The Table

BEING

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

EDITED BY

J. M. DAVIES

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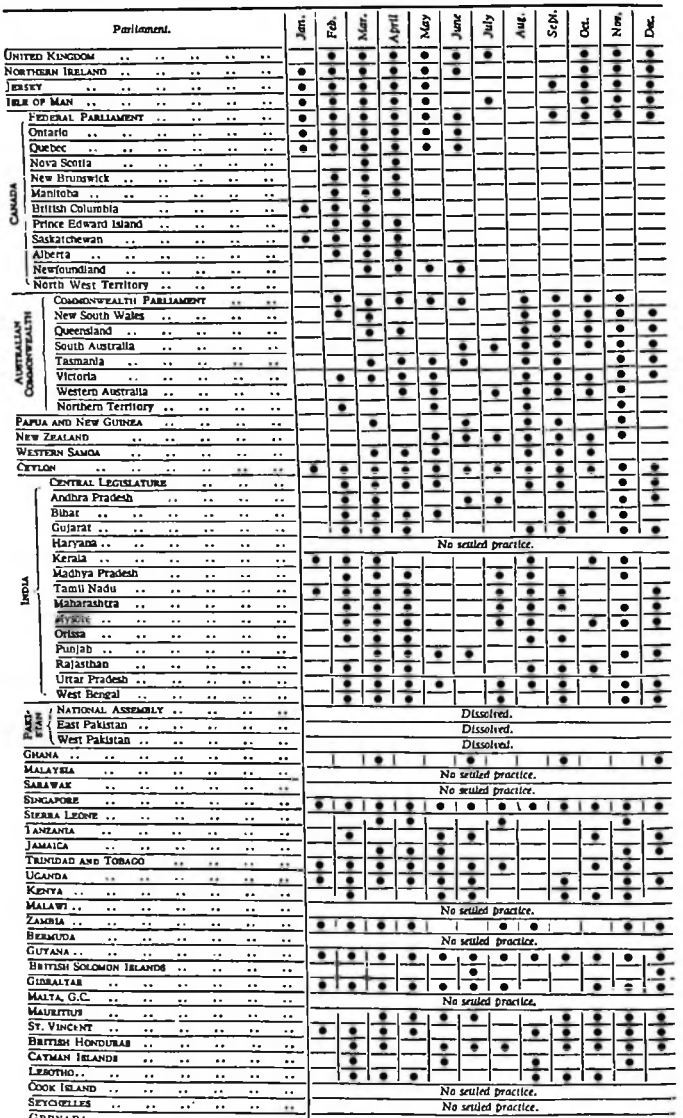

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THE JOURNAL OF THE SOCIETY OF CLERKS-AT-THE-TABLE IN COMMONWEALTH PARLIAMENTS

I. EDITORIAL

This volume of THE TABLE contains articles from most parts of the Commonwealth but, unfortunately, there is no contribution from India or Africa. Once again a majority of the articles and notes deal with matters of procedural and constitutional interest in the United Kingdom Parliament. This, no doubt, is desirable but, at the same time, the Journal should record similar items from as many other legislatures as possible and we appeal for more contributions from the smaller and newer Parliaments. Next year we hope the Journal will show the fruits of this appeal and will contain articles from every part of the Commonwealth.

The Seventh General Meeting of the Society in Trinidad reaffirmed the desirability of THE TABLE containing no contentious material.This has always been a concern of the editors of the Journal, but where politics, procedure and constitutional practice or change intermingle, as they often do, a balance has to be struck. For instance, the article in this volume dealing with the postponed alteration of constituency boundaries in Great Britain inevitably contains political undertones, but the electoral and constitutional issues involved with the political surely deserve recording in the Journal. If, occasionally, the balance tips the wrong way and results in embarrassment, the Editor apologises and hopes for understanding.

A proposal has been received from the Canadian Area Council of the Commonwealth Parliamentary Association that THE TABLE should contain an annual index of parliamentary rulings in the Canadian legislatures and, if this is successful, perhaps from other area groups, such as India, Australia or the Caribbean. This is an interesting suggestion, designed to make the Journal of the Society more useful to those it is intended to serve: namely, parliamentary officers of the Commonwealth. The Editor hopes that it may, perhaps, be possible to put this proposal into operation next year.

Mr. C. B. Koester, C.D., M.A., B.Ed.—Mr. Koester resigned as Clerk of the Legislative Assembly of Saskatchewan, Canada, during September, 1969, in order to return to academic work. On 20th March, 1969, the Premier, Mr. W. R. Thatcher, moved the following motion:

That the Members of this House, desiring to record their deep appreciation for the long and distinguished service rendered by Mr. C. B. Koester, C.D., M.A., B.Ed., to this Legislature as Clerk, and acknowledging the dignity and profound learning with which he has graced this office, designates him as Honorary Officer of this Legislature with an entrée to the Chamber and a seat at the Table on all ceremonial occasions.

In doing so he said,

Mr. Speaker, Hon. Members, it is with mixed feelings that I rise on this occasion. It is a pleasure to be able to pay a tribute to a particularly distinguished public servant. At the same time it is a source of regret to realize that in the near future Mr. Koester will no longer be among us in this House. Mr. Koester is a learned man, an outstanding scholar and writer, and an unfailing fount of knowledge on parliamentary procedure. He has been a servant of this Assembly for a decade. He has held the difficult and demanding position of Clerk since 1961. He is also a family man and I take this opportunity of welcoming his children and his wife to the Assembly on this occasion. They are I know justifiably proud of him. [*Hear, hear:*] If there is a single characteristic of Mr. Koester other than his rather remarkable efficiency which stands out, it is his ever-present cheerful good nature. And in this House you need that characteristic. Mr. Speaker, I am sure that there must have been many times when many of us, even I, have stretched our Clerk's good humour to the limit. Yet, it is always there. [*Hear, hear:*] Without exception there seems to be no procedural problem, no matter how complicated, which can get the better of him. And I am sure, Mr. Speaker, that you and all your predecessors who have worked closely with him will agree that if there is such a thing as a man who has all the answers, it is Mr. Koester.

The Clerk served his country during World War II and after in the Royal Canadian Navy, having entered while in his teens. Before coming to this House he was a teacher and department head at Sheldon Williams Collegiate. He has contributed frequent articles to various publications in the two fields in which he is a recognised authority—history and parliamentary procedure. While serving this House, Mr. Koester has continued his pursuit of learning in his chosen field of history. He is leaving us for a university career. I hope he can straighten things out over on the campus, Mr. Speaker. I know he will continue to distinguish himself just as he has in this Assembly.

Mr. Speaker, we will miss Mr. Koester. All Hon. Members I know will join me in wishing him every success and happiness in the days ahead. [*Hear, hear:*]

Mr. W. S. Lloyd, The Leader of the Opposition, spoke as follows:

Mr. Speaker, I am sure that all of us received the news last fall with some dismay that our Clerk, sometimes our "Klark", had decided to vacate his position at our table in this Legislature and transfer his very well known energy and ability to teaching at the University. However, times do change and even Clerks change their ideas as to what is the most satisfying occupation from time to time, and we have no alternative other than to accept. I want to join very heartily on behalf of all of us on this side of the House and on behalf of myself personally with the tribute which the Premier has paid to Mr. Koester.

We also join in the welcome to Mrs. Koester and members of the family here this afternoon. A couple of them tend to look very much alike. There is a very logical explanation for that, and it is good to have them with us as we speak appreciation to husband and father on this particular occasion.

Certainly, as the Premier has said, Mr. Koester has displayed during his period here great technical competence and great patience. It seems to me, however, that the talent he has brought to his position and the contribution he has made to us and the parliamentary institution in which we operate comes from much more than just a grasp of the technicalities of the rules and the history and the precedents in which they have been applied. It seems to me it comes particularly from an understanding of parliamentary principles, his study of them. It comes particularly from some strange sort of feeling, I believe, with respect to what these rules mean. I don't know how one acquires this feeling, I am sure. I suspect in part it is a procedure of some kind of osmosis almost, but some people have it and others don't. We are fortunate to have had a Clerk who has had this very strong feeling with respect to what parliamentary institutions and principles and procedures really do mean. [*Hear, hear:*] It is much more than just a matter of technical interpretation. I might be pardoned I suppose by saying that I suspect that some of this came by virtue of the fact of his experience as a teacher. Certainly some of it came as a result of his very considerable interest in history.

His work has been made effective in part, of course, because we have had confidence, a well-earned confidence, in his knowledge of the use of the rules. In addition to that his work has been successful because we have had confidence in him as a person and again one can't stress the value of this too much in a very difficult position such as that which he holds. If I may, Mr. Speaker, I would like to add appreciation for the fact and the Premier has made reference to this, while he was here he saw fit not just to sit and serve but also to study and extend his experience. As will be recalled he took time to attend university, he took time also to broaden his experience by an exchange, which he arranged, which made it possible for him to serve in the British House of Commons. This kind of continuing interest in getting more information and better and deeper understanding with the work, I think, is a characteristic of our Clerk.

May I mention our appreciation for his services in another way. And that is with respect to his interest in the Parliamentary Association. Here I may only say this is an extension of the Legislature in one sense. It is a body apart from the Legislature in another sense and the contribution of the Clerk in making that more meaningful to all of us is again one of his services. Let me also express to him, Mr. Speaker, our very best wishes as he enters into his next career, which is his third or his fourth, I have forgotten which. I think it is very fortunate that we do have people going into our universities to teach who have had some background in the Public Service. I have often felt that students sometimes get short changed because not enough of the university teachers have had an opportunity to work in and get an understanding of just what the Public Service is all about. I feel that, if there were more people that had that background while teaching, then probably students might in turn have more interest in entering the Public Service and the whole public would be better served. Let me just say that we wish him very well in his new career. I give my very sincere thanks, Mr. Speaker, to Mr. Koester for all that he has done in the past and our very best wishes for every success as he goes to the University to teach.

After two further tributes Mr. Speaker added his own,

I ask the indulgence of the House in order to add my words to those of others who have spoken in connection with this ceremony in honour of our Clerk who has served this Legislature so ably and so well throughout the past nine years.

Where people have the priceless privilege of living in a free, self-governing country, where they themselves select and elect their own governors, it is absolutely essential that those to whom the people delegate power shall have a legislature or a parliament in which to operate. It has been recognized since the earliest times that the Legislature must have a Clerk to act as its recording officer. This position requires a person capable of paying meticulous attention to detail in order to absolutely ensure the correctness of the records. In this regard the Legislature of our province has been most fortunate in having as a Clerk one who so completely filled this qualification.

It is reasonable that those that make the laws which govern us should be governed by a rule of law in their making and these are the laws of parliamentary procedure evolved over centuries, sometimes by a process of trial and error, but more often instituted by logic. The Clerk of the Legislature is an important, continuous custodian of this vast mass of precedents and of these great traditions.

Once again, we in this province have been fortunate in having had in the service of the House, in the person of our Clerk, a man who devoted many years of painstaking research to this subject, by which he amassed a wealth of knowledge, that has always been readily and freely available, both to the three Speakers with whom he has worked and to all of the Members of our Legislature.

I pay tribute also to his excellent good humour and good nature, as he met all of the problems which he encountered from day to day and of which without a shadow of a doubt I have probably been the worst.

Our Clerk has been accepted throughout Canada, and throughout the British Commonwealth as a master of parliamentary procedure and is an authority thereon.

His service to this House as a Clerk and to the Commonwealth Parliamentary Association as Secretary has been outstanding, and on behalf of the Legislature, and very particularly for myself, I wish to join with others in expressing to him the most sincere thanks and the deepest appreciation.

On September next he will leave the service of the House to return to the teaching profession. He has had a distinquished career in the Services and also as a parliamentarian. He is recognised as an erudite scholar and an outstanding historian. What this House has lost, the field of education has gained. We wish to him, to his wife and to his family every success and the very best of luck.

Mr. Jean Senécal.—Mr. Senécal, Clerk of the Legislative Assembly of Quebec, retired from that office during 1969. On 7th October, 1969, tributes to his many years service in public office were paid in the Assembly. Mr. Bertrand, the Prime Minister, spoke as follows:

During the recess, the Clerk of the National Assembly began his retirement. I think it is my duty to thank him, not only for the signal services he has rendered this Chamber especially over many years, but also, to Quebec.

Mr. Senécal has been in public service for nearly 43 years. Everyone has admired his knowledge, his experience and his good judgment as Clerk of this Assembly. I am sure that I speak on behalf of all members in wishing him a happy retirement and good health and in assuring him that he will enjoy, in his retirement, the admiration and esteem of all members.

Mr. Lesage spoke on behalf of the Opposition when he said that,

Mr. Senécal has, in abundance, all the qualities mentioned by the Prime Minister. He has been in the service of the Province for a great number of years. He has gained a formidable experience of public life and of people.

He is a man in whom the most marked characteristic is one of pleasantness. He is good natured, easily accessible, and always ready to be of help. He is a man who was absolutely impartial in exercising his duties; especially so when these duties required him to advise the President of the Assembly at times when he had to give rulings.

I know that the Minister of Justice himself has benefited from the advice of Mr. Senécal, as you yourself, Mr. President, have benefited.

We watch him leave with regret but we understand that, after so many years—and I understand this perhaps better than some—he wants to be relieved of certain burdens.

Shri K. P. Gupta, B.Sc., LL.B., H.J.S.—Shri Gupta retired as Secretary of the Uttar Pradesh Legislature on 10th June, 1969.

Mr. J. L. Pitaluga, M.B.E.—Mr. Pitaluga, who had held the appointment of Clerk of the Legislative Council of Gibraltar since March, 1961, relinquished his appointment in April, 1969, on promotion to the post of Administrative Secretary.

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

O.B.E.—R. E. Bullock, Deputy Clerk of the Senate, Canberra, A.C.T.

C.B.—C. A. S. S. Gordon, Principal Clerk, Table Office, House of Commons and formerly a Joint-Editor of *The Table.*

II. THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION

By Sir Edmund Compton, K.C.B., K.B.E.

The title of my Office is the Parliamentary Commissioner for Administration. The press and the public generally choose to call me The Ombudsman. But the proper title is really more helpful for it is more accurate. Admittedly the first Ombudsman, whose office was established in Sweden in 1809, was made responsible to Parliament, as distinct from the Chancellor of Justice, who was responsible to the King. Admittedly also, other Ombudsmen have links with the Parliaments of their respective countries. But I am uniquely parliamentary in that all other Ombudsmen deal directly with complaints, whereas I only investigate complaints referred to me by Members of the House of Commons.

There is much misconception about the purpose and powers of Ombudsmen in general, and this is accentuated by the unfamiliarity of the word in the English language. Some people seem to envisage the Ombudsman as combining the wisdom of Solomon with the temperament of Father Christmas and an overriding executive authority like the Caliph of Baghdad in the Arabian Nights. But a more sober and more accurate definition of the post is to consider the duties of the Ombudsman as being to review administrative actions of the Government which are alleged to have caused injustice to an individual. This description applies to the United Kingdom post as well as to those abroad. For me the ground rules are spelled out in two places in my Act: in Section 5 (1), which is the positive provision giving me power to investigate a complaint against action taken by a department in the exercise of administrative functions, and in Section 12 (3), which prevents me from questioning a department's decision taken without maladministration. And as I have already said, in this country the Parliamentary Commissioner has the further limitation that he can only act on a complaint referred to him by a Member of the House of Commons, and after investigation reports back to the Member either the results of his investigation or a statement of his reasons for not conducting an investigation. It follows from this close association with Parliament that the range of administrative actions which I may investigate does not go beyond those actions for which Ministers are answerable to Parliament. As a Parliamentary Commissioner, it would not be appropriate for me to investigate, for example, complaints against local authorities or the actions of nationalised industries, since Ministers are not accountable to Parliament for the administrative actions of such bodies.

This linking of my powers and actions with Parliament is deliberate. The White Paper of October 1965 outlining the purpose of my office said explicitly " We do not want to create any new institution which would erode the functions of Members of Parliament in this respect, nor to replace remedies which the British Constitution already provides. Our proposal is to develop those remedies still further. We shall give Members of Parliament a better instrument which they can use to protect the citizen, namely, the services of a Parliamentary Commissioner for Administration."

In fact, my experience over the first three years of operating this Office has confirmed the benefits of the Parliamentary connection. In the first place, I respectfully endorse the political argument in the 1965 White Paper that by this arrangement I avoid the risk that I might compete with M.Ps. as an alternative channel for handling complaints.

In the second place the fact that complaints have to be referred through a Member of Parliament provides the satisfactory and economical solution to what I have called the " collection problem ". If I received complaints direct, I would need a large staff dispersed all over Great Britain for reception purposes, with investigation staff organised on a different pattern to correspond with the location of the Departments that have to be investigated. As it is, the Members get the complaints from their local constituencies, but as they are at Westminster I receive and process them at the centre, where I have a quite small team of investigators to send out to the Departments concerned. My present staff is something under sixty, but it would have to be multiplied many times if I needed to have local offices spread over the country to which aggrieved citizens would come if it were not for the interposition of the Member.

Most important of all, the link with Members of Parliament provides the sanction for ensuring that, where I find that maladministration by a Department has led to injustice, an adequate remedy is provided. The legislative basis for this arrangement is Section 12 (3) of the Parliamentary Commissioner Act, which provides that:

> If, after conducting an investigation under this Act, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before each House of Parliament a special report upon the case.

I am glad to record that on no occasion so far have I found it necessary to take action under this Section. Indeed, the New Zealand Ombudsman, who has a somewhat similar provision in his Act, has told me that during his longer tenure of office, he, too, has never used it. But the fact that the power is there, greatly strengthens my hand in discussing with a Department what remedy should be made in appropriate cases. I think it is fair to say that in every case in which I have found some measure of injustice that is susceptible of remedy, I have been able, when reporting to the Member, to indicate not only the remedy

which I regarded as acceptable, but also that the Department had undertaken to put that remedy into effect.

A further advantage of the Parliamentary arrangement is that one particular Member will, by definition, be personally interested in the result of each investigation of mine and will, therefore, be well placed to carry out the Parliamentary " follow-through ". It is just because I report my results to Members and to Parliament that I do not need the power to order remedies when I find there has been injustice caused by maladministration.

It has been objected that the need to refer complaints through a Member of Parliament may prevent the aggrieved citizen from getting access to my Office. If this means that a Member might block the reference to me of a constituent's complaint, it is not a valid objection. It is true that out of the 630 Members of the 1966–70 Parliament, 47 did not refer a complaint to me. But the requirement of my Act is that the complaint is referred to me by "a Member" of the House of Commons, and not "the" constituency Member. This provision was made deliberately and was debated in Parliament before my Bill became law. I have also noticed that the existing arrangements positively improve the citizen's access to my Office in one respect. I have seen to it that all Members are kept fully informed of the scope and functions of my Office, so that (as the White Paper said) they can appreciate its availability as an instrument which they can use to protect the citizen. In the cases referred to me I often see that it is the Member who, dissatisfied with the results of a direct approach from himself to the Minister concerned, has sought the consent of the complainant to refer the matter to me.

In considering the relationship between the Parliamentary Commissioner and the House of Commons, the post and powers of the Comptroller and Auditor General provide a useful analogy. For just over 100 years the Comptroller and Auditor General has investigated the financial performance of Departments on behalf of Parliament. The Reports made to Parliament by the Comptroller and Auditor General are considered by a Select Committee (the Public Accounts Committee) which takes evidence from the Accounting Officers of the Departments concerned. The Parliamentary Commissioner likewise functions on behalf of Parliament when he investigates the administrative performance of Departments. His Reports to Parliament are considered by a Select Committee, which, in turn, takes evidence from the Principal Officers of the Departments concerned. (In practice the Principal Officer is usually the same individual as the Accounting Officer.) In the light of such evidence, the Select Committee on the Parliamentary Commissioner for Administration, like the Public Accounts Committee, makes Reports to the House of Commons.

Having had the good fortune to serve in both posts, I may comment here on one feature where I think my new Office has an advantage. Apart from narratival matter, the Reports of the Comptroller and

Auditor General draw attention to facts suggesting criticism of Departments. In my Annual Reports to the House as Parliamentary Commissioner I give particulars (omitting names) of all complaints in which I have found that an element of maladministration in the Department has led to some measure of injustice; but I also give a representative selection of other cases, in which I have reported the complaint to be unfounded and the performance of the Department to be satisfactory. My object in so doing is to prevent my published Reports from giving an unbalanced view of the administrative standards of Whitehall. I was glad, therefore, to read the comment of the Select Committee in its Report for the Session 1968–9 that the publication of this selection of representative cases " gives a fair picture of the good deeds of the Departments as well as their defects, and your Committee trust that the Commissioner will continue this practice".

My other object, in reporting a large selection of representative casework, is to give not only Parliament but also the public a picture of my work as it actually is and the types of complaints that actually reach me—a useful means of bringing realism into a discussion which can drift into academic guesswork.

Besides the case histories, I have used these Annual Reports to publicise jurisdiction rulings that I have given in the course of my work, and this has given the Select Committee the opportunity to consider whether these rulings are appropriate and acceptable to Parliament. Thus it was the jurisdictional comment of the Select Committee that led me to extend my jurisdiction to the investigation of the action taken by Departments to review the operation first of administrative rules (Second Report of 1967–8) and then of Statutory Instruments (Report of 1968–9).

In round figures, my three Annual Reports for the years 1967–9 have recorded that I have fully investigated some 860 complaints; have contained the full texts (omitting names) of some 230 results reports; and given 14 jurisdiction rulings with 43 examples of cases excluded, for various reasons, from my investigation.

I have also made use of the power granted to me by the Act of making reports, other than Annual Reports, to Parliament, to provide Parliament with the texts of my reports to Members on (so far) three complaints of particular interest both as regards subject-matter and as bearing on the performance of my functions under the Act. These dealt with the actions of the Foreign Office in relation to the former prisoners at Sachsenhausen concentration camp: of the Board of Trade in relation to the Duccio painting: and of the Board of Trade in relation to the noise caused by air traffic using London Airport (Heathrow).

The Select Committee also concerns itself with the restrictions placed upon the area of my operations by the Parliamentary Commissioner Act. In its present form, the Act brings practically every Government Department within my scope, but Schedule 3 to the Act excludes from my investigation a number of matters dealt with by

various Departments. These exclusions can be removed by Order in Council. The Select Committee has recommended the removal of two restrictions provided in Schedule 3, namely paragraph 8, which prevents me investigating action taken on behalf of the Secretary of State for Social Services by a Regional Hospital Board or certain other hospital authorities; and paragraph 10 which excludes me from personnel matters of members of the Armed Forces, the Civil Service, and any other employment where power to take action rests with a Minister of the Crown. So far no action has been taken by the Government on either recommendation.

Looking back over the first three years of my appointment, I have analysed the effect of my Office upon the administration of Government in terms of three " plus " factors and three " minus " factors.

The first " plus " factor is that something over a hundred cases of injustice resulting from maladministration have been brought to light through my investigation and, where possible, have been remedied.

The second is that in a number of cases my investigation has led to specific modifications of departmental practice designed to prevent a recurrence of the situation which had provoked the complaint to me in the first place.

The third is the " presence " factor, by which I mean the tonic effect upon the standards of departmental performance coming from the knowledge right through the department that a complaint against a shortcoming may be the subject of my independent investigation.

The " minus " factors are in a sense the inevitable counterparts.

The first is the increase in the workload of the investigated Department. At the most senior level, my Act specifically requires me, as the first step in any investigation, to give an opportunity to the Principal Officer to comment on the complaint. This has led to an increase in the correspondence handled at Permanent Secretary level, amounting in the case of a few Departments, to more than fifty cases a year. At all levels the process of investigation, with the inspection of files and questioning of officials by members of my staff, is bound to increase what I have called the coefficient of friction within the administration.

The next " minus " factor is the risk that my presence will make Departments less forthcoming and helpful in the work they do for the public. Departments, particularly the Social Service Departments with local offices throughout the country, are frequently helping members of the public with advice given outside the limits of their statutory obligations. The risk is that if I report adversely when they have given wrong advice, next time they will play for safety and not give advice at all. For my part I have done my best to encourage Departments not to be over-cautious in this way, even if some additional complaints do come my way on account of it.

The third " minus " factor is the risk that the liability to outside investigation will undermine the efficiency of government by preventing delegation. Perhaps the advent of a Parliamentary Commissioner does

not add much to the risk that already follows from Ministerial responsibility to Parliament. But the risk is there, and I for my part have done my best to counteract it by exercising great care before I blame a mistake made down the line in a Government Department on lack of control by higher authority.

Summing up, this is an experiment in Parliamentary surveillance of Government administration. The basic limitation to the jurisdiction of the Parliamentary Commissioner is in Section 12 (3) of the Act, which declares that he is not authorised or required to question the merits of a decision taken without maladministration; the Commissioner is not to substitute his decision for the Government's. Given that limitation, the results of the three years' work of the Office show: first the advantages of the Parliamentary connection; secondly the efficiency of the Office as an investigating agency and as a means of securing a remedy for injustice caused by maladministration; and thirdly the mixed but, on balance, the favourable effect of the Office upon the quality of Government administration. It is beyond the scope of this article to comment on the many ideas that are current for extending the Office, except for a warning that the benefits of any extension should be weighed against the cost in money and manpower and the risk of losses in efficiency.

III. THE SPEAKER OF THE SENATE OF CANADA

By Professor W. F. Dawson
Faculty of Social Science, The University of Western Ontario

The provisions of the law do not give any clear picture of the office of Speaker of the Canadian Senate. The British North America Act of 1867 established in Canada a pale reflection of the House of Lords and copied even more vaguely the office of Lord Chancellor. Under the Act the Government has the power to appoint the Speaker of the Senate without even the formal approval of the Senate itself, and states that this officer shall hold office at pleasure. Beyond implying further that the Speaker is expected to be a partisan while in the Chair, the British North America Act is silent. The Speaker is not given any specific powers or responsibilities, not even the simple one of presiding over the Senate.[1] Canadian statutes and the rules of the Senate add little to this. Provision is made in the Speaker of the Senate Act for the appointment of a temporary Speaker, and the rules give only a vague limited power to the Speaker to preserve order and decorum.

The very lack of precision in the law has meant that certain customs have been able to grow up around the office. Over the one hundred years since Confederation certain general trends may be found and traditions have grown up which set the Senate Speaker apart from other presiding officers in the parliamentary system. Such issues as appointment and removal as well as political partisanship and the position of the Speaker in the House have all acquired a distinctively Canadian flavour, and have combined to change the nature of the Speakership into something that was clearly not contemplated in 1867.

Appointment

The Speaker of the Senate is, under the British North America Act, appointed by the Governor General " by Instrument under the Great Seal of Canada ". In practice, of course, this means that the Prime Minister has complete control of the appointment.[2] This power of the Government to appoint Speakers has not always gone unchallenged. As early as 1868 Letellier proposed a motion in the Senate stating that it was " desirable " that the Senate should choose its own Speaker.[3] The Senate debated the resolution for a short time and came to the obvious conclusion that nothing could be done under the British North America Act as it then existed, and let the matter drop. The subject was briefly revived in 1888 when Alexander moved an address to the Queen asking for an amendment to the Act to provide for the election of a Speaker. Unfortunately *Hansard* does not record

the debate on this motion, but simply notes that " after some remarks, by permission of the House, the motion was withdrawn ".[4]

One unusual feature of these purely Governmental appointments is the possibility of a complete stranger being appointed to the Chair. A Government which controls appointments to the Senate and also to the Chair can make both appointments nearly simultaneously. This has, in fact, happened four times.[5] On these four occasions the Senate met, the newly appointed Senator appeared, took the oath and presented his certificate of qualification. He then at once took the Clerk's chair and announced that he had been appointed Speaker. His Commission was read and the leaders of both sides of the House escorted him to the Chair. Such appointments have not always been popular with the Senate. In 1873 Letellier protested that the appointment of Chauveau was " contrary to the feelings of the House ". He emphasised that he had nothing against Chauveau personally, but the Government had, for the second time, taken a man from the lower house to preside over the Senate.[6] Later appointments from the outside went unchallenged.

The elevation of newly appointed Senators to the Chair might indicate that experience in the Senate was not a necessary qualification for the post. The record shows, however, that there is a definite tendency for Speakers to have had some considerable time to become acquainted with the procedures and traditions of the Senate before being appointed to preside over it. A large majority of Speakers have had more than five years' experience in the Senate and nearly half have had over ten years. The record period of such training has been thirty-two years. Even three of the four who were appointed from outside had some experience to qualify them for the post. One had been Deputy Speaker of the House of Commons and the other two had been either in the House of Commons or in a provincial legislature. Only Drouin had no legislative experience at all.

There has never been any doubt in Canada that faithful party service is a prime requisite for appointment to the Senate. It is not surprising then to find that the Speaker of the Senate is tainted with a strong party affiliation when he is appointed to the Chair. The most notable examples, of course, are the two Speakers who were Cabinet Ministers while in the Chair[7] but others could be identified as partisans as easily. One speaker, for instance, had been Premier of Quebec immediately before his elevation to the Chair and four others moved directly from the Cabinet to the Chair.[8] Numerous others have served in provincial or federal Cabinets, in the House of Commons and in various party offices. Virtually none has been free from strong party ties.

Rotation and Change

The Senate normally changes its Speaker at the same time that the House of Commons does. This is not pure chance, as the custom has obviously been to choose a Speaker for the Senate from the opposite linguistic group to the Speaker of the House. This has not been an

invariable rule, although Bellerose complained as early as 1883 that what he called the custom was not being followed.[9] The practice was, in fact, only intermittently followed up to 1900. The Liberals in 1873–8 ignored it completely by appointing English Speakers in both Houses, while the Conservatives appointed two English Speakers for the years 1883–6. One dubious exception can also be found in 1891–6 when J. J. Ross, a bilingual English native of Quebec occupied the Chair in the Senate while White held the Chair in the Commons. Since 1900 the rule has been followed faithfully with (at the most) three exceptions. In the 1916 session Landry was Speaker of the Senate while Sévigny was Speaker of the House. More recently two more residents of the Province of Quebec have held the posts concurrently, Macnaughton in the House and Bourget in the Senate from 1963–6, while in 1966–8 both incumbents came from outside Quebec.[10]

The custom of rotating Senate and Commons Speakers simultaneously has meant on occasion that successive Speakers in the Senate have not always alternated between French and English. Such an alternation has been claimed by individual Senators to be a necessity and even a " constitutional right "[11] but the record shows that it has been consistently ignored. Thus when a new Speaker has had to be found in the middle of a Parliament, he has almost always been of the same linguistic background as his predecessor.[12] The only possible exception to this was in 1891 when J. J. Ross succeeded Lacoste.

One possibility has been mentioned in the Senate which would, if true, differentiate the Senate Speaker from his Commons counterpart. Trudel in 1884 referred to a conversation he had had with Cartier when he was told that the Speaker of the Senate would rotate among the Senatorial divisions of the country.[13] In fact, this has not happened and the divisions have been very unevenly represented. Quebec has produced fifteen Speakers, Ontario seven, the Maritimes six and the West only three. It seems likely that had such a plan for rotation ever existed, the desirability of alternating with the House of Commons has been enough to force its abandonment without a trial

Removal

The Speaker of the Senate may leave the Chair in one of three ways: by death, removal or retirement. Three Speakers have died in office. Two of these, Bostock in 1930 and Farent in 1942 presented no difficulty as they died when the Senate was not sitting. The Government had time to issue a new Commission and a Speaker was ready to take the Chair when the Senate reconvened. In 1888, however, Plumb died in the middle of a session. The Senate met and the Clerk announced the death of the Speaker. Faced with the problem of having no presiding officer and no means of getting one, the Senate proceeded by unanimous consent to put a senior Senator in the Chair for the sole purpose of accepting a motion to adjourn.[14]

The removal of a Speaker is a simple matter as he holds office at pleasure. This power of removal has never been used by the Government as a punitive measure. It was, however, necessary up to 1895 to remove a Speaker who was " unavoidably absent ". Thus Cauchon was removed for ten days in 1869 so that he could attend the funeral of one of his children. He was removed again in 1872 for three days for unstated reasons. Macpherson was similarly removed in 1889 for two months " in consequence of illness ". On all of these occasions a new Commission was issued appointing a new Speaker who held office until the normal incumbent was prepared to take the Chair again.

On each of these three occasions on which the Speaker was temporarily absent for personal reasons his successor resigned the office at the end of his short period in the Chair. On only four occasions has a Speaker resigned in mid-term for other reasons. In 1883 Macpherson resigned from the Chair to become Minister of the Interior; Wilmot vacated both the Chair and his seat in the Senate to become Lieutenant Governor of New Brunswick; and in 1891 Lacoste vacated both to become Chief Justice of Quebec. The most unusual resignation was undoubtedly that of Landry in 1916 who, it was reported, resigned from the Chair because he felt that he had been unfairly treated by his colleagues.[16]

Prospects after Retirement

The principle of relatively rapid rotations of Speakers naturally involves the question of what to do with Speakers after they have left the Chair. It is difficult to provide a suitable reward for the Speaker of the Senate after his retirement as most people would agree that he already held one of the choicest appointments in the gift of the Government. It is impossible, therefore, to find any significant number of Speakers moving from the Chair to better things. Most Senators who have been Speaker merely move to the back benches and continue their careers as private Senators. The advanced age of most Senators at the time of their appointment, and the fact that most have a reasonable length of service in the Senate before they get to the Chair, means that this retirement to the back benches will not last long in most instances, and that death will intervene. There are one or two marked exceptions to this generalisation, but the overwhelming majority of Speakers who retired to the back benches lived less than ten years after their retirement. The rewards of other Speakers have been varied. Three are mentioned above, as they left the Chair in the middle of their term to seek other employment. Only one other Senator has been similarly rewarded, by an appointment to the Supreme Court of Quebec. One further Speaker resigned from the Senate to contest (unsuccessfully) a seat in the House of Commons, a procedure which can hardly be called rewarding. Only one Speaker could be said to have had a distinguished public career after his retirement. Senator Dandurand, who had entered the Senate at the exceptionally early age of 37 and had become Speaker at the age of 44, spent twelve years as a back bencher

and then the last twenty-one years of his life as either Government Leader or Opposition Leader in the Senate.

The most normal reward for a retiring Speaker has, therefore, become the titular appointment to the Canadian Privy Council. In 1891 the Government announced in the Senate that all former Speakers of the Senate were to be appointed to the Privy Council and that the three surviving candidates had been sworn in that day.[16] Since then this practice has been followed in virtually all cases where the Speaker has not already been a Privy Councillor.

Unavoidable Absence and the Deputy Speaker

The question of the unavoidable absence of the Speaker has two facets. There has never been any provision made, either in law or in the rules of the Senate, for the appointment of a permanent Deputy Speaker or Chairman of Committee of the Whole. When the Senate goes into Committee of the Whole (an unusual proceeding in recent years) the Speaker merely calls on any convenient Senator to take the Chair. There is no assured succession and no precedents which establish who should be called. The question of a Deputy Speaker has, therefore, little significance in these terms, and has never posed a problem for the Senate.

In cases, however, when the Speaker is absent from the beginning of the sitting, a new problem arises, as there is no Speaker present to call anyone else to the Chair. As noted above, for nearly thirty years after Confederation the removal of a Speaker was closely connected with his unavoidable absence. Under the British North America Act there could be only one Speaker of the Senate at any time, and there was no possibility of an Acting Speaker being appointed for even a few minutes. This lack was felt early in the life of the Senate, and on the day that Cauchon was temporarily removed in 1869, the Leader of the Government introduced a Bill to allow the senate to elect an Acting Speaker and to allow the Speaker to call another Senator to the Chair for short periods during a sitting. Some Senators raised doubts as to the constitutionality of the Bill and two weeks later it was dropped. The situation predictably did not improve over the years, although the relatively short sitting hours of the Senate and its long adjournments meant that the Speaker operated under considerably less strain than did the Speaker of the Commons.

Finally the same Bill was introduced again in 1893 as a result of the absence of J. J. Ross on two occasions. The same doubts as to the constitutionality of the Bill were raised as in 1869, although most Senators appeared to believe that it was a sensible move. One Senator presented an interesting dilemma to his colleagues. Under the Bill the replacement would either be Speaker or he would not. If he really was the Speaker, then the Senate could not appoint him under the terms of the British North America Act. If he was not really Speaker then the Senate could do nothing legally while he was in the Chair.

The solution which Poirier produced did not really settle anything: let the Speaker call anyone to the Chair during a debate, but when the Senate took any formal action, the Speaker must return. In spite of these objections the Bill passed, and then died on the Order Paper of the Commons. The next year the Government again introduced the Bill with one small alteration. A clause had been added which allowed the Bill to come into effect by proclamation, and thus gave the law officers of the Crown an opportunity to examine its constitutionality. This Bill passed both Houses, but sufficient doubts were raised that the British Parliament, by request, passed an enabling Act which clearly legitimised the election of a temporary Speaker.

Since 1895 this Act has been used frequently. The procedure is similar to that used in the House of Commons. The Clerk announces at the beginning of a sitting that the Speaker is unavoidably absent, and the Leader of the Government moves that another Senator take the Chair of the Senate as Speaker. If accepted (and there has never been a protest over a nominee) this Senator presides without further Motion until the incumbent returns to his place. This period may be a relatively short time lasting only a day, or may extend over a period of a week or more. Should this replacement in turn be absent, his absence is announced to the Senate, and a new Speaker *pro tem* is elected.[18] During a sitting the procedure is even more simple. The Speaker alone calls a Member of the Senate to take his place, and all action taken with this individual in the Chair has the same validity as if the Speaker were present.

There has been no consistent policy on these temporary appointments. On some occasions a relatively senior Senator is chosen, and at least once the most junior Senator of all was picked.[19] Two women have presided over the Senate as a result of the absence of the Speaker[20] and, what is more unusual, the Deputy Leader of the Opposition was once chosen.[21]

On one occasion the whole question of the absence of a Speaker was examined by the House. In 1915 Landry, the Speaker, was in difficulty with the House constantly, and his rulings were appealed and rejected. As a result on 8th April the Clerk reported the unavoidable absence of the Speaker. For the remaining six days of the session the House was in a ferment. Each day the question of the Speaker was raised in one form or another.[22] A variety of Senators reported (apparently accurately) that the Speaker was sulking in his rooms in the Parliament buildings. On 10th April a crucial question was raised: is the Speaker's absence " unavoidable " if he is simply unwilling to appear? To Cloran who raised the point, the answer was clear. The absence of the Speaker was avoidable, all the decisions of the Senate under its Acting Speaker were illegal, and the Government should take steps either to force the Speaker to take the Chair or dismiss him. The Government refused to be drawn in spite of every effort being made to force it to a decision. It hid behind the patently untrue statement

that it had no knowledge of the subject. The situation cured itself at the beginning of the last sitting of the Senate before prorogation. The Speaker reappeared and made what must be one of the most unusual statements ever made by a presiding officer:

> In resuming my seat I would like to give only one word of explanation for my recent absence.
>
> I shall not refer to the past only to say that, though I attach very little importance to the fact that my last two decisions have been reversed, I confess that I felt deeply the defection of Conservative friends which has been manifested by the hostile vote of some of them and by the abstention of some others. That reason alone prompted me to decline to preside over a House which failed to give me the expected support.
>
> Now that all the contentious matters have been settled, without any participation of mine, I feel it my duty to take part in the closing of Parliament, and to be at my post at this last call of the Crown.
>
> I do so all the more willingly because I have received the best assurances that my last decisions were strictly in conformity with the law, and that action will be taken which will ensure the full recognition of my rights as Speaker of this House.[23]

This statement, on which the Speaker refused to allow either comment or debate, closed the incident, and Landry presided over the Senate for another year.

Position of the Speaker in the House

The tendency towards strong party affiliation on the part of the Speaker has already been noted. There is nothing unusual in this as the same tendency has often been noted in the Speaker of the House of Commons. The most curious feature of this strong party connection is that the Senate (unlike the House of Commons) has never considered this to be a liability in office. Macpherson was welcomed to the Chair by the statement of the Leader of the Opposition that the promotion had been the result of services rendered to the party[24] and four years later Miller was welcomed in similar terms.[25] More recently the Speaker himself, and the Senate as a whole, have tried to lend an air of impartiality to the Chair. Hardy on his appointment in 1930 promised to subordinate his Liberal leanings while in the Chair, although he remained President of the Ontario Liberal Federation throughout his brief term.[26] Some years later the Leader of the Opposition noted the impartial manner in which Drouin had presided for four years.[27] Occasionally these pleasant relationships have broken down. There is little doubt that the Motion put forward by Alexander in 1885 to remove Macpherson's portrait from the halls of the Parliament buildings was based more on personal antogonism than on political grounds, but in the debate on the Motion Alexander alleged partisanship on the part of Macpherson while Speaker.[28] Similarly, a Motion debated briefly in 1916 which would have eliminated the Speaker's right to participate in debate was based on the principle that the Speaker was an appointee of the party in power.[29]

Certainly the rules of the House encourage the Speaker to be and act as a partisan, and eliminate the idea that he should sever his party ties while in the Chair. The rules of the House and the British North America Act both assume that the Speaker will take an active part in political life. The rules allow him to speak in debate if he so chooses, providing only that he must leave the Chair to do so;[30] and the British North America Act gives him an original and not a casting vote.[31]

Not only has the Speaker the right to participate in debate, but he has often exercised it. In the early years this participation was common and was often directed to purely party political ends. Speakers indulged in speeches on Bills relating to the Canadian Pacific Railway, a Dominion lands Bill, a fisheries Bill, a franchise Bill and similar legislation. Sir David Macpherson, as a Minister as well as Speaker, took an active part, steering a supply Bill through the Senate in 1882 and the lands Bill through Committee of the Whole the next year. This participation in debate has not always meant blind support for the Government. On one occasion at least the Speaker announced his opposition to a Government Bill when speaking on it, and Speakers have been known to move amendments to Government Bills in Committee of the Whole. In recent years the Speaker has been only an infrequent contributor to debate, contenting himself usually with the internal organisation of the Senate and non-contentious matters such as the ratification of the Charter of the United Nations.[32]

The voting pattern of Speakers has followed much the same course. For the most part Speakers voted in divisions for the first twenty years after Confederation, although on occasion they abstained from voting for no apparent reason. From that time on voting became intermittent, with even individual Speakers varying their habits wildly.[33] The one further period during which the Speaker voted with a fair degree of regularity was between 1911 and 1921. Since that time a vote from the Speaker has become a rarity. The ability of a Speaker to vote in any division has, in the past, led to the unusual feature of the pairing of the Speaker with another Member, an event which would never have been possible at any time in the House of Commons. This practice of pairing the Speaker has, of course, in practice disappeared along with the Speaker's vote.

It would be reasonable to expect that the open party affiliation of the Speaker, reinforced by his willingness to speak and vote, would lead to an amount of dissatisfaction with his rulings. In fact, Speakers have shown themselves to be impartial in their rulings and appeals to the Senate, while allowed, have been uncommon. There have only been nine occasions in one hundred years when a Speaker's decision has been carried to a recorded vote in the Senate, and six of these were during the unhappy period when Landry was in the Chair. The form of appeal seems reasonably settled. The Motion to appeal, unlike that in the House of Commons, is that the decision be *not* sustained, and the Senate votes on it as it would on any other Motion.[34] There seems

to be no consensus as to whether a ruling may be debated. The rules are silent on the subject[35] and a suggestion made in 1903 that the Motion was not debatable was challenged by some Senators. More recently, the same suggestion has been made without serious question.

On only one occasion has the question of partisanship become a serious issue in the Senate. In 1916 Senator Pope called attention to a speech made by the Speaker in the previous year in which Landry was reported to have referred to the Liberal Senators as " fanatics ". Pope refused to raise the question as one of privilege, and merely asked if the Speaker had indeed made the remarks attributed to him. The Acting Speaker in the Chair rejected both methods of approach, and ruled that any matter affecting the Speaker could be raised only as a substantive Motion. Pope ignored this advice and two weeks later raised the same matter as a question of privilege. Landry, himself in the Chair on this occasion, attacked the move as the speech had been made outside the Senate and, therefore, could not be made the subject of a question of privilege. He added further that he had been misquoted. The question rested there for another week until Pope introduced a substantive Motion which was, in effect, a Motion of censure. The Motion stated:

> That this House deeply regrets that in more than one public speech . . . His Honour the Speaker of the Senate has made injurious and unjustifiable remarks about Members of the Senate, and this House is of the opinion that it is highly improper for any Senator while holding the high office of Speaker to publicly engage in violent public controversies and make statements calculated to throw discredit upon this House or the Members thereof.[36]

Pope denied that this Motion was an attack on the Speaker, but claimed rather that the Speaker's speeches had been an attack on the Senate as a whole. He, and others in the Senate, were not satisfied with the Speaker's bald statement that he had been misquoted, and were trying to obtain a clear statement that Landry had not referred to Senators as fanatics because they had voted against his rulings. A compromise was suggested by the Leader of the Government by which a committee would be struck to interview the Speaker and ascertain if, in fact, he had used the words complained of. The Senate accepted the suggestion and a week later the Committee reported to the House. The Committee had asked the Speaker if the speech read into *Hansard* was an accurate report of his speech and, if not, how it differed from what he had said. The Speaker refused to amplify his previous statement that he had been misquoted and the committee expressed itself satisfied with the answer. Pope and his backers dropped their Motion of censure at this point, and Landry continued in the Chair until he resigned at the end of the session.

It might be assumed also that the political ties of the Speaker would affect his ability to keep order in the Senate. The rules themselves made his position unenviable for the first forty years after Confederation. The Speaker was placed in the Chair but was given little authority

to enforce the rules or control the House. In 1885 for instance, Miller stated clearly that it was not his duty to call a Senator to order until his attention had been called to a breach of the rules. In the next year Miller also disclaimed responsibility for calling a Member to order for irrelevancy and noted rather sadly that Senators tended to ignore him and continued speaking when he rose in the Chair. In 1902 a direct attempt was made to extend the Speaker's powers. The Speaker removed a notice of Motion from the Order Paper on his own authority as being contrary to the dignity of the Senate. He contended, when attacked, that his position as the protector of the dignity of the Senate gave him the necessary authority, and offered to let the Senate decide the issue by vote if it liked. A short time later a Senator moved a resolution designed to give the Speaker the power to review the content of all notices of Motion and to reject those that were out of order or " of a character which should not appear in the Journals or records of the Senate ". In spite of the fact that it had taken no action on the Speaker's proposal a short time before, the Senate defeated this Motion on division.

One question which was never settled in this period was whether the Speaker himself could raise a point of order. The Senate was quite firm on occasion that all Senators were equal, and that the Speaker held no higher place than any other. But there seemed to be an assumption that the Speaker, if anything, held a lower place than other Senators as he alone was incapable of raising a point of order himself.[37] Several times Speakers did assert their rights as Senators to draw their own attention to breaches of order, but the method was never widely used.

The 1906 revision of the rules added a new rule which placed the Speaker in much the same position as his Commons counterpart. For the first time the rules gave the Speaker specific authority to preserve order in the House. The committee on revision approved the new rule unanimously, and, after a certain amount of opposition from Senators who disliked the idea of putting themselves " under " a Speaker, the Senate passed the rule. In practice, this new rule made very little difference in Senate procedure and does not seem to have been well understood by Senators. The very next year one Senator questioned the right of the Speaker to intervene to maintain order and as late as 1934 the Speaker himself stated that he must have his attention called to a breach of the rules before he could do anything.

The exact extent of the Speaker's power to deal with breaches of discipline is far from clear. The traditional sanction of " naming " seems to be available, although in practice it has shown serious limitations. It was tried in 1916 with no effect whatsoever. The brief exchange which took place at that time will illustrate the problem:

The Speaker: I will name the hon. gentleman if he does not stop.
Hon. Mr. Cloran: Well, name me.
The Speaker: Hon. Mr. Cloran.
Hon. Mr. Taylor: The Sergeant-at-Arms will do his duty.[38]

On the surface the procedure is neat and effective. But if *Hansard* is examined further the futility becomes obvious. The Sergeant-at-Arms apparently took no action, and in spite of the supposedly impressive rebuke, Senator Cloran simply continued his speech. The effect may have been greater than appears, however, for in the next year the threat of naming brought Senator Cloran safely back into line. In 1917 the sanction of naming was again used with somewhat better results. The procedure was, however, thoroughly bungled and several Senators expressed considerable doubt afterwards as to whether the offender had, in fact, been named. The threat of suspension seems to have been more effective, and the offender, admitting that he could not remember what he had said, withdrew any words that might have caused offence.[39]

It is fortunate then that the problem of maintaining order in the Senate has never been a large one, and the political affiliations of the Speaker have clearly never affected his ability to maintain some semblance of order. There is no doubt that the Senate has a tradition of orderly debate and gentlemanly conduct. There is also no doubt that a chamber that prides itself on its non-partisan approach to legislation will never arouse the strong feelings that occasionally disturb the House of Commons. It is impossible to imagine, for instance, the Senate ever becoming sufficiently aroused that a sitting would have to be suspended for disorder. The few cases of disorder that have occurred have been largely the result of the activities of a very small number of Senators with exceptionally strong opinions. It is difficult to see these as anything more than the protests of a few querulous old men who are annoyed at not being able to get their own way.

The Speaker at Present

On the whole the Speakership of the Senate presents few of the problems that confront the office in the House of Commons. The Speaker still presides over a House noted for its short sittings, leisurely procedure and docile manners. The reform of 1906, as we have seen, gave the Speaker the reserve power he needs to control any unexpected outbreaks of bad temper in the House. The one feature—political partisanship—that has traditionally plagued the House of Commons Speaker in Canada should be present in the Senate in an even greater degree, but it has never become important. It is natural that this should be so, for the Chair of the Senate does not carry with it the same responsibility or the necessity for a strict application of the rules which mark the Chair of the Commons. Debate is never as heated and awkward political situations simply do not arise in the Senate. On the whole, Senators have been satisfied with those who have been placed in the Chair, and the proceedings of the Senate have never suffered from any partisan political suspicions.

Indeed, it would seem that few features of the Senate Speakership could profitably be improved. It does seem unnecessary that the

Government should still appoint the presiding officer for one part of the legislature. In the past, however, the Government seems to have chosen men who were, for the most part, well known to their fellows, even if many have not been particularly distinguished in their duties. It is possible that the Senate itself should choose its Speaker, although there is no reason to believe that its choice would automatically be any better than that of the Government.

There is, however, one feature of the Senate Speakership that should be noted. There seems to be little doubt that the Speaker of the Senate is ceasing to be the officer he was once expected to be and is growing closer to the Speaker of the Commons. As we have seen, the Senate Speaker was always intended to be an active partisan. Twice he has been a Cabinet Minister, and he has the right to speak and vote. The picture of a partisan Speaker at Confederation is clear. The succession of Speakers in recent years has blurred this image. To an extent this trend may be traced to the reform of 1906 which gave the Speaker real power over the Senate and changed him from a stuffed dummy whose strings were pulled by the Senate as a whole into a potentially effective presiding officer. At the same time, the Speaker himself has been giving up many of the outward appearances of partisanship by not speaking and voting in the Senate. It is, therefore, much easier for the Speaker to appear today in the guise of an impartial arbiter, free from overt party allegiance.

The reasons for this change are impossible to assess with certainty, but there is no reason to believe that it is not connected with the background of the incumbents combined with the normal composition of the Senate itself. Since 1900 two-thirds of the Speakers of the Senate have sat in either the House of Commons or in a provincial legislature. Roughly the same proportion of Senators have had the same background. In all of these bodies the tradition of an impartial Speaker is strong and it is not impossible that this tradition has been carried over from one to the other. Whatever the reason it seems certain that the Senate has gradually moved from the idea of a partisan Speaker to a position where he presides, as do his counterparts in other parliamentary legislatures, with firmness, dignity and obvious impartiality over the proceedings of the House.

[1] This is in marked contrast to the House of Commons where the Speaker is elected under one section of the Act and is also made specifically the presiding officer of the House.

[2] The control of the Prime Minister personally over this appointment has been specifically claimed in an Order-in-Council, P.C. 3374 of 25th October, 1935. The same Order-in-Council also claims for the Prime Minister the right of recommending personally the appointment of all Senators.

[3] Senate *Debates*, 6th May, 1868, pp. 214–6.

[4] *Ibid.*, 16th April, 1888, p. 324.

[5] This ignores the appointment of Cauchon in 1867 when such an appointment was obviously necessary. It has also happened with Chauveau (1873), Vien (1943), Drouin (1957) and Bourget (1963).

[6] Senate *Debates*, 11th March, 1873, c. 35–6.
[7] R. D. Wilmot and Sir David Macpherson.
[8] P. J. O. Chauveau had been Premier of Quebec while D. Christie, H. Bostock, J. H. King and W. McL. Robertson moved from the Cabinet to the Chair.
[9] Senate *Debates*, 12th February, 1883, p. 19.
[10] As in the case of Ross these exceptions are open to argument. Macnaughton is a bilingual English Canadian from Montreal, while Lamoureux is a bilingual French Canadian from Ontario.
[11] Senate *Debates*, 21st January, 1884, p. 23; 1st September, 1896, p. 116.
[12] Thus Allen succeeded Plumb in 1888; Hardy followed Bostock in 1930, and Vien succeeded Parent in 1943.
[13] Senate *Debates*, 24th January, 1884, p. 64.
[14] *Ibid.*, 13th March, 1888, pp. 164–7.
[15] *Ibid.*, 23rd August, 1917, p. 674.
[16] *Ibid.*, 1st June, 1891, p. 61.
[17] On both occasions Ross was unexpectedly absent and the Government had little opportunity to appoint a substitute. The Senate, therefore, met without a Speaker and appointed one of its senior members to the Chair simply to accept a Motion to adjourn. Senate *Journals* 13th May, 1892, p. 145; 16th May, 1892, p. 146.
[18] *Ibid.*, 26th July, 1955, p. 573. The term Speaker *pro tem* has been in virtually constant use since 1922. This temporary officer has also been referred to in the past as "Speaker", "Acting Speaker" and "Deputy Speaker".
[19] Sentate *Debates*, 8th July, 1958, p. 266.
[20] Senator Cairine Wilson and Senator Nancy Hodges.
[21] Senator W. M. Aseltime.
[22] On one occasion a Senator asked if some arrangement could be made to rent the Speaker's robes for the use of the Acting Speaker so that he would not cut such a poor figure at prorogation. Senate *Debates*, 13th April, 1915, pp. 439–40.
[23] Senate *Journals*, 15th April, 1915, p. 234.
[24] Senate *Debates*, 13th February, 1880, p. 13.
[25] *Ibid.*, 21st January, 1884, p. 13.
[26] *Ibid.*, 13th May, 1930, pp. 180–1.
[27] *Ibid.*, 4th October, 1962, p. 31.
[28] *Ibid.*, 11th February, 1885, pp. 45–7.
[29] *Ibid.*, 3rd May, 1916, pp. 384–5.
[30] 1958 Senate Rule 50. There are numerous examples of the Speaker addressing the Senate without leaving the Chair.
[31] Sec. 36.
[32] An exception might be made here in the case of a speech supporting the admission of Germany to N.A.T.O. which had been a contentious issue in the House of Commons.
[33] Pelletier, for example, voted several times in 1897, not at all in 1898, rarely in 1899 and more often in 1900. Similarly, Dandurand voted several times in 1905 and never again during his term in the Chair.
[34] There is one case in which the Motion was that used in the House of Commons: "Shall the ruling of the Speaker be sustained?" but this is the only example of this form that can be found. Senate *Journals*, 8th April, 1915, p. 205.
[35] 1958 Senate Rule 16 merely states that a Speaker's ruling may be appealed.
[36] Senate *Debates*, 23rd March, 1916, p. 198.
[37] This principle was specifically stated in the debate on the Speaker's powers in 1906. *Ibid.*, 26th March, 1906, p. 196.
[38] *Ibid.*, 9th May, 1916, p. 471.
[39] *Ibid.*, 6th September, 1917, pp. 846–7.

IV. CANBERRA'S PROPOSED NEW AND PERMANENT PARLIAMENT HOUSE

By J. A. Pettifer
Clerk Assistant, House of Representatives, Australia

For the past forty-three years the Parliament of the Commonwealth of Australia has met in its provisional Parliament building in Canberra. The building's provisional character was deliberately planned. *Hansard* of 23rd July, 1923, records words of the then Minister for Works which today seem to have a special significance: " If the faith of optimists who believe that in Canberra we are to have the world's most beautiful city is confirmed in forty or fifty years' time, the work of building a Parliament House worthy of such a city is too big a job for us to tackle at the present time, and might well be left to posterity. Our successors will be in a better position to judge of the then requirements." As events have proved, his statement was both wise and prophetic. Australia's progress, especially over the last twenty years, and the complete acceptance and rapid growth of Canberra as the National Capital have now created conditions which are not only suitable but, in fact, demand moves towards a new and permanent building.

Generally, the provisional Parliament House has served the Commonwealth well. From time to time it has been extended—indeed the amount spent on capital works since its construction ($2.4m.) has far exceeded its initial cost in 1927 of $1.5m. However, accommodation in the present building, like many parliamentary buildings throughout the world, has become inadequate in almost every area. In addition, maintenance costs, which have averaged about $100,000 over the last three years, are expected to rise as the building ages and in another ten years or so will enter a new phase involving quite substantial expenditure. Thus, an early start on a new and permanent building would be, in every way, a sound and practical move.*

In the House of Representatives on 3 December 1965, Sir Robert Menzies, then Prime Minister, first moved for the appointment of a Joint Select Committee to enquire into certain aspects of a new and permanent Parliament House in Canberra. Following are the terms of reference of the Committee, as set out in para. 1 of the resolution of appointment:

> That, having in mind proposals for the erection of a new and permanent Parliament House (in this resolution referred to as 'the Parliament building') and in that connexion the need to examine the efficiency or otherwise of working

* See The Table, Vol. XXXIV, pp. 40–2, for additional comment on the existing provisional Parliament building and the establishment of a Joint Select Committee to inquire into a new building.

arrangements in the present Parliament house and any changes in those arrangements that may seem to be desirable, a Joint Select Committee be appointed to inquire into and report on

(*a*) the accommodation needs of
  (i) the Senate, the House of Representatives and the Parliamentary staff in the Parliament building;
  (ii) members of the public visiting the Parliament building; and
  (iii) library facilities, and catering and other facilities and services in the Parliament building for Members of the Parliament and others;

(*b*) whether, and, if so, to what extent or in what manner, the following should be accommodated in the Parliament building:
  (i) the Executive;
  (ii) the press; and
  (iii) communication services; and

(*c*) matters incidental to the foregoing matters.

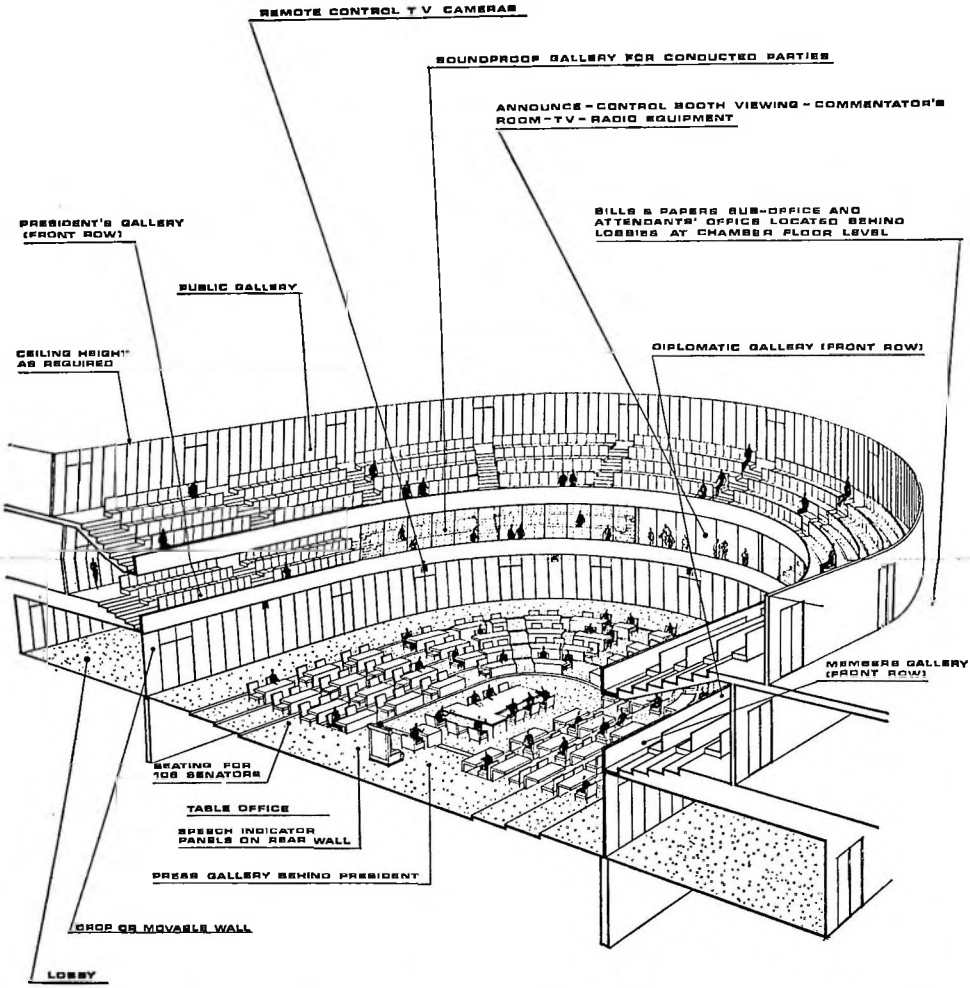
The Committee approached its investigation in two ways. First, it asked the Permanent Heads of the five Parliamentary Departments (Senate, House of Representatives, Joint House, Library and Reporting Staff) to prepare detailed submissions on what they considered would be the future accommodation requirements of their particular sections of the building. These were collectively discussed by the Departmental officers, amended as necessary, and finally embodied in a consolidated submission which covered a large proportion of the Committee's enquiry. The Committee used the submission as its basic working document.

In addition, representatives of the press proprietors and working journalists were called before the Committee in regard to press accommodation and representatives of the Australian Broadcasting Commission and the Postmaster-General's Department were asked for submissions in regard to communications.

The second major line of enquiry was the Committee's overseas tour conducted by the two Presiding Officers, two Senators and three Members of the House (representative of the two main parties) accompanied by the Secretary to the Committee, the Associate Commissioner of the National Capital Development Commission (responsible for the development of Canberra) and an officer of the Prime Minister's Department.

In order to derive maximum benefit from the tour, the Committee did not approach the Government for approval to travel until it had assessed the deficiencies of the present building and had decided, in broad principle, what should be done to overcome them in the new building. Thus the Committee was able to compare its tentative solutions and suggestions with any new methods and ideas from overseas.

The Committee's study group left Australia on 21st June, 1968, visiting the Parliament buildings in Kuala Lumpur, New Delhi, Rome, Berlin, Bonn, London, Washington, Ottawa and Honolulu in addition to the United Nations buildings in Geneva and New York. The group looked in some detail at the Chambers and assembly halls and other



NOTIONAL IMPRESSION OF CHAMBER AREA
THE SENATE

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accommodation in these buildings, considered the architectural and design aspects and, in the case of the parliamentary buildings, conferred with Members and officers on such matters as the functioning of the Houses, the relationship and the interaction of function and design, the merits or demerits in their present arrangements and the place of the Executive in their buildings. The party also paid particular attention to the facilities provided for the press and other news media and to special communications arrangements.

The Committee, in its report, made special acknowledgement of the goodwill, kindness and assistance afforded to it by parliamentarians and parliamentary officers throughout its tour.

The gathering and sifting of evidence took much time but this had some advantage in allowing time for the evaluation of ideas.

The Committee's Report* was presented on 8th April, 1970, and now awaits consideration in both Houses. The Report is of substantial size and contains much detail supporting its main recommendations. Principal recommendations were:

Working arrangements

(1) That, in connection with Parliamentary working arrangements, the present system, whereby the two Houses share and jointly control the services of the refreshment rooms, *Hansard*, the Library, cleaning and maintenance, be continued in the new building.

Future membership of the Houses

(2) That, for the purposes of planning the building, membership of the Houses be taken as
108 Senators and about 225 Members by the year 2000 A.D. and
108 Senators and 400–450 Members ultimately.

Present and future needs

(3) That, subject to the next recommendation, an essential feature of the design of the building be its practicability for extension or enlargement at appropriate future intervals.

(4) That those parts of the building which are centrally situated and so incapable of easy expansion (for example, the Chambers, the halls and, possibly, the Library) have a floor area necessary to meet the ultimate requirements of the Parliament, but other portions of the building be built initially to meet requirements for, say, twenty to twenty-five years following the completion of the building.

The Chambers

(5) That the Senate Chamber and the House of Representatives Chamber be developed to accord generally with the notional studies and perspectives shown in this Report and that they have incorporated in them the features shown in those illustrations.

The halls and foyer

(6) That, in addition to a foyer of generous proportions, the building contain three separate halls situated respectively

(*a*) Between the Chambers at legislative level, similar to the present King's Hall, with the suggested title " Federation Hall ", symbolising the indissoluble act of federation of the Australian States.

* Parliamentary Paper No. 32 of 1970.

(*b*) Between the Chambers at upstairs gallery level with the suggested title " States Hall " or " National Hall ", and

(*c*) Adjacent to the entrance foyer, this being a Great Hall of large and stately proportions for important State and social occasions, etc., normally open to the public, with the suggested title " Parliament Hall ".

Film theatrette and viewing rooms

(7) That a film theatrette seating 400 people and two viewing rooms each seating 25–30 people be included in the building.

Accommodation needs of the Parliamentary Departments

The Senate

(8) That the accommodation for a Senator consist of an office about 15ft. × 15 ft., a staff room about 15 ft. × 15 ft. and a wash–rest area of about 10 ft. × 8 ft. and that other accommodation for the Department of the Senate be provided as shown in the Schedule of estimated space requirements.

The House of Representatives

(9) That accommodation for a Member consist of an office about 15 ft. × 15 ft., a staff room about 15 ft. × 15 ft. and a wash–rest area of about 10 ft. × 8 ft. and that other accommodation for the Department of the House of Representatives be provided as shown in the Schedule of estimated space requirements.

Committee Rooms

(10) That the statutory, standing and select committee rooms (but not party committee rooms) be located in one self-contained area or floor of the building and that the number and size of the rooms be as shown in the schedule.

Location of rooms in relation to Chamber

(11) That, in locating rooms in their respective areas in relation to the House of Representatives Chamber, priority rights for office accommodation be given to those persons who, because of their functions, have a need to be constantly or frequently in attendance upon the House and those other persons who, because of their status should be accorded some precedence in the location of their rooms in relation to the Chamber, namely,

(*a*) Whips of all parties.

(*b*) House officers in the order of Mr Speaker, the Chairman, some Deputy Chairmen, Clerks at the Table and Serjeant-at-Arms.

(*c*) Ministerial officers in the order of Leader of the House, the Prime Minister, the Deputy Prime Minister and certain senior Ministers (all within the self-contained Executive area).

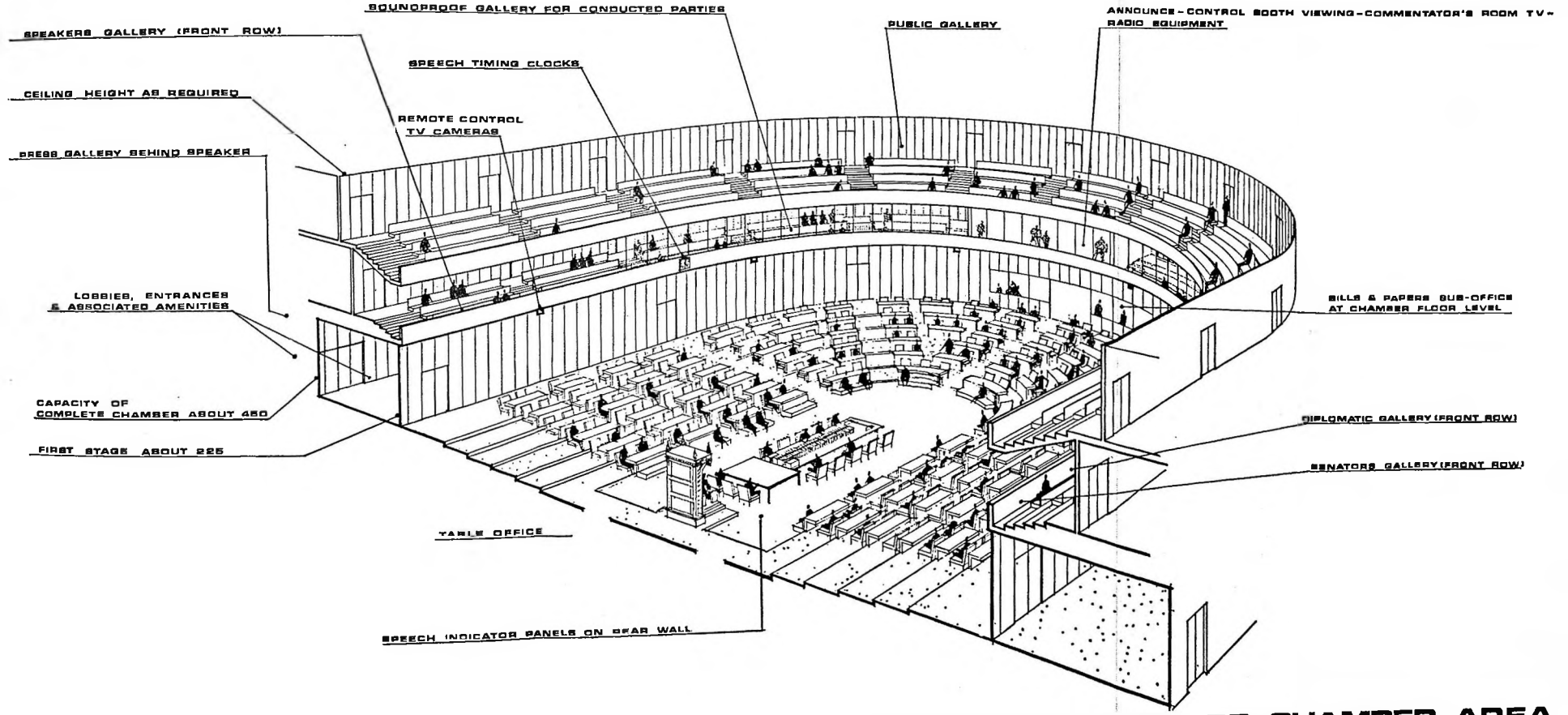
(*d*) Opposition officers in the order of Leader and Deputy Leader of the Opposition, senior Members of the Opposition Executive.

(*e*) Other parties in the order of Leaders, Deputy Leaders and senior Members,

and that the same principles apply in allocating priority rights in the Senate.

Parliamentary Library

(12) That the Parliamentary Library be, as far as possible, centrally situated and that the general reading rooms and services to Senators and Members be on the same level as both Chambers and be readily accessible from the Chambers.



NOTIONAL IMPRESSION OF CHAMBER AREA

THE HOUSE OF REPRESENTATIVES (SHOWING INITIAL DEVELOPMENT)

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Accommodation and facilities for visitors

(13) That, for purposes of security, the public areas of the building be clearly delineated and the public circulation pattern allow for easy movement, with little or no policing or directing, from the point of entry to the foyer, the Parliament Hall, the States Hall or National Hall and thence directly to the public galleries of each Chamber.

(14) That the main committee area be easily accessible from the public area.

(15) That interview rooms be provided near the entrance and near the States Hall.

(16) That a light refreshments cafeteria, a book stall and an information centre be provided for visitors near the main entrance.

(17) That parking for the public be underground so as not to detract from the appearance of the Parliamentary area and, for purposes of security, be away from any underground parking areas provided for Members and Staff.

Facilities, services and fittings

(18) That the building be fully air-conditioned.

(19) That information regarding current business in the Chambers be relayed to specific points in the building by means of a system of closed-circuit television and a house monitoring system.

(20) That efficient and quick means of movement be provided for Senators and Members for their attendance at divisions, etc.

(21) That adequate recreational facilities be provided.

Other matters in relation to the building

(22) That, in regard to access to the building, account be taken of the needs of ceremonial occasions, some form of protection be provided against large bodies of demonstrators and separate covered entrances be provided for Senators and Members.

(23) That, in regard to the outside of the building, courtyards (or their equivalent) be included in the plan, provision be made for the underground garaging of the cars of Members and staff and others having long-term parking needs and that facilities be provided for Government transport cars to wait, pick up and set down passengers underneath the building.

(24) That the security needs of the building be considered at all planning stages.

(25) That, when the physical characteristics of the new Parliament House are determined, action be taken either by resolution of the Houses or by legislation to define the nature and extent of the " Parliamentary Precincts " over which control shall be exercised by the Parliament through its Presiding Officers.

The Executive

(26) That, subject to the next recommendation, Ministers be accommodated in the Parliament building complex.

(27) That the Executive or Ministerial area be a separate and self-contained block (or wing or section) being part of, or linked to, that part of the building containing the Chambers and having quick and easy access to the Chambers.

(28) That, in addition to accommodating the Cabinet Room and ancillary offices, the area be planned, as a first stage, on the basis of a Ministry of 35.

The Press

(29) That, subject to the next recommendation, accommodation for representatives of the press, radio and television for the reporting of Parliamentary proceedings and the functioning of the Executive Government, be provided in the Parliament building complex.

(30) That this accommodation be in a clearly defined self-contained block (or wing or section) of the building under the direction and control of the Presiding Officers.

(31) That the accommodation be leased to the newspaper, radio and television interests using the space and that management of and financial arrangements relating to accommodation (*e.g.* rent payments) be determined by the Presiding Officers.

(32) That there be a separate entrance to this accommodation under House supervision.

(33) That there be quick and easy access from the press area to the Chamber press galleries.

(34) That circulation routes from the press offices to the Library, to the Refreshment Rooms and to the Parliament Hall and interview rooms be such as to avoid areas set aside for the use of Members and Ministers.

(35) That a "hot room" equipped with telephones and small desk units be provided immediately behind the press galleries of the Chambers for use when the despatch of news is of the utmost urgency.

(36) That a large press conference room be provided for press, television or radio interviews with Ministers, Members, national leaders and other V.I.P.s.

(37) That division bells, the sound amplification system and/or closed-circuit television from the Chambers be conveyed to the area.

(38) That structural and other provisions be made for the installation of all necessary means of communication in the area and provision be made, as far as possible, for likely developments and technical advances in communication systems.

Communication Services

(39) That, in addition to services now being provided (for example, telephone, telegraph, broadcasting, post office facilities), provision be made for additional communication services, the most important of which are:

(*a*) Television transmission from the Chambers for "broadcasting" of proceedings and for closed-circuit purposes.

(*b*) A press conference room with TV and broadcasting facilities and other press wing facilities for television and radio broadcasting. (*See under* "*Press*".)

(*c*) A house monitoring system to *Hansard* and other officers from the Chamber and Committee rooms and

(*d*) Control announce facilities in the Chambers, the halls, the film theatrette, four major Committee rooms and Members' dining-room.

Incidental Matters

(40) That in all phases of planning and construction of the new building there be a close liaison between planning authorities and parliamentary authorities and for this purpose there be established a "client" Committee consisting of representatives of Senators, Members and the Parliamentary Departments.

Summary

The principal task, as the Committee saw it, was to present a report fulfilling two requirements, viz.:

(1) to provide in the form of proposals, the data necessary for the planning and design of the new House;

(2) to set out the proposals in a form which could be readily under-

stood by Senators and Members and so facilitate debate on the project in the Parliament should it be desired.

The Committee was careful to avoid, in any way, predetermining the architectural design of the building, since clearly it should be the function of the architects to use their ingenuity and best skills in the design of this major project. None the less, the Chambers in particular need to be designed and constructed within stated limits in order to function in the most efficient manner and notional drawings of these are shown.

The need for a plan which would allow for the growth of parliamentary requirements was stressed by the Committee. This has been a major concern of the Parliament in Canberra and quite clearly was also a problem for every existing Parliament visited overseas.

Advice given to the Committee indicated that the new building would be about a ten-year project from the date of approval to commence planning to its construction, more than half of this time being necessary to deal with architectural competitions, preliminary plans and designs.

Another matter of some significance was the Committee's recommendation that a parliamentary committee of about 8 to 10 persons be appointed to act as a " client " and as a means of asserting parliamentary control over the development of the architectural brief and subsequent planning and design phases of the project.

Canberra exists as the Seat of Government of the Commonwealth of Australia. Parliament's role in the Government demands that it be housed in a structure of pre-eminence in the National capital. It is our hope that the new and permanent Parliament House will be a prestige and highly functional building. Some of the less aged Clerks, at least, are looking forward to working in it.

V. THE SOCIETY'S GENERAL MEETING IN TRINIDAD, 1969

By Sir Barnett Cocks, K.C.B., O.B.E.
Clerk of the House of Commons

Port of Spain and the Humming-bird suite of the Trinidad Hilton make an admirable venue for an international gathering. For the Clerk of the House of Commons, who attended a conference there in October 1969 as representative of his colleagues at Westminster, the occasion was both impressive and stimulating. It was a general meeting of members of the Society of Clerks-at-the-Table from the many Commonwealth Parliaments whose funds enabled them to send a Clerk to the conference. Under the able and dignified chairmanship of Rex Latour, Clerk of the House of Representatives of Trinidad and Tobago, the Society entered upon a big agenda of parliamentary subjects.

For all too many years the Society had been represented by a few dusty volumes of red and green, interesting but remote from actuality and too often describing parliamentary news as dated as last year's calendar: the impression had been of a moribund body linked only by memoranda. Here, however, was the clearest evidence that the Society was indeed alive, that its members were human and that their discussions were effective and vigorous, leading to decisions on future programmes and policy.

Perhaps the physical setting in the famous " upside down " Hilton deserves credit for the shake-up of ideas which ensued. To those who were unfamiliar with the modern world of the Caribbean, it was a surprise to find that the ground floor of the hotel, overlooking a swimming pool and backed by the mountain, was placed at the top, so to speak; and guests who were directed to their bedrooms on the fifth floor took the lift down, not up.

A verbatim report of the Society's discussion was taken, and minutes *in extenso* have been circulated to the 160 officers of Parliament who comprise our membership. In the past, there has been some feeling that without the full membership there can be no general meeting of the Society, and consequently, that whenever a meeting of members of the Society takes place, nothing can be done. Such objections, to the extent that they still exist, were brushed aside under the harmonious influence of the humming-bird. It was decided by the Commonwealth Clerks present in Trinidad, being drawn from Africa, from North and South America, from Asia, Australasia and Europe, that their representation was wide enough for the meeting to be properly described as a general one. The virtue of this decision was to enable the Society to develop both its policy and its procedure from meeting to meeting.

The Clerks thought that the meeting of the Society at Westminster in 1961—the first under the aegis of the C.P.A.—would be the starting-point. The result will be seen as follows:

First General Meeting	London	1961
Second General Meeting	Nigeria	1962
Third General Meeting	Canada	1966
Fourth General Meeting	Uganda	1967
Fifth General Meeting	Bahamas	1968
Sixth General Meeting	Canada	1969
Seventh General Meeting	Trinidad	1969

At the same time, there is a tacit understanding that no major changes would be instituted except by a majority decision established as the result of a ballot, as in the past. One of these major changes established. by ballot was reported to, and approved by, the Trinidad conference This approval, it should be noted, was not required by the Society's rules: but it endorsed the action of the Society's officers, who, working in isolation at Westminster, have no other barometer with which to gauge the degree of approval for their work felt by members generally. The effect of the ballot is to delegate the general direction of the Society's affairs to the Clerk of the Overseas Office at Westminster.

A few years ago the scheme and system of the Society, which in happier days had drawn its inspiration from the devoted work of Owen Clough, C.M.G., in Cape Town, was threatened with disintegration. A series of misfortunes culminated in the rumoured loss of manuscript in the unusual floods which submerged tracts of England in 1967—a year in which no volume of the Journal of the Society actually appeared. The fortunate appointment of Mr. J. M. Davies, a House of Lords Clerk, as editor and a new energy derived from the encouragement of Sir David Stephens as Clerk of the Parliaments and from the Commons Overseas Office under the direction of Mr. M. H. Lawrence, have transformed the prospects of the Society and confounded the pessimists (among whom was the Clerk of the Commons) who saw no future other than amalgamation with the Journal's friendly rival, the challengingly efficient *Parliamentarian* published from the General Council's offices across the road.

It was generally felt at the meeting in Trinidad, however, that energy and inspiration alone were not wholly sufficient to secure the future. The new financial provision which the Society has approved was designed to remove the embarrassment of Clerks in smaller Parliaments being left to find the subscription themselves for an institution which the Commonwealth as a whole has found valuable. The new rule regarding subscriptions states that " The minimum subscription of each House shall be £10 payable not later than 1st January each year ", and it goes on to say that failure to make such a payment shall make all members of the Society in that House liable to forfeit their membership. It was pointed out at the meeting that this rule was in no way designed

to frighten Clerks, but it was designed to put pressure on the Governments whose support for Parliament was clearly essential, and it was felt that no Government who subscribed to the concept of parliamentary democracy would be so impoverished in its financial resources as to be unable to find £10 for so worthy a purpose as the continuance of the professional society representing Parliaments' advisers. Comparisons were made at the meeting between the readiness of the executive in each country to support the demands of the defence forces and their indifference to contributing to the essential institutions of Parliament, among which the Society made its modest claim to inclusion.

Having in mind the successful practice of the Association of Secretaries General, the Clerks' body within the Inter-Parliamentary Union, in promulgating a list of those countries who subscribe and those who have omitted that duty of membership, the meeting thought that a published list of subscribers would be a useful spur to laggards. Several Clerks undertook to take a firm line in persuading their Speakers or Governments to see that subscriptions were paid in future, and it was noted in this context that Westminster's record, among others, was always exemplary.

The value of regular meetings of the Society was also approved as a highly desirable development. It was recognised that not all members could hope to be present; but that on any occasion when their presence at a C.P.A. conference made a meeting of several members practicable, then they should seize the opportunity provided to them. With the friendly co-operation of the General Council and its Secretary General, the Society's meeting is now regarded as an essential accompaniment to the annual conference of the C.P.A.

Some members argued that this link with the C.P.A. Conference was not essential, and that the Clerks should demonstrate their independent identity by meeting in their own international conference at some different site, as the IPU's Association of Secretaries General occasionally did. This view was countered by the argument of convenience and practicality: the generous facilities provided by the C.P.A. were contrasted with the impossible cost of a separate Commonwealth gathering.

It was, however, pointed out that the newly instituted meetings of Speakers and Clerks, as at Ottawa in 1969, gave a second opportunity for meetings by the Society of Clerks, and indeed that the sixth general meeting of the Society had taken place on that occasion.

Finally, with new finance and new opportunities, it was expected that the Society should be regularly attended at its meetings by at least one of its officers. This practice has already begun: but for the editor at Westminster to be deprived of the opportunity of meeting the contributors to the Society's Journal seems unfitting if his enthusiasm for the Society's work is to be maintained. It is hoped that in future financial means may be sufficient to allow him to attend a general meeting.

This short article does not purport to describe the whole of the Society's deliberations throughout its prolonged session. One item of

general importance to all Parliaments was a debate on the powers and authority of the Public Accounts Committee. It was generally agreed to be the best instrument which democratic Parliaments possess in keeping their public finances free from corruption and manipulation. Apart from the Society's own meeting, their stay in Trinidad was an experience of great value to all those Clerks who had not previously attended a Commonwealth Parliamentary Conference. International gatherings are often marked by sad lapses in organisation and by underlying hostilities: the Commonwealth Parliamentary Association provided an example in efficiency and harmony to all other conferences. The debates were conducted with precision and clarity, including time limits on speeches which provided a salutary discipline for those accustomed to unlimited oratory. The welcome given by the host country was unforgettable; the friendship of the Commonwealth stretched round the world, eastward to Punjab and westward to Cook Islands, north to Prince Edward Island and south to New Zealand.

Trinidad and Tobago are beautiful islands and miles of their coastlines remain as unspoilt as they were in the eighteenth century. The invasion of what has been described as " big-time tourism " has not yet sullied their shores as it has in so many other parts of the world.

VI. EXPULSION OF A MEMBER AND REMOVAL OF THE CHAIRMAN OF COMMITTEES OF THE LEGISLATIVE COUNCIL OF NEW SOUTH WALES

By J. R. Stevenson
Clerk of the Parliaments

A Judgment was delivered in the Supreme Court of New South Wales in Equity on 19th December, 1968, by Mr. Justice Street in a case, *Barton* v. *Armstrong and Ors* (No. 23 of 1968).

The Honourable Alexander Ewan Armstrong was a Member of the Legislative Council of New South Wales and reference was also made to another Member—Brigadier the Honourable S. L. M. Eskell (Chairman of Committees)—during the hearing of the Court case. Both Members were supporters of the Government, Mr. Armstrong being a Member of the Country Party and Brigadier Eskell of the Liberal Party.

The suit extended over 55 Court sitting days in the latter half of 1968 and the transcript of evidence amounted to something in the vicinity of 1,500,000 words. During the hearing of the case the newspapers and radio gave a great deal of publicity to various aspects of the evidence and cross-examination. The Judgment itself covered 95 foolscap pages.

The litigation commenced with a Statement of Claim by Mr. Alexander Barton who sought a declaration that a deed of 17th January, 1967, and certain supplementary documents of 18th January, 1967, were executed under duress and that they were accordingly void.

In his Judgment, the Judge outlined the origin of the case and stated: " This suit has its origin in a fight between two men for the control of a public company. The plaintiff, Alexander Barton, was the Managing Director of that company, Landmark Corporation Ltd., and the first defendant, Alexander Ewan Armstrong, was the Chairman of Directors. They had been associated on the Board in these respective capacities since the end of 1964. Their relationship was at first friendly. But by the latter part of 1966 they had reached a state of open conflict. From that conflict there emerged the hatred between the two men that has given rise ultimately to this suit."

On 27th August, 1968, during cross-examination, reference was made to the election of A. E. Armstrong to the Legislative Council, the suggestion being that Mr. Armstrong had paid the sum of $30,000 to ensure his election in 1963. Mr. Justice Street excluded further cross-examination and said that as a matter of public policy the Court would reject any question asked of Armstrong as to the manner in which Armstrong voted. The Statute prescribed a secret ballot and it

would be inexpedient for the Court to permit by its processes the disclosure of matters which, by their nature, must be kept secret.

On the following day Counsel endeavoured to raise the matter again and sought to tender, for limited purposes, both Sydney morning newspapers of 22nd November, 1963: Mr. Justice Street stated that his ruling would not preclude Counsel from cross-examining Armstrong on the challenge he was making on credit but would preclude him from questioning on the manner in which votes were cast.

In this case it will be noted that two main questions arose: First, did Armstrong threaten Barton? And second, was Mr. Barton intimidated by Mr. Armstrong's threats into signing the deeds of 17th January, 1967? Mr. Barton, being the plaintiff, bore the burden of proving his case. In order to succeed he had to satisfy the Court that both of these questions should be answered in the affirmative. It was not enough to prove that Mr. Armstrong had threatened him; if he succeeded in doing that he still had to show that, in addition, it was because of those threats he had signed the deed. The burden of proof was not the criminal burden of establishing a case beyond all reasonable doubt; but the lesser civil burden of establishing it on the balance of probabilities.

Questions based on the Court proceedings were asked in the Commonwealth Parliament on 27th August, 1968, by E. G. Whitlam, the Leader of the Opposition, regarding electoral expenses paid in Eden-Monaro Division, and on 18th September, 1968, by F. E. Stewart (A.L.P.—Lang) on allegations of conspiracy to obtain a divorce.

In the law suit Mr. Barton succeeded on the first question but failed on the second; therefore his suit was dismissed. An Appeal was lodged by Mr. Barton on 15th January, 1969. Mr. Barton also took out a Writ on 20th December, 1968, against Mr. Armstrong for $2,000,000 damages for assault and the application had been stood over to 14th February, 1969.

Prior to the Judgment being delivered, on 11th December, 1968, the Legislative Council had adjourned to 25th February, 1969, and the Legislative Assembly to 18th February, 1969.

In the Legislative Assembly, when resuming on 18th February, a question was directed by the Deputy Leader of the Opposition, S. D. Einfeld (A.L.P.—Bondi) to the Premier, asking what action the Government intended to take on what had become known as the "Armstrong Case." The Premier, R. W. Askin, replied, after quoting from May's *Parliamentary Practice* and a ruling given by a former Speaker—"The Government believes that this matter is not one which should be dealt with in this Chamber and it will resist any attempt to bring this about, just as much as it would resist any attempt by the Legislative Council to deal with a Member of this House. I believe that the Legislative Council is quite capable of dealing with any internal problem which might arise in relation to its Members."[1]

A further question was asked by W. F. Sheahan (A.L.P.—Burrinjuck)

of the Premier: whether the Leader of the Government in another place proposed to take any action? A point of order was taken by W. A. Chaffey (C.P.—Tamworth) but the Premier replied that the Ministers in the Upper House would report to the Government on what they intended to do there because the Government was very concerned about the matter but whatever action was deemed necessary was a matter for Members of the Legislative Council collectively.[2]

When the Legislative Council met on 25th February the Leader of the Government, the Honourable J. B. M. Fuller, laid on the Table a copy of the Judgment delivered on 19th December, 1968, in the case of *Barton* v. *Armstrong and Ors.*[3]

Mr. Fuller then moved—as a matter of privilege—

(1) That in view of evidence given by the Hon. Alexander Ewan Armstrong and the comments in the judgment delivered by His Honour Mr. Justice Street on 19th December, 1968, in the case of *Barton* v. *Armstrong and Ors*, No. 23 of 1968, in the Supreme Court in Equity, the Hon. Alexander Ewan Armstrong is adjudged guilty of conduct unworthy of a Member of the Legislative Council; and

(2) That the Hon. Alexander Ewan Armstrong is expelled by this House and his seat in the Legislative Council is hereby declared vacant.

Mr. Armstrong was present in the House and immediately took a point of order that the matter was *sub judice*, the grounds for the Motion being: first, the evidence given in the case; and second, the comments in the Judgment.[4] Mr. Armstrong submitted that the Judgment was at present subject to an appeal to the Court of Appeal and it was for that Court to decide whether the Judgment and the comments in it were correct. Mr. Armstrong mentioned two other actions by him for libel, that were pending—one against Mr. David McNicoll for $1,000,000 and one against the *Daily Telegraph* for $1,000,000. Mr. President, before giving a ruling, invited debate on the matter.

The Hon. B. B. Riley (Lib.) referred to the Select Committee of the House of Commons on procedure, which reported in 1963 on the subject of *sub judice*. He submitted that the real question was one of whether the discussion in the House was one that would be likely to prejudice an impartial hearing of the legal proceedings that were pending. He illustrated a similar situation in connection with newspapers and referred to some remarks of four judges (Sir Owen Dixon, Sir Wilfred Fullager, Sir Frank Kitto and Sir Alan Taylor) in a case that was reported in 93 *C.L.R.* at pp. 370 and 371. Mr. Riley said he found it extraordinarily difficult—indeed impossible—to imagine how it could be that an appeal from the Judgment could result in a finding that the Honourable A. E. Armstrong's sworn evidence before the Court, and his own documents before the Court, could be otherwise than acceptable to the Court of Appeal.[5]

The Hon. R. R. Downing (A.L.P.), Leader of the Opposition, directed the President's attention to the question of to what extent, if any, the defamation action to which the Hon. A. E. Armstrong referred

was tied up in the ruling that must be given. Whilst he agreed with the statement of Mr. Riley (that these matters were unlikely to influence the Court of Appeal) if there was any question of a jury action in any way related to this, then that was a matter on which he thought some Hon. Members would put some views to the President.[6]

Mr. President disallowed the point of order and declared the Motion in order.[7]

The Hon. A. E. Armstrong took a second point of order: that the Motion was unconstitutional and beyond the power of the Legislative Council. He read a written opinion by an eminent senior counsel.[8]

Mr. President did not uphold the point of order. He referred to the fact that the Legislative Assembly, on three occasions, had dealt with similar matters and had carried Motions expelling Members, which were never challenged. There was conclusive evidence that the Council had the same powers as the Assembly.[9]

Mr. Fuller outlined the case in support of his Motion and quoted extensively from the Judgment and the transcript of evidence. Summarised, the effect was that Mr. Armstrong's own documents and evidence demonstrated three things: first, he was party to an arrangement which he believed to be an arrangement to procure false evidence for the Divorce Court; second, his documents and evidence demonstrated to the Court that Mr. Armstrong entertained as a real possibility the bribery of a Supreme Court Judge; third, they demonstrated his views on bribery in general.

Mr. Fuller said that on 20th February he had interviewed Mr. Armstrong in his office and had invited him to submit his resignation; also, on the previous day (24th) he had advised Mr. Armstrong of the terms of the Motion.

Prior to the meeting of the Council on 25th February the Country Party Members had excluded Mr. Armstrong from any meetings of Members of the Country Party in the Legislative Council.

Mr. Fuller referred to the Legislative Assembly Standing Order No. 391 and discussed the powers in regard to the expulsion of Members; he said the basis of his comments with regard to power to expel was advice by the Crown Solicitor to the Attorney-General, in which the Attorney-General concurred.

Mr. Fuller quoted from various Court cases, including *Chenard and Company and Others* v. *Joachim Arissol* (1949) A.C. 127 at 133:

> It has long been settled that the setting up of a colonial legislature does not vest in the legislature without express grant all the privileges of the House of the Imperial Parliament, but only such powers or privileges " as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute. Whatever, in a reasonable sense, is necessary for these purposes is impliedly granted whenever such legislative body is established by competent authority."

In *Barton* v. *Taylor*, 11 *App. Cas.* 197, which was an appeal from the Supreme Court of New South Wales and concerned the powers of the

Legislative Assembly of this State, after referring to the cases of *Kielley* v. *Carson* and *Doyle* v. *Falconer*, Lord Selborne, in delivering the Judgment of the Judicial Committee said at page 203:

> It results from those authorities that no powers of that kind are incident to or inherent in a Colonial Legislative Assembly (without express grant), except " such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute". Whatever, in a reasonable sense, is necessary for these purposes, is impliedly granted whenever any such legislative body is established by competent authority. For these purposes, protective and self-defensive powers only, and not punitive, are necessary.

(Quoting from *Doyle* v. *Falconer*, L.R. 1 P.C. 328 at p. 340):

> If a member of a Colonial House of Assembly is guilty of disorderly conduct in the House while sitting, he may be removed or excluded for a time, or even expelled. . . . The right to remove for self-security is one thing, the right to inflict punishment is another. . . . If the good sense and conduct of the members of Colonial Legislatures prove insufficient to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person excluded from the place of meeting, and to keep him excluded.

At page 205, Lord Selborne continued:

> But their Lordships are at present considering only those powers which ought to be implied on the principle of necessity, and which must be implied in favour of every Legislative Assembly of any British possession, however small, and however far removed from effective public criticism. Powers to suspend *toties quoties*, sitting after sitting, in case of repeated offences (and, it may be, till submission or apology), and also to expel for aggravated or persistent misconduct, appear to be sufficient to meet even the extreme case of a member whose conduct is habitually obstructive or disorderly. To argue that expulsion is the greater power, and suspension the less, and that the greater must include all degrees of the less, seems to their Lordships fallacious. The rights of constituents ought not, in a question of this kind to be left out of sight. Those rights would be much more seriously interfered with by an unnecessarily prolonged suspension than by expulsion, after which a new election would immediately be held.

Mr. Fuller then said on the judicial observations it was clear that the Legislative Council did not necessarily possess powers of expulsion of Members of the nature of those that existed in the Imperial Parliament but that there can be inherent powers of expulsion, as was clear from the observations in *Doyle* v. *Falconer* and *Barton* v. *Taylor*, which expressly mentioned such powers. For such powers to exist there were two requirements: first, the powers of expulsion must be necessary to the legislative body and the proper exercise of its functions; and second, such powers must be protective and self-defensive powers only, and not punitive. Express power granted under section 19 of the Constitution Act did not appear to be relevant, as that section provided for an automatic vacation upon the happening of any of the events specified in the section.

Mr. Fuller submitted the Motion was in two parts: firstly, on the

evidence, Mr. Armstrong was guilty of conduct unworthy of a Member; secondly, it was obvious that the House had power to expel.[10]

Mr. Armstrong spoke next and began by recapitulating certain events leading up to the Court case. He claimed that in the Judgment preceding the decree, dismissing the case, the Judge included many views and opinions on the character and credibility of witnesses, particularly himself. But it should be borne in mind that the conclusions, opinions and findings were formulated by His Honour for the sole purpose of making the decree in the case before him, and not in any other matter or for any other purpose whatsoever. The Judgment, and everything in it, was a privileged public document: it was a privileged public document only as it pertained to the exclusive context of the Court case to which it applied. It applied to nothing else.

Referring to the fact that the Chairman of Committees and Leader of the Liberal Party in the House was implicated with him, Mr. Armstrong quoted the comments by His Honour but drew attention to the fact that the Judge did not say " false evidence " and questioned how it could be said that he had arranged to procure false evidence. Mr. Armstrong said that when cross-examined on his note, the question " Can we attack or bribe Mr. Justice Dovey?", he had tried to convince the Court, to the best of his ability, that in writing down such a weird thought he did not contemplate or consider such a " way-out " possibility in the practice of everyday life. He claimed that he did not pretend to be a knight in shining armour but said emphatically he had not brought disrepute on the House; but the House was bringing disrepute on itself by accusing him.

Mr. Armstrong said that he was asked to resign because of the case, and was told that, unless he resigned, there could be committees and votes, and even inquiries—perhaps inquisitions. He questioned whether that was freedom from fear.

Mr. Armstrong denied that he was a conspirator and asked whether his Government colleagues were trying to prove him guilty by word of mouth rather than by evidence, by rumour rather than by fact, by ill-will rather than by the spirit of loyalty and good will which should prevail. He said he did not defend himself but instead accused his accusers of violating the basic freedom of one of its members. He claimed that he had done no wrong and therefore opposed the Motion most strongly.

The Leader of the Opposition, R. R. Downing, followed, and moved that the question be amended by referring the matter to a Select Committee for consideration and report. He stated he had received, the previous day, a large bundle of transcript of evidence; he considered on a conservative estimate, that if he had worked for ten hours a day in the eight days he would not have completed his study of it.

Mr. Downing contended that the Minister moved the Motion for only two purposes: the first of them was to save the Government the embarrassment of any enquiry into the conduct of the Leader of the

Liberal Party in the House, Major-General S. L. M. Eskell. He claimed it was all very well for the Minister to say that he had obtained the opinion of a Queen's Counsel that Major-General Eskell had committed no offence for which he could be charged. He said that, so far as he could see, the Honourable A. E. Armstrong had committed no offence for which he could be charged; but as far as he had been able to read the Judge's view was at least as derogatory of the conduct of General Eskell as it was of the conduct of A. E. Armstrong.

Mr. Downing said there were rumours to the effect that Mr Armstrong was going to be expelled to make way for a prominent official of the Australian Country Party and that it was a heaven-sent opportunity to do two things: cover up, as far as Major-General Eskell was concerned; and make a position for this prominent official of the Country Party. He submitted the House should give careful consideration to the matter. There were plenty of derogatory remarks in the Judgment about the Honourable A. E. Armstrong and plenty of things that would probably justify the action against him. When deciding if one person was guilty of conduct unworthy, let the House not let go unchallenged another Member whose conduct, as contained in the Judge's report, gave rise to at least a grave suspicion that it was not the conduct to be desired.[12]

Mr. Armstrong then made a brief statement to the House, saying that if it was decided to appoint a Select Committee, it would not need to expel him. If the Select Committee decided he should be expelled, he would be happy to resign.[13]

The Hon. C. A. F. Cahill (A.L.P.) supported the amendment, as did the Hon. J. J. Maloney (A.L.P.).

The Leader of the Government, Mr. Fuller, in reply, laid upon the Table the brief to advise from the Crown Solicitor to Mr. J. Slattery, Q.C., and the opinion that the Attorney-General had received from Mr. Slattery, that no evidence was shown on which to found a charge of perjury against Major-General S. L. M. Eskell. The opinion stated the evidentiary matter in the brief for opinion did not disclose evidence of conspiracy to abuse or pervert the due course of justice on the part of Mr. Armstrong, Mr. Eskell or Mrs. Cleary (co-respondent in the Eskell divorce case). Mr. Fuller said that his charge was not that the Hon. A. E. Armstrong was engaged in a conspiracy to procure false evidence; it was, in essence, that he participated in what he believed to be an arrangement to procure false evidence. There may not have been such an arrangement; but he thought there was—and that was the basis of the difference.[14]

The House divided and the amendment was lost on a division—Ayes 29, Noes 28, Mr. Armstrong voting with the Opposition. The original Motion was agreed to on the voices. Under the direction of the President, Mr. Armstrong was escorted from the Council Chamber by the Usher of the Black Rod.[15]

In the Legislative Assembly on the same day, R. J. Kelly (A.L.P.—

East Hills) directed a question to the Speaker, inquiring whether Members were not permitted to discuss the conduct of persons in another Chamber; as Members of the Assembly they were in a privileged position, being the electors of Members of the Upper House. Points of order were taken and Mr. Speaker reiterated a ruling of a former Speaker—that the practice extended not only to Members of the Legislative Council but also to the officers; he refused to allow the conduct of the officers to be criticised—with which the present Speaker agreed.[16]

The Leader of the Opposition, P. D. Hills (A.L.P.—Phillip), on 4th March, 1969, questioned the Premier, the Hon. R. W. Askin: If the Government considered, or had sought, constitutional legal advice concerning the validity of any legislation passed by the Legislative Council during the expelled member's enforced absence, should an appeal to the courts be upheld? The Premier replied the Government made full enquiry beforehand and believed it to be constitutionally correct.[17]

The Deputy Leader of the Opposition, S. D. Einfeld (Bondi) then questioned the Premier as to why the Government engaged outside counsel to examine charges that Major-General the Hon. S. L. M. Eskell conspired to procure false evidence. R. W. Askin, the Premier, pointed out it was the same procedure as had been followed by previous Governments.

L. J. Ferguson (A.L.P.—Merrylands) directed a question to the Premier in regard to the suggestion, during the hearing of the Court action, of the payment of $30,000 for A. E. Armstrong's election to the Legislative Council.[18]

In the Legislative Council on 4th March, 1969, the Leader of the Opposition, R. R. Downing, gave notice of a Motion " That Major-General the Hon. S. L. M. Eskell, Chairman of Committees of the Whole House, be removed from such office "—which Motion was moved on 6th March.[19]

In speaking to the Motion Mr. Downing said he was compelled to move it as he believed the Honourable Member no longer held the confidence of other Members. The belief was based on expressions of private opinions and that certain events had caused public disquiet. The first matter was the silence of the Honourable Member during the proceedings of what might be called the " Armstrong Case ", which had caused considerable concern and comment, not only among people in public office but among the public generally. Mr. Downing quoted comments of Mr. Justice Street and then referred to the opinion of Mr. Slattery, Q.C.

Mr. Downing said that Members must fully understand the specific question directed to Mr. Slattery He was not asked whether, in the light of evidence, he thought further enquiries should be made. Mr. Slattery set out the law relating to conspiracy between two persons and he was asked whether in the files submitted to him there

was any evidence justifying the institution of criminal proceedings.

Mr. Downing read from Mr. Slattery's opinion: " In the matrimonial cause of Eskell *v.* Eskell: Dunn—co-respondent and Cleary—co-respondent, heard before Mr. Justice Dovey on 25th June, 1962, the following persons gave evidence—

(i) Mrs. Denise Rachael Eskell;
(ii) Stanley Louis Mowbray Eskell;
(iii) Margaret Cleary; and
(iv) Mrs. Nan Elizabeth Dunn."

Mr. Downing went on to read further references and then quoted the notes made by Mr. Armstrong in regard to evidence in the divorce case. He regarded as significant the fact that Mrs. Cleary provided a confession of adultery in 1962 when her association with Mr. Eskell had long since finished. He suggested that this must surely give rise to suspicion and drew attention to the comment of Mr. Slattery that Mr. Armstrong and Mrs. Cleary had had a close and intimate association since 1959. In relation to the evidence of Mr. Eskell and Mrs. Cleary the significant words of Mr. Slattery were " *prima facie* their evidence must be accepted ".

Mr. Downing questioned why, when the allegations were made, were enquiries not instituted by the Police?[20]

Major-General S. L. M. Eskell stated it was true he had been reluctant to speak, and it was true it was for personal reasons. He could have spoken when the Hon. A. E. Armstrong was being attacked the previous week, which would have been to Armstrong's advantage and to his own personal advantage to defend him and himself at the same time. He claimed that Mr. Justice Street had said that Mr. Eskell and his wife were anxious to obtain a divorce, but that was a misstatement—the facts being that he did not want a divorce. He referred to a statement he made in 1961, that he signed for his solicitors and counsel, regarding his position at that time.

General Eskell then read the statement he referred to and traversed the events regarding the divorce proceedings and said he was not guilty of perjury or conspiracy.

In reply to Mr. Downing's comments that the Premier had rejected him as a Minister, General Eskell said the fact was that he had gone to the Premier and told him that when he (the Premier) was considering Members for Cabinet he would not be available.

With regard to his chairmanship of the Liberal Party group, he said he had a discussion with the Honourable F. M. Hewitt in November, 1968, and at a second meeting of the party his position of chairmanship lapsed.[21]

The Hon. B. B. Riley (Lib.) invited the House to look at the material that was before it. He said Mr. Downing had raised four matters: one was the silence of General Eskell during the *Barton* v. *Armstrong* case, which he considered was the least substantial of the three of the

four grounds; the other two he considered to be unsubstantial grounds were—the matter that General Eskell was overlooked by the Premier for Cabinet rank; and the third was the cessation of his chairmanship of the Liberal Party Members in the Legislative Council. The fourth matter was General Eskell's silence in the House during the debate on the expulsion of A. E. Armstrong.

Mr. Riley questioned what was the evidence produced in support of the Motion. He discussed aspects of conspiracy and perjury and claimed the House should reject the Motion.[22]

The Hon. J. J. Maloney (A.L.P.) pointed out that the House was the custodian of the dignity and honour of every Member in the Chamber and by no stretch of the imagination could the House be classed as a court of law. He claimed that if General Eskell's silence was to protect children and other people from the possible stigma that might fall upon them, he would not sit in the House to vote for the expulsion of his confederate in the matter and if he did not want to be mixed up in the matter he could have resigned without any explanation.

Mr. Maloney claimed that the statement made by General Eskell during the debate had ruined the character of people who had nothing at all to do with the debate in the House.[23]

The Hon. R. C. Packer (Lib.) supported the Motion for reasons unconnected with the Armstrong case and felt sure that all Members were as acutely embarrassed and horrified as he was that the Member should have dragged into the debate—and into the full glare of publicity —innocent and defenceless people. He said, for General Eskell to pretend to the House that he was not a candidate for Cabinet stretched his imagination to ludicrous lengths.[24]

The Hon. H. D. Ahern (Lib.) said his attitude to the required impartiality of the Office of Chairman of Committees was well stated in an address he had given last year on the Appropriation Bill, and he supported the Motion.[25]

The Leader of the Government, the Hon. J. B. M. Fuller, said he believed that the Hon. R. R. Downing was Attorney-General during the period of the divorce case; he would have expected him to act in regard to an investigation if he had felt that action should be taken.

Mr. Fuller appealed to each individual Member of the House to vote as he thought fit and suggested they should forget political allegiance. Basically, he believed that maintenance of standards in the Legislature was of paramount importance to the system of parliamentary democracy.[26]

Mr. Downing, in reply, said that no report was made to him, when he was Attorney-General, about the proceedings which, he understood were taken under the federal Divorce Act. He was sorry that the whole matter, from the very start, was not dealt with on the basis on which the Minister now suggested it should be dealt with. He could only assume—unfortunate as it might be—there would be a complete reopening of the proceedings, by virtue of the statement that General

Eskell had made in the debate. He knew that the authorities probably would have to give long and serious consideration to it. All that General Eskell had done was to give evidence of some wrongdoing on the part of someone who was innocent to these proceedings.

The Motion was agreed to on the voices.

On 7th March, 1969, an Originating Summons (No. 234 of 1969) was issued in the Supreme Court in Equity by Alexander Ewan Armstrong, plaintiff, against Harry Vincent Budd, President of the Legislative Council, and John Rowlstone Stevenson, Clerk of the Parliaments. The Crown Solicitor was authorised to accept service on behalf of the two defendants.

A. E. Armstrong applied to the Court for the following declarations and orders:

1. *THAT* it may be declared that the resolution or purported resolution in the terms following, that is to say:

   " 1. That in view of evidence given by the Hon. Alexander Ewan Armstrong and the comments in the judgment delivered by His Honour Mr. Justice Street on 19th December, 1968, in the case of *Barton* v. *Armstrong and Ors.* No. 23 of 1968, in the Supreme Court in Equity, the Hon. Alexander Ewan Armstrong is adjudged guilty of conduct unworthy of a Member of the Legislative Council; and

   " 2. That the Hon. Alexander Ewan Armstrong is expelled by this House and his seat in the Legislative Council is hereby declared vacant."

   passed or purported to have been passed by the Legislative Council on the 25th day of February, 1969, was and is beyond the power of the Legislative Council to pass, and, as such, was and is null and void and of no effect.
2. *THAT* it may be declared that the Plaintiff is, and at all material times since the 25th day of February, 1969, has been a Member of the Legislative Council and, as such, entitled to exercise and enjoy all the powers and privileges conferred on him as such Member of the Legislative Council.
3. *THAT* the Defendant Harry Vincent Budd as such President for that time being of the Legislative Council and other the President from time to time of the Legislative Council may be restrained from by himself his servants or agents preventing impeding or in any way interfering with or causing to be prevented, impeded or in any way causing interference to the exercise and enjoyment by the Plaintiff of all or any of the powers and privileges conferred on the Plaintiff as such Member of the Legislative Council.
4. *THAT* the Defendant John Rowlstone Stevenson as such Clerk of Parliaments for the time being and other the Clerk of Parliaments from time to time may be restrained from by himself his servants or agents giving or purporting to give any or any public notice of any Writ directed to him as Returning Officer pursuant to the provisions of the Constitution (Legislative Council Elections) Act 1932–1937 by His Excellency Sir Arthur Roden Cutler the Governor for the time being or other the Governor for the time being of the said State to conduct an election for a person to replace the Plaintiff in his office as such Member of the Legislative Council, and from calling or purporting to call for nominations and from conducting or purporting to conduct an election and from doing or purporting to do any other act or thing in pursuance of any such Writ.
5. *THAT* if and to the extent to which it may be necessary the Defendant Harry Budd be appointed to represent for the purposes of this suit the class comprising all the Members of the Legislative Council other than the Plaintiff.

6. *THAT* the Defendants or such one of them as to this Court may seem fit may be ordered to pay the Plaintiff's costs of this suit.
7. *THAT* the Plaintiff may have such further or other relief or order as to this Court may seem meet.

The Chief Judge in Equity, Mr. Justice McLelland, granted leave to serve the summons and it was heard on 11th March. Mr. Justice McLelland agreed with Mr. D. A. Staff, Q.C. (for Armstrong), that it was desirable to arrange for the Court of Appeal to decide the matter. The Solicitor-General, H. Snelling, Q.C., said this seemed a practical way and the proceedings were adjourned.

The suit came on for hearing before the Chief Justice, Sir Leslie Herron, the President of the Court of Appeal, Sir Gordon Wallace, and Mr. Justice Sugerman on 16th April, 1969, and was heard on that day and the following day, 17th April, and the decision was reserved. Flowing from the proceedings of 17th April, A. E. Armstrong on 18th April petitioned the Court of Disputed Returns against the election of L. A. Solomons as a Member of the Legislative Council (No. 221 of 1969).

It will be noted that on 4th March, 1969, His Excellency the Governor issued a Writ, directed to J. R. Stevenson as Returning Officer, to conduct an election to fill the vacancy caused by the expulsion of A. E. Armstrong. When nominations closed on 12th March there was only one candidate nominated—L. A. Solomons—and the Returning Officer declared him elected.

The Prothonotary of the Supreme Court gave public notice of the receipt of the Petition in the *Government Gazette* No. 51 of 24th April and in the press on 26th April, 1969.

In the case of *Armstrong* v. *Budd and Stevenson*, Judgment was delivered on Monday, 19th May. Three separate Judgments were made, each dismissing the suit with costs against the plaintiff, A. E. Armstrong. The Chief Justice pointed out the suit was heard by the Supreme Court in Equity, consisting of three Judges, constituted by virtue of section 6 of the Equity Act 1901, as amended.

The Chief Justice, in order to construe and interpret the phrase " guilty of conduct unworthy of a member ", summarised some of the circumstances surrounding it and outlined the history of the plaintiff's association with the Legislative Council.

After dealing with section 19 of the Constitution Act, the Chief Justice stated that the first or primary essentials were: " in absence of expressed grant the Legislative Council possesses such powers and privileges as are implied by reason of necessity; the necessity which occasions the implication of a particular power or privilege is such as is necessary to the existence of the Council or to the due and orderly exercise of its functions ".

Various cases decided in the Privy Council, the High Court and the Supreme Court were then cited. The Chief Justice pointed out that he saw nothing in the authorities that compelled in the Court a

decision that, for self-protection, or as a defensive measure, expulsion was denied to one of the Houses of the Legislature of the State.

Reference was then made to the three instances in which a Member of the Legislative Assembly had been expelled by resolution of the House. The Chief Justice said: " The requirements of necessity must be measured by the need to protect the high standing of Parliament and to ensure that it may discharge, with the confidence of the community and the Members in each other, the great responsibilities which it bears."

Sir Gordon Wallace, in discussing the phrase " conduct unworthy ", quoted from the speech by the Hon. J. B. M. Fuller during the debate, in which he said: " In our democracy, in the parliamentary institution in the free world, it is essential that the standing of Members of Parliament in the eyes of the community should be maintained at a high level. It is necessary to maintain certain standards for the very preservation of the institution of Parliament itself and, in particular, for the preservation of the Legislative Council of New South Wales in this case. We are Members of a sovereign law-making body and for this reason the House itself is given a measure of responsibility in the control of the behaviour of its Members."

Sir Gordon Wallace said the expulsion resolution did not derive from some indirect improper motive which could not generally support an adjudication by the Council on conduct unworthy, but from the comments and grave strictures of a Judge of the Supreme Court. Sir Gordon then discussed, as the sole question for the Court, whether the Legislative Council had the inherent constitutional power to expel a Member on the ground that it had formed the view that the Member had been guilty of conduct—outside the Council—which was " unworthy of a Member " of the Council. He was of the opinion the Council had an implied power to expel a Member if it had adjudged him to be guilty of conduct unworthy of a Member. The nature of this power was that it was solely defensive—a power to preserve and safeguard the dignity and honour of the Council and the proper conduct and exercise of its duties.

The power extended to conduct outside the Council, provided the exercise of the power was solely and genuinely inspired by the said defensive objectives.

Mr. Justice Sugerman pointed out that absolute privilege, at common law, of statements made in a legislative body by Members of that body rested on necessity.

Necessity stopped short where punishment began: he said there was absent from the present case any question of the punishment of Mr. Armstrong. The critical question was whether the notion insisted upon in the decisions of self-defence, self-protection, self-preservation or self-security, or the due conduct of business or exercise of functions, related only to the orderly conduct of business in the House, or whether it was wide enough to take in unworthiness by reason of proved conduct outside the House.

After discussing *Harnett* v. *Crick* (1908 A.C. 470) and setting out the facts as stated by Lord Macnaghten by the Privy Council, Mr. Justice Sugerman said: " That the proper discharge of the legislative function by the Council demands an orderly conduct of its business is undoubted. That it demands honesty and probity of its Members should be equally undoubted. Indeed, the need for removal and replacement of a dishonest Member may be more imperative as a matter of self-preservation, than that of an unruly Member."

Later, His Honour made reference to the fact that the cardinal principle was that the implied grant of powers on the ground of necessity comprehended not only the orderly conduct of deliberations, in the sense of freedom from disturbance and unseemly conduct, but also the integrity of those who participated therein, which was essential to mutual trust and confidence amongst the Members.

On 29th May, 1969, a Notice of Motion was made by A. E. Armstrong for conditional leave to appeal to the Privy Council from the Judgment of the Supreme Court, whereby his suit was dismissed.

The case was heard on 2nd June, 1969.

Leave to appeal to the Privy Council was granted upon the condition *inter alia* that Armstrong, within three months of that date, gave security in the sum of $1,000 for the due prosecution of the appeal and upon a further condition that, within three months of the same date, he take out and proceed upon all such appointments and take all such other steps as may be necessary for the purpose of settling the index of the transcript record. Neither of these conditions was complied with and, as the period of three months had expired, it would appear that Armstrong no longer had leave to appeal.

Editorial reference was made to the case in the *Australian Law Journal* Vol. 43, No. 6 of 30th June 1969, under the caption " Parliamentary Self-Protection ".

A further case was litigated on 17th June, 1969, by A. E. Armstrong in the Court of Appeal against Alexander Barton. The suit was heard by the President of the Court of Appeal, Sir Gordon Wallace, Mr. Justice Walsh and Mr. Justice Jacobs. (Barton, on 15th January, 1969, had filed notice of appeal against the Judgment of Mr. Justice Street in *Barton* v. *Armstrong and Ors* and A. E. Armstrong had filed notice of appeal against certain interlocutory costs.) The Appeal Court ordered that the appeal should be conducted with " due diligence ".

[1] *Parliamentary Debates*, Vol. 78, page 3689.
[2] *Ibid.*, p. 3691.
[3] Leg. Co. Journal, p. 318.
[4] *Parliamentary Debates*, Vol. 78, p. 3858.
[5] *Ibid.*, p. 3859.
[6] *Ibid.*, p. 3860.
[7] *Ibid.*, p. 3861.
[8] *Ibid.*, p. 3861.

[9] *Ibid.*, p. 3862.
[10] *Ibid.*, p. 3862.
[11] *Ibid.*, p. 3875.
[12] *Ibid.*, p. 3879.
[13] *Ibid.*, p. 3883.
[14] *Ibid.*, p. 3888.
[15] *Ibid.*, p. 3890.
[16] *Ibid.*, p. 3900.
[17] *Ibid.*, p. 4116.
[18] *Ibid.*, p. 4119.
[19] Leg. Co. Journal, p. 369.
[20] *Parliamentary Debates*, Vol. 78, p. 4262.
[21] *Ibid.*, p. 4271.
[22] *Ibid.*, p. 4274.
[23] *Ibid.*, p. 4278.
[24] *Ibid.*, p. 4280.
[25] *Ibid.*, p. 4281.
[26] *Ibid.*, p. 4282.
[27] *Ibid.*, p. 4283.

VII. CRISIS IN THE HOUSE OF COMMONS OF CANADA

By Alistair Fraser
Clerk of the House of Commons, Canada

In the Canadian House of Commons, on the evening of Monday, 19th February, 1968, a Motion for the third reading of an important Government tax Bill was defeated by a vote of 84 to 82.

In the face of that stunning upset on a measure representing major government policy, there were raised very serious problems relating to constitutional practice and parliamentary procedure in addition, of course, to the political aspects of the problem. It is with regard to parliamentary procedure that this article will be primarily concerned.

On 30th November, 1967, the then Minister of Finance, Mr. Sharp, presented a " mini budget " and later, on 18th December, 1967, a Bill based on the Ways and Means resolution was introduced in the House of Commons and, as Bill No. C-193, it was given a first reading. Second reading took place on 6th February, 1968, and the Committee of the Whole stage which started on 15th February continued on Monday, 19th February. During the afternoon sitting of that day the Government survived one close division in Committee. Immediately after the sitting resumed following the dinner recess, the committee completed its deliberations on the Bill and it was reported. When third reading follows the Committee of the Whole stage where no amendments have been reported, the Bill " is forthwith ordered to be read a third time at such time as may be appointed by the House " according to the then Standing Order 78. The Deputy Speaker heard a chorus of " by leave now " and inadvertently did not hear the chorus of " next sitting " which included the Minister of Finance, and put the Motion for third reading. There was then an exchange on a point of order as to whether there had been objection to calling third reading, but that was resolved when the Minister said he had no objection. The Government was undoubtedly concerned about calling a division on a Monday night and after the division bells rang for well over an hour, the Motion for third reading was defeated on a division of 84–82. The Government immediately called for the House to go into Committee of Supply. As soon as the House resolved itself into Committee it was moved by an Opposition Member that the Committee rise and report progress. This Motion succeeded on a vote of 79–78. The Government then called another order but before the Motion could be put, a point of order was raised when an Opposition Member suggested that in view of what had transpired the House should adjourn. The Speaker pointed out that it was not the responsibility of the Chair, but that it

was open to a Member so to move. The Motion was then put on the item called and another point of order was raised when an Opposition Member suggested that the Speaker, under the circumstances, had the authority to adjourn the House. The Speaker, however, took the position that although he did have authority to adjourn the House in the event of a disorder, he should not now be placed in that position. It was then a very few minutes prior to the normal hour of adjournment and the Speaker obtained the agreement of the House that it would adjourn and not proceed with the adjournment proceedings.

The Government had to consider what steps it might take following the rejection by the House of a major item of financial legislation. The Standing Orders did not provide for a Motion of no confidence *per se*, save by unanimous consent, and as amendments to the Motions going into Committee of Supply, the debate on the budget proposals and during the debate on the Throne Speech. It became quite clear later, however, that the most difficult matter facing the Chair would be the procedure involved when the Government attempted to introduce an alternative tax measure to replace the defeated Bill because the earlier one represented a surcharge which had been levied from 1st January, 1968, in anticipation of Parliament's approval. The Chair had to also consider that Members might under the guise of a point of order, attempt to have the Speaker rule on the validity or legality of the Government placing any business before the House after, as alleged by the Opposition, it had lost the confidence of the House. In this case, the Speaker could only point out that unless it was prorogued or was sooner dissolved by the Governor General, the House of Commons shall continue for five years from the day of the Return of the Writs for choosing the House and, that he, the Speaker might not rule on a legal and constitutional matter.

The Prime Minister of the day, Mr. Pearson, who led a minority Government had not been present for the division and, in fact, was out of the country receiving an honourary degree. He returned as soon as he possibly could and arrived the next day, Tuesday, but only at noon. It is understood that he sought and obtained from the Opposition parties their agreement that when the House met at 2.30 later that day, they would immediately move to adjourn. Presumably this was to afford the Prime Minister an opportunity to assess his position. When the Motion was put in the House, the Leader of the Opposition attempted to speak but the necessary unanimous consent was not forthcoming. The House therefore adjourned after sitting for two minutes.

On the following day, Wednesday, 21st February, as soon as the House met, the Prime Minister rose in his seat and sought unanimous consent to waive the required forty-eight hours' notice to move

> That this House does not regard its vote on February 19th, in connection with third reading of Bill C–193 which had carried in all previous stages, as a vote of non-confidence in the Government.

In opposing this request, the attitude of the Opposition generally was that constitutional practice dictated that the Government should not attempt to place any business before the House as it had lost the confidence of the House and its alternatives were to resign or to dissolve Parliament. The Prime Minister rose again and after remarking on the absence of the required consent and that the Motion could not be put before Friday, expressed the hope that the House might on the next day, Thursday, go ahead with the debate on the constitutional conference which had been announced prior to 19th February, as the business for that day. However, a point of order was raised that the Government should not follow this " business as usual " attitude and proceed the next day with the planned debate on the constitution because, constitutionally, the Government could not so proceed until it had the confidence of the House. The Speaker, however, ruled against this point of order on the ground that he was not permitted to rule on any legal point, including one relating to the constitution. The Government then moved the adjournment of the House which was carried on a voice vote. The House had sat for thirty minutes.

In the interim, while there may not have been any debate taking place in the House, a debate on the issue of constitutional practice was taking place before the television cameras, often immediately outside the Chamber, by Members of all parties by means of frequent interviews. It was one such television interview, that took place on Wednesday night, which provoked a question of privilege in the House the next day, Thursday, when it met as usual at 2.30.

The former Minister of Justice in the previous Government, Mr. Fulton rose from the Opposition benches, and reading from the official transcript of the broadcast, drew the attention of the House to remarks made by the Prime Minister and submitted that they constituted a breach of privilege and formerly moved that the House take action in respect thereof. It revolved around the use of the words " trickery " and " manufactured crisis " which the Prime Minister had used during the course of the interview while referring to the role of Opposition Members immediately preceding the division on Monday. After allowing the debate on the question of privilege to range beyond the establishment of a *prima facie* case due to the extraordinary circumstances, Mr. Speaker ruled, that having regard to the manner in which the words were used, they could not be considered to be offensive.

The following day, Friday, when the notice of the Government's Motion was called, was a day devoted to a full and exhaustive review of the constitutional practice surrounding the defeat of a Government and what course of action such an event should dictate to the Government. It is imperative here to add that during much of this debate which continued for three more days, the House was treated to wide ranging observations from all quarters of the Chamber on the manner of the dissolution of Parliament, both in Canada and in Britain. Apart from the fact that this day saw the start of the debate on the Govern-

ment's Motion of confidence, it was also important in that one of the splinter parties indicated that it would support the Government on its Motion, worded as it was, assuring the continuation of the Pearson administration in office. Procedurally, no serious problems arose after the debate started and the Motion carried 138 to 119.

This was an exciting time as the defeat of the third reading of the Bill occurred concurrently with a serious drain on the Canadian dollar, and the party in power was in the middle of a leadership campaign with a convention date set for 6th April. Quite naturally, active campaigning was discontinued abruptly and following the vote on the Motion the Prime Minister, who was not himself a candidate, instructed those candidates who were also parliamentarians to restrict their campaigning to the week-end, while the House was in session.

It is fair to ask whether as a result of the outcome of the debate and the vote, henceforth in Canada the proper constitutional view is that although the Government should resign or dissolve Parliament after it fails to obtain a vote of confidence, it is up to the House of Commons to decide what is and what is not a test of confidence.

With the approval of the Government's Motion of confidence, there still remained, however, the question of how it was going to raise the revenue that it had been seeking in Bill C-193 and at the same time avoid the bringing of a Bill of the same substance in the same session.

The first indication of the Government's intention came when a Ways and Means Resolution was appended to the Notice Paper of 6th March, 1968. On the following day, 7th March, the Government called the Order resolving the House into Committee of Ways and Means. In committee, after the resolution was read, a point of order was raised that no notice of the resolution had been given, and it was alleged that such notice was required. The Chairman, after hearing argument, ruled that no notice was required. An appeal was immediately taken to the Speaker who, after hearing further argument, sustained the Chairman's ruling on the ground that notice of a Ways and Means Resolution was never required because these resolutions are introduced in the Committee of Ways and Means (using May's 17th ed., p. 734 and Canadian precedents), the appendix being simply a matter of convenience and for the information of the Members. The resolution was reported the next day and concurred in on a division, and Bill C-207, based on the resolution, was given a first reading and ordered for second reading at the next sitting of the House.

When the order for second reading was called, the anticipated point of order was raised as to the regularity of the Bill. The Speaker reserved this ruling until later that day. The objection taken by Members opposed to its presentation was that it renewed a question already decided by the House because the similarity between the two Bills C-193 (rejected) and C-207 was of a substantial nature.

In his ruling Mr. Speaker first of all pointed out the general rules relating to putting the same question twice in the same session in that a

question being once decided must stand as a judgment of the House, that a mere alteration of the words of a question without any substantial change in its object will not be sufficient to evade the rule and, that the only means by which a negative vote can be revoked is by proposing another question, similar in its general purport to that which had been rejected but with sufficient variance to constitute a new question. The Speaker added that it then becomes a matter of interpretation or judgment whether the Motion offered is substantially the same as the one on which the decision of the House had been expressed, and the only way to interpret the two measures in the light of the rule, is to compare the proposals offered in each case.

The rejected Bill and the new proposal were both brief, the former having six clauses and the latter having eight. Mr. Speaker noted that the new Bill had one feature that was entirely new, a gift tax; that the substantive part of the Bill was a surtax and, in that way, similar to the rejected Bill but that the rates, the exemption and the ceiling differed. Also the surtax was now to be imposed on the tax payable by corporations in addition to individuals, and rates of prepayment of corporation tax differed from those rates set forth in the rejected Bill. All of these reflected a change from the rejected Bill, particularly *vis-à-vis* their substantive clauses. However, four clauses of the proposed Bill were identical and in fact a repetition of four of the six clauses in the Bill that had been defeated. They dealt with the table of taxes in the individual tax forms, deductions permitted in computing tax payable in certain cases and refunds to corporate tax payers. Mr. Speaker relied on an earlier ruling and said that the cumulation of added changes does not obviate the basic requirement that no part of the new proposal should be inconsistent with the previous decision of the House. He therefore ruled that since the House must guard against taking a decision inconsistent with an earlier one, the proposed Bill must be withdrawn and the order discharged, provided, however, that another Bill might be introduced based on the same ways and Means resolution, which he ruled was still valid, but such Bill should not contradict the principle of the decision on the Bill defeated on Monday, 19th February.

Therefore, later the same day, on Motion of the Government, the order for second reading of Bill C-207 was discharged and the Bill withdrawn. The Government then introduced a new tax Bill which was acceptable to the Chair and on 15th March, 1968 it received third reading, with Senate approval and Royal Assent following shortly thereafter. The final Bill C-208 was similar to Bill C-207 save that it removed those clauses to which Mr. Speaker took exception.

VIII. SPECIALIST COMMITTEES IN THE HOUSE OF COMMONS

By R. S. Lankester

A Deputy Principal Clerk in the House of Commons

The term " Specialist Committee " is used at Westminster to describe certain Select Committees which have been appointed since the end of 1966. Faced with the apparent decline of Parliament from its mid-nineteenth-century pre-eminence, and the increasing scope and power of governments, proposals to establish specialised committees to enable Parliament to maintain more effective surveillance of the executive have been advanced on many occasions since the beginning of the century.[1]

The proponents of specialised committees advocated various types of committee with a variety of functions and powers. In general they disavowed any intention of creating committees which would usurp the functions of either the House of Commons or the executive. The aim was better to inform the House and so enable it to discharge its critical role more effectively and coherently. In the words of Laski " They would have . . . no authority to dictate ministerial methods. Their business . . . would be to advise, to encourage and to warn with the addition, that, in the process, they would also learn."[2] The executive would lose some of its secrecy and would receive more apt advice and criticism; it would lose none of its powers and responsibility for determining and executing policy.

The potential threat to the authority of the House and to the freedom of action of the executive were none the less obvious and to many outweighed the potential advantages of specialised committees. When a proposal was made by Members of the Committee on Procedure in session 1958–9 to set up a specialist Colonial Committee, it was rejected by the majority of the Committee on the main ground that it was " a radical constitutional innovation . . . the activities of such a committee would ultimately be aimed at controlling rather than criticising the policy and actions of the department concerned. In so doing it would be usurping a function which the House itself has never attempted to exercise. Although the House has always maintained its right to criticise the executive and in the last resort to withdraw its confidence . . . it has always been careful not to arrogate to itself any of the executive power. The establishment of a colonial committee would not only invade this principle but would also lead to the establishment of other similar committees."[3]

The then Mr. R. A. Butler, Leader of the House, in the subsequent debate in the House on the Committee's Report, added that " it smacks

to me far more of Capitol Hill and the Palais Bourbon than of the Parliament in Westminster ".[4]

The proposal for a Colonial Committee foundered. Nevertheless, in the following years opinion in favour of some kind of specialised committees strengthened, if not as markedly on the front as on the back benches. Mrs. Castle in a debate on procedure in 1963 expressed her doubts—" I suggest that it really is not the job of specialist committees sitting outside the Chamber—a move that is more likely to empty the House still further during the remaining debates—to examine all the expert evidence and the technical processes. This ought to be done by the respective parties' own specialist groups in reaching their own conclusions about the issues involved."[5] Mr. Iain Macleod, the Leader of the House, in the same debate, differentiated between the constitutional position in the United States of America and Great Britain.

> I turn to the question of the specialist Committees. The Opposition Chief Whip is not alone in having his doubts about this. I too, have doubts. There are constitutional problems which have been touched on, and I think that there is at least one other point which must not be overlooked. I believe, for example, that the argument comparing such a system with that adopted in the United States rests on a false analogy. The real reason is, taking the example of defence, which is so often quoted, that here the Minister of Defence speaks at the Dispatch Box over and over again. At this time of the year we have any number of debates lasting late into the night. The Minister of Defence answers Questions. There can be Adjournment debates and the rest of it. The position is, therefore, quite different when there is that level of direct responsibility to the House by the Minister of Defence and by all the Service Ministers. The position is quite different when there are Ministers or Members of a Cabinet who are removed, except by such methods as specialist Committees, from close investigation by the House.[6]

At the same time he was sufficiently convinced of the strength of the case for these committees to add,

> However, I want to make it quite clear to my right hon. and learned Friend the Member for Chertsey (Sir L. Heald) that I very much welcome the interest that he and his hon. Friends have shown in this subject, and I will give the most careful consideration to the question whether a Select Committee of the sort he indicates should be set up.[7]

The proponents of these committees produced a steady flow of articles, papers and motions[8] and in the run-up to the 1964 General Election, Mr. Harold Wilson then Leader of the Opposition, in a speech at Stowmarket on 3rd July, 1964, said: " In recent years, the balance of power between the Executive and the Legislature has shifted in favour of the machine. This is perhaps inevitable, but much more thought needs to be given to enabling M.P.s—of all parties—to make a greater contribution to the formation of policy, including legislation. . . . In the past year or two, we have seen how effective certain Select Committees—Estimates, Public Accounts, Nationalised Industries—have been in getting to the heart of some national problem by summoning witnesses, taking evidence and reaching agreed conclusions, cutting

right across party controversies. I believe this could be taken further. . . ."

In the new Parliament, a Committee on Procedure was appointed on 22nd December, 1964, and among other matters,[9] considered the question of specialised committees, on which they reported in their Fourth Report.[10]

The Committee were very conscious both of frustrations felt on the back benches and of the various objections to these committees which had been voiced over the years. They stated that " Your Committee have come to the conclusion that more information should be made available to Members of the way Government departments carry out their responsibilities, so that, when taking part in major debates on controversial issues, they may be armed with the necessary background of knowledge. This requires that the House should possess a more efficient system of scrutiny of administration,"[11] and added " In accepting the need to improve the House's sources of information, your Committee have turned their attention to the Select Committee system as the means of achieving this end. In doing so they have sought to avoid disturbing the relationship of Ministers to Parliament, and also the creation or extension of procedures which might drain away interest from the proceedings of the House as a whole. Their object is to provide all Members with the means to carry out their responsibilities, rather than to elevate any committees of the House to new positions of influence. . . .[12] It is not the wish of your committee that ' specialist ' committees should become involved in matters of political controversy."[13] Their recommendations were:

(i) That a new Select Committee be set up, as a development of the present Estimates Committee, " to examine how the departments of state carry out their responsibilities and to consider their Estimates of Expenditure and Reports".

(ii) That the new Committee should function through sub-committees specialising in the various spheres of governmental activity.

(iii) That there should be two clerks supervising the work of the Committee and one full-time clerk to each sub-committee. The Committee should be able to employ specialist assistance.

(iv) That the power of Select Committees to adjourn from place to place should include the power to travel abroad, with the leave of the House, when investigations require it.[14]

When the House came to debate the Report in October 1965, Mr. Bowden, the Leader of the House, showed no enthusiasm for these proposals:

> The Select Committee on Procedure has expressed its anxiety that the proposed new Committee, which is a development of the Estimates Committee, should not lead to an encroachment into the field of policy. A number of witnesses who gave evidence, as the House will know, thought that it might do just that. The real question is whether or not we want to develop a system of specialist committees, not exactly like, but something akin to, the American

Congressional Committees and similar committees which exist in certain European countries, or whether we feel that the proper place for policy discussions, as distinct from financial administration, is on the Floor of the House. With the best will in the world, I am afraid that once the terms of reference are widened as suggested—and I know that the Select Committee on Procedure was anxious to avoid this—the necessary detailed examination of Government expenditure and administration is bound to give place to policy discussions. In addition to that, we should lose a valuable part of the procedures on financial control.

The Government are prepared to consider the Select Committee's proposal, and I will listen carefully to today's debate, but as the Select Committee on Procedure has not itself discussed the method and lines of procedure of its proposed new Committee, I would recommend to the House that the terms of reference of the Estimates Committee should remain unchanged at present.[15] . . .

My mind is by no means closed. We are prepared to look at it again, and to continue to look at it. For the time being, when we set up the Estimates Committee in two or three weeks' time, it will be my hope that we can proceed with our present terms of reference, accepting one or two other proposals which the Select Committee felt would help.[16]

At the end of the debate he reiterated: " I think that we had better stay with the terms of reference as they are."[17]

On this likening of the proposed development of the Estimates Committee to American or European committee systems, Mr. Bowden was taken up by various Members. Mr. Redmayne from the Opposition front bench said:

It is said outside, and it may well be said in the House, that the Committee has come down in favour of, or contemplates, a further move towards specialist committees, on the American pattern. I am not sure that the right hon. Gentleman did not use that phrase himself. Any careful study of the evidence given and of the proceedings on consideration of the draft Report shows that although such propositions were widely discussed, they were in the end rejected in favour of a more specialist organisation of the Estimates Committee, wholly within the existing conception of the relations of this British Parliament with the British Government. That I belive to be the nub of the whole thing.[18]

On the other hand he received considerable support. Mr. Michael Foot (Ebbw Vale) stated comprehensively the case against these committees:

I am strongly opposed to the whole idea of extending these specialist committees, because I believe that so far from reforming the House of Commons it would inflict the gravest injury upon it. Although I admit that this proposal which has been put forward by the Select Committee on Procedure goes only a small way in that direction, I am opposed to it because I think that it could be carried further.

There are large numbers of my hon. Friends and many hon. Gentlemen in the House who see as the main cure for the disease of the present House of Commons an extension of specialist committees, either on the lines of those in the American Congress or of those in some other Parliaments. I am strongly opposed to this proposition for reasons which I wish to state. I believe that if we could push this idea out of the way we could go ahead to real radical reform of the House of Commons.

First of all, I am opposed to this idea of small specialist committees because a Member of Parliament can only be in one place at a time. The curse of Parliamentary life at present is too many committees. . . .

My second reason for opposing this idea of small specialist committees is that it means that all the topics of debate in this House would be hashed and rehashed before they ever got to the House of Commons itself. By the time they got here, we would find the subject utterly boring or would be told by the members of the specialist committees that they knew so much more about the subject than the others that the rest of us were not supposed to speak on the matter.

The third reason why we should oppose these small specialist committees is that this is an excellent way to play into the hands of the Executive. The idea that they will put the Minister "across a barrel"—a commendable purpose—is an error. The cosier the committee, the more likely it will be that we shall have bipartisan politics. Every Minister worth his salt knows how to diddle a committee of that nature. Therefore, all debates in those committees would be with the terms of reference laid down by the Government, by the Civil Service, and there would be a growing tendency towards more and more bipartisan policies. . . .

Of course it is right that Members of Parliament should be expert on some subjects, or that some of them should be experts, but the main business of Members of Parliament is to relate different forms of knowledge—including expert knowledge—and to keep the experts in their place, to know where the shoe pinches for the customers and to see that all questions are approached in a different way from that of the bureaucrats. These are the functions of Members of Parliament.

If we separate them in specialist committees, we shall be diminishing this function all the time and would end up with a situation such as they have to a great extent in the United States—where all power is transferred to the specialist committees and dissipated from the central debating chamber. For these four reasons, I believe that we should set our face against the specialist committees.[19]

Mr. Mendelson (Penistone) added:

The idea, once got abroad, that in these committees, with expert advice, one could always get some sort of sensible agreement on what ought to be done, would stultify and falsify debate. Once this system had carried on for a number of years in committees, then, as Professor Beard points out, the committee debate would be the only important debate and there would be, when the matter finally reached the House of Commons, a charmed circle of those who had taken part in the debate repeating what they said there. Most of the other Members would be regarded as rather outside that circle. It would be the beginning of the destruction of one of the most important elements of the House of Commons, namely, the ability to produce a real political challenge from one side to the other, and if necessary, by a combination of Members, from the House to the Executive.[20]

Mr. Bowden's first advice to the House was that the Estimates Committee might consider introducing specialisation by its sub-committees without any change in its order of reference and the matter could be considered again in the light of the experiences gained.[21]

The Estimates Committee *par faute de mieux* followed this advice. In their first special Report in Session 1965–6,[22] they regretted that their order of reference had not been enlarged, as recommended by the Select Committee.

They intended nevertheless to implement as far as they could within their existing order of reference the recommendation about specialisation. The following sub-committees were accordingly appointed, in

addition to the Steering Sub-Committee and a Sub-Committee to consider Supplementary Estimates:

1. Sub-Committee on Technological and Scientific Affairs (covering Labour, Education and Overseas Affairs).
2. Sub-Committee on Economic Affairs (covering Treasury, Trade, Power, Aviation).
3. Sub-Committee on Social Affairs (covering Health, Home Affairs, National Insurance).
4. Sub-Committee on Defence and Overseas Affairs (covering Defence, Foreign and Commonwealth Affairs).
5. Sub-Committee on Building and Natural Resources (covering Housing, Works, Land, Roads, Agriculture, Fisheries and Food).

In their view, six sub-committees were necessary satisfactorily to cover the whole field of Government administration. With their then membership of forty-three this was not practicable and they canvassed an increase in membership to fifty to make possible six " subject " sub-committees. In the next session, 1966–7, the membership remained at forty-three and the same sub-committees were appointed.

This position was radically changed and the Specialist Committees as we know them, came into being, following a debate on Procedure on 14th December, 1966. Mr. Crossman was by then Leader of the House and in initiating the debate, he stated his opinion that:

> the authority of the House of Commons has been declining, is declining, and will continue to decline unless we take active steps to stop it.[23]

He continued:

> Let me describe the central problem as I see it. The physical conditions under which we work and many of our main procedures are survivals from a period when parties were weak, when the making and unmaking of Ministries still rested with the House of Commons, not with an electorate based on universal suffrage, and when the Cabinet was merely the executive committee of the Commons. Procedurally, we still behave as though we were a sovereign body which really shared with the Government in the initiation of legislation, which exercised a real control not only of finance, but of the administration of the Departments. But, today, not only the House of Lords has been shorn of most of its authority. The House of Commons, too, has surrendered most of its effective powers to the Executive and has become in the main the passive forum in which the struggle is fought between the modern usurpers of parliamentary power, the great political machines.
>
> In this transformation of the parliamentary scene the House of Commons has largely lost the three functions for which its procedures were evolved and to which they are relevant, the making of Ministries, initiation of legislation shared with the Cabinet, and the watchdog control of finance and administration.[24]

He rejected any attempt to turn the clock back. The House had to have an efficient legislative process geared to the tempo of industry; the time to debate the great and topical issues; and provide a continuous and detailed check on the work of the Executive.

I have no doubt that in this respect at least the transfer of power from Parliament to the Executive has gone too far. We need to consider ways in which, while leaving the Executive the necessary freedom of action, we can develop institutions detailed, continuous and effective in their control. This reform would be good for the prestige of Parliament, good for the morale of back benchers, and, I believe, very good for the Government as well, because a strong and healthy Executive is all the stronger and healthier if it is stimulated by responsible investigation and criticism.[25]

His remedy was to initiate an experiment in the use of specialist committees, " giving to back-bench Members a share in the investigation of administration and even of the policies of the Government."[26] For that session, experimentally, two specialist committees, one on the subject of Science and Technology and one on the Department of Agriculture, Fisheries and Food would be established. He proposed to give the new specialist committees the power to sit in public, unless they otherwise ordered,[27] and hoped that other select committees would seek to follow this example.

At the end of the debate these two committees were formally appointed and Members were nominated to the Committee on Science and Technology on 25th January, 1967, and to the Committee on Agriculture on 30th January.

The Committee on Science and Technology decided to inquire into the nuclear reactor programme and while engaged in that enquiry was ordered by the House on 10th April, 1967, to enquire into " The question of future measures against the pollution of our shores in the light of the experience gained from the wreck of the *Torrey Canyon*.[28] The Committee on Agriculture, for its part, determined to inquire into the scope and adequacy of the enquiries made by the Ministry of Agriculture, Fisheries and Food concerning the effect of possible entry into the European Economic Community on British agriculture, fisheries and food.

In a debate on further reports from the Committee on Procedure in the following November, the Leader of the House succinctly described the progress made with specialist committees in their first session—

Lastly, we have been able to watch our first two Specialist Committees settling down to work. Once again, one is fascinated to observe how rapidly a radical innovation is absorbed into our customs and practice, because a year ago the proposal that Select Committees should sit normally in public was regarded as quite adventurous, and as for Ministers submitting themselves to cross-examination I can reveal to the House that this idea sent shivers of apprehension through wide areas of Whitehall. Nor was it easy for some Ministers and civil servants to accept the notion that our Specialist Committees are entitled to equip themselves with properly paid experts and to use foreign travel to facilitate their investigations. Of course, we have had quite a number of difficulties, misunderstandings and even an occasional explosion of wrath.

But the remarkable fact is how rapidly our two Committees has each evolved a strong corporate will and personality and what importance they have already achieved, not merely here, but in Whitehall and in the public Press.[29]

He proposed that both committees should be reappointed. The

" subject " committee on Science and Technology was to be a continuing sessional committee. He drew a distinction, however, between such a " subject " committee and a committee examining a Department of State, and disclosed that his intention had been for " departmental " committees to exist for only one session, and then for another department to be examined. The Committee on Agriculture had, however, become involved in a lengthy dispute, particularly with the Foreign Office, and as a result had not examined more than a fraction of the Ministry of Agriculture's activities. He proposed therefore that the committee should have a further year to examine the Ministry.

He then turned to the future progress of the system of specialist committees. There were difficulties in any expansion—the problem of getting enough Members to run a wide range of committees, and the burden placed on senior members of the Clerk's department in servicing more committees. He felt obliged to proceed slowly—and limited himself to the intimation that at the appropriate time he would propose the appointment of a Specialist Committee on the Department of Education and Science (including the Scottish Education Department).[30]

The 1967–8 session saw, therefore, the continuation of the Committees on Science and Technology and Agriculture and, on 22nd February, the appointment of a Specialist Committee on Education and Science. The Estimates Committee meanwhile was reduced to thirty-six Members and abandoned its " subject " sub-committees. In the following session 1968–9 the Committees on Science and Technology and Education and Science were reappointed, and further Specialist Committees on Race Relations and Immigration,[31] Scottish Affairs[32] and Overseas Aid[33] appointed. The Committee on Agriculture was reappointed,[34] but with the order to report by 28th February, 1969. When the Committee duly reported on 12th February it thereupon ceased to exist.

The possibility of giving legislative or pre-legislative functions to these committees has been canvassed. In their Sixth Report in Session 1966–7, the Procedure Committee said:

(a) *Prior discussion of proposals for legislation*

11. Your Committee believe that the House should be brought in at an earlier point in the legislative process so as to allow discussion by Parliament of subjects and details of potential legislation before the Government really prepare a Bill. As the Opposition Chief Whip told Your Committee: " Everyone knows that a Minister preparing a Bill is consulting all sorts of outside organisations, and indeed must do so inevitably. The one lot of people he never consults in any way before he prepares it are the Members of the House of Commons. . . . All too often the Bill is produced in a form agreed outside and is then given to the House on a much more ' take it or leave it ' basis than sometimes Members would wish it to be (Q. 279). Your Committee recognise that responsibility for the form in which their Bills are presented must rest with the Government of the day, but Parliament is entitled to have its views taken into consideration, whenever possible, at a sufficiently early stage in the formulation of these decisions. The Leader of the House gave evidence expressing his strong support and that of the Prime Minister for such consultation (A. 186).

'You take the idea already formulated outside, you bring it into politics, you discuss it . . . and in the end you come up with the experience which enables those who finally draft the Bill to draft it with far more understanding of the problems involved than they would otherwise have" (Q. 257). There are several improvements in procedure that could be made to this end, both by debates in the House and by the work of Committees.

13. *Specialist Committees.* With the growth of the use of Select Committees which concern themselves with particular subjects (such as Science and Technology) or particular Departments of State (such as Agriculture, Fisheries and Food) it will become increasingly possible for such Committees to consider ideas for legislation referred to them, or for them to propose legislation themselves as a result of their enquiries. The Select Committee on Nationalised Industries, for instance, have already considered the form the proposed Corporation for the Post Office might take. Specialist Committees concerned with Departments (such as the Home Office) that frequently produce Bills could play a useful role in giving preliminary consideration to proposed legislation. Your Committee recommend that this aspect of the work of the specialised Committees should be developed as more of these Committees are set up.[35]

Mr. Crossman in the debate on 14th November, 1967, referred to above, indicated that he was pursuing the possibility of *ad hoc* committees to study and report on specific topics of possible legislation.[36] The Select Committee on Agriculture in their Special Report in Session 1968–9, considered possible legislative functions:

Given government goodwill, specialist "subject" Committees could undertake the additional function of considering Bills within their province at the pre-legislative stage. With the evolution of Parliament, the nature of the legislative process has changed radically. Before a major agricultural bill is presented to Parliament, vital and prolonged discussions take place between the Ministry and various interested bodies, such as the unions and trade associations. The bill presented for second reading in the House had gone through these processes and ministers are loath to contemplate any drastic changes which might upset the consensus achieved. But in these processes, back-bench Members of Parliament are not consulted. However good and informed their speeches may be on Second Reading or during the Committee stage, they are unlikely to influence the Bill as much as people who were consulted before the Bill was finally drafted.

This defect could be remedied by the use of the Select Committee. The Minister and his Civil Servants could come to the Committee and, either in public or private, be questioned and be made aware of the considered views of elected representatives who have specialised knowledge of their subject. We consider that this pre-legislative function of Specialist Committees should be developed.[37]

Nothing has yet come of any of these projects.

The concept of specialist committees reviewing the whole field of Government activity could be achieved either by committees linked to Government departments—departmental committees—or by committees concerned with areas of governmental activity—the subject committees. In the initial experiment, one of each type was established. Since then "departmental" committees on Education and Science and Overseas Aid have been set up and "subject" committees on Race Relations and Immigration and Scottish Affairs. The latter

has only geographical limits and perhaps could be regarded as a third or regional type of specialist committee.

Experience to date has tended to favour " subject " rather than " departmental " committees. Mr. Crossman, when moving the appointment of the departmental Committee on Education and Science conceded that " It is arguable that subject Committees are, on the whole, better and easier to work. . . . It may be that in the final resort we come only to subject Committees.[38]

In their Third Special Report later that session, the Committee on Education and Science reinforced this preference:

> We were appointed as a " departmental " Committee, so that our choice of enquiry was limited to the activities of the Department of Education and Science and the Scottish Education Department. In order to allow it, if it so wishes, to enquire more widely into aspects of education, we recommend that the terms of reference of any Committee appointed next session should be those of a " subject " Committee.[39]

The Committee on Agriculture in the Special Report which accompanied their final report made the same case:

> Of more fundamental importance to the value of specialist committees is their scope and their relations with government departments. We have encountered drawbacks in being linked to a particular department, rather than to the subject of Agriculture. There are inevitably areas where the departmental boundaries are drawn arbitrarily and where the boundary lines straddle particular problems as, for instance, Agriculture's place in the national economy anti-dumping action, international commitments, and land use. Whateve the agreed procedure of consultation in these areas, weaknesses in administration tend to arise in practice. To the extent that these boundary lines are imperfect, a Committee with identical limits reproduces these imperfections and makes it less easy to probe the problems and comment on them.
>
> Further, Agriculture has to be considered for the United Kingdom as a whole. This is done in the Annual Review, in the Selective Expansion Programme and in the E.D.C. Report on Agriculture and the Government's policy arising from it. Yet we are limited to the Ministry's activities in England and Wales, excluding the Department of Agriculture in Scotland.
>
> We accept that the work imposed on a department by a specialist committee's enquiry is considerable, but a readiness to explain its policies and actions to Parliament, and through Parliament to the public is a primary responsibility of a Government department. Nevertheless a Committee examining a subject such as agriculture could profitably from time to time examine matters of vital concern to the agricultural industry which fall outside England and Wales or outside the immediate responsibility of the Ministry of Agriculture, Fisheries and Food.[40]

No " subject " committee has asked to be a " departmental " committee.

The staffing of specialist committees has been a thorny problem. The concept of employing expert assistance had been examined by the Select Committee on Nationalised Industries in 1958–9 and they had stated their conclusions in their second Special Report.[41] They had in a recent enquiry felt the need for accountancy assistance and the help of a " research worker with training in economics who could have informed them on what had been written on the subject " and

who could have assisted them in determining and pursuing lines of enquiry. They recalled that the Select Committee which recommended a sessional committee on Nationalised Industry had proposed for them the assistance of an officer of high administrative experience, at least one accountant, and access to additional information from the industries' statutory auditors.[42] None of this assistance had been provided. They considered other possibilities—assistance from a seconded Treasury official, from the Comptroller and Auditor General, from the Library of the House, an outside (perhaps university) economist, a male research staff, and an additional clerk.

They rejected the concept of special officer. The assistance of an accountant would be useful up to a point. They did not wish to impose further duties on the statutory auditors, nor did they wish on principle to avail themselves of assistance from anyone connected with the Government machine.

Of the other possibilities, they saw both advantages and disadvantages, except that the assistance of a second clerk would receive an unalloyed welcome. They concluded that some steps should be taken to provide assistance on a moderate scale, and increased or varied in the light of experience. They preferred that it came from within the House, but acknowledged that some of the help they needed was of a specialised kind which the House had not hitherto provided. They left the decision to the House. They duly got their two clerks and nothing else.

In Session 1964–5, the Estimates Committee reviewed the question of temporary technical or scientific assistance for their sub-committees. In a Special Report,[43] they considered that " there may be occasion on which it would be valuable for them to be able to engage the services of someone with technical or scientific knowledge on an *ad hoc* basis for the purpose of a particular enquiry or part of an enquiry, either to supply information which was not readily available or to elucidate matters of complexity within the Committee's order of reference ".

In effect this linked with and spelled out more precisely the recommendation of the Procedure Committee in that session, referred to on page 66 above, that their proposed committee, which was to be developed from the Estimates Committee, should be able to employ specialist assistance. In the debate on this Procedure Committee Report, also referred to above, the Leader of the House was more forthcoming in regard to specialist assistance than to specialised committees. " If the present Estimates Committee, . . . would like to augment the clerical staff and employ specialist assistance, the whole question could be considered urgently at the right time, which would be the new House of Commons Services Committee. . . ."[44]

The Services Committee duly considered the matter and in a Report on 31st January, 1966, saw no reason why select committees should not be allowed to employ specialist assistance. Anyone so employed should be entitled to attend meetings of the committee but would have no power to vote or examine witnesses. On 7th February, 1966,

the House duly gave this power to the Estimates Committee[46] and they availed themselves of it at once for one of their enquiries. This power has subsequently been given to the Committee at the beginning of each session.

When the question of Coastal Pollution was referred to the Committee on Science and Technology, the Committee found themselves in some difficulty. They were already engaged in the enquiry of their own choice into the nuclear reactor programme and felt " bound to call attention to the problem which might arise from a procedure which could divert the Committee's attention from their chosen line of inquiry. As a partial solution they sought the power to appoint sub-committee and to engage specialist assistance.[47] Both these powers were given them on 19th April, 1967,[48] and in addition at their behest[49] three additional members were added by the House on 10th May[50] to their sub-committee on Coastal Pollution.

The powers to employ specialist advisers and to appoint sub-committees has subsequently been accorded to those specialist committees which have sought them. The co-opting of members not on the parent committee to serve on sub-committees has not been repeated, nor has the charging of a specialist committee to undertake a particular enquiry not of their own choosing.

Staffing difficulties, apart from specialist advice, also arose from the institution of specialist committees. In the debate on 19th April which is referred to above, the Leader of the House had stated bluntly that the House was under-staffed and gave a warning about the

> practicability of extending the number of our specialist and their sub-committees much further unless we can be sure of recruiting the Clerks necessary to staff them. This is a highly relevant warning. Already, before we created the Departmental Committee on Agriculture and the Specialist Committee on Science and Technology, we had not got the full complement of Clerks that we are permitted and there were insufficient to carry all the burdens imposed upon them. Since then we have created three new Committees.
>
> In order to man our new Committees, we were forced to cut back the manpower that we had allocated to the Estimates Sub-Committee, with consequent detriment to its work . . . the function of a Clerk to a Select Committee is both highly responsible and highly specialised, and that staff shortages cannot be plugged by bringing in civil servants from Whitehall. If we want to expand our Specialist Committees next Session—and I very much hope this is the will of the House—then we must take urgent steps to ensure the recruitment of senior Clerks to man them.[51]

Mr. Hamilton, Chairman of the Estimates Committee underlined the staffing difficulty.

> I wish to refer to the position as it affects the Estimates Committee, to which I belong. We have six investigating sub-committees to investigate the whole of Government activity. Prior to the establishment of the two new specialist Committees of Science and Technology and Agriculture, the Estimates Committee had one clerk per sub-committee, plus another senior clerk supervising the whole. Even then, the clerks who were servicing the Estimates Committee were not wholly and exclusively attached to the Estimates Committee, although, to be fair, it was always assumed that, as in fact happened, they would give

their service primarily to the Estimates Committee. Nevertheless, they were expected to serve, and did serve, Standing Committees and other Committees.

When the Select Committee on Procedure went into this matter in 1964–65, it recommended in its Fourth Report that there should be two senior supervisory clerks for the Estimates Committee and one full-time clerk per sub-committee exclusively and entirely devoting his service to the committee. In my view, that was not then, and certainly is not now, an extravagant, irresponsible proposal.

Yet, what has happened? The Estimates Committee has had two clerks taken away from it altogether following the establishment of the two new Specialist Committees.[52]

> . . . for the first time in the history of the Estimates Committee, two of its clerks are having to serve two sub-committees. About a week ago we had the ridiculous situation in which, because one of the sub-committees was exercising its right, hardly fought for in the House, to examine expenditure overseas, it went overseas and took with it a clerk who was servicing another committee, which had to abandon or postpone its proceedings until he returned.
>
> One of the reasons for our problems on the Estimates Committee is that the new Specialist Committees have refused to accept the idea of being served by seconded civil servants. I support that view entirely. The Clerk's Department of this House must remain separate from the Civil Service. That is of crucial importance. Our clerks serve the Legislature, whereas the Civil Service serves the Executive. If there is any suspicion, either in this House or outside, that there is a clash or conflict of loyalty, it would result in a great loss, in my view.

On 27th July, the Committee on Agriculture made the first report from a specialist committee to the House[54] and devoted the first twenty-nine paragraphs of their report to working difficulties which they had experienced, including staffing difficulties. They wished the services of two clerks with supporting staff, and more access to the research facilities of the Library. They rejected the idea of seconded civil servants assisting the clerk—" such a system would be scarcely fair to the Civil Servant attached to the Committee, whose future would lie with the Department under scrutiny and whose loyalties would inevitably be divided ".[55]

The Report of the Committee on Agriculture in session 1966–7 was the subject of a debate—the first from a specialist committee to be so debated—on 14th May, 1968. The question of adequate staffing was again raised, as was the committee's relationships with Government departments and access to Government papers examined.[56] Later that year, on 28th July, the Committee on Science and Technology reported to the House on Coastal Pollution, and in an Appendix to the Report analysed the difficulties that had confronted its sub-committee engaged on this enquiry.[57] They pressed for the uninterrupted service of a clerk with adequate office assistance for any sub-committee dealing with a highly specialised subject.

The Committee on Agriculture in their Special Report in February 1969 re-echoed this point:

> A reason given by the Government for not expanding the system of " Specialist " Committees was the shortage of staff. This was repeated when the Leader of the House defended his proposal to terminate the activities of this

Committee on 28th February 1969. In our view limiting Specialist Committees because of staffing considerations is indefensible. If it is felt that the House needs to develop this institution in order to play a more effective role in influencing policy-making and in investigating administration, then there should be no question of restricting this development in the interests of staff economies The repute of Parliamentary government is involved.[58]

There has been, as a result, some increase in the establishment of the Committee Office and more use made of outside specialist assistance.

The future of specialist committees rests on future decisions of the Government and the House. These decisions will decide what functions these committees are to discharge and what resources they are to have at their disposal in carrying out their functions. When commending them to the House in December 1966 (see p. 69 above) Mr. Crossman had indicated that, unlike the Estimates Committee which had to accept Government policy as it stood, his specialist committees might share in the pre-decision stages of policy. On the other hand the Government has not found itself able to inform these committees very far on the workings of the machinery of Government and particularly of the decision-making processes of the Cabinet and its committees.[59] On 25th March, 1969, in reply to a Member who asked for a Committee on Defence, Mr. John Silkin, the Chief Whip, rehearsed the difficulties of finding members and staff for committees, and of risking taking authority from debates in the House. He added:

> The position really is that the time has come for the Government to take stock of this whole experiment, for experiment it was, of Select Committees. I hope that the House will never abandon Select Committees. Indeed, I doubt whether it ever could. This idea has gripped the consciousness and general fibre of Parliament today, and Parliament would be a very much poorer institution without Select Committees. But the House must consider not only the experiment as a whole, but the experiment individually. I think that it would be very foolish indeed to give a simple *non possumus* to the suggestion, but, equally, this is a matter which must be carefully thought out and given some study, and I assure the hon. Gentleman that this is what the Government intend to do.[60]

In winding up the debate in which many of the arguments for and against specialist committees were repeated the Chief Secretary to the Treasury referred to the wide range of opinion expressed:

> There is the view that we should have all specialist Committees. There is the view that we should have no specialist Committees. There is the view that we should have some specialist Committees and the Estimates Committee reconstructed. There is a great variety of views and for all reasons. I can understand them all. . . . It would be wrong of any Government, after a verbal debate of this kind, not to give time . . . to enable careful thought to be given to all the different points of view which have been expressed.[61]

While this study was under way, the Procedure Committee published a report in July 1969 on the Scrutiny of Public Expenditure and Administration.[62] As part of their proposals for a more efficient scrutiny of expenditure the Committee recommended that the Estimates Committee should be changed to a Select Committee on Expenditure, and its order

of reference should be to consider public expenditure and to examine the form of the papers relating to public expenditure presented to this House. The Committee should have a series of functional sub-committees and eight were recommended as a possible pattern.

The sub-committees would be neither subject nor departmental, but " functional ". There would clearly be much overlapping with existing and proposed specialist committees. The Procedure Committee recommended that the future of these committees should be decided upon " in the light of this Report and as the occasion arises ".[63] In any case more staff and perhaps additional specialist assistance were needed.[64]

When the report was debated on 21st October, 1969, the Leader of the House, referring to these recommendations, said:

> These proposals are, of course, both comprehensive and constructive. As I have said, they pose fundamental questions of the relations between Parliament and the Executive. They have wide-ranging implications for the work of hon. Members and Ministers and for the Civil Service, and they constitute a considerable development in our constitutional arrangements. As such, they demand the most thorough—though not dilatory—examination, both by individual hon. Members and by the Government.
>
> As I have already informed the House, the Government are at present undertaking a full-scale review of the work of the present Specialist Committee experiment with a view to considering what more permanent arrangements they should recommend to the House. After all, in the end it is the House which will have to approve or disapprove. Naturally, the Select Committee's proposals for a comprehensive system will form a most important element in everybody's thinking.[65]

The Government had not announced its conclusions when Parliament was dissolved on 29th May, 1970.

[1] The more notable are summarised in: *Parliamentary Reform—a survey of recent proposals for the Commons*, 2nd ed. 1967, pp. 45–60 (The Hansard Society). See also Report, Select Committee on Procedure (1914 H.C. 378, 1931–2 H.C. 129).
[2] Harold Laski: *A Grammar of Politics*, 1925, p. 350.
[3] H.C., 1958–9, No. 92–I, p. xxv.
[4] *Hansard*, Vol. 609, col. 42.
[5] *Hansard*, Vol. 673, col. 1811.
[6] *Ibid.*, col. 1790.
[7] *Ibid.*, col. 1791.
[8] *E.g.* Michael Ryle " Greater Committee scope for M.P.s," *The Times*, 17th April, 1963; Jo Grimond: " How to make Parliament Work ", *The Guardian*, 11th September 1963; *Socialist Commentary*, July, 1964.
[9] For a full account of its work see THE TABLE, Vol. xxxiv, pp. 43-8.
[10] H.C. 1964–5, No. 303.
[11] Report, p. v.
[12] *Ibid.*, p. vi.
[13] *Ibid.*, p. vii.
[14] *Ibid.*, p. ix.
[15] *Hansard*, Vol. 718, col. 183.
[16] *Ibid.*, col. 184.
[17] *Ibid.*, col. 287.
[18] *Ibid.*, col. 202.
[19] *Ibid.*, cols. 207–9.

[20] *Ibid.*, col. 247.
[21] *Ibid.*, col. 287.
[22] H.C. 1965–6, No. 21.
[23] *Hansard*, Vol. 737, col. 478.
[24] *Ibid.*, col. 479.
[25] *Ibid.*, col. 483.
[26] *Ibid.*, col. 485.
[27] Select committees could, and had, previously sat in public but the practice was in disuse, partly because any one Member could enforce the withdrawal of strangers.
[28] *C.J.*, 1966–7, p. 420.
[29] *Hansard*, 14th Nov., 1967, Vol. 754, col. 245.
[30] *Ibid.*, cols. 260–1.
[31] *C.J.*, 1968-69, p. 31.
[32] *C.J.*, 1968-69, p. 135.
[33] *C.J.*, 1968-69, p. 222.
[34] *C.J.*, 1968-69, p. 31.
[35] H.C., 539, p. vii and viii.
[36] *Hansard*, Vol. 954, col. 262.
[37] H.C., 1968–9, No. 138.
[38] *Hansard*, Vol. 759, col. 792.
[39] H.C., 1967–8, No. 317.
[40] H.C., 1968–9, No. 138.
[41] H.C., 1958–9, No. 276.
[42] Select Committee on Nationalised Industries, H.C., 1952–3, No. 235.
[43] Fifth Special Report from the Estimates Committee, H.C., 1964–5, No. 161.
[44] *Hansard*, Vol. 718, cols. 185–6.
[45] First Report from the Services Committee, H.C., 1965–6, No. 70.
[46] *C.J.*, 1965-66, p. 83.
[47] Fourth Special Report, H.C., 1966–7, No. 447.
[48] *C.J.*, 1966-67, p. 447.
[49] Fifth Special Report, H.C., 1966–7, No. 463.
[50] *C.J.*, 1966-67, pp. 479, 507.
[51] *Hansard*, Vol. 745, col. 605.
[52] *Ibid.*, col. 659.
[53] *Ibid.*, cols. 659–60.
[54] H.C., 1966–7, No. 378, xviii.
[55] *Ibid.*, p. vii.
[56] *Hansard*, Vol. 764, cols. 1117–74.
[57] H.C., 1967–8, No. 421, pp. xivii–xivx.
[58] H.C., 1968–9, 138, p. 8.
[59] *E.g.* Minister of Agriculture: "It is not the practice to reveal what Cabinet Committees exist or what their composition is." Report, Select Committee on Agriculture, 1968–9, H.C., 1968–9, No. 137, Evidence Q. 1370.
[60] *Hansard*, Vol. 780, col. 1471.
[61] *Ibid.*, col. 1066.
[62] H.C., 1968–9, 410.
[63] Paras. 32–8.
[64] Para. 39.
[65] Vol. 788, col. 970–1.

IX. PROTECTION OF SELECT COMMITTEES SITTING OUTSIDE THE PALACE OF WESTMINSTER

By R. D. Barlas, C.B., O.B.E.
Second Clerk Assistant and Clerk of Committees, House of Commons

On 25th April, 1969, a sub-committee of the Select Committee on Education and Science met in the Meeting Hall of Essex University outside Colchester. Their purpose was to take evidence from students and University authorities in connection with their current enquiry into student–teacher relationships. They had agreed to hear the evidence in public.

On the arrival of the sub-committee at the Hall, shortly after 10 a.m., there was an audience of about twenty, but this later grew to between eighty and one hundred. The first session of evidence was taken from a students' group for about an hour and a quarter. There was a good deal of shouting and barracking from the audience while this evidence was being taken. At the conclusion of this session, one of the committee tables was overturned by a member of the audience. After this had happened, the sub-committee took a short break and then continued until lunch with evidence from a group representing the staff. The interruptions continued during the second session. It was, however, possible to continue taking evidence from the witnesses.

The third and final session began at half-past two in the afternoon, when evidence was to be given by the Vice-Chancellor and certain of his colleagues on behalf of the University authorities. Before the sub-committee Chairman could open the proceedings, a member of the audience stood up and began addressing those assembled in the room. Thereupon, the Chairman announced that he would give the audience a minute in which to decide whether they wished to hear the evidence. The interruptions continued amid a general uproar, and the disorder made it impossible to proceed with the evidence. The sub-committee then adjourned. Members of the audience then got behind the members of the Sub-Committee and tried to stop them getting out of the room.

Previous public sittings of the Committee and its Sub-Committees had aroused considerable interest in the press and the evidence had been fully reported. The press was well represented at the Colchester sitting, and not unnaturally the events of the 25th April were front-page news in the evening and following morning's newspapers. They were raised in the House as a matter of privilege by Sir Douglas Glover, Member for Ormskirk. In the debate which followed many Members thought that any disciplinary action was best left to the University

authorities, but the complaint was eventually referred to the Committee of Privileges on a division by 197 votes to 110.

The history of select committees sitting outside the House goes back a long way. One of the earliest was the Committee on the South Sea Company, set up to enquire into the notorious South Sea " bubble ", a largely fraudulent scheme for investment which collapsed with disastrous results for many stockholders. This Committee was given power to adjourn from place to place and sat in South Sea House in the City of London during January 1720. The Committee on the State of Gaols sat in the Fleet Prison during 1729, to take evidence regarding the horrors perpetrated by the infamous gaoler, Thomas Bambridge; a contemporary painting by Hogarth shows the Committee engaged in their investigations. The Select Committee on His Majesty's Physicians also sat outside the Palace to take evidence relating to the mental illness of George III.

No untoward incidents were recorded at any of these earlier sittings, but this is not surprising. The Committees were not indeed attended by the Serjeant at Arms, but the members would themselves have been armed with their own swords and no doubt accompanied by their servants with staves. It may be presumed that any disorder might have been dealt with somewhat summarily without reporting to the House. It is also possible that committees which sat outside the House would have included members who were magistrates and they would have been able to exercise their jurisdiction in that capacity. This practice was mentioned by Sir Thomas Erskine May in his evidence in another connection, before the Select Committee on House of Commons Witnesses in 1869. Sir Thomas then referred to the practice adopted in the seventeenth century, when select committees had not the power of administering oaths, of empowering " Justices of the Peace for the county of Middlesex who happened to be Members of the House of Commons, to administer oaths in Committees of which they were members; thus endeavouring to bring the authority of a Justice of the Peace in aid of their own jurisdiction ".

It was, however, rare for select committees to sit outside the Palace of Westminster and this continued to be the case until 1965, when the extension of the Commons Committee system produced a number of new specialist committees, including the Education and Science Committee. It was therefore necessary for the Privileges Committee not only to enquire into the circumstances of the Essex University incident, but also to examine the implications of future committee sittings outside the House. They took evidence from the Clerk of the House regarding the status of select committees and the position of the Serjeant at Arms in relation thereto, and from the Home Office in regard to the powers and duties of the police. Their evidence was rather disturbing.

The evidence of the Clerk of the House was quite clear that a committee possessed no disciplinary powers. If witnesses or onlookers misbehaved, or a disturbance took place, a committee might make a

special report to the House, drawing attention to the matter; and it would then be for the House to decide upon a Motion, what action to take. A select committee possessed no authority except that which it derived from the terms of its appointment by the House. It had no inherent or executive powers apart from the limited right to give instructions to its clerk, who was bound to follow them if they were in conformity with the ordinary rules of the House. He could not, for example, be authorised to use force against intruders. At Westminster it was the duty of the Serjeant at Arms and his officers to maintain order within the precincts of Parliament under the authority of Mr. Speaker, but it was not the duty of the Serjeant at Arms to offer protection to a select committee sitting beyond the precincts. When select committees exercised the power accorded to them by the House to sit beyond the precincts, they therefore had no special means of enforcing their authority. They would, however, have a claim to the protection of privilege, which, if it thought fit, the House could sustain by taking action retrospectively against the offenders.

In the circumstances, it might well be thought that retrospective action would be of little use to uphold the dignity of a committee faced with dealing with an uproar on the spot. The Privileges Committee therefore turned to the Home Office to enquire what the police could do on such occasions. Their reply brought little comfort.

In the view of the Home Office—and this is almost certainly correct—there is nothing in law to distinguish a select committee meeting from any other public meeting. Where such meetings were held on private premises, a police constable had no right in general to enter upon the premises except at the invitation or with the permission of the occupier, unless he had reasonable cause to suspect that a breach of the peace had been or was about to be committed.

It was not the function of the police to become involved in civil disputes of any description which did not involve a breach of the peace however much it might be considered that the rights were on one side rather than the other. This applied to a wide variety of public and private activities, and included disputes at all types of meetings. It was in particular no part of the duty of the police to attend any meetings for the purpose of maintaining general order. The organisers of all meetings were responsible that the business for which the meeting had been called was transacted; it was also for them to provide stewards or like persons for the general control, if necessary, of those present at the meeting.

As regards select committee meetings outside the precincts, the police would treat such meetings like other meetings, and their general approach would be the same. Chief officers would be ready to assist with any requests by the Chairman for protection of members of a Select Committee, particularly in regard to their passage to and from these meetings, but in general their officers would not intervene unless offences against the person or property were committed, or were likely

to be committed. In answer to a point put specifically to them, the Home Office stated that even if police were present at a Select Committee meeting, they would not act to prevent interruptions of the meeting by heckling or other means, unless breaches of the peace or other offences seemed likely to be committed.

The Privileges Committee came to the firm conclusion on the incident itself that a contempt had been committed (Second Report, 1968–9, House of Commons paper No. 308). They acknowledged, however, the expression of deep regret that had been offered by the Vice-Chancellor on behalf of his University, and in view of the disciplinary action which the University authorities proposed to take, they thought that this was not an occasion for the exercise of the penal jurisdiction of the House. As regarded the future they recognised that visits by Select Committees were likely to continue, though in the absence of special circumstances meetings ought generally to take place at Westminster. But when they took place away from Westminster, it should be emphasised that the duty of maintaining order was laid on those responsible for the premises in which the Committee met. When it was anticipated that disorderly conduct might impede a Committee's work, its proceedings should not be held in public. They concluded by observing that Members, when acting as representatives of the House, should not expose themselves to situations which they were unable to control and which could reflect upon the authority of Parliament.

It is difficult to see what other course the Privileges Committee could have taken. No punishment which the House could have imposed—save imprisonment—could have been more effective than disciplinary action taken by the University authorities, who had the power of expulsion at their disposal. Imprisonment might have been appropriate, though a trifle ludicrous when exercised against undergraduates, had it been possible for the Committee to commit the offenders forthwith; but it was scarcely possible for the House (which alone can imprison) to wait to do this until the Privileges Committee had reported some weeks after the incident. It is interesting to note that when a few months later a High Court Judge committed a party of Welsh Nationalist students to prison for three months for interrupting the proceedings of his Court, the Court of Appeal set aside the sentences while upholding the right of the Judge to impose them.

Nor is it easy to see how the Privileges Committee could have made any other recommendations for the future. The fact remains that a Committee does not have the powers of the House, and to grant such powers would involve an extension of Privilege. It would not be practicable for the Serjeant at Arms to send his Assistant Serjeants to be in attendance at every sitting of a Committee outside the Palace; and even if he did, his Assistants would not be able to exercise the same authority as they do within the precincts.

The Committee of Privileges were concerned only with sittings

within the United Kingdom. It was formerly held that Select Committees ought not to sit outside the United Kingdom jurisdiction, but under the present practice, sittings in Commonwealth and foreign countries not infrequently take place. The Overseas Aid Committee have, for example, made three visits of this nature within the last year. At the same time, Select Committees of both Commonwealth and foreign Parliaments have conducted enquiries in Britain. In 1968 Committees of the Canadian and Australian Parliaments, and in 1969 a Committee from the Netherlands Parliament visited Westminster, in pursuance of powers given by their respective Parliaments. It is, however, acknowledged, certainly as far as Committees of the Commons at Westminster are concerned, that Committees sitting outside the jurisdiction of their State have no parliamentary rights whatsoever, and cannot rely upon their parent House to afford them protection even retrospectively. Nor can they of course exercise their power to send for persons, papers and records when sitting in another jurisdiction. They are, in effect, guests of the Government in whose territory they sit, and can expect no other protection than may be afforded, no doubt with the greatest goodwill, by their hosts.

X. THE ATTEMPTED REFORM OF THE HOUSE OF LORDS 1964–69

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

In the conclusion of their Election manifesto of 1964, the Labour Party said:

> Certainly we shall not permit effective action to be frustrated by the hereditary and non-elective Conservative majority in the House of Lords.

In the short Parliament which lasted from November 1964 to March 1966, with a Labour Administration headed by Mr. Harold Wilson with a majority of five in the Commons, the Lords were in effect on good behaviour and this situation was realised and accepted by Members of the Upper House, and in particular by the leaders of the Conservative majority party in it. Their attitude was made clear on a number of occasions and in particular in various speeches by Lord Carrington, the Opposition Leader in the Lords, urging the House not to insist on amendments made in the Lords which had been rejected by the Commons. For example, when considering the Commons' Reason for rejecting the Lords amendments to the War Damage Bill (the Burmah Oil affair) on 25th May, 1965, Lord Carrington used these words:

> In the procedure debate the other day I said that I thought there could be occasions, when measures were passed through the House of Commons on which the opinion of the electorate was not known, or in so far as it was known it was not thought to be favourable, when our delaying power might be used, and perhaps should be used, so as to enable public opinion to make itself felt. Is this one of those occasions? I am bound to say that I do not think that it is. . . . It may well be that in the future some issue may arise of such gravity and of such importance to the wellbeing of the country, as a whole, that it would be perfectly right and proper for your Lordships to use the powers which remain to you in order to bring home to the people of this country the gravity of that issue, and to give them time to understand its importance. But I must honestly say to your Lordships that I do not believe that this power can be used save in the most exceptional circumstances. If it were, I do not doubt that the whole future of two-Chamber Government, as well as the present form of this House, would be called into question. (*H.L. Hansard*, Vol. 266, col. 734.)

On this, and on all other differences between the Houses in the short Parliament 1964–6, the House of Lords did not insist on any

Editor's note:
Mr. Wheeler-Booth was seconded as Special Assistant to the Leader of the House of Lords from October 1967 to September 1969 and as such acted as a joint Secretary to the Inter-Party Conference on House of Lords Reform.

amendments which had been rejected by the Commons, but acquiesced the second time round in their rejection by the Commons.

Effectively, therefore, the House of Lords did nothing to hinder the Labour Government from 1964 to 1966. In the Election Manifesto of 1966 the Labour Party pledged itself to introduce legislation " to safeguard measures approved by the House of Commons from frustration by delay or defeat in the House of Lords ". The General Election returned a House of Commons with a majority of 99 for the Labour Party.

In 1967, before the Labour Government had made any announcement of the manner in which it intended to fulfil the promise of the Election Manifesto, a debate was held in the House of Lords on 12th April on a Motion by Lord Mitchison " To call attention to the need for reform of this House and its powers, and to move for Papers." In this debate Lord Longford (Lord Privy Seal and Leader of the House) reiterated the pledge given by his Party in the Manifesto, but said that that debate was not the proper occasion to go into any details of the Government's intentions. He added that they would take note of all that was said in the debate. The Conservative Deputy Leader of the Opposition, Lord Harlech, said:

> . . . the chief criticism which could be levelled against your Lordships' House at the present time is that there is a built-in majority for the conservative party. . . in this present day and age it is not really a rational basis on which to run a Second Chamber in a democracy. . . . We have not really grappled with the problem of the hereditary Peers. . . . If we are to achieve a fair balance between the Parties in this House, and if there is to be no permanent majority for any one Party, then clearly this particular nettle would have to be grasped . . . (*H.L. Hansard*, vol. 281, col. 1299.)

He went on to explore various ways in which the present hereditary membership of the House could be altered so as to do away with the built-in majority for the Conservative Party. He concluded his speech by saying that the Conservatives would be very ready to discuss proposals for improving the House of Lords and the way it does its work.

Session 1967–68: The Inter-Party Conference

Despite the Government's official silence about the reform of the House of Lords, there was some press speculation that proposals might be forthcoming in the Queen's Speech of 31st October, 1967. The press was not disappointed and the following passage appeared in the Speech from the Throne:

> Legislation will be introduced to reduce the powers of the House of Lords and to eliminate its present hereditary basis, thereby enabling it to develop within the framework of a modern Parliamentary system. My Government are prepared to enter into consultations appropriate to a constitutional change of such importance.

In the Commons, in the debate on the Gracious Speech, the Leader of the Opposition (Mr. Heath) asked whether this announcement about " consultations " meant that the Government wished to have full and

proper consultations or whether they intended merely to inform the Opposition of their intentions. In reply the Prime Minister made an important statement of the Government's attitude to Lords reform:

Since the theme of this Gracious Speech and those which have preceded it is the modernising of our country, we cannot ourselves, as a Parliament, lay ourselves open to the charge that we are failing to modernise Parliament itself—and not only the elected Chamber. . . .

I begin with powers. The other place, on a strict reading of our Constitution, has vast powers not only to amend legislation passed by the elected Chamber but to delay it, to reject subordinate legislation in the form of Statutory Instruments and, if it so wills, to frustrate on matters of great urgency the decisions of this democratically elected House. This is the present position, and so vast are these powers that they are virtually unusable. Leading Opposition spokesmen in another place, conscious of the voting power which they could no doubt summon up in large matters and small, have had an unwelcome restraint forced on them by their legitimate and honourable desire to avoid precipitating a constitutional crisis.

The other place has an important role in improving our legislation and in debating issues of great moment. Their debates—if we are fair we must accept this—sometimes transcend the quality and depth of debates even in this House. But having said this, it is an anachronism that a House not responsible to the electorate should have the powers which the other place has, and it is an indefensible survival from the centuries that one of the two Houses in our modern Parliamentary constitution should, whatever its powers, be based on the hereditary principle.

We have made it clear that we intend to introduce legislation this Session to deal with powers and also with the composition of their Lordships' House. We intend that this legislation shall be introduced in good time for it to become law this Session.

Equally, however, on a matter of such constitutional importance, we feel that there should be discussions with the other political parties in both Houses, and we propose to open these discussions immediately. My right hon. Friends and I hope that a broad measure of agreement can be reached on the means of giving effect to the principles laid down in the Gracious Speech, and we do not intend to make detailed proposals unilaterally ourselves, unless the prospect of agreement in the consultations seems so unlikely or so remote in time as to rule out agreed legislation this Session.

I must make it clear that, if agreement is not reached and in adequate time, the Government will then go ahead with legislation this Session. There is plenty of time to make the consultations a reality; what we cannot accept is either a veto or the use of the consultations for an unconscionable period of delay such as that in the existing Parliament Act. . . .

In answer to a question by Mr. Heath about the nature of the consultations, the Prime Minister said:

We will put forward principles and proposals. It would have been a discourtesy to those who will be taking part if we had put forward cut-and-dried plans this afternoon—before the consultations had taken place. We shall be ready to consider any alternative suggestions made by right hon. Gentlemen to achieve the same objectives and principles. The consultations will be real consultations. What I said was that if it became clear that no agreement was possible or that if the consultations were unconscionably delayed so that agreed legislation would not be possible this Session, then I thought it right to give notice that, in those circumstances, the Government would do as the right hon. Gentleman said, and go ahead with their own legislation. (*H.C. Hansard*, vol. 753, cols. 27–30.)

Both the Leader of the Opposition and the Leader of the Liberal Party (Mr. Jeremy Thorpe) accepted the Prime Minister's invitation to take part in discussions between the political Parties in both Houses in the hope that a broad measure of agreement could be reached on the means of giving effect to the principles for Lords reform laid down in the Queen's Speech. The Inter-Party Conference on Lords reform was thereafter speedily convened with representatives of the three main Parties meeting for the first occasion on 8th November, 1967. The Government was represented by the Lord Chancellor (Lord Gardiner), who also took the chair, the Lord President of the Council and Leader of the House of Commons (Mr. R. H. S. Crossman), the Home Secretary (Mr. Roy Jenkins, and after November 1967, Mr. James Callaghan), the Lord Privy Seal and Leader of the House of Lords (Lord Longford, and after January 1968 Lord Shackleton, who had previously attended as Minister without Portfolio) and the Government Chief Whip (Mr. John Silkin). The Conservative Party was represented by Mr. Reginald Maudling, Mr. Iain Macleod, Lord Carrington and Lord Jellicoe; and the Liberal Party by Mr. Jeremy Thorpe and Lord Byers. Mr. Fred Peart attended the conference from the time he was appointed Leader of the House of Commons in April 1968. The first meeting was also attended by the Prime Minister and the Leader of the Opposition and it was then agreed that the meetings should be confidential to those taking part. Originally it was hoped that the conference might complete its work within two or three months so as to allow time for the resultant legislation to be introduced during that Session, but the inter-Party talks were continued until the summer of 1968 which effectively prevented the introduction of any legislation during that Session. As well as the full meetings of the whole conference it has been revealed that there was a sub-committee[1] which met much more frequently (some 40–50 meetings) and which commissioned a number of statistical and other studies, gave preliminary consideration to the problems that presented themselves and prepared many of the papers which were later considered by the full conference.

The Inter-Party Conference was serviced by secretaries drawn from the Cabinet Office, the Home Office and the Parliament Office, House of Lords, and by a Committee of Officials under the chairmanship of Lord Shackleton.

In the spring and summer of 1968 the Labour Government apparently became increasingly unpopular in the country, according to the evidence of a series of by-election results, and the opinion polls. As a result the Conservative leadership in the Lords came under increasing pressure to make use of the Conservative majority in that House. The most serious use of this majority was on the Southern Rhodesia (United

[1] The Sub-Committee consisted of Lord Shackleton first as Deputy Leader and after January 1968, as Leader of the House of Lords, Lord Jellicoe, Conservative Deputy Leader in the Lords and Lord Byers, Liberal Leader in the Lords.

Nations Sanctions) Order 1968 which was rejected in the Lords on 18th June 1968 by a majority of 185 to 179.[2]

This Order in Council gave effect to a United Nations Resolution extending the scope of mandatory sanctions against Rhodesia. The Order however remained in force, despite the Lords vote, because it was a 28 day Order which was in force from the date of making. A second Order prolonging the earlier Order was made after the Lords vote, and, this time, was allowed to pass by the House of Lords.

The Prime Minister, two days after this vote in the Lords, announced the breaking off of the Inter-Party Conference talks on 20th June, using the following words in his statement to the Commons:

As the House will be aware, the Southern Rhodesia (United Nations Sanctions) Order, 1968 (Statutory Instrument 1968, No. 885) dated 7th June, 1968, made by Her Majesty in Council under the Southern Rhodesia Act 1965, which was approved by this House on Monday, 17th June, was on Tuesday rejected in another place.

What the Conservative majority in another place are arrogating to themselves is that this elected Chamber and the Government of this country, in their international relations and international commitments, can be frustrated, and their actions nullified, by another place, on one condition, namely, that a Labour Government are in office. By a simple majority in another place they, accountable to none, have now, quite deliberately, sought to assert a power to put this country in default of international obligations solemnly entered into, and particularly Article 25 of the Charter of the United Nations, which binds this country and all other members of the United Nations to implement decisions, having mandatory effect, of the Security Council.

This decision was taken after the clearest warnings as to its meaning and as to its consequences. No Government could for one moment tolerate action of this kind, which was taken not in pursuance of any democratic objective, but in pursuance of calculated party advantage. This House cannot accept what has happened and cannot but treat it as a denial of democracy and a total frustration of the spirit of our Constitution. . . .

The House will recall the terms of the Gracious Speech:

> " Legislation will be introduced to reduce the powers of the House of Lords and to eliminate its present hereditary basis, thereby enabling it to develop within the framework of a modern parliamentary system."

The House will be aware that, on the initiative of Her Majesty's Government, constructive talks have been continuing for several months about House of Lords reform, talks which have been directed both to the powers of another place and to its composition, in the confident and not unreasonable hope that an all-party consensus could be reached about the place, powers, and composition of the Second Chamber in the second half of the 20th century.

The deliberate and calculated decision of the Conservative Party to take the action it did on Tuesday was in direct contravention of the spirit in which these talks were being conducted. There is no precedent for the voting down of a Statutory Instrument by the non-elected Chamber in which, in present circumstances, most of its Members sit not by the right of creation but by the right of succession from some near or distant ancestor. Not since the Parliament Act have they deliberately set themselves out to frustrate in this way the

[2] In the division, Government Support came from 84 Labour peers, 23 Liberals, 8 Conservatives, 1 Communist, 50 Cross-benchers and 18 bishops. The 193 peers who voted against the Government were mostly Conservatives, but a small minority took no party whip.

executive actions, and in this case actions to fulfil the international commitments of an elected Government.

Since this decision was clearly taken after the fullest consideration, and after every warning of the consequences, there can be no question of these all-party talks, in these new circumstances, continuing. Although the time has not been wasted, and valuable proposals have been put forward both about the powers and the composition of another place, I must tell the House that it is the intention of Her Majesty's Government, at an early date of the Government's choosing, to introduce comprehensive and radical legislation to give effect to the intention announced in the Gracious Speech.

(*H.C. Hansard*, vol. 766, cols. 1314–16.)

Session 1968–69: The White Paper

The Government did not resume the Inter-Party talks and made no further announcement until the Queen's Speech at the Opening of the Session 1968–9 when it was announced on 30th October, 1968, that " Legislation will be introduced on the composition and powers of the House of Lords ". In his speech on the Address, the Prime Minister recalled that real progress had been made in the confidential Inter-Party Talks on the place, composition and powers of the Second Chamber. The Conference had reached agreement on the main outline of a comprehensive scheme for Lords reform and had also made a great deal of progress with details of its implementation. The Government's proposals were to be published as a White Paper and it was agreed that there should be a full debate on the proposals after its publication before any introduction of legislation.

On 1st November, 1968, the Government published a White Paper entitled " House of Lords Reform " (Cmnd. 3799). The White Paper began by rehearsing briefly the events leading to its publication and made clear that the Government's proposals were based on those reached at the Inter-Party Conference.

As the White Paper represents the first comprehensive statement of policy of a British Government for the reform both of the composition and the powers of the House of Lords which has ever been made, it may be thought useful to include fairly extensive quotations from it.

The objectives of the reform were stated on the first page of the White Paper as follows:

> The Government considers that any reform of the House of Lords should be based on the following propositions:
>
> (*a*) in the framework of a modern parliamentary system the second chamber has an essential role to play, complementary to but not rivalling that of the Commons;
> (*b*) the present composition and powers of the House of Lords prevent it from performing that role as effectively as it should;
> (*c*) the reform should therefore be directed towards promoting the more efficient working of Parliament as a whole; and
> (*d*) once the reform has been completed the work of the two Houses should become more closely co-ordinated and integrated, and the functions of the House of Lords should be reviewed.

The Government further believes that any reform should achieve the following objectives:

(*a*) the hereditary basis of membership should be eliminated;
(*b*) no one party should possess a permanent majority;
(*c*) in normal circumstances the government of the day should be able to secure a reasonable working majority;
(*d*) the powers of the House of Lords to delay public legislation should be restricted; and
(*e*) the Lords' absolute power to withhold consent to subordinate legislation against the will of the Commons should be abolished.

The White Paper continued by giving an account of the present functions of the House of Lords and its composition and powers; set out the reasons why a comprehensive reform of its composition and powers was considered to be necessary; and described a number of schemes which had been considered and rejected. Thereafter an explanation was given of the reasons which had caused the Government to adopt the scheme proposed. Part II of the Paper gave the proposals in detail. Appendix 1 gave an account of some of the previous attempts at reform and Appendix 2 offered some ideas of developments in functions and procedures.

Extracts from Part I of the White Paper: "House of Lords Reform" (Cmnd. 3799)

Functions of the House of Lords

Apart from providing the supreme court of appeal, the House of Lords at present performs the following main functions:

(*a*) the provision of a forum for full and free debate on matters of public interest;
(*b*) the revision of public bills brought from the House of Commons;
(*c*) the initiation of public legislation, including in particular those government bills which are less controversial in party political terms and private members' bills;
(*d*) the consideration of subordinate legislation;
(*e*) the scrutiny of the activities of the executive; and
(*f*) the scrutiny of private legislation.

All these functions have to be performed by Parliament, whether by the House of Lords or by the House of Commons, and in all of them except the last the House of Lords has in recent years made an increasing contribution and the volume of its work has expanded. Over the years it has evolved from a chamber which provided a check on the executive by its power to reject legislation to one which can still act as a check on the executive but does so through the detailed consideration of legislation and its scrutiny of administrative decisions. The House is however prevented from developing its full effectiveness by the problems of composition and powers which have bedevilled all discussion of its functions in recent years. Once these problems of composition and powers have been solved the functions of the House of Lords should also be reviewed and developed, but such a review cannot be profitably made until that time and it would in any event be more appropriately undertaken by the two Houses themselves. In making the present proposals, the Government has assumed that the functions of the House will remain broadly those set out above, but it has borne in mind that they might be extended and developed later. The

Government sees this possibility of developing the functions of Parliament as a whole as the most positive ground for reform.

The present House of Lords—Composition

On 1st August 1968 the House consisted of:

(*a*) 736 peers by succession
(*b*) 122 hereditary peers of first creation
(*c*) 155 life peers*
(*d*) 23 serving or retired law lords†
(*e*) 26 bishops‡
1,062 Total

In this paper, peers who sit by right of succession to a hereditary title are described as peers by succession; all other members of the House, that is categories (*b*)-(*e*) above, are described as created peers.§

The membership of the House of Lords has increased steadily since 1900, when it was 590, because frequent new creations have been made and because until the introduction of life peerages in 1958 all newly created members of the House, except Lords of Appeal in Ordinary and bishops, were hereditary peers. The increase in the membership of the House has been accompanied by an increase in the number who do not attend: these now represent about one-third of the total.

Of the present potential membership of over 1,000, between 350 and 400 did not attend at all during the session for 1967–68 up to 1st August: most of them were either on leave of absence¶ or had not received writs of summons. Of the 675 or so who did attend, rather less than 300 attended reasonably often (more than 33⅓ per cent of the sittings of the House or of its committees); rather more than 200 attended from time to time (between 5 per cent and 33⅓ per cent of the sittings); and about 175 attended rarely (5 per cent or less of the sittings). Of the 320 or so created peers about 290 attended the House; of these, about 150 attended reasonably often, about 100 attended from time to time and about 40 attended rarely. The average daily attendance for 1967–68 up to 1st August was about 230: this figure compares with 140 in 1963 and 92 in 1955.

There is a striking difference between the party political composition of the whole House on the one hand and of those peers who attend regularly on the other. On 1st August 1968 a total of about 115 peers took the Labour whip, about 350 took the Conservative whip and about 40 took the Liberal whip. The remainder, including those who did not attend, took no party whip. On the other hand, of those who attended more than 33⅓ per cent of the sittings during the session for 1967–68 up to 1st August, about 95 took the Labour whip, about 125 took the Conservative whip, about 20 took the Liberal whip and about 50 took no party whip. Amongst created peers the figures for the whole House were 95 Labour, 77 Conservative, 13 Liberal and 141 without a party whip, giving a total of 326; for those who attended more than 33⅓ per cent of the sittings the figures were 81 Labour, 38 Conservative, eight Liberal and 26 without a party whip, giving a total of 153. . . .

Since those peers who attend but take no party whip usually sit on the cross benches, they are commonly known as ' cross benchers '. They are a special feature of the House of Lords and include men and women with a wide range

* Created under the Life Peerages Act 1958.

† Peers qualified to sit judicially under the Appellate Jurisdiction Act 1876.

‡ Consisting of the two archbishops, the Bishops of London, Durham and Winchester, and 21 diocesan bishops of the established church in England.

§ Bishops are not, strictly speaking, peers but are lords spiritual and lords of Parliament. They leave the House on retirement.

¶ Under the scheme introduced by standing order in 1958.

of backgrounds who for one reason or another prefer not to accept any party allegiance. The evidence shows that in speech and vote they do not adhere regularly to any party. Many have full-time occupations outside the House and for this reason they tend to come infrequently until they retire from their regular occupation; but after retirement many give a period of regular service to the House. Some of the most influential speeches by cross benchers have been made by those who come rarely. The evidence indicates that they do not possess any sense of corporate identity or act in any way as an organised group, and they resist any tendency for them to be regarded as such.

The present House of Lords—Powers

The House of Lords has the same right to initiate and revise legislation as the House of Commons (subject to the Commons' financial privilege), except for restrictions imposed by the Parliament Acts of 1911 and 1949. . . . Their effect in practice is that a bill to which the Lords are opposed can never be passed in less than 13 months from the original second reading of the bill in the House of Commons and in some circumstances the period could well be substantially longer. The effective delay which the House of Lords can cause is however much shorter than this, since the period of 13 months includes the time needed for the bill to pass through all its stages in the House of Commons after second reading and also the time which the House of Lords takes to consider the bill up to the point of disagreement. Nevertheless, dislocation of the parliamentary timetable can be caused at any time and, if a bill is not introduced until towards the end of a parliament, it may be lost altogether. Subordinate legislation, private bills and bills to confirm provisional orders* do not come within the limitations of the Parliament Acts.

There has in recent years been an increase in the significance of subordinate legislation, with the result that the theoretical scope for the Lords to use their powers in order to override the Commons has in fact grown considerably since the passage of the Parliament Act 1911. Over a wide area, which tends to expand as the processes of legislation and of government become more complex, provisions supplementary to legislation are left to be made by subordinate legislation, that is by Order in Council or Ministerial order or regulation. The enactments conferring these powers normally include provisions for Parliament to supervise their use, the substance of which is either that an instrument made under the power may be annulled by resolution of either House or that such an instrument cannot come into force (or remain in force) unless approved by resolution of each House. Except in the fields of taxation and other financial matters, these provisions give parallel powers to both Houses. The Parliament Acts do not apply, and the House of Commons has no means of overriding a decision of the House of Lords which conflicts with its own. There can be no justification for a non-elected second chamber having co-equal power with an elected House of Commons in this important area of parliamentary business.

The case for reform

The present composition of the House of Lords gives it certain qualities which are particularly valuable to it in performing the functions set out above. The detailed consideration of legislation and the scrutiny of administrative decisions demand the presence of a nucleus of experienced parliamentarians who are able to devote a substantial part of their time to the business of the House; but its function as a forum for wide-ranging debate makes desirable in addition the presence of other men and women who have expert knowledge of or a special interest in the subject under discussion. The House of Lords provides a means of bringing both these groups together in Parliament. Never-

* Including confirmation bills under the Private Legislation Procedure (Scotland) Act 1936.

theless the House has two main features which are inappropriate to modern conditions: first, the right to vote can still be derived from succession to a hereditary peerage and second, the House still contains a permanent majority for one political party. The unsatisfactory situation which these features have produced is seen most clearly in the way in which the House of Lords has made use of its powers: although its formal powers are considerable, and have increased in scope with the wider use of subordinate legislation, in practice its final powers of delay over public legislation and of rejection of subordinate legislation have remained almost unused. These powers cannot however be disregarded since they give the Lords considerable influence, of which they make effective use in amending bills brought to them in the course of the ordinary legislative process of scrutiny and revision. Governments are naturally more ready to accept amendments on matters which do not involve major party political controversy, and the Lords' influence has therefore most frequently affected private members' bills and those government bills which have been less controversial in party political terms; but the Lords have nevertheless made their influence felt on party political issues, by governments both of the right and of the left.

Since the Conservatives have always in modern times been able to command a majority, the Lords' influence, and the threat of the use of their final powers, have naturally had a more important bearing on the major legislative proposals of governments of the left—for example, the delays forced upon the Labour Government on the Iron and Steel Bill 1949—although for the same reason the threat to a government of the left cannot easily be brought into play without the risk of involving Parliament in a constitutional crisis. The same factors have applied to subordinate legislation: mention has already been made of the Lords' rejection of the Southern Rhodesia (United Nations Sanctions) Order on 18th June 1968, and there have been a few occasions on which orders have not been proceeded with because of known opposition in the House of Lords. But the fact remains that since 1914 the only bill actually passed into law against the continuing opposition of the Lords was the Parliament Bill of 1947, and on the single occasion since the Second World War when the Lords have rejected an item of subordinate legislation they did not persist in their opposition when an equivalent Order was subsequently introduced. The reason is clear: the composition of the House is such that the Lords cannot persist in their opposition to a measure upon which the Commons are determined without the risk of provoking a constitutional crisis. . . . A situation in which the House of Lords is prevented by its composition from making an appropriate contribution to the parliamentary process cannot be satisfactory or even respectable at a time when increasing demands are being made on Parliament and there is widespread public concern that the country's parliamentary institutions should be made more effective.

To solve these problems some would favour a remedy which would abolish the House of Lords altogether, or alternatively would strip it so radically of its powers and functions that the House of Commons would become in effect the sole organ of parliamentary government. To adopt a system of single-chamber government would however be contrary to the practice of every other parliamentary democracy which has to legislate for a large population. More important, the case for two-chamber government in this country has been strengthened since the end of the Second World War by the growth in the volume and complexity of legislation, and also by the increase in the activity and power of the executive and in its use of subordinate legislation. Moreover, abolition of the second chamber would subject the House of Commons to severe strain, and paradoxically would result in less procedural flexibility and speed because of the need to guard against the overhasty passage of legislation.

Another remedy has been suggested which would leave the composition of the House unchanged but would reduce its powers. Such a remedy would

transform the upper House into little more than a debating chamber, and at least some of its functions would have to be performed exclusively for the House of Commons. Again, additional burdens would be imposed upon the Commons which would be difficult for them to sustain. Furthermore, if the House had no worthwhile function to perform, distinguished men and women would be reluctant to become members.

Possible schemes of reform

For these reasons the Government believes that there is no sensible alternative to a comprehensive reform both of the composition and of the powers of the House of Lords. It has therefore examined a number of proposals which have been made at various times. One group relies on the principle that a modern second chamber should derive its authority from the popular vote: for example, that the membership should be directly elected by the electorate which chooses the Commons. An obvious method of making such a change would be to follow the example of Norway where some of the members elected in a general election go to the lower house and the remainder to the upper house. Alternatively, the upper House could be elected indirectly, or by larger or different constituencies and for longer or shorter periods than the House of Commons.

There are strong arguments for an elected second chamber: such a change seems both radical and rational since it would both make clear the source of the political authority of the upper House, and also successfully prevent any one party from maintaining a permanent majority. Whether or not a House of Lords reformed in this way became a senior and influential chamber, like the Senate of the United States of America, would largely depend upon the system by which its members were elected and upon the powers it possessed. But whatever the system of election and whatever its powers, a directly elected second chamber would inevitably become a rival to the House of Commons. The second chamber would then also possess a mandate from the people, and it would therefore be inclined to make a claim for greater or even equal powers, and in particular to challenge the present control by the Commons of finance and supply. A directly elected second chamber fits well enough into a constitution based on a division of powers between two chambers (most often found in connexion with a federal system of government) but it would violate the central principle of the present British parliamentary system by which it has been recognised, at least since the beginning of the nineteenth century, that the government stands or falls in the House of Commons.

A second possibility would be an upper House constituted on a regional basis: for example, indirectly elected or nominated by local authorities. But a House composed on this principle would still be open to the dangers resulting from the probability of rivalry between the Houses, and although they might not be in such an acute form as if it were directly elected, such a change would inevitably alter the relationship which at present exists between members of Parliament and their constituents. It is relevant that in countries where there is an effective house based on some form of regional or local representation, for example in Australia or in the United States of America, it is usually part of a federal system of government which does not exist in this country. The Government certainly thinks it essential to include in the reformed House members from Scotland, Wales and Northern Ireland, and from the regions of England, but does not believe that it would be desirable or practicable at this stage to establish a reformed second chamber on a regional basis. There do not at present exist national or regional institutions which could provide the machinery for selection to such a chamber and the selection could hardly be made through the existing system of local government. Local government elections take place at different times from general elections and a government with a majority in the House of Commons could well find itself in a minority in the House of Lords. . . .

Another suggestion was that the reformed House should consist solely of members nominated for the life of one parliament. The party composition of the House of Lords in each parliament would then be arranged broadly to reflect the balance of parties in the lower House. The main attraction of this proposal is that without recourse to elections it would remove the permanent majority for a single party and would replace it by an assured majority for the government of the day; but this attraction is more than outweighed by the reduction in the independence of the individual peer and of the House as a whole which the change would inevitably bring with it. A House composed in this way would in effect reproduce the composition of the House of Commons and reflect its opinions and decisions; it would therefore be incapable of carrying out effectively the complementary functions which the reformed second chamber should perform. Further, if members of the House of Lords were appointed afresh after each general election, powers of patronage would inevitably be greatly increased since in order to be re-selected a peer would have to remain acceptable to the party managers. Under the present system a peer having once become a peer cannot be deprived of his seat in the House and the Government believes that this feature should be preserved for members of the reformed House.

Principles of reform

Two main principles emerge from the examination of these suggestions The first is that if a reformed House is to have the influence which an effective second chamber requires, it must possess a degree of genuine independence. The present House has three characteristics on which such an independence could be founded: one is the fact already mentioned that a peer, having once become a peer, cannot be deprived of his seat; another is the participation of a considerable number of part-time members with wide interests and experience who can make contributions of high quality from time to time; and the third is the presence of a number of cross benchers who owe no allegiance to any party. The House is however prevented from exploiting these characteristics by the unsatisfactory features of its composition which have already been described—the hereditary principle and the permanent majority for one political party. The Government considers that these three characteristics should be preserved to give the reformed House the independence it needs, and to enable it to make a distinctive contribution of its own and not merely to duplicate the work of the House of Commons.

The second principle is that the reformed House, with all the qualities and opportunities it would offer, should be able to make an effective contribution to good democratic government. No government could however be expected to take advantage of them, or to encourage the development of the functions of the House, without reasonable expectation that its measures, although subject to proper scrutiny, would normally be passed without undue delay. It is therefore important that the government of the day should have a majority of the party membership of the working House sufficient for this purpose.

These two principles must inevitably conflict to some extent and it is essential that any proposals for reform should attempt to reconcile them so far as possible.

A ' two-tier ' scheme

The need to reconcile these two principles led to the suggestion of a ' two-tier ' scheme which would divide the membership of the reformed House into two groups, ' voting ' peers and ' non-voting ' peers. For the future, all new members of the House would sit by right of creation and not by right of succession to a hereditary peerage. Voting peers would constitute a ' working House ' in whom the effective power of decision would reside. In particular they would be responsible for the bulk of the work arising from the legislative functions

of the House: as indicated above, these duties require regular attendance and are not appropriate for those who can attend only occasionally. Voting peers would include every created peer who was prepared to accept, for the term of a parliament at a time, the responsibilities of regular attendance; in the first instance the number of created peers available to serve in the working House would be increased, to the limited extent necessary to create a viable House and to achieve political balance, by conferring life peerages on a number of those peers by succession who are active in the House.

The government of the day would have a majority of the party membership but, in order to preserve the measure of independence to which the Government attaches importance and to avoid the need for large numbers of new peers to be created at every change of government, it would not have a majority of the working House as a whole when those without party allegiance were also taken into account. It follows that the government's majority over the other parties would be small, perhaps ten per cent of the total of the opposition parties, and that it would not vary with the size of the government's majority in the House of Commons. It might be thought that the peers without party allegiance—the cross benchers—would thus hold the balance of power and would come to represent a new constitutional force; but it was pointed out in paragraph 14 above that they have no such sense of corporate identity at present. An incoming government would achieve its majority over the other parties by means of a suitable number of new creations during its first months of office: although this practice could theoretically produce an indefinite increase in the size of the voting House, studies have indicated that in almost any foreseeable circumstances the voting House could be kept, or soon restored, to an acceptable size if the older members retired as voting peers at the end of each parliament under a retirement rule (they would remain in the House for life as non-voting peers).

The 'second tier' would be composed of non-voting peers who would comprise all the other members of the House of Lords. The existence of this second tier would make it possible to bring into the House created peers who could not attend regularly but who would be able to make valuable contributions from time to time: they would include representatives of the professions, scientists, industrialists, trade union leaders and other leading members of the community, together with those experienced parliamentarians who had passed the age of retirement. Their presence would enable the House to consider and discuss with authority all aspects of national life. In order to preserve continuity and to limit the extent to which any individual's rights were taken from him, this second tier would also include, at first, those existing peers by succession who wished to remain in the House; but since they would not be entitled to vote, all connexion between the hereditary principle and the power to vote would be severed immediately.

The Government proposes to retain the arrangements by which new members are admitted to the House of Lords and they would therefore continue to be admitted when created peers by the Queen on the recommendation of the Prime Minister. Alternative proposals such as nomination for the duration of a parliament have been rejected on the grounds that they would represent an unacceptable extension of the parties' powers of patronage. On the other hand, the Government has felt obliged to reject as impracticable a number of schemes which would replace the system of nomination altogether; and various methods have therefore been considered by which the amount of patronage implicit in the Government's proposals might be limited or controlled. One suggestion was that the power of nomination should lie not with the Prime Minister but with some form of constitutional committee; but the members of a committee which possessed such a power would be placed in an extremely embarrassing situation and would be open to pressures and representations of a kind which would make it very difficult for them to do their work effectively.

The Government does however see attraction in the possibility of a committee which, while possessing no power of nomination, would review periodically the composition of the reformed House and report, either to the Prime Minister or to Parliament, on any deficiencies in the balance and range of the membership of the House. Its members would include representatives of the political parties and persons without party political affiliations; a person of national standing but not necessarily with party political affiliations would be its chairman. Its reports would enable Parliament and the country as a whole to satisfy themselves that the powers of patronage were not being abused.

The Government takes the view that a two-tier chamber, organised and chosen in the way proposed, provides a sensible method of transition from a largely hereditary to a wholly created House without disturbing that blend of the active parliamentarian and the independent expert which gives the present House its special distinction and special qualifications for performing the functions assigned to it. . . .

Powers of the reformed House

The Government considers that, in exercising its six main functions, the reformed House must possess a real, if limited, power of delay whose use should not, as it would with the present composition of the House, risk precipitating a constitutional crisis. Since the government of the day would normally have a working majority, the actual use of this power would continue to be a rare event; but on public legislation generally a reformed second chamber should have a power of delay sufficient to cause the Commons and the government of the day to think seriously before proceeding with a proposal against the opposition of the Lords, and to encourage a government to seek agreement on any point of dispute which might arise between the House of Commons and the reformed House. On the other hand, it would not be right for a created House to be able to frustrate the legislative proposals of a government responsible to an elected House; and even if the House of Lords pressed its objections, it should be possible, provided the government had been warned of the objections and had considered its proposals again, for the House of Commons to carry them into law within a reasonable period of time.

With these principles in mind the Government proposes that if the Lords reject a public bill sent up from the Commons it should be capable of being presented for Royal Assent at the end of a period of six months from the point of disagreement between the two Houses, provided that a resolution directing that it should be presented has been debated and passed by the House of Commons. The period of delay would be capable of running into the next session or the next parliament, and there would be no need as there is under the present procedure, for the disagreed bill to be passed again through all its stages in the second session or parliament. A straightforward power to impose a delay of six months has the double advantage of applying to the legislation of a government of any party at any stage of a parliament, and of being more readily comprehensible than the complicated provisions of the Parliament Acts.

On subordinate legislation, the Lords' present power of rejection is clearly inappropriate and unsuited to modern conditions. The Government has considered whether it might be possible to provide for a period of delay analogous to the period proposed for public legislation, but it has concluded that such a scheme would be impracticable in present circumstances because of the need for some orders to take effect immediately and because the concept of a period of delay is not part of the general legislative framework within which subordinate legislation is enacted. The Lords' power of outright rejection should therefore be replaced by a power only to insist that the government of the day should think again and, if necessary, that the House of Commons debate again and vote again upon any instrument to which the upper House has taken exception. . . .

Part II of the White Paper, which gave the Government proposals in detail, may be summarised as follows:

(*a*) The reformed House of Lords would be a two-tier structure comprising voting Peers, with a right to speak and vote, and non-voting Peers, with a right to speak.

(*b*) After the commencement of the reform, succession to a hereditary peerage would no longer carry the right to a seat in the House of Lords, but existing Peers by succession would have the right to sit as non-voting members for their lifetime.

(*c*) Voting members would be exclusively created Peers, but some Peers by succession would be created Life Peers and therefore would become qualified to be voting Peers.

(*d*) Non-voting Peers would include those created Peers who did not meet the requirements of voting membership (see (*f*) below), and Peers who at the time of the reform sat by right of succession only.

(*e*) Peers who at the time of the reform sat by right of succession would have the opportunity to withdraw from the House if they wished to do so.

(*f*) Voting Peers would be expected to play a full part in the work of the reformed House and required to attend at least one-third of the sittings; they would be subject to an age of retirement of 72 at the end of any Parliament.

(*g*) The voting House would consist initially of about 230 Peers, distributed between the Parties in a way which would give the Government of the day a small majority over the Opposition Parties, but not a majority of the House as a whole when those without Party allegiance were included.

(*h*) Non-voting Peers would be able to ask questions and move Motions and also serve in Committee, but not to vote on the Floor of the House or in any Committee for the consideration of legislation.

(*i*) The reformed House would include a suitable number of Peers able to speak on the problems and wishes of Scotland, Wales, Northern Ireland and the regions of England.

(*j*) Voting Peers would be paid at a rate which would reflect their responsibilities and duties, but the question of the amount and method of payment would be referred to an independent Committee.

(*k*) The reformed House would be able to impose a delay of six months on the passage of an ordinary Public Bill sent up from the Commons on which there was disagreement between the two Houses; it would then be made possible to submit the Bill for Royal Assent provided that a resolution to that effect had been passed in the House of Commons. The period of delay would be capable of running into a new Session or into a new Parliament.

(*l*) The reformed House would be able to require the House of Commons to reconsider an affirmative order, or to consider a negative order, to which the House of Lords had disagreed, but its power of final rejection would be removed;

(*m*) There would be a place in the reformed House for the Law Lords and Bishops, though the number of the latter would be reduced from 26 to 16.

(*n*) All Peers would be qualified to vote in Parliamentary Elections.

(*o*) After the passage of the reform those who succeeded to Peerages, and then existing Peers by succession who chose to renounce their membership of the House of Lords, would be able to sit in the House of Commons, if elected.

(*p*) A Committee would be established to review from time to time the composition of the reformed House; it would have a chairman of national standing but not necessarily with Party political affiliations, and its members would include representatives of the political Parties and persons without Party political affiliations.

The Government also proposed that there should be a review of the functions and procedures of the two Houses once the main reform had come into effect. It suggested that such a review would be an important continuation in the process of improving the efficiency of Parliament, but since it would properly be carried out by the two Houses, the Government did not tie itself to any specific proposals. It did, however, include, as Appendix 2 to the White Paper, a Paper submitted by the Government to the Inter-Party Conferences setting out some possible developments which might be examined by a Joint Select Committee at an early date after the reform came into effect. (The text of this Appendix 2, " Possible Changes in Functions and Procedure " is appended to this article as an Annex.)

The White Paper received a mixed reception from the press and public. It was fully debated in both Houses of Parliament, who judged it rather differently. In the Lords, at the end of a three-day debate, from 19th to 21st November, it was approved by 251 votes to 56. All 72 Labour Peers who voted were in favour of the White Paper proposals; the Conservative Peers divided—108 in favour and 43 against; Liberals —13 in favour and 3 against, and cross-benchers, Bishops, Law Lords, etc.—58 in favour and 10 against. The White Paper proposals were commended not only from the Government side by the Lord Chancellor (Lord Gardiner) and Lord Shackleton, the Leader of the House but also by the Opposition Leader and Deputy Leader, Lords Carrington and Jellicoe and by the Leader of the Liberal Party in the Lords, Lord Byers. The proposals were also generally commended by a majority of Peers who took part in the debate, although Lords Dilhorne and Salisbury led those, mainly from the Conservative Benches, who voted against the White Paper. Some 28

peers from the Conservative Benches were in favour of the retention in some form of the hereditary rights of the peerage, e.g. by allowing peers by succession to serve as non-voting members of the reformed House.

In the Commons there was a two-day debate on 19th and 20th November and there, both the speeches made in debate and the division at the end, on a Motion to reject the White Paper, were less favourable to the Government proposals. The Government had put on a three-line whip, and the Motion to reject the White Paper was defeated by 270 votes to 159. 233 Labour members voted for the proposals; 47 for the rejection of the White Paper; and some 40 abstained. The Conservatives had a free vote; 104 voted against the proposals; 37 in favour and some 50 abstained. All 8 Liberals who took part in the division voted against the Government's proposals. In the debate there was little support for the White Paper proposals except from the Front Benches on both sides. Mr. R. H. S. Crossman (Secretary of State for Social Services), Mr. James Callaghan (Home Secretary) and Sir Elwyn Jones (Attorney General) spoke for the Government. Mr. Iain Macleod, Mr. Reginald Maudling and Sir Peter Rawlinson for the Opposition also recommended the proposals to the House. There was a divergence between the Front Benches of the two main Parties on only one point—a point on which there had not been agreement at the Conference—the issue of the date of commencement of the proposed reform. The Conservative Leaders believed that the reform should take effect at the beginning of a new Parliament, while the Government wished it to take effect at the end of the Session. From the Back Benches of all three Parties, however, there was widespread criticism of the proposals, particularly on the grounds of the extension of patronage which a nominated and paid Second Chamber would produce.

Parliament (No. 2) Bill

The Parliament (No. 2) Bill* (Bill 62) which embodied the White Paper proposals was introduced into the House of Commons on 19th December, 1968. The Bill proposed to make only those changes in the law which were necessary to implement the White Paper proposals. It did not include provisions on matters which could be dealt with in other ways, for example, by the exercise of the Royal Prerogative or

* The Government Bill was entitled the Parliament (No. 2) Bill because Lord Mitchison had previously that Session introduced on 7th November, 1968, a Private Member's Bill into the Lords, to alter the powers of that House, which was entitled the Parliament Bill. It made no progress after First Reading. After the introduction of the Government's Parliament (No. 2) Bill, four more Parliament Bills (Nos. 3–6) were introduced by Private Members, none of which received a Second Reading, although one, Lord Dalkeith's (No. 4) Bill, was debated on Second Reading in the Commons. The (No. 6) Bill, which was identical with the Government's Bill and introduced by Lord Alport into the Lords, after the Prime Minister's announcement of 17th April of the 'dropping' of the Government bill, only received a First Reading after a division carried by 54 to 43 votes, in the first Lords division on a First Reading since 1933.

by the actions of the two Houses themselves. It did not seek to regulate the exercise of the Prerogative in respect of the creation of new Peers and therefore it contained no provisions especially related to the proposals about the total number of Peers comprised in the reformed House or in the voting nucleus, or the balance within that nucleus between the Peers supporting the Government, those supporting other Parties and Cross Bench Peers. Similarly there were no provisions designed specifically to secure the inclusion of a suitable number of Peers with knowledge and experience in matters which are a particular concern of the various parts and regions of the United Kingdom. These requirements were cardinal to the working of the scheme and were referred to in the Preamble to the Bill. Preambles are no longer customary in Public Bills but remain usual in the case of a Bill which is of constitutional importance. The Preamble also summarised the main purposes which would be achieved by the passing into law of the Bill as follows:

"Whereas it is expedient to make further provision with respect to the composition and powers of the House of Lords, and in particular to exclude from membership of that House persons not already members thereof who are peers by virtue only of succession to a hereditary peerage; to establish within the House a body of voting members exclusively entitled to participate in decisions relating to legislation and other matters, being qualified in that behalf by virtue of their attendance to the business of Parliament or by their official position; to reduce the number of the Lords Spiritual in the House; to substitute for section 2 of the Parliament Act 1911 as amended new provisions limiting the power of the House to prevent or delay the enactment of Bills passed by the House of Commons; and to secure the predominance of the House of Commons in case of disagreement between the two Houses in respect of subordinate legislation:

And whereas proposals for the purposes aforesaid were presented to Parliament by Command of Her Majesty on 1st November 1968, together with proposals (to which effect would properly be given by means of the exercise of Her Majesty's Prerogative in respect of the creation of new peers) designed to secure—

(*a*) the preservation within the said body of voting members of the reformed House of Lords of a proper balance between members adhering to the party of Her Majesty's Government, members adhering to other parties and members adhering to no party; and

(*b*) the inclusion in that House, and in the said body of voting members, of suitable numbers of peers with knowledge of and experience in matters of special concern to the various countries, nations and regions of the United Kingdom:"

The Bill was divided into five main Parts which dealt respectively with the composition of the House of Lords, its legislative powers, its proposed new powers on subordinate legislation, changes in the Parliamentary franchise and qualification, and a supplementary Part dealing with interpretation, commencement, title, and laying down the necessary arrangements for the introduction of the two-tier scheme at the end of that Session. The Schedule listed the enactments to be repealed.

Clause 3 (3) of the Bill laid down that no created Peers who had

reached the age of 72 before the Dissolution of the previous Parliament would be able to make voting declarations and thus qualify themselves as voting Peers. In order to give flexibility to the early stages of the proposed reform, it was intended that this provision should not be implemented at once but would have been effected by Order in Council at a later stage. Ministers and the holders of high judicial office were to have been exempted from the retirement rule and the attendance requirement. Created Peers who were unable to fulfil the attendance requirement of not less than one-third of the total sittings of the House, and those over the retirement age together with existing Peers by succession who did not receive Life Peerages at the commencement of the reform, would, under the provisions of the Bill, be able to sit in the reformed House but not to vote on any question in the House itself or in any Committee for the consideration of legislation, including subordinate legislation. They would, however, be able to take part in other ways in the working of the House and would be entitled to ask questions and move Motions, including amendments to Bills.

Clauses 8 to 12 replaced the present restriction of the powers of the House of Lords with regard to public legislation under the Parliament Acts 1911 to 1949 by providing that a Bill which had been disagreed to by the House of Lords could be presented for Royal Assent following a Resolution of the House of Commons after a period of six months delay. There was a new formulation of " disagreement " between the Houses which was defined by Clause 10 of the Bill as a situation in which a Bill sent up from the Commons was either rejected by the Lords at any stage of its progress or where the Lords insisted on amendments which were not acceptable to the Commons. A Public Bill could also be treated as disagreed to, if after 60 Parliamentary[3] days from its introduction in the Lords that House were to reject a Motion necessary for the progress of the Bill, or in the last resort if the House of Commons were to resolve that the Bill should be so treated. The period of six months delay was to last either from the date of disagreement, or, if the Bill was disagreed to after 60 Parliamentary days, from the last of those days. This would mean that if the Lords were to take a long time for the consideration of a Bill, any excess period over the 60 Parliamentary days would be subtracted from the proposed six months period of delay. The period of delay and the right of the Commons to pass a Resolution that a disagreed Bill should be submitted for Royal Assent would extend over a Prorogation and a Dissolution of Parliament. In that event, the Resolution would have to be passed within a month of the expiry of the period of delay. During the period

[3] Clause 18 of the Parliament (No. 2) Bill included the following definition:
" Parliamentary days " means—
(*a*) days on which either House meets (but disregarding any meeting of the House of Lords for judicial business only), and
(*b*) days comprised in any period when both Houses are adjourned if the number of days so comprised does not exceed four,
and periods of parliamentary days shall be calculated accordingly;"

of delay, either House would continue to have the right to seek agreement on a disagreed Bill so that an initiative towards compromise would not be prevented for procedural reasons during the period of delay. The Commons would be enabled to include in the Bill as presented for Royal Assent such amendments as had been specified in the Resolution passed after the period of delay. The need for such a provision could arise if, for example, a Bill were to be rejected by the Lords on Third Reading.

It should be noted that the proposed new powers of the House of Lords with regard to public legislation would not apply to certified Money Bills, which would continue to have been subject to the provisions of section 1 of the Parliament Act 1911.

Clauses 13 to 15 dealt with subordinate legislation, which are not covered by the Parliament Acts 1911 and 1949. The general intention underlying these Clauses was stated in Clause 13 which said that " In cases where each House of Parliament has power . . . to control the making . . . of an instrument . . . a decision of the House of Lords may be overruled by the House of Commons ".

In the case of " negative Resolution " procedure, a " Prayer " passed by the Lords would be of no effect if the House of Commons rejected a corresponding Motion or approved the instrument or draft by a Resolution within a stated period. With regard to the " affirmative Resolution " procedure, the Parliament (No. 2) Bill would have allowed the Commons to overrule a rejection by the Lords of any Order, but in this case the instrument or draft would have to be approved by the Commons before its rejection by the Lords and it would thereafter be necessary for the Commons to reaffirm its approval of the Order in question. In the case where the Order would cease to have effect unless approved by both Houses within a specified period, there was a provision to extend that period if the Resolution for approval was rejected by the Lords towards the end of that period.

Clauses 16 and 17 dealing with Parliamentary franchise and qualification, proposed to give to all Peers and Lords Spiritual, whether Members of the proposed reformed House or not, the right to vote in General Elections. It also gave to those Peers by succession who would not thereafter be members of the House of Lords the right to stand for election to the Commons on the same basis as other citizens.

Clause 18 defined the expressions used in the Bill and Clause 19 provided that it would come into force at the end of the Session in which it was passed. This raised the question of timing which was the one issue on which the Inter-Party Conference had not been in agreement.

The Parliament (No. 2) Bill received a Second Reading on 3rd February, 1969, (*H.C. Hansard*, vol. 777, cols. 93–171) by 285 votes to 135, a rather higher majority for the Government proposals than in the debate in the previous November on the White Paper. In this division

there was a Government two-line whip, the Conservatives had a free vote, and the Liberals were split.

A breakdown shows that the Government majority was 39 bigger than that obtained in the White Paper debate; 226 Labour members voted for the Bill, 25 against; 58 Conservative voted for the Bill, 105 against; while the Liberals voted 3 for, 3 against, and 6 abstaining. The one Welsh and one Scottish Nationalist Members voted against the Bill. The debate was characterised by a more favourable tone towards the proposed reform. The Prime Minister moved the Second Reading and the Home Secretary (Mr. Callaghan) wound up for the Government. Mr. Maudling, Deputy Leader of the Conservative party, and Sir Alec Douglas-Home also supported the proposals in the Bill from the Opposition front bench, with the exception of the question of the timing of the commencement of the reform on which there had been disagreement between the two Parties. The Prime Minister in his speech announced two concessions to critics of the Government proposals. The first was to defer the White Paper proposals about the payment of the voting members of the reformed House. Instead he suggested that the existing system of tax-free expenses would continue and that there would be no salary. Mr. Wilson continued: " It does not mean that we have decided that voting members should not be paid sometime in the future, or that they should. It simply means that we are preserving an open mind so that the matter can be considered in the light of experience at a more suitable time in the future " (*H.C. Hansard*, 3rd February, 1969, col. 55). The Prime Minister also offered to consider some concession to the Opposition on the matter of timing including the possibility of separating the introduction of those parts of the Bill which referred to powers from those which referred to composition, and said that this was a point which could be further discussed in Committee.

The Liberal Leader, Mr. Thorpe, also spoke generally in support of the Bill and speeches from the Back Benches were divided between those who were opposed and those who were broadly in support of the Government proposals. In the vote at the end of the debate, Ministers were joined by the Leader and Deputy Leader of the Opposition and most of the Shadow Cabinet and the Leader of the Liberal Party.

The Bill was referred to a Committee of the Whole House, following the practice whereby Bills on constitutional matters are not sent to Standing Committee but taken on the Floor of the House. The fact that the Bill was taken on the Floor of the House offered its opponents the opportunity to put down a very large number of amendments to it and to argue them at length and to use every procedural device to prolong the proceedings of the Bill. The House of Commons sat in Committee on 12th, 18th, 19th, 20th, 25th, and 26th February, 18th and 19th March, 1st, 2nd, and 14th April, and by 17th April had spent over 80 hours in Committee. By then only the Preamble and 5 Clauses

had been debated. (For a fuller account of the committee stage of the Bill, see the article " The Publication of Lord's Attendances " in this Volume.)

On 17th April, 1969, the Prime Minister made a statement in the Commons about the Parliament (No. 2) Bill in which he said the Government had decided not to proceed with the Bill " in order to ensure that the necessary Parliamentary time is available for priority Government legislation including the Industrial Relations Bill and the Merchant Shipping Bill." The Prime Minister told the Commons that the Leader of the House (Mr. Fred Peart) would at the appropriate time keep Parliament informed " about the Government's further intentions on the matter of the Bill ".

No further announcement of Government policy was made during the remainder of that Administration until May 1970, although the House of Lords made use of their powers under the Parliament Acts to frustrate the intentions of the Government with regard to Parliamentary Boundaries (see pages 130–135). The Labour Party Election Manifesto of 1970, contained the following pledge:

> We cannot accept the situation in which the House of Lords can nullify important decisions of the House of Commons and with its delaying powers veto measures in the last year before an election. Proposals to secure reform will therefore be brought forward.

In the event, however, a Conservative administration was returned to power in the General Election in June 1970.

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ANNEX

Appendix 2 to the White Papers " House of Lords Reform" entitled:

Possible Changes in Functions and Procedure

Public bills: General

A substantial contribution towards improving the legislative process could be obtained by spreading the introduction of public bills more evenly over the session and dividing it more equally between the two Houses. More bills would therefore be introduced in the House of Lords. There is the difficulty that major bills introduced into the House of Lords would tend to reach the House of Commons in the late spring when the Commons are pre-occupied with financial business; and it might be necessary, in order to obtain full advantage from an improved flow of legislation from one House to the other, to increase the number of Cabinet and other Ministers in the House of Lords. At present there are in the House only two Cabinet Ministers and 13 other Ministers (including the Whips), of whom one is permanently at the United Nations and two others are not often able to attend the House because of other commitments. Bills should not however be prevented from starting in the House of Lords because they are in some degree politically controversial or because they incorporate certain types of financial provisions: this was the subject of a recommendation of the Sixth Report of the Commons' Select

Committee on Procedure for the session 1966–67 (H.C. 1966–67, 539, paragraphs 7 and 8). Some waiver of the Commons' financial privilege would be necessary, preferably by standing order (on the model of the Commons' Standing Order No. 57).

Public bills: Committee procedure

If the Lords are to play a more useful part in the legislative process it might be desirable to adopt some form of public bill committee procedure, which need not necessarily be modelled on the procedure for the Commons' standing committees. Other aspects of public bill procedure in the House of Lords might also be considered: for example, whether or not it is desirable to follow the example of the House of Commons in the use of second reading committees.

Public bills: Accelerated procedure

There are two ways in which the legislative process might be accelerated for bills of a kind which may not need consideration at as many stages as the present procedures require: the proceedings in one of the Houses could be curtailed, or some of the stages of consideration could be made a joint procedure. Of these two possibilities, the latter seems the more promising. A convention might be established that certain classes of bills should start in one House and then receive detailed examination by a joint committee. Experience on consolidation bills indicates that under such an arrangement the main burden would fall on the Lords and very little of the Commons' time would be needed when a bill reached the lower House. Classes of bill suitable for this treatment might include bills resulting from the work of the Law Commissions and other technical but largely uncontroversial legislation such as that on mines and quarries. A further possibility would be to commit to a joint committee private members' bills on controversial social subjects after they had received a second reading in either House.

Subordinate legislation

Present procedures in relation to subordinate legislation may be thought to occupy too much time on the floor of both Houses, in so far as prayers are moved as a device for obtaining explanations or assurances without being pressed to a division, and in so far as affirmative resolutions lead to debate on orders which are not matters of controversy. Moreover, the work of the Lords' Special Orders Committee duplicates to some extent that of the Commons' Statutory Instruments Committee. The Commons' Select Committee on Procedure recommended in the report already mentioned that it should be made possible to refer non-contentious affirmative resolutions and prayers to the Select Committee on Statutory Instruments, subject to the same safeguards as exist for references to a second reading committee. Given a reformed House of Lords, there might be scope for the development, under procedural resolutions, of a joint procedure on these lines.

A joint committee might also be set up to exercise the combined scrutinising functions of the Special Orders Committee and the Statutory Instruments Committee, but with a smaller and combined membership. All statutory instruments could then be referred to this committee for scrutiny, with the exception of financial orders which would be considered only by the Commons' representatives and would be reported only to that House; but otherwise the committee would report to both Houses. Additionally, it might be possible for the joint committee to consider the merits of affirmative resolutions and prayers. Since it would probably be thought necessary to permit prayers against negative orders which were expected to be pressed to a division, and affirmative resolutions on contentious orders, to be debated on the floor of the House, and since such debate would duplicate discussion in committee, one procedure might be for the government to refer to the joint committee

only those prayers which were not expected to be pressed to a division and affirmative resolutions on non-contentious orders. Motions to refer resolutions and prayers to the committee would be subject to the same safeguards as exist for the reference of bills to a second reading committee.

As regards proceedings in the committee on prayers or affirmative resolutions, it might be provided that Ministers and members of the House who were not members of the committee could speak but not vote, and could examine witnesses. Alternatively, as recommended by the Commons' Select Committee on Procedure, the joint committee could have a specified number of members added by the Committee of Selection and could conduct its debates in the manner of a standing committee. The joint committee would report to both Houses whether it recommended that an instrument be approved. It is for consideration whether this recommendation would be put to the Houses for approval without opportunity for amendment or debate, as recommended by the Select Committee, or be open to debate where a given number of members so desired, despite the opportunity for objection on the original motion to refer the matter to the joint committee.

In the longer term, the development of an effective joint procedure for scrutinising statutory instruments might enable provision to be made for the amendment of statutory instruments, since a means would then be available of reconciling differences between the two Houses. Consideration might also be given to the method of reference of matters for debate (an alternative procedure has been suggested for the automatic reference of all instruments, leaving the committee discretion to select topics for debate), and to the proceedings in the two Houses on the report of the joint committee.

Private bills

A general reform of the functions and procedures of the House of Lords, with an emphasis on joint committees, might provide a suitable occasion for reopening the question of extending the use of joint committees for the consideration of private bills. This question was exhaustively discussed by the Joint Committee on Private Bill Procedure in 1955 (see paragraphs 53–65 of its Report—H.L. 14.58—I, H.C. 139—I) when it came to the conclusion that, on balance, it could not recommend any alteration in the present system. The Committee did report, however, that the argument for a second hearing depends largely on the fact that, until the case for the promoters is deployed and the attitude of the government is known, petitioners are placed at an unfair disadvantage. If a means could be found for the earlier deployment of the case for the promoters and if the attitude of the government could be disclosed earlier, petitioners would not be at so great a disadvanatge and joint committees might therefore be more freely used. A change of this importance, however, could hardly be made without wide consultation among interested parties and a recommendation from a further joint committee on private bill procedure. Such a committee might also consider other business of a private character such as special procedure orders.

Specialist committees

There may be scope for involving the Lords in specialist or select committees: for example they could set up such committees, e.g. on the arts, or aspects of law reform, in which the Commons might participate; and *vice versa*. Provision might be made for unequal membership. There are clearly some committees of the House of Commons, such as the Public Accounts and Estimates Committees, in which the Lords should not participate, and others, such as the Nationalised Industries Committee, on which the House of Lords might be only sparsely represented. Other committees such as *ad hoc* prelegislation committees and committees specialising in the affairs of public departments might draw their membership equally from both Houses; and

others, for example on aspects of law reform, might be composed entirely of Lords or include only a small representation from the House of Commons. Any such representation of the members of one House in a committee of the other would be subject to procedural decisions to be taken in the proposed joint select committee on procedure.

Other matters

Other matters which might be pursued by the proposed joint select committee are:

(*a*) Enabling joint select committees to appoint sub-committees and, where desirable, to proceed by way of public debate. This would allow a joint committee to deal expeditiously with many aspects of subordinate legislation.

(*b*) The right of a member of either House to attend and speak, but not to vote, in a joint committee of which he is not a member, This would be an extension of the Lords' Standing Order No. 58 and could be convenient in a joint committee on, for example, subordinate legislation.

XI. THE PUBLICATION OF LORDS' ATTENDANCES

By H. J. Palmer
A Deputy Assistant Librarian, House of Commons

A list of the individual attendances of Members of the House of Lords in each session 1963–4 to 1967–8 was published in March 1969 as House of Lords paper 66, session 1968–9. This was the first time that such particulars had ever been made generally available in a readily usable form. It may be useful to put on record two aspects of the matter: firstly the custom of recording Lords' attendances; and secondly, the circumstances of their publication in the spring of 1969.

The Record of Lords' Attendances

The daily attendance of peers in the House of Lords has been recorded from the earliest times. The *Journals* record each day the names of those present, listed in order of their rank in the peerage. The attendance of peers as a whole, or of any individual peer, is therefore a matter of public knowledge. On the other hand, the information in the *Journal*, scattered as it is over the entries for each day's business in the session, is not available in an easily assimilated form. The conversion of the *Journal* record into a usable alphabetical list of peers with the total of their attendances during a session would be a formidable task.

Members of the House of Lords do not " clock in " or sign a book: attendances are recorded by the Clerks at the Table noticing those who are present in the Chamber (not a simple task when the average daily attendance is now more than 200). This daily note of attendances forms the basis of the record later published in the *Journal*. But further, since 1959 the Clerk of the Journals has prepared at the end of each session a record of the individual attendances of peers listed in alphabetical order, along with other statistics on the business of the House, such as the number of divisions. The result is a sessional document entitled *Summary of Business and Peers' Attendances at Sittings of the House (excluding days when the House sat for Judicial Business only)*. Before session 1968–9 this paper was produced as an internal office record for use in connection with such matters as Leave of Absence, and was marked " Confidential," although all the information contained therein could in theory (and in practice if the researcher was assiduous enough!) be obtained by a careful study of the *Journals*, the House of Lords *Hansard* and other published sources. (cf. Lord Shackleton, *H.L. Deb.*, 20th March, 1969, vol. 300, col. 1023).

The Publication of Lords' Attendances, March 1969

The context within which the attendances of individual peers in

recent sessions came to be published was the committee stage in the House of Commons of the Parliament (No. 2) Bill, the Bill designed to implement the proposals of the White Paper *House of Lords Reform*, Cmnd. 3799. The committee stage was a field-day for obstructionist tactics which can hardly be paralleled in recent times. What gave obstruction free rein was the inability of the Government to apply the " guillotine ": a timetable Motion might well have been defeated by a combination of the official Opposition (because it was an important constitutional Bill) and of those Government back-benchers who were against the Bill. The Government was committed to a process of attrition on the floor of the House. Five days were originally allowed for the committee stage (*The Times*, 27th February, 1969); it was later reported that the Government were prepared for fifteen days in committee (*The Times*, 13th March, 1969). The Government attempted to exhaust the Bill's opponents by all-night and morning sittings, but eventually it was the Government which succumbed: the first sign appeared on 2nd April, just before the Easter recess, when, to cheers from the critics of the Bill, the Government was unable to continue with the discussion of the Bill after 10 p.m. because it feared that it could not command the necessary minimum of a hundred supporters. After the Easter recess one further day was spent on the Bill (14th April); on 17th April the Prime Minister announced that the Bill would not be proceeded with. On 14th April the committee had disposed of clause 5 (out of 20); this was followed by a procedural Motion that consideration of clause 6 be deferred until after consideration of clause 15. When it came to a vote, the Government had insufficient supporters to obtain the closure.

The victory for the critics of the Bill was a signal one. The leaders of the opposition to the Bill were a diverse and formidable group from both Government and Opposition back benches. Although united in opposition, their views were diametrically opposed: some wished to see the second chamber abolished, others favoured reform on a different basis to that proposed in the Bill, while some wished to see the House of Lords continue as it was.

In the later stages of the committee, the House presented an odd picture: an empty Opposition front bench, the Government front bench deserted by members of the Cabinet and usually occupied by a junior minister from the Home Office or a law officer and a disconsolate whip, and dotted about elsewhere a voluble array of critics of the Bill on both sides.

The delaying tactics applied to the Bill were many: the time spent on points of order accumulated into hours and then days; Motions to report progress were lengthily debated; Mr. Sheldon opened the second day's proceedings with a speech of over two hours in moving an amendment; Members worried at length about the position of the Great Officers of State; much learned discussion was devoted to the status of the preamble to the Bill and the question of when it should be debated.

It is in this context of delaying progress that the question of the availability of Lords' attendance records proved fruitful for the opposition and in particular Mr. Sheldon, who played a leading part during the whole of the committee stage.

Mr. Sheldon was deeply opposed to the Bill and had made a concentrated study of its provisions and of the white paper. In the latter was published an analysis of attendances in the period 31st October, 1967, to 1st August, 1968. This distinguished between created peers and peers by succession by party and gave figures for those who attended more than one-third of the days, those who attended between 5% and 33⅓% of the time, those who attended less than 5% of sittings and those who did not attend. The table was based on information supplied to the Home Office by the Clerk of the Journals. The white paper proposed a new voting House of about 230, a retiring age of 72, adequate remuneration and an attendance requirement of not less than one-third of the sittings (paras. 46, 44, 52 and 45 respectively). In committee on the Bill on 26th February, when the questions of the retiring age and the attendance requirement were under discussion, a number of speakers pressed the Government to make fully known the data on which its proposals were based. Mr. Sheldon said (*H.C. Deb.*, Vol. 778, col. 1836):

> For some reason the Government have decided on one set of figures. No one knows why. This is a tenable system, but there are many others. When deciding the constitution of another place, the very least we ought to have is the figuring that went into this. Why did the Government make these arbitrary decisions? There may be valid reasons. We have not been given them but have been told we will not get them. This is outrageous. In devising a constitution for another place certain figures and calculations have been adduced and carried out. There has been an element of secrecy, and we are not given the details. These figures exist in an ordered form. Has the Opposition Front Bench been given these figures? We are entitled to know. Why have they not been given to us? Why are they regarded as secret?

In reply, Mr. Crossman, one of the architects of the Bill but then Secretary of State for Social Services, said (col. 1837), " Certain calculations were made on our behalf and, if my hon. Friend feels interested, I will consider making them available . . . although they are long and complicated." A few minutes later he spoke as follows (col. 1844–6), and gave some figures which were not in the white paper:

> In the Session 1967–68 up to 1st August, 1968, 76 created peers and 85 peers by succession under the age of 72 attended over 50 per cent. of the sittings. This is the calculation as to what the effect would be for a 50 per cent. requirement, a two-thirds requirement, or a one-third requirement. Ninety-nine created peers and 117 peers by succession under the age of 72 attended over one-third of the sittings.
>
> My conclusion is that, unless many more peers were created, an attendance requirement of 50 per cent. would produce a much smaller voting House than the 230 thought desirable, if that is the figure we wanted. It was on this basis of the calculation of attendances for 50 per cent. and one-third that we came to the conclusion that one-third of the sittings would be a reasonable requirement.

Shortly after this the proceedings for the day were adjourned, and there followed an interval of a fortnight before the committee stage was resumed (on 18th March). In the interval Mr. Sheldon continued his efforts to obtain the full details of the " calculations " on which the Government's proposals were based. On 28th February he asked the Commons' Library for an analysis of peers' attendances in session 1966–7. The Library had received similar requests in the past and, as on previous occasions, in order to answer them had borrowed from the Journal Office of the Lords the alphabetical list of attendances for the relevant session, on the usual understanding that it could be used for statistical purposes but that individual attendances should not be disclosed, nor should the document itself be handed to a Member. However, when asked by the Library whether the analysis should be done in exactly the same form as the figures for the 1967–8 period in the white paper, Mr. Sheldon requested the document itself. The member of the Library Staff concerned replied that he was unable to hand over the document as he had agreed to regard it as confidential. Part of the reply was quoted in the House by Mr. Sheldon (18th March, 1969, Vol. 780 col. 240):

" I obtained a list of peers' attendances in 1966 to 1967 in order to answer what was then a request for straightforward statistical information from you. I was provided with the document (which is marked ' Confidential ') on the understanding that while it might be freely used for statistical purposes, details of individual attendance should not be disclosed."

Mr. Sheldon was invited to refer to the Clerk of the Parliaments and was then offered the document on condition that he regarded it as confidential. He refused to accept it on these terms. The Library's copy of the document was returned to the House of Lords.

Concurrently Mr. Sheldon received the following written answer on 6th March (Vol. 779, col. 146 written answers): He had

asked the Secretary of State for the Home Department if he will lay before the House the full calculations made by Her Majesty's Government and used as a basis for the proposal concerning the size of the Chamber of the House of Lords, the maximum age of retirement and the minimum attendance requirement.

Mr. Callaghan: The proposals to which my hon. Friend refers were based on the Government's judgment of what would be an appropriate size for the voting House and an appropriate attendance requirement for the exercise of voting rights. They took into account the details of attendance in the House of Lords which are published in the Journals of that House. The age of retirement was set at a level which will give a sufficient turnover in membership to accommodate the new creations needed on a change of Government, and which will also correspond approximately with the age at which persons retire from other occupations, for example bishops and law lords. The Government's conclusions correspond with those of the Inter-Party Conference.

When the committee stage resumed on 18th March, Mr. Sheldon raised at once, on a point of order, the refusal of the Library to give him a copy of the document (Vol. 780, col. 235): " I have been trying

to obtain a list of statistics which are relevant and which are in the Library, but which have been denied to me. [Hon. Members: " Oh "]." The point was quickly seized upon by a number of other Members: was it not a breach of privilege to impede a Member by withholding information? (Mr. Arthur Lewis, col. 235); the House of Commons " which is sovereign in these matters " was being deprived of information because of some private agreement (Sir Douglas Glover, col. 236); the Library was the servant of Members, Mr. Speaker should direct the staff to disclose the information (Mr. Charles Pannell, col. 242; Mr. William Hamilton, col. 244). Mr. Sheldon made the point that the information was not in any case secret but could be laboriously tabulated from the *Journal* (col. 289 ff.). Four hours of time were occupied by opponents of the Bill on these points of order and on a Motion to report progress.

At the morning sitting the next day the Leader of the House of Commons, Mr. Peart, made the following statement (18th March, 1969, vol. 780, col. 445):

> I believe that it is the desire of many hon. Members to have this information if possible. This involves another place, and I should like to contact the Leader of the House in another place to make arrangements so that we can have this document presented for the debate on the Question, That the Clause stand part of the Bill. In view of that assurance, which is to help hon. Members—and I mean that—I beg to move, That the Chairman do report Progress and ask leave to sit again.

The committee stage was not in fact resumed for a further fortnight (1st April). Meanwhile, in response to the approach of the Leader of the House, on 20th March the Leader of the House of Lords (Lord Shackleton) moved that a return of Lords' attendances for sessions 1963–4 to 1967–8 be prepared and published. The order to print was dated 26th March and the document was published on 27th March as H.L. 66 of session 1968–9. The full Title is: *Lords' Attendances: a return of the number of days on which each Lord was recorded as being present in the House during sessions 1963–64, 1964–65, 1965–66, 1966–67, and 1967–68.* In addition to the information mentioned in the title, the document included the number of sitting days in each session and a figure for average daily attendance, and represents a straightforward printing of the record prepared by the Clerk of the Journals.

When proposing the publication on 20th March, Lord Shackleton pointed out that " Nobody has asked me for anything quite so long and detailed as this, but I think that if anybody wants figures he might as well be given the lot " (*H.L. Deb.*, Vol. 300, col. 1023). Publication was supported by the leaders of the Conservative and Liberal parties in the House of Lords, and several speakers in the short debate commented wryly that no comparable figures for attendances of Members of the House of Commons were available or were ever likely to be.

The publication of *Lords' Attendances* excited little comment in the press, which appears to have judged that it was yet another obscure

event in what had by then become the mysterious and remote private world of the committee stage on the Parliament (No. 2) Bill. Nor were the opponents of the Bill particularly grateful for what they had at last received. When the committee stage resumed on 1st April, a number of Members pointed out that these were not the " long and complicated " calculations to which Mr. Crossman had referred on 24th February. Mr. Sheldon said (Vol. 781, col. 342):

In particular, I should have expected the fairly elementary figures, which the Government must have known—because they must have used them—about such things as peers' ages, their parties, possibly something about their background, their voting habits, and their regional affiliations. These are the kinds of things which must have been used and available to the Government. I strongly recommended a much more thorough and exhaustive approach than this. If we were to decide what the basis of attendance was to be, and this was the figure integral with the model selected by the Government, then these figures were at any rate certainly required by me. Although there were certain scornful remarks about the way in which the decision was made, I expected that there would be much more useful figures than have been produced.

But by this stage a victory for the opponents of the Bill was already in the air: it was rumoured that the Government might abandon it. There were two more days in committee, 2nd and 14th April. As already mentioned, on the first of these the Government found itself unable to continue after 10 o'clock; on the second it failed to secure a closure Motion.

The Future Availability of Lords' Attendance Records

On 25th July, 1969, the House of Lords agreed to the following report of the House of Lords Offices Committee (*H.L. Deb.*, Vol. 304, col. 1185):

LORDS' ATTENDANCES

The Committee considered whether or not the sessional record of Lords' attendances should be regularly published. They are of the opinion that the printing of this record would not be justified. But they see no reason to place any restriction upon the information contained in the record being made freely available on demand.

Mr. Speakers' Ruling on the Availability to Members of Documents in the Commons' Library

Arising from the points made in the debate on 18th March, summarised above, on 19th March (*H.C. Deb.*, Vol. 780, col. 491–2) Mr. Speaker made the following statement:

I think that nothing which reaches the Library should be withheld from Members seeking information. Consequently, if information comes into the possession of the Library, the restriction that the document is confidential, while it should apply to members of the public seeking information, should not apply in the case of hon. Members.

In future, therefore, I am directing the Library to make available to Members all documents which relate to their work in the House, whether marked confidential or not.

Following this, the Librarian circulated members of his staff on the detailed implications of the Speaker's ruling. Among the points made were the following: 'A. When acquiring or borrowing a confidential document from an outside body, on behalf of the Library, staff cannot now enter into any undertaking that the document will remain confidential. B. Copies of letters written to individual Members of Parliament remain personal and private as now.'

XII. THE USE OF THE CLOSURE AND THE SUSPENSION OF MEMBERS AT STORMONT

By Sholto Cooke

Clerk of the Parliaments, Northern Ireland

During the sitting of the House of Commons of Northern Ireland on 20th March, 1969, there occurred, in the words of the then Leader of the House, " an unusual and unparalleled situation ".

On 5th March, 1969, the Minister of Home Affairs presented in the House of Commons of Northern Ireland a Public Order (Amendment) Bill " to make further provision for the maintenance of public order and the prevention of disturbance of lawful public processions and public meetings, to prohibit the maintenance by private persons of associations of a military or similar character, to prohibit the carrying of offensive weapons in public places without lawful authority or reasonable excuse, and for purposes connected with those matters ". The Bill was read a second time on 12th March after a " Six Months " amendment by Opposition Members had been negatived and on 19th March the committee stage commenced. Members of the Opposition parties had tabled over 50 amendments to the nine clauses of the Bill and on the first day of the committee stage, which lasted for over ten hours, Clauses 1 and 2 were agreed to.

The committee stage discussion of Clause 3 was continued on Thursday, 20th March, but after debate lasting almost three hours *Hansard* records the following events:

Captain Brooke (*Lisnaskea*): On a point of order, Mr. Scott. Would the hon. Member give way?

Mr. Hume: Yes.

Captain Brooke: I beg to move, That the Question be now put.

Mr. Hume: That is not a point of order.

Question put, That the Question be now put.

The Chairman then proceeded to collect the voices.

Mr. Hume: This is dreadful. Just as I was saying the voice of the elected representatives in Parliament is not listened to. The Government will have no order if this is carried on.

Mr. Cooper: The hon. and gallant Member for Lisnaskea (Captain Brooke) was not in the Committee yesterday.

Mr. F. V. Simpson: Shame.

Mr. Hume: Absolute shame. [*Interruption*]

Mr. Keogh: A sham and a shame.

Mr. Patrick Kennedy: Treating an Opposition like this.

Mr. Cooper: Resign.

Mr. Hume: It is absolutely ridiculous.

Mr. Keogh: That was a very fine contribution to the debate.

Mr. Hume: We shall not show much respect for this Parliament if we continue

to receive this treatment. If this Motion is carried we will take immediate action. If this goes through I give notice that we shall sit on the Floor and be evicted if we are not allowed our right to put forward our point of view. The consequences are serious.

Mr. Cooper: The hon. and gallant Member comes blowing in and blowing out of the Committee.

Question put, That the Question be now put.

The Committee divided: Ayes, 26; Noes 10.

Mr. F. V. Simpson: Shame.

Amendment negatived.

At this point Mr. Carron, Mr. Cooper, Mr. Devlin, Mr. Hume, Mr. Patrick Kennedy, Mr. Keogh, Mr. O'Hanlon and Mr. O'Reilly seated themselves on the Floor of the House and proceeded to sing " We shall overcome ".

The Chairman of Ways and Means called the attention of the Committee to the disorderly conduct of several Members and then left the Chair to make his report to the House.

Mr. F. V. Simpson: Does the Chairman wish the Deputy Chairman to assume the Chair?

Mr. Keogh: If the Deputy Chairman had been there this would not have happened.

Mr. F. V. Simpson: Has Mr. Speaker been called?

Mr. Devlin: What would the Public Order Act say about this?

The House resumed, Mr. Speaker in the Chair.

The Chairman of Ways and Means: I have to report grave disorder in the Committee.

Mr. Devlin: Where did it come from?

Mr. Keogh: It was because of bad chairmanship.

Mr. Speaker: May I ask hon. Members who are sitting on the Floor to resume their seats on the Benches in order to allow the proceedings of the House to go forward?

Mr. F. V. Simpson: May we have an assurance from you, Mr. Speaker, that the business of the Committee will not be rudely interrupted by Members on the Government side attempting to force a guillotine action? This is contrary to the spirit of this House and was not called for by the method of discussion that was taking place at the time.

Mr. Burns: No guillotine.

Mr. Speaker: I was absent from the House during the proceedings referred to by the hon. Member for Oldpark (Mr. F. V. Simpson) and so I cannot give him a categorical answer. But I would again request hon. Members to resume their seats on the Benches and to allow the proceedings of the House to go forward. Otherwise I shall have to announce that the House stands adjourned.

Mr. F. V. Simpson: May I have the assurance for which I asked, Mr. Speaker? I think such an assurance will satisfy everybody concerned.

Mr. Speaker: I do not want a debate between the Floor and the Speaker's Chair. It is most unseemly. I am appealing to the honour and common sense of the hon. Members sitting on the Floor. I am doing it for the last time. Let common sense prevail and let the proceedings of the House go forward.

I have given the hon. Members an opportunity to resume their seats. They have now placed me in the position of having reluctantly to name. I name the hon. Members on the Floor and I call on the Leader of the House.

The Leader of the House (Major Chichester-Clark): I beg to move, That the hon. Members be suspended from the service of the House.

Question, That the hon. Members who have been named be suspended from the sittings of the House, put and agreed to.

Mr. Keogh: That makes it much easier.

Grave Disorder having arisen in the House, Mr. Speaker pursuant to Standing Order No. 20 (Power of Mr. Speaker to adjourn House or suspend sitting), suspended the Sitting of the House for half an hour.

During the interval the eight Members continued to sit on the Floor and Mr. F. V. Simpson remained in his place.

The House resumed at 6.28 p.m.

Eight Members were still sitting on the Floor and one Member, Mr. F. V. Simpson, was standing with his back to Mr. Speaker. He then sat on the Floor with the other eight Members.

The Deputy Serjeant-at-Arms (Captain Cartwright): Mr. Speaker, I have instructed the nine Members to leave the House in accordance with your instructions, I regret to report that they refused to do so and force may be necessary.

Mr. Speaker: You have my authority to take such measures as may be necessary to ensure that the Members named leave the Chamber.

Grave Disorder having arisen in the House, Mr. Speaker, pursuant to Standing Order No. 20 again suspended the Sitting of the House for ten minutes.

During the time the House was suspended, a Sergeant of the Royal Ulster Constabulary approached each of the nine Members in turn and they rose and left the Chamber. The House resumed at 6.40 p.m.

It was then resolved, on the Motion of the Leader of the House, Major Chichester-Clark, " That the proceedings on Government business be exempted at this day's sitting from the provisions of the Standing Order ' Sittings of the House '."

But immediately after the House had resumed its consideration of the Public Order (Amendment) Bill, Major Chichester-Clark said that " In view of the unprecedented events that have taken place this afternoon and in view of the fact that the movers of all remaining Amendments to the Bill which we have under consideration are now no longer with us, I beg to move, That the Chairman do report progress and ask leave to sit again."

Question put and agreed to.

As a consequence of these proceedings all Opposition Members joined in tabling a Motion of Censure on the Chairman of Ways and Means in the following terms:

" That in the opinion of this House the action of the hon. and gallant Member for Lisnaskea (Captain Brooke) in rising on 20th March on an alleged point of order and then moving ' That the Question be now put ' was provocative, harsh and an abuse of Parliamentary procedure; and that the action of the Chairman of Ways and Means in accepting such Motion from the hon. and gallant Member for Lisnaskea was an unwarranted use of his discretionary authority and as such deserving of the censure of this House."

In moving the Motion, the hon. Member for Foyle (Mr. Hume) said that the action of the hon. and gallant Member for Lisnaskea in rising on a point of order which was not in any sense a point of order and then moving the closure Motion " displayed a total lack not only of parliamentary manners but of ordinary good manners".

Mr. Hume went on to say that the Opposition expected impartiality from the Chair and that on the occasion in question they did not get it. He claimed that the Chairman's attitude throughout the debate revealed anything but impartiality. The Chairman, said Mr. Hume, had interrupted Members on the Opposition side of the House no fewer

than 54 times during the debate on the committee stage of the Public Order Bill and he (Mr. Hume) felt particularly sore in view of the fact that of the 54 interruptions 21 occurred while he was speaking.

Then, continued Mr. Hume, " when I gave way on the alleged point of order he allowed a different matter altogether to be raised ".

Mr. Hume summed up by saying that whether or not parliamentary democracy would be saved in Northern Ireland depended on the attitude of the Government supporters and on those who held office in the House. In proposing the Motion of Censure, Mr. Hume claimed that what he and his colleagues were really saying was that they were standing up for the decency and for the dignity of democracy, " and there was more dignity and honour paid to democracy by sitting on that floor than by 40 years of talking in this House ".

Major Chichester-Clark (Leader of the House), replying to the debate, said he had to deal with two main charges—that the hon. and gallant Member for Lisnaskea was wrong in rising to a point of order and then, when the hon. Member for Foyle, who was at that moment speaking, gave way, moving a closure Motion; and secondly, that the Chairman of Ways and Means should not have accepted a Closure Motion at that time.

As regards the action of the hon. and gallant Member for Lisnaskea, Major Chichester-Clark quoted the wording of the relevant Standing Order:

> " After a question has been proposed a Member rising in his place may claim to move, ' That the Question be now put ', and, unless it shall appear to the Chair that such Motion is an abuse of the rules of the House, or an infringement of the rights of the minority, the Question, ' That the Question be now put ' shall be put forthwith and decided without amendment or debate."

Major Chichester-Clark observed that in view of this wording it was clear that any hon. Member had the right to move the closure Motion at any time, even at the beginning or in the middle of another hon. Member's speech. There was ample authority both at Westminster and in the Northern Ireland House, for this contention. It was clear also that it was common practice at Westminster for an hon. Member to rise to a point of order and then to seek to move the closure.

For these reasons, continued Major Chichester-Clark, he did not think that from a procedural point of view the hon. and gallant Member for Lisnaskea could reasonably be criticised for his action. However, Major Chichester-Clark thought it would help in the future if he used his best endeavours to arrange that if and when it was necessary for a closure Motion to be moved on Government business it was done, after consultation with the Minister in charge of the Bill, by the Chief Whip or an Assistant Whip.

As regards the attempt to censure the Chairman of Ways and Means for having accepted the closure Motion, Major Chichester-Clark said that the debate on the amendment commenced at approximately ten minutes past four o'clock and ended at approximately a quarter to six.

In that time the hon. Member for Mourne (Mr. O'Reilly) who moved the amendment, had spoken twice; the hon. Member for South Fermanagh (Mr. Carron) had also spoken twice; the Minister of Home Affairs and the learned Attorney-General replied to the amendment on behalf of the Government, and then the hon. Members for South Down (Mr. Keogh), South Armagh (Mr. O'Hanlon) Mid Londonderry (Mr. Cooper), Falls (Mr. Devlin) and Central (Mr. Patrick Kennedy) spoke. The hon. Member for Foyle was himself speaking at the moment the closure was moved. " In short, I think I am right in saying that of the nine Members of the Opposition present in the Committee on that occasion two spoke twice on the amendment, five spoke once and another was speaking when the Closure was moved".

(*Mr. Currie:* For the first time.)

" Only one hon. Member of the Opposition did not speak but the views of his party had already been voiced by his hon. colleagues.

One can imagine the chaos which would result at Westminster if on every amendment to a Bill virtually every hon. Member of the Opposition present—that is, well over 200—claimed a right to speak. Obviously in such circumstances business would come to a standstill."

Finally, Major Chichester-Clark said he supported the right of all Members opposite to criticise the Government but he appealed to them to avoid making the Chairman of Ways and Means their target merely because he obeyed the Standing Orders of the House.

On a division the Motion of Censure was negatived by 30 votes to 12.

XIII. NEWSPAPER MEN AT THE BAR OF THE HOUSE

By A. R. B. McDonnell

Clerk of the Parliaments and Clerk of the Legislative Council, Victoria

Commencing with an initial 5 acres selected by Superintendent La Trobe in 1845, the Royal Botanic Gardens of Melbourne have been from time to time expanded until, at the present time, the Gardens contain 87 acres 2 roods 31 perches, and include some 8,000 species of animals and 30,000 different specimens. Since 1880, 127 bird species have been identified, of which 115 are native and, of these, 56 are permanent residents using the Gardens as a breeding ground.

In 1964 negotiations and conferences had been begun with a view to replacing the old tea kiosk, which had been erected in the Gardens about the year 1900 on the site of an earlier one built in 1868. By September, 1965, it was Government policy to provide a restaurant providing for night meals and dancing on a promontory situated on the opposite side of the ornamental lake to the present kiosk. The proposals envisaged flood-lighting and provision for parking of motor vehicles in the vicinity. The restaurant, which was to incorporate a small tea kiosk, was to be built by the Government and leased to a restauranteur at a reasonable rental. Following interviews with Sir William McDonald (the Minister of Lands), and a decision by the Cabinet on 10th November, 1967, Mr. Richard Frank, the proprietor of a successful restaurant operating within the City of Melbourne, was advised that he was the successful tenderer.

The original estimate of cost prepared in 1967 was $130,000, and in September, 1968, tenders were invited for construction. The lowest tender of the thirteen received was $253,000. This required additional financial provision and the Honourable the Treasurer, on 9th December, 1968, refused to approve the additional funds required. In the meantime, Mr. Frank had purchased equipment for use in the restaurant.

By now considerable public disquiet was evident in letters to the newspapers and in obtaining signatures to petitions and, in March, 1969, the Cabinet decided to prepare fresh plans for the restaurant, with a new but similar kiosk on the site of the present kiosk, the total estimated cost not to exceed $200,000.

There is a further history of decision and reversal of decision, and of variations in cost, but to set it out in detail at this stage would add nothing to the general discussion, the above account having outlined the background to a Motion in the Legislative Council on 27th March, 1969, by the Honourable John W. Galbally, the Leader of the Labour Party, one of the Opposition parties:

" That there be a Select Committee of eight Members appointed to inquire into and report upon the present and future use of the Royal Botanic Gardens; the Committee to have power to send for persons, papers, and records; three to be the quorum."

The debate on this motion was adjourned until the next day of meeting and, on 1st April, on the debate being resumed, the question was decided—Ayes 18, Noes 16; the Labour Party and the Country Party having combined against the Government. The Government (Liberal Party), having refused to enter into membership of the eight-man committee, despite the offer of the Leader of the Labour Party to grant equal representation to the Government *vis-à-vis* the other two Parties, the membership comprised entirely Labour and Country Party Members.

The Committee commenced its hearings almost immediately and received a wealth of informed, professional, and community opinion, both written and oral. On Wednesday, 23rd April The *Sun News-Pictorial* newspaper carried an article " Up the Gardens Path " under the by-line of one Douglas Wilkie. On the following day, the Secretary for Lands wrote to the Secretary of the Select Committee drawing attention to certain comments in the article regarding the Director of the Gardens (Mr. R. T. M. Pescott), who had been a witness before the Select Committee. The Secretary for Lands also drew attention to Standing Order No. 228 of the Legislative Council which provides: " All witnesses examined before the Council or any Committee thereof shall be entitled to the protection of the Council in respect of anything that may be said by them in their evidence".

The Chairman of the Select Committee (the Hon. John W. Galbally) immediately after prayers on 30th April, advised the President of the Legislative Council that he wished to make complaint of a breach of privilege and, drawing attention to Standing Order No. 228, he produced the newspaper complained of and requested that the Clerk be instructed to read the article. This being done, Mr. Galbally addressed the House and, drawing particular attention to the following paragraphs of the article:

The Director of the Gardens, Mr. R. T. M. Pescott, has defended the Government's proposal.

But as an employee of the Government who must want it to be assumed that Sir Henry (Premier and Treasurer of State of Victoria) took him into his confidence, Mr. Pescott is compromised in advance.

The Secretary of the Public Works Department, Mr. G. G. Serpell, has sought to justify the proposed restaurant by explaining that it would jut 20 ft. into the lake, and thereby require the axing of only a few trees and shrubs.

But as he, too, is a Government servant, the public may suspect him of being a political serpent in their Gardens.

moved: " That Douglas Wilkie and Henry Alfred Gordon do attend this House tomorrow at a quarter-past Eleven o'clock."

On 1st May, the President having read the prayer to open the day's proceedings, the Usher of the Black Rod announced that Douglas

Wilkie and Henry Alfred Gordon were in attendance and, on instruction from the Chair, they were brought to the Bar of the House by the Usher carrying his Rod of Office. The author of the article (Douglas Wilkie) and the Editor of the newspaper (Henry Alfred Gordon) were then advised by Mr. President that the article and a letter from the Secretary for Lands had been read to the House the previous day. The newspaper and the article having been exhibited to Messrs. Wilkie and Gordon at the Bar of the House by the Clerk, Messrs. Wilkie and Gordon were then questioned by the President to establish the authorship of the article and the responsibility for newspaper editorship. Questioning of Mr. Wilkie elicited that he had not attended any of the hearings of the Select Committee nor had he seen any transcript of evidence. Mr. Wilkie and then Mr. Gordon were each invited to offer an explanation. Both took the opportunity to address the House and, at the conclusion of their remarks, they were escorted from the Chamber by the Usher of the Black Rod.

The Honourable John W. Galbally then moved: " That this House is of opinion that the article appearing in the *Sun News-Pictorial* newspaper dated the 23rd April, 1969, written by Douglas Wilkie and entitled " Up the Gardens Path " constitutes an insult to a witness appearing before a Select Committee of this House of Parliament ", which Motion was seconded by the Honourable G. L. Chandler, in these words, " As Leader of the Government in this House, I second the motion". The Honourable Sir Percy Byrnes then spoke in support of the Motion saying: " As vice-chairman of the Select Committee and Leader of the Country Party in this House, I support the Motion moved by Mr. Galbally and seconded by the Leader of the House." Further Motions: " That Douglas Wilkie having admitted that he is the author of the article and Henry Alfred Gordon having admitted he is the editor of the newspaper in which it was published have each been guilty of a breach of the privileges of this House " and " That Douglas Wilkie and Henry Alfred Gordon, for their respective offences, be summoned to the Bar of the House to be reprimanded by Mr. President and discharged " were moved by Mr. Galbally and, in each case, supported by Mr. Chandler and Sir Percy Byrnes.

On instruction from the Chair, the Usher of the Black Rod again brought Messrs. Wilkie and Gordon to the Bar of the House, whereupon the President directed the Clerk to read to them the three resolutions which the House had adopted.

The President then said:

By unanimous vote of the House it is considered that the article constitutes an insult to a witness before a Select Committee of this House and is therefore a breach of Parliamentary privilege.

It is now my unpleasant duty to say to you, Douglas Wilkie, that your comments about a witness before a Select Committee of this Honourable House was a cowardly attack which the person concerned is in no position to refute publicly and, the witness being entitled to the protection of the Council tin respect of his appearance before the Committee, I say to you in the stronges

possible terms that the reprimand recorded in the Journals of this House is richly deserved.

You, Henry Alfred Gordon, are also reprimanded by this House of Parliament. Your acquiescence in the attack by Douglas Wilkie on the witness deserves strong condemnation, and the Journals of the House will record your offence and penalty.

and instructed the Usher of the Black Rod to escort them from the Chamber.

These proceedings in the Legislative Council were taken whilst the Committee were still deliberating; the report being presented to the House by Mr. Galbally on 6th May.

On no previous occasion since the formation of the Legislative Council in 1851, had the Council considered it necessary to bring persons to the Bar of the House for censure, and it is with some pride we record the step was taken on this occasion, not on behalf of the House or the Parliament, but on behalf of witnesses before a Select Committee, they being themselves in no position to publicly refute the imputations levelled against them.

On 8th May, after a lengthy debate the House, on a division, accepted the Motion of Mr. Galbally: " That this House do approve and adopt the report of the Select Committee appointed to inquire into the present and future use of the Royal Botanic Gardens "; the Country Party again voting with the Labour Party in opposition to the Government. Within minutes of this decision the Government Leader (the Hon. G. L. Chandler, Minister of Agriculture), moved for the adjournment of the House " Until a day and hour to be fixed by the President or, if the President is unable to act on account of illness or other cause, by the Chairman of Committees . . ." The House then went into recess and, by proclamation of His Excellency the Governor, shortly thereafter the Parliament was prorogued, to resume again on 9th September.

The *Sun News-Pictorial* of the morning of Friday, 9th May, carried an article by Douglas Wilkie entitled " Down the Parliamentary Drain ", in which, amongst other comments, it was suggested that the Legislative Councillors had confused the dignity of Parliament as an institution with their own assessment of their dignified image. Other attacks appeared in various newspapers, some carrying the suggestion that it was wrong for the Parliament to be accuser, judge, prosecutor, and executioner, in cases of alleged contempt.

When the Parliament resumed in September, no Member of either House saw fit to draw attention to the article of 9th May, and here the case of the Parliament *v.* the *Sun News-Pictorial* rests. Probably the words of Theo. Hook: " A reply to a newspaper resembles very much the attempt of Hercules to crop the Hydra without the slightest chance of ultimate success " were considered apposite and, moreover, the Parliament consulted its own dignity and chose not to enter into protracted guerrilla war with the Fourth Estate.

XIV. "OTHERWISE DETERMINES"

By P. G. Henderson
Reading Clerk and Clerk of Public Bills, House of Lords

Section 4 (Duration) of the Murder (Abolition of Death Penalty) Act 1965 reads:

> This Act shall continue in force until the thirty-first day of July nineteen hundred and seventy, and shall then expire unless Parliament by affirmative resolutions of both Houses otherwise determines: and upon the expiration of this Act the law existing immediately prior to the passing of this Act shall, so far as it is repealed or amended by this Act, again operate as though this Act had not been passed, and the said repeals and amendments had not been enacted:
>
> Provided that this Act shall continue to have effect in relation to any murder not shown to have been committed after the expiration of this Act, and for this purpose a murder shall be taken to be committed at the time of the act which causes the death.

In short, unless Parliament, by affirmative resolutions of both Houses otherwise determines, the Act of 1965 expires on 31st July, 1970, and the Homicide Act 1957 is restored.

This deceptively simple provision for the duration of the Act of 1965 posed a delicate problem of interpretation for the Clerks of both Houses.

Clearly, the meaning of Section 4 and, in particular of the words " otherwise determines " can only be ascertained in the Courts. But the Clerks had to decide what the words could mean for the purpose of giving advice on amendments to any affirmative resolution tabled pursuant to Section 4 of the Act.

On the face of it the words " otherwise determines " in the context of Section 4 and of the Act as a whole could only mean one of two things.

First, they could mean that both Houses, by affirmative resolution, might determine that the Act of 1965 should not expire on 31st July, 1970: that is, that it should continue indefinitely.

Alternatively, the words could mean that both Houses, by affirmative resolution, might determine that the Act of 1965 should not expire on 31st July, 1970 but on any later (or earlier) date.

It seemed absolutely clear that Section 4 could not be construed so as to permit amendment of the substance of the Act, for example to restore the death penalty for the murder of prison warders or of policemen, because Section 4 was solely concerned with the duration of the Act.

The doubt, therefore, lay solely in the construction of the words " otherwise determines ". Did they import only that the Act of 1965

would expire on 31st July, 1970, or continue indefinitely thereafter if both Houses passed affirmative resolutions? Or did they mean that the Act of 1965 would expire at the latest on 31st July, 1970, or continue in force for whatever time both Houses, by affirmative resolution, otherwise determined?

The Government tabled on Tuesday, 9th December, 1969, in both Houses an identical affirmative resolution:

That the Murder (Abolition of Death Penalty) Act 1965 shall not expire as otherwise provided by Section 4 of that Act,

to be moved in both Houses in the following week.

It seemed to the Clerks of both Houses that Section 4 might be so construed as to allow expiry of the Act on some date other than 31st July, 1970, and accordingly they advised that amendments to the affirmative resolution of the Government could be tabled in both Houses in relation to the expiry date.

In the Commons two amendments were tabled:

(1) to leave out from " expire " to the end and insert " but shall continue in force until the 31st day of July, 1973;" and
(2) to add at the end " but Section 4 shall continue to apply in relation to the position in Scotland ".

In the Lords also, two amendments were tabled:

(1) to leave out all the words after " that " and insert " this House declines to come to a decision on the question of the continuance of the Murder (Abolition of Death Penalty) Act 1965 until after the publication of all available statistics covering the full year 1969 ";

and

(2) to leave out all words after " expire " and insert " until the 31st day of July, 1973 ".

In the Commons, the Opposition tabled a Motion of Censure on the Government for asking Parliament to reach a conclusion on the continuance of the Act at an unnecessarily early stage. This was debated on Monday, 15th December, and the arguments on the timing of the Affirmative Resolution were deployed on that day. The Motion was defeated on division.

When the Commons came to consider the Government's affirmative resolution on the next day, Tuesday, 16th December, the Speaker did not select either of the two amendments. The Speaker is not obliged to give his reasons for selecting or not selecting amendments. In this case he clearly had some difficulty in reaching his decision, for he said:

I have given tremendous consideration to the problem whether to select an amendment or not, and after much reflection I have decided not to. (*Commons Hansard*, 16th December, 1969, col. 1149)

This decision meant that there was a straight vote on the Government's affirmative resolution, which was duly carried on division.

In the Lords' Debate on the next two days, Wednesday and Thursday,

17th and 18th December, the House had before it not only the Government's affirmative resolution but also the two amendments. In order to simplify the Debate, it was agreed through the usual channels that the movers of both the amendments would speak to their amendments early but not move them formally until the conclusion of the Debate. The Debate, therefore, technically took place on the Government's affirmative resolution but, by agreement, it also embraced the arguments for and against the amendments. In the event, one amendment (to delay the decision until further statistics were available) was not moved; the other (to extend the operation of the Act to 31st July, 1973) was moved formally and defeated on division; and the affirmative resolution was then agreed to without a division.

Though the Debate ran fairly smoothly due to this agreement through the usual channels, the problem of the interpretation of section 4, which had hardly surfaced in the Commons, was fully exposed in the Lords.

The Lord Chancellor argued openly in the Lords the view that, presumably, the Law Officers had tendered privately to the Speaker in the Commons that Parliament cannot " extend the period of suspension by a resolution or by amending this (the Government's) resolution ". He went on to say:

> The reason for this is that while, of course, Parliament can always change the law by legislation, it cannot change the law by a resolution unless there is a preceding Act which says that the law can be changed in that particular way by a resolution passed by both Houses.
>
> If Parliament wants to provide that an Act enacted for a limited period can by resolution be extended for some further period or periods, it says so. (*Lords Hansard*, 17th December, 1969, col. 1114.)

The Chancellor then gave the following examples of Acts which specifically conferred powers on Parliament to extend the operation of Acts or of statutory periods:

> Supplies and Services (Transitional Powers) Act 1945, Section 8 (1).
> Agriculture (Miscellaneous Provisions) Act 1954, Section 2 (1).
> Agriculture Act 1937, Section 1 (3).
> Agriculture (Miscellaneous Provisions) Act 1950, Section 3 (2).
> Air Corporations Act 1967, Section 19 (1) and (2).

The Government's argument was summarised by the Lord Chancellor thus:

> ... when Parliament wishes to provide that a decision is to be made as to whether or not an Act is to expire, but that, apart from expiring or not, it may be prolonged for a period or periods, it always says so.

The Lord Chancellor conceded that he was " too old a lawyer not to know that there is hardly any question of construction on which it is not possible to find some lawyer to take a different view ". It so happened that he found in the House two eminent lawyers, both Lords of Appeal in Ordinary, who took a different view: Viscount Dilhorne,

a former Attorney General and Lord Chancellor, who was the mover of the amendment to extend the operation of the Act to 1973; and Lord Reid, the senior Lord of Appeal in Ordinary.

Lord Dilhorne presented his case by reference to the Acts cited by the Lord Chancellor which contained express provision for a limited extension. He said:

> It may well be the case that Parliamentary draftsmen, when drafting to enable a temporary extension to be made, use words of that sort and different formulae. But the Act we have to consider is the 1965 Act and the language of that Act. There, my Lords, the language is that the Act shall expire on July 31st unless decided otherwise by affirmative resolution of both Houses. . . .
> The noble and learned Lord the Lord Chancellor is asking us, and the Government are asking us, to determine otherwise by saying that the Act shall be a permanent Act. But, my Lords, surely it is determining otherwise also to say that the Act shall continue in force for a limited period. Both are determinations otherwise than allowing the Act to expire. . . . (*Lords Hansard*, 17th December, 1969, cols. 1136–7).

This view was briefly supported by Lord Reid later in the Debate when he said that he had considerable sympathy with his noble and learned friend's view " that it would be legally effective if both Houses passed similar resolutions containing the postponement for 3 years . . ." (*Lords Hansard*, 18th December, 1969, col. 1287.)

We shall never know which of these two views is correct since, due to the affirmative resolutions of both Houses, the Courts will never be called on to determine the issue. But for the future, Clerks must hope that where, to repeat the Lord Chancellor's words " Parliament wishes to provide for the prolongation of a period " it says so expressly; and that Parliament is equally explicit where it wishes to provide for the strict alternative of expiry on a certain date or of indefinite continuation.

Perhaps the ambiguity in the drafting of section 4 was due to the fact that it was inserted as a Private Member's amendment in a Private Member's Bill. This is a strong argument in favour of those who believe that the Government ought to give drafting assistance to Private Members whenever a Private Member's Bill is likely to reach the Statute Book.

XV. THE POSTPONEMENT OF ALTERATIONS IN CONSTITUENCY BOUNDARIES

On 20th June, 1969, the Government introduced into the House of Commons the House of Commons (Redistribution of Seats) (No. 2) Bill. The objects of the Bill were, in broad terms, to suspend the implementation of the proposals of the Boundary Commissions pending consideration and implementation of the recommendations of two Royal Commissions on Local Government but, at the same time, to allow the reorganisation of constituencies in Greater London, which had not been within the latter's terms of reference. The provisions of the Bill were bitterly opposed in both Houses of Parliament by the Opposition parties. The main charge of the opponents of the Bill was that the Government were altering the rules of the constitutional " game " to gain electoral advantage for themselves. The reason behind this charge was the generally accepted view that in Greater London the proposed changes in constituency boundaries would benefit the Labour party but if carried out throughout the country the new boundaries would be of electoral advantage to the Conservative party.

The background to this dispute, which eventually ended with the House of Lords wrecking the Bill and the House of Commons rejecting the constituency Orders on the advice of the Home Secretary who had laid them before Parliament, began in 1944. In that year Mr. Speaker's Conference on Electoral Reform and Redistribution of Seats proposed the establishment of four permanent boundary commissions, one for each of the countries comprising Great Britain. In the same year the House of Commons (Redistribution of Seats) Act gave effect to the recommendations of the Speaker's conference. It provided that the Commissions should review, and report on, constituency boundaries at intervals of not less than three, or more than seven years. It also provided, in section 2 (5), that the Secretary of State " shall lay the reports before Parliament together with the Orders implementing, whether with or without modifications, the recommendations of the Commissions ".

In 1948 a general review of constituency boundaries was carried out, the first since 1910. In 1949 the House of Commons (Redistribution of Seats) Act consolidated the 1944 Act with a number of others, but, of course, the provisions mentioned above were preserved. The first of the Periodical Reports from the four Commissions were laid before Parliament in November 1954. They were laid in accordance with the provisions of the 1949 Act and, so, were accompanied by the Orders implementing the reorganisation of constituency boundaries, as recommended.

In 1958 the 1949 Act was amended to allow the Commissions to report at intervals of not less than ten, or more than fifteen, years. This meant that the Commissions were statutorily required to report again between November 1964 and November 1969. The Commissions, therefore, began their reviews early in 1965.

In May, 1966, the Government announced the setting up of two Royal Commissions on Local Government, one for England under the chairmanship of Lord Redcliffe-Maud and one for Scotland under the chairmanship of Lord Wheatley. The first reported in June 1969 and the second in September 1969. Both Commissions recommended fundamental changes in the structure of local government. For England, the Redcliffe-Maud Report proposed, in general terms, the abolition of local authorities based on county units and borough units and the creation of far larger local government areas. The Wheatley Report proposed similar changes for Scotland. The Government accepted the recommendations contained in these Reports as a basis for local government reform. It was recognised that any fundamental change in local authority boundaries would almost inevitably result in consequential changes in parliamentary constituency boundaries. The Government, therefore, rested their case for postponing the alteration of constituency boundaries on the undesirability of having two major upheavals of the political map within a few years of each other.

Some months before the publication of the Reports of the Royal Commissions, speculation in the press had suggested that the Government would seek to postpone the alteration of constituency boundaries. Indeed, early in 1966 the Government had tried to get the agreement of the Opposition to postponement but the Opposition was unable to agree.*

On 19th June the Home Secretary, Mr. Callaghan, presented the Reports of the Boundary Commissions to Parliament, as Command papers. The Orders were not laid together with the Reports as required by section 2 (5) of the 1949 Act. On the same day Mr. Quintin Hogg, on behalf of the Conservative Opposition, moved in the House of Commons:

> That this House calls upon the Secretaries of State for the Home Department and Scotland to implement in full, and without further delay, the recommendations of the Parliamentary Boundary Commissions.

In the course of his speech he spoke as follows:

> The statutory provision [s. 2 (5)] which I have read, moreover, is not satisfied by a Government who reject the Boundary Commission's Report. The law is that they shall with the Report lay a draft Order in Council giving effect to the recommendations of the report. They are not entitled to reject it, although they may modify it. Second, at least as I read the statute, they are not entitled to implement part of it and reject the rest. They are not entitled to implement part of it and substitute their own proposals in regard to the rest. It is the whole report on the relevant portion of the United Kingdom which

* *H.L. Deb.*, Vol. 304, col. 476.

they are bound to implement with or without modification and the draft proposals for the implementation of which they must lay at the same time as the report is laid before Parliament.

If the Government want to do anything else, they must produce a Bill. If minded to break the law, a Government with a temporary Parliamentary majority can always unconstitutionally use its Parliamentary majority to pass a statute breaking the law retrospectively and indemnifying the Government against the breach. However, the reason why we have put the Motion down is that we should regard a step in this context as a constitutional impropriety. It would strike a serious blow at the integrity of our public life and our Parliamentary institutions. It would be an instance of the improper use of a Parliamentary majority. It would be an example of changing the rules while the match was being played, and the right hon. Gentleman and his colleagues could not escape without a serious blemish upon their personal reputations if they contemplated such an act. Speaking for myself, I very much hope that they would not contemplate such an act. We consider, with *The Times*, which wrote about this a few days ago in a leading article, that although there may be some inconveniences in keeping the law . . . the Government have no excuse for breaking the law.

It will be accepted, at least, that after the 15 years which have elapsed since the last review the present Parliamentary boundaries are intolerable—intolerable, that is, for the purposes of a general election. . . . Birmingham, Ladywood, the electorate is only 18,000, having gone down by 41 per cent. since 1964. Manchester, Exchange is virtually as small as Ladywood and Leeds, South-East has fewer than 30,000. In addition to those three, there are 22 seats in England with fewer than 40,000 voters. At the other end of the scale, there are four seats with more than 100,000 voters, the prize going to Billericay with 113,000, which, incidentally, has risen by 25 per cent., since only 1964. There are a further 12 above 90,000 and another 31 above 80,000. [H. C. Deb., Vol. 785, col. 732–3.]

In opposing the Motion, the Home Secretary rejected the allegations of " gerrymandering " with the Constitution, said that it was the Government's duty to find some way out of an impossible situation and announced that the next day he would introduce a Bill to implement boundary changes in Greater London and in certain other selected constituencies but to postpone the majority of alterations until after the next general review. The Opposition's Motion was rejected by 51 votes.

The House of Commons (Redistribution of Seats) (No. 2) Bill was given a second reading in the House of Commons on 2nd July, despite a reasoned amendment in the following terms:

" this House declines to give a Second Reading to a Bill which . . . violates constitutional arrangements agreed by all parties, and continues a substantial number of constituencies with abnormally large and abnormally small electorates without regard to the statutory requirements relating to the approximation of individual constituencies to an electoral quota.

The Committee stage of the Bill was begun on 8th July and by 11.30 p.m. that evening only three of the many amendments down to the Bill had been taken. The Leader of the House, Mr. Fred Peart, then announced that owing to lack of progress on the Bill the Government would ask the House to consider a time-table Motion which had been tabled that

evening and which would be taken first business the next day. This announcement was greeted with uproar in the House. However, the Guillotine Motion was duly debated and carried on 9th July. The Committee stage of the Bill was then completed and the Bill reported without amendment. It was then read a third time, passed and sent to the Lords.

The House of Lords began their deliberations on the Bill on 17th July when the Minister of State at the Home Office, Lord Stonham, moved the second reading. Much the same arguments for and against the Bill were advanced, but the Lords had a further consideration to contend with. This was whether it was proper for a largely hereditary and unelected chamber, with a permanent majority of one party, the Opposition, to interfere with the decisions of an elected House in a sphere which some people believed to be peculiarly the concern of the House of Commons. The view was expressed by many members of the Labour party that, if the House of Lords rejected the Bill, or even interfered with it, they would lose their delaying powers for ever. The arguments on both sides of this question eventually brought out a further consideration as to the legality of the Parliament Act 1949 (see *The Times*, 14th July, 1969, p. 9). The opposing viewpoints on the question of the Lords veto can be summarised in two short passages; *The Times* newspaper, in a leading article, said that " the most serious responsibility of a second Chamber is to act as a constitutional watchdog, to prevent the majority Party in the Commons from using its temporary advantage there to change the Constitution for its own partisan purposes. When faced with a challenge of this sort the Lords have a duty to respond;" while Lord Shackleton, the Leader of the House of Lords, concluded his speech on second reading as follows:

> Should a House which we on the Labour side believe ought to be reformed, and ought not to be in a position to exercise a veto only on behalf of one Party, be enabled, in a matter which we are convinced, for reasons which I have given, is not constitutional, to be in a position, in the fourth or fifth year—the fatal years which they always use for this purpose—to be entitled, to hold up the House of Commons?" [*H. L. Deb.*, Vol. 304, col. 549.]

During the debate, Lord Brooke of Cumnor, a former Home Secretary, announced the type of amendments the Opposition would seek to carry into the Bill in Committee. He said:

> If the Bill is given a Second Reading today, Amendments will be tabled for debate in Committee. The main purpose of these Amendments will be to give the Government a breathing space, a breathing space of some eighteen months in which to reconsider their position: in which to appreciate how public opinion will be scandalised if the next General Election takes place on a constituency basis which is outdated and unfair, and which flouts the Boundary Commission's recommendations. The Amendments will give the Secretary of State up to March 31, 1970, to lay draft Orders in Council implementing the Boundary Commission's recommendations, with or without modifications as the law permits. Provided he does so by that date, the Amendments to this Bill will indemnify him against any breach of his duty under the existing law

to lay those draft Orders in Council as soon as may be after receiving the Commission's Reports. In other words, whereas Clause 1 of the Bill now overrides the existing law, the Amendments will preserve the law but will grant the Secretary of State up to the end of March to comply with it.

The date in the Amendments, March 31, is the same date which the Government themselves have inserted in the Bill as the date by which the Secretary of State may lay draft Orders in Council to give effect to the Boundary Commission's recommendations for Scotland and Northern Ireland; so there is good reason for the Amendments to take that same date. It is also, noble Lords will observe, a date before the next Greater London Council elections, so with these Amendments the Government will be in just the same position as under the Bill as it stands, to give effect to redistribution in Greater London. In fact, the change in the practical effects of the Bill which the Amendments will make will be limited to requiring the Secretary of State to lay Orders implementing the impartial recommendations of the Boundary Commissions not later than the end of March. This seems to me entirely in accord with the traditional function of your Lordships House, that of granting time for further thoughts. [*H. L. Deb.*, Vol. 304, cols. 484–5.]

The Committee stage of the Bill was taken on 21st July and after further debate the Opposition amendments were agreed to on, Division, by 174 votes. It was later shown that the Government would have still lost the Division if the House had been reformed on the lines of the Parliament (No. 2) Bill. The Bill was returned to the House of Commons before the summer recess, with the expectation that the Commons would immediately reject the Lords' amendments. The Government's decision, however, to allow the summer recess to pass before returning to the Bill did reduce the temperature of a situation which might otherwise have erupted into a serious clash between the Houses.

Meanwhile, on 3rd October, a Mr. McWhirter moved in the Divisional Court for leave to apply for an order of mandamus directed to the Home Secretary to compel him to implement the recommendations of the Boundary Commissions. Leave was granted and the application was heard on 20th October by a Court presided over by the Lord Chief Justice, Lord Parker of Waddington. The Attorney General appeared on behalf of the Home Secretary. After hearing submissions on both sides the Court dismissed the application. On 15th October the House of Commons rejected the Lords' amendments but set a date, 31st March, 1972, as being the latest date for reactivating the Boundary Commissions. When moving the rejection of the Lords' amendments the Home Secretary announced that if the House of Lords insisted on these amendments he would then lay the necessary Orders but advise the Commons not to approve them. On 16th October the Lords insisted on their amendments, the first time this had occurred since 1949. The Bill was then returned to the House of Commons where no further action was taken on it. Shortly afterwards Parliament was prorogued.

On the first day of the new session the four Orders implementing the recommendations of the Boundary Commissions were laid before

both Houses. On 12th November, 1969, in the House of Commons the Home Secretary moved that the Orders be not approved and advised the House to vote them down. After a lengthy debate the Orders were each rejected by 53 votes. The House of Lords was not asked, in these circumstances, to approve them.

* * * * * * * *

The new Government, elected to office on 18th June 1970, promised in the Queen's Speech that the recommendations of the Boundary Commissions would be speedily implemented. At the time of going to press Motions asking Parliament to approve the Orders stand on the Order Paper of each House for debate in October.

XVI. THE CARIBBEAN PARLIAMENTARY SEMINAR OF 1969

By Curtis V. Strachan
Clerk of Parliament, Grenada

Much of the paternity for the first Parliamentary Seminar to be held in the Caribbean can rightly be claimed by the Premier of Grenada, Mr. E. M. Gairy.

The 14th Commonwealth Parliamentary Conference was meeting in Nassau, Bahamas, in October, 1968, when the idea was conceived. The General Council of the C.P.A. was at the time discussing a proposal to discontinue the publication of one of its journals (*World Affairs*). In supporting the proposal for the discontinuance of that publication, Grenada's Premier in his maiden speech to the General Council, suggested that some of the money which will be saved by the discontinuance of the journal on *World Affairs*, might usefully be spent on Parliamentary Seminars in various parts of the Commonwealth.

He contended that although the annual Parliamentary Courses at Westminster held jointly by the U.K. Branch and the General Council of the C.P.A. were very useful and greatly appreciated by all branches of the Association in the Commonwealth, it was clear that those courses benefited a limited number of Parliamentarians. He therefore suggested that efforts should be made to supplement the Westminster Courses by holding Parliamentary Seminars in other parts of the Commonwealth, thereby providing an opportunity for all Members of the Parliament in the host country to participate, and also, Parliamentarians from nearby territories.

Mr. Gairy's suggestion was supported by several other members of the General Council, and was accepted. Soon after the Nassau Conference, firm arrangements were made for the first of such seminars to be held in Grenada. A parliamentary student once said that " Parliament is essentially a human institution "; perhaps it is not without significance that this parliamentary idea which was conceived in Nassau, came to life nine months later.

The Grenada Branch of the C.P.A. and the Government were pleased to be host to the Seminar, and invited the Parliaments of Canada, the United Kingdom, St. Lucia, St. Vincent and Dominica to send representatives. Invitations were also extended to the Chairman of the C.P.A.'s General Council, and the Regional Representative on the Executive Committee, both of whom attended and participated in the discussions.

All Members of both Houses in Grenada attended and participated. It was most encouraging that the Premier and other Ministers of the

Grenada Government were able, despite their busy ministerial schedules, to give the fullest support by attending all the sessions and taking an active part in the discussions.

The Seminar benefited greatly from the wealth of experience and knowledge of the Westminster and Ottawa teams, the Chairman of the General Council of the C.P.A., Mr. Montano, and the Regional Representative on the Executive Committee, Mr. Bissember.

The range of subjects covered were:

Parliament and the People
Government and Parliament
The Role of the Presiding Officer
Parliamentary Control of Finance
The Process of Debate
The C.P.A.—its work, purpose and future, and a Brains Trust.

Discussions were wide ranging and special attention was paid to the application of parliamentary procedures and practices to smaller territories, such as those in the Windward Islands.

A summary of the discussions was produced on each session, and copies were distributed to the branches of the C.P.A. and the press.

There were matters on which a clear consensus emerged. Those included the need to promote consultation and co-operation, to keep under constant review Parliament's function of examining estimates of expenditure, and to discourage, by all means, the pernicious practice of floor crossing.

The success of the Grenada project has generated much interest by other countries in the promotion of Parliamentary Seminars.

There has since been a proposal that a similar seminar might be held in Nairobi, and the Kenya Branch of the C.P.A. has already agreed in principle to serve as host to such a seminar, inviting branches of the Association in East, Central and Southern Africa.

The General Council of the C.P.A. gave tremendous assistance with the preparatory arrangements, and was very generous in its financial help.

There is very strong support in the Caribbean for the principle of Parliamentary Seminars, and it is hoped that wherever possible, other countries will promote parliamentary events of this type.

XVII. JERSEY'S CONSTITUTIONAL PROBLEM

By A. D. Le Brocq
Greffier of the States, Jersey

In January, 1967, a Special Committee of the States of Jersey was appointed to consult with Her Majesty's Government in the United Kingdom in all matters relating to the Government's application to join the European Economic Community.

At that time, it was expected that Her Majesty's Government would make early application for membership of the E.E.C. and it was realised that in the event of the application being successful the Island was bound to be closely affected for good or ill. The Committee therefore initiated an immediate survey of the economic situation of the Island and the probable effect on that situation of entering the E.E.C. At the same time, the Committee was concerned to resolve the constitutional issues involved, affecting as they did the freedom of choice of the Island as to its entry or non-entry into the E.E.C.

The constitutional issue is of extreme significance for the Island and while it has been brought acutely to the fore in relation to the Common Market, it arises with increasing frequency in many other matters.

Briefly, the difficulty stems from the fact that, in international affairs, the United Kingdom is regarded as responsible for the Island, so that an international undertaking of the United Kingdom includes and binds the Island unless its position has been made subject to a general or special reserve. But an international agreement may relate to matters which would normally be regarded as purely domestic and in respect of these domestic issues Jersey has been given, by the grace of successive Sovereigns and Parliaments, and in recognition of the loyalty of its people over many centuries, a very real measure of self-government. It may therefore be of interest to examine in greater detail how the present constitutional status of Jersey has evolved.

In A.D. 933 Jersey, together with other Channel Islands, was annexed by William Longsword, Duke of Normandy, and thereafter formed part of the Duchy of Normandy until 1204. In 1066 William, Duke of Normandy, after defeating Harold, King of the English, at the Battle of Hastings, became King of England. Between then and 1204, except for a brief period, England and the Duchy of Normandy were united in the person of the occupant of the English throne, who was both the English Sovereign and the Duke of Normandy.

In 1204 King Philip Augustus of France drove the Anglo-Norman forces out of Continental Normandy, but his attempts to occupy also insular Normandy were not successful, except for brief periods when some of them were taken by French forces. Thus the Channel Islands

remained, as before, united with England, and this fact was placed on a legal basis by subsequent treaties concluded between the Kings of England and France.

The origin of the title of the English Crown to the Channel Islands goes back, therefore, through the Kings and Queens of England, as successors to the Dukes of Normandy, to 1066; and from that year until the present time, with the exception of a few insignificant interruptions, they have remained possessions of the English Crown.

The Channel Islands are, therefore, dependencies of the Crown—outside the United Kingdom—which are distinguished from the colonial and other overseas dependencies by their proximity to Great Britain and by the history of their relationship with the Crown of England.

Recognition of these distinctive features possibly accounts for the decision taken in 1801 to separate government business connected with these Islands from government business connected with the Colonies. In that year, business connected with the Colonies was transferred from the Secretary of State for the Home Department to another Secretary of State; but no change was made as regards business connected with these Islands, and today such business remains with the Home Secretary.

The distinction between the ancient dependencies of the Channel Islands and the Isle of Man and the Colonial dependencies was exemplified in recent years by a special provision in the British Nationality Act 1948. In that Act, the words " citizens of the United Kingdom and Colonies " are used as a brief, collective designation of those British subjects who are not citizens of one of the Commonwealth countries specified therein: but as a Channel Islander or a Manxman cannot properly be called a " citizen of the United Kingdom and Colonies ", such a person is authorised by the Act to call himself a " citizen of the United Kingdom, Islands and Colonies ".

The Law of Jersey springs from the following five sources:

1. Royal Charters;
2. Prerogative Orders of the Sovereign in Council;
3. Acts of the Imperial Parliament;
4. Acts of the States of Jersey sanctioned by Order of the Sovereign in Council;
5. Triennial Regulations passed by the States of Jersey.

Royal Charters

The last Royal Charter granted to Jersey was that of James II (1687).

Prerogative Orders of the Sovereign in Council

The right within the Royal prerogative to legislate by Order in Council for Jersey is presumed to have been derived from the supreme legislative power possessed originally by the Dukes of Normandy; and for several centuries was the method commonly used. However, following the development of the English constitution, legislation by prerogative

Order in Council has been almost entirely superseded by the application or extension to Jersey of Acts of the Imperial Parliament.

Before a prerogative Order in Council can be executed in the Island, it must be registered in the Royal Court, and a command to that effect always accompanies such Orders. That requirement is prescribed by a provision in the Code of 1771* (referring to an Order in Council dated 21st May, 1679), which at the same time allows the Royal Court to suspend the registration of an Order considered to be contrary to the Charters and privileges of, or burdensome to, the Island, until the pleasure of the Crown be taken.

Where the Royal Court has exercised its power of provisional suspension, if, after representations have been made, the Sovereign is advised that there is no ground on which the Order should be revoked, the Crown in Council will direct that the disputed Order be registered and the Royal Court must then comply with such direction.

Acts of the Imperial Parliament

Jersey is subject to the legislative supremacy of Parliament, which has a " paramount right " to legislate for the Island. As a matter of strict law, that right extends to every field of legislation, including subjects of purely domestic concern and taxation, and may be exercised without the consent of the States.

An Act of Parliament does not extend to Jersey automatically; if it is intended that it should so extend, it must be expressly enacted as to the Island or to all of the Channel Islands, or as to all Her Majesty's Dominions, or must so extend by necessary implication. Where an Act of Parliament extends to Jersey in terms or by necessary implication, the practice is to transmit to the Insular Authorities an Order in Council directing that the Act be registered and published in the Island, as provided by the Code of 1771.

The legal operation of an Act of Parliament which applies to the Island in terms or by necessary implication is not dependent upon registration and publication, the purpose of which is merely to give notice to the inhabitants, and such an Act may be enforced in the Island even though not registered.

The power of provisional suspension of registration of Orders, Warrants and Letters conferred upon the Royal Court by the Code of 1771 is not exercisable in relation to Acts of Parliament which apply to the Island. If, therefore, it is desired to object to a parliamentary

* In 1770 a Committee was appointed and charged with the task of " selecting a proper Collection of the most useful & necessary Political Laws and Customs of this Island, out of that immense Chaos of them, which are now found confusedly scattered through the many Books of the States of all the different Courts and even in the most Ancient Records of the Island, in Order that such a Collection having been examined and considered by such persons of Learning and Judgement as His Majesty shall be pleased to appoint, may receive the Royal assent and Confirmation ".

The work, described as a " Recueil d'Ordonnances Politiques " was presented to the States on 20th October, 1770, and was approved by Order in Council of 28th March, 1771, and it is this Code which is now known as " the Code of 1771 ".

measure applying to Jersey on the ground that it would infringe the constitutional position of the Island, such an objection can only be taken by petition to Parliament itself and should be taken whilst the proposed measure is still under discussion and has not yet received the Royal Assent and so become an Act.

Where an Act of Parliament which it is intended shall apply to the Island contains provisions which require modifications to make them consonant with the insular administrative or judicial system, the modern practice is for the Act to provide for its extension to the Island by means of an Order in Council " with such exceptions, modifications, and adaptions, if any, as may be specified in the Order ". It is doubtful whether the power of the Royal Court of provisional suspension of registration can strictly be exercised in the case of such Orders in Council, which are made under the authority of an Act of Parliament. Moreover, it is considered that the Privy Council would decline to entertain a representation that Parliament had no constitutional right to enact the legislative provisions to which objection had been taken, on the ground that it could not question the competence of Parliament in the matter.

The right of the Royal Court to exercise the power of provisional suspension of registration in respect of statutory instruments made under an Act of Parliament has been recognised by the United Kingdom Government, for example, in relation to any Order or Regulations made, or Directions given, by the Board of Trade under the Civil Aviation Act 1949.

Although the right of Parliament to legislate for Jersey extends, as a matter of strict law, to every field of legislation, it is accepted that that right is now limited in two respects by constitutional convention. The two limitations are:

(*a*) taxation; and
(*b*) other matters of purely domestic concern to the Island.

United Kingdom legislation applying or extending to the Island at the present time is confined to matters affecting the Armed Forces, extradition and fugitive offenders, friendly, industrial and loan societies, savings banks, Post Office and telegraphs, sea fisheries, backing of warrants, copyright, merchant shipping, civil aviation and carriage by air, nationality, etc.

Acts of the States of Jersey, sanctioned by Order of the Sovereign in Council

The States initiate legislation of a permanent character by passing an Act, or " projet de loi ", which commences with the words: " The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law: . . . ". The Act remains inoperative until sanctioned by the Sovereign in Council.

The legislative powers of the States are also subject to the Bailiff's

power of dissent and the Lieutenant Governor's power of veto, which are respectively defined by Articles 22 and 23 of the States of Jersey Law 1966.

By constitutional usage, the States initiate legislation relating to taxation and all other matters of purely domestic concern to the Island; and in relation to these matters the discretion whether or not to legislate lies solely with the States.

Triennial Regulations passed by the States of Jersey

Under the Order in Council dated 28th March, 1771 (confirming the Code of 1771), as modified by the Order in Council dated 14th April, 1884, the States are empowered to make regulations which may remain in force for not longer than three years but which may be renewed for a like period. Such regulations must not infringe the Royal prerogative nor be repugnant to the permanent political or fundamental laws of the Island.

These, then, are the sources of Jersey law. As has been seen above, the right of Westminster to legislate for Jersey has over the years been subject to the constitutional convention that it will not legislate in matters of domestic concern. But since the United Kingdom is responsible for Jersey in international law, it means that many international conventions to which the United Kingdom accedes are binding on Jersey also. Jersey's position can, of course, be reserved; but international conventions are growing more numerous and many now apply to purely domestic matters, for instance Race Relations.

If the implementation of these conventions needed legislation which Jersey was unwilling to pass, then the United Kingdom Parliament might have to pass legislation affecting domestic matters of the Island contrary to established constitutional convention.

This clearly poses a great constitutional problem but comment on the political aspect of this would be inappropriate in this article.

XVIII. THE LEGAL STATUS OF A HOUSE OF PARLIAMENT

The Questionnaire for Volume XXXVIII asked the following questions:

How far is your House a " legal person " in its relations with the Government, local authorities and private persons and organisations? How, for example, does it pay for its electricity and its drainage services? Can it be sued for catering debts? Who sees that the building is safe? Does it pay rates?

The returns show that, whatever its legal status, a Parliament building is invariably maintained by a government department and that most of the expenses of the legislature are borne, in the end result, by the Government.

Any immunity a House may enjoy in law varies from country to country but, in all cases, remains obscure. In the United Kingdom, Parliament is housed in a royal palace; in Canada, on Crown land; in the Cayman Islands, the town hall. These differences are reflected to some extent in the immunity enjoyed. According to the returns, only once has any claim been made against a House of Parliament, and then the claim was settled out of court.

In some Houses an Officer of that House is accepted as being the person responsible in law for any debts or claims incurred, but in Australia the liability appears to rest more with Joint House Committees.

Few Houses, according to the returns, pay rates or municipal taxes.

Westminster: House of Lords

Strictly speaking, the legal status of the House of Lords is that it is a Court, in fact the highest Court. Because of the undifferentiated nature of government in the middle ages, the House has also evolved into a House of Parliament; and because this function developed from among those exercised by a Court which had general administrative, judicial and military functions, and which was therefore naturally housed in a royal palace, the House has continued to inhabit the Palace of Westminster, which, until 1965, enjoyed the full status of a Royal Palace whose upkeep and management was the responsibility of a Court Official, the Lord Great Chamberlain. Since then, though the building at Westminster continues to be a Palace, the two Houses have been given responsibility for the management of their own accommodation in the Palace, and are in direct communication with the Ministry of Public Building and Works for this purpose. Similarly, they communicate directly with the Stationery Office and have done so until recently with the Post Office. Now that the Post Office is a

Corporation and not a Ministry, communication with it will probably eventually be made through the Ministry of Posts and Telecommunications. But payments for electrical and other services are the responsibility of the Ministry of Public Building and Works; since the Crown pays no rates, but the Treasury makes a payment in lieu to the relevant local authorities, presumably the services given to the Palace of Westminster are included among those paid for in this manner.

In addition to what might be called the official services described above, the House does behave virtually as an ordinary private corporation in organising its catering services and such incidental matters as War Memorials. The legal position is obscure, and it seems very unlikely that any action could be brought against the House on this account. But for ordinary purposes the person in whose name these operations are carried out is generally taken to be the Chairman of Committees, though occasionally special arrangements may be made; for example a banking account has been opened in the name of the Chairman of Committees for the time being and the Lord Great Chamberlain for the time being.

Should it be necessary to enter into a more solemn contract, the House would almost certainly be represented by the Crown, responsibility for advising whom would presumably rest, in this as in all other matters, ultimately with the Government.

From the point of view of its own servants, the House is regarded as a separate entity, and, in principle at least, has its own revenue. But in practice much the greater part of this revenue comes from the Treasury, and the servants of the House are paid on the same scales as civil servants. The Treasury and the Civil Service Ministry have a very considerable influence in staff matters, though no doubt as a matter of strict law they are acting as the agent of the House.

On the other hand, such matters as the payment of Peers' expenses are very largely recognised to be the responsibility of the Government.

Westminster: House of Commons

While the House of Commons is in some respects a " legal person " —for instance, it is a court of law which can arraign and punish outsiders as well as its own members—it is not one in the sense that it can enter into contracts and be sued upon them. Certain persons and committees assume on behalf of the House certain responsibilities which have legal consequences, and these can be sued. Among these persons are the Clerk of the House and the Serjeant-at-Arms. The Catering Sub-Committee, though legally the Speaker's agent, control the kitchen and refreshment services and contract in their own name for all supplies, staff, etc., and could be sued on any contracts they make. The House itself cannot be sued.

Responsibility for the maintenance and safety of the building, as well as for new building, lies with the Serjeant-at-Arms, although the Ministry of Public Buildings and Works carries out the actual work and

pays the expenses. Electricity and drainage services are among those paid for by the Ministry. Administrative expenses—for instance the salaries of officials—and stationery and printing costs are borne on the House of Commons Vote.

The building itself is a royal palace and therefore does not pay rates, but the Treasury valuer makes a contribution in lieu to the Westminster City Council, as is customary in such cases.

Jersey

The Public Works Committee is responsible for the maintenance of the States Building and is granted a vote of credit for general expenses and improvements. The House does not pay rates but it can be sued for debts.

Isle of Man

Neither Tynwald nor the Branches of Tynwald (Legislative Council and House of Keys) are considered a " legal person " in the sense mentioned. The Boards of Tynwald, however, are executive bodies and the Commercial Boards operate public utilities similar to those in the private sector. All the expenses of the Legislature are paid for by vote of Tynwald.

There is no procedure for suing the Legislature (although there is the ancient right of petition for redress).

The Isle of Man Government is responsible for the building in which the Legislature meets and for all services relative thereto.

Canada: Senate

The Senate of Canada has a collective identity as a House of Parliament and as a constituent element of Parliament together with the Crown and the House of Commons. As such, it has a legal personality of its own. However, its attributes, powers, privileges and immunities derive directly from the Canadian constitution, the British North America Act 1867, as amended, and the *lex et consuetudo parliamenti.* They do not derive, as do those of ordinary legal persons, from the ordinary common law or from ordinary statutes. The Canadian Senate occupies, as does the House of Commons, a part of the Centre Block of the Canadian Parliament Buildings, title to which vests in the Crown in the right of Canada. Such property is not taxable by the provincial legislatures or by municipalities. Though the Parliament Buildings are in Ottawa, Ontario—the capital—no municipal taxes are therefore payable. However, by virtue of section 9 of the Municipal Grants Act, Chapter 182 of the Revised Statutes, as amended, it is provided that in respect of the Parliament Buildings " a grant may be made in or around what, in the opinion of the Minister (of Finance) is a reasonable compensation for the expenses incurred by that city in furnishing services to the property ".

The Senate has its own protective and cleaning staffs. Catering is

provided by the Parliamentary Restaurant under the supervision of a Joint Committee of Parliament. Many other services are provided by the Department of Public Works. The Crown in right of Canada may be sued for contracts entered into on its behalf pursuant to the Financial Administration Act, Chapter 247 of the Revised Statutes, as amended. However, there is nothing in the British North America Act, in the *lex et consuetudo parliamenti*, or in statutory or case law, indicating that the Senate *per se* is a " legal person " in the sense that it is a suable entity. Moreover, by virtue of sections 4 and 5 of the Senate and House of Commons Act, Chapter 249 of the Revised Statutes, as amended, the privileges of each House are expressed to be part of the general and public law of Canada and the courts are required to take cognizance of such privileges.

Canada: House of Commons

The House of Commons has a recognised legal personality only as a constituent element of Parliament together with the Crown and the Senate. There is authority for the proposition that the executive Government has no control over the internal economy of the House. The power, immunities and privileges of the House are part of the law of Parliament which includes matters of internal economy and by statute the powers, privileges and immunities are part of the general and public law of Canada of which the courts are required to take judicial notice. The House of Commons occupies, as does the Senate, a part of the Centre Block of the Canadian Parliament Buildings but the title to the buildings rests in the Crown in the right of Canada. Accordingly, this property is not subject to taxes imposed by provincial legislatures or by the municipality of the City of Ottawa where the Parliament Buildings are located. However, to compensate the municipality for this loss of revenue, provision is made by federal statute for a grant to be paid to the city in lieu of taxes based on a reasonable compensation for the expenses incurred by the city in furnishing services to the property.

The House of Commons has its own protective and cleaning staffs. Any catering required is provided by the Parliamentary Restaurant under the control of a Joint Committee of the Senate and House of Commons. Many services are provided by the federal Department of Public Works. Generally speaking, the Crown in the right of Canada may be sued in contract or tort as provided by legislation to this effect. However, there is nothing in the constitution or in the law of Parliament or, for that matter, in any statute or case law that indicates that the House of Commons *per se* is a legal entity in the sense that it may be sued as such.

British Columbia

The House is not a " legal person " in the sense suggested. All services and security are provided through the Department of Public

Works in consultation with the Speaker. The facilities of the Parliamentary Restaurant are also provided through the Department of Public Works, but its operation is controlled by the Speaker's office.

Saskatchewan

The Act establishing the Legislative Assembly of Saskatchewan states that; " The Assembly shall be a court and shall have all the rights, powers and privileges of a court for the purpose of summonarily inquiring into and punishing the acts, matters and other things following:

" (*a*) assaults, insults and libels upon or to members of the Assembly while in session;

" (*b*) obstructing, threatening or attempting to force or intimidate members of the Assembly;" etc.

And " For the purposes of this Act the Assembly shall possess all such powers and jurisdiction as may be necessary or expedient for inquiring into, judging and pronouncing upon the commission or doing of any such acts, matters or things and awarding and carrying into execution the punishment thereof as provided for by this Act ".

And " Every person who, upon such inquiry, appears to have committed or done any of these acts, matters or things mentioned in section 30, shall, in addition to any other penalty to which he may by law be subject, be liable to imprisonment for such a time as may be determined by the Assembly. The determination of the Assembly upon any proceedings under this Act shall be final and conclusive."

The Speaker of the Assembly is responsible for the order and decorum of the Assembly as set down in the Standing Orders.

The Legislative Assembly of Saskatchewan does not have direct financial responsibility for the care of the building or the chamber. The care of the Assembly, such as heat and light, is the responsibility of the Minister of the Department of Public Works. The expenses are thus provided for through the Appropriation Act which grants money from the consolidated fund.

North-west Territories

The Council of the North-west Territories is not a " legal person ". The cost of all services such as building rental, telephone charges, catering, etc., is provided for in Territorial Government estimates.

All Council staff, both permanent and temporary, are employed by and paid by the Government of the North-west Territories.

Commonwealth of Australia

So far as can be ascertained, Parliament House is not given status as a " legal person " in any statute, or in any subsidiary legislation. However, individual Parliamentary Departments could be regarded as being legal persons as they are vested with rights and obligations in such legislation. It would appear that there has been no occasion on

which the House has been regarded as a single legal entity by the Government, or any outside organisation. However, the Presiding Officers have, on occasions, in their capacity as Parliamentary Heads, presented the views of Parliament House to the Government on administrative matters, but this is virtually a consensus of the views of all Parliamentary Departments and not the view of a single body. The Joint House Department meets from Treasury Votes under its control, the following expenses:

(*a*) Electricity
(*b*) Excess water rates, but not land rent or rates.
(*c*) Drainage services.
(*d*) Telephones.

The catering services are administered by the Joint House Department, but financially they are quite separate from the Treasury system under which the Department operates. The question has never arisen, but it is considered that the Parliamentary Refreshment Rooms could be sued for catering debts, and also it could itself sue for payment of debts due to it. The security of the building is primarily the responsibility of the Joint House Department which acts in liaison with the other Parliamentary Departments concerned in any particular matter. Control is exercised in three ways:

(*a*) The Joint House Department Attendants at the door control entrance to the building, and a nightwatchman patrols at night.
(*b*) The House Departments (Senate and House of Representatives) control attendants who are responsible for corridors and rooms in their particular areas.
(*c*) The Australian Capital Territory Police provide an officer at the front entrance during recess periods, but in sessional periods, additional to this, officers are stationed in the King's Hall and Public Galleries, and a patrol is maintained outside the building.

New South Wales

The New South Wales Parliament is not a body corporate. In 1964 a claim was made by a Mrs. Amy Watson for compensation for injury whilst visiting Parliament House on 1st August, 1963. At the time the matter was reported to the Government Insurance Office of New South Wales and the Under Secretary of Justice was appointed nominal defendant under the Claims Against the Government and Crown Suits Act, 1912. The case was listed for hearing at the Supreme Court on 3rd March, 1967, but was settled out of court for $5,000.

Each year the Budget includes provision for the normal expenses of the Legislature, viz. salaries, etc., maintenance and working expenses and other services. In addition, the Budget provides for the following services to all Departments including the Legislature to be met from the Group Votes of the Departments listed:

Advertising	Premier's Department
Stores, furniture, etc.	Treasury (by the Government Stores Department)
Printing	Treasury (by the Government Printing Office)
Repairs, maintenance and renewal of buildings	Public Works Department
Electricity and gas	" " "
Telephones	" " "

Government Departments, including the Legislature, are exempted from the payment of water, sewerage and local government rates.

The catering at Parliament House is provided by the Parliamentary Refreshment Room and is controlled by House Committees of the Legislative Council and Legislative Assembly meeting jointly. The House Secretary and Parliamentary Accountant is the administrative officer. No case has occurred where debts have not been met, but it is assumed the administrative officer would be the person who would act on behalf of the House Committees.

With regard to the safety of the building, on occasions arrangements are made for the Public Works Department to inspect. This Department carries out all maintenance, repairs and building work in the establishment.

Queensland

Parliament House is rate free in common with other State Government Buildings. Water and sewerage rates are paid to Brisbane City Council. Cost of supply of electricity and gas is borne by Department of Works. Maintenance of Parliament House buildings, new constructions, etc., are executed by Department of Works. Parliamentary Refreshment Rooms Committee is responsible for conduct of staff of Parliamentary Refreshment Rooms which has a manageress and wages staff, female and male.

Tasmania

The House Committees pay for electricity and other services. Resident office-keepers are responsible to report anything amiss. The building and contents are regularly inspected by a responsible officer. Parliament House does not pay rates.

South Australia

The Joint House Committee Act 1941 authorises the appointment of a Joint House Committee consisting of the President of the Legislative Council, the Speaker of the House of Assembly, and three Members from each House. An officer of one of the Houses is secretary to the Committee. The Committee, *inter alia*, controls the dining- and refreshment-room services. The caretakers are responsible to the Committee for the security of the building. The Joint House Com-

mittee is created a body corporate by statute, and as such, presumably could be sued. The Committee enjoys perpetual succession, has a common seal and is capable of holding and dealing with property of all kinds.

Parliament House is not liable for State Land Tax or local government rates. Provision is made on the annual estimates of payments from Consolidated Revenue Account for electricity and water and sewer rates. These payments are made by the Clerk of Parliaments.

Victoria

Section 23 of the Crown Proceedings Act 1958 renders the Crown liable for torts and in contract, in the same manner as a subject is liable. The Houses and their respective departments probably still enjoy immunity. The Joint House Committee, which is responsible for services such as electricity, drainage, catering, and the like, probably does not. Electricity is paid for from loan funds at ruling rates. A contract involving catering debts is probably enforceable against the Joint House Committee. The safety of the Parliament Building is ensured by regular police patrols around the perimeter and by internal fire-watching and security services provided by the Joint House Committee. No rates are paid in respect of the Parliament Building, except that *ex gratia* payments are made to the municipality in respect of the residential accommodation of the Housekeeper of each of the two Houses.

Western Australia

Each House is a legal entity, as it is established under the Constitution Act. Whether it can be said to be a body corporate in the strict legal sense of the word is not known. There is no doubt that the Joint House Committee is not a legal entity and has always acted without legal authority. The Standing Orders of each House provide for the election of a House Committee of that particular House with power in each instance for the relative House Committees to confer with each other. The Houses pay for electricity and drainage services through the Public Works Department Vote.

In view of the lack of any legal foundation it would be difficult for anybody who wished to sue the Joint House Committee for payment of catering debts. It is doubtful whether it could be sued.

The Houses are exempt from paying rates. The Controller is responsible for seeing that the building is safe.

Northern Territory

The Act of the Commonwealth of Australia Parliament which constituted this Council provides that the Council may declare its powers, privileges and immunities by Ordinance provided that those powers, privileges and immunities do not exceed those of the House of Commons at the establishment of the Australian Commonwealth.

To this extent and to the extent that the Council is an arm of the Commonwealth, the extent to which it can be sued is limited. Electricity, water, garbage and sewerage rates are paid to the respective authorities. A maintenance service for the building is provided by the Commonwealth Department of Works and is paid for by the Council. Being on Crown land the Council does not pay municipal rates.

Papua and New Guinea

The Papua and New Guinea House of Assembly is not a " legal person ". The Administration looks after all the financial aspects through the Department of the House of Assembly. The Department is responsible for the security of the buildings and the Department of Public Works provides the services and maintenance of the building through funds made available by the Administration. There are no rates payable.

New Zealand

The Parliament of New Zealand, as defined by the Acts Interpretation Act 1924 (as amended by the Legislative Council Abolition Act 1950), means the House of Representatives in Parliament assembled. The same Act defines a " person " as being *inter alia* a body of persons whether incorporate or unincorporate. Section 5 of the Crown Proceedings Act 1950 states that " except as expressly provided by this Act or in any other Act, this Act shall not be construed so as to make any Act binding upon the Crown which would not otherwise be so binding, or so as to impose any liability on the Crown by virtue of any Act which is not binding on the Crown ".

To the extent, therefore, that the Legislative Department (of which the Prime Minister is the political head and of which the Clerk of the House of Representatives is the permanent head and which exists to provide the necessary services to enable the New Zealand Parliament to function) represents the Crown, its liability may be set out as follows.

The Legislative Department, as the Crown, is not responsible for the payment of general rates to the Wellington City Council or local body servicing the area in which Parliament House is situated. The Crown does make some payments in some areas in respect of or in lieu of rates but only on an *ex gratia* basis, and no legal liability for such payments exists.

The Legislative Department makes provision on its annual Estimates for payments to the local body for electricity supplied to meet Parliament's needs, and also makes provision for the payment of water rates. In default of payment of water rates, the local body would not be under any compulsion to provide the water required for Parliament House.

The House itself cannot be sued for any catering debts owing by Bellamys or the catering section of the Legislative Department, which exists to provide meals and other refreshments for Members and others, and whose management is in the hands of a Manager appointed by the

Clerk of the House but whose policy, in the conduct of his establishment is determined for him by the House Committee. The Crown Proceedings Act, however, does provide a means under which civil proceedings may be instituted against the Attorney-General for recovery of catering debts owing by Bellamys.

The safety of the building itself, which is the property of the Crown, lies with the Ministry of Works which is also responsible, within the limitations of the monies provided by Parliament, for its maintenance and upkeep. The Standing Orders of the House of Representatives, however, purport to vest the control of Parliament House grounds and the erections thereon in Mr. Speaker on behalf of the House, but the Standing Order expressly excludes from his control those portions of the building permanently occupied by Ministers of the Crown. (The Prime Minister and all other Ministers have been permanently housed in Parliament House since 1922).

From the point of view of security, the Clerk-Assistant is the Security Officer who maintains a liaison with the appropriate officers in the ministerial offices and also with the Police and with the Director of the Security Service who himself is directly responsible to the Prime Minister.

The Clerk-Assistant is also responsible for the issue of appropriate instructions to the fire wardens, staff and Members working within Parliament House in the case of a fire or earthquake, and for the conduct of evacuation trials and other appropriate exercises.

Ceylon: Senate

The House has no " legal status " in its relations with the Government, local authorities, private persons, etc. Electricity dues are met from funds provided by Parliament in the Annual Appropriation Bill under the Votes of the House. No direct payment for drainage services or rates arises as the Senate is housed in a Government building. Payment of rates, etc., to local authorities in respect of Government buildings is done by the Central Government.

The House cannot be sued for catering debts. Contracts for the supply of items necessary for catering services of the Refreshment Room of the Senate are entered into by the Clerk of the Senate. He thus becomes liable to be sued.

The Clerk appoints Watchers to his staff who keep watch over the Senate Building day and night.

India

Parliament House is a Government building; it is constructed by the Government of India; maintained by the Government and for all purposes it is considered to be a Government property. Water, electricity and other service charges are paid by the Government of India. The Government have to ensure the safety of the building.

The building is placed at the disposal of the Speaker, Lok Sabha

and Chairman, Rajya Sabha. No rent is, however, charged from the Secretariat of Parliament. The sole discretion for allotment of rooms and carrying out of additions and alterations in their respective sectors lies with the Speaker, Lok Sabha and the Chairman, Rajya Sabha.

Catering in Parliament House is undertaken by agencies—Government or private—for the payment of whose debts, etc., Parliament Secretariats do not owe any responsibility. At present catering services of Parliament House are undertaken by a Government Agency and payment of dues accruing out of catering services, etc., is the responsibility of that Department.

Andhra Pradesh

The Legislature pays for its electricity and drainage services. It also pays a tax similar to property tax to the local authority. The Public Works Department maintains the building.

Bihar

The House cannot be sued for any dues. The payment of all categories of dues rests entirely with the Head of the Office.

Gujarat

The Assembly is the creature of a written Constitution. The Governor is the Head of the Legislature, just like the Sovereign in Great Britain. For all practical purposes the administrative side of the House is managed like any other Department of the Executive Government, though independent of it, and can, therefore, sue and be sued upon.

All building accommodation is provided for by the Public Works Department of the Executive Government and they maintain the premises. The payment of charges for water, electricity, etc., to the local authorities is the liability of the Legislature Secretariat and provided for in its Annual Budget.

As far as catering debts are concerned, the contract with the caterer is entered into by the Secretary of the Legislature Secretariat and as such the Secretary of the Legislature Secretariat can be sued for any catering debts.

Madhya Pradesh

This State Legislature has no definite entity as a " legal person " with independent rights of suing and the liability of being sued, as have ordinary corporations. The State alone is empowered to sue, enter into contracts and do all things which a " legal person " can do.

Tamil Nadu: Legislative Council

Under the Constitution of India, the House of a State Legislature is not a " legal person " as such. It can neither sue nor be sued. Nor

is it a Corporation or a Company with perpetual succession. As far as the State of Tamil Nadu (formerly State of Madras) is concerned, the affairs of the Legislative Council are dealt with by the Legislative Council Secretariat. The Legislative Council Department, of which the Secretary is the Head, is treated as a Department of the State Government in its relations with the Government, local authorities, and private persons and organisations. The Secretary to Government can sue or be sued as the representative of the State as provided for in Article 300 of the Constitution of India. This Article provides for the Government of a State to sue and to be sued.

Electricity and other service charges are paid by the Secretary from out of the Budget allotment made to the Legislative Council Department. The Legislative Council Chamber is located within the Secretariat Buildings and the dues to the Corporation, etc., are paid by the Government themselves and no portion of them is debited to the Budget head of this Department.

The maintenance of, and improvements to, the Chamber buildings are the responsibility of the Public Works Department of the Government. This Department also looks after the safety, etc., of the building.

If the Secretary incurs any catering debts, he can be sued, as a Department of the Government. So also, he can sue as a Department of the Government.

Tamil Nadu: Legislative Assembly

The Legislative Assembly as such is not a " legal person ", as it can neither sue nor be sued, and it does not have a perpetual succession. The Assembly Chamber is situated in the ground floor of the Secretariat buildings and the permanent fixtures in them are under the administrative control of the Speaker. The Government, through the Public Works Department which maintains the Secretariat buildings, looks after the safety of the Assembly Chamber buildings. As regards payment of electricity and drainage charges, they are met by the Legislative Assembly Department.

Maharashtra

The question regarding the legal status of the two Houses of the Maharashtra Legislature cannot be answered in categorical terms, as several departments of the State Executive Government are connected with the execution of contracts for the maintenance of the building, supply of stationery, printing of proceedings, etc.; and the Legislature Secretariat comes into the picture in only a very few cases.

The building is maintained by the State Executive Government through the Buildings and Communications Department. The same department also pays for the drainage service; but the electricity charges are paid by the Maharashtra Legislature Secretariat.

As far as catering debts are concerned, it is stated that the contract with the caterer is entered into by the Secretary of the House, and as

such the Secretary of the House can be sued for any catering debts. Municipal rates are paid by the Legislature Secretariat.

Mysore

Under the Indian Constitution, the House of a Legislature is not considered to be a "legal person" in the sense in which it is contemplated in the questionnaire. Article 300 of the Constitution of India says that the Government of India may sue, or be sued, in the name of the Union of India and the Government of a State may sue or be sued in relation to their respective affairs, etc.

All contracts are also entered into in the name of the Governor of a State. As regards payments for electricity and other services, it may be pointed out that a separate grant is provided for Parliament and State Legislatures in the Budget and the money provided under the said grant is utilised for making payments of the kind mentioned in the questionnaire.

All the same, the House is deemed to be a legal entity in certain matters such as privileges of the House. The House has powers to punish for contempt or breach of privilege. The House can be impleaded in respect of writ matters.

Orissa

Charges for the consumption of electricity by this State Legislature are borne by this Secretariat. No payment is made with regard to the drainage services. The P.W.D. looks to the safety of the building. No rates are paid on account of this.

Malaysia

It is difficult to say the extent to which the House of Parliament is regarded as a " legal person " in view of the fact that so far the House itself has never come into conflict with the Government, local authorities, private persons and organisations.

Electricity and water consumed in the Parliament building are paid for as in the case of any other individual. There is no question of the House being sued for catering debts, as meals and other services rendered in the building are paid for by the individual Member or officer concerned.

The safety of the building is the responsibility of the Ministry of Works, Posts and Telecommunications and all the day-to-day cleanliness and maintenance is looked after by a Building Supervisor who is an officer in the Parliamentary Service. At present, no rates are paid in respect of the building.

Malta

The House meets in the Tapestry Chamber on the first floor of the Grandmasters' Palace in Valletta. The Speaker's chambers, Ministers' chambers, Members' rooms, the Lobby and the restaurant are on this same floor. This floor is shared also by several chambers and offices

belonging to the Governor General. Electricity, water and drainage costs are prepared quarterly by the authorities concerned and presented in one bill. Settlement is shared on a proportional basis between the Governor General and the House.

The care and maintenance of the whole Palace impinges upon the duties of the Ministry of Public Building and Works. A repairs and maintenance gang, headed by an architect, is often on the premises. Costs of repairs, stores and wages for this gang are charged to a special vote of this Ministry.

The catering facilities in the House are discussed by an *ad hoc* Committee composed of Members of both sides. Catering is contracted out on a year-to-year basis. The Committee, with the help of the Clerk of the House, ensures that the conditions agreed upon are adhered to.

Zambia

The House is a " legal person " in so far as the settlement of bills for accounts rendered in respect of water, electricity, etc., are concerned. Because of the immunity it enjoys in terms of the National Assembly Powers and Privileges, the House may not be sued. Even if a person erroneously sued it would be impossible to serve summons on the Clerk as this cannot be done within the precincts of the Parliament Buildings. The Buildings are insured and, like any other Government buildings, rateable values are paid by the Ministry of Provincial and Local Government to local authorities.

Cayman Islands

Sessions are held in the Town Hall which is a Government building and is supervised by the Public Works Department.

Grenada

The House is not a " legal person ". It pays for all its services by a vote provided by the Appropriation Act. The Clerk of the Parliament is responsible for the safety of the building. The House does not pay rates.

Gibraltar

The Legislature is a statutory creation and to that extent is a " legal person ".

All the expenses of the House of Assembly including electricity, telephone, etc., are met from the general revenues of the colony.

The building is maintained by the Lands and Works Department.

Mauritius

The Legislative Assembly has a constitutional existence (vide Chapter V of the Constitution). It depends, however, on the Government initially and on itself finally for its budget as all public expenditure

must be sanctioned by the Legislative Assembly. The building housing the Legislature is a State building and, as such, pays no rates to the local authority. The Legislature does, however, pay for its electricity to the Central Electricity Board. It could certainly be sued for catering debts in the same way as the Government could. The Ministry of Works looks after all State buildings.

Ghana

The National Assembly does not have the status of a " legal person " in its relations with the bodies mentioned.

The Government pays for all services, including security, provided for the House.

The House does not pay rates.

Trinidad and Tobago

The building in which the " House " is accommodated is owned by the Government. All services provided, including the staff, are at the expense of Government.

As a result the Government supervises all aspects of the facilities provided for the Parliament through the Clerk of the House who is the Senior Parliamentary Officer.

Both Houses meet in the same Chamber on the respective days allocated to them.

The Gambia

The House of Parliament is not a " legal person " in its relations with the Government, local authorities and private persons and organisations. Government pays for its electricity and drainage services. The House cannot be sued for catering debts. A caretaker is employed by the Legislature Department to see that the building is safe. The House does not pay rates.

XIX. APPLICATIONS OF PRIVILEGE

At Westminster

House of Commons (Impartiality of Chairman of a Select Committee questioned.)—On the evening of 5th March, the *Wolverhampton Express and Star* carried an article entitled " Another protest on M.P.'s visit ". It concerned the proposed visit to Wolverhampton in the course of an enquiry into housing finance of Sub-Committee B of the Estimates Committee, whose Chairman was Mrs. Renée Short, the Labour M.P. for Wolverhampton North-east. In the article, Alderman Peter Farmer was quoted as saying that he felt it was undesirable for Mrs. Short to go to Wolverhampton, where she would be unable to give an unbiased review of the situation, and that she should therefore go to a neighbouring authority.

On 7th March, Mrs. Short raised the matter in the House, claiming that a slur on her ability to act impartially as Chairman was also a slur on the Committee and so on the House, and that the article constituted a breach of privilege and contempt of Parliament.

On 10th March, Mr. Speaker gave his ruling that a *prima facie* case of breach of privilege had been established. Mr. Peart, the Leader of the House, moved that the matter be referred to the Committee of Privileges. The Motion was agreed to, with reservations by the Member for Ebbw Vale, Mr. Michael Foot, who felt that it was time that " the Government introduced proposals and legislation on the basis of recommendations made by the Select Committee on Parliamentary Privileges in 1967. The House should accept much wider terms of freedom of discussion throughout the country of affairs which previously had been governed by privilege."

The Committee reported on 18th March. They found that the words attributed to Alderman Peter Farmer were substantially correct, and could be construed as a contempt of the House. However, they recommended that they should not be so construed, quoting a passage in the report of the Committee of Privileges of 16th June, 1964, which ran as follows:

> It seems particularly important that the law of parliamentary privilege should not, except in the clearest case, be invoked so as to inhibit or discourage formation and free expression of opinion outside the House by Members equally with other citizens in relation to the conduct of the affairs of the nation.

The Committee added that they would take a grave view of any attempt to obstruct any committee or sub-committee of the House or any of its Members in the execution of their duty (*H.C. Deb.*, Vol. 779, cols. 849–50. *H.C. Deb.*, Vol. 779, cols. 988–90.)

British Columbia

Member receiving pecuniary reward for services involving enactment of legislation.—A member of the Legislative Assembly was suspended from the service of the House on 2nd April, 1969, in the following circumstances. After prayers, Mr. Cappozi rose on a matter of privilege and moved the following motion:

> That the member from Burnaby-Edmonds be admonished by the Speaker for breach of privilege and be suspended from the service of the House for the remainder of this Session.

On hearing the submission made on the Motion Mr. Speaker declared a recess until 3.12 p.m. When Mr. Speaker resumed the Chair he quoted the authority of May, 17th edition, at page 115, which states, " It has also been declared contrary to the law and usage of Parliament for any member to be engaged, either by himself or any partner, in the management of Private Bills before either House of Parliament for pecuniary reward ", and observed that, while extenuating circumstances may exist, nevertheless a *prima facie* case of breach of privilege had been established and, accordingly, Mr. Speaker ruled the Motion to be in order.

The debate on the Motion was resumed and was agreed to on division.

The House again recessed.

Mr. Speaker then resumed the Chair and requested the Member for Burnaby-Edmonds to stand in his place, whereupon Mr. Speaker addressed the Member as follows:

> *Mr. Member*—Pursuant to the Order of this House, the Chair is now called upon to censure you for a breach of the privileges of Parliament—namely, that you were a partner in a firm which acknowledged receipt of pecuniary reward for services involving the enactment of legislation.
>
> In accordance with the said Order you are suspended from the service of the House for the remainder of this Session.

Upon completion of the statement by Mr. Speaker, the Member for Burnaby-Edmonds withdrew from the Chamber.

New South Wales: Legislative Assembly

Contributed by the Clerk of the Legislative Assembly

Member's wife receiving intimidatory telephone call.—The Honourable Member for Merrylands, Mr. Ferguson, drew the attention of the House to a Question he had asked the Premier and Treasurer earlier in the week concerning allegations of illegal gambling at Strathfield. He stated that last night his wife had received a telephone call and the caller had said, " If he (Mr. Ferguson) mentions baccarat there will be a bomb in his home ". Mr. Ferguson said that this threat upon his life was intimidatory and constituted an infringement of the rights and privileges of Members of Parliament.

The Speaker ruled that *prima facie* the matter affected the privileges of Members of the House.

Mr. Ferguson then moved, " That this House reaffirms the traditional right of its Members to speak freely and without fear on all matters of public interest." After debate the Motion was agreed to. (Votes and Proceedings, Session 1969–70, p. 109: P.D., p. 1279.)

Papua and New Guinea

Contributed by the Clerk of the House of Assembly

Newspapers casting reflections on the House.—On 17th June, 1969, pursuant to Standing Order 22, a Committee of Privileges was appointed. This was the first time in the history of the House that it had been necessary to appoint the Committee (Minutes of Proceedings, p. 195.)

The same day, Mr. Traimya Kambipi, M.H.A., raised a matter of privilege based on a television interview in Australia and certain newspaper articles published in Australia and the Territory (Minutes p. 195) (*Hansard*, p. 1134). The case became popularly known as the " stooges case ".

On 18th June, 1969, Mr. Speaker informed the House that he had referred the matter to the Committee of Privileges. (Minutes, p. 199) The same day, the House resolved that the Committee, while considering this matter, have power to send for persons, papers and records (Minutes, p. 200). On 27th June, 1969, the Chairman of the Committee, Mr. Dutton, M.H.A., made a statement to the House concerning the matter of privilege (Minutes, p. 229, *Hansard*, p. 1420–1).

The Committee presented its report on the matter on 25th August, 1969 (Minutes, p. 249). The report was debated in the House on 28th August, 1969 (Minutes, p. 256) and adopted.

Following publication of the Committee's report, in particular par. 24 (4) regarding an apology from the editors of the *Post-Courier* and their predecessors, the *Post-Courier* published an article stating that it saw no reason why it should apologise and would not apologise. After adopting the report of the Committee of Privileges the House resolved that the Speaker be asked to exclude the representatives of that newspaper from the House for the remainder of the meeting or until the newspaper apologised, whichever was the sooner. The Speaker acceded to the request and no apology had been made when the meeting concluded on 10th September 1969 (Minutes, pp. 258, 259).

India: Lok Sabha

Reported statement of a chief Minister that appointment of a Parliamentary Committee to study the situation in a part of his State would amount to interference in the affairs of that State.—On 7th April, 1969, Shri Madhu Limaye, a Member, sought leave of

the House to raise a question of privilege against the Chief Minister of Andhra Pradesh (Shri Brahmananda Reddy) for the latter's reported statement that appointment of a Parliamentary Committee to study the situation in Talengana would amount to interference in the affairs of that State. As more than twenty-five members stood in support, the Speaker declared that the leave of the House was granted.

Shri Madhu Limaye then moved:

That the question of privilege arising out of the reported statement of Shri Brahmananda Reddy, Chief Minister of Andhra Pradesh, made at Palam Airport, Delhi, be referred to the Committee of Privileges.

Shri Limaye contended that the statement of Shri Brahmananda Reddy constituted an undue influence on the Members of Parliament and an obstruction in the discharge of their duties. He felt that this had brought the House into disrepute and was, therefore, a contempt of Parliament. He added that the Government of Andhra Pradesh had violated the Presidential Order with regard to the functioning of Regional Committees in Andhra Pradesh, constituted by Order of the President in exercise of powers under Article 371 of the Constitution to safeguard the interests of the people of Telengana region in that State. Shri Limaye felt that Shri Brahmanada Reddy had knowingly given a statement to frighten the Members of Parliament so that they should oppose the appointment of a Parliamentary Committee.

Speaking on the Motion, the Minister of Law (Shri P. Govinda Menon) said:

On 2nd April, before Parliament had thought of appointing a Parliamentary Committee, Mr. Brahmananda Reddy, although Chief Minister yet a citizen, thought that, in his opinion if a Parliamentary Committee were appointed, which had not been contemplated, it would be an interference with the affairs of the State.

Let Mr. Limaye and those who think with him understand that justice is not a cloistered virtue nor is the privilege of Parliament a very tender reed which will be broken if somebody says something at some time. I would also quote what Mr. May has said. That is the Bible by which we swear. In the Seventeenth Edition, at page 117, he says that it is only statements which are libellous and derogatory to the character and prestige of Parliament or any acts which tend to obstruct the proceedings of the House in the performance of their functions by diminishing the respect due to them that are considered breach of privilege or contempt. So, that is the test—whether whatever was said by Mr. Brahmananda Reddy tended to diminish the respect due to this august House and tended to obstruct the functioning of the House or its Committee. What is our fear? If tomorrow a Committee is appointed do you think that the Committee of Parliament, of this august House, will not be permitted to go to Telengana? Will it be obstructed from discharging its duties? Why then this frequent resort to the rule regarding privileges which, by constant abuse, creates a feeling of disrespect towards this assembly in the minds of the Public. That is most important. . . . That privilege is there in order to enable us to discharge our functions. . . . I, therefore, submit that there is absolutely no basis for this motion against the Chief Minister.

Shri K. Anbazhagan, a Member, stated:

This body has every right to solve the national issues, when there is a serious

conflict in a State endangering the national cause. This Parliament has every right to take action. But, at the same time, in my humble view, it is also within the right of the Chief Minister or the elected Members of a State Assembly to express their opinion about such action which the Parliament may consider necessary.

In my view, if we pursue the matter to the Privileges Committee, it may create strong resentment and reaction in the people who are holding responsible posts in the Legislatures and also shake the confidence in the authority of the Parliament. The authority of the Parliament is not saved by the Members alone. Because the people support this Parliament, we have got the authority. If we make the people doubt that this Parliament is only interested in its own way and if we let down the Chief Minister or representatives of the elected bodies on the flimsy ground of breach of privileges of this body, they will lose faith in the authority of the Parliament. We cannot take action on a reply to a Reporter's question whether it would mean an interference in the internal affairs of the State. . . .

Therefore, I think after having discussed the issue, we need not pursue the matter to the extent of reference to the Privileges Committee.

Shri K. Narayana Rao, another member, said,

. . . it is open to the State Chief Minister to interpret the Constitution in his own way and say that the appointment of a Parliamentary Committee would constitute intervention. We may differ from him. I do not say he is right or not, but he is entitled to hold that interpretation of the Constitution and we may quarrel with him and, in spite of whatever the Chief Minister has stated, may still appoint a Committee. . . . I feel, this privilege motion should be rejected by the House.

After some discussion, the Motion moved by Shri Limaye was negatived.

Aspersions cast on a Parliamentary Committee in an article published by a newspaper.—On 11th April, 1969, Shri George Fernandes sought* to raise a question of privilege in respect of an article entitled " Success Story of Trombay Fertiliser ", published in the *Financial Express*, Bombay, dated 1st April, 1969, allegedly casting aspersions on the Committee on Public Undertakings, which *inter alia* read as follows:

A senior official of the plant told this correspondent during a recent visit that COPU (Committee on Public Undertakings) must have been confused about the various foreign contractors in the plant. When the contract was signed in 1962, Chemicos were undoubtedly in the lead. . . .

But many in the plant felt disgusted at the ill-timed report of COPU which to quote one ' brought back the dirty linen for a second wash in public '. Trombay has taken two years to bring out its true image. True, it can face the storm now. It is to be hoped that the COPU report would turn out to be nothing more than kindling the dead fire.

On 16th April, 1969, the Minister of Petroleum & Chemicals and Mines & Metals (Dr. Triguna Sen) made a statement† in the House on

* *L.S. Deb.*, dt. 11.4.1969, cols. 220–22.
† *L.S. Deb.*, dt. 16.4.1969, cols. 113–16.

the matter in which he stated that the Industrial Correspondent of the *Financial Express* had visited the Trombay Factory along with 24 other press correspondents and 11 members of the United States Information Service as part of a group sponsored by the latter and the General Manager had categorically denied that he had ever discussed the Report of the Committee on Public Undertakings with the correspondents.

Shri George Fernandes moved the following Motion which was adopted by the House:

That the question of privilege in respect of the article entitled " Success Story of Trombay Fertilizer' published in the *Financial Express*, Bombay, dated the 1st April, 1969, be referred to the Committee of Privileges for investigation and Report.

The Committee of Privileges, after calling for written explanations of the Editor of the *Financial Express*, Bombay, and the General Manager of the Trombay Unit of the Fertilizer Corporation of India, and after examination of the Editor in person, in their Seventh Report, presented to the House on 8th August, 1969, reported *inter alia* as follows:

(1) The Committee examined on oath, Shri G. M. Laud, Editor, *Financial Express*. During his evidence, Shri Laud stated that he, as editor of the newspaper, took full responsibility for the impugned article written by his Industrial Correspondent and added that it was not his intention, nor of the Industrial Correspondent concerned, to cast any aspersions on the Committee on Public Undertakings. When the Committee pointed out to the witness the objectionable passages in the impugned article published in the *Financial Express*, he expressed his sincere regret for the lapse and tendered his unqualified apology. He then submitted to the Committee the following written statement which he undertook to publish in the *Financial Express*, Bombay:

> " It has been pointed out by the Committee of Privileges to me that the following passages occurring in the article entitled " Success Story of Trombay Fertilizer " by our Industrial Correspondent published in the *Financial Express*, Bombay, dated the 1st April, 1969, cast aspersions on a Parliamentary Committee, and, therefore, constitute a breach of privilege and contempt of the House:
>
> " (i) A senior official of the plant told this correspondent during a recent visit that COPU must have been confused about the various foreign contractors in the plant.
>
> " (ii) But many in the plant felt disgusted at the ill-timed report of COPU which to quote one " brought back the dirty linen for a second wash in the public ".'
>
> " (iii) It is to be hoped that the COPU report would turn out to be nothing more than kindling the dead fire.
>
> " It was not the intention of our Industrial Correspondent or of the Editor to cast any aspersions on the Committee on Public Undertakings of Parliament. I express my sincere regret for this lapse and tender my unqualified apology."

(2) The Committee feel that in view of the unqualified apology tendered by the Editor, *Financial Express*, Bombay, no further action need be taken against the Editor or the Industrial Correspondent of the newspaper.

The Committee are satisfied that the officers of the Trombay Unit of the Fertilizer Corporation of India had no hand in the publication of the impugned article.

The Committee recommended that no further action be taken by the House in the matter.

ANDHRA PRADESH

Contributed by the Secretary to the Legislature

Deputy Speaker acting on behalf of the Speaker.—Two notices under Rule 174 of the Andhra Pradesh Assembly Rules, one dated 7th March, 1969, by Sri C. V. K. Rao and Sri Vemaiah and the second one dated 8th March, 1969, by Sri Badri Vishal Pitti, were given complaining of a breach of privilege of the Members of the House, on the ground that the action of the Secretary of the Legislature in issuing notices on 20th January, 1969, to Members informing them that the Budget proposals for the year 1969–70 would be presented to the House after obtaining the agreement of the Deputy Speaker to the dates of the Assembly proposed by the Government was unconstitutional and against the rules of the Assembly. Their view was that the Deputy Speaker was not entitled to exercise the powers of the Speaker without having been delegated them by the Speaker under Rule 260 of the Assembly Rules and nor was he entitled to act in the absence of the Speaker under Article 180 of the Constitution. In their view this irregularity constituted a breach of privilege and as such it should be referred to the Committee of Privileges.

On 18th March, 1969, the Speaker ruled as follows—

None of the three members who have given notices has adduced any reasons to show how it constitutes a breach of privileges nor have they quoted any precedent for holding that an irregularity of this nature amounts to breach of privilege. I may state here that this happened, when I was absent from the Headquarters for nearly a month and half from 4th January during which period I was confined to bed at home and later on in the General Hospital, Kurnool, for treatment on account of illness. Sri G. V. Chowdary, Secretary of the Legislature, who came to my home on 16th January, 1969, with the file for obtaining my orders of concurrence for the convening of the Assembly on 14th February, could not do so, as the doctors attending on me did not permit him to show the file to me or discuss the matter with me. As such he had to come away without obtaining my orders. Later on as it was felt that on account of illness which required complete rest for 6 weeks I would not be able to resume my normal duties, the file was submitted to the Deputy Speaker for his orders. It is true that the Deputy Speaker cannot discharge the functions of the Speaker outside the House in his absence, unless powers are delegated to him by the Speaker under Rule 260 of the Assembly Rules, which I had not done. Moreover, there is no specific provision in the Constitution regarding this aspect. However, in this case both the Secretary, who sent the file and the Deputy Speaker who passed orders acted under a *bona fide* belief that the Deputy Speaker could discharge the duties of the Speaker in his absence and with no other motive. As such in my opinion, though this may amount to an irregularity, it does not constitute breach of privilege of Members of the House as no *mala fides* can be attributed to either of them for their action. Moreover, it is not shown as to how the rights of the Members have been affected for discharging their duties.

According to May, " the distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are absolutely

necessary for the due execution of its powers. They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity."

There is no such case of breach of privilege found in May's *Parliamentary Practice.*

For the above reasons I consider it is not a fit case for referring to the Committee of Privileges. Hence it is disallowed.

Tamil Nadu: Legislative Assembly

Contributed by the Secretary of the Legislative Assembly

Member levelling accusations against the Chair.—On 30th August, 1968, during question hour, a Member put a supplementary question about admissions to medical colleges and stated " these medical college admissions have become a serious business. There are a lot of complaints against Government. . . ." At this stage, the Deputy Speaker who was then in the Chair, intervened and pointed out that the Member could only put a question to elicit information and that arguments, inferences, imputations, ironical expressions and defamatory statements must not be made. The Member then stated with reference to the Chair, " You were also in the Opposition. . . ." As the expression was not in good taste, the Member was asked to withdraw those words. Thereupon, the Member stated that the Deputy Speaker had enforced the rules too rigidly in this case. The Deputy Speaker then observed that the Member had levelled a direct accusation against the Chair and therefore referred the matter *suo motu* to the Committee of Privileges for examination and report.

The Committee of Privileges which had examined the above matter, accepted the expression of regret made by the Member and recommended that the matter be dropped. The report of the Committee was presented to the House on 28th March, 1969, and it was adopted by the House on the same day. (Tamil Nadu *LA Deb.*, Vol. XV, No. 6, pp. 588–90).

Newspaper casting reflections on the House.—On 30th August, 1968, a Member of the Assembly raised a matter of privilege against the Editor and Publisher of the Tamil Daily *Kaditham* in regard to the publication of certain passages under the caption " Is the Legislature a Court of Judicature." As a *prima facie* case of breach of privilege was involved in the article, the Deputy Speaker had, by a Motion moved and carried in the House, referred the matter to the Committee of Privileges.

The Committee of Privileges which considered the matter decided to ask the Editor and Publisher what he had to say in the matter. Since the Editor wrote to the Committee that he still stuck to what he had written in the article, the Committee decided to summon the Editor and Publisher to appear before the Committee to explain why

action should not be taken against him for contempt of the House in regard to the above passage. The summons were accordingly issued to the Editor directing him to appear before the Committee. However, the Editor wrote that he had not the least intention of being disrespectful to the House and that if the Committee felt that the article in question was disrespectful of the House, he regretted it.

The Committee came to the conclusion that the article in question and its publication was a reflection on the House and of its Members, and therefore constituted a contempt of the House. The Committee, however, decided to recommend to the House that the expression of regret be accepted by the House and the matter be dropped.

The report of the Committee was presented to the House on 12th September, 1969, and it was adopted by the House on 23rd January, 1970.

Maharashtra: Legislative Assembly

Contributed by the Secretary of the Legislative Assembly

Undignified and unbecoming behaviour of a Member during the Governor's Address.—Shri J. B. Dhote, a Member of the Maharashtra Legislative Assembly, by constantly shouting during the Governor's Address to the Joint Session of the Legislative Assembly and the Council on 7th February, 1968, interrupted the Governor and caused disturbance when the Governor was discharging his constitutional obligation under Article 176 of the Constitution. Thereupon, another Member gave notice of his intention to raise a question of privilege and contempt of the House, contending that Shri Dhote had committed a breach of privilege and contempt of the House by his unbecoming and undignified behaviour during the Governor's Address. The Speaker gave his consent to raise the question in the Assembly on 8th February, 1968, and after leave was granted by the House referred it to the Committee of Privileges for examination and report.

After having carefully considered the question, the Privileges Committee held that though the Governor's Address did not form part of the proceedings of the House, Shri Dhote behaved in an unbecoming and undignified manner and showed utter disrespect to the Governor when he was fulfilling a mandatory constitutional obligation and utter disregard of the reciprocal Constitutional obligation to listen to the Address with dignity and decorum. The Committee, therefore, adjudged the Member guilty of breach of privilege and contempt of the House and recommended that the Member be suspended from the service of the House for the remainder of the Session. It further recommended that if the Member tendered an unconditional apology to the Assembly for his improper and unbecoming conduct, he should be pardoned. The House, having considered the Report, decided that the Member be reprimanded. The Member was accordingly reprimanded by the Speaker. (*Maharashtra LA Proc.*, 30th July, 1969.)

MYSORE

Contributed by the Secretary of the Legislature

Allegation that a Chief Minister had adversely commented on the proceedings of the Legislature.—On 11th March, 1969, a Member of the Legislative Assembly sought the consent of the Speaker to raise a question of privilege against the Chief Minister of a State alleging that the said Chief Minister had adversely commented upon the proceedings of the Legislative Assembly of Mysore. The Member contended that the remarks of the Chief Minister were improper and amounted to breach of privilege of the House. The Speaker, withholding his consent, ruled as follows:

Article 194 of the Constitution deals with the powers, privileges and immunities of the House or Legislature of a State and of the Members and the Committees of a House of such Legislature. According to Clause (1) of that article there is, subject to the provisions of the Constitution and the Rules, freedom of speech in the Legislature. Clause 2 provides that no Member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any Committee thereof. It is clear from the above provision that a Member has freedom of speech in the Legislature or its Committees and no action can be taken in any Court for anything said or done within the House. Mention is made of Court and not Legislature. Though there is no express mention of the Legislature, it may be taken that the immunity extends against action by other Legislatures also, for otherwise there would be no meaning in having a freedom which can be set at naught by another Legislature. A Member can claim privilege for anything said or done by him within the House, although his speech or action may amount to a contempt of another Legislature. It should not be assumed that a Member is free to cast reflections. There are rules of procedure in every Legislature, framed under Article 208 of the Constitution. Rule 288 of the Rules of Procedure of the Mysore Legislative Assembly provides that a Member while speaking should not use offensive expressions about the conduct of proceedings of Parliament or any State Legislature.

A Member of a Legislature can claim privilege in regard to anything said or done by him within the House of which he is a Member and no action can be taken against him for contempt of any other Legislature.

In 1953 when the Andhra State Bill was being discussed in the Madras Assembly, a Member moved an amendment for the inclusion of Kolar in the proposed Andhra State. The amendment was carried. Next day the Chief Minister of Mysore referred to the said amendment in the Mysore Legislative Assembly and stated that it was a snap vote and was not binding on Mysore. A question of privilege was raised in Madras Assembly contending that the Chief Minister of Mysore had cast reflections on the proceedings of Madras Assembly. The Speaker of Madras Assembly ruled that no question of breach of privilege was involved as Members of each legislature had freedom of speech in the House.

Similarly, our Members have been commenting on a number of individuals who are Members of other Legislatures and Parliaments during discussion of the activities of Shiva sena and the river waters dispute. No action would lie on our Members in respect of their utterances in this House. I would, however, appeal to Members not to make derogatory remarks against Members of other Legislatures.

Since what was stated by the Chief Minister of Andhra Pradesh was in the

Andhra Legislative Assembly and such statements are protected by Article 194 of the Constitution, consent cannot be given to raise the matter.
(*L.A. Deb.*, 11th March, 1969.)

ORISSA

Contributed by the Secretary of the Legislative Assembly

Minister making policy statement outside House.—On 25th March, 1969, a notice of question of breach of privilege was tabled in which it was alleged that the Minister of Education had made a policy announcement at an Oriya Seminar at Ravenshaw College on 21st March, while the House was in Session, that the Government would introduce legislation providing therein for compulsory purchase of Oriya Books by the Libraries.

The Speaker withheld his consent after quoting the following rulings in the House of Commons, and the Lok Sabha, namely:

I am clear that there is no question of Privilege about it. The custom of the House whereby Ministers judge it courteous to the House to make important announcements here before they make them outside is a matter of courtesy which has grown into a custom, a good custom of the House. Its breach does not raise a question of Privilege. (*H.C. Deb.*, Vol. 500, 390–1.)

I am clear in my mind that there is no breach of privilege in this matter. Even if a matter of policy were to be announced outside the House while the House is in Session, it was ruled in the House of Commons that there was no breach of privilege; it may be a breach of courtesy. When the House is in Session all matters of policy ought to be announced first to the House. That is the rule that has been adopted for several years in this House also. (*Lok Sabha Deb.* dt., 17.12.59.)

I have studied all rulings up to this time not only in India but also in the United Kingdom. They are all uniform in this respect that statements by Ministers outside the House in regard to their policy matters or some such things do not constitute a breach of privilege of the House, though it is a matter of propriety, and courtesy demands, that they should be made in the House when the House is in Session. (*Lok Sabha Deb.*, 19.12.63, cols. 5792–3.)

MALTA

Contributed by the Clerk of the House of Representatives

Inaccurate Reporting of a Debate.—A claim of breach of privilege was made in November, 1969, by an Opposition backbencher who complained of inaccuracies in the report published by the Times of Malta on the debate concerning the dismissal from Malta Drydocks of two senior employees. Another claim was raised by the same Member during the discussion of his first claim. The House was then informed of a letter published in the Times of Malta by a correspondent over the nom-de-plume " Foreigner " which denigrated the Leader of the Opposition, and also of the refusal by the same newspaper to publish a letter in reply written by the same Member who was writing as secretary to the Opposition Parliamentary Group.

The Speaker ruled that no *prima facie* case of breach of privilege

had been made out. As a sequel to Mr. Speaker's rulings on these two claims, the Deputy Leader of the Opposition asked for leave of the House to table a motion without notice that the House discuss the matter and then suspend the reporters of this newspaper from attending the sittings of Parliament for three months. Leave was granted and a debate followed but when a division was taken the motion was negatived by 26 votes against 21.

MAURITIUS

Contributed by the Secretary of the Legislative Assembly

Member insulted on account of his conduct in the Assembly.— On 8th July, 1969, during prorogation, the Honourable Maurice Lesage, First Member for Belle Rose and Quatre Bornes, wrote as follows to Mr. Speaker:

Sir,

I should like to draw your attention to the following.

First, I think it necessary to recall that I had asked for a reduction in the salary of the Director, Marine Services when the Estimates 1969–70 were discussed in Committee of Supply.

Yesterday, I attended the celebration of the U.S. Independence Day at the residence of the *Chargé d'Affaires* and just as I was leaving, Mr. Booker, Director, Marine Services, addressed me in the following terms:

— " Mr. Lesage, I thank you for the nice words you had for me in the Assembly.
— I've been doing my duty.
— Perhaps you would not have told so many lies had you been properly informed. But, of course, you are invested with parliamentary privilege.
— Don't talk that way. I might have the whole thing published in the papers ".

I could not catch the rest of his remarks and matters were left at that.

Feeling as I do on the matter at issue, I should be very grateful to know whether this constitutes contempt of the Assembly.

The new session opened on 28th October and Mr. Lesage availed himself of this first opportunity to raise the matter of breach of privilege before the Assembly.

Mr. Speaker declared under Standing Order 113 (3) that, in his view the circumstances reported by Mr. Lesage amounted to the offence of insulting a Member on account of his conduct in the Assembly in breach of paragraph (*e*) of sub-section (1) of section 6 of the Legislative Council (Privileges, Immunities and Powers) Ordinance, 1953.

The Honourable First Member for Beau Bassin and Petite Riviere, Mr. Rivet, seconded by the Honourable Fourth Member for Vacoas and Floreal, Mr. Bussier, then moved under Standing Order 113 (3) that the Attorney General do institute proceedings in the matter of the offence specified in Mr. Speaker's declaration. The Motion of the Honourable First Member for Beau Bassin and Petite Riviere, Mr. Rivet, was, on question put, unanimously agreed to. (*Hansard* col. 4593.)

The matter was referred to the Attorney General on 29th October.

On 13th November the Legislative Assembly was informed by the Director of Public Prosecutions that an information had been lodged before Court against the Director of Marine Services.

The case was heard in Court for the first time on 19th December. Judgment was delivered on 28th January. Mr. Aubrey Gordon Booker, Director of Marine Services, was found guilty of contempt of the Legislative Assembly and fined Rs. 50 (app. £4) and Rs. 5 costs.

XX. MISCELLANEOUS NOTES

1. Constitutional

House of Lords (Administration of Justice Act 1969).—Part II of the Act makes provision for civil appeals to be brought direct to the House of Lords from the High Courts of England and Wales and of Northern Ireland, so by-passing the Courts of Appeal. This variation of the appellate jurisdiction of the House had been recommended in 1951 by a Committee chaired by Sir Raymond Evershed, Master of the Rolls (Cmd. 8176). " Leap-frog " appeals, as they have come to be known, may only be brought if all the parties to the proceedings consent and the High Court Judge certifies that the relevant conditions are fulfilled in relation to his decision. These are set out in section 12 (1) and (3) of the Act. Parties then have to petition the House of Lords for leave to bring an appeal direct to the House and this petition is considered by the Appeal Committee, without a hearing. If the Appeal Committee refuse such a petition, the parties may then take the appeal to the Court of Appeal and, possibly, eventually to the House of Lords, in the normal way.

Isle of Man (Executive Council).—The Isle of Man Constitution Act 1968 provides for the Executive Council to consist of 2 Members of the Legislative Council and 5 Members of the House of Keys nominated in each case by the Branches concerned but elected by Tynwald, *i.e.* both Branches sitting together. The Chairman of the Finance Board is *ipso facto* a member of the Executive Council.

Under the Isle of Man Constitution Act, 1969, the two Members of the Legislative Council appointed by the Governor cease to be Members with effect from 21st October, 1970. They are replaced by two Members elected by the House of Keys, thus bringing the number of Members of the Executive Council who are elected by the House of Keys from 5 Members to 7 Members.

(*Contributed by the Clerk of Tynwald.*)

Australia (Public Works Committee Act 1969).—The Parliamentary Standing Committee on Public Works is a joint committee appointed by the Houses, in accordance with the provisions of the Public Works Committee Act, to consider and report upon proposed public works of the Commonwealth.

From the Committee's first appointment in 1914 until 1936 it was mandatory for the Government to refer to it all Commonwealth public works over Aus. £25,000, excepting certain defence works. However, in 1936 the Act was amended so that the Committee was able to

consider only those works referred to it by the House of Representatives. Works reported on by the Committee could not be commenced until the House of Representatives resolved that it was expedient to carry out the work.

In 1960 the Act was again amended to restore the mandatory powers held before 1936. It provided that no proposed public work estimated to cost more than Aus. £250,000 shall be commenced unless it had been referred to the Committee for a report. There was a qualification, however, that the House of Representatives may resolve that the work may proceed without reference to the Committee. Also it was provided that the Governor-General may, by order, declare that the work was for defence purposes, and that reference to the Committee would be contrary to the public interest. The Committee was also empowered to review its own reports so long as the actual work on which it had reported had not been commenced.

It is of interest that only the House of Representatives, not the Senate, could refer matters to the Committee and determine by resolution whether proposed works should be carried out.

In 1966 the Committee sought to have the Act redrafted so that it could operate under legislation which fully recognises modern conditions and procedures. A full review of the provisions of the Act was made and, because of the quite substantial redrafting required, the Public Works Committee Act 1913–1965 was repealed.

As in the repealed Act, the new Act of 1969* provides for the Committee to be appointed at the commencement of the first session of each Parliament and be composed of three Senators and six Members of the House of Representatives. Ministers, the President of the Senate, the Speaker of the House of Representatives, and the Chairman of Committees of either House are not eligible for appointment as members of the Committee. The usual composition of the Committee is five Government and four Opposition party members.

Each House appoints its own Members to serve on the Committee and they hold office until such time as the House of Representatives expires by effluxion of time or is dissolved. A member may resign his office on the Committee by writing to the President or the Speaker, as the case may be.

The Chairman and Vice-Chairman are elected by the members of the Committee. Provision is made that, in the absence of the Chairman and Vice-Chairman, members present at a meeting may appoint one of their number to be temporary chairman. The powers of a temporary chairman are not limited to a particular meeting but last for the term of his appointment. The Committee may appoint an *ad hoc* chairman for a particular meeting.

The Committee may appoint three or more members to be a Sectional

* *Hans. H. of R.*—27 Nov. 1968, pp. 3322–4; 26 Feb. 1969, pp. 195–206; 27 Feb. 1969, pp. 255–65; 25 Sept. 1969, pp. 1981–3. *Senate*—15 May 1969, pp. 1279–81; 28 May 1969, pp. 1707–18; 29 May 1969, pp. 1767–70; 25 Sept. 1969, pp. 1409–13.

Committee but there shall not be more than two Sectional Committees at the one time. The Committee may refer to a Sectional Committee for inquiry and report to the Committee, a matter connected with a public work that has been referred to the Committee under the Act.

The Committee may meet at such times and at such places within the Commonwealth or within a Territory not forming part of the Commonwealth as the Committee determines. It may meet and transact business notwithstanding any prorogation of the Parliament but shall not meet or transact business on a sitting day of either House during the time of the sitting, except by leave of that House.

All questions arising in the Committee (or a Sectional Committee) are decided by a majority of votes of the members present, and when the votes are equal the Chairman has a casting vote. In all cases of divisions, if a member so requires, the names of the members voting and abstaining from voting are recorded in the minutes and in the report.

In addition to reports on works referred to it, the Act provides that the Committee shall table in each House a report on its proceedings for the calendar year, within fifteen sitting days of that House after each thirty-first day of December.

In regard to the functions of the Committee the Act provides that it shall, as expeditiously as is practicable, consider each public work referred to it and make a report to both Houses concerning the expedience of carrying out the work and concerning any other matters related to the work in respect of which the Committee thinks it is desirable that its views should be reported to the Houses. In its report the Committee may recommend any alterations to the proposals for the work that, in its opinion, are necessary or desirable to ensure that the most effective use is made of the moneys to be expended on the work.

The Act now points out with greater clarity and in greater detail the functions of the Committee. It states that in considering and reporting on a public work the Committee shall have regard to:

The stated purpose of the work and its suitability for that purpose;

The necessity for, or the advisability of, carrying out the work;

The most effective use that can be made, in the carrying out of the work, of the moneys to be expended on the work;

Where the work purports to be of a revenue-producing character, the amount of revenue that it may reasonably be expected to produce; and

The present and prospective public value of the work.

The Bill as passed by the House of Representatives retained the provisions of the old Act that a public work could be referred to the Committee only from the House of Representatives, that reports from the Committee were required to be made to the House of Representatives only and that only the House of Representatives could rule that it was expedient or inexpedient to carry out the work. These provisions were subject to lengthy debate in the Senate which resulted in a number

of amendments which were accepted by the House of Representatives. The amendments provide the Senate with concurrent rights of referral to the Committee and receipt of reports by the Committee. This means that a Motion may be moved in either House that a public work be referred to the Committee for consideration and report. A public work that has been referred to the Committee in accordance with this provision shall not be commenced before a report of the Committee concerning the work has been presented to both Houses. The amendments give recognition to the Senate in respect of reference to the Committee and a right to have the Committee's report but do not derogate from the power of the House of Representatives alone to pass a resolution that it is expedient to carry out the work.

In the event of the Parliament not being in session or if the House of Representatives is adjourned for a period exceeding one month or for an indefinite period, the Governor-General may refer a public work to the Committee for consideration and report.

After a report has been presented to both Houses and before the work has commenced, a resolution, if passed by both Houses, may require the work to be again referred to the Committee for further consideration.

Having in mind current construction and works values, the Act provides that the cost limit below which works need not be referred to the Committee is $Aus. 750,000. All Commonwealth public works estimated to cost beyond that limit must be referred to the Committee although, as previously, any public work below that estimated cost may be referred. Two exceptions remain, viz.: where the House of Representatives resolves that because of the urgent nature of the work it is expedient that it be carried out without having been referred to the Committee, or where the Governor-General declares that the work is for defence purposes and that reference to the Committee would be contrary to the public interest.

The Act makes it clear that the Committee may examine only those public works which are carried out by, or for, the Commonwealth, within the Commonwealth or within a Territory of the Commonwealth.

In relation to the powers of the Committee to examine the works of statutory authorities, it was the Government's view that it should preserve the principle that statutory authorities are established with the express purpose of preserving an autonomy of operation and a degree of independence from the legislature and the executive. Accordingly, it has been made clear that where a work of a statutory authority is carried out by the Commonwealth or its agent—and this can be taken generally to mean the Commonwealth Department of Works—and also where the money to pay for that work is appropriated by the Parliament and placed under the control of the Department of Works, then that project is subject to examination by the Public Works Committee. On the other hand, where the money to pay for a work carried out for a statutory authority is drawn from funds vested in the authority

itself and not under the control of the Department of Works, that work is not subject to the scrutiny of the Public Works Committee.

The Act declares the Committee's powers with respect to witnesses. Authority is given to summon witnesses to give evidence and produce documents, and to take evidence on oath or affirmation. In case of disobedience of summons, the Chairman may issue a warrant to authorise the apprehension of the witness. The person executing the warrant may bring the witness before the Committee and detain him in custody until he is released by order of the Chairman or a Member.

The Committee must take its evidence in public but provision is made whereby if, in the opinion of the Committee, any evidence proposed to be given or any document proposed to be produced in evidence relates to a secret or confidential matter, the Committee may, and at the request of the witness shall, take the evidence in private or direct that the document be treated as confidential. Such evidence or document shall not be disclosed or published without the consent of the person entitled to the non-disclosure.

A witness is entitled to the same protection and privileges (and subject to the same liabilities) as a witness in proceedings in the High Court. There are substantial penalties for such things as failure of a witness to attend, preventing a witness from giving evidence, refusing to be sworn, giving false evidence and molestation of a witness. Proceedings in respect of such offences shall not be instituted except by the Attorney-General or with his consent in writing.

Public Works Committee members receive such fees and travelling allowances as are prescribed from time to time but the total is limited by the Act to $Aus. 20,000 in any financial year.

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

New South Wales (Imperial Acts Application Act 1969).—This Act was based on a report of the Law Reform Commission and provides that certain enactments of the Parliaments of England, Great Britain, and the United Kingdom in force at the time of the passing of Imperial Acts shall continue in force in New South Wales, for the re-enactment of those parts of Imperial Acts which should continue as part of the New South Wales law and for the repeal of those which no longer apply.

The Act contains a savings clause to empower the Governor in Council to re-enact any Imperial Act which is repealed in order that any accidental omission may be cured without the need of further legislation. (*Parl. Deb.*, Vol. 79, pp. 4795, 5140, 5215.)

New South Wales (Limitation Act 1969).—This Act is based on a report of the Law Reform Commission. It amends and consolidates the law relating to the limitation of actions, repeals certain Imperial and New South Wales enactments in part or in whole, and amends certain other Acts. The periods of limitation for actions in certain

cases are reduced or extended to conform in substance with the Imperial Limitation Act 1939. (*Parl. Deb.*, Vol. 79, pp. 4873, 5151, 5226.)

New South Wales (Interpretation (Amendment) Act 1969).—This Act simplifies the form of future legislation by reducing the content of Acts which make provision for matters of a recurring nature, such as the establishment of a statutory corporation, powers of delegation, and regulation-making machinery, and includes certain drafting aids. It also includes a " reading down " or " severance " clause which has the effect of preserving that part of a State enactment which is not inconsistent with a Commonwealth Act. Previously if, only in a small detail, a State law was held to be inconsistent with Commonwealth legislation, the whole Act became invalid in consequence of section 109 of the Commonwealth Constitution.

Provision is also included to rectify a defect in the law relating to the repeal or amendment of a regulation. Proceedings previously could not be continued under a regulation if such were amended, as it was held it became a new regulation, and any action pending under the old regulation, which had been amended or repealed, lapsed.

Further provisions permit the service of documents by ordinary mail, and give primacy to the status of Australian citizens. *Parl. Deb.*, Vol. 76, p. 2565; Vol. 78, p. 4160; Vol. 79, pp. 4578, 4903, 5498.)

New South Wales (Solicitor General Act 1969).—Section 36 of the Constitution Act 1902, states:

> The Governor may authorise any Executive Councillor to exercise the powers and perform the official duties and be responsible for the obligations appertaining or annexed to any other Executive Councillor in respect to the administration of any department of the Public Service, whether such powers, duties, or obligations were created by virtue of the terms (express or implied) of any Act or are sanctioned by official or other custom:
>
> Provided that no such authority shall be granted under this section in respect of the powers, duties, and obligations by law annexed or incident to the office of the Attorney-General.

This allowed in the event of illness, absence or sufficient cause for the appointment of an Acting Minister, but the proviso made it impossible for an Acting Attorney-General to be appointed. The new Act rectifies this provision by giving statutory recognition to the office of the Solicitor General and permitting certain powers, authorities, duties and functions of the Attorney-General to be exercised by the Solicitor General where they are so delegated, where the Attorney-General is absent from the State, or where he is unable to act, or where such office is vacant.

The Act also provides that the office of Solicitor General shall not be held by a Minister of the Crown. (*Parl. Deb.*, Vol. 81, pp. 969, 1475; Vol. 82, p. 2681.)

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

South Australia (Constitution Act Amendment Act). — Of great constitutional and political significance in the State of South Australia was the introduction and passage during the 1969 session of the Constitution Act Amendment Bill. The legislation gave effect, *inter alia*, to the recommendations of the Electoral Commission set up in pursuance of the Electoral Districts (Redivision) Act 1969, and consisting of a Supreme Court judge and two public servants, the Electoral Returning Officer for the State and the Surveyor-General. The number of Members of the House of Assembly at the next general election is to be increased from 39 to 47, the Assembly district boundaries having been completely redrawn in accordance with principles laid down in the Electoral Districts (Redivision) Act. Legislative Council boundaries are also significantly changed. In addition to implementing the recommendations of the Commission, the Constitution Act Amendment Act 1969, extends the franchise for the Legislative Council—at present restricted to those with interests in property, " inhabitant-occupiers " and those with war service—to include the spouse of any person entitled to vote in Legislative Council elections. The legislation also provides that any Bill to alter the constitution in specified ways including the abolition of either House shall not be presented for Royal assent unless approved at a referendum by a majority of Assembly voters.

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

Tasmania.—The Parliament will now be elected for a three year period; previously it was for five.

India (Constitution (Twenty-third Amendment) Act 1969).— Article 334 of the Constitution laid down that the provisions of the Constitution relating to reservation of seats for the Scheduled Castes and Scheduled Tribes and representation of the Anglo-Indian community by nomination in the House of the People would cease to have effect on the expiration of a period of twenty years from the commencement of the Constitution. Under this Act the reservation for the Scheduled Castes and Scheduled Tribes and the representation of Anglo-Indians by nomination was extended for a further period of ten years. As more than 90 per cent of the population of the State of Nagaland is tribal and hence in majority, reservation for the Scheduled Tribes of Nagaland in the House of the People was done away with.

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

Gibraltar Constitution Order 1969.—Following a Constitutional Conference held in July 1968 a new Constitution came into operation on 11th August, 1969. The Legislative and City Councils were merged to produce an enlarged legislature known as the Gibraltar House of Assembly. Executive authority is exercised by the Governor, who is also Commander-in-Chief. The Governor, while retaining certain reserved powers, is normally required to act in accordance with the advice of the Gibraltar Council, which consists of 5 elected and 4

ex-officio members (the Deputy Governor, the Deputy Fortress Commander, the Attorney-General and the Financial and Development Secretary). The elected members of the Gibraltar Council are appointed by the Governor after consultation with the Chief Minister and are styled Ministers. Matters of domestic concern are devolved to Ministers, with Britain responsible for other matters, including external affairs, defence and internal security. There is a Council of Ministers presided over by the Chief Minister.

The House of Assembly consists of a Speaker appointed by the Governor, 15 elected and 2 ex-officio Members (the Attorney-General, and the Financial and Development Secretary.

A Mayor of Gibraltar is elected from among the Members of the Assembly by the Elected Members of the Assembly.

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

2. General Parliamentary Usage

Westminster (Statute Law (Repeals)).—On 20th May, 1969, the Lord Chancellor moved the following Motion in the House of Lords:

> That . . . in the present Session, all Bills proposed by one or both the Law Commissions to promote the reform of the Statute Law by the repeal, in accordance with Law Commission recommendations, of certain enactments which (except in so far as their effect is preserved) are no longer of practical utility, and by making other provision in connection with the repeal of those enactments, together with any Law Commission report on any such Bill, be referred to the Joint Committee on Consolidation Bills; and that, on any such Bill, the Joint Committee do report whether the enactments proposed for repeal in the Bill ought to be repealed on the ground that they are no longer of practical utility, and do make such other report as they may think fit.

The background to this Motion lay in the Law Commission's first report on Statute Law Revision. In 1966 the Commission set themselves the task of reviewing the Statutes in chronological order with a view to recommending the repeal of all that could not be shown to continue to perform a useful function; and in May 1969 a Statute Law (Repeals) Bill was introduced into the House of Lords containing a great number of repeals proposed by the Law Commission. Some of the proposed repeals could have been dealt with under the existing procedure applicable to Statute Law (Revision) Bills, whereby enactments qualifying for repeal have to be " obsolete, spent, unnecessary or superseded ". The remaining repeals in the Statute Law (Repeals) Bill 1969, as introduced, were included on the ground that the relevant enactments were, in the opinion of the Law Commission, no longer of practical utility.

In consequence, therefore, of the Motion set out above (a similar one was duly agreed to by the House of Commons) a fifth class of Bill was added to the list of legislation automatically referred to, and considered by, the Joint Committee on Consolidation Bills. It will be

remembered that in 1967 Parliament agreed to refer another novel type of Bill to the Committee, viz. " Bills to consolidate any enactments with amendments to give effect to recommendations made by one or both of the Law Commissions ".* Thus, both of the recent extensions to the Committee's terms of reference spring from the establishment of the Law Commission.

On 12th June, 1969, the Statute Law (Repeals) Bill was read a second time in the House of Lords. It contained four clauses and a schedule, divided into nine parts, containing the enactments proposed for repeal. The part headings were as follows: Part I, Constitutional Enactments; Part II, Ecclesiastical Enactments; Part III, Law of Property Enactments; Part IV, Enactments relating to Sunday Observance; Part V, Hallmarking Enactments; Part VI, Enactments relating to the Commonwealth; Part VII, Miscellaneous Enactments; Part VIII, Acts of the Parliament of Ireland; Part IX, Church Assembly Measures. In all, nearly two hundred Acts were proposed for repeal or part repeal.

The Joint Committee on Consolidation Bills sat for six days, between the 24th of June and the 16th of July, and made in all thirty-one amendments to the Bill, perhaps the most important of which were those made to Part I of the Bill, dealing with constitutional enactments. The Committee made six amendments to this part, to preserve *inter alia* certain articles of the Statute of Westminster the First (3 Edw. I (1275)) and the Confirmation of Magna Carta (25 Edw. I (1297)), proposed for repeal. They made ten amendments to Part III (Law of Property Enactments) and eleven amendments to Part VII (Miscellaneous Enactments).

In addition to the Parliamentary draftsmen (who appear as witnesses on all Consolidation Bills), the Committee were assisted by evidence from nine other witnesses, six of whom represented Government Departments or statutory bodies and three of whom were practitioners in branches of the law forming the subject matter of the repeal proposals.

In their Report the Committee pointed to the difficulties attaching to a scrutiny of legislation so wide in ambit, and as this was the first Bill of its kind and could be the precursor of similar Bills in other legislatures it is thought that the lengthy extracts from the Report appearing below might be of value particularly as they indicate the view taken by the Committee on what may be called the " burden of proof " in repeal exercises under the new procedure.

Extracts of Report on the Statute Law (Repeals) Bill, 16th July, 1969

. . . the Committee are of the opinion that in any future Bills of this nature the Law Commission should endeavour where possible to call witnesses independent of the Parliamentary Draftsmen who can assist the Committee in their task of forming a judgement as to whether or not enactments proposed for repeal are any longer of practical utility. In saying this they do not in any way wish to reflect upon the ability or conscientiousness of the Parliamentary

* THE TABLE, Vol. XXXVII, pp. 91–3.

Draftsmen who consulted a large number of interested bodies, organisations and Government Departments.

However, the role which the Committee found themselves called upon to perform in this Bill was so unlike their normal function in relation to Consolidation and Statute Law Revision Bills that it soon became apparent that in many cases additional evidence, such as that of practitioners in certain branches of the law and others who possessed particular experience in the field of the enactments proposed for repeal, were essential if the Committee were to perform their scrutinising role effectively.

... They are of the opinion that the great majority of the enactments proposed to be repealed in the Schedule of the Bill are obsolete, spent, unnecessary or superseded, or are no longer of practical utility, and in consequence they approve the repeal of those enactments.

They are further of the opinion that the remainder of the enactments proposed to be repealed may still be of practical utility or at all events they are not satisfied that they are shewn no longer to be of practical utility and accordingly they have made amendments to the Schedule to the Bill to preserve those enactments in force.

It is unlikely that any further Statute Law (Repeals) Bills introduced under the procedure will be of the size of the 1969 Act. Indeed, the constitution of the Joint Committee (twelve members from each House, with a quorum of three from each House) is such that it is extremely difficult to secure effective meetings lasting for a whole day. The Committee normally sits at 4.30 p.m. for two hours or so once a fortnight or once a week, when business is heavy, and this tends to occur in the spring and summer months.

Nevertheless, the painstaking and thorough manner in which the 1969 Act was scrutinised, combined with the terms of the Committee's report, should go far to satisfy those, both in the legal profession and outside, who may be concerned lest enactments are repealed which still have a continuing function.

(*Contributed by J. V. D. Webb, Chief Clerk, Committee and Private Bill Office, House of Lords.*)

House of Lords (Lords Spiritual: Writs of Summons).—On 11th November, 1969, the Lord Chancellor (Lord Gardiner) made the following statement to the House:

The House will have noted that there has recently been laid before Parliament the Crown Office (Writs of Summons) Rules, which prescribe a new form of writ of summons to the House to be issued to Lords Spiritual on the summoning of a new Parliament. This means that someone has instigated some change in the form of the writ of summons, and, as all students of your Lordships' Standing Orders will at once recognise, this immediately activates Standing Order No. 6, which is in the following terms:

> " If there be any difference in the form or style of the writs from the ancient, it is to be examined how it came to pass ".

I have always been curious as to the history which might lie behind the making of this Standing Order, and owing to the learning and industry of the learned Clerks at the Table I am in a position to tell your Lordships that in 1620 Lord North found that his writ of summons was not in the usual form. An appalling thing had happened: the words, " right trusty and well-beloved "

had been omitted. Your Lordships' House, seized with the importance of the occasion, at once referred the claim to the Committee for Privileges, and after an investigation of the matter it was discovered that the miscreant was Mr. Richard Cammell, a clerk in the Office of the Petty Bag. He was at once brought before the House and, in spite of an abject confession of guilt and expression of remorse made when he threw himself on his knees before your Lordships' House to beg for indulgence, it was not to be, and he was at once removed to the Fleet Prison. Fortunately for him, on a subsequent petition to your Lordships' House your Lordships were indulgent, and he was released. However, it was clearly a sensitive subject, because in the Roll of Standing Orders 1664–1715 what is now Standing Order No. 6 appears in a rather long form, namely:

> " If there be any difference in the form or style of the writs from the ancient, it is to be examined how it came to pass and a strict course for punishing the time past, and future amendment."

The responsibility for issuing writs of summons is mine, and I do not wish either to incur strict punishment or to have to mend my ways. So I will, if I may, briefly explain to the House what the change in the Bishops' writ is, and why it has been made.

The change consists solely in the omission of the traditional " Praemunientes clause ", which commands the Bishop to " forewarn " the Dean and Chapter of his Cathedral and the Archdeacons and clergy of his diocese that they are to be present (either in person or by their elected representatives) at the place appointed for the meeting of the new Parliament. This command has not been acted on for over 600 years. Those more familiar than I am with mediæval constitutional history will be aware that in the very early days of Parliament the King wished to summon the clergy to Parliament through the Bishops as something like a separate estate for the purpose of making them vote taxes. The clergy resisted, and in the end a compromise was reached whereby, on the King's authority, the Archbishops summoned the clergy to the Convocations, where the necessary business was transacted. But the old form persisted in the Parliamentary writ issued to Bishops.

Those who have gone into the matter thoroughly and are entitled to speak with authority are all satisfied that the authority for summoning the clergy to Convocation does not stem from the Parliamentary writ. Indeed, it could not do so now that many diocesan Bishops receive no such writ. The Praemunientes clause has therefore long been obsolete, but its anachronistic nature was obscured as long as the Convocations were invariably summoned at the same time as a new Parliament. With the passing of the Church of England Convocations Act 1966, that is no longer the case; and when the Bill for that Act was before this House my noble friend Lord Stonham adverted to the possibility of its involving some amendment to Bishops' writs, which, in their current form, can do nothing but cause confusion. The Rules recently laid before the House make the necessary amendment. I should perhaps add that I have had the benefit of the advice of the most reverend Primates, the Archbishops of Canterbury and York, both of whom have agreed that the time has now come to make this change. I hope that your Lordships will be satisfied with this explanation and that I may escape the fate of Mr. Cammell. [*H.L. Deb.*, Vol. 305, cols. 523–6.]

House of Commons (Broadcasting of Proceedings).—On 21st November, 1969, the House of Commons again debated the question of broadcasting its proceedings. This was on a private member's Motion, "That this House approves for an experimental period the broadcasting of its proceedings on closed circuits ". No decision was

reached on the Motion because less than 100 Members voted for the " closure " and so the debate was adjourned. Previous debates on this subject have been treated in Volumes XXXV and XXXVII of THE TABLE. (*H.C. Deb.*, Vol. 791, cols. 1617–1718.)

House of Commons (Members' Outside Interests).—On 26th March, 1969, the Prime Minister made the following statement:

The House will recall that on 4th March I was asked by my hon. Friend the Member for Fife, West (Mr. William Hamilton)

> " whether, in view of the increasing number of hon. Members being remunerated by outside bodies, he will re-examine the desirability of legislation to establish a public register of such interests."—[Vol. 779, c. 209.]

I said that the Government were continuing to watch the position, and in answers to Questions by the right hon. and learned Gentleman the Member for Hertfordshire, East (Sir D. Walker-Smith) referred to the disparity between the treatment, so far as this House is concerned, of hon. Members who are required by long established practice to declare their interest, and others who are not so required.

I should now like to tell the House the results of the Government's examination of the issues raised.

As I have more than once suggested, there are two separate issues here.

The first is the position of Members of Parliament who, by virtue of some paid connection with an outside interest, be it domestic or overseas, are involved in matters which are the concern of Parliament and of Government. As I indicated in reply to my hon. Friend, it is important that the position of such Members should be made clear in all matters which affect their responsibilities to the House and to their Parliamentary colleagues.

This is an issue for Parliament. After consultations with the opposition parties, the Government have therefore decided to recommend to the House to set up a Select Committee to consider the rules and practices of the House in relation to the declaration of Members' interests and to report. The form of the Select Committee will be discussed through the usual channels. This relates only to the House of Commons, but I understand that my noble Friend the Lord Privy Seal will be having discussions on parallel action that might be taken in another place.

There is, however, a second issue about which there is considerable public concern, and concern in this House. This relates to the operation of public relations and other organisations holding an account or a commission on behalf of an overseas Government, or an overseas political interest. The activities of some of these organisations have been mentioned in this House on a number of occasions and there is concern about their activities, whether or not they employ on any basis individual Members of this House. What is important is that Parliament, and the public, should know when activities of this kind are being conducted. Many of these organisations do valuable work in informing Parliament and the public: the danger occurs when it is not done in an open way. There is increasing evidence that some of these organisations are concerned with operating outside Parliament as well as on Parliament and on the Government. Again the public has a right to know.

Equally, it is right that the House should be aware of the problems associated with the administration of any scheme designed to bring these activities into the open. The House will be concerned to ensure that whatever is finally decided reflects a fair balance between protection of Parliament and the public on the one hand and free and legitimate expression of opinion on the other.

The Government have given urgent consideration to this question, including the possibility of legislation requiring registration. I now propose to initiate discussions with the opposition parties to see how far agreement can be reached on the best way of proceeding.

Mr. Heath, the Leader of the Opposition, assured the Government of his support but asked:

Will the Prime Minister confirm that the purpose of the Select Committee is to consider whether the present arrangements for the declaration of interests by Members are satisfactory and that there is nothing improper about any Member having outside interests as such?

The Prime Minister replied:

That is exactly the position as I see it. The rules in Erskine May and the rules and practices of this House about declarations of interest are very narrow and relate to particular forms of interest. Indeed, sometimes it seems almost unfair that there should be a declaration in some cases. The new development, from all the information known to hon. Members, is the employment of hon. Members whether as so-called Parliamentary consultants or in any other capacity for public relations and similar organisations. It is right that the House should have a fresh look at the question of the definition of the issues in which a declaration of interest should be made.

(*H.C. Deb.*, Vol. 780, cols. 1630–39.)

A Select Committee was appointed on 14th May, 1969, and reappointed in the new session on 12th November, 1969. The Committee reported to the House on 4th December, 1969. (*H.C.* (1969–70) 57.)

House of Commons (Non-availability of copies of the Finance Bill).—On 6th May, 1969, the Finance Bill was on the Order Paper for Second Reading. After Question Time Sir Gerald Nabarro, Conservative Member for Worcestershire, South, called the Speaker's attention to the fact that no copies of the Finance Bill were available in the Vote Office, due to industrial action at the Stationery Office. He reminded the House that " immediately the Second Reading of the Bill is achieved today many hundreds of Amendments will be placed on the Notice Paper none of which backbenchers will be able to assess without ready reference to copies of the Bill which are not available." He asked that emergency measures should be taken to ensure the printing of amendments.

Mr. Speaker informed the House that the shortage of copies of the Bill was due to events beyond their control. During further discussion the Leader of the Liberal Party, Mr. Thorpe, sought to move the adjournment of the House under Standing Order No. 9 to discuss a specific and important matter that should have urgent consideration, namely:

that the House of Commons is being invited to vote for the Second Reading of a Bill the contents of which are not generally available to all Members of the House.

He urged that the Second Reading debate should be adjourned until

copies of the Finance Bill were available to all Members. Mr. Speaker rejected the application but, immediately after, was asked by another Member whether a breach of privilege might not have been committed by alleged interference with the normal delivery of copies of the Bill.

The next day Mr. Speaker ruled that no *prima facie* case of breach of privilege had been committed.

(*H.C. Deb.*, Vol. 783, cols. 266–82, 464–5.)

India: Mysore (Allotment of Seats to Members).—Two Members, Sri M. Nagappa and Sri D. B. Kalmankar, raised a matter, other than a point of order under Rule 312, regarding certain changes in the allotment of seats to some hon. Members under Rule 4. While referring to certain principles and conventions which in their opinion should regulate the allotment of seats, they requested the Chair to clarify the reasons, principles and conventions on the basis of which the allotment of seats was changed.

Though Rule 4 gives unfettered discretion to the Speaker in the allotment of seats, he is guided in the matter by well-established conventions and principles. The issue involved recognition of political parties and groups in the Assembly and allotment of seats to their members so that they might function conveniently and efficiently.

There is a time-honoured convention that the Ruling Party is allotted seats on the Right side of the Chair and the Opposition on the Left side. The second convention is that, as far as possible a compact block of seats should be allotted to parties and groups, but to leave the individual allotment of seats to members, to the party leadership. When allotting blocks of seats, the strength of the Party or group membership is taken into consideration. These conventions have been followed in the House.

The reason for Sri M. Nagappa and Sri D. B. Kalmankar raising the question was the change in the allotment of seats to some Members who had severed their connection with their former associations and joined the Ruling Party.

The Speaker ruled on this point as follows:

> It is not for the Chair to consider the reasons or justification about the change in the party alignment in order to effect changes in the allotment of seats. It is for the Chair to be satisfied about the resignation from a party or group and about the joining and admission in a new party or group, before allotting new seats. This matter came up before the Presiding Officers' Conference recently held at Trivandrum. This Conference has taken a decision which is as follows:
>
> > " In any case where a member of one Party or Group subsequently chooses to change his party or group affiliation, he must write to the Speaker accordingly. If the Speaker is satisfied that the decision has been duly communicated in writing by the member to the Party or Group from which he has severed his loyalty, and the party or group which he has joined has communicated in writing its acceptance of his membership to the Speaker, he may recognise the change. The Committee further recommend that these principles should be followed in all State Legisla-

tures in the matter of giving recognition to a composite Party or Group or to a party or Group composed of different parties or groups."

I have followed these principles in effecting changes in the allotment of seats. The Members have stated before me in writing that they have resigned from the erstwhile party or group and joined the Ruling Party. I have also received communications from the Leader of the Ruling Party of having admitted them to the party.

In view of the statement, the matter does not admit of any further discussion and it should be closed.

Mysore (Withholding of information by the Government in respect of an Admitted Question).—On 16th January, 1969, there was a question in the name of Shri M. S. Krishnan about a strike of Central Government employees. Clause (d) of the question sought information as to whether there were any circulars/instructions/advice received by the State Government from the Central Government to review certain cases and withdraw them. In reply to that part of the question the answer was that it would not be in the public interest to disclose the information. Shri M. S. Krishnan took objection to this answer. The Speaker stated that when the Government claimed that information could not be disclosed in the public interest, that was the last word and that no further question could be put. At the end of the question hour, Shri M. Nagappa raised a point of order stating that when once the Speaker had admitted a question it carried the prestige and authority of the Speaker and that every ruling of the Speaker had to be complied with by the Minister. According to Shri M. Nagappa the Minister could not say that it was not in the public interest to disclose the information. In support of his contention, he quoted a ruling of the Andhra Pradesh Legislative Assembly.

The Speaker promised to look into the matter. He later gave a considered ruling as follows:

I have carefully considered the matter. I have consulted several authorities including the ruling cited by Shri M. Nagappa. There is a long chain of rulings of the House of Commons and Lok Sabha to the effect that an answer to a question cannot be insisted upon if the Minister refuses to answer on the ground of public interest, and the Speaker has refused to allow supplementary questions in these circumstances. It has been held that the refusal of a Minister to answer a question on the ground of public interest cannot be raised as a question of privilege. A question is not generally disallowed by the Speaker on the ground that it is not in public interest to disclose the information. It is for the Minister to refuse to answer a question on the plea of public interest. On July 28th, 1956, in Lok Sabha when a Member asked whether the Chair had any voice in determining whether something was in public interest or not, the Speaker observed as follows:

> " Normally it is the function of Government to decide what ought to be disclosed and what ought not to be disclosed. The Speaker does not sit in judgment over that."

On 3rd April, 1937, a question was asked in the Central Assembly as to whether the Government would be pleased to lay on the Table a list of books and publications forfeited by them in the Centrally Administered areas. Then the Minister answered that it was not in the public interest that he should lay

the list of forfeited books and publication on the Table. A question was raised by another Member as to what was the public interest in the matter. The then President (Hon. Sir Abdul Rahim) observed as follows:

> "The Chair understands public interest is a well-known phrase, but whether a particular matter is or is not in public interest, it is entirely for the Government to judge."

On 13th August, 1953, the Deputy Speaker of Lok Sabha observed as follows in a similar case:

> "It is open to the Government to consider whether a matter is confidential or not. The Chair does not insist upon placing the matter before the House or disclosing it."

Shri A. R. Mukherjea in his textbook *Parliamentary Procedure in India* has stated as follows:

> "A Minister is not bound to answer a question, and the Presiding Officer has no power to compel a Minister to answer a question or to answer it in any particular way. In the British House of Commons a Minister is not bound to answer a question if it is not in the public interest to do so. The same practice is followed in India, and Ministers answer questions unless they think that the public interest would suffer by answering the question."

On 1st March, 1961, when a point arose in the House of Commons the Speaker observed as follows:

> "The Rule is that if a Minister says that he will not answer on security grounds, that is a permitted ground for refusal. It was for that reason and no other that I called the next question, and I am afraid that I must persist in what I said."

It is the duty of the Speaker to examine every question under the Rules. If the questions fulfil the conditions laid down in the Rules, they are admitted and if they do not, they are disallowed. At this stage, the Government does not come into the picture. If at the time of reply the Minister thinks that it is not in public interest to disclose the information, he would be perfectly within his rights to refuse to reply, on that ground. The admission of the question by the Speaker does not mean that the Minister can be compelled to answer a question when public interest demands refusal to answer. Further it may also happen that the ground for refusal to answer a question (such as *sub judice*) may intervene after the question is admitted and before it is actually answered.

In view of the above position, I am afraid I cannot agree to the precedent cited by Sri Nagappa and I am unable to uphold his point of order. The position stated by me when this matter was raised holds good.

3. PROCEDURE

House of Commons (Interpretation of S.O. No. 100 (Statutory Instruments, &c., (Procedure)) in Relation to the Chair's Duties at 11.30 p.m.).—On 10th December, 1969, at 10.26 p.m. a Member moved a Motion to annul the Town and Country Planning (Control of Advertisements) Regulations. Debate continued until about 11.25 p.m., when on points of order several Members interrupted the winding-up speech to ask the Deputy Speaker whether he would adjourn the debate in exercise of his powers under S.O. No. 100; they argued that several Members still wished to speak and that the start of the debate had been delayed.

Mr. Deputy Speaker replied that he was required to consider these matters at 11.30 p.m. and would take his decision then. As he was about to put the Question, he was interrupted on two occasions; he then announced that he had decided that the Question should be put. The House then divided, the Question being put at 11.30 p.m.

(*H.C. Deb.*, Vol. 793, cols. 596–8.)

House of Commons (Motion necessary to secure production of committee documents not reported to the House).—On 13th November, 1969, Mr. Ian Lloyd, Conservative Member for Portsmouth, Langstone, asked the Speaker how Select Committee documents which had not been reported to the House in the last session could be made available to the House. He said:

It will be within the recollection of the House that quite recently the Select Committee on House of Commons (Services) published the minutes of its meeting on 8th July and days following. In that document there occurs the following words:

> " A letter from the Chancellor of the Exchequer to Mr. Speaker concerning relations between the House of Commons, the Treasury, and the Civil Service Department considered.
>
> *Resolved*, That the Chancellor's proposals should be adopted."

Following that, I put a Question, with your consent and knowledge, to the Leader of the House, asking him whether he would seek the agreement of Mr. Speaker to placing in the Library a copy of the letter from the Chancellor of the Exchequer to Mr. Speaker concerning relations between the House, the Treasury and the Civil Service as referred to on page 3 of the Report that I have mentioned.

To this, the Lord President of the Council replied that it would not be appropriate to do so because these papers were Select Committee documents which had not been reported to the House. It would be right to inform the House what Erskine May says on one aspect of this subject, namely,

> " A select committee . . . possesses no authority except that which it derives by delegation from the House by which it is appointed . . . the scope of its deliberations or inquiries is defined by the order by which the committee is appointed."

The Order appointing this Committee is contained in the OFFICIAL REPORT of 14th November, 1967, when a Motion was moved by the then Lord President of the Council, now the right hon. Member for Coventry (Mr. Crossman),

> " to advise Mr. Speaker on the control of the accommodation and services in that part of the Palace of Westminster and its precincts occupied by or on behalf of the House of Commons, and to report thereon to this House."

There is nothing in the Order which states or implies that the Committee is empowered to consider relationships between the House, the Treasury and the Civil Service Department.

My point of order is, first, that since it is beyond the scope of the Committee to consider relationships between the House, the Treasury and the Civil Service these can be raised only if the subjects which it is considering themselves raise this question of considerable importance. If so, since it is a matter which is fundamental and sensitive to the House—and I think that in the opinion of many hon. Members it is increasingly fundamental and sensitive—surely the

House as a whole would not only wish to discuss it but would have a right to do so.

Secondly, there seems to be a growing and undesirable practice for Committees of this kind to suppress documents by pleading privilege. Surely no Committee of the House should arrogate to itself the exclusive right to discuss matters of such importance unless—and I emphasise this—specifically requested and empowered by the House to do so.

I ask for your guidance, Mr. Speaker, on what steps the House may take as a whole to protect its legitimate interests in this matter.

Mr. Speaker pointed out:

that this is not the proper occasion on which to discuss the functions or powers of the Services Committee. As those powers were exercised in the last Session of Parliament, the Services Committee for the current Session, which has not yet met, has no control over documents which have not been reported to the House.

But there is a procedure by which such documents can be made available—the hon. Member asked me for guidance—namely, by putting down a Motion that they be laid upon the Table. If agreed to, the Motion would secure their production from the Committee archives.

(*H.C. Deb.*, Vol. 791, cols. 622–4.)

House of Commons (Selection of Amendments).—On 3rd March, 1969, three Amendments stood on the Order Paper to a Government Motion, seeking approval of a Command Paper on industrial relations, which were in the names of back-bench supporters of the Government. Mr. Speaker, in announcing that none was selected, gave as one reason for his decision the necessity of observing in the debate the *sub judice* rule of the House.

On the day of the debate, a dispute between the Ford Motor Company and certain trade unions was under trial in the courts of law on a notice of Motion by the Company for an injunction. Mr. Speaker ruled that:

The Resolution passed on 23rd July, 1963, lays down that reference in debate to any matter brought before the court—and it includes,

> " as for example by notice of motion for an injunction ".—[OFFICIAL REPORT, 23rd July, 1963; Vol. 681, c. 1417.]

or otherwise—is out of order.

The reason for the rule which the House has adopted is that there may be a real and substantial danger of prejudice to the trial of a case if we endeavour to prejudge the issues in that case in this House this afternoon. Hon. Members will understand, therefore, that although the Chair will endeavour to exercise a reasonable degree of discretion, Mr. Speaker will have to intervene if hon. Members refer to the actions of the Ford Motor Company in its dispute with certain trade unions, as that matter has now been brought within the ambit of the courts of law.

(*H.C. Deb.*, Vol. 779, cols. 36–7.)

House of Commons (Ten-Minute Rule Bills).—At 10 a.m. on 27th November, 1969, Mr. Maxwell-Hyslop, the Conservative Member for Tiverton, handed in to the Public Bill Office seventy Ten-Minute

Rule Bills, thus taking all possible dates for their introduction for well over a year. It was alleged by Members of the Labour Party that Mr. Maxwell-Hyslop had acted on behalf of other Members of his Party without their knowledge and that his success in pre-empting all future dates for Ten-Minute Rule Bills had been the result of an organised move by the Whips. It was claimed that the spirit of the Standing Orders had been infringed and that private Members' time had been abused.

Mr. Maxwell-Hyslop gave an account of his activities as follows:

First of all, I intended to queue myself through the night in order to secure a favourable position for the Bill I have given notice of. I then inquired of the Public Bill Office whether I could as well give notice on behalf of other hon. Members to save them the ordeal of sitting through the night—an ordeal which no other hon. Members availed themselves of—and was informed that I could give notice for any other hon. Members wishing to give notice of Bills and that there was no limit on the number. That is the quite specific answer I got to a quite specific question put to the quite specific authority for ruling on these matters.

I did then queue throughout the night without any other hon. Member, from either the Government benches or the Liberal bench being present. . . . It was not until after 8 o'clock this morning that any hon. Member from the Government or Liberal benches put in an appearance. When 10 o'clock came, I handed in, first, my own Bill, and gave notice of it, and then a considerable number of Bills in the names of hon. Friends who wished notice to be given of their intention. Without exception, they had either given the Bills to me themselves or the Bills had been given to me with concrete assurances that it was their wish.

It was at that point that there was a certain amount of discussion with the Clerk of Public Bills, because the hon. and learned Member for Derby, North, raised the question whether a commission or request to give in a notice can, as it were, be sub-contracted. I did indeed say that, if the Clerk ruled against me, so be it. The hon. and learned Gentleman has half reported a number of conversations, but without naming their originators, some of whom are present, so that they cannot speak for themselves as to whether his report is accurate. . . . I will merely conclude by saying that it was a case where the early bird got the worm and that the frustration of the hon. and learned Gentleman, who preferred to spend the night in bed, is understandable in the circumstances rather than commendable.

Mr. Speaker ruled that " the present procedure for receiving notice of Motions for Ten Minute Rule Bills was observed. It is for the House, not Mr. Speaker, to change the rules if that course would seem desirable ".

The Leader of the House suggested that the matter should be investigated by the Procedure Committee and, after further points of order had been raised, the Leader of the Opposition (Mr. Heath) intervened as follows:

I rise formally to support what the Leader of the House has said—that this matter should be referred to the Select Committee on Procedure. I well recall the early days of the 1951 Parliament when a group of hon. Members below the Gangway who were then in opposition organised Ten-Minute Rule Bills for their own party purposes by putting down sufficient Bills on one day to preclude all other Government business.

We readily agreed that we were outwitted and the matter was referred to the Select Committee on Procedure, as a result of which the rule was made that not more than one Ten-Minute Rule Bill could be put down on one day.

Perhaps hon. Gentlemen opposite and those on the Liberal benches will now admit that they have been outwitted on this occasion. You, Mr. Speaker, knowing all the facts, have said that nothing out of order has been done. I am sorry if hon. Members opposite cannot admit that they have been outwitted by my hon. Friend the Member for Tiverton (Mr. Maxwell-Hyslop). I agree with the Leader of the House that this matter should be referred to the Select Committee on Procedure. I am confident that we can find a solution to this problem.

(*H.C. Deb.*, Vol. 792, cols. 639–50.)

4. Standing Orders

House of Lords (Irish Peers).—On 24th November, 1966, the House endorsed the opinion of the Committee for Privileges " that the right to elect Irish representative Peers no longer exists ".*

In the light of this decision, the Procedure Committee considered Standing Orders Nos. 68 and 69, which purport to regulate:—

(*a*) claims to a right to vote at elections of Peers of Ireland;
(*b*) the procedure for treating the claims to Irish Peerages in abeyance.

The Committee took note of the fact that Standing Order 68 had been used as a means of validating routine claims to the succession of Irish Peerages, as distinct from Peerage claims that would arise on petition to the Sovereign. They understood that, notwithstanding the decision of the House, taken on 24th November, 1966, in regard to Irish representative Peers, the Lord Chancellor was nevertheless prepared to continue to consider and decide such routine claims to succession in the Peerage of Ireland as might be submitted to him.

In these circumstances, the Committee recommended† that Standing Order 68 should be amended by leaving out the words " A claim of a right to vote at elections of Peers of Ireland to sit in the Parliament of the United Kingdom " and inserting in their place:—

" A claim to any Peerage of Ireland ".

This Amendment was made by the House on 25th July, 1969. (*H.L. Deb.*, Vol. 304, col. 1184.)

House of Lords (Presentation of Public Petitions).—On 24th June, 1969, the House agreed to pass a new Standing Order No. 63A to regulate the presentation of public Petitions. The Procedure Committee had recommended that such Petitions should be presented only by a member of the House and that in doing so the Peer presenting a Petition should confine himself to reading out the Prayer and stating the number of Petitioners who have signed the Petition. They further

* The Table, Vol. XXXV, p. 166.
† *H.L.* (1968–9), 146.

recommended that such a Petition should not be printed unless a member of the House puts down a motion to debate it for a particular day; in which case the Petition would be ordered to be printed for the convenience of the House.

(*H.L.* (1968–9), 67.)

House of Commons.—The changes in Standing Orders made in 1969 were as follows:

(1) Standing Order No. 2 (Exempted Business) was modified to allow Motions to be made to exempt specified business without limit, for a fixed period after the business had been entered upon, or for a specific period after ten o'clock or after business had been entered upon, whichever was the later. Exemption Motions are moved at the interruption of business at ten o'clock and allow opposed business to be taken after that hour.

(2) Standing Order No. 18 (Business of Supply) was amended to bring it into conformity with changes made with regard to defence votes. Individual service votes were combined into a class of the Estimates in respect of the Ministry of Defence. A further change was made to allow the vote on account to be taken before 6th February. The basis of calculation of the vote on account for Civil Departments had been changed, so that it was published earlier in the Session.

(3) Standing Order No. 60A (Second Reading Committees) was amended to reduce the maximum number of Members of a Second Reading Committee from eighty to fifty and the minimum number of Members from twenty to sixteen. This change brought membership of Second Reading Committees to the same limits as Standing Committees.

(V. & P. 1968–9, pp. 702–3.)

Jersey.—In 1969 two Standing Orders were amended in order to enable the person presenting a petition to speak first and last in the matter instead of the Committee to which it had been referred.

(*Contributed by the Greffier of the States.*)

Australia: Senate.—During 1969 the Standing Orders Committee presented two Reports to the Senate.

The first Report referred to the method of answering Questions on Notice in the Senate, and the second Report again referred to the same matter, without recommending any alteration to the Standing Orders.

The second Report also considered three further matters, arising from the existing Standing Orders 413 (allusion to debates of same Session), 416 (allusion to debate in House of Representatives) and 308 (disclosure of Select Committee evidence).

The Committee recommended amendments to Standing Orders 413 and 416 to permit allusion to debate during the same Session or to debate in the House of Representatives provided the allusion is relevant

to the matter under discussion, but made no recommendation in relation to S.O. 308. (An amendment to this Standing Order was subsequently recommended, and agreed to, during April 1970.)

The recommendations contained in the Second Report were adopted by the Senate on 26th September, 1969, and the Standing Orders were amended accordingly.

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

South Australia: House of Assembly (Time limits on Speeches).—By the adoption of a new Standing Order No. 143a, on 30th October, 1969, the House of Assembly in South Australia imposed time limits on speeches for the first time in the House's 112 years history. The enactment of this order is seen by Members as a practical step towards the elimination or at least the reduction of the occasional bouts of prolixity. The time limits operate in the House only, and not in a Committee of the whole. They are as follows:

Subject	*Limit*
(*a*) Address in Reply:	
Each Member	1 hour
(*b*) Second reading of a Bill:	
(i) Introduced by a Minister:	
Mover	Unlimited
Leader of Opposition, or one Member deputed by him	Unlimited
Any other Member	45 minutes
(ii) Introduced by a private Member:	
Mover	Unlimited
Premier, or one Minister deputed by him	Unlimited
Leader of Opposition, or one Member deputed by him	Unlimited
Any other Member	45 minutes
(*c*) Third reading of a Bill:	
Each Member	30 minutes
(*d*) Motion of want of confidence:	
Mover	Unlimited
Premier or Minister deputed by him	Unlimited
Any other Member	45 minutes
(*e*) Substantive Motion:	
Mover	Unlimited
Principal speaker in Opposition	Unlimited
Any other Member	45 minutes
(*f*) Motion: That the Speaker do now leave the Chair and the House resolve itself into a Committee of Supply:	
Leader of Opposition, or Member deputed by him	Unlimited
Any other Member	45 minutes

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

Papua and New Guinea.—The House of Assembly adopted the following new Standing Order on 17th November, 1969,:

Economic Development Committee

(1) A Committee, to be called the Standing Committee on Economic Development, shall be appointed at the commencement of each House.

(2) The Committee shall consist of seven Members appointed on motion.

(3) The Committee shall have power to send for persons, papers and records, to sit during recess and to adjourn from place to place.

(4) The Committee shall maintain under continuing review and report upon ways and means of developing a balanced and self-reliant economy, the strength and direction of factors bearing on the economy and progress toward achievement of the aims of the Government's economic policies.

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

India: Maharashtra.—Ministers of State were appointed for the first time in October 1969. Rule 2 (m) of the Assembly and Council Rules defined " Minister " to include " Deputy Minister " but not " Minister of State ". The rules were amended so as to include Minister of State as well. Two other minor amendments were of a drafting nature.

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

5. Order

India: Mysore (Members instructed to withdraw from House).—On 21st August, 1969, there was an uproar in the House. Several Members insisted on speaking. The Speaker directed four Members to withdraw from the House for persistently obstructing the proceedings of the House. The Speaker adjourned the House for ten minutes. The House did not, however, reassemble for 90 minutes. One of the four Members ordered to withdraw from the House then wanted to re-enter the House. The Marshal of the House asked the Member not to enter the House since, under the Rules, a Member ordered by the Speaker to withdraw from the House had to be away from the House for the rest of the day and the Marshal had obtained the orders of the Speaker in this regard. The Member alleged that the Marshal had manhandled him and had caused injury to his hand.

After some discussion in the House, the matter was referred to the Privileges Committee. The Committee has not yet presented its report.

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

6. Electoral

House of Commons (Representation of the People Act 1969).—The principal changes wrought by the Act were as follows:

1. *Electorate*

(*a*) Voting Age. By Section I of the Act, the minimum age for voting in a parliamentary election was reduced from twenty-one years

to eighteen. The same section made provision for the appearance on the register of electors who would not reach the qualifying age until some time during the twelve months following the publication of the register. This registration in advance enabled people to vote at any election held after they reached the qualifying age, instead of having to reach the qualifying age before they could be registered.

(*b*) Proxy and Postal Voting. Among the amendments made to the law regarding proxy and postal voting was the extension of the facilities accorded in the Representation of the People Act 1949 to members of the Armed Forces serving abroad to members of the British Council (Section 2). People changing address within the same urban area were enabled in certain circumstances to qualify for a postal vote (Section 6 (i)), and provision was made for people who would not have been able to vote in person for reasons of religious observance (Section 6 (2)).

(*c*) Merchant Seamen. Special provision (Section 3) was made for the registration of merchant seamen as resident either where they would live but for their employment or at the club or hostel most frequently used, thus exempting them from the provisions of the Act of 1949 (Section 4 " Residence ").

2. *Electoral System*

(*a*) Hours of Polling. Schedule 1, Part II, Section 2 provided that polling stations should close at 10 p.m., instead of at 9 p.m. as previously.

(*b*) Party label on ballot paper. Section 12 permitted a statement of which party the candidate claimed to represent to appear on the ballot paper.

(*c*) Election expenses. Section 8 altered the method of computation, declaration and publication of candidates' election expenses. Section 10 repealed Section 97 of the 1949 Act which forbade the incurring of election expenses on bands, etc.

(*d*) Broadcasting during election campaigns. Section 9 relaxed certain of the restrictions on broadcasting during election campaigns so that for a broadcast relating to a particular constituency, it was no longer necessary for all candidates to take part provided that any absent candidate gave his permission.

Other amendments were made to the law relating to registration offices, election agents and certain other matters.

Jersey.—In 1969 the Franchise (Jersey) Law 1968 was amended to enable citizens of the Irish Republic to vote as electors in public elections in the Island.

Australia (Naming of Electoral Divisions).—In October 1968 the House of Representatives appointed a select committee to consider and report upon (*a*) the criteria which should be adopted in naming Electoral Divisions; and (*b*) whether the Distribution Commissioners

should attach names to Divisions at the time of publishing their proposals, or whether some other person or persons should attach the names and, if some other person or persons, when.

The Committee presented its report* on 15th April, 1969. The report stated that some existing Divisions are inappropriately named and that there are many distinguished persons who have a greater claim to have Divisions named after them. It was to be regretted that certain names have been abandoned.

The naming of Divisions after former citizens who have rendered outstanding service to their country was strongly favoured by the Committee but it was of the opinion that a name should not be used until 10 years after a person's death. The suggested period of 10 years would prevent the use of a name for political advantage and would ensure to some extent that the prominence of the citizen had stood the test of time.

Locality or place names should generally be avoided as they are often misleading. With the alteration of boundaries from time to time the locality or place name from which a Division originally derived its name may well become inappropriate. In addition there is the possibility that the name of an electorate which happens to have a geographical significance could be permitted to influence a redistribution at the expense of those Divisions which have names of no such significance. However, the Committee was aware that in certain areas the naming of a Division after a geographical feature may be appropriate.

The Committee considered that it is appropriate for a proportion of Aboriginal names to be used and, as far as possible, the names of those existing Divisions with Aboriginal names should be retained.

Concern was expressed at the number of Commonwealth Divisions the names of which duplicate existing State Divisions which causes considerable confusion to electors and results in many votes being rejected because they are recorded for incorrect electorates. The Committee suggested that discussions between the Commonwealth Electoral Officer and the Electoral Officers of the various States should take place on this question.

When names such as Melbourne and Adelaide are used, qualifying names such as Melbourne Ports and Port Adelaide should be avoided as they cause confusion both inside and outside the House. Confusion is also caused by names with similar pronunciation such as Lawson and Dawson.

The Committee felt that the names of Division which have been abolished at a redistribution should not be reallocated at the same redistribution to new areas quite remote from the old Divisions.

It was suggested that names of Divisions should not be changed or transferred to new areas without very strong reasons. Members who find that they will be candidates for new areas often want to take with them the Division names with which they are identified. While this

* *Parliamentary Paper* No. 35 of 1969.

desire may be understandable there is no doubt that it causes considerable confusion and loss of votes by votes being recorded for incorrect Divisions.

The Committee was of the opinion that when two or more Divisions are partially combined at a redistribution, as far as possible the name of the new Division should be that of the old Division which has the greatest number of electors within the new boundaries.

In respect of the second part of the terms of reference the Committee believed that the practice of the Distribution Commissioners in attaching provisional names to distribution proposals is sound. It is convenient to have provisional names for identification of the Divisions both from the Parliamentary and public points of view and also for Party preselection purposes.

However, the attaching of permanent names should be quite distinct from redistribution proposals and the practice of the Parliament approving names should become the rule.

Parliament should be assisted in this task by a Standing or Select Committee of the House of Representatives which should be appointed at the time of a redistribution to give full and proper consideration to the naming of Divisions. The findings of the Committee should be reported to the House for approval at the same time as the distribution proposals are considered.

To assist the Committee in its deliberations and to give interested persons throughout the community an opportunity to express their views on the names of Divisions, it was suggested that the Commonwealth Electoral Act could be amended to provide for the Distribution Commissioners to receive suggestions and comments relating to names in the same way as they receive them in relation to distribution under a section of the Act. After the statutory period for suggestions and comments has elapsed these would be forwarded to the Committee for consideration and subsequent recommendation to the House.

The report is in the hands of the Government but no intimation of its intentions in respect of the Committee's recommendations has yet reached the Parliament.

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

Australia (Defence (Parliamentary Candidates) Act 1969).—The Defence (Parliamentary Candidates) Act 1966 (see TABLE Vol. XXXV, p. 190) was passed to enable officers and other ranks called up for service in the armed forces to contest Federal Parliamentary Elections. That legislation was necessary because Section 44 of the Constitution provides that any person who holds an office of profit under the Crown, *e.g.* a member of the armed forces, shall be incapable of being chosen or of sitting as a Member of either House of the Parliament.

The new Act* gives consideration to the position of other members of the Defence Forces who may wish to contest Parliamentary Elections

* *Hans. H. of R.*, 15th May, 1969, pp. 1849–50.

and provides means whereby a member of the Defence Forces who is released to contest a Parliamentary Election can be reinstated with all his accrued rights and privileges preserved if he is not successful at the Election.

Because of the substantial amendments involved, it was found convenient to repeal the 1966 Act and to incorporate its provisions in the new one.

Members of the Defence Forces will now have the right, almost generally, to contest Elections in a manner which does not relieve them of their obligation or commitment to serve in the Defence Forces in the event of their being unsuccessful electorally but also in a way which fully protects all of their rights and benefits as servicemen.

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

New South Wales (Parliamentary Electorates and Elections (Amendment) Act, 1969).—For state electoral purposes the State of New South Wales is divided into two areas—the Sydney area and the country area. This Act determines the boundary of the Sydney area which will now take in the area extending from Stockton in the north to Shellharbour in the south and westward to Linden on the lower Blue Mountains. This will now be known as the central area and the remainder of the State continue to be known as the country area. The number of electorates is increased to 96 with the central area containing 63 seats and the country area being increased from 31 to 33 electorates.

A redistribution of New South Wales into 96 electoral districts is to be commenced by 3 electoral district commissioners within six months to this measure. Thereafter, there is to be a redistribution every six years from the date of commencement of this first redistribution.

In redrawing electoral boundaries, the commissioners are required to give consideration to a number of factors apart from the number of electors. These are existing boundaries, community or diversity of interest, lines of communication and physical features. They will now consider three additional factors, namely distance from the seat of government, density of population and demographic trends. The margin of allowance of electors enrolled in an electoral district is reduced to 15 per cent above or below the quota of the area. (2nd Debate: Session 1968–9, P.D., p. 5155.)

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

South Australia (Controverted Elections).—Since the inauguration of responsible government in South Australia in 1857, the jurisdiction in controverted Parliamentary elections has been vested in a Court of Disputed Returns, consisting of the junior Supreme Court judge and four Members of the House affected by the dispute. By the Electoral Act Amendment Act this jurisdiction has been transferred from Parliament to the Supreme Court.

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

New Zealand (Number of Members).—There are now 84 electorates (80 European and 4 Maori) returning Members to the House of Representatives. The previous Parliament comprised 80 Members, but the Electoral Amendment Act 1965 fixed the number of European electorates in the South Island at 25 (an increase of one) and provided that the number of European electorates in the North Island should be ascertained by the Representation Commission after each quinquennial census of population on the basis of the quota fixed for the South Island. In 1967 the Electoral Boundaries Commission considered the results of the 1966 census and fixed the number of electorates in the North Island at 55 (an increase of 3).

New Zealand (Age of Voter).—The Electoral Amendment Act 1969 amended the Electoral Act 1956 by altering the minimum age for persons qualified to be registered as voters and to vote at elections from 21 to 20.

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

7. Ceremonial

House of Commons (Statue of Sir Winston Churchill).—On 1st December, 1969, Lady Spencer-Churchill unveiled the bronze statue of Sir Winston Churchill which now stands in the Members' Lobby. The statue is the work of Mr. Oscar Nemon and is placed to the left of the Churchill Arch. The Speaker, who escorted Lady Spencer-Churchill, said that the statue " will inspire through the years those who come to serve parliamentary democracy which he lived to protect ".

8. Emoluments

Westminster (Members' Expenses and Allowances).—On 11th December, 1969, the Leader of the House of Commons, Mr. Fred Peart, announced that Members would be allowed to claim an allowance for secretarial assistance of up to £500 per annum. He also announced an increase in the car allowance of 4½d. a mile to 6d. a mile.* The same day, the Leader of the House of Lords, Lord Shackleton, announced a similar increase in the car allowance for Peers and, also, that the daily attendance allowance for Members of the House of Lords would be increased from £4 14s. 6d. to £6 10s.† The secretarial allowance for Members of the House of Commons had been recommended by the Select Committee on House of Commons (Services) in their Sixth Report (H.C., 1968–9, 374).

The necessary Motions for implementing the proposals in the statement to each House were agreed to on 18th December.

* *H.C. Deb.*, Vol. 793, col. 653.
† *H.L. Deb.*, Vol. 306, col. 671.

New South Wales (Parliamentary Allowances and Salaries (Amendment) Act 1969).—This Act authorised increases from 1st July, 1969, in the remuneration of Members of the Legislative Council and Legislative Assembly, Ministers of the Crown and the holders of certain parliamentary offices. The increases amounted to 17½ per cent in all salaries, expense allowances and special allowances and an increase in the electorate allowances payable to Members of the Legislative Assembly of 20 per cent. (See table on page 200).

(2° Debate: Session 1968–9, P.D., p. 5273.)

Victoria (Parliamentary Salaries and Superannuation (Administration) Act 1969.)—The Act made several changes in the Parliamentary Contributory Superannuation Fund. The administration of the Fund was transferred from the control of Trustees to the State Superannuation Board, a provision was made for interim loans to the Fund from Consolidated Revenue and a Member was permitted to capitalise his pension at the rate of ten times his annual entitlement, the balance to provide an annual amount to be paid fortnightly (*Hansard*, 15.4.69, pp. 3712–13).

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

South Australia (Parliamentary Salaries Tribunal).—The Tribunal which had been established by the Parliamentary Salaries and Allowances Act 1965 reported in 1969 and recommended the following changes in salaries and allowances of Ministers of the Crown, Officers of Parliament and Members.

Position	*From 1st July, 1966*	*From 1st July, 1969*
I. *Ministers of the Crown*		
1. Premier	$	$
Basic salary	6,500	7,500
Additional salary	5,500	7,500
Electorate allowance	1,200	1,400
Expense allowance	1,500	1,650
Total	14,700	18,050
2. Chief Secretary (Deputy Premier)		
Basic salary	6,500	7,500
Additional salary	4,100	4,750
Electorate allowance	1,200	1,400
Expense allowance	1,200	1,350
Total	13,000	15,000

NEW SOUTH WALES PARLIAMENTARY ALLOWANCES

As from 1 July, 1969

Member	*Base Salary*	*Salary of Office*	*Electoral Allowance (Refer Fifth Schedule Constitution Act)*	*Expense Allowance*	*Special Allowance*	*Total Remuneration*
	$	$	$	$	$	$
	p.a.	p.a.	p.a.	p.a.	p.a.	p.a.
Legislative Assembly:						
Private Member ..	8,035	..	1,945–2,880	..	..	9,980–10,915
Ministers of the Crown—						
Premier	..	18,215	1,945–2,880	4,700	..	24,860–25,795
Deputy Premier ..	..	16,075	1,945–2,880	2,115	..	20,135–21,070
Other Ministers ..	..	15,040	1,945–2,880	1,880	..	18,865–19,800
Holders of Offices—						
Speaker	8,035	4,890	1,945–2,880	1,175	..	16,045–16,980
Chairman of Committes	8,035	1,385	1,945–2,880	590	..	11,955–12,890
Leader of the Opposition	8,035	5,595	1,945–2,880	1,880	..	17,455–18,390
Deputy Leader of the Opposition.. ..	8,035	1,365	1,945–2,880	470	..	11,815–12,750
Leader of other Opposition Party (not less than 10 Members)..	8,035	1,600	1,945–2,880	940	..	12,520–13,455
Deputy Leader of other Opposition Party (not less than 10 Members)	8,035	..	1,945–2,880	425	..	10,405–11,340
Whips—						
Government and Opposition ..	8,035	1,365	1,945–2,880	470	..	11,815–12,750
Party (not less than 10 Members) ..	8,035	..	1,945–2,880	425	..	10,405–11,340
Legislative Council:						
Private Member ..	2,395	..	*	1,690	..	4,085
Ministers of the Crown—						
Leader of the Government Members ..	..	15,040	..	1,880	1,410	18,330
Deputy Leader of the Government Members..	..	15,040	..	1,880	355	17,275
Holders of Offices—						
President	..	7,710	..	1,690	1,175	10,575
Chairman of Committees	..	5,005	..	1,690	355	7,050
Leader of the Opposition	..	5,850	..	1,690	705	8,245
Deputy Leader of the Opposition ..	..	3,245	..	1,690	355	5,290
Whips—						
Government and Opposition ..	..	3,245	..	1,690	355	5,290

* *Living away from home allowance:* Private Members of the Legislative Council living in electoral districts specified in Parts III, IV, V and VI of the Fifth Schedule to the Constitution Act receive an allowance of $10.00 for each day or part of a day they attend a sitting of the Legislative Council.

Position	From 1st July, 1966	From 1st July, 1969
3. Other Ministers		
Basic salary	6,500	7,500
Additional salary	3,500	4,000
Electorate allowance	1,200	1,400
Expense allowance	1,000	1,100
Total	12,200	14,000
II. *Officers of Parliament*		
1. President—Legislative Council		
Basic salary	6,500	7,500
Additional salary	2,100	2,400
Electorate allowance	1,900	2,200
Expense allowance	200	400
Total	10,700	12,500
2. Speaker		
Basic salary	6,500	7,500
Additional salary	2,100	2,400
Electorate allowance	1,600	1,850
Expense allowance	200	400
Total	10,400	12,150
3. Chairman of Committees—House of Assembly		
Basic salary	6,500	7,500
Additional salary	1,050	1,200
Electorate allowance	1,600	1,850
Expense allowance	—	—
Total	9,150	10,550
4. Leader of Opposition—Legislative Council		
Basic salary	6,500	7,500
Additional salary	600	700
Electorate allowance	1,200	1,400
Expense allowance	300	350
Total	8,600	9,950
5. Leader of Opposition—House of Assembly		
Basic salary	6,500	7,500
Additional salary	2,500	3,000
Electorate allowance	1,200	1,400
Expense allowance	600	800
Total	10,800	12,700

Position	From 1st July, 1966	From 1st July, 1969
6. Deputy Leader of Opposition—House of Assembly		
Basic salary	6,500	7,500
Additional salary	800	900
Electorate allowance	1,900	2,200
Expense allowance	—	—
Total	9,200	10,600
7. Whip		
A. Government		
Basic salary	6,500	7,500
Additional salary	600	800
Electorate allowance	1,900	2,200
Expense allowance	—	—
Total	9,000	10,500
B. Opposition		
Basic salary	6,500	7,500
Additional salary	600	800
Electorate allowance	1,200	1,400
Expense allowance	—	—
Total	8,300	9,700

NOTE—The electorate allowance shown above for each Officer of Parliament is that applying to the member at present holding the office.

III. *Members*

Zone A		
Basic salary	6,500	7,500
Electorate allowance	1,200	1,400
Total	7,700	8,900
Zone B		
Basic salary	6,500	7,500
Electorate allowance	1,600	1,850
Total	8,100	9,350
Zone C		
Basic salary	6,500	7,500
Electorate allowance	1,900	2,200
Total	8,400	9,700

The Tribunal recommended no change in the distance of 35 miles which qualifies a Member in certain circumstances for the Living Away from Home Allowance. They also rejected a submission that the Leader of the Opposition should be paid at the same rate as a Minister of the Crown.

South Australia (Parliamentary Superannuation Act Amendment Act 1969).—The Act made certain changes in the bases of contributions and pensions payable.

India (Salaries and Allowances of Members of Parliament (Amendment) Act, 1969).—The Act provided for enhancement of the rate of daily allowance payable to Members of Parliament from thirty-one rupees to fifty-one rupees per day during any period of residence on duty.

The Act also entitled a Member to perform journeys by air for visiting any place in India.

(*a*) not more than four times during a session lasting more than seventy-five days;
(*b*) not more than twice during a session lasting for seventy-five days or less; and
(*c*) not more than once during a sitting of the Committee.

The Act further entitled a Member

(i) to travel by any railway in India at any time in first-class air-conditioned on payment of the difference between the railway fares for first class air-conditioned and first class;
(ii) to one free third-class railway pass for one person to accompany the Member when he travelled by rail; and
(iii) to one free non-transferable first-class railway pass for the spouse, if any, of the Member to travel from the usual place of residence of the Member to Delhi and back, once during every session:

Where, however, a Member travelled by rail in first-class air-conditioned and no person accompanied that Member on that journey in third class, by virtue of the free third-class railway pass, then, in determining the amount payable by the Member under (i) above, the amount of the third-class fare for such journey was to be deducted from the difference referred to in (i) above.

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

India: Maharashtra (Parliamentary Salaries and Allowances).—Under section 2 (i) (a) of the Bombay Legislature Members' Salaries and Allowances Act 1956 the expression " term of office " was defined as the period beginning with the date when the Member took his seat in the House and ending with the date on which his seat became vacant.

This provision was made to follow the procedure in vogue at the Centre and to achieve uniformity in this respect and was adopted at the instance of the Auditor General of India. Under this provision, if Members could not take their seats in the House they were not eligible for any salary or allowances till they took their seats. This entailed considerable monetary loss to the members. It was, therefore, considered necessary to take power for the State Government to specify an earlier date from which the term of office of Members shall commence. The definition has accordingly been altered. The term " Term of office " now means the period beginning with the date when such Member takes his seat in the House or such other earlier date as the State Government may by order specify in this behalf if he is not likely to take his seat as aforesaid within fifteen days of the date of occurrence of the vacancy or the date of the notification of his election or nomination, whichever is later, and ending with the date on which his seat becomes vacant.

The travelling allowance admissible to Chairmen of Committees was as per the scale admissible to them as members of the House vide section 5 and 5AA of the Bombay Legislature Members' Salaries and Allowances Act 1956. But due to exigencies of their duties they have to undertake travel by railway in an air-conditioned coach (AC Class) or by air. Provision has now been made to entitle them to receive by way of travelling allowance an amount equal to one and one-quarter of the fare for air-conditioned coach class or of the air fare, as the case may be.

Under sub-section (1) of section 3 of the same Act a Member is entitled to a salary of Rs. 250/– per month. The same was raised to Rs. 300/– per month from 1st December, 1969. Under sub-section (2) of section 3, a Member is entitled to a sum of Rs. 150/– per month as a consolidated allowance for all matters not specifically provided for by or under the provisions of the Act. The same was raised to Rs. 200/– per month. Under section 4, a Member is entitled to receive a daily allowance at the rate of Rs. 21/- for each day of the period of residence at the place of session. This was raised to Rs. 30/- per day.

There was no such provision in the original Act for a salary and allowances to be paid to the Leader of the Opposition. It was decided to provide for the payment of a higher salary and certain allowances to a Member of the Assembly who is the Leader of the Opposition. The Act was amended accordingly by inserting section 3A, after section 3. The amending Act, *inter alia*, provides for the following:

(1) Salary at the rate of Rs. 1400 per month.
(2) Furnished residence or in lieu thereof a house allowance of Rs. 250/- per month.
(3) Conveyance allowance of Rs. 400/- per month.
(4) Staff, as determined by rules or orders in that behalf.
(5) Entitled to travel in air-conditioned coach by railway or by air.

(6) Facilities regarding reservation of accommodation in Dak Banglows, rest houses, circuit houses, etc.

The salaries and the allowances to the Chairman/Speaker and the Deputy Chairman/Deputy Speaker have been revised under the Maharashtra Act No. LI of 1969. The revised rates came into force from 1st December, 1969, as follows:

(1) The salary of the Chairman/Speaker has been revised from Rs. 1100/- p.m. to Rs. 1400/- p.m. and that of the Dy. Chairman/Dy. Speaker has been revised from Rs. 750/- p.m. to Rs. 1200/- p.m.

(2) The sumptuary allowance payable to the Chairman/Speaker has been raised from Rs. 1000 to Rs. 5000 per annum.

(3) The Chairman/Speaker and the Deputy Chairman/Deputy Speaker have been provided free of charge with the services of a chauffeur for the cars supplied to them.

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

Orissa.—The Orissa Legislative Assembly Members' Salaries and Allowances Act 1954 (Orissa Act 19 of 1954) was amended to give certain facilities to the Government Chief Whip and Government Deputy Chief Whip. The All India Whips' Conference has urged that the Government Chief Whip and Government Deputy Chief Whip should be treated at par with the Ministerial Deputy Ministers in respect of facilities enjoyed by them. The amending Bill was passed on 16th April, 1969.

(*Contributed by the Deputy Secretary of the Legislative Assembly.*)

9. Accommodation and Amenities

House of Commons (Members' Facilities).—The Sixth Report of the House of Commons (Services) Committee, which was laid before the House on 15th July, 1969, recommended (in addition to increased travel allowances and the introduction of a secretarial allowance which are dealt with on page 198 of this volume) the following improvements in Members' facilities:

Free Trunk Calls

The present system of telephone facilities is that all local calls can be made free of charge, but that Members must themselves pay for all calls outside the London telephone area. The cost of such calls can be set off as an expense against income tax. This system, however, not only entails considerable expense to Members, but makes an invidious distinction between London Members, who can, if they wish, conduct their constituency business on the telephone free of charge, and other Members, who have to pay.

When the new automatic telephone exchange comes into operation in the second half of 1971, Members will be able to make any call within the United Kingdom free of charge. The extra cost of this will be largely met by the great saving achieved by the reduction in telephone staff. To introduce such a system now, with the present manual exchange, will add to the cost borne on the Vote of the House.

Your Committee, however, submitted that free trunk calls should be introduced before the new automatic exchange is installed. The Treasury have agreed to this submission on the following conditions:

(i) That free trunk calls should be limited to Members and their secretaries.
(ii) That Members private trunk calls as well as all international calls will be charged for as at present.
(iii) That it will be inadmissable for Members to accept any arrangement whereby charges are reversed on incoming trunk calls.
(iv) That the new system shall be subject to review after twelve months so that the position can be reconsidered if it has become apparent that the cost of these calls has risen unreasonably.

There is however a danger of the exchange becoming overloaded, with the result that the delay in making calls will greatly increase. This danger could be mitigated to some extent if the existing 53 trunk-barred telephone boxes were to be made available for all calls, as the lines from these boxes go direct to an outside exchange and not through the switchboard. 30 boxes now connected to the switchboard could also be converted to outside lines. All this work could be completed in about two or three weeks. In addition, some extra lines could be installed on the existing switchboard and connected to an outside exchange. This work would however take considerably longer. Your Committee do not consider that an STD telephone should be installed in single or double rooms, because it would have to be changed again when the automatic exchange comes into operation in two years' time. Your Committee consider that it is essential that these alterations should be made by the Post Office before the new system is established, in order to ensure as far as possible that the existing switchboard is not greatly overloaded. It will also help if as many official trunk calls as possible are made from dial telephones. They therefore recommend that the work should be put in hand at once so that the system of free trunk telephone calls for Members can start on 1st October.

Free Postage

Members are now entitled to free postage for letters to Government Departments, Nationalised Industries, local Committees and Boards of the Health Service, the Clerks and Heads of Departments of Local Authorities and officials of the House. It has been suggested that the facility of free postage should be extended to all correspondence on Parliamentary business, including correspondence between Members. The latter facility is particularly needed during recesses, when the letter board in the Members' Lobby is not in operation. Your Committee consider that free postage on official business is the natural corollary of free trunk calls. The Treasury have accepted this in principle. It will also probably help in reducing the risk of overloading the existing switchboard. Your Committee therefore recommend that all letters on official business should be allowed to be sent free of charge.

It has been suggested that, in order to prevent abuse, an upper limit on the number of free letters should be fixed. This would, however, be difficult to administer, as the correspondence of each Member varies greatly. For instance, if a Member is responsible for a Private Member's Bill going through Parliament his correspondence is bound to increase far beyond the normal. Your Committee prefer an alternative idea, that a specially designed House of Commons envelope should be provided, in place of the existing " Official Paid " envelopes. The fact that they would be distinguishable from all other envelopes should help to reduce the possibility of their use for unofficial letters. Your Committee recommend that free postage on official business should also start on 1st October.

Photocopying Service

There are a number of photocopying machines provided for the use of Members and their secretaries. At present Members are allowed six free copies (recently increased from three), but have to pay fourpence a copy thereafter. The machines must be used only for Parliamentary business, i.e. not for letters to constituencies etc.

Many complaints have been received about these restrictions particularly when a Member has copies of documents made on behalf of a group of Members. Some Members want an entirely free service with no limit on the number of copies. Your Committee consider, however, that this goes too far, and might lead to great abuse of the facility. They have suggested, and the Treasury have agreed, that the number of free copies should be increased to twelve and that if a paper is being copied on behalf of a group of Members the number of free copies should be multiplied by the number of Members in the group. For instance, a group of 20 Members would be entitled to 240 free copies. It is unlikely, therefore, that a Member acting on behalf of a group would incur any expense to himself, as now happens. Your Committee recommend that this new rule be introduced immediately.

Stationery Allowance and File Pockets

Your Committee recommend two other small concessions which have also been agreed to by the Treasury. These are:—

(i) That Members should be allowed a free supply of stationery up to the value of £25 instead of £20.

(ii) That Members should be entitled to a free supply of one hundred file pockets for their filing cabinets instead of the existing twenty-five.

Your Committee recommend that these two changes should also take effect immediately.

(H.C., (1968–9.) 374.)

XXI. SOME RULINGS BY THE CHAIR IN THE HOUSE OF COMMONS, 1968–9

The following index to some points of parliamentary procedure, as well as rulings by the Chair, given in the House of Commons during the Third Session of the Forty-fourth Parliament of the United Kingdom is taken from Volumes 772–788 of the *Commons Hansard*, 5th Series, covering the period from 31st October, 1968 to 22nd October, 1969.

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.

Address (Queen's Speech)
—selection of amendments to [772] 699–701

Adjournment
—*Allowed under S.O. No. 9*
—suspension by executive action of second-class postal service [766] 1553
—revelation of confidential French proposals [778] 1107
—half-hour debate reserved for matters raised by private Members [775] 829
—speaking on without giving notice, deprecated [778] 634–6

Amendments
—acceptance of [776] 55
—not to refer to not selected [784] 1579

Bills
—cannot amend on Third Reading [782] 1814
—new contentious matters must not be brought in on Third Reading [786] 1811
—not necessary for any Member to hear voice objecting to Second Reading [776] 895
—questions of taxation and legislation cannot be raised on Consolidated Fund [780] 1293
—Third Reading not debatable unless notice of objection is given on Order Paper signed by 6 Members [775] 1697

Chair
—*cannot rule on hypothetical situations [778] 1463
—*has complete discretion in selection of amendments [777] 1324–5
—*reflecting on discretion of is unparliamentary [778] 413

Count
—called at 7.28 p.m. refused [774] 1917
—no, after 10 o'clock [782] 1109

Debate
—cannot debate American Ways and Means Resolution [774] 215
—cannot debate merits of issue which Select Committee will look into [777] 230
—convention of House that if any Privy Councillor or Minister rises, he must be called [775] 829
—*intervention after intervention cannot be made [774] 1696
—may use notes [774] 93
—Member must come back to ministerial responsibility [773] 1256
—must link remarks to Bill [773] 1721
—*no aspersions should be cast on living persons who are also Members of another place [777] 1369, 1400
—if Member opens debate wide of own bill Chair will have to allow House to, equally wide [779] 1174
—cannot quote verbatim from speech in another place [778] 850

Government
—matter for, if statement is to be made [780] 39

Members
—allowed to ask elucidatory questions on statements [777] 228
—must ask leave of House to speak again [772] 1201
—must not ask Speaker to comment on ruling of a Chairman in Committee [774] 1779
—must not reflect on chair's choice of speaker [779] 1480
—must not recall to Speaker what happened when he was not in Chair [780] 1741
—may not make intervention when outside House [784] 1416
—must not refer to Private Notice Question Speaker has refused [787] 1742
—need not declare interest when putting question or supplementary [779] 1563
—should not anticipate Question [778] 449
—should not refer to member of another place who will not have a chance of intervening [775] 216
—not permitted to refer to presence of strangers [776] 1643

Motion
—*cannot be moved without notice [774] 317
—procedural, cannot be amended; can only be voted for or against [783] 405

Order
—not out of, to eat apples in Chamber [774] 1245
—out of, to deal with correspondence in Chamber [778] 1943
—out of, to read a newspaper [779] 888
—out of, to suggest one Member not honourable but charges may be levelled at group [780] 483
—*out of, to criticise Member of another place in his capacity as a Member [781] 448
—*out of, to seek to reverse decision Committee has already taken [783] 1528
—*points of, cannot be entertained while Question being put [778] 411

Personal Statements
—discretion of Speaker not to allow if he thinks they are controversial [784] 241

Privilege

—•complaint of breach of not immediately raised therefore cannot be accepted [780] 255

—publication of draft report before agreed to by Committee and presented to House is breach [780] 1043

Questions

—to Prime Minister, not to be taken until appointed time [783] 1647

—for written answer, answered orally [773] 892

—if member has special constituency interest in problem has right to put [780] 1818

—not normal to call member to put supplementary unless member who asks Question puts supplementary [774] 302, 303, 308

—no quotations in supplementary [774] 743

—Private Notice Questions must be submitted by noon on Mondays to Thursdays and by 10 a.m. on Fridays [773] 768–70.

—supplementaries must arise out of original [777] 1558

Speaker

—•has no control over what happens in Committee of the Whole House [778] 1462

—has no power to interfere with Ministers transfering questions from one to another [781] 235–6

—questions of leakage or non-leakage of information not a matter for [777] 219

Statutory Instruments

—interpretation of S.O. No. 100 in relation to Chair's duties at 11.30 p.m. [775] 1043–4

Vacant Seat

—in recesses possible for any two members to instruct Speaker to declare a vacancy [787] 2143

XXII. EXPRESSIONS IN PARLIAMENT, 1969

The following is a list of examples occurring in 1969 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 Editor has excluded a number of instances submitted to him 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

" competent " (*Tamil Nadu Deb.*, 13.3.69)
" delinquency, political " (*N.Z. Hans.*, p. 1294)
" false impression, deliberately creating " (*N.Z. Hans.*, p. 1242)
" gerrymander " (*N.S.W. Leg. Ass. Hans.*, p. 5165)
" irresponsible innuendo " (*N.Z. Hans.*, p. 1379)
" karantepara " (wretchedness) (*Maharashtra Leg. Ass. Deb.*, Vol. 27, 14.8.69.)
" Leader of the Opposition's word could not be counted on " (*N.Z. Hans.*, p. 1377)
" some sort of a boob " (*W.A. Hans.*, Vol. 179, p. 176)
"that is a snide, dirty, rotten remark from a man who smirks when making such an assertion and who is supposed to have a little prestige " (*W.A. Hans.*, Vol. 182 p. 3914)
" to obtain a miserable political advantage " (of the Leader of the Opposition) (*N.S.W. Leg. Ass. Hans.*, p. 2722)
" truth, suppress the " (*N.Z. Hans.*, p. 3632)
" yapping, the hon. member did not stop " (*N.S.W. Leg. Ass. Hans.*, p. 1438)

Disallowed

" agent of China " (*Lok Sabha Debates*, 14.4.69, col. 259)
" axe to grind " (*M.P.V.S. Procs.*, 1.7.69)
" bakwas " (nonsense) (*Lok Sabha Debates*, 19.3.69, col. 301)
" beat with shoe " (*M.P.V.S. Procs.*, 7.7.69)
" beggar " (*Haryana Deb.*, 14.8.69)
" behaya " (shameless) (*Haryana Deb.*, 7.2.69)
" beimani " (dishonesty) (of the Governor) (*Lok Sabha Debates*, 26.3.69, col. 306)
" bloody fool " (*Queensland Hans.*, p. 1104)
" bludger " (*Queensland Hans.*, p. 1176)

" bootlickers of the British " (*Lok Sabha Debates*, 24.7.69, col. 215,
" bugger " (*Zambia Hans.*, Vol. 17, p. 364)
" chaprassi " (peon) (*Lok Sabha Debates*, 21.11.69, col. 9)
" chaps " (*Zambia Hans.*, Vol 17, p. 1964, 1966)
" Chief Minister had withdrawn cases against the company after accepting money " (*Lok Sabha Debates*, 8.8.69, col. 267)
" Congress people were responsible for raping of a Harijan woman and her suicide " (*Lok Sabha Debates*, 15.4.69, col. 306)
" conspiracy " (*Tamil Nadu Deb.*, 28.2.69)
" courage, lack of moral " (*N.Z. Hans.* p. 3769)
" coward " (*Com. Hans.*, Vol. 777, col. 35)
" crocodile tears " (alleging hypocrisy by Member) (*Gujarat Procs.*, Vol. 22, col. 1667)
" delirium, talking in a state of " (*Orissa Procs.*)
" deliberate lie " (*S. Aust. Hans.*, p. 1624)
" demagogue " (*Canada Com.*, p. 10194)
" despicable implications " (*Aust. Sen. Hans.*, p. 233)
" dishonest, that is " (*N.Z. Hans.*, p. 1171)
" dishonesty, political " (*N.Z. Hans.*, p. 1293)
" dishonourable Member " (*Com. Hans.*, Vol. 784, c. 1228)
" deliberate lie " (*Queensland Hans.*, p. 2.45)
" distortion, deliberate " (*N.Z. Hans.*, p 2492)
" doing injustice " (of the Speaker) (*Uttar Pradesh Deb.*, Vol. 277, p. 392)
" dumb " (*N.S.W. Leg. Ass. Hans.*, p. 1033)
" false " (*N.Z. Hans.*, p. 2739)
" farcical ruling " (*N.S.W. Leg. Ass. Hans.*, p. 4672)
" foul mouthed " (*Queensland Hans.*, p. 2837)
" Gestapo " (*Queensland Hans.*, p. 2015)
" Gestapo-minded and arrogantly Fascist " (*Aust. Sen. Hans.*, p. 260)
" goonda " (a bad character) (*Lok Sabha Debates*, 3.8.69, c. 71)
" gutter, come up out of the " (*N.Z. Hans.*, p. 1374)
" guts " (*Queensland Hans.*, pp. 491, 626)
" guttersnipe " (*N.S.W. Leg. Ass. Hans.*, p. 3494)
" hell " (*Zambia Hans.*, Vol. 17, p. 1953)
" honest, a few people there who kept him " (*N.Z. Hans.*, p. 3822)
" hypocrisy " (*N.Z. Hans.*, p. 1753)
" hypocrisy, lays himself open to the charge of " (*Aust. Sen. Hans.*, p. 166)
" hypocrite " (*Canada Com.*, p. 11105)
" informer " (*Queensland Hans.*, p. 249)
" I find myself charged with . . . dishonesty by the Minister " (*N.S.W. Leg. Ass. Hans.*, p. 1999)
" insane " (of an officer) (*Lok Sabha Debates*, 13.5.69, c. 239)
" I think he is the most biased Speaker that this Parliament has ever known. I think he is a disgrace to this House " (*S. Aust. Hans.*, p. 71)
" jhoot " (lie) (*Haryana Deb.*, 12.8.69)

" khote " (false) (*Maharashtra Leg. Co. Deb.*, Vol. 21, 9.12.69)
" kick with boots " (*M.P.V.S. Procs.*, 3.7.69)
" kill " (*Zambia Hans.*, Vol. 18, p. 492)
" kundu chattiyil kudhirai ottum katchi " (Party which rides a horse within a round pot) (*Tamil Nadu Deb.*, 24.3.69)
" liar " (*Lok Sabha Debates*, 2.8.69, c. 301)
" liar, the Leader of the Opposition is a rotten " (*N.S.W. Leg. Ass. Hans.*, p. 3493)
" lie " (*Com. Hans.*, Vol. 777, c. 37)
" lies, don't tell " (*N.Z. Hans.*, p. 1936)
" lunatic from Wollongong " (*N.S.W. Leg. Ass. Hans.*, p. 337)
" mean bastards " (*Com. Hans.*, Vol. 784, c. 247)
" Members would sell their souls " (*N.Z. Hans.*, p. 2345)
" misbehaviour " (*Uttar Pradesh Deb.*, Vol. 277, p. 1002)
" misleading " (*Canada Com.*, p. 10403)
" misrepresenting the situation, you know you are " (*N.Z. Hans.*, p. 1785)
" mithya Katha " (lies) (*West Bengal Leg. Ass.*, 25.3.69)
" mug " (*Queensland Hans.*, p. 1551)
" pattini Budget " (Starvation Budget) (*Tamil Nadu Deb.*, 5.3.69)
" piccaninny " (*Zambia Hans.*, Vol. 18, p. 128–9)
" pimp and inform on them " (*Aust. Sen. Hans.*, p. 747)
" Pizhaikha vandavargal " (persons who wanted to eke out their livelihood) (of the Congress Party) (*Tamil Nadu Deb.*, Vol. XVI, p. 261–4)
" political outcast " (*Zambia Hans.*, Vol. 18, p. 283)
" porona " (*Zambia Hans.*, Vol. 17, p. 283)
" privilege Kamitiche Natak " (show of the Privilege Committee) (*Maharashtra Leg. Ass. Deb.*, Vol. 27, 30.7.69)
" Quisling " (*Zambia Hans.*, Vol. 18, p. 283)
" rat " (*Queensland Hans.*, p. 2638)
" rubbish " (*Zambia Hans.*, Vol. 17, p. 648, 724, 2332)
" scabs " (*Queensland Hans.*, p. 1414)
" scoundrel " (*Lok Sabha Debates*, 22.7.69, c. 15)
" shabby manner that is so characteristic of him " (*Aust. Sen. Hans.*, p. 232)
" shamelessness " (*Uttar Pradesh Deb.*, Vol. 276, p. 269)
" sheep " (*Haryana Deb.*, 13.8.69)
" shut up " (*Lok Sabha Debates*, 19.3.69, c. 299)
" skulduggery " (*Queensland Hans.*, p. 2836)
" slime behind him, like a snail leaves a " (*N.Z. Hans.*, p. 1998)
" smear " (*N.Z. Hans.*, p. 1369)
" stooge " (*Zambia Hans.*, Vol. 19, c. 65)
" stupid " (*N.Z. Hans.*, pp. 3568, 3570)
" traitor " (*Lok Sabha Debates*, 16.5.69, c. 263)
" true: that is not true and the member knows it " (*N.Z. Hans.*, pp. 2734, 2720)

" trusted, Minister cannot be " (*N.Z. Hans.*, p. 3625)
" truth, not telling the " (*N.Z. Hans.*, p. 1752)
" twister, you are a " (*N.Z. Hans.*, p. 3554)
" untrue, absolutely " (*N.Z. Hans.*, p. 2904)
" venemous cobra " (of a Minister) (*Lok Sabha Debates*, 12.3.69)
" wilfully misrepresented the position " (*N.Z. Hans.*, p. 1726)
" word, prepared to break his " (*N.Z. Hans.*, p. 3625)
" wild Administration " (*Orissa Procs.*)
" yes man " (*Gujarat Procs.*, Vol. 22, c. 3164)
" You are getting as low as the other fellow " (*Aust. Sen. Hans.*, p. 775)
" You have either a bad memory or you are a liar " (*N.S.W. Leg. Ass. Hans.*, p. 2314)
" You're a liar, the same as the rest of your mates " (*S. Aust. Hans.*, p. 1733)
" You are a liar " (*S. Aust. Hans.*, p. 1734)

Borderline

" antha kuzhiyil vizhunthu vittar " (fallen into that pit) (of the Chief Minister) (*Tamil Nadu Deb.*, 28.8.69)
" butchered " (*Tamil Nadu Deb.*, 24.3.69)
" kuttichuvar " (ruined) (*Tamil Nadu Deb.*, Vol. XIX, p. 140)

XXIII. REVIEWS

The Committee System of the United States Congress. By John D. Lees. (Routledge & Kegan Paul, Cloth 15s., Paperback 9s.)

Professor H. V. Wiseman, who has written the introduction to this book, is a well-known advocate of " specialist " committees in the House of Commons. In 1965 he told the Select Committee on Procedure that he was not arguing in favour of such committees on the grounds of what happened in the United States and France but on their merits, and that he considered it invalid to make comparisons between those two countries and this country.* It is therefore surprising to find him recommending this book on the U.S. Congressional committee system by suggesting that a study of its contents should help to overcome some of the objections to " specialist " committees. It is also unfortunate from the point of view of the author, as in his preface he expressly disclaims this as the main purpose of his book. What he has principally tried to do, he says, is " to present a combination of factual information and case-study material on important groups of decision-makers in a powerful legislative system ". This claim his book is largely successful in vindicating, and in the process it demonstrates the soundness of Professor Wiseman's earlier view as to the futility of a comparative study of the U.S. and British committee systems.

The author starts with a description of the different types of committee and their organisation. It is interesting to note that it is the permanent committees of Congress (known as standing committees) which are primarily concerned with legislation whereas investigations are generally carried out by committees set up on an *ad hoc* basis. In fact, writes Mr. Lees, the House Un-American Activities Committee is " the only standing committee given a permanent subpoena power and as a permanent investigating committee it has a unique status " (p. 78).

A point which emerges clearly in several places is the extraordinary powers possessed by a committee chairman. Appointed on the basis of seniority of service with the committee, he can create sub-committees (in 1966 there were 195 sub-committees of standing committees alone), choosing their chairmen and the party ratios on them; he can recruit staff and allocate them as he chooses; and by his control over the agenda he can accelerate or delay the transaction of business.

Much of the book is devoted to a description of various committees in action. This serves to illustrate the difference not only in the way committees function (for example, the Joint Committee on Atomic Energy has 8 sub-committees whereas the House Ways and Means

* House of Commons (1964–5), No. 303, qq. 238–9.

Committee has none) but in the extent of their influence and the regard in which they are held. Perhaps the most interesting of these case studies is that which describes how Harry Truman advanced in three years through the medium of the chairmanship of the Senate Special Committee to Investigate the National Defence Programme from the status of a virtually unknown Senator to that of Vice-Presidential candidate.

In conclusion the author submits a plea that the defects of the U.S. committee system should not be allowed to obscure the value of the part that can be played by committees and suggests that they are the result of a failure to impose controls on the independence of committees when they are established (p. 102). This diagnosis is too simple. A majority in an assembly which agrees to the setting-up of a committee can attempt to control its activities by restricting its terms of reference and choosing its members. But once the committee has been established these powers are at an end. An independently-minded committee will put its own interpretation on its terms of reference and may cause considerable embarrassment to its Government in the process. What needs to be evolved is a satisfactory method of reaching a compromise between the legitimate wishes of Members of the legislature to participate in committee proceedings designed to scrutinise the activities of the Government and the equally legitimate wishes of a Government to govern without undue interference. It is precisely because the Government is not represented in the U.S. Congress and has to rely entirely upon its supporters to terminate the existence of an obnoxious committee that such a compromise is likely to be the more difficult to achieve there.

(*Contributed by A. A. Birley, Clerk of Select Committees, House of Commons.*)

Judicial Control of Administrative Action in India and Pakistan. By M. A. Fazal. (O.U.P.) 345 pp. 80s.

Mr. Fazal's book is the latest in a lengthening line of works of legal scholarship dealing with administrative law. His theme is the clash between the principles of individual freedom, and the demand for welfare legislation. Such legislation has inevitably led to a great expansion of the power of the executive branch of government, and it is of the safeguards set up in modern democratic states to limit the use of this power that Mr. Fazal sets out to treat.

The increase in the activities of the State as a result of the need to promote the welfare of the people had been going on in western Europe since the Industrial Revolution, and the British, by their rule in the Indo-Pak sub-continent, imposed upon a self-sufficient village polity a hierarchy of central, provincial and sub-ordinate services which formed the executive branch of the new, unified State. By 1935, when the Constitution Act came into force, the responsibilities of the Govern-

ment in India were already far greater than those which had previously been envisaged for it, such as collection of taxes, defence and policing.

Since independence, both India and Pakistan have set before them the goal of establishing a welfare State in each country and this has meant a continuous legislative output. Indeed, the President of India said with satisfaction in 1957, in the course of his inaugural address to the Indian Law Institute: " A tremendous amount of legislative activity has been going on in this country since we obtained independence. If I may tell you, from the 1st of June, 1953, until 30th November, 1957, more than 350 Bills were passed by Parliament." This is a far cry from Lord Palmerston's complaint against the very modest legislative programme which was submitted to him when he was Prime Minister: " But we can't go on legislating for ever."

Apart from the introductory and concluding chapters, Mr. Fazal's book is divided into four sections: the jurisdictional principle; the review of fact and law; natural justice (which is sub-divided into sections on bias and the right to a hearing); and remedies. His research has been thorough and his work is amply and conveniently provided with footnotes. Not least, it is written in a clear and agreeable style which makes Mr. Fazal's book a pleasure to read. It would be a pity if this book were read only by those who are experts in, or wish to become experts in, Indian and Pakistani law; the book contains at least as much, and probably more, on Anglo-American as on Indo-Pakistani law, and the problems with which he is dealing are of general interest and relevance to all the countries of the free world.

(*Contributed by J. A. Vallance White, a Senior Clerk in the House of Lords.*)

XXIV. RULES AND LIST OF MEMBERS

The Society of Clerks-at-the-Table in Commonwealth Parliaments

Name

1. The name of the Society is " The Society of Clerks-at-the-Table in Commonwealth Parliaments ".

Membership

2. Any Parliamentary Official having such duties in any Legislature of the Commonwealth as those of Clerk, Clerk-Assistant, Secretary, Assistant Secretary, Serjeant-at-Arms, Assistant Serjeant, Gentleman Usher of the Black Rod or Yeoman Usher, or any such Official retired, is eligible for Membership of the Society.

Objects

3. (*a*) The objects of the Society are:

(i) To provide a means by which the Parliamentary practice of the various Legislative Chambers of the Commonwealth may be made more accessible to Clerks-at-the-Table, or those having similar duties, in any such Legislature in the exercise of their professional duties;

(ii) to foster among Officers of Parliament a mutual interest in their duties, rights and privileges;

(iii) to publish annually a JOURNAL containing articles (supplied by or through the Clerk or Secretary of any such Legislature to the Officials) upon Parliamentary procedure, privilege and constitutional law in its relation to Parliament.

(iv) to hold such meetings as may prove possible from time to time.

(*b*) It shall not, however, be an object of the Society, either through its JOURNAL or otherwise, to lay down any particular principle of parliamentary procedure or constitutional law for general application; but rather to give, in the JOURNAL, information upon these subjects which any Member may make use of, or not, as he may think fit.

Subscription

4. (*a*) There shall be one subscription payable to the Society in respect of each House of each Legislature which has one or more Members of the Society.

(*b*) The minimum subscription of each House shall be £10, payable not later than 1st January each year.

(*c*) Failure to make such payment shall make all Members in that House liable to forfeit membership.

(*d*) The annual subscription of a Member who has retired from parliamentary service shall be 25s. payable not later than 1st January each year.

List of Members

5. A list of Members (with official designation and address) shall be published in each issue of the JOURNAL.

Records of Service

6. In order better to acquaint the Members with one another and in view of the difficulty in calling a full meeting of the Society on account of the great distances which separate Members, there shall be published in the JOURNAL from time to time, as space permits, a short biographical record of every Member. Details of changes or additions should be sent as soon as possible to the Officials.

Journal

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.

Administration

8. (*a*) The Society shall have its office at the Palace of Westminster and its management shall be the responsibility of the Clerk of the Overseas Office, House of Commons, under the directions of the Clerks of the two Houses.

(*b*) There shall be two Officials of the Society, one appointed by the Clerk of the Parliaments, House of Lords, and one by the Clerk of the House of Commons, London; each Official shall be paid an annual salary, the amount of which shall be determined by the two Clerks. One of these Officials shall be primarily responsible for the editing of the JOURNAL.

Account

9. Authority is hereby given the Officials of the Society to open a banking account in the name of the Society and to operate upon it, under their signature; and a statement of account, duly audited, and countersigned by the Clerks of the two Houses of Parliament at Westminster shall be circulated annually to the Members.

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A. R. Browning, Esq., Senior Parliamentary Officer of the House of Representatives, Canberra, A.C.T.

L. M. Barlin, Esq., Senior Parliamentary Officer of the House of Representatives, Canberra, A.C.T.

* Barrister-at-Law or Advocate.

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

A. W. B. Saxon, Esq., Clerk Assistant of the Legislative Council, Sydney, N.S.W.

L. A. Jeckeln, Esq., Usher of the Black Rod, Legislative Council, Sydney, N.S.W.

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I. J. Ball, Esq., A.A.S.A., A.C.I.S., Clerk of the Legislative Council and Clerk of the Parliaments, Adelaide, South Australia.

A. D. Drummond, Esq., F.A.S.A., A.C.I.S., J.P., Clerk-Assistant of the Legislative Council and Gentleman Usher of the Black Rod, Adelaide, South Australia.

C. H. Mertin, Esq., Second Clerk-Assistant, Legislative Council, Adelaide, South Australia.

G. D. Combe, Esq., M.C., A.A.S.A., A.C.I.S., Clerk of the House of Assembly, Adelaide, South Australia.

A. F. R. Dodd, Esq., A.U.A., Clerk-Assistant and Serjeant-at-Arms of the House of Assembly, Adelaide, South Australia.

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M. K. Yere, Esq., Serjeant-at-Arms, House of Assembly of Papua and New Guinea, Port Moresby, New Guinea.

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Shri S. S. Bhalerao, M.A., LL.M., Joint Secretary of the Rajya Sabha, Parliamentary House, New Delhi.

Shri P. N. Krishna Mani, Deputy Secretary of the Rajya Sabha, Parliamentary House, New Dehli.

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*Shri A. Shanker Reddy, B.A., LL.B., Secretary to the Andhra Pradesh Legislature, Public Gardens, Hyderabad, Andhra Pradesh.

Shri Muneshwari Sahay, Secretary of the Bihar Legislative Council, Patna, Bihar.

Shri R. K. Malhatra, B.A., LL.B., Secretary of the Haryana Legislative Assembly, Chandigarh, Haryana.

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Shri S. H. Belavadi, Secretary, Maharashtra Legislative Department, Bombay, Maharashtra.

*Shri A. B. Palekar, B.A., LL.B., Deputy Secretary, Maharashtra Legislative Department, Bombay, Maharashtra.

*Shri M. J. Tamane, B.A., LL.B., Deputy Secretary, Maharashtra Legislative Department, Bombay, Maharashtra.

Shri S. R. Kharabe, B.A., LL.B., Deputy Secretary, Maharashtra Legislative Department, Bombay, Maharashtra.

Shri D. G. Desai, Secretary of the Gujarat Legislative Assembly, Ahmedabad-16, Bombay, Gujarat.

*Shri T. Hanumanthappa, B.A., B.L., Secretary of the Mysore Legislature, Bangalore, Mysore.

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* Barrister-at-Law or Advocate.

Shri D. N. Mithal, Secretary to the Uttar Pradesh Legislative Assembly, Lucknow, Uttar Pradesh.

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*Shri A. K. Chunder, B.A.(Hons.), (Cal.), M.A., LL.B.(Cantab.), LL.B.(Dublin), Deputy Secretary to the West Bengal Legislative Assembly, Calcutta, West Bengal.

Ghana

C. A. Lokko, Esq., LL.B., Clerk of the National Assembly, Parliament House, Accra.

S. N. Darkwa, Esq., B.A., Assistant-Clerk of the National Assembly, Parliament House, Accra.

J. N. Kudadjie, Esq., B.A., Assistant-Clerk of the National Assembly, Parliament House, Accra.

Malaysia

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Mazlan bin Hamdan, Esq., Clerk of the Council Negri, Sarawak.

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Sierra Leone

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P. Msekwa, Esq., B.A., Clerk of the National Assembly, Speaker's Office, P.O. Box 9133, Dar-es-Salaam.

Y. Osman, Esq., Clerk-Assistant of the National Assembly, Speaker's Office, P.O. Box 9133, Dar-es-Salaam.

Jamaica

H. D. Carberry, Esq., Clerk of the Legislature of Jamaica, Kingston, Jamaica.

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J. E. Carter, Esq., Clerk of the Senate, Trinidad and Tobago, Port-of-Spain, Trinidad.

Uganda

E. T. A. Ochwo, Esq., Clerk of the National Assembly, Parliamentary Building, Kampala.

* Barrister-at-Law or Advocate

Kenya

L. J. Ngugi, Esq., Clerk to the National Assembly, P.O. Box 1842, Nairobi.

Malawi

C. K. M. Mfune, Esq., Clerk of the Parliament, P.O. Box 80, Zomba.

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Zambia

N. M. Chibesakunda, Esq., Clerk of the National Assembly, P.O. Box 1299, Lusaka.

D. F. Mukungwana, Esq., Clerk-Assistant of the National Assembly, P.O. Box 1299, Lusaka.

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Office of the Society
Palace of Westminster, S.W.1.
Editor for Volume XXXVIII of the JOURNAL: J. M. Davies.

* Barrister-at-Law or Advocate.

XXV. MEMBERS' RECORDS OF SERVICE

Note.—**b.** =born; **ed.** =educated; **m.** =married; **s.**=son(s); **d.** =daughter(s).

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat individual records on promotion.

Agarwala, H. C., H.J.S.—Secretary of the Legislature, Uttar Pradesh; *b.* 18th May, 1915; obtained degree of Bachelor of Laws from the University of Lucknow, Uttar Pradesh, 1939; Practised law for about two years; selected to Uttar Pradesh Judicial Service, 1941; joined service, July, 1943. Worked as Registrar, Board of Revenue from December, 1947 to August 1949; thereafter Under Secretary and then Deputy Secretary to the Government of Uttar Pradesh in Legislative and Judicial Departments for about 8 years; appointed to Higher Judicial Service, 1955; worked as Secretary Law, Manipur Administration from April to June 1962; worked as District and Sessions Judge to September, 1965 and then as Special Judge, Anticorruption, Uttar Pradesh; took over as Secretary Legislature, Uttar Pradesh in June, 1969.

Barnhart, Gordon Leslie, B.A. (Hons.).—Clerk of the Legislative Assembly of the Province of Saskatchewan; *b.* 22nd January, 1945; *ed.* University of Saskatchewan; *m.* one son; Historian; taught history at the University of Saskatchewan and at the North Battleford Collegiate Institute; appointed Clerk-Assistant of the Legislative Assembly, January, 1969, and appointed Clerk of the Legislative Assembly, September, 1969.

Bhalerao, S. S., M.A. LL.M.—Joint Secretary, Rajya Sabha, Parliament of India, *b.* 1921; *ed.* Ferguson College, Gokhale Institute of Politics & Economics, Law College, Poona; joined as Assistant Secretary, Hyderabad Legislative Assembly Secretariat 1952–1956; Under Secretary, Law and Judicial Department of Government of Bombay 1956–1958; Deputy Secretary, Rajya Sabha in November 1958; appointed Joint Secretary, Rajya Sabha, in December 1963.

Blondin, René, B.A., L.L.L.—Clerk of the National Assembly of Quebec; *b.* 19th January, 1924; *ed.* Seminary of Nicolet and Laval University; Notary; Member of Order of Notaries of Quebec, 1949,

and Chamber of Notaries, 1963–1965; appointed Associate Clerk in 1965, and Clerk in 1969.

Krishna Mani, P. N.,—Deputy Secretary, Rajya Sabha Secretariat, Parliament of India; *b.* 1915; entered service in 1936, Reforms Office, Government of India; Private Secretary to Sir B. N. Rau, Constitutional Adviser to the Constituent Assembly of India 1946–50; Assistant Secretary, Election Commission of India 1951–2; Under Secretary, Rajya Sabha Secretariat 1952–60; Deputy Secretary, Rajya Sabha Secretariat since 1960. Author of *Elections, Candidates and Voters*, published by the Institute of Constitutional and Parliamentary Studies, New Delhi; Member, Committee of Editors *Framing of India's Constitution* (in five volumes) published by the Institute of Public Administration, New Delhi.

Littlejohn, Charles Philip, LL.M.—Second Clerk-Assistant of the House of Representatives, New Zealand; *b.* 1923; *m.* 2 children; *ed.* Helensville District High School; Victoria University of Wellington; LL.B. 1957; LL.M. 1970; joined Public Service 1940, Lands and Survey Department; appointed Clerk of Journals and Records 1954, and to present position 1964.

Nicholls, Herbert Charles—Usher of the Black Rod, Australian Senate; *b.* 10.12.1927; *m.* 3 *s.* 1 *d.; ed.* Canberra High School; entered parliamentary service in 1951; appointed Black Rod 1965. Clerk of Senate Standing Committee on Regulations and Ordinances since 1965; Clerk of Senate Select Committee on Metric System of Weights and Measures 1967–8; Clerk of Senate Select Committee on Water Pollution 1968–9.

Summerfield, John Thomas.—Clerk to the House of Assembly, Gibraltar; *b.* 16th February, 1915, Gibraltar; *m.; 1 s., 1 d.; ed.* Buena Vista Garrison School and Sacred Heart Terrace, Gibraltar; entered public service in 1930; served in the judiciary 1936–1969; apptd. Clerk to the Justices, Coroner's Clerk, Marriage Registrar and Registrar of Births and Deaths in 1960; apptd. to present position in April 1969; interested in judicial and social work.

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ABBREVIATIONS

(Art.) — Article in which information relating to several Territories is collated.
(Com.) = House of Commons.

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