = daughter(s).

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat individual records on promotion.

Campbell, John Harold, Dip. Pub. Admin.—Serjeant-at-Arms of the Legislative Assembly of Victoria; *b.* 1925; *ed.* Melbourne High School and Melbourne University; *m.* 1950; 3 *s.*; joined Victorian Public Service, 1942; Clerk, Courts Branch, Law Department, 1942-49; Clerk of Papers and Assistant Clerk of Committees, 1951; Reader and Clerk of the Record, 1959; Serjeant-at-Arms, Secretary of the Public Accounts Committee and Accountant, 1961.

Carter, Joseph Emmanuel.—Clerk-Assistant of the Legislature, Trinidad and Tobago; *b.* 29th December, 1929, at Port-of-Spain, Trinidad; *m.*; 3 children; *ed.* Queen's Royal College; joined Government Service on 1st January, 1950; served in Colonial Secretary's Office and Ministry of Communications and Works before being appointed to Legislature and Clerical Officer Grade I on 1st January, 1956; promoted to Second Clerk-Assistant on 1st January, 1960; promoted to present position on 1st December, 1961.

Challons, Michael John.—Clerk of the British Solomon Islands Legislative Council; *b.* 1927; *m.*; 1 *d.*; served in the Royal Air Force, 1945-48; *ed.* Henry Thornton and Keble College, Oxford; Colonial Administrative Course, London University, 1951-52; service as an Administrative Officer in the Anglo-French Condominium of the New Hebrides from 1952 to 1958 and as Assistant Secretary for Protectorate Affairs in the Western Pacific High Commission, Secretariat, Honiara, B.S.I.P., from 1958 to 1962; appointed Clerk in 1960.

Darkwa, Samuel Ntim, B.A. (London).—Assistant Clerk of the National Assembly, Ghana; *b.* 20th July, 1935; *ed.* Adisadel College, Cape Coast; University College of Ghana; Institute of Public Administration, Achimota, Ghana; appointed to present position 1st September, 1961.

Kpodonu, Alfred Senaya, LL.B.(Hons.), Diploma-in-Law.—Assistant Clerk of the National Assembly, Ghana; *b.* 1933; *ed.* Achimota School, Accra, University of Nottingham, and the Ghana School of Law, Accra; *m.*; served in the Ghana Administrative Service and the Ghana Legal Service, 1958-61; appointed to present position, January, 1962.

Moore, L. B.—Second Clerk-Assistant, Federal Assembly, Federation of Rhodesia and Nyasaland; *b.* 1925; *ed.* Diocesan College, Rondebosch and University of Cape Town; B.A.; served South African Air Force, 1944-46; Southern Rhodesia Civil Service, 1950-53; *Hansard* Editor, 1954-62; appointed to present post, 1962.

Oliver, Roland Brian.—Second Clerk-Assistant of the Legislative Assembly, Southern Rhodesia; *b.* 1924; *ed.* George Heriots School, Edinburgh, and Brentwood School; active service with Indian Army, 1942-47; Southern Rhodesia Department of Education, 1947-49, Department of Roads and Road Traffic, 1949-56; appointed Committee Clerk, Legislative Assembly on 1st February, 1956; appointed to present position 8th December, 1961.

Ottley, John Pierre.—Clerk of the Senate, Trinidad and Tobago; *b.* 13th October, 1906, in Tobago; *ed.* St. Mary's College, Port-of-Spain; 4 children; entered Government Service of Trinidad and Tobago as a Junior Clerk in April, 1930, and worked in several departments; appointed Clerk-Assistant of the Legislative Council in January, 1960, and to the present post of Clerk of the Senate in December, 1961.

Puri, K. C.—Secretary, Uttar Pradesh Legislature; *b.* 1910; *ed.* Edwards College, Peshawar, and Law College, Lahore; practised at Bar at Peshawar, 1933-47; District Government Counsel at Allahabad, 1948; Civil and Sessions Judge in Higher Judicial Service of Uttar Pradesh, 1954; District and Sessions Judge, 1956; appointed to present position, February, 1962.

Said Pullicino, John.—Clerk of the Legislative Assembly, Malta, G.C.; *b.* 16th January, 1907; *ed.* The Lyceum, Malta; *m.* 1934; 5 *s.*, 2 *d.*; Higher Division of the Clerical Establishment of the Malta Civil Service, 1st June, 1925; Clerk-Assistant, 1948-59; Assistant Secretary, 1959-62; appointed present position, 1st March, 1962.

Stevenson, Ronald Charles.—Clerk of the Legislative Assembly, Province of New Brunswick; *b.* 20th December, 1929; *ed.* University of New Brunswick (B.A.), Dalhousie University (LL.B.); called to Bar of New Brunswick, November, 1953; *m.* 1957; 2 *d.*; practices in partnership at Fredericton; appointed Clerk of Legislative Assembly, October, 1960.

CONSOLIDATED INDEX TO VOLUMES I–XXX

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.) (*Art.*)=Article in which information relating to several Territories is collated.
(Com.)=House of Commons. Ex. Co.=Executive Council. S/C=Select Committee.
1R=First Reading. 2R=Second Reading. 3R=Third Reading.

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