The Table

BEING

THE JOURNAL OF

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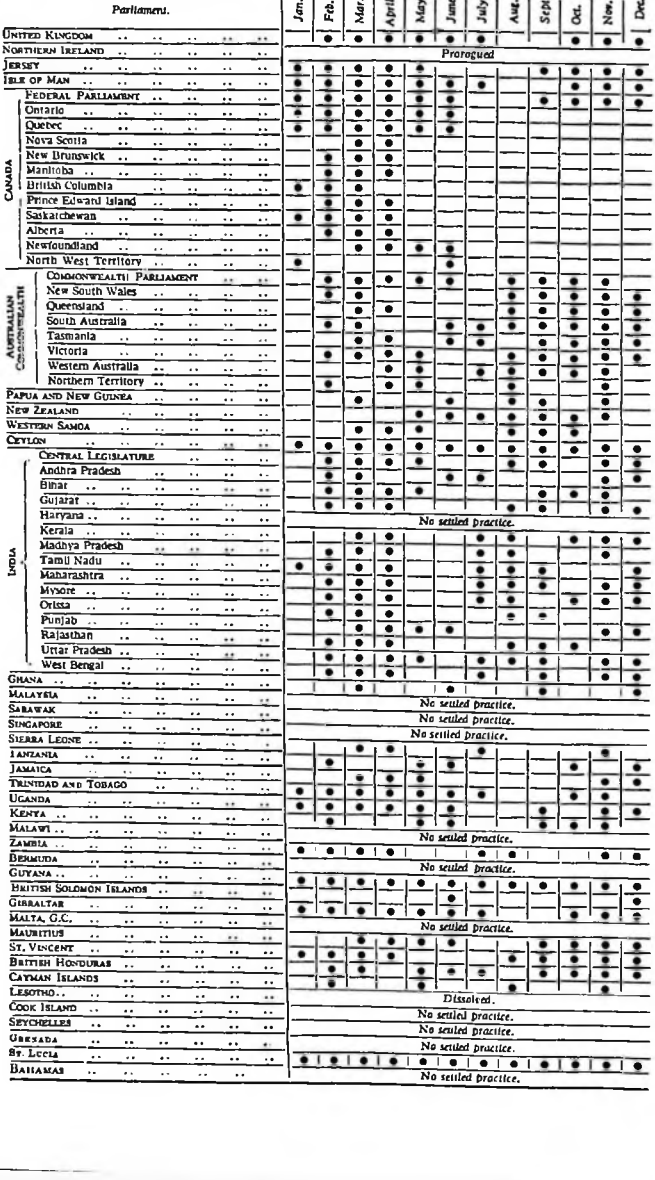

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THE JOURNAL OF THE SOCIETY OF CLERKS-AT-THE-TABLE IN COMMONWEALTH PARLIAMENTS

I. EDITORIAL

This volume of THE TABLE contains material from more parts of the Commonwealth than has been the case in recent years. The Editors regret, however, that once again they have not received any substantial contribution from the African Continent. A noteworthy feature of the volume is the preponderance of articles on the work and procedure of Upper Chambers. The House of Lords, the Australian Senate and the Senate of Trinidad and Tobago have all had important and influential roles to play in the legislative work of their respective Parliaments. The Senate of Ceylon (now Sri Lanka) has been abolished but it is apparent that this was the result of several years of discussion on a suitable future constitution rather than as a result of dissatisfaction with the work it did.

It is regretted that some items sent in for this volume were received too late for inclusion. An early date of publication is generally appreciated by members and this has meant sticking rigidly to production schedules.

In previous years, every tenth volume of THE TABLE has included a consolidated index of matter appearing in all preceding volumes. The index contained in Volume XXX, covering thirty years, is extremely bulky and difficult to use. A forty-year index would have been correspondingly bulkier and harder to use. The Editors, therefore, have decided that it would be more convenient to users of THE TABLE if they compiled a decennial index, covering Volumes XXXI to XL, and this they have done, as will be found in the current volume.

As most members will be now aware, a Society tie is available from the officials of the Society at Westminster. The purchase price is £1.50 post paid and, subject to the agreement of the next General Meeting of the Society, ties will be available not only to members, but also to ex-members, officials and ex-officials of the Society.

Major-General J. R. Stevenson, C.B.E., D.S.O., E.D.—The death occurred in Fiji on 4th July, 1971, of Major-General John Rowlstone Stevenson, C.B.E., D.S.O., E.D., Clerk of the Parliaments and Clerk of the Legislative Council of New South Wales. Major-General Stevenson, together with the President of the Legislative Council, had attended a conference of Presiding Officers and Clerks of the Parliaments of the Commonwealth and States of Australia and of the Pacific Islands, held at Suva, at the conclusion of which he had enjoyed a short vacation with his wife. He died of a heart attack at the Gate-Way Hotel, Nadi, on the morning he was to emplane for Sydney.

John Stevenson was born at Bondi, New South Wales, on 7th October, 1908, the eldest son of James John Stevenson and Caroline Maude Stevenson (later Mrs. Ferguson). He was educated at Lakemba Primary School and Canterbury High School. On 16th June, 1941, in St. George's Cathedral, Jerusalem, he married Rita Anne Hanscombe, Sub-Matron of the Australian Army General Hospital at the time stationed in Palestine, and they have two daughters.

John Stevenson was appointed Third Clerk on the staff of the Legislative Council on 16th October, 1933, and progressed through every position on the staff until appointed Clerk of the Parliaments and Clerk of the Legislative Council on 11th March, 1954, which office he held with distinction for over seventeen years. During his period as Clerk, he was responsible for the production of a number of publications on parliamentary history and procedure which were of great assistance to Members and to the staffs, not only of the N.S.W. Parliament but government departments and also to constitutional experts. The major work he inaugurated and which is being continued was the compilation of a Consolidated Index of Legislative Council procedure and parliamentary documents (minutes, papers, petitions, correspondence, etc.) from the inception of Responsible Government in 1856. These volumes, each covering a twenty-year period, contain a wealth of information which has been of tremendous value to historical researchers and academics and, in fact, to anyone interested in parliamentary and government affairs. In addition, of recent years John Stevenson published a series—" Records " of the 37th, 38th, 39th, 40th and 41st Parliaments and was working on the 42nd at the time of his death. These summarise the legislation, etc., of each Parliament and have proved to be valuable records of N.S.W. parliamentary activity. General Stevenson also contributed a number of articles to THE TABLE during his clerkship.

He led a very full life outside his parliamentary interests, including a distinguished military career which started when he was called up for compulsory training in 1929 and was attached to the 45th Infantry Battalion. He was a very keen Citizen soldier, becoming an accomplished horseman and was commissioned Lieutenant in January 1929. After the cessation of compulsory training in November 1929, he continued voluntarily as an officer in the Citizen Military Forces, being

promoted Captain in 1934. On the outbreak of World War II he enlisted immediately and joined the 2nd/3rd Infantry Battalion, proceeding to the Middle East in 1940. In 1940, as a major, he commanded 16th Training Battalion; in April 1941 he returned to 2/3 Battalion as second-in-command and with the unit moved to Syria. On its first night in action the Commanding Officer of the battalion was wounded and captured and Major Stevenson assumed command; later, as Lieutenant-Colonel he led the battalion in the capture of the forts outside Damascus. During this campaign he was wounded but continued on duty; he was mentioned in despatches and later awarded the D.S.O. and promoted Colonel. In 1942 the battalion went to Ceylon for four months and in August of that year returned to Australia. The Japanese invasion of New Guinea and approach to Port Moresby caused the authorities to hasten reinforcements in that area, and in September 1942 Colonel Stevenson, with the battalion, moved to Port Moresby and took part in the Kokoda campaign with the 7th Division. He was again wounded but remained on duty and was mentioned in despatches. Upon promotion to Brigadier and command of the 11th Infantry Brigade, he was charged with the defence of the western approaches to Torres Strait and the civil administration of the Dutch New Guinea local area of Merauke. In December 1944 and during 1945 he was in action against the Japanese at Bougainville.

After the Armistice, Brigadier Stevenson, representing the Commander of the United States Seventh Fleet, and on behalf of the United Kingdom, New Zealand and Australian Governments, accepted the surrender of the Japanese Forces on Nauru and Ocean Islands and arranged the appointment of a Military Governor and establishment of a garrison force to enable the early production of phosphate there. He served in Rabaul until 1946. He was awarded the C.B.E. for his service at Merauke.

After six and a half years' war service, Brigadier Stevenson returned to his civilian occupation, as Usher of the Black Rod, but maintained his interest in the Citizen Military Forces and in ex-servicemen's organisations. In 1948 he raised and commanded the 5th Infantry Brigade, covering the southern section of New South Wales. In 1957 he was promoted Major-General as General Officer Commanding 2nd Division Citizen Military Forces, which appointment he relinquished after two years.

In 1951 John Stevenson was appointed State Marshal for the planned visit of Princess Elizabeth and the Duke of Edinburgh. He expended much time in preparing plans for the event which was cancelled in 1952 on the death of His Majesty King George VI. In 1962 he proceeded abroad to study parliamentary procedure in Great Britain, Europe, India and South-East Asia, and on his return produced a comprehensive report on those Parliaments.

He had been a member of the United Service Institution of N.S.W. since 1929 and its president from 1962 to 1966. He was a member and

past president of the Imperial Service Club and of several ex-serv ice men's leagues and associations, and a member of two Masonic Lodges. He was a trustee of the Australian Forces Overseas Fund since its inauguration in 1965 (and at his death the N.S.W. Commissioner); in 1967 he visited South Vietnam, Malaya and Singapore to gain a first-hand knowledge of the conditions under which servicemen were operating and to improve their recreational facilities. He was Honorary Colonel of the Werriwa Regiment from 1957 to 1960 and of the N.S.W. University Regiment in 1962.

Since 1960 he had been a member of the Rotary Club of Sydney and served on many of the Club's committees with his customary vigour and thoroughness. He had been chairman of a committee planning for the International Rotary Convention held in Sydney in May 1971 but was forced to withdraw after suffering a thrombosis in January 1970. In 1964 he was a prominent member of the committee organising the British Industries Exhibition in Sydney. Since 1958 he was a Councillor of the National Roads and Motorists' Association (N.S.W.), and in 1967 was elected Junior Vice-President.

On 20th April, 1966, he was appointed a member of the Archives Authority of New South Wales on the nomination of the President of the Legislative Council and the Speaker of the Legislative Assembly, and reappointed for further four-year terms from 1st June, 1967, and 1st June, 1971.

John Stevenson developed a fondness for sailing during the war years which culminated in ownership of his own yacht. He was a member of the Cruising Yacht Club of Australia; he sailed in the Montagu Island and Sydney–Hobart ocean yacht races in 1961. He was also a member of the Royal Australian Naval Sailing Association.

A funeral service, with full Military Honours, was held at St. Stephen's Presbyterian Church, Sydney (directly opposite Parliament House) and later at the Northern Suburbs Crematorium on Wednesday, 7th July, 1971. On 30th July, 1971, a Requiem Mass, as a mark of respect to his memory, was held at St. Joseph's College Chapel. As the funeral cortège moved from St. Stephen's, thousands lined the street to pay homage to a fine Australian who had served his country to his utmost in social, professional, business, parliamentary and military fields.

Parliament was in recess at the time of John Stevenson's death, but on 4th August, 1971, in his speech on opening the Session, His Excellency the Governor spoke of the grief he shared with Members in the death of the Clerk of the Parliaments. When the Legislative Council met later that day many Members paid eloquent tributes to the achievements of a remarkable man.

(*Contributed by A. W. B. Saxon, Clerk of the Parliaments, New South Wales.*)

We also record with regret the deaths of the following ex-members of the Society:

Ramsey Gelling Johnson, Clerk of Tynwald and Secretary of the House of Keys, 1929–38.

Hugh Kennedy MacLachlan, Clerk of the House of Assembly, Victoria, 1951–61.

John Archibald Robertson, Clerk of the House of Assembly, Victoria, 1961–8.

Mr. G. W. Brimage.—Mr. Gladstone William Brimage, Clerk of the Tasmanian Legislative Council since 29th July, 1965, retired on 8th September, 1971, aged 66. Affectionately known and addressed by Members and Officers alike as " Bill ", he was a big man in every sense. Some 6 feet 3 inches tall, his weight was a closely-guarded secret but acknowledged to be " about 18 stone ". Gentle as many big men are, he was unfailingly courteous and helpful to all.

Educated at the Church of England Boys Grammar School in Perth, Western Australia, his first employment was with a banking company in Perth. He joined the Tasmanian Public Service in 1936, obtained a Commission in the 2nd A.I.F. during the Second World War, and returned to the Public Service upon demobilisation in 1944. On a number of occasions until 1953 he acted in a relieving capacity at the Legislative Council, when the Clerk-Assistant was absent on leave or parliamentary duties. He was appointed Clerk-Assistant and Usher of the Black Rod on 19th March, 1953, serving in that capacity until his promotion to Clerk of the Council in 1965.

A lifetime study of British, European and Colonial history, and the development of the parliamentary system of democratic government, provided a foundation for an almost instinctive reaction to procedural problems, which has left his successors a very high standard to maintain.

On the eve of his retirement the Legislative Council recorded, in its Journals, appreciation of Mr. Brimage's service and devotion to duty. The Members and Clerks of the Council, at a farewell dinner, presented him with suitably inscribed matching silver water-jug and tray. The Clerks and staff, at another dinner a few days after his retirement, presented a crystal decanter and goblets.

" Bill " now devotes most of his time to his garden and his favourite pastime, the study of history and the development of parliamentary democracy. Rumour has it that he is writing a book, but he is somewhat evasive when questioned about the subject matter.

(*Contributed by A. J. Shaw, Clerk-Assistant and Usher of the Black Rod.*)

Mr. J. S. F. Cooke, C.B.E., D.L.—Mr. Cooke, Clerk of the Parliaments of Northern Ireland retired on 21st July, 1971.

John Sholto Fitzpatrick Cooke was born in Londonderry in 1906. He was educated at Harrow and Magdalen College, Oxford, graduating

Bachelor of Arts in 1928. In 1930 Mr. Cooke was called to the Bar at the Inner Temple and in 1931 was called to the Bar of Northern Ireland. During the Second World War Mr. Cooke served in the Royal Naval Volunteer Reserve with the rank of temporary Lieutenant-Commander. When the war ended Mr. Cooke resumed practice at the Bar in Northern Ireland and in 1947 was appointed to be Second Clerk-Assistant of the Parliaments of Northern Ireland. In 1952 he was appointed Clerk-Assistant and in 1962 became Clerk of the Parliaments. Mr. Cooke is a Deputy Lieutenant for County Down.

At the sitting of the House of Commons on 8th July, 1971, Mr. Speaker read to the House a letter which he had received from Mr. Cooke informing the House of his impending retirement and thanking Members, past and present, for their kindness and co-operation.

Mr. Speaker said: " As Speaker I have been grateful for his advice and assistance and I know that he has always worked hard to uphold the dignity of Parliament and the prestige of Members."

The Prime Minister (Mr. Faulkner) led the tributes of Members from both sides of the House, saying: " I want to put on record appreciation of the very distinguished services which have been given to this Parliament by Mr. Sholto Cooke."

From the Opposition tributes came from Mr. O'Connor (Nationalist Party), who stated that Mr. Cooke " deservedly won the respect and affection of all hon. Members ", while Mr. F. V. Simpson (Northern Ireland Labour Party) referred appreciatively to Mr. Cooke's work as Secretary of the Northern Ireland Branch of the Commonwealth Parliamentary Association. Mr. Devlin (Social and Democratic Labour Party), speaking as a comparatively new Member of the House, spoke of the great help he had received from Mr. Cooke.

At a meeting of the Senate of Northern Ireland, also on 8th July, tributes were also paid to Mr. Cooke and to his devoted service by the Speaker and representatives of all Parties in the Senate.

At a later ceremony, attended by the Speakers of both Houses, Members and Senators, parliamentary staff and representatives of the Civil Service, Mr. Cooke was presented by the Speaker of the House of Commons with an inscribed silver salver.

(*Contributed by the Clerk of the Parliaments, Stormont.*)

Mr. G. S. C. Tatem.—Mr. Tatem retired as Clerk to the House of Assembly of Bermuda after thirty-three years of public service.

On Friday, 23rd July, 1971, the Speaker (Lt.-Col. J. C. Astwood) announced in the House that this would be the last occasion on which Mr. Tatem would be present in his capacity as Clerk, and paid tribute to his very high standard of efficiency and helpfulness throughout his thirty-three years of service. On behalf of all Members of the House he wished Mr. Tatem a very happy retirement.

The Government Leader (Sir Henry Tucker) and the Opposition Leader (Mrs. Lois Browne-Evans) expressed in the House their appre-

ciation of the efficiency and dedication with which Mr. Tatem had served the House during his long tenure of office and wished him a happy retirement.

After the House adjourned a reception in Mr. Tatem's honour was held in the main committee room which was attended by present and past members of the Assembly and the Legislative Council. The Speaker presented to Mr. Tatem a return air ticket to Switzerland and two silver beer tankards inscribed " G. S. C. Tatem, Clerk to the House of Assembly 1938–1971, from grateful Members ". The Speaker remarked that it was understood that Mr. Tatem was planning to go skiing this winter and for this reason it was felt that an air-ticket to Switzerland would be a useful gift.

Mr. Tatem thanked the Speaker and those present for their very generous gifts and for the many kind things which had been said about him.

(*Contributed by Mr. R. C. Lowe, Clerk to the Legislature, Bermuda.*)

Sir Alan Turner, C.B.E.—On 10th December, 1971, Alan Turner retired from the Clerkship of the Australian House of Representatives. In the New Year Honours List of 1972, three weeks after his retirement, he was created a Knight Bachelor by Her Majesty the Queen for " distinguished public service ".

Apart from a period of secondment to the Department of Supply and Shipping between 1942 and 1945 during the war years, Sir Alan Turner had served the House continuously over a period of forty-seven years. He was a Chamber officer from 1946, having been Serjeant-at-Arms and Clerk of Committees from 1946 to 1949, Second Clerk-Assistant from 1949 to 1955, Clerk-Assistant from 1955 to 1958, and Clerk of the House from 1 January, 1959. His Clerkship was a notable one. Features of it were the major revision of the Standing Orders of the House which was undertaken between 1960 and 1963 and the reorganisation of the staff of the House of Representatives to meet the greatly expanded and developing requirements of the House. He was made a Commander of the Order of the British Empire by Her Majesty the Queen in 1965.

As Clerk of the House, Alan Turner had on three occasions accompanied Speakers of the House to conferences of Presiding Officers and Clerks of the Parliaments of the Commonwealth of Nations.

From 1958 to 1971 he was the Honorary Secretary/Treasurer of the Commonwealth of Australia Branch of the Commonwealth Parliamentary Association and in that capacity served the Branch with great dedication and achieved much in furthering Australia's interests and reputation in the affairs of that Association. As Secretary of the Commonwealth Branch delegation he attended many Commonwealth Parliamentary Association conferences.

Complimentary references to the retiring Clerk were made in the

House on 10th December, 1971, the last day of his service.

Mr. Speaker (Hon. Sir William Aston) said, in part:

Mr. Turner has served this House and this Parliament with great distinction. A great many Members over a very lengthy period will recall with gratitude his courteous help and assistance, not only as Clerk of the House, but also as honorary secretary of the Commonwealth Branch of the Commonwealth Parliamentary Association. May I as Speaker say that I have greatly appreciated working with Mr. Turner, that I have always respected his wise judgment and experienced counsel, and I thank him very sincerely for the ready assistance and support which he has always given me and all members of this House. In saying our official farewell to Alan Turner after a lifetime of service to this House, I assure him that he leaves with our sincere respect and gratitude and we wish him and Mrs. Turner health and happiness for the future.

Mr. Speaker was followed by the Prime Minister (Rt. Hon. William McMahon) who said, in part:

The rôle of the Clerk of the House has always been a key one in our parliamentary system of government because upon it devolves responsibilities for the procedures that enable Parliament as an institution to function efficiently and smoothly. Mr. Turner has upheld the finest traditions of his office. His wise and friendly counsel has been availed of by both sides—Government and Opposition alike. He has also made an outstanding contribution in the sphere of interparliamentary relationships. For many years now Mr. Turner has taken a keen interest in the activities of the Inter-parliamentary Union and the Commonwealth Parliamentary Association and has represented this Parliament at many conferences of these bodies. I therefore want to place on record our appreciation of his services and wish him many years of his well-deserved retirement.*

Similar tributes were paid by the Leader of the Opposition (Mr. E. G. Whitlam), the Deputy Prime Minister (Rt. Hon. J. D. Anthony) and many other Members.

To mark the retirement of Mr. Turner, as he then was, the Commonwealth of Australia Branch of the Commonwealth Parliamentary Association held a Branch function in his honour and at this function made a presentation to him in recognition of his outstanding service to the Association.

We wish him well in his retirement and congratulate him on his enviable record of service to the Australian Parliament.

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

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

K.C.V.O.—Sir Alexander Gordon Lennox, Serjeant-at-Arms, House of Commons.

Knight.—Sir Alan Turner, C.B.E., former Clerk of the House of Representatives, Canberra, Australia.

C.M.G.—M. H. Lawrence, Clerk of the Overseas Office, House of Commons.

* H. of R. *Hansard*, 9th and 10th December, 1971, pp. 4495–502.

II. WITNESSES IN PARLIAMENT: SOME HISTORICAL NOTES

By M. F. Bond, O.B.E.
Clerk of the Records, House of Lords

Recent developments in the use of Select Committees of enquiry, or "Specialist Committees", at Westminster[1] are bringing increasing numbers—whether civil servants, professional experts, or representatives of general opinion—to participate in the business of Parliament by giving evidence and submitting to what is sometimes a long and gruelling process of question and answer. Some assistance of this type has been sought by Parliament from the earliest days, and the key precedents are set out in Erskine May's *Parliamentary Practice*.[2] As yet, however, only incidental references have been made to the Parliamentary use of witnesses in general historical works.[3] The source material preserved by the House of Lords Record Office in the Victoria Tower at Westminster alone is so vast that a great deal of specialised research will have to be undertaken before any detailed history becomes possible.[4] In the meanwhile the following notes have been compiled as a tentative introduction to the subject.

I

Parliament in the Middle Ages is amply documented so far as the petitions presented to it and the final decisions on them (the "Acts") are concerned; what came in between, how business was organised, how debates were conducted, is to some extent obscure. Petitioners, however, must have had to appear in person or by attorney to prove their allegations, and in the conduct of more general business, Parliament often needed the help of members of the public in order to ascertain the facts of a case. Thus, in 1377 various individuals were sworn and examined by a committee of peers concerning offences committed by Alice Perrers;[5] in 1384, John Cavendish, a fishmonger of London, gave evidence in the impeachment of de la Pole;[6] and on another occasion the burgesses of Kingston-on-Hull, having petitioned for a licence to

[1] See R. S. Lankester, "Specialist Committees in the House of Commons", The Table, Vol. xxxviii (1969), pp. 64–79. In the course of 1971 a similar committee has been appointed by the House of Lords.

[2] Eighteenth ed., edited by Sir Barnett Cocks (1971), chapter 25.

[3] One of the most valuable of these is the section devoted by Sir John Neale to evidence in *The Elizabethan House of Commons* (1949), p. 384.

[4] There are, for instance, some two million pages of manuscript transcripts of evidence given in Private Bill Committees.

[5] *Rolls of Parliament*, Vol. iii, p. 13.

[6] *Ibid.*, pp. 168–9.

enclose their town, stated that they could advance many more reasons " by parol ",[7] that is by giving evidence in person. The Red Paper Book of Colchester shows that in 1485 a member of the public—albeit a countess—came to the Commons in the Chapter House, " showed a piteous complaint, and thereupon she delivered a bill ".[8] These few instances, some as we would now say judicial in nature, some legislative, indicate that the roots of the parliamentary witness system are to be found in mediaeval practice.

When in the sixteenth century the daily business of Parliament can be traced fairly continuously in the Journals of the two Houses, the systematic appearance of members of the public to participate in varied types of business soon becomes apparent, and notably in the discussion of Private Bills. The earliest such entry concerning private business consists of an order on 16th February, 1549, by the Lords that Lady Howard should " appear in the House, before the Lords, to declare there frankly, whether she were content with such matter as was contained in the said bill [the Howard Estate bill] ".[9] She appeared on 18th February and the Clerk summarised her evidence in the Journal together with her thanks to the Lords " that it pleased them to take pains in so simple a matter " and her exhortation to them " to continue their good minds to the conclusion of the same ".[10] The Commons also heard evidence on Private Bills, although the earliest relevant entry, for 17th March, 1552, merely records that an opponent with his counsel " exhibited certain articles in writing against the bill ".[11] On 30th January, 1563,[12] however, the Commons heard an opponent to the Guildford Iron Mill Bill, together with his counsel, after Second Reading, and then committed the Bill to twelve Members who were " to hear the parties and proofs on both sides, and then to certify this House ".

The hearing of evidence in the sixteenth century also extended to certain types of Public Bill, usually those of a semi-judicial nature. Thus, when in 1555 the Commons were considering a Bill to take away benefit of clergy from a convicted murderer, Giles Rufford, the murderer was brought from the Tower, together with two desperadoes whom he had paid to commit the murder and various servants of his who were key witnesses against him. One by one they stood at the Bar of the Commons and gave conflicting accounts of what had happened, until Rufford broke down and confessed his guilt. The Clerk noted " judicatum " and the Bill passed.[13] Similarly, Bills of Attainder usually led to the hearing of witnesses. At Thomas Seymour's attainder in 1548 " certain noblemen " came to the Bar of the Lords and gave evi-

[7] *Ibid.*, Vol. ii, p. 385.
[8] *Red Paper Book of Colchester*, ed. W. G. Benham (1902), p. 62.
[9] L[ords] J[ournals], vol. i, p. 342. Lady Howard was, of course, strictly a party to the Bill, rather than a witness.
[10] The evidence was given at the Bar on what seems to have been a separate procedural stage between Second and Third Reading (*ibid.*).
[11] C[ommons] J[ournals], Vol. i, p. 20.
[12] C.J., Vol. i, p. 64. [13] C.J., Vol. i, p. 45.

dence concerning his treasonable activities.[14] The Commons, on receiving the Bill, resolved " that the evidence shall be heard orderly, as it was before the Lords ", though the Crown subsequently forbade them to hear Seymour himself.[15]

For the Commons, however, a more direct form of judicial activity in the sixteenth century arose from consideration of alleged breaches of privilege. By then the Commons had established the right to protect itself against breaches of privilege and to inflict punishments of reprimand and imprisonment. But in this process, facts had to be established. When in 1581 Arthur Hall, M.P. for Grantham, published a book which was thought to slander Speaker Bell and other Members, not only was Hall himself examined by the Speaker and by counsel at the Bar of the House, but his printer from Friday Street in the City and a scrivener from Fleet Street were also brought to the Bar to give evidence—evidence which led to the expulsion and imprisonment of Hall.[16] Such importance came to be attached to the hearing of evidence in cases of privilege that when, two centuries after Hall's case, the Clerk of the House, John Hatsell, compiled his book of precedents, almost the whole chapter on " Witnesses "[17] related to delinquents who had offended the House or its Members, although in Hatsell's day delinquents formed a minute fraction of the witnesses as a whole; and it may be significant that one of the very few contemporary pictorial representations of a member of the public being heard at the Bar of the Commons is of a " delinquent " on his knees.[18]

At the end of the sixteenth century one further reason emerged for the use of witnesses: the necessity for arriving at conclusions in cases of disputed elections. Conflicts over returns of M.P.s had for long been referred to judges.[19] Then, in 1586 a committee of 15 was set up by the Commons to enquire into a disputed return for Norfolk, and the Under-Sheriff was brought to the committee to give evidence.[20] In 1604 the House obtained a full acknowledgement from James I that it could judge returns.[21] The House from then until 1868 consistently exercised jurisdiction over disputed elections, and the opening days of most Parliaments usually saw the House (or a committee) involved in hearing many hours of evidence concerning how votes had been cast at elections, in whom the right to vote existed, and to what extent undue influence had been used. Thus, by the beginning of the reign of

[14] L.J., Vol. i, p. 346. [15] C.J., Vol. i, p. 9. [16] C.J., Vol. i, pp. 122–3.

[17] John Hatsell, *Precedents of Proceedings in the House of Commons* (1781), pp. 92–9; re-printed with some variations in 1796, pp. 130–7, and 1818, pp. 137–41.

[18] This is a double page line engraving in the British Museum (Harl. MS. 159, ff. 3–4), probably issued to commemorate the election of Speaker Crewe, 12th February, 1624, but possibly based on an earlier representation of Speaker Philips admonishing the Warden of the Fleet Prison at the Bar of the House in 1604. This is reproduced in J. E. Neale, *The Elizabethan House of Commons* (1949) at p. 364. (Cf. R. J. B. Walker, Catalogue of paintings, drawings, sculpture and engravings in the Palace of Westminster, part vi, duplicated (1965), p. 6.)

[19] W. R. Anson, *Law and Custom of the Constitution*, Vol. i (1911), p. 168.

[20] J. E. Neale, *Elizabeth I and her Parliaments 1584–1601* (1957), pp. 184 ff.

[21] C.J., Vol. i, p. 168.

James I, members of the public might appear, when the House so desired, in the course of four types of business—Private Bills; Public Bills; cases of privilege; and election disputes. And those appearing might be witnesses *simpliciter*, or parties, or legal representatives (counsel, attorneys or agents). The procedure by then established formed a binding corpus of precedents that was to remain little changed throughout the great period of the witness system in the eighteenth and early nineteenth centuries.

II

As Sir John Neale has remarked, the hearing of members of the public in Parliament could never become " automatic or general "—time was too short[22]—and very frequently a specific order by one of the Houses directed that certain named persons should appear. The order might vary from precise instructions that John Smith should appear on Wednesday next to give evidence on a particular point[23] to a more general directive; the Lords, for instance, in 1701 on a Bill to reunite the governments of the colonies to the Crown desired to hear " any other persons who shall think themselves concerned,"[24] and the Commons in 1750, at the report stage of another American Bill from Committee of the Whole House, on being informed " that two persons attended at the door who could give the House some information " concerning an amendment, had them severally called in and examined.[25] When Private Bills have been considered it has generally been left to the promoters (or their opponents) to secure the appearance of witnesses, though if witnesses have proved reluctant to come, an order may then be made by the House.[26]

Orders of the Houses on rare occasions might be resisted, as when Richard Awdesley in 1641 informed the Commons that " he cared not for Parliament; that Parliament should come to him, for he would not come to the Parliament ".[27] The assistance of the Serjeant-at-Arms in the Commons, or of Black Rod (or of the Serjeant-at-Arms) in the Lords, was then ordered.[28] The recalcitrant witness was taken into custody and, appearing as a delinquent, was made to kneel at the Bar,[29] then perhaps to be sentenced to reprimand or imprisonment for contempt of the House.[30] There have been, however, occasions when Parliament has chosen to go to the witness. Evidence might be taken outside Westminster directly by Members or by affidavit; a committee of the House might go to a sick witness, or to witnesses detained in a prison (though frequently prisoners were released in order to come to

[22] J. E. Neale, *The Elizabethan House of Commons* (1949), p. 384.
[23] E.g. on 30th April, 1690, C.J., Vol. x, p. 395.
[24] L.J., Vol. xvi, p. 680.
[25] C.J., Vol. xxv, p. 1091.
[26] Erskine May, *op. cit.*, p. 946.
[27] C.J., Vol. ii, p. 151.
[28] See Erskine May, *op. cit.*, c. ix, *passim*.
[29] Though this was not insisted on after 1772.
[30] J. Hatsell, *op. cit.*, 4th ed. (1818), p. 144.

Parliament).[31] Sometimes committees would sit away from Westminster in order to conduct the whole of their business (as in the Inns of Court), and quite recently committees of the Commons with the leave of the House have heard evidence in various towns and universities of the British Isles and also in such distant countries as India and Pakistan.

The hearing of witnesses has involved the exercise of two special parliamentary powers: to administer oaths to the witnesses, and to extend privilege to them. The former was a source of difficulty and irritation to the Commons. The House of Lords, whether hearing judicial cases or not, was a court and (until 1858) witnesses were sworn at the Bar.[32] False witness then rendered the witness liable to the penalties of perjury. It was otherwise in the Commons. As Erskine May lamented in 1844: " By the laws of England, the power of administering oaths has been considered essential to the discovery of truth; it has been entrusted to small debt courts, and to every justice of the peace; but is not enjoyed by the House of Commons, the grand inquest of the nation."[33]

The Commons therefore resorted to ingenious expedients whenever oaths were considered essential; they selected Members who were J.P.s for Middlesex to administer oaths, or formed a " committee of secrecy " in which they would administer oaths; they had witnesses sworn at the Bar of the Lords; they sought to have matters dealt with in joint committees of the two Houses, where the rules of Lords procedure are followed; or they simply abandoned the hearing of witnesses to one of the Judges.[34] More effectively, the House decided to treat false evidence as a breach of privilege, and in the seventeenth and eighteenth centuries there were many cases in which witnesses were punished by commitment to the Serjeant-at-Arms and then to Newgate Prison, for prevaricating, giving false testimony, or suppressing the truth; for refusing to answer questions; or for not producing documents in their possession.[35] The Parliamentary Witnesses Oaths Act, 1871,[36] ended the anomalous position by which the Upper but not the Lower House could administer oaths, and now a Clerk at the Table in the House itself, or the chairman or clerk in a committee, may administer the oath to witnesses.[37]

Parliamentary privilege for witnesses caused less difficulty and has probably been of greater significance. The aim is to give witnesses in Parliament such complete freedom from intimidation and constraint—even from that constraint resulting from other due legal processes—

[31] C.J., Vol. i, pp. 849, 850, 851; Vol. ii, pp. 49, 194; Vol. x, p. 682; Vol. xiii, p. 562. For the examination of witnesses in India, cf. the arrangement by the Lords in 1820 for divorce evidence to be taken in India, L.J., Vol. liii, pp. 388, 554.

[32] Erskine May, *op. cit.*, 1st ed. (1844), p. 238; *ibid.*, 4th ed. (1859), p. 358.

[33] Erskine May, *op. cit.*, 1st ed. (1844), p. 244.

[34] *Ibid.*, p. 244–5.

[35] A list of examples of contempt by witnesses, 1676–1948, is provided in Erskine May, *op. cit.*, 18th ed. (1971), pp. 133–4.

[36] 34 & 35 Vict., c. 83.

[37] Erskine May, *op. cit.*, 18th ed. (1971), p. 671.

that evidence before the Houses will be immediately available, and will be as full and truthful as possible. The earliest recorded precedent in the Journals for such protection was that in the Commons in 1614 when Francis Levett was called in as a witness against the Bishop of Lincoln and it was ordered that " during the time he attendeth the commandment of this House he shall have the privilege of this House ".[38] Similarly the Lords gave protection against arrest to a witness in 1621.[39] Subsequently, witnesses, petitioners and their solicitors have received protection from arrest and also from the consequences of any statement they might make in the course of parliamentary business.[40] On 21st February, 1701, a resolution was passed by the Commons declaring that any attempt " to deter or hinder any person from appearing or giving evidence " before them was " a high crime and misdemeanour ".[41]

The need for this resolution was vindicated almost immediately, for in March 1701 it was reported to the House that at the Blue Posts coffee house a Member had tried to instruct a witness from his constituency in how he should conduct himself in a Committee of Privileges then investigating charges of bribery in an election at Bramber. The witness had been told he was to " stand Buff ", that is, silent.[42] The House ultimately expelled the offending Member and ordered others into custody.[43] Thereafter, session by session, the resolution of February 1701 against intimidation was repeated, and from time to time proceedings were taken against those interfering with witnesses.[44] As recently as 1892 the Commons summoned the Directors of the Cambrian Railway Company to the Bar of the House, and Speaker Peel admonished them for dismissing an employee partly on account of the evidence he had given to a Select Committee concerning the hours worked by their staff. " A great principle has been infringed ", he informed the Directors, " the principle that evidence given before this House shall be free and unrestrained "; the effect of their behaviour was " to disturb and taint the very sources of truth ".[45]

III

When those who are not Members come to speak before Parliament they may be heard in the fully constituted House; in a Committee of the Whole House; or in other forms of committee. Of these methods, the first though now no longer used (except when counsel are heard by the Lords sitting judicially), was for three centuries felt to be the most appropriate for important hearings, as it was the most solemn method of procedure. When the House itself heard evidence the witness stood

[38] C.J., Vol. i, p. 505. [39] L.J., Vol. iii, p. 153.
[40] Cf. the general statement in Erskine May, *op. cit.*, 1st ed. (1844), pp. 110–12, where the earliest precedent is of 12th May, 1624.
[41] C.J., Vol. xiii, p. 350. [42] C.J., Vol. xiii, p. 400. [43] *Ibid.*, pp. 400–13.
[44] Cf. the Report of the Select Committee on Witnesses, H.C. (1935), 84, Appendix No. 1, p. 50 *et seq.*
[45] *Ibid.*, pp. 58–9; C.J., Vol. cxlvii, pp. 166–7.

at the Bar of the House, and the rule was that the Speaker asked all the necessary questions.[46] This seems to have been observed carefully in the seventeenth century; preparations were made beforehand as to what questions should be put, and if after the witness had answered the House wished to put further questions, the witness withdrew while these were formulated.[47] During questioning the House usually sat silent, some of the Members perhaps jotting down the answers. By the later eighteenth century, however, as Hatsell observed, " the practice, for the sake of convenience often is, that the Members themselves examine the witness without the intervention of the Chair "; this practice Hatsell condemned as " irregular "; it seldom failed to produce disorder, in his experience.[48]

Appearance at the Bar in the early Stuart Parliaments often arose from decisions of the Commons to enquire into specific grievances, and very many witnesses were treated as delinquents to be interrogated and then reprimanded or otherwise punished. A Sheriff might be questioned as to his mishandling of an election[49] or a clergyman (such as Dr. Harris in 1624) rebuked for " venting his spleen in the pulpit ".[50] Occasionally the Commons sought to pursue wider matters by examination at the Bar, as when the House was formulating a case against Richard Montagu (Charles I's chaplain and canon of Windsor), the Mayor of Windsor came to the Bar and was interrogated about Montagu's speeches and actions in Windsor, and about " a bonfire lately there made ".[51] It was not, however, until the Long Parliament that men (and women[52]) were brought frequently to the Bar of the House; then on at least twelve sitting days in November and December 1640, witnesses appeared at the Bar. Some of the interrogations were inscribed in the Journal, as for instance when the House was seeking to prepare a case against John Cosin, Master of Peterhouse. " One Mr. Norton, a Divine " was called in, and examined, and " to divers Questions, demanded of him by Mr. Speaker, answered, that he had a Son at Cambridge; and certain Fellows of Peter-house endeavoured to seduce him to Popery; pretending that Dr. Cosens would make him a Fellow of Peterhouse, if he would come thither:—Thus much appeared on Oath:—And he was forced to send his son away—Said, he hath a Copy of the Arguments that passed beween them and his Son: That the Ques-

[46] Hatsell, *op. cit.*, Vol. ii (1818), pp. 140–4.

[47] E.g. the examinations of Titus Oates, 28th November, 1678.

[48] Hatsell, *op. cit.*, Vol. ii (1818), p. 141. When the witness was a delinquent, " the serjeant must stand by him at the Bar, with the Mace [on his shoulder] "; then only the Speaker could address him. But if the Serjeant did not hold the Mace, the questions asked by the Speaker could " be proposed, at the time of the witness's standing at the Bar, by Members to the Chair " (*ibid.*, pp. 140–1).

[49] E.g. C.J., Vol. i, p. 928–9.

[50] C.J., Vol. i, p. 695.

[51] C.J., Vol. i, p. 912.

[52] Sir Edward Coke had objected to women witnesses; women were " not to speake in the congregation " (C.J., Vol. i, p. 519); in fact, they did occasionally speak at the Bar (cf. C. J., Vol. ii, p. 27; Vol. vii, p. 651). A woman spoke at the Bar of the Lords in 1601 on behalf of her husband, by reason of his great age and infirmities (L.J., Vol. ii, pp. 236–7).

tions held in Peter-house Chapel are maintained and held, as they are at Rome: And instanced several of the Questions."[53]

The number of enquiries such as this steadily declined after 1641—in November 1646 only two delinquents were sent for, and major examinations of policy in the House involving the hearing of evidence had ceased. A process of disengagement from the attempt to govern directly was taking place, and it is significant that in 1648 both Houses made a joint declaration that petitioners no longer might come into Parliament themselves to present petitions—a Member was to do it for them.[54]

The Lords' use of witnesses at the Bar in the first half of the seventeenth century was broadly similar to that of the Commons. Fewer general enquiries were heard, but the Lords occasionally assembled a sequence of witnesses, as they did in December 1640 after a riot in the parish church of Halstead.[55] Procedure sometimes seemed slightly less formal, one delinquent witness, a lawyer, being allowed to engage in debate with the House, asking the peers what he should have done when told to draw up a libellous petition, and receiving an answer from the Lord President of the Council, " Yt is noe parte of a lawyer to drawe petitions.".[56] A special feature of appearances at the Bar of the Lords however, was the judicial character of some of them after the revival of impeachment and the introduction of the hearing of appeal cases in 1621. Counsel and the parties concerned pleaded at the Bar of the House, and were able to bring witnesses for examination and cross-examination. Trials such as that of Laud in 1644 involved extensive hearing of evidence, and the very full Clerk's transcript of evidence against him has recently been published in the Calendar of House of Lords Manuscripts.[57] Appeal cases, as distinct from impeachments, normally only led to a few witnesses of fact appearing in the seventeenth century, and by the mid-eighteenth century it was customary for the Lords to hear counsel but not witnesses, as the House did not seek to elicit any information not previously presented to the lower court.[58]

Examinations by the Houses into matters of general policy continued after the Restoration with perhaps two of the most celebrated in parliamentary history occurring in the reign of Charles II. The first of these concerned the conduct of business by the Navy Office, and the enquiry involved the appearance of Samuel Pepys at the Bar of the

[53] C.J., Vol. ii, p. 35.

[54] C. H. Firth and R. S. Rait, *Acts and Ordinances of the Interregnum*, Vol. i (1911), p. 1139.

[55] L.J., Vol. iv, p. 107.

[56] *Notes of the Debates in the House of Lords*, ed. S. R. Gardiner (1879), p. 44. The Lord President was Viscount Mandeville, the future Earl of Manchester. The prisoner was eventually imprisoned in the Fleet.

[57] Vol. xi, new series (1962), pp. 365–467.

[58] In 1640 the Lords seem to have received " judicial " witnesses quite freely; in 1667 they only heard evidence already deposed in the lower court. Lord Chancellor Macclefield (1718–25) is held to be the last Lord Chancellor who would accept the examination of witnesses at the Bar (J. Macqueen, *Appellate Jurisdiction of the House of Lords* . . . (1842), p. 174). Counsel, on the other hand, have pleaded at the Bar from the beginning of appeal cases in 1621 to the present day.

House in 1668. Pepys described in his *Diary* the preparations for his evidence. The night before, he was so anxious that he hardly slept, " at last getting my wife to talk to me to comfort me ". Pepys arrived at Westminster Hall much too early and had to wait several hours before being called. However, he strengthened himself with mulled sack and brandy, and " so we all up to the lobby; and between eleven and twelve o'clock were called in, with the mace before us, into the House, where a mighty full house; and we stood at the bar ". The Speaker told Pepys and his Navy Office colleagues of the House's dissatisfaction with them, and read the report of a committee which had considered their affairs. Pepys then records: " I began our defence most acceptably and smoothly, and continued at it without any hesitation or losse, but with full scope and all my reason free about me, as if it had been at my own table, from that time till past three in the afternoon; and so ended, without any interruption from the Speaker." In fact, he spoke rather too long, for by the time he had finished Members had drifted off to their dinner, and no conclusion was arrived at by the House; not until a fortnight had elapsed was it clear that the House did not intend to pursue Pepys and his Office any further. Members (at least those of the Court party) seem to have been overwhelmed by the brilliance of his speech, some calling him " another Cicero "; Vaughan declared that he had sat twenty-six years in Parliament and never heard such a speech.[59]

Ten years later a more extended examination involved the appearance at the Bar of the principal accusers in the Popish Plot. On 21st October, 1678, Parliament assembled and was told in the King's speech " that he had been informed of a design against his person, by the Jesuits ". On each day but one between 23rd and 31st October the Commons heard evidence in the House. Titus Oates appeared five times, Israel Tongue twice, and the Keeper of Newgate once. Key statements by Oates were repeated outside the House before Members who were Justices in order that they might be attested.[60] When the Commons had heard Oates to their satisfaction he appeared before the Lords (who for the first week had contented themselves with appointing committees to examine papers and witnesses). In the Upper House Oates, as the Clerk noted, " made a large narrative " of it: " in which a long time being spent, and he wearied, humbly desired leave (there being much behind) that he might retire to refresh himself ". Oates harangued the Lords for the greater part of a day, and the summary of his narrative, subsequently inscribed in the Lords Journal, amounts to some 24,000 words.[61]

In addition to hearing evidence in special enquiries of this nature the Houses frequently listened to arguments at the Bar in the seventeenth and eighteenth centuries for and against Public Bills or, less frequently, Private Bills. Erskine May noted that Second Reading was the stage

[59] *Diary of Samuel Pepys*, ed. H. B. Wheatley, Vol. vii (1896), p. 350–3.
[60] C.J., Vol. ix, pp. 519–41 *passim*.
[61] L.J., Vol. xiii, pp. 313–30.

at which Counsel were more usually heard, " whenever the house have agreed that a public bill is of so peculiar a character as to justify the hearing of parties whose public or private interests are directly affected by it. . . . But counsel have also been heard at various other stages of bills."[62] Thus, in 1772 the East India Affairs Bill was read a third time in the Commons and two Counsel were heard on behalf of the Company. Then the examiner of the Company's records was called in and examined by Counsel, Members intervening to ask additional questions. A typical exchange ran as follows: " *Mr. Impey* [Counsel for the Company]—Does Mr. Wilks know any reasons that were assigned by the Governor and Counsel, for not letting the Company know of the tax, called Mottut, until it had been collected five years, and now not accounted for? *Mr. Wilks*—Yes; the reasons alleged by the Governor and Counsel were, that they did not think it was in proper order to lay before the Company at home yet. (At which a general laugh was in the House)." When the examination ended the debate was opened and speeches were based on what Counsel and witnesses had said, Burke proceeding to attack " a measure (the brat of Administration) " which was subversive of the India Company's rights.[63]

In the following year evidence was taken on seven Bills in the Commons in this way, although on one only in the Lords. Subsequently, as Erskine May suggests, [64] the pressure of time gradually became too great to allow for evidence to be taken except in Select Committees. In 1839 the Commons heard evidence at the Bar on the Second Reading of the Jamaica Government Bill,[65] and in 1844 the Lords heard Counsel (though not witnesses) on the second reading of the Sudbury Disfranchisement Bill.[66] Evidence ceased to be taken in the House,[67] although it continued to be given in the Lords on certain Divorce Bills down to 1922.[68]

IV

Parallel with hearings in the House between 1660 and 1840 were the more frequent and more effective hearings in Committee of the Whole House. When the House went into Committee of the Whole House the Speaker (or the Lord Chancellor) did not preside; the Mace was removed; an ordinary Member of the House sat as chairman; the Bar was set down; and—the key point—Members could speak more than

[62] *Op. cit.*, pp. 278–9. [63] J. Debrett, *Parliamentary Debates*, Vol. vi, pp. 410–19.

[64] Erskine May, *op. cit.*, 4th ed. (1859), p. 348. May is referring to Public Bill evidence; the last orders for hearing arguments at the Bar on Private Bills were made by the Commons in 1824 (F. Clifford, *History of Private Bill Legislation*, Vol. ii (1887), p. 861).

[65] C.J., Vol. xciv, p. 208. [66] L.J., Vol. lxxvi, p. 560.

[67] Although on 23rd April, 1891, the Lords heard a delegate from the Legislative Council and House of Assembly of Newfoundland at the Bar on the Second Reading of the Newfoundland Fisheries Bill, L.J., Vol. cxxiii, p. 158.

[68] (See p. 27 below). Counsel have continued to appear in judicial business in the Lords.

once to a given question.[69] It therefore became possible for Members to pursue arguments, to answer objections and, in the examination of witnesses,[70] to come back again and again with questions. The whole atmosphere became more informal with the departure of the Speaker and Mace. Plans and papers were produced and handed round; samples of goods could be displayed, and on one occasion a baker produced some loaves, which Members " with great greediness devoured ".[71]

Although from time to time evidence on Bills was heard in Committee of the Whole House,[72] the Committee was more frequently used for the hearing of evidence in general enquiries, and in particular for those concerning trade and the colonies. Thus, tobacco merchants and Bristol sugar merchants appeared in Committee of the Whole House of the Commons in 1685 to give reasons for not placing import duties on sugar and tobacco;[73] Counsel for English distillers spoke before the Lords in 1689,[74] and members and Counsel of the East India Company made frequent appearances in Committees of the Whole House in each House —notably when a Scottish East India Company was mooted in 1695.[75]

Many enquiries in Committee of the Whole House were initiated by Members antagonistic to the Government and were correspondingly disliked by Ministers. When witnesses were being heard in 1740, for instance, concerning the proposed cession of Georgia to Spain as part of a peace settlement, and a sea captain was standing at the Bar, the Chairman of Committee " was observed to be deaf on this occasion ", and was helped by Walpole's followers, who " were instructed to make so much noise that nobody could be heard ". In the following year the House ordered eight witnesses to give evidence concerning the State of Georgia; but they were never heard, as the ministry " had no mind from the beginning to enter into the affair ".[76] Pelham in 1745 claimed that it was not the task of the Commons either to interrogate Ministers of State or still more to examine the servants of Government, for by so doing they were encroaching on the prerogative or (if witnesses were adjudged delinquent) they were usurping the business of the courts.[77]

[69] Erskine May, *op. cit.*, 1st ed. (1844), pp. 196, 224–9.

[70] Committees of the Whole House were normally restricted in calling for witnesses and papers to specific orders by the House, and would have to refer back to the House if during an enquiry they decided to hear additional witnesses. (P. D. G. Thomas, *House of Commons in the Eighteenth Century* (1971), p. 271.) On occasion, however, they were authorised " to send for any to inform or assist them " (C.J., Vol. i, p. 822).

[71] J. Debrett, *History, Debates and Proceedings of both Houses of Parliament* (1792), Vol. vi, p. 315.

[72] E.g. on the Bill to prevent foreigners being part owners of British ships, 18th February, 1773, *Parliament History*, Vol. xvii, cols. 704–5.

[73] C.J., Vol. ix, p. 734.

[74] *Manuscripts of the House of Lords*, 1690–91 (1892), p. 247.

[75] The record of the 1695 hearings was entered at length in the Lords Minute Book; see *Manuscripts of the House of Lords*, Vol. ii, new series (1903), pp. 3–13.

[76] *Manuscripts of the Earl of Egmont, Diary of the first Earl of Egmont*, Vol. iii (Historical Manuscripts Commission, 1923), p. 209.

[77] *Parliamentary History*, Vol. xiii, cols. 1216–22.

In spite of the attitude of Ministers, enquiries of the most widely ranging character continued through most of the eighteenth century, and the diary of a Member, Nathaniel Ryder, which covers 1764–7 and has recently been edited by Dr. P. D. G. Thomas, reveals that something like a fifth of the material Ryder thought worth recording for that period consisted of answers or speeches of witnesses at the Bar of the Commons.[78] American policy was being investigated in detail, Benjamin Franklin, for instance, speaking at length on 13th February, 1766.[79] On 27th March, 1767, the affairs of the East India Company brought Henry Vansittart to the Bar to speak from 3 until 7 o'clock;[80] and further witnesses, including Warren Hastings,[81] appeared on six subsequent days, on the last of which the examination continued until 8 or 9 p.m.[82]

The climax came in the session of 1772–3, when out of a total of 112 sitting days, 18 were largely devoted by the Commons to hearing evidence, mainly in Committee of the Whole House. This on average was one day in every seven, and the reports suggest that the examinations were well attended and that the Treasury bench (notably Lord North) took an active part in questioning. Thereafter the hearing of evidence in Committee of the Whole House declined, although as late as 1785 it remained a significant factor in parliamentary business. In that year Pitt's proposals for the adjustment of commercial intercourse with Ireland led to witnesses appearing at the Bar in both Commons and Lords. This did not seem to have been Pitt's initial intention, and Charles James Fox expressed his surprise that Pitt had not intended " to call to the bar of the House some of the best informed and principal manufacturers of the kingdom . . . [to] learn from them the probable consequence ". Fox did not ask the House to be guided solely by witnesses, but he felt that the proposed change in commmercial policy " does need the fullest information ". Pitt retorted that " it was perfectly unnecessary to invite witnesses to their bar "; they would come impelled by their " natural jealousy of trade " and by " clamours and complaints " of others. Fox, he felt, was seeking to embarrass the ministry " by causing the table to be covered with petitions and the bar to be crowded with witnesses ".[83] In spite of Pitt's dissatisfaction, witnesses were heard in both Houses, and the emphatic evidence of men such as Josiah Wedgwood and James Watt contributed to the defeat of the propositions.[84]

[78] " Parliamentary Diaries of Nathanial Ryder, 1764–7 ", ed. P. D. G. Thomas, *Camden Miscellany*, Vol. xxiii, *passim*. The witnesses were mainly those examined in Committee of the Whole House, but some were in the House.

[79] *Op. cit.*, pp. 300–1.

[80] *Op. cit.*, p. 337. Ryder did not, however, note down any of his evidence. Some evidence Ryder felt, in any case, was " scarce worth writing down ", and occasionally merchants came to the Commons " to prove nothing more than what was very well known before " (pp. 294, 299).

[81] *Op. cit.*, p. 337.

[82] On 8th May, 1767, *op. cit.*, p. 341.

[83] *Parliamentary History*, Vol. xxv, cols. 352, 356.

[84] The manuscript transcript of the Lords evidence is preserved among the Main Papers, House of Lords Record Office.

The 1785 enquiries, however, marked the beginning of the end of regular examination of witnesses in Committee of the Whole House. Erskine May pointed out that when in 1790 the Committee of the Whole House enquiring into the African Slave Trade needed further information, it did not attempt to examine witnesses itself but sought the appointment of Select Committees to examine witnesses and report;[85] and by 1810 the advocates of enquiry in Committees of the Whole House were on the defensive. Lord Porchester, seeking an enquiry in that year into the Walcheren expedition, protested that he could not " consent to delegate the right of inquiry on this occasion to any select or secret committee. . . . It is in a Committee of the Whole House alone, we can have a fair case, because if necessary we can examine oral evidence at the Bar." He gained his motion but only by 195 to 186.[86] Evidence was taken on the operation of the Orders in Council in 1812,[87] and evidence was taken by the Lords on the Second Reading of the Municipal Corporation Bill in 1835 and printed at great length in the Journal;[88] but by 1859 Erskine May considered the taking of evidence on enquires was " better intrusted to select and secret committees ".[89] Evidence continued to be given at the Bar of the Lords on Divorce Bills for nearly a century,[90] but this ended with the appearance of the witnesses on the Second Readings of two Divorce Bills on 23rd March, 1922.[91]

V

The use of Select Committees to conduct specific enquiries long antedated the year 1790 which had been chosen by Erskine May to mark the decline of examination in Committees of the Whole House.[92] Committees of the Commons had been set up in 1581 to consider the maintenance of the Navy, in 1605 to consider the provision of a learned clergy, and in 1606 to discuss how to deal with those " popishly inclined ". Similarly the Lords were accustomed to enquire into general matters by committee, dealing for instance with the establishment of " an Academy for the education of the young Nobility " in 1621, and the state of the munitions, forts and ordnance of the land in 1624. Select Committees such as these might be authorised to send for " any that can inform them ",[93] " for persons, papers and witnesses ",[94] for " any they shall think fit ",[95]—there were many variations on these formulae—or, more precise limits might be set, authority, for instance,

[85] *Op. Cit.*, 4th ed. (1859), p. 348.
[86] *Parliamentary Debates*, 1st series, Vol. xv, cols. 162, 207.
[87] C.J., Vol. lxvii, p. 333.
[88] L.J., Vol. lxvii, pp. 348 ff.
[89] Erskine May, *op. cit.*, 4th ed. (1859), p. 348.
[90] On divorce evidence, see J. MacQueen, *Appellate Jurisdiction of the House of Lords and Privy Council together with the practice on Parliamentary Divorce* (1842), *passim*.
[91] L.J., Vol. cliv, p. 108.
[92] See n. 85, above.
[93] C.J., Vol. i, p. 572.
[94] C.J., Vol. iii, p. 100.
[95] C.J., Vol. i, p. 586.

being given " to send to the Officers of the Navy to know what stores remained ".[96] When appropriate, Counsel might be sent for, and this usually was ordered for Committees of Privileges[97] or for Committees on Bills.[98]

All that necessarily resulted from the work of a Select Committee was its report to the House; this became of record, being included in the Journal. The evidence given to the committee might never see the light of day, at the most being summarised in the committee clerk's minute book. The House, however, could order a committee to report its proceedings as well as its opinion,[99] and many committees included in their report details of evidence taken. In the eighteenth century the reports began to be ordered to be printed, as were, for instance, those on Poor Rates (1716), Layer's Conspiracy (1723), the Charitable Corporation (1733) and the Hudson's Bay Company in Canada (1749). From at least 1742 the House seems to have tolerated the printing of oral evidence as broadsheets, and after 1771 considerable sections of the London newspapers might be taken up with verbatim evidence. By the early nineteenth century witnesses at Select Committees of Enquiry could hope that their words might be on everyone's breakfast table the following morning—before the committees had even reported to the House—and would also become known to Government departments as well as to peers and Members not of the committee. From 1837 onwards, however, the privilege of the House was usually exercised to prohibit the printing of Select Committee evidence before it had been reported to the House unless the public had been admitted to the sittings of the committee.[100]

The publication of Select Committee evidence by order of the House raised problems of authenticity. Some witnesses made minor and permissible corrections before publication; but it was alleged that Henry Warburton, M.P., had added 7,000 words to the 5,000 he had spoken in evidence before the Select Committee on Timber Duties,[101] and the original text of the evidence of David Ricardo and others in 1819 on the Resumption of Cash Payments, which is still preserved in the House of Lords Record Office, shows a number of significant alterations.[102] A code of practice seems to have been worked out by 1837, but as late as 1854 Henry Hansard found that some witnesses added 50 per cent or more to their evidence when correcting the proofs of it.[103] Beatrice Webb, not realising that such substantial corrections were often made or that additional footnotes could be added, left uncorrected an exaggera-

[96] C.J., Vol. x, p. 282.
[97] C.J., Vol. i, pp. 745, 873, 920, etc.
[98] C.J., Vol. i, p. 84; Vol. viii, p. 329.
[99] Cf. C.J., Vol. xi, p. 589; Vol. xvii, p. 279.
[100] Under the resolutions of 30th and 31st May, 1837, C.J., Vol. xcii, pp. 418–20. A newspaper publisher was committeed for publishing a report including evidence in 1832, *op. cit.*, Vol. lxxxvii, p. 360.
[101] H. S. Cobb, " Sources for Economic History amongst the Parliamentary Records in the House of Lords Record Office ", *Economic History Review*, 2d. ser., Vol. xix, p. 173.
[102] *Op. cit.*, p. 174.
[103] *Ibid.*

tion of the number of days she had worked as a trouser-hand when she corrected the proofs of her evidence before the Lords Committee on the Sweating System of 1888—and so brought upon herself some " unpleasant imputations ".[104]

The Select Committees of the nineteenth century contrasted to some extent in their choice of witnesses with those of the earlier part of the eighteenth century. In the eighteenth century it was chiefly officials and experts who spoke—churchwardens, vestrymen, overseers, magistrates, representatives of government departments. The Committee on the Poor Rates in 1715, for instance, examined those who made the rates, not those who paid them or those who were relieved by them. In the nineteenth century, however, efforts were made in Committees of Enquiry to hear all those concerned in a problem—men as well as masters. For example, the Select Committee on Factory Children's Labour of 1831–32, presided over by the Tory reformer Michael Sadler, sat on 43 days with 99 appearances of witnesses, and Sadler is said to have taken especial care to get working men to come to Westminster from the textile districts. The pages of evidence bring before the reader in the vivid form of dialogue the kind of life that was led by the victims of the new system, as when Joseph Hebergan, a Huddersfield worsted spinner aged 17, answered questions concerning work done by other members of his family.

" Where is your brother John working now?—He died three years ago.

What age was he when he died?—Sixteen years and eight months.

To what was his death attributed by your mother and the medical attendants?—It was attributed to this, that he died from working such long hours; and that it had been brought on by the factory. They have to stop the flies with their knees, because they go so swift they cannot stop them with their hands; he got a bruise on the shin by a spindle-board, and it went on to that degree that it burst; the surgeon cured that, then he was better; then he went to work again; but when he had worked about two months more his spine became affected, and he died.

Did his medical attendants state that that spinal affection was owing to his having been so over-laboured at the mill?—Yes.

He died in consequence?—Yes."

Passages such as these occur with pathetic frequency in the Select Committee evidence of the early nineteenth century, and a vivid anthology of some was published in 1952 by Sir Barnett Cocks, now Clerk of the House, and Mr. Strathearn Gordon, the late Librarian of the Commons, under the very significant title of *A People's Conscience.*

The Select Committee became a forum popular not only with social reformers but even with civil servants. It has recently been observed how in 1840 two officials of the Board of Trade wishing to advocate a policy of free trade put up " a sympathetic M.P. to move for a Select Committee on import duties in 1840, [thinking] 'that it would be for the public interest if those who were, or who had been, in office at the

[104] B. Webb, *My Apprenticeship*, Vol. ii (1938 ed.), p. 370.

Board of Trade could be transferred for a short time from their homes, or from their private offices in Whitehall into a committee room of the House of Commons, for then, not only would their evidence be given publicly, but it would be ordered to be printed, and circulated throughout the country ' ".[105]

The massive Blue Books of evidence which resulted from the nineteenth century Select Committees are today primary sources for social and economic history. Specialists in many disciplines using these Blue Books would echo the verdict of the 1971 enquiry by the Ormerod Committee into Legal Education. This Committee described the work of a Commons Select Committee on Legal Education of 1846, and noted how it had reported in the " amazingly short period of three months " and had produced " a Report which contains a remarkable and far-sighted study of the whole problem ". The 1971 Committee concluded that the history of legal education from 1846 to today " is largely an account of the struggle to implement the recommendation of the 1846 Committee ".[106]

By 1846, however, the great era of witnesses in Select Committees of enquiry was passing. The Select Committees had a powerful rival in Royal Commissions, and the following statistics suggest a marked decline in the use of Select Committees at the end of the nineteenth century:

Decennial statistics of Commons and Lords Committees on general matters (i.e not on bills or domestic parliamentary topics)[107]

	1800	*1810*	*1820*	*1830*	*1840*	*1850*	*1860*	*1870*	*1880*
H.C.	14	15	13	17	20	9	20	14	12
H.L.	2	6	8	3	3	5	4	1	1
	1890	*1900*	*1910*	*1920*	*1930*	*1940*	*1950*	*1960*	*1970*
H.C.	9	7	2	6	6	3	2	3	22
H.L.	2	3	2	0	0[108]	0	0	0	0
Joint Committees	0	4	1	1	1	0	0	0	1

The use of Select Committees received fresh stimulus, however, with the advent of a type of Parliamentary enquiry that would be continuing and not *ad hoc*. The Public Accounts Committee was first set up in 1861, soon became established as a " sessional committee ", and took the field of public accountancy for continuous and intensive enquiry. The committee summoned the accounting officers of the government departments before it to explain detail in the accounts, and, as a clerk has observed, these witnesses, " the very highest personages in the Civil Service—forgather in the corridor outside Committee

[105] Henry Parris, *Constitutional Bureaucracy* (1969), p. 94.
[106] *Report of the Committee on Legal Education* (Cmnd. 4595), pp. 5, 8.
[107] The sessions to which these statistics relate usually began in the preceding autumn, e.g. were for 1969–70, etc.
[108] Lords Select Committees of Enquiry were appointed in 1938–39 to enquire into Gas, Electricity and Water Undertakings; the Prevention of Road Accidents; and Official Secrets Acts. These were the last until that set up in 1971 to enquire into Sport and Leisure.

Room 16 on Tuesdays and Thursdays when the Committee is sitting, often in a state of acute nervousness . . . an adverse report can ruin a great career, can provoke a storm in the House. And that is enough to secure strict adherence to the schedules of the Appropriation Account."[109]

The Estimates Committee, first set up in 1912, after a little time also became sessional.[110] Witnesses of varied rank in the Civil Service together with experts and occasional members of the general public appeared before it, and the committee dealt with estimates of departments not after they were spent, but as soon as they were presented. In 1971 the Estimates Committee was replaced by the Committee on Expenditure and the scope of this committee now extends to the whole range of government expenditure and of policy concerning it.[111]

A still more marked return to the eighteenth and nineteenth century committee of enquiry took place as part of a series of reforms in parliamentary procedure in the 1960s with the appointment of a number of committees known as " Specialist Committees ".[112] These have in recent years investigated general policy on such matters as Agriculture, Science and Technology, Education and Science, Scottish Affairs, Overseas Aid and Race Relations. Much or all of the evidence is taken in public (not always the case for other Select Committees); the committees have power to go to the witnesses, and some have travelled to various parts of the British Isles or to countries of the Commonwealth. The committees may be empowered to employ experts in order to gather information or to " elucidate matters of complexity ". Finally, following the example of the nineteenth-century committees of enquiry, evidence is taken not only from experts and administrators but also from others likely to be concerned with the matter under discussion. Thus the Select Committee on Education and Science of 1969–70 investigating teacher-training sat either in full committee or in subcommittee on 32 days, at Westminster and also at Edinburgh, Glasgow, Dundee, York, Cardiff, Glamorgan, Portsmouth and Southampton, hearing evidence from students and lecturers in the colleges of education as well as from professors of education and civil servants. In all, over 400 witnesses were examined, and five Blue Books of evidence containing 1,700 pages were published,[113] though the dissolution of Parliament in June 1970 prevented the committee from making a report.

VI

Committees in the Commons on public business have usually been given power to send for persons, papers and records. When Private

[109] Eric Taylor, *The House of Commons at Work*, 7th ed. (1967), p. 219.
[110] *Ibid.*, pp. 220–3.
[111] Erskine May, *op. cit.*, 18th ed., pp. 653–4; Standing Order No. 87.
[112] Erskine May, *op cit.*, 18th ed., pp. 657–8.
[113] Select Committee on Education and Science (1969–70), H.C. 182—I, II, III, IV, V, with Index to Evidence, VI.

Bills have been considered this power is not given, but the parties have normally been present, and both the promoters of a Bill and petitioners have had the right to be heard themselves, by their counsel or by their agents.[114] Otherwise the Private Bill Committee, unless specifically given authority by the House, is confined to hearing witnesses brought before them by the parties. As Dr. Orlo Williams comments, this in effect " obliges the committee on a private bill to act in a semi-judicial capacity and to decide upon each case as argued before them by the parties ".[115] The topics dealt with in the Private Bills of the sixteenth and seventeenth centuries were frequently of somewhat restricted interest and did not provoke much controversy, concerning as they often did such matters as the naturalisation of foreigners, the release of individual private estates from the effects of the law of entail, or the foundation of schools and hospitals. The evidence given in committee was consequently brief. Thus, when in December 1711 the Hon. Charles Egerton sought a Bill for the sale of two manors and other entailed lands in Staffordshire in order to pay his debts, the Lords Clerk minuted in his committee book on 15th March, 1712: " The parties called in. The Bill read by paragraphs. The deeds are perused and the execution of the bargain and sale in the Bill recited, proved by Richard Holder. Ordered [the Bill] to be reported without amendments."[116] The whole proceeding probably took about half an hour. Yet even at this time a few Private Bills might be contentious, and evidence conflicting. A Bill to establish a new cattle market at Brookfield in London in 1701 led to fierce differences in the Lords Committee, which lasted two days. Some twenty witnesses, for the most part butchers, alternately attacked and supported the existing Smithfield market: " *Thomas Porter* (sworn): often known Smithfield not able to contain the cattle; that when butchers have bought sheep, the salesmen would not let them have them unless they presently took them away that they might bring in others. He has known this twenty times in a year." Thomas Wright, on the other hand, having known Smithfield Market thirty years, deposed that he " never saw Smithfield Market so crowded, but there was room . . . for many more ". The Committee accepted the Bill, but the House, more conscious of the wishes of the City, rejected it without a division.[117]

After 1760 there was a marked growth in Private Bill work, a peak year being reached in 1846. The main types of projects involved were the inclosure of open fields; the construction of canals, toll-roads and railways; and the provision of gas and water services. Bills to deal with these subjects were numerous, technical, and sometimes contentious. Especially in the construction of railways large capital sums were involved, and quite frequently Parliament was directly or indirectly con-

[114] O. C. Williams, *Private Bill Procedure and Standing Orders in the House of Commons*, Vol. i (1948), pp. 10–11.

[115] *Ibid.*, p. 11.

[116] *Manuscripts of the House of Lords*, Vol. ix, new series (1948), pp. 203–4.

[117] See the papers concerning the Brookfield and Newport Markets Bill calendared in *Manuscripts of the House of Lords*, Vol. iv, new series (1908), pp. 154–9.

fronted by two or more competing schemes. Committee sittings therefore became long and complicated. For example, on a short Bill to build a new pier in the Thames at Gravesend in 1832 a Lords Committee sat for twelve afternoons between 8th May and 4th June and listened to some fifty witnesses in order to disentangle complicated points concerning local politics and the social conflicts between watermen and shopkeepers in Gravesend.[118]

Although at first clerks in Private Bill committees merely summarised the statements of witnesses, the use of shorthand after 1771 made transcripts possible,[119] and from the session of 1793 increasing quantities of complete transcripts of evidence in committee on opposed Private Bills are preserved in the House of Lords Record Office—after the fire of 1834 (in which so many Parliamentary documents were destroyed) the series is practically complete for both Houses.[120] The bulk is enormous; there are probably about two million pages of Private Bill evidence in all. No general survey has ever been attempted, and only a small fraction has ever appeared in print. The rest, in longhand or in typescript, awaits analysis by researchers. At the moment all that can be attempted here is a sample probe: into the evidence recorded in the first continuous set of Commons Evidence books that has been preserved: those for the session of 1835.

The 1835 books deal with evidence on 27 opposed Private Bills, relating to a representative spread of subjects—waterworks (5); roads (2); town improvement (5); poor relief (2); gas supply (2); rivers and canals (4); railways (6); and the church (1). The committees, as was customary, consistently began by hearing one or more counsel representing the party for the bill, followed by perhaps 10 or 20 witnesses in support, each of whom was questioned by his own counsel and cross-examined by the opposition counsel; and then (if the original evidence had been shaken in cross-examination) re-examined by his own counsel. The whole process was repeated for the opposition case—and opposition witnesses were usually more plentiful, numbering 41, for instance, on the Islington Market Bill. The whole committee stage was lengthy; in the nineteenth century evidence was seldom completed in one day, sometimes continuing, as in the case of the 1834 Great Western Railway Bill, for as long as 57 days. The process was also highly technical; the Sheffield Gas Bill involved detailed descriptions of how silver plate was manufactured, and the Great Western Railway Bill produced varying estimates of where danger limits came in railway gradients. In the latter case the evidence of one opposing engineer was considered so 'scientific' that the committee and counsel agreed to ask the petitioner's

[118] House of Lords Record Office, MS. Evidence, H.L., Gravesend Pier Bill, 8th May–4th June, 1832.

[119] In 1789 Joseph Gurney was appointed to take verbatim notes of evidence and speeches at Warren Hastings' trial; W. B. Gurney was appointed shorthand writer to the Commons in 1806 and to the Lords in 1813. Cf. M. F. Bond, *Guide to the Records of Parliament* (1971), pp. 46–7.

[120] *Op. cit.*, pp. 48–54.

engineer, Brunel himself, to conduct cross-examination. A final general feature of the evidence was the extent to which the committee were often in the hands of the two parties. On Sheffield Gas the chairman intervened with the question, 'did they need *more* witnesses on the same facts?'. Counsel firmly replied that his side did not know what points the opposition were going to raise, and therefore needed all their witnesses.

From the nature of the case, the committees in 1835 were hearing for the greater part of their time the professional men, the engineers and surveyors who had specialised technical knowledge, or the merchants, cutlers, etc., affected by the Bill. The leading engineers and surveyors of the nineteenth century in particular became quite at home in Parliamentary committees, and on occasion indulged in professional displays of a prima donna type—as when George Stephenson in 1835, giving evidence for the Sheffield and Rotherham Railway, on being asked whether the railway would be visible from the house of a Miss Walker replied: " I should consider it a very great beauty to Miss Walker's house if she has any taste in her," and subsequently prophesied: " I know that I was considered insane when I talked of going 10 miles an hour—I should not be considered so insane if I should now say that we might go 100 miles an hour—it is quite possible to do it."[121]

The professional men dominated; members of the general public were not usually heard. The purpose of evidence in Private Bill committees was to establish facts; Counsel brought to the committee those whose knowledge and experience would assist them, and when a committee on one occasion in 1835 said that it did not need to hear the evidence of Michael Faraday, Counsel insisted, and the eminent scientist's views on the preservation of timber were duly taken.[122] Until 1835 the Commons committees usually included all Members for counties and boroughs adjacent to the localities affected by a Bill. It was therefore assumed that local authorities and inhabitants were adequately represented in this way.[123] Subsequently, local authorities and inhabitants have been allowed in specific cases to appear against a Bill, but during the heyday of Private Bill legislation the " ordinary member of the public " was extremely unlikely to appear before a Private Bill Committee.

A further limitation of the system was revealed in the committee on the 1835 Great Western Railway Bill. For long Parliament did not usually allow opposition to a measure to be based on competing interests;[124] this merely meant that a competing company, in this case the Basing and Bath Railway Company, covertly organised opposition among landowners and proprietors. The committee might therefore be faced with an unreal issue. It was pleaded that a prominent land-

[121] H.C., MS. Evidence, Sheffield and Rotherham Railway Bill, 21st May, 1835.
[122] Faraday gave evidence before the committee on the Great Western Railway Bill, 1835, H.C., MS. Evidence, 10th April, 1835.
[123] O. C. Williams, *op. cit.*, Vol. i, pp. 87–91; F. Clifford, *History of Private Bill Legislation*, Vol. ii (1887), p. 869.
[124] F. Clifford, *op. cit.*, p. 868.

owner was opposed to the project; in fact the real opposition arose from the existence of an alternative scheme which could not (until 1853) be put squarely to the committee. The opinions of landowners inevitably bulked large, and it was established by parliamentary law that landowners could oppose a Private Bill, not only in terms of the harm their property might suffer, but also on the general merits of a proposal, and their opposition could prove fatal to a scheme. As Clifford remarked: " The fate of a railway is, in fact as well as in theory, involved in a single landowner's opposition if any lands proposed to be traversed are struck out of the Bill. The railway is then cut in two and cannot be made a continuous line of communication."[125]

The general impression of the 1835 Private Bill Committees is that complicated technical questions which were to have considerable bearing on the life of the local communities had been dealt with publicly, and on the whole expertly and expeditiously. Even the Great Western Railway Bill, so hotly opposed by Eton College, by many landowners, and (in 1834) by the House of Lords itself, was brought to enactment. A more restricted issue arises in relation to the witnesses. They were mainly expert but how valuable was their evidence? Some was clearly worthless, and this was usually exposed in cross-examination, as when one " expert ", after delivering his opinion at length on gradients, admitted to having laid a total of exactly one and a half miles of railway.[126] But most of the witnesses spoke either out of actual professional knowledge—as for example did Cubitt, Faraday and Stephenson; or from their own immediate experience, as did the cutlers of Sheffield or the butchers of Islington. Unlike much evidence presented to Select Committees of Enquiry, Private Bill evidence was directed in each case to a precise and specific scheme of action and did not range widely over fields of general policy; it had been backed since 1794 by the deposit of plans, sections, contracts, estimates and other papers; and from time to time by the presentation of censuses of traffic, trade, etc., which were subsequently bound into the minutes of evidence.[127] The large parliamentary Bar had come to acquire considerable expertise in cross-examination and it is unlikely that a better parliamentary system could have been devised to produce consistent results within the narrow time limits of a session.[128]

VII

The significance of the examination of witnesses in the life of Parliament depends in the last resort on the influence their evidence had on

[125] *Ibid.*, p. 867.

[126] William Reed's evidence on 3rd April, 1835, H.C., MS. Evidence, Great Western Railway Bill.

[127] M. F. Bond, *op. cit.*, pp. 71, 86–91.

[128] Dr. O. C. Williams concludes that in spite of " frequent criticism of the system of Private Bill legislation, on the grounds of slowness, cumbrousness and expense, the quasi-judicial tribunal constituted by a committee on a Private Bill enjoys, and has for long enjoyed, a very high measure of public confidence" (*op. cit.*, p. 12).

legislation and on public opinion. This it would be premature to attempt to estimate until detailed research had been undertaken on the various types of examination. It is possible, however, to provide some statistics concerning the use of witnesses. This is a question relatively easy to determine for the Lords. The use of oath-taking by witnesses who appeared before the Lords involved the Lords' clerks in the keeping of registers of oaths taken, and there survives in the House of Lords Record Office a sequence of manuscript Witness Books, with only a few gaps, for the entire period from 1641 until 1862.[129] In these books witnesses' names appear in chronological order, whether their evidence was to be given in the House, in Committee of the Whole House, in Select Committee, or in Private Bill Committee. After 1862 oath-taking had ceased to be compulsory for Lords witnesses, and more recent statistics can only be obtained by counts made in Minutes of Proceedings. The result for years at roughly twenty-year intervals is as follows:[130]

Witnesses in the Lords

1641	*1661*	*1675*	*1710*	*1730*	*1750*	*1770*	*1790*	*1810*
44	168	57	210	212	151	395	274	1,278
1830	*1840*	*1846*	*1860*	*1880*	*1900*	*1920*	*1940*	*1950*
1,072	1,290	10,394	1,620	895	1,819	789	95	242

The Commons, since they have not had a compulsory or universal system of oath-taking for witnesses, have never compiled similar registers, and the relevant minutes of proceedings do not survive in many instances for the pre-1835 period. Rough estimates from available source material show, however, that rather more witnesses appeared before the Commons than the Lords.

Thus, in 1641, when a mere 44 witnesses are listed in the Lords Witness Books, as many as 385 are noted in the Commons Journals as having been sent for (the Journal records that committee rooms were filled with " disorderly multitudes "). Where Private Bills were concerned, the Commons in the later seventeenth and in the eighteenth centuries again heard more witnesses than the Lords, since the initial petition to introduce a Bill was itself committed and evidence taken on it before the Bill was read and committed: this increased, perhaps by a half, the total number of Private Bill witnesses. Select Committees of Enquiry, always very much more numerous in the Commons than in the Lords, might add a further hundred or so witnesses to the Commons' total; and the hearings of election petitions until 1868 might lead to a further fifty or so witnesses being examined in one session. A tentative conclusion would be that in the Commons perhaps four or five hundred witnesses appeared in 1641, in the later eighteenth century on an average some 600 in each session, rising to 2,000 in the early

[129] M. F. Bond, *op. cit.*, p. 92.

[130] The statistics are of all witnesses taking the oath during the calendar year named. They include counsel, agents, etc.

nineteenth century, and about 11,000 in 1846. The totals for Parliament as a whole, therefore, are: perhaps 500 witnesses in a mid-seventeenth-century session; 1,000 in a later eighteenth-century session; 21,000 in 1846; and in the 1950 session about 700. Those appearing on Private Bill business were frequently the same in each House, and the high mid-nineteenth-century totals in particular would conceal a great deal of duplication. Yet it seems that from at least the late sixteenth century onwards the numbers of witnesses were substantial, and that the sittings of Parliament were habitually attended by members of the public, coming not as " strangers " in the parliamentary sense, but as attendants upon Parliament and participants in varied aspects of its daily work.[131]

[131] I am most grateful for guidance at many points in the preparation of these notes in the House of Lords to Mr. R. W. Perceval, Clerk Assistant, and in the House of Commons, to Mr. T. G. Odling, Principal Clerk of Private Bills, Mr. D. Scott, Principal Clerk of Select Committees, and Mr. F. G. Allen, Principal Clerk, Committee Office.

III. THE AUSTRALIAN SENATE AND ITS NEWLY-EXPANDED COMMITTEE SYSTEM

By R. E. Bullock, O.B.E.
Deputy Clerk of the Senate

With the introduction of proportional representation in the election of Senators in 1948, the Australian Senate took on a new look. Since that date there has been a fairly close division of its numbers between the major parties. Of recent years the minority element has increased. Over most of the last ten years the Government has been without a majority in the Senate, but those years have been notable not as years of legislative frustration but years of intense Senate activity.

The last three years, 1970–72, will be remembered as the period when the Senate as a whole, in a concerted move for a comprehensive committee system, entered into a new and exciting phase of committee activity.

On 11th June, 1970, the Senate appointed, as additional to its existing committees,* (*a*) seven new Standing Committees, to " stand ready " to examine and report upon such matters as might be referred to them by the Senate, and between them covering the whole ambit of governmental activity, and (*b*) five Estimates Committees to scrutinize the annual particulars of proposed expenditure.

The new committees were not brought into full operation immediately. The Senate voted for gradualism in their introduction so that it could benefit from experience as the system developed. Only recently have they become fully established.

In the course of this article it is proposed to outline the circumstances and proceedings leading up to the full establishment of the new system, and to refer to some of the more interesting procedural features of the committees and problems which have been encountered.

Select Committee Activity 1967–70

The concerted move by Senators for a more comprehensive committee system arose in large part from the general approbation won by the work of its Select Committees.

The period 1967 to 1970 was a period of marked committee activity.

* Select (*ad hoc*) Committees—Off-shore Petroleum Resources; Drug Trafficking and Drug Abuse; Securities and Exchange. Standing Committee on Regulations and Ordinances. " Domestic " Standing Committees—Standing Orders; Privileges; Library; House; Disputed Returns; Publications. Joint Statutory Committees—Broadcasting of Parliamentary Proceedings; Public Accounts; Public Works. Joint Committees (appointed by Resolution)—Foreign Affairs; Australian Capital Territory; Defence Forces Retirement Benefits Legislation.

Select Committees had reported upon such diverse matters as the Metric System of Weights and Measures, the Container Method of Handling Cargoes, Air Pollution, Water Pollution, the Canberra Abattoir, Medical and Hospital Costs; and committees were inquiring into Drug Trafficking and Drug Abuse, Off-shore Petroleum Resources, and Securities and Exchange. This activity had engendered a growing public awareness of the important rôle played by the Senate Committees. The public hearings and the reports of these committees brought a realisation that in the sphere of national inquiry, fact-finding and reporting, the Senate was specially equipped to exert a powerful influence for the public good.

The Clerk's Report recommending new Standing Committees

Towards the end of 1969, the Standing Orders Committee instructed the Clerk of the Senate to prepare for its examination a Report on Standing Committees.

The Clerk presented his Report early in 1970. It was presented to the Senate by the then President of the Senate, Senator the Hon. Sir Alister McMullin, and ordered to be printed as a Parliamentary Paper.

The Clerk's Report offered the Senate a " blue-print of a comprehensive committee system ". It recommended the establishment of six legislative and general purpose Standing Committees and a separate specialist " watchdog " committee for the " neglected area " of Statutory Corporations. The six Legislative and General Purpose Committees were intended to embrace the activities of all the departments of government, and stand ready to consider any Bills, estimates, petitions, inquiries, papers or other matters which the Senate might refer to them on motion.

The Clerk stated in his Report that the need for Parliamentary Committees, with power to send for persons, papers and records, was greater today than it had ever been because of:

(1) increasing governmental responsibilities and activities;
(2) the impact of the tremendous progress in science and technology;
(3) the complexity of legislation which cannot always be satisfactorily considered within narrow parliamentary time-tables;
(4) the inadequacy of opportunities and means on the floor of the House to discharge fully Parliament's important duty to probe and check the administration;
(5) the inadequacy of present-day means for the ventilation of citizens' grievances against administrative decisions or acts;
(6) growing executive expertise and secrecy; and
(7) the need, in an increasingly expert world, for parliamentarians to be able to call upon scholarly research and advice equal in competence to that relied upon by the administration.

While Select Committees such as those which were already functioning would always occupy a place of importance, the real strength of

any committee system, the Clerk stated, lay in Standing Committees. Standing Committees—

(1) permit a continuing surveillance of defined fields;
(2) from time to time make progress reports on chosen matters coming within their prescribed jurisdiction;
(3) do not suffer from the handicap of Select Committees which are under pressure to complete inquiries by stated dates;
(4) create an awareness, both within the Public Service and at large, of Senate " watchdog " functions in certain fields of government;
(5) create within Parliament certain defined areas, as with regulations and ordinances, where there develops a willing disposition to " leave it to the Senate ", thus enhancing the status of the Upper House; and
(6) provide a unique opportunity for organisations and others to make representations and submissions to Parliament regarding the administration of the laws coming within the jurisdiction of the committees.

The Clerk stated that his proposals reflected the best features of the United Kingdom, Canadian and New Zealand systems, suggested no assumption of Senate powers which could not be exercised under existing Standing Orders, and merely represented an adaptation of existing procedures to meet the demands of the times.

Appointment of new Estimates and Standing Committees

The Clerk's Report was discussed by the Senate on 11th June, 1970, in conjunction with three separate motions moved by the leaders of the three party groups in the Senate. While the leaders were in agreement on the need for more committees, they differed in their views as to the number and type required. The Leader of the Government (Senator the Hon. Sir Kenneth Anderson) sought the appointment of five Estimates Committees as an experimental start towards a wider system; the Leader of the Opposition (Senator Murphy) wanted the immediate appointment of seven new Standing Committees which in themselves would embrace all avenues of inquiry; and the Leader of the Australian Democratic Labour Party (Senator Gair) sought the immediate appointment only of two of the committees recommended by the Clerk.

The Senate agreed in its voting to the appointment not only of the five Estimates Committees sought by the Leader of the Government but also of the seven Standing Committees sought by the Leader of the Opposition. Subsequently, however, on 19th August, 1970, on the motion of the Leader of the Government, it resolved that only two of the seven Standing Committees agreed to should be established immediately. The relevant part of the Resolution read:

> The actual establishment of the total number of committees, including the appointment of Senators to the various committees, shall be done over a period of not less than twelve months and not before two of the said committees selected by the Senate for first establishment have actually operated and a report of the operation of those committees has been presented to the Senate by the President.

It was agreed that the President should present a report not later

than the commencement of the first session of 1971 on the operation of the new committees.

Initial functioning of the new Estimates and Standing Committees

Estimates Committees.—The five new Estimates Committees* met for the first time during September–October 1970 to consider the 1970–71 Particulars of Proposed Expenditure. They met for a combined total of 74 hours of public meetings, spread over seven sitting days. It had earlier been agreed that not more than three committees should sit at any one time. The five committees, entitled Estimates Committees A, B, C, D and E, covered respectively the group of departments for which each of the five Senate Ministers was responsible in the Senate. Each committee therefore dealt with one Minister throughout its examinations.

The meetings of the committees were of particular significance because for the first time in the history of the Commonwealth Parliament (*a*) the Annual Estimates came under the scrutiny of Parliamentary Committees as distinct from being examined on the floor of the House; (*b*) departmental officers as well as Ministers were questioned directly on the proposed expenditure; and (*c*) a daily *Hansard* was issued of the proceedings of Parliamentary Committees. A further feature of the committees was that, although they consisted of eight Senators (a Government Senator as Chairman) any other Senators could attend and participate in the questioning of witnesses, though not allowed to vote. Some 250 public servants attended the committee hearings as witnesses, and 144 actually gave evidence. The Reports of the Committees, which were accompanied by copies of the Minutes of Proceedings and the *Hansard* reports of the evidence, were considered by the Senators during the Committee of the Whole stages of the Appropriation Bills. The Reports were subsequently printed together as one Parliamentary Paper. A final *Hansard* record of the proceedings of all five committees was also published in one volume, comprising 749 pages.

New Standing Committees.—The seven new Standing Committees, appointed on the motion of the Leader of the Opposition in the Senate, were entitled respectively the Standing Committee on Foreign Affairs and Defence; Constitutional and Legal Affairs; Health and Welfare; Finance and Government Operations; Education, Science and the Arts; Social Environment; and Primary and Secondary Industry and Trade. The two committees to be first established, in accordance with the Senate Resolution of 19th August, 1970, were the Standing Committee on Health and Welfare, and the Standing Committee on Primary and Secondary Industry and Trade.

Prior to the conclusion of its 1970 sittings three separate matters

* A paper entitled "The Australian Senate and its 1970 Estimates Committees" by the writer, appears in the April 1971 issue of *The Parliamentarian*. Necessarily it gives a more detailed account of the Estimates Committees than appears here.

had been referred to the Standing Committee on Health and Welfare, viz.—

(1) The problems of mentally and physically handicapped persons in Australia;
(2) All aspects of Repatriation, including the operation of the Repatriation Act; and
(3) Two petitions presented to the Senate " praying that the Senate seek to ensure that the Commonwealth obtains the co-operation of, and supplies extra finance to, the States so as to overcome the increase of crime in Australia ".

The third of the references was of special significance as it represented the first time a petition presented to the Senate had been referred to a Parliamentary Committee. The Standing Committee on Primary and Secondary Industry and Trade received one reference, viz.: The operation of the Australian National Line's shipping services to and from Tasmania with regard to freight rates.

Each committee consisted of eight Senators, including four Government Senators, one of whom must be Chairman. As with the Estimates Committees, a Senator, though not a member of the committee, could participate and question witnesses, unless the committee otherwise ordered, but not vote; and a daily *Hansard* was issued of the committee's public proceedings. The practice was adopted by the committees of notifying all Senators of the committees' programmes of public meetings, so that those who wished to do so could participate in the proceedings. Further, those Senators who represented the State where inquiries were being held were supplied, where possible, with lists of witnesses and detailed information in relation to the meetings.

The Resolution appointing the Standing Committees provided that they " be provided with all necessary staff, facilities and resources " and " be empowered to appoint persons with specialist knowledge "; and that they have the power to appoint sub-committees, and any committee or sub-committee have the power " to send for and examine persons, papers and records, to move from place to place, and to meet and transact business in public or private session and notwithstanding any prorogation of the Parliament ". Members of the public and representatives of the news media could attend, record and report any public session of a Standing Committee, unless the committee otherwise ordered.

The President's Report on the New Committees (16th February, 1971)

When the Senate resumed for its 1971 sittings on Tuesday, 16th February, 1971, the then President of the Senate, Senator the Hon. Sir Alister McMullin, presented his report on the functioning of the committees.

In his introductory paragraphs, the President stressed the wisdom of gradualism and experimentation:

All Parliaments differ in their forms and practices to suit local conditions, but they have one common aim—to make the Parliament as effective as possible and to expand and develop its functions to meet the demands of the times.

To that end, the House of Commons at Westminster is currently experimenting with its Select Committee system; Canada is carrying through an extensive overhaul of its procedures; other countries are making comparable revisions; and unquestionably the common aim is to strengthen the parliamentary system.

It is with the same high objective that the Australian Senate has set its own course—the establishment of seven Legislative and General Purpose Standing Committees and five Estimates Committees.

The Senate's decision is a far-reaching one and, when in full operation, will profoundly influence the functions and procedures of the Australian Upper House. It is in the nature of parliamentary institutions, however, to be cautious of change and it is right that this should be so. Westminster, for example, Mother of Parliaments and with more than 700 years of tradition and experience, has for the past five years been experimenting with Specialist Select Committees. It has not yet found the definite solution, but the experiment goes on, with the Heath Government currently proposing a re-shaping of the House of Commons committee system to provide more effective machinery for scrutiny of the acts of the Executive.

It is understandable, therefore, that the Senate should vote for gradualism in its own approach to the introduction of a system of Standing Committees and that it should have the benefit of experience before completing the establishment of the system.

Referring to the Estimates Committees, the President stated:

The Estimates Committees were clearly a success and this was only possible through the high degree of co-operation by honourable Senators, Ministers and departmental officers. Undoubtedly, the Estimates received a very thorough examination. Senators for the first time had the opportunity to question the departmental specialists responsible for the carrying out of policies. It was first hand information. Not only that, but the question and answer sessions provided a unique opportunity for the officers themselves to communicate directly with Senators, to explain policies, and to establish a closer relationship and understanding between Parliament and Public Service.

The President paid special attention to the problem of concurrent references to the Standing Committees:

The Health and Welfare Committee has three references from the Senate and it is, of course, a matter for that committee and any other committee in a similar situation to determine its own priorities, unless the Senate should order otherwise. It is conceivable that, at any time, the Senate might require a committee to give priority to a certain matter—for example, the consideration of an urgent Bill upon which the Senate might require a Report within two weeks or other stated time.

It is logical that Standing Committees should have concurrent references and it need not be a matter of concern that references might be extensive. It is envisaged that the time will come when committees will publish calendars listing their membership, powers and duties, rules, matters for consideration, information on hearings, etc. These calendars would be issued regularly and the committees would determine their priorities according to circumstances. It would be unfortunate if a committee were to concentrate on a long and extensive inquiry to the exclusion of other urgent matters and, in any event, extensive inquiries themselves might well be broken up and particular and urgent aspects taken separately.

The success of Standing Committees flows largely from organising priorities, time-tables and targets, and making regular Reports to the Senate. To this end, adequate staff support is vital and the use of sub-committees can be a valuable aid.

The President suggested in his report that in future not more than two Estimates Committees should sit simultaneously; that the Senate should consider whether the additional Estimates presented towards the end of the financial year should also be referred to the Estimates Committees; that the Senate progressively bring into operation the remaining Legislative and General Purpose Standing Committees already agreed upon; and that the Senate give consideration to authorising the televising of the public hearings of its committees.

Resolution of the Senate, March 1971

The Senate adopted the President's Report on 15th March, 1971, after an interesting debate on a Motion moved by the Leader of the Government in the Senate. The Senate agreed, *inter alia*—

(*a*) That only two Estimates Committees should sit simultaneously.

It should be indicated in this connection that there were three separate factors which affected the number of committees which could sit simultaneously. The original decision to limit the number to three during the examination of the Annual Estimates in 1970 was due mainly to *Hansard* and Printing Office difficulties in providing a daily *Hansard*. Later, accommodation also emerged as a problem; larger committee rooms were necessary to permit the committees to function properly and allow for the attendance of all Senators who wished to participate as well as the departmental advisers, the press and the public. Finally, many Senators complained that three committees meeting at once denied them the opportunity of asking questions on many matters they had wished to raise as they could not be in three places at once; thus they urged that only two committees meet at once.

The proposal was opposed by only a few Senators. One was Senator Wright, Minister for Works. Always a strong supporter of the committee system, and an early advocate of Estimates Committees, Senator Wright protested that the whole purpose of setting up the five committees to replace the former Committee of the Whole procedure was to enable five processes of examination to go on at the one time. " Having excused the reduction in the number of committees from five to three, I find it completely inexcusable to have it suggested that the number should be reduced to two."

The decision to reduce the number to two was agreed to on the voices.

(*b*) That the Additional Estimates be referred to the committees.

There was general concurrence in the suggestion for referring the Additional Estimates to the committees. The Estimates Committees

have since met twice a year—in the Australian spring prior to the consideration of the Appropriation Bills 1 and 2, and in the Australian autumn prior to the consideration of Appropriation Bills 3 and 4.

(*c*) That the two Estimates Committees should meet, when possible, in the Senate Chamber and the main Senate Committee Room.

It should be noted in this connection that the Senate resolved, when agreeing to the Estimates Committees, that the committees should not meet while the Senate was actually sitting, unless by special order of the Senate. The practice is for the Senate to suspend its sittings to enable the committees to meet during periods when the Senate itself would otherwise be meeting. Hence the Senate Chamber itself is available for use by the committees—with the public and press free to occupy the galleries in the same way as when the Senate itself is sitting.

The Chamber is now also made available, as special occasions warrant, for the public hearings of Select or Standing Committees. It was first so used last year, by the Securities and Exchange Committee—due to the great public interest in the investigations conducted by that Committee. There have been many occasions since that time when parties of school children, tourists and others visiting Parliament House have had the opportunity of observing and listening from the public galleries of the Chamber to the proceedings of Senate Committees.

(*d*) That two more Standing Committees be fully established.

It was agreed that the new committees to be fully established be the Standing Committee on Education, Science and the Arts, and the Standing Committee on Social Environment. The Opposition's attitude was expressed by its Leader: " I do not think the Opposition has any great quarrel about the two committees that have been selected, because for us it is not a matter of priority; we want the lot appointed and as soon as possible."

The remaining three of the seven committees, viz. Foreign Affairs and Defence; Constitutional and Legal Affairs; and Finance and Government Operations, were finally fully established on the 6th October, 1971.

(*e*) That the membership of the new Standing Committees be reduced.

The Leader of the Government proposed that the membership of each Standing Committee be reduced from eight to six, because of the workload on Senators and changes that would take place in the membership of the Senate as from 1st July, 1971, when new Senators elected at the November 1970 Senate elections took their places. There would then be only 26 Government Senators (in lieu of 27) and 26 Opposition Senators (in lieu of 28).* Excluding from the 26 Government Senators the President of the Senate, the Chairman of Committees and the five

* Prior to the November 1970 Senate elections the party numbers were: Govt. 27, A.L.P. 28, A.D.L.P. 4 and Independent 1. As from 1/7/71 they were: Govt. 26, A.L.P. 26, A.D.L.P. 5, Independents 3.

Ministers of State, there would be only 19 Government Senators to fill committee positions.

The Senate agreed to the proposed reduction in membership to six, except in the case of the existing committees where the membership would stay at eight.

(*f*) That the televising of committee proceedings be authorised.

The resolution was " That the Senate authorises the televising of public hearings of Standing and Select Committees, at the discretion of each such committee and under such rules as the Senate may adopt."

Speaking to his proposal, the Leader of the Government in the Senate said:

> The President's Report contains a reference to an authorisation to televise committee proceedings. As I understand the situation, there is already the authority for the press to be present at the proceedings of a committee when the meeting is open to the public. Whilst one or two of us may have grave doubt about the efficacy of television and the effect it might have on personalities or the manner in which proceedings are held—some people react better to cameras than others—I do not think we should allow our personal views to impinge upon the logic which says that if the will of the committee is to open its proceedings to the press, why single out the press to the exclusion of television?

No real objection to the proposal was expressed by any Senator, although several stressed the need for proper safeguards. Speaking on this aspect, the Minister for Works, Senator Wright, said:

> I do not oppose television coming into the chambers of Parliament, but I do oppose its coming into the chambers of Parliament or into the committee rooms unless each television organisation has firmly placed upon it the obligation that its presentation of the picture to the public will be accurate, fair and adequate, and that there shall be a proper sanction for default in that obligation.

The Senate has since referred to its Privileges Committee the question of the rules to be adopted.

Present Functioning of the Committee System

Much has happened in the committee field of Senate activity since the March 1971 Resolutions.

(*a*) *Estimates Committees*

As already indicated, these committees now meet twice a year to examine the main Estimates and the Additional Estimates respectively. The most important comment emanating from these committees has come from Estimates Committee B which reported after the 1971–72 Estimates examination last year:

> There appeared to the Committee to be a lack of understanding by officers of the Broadcasting Control Board and the Australian Broadcasting Commission of the accountability to Parliament of Statutory Corporations. The Committee is of the opinion that whilst it may be argued that these bodies are not accountable through the responsible Minister of State to Parliament for day-to-day operations, Statutory Corporations may be called to account by Parliament

itself at any time and that there are no areas of expenditure of public funds where these corporations have a discretion to withold details or explanations from Parliament or its committees unless the Parliament has expressly provided otherwise.

The Senate, by resolution, confirmed the opinion expressed by the Committee.

After the 1971–2 Additional Estimates examination, the committee again reported on this subject:

> The Committee, noting the confirmation by the Senate of the view expressed in its November 1971 Report, has considered further questions which arise in relation to this matter.
>
> After some delay the Committee received from the Acting Postmaster-General the deferred answers to questions asked by committee members.
>
> In that reply the Minister raised the question of the possible detriment to the business interests of a Statutory Corporation, and therefore to the public interest, if such a Statutory Corporation was required to divulge, in public, information which would weaken the bargaining and competitive position of that Corporation.
>
> The Committee unanimously agreed that without necessarily accepting the reasons stated in the Minister's letter in relation to the particular questions and their subject matter, it did recognise the existence of some circumstances which would warrant the objection of a Statutory Corporation or government department to answering questions or supplying information in public.
>
> The Committee believes that all such information should be available but that in some circumstances it must be upon a *prima facie* confidential basis. The Committee believes that in such circumstances a committee should hear such information whilst sitting in private session.
>
> With these views the Attorney-General, as the Minister representing the Postmaster-General, agreed. . . .
>
> However, upon consideration and advice, the Committee has concluded that considerable doubt exists as to whether a Senate Estimates Committee has, under the present Standing Orders and Terms of Reference, the power, on its own initiative, to take evidence in private session.
>
> The Committee is therefore of the opinion that the matter of Estimates Committees meeting in private session should be referred to the Standing Orders Committee for its consideration and report to the Senate prior to the next meetings of the Estimates Committees.

At the time of writing, the Committee's report, presented on 11th May, 1972, has yet to be considered by the Senate.

(*b*) *Select Committees*

Since March 1971 two Select Committees have presented reports, and another Select Committee has been appointed.

The reports presented were those on Drug Trafficking and Drug Abuse, presented on 6th May, 1971, and on Off-Shore Petroleum Resources—the culmination of four years work—on 8th December, 1971.

The new committee appointed is entitled the Select Committee on Foreign Ownership and Control. It was appointed on 10th December, 1971, " to inquire into and report upon foreign ownership and control of Australian commerce, industries, land and resources ". Particular aspects to which the committee was asked to give attention included

" whether or not foreign ownership and control . . . is prejudicial to Australia's interests in all circumstances "; whether it is excessive; the operation of exchange control restrictions; and the best method of mobilising Australian capital resources.

The Select Committee on Securities and Exchange, appointed on 19th March, 1970, has yet to present its report. The inquiries earlier pursued by this committee, particularly in regard to Stock Exchange interests in 1971, had a tremendous impact upon the Australian public and were widely publicised in the press. They also led to questions being raised by the Bar Association and others on the rights and protection of witnesses, civil rights and liberties, and the propriety of the committee procedures. The Senate's reply to criticisms that the rights and obligations of committee witnesses were not clearly defined and ascertainable, and should be so defined, was to refer the issue to its Privileges Committee which has been asked to look into the matter " with a view to establishing the rights, responsibilities, obligations and protection of Senators, members of the press and others in relation to committee proceedings ". That committee also has yet to report.

The Senate permits questions to be asked of Committee Chairmen during Question Time. On 9th May, 1972, the Leader of the Opposition in the Senate directed a question without notice to the Chairman of the Select Committee on Securities and Exchange asking when the Senate could expect the Committee's Report. No date had been set for the committee to report; it had been directed simply to report to the Senate " as soon as possible ". The Chairman, in reply, referred to the broad spectrum covered by the terms of the committee's reference and to the research and compilation work involved in preparing the report. The committee, he stated, had received five years brokers' accounts, and that alone was a major task of analysis.

(*c*) *Standing Committees*

As already indicated, all seven of the Legislative and General Purpose Standing Committees are now fully established.

During the past year the following reports have been received from these committees:

5.5.71—Mentally and physically handicapped persons (Health and Welfare Committee).

9.9.71—Operation of the Australian National Line's shipping services to and from Tasmania, with regard to freight rates (Industry and Trade Committee).

4.11.71—The content, form and presentation of the Information Section of telephone directories (Social Environment Committee).

2.12.71—Continuing oversight of the problems of pollution—the Canberra Sewage Effluent (Social Environment Committee).

2.12.71—The *Death Penalty Abolition Bill* 1970 (Constitutional and Legal Affairs Committee).

9.12.71—Petition relating to the supply of liquefied petroleum gas to the Australian market (Industry and Trade Committee).

22.2.72—The Commonwealth's role in regard to teacher education (Education, Science and the Arts Committee).
13.4.72—Petitions relating to crime in Australia (Social Environment Committee).
20.4.72—Possible pollution of the environment by the Clutha project (Social Environment Committee).
11.5.72—The proposed takeover of Ansett Transport Industries Ltd. by Thomas Nationwide Transport (Industry and Trade Committee).

At the time of writing the committees still have some nineteen other matters before them, including:

The law and administration of divorce, custody and family matters.
All aspects of television and broadcasting, including Australian content of television programmes.
The position of and provision for deprived schools.
Effects of estate and like duties on the public revenues and the economic circumstances of individuals and communities, and the social consequences of such duties.
All aspects of repatriation.
Introduction of a National Superannuation Scheme.
Promotion of trade and commerce with other countries, the operation of Australia's international trade agreements, and the development of trading relations.
Determination of prices, measures to prevent unjustifiable price increases, and the establishment of a Prices Surveillance Tribunal.
Environmental conditions of Aborigines and Torres Strait Islanders and the preservation of their sacred sites.
Japan.
Petitions relating to education needs, the state of the arts, social services, and the Postmaster-General's department.

It should be explained that in establishing the committees the Senate agreed to special procedures permitting the early consideration of proposed references. On the motion of the Leader of the Government, the Senate in August 1970 resolved that where any Senator wished to refer a matter to one of the committees, his Notice of Motion would be listed on the Notice Paper under " Business of the Senate " and as such take precedence of Government and General Business set out on the Notice Paper for that day. In the past many proposed references to Select Committees had languished on the Notice Paper under General Business, with little chance of early consideration. The new procedure for Standing Committees was a major liberal concession facilitating the effective operation of the new committees.

There have been differences of opinion between the major parties as to the nature of the matters which should be referred to the committees. The Government and the Australian Democratic Labour Party have, in principle, sought to have only short-term references submitted to the Standing Committees, and matters requiring prolonged consideration referred to Select Committees. The Opposition believe the Standing Committees should be an all-embracing system in themselves, covering all the fields of inquiry now conducted by the Standing, Select and the Estimates Committees; and the resolution under which the Standing Committees were appointed would permit of this. In the

present closely-divided Senate, compromises are now the norm: the Senate now has all three types of its committees actively functioning and, as will be seen by the foregoing list of subjects referred to the Standing Committees, those committees have many long and detailed references for consideration.

The recent reference to the Industry and Trade Committee of the proposed takeover of Ansett Transport Industries Ltd. by Thomas Nationwide Transport Ltd. has been regarded as a classic example of the type of urgent reference that might be undertaken by the Standing Committees. The Industry and Trade Committee was directed to report back to the Senate on this matter within twenty-eight days. It presented its report on 11.5.72, within the time directed.

It was the intention of the Leader of the Opposition, in moving for the appointment of the Standing Committees, that the reference of Bills to those committees would become a regular feature of Senate activity. In Australia, however, the reference of Bills to committees has been infrequent, even though the Senate Standing Orders have long contained provisions which would permit of the reference of Bills to committees. To date only two Bills have been referred to the new committees, and both of them to the Constitutional and Legal Affairs Committee. The first Bill—a Private Member's Bill for the abolition of the death penalty—has been reported upon, and has since been passed by the Senate and forwarded to the House of Representatives for consideration. The second Bill, the Evidence (Australian Capital Territory) Bill, was referred to the committee on 12th April, 1972, and is still under consideration.

It has now become commonplace for petitions presented to the Senate to be referred to Standing Committees, and the Social Environment Committee has already reported upon one such petition. As that report indicated, however, there are differences of opinion as to how the committees should deal with such references. Many of the petitions now presented to the Senate also contain requests that certain matters be referred to Senate Select or Standing Committees for examination. The report of the Industry and Trade Committee on liquefied gas was the result of such a petition.

The Staffing of the Committees

The development of the committee system and the increased activity of Senate business has led to marked increases in the Senate's staff over the last three years. The total Senate staff in March 1969 was 40; in March 1970, 56; in March 1971, 73; and in March 1972, 99. As at the date of writing, 15th May, 1972, it is still 99, but proposals for some further appointments are under consideration. There is now a special Committee Secretariat of some thirty officers, operating under the direction of one of the Clerk-Assistants, Mr. A. R. Cumming Thom, who was recently awarded a Churchill fellowship to study the operation

of committees in other Parliaments. Each of the seven Legislative and General Purpose Standing Committees has a committee clerk, a research officer, a steno-secretary, and in some cases a clerical assistant. Each of the Select Committees has a full-time committee clerk and other assistance as necessary. Each of the five Estimates Committees is staffed during the period the committees operate by a parliamentary officer of senior status from the procedural staff. These committees are regarded as little committees of the Whole and in a different light from the Select and Standing Committees.

Specialist Assistance

Specialist assistance is sought as required. The Select Committee on Securities and Exchange in particular has availed itself of the services of highly qualified academics, acknowledged as experts in the securities field. The Chairman of the Standing Committee on Industry and Trade acknowledged similar such assistance in the report presented to the Senate on 11th May, 1972, on the proposed takeover of Ansett Transport Industries Ltd. by Thomas Nationwide Transport Ltd.: " We have been able to avail ourselves of specialist advice in the many matters involved, without which we could not have prepared a meaningful report in the time available to us." In a press release which it issued the same day, 11th May, 1972, the Select Committee on Foreign Ownership and Control stated: " The committee have considered the appointment of a permanent adviser. It has been agreed that the terms of reference could not adequately be covered by such an adviser and it has therefore been agreed that advisers will be sought from Industry, Government or the Universities on a short-term basis as each area is investigated."

The President exercises general oversight of all administrative arrangements, including finance.

The Consideration of Senate Reports

As will be seen from the foregoing paragraphs, reports from Senate committees are now freely flowing in. The reports are advisory and recommendatory only. What happens to them after presentation is a matter for the Senate and the Government of the day.

On 23rd March, 1972, the Leader of the Opposition in the Senate gave notice of the following Motions aimed at establishing a definite procedure for the consideration of the committee reports:

(1) That on Thursdays, unless otherwise ordered—

(*a*) The consideration of the Reports of Standing and Select Committees of the Senate be placed on the Notice Paper as " Business of the Senate " and, as such, shall take precedence of other business set down for such day;

(*b*) The consideration of the Reports shall take precedence on the Notice Paper pursuant to their date of presentation to the Senate; and

(*c*) The maximum period each Thursday for the consideration of Reports of Committees, in accordance with this Resolution, shall be two hours.

(2) That the Senate—

(*a*) Declares its opinion that, following the presentation of a Report from a Standing Committee or Select Committee of the Senate which recommends action by the Government, the Government should, within the ensuing three months, table a Paper informing the Senate of its observations and intentions with respect to such recommendations; and

(*b*) Resolves that the President communicate this resolution to the Government with a request that the foregoing procedure apply, from the date of the passing of this resolution, to Reports already presented during the present Session and, in respect of future Reports, from the date of presentation of a Report.

The first of the Motions was agreed to by the Senate on 27th April, 1972, with amendments, proposed by the Government, providing that the consideration given to the Committee Reports on a Thursday morning shall, in any event, conclude three hours after the time fixed for the meeting of the Senate; and that no Senator shall speak for more than thirty minutes in such a debate, unless otherwise ordered.

The second Motion has yet to be debated.

On Thursday, 11th May, 1972, the Senate considered Committee Reports in accordance with the terms of the motion already passed.

The Senate Regulations and Ordinances Committee

The foregoing paragraphs have dealt with the activities of the Senate Select Committees, Estimates Committees and the new Legislative and General Purpose Standing Committees.

The paper would not be complete, however, without a reference to the Senate's long-standing and perhaps most important committee—the Standing Committee on Regulations and Ordinances. This committee, the recognised parliamentary watchdog of delegated legislation, has functioned with marked success and vigilance since it was first established in 1932.

All regulations and ordinances laid on the Table of the Senate stand referred to this committee which scrutinises them to ascertain—

(*a*) that they are in accordance with the Statute;

(*b*) that they do not trespass unduly on personal rights and liberties;

(*c*) that they do not unduly make the rights and liberties of citizens dependent upon administrative and not upon judicial decisions;

(*d*) that they are concerned with administrative detail and do not amount to substantive legislation which should be a matter for parliamentary enactment.

The present activities of this committee may be gauged from the fact that during the period April 1970 to August 1971 it presented ten Reports to the Senate and, through its members, gave Notices of Motion for the disallowance of 25 regulations or ordinances, after it had conducted inquiries into these regulations and ordinances. The

Notices relating to 19 of the regulations and ordinances were withdrawn by the committee following assurances from the relevant Ministers that amendments would be made to overcome the committee's objections; one Motion was not proceeded with, but the remaining five were proceeded with and agreed to.

The committee meets weekly during parliamentary sittings. It has a senior parliamentary officer as its full-time secretary, and is assisted by a legal adviser in private practice who reports to the committee on every regulation and ordinance tabled.

Conclusion

Thus, in a period of less than two years since it agreed to the appointment of its new committees, the Senate has developed its committee system to a stage of full and active operation. The development has been accompanied by many procedural changes and adaptations. Generally conservative in changing its Standing Orders, the Senate has readily adapted practice and procedure to accommodate the new system.

The operation of the new committees has undoubtedly added to the Senate's prestige and standing and given a new significance to its rôle as a House of Review; but it has also significantly strengthened the parliamentary system of government by emphasising, particularly through the Estimates Committees, the accountability of the Government to the Parliament. The many inquiries and investigations being conducted by Senate Committees have also brought the Parliament closer to the people, and the people closer to Parliament. The light of public inquiry has been thrown into many areas of national concern, with the problems exposed; and the Senate, as an institution, has benefited through the knowledge and expertise gained by its Senators.

IV. CONSTITUTIONAL DEVELOPMENT AND THE ROLE OF THE SENATE IN TRINIDAD AND TOBAGO

By J. E. Carter
Clerk of the Senate, Trinidad and Tobago

The Senate of Trinidad and Tobago came into existence as recently as December 1961, when this country was granted a new Constitution providing for full internal self-government, and it was also the first time in this country's constitutional history that provision had been made for a bi-cameral legislature. Previous to this the country had a long history of a single-chamber legislature which comprised elected, official and nominated Members.

It may be of some interest, therefore, to consider the role of the Senate during the first ten years of its existence. However, to view it in its right perspective it would be better to trace briefly some of the more recent and important steps of this country's constitutional development which eventually led to the establishment of a Senate.

It was not until the third decade in this century, soon after World War I, that provision was made for two Members to be elected by the people under a limited franchise to the Legislative Council. This followed strong representations which were led by the late Captain A. A. Cipriani, one of our most famous politicians, who campaigned under the slogan " No taxation without representation ". The next twenty years saw a gradual increase in the number of elected Members and a corresponding decrease in the official and nominated membership of the Legislative Council. Captain Cipriani's labours bore further fruit soon after his death in 1945, as constitutional advances became rapid after the end of World War II.

In 1946 the country held its first General Election under full adult suffrage. The newly-elected Representatives immediately began pressing for more authority in the administration of government, and before the five-year term had expired another General Election was held in 1950 under a new Constitution which included provision for the first time for five elected Members to become Government Ministers with Portfolio. Another significant feature of this Constitution was that it provided for the first time for the appointment of a Speaker to preside over sittings of the Legislative Council, a function which until then was performed by the Governor.

The Legislative Council by this time consisted of twenty-six Members, eighteen of whom were elected by popular vote, five were nominated, while the remaining three seats were held by top civil servants, i.e. the Colonial Secretary, the Attorney-General and the Financial Secretary, mainly expatriate officers.

Before the next General Election was held a new political party was formed which strongly advocated a bi-cameral legislature consisting of a fully elected House and a nominated Senate. Despite strong representations made by the new party the next Constitution saw few significant changes. The number of elected Representatives was increased to twenty-four, the Financial Secretary no longer had a seat in the Council and his portfolio was to be taken over by one of the elected Ministers—now increased to eight in number—one of whom was to be the Chief Minister, while provision was also made for the appointment of four elected Members as Parliamentary Secretaries.

This Constitution, however, was not drafted before the maximum five-year term of that Legislative Council had expired. Accordingly, a resolution was passed extending the life of the Council for another year. Postponement of the election for one year gave the newly-formed party sufficient time to gain considerable strength, and they succeeded in securing thirteen of the twenty-four seats, but since this did not give them an overall majority it was agreed to allow them to nominate two of their party Members among the five nominated Members still provided for in the Council. This marked the advent of party politics in Trinidad and Tobago and also paved the way for the introduction of the two-chamber system. Before this was achieved the Constitution was streamlined in 1959 to introduce Cabinet Government, and an additional Minister was added to take charge of Home Affairs.

As could be expected, a new Constitution was prepared in time for the 1961 General Election, which provided for the first bi-cameral legislature in this country. The Senate, which held its inaugural meeting in December 1961, then consisted of twenty-one Members. Trinidad and Tobago achieved its Independence some eight months later and although new elections were not held, the Constitution, which was framed for our Independence on 31st August, 1962, made provision for the membership of the Senate to be increased to twenty-four. Of the twenty-four Senators, thirteen are appointed by the Governor-General (acting in accordance with the advice of the Prime Minister), four are appointed by the Governor-General (acting in accordance with the advice of the Leader of the Opposition); the other seven are appointed by the Governor-General (also in accordance with the advice of the Prime Minister), after the Prime Minister has consulted those religious, economic or social bodies or associations from which it is considered that such Senators should be selected. A person must be a citizen of Trinidad and Tobago of at least 30 years of age to be qualified for an appointment as a Senator. There are, of course, the other normal provisions which would disqualify persons from becoming Members of Parliament, such as bankruptcy, insanity, etc. The life of the Senate coincides with the life of the House of Representatives, and every Senator must vacate his seat at the next dissolution of Parliament after his appointment. A Senator will also automatically lose his seat if he absents himself for more than ten consecutive meetings during the same

session without leave of the President. Senators who are appointed in accordance with the advice of the Prime Minister or the Leader of the Opposition as a party Member or supporter can be removed from office as a Senator if the person who advised his appointment should afterwards advise his removal. Provision is also made in the Constitution for the appointment of temporary Senators, if at any time a Senator is incapable of performing his functions.

The President, or in his absence the Vice-President, presides over the sittings of the Senate. Both are elected at the first sitting of the Senate after a General Election and must come from among the twenty-four Senators. The President does not have an original vote but does have a casting vote. After a dissolution of Parliament the President continues to hold office until the first sitting of the next Senate when a new President is elected. The President and the Vice-President receive the same salaries and allowances that are payable to the Speaker and the Deputy Speaker of the House of Representatives, while the salaries and allowances paid to ordinary Senators are approximately 10 per cent. less than those received by Back Benchers in the other House.

A quorum of the Senate consists of eight Senators, excluding the President or other presiding officer. All Bills must be passed by both Houses of Parliament and assented to by the Governor-General before being passed into law. Bills can be introduced in either House, except a Money Bill, which cannot be introduced in the Senate. However, in practice at least 90 per cent. of the Bills introduced in Parliament originate in the House of Representatives. The provisions of Section 1 of the British Parliament Act of 1911 are enshrined in the Constitution of Trinidad and Tobago, so that if the elected House sends a Money Bill to the Senate, at least one month before the end of the session such Bill can be presented to the Governor-General for assent, if the Bill is not passed by the Senate without amendment within one month after it is sent to the Senate. In the case of other Bills that are not Money Bills, the Senate does not have the power to delay such Bills for more than two consecutive sessions. All other business can be dealt with simultaneously by both Houses. Normally the Senate meets once a week on Tuesdays and the House usually meets once a week on Fridays. Because of limited accommodation both Houses share the same Chamber. No provision is made for a Minister from any House to speak in the other, although there is some feeling that particularly in the case of the Attorney-General, provision for this procedure should be considered. Of course, it is impossible for anyone to be a Member of both Houses at the same time.

It could be seen from what has been mentioned that the composition of the Senate depends entirely on the results of a General Election and that the party which controls the majority in the elected House is guaranteed an overall majority in the Senate. The rôle of the Senate in Trinidad and Tobago is more or less comparable with the rôle asso-

ciated with upper Houses in the various Legislatures and Parliaments of the Commonwealth, and in the Constitution as well as the Official Table of Precedence, the Senate is given priority.

Although there are some who doubt its effectiveness, the Senate nevertheless serves a very useful purpose and is not as some people believe a mere rubber-stamping body. A lot can be said for the retention of the Independent Nominated Members, because in the past when this country was ruled by a one-chamber legislature, most of the nominated Members who served represented significant interests in the community and the provision for Independent Nominated Members affords a continuation of this type of representation. Although it may be the view of many that members of organisations who would like to have a voice in the Parliament of their country should face the electorate, it does not necessarily mean that the most experienced and capable Members connected with these organisations who would be the most competent to speak on their behalf are the ones who could spare sufficient time to face the rigours of an election campaign. There can be no doubt that the religious, social and economic organisations which they represent not only have a great influence on public opinion but also the views of these organisations can have a great effect in guiding the nation's destiny.

As a revising Chamber with a delaying veto the Senate does have some measure of influence, however small, on the deliberations and decisions of the other House. It should also be pointed out that there are entrenched sections in the Constitution which require a three-fifths, or greater, majority of both Houses of Parliament if an amendment is required at any time, and it can be seen from the composition of the Senate that such an amendment could not be carried through by the Government in the Senate unless it received the support of either the Independent or Opposition Members in the Senate, or both. Also, provision is made in the Constitution for three Ministers to be recruited from the Senate, in addition to which the Attorney-General, if he is not a Member of the House of Representatives, can also be recruited from the Senate. This provision is certainly of great assistance to a Prime Minister in forming his Cabinet, for it may not always be easy to recruit men of the calibre required for ministerial appointment from the majority party in the elected House, which has a membership of only thirty-six.

The first Senate, although lacking in experience (since only four of its Members had previously served in a Parliament), quickly settled down and dealt with its business with efficiency and despatch. Notwithstanding its limited powers, all the groups—Government, Opposition and Independents—made valuable contributions to the debates on the various matters brought before it. The second Senate appointed after the 1966 General Election found itself in the spotlight because the Opposition party embarked on a policy of silence as a protest against the existing electoral procedure, and their twelve Members in the elec-

ted House, as well as the four in the Senate, refused to participate in the proceedings of their respective Houses, even though they attended quite regularly. As a result, the Independent Senators were the only Members in Parliament to question Government actions and to express alternative views and virtually assumed the rôle of an Opposition, thereby maintaining some measure of parliamentary democracy. This situation continued for approximately eighteen months until the Opposition broke its silence.

However, developments in 1971 created an even more unusual situation as the main Opposition parties decided to boycott the General Election held that year, which resulted in the ruling party gaining all of the thirty-six elected seats. This unique state of affairs quite naturally caused great concern, as the absence of even a single Member of the Opposition in the elected House also meant that there was no Leader of the Opposition to advise the Governor-General on the appointment of the four Opposition Senators. After carefully considering the situation in relation to the Constitution, the Senate was appointed without the four Opposition Senators and Parliament was opened on 18th June, less than one month after the elections. It was not the first time that the Senate had functioned without the Opposition Senators, as a similar situation existed from December 1961 to August 1962, except that there was a Leader of the Opposition then, who chose not to advise the Governor-General to make the necessary appointments. This once again brought the Senate into prominence, as the Independent Senators were now the only Members to provide any form of opposition in Parliament.

Recognising the reality of the political alignment in Parliament, Government announced in the Speech from the Throne certain measures to ensure that alternative views would be heard and respected, i.e.:

1. Government proposals would be circulated as widely as possible and would allow for the longest possible period of consultation with the people without interfering with the efficiency of Government.
2. Wherever possible, legislation would first be introduced into the Senate to the extent that this could be done constitutionally and without departing too radically from the established parliamentary tradition of the paramountcy of the elected Chamber.
3. Government would further enlist the assistance of the Senate in respect of Joint Select Committees of both Houses of Parliament, e.g.:
   (i) A committee would be appointed immediately to consider the question of the reduction of the voting age and age of legal majority;
   (ii) To ensure the strictest possible control over government expenditures by Parliament, Government would immediately take steps to secure the appointment of a Joint Select Committee on Public Accounts.

All these proposals have been implemented except that it has been found much more convenient to continue the practice of introducing the majority of Government Bills in the elected House. With reference to the Public Accounts Committee certain procedures had to be adopted to overcome the restrictions of the Standing Orders. The Public

Accounts Committee is traditionally a committee of the elected House and no mention is made of it in the Senate Standing Orders. The House of Representatives therefore passed a resolution suspending for the entire session the Standing Order which provides for the appointment of the Public Accounts Committee, and then proceeded to invite the Senate to appoint some of its Members to sit with a similar number from the elected House as a Joint Select Committee on Public Accounts. It is expected that this procedure will be repeated at the commencement of each session.

Government also announced in the Throne Speech the appointment of a Constitution Commission with the following terms of reference:

> To consider the Constitution of Trinidad and Tobago and matters related thereto and to make recommendations for the revision of the said Constitution and for constitutional reform.

The Commission immediately got down to its task and early this year produced a document of just over 100 pages called " Thinking Things Through ", which tries to set out opinions for and against all the provisions in the present Constitution as well as some alternatives. A considerable part of this document has been devoted to the Senate and it can clearly be seen that there are a variety of views as to whether a Senate should be retained, and if so in what form.

The Commission will probably present its report towards the end of 1973 and only then will we know whether the bi-cameral system will be retained. Only time will tell whether or not the Senate will continue to have a place in the revised Constitution, but those who advocated its establishment can feel justly proud of the foresight they displayed, seeing that the Senate not only played its part admirably but probably exceeded the expectations of some of its most ardent supporters. On the other hand, those who had the privilege to serve as Senators can look back with pride on the outstanding contribution the Senate made during their term of office. Above all the dignity with which its proceedings were conducted stands as an example which all future parliamentarians in this country would do well to emulate.

V. THE PROCEDURE OF THE HOUSE OF LORDS IN 1971

By Sir David Stephens, K.C.B., C.V.O.
Clerk of the Parliaments

The purpose of this article is to describe the present state of the procedure of the House of Lords by reference to the main developments in that field from the General Election of June 1970 (when the Conservative Government came into office) to the end of 1971.

As one would expect, the first six months of the new Parliament were from the point of view of procedural change relatively quiet. In the course of that half year from June to December 1970 the Procedure Committee made only one Report to the House. By contrast, the calendar year 1971 was a time of exceptional activity. During that year the Procedure Committee presented no less than 12 Reports to the House—9 in the remainder of the 1970/71 Session, making 10 in all for that Session, and 3 in the first two months of the next Session 1971/72.

1971—A Year of Exceptional Activity

There were a number of reasons for the upsurge of procedural activity in 1971. One was that it was decided to revise the Companion to the Standing Orders. This is the manual to which the House looks for assistance in interpreting the Standing Orders and for guidance on its practice and its customs. The current edition had not been revised since 1963 and had become seriously out of date. A new and revised edition was therefore ordered before the last Dissolution of Parliament and was in course of preparation for the best part of two years. The process of revision has, in fact, involved a major re-writing of the 1963 edition and the new text was published at Easter 1972.

In the course of this revision many points were thrown up which had to be referred to the Procedure Committee for consideration and then to the House for final approval. The revision was an undoubted cause of procedural activity during 1971.

There is another cause which is less easy to pinpoint. In recent years, as the statistics of attendance and of sitting time show, the House itself has become significantly more active. In the Session 1970/71 the average attendance per sitting day was 18 per cent. up over any previous Session. Over the last thirteen years the average has, in fact, more than doubled (in 1970/71 it was 265, as against 124 in 1957/58). Last Session the average length of sitting was 6 hours 20 minutes, as against $4\frac{3}{4}$ hours in 1969/70 and 5 hours in 1968/69. Last Session

there were more Divisions (196) than had ever previously taken place; and the largest recorded vote of all time. All this activity imposed more demands upon the time, and a greater strain upon the procedure, of the House, as well as a self-questioning attitude on the part of the House itself. At the same time there was also an increasing tendency for the House to refer to the Procedure Committee any doubtful or disputed point of procedure that arose in the course of its proceedings. Formerly the House used ordinarily to decide points of procedure as they arose. Today any such matter is normally referred at once to the Procedure Committee for consideration and advice.

There is one other factor which should be mentioned, although its effects on the procedure of the House are uncertain. This is the failure of the attempt in 1969 to reform the composition and the powers of the House of Lords.

The Labour Government of 1964–70 made a determined attempt to reform the House of Lords. In 1967 they called together an inter-party conference, which reached a wide measure of agreement on the main outline of a scheme for reform. In October 1968 the Queen's Speech announced that legislation would be introduced to reform the composition and the powers of the House. In the following month (November) the Government published the White Paper, Cmnd. 3799, putting forward specific proposals for reform. This was debated and approved by both Houses—in the House of Lords itself by 251 votes in favour, to 56 against. The Government then introduced legislation in the House of Commons in the shape of the Parliament (No. 2) Bill, which in 1969 foundered on back bench opposition from both sides of that House. In March 1969 it was decided, after eleven abortive days in Committee on the Floor of the House of Commons, not to proceed further with this Bill. So today the House of Lords remains unreformed.

What the procedural results would have been if the Parliament (No. 2) Bill of 1968 had been enacted in more or less the form in which it was introduced in the House of Commons is anybody's guess. Certainly the House would have become in course of time, and no doubt fairly quickly, a very different place. Its membership would have been reduced in the long run, and voting rights limited at once to peers of first creation; and the right by inheritance to a seat in the House would have been withdrawn from future successors to hereditary peerages. The legislative powers of the House would also have been radically altered and, as a result, a new relationship would have had to be established with the House of Commons. As Appendix II of the 1968 White Paper made clear, the House would have needed to discover a new rôle in terms both of functions and procedures.

So much for what did not happen. But what can be said of the effect upon the procedure of the House of preserving the *status quo*? The need to examine the procedures and functions of the House has not been rendered unnecessary by the abandonment, for the time being,

of reform. That process of self-examination would no doubt, have received great impetus, if the reform had gone through as planned. But as things are, the process is unobtrusively proceeding all the time in the unreformed House. One manifestation of this endeavour is to be found in the efforts made during 1971 by the Procedure Committees of both Houses to find a new basis for collaboration between the two Houses, particularly in the setting up of joint committees on matters of common interest. Another is to be found in the interest aroused in the House by the Report of the informal Group appointed by the Leader of the House in March 1971 " to examine the working of the House and to make recommendations for the more effective deployment in the public interest of the time and talents of its members ".

I shall return to both these subjects in more detail later. Meanwhile, I underline their importance as evidence of the desire on the part of the House of Lords, though unreformed, to improve its procedures and to develop new functions. It could be said with truth that, notwithstanding the failure of the legislative attempt at reform, the House of Lords is little by little reforming itself.

I take, therefore, the following to be the main causes of the exceptional activity in the field of procedure in 1971:

(*a*) that the House itself became more active in all directions and formed a regular habit of referring all procedural difficulties and disputes to its Procedure Committee;

(*b*) that, despite the failure of reform by legislation, the House is little by little reforming itself all the time and is specially conscious of a need to improve its own procedures and to develop new functions in its relationships with the House of Commons;

(*c*) the fact that the Companion to the Standing Orders became due for revision and that its complete rewriting threw up a large number of procedural points for decision.

The Special Character of House of Lords Procedure

The House of Lords is the only parliamentary assembly in the world that rules itself by applying its own rules of order as it goes along. It has a Speaker in the person of the Lord Chancellor. But his sole duty is to put the Question. He has no power of control over the House. He cannot call any Member of the House to order, with the single exception of peers who are conversing in the space behind the Woolsack (S.O. 21). They are, in fact, technically not in the House at all, but may be disturbing its proceedings by their conversation. The Lord Chancellor is specifically debarred from adjourning the House or being " anything else as Mouth of the House, without the consent of the House first had; and any matter on which there is a difference of opinion among the Lords is to be put to the Question " (S.O. 18).

This tradition of self-government has several procedural implications. First, there is no focus of debate in the Woolsack or the Chair. In terms of S.O. 26; " When any Lords speak, they are to address their

speech to the rest of the Lords in general." They are not, therefore, addressing the Lord Speaker or the Lord Chairman. Nor has either of those officers any special primacy amongst peers. All peers are by definition equal. " None is afore, or after other."

Secondly, in any question of doubt or dispute, it is the House that decides. If, for example, two lords rise to speak simultaneously, the House calls by name upon the one that it wishes to hear. This tradition of self-government gives a special importance to the " sense of the House ", and any lord who presumes to do anything unusual must have the support, or at any rate the acquiescence, of the House in what he wishes to do.

Thirdly, as a recent Report puts it: " There are few Standing Orders, and the House runs its affairs according to good sense rather than by the rule book. The House is a self-regulating body which is accustomed to agree on its day-to-day proceedings, under the guidance of the Leader of the House." (Report of the Group on the Working of the House, paragraph 3; published as Appendix to Tenth Report from the Procedure Committee in the Session 1970–71.) The first sentence of this quotation is a mild exaggeration. It is true that there are 81 Standing Orders relating to Public Business, as compared with 122 in the House of Commons. But it is not true that these are freely or, indeed, ever consciously disregarded. If they were, they would cease to have any useful function. The Standing Orders provide a framework within which the House conducts its day-to-day proceedings. Some are couched in general terms and permit varying interpretations. For example, " Debate must be relevant to the question before the House " (S.O. 27); or, again, in the words of a Standing Order dating from 1626 and entitled " Asperity of speech to be avoided ", " That all personal, sharp or taxing speeches be forborn " (S.O. 31). Others are much more specific, such as those relating to Leave of Absence (S.O. 22); the Arrangement of Business (S.O.s 37 and 38); and the recently revised procedure on Divisions (S.O.s 51 *et seq.*—see below). It is no accident that the Standing Orders tend to be negative rather than positive—that they are concerned, like the Ten Commandments, to prescribe what should not be done rather than what should or can be done. They are not intended to be a code of practice covering every possible contingency. They represent much rather the minimum corpus of rules which the House, as a result of many centuries of working experience, has seen fit to impose upon itself. No less than 29 out of the 81 date from the seventeenth century.

Fourthly, the very flexibility in which the House takes pride and which justifies the description that it proceeds " by good sense rather than the rule book " has its own dangers. To quote again the Report referred to above: " . . . The democratic and flexible way of managing our affairs depends on the responsibility and restraint of each member; abuse by even a handful must certainly entail, in due course, the creation of a multiplicity of procedural rules and the importation of a

Speaker with power to enforce them, on the pattern of the House of Commons." (*Op. cit.*—same paragraph.) The truth is, the general sense of the House is a viable *modus operandi* only so long as individual Members of the House are prepared to accept its authority and to act within its spirit. Any determined attempt by individual Members to stretch the rules of order to their own advantage constitutes a threat to the system of self-government. The only countermeasure open to the House to meet such a threat is to impose more rules, more restrictions and more prohibitions by way of Standing Orders in the way that the House of Commons was forced to do in the latter part of the nineteenth century in reply to the disorder created by its Irish Members. Flexibility of procedure has great advantages and is rightly prized by the House as a whole. But, like liberty, it is a fragile and vulnerable plant which needs tender care and constant vigilance.

A further implication of the system that I have been attempting to describe is, as I shall hope to show in detailed examples later in this article, that the House operates procedurally at different levels. First, there is the law and custom of Parliament, which is part of the common law of England. Then there are the Standing Orders, which provide (as I have said above) a framework for all proceedings, but are by no means exhaustive nor can hope to deal with all contingencies. Finally, there is the practice of the House which is continually evolving to meet new demands and new situations.

The Work of the Procedure Committee in 1971

I now come to particular subjects that have engaged the attention of the Procedure Committee and of the House during 1971.

Here I should explain that the Procedure Committee of the House of Lords is not, like its counterpart in the House of Commons, a committee composed of Back Benchers, but a committee on which the Government and the Opposition are strongly represented—normally by the Leaders and the Chief Whips of each of the three political parties. The Reports often deal with points which have arisen in the House and which have been specifically referred to the Procedure Committee for advice; and the fact that the Procedure Committee is broadly representative of the House as a whole, including the Front Benches and the " usual channels ", gives it special authority.

Notice and Leave

On the last day before the House adjourned for the Summer Recess (23rd July, 1970), a Report from the House's main administrative committee (the House of Lords Offices Committee) was omitted in error from the Order Paper. The House's agreement to the Report in question was required before the Recess in order to provide authority for certain payments. The Report in question was broadly uncon-

troversial and the House agreed, exceptionally, to pass the Report without notice. But some voices were raised in protest, and the Procedure Committee were asked to examine the implications of the action taken by the House on this occasion. This led to a detailed consideration of the concepts of " Notice " and " Leave of the House "—that is to say, of the proceedings that require notice and of those that can be undertaken by leave of the House without notice.

Notice

The main principle at stake is clear enough: that the House should not normally be asked to take decisions on questions that are sprung upon it without due notice. This principle is evidently the background of S.O. 81, which provides that no Standing Order may be made or dispensed with without notice given in the Order Paper. When, however, it comes to the wider problem of defining which proceedings require notice and which do not, the matter becomes both difficult and complicated. In this field the Standing Orders are by no means precise, and still less comprehensive. S.O. 81 lays down that any alteration or suspension of Standing Orders requires notice. S.O. 39 (" Business of which notice is not necessary ") specifies a number of items of business, such as Messages from the Crown, Messages from the Commons and the First Readings of both Commons' and Lords' Bills, which do not require notice. But the list cannot be exhaustive, because all eventualities cannot be foreseen, and something, therefore, has to be left to the discretion of the House in the infinite variety of circumstances which may arise.

In this context special difficulty arises over Motions. At one end of the scale are Resolutions embodying declarations of policy, which clearly the House cannot be asked to agree to without notice. At the other end are Motions relating to the business of the House, which may arise in the course of that business and need to be decided without delay. Examples of such Motions are, Motions for the adjournment of a debate or of the House; the Motion denying a lord leave to ask a particular Question; the rarely used Motion " That the Noble Lord be no longer heard ". On the advice of its sub-committee on the revision of the *Companion*, the Procedure Committee approved for inclusion in the current edition of the *Companion* (pp. 48–50) a list of subjects that may be embarked upon without notice. This list makes no claim to be comprehensive, but it is a great deal wider and more informative than any that has previously existed.

The items listed fall broadly into three categories:

(*a*) Business which does not involve a decision of the House;
(*b*) Business which is expressly authorised by S.O. 39 as competent to be taken without notice;
(*c*) Motions which are concerned with the conduct of the business of the House.

At the same time, the Standing Orders relating to notice —now 34, 35, 39 and 81—have been reviewed and amended as necessary.

The upshot is that, in a difficult and complicated field where close definition is impossible, the House looks first to the Standing Orders, which declare the principles, so far as they exist, and indicate the scope of the proceedings that do not require notice. Secondly, it looks to the *Companion*, which explains and amplifies the Standing Orders. Finally, it relies on the sense of its Members to decide such problems as may arise which are not covered either by Standing Orders or by the accepted practice of the House, as set out in the *Companion*.

Leave of the House

" Leave of the House " is related, and is in a sense subordinate, to the concept of notice, in that there are a number of matters which can be proceeded with (without notice) only with the leave of the House. But here the question arises as to when such leave needs to be unanimous and when it could be granted by majority decision.

Some parliamentary assemblies (e.g. the British House of Commons) have a rule that Leave has to be unanimous and is, therefore, withheld if a single Member objects; and such a condition of unanimity is clearly a valuable and, in certain circumstances, necessary safeguard for the rights of minorities. But these are Chambers in which the conduct of business is in the hands of a Speaker or President with powers of control over the House. In the House of Lords, the House itself administers its own rules of order—if necessary by majority vote. In such an assembly a number of proceedings take place " with the leave of the House ", which it would not be reasonable to subject to a free veto. Examples of such proceedings are the leave to ask Questions, leave to make Ministerial or Personal Statements, leave to take business of which notice in the Order Paper is not required. It would be frustrating for the conduct of business and contrary to the interests of the House if leave, sought for example by the Government for the purpose of making a Ministerial Statement, could be denied by the objection of a single Member. The principle governing unanimity which the House has now adopted and put into a new Standing Order is that leave of the House " must be unanimous in those cases where, if Leave were granted, the House or Committee would be deprived of a Question which would otherwise have been put from the Woolsack or the Chair. In all other cases where Leave is sought, it is granted by a majority of the House and the objection of a single peer does not suffice to withhold it " (S.O. 30).

Here, again, the Standing Order declares the principle; and the *Companion* gives explanations and guidance as to how the principle is to be interpreted.

Divisions

The question of the procedure to be followed when the House proceeds to a Division occupied a prominent place in the Reports from the Procedure Committee during 1971. The first point to which the committee addressed itself to was, however, one of detail—namely, what was to happen if, on a Division being called, one side failed to appoint Tellers within the prescribed time limit (originally four minutes; then, experimentally two minutes; finally, as adopted in December 1971, three minutes from the time that the Division was originally called). The House decided that in such circumstances the Division could not take place, and that the question before the House must be decided in favour of the side which had appointed Tellers in accordance with the Standing Order.

Of greater significance was the examination by the Procedure Committee of the possibility of speeding up the procedure on Divisions. This was, no doubt, prompted and encouraged by the prospect of a hard political fight and many Divisions on the Industrial Relations Bill. In the event, these expectations were not disappointed.

The old procedure (which was followed up till 1971) was time-wasting in that the first four minutes after a Division had been called were devoted simply to assembling in the Chamber those lords who wished to vote. At four minutes the doors of the Chamber were locked, the question was repeated for all to hear and, provided the challenge was repeated, voting began. But no voting was allowed until the doors had been locked at four minutes and the question had been put again to the House or the committee.

The new proposals, which operated first experimentally in May 1971 and, after undergoing certain modifications, were adopted finally as part of the Standing Orders the following December, were directed, therefore, to getting peers earlier into the lobbies, to enabling the process of voting to start earlier and to speeding up that process, once it had begun.

The new procedure, as finally adopted in December 1971, was as follows:

(*a*) On a Division being called, peers may assemble in the lobbies and there is no obligation to remain in the House in order to hear the Question put.
(*b*) Once in the lobbies, peers are divided into two alphabetical streams, A–K and L–Z, in each lobby.
(*c*) At three minutes, the Question is again put and the voices collected; provided that both sides by that time have appointed Tellers and the challenge is repeated, the Division proceeds and voting can begin.
(*d*) At six minutes, the doors of the Chamber are locked and no lord who is outside the Chamber at that moment and has not voted can still vote. The Question is repeated for information only.

The main change which was made in the course of the experiment, as a result of the experience gained during the summer months, was the

increase from two to three minutes in the time allowed between a Division being called and the first repetition of the Question from the Woolsack or the Chair. Experience showed that an allowance of two minutes was too short a time to provide for the appointment of Tellers and too short also to allow the Clerks (who might have to be summoned from distant parts of the building) to arrive in the Division lobbies.

The new procedure is calculated to have saved at least two minutes per Division; and in the 92 Divisions which took place on the Industrial Relations Bill it must, therefore, have saved something of the order of three hours of the time of the House. It has been criticised on the grounds that any system which allows voting to start before the doors of the Chamber are locked inevitably means that some of those voting will not have heard the Question put. At one time the House attached much importance to this principle and in 1868 even disallowed the vote of a peer because he had not been in the House when the Question was put. In 1906 the Commons released their Members from a similar obligation (*Erskine May*, 18th edition, page 394) but attached sufficient importance to the principle to provide explicitly in their Standing Orders that " a Member may vote in a Division although he did not hear the Question put " [House of Commons Standing Order 35(1)]. The Lords have now adopted a similar provision in their S.O. 51(5). The abandonment of the principle has, on the whole, been accepted as the price of getting the process of voting under way at an earlier stage.

The net result of this prolonged experiment in Divisional procedure was that the House of Lords have now assimilated their practice to the Commons' procedure. The main differences are that the Commons have adopted *two* minutes, whereas, for the reasons already explained, the Lords have come down in favour of *three* minutes before the question is repeated and voting can begin. Secondly, the practice of the two Houses in regard to the locking of the doors is different. In the Commons it is the lobby doors that are locked after six minutes and any Member not in one or other of the lobbies by that time is too late to record his vote; whereas in the Lords access from the Chamber to the lobbies remains open and it is the doors of the Chamber itself that are locked after six minutes. In principle, however, the procedures of the two Houses have much in common.

The Group Report

I have already referred to the Report of the informal Group set up by the Leader of the House to report to him personally on the working of the House; and have cited this Report and its reception by the House as evidence of the gradual process of self-reform in relation both to the procedure and to the functions of the unreformed House.

The Group consisted of Lord Aberdare, Deputy Leader of the House, Lord Shepherd, Deputy Leader of the official Opposition, Lord Byers, Leader of the Liberal Party, and the Earl of Perth from the Cross

Benches. All took part in a personal capacity. The Group were asked:

> To examine the working of the House and to make recommendations for the more effective deployment in the public interest of the time and talents of its members.

The Group presented two Reports, which, after reference to the Procedure Committee, were published as Appendices to Procedure Committee Reports for the information of the House without commitment or comment—the main Report (at the beginning of the summer recess) as the Tenth Report of the Session 1970/71 and the subsidiary Report on the composition of committees as the First Report of the Session 1971/72. Both Reports were debated by the House on 23rd November on a Motion " To take note ". The Procedure Committee then considered the two Reports in the light of the views expressed in the debate of 23rd November and presented its own recommendations in the form of the Second Report of the Session 1971/72. These further recommendations were considered by the House on 16th December, 1971.

The Group's Reports were primarily concerned not with procedure as such, but with the working arrangements of the House, that is to say, with such questions as: how the procedure of the House could become better known to, and better understood by, its members; how more time could be made available to Private Members; how the list of speakers in a debate should be compiled: how the length of speeches could be reduced; how matters of urgency or current interest could be raised; whether comment should be allowed from all parts of the House on Ministerial Statements; the composition and membership of the Sessional Committees of the House; and the accommodation and facilities of the House.

The main changes recommended by the Procedure Committee were as follows:

(i) That the procedure and practice of the House should be better known and understood in order that all Members might play their part in maintaining order.
(ii) That one Wednesday a month should be set aside experimentally for debates lasting not more than two-and-a-half hours each, to be initiated by Private Members, and chosen by ballot.
(iii) Two clocks should be installed on either side of the Chamber with indicators to show how long a lord had been speaking.
(iv) Ministerial Statements should be open to brief comment by all Members of the House and not merely by representatives of the Front Benches, as hitherto.
(v) There should be a regular turnover in the membership of the main Sessional Committees of the House with all members (save about a dozen specified as members *ex officio*) retiring after three years' service (but eligible for reappointment after an interval of one year).

Broadly, the Procedure Committee endorsed the majority of the Group's proposals. But in certain particular instances they dissented—

for example, in advising the House not to accept the following recommendations:

(*a*) That there should be a committee of Back Benchers to advise the Leader of the House and to receive and pass on suggestions on the working of the House.
(*b*) That there should be an opportunity for emergency debates on the pattern of those provided by S.O. 9 in the House of Commons.
(*c*) That in addition to the four Starred Questions at present allowed each sitting day, there should be one "Double Starred" Question on a matter of topical interest.

In each case the grounds of rejection were that the existing facilities and opportunities were adequate for present needs. In the case of (*c*), there was in addition the extreme difficulty of defining "topicality".

On 16th December, 1971, the House accepted the recommendations of the Procedure Committee with reservations on the method of choosing the subjects for short Wednesday debates, and on the subject of Starred Questions. In February 1972 the House decided on a Division (104 votes to 43) not to depart from the ballot as the method of choice; and this seems likely to endure as the basis of the experiment for the time being.

The Group Report recommended no revolutionary changes. Its recommendations did not even involve any immediate changes in the Standing Orders, though if the limited-time debates, which are being tried experimentally on Wednesdays once a month, up till the Whitsun recess, prove acceptable and are permanently adopted by the House, they will require the authority of a new Standing Order. At present it seems likely that the experiment will be continued on the present basis in the Session 1972/73. The Report, nevertheless, had a warm welcome from the House as a contribution to the dialogue between Back Benchers and the managers of House of Lords business. It is at least evidence that the House is willing to examine its own practices and ways of working. It helps the cause of self-government; and in doing so it contributes to the cause of self-reform.

Co-operation with the House of Commons

The Eighth Report from the Procedure Committee to the House recorded that the House of Commons Procedure Committee had suggested co-operation between the Houses in examining the following four subjects:

(*a*) the distribution of Bills between the Houses;
(*b*) joint pre-legislation committees;
(*c*) joint post-legislation committees;
(*d*) a joint committee to examine or debate statutory instruments.

This initiative was warmly welcomed by the committee and by the House. In response, the Leaders of the three parties and the Lord Chairman, the Earl of Listowel, went down, with the leave and approval

of the House, on 7th July and gave evidence in a personal capacity on these four subjects before the Commons Procedure Committee. The evidence given is reproduced in the Second Report from that Committee entitled " Process of Legislation " [House of Commons Paper No. 538 of Session 1970/71]. The Report made several recommendations of importance to the House of Lords. First, it recommended a relaxation of Commons' financial privilege with the object of enabling more Bills with financial content to start in the House of Lords. Secondly, it recommended a Joint Select Committee of both Houses, with wide terms of reference, to conduct a comprehensive inquiry into Parliamentary control over Delegated Legislation. Thirdly, it recommended that the Government should set up a committee including members and officers of each House to review the form, drafting, amendment and preparation of legislation. Fourthly, it recommended that experiments should be made in setting up Joint Committees to examine proposals for legislation before introduction and to review the working of legislation after it had been enacted.

The Leader of the House of Commons, then Mr. William Whitelaw, and the Leader of the House of Lords, Earl Jellicoe, announced each in his own House, on 8th and 9th November respectively, that the Government accepted the recommendation for a Joint Committee on Delegated Legislation; and for a Government-appointed committee to review the process of legislation.

In approving the Second Report of the Session 1971/72 from its own Procedure Committee, the House of Lords:

(*a*) welcomed the proposals for:
  (i) a Government Enquiry into the Process of Legislation;
  (ii) a Joint Select Committee on Delegated Legislation;
(*b*) welcomed any measure which might be taken by the Commons to facilitate more equal distribution between the Houses of the Bills introduced; and
(*c*) noted with approval that experiments in the use of pre- and post-legislation committees might be made.

So far as the Committee on Delegated Legislation was concerned, the House of Lords appointed on 16th December seven Lords to join with the Commons' Members in forming the Joint Committee. For further action on this and other topics we must look to 1972. The initiative taken by the Commons Procedure Committee in 1971 was warmly welcome to the House of Lords, not only as evidence of good will but also as an important contribution to the collaboration of the two Houses. It could well point the way towards the discovery of new functions for the House of Lords, which for their success and acceptance must depend upon the good will and co-operation of the House of Commons.

Select Committee on Sport and Leisure

On 9th December, 1971, the House set up, on the Motion of the Leader of the House (E. Jellicoe), a Select Committee to consider the demand for facilities for participation in sport and in the enjoyment of

leisure out of doors. I mention this briefly because it represents the use of a procedure which has always been open to the House but has, nevertheless, not been much resorted to in recent years—namely, the setting up of a Select Committee to inquire into a subject of general parliamentary interest, which is not, as such, of special concern to the House more than any other subject. In moving his Motion the Leader of the House expressed the hope that this would be the first of " quite a long line of Select Committees of this House on various subjects " [Lords *Hansard* of 9th December, 1971, col. 894]. This hope seems to foreshadow a development of the Select Committee system for the consideration of general subjects. The House of Lords has immense reserves of knowledge and experience, and such an extension of the committee system would provide additional means of making use of these resources.

Finally, I could not end an article on matters of procedural significance in 1971 without referring to two highlights. One was the fact that the Government Motion to approve the decision to join the Common Market, which was debated on October 26th, 27th and 28th, ended (after some 20 hours of debate) in the largest division in the history of the House: Contents 451: Not Contents 58.

The second " highlight " was provided by the Industrial Relations Bill. This was a Bill of 160 Clauses and 9 Schedules (running to 160 pages of print) which had been guillotined in the Commons. It came to the Lords on 25th March and was returned to the Commons on 20th July with 343 Amendments (57 pages of print). According to the Leader of the House of Commons, speaking on 28th July after the Bill had been returned to that House, of the 343 Amendments made by the Lords, 135 were either non-Government Amendments accepted by the Government or Amendments put down by the Government to meet Opposition points. As the Bill left the Lords, it consisted of 170 Clauses, 9 Schedules, and extended to 187 pages.

The Bill was considered in the Lords on no less than 30 sitting days (2 days on Second Reading, 18 in Committee of the Whole House, 9 on Report and one day on Third Reading). The total time devoted by the House to consideration of the Bill was 232 hours 32 minutes. There were 138 Divisions on the Bill (2 at the Second Reading stage, 92 in Committee, 43 on Report and one on Third Reading). It certainly occupied more time on the floor of the House than any other Bill since the war, and probably since the beginning of the century. It imposed procedural strains of an unprecedented nature upon a House which rules itself and in which the interpretation and applicability of the rules of order are matters for the House as a whole. Quite apart from the value of the House as a debating forum, which is widely acknowledged, the time and labour devoted to Bills like the Industrial Relations Bill, especially when they have been guillotined in the Commons, are evidence of the contribution that the House can make as a revising Chamber in the field of legislation.

VI. THE PROCESS OF LEGISLATION:

Second Report from the Procedure Committee, 1970–71

By D. McW. Millar

An Acting Deputy Principal Clerk in the House of Commons

" Your Committee were aware of criticisms made inside and outside Parliament of shortcomings in the procedures used by the House to examine legislation and of lack of opportunity for backbenchers to influence the process of decision taking and to debate certain delegated legislation ". With these words the Procedure Committee of session 1970–71 introduced the most comprehensive Report made to the House for twenty-five years on the process of legislation. But the Committee also acknowledged that the way had been prepared for them by the Sixth Report of the Committee of 1966–67 (H.C. 539) on Public Bill Procedure, and explained that their enquiry had found its origin in the 1967 Report.

The Committee recorded that less time had been spent since 1967 on general debates on White Papers and Reports of Royal Commissions, etc., which were fields for possible legislation. The time of the House spent on legislation and the volume of legislation had showed a marked increase in the previous ten years, and legislation was occupying an increasing proportion of the time of the House.

Pre-legislation Committees

In an attempt to bring the House in at an earlier point in the legislative process, the 1967 Committee recommended that ad hoc select committees should be used " to study and report on the specific topics of possible legislation referred to them ". The 1971 Committee, endorsing this proposal, argued that these " pre-legislation committees " would enable the House to influence the Government at an early stage in the process of decision taking, rather than having to accept the Bill as introduced, often on a ' take-it-or-leave-it ' basis. The Committee foresaw that some matters of basic Party controversy would not be suitable for consideration by these committees but nevertheless noted that since 1900 nearly half of the " pre-legislation committees " had given rise to identifiable legislation.

Linked with this proposal was one for " post-legislation committees ", to examine the working of statutes within a short period after their enactment. It was argued that the need for legislation to amend certain parts of an Act might become imperative within even a short period of its enactment, and that " post-legislation " select committees could

take evidence from Government officials and from practitioners, who might have experienced difficulty in interpreting and applying the statute. The Lord President of the Council, in a statement on the Report on 8th November, 1971, accepted these proposals in principle, but thought that there was only limited scope for their use.

Timetables

The Committee could claim more success in winning acceptance of the next part of their Report, concerning Timetables. They traced the several attempts made since 1947 to regulate guillotine procedures, including latterly the introduction of the concept of " voluntary timetables ". This the Committee believed to be a contradiction in terms, the only alternative to an imposed timetable being an informal agreement made through the " usual channels ". Difficulties had arisen also from the fact that the Business Committee, which was composed principally of members of the impartial Chairmen's Panel appointed by the Speaker, had to take decisions about the timetabling of complex Bills of high political content.

The Committee recommended that the Panel should be excluded entirely from membership of the Business Committee, which should be composed of five Members concerned with the Bill, together with three senior Members of the House. In a further recommendation, debate on allocation of time motions in the House was restricted to three hours, which was a compromise between a full day of 6½ hours (generally believed to be too long a period) and the two hour period established in 1967. These recommendations were agreed to by the House on 16th November, 1971.

Then followed four less important recommendations, largely following proposals made by the 1967 Committee. The objects were to enable more Bills involving financial charges to be introduced into the House of Lords; to make explanatory memoranda to Bills more informative and more relevant; and to provide that Bills considered by a second reading committee in one session should be " carried over " to the next session for their later stages. These recommendations were received sympathetically by the Government, but have not yet been implemented.

Committee stage

The Committee then turned to the committee stage of Bills. They made no general recommendations in regard to Standing Committees, but recommended that suitable Bills should be committed to select committees, such Bills being defined as " of little political controversy but possibly of some complexity ". In support of their proposal the Committee recalled that until the late 19th century Bills were committed either to a committee of the whole House or to a select committee, and

claimed that a need still eixsted for those likely to be affected by a Bill to give evidence about its effects to a select committee. The second recommendation of the Committee regarding select committees was that a Bill should be committed in part to a standing committee and in part to a select committee. The Finance Bill has in recent years been divided between a committee of the whole House and a standing committee, and the Committee believed that, similarly, clauses in Bills containing questions of principle could be committed to a standing committee, and those on which questions of detail arose to a select committee. The Committee believed that greater flexibility would result from their recommendation and that it was capable of being applied to major Bills of some controversy. Both these recommendations were accepted in principle by the Government, with certain reservations.

Report and Third Reading

The 1967 Committee recommended that suitable Bills should be considered on report in a standing committee. Evidence given to the 1971 Committee revealed, however, that in three sessions only sixteen hours in total would have been saved on the Floor of the House, if all the Bills eligible had been sent to a report committee. The Committee emphasised the importance of report stage, in view of the reduction in size of standing committees, but made no formal recommendations relating to it. On third reading, they received evidence that " speeches in third reading debates are often formal, laudatory or repetitious of debates on report ", and some witnesses favoured the abolition of debate on third reading. On the other hand it was argued that not much time would be saved per session if third reading was made formal, and that it provided an opportunity to indicate changes in a Commons Bill which might be made in the Lords. On balance the Committee favoured the abolition of debate on third reading, and so recommended. However, when the Government brought this proposal before the House, giving their support to it, sufficient opposition was expressed to secure its withdrawal.

Burden on the Chair

The Committee then turned to two subjects on which proposals were addressed to them by Lord Maybray-King, a former Speaker, arising from the increase in the volume and complexity of legislation, and the desire of Members to participate more fully in proceedings in the House. Both he and the present Speaker drew attention to the increasing burden falling upon the Chair, and made proposals for its alleviation. The Committee accepted the need for some alleviation of the burden and recommended that a second Deputy Chairman of Ways and Means should be appointed, and that the Chairman and Deputy

Chairmen should have power to accept the closure on any class of business and to select amendments during the business of Supply. The House agreed to these recommendations on 16th November, 1971.

Short Speeches

Mr. Speaker told the Committee of an experiment which he was conducting into the possibility of voluntary restriction by Members of speeches in a day-long debate. The Committee believed that opportunities for Members to speak on the second reading of Bills and in debates on important matters could only be created by some limitation of the length of speeches; in this they were reflecting views expressed by previous Procedure Committees. They gave strong support to Mr. Speaker's experiment, and went on to recommend that for an experimental period front-bench speakers and the movers of motions should be limited to a maximum of twenty, and back-bench speakers to a maximum of ten, minutes in debates on delegated legislation, in half-day debates in Supply, and on timetable motions, and in emergency debates under Standing Order No. 9. In response, the Leader of the House promised time for a debate on this matter, which to date has not taken place.

Delegated Legislation

The Committee then turned to the consideration of delegated legislation. They recorded that " a very serious situation has arisen in regard to the lack of time for debates on Prayers " (i.e. statutory instruments subject to negative procedure). Considerable anxiety had been expressed by influential witnesses about this situation, which was expected to become worse as the flood of legislation increased each session. The Committee recommended that, in order to ease the situation, three " Prayer Days " should be set aside each session from Government time for debate on back-benchers' Prayers. They also proposed that non-contentious Prayers and affirmative resolutions should be referred to a special standing committee for debate, any division being held in the House itself after the committee debate. Following evidence in favour of such a proposal, the Committee also recommended that a joint committee should be appointed to enquire into the control of each House over delegated legislation. The Government accepted this recommendation and referred the other two to the joint committee, which was appointed on 17th December, 1971.

Private Members' Bills

The Committee undertook a comprehensive survey of procedure in regard to private Members' Bills, but adopted few of the proposals made to them, partly in the light of evidence from other Members

resisting changes in the procedure which would tend to facilitate the passage of private Members' legislation. The Committee found that insufficient time was available to private Members for the choice and preparation of their Bills between the ballot, held in the second week of each session, and the first day for second readings. In order to provide more time for such preparation, and for proceedings on ballot Bills in the Lords later in the session, the Committee recommended that the ballot should be held before the summer adjournment, Bills thereafter being presented in the succeeding session. The Government were non-committal in their approach to this proposal. The Committee had more success, however, in winning acceptance of their next recommendation, to which the House agreed on 29th November, 1971. In order to assist private Members with the drafting of their Bills, the Government agreed to pay to each Member winning one of the first ten places in the ballot the sum of £200 towards drafting assistance. This change is expected to prove of considerable value to Members who have a good chance of securing a full second reading debate and committee stage for their Bills, it is noteworthy that the Government did not discriminate between Bills to which it might be hostile and those which it might regard with favour.

Counting

A proposal was made that the practice of counting the House on private Members' Fridays should be abolished. In favour of abolition it was argued that the original need in the seventeenth century for a quorum provision to prevent questions being agreed to by surprise had been superseded by the customary announcement by the Government of the business for up to ten days ahead. The principle of counting had also been substantially breached by the prohibition in 1967 of counting after 10 p.m. It was claimed in favour of retaining the count that, the House having established a quorum, a method should exist of establishing that a quorum was present. Witnesses also thought that to abolish the count would be unduly favourable to the Government, but the Committee found compensating advantages to private Members. They recommended that counting should be abolished, but that if the numbers voting in a division indicated the lack of a quorum, the next business should be taken. This was agreed to by the House on 16th November, 1971.

Form and Drafting of Bills

The Committee concluded their Report by considering various technical matters in regard to Explanatory Notes on Bills and Explanatory Statements on Acts which had been raised in Reports from the Law Commissions. They also received various proposals for improving the form, drafting and method of amendment of legislation, including a

suggestion for a system of " textual amendment " of Bills, and for a " crash programme " of consolidation. These proposals were designed to simplify and clarify the Statute Book so as to assist Members, legal practitioners, and regular users of statutes. As many of these proposals were beyond the scope of their inquiry, the Committee recommended that the Government should appoint a Committee, including Members and Officers of both Houses, to review the form, drafting and amendment of legislation and the practice in the preparation of legislation for presentation to Parliament. The Government accepted this recommendation in principle, but the Committee has not yet been appointed.

In their conclusion, the Committee stated that their aim had been to rationalise the work of legislative committees so as to husband the scarce resources of the House in the energies and time of its Members. They re-emphasised the fundamental importance of the House being able to debate all Prayers which are tabled, even if only in a standing committee.

VII. THE SENATE OF CEYLON

and the drafting of a new Constitution

On 5th July, 1944, the Secretary of State for the Colonies announced in the House of Commons the decision of His Majesty's Government to appoint a Commission to visit Ceylon in connection with the reform of the Constitution for which agitation had been going on for some time. A considerable number of witnesses from all communities who gave evidence before the Commission—which was called the Soulbury Commission taking the name from its Chairman, Lord Soulbury—advocated the establishment of a Second Chamber and after careful consideration the Commissioners made a recommendation that Ceylon's legislature should be bicameral.

His Majesty's Government thereupon enacted the Ceylon (Constitution) Order in Council, 1946, which established a Parliament of Ceylon consisting of His Majesty, and two Chambers to be known respectively as the Senate and the House of Representatives. Except for the reduction of the term of office of a Senator to six years from the recommended nine, the constitution of the Senate was as recommended by the Commission.

Composition and Powers

The Senate of Ceylon was composed of thirty members, of whom fifteen were elected by the House of Representatives, known as " elected Senators ", and fifteen were appointed by the Governor-General on the advice of the Prime Minister, and known as " appointed Senators ".

Section 12 of the Constitution qualified a person to sit in either House of Parliament if he was qualified to be an elector; it was not necessary that he should have been actually registered as an elector. Section 13 set out the disqualifications for membership of the two Houses. Amongst other things a person was disqualified for being elected or appointed a Senator if he had not attained the age of thirty-five years.

The Constitution Order in Council provided for the determination and regulation of the privileges, immunities and powers of both Houses by Act of Parliament provided that no such privileges, immunities or powers exceeded those for the time being held or enjoyed by the Commons House of Parliament of the United Kingdom or of its Members. Accordingly the Parliament (Powers and Privileges) Act, No. 21 of 1953, was passed to regulate the privileges, immunities and powers of the two Houses.

All Bills had to be passed by both the Senate and the House of Representatives subject to the restrictions on the powers of the Senate as set out below.

Any Bill, except a Money Bill, could be introduced in the Senate.

A Money Bill, passed by the House of Representatives and sent to the Senate at least one month before the end of a session, which was not passed by the Senate within one month after being so sent, could be presented to the Governor-General for Royal Assent, with or without any amendments which might have been made by the Senate and agreed to by the House of Representatives.

Procedure for resolving differences between the two Houses

If a Bill, other than a Money Bill, was passed by the House of Representatives in two successive sessions, whether of the same Parliament or not, and having been sent to the Senate in the first of those sessions at least one month before the end of that session, was not passed in that session, and having been sent to the Senate again in the second of those sessions, was not passed within one month after it had been so sent, or within six months after the commencement of that session, whichever was the later, the Bill could be presented to the Governor-General for Royal Assent, although it had not been passed by the Senate.

Bills so presented to the Governor-General have to be certified by the Speaker of the House of Representatives, after consultation with the Attorney-General or the Solicitor-General, as being in compliance with the relevant provisions of the Constitution and in particular that the Bill was identical with the Bill sent to the Senate in the first of the two sessions, or that it contained only such amendments as were necessary to bring it up to date or as have been made by the Senate and approved by the House of Representatives.

Functions of the Senate

One can do no better in describing the functions of the Senate than to quote from the Report of the Soulbury Commission on whose recommendation, as stated earlier, the Constitution was created:

> A Second Chamber would serve as a check upon hasty and ill-considered legislation to which a uni-cameral legislature, with a very short experience of responsibility and apt to be swayed by strong emotion and excitement, would be prone. . . .
>
> . . . . there are in Ceylon, as in other countries, a number of eminent individuals of high intellectual attainment and wide experience of affairs, who are averse to entering political life through the hurly-burly of a Parliamentary Election. But it would be of advantage to the country to enjoy the services of men upon whom party or communal ties may be expected to rest more lightly, and who can express their views freely and frankly, without feeling themselves constrained to consider the possible repercussions upon their electoral prospects."

A Ceylonese constitutional authority who made a study of Parliamentary Government in Ceylon (1948–1958) made the following observation when analysing the work of the Senate:

The matters that interested the Ceylon Senate were substantially the same as those that exercised the minds of the members of the House of Representatives. This was generally so both as to the topics of discussion and the lines on which the discussion proceeded. In concrete form, the main items of business considered by the Senate as in the case of the other House are:

(1) the debate on the speech from the throne;
(2) the debate on the annual Appropriation Bill;
(3) debates on bills other than money Bills;
(4) discussions on motions moved by members of the Government or private members; and
(5) the discussion and approval of subsidiary legislation, required by Statute to be placed before the Senate.

A study of the way in which Senate time was utilised by members during the last decade will show that it was not effectively used to improve the business of Government or legislation.

The Senate's record has generally been that of endorsing the work of the House of Representatives. Although it cannot initiate money Bills, it has the power to introduce any other Bill. Despite this power, very few Bills of any importance were introduced in the Senate."

Abolition of the Senate

In 1958 a Select Committee of both Houses of Parliament which was appointed to consider the revision of the Constitution was of the view that the legislature should be unicameral. It was however not possible for this Committee to present its report as Parliament was prorogued before it could finalise its recommendations.

Thereafter at the start of almost every Parliamentary session similar Select Committees were appointed but were unable to complete their deliberations for various reasons. Meanwhile certain judgments delivered by the Privy Council raised doubts in certain quarters about the power of the Parliament of Ceylon to amend the Constitution in some respects. In one case in particular (Ranesinghe vs. the Bribery Commissioner—66 New Law Reports, page 78) Lord Pearce said, in reference to certain sections of the Constitution, that " they represent the solemn balance of rights between the citizens of Ceylon, the fundamental conditions on which, *inter se*, they accepted the Constitution. All these are therefore unalterable under the Constitution." This judgment was quoted by the spokesmen of parties then in the Opposition to make out a case for the drafting of a new Constitution altogether in preference to amending the existing one for which purpose the Select Committees had been appointed. During the last years of the Sixth Parliament in 1968–69 the then Opposition refused to serve on the Select Committees appointed to revise the Constitution and later in the General Election of 1970 sought a mandate from the people in the following terms:

We seek your mandate to permit the Members of Parliament you elect to function simultaneously as a Constituent Assembly to draft, adopt and operate a new Constitution.

This General Election saw the United Front, comprising the Sri Lanka Freedom Party, the Lanka Sama Samaja Party and the Communist Party, being given a clear mandate with an overwhelming majority. They immediately set about the work of preparing a new Constitution.

Even as the new Constitution was being prepared, the Government introduced a Bill in the House of Representatives intituled the Ceylon (Constitution and Independence) Amendment Bill by which it sought to amend the existing Constitution for the purpose of abolishing the Senate. This Bill was passed in the House of Representatives on the 27th October, 1970, with the two-thirds majority necessary to amend the Constitution. Thereafter the Bill was sent to the Senate, which, however, with a majority of members opposed to the Government in power, delayed the Bill by not allowing it to come up for debate. Thereafter Parliament was prorogued on the 23rd March, 1971, and the Bill was reintroduced in the next session which commenced a week later on the 29th of the same month. The Bill was passed in the House of Representatives a second time and sent to the Senate on the 22nd May, 1971, but was again delayed in the Senate and not taken up for debate, as in the previous session. Thereupon after the requisite six months had elapsed after the commencement of the second session, the Government presented the Bill for Royal Assent under the terms of the Constitution outlined earlier in this article under " Procedure for resolving differences between the two Houses ".

This Bill received Royal Assent on 2nd October, 1971, from which date the Senate of Ceylon stood abolished.

Drafting of a New Constitution

On the 19th July, 1970, the newly elected Members of Parliament met for the first time as members of the Constituent Assembly and adopted the following Resolution moved by the Prime Minister:

> We the Members of the House of Representatives in pursuance of the mandate given by the People of Sri Lanka at the General Election held on the 27th day of May 1970, do hereby resolve to constitute declare and proclaim ourselves the Constituent Assembly of the People of Sri Lanka for the purpose of adopting enacting and establishing a Constitution for Sri Lanka which will declare Sri Lanka to be a free sovereign and independent Republic pledged to realise the objectives of a socialist democracy including the fundamental rights and freedoms of all citizens and which will become the fundamental law of Sri Lanka deriving its authority from the People of Sri Lanka and not from the power and authority assumed and exercised by the British Crown and the Parliament of the United Kingdom in the grant of the present Constitution of Ceylon nor from the said Constitution and do accordingly constitute declare and proclaim ourselves the Constituent Assembly of the People of Sri Lanka. . . .

The Constituent Assembly then set up a Steering and Subjects Committee to determine the principles on which the Constitution was to be drafted. The Steering and Subjects Committee called for and received a large number of memoranda from various organisations and

individuals from all over the country and after careful sifting and consideration of these memoranda, the Committee presented to the Assembly on the 14th March, 1971, a set of thirty-eight Basic Resolutions for the consideration of the Assembly.

The Constituent Assembly next entered upon a lengthy and detailed discussion of the Basic Resolutions. Considerable revision was effected in the light of this discussion and the Constituent Assembly agreed on a final set of Basic Resolutions on the 10th July 1971. The Steering and Subjects Committee was then set the task of preparing a draft of the Constitution in accordance with the Basic Resolutions. Once again public suggestions were called for and poured in and the Steering and Subjects Committee presented its first draft of the Constitution on the 29th December, 1971.

This draft was adopted by the Constituent Assembly as being in accordance with the Basic Resolutions. Thereafter the Assembly divided itself into eleven Committees to each of which was entrusted for detailed study a specific portion of the draft Constitution. The Committees themselves called for and received more memoranda from the public and whenever necessary heard oral evidence.

In the light of the reports of these Committees a revised draft of the Constitution was presented to the Constituent Assembly on the 8th May, 1972, and the Assembly went into Committee to consider the draft Clause by Clause.

The final draft was next adopted by the Constituent Assembly and the new Constitution was ceremonially proclaimed when the President of the Constituent Assembly affixed his signature to the Constitution on the 22nd May, 1972. The new Constitution then became the fundamental law of the land.

Thus was born the free, sovereign and independent Republic of Sri Lanka (Ceylon).

VIII. THE SELECT COMMITTEE ON THE CIVIL LIST

(SESSIONS 1970–71 AND 1971–72)

BY D. SCOTT

Clerk of Select Committees, House of Commons, of Sessions 1970–71 and 1971–72

The Select Committees on the Civil List presented a number of interesting features of procedure, and these will be dealt with below in chronological sequence.

The original Committee was appointed on 20th May, 1971, " to consider Her Majesty's most gracious Message of 19th May relating to the Civil List ". This Message from the Queen, which is set out in full in *Hansard** and in the Votes and Proceedings of the House for that day, requested the House to consider the provision made by the Civil List Act 1952 for her Civil List, and by way of annuities for other Members of the Royal Family. This in turn had embodied, in accordance with custom, the recommendations of the Civil List Committee† set up that year following the death of King George VI. It was, however, the first Civil List Committee to be asked to consider the general provision for meeting the Sovereign's expenses, apart from the normal Committee set up at the outset of a reign, to be appointed in the course of one since George III's time, when the Civil List had to be refreshed periodically owing to the fact that it provided for some of the " Civil " expenditure of the State, and was not restricted to maintaining the royal establishment.

The need for a revision of the Civil List was, of course, the result of inflation; and the Committee of 1952 had tried to anticipate its possible effects over what was hoped to be a long reign by providing for the accumulation of a contingencies margin in the early years of the reign, which could be drawn on in later years. But as stated in paragraph 12 of the 1971 Report, by 1969 it had become apparent that this provision would shortly be exhausted. In paragraph 10 it was estimated that the total call on the Privy Purse to finance the deficit on the Civil List would reach £600,000 by the end of 1971. The then Prime Minister, Mr. Harold Wilson, explained the situation to the House on 11th November, 1969.‡ He concluded by saying, " Accordingly, detailed discussion took place between Treasury officials and the Queen's advisers, as a result of which the Government informed the Queen's advisers that a new Select Committee would be appointed at the beginning of the next Parliament ".

* *H.C. Deb.* 817, 1970–71, Col. 1269.
† *H.C.* (1951–52) 224.
‡ *H.C. Deb.* 791, 1969–70, Col. 184.

The contingency of further provision being necessary was also envisaged in paragraph 6 of the 1952 Report.

The Queen addressed a message to the House, dated 18th and presented to the House by the Chancellor of the Exchequer, the Rt. Hon. Anthony Barber, on 19th May. It differed from other such messages during this century in requesting provision for the widows of younger sons of Her Majesty, and for the Duchess of Gloucester in the event of her surviving her husband. The Message also stated that, in order to limit the burden of any new provision, the Queen was content to forego the provision made in 1952 for the Privy Purse: this had been fixed at £60,000 the same figure as that voted to Queen Victoria in 1837. It may be surmised that this was made possible by the increase in payments to the Privy Purse from the revenues of the Duchy of Lancaster from £110,000 in 1952 to £300,000 in 1970 (p. xxvi).

On the following day the Chancellor moved for the appointment of a Select Committee to consider the " most gracious message of 19th May relating to the Civil List, and other matters connected therewith ".* The Motion proposed a committee of 17 members, including Mr. William Hamilton, M.P. for West Fife, who is a well known critic of the Monarchy and of the expenses attending its support. When the Speaker began proposing the Question on the names of the Members to be appointed, Mr. Kenneth Lewis, M.P. for Rutland and Stamford, objected to the name of Mr. Hamilton in accordance with an amendment he had tabled to leave out that Member.† After debate, the question, that Mr. W. W. Hamilton be a member of the Committee, was put and agreed to without a division.‡

The Order of Reference (set out on page lxxxii and repeated on page ii of the Report) followed recent precedent in giving the Committee " power to examine all witnesses who voluntarily appear before them "; the Committee did not therefore have power to send for persons, papers and records, and consequently lacked the power to report the evidence. It has since early in the last century been considered inappropriate that a select committee should have power to compel evidence to be given about the domestic arrangements of the Sovereign. It was, however, decided that a shorthand note of the evidence should be taken, and to each witness or group of witnesses the Chairman (the Chancellor of the Exchequer) explained that although the Committee had no power to report oral or written evidence to the House, they could give no assurance that such a power would not be given in the future, and witnesses were told of the well established practice by which they could sideline passages in the evidence which they would like the Committee to refrain from reporting (see Minutes of Evidence Q.1, page 1). On 6th July, the Committee rejected, by 8 votes to 3, a Draft Special Report by Mr. Hamilton recommending the House to give them power to admit strangers during the examination of witnesses, and the draft

* *H.C. Deb.* 817, Cols. 1531–1556.
† *H.C. Deb.* 817 Col. 1547.
‡ *Ibid.*, Col. 1556.

report drew attention to the lack of power to report evidence (Minutes of Proceedings, p. lxxxvii). Earlier, Mr. Hamilton had withdrawn another draft special report which recommended in addition the granting of power to adjourn from place to place (pp. lxxxv and lxxxvi). After the Committee had been re-appointed in the following Session, 1971–72, the House on 11th November, 1971, did in fact give them power to report the Minutes of Evidence with Memoranda. The Report of this Committee was therefore the first Report of a Civil List Committee to be accompanied by evidence, with the exception of the Report of the 1837 Committee, which contained a supplementary statistical Memorandum by the Treasury (technically " evidence ") and which that Committee had been given power to report. A glance at the number of asterisks in the Minutes of Evidence will show how sparing in the event witnesses were in requesting that certain evidence should not be reported.

One other procedural event during the sittings of the original Committee should be noted, and that was a motion moved by Mr. Joel Barnett calling upon the Committee to invite witnesses to give further information on matters recited at length in the preamble to the motion (pp. lxxxvii–lxxxviii). This was rejected by 8 votes to 3.

In other respects the Committee proceeded on lines broadly similar to those of their predecessors. The House referred to them the usual set of Accounts laid before the House by the Chancellor on the 20th May, which have always been made available to Civil List Committees, and, in the usual way, these Statements were printed as an Appendix to the Report (pp. xix–xxix). With the Minutes of Evidence were printed 21 of the Memoranda submitted to the Committee (pp. 84–160). Three of these papers contained proposals for amending the Civil List Act of 1952) p. 84); the first was the Chancellor's; the second was a proposal by Mr. John (now Lord) Boyd-Carpenter to link the Civil List to the revenue of the Crown Estate (p. 88); with this should be read a Memorandum by the Earl of Perth, First Crown Estate Commissioner, commenting on the proposal (p. 128); and the third was a proposal by Mr. Douglas Houghton (Chairman of the Parliamentary Labour Party and a former Chancellor of the Duchy of Lancaster) to set up a Department of the Crown (p. 88). Mr. Houghton later developed this in the form of a Draft Report, which was considered by the Committee of the following session on 10th November, 1971 (pp. liii–liv), but rejected by 8 votes to 7. It incorporated a Specimen Estimate for the Vote for such an organisation, which Mr. Houghton proposed should be called the Crown Commission. The list of witnesses is set out on page xci; the principal spokesmen for the Royal Household were the Lord Chamberlain, Lord Cobbold, and the Queen's Private Secretary, Sir Michael (now Lord) Adeane. In addition to witnesses from the Treasury, Inland Revenue, Crown Estate Commissioners, and Duchies of Lancaster and Cornwall, there were witnesses from the Civil Service Union.

After completing the taking of Evidence, the Committee having, on 30th July, been given power to sit notwithstanding any adjournment of the House, held two deliberative meetings on 2nd and 3rd August before the House rose for the summer adjournment, but did not in fact meet again that Session.

On 18th October, the Chancellor circulated to members of the Committee his draft Report (p. xxxix–xli), as also did Mr. William Hamilton (p. xli–xlvii,) and on 21st October the *Daily Mail* published what purported to be an account of the Chancellor's proposals. This was the subject of a Complaint of Privilege that day by Mr. William Hamilton; the complaint was referred to the Committee of Privileges, which made a Report on the matter on 7th March, 1972.* Mr. Houghton's draft report, already mentioned above, was circulated later, in the next session.

Parliament was prorogued on 28th October, and reassembled for the new session on 2nd November. The Committee was reappointed on November 4th. After a deliberative meeting on 8th November they met on 10th November to consider the three draft reports, in accordance with the normal procedure in such instances. Mr. Hamilton's and Mr. Houghton's reports were dealt with successively by means of amendments to leave out the words " the Chairman " and insert one or other of their names, in the question on the second reading of the Chairman's draft report (p. liv). The substance of Mr. Houghton's draft has already been indicated above. Mr. Hamilton's draft (which is summarised at p. xlvii) proposed an annual payment to the Queen of £100,000, and the transfer of Household salaries and expenses to annual Votes to be subject to quinquennial review by a Select Committee. Payments to other members of the Royal Family were to be drastically reduced or abolished. This draft report was rejected by 9 votes to 3; as already stated, Mr. Houghton's was rejected by 8 votes to 7. The Chairman's draft was thereupon read a second time, without a division.

Detailed consideration of the draft Report began on 15th November, and was completed a week later on the 22nd, after a total of five sittings; this compares with three sittings held by the 1952 Committee to consider their report. Owing to the larger number of amendments considered, and to the fact that two other drafts had been offered, the older practice of setting out the Chairman's draft report *in extenso* in the Minutes was followed (pp. xxxi to lxi). Many more amendments were considered than had been the case in 1952, and the Minutes of Proceedings for those five days occupy 24 pages (lv to lxxix) of the Report as compared with five pages in 1952. Whereas in 1952 several important amendments were moved by the then Leader of the Opposition, Mr. Attlee, none were proposed by the present Leader Mr. Harold Wilson. To a considerable extent the amendments proposed reflected

* *H.C.* (1971-72) 180.

the views expressed in Mr. Hamilton's draft report, and in Mr. Joel Barnett's motion of 13th July (pp. lxxxvii and lxxxviii). Mr. Boyd-Carpenter did not in fact move any amendments to give effect to the proposal contained in his Memorandum of 11th June, 1971 (Appendix 2, p. 88). A few amendments, mainly of a drafting character, were made, and the Report, as amended, was, on 22nd November, agreed to by 8 votes to 4.

The Report is set out in full at pp. v to xvii (excluding the Appendix) and summarised at p. xvii. The Civil List was increased from £475,000 (including £60,000 for the Privy Purse) to £980,000 (with nothing for the Privy Purse) and the old classes into which the Civil List has been divided were dispensed with. It was estimated that £810,000 would be required to finance Civil List expenditure in 1971–72 (para 23, page xii), thus providing a contingency reserve of £170,000 in the first year, for accumulation to meet deficits in later years: the comparable figure in 1952 was £70,000. The Chancellor's original proposals as set out in Appendix 1 to the Minutes of Evidence (pp. 84–7) and summarised on page 87 suggested a basic Civil List charged on the Consolidated Fund of £830,200. Deficits in subsequent years were to be made up by annual votes. So the Contingency reserve represented a reversion to the principle embodied in the 1952 Act. On the presentation of reports to Parliament to be made as necessary by the Royal Trustees, and in any case not less frequently than once every ten years, power was given to increase the Civil List by Treasury Order laid before Parliament which would thus have an opportunity to review the arrangement at least every ten years, and if necessary more frequently (paras. 28–9, pp. xxxviii and xxxix). This system of reviews was not very dissimilar from that proposed by Mr. Attlee in 1952 (p. 28).

The following increases were proposed in the taxable annuities of other members of the Royal Family:

	1937–1952	*1971*
H.M. Queen Elizabeth The Queen Mother	£70,000*	£95,000
H.R.H. The Duke of Edinburgh	£40,000	£65,000
H.R.H. The Princess Anne	£6,000†	£15,000
increasing in the event of marriage to	£15,000	£35,000
H.R.H. The Princess Margaret	£15,000	£35,000
H.R.H. The Duke of Gloucester	£35,000	£45,000
Younger sons at age of 18 before marriage	£10,000†	£20,000
Younger sons after marriage	£25,000†	£50,000
Widow of the Prince of Wales	£30,000‡	£60,000
Widows of younger sons (including H.R.H. The Duchess of Gloucester in the event of widowhood)	—	£20,000
Provision for other members of the Royal Family	£25,000	£60,000

The Report was debated on 14th December, 1971, on a motion moved by the Chancellor of the Exchequer, which concluded with the words,

* Queen Adelaide was voted a jointured £100,000 a year in 1831.
† The same as the annuities voted to the younger sons and daughters of Queen Victoria.
‡ The same as the annuities provided for widows of the last three Princes of Wales.

" and that the sums payable in pursuance of provision so made should be charged on the Consolidated Fund ". The Opposition in general supported the scheme proposed by Mr. Douglas Houghton in his draft Report, and to give effect to their view, Mr. Roy Jenkins, the former Labour Chancellor, then Deputy Leader of the Opposition, and a member of the Committee, moved an amendment to leave out the words " charged on the Consolidated Fund " and add, " payable out of moneys provided by Parliament "—i.e. by annual votes. The amendment was rejected on a division by 300 votes to 263; the main Question was then carried by 300 votes to 27, and a Bill was accordingly brought in on the Resolution.* The Second Reading of the Bill was debated on 21st December.† and carried by 166 votes to 45. The Committee Stage took place on 19th January 1972, when five amendments were debated, two of which were carried to a division, but none was made. The Bill was then read a third time and passed.‡

The House of Lords gave the Bill an unopposed Second Reading on 2nd February. It was read the third time and passed on 17th and received the Royal Assent on the 23rd February.

* *H.C. Deb.* 828, 1971–72, Cols. 278 to 400.
† *H.C. Deb.* 828, 1971–72, Cols. 1323 to 1382.
‡ *H.C. Deb.* 829, 1971–72, Cols. 495 to 557.

IX. THE INDIAN PRINCES AND THE CONSTITUTION

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The Background

Before the transfer of power from British to Indian hands in August 1947 under the Indian Independence Act,[1] the political map of India was painted in two colours—pink and yellow. Three-fifths of the territories constituting India painted pink represented British India and comprised what were called " the Governors' Provinces ", while the remaining two-fifths painted yellow consisted of what were called " the Indian States " or the Princely States.[2] Under the Government of India Act 1935, the " Indian State " meant any territory which, not being part of British India, was recognised as being such a State " whether described as a State, an Estate, a Jagir or otherwise "[3]. On the eve of Independence, the division of India into two distinct parts continued. British India consisted of eleven Governors' Provinces and six Chief Commissioners' Provinces.

The Indian States and Paramountcy

The other India—Indian India, consisted of some 600[4] Indian States, an elastic term covering " at one end of the scale, units like Hyderabad and Kashmir which were of the size of the United Kingdom, and at the other end minute holdings in Kathiawar extending only to a few acres ". Only sixteen States had a population of over one million. As many as 327 were in fact only Estates or Jagirs; they were " States " only in the sense that their territory did not form part of

Editors' note.—The views, if any, expressed in the present paper are purely personal and Dr. Kashyap's inidividual responsibility and should not be attributed to the Institute.

[1] 10 and 11 Geo. VI, C-30. The Indian Independence Bill was passed by the British Parliament in less than two weeks and became law on receiving the Royal Assent on 18th July, 1947.

[2] The base of this dualism lay in historical factors and in the peculiar processes of the growth of British power in India in the eighteenth and nineteenth centuries. Within a century of Clive's victory at Plassey in 1757 the whole of India was brought under British control. But the way it was achieved divided India into " British India " and " Indian States ". See Neal A. Roberts, " the Supreme Court in a Developing Society ", *The American Journal of Comparative Law*, Winter 1972, p. 79.

[3] Government of India Act 1935, Sec. 311. For the definitions of the expression " British India ", " Indian State " and " India ", see the General Clauses Act 1897 as adopted and modified by the Adaptation of Laws Order 1950, Section 3, Sub-sections (5), (28) and (30).

[4] Six hundred, according to the Joint Committee on Constitutional Reforms 1933-34; 562 according to the Bulter Committee and the Simon Commission—see *White Paper on Indian States*, March 1950, New Delhi, p. 17.

British India. The geographical set-up of the Indian States did not coincide with any ethnic, racial or linguistic divisions and their territories were closely interwoven with those of British India.[5]

The States had no direct constitutional relationship with British India, and the " sole link " between them and the Government of India was provided by the Crown as represented by and acting through the Viceroy, who as Crown Representative, represented to the Indian States the suzerainty of the British Crown while at the same time he was, in relation to British India, the head of the Government as Governor-General. The relationship, unique as it was, had come to be known by the term " Paramountcy " and was based on a multitude of specific Agreements, Treaties, Engagements and *Sanads* under which the ruling princes accepted the suzerainty of the British Crown and surrendered to it the management of their external relations, retaining with them the control of the domestic affairs of their States. Though by accepting the suzerainty of the Crown they were brought within the ambit of the British Empire, their territories did not become British soil, nor their subjects British subjects.[6] However, the paramountcy of the British Crown was by no means limited to the rights of the Crown flowing from the Treaties, etc. It was based on Treaties, Engagements, *Sanads*, as supplemented by usage and sufferance and by decisions of the Government of India and the Secretary of State embodied in political practice.

The internal administration of the States and their political set-up varied greatly. There was a very wide difference in the degree of administrative efficiency achieved by the most advanced and the most backward. Also, while the ruling princes of some of the bigger States had more substantial powers of administration over their territories, other estate holders were allowed only some limited magisterial powers and rights of collecting revenue. But, big or small, for external purposes all the States were, for all practical purposes, in the same position as British India. They had no international life and were required to give effect to the international obligations entered into by the Paramount Power. Even in regard to the powers in internal affairs vested in respective States, the Crown had a right to interfere " for the benefit of the Ruler of the State, or of India as whole, or for giving effect to international commitments ".[7] Thus, " Paramountcy " provided the British an elastic instrument for regulating the relations with the Princes and between British India and the Indian States.

The Indian Independence Act 1947 provided for the setting up in India as from 15th August, 1947, two independent dominions to be known respectively as India and Pakistan. India was to comprise all territories included in British India immediately before the appointed day—15th August, 1947—with the exception of the territories included

[5] *Ibid.*, pp. 4, 17–20.
[6] R. Coupland, *The Constitutional Problem in India*, Madras, 1945, Part I, p. 7.
[7] *White Paper*, *op. cit.*, p. 13, and Coupland, *op. cit.*, Part I, p. 14.

in Pakistan by the Act.[8] However, as regards the Indian States, the Act left the position vague and uncertain. With the transfer of power in New Delhi, paramountcy was transferred neither to the successor Government of India nor to the Princes themselves. It lapsed. The Act terminated the paramountcy and the suzerainty of the Crown over the States.[9] Future arrangements were to be settled by negotiation. Section 7(i) (b) provided that as from the appointed day—

> (*b*) the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise.
>
> Provided that, notwithstanding anything in paragraph (*b*) of this sub-section, effect shall, as nearly as may be continued to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the ruler of the Indian State . . . on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.

The situation, as the White Paper later recalled, was fraught with the gravest danger to India within whose geographical limits practically all the States were situated, for " an India broken into hundreds of independent entities would have inevitably lapsed into a state of chaos ". However, before the " appointed day " (15th August, 1947) dawned, of the 552 States situated within the geographical limits of the Dominion of India, all except three, namely Hyderabad, Jammu and Kashmir, and Junagadh had acceded to India. Jammu and Kashmir acceded on 26th October, 1947, and the Standstill Agreement entered into between the Government of India and the Nizam in November 1947 ensured virtual accession of the State in respect of defence, external affairs and communications. Junagadh was taken over on 9th November, 1947, at the request of the Nawab's Council; a referendum held subsequently, in February 1948, gave an almost unanimous vote in favour of accession to India.[10]

The Instruments of Accession were followed by Merger Agreements or Covenants which led to the consolidation of the States into sizable or viable administrative units and their integration with the mainstream of India's body politic. Thus, 216 States were merged into provinces geographically contiguous to them; sixty-one States were converted into seven centrally administered areas or Chief Commissioners' Provinces, namely Himachal Pradesh, Kutch, Bilaspur, Bhopal, Tripura, Manipur, and Vindhya Pradesh; and 275 States were inte-

[8] 10 and 11 Geo. VI, C.30, S.1 and 2(1).

[9] For a discussion on the consequences of the lapse of paramountcy, see the *White Paper*, *op. cit.*, pp. 32–7 and 141.

[10] *Ibid.*, pp. 35–6 and 111–14.

grated into five " Unions of States ", namely, Saurashtra, Rajasthan, Madhya Bharat, Patiala and East Punjab States Union, and Travancore Cochin. Only three States, namely Hyderabad, Mysore, and the State of Jammu and Kashmir, which were considered viable in themselves, continued as separate units.

Under the influence of political events and the prevailing climate of opinion in the country all the Rajpramukhs of the Unions of States as well as the Maharaja of Mysore signed revised instruments of accession, thereby acceding to the Dominion of India in respect of all matters included in the Union and Concurrent Legislative lists excepting only those relating to taxation. Further, in November 1949 the Rajpramukhs as well as the rulers of Mysore and Hyderabad issued proclamations declaring that " the Constitution shortly to be adopted by the Constituent Assembly shall be the Constitution " for their respective States or Unions of States and shall, " as from the date of its commencement, supersede and abrogate all other constitutional provisions inconsistent therewith which are at present in force in this State ".

Thus, by the time the Constitution of India came into force, the 550 and odd Indian States had been " integrated geographically " and, with a lone exception,[11] brought into the same constitutional relationship with the Centre as the erstwhile provinces of British India, thereby consummating, in the words of Sardar Patel, " the great ideal of geographical, political and economic unification of India which had for centuries remained a distant dream ".[12]

The Privileges and Purses

Under the initial Instruments of Accession the Princes had surrendered to the then Dominion Government of India only three subjects—Defence, External Affairs and Communications. Under the Merger Agreements and the Covenants the Princes gave up their internal governmental functions in respect of all subjects and surrendered the territories of their States. The Merger Agreements and Covenants also provided that the Princes would continue to enjoy their personal rights and privileges and would be paid a Privy Purse. As the *White Paper on Indian States*, issued by the Government of India in March 1950, said:

> The Instruments of Merger, and the Convenants establishing the various Unions of States, are in the nature of overall settlements with the Rulers who have executed them. While they provide for the integration of States and for the transfer of power from the Rulers, they also guarantee to the Rulers privy purse, succession to gaddi, rights and privileges, and full ownership, use and enjoyment of all private properties belonging to them, as distinct from State properties.

[11] Article 370 made special provisions for the partial application of the Constitution to the State of Jammu and Kashmir. These provisions were obviously " Temporary and Transitional ".

[12] *White Paper*, *op. cit.*, pp. 371–2; V. P. Menon, *The Story of the Integration of the Indian States*, Bombay, 1956, pp. 489–90.

In the generality of cases, the Privy Purse was calculated on the basis of a percentage of the average annual revenues of the State, subject to a ceiling of Rs. 10 lakhs. In the case of eleven major States with very large revenues the Government departed from the ceiling of Rs.10 lakhs and fixed higher Privy Purses. These eleven States were: Hyderabad, Gwalior, Indore, Patiala, Baroda, Jaipur, Jodhpur, Bikaner, Travancore, Bhopal and Mysore. In the case of their Rulers the Government laid down that the increased amounts would be payable to them only for life and that, so far as their successors were concerned, the Government of India would pay such amounts as they might decide.

In 1950–51, the Government of India paid a total amount of over Rs.5.5 crores in Privy Purses to the former rulers of India's Princely States. According to official figures, since Independence the Government had paid to the Princes a sum of nearly Rs.98 crores up to 1968–69. The figures for 1969–70 and 1970–71 were 4.79 and 4.78 crores respectively. The amount of purses received by individual Princes varied widely, ranging from Rs.26 lakhs per annum, which was the highest being paid to the former Ruler of Mysore, to Rs.192 per annum which the former ruler of Katodia in Saurastra received. The number of Princes getting Privy Purses in 1970–71 was 278.

The Privileges enjoyed by the Princes also varied widely. However, some of these were: use of titles like His Highness, firing of gun salutes on ceremonial occasions, possession of palaces, posting of guards at the palaces, free medical care for themselves and their families outside their former States, possession of arms and ammunition without license, free water and electricity, use of red number plates and flying their own flags on their cars, exemption from payment of tax on vehicles, import of duty-free articles for private use, special passports and foreign exchange, immunity from legal action and appearance in courts, exemption from being sued for any criminal or civil offence without the consent of the Government of India, holding Durbars as in olden days, observance of their birthdays as holidays in the territory of their respective former States, military honours at their funerals as well of those of their consorts and children, exemption from payment of tax on Privy Purses and municipal taxes on their properties, precedence in public functions, fishing and shooting rights, special saloons on railways, non-payment of radio, TV and driving license fees, etc.

Position under the Constitution of India

Constitutional sanction to the Merger Agreements and Covenants and to the special personal rights, privileges and Privy Purses of the Princes of the former Indian States was provided by incorporating specific provisions in the Constitution of India.

Sardar Patel, who introduced the draft provisions of the Constitution concerning the Princes and their privileges and purses, said in the Constituent Assembly that the Privy Purse settlements were " in the

nature of consideration for the surrender by the Rulers of their ruling powers and also for the dissolution of the States as separate units ".[13]

The Constitution of the Republic of India as it came into force on the 26th of January, 1950, contained the following definitions of the terms " Indian State " and " Ruler ":

" Indian State " means any territory which the Government of the Dominion of India recognised as such a State.[14]

" Ruler " in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (i) of Article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler.[15]

Besides including these two terms in the main definition clause, the Constitution devoted three separate articles to the privileges and Privy Purses of the Princes. Thus Article 291 provided that—

Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, had been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as privy purse, such sums shall be charged on, and paid out of, the Consolidated Fund of India; and the sums so paid to any Ruler shall be exempt from all taxes on income.

Article 362 enjoined the Union and State Legislatures and Governments to pay due regard to the guarantee and assurance given under any covenant or agreement referred to in Article 291 with respect to the personal rights, privileges and dignities of the Ruler of any Indian State.

Lastly, Article 363 debarred the jurisdiction of the courts " in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of the Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which had continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument. The terms ' Indian State ' and ' Ruler ' for purposes of this Article (363) were separately defined in its clause (2) which said:

(*a*) " Indian State " means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(*b*) " Ruler " includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

[13] *Constituent Assembly Debates*, Vol. X, pp. 165–8.
[14] *Constitution of India*, Article 366(15).
[15] *Ibid.*, Article 366(22).

Demand for Abolition of Purses and Privileges

According to Roberts, in the first years of India's Independence, Princes took a very co-operative political role, and very little critical mention of their unique privileged position was taken by the dominant Congress Party. Some of Princes actually became heads of the States of the Union as Governors and Rajpramukhs. By mid-sixties, however, Princes had gradually become highly politicised. If some of the Princes fought elections on Congress tickets, there were others who opposed the Congress candidates. In the territories of the former princely States people still looked upon their former Maharajas with awe, respect and a sense of feudal loyalty. Political parties and programmes, therefore, became irrelevant in those areas and members of the former ruling families or candidates supported by them usually won by large majorities.[16] When the Princes began taking " larger and larger role in elective politics and began backing local candidates with both monetary and personal help ", there appeared in the Parliament a body of opinion which felt that the Privy Purses and Privileges given to the former Rulers were being put to political use.[17] In the 1967 elections the Congress Party had some very serious setbacks and it lost its unique position as the single dominant party. The rethinking in the party favoured a more radical socialistic approach to bringing down disparities and building an egalitarian social order. Accordingly, the Congress Working Committee meeting in May 1967 adopted a ten-point programme which *inter alia* sought the abolition of Princely privileges. The A.I.C.C. session held in June that year adopted a modified ten-point programme which *inter alia* sought the abolition not only of Princely Privileges but also of the Privy Purses. The Privileges and Privy Purses enjoyed by the ex-rulers were according to the Resolution, " incongruous to the concept and practice of democracy ".

Ever since the adoption of the ten-point programme by the A.I.C.C., certain personalities and left-oriented groups in the Congress Party kept up constant pressure for its implementation. The question of Privy Purses and Privileges was discussed by the Cabinet several times. The Cabinet was reported to be divided.[18]

At the Bangalore Session of the A.I.C.C., Prime Minister Shrimati Gandhi took the initiative in suggesting accelerated action towards implementing the ten-point programme and giving a new orientation to economic policies. Events towards the end of 1969 moved fast. The election of Shri V. V. Giri as President and the split in the Congress followed. Shrimati Gandhi's Government lost its absolute majority in Lok Sabha and her party—the new or the ruling Congress—was reduced to the position of the single largest party. Heading a minority Government, Shrimati Gandhi was naturally dependent to some extent

[16] By 1970 some 25 Members of Parliament were either rulers or members of princely families. See Roberts, *op. cit.*

[17] Roberts, *op. cit.* Also see William Richter, *Princes in Indian Politics*, VII; *Econ. & Pol. Weekly*, 535 (27th February, 1971), referred to by Roberts.

[18] K. C. Mahendru, *The Politics of Privy Purses*, Ludhiana, 1971, p. 24.

on support from outside her own party. This came from leftist elements. Under these circumstances, it was natural that the leftists within the Congress and outside pressed the Government, among other things, for implementing the policy of the abolition of the anachronistic Privileges and Purses of ex-rulers.

The Still-born Abolition Law

As early as 1967–68 the Union Ministry of Law had formulated the outlines of a scheme for the abolition of the Privy Purses and Privileges. The same year the Princes had formed a " Concord of Princes " to represent their case. For nearly three years, negotiations between the Concord and the Government continued, but there appeared to be no meeting ground between the rigid postures of the two sides. While the Princes considered all talk of abolition of their Purses and Privileges as immoral and a breach of faith, the Government appeared determined to end the Purses and Privileges as anachronisms in a democratic society wedded to the ideals of equality and social justice.

Amidst mixed scenes of jubilation and protests, the Union Minister, Shri Y. B. Chavan, introduced in the Lok Sabha the terse, three-clause Constitution (24th) Amendment Bill on 18th May, 1970. The Bill sought to delete Articles 291 and 362 and Clause (22) of Article 366 with a view to ending the last vestiges of princely rule in India.[19] The statement of objects and reasons in the Bill said:

"The concept of rulership, with privy purses and special privileges unrelated to any current functions and social purposes, is incompatible with an egalitarian social order. The Government has, therefore, decided to terminate privy purses and privileges of the rulers of former Indian States."

The text of the Bill read:

"Be it enacted by Parliament in the 21st year of the Republic of India as follows:

1. This Act may be called the Constitution (24th Amendment) Act 1970.
2. Articles 291 and 362 of the Constitution shall be omitted.
3. In Article 366 of the Constitution, Clause (22) shall be omitted."

After a fairly well-documented presentation of the princes' case by the Maharaja of Kalahandi, Mr. P. K. Deo and Mr. Balraj Madhok's criticism that the Government's move was but a " stunt " and " diversionary tactics " to turn people's attention from more important issues, the Opposition (to the Bill) threw in the towel and did not challenge a Division on the Motion to grant leave for its introduction. It was all over in less than an hour after the Government neatly turned the tables against the princes. The Prime Minister, the Home Minister and other Ministers sat pretty on the treasury benches watching the fun, while the three Communist parties, D.M.K., S.S.P and P.S.P. fought it out with the Swatantra and Jan Sangh.[20]

[19] *Times of India*, 19th, May 1970. Also *The Hindu*, 19th May, 1970.
[20] *Ibid.*

The consideration of the Constitution (24th) Amendment Bill 1970 was taken up by the Lok Sabha only on 1st September, 1970. The Motion for consideration was moved by the Prime Minister herself. A three-line whip was issued to all the Members of the ruling party making it compulsory for them to attend and vote and disallowing firmly any " conscience-vote ". A Deputy Union Minister, Shri Bhaun Pratap Singh, Raja of Narsinghgarh, resigned from the Ministry on being refused freedom to vote against the Bill. Maharajas of Tripura and Ajaigarh resigned from the Congress Party. The Concord of Princes, like the ruling Congress Party, had left nothing to chance. As Mahendru describes the atmosphere:

> In that state of preparedness, with maximum attendance in the House and the galleries packed to capacity, including 30 strong royalty in fair sex for the first time thronging the place—indeed a historic occasion—the Prime Minister, Mrs. Gandhi, moved the motion for the consideration of the Constitution (24th) Amendment Bill. The historic Central Hall of the Parliament, where her father had made his tryst with destiny, hummed with high excitement on 1st September, 1970—in many ways reminiscent of the fateful drama that preceded Presidential election last year with both the Government and the Opposition sitting ready for the cat-and-mouse play. The atmosphere in the Lok Sabha was surcharged with such excitement as was never witnessed in the House before.[21]

The Lok Sabha debated the Bill for two days—1st and 2nd September. On the second day, amidst acclamation from the treasury benches and a sizable section of the Opposition, the Speaker, Dr. G. S. Dhillon, declared that the Bill as amended by an official amendment moved by Shrimati Gandhi had been passed by 339 to 154 votes, i.e. by 9 more votes than the required two-thirds majority. Shrimati Gandhi's amendment fixed 15th October as the date on which the legislation was to come into force.

The voting pattern was not uniform at all stages of the Bill's passage. It was 336 to 155 on the First Reading, and two clauses received 339 to 152 and 336 to 153 votes respectively. The amendment fixing 15th October as the date on which the legislation would come into force was carried by 338 to 152 votes.[22]

While speaking on the Bill in a packed House with the highest ever percentage of attendance (98·5), the Prime Minister had earlier appealed to the M.P.s to show a sense of history in the context of the needs of a dynamic society striving for equality and social justice. Princely Privileges and Privy Purses, she said, were incompatible with the democratic constitution, the spirit of the time and the demand for change.[23]

The Bill as passed by the Lok Sabha came up before the Upper House—the Rajya Sabha—and was discussed on 4th and 5th September,

[21] Mahendru, *op. cit.*, pp. 54–55.
[22] *The Hindustan Times*, 3rd September, 1970.
[23] *Lok Sabha Debates*, 1–2 September, 1970. On the first day, the attendance was just over 400, but on the second, much against the expectation of the Opposition, as many as 493 Members out of 519 turned up.

1970. In almost the same words as she had used in the Lok Sabha, the Prime Minister appealed for the acceptance of the Bill, declaring that history was irreversible and change inevitable. When the Bill was put to vote, it got as many as 149 votes, as against only 75 Members opposing it. However, it failed to get the requisite two-thirds majority by a thin margin of a mere one-third of one vote.[24] The passage of the Bill was thereby blocked.

The party-wise break-up of the Rajya Sabha voting on the Bill to abolish Privy Purses and Privileges (under headings: Party, Strength, Present, Absent, Yes, No) was as follows:[25]

Party	*Strength*	*Present*	*Absent*	*Yes*	*No*
Congress (R)	88	86	2	85	1
Congress (O)	41	41	—	1	40
Jana Sangh	15	15	—	—	15
Swatantra	12	12	—	1	11
C.P.I.	9	9	—	9	—
C.P.I. (M)	8	7	1	7	—
S.S.P.	8	7	1	7	—
D.M.K.	7	5	2	5	—
P.S.P.	5	5	—	5	—
Akali Dal	3	3	—	3	—
B.K.D.	3	3	—	—	3
Muslim League	4	3	1	3	—
Republican	2	1	1	1	—
F.B.	1	1	—	1	—
F.B. (Marxist)	1	1	—	1	—
R.S.P.	1	1	—	1	—
Sampoorna Maharashtra Samiti	1	1	—	1	—
Telengana Front	1	1	—	1	—
I.S.P.	1	1	—	1	—
Bangla Congress	1	1	—	1	—
Nom and Ind	25	18	7	13	5
Jana Congress	2	2	—	2	—

Derecognition of Princes by Executive Order

After the Constitution (24th) Amendment Bill 1970 was thrown out in the Rajya Sabha, the Prime Minister, acting swiftly and, true to her style, dramatically, called an emergency meeting of the Union Cabinet on 5th September itself. The Cabinet decided to advise the President to derecognise all the 278 " Rulers " by a Presidential order issued under Article 366(22) of the Constitution under which a " Ruler " meant a person who *inter alia* was recognised as such by the President for the time being. The Cabinet dispersed around midnight. Before the next day dawned, the Presidential order was signed by Shri V. V. Giri who was then at Hyderabad in the South.[26] The withdrawal of recognition was understood to imply automatic abolition of the Privy

[24] The Government needed a minimum of 149-1/3 votes—two-thirds of the 224 (out of a total of 240) Members present and voting.

[25] *The Statesman*, 6th September, 1970.

[26] The Derecognition Order was presented to the President by a special messenger who flew to Hyderabad.

Purses and Privileges of the 278 former " Rulers " and 42 Bhagdars and Talukadars. The letters communicating the President's order were signed by the Home Secretary in the name of the President and posted on 6th September, 1970. They were to apply with immediate effect.

The Legal Battle

After the Legislature and the Executive, it was the turn of the Judiciary. Within four days of the derecognition order, five of the former rulers filed a petition in the Supreme Court challenging the Presidential order and seeking an *ex parte* stay of its operation. For the third time in the court's history, the Chief Justice constituted a full bench of eleven judges to hear eight writ petitions in the Privy Purse Case.[27] The case was argued for twenty-one days by an impressive galaxy of some of the most distinguished advocates in India. The Supreme Court delivered its judgment on 15th December, 1970, and by a nine to two majority held the derecognition order of the President to be " unconstitutional, illegal and void and on that ground inoperative ". The *status quo ante* was thus restored, leaving the Princes fully entitled to all their Privy Purses and Privileges. The Union Government was asked by a writ of mandamus not to enforce the said Presidential order.

The majority judgment was largely based on the ground of the President's order being *ultra vires* and beyond the intention of Article 366(22) inasmuch as the President was not invested with " authority to recognise or not to recognise a Ruler arbitrarily ". The President must exercise his power to recognise a Ruler or to withdraw recognition " *bona fide*, and in the larger interest of the people consistent with the provisions of the Constitution to maintain the institution of Rulership ". The Court held:

> the power of President is plainly coupled with a duty, a duty to maintain the constitutional institution, the constitutional provisions, the constitutional scheme, and the sanctity of solemn agreements entered into by the predecessor of the Union Government which are accepted, recognised and incorporated in the Constitution. An order merely " de-recognising " a Ruler without providing for continuation of the institution of Rulership which is an integral part of the constitutional scheme is, therefore, plainly illegal.[28]

The majority judgment did not directly pronounce on the subject whether the right to receive Privy Purse was a right to property. Two of the judges in their separate judgments, however, were categorically of the view that it was. In fact the majority also appeared to have come very close to accepting this position when it said that as soon as an Appropriation Act was passed, the outstanding Privy Purse became the property of the Ruler in the hands of the Government. This created a difficult situation and almost drove the Government to

[27] Madhav Rao Scindia and others *v.* Union of India, A.I.R., 1971, S.C., 530.
[28] *Ibid.*, p. 569.

the wall in so far as if Privy Purse was private property, the relevant provisions of fundamental rights were attracted and the Rulers could not then be deprived of their right to Privy Purses even by a Constitution Amendment Act.[29]

The New Parliament and Fresh Legislation: Abolition of Privy Purses and Privileges

Reacting to the Supreme Court judgment and angry enquiries of excited and restive M.P.s, Prime Minister Shrimati Gandhi told the Lok Sabha and the Rajya Sabha on 15th and 16th December that the Government had " expected obstacles in every step in our march towards progress and in bringing better life to our people ", the court judgment did not constitute a " defeat " or create any " predicament " for the Government which remained " committed to its policy of abolition of Privy Purses by appropriate constitutional means. ".

Once again acting swiftly and with a tremendous confidence, astute statesmanship and a sense of timing, Shrimati Gandhi decided to seek a fresh vote and a clear verdict from the people. Within a fortnight of the Supreme Court judgment, the Council of Ministers advised the President to dissolve the Lok Sabha.

The fresh General Election to the Lok Sabha held in March 1971 more than vindicated the programmes and policies of the Prime Minister, Shrimati Gandhi. Her ruling Congress Party was returned not only with absolute majority in its own right but with a clear two-thirds majority. One of the very first things the new Parliament did was to restore to itself the full power to amend any part of the Constitution including the Fundamental Rights. This was achieved by the Constitution (24th) Amendment Act 1971.

With a view to fulfilling its longstanding commitment and with the unanimous consent of the House, on 9th August, 1971, Shrimati Gandhi introduced the 26th Constitution Amendment Bill in the Lok Sabha seeking to terminate the Privy Purses and Privileges of the former Rulers of the princely States. In the statement of objects and reasons for the Bill it was stated that to end Privileges and Privy Purses it was necessary to insert a new Article to terminate expressly the recognition already granted to such Rulers and to abolish Privy Purses and extinguish all rights, liabilities and obligations in respect of Privy Purses. With the exception of this article which was added expressly to provide for de-recognition of Rulers and their successors and for the abolition of purses, the Bill was largely similar to the one introduced in the previous year.

As contradistinguished from the atmosphere which prevailed at the time of the earlier Bill in 1970, there was not even a murmur of dissent

[29] In the famous Golak Nath's Case (L. G. Golak Nath *v.* Punjab, A.I.R. 1967 S.C. 1643), the Supreme Court had held that the Parliament was not competent to take away or abridge any of the fundamental rights even by way of constitutional amendments.

this time and the Bill was introduced amidst thunderous applause from virtually all sections of the House. The whole process was over in about a minute.

On 2nd December, 1971, the Lok Sabha voted with a massive voice for the Constitution (26th) Amendment Bill. The passage of the Bill was loudly cheered. Only six Swatantra Members voted against the Bill, two Independents and two of the princely families abstained, Jan Sangh stayed out of the House and as many as 383 Members from the Ruling and Opposition benches supported it. Earlier the Prime Minister laid stress on the irrelevance of the Princely order when efforts were being made to establish " a country of equals ". On the other hand, describing the 26th Constitution Amendment Bill as a Bill to nationalise the Princes of India, the Chairman of the Concord of Princes, Shri Gaekwad said in the Lok Sabha that as " the fortunate or unfortunate leader of the trade-union of the Princes " it was his duty to set the records straight. Twenty-two years ago, he said, we were called the co-architects of Indian Independence on this very floor, while today we are branded as an anachronism and even reactionaries obstructing the path towards an egalitarian society. Shri Gaekwad appealed to the House through the Speaker to treat the Princes as " Indians, equal partners in Indian history, past and future, and that the few qualities that some of us possess be used for the benefit of the nation and that fair play and justice be dispensed to us due to all citizens of this great and beloved country ". The Rulers were quite content to face the verdict both of justice and history, he said. He ended his spech with a slogan: " Maharaja is dead, long live these Maharajas ", pointing at the Members on the treasury benches.[30]

On 9th December, 1971, the Rajya Sabha, which had thrown out the predecessor of the present Bill, passed the Constitution (26th) Amendment Bill with an impressive majority of 167 votes to 7, thereby providing more than the requisite two-thirds majority. The Bill as passed by the two Houses of Parliament received the President's assent before the end of the year 1971. And, with the close of the year 1971 the high drama enacted round the issue of the Privy Purses and the Privileges of the former princely order in India came to an end and with that ended the last vestiges of monarchy in the Republic of India.

With the Constitution (26th) Amendment Act coming into force, all the Privy Purses and Princely Privileges were abolished with effect from the new year—1st January, 1972. Articles 291 and 362 of the Constitution stood omitted and after Article 363 of the Constitution a new Article 363(A) stood inserted. The new Article expressly terminated the recognition already granted to the Rulers by the President before the commencement of the Constitution and specifically abolished the Privy Purses. The definition of the term " Ruler " in Article 366(22) was modified to say that it would mean a person who

[30] *The Hindustan Times*, 3rd December, 1971, and *The Statesman*, 3rd December, 1971.

was so recognised before the commencement of the Constitution (26th) Amendment Act 1971.

Thus the Indian Princes have passed into history and as of today have no constitutional position other than as equal Citizens of India.[31]

[31] Certain privileges are still available to the former princes because some of the statutory provisions which confer them have not so far been deleted. The Union Cabinet was understood to have resolved on the 7th June, 1972, to abolish all such remaining privileges by amending the existing statutes. The State Governments have already been asked to remove all the privileges that could be removed through executive action. The Centre has also already taken similar steps such as stoppage of customs-free imports by the ex-Rulers. To meet the hardships of the former Princes, the Cabinet is reported to have approved a scheme for payment of transitional allowances to them. These allowances will be spread over a period of some years. (*Indian Express*, 8th June, 1972.)

X. PRESENTATION OF A MACE TO THE LEGISLATIVE ASSEMBLY OF MAURITIUS

By M. H. Lawrence, C.M.G.

Clerk of the Overseas Office, House of Commons

On 23rd November, 1970, the House of Commons agreed to an address to Her Majesty praying for the presentation of a mace to the Legislative Assembly of Mauritius to mark the attainment of independence by that country in March 1968. Her Majesty gave a favourable reply and in December the House nominated Mr. (now Sir) Bernard Braine and Mr. Ernest Perry to make the presentation. I accompanied them as Clerk to the Delegation.

Before we left London we were entertained generously by the High Commissioner for Mauritius, Dr. (now Sir) Leckraz Teelock, and his wife, and we also called upon Mr. Speaker who gave the Leader, Mr. Braine, a letter to present to the Speaker of the Mauritius Legislative Assembly. We left London on Sunday, 7th March, and after a short stop in transit at Nairobi we landed in sunshine at Plaisance airport at 3.40 p.m. on Monday, 8th March. There to greet us were Mr. Gujadhur and Mr. d'Espaignet, the Deputy Speaker and the Clerk, respectively, of the Legislative Assembly. Also present were the British High Commissioner, Mr. Carter, and the Chief of Protocol of the Mauritius Government, Mr. Mamlugon. We then drove the thirty-odd miles across the island to the home of the High Commissioner with whom we were to stay during our visit and apart from calling upon the Governor General at his charming eighteenth-century residence, Le Reduit, we had no engagements that evening.

The presentation ceremony took place next day, Tuesday, 9th March, and was preceded by two formal calls by the Delegation. The first was upon the Speaker, Sir Harilal Vaghjee, who was accompanied by the Clerk, and to both of whom letters of greeting were handed over, Mr. Braine giving Mr. Speaker Lloyd's letter to Sir Harilal and I giving one from Sir Barnett Cocks to Mr. d'Espaignet. The second call was upon the Prime Minister, Sir Seewoosagar Ramgoolam, who welcomed us on behalf of the Government. The ceremony began at noon, the Assembly having met shortly beforehand, and the formal procession into the new (1965) and very splendid semi-circular Chamber was led by the Prime Minister and the Leader of the Opposition, Mr. Lesage. The old mace of Mauritius lay upon the Table, the Assembly being in session, while I carried the new one draped by the Union Jack. Our Delegation was seated in the well of the Chamber facing Mr. Speaker who made the first speech of welcome. Mr. Braine and Mr. Perry then spoke, bringing greetings from Westminster and formally presenting the new mace to the Legislative Assembly,

after which the old mace was covered by the Mauritian flag and the new one, uncovered, was laid upon the Table resting upon the special brackets which had been provided for it. Further speeches of thanks were then made, by the Prime Minister and the Leader of the Opposition, on conclusion of which the Delegation processed formally from the Chamber and the Speaker suspended the sitting. It was a dignified and impressive ceremony with the visitors' gallery as well as the Members' benches full to capacity and with suitable arrangements for the press and photographers to which the Mauritian newspapers subsequently did full justice. An official parliamentary luncheon then followed in the Parliament building, but with no speeches, after which the Assembly resumed its sitting and we for our part drove for three-quarters of an hour up the coast away from the humidity of Port Louis for a bathe in Mauritius' coral island sea as clear and as blue as anywhere else in the world.

The Delegation remained in Mauritius for four more days in order to be present for the independence anniversary celebrations on National Day, 12th March, and because our hosts wished generously to show us something of their country's many activities and achievements, economically and socially. We visited the Municipality of Port Louis, whose Mayor, Mr. Duval, is also Mauritius' Foreign Minister; the Chamber of Agriculture, which is concerned largely with Mauritius' staple crop of sugar upon which her economy so largely depends, the Sugar Industry Research Institute and the Mauritius Institute. We also spent a very interesting morning at the University of Mauritius, whose imaginative growth so impressed us, and we were entertained by the Township of Beau Bassin—Rose Hill. On Friday, 12th March, we accompanied the High Commissioner to the Champ de Mars, the race-course set in an amphitheatre of hills, where a vast crowd had assembled for National Day celebrations which lasted for about three hours, beginning with the formal salute to the Mauritian flag by the Governor-General, continuing with many dances and other spectacles representative of the varied strands of Mauritian life and ending with a march and drive past the grandstand by a great number of the participants and concluding with a procession of floats of various descriptions.

Our final day, Saturday, was spent in seeing something of the countryside including the famous botanical gardens of Pamplemousse and enjoying a bathe and an excellent meal of the local fish before our departure by air that evening. It had been a memorable visit for us, during which we had experienced at first hand and many times over the warmth and generosity of the Mauritian people and had been able to see something of their life and their country. It had been our privilege to present Westminster's gift as a mark of Mauritius' independence and our good fortune thus to have been enabled to spend five days in this most beautiful of islands.

XI. OFFICERS OF PARLIAMENT: STATUS AND SALARIES

The following Resolution was passed at the Eighth General Meeting of the Society in 1970:

THAT THE PATTERN OF RELATIVITY ESTABLISHED BETWEEN THE SALARIES AND STATUS OF OFFICERS OF THE UNITED KINGDOM PARLIAMENT AND THE BRITISH CIVIL SERVICE BE RECOMMENDED AS A MODEL FOR ALL LEGISLATURES IN THE BRITISH COMMONWEALTH.

In the light of the Resolution, which was subsequently communicated to all Governments in the Commonwealth, the Questionnaire for this volume of THE TABLE asked the following questions:

1. What is the current pattern of relativity between the salaries and status of the officers of your Parliament and your comparable public service?
2. Do officers of Parliament have permanent established posts, or are they on secondment?
3. Do officers of Parliament have independent professional status and, if so, how is it secured?

Answers to these questions show that there are wide variations of practice throughout the Commonwealth. Because of the way the questions were worded, however, it is impossible to say whether there have been any dramatic improvements in the status and salaries of officers of Parliament since the Resolution was passed two years ago. In some legislatures, mainly the smaller ones, officers are seconded to the parliamentary from the public service. In most countries, however, it is evident that the importance of securing a totally independent, professional cadre to serve Parliament is well recognised. This has been achieved either through provisions enshrined in the constitution or by ensuring so far as possible that appointments to the clerkship (or secretaryship) are from the ranks of the Clerk's Department.

In a number of countries, however, and notably Australia, clerks are still paid far less than their equivalent grades in the public service. This no doubt could be the result of the age-old myth that Parliament is a half-time occupation whereas in truth, with legislation and parliamentary scrutiny increasing rapidly, most officers of Parliament are indeed fully occupied throughout the year. Yet in those legislatures which meet on only a few days during the year the Clerk, often without assistance, has to perform a wide range of other duties, for instance that of electoral officer.

The answers to the Questionnaire given below are not grouped in any particular way, but state legislatures are placed immediately after their national parliament, since the practice in such cases is nearly always similar.

Westminster: House of Lords

There is virtually complete relativity between the salaries and status of the officers of the House and those of the Civil Service. An agreed scale of equivalent ranks has been established, and changes in salaries and pensions, etc. are applied to the officers of the House of Lords, on the authority of the Offices Committee, very shortly after they are promulgated for the Civil Service.

Officers of the House do have permanent established posts, and in practice they have the same rights in their posts as the Civil Service. As a matter of strict law, however, the Clerk of the Parliaments has the right to " hire and fire " any member of the Parliament Office other than the Clerks at the Table. The Clerks at the Table, by Act of Parliament, can only be dismissed by order of the House.

The Clerk of the Parliaments Act 1824 provides that the Clerk of the Parliaments himself is to be appointed by the Crown, which means in effect the Prime Minister. Other Clerks at the Table are to be nominated by the Lord Chancellor, and the remaining members of the office by the Clerk of the Parliaments.

Other Officers of the House—the Gentleman and Yeoman Ushers of the Black Rod, the Serjeant-at-Arms, Librarian, etc., are appointed specifically to posts which they will hold until they reach retirement age. They enjoy virtually complete independent status.

Westminster: House of Commons

During the discussion which preceded the passing of the Resolution referred to in the Questionnaire, Sir Barnett Cocks outlined the main features of the linkage between officers of the United Kingdom Parliament and civil servants in relation to pay and conditions, and it is unnecessary to repeat at length what he then said. Each grade in the Clerk of the House's department in the House of Commons is linked to an equivalent grade in the Civil Service, the Clerk of the House himself ranking as equivalent to the Permanent Secretary of a major government department; and any adjustment in the pay of the Civil Service grade is automatically and without further negotiation matched by a corresponding increase in the pay of the House of Commons grade.

The linkage is reinforced by the fact that the qualifications required for entry into the Clerk's Department are similar to those for entry into the Civil Service and the selection procedures for both are identical. Once candidates who have expressed a preference for the Clerk's Department are accepted into it, they can look forward to permanent, established employment there and this more than anything else guarantees their independence of the Civil Service and Government. Parliamentary sessions in the United Kingdom are long enough to require the full-time attendance of a permanent staff, and there is no question of temporary secondment of officers of Parliament to the Civil Service or of civil servants to Parliament.

Northern Ireland

The Northern Ireland parliamentary staff are divided into four categories to which different considerations apply.

Category I comprises the Clerk of the Parliaments, the Clerk-Assistant, the Serjeant-at-Arms and the Gentleman Usher of the Black Rod. These officers are appointed by Warrant of the Governor of Northern Ireland and are removable from office only on an Address to the Governor from both Houses of Parliament. The Clerk of the Parliaments is paid as a Deputy Secretary in the Northern Ireland Civil Service and the Clerk Assistant as an Assistant Secretary. The Serjeant-at-Arms and Black Rod are paid at rates which take into account the part-time nature of their duties. Apart from the matter of salary the status of the Clerk of the Parliaments, as permanent head of the Parliamentary Department and Accounting Officer for the Parliamentary Vote, is exactly the same as the permanent head of a Civil Service department.

Category II comprises the Chaplains and the Counsel to the Speakers. These officers are appointed jointly by the Speakers of both Houses and are paid small salaries commensurate with the part-time nature of their duties.

Category III comprises the Second Clerk-Assistant, the Fourth Clerk at the Table, the Librarian, the Assistant Librarian, the Editor of Debates and the *Hansard* staff. Officers in this category are appointed by the Speakers on the recommendation of the Clerk of the Parliaments. The Second Clerk-Assistant is paid on the Northern Ireland Civil Service Principal Officer scale, the Fourth Clerk and the Librarian on the Deputy Principal scale and the Assistant Librarian on the Higher Executive Officer scale. The Editor of Debates and the *Hansard* staff salaries are directly linked to the salaries of the *Hansard* staff at Westminster.

Category IV comprises all the parliamentary staff not included in Categories I to III and these officers are civil servants assigned from the Northern Ireland Civil Service on the recommendation of the Clerk of the Parliaments.

Isle of Man

The Clerk of Tynwald and Secretary of the House of Keys is paid the salary appropriate to an Administrative Officer, Grade I, in the Isle of Man Civil Service, plus 10 per cent. This is identical remuneration to the Island's Stipendiary Magistrate but is less than the Government Secretary or Government Treasurer and a number of professional officers in the Public Service of the Isle of Man.

The staff of the department are civil servants. The Clerk is appointed by Tynwald, retaining a right of return to the Civil Service if recruited therefrom and also safeguarded superannuation rights.

Jersey

The Greffier, the Deputy Greffier of the States and the other permanent officials enjoy salaries and a status above that of their equivalents in the various executive departments.

Officers of the States have permanent established positions.

The relevant piece of legislation dealing with the appointment of the Clerk and Clerk-Assistant is as follows:

(5) The Greffier of the States is appointed by the Bailiff with the consent of the States and the Deputy Greffier of the States is appointed by the Greffier of the States with the consent of the Bailiff.

It will be seen that the two officers are not subject to the normal appointment procedure of the Civil Service, which is by means of the Employing Committee and the Establishment Committee.

Canada

The Clerks of the Senate and of the House of Commons receive a salary comparable to that of a Deputy Minister or permanent head of a Department. The salaries of the Serjeant-at-Arms and the Clerks-Assistant are equated to the salaries of an Assistant Deputy Minister of the Public Service. All other officers and employees of Parliament are paid salaries adjusted annually conforming, as far as possible, to recommendations, for comparable positions where a comparison can be arrived at, with positions in the Public Service of Canada.

The Clerks, the Clerks-Assistant and the Serjeant-at-Arms are appointed by the Governor in Council on the recommendation of the Prime Minister. It has not been the custom in Canada for officers appointed by the Governor in Council to be changed with an alteration in the Government. All other officers and employees of the House of Commons are employed by the Speaker of the House of Commons. In the past, many employees of the Canadian House of Commons have been employed by the Session rather than by the calendar year, but in recent years the fact of ten-month Sessions has resulted in virtually permanent employment for all servants of the House.

Ontario

These matters are under active reassessment.

Northwest Territories

The office of the Clerk of the Council of the Northwest Territories is a separate unit of the Territorial Public Service which is not included within a department.

The Clerk reports to the Deputy Commissioner. The Clerk, the Clerk-Assistant and other members of the present staff of this unit are permanent employees of the Territorial Public Service and enjoy all privileges, benefits, etc., of such employment.

Australia

The Clerks have the status of a Permanent Head (Secretary) of an Executive Department but their salaries are less than that paid to the Permanent Heads (First Division Officers).

The Deputy Clerks are paid at a rate corresponding to that of a First Assistant Secretary of an Executive Department (Second Division Officers).

Clerks-Assistant are paid at the rate equivalent to that of an Assistant Secretary of an Executive Department (Second Division Officers).

Senior Parliamentary Officers are paid at a rate equivalent to the highest level of the Third Division of the Executive Departments.

Officers of Parliament have permanent established posts. Under the Public Service Act, officers of the Parliament have independent status from the Executive. Appointments and promotions are made by the Governor-General on the recommendation of the President of the Senate or the Speaker of the House of Representatives who are responsible respectively for the administration of the departments. The conditions of employment are similar to those existing in the Public Service but are prescribed in the Public Service (Parliamentary Officers) Regulations. In salary and organisational matters the President and Speaker are normally guided by advice they seek from the Public Service Board.

New South Wales

The Clerk of the Parliaments receives a salary determined by Cabinet, as is the case with Under-Secretaries and Assistant Under-Secretaries in the New South Wales Public Service. The salary of the Clerk of the Parliaments is less than that of a departmental Under-Secretary, but exceeds that of an Assistant Under-Secretary.

Other parliamentary officers are paid in accordance with the terms of agreements between the Public Service Board and the Public Service Association. Although parliamentary officers are members of the Association, an industrial union under the Industrial Arbitration Act 1940, they are not members of the Public Service to whom the Public Service Act 1902 applies. It is for salary purposes only that officers are represented by the Association; working conditions, leave and other benefits are internal matters. However, the salaries of officers are the same as those paid the holders of certain graded positions in the Public Service, but as the work is of a different nature, there is no real comparison of duties. The relationship established with the Public Service results in any increases granted to the Administrative and Clerical Division of the Service being applied also to the salaries of parliamentary officers.

Parliamentary officers are permanently appointed and are not related to the Public Service, as administered by the Public Service Board. Officers joining the parliamentary staffs from the Public Service must

resign therefrom, but suffer no loss of accrued leave rights, superannuation, etc., these rights being transferred.

The staffs of the two Houses are entirely separate and, as indicated above, are not part of the Public Service. Following appointment to one of the parliamentary staffs, an officer will usually be promoted upon the occurrence of a vacancy in the positions above him providing, of course, he is considered suitable for promotion. The training of staff is an internal matter. There are no examinations either internally or externally.

Queensland

Public Service classifications are graded from 1 to 30. The highest classification (Grade 30) is that of the Under-Secretary of the Treasury Department. The Under-Secretary of the Premier's Department is on Grade 28 and Under-Secretaries of the remaining departments on Grade 26. The salary of the Clerk of the Parliament is equated with Grade 20, which corresponds with that of the Assistant Under-Secretary of the Treasury Department. The Clerk-Assistant is on Grade 13 (two grades below that of the majority of Departmental Assistant Under-Secretaries), the Second Clerk-Assistant on Grade 9 and the Third Clerk-Assistant on Grade 7.

The Clerks have permanent established posts but not an independent professional status.

Victoria

The Clerk of the Legislative Assembly is deemed to be a " Permanent Head " pursuant to the provisions of the Victorian Constitution Act Amendment Act. His salary is at a level between that of a permanent head of a Public Service department and his deputy. Salary-wise he can be equated to the Chairmen of a number of Victorian statutory corporations. The Clerk-Assistant, who is the Deputy Clerk, has a salary slightly below that of a deputy permanent head in the Public Service. The Second Clerk-Assistant, the Serjeant-at-Arms and all other Assembly officers are on classifications for which there is an equivalent classification in the Victorian Public Service. Similarly, all officers of the Legislative Council are on classifications for which there are Public Service equivalents.

All officers of the Legislative Council and Legislative Assembly occupy permanently established posts.

Officers of Parliament are appointed and promoted by the Governor-in-Council on the recommendation of either of the Presiding Officers, whereas Public Servants are appointed by the Victorian Public Service Board. Officers of Parliament are independent of the Public Service and their rights, etc., are established by Part IX of the Victorian Constitution Act Amendment Act.

Tasmania

Prior to 1967, the Parliamentary Privilege Act 1898, as amended, provided that—

> The Governor may, on the written nomination of the appropriate Presiding Officer, appoint such and so many permanent officers of the Legislative Council and House of Assembly, respectively, as may appear to him to be necessary or desirable. . . .
>
> The officers who are appointed pursuant to this Section shall be paid such salaries as the Governor may determine. . . .

In theory, Cabinet would consider and decide upon the recommendation of the Presiding Officers with respect to salary variations. In practice, however, Cabinet would refer the recommendation to the Chairman of the Public Service Tribunal for his comments. Thus the Tribunal sat in judgment upon the claims of the parliamentary staff without hearing any evidence or making any determination. The staff had neither means of presenting claims nor right of appeal.

In 1967, following a request by the then newly-created Parliamentary Staff Association, the Government amended the Public Service Tribunal Act to provide for salaries to be determined by that Tribunal. Since then there has been little improvement, as the following will indicate.

The latest award for the Clerks of the two Houses provided for an annual salary of $A13,701. This award came into force on 1st January, 1972. Heads of Public Service Departments are classified under a separate award, which came into effect on the same day. The award provides for fifteen grades or classifications of Heads of Departments. The salaries range as follows:

Classification Head of Department	*Salary per Annum Male Rate* A$.
Grade 1	10,125
Grade 2	10,581
Grade 3	11,244
Grade 4	11,907
Grade 5	12,570
Grade 6	13,233
Grade 7	13,896
Grade 8	14,559
Grade 9	15,222
Grade 10	15,885
Grade 11	16,548
Grade 12	17,211
Grade 13	17,874
Grade 14	18,537
Grade 15	19,200

It will be seen that the Clerks of the two Houses are rated at something below the middle of the salaries range.

The salary of the Clerk-Assistant in each House ranges from $A8,091 to $A8,667 over a four-year period, with annual increments.

He receives, therefore, when his maximum salary is attained, approximately 63 per cent. of the Clerk's salary, whereas a Deputy-Head of a Public Service Department receives approximately 80 per cent. of the salary of the Head of Department in each case. Salaries of other senior parliamentary officers bear somewhat the same relativity. Salaries of staff members are similar to those of their respective Public Service counterparts.

All officers of the Tasmanian Parliament have permanent established posts.

The officers have independent professional status, being appointed under the provisions of the Parliamentary Privilege Act 1898.

Western Australia

For many years the salaries of officers of Parliament have been adjusted whenever Public Service rates have been altered, and the Chairman of the Public Service Board, on behalf of the Government, fixes the salaries of parliamentary officers.

The actual salaries payable to the officers are certainly not aligned to any particular position in the Public Service, although it has been recommended on numerous occasions that such should be the case. It has been, and it is still contended, that the Clerk should be considered to be the equivalent of the Under-Secretary of a Public Service Department, and that the Clerk-Assistant should be linked with an appropriate senior position in the Service. The current pattern of relativity is that the Clerks receive less than heads of Government Departments.

Officers of Parliament in Western Australia are not seconded from other departments, and are not subject to the Public Service Act. In fact some of the present officers have had to resign from the Service to accept positions in the parliamentary sphere.

It can be said that Officers of Parliament have independent status inasmuch as they are not in the Public Service and are not connected with other Government Departments. The tendency in recent years to align all conditions of service to those applying in Government Departments has, however, minimised this independence.

South Australia

There is no identifiable pattern of relativity between the salaries and status of the officers of the Parliament of South Australia and the State Public Service. Officers of this Parliament have permanent established posts. The independence of the status of officers of Parliament is secured by the Constitution Act which provides that " the Chief Clerk for the time being of the Legislative Council, and of the House of Assembly, shall respectively be removable from office only in accordance with a vote of the House in which he is an officer ".

Northern Territory

Because of the unusual constitutional position of the Legislative Council it is not possible to establish any relativity such as was sought in the Resolution. The Civil Service is not a local administrative body but consists of branches of the Federal Public Service controlled from Canberra 2,000 miles away. On the last two occasions on which salaries were reviewed, a form of relativity with the office of the Clerk of the House of Representatives in the Commonwealth Parliament was established. This fixed the salary level of the Clerk of this Council at that of the Serjeant-at-Arms of the Commonwealth Parliament. Because the Council is a subordinate legislature created by the Commonwealth it is simpler to establish this relationship than it would be with the Public Service.

Papua New Guinea

Heads of executive departments in the Papua New Guinea Administration are distributed over three different salary classifications. The Clerk of the House has a salary a little below the lowest of these, and equivalent to deputy to departmental head in some executive departments. This is regarded as unsatisfactory, but action has been deferred until there is a lead from the Commonwealth Parliament, where the Clerks of the Senate and the House of Representatives are currently in a similar position. Other officers are on salary classifications equivalent to positions of comparable responsibility in the executive departments.

The officers of the House have permanent established positions. There is a Department of the House of Assembly, which is a department of the Public Service and the Clerk of the House, as permanent head, has responsibility to the Public Service Board in such matters as discipline, etc. The Speaker, as Parliamentary Head, makes recommendations to the responsible Minister of State in the Commonwealth of Australia (as administering authority), who is empowered to establish and classify offices and appoint, promote, etc., officers of the House of Assembly. The Speaker also has authority to grant recreation leave to officers, and there is also provision for the Minister to make determinations of conditions of service peculiar to the Department of the House of Assembly; otherwise, such conditions are the same as those applying to the Public Service generally.

The position of Papuan officers as members of the Public Service is similar to that of officers of the Commonwealth Parliament. They have independent professional status, secured by the statutory position of the Speaker as their Parliamentary Head, with power of broad direction of their operations, and the Clerk's responsibility to the Public Service Board limited to personnel functions. Membership of the Public Service does ensure that officers of the Parliament generally have conditions of service (pensions, sick-leave and furlough entitle-

ments, assistance with studies, etc.) at least not less favourable than public servants generally.

New Zealand

The Legislative Department is a branch of the State Services for the purposes of fixing rates of remuneration and conditions of employment. Salary scales are the same as those applying to the Public Service, and are subject to the same general variations. The status of the Clerk of the House of Representatives is equal to the Permanent Heads of Departments in Group 3 of the Public Service.

Officers of Parliament have permanent established posts, appointment to which involves resignation from the Public Service.

It has been a requirement of long standing that the Clerk of the House of Representatives and the Clerk-Assistant shall be barristers and solicitors. At present four of the senior officers have legal qualifications and have been admitted to the Bar.

Ceylon

The pattern of relativity between the salaries and status of the officers of the Ceylon House of Representatives and the Ceylon Public Service is identical to the one which operates in the United Kingdom. The Clerk of the House of Representatives in Ceylon is paid the same salary and enjoys the same status as a Permanent Secretary of a Ministry in Ceylon—which is the highest rank in the Public Service. The Clerk-Assistants and other officers are linked with appropriately senior grades in the Public Service.

All officers of Parliament have permanent established posts and have independent professional status secured by the provisions of Sections 28 (2) and 28 (4) of the Constitution of Ceylon.

India

The salaries and status of the Secretaries of the Secretariat of both the Houses of Parliament and the officers below them correspond to those of comparable posts in the Union Government.

All officers of both Houses of Parliament have permanent established posts. They are not on secondment from other departments, but persons in other departments of the Union Government or State Governments may be selected for appointment to some of the posts.

The Secretaries and other officers of the Secretariats of both Houses are whole-time officers.

Andhra Pradesh

The salaries and status of officers of the Andhra Pradesh Legislature Secretariat are the same as those of officers in public services in other Government Departments of Secretariat.

The Officers of the Legislature Secretariat have permanent established posts but do not have independent professional status; the Legislature Secretariat is one of the Departments of Secretariat.

Gujarat

There are three categories of officers of the Legislature, viz. (1) Secretary, (2) Deputy Secretary and (3) Under-Secretary. The pay scale of the post of Secretary is Rs. 1,200–1,800. However, the present incumbent has been given a pay scale of Rs. 2,250–2,500, which is comparable with that of Secretary to Government in Public Service.

The pay scales of Deputy Secretary (Rs. 1,050–1,500) and Under-Secretary (Rs. 700–1,275) are comparable with those of Deputy Secretary and Under-Secretary in Public Service.

The status of all the three categories are thus comparable with those of similar categories in Public Service.

The post of Secretary and three posts of Under-Secretary are permanent, while one post of Deputy Secretary and one post of Under-Secretary exist on a temporary basis and are continued from year to year.

The officers of Legislature have no independent professional status. But they can neither practise nor engage in any trade or undertake any employment while they are in service of Legislature under the State Government.

Kerala

According to the Legislature Secretariat (recruitment and conditions of service) Rules, officers and other employees of the Secretariat must be paid such salaries and allowances as are, or may be, payable to officers of corresponding ranks in the State Administrative Secretariat. Accordingly all the officers of the Secretariat, excluding the Secretary to Legislature, are paid the same salaries and allowances as are payable to their counterparts in the Administrative Secretariat. The scale of pay of the Secretary is, however, equated to that of the Secretary to Government, Law Department, and not to that of other Secretaries to Government (as in the Parliament and some of the State Legislatures). Officers of Parliament have permanent established posts.

Orissa

There is a difference between the scale of pay of the Secretary to the Assembly and the Secretary to Government—the latter belonging to the Indian Administrative Service Cadre, of which the scale of pay is higher than that of the Secretary to the Assembly. But there is no difference in the powers exercised, and functions discharged, by the Secretary to the Assembly and the Secretary of any Department of the State Government. Officers of the Orissa Legislative Assembly have permanent established posts.

Rajasthan

The salaries and status of the officers of the Secretariat of this House are comparable to those of the corresponding posts under the Executive.

The officers of the Secretariat of the House, except the Secretary and a few other posts, are permanent members of the Secretariat. The Secretary is ordinarily a member of the Higher Judicial service of the State and is on secondment to this Secretariat.

They are under the direct control of the Speaker, who has the ultimate authority to appoint them. Similarly the Secretary has the authority to appoint the lower categories of officers. They are totally independent of the Executive.

Maharashtra

The scales of pay and status of all the officers of the Secretariat are on a par with the pay scales and status of the officers in the State Civil Secretariat. Officers of the Secretariat have permanent established posts.

The Secretariat is a separate entity from the Civil Secretariat and the independence of the officers is secured by keeping them under the administrative control of the Speaker of the Assembly and the Chairman of the Council.

Mysore

The salary and status of the Secretary and other officers and staff of the Legislature Secretariat are generally on a par with those of the officers and staff in the Civil Service.

The posts of the Secretary and staff of the Legislature Secretariat are all permanent, pensionable posts.

The Secretary and other officers of Legislature Secretariat are whole-time officers. Their status is governed by the provisions of the Mysore Government Servants Conduct Rules 1957.

Tamil Nadu

The Secretary of the Legislative Assembly is placed in a pay scale of Rs. 1,300–50–1,400–75–1,700–100–2,000 plus special pay of Rs. 200. The Secretary of the Assembly is the Head of the Department just as are the Secretaries to other Departments of the Secretariat of the Tamil Nadu Government with similar status and powers.

He deals with Ministers and other Secretaries to Government direct and has been assigned the same rank as Secretaries and Additional Secretaries to Government in the warrant of precedence. The post is a non-tenure one. The work in the Legislative Assembly Department is of a special and technical nature. The Secretary shoulders as many onerous duties and responsibilities, if not more, as the other secretaries of departments. Further, he has not only to be thorough

in the knowledge of parliamentary principles, practices and procedure, but has also to possess experience in parliamentary precedents. He is also the Secretary to the Financial Committees and other Legislature Committees, besides Select and Joint Select Committees on Bills.

The Government have created selection grade posts for Secretaries to Government in the scale of Rs. 1,800–100–2,000 with special pay of Rs. 250/- or Rs. 300/- and super time scale of Rs. 2,500–125–2,750. But this is not applicable to the Secretary to Government, Legislative Assembly Department, though he enjoys similar status and powers.

The Deputy Secretary and Assistant Secretaries are equated with their counterparts in other departments of the Secretariat in regard to the scale of pay and allowances. They enjoy similar status and powers.

The posts of Secretary, Deputy Secretary and Assistant Secretaries in the Tamil Nadu Legislative Assembly Secretariat are permanently established posts.

The officers of this department have independent professional status and this is secured by Article 187 of the Constitution of India which provides for an independent status of the Assembly Department. The independent position of officers is safeguarded both by the Constitution and the Tamil Nadu Legislative Assembly Secretariat Service Rules, which provides for the recruitment and conditions of service in this department which forms a separate wing of the Government and independent from the Executive.

Uttar Pradesh

The Secretary has the status and salary equivalent to a Deputy Secretary of the executive branch of Government. Officers of Parliament have permanent established posts.

Malaysia

The following schedule shows the grades existing in the Malaysian Civil Service, in order of rank:

Staff A
Staff B
Superscales I–VIII
Timescale

The Clerk to the Senate is a Superscale VI Officer, while the Clerk to the House is Superscale IV.

The Parliamentary Service, which embraces the two Clerks and the staff of both Houses of Parliament, is distinct and separate from the general Public Service, and is solely responsible to Parliament. Power of appointment of the Clerks of the two Houses of Parliament is vested under the Constitution in the hands of the Head of State. In the past, secondment of officers from the general Public Service to serve as Clerks was practised, and this could happen again in the future.

Trinidad and Tobago

The salary and status of the officers of the Parliament are as follows:

(*a*) *The Clerk of the House.*—Equal to a third Administrative Officer in a Ministry and to the third officer in some departments under a Ministry.
(*b*) *The Clerk of the Senate.*—Very slightly above a fourth Administrative Officer within a Ministry and a third Officer in some of the minor departments under a Ministry.
(*c*) *The Assistant Clerk.*—Equal status as a Clerk trained to handle accounting records, a chief storekeeper, a hospital supplies officer.
(*d*) *The Second Assistant Clerk.*—Equal status as a junior Clerk in training to handle accounting records, a hospital steward, hospital manager (lowest grade), medical records officer, maintenance officer for navigational aids.

Representations have been made for placing the position of Clerk of the House of Representatives (as Clerk of the House—the administrative Head for the whole Department) at least in the same range as most heads of departments and the Second Officer in a Ministry, and for the consequential upgrading of the other three Clerks.

The chief argument used here is that the officers are civil servants, selected and promoted from the open service. Their colleagues, with equal service and no more qualifications in the same seniority range in the service, would in the large majority of cases have been found to have received promotions which placed them some two positions above the Clerk who, after years of specialising, finds himself at a dead end with no compensating reward.

The officers have permanent established posts but are not required to have any professional status.

Singapore

The salary and status of the Clerk are equated to those of a head of a department in the Public Service and the salaries of the senior officers of Parliament are linked with those of similar grades in the Public Service. Except for the supporting staff, officers of Parliament have permanent established posts.

Malta

The salary and status of the Clerk are those of Head of Department, Grade III. The salary of Head, Grade III, is also the same as that of Senior Assistant Secretary. Above these grades, there are the following in ascending order:

1. Head Grade II or Principal Assistant Secretary;
2. Head Grade I;
3. Under-Secretary;
4. Secretary;
5. Administrative Secretary (i.e. the Permanent Head of the Civil Service).

The Clerk-Assistant is an Administrative Officer—that is, a grade below that of Assistant Secretary, and two grades below that of Head

Grade III or of Senior Assistant Secretary. The Second Clerk-Assistant is a Higher Executive Officer—that is, a grade below that of Administrative Officer.

All officers of Parliament are permanent employees, but are members of the Civil Service subject to transfer according to the exigencies of the Public Service. In terms of the Constitution, the office of the Clerk to the House of Representatives and the offices of the members of his staff have to be public offices.

The Clerks have no independent professional status but are permanent civil servants.

Bermuda

There are three officers of Parliament, the Clerk to the Legislature (formerly Clerk to the House of Assembly), the Assistant Clerk to the Legislature (formerly Clerk to the Legislative Council), and the Serjeant-at-Arms.

These officers are civil servants. The grading of the post of Clerk is equivalent to that of the posts of Registrar General, Assistant Collector of Customs or Medical Officer.

All three officers of Parliament in Bermuda hold permanent established posts.

Sabah

The Clerks enjoy the same salaries as the Public Service. They are on secondment from the Administrative Executive services.

Grenada

The Clerk has the status of a Senior Assistant Secretary in the Public Service and the Clerk-Assistant has that of a Senior Executive Officer.

Gibraltar

The Clerk to the House of Assembly is recruited from and remains a member of the Civil Service but is naturally not engaged in any Civil Service duties of a political nature.

Bahamas

The Clerks are on a comparative scale with officers in the Public Service. They enjoy permanent established posts and their independent status is guaranteed by the rules of the House and embodied in the Constitution. However Clerks are on the Public Service establishment by convention.

Malawi

Officers of Parliament are seconded from the Public Service and

therefore the salaries and status of the officers of Parliament and the Public Service are the same.

For the same reason, officers of Parliament do not have independent professional status.

Mauritius

The Clerk has the equivalent status and salary of a Principal Assistant Secretary and the Clerk Assistant of an Assistant Secretary. They enjoy permanent established posts.

XII. APPLICATIONS OF PRIVILEGE

At Westminster

House of Commons (Resolutions clarifying the practice of the House in regard to Parliamentary Privileges).—On 16th July, 1971, on the motion of the Leader of the House, the House of Commons agreed to a number of resolutions and orders designed to clarify and bring up to date its practice in regard to certain aspects of parliamentary privilege. These changes, and the other motions that were debated on the same day but were not in the end agreed to, had their origin in the Report of the Select Committee on Parliamentary Privilege of session 1966–67, whose recommendations were described in detail in an earlier number of The Table (Vol. XXXVII, page 16).

The four motions which were agreed to were concerned mainly with the publication of the proceedings of the House and its committees. Historically the most significant was the first, which read as follows:

> Resolved, That notwithstanding the Resolution of the House of 3rd March, 1762, and other such Resolutions, this House will not entertain any complaint of contempt of the House or breach of privilege in respect of the publication of the debate or proceedings of the House or of its Committees, except when any such debates or proceedings shall have been conducted with closed doors or in private, or when such publication shall have been expressly prohibited by the House.

Not since the last quarter of the eighteenth century had the House in fact attempted to enforce any restriction on the fair and accurate reporting of its open proceedings; but earlier resolutions forbidding all reporting, though in practice obsolete, had never formally been rescinded, and the press had successfully urged the Committee of 1966–67 to recommend the removal of this anomaly. A complementary resolution also made it clear that the House would not consider it a contempt or a breach of privilege for a newspaper to publish details of voting in divisions or of questions or motions tabled in the House, even if this were done before the official division lists or notice papers were issued; similarly, it would not be improper for a newspaper to report on a Member's intention to vote in a particular manner or to table a particular parliamentary question or motion. The press has for some time carried details of this sort, and the purpose of the resolution was to remove doubt rather than to make a substantial change in practice.

The House also agreed to two new standing orders relating to Select Committees. The first gave a general authorisation to Select Committees, if they should decide to do so, to admit the public during meetings at which evidence is taken; this power has been granted individually to a number of committees over the last few sessions. Select Committees

were also empowered, by a further order, to authorise the publication by the witnesses concerned of memoranda of evidence submitted to them and of the names of persons who have been summoned to appear as witnesses before them.

Two further motions, tabled by the Leader of the House, were discussed on the same occasion but were withdrawn in the face of opposition. The first of those was in the form of a general statement of principle, affirming that the penal jurisdiction of the House should be used as sparingly as possible, and should not normally be invoked by a Member when (as for example in a case of alleged libel) an alternative remedy was available to him in the courts. Objections were raised to this Motion by a number of Members who considered that, as legal aid was not available for libel actions, it was impracticable for most Members to consider resorting to the courts and that therefore their freedom to seek an alternative remedy within the House should be maintained.

The purpose of the other motion was to introduce a new procedure for raising questions of privilege. At present a Member must raise a complaint of breach of privilege in the chamber after Question Time; the Speaker considers the complaint overnight and the next day states whether or not he thinks that a *prima facie* case has been made out. If he decides that it has, the matter takes precedence over the orders of the day and the House has an opportunity to debate the subject and, if it so decides, to refer it to the Committee of Privileges for detailed investigation. The Select Committee on Parliamentary Privilege criticised this procedure on a number of grounds, in particular that it ensured equal publicity for all complaints, whether trivial or important, and that it disrupted the business of the House during the most important time of the day. The Motion incorporated the Committee's recommendation that in future complaints should in the first instance be made to the Committee of Privileges who would decide the preliminary question whether or not the complaint had sufficient merit to justify a full investigation. If they decided in favour of entertaining the complaint, they would report to the House that the matter should have precedence; and the House would then determine, after a strictly limited debate, whether or not to refer the matter back to the Committee for a full investigation.

In the debate a number of Members opposed these proposals, both on the ground that, as a matter of principle, it was wrong to limit Members' rights to raise matters in the Chamber, and on the ground that it would be impracticable to convene the Committee of Privileges merely to decide on the *prima facie* merits of a complaint. At the end of the debate the Leader of the House accordingly announced that he would not press the Motion to a decision. (*H.C. Deb.*, Vol. 821, cc. 922–994.)

House of Commons (Alleged threat by trades union to with-

draw financial support from sponsored Members).—On 14th July, 1971, two days before the debate on proposed changes in the procedure for raising questions of privilege (see above), Mr. David Steel, Liberal Member for Roxburgh, Selkirk and Peebles, made a complaint in the House about a report in the *Sun* newspaper of that day. The newspaper reported an official of the Transport and General Workers' Union as advocating in a speech that the grants which the union made towards the expenses of certain Labour M.P.s should be withdrawn from any who voted in favour of Britain's entry into the Common Market. Mr. Steel claimed that this was an improper threat and inconsistent with the privilege of freedom of speech, and in support he cited the resolution of the House of 15th July, 1947, declaring it to be a breach of privilege to take or threaten action of a kind against which it is absolutely necessary that Members should be protected if they are to discharge their duties " independently and without fear of punishment or hope of reward ".

On the following day (Thursday) Mr. Speaker ruled that the matter could take precedence over the orders of the day, and the Leader of the House accordingly moved that the complaint should be referred to the Committee of Privileges. Mr. Harold Wilson, the Leader of the Opposition, objected to this proposal on the ground that the House was debating privilege on the following day and might decide to change its procedure for dealing with complaints. He suggested that in those circumstances the best course would be to withdraw the motion and return to the matter on the Monday, when it could be discussed in the light of the decisions of the House on procedure. With the consent of the Speaker, this course was followed. On Monday, 19th July, no change in procedure having been made, the Leader of the House again moved that Mr. Steel's complaint be referred to the Committee of Privileges and, after a short debate, this was agreed to by 205 votes to 95.

In their report on the case, the Committee stated that they had instructed their Clerk to write to the trades union official concerned to ask him whether the newspaper had correctly reported his speech. The official had replied denying that the union had ever threatened to withdraw cash support from Members and enclosing a transcript of the relevant part of his speech. His letter and the transcript were published in the Report. On the basis of this denial and the content of the transcript, the Committee recommended that no further action should be taken in the matter. (*H.C. Deb.*, Vol. 821, cc. 516–518, 737–744, 1059–1075.)

House of Commons (Member sued for libel).—Early in 1971 a case was decided in the Queen's Bench Division of the High Court which, although not concerned with parliamentary privilege as such, deserves recording for the interpretation which the judge gave of the common law principle of qualified privilege in relation to the activities of a Member of Parliament.

The defendant in the action was Mr. Reginald Freeson, Labour Member for Willesden East. In April 1969 Mr. Freeson wrote a letter to the Secretary of the Law Society and an identical one to the Lord Chancellor, stating that he had been requested by a constituent to refer a firm of solicitors, Messrs. Beach & Beach, to the Law Society for investigation. After recounting the constituent's allegations against the firm, Mr. Freeson's letter went on to say that he was acting contrary to his normal practice in agreeing to the request to report the matter; he only did so because the firm's name had appeared in a number of complaints which he had received in the past. On the basis of the letter the firm of solicitors claimed damages for libel.

It was not disputed in the action that the terms of the letter were other than defamatory of the plaintiffs, but Mr. Freeson claimed in his defence that his action was protected by qualified privilege. In their reply the plaintiffs denied that the occasion was privileged and claimed that, in any event, Mr. Freeson had been actuated by express malice.

Giving judgement, Mr. Justice Geoffrey Lane re-stated the general principle that, for an occasion to be protected by qualified privilege, it was necessary that the person making the communication should have an interest or a duty, legal, social or moral, to make it to the person to whom it was made and that the person to whom it was made should have a corresponding interest or duty to receive it. He then went on to apply this principle to Members of Parliament:

> This case has to be judged against the background of the conditions prevailing in 1969. There is no doubt at all on the evidence which I have heard that by that time there had been a remarkable increase in the amount of work done by Members of Parliament outside the House of Commons on behalf of their constituents. The reasons for this increase are not altogether clear but possibly it is that the private individual feels, increasingly, that he is at the mercy of huge, amorphous and unfeeling organisations who will pay no attention to his feeble cries unless they are amplified by someone in authority. The Member of Parliament in those circumstances is the obvious ally to whom to turn. It is a short step and, in my judgment, a proper one from there to hold that, in general, the Member of Parliament has both an interest and a duty to communicate to the appropriate body at the request of a constituent any substantial complaint from the constituent about a professional man in practice at the service of the public.

The judge said that he had no doubt, despite a contention to the contrary by counsel for the plaintiffs, that Mr. Freeson had indeed had a number of earlier complaints against Beach & Beach; and he stated that, in his view,

> " it certainly was incumbent upon the defendant to inform the Law Society of his previous experiences through his constituents of this particular firm ".

The reciprocal interest or duty of the Law Society in receiving the complaint could not be in doubt; and while the Lord Chancellor had no direct power to discipline solicitors, he was the Minister responsible for ensuring that the machinery of justice ran smoothly and as such

was concerned with complaints affecting all officers of the courts, including solicitors.

The judge thus upheld Mr. Freeson's contention that his action in sending the letters was protected by qualified privilege. He also dismissed the allegations of malice against Mr. Freeson, and accordingly judgement was given against the plaintiffs, with costs. (2 WLR [1971], 805).

House of Commons (Premature publication in newspaper of select committee report).—On 21st October, 1971, Mr. William Hamilton, a Labour Member of Parliament, drew the attention of the House to an article published in the *Daily Mail* newspaper that morning. The article was entitled " The Million Pound Queen " and gave an account, which it claimed was exclusive to the *Daily Mail*, of proposals that were shortly to be made for increasing the financial provision made by the State to the Queen and other members of the Royal Family. The account was full and detailed, and gave specific figures for different members of the Royal Family.

The question of the finances of the Royal Family had been under consideration for some time by the Select Committee on the Civil List (see page 84 of this edition of THE TABLE), but their report had not at that stage been presented to the House. In these circumstances Mr. Hamilton, himself a member of the Select Committee, claimed that the article had the effect of casting suspicion on all the members of the Committee, and he asked the Speaker to rule that the matter constituted a *prima facie* breach of privilege. The following day the Speaker ruled that the matter did merit further investigation, and it was accordingly referred to the Committee of Privileges.

By the time that Committee began its investigation, the report of the Select Committee on the Civil List had been published and it was known that the figures in the newspaper article coincided in most respects with those recommended in the report. At the time the article was published, the report had already been circulated in draft to members of the Select Committee and others concerned; and the similarities were so striking that the Privileges Committee concluded that " beyond reasonable doubt the information published in the article, or a very substantial part of it, was derived, albeit indirectly, from the Draft Report". They also satisfied themselves that the Draft Report had been distributed to a very limited number of people; in addition to the copies sent to members of the Select Committee, eight copies had been sent to Ministers, five to Treasury officials, one to Parliamentary Counsel, and the remaining copies to Officials of the House, Palace Officials, the Treasury Solicitor, the Inland Revenue and the Comptroller and Auditor General. There were apparently no copies unaccounted for.

The Privileges Committee next took evidence from the journalist who had written the article, Mr. Gordon Greig, and asked him to reveal

his source for the article. He refused to do so, and maintained his refusal at a subsequent sitting after having been requested to reflect upon his position. He also said that he had thought the information he had received related to " Government proposals " for the pay of the Royal Family, and had not connected it with the work of the Select Committee. The Committee was inclined to discount this claim, particularly as there was a reference to the Select Committee in the article; and they declared themselves satisfied that Mr. Greig knew, or on reasonable consideration ought to have known, that the information on which the article was based derived from a document presented to the Select Committee.

The Committee's conclusion was that the principle offender in the matter was the undisclosed person who provided Mr. Greig with the information; but their report went on:

> In your Committee's opinion Mr. Greig's part in publishing the information he received was a contempt of the House and reprehensible, particularly as he is a journalist who enjoys the facilities and corresponding obligations of the parliamentary lobby and benefits from privileges which he has abused.

After pointing out that Mr. Greig had expressed an unqualified apology for any unintended affront to the House on his part, the Committee recommended that no further action should be taken with respect to him. They also stated that Mr. Greig's refusal to declare his source of information had not materially affected their deliberations on the matter specifically referred to them, namely whether the publication of the article constituted a contempt; but their Report in no way pre-empted any decision which the House might make in relation to that refusal.

No further action has in fact been taken by the House in regard to this matter.

Australia: Senate

Premature publication of Senate Select Committee Report.— On 4th May, 1971, Senator J. E. Marriott, the Chairman of the Senate Select Committee on Drug Trafficking and Drug Abuse, drew the attention of the Senate to articles in two newspapers, *The Sunday Australian* and *The Sunday Review*, dealing with the proposed report of the Select Committee. The matter was referred to the Committee of Privileges.

The Committee of Privileges heard evidence from Senator Marriott, and from Messrs. H. B. Rothwell and J. R. Walsh, the editors of *The Sunday Australian* and *The Sunday Review* respectively. The publishers of each newspaper were also invited to give evidence, but did not wish to do so. After considering the evidence and authorities on parliamentary privilege, the Committee found that each newspaper had published contents of a draft report of the Select Committee, and that this constituted a breach of privilege.

The Committee was told by each editor that he did not advert to the possibility of a breach of parliamentary privilege being involved in the premature publication of the report. The editor of *The Sunday Review* stated that no disrespect to the Senate was intended and that, if a breach of privilege was involved, he would wish to tender an unqualified apology on behalf of himself and his newspaper. The editor of *The Sunday Australian* indicated that if the Committee found him to be in breach of privilege he would be ready to apologise.

Bearing in mind the fact that the Senate had developed a significant system of Standing and Select Committees, and that this development appeared certain to continue, the Committee was concerned that such clear cases of premature publication should have occurred at this time. The Committee hoped that its finding in this matter would constitute a warning against any future disclosure or premature publication.

The Committee considered that the Senate has the power, in the enforcement of its privileges, to commit to prison, to fine, to reprimand, or admonish, or otherwise withdraw facilities held, by courtesy of the Senate, in and around its precincts, and that any such breach in the future, save in exceptional circumstances, should be met by a heavier penalty, such as a substantial fine. Considering that this was the first case to come before the Senate, however, the Committee recommended that the situation would be adequately met by requiring the two editors to attend before the Senate, on their own behalf and on behalf of their publishers, to be reprimanded by the Presiding Officer.

The Senate adopted the Committee's Report and, on 14th May, 1971, the editors were brought to the Bar of the Senate and reprimanded by the Deputy-President. (*Hansard*, 4th May, 1971, p. 1253; 14th May, p. 1935.)

Australia: House of Representatives

Arrest and imprisonment of a Member.—On 20th April, 1971, Mr. Speaker reported to the House a letter from the Clerk of the Central Court of Petty Sessions, Sydney, advising that Mr. T. Uren, M.P., had been committed to prison. Mr. G. M. Bryant, Member for Wills, immediately raised the matter as one of privilege and the House agreed to refer it to the Committee of Privileges.

The circumstances leading up to the imprisonment began when Mr. Uren claimed to have been assaulted by a policeman while participating in a Vietnam Moratorium Campaign and subsequently on 21st September, 1970, laid an information against the constable.

The case was heard in the Central Court of Petty Sessions, Sydney and on 5th January, 1971, the information was dismissed. Mr. Uren was ordered to pay the defendant's costs in the sum of eighty dollars, three months being allowed for payment and in default of payment within that time, Mr. Uren was ordered to be imprisoned for forty days with hard labour.

Mr. Uren, in reply to the Magistrate's judgment, said " I won't pay the fine—I'll do the hard labour ". Payment was not made within the specified time and a warrant to commit Mr. Uren to prison was issued on 8th April, 1971. Mr. Uren was, on 10th April, 1971, duly taken and committed to prison. On 12th April, 1971, Mr. Uren was released from prison after the balance of the sum ordered to be paid by him by way of costs was paid by another person.

At no stage did Mr. Uren seek the protection of privilege, the matter being raised in the House by another Member.

The Committee presented its Report on 7th May, 1971, the last day of the Autumn sittings, and the House ordered that it be taken into consideration at the next sitting.

In considering whether the commitment to prison of Mr. Uren was a breach of Parliamentary Privilege, the Committee concluded that the principal question for determination was:

whether the commitment was one in a case which was of a civil character, or whether it was a commitment in a case which was either of a criminal character or which was more of a criminal than of a civil character.

The Committee concluded that a breach of Parliamentary Privilege would have occurred only if the commitment was one in a case which was of a civil character.

The findings of the Committee were:

(1) That the Committee is of the opinion that the commitment to prison of the honourable Member for Reid (Mr. T. Uren) constituted a breach of Parliamentary Privilege.

(2) That the Committee having regard to the complexities and circumstances of the case, recommends to the House of Representatives that the House would best consult its own dignity by taking no action in regard to the breach of Parliamentary Privilege which has occurred.

To assist the Committee in its deliberations, evidence was received from Mr. C. W. Harders, O.B.E., the Secretary, Attorney-General's Department, and from Professor Geoffrey Sawer, Professor of Law, Australian National University. The Committee also took advice on the subject from the Clerk of the House of Representatives.

In reaching its findings the Committee was divided on which of the two opinions it had sought it should accept. Mr. Harders had concluded that:

the cause of his arrest and imprisonment partakes more of a criminal than a civil character—in other words it is more criminal than civil in nature.

Professor Sawer's opinion conflicted:

Mr. Uren was imprisoned in a civil and not a criminal cause, and this was a prima facie a breach of privilege since the imprisonment occurred during a Parliamentary Session.

In considering its Draft Report the Committee divided on six occasions. On each occasion the same two Members voted against the majority of the Committee. The Committee's vote on the paragraph

containing its findings found, in addition to the dissent of the two Members, one other Member (Mr. Turnbull, Member for Mallee) abstaining because, as he later said in the House,—

> Without legal training one has to depend largely on the advice of experts, but as one opinion offset the other I decided that it was not in the best interests of justice that I vote on this subject.

During the debate in the House on the Committee's Report the Minister in the House representing the Attorney-General, and a former Attorney-General himself, Mr. N. H. Bowen, Q.C., made the following statement:

> I find myself in disagreement with the majority views of the Committee on the legal question. In my view, the order that the magistrate made . . . was such that the imprisonment . . . did not give rise to a breach of Parliamentary Privilege.

He went on to say to the House that:

> . . . in all the circumstances I suggest to the House that the appropriate course for it to take would be to carry this motion: " That the House take note of the Committee's Report. "

The question was resolved in the affirmative.

It is important to note that the normal motion that would be moved in the House in view of the Committee's findings would be for it to agree to the Report.

Mr. Bowen tabled certain letters expressing the " strong view " of the New South Wales Government that the Committee's first finding is inconsistent with the decisions of New South Wales Courts that imprisonment for costs is " criminal in nature ".

It should be noted that this case of Parliamentary Privilege has given rise to a revived interest among Members in the nature of Privilege. Mr. Bowen announced that the Prime Minister had called for a report from the Attorney-General in conjunction with the Solicitor-General on the whole question of Parliamentary Privilege which would cover the question of freedom from arrest. In consideration of the Committee's Report a number of Members expressed the need for the Australian Parliament to modernise and codify the law of privilege. (*V. & P.*, 1970–71, pp. 517–18, 628; *Parl. Paper*, 1971, No. 40; *Hansard*, 23rd August, 1971, pp. 529–30.)

Letter to the Editor published in *The Australian*.—Mr. Cohen (Labour Member for Robertson) raised in the House on 13th September, 1971, a matter of privilege based upon a letter to the editor published in *The Australian* on the same day. The House resolved that the matter be referred to the Committee of Privileges.

The text of the letter read as follows:

LOBBYING

..While congratulating you on the fine series of articles on parliamentary lobbying by Kenneth Randall, I am wondering when Mr. Randall will get around to the question of bribes.

It is common knowledge that many parliamentarians look for some monetary reward for the favours they do. In fact you won't get much done without it. It is called " the sling ". I am assured by a friend who earned his living as a lobbyist that it is essential to offer sufficient financial inducement to the right person if you want something done—$10,000 is considered " pin money " in this field.

My friend laughed at the idea that lobbyists " persuade " members of Parliament by the force and persistency of their arguments.

P. WINTLE
Mundingburra, Qld.

In its examination of the matter, the Committee sought advice from the Acting Clerk of the House of Representatives (Mr. J. A. Pettifer) and called and took evidence from the editor of *The Australian* (Mr. O. M. Thomson). At the request of the Committee the editor presented to the Committee the original of the letter to the editor published in that newspaper.

The Editor said in evidence that he accepted responsibility for publication of the letter. However, he stated to the Committee that he believed the letter should not have been published by the newspaper and admitted that he had been neglectful in not reading it prior to its publication.

Extensive inquiries conducted on behalf of the Committee failed to locate the author of the letter either at the address given or elsewhere in Australia. Inquiries made by the newspaper concerned were similarly unsuccessful and the Committee reached the conclusion that the name and address given on the letter were not authentic.

The Committee's Report was tabled in the House on 28th October, 1971, and set down for consideration on 4th November.

The findings of the Committee were:

(*a*) That publication of the letter to the editor signed by P. Wintle of Mundingburra, Queensland, and published in *The Australian* of Monday, 13th September, 1971, constitutes a contempt of the Parliament.

(*b*) That the author of the letter and the editor of *The Australian* are both guilty of a breach of Parliamentary Privilege.

(*c*) That the letter was published by *The Australian* without malice towards the House or any Member of the House.

(*d*) That there is no evidence to substantiate the allegations contained in the letter.

The Committee made the following recommendations:

(*a*) That no further action be taken against the editor of *The Australian* provided that, within such time as the House may require, he publishes in a prominent position in his newspaper an apology to the following effect, namely–

(i) That a diligent search had failed to reveal the alleged author of the letter;

(ii) That publication of the letter signed by P. Wintle constituted a

contempt of the Parliament and that it should not have been published;

(iii) That the editor dissociates himself from the allegations contained in the letter;

(iv) That the editor believes the allegations are without foundation, and

(v) That the editor apologises to the House of Representatives therefor.

(*b*) That it consider publication of an apology by the editor of *The Australian* does not absolve the author of the letter of his guilt in the matter.

During debate on the Motion—That the House agrees with the Committee in its Report—Members indicated that the Committee had reached the most appropriate conclusion. Among the other points mentioned was the suggestion that letters to editors of newspapers should be closely scrutinised in the future. The Motion was agreed to by the House.

The day following the presentation of the Committee's Report and prior to its consideration by the House the editor published an apology in the newspaper in the terms of the Committee's recommendation. (*V. & P.*, 1970–71, pp. 711, 796, 818; *Parl. Paper*, 1971, No. 182; *Hansard*, 13th September, 1971, p. 1151, 4th November, p. 3023.)

Article published in the *Daily Telegraph*.—A report which appeared in the *Daily Telegraph* on 27th August, 1971, relating to the count-out of the House of Representatives on the previous day (see article in this edition of THE TABLE, p. 154) was raised on 7th September (the next sitting day) as a matter of privilege by Mr. Cope (Labour Member for Sydney). The House resolved that the matter be referred to the Committee of Privileges.

In raising the matter Mr. Cope drew the attention of the House to a paragraph in the article which alleged that:

> A group of A.L.P. Parliamentarians walked out of the Chamber when the quorum was called, well knowing that their action could cause the collapse of the House of Representatives.

In investigating the matter the Committee was also concerned with a further paragraph in the article which asserted that:

> Though standing order 47 states that no member shall leave the Chamber when a quorum is called several Labour men disappeared quickly through the door.

To assist the Committee advice was sought from the Acting Clerk of the House of Representatives (Mr. J. A. Pettifer). Further evidence was taken from the Deputy Speaker of the House of Representatives (Mr. P. E. Lucock, C.B.E., M.P.) who was occupying the Chair at the time the quorum was called, from other officers of the House who were on duty at that time and from certain Members of the House. None of these persons saw any Member leave the Chamber.

The author of the article, Mr. A. D. Reid, informed the Committee

that he was not present in the press gallery in the House of Representatives Chamber when the quorum was called, but proceeded to the gallery while the Members present were being counted. He admitted that he did not see any Member leave the Chamber but stated that he believed what he wrote in the article was correct.

The editor-in-chief of the newspaper, Mr. D. R. McNicoll, stated in evidence that he accepted responsibility for the publication of Mr. Reid's article but that he did not doubt Mr. Reid's story.

In its report the Committee stated that it had by every means possible endeavoured to ascertain whether the allegations contained in the *Daily Telegraph* article were correct. No witness saw any Member or Members leave the Chamber when the quorum was called. The Committee was satisfied that the allegations were without foundation and that the newspaper article was an inaccurate report of the proceedings of the House of Representatives.

The Committee's Report was tabled in the House on 30th November, 1971, and set down for consideration on 8th December, 1971. The Committee also tabled the Minutes of Proceedings, and for the first time, the Minutes of Evidence of an enquiry of the Committee of Privileges were tabled.

An unusual aspect of the Committee's inquiry, disclosed in the Minutes of Proceedings, was the recommittal and subsequent reversal of its original finding. It was pointed out that this was one reason why the Committee decided to append the evidence in full.

The original finding of the Committee made in the absence of three members was recommitted and reversed at a later meeting in the absence of one member. At its last meeting the later decision was again recommitted when all members were present and the finding upheld on the casting vote of the Chairman.

The Committee found:

(*a*) That the article published in the *Daily Telegraph* of Friday, 27th August, 1971, constitutes a contempt of the House of Representatives, and

(*b*) That Mr. A. D. Reid as writer of the article and Mr. D. R. McNicoll as Editor-in-chief, Australian Consolidated Press Limited, are both guilty of a contempt of the House of Representatives in that they were responsible for the publication of a newspaper report which incorrectly described the proceedings of the House and misrepresented the proceedings of Members in the House.

In view of its findings the Committee recommended to the House:

(*a*) That Mr. A. D. Reid be required to furnish to Mr. Speaker a written apology for his inaccurate reflections on Members.

(*b*) That the Editor-in-chief, Australian Consolidated Press Limited, be required to publish on the front page of the *Daily Telegraph* a correction and apology with the position and prominence of the original article.

The order of the day for the consideration of report was called on on 8th December and the Leader of the House (Mr. Swartz) moved " That this House agrees with the Committee in its findings and is of

opinion that it would best consult its own dignity by taking no further action in the matter ".

This Motion gave rise to a heated debate, many Members indicating that the recommendations of the Committee should be carried out, and Mr. Cope moved an amendment to this effect.

The House divided on the amendment, and although it was agreed that it be a free vote it was decided largely on party lines. The amendment was negatived by 50 votes to 47, only one Government Member crossing the floor.

The original question was then resolved in the affirmative. (*V. & P.*, 1979–71, pp. 689, 863, 901; *Parl. Paper*, 1971, No. 242; *Hansard*, pp. 4342–78.)

Victoria: Legislative Assembly

Member using in debate contents of a private letter written by another Member to a Minister.—On 29th September, 1971, the Leader of the Opposition complained in the House that during the course of a debate a letter written by an Honourable Member in his capacity as a Member to a Minister was handed to another Member without the permission of the first Member. On the following sitting day (5th October) Mr. Speaker found that there was no ground on which he could find that the matter constituted a *prima facie* breach of privilege. His opinion in summary, is as follows:

(i) a Member had written a letter to a Minister which had been, in part, quoted by another Member without disclosure of authorship;

(ii) the Member who wrote the letter then stated in the House that it was his and that he had marked the envelope " Private and Personal ";

(iii) the letter was used without the permission of the Member who wrote it;

(iv) no case directly in point could be found in the authorities;

(v) " May ", 17th Edition, p. 109 was quoted that in general terms any act which obstructs or impedes a Member in the discharge of his duty or does so directly or indirectly may be treated as contempt;

(vi) on the facts of the case, including the benign nature of the statement in the letter, it would appear in this particular case that the Member was not obstructed or impeded in the performance of his duties, nor was any other Member. It could be argued that a similar disclosure of material of a detrimental nature could perhaps constitute an obstruction or impediment;

(vii) the document was a private one;

(viii) not only was the action taken not in line with the best conduct of debate (" May", pp. 458–9 was referred to) but it was also against good taste;

(ix) all Members should take the episode to heart; quoting letters from Members to Ministers and vice versa or using extracts against a Member of the House could affect the whole smooth routine of operation of correspondence and rapport between Members and Ministers to the great hurt of the Members' work.

The offending Member made a full apology to the House and there the matter ended. (*Hansard*, pp. 846–7; 953–4.)

Action by Public Authority in anticipation of statutory authorisation.—On 23rd November, 1971, the Leader of the Opposition raised a question of privilege on the basis that—

(i) on 9th November a Bill was introduced authorizing freeway works to be carried out on recreational lands. It referred to previous decisions of the Parliament that Parliamentary approval would be needed before there could be any dealings connected with establishing freeways, &c. on recreational lands;
(ii) work on the parkland had been commenced contrary to law;
(iii) whilst a breach of law is not necessarily a breach of privilege, the action complained of prejudicially affected the dignity and authority of the Parliament;
(iv) the action taken would affect the capacity of Members to examine the Bill impartially and rationally.

The following day Mr. Speaker expressed his opinion that to act in anticipation of and without the authority of the House specifically sought as in the Bill as a sanction to act, could be considered to call in question the worth of the authority of the House and its effectiveness; and he said that on the limited material before him he felt that a *prima facie* case existed. He accordingly suggested that the matter be referred to a Select Committee of Privilege for examination.

The Leader of the Opposition gave notice that he proposed to move the referral of the matter to the Standing Orders Committee (the House has no Standing Committee on Privilege).

Later the same day in the Legislative Council (in which House the Minister most directly involved has a seat) a special adjournment Motion was moved. In the course of debate reference was made to the same matter as had been the subject of the privilege complaint in the Assembly.

The Minister in that House explained the circumstances of the occurrence in some detail. He agreed that the action taken had been illegal and that the statutory authority concerned had a responsibility to him as a Minister which he fully accepted.

On 25th November in the Assembly the Leader of the Opposition moved that a Message be sent to the Legislative Council requesting that leave be granted the Minister for Local Government to attend in the Assembly to enable him to inform the House concerning the matter.

This Motion was negatived. There were no further proceedings on the complaint. (*Hansard*, pp. 2956–89.)

New Zealand

Premature publication of proceedings of Statutes Revision Committee.—Sir Leslie Munro drew attention to a report of proceedings of the Statutes Revision Committee on the Race Relations Bill appearing in the newspaper *New Zealand Truth*, in breach of S.O. 345. He emphasised that the newspaper stated its intention " to publish next week as fully as possible all the details we have of submissions on the Bill".

The question was referred to the Committee of Privileges, who examined the Editor and Publisher of the paper. The Committee found that the premature publication of the evidence was a breach of privilege, but recommended the acceptance of an apology in suitable terms, published in a position of equal prominence to the original article. (*Hansard*, p. 3841).

India: Rajya Sabha

Imputation of improper motives to a Minister.—On a Motion adopted by the Rajya Sabha on 7th September, 1970, a complaint of breach of privilege arising out of a statement made by Shri Ramnath Goenka which appeared in the *Indian Express* of the 4th September, 1970, under the heading " Goenka refutes Minister's charge ", was referred to the Committee of Privileges. In the statement Shri Goenka *inter alia* described as " maliciously misleading " the replies given in the Rajya Sabha on 31st August, 1970, by Shri K. V. Raghunatha Reddy, Minister of Company Affairs, to certain supplementaries on Starred Question No. 679, regarding a CBI enquiry into firms connected with Goenkas. He further stated that he believed that he was being persecuted because of the critical attitude the *Indian Express* had adopted towards some of the Government's policies.

On 9th November, 1970, a Member of the Rajya Sabha gave notice seeking permission of the Chairman to raise a question involving breach of privilege and contempt of the Rajya Sabha, its Chairman and Members arising out of certain statements contained in a writ petition filed on the 7th October, 1970, by the National Company Limited and Shri Ramnath Goenka, a Director of the Company, in the High Court of Calcutta. The Member's contention was that in the said petition the petitioners had referred to certain portions of the proceedings of the Rajya Sabha of the 31st August, 1970, relating to Starred Question No. 679, answered on that day, and in so doing, had attributed motives to the Members who put the question and the Minister of Company Affairs who answered the same. As the issues involved in this case were sufficiently important from the point of view of Members' rights and privileges, and as a connected case arising out of the same pro-

ceedings of the House had already been referred to the Committee of Privileges on the 7th September, 1970, the Chairman directed, under rule 203 of the Rules of Procedure and Conduct of Business in the Rajya Sabha that the matter be referred to the Committee of Privileges for examination, investigation and report.

The Committee considered the complaint of breach of privilege against Shri Ramnath Goenka and decided to give him an opportunity to explain his position in writing. Shri Goenka in his reply reiterated the statement published earlier in the *Indian Express* of the 4th September, 1970, and furnished a lengthy explanation in justification thereof. He contended that the circumstances of the case compelled him to make the impugned statement as there was a deliberate attempt on the part of the Minister to mislead the House in the matter and damage his reputation.

The Committee after considering the matter and Shri Goenka's explanation, came to the following conclusions:

The Committee recognises that in a democratic country like ours, every citizen has a right to offer fair criticism and/or comments on a matter which is of public concern and that it is not correct to suggest that a Member of Parliament is not liable to be criticised in the performance of his duties as such Member. Fair comments or criticism by a citizen on a matter which is of public concern and particularly a statement couched in proper language in which he puts forward his own version of certain facts, which may be contrary to something said on the floor of the House by a Member or a Minister, will not be objectionable. When, however, the citizen exceeds the limit of fair comment or criticism and indulges in imputations of improper motive to a Member of Parliament, he brings himself within the penal jurisdiction of the House and it will be for the House to decide whether such an action constitutes a breach of privilege or contempt of the House. If Shri Goenka had in the statement published in the Press stated his own version of the facts of the case without making any imputation or casting any reflection on the Minister, the question of initiating a case of breach of privilege against him would not have perhaps arisen. Instead of that Shri Goenka has in his impugned statement as also in his reply to the Committee, imputed motive to Shri Raghunatha Reddy, a Member of the House, in relation to his service therein and has thus made himself liable for breach of privilege and contempt of the House as his statement would amount to an improper obstruction in the functioning of this House.

In the circumstances the Committee has come to the conclusion that Shri Goenka by his statement which appeared in the *Indian Express* of the 4th September, 1970, has committed a breach of privilege and contempt of the House.

During the period when the matter was under consideration of the Committee, Shri Goenka was elected as a Member to the Lok Sabha. Taking this fact into consideration, the Committee did not consider it necessary to recommend any further action in the matter. The Committee, however, observed " that responsible persons in public life should refrain from commenting on the proceedings in Parliament in a manner which would bring them within the penal jurisdiction of the House ".

For the same reasons the Committee recommended that no further

action need be taken on the complaint referred to in paragraph 2 above against the National Company Limited and Shri Goenka for the statements contained in the writ petition filed by them in the High Court of Calcutta.

The report of the Committee was presented to the House on the 11th June, 1971.

No further action in the matter has been taken by the House.

Complaint against photograph of a wall poster.—On a Motion adopted by the Rajya Sabha on 7th April, 1971, a complaint of breach of privilege alleged to have been committed by the editor, printer and publisher of the *Ananda Bazar Patrika*, a Bengali Daily published from Calcutta, was referred to the Committee of Privileges. The complaint related to a photograph of a wall poster published in its issue of 19th February, 1971.

The poster in question depicted a prince being carred in a palanquin by four bearers, one of whom was labelled as " Arun Prakash " [Chaterjee]. Shri Chaterjee was the Member of the Rajya Sabha who first raised the complaint, and he drew particular attention to the words on the poster, which were as follows:

> Do you know? For only one vote the Privy Purse Abolition Bill was not accepted. Whose vote was it? The New Congress Party's M.P. Arun Prakash Chaterjee's. Secret love between agent and agent—Syndicate and New Congress Party.

Shri A. P. Chaterjee's contention was that by publishing the aforesaid photograph of the wall poster, a sordid motive had been attributed to him for not being present in the Rajya Sabha on the day of the voting on the Constitution (Twenty-fourth Amendment) Bill 1970 to abolish the Privy Purses, and that a false statement had been made that the one vote that sealed the fate of that Bill was his vote, though there were other Members besides himself who could not be present.

The Committee after considering the matter in detail observed:

> The Ananda Bazar Patrika in its issue dated 19th February, 1971, published a photograph of five posters purported to have been displayed on the walls of Calcutta by various political parties while campaigning during the recent elections to the Lok Sabha and West Bengal Legislative Assembly held in March, 1971. Considering the circumstances in which the impugned poster had been reproduced in the Patrika and recognizing that freedom of the press, to express itself without fear or favour on matters of public import, has to be cherished in a democratic society like ours, the Committee came to the conclusion that there was no breach of privilege or contempt of the House involved in the complaint of Shri A.P. Chatterjee and that it was too trivial a matter to be taken notice of by the House.

The Committee accordingly recommended and reported to the House on 17th June, 1971, that no action was called for on Shri Chatterjee's complaint.

The House took no further action in the matter.

INDIA: LOK SABHA

Complaint in provincial Assembly against remarks made in Lok Sabha.—On the 13th July, 1971, during the discussion on a Calling Attention Notice regarding the Cauvery Waters Dispute, Shri N. Shivappa, a Member, made the following remarks in the House:

> Why should the Tamil Nadu Government come forward and create all this *Hulla-gulla*. I do not understand. The agreement is subsisting till 1974. So, why should they make all this *Kalata* and *Hulla-gulla* till then?

On 14th July, 1971, in the Tamil Nadu Legislative Assembly, the Chief Minister of Tamil Nadu referred to the above remarks made by Shri N. Shivappa in Lok Sabha and stated that the words and expressions *Hulla-gulla*, allegedly used by Shri N. Shivappa, were derogatory to the dignity of the Tamil Nadu Legislative Assembly. He urged the Speaker, Tamil Nadu Legislative Assembly to take appropriate action in the matter.

Thereupon, the Speaker, Tamil Nadu Legislative Assembly, ruled that the impugned remarks made by Shri N. Shivappa in Lok Sabha, affected the dignity of the House and *prima facie* constituted a breach of privilege of the Tamil Nadu Legislative Assembly. He also observed that he would refer the matter to the Speaker, Lok Sabha, for appropriate action, in accordance with the established procedure and practice in regard to a complaint of breach of privilege by a Member of one Legislature against a Member of another Legislature.

On 16th July, 1971, Shri S. M. Krishna and other Members of Lok Sabha sought to raise a question of privilege in the House against the Tamil Nadu Legislative Assembly and its Speaker for interfering with the proceedings of Lok Sabha on the Calling Attention Notice on Cauvery Waters Dispute on 13th July, 1971.

After some discussion, the Speaker of the Lok Sabha gave his opinion as follows:

> I think we should observe restraint in this matter and let us wait for the communication from the Speaker of the Tamil Nadu Assembly . . . when I receive the communication, I shall place it before the House.

On 12th August, 1971 the Speaker informed the Lok Sabha that in reply to a reference received by him from the Speaker of the Tamil Nadu Legislative Assembly, he had written a letter on 29th July, 1971, informing him as follows:

> From the Lok Sabha Debates, dated the 13th July, 1971 (copy of relevant extracts enclosed) it may be seen that Shri Shivappa had used the words '*Kalata*' and '*Hulla-gulla*' in respect of the Tamil Nadu Government and not the Tamil Nadu Legislative Assembly.
>
> Moreover, a question of privilege would not arise in respect of anything said by a Member on the floor of the House.
>
> In the circumstances, I am treating the matter as closed.

The Speaker, also observed that he was not giving his consent to the question of privilege which was sought to be raised by Shri S. M.

Krishna and others against the Tamil Nadu Legislative Assembly and its Speaker.

The matter was, thereafter, closed. (*L. S. Deb.* cc. 148, 171–5; 190–1.)

Alleged ill-treatment of Members by police.—On 17th November, 1971, Shri Saradish Roy, a Member, sought to raise a question of privilege on the ground that on 9th November, 1971, when he went to Kashipur village, District Birbhum (West Bengal), where 23 families were reported to have been driven out after looting and burning of their huts, a group of Gujarat State Reserve Police abused him. He added that he was forcibly brought to the police camp at Sultanpur and prohibited from going to Kashipur. When he again went to that village, another batch of police personnel approached him menacingly and he had to leave that village.

On the same day, Shri Bhan Singh Bhaura, another Member, also sought to raise a question of privilege against the Deputy Superintendent and Inspector of Police, Muktsar, District Ferozepur (Punjab), on the ground that on 27th August, 1971, when he went to the Government College, Muktsar, to enquire into the reported police excesses and firing on students, the police misbehaved with him, forcibly dragged students from his car, broke his car's door handle and threatened him, even after knowing his identity.

The Speaker (Dr. G. S. Dhillon) observed that according to the practice followed in such cases, these cases would first be referred to the Government for their comments and after getting a report from the Government, he would give his ruling thereon.

On the 23rd December, 1971, disallowing the question of privilege, the Speaker ruled as follows:

> When there are matters not connected with the House, even though the happening of such things is unfortunate, the remedy is at the official level. So far as the rights of this House are concerned, the difference between one MP and a citizen is very narrow, so far as incidents outside the House are concerned. We have settled . . . that the member could mention it, I could send it to the Minister and the reply could come. But if he thinks that it is a matter of privilege, I do not think it is a matter of privilege. . . . The MPs are not above law. . . . An MP outside the House is just an ordinary citizen like any other citizen. If he is prevented from performing his duties of the House, that is a different matter. If he is moving outside, he is subject to the law and subject to other remedies available. He can have the same remedies as are available to an ordinary citizen. If I am insulted outside and I say, 'I am the Speaker and I can punch anybody', I do not think I have that privilege.

(*L.S. Deb., 17 November, 1971*, cc. 186–8; *23 December 1971*, cc. 1–3).

Alleged ill-treatment and arrest of a Member, and failure to notify arrest to Speaker.—On 17th December, 1969, Shri Tulmohan Ram, a Member, raised a question of privilege regarding his alleged arrest on 28th November, 1969, the non-intimation thereof to the

Speaker, and the ill-treatment which he alleged he had suffered at the hands of Shri Chandrika Prasad, then Sub-Inspector of Police, Mahishi (Bihar). In his notice of question of privilege, Shri Tulmohan Ram set out the facts of the case as follows:

> On 28th November, 1969, the Sub-Inspector Shri Chandrika Prasad met me in the afternoon outside the village. He was coming from my paddy field after getting the paddy crops looted. On my questioning as to why my paddy crop was looted and that too under the protection of police, the said Sub-Inspector asked me to get down from the back of the horse and rebuked me . . . I reached my house. The Sub-Inspector accompanied by persons hostile to me reached my house and was entering my family apartments. I told the Sub-Inspector that only ladies and children are in the House. On this the said Sub-Inspector got me arrested. The Sub-Inspector began to rebuke me again.
>
> I remained in the police custody (under arrest) for more than half an hour. I was set free on the request of hundreds of persons of my village, Sarauni.
>
> The said Sub-Inspector arrested me while the session of Lok Sabha was in continuance and did not inform the Speaker of the House.

After some discussion, the matter was referred to the Committee of Privileges by the House.

The Committee of Privileges called for a written explanation from the Sub-Inspector of Police concerned and for the factual comments of the Government of Bihar on the incident; they also examined in person both Shri Tulmohan Ram and the Sub-Inspector, as well as three other witnesses, each of them on oath. The Fourth Lok Sabha was dissolved on 27th December, 1970, before the Committee could present its report to the House; but on 8th June, 1971, in the Fifth Lok Sabha, Shri Tulmohan Ram, successfully moved to refer the matter to the new Committee of Privileges.

That Committee decided that it was unnecessary to hear evidence *de novo*, but that they would consider the matter on the basis of the evidence and documents previously obtained. But before publishing a report they summoned Shri Chandrika Prasad, the Sub-Inspector of Police, to appear again before the Committee.

The Committee's report was presented to the House on 10th December, 1971. In it they pointed out that the main issue for consideration was whether Shri Tulmohan Ram had in fact been arrested by the Sub-Inspector of Police on 28th November, 1969, a fact which the Sub-Inspector denied. The question of breach of privilege for not notifying the Speaker of the arrest would only arise if the fact of the arrest was satisfactorily established. In the Committee's view, the evidence on this point was conflicting and contradictory, and the fact of Shri Tulmohan Ram's arrest had not been conclusively proved. In these circumstances it could not be said that any breach of privilege had been committed.

The Committee felt, however, that in all the circumstances Shri Tulmohan Ram had been ill-treated and abused by the Sub-Inspector, Shri Chandrika Prasad. When the Sub-Inspector had appeared before the Committee on 10th November, 1971, he had been informed that

this was the Committee's opinion, and had thereupon expressed his unqualified regret if he had uttered any undignified remarks towards any Member of Parliament. In view of this expression of regret the Committee recommended that no further action should be taken in the matter.

KERALA

Prior discussion of provisions of Bill with interested parties.—On 26th August, 1971, the Speaker withheld consent to Shri P. N. Chandrasenan, and Shri V. K. Gopinathan, Members of the Assembly, to raise a question of breach of privilege against Shri K. Avukkaderkutty Naha, Minister for Food and Local Administration and Shri N. I. Devassykutty, a Member of the House. It was alleged in the notices that the Minister for Local Administration and Shri Devassykutty had been reported to have discussed in detail the provisions of the District Administration Bill outside the House before the Bill was introduced in the Assembly.

The Speaker said that it was a well established administrative practice by the Government to consult the appropriate outside interest while framing social legislation. The intention of the Minister, it was pointed out by the Speaker, was obviously to present before the House a Bill, the provisions of which had a large measure of approval of those who were affected by or interested in the legislation.

MAHARASHTRA

Misleading the House by giving incorrect information.—On 26th April 1971 a Member of the Maharashtra Legislative Assembly gave notice of breach of privilege and contempt of the House against the Minister for Public Health alleging that the Minister while speaking on Demands for Grants, misled the House by giving wrong information, that is by saying that there was no offer of costly equipment by the World Federation of Neuro-Surgery. The Member contended that there was evidence in his possession to contradict what the Minister had stated.

While refusing his consent to raise the matter in the House, the Speaker informed the Assembly that he had gone through the papers which the Member was referring to and from these papers he could not say that there was any definite offer of the equipment. From the papers relied upon by the Member it could not be concluded that the Minister had given any incorrect information to the House. Since the question of the said offer was the subject matter of examination by the Estimates Committee, the Speaker further observed:

> The Parliamentary convention however requires that the recommendations made by the Estimates Committee should be considered by Government in all seriousness and Government should send a statement of action to the Committee covering those recommendations. The Government in its statement may

choose to accept the recommendations or may not choose to accept them in which case it has to explain to the Committee why it is not able to accept the recommendations Instead of doing so, the Minister had chosen to make a public statement, short-circuiting this procedure. It is not open to the Minister to state the Government's position in the House in regard to any of the recommendations of the Estimates Committee unless the Committee has had an opportunity of considering them beforehand. This is the settled position and Government should make a note of this. As I have said earlier, this is not a matter which involves any breach of privilege.

(*M.L.A. Debates dated* 29th *April* 1971).

Lapse on the part of Government to comply with certain provisions of Act.—On 28th September, 1971, a Member of Maharashtra Legislative Assembly gave notice of breach of privilege against the Minister for Revenue. The Member alleged that the Minister failed to place before the Legislature the rules framed under the Maharashtra Agriculture Holdings (Ceiling on Holdings) Act, 1961 when some action pursuant to the said Act had already been taken under executive instructions on matters which were to be governed by the rules. The Member contended that by doing so the House was deprived of its right to consider and modify these rules and that the Minister had therefore committed breach of privilege and contempt of the House.

The Speaker permitted the Minister concerned to explain the position and, after hearing the statement of the Minister, the Speaker refused his consent to the privilege notice with the following observations:

The Member who had given the notice had stated that the draft rules under the Act were published on 19th October, 1970, and objections, if any, to the rules were invited within a period of one month from that date. It was true that though one year had elapsed the rules were not finalised. The Minister had explained that the delay in finalising the rules was due to some technical difficulty. He admitted that some administrative action had been taken implementing the provisions of the Act but that was done only after ascertaining the legal opinion of the Law and Judiciary Department that such action could be taken.

The question for consideration is very limited, that is whether the subject matter will constitute a breach of privilege and whether some information has been deliberately withheld by the Minister and whether any attempt had been made to by-pass this House. The Minister had explained the reasons for delay in finalising the rules. This question can however be gone into by the Subordinate Legislation Committee of this House. Delay in laying the rules before the House, or even failure to do so, would not constitute any breach of privilege. Breach of law in any respect would not by itself give rise to any breach of privilege. (*M.L.A. Debates, dated 6th October,* 1971).

MYSORE

Governor's Address at first meeting of year.—The ninth session of the Mysore Legislative Assembly was summoned by the Governor of Mysore to meet on 23rd December, 1970. The Assembly met on 23rd, 24th and 26th December, and on the last of those days the Speaker

adjourned the Assembly *sine die*. The Assembly was next convened to meet on 15th March 1971, and a notice was sent to the Members of the Assembly by the Secretary, acting under orders from the Speaker, requesting their attendance. A provisional programme for the adjourned meeting of the Legislative Assembly was also sent to all the Members.

On 15th March, 1971, when the Assembly met, Shri H. N. Nanje Gouda, a Member of the Legislative Assembly, raised a question of privilege on the failure of the Government to advise the Governor to address the Assembly before the introduction of the Budget for 1971–72, which deprived Members of the privilege of knowing the policies and programme of the Government. He contended that the meeting of the Assembly on 15th March, 1971 was the first one in the year 1971 and therefore it should have commenced with an address from the Governor as required under article 176 of the Constitution. The normal procedure in the House was to have the Governor's address before the Budget; the deviation from the normal procedure had affected their rights and therefore, he claimed, a breach of privilege was involved.

After hearing some other Members, the Speaker ruled as follows:

Honourable members are aware that the word " Session " is not defined in the Constitution or in the Rules of Procedure. May has defined " Session " as follows:

" A Session is the period of time between the meeting of a Parliament whether after prorogation or a dissolution and its prorogation ".

A Session which is called a meeting or meetings is continued up to the date of prorogation. In England to which the Honourable Member Sri Siddaveerappa made reference, the Session lasts the entire year. It commences round about the first week of October and ends in September. There are yearly sittings in the Parliament. For the purpose of convenience the Session adjourns from time to time. They adjourn for Christmas and adjourn for other holidays also. The Budget Session comes in the month of March or April. There is one point here to be mentioned, and that is there is no connection between the Budget and the First Session.

During the Third Session of the Provisional Parliament which commenced on September 14, 1950, the House was adjourned on 20th December, 1950 to meet again on 5th February, 1951. Since Parliament was not prorogued the President did not address the Parliament though it met for the Budget on 5th February, 1951. Therefore, there is no connection between a Budget Session and the first Session. The Budget Session may not be first Session. It may be continuation of a Session called earlier.

The other question raised by the Honourable member Sri K. H. Patil was that it was an emergent Session. Whatever might be the intention in summoning the Session, whether as an emergent Session or a non-emergent Session or as an ordinary Session, Honourable Members will find that a Session is always called in the following terms:

" I Dharma Vira, Governor of Mysore do hereby summon the Mysore Legislative Assembly to meet at Bangalore at such and such a time on such and such a date."

It will thus be seen that the summons of the Governor is always in general terms and no programme is included in the summons. In the course of a session if a particular item of business is over, it is open for the Government or Honourable Members to indicate further work and to continue the Session.

Therefore, there is no distinction between emergent session and non-emergent session so far as the Constitutional position is concerned. This being an adjourned meeting, I think, according to the Constitution it need not commence with the Governor's Address.

I do not find there is any breach of privilege and I cannot give my consent. I withhold my consent.

Despite this ruling from the Speaker, five Members of the Legislative Assembly and one Member of the Legislative Council lodged a petition with the High Court praying for a writ of certiorari quashing the notices and programmes issued to the Members of the Assembly in relation to the meeting summoned for 15th March, 1971. They prayed also for a writ of prohibition directing the respondents (the Government) from commencing the business so intimated, and for a writ of mandamus directing the respondents to summon a joint session of the Legislative Assembly and Council in accordance with the provisions of Article 176 of the Constitution.

After hearing submissions from Shri R. M. Patil on behalf of the petitioners and from the Advocate-General on behalf of the respondents, the judge, A. Narayana Pai C.J., commenced his summing up by quoting the terms of Article 176, which are as follows:

(1) At the commencement of the first session after each general election the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provisions shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address.

He then cited the various documents which the Advocate-General produced in evidence: the Mysore Gazette Extraordinary of 19th December 1970, which contained the orders of the Governor summoning the two Houses to meet on 23rd December, 1970; the record of the brief session in December, the last entry of which stated " the House adjourned *sine die* at 9.15 p.m."; and the printed programmes for the meeting convened for 15th March, 1971, which bore the heading " Ninth Session (Adjourned Meetings) ".

There was a clear constitutional distinction, the judge said, between prorogation of the Legislature and an adjournment of a meeting of the Legislature; and it was apparent from the documents that the Ninth Session which had been summoned by the Governor on 19th December, 1970 had not been prorogued, and that the new meeting was only an adjourned meeting of the same session. He then went on:

The only answer attempted by Mr. Patil to this argument of the Advocate-General is that the Ninth Session summoned to meet on the 23rd of December, 1970, was an emergent session intended only to discuss certain matters relating to border disputes between the States of Mysore and Maharashtra, and that when it adjourned after discussing the same, no further item of work was left on the agenda for consideration. He however concedes or does not dispute that

there is nothing preventing the Legislature or a competent officer of the Legislature from adding to the agenda or modifying the agenda.

We therefore agree with the Advocate-General that the meeting of the 15th of March, 1971, is not a new Session at all but an adjourned meeting of the Ninth Session which commenced on the 23rd of December, 1970. It cannot therefore be regarded as a new session and therefore the first session of the year 1971 attracted the provisions of article 176 of the Constitution.

The writ petition is dismissed.

ORISSA

Excessive delay in raising question of privilege.—The Union Minister for Information and Broadcasting, in the course of a speech in the Lok Sabha on 8th July, 1971, stated that there was delay by the Orissa Government in transferring land in Cuttack town for the construction and expansion of Cuttack Radio Centre. In response to a Call-Attention Notice on the subject, tabled by a Member in the Orissa Legislative Assembly, a Minister made a statement in the Assembly on 15th July. It was alleged by a question of privilege in the Assembly, tabled on 21st July, that the said statement was misleading and untrue that that the Minister had deliberately suppressed a material portion of the facts. The Speaker while refusing his consent to the question of privilege, gave the following ruling on 3rd August.

"On 21st July Shri Brajamohan Mohanty and four others raised a question of privilege against Shri R. K. Patnaik, Minister, Health who made a statement on the call-attention notice on behalf of the Minister, Revenue. It has been alleged that Shri Patnaik has deliberately given a misleading and untrue statement. It has also been alleged that the Minister has suppressed a material portion of the facts. Hence it is urged that the statement of the Minister comes within the purview of contempt of the House.

"I have carefully gone through the relevant papers and find that the Minister made a statement on 15th July while notice to raise the present question of privilege was given on 21st July. The Member also gave a notice for short duration discussion on 19th July stating that the statement made by the Minister was misleading and untrue. He could have given the notice of the Privilege motion on the said date when the matter came to his knowledge. In consideration of the above facts, I have come to the conclusion that the Members have not availed themselves of the earliest opportunity and that there has been undue delay in giving notice to raise the privilege question.

" I therefore, refuse my consent."

XIII. MISCELLANEOUS NOTES

1. Constitutional

Australia (Ministers of State—Increase in Numbers).—On 10th March, 1971, the Right Honourable William McMahon succeeded the Right Honourable J. G. Gorton as Prime Minister of Australia. The new Prime Minister proceeded to effect some changes in the Administrative Arrangements Order and an increase in the number of Ministers from 26 to 27 was proposed. As Parliament alone has the power to increase the size of the Ministry, a Bill to effect the change was necessary.

The Prime Minister introduced the Ministers of State Bill 1971 in the House on 29th April, 1971.* Acrimonious debate ensued† and the Bill was passed only after Divisions had occurred on Closure Motions, on the Second Reading, during the Committee Stages, on the Adoption of the Report and on the Third Reading.

The Bill passed the Senate‡ with less difficulty. It is of interest to note that a Government Senator expressed concern at certain of its provisions and stated his opinion that the Senate should not have any Ministers, as the origins of the Senate were those of a States House, not a " popularly " elected House, but he supported the Bill on the grounds that the proposed new Minister would be a Member of the House of Representatives, not the Senate.§

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

Australia (Appointment of Assistant Ministers).—On 29th April, 1971, the Prime Minister made a statement relating to a proposal for the appointment of Assistant Ministers. In this statement the Prime Minister cited historical precedents for appointing Assistant Ministers, Honorary Ministers and Ministers without portfolio in the Australian Parliament, the most recent being the appointments by Prime Minister Menzies in the early 1950s. It was stated that the Assistant Ministers, who were to assist Cabinet Ministers, would be sworn in as Executive Councillors and receive no extra salary, but they would receive payments " to meet out-of-pocket expenses ".¶

The functions of Assistant Ministers anticipated by the Prime Minister included the exercising of statutory functions delegated by the Ministers they were to assist, thus allowing these Ministers " to give more time to Cabinet business ".¶ They would also be expected to take charge

* *H. of R. Hansard*, 29th April, 1971, p. 827.
† *H. of R. Hansard*, 4th May, 1971, pp. 2449–72.
‡ *Senate Hansard*, 11th May, 1971, pp. 1700–05 and 12th May, 1971, pp. 1744–59.
§ *Senate Hansard*, 12th May, 1971, p. 1754.
¶ *H. of R. Hansard*, 29th September, 1971, p. 2244.

of legislation in the Committee of the Whole, sitting at the Table and representing their Minister " in the discussion of clauses and amendments as they arise ".* The Prime Minister anticipated that it would be necessary to amend some Standing Orders to facilitate this proposal.

Debate on the Motion to take note of the April statement resumed on 4th May. The Opposition moved an amendment expressing disapproval of the proposed appointments and quoted a statement by a previous Speaker (Speaker Cameron) who cited *May* as authority for categorising Assistant Ministerships as " offices of profit ".† Debate was adjourned and made an Order of the Day.

A public announcement to the effect that six Assistant Ministers were to be appointed was made on Thursday, 19th August, shortly after the House had resumed for the Budget sittings. It was understood that some of the Assistant Ministers would be sworn as Executive Councillors on the following day.

The next day, prior to the swearing in of the Assistant Ministers, a member of the Shadow Cabinet moved " That so much of the Standing Orders be suspended as would prevent the House from debating Order of the Day No. 39 [i.e. the Motion to take note of the statement, and the amendment] and voting on it without adjournment ".

The Motion was seconded by another Shadow Minister and supported by four Government backbenchers, two of whom had been previous ministerial colleagues of the Prime Minister. Their defection would have given the Opposition a majority, though not the absolute majority required to suspend the Standing Orders.

The Opposition's principal charge was that the Prime Minister should have informed Parliament rather than the press of his decision to appoint the Assistant Ministers and that he should not have contemplated the appointments until the House had disposed of the Opposition amendment expressing disapproval of the appointments.

The Prime Minister delayed the swearing-in of the Assistant Ministers, saying " in deference to the wishes of honourable Members, if they wish to debate the matter in full I shall make arrangements for the debate to take place this afternoon, if that is desired ".‡

The Motion to suspend Standing Orders was then withdrawn, by leave, and a debate on the Order of the Day took place that afternoon. On Division, the House decided on party lines in favour of the appointment of the Assistant Ministers.

Subsequently, on 10th September, 1971, the Prime Minister, in announcing ministerial arrangements, formally notified the House of the appointment of six Assistant Ministers (five in the House of Representatives and one in the Senate) and indicated which member of Cabinet each would assist.

As yet no action has been taken to amend those Standing Orders

* *H. of R. Hansard*, 29th September 1971, p. 2244.
† *H. of R. Hansard*, 4th May, 1971, p. 2473.
‡ *H. of R. Hansard*, 20th August, 1971, p. 427.

which relate to Ministers. Until the Standing Orders Committee has reported and the House has acted on that Report it is not possible for Assistant Ministers to fulfil the rôles in the House which the Prime Minister intended for them.

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

Tasmania (Deputy Governor).—Until recently, no authority existed for the Governor of the State of Tasmania to appoint a deputy in the case of his (the Governor's) illness. In such cases it was necessary either for the Governor to conduct Government business from his sick bed, or for the Lieutenant-Governor (if there were such an officer), or the Administrator, to invoke the appropriate Commissions and assume the administration of the Government during the period of the Governor's incapacity.

The Letters Patent constituting the office of Governor of the State of Tasmania provided for the Governor's appointment of a deputy only by reason of his temporary absence from the Seat of Government or from the State, for a short period. The relevant clause of the Letters Patent (Clause XIII) was amended in May 1971 to permit the Governor to appoint a deputy during any short period of illness, as well as during temporary absence.

The purpose of the Constitution Act 1971 is to bring the provisions of Section 8 of the Constitution Act 1934 into conformity with the alterations to the Letters Patent.

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

South Australia (Members' Contracts with Government).—The Constitution Act Amendment Act (No. 2) (Act No. 95 of 1971) enables Members of Parliament to enter into and enjoy the benefit of certain contracts and agreements with the Government or its instrumentalities where the Members do not receive more favourable terms than are accorded to the public, without risk of Members forfeiting their seats in Parliament.

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

Papua New Guinea (Constitutional changes).—The Papua and New Guinea Act 1949–68, an Act of the Commonwealth of Australia which is in effect the constitution of Papua New Guinea, was twice amended in 1971, by Act No. 49 of 1971 and Act No. 123 of 1971; it is now cited as the Papua New Guinea Act 1949–71.

The territory of Papua and the territory of New Guinea, administered together under the provisions of the Act and formerly together called the " Territory of Papua and New Guinea ", is now called " Papua New Guinea ".

Members of the House of Assembly elected by the House to ministerial office are now designated " Ministers of the House of Assembly " (formerly " Ministerial Members " and " Assistant Ministerial Members ").

The Membership of the House is increased to not less than 104 and not more than 107, composed of:

4 Official Members;

82 Members elected for the open electorates;

18 Members elected for the regional electorates;

Not more than 3 Nominated Members (who may be nominated by Resolution of the House). Unsuccessful candidates at the last General Election are not eligible for nomination.

The quorum of the House is raised to 36 Members.

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

India (North-eastern Areas (Reorganisation) Act, 1971).—The Act establishes new States of Manipur and Tripura, and forms the new State of Meghalaya and the new Union territories of Mizoram and Arunachal Pradesh by reorganisation of the existing State of Assam. The Act also defines the territories of the new States and Union territories and makes the necessary supplemental, incidental and consequential provisions regarding representation in Parliament and in the Legislative Assemblies of the States and other matters.

There has been no change in the number of seats allocated to the new States of Manipur and Tripura for representation in the Rajya Sabha. The new state of Meghalaya as well as the new Union territories of Mizoram and Arunachal Pradesh have, however, been provided with one seat each in the Rajya Sabha, the strength of which has consequently been increased from 240 to 243.

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

India (Constitution (Twenty-fourth Amendment) Act 1971).—The Supreme Court of India, in the Golak Nath case (1967, 2 S.C.R. 762), reversed its earlier decisions which had upheld the power of Parliament to amend all parts of the Constitution of India including Part III relating to Fundamental Rights. The result of the judgment was that Parliament was considered to have no power to take away or curtail any of the fundamental rights guaranteed by Part III of the Constitution even if it became necessary to do so for giving effect to the provision of Part IV of the Constitution relating to the Directive Principle of State Policy and for the attainment of the objectives set out in the preamble to the Constitution. It was considered necessary to provide expressly that Parliament was empowered to amend any provision of the Constitution so as to include the provisions of Part III within the scope of the amending power.

The Act amends Article 368 suitably for the purpose mentioned above and makes it clear that Article 368 provides for amendment of the Constitution as well as procedure therefor. The Act also provides that when a Constitution Amendment Bill passed by both Houses of Parliament is presented to the President of India for his assent, he shall give his assent thereto. The Act also amends Article 13 of the Con-

stitution to make it inapplicable to any amendment of the Constitution under Article 368.

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

India (Constitution (Twenty-seventh Amendment) Act 1971).— Article 239A empowered Parliament to create a Legislature or a Council of Ministers or both in any of the Union territories of Goa, Daman and Diu, and Pondicherry. A new Union territory of Mizoram has been formed which also will have a Legislature and Council of Ministers. Article 239A of the Constitution has, therefore, been amended to include this unit.

The Study Team appointed by the Administrative Reforms Commission on the Administration of Union Territories and N.E.F.A. had recommended that the Administrator of a Union territory with Legislature may have the power to promulgate Ordinances when the Legislature is not in session. This recommendation has been accepted and a suitable provision in the Constitution conferring such power on the Administrator has been incorporated in the Act.

Under paragraph 18 (2) of the Sixth Schedule to the Constitution read with Article 240 of the Constitution, the President was empowered to make Regulations for the North-East Frontier Agency. The Act continues to vest these powers in the President even after the Agency has become the Union Territory of Arunachal Pradesh under the reorganisation scheme. Similar powers have been also vested in the President in respect of the newly-created Union Territory of Mizoram.

When the Legislature of a State is dissolved or its functioning is suspended by a proclamation under Article 356 of the Constitution, Parliament is empowered to confer legislative powers on the President in respect of that State by passing a law under Article 357 (1). No such provision exists in the case of Union Territories with Legislatures, with the result that whenever the Legislature of any Union Territory is dissolved or suspended by an order of the President, all legislation relating to that Union Territory has to be passed by Parliament. The Act provides that in such circumstances the regulation-making power under Article 240 should be available to the President.

Hill Areas of Manipur are predominantly inhabited by members of Scheduled Tribes. To safeguard their interests, special provisions were made in Section 52 of the Government of Union Territories Act 1963 for a Committee of the Legislative Assembly of the Union Territory of Manipur, consisting of members from the Hill Areas. The said Section 52 had ceased to operate after the Union Territory of Manipur had become a State under the reorganisation scheme. As a part of the scheme of safeguards for the people of the Hill Areas, this arrangement continues even after Manipur has become a State. Hence a specific provision has been made in the Act for the formation of such a committee.

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

Malawi (Ministers to be Members of the Assembly.)—Section 50 of the Constitution was amended by the insertion of the following subsection immediately following subsection 1:

"(2) Ministers appointed pursuant to Subsection (1) shall by Virtue of such appointment, be members of the National Assembly for the duration of their holding of the office of Minister."

2. Procedure

House of Commons (Effect of Resolution Agreed to in Private Members' Time).—On a dozen occasions in each Session, backbench Members of the House of Commons ballot for the opportunity to initiate debates on Motions of their own choice. Such debates take place on Fridays or during the first half of Monday sittings, times when many Members are away in their constituencies and full-scale party Divisions are avoided as far as possible. Though private Members may use these occasions to raise subjects of major political importance, the debates tend to attract less attention than debates at other times, and the major frontbench spokesmen on either side do not normally participate.

The extent of the devaluation of debates in private Members' time was demonstrated in May 1971, when an Opposition backbencher moved the following Motion:

> That this House, noting the increase in prices of basic foods with the consequent hardship to families in areas of low average wages and increasing unemployment, but not classified as developing areas, calls upon Her Majesty's Government to set up an organisation for consumer protection with powers to scrutinise and check prices of essential goods and services.

Food prices were at that time at the centre of political controversy between the Government and the Opposition, and the Minister of Agriculture therefore thought it proper to answer the debate himself. In his speech he made clear his opposition to the proposal in the Motion requesting the setting up of an organisation for consumer protection. Despite this the Government did not have sufficient of their supporters in the House to challenge the Motion when it was put to the House, and the Motion was accordingly agreed to without a Division.

The following day the Leader of the Opposition attempted, on a point of order, to ask the Government to state how they intended to implement the Motion which the House had passed, but no answer was forthcoming. Accordingly the official Opposition devoted the next day available to them to a new Motion, which drew attention to the earlier Resolution and called upon the Government to announce their plans for a consumer protection organisation without further delay. The debate on this Motion for the most part covered the same ground as before, the problem of rising prices and the Government's policy for tackling the problem. But the Ministers who spoke made passing reference to the Government's failure either to oppose or to implement the private

Member's Motion, which they defended on two grounds: first they claimed that the Motion had " not been worth voting against " because the Opposition were themselves so divided and uncertain about their policy; and secondly they claimed that there was ample precedent for not acting on such a Resolution. As an example they cited a private Member's Motion in the last Parliament calling for new social security benefits for single women and their dependants; the Labour Government at the time had allowed the Motion to pass but had not subsequently taken any action on it.

At the end of the debate the Opposition's new Motion was defeated following a Division on straight party lines.

(*H.C. Deb.*, Vol. 817, cc. 40–101, 205, 919–958.)

Australia: House of Representatives (Guillotine).—On Tuesday, 4th May, 1971, the Government, with only three days of its timetable for the autumn sittings remaining, still had on the Notice Paper some 18 Bills and intended to introduce others which were programmed to be passed before the House adjourned until the Budget sittings in August. That day the Leader of the House moved, pursuant to notice, that so much of the Standing Orders be suspended as would prevent him making one declaration of urgency and moving one Motion for allotment of time in respect of 17 Bills.* The Standing Orders were suspended, an omnibus declaration of urgency made and a Motion passed allotting a total time of 19 hours and 10 minutes for the 17 Bills.† Time limits for each Bill were stipulated in hours and minutes and ranged from a minimum of 5 minutes each for all stages of 7 of the Bills to 2½ hours for the Second Reading and 1½ hours for the remaining stages of the Trade Practices Bill 1971.

By the morning of Thursday, 6th May, after two late sittings (1.21 a.m. and 6.22 a.m.) only 5 of the 17 Bills had been disposed of because of intervening business which included a want of confidence amendment and 6 Opposition Motions to suspend Standing Orders for various reasons.‡ The Leader of the House then moved for a variation of allotment of time which set actual concluding times such as " until 3.30 p.m. this day " for the proceedings on each of the 12 remaining Bills. This variation reduced the total time for the 17 Bills from 19 hours 10 minutes to 13 hours 7 minutes.

In the House of Representatives the guillotine has been applied to 145 Bills on some 110 occasions since it was first used in 1918. On 105 of these occasions only one Bill was declared urgent and had time limits allotted to the various stages of its progress through the House. The figures below show the frequency of groups of Bills being " guillotined " at the same time.

* Standing Order 92 refers only to " a Bill " and not " Bills "—thus the suspension was necessary. *V. & P.*, 1970–71, pp. 577–8.

† *V. & P.*, 1970–71, pp. 580–3.

‡ See article on subsequent suspension of S.O. 399 in this edition (page 168).

No. of Bills	*No. of Occasions*	*Total Bills*
1	105	105
2	2	4
5	1	5
14	1	14
17	1	17
	110	145

By comparison, *May*, 18th edition, pages 451–2, lists only 64 Bills guillotined in the House of Commons in the period 1887–1969 and four occasions on which 2 or 3 Bills have been guillotined jointly (page 443).

The interesting feature of the 1971 guillotine is that it demonstrates a two-stage development of a new practice. Between 1901 and 1957 no more than one measure had ever been guillotined by one declaration of urgency and a subsequent allotment of time. However, this practice was varied in 1958* when 4 Banking Bills and 10 Bills effecting consequential amendments to other Acts were grouped together. Ten years later, during the Session 1968–9, the two main Appropriation Bills were grouped.† This occurred again in 1970‡ and also that year five Bills relating to Receipts Duties were grouped.§

Thus, after the use of an omnibus guillotine for only the second time in 1969, the procedure was used twice in the following year. But on all of these occasions the Bills were related measures. In the case of the guillotine of 4th May, however, the Bills were not related by subject matter. They covered subjects as diversified as Trade Practices, Income Tax, the Wool Industry, Seamen's Compensation and Papua and New Guinea.

The use of this guillotine led to considerable criticism in the House and the press, and in the light of this criticism it is doubtful whether governments in future years will be keen to draw on this particular precedent.

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

Australia: House of Representatives (Adjournment of House due to Count-out and Resumption of Lapsed Business).—During debate on the Second Reading of the Appropriation Bill 1971–2 (Budget debate) on 26th August, 1971, a Member drew the attention of Mr. Deputy Speaker (Mr. Lucock) to the state of the House. The bells were rung and a count failed to show that a quorum had been obtained within the prescribed time. Mr. Deputy Speaker thereupon at 4.53 p.m. adjourned the House until the next sitting day provided for under Standing Orders, viz.: 7th September, at 2.30 p.m.*

Section 39 of the Constitution of the Commonwealth provides for the

* *V. & P.*, 1958, p. 27; and see THE TABLE, 1958, pp. 57–9.
† *V. & P.*, 1968–9, p. 521.
‡ *V. & P.*, 1970–1, pp. 298–9.
§ *V. & P.*, 1970–1, p. 222.
¶ *V. & P.*, 1970–1, p. 688.

quorum of the House of Representatives to be one-third of the total number of Members. At the time the count was taken only 40 Members (including Mr. Deputy Speaker) were present, two Members less than the quorum. Government Members (including the Deputy Speaker) in the Chamber at the time totalled 35 and Opposition Members 5.

The count-out took place after several quorums had been called earlier in the afternoon.

Following the count-out the Prime Minister issued a statement to the press which stated that it was the responsibility of the Government parties to have sufficient Members in the House to maintain quorums. The Prime Minister also stated that on this occasion the fact that there were enough Government Members in the parliamentary precincts to sustain a quorum was not a satisfactory reason for their failure to promptly answer the bells. He concluded by saying—

> I regret that the quorum was not maintained and I treat the matter extremely seriously both from the point of view of the business of the House and of sustaining the prestige and authority of the Parliament.

Standing Order 90 of the House of Representatives states that—

> If the proceedings be interrupted by a count-out, such proceedings may, on Motion after notice, be resumed at the point where they were interrupted.

On the next day of sitting the Leader of the House moved, by leave: "That the proceedings on the Appropriation Bill (No. 1) 1971–2, which lapsed on Thursday, 26th August, 1971, be resumed forthwith at the point where they were interrupted." The Motion was agreed to and debate was resumed on the Bill.*

The lack of a quorum has caused the adjournment of the House of Representatives on 64 occasions. On only 10 of these occasions has the business of the House been interrupted, and on the 54 other occasions the count-out has occurred during the adjournment debate. The most recent previous occasion of a count-out interrupting the business of the House occurred on 10th April, 1935.†

Australia: House of Representatives (Quorum of Members).—An article in THE TABLE (1970), Volume XXXIX, pp. 162–5) discussed the recommendation of the Standing Orders Committee (in its report of 10th June, 1970) that the quorum of the House be reduced from one-third of the Members to one-fifth. The article pointed out that, in principle, the House had approved the recommendation.‡ In view of the constitutional provision that:

> Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the Members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.§

* *V. & P.*, 1970–1, p. 691.
† *V. & P.*, 1934–7, p. 252.
‡ *V. & P.*, No. 41, 20th August, 1970, pp. 252–3; *Hans.* H. of R., 20th August, 1970, pp. 318–55.
§ *The Constitution*, Section 39.

a Bill was introduced into the House on 1st September, 1970, to effect the reduction.

The important section of the Bill, as introduced, was Section 3, which read:

The presence of at least one-fifth of the whole number of Members of the House of Representatives is necessary to constitute a meeting of the House for the exercise of its powers.

On 4th September, 1970, the House, in a free vote, amended the Bill by adding the following proviso to Section 3:

Provided that for a Division to be declared carried, one-third of the whole number of Members must be present, otherwise no decision of the House shall be considered to have been arrived at by such Division.

The House passed the Bill, as amended.

On 14th October, 1970, the Standing Orders Committee met to consider the implications of the Bill and on 17th February, 1971, presented a Report.* Paragraphs 6–8 of the Report read as follows:

6. One possible interpretation of Clause 3 of the Bill as it now stands is that it provides for two quorums, namely, a quorum of one-third of the whole number of Members when the House is voting, by means of a Division, on a question and a quorum of one-fifth of that number at other times. Whether the Constitution permits one quorum for some purposes and another quorum for other purposes is not clear.

7. In addition, the view can be taken that the proviso, in the form in which it has been worded, deals with a matter relating to the conduct of the business of the House, which is not a matter on which *the Parliament* may make laws but is a matter with respect to which the *House of Representatives* (not the Parliament) may make rules and orders under section 50 (ii) of the Constitution, which reads:

" Each House of the Parliament may make rules and orders with respect to;
(i) .....
(ii) The order and conduct of its business and proceedings either separately or jointly with the other House."

8. Finally, in relation to the wording of the proviso there is a deficiency in that it relates only to the carrying of a question and makes no provision for the negativing of a question by division.

In view of this the Committee recommended that the Bill, then before the Senate, be not further proceeded with in its amended form and that a new Bill, similar to that introduced on 1st September, 1970, be introduced. The Committee added, however, that

if the Division requirement of one-third is to be given effect, this should be done by amendment of the Standing Orders pursuant to Section 50 (ii) of the Constitution.†

Appropriate amendments, which met the intention of the proviso in Section 3 of the 1970 Bill, were shown in the Appendix to the Report.

The 1970 Bill, which had been read a first time in the Senate on 21st October, 1970, was discharged from the Senate Notice Paper on 24th February, 1971. A new Bill (House of Representatives (Quorum) Bill 1971), similar to that introduced on 1st September, 1970 (i.e. without the proviso), was introduced, on notice, on 23rd February,

* *P.P.*, No. 10 of 1971. † Two members of the Committee dissented.

1971, by the then Leader of the House, the Hon. B. M. Snedden, Q.C. In his Second Reading speech Mr. Snedden outlined the history of the 1970 Bill and the Report of the Standing Orders Committee. He then said:*

> Assuming the Bill is now passed by the House in this form (as recommended by the Report) it leaves for decision the question of whether the Standing Orders should be amended to give effect to the intention embraced by the proviso added to the earlier Bill. There are now two contradictory votes. One, of 20th August, 1970, for simply a one-fifth quorum; another of 4th September, 1970, requiring that, notwithstanding a one-fifth quorum, on a vote, not less than a one-third vote is needed for the Division to be effective. A firm and definitive decision now needs to be taken and if the Bill is passed by the House in its introduced form, I will move the Motion of which I have given notice to amend the Standing Orders to provide a vehicle for that decision. . . . I should like to make it clear to the House that, although I shall be moving these amendments to the Standing Orders, I will do so only in order that the amendments may be put before honourable Members for their consideration and decision. I do that as Leader of the House to fulfil an official duty. I shall not vote for them myself.

Immediately after Mr. Snedden's speech, debate was adjourned. Notice to move the appropriate amendments to the Standing Orders had been given on 22nd February and appeared on the Notice Paper for the 23rd.

The Second Reading debate on the Bill has not been resumed and the notice remains on the Notice Paper. It would seem that more pressing parliamentary business has prevented further consideration. There is also perhaps a lessening of interest in the quorum question.

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

3. General Parliamentary Usage

House of Commons (Questions to Ministers)—In their second report of Session 1969–70 the Select Committee on Procedure considered the operation of Question Time in the House of Commons and made a number of recommendations designed to mitigate difficulties arising from the large number of questions now tabled for oral answer. The House considered this Report on 7th April, 1971, and many of the committee's recommendations were adopted. In particular the House agreed to an amendment to Standing Order No. 8 (Questions to Ministers) reducing the maximum period of notice for questions from twenty-one calendar days to ten sitting days. The pressure on Question Time is such that the maximum period had in practice become the minimum period for any Member who wanted to be sure that his question would be answered in the House; and as a result questions were often out of date by the time they came up for answer.

The House also agreed that, where a Member had put two questions down for oral answer on any one day to the Minister answering first on that day, or to the Prime Minister, his second question should appear on the Order Paper below all first or single questions to that Minister

* *Hans. H. of R.*, 23rd February, 1971, p. 489.

by other Members. This change was designed to ensure that more Members in total would have the opportunity to put a question orally in the House.

The enthusiasm of Members in tabling questions in recent years has also caused problems for the Stationery Office Press who are responsible for the overnight printing of the Order Paper and the various papers recording questions, Motions, and amendments tabled on the previous day. To ease their burden, the Select Committee on House of Commons (Services) recommended in March 1971 that questions handed in after 10.30 p.m. on any day should not be sent to the printer that night, but should be treated for all purposes as if they had been handed in on the next day. A similar system operated during the 1966–7 Session but had not been renewed in subsequent Sessions. This new recommendation was agreed to by the House on 7th April, 1971, and renewed for the current session on 5th November.

The other major development in relation to Question Time during 1971 arose as a result of a Report in *The Sunday Times* newspaper of 12th December. The Report claimed that Ministers in the Department of the Environment had authorised their officials to prepare a file of parliamentary questions to be tabled by Government backbenchers. The object of this arrangement was to promote the tabling of " friendly " questions and thus to lessen the amount of time available for the answering of hostile questions from the Opposition, and the Report gave statistics to show how successful this had been. During the period from May to December only 27 per cent. of the questions answered by Ministers of the Department of Trade and Industry had come from the Government side, while the comparable figure for the Department of the Environment was 61 per cent.

On the Monday following the appearance of this article the Secretary of State for the Environment, Mr. Peter Walker, made a statement to the House in which he claimed that it was perfectly normal for ministries to supply material for parliamentary questions to Government supporters. The tactic had been employed in response to a " concerted campaign by the Opposition to pre-empt the Order Paper with Questions ", and had been used on only two occasions, in April and May; after that the Opposition's campaign was discontinued and no further questions of that sort had been tabled, although arrangements had continued for the collection of material in case of a recurrence.

The Minister's statement failed to satisfy the House, and one Member asked the Speaker to rule whether or not the matter constituted a *prima facie* breach of privilege. The following day the Speaker ruled against this submission; but the Leader of the House stilled further complaint by announcing that a Select Committee would be appointed to consider " the whole problem of Questions and Question Time procedure ". This undertaking was fulfilled on 24th January, 1972. The terms of reference of the committee then appointed were " to consider the practice and procedure in relation to Questions and

Question Time in the House and to recommend what changes might be desirable ", a wide remit extending far beyond the original dispute about " question rigging ", and one which will enable the committee, if they so choose, to recommend sweeping changes in this part of the House's procedures, whose effectiveness has been put at risk by its very popularity.

Canada: House of Commons (Continuity of the Speakership).— Canadians have been discussing for years the establishment of the office of Speaker of the House of Commons on a continuing basis. Stanley Knowles, a highly-respected veteran parliamentarian and New Democratic Party House Leader, recently introduced a Bill in an attempt to resolve this question of a permanent or continuing Speaker. The Bill was entitled " An Act respecting the Designation of the Speaker of the House of Commons as the Member for the Electoral District of Parliament Hill ".

The Bill provided that a person must have been elected as a Member of Parliament in the normal way in order to be eligible for election as Speaker. When the Speaker has held that post for two complete Sessions of a Parliament, the Bill allowed the Commons to designate that person as the Member for the special constituency of Parliament Hill. The Member would have all the rights and privileges of being a Member of the House of Commons and the seat he formerly held would be declared vacant and could then be filled by a by-election. The Member for Parliament Hill would continue in that position and be eligible for re-election to the Chair at the first meeting of the House of Commons following a General Election, without his having to contest the election. The move would increase the number of M.P.s by one. In the explanatory notes, Mr. Knowles wrote that the Bill underlined the independence of the Chair, by making it possible for a Speaker to be continued in office, when the House so wished, without his having to contest a succeeding General Election. At the same time, the Bill preserved the principle set out in the Constitution that each new Parliament shall elect the Speaker of its choice.

During Private Members' Hour on 29th October 1971, Mr. Knowles explained that the designation of Speaker as the Member for Parliament Hill was an " optional provision; the House would not have to do it. It would be free to do it if it was satisfied . . . with the job being done by the person in the chair." He stated that the Speaker, as the Member of Parliament Hill, on the occasion of a General Election " would be free . . . to run in a normal constituency and revert to the more normal rôle of us ordinary mortals who make up this chamber." He concluded by indicating that his Bill solved four problems related to the question of a continuing Speaker:

> In the first place, to become a continuing Speaker one cannot be just a choice that was picked out somewhere; he has to have been a Member of Parliament elected in the first place in the ordinary way.

In the second place a Speaker, once elected to the Chair, does not automatically become a continuing Speaker; he has to prove himself through at least two sessions.

In the third place, although my Bill makes provision for a continuing situation it does not deny the right of each succeeding Parliament to make its choice. The good Speaker of one Parliament is there for the next Parliament to choose, but the new Parliament does not have to take him unless it, too, is satisfied.

My final point is that my Bill makes it possible for a constituency that has done so well by electing a person who can fill the Chair also to be a constituency that would have the right, in two years or so, to choose a Member who would speak for it on the floor. This is achieved by the vacancy that is declared and the by-election that is to be held.*

The Hon. Marcel Lambert, Speaker in 1962–3 and former Cabinet Minister, did not agree with Mr. Knowles' approach. He argued that " as soon as a Member is elected to a position in which he is not one of the Members of the House he becomes a super-official ". As Speakers became eligible for the permanent job, they might be affected by the proposal. He agreed with the British system which was tentatively put into practice in Canada following the last election.

Debate on the Bill was interrupted by the conclusion of Private Members' Hour without the Bill having come to a vote. Consequently, it dropped to the bottom of the list of Private Members' Public Bills on the Order Paper.

(*Contributed by the Clerk-Assistant, House of Commons.*)

Canada: House of Commons (Impeachment Proceedings).— An unprecedented Motion for impeachment of three Members of the Cabinet was attempted in the Canadian House of Commons in September 1971. Under the Temporary Wheat Reserves Act, passed in 1956, the Government made yearly payments to the Canadian Wheat Board for grain held in commercial storage. Those payments were withheld in anticipation of the passage of Bill C-244, the Prairie Grain Stabilisation Act, which provided for more generous payments and the repeal of the Temporary Wheat Reserves Act. The Bill was introduced in April 1971 and was still on the Order Paper in September. On 15th July, 1971, a consolidation of the Revised Statutes of Canada was proclaimed, omitting from the text the Temporary Wheat Reserves Act on the assumption that the Act would be repealed. The Motion for impeachment followed this Government decision to suspend payments under the Temporary Wheat Reserves Act while waiting for the proposed income stabilisation plan to pass in the House of Commons.

On 15th September a Notice of Motion was placed on the Order Paper by G. W. Baldwin, Opposition House Leader. This Motion called for a special committee of five Members to examine the Ministers' refusal to pay the moneys due to western wheat farmers and to draft articles of impeachment against the Ministers. The Motion was directed against Otto Lang, Minister responsible for the Wheat Board,

* Canadian House of Commons *Debates*, 29th October, 1971, p. 9187–8.

Finance Minister Benson for not authorising the payments as directed by the Temporary Wheat Reserves Act and Justice Minister Turner. Mr. Turner was included because he was responsible for the publication of the Revised Statutes of Canada from which the Temporary Wheat Reserves Act had been removed.

On a question of privilege, Opposition Member W. B. Nesbitt attempted to have the Motion put before the House on 17th September. The Speaker ruled the Motion was not a privileged Motion and, therefore, could not be given priority.

The following Tuesday (21st September), Mr. Baldwin, on a point of order, sought to have the Commons debate the Motion for the establishment of an impeachment committee. His submission was that the power of the House to invoke the practice of impeachment is embodied in the British North America Act, in statutes of Parliaments and in the Standing Orders of the House. He stated even the most ancient practices of the British Parliament apply in the Parliament of Canada. He cited cases of impeachment in the United Kingdom and United States.

Government House Leader Allan MacEachen said that the Opposition had two procedures open to it if it were dissatisfied with the actions of the Government. The first was a Motion of Censure, which could be moved as a substantive Motion complaining against an action or lack of action on the part of the Government. The other procedure would be to accuse the Ministers directly of wrongdoing.

Stanley Knowles, New Democratic Party House Leader, contended that the Motion should be proceeded with. It was a serious Motion, evoking the concept of the superiority of the House of Commons over the Government. The Government, he said, had broken a law that was still on the statute books, whatever new law the Government may have drafted.

Mr. Speaker stated that impeachment had fallen into disuse in Britain. He indicated that the last time impeachment was actually used and effected in British Parliament was in 1805. He pointed out that it must be determined whether the usages and customs in force in 1867 in the British Parliament and imported into Canadian proceedings by virtue of Standing Order 1 were applicable. In the British tradition, articles of impeachment may be started in the House of Commons but the trial of the accused was before the House of Lords. These proceedings were based on the exercise of judicial functions possessed by the House of Lords, a function not discharged in the Canadian Senate. Mr. Speaker doubted this custom was applicable to Canada as the Senate does not have a judicial capacity. He mentioned he had been unable to find support

> for the proposition that impeachment procedure has been carried over into our Canadian practice . . . based on recent British authorities, it would be difficult to support such a proposition even in the British parliament.*

* Canadian Commons *Debates*, 21st September, 1971, p. 8024.

He concluded that such a Motion was not in accordance with modern parliamentary practice.

At a later date, the Government decided to make payments under the Temporary Wheat Reserves Act. Bill C-244 was not proceeded with and remained on the Order Paper until the end of the Session.

(*Contributed by the Clerk-Assistant, House of Commons.*)

Australia: House of Representatives (Petitions).—An interesting feature of proceedings over recent years has been the increasing number of petitions presented to the House. The record year for petitions was 1901, when 226 were presented, but 1970 saw this record more than doubled with the presentation of 496.

In 1971 a marked increase was again noticeable with a total of 723 being presented to the House.

The situation has caused some concern, especially in view of the fact that the House has no provision for a Petitions Committee and consequently no action is taken on them and they merely gather dust in the archives.

Members, the press and public have been showing their concern at the lack of action taken on petitions following their presentation, while the Speaker and the Government have expressed their concern at the time taken up in the House. During 1971 petitions occupied approximately 9 hours of the House's time.

The question of streamlining the procedure for the presentation of petitions and the matter of possible follow-up procedures are presently being examined by the Standing Orders Committee.

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

Australia: House of Representatives (Want of Confidence in the Speaker).—Following Question Time on 21st April, 1971, the Deputy Leader of the Opposition (Mr. Barnard) moved, pursuant to notice—That the Speaker (Sir William Aston) no longer has the confidence of the House.*

The Opposition motion resulted from question time on the previous day which was marked by an exchange between Mr. Speaker and the Opposition during which numerous points of order were raised. The exchange culminated in the naming of an Opposition Member† who had already been warned for interjecting. Mr. Barnard immediately indicated that he would move a Motion of no confidence in the Speaker, and following the suspension of the Member from the House, he gave notice to this effect.

Over the 70-year history of the Australian Parliament there have been six previous Motions of want of confidence in the Speaker, all of which occurred between 1944 and 1955.

* *V. & P.*, 1970–1, p. 524.
† *V. & P.*, 1970–1, p. 518.
‡ *H. of R. Hansard*, 20th April, 1971, p. 1666.

In speaking to his Motion, Mr. Barnard's remarks centred on the suspension of the Opposition Member on the previous day and he asserted that the Member's behaviour did not warrant the action which Mr. Speaker had taken.

The Leader of the House (Mr. Swartz), in defending Mr. Speaker, stated that " we cannot help but comment on the degeneration of the behaviour of some Members of the Opposition . . . and the change in their attitudes to and respect for the Chair and the institution of Parliament itself. On occasions when Mr. Speaker gives a decision which is impartial and in accordance with the terms and customs of this House there has been an unfavourable reaction from the Opposition."

The debate continued for two hours and the Motion was defeated by 51 votes to 47, the vote being on party lines.

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

Western Australia: Legislative Assembly (Death of a Speaker). —The General Election for the State of Western Australia took place on Saturday, 20th February, 1971, and the Liberal–Country Party coalition Government, after twelve years in office, was defeated.

The new Labour Government in a House of 51 held 26 of the seats and received a Commission to govern on the 3rd March, 1971.

When the Legislative Assembly first met for business on the 15th July, 1971, John Mervin Toms was elected Speaker. Being a Government supporter this left the Government and Opposition equally divided on the floor of the House, which meant on the call for a Division the Speaker was required to give a casting vote to enable legislation to be passed.

During the course of the Session the Speaker gave his casting vote on a number of occasions and voted in committee as an ordinary member to provide the opportunity for the Chairman of Committees to give a casting vote. Thus the Government was able to survive and pass its legislation.

During the evening of Thursday, 7th October, 1971, and while the House was sitting, the Hon. J. M. Toms became ill and was taken to hospital, where he died in the early hours of the following morning. The day the Speaker died the House stood adjourned to Tuesday, 12th October.

Speculation was rife throughout the weekend on the outcome of the next meeting and on the election of a new Speaker. Assuming the new Speaker came from the Government ranks the Opposition would be in a position to block legislation and take control of the House and ultimately force a General Election.

It appeared from press reports and general comment that the Opposition was keen to force a General Election and the Government equally keen to avoid going to the people. The machinations throughout the weekend came to an end on Monday, 11th October, 1971, when the Governor, in exercise of his prerogative, prorogued Parliament until

the 16th November, 1971, thus giving time for a by-election to be held for the vacant seat.

The prorogation brought to and end the immediate problems of the Government, but much criticism was levelled at the Premier by the press and Opposition parties on the recommendation to the Governor that Parliament be prorogued. It was said by the Opposition and the press that no Government approach was made to the Opposition to provide a Speaker to enable Parliament to carry on until the by-election was held.

All went well for the Government in the by-election and the House returned to normal with the Speaker providing the majority.

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

4. Ceremonial

Northern Ireland (Fiftieth Anniversary of the Parliament).—On 22nd June, 1921, the First Parliament of Northern Ireland was formally opened by His Majesty King George V. The State Opening of the Second Session of the Twelfth Parliament by His Excellency the Governor of Northern Ireland, the Lord Grey of Naunton on 22nd June, 1971, was therefore very significant for Parliamentarians in Northern Ireland and the event was marked by the presence of many distinguished guests at the State Opening Ceremony and the attendant celebrations.

On the evening before the State Opening a celebration dinner was given in Parliament Buildings, Stormont, by Colonel the Rt. Hon. the Lord Glentoran, Speaker of the Senate and Major the Rt. Hon. Ivan Neill, Speaker of the House of Commons. The guests included His Excellency the Governor; the Rt. Hon. Selwyn Lloyd, Speaker of the United Kingdom House of Commons; Senator the Hon. Sir Alister McMullin, President of the Australian Senate, and Lady McMullin; and the Hon. H. C. Kerruish, Speaker of the Manx House of Keys. Among the many other distinguished persons present, perhaps specially significant was the Rt. Hon. the Lord Rathcavan who as the Hon. Hugh O'Neill was Speaker of the Northern Ireland House of Commons from 1921 to 1929 and later became " father of the House " at Westminster. It had been hoped that the Bailiffs of Guernsey and Jersey would complete the line up of Speakers but they were unavoidably absent and the Channel Islands were ably represented by the Greffier of the States and Mrs. Potter. The Secretary-General and Mrs. Vanderfelt represented the Commonwealth Parliamentary Association. The Clerks at Stormont had specially hoped to be able to welcome Sir Barnett and Lady Cocks and Mr. and Mrs. Michael Lawrence, but pressure of business held them at Westminster. It was, however, a particular pleasure to have Brigadier Noel Short and Mr. Green accompanying Speaker Lloyd. In keeping with the exceptional nature of the occasion, most of the speeches at the dinner came from serving

Speakers and perhaps it can be said without disrespect that they took full advantage of their temporary licence.

When His Excellency the Governor arrived at Parliament Buildings next morning for the State Opening ceremonies the weather was fair and the gleaming horses and fluttering pennants of his Royal Military Police escort added the final touch to what was already a splendid sight. Parliament Buildings itself was looking its very best, having had the final vestiges of its war-time camouflage sand-blasted from it for the occasion (to the intense discomfort of its day-to-day occupants); and the serried ranks of civil servants' cars had been temporarily displaced by a Guard of Honour found by the Queen's Squadron, Royal Air Force, with accompanying Royal Air Force Regiment Band and by a saluting troop of the 102nd Light Air Defence Regiment, Royal Artillery (Volunteers), all in full dress with band instruments and guns shining.

After receiving a Royal Salute and inspecting the Guard of Honour, His Excellency, accompanied by the Minister-in-Attendance and Members of the Household-in-Waiting, ascended the sixty steps to the main portico of Parliament Buildings where he was met by the Speakers of the Senate and the House of Commons together with the Speaker of the United Kingdom Commons and the Speaker of the House of Keys, all splendid in their black and gold ceremonial robes (see photograph). His Excellency then entered Parliament Buildings and was conducted to the Central Hall which for the day was serving as Senate Chamber in order to accommodate the great number of guests. When the last echoes of the trumpet fanfare had died away and His Excellency was seated on the Throne the Gentleman Usher of the Black Rod was commanded to summons the Commons from their Chamber. When the Speaker of the Commons arrived, preceded by Black Rod and the Serjeant-at-Arms and followed by the Clerks and the Members of Commons, His Excellency read the following Message from Her Majesty the Queen:

> On this, the fiftieth anniversary of the opening of your first Parliament by my grandfather, King George V, I take great pleasure in sending my cordial greetings and good wishes to the people of Northern Ireland. It is my hope that in the years to come the Province will develop in confidence and harmony, and that the happiness, contentment and prosperity of all its people will be assured.

His Excellency then delivered the speech outlining the Government's programme for the Session. At the conclusion of the speech the National Anthem was played and outside the gunners fired a nineteen-gun salute. His Excellency and Lady Grey then withdrew and the Commons returned to their Chamber. After lunch both Houses commenced their debates on the addresses in reply to the speech, and apart from the unaccustomed morning suits Parliament was once more back to normal.

In the evening the parliamentary celebrations concluded with a

reception given by His Excellency and Lady Grey at Government House, Hillsborough.

(*Contributed by J. M. Steele, Second Clerk Assistant.*)

5. Standing Orders

House of Commons (Joint Committee on Consolidation, etc. Bills).—Most of the changes made in the Standing Orders of the House of Commons in 1971 are described in the article on the Report of the Procedure Committee from which they were derived (page 73). Other changes are referred to in paragraphs relating to Privilege (page 122) and Questions to Ministers (page 157).

One further change in addition to these was the passing of a new Standing Order providing for the nomination, at the commencement of each Session, of a committee of twelve Members to join with a similar committee of the Lords to form the Joint Committee on Consolidation, etc., Bills. This committee has been appointed by sessional order in most Sessions since 1894 to undertake the detailed consideration of the various Bills which the Government regularly introduce to tidy up and consolidate the Statute Book; but not until now has it been included in the small group of committees whose existence is provided for in the Standing Orders.

In addition to Bills which do no more than consolidate existing law, the Standing Order empowers the committee to consider consolidation Bills incorporating minor amendments proposed by the Lord Chancellor or the Law Commissions, and also Statute Law Revision Bills and Bills whose purpose is to repeal enactments which, in the opinion of the Law Commissions, are no longer of practical utility.

A similar Standing Order was passed in the House of Lords.

Jersey.—The second amendment to Standing Orders was passed during 1971 to enable Members of the States to present matters for lodging " au Greffe " otherwise than at a meeting of the States. This is done by delivering a copy of the matter to be lodged to the Greffier of the States at any time during the week up to Friday morning, whereupon the matter is deemed to be lodged as from the following Tuesday. The reason for Tuesday is that this is the normal sitting day of the States Assembly. The Greffier causes notice of any matter so delivered to be circulated to every Member of the States and to be published in the *Jersey Gazette*.

This amendment provides a valuable improvement in the previous procedure whereby a Member could only lodge a matter at an actual meeting of the States. This meant that when the States were out of Session a meeting had to be convened to enable matters to be lodged and then a further meeting convened not less than 14 days later in order to consider the matter.

(*Contributed by the Greffier of the States.*)

Australia: Senate.—In August 1971 the Standing Orders Committee of the Senate presented a comprehensive Report recommending various changes in the Standing Orders. Among the subjects dealt with in the Report were: composition of the Standing Orders Committee; Motions for adjournment to debate matters of urgency; procedure in Committee of the Whole on Bills which the Senate may not amend; presentation of Committee Reports during the adjournment of the Senate; rights of witnesses; televising of public hearings of committees; time limits on speeches when proceedings are being broadcast; suspension of Standing Orders to facilitate the passage of Bills and for other purposes.

Some of the proposed amendments were agreed to in Committee of the Whole, but consideration of the Report was not completed in 1971.

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

Australia: House of Representatives (Days and Hours of Sitting).—The previous volume of THE TABLE carried a note* about changes in the House's days and hours of sitting. The note pointed out that the Standing Orders Committee in its Report of 10th June, 1970, had recommended a change from the long-standing pattern and that, following a vote to amend the Standing Orders, a new pattern had come into operation on 13th October, 1970. The old pattern involved three successive three-sitting-day weeks, followed by a week of adjournment. The new pattern prescribed that there should be two successive four-sitting-day weeks, followed by a week of adjournment.

The new pattern proved unsuccessful. The overriding reason for its lack of success was that Members from more remote electorates found it very difficult to return home to attend to electorate matters in any weekend between two sitting weeks and it was generally conceded that it was difficult to conduct business on Fridays, when Members were weary and anxious to return to their electorates. Members were not the only ones affected, for officers of the House and Government Departments, found life difficult when the House rose on Friday afternoon and sat again on Monday.

On 20th August, 1971, the Standing Orders Committee presented another Report, in which a return to the original pattern of sitting days was recommended. The committee said that:

> experience had shown that the present sitting pattern had not proved as efficient or convenient as anticipated and that the large majority of Members favoured a return to the pattern of sittings previously in use.†

Although in the debate which followed the presentation of the Report some Members stressed that the four-day system had not received a fair trial, that the House needed to sit more often (particularly so that late nights could be avoided) and that neither system was adequate, an

* THE TABLE, Volume XXXIX, 1970, pp. 158–9.
† See *P.P.* 58 of 1971.

overwhelming majority of Members voted in favour of returning to the old pattern.

The new Standing Order, which came into effect on 28th September, 1971, states:

> 40. Unless otherwise ordered, the House shall meet for the despatch of business on each Tuesday and Wednesday at half-past two o'clock p.m.; and on each Thursday at half-past ten o'clock a.m.

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

Australia: House of Representatives (Suspension of Standing Order 399).—Standing Order 399 of the House of Representatives states:

> In cases of necessity, any standing or sessional order or orders of the House may be suspended, on motion, duly moved and seconded, without notice: Provided that such motion is carried by an absolute majority of Members having full voting rights.

Immediately prior to the adjournment of the House at 6.22 a.m. on 6th May, 1971, the Leader of the House gave notice of his intention to move, at the next sitting, " That Standing Order 399 be suspended for the remainder of this period of sittings, except when a Motion is moved pursuant to the Standing Order by a Minister ".

This had been necessitated by the Government's intention to rise for the winter adjournment on 6th May and the consequent need to pass 14 Bills prior to adjournment.

The Opposition had during the sitting of 5th and 6th May moved for the suspension of Standing Orders on five occasions and three of the 14½ sitting hours had been taken in disposing of these Motions.

The House sat at 10 a.m. on the 6th and the Notice of Motion for the suspension of the Standing Order was called on at 11.53 a.m.* The Deputy Leader of the Opposition opposed the Government's move on behalf of the Opposition and said "... I cannot remember a precedent for this Motion ...",† one Government Member spoke, the debate was gagged, and both the closure and the Motion were carried on Division.

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

Western Australia: Legislative Council.—A new Standing Order 15A has been included to enable Bills to be introduced, or received from the Legislative Assembly, and the Motion " That the Bill be now read a second time " may be moved before the Address-in-Reply has been adopted; but such a Motion may not be debated except in accordance with Standing Order 15.

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

* *V. & P.*, 1970–1, p. 607.
† *H. of R. Hansard*, 6th May, 1971, p. 2720.

Papua New Guinea (Amendments to Standing Orders).—A report of the Standing Orders Committee, recommending certain amendments to Standing Orders, was presented on 3rd June, 1971, and adopted on 4th June, 1971, to come into operation at the next sitting.

The amendments are concerned mainly with the ordering of the business of the House. Government and private business are now separated. Government business has precedence on Mondays, Tuesdays and Fridays, with the Senior Official Member having authority to determine the order in which it is taken. Private business has precedence on Thursdays (the House not sitting on Wednesdays) and the order for that day is determined by the Private Business Committee, a standing committee set up for the purpose.

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

Tamil Nadu: Legislative Assembly (Amendments to Standing Orders).—Important changes made in the Standing Orders in 1971 are as follows:

For the terms " non-official Member " and " non-official Members' business ", the terms, " Private Member " and " Private Members' business " have been substituted. Moreover, " Private Members' business " shall not include certain classes of business such as Motions made in pursuance of statutory provision, Motions for discussion of Reports required to be laid on the Table of the House under any law or rule made thereunder and in particular Motion of Thanks for the Governor's Address or Motions for amendment of the Standing Orders, for which notices are given by Private Members.

Provision has also been made to enable the Speaker to allot a day (or days as the case may be) for the transaction of Private Members' business in lieu of Thursdays taken over for the discussion of financial matters under Article 202 to 206 of the Constitution or discussion of a Motion on the Governor's Address.

The rules in regard to the Motion for adjournment of the business of the Assembly have been amended so as to be in conformity with the practice now in force.

Rule 243, which relates to the delegation of powers of the Speaker to the Deputy Speaker, has been omitted as the provisions of the Constitution do not contemplate any such delegation of powers to the Deputy Speaker.

(*Contributed by the Secretary to the Legislative Assembly.*)

Zambia (Daily Routine of Business).—An amendment was made to the Standing Orders adding the National Anthem to the list of daily routine of business as follows:

" Unless the Standing Orders otherwise permit, the daily routine of business in the Assembly shall be as follows:

(*a*) Zambia's National Anthem;

(*b*) Prayers;
(*c*) Introduction of new Members;
(*d*) Announcements by Mr. Speaker;
(*e*) Private business;
(*f*) Questions to Ministers;
(*g*) Statements by Ministers;
(*h*) Applications for leave to move the adjournment under Standing Order 30;
(*i*) Presentation of Governments Bills;
(*j*) Motions relating to the business of the House;
(*k*) Motions for leave to introduce Bills other than Government Bills;
(*l*) Public business.

Provided that on the last sitting day of any meeting the Government may place notices of Motions relating to the business of the House before the presentation of Government Bills."

The procedure for Orders of the Day and Notices of Motions of the Assembly was made flexible by amending Standing Order 22 to provide for emergency matters to be announced, or brought before the House at any time during the sitting hours by Ministers.

Malta (Recording of Debates).—At the Sitting of the 23rd August, the Minister of Justice and Parliamentary Affairs moved the suspension, for the duration of this Legislature, of Standing Order No. 173 which provided that all debates and discussions in the House " be taken down by officers appointed to this effect ". Instead he moved that " for the duration of this suspension the Speaker be authorised, in so far as he considers it possible, to make arrangements to take down the debates of the House and in so far as these debates are taken down in accordance with these arrangements they shall constitute the journals of the House about what is taken down".

Speaking on the Motion, the Minister of Justice and Parliamentary Affairs said that this was already the practice in the previous Legislature. The use of tape-recorders had been introduced and as a result reports of debates were being made available sooner. The Motion was carried.

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

Malta (Same Motion or Bill may appear in same session).—At the same sitting, the Minister of Justice and Parliamentary Affairs moved that for the duration of this Legislature Standing Order No. 25 (which states that the same Motion cannot be proposed again in the same session) and Standing Order No. 107 (which states that the same Bill is not to be twice offered in the same session) be suspended together with all other Standing Order provisions which go against this suspension.

Speaking on his Motion, the Minister of Justice and Parliamentary Affairs said that the two Standing Orders under discussion originated from the usages and practices of the House of Commons where there

was a reason for them because each session there lasted one year: but here in Malta the distribution of business into yearly sessions had been rarely followed.

The Leader of the Opposition said these Standing Orders were there for a purpose and the Opposition wanted them to remain. There might be good reasons to ask for the suspension of these Standing Orders but the Opposition felt they could not agree to their suspension for the duration of the present Legislature, namely till another election.

The Prime Minister said that two Members from the Government or the Opposition side might go sick and a money Bill might be held up because of this, with unnecessary public expense necessitated by laying on the ceremonial of a new session with a Speech from the Throne. Under the circumstances the two Standing Orders were unworkable since there was no fixed rule about the length of sessions. This was not a sign of weakness but a sign of foresight by the Government which was, in this way, preparing for any eventuality. The motion was carried by 28 to 26 votes.

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

6. Electoral

New South Wales (Increase in Electorates).—A Proclamation appeared in the New South Wales Government *Gazette* on 3rd March, 1971, amending the Fifth Schedule to the Constitution Act 1902, increasing the number of electorates for the Legislative Assembly from 94 to 96. Section 28A of the Constitution Act enabled this to be done to give effect to the periodic redistribution of electorates carried out in accordance with the Parliamentary Electorates and Elections Act 1912.

Queensland (Redistribution of Seats).—A Bill was introduced to make provision for a review of the shift in the population of the State and for this purpose appointed three Electoral Commissioners charged with the duty of completely distributing each of four zones listed in the Bill into the number of electoral districts prescribed for each zone. The overall effect of this redistribution will be to increase the number of electoral districts, each returning one Member, from the present 78 to 82; and this will apply to the next Parliament to be constituted following the General Election.

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

Singapore (Parliamentary Membership Act).—The number of Members of Parliament is to be increased from 58 to 65 at the next general election, in pursuance of the Parliamentary Membership Act 1971. The Act gave effect to the recommendations of the Electoral Boundaries Delineation Committee appointed in April 1970 to review the boundaries of the existing electoral divisions and " to recommend such changes or adjustments thereto as may be necessary to ensure more

equal representation throughout all constituencies ". The Committee recommended an increase of the electoral divisions from 58 to 65 as well as changes and adjustments to 11 electoral divisions having an electorate of more than 20,000 and to six having less than 12,800 electors. Eight electoral divisions adjoining these 17 electoral divisions were also required to be adjusted in consequence.

7. Emoluments

House of Commons (Review of salaries of Members of Parliament and Ministers).—Following the undertaking given by the Leader of the House in November 1970 (see The Table, Vol. XXXIX, pages 168–9), the newly established Review Body on Top Salaries, whose job it is to conduct periodic examinations into salaries in the higher levels of the public service, was required, as its first task, to review the emoluments, allowances and expenses payable to Ministers of the Crown and Members of the House of Commons. Apart from the introduction, in 1969, of an allowance of up to £500 a year towards secretarial expenses, no change had been made in the salaries of Members since 1964; and it was not surprising that when the Review Body's report was published in December 1971 it was found to recommend very substantial increases. The recommendations were accepted immediately and with only minor modifications by the Government, and were implemented in a series of resolutions passed by the House on 20th December and in the Ministerial and other Salaries Bill, which received the Royal Assent on 10th February, 1972.

As a result of these changes the basic salary of a Member of Parliament has been increased from £3,250 to £4,500; but the most significant innovations are in the provisions made for meeting the particular expenses of Members, a matter which was strongly emphasised by the Review Body. The expenses of travel between Westminster and a Member's constituency have been paid out of public funds for many years, but no allowance has hitherto been made for the costs of additional accommodation in London for those Members whose main home is in the provinces. Accordingly a scheme of subsistence allowances has been introduced, under which a Member can claim up to a maximum of £750 a year in respect of " additional expenses necessarily incurred (by him) in staying overnight away from his only or main residence for the purpose of performing his parliamentary duties ". Members sitting for London constituencies cannot, of course, claim under this scheme, but instead receive a fixed supplement of £175 a year in recognition of the higher cost of living in London. In addition the maximum allowance for secretarial expenses has been raised from £500 to £1,000, and provision has been made for up to £300 of this total to be claimed in respect of the expenses of employing a research assistant.

An important new principle was also established in the provision of short-term assistance for Members defeated at a General Election. As

the Review Body pointed out, " General Elections occur with little notice: when they do, Members have little time or opportunity to make any arrangements for alternative employment, particularly when they are preoccupied with conducting a campaign for their re-election. Because their parliamentary salary ceases as from the date of dissolution, Members not retiring on a pension may suddenly find themselves without any regular source of income. . . ." Accordingly, authorisation was given for the payment of a grant equivalent to three months' salary to any Member who is defeated at a General Election or who does not stand because his constituency has disappeared following boundary reorganisations; and, in accordance with the same principle, the previous, and constitutionally correct, rule that Members cease to be Members during the period of a dissolution of Parliament and so cease to be paid as Members, has now been abandoned.

The increases made in the salaries payable to Ministers and parliamentary office-holders were no less significant than those for other Members. They too had received no increase since 1964, and the salaries then fixed reflected only one half of the increases recommended at that time. The table below gives the new and old salaries for a number of the main ministerial and parliamentary offices.

Office	*Old Salary*	*New Salary*
	£	£
Prime Minister	14,000	20,000
Secretaries of State and other Cabinet Ministers	8,500	13,000
Lord Chancellor	14,500	20,000
Attorney General	13,000	14,500
Non-cabinet Ministers	7,625	9,500
Ministers of State	5,625	7,500
Parliamentary Secretary	3,750	5,500
Chief Whip, House of Commons	5,625	9,500
Leader of the Opposition	4,500	9,500
Opposition Chief Whip	3,750	7,500
Mr. Speaker	8,500	13,000
Chairman of Ways and Means	4,875	6,750
Deputy Chairman of Ways and Means	3,750	5,500

Members of the House of Commons who hold any of these offices also receive a salary of £3,000 in respect of their membership of the House, and qualify (with certain modifications) for the allowances described in the second paragraph of this note.

House of Lords.—The daily expenses allowance for peers attending the House was raised from £6·50 to £8·50 on 16th December, 1971.

Australia (Parliamentary Salaries and Allowances).—The Prime Minister (Rt. Hon. William McMahon) announced to the House of Representatives on 16 September, 1971, that an inquiry would be held into the parliamentary salaries and allowances of Members of the

Commonwealth Parliament and that Mr. Justice Kerr had been asked to undertake the inquiry.*

The terms of reference for the inquiry were:

To examine and report upon the salaries and allowances of Senators and Members of the House of Representatives, and those paid to Ministers and Senators and Members who are office bearers of the Parliament.

If it be reported that it is necessary or desirable to alter such salaries and allowances or any of them then to recommend the nature and extent of the alterations that should be made.

To examine and report upon methods by which such salaries and allowances may be determined in future.

Mr. Justice Kerr's report† was tabled in the House on 8th December, 1971. Justice Kerr's recommendations can be briefly summarised as follows:

An increase in the basic salary for Members of Parliament from $9,500 to $13,000.

Increases in allowances for electorate expenses from $2,750 to $3,200 for Senators and Members representing city electorates and from $3,350 to $4,100 for Members representing country electorates.

Increases in ministerial salaries and allowances, in the salaries and allowances of office holders of the Parliament and in the salaries and allowances of Leaders and Deputy Leaders of Opposition Parties.

Sitting fees for members of parliamentary committees be discontinued, but the chairmen of some committees (if not already in receipt of a salary of office) receive an annual salary of $500 per annum.

A salary for Assistant Whips.

Increased rates of travelling allowance.

Specific stamp allowances be discontinued, but certain office holders and Opposition Leaders receive stamps as required.

An independent tribunal be established to report regularly to the Parliament and make recommendations relating to the salaries and allowances of Members. It was not proposed that any system of automatic adjustments be instituted, but that the Parliament should, after the receipt of each report, determine its own course of action.

After tabling the Report the Prime Minister introduced three Bills to give effect in part only to the provisions recommended in the Report—a Parliamentary Allowances Bill, a Ministers of State Bill and a Parliamentary Allowances Tribunal Bill.

The recommendations were not fully accepted by the Government because as the Prime Minister pointed out:

We are undoubtedly in a period in which general wage and salary restraint is of critical importance. In these circumstances, it is incumbent on the Government to act with moderation and restraint and by doing so to give leadership. As

* *V. & P.*, 1970–1, p. 721.

† *Parliamentary Paper*, No. 284 of 1971.

I have said, Mr. Justice Kerr's recommendation is that the basic salary for Members of Parliament should move from $9,500 to $13,000—an increase of $3,500. The Government has decided that it would be appropriate to reduce by $1,000 the amount of the new salary recommended by Judge Kerr. This will mean that the increase which Judge Kerr proposes will be reduced by 28·6 per cent. The Government will also reduce in the same proportion, that is 28·6 per cent, the increases recommended in ministerial salaries and salaries of other office holders.*

The Government's decision to establish a Parliamentary Allowances Tribunal was generally along the lines of that proposed by Mr. Justice Kerr in his report.

It was intended by the Government that the three Bills be passed through all stages without delay, but as general agreement could not be reached between the Government and the Opposition on the increases proposed, the debate was adjourned. Consideration of the Bills has therefore been stood over until 1972 and Members continue to receive their existing salaries and allowances.

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

Australia (Parliamentary Retiring Allowances).—The Parliamentary Retiring Allowances (Increases) Act 1971† amended provisions relating to the allowances payable to both Ministers and private Members whose retirement occurred before 1st December, 1968.

In introducing the Bill the Minister assisting the Treasurer stated:

> The increases provided by the Bill will result in the consolidated revenue component of existing pensions being raised to the level that prevailed for a Member retiring on 30th June, 1971. But, because the rates of pensions applying to Members and office-holders currently contributing to the Parliamentary and Ministerial Retiring Allowances Funds have remained unchanged since 1st December, 1968, the effect of the Bill is to increase only those pensions in relation to persons who qualified prior to that date.
>
> The Bill also increases by one-half the Prime Ministerial pensions payable to the widows of two former Prime Ministers who died before the commencement of the Parliamentary Retiring Allowances Act in 1948. These rates of pension have remained unchanged since 1959.‡

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

South Australia (Members' Pensions).—The Parliamentary Superannuation Act Amendment Act (No. 85 of 1971) authorised an increase of 5 per cent in pensions payable to certain ex-Members of Parliament, or their widows.

New South Wales (Members' Salaries and Allowances).—Following upon presentation of a report of an inquiry into the emoluments of statutory and other senior office holders and the emoluments, allowances and the facilities and other benefits of Members of the

* *H. of R. Hansard*, 8th December, 1971, pp. 4310–16.
† Act No. 75 of 1971.
‡ *H. of R. Hansard*, 19th August, 1971, p. 367.

Legislature (the Goodsell Report), the following salaries and allowances became payable as from 1st January, 1972:

Legislative Assembly	*Salary* $ p.a.	*Expense Allowance* $ p.a.	*Special Allowance* $ p.a.
Premier	26,000	6,000	—
Deputy Premier	23,250	3,000	—
Minister	21,800	2,700	—
Speaker	20,300	2,700	—
Chairman of Committees	14,500	1,500	—
Leader of the Opposition	20,300	2,700	—
Deputy Leader of the Opposition	14,500	1,500	—
Leader of the Opposition Parties (not less than 10 members)	14,500	1,500	—
Deputy Leader of the Opposition Parties (not less than 10 members)	11,500	650	—
Whips (Government & Opposition)	13,500	700	—
Whips (other)	11,500	700	—
Private Members	11,500	—	—
Legislative Council			
Leader of Government	21,800	2,700	1,750
Deputy Leader of Government	21,800	2,700	500
President	12,000	2,500	2,000
Chairman of Committees	7,275	2,460	515
Leader of Opposition	8,510	2,460	1,030
Deputy Leader of Opposition	4,720	2,460	520
Whips	4,720	2,460	520
Private Members	4,000	2,000	—

Electoral Allowances payable to Members of the Legislative Assembly in accordance with the Fifth Schedule of the Constitution Act were increased as follows:

Electoral Divisions	*Present Rate* $ p.a.	*Proposed Rate* $ p.a.
Part I	1,945	2,750
Part II	2,015	2,850
Part III	2,275	3,230
Part IV	2,520	3,580
Part V	2,590	3,680
Part VI	2,880	4,100

Members of the Legislative Council who reside in the electoral districts specified in Parts III, IV, V and VI of the Fifth Schedule to the Constitution Act receive also an allowance at the rate of $20 for each day or part of a day they attend sittings of the Council.

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

New South Wales (Members' Superannuation.)—The Legislative Assembly Members Superannuation Act 1941 has been repealed and the Parliamentary Contributory Superannuation Act (No. 53 of 1971), which now embraces Members of the Legislative Council (for whom there was no superannuation scheme previously) as well as

Members of the Legislative Assembly, came into operation on 1st January, 1972.

The new Act provides for the payment by a Member into the Parliamentary Contributory Superannuation Fund of 11½ per cent of his gross salary (10 per cent in the case of female Members). For the purposes of the Act, " salary " excludes all allowances other than special allowance and " service " means service in the Legislative Council since 1st January, 1952.

Subject to satisfying certain requirements of the Act in respect of pension entitlements for less than fifteen years' service, private Members are entitled to a pension after aggregate service of eight years at the rate of 41·2 per cent. of the current basic salary, rising proportionately to a maximum of 70 per cent. of the Member's salary after 20 years' service.

(At the basic salary rate of $4,000 per annum, a private Member in the Legislative Council with eight years' service would be entitled to a pension of $1,648 per annum. After 20 years' service, the pension would increase to 70 per cent. of that salary, viz. $2,800 per annum.)

Provision is also made for Members entitled to a pension to elect, within 3 months after ceasing to be a Member, to convert part of that entitlement into a lump sum payment, the amount convertible being related to the age of the Member at the time an election is made. The lump sum payable will be ten times the amount of the " annual pension entitlement " in respect of which the election is made, which varies according to age of retirement.

On the death of a Member who has served for an aggregate period of eight years or more, the widow shall be entitled to an annual pension until her death or remarriage at the rate of five-eighths of the pension that would have been payable to her husband but for his death, if he had ceased to be a Member on the date of his death, or 40 per cent. of the current basic salary, whichever is the greater. Pension at the same rate is payable to the widow of a former Member who was in receipt of a pension.

On the death of a Member who has not served an aggregate period of eight years, the widow shall be entitled to a pension until death or remarriage at the rate of 40 per cent. of the current basic salary.

Provision is also made for the refund of contributions where a person ceases to be a Member and is not entitled to a pension.

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

New South Wales (Miscellaneous Allowances).—

(a) *Air Travel*

Members of the Legislative Council who reside in electoral districts specified in Parts IV, V and VI of the Constitution Act 1902, are now to receive air travel vouchers entitling them to 60 single journeys per annum between their homes and Sydney. Wives receive 14 vouchers.

The previous entitlement was 50 and 12 respectively. Ministers, the Leader of the Opposition and Deputy Leader of the Opposition in the Council receive additional vouchers.

With regard to the Legislative Assembly, all Members receive vouchers for 10 journeys between any two centres in the State. Those Members who reside in country areas covered by Parts IV, V and VI of the Fifth Schedule above-mentioned receive additional vouchers for 74 journeys between their electorates and Sydney. The wives of such Members receive vouchers for 14 such journeys.

Ministers, together with the Leaders and Deputy Leaders of parties with 10 or more Members in the Assembly, receive additional vouchers for journeys between any two centres in New South Wales.

(b) *Printing Allowance*

In addition to the free supply of *Parliamentary Papers*, *Hansards*, Bills, etc., Members are entitled to receive Government Printing Office publications such as Government *Gazettes*, Regulations, etc., from the Printer, to the value of $75 per annum, in lieu of $45 previously. Members may also order the printing of Christmas cards by the Government Printer as a charge against this allowance.

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

Queensland (Increases in Members' Salaries).—In the 1971 Session, which ended on December 10th, a Bill was passed amending the Constitution Act Amendment Act of 1896 and the Officials in Parliament Act 1896–1969 whereby the basic salary payable to a Member of the Legislative Assembly and the additional salaries payable to the Premier, Ministers, Speaker and other officials, were increased. These increases took effect from the date of the Bill's assent, viz. November 1st, 1971. The last increase in salaries was in September, 1968.

The new annual amounts payable are:

	Base Salary	*Additional*	*Total*
	$	$	$
Members	9,690	—	—
Premier	"	10,550	20,240
Deputy Premier	"	7,660	17,350
Ministers	"	6,220	15,910
Leader of Opposition	"	4,050	13,740
Deputy Leader of Opposition	"	870	10,560
Speaker	"	3,610	13,300
Chairman	"	1,160	10,850
Whips	"	580	10,270

From the same date (November 1st, 1971) the range of Electoral Allowances was increased from $1,600 p.a. metropolitan (previously $1,245) to $3,810 p.a. for country (previously $2,970).

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

India (Salaries and Allowances of Officers of Parliament).—Under Section 3 of the Salaries and Allowances of Officers of Parliament Act 1953 the Deputy Chairman of the Council of States (Rajya Sabha) and the Deputy Speaker of the House of the People (Lok Sabha) were entitled to a salary of Rs. 2,000 per mensem. In 1962 the Deputy Chairman of the Council of States (Rajya Sabha) and the Deputy Speaker of the House of the People (Lok Sabha) were given the status of a Minister of State for purposes of warrant of precedence and travelling and daily allowances, but their salary was not then made at par with that of a Minister of State.

By the amending Act 23 of 1971 these two officers of Parliament have been equated with a Minister of State in the matter of salary by raising their salary to Rs. 2,250 per mensem; they have also been provided with a sumptuary allowance of Rs. 250 per mensem in order to enable them to meet their official obligations.

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

Maharashtra.—Rule 16 of the rules made under the Bombay Legislature Members' Salaries and Allowances Act 1956 was amended to provide the Chairman of the Public Undertakings Committee with a double room in the Legislature Hostel as in the case of the Chairman of the Public Accounts Committee and the Chairman of the Estimates Committee.

(*Contributed by the Secretary of the Legislative Department.*)

XIV. RULINGS OF THE CHAIR IN 1971

Westminster: House of Commons

Adjournment of the House under S.O. No. 9 (Urgent Debates): Motions allowed by Mr. Speaker.

—The future of Rolls-Royce Ltd. (4th February, 1971; Vol. 810, col. 1945).
—Post Office dispute (18th February, 1971; Vol. 811, col. 2135–6).
—The future of Upper Clyde Shipbuilders Ltd. (29th July 1971; Vol. 822, col. 800).
—Northern Ireland (Compton Committee's report) (16th November, 1971: Vol. 826, cols. 222–3).

Divisions: Tellers names must be in before Question is put a second time.

On 27th July, 1971, the House proceeded to a division and Tellers were appointed for the Ayes; but no Tellers for the Noes having been appointed, the Speaker declared that the Ayes had it. When a Member thereupon said that he had now arranged Tellers for the Noes, the Speaker said that Tellers' names had to be put in before the Question was put a second time. Accordingly the Ayes had it. (Vol. 822, col. 535.)

Official Report: Undelivered speeches not be be recorded.

At the end of a debate in which many Members had failed to catch the Speaker's eye, a Member asked if they might be allowed to record their point of view by written submissions to be published in the Official Report. The Speaker replied that the Official Report was a record of speeches made in the House and that it also contained answers to oral and written Questions. To alter the practice would require a Resolution of the House. (Vol. 822 cols. 167–8; 26 July 1971.)

Questions to Minister: Points about admissibility of Questions.

On 8th December, 1971, a Member sought the assistance of Mr. Speaker on a matter concerning the admissibility of a Question refused by the Table Office. In reply the Speaker said:

> I want the assistance of the House on these matters. I am getting a series of points of order on Questions and on the Table Office. The correct procedure would be for the hon. Member to raise the matter first with the Table Office and then, if the hon. Member thinks the answer is unsatisfactory, to talk to me about it. If my answer is unsatisfactory, the hon. Member should then raise it as a matter for the House. I do not think the time of the House should be taken up with these matters initially.

(Vol. 827, col. 1298: 8th December, 1971.)

Selection of Speakers: Consecutive speeches from same side of House.

On 1st April, 1971, a Member complained that Mr. Deputy Speaker had in the previous day's debate, on Mr. Speaker's instructions, called two Members in succession for the Government side. He asked that, to restore the balance, a similar favour should be granted to the Opposition.

Mr. Speaker: It is well established that the discretion of the Chair is unfettered and must not be discussed. Whether Mr. Deputy Speaker acted on my instructions is a matter on which I cannot enlighten the hon. Gentleman. These matters must not be discussed. One must bear in mind all the factors, and I promise that the Chair will try to do that.

(Vol. 814, col. 1688.)

CANADA: SENATE

Committees: Instructions to.

On 9th March, 1971, the hon. Senator Smith moved, seconded by the hon. Senator Inman, that Bill C-203, containing proposals for the amendment of the Pension Act and the Civilian War Pensions and Allowances Act, be referred to the Standing Senate Committee on Health, Welfare and Science. The hon. Senator Philips, seconded by the hon. Senator Grosart, moved an amendment to this Motion " that the Committee do not meet until adequate notice of the Committee Meeting has been given to the veterans' organisations who may wish to appear before the Committee ".

In the course of debate on this Motion in amendment, the Leader of the Government raised a point of order to the effect that the Committee was already empowered under the rules to do what the Motion in amendment contemplated. Whereupon Senator Grosart observed: " Surely this Chamber has the right to instruct Committees."

Ruling on the Leader of the Government's point of order when the debate was resumed the following day, the Speaker agreed that the Senate had the right to instruct Committees; but he cited the statement on page 513 of *Bourinot*, 4th edition: " An instruction is given to a committee to confer on it that power which, without such instruction, it would not have." The Speaker then went on:

Many precedents are referred to by *Bourinot*, at pages 513 and following, whereby instructions to Committees were declared irregular because the Committee concerned already had the power to take the action indicated. *May*'s 17th edition, at page 493, contains a statement to the same effect. Quite clearly, pursuant to Senate Rule 71, the Senate Standing Committee on Health, Welfare and Science has the power to take the action referred to in the amendment moved by Senator Phillips.

I must, therefore, rule that the amendment in question is technically out of order. In so ruling, I am mindful of the fact that Senate Committees pride themselves on endeavouring to give adequate notice and a full opportunity to appear to all persons who may be adversely affected by any measure which is before them. In addition, the Committee members will be well aware of the nature of last evening's debate.

XV. EXPRESSIONS IN PARLIAMENT, 1971

The following is a list of examples occurring in 1971 of expressions which have been allowed and disallowed in debate. Expressions in languages other than English are translated where this may succinctly be done; in other instances the vernacular expression is used, with a translation appended. The Editors have excluded a number of instances submitted to them where an expression has been used of which the offensive implications appear to depend entirely on the context. Unless any other explanation is offered the expressions used normally refer to Members or their speeches.

Allowed

" arrogant " (*N.Z. Hans.*, p. 408).
" barefaced falsehood " (*Can. Com.*, 26.5.71)
" belongs to a communist-controlled union " (*N.S.W. Leg Ass*, No. 4, p. 212)
" blackmail " (*Can. Com.*, 27.9.71)
" stupid statement " (*N.Z. Hans.*, p. 197)
" political bribe " (*N.Z. Hans.*, p. 2562)
" poromai " (jealousy) (*T.N.L.A.*, Vol. IX, No. 2, p. 131)
" nod is as good as a wink to a blind horse " (*W.A. Parl. Deb.*, Vol. 190, p. 292)
" poppycock, he is talking utter " (*W.A. Parl. Deb.*, Vol. 190, p. 551)
" rubbish, he is talking " (*W.A. Parl. Deb.*, Vol. 191, p. 1534)
" straightforward, not completely " (*S. Aust. Hans.*, p. 1674)
" weak, brittle, friable, fragilely brittle and insignificant, without a mind of his own " (of a minister) (*W.A.L.A.Deb.*, 2nd session, p. 928)

Disallowed

" all your rorts in Queensland when you were scabbing " (*Aust. Sen. Hans.*, Vol. I, p. 981)
" Asinine remarks " (*N.Z. Hans.* p. 5231)
" asses " (*Can. Com.*, 17.11.70)
" avasarappaclukireergal " (hasty) (of the chair) (*T.N.L.A.*, 9.7.71)
" Bias, suggested " (offence to the Chair) (*N.Z. Hans.*, p. 5273)
" bird-brain " (*Queensland Hans.*, p. 1104)
" bloody" (*Queensland Hans.*, p. 574)
" bloody hypocrite " (*H.C. Deb.*, Vol. 811, col. 1841)
" bloody lions " (*Zambia P.D.*, Vol. 25, col. 141)
" bloody twister " (*H.C. Deb.*, Vol. 825, col. 760)

" bullshit " (*Queensland Hans.*, p. 628)
" complete and utter nonsense " (*Can. Com.*, 5.10.71)
" Conservative politics at its most corrupt " (*N.Z. Hans.*, p. 1946)
" corruption, citadel of " (of housing board) (*T.N.L.A.*, Vol. II, No. 5, p. 439)
" damn fool " (*India R.S. Deb.*, col. 164, 26.5.71)
" damn liar and crook " (*Can. Com.*, 24.9.71)
" dear " (of lady in chair) (*Haryana Procs.*, 5.8.71)
" deliberate falsehood " (*Can. Com.*, 24.11.71)
" deliberately deceiving " (*Can. Com.*, 22.3.71)
" deliberately or otherwise misleading " (*Can. Com.*, 11.12.71)
" dill " (*Queensland Hans.*, p. 1035)
" disgrace " (*N.Z. Hans.*, pp. 4315, 4386)
" ewe " (allusion for " you ") (*N.Z. Hans.*, p. 5224)
" fascist " (*N.S.W. Leg. Ass.*, No. 48, p. 3921)
" fellow travellers " (*N.S.W. Leg. Ass.*, No. 48, p. 3920)
" fight, not prepared to face up to a " (*N.Z. Hans.*, p. 1961)
" figures were designed to distort the facts " (*N.Z. Hans.*, p. 5089)
" geese, we have classes of too " (derogatory inference with Member's name) (*N.Z. Hans.*, p. 3094)
" goat, greatest in this chamber " (*Aust. Sen. Hans.*, Vol. II, p. 816)
" Got its riding instructions " (*N.Z. Hans.*, p. 2781)
" Government controlled or mastered by outsiders " (*N.Z. Hans.*, p. 3143)
" greasier, you can't get much than that " (*N.Z. Hans.*, p. 300)
" heretic " (*Aust. Sen. Hans.*, Vol. I, p. 856)
" hypocrisy, twenty minutes of " (*N.Z. Hans.*, p. 4388)
" hypocrite " (*N.S.W. Leg. Ass.*, No. 59, p. 4860)
" idiotic questions " (*Can. Com.*, 21.10.71)
" intimidating returning officer " (*N.S.W. Leg. Ass.*, No. 6, p. 379)
" it was the ' Rockhampton sewer ' who passed the remark " (*Queensland Hans.*, p. 2190)
" judge, tried to influence the " (*N.S.W. Leg. Ass.*, No. 6, p. 376)
" kavadi thookkuthal " (to make a pilgrimage to) (*T.N.L.A.*, Vol. III, No. 4, p. 322)
" lamposts " (*L.S. Deb.*, 28.7.71)
" lawyer members " (*T.N.L.A.*, 22.10.71)
" let off the leash " (*N.Z. Hans.*, p. 4706)
" liar " (*Malta*, 23.11.71)
" lie " (*Canada Com.*, 14.5.71)
" lies " (*Queensland Hans.*, p. 596)
" low-down implications " (*Aust. Sen. Hans.*, Vol. I, p. 294)
" Member having sympathy for school children stupified with drink " (*N.Z. Hans.*, p. 5136)
" Minister put water in the milk " (*N.Z. Hans.*, p. 254)
" Minister should try to fool the people " (*N.Z. Hans.*, p. 1952)
" misled " (*Can. Com.*, 24.11.71)

" murderer " (*Aust. Sen. Hans.*, Vol. I, p. 938)
" nigargattapana " (obstinate) (*Maharashtra L.A.*, Vol. 32, Pt. II)
" notorious and mischievous " (*Zambia P.D.*, Vol. 25, col. 1841)
" plain liar " (*Aust. Sen. Hans.*, Vol. II, p. 816)
" Poor old Les " (*N.Z. Hans.*, p. 5238)
" Pretend " (*N.Z. Hans.*, pp. 3101, 4574)
" Professional windbag " (*N.Z. Hans.*, p. 4025)
" psychiatrist, needs a " (*Aust. Sen. Hans.*, Vol. I, p. 981)
" psychotic " (*N.S.W. Leg. Ass.*, No. 7, p. 464)
" Rabbit " (*N.Z. Hans.*, p. 4920)
" Rat " (*Queensland Hans.*, p. 1019)
" rotten scab " (*Aust. Sen. Hans.*, Vol. I, p. 981)
" scab " (*Queensland Hans.*, p. 1018)
" scathing type " (*N.Z. Hans.*, p. 4857)
" shouted " (*T.N.L.A.*, 22.10.71)
" shut up " (*Zambia P.D.*, Vol. 25, col. 932)
" silly " (*Can. Com.*, 21.10.71)
" slimy, he is too to do it " (*N.Z. Hans.*, p. 2397)
" stooge " (*Zambia P.D.*, Vol. 25, col. 771)
" stooge of the British " (*L.S. Deb.*, 28.7.71), col. 301)
" superficial " (of Speaker's ruling) (*Malta*, 24.8.71)
" thief " (*Malta*, 6.9.71)
" tripe, don't talk a lot of " (*N.Z. Hans.*, p. 2081)
" Type " (*N.Z. Hans.*, p. 4920)
" unfair " (of the Chair) (*India, R.S. Deb.*, 8.6.71, col. 185)
" unscrupulous " (*T.N.L.A.*, 30.7.71)
" unscrupulous and untruthful assertion " (*N.Z. Hans.*, p. 841)
" upstairs, something wrong with his " (*Zambia P.D.*, Vol. 25, col. 1188)
" vakil bashai " (lawyer's language) (*T.N.L.A.*, 13.7.71)
" woman, you are an old " (*Queensland Hans.*, p. 1902)
" You are a dirty Minister " (*N.Z. Hans.*, p. 4084)
" You cannot trust him for a minute " (*N.Z. Hans.*, p. 2596)
" you Queen Street clot " (*Queensland Hans.*, p. 953)

XVI. REVIEWS

Guide to the Records of Parliament. Maurice F. Bond (H.M.S.O., London, 1971).

The age of the great narrative political histories is past, but the first need of the historian as monographist remains the same, to know how it actually happened—in Ranke's famous phrase, *wie es eigentlich geschehen ist.* The Clerk of the Records' comprehensive *Guide* to the important and fascinating collection of material in the Palace of Westminster, material which is available (for the most part) to public inspection, will stimulate and assist historians and others in meeting that need.

The archive of the House of Lords was not destroyed in the fire of 1834 and the greater part of the text deals with documentation relating to the Lords. The Lords records in the custody of the Record Office begin in 1497, when the Clerk of the Parliaments, having made the usual entry on the Parliament Roll, kept the enacted Bills in his office, instead of passing them on to Chancery with the Roll, in the normal way. The surviving series of Lords *Journals* begins in 1510, though a copy of the first fragmentary record of the proceedings of the upper House is dated more than half a century earlier.

The holdings of the Commons in the " lumber room " above the House before the fire were equally impressive. Mr. Bond cites a catalogue dating from a century before the fire, which shows that Bills were preserved in continuous series from 1558, original petitions from 1607 and returns from the 1640s. The Minute-books of the Clerks at the Table existed from 1685 in the case of the House and 1689 for Committees. The growth in the use of printing for official documents and recourse to record holdings elsewhere makes the position in respect of Sessional papers easier, particularly from the middle of the eighteenth century, but the *Guide* reveals the extent of the loss of seventeenth-century material, noticing only for example Grand Committee Proceedings Books for 1621 and 1625, and the Commons' Library's collection of printed papers, once the Clerk of the Journals' Library.

The *Guide* usually gives a description of the contents of the particular volumes or documents referred to in each of the classes of record—proceedings in the House, committees, public and private Bill records, Sessional papers and so on. There is frequently a critical note comparing, for example, the original *Journal* with the printed copy and indicating where material may be found in contemporary writing to fill the gap in the official record. In many cases there is an explanation of the practice of the House which shaped the archive material concerned. This is developed in the several texts which introduce the classes of record and deal concisely with such matters as the develop-

ment of the printing of papers or the history of the preparation of original Acts. Commons Clerks will no doubt find that there has been little essential change in the method of preparing the *Journal* or Vote. But other practices have changed radically, and the brief explanation of, for example, the relationship in pre-1849 public Bill practice between breviates, paper Bills, engrossed Bills, amendment papers and riders will no doubt be very welcome.

A good example both of the kind of record with which the *Guide* is dealing and of the damage done in 1834 is the case of the records of select committees on public matters. In the Lords, Minutes of Proceedings exist from 1660 for the Committee for Privileges, including summaries of evidence given, counsels' speeches, and the texts of Motions moved in committee. Similar Minute-books for other select committees exist (and have in part been calendared) from 1661. When after 1771 separate records of evidence were kept, but before such evidence was regularly printed, these records too have in large degree survived. Finally, though they were only intermittently preserved and relatively few have survived for the nineteenth century, miscellaneous select committee papers exist for thirty-one committees between 1669 and 1800. In the House of Commons, on the other hand, records of select committees are much rarer. According to the *Guide*, Books of Evidence seem to have been preserved from 1736, but evidence was not regularly printed until the end of the century, and again much valuable documentation disappeared in the fire. Minutes of Proceedings of a Committee of Secrecy in 1742 are preserved and of course there is Courthope's Minute-book printed by Orlo Williams. The rest is silence. No doubt the history of select committees in the House of Commons could be pieced together from other sources, but the effective absence of official records will leave large gaps in the narrative. In modern times, it is noticeable that, apart from one document surviving among Lords papers, dated 1732, no separate files of original Commons select committee papers were preserved until 1934. It is in consequence impossible to examine in detail the crisis in the system at the turn of the century which seems to have led to a temporary decline. One would like to know more about the workings of the mid-Victorian select committees which seem to have been able to turn their hand with considerable success to the most technical of subjects. The files of the select committees which dealt with the Jameson Raid and the Marconi affair would have been of particular interest.

Even to the reader of less serious purpose, the *Guide* may point the way to occasional gems. He might ask Mr. Bond to bring out the (safely undated) Return of hours of attendance among the Parliament Office papers, which is endorsed " Library of Fiction ". And should there not be a larger class of papers catalogued with the eighteenth-century petition of the " four Clerks without doors attending Committees " of the House of Commons concerning their salary?

Very occasionally, the editorial text nods. Whatever may be true

of the seventeenth and eighteenth centuries, it is not helpful to call a modern standing committee " a select committee which continues throughout a session ", and the file on the Kitchen Committee may now, one imagines, be safely closed. On a broader aspect perhaps this reviewer may be forgiven for raising an historical point concerning the origin of certain judicial powers of the House of Lords.

It is stated (page 114) that the Act of Union with Scotland contained no provision for the hearing of civil appeals from Scotland but " it seems to have been considered " that the United Parliament inherited the functions of the Scottish Parliament " which had included the hearing of appeals ". Both these statements are seriously open to challenge.* Article XIX of the treaty states that no causes in Scotland should be " cognoscible by the Courts of Chancery, Queen's Bench, Common Pleas or any other Court in Westminster Hall " and since this text was put forward by the Scottish Commissioners, the crux of the argument will lie in whether there existed a right of appeal to the Scottish Parliament and whether this text was meant to transfer it to the upper House of the United Parliament. The statement in the *Guide* is not a new view of the matter. Defoe states bluntly that " before the Union appeals in law lay from the Lords of Session to the Parliament (of Scotland); and the House of Peers of Great Britain being now to be the sovereign judicature . . . there could be no appeals [in causes of private right] but to them in Parliament " (*History of the Union*). There is, however, sufficient evidence to suggest that in the post-revolution Parliament in Scotland at least, this was not thought to be the case. In the first place, Scottish views of parliamentary sovereignty differed widely from those in England. It is true that some interpreters of these views both in the courts and in Parliament on isolated occasions did attempt to endow the Scottish Parliament—all Three Estates—with appellate functions, and procedural traces of such functions undoubtedly remained. But it seems to have been generally understood that Parliament had surrendered its judicial functions proper to the Court of Session more than 170 years before the Union. Sir George Mackenzie thought that Parliament " should only meddle with the making of laws and should remit the decision of private cases to inferior courts ". Andrew Fletcher of Saltoun, than whom there was no stouter defender of Parliamentary liberties, and the Claim of Right both demonstrate, as Rait pointed out, that " in its last years the Scottish Parliament did not regard itself as an appeal court in the full sense of the term ". Treason cases of first instance were heard, and protestations for remeid of law, much discussed in the 1690s, came before Parliament; but the latter were certainly not appeals. Secondly, it is for several political reasons inconceivable that the Scottish Commissioners intended their text to mean that appeals should lie to the House of Lords, or even

* It also seems odd to refer to appeals from the Court of Session, the Commission of Teinds, and the Court of the Exchequer " on the equity side ". So far as equity existed in Scotland, it was a matter for the Council.

meant to leave the matter open. Would they have delivered up Scottish litigants to a House where Anglican Bishops sat? With the watchful eyes of the westland presbyteries upon them, not to mention the Edinburgh mob with its Covenanting sympathies, the Scottish Parliament when it came to debate article XIX did not think so. This aspect of the matter was not even discussed. If it was a deliberate ambiguity, it was the most successful *coup* of the Union. What then happened? The theory that the English Commissioners saw at once that the Scots were delivered into their hands, because of course the House of Lords was not a court in Westminster Hall, and casuistically kept silent, should probably for charity's sake be discounted. An unexpected ambiguity in the text of the treaty was settled by the stronger partner in its favour after the event. None of the traditions of the vigorous post-Revolution Scottish Parliament was permitted to come to Westminster. It is not surprising that no consideration was given to the niceties of the Scottish Parliament in judicial matters. Though not the first case to go to the Lords, the most notable early case was that of Greenshields, an Episcopalian clergyman, from which sprang the Toleration Act of 1712, that " licensing of schism, heresy and sedition ". The more distant effects, good and bad, are still with us.

The worth of this book is sure to be seen in the work of the scholars and others interested in parliamentary history whose debt to it will no doubt be considerable for a long time to come.

(*Contributed by W. R. McKay, a Senior Clerk in the House of Commons.*)

Parliament and Congress. By Kenneth Bradshaw and David Pring, (Constable, London, 1972, £4·50).

As an account of the procedure of the House of Commons (with that of the Lords thrown in for good measure), " Parliament and Congress " must rank with Lord Campion's well-known " Introduction ", now, alas, sadly out of date. Similarly it provides the best short account to appear so far of United States Congressional practice. But its greatest value is that it contrasts and compares the two procedures, showing how each has diverged from the common origin. Procedure cannot be properly understood except in the context of its historical development; and Messrs. Bradshaw and Pring show not only how each procedure has developed separately, but why it has done so.

The fact of the matter is, as the authors state, that the two institutions exist to do separate jobs over large areas of their activities. The relationship between government and legislature is so different that oversight of the one by the other has different purposes in each country, and takes different forms. The British constitutional system has evolved in such a way as to enable government and legislature to work in harmony; in the United States, the constitution operates so that President and Congress can usefully coexist without accord between them. The leadership also differs. In Parliament it is provided by the Prime

Minister and government which monopolises the majority of the time of the House; in the House of Representatives it is provided by the Speaker and the hierarchy below him. Lastly the membership draws its strength from different sources. A Member of Parliament is a Member primarily because he subscribes to the national policies of his party; a Congressman on the other hand has his roots firmly based in his district and must constantly bear local and regional needs in mind both in speaking and in voting. To take up the time of the House by a eulogy of a retiring provincial newspaper editor would be as unthinkable in the Commons as it would be natural in the House of Representatives.

The majority of Commonwealth parliaments have a greater procedural affinity with Westminster than with Washington. But the lessons to be learnt from congressional practice are, it is suggested, as valuable in India and Africa as they are in the United Kingdom. Indeed, the congressional variations can shed a great deal of light on the Westminster procedure on which most Commonwealth procedures are based. If a relatively obscure example may be taken, the development of the " previous question " as a means of closure in the House of Representatives illustrates at the same time the reasons for its limitations in the British procedure.

The publishers lay stress on the importance of the long chapter dealing with the respective committee systems and it is this which will perhaps prove most useful in the Commonwealth. In many parliaments, particularly those at Canberra, Ottawa and Westminster, the committee system is being strengthened and enlarged to maintain a closer scrutiny of the Executive. It is natural to look to their American counterparts for guidance, and a thorough study of committee practice in the House of Representatives and Senate is to be found in chapter five. At the same time the authors strike a warning note which many parliaments would do well to heed. It is clear from their account that power at Washington resides in committees at the expense of the floor of the House. The American system of government, said Woodrow Wilson, was " government by the Chairmen of the Standing Committees of Congress ". The dangers inherent in strengthening the committee system were pointed out six years ago at Westminster by many who would rate as " good House of Commons men ". The House exists as a lively institution and should attract a large audience of Members. Care must therefore be exercised in building up a committee system to ensure that the House itself is not emasculated as a focal centre of debate. The experience of Congress can show at least as much to avoid as to copy.

The visitor to Congress is always struck by the anomalies existing in the procedure on the floor of the House which is dealt with in chapter three and again in the later chapters of the book. On the one hand there are strict timetabling measures especially when Bills in the union calendar are being discussed; in particular amendments are considered under the " five minute rule ". At the same time the House is content to

continue time-wasting practices which would not have been tolerated in a Commonwealth Parliament even in the more leisurely days of the nineteenth century. Divisions can be taken in five different ways each of which can succeed the other; the most exhaustive (and exhausting) method, by roll call, can take up to three-quarters of an hour. It is also remarkable that the Commons at Westminster have now abolished the procedure for counting the House to establish a quorum while in Washington the call for a quorum can still, despite the efforts of Speaker Reed at the end of the nineteenth century, be used as a delaying tactic.

Three excellent chapters are included on Legislation, Finance and scrutiny and control of the executive. In each the respective procedures are described and compared. Description is detailed without being confusing; one can still see the trees as well as the wood. Thus, for example, the chapter on Legislation includes a survey of delegated legislation and the methods which are used to control it in both countries

This is a book which no one concerned with Commonwealth parliaments can afford to be without. The material does not exist elsewhere or at the least can only be dug out from many other sources. Its value lies in the collation of these sources, as well as in the original and scholarly research which has gone into its writing. At the same time it does not suffer from the aridity and misconceptions which sometimes mar a purely academic work; this is not, perhaps, surprising since the authors are both Clerks and have had the benefit of assistance and advice from their opposite numbers, the " Parliamentarians " in Congress. It is essentially a book written by practitioners for practitioners; but its easy style should give it a wider readership among those with a general interest in the working of parliaments. Finally its comprehensive index should make it a quick and easy work of reference.

(*Contributed by the Second Clerk-Assistant, House of Commons.*)

Debates of African Legislatures. Standing Conference on Library Materials on Africa, edited by Miriam Alman (W. Heffer & Sons Ltd., Cambridge, £2·50).

This little paperback of some 80 pages lists the holdings of the debates of the Legislatures, and of many of the previous legislative assemblies and advisory bodies, of all African countries except the United Arab Republic.

The holdings of 54 libraries, 21 in the United Kingdom, 23 in Africa, 6 in the United States, and one each in Australia, Germany, India and Sweden are listed under the names of the originating countries.

The lists are not complete, but the attempt is admirable. One hopes that the appearance of this edition, which is a greatly expanded version of a duplicated supplement to a newsletter of SCOLMA's, issued in 1966, will encourage further libraries to reveal their holdings in order to make future editions even more useful than the present one.

Each geographical heading is followed by a note on the history of the country concerned. These are not only a guide to the nature of the

assembly whose debates are listed but are valuable reference material in their own right.

(*Contributed by R. V. C. Morgan, Assistant Librarian, House of Lords.*)

Officers of the House of Lords, 1485 to 1971. (House of Lords Record Office Memorandum No. 45)

It was Marcel Proust who pointed out the value that names have of themselves, with no gloss other than their historical context, and although this Memorandum is unlikely to have quite the success of A LA RECHERCHE, Mr. Sainty has performed a valuable task in re-editing the out of print " Clerks in the Parliament Office, 1600–1900 ". He has extended the list both backwards and forwards and has made a number of useful corrections and amplifications to the previous edition.

There are a number of things that strike one about these lists. It is interesting, for instance, to see how small is the list of Clerks of the Parliaments—only 35 since 1485. Interesting, too, to note how many times the name Walmisley appears in the lists—eight members of that fortunate family were appointed as Clerks between 1777 and 1827, although in their case family effort appears to have been spent on quantity rather than quality as none achieved Table rank.

This is a useful work which will be invaluable as an aid to any study of the Parliament Office and indeed of the House of Lords itself.

(*Contributed by J. A. Vallance White, a Senior Clerk in the House of Lords*)

XVII. 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 £1·25 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 £2·50 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 to the Clerk of the Overseas Office and 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.

LIST OF MEMBERS

United Kingdom

Sir David Stephens, K.C.B., C.V.O., Clerk of the Parliaments, House of Lords, S.W.1.

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P. G. Henderson, Esq., Reading Clerk and Clerk of Outdoor Committees, House of Lords, S.W.1.
R. P. Cave, M.V.O., K.C.S.G., Fourth Clerk-at-the Table (Judicial), House of Lords, S.W.1.
Admiral Sir Frank Twiss, K.C.B., D.S.C., Gentleman Usher of the Black Rod and Serjeant-at-Arms, House of Lords, S.W.1.
Col. C. L. Sayers, C.B.E., Yeoman Usher of the Black Rod and Deputy Serjeant-at-Arms, House of Lords, S.W.1.
Sir Barnett Cocks, K.C.B., O.B.E., Clerk of the House of Commons, S.W.1.
D. W. S. Lidderdale, Esq., C.B., Clerk Assistant of the House of Commons, S.W.1.
*R. D. Barlas, Esq., C.B., O.B.E., Second Clerk Assistant of the House of Commons, S.W.1.
C. A. S. S. Gordon, Esq., C.B., Principal Clerk, Table Office, House of Commons, S.W.1.
M. H. Lawrence, Esq., C.M.G., Clerk of the Overseas Office, House of Commons, S.W.1.
Rear Admiral Sir Alexander Gordon Lennox, K.C.V.O., C.B., D.S.O., Serjeant-at-Arms, House of Commons, S.W.1.
Lieutenant-Colonel P. F. Thorne, C.B.E., Deputy Serjeant-at-Arms, House of Commons, S.W.1.

Northern Ireland

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J. M. Steele, Esq., Second Clerk-Assistant, Stormont, Belfast.
Brigadier J. Y. Calwell, C.B.E., M.V.O., Serjeant-at-Arms, Stormont, Belfast.
Capt. J. C. Cartwright, D.S.C., R.N., Black Rod and Deputy Serjeant-at-Arms, Stormont, Belfast.

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T. E. Kermeen, Esq., F.C.C.S., Clerk of Tynwald, Clerk of Tynwald's Office, Legislative Buildings, Douglas, I.o.M.
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Canada

Robert Fortier, Esq., Clerk of the Senate, Ottawa, Ont.
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* Barrister-at-Law or Advocate.

Alistair Fraser, Esq., Clerk of the House of Commons, Ottawa, Ont.
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Marcel R. Pelletier, Esq., Clerk-Assistant (Legal), House of Commons, Ottawa, Ont.
Alexander Small, Esq., Second Clerk-Assistant, House of Commons, Ottawa, Ont.
Joseph Maingot, Esq., LL.B., Parliamentary Counsel, House of Commons, Ottawa, Ont.
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René Blodin, Esq., Secretary-General of the National Assembly, Parliament Buildings, Quebec.
*J. R. Howie, Esq., Clerk of the Legislative Assembly, Fredericton, New Brunswick.
*R. A. Laurence, Esq., Q.C., LL.B., Chief Clerk of the House of Assembly, Halifax, N.S.
E. K. De Beck, Esq., Clerk of the Legislative Assembly, Victoria, B.C.
G. Barnhart, Esq., Clerk of the Legislative Assembly, Regina, Sask.
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E. Pianim, Esq., LL.B., Assistant-Clerk of the National Assembly, Parliament House, Accra.

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J. M. Scott, Esq., Clerk of the Legislative Assembly, Rarotonga, Cook Islands.

The Gambia
B. O. Jobe, Esq., Clerk of the House of Representatives, Bathurst

St. Lucia
Mrs. U. Raveneau, Clerk of the House of Assembly, St. Lucia.

Bahamas
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Mrs. L. Poznanski, Clerk of the Legislature, Honiara.

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N. L. Dlamini, Esq., Clerk of Parliament, P.O. Box 448, Mbabane, Swaziland.

Ex-Clerks-at-the-Table

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E. C. Briggs, Esq. (Tasmania).
W. G. Browne, Esq. (Western Australia).
Henry Burrows, Esq., C.B., C.B.E. (United Kingdom).
H. N. Dollimore, Esq., C.B.E. (New Zealand).
C. B. Koester, Esq., C.D, M.A., Ph.D. (Saskatchewan).
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R. H. C. Loof, Esq., C.B.E., B.Comm., J.P. (Australia).
T. R. Montgomery, Esq. (Ottawa, Canada).
C. K. Murphy, Esq., C.B.E. (Tasmania).
A. W. Purvis, Esq., LL.B. (Kenya).
E. C. Shaw, Esq., B.A., LL.B. (N.S.W.).
A. A. Tregear, Esq., C.B.E., B.Comm., A.A.S.A. (Australia, Commonwealth Parliament).
Sir Alan Turner, C.B.E. (Australia, Commonwealth Parliament).
*Shri D. K. V. Raghava Varma, B.A., B.L. (Madras).
Colonel G. E. Wells, C.B.E., E.D. (Southern Rhodesia).

Office of the Society

Palace of Westmister, S.W.1.
Editors for Volume XL of the JOURNAL: J. M. Davies and R. B. Sands.

XVI. MEMBERS' RECORDS OF SERVICE

Note.—**b.** = born; **ed.**=educated; **m.**=married; **s.**=son(s); **d.**=daughters(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.

Aney, Shri D. M., B.A., LL.B.—Secretary, Maharashtra Legislature Secretariat, Bombay; soon after Law Graduation, joined the Judicial Service of the former State of Madhya Pradesh in 1943; served in various districts in that State; joined the Judicial Service of Maharashtra State on reorganisation in 1956; served in various districts as District and Sessions Judge; member Industrial Court and Industrial Tribunal, Maharashtra, Bombay, 1966–71; joined Maharashtra Legislature Secretariat as Additional Secretary on 1st January, 1972; appointed Secretary, Maharashtra Legislature Secretariat on 1st April, 1972.

Caley, Rodney George Greggor.—Clerk Assistant of Tynwald, Isle of Man; *b.* 28th January, 1942, St. Johns, Isle of Man; *m.* 1971; *ed.* King William's College, Isle of Man; joined Isle of Man Civil Service 1963, appointed to present position 1970.

Garbarino, Paul A., Ed.—Clerk to the House of Assembly, Gibraltar; *b.* 3rd September, 1928, Gibraltar; *m.* 1 *s.*, 2 *d.*; *ed.* Line Wall College, Gibraltar; entered the public service (City Council) in 1946, served in Town Clerk's Department as Minutes Clerk; appointed Administrative Assistant in City Engineer's Department 1968; transferred to Civil Service 1969 on appointment as Clerk to the Council of Ministers; appointed Clerk to the House of Assembly, December 1971.

Pendse, Shri B. G., B.Sc.—Deputy Secretary, Maharashtra Legislature Secretariat; *b.* 25th August, 1918; joined service in the Indian Audit and Accounts Service in April 1940, borne on the cadre of Indian Audit and Accounts Service from 7th August, 1963; served as Assistant Accountant General, Deputy Accountant General in the Indian Audit and Accounts Department; appointed Deputy Secretary in Maharashtra Legislature Secretariat in September, 1971.

Reddy, A. Shanker, B.A., LL.B.—*b.* 1st June, 1917; *m.*, 5 *s.*, 3 *d.*; *ed.* at Osmania University, Hyderabad; practised Law in the erstwhile Hyderabad High Court for about 10 years; joined judicial service in

1951; acted as District Munsif for more than 3 years; in 1955 shifted to the Law Department of erstwhile Hyderabad State and thereafter in 1956 to the Law Department of Andhra Pradesh and continued to be there for about 14 years in various capacities, namely, Assistant Secretary, Deputy Secretary, Draftsman and Joint Secretary to Government; acted as Additional Secretary in the Andhra Pradesh State Law Commission for about three years; worked as Additional Secretary, Legislature, for nine months prior to assuming charge as Secretary, Legislature on 1st March, 1970.

Seneviratne, Santi Nihal.—Clerk-Assistant, House of Representatives, Ceylon; *b.* 28th May, 1934; *ed.* Royal College, Colombo, Ceylon, University of Ceylon, Ceylon Law College, LL.B. (Ceylon) and Advocate of the Supreme Court of Ceylon; appointed Second Clerk-Assistant of the House of Representatives, 15th June, 1961; appointed Clerk-Assistant of the House of Representatives, 28th October, 1964.

Tittawella, Bertram Senaka Bandara.—Second Clerk-Assistant, House of Representatives, Ceylon; *b.* 15th February, 1939; *ed.* Trinity College, Kandy, Ceylon, Ceylon Law College, Harvard Law School (Harvard University, U.S.A.); LL.M. and Proctor of the Supreme Court of Ceylon; Congressional Fellow of the American Political Science Association, 1966–7; Parliamentary Fellow of the Institute of Constitutional and Parliamentary Studies, New Delhi, 1969; Legal Assistant of the Insurance Corporation of Ceylon; appointed Second Clerk-Assistant, House of Representatives, 1st January, 1971.

XIX. CONSOLIDATED INDEX TO VOLUMES XXXI—XL

ABBREVIATIONS

(Art.) = Article in which information relating to several Territories is collated. (Com.) = House of Commons.