The Table

BEING

THE JOURNAL OF

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IN COMMONWEALTH PARLIAMENTS

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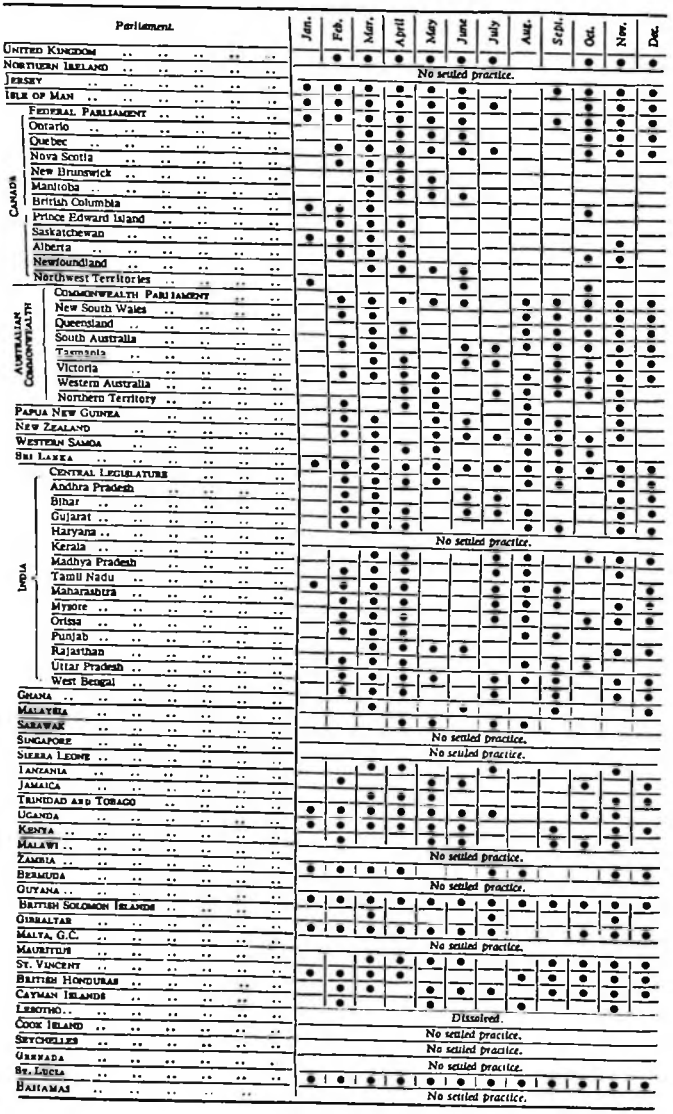

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THE JOURNAL OF THE SOCIETY OF CLERKS-AT-THE-TABLE IN COMMONWEALTH PARLIAMENTS

I. EDITORIAL

This Volume of THE TABLE is well representative of the Commonwealth in that it contains two articles each from Australia, Canada, Northern Ireland and Westminster, as well as important contributions from India and Jersey. Readers will be especially interested in the two Australian articles which deal with the constitutional effects of prorogation and dissolution. Westminster clerks in particular may be surprised at the extent to which a period of prorogation is now regarded by the Commonwealth Parliament as little different from an adjournment period. A further difference between Westminster and Australian constitutional practice appears to be that whereas at Westminster the gap between the old and new sessions is now seldom more than a week-end, in Australia it is usually two weeks or more.

1973 was a significant year constitutionally. Northern Ireland received a new constitution and we are able to include interesting articles on the birth of the now suspended Assembly and its adoption of Standing Orders. Furthermore, 1973 was the first year of the United Kingdom's membership of the European Communities, with all the resulting constitutional and procedural implications for the Westminster Parliament. We include an article on developments at Westminster aimed at ensuring that both Houses keep a watchful eye on legislative proposals emanating from Brussels.

In the Clerk's department computers are now beginning to take over much of the routine retrieval work for Parliament. Canada seems to be in the van of developments here and Alexander Small's article will be studied with interest by colleagues throughout the Commonwealth.

As we go to press, we have received news of the retirement of Sir David Stephens, Clerk of the Parliaments since 1963. A full notice of Sir David's career will appear in our next volume. Suffice it to say here that his retirement, coupled with that of Sir Barnett Cocks, means sadly that the Society has lost its two trustees of the past decade. On behalf of all Members we would like to take this opportunity to express our thanks to them for their work for the Society.

Mrs. Ursula Raveneau.—We record with regret the death on 26th April, 1974, of Mrs. Ursula Raveneau, formerly Clerk of the Legislative Assembly, St. Lucia.

Edwin K. De Beck.—Mr. De Beck, Clerk of the Legislative Assembly of British Columbia, retired on 18th April, 1973. The Assembly resolved that he be appointed Clerk Consultant.

Less than two weeks before his retirement, Mr. De Beck celebrated his ninetieth birthday. On behalf of our Members we would wish to add our congratulations to those extended to him by the Legislative Assembly of British Columbia. The Assembly marked this happy occasion by appointing Mr. De Beck a Queen's Counsel.

Sir Barnett Cocks, K.C.B., O.B.E.—On 31st December, 1973, Sir Barnett Cocks retired from the Clerkship of the House of Commons at Westminster, an office which he had held for longer than any of his predecessors this century with the exception of Sir Courtenay Ilbert more than fifty years ago. When Sir Barnett first entered the Department of the Clerk of the House, the Stationery Office was still issuing sharpened quill pens and there were senior Clerks who had begun their parliamentary career when Gladstone was still a Member; now computers are taking over much of the printing and retrieval work for the House.

Sir Barnett's early years in the House during the 'thirties followed the usual pattern of those days. He gained experience in a junior capacity of most of the Offices in the Department. But war was not far off. When it came, with the attendant bombing and destruction of so much of London, including the Chamber of the House of Commons, Clerks, like everyone else, had to turn their hands to all manner of work and Sir Barnett with some of his colleagues was engaged on the manufacture within the basement of the Houses of Parliament of spare parts for submarines and otherwise contributing to the war effort. Meanwhile, the work of Parliament had to go on and plans had to be made for the future, and one of these projects was the revision of Erskine May upon which the then Clerk of the House, Sir Gilbert Campion, was at work. Sir Barnett was drawn into this revision by the Clerk and undertook on his behalf much responsibility for it. It gave him an abiding interest in this aspect of a Clerk's reponsibilities; and although, as he generously recognises in the latest (18th) edition, Erskine May is " no more than a convenient appellation for the contemporary work and corporate memory of Clerks in both Houses of Parliament ", he has been a major participant in the last five editions, co-editor of two of them and sole editor of the last two.

After the war Sir Barnett worked for several years in the newly created Table Office at a time of great pressure when the pre-war trickle of parliamentary questions had become a raging flood. He was also for many years the Clerk to that most important of all Committees,

the Committee of Privileges before which he subsequently made frequent and distinguished appearances as the principal witness after he had become Clerk of the House. In 1949 he began a five-year term in the Public Bill Office, and in 1954 he was appointed Second Clerk Assistant, the beginning of a long career at the Table of the House.

Meanwhile, the international parliamentary scene in Europe was beginning to come alive. In 1949 Sir Barnett attended the first session of the Consultative Assembly of the Council of Europe as a member of the team of British Clerks led by Sir Gilbert Campion, which lent professional experience of the working of Parliament to the debates of the new Assembly. He attended many subsequent sessions and edited seven editions of a manual of procedure for this Assembly, the latest being published in 1973. In 1955, when the Assembly of Western European Union came into being, Sir Barnett served as an expert adviser on the drafting of the Charter and Rules of the Assembly. Later he was closely concerned with the emergence of the North Atlantic Assembly as a consultative parliamentary Assembly linked to the North Atlantic Treaty Organisation. After becoming Clerk of the House in 1962, he frequently attended meetings of the Association of Secretaries General of Parliament within the context of the Inter Parliamentary Union, which recognised the value of his services by appointing him in 1972 as President of the Governing Board of its International Centre for Parliamentary Documentation.

None of these commitments inhibited a close and developing interest in the Parliaments of the Commonwealth. His first direct experience had been as a member of the Commons' Delegation which presented gifts to the Parliaments of New Zealand and Australia in 1951, and in 1954 he went on a similar visit to Ghana. Thenceforth his associations grew and he took a close personal interest in the professional visits of Clerks from Commonwealth Parliaments who visited Westminster for periods of attachment. It was in order to maintain these personal contacts and to make new ones that he began in May 1958 a series of Newsletters which have become familiar reading throughout the Commonwealth and which he began as much to encourage the flow of news to Westminster as to send it out from there. At the same time Sir Barnett began a close association with the Commonwealth Parliamentary Association both at home and overseas taking part regularly in the annual seminars for Members of Commonwealth Parliaments and delighting in being able to offer with Lady Cocks hospitality in their official home in the House to their friends from overseas. Last September, the meeting of the Society of Clerks-at-the-Table in London, over which he was elected to preside, provided a fitting climax to many years of association with Members and Clerks of Commonwealth Parliaments.

Public tributes were paid to him in the House on 20th December, 1973, by the Leader of the House, from the Opposition front bench,

by the Leader of the Liberal Party, by the Father of the House and from all sides on the back benches. This is not the place for long quotations but one sentence is worth referring to:

> He [Sir Barnett] has not only a strong feeling of affection for the House but a deep understanding of the social change brought about through a representative Parliament in a free society.

This is essentially a personal quality but it is one without which no Clerk can really give adequate service to Parliament. Forms and procedure and practice are of the essence of Clerks' work, but without an understanding of the deeper forces which lie behind each representative Parliament assembled at Westminster one's work becomes meaningless.

Sir Barnett remains a member of the Society and joins the distinguished band of ex-Clerks-at-the-Table. It is to be hoped that he will still find time and opportunity to take an active part in the affairs of the Society.

Ivor Percy Kidd Vidler, C.B.E.—On 31st January, 1974, Ivor Vidler retired from the Clerkship of the Legislative Assembly, New South Wales, having served the House for forty-five and a half years, of which more than twenty-six were as a Chamber officer, with the last seven as Clerk.

Ivor Vidler began his career with the Legislative Assembly Staff in 1928, when at the age of 19 he became a junior clerk. He was appointed Clerk of Papers and Assistant Clerk of Bills in 1937 and First Clerk and Clerk of Bills in 1945. In quick succession Mr. Vidler was appointed Serjeant-at-Arms and Clerk of Select Committees in 1947, and then later that same year Second Clerk-Assistant. He was promoted to Clerk-Assistant in 1956 and appointed Clerk of the Legislative Assembly in 1967. Mr. Vidler is the author of the parliamentary publication, *A guide to Procedure in Committees of the Whole House.*

During World War II, Ivor Vidler served in the 2-17 Australian Infantry Battalion, 9th Division, from 1940 to 1943, attaining the rank of Warrant Officer. He saw active service in the Middle East.

Mr. Vidler had a particularly close association with the Commonwealth Parliamentary Association. He was elected Honorary Secretary of the New South Wales Branch in 1956, and occupied that position until his retirement. He attended the C.P.A. conferences in Nigeria (1962), the Bahamas (1968) and Trinidad and Tobago (1969), as Secretary to the Australian States' Delegation. He also attended all of the Association's Australasian Area Conferences held from 1956 to 1971.

Ivor Vidler had the honour to be appointed Clerk to the Australian Constitution Convention held in Sydney from 3rd to 7th September, 1973. Over 110 delegates, comprising Members of Parliament and Local Government Representatives from all over Australia, attended the Convention.

Her Majesty the Queen conferred on Mr. Vidler the title of Commander of the British Empire in June 1973, in recognition of his services to the Parliament and to the State.

On 19th February, 1974, the Speaker of the Legislative Assembly, the Honourable James Cameron, formally notified the House of Mr. Vidler's retirement. Mr. Speaker said in part:

> The future of this Parliament—indeed its very survival—depends to no small degree upon the calibre of the senior staff it is able to attract and retain. Ivor Vidler must rank within the very vanguard of those senior staff members whose service to the Parliament entitles them to tribute from this House.
>
> Mr. Vidler—universally known as " Snow " to his innumerable friends and associates—is a man of commanding physical stature. His personailty matches that physical stature. It is broad, kindly and robust—flecked with an attractive sense of humour and built on foundations sunk deep. This House is saddened by the ending of its long, continuing association with him. It conveys to Mr. Vidler and Mrs. Vidler its best wishes for a happy world tour now in progress, in the course of which they look forward to being reunited with their son and daughter.

The Premier of New South Wales, the Honourable Sir Robert Askin, then moved that Mr. Speaker's remarks be recorded in the *Votes and Proceedings* and said, in part:

> Mr. Ivor Vidler, in his person and performance over the long period of forty-five and a half years as an officer of the Legislative Assembly, has set a shining example of what an officer of Parliament should aspire to be. There can hardly be anyone on either side of the Chamber who has not benefited in some way from Mr. Vidler's counsel and advice. I am referring not merely to recent years, since he became Clerk of the Legislative Assembly; I go back much further, to the days even before the older members entered Parliament. Mr. Vidler has always been most co-operative and helpful to members on both sides of the House, and yet managed to preserve a political neutrality. I welcome this opportunity of placing on record my personal thanks to him for the help and assistance he readily gave me on innumerable occasions.
>
> Mr. Vidler served his country in war and this Parliament in peace time with considerable distinction. It is most appropriate that our appreciation of the work of such a loyal, competent and indefatigable officer of this ancient and honourable institution should be placed in the official record of the proceedings of the Parliament he served so well. I believe the institution has lost an invaluable officer, who will be sadly missed.

In supporting the Premier's remarks, Mr. L. J. Ferguson, Deputy Leader of the Opposition, said, in part:

> Through persons like Ivor Vidler it has been proved to me that not only officers of this Parliament, but also public servants generally, can be impartial and do serve the interests of the State with even-handed justice. I am sure that every Member of this House could tell of the help and guidance that Ivor Vidler at some time rendered to him. Therefore, we certainly wish him a happy retirement.

Ivor Vidler's record of service to the Parliamentary Institution is an enviable one and will serve as a standard for those who follow in his footsteps. He carries our very best wishes for a contented retirement.

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

R. W. Perceval.—Mr. Robert Perceval, Clerk-Assistant of the Parliaments since 1964, retired during the Whitsun Recess. He had been a Clerk in the House of Lords since 1938 and was an acknowledged authority on parliamentary matters, as many of our colleagues in the Commonwealth will be aware. He was a co-editor of this Journal from the time that Owen Clough handed over the editorship to two clerks at Westminster until he was appointed to the Table as Reading Clerk in 1963—a period of some eleven years. Members of the Society of Clerks-at-the-Table in Commonwealth Parliaments owe Mr. Perceval a great debt of gratitude for the work he did for them both as Treasurer of the Society and as co-editor of the Journal. He was also a frequent contributor to THE TABLE, as this present volume again testifies.

When the House of Lords resumed after the Whitsun Recess the Leader of the House, Lord Shepherd, announcing Mr. Perceval's retirement, said this of him:

> The House would not wish to take leave of Robert Perceval without thanking him for his services to the House. He joined the staff of the House in November 1938. He was a man of great ability and deep knowledge. He had his own concept of a Clerk's duties but he was, beyond all doubt, devoted to this House, its traditions, its history and its practice. Robert Perceval had and has many friends in the House and on their behalf, and on behalf of the House as a whole, I should like to thank him for his long service to the House and to offer him and his wife our best wishes for the future.

The other Party Leaders endorsed these sentiments and warm tributes were paid to Mr. Perceval by back-benchers from all parts of the House.

II. TWO PETITIONS COMMITTEES

By S. L. Shakdher
Secretary General of the Lok Sabha, India

Institution of Petition

In a Parliamentary democracy it is the inherent right of the people to present petitions to Parliament with a view to ventilating grievances and offering constructive suggestions on matters of public importance. This right has been well recognised in India where the practice of petitioning the King or the ruler of a state has been in vogue since times immemorial. The concept of petitioning for redress of grievances finds a recognition in the Indian Constitution.[1]

In the United Kingdom, the right of petitioning the Crown and Parliament for redress of grievances has been regarded as a " fundamental principle of the Constitution ".[2] In olden days, the legislative and judicial functions of the British Parliament were, to a large extent, interlinked, and hence petitions presented to Parliament covered a wide spectrum, ranging from personal grievances to matters of national policy. The modern form of petitioning has, however, grown up from about the 17th century when the judicial functions of Parliament, and particularly of the House of Commons, gradually became less important than its political and legislative functions. The nature of petitions has also undergone a change. Petitions have now become more concerned with attempts to alter national policy on particular issues, whether matters of legislation or of administration. These now also relate to such local personal grievances as are outside the scope of legislation and where, for instance, a judicial remedy is not appropriate.[3]

The right to present, and for the House to receive, petitions was clearly laid down by the House of Commons in 1669 by the following resolutions:

> That it is the inherent right of every commoner in England to prepare and present petitions to the House of Commons in case of grievance, and the House of Commons to receive the same.
>
> That it is an undoubted right and privilege of the Commons to judge and determine, touching the nature and matter of such petitions, how they are fit and unfit to be received.[4]

Until after the Reform Act of 1832 the House of Commons imposed little restriction on the raising of debate on the presentation of petitions which could be used to raise subjects of a general character and also as a means to obstruct other business. As a result of the increasing number of petitions and the demands upon its time, the House passed, in 1842, a series of standing orders which were designed to make the presentation of a petition " a formal procedure incapable, except in

are cases, of giving rise to debate ". The change occurred as Parliament became " more representative of the people " and " the channel which had been filled by petitions was to some extent superseded by questions to Ministers ". Accordingly, in recent years there has been marked decline[5] in the number of petitions presented to the House.

Committee on Petitions

In India, the present Committee on Petitions of Lok Sabha dates back to the Legislative Assembly of the pre-Independence era. It owes its origin to a resolution moved in the then Council of State by a Member (Sir Manekji Byramjee Dadabhoy) on 15th September, 1921, which sought to empower the Council, if necessary by statute, *inter alia* " to receive public petitions on all matters relating to public wrong, grievances or disability, to any act or acts of public servants, or to public policy ". The resolution also sought that " a Committee be constituted on public petitions with powers to examine witnesses and record evidence ".[6] In pursuance of an assurance given by the Government that they would have the matter examined by a committee, the resolution was withdrawn. The promised committee, subsequently appointed by the Government to examine this matter, did not favour giving to the Legislature the wide powers proposed in the resolution; but they did recommend that there should be a right of petitioning the Legislature, limited to the public business. In pursuance of this recommendation, Speaker Sir Frederick White constituted, on 20th February, 1924, what was then known as the Committee on Public Petitions.[7] It is thus one of the oldest committees of the House.

Its strength was then fixed at five, which remained unchanged until April 1954, when it was raised to fifteen in order to provide adequate representation to all parties and groups in the House. This strength remains unchanged.

The Committee continued to be known as the " Committee on Public Petitions " until 1933, when its name was changed to its present nomenclature, viz., the Committee on Petitions.

According to the Rules of Procedure and Conduct of Business in Lok Sabha, the Committee on Petitions holds office till such time as a new Committee is constituted by the Speaker.[8] However, in practice the Committee is generally constituted annually and its term is one year from the beginning of June till the end of May in the following year.

The Chairman of the Committee is appointed by the Speaker from amongst the Members of the Committee.[9] The quorum to constitute a sitting of the Committee is five.[10]

In the United Kingdom, up to 1817 the practice was to print public petitions in the Votes and Journals. Up to 1833, Members' names were balloted for precedence in presenting petitions. Thus considerable time was spent by the House on considering petitions. The

Committee on Public Petitions, which was originally set up as a Sessional Select Committee in 1833, was primarily intended to reduce the expenditure on printing petitions. With the establishment of this Committee, the practice of printing the petition *in extenso* was replaced by a discretionary power to print it only when the Committee considered it desirable.[11]

The Committee is appointed each session by a sessional order, and normally consists of fifteen Members. As is the case with all the Select Committees of the House of Commons, the Chairman of the Committee is chosen by the Committee itself. The quorum to constitute the Committee is fixed by its order of reference at three.

Scope of Petitions

In India, till the end of 1953, petitions could be presented to Lok Sabha only on Bills which had been published in the *Gazette of India* or introduced in the House or in respect of which notice to move for leave to introduce the Bill had been received. The question of enlarging the scope of petitions which could be presented to the House was discussed in great detail by the Rules Committee of Lok Sabha in December 1953. The Committee felt that, as in the United Kingdom, the people should have the right to present petitions to Parliament not only in respect of Bills, but in regard to other grievances also and the House should receive such petitions. The scope of petitions which could be presented to the House was accordingly amplified.[12]

The Rules of Procedure of Lok Sabha specify the matters on which petitions may be presented to Lok Sabha. At present, petitions may be presented, with the consent of the Speaker, on a Bill which has been published or introduced in the House,[13] or on any matter connected with the business pending before the House.[14] Petitions can also relate to any matter of general public interest,[15] provided that it is not one which falls within the cognisance of a court of law having jurisdiction in any part of India or a court of inquiry or a statutory tribunal or authority or a quasi-judicial body, or a commission. Matters which can be raised on a substantive motion or resolution, or for which remedy is available under the law, including subordinate legislation, are also outside the scope of such petitions.[16]

The Rules prohibit the presentation of a petition which deals with financial matters or involves expenditure from the Consolidated Fund of India, unless it is recommended by the President.[17]

In India, petitions serve two principal objects, namely, to state the merits of a public matter to which the petitioner wishes to invite the attention of Lok Sabha, and to show and stress the degree of importance which the public outside are giving to the matter. The object of the petitions relating to the second category is to intensify and focus public opinion and ensure that the Government may be moved to quick action in cases of genuine grievances.

In the United Kingdom, a public petition is essentially intended to

seek redress of grievances which are within the scope of parliamentary action. A petition may thus pray for an alteration of the general law or the reconsideration of a general administrative decision, besides praying for redress of local or personal grievances. As in India, in the United Kingdom also, no application can be made for any grant of public money, except with the recommendation of the Crown; but petitions praying for the grant of money by Bill are excluded from this rule.[18]

Form of Petition

In India, all petitions to Lok Sabha are required to be in a prescribed form. The essential requirements in this respect are that a petition should contain (i) a formal superscription to the House (*i.e.* it must be addressed to Lok Sabha),[19] (ii) a concise statement of grievance, (iii) a prayer regarding the definite object in regard to the matter to which the petition relates,[20] and (iv) name and designation of the petitioner with address, authenticated by his signature or, if illiterate, by his thumb impression[21] and that every petition should, if it is to be presented by a Member, be countersigned by him. In the United Kingdom, also, the form of a petition is more or less the same as in India. There, also, the petition is required to be superscribed to the House of Commons. Then follows a general designation of the parties to the petition. The general allegations of the petition are concluded by the " prayer ", in which the particular object of the petition is expressed.

In both India and the United Kingdom, the Rules provide that where there is more than one signatory to a petition, at least one person is required to sign on the sheet on which the petition is inscribed, and in the United Kingdom that sheet has to be hand-written. If signatures are affixed to more than one sheet, the petitioners have to ensure that the prayer of the petition is repeated at the head of each sheet. In the United Kingdom the Rules also provide that every person signing a petition should also write his address after his signature, or else " his signature would not be counted ".

Language of Petitions

In both India and the United Kingdom the language of a petition is required to be " respectful, decorous and temperate ". In India, every petition should be either in Hindi or in English. If any petition in any other Indian language is made, it should be accompanied by a translation, either in Hindi or in English, and signed by the petitioner.[22] Likewise, in the United Kingdom a petition must be in the English language, or else should be accompanied by a translation in English, which the Member presenting it has to certify as correct.[23]

Transmission by post

In India, the petitions for presentation to Parliament can be sent at book packet rates, provided a declaration is made on the wrapper that

they are petitions for presentation to Parliament in accordance with the Rules of Procedure.[24]

In the United Kingdom, also, facilities exist for the transmission of the petitions through the Post Office, to Members, free of postage, provided they be sent " without covers, or in covers open at the sides, and do not exceed 32 ounces in weight ".[25]

Presentation of Petitions

In India a Member who intends to present a petition to the House has to give advance intimation of his intention to the Secretary-General.[26] Although no minimum period is specified in the Rules for an advance notice, ordinarily, two days' notice is considered sufficient. In exceptional cases, however, the condition of advance notice has been waived. The Secretary-General examines each petition to consider its admissibility according to Rules. If the Speaker admits the petition, the Member concerned is advised to see the Speaker in his Chamber and obtain his consent for presenting the petition to the House.[27] A petition is presented to the House after the Question Hour.[28]

If a petition is received direct from any person without the counter-signature of a Member and on scrutiny by the Secretariat is considered otherwise admissible, the practice in the Lok Sabha is to return it to the petitioner, who is advised to have it countersigned by a Member for presentation to the House. This practice is based on the principle that petitions are normally presented by Members in their capacity as elected representatives of the people, and that they have to take full responsibility for the statement made in the petitions and answer questions on them in the House, if any are raised.

In urgent cases, when a petition without the counter-signature of a Member is received on a Bill or other business which is either under consideration or is to be considered in the House in a day or two and there is no possibility of getting it back in time after the petitioner has got it countersigned by a Member, the Speaker may nominate a Member of the Committee on Petitions to present the petition.

In exceptional cases, where presentation of such a petition by a Member cannot be arranged or would not be possible before the subject-matter of the petition is taken up in the House and the Speaker considers that the petition should be presented to the House, he directs the Secretary-General to report the petition to the House. As in the case of presentation of a petition by a Member, no debate is permitted on the report of a petition by the Secretary-General.[29]

In the United Kingdom, petitions must be presented by Members, except in the case of the Corporation of the City of London and, in the past, the Corporation of Dublin, who may present petitions at the Bar of the House, the actual presentation being made by the Sheriffs. By law of the House, members of the public have presented petitions at the Bar of the House, but the practice has long since fallen into desuetude.

A Member is, however, under no obligation to present a petition; and if he does present a petition, this is not an implied agreement with its views.[30] In both India and the United Kingdom, letters, affidavits or other documents cannot be attached to any petition.

A petition in the House of Commons may be presented either informally or formally. If the petition is presented informally, it is merely dropped at any time into the 'green bag' kept behind the Speaker's Chair. The bag is emptied each day at 4 p.m. and petitions, if there be any, are examined in the Journal Office. If the petition is found to be in order, it is entered in the Votes and Proceedings of that day. If it is not in order, a footnote " an informal petition is not noticed " appears on the first page of the Votes and Proceedings. A petition which is not in order is returned by the Journal Office to the Member concerned with a statement to that effect.

If, on the other hand, the formal method is chosen for the presentation of the petition, the first step normally is the examination of the petition by the Clerk of the Committee on Public Petitions, who, after scrutinising the petition, advises the Member concerned as to whether the petition is in order. If the petition is in order, the Member signs the list in the Table Office before 12 noon on the day of presentation (before the rising of the House on Thursday for a Friday presentation). Although the Member has a duty not to present a petition which he believes not to be in order, the Table Office nevertheless requires positive endorsement by the Clerk to the Committee before the list can be signed by the Member.

In the House of Commons, the Speaker calls on the Member to present the petition after Private Business and before Question Time. On that occasion, the Member is not supposed to address the House. Nor can any other Member speak, except to raise a point of order. The Member presenting the petition is required only to read the prayer of the petition and make a statement as to the parties from whom it comes, the number of its signatories and its material allegations. The Member then brings the petition directly from his place to the Table and drops it in the green bag placed behind the Speaker's Chair. As in the Lok Sabha so in the House of Commons, no debate is allowed on the presentation of a petition.[31] However, points of order relating to the petition may be raised in the House of Commons, either immediately or at the conclusion of Question Time.[32]

In India, a Member cannot present a petition from himself,[33] except as a member or officer of a public corporate body or society, when he might present it on their behalf. In the United Kingdom, also, a Member is not allowed to present a petition from himself. While it is quite competent in the United Kingdom for any Member to petition the House, his petition ought to be presented by another Member. This, however, does not bar a Member from presenting a petition signed by him in his representative capacity as Chairman of a County Council or of any public incorporated body.[34] In neither country, the

does Speaker present a petition, either from himself or on behalf of another Member.

Withdrawal of Petitions

In India, a petition, which after presentation is found defective in some respects, may be withdrawn by order of the Speaker and the petitioner informed accordingly.[35] In the United Kingdom, also, petitions in which irregularities may be noticed at a later stage can be withdrawn. Though in India there has not been any case of withdrawal of a petition on the ground of irregularity, in the United Kingdom there have been instances in the past where petitions have been so withdrawn.[36]

Protection to Petitioners from Legal Proceedings

In India, petitioners and their counsel who appear before any House, or any Committee thereof, are protected, under the Constitution, from suits and molestation in respect of what they say in the House or its Committees. This privilege may be regarded as an extension of the privilege of freedom of speech of the House, as its purpose is to ensure that information is given to the House freely and without interference from outside.

As stated earlier, in the United Kingdom also, the right to petition Parliament is regarded as an inalienable right of the people. It is in fact one way of bringing grievances to the notice of the Parliament. Unlike a letter to a Member of Parliament, a public petition in that country is protected by " absolute privilege from proceedings for defamation ".[37]

Petitions after Presentation stand referred to Committee on Petitions

In India, every petition after presentation by a Member, or report by the Secretary-General, as the case may be, stands referred to the Committee on Petitions. No discussion or debate is permitted on the presentation of a petition.[38] Likewise, in the United Kingdom, all petitions, after they have been ordered " to lie upon the Table ", automatically stand referred to the Committee on Public Petitions without any question being put.[39]

It may be mentioned here that in the United Kingdom there are two categories of petitions which may be discussed on presentation. Petitions which complain of matters affecting the privilege of the House are always regarded as being entitled to immediate consideration. However, if the privilege matter is not urgent, the House can order that it be taken into consideration on a future day. The second category of petitions on which discussion can be allowed on presentation relates to present personal grievances which may warrant " immediate and urgent consideration ".[40]

Functions of the Petitions Committee

In India, the Committee on Petitions examines every petition which, after presentation to Lok Sabha, stands referred to it. However, the petitions on a Bill pending before a Select or Joint Committee, are referred to the Select or Joint Committee concerned, without being presented to the House and the Petitioner is informed accordingly.[41] It is the function of the Committee on Petitions to report to the House on specific complaints made in the petitions atter taking such evidence as it deems fit. The Committee also suggests remedial measures, either on the specific case under review or in a general way to prevent such cases in future.[42] The Rules empower the Committee to direct that the petition be circulated, either *in extenso* or in a summary form, to all Members of the House.[43] In practice, however, the Committee directs circulation of only those petitions which deal with Bills or the matters pending before the House. In the case of petitions on matters of general public interest, the Committee examines the suggestions made therein, and calls for formal comments from the Ministries concerned, where necessary, before making suitable recommendations in its Report to the House.

The Committee also considers representations, including letters and telegrams, received from various individuals and associations, which are not covered by the Rules relating to petitions, and gives directions for their proper disposal.[44] Like petitions on Bills, representations relating to a Bill pending before a Select or a Joint Committee are also forwarded to that Committee, without being placed before the Committee on Petitions.[45] Other representations on matters within the purview of the Government of India are placed before the Committee, after these have been classified into two categories, viz., categories "A" and "B". Representations relating to important matters requiring the intervention of the Committee, together with brief summaries or gists thereof, are placed in category "A", while representations of less importance or those pertaining to minor matters, in which the Committee would not normally proceed further, are classified under category "B".

So far as representations placed in category "A" are concerned, where the Committee feels that there is a *prima facie* genuine grievance, it directs, in the first instance, that facts should be obtained from the Ministry concerned, and after considering the reply of the Ministry, or getting further clarification from the Ministry or the petitioner, the Committee directs that the petitioner should be informed suitably of its decision.[46] In certain cases the Committee feels that, though the grievance appears to be genuine, it is nevertheless not of general public importance. In such cases, it directs that the representation in original be forwarded to the Ministry concerned for disposal after due consideration.

In the case of representations placed in category "B" the Committee does not usually call for facts from the Ministry concerned, for,

as already mentioned, such representations generally relate to minor or trivial matters. If, after considering the representations, or the facts thereon, whenever these have been obtained from the Ministry under its directions, the Committee feels that the grievance ventilated in the representation appears to be genuine, but decides not to take it up with the authorities, it directs that the representation should be forwarded in original to the Ministry concerned for disposal and the petitioner is apprised accordingly.[47] Where, in the Committee's opinion, the grievances are trivial or purely personal and do not require its intervention, the Committee directs that these should be filed.

In regard to representations, according to normal practice, the Committee does not make any formal recommendation in its Report. It may, however, report on matters of special interest which may come to its notice while examining the facts obtained from the Ministries, and suggest necessary remedial measures.[48]

As most of the State Legislatures have their own committees on Petitions, the representations on matters falling under the control of State Governments, when received by the Committee are forwarded to the Secretary of the State Legislature concerned for disposal by the Committee on Petitions of that House. Simultaneously, the petitioners are advised by the Secretariat to address future correspondence in that connection to the Legislature concerned direct.[49]

The Committee does not consider anonymous letters on which names or addresses of senders are either not mentioned or are illegible. Letters not containing any specific prayers are also not considered, nor copies of letters addressed to persons in authority, other than to the Speaker or the House, unless there is a specific request on the copy praying for redress of the grievance. Such anonymous letters or copies are filed in the Secretariat.[50]

In the United Kindgom the terms of reference of the Committee on Public Petitions have remained virtually unchanged since the Committee was first established in 1833 with the principal object of reducing expenditure on the printing of petitions.[51] The terms severely restrict the powers of the Committee—its only function being to report to the House the number of valid signatures attached to each petition, and to prepare abstracts of the petitions " in such form and manner as shall appear to them best suited to convey to the House all requisite information respecting their contents ". In practice, however, all this work is done by the Clerk, and the Committee meeting is generally a " formal endorsement of the Report ".

Sittings of the Committee

In India, the number of sittings of the Committee held in a year varies from year to year, depending upon the business before it. For instance, during the term of the Fourth Lok Sabha, the Committee met 32 times during 1967–8, 15 times during 1968–9, 18 times during

1969–70 and only 9 times during 1970–1. Each sitting of the Committee may last from an hour to several hours. In the United Kingdom, the Committee on Public Petitions roughly meets four times in a year " depending upon the number of petitions coming in ". The duration of sittings there, it may be interesting to know, had been " as short as a minute and a half, sometimes less than a minute".[52]

The sittings of the Committee in India are held in private.[53] At such sittings the Committee deliberates or occasionally examines witnesses according to the agenda circulated in advance. When the Committee deliberates, all persons other than the Members of the Committee and officials of the Secretariat have to withdraw.[54] When the Committee is taking evidence, Members other than the Members ot the Committee may watch the proceedings of the Committee with the permission of the Chairman. A verbatim record of the proceedings of a sitting of the Committee is kept when the Committee hears oral evidence. The proceedings of the Committee are treated as confidential and not shown to any one other than a Member of the Committee or an official of the Secretariat, except under the authority of the Speaker.[55] If the Committee feels that a Member other than a Member of the Committee can be of assistance to it because of his connection with, or special knowledge of, the facts stated in the petition or representation, he may be invited to attend the sitting of the Committee under orders of the Chairman.[56] Such Members have, however, to withdraw as soon as they have rendered the necessary assistance to the Committee.

In the United Kingdom, the Standing Orders of the House of Commons provide that the Members of the House are entitled to be present at the sittings of the Committees of their House, as well during the deliberations of the Committee as when witnesses are being examined. But in view of the limited nature of the Committee's powers and the brevity of their proceedings, it is most unlikely that any Member would ever seek to exercise those rights in relation to the Committee on Public Petitions.

Contents of the Report

In India, the Report is drafted on the basis of the minutes of the sittings of the Committee. The introductory paragraphs in the Report give the number and dates of sittings held since the presentation of the last Report, the subject-matter of the petitions considered at these sittings in chronological order, the date of adoption of the Report, and so on. The report then deals in detail with the petitions examined by the Committee. It gives the date of presentation and the name of the Member presenting the petition.[57] Then follow the specific grievance or complaint of the petitioner and arguments advanced by him to reinforce his plea. Wherever comments of the Ministry concerned, of a factual nature, have been obtained for the perusal of the Committee, a summary thereof is incorporated in the Report. The decision of the

Committee or its recommendation in regard to the disposal of the petition or its suggestions about remedial measures are given in conclusion.

Another matter which is dealt with in the Committee's Report relates to action taken by the Government on the recommendations of the Committee contained in its earlier Reports. In such cases the Report indicates the decisions of the Committee either to pursue its recommendation with the Government in spite of the difficulties pointed out by the latter in implementing them or to acept the reply of the Government explaining the reasons for non-implementation of certain recommendations.

The Report also makes a mention of the total number of representations received from various individuals, associations, etc., which are inadmissible as petitions to the House but which have been considered by the Committee at their sittings held during the period under report.[58] Where the Committee feels that facts arising out of a representation ought to be brought to the notice of the House, a mention of the contents thereof is made in the Report with suitable recommendations. The Report also specifies the number of cases in which, through the Committee's intervention, petitioners have been granted speedy or due relief.[59]

No minutes of dissent can be submitted or appended to the Report of the Committee.[60]

As stated earlier, in the case of a petition on Bills or matters pending before the House, the Committee generally does not make any recommendations, but circulates the petition, *in extenso* or in summary form, to the Members of the House. In regard to such petitions, therefore, the Committee makes a report to the same effect, giving the dates on which the petitions were circulated. When, however, adequate time is available before the subject-matter of the petition is to be taken up in the House, the Committee examines the petitions in detail and makes a suitable recommendation thereon to the House.

In the case of a petition on a matter of general public interest, the Committee reports to the House giving the facts as stated by the petitioner, the comments of the Ministry concerned thereon, and its own conclusion or recommendation. The recommendations of the Committee may be:

(i) that the petitioner's suggestion(s) *in toto* ought to be implemented; or
(ii) that the petitioner's suggestion(s) in the form modified by or acceptable to the Committee ought to be implemented; or
(iii) that no action is necessary on the petition since the facts or comments furnished by Ministry concerned or the action taken by them meet adequately the petitioner's points or the Committee is in agreement with the Government's views, or the

suggestions would not be feasible as they involve undue additional financial burden on, or heavy loss to, revenue, or would hurt the country's economy; or

(iv) that remedial measures (either in a concrete form applicable to the case under review or to prevent such cases in future) might be taken.

In the United Kingdom the Reports of the Committee on Public Petitions, printed at intervals during the Session, point out only the subject of each petition and the number of signatures to which addresses are affixed and which are written on sheets headed by the prayer of the petition. The total number of petitions and the signatures with reference to each subject are also mentioned. Whenever the peculiar arguments and facts or general importance of a petition require it, it is printed in full length in the Report.

It may be worth while here to refer to another practice obtaining in the United Kingdom. If a petition relates to a subject with respect to which the Member presenting it has given notice of a motion and which has not been ordered to be printed by the Committee, the Member may, after giving notice, move that the petition be printed and circulated with the Votes.[61]

Implementation of Committee's Recommendations

In India, after the Report of the Committee has been presented to the House, copies thereof are forwarded to the Ministries concerned with the subject-matter of the recommendations made by the Committee. The Ministries are required to furnish to the Secretariat statements of action taken, or proposed to be taken, by them on the recommendations. The information so received is placed before the Committee in the form of a memorandum.

When the Ministry concerned has implemented the recommendations, or taken action in implementation thereof, the fact is reported by the Committee to the House. Where a Ministry feels any difficulty in implementing some or all of the recommendations of the Committee, it apprises the Committee of the obstacles in the way of implementing the recommendation or recommendations, as the case may be. The Committee may either accept the replies or decide to press the recommendations. Whatever be the Committee's decision, it is included in its Report. The Committee, after considering the views of the Ministry in the matter, may also choose to present a further Report to the House.

In the United Kingdom, after the Committee on Public Petitions has made a Report on a petition, no further action is taken by the House upon the petition, which, at the end of the session, is " consigned for safe keeping to the Victoria Tower ".[62]

Committee's Achievements

Ever since it submitted its first Report to the House on 19th February, 1925—which incidentally happened to relate to the Indian Penal Code (Amendment) Bill, popularly known as the " Age of Consent " Bill—the Indian Committee on Petitions has been doing useful work. The Government have, from time to time, taken many a step on matters of public importance on petitions submitted to Parliament by individuals, which they would have perhaps not taken but for the Committee's intervention. For instance, during the Second Lok Sabha, the Committee had recommended that facilities should be provided in Branch Post Offices in rural areas for the issue and renewal of broadcasting receiver licences.[63] The suggestion was later implemented by the Government.[64]

Likewise, during the Third Lok Sabha, the Committee had recommended that the Government should adopt, with suitable modifications, the procedure suggested by a petitioner for the distribution of " stamp folders " through Philatelic Bureaux so as to avoid unnecessary delay in their reaching philatelists.[65] The Government accepted the recommendation for implementation.[66]

To quote yet another instance, the Committee, also during the Third Lok Sabha, recommended in favour of the provision of ordinary voting facilities at the place of posting for the voters put on election duty within their own constituencies.[67] The suggestion was implemented by the Government.[68]

During the Fourth Lok Sabha, the Committee made a number of recommendations in regard to increase in pensions of Central Government pensioners.[69] Some of the suggestions were implemented by Government and relief granted to pensioners.[70]

Also, during the Fifth Lok Sabha, on a suggestion made by the Committee[71] after considering representations on complaints regarding over-billing and working of the Subscriber Trunk Dialing (STD) system on Delhi Telephones, Government appointed[72] an Expert Committee for examining the billing system of Delhi Telephones District with respect to excess metering complaints.

As for the Committee on Public Petitions of the House of Commons, it at best plays the role of a Committee of the House intended to " survey the whole field of petitions currently presented ". Its terms are in fact so circumscribed that it has no power to investigate or even report on the merits of any petition. It cannot interrogate representatives of Government Departments or other persons. The Committee on Petitions of Lok Sabha would thus appear to be a more effective body than its British counterpart. It acts as an important link between the people and the Government by bringing to the notice of the latter, through the House, public opinion on matters of public importance and providing an effective means of moving the Government to redress genuine public and individual grievances.

Proposals for reform in the U.K.

During 1973 the United Kingdom's Select Committee on Procedure conducted an inquiry into the procedure relating to public petitions. The inquiry was unusual in that it was begun at the express invitation of the Committee on Public Petitions, whose chairman, Mr. J. C. Jennings, submitted an outspoken memorandum about his Committee's powers.

In his memorandum Mr. Jennings stated that the Committee considered the existing procedure for petitions to be " unsatisfactory for a number of reasons ". " Firstly ", he said, " the entire procedure seems designed to prevent any further parliamentary consideration of the petition, and secondly, the proceedings can hardly be described as other than a waste of time for the Members of the Committee." The memorandum suggested that " two possible courses for the future would offer advantage over the present procedure ". Firstly, it was suggested, the Committee could be abolished and replaced by an Annual Return, of similar form as the existing Reports, which would be prepared by Department of the Clerk of the House. The second course of action, according to the memorandum, would be " to allow the Committee to consider petitions referred to them and to be able to examine the allegations of the petitions and make representations to Ministers (and possibly to examine Ministry representatives) ". They would then make Reports, as at present, to the House, not only on the contents of the petitions, but also, where it was felt appropriate, on the grievance of the petitioner. The memorandum envisaged that the Reports of a session might be debatable to the extent of a half day per session.[73]

In his oral evidence to the Select Committee on Procedure, Mr. Jennings described the existing procedure as a " meaningless charade " which " deceives the public "; and he informed them that the majority opinion of the Committee on Public Petitions was that, unless more power was given to it, the Committee should be abolished. Giving his " own personal view ", he added that if the Committee was retained, it should be entrusted with the following powers: (i) to arrange, as at present, for the counting of signatures; (ii) to notify the Government Department of the petition, of its contents and of the number of signatories; (iii) to report to the House, printing such sections of the petition as were considered necessary and also the Ministry's reply to the petition; (iv) to comment on the Ministry's reply, if necessary; (v) to send for persons, papers and records, excluding petitioners but including the Minister or Ministers concerned; and (vi) to have a half-day debate at least once a year on the report. Mr. Jennings felt that these proposals would constitute " a reasonable middle way between the two extremes of abolition and full investigation powers where the Committee would become a committee of investigation into the subject-matter itself ".[74]

The Select Committee on Procedure, however, reached the conclusion that if the Committee on Public Petitions were enabled to enquire into the merits of all petitions, the scope of its function would have to be increased so enormously that " its work would conflict to an unacceptable degree with that of other Select Committees of the House ". They therefore recommended that " Standing Orders be amended to provide for the winding up of the Public Petitions Committee ". While making this recommendation, the Committee on Procedure nevertheless affirmed that " the right of the citizen to petition the House must remain inviolate ". The Committee on Procedure favoured the proposals of the Chairman of the Public Petitions Committee for the printing of petitions, their despatch to Government Departments and for the printing of any reply made by a Department. Accordingly they recommended that the following changes be made in regard to public petitions:

(i) the style in which petitions were drawn up should be simplified and modernised;
(ii) petitions presented by a Member should automatically be ordered to lie upon the Table and to be printed;
(iii) the Clerk of the House should be directed by Standing Order or by resolution of the House to transmit to a Minister all petitions which had been ordered to be printed;
(iv) any observations made by a Minister (or by more than one Minister) in reply to petitions should be laid upon the Table by the Clerk of the House and be printed; and
(v) signatures to petitions should cease to be counted and checked and no return should be made of the number of petitions presented and of the signatures thereto.

If these changes were to be made, the Procedure Committee felt, it would be open to Members, who wished to take further action in the House on behalf of petitioners, to raise the matter by Questions or in a debate on the adjournment or on a Consolidated Fund Bill. In the Committee's opinion, this would also enhance " the ability of the House to take effective action on the petitions of citizens of the United Kingdom ".[75]

ADDENDUM

By the Editors

On 4th April, 1974, after Shri Shakdher's article was received, the House of Commons agreed to amendments to its Standing Orders which implement the main recommendations of the Procedure Committee described at the end of the article. The standing order which provided for the automatic referral of petitions to the Committee on Public

Petitions has been repealed and the Committee has thus been abolished. A new standing order has been agreed to in its place, in the following terms:

That all petitions presented under Standing Order No. 99 (Presentation of petitions), and not proceeded with under Standing Order No. 101 (Petition as to present personal grievance), shall be ordered to lie upon the Table and to be printed, and the Clerk of the House shall transmit all such petitions to a Minister of the Crown and any observations made by a Minister or Ministers in reply to such petitions shall be laid upon the Table by the Clerk of the House and shall be ordered to be printed.

As a result of further amendments, the standing orders now require that a formal presentation of a petition should take place at the end of public business and not before Question Time, as was the case previously. The first such presentation was made on 8th April, 1974.

References and Notes

[1] *Vide* Article 350.
[2] Erskine May, *Parliamentary Practice*, 18th edition, p. 792.
[3] See *Select Committee on Procedure (U.K.)*, Second Report, Session 1972–3, p. 23.
[4] See Erskine May, p. 792.
[5] See *Select Committee on Procedure (U.K.)*, *op. cit.* pp. 24 and 25—while during the period 1828–32 as many as 23,283 petitions were presented, during the period from 1962 to 1970 the number of petitions presented to the House dropped to a mere 108.
[6] See *C. S. Deb.*, 15.9.1921, Vol. II, p. 197.
[7] See *L. A. Deb.*, 20.2.1924, p. 817.
[8] *Rules of Procedure and Conduct of Business in Lok Sabha* (5th edition), Rules 256 and 306.
[9] *Ibid.*, Rule 258.
[10] *Ibid.*, Rule 259 (1).
[11] The number of petitions printed before 1833 (but after 1817) was between 30 per cent and 60 per cent of the total, but it quickly dropped after 1833 to between 10 per cent and 20 per cent of the total. It has recently been rare for a petition to be printed. See Select Committee on Procedure (U.K.), *op. cit.*, pp. 23 and 24.
[12] *Rules of Procedure*, *op. cit.*, Rule 160.
[13] Certain important Bills on which petitions have been received are: Proceedings of Legislature (Protection of Publication) Bill, 1956; States Reorganisation Bill, 1956; Scheduled Castes and Scheduled Tribes Order (Amendment) Bill, 1956; Andhra Pradesh and Madras (Alteration of Boundaries) Bill, 1959; Constitution (Ninth Amendment) Bill, 1960 and Banking Companies (Acquisition and Transfer of Undertakings) Bill 1969.
[14] Petitions presented on certain important matters include those on the Report of States Reorganisation Commission, on the Report of Committee of Parliament on Official Language, on withdrawal of exemption from levy of excise duty on vegetable non-essential oils proposed in the Budget Speech by the Minister of Finance in 1958.
[15] Petitions and representations, *inter alia*, on the following subject have been received and admitted: preparation and publication of Railway Time Tables and Guides; grant of rail concessions at single fares for double journeys to students who wish to appear at competitive examination for award of merit scholarship in public schools, etc.; welfare of Scheduled Castes and Scheduled Tribes in India; amendment of Conduct of Elections Rules, 1961; Defence of India (Amendment) Rules, 1963 relating to Gold Control; increase in pension of Central Government Pensioners; development of Kutch area; repeal of Essential Services Maintenance Act, 1968; welfare of the blind in India; educational policy of Government and funds earmarked for education since independence; unemployment and other grievances of youth; complaints regarding overbilling and working of STD system on Delhi Telephones; accommodation problem of retiring Government servants; unenployment of Agricultural Graduates and Post Graduates and Agricultural Engineers.

[16] *Rules of Procedure, op. cit.*, Rule 160 (iii) (a) to (d).
[17] *Ibid.*, Rule 160, A.
[18] *Select Committee on Procedure* (*U.K.*), *op. cit.*, p. 29.
[19] *Rules of Procedure, op. cit.*, Rule 165.
[20] *Ibid.*
[21] *Ibid.*, Rule 162 (1).
[22] *Ibid.*, Rule 161 (3).
[23] See *Commons Journals* ,1821, March 16; March 21.
[24] See *Gazette of India*, Part II, Sec. 3, dt. 8.2.1958.
[25] Erskine May, *op. cit.*, p. 799.
[26] *Rules of Procedure, op. cit.*, Rule 166.
[27] Directions by the Speaker under the *Rules of Procedure of Lok Sabha* (2nd edition), Dir. 2.
[28] *Rules of Procedure, op. cit.*, Rule 168.
[29] *Ibid.*, Rule 167.
[30] *Select Committee on Procedure* (*U.K.*), *op. cit.*, p. 26.
[31] Standing Orders of House of Commons relating to Public Business, Nos. 99 and 100.
[32] Erskine May, *op. cit.*, p. 800.
[33] *Rules of Procedure, op. cit.*, Rule 164 (2)—He can, however, entrust his petition to some other Member to countersign and present it.
[34] Erskine May, *op. cit.*, p. 799
[35] Directions by the Speaker, *op. cit.*, Dir. 39.
[36] See Erskine May, *op. cit.*, pp. 795–6.
[37] Erskine May, *op. cit.*, p. 79, and *Select Committee on Procedure* (*U.K.*), *op. cit.*, p. 24.
[38] *Rules of Procedure, op. cit.*, Rules 168 and 169.
[39] Standing Order No. 102.
[40] Erskine May, *op. cit.*, pp. 801–2; and *Select Committee on Procedure* (*U.K.*), *op. cit.*, p. 26.
[41] Directions by the Speaker, *op. cit.*, Dir. 38 (3) Second Proviso; and Dir. 82.
[42] *Rules of Procedure, op. cit.*, Rule 307 (3).
[43] *Ibid.*, Rules 307 (1) and (2).
[44] Directions by the Speaker, *op. cit.*, Dir. 95—Pursuant to the observations made by the Speaker (vide Committee on Petitions, First Lok Sabha, Ninth Report Appendix VII), the Committee commenced considering representations with effect from 25th April, 1956. In its Report to the House, however, the Committee does not give any details about the representations concerned.
[45] *Ibid.*, Dir 38 (3), Second Proviso.
[46] Minutes (Committee on Petitions—Second Lok Sabha), 9.9.1957.
[47] *Ibid.*, 8.4.1959.
[48] See Tenth Report of Committee on Petitions (Second Lok Sabha).
[49] See Minutes (Committee on Petitions—Second Lok Sabha), 20. 4. 1961.
[50] Directions by the Speaker, *op. cit.*, Dir. 95, Proviso 2.
[51] *Select Committee on Procedure* (*U.K.*), *op, cit.*, *p.* 27.
[52] *Ibid.*, p. 18.
[53] *Rules of Procedure, op. cit.*, Rule 266.
[54] *Ibid.*, Rule 268. As an exception, when the Committee was deliberating on a representation regarding rationalisation scheme of N. E. Railways, the officials of the Ministry of Railways were, on 17th February, 1959, permitted by the Chairman to take part in a preliminary discussion after their evidence was over.
[55] *Rules of Procedure, op. cit.*, Rules 275 (2) and (3); and Directions by the Speaker, *op. cit.*, Dir. 65 (i).
[56] Directions by the Speaker, *op. cit.*, Dir. 57.
[57] In a case where a petition is reported by the Secretary, it is so stated.
[58] This practice of including other matters in the reports began with the First Report of the Committee during the Second Lok Sabha.
[59] See Tenth Report of Committee on Petitions (Second Lok Sabha).
[60] Directions by the Speaker, *op. cit.*, Dir. 68 (3).
[61] Erskine May, *op. cit.*, p. 892
[62] *Select Committee on Procedure* (*U.K.*), *op. cit.*, p. x.
[63] See Fourteenth Report of the Committee on Petitions (Second Lok Sabha).
[64] See Second Report of Committee on Petitions (Third Lok Sabha).
[65] See First Report of Committee on Petitions, (Third Lok Sabha).
[66] See Second Report of Committee on Petitions, (Third Lok Sabha).
[67] See First Report of Committee on Petitions (Third Lok Sabha).

[68] See Third Report of Committee on Petitions (Third Lok Sabha).
[69] See Fourth Report of Committee on Petitions (Fourth Lok Sabha).
[70] See Sixth Report of Committee on Petitions (Fourth Lok Sabha).
[71] See Fourth Report of Committee on Petitions (Fifth Lok Sabha).
[72] See Twelfth Report of Committee on Petitions (Fifth Lok Sabha).
[73] Select Committee on Procedure (U.K.), *op. cit.*, pp. 12–13.
[74] *Ibid.*, pp. 14–18.
[75] *Ibid.*, p. xii.

III. IMPEACHMENT

By R. W. Perceval

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Historically minded Clerks will be aware that the Latin for " impeach " is " impetere ", which in classical Latin meant to " attack " or " accuse ", and in mediaeval Latin to " proceed against " or " prosecute ". As a matter of etymological fact, however, " impeach " is the same as the French " empêcher ", which means to " impede " or " hinder ", and comes from the mediaeval Latin " impedicare ", " to entangle the feet of ". " Impeachment " therefore originally was the same as " impediment ". It may also be of interest to note that the 18th-century thieves' slang word " peach ", meaning to " inform against ", was an abbreviation of " impeach ".

Anciently, then, the word " impeach " had a fairly general sense, as is exemplified by Article 9 of the Bill of Rights " That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament". But it also has, as we all know, a more particular meaning, and it is in that sense that it is the subject of this article.

Mediaeval England was revolutionary to a perhaps surprising extent. It is true that the movements which deposed Edward II and Richard II were initiated, and headed, by Earls and Barons. But the long and rather pointless French Wars of Edward III, combined with the devastating effects of the Black Death, also led to profound popular discontent which, perhaps for the very reason that it was not widely shared among the magnates, did not issue in violence. It did, however, show itself very plainly in other ways, and did manifest itself in the House of Commons. There had been, in the early part of the 14th century, a number of political trials in Parliament (including for example that of Archbishop Stratford of Canterbury in 1341) and it was therefore natural for discontented minds among the people and in the Commons to seek to bring down by such means those members of the Government whom they disliked or thought responsible for their misfortunes. One such was Alice Perrers, the King's mistress. Others were Richard Lyons and his associates, merchants of London, who had been guilty of " extortions, deceits and oppressions " as creditors of the Crown and tax-farmers. There was also Lord Latimer, a Minister. Lyons and Latimer and those involved with them were formally accused by the Commons in 1376; and Latimer, being a peer, claimed to be tried by the Lords. Lyons pleaded not guilty, submitted himself to the King's mercy, was imprisoned, fined and disqualified from office for the future. Latimer was convicted by his peers in the Lords, fined, committed to prison and deprived of his offices.

Other instances of impeachment followed between 1376 and 1400. Possibly because several of those impeached were peers, or perhaps because of the infancy of Richard II, it seems to have been felt preferable to adopt the practice followed in Latimer's case rather than that in Lyons's, and the form of impeachment ultimately became set in that mould; it was for the Commons to impeach and accuse and for the Lords to try the offender. About twenty persons, in total, were impeached between 1376 and 1450, after which the procedure went into abeyance until it was resurrected by the antiquarian M.P.s—Selden, Prynne, Nye and Cotton—of James I's time. During this century and a half, process by Bill of Attainder was in certain respects a substitute for impeachment. This process may be said to have begun in 1453, when it was used against Jack Cade; and it continued to be used, whether or not impeachment was in fashion, continuously from that date until the middle of the 18th century. It was last used in 1746 against certain persons who had taken part in the Jacobite rising the previous year. In 1640 the Earl of Strafford was first unsuccessfully impeached by the Commons, and then executed after a Bill of Attainder had been passed against him. Clearly in this case the two procedures were regarded as alternatives. But in many cases Bills of Attainder were only passed, as a sort of confirmation, after the victim had been prosecuted and convicted in some other court. Since these trials were at least partly political, the object may have been to involve as many prominent persons as possible in the verdict.

Be that as it may, impeachment was revived in 1620, for the purpose of bringing to justice Sir Giles Mompesson, who had been guilty of large-scale corruption in the issue of patents. It was also used to attack Lord Chancellor Bacon and Lord Treasurer Middlesex. Bacon had been guilty of taking bribes, and Middlesex of peculation on so large a scale that he had been able to build himself a more than palatial mansion at Audley End. Both were convicted, and Bacon—a unique punishment—was deprived of his peerage.

Between 1620 and 1688 there were thirty-nine trials by impeachment, at four of which more than one person was accused. Between 1688 and 1746 there were sixteen such trials, at nine of which there were more than one person accused. In 1787 Warren Hastings was impeached, for maladministration in India, and in 1805 Lord Melville, for alleged corruption at the Admiralty. These last two cases took so long, and were obviously so clumsy and unsatisfactory, that the procedure could plainly not be continued in its existing form; but the need for it in any form had already largely disappeared by 1800, so that there was no necessity to improve the procedure or bring it up to date.

What may reasonably be described as the triumph of the party system had rendered impeachment unnecessary. For if a prominent politician had committed an ordinary crime, he could be tried in the ordinary way, by the courts or the House of Lords. But if his offence was more political than criminal, he could be got rid of under the party

system, merely by voting him down. Up till 1800 it was indeed possible for a Minister to be maintained in office notwithstanding that he had no majority in the Commons; and George III did so maintain the younger Pitt for a short period. But no King after George III was able to do this, and it can fairly be said that from 1800 or thereabouts political power operated solely through, and depended solely on, the party. The conditions which had made impeachment possible and desirable disappeared from the scene.

It is worth examining for a moment the rather striking way in which the process of impeachment twice appeared, and twice disappeared, on our political scene, in order to discover what its real purposes and functions were. Both in the early period, which we may perhaps call the Lancastrian, from 1376 to 1450, and in the later time from 1620 to 1800 there is a common feature of a certain balance between the royal and the parliamentary power. This balance disappeared with the Wars of the Roses in 1450, and was then destroyed by the Tudors, who dominated their parliaments. It revived again in the last years of Queen Elizabeth, and it swayed this way and that throughout the 17th century. In the 18th century the royal political power slowly declined, and it virtually vanished in the 19th. Impeachment was one of the modes by which the dominant faction in Parliament could assert itself against the monarchy; control of taxation was of course another such mode. The Royal Assent was necessary to pass a Bill of Attainder, and such an instrument could therefore only be used against someone whom the King was prepared to sacrifice. But impeachment was a sort of trial, and it was necessary to make an objective case against the accused and to show that he had been guilty of acts which could be regarded as criminal; if such a case could be made out, royal favour could not save him.

Impeachment thus emerges as the product of a balanced constitution, which uses it as a means whereby persons who are highly placed in any of the branches of that constitution and who have been guilty of misconduct which falls short of actual crime can be eliminated by a quasi-political process. To say this now is merely commonplace; it has been the object of this article to show how it came about.

IV. POWER OF COMMITTEES TO FUNCTION DURING PROROGATION OR DISSOLUTION

By J. R. Odgers
Clerk of the Australian Senate

It is fair for a Clerk-at-the-Table in a Commonwealth Parliament to make the claim that the Westminster model of parliamentary government is unsurpassed, but it would be unreal to expect kindred legislatures to follow slavishly all Westminster interpretations and applications of the law and custom of Parliament. Ask any authority at Westminster what is the effect of prorogation or dissolution and there is only one answer: all proceedings, including Bills and committees, die on prorogation or dissolution, except impeachments and anything statutorily saved. Undaunted, one asks if there is any precedent at Westminster for the English Houses of Parliament asserting by resolution or Standing Order that committees may continue to function notwithstanding prorogation or dissolution. Certainly not is the answer: it would be unlawful without legislation.

As seen through English eyes, it may appear that section 49 of the Australian Constitution is the last word on the powers of the Australian Houses. That section reads:

> The powers, privileges, and the immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

It is true that no specific declaration within the meaning of that section has ever been made by an Australian Act of Parliament. Thus (with certain exceptions) the powers, privileges and immunities of the two Houses at Canberra are still the same as those of the House of Commons in London in 1900. Clearly, the power of the Senate to authorise its committees to function during recess could be dealt with by legislation, but such power may also be exercisable under section 50 (ii) of the Constitution, which provides that each House may make rules and orders with respect to the order and conduct of its business and proceedings either separately or jointly with the other House. Certainly, section 50 is a recognition that the Australian Houses of Parliament were not to be bound by Westminster procedures unsuited to local needs and that they would necessarily build up conventions and practices of their own. It is in this mould that the effect of prorogation of the Parliament of the Commonwealth of Australia should be considered.

The only reference to prorogation in the Australian Constitution is in section 5, which provides:

The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives.

It is submitted that the effect of any such prorogation is a matter not only of statute law but also of convention to be built up according to the needs of the Australian federal structure. Why should it be otherwise if the legislature is not to be hamstrung by outmoded conventions? English parliamentarians argue that it is a matter of law, not of procedure or of interpretation, that everything dies on prorogation or dissolution and the law can only be changed by Act. Looked at through Australian eyes, one ponders the acceptability of an argument that a matter of parliamentary law, which has its roots in custom and not in statute law, cannot undergo change in its application to new situations without Act of Parliament. This must have been the view taken by the Houses of Parliament at Canberra when they wrote into their Standing Orders provisions for committees to sit during recess and, subject to an enabling resolution pursuant to Standing Orders, for Bills to be carried over from session to session.

In the evolution of parliamentary government, one ponders, too, the need for retaining the device of prorogation. In its early use, prorogation was a device employed by English monarchs to rid themselves of troublesome Parliaments and unwelcome legislation. A lost head or two changed all that and the parliamentary time-table is now, in practice, very much in the control of the elected representatives. Certainly the Australian federal Parliament has not suffered by, at times, continuing a session of Parliament for the three years' life of the House of Representatives, without prorogation. Any notion that prorogation may be necessary to provide a periodic opportunity to announce the Government's legislative programme is answered by remembering that the Opening Speech is prepared by the Government and much the same purpose can be served by Ministerial Statement. So perhaps prorogation could be discontinued and the Houses of Parliament left unhampered to get on with their work between periodical elections. But, if the practice of prorogation is still useful and is to continue, let its interference with the work of Parliament be minimal and not more than the Houses of Parliament may determine.

Be that as it may, the process of developing the Senate's own practices began on the establishment of the Commonwealth of Australia in 1901, when the Senate followed certain of the Australian colonial legislatures and adopted Standing Orders providing that specified committees shall have power to act during recess. It was recognised at the time that this provision was not in accordance with House of Commons practice, but it is to be noted that departure from such practice was permitted by a deliberate decision of the first Senate. The Committee charged with the drafting of Standing Orders recommended the adoption of a Standing Order, to be numbered " 1 " and reading as follows:

In all cases not provided for hereinafter, or by Sessional or other Orders, resort shall be had to the rules, forms, and practice of the Commons House of the Imperial Parliament of Great Britain and Ireland in force on the 1st day of January 1901, which shall be followed as far as they can be applied to the proceedings of the Senate.

After debate the proposed Standing Order was rejected, the Senate taking the view that, while House of Commons' practice would be useful for guidance, the Senate should aim at building up a practice of its own.

The development of Canberra's law and custom of Parliament in relation to committees advanced a further stage in later years when a joint committee was authorised to sit during recess. The circumstances were that the House of Representatives forwarded to the Senate a resolution proposing the re-appointment of the Joint Committee on Constitutional Review. The Senate concurred in the resolution, subject to a modification which gave to the committee power to sit during recess as well as during adjournments. The modification was agreed to by the House of Representatives. When considering the Senate's modification, the then Leader of the House of Representatives (Rt. Hon. Harold Holt) said:

The effect of the Senate's modification is that not only will this committee of both Houses of the Parliament, of all sections of the Parliament, be able to carry on its work during any adjournment of the Parliament, but also, in point of fact, when there has been a termination of a parliamentary session by prorogation. When the resolution was drafted in its original form, we followed the practice which had been established in the House of Commons, for which there are quite obvious and constitutional reasons, that if a session is terminated by prorogation, then it was natural to expect and to provide that committees of Parliament should also come to an end, and there are precedents in the House of Commons which suggest that this has been the regular practice there. But I think that there is some practical merit in the suggestion that has come to us from the Senate, and that is the view taken by members of the Government parties. Although we follow quite regularly the rulings and practices of the House of Commons where they appear to accord with the needs of our situation in Australia, each Parliament, of course, has its own way to make and its own problems to resolve. We having decided that henceforth we shall have a session of the Parliament annually, and it being the desire, I think, of all members of the Parliament that committees such as the Constitutional Review Committee, which has a valuable public service to perform, should continue to function in any period of recess between the prorogation of one session of the Parliament and the formal opening of another, there is sound practical sense in the suggestion that these committees be enabled to continue during any such recess. That is the view that we have taken, Mr. Speaker. I have mentioned the point of practice because there is some logic in the notion that the Parliament having ceased to exist in legal form the committees of that Parliament also have ceased to exist. We live in a practical and swiftly moving world, and, although the prorogation may legally bring to an end a session of the Parliament, it is assumed that if we are to have a session annually the Parliament will go on and resume in a new session shortly after the New Year according to the kind of programme that I outlined last week.

The House of Representatives was not really breaking new ground,

because its own Standing Orders provide that certain standing committees shall have power to act during recess. It has now become standard practice for Senate committees to be authorised, by Standing Order or resolution, to function notwithstanding any prorogation of the Parliament. The House of Representatives, also by resolution, authorises select committees to sit during any recess. Joint committees of both Houses are also so authorised, some by statute and others by resolution of the Houses. A similar practice has developed in the Indian Lok Sabha, where by Rule of Procedure 284—not by statute it will be noted—it is provided that any business pending before a committee shall not lapse by reason of the prorogation of the House and the committee shall continue to function notwithstanding such prorogation. It is understood that the question whether this matter should be regulated by statute rather than by rule has never been an issue in the Lok Sabha and it is accepted that the matter should be regulated by the rules of procedure, which themselves are considered to have a statutory effect under the provisions of the Constitution. The committees function during prorogation and are not reappointed from session to session. Similarly, all matters referred to the committees continue to be with them until they have reported, despite the prorogation and the number of sessions involved in considering and reporting them by the committees. Canada, where committees are appointed at the beginning of a Parliament, has its own practical answer to the matter of committees pursuing their investigations beyond the date of prorogation. Prorogation is effected as late as possible and it appears to be the practice for the House to make an order to resume and then prorogue the day prior to the opening of the new session.

In the development of the Australian Senate's committee system, it was logical for the Senate, next after prorogation, to turn its attention to the matter of committees functioning after a dissolution of the House of Representatives, rather than for committees to go into limbo for months while that House conducted an election. Because of the time factor, this is a more important matter than prorogation, the duration of which is usually only for about two weeks.

Arguments against Senate committees continuing to function after a dissolution of the Lower House may include:

(1) The " organic whole " theory that the two Houses live and die together.
(2) When the House of Representatives is dissolved, the Parliament so it is argued is also dissolved and neither the Senate nor its committees have power to meet until Parliament is called together following the general election.
(3) Dissolution of the House of Representatives has a similar effect as prorogation on the powers and proceedings of the Senate and its committees.

Arguments in support of the power of the Senate to authorise its committees to function after a dissolution of the House of Representatives include:

(1) The Senate is a continuing body and is not dissolved upon dissolution of the House of Representatives. The only circumstance in which the Senate is dissolved is in the event of a deadlock between the Houses followed by a dissolution of both Houses pursuant to section 57 of the Constitution. (This, at the date of writing, has happened on only two occasions, in 1914 and 1951.)
(2) The " organic whole " theory that the two Houses live and die together finds no support in the Constitution, because section 5 does not expressly provide that, upon a dissolution of the House of Representatives, the " Parliament " as a whole ceases to exist. Nor does the Constitution expressly provide that, by reason of a dissolution of the House of Representatives, neither the Senate nor its committees can continue to function.
(3) The Senate's inter-session right to transact its own business following dissolution of the Lower House makes even more sense than in the case of prorogation of the Parliament.
(4) In New Zealand it is a long-established practice that committees of the House of Representatives may be authorised by resolution of the House to sit not only during recess but also during the period between the last session of one Parliament and the first session of the next, which includes a general election.
(5) In Tasmania in 1972 the Legislative Council and a select committee continued to function after the dissolution of the Lower House and prior to prorogation of the Parliament.
(6) It would be harmful to the proper and efficient functioning of the legislature, and the independence of the Senate, if urgent and important committee inquiries by Senate committees should come to an unnecessary halt for up to four months while the other arm of the legislature—the House of Representatives—was engaged in an election.

On 27th October, 1972, the Standing Orders Committee reported to the Senate that the question of Senate committees sitting after the dissolution of the House of Representatives raised matters of profund constitutional and parliamentary importance which required more study. In the meantime, the committee recommended to the Senate, without prejudice to any constitutional rights, that Senate committees be directed to refrain from meeting and transacting business after the dissolution of the House of Representatives on 2nd November, 1972, except with the permission of the President. The Senate adopted the committee's recommendation. The purpose of adding the proviso that the permission of the President should be obtained resulted from a consideration as to whether committee proceedings, after the dissolution

of the House of Representatives, would be absolutely privileged. It was considered advisable that, until further consideration had been given to the matter, the President should give permission for committees to meet for the transaction of executive business only, and that evidence be not taken.

Pursuant to the Senate's resolution adopting the Standing Orders Committee's report, the President granted permission to the Standing Committee on Foreign Affairs and Defence, the Standing Committee on Industry and Trade, and the Select Committee on Securities and Exchange, to sit after the dissolution of the House of Representatives. The committees met in executive session only.

When the Parliament met in 1973 after the elections for the House of Representatives, the Senate's seven Legislative and General Purpose Standing Committees were reappointed and the resolution of reappointment contained a provision that a standing committee or any subcommittee shall have power to send for and examine persons, papers and records, and to transact business in public or private session and notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives. The resolution was agreed to on the voices. Thus it may be taken that, after time for consideration, the Senate was of opinion that it had power to authorise its committees to function, not only during recess, but also during the period of dissolution of the House of Representatives.

Parliament was prorogued in February 1974 and, on the reappointment of the committees in the new session, authority was again given in the resolution of reappointment for the committees to function notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives. So far as absolute privilege is concerned in connection with committee sittings during prorogation or dissolution of the House of Representatives, this matter was not again raised. It is submitted that committee proceedings held pursuant to the authority of the Senate are proceedings in Parliament and, accordingly, are absolutely privileged.

What the foregoing adds up to is that, in the evolution of the Australian parliamentary federal system, prorogation of Parliament or dissolution of the House of Representatives may involve the end of one session and the beginning of another, but in the interregnum the Senate is not to be impeded by outmoded conventions from discharging its constitutional functions and developing its own law and usage of Parliament. It is a recognised proposition that the law and custom of Parliament have the same status as the common or statute law. It is part of that law and custom of Parliament at Westminster that all proceedings (including Bills and committees) die on prorogation or dissolution, except impeachments and anything which has been statutorily saved. But that is not part of the law and custom of Parliament as it has evolved at Canberra, where from the establishment of the Parliament of the Commonwealth of Australia in 1901 the Senate set

about building up rules, forms and practices of its own, suited to its own conditions. And so it followed that, Westminster custom to the contrary, the Senate wrote into its early Standing Orders the principle that committees have power to act during prorogation and, over the years, that power has been exercised. Surely, the power is now hallowed as part of the law and custom of the Senate.

Then, as has been shown, with the development of its committee system and the need for continuity of inquiries during the months when the House of Representatives is dissolved for election purposes, it was a logical and necessary step for the Senate further to develop its customs by resolving that committees have power to function notwithstanding any dissolution of the Lower House. Thus does the law and custom of Parliament evolve.

V. DISSOLUTION, PROROGATION, AND THEIR EFFECT ON AUSTRALIAN PARLIAMENTS

By Robert Doyle

Second Clerk-Assistant, House of Assembly, Tasmania

In the fourth edition (1972) of *Australian Senate Practice* J. R. Odgers claims on page 553 that there is a strong case for the proposition that the Senate and/or its committees may continue to function after a dissolution of the House of Representatives. In Volume XLI of The Table, R. W. Perceval, in a review of Mr. Odgers' fourth edition, comments at page 128:

> One of the points of greatest interest in the growth of the Senate and the Australian Constitution is the change that has taken place in the concepts of prorogation and dissolution. I suppose the parliaments of the Australian States, some of which had been in existence for half a century when the Federal Constitution was instituted, may have evolved variations on the pure English doctrine before 1900; but it seems that the general intention of the makers of the Federal Constitution was to follow the English example, and to regard prorogation or dissolution as killing all business in progress in both Houses and preventing any continuation of the functions of either House or any Committee. Yet by reason of the fact that half the Senators survive a dissolution, the Senate has evolved the doctrine that it is not subject to dissolution in the same way as is the House of Representatives. This enables Committees of the Senate to function, apparently, after a dissolution, and Bills to be carried over from one session to the next. It even enables the Governor-General, it seems, to give the Royal Assent to Bills after the Parliament has been prorogued. All these things, of course, would be anathema at Westminster.

Mr. Odgers places much importance on what he terms a " Tasmanian Precedent ", that the Upper House may function after a dissolution of the Lower House. Because of the obvious importance of what has always been recognised as the effect of a dissolution, and in view of Mr. Odgers' claim and Mr. Perceval's comment, it seems necessary to outline and comment upon the events which took place in March 1972 and led to the precedent that Mr. Odgers applauds.

The Tasmanian House of Assembly was dissolved on 15th March, 1972, as a result of the breakdown of the then coalition government. Consequently it was a very sudden, hurried dissolution. Normally, Parliament is prorogued prior to dissolution, though there have been occasions when there has been no prorogation at all. On this occasion the act of prorogation was deliberately delayed for the purpose of enabling the Legislative Council to meet on 28th March and consider a Loan Fund Appropriation Bill which had passed the Assembly prior to dissolution. The Council met on 28th March and passed the Bill, and in addition did certain other business. Mr. Odgers comments at page 553:

The correctness of the Council's proceedings rested on the circumstance that the Parliament had not been prorogued, and therefore the Council was still in session.

This being the case, the Council would have been able to meet on other occasions when there was no prorogation. The fact is that it never did.

The assertion here is that although the Lower House has been dissolved, there has been no prorogation of Parliament, therefore it is quite correct for the Upper House to meet, and do any business it may wish until the formal act of prorogation. In other words, prorogation of Parliament, and not the dissolution of a Lower House, terminates a Parliament. But this cannot be correct. Prorogation is distinct from dissolution in that Parliament still remains in existence. It is submitted that this contention (that as Parliament was not prorogued the Council was still in session) is not correct.

Section 12 (2) of the Tasmanian Constitution Act 1934 provides that:

The Governor, by proclamation may prorogue Parliament or dissolve the Assembly whenever he shall deem it expedient so to do, but shall not have power to dissolve the Council.

It would appear that an interpretation has been placed on this section that because the Governor has no power to dissolve the Council then it can continue to exist in its legislative function after a dissolution of the Assembly, but only until such time as Parliament is prorogued.

What is meant by the words " dissolution " and " prorogation "? Firstly, *Prorogation*: The first thing to note is that it is " Parliament " which is prorogued. The effect of prorogation is to bring to an end an annual session of Parliament, as Parliament is required, under the Constitution Act 1934, to meet at least once every twelve months. All business in progress in both Houses is suspended until such time as Parliament is again summoned. Any unfinished business in progress at the time of prorogation can be revived on motion by both Houses. However, the real effect of prorogation is to terminate a particular session of Parliament. Secondly, *Dissolution*: The effect of the Proclamation of Dissolution of the Lower House is to terminate a particular Parliament. At least this has been the effect in Westminster and had been thought to be the effect in Australia until 1972.

Once the Lower House has been dissolved, then a constituent part of Parliament is no longer in existence, and it is submitted that only Parliament, properly constituted, can validly pass legislation. In Tasmania, Parliament is defined by the Constitution Act 1934 as the Governor, the Legislative Council, and the House of Assembly, who together, not piecemeal, constitute Parliament. Section 10 of the Constitution provides that:

The Governor and the Legislative Council and the House of Assembly, shall together constitute the Parliament of Tasmania.

All Acts of the Tasmanian Parliament are enacted by His Excellency the Governor, by and with the advice and consent of the Legislative Council and the House of Assembly in *Parliament Assembled.*

On 28th March, 1972, the House of Assembly was dissolved, therefore there could not have been a *Parliament Assembled* when the Legislative Council met on that date and passed the Loan Fund Appropriation Bill. Normally, before the Assembly is dissolved, Parliament is prorogued. The effect of prorogation is, as Mr. Odgers points out, to bring to an end a session of Parliament, without dissolution. *All business is suspended until Parliament is again summoned.*

The dissolution of a Lower House is, in effect, the dissolution of a Parliament, whether or not there has been a prorogation of that Parliament. Dissolution, not prorogation, is the paramount weapon in determining the life of a Parliament. If this is not the case, then when did the Thirty-fifth Parliament of Tasmania end and the Thirty-sixth Parliament begin?

As prorogation only ends the annual session of Parliament, just as the adjournment only ends the sitting of each day, what event marked the end of the Thirty-fifty Parliament so far as the Legislative Council was concerned? The importance of this question cannot be over emphasised. Under Section 12 of the Constitution, the Thirty-sixth Tasmanian Parliament must be called together within ninety days after the dissolution of the House of Assembly. Section 12 (3) of the Constitution provides:

> The Governor shall call *Parliament* together for the despatch of business after every general election of members of the Assembly, within 90 days after the dissolution of the Assembly, . . .

Thus, the Governor within that period of ninety days must call together a new Parliament.

Therefore, the length of any Parliament of Tasmania is determined under the Constitution Act by the length of duration of the House of Assembly from the time Parliament is called together by the Governor until the Assembly is once again dissolved.

Once a Lower House has been dissolved the text writers do not talk of, for example, the dissolution of the House of Commons, they talk of the dissolution of Parliament. Yet the House of Lords is not dissolved.

The particular situation under discussion has of course no similar precedent, and the nearest analogy that can be drawn is the problem which has faced a number of legislatures in relation to the position of the validity of a Governor giving Royal Assent to Bills passed by the two Houses of Parliament, but with the Lower House dissolved before Assent was given.

First, on this point reference should be made to Mr. Odgers. Mr. Odgers discusses the problem as to whether it would be regular for the Australian Governor-General to assent to a Bill after the dissolution of the House of Representatives. He says at page 292:

I am unaware of any official opinion on the question, but it can be said that practice leans towards safety, in that care is taken to present Bills for assent before dissolution.

There is a New Zealand case, Simpson *v.* Attorney-General, NZLR 1955, p. 276, which does say that in New Zealand there is no requirement that Royal Assent must be given during the life of the Parliament.

However, the dissenting judgement of Mr. Justice McGregor is of great significance. He points out (with author's comments in brackets)

> . . . that in England the Royal Assent is an Act of the prerogative, and not a legislative act, but in New Zealand [as in Tasmania] the power to assent or reject Bills passed by *the two Houses of Parliament* is not the exercise of part of the Royal Prerogative, but is the performance of a function as part of the General Assembly of New Zealand [the same as the Parliament of Tasmania], of which he, the Governor-General [Tasmanian Governor] is one of the three requisite parts in terms of the New Zealand Constitution [likewise the Tasmanian Constitution].
>
> It is a matter of grave doubt whether a legislative power of the General Assembly [Tasmanian Parliament] could be exercised by any component part at a time other than when there was in existence a General Assembly [Tasmanian Parliament] consisting of the three component parts.

The next reference is to Keith, Vol. 1, of *Responsible Government in the Dominions*, p. 149, where, a dissolution having been obtained from the Governor-General for the House of Commons in Canada before he had assented to certain important Bills, the Bills which had passed both Houses of Parliament were wasted. If these authorities are correct, then the Tasmanian " precedent " could be said to be highly suspect. In addition, the Standing Orders of both Houses recognise the existence of the other House during the various stages of the passage of a Bill, and adding strength to this point, Section 43 of the Tasmanian Constitution, dealing specifically with Appropriation Bills, expressly assumes the existence of the House of Assembly when a money Bill is being considered by the Legislative Council. How could the Council return a Bill to the Assembly requesting, by Message, an amendment of the Bill when the Assembly is dissolved? How could the Assembly be informed by Message that the Council has passed a Bill when the Assembly is dissolved?

Also, at Common Law the demise of the Crown affected the existence of a Parliament. Parliament was automatically dissolved *ipso-facto*. However, legislative enactments have now made the duration of a Parliament independent of a demise of the Crown. Section 4 of the Tasmanian Constitution Act 1934 provides:

> The Legislative Council and the House of Assembly of Tasmania in being at any future demise of the Crown shall not be determined or dissolved by such demise, but, subject to the provisions of this Act, shall continue so long as they would have continued respectively but for such a demise.

Provision is also made in Tasmania for a Deputy-Governor, or Administrator, to act in the absence of the Governor from the seat of

Government or from the State, to enable continuity of that office at all times. It may well be that the only way an Upper House could meet whilst its Lower House is in a state of dissolution would be by legislative enactment giving it express power to do so, and it is likely that an amendment to the Constitution would be necessary.

Finally, in the " Tasmanian Precedent ", to add insult to injury, the Parliament which *apparently was still in existence* on 5th April, was prorogued by the Governor. (The Proclamation proroguing Parliament was quite meaningless and unconstitutional, as there was no *Parliament* in existence to prorogue to another day, only the Governor and the Legislative Council.) Then on April 7th, two days later, Royal Assent was given by the Governor to the Loan Fund Appropriation Bill.

Thus, in the case of this particular piece of legislation a procedure was adopted which was the very reverse of normal procedure for the passage of legislation.

Instead of the normal process of Royal Assent to a Bill, then prorogation of Parliament, then dissolution of the House of Assembly, there was first a dissolution of the House of Assembly, then a prorogation of Parliament, and finally, Royal Assent to a Bill. It is submitted that this particular variation of procedure is without precedent and should never be argued as a precedent to be followed again. If Mr. Odgers desires the Australian Senate to have power to function whilst the House of Representatives is dissolved, then a much better precedent than that of putting the procedural cart before the horse will have to be found.

One could speculate indefinitely about the effects of the adoption of such procedure. However, two examples should suffice to illustrate the absurdity of such an adoption. Suppose the Upper House adjourned debate on the Government's Supply Bills, thus forcing the Premier or Prime Minister to seek a dissolution of the Lower House. After the Governor, or Governor-General, had granted a dissolution, there is apparently nothing to stop the Upper House from meeting and passing the Supply Bills. Or, suppose the Lower House has been dissolved by normal expiry of time for the purpose of a general election. As we know that prorogation does not terminate a Parliament, and if we acknowledge that the dissolution of the Lower House does not either, then the Upper House, even the Australian Senate, could go on sitting, meeting, passing motions, perhaps even a few Bills, until such time as Her Majesty the Queen's representative opens Parliament officially again. In fact, if the Opening is not to take place until the afternoon on a particular day there seems to be no reason why the Upper House could not meet that morning. It is respectfully submitted that such procedure would be untenable, and that a Parliament is terminated once its Lower House has been dissolved.

One final authority for the latter statement is Mr. Odgers himself, who writes at page 554:

Pursuant to section 28 of the Constitution the life of the House of Representatives—*and therefore the Parliament*—is limited to a period of three years from the date of the first meeting of the House of Representatives after any general election for that House.

Again, at page 113:

The life of a Parliament in the sense of a Parliamentary period is regarded as the duration of the House of Representatives for the time being.

Finally, at page 551:

A session of Parliament begins with an Official Opening by the Governor-General and ends either by prorogation or by dissolution of the House of Representatives.

The importance of the arguments presented against Mr. Odgers' claim are most significant in the light of:

1. Whether the Tasmanian legislation is constitutionally valid;
2. Whether payments to Members (travelling expenses, etc.) are lawful; and most importantly,
3. Whether Proceedings of the Legislative Council and the Senate and their Committees are protected by privilege; and finally,
4. The superior power which would be given to Upper Houses, a power enabling them to sit as the Parliament. Such a superior power was never envisaged in the concept of the bi-cameral system of legislature, and the possibility is raised of legislation by an Upper House and Governor alone.

This point is important in light of the decision made in Tasmania in the 1850's to set up a bi-cameral system of legislature for the purpose of self-Government in the Colony. The new Constitution Act of 1854 was the result of the findings of a Select Committee of the old Legislative Council. This Committee which recommended the form the new Constitution should take said they had, " derived very considerable encouragement from the reflection that they had scarcely resorted to a single principle which had not been enunciated and approved by statesmen of the highest reputation in the Mother Country." They had endeavoured, they said, " to preserve the closest analogy to the Constitution of the United Kingdom ", and had " departed from their model only in cases in which it was impossible to preserve the analogy ". Adopting the model meant of course, adopting its rules, practices and conventions, as well as its procedures.

In addition, Mr. Perceval deserves an explanation to the point he has raised. If prorogation and/or dissolution do not kill all business before the Tasmanian Legislative Council and the Australian Senate, then what does? In view of the importance of the answers to the arguments presented, it would be most unfair to both Members and the public if the position is not clarified.

VI. DELEGATED LEGISLATION IN THE UNITED KINGDOM PARLIAMENT—THE WORK OF THE BROOKE COMMITTEE, 1971/72–1972/73

By J. E. Grey
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Introduction

In 1970/71 the Procedure Committee of the Commons in its Second Report on the Process of Legislation recommended that " a joint committee should be appointed to inquire into the procedures and practice by which the control of each House over delegated legislation is exercised, and to report on how they might be improved ". In the following session 1971/72 this recommendation was accepted by both Houses and a Joint Committee of seven members from each House was set up under the chairmanship of Lord Brooke of Cumnor (the Brooke Committee).

In this article an attempt is made to describe briefly the more important or interesting recommendations made by the Brooke Committee in the three reports which they made in the sessions 1971/72 and 1972/73.[1] Before doing so, however, it is necessary to describe the complicated subject dealt with by those reports.

The concept of delegated legislation is a simple one. The more governments enlarge their field of operation (and governments increasingly do) the greater becomes the bulk and complexity of legislation and the more urgent its need for flexibility.

An Act of Parliament is not a suitable instrument for dealing directly with complex details nor is it sufficiently flexible to cope with a quickly changing situation. Thus for a very long time it has been the practice in the United Kingdom for Acts to provide the outline and to delegate to Ministers legislative power to fill in the details.

If power is delegated in this way it is important that there should be sageguards to ensure that the power is one that should properly be delegated, that it is exercised only within the limits laid down by its parent Act and in the more important cases that the merits of the particular exercise of the power can be debated. These safeguards are provided first by Parliament, secondly by the Courts and thirdly by the statutory provisions for publication contained in the Statutory Instruments Act 1946.

The Brooke Committee were concerned solely with the parliamentary safeguards.

Parliament has conferred a right to petition on individuals adversely affected by private or hybrid Bills because they affect " the interests of specific individuals or corporations as distinct from all individuals or

corporations of a similar category". Following out this principle Parliament provides a similar right to petition against certain kinds of delegated legislation " in the nature of a private or hybrid Bill ".

It follows that there are two kinds of delegated legislation, namely delegated legislation in the nature of public general Bills and delegated legislation in the nature of private or hybrid Bills (here called public general and private or hybrid delegated legislation as the case may be).

The problem facing the Brooke Committee concerned the forms of and the machinery for control of delegated legislation of each of these two kinds; I shall deal first with public general legislation which was dealt with in the Report of 1971/72 and in the Second Report of 1972/73.

Public General Delegated Legislation

Forms of Control

Though the theory of delegated legislation may be simple Parliament has made it very complicated (at any rate to a layman) in practice. First, Parliament examines delegated legislation from two angles, that is to say its technical propriety (a process called technical scrutiny) and also the political merits of the instrument (a process called consideration of merits). Secondly there are no less than seven standard varieties of control as follows:

(i) The instrument is laid in draft and cannot be made unless approved by Parliament.
(ii) The instrument is laid after making, but cannot come into force unless and until so approved.
(iii) The instrument is laid after making, but cannot remain in force after a specified period unless approved within that period.

Affirmative instruments

(iv) The instrument is laid in draft, and cannot be made if disapproved within forty days (Statutory Instruments Act 1946 section 6).
(v) The instrument is laid after making, but must be revoked if a resolution for annulment is passed within forty days (Statutory Instruments Act 1946 section 5).

Negative instruments

(vi) The instrument is laid after making but there is no provision for further Parliamentary proceedings (Statutory Instruments Act 1946 section 4).
(vii) The instrument—a statutory instrument certified as general—is not required to be laid.

It should here be explained that laying of an instrument consists of its formal delivery to the appropriate office in the House before which it is laid and the publication of its title in the formal record of the proceedings of that House. Laying is therefore a formal communication to Parliament that a particular instrument has been made and of its contents.

It will be seen that in the case of affirmative instruments there must be some opportunity for debate for if they are to remain in or come into force they must be approved by both Houses or the House of Commons, in the case of negative instruments there should be an opportunity for debate if a Motion is tabled to annul the instrument (such a Motion being called a " prayer ")[2] but in the case of the remainder there is no opportunity for either House directly to affect the instrument though the Minister concerned may be held accountable by the tabling of either a Motion or a Question.

Methods of Control

Technical Scrutiny

Both Houses have entrusted technical scrutiny to committees first because it is an operation which cannot be adequately carried out on the floor of the House as it involves the hearing of departmental representatives and the consideration of memoranda from departments and secondly because time is short (at any rate in the Commons), and technical scrutiny has a place well back in the queue for priority. Both Houses are more or less content to leave this matter in the hands of their committees and to take little notice of reports drawing attention to defects. On the whole this has worked because departments usually take steps to remedy defects which are pointed out to them by such committees.

Consideration of Merits

Consideration of merits had until last session always been carried out on the floor of each House since it normally involves questions of policy and principle. There was no difficulty in finding time in the Lords for this but in the Commons the picture was very different. While time was always found in that House for the approval of affirmative instruments time was hard to find to debate prayers because unless such prayers were officially supported by the Opposition they were by their nature initiated by backbenchers who have little claim on time for delegated legislation unless they can find massive back-bench support.

Previous Inquiries

There have been three previous inquiries by committees into the control of delegated legislation. The first committee (the Donoughmore Committee) was appointed by the Lord Chancellor in 1929 under the Chairmanship of the Earl of Donoughmore who was then Chairman of Committees of the House of Lords; the second was the Select Committee of the Commons on Delegated Legislation under the chairmanship of Mr. Clement Davies (the Clement Davies Committee) and the third was conducted by the Procedure Committee of the Commons in session 1970/71 in their Second Report on the Process of Legislation.

The results of the inquiries conducted by each of these committees is summarised in paragraphs 15 to 27 of the 1971/72 Report, but a few additional comments might usefully be made in this article.

The Donoughmore Committee

The Donoughmore Committee was set up largely in response to a fierce attack on the growth of delegated legislation by the Lord Chief Justice of England (Lord Hewart) in his book *The New Despotism.* Perhaps for this reason its terms of reference were very wide for they covered not only parliamentary procedures but also the control of delegated legislation by the courts and the provisions for publicising delegated legislation contained in the Rules Publication Act 1893. In addition to this it was felt necessary to counter Lord Hewart's attack by devoting a large section of the report to a history and justification of delegated legislation. The section on parliamentary procedures is surprisingly defective. No mention is made of the Special Orders Committee of the Lords which had been in existence since 1925 or of the provisions of the Lords Standing Order setting up that committee which conferred petitioning rights against certain Special Orders. This omission is very surprising both because the Earl of Donoughmore was Chairman of Committees in the Lords from 1911 to 1931 and had been very much concerned in the setting up and functioning of the Special Orders Committee and also because the Donoughmore Committee themselves recommended the setting up by each House of a Committee to examine the form only, not the merits, of regulations and rules.

The Clement Davies Committee

The Clement Davies Committee was of course entirely concerned with Commons procedure and mainly with opportunities for the consideration of the merits of negative instruments. It attempted to increase these opportunities (by recommending the 11.30 rule) and also the effectiveness of technical scrutiny (by recommending the extension of the 40-day period where an adverse report was made on an instrument by the Statutory Instruments Committee). The latter of these two recommendations was not accepted. The "11.30 rule" is a provision in Commons Standing Orders which allows prayers to be taken as "exempted business" after 10.00 p.m. Thus so long as ordinary business is concluded by 10.00 p.m. there is a period of 1½ hours for debating prayers. In recent years, however, the House of Commons has sat much more frequently for Government business after 10.00 p.m. thus eating into and sometimes entirely consuming the 1½ hours. This rule has therefore frequently operated so as to produce exactly the opposite of its intended effect.

The Commons Procedure Committee 1970/71

The Procedure Committee of the Commons dealt with these difficulties in their Second Report of 1970/71 entitled "the Process of

Legislation ". But as a result of evidence received by them from the Leaders of all three parties in the Lords the Committee recommended that a Joint Committee should be set up to make, in Lord Jellicoe's words, a " comprehensive and rather deep study " of the procedures and practice by which the control of each House over delegated legislation is exercised. The acceptance of this recommendation by the setting up of the Brooke Committee therefore had the effect of referring to the Brooke Committee for further examination the other more specific recommendations of the Commons Procedure Committee so that it is not necessary to discuss them here.

The Problems

Technical Scrutiny

The machinery for technical scrutiny in each House had been developed entirely separately. The Statutory Instruments Committee of the Commons examined the whole field of statutory instruments. The Special Orders Committee of the Lords confined their scrutiny to affirmative instruments (called Special Orders) but their procedure contained two useful provisions not found in the Commons. The first of these was the provision in Lords Private Business Standing Order 216 (8) that no motion for the approval of a Special Order might be moved in the House until the Report thereon of the Special Orders Committee had been laid before the House. This ensures that the House is advised on the technical propriety of the instrument before a motion for its approval can be taken. The second provision was the petitioning procedure provided by Lords Private Business Standing Order 216(4) against Special Orders " in the nature of Private or Hybrid Bills ", which is dealt with below.

It was the unanimous opinion of all those who gave evidence to the Brooke Committee, including the Leaders of both Houses, that there would be great advantage in a joint procedure for technical scrutiny. The consideration of merits is by its nature political (and often party-political) so that there is some objection to giving the Lords, as a non-elected House, an equal say with the Commons on a Joint Committee. Technical scrutiny on the other hand is traditionally removed from the field of party politics in the same way as is the technical work done by the Joint Committee on Consolidation Bills. Indeed, it would be difficult for an observer of the proceedings of one of these Committees to discover from those proceedings the political affiliation of any member of the Committee. Thus there is less objection to allowing the House of Lords to contribute to a joint procedure in this field, where technical expertise is the main qualification.

Recommendations

It was therefore no surprise that the Brooke Committee recommended that the Special Orders Committee and the Statutory Instruments

Committee should be replaced by what is now the Joint Committee on Statutory Instruments. The Brooke Committee recommended that the terms of reference of the new Joint Committee should include all those instruments previously scrutinised by the two separate committees. In dealing with the two provisions in the terms of reference of the Special Orders Committee of the Lords namely the provisions of the Lords Private Bill Standing Order 216 (8) and 216 (4)–(6) which have been mentioned above, the Brooke Committee recommended that a provision similar to the first of these should apply in the Commons. The second provision (the petitioning procedure) proved so difficult that the Brooke Committee reserved it for their first report of the following session (1972/3). The existing Lords petitioning procedure was therefore kept in being as an interim measure.

Evidence was given to the Brooke Committee of dissatisfaction felt by the Statutory Instruments Committee in the Commons that its adverse reports on instruments were largely ignored. The Brooke Committee recommended that any instrument subject to an adverse technical report should be referred to the new " merits " committees (described below) and should be given priority of debate. Consideration was also given to the desirability of making technical scrutiny more effective by conferring on the Joint Committee power to amend instruments. The Brooke Committee rejected this suggestion on the ground that legislation would be required to create such a power and that it is already possible for Ministers to withdraw instruments and re-lay them in amended form where this is required.

Consideration of Merits

Recommendations

The problem of finding more time in the Commons for the consideration of merits was eased by providing a method of debating delegated legislation in Standing Committees which was proposed by the Second Clerk Assistant in the Commons (Mr. Barlas). In the majority of cases members wish to debate an instrument of delegated legislation in order to probe the government's intentions and to get more information about the instrument rather than to object to the instrument itself. Divisions at the end of such debates are therefore the exception rather than the rule. Consequently the new procedure in the Standing Committees which was recommended provided for a debate on a motion " to take note " of the instrument so that there was little point in a division in the Committee. If a division was required the procedure provided that it should take place later in the House without debate. In order to allow for the attendance of any member of the house who might be interested, the Brooke Committee recommended that these Committees should adopt the Lords procedure (Lords S.O.62) whereby any member of the House though not named of the Committee may attend and speak but not vote.

The Brooke Committee also suggested that more time might be found on the Floor of the House if the 11.30 rule were modified so as to allow a debate on a take note motion at any hour subject to not more than one such debate being permitted on any one night and a time limit of 1½ hours.

The Government's Reaction

The Government reacted very quickly to this report. On 13th February, 1973, in the Commons and 20th February, 1973, in the Lords the Joint Committee on Statutory Instruments was first set up by sessional order. This Committee has worked well and has been re-appointed in every session since then. On 22nd March, 1973, " merits " committees called Standing Committees on Statutory Instruments were set up in the Commons by sessional order substantially on the lines recommended and in the following session on 21st November, 1973, they were made permanent in Standing Order 73A. These committees have, I understand, been useful in helping to avoid late nights in the Commons. When moving the Motion to set up the " merits " committees in March 1973 the Leader of the House announced the Government's acceptance in principle of the Brooke Committees' suggested modification of the 11.30 rule mentioned above. The Government did not propose any amendment of the Standing Order but would be prepared to move a Motion modifying it *ad hoc*. The Government did not however agree to the extension to the Commons of the provision in the Lords Private Business Standing Order 216 (8), which prevents a Special Order being taken in the House until it has been reported from the Special Orders Committee, nor did they accept the recommendation about priority of debate in merits committees for adverse reports from the Joint Committee on Statutory Instruments.

Forms of Control

Having dealt with the machinery the Brooke Committee considered the forms of control in their last Report (session 1972/73 Second Report). This consideration raised two problems:

(*a*) whether the numerous different kinds of parliamentary control of statutory instruments are all of them useful and all of them required, or can be reduced in number and thereby simplified; and

(*b*) whether any guidelines can be laid down to help Parliament —and, before the legislation reaches Parliament, Ministers and their advisers—to judge what is the most appropriate kind of control to apply in the particular circumstances.

The Committee found that though views had been expressed on the subject there was no published research and therefore no reliable basis of fact for any conclusions. The most careful study of the subject appeared to be in a Ph.D. thesis by Dr. J. E. Kersell in 1959 then of the

London School of Economics, later published in slightly abbreviated form as his book *Parliamentary Supervision of Delegated Legislation, the United Kingdom, Australia, New Zealand and Canada*, published in 1960 by Stevens and Sons Limited.

Dr. Kersell very kindly made this thesis available to the Committee, but unfortunately no record was found of the research on which it was based. The Brooke Committee therefore considered it essential to commission a systematic examination of the Statute Book for a substantial period (six years) in order to provide the required basis of fact. For this purpose they were fortunate in obtaining the services of Sir Noel Hutton, G.C.B., Q.C. (former First Parliamentary Counsel), Professor J. A. G. Griffith of the London School of Economics and his Research Assistant Mrs. Ove Sarup. An examination was made of the provisions for delegated legislation in the Statute Book for the years 1967–72 inclusive. The results are set out in the Joint Memorandum printed as Appendix 1 (1) to the Report. Future research students may be interested to know that the tables of these provisions (resulting from the research) are in print and are kept with the working papers of the Brooke Committee in the Record Office, House of Lords.

Having examined the seven standard categories the Brooke Committee recommended that three of them should cease to be used in future, leaving the following varieties:

(i) The instrument is laid in draft and cannot be made unless approved by Parliament.

(iii) The instrument is laid after making, but cannot remain in force after a specific period unless approved within that period.

(v) The instrument is laid after making, but must be revoked if a resolution for annulment is passed within forty days (Statutory Instruments Act 1946 section 5).

(vi) The instrument is laid after making but there is no provision for further parliamentary proceedings (Statutory Instruments Act 1946 section 4).

It will be seen that this would simplify the procedure by leaving only two varieties of affirmative instrument, (i) and (iii); one of negative (v); and one not subject to proceedings in Parliament (vi).

In considering the second question which they called " the criteria for the selection of forms of parliamentary control " the Brooke Committee found, as the Donoughmore Committee had before them, that " it is impossible to discover . . . on what principle Parliament acts in deciding which [of the different varieties] should be adopted in any particular enactment ". There was a conflict of opinion in the evidence given to the Committee as to whether it was desirable to lay down rules for the use of each category. The Committee were however of opinion that " if a classification can be devised of the cases in which each type of procedure is normally appropriate, this may be some help to Parliament

in checking whether powers proposed to be delegated by Bills fit into the normal pattern of control or whether they should, as regards Parliamentary control, be treated exceptionally ".

The classifications thus devised by the Committee are as follows:

The affirmative procedure is normally appropriate (paragraph 46) for:

(1) Powers substantially affecting provisions of Acts of Parliament.

(2) Powers to impose or increase taxation or other financial burdens on the subject or to raise statutory limits on the amounts which may be borrowed by or lent or granted to public bodies.

(3) Powers involving considerations of special importance not falling under heads (1) or (2) above (e.g. powers to create new varieties of criminal offence of a serious nature).

The necessity to prevent forestalling or to deal with an emergency is not by itself a ground for use of the affirmative procedure, since the negative procedure also provides immediate effect. Variety (iii) should only be used where the subject-matter falls under heads (1), (2) or (3) above. Since the negative procedure is by far the most common, it seems to Your Committee that the most sensible approach is that the negative procedure should generally be selected unless the power is of a type which would normally require the affirmative procedure or unless it is of a type over which Parliament has generally been content to relinquish any further control.

The following classes of instrument (paragraph 52) should not normally be subject to either the affirmative or the negative procedure, namely:

(1) Commencement orders and the like.

(2) Orders relating to overseas territories, the Channel Islands and Isle of Man and, perhaps, the Scilly Isles.

(3) Judicial rules and regulations.

(4) Orders prescribing routine forms.

(5) Orders declaring a state of fact, e.g. the parties to an international convention or the passage of corresponding legislation.

These recommendations have not yet been debated by either House nor has there been any reaction from the Government.

Private or Hybrid Delegated Legislation

The right to petition against delegated legislation of this kind exists only against Special Procedure Orders and against affirmative instruments (in the Lords confusingly called Special Orders) in the nature of private or hybrid Bills (called here hybrid Special Orders).

These two kinds of instrument were devised to replace private, Provisional Order or hybrid Bills. The Special Procedure Order is a creature of the Statutory Orders (Special Procedure) Act of 1945 and the S.O.s of both Houses made thereunder. The petitioning procedure against hybrid Special Orders is provided by Lords Private Bill Standing Order 216. A Petitioner against a Special Procedure Order must show that he has a *locus standi* to petition, that is to say, broadly speaking, that he will suffer financial loss if the Order is upheld. Once he has shown this his petition if lodged within the prescribed time will be heard by a joint committee (except in the unlikely event of a veto by either House) and he may re-open the whole matter complained of in

his petition notwithstanding that it has already been the subject of an inquiry outside Parliament, as is nearly always the case.

On the other hand a petitioner against a Special Order must not only show that he has " substantial grounds of complaint " (the equivalent of *locus standi*) but also that through no fault of his there has been no adequate inquiry into his complaint. Only after he has satisfied the Special Orders Committee on these points, and the House of Lords has agreed, will his petition be heard on its merits by a Select Committee of five Lords.

Special Procedure Orders

The section of the report on Special Procedure Orders makes several detailed recommendations for improving the statutory procedure which will not be of general interest. There is, however, one recommendation which does raise a question of importance and in which increasing interest is being shown by Members of both Houses and organisations outside Parliament. This is the question of the expense of petitioning Parliament. It is all very well to say to individuals that they have a right to petition but this right is no use if it is too expensive to be exercised by people of limited means. One is reminded of the saying that " the Courts are open to all—like the Ritz Hotel. " The report gives figures which show that even a petitioner in person may still have to pay £50 per day as a contribution towards providing a transcript of the evidence. Of course, once Counsel and Agents are employed the sums involved can become very large. The report sets out the position as follows:

> If a petitioner briefs counsel or agents, the fees which he will have to pay are very substantial. For example if leading counsel is employed his average brief fee will be £750 plus £60 for each day on which the Committee sit, together with corresponding fees of £500 and £60 for his junior. If junior counsel only is employed the average corresponding fees would be £400 and £60. These fees are of course in addition to the substantial fees payable beforehand for instructions, etc.

The question of expense has also been raised (see North Wales Hydro-electric Bill 1972/3) in connection with petitions against Private Bills especially by amenity societies who do not see why with their limited resources they should be left to bear the expense of petitioning to protect what they consider to be the national interest in amenity against encroachment by new roads, reservoirs and other works which increasingly despoil the countryside.

The Brooke Committee's terms of reference were not wide enough to permit them to examine this question thoroughly but they did recommend that the question of the expense of petitioning against S.P.O.s " should form part of a wider inquiry into the expense of petitioning against all kinds of private or hybrid legislation ".

Hybrid Special Orders

The Lords petitioning procedure against hybrid Special Orders was

the result of the efforts of the then Leader of the House, the Marquess of Salisbury, in 1924 and 1925 which produced a Standing Order (now 216) setting up the Special Orders Committee and provided a procedure for petitioning against Special Orders in the nature of Private or Hybrid Bills and for the hearing of petitions by a Select Committee similar to a Private Bill Committee. Orders subject to this petitioning procedure are called hybrid Special Orders and the procedure has continued to this day. The Brooke Committee were impressed by the value of this procedure which though not often used is effective.

The present Standing Order (which differs little from the original one) provides that as soon as possible after the order is laid the Special Orders Committee consider whether the order is in the nature of a public Bill or whether it is in the nature of a private or hybrid Bill. If the latter, provision is made for petitions to be lodged against the order within fourteen days (or ten days in the case of some orders) of the date of laying of the order. If petitions are lodged the Special Orders Committee must then consider:

(*a*) whether the Petition discloses substantial grounds of complaint;
(*b*) whether the matter has been so dealt with upon a departmenta inquiry that further inquiry is unnecessary;
(*c*) whether the submissions in the Petition could have been brought before a local inquiry and were not;
(*d*) whether, having regard to the answers to the preceding questions and to the findings, if any, of these inquiries and to the other circumstances of the case, there ought to be a further inquiry by a Select Committee;

and shall report to the House accordingly.

If the Special Orders Committee think that there ought to be a further inquiry by a Select Committee the Order and petitions are referred to a Select Committee of five peers for consideration on merits.

Though effective, the procedure is however somewhat makeshift. For instance, an order only becomes hybrid when the Special Orders Committee has decided that it is so. But the petitioning time of fourteen days runs from the date of laying of the order. It may, and probably will, therefore happen that a petitioner will not know whether or not he has a right to petition (i.e. whether or not the order is hybrid) until after petitioning time has expired. There is no provision for giving notice to people who have a right to petition. It is interesting here to note that such a provision was contained in an early draft of the Standing Order by Lord Salisbury but was omitted from the Standing Order subsequently moved in the House by Lord Donoughmore. In recent cases the only persons affected have been named in the order so that the Clerk has been able to inform them of their rights, but there may be cases where it would not be so easy to identify such persons.

The "Roche" Order

By a fortunate coincidence this procedure was used while the Brooke Committee were considering the subject, and the proceedings illustrated most of these defects. This was the case of the Regulation of Prices (Tranquillising Drugs) Order 1973, which was made after an inquiry by the Monopolies Commission into the prices charged by Roche Products Limited and other associated companies for two drugs. The Monopolies Commission found that these prices were "such as to operate against the public interest" (i.e. too high). Consequently the Secretary of State made an order, which was subject to the approval of both Houses by affirmative resolution, expressed to be binding on those named companies and reducing the price of both the drugs, the first to 40 per cent and the second to 25 per cent of its 1970 price. This order was a Special Order (as it was subject to affirmative resolution) and was a hybrid Special Order because it applied only to certain named companies; it did not apply to all companies of that type. Immediately the order was laid on 12th April, 1973, the Lord Chairman formed the opinion that it was hybrid. The Clerk to the Special Orders Committee then telephoned the companies affected and informed them that the Committee would meet the following Wednesday, 18th April, to consider whether or not the order was hybrid and that they would probably decide that it was. When the Committee met they decided that the order was hybrid and a petition was lodged. Fortunately, since the petitioning time expired during the Easter Recess it was automatically extended to the first sitting day thereafter, 1st May.

The Special Orders Committee after hearing the parties for five full days on the preliminary question whether the petiton should be referred to a Select Committee in accordance with Standing Order 216, found in favour of the petitioners and so reported to the House. The House, however, took the exceptional step of disagreeing with this report by a majority of 43 to 23 so that the petitioners' case never reached a Select Committee. It is, however, interesting that, while disagreeing with the Special Orders Committee's Report in this particular case, several members of the House emphasised the value of the hybrid procedure.

Recommendations

The Brooke Committee made three recommendations to remedy the absence of any provision for notifying prospective petitioners of their rights and the difficulty over petitioning time. These recommendations were first that the Department responsible for the order should be required to give notice to prospective petitioners either directly or by notice in the *London Gazette*, etc., in the same way as is done with Special Procedure Orders; secondly that the Lord Chairman, not the Committee, should be responsible for the decision whether or not the order is hybrid; and thirdly that petitioning time should only begin to run from the date of this decision not the date of laying.

The Brooke Committee thought it undesirable that a hearing of this sort which was equivalent to a hearing by the Appeal Committee of a petition for leave to appeal in a judicial case should last as long as five days. In an attempt to avoid this in future they made two recommendations: first, the appointment of a Law Lord to the Committee so that they might have the benefit of his experience of dealing briefly with such applications, and secondly they recommended a revision of the criteria by which the Special Orders Committee must judge whether a petition should be sent to a Select Committee.

Under the recommended new criteria the Special Orders Committee would consider:

(*a*) whether the petitioner is adversely affected by the instrument;

(*b*) whether the matters complained of in the petition have already been adequately inquired into;

(*c*) whether any inadequacy in the inquiry was substantially the fault of the petitioner.

These criteria are much simpler and less ambiguous than the existing ones and, it is hoped, leave less room for argument.

Consideration was also given to the question whether this procedure should be operated jointly rather than solely in the Lords. Though recognising that a joint operation was logically desirable the Brooke Committee recommended that the procedure should continue in the Lords only in order to avoid making further claims on the already scarce time and manpower in the Commons.

Finally the Brooke Committee emphasised the importance of the principle (which is the basis of the Lords' petitioning procedure) that rights should not be taken away from individuals without a proper inquiry into their objections. They considered that it was practicable and desirable to maintain this principle by extending the petitioning procedure to negative instruments which are often just as important as some affirmative instruments. The Government's reaction to this recommendation is awaited with interest.

Before leaving this subject it is interesting to note this procedure as an example of how the Lords can contribute to the effectiveness of Parliament by providing manpower, expertise and time for matters which though important the Commons is unable to consider owing to the pressure of more important business.

MISCELLANEOUS

Three other miscellaneous matters were dealt with in the Reports in the session 1972/73, but there has not yet been any Government reaction. The First Report deals with the calculation of the forty-day " praying " period under section 7 of the Statutory Instruments Act 1946. As has been explained above the Statutory Instruments Act of 1946 fixes the period in respect of most negative instruments during

which it is possible to move a motion in either House praying that the instrument be annulled.

The same method is now usually also employed in calculating the number of days in respect of those affirmative instruments which expire after a certain period if not affirmed. Although the Brooke Committee received evidence that the forty-day period was often too short they thought that time should be given to judge the effect of the recommendations made in their report of the previous session. They therefore recommended that the period should remain unchanged for the present but that to meet any future difficulty statutory provision should be made for the forty-day period to be extended by resolution of both Houses.

A more interesting matter was Lord Molson's proposal (Second Report) to replace the present petitioning procedure against private, hybrid and Provisional Order Bills and Special Procedure Orders by a single new procedure. He proposed that wherever there is a public local inquiry into any matter which forms the basis of a Ministerial order or decision (e.g. on a planning application) those affected should have a right to appeal to Parliament by petition. He suggested that petitions of this kind should go to the Joint Committee on Statutory Instruments as a " screening " Committee who would decide whether the petition raised matters of sufficient importance for it to be referred to a Select Committee.

The terms of reference of the Brooke Committee were, however, not wide enough to enable them to consider this subject though they were sufficiently impressed by Lord Molson's scheme to recommend that it should form the subject of a future inquiry.

The last matter dealt with in the Second Report is the proposal by Lord Byers that the Lords' veto over delegated legislation should be reduced to a delaying power in the case of orders found to be " urgent ". The Brooke Committee, however, found that it was impossible to devise an objective criterion by which to determine whether or not an order is " urgent " and for this reason rejected Lord Byers' suggestion.

References

[1] 1971/72 H.L. 184 (H.C. 475). 1972/73 First Report H.L. 188 (H.C. 407). Second Report H.L. 204 (H.C. 468).

[2] Such Motions are called "prayers" because section 5 (1) of the Statutory Instruments Act 1946 provides that they shall be in the form of a motion for an Address to Her Majesty *praying* that the instrument be annulled.

VII. A NEW CONSTITUTION FOR NORTHERN IRELAND

By R. H. A. Blackburn
Clerk to the Asembly

The Parliament of Northern Ireland, which came into existence in June 1921 by virtue of the Government of Ireland Act 1920[1]—an Act of the United Kingdom Parliament—consisted of the Sovereign (represented in Northern Ireland by a Governor) and a bicameral legislature, a Senate of 26 Members and a House of Commons of 52 Members. In addition, Northern Ireland continued to be represented at Westminster by 13 (later 12) Members to speak for their constituents on matters, such as foreign affairs and defence, " reserved " to the United Kingdom Parliament by the 1920 Act.

The practice and procedures of the Parliament of Northern Ireland followed closely those of the parent Westminster Parliament. However, the vital difference between Westminster and Stormont was the fact that in Northern Ireland one party—the Unionist Party—was in power and formed the Government for the whole of the fifty-two years. As the Unionist Party was almost exclusively representative of the Protestant majority of electors, the Roman Catholic minority (about one-third of the population) were increasingly critical of and hostile to a system of government which in their view condemned them permanently to a minority opposition rule.

As a Clerk I do not, of course, wish to enter into matters which are still the subject of acute political controversy in Northern Ireland. Suffice it therefore to say that from 1968 onwards there were ever-increasing demands for full " Civil Rights " and that this was reinforced by a campaign of terror and subversion by the Irish Republican Army (an organisation dedicated to driving Britain and British influence out of Northern Ireland and the creation thereafter of an all-Ireland Republic). Although the Government of Northern Ireland pushed through a programme of reforms to meet most of the original demands of the Civil Rights supporters, there was ever-increasing public disorder and in March 1972 the United Kingdom Government, exercising powers retained by it under the Government of Ireland Act, prorogued the Parliament of Northern Ireland and imposed direct rule from Westminster, through a Secretary of State for Northern Ireland.

During 1972 and early 1973 there was intense activity amongst the various political parties in Northern Ireland, each putting forward its ideas as to how the province should in future be governed. In addition, the Secretary of State for Northern Ireland produced a paper[2] setting out possible forms of constitution which might replace that contained in the 1920 Act. These proposals were brought before the United Kingdom Parliament early in 1973 and became law as a Northern Ire-

land Assembly Act[3] and a Northern Ireland Constitution Act[4]. These provided for the abolition of the Parliament of Northern Ireland and its replacement by a unicameral Northern Ireland Assembly of 78 elected Members, to be elected by a system of proportional representation (single transferable vote).

The Constitution Act, as amended by the Northern Ireland Constitution (Amendment) Act 1973[5] provided also for an administration of 15 Members, 11 of whom had voting rights as the Executive for Northern Ireland. The Secretary of State for Northern Ireland was empowered to appoint an Executive if it appeared to him that " having regard to the support it commands in the Assembly and to the electorate on which that support is based " it was " likely to be widely accepted throughout the community ". This provision—the key to the new constitution—meant that in future no political party which drew its support exclusively from only one section of the population could hope to form the Executive. In short, there had to be a sharing of power between representatives of the Protestant majority and the Catholic minority.

The Constitution Acts confer upon the new Assembly the powers, privileges and immunities of the Westminster House of Commons and empower it to legislate by means of " Measures " which will have the force of law when approved by Her Majesty in Council.

From a purely procedural aspect, perhaps the most novel feature of the new Constitution is that the Assembly is required to provide for the establishment of " consultative " committees to advise and assist the head of each of the Northern Ireland Departments in the formulation of policy with respect to matters within the responsibilities of his Department. The Act requires also that Standing Orders shall provide for the head of a Department in relation to which a consultative committee is established to be chairman of that committee and shall secure that the balance of parties in the Assembly is, so far as practicable, reflected in the membership of the consultative committees taken as a whole. The function of these committees is advisory only and in essence they are an attempt to involve back-benchers at a comparatively early stage in the formulation of departmental policies.

On 30th June, 1973, a General Election was held for the first Assembly of Northern Ireland and resulted in the return of 78 Members, and the first meeting of the Assembly was fixed by the Secretary of State for 31st July, 1973. The question of where the new Assembly should hold its first meeting was a matter that caused considerable difficulty. The obvious places were the former House of Commons Chamber or the Senate Chamber in Stormont but some Members made it clear that they would have objections to the new Assembly having any association with the former Parliament. Accordingly the Secretary of State decided that the first meeting should take place in the Central Hall, Stormont, normally used for banquets and receptions.

As the Assembly had no code of procedure and no Standing Orders

the Constitution Act had empowered the Secretary of State to issue "Directions" to regulate the first and subsequent meetings of the Assembly until such time as it had adopted Standing Orders. The Direction of the Secretary of State, issued on 25th July 1973, prescribed that the first duty of the Assembly should be to elect a Presiding Officer and that until that election had taken place the Clerk of the Assembly should preside.[6] The Direction also provided skeleton rules for order in debate, including provisions for the closure and for the control of disorderly conduct, and laid down that the Presiding Officer, when elected, should at once appoint a representative Committee of the Assembly to draw up draft Standing Orders and to make recommendations as to the place of and arrangements for future meetings of the Assembly.

I had been appointed as Clerk of the Assembly before the first meeting and I was aware of the strong feelings which existed among Members about the new Constitution, etc. It was, therefore, with some trepidation that I took the Chair on a dais in the Central Hall on 31st July. It was true that in accordance with the Direction of the Secretary of State I was required to preside over the Assembly only until they had elected a Presiding Officer but I was acutely conscious that such an election was very likely to prove both difficult and acrimonious.

My forebodings proved to be correct. Immediately I rose to initiate the proceedings I was met with points of order and after two Members had in turn been proposed as Presiding Officer there followed a heated and difficult debate, ostensibly about the merits of the respective candidates but in reality a debate about the merits or demerits of the new constitution and Assembly.

I must confess that I found my transition from the advisory role of a Clerk to that of temporary Presiding Officer very difficult. I did not find it easy to rule out of order—as I frequently had to do—Members whom I had known and served for many years in the former Stormont Parliament, and their feelings, I think, were summed up at one point by Rev. Dr. Paisley when he said, "... as a former Member of Parliament I have absolute respect for you as Clerk. I may have very little time for you as Presiding Officer ..." (Northern Ireland Assembly Official Report, Vol. 1, No. 1, col. 14).

However, in the event the Assembly proceeded to elect a Presiding Officer and, wiping the perspiration from my forhead, I very thankfully relinquished the Chair to him and took my accustomed place at the Clerk's Table.

APPENDIX

DIRECTION OF THE SECRETARY OF STATE FOR NORTHERN IRELAND

Election and Powers of Presiding Officer

1.—(1) At the first meeting of the Assembly held on the day and at the time and place directed by Order made under section 1(3) of the Northern Ireland Assembly Act 1973, the Clerk to the Assembly (in these directions referred to as "the Clerk") shall read the said Order and the Assembly shall at once proceed to elect a Presiding Officer in the manner specified in Paragraph 2 below.

(2) The Presiding Officer shall have power to summon the Assembly to meet and to adjourn any sitting of the Assembly without putting any question and for the purpose of regulating the business of the Assembly and maintaining order shall exercise the powers conferred on him by the Standing Orders set forth in Paragraph 5 below.

(3) Until the Presiding Officer is elected, the Clerk shall have the like powers as the Presiding Officer except that the Clerk shall not have power to accept a motion under Paragraph 5(9) below for the closure of a debate.

(4) Until the Assembly makes Standing Orders regulating its procedure the Standing Orders in Paragraph 5 below shall regulate its procedure.

Procedure for Election of Presiding Officer

2. The election of the Presiding Officer shall be conducted in the following manner—

(*a*) a member, addressing himself to the Clerk, may propose a member of the Assembly, then present, as Presiding Officer and move "That Mr. . . . be Presiding Officer of this Assembly", which motion shall require to be seconded and to be followed by a statement to the Assembly from the member proposed and seconded that he accepts the nomination;

(*b*) the Clerk shall then ask "Is there any further proposal?" and—

(i) if there is no further proposal the Clerk shall say "The time for proposals has expired" and no member may then address the Assembly or propose any other member, and the Clerk shall then without question put, declare the member so proposed and seconded to have been elected as Presiding Officer and that member shall take the Chair;

(ii) if more than one member is proposed and seconded as Presiding Officer and has stated that he agrees to accept nomination, the Clerk shall, after each proposal has been made and seconded and the statement of acceptance made, say "Is there any further proposal?" and if there is no further proposal the Clerk shall say "The time for proposals has expired" and a debate may then ensue but it shall be relevant to the election and no member shall speak more than once. Upon the cessation of the debate, the election shall be proceeded with in accordance with sub-paragraph (*c*) below;

(*c*) the Clerk shall put the question "That Mr. . . . (the member first proposed) be the Presiding Officer of this Assembly" and, if the opinion of the Clerk as to the decision of the question is challenged by any member a division shall be taken by voices. Ayes and Noes. The vote shall be taken by the Clerk asking each member separately in the alphabetical order of his name how he desires to vote and recording the votes accordingly. The Clerk shall announce the numbers of the votes and

(i) if the majority be in favour of the member first proposed, the Clerk shall declare him to have been elected as Presiding Officer and he shall take the Chair of the Assembly:

(ii) if the majority be not in favour of the member first proposed, the Clerk shall put a similar question in relation to the member proposed secondly which, if resolved in the affirmative, that member shall be declared by the Clerk to be elected and shall take the Chair and this shall be done in relation to each member subsequently proposed as often as necessary until a majority has agreed upon a member to be their Presiding Officer.

References

[1] 10 & 11 Geo.V, c. 20.
[2] The Future of Northern Ireland—a Paper for Discussion.
[3] 1973, c. 17.
[4] 1973, c. 36.
[5] 1973, c. 69.
[6] The relevant part of the direction is shown in the Appendix above.

VIII. THE USE OF COMPUTERS IN THE BILINGUAL PUBLISHING AND RETRIEVAL OF PARLIAMENTARY PUBLICATIONS

By Alexander Small
Second Clerk Assistant, House of Commons, Canada

Background

On April 2nd, 1965, the House of Commons of Canada, on the recommendation of one of its committees, encouraged the use of computerised printing in the production of its parliamentary publications, particularly *Hansard*, to cope with spiralling costs and unprecedented increases in the volume of printing in the two official languages. The same year the traditional hot-metal system at the Canadian Government Printing Bureau (now known as the Department of Supply and Services—DSS—Printing Operations) was relegated to limited roles and displaced by a Univac 1050 computer, teletypesetting system (TTS), paper-tape-producing keyboards and paper-tape-driven Elektron linecasters. This computer initially had 32 K and later 64 K bytes* of core. The computer was used to run a Univac-developed hyphenation and justification program in a torn-tape, single-pass, galley system.

In 1968-69 experimental trials were started with on-site typewriter terminals for inputting text of the Commons Debates. These trials were suspended early in the experiment as it soon became apparent that a special text-editing program must first be developed to meet needs peculiar to the House of Commons, relying on sources conscious of customer-needs rather than of the needs and desires of the suppliers of equipment or services. Also, the role of House staff had to be better appreciated in preparing them for conversion training. It was also apparent that conversion to the new system would best be accomplished after a shake-down period of parallel operations with the old system.

The printing services to which the House of Commons of Canada was traditionally accustomed were probably unmatched anywhere in the world. What other parliamentary body, for example, produces overnight a separate *Hansard* of the full spoken and translated texts in more than one language simultaneously without a cut-off time for the Printer even if the House sits till dawn? . . . and also produces within 24 to 60 hours of a sitting a bilingual " Hansard " for each of up to 18 meetings of committees on a single day? And all this in addition to other urgent parliamentary and government printing needs!

* 64 K bytes of core represents 64,000 characters (a character being a letter, numeral or equivalent).

Planning and Development of Systems for the House of Canada

The principal parliamentary publications of the House of Commons of Canada (for most of which the Senate has a counterpart) are the following:

1. Order Paper (officially known as " Order of Business and Notices ").
2. Votes and Proceedings and Sessional Journals.
3. Debates (daily *Hansard* and sessional bound volumes).
4. Committee " Hansards " and Reports to the House.
5. Bills (Government, Private and Private Members).
6. Standing Orders.
7. Indexes to Debates, Journals, Committee Proceedings, etc.

All of these are published in English and in French, the two official languages of Canada. Some are published as separate English and French editions; others as a single edition with a matched-column page-by-page bilingual format.

Before resuming further experimental trials, officers of the House of Commons surveyed the computerised-publication activities of legislative jurisdictions in other countries. The facilities and systems of the DSS Printing Operations consisted of a medium-sized computer and a text-editing program which, in spite of some attractive features, lacked many others required by the House of Commons as well as being too cumbersome for House of Commons use. A visit was made to the Pennsylvania Legislative Data Processing Centre as well as to the Conference Meetings of the Council of State Legislatures and Governments held in Miami, Florida, which revealed a number of problems associated with legislative text-editing and printing systems. The latter also led to the acquisition by Queen's University, and availability to the House of Commons, of the services of an expert in the field of computerised text-editing who was then Vice-President of a data-retrieval corporation. By joining the staff of Queen's University Law Faculty's QUIC/LAW Project, he became available as a consultant for House of Commons development projects. The QUIC/LAW Project was incorporated as QL Systems Limited in 1973 and, in addition to the development-consulting services to the Houses of Commons, this firm hold a number of government contracts and, in particular, with the Justice Department concerning the 1970 Revised Statutes of Canada. More recently, in conjunction with a forthcoming study to be undertaken under the auspices of the Association of Secretaries General of Parliaments of the Inter-Parliamentary Union, the legislative facilities of Italy and Western Germany were also discussed with parliamentary officers in those countries and during their visits to Canada.

Because of a shortage of trained personnel and the expenditures involved in terms of time and money, it was decided not to place the emphasis or priority on re-inputting or re-keyboarding of existing parliamentary data into computer banks for information-retrieval

purposes (a library or archive role in any event) but rather to " start from scratch " with current material using the magnetic tapes made available as a by-product of printing the various publications published by or for Parliament. As the system also appeared to lend itself as well to a machine-readable aid to translations of English and French texts, the chosen course of action might also speed up such an aid.

To develop the text-editing software that would meet the needs peculiar to the House of Commons, a team of systems analysts and programmers was drawn from the Printing Bureau and the computer manufacturer and placed under the leadership of the expert in the field of computerised text-editing from Queen's University mentioned above. The best features of IBM's Administrative Terminal System (ATS) text-editing system were blended with a large number of additional enhancements and improvements to create a modified text-editing program with capabilities peculiar to the specific operating requirements of the House of Commons. Generally speaking, the modified system minimised the number of special codes for bilingual printing as well as the number of formating commands by terminal operators on-site at the House of Commons. Programs were also developed to automatically recognize standard features of House of Commons publications including those produced bilingually or as separate English and French editions.

To avoid the pitfalls of the initial experimental trials of 1968–9, the following basic principles were adopted for application in the testing of the the newly modified text-editing facilities:

1. Provide full back-up by traditional means for any proposed computerised-publishing activity and maintain it until all problems encountered with the new system have been solved.
2. Tackle first the easiest-handled publications leaving the most difficult until the last when greater knowledge, skills and experience should be available from the staff; for example, start with the Order Paper rather than *Hansard.*
3. Give priority to those publications where costs can be most effectively reduced unless desirable services can be more readily or effectively made available sooner.
4. Accomodate systems-development experts and consultants on-site until each project is fully phased in and operating satisfactorily.
5. Keep in mind future potential uses of these data banks for information retrieval, automated indexing aids, and machine-readable language-translation aids from English to French and vice-versa.

Implementation of the House of Commons System

The system installed in 1965 at the DSS Printing Operations plant was enhanced in 1969 because of the physical limitations of hot-metal typesetting machines and logistics problems associated with paper tape. To achieve a greater degree of automation, the new hardware configuration consisted of:

(*a*) A Linotron 505 magnetic-tape-driven cathode ray tube (CRT) phototypesetting machine and
(*b*) An RCA Spectra 70/45 computer with 262K bytes of core.

The software to run in conjunction with this equipment basically consisted of:

(1) The IBM Administrative Terminal System (ATS) software modified (for House of Commons' use as already described) so that it would run on the Spectra system. Enhancements of the House of Commons' modified system included on-line text-diagnostic facilities and, more significantly, the ability to operate using CRT terminals as well as IBM 2741 or equivalant typewriter terminals.
(2) A generalised page make-up program.
(3) A specialised page make-up program to achieve uniform pagination on the separate daily editions of the French and English issues of the Commons (and Senate) Debates. As mentioned earlier, this feature enables Members of Parliament and other users to cite a page reference common to both the English and French versions when referring to or quoting citations from previous issues or volumes of Hansard.
(4) A specialised page make-up program to produce any bilingual publication, two-columns per page, as a single edition. This program (referred to earlier) matches corresponding English and French texts on a paragraph-by-paragraph basis and top-aligns these paragraphs in adjacent columns on the page.
(5) A program which scans the text being processed through the typographic system and, upon finding pre-defined characteristics, inserts appropriate photocomposition formating or type-selection codes. This program, as explained earlier, avoids the necessity of inputting typesetting codes thereby facilitating the off-site capture of input from on-site sources.

" *Phasing in* " *of the House of Commons Order Paper*

Because the Order Paper involved the daily resequencing and repositioning of a number of small entries, particularly a large number of written parliamentary inquiries (questions), the additional capabilities added to the text-editing programs enabled these short entries to be assembled and recompiled by the on-site terminal operator through simple daily procedures. Other enhancements provided automated checking for errors and standardisation of formating. With the growing demand for bilingual parliamentary publications with facing matched-columns in English and in French on each page, other programs had to be devised to automatically check that English and French versions corresponded and that equivalence of citations between English and French versions was ensured.

The system for the House of Commons' Order Paper was first

developed by visits of House of Commons' staff to Queen's University at Kingston and was later initially tested using the computer facilities at the University of Ottawa accessed by four on-site terminals installed for use of the Commons' Journals Branch in the Centre Block of the Parliament Buildings. Following these tests and operator training in the basic procedures, the system was implemented with DSS Printing Operations' computer in parallel with the hot-metal system; *i.e.* an Order Paper produced by the traditional messenger-delivered hard copy hot-lead process as well as one produced at the same time by the off-site computerised photocomposition process located in Hull, Quebec, from on-site terminals located in the Parliament Buildings in Ottawa. In this way, defects in the computerised version were readily identified and easily corrected day by day. The hot-metal version was discontinued within a matter of weeks with resultant savings in printing costs of 25% or more since the new system replaced the old. With a total printing budget approaching 4 million dollars annually for the House of Commons alone, a 25% reduction or close to a million dollars annually is a significant saving.

Current Hardware and Software Status

In 1972, to ensure that the processing and production of critically scheduled parliamentary publications work were not disrupted by hardware malfunctions, DSS Printing Operations installed a second computer to back up the primary system (RCA Spectra 70/45 computer and a Linotron 505 Phototypesetter) supplemented in 1973 by a second phototypesetter, a Photon 7000, which then became the primary device with the Linotron 505 relegated to a secondary or back-up role. One of the typical advantages gained is that these two phototypesetting machines can complement, substitute, or support each other by either sharing separate jobs or even splitting a job (*e.g.* by standardising on Times Roman typeface instead of several such as Excelsior, Modern, etc.). By April 1974 the RCA (or Univac system as it had then become) was replaced by twin IBM 370/135 computers each with 240K bytes of memory. The purpose of replacement was to provide for growth more effectively, particularly to meet expanding photocomposition and terminal workloads and to serve such additional needs of the House of Commons as well. The co-operatively developed software for the former RCA system was converted (again by co-operative participation) to run on the new IBM configuration which, by use of its virtual-memory operating system, allows for improved multiprogramming capability.

Current Preparations and Future Plans for Printing and Retrieval of Information from Parliamentry Publications

The preliminary stages for a parallel run of a bilingual edition of the Votes and Proceedings (in lieu of the present separate English and French editions) by input of copy from on-site terminals to a remote

off-site computerised photocomposition typesetting system in the same manner followed for the Order Paper have been programmed and have successfully undergone initial tests on the University of Ottawa's computer. The first stage of a parallel run for implementation on DSS Printing Operations' facilities has been completed and correction of discrepancies between the old and new versions is proceeding as contemplated. No significant staff training will be required since the terminal operators now handling the Order Paper are the same as those now handling the Votes and Proceedings. If all goes well, the target implementation date should coincide with the opening of the next session of Parliament.

As Committee Reports to the House are also printed in Votes and Proceedings (as well as in the published Committee " Hansards "), terminal operators are being trained simultaneously on a terminal in the Committees Branch located in another building which also houses the committee reporting staff for whom terminals will also be installed on a mutually delayed co-operative phasing-in arrangement agreed to with DSS Printing Operations (because of current systems changes and shake-downs they are making in readiness for such workloads). The House of Commons Debates (*Hansard*) has been scheduled as the last to be phased in.

Because of divided responsibilities for some Bills, Statutes and Regulations delegated by Parliament, principally to the Department of Justice and the Queen's Printer in the federal Government's Department of Supply and Services, programs have been developed separately and independently mainly to serve the special needs common to each for the respective areas of jurisdiction (but recently with growing co-operation, greater exchange of ideas and combined efforts). Although the Department of Justice drafts Bills initiated by the Ministry, it does not draft Private Members' Public Bills (nor Private Bills) which have outnumbered Government Bills by about 5 to 1 in recent years (but with shorter texts). The needs of M.P.s, the House and its committees, for ready reference to the exact texts of the existing law as amended to date as soon as the legislative program is disclosed in the Speech from the Throne or as supplemented by further Bills during the course of a session are presently so badly served that even the statutory intent for ready availability is rarely met. The situation with respect to the additional needs of the courts, the business and legal fraternities and indeed the public domain to know the up-to-date law whenever amendments to statutes or new laws are enacted is even worse. Since the publication by this process of the 1970 Revised Statutes of Canada, the extension of computerised publication, with virtually instant retrieval capabilities of or to all Bills from introduction to enactment as law and to the sessional separate and bound Statutes (including revisions and consolidations thereof as well as of Statutory Instruments) should provide a vehicle for overcoming justifiable pleas of " ignorance of the law "; not only by those who legislate, who interpret, and who admini-

ster the law, but by those who defend the public against ignorance of the law. Bill C–23, entitled " Statute Revision Act ", given first reading on April 15, 1974, appears to be directed towards greater access.

At the same time as the House of Commons is implementing the computerised process of printing its parliamentary publications, other steps are being taken simultaneously to develop the potential application and uses of the machine-readable versions (magnetic tapes) produced as a by-product of the printing operations for ultimate use by the House of Commons. For example, segments of the magnetic tapes used to publish the daily editions of *Hansard* are being used experimentally as data bases or oral questions, written questions, and orders for returns for development within a retrieval system and which can now be demonstrated by the House of Commons' consultants. Mr. Speaker has also authorised the development, initially for the Committee on Regulations and other Statutory Instruments and later for all Members of Parliament, of a retrieval system from the magnetic tapes produced as a by-product of printing the Statutes and Regulations.

A start has also been made on developing computerised editing of the printed indexes to *Hansard*, Journals, and Committees' published proceedings. To this end terminals have been placed in the Index and Committees Branches to train staff in the use and operation of these facilities, not only for preparing the indexes for printing but as an automated aid to the irreplaceable mental process of indexing. A new text-editing system for the use of indexers is planned for development as soon as the indexing staff becomes familiar and proficient in the use and operation of typewriter terminals and CRT terminals.

To sum up: The first broad objective is to publish all parliamentary publications bilingually by computerised processes which produce a simultaneous data-base as a by-product at little or no extra cost in both official languages thereby bringing a second broad objective of automated information retrieval within reach almost as soon as published and, as a third broad objective providing, as another by-product, machine-readable data bases of all English and French texts printed in any parliamentary publication (including the Statutes and Statutory Orders and Regulations) for computerised searches to aid in translation to and/or from the two official languages.

IX. WESTMINSTER AND EUROPEAN COMMUNITIES LEGISLATION

By J. R. Rose

An Acting Deputy Principal Clerk, House of Commons

The United Kingdom joined the European Economic Community on Ist January, 1973. This was an event of the greatest historical and constitutional importance for the U.K. Parliament. The European Communities Act 1972 (which made the legislative changes required to implement the Treaty of Accession) gave to present *and future* Community law, which under the Community Treaties is directly applicable in Member States, the force of law in the U.K., and section 2 provided " so far as it can constitutionally be achieved, for Community law to prevail over conflicting provisions of future Acts of Parliament ".[1] While it is generally agreed that the Act can, like any other, be amended or repealed by any later Act of the U.K. Parliament, which thus remains sovereign, it is contended that any such Act must use " the most positive, clear and express provision ".[2]

During 1972 the European Communities Bill was debated for a total of thirty-five days in the two Houses of Parliament.[3] As early as the Second Reading, on 15th February, 1972, the Chancellor of the Duchy of Lancaster on behalf of the Government expressed his deep concern " that Parliament, as well as United Kingdom Ministers, should play its full part when future Community policies are being formulated, and in particular that Parliament should be informed about and have an opportunity to consider at the formative stage those Community instruments which, when made by the Council, will be binding in this country ."[4] He proposed the setting up forthwith of an *ad hoc* committee of both Houses to consider what would be the most suitable method of ensuring adequate parliamentary scrutiny of draft Community laws. This proposal was not pursued in the House. The Select Committee on Procedure produced a Special Report in July,[5] recommending a review, by themselves or by another Select Committee with wide terms of reference, of all the problems for the Westminster Parliament of the U.K.'s entry to the Community. This Report received no response.

The Foster and Maybray-King Committees

The European Communities Bill received the Royal Assent on 17th October, but it was not until 21st December, only days before the U.K. became a Member of the Communities, that a Select Committee of the Commons was set up, after a short debate[6] and without a vote, " to consider procedures for scrutiny of proposals for European Community Secondary Legislation ".[7] This Committee chose Sir John Foster, M.P.,

as its Chairman, and is now commonly called the Foster Committee. One day earlier[8] the House of Lords appointed a similar Committee with Lord Maybray-King, a former Speaker of the House of Commons,[9] as its Chairman. The Committees were given the almost unprecedented power to confer with each other.

Although many had perhaps hoped that a joint committee of the two Houses could have been appointed, there were at least two reasons in favour of the establishment of separate Committees. Firstly, the roles of the two Houses " though complementary are different and separate "[10] and there is less pressure on time of Members of, and on time for debate in, the House of Lords. Secondly, political views on the Common Market diverged widely between the two Houses, the House of Lords having comparatively few Members who were actively hostile to British entry. This difference of view required and received reflection in the composition of the Committees.

Task of the Two Committees

In order to fulfil their task, the two Committees required first to discover the meaning of "proposals for European Community Secondary Legislation "and then, before recommending new procedures (if necessary), to examine the procedures whereby such proposals were prepared in the Commission, published, discussed in the various working groups under the Council of Ministers, in the European Parliament[11] and elsewhere, perhaps amended, and finally decided by the Council. The considerable amount of oral and written evidence taken by the two Committees and shared between them[12] throws a great deal of light on these legislative processes.[13]

Amongst the wider questions for the Committees' consideration were the following: could or should the U.K. Parliament establish relationships with the Commission so as to be informed of, and to attempt to influence the shape of, proposals before their publication? Could or should it mandate its delegation to the European Parliament, or require the delegation (or ask the Parliament) to keep it informed of developments in that Parliament? Was there anything to be learnt by it from the experience and procedures of the Parliaments of the six original Member countries? Could or should it exercise influence or control on its own Government before decisions were taken in the Council of Ministers, bearing in mind the secret and negotiatory nature of Council decision-making and the prospect at some future date of majority decisions there?[14] Still wider questions could be asked: would strong control procedures by a national Parliament inhibit or prevent the success of the Community idea, either by bringing Council decision-making to a halt or by preventing the evolution of a stronger and democratically elected European Parliament? Was there even a case for no control by national Parliaments, even if Community secondary legislation were to cover wider and wider spheres of activity as 1980, with projected economic and monetary union, approached?

First Reports of the two Committees

Both Committees set to work early in 1973, and both produced early interim (and unanimous) Reports. The Foster Committee, in a First Report dated 13th February, 1973,[15] incorporating oral evidence from the Chancellor of the Duchy of Lancaster,[16] defined secondary legislation (primary legislation being the Community Treaties themselves) as regulations, directives, decisions, the budget and instruments concluding treaties. Confining itself to the 300 or so instruments in the above categories which is the average annual number agreed to by the Council,[17] the Committee recommended that the Government should issue a written statement explaining the general effect and the legal and policy implications of each proposal for legislation, the Ministry taking primary responsibility, and the date of likely consideration by the Council of Ministers. It also recommended a monthly list giving the agenda of forthcoming meetings of the Council of Ministers, an oral statement on it in the House, and regular reports to the House after each Council meeting. Armed with this information, individual Members could inform themselves of Community proposals, and then use the existing procedures of the House for further action.

This Report was debated in the House on 18th April, 1973,[18] when the Leader of the House explained that the Government had already accepted and implemented the main recommendation, for the provision of written statements, and had issued the first monthly list of subjects likely to be taken in the Council of Ministers. The Government undertook also to make oral statements, whenever they thought it necessary, after Council meetings (but not before them, on their likely agenda). The details in the Report on which the Government took a different view, and in fact all the recommendations, could be reviewed, he suggested, in the light of experience. The Government motion " That this House takes note of the First Report from the Select Committee on European Community Secondary Legislation; endorses the Committee's view that Members are entitled to have early information about proposals for such legislation; accordingly welcomes the arrangements made for the issue of explanatory Departmental memoranda and the assurance given that Ministerial oral statements will be made whenever the substance of meetings of the Council of Ministers has warranted it; and will give a fair trial to the arrangements made with regard to monthly estimates of Council business " was agreed to without a division after an Opposition amendment, to approve the recommendations of the Committee *in toto*, had been rejected.

The Maybray-King Committee produced its First Report on 8th March.[19] This included written and oral evidence from, amongst others, Lord Diplock (a Lord of Appeal in Ordinary), the Lord Privy Seal (on behalf of the Government), and the Leader and Deputy Leader of the (Conservative) Delegation to the European Parliament.[20] The sole recommendation was that a sifting committee, preferably a joint com-

mittee of both Houses, should be established at once to sift all proposals for secondary legislation. No action followed this Report.

The evidence taken by the two Committees

After their First Reports, both Committees met regularly, but still separately, to take evidence until June, and the Foster Committee continued until late July. All the latter's evidence was taken in private. This evidence was published in each case as a single volume.[21] Both Committees visited Brussels, to see the Commission, and Strasbourg, to question Members and staff of the European Parliament. The Maybray-King Committee also visited the Hague, Bonn and Copenhagen. The Secretary General of the European Parliament visited London to give evidence to the Committees, and a Vice-President of the Commission, Senor Carlo Scarascia Mugnozza, paid a courtesy visit to them. The Foster Committee met informally for this visit, and this may well have been the first occasion on which the proceedings of a Select Committee were conducted totally in French! If it is not wrong to single out any particular sessions of the Foster Committee for special mention, that on 26th June, when Mr. Enoch Powell, M.P., was before the Committee, might have made an excellent television programme. Similarly an informal meeting with M. Ortoli, the President of the Commission, and the formal evidence given by Sir Christopher Soames, one of the two British Commissioners, were occasions of great interest to all who were present.

The Second Reports of the Two Committees

The Foster Committee held several meetings during the summer recess and its Second Report was only finally agreed to on 22nd October, very shortly before the Prorogation of the Session.[22] The Common Market issue continued to excite political passions; it therefore gave a great deal of satisfaction to the Committee and to Parliament as a whole, that the Report was unanimous and that only one division took place during its consideration.[23] The main theme of the Report was that substantial and important parts of U.K. law were now and would be made in new and different ways and that it was " central to the U.K. concept and structure of parliamentary democracy that control of the law-making processes lies with Parliament "; and that new and special procedures were therefore " necessary to make good so far as may be done the inroads made into that concept and structure by these new methods of making law ".[24]

The Committee believed that Parliament must both

> (*a*) receive the fullest and most accurate information about all proposals for European Community Secondary Legislation at the earliest possible stage and thereafter whenever new facts emerge or changes occur, and
> (*b*) provide for itself special facilities for reaching and expressing a conclusion on proposals before they are brought to decision in the Council of Ministers."[25]

The Government had suggested to the Foster Committee[26] the appointment of Standing Committees for the debate of proposals for European Community secondary legislation, but the Committee rejected this idea. Its main recommendation was for the appointment of a new and different Committee, for the Commons only, with all the powers of a Select Committee and with totally flexible procedures, to identify proposals of political and/or legal importance and to make recommendations as to their further consideration. This new Committee was to be served by Clerks and a new legal adviser. All its meetings were to be attended by a Minister with " specific responsibility to keep Parliament informed of all proposals, the Government's intentions concerning them, when they are likely to be (*a*) considered and (*b*) decided, and of all practical details concerning them ",[27] together with a new Law Officer of the Crown whose duty would be to inform Parliament of the legal consequences and implications of all proposals. This Committee was also to be assisted by a committee of officials which would carry out a preliminary sifting of all proposals into categories of relative importance.

The Foster Committee recommended no new rules to ensure the implementation of the recommendations of this new Committee for the debating of important proposals. It considered that it was entirely within the power of a government to give full effect to any such recommendations without any changes in Standing Orders, *e.g.* by undertaking to provide, and providing, time as required by the recommendations of the new Committee (para. 72) and by accepting, as any Government must, that it would not cause or permit the law of the U.K. to be changed contrary to a resolution of the House. Further, if a matter were found to be of importance by the scrutiny Committee, and if it was urgent but the Government had not yet found time for it to be discussed, there would obviously be a case for a debate under the existing S.O. No. 9 procedure.[28]

In Part III of its Report, on debates and questions on Community matters in general, the Foster Committee recommended reports by the Government to the House twice yearly with a day's debate on each, and four further days per Session with subjects chosen on two days by the Government and two by the Opposition. It also recommended a special place in the Question Time rota for questions relating wholly to E.E.C. matters. In conclusion, looking to the future, it recognised that further methods of dealing with E.E.C. matters would need to be evolved.[29]

This Report was debated on 24th January, 1974, on a Motion to take note, which was agreed to without a division. [30] The Government accepted the recommendation for a " House sifting Committee ", and agreed generally with the functions and powers recommended. They did, however, reject some of the points of detail, and had reservations about others.[31] Before further action was taken in the House of Commons, Parliament was dissolved and the General Election took place on 28th February.

The House of Lords had made slightly more progress before the

Dissolution of Parliament. The Maybray-King Committee made its Second Report, which was again unanimous, on 25th July, 1973.[32] This Report contained a detailed exposé of the workings of the Community, and recommended a full-scale Select Committee large enough to appoint sub-committees to cover the whole range of Community activities. It was debated on 6th December.[33] The Procedure Committee reported on 30th January, 1974, on the proposed terms of reference of the Committee,[34] and these were agreed to by the House of Lords on 5th February [35] as follows:

> That a Select Committee be appointed to consider Community proposals, whether in draft or otherwise, to obtain all necessary information about them, and to make reports on those which, in the opinion of the Committee, raise important questions of policy or principle and on other questions to which the Committee consider that the special attention of the House should be drawn.

The Committee was given powers, amongst others, to appoint sub-Committees and to co-opt other peers to them, to send for persons, papers and records, to adjourn from place to place, to appoint specialist advisers, etc. Members were not nominated before the Dissolution.

Developments in the New Parliament

The new Parliament met for the first time on 6th March. The new minority Labour Government[36] was firmly committed to renegotiation of the terms on which the U.K. had joined the Community. As early as 18th March, in the speech to wind up the debate on the Address, the new Leader of the House of Commons said that the standing of the House had perhaps " fallen lower than was healthy in our parliamentary democracy ". Perhaps the most important change to be made was to " stem and reverse the erosion of our powers which we have suffered since our accession to the E.E.C. " He saw "the Foster Report as a means of restoring to the House the sovereignty that has been eroded since the Treaty of Accession ".[37] In a written answer on 1st May the Foreign Secretary thought that at the end of the renegotiations "Section 2 of the European Communities Act will need to be scrutinised very closely to see how far it fits in with our requirements and with the overall desire of this House to maintain control of its own affairs ".[38]

On 2nd May the new Government's response to the Foster Report was given in a long written reply in *Hansard*.[39] A Motion to set up the " scrutiny " committee had been tabled, and Ministers and Departments would do all they could to assist it. A legal adviser was to be appointed as recommended, and the Government would provide " further staffing support including research assistance, to the committee, as the need shows itself ". The Government accepted that ministerial oral statements should accompany the monthly written forecasts of Council business, that reports on E.E.C. matters generally should be made to Parliament twice a year, that they should be debated on two days, that four further days should be allocated to general E.E.C. matters, and that a place for questions on E.E.C. matters should be included in the

Questions rota. Departmental Ministers would continue to be answerable for the substance of particular proposals for secondary legislation, but the Foreign Secretary would assume overall responsibility for the supply of information to the House about such proposals. The recommendation for a new Law Officer was not accepted, but would be kept under review. The present Law Officers, however, would be available to advise the committee on particular proposals. It was the Government's " firm intention ", if the scrutiny committee made its views known in sufficient time, " that the debate on any proposal which the committee reports as being of extreme urgency and importance should take place before a final decision is taken in the Council of Ministers ". Finally, if experience showed them necessary, the consideration of further measures was not ruled out to secure a proper degree of parliamentary control in these matters.

On 7th May the Motion to set up the new committee in the House of Commons was agreed to without debate, as follows:

> That a Committee be appointed to consider draft proposals by the Commission of the European Economic Community for secondary legislation and other documents published by the Commission for submission to the Council of Ministers, and to report their opinion as to whether such proposals or other documents raise questions of legal or political importance, to give their reasons for their opinion, to report what matters of principle or policy may be affected thereby, and to what extent they may affect the law of the United Kingdom, and to make recommendations for the further consideration of such proposals and other documents by the House.[10]

These terms of reference were in several respects wider than those recommended by the Foster Committee. Sixteen Members were named[41] and the Committee was given powers, amongst others, to appoint specialist advisers, to send for persons, papers and records, to sit during adjournments, to adjourn from place to place, and to appoint sub-committees.

The House of Lords established their European Communities Committee on 10th April, after a very brief debate.[42] Its terms of reference were identical to those agreed to in the last Parliament. Its Members were appointed on 1st May, with Lord Diamond as Chairman, and it held its first meeting on 8th May.

At the time of writing, therefore, fifteen months after the U.K.'s accession to the Community both Houses of Parliament have just established Communities to scrutinise proposals for E.E.C. laws, etc.

In the same month a symposium on European integration and the future of Parliaments in Europe has been held in Luxembourg, and the Press has leaked the contents of an as yet unpublished report of 237 pages prepared by officials of the European Parliament, " on the loss of power suffered by national Parliaments, including Westminster, as a result of membership of the Common Market ".[43]

The Common Market issue has remained at the centre of political controversy in the U.K. and it cannot be said that the U.K. Parliament has moved as fast as the Parliaments of Denmark and Ireland,[44] the

other new members of the Community, to introduce new procedures in relation to E.E.C. matters. But perhaps it has moved surely. Only time will tell.

References

[1] *Hansard*, 13th June, 1972, col. 1316.
[2] *Hansard*, Standing Committee H., 15th February, 1973, col. 735.
[3] See K.R. Mackenzie's article on the passage of the Bill in THE TABLE, Volume XLI, p. 28.
[4] *Hansard*, 15th February, 1972, col. 274.
[5] Third Special Report, 1971–2, H.C. 448.
[6] *Hansard*, 21st December, 1972, cols. 1741–53.
[7] Although called secondary legislation to distinguish it from primary legislation (the basic treaties), this legislation is not necessarily secondary in importance.
[8] As Dr. Horace King, M.P. This Committee is also commonly called after its Chairman.
[9] *Hansard* (House of Lords) 20th December, 1972, cols. 1088–1114
[10] Foster Second Report, para. 75.
[11] So commonly called, although its original title of Assembly is still preferred by many.
[12] Although they never conferred together formally all papers were freely shared.
[13] See, *e.g.*, Foster Second Report, Evidence, H.C. 463 II, pp. 13ff, 160ff.
[14] Which would mean that any one national Government would be powerless to fulfil its Parliament's wishes if it found itself in a minority.
[15] H.C. 143.
[16] Who was then Minister responsible for co-ordinating Government policies towards the E.E.C.
[17] As opposed to the mass of minor legislation made by the Commission. See footnote 29.
[18] *Hansard*, 18th April, 1973, cols. 550–619.
[19] House of Lords paper (67).
[20] There was then and there is now, no Labour party representation on the Delegation, and the U.K. has filled no more than 22 of its 36 seats.
[21] House of Commons paper 463 ii, 25th October, 1973, House of Lords paper (194), 25th July 1973.
[22] House of Commons paper, 463–I.
[23] See Committee Minutes, H.C. 463–I, p.xxxvii.
[24] Second Report, para. 36.
[25] Second Report, para. 53.
[26] See Second Report, Evidence (H.C. 463 II), pp. 272 to 293.
[27] Second Report, para. 46.
[28] Second Report, para. 80.
[29] It also believed essential further study by Parliament of Commission-made law which at present, due to lack of a proposal stage, cannot be influenced in any way by national Parliaments (para. 12).
[30] *Hansard*, 24th January, 1974, cols. 1906–2025.
[31] See the speech of the Leader of the House, cols. 1906–15.
[32] House of Lords paper (194)
[33] *Hansard* (House of Lords), 6th December, 1973, cols. 759–839.
[34] First Report, House of Lords paper (58).
[35] *Hansard* (House of Lords), 5th February 1974, cols. 713–18.
[36] Which included all five of the Labour Members who had served on the Foster Committee, three of them being in the Cabinet.
[37] *Hansard*, 18th March, 1974, cols. 796–7.
[38] *Hansard*, 1st May, 1974, col. 1127w.
[39] *Hansard*, 2nd May, 1974, cols. 523–5w.
[40] *Hansard*, 7th May, cols. 361–2.
[41] Of whom Mr. John Davies, Chancellor of the Duchy of Lancaster in the previous Conservative Government, was chosen Chairman at the first meeting of the Committee.
[42] *Hansard* (House of Lords) 10th April, 1974, cols. 1229–33.
[43] *The Guardian*, 1st May, 1974.
[44] The Danish Folketing's "Market Committee" early in 1973 established strong control procedures and the Irish Parliament established a "joint Committee on the secondary legislation of the European Communities" on 26th July, 1973.

X. THE ASSOCIATION OF CLERKS-AT-THE-TABLE IN CANADA

By Joseph Maingot
Parliamentary Counsel, House of Commons, Canada

Some time prior to a meeting of the Canadian Area Conference of the C.P.A. to be held in Ottawa late March 1969, Mr. Alistair Fraser, Clerk of the House of Commons, got in touch with the Clerks of the provincial legislatures suggesting that they accompany their Speaker to Ottawa with a view to discussing with the Clerks a form of association of parliamentary Clerks in Canada. For many years there had been informal communications usually by telephone between the Clerks of various provinces and of Parliament inquiring about what other jurisdictions would do or have done in certain procedural circumstances. Most of the Clerks had on one occasion or another spoken with their colleagues in other provinces or in Ottawa and Mr. Fraser felt that this should be brought a step further and provide a permanent forum for the exchange of problems with which legislatures are always confronted.

This suggestion brought Clerks of seven of the ten provinces to Ottawa (Newfoundland, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba and Alberta) and the founding meeting of the Association took place on 28th and 29th March, 1969 in the Parliament Buildings with the seven provinces represented along with the Senate and House of Commons. Mr. Fraser was able to advise those present that the Clerks of the three provinces which were absent (Prince Edward Island, Saskatchewan and British Columbia) had told him of their desire and consequently it was agreed to establish an association of parliamentary Clerks.

A draft proposal of the rules had been prepared beforehand and it was felt that to avoid confusion with the ' parent ', the name should be " Association of Clerks-at-the-Table in Canada " rather than " Society of Clerks-at-the-Table in Canada ". The draft also prompted a legitimate point of order by the Clerk of the Senate as he noticed that the proposed membership did not include Senate representation when after all the founding meeting was taking place in the Senate Smoking Room.

There was general agreement that the founding Officers be from Ottawa and appropriately enough Mr. Alistair Fraser, Clerk of the House of Commons, was elected President. The other founding officers were Mr. Robert Fortier, Clerk of the Senate, Vice-President, and Joseph Maingot, then Assistant Parliamentary Counsel, Secretary. Their tenure was to be of a temporary nature and would continue until September which was a time then generally felt most convenient from the

point of view of the sitting of the legislatures and of Parliament. September 1969 was also the date when the Speakers of the Commonwealth Parliaments were to meet at Ottawa and the Speakers of the provincial legislatures of Canada having been invited, the Clerks would be accompanying them.

Membership was open to any parliamentary official having such duties in the Senate and House of Commons of Canada and the provincial legislatures as those of Clerk, Clerk-Assistant, Second Clerk-Assistant, Third Clerk-Assistant or who combines the duties of a Clerk-at-the-Table and Law Clerk. It was also agreed that the objects would be as follows:

(*a*) to provide a means by which the parliamentary practice of the various legislative chambers of the provinces and of the Senate and House of Commons in Canada may be made more accessible to Clerks at the Table in the exercise of their professional duties;

(*b*) to foster among such officers of the Senate and House of Commons and the legislatures a mutual interest in their duties, rights and privileges; and

(*c*) to hold at least once a year and from place to place, a meeting to foster discussions of matters of mutual interest and to exchange information upon all subjects relative to their duties.

After discarding a proposal to select officers from Parliament and then from the legislatures according to the entry of their province into Confederation as being too cumbersome among other reasons, it was agreed that the officers of the Association should simply be a President, a Vice-President and a Secretary who should be selected from time to time.

The following procedural topics were discussed during the founding meeting: Estimates, Private Members' Hour, Committees of Supply and of Ways and Means, and Standing Committees sitting beyond an adjournment and a prorogation.

The meeting was recorded electronically and it was decided that the transcript would be edited and forwarded to all menbers along with minutes.

Early September 1969 saw the Speakers of the House of Lords and of the U.K. House of Commons and of many of the Commonwealth countries united in Ottawa in Conference. The Clerks of the provincial legislatures who had accompanied their Speakers to this Conference, and the representatives from Parliament flew to Quebec City for the second meeting of the Association, there having been in the interim an invitation by the now retired Secretary-General of the National Assembly of Quebec, M. Jean Senecal. (A meeting in Ottawa also took place with the Clerks of the Commonwealth Parliaments who had accompanied their Speaker.)

The meeting took place in the Chateau Frontenac with six provinces represented (Alberta, British Columbia, New Brunswick, Nova Scotia,

Quebec and Saskatchewan) along with the Senate and House of Commons.

At the outset it was agreed that the editing of the transcript was a bigger undertaking than expected (the Secretary complained) and accordingly it was agreed that minutes with synopsis would suffice bearing in mind that the facilities for recording and transcribing may not always be available on site.

The following agenda items were thoroughly aired: rescinding a vote, Supply and Ways and Means (a favourite), media reporting, use of committees in the legislative process, and participation of provincial clerks at international parliamentary conferences. The Clerk of the Alberta legislature invited the members to hold the 1970 meeting in Edmonton, Alberta, which was promptly accepted, and in the light of this offer and acceptance Mr. William H. MacDonald, Clerk of the Legislative Assembly of Alberta was elected President. Mr. Ray W. Dixon, Clerk of the Legislative Assembly of New Brunswick was elected Vice-President and Mr. Joseph Maingot, Secretary.

Sometime following the 1969 meeting correspondence ensued as to the date of the 1970 annual meeting. It was agreed that August was probably the most convenient time for parliamentary clerks. The best-laid plans often go astray, however, and having been so well received in Quebec City the participants in Edmonton, Alberta were disappointed to hear that their collegues from Quebec would be unable to attend due to a special session of the legislature being called at that time.

The meeting of the Association at Edmonton on 6th and 7th August, 1970, was highlighted by the fact that it was opened by the Premier of the Province, Hon. E. E. Strom. This obviously reflected the high regard in which the Clerk, Mr. W. H. MacDonald was held by the members of his legislature.

The 1970 meeting was attended by the representatives of six provinces and from the Senate and House of Commons. In addition an invitation had been extended to the Clerk of the Council of the Northwest Territories as an observer. For those uninitiated in Canadian geography the capital of these territories is a mere 700 miles north of Edmonton. The matters discussed in Edmonton included the role and functions of the Public Accounts Committee and of the provincial Auditor General vis à vis this Committee; amending the Standing Orders; Procedure following defeat of a vote in Committee of Supply; the control by proponents over private Bills after first reading; recommendations and money Bills; suspension of standing orders; relevancy in debate; and resolving procedural problems where no precedent is available or the authorities are not clear. In addition, the representatives of the House of Commons gave the members a synopsis of the scope of changes incorporated in the new standing orders and the Speaker's rulings based on them, and a review of the proceedings of the committee studying the question of televising the proceedings in the House of Commons. Also the question once again was raised respecting the participation of

provincial clerks at C.P.A. and I.P.U. meetings. Reports from members who recently attended such meetings were that countries such as India and U.S.A. had expressed concern in view of the large number of states within their countries.

Edmonton is in the western part of Canada, a country over 3,000 miles in length, and since the east wished to host a meeting the Vice-President extended an invitation for the 1971 meeting to be held in New Brunswick, which was duly accepted. Thereupon Mr. Ray W. Dixon of New Brunswick our Vice-President became President. Mr. Gordon Barnhart of Saskatchewan became Vice-President and Mr. Maingot remained as Secretary.

Sometime following the 1970 meeting a provincial election took place in New Brunswick. Such an event would normally not affect the Association, nor the outcome which involved a change in Government. However, it came to pass that our newly elected President saw fit to publicly support a candidate at that election (who opposed another candidate who was eventually elected Member and then Speaker) and thus New Brunswick found itself with a new Clerk, Mr. J. Robert Howie (a most delightful person who has since resigned that post having successfully run as a candidate for the House of Commons in 1972). Mr. Howie having been advised by his predecessor, Mr. Dixon, about the impending meeting, promptly sent word that he should be grateful to host the meeting, funds having been previously allocated.

The 1971 meeting was therefore held on 23rd and 24th July in Fredericton, New Brunswick, which was immediately prior to the Canadian Area Conference of the C.P.A. in Halifax, Nova Scotia, a neighbouring province. It had been decided in the interim that since the Speaker of the Nova Scotia legislature had invited our members to attend this Conference, our meeting would take place before and those who wished could go on to Halifax. The Fredericton meeting which was opened by the Hon. Lawrence Garvie, Speaker of the Legislative Assembly, saw representatives from six provinces along with those from the Senate and House of Commons present and produced a change in the rules of the Association. The membership was extended to include the representatives from the two territories in Canada, the Northwest Territories and the Yukon Territory and, the Clerk of the Northwest Territories was in attendance. We also had three observers in attendance, one of whom was Mr. Curtis Strachan, Clerk of Parliament, St. George, Grenada, West Indies, who had spent some time earlier in Ottawa.

At this meeting the members discussed the question of compiling rulings of importance made by Speakers of Legislatures and it was agreed that such rulings would be sent to Ottawa once a year in the spring to be selected and form part of a volume to be produced later in the same year. The topics discussed in 1971 included the question of countermanding a proclamation proclaiming a special session. Two provinces, Quebec and Saskatchewan, had this experience where a special session was called in the light of an emergency which subse-

quently was settled before the date of commencement of the special session. Items new to the annual meeting which were discussed included terms of reference to committeess and substantive amendments.

Mr. Gordon Barnhart, Clerk of the Legislative Assembly of Saskatchewan and Vice-President, who had chaired the meeting and had extended an invitation to meet in Regina, Saskatchewan in 1972, was elected President. Mr. Ian Horne, the then Clerk-Assistant of the British Columbia legislature was elected Vice-President and Mr. W. H. Remnant the Clerk of the Northwest Territories was elected Secretary.

Following a short interval, New Brunswick produced a verbatim transcript of the proceedings which made the Secretary's work a lot easier. We therefore were able to obtain both a transcript and Minutes setting out page references in the transcript where topics were discussed and there being two official languages in Canada, the Minutes are produced in English and in French.

The agenda increased from year to year and in 1972 at Regina the meeting extended to three days, 24th to 26th August, and once again it was held prior to the Canadian Area Conference of the C.P.A. which was taking place in Quebec City, and to which the members had been invited. For the first time representatives from all ten provinces and the two territories were present along with representatives from the House of Commons. Most of the agenda items were now accompanied by a supporting paper or synopsis of the topic to be discussed which had been circulated some time before the meeting through the Secretary.

The new topics brought up in 1972 included closure in a Committee of the Whole, suspension of the rules for emergency debate, sessional orders, the structure and administrative support for committees, the rule of the Statutory Instruments committee. An interesting matter was brought up by the Clerk-Assistant from Alberta which experienced a sweeping change in membership in that legislature. It related to problems attendant upon a legislature a vast majority of whom were new members and who were not prepared to accept the traditional role of the opposition Member and of the back-bencher—particularly where the new government was in agreement. On the other hand, *plus ça change, plus c'est la même chose.*

It had become the trend to elect as President the Clerk of the Legislature who would be hosting the meeting the next year and as Vice-President, the Clerk of the Legislature who would be hosting the meeting for the year following. However, it was not always apparent to a Clerk that he would be in a position to extend an invitation and therefore to avoid any problems we now leave it to the executive to receive invitations and to determine the venue of the meeting. This is accomplished informally during the year by 'phone calls with the various Clerks and is worked out to everyone's satisfaction. Mr. Binx Remnant, the Clerk of the Northwest Territories, was elected President, M. René Blondin, the Secretary General of the National Assembly of the Province of Quebec, was elected Vice-President, and the first female Clerk-at-the-

Table in Canada, Merry Harper, Clerk-Assistant from Saskatchewan was elected Secretary.

The meeting in 1973 was held on 16th and 17th August at Victoria, British Columbia, on the shores of the Pacific Ocean. New matters discussed were the confidentialty of a committee report before tabling, including problems arising from the use of the material by committee staff; proceedings in Parliament and freedom of speech; debating Speakers' rulings under the guise of points of order; procedure in relation to third and fourth parties; Motions for returns; Clerks and advice to Members; and standing committees sitting beyond a prorogation.

The meetings now take on the appearance of a well run yet informal seminar. The person putting forth the topic has previously circulated a background paper and put the topic or problem (which he may have encountered since the last meeting) before the meeting. It is generally felt that all members receive a great deal of benefit from these annual meetings and return to their respective jurisdictions perhaps a little more reinforced and at least confident that their collegues are faced with fairly similar difficulties. Clerks who are not able to attend receive copies of the minutes and a verbatim transcript to enable them to keep up to date.

XI. NORTHERN IRELAND ASSEMBLY: COMMITTEE ON STANDING ORDERS, *ETC.*

By J. M. Steele
Second Clerk Assistant

At the initial stormy meeting of the Northern Ireland Assembly on 31st July, 1973, the Presiding Officer, in accordance with the Direction[1] of the Secretary of State for Northern Ireland under Section 25(9) of the Constitution Act[2], invited proposals from Members of persons to serve on a Committee:

> to draw up and submit to the Assembly Standing Orders regulating the procedure of the Assembly and to make recommendations as to the place of and arrangements for future meetings. . . .

The omens for the success of this Committee were not propitious. The first meeting of the Assembly[3] ended in some disorder and a substantial block of Members had been at pains to make clear their opposition to the whole concept of the Assembly as embodied in the Constitution Act. The discussions which were to lead, five months later, to the formation of a " power-sharing " Executive had not even begun. It was therefore with a sense of mild foreboding that I found myself, as Clerk to the Committee, attending the first meeting of the Committee on 9th August. After considering the nominations which he received from Members, and bearing in mind the injunction in the Direction of the Secretary of State that he should "endeavour to the best of his ability to ensure that the Committee is representative of the various interests in the Assembly " the Presiding Officer had appointed eight Members to serve with him on the Committee. In the event one of those appointed declined to take any part in the proceedings and it was therefore the Presiding Officer, as ex-officio Chairman, and seven Members who on 9th August met to consider what procedure should be followed at the Committee and to determine a course of proceeding.

The matter of the Committee's own procedure, apart from its intrinsic importance to the Committee's deliberations, was significant in that it was in a sense a microcosm of the Committee's task as a whole. The Direction of the Secretary of State had laid down that the Presiding Officer should be Chairman of the Committee and that he should have a casting vote in addition to his vote as a member of the Committee but otherwise the procedure of the Committee was left to be determined by the Committee. In other words, when the Committee met for the first time it was of necessity in an almost total procedural vacuum. For Clerks used to operating under well-tried Standing Orders and customary procedures and with the strength of Erskine May to fall back on, this was, to put it mildly, a disconcerting experience. But without too

much trouble the Committee arrived at eight simple rules for the conduct of their proceedings[4] and, from the Clerks' point of view, the overall task of the Committee immediately assumed less imposing proportions. In fact the rules agreed on by the Committee stood up very well in practice and were not called into question at subsequent meetings, which perhaps said more for the goodwill of members of the Committee than it did for the rules themselves.

Having disposed of the question of its own procedure the Committee quickly got down to business. In all there were eight meetings usually lasting from 10.30 a.m. to around 5.30 p.m. and over 300 pages of evidence were taken from four different witnesses.[5] In addition the Committee spent two days visiting London, The Hague and Brussels for the purpose of examining different arrangements of seating in debating chambers, " automatic " voting systems, etc. The Report of the Committee[6] was ordered to be printed on 20th September, 1973, and issued to Members of the Assembly on 28th September. All in all it must be accepted that this was a considerable achievement and certainly in the context of the difficulties surrounding the proposed constitutional arrangements the Committee's Report was the first sign that things would go more or less according to the plan envisaged in the Constitution Act.

The Standing Orders drawn up by the Committee for submission to the Assembly were in general firmly based on practices which had been well tried both in the Parliament of Northern Ireland and elsewhere. There were, however, a number of novel features, some of which arose directly from the provisions of the Constitution Act and some of which were simply a desirable modernisation and simplification of earlier practice. In addition the Committee made a conscious effort to keep the language of the new Standing Orders as simple and self-explanatory as possible. In the latter endeavour they were so successful that to day the poor Clerks find Members, and others, much more ready to challenge the Clerks' interpretation of the rules of procedure than ever was the case in the past. However, I really must avoid displaying my disapproval of those who are not Clerks but who nevertheless have the temerity to claim understanding of the inner mysteries of procedure. To get away from that tack it may be of some interest to readers of THE TABLE if I mention some of the principal and more unusual features of the forty-six draft Standing Orders which were prepared by the Committee.

The general pattern of business envisaged in the draft Standing Orders was as follows:

Tuesday	2.15 p.m.–3.15 p.m.	Questions
	3.15 p.m.–6.30 p.m.	Executive business
	6.30 p.m.–7.00 p.m.	Adjournment debate
Wednesday	2.15 p.m.–3.15 p.m.	Questions
	3.15 p.m.–4.45 p.m.	Adjournment debate
	4.45 p.m.–9.30 p.m.	Executive business

Thursday	2.15 p.m.–3.15 p.m.	Questions
	3.15 p.m.–6.30 p.m.	Executive business
	6.30 p.m.–7.00 p.m.	Adjournment debate
Friday	11.00 a.m.–1.30 p.m.	Private Members' time

This was a departure in a number of respects from the pattern in the Northern Ireland House of Commons:

Tuesday	2.30 p.m.–3.15 p.m.	Questions
	3.15 p.m.–4.00 p.m.	Government business
	4.00 p.m.–6.00 p.m.	Private Members' business
	6.00 p.m.–6.30 p.m.	Adjournment debate
Wednesday	2.30 p.m.–3.15 p.m.	Questions
	3.15 p.m.–4.15 p.m.	Adjournment debate
	4.15 p.m.–10.00 p.m.	Government business
	10.00 p.m.–10.30 p.m.	Adjournment debate
Thursday	2.30 p.m.–3.15 p.m.	Questions
	3.15 p.m.–6.00 p.m.	Government business
	6.00 p.m.–6.30 p.m.	Adjournment debate

The thinking behind the changes was to take account of the increase in membership from 52 to 78 by giving slightly more time for both Executive and Private Members' business. However when the draft Standing Orders came before the Assembly the old pattern was promptly substituted for the one proposed and so far it has proved adequate, although in this it must be remembered that a group of Members are at present partially abstaining from attendance and that Executive business has been much lighter than is likely to be the case in future years. One feature which is common to the arrangement put forward by the Committee and the arrangement adopted by the Assembly and which may strike readers as odd is the standing provision for an adjournment debate after Questions on Wednesday. This is a hang-over from former Standing Orders which provided that the Commons should meet five days per week although in practice three days were sufficient, thus necessitating a Motion on Wednesdays " That this House at its rising tomorrow do adjourn until Tuesday next ". The " first adjournment ", as it became known, was a popular opportunity for raising constituency grievances, so much so that eventually it became necessary to limit it to a period of one hour. The reasons for its popularity were that attendance in the Chamber is always good immediately after Questions and also because that part of the day invariably receives relatively better coverage from the media. Thus we continue to have our first adjournment even when the original reason for it has disappeared. Another feature which may be of interest is the clear distinction which is drawn between the subjects which may be debated on the adjournment and the subjects which are appropriate to Private Members' time. Adjournment debates are confined to matters of administration with which a Department is connected or for which a Member of the Executive has a

responsibility, while in Private Members' time it is possible, on Motion, to raise matters outside the competence of the Executive, including, for example, security matters which are the responsibility of the United Kingdom Government.

The legislative process proposed by the Committee followed roughly the procedure which was used in the Northern Ireland House of Commons, *i.e.* First Reading, Second Reading, Committee, Report and Third Reading. This was accepted by the Assembly, as indeed was the great majority of the Standing Orders put forward by the Committee. A proposed Measure of the Assembly now goes through the following stages:

First Stage	—	Presentation
Second Stage	—	Consideration of general principles
Third Stage	—	Detailed consideration
Fourth Stage	—	Further consideration
Fifth Stage	—	Passing

The First Stage is formal and the Second Stage is for all purposes the same as the Second Reading of a Bill. The Third Stage is the equivalent of the former Committee Stage but now takes place in the Assembly, the Committee atmosphere being retained by dispensing with the normal rule against speaking more than once. Fourth Stage is a further opportunity of proposing amendments which have not been put forward at Third Stage. No debate is possible at Fifth Stage. In addition Standing Orders contain special provisions for the return of a proposed Measure to Third Stage when it has been referred back to the Assembly by the Secretary of State for Northern Ireland.

When it came to Standing Orders dealing with financial procedure the Committee scored some notable successes. We now have no Committee of Supply, and therefore no " Report Stage ". Estimates instead are considered within twelve " allotted days " in the Assembly itself, again with the rule against speaking more than once dispensed with. Similarly the " Money Resolution " is no longer with us in any form. We also thought we had eliminated " Ways and Means " but because of an obscure provision in the Northern Ireland exchequer and audit legislation this has had to be, temporarily, resurrected. A Standing Order, implementing a provision of the Constitution Act, prohibits the Assembly proceeding upon any proposed Measure or amendment which would have the effect of instituting a charge upon the public revenues without a recommendation from the Head of the Department of Finance.

In the Northern Ireland Parliament ministerial statements were subject only to elucidatory questions from Members. This often produced a lengthy round of debating and political points thinly disguised as Questions and the Committee therefore formulated the following Standing Order:

(1) Members of the Executive may make statements to the Assembly on matters for which the Executive is responsible.

(2) Notice of statements shall be given to the Speaker before noon on the day on which they are to be made.

(3) When a statement has been made as aforesaid, a Member may move "That the statement be noted" and Debate may then ensue but it shall be limited to a period of half an hour and in it no Member may speak for more than five minutes."

This procedure has worked exceptionally well in practice, perhaps providing evidence for the beneficial effect of a possible limitation of the length of all speeches.

In a note such as this it is neither possible nor desirable to provide a detailed commentary on Standing Orders and I will therefore confine myself now to mentioning briefly one or two other aspects. The Standing Orders, in accordance with the provisions of the Constitution Act, provide for a Public Accounts Committee and for a system of " Consultative Committees " to advise the Heads of the Northern Ireland Departments and in addition a Committee of Selection is now charged with the task of recommending the membership of all committees to the Assembly. In spite of the Committee's early interest in electronic voting systems, the procedure of dividing through the lobbies has been carried forward into the Assembly. During the period before Standing Orders were adopted by the Assembly the form of division employed was a roll call by the Clerk, each Member answering " aye " or " no " (or sometimes " definitely " or other expressions calculated to throw the Clerk's concentration). From the Clerks' point of view this was a great trial and we were heartily glad to see the end of it. The only Standing Order recommended by the Committee and adopted by the Assembly which it has since become necessary to amend is that dealing with order in the Assembly. Not surprisingly in the circumstances of some of our recent sittings, the powers of the Speaker have been considerably strengthened.

The second part of the Committee's remit was to make recommendations as to the place of and arrangements for future meetings of the Assembly. Two of the Members felt that with the setting-up of the new political institutions under the Constitution Act it would be appropriate for the Assembly to meet away from Parliament Buildings, Stormont, and they suggested the city of Armagh as a suitable venue. A majority of the Committee, however, considered that the factors of cost and convenience to existing government buildings clearly indicated that the Assembly should meet in Parliament Buildings. This view was later endorsed by the Assembly. In addition it was agreed that the Assembly should meet in the Chamber formerly occupied by the Northern Ireland Commons. The first meeting of the Assembly had been held in the Central Hall which had been found in practice to be inconvenient from almost every point of view and the Senate Chamber was considered too small. The Committee also examined possible methods of providing the necessary additional seating capacity in the

Commons' Chamber. These ranged from a complete reconstruction of the Chamber to provide a semi-circular layout to the simple addition of " cross-benches " at the end of the Chamber away from the Speakers Chair. Eventually it was concluded that the existing seating should be adapted to form a " U "-shape layout. It is hoped that this work will be carried out during this year's summer recess.

In considering the general topic of arrangements for future meetings the Committee examined in detail the question of where the Executive should sit in the Assembly and also the related question of from where in the Assembly Members should speak. During the visits to London, The Hague and Brussels the Committee found several different answers to these questions, including the allocation to Members of the Government of a block of seats entirely divorced from the places of the Members and the system whereby all Members come to a single rostrum when they wish to speak. The Committee concluded, however, that Members of the Executive should sit on the front bench to the Speaker's right and speak from a fixed point at the Table of the Assembly, that opposition spokesmen should do likewise on the opposite side of the Chamber and that all other Members should speak from their places.

The Committee decided against recommending to the Assembly the use of a mace but this was overruled when the matter came before the Assembly. Other innovations proposed by the Committee and accepted by the Assembly were the provision of a closed-circuit television annunciator system and a Press Association Telex service for use by Members.

As an aside and in conclusion, readers may be interested to know that both the Speaker and the Clerks now appear in the Assembly unadorned by robes and wigs, and very comfortable we are too. I have heard it said, however, that certain Members, perhaps affronted by the taste in shirts and ties of at least one of the Clerks, are now murmuring for a return to former glories—" There are more ways of killing a cat . . . "

References

[1] Direction of the Secretary of State for Northern Ireland dated 25th July, 1973.
[2] Northern Ireland Constitution Act 1973 (Ch. 36).
[3] Northern Ireland Assembly Official Report Vol. 1, No. 1, 31st July, 1973.
[4] Report from the Presiding Officer's Committee on Standing Orders, etc., Appendix I.
[5] Minutes of Evidence taken before the Presiding Officer's Committee on Standing Orders, etc. (NIA 1–11).
[6] Report from the Presiding Officer's Committee on Standing Orders, etc. (NIA 1–i).

XII. " WESTMINSTER—THE REFLECTIONS OF A VISITING CLERK "

By John Campbell
Clerk of the Legislative Assembly, Victoria

. . . in all cases not herein provided for resort shall be had to the Rules, Forms, Usages, and Practice of the Commons House of Parliament of Great Britain and Ireland, which shall be followed so far as the same may be applicable to this Assembly and not inconsistent with the foregoing Rules.
(*Standing Order 285 of the Victorian Legislative Assembly*)

Westminster forms the model upon which the Legislative Assembly of Victoria is based. Not only is this recognised in the Standing Orders but also in much that we do both in the House itself and in the administration of the affairs of the House. From Westminster itself we derived our very origin by virtue of the Constitution Act passed by the British Parliament in 1855. In this of course we are not alone.

Our House, in so far as Standing Orders are concerned, is modelled more upon the procedures of the House of Commons as they were long ago than the procedures as they now are. In simple terms the model is changing more rapidly than we are. Particularly is this so in the light of the last ten years of procedural change in the Commons. It was basically for this reason that the writer was privileged to serve at Westminster on exchange duty from May to July 1973. It was felt that Victoria needed to overhaul some of its procedures and should seriously consider the new pattern evolving at Westminster before deciding which direction it should take. Most particularly did this apply to the financial procedures of our own House which still followed closely the earlier, traditional Supply and Ways and Means procedures of the Commons.

The writer was able to see for himself the working of the new procedures of the Commons and to examine their applicability or otherwise to the needs of the Victorian Parliament. As many Clerks will know, exchange duty at the Commons is a well-established system and one in which a number of my fellow-Australians have participated. The Commons each year assists many other Parliaments by giving skilled advice and training to overseas Clerks who attend on a variety of schemes whether exchange, attachment, or short visits. Advice and training is given in a context where those on the home ground claim (with true British diplomacy and modesty) that they too gain from the interplay of ideas and discussion of common problems. Access to the Chamber, to committee meetings and to various officers including the Clerk of the House, all contribute to the value of the scheme.

Exchanges of Clerks have been the subject of articles by many others in this Journal. In the light of their fine contributions it is with great reluctance that I put pen to paper. Between them they have explained

the history and basis of the exchange scheme and I will not repeat what they have said. Each has given his impressions of the great lasting value of their experiences which I too would echo in the words of C. B. Koester as a " continuing reaction far beyond the immediate events themselves " (THE TABLE, Vol. XXXVII).

One could at great length express appreciation of the kindly hospitality, guidance and assistance given by Members and officers of both the Lords and the Commons. This is not the purpose of this article either; suffice to say that the personal friendship, assistance and guidance extended was even better than I came to expect from hearing the praises of some of my colleagues who had gone before me. I am tempted also to side-track to describe my impressions of the Palace of Westminster and its fascination for me, but I could not hope to do justice to the subject and will pursue another path!

Working as I do in a much smaller organization I found the size and complexity of the Westminster departments rather a contrast; however, organisational charts, functional statements and a good initial briefing helped me to get the feel of it early in the programme.

On my return following a busy and varied programme organised for me by Kenneth Bradshaw, Clerk of the Overseas Office, I made a detailed written report to Mr. Speaker, Members of our Standing Orders Committee and others interested. The mere act of writing such a report makes one think hard and relive in the mind much of what occurred.

One thinks of Parliaments as following tradition very closely, consequently being rather static in procedures and organisation. There is of course very good reason why Parliaments should not change the rule-book frequently and at whim. However, the world in which we live is changing and the rate of change in many respects is accelerating. Policy issues to be faced in the modern welfare State involve a multitude of difficult decisions by governments upon complicated questions which are neither black nor white but a great number of shades of grey. Of necessity there is a growing body of civil servants to advise Governments. Parliaments in this context are under pressure in fulfilling their role in an increasingly complex society. Traditional machinery may not be the most effective for Parliament when acting as scrutineer and critic. Parliaments may need to more nearly match the expertise of the growing executive machine and to more effectively draw upon that expertise in the performance of their own function. Much has been written on this challenge to the working of parliamentary systems by writers far more expert than I. It is a challenge which I feel Clerks should be fully aware of because it helps to explain much of the pressures under which we find ourselves working in whatever part of the world we follow our calling.

In retrospect, my overall impression of the House of Commons was of its continuing evolutionary process of adjustment, experiment and change. Old procedures considered to be losing value and relevance

have been discarded in favour of what is considered to be more effective and relevant. Westminster seems to be in the nature of a laboratory of parliamentary government. Its active Select Committee on Procedure is continually analysing problems and suggesting solutions. Sometimes new procedures are adopted experimentally on the understanding that if successful they will continue.

Among the innovations of recent years in the Commons are the new financial procedures, the new form of putting questions on amendments, the dramatic development of the use of the Standing Committees, also the greatly increased use of Select Committees.

At the time of writing the Commons with its 630 Members,[1] and its numerous Select and Standing Committees is a large and complex institution supported by several specialist and highly skilled departments. Much debate and business has been " moved out " from the Chamber into Standing Committees with the attendant advantage of a greater level of participation on the part of the individual Member. The nature of the financial debates has changed and Supply days now may deal with matters unrelated to expenditure and of a very wide and diverse nature. The Expenditure Committee with its attendant sub-committees is now the body which looks most closely at government expenditure in detail, and the Finance Bill Committee the body in which much of the debate on taxation occurs.

Westminster obviously differs from the Victorian Parliament in many ways particularly in its role as a National Parliament in a unitary system, whereas we are a State Parliament in a federal system. In contrast to the size of the Commons' membership, ours in the Assembly is only 73.

Our comparatively young House has drunk deeply from the well of the accumulated experience of Westminster and has learned much from its past conflicts and difficulties. We need now to keep constantly abreast of the developments in procedures and methods there. We should appreciate the underlying reasons for changes which may or may not apply to our own case. Available resources, scale of operations, constitutional scope, pressures on time, all these factors will have a bearing on what is reasonable for us to adopt from the Westminster model at any point in time.

The basic concepts of parliamentary government have withstood the test of time. It is the perimeter issues of how the House organizes its business, how the point of balance between needs of Government and rights of Opposition and of individuals is maintained, how committees can best be used and the mechanics of day-to-day operation where I see a need for Parliament to be continually taking stock of itself. Our own tendency in Victoria has been to tinker very little with our Standing Orders and in areas where they prove to be silent or ineffective to develop remedies outside the terms of the Standing Orders. On the other hand the Commons adopt a more fundamental approach of analysing basic problems and designing new rules to cope.

Things now are changing in the Victorian Legislative Assembly in

that our Standing Orders Committee has recently become active. On its recommendations our financial procedure has been completely reformed and Committees of Supply and Ways and Means abolished. In summary our financial procedure is now as follows:

Taxing Bills:

(*a*) can only be introduced by a Minister;
(*b*) can only be amended to increase a tax at the instigation of a Minister;
(*c*) may be introduced without notice; and
(*d*) are otherwise dealt with in all respects in the same manner as ordinary Bills.

Bills primarily initiating expenditure:

(*a*) require a Governor's Message recommending expenditure;
(*b*) may be introduced without notice and read a second time forthwith immediately after the Message is read;
(*c*) are subject to the traditional restrictions on amendments; and
(*d*) are otherwise dealt with in all respects in the same manner as ordinary Bills.

The Budget Debate occurs on the second reading of the annual Appropriation Bill and the various items of expenditure are voted in the course of the committee stage of the proceedings on that Bill.

Financial Resolutions have been dispensed with.

Following the success of its proposals for reform of financial procedure, the Standing Orders Committee is meeting regularly and has a large programme of matters before it. Already the workings of question time and the form of putting questions have been studied and recommendations made to the House.

Material changes of this kind are assisted by the developments in the Commons. The fact that others have already considered some of the problems certainly removes the pioneering aspect from some issues.

On a different and subjective theme, no doubt other Clerks have felt at times as I have, that the Clerk's job can be a lonely one. The temptation to become immersed in day-to-day problems and not take the time to think back to fundamentals can be great. For a Clerk to step out of the arena of his own Parliament for a while to work with his colleagues on the other side of the world and discuss common problems and see how others cope is itself a tremendous education. It leaves the feeling that the problems are similar wherever one goes but the scale may be different. The challenges facing Clerks are basically the same.

It is comfortable if nothing changes and the Clerk performs his traditional role in the manner performed for decades. With the pressures upon the parliamentary institution, however, I submit that the Clerk must keep himself well-informed on how Parliament can react to

the challenges facing it. Parliament can be a dynamic organ designed to react to the needs of society. Its techniques and its resources need to continue to develop and the Clerk may well find himself in the less comfortable position of having to read well, study wisely, think ahead and offer constructive suggestions instead of being carried along with the stream. In so doing he need not imperil either his objectivity or his dedication towards serving Parliament.

To spend three months with the Parliament at Westminster was indeed a memorable experience; however, if I had come to the Commons seeking to find a series of final answers—answers of universal application—to all my questions, I would have been sadly disappointed. What I learnt was that the search for answers, for improvement in procedure, in technique, resources and knowledge continues and (I expect) it will ever be thus. Surely herein lies much of the challenge and fascination of our particular calling. To those who had the vision to design and pioneer the exchange scheme I owe my admiration and gratitude.

To sum up, my exchange visit to Westminster was a " mind stretcher " and it opened new horizons not only for my benefit but also I believe for that of the House which I serve as Clerk.

XIII. A HOUSE OF COMMONS DELEGATION TO TONGA

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

In May 1973 the House of Commons addressed the Queen asking her to give directions that there be presented on behalf of the House a gift of a Table to the Legislative Assembly of the Kingdom of Tonga. In due course the Speaker approved my appointment as Clerk to accompany the Delegation which comprised Sir John Gilmour, Conservative, and Mr. James Hamilton, Labour. Both have constituencies in Scotland covering a large area between Glasgow and Edinburgh and both were returned at the General Election in June 1970 with majorities in the 10,000 or 11,000 range. There was therefore no danger of either being summoned back for some local crisis or even for an emergency meeting of Parliament, since each came from an opposite side of the House. The arrangements for a distant journey in the autumn of 1973 required more calculated study than formerly. It will be remembered that the Inter-parliamentary Union's Association of Secretaries General had planned to gather its members in Chile within hours of the revolution which led to the death of President Allende, and the latter event only just forestalled the former. If we favoured some of the South American routes the possibility of being held to ransom was not so remote from reality as to be wholly absent from the minds of our advisers. It was also useful to study the impact of hi-jacking upon the type of plane chosen for a journey. Jumbo jets have a far higher risk in this respect than the older planes, and as Clerk I was careful to select for our Delegation a well-tried type—the VC 10—for both outward and homeward journeys. The temptation of choosing the shortest flight—over the North Pole—might have resulted in the only plane available being delayed or cancelled. Again, a large airline has more resources in attaining punctuality than a smaller one. Throughout our journey to and from Tonga we were alarmed with reports that flights from Australia were being delayed or cancelled because of strikes in the various airports of that great country, particularly in Sydney. It was therefore most gratifying to all of us to find that British Airways were punctual at all points on the outward and homeward journeys. It is also necessary in these uncertain times to see that the luggage of the Delegation is insured against loss. En route we met a Minister of the Crown travelling light. His secretary, a civil servant, was embarrassed because his own luggage had arrived in Washington while that of the Minister was assumed to be reposing somewhere in the airport corridors of Heathrow, London.

All these precautions having been taken, the Delegation assembled

in Los Angeles for the start of their journey south across the Pacific to Hawaii and Fiji and thence to Tonga.

Los Angeles, a city of 5 million cars, was proud of the fact that its automobiles outnumbered those of West Germany. An interesting sight in this fabled Californian metropolis were two open spaces about fifteen miles from the city centre which, since they belonged to Howard Hughes, the millionaire, had not yet been built upon. Among the other astonishing statistics of this great city are the 69 universities and colleges in the Los Angeles area, catering for nearly half a million students.

On arrival in Fiji it came as a surprise to find that Suva, the capital, is usually wet: it was certainly overcast and rainy for much of our stay. We were all impressed with the efficiency of Mrs. Ah Koy, the Clerk of the Assembly; she was accompanied by the equally well-versed Clerk of the Upper House, Mr. Peter Howard, who later was kind enough to take us to the city's museum, and show us some fascinating exhibits of the earlier history of Fiji and the impact of Western civilisation upon it in the nineteenth century.

Our first sight of Tonga, the main island of which lies 400 miles east of Fiji, was of a large sea-girt territory decked with endless swaying coconut palms. Because, unlike Fiji, it is low-lying and not mountainous, the weather is much finer and the usual picture of the South Sea islands is much nearer reality in Tonga. Like the Scots—a point made by Mr. James Hamilton—the kilt (vala) is normal wear for the splendidly built men; and the strong influence of the missionaries of all faiths have imposed on the handsome women a kind of mother hubbard costume over which they customarily wear grass skirts. It was pleasant also to see an island almost completely covered with trees, apart from the airfield. Every young Tongan male is by law at the age of sixteen entitled to a piece of land measuring 8¼ acres, and simply by staying home until the coconuts ripen he can obtain two cents per coconut from the Government purchasing centre.

What is normally called Western civilisation is now reaching the island via Japan. His Majesty King Taufa'ahau Tupou IV, who kindly received the Delegation, told us he had so far resisted the temptation to allow development of hotels and golf courses for millionaires, as any such development would soon threaten to spoil a natural paradise. Blue lagoons surround the islands, of which there are 150 in the Tonga group, and beyond coral reefs the sea breaks white and clear. A young American visitor was astonished to find that the water was transparent —a feature which, owing to pollution in the United States, he had never previously seen.

The ceremony in the Legislative Assembly which attended the presentation of the Speaker's Table was deeply impressive. The great talent of Tongans, and indeed of South Sea islanders generally, is singing: and the Members began the ceremony with unaccompanied part-song. The ceremony of presentation was mainly in Tongan,

with the official interpreter assisting us *sotto voce*. After two detailed rehearsals the day before, in which Mr. George Fifita, the Clerk of the Assembly, played a prominent part, the Leader of our Delegation, Sir John Gilmour, swept aside a great Union Jack which covered the Table and revealed the beautiful carving of the Tongan arms and the other features of the presentation, which evoked deep admiration from all the Members. The Prime Minister, who is His Majesty's younger brother, made an appropriate and dignified speech in moving the resolution of thanks to the House of Commons in the following terms:

> That we, the Speaker and Members of the Legislative Assembly of Tonga accept with sincere gratitude this magnificent Speaker's Table, and in so doing, reaffirm the close ties that have existed, and indeed continue to exist, between Tonga and the United Kingdom.

That evening the Delegation was lavishly entertained at the home of a Minister, the Hon. Ve'hala and his delightful family, to the accompaniment of traditional music and much laughter. Each member of our Delegation was shrouded in a cape of flowers and necklace of sea shells and then required to dance or sing solo. In the latter accomplishment Mr. James Hamilton, with a splendid Scottish voice, outdid even the Tongans, and generally we were held to have acquitted ourselves manfully. Next day we left the South Seas and turned northward to return to London.

XIV. AN ACCOUNT OF THE PROCEDURES OF THE STATES OF JERSEY

By E. J. M. Potter
Deputy Greffier of the States

An article in a previous number of The Table explained the constitutional position of the Bailiwick of Jersey. The purpose of this article is to explain briefly the procedure of " government " in the Bailiwick.

The first thing which strikes the observer is that there is no government in the generally accepted sense of government and opposition. The States of Jersey (the name by which the Parliament is known) comprises fifty-two elected Members, all independent and all elected by virtue of their own " platform " at election time and not because they follow the usual party lines. Indeed, they cannot do so because there are no political parties. Attempts have been made from time to time to organise political parties but their existence is short-lived, a possible explanation being that the rugged individualism of the Jersey resident does not lend itself to the constraints which must be tolerated if a party system is to work successfully.

The fifty-two Members are made up of twelve Senators, elected by the electorate of the whole Island for a period of six years, twelve Connétables, elected by the electorate of their parish for a period of three years—the Island being divided into twelve parishes and the Connétable being the civic head of the parish—and twenty eight Deputies, elected by the electorate of a statutorily defined constituency for a period of three years.

Facilities, etc., for the Elected Members

There is still a very strong tradition of honorary service in the Island and it is exemplified by the fact that Members are not paid any salary, nor do they receive any expenses, except when they travel abroad on official business. There is machinery available designed to ensure that no Member has an income of less than £2,000 a year, but it cannot in any way be regarded as providing a salary. They receive no official secretarial assistance and no office facilities are provided. They do have their domestic telephone rental paid, but this is not necessarily an advantage in a small community where Members are easily accessible to their constituents at all times.

Non-elected Members

The President of the States Assembly is the Bailiff of Jersey or in his absence, the Deputy Bailiff. Very occasionally when neither the Bailiff nor his Deputy can preside, the duties are temporarily performed

by one of the most senior Members. The Lieutenant-Governor, the Dean, the Attorney General and the Solicitor General have a seat in the Assembly and have a right to speak but have no vote. The Bailiff has a casting vote although it is very seldom necessary for him to use it. The Lieutenant-Governor normally only attends on ceremonial occasions. However, the minutes of the States must be submitted in draft form to the Lieutenant-Governor who has a power of veto in matters affecting the special interest of Her Majesty.

Officers of the States

The officers of the States are the Greffier of the States, the Deputy Greffier of the States, who are respectively the Clerk and Clerk-Assistant, and the Viscount who is the executive officer.

Sessions of the States

Standing Orders provide that the States sit one day each week during two Sessions. The first Session is from the third week in January to the second week in June (with a recess during Holy Week and Easter Week) and the second from the second week in September to the third week in December.

The States normally sit on a Tuesday commencing at 10.15 a.m. and if business is not finished that day the Bailiff has the power to extend the sitting to another day or to convene an additional meeting. A special meeting may also be convened at the request of at least seven elected members.

In practice, there is a tendency for relatively little business to be transacted in the early part of each Session, thus lulling everyone into the belief that there is ample time in hand. The rude awakening inevitably comes in the last four or five weeks of a Session when Order Papers expand to alarming proportions and consideration has to be given to convening sittings out of session. Despite firm resolves to the contrary we seem to fall for it every time—but perhaps it happens elsewhere as well.

The States Chamber

The States sit in a horseshoe-shaped Chamber in St. Helier. The groupings are according to whether one is a Senator, a Connétable or a Deputy and this is possible because of the absence of the party lines across the floor of the House. The present Chamber was opened in 1887 and was considerably modernised some fifteen years ago, but the original layout and overall design was successfully retained. Each Member has his own seat and desk top, and there is a monitored microphone system relaying the debates to the press box and the staff room. There is no Hansard or equivalent record of the proceedings. The local newspaper reports the debates as fully as it is able to but there is no verbatim record. The States' minutes follow a set pattern very closely

and can be prepared from an annotated Order Paper by someone who need not have been present in the Chamber.

A States Sitting

At the commencement of the sitting, the Bailiff enters the Chamber in procession, preceded by a member of the Viscount's Department carrying a silver gilt mace presented to the Island by King Charles II in 1663, and followed by the Greffier. The Bailiff wears a red gown and bands, the officers black gowns and bands, but none wears a wig. The Greffier calls the roll of members in French. This is followed by prayers said either by the Dean or the Greffier, again in French.

Thereafter the remainder of the proceedings will be in English, although Members still have the right to address the House in French or Jersey French if they wish to. This is a rare occasion today as relatively few Members could still deliver a major speech in either of those tongues and they would not be understood by all their colleagues.

The quorum of the House is twenty four, and when the Greffier declares to the Bailiff that there is a sufficient number, the business of the day begins. In the event that a quorum cannot be obtained because of the failure of enough Members to be in attendance and the absentees do not have an acceptable excuse, they are liable to a fine of no less a sum than £1 which is to be levied by the Viscount. As one might expect, illness is a sufficient excuse for being " en défaut " but absence from the Island is also acceptable regardless of whether the Member is away on official or private business.

Subject to the carrying of a Motion " that strangers do withdraw " or to the requirements of any Law that a matter must be debated in camera, the public are admitted to all sittings, the only restrictions as to numbers are imposed by the space available in the galleries. This was not always so and it was not until March 1833 that the sittings were opened to the public. We are told that in their initial enthusiasm the spectators left the Members in no doubt as to which side they were supporting in the various debates and, by these standards, today's onlookers have an unblemished record of good behaviour inside the House.

Standing Orders

In 1966 Standing Orders were drawn up with the considerable assistance of Mr. C. A. S. S. Gordon who at that time was the Fourth Clerk-at-the-Table of the House of Commons at Westminster. They are modelled on the Westminster pattern, but with very considerable adaptations to suit the size of the legislature and the absence of the party system.

The Order Paper

Before each sitting an Order Paper is produced by the Greffier and circulated to Members on the Friday before the Tuesday sitting.

Business is conducted in accordance with the matters shown on the Paper and can be tackled in a systematic manner.

The Committee System or " the Government "

The day-to-day administration of the Bailiwick is delegated to Committees of the States elected by the States after each general election and comprising seven members. The President of a Committee is elected first and he subsequently nominates for approval the other six members. Standing Orders name eleven Standing Committees and these cover every aspect of Island life, *e.g.* Finance and Economics, Harbours and Airport, Public Health, Public Works, Agriculture, Education, Social Security, Tourism, etc. No member can be President of more than one Standing Committee nor a member of more than two. The President of a Committee is really the equivalent of a Minister and he is supported by his Committee and the usual Departmental resources of the Civil Service.

Debates in the House

The business of the States is generated very largely by the Committees. A Committee will seek States' support for its policies and this support is obtained by putting a Proposition down on the Order Paper and securing a simple majority ot the votes cast at the end of the debate. The President of the Committee will propose the Motion and then every other Member of the House is entitled to speak if he can catch the Bailiff's eye. A member may speak only once in a debate, but some have succeeded in making more than one contribution to a particular debate through skilful use of the well-known device of " Point of Order ". When no other member wishes to speak the President of the Committee will sum up and the vote will be taken. This can be either by a " standing vote " in which Members merely indicate their wish by standing in their seat or by an " appel nominal " where each member's name is called and he replies either " pour " or " contre " according to his inclinations. Several attempts to alter the system of voting or to substitute " for " and " against ' for the traditional " pour " or "contre " have been stubbornly rejected in favour of the *status quo*. Not even an eminently reasonable proposal to satisfy all shades of opinion by changing to " oui " or " non " could attract a majority and, given such a situation, electronic gadgetry seems unlikely to make any headway.

Any number of Propositions can be dealt with at any sitting if the States have previously agreed to debate the matter on that date, and it will be seen that " the Government " in the House is really the Committee for the time being proposing the matter, with a potential " opposition " comprising the other forty-five members.

Financial Matters

Any Committee or Member wishing to propose anything which involves money must submit the Proposition first to the Finance and

Economics Committee which will then comment on it. Money can only be voted by the States at Budget time in November or at four nominated Supply Days during the year.

Private Members' Business

A private Member is entitled to raise any matter in the House either by means of a Proposition or by legislation. Provision is also made on the Order Paper for oral and written questions but very few questions have in fact been asked in past years presumably because of the intimate nature of the House and the absence of the Party System. One sees now a gradual trend towards the asking of more questions but not yet on anything approaching the scale of Westminster.

Legislation

Legislation is usually promoted by a Committee although, as has been said, a private Member may do so. The first reading is the formal presentation of the Bill which then must lie on the Table for at least fourteen days to give Members time to study it. On the date fixed for its debate, the Bill will be debated Article by Article in Second Reading and, if adopted, will then be taken in Third Reading at which time no amendments can be made but the Bill must be adopted or rejected in its entirety. If adopted in Third Reading it is then submitted by the Greffier to the Privy Council in London for Royal Sanction.

Recent attempt to secure more co-ordination

Any significant projects must now also be considered by the Policy Advisory Committee which is an advisory and consultative body comprising the Presidents of several of the most important committees. It has no executive powers and must not, therefore, be regarded as a Cabinet but is an attempt to introduce a measure of practical co-ordination very much on a voluntary basis. How it will evolve and whether it will evolve in the future remains to be seen.

Conclusion

The above is of necessity a very sketchy outline of some of the aspects of procedure in Jersey. Several things strike strangers as odd—not least the absence of a Cabinet, the absence of a party system and the presence of an honorary service. The only reply that one can give is that the present system has worked for very many years and still does work. How long it will continue so to do is impossible to say. No doubt events will make modifications and adaptations imperative but changes are likely to come slowly.

XV. RESEARCH FACILITIES FOR MEMBERS OF PARLIAMENT IN NEW ZEALAND

By C. J. Littlejohn
Clerk-Assistant of the House of Representatives

For many years the National Party—the Conservative Party in New Zealand—have had their own staff in Parliament House to give assistance to members. This small staff of two was accommodated in one of the rooms allocated to members of that Party. The room was always counted as such to ensure that the allocation of rooms between the Parties was fairly made. The duties of these two Party officials included the provision of speech notes, the answering of research enquiries for the leader of the Party and other members, and the publication of a periodical news-sheet summarising the work of Parliament period by period. The members of the Labour Party have never provided themselves with assistance of this kind. During their period in Opposition they were accommodated in the building which houses the General Assembly Library and no doubt found it comparatively easy to obtain the material they required from the library resources.

In New Zealand, as in most countries, the involvement of Members of Parliament in the business of Parliament and the affairs of their electorate has been increasing steadily, and the problems of investigating legislation and other matters coming before them have grown as a consequence. The question of providing, at State expense, a small research group for each Party was favourably considered by the Royal Commission upon Parliamentary Salaries and Allowances in 1970 and, after studying the matter, the Commission included the following in its Report:

> It has been represented to us that the demands upon the sessional and recess time of the private member is now such that he cannot find sufficient time for the research that is necessary to enable him to cope adequately with the daily problems of his office and that he needs access to background information on a multiplicity of subjects. Not only were representations made by members from both sides of the House, but strong supporting views were expressed by members of the faculty of the School of Political Science and Public Administration at Victoria University of Wellington. The demand for this type of service or assistance is increasing in all Commonwealth Parliaments and is being met or partially met in a variety of ways.
>
> In our view, the needs of the New Zealand private member can best be met by the establishment at public expense of two separate full-time research units, one for the Government party and one for the Opposition party. As some members have observed "it is not possible for this assistance to be fully provided from the existing General Assembly Library reference service, particularly in the preparation of speeches and material for partisan debates. Members need background material on legislation seen through political eyes. . . . The work needs to reflect the members' political interest and not be confined to an

antiseptic gathering of facts.' " It may well be that the establishment of these units may later require consideration to be given to an increase in the reference establishment of the General Assembly Library.

We recommend that the Clerk of the House be authorised to appoint a research officer and an assistant research officer to each unit with such supporting staff as may appear reasonable or necessary, such appointments to be made from within or from outside the State Services on the recommendation of the respective leaders, the appointees to serve under the immediate direction of the Senior Government and Opposition Whips respectively.

The recommendation was in due course put into effect and for three years the small research units so established provided each Party with constructive commentaries on Bills before the House, and with material for speeches, draft questions, and other material of that nature.

The establishment of the units was in some degree experimental and their effectiveness was considered by the Royal Commission upon Parliamentary Salaries established in 1973. The following extracts from their Report indicate the view they took:

. . . The party research units were established on the recommendation of the Commission of 1970 with a view to meeting the needs of the private member for background information. They should now be examined in the light of the experience of their 3 years' operation.

We have been assured that the research units have been of great value to members. The experiment has been a success. Nevertheless, we have gathered that there is an increasing tendency for the main efforts of the units to be directed towards the need of the party rather than towards those of the private member for whom they were primarily established. We consider that both these functions are important and for this reason we listened with great interest to the submission of the Chief Librarian of the General Assembly Library. He made certain proposals for the improvement of research and information services of the library which, we think, would prove useful to members and also to select committees—more so than would a comparable increase in the party units. We understand that these proposals have been placed before the Library Committee. Such a development was foreseen by the Commission of 1970.

We suggest that the enlargement of research and information services, both in the party units and in the General Assembly Library, is a matter for favourable consideration, but that it should first be fully investigated, either by a select committee, or by a special committee appointed for the purpose.

Accordingly a Joint Caucus Committee was appointed with your writer as Secretary/Adviser to carry out the recommendation, and also to consider other matters of an administrative nature. He had the opportunity to make a brief study of the services available to members in Canberra and submitted a report in which he included the following comments:

. . . It seems to me that there is a very considerable danger that if too much responsibility is given to research officers to make political assessments of the value of information, Members of Parliament will be abrogating their right to make their own decisions.

If they see only material which has already been subjected to a process of selection they will lose the opportunity to make their own selection—to decide for themselves what their point of view is to be on any issue. Such a responsibility carries with it, into the hands of the research officer, a power to exert a very strong influence on political decisions, and, in practice, research officers

find the opportunity to exercise this power very hard to resist. This point was stressed very strongly by the President of the Senate, and also by the Chief Librarian. Controls have been hard enough to devise and enforce in a Library which has a strong and necessary tradition of impartiality. They would be even more difficult in a Party organization, but admittedly this problem would be of less importance if the research officer possesses the confidence of members, both in regard to Party loyalty and in regard to professional ability and integrity.

. . . I think the Group should be related in size to the broad fields of interest they should deal with—they should have a specialist in each of certain key subjects, who is able to deal with assignments in related subjects to a greater depth than would a general researcher. I suggest the appointment of a specialist in each of economics, social services, and industry, with sufficient supporting staff to meet administrative needs. Their function should be to obtain information, condense it if required, develop a case for or against a proposition if required, and produce background papers, but not write speeches or to decide or unduly influence Party policy.

The Joint Caucus Committee gave careful consideration to the report and moved with some caution, increasing the existing units by two for each Party as an interim measure, and in due course making a final recommendation that the units should be established at a strength of ten in each, with a maximum of seven research officers.

The units have now been operating on that basis for some months. It is too early to claim that they have been an unqualified success, but it is clear that they have been very helpful. A careful assessment of their value should be made after a year or so, and it is intended to carry this out to ensure that future development of the service is in harmony with other services provided, in the fields of reference, research, library and secretarial assistance.

XVI. CLERKS' DRESS:

Answers to Questionnaire

The Questionnaire for Volume XLII of The Table asked the following questions:

(*a*) Do Clerks when attending your House wear a distinctive uniform and, if so, what?
(*b*) Have there been any recent changes in the uniform, or pressure for a change?

For several years now answers to the Questionnaire have been published separately, and in full, since many state and provincial legislatures have tended to make contributions which differ markedly from those of their national parliament. In the case, however, of Clerks' Dress the main considerations appear to be those of tradition, climate and convenience. Such considerations do not, of course differ much from one area to the next. Most Commonwealth Parliaments, it appears, excepting those of India, Sri Lanka and some of the West Indian legislatures have followed in part the Westminster traditions.

When they are on duty at the Table, Clerks of both Houses at Westminster wear a black silk gown, white tie and barrister's wig. The history of this uniform can be traced in outline from a study of contemporary pictures of the Houses in session at different times during the last four centuries. From these it appears that the gown has been worn since at least the latter half of the 17th century, although in those days it was probably a more ornate and colourful garment than it is now. During the latter half of the 17th century it became the fashion for all gentlemen to wear wigs, and this continued to be the case throughout the 18th century. Clerks conformed with this fashion; and the only distinctions between Clerks and Members in this respect were that Clerks' wigs were more standardised than those that Members occasionally permitted themselves, and that Clerks did not wear hats on top of their wigs as Members (and the Speaker) normally did. In common with other professions, notably the law, Clerks continued to wear wigs after they had gone out of general fashion during the early part of the 19th century. The present dress appears to date from that period.

On ceremonial occasions, the Clerks of both Houses wear knee breeches instead of trousers, lace cuffs and jabot and black court shoes.

On 14th November, 1967, the following Motion appeared on the order paper of the House of Commons for discussion in conjunction with a number of other miscellaneous proposals for changes in the procedure of the House:

That it is not necessary for Clerks-at-the-Table to wear wigs and gowns except on ceremonial duties.

The Leader of the House, in whose name the Motion stood, explained that he had tabled it as a result of representations that he had received; the Clerks themselves were by no means unanimous of the subject, but he had felt it right to table the Motion to enable a decision to be taken. During the course of the debate some opposition was expressed to a change in the customary uniform, and the Motion was not pressed to a vote. The proposal has never since been revived.

As is described in an earlier article, the Clerks to the new Northern Ireland Assembly no longer wear any distinctive uniform but the Isle of Man Parliament ensure that their Clerk is properly dressed by means of a Standing Order in the following terms:

Official dress of the Secretary of the House.

13. The official dress of the Secretary of the House shall be similar to that worn by the Clerk of the House of Commons at the ordinary sittings of that House, and such official dress shall be worn at the sittings of the House and of Tynwald.

In Jersey, the Greffier of the States wears a black stuff gown and bands but no wig or court dress.

In Canada, practice varies a little between assemblies; in the Dominion Parliament, Ontario, British Columbia, Newfoundland and the Northwest Territories, for instance, the Clerks wear dress similar to that at Westminster while in Saskatchewan the Clerk wears an ordinary lounge suit under an academic gown. In the latter case the Assistant Clerk happens to be a woman and she has found it necessary to adopt the specific uniform of a black dress and a white sweater to establish some sort of consistency in her dress. In Quebec on the other hand the Clerks will, as from the beginning of their new session, dress purely in dark grey suits without any of the other trappings.

The Australian practice also varies between the more formally dressed Clerks of the New South Wales Parliament through the modified dress of most of the state legislatures down to the informal dress of Clerks serving the Legislative Council of the Northern Territory.

For instance, in the New South Wales Parliament the Clerks wear dress similar to their colleagues at Westminster. However, in Canberra the Senate Clerks have, with the President's approval, recently stopped wearing a white bow tie and stiff wing collar and now wear white bands under the normal collar of a plain white shirt. In Victoria, the Legislative Council Clerks wear full Windsor Court dress on ceremonial occasions and a modified version for ordinary House sittings, but in the Legislative Assembly the Clerks have, since March 1973, replaced the use of a waistcoat and tail coat for ordinary sittings with a short jacket worn under their gowns. They continue to wear wigs.

In the Queensland Parliament it is the practice on each sitting day for the Clerk and the Clerk-Assistant/Serjeant-at-Arms to wear black

dress trousers, barrister's vest and gown, starched dress collar, white bow tie and barrister's bands. The wig is worn by these officers only on ceremonial occasions. The dress for the other Table officers comprises a dinner suit with soft white shirt and black bow tie. Although over the years opinions have frequently been expressed concerning the unsuitability of this uniform for the hot weather no serious move had been made to break with tradition. However, just prior to the present summer Session the Chamber was air-conditioned and it has been unanimously accepted by the Table staff that life in " official attire " had suddenly become bearable.

In South Australia, the normal dress for Clerks-at-the-Table of both the Council and Assembly is a graduate's gown over a dark suit, white shirt and black tie. On ceremonial occasions (Opening of Parliament or Presentation of Address in Reply to the Governor) full evening dress is worn with wig and white gloves. Wigs were first worn at the Royal Opening of Parliament on 23rd March, 1954. On 5th March, 1974, the President of the Legislative Council suggested that the Council grant leave for Members to remove their coats owing to the high temperature and the poor ventilation of the Chamber occasioned by the malfunctioning of the air-conditioning plant. The President authorised the Clerks-at-the-Table to remove their coats but the gowns were retained. This arrangement will continue while the oppressive conditions prevail in the Chamber. In the Legislative Assembly, there has been pressure to abolish the wig because of the summer heat.

Dress similar to that described above is worn by the Clerks-at-the-Table in Western Australia where the wig has occasionally been discarded during the hot weather. In Tasmania the Clerks do not wear wigs at all but otherwise wear similar dress to that above.

In the Northern Territory Legislative Council on ceremonial occasions, such as at the opening day of each new Council, which usually occurs once in every three years, the Clerks wear a bob wig, black stuff gown, white linen dress collar and white linen bands. However, the normal everyday wear of clerks is a little different from those of their Australian colleagues. Shorts, long socks and short-sleeved shirts without a tie are normally worn in the office, while long trousers, long-sleeved white shirts and a tie are worn in the Chamber and on formal occasions.

Up until 18th June, 1973, the Clerks-at-the-Table in the Papua New Guinea House of Assembly wore the following distinctive uniform; wig, black gown, white long-sleeved shirt, white bands, long black trousers and black shoes. The standard of dress for Members in the Chamber was changed by resolution of the House on 27th February, 1973, discarding coats and allowing laplaps as well as long trousers. Coats and long trousers do not seem to be appropriate for parliaments in tropical zones. The Speaker and Clerks followed suit to a certain degree, discarding their wigs and replacing the white bands with a tie.

The New Zealand Clerks wear a dress suit, either dinner jacket or

tails, a barrister's bib and white tie, a Queen's Counsel gown and a wig. There has been no recent pressure for any change in this dress.

In India, Clerks do not have a specific uniform but wear the usual smart, buttoned-up coats with trousers. These can be of colours of their own choosing.

In Africa, however, the Clerks appear to be more imaginative in their uniform than their colleagues elsewhere. For instance, in Zambia since January 1971, Clerks-at-the-Table have worn black shoes, typically Zambian National tie, Clerk's wig and the Clerk's gown which is embroidered with Zambian National Colours of green, red, black and orange. And in Tanzania when attending the House, Clerks wear either a blue-black or black " Tanzania National Suit ".

The Malaysian and Singapore Clerks have similarities of dress. In Singapore when attending at the Table of the House the Clerks wear barristers' gowns and white dress bow-ties but no wigs. At Openings of Parliament the Clerk and his Assistants also wear a barrister's wig and " bib ". The Clerk of the House of Representatives of Malaysia when attending meetings of the House wears a robe and tie whereas the Clerk of the Senate wears a robe and winged-collar. Neither wears a wig. However, during the Opening of Parliament by His Majesty the Yang di-Pertuan Agong both the Clerks wear robes, winged-collars and wigs.

In Mauritius, the Clerk of the Legislative Assembly is the only Clerk who wears a uniform. He does so only on ceremonial occasions, such as the Opening of a new Session of Parliament or the visit of a Head of State to the Assembly. The uniform consists of a black silk gown, bob wig, black patent leather shoes, soft or pleated white shirt and white evening bow tie with stiff evening collar.

In the West Indies most legislatures do not appear to have any special uniform for clerks. In Barbados, for instance, the Clerks do not wear their wigs and gowns any longer due to climatic conditions. There has been considerable pressure for a change in dress from the normal lounge suit to the shirt-jac type of suit with open neck. In the Cayman Islands the clerks wear gowns and wigs on ceremonial occasions only. On the other hand in St. Lucia the woman Clerk wears a specific uniform consisting of a three-piece blue and white dress suit with a matching beret. The Clerk of the House of Assembly of St. Vincent wears a robe and wig when attending meetings of the House.

XVII. APPLICATIONS OF PRIVILEGE

At Westminster

Questioning of parliamentary proceedings before the Courts.—On 30th January, 1974, a judgement was given in the House of Lords, sitting as supreme court of appeal, which was of considerable interest to students of parliamentary privilege, in that it reaffirmed the provision in the Bill of Rights of 1688, " That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any place out of Parliament ".

The case arose from an action brought by a Mr. Pickin against the British Railways Board in relation to the closing of certain railway lines. In 1968 the Board had promoted a private Bill, one section of which repealed provisions in a number of nineteenth-century private Acts which had laid down that land used for the construction of a railway line should revert to the owners of the adjoining land if the line were subsequently to be closed. During the passage of the 1968 Bill through Parliament the Board were obliged, in the normal way, to satisfy the officers of both Houses that they had complied with the standing orders and had given due notice of their intentions to persons who might be affected by the Bill. They had succeeded in doing this, and the Bill has been enacted. As part of his action against the Board, Mr. Pickin alleged that they had not in fact complied with the Standing Orders and had misled Parliament and its officers. He claimed that if he proved that Parliament had been fraudulently misled into enacting the relevant section of the 1968 Act, the Court could disregard that section or, alternatively, could nullify the benefits which the section conferred on the British Railways Board.

The Board sought to have this allegation struck out as impermissible, and an order to that effect was made by a judge in chambers. Mr. Pickin appealed against the order, and the Court of Appeal allowed his appeal, saying that he was entitled to have the issue sent for trial. The British Railways Board in their turn appealed to the House of Lords against this decision. In view of the importance of the issues, the Solicitor General attended the hearings as *amicus curiae*. Five Law Lords heard the appeal, and were unanimous in granting the appeal and restoring the order that had originally been made to strike out Mr. Pickin's allegation.

In assenting to Mr. Pickin's arguments, the Court of Appeal had relied principally on the obscure case of Mackenzie *v.* Stewart of 1754, when the Lord Chancellor, in giving his opinion, was reported to have " expressed a good deal of indignation at the means of obtaining [an] Act; and said, that he never would have consented to such private Acts had he ever entertained a notion that they could be used to cover fraud ".

One of the Law Lords, Lord Reid, pointed out that neither this nor other similar reports of that case necessarily indicated the grounds on which the decision had been made. There were no contemporary records of the case, which had probably turned on the true construction of the Act in question rather than on the means by which the Act had been obtained. The case of Mackenzie *v.* Stewart could not, therefore, be relied on as a precedent, whereas there were many cases throughout the nineteenth century in which the Courts had expressly declined to inquire into the means by which a Bill had passed through Parliament and been enacted. Lord Reid then went on:

> The function of the Court is to construe and apply the enactments of Parliament. The Court has no concern with the manner in which Parliament or its officers carrying out its Standing Orders perform these functions. Any attempt to prove that they were misled by fraud or otherwise would necessarily involve an enquiry into the manner in which they had performed their functions in dealing with the Bill which became the British Railways Act 1968. . .
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> For a century or more both Parliament and the Courts have been careful not to act so as to cause conflict between them. Any such investigations as the Respondent seeks could easily lead to such a conflict ,and I would only support it if compelled to do so by clear authority. But it appears to me that the whole trend of authority for over a century is clearly against permitting any such investigation. . . .
>
> [Mr. Pickin] is not entitled to go behind the Act to shew that section 18 should not be enforced. Nor is he entitled to examine proceedings in Parliament in order to shew that the Appellants by fraudulently misleading Parliament caused him loss.

The opinions delivered by the Law Lords in this case contain many other excellent statements of the constitutional relationship between Parliament and the courts. The following passages are taken from the judgement of Lord Simon of Glaisdale:

> The system by which, in this country, those liable to be affected by general political decisions have some control over the decision-making is parliamentary democracy. Its peculiar feature in constitutional law is the sovereignty of Parliament. This involves that, contrary to what was sometimes asserted before the 18th century, and in contra-distinction to some other democratic systems, the courts in this country have no power to declare enacted law to be invalid. It was conceded before your Lordships (contrary to what seems to have been accepted in the Court of Appeal) that the courts cannot directly declare enacted law to be invalid. That being so, it would be odd if the same thing could be done indirectly, through frustration of the enacted law by the application of some alleged doctrine of equity. . . .
>
> It is well known that in the past there have been dangerous strains between the law courts and Parliament—dangerous because each institution has its own particular role to play in our constitution, and because collision between the two institutions is likely to impair their power to vouchsafe those constitutional rights for which citizens depend on them. So for many years Parliament and the courts have each been astute to respect the sphere of action and the privileges of the other—Parliament, for example, by its *sub judice* rule, the courts by taking care to exclude evidence which might amount to infringement of parliamentary privilege. . . .

Lord Reid, in part of his judgement, ventured into even loftier realms

of constitutional law, and his remarks have a peculiar relevance at a time when the authority of Parliament and its enactments is increasingly being called in question.

In earlier times many learned lawyers seem to have believed that an Act of Parliament could be disregarded in so far as it was contrary to the law of God or the law of nature or natural justice but since the supremacy of Parliament was finally demonstrated by the Revolution of 1688 any such idea has become obsolete.

House of Commons: Complaints against speech of Lord Chancellor.—Towards the end of 1973 a major political dispute arose over the action of the National Industrial Relations Court in imposing a heavy fine on the Engineering Workers' Union and in sequestrating part of the Union's political fund in order to secure payment of the fine. A number of Members of the House of Commons tabled a motion for an address to the Crown praying for the dismissal of the President of the Court, Sir John Donaldson, and alleging that he was guilty of gross negligence and incompetence or alternatively of political prejudice and partiality. The official Opposition also tabled a more temperate Motion calling for the repeal of the Act under which the Industrial Relations Court had been established and regretting the involvement of the Court in matters of political controversy. The latter Motion was debated in the House on 4th December, 1973.

The evening before the debate the Lord Chancellor (Lord Hailsham) made a speech in which he criticised Members for abusing the privilege of the Order Paper to make personal attacks on a judge. On the following day, before the debate began, Mr. Charles Pannell raised a complaint of breach of privilege against the Lord Chancellor, who, he said, had committed a contempt of the House by attempting, in his speech, to dictate what should be on the Order Paper of the House of Commons and to pre-empt the debate due to take place that day. Mr. Pannell said that he was well aware that Members of the House of Lords were not in the same position as other people in relation to privilege; and he quoted the passage of Erskine May which states that " neither House of Parliament can take upon itself to punish any breach of privilege or contempt offered to it by any Member of the other House ". But he nevertheless asked the Speaker to rule whether or not the Lord Chancellor's speech constituted a *prima facie* breach of privilege.

In giving his ruling the following day the Speaker made clear that the only question that he had to rule on was whether or not the matter should have priority over the orders of the day; he had decided that he would not be justified in granting it that priority. In reaching this decision, he said, he had been guided by the precedents, and in particular by a similar case in 1964 (see THE TABLE, Vol. XXXIII, p. 123) when the Committee of Privileges had stated that, in their view, it was " particularly important that the law of parliamentary privilege should not, except in the clearest case, be invoked so as to inhibit or discourage the

formation and free expression outside the House by Members equally with other citizens in relation to the conduct of the affairs of the nation ".

House of Commons (Delivery of a copy of a writ to a Member within the precincts of the House).—On 7th December, 1972, Mr. Ray Carter, Member for Northfield, went to the Central Lobby to meet an unknown visitor, a Mr. D. S. West, who in the customary way had filled in a green card requesting an opportunity to see him. Mr. West handed him an envelope which contained a solicitors' letter together with a document which he took to be a writ summoning him to appear in the Queen's Bench Division of the High Court of Justice. The letter stated that the solicitors were acting on behalf of the St. Christopher Motorists Association Ltd., and that the writ was issued following an article in that morning's *Guardian* newspaper. The article described how Mr. Carter, in response to an invitation in a Parliamentary Answer, had made available to the Secretary of State for Trade and Industry a file on the activities of the St. Christopher Motorists Association Ltd., and it quoted Mr. Carter as saying that the contents of the file were " serious " and that he hoped that the Government would " act with speed ". Both this statement and the article as a whole, the solicitor's letter alleged, were gravely defamatory of their clients.

The next day Mr. Carter made a complaint of breach of privilege on two counts: that the writ had been served on him in the precincts of the House, and that the writ was " a clear attempt at intimidation, an attempt to prevent me carrying out my public responsibilities as a Member of Parliament ". On 11th December the Speaker ruled that the matter constituted a *prima facie* breach of privilege, and it was referred to the Committee of Privileges in the normal way.

The Committee's report, presented to the House on 13th February, 1973, dealt with both parts of Mr. Carter's complaint. The Committee pointed out that the document handed to Mr. Carter in the Central Lobby was in fact a copy of the writ, although it had not been marked as such. They had been advised by the Attorney General that there could not be effective service of a writ by delivery of a copy unless there was a definite intention to effect service in that way; and on the evidence of the solicitors' covering letter, the Committee accepted that there had been no such intention. None the less, they concluded that the object of sending the letter had been to further legal proceedings, and the report went on:

> Your Committee consider that to gain entry to the precincts on a sitting day and send for a Member for this purpose was an affront to the House, and they find accordingly that a contempt was committed. In view of the lack of any precise precedent for this case, and Your Committee's acceptance of the submission that no contempt was intended, they recommend that the House should take no action against those involved. They are in no doubt, however, that an intrusion into the precincts for the purpose of delivering documents of

this type is a serious abuse of the facilities available to visitors, and they warn those concerned with such matters to avoid committing such contempts of the House in future.

The report then turned to the question of whether the solicitors' letter amounted to an attempt to obstruct Mr. Carter in the performance of his parliamentary duties. In evidence the solicitors stated that they had not complained about the Parliamentary Questions tabled by Mr. Carter or about his action in sending a file to the Minister, and assured the Committee that they had not intended to obstruct or intimidate Mr. Carter in carrying out his duties as Member of Parliament. The Committee accepted this assurance and concluded that on this aspect of the matter no contempt was committed.

Canada: House of Commons

Member's staff questioned by police.—The Canadian House of Commons agreed to investigate actions of the Royal Canadian Mounted Police and City of Ottawa Police when they visited the office of Miss Flora MacDonald, M.P., without the permission of herself or the Speaker of the House and interrogated her staff.

On a question of privilege raised on 4th September, 1973, Miss MacDonald moved: " That all matters pertaining to the interrogation of myself and my staff on Friday last be referred to the Committee on Privileges and Elections for study and report. " The Member for Kingston and the Islands went on to state that the purpose of the police in visiting her office was to inquire about files and documents missing from a government department. Miss MacDonald said she had an " overriding obligation to ensure that the privacy of my office is not violated " and sought approval for an investigation by the Privileges and Elections Standing Committee.

Speaker Lamoureux said he had no doubt that all M.P.s were " highly concerned about such activity " and would not like to see representatives of any police force questioning staff without permission. " I think that is an extremely serious matter and I have no doubt at this point that I express the views and concern of each Member of this House when I say that if ever there was an apparent breach of a Member's privilege, this is it, " the Speaker said.

After eight meetings, the Committee reported to the House on 21st September, 1973, that the privileges of Miss MacDonald had indeed been breached but was of the opinion the police acted in good faith. The Committee recommended that Mr. Speaker " remind the outside police forces and the security staff of the House of Commons of their respective obligations " and that no further action be taken.

AUSTRALIA: HOUSE OF REPRESENTATIVES

Article published in "The Sun".—On 20th September, 1973, Mr. C. J. Hurford, Chairman of the Joint Committee on Prices, brought up the report of that Committee on Stabilisation of Meat Prices. On the same day he raised as a matter of privilege an article which appeared in *The Sun*, a Sydney newspaper, on 18th September, 1973.

He said in the House:

> Now that I have brought down the report on the stabilisation of meat prices from the Joint Parliamentary Committee on Prices it will be obvious to honourable Members that recommendations made by the Committee in its report were prematurely published in a front-page article in *The Sun* on Tuesday, 18 September 1973. It is well known that the publication or disclosure of reports of committees before they have been reported to the House constitutes a breach of privilege or contempt.

The House resolved that the matter be referred to the Committee of Privileges.

In its examination of the matter, the Committee sought advice from the Clerk of the House of Representatives (Mr. N. J. Parkes, O.B.E.). Evidence was taken from Mr. C. J. Hurford, Chairman of the Joint Committee on Prices, Mr. M. E. Aldons, Clerk to that Committee and from Mr. C. S. Boorman, Clerk to Sub Committee B of the Joint Committee on Prices which was primarily responsible for the inquiry into meat prices. Mr. B. J. Tier, Editor of *The Sun* and Mr. N. E. O'Reilly, journalist employed by *The Sun* in the Parliamentary Press Gallery, were also required to give evidence.

The Editor of the newspaper accepted responsibility for publication of the article. He stated, however, that at the time of publication he did not think of the parliamentary rule prohibiting publication or disclosure of reports of committees which have not yet been presented to the Parliament. He expressed regret for his action and informed the Committee that he had taken action to avoid a repetition of this nature so far as that was practicable. Inquiries by the Committee failed to locate the person who had made the report available to the journalist who wrote the article.

The Privileges Committee Report (Parliamentary Paper No. 217 of 1973) was tabled in the House on 8th November, 1973, and set down for consideration on 12th November, 1973.

The findings of the Committee were:

> (i) That a breach of privilege and a contempt of the House of Representatives occurred when—
>
> (*a*) an unknown person, on Tuesday 18 September 1973, made available to Mr. N. E. O'Reilly, a copy of the draft report on Stabilisation of Meat Prices;
>
> (*b*) Mr. N. E. O'Reilly transmitted his article to *The Sun* on the same day; and
>
> (*c*) the article was published in *The Sun* newspaper on Tuesday, 18 September 1973.

(ii) That the author of the article and the editor of *The Sun* were both guilty of a contempt of the House of Representatives.

The Committee made the following recommendations:

(i) That the Editor of *The Sun* should be required to publish in a prominent position in that newspaper, an adequate apology for the premature publication of contents of the draft report on Stabilisation of Meat Prices.
(ii) That as the Editor of *The Sun* had accepted responsibility for the premature publication of contents of the draft report on Stabilisation of Meat Prices, no action should be taken against Mr. O'Reilly.
(iii) That Mr Speaker communicate with the President of the Parliamentary Press Gallery requesting him to bring to the notice of all journalists employed in the Gallery the long-standing Parliamentary rule applying to the premature publication or disclosure of Committee proceedings, evidence or Reports.

Before the report of the Privileges Committee came up for consideration by the House the editor of the newspaper concerned died suddenly. When debate on the report was resumed on 13th November, 1973,[5] Mr. Daly (Leader of the House) moved:

That the House agrees (*a*) with the Committee in its findings; (*b*) that, in view of the death of Mr. B. J. Tier, the former editor of *The Sun*, no further action be taken with respect to the committee's recommendation seeking publication of an apology, and (*c*) that Mr. Speaker should communicate with the President of the Parliament Press Gallery as recommended by the committee.

This Motion was agreed to by the House.

Letter allegedly written by the Secretary, Department of Aboriginal Affairs.—Mr. Snedden (Leader of the Opposition) raised in the House on 11th October, 1973, a matter of privilege based upon an article published in the *Daily Telegraph* on the same day. The article referred to a letter allegedly written by the Secretary of the Department of Aboriginal Affairs. The House resolved that the matter be referred to the Committee of Privileges.

In raising the matter Mr. Snedden emphasised that the issue of privilege related in no way to the newspaper itself. The matter of privilege related to a letter reported in the newspaper allegedly written by Mr. Dexter (Permanent Head of the Department of Aboriginal Affairs) to Dr. Coombs (Chairman of the Council for Aboriginal Affairs). Mr. Snedden said in the House:

The report says that Mr. Dexter's letter to Dr. Coombs related to evidence to be given to the House of Representatives Standing Committee on Environment and Conservation. I have ascertained that both Mr. Dexter and Dr. Coombs in fact gave evidence before that Committee.

To assist the Privileges Committee advice was sought from the Clerk of the House of Representatives (Mr. N. J. Parkes, O.B.E.), and a copy of the letter was obtained from the Secretary of the Department of Aboriginal Affairs.

The Committee's report (Parliamentary Paper No. 236 of 1973) was tabled in the House on 22nd November, 1973.

The findings of the Committee were:

(*a*) That it was apparent to the Committee that portions of the letter referred to in the newspaper article were quoted out of context and the newspaper article presented a distorted version of the letter.

(*b*) The Committee was satisfied that the letter did not cast imputations against or reflect on members of the Standing Committee on Environment and Conservation, nor did it express an intention to withhold information or constitute an attempt to influence a witness with respect to the evidence to be given to that Committee.

(*c*) The Committee did not consider that the terms of reference required it to pursue inquiries as to how the letter came into the possession of the journalist or whether the form of its publication was the result of a deliberate action by the journalist.

The Committee, therefore, found that there was no breach of privilege involved.

India: Lok Sabha

Alleged reflections on the Members of Rajya Sabha in a speech of a Member in Lok Sabha.—On 19th April, 1973, the Speaker (Dr. G. S. Dhillon) informed the House that he had received a letter from the Chairman of the Rajya Sabha, dated 2nd April, as follows:

> The speech of Shri Bibhuti Mishra, M.P. in the Lok Sabha on 30 March 1973, while moving his resolution for abolition of the Rajya Sabha, as reported in the Hindi daily *Hindustan* in its issue of 31 March 1973, was the subject matter of some discussion in Rajya Sabha in its sitting held on 31 March 1973. I am forwarding the relevant extracts of the proceedings of the Rajya Sabha which also include the observations which I made on the subject in the House for your consideration and for such action as you may think appropriate. You will no doubt agree with me that both Houses of Parliament and their members should treat the other House with utmost respect and consideration, and the best of relations should prevail between the two Houses and the respective members thereof. I shall be glad if you would kindly inform me about the action you take in the matter.

The Speaker added that he had replied to the Chairman of the Rajya Sabha on 5th April enclosing the transcript of Shri Bibhuti Mishra's speech. It was clear from the transcript that Shri Bibhuti Mishra had not delivered the remarks attributed to him by the *Hindustan*, and the Speaker had accordingly taken up the matter with the editor of that newspaper. The editor had replied in a letter dated 16th April, stating that the attribution of the remarks in question to Shri Bibhuti Mishra had indeed been a mistake; but that remarks to the same effect, describing the manner in which some of the Members of the Rajya Sabha had come to occupy their places, had been made by Shri S. M. Banerjee, who had spoken after Shri Bibhuti Mishra in the debate. A correction notice drawing attention to this mistake had been published on the front page of the *Hindustan* on 2nd April.

The Speaker then observed as follows:

In view of the explanation given by the Editor and the correction published by him in the newspaper, if the House agrees, the matter may be treated as closed.

I hope the House agrees.

I shall also inform the Chairman, Rajya Sabha, accordingly.

May I take this opportunity to appeal to the Hon. Members to use necessary restraint and not to say anything in this House which may bring disharmony between this House and Rajya Sabha.

The Speaker accordingly sent a letter to the Chairman, Rajya Sabha informing him of the position.

Throwing of leaflets from the Visitor's Gallery.—On the 23rd July, 1973, a person threw some leaflets from the Visitors' Gallery on the Floor of the House. He was immediately taken into custody by the Watch and Ward Officer and removed from the Visitors' Gallery. After some time, on the same day, the Minister of Parliamentary Affairs (Shri K. Raghuramaiah) moved the following Motion:

This House resolves that the person calling himself Tanaji Kamble who threw some leaflets from the Visitors' Gallery on the Floor of the House at 12.35 hours today and whom the Watch and Ward Officer took into custody immediately, has committed a grave offence and is guilty of the contempt of this House.

This House further resolves that he be sentenced to simple imprisonment till 5 p.m. on Thursday, the 26th July, 1973 and sent to the Central Jail, Tihar, New Delhi.

When some members wanted to know about the contents of the leaflets, the Speaker (Dr. G. S. Dhillon) observed:

Whatever may be written in them, good or bad this is not the question. But throwing of leaflets like this is against the dignity of the House. It is a bad thing, this should not be thrown like this. The very fact that it was thrown into the House is contempt of the House.

However, pleasant or unpleasant the contents may be, the act of throwing it into the House is contempt of the House.

Shri Madhu Limaye, a Member, suggested that the person concerned be heard before taking any decision in the matter. Some other Members opposed this suggestion as they felt that if a precedent of hearing such a person, who had committed the offence in the very presence of the House, was set up, many people would resort to this kind of offence, actuated by a desire to speak before the House.

The House divided and the Motion moved by the Minister of Parliamentary Affiars was adopted by 74 votes to 11.

Shri Tanaji Kamble was, accordingly, taken by the Watch and Ward Staff to and lodged in the Central Jail, Tihar, Delhi.

On 24th July, 1973, Shri Jyotirmoy Bosu, a Member, moved the following motions:

That Rule 338 of the Rules of Procedure and Conduct of Business in Lok Sabha in its application to the motion regarding reduction of the sentence of

imprisonment awarded to Tanaji Kamble, by the House on the 23rd July 1973, be suspended.

This House resolves that the sentence of imprisonment awarded by this House on the 23rd July, 1973, to the person calling himself Tanaji Kamble, for having thrown leaflets in the House from the Visitors' Gallery and thereby having committed contempt of the House, be reduced to simple imprisonment till 10 a.m. on Wednesday 25th July 1973.

The Speaker, thereupon, observed as follows:

Before this matter was brought to the House, he (accused) was approached, but he refused to give any statement. He would not talk to anybody. Then he was examined by a doctor and every limb was found to be normal, his brain was normal, his heart was normal, but in spite of that, he refused to give any statement. What to talk of expressing regrets, he refused even to talk to our staff.

The Minister of Parliamentary Affairs (Shri K. Raghuramaiah) stated *inter alia* as follows:

It is the duty of every citizen of this country and every member of this hon. House to maintain dignity and decorum of the House. I had a talk with the other Leaders of the opposition this morning. Shri Vajpayee, for instance, agrees with me that, in a matter like this where not even an apology has been tendered where no new situation has arisen, it would be most improper to reduce it. . . .

After further discussion Shri Jyotirmoy Bosu withdrew his Motions by leave of the House.

Alleged directive by a parliamentary party to its members not to 'hob nob' with members of other parties.—On 1st August, 1973, Sarvashri Shyamnandan Mishra, Jyotirmoy Bosu and Madhu Limaye, members, sought to raise a question of privilege on the ground that the Congress Parliamentary Party Executive Committee was reported to have issued a directive to its party members not to 'hob nob' with members of Opposition parties. They contended that the Central Hall and Lobbies of Parliament were places meant for free exchange of idea among members and any hinderance imposed in this respect amounted to curtailment of rights and privileges of the members.

Disallowing the question of privilege, the Speaker (Dr. G. S. Dhillon) ruled as follows:

How can you bring it up as a privilege motion? If something happened inside the party executive meeting, it is a party affair. . . . I do not allow it. . . . Every party has a right to issue direction to its members. A privilege motion should not arise unless a member comes to me and says to me that due to this he is obstructed from the discharge of his duties. That direction is meant only for Congress members. . . . If any Congress member comes to me and says that he is obstructed . . . or if anybody else comes to me and says that this statement is causing obstruction in the performance of his duties as a member of Parliament, that is understandable. Why should you worry? It is another party. They have a right to discuss everything in their party meetings, in their party executive committee meetings and they have the right to issue directions to their partymen. If any of their partymen resents it and comes to me and says: this is not a mere direction, it is an obstruction in the performance of my duties as a member, then I shall consider it. So far there is no such thing.

HARYANA

Criticism of Speaker by a Member.—On 3rd October, 1972, Chaudhri Ishwar Singh, a Member of the Haryana Vidhan Sabha, raised a question of privilege against another Member of the House alleging that he, during the course of his public speech, criticised the conduct and the ruling of the Speaker given by him in the House in the discharge of his duty. The matter was referred by the House to the Committee of Privilege on 3rd October, 1972, for examination and report to the House.

Ch. Ram Lal, M.L.A., the person complained against, was afforded an opportunity by the Privileges Committee to explain his position in the matter. He submitted his written statements to the Committee. After examining his statements, the Committee came to the conclusion that the impugned part of his speech constituted a breach of privilege and contempt of the House as it cast reflections on the conduct of the Speaker in the discharge of his duty. The Committee recommended that Chaudhri Ram Lal, M.L.A., be reprimanded by the Speaker so that he may be careful in his public utterances in future.

The report containing the recommendation of the Committee was adopted by the House in its sitting held on 12th November, 1973. Ch. Ram Lal, M.L.A., was accordingly reprimanded by the Speaker in the name of and under the authority of the House on the same day.

KARNATAKA

Complaint against Minister of Labour.—Sri H. D. Deve Gowda, Leader of Opposition in the Karnataka Legislative Assembly raised two questions of privilege against the Minister for Labour and Transport on 27th March, 1973. One was regarding the purchase of land at Raichur for construction of a Road Transport Corporation workshop, office, etc., and the other was regarding the purchase of chassis.

In the first case, Sri H. D. Deve Gowda alleged that the statement made by the Minister in reply to a call attention notice by a Member, regarding the purchase of land at Raichur for construction of the Road Transport Corporation workshop, office, etc., was untrue and therefore he contended that the Minister had misled the House and had committed a breach of privilege of the House. The second case related to certain statements made by the Minister for Labour and Transport in reply to a starred Question regarding the purchase of chassis by the Road Transport Corporation. It was contended that the Minister's statements were false and that the Minister had misled the House, which involved a breach of privilege of the House.

The Minister, explaining the facts of the two cases, denied the allegations made by the Members of the Assembly in the House on 19th May, 1973.

After hearing the Members and the Minister, the Speaker gave the following ruling:

I have heard the Leader of Opposition and other Members on the two questions of privilege. I have also heard the Minister for Transport. Several arguments were advanced regarding the powers of the Government in the affairs of the Road Transport Corporation, etc., There are a number of rulings of Parliament, other State Legislatures and of this House that if any statement is made by any member or Minister which another Member believes to be untrue, incomplete or incorrect, then there is no breach of privilege. The established procedure in such cases is to hear both the members and the Minister concerned and the matter is left to the members of the House and the public to judge who is right or who is not right. The Speaker of Lok Sabha has held that we cannot enter into any enquiry or investigation here. The recent rulings of Lok Sabha in such cases are also to the effect that there can be no question of privilege when facts are in dispute. A breach of privilege can arise only when the Member or the Minister makes a false statement or an incorrect statement wilfully, deliberately and knowingly.

In the light of the rulings on the above lines, today I allowed the Members and the Minister to make their statements. Both the versions are before the House. I withhold my consent to the privilege Motion. This does not, however, mean that the matter cannot be raised by Members in other ways. The House can discuss the affairs of the Corporation through other parliamentary devices. I may also add that the Public Undertakings Committee also goes into the working of the Corporation.

So far as the privilege matter is concerned, I feel that the matter may be treated as closed.

Press statement relating to a speech in the House.—On 19th September, 1973, Sri H. S. Siddappa while speaking in the Legislative Assembly on an adjournment Motion regarding the rise in price and the food situation in the State had said, inter alia, that the Vidyarthi Parishads in the colleges, which were sponsored by the Jan Sangha Party, were responsible for the disturbances in the State. The Secretary of the Jan Sangha Party in a press statement, denying the allegations made by the Member, stated, *inter alia*, that the Member appeared to have made the speech with an intention to please the Chief Minister and with a view to join the Congress.

On 22nd September, 1973, Hon. Member Sri H. S. Siddappa raised a question of privilege alleging that the Secretary of the Jan Sangha Party at Bangalore had committed a breach of privilege of the House by his press statement published in two local papers (*i.e.*, *Prajavani* and *Kannada Prabha*). The Member contended that the statement of the Jan Sangha Party Secretary was a reflection on him and hence constituted a breach of privilege.

On 25th September, 1973, the Speaker held the matter to be in order. On a Motion moved by the Member the matter was referred to the Committee of Privileges for enquiry and report. The Committee presented its report to the House on 12th March, 1974. It cited a number of authorities, including the report of the House of Commons Select Committee on Parliamentary Privilege of 1967; and concluded that the statement of Sri B. V. Deshpande did not impute improper motives which would bring ignominy on a Member, and therefore did not constitute a breach of privilege. The Committee accordingly recommended that no further action need to be taken in the matter.

MAHARASHTRA

Telegram to the Speaker criticising a resolution passed by the Assembly.—On 2nd March, 1973, the Speaker of the Maharashtra Legislative Assembly received a telegram from one Shri Sahasrabudhay stating that a resolution passed by the Assembly earlier committing two lady visitors to prison was cowardly, atrocious, high handed, unsportsmanly and hence undemocratic. (The said two lady visitors had been punished for their gross misbehaviour in shouting slogans and throwing leaflets from the Visitor's Gallery in the House.)

Shri Sahasrabudhay was asked to explain why action should not be recommended against him for breach of privilege and contempt of the House and after considering his reply, the matter was referred to the Privileges Committee.

The Committee in its report presented to the House on 14th August, 1973, recommended that irresponsible statements such as those made by Shri Sahasrabudhay, who lacked in coherence and understanding, might not be taken serious notice of and no action need consequently be taken against him.

The House, on a Motion by the Chief Minister moved by Minister for Legislative Affairs on 4th September, 1973, unanimously adopted the said report.

Article containing serious allegations against Members of the House and criticising Speaker of the Assembly.—On 6th August, 1973, a Member of the Maharashtra Legislative Assembly gave a notice of his intention to raise a question of breach of privilege and contempt of the House arising out of an article in Marathi language captioned " Burn these Members of the Legislature Alive " appearing in *Prashasti*, a Marathi weekly of Bombay. The Member claimed that the said article contained serious allegations against the Members of the House about their behaviour and conduct in the House. For instance, there were allegations that the Members gather in the Canteen when the proceedings go on in the House and bargain for some commission in some private enterprises, or plan for a walk-out from the House in order to meet " a woman " in a room in Legislators' Hostel. They were also alleged to have managed to sign the attendance register for two or three days at a time with the connivance of the officials when really they were absent from the House or the Committees on those days and thus improperly got daily allowances. The article also criticised the Speaker of the Assembly.

The matter was allowed to be raised in the House. After leave was granted by the House the matter was referred to the Committee of privilege for investigation and report.

The Committee in its report presented to the House on 15th November, 1973, held that a breach of privilege and contempt of the House was committed by the Editor, who also happened to be the printer and

publisher of the said weekly, and recommended that he should be committed to prison for a period of not less than 30 days, the sentence to be undergone in one session or in two sessions depending upon whether or not the whole period of 30 days fell within one session.

The House, on a Motion by the Chief Minister moved by the Minister for Legislative Affairs, adopted the said report and the Editor was committed to prison for a period of thirty days which he underwent for 27 days during one session and for 3 days in the next succeeding session of the Legislative Assembly.

Tamil Nadu: Legislative Council

Privilege issue against " Nathigam ", a Tamil daily.—A Member raised a privilege issue relating to a report published by the Tamil daily, *Nathigam* in its issue dated 10th February, 1973. The facts of the case are as follows.

On 8th February, 1973, when the question about the " Pidiarisi Thittam of Sri Sankaracharia r " tabled by a Member came up before the House, another Member raised a point about the propriety of answering the question. In that connection, the Chief Minister stated that a practice was going on of some outsiders preparing the draft of questions for Members and sending them on to the Secretary of the Council without the Members concerned themselves knowing the contents of the question. He pointed out that the present question was one such and he left it to the decision of the Chair to either allow or disallow it. The Leader of the Opposition suggested that if the questioner was not present in the House when the question came up, and if no other Member put the question on behalf of the absent Member, the answering of the question might be suspended. After some discussion, the Deputy Chairman kept the question in abeyance.

A news report appeared in the Tamil daily *Nathigam* on 10th February, 1973, commenting on the proceedings of the Council on the above question. The report referred to certain Members and the Chief Minister and described how they functioned in the Council when the particular question was taken up for being answered. On 13th February, 1973, a Member raised a question of privilege and alleged that the press report contained denigrating and derogatory references to the Chief Minister and the Leader of the Opposition and stated that it amounted to contempt of the House. The Chairman held that a *prima facie* case of contempt of the House had been made out and referred the matter to the Committee of Privileges for investigation and report.

The Committee called for a written explanation from the Editor of the paper and, finding the explanation unsatisfactory, summoned him to appear before the Committee for further inquiry.

The Editor appeared before the Committee and tendered his unqualified apology for the publication of the news report containing derogatory references to the proceedings of the Council and promised

to publish his letter of regret in his daily and send a copy of the particular issue to the Committee. In view of the apology tendered by the Editor and considering the dignity of the House, the Committee decided to drop the matter and recommend to the House accordingly.

The report was presented to the House on 11th August, 1973, and considered and approved by the House on 13th August, 1973.

UTTAR PRADESH: LEGISLATIVE ASSEMBLY

Case brought against Member by disciples of a religious sect.— On 29th March, 1973, Sri Shiva Nand Nautiyal gave notice of a breach of privilege stating that some disciples of Bal Yogeshwar had filed a case against him in the Court on the ground that he had asked some questions in the House regarding the Divine Light Mission. The Speaker asked for the authentic copy of the notice received by the member from the Court and added that he would then take action on the facts of the case irrespective of the personalities involved in it.

On 30th March, 1973, Sri Shiva Nand Nautiyal, with the consent of the Speaker, raised a question of breach of privilege and contempt of the House against Sri Hari Ram Srimali of Gorakhpur District and Sri Prem Pal Singh Rawat, alias Balyogeshwar. After hearing Sri Krishnanand Rai, Sri Madhav Prasad Tripathi, Sri Laxmi Raman Acharya and Sri Jai Ram Verma, Members of the Assembly, Speaker admitted it as a *prima facie* case of breach of privilege. On 2nd May, the Speaker read to the House the names of the various courts in which cases against Sri Nautiyal had been filed. Some Members insisted that the House should directly proceed to deal with this question of breach of privilege in the House itself. The Chief Minister suggested that the matter should first be discussed in a meeting of the leaders of the parties of the House and the Speaker and that further action should be taken in accordance with the consensus of their opinion. The same day Sri Nautiyal informed the House that certain persons had threatened to harrass him. On the demand of some Members, the Deputy Speaker directed the Chief Minister to arrange for the security of the honourable Member and to see that he was not molested in any way.

On 3rd April, the Speaker informed the House that it had been decided at the meeting of the leaders of the parties to postpone the consideration of the question for some time, and he added that he would acquaint himself with the cases filed against Sri Nautiyal in the courts. When the matter was raised again by Sri Nitya Nand Swami on 23rd April, 1973, the Speaker informed the House that on the suggestion of the Chief Minister he had convened a meeting of the leaders of all the parties and had also called in the Advocate General; he added that the House would finally decide the question of breach of privilege.

On 8th May, 1973, the Speaker announced in the House that after assessing the opinion of all concerned he had decided to refer the said question to the Privileges Committee of the House. The Committee could not submit its Report before the dissolution of the House.

Member menaced by police.—On 8th May, 1973, Sri Suberdar Singh, M.L.A., gave a notice of a question of breach of privilege against Sri Krishnapal Singh and Sri Shishupal Singh, Sub-Inspectors of the police station at Bhogaon, Mainpuri District. He informed the House that on the night of 7th May, 1973, at 9 p.m., when he was going to catch the train for Lucknow to attend the session of Legislative Assembly the said two sub-Inspectors, who were sitting on a jeep made him sit in the jeep in order to take him forcibly to the Superintendent of Police, On the way the sub-Inspectors had forced him at pistol point to write his resignation from the membership of Legislative Assembly on a blank piece of paper, which sub-Inspector Shishupal Singh kept in his pocket.

The Speaker informed the House about the receipt of the said letter of resignation by post, and said that he did not accept it as a letter of resignation. On 9th May, 1973, the Speaker admitting the question as a *prima facie* case of breach of privilege referred it to the Privileges Committee of the House. The Committee could not submit its report before the dissolution of the House.

MALTA

Imprisonment for attempted bribery.—At the sitting of the 4th June, 1973, the Minister of Justice and Parliamentary Affairs reported to the House of Representatives that on 31st May, two men, Ronnie Said and Roger Camilleri, had called on the Gozitan Labour Member of Parliament, Mr. Angelo Camilleri, at his home and offered him £M120,000 to vote against the Government, and raised this case as a breach of privileges of the House.

The Minister added that it was not the Government's wish to bring up the matter before Parliament because they did not wish to be judges in their own case, but the Criminal Code did not contemplate such a case, but only cases of corruption against the administration of justice and against the administration, and all the cases provided for concerned public officers.

After suspending the sitting for ten minutes to consider the matter the Speaker ruled that the case raised by the Minister constituted a *prima facie* breach of privilege under Section 11 (d) of the Privileges Ordinance which runs as follows:

> 11. (1) The House shall have the power to punish with a reprimand or with imprisonment for a period not exceeding sixty days or with a fine not exceeding one hundred pounds, or with both such fine and such imprisonment, any person, whether a Member of the House or not, guilty of any of the following acts— . . .
>
> (*d*) any offer to or any acceptance by a Member or an officer, of a bribe to influence him in his conduct as such Member or officer;

Following this ruling the Minister of Justice and Parliamentary Affairs moved that the facts alleged to have occurred on 31st May be

considered a breach of the privileges of the House. Then the Minister moved that his Motion be postponed so that it could be discussed when the persons concerned appeared in the House to answer the charge. This was agreed to.

The Minister of Justice and Parliamentary Affairs then moved that the House order the Clerk to issue a summons, signed by him, against Roger Camilleri and against Ronnie Said to appear before the House on 6th June to answer this charge:

> That at Nadur, Gozo, on May 31 of this year, they offered the sum of $M120,000 to Member of Parliament, Angelo Camilleri to influence him in his duties as a Member of the House against Section 11 (*d*) of the House of Representatives (Privileges and Powers) Ordinance and that the same Clerk summon also the witnesses indicated to him.

This Motion was carried.

When the accused appeared at the bar of the House on 6th June, 1973, they were without counsel, as they stated their lawyers could not take the brief due to the short notice (the Privileges Ordinance lays down a minimum of 24 hours' notice). The Prime Minister said the two accused had already been investigated by the police and had known about the charge more than a week before; but to remove all doubts about the accused not having had sufficient time to prepare their defence he would move that the case be postponed till the following sitting—Monday, 11th June. The case was thus postponed.

On 11th June at the opening of the sitting, the Speaker Mr. E. Attard Bezzina informed the House that late that morning he had been served with a copy of an application by accused to the Civil Court seeking a declaration that the charges brought against them were null because the law under which they were being tried was null. Mr. Speaker informed the House that the case had been heard with urgency by the Court, which had rejected the application.

In their submission to the Court the accused had claimed that the Privileges Ordinance was now a dead letter; it had been promulgated under the 1939 Constitution and had no effect under the 1964 Constitution. Article 66 of the 1964 Constitution required that a law be enacted by Parliament to regulate its immunities and powers, but this had not been done. This claim was rejected by the Court, who held that the provisions relating to the continuation and adaptation of laws found in article 11 of the Malta Independence Order 1964 had clearly and unequivocally conferred on the House of Representatives the powers granted under the Privileges Ordinance.

The Hon. Dr. M. Felice, on the Opposition side, claimed on a point of order that the case was still *sub judice* before the Courts, as the accused might appeal from the decision of the Court. The Hon. Prime Minister said that they had started the proceedings and others should not interfere. The House was the highest institution in the country. Mr. Speaker ruled that apart from who started the proceedings, the House had always

acted under the Privileges Ordinance and unless some other competent authority decided otherwise the case would proceed.

The Labour Member for Gozo, the Hon. A. Camilleri, then described the circumstances which had led up to the complaint of breach of privilege. He had first been approached in February 1973 by Ronnie Said, who had offered him £M30,000 to defeat the Government. He had immediately reported the incident to the Prime Minister. In March the offer had been renewed, and on that occasion Said had named four other Maltese M.P.s (including two Members of the Government) who, he claimed, had accepted similar offers. The Hon. A. Camilleri said he had replied that since they already had those Members, they should leave him alone.

Said and Roger Camilleri had visited him again in mid-April and on 25th May, offering him first £M60,000 and then £M120,000. On both occasions he had told them not to approach him again. When they rang him a further time on 31st May to tell him that they were coming to see him that evening he had informed the police. When the two accused had called at about 10 p.m. a police inspector and a sergeant were stationed in hiding in an adjoining room and had heard the offer repeated.

Giving evidence Police Inspector John Piscopo described how he and the police sergeant had taken notes of the conversation between the Hon. A. Camilleri and the two accused. The accused had told the Hon. A. Camilleri that the money was there whenever he wanted it; and they had also referred to the possibility of an arrangement with the other Gozo Labour M.P., the Hon. K. Galea. The Hon. A. Camilleri told the accused to get out and Roger Camilleri replied: " You are right, but we were sent. " The following day the accused had been detained for questioning.

An Opposition Member asked the witness whether he did not consider that he should have apprehended the accused immediately after hearing their conversation. The Speaker ruled the question out of order and directed witness not to answer.

The House then heard corroborating evidence from other witnesses, including two Members from the Government side who stated that they had received similar offers from the accused.

The case was continued on the following day, Tuesday, 12th June, 1973. The Speaker said that he would allow questions to be put by the defence counsel to Members of Parliament in his discretion, and Members could answer if they wanted to. Questions were put. As the defence had no witnesses the House agreed that defence counsel for the accused should make their submissions. Dr. J. Fenech, for accused Said, gave up his patronage of the accused saying that under the circumstances he felt he could not proceed. The Speaker then ordered Dr. Fenech to withdraw from the House. Dr. Fenech was in fact held up a number of times by the Speaker and other Members for contesting the jurisdiction of the House to hear this case under the Privileges

Ordinance. He was replaced by Dr. Bajada, who made submissions on behalf of Ronnie Said.

In his submissions on behalf of accused Roger Camilleri, Dr. P. Mallia said *inter alia* that in his view the prosecutor and Members who were also witnesses should not exercise their vote in this case.

Following Dr. Mallia's submissions, the sitting was suspended to consider the case. When the House resumed the Speaker put the question on the Motion moved by the Minister of Justice and Parliamentary Affairs on the 4th June, 1973. It was agreed to without a division.

At the sitting of 13th June, 1973, the Minister of Justice and Parliamentary Affairs moved that Ronnie Said and Roger Camilleri, who were found guilty during the previous sitting of a breach of privilege, be condemned to imprisonment for 60 days and to a fine of £M100 each—that is the maximum penalty stipulated in the Ordinance.

The Minister pointed out that the crime was of a very serious nature. This had also been admitted by the defence. It was serious not only because somebody had tried to subvert the will of the people by means of money but also because the sum involved was very big and several attempts had been made on several Members.

The Motion was agreed to.

At the sitting of 18th June, 1973, Mr. Speaker informed the House that the appeal filed by Roger Camilleri and Ronnie Said had been rejected by the Court of Appeal. Recourse had also been had to the Constitutional Court, which had abstained from taking cognisance of the case.

This was the worst case of breach of privilege in Malta since the 1947 (Second Self Government) Constitution, and the first case since 1947 of a person being sent to prison for a breach of parliamentary privilege. There had been other cases of people sent to prison under the 1921 (First Self Government) Constitution. These occurred in 1928 and in 1929 (two cases); and they all involved editors of newspapers.

Expulsion of reporters by order of Speaker.—At the sitting of 12th June, 1973, Mr. Speaker referred to a report in the daily newspaper *In-Nazzjon Taghna* of that same day concerning the case of breach of privilege on the attempted corruption of a Member of Parliament, which report carried as heading " Dr Mallia threatened with breach of privilege ".

Mr. Speaker informed the press that he had threatened no one; he had only ordered and warned as in duty bound. He then warned *In-Nazzjon Taghna* to report faithfully what took place in the House, or else other steps would be taken; and he asked for a correction to be published.

At the sitting of 13th June, 1973, the Speaker stated that he did not consider the correction appearing in *In-Nazzjon Taghna* of that day to be the one called for. Therefore, in accordance with the warning given in the previous sitting he ordered the Marshal to expel the reporters of

In-Nazzjon Taghna and to suspend them from attending the next two sittings of Parliament.

Speaking on the adjournment a Member of the Opposition asked Mr. Speaker to reconsider his decision. In the following sitting of 18th June, 1973, the Speaker informed the House that after reconsidering the the case he regretted that he could not go back on his decision.

Alleged remarks made from Strangers Gallery.—At the sitting of 26th March, 1973, a Nationalist Member of Parliament claimed that a remark passed on him by a person in the Strangers' Gallery, Mrs. N. Galea, while the House was sitting, constituted a breach of privilege.

At the sitting of 27th March, 1973, the Speaker ruled that the case brought up constituted a *prima facie* breach of privilege. The Member of Parliament in question then moved: " That the House consider as a breach of privilege the remarks made by Mrs. Nina Galea of 99 Kingsway, Valletta, a stranger present at the sitting of Monday, 26th March, 1973, whilst the Hon. Dr. Joe Muscat was entering the House ". Discussion on this Motion was then interrupted and stood adjourned for the time when this Motion appeared on the Agenda.

At the sitting of 25th April, 1973, the House resumed the discussion on the Motion of breach of privilege, which was agreed to. The Minister of Justice and Parliamentary Affairs then moved that after the House had approved as a breach of privilege the remark " There goes Solomon " which the Hon. Dr. Joe. Muscat alleged to have been said by Mrs. Nina Galea, the latter be ordered to appear before the House together with any witnesses to state why she should not be found guilty of a breach of privilege. This Motion was agreed to.

At the sitting of 7th May, 1973, Mrs. Nina Galea was called to the bar of the House. Mrs Galea, who was assisted by counsel Dr. J. Filletti, denied on oath to have uttered the words " There goes Solomon " to Dr. Muscat or to any other Member. Dr. Muscat told the House that as he was entering the House he saw Mrs. N. Galea look in his direction and say sarcastically " There goes Solomon ". The defence called four witnesses, all of whom stated on oath that they did not hear anything. The counsel for the accused submitted that the burden of proof lay on the person making the allegation. The resulting conflict of evidence should go in favour of the accused.

The Minister of Justice and Parliamentary Affairs moved that the House, after hearing Dr. Muscat, Mrs. N. Galea and defence witnesses, found the accused not guilty because of conflicting evidence and freed her. The Motion was carried by 28 to 27 votes.

Zambia

Breach of privilege by Director of Public Prosecutions.—On 20th February, 1973, the Hon. Mr. Speaker ruled that a breach of parliamentary privilege was committed by the Director of Public

Prosecutions against Mr. W. D. Mung'omba, Member of Parliament for Mporokoso South and a lawyer by profession. This was as a result of the latter's speech on 7th February, 1973, when he made a contribution during the Committee of Supply on Vote 15/01 (Prisons Department) of the Ministry of Home Affairs. In his speech Mr. Mung'omba advocated heavy penalties for those who corruptly grant Zambian citizenship to non-Zambians.

On 12th February, 1973, in connection with the trial of a Mr. Mulwanda who was being tried for allegations of granting Zambian citizenship corruptly to non-Zambians, the Director of Public Prosecutions (Mr. Chigaga) issued a press statement in court condemning Mr. Mung'omba in the following terms:

> It is reprehensible that Mr. Mulwanda's defence lawyer, albeit in a different capacity, has used the cloak of Parliamentary Privilege to comment on a matter which is very much *sub judice*. He himself is also aware that investigations of similar corruption are taking place, and the statement could not fail to influence potential witnesses who are being approached.

Mr. Mung'omba, M.P., wrote a letter to Mr. Speaker complaining that an infringement of parliamentary privilege had taken place, since his freedom of speech in the House had been attacked by the Director of Public Prosecutions. It was proved that in fact at no time had Mr. Mung'omba been a defence counsel of Mr. Mulwanda.

In his ruling, Mr. Speaker pointed out *inter alia* that the attack on Mr. Mung'omba implied that the Chair should have ruled the former out of order when he expressed his view regarding persons who corruptly grant or assist in granting Zambian citizenship illegally. Mr. Speaker further ruled that a breach of parliamentary privilege was committed and he gave a final warning " to all outsiders that Parliament will not hesitate to punish anyone who tampers with the rights and privileges of Hon. Members as laid down by the law of this land on Parliamentary Procedure and Practice. " (*Parliamentary Debates, Fifth Session of the Second National Assembly, Vol. XXXII, cols. 890, 1309-12.*)

XVIII. MISCELLANEOUS NOTES

1. Constitutional

Australia (Constitution Alteration Bill 1974).—The purpose of this Bill was to amend section 128 of the Constitution, which stipulates the manner in which the Constitution itself can be amended. The first amendment aimed at facilitating constitutional change proposes that the requirement that there be a majority of voters in a majority of States in a referendum to amend the Constitution be changed to consent by the majority of voters in not less than one half of the States. The second amendment proposed to give a vote in referendums to the people of the mainland Territories, viz. the Australian Capital Territory and the Northern Territory.

This Bill was amended by the Senate to keep the requirement of a majority of voters in a majority of States and the House of Representatives disagreed to the amendments. When the Senate insisted on its amendments, and the House insisted on disagreeing to those amendments, the Bill was ordered to be laid aside by the House of Representatives.

It is of interest to note that s. 128 of the Australian Constitution provides:

> 128. This Constitution shall not be altered except in the following manner:
>
> The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of Members of the House of Representatives.
>
> But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.
>
> When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of Members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.
>
> And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.
>
> No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise

altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

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

South Australia (Constitutional changes).—A number of important amendments were made to the Constitution by Acts No. 51 and No. 52 of 1973 assented to by Her Majesty the Queen and proclaimed on 22nd November, 1973. They included:

1. Abolition of the five Legislative Council Electorates and creation of a single State Electorate—the change will be effective from the first Legislative Council election following the commencement of the amending Act:
2. An increase in the number of Legislative Council Members from 20 to 22 to be effected by replacing the ten retiring Members at the next two periodical elections by eleven Members:
3. Election of Legislative Council Members at General Elections by a system of proportional representation (with optional preferential voting) so as to ensure the numbers elected from each Party is as near as possible in direct relation to the total percentage vote achieved by each Party:
4. The filling of casual vacancies by Members chosen by a joint meeting of the Members of both Houses:
5. The extension of the Legislative Council franchise to all persons aged 18 years or over with enrolment for the Legislative Council automatically following enrolment for the House of Assembly: (Note: Electors are compelled to vote for the House of Assembly, but not for the Legislative Council.)
6. The minimum age of 30 years for membership of the Legislative Council has been abolished and any elector may now nominate for election to either House.

The Presiding Officers of the two Houses have been given the right to indicate their concurrence or non-concurrence in the votes taken on the second and third readings of any Bill on those occasions when they have not exercised a casting vote. Previously, the Presiding Officers were allowed a casting vote only when there was an equality of votes.

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

Papua New Guinea (Constitutional changes).—Necessary changes were made in the law concerning the House of Assembly in 1973 which made provision for the Internal Self-Government of Papua New Guinea on 1 December 1973.
The changes involved were as follows:

1. *Sections 13 and 14:* Sections 13 and 14 were repealed which resulted in the abolition of the office of " The Administrator ".

Substituting Sections 13 and 14 allowed for the establishment of the new office of " The High Commissioner ".

2. *Section 36 (1) (a):* The omission of Section 36 (1) (a) abolished 4 seats in the House formerly held by Official Members appointed by the Governor-General on the nomination of the High Commissioner. This reduced the overall membership of the House, now consisting of not less than 100 Members, but not more than 103 (Section 36 (1) (d)) Members.
3. *Section 52:* The amendment to Section 52 makes provision for future " Ordinances " to be called " Laws ".
4. *Section 57:* Section 57 was repealed which constituted the removal of the power of the Governor-General to disallow Acts assented to by the High Commissioner either wholly or partially within 6 months of their assent.

India (Constitution (Thirty-first Amendment) Act 1973).—Sub-clauses (a) and (b) of clause (1) of article 81 of the Constitution of India provide that the House of the people (Lok Sabha) shall consist of not more than 500 Members to be chosen by direct election from territorial constituencies in the States and not more than 25 Members to represent the Union territories, chosen in such manner as Parliament may by law provide. As a result of the enactment of the North-eastern Areas (Reorganisation) Act 1971 the total number of seats in the Lok Sabha allotted to the States had increased to 506, six more than the permissible limit of 500 under article 81 of the Constitution.

Clause (2) of article 81 of the Constitution lays down that for the purposes of sub-clause (a) of clause (1), there shall be allotted to each State a number of seats in the Lok Sabha in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States and that each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State. Under clause (3) of article 81, the expression " population " used in this article means the population as ascertained in the last preceding census of which the relevant figures have been published. Article 82 enjoins that on the completion of each census, the allocation of seats in the Lok Sabha to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine. After completion of census in 1971, in pursuance of article 82, Parliament enacted the Delimitation Act in 1972 and the Delimitation Commission has since been constituted to undertake the necessary task of the readjustment envisaged in article 82. (See page 88 of THE TABLE, vol. XLI for 1972/73).

In view of these circumstances the Constitution (Thirty-first Amendment) Act was passed in 1973. Section 2 of this Act, which amends article 81 of the Constitution, increased the upper limit for representation

of the States from 500 to 525 mainly with the view to ensure that any readjustment and consequent allocation of seats does not adversely affect the existing number of seats allotted to each State in the Lok Sabha; and the opportunity has been utilised to decrease the limit of representation from the Union territories from 25 to 20.

Clause (1) of article 330 and clause (1) of article 332 of the Constitution relate respectively to reservation of seats in the Lok Sabha and State Assemblies for the Scheduled Castes and the Scheduled Tribes. However under sub-clause (b) of clause (1) of article 330 and clause (1) of article 332 the provisions of these articles have been made inapplicable to the State of Nagaland and the tribal areas of the State of Assam on the ground that these areas have predominantly tribal population. According to the 1971 census, it has become very clear that the bulk of the population in these areas as well as in other parts of the Eastern region of the country—namely State of Meghalya and Union territories of Arunachal Pradesh and Mizoram, belonged to the Scheduled Tribes. It has, therefore, been provided by the Constitution (Thirty-first Amendment) Act 1973 that the powers of articles 330 and 332 would not apply also to the predominantly tribal units of Meghalaya, Arunachal Pradesh and Mizoram.

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

Zambia (Increase in composition of Assembly).—Following the enactment of the Constitution of Zambia Act 1973, the composition of the House was increased from 105 elected Members to 125 elected Members; and from five nominated Members to ten nominated Members—thus bringing the total composition of the House to 136 including Mr. Speaker who is elected by Members of the Assembly from among persons who are qualified to be elected as Members of the Assembly but are not Members of the Assembly.

Bermuda (Constitution (Amendment) Order 1973).—This Order came into force on 18th April and provides *inter alia* for:

(1) A Cabinet for Bermuda in substitution for the former Executive Council, and for the person holding the office of Government Leader immediately before the appointed day (18th April, 1973) to be deemed as from that day to have been appointed Premier.
(2) The appointment of Ministers (formerly Members of the Executive Council) by the Governor in accordance with the advice of the Premier.
(3) The Cabinet to be presided over by the Premier, or in his absence by such other Minister as he may appoint, and for the Cabinet to be summoned only on the authority of the Premier. (The former Executive Council was summoned only on the authority of the Governor and was presided over by the Governor.)
(4) The creation of a Governor's Council for the purpose of con-

sidering matters for which the Governor is responsible under s. 62 (1) of the Constitution. The Governor's Council consists of the Governor, as Chairman, the Premier and not less than two nor more than three Ministers appointed by the Governor after consultation with the Premier. (Formerly the Chief Secretary (which office no longer exists) was responsible for assisting the Governor in the exercise of his functions relating to matters for which he is responsible under s. 62 of the Constitution.)

An Act entitled " The Constitution Amendment (Consequential) Provisions Act 1973 " making such provision in relation to the Laws of Bermuda in consequence of the amendments to the Constitution made by the Bermuda Constitution (Amendment) Order 1973 was passed by the House of Assembly on 22nd February, 1973, and by the Legislative Council on 19th March, 1973, and was assented to on 21st March, 1973. The Act was brought into operation on 18th April, 1973.

2. Electoral

Canada (Election expenses).— Legislation imposing limits on the amount of money candidates can spend on federal election campaigns and requiring them to reveal sources of major contributions was approved in the Canadian House of Commons on 3rd January, 1974.

After several months of debate, Members of Parliament voted 174 to 10 to give third and final reading to Bill C-203, an Act to amend the Canada Elections Act, the Broadcasting Act and the Income Tax Act in respect of election expenses. It is expected the Act will come into force in July 1974.

The legislation establishes campaign spending limits for candidates in their constituencies and for national parties. Full disclosure of campaign contributions exceeding $100 will be required. The Act also provides public money for political parties and sets new rules in election broadcasting.

Once in effect, candidates will be limited to an expenditure of $1 for each of the first 15,000 voters in their ridings, 50 cents for each of the next 10,000 and 25 cents for each voter over 25,000. Parties will be allowed to spend 30 cents for each registered voter in ridings in which they have a candidate.

The legislation also requires each candidate to file an audited statement of his expenses on which reimbursement by the Government will be based. Candidates will be reimbursed from the public purse for limited postage, travel and auditing expenses.

Contributions will be tax deductible on a sliding scale to a maximum deduction of $500.

The Canada Elections Act provides for an election period of a minimum of 57 days, which must include at least nine Mondays. Polling day is always on a Monday, except when the appointed Monday is a national holiday. In such cases polling takes place on the first Tuesday

following the ninth Monday. All radio and television stations will be required to provide 6½ hours of prime time, to be paid partially from public funds and to be allocated under an all-party agreement.

Violators of any section of the Act will be liable to maximum fines of $25,000.

Australia (Changes in electoral system).—The following changes were effected in the Federal Electoral System during 1973: The franchise was extended to include 18- to 20-year-olds; the age of candidature was lowered to 18 years and provision was made for the Australian Capital Territory to be divided into two electorates. The legislation concerning the lowering of the voting age, the subject of a previous article (see THE TABLE, Vol. XLI, pp. 113–14), had an easy passage through both Houses.

During the year the Government also attempted to grant the two mainland Territories, the Northern Territory and the Australian Capital Territory, representation in the Senate. The main arguments used by the Government in support of this legislation were the lack of effective representation at all levels in the Australian Capital Territory and the democratic right of people to have a say through the ballot box concerning those who make their laws. The Opposition, on the other hand, in opposing these measures used the Constitutional argument that the Senate is a States House designed to protect the interests of the States and the intrusion into that Chamber of non-State representatives would be unconstitutional.

An attempt was also made to amend the *Commonwealth Electoral Act* 1918–1973 to alter the law concerning the distribution of States into electoral divisions.

The first proposal of the Bill was to reduce the permissible variation from the quota of electors required in an electorate from plus or minus one-fifth to plus or minus one-tenth. The other major proposal was to revise the factors which Distribution Commissioners were required to take into consideration in distributing a State into electoral divisions. This proposal involved deleting references to disabilities arising out of remoteness or distance, the density or sparsity of population of the division, and the area of a division. The arguments used by the Government in support of these measures were the need for equality of representation between electoral divisions and the undemocratic process of using geographic criteria in determining the number of electors in a division. The Opposition in refusing to support this piece of legislation argued that the present quota variation of one-fifth was the most equitable and quoted election results for the last twenty years in support for their argument. They also argued that people in rural areas, because of their contribution to the national economy and because of disadvantages suffered by living in isolated rural areas, were entitled to an electoral loading in their favour as compensation.

Although the Bills were passed by the House of Representatives, the

Senate failed on two occasions to give these Bills a second reading thus providing the Government with the Constitutional prerequisites to seek a double dissolution of the Parliament if it so desired.

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

New South Wales (Electoral Changes).—By the Parliamentary Electorates and Elections (Amendment) Act (No. 44 of 1973), the State of New South Wales was to be divided into 99 Electoral Districts (previously 96) for the election of Members of the Legislative Assembly. There were to be 66 Electoral Districts in the Central Area and 33 in the Country Area.

In arriving at the number of persons to be enrolled in each District, the Electoral Districts Commissioners appointed for the distribution were to arrive at a quota for each Area by dividing the total number of electors enrolled in the Area by the number of Districts in that Area. They were permitted to vary the resulting quotient for each District by a margin not exceeding 20% in lieu of 15% in previous distributions. Subsequent distributions were to be carried out at the expiration of six years from the date on which the last preceding distribution commenced.

The amending Act also provided that, notwithstanding anything to the contrary in the principal Act, a ballot paper should not be informal by reason only of the fact that it had not been signed or initialled by the presiding officer at the polling booth, if it bore such mark as is prescribed as an official mark.

It was to be an offence in future for a person to print, publish or distribute any advertisement, " how to vote " card, handbill, pamphlet, poster or notice without the name and address of the person on whose instruction the matter was printed, and the name and address of the printer.

A General Election in accordance with the provisions of the amending Act was held on 17th November, 1973. In the Central Area electorate of Coogee, the declaration of the poll was delayed until 6th December, 1973, due to requests by two candidates for recounts of the votes and distribution of the preferences. The Returning Officer finally declared that the Liberal candidate had won the seat by 8 votes from his Labour opponent. On 24th December, 1973, the Labour Party candidate petitioned the Supreme Court of New South Wales sitting as the Court of Disputed Returns, praying that the Court declare—

1. That the Liberal candidate was not duly elected; and
2. That the Petitioner was the duly elected member; or, alternatively to the two foregoing prayers, that the election was absolutely void.

The Court's decision on the pleas was not available at the time of going to press.

Western Australia (Reduction of voting age).—The Constitution Acts Amendment Act was amended to enable a person aged 18 years (in lieu of 21 years) to be qualified to be elected a member of either the Legislative Council or the Legislative Assembly.

Western Australia (Increase in deposit).—The Electoral Act was amended to provide for the deposit which must accompany a nomination form by a candidate seeking election to either House to be increased to 100 dollars.

Zambia (Electoral system).—Under the present Constitution of Zambia, for the purpose of selecting persons from any Constituency to be candidates for election to the National Assembly, the Electoral Commission holds primary elections in that Constituency in such manner as may be prescribed by or under an Act of Parliament. At a primary election a poll is held at which the following persons resident within the Constituency of the National Assembly shall be entitled to vote:

(*a*) The Regional Secretaries, the Regional Women Secretaries, Regional Youth and Publicity Secretaries and two Trustees of the Party;
(*b*) The Chairmen, the Vice-Chairmen, the Vice-Treasurers, the Publicity Secretaries and the Vice-Publicity Secretaries of every Constituency of the Party; and
(*c*) The Chairmen, the Vice-Chairmen, the Secretaries, the Vice-Secretaries, the Treasurers, the Vice-Treasurers, the Publicity Secretaries and the Vice-Publicity Secretaries of every Branch of the Party.

At the conclusion of the poll the Electoral Commission declares the number of votes received by each candidate and thereafter submits the names of all the candidates to the Central Committee together with the number ot votes received by each candidate.

In any Constituency of the National Assembly the three persons who have received the greatest number of votes at the primary election are qualified for nomination as candidates for election to the National Assembly from that Constituency, unless the Central Committee disapproves the nomination of any such person on the ground that his nomination would be inimical to the interests of the State, in which event the person who has received the next highest number of votes after the said three persons at the primary elections becomes qualified for the nomination.

Malaysia (Electoral system).—The Federal Constitution was amended to provide for the establishment of the Federal Territory of Kuala Lumpur with effect from 1st February, 1974, and for the allocation of seats in the House of Representatives on State basis in

Peninsular Malaysia similar to the provisions applicable to the States of Sarawak and Sabah after Malaysia Day. Thus the total of Members of the House of Representatives will, but not before the next dissolution of Parliament, be increased from 144 to 154 as follows:

(i) sixteen members from Johore;
(ii) thirteen members from Kedah;
(iii) twelve members from Kelantan;
(iv) four members from Malacca;
(v) six members from Negri Sembilan;
(vi) eight members from Pahang;
(vii) nine members from Penang;
(viii) twenty-one members from Perak;
(ix) two members from Perlis;
(x) sixteen members from Sabah;
(xi) twenty-four members from Sarawak;
(xii) eleven members from Selangor;
(xiii) seven members from Trengganu;
(xiv) five members from the Federal Territory.

Sabah (Increase in Members of House).—A Bill amended section 2 of the Legislative Assembly (Elected Members) Enactment 1965 with the view to increase the number of elected members to the Legislative Assembly of the State from thirty-two to forty-eight. However, such additional number shall only be effective as from the date of the coming General Election for the State.

Mauritius (Vacancies in Legislative Assembly).—In November 1973 the Constitution was amended by Act No. 40 of 1973 to provide for the filling of vacancies in the Legislative Assembly otherwise than through by-elections.

3. Procedure

House of Commons (Moving of new writs).—When a seat in the House of Commons becomes vacant, any Member may move the Motion requiring that a writ be made out for the election of a new Member. However, it has been a long-standing convention between the parties that the Motion should be moved by the Chief Whip of the party to which the Member who previously held the seat belonged. The party in occupation can thus pick the most advantageous time for holding the election; and as a result there has sometimes been considerable delay between the occurrence of a vacancy and the moving of a new writ to fill the vacancy.

On 10th July, 1973, Mr. Dick Taverne, who had himself recently been elected at a long delayed by-election, attempted to break the convention. A vacancy had occurred in the Berwick-on-Tweed constituency on 1st June; if the Chief Whip concerned (the Government Chief Whip) did

not move the new writ before the long summer recess began at the end of July, the by-election could not be held until November at the earliest. In order to draw attention to this situation and the whole question of the timing of by-elections, Mr. Taverne himself moved a Motion for a new writ to be made out for an election in Berwick-on-Tweed. In reply to Mr. Taverne's speech the Leader of the House (Mr. James Prior) suggested that the whole matter might be included in the terms of reference of the Speaker's Conference on Electoral Law, which had recently been set up. He also pointed out that if the Motion were agreed to, the by-election would have to be held in the middle of the holiday month of August, while if it were negatived it would be impossible, under the practice of the House, to move again for the new writ before the next parliamentary session. In order to avoid this dilemma, the Leader of the House resorted to a rarely-used procedure and moved, as an amendment to Mr. Taverne's motion, " That this House do pass to the Orders of the Day ". After a further brief debate this amendment was agreed to by 194 votes to 25, and a vote on Mr. Taverne's Motion was thus forestalled.

On 19th July Mr. Taverne reverted to the question, and sought once more to move the writ for the Berwick-on-Tweed by-election. In his speech he pointed out that the Conservative Party had now chosen a candidate for the constituency, and there was therefore no reason for further delay. In the ensuing debate the Leader of the House confirmed that the subject was to be considered by the Speaker's Conference on Electoral Law; he then moved that the debate should be adjourned, and this Motion was eventually agreed to without a vote. The effect of this was that the debate could only be resumed at a time of the Government's own choosing; and in the event the Motion for the new writ was agreed to after the summer recess, on 19th October.

The recommendations of the Speaker's Conference on Electoral Law relating to the timing of by-elections were published at the beginning of December. The principal recommendation was that the Motion for a by-election writ should normally be moved within three months of a vacancy arising. The Conference also dealt with the complex question of the issue of writs during a recess. At present writs may only be issued during a recess in certain cases, and never in the case of a vacancy caused by resignation; but if the case is one where a writ may be issued, the Speaker is obliged to give the necessary authorisation if two Members so request. The Conference recommended that the Speaker should be empowered to set a by-election in train during a recess whatever the circumstances of the vacancy, but that he should have the discretion to reject or accede to a request from two Members to do so. It would then be a matter of convention that the Speaker would only accede to a request if it came from the representatives of the party to which the previous Member for the seat belonged.

The recommendations of the Conference relating to the issue of writs during recesses will require legislation. Implementation of the recom-

mendation that no more than three months should elapse between a vacancy occurring and the holding of a by-election lies in the hands of the parties. As the Speaker's Conference had an all-party membership, it can be assumed that the recommendation will be complied with.

House of Commons (Introduction of new Members after by-elections).—During 1973 the Select Committee on Procedure conducted a brief inquiry into the practice of the House of Commons in relation to the introduction of new Members after by-elections. The present practice was laid down by a Resolution of 1688:

> That upon new Members coming into the House, they be introduced to the Table between two Members, making their obeisances as they go up, that they may be the better known to the House.

The Select Committee were prompted to undertake the inquiry by a case in March 1973 when a new Member, who did not belong to any of the parties represented in the House, was reported to have had difficulty in finding two Members to act as his sponsors.

The main argument put to the Committee in favour of a change in the rule were, first, that it was illogical to require a Member returned at a by-election to be introduced formally when there was no such requirement after a General Election; and, secondly, that the requirement had given rise to political and personal embarrassments both to those sponsoring and those being sponsored. The Committee dismissed the first of these arguments, maintaining that there was a clear distinction " between customs appropriate to the constituting of an assembly, and those appropriate to the introduction of new Members to an already constituted assembly ". They also pointed out that since 1688 there had been only two occasions when real difficulties had arisen over the operation of the rule—in 1875 and 1945. On the first of these occasions the Member concerned had tried but failed to find sponsors, and the House agreed to dispense with the normal rule in his case. In 1945 the new Member at first refused to have sponsors, and although a Motion was moved to dispense with the rule it was disagreed to by the House. The next day the Member submitted under protest and came in with sponsors. These instances, the Committee said, showed that present procedures were adequate to enable the House to deal with difficulties as they arose, on their merits. They therefore recommended that there should be no change in the traditional custom which, as one Member described it in his evidence, " is a pleasant ceremony and one which undoubtedly gives confidence and comfort to a new Member taking his seat ".

(Fourth Report of the Select Committee on Procedure, 1972–3.)

4. Standing Orders

House of Lords (Duties and Powers of Black Rod).—A new Standing Order 11 was inserted in place of the old Standing Orders 11 and 13. It was agreed to by the House on 31st January, 1973 (*Journals*, 1972–3 page 122; *Hansard*, cols. 591–2). The new Standing Order is designed to place responsibility for security within the Chamber and precincts of the House on Black Rod, rather than on the Lord Great Chamberlain.

The new Standing Order reads as follows:

(1) The admission of strangers to the Chamber and the precincts of the House, whether or not the House is sitting, shall be subject to such orders and rules as the House may make. The Gentleman Usher of the Black Rod shall give effect to such orders and rules and shall have such powers (including the power to take into custody) as are necessary for that purpose.
(2) Respect is to be had to the Chamber, whether or not the House is sitting.
(3) The Gentleman Usher of the Black Rod shall take into his custody any person whom the House may order to be detained.
(4) In the absence of the Gentleman Usher, the Yeoman Usher may act in his place.

Subsequently Black Rod issued the following rules for the admission of strangers to the House:

(1) Pursuant to Standing Order 11 and as Agent of the Administration Sub-Committee of the Offices Committee, the Gentleman Usher of the Black Rod is responsible for security in, and control of access to, the precincts of the House (as defined in Rule 2 below) in respect both of persons and of vehicles, whether or not the House is sitting.
(2) For the purposes of the interpretation of Standing Order 11 and these Rules the "precincts of the House" shall be understood to comprise all that area of the Palace of Westminster which was vested by the Queen in the Lord Chancellor, as Speaker of the House of Lords, with effect from 26th April, 1965, as well as the adjacent areas under the control of the House in Old Palace Yard and Black Rod's Garden.
(3) Before admission to the Galleries of the House strangers may be required:
  (i) to sign an undertaking to abstain from making interruption or disturbance and to obey the rules for the maintenance of good order in the Galleries;
  (ii) to deposit in the appropriate cloakroom all cameras, tape recorders, electronic devices, binoculars, umbrellas and walking sticks, parcels, packages, cases and bags (other than ladies' handbags); and
  (iii) to open for inspection at the request of Black Rod, or of the staff under his control, any parcel, package, case or bag including ladies' handbags, which a stranger may bring into the precincts.
(4) In the Galleries strangers are not permitted to smoke, read books or papers (other than the papers of the House), draw or write, stand in or behind the Galleries, or to make use of cameras, tape recorders, electronic devices, or binoculars. Any offence against this rule may result in the confiscation by Black Rod of the electronic device, or the film from the camera, or the tape from the tape recorder used in the offence.
(5) Where Committees of the House are sitting in public, the rules governing the admission of strangers to Committee Rooms are, so far as practicable, the same as those for admission to the Galleries of the House.

(6) Any stranger who is suspected by Black Rod of having committed a criminal offence within the precincts of the House shall be taken into custody and handed over by him to the police for such further action as may be appropriate under the law. Any such action shall be reported by Black Rod to the Lord Chancellor or, in his absence, to the Chairman of Committees.

(7) Any stranger who is suspected by Black Rod of having committed contempt of the House, including the contravention of an order or rule of the House, may, at the discretion of Black Rod, either be ejected from the precincts forthwith, or be detained by him until three hours have elapsed after the rising of the House or, if the House is not sitting, for a period not exceeding three hours, in order to enable enquiries to be made into the circumstances of the contempt. If the contempt is of such a nature that, in the opinion of Black Rod, the House may wish to take it into consideration, he shall report it to the Lord Chancellor or, in his absence, to the Chairman of Committees.

(8) The Lord Chancellor or, in his absence, the Chairman of Committees shall communicate to the House any report by the Gentleman Usher of the Black Rod made in pursuance of these rules.

(9) A vehicle which is causing obstruction or appears to Black Rod to be endangering security, within the precincts of the House may be removed by him, or by the servants of the House or by the police on his instructions.

House of Lords (Short Debates).—A new Standing Order 35a, for the purpose of curtailing " short " debates, was agreed to by the House on 3rd April, 1973 (*Journals*, 1972–3 page 268; *Hansard*, cols. 146–9) as follows:

(1) If a Short Debate is continuing at the end of the time allotted to it, the Clerk-at-the-Table shall rise and thereupon the Lord Speaker shall ask the Mover whether or not he wishes to withdraw his Motion. If the Mover does not ask leave to withdraw, or if leave to withdraw is refused, the Lord Speaker shall, notwithstanding the provisions of Standing Order No. 18, put the Question forthwith.

(2) If an amendment is moved to a Motion which is the subject of a Short Debate, paragraph (1) shall have effect in relation to the amendment in like manner as it has in relation to the original Motion.

The need for the Standing Order was the procedure adopted by the House in 1972 whereby on one Wednesday a month two Motions, each limited to two-and-a-half hours' duration, are debated (see THE TABLE, Vol. XLI, p. 89). The Standing Order provides the procedure to bring the debates to a close after the prescribed time.

Australia: House of Representatives (Days and hours of sitting).—Standing order 40 of the House of Representatives provides that the House shall meet for the despatch of business on each Tuesday and Wednesday at 2.30 p.m. and on each Thursday at 10.30 a.m. To cope with an anticipated busy legislative year and, at the same time, in an endeavour to avoid late evening sittings, on 1st March, 1973, the House passed the following resolution:

(1) That, unless otherwise ordered, the House shall meet for the despatch of business on each Tuesday and Wednesday at two o'clock p.m. and on each Thursday at ten o'clock a.m.

(2) That, unless otherwise ordered, at fifteen minutes to eleven o'clock p.m. on each Tuesday and at fifteen minutes past ten o'clock p.m. on each Wednesday and Thursday the Speaker shall put the question—That the House do now adjourn—which question shall be open to debate; if the House be in committee at the time stated, the Chairman shall report progress and upon such report being made the Speaker shall forthwith put the question—That the House do now adjourn—which question shall be open to debate.

Provided that:

(*a*) if a division be in progress at the time of interruption such division shall be completed and the result announced,

(*b*) if, on the question—That the House do now adjourn—being proposed, a Minister requires the question to be put forthwith without debate, the Speaker shall forthwith put the question,

(*c*) nothing in this order shall operate to prevent a motion for the adjournment of the House being moved by a Minister at an earlier hour,

(*d*) any business under discussion and not disposed of at the time of the adjournment shall be set down on the Notice Paper for the next sitting, and

(*e*) if the question—That the House do now adjourn—is negatived, the House or committee shall resume the proceedings at the point at which they had been interrupted.

Provided further that if, at eleven o'clock p.m. the question before the House is—That the House do now adjourn—the Speaker shall forthwith adjourn the House until the time of its next meeting.*

The meeting times were again varied on 3rd May, 1973, when the House resolved that the House should meet " on each Tuesday at ten o'clock a.m., or such time thereafter as Mr. Speaker may take the Chair, on each Wednesday at eleven o'clock a.m. and on each Thursday at ten o'clock a.m. "†

A further variation in meeting times was made on 22nd August, 1973, when the House also agreed to meet on some Mondays in order to get through its legislative programme. The resolution agreed to on that date was as follows:

(1) That, in lieu of the times fixed for the meeting of the House in paragraph (1) of the order of the House of 1 March 1973, for the remainder of this period of sittings, unless otherwise ordered, the House shall meet for the despatch of business on each of the following Mondays, viz: 17 September 15 and 22 October and 12 and 26 November, at two o'clock p.m., on each Tuesday at eleven o'clock a.m., or such time thereafter as Mr Speaker may take the Chair, on each Wednesday at half-past eleven o'clock a.m. and on each Thursday at ten o'clock a.m.

(2) That paragraph (2) of the order of the House of 1 March 1973 with respect to the adjournment of the House be varied by omitting "at fifteen minutes to eleven o'clock p.m. on each Tuesday" and inserting in place thereof "at fifteen minutes to eleven o'clock p.m. on each Monday and Tuesday".‡

The House followed this pattern of sittings until 13th December, 1973, when it adjourned for the year.

* V. & P. 1973, pp. 28–30.
† V. & P. 1973, pp. 144.
‡ V. & P. 1973, pp. 285–6.

During 1973 records were set in relation to the number of days and hours of sitting. The Parliament sat for a total of eighty-one days, the greatest number for more than twenty years and the total number of sitting hours (913) was the largest since 1912 (966). For the first year since Federation in 1901 the Parliament on no occasion sat after midnight.

In terms of legislation 253 Bills were introduced and read a first time and 221 Acts were passed. Both figures represent the highest totals since Federation.

In respect of the proceedings in the House during 1973, the largest number of Petitions was presented (1,677), the highest number of closures was agreed to (103) and the highest number of adjournment debates (73) took place. The number of divisions (264) was the highest since 1935 (311) and the second highest since Federation.

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

Victoria: Legislative Assembly (Standing Orders amended).—On 11th September, 1973, the Legislative Assembly adopted fourteen amendments to its Standing Orders. These amendments completely altered the financial procedure of the Legislative Assembly and the manner of dealing with Messages from the Governor recommending appropriations for various Bills*. One set of amendments repealed the provision requiring a Governor's Message to be considered in the Committee of the whole. The practice now is that the Governor's Message is announced by the Speaker and is then recorded in the Votes and Proceedings.

The other set abolished the Committees of Supply and Ways and Means and substituted a new financial procedure.

Uttar Pradesh (Rules Committee recommendations).—Rule 251 of the Legislative Assembly which governs the procedure for the amendment of the Rules was amended to read as follows:

(*a*) The recommendations of the Committee shall be laid on the Table of the House and any Member may, within a period of fourteen days beginning with the day when it is so laid on the Table, give notice of an amendment, including a Motion to refer all or any of the recommendations of the Committee, for the reconsideration of Committee, together with the objects and reasons for such amendment.

(*b*) If no notice of amendment to the recommendations of the Committee is given within the period mentioned in sub-rule (*a*) the recommendations of the Committee shall be deemed to have been approved by the House on the expiry of the said period and shall be incorporated in the Rules.

(*c*) If notice of any amendment is received within the period prescribed in sub-rule (*a*), the Speaker shall refer such amendments which are admissible to the Committee and the Committee may, after considering such amendments, make such changes in its recommendations as its deems fit.

(*d*) The final report of the Committee, after considering the amendment

* See previous article, p. 93.

mentioned in sub-rule (*c*), shall be laid on the Table of the House for ten days, and if notice of any amendment to the decisions taken by the Committee after such reconsideration is received along with the statement of objects and reasons within this period the Speaker shall place such amendments which are admissible, for the consideration of the House; in any other case, the report of the Committee shall be deemed to have been accepted by the House and the recommendations made in the report shall be incorporated in the Rules.

Malaysia: House of Representatives (Amendments to Standing Orders).—Among a number of amendments made to Standing Orders in 1973 was one to allow the Speaker or Chairman, if they think fit, to prescribe the time limit on speeches and another to enable debate on the Supply Bill and the Motion on the Development Estimates to take place simultaneously. This procedure was successfully used during the consideration on the Supply Bill and the Motion on the Development Estimates at the Budget Meeting of the Second Sessions in 1973.

It is found that a period of eleven days should be allotted for debate on the general principles and fourteen days for debate in Committee, to enable as many Members as possible to participate in the debate.

Standing Orders were also amended to enable Select Committees to continue to sit during a Dissolution of Parliament.

5. Emoluments

British Columbia (Members' salaries and allowances).—The Constitution Act was amended during the spring Session of the Legislature, increasing the membership of the Executive Council from " not exceeding seventeen, . . . of whom not more than fourteen shall receive any salary " to " not exceeding twenty-three . . . and not more than nineteen of those persons appointed shall receive a salary under this Act ".

The salary of the Premier was increased from $23,000 to $28,000 per annum. The salaries of the Members of the Executive Council with portfolio were increased from $20,000 to $24,000 per annum. The salaries of the Members of the Executive Council without portfolio were increased from $17,500 to $21,000 per annum.

The allowance to Members of the Legislature has been increased by $2,000 so that they now receive $12,000 per Session. The special allowance to the Speaker and the Leader of the Official Opposition has been increased from $9,000 to $11,000 per Session, and the special allowance for the Deputy Speaker has been increased from $3,500 to $4,500. These special allowances are paid in addition to their allowances as Members of $12,000 per Session.

Provision has been made for payment to the Member occupying the position of chairman of each committee of the Legislative Assembly of a special allowance to be fixed by Order-in-Council.

(*Hansard*, April 17, 1973, pp. 2972–9 inc.)

Australia (Parliamentary salaries and allowances).—In Vol. XLI of THE TABLE (1972–3, pp. 116–17) it was reported that certain Bills to make increases in allowances payable to Members lapsed at the dissolution of the House of Representatives in 1972. The new Government, after gaining office at the 1972 elections, introduced into the House on 28 March 1973 the Remuneration and Allowances Bill 1973 which, as the Prime Minister (the Hon. E. G. Whitlam, Q.C., M.P.) explained in his second reading speech, was to bring " together salaries proposals for Members of Parliament including Ministers and office holders, judges, permanent heads of departments and statutory office holders whose salaries are related to First and Second Division salaries in the Public Service ". The Bill was assented to and came into effect on 1st April, 1973, giving Members and Ministers increases in salaries and allowances as illustrated in the following table provided by the Prime Minister:

PARLIAMENTARY SALARIES AND ALLOWANCES

SALARIES AND ALLOWANCES PROVIDED FOR UNDER THE PARLIAMENTARY ALLOWANCES ACT 1952–1970 AND THE MINISTERS OF STATE ACT 1952–1971

	Per annum	
	Existing	*Proposed*
	$	$
1. Members of Parliament—		
(a) Salary	9,500	14,500
(b) Electorate Allowance—		
Senators	2,750	4,100
Members (City Electorates)	2,750	4,100
Members (Country Electorates)	3,350	4,100
2. Ministers—		
(a) Salary (additional to 1 (a) and 1 (b) above)—		
Prime Minister	21,250	27,000
Deputy Prime Minister	12,500	12,500
Treasurer	12,250	10,500
Ministers*	8,625	10,500
(b) Special Allowance (additional to 1 (a) and 1 (b) above)—		
Prime Minister	10,300	10,900
Deputy Prime Minister	4,600	5,200
Ministers*	4,000	4,875
3. Other Office Bearers—		
(a) Salary (additional to 1 (a) and 1 (b) above)—		
President and Speaker	7,500	10,500
Chairman of Committees	3,125	4,000
Leader of Opposition	10,500	10,500
Leader of Opposition in the Senate	5,000	7,500
Deputy Leader of Opposition	5,000	7,500
Deputy Leader of Opposition in the Senate	1,625	3,200
Leader of Third Party in House of Representatives (as defined in legislation)	2,500	5,000
Leader of Second Non-Government Party in the Senate (as defined in legislation)	1,000	2,000
Government Whip (Representatives)	1,500	2,500
Government Whip in the Senate	1,250	2,000
Opposition Whip (Representatives)	1,250	2,000
Opposition Whip in the Senate	1,250	2,000

Whip of Third Party (Representatives)	1,250	2,000
Assistant to Government Whip (Representatives	—	500
Assistant to Government Whip in the Senate	—	500
Assistant to Opposition Whip (Representatives)	—	500
Assistant to Opposition Whip in the Senate	—	500
(b) Special Allowance (additional to 1 (a) and 1 (b) above)—		
President and Speaker	4,000	4,250
Leader of Opposition	4,600	4,875
Leader of Opposition in the Senate	†1,500	4,250
Deputy Leader of Opposition	†1,500	4,250
Deputy Leader of Opposition in the Senate	†750	†900
Leader of Third Party in House of Representatives	†750	†1,500
Leader of Second Non-Government Party in the Senate	†500	†750

* The rates of salary and special allowance payable under the former Government were:

	Salary	*Special allowance*
Deputy Prime Minister	12,500	4,600
Treasurer	12,250	4,600
Senior Ministers	10,500	4,600
Other Ministers	7,500	4,000

† Plus Canberra Allowance.

In addition, the Act made provision for travelling allowances for Members, Ministers and office holders in future to be laid down by regulation and thus be subject to the scrutiny of the Parliament. As yet no increase in this area of allowances has been granted.

Later in the year the Treasurer (the Hon. F. Crean, M.P.) introduced the Parliamentary and Judicial Retiring Allowances Bill 1973 which was to give effect to certain changes foreshadowed by the Prime Minister in his second reading speech on the Remuneration and Allowances Bill 1973. Generally this Bill improved the retirement scheme for Members of Parliament by introducing pensions proportionate to length of service and by removing and changing certain age qualifications. Other proposals were effected by the legislation which became law on 8th June, 1973.

At the end of the year a third Bill, the Remuneration Tribunal Bill 1973, was introduced and passed. The purpose of this piece of legislation was to establish a Tribunal to assess, *inter alia*, the salary and allowances of Ministers and Members of the Parliament.

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

Tasmania (Members' salaries and pensions).—The Parliamentary Salaries and Allowances Act 1962 was repealed and a new system established for the payment of Members. The basic salary is determined by calculating the average of the rates currently being paid

to Members of Parliament in the other Australian States. The basic salary is reviewed annually. Allowances payable for various purposes are expressed in the Act as percentages of the basic rate.

A new Parliamentary Superannuation Act was also passed, providing for Members' contributions and pensions to be in proportion to their gross salaries.

Malaysia (Members' Remuneration).—Members of Parliament are now paid a subsistence allowance of $50/= instead of $35/= per day for attending meetings of the House or any Committee thereof.

The President of the Senate, the Speaker and the Deputy Speaker of the House of Representatives are entitled to furnished quarters to be maintained free of charge except where the President, the Speaker or the Deputy Speaker stays in his own house or that of his spouse in which case a monthly rental payable shall not exceed $1,500 per month.

The above provisions were made by way of a resolution passed by the House of Representatives on 24.7.73 and the Senate on 14.8.73 amending the Schedule to the Parliament (Members' Remuneration) Act 1960.

Tanzania (Constituency Allowance).—The Constituency Allowance of Members of Parliament was increased from Shs. 500/– to Shs. 750/– per month.

St. Vincent (Members' salaries).—The House of Assembly accepted the report of a Select Committee appointed to examine and report upon the salaries and allowances of Members of the House. The new rates, as accepted by the House, are:

		Basic salary	*Entertainment allowance*	*Transport allowance*
		$	$	$
Speaker	New	6,000	1,920	1,440
	Old	3,600	—	720
Premier	New	16,200	2,700	2,400
	Old	12,000	1,440	1,200
Deputy Premier	New	14,400	2,400	2,400
	Old	8,400	1,440	1,200
Ministers	New	13,680	2,400	2,400
	Old	8,400	1,440	1,200
Parliamentary Secretary	New	9,000	—	1,440
	Old	8,000	—	720
Leader of the Opposition	New	5,760	—	1,440
	Old	2,880	—	720
Other Members	New	3,300	—	1,440
	Old	1,728	—	720

The new rates came into effect on 1st April, 1973.

A Select Committee of the House is now considering the question of retiring benefits for Members.

6. Order

House of Commons: Sit-in in a Standing Committee.—The Local Government (Scotland) Bill of 1973 was the most important piece of legislation affecting Scotland to be introduced into Parliament during the 1972–3 session. Its purpose was to effect a complete transformation of the structure of local government and the boundaries of local government areas in Scotland. Dispute about the provisions of the Bill cut across party lines, and as soon as the Bill had been read a second time, controversy arose about the composition of the standing committee that was to consider the Bill.

Under the standing orders a standing committee must consist of between sixteen and fifty Members, who are selected for each Bill by the Committee of Selection. The Committee of Selection is required by its terms of reference to " have regard to the qualifications of those Members nominated and to the composition of the House ". The latter rule is applied very strictly. Mathematical calculations are made to determine the exact number of places on a committee to which each political party is entitled on the basis of its representation in the House as a whole; and these calculations occasionally yield paradoxical results.

The normal size of the Scottish Standing Committee for a major Bill is 30. On a committee of that size the Government were entitled to 16 places and the Labour Opposition to 14. The Liberal party, with less than 10 Members in the House, were not entitled to a place at all, but tried to claim special treatment on two grounds: one of their Members had served on the Royal Commission whose recommendations formed the basis of the Local Government (Scotland) Bill; and their representation was proportionately higher in Scotland (3 out of 71) than in the United Kingdom as a whole. A proposal was therefore made that the size of the committee should be increased to 31, the extra place being taken by the Liberals. But the calculations showed that, while the Government were entitled to a majority of two on a committee of 30, they were only entitled to a majority of one on a committee of 31. The extra place therefore belonged as of right to the Labour Opposition, who promptly announced that they had many more than 14 Members wishing to serve on the committee and if there were extra places available they were not prepared to allow the Liberal party to fill them. All attempts at compromise broke down, and the committee was appointed with 30 Members, 16 Conservative and 14 Labour.

When the Committee met on 23rd January, 1973, it immediately encountered a demonstration organised to draw attention to the controversy about membership. Six Members (three of them Liberals) who had not been nominated to the Committee sat in the part of the room reserved for nominated members, and ignored repeated requests from the Chairman to leave. The Chairman of a Standing Committee does not have the same disciplinary powers as the Speaker in the House; in particular he can neither order the Serjeant-at-Arms' staff to remove a

Member who has been guilty of disorderly conduct nor name the Member for disregarding the authority of the chair. The Minister in charge of the Bill accordingly moved that the recalcitrant Members should be reported to the House by the Chairman. After a short debate the Motion was withdrawn and the Committee adjourned in the hope that the protesters would not renew their demonstration at a subsequent meeting of the Committee.

This hope proved ill-founded. When the Committee next met, on 25th January, the same six Members again came into the body of the committee room and again ignored the Chairman's requests to them to withdraw. The Minister once more moved that they should be reported to the House by the Chairman, and after debate and a division his Motion was agreed to. On the afternoon of the same day the Chairman made his report orally in the House, naming the Members concerned and explaining the nature of their disorderly conduct. The Speaker ruled that the matter was one of privilege and should be accorded precedence over the business of the day, and the Leader of the House moved:

> That the Chairman of the First Scottish Standing Committee in respect of the Local Government (Scotland) Bill shall have power to order any Member who is not a member of the Committee to withdraw immediately from the Committee Room; and the Sergeant-at-Arms shall act on such orders as he may receive from the Chairman in pursuance of this Order.

In the course of debate on this Motion one of the Liberal Members who had been reported to the House gave an undertaking on behalf of his colleagues that they would not renew their sit-in on a subsequent occasion. The Leader of the House nevertheless declined to withdraw his Motion, which was agreed to without a vote.

No attempt was in fact made to continue the sit-in at any later meetings of the Standing Committee, and the Chairman did not need to employ the new power granted to him.

The Select Committee on Procedure subsequently conducted a brief inquiry into the question of the powers of chairmen of standing committees, and reported to the House on 21st March. They expressed severe criticism of the Motion which the House had agreed to in respect of the Scottish Standing Committee: it was wrong in principle to grant additional powers just to one Chairman and not to the others; and the Motion should have contained a provision requiring the Chairman to report to the House if he had to exercise the novel powers granted to him. Despite the first of these criticisms the Committee also expressed the view that if Chairmen of standing committees were armed with severe disciplinary powers, Members might show less loyalty to them than they had been accustomed to hitherto; and they accordingly recommended against any extension of those powers.

(*H. C. Deb.*, Vol. 849, cc. 666–78; Second Report of the Select Committee on Procedure, 1972–3, H.C. 202.)

House of Commons (Unparliamentary expressions).—On 10th April 1973, there was an incident in the House of Commons which caused some embarrassment to the Speaker and led him to make a definitive ruling on the propriety of the word " lie " and similar expressions. In the course of question time that day the Leader of the Opposition described a remark made by the Prime Minister as a " lie ". When the Speaker deprecated the use of the word, the Leader of the Opposition retorted by saying that the Chancellor of the Exchequer had twice recently been allowed to use the expression " pack of lies ". At that stage the matter was allowed to drop, but two days later the Leader of the Opposition's complaint was taken up by a backbencher, Mr. William Hamilton, who pointed out that the words " lie " and " liar " were not included in the list of unparliamentary expressions in Erskine May's *Parliamentary Practice*. He therefore asked the Speaker to rule finally whether or not such accusations were admissible.

The Speaker gave his ruling on 16th April. He pointed out that Erskine May classified unparliamentary expressions under a number of headings, one of which was " charges of deliberate falsehood "; and he cited several occasions on which the Chair had ordered Members to withdraw such expressions as " that's a lie " and " liar ". It was, he said, " a matter of judgement " whether the Chair should intervene if not expressly requested to do so; but he had come to the conclusion that he had been at fault in not intervening to disallow the expression " pack of lies " on the occasions mentioned by the Leader of the Opposition. He intended in future to disallow all allegations of deliberate untruthfulness.

(*H. C. Deb.* 1972–3, Vol. 854, cc. 1137, 1525; Vol. 855, c. 28.)

British Columbia (Sitting suspended).—On 5th November, 1973, during Oral Question Period, a member accused a Minister of lying, in the words, " Mr. Minister, I say that you lied to this House when you said there was no study, and that you should resign right now. "

Mr. Speaker ordered the Member to withdraw the offending words. Upon the Member's refusal to do so, Mr. Speaker suspended the Member from the service of the House for the balance of the afternoon sitting.

(*Journals*, 1973 (2nd Sess.), p. 149. *Hans.* 5th Nov., 1973, pp. 1247–52 inc.)

7. Accommodation

Australia (New and permanent Parliament House).—As was reported in The Table, Vol. XXXVIII (1969, pp. 33–9) the Joint Select Committee on the New and Permanent Parliament House was, in 1969, ready to report to both Houses of the Australian Parliament on its findings. The report was tabled by Mr. Speaker in the House of

Representatives on 8th April, 1970. Since then there has been little follow-up possibly because of differences of opinion as to the site for the new building. These differences date back to the previous Parliament when the House of Representatives resolved that Camp Hill should be the site while the Senate maintained Capital Hill was the ideal setting for the new building. On 23rd August, 1973, in an attempt to resolve the issue the Chairman of Committees (Mr. Scholes) moved the following general business motion:

(1) That this House is of the opinion that (*a*) the site for the new and permanent Parliament House should be determined forthwith, (*b*) a joint meeting of the Senate and the House of Representatives should be convened to determine the matter, and (*c*) planning for the new House should commence immediately.
(2) That a message be sent to the Senate acquainting it of this resolution and requesting its concurrence.

To this Motion the Minister for Urban and Regional Development (the Hon. T. Uren, M.P.) moved an amendment which whilst retaining the substance of the original Motion indicated that the site for the new and permanent Parliament House should be Camp Hill. A display showing the benefits of the Minister's proposal was set up in the Parliament building to give Members an opportunity to contemplate the alternatives before the House voted on the matter. On 24th October, 1973, the Motion was further debated, the Minister's amendment defeated, and the original Motion carried.

The House resolution was considered by the Senate on 20th November, 1973, when the following resolution was agreed to by that Chamber:

That the Senate, while not agreeing to the Resolution transmitted to it in Message No. 201 of the House of Representatives for a joint meeting of the Senate and the House of Representatives, expresses the opinion that planning for the New and Permanent Parliament House should commence immediately and that the site be upon Capital Hill.

The Senate's resolution was not debated by the House of Representatives.

On 8th November, 1973, Senator the Hon. R. C. Wright, a back-bench opposition Senator representing the State of Tasmania and the former Minister for Works in the previous Government, made history by introducing into the Senate a Bill to determine the site for the long-proposed New and Permanent Parliament House. The Bill, entitled " A Bill for an Act to determine the Site of the New and Permanent Parliament House, to provide for the Grounds in the vicinity of the Parliament to be controlled by the Parliament, and to set aside an Area on Capital Hill to be known as the National Garden of Australia " delineated an area to be known as the " Parliamentary grounds " (and subject to the joint control of the President of the Senate and the Speaker of the House of Representatives) and including the area known as Camp Hill as the site for the new House.

The Bill as introduced also included provisions extending " the powers, privileges and authorities " of Parliament to the proposed grounds, and applying the laws of the Australian Capital Territory within those grounds " subject to any Act or to any order of either House of the Parliament ".

Events within the Senate on that same day, and in the following week, " caught up " with Senator Wright and his Bill. The Senate, when considering a Message from the House of Representatives proposing a joint meeting of the Houses to determine the site for the new Parliament House, amended a Motion to concur in the proposal by " expressing the opinion that planning for the new House should commence immediately and that the site be Capital Hill ". (An amendment to leave out " Capital Hill " and insert " Camp Hill " was defeated by 36 to 14.)

As a result of this expression of opinion Senator Wright proposed amendments to his Bill, the most significant, naturally, being the variation of the proposed site from Camp Hill to Capital Hill. When the Bill came before the Senate again for consideration, in addition to the amendment proposed by Senator Wright, further amendments were made to the Bill, including the omission of the previously mentioned clauses referring to the extension and application of Parliamentary powers, privileges and authorities and the application of the laws of the Australian Capital Territory.

The amended Bill was finally passed on 29th November with a new Title—" A Bill for an Act to determine the Site of the New and Permanent Parliament House, and to provide for the Grounds in the vicinity of the Parliament to be controlled by the Parliament ". It was forwarded to the House of Representatives for concurrence, where it was listed on the Notice Paper as Order of the Day No. 1, General Business, when the House rose for the Christmas adjournment on 13th December. Parliament was prorogued on 12th February, 1974.

The interesting feature of the House of Representatives resolution of 24th October, 1973, was the proposal to hold a joint sitting of both Houses of the Parliament to decide the " site " issue. If the Senate had agreed to the proposal it would have been the first such meeting of the two Houses. On a previous occasion in 1971 the Senate had proposed a joint sitting for the very same purpose, but that proposal was not in fact considered by the House of Representatives and lapsed at the close of the session.

8. General

Australia (Proposed Joint Committee on the Parliamentary Committee System):—On 22nd August, 1973, the Leader of the House of Representatives (The Hon. F. M. Daly, M.P.) moved that a Joint Committee be appointed to inquire into, report on and make recommendations for:

(*a*) a balanced system of committees for the Parliament;
(*b*) the integration of the committee system into the procedures of the Parliament, and
(*c*) arrangements for committee meetings which will best suit the convenience of Senators and Members.

Speaking to the Motion, Mr. Daly pointed out that the proposed Joint Committee could inquire into the functioning of committee systems in other countries and into the part committees could play in the deliberations of Parliament, speeding up processes where possible and enabling Members to make more informed decisions. Mr. Daly said that the proposed Joint Committee might also investigate committee sitting arrangements while Parliament is sitting.*

The Motion was debated and agreed to by the House on 28th August, 1973, and a message sent to the Senate requesting its concurrence.† The message was reported in the Senate on 30th August, 1973, and its consideration was made an order of the day. However, no further action had occurred in the Senate when Parliament was prorogued on 12th February, 1974.

At the time of the Motion, the number of Parliamentary committees was as follows:

Joint Committees	7
Senate Standing Committees	20
Senate Select Committees	4
House of Representatives Standing Committees	7
House of Representatives Select Committee	1
Total	39

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

Australia: House of Representatives (Time for ringing of the Division bells).—On 1st March, 1973, the following Motion moved by the Leader of the House (the Hon. F. M. Daly, M.P.) in relation to divisions and quorums was agreed to by the House:

That, unless otherwise ordered, in all standing orders relating to the taking of a division or the counting of the House or committee for quorum purposes, references to two minutes be suspended and three minutes apply in place thereof.‡

Due to alterations being made to the Parliament building at that time, a number of Members and the Prime Minister were accommodated temporarily quite some distance from the Chamber. As a consequence,

* V. & P. No. 36, 22 August 1973, pp. 286–7, *Hans. H. of R.*, 22nd August, 1973, pp. 252–4.
† V. & P. No. 38, 28th August, 1973, p. 299. *Hans. H. of R.*, 28th August, 1973, pp. 444–52.
‡ V. & P. 1973, pp. 27–8.

it was considered that the time for the ringing of the bells should be extended to allow Members more time to proceed to the Chamber when summoned for a Division or Quorum.

The extension was intended as a temporary measure, but although the alterations have been completed, some Members are still located in distant parts of the building. As a consequence, no move has been made to restore the time to two minutes.

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

New South Wales (Woman Members):—At the last Triennial Election of 15 Members of the Legislative Council, held on 5th April, 1973, two additional women were elected, making a total of 8 women Members in a House of 60—or 13.3%.

On 2nd May, 1973, at the first meeting after the Members were sworn, the Hon. Edna S. Roper was appointed a Temporary Chairman of Committees and reappointed on 8th August, 1973, after the ceremonial opening of the new Session. This is the the first time in the history of the N.S.W. Legislative Council that a woman has been appointed to this position.

On 19th October 1973, the Legislative Council was prorogued and the Legislative Assembly dissolved. On the same day the Leader of the Opposition in the Legislative Council, the Hon. N. K. Wran, Q.C., resigned to contest (successfully) the Bass Hill seat at the general elections held on 17th November. When the Assembly resumed on 4th December it was announced that Mr. Wran had been elected Leader of the Opposition in that House by the Parliamentary Labour Party.

As a result of Mr. Wran's resignation, on 4th December, 1973, the Legislative Council was informed that the Hon. Edna S. Roper had been elected Deputy Leader of the Opposition, thus establishing another precedent so far as New South Wales is concerned.

A woman was elected to the N.S.W. Legislative Assembly at a by-election held on 6th October, 1973, for the electoral district of Murray. Mrs. Mary Meillon, a former member of the Legislative Assembly staff, took her seat on 17th October, 1973, after winning the by-election caused by the death of her father who had represented the seat for many years. This was the first time since 22nd May, 1950, that there had been a woman Member of the Assembly. Mrs. Meillon was returned as Member for the same electorate at the general elections held on 17th November, 1973.

A further precedent was established at a sitting of the Legislative Council on 27th March, 1973. When a division was demanded on the question whether the Valuation of Land (Amendment) Bill should be referred to a Select Committee, the President appointed all women tellers, two for the Ayes and two for the Noes.

New Zealand (Officers of Parliament and the Order of Precedence).—For many years Mr. Speaker has been required to take his

place below Ministers, Ambassadors and High Commissioners, Foreign Ministers and Envoys, Privy Councillors and the Chief Justice. The Clerk of the House of Representatives was the last mentioned of all the Heads of Departments of State.

A new Order of Precedence reflects a valued recognition of the status which ought to be accorded to Parliament. The Speaker is now placed at No. 3, after His Excellency the Governor-General and the Prime Minister, and before the Dean of the Diplomatic Corps, the Deputy Prime Minister and other Ministers, the Chief Justice, Ambassadors and High Commissioners, the Leader of the Opposition, Privy Councillors, Members of Parliament and so on.

The Clerk of the Parliament, with two others who hold by statute a position as an Officer of Parliament —namely, the Controller and Auditor-General and the Ombudsman—takes his place now immediately above the Chief of Defence Staff, the Chairman of the State Services Commission, the Solicitor-General, and the Permanent Heads of Civil Departments of State.

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

Malta (Minutes of Proceedings).—At the sitting of 11th September, 1972, the Minister of Justice and Parliamentary Affairs moved that during the current Legislature, the minutes of the proceedings of the House along with the Notice Paper could be drawn up in Maltese only. The Motion was agreed to. Standing Order 171 provides *inter alia* that every vote and proceeding of the House should be noted by the Clerk and recorded in the Maltese and English languages.

XIX. RULINGS OF THE CHAIR IN THE HOUSE OF COMMONS: 1973

Adjournment of the House under S.O. No. 9 (Urgent Debates): Motions allowed by Mr. Speaker

—Hospital workers dispute (20th March, 1973; *Hansard*, Vol. 853, c. 256)

—Coal Supplies (12th November, 1973; Vol. 864, c. 33–4)

Member should give notice of intention to make statements about another Member

On 20th July, 1973, a Member complained that another Member had failed to give him adequate notice of his intention to make defamatory statements about him in the House. The Member asked Mr. Speaker if it was not the custom of the House that if one Member intended making defamatory statements about another Member he should give him adequate notice of his intention.

Mr. Speaker:

It certainly is the convention of the House that notice should be given of any such intention (Vol. 860, c. 1013.)

Ministers' speeches made abroad

A Member asked if the rule by which Questions about speeches made by Ministers at conferences on behalf of the Government had to be addressed to the Minister in charge of the Department concerned, should continue to apply when a Minister spoke in the European Parliament not only as a Minister but also as a member of the Council of Ministers. Mr. Speaker ruled:

. . . where a speech is made outside the House by a Minister, the only question which can be asked about it is an inquiry to the Prime Minister whether it represents the policy of Her Majesty's Government. Where, however, a speech is made by a ministerial representative at a formal international conference, the Minister concerned or, if he does not bear the ultimate departmental responsibility, the Minister who does, can be questioned in detail about the substance of the speech itself.

On the following day, he amplified his Ruling thus:

The hon. Member expressed concern that he might be debarred from asking the Prime Minister about any ministerial speeches made abroad on the ground that there was always a presumption that a Minister speaking abroad did represent the policy of Her Majesty's Government. Although this may in practice often be the case, the basic distinction—this is the new point—is not simply between speeches made abroad and at home; it is between those made, for want of a better description, in a representative and a non-representative capacity. If a Minister of Cabinet rank addresses a public meeting, whether in

London or in Paris, then the only question which is in order is one to the Prime Minister asking whether what the Minister said represents the policy of Her Majesty's Government.

On the other hand, if any Minister officially represents the Government at an international conference or deliberative body, whether at home or abroad, then any speech he makes must be presumed to be made in such a representative capacity, and questions about its details can be addressed to whichever Minister is departmentally responsible for their substance. (26th–27th March, 1973; Vol. 853, cc. 919–20, 1098–9.)

Prime Minister not to be questioned about the Leader of the Opposition

A Member said there was a growing practice by which the Prime Minister was questioned about the views of the Leader of the Opposition, or those of the main Opposition party.

Mr. Speaker:

. . . I must make it clear that Prime Minister's Question Time is not the Leader of the Opposition's Question time and that it is wrong to put Questions to the Leader of the Opposition when, in fact, the Prime Minister is answering Questions. Secondly, the Prime Minister of the day is not responsible for the actions of the Leader of the Opposition of the day. Therefore he ought not to be questioned about them. . . . I think that it is an abuse of the procedure of the House, whichever party has been guilty of it in the past. We should try to see that Prime Minister's Question Time is confined to Questions to the Prime Minister on matters for which he is responsible. (18th April, 1973; Vol. 855, c. 504–5.)

XX. EXPRESSIONS IN PARLIAMENT, 1973

The following is a list of examples occurring in 1973 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

" Arrogance " (*N.Z. Hans.*, Vol. 387, p. 4943)
" befool " (of lawyers) (*Gujarat Procs.* Vol. 43, c. 457)
" calculated omissions from a State document" (*N.Z. Hans.*, Vol. 384, p. 2167)
" fiddling with accounts, leads the field from either side of this House when it comes to knowledge about " (*N.S.W.L.A.*, p. 4830)
" Fraud on the Constitution leading to the rape of democracy " (regarding the action of a Governor) (*India R.S. Deb.* 5.3.73 col. 143)
" Ignorance of the Honourable Member " (*N.Z. Hans.*, Vol. 388, p.5365)
" Jack-boot tactics " (*N.Z. Hans.*, Vol. 385, p. 3144)
" meanest person in this House " (of a minister) (*India R.S. Deb.* 23.2.73. col. 131)
" Party without any method or manner " (*Gujarat Procs.* Vol. 43, c. 9)
" Rural rump " (*N.Z. Hans.*, Vol. 385, p. 3008)
" Sanctimonious humbug " (*N.Z. Hans.*, Vol. 382, p. 460)
" Timid opposition " (*Gujarat Procs.*, Vol. 46 c. 279)

Disallowed

" . . . absurdity that we have in this House that a Nominated Member is a Minister . . . " (*St. L. Hans.*, 30.11.73)
" Animal " (*India L.S. Deb.*, 16.3.73, col. 280)
" Arab " (*Zambia P.D.*, Vol. XXXII, col. 1117)
" baboons, like a lot of screaming " (*N.Z. Hans.*, Vol. 382, p. 645)
" bandalboji " (bluffing) (*Maharashtra L.A.*)
" barber, perhaps the honourable Member does not spend as much time at the, as he used to " (*N.S.W.L.C.*, Vol. 105, p. 222)
" blackmail " (*Br. Col.*, 17.4.73, p. 2989)
" Blackmailer " (*India L.S. Deb.*, 13.8.73, col. 352)
" Bloated plutocrat " (*N.Z. Hans.*, Vol. 381, p. 671)

" Blooming Committee " (of a Parliamentary Committee) (*India L.S. Deb.*, 13.3.73, col. 234)
" bought " (*N.S.W.L.C.*, Vol. 104, p. 4758)
" brains, something wrong upstairs in our " (*Zambia P.D.*, Vol. XXXII, col. 1068)
" Bull dust artist " (*Victoria Hans.*, p. 4607)
" Bush Lawyer " (*Victoria Hans.*, p. 3860)
" by God " (*Br. Col.*, 11.4.73, p. 2535)
" Comrade " (*Zambia P.D.*, Vol. XXXII, col. 1372)
" crackpot " (*Br. Col.*, 12.4.73, p. 2606)
" criminal friends, you can go and talk to your, but be quiet here " (*N.S.W.L.A.*, 1973/74, p.302)
" crooks like you, double-sided " (*India R.S. Deb.*, 3.12.73)
" cur, you little " (*Aust. Sen. Hans.*, Pt. I, p. 1533)
" Cur and a skunk " (*Aust. Sen. Hans.*, Pt. I, p. 1533)
" deceitful " (*Br. Col.*, 15.2.73, p. 469)
" decent ones amongst them " (*N.Z. Hans.*, Vol. 382, p.822)
" deficiencies in the Bill as we heard just now, exist, and applicants were never informed of even the receipt of their application. That I consider a grave error, because in some . . . " (*St. L. Hans.*, 20.12.72)
" denied the right to speak to an earlier Motion " (reflection on the Chair) (*N.Z. Hans.*, Vol. 382, pp. 900–3)
"Dictator " (*Aust. Sen. Hans.* Pr. II, p. 713)
" dirt, scum " (*Malta*, Sitting 143, 8.1.73)
" Dishonest " (of a Minister) (*India L.S. Deb.* 21.3.73, col. 357 & 30.3.73, col. 225)
" Dishonesty " (*Victoria Hans.*, p. 2274)
" Donkey ", (*Q'ld. Hans.*, p. 357)
" drip, sit down you " (*N.Z. Hans.*, Vol. 385, p. 2828)
" Dubious Member for " (*N.Z. Hans.*, Vol. 386, p. 4309)
" fait accompli . . . " (*St. L. Hans.*, 16.2.73)
" Faking the report " (*N.Z. Hans.*, Vol. 384, p. 1994)
" false, That statement by Member was deliberately " (*N.S.W.L.A.*, 1972/73, p. 30)
" Fascist, The Minister is too " (*N.S.W.L.A.*, 1972/73, p. 3497)
" father's House, This is not your " (*India L.S. Deb.*, 6.8.73, col. 325)
" favouring, Ministers " (*N.Z. Hans.*, Vol. 387, p. 4666)
" filibuster " (*St. L. Hans.*, 16.2.73)
" grey, slow, and weak Leader " (*N.Z. Hans.*, Vol. 388, p. 5352)
" hams, there are a couple over there " (*N.Z. Hans.*, Vol. 382, p. 696)
" *Hansard*, member cuts some of his " (*N.Z. Hans.*, Vol. 383, p. 3850)
" hell, go to " (*Zambia, P.D.*, Vol. XXXII, col. 701)
" Hooligans ", (*Q'ld. Hans.*, p. 1919)
" humbug, sit down, you " (*N.S.W.L.A.*, 1973, p. 670)
" Hypocrites " (of Chief Ministers of States) (*India L.S. Deb.* 19.4.73, col. 244)
" hypocrisy, hypocrite, hypocritical " (*Br. Col.*, 26.3.73, p. 1702)

" Idiot " (*India L.S. Deb.*, 23.4.73, col. 1)
" Immoral " (of a Government official) (*India L.S. Deb.*, 26.11.73)
" insincerity, concerned about his" (*N.Z. Hans.*, Vol 387. p, 4827)
" intrigue will be carried out " (*St. L. Hans.*, 26.10.73)
" jack booted " (*Br. Col.*, 2.2.73, p. 201)
" Jekyll or Hyde " (*Aust. Sen. Hans.*, Pt. II, p. 523)
" kill people in Vietnam, at least I did not " (*N.S.W.L.A.*, 1972/73, p. 4338)
" lackeys, Leader of the Opposition and his " (*N.Z. Hans.*, Vol. 388, p. 5358)
" Law breaking " (inference member supported) (*N.Z. Hans.*, Vol.388, p. 5387)
" Liar " (*India L.S. Deb.* 10.8.73, col. 308)
" liar, you are a " (*N.S.W.L.A.*, 1973, p. 544)
" lie " (*Q'ld. Hans.*, p. 464)
" lie, a blatant lie and it is dishonest . . . " (*St. L. Hans.*, 29.12.72)
" little toad from Queensland " (*Aust. Sen. Hans.* Pt. II, p. 1255)
" Lying ", (*Q'ld. Hans.*, p. 502)
" Mug " (*Q'ld. Hans.*, p. 444)
"Nasty little man " (*N.Z. Hans.*, Vol. 388, p. 5373)
" nefarious activities, The Leader of the Opposition endorsed a candidate who subsequently had to be stood down because of his" (*N.S.W.L.A.*, 1972/73, p. 3249)
"nonsense, arrant " (*India L.S. Deb.*, 27.3.73, col. 259)
" Paper tiger Zambians " (*Zambia P.D.* Vol. XXXII, col. 1144)
" Parliamentary Circus " (*Zambia P.D.* Vol. XXXII, col. 1799)
" pawn " (*Br. Col.*, 22.2.73, p. 653)
" Peddling lies " (*Victoria Hans.*, p. 3769)
" pervert and bad intentioned " (*Malta*, Sitting 225, 16.10.73)
" phoney " (*N.S.W.L.A.*, 1972/73, p. 4660)
" Piglets, like a lot of little " (*N.Z. Hans.*, Vol. 387, p. 4799)
" pockets, you see Ministers of Governments are more interested in their" (*St. L. Hans.*, 29.12.72)
" Political fraud " (*Victoria Hans.*, p. 1457)
" Purchased by somebody " (*India L.S. Deb.* 23.2.73, col. 333)
" Racist " (*N.Z. Hans.*, Vol. 388, p.5321)
" rank hypocrisy " (*Br. Col.*, 29.1.73, p. 29)
" Red rabble " (*N.Z. Hans.*, Vol. 388, p. 5376)
" Rowdy little member " (*N.Z. Hans.*, Vol. 382, p. 804)
" right-wing fascist " (*N.S.W.L.A.*, 1973/4, p. 427)
" Scum " (*Malta*, Sitting 184, 19.4.73)
" sham or a farce " (*Br. Col.*, 19.3.73, p. 1439)
" Shut up " (*India L.S. Deb.*, 23.4.73, col. 1, & 6.8.73, col. 325)
" Shut your mouth, you old mug " (*Q'ld. Hans.*, p. 196)
" shyster lawyer " (*Aust. Sen. Hans.*, Pt. I. p. 1136)
" Telling lies " (*Q'ld. Hans.*, p. 468)
" Telling lies " (*Zambia P.D.*, Vol. XXXII, Col. 1869)

" Tommy-rot " (to the Chair) (*India L.S. Deb.*, 7.8.73, col. 316)
" trained seals " (*Can. Com.*, 7.6.73, p. 4530)
" traitor " (*Aust. Sen. Hans.*, Pt. I, p. 585)
" uniform, never had on a" (*Aust. Sen. Hans.*, Pt.I, p. 1248)
" Weak-kneed " (*Q'ld. Hans.*, p. 109)
" Warmonger " (*N.Z. Hans.*, Vol. 385, p. 3381)
" war, have a vested interest in the perpetuating of " (*Aust. Sen. Hans.*, Pt. II, pp. 581–2)
" War surplus Air Commodore " (*N.Z. Hans.*, Vol. 384, p. 1989)

XXI. REVIEWS

Final Appeal—A Study of the House of Lords in its Judicial Capacity. By Louis Blom-Cooper and Gavin Drewry. (Oxford University Press. 1972. £10.)

The authors of this mammoth work, one a lawyer the other a social scientist, after years of beaverlike work of the highest quality, shed considerable light on an esoteric subject, the judicial functions of the House of Lords.

No stones are left unturned. One finds the history of the House of Lords as a judicial tribunal painstakingly traced from 1600 to the present day. As one would expect,the dramatic events of the 1870s are followed in detail. In 1873 a Bill received the Royal Assent whereby the House of Lords entirely lost its appellate jurisdiction. The Act was to come into force in November 1874. But before then, Gladstone's administration fell. After two Bills had been rushed through all stages in both Houses to postpone the implementation of those parts of the 1873 Act which had abolished appeals to the Lords, Disraeli's administration passed the Appellate Jurisdiction Act 1876 providing for the appointment of two salaried Lords of Appeal in Ordinary (since increased at various dates to ten). Thus the present-day appellate jurisdiction of the House of Lords rose phoenix-like from Gladstone's ashes, a study of which forms a major part of the book. The abolition of the doctrine of *stare decisis* in 1966 is dealt with, though whether " their Lordships were unshackled from the albatross of their own previous decisions " is perhaps open to question.

The authors consider the advantages and disadvantages of separate Judgments, the practice in the House of Lords in contra-distinction to that of the Judicial Committee of the Privy Council. The " leap-frog " procedure direct from the High Court introduced in 1969 is analysed. A mass of analytical tables and appendices enlighten the intelligent enquirer on every conceivable aspect of the judicial work of the House of Lords, ranging from an analysis of the development of Public and Private Law to the parentage and educational background of the Law Lords.

In considering proposals for reform, the authors came down firmly against abolition of the House of Lords as the second and ultimate Appellate Tribunal. Wisely, in my view, the authors consider that " Anyone contemplating the reform or abolition of the House of Lords should bear in mind the dangers of upsetting the equilibrium of this delicately balanced and highly complex sociolegal mechanism ". They advance the controversial view that the House of Lords as a judicial body should be amalgamated with the Judicial Committee of the Privy

Council and established in Downing Street. This reviewer trusts that that reform first mooted by Lord Westbury in 1871, will not be implemented in his time.

(*Contributed by R. P. Cave, Fourth Clerk-at-the-Table (Judicial), House of Lords.*)

The theory and practice of the Dissolution of Parliament: A comparative study with special reference to the United Kingdom and Greek experience. B.S. Markesinis (Cambridge University Press, 1972).

In a footnote on page 60 of this book, Dr Markesinis refers to the " unlikely event of no party having an overall majority (in the United Kingdom House of Commons) ". When the book was published that was certainly a fair assessment of the odds; but the unlikely has now happened, a minority government is in power, and one result of this new situation has been to revive political interest in the constitutional questions surrounding the power of dissolution. Dr. Markesinis' work therefore has a particular relevance in present circumstances, and his conclusions deserve close attention.

The book is in four parts. The first is a brief analytical summary of the provisions concerning the power to dissolve to be found in European constitutions past and present; the second part provides a useful historical survey of the use of dissolution in the United Kingdom over the past hundred years or so; Part III, the longest, provides a similar but more detailed survey for Greece; and Part IV consists of a short chapter of conclusions. It is difficult to imagine that there are many readers who will be able to approach these different parts with an equal degree of interest and knowledge. In Part III Dr. Markesinis does his best for the reader unfamiliar with modern Greek history, providing a much fuller political and historical background than in the United Kingdom chapters. In an appendix he also gives short biographies of the principal political figures involved. As he himself says, " A strictly legal interpretation of any constitution, ignoring the political and economic background, is bound to be purely academic and of little interest to lawyer and political scientist alike " (p. 154–5). The resulting political narrative is often fascinating, but is hardly satisfactory from any one point of view. Inevitably it is highly compressed (and therefore difficult to read); but at the same time it contains more detail than is necessary simply to support the author's basic conclusions—that "irregularity seems to have been the rule rather than the exception in Greek constitutional history " and that " the Crown in Greece clung to its nineteenth-century prerogatives far longer than it did in Great Britain and, indeed, in any other European Monarchy ". In fact Dr. Markesinis' own laudable insistence on placing constitutional events in their political and historical context shows up clearly the impossibility of comparing Greek and United Kingdom experience in

this field in a meaningful way. What we are left with is not so much a comparison as a stark contrast; and the introduction suggests that this may have been what the author intended.

Both the United Kingdom and Greek parts of the book are punctuated by the author's own comments on the constitutional propriety of the events which he describes and of the opinions which he quotes. His judgments are always balanced and reliable, and he is invariably seen as an advocate of moderation on the part of those in power, whether it be monarchs or prime ministers.

On page 120 Dr. Markesinis summarises the rules which, he thinks emerge from the United Kingdom practice in relation to dissolution. The fifth of these rules is of direct relevance to the current situation at Westminster:

> The Crown may, under certain circumstances, refuse a dissolution to a minority Government (whether defeated or undefeated) provided an alternative Government is possible and able to carry on with the existing House. If the [new] Government is censured it is advisable that the Crown recall its predecessor and grant its request to dissolve."

This accords with a view which has commonly been advanced in discussion of this topic over recent years; namely that, although the Crown has not refused a dissolution for well over a century, hypothetical circumstances (of varying degrees of probability) may be envisaged in which it would be right to do so. The proviso in Dr. Markesinis' rule is a stiff one. It implies that in the present situation the Queen could refuse a dissolution to Mr. Wilson only if the Conservative and Liberal parties, with the Ulster Unionists and perhaps the nationalists as well, formally committed themselves to sustaining a Conservative Government in power for a reasonable period. Nonetheless one imagines that Dr. Markesinis, were he writing his book today, might be even more cautious in formulating his rule.

The most immediately impressive part of the book is the final chapter, in which the author traces the development of the institution of dissolution. Its original purpose, he points out, was as a device to resolve conflicts between the Executive and the Legislature. Since the introduction of universal suffrage and the growth of the mass political parties, the risk of such conflict in the U.K. has been reduced almost to vanishing point. What justification can there be, therefore, for retaining an institution which is now just an additional weapon in the armoury of an ever more powerful Prime Minister and which is used almost exclusively for party political advantage? Were it not for the fact that use of the weapon has, on the last two occasions, proved disastrous to the user, this question would by now have become an urgent one. Dr. Markesinis does not provide a firm answer; but his book is a useful contribution to the debate that sooner or later will have to take place.

Practice and Procedure of Parliament (with particular reference to Lok Sabha): Second edition. M. N. Kaul and S. L. Shakdher (Metropolitan Book Co., Delhi, 1972).

Even before opening this book one can tell at once that it is the Indian Erskine May. The spine of this 2nd edition has been redesigned and bears a striking resemblance to the new and elegant binding of the 18th edition of May; and in its format and its bulk (with 960 pages, it is scarcely shorter than May) it is instantly recognisable as an authoritative work of reference.

In fact a study of the book soon shows that the authors, the former and present Secretaries of the Lok Sabha, have set out to provide an even more comprehensive survey of their subject than Erskine May provides for the United Kingdom Parliament. It is a reasonable criticism of Erskine May to say that it is possible to read right through its 1,000 pages and end up knowing everything there is to know about parliamentary law and practice but absolutely nothing about what parliament is actually like. This criticism could not be levelled at Shri Kaul and Shri Shakdher. They describe in detail the Parliament House building and the various facilities provided for Members, and throughout the book they give glimpses of the realities of parliamentary life in addition to their comprehensive account of parliamentary forms and technicalities. Their passage on the role of the Whips, for example, is far more vividly recognisable than the equivalent section in Erskine May. Similarly, editors of Erskine May would perhaps hesitate before committing themselves to such a ringing pronouncement as the following one, on the duties of the Leader of the Opposition:

> The Leader of the Opposition must himself be a skilled parliamentarian and familiar with the tricky situations. He should be fully conversant with the rules of the House so that he might utilise the opportunities provided thereunder. Vigilance is his hallmark and he must, therefore, be in his place constantly.

At the end of the book there are chapters on " Parliament and the Civil Service " and " Parliament and the Press ", which deal with such fundamental matters as the doctrine of ministerial responsibility and the freedom of the press. These are interesting sections, and their presence is another indication that the authors of *Practice and Procedure of Parliament* have set out to provide a far more comprehensive survey of the constitution and democratic system of India than their title might suggest.

Inevitably, though, the procedural sections form the major part of the book; and here the United Kingdom reader tends to turn to the sections describing procedures which might with advantage be transplanted to Westminster. One section, for example, sets out the rules which govern the recognition of parliamentary parties in the Lok Sabha, and describes the facilities which are granted as a consequence of recognition. There are no such hard and fast rules in operation at Westminster; but, with minority parties gaining greatly increased representation at the recent

election, some rules may soon have to be devised. If so, the practices of the Lok Sabha will be a useful point of reference.

It was also fascinating to read that in the Lok Sabha there is a chart for each sitting showing the number of Members present in the House at different hours of the day, and that statistics are prepared each session showing maximum and minimum attendance for each day, the highest and lowest hourly count and the average attendance per day. Was this excellent system introduced on the initiative of the secretariat? Certainly it is hard to imagine Members pressing for similar arrangements to be made at Westminster.

As its title indicates, the book is not exclusively concerned with the Delhi Parliament, but also takes account of India's federal structure. But, as the Speaker, Dr. Dhillon, points out in the Foreword, the authors are fortunate in that there is near uniformity of procedure between the Houses of Parliament and the State Legislatures. There is a separate chapter on " Parliament and the States "; but throughout the book as a whole the State Legislatures are not accorded separate treatment, for the practices and procedures described in the book apply equally to almost all of them.

It is hard to conceive that this work will ever lose its place as the basic manual of parliamentary reference in India. This edition will no doubt be superseded in time; but we may safely assume that subsequent editions of " Kaul and Shakdher " will occupy the same position of authority in Delhi as successive editions of " Erskine May " have occupied at Westminster.

XXII. 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:

(ii) 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.

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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.

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7. One copy of every publication of the JOURNAL shall be issued free to each Member. The cost of any additional copies supplied to him or any other person shall be £2.50 a copy, post free.

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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.

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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.

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ABBREVIATIONS

(Art) = Article in which information relating to several territories is collated. (Com.) = House of Commons

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