Journal
of the
Society of Clerks-at-the-Table
in
Empire Parliaments

EDITED BY
OWEN CLOUGH, C.M.G.

"Our Parliamentary procedure is nothing but a mass of conventional law."—DICEY

VOL. VI

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1938
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USUAL SESSION MONTHS OF EMPIRE PARLIAMENTS

Parliament.	*Jan.*	*Feb.*	*Mar.*	*April.*	*May.*	*June.*	*July.*	*Aug.*	*Sept.*	*Oct.*	*Nov.*	*Dec.*
UNITED KINGDOM		*	*	*	*	*	*				*	*
CANADIAN DOMINION	*	*	*	*	*	*	*					
CANADIAN PROVINCIAL:												
Ontario		*	*									
Quebec	*	*	*									*
Nova Scotia			*	*								
New Brunswick		*	*	*								
Manitoba		*	*	*								
British Columbia										*	*	*
Prince Edward Island ..				*	*							
Saskatchewan	*	*	*									*
Alberta		*	*	*								
AUSTRALIAN COMMONWEALTH ..				*	*				*	*	*	*
AUSTRALIAN STATES:												
New South Wales					*	*	*	*	*	*	*	*
Queensland					*	*	*	*	*	*	*	*
South Australia							*	*	*	*	*	*
Tasmania							*	*	*	*	*	*
Victoria							*	*	*	*	*	*
Western Australia							*	*	*	*	*	*
EW ZEALAND							*	*	*	*	*	*
NION OF SOUTH AFRICA ..	*	*	*	*	*	*	*					
JNION PROVINCIAL:												
Cape of Good Hope												
Natal		*			*				*			
Transvaal			*	*	*	*						
Orange Free State			*	*	*							
SOUTH WEST AFRICA			*				*					
IRELAND			*	*	*							
SOUTHERN RHODESIA	*	*	*	*	*	*	*			*	*	*
INDIAN CENTRAL			*	*	*					*		
INDIAN PROVINCIAL:	*	*	*	*				*	*	*		
Madras	*	*	*					*				
Bombay		*	*			*	*		*	*		
Bengal			*	*				*	*			
United Provinces				*	*			*	*			
The Punjab							*	*	*	*		
Bihar		*	*				*		*		*	
Central Provinces and Berar ..	*	*	*					*	*			
Assam	*	*	*					*				
North-West Frontier ..				*				*		*		
Orissa			*	*					*	*	*	
Sind								*	*			
BURMA		*										
CEYLON		*		*	*			*				
BRITISH GUIANA	*	*		*	*	*	*	*	*	*	*	*
JAMAICA				*	*	*				*	*	*
STRAITS SETTLEMENTS												

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Journal
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Society of Clerks-at-the-Table
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VOL. VI. FOR 1937

I. EDITORIAL

Introduction to Volume VI.—The year under review in this Volume covers a more varied range of questions of Parliamentary procedure than its predecessor, which included many references to important constitutional issues in the Dominions.[1] 1937 has seen: the passage of a Regency Act at Westminster; further investigation into the problem of Dominion-Provincial Relations in Canada; consideration by the Commonwealth and the States of Australia of the proposal to ratify the Statute of Westminster; an important appeal case relating to the powers of the Union Parliament; the coming into force of the new Constitution for Ireland and general elections for both Seanad and Dáil Eireann; the introduction of Provincial Autonomy in the eleven Indian Provinces; and the appointment by His Majesty's Government in the United Kingdom of a Royal Commission to consider the question of closer co-operation or association between Southern and Northern Rhodesia and Nyasaland.

To turn to questions of Parliamentary procedure, two important subjects have been given consideration in the House of Commons: its control of Committee Money Resolutions, and greater uniformity in Local Legislation Clauses as well as increased expedition in Private Bill Procedure generally. There has also been discussion in that House upon the salaries of both Ministers and Members, as well as upon a scheme of

[1] *i.e.*, King Edward VIII's Abdication, Federal Powers in Canada, Commonwealth v. State in Australia, the new Constitution for Ireland, the Parliamentary Franchise in South Africa and the administration of its Mandated Territory, etc.

pensions also for M.P.'s, though no decision was come to upon this last mentioned subject.

We regret to announce the death of J. W. McKay, I.S.O., Secretary of the Bengal Legislative Council, on October 29, 1936, in Calcutta, through broken health due to incessant work. The funeral, which took place in that city the following day, was attended by many officials and non-officials, including the Honourable Sir B. L. Mitter, Judicial Member to the Government of Bengal. Letters of condolence were received by Mrs. McKay when the news of her husband's death reached Darjeeling, the Government Headquarters at the time, from the Members of Government, and from His Excellency Sir John Anderson, the Governor, and obituary references regretting the loss of such a distinguished officer were made in the Council when it next sat, on November 9, 1936.

Mr. McKay joined the Legislative Department in 1911, and his long official experience stood him in good stead in the reorganization of the Department after the introduction of the Montagu-Chelmsford Reforms in 1921. In 1932, when he was acting as Registrar, he was chosen for appointment as Secretary to the Council, on the creation of a separate Council Department. Mr. McKay was a devoted and conscientious worker and his loss was felt to be irreparable. Our sincere sympathies are respectfully offered to his widow, and other members of his family, in their deep sorrow.

Acknowledgments to Contributors.—This year we have not the pleasure of acknowledging articles by several contributors, but we extend to Mr. D. H. Visser, J.P., our thanks for his regular and valuable contribution upon precedents and unusual points of Procedure in the Union House of Assembly.

We also acknowledge with equally grateful thanks the splendid co-operation which is being accorded the Society and

its JOURNAL by our members throughout the Empire. To single out names for special mention in this connection would make such a long list as to render its publication here impracticable. This splendid spirit is indeed a distinct encouragement to us in our work, so much of which must necessarily depend upon the regular and prompt supply of the required documents, facts and references by those best able and in a position to do so. Particularly, however, should we appreciate being allowed to mention the ready and willing assistance rendered by the Librarian and staff of the Parliament at Cape Town, where much of our reference work has now to be carried out.

Questionnaire for Volume VI.—There is still such an accumulation of matter of Parliamentary interest, from a procedure point of view, outstanding from the Questionnaires for earlier Volumes, which it has not yet been possible to treat in the JOURNAL, that in the Questionnaire for Volume VII, recently distributed, no new subject has been included. That does not mean, however, that members are not to continue suggesting subjects upon which the treatment of the combined experience of the Parliaments of the Empire is to be undertaken in the JOURNAL. Such suggestions we shall always continue to welcome, for, in order to give time for a subject to be first proposed and the information thereon to be collected by the annual Questionnaire from the various parts of the Empire, it is never too early for suggested subjects to be sent in.

The outstanding subjects abovementioned include the following: Cases of Privilege, Tampering with Witnesses, Suspension and important alterations in Standing Orders, Pecuniary interest of M.P.'s, the Crown's Powers under Oversea Constitutions in the amendment of Bills, Approval and Resignation of the Speaker, Parliamentary Expressions, *allowed* or *disallowed*, the Address-in-Reply, and Tables of Precedence in the British Empire. The last named, however, is now being prepared, but it is too long for inclusion in the JOURNAL unless a large number of current Parliamentary items, with which it is important that we keep abreast, are to be dropped. The question is therefore being considered of publishing these Tables separately, upon which we are awaiting information from our printers. Neither has it been possible to deal with an outstanding subject—Censure of the Chair—which was contained in the Questionnaire for the present Volume.

House of Lords (Life Peerages).—On March 24[1] Lord Strickland rose:

[1] 104 H.L. Deb. 5. s. 783 to 803.

to call attention to the law in reference to Life Peerages and to ask His Majesty's Government whether under the law as it stands steps may be taken that would enable Prime Ministers from the Dominions to sit and speak in the House of Lords after the precedent established in South Africa by which Ministers speak in a House to which they do not belong; and to move for Papers.

The mover, in his introductory speech, urged the granting of Life Peerages to Dominion Prime Ministers. Dealing with the legal aspect, he quoted the Wensleydale case,[1] and said that there would be great sympathy with those who ask for a review of the Resolution of 1856. Ever since the passing of such Resolution no Life Peerages had been created, except in so far as certain Lords of Parliament had been made members of the House of Lords *ex officio*.[2] Consequently, amending Acts were passed which gave to the *ex officio* Law Lords all the privileges of Peerage for the period of their natural lives. Several Bills that assumed the authority of the Wensleydale decision had passed Second Reading, in favour of the grant of Life Peerages. The noble Lord held with those who

[1] In regard to this subject May says:*

Life peerages were formerly not unknown in our Constitution,† and in 1856 Queen Victoria, having been advised to revive the dignity, with a view to improve the appellate jurisdiction of the House of Lords, created Sir James Parke, late one of the barons of the Court of Exchequer, by letters patent, Baron Wensleydale, "for and during the term of his natural life." But the House of Lords referred these letters patent to a Committee of Privileges, which, after examining all the precedents of life peerages, reported their opinion, "that neither the said letters patent, nor the said letters patent with the usual writ of summons issued in pursuance thereof, can enable the grantee therein named to sit and vote in Parliament." The House concurred in this opinion, and Lord Wensleydale therefore did not offer to take the oaths and his seat, but was shortly afterwards created an hereditary baron, in the usual form.‡ The expediency of creating life peers, however, continued to be discussed.§ Provision was made by statute for the Constitution of Lords of Appeal in ordinary in 1876,‖ and their number was increased to 6 in 1913.¶ They enjoy the rank of baron and are entitled to a writ of summons for life, but their dignity does not descend to their heirs.**

[2] Appellate jurisdiction, Act. 1876 (39 and 40 Vict., c. 59).

* 13th Ed., 11, 12. † Parl. Paper (H.L.), sess. 1856, No. 18 of 1856.
‡ *Ib.*, 106; 88 L.J. 38; 140 H.D. 3. s. 263, 1290; May Constitutional History, I, 196-201; *see also* 140 H.D. 3. s. 263, 508, 591, 898, 977, 1022, 1121, 1152, 1289.
§ 142 H.D. 3. s. 780, etc.; 143 *ib.*, 428 etc.
‖ 39 and 40 Vict. c. 59. ¶ 3 and 4 Geo. V, c. 21.
** 39 and 40 Vict. c. 59, ss. 6, 14; 50 and 51 Vict. c. 70. s. 2; 3 and 4 Geo. V, c. 21. s. 1. The precedence of a baron's wife and child was granted to the wife and children respectively of a lord of appeal in ordinary by the Royal Warrants of December 22, 1876, and March 30, 1898. *Vide London Gazette*, August 16, 1898, 4935.

maintained that there could be no augmentation or diminution of the Royal Prerogative except by an Act of Parliament, and said there were those who strongly supported the view that the Prerogative was unshaken and unshakable as vested in the Crown to create honours and peerages of any description either on the initiative of the King himself or on the advice of his Ministers or of the Prime Ministers of the Dominions, or, if it was a question of conferring the highest honour on a Prime Minister, then on the advice to the Crown of that Prime Minister's colleagues. The obvious solution was the passing without any delay of a one-clause Act of Parliament declaring the interpretation of Common Law that has been adopted as a consequence of the Wensleydale case *non sequitur*.

The noble Lord recalled the acceptance within recent times overseas of hereditary peerages, and expressed the view that it was not in the interests of constitutional democracy to endeavour to carry on government without admitting and recognizing the necessity of taking steps to co-ordinate the distribution of honours with due allegiance and regard for the Prerogative of His Majesty the King, the supreme centre and authority in the British Commonwealth of Nations. There was nothing in law to prevent the King creating a new order of Life Peers. The Rules of the House of Lords as to wher those inside the chamber sit, and as to who are to speak ar embodied in S.O. VIII. That Order did not derive its autho ity from any law, but solely from a Resolution of the Hous of Lords which could only be altered by another Resolution. When the Commons sat in the same Chamber with the Lords, up to the Parliament of 1290, seats were placed for distinguished visitors from Ireland, Scotland and Wales, and the equivalent of Writs of Assistance were issued to three or four commoners to be with the Lords and speak for the burgesses and the people who were allowed to go to the House to ask for redress for their grievances. The suggestion in the Motion, continued the noble Lord, of action by Resolution was made deliberately as a step, and as an expedient to eliminate the difficulties as to legislation and to show that, if their Lordships were to decide to alter S.O. VIII, subsequent legislation would be inevitable to facilitate the creation of Life Peerages.

The Lord Chancellor (Rt. Hon. Viscount Hailsham)[1] supported Lord Snell in stating that he regarded the Motion as primarily a question of law. The Lord Chancellor did not believe that under the law as it stood steps could be taken that

[1] 104 H.L. Deb. 5. s. 794 to 802.

would enable Prime Ministers from the Dominions to sit and speak in their Lordships' House. The Lord Chancellor was not a member of the House of Lords at all; in fact, he sat as Lord Chancellor when Sir Douglas Hogg, and before he had the privilege of becoming a Member of the House of Lords; his Lordship, continuing, said:

> The Lord Chancellor, as such, sits on the Woolsack, and the Judges and the Attorney General and Solicitor General who are to-day summoned to attend your Lordships' House, if ever they did attend, would sit again on these Woolsacks so as to be outside the House. When I address your Lordships' House, then I move into the House, as I am doing at this moment, and I speak from this place so that I am in my place in the House. In order to address your Lordships in Committee, I am only on the Front Bench, not by virtue of my position as Lord Chancellor, but by virtue of my position as a member of the House. If he were not a member of the House, the Lord Chancellor would have no right to sit in Committee on the Front Bench or in any other part of the House. I have the honour to be permitted to address your Lordships' House, not by virtue of the fact that I am Lord Chancellor, but simply and solely by virtue of the fact I am a Peer.

"My noble friend," continued his Lordship, "referred at considerable length and in great detail to the Wensleydale case. I certainly believe that the Wensleydale case was rightly decided." The Lord Chancellor then dealt with the practice from early times in regard to writs of summons to Parliament, and in conclusion observed that from time to time there had been an increased number of Law Lords created, and always by Act of Parliament; and he would be a bold man who would say that the Crown could exercise the Prerogative which had been denied as long ago as eighty years in the Wensleydale case, and had been denied by such a weight of authority as that to which he had referred and which had been acquiesced in by Parliament ever since.

The Motion for Papers was then by leave withdrawn.

House of Lords (Labour Peers).—On December 21,[1] Lord Snell made a statement calling the attention of their Lordships to a report in a prominent London newspaper which his noble friends considered was a reflection on their conduct as members of the House of Lords, namely—(1) That some of the Labour Peers are very poor; (2) that they were agitating to persuade the Government to pay them a salary; and (3) that they were trying to persuade some prominent Labour Member to state

[1] 107 H.L. Deb. 5. s. 531 to 533.

their case in the House of Commons. The noble Lord went on to say that to the best of his belief only the first of those statements was true, which he observed implied no dishonour to them and he hoped no disadvantage to their Lordships. His personal preference was to ignore those statements as just one more illustration of the sabotage of character to which members of the Labour Party had grown accustomed, but that he was advised that inasmuch as those statements reflected on their conduct as Members of their Lordships' House they should be formally repudiated, and that the suggestion that they were canvassing Members of the House of Commons in order to secure for themselves financial benefits was definitely untrue and injurious to them as Members of the House of Lords. In conclusion the noble Lord expressed the hope that their Lordships would accept his denial of the truth of those statements and also respect their wish that no action be taken in regard to them.

The Lord President of the Council (Rt. Hon. Viscount Halifax, K.G., G.C.S.I., etc.) then addressed their Lordships and said that he thought the noble Lord had been much more actuated by the possibility of misunderstanding being created outside among those who were not familiar with public life, and that he had accordingly been justly careful to do what lay in his power to correct what he described as an aspersion upon the position of himself and his friends. The noble Lord had used the phrase " sabotage of character " but he (the speaker) said that the noble Lord could rest assured that there was no feeling of that sort in the House towards either himself or any of his colleagues who sat opposite. " If the noble Lord opposite, and his friends," continued the speaker, " have any thought that the statement to which he has referred in any way reflects upon their character as Members of the House and upon the work they do there, they can feel sure that the feeling in all parts of the House will be with them in the statement the noble Lord has made."

House of Commons (Mr. Speaker's Attendance at the Coronation).—On February 24,[1] the Secretary of State for the Home Department (Rt. Hon. Sir John Simon, G.C.S.I., etc.) informed the House that His Majesty had been graciously pleased to signify a desire that, at His Majesty's Coronation in Westminster Abbey on Wednesday, May 12 next, the House should be represented by Mr. Speaker, and that this intimation of His Majesty's Pleasure meant that the House would dispense

[1] 320 H.C. Deb. 5. s. 2009.

with going to the Abbey in its corporate capacity. Hon. Members would therefore be free to go to the Abbey in the manner most convenient to themselves. The following question was therefore then put and agreed to:

> That this House, in accordance with His Majesty's gracious intimation, doth authorize Mr. Speaker, as representing this House, to attend His Majesty's Coronation in Westminster Abbey on Wednesday, the 12th day of May next.

Ministers of the Crown[1] at Westminster.—During the year under review in this issue of the JOURNAL an Act[2] was passed to remove certain anomalies in the present standing of Ministers by adjustments and alterations in their salaries and to revise the existing rules as to the distribution of Ministers between the two Houses. For the guidance of those who wish to study the debates at length, the Bill (107) for the Act passed through the various stages in the Commons on the dates given against them: introduction, March 23;[3] 2*R*, April 12;[4] *C.W.H.*, 28 and 29 *idem*;[5] *Cons.* and 3*R*, June 3;[6] *Cons.* Lords' Amendments 30, *idem.*;[7] and R.A. was signified on July 1.[8] There was also a Money Resolution to authorize the salaries and pensions contemplated under the Bill (S.O. 69), which was considered in Committee of the whole House on April 12[9] and reported to and adopted by the House on the day following.[10]

As many points which occurred during the debate on the Bill are of special interest to readers of the JOURNAL it is proposed to quote some of them, particularly from the speeches of the Minister-in-charge of the Bill, the Secretary of State for the Home Department (Rt. Hon. Sir John Simon, G.C.S.I., etc.). Mainly the provisions of the Act are based upon the reports of the Select Committees of 1920[11] and 1930[12] and a Resolution of the House of Commons of 1936, already dealt with in the previous issue of the JOURNAL.[13]

To take the sections of the Act *seriatim*, they make the following provisions. Section 1 provides for the payments of the salary of £5,000 each to the Ministers named in Part I of the First Schedule, namely—Chancellor of the Exchequer, Secretaries of State (not to exceed 8), First Lord of the Admiralty, President of the Board of Trade, Minister of

[1] *See also* JOURNAL, Vol. V, 18, 19.
[2] 1 Edw. VIII and 1 Geo. VI, c. 38.
[3] 321 H.C. Deb. 5. s. 2759, 2760.
[4] 322 *ib.*, 639 to 752.
[5] 322 *ib.*, 363 to 499, and 553 to 680.
[6] 324 *ib.*, 1191.
[7] 325 *ib.*, 1975.
[8] *Ib.*, 2179.
[9] 322 *ib.*, 753, 754.
[10] *Ib.*, 973 to 975.
[11] H.C. Paper 241.
[12] H.C. Paper 170.
[13] Vol. V, 18, 19.

Agriculture and Fisheries, President of the Board of Education, Minister of Health, Minister of Labour, Minister of Transport, and the Minister for the Co-ordination of Defence. To the Ministers given in Part II of such Schedule—namely, the Lord President of the Council, Lord Privy Seal, Postmaster-General and First Commissioner of Works[1]—the salary is £3,000 p.a. and to the Minister of Pensions, alone named in Part III of such Schedule, a salary of £2,000 p.a.

Subsection (2) of Section 1 deals with the salaries of Parliamentary Secretaries and Under-Secretaries of State, which are to be as follows:

	£ p.a.
(i) Parliamentary Secretary to the Treasury ..	3,000
(ii) Financial Secretary to the Treasury	2,000
(iii) Secretary for Mines	2,000
(iv) Secretary of the Department of Overseas Trade	2,000
(v) The following Parliamentary Under Secretaries to the Departments of State (other than those mentioned in (iii) and (iv) above) namely, Admiralty, Air Ministry, Board of Education, Board of Trade, Burma Office, India Office, Ministry of Agriculture and Fisheries, Ministry of Health, Ministry of Labour, Ministry of Transport, Scottish Office and War Office ..	1,500
(vi) Assistant Postmaster-General	1,200

But it is provided that, if and so long as there are two Parliamentary Under Secretaries to the Foreign Office, to the Admiralty or to the War Office, the annual salary payable to each of the two Parliamentary Under Secretaries is to be determined by the Treasury; provided the aggregate of the annual salaries payable to both of them does not exceed £3,000.

Subject to the provisions of the Act as to number, section 1 (3) provides that the annual salaries payable to each of the Junior Lords of the Treasury is to be £1,000.

The maximum number of Secretaries of State has already been given, and section 2 limits also the number of Parliamentary Under-Secretaries of Departments of State to whom salaries may be paid under the Act as follows: Treasury 2; Board of Trade 3 (including the Secretary for Mines and the Secretary of the Department of Overseas Trade); Foreign Office, War Office and Admiralty 2; other Departments of State (*vide* (v) above), and Post Office 1; and, Junior Lords of the Treasury 5.

[1] P.W.D.

Section 3 provides that whatever salary may be attached to the office of a Minister, if he sits in the Cabinet, his salary is to be made up to the normal figure of £5,000. It is an interesting fact that this is the first time in the history of the British Constitution that the word " Cabinet " and the phrase " Cabinet Minister " have ever appeared in the Imperial Statutes. This section therefore helps define that phrase and requires that the appointment of Cabinet Ministers shall be *Gazetted*. Section 3 also applies to the Ministers mentioned in Part II of the First Schedule and to the Chancellor of the Duchy of Lancaster, if in any case his salary should be less than £5,000 p.a.

Another point of constitutional interest in connection with Section 4, which fixes the salary of the Prime Minister at £10,000, is that this is practically the first mention in an Imperial Statute of " Prime Minister "; the only other instances being the Chequers Estate Act, 1917,[1] and the Physical Training and Recreation Act of 1937.[2] Before the passing of the Act now under consideration, no salary at all has been attached to this office. The salary has always been received from another office, generally the First Lord of the Treasury. The title of " Prime Minister," further remarked Sir John Simon in his most interesting speech, was first used 200 years ago in regard to Sir Robert Walpole, at which period the phrase was considered of such little compliment, that Walpole once remarked in debate:

> " I unequivocally deny that I ame sole and prime minister."

Gladstone, in his " Gleanings of Past Years,"[3] described the Prime Minister in these words:

> "The Prime Minister has no title to override any one of his colleagues in any one of the Departments. . . . But upon the whole, nowhere in the wide world does so great a substance cause so small a shadow; nowhere is there a man who has so much power with so little to show for it in the way of formal title or prerogative."

In connection with this new salary to be attached to the office of Prime Minister it is to be noted that it is subject to both Income and Sur-Tax and will thus suffer a reduction from £10,000 to £6,241, and in fact to a greater reduction if the Prime Minister has other income.

[1] 7 and 8 Geo. V, c. 55. [2] 1 Edw. VIII, and 1 Geo. VI, c. 46.
[3] Vol. I (1879), 244.

Section 4 also provides for a pension of £2,000 to ex-Prime Ministers who occupy the Office of First Lord of the Treasury, and this has been made retrospective. But no pension is payable under this section to anyone in receipt of a pension under the Political Offices Pensions Act, 1869,[1] or of any salary payable and of moneys provided by Parliament, the revenues of the Duchy of Lancaster or the Consolidated Fund of the United Kingdom.

Section 5 introduces a new principle into the United Kingdom, although it is not unknown in the oversea Dominions,[2] namely—the provision of a salary for the Leader of the Opposition, who is by this Act allotted an annual salary of £2,000, provided he is not in receipt of another pension under the Act or under the Political Offices Pensions Act already mentioned, and if such is the case, the salary payable to him as Leader of the Opposition will be reduced by an amount equal to the amount of that pension.

Section 6 provides against a Minister receiving more than one Ministerial salary, even should he hold one or more such salaried offices. No person in receipt of a salary or pension under the Act is allowed to receive any remuneration as an M.P.

Under Section 7, the salary payable to the Leader of the Opposition and any pension authorized by the Act to an ex-Prime Minister or ex-First Lord of the Treasury is a charge upon the Consolidated Fund. All other salaries are paid out of moneys voted by Parliament and Section 8 empowers the House of Commons to reduce salaries.

Part II of the Act deals with the capacity of persons receiving salaries under the Act to sit and vote in the House of Commons. Of the pool of 17 Ministers under Part I of the First Schedule not more than 14 may so sit; of the four Ministers named in Part II thereof, not more than 3; and of the Parliamentary Under-Secretaries not more than 20. Should there be at any time a number of Ministers or Parliamentary Under-Secretaries in the House of Commons in excess of the numbers allowed under the Act, none of such number except any who held his office and was a Member of that House before the excess occurred may sit or vote in the House until the number

[1] 31 and 32 Vict. c. 72; 32 and 33 Vict. c. 60.

[2] In Canada, the Leader of the Opposition receives $10,000, in addition to the Sessional allowance of $4,000; New South Wales £176 p.a. Both in the Dominion Parliament and Ottawa and that of the Commonwealth, stenographers for the Leader of the Opposition are paid for out of the Official Vote.

of such Ministers or Parliamentary Under-Secretaries in that House has been reduced by death, resignation or otherwise. The penalty for such a contravention is £500 for each day upon which he so sits or votes.

Part III of the Act contains the interpretation section, in which "Leader of the Opposition" is defined as "that Member of the House of Commons who is for the time being the Leader in that House of the party in opposition to His Majesty's Government having the greatest numerical strength in that House." Should there be any doubt as to who is such Leader then the certification in writing of Mr. Speaker shall be final. Section 11 deals with consequential amendments and repeals of enactments each of which is enumerated in the Third and Fourth Schedules to the Act, respectively.

House of Commons (Minister's Private Practice as Solicitor).—On June 10, the Prime Minister was asked[1] whether he was (now) able to make a statement with reference to the practice to be followed by members of his Government, both inside and outside the Cabinet, who are solicitors, in the matter of private practice, to which the reply was, that he had carefully considered the views expressed on this subject in the course of the debate in the House on June 3 last,[2] and that he concurred in the observations made by the Chancellor of the Exchequer.

The rule laid down by Sir Henry Campbell-Bannerman on March 20, 1906,[3] had since been followed by successive Prime Ministers, and would be followed by himself. This rule, however, applied only to directorships and the Member's question referred to solicitors in private practice, whose position formed the subject of the discussion in the House already referred to. The Prime Minister agreed that it would be unreasonable to require that a solicitor, on becoming a member of the Government, should dissolve his partnership or should be obliged to allow his annual practising certificate to lapse. On the other hand, he should, in accordance with the principle underlying Sir Henry Campbell-Bannerman's rule, cease to carry on the daily routine work of the firm or

[1] 324 H.C. Deb. 5. s. 1953, 1954. [2] *Ib.*, 1191 to 1277.

[3] "The condition which was laid down on the formation of the Government was that all directorships must be resigned except in the case of honorary directorships, directorships in connection with philanthropic undertakings, and directorships in private companies" (154 H.C. Deb. 4. s. 234).

The above statement was also quoted by the Rt. Hon. Stanley Baldwin when Prime Minister, upon which he added: "This rule has been observed by all subsequent Governments, and is still in force. As regards the other activities, no necessity has ever arisen to supplement with specific rules the traditional standards of public life in this country" (307 H.C. Deb. 5. s. 731).

to take any active part in its ordinary business, although he should not be precluded from continuing to advise in matters of family trusts, guardianships and similar cases. A certain amount of discretion must be allowed, since it is impossible to cover every conceivable caste in any rule, but he was satisfied that under the conditions he (the Prime Minister) had laid down every reasonable requirement of propriety would be fulfilled.

House of Commons (Minister in Lords).—On March 15[1] the question was asked the Prime Minister in the Commons, whether, in view of the large expenditure to be incurred on the Royal Air Force and the importance and complexity of air questions, he would make arrangements whereby the Air Minister, whose Estimates were now the second largest of the Defence Ministries, might be a Member of the Commons. The Prime Minister (Rt. Hon. Neville Chamberlain) in reply referred the hon. and gallant Member to the answer he gave to a question on March 19 last.[2] To a supplementary question, to the effect that in view of the enormous sums now involved in Air Defence, it was not only right that the Commons should have an opportunity of questioning the Minister himself, and was it not due to the status of the Air Ministry that it should be represented in the Commons by a Minister? the Prime Minister said that in view of the enormous amount of work which rested on the Secretary of State for Air, there were advantages in his being more free to devote himself to the work that he had to do and to be represented in the Commons by a Parliamentary Secretary.

On December 6,[3] upon the Motion for the adjournment, an hon. Member raised the question of the desirability of the Secretary of State for Air (Rt. Hon. Viscount Swinton, G.B.E., M.C.) being a Member of the House of Commons, urging, among other things, that the head of a great spending Department, responsible for the arm on which our safety depended and which was peculiarly responsible for the defence of London, should be a Member of the Commons.

The Prime Minister (Rt. Hon. Neville Chamberlain) in reply remarked that they were under a Constitution which provided for two Chambers, and if the work of the Government was to be efficiently and properly carried out, it must be adequately represented in the Upper Chamber as well as in the Lower. He did not consider that in the present circumstances five

[1] 321 H.C. Deb. 5. s. 1627.
[2] *See* JOURNAL, Vol. V, 18.
[3] 330 H.C. Deb. 5. s. 163 to 170.

Members of the Cabinet in the other House was too large a number, and he was sure that the House, in accepting the Ministers of the Crown Act,[1] recognized that it would be too much restriction on the opportunities of the Prime Minister, who had to form a Cabinet, to insist that he should find always Members of the Commons to represent particular Ministries.

House of Commons (Ministers and the Press).—On December 2,[2] the Prime Minister was asked whether his attention had been called to an article written by a Minister of the Crown in the *Daily Express* on Monday, November 29, and whether the publication of this article indicated that the Government had departed from the policy covering this matter, as laid down by the late Prime Minister in his statement of March 3, 1927, precluding Ministers from the practice of journalism in any form unless the article be of a literary, historical, scientific, philosophical or romantic character? The Prime Minister replied that his answer to the first part of the question was in the affirmative, and that in his reply to the second part he would refer the Member to the reply on the subject of the rule relating to contributions to the Press by Ministers which was given by the then Prime Minister on November 26, 1934,[3] as follows:

> "The rule has never been interpreted as debarring Ministers from writing articles which supplement the means already used for enlightening the public in regard to Measures before Parliament and other administrative questions."

In supplementary questions it was suggested that these articles might have been written by the staffs, public or private, of Ministers and whether this was not imposing upon the Opposition, who have no staff, an ever increasing burden. In answer to one supplementary question, the Prime Minister said that no question of payment arose in this particular case. A further supplementary question was asked —but not answered—as follows:

> Does the Prime Minister not see, that if officers of State Departments, drawing salaries from public funds, are to be called on to do the personal journalistic work of Ministers, who are not supposed to do journalistic work at all, it is very objectionable from the point of view of this House?

House of Commons (Leader of the Opposition).—Some interesting proceedings took place in this House in regard to "that Member[4] of the House of Commons who is for the

[1] *See* p. 12 *ante*.
[2] 329 H.C. Deb. 5. s. 2236, 2237.
[3] 295 H.C. Deb. 5. s. 495, 500.
[4] Rt. Hon. C. R. Attlee.

time being the Leader in that House of the party in opposition to His Majesty's Government having the greatest numerical strength in that House," which was the definition in the Ministers of the Crown Act, 1937,[1] of " Leader of the Opposition."

On December 9,[2] an hon. Member (Mr. W. S. Liddall, Lincoln) asked the Prime Minister (Rt. Hon. Neville Chamberlain) whether he would give an early date for the discussion of the Motion standing in his (the hon. Member's) name, which read as follows:

> [*That, in view of the facts that at Madrid on 6th December, 1937, notwithstanding he had, before leaving this country, given an undertaking not to take part in any activities liable to be interpreted as inconsistent with His Majesty's Government's policy of non-intervention, the Leader of His Majesty's Official Opposition (the Right Honourable Gentleman the Member for Limehouse) stated publicly, etc.*]

To which the Prime Minister stated that the Motion quoted in the question referred to the conduct of a Member of the House and that the proper course was to defer the reply until the Rt. Hon. Gentleman, the Leader of the Opposition, was able to be in his place.

Among other supplementary questions, another hon. Member asked Mr. Speaker: " If any hon. Member of this House feels aggrieved in consequence of something done by another individual in this House or outside, is he entitled to put down a vote of censure on him ?" to which Mr. Speaker replied that any hon. Member can put down a substantive Motion about anything.

On the 13th *idem*,[3] Mr. Attlee asked Mr. Speaker's permission to make a personal explanation and referred to the hon. Member for Lincoln (Mr. Liddall) having placed upon the Order Paper a Motion attacking his (Mr. Attlee's) honour, etc., and remarked:

> A Motion inviting this House to pass a Vote of Censure upon a private Member for an action not arising out of the business of this House is a very unusual proceeding.
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> It cannot be too strongly emphasized that a private Member of Parliament does not by his words or actions involve the British Government, but that he is a free man with the right of

[1] 1 Edw. VIII and Geo. VI, c. 38, sec. 10.
[2] 330 H.C. Deb. 5. s. 564 to 567.
[3] 330 H.C. Deb. 5. s. 821 to 824.

> freely expressing his opinions. In his Motion, the Hon. Member for Lincoln has specifically referred to me as "the Leader of His Majesty's Official Opposition," and seems to imply that this places me in a special category. The Leader of the Opposition is a private Member. He owes no allegiance to the Government. No action of his can in any way implicate the Government. He is responsible only to his constituents and to the Members from whom he derives his position.

The Prime Minister remarked, that the Rt. Hon. Gentleman had made his personal statement on his visit to Spain and hoped that the House would now accept it and take what seemed to him the right and most dignified course, namely, to let it rest there.

It was later reported in *The Times*[1] that Mr. Liddall had withdrawn from the Order Paper of the House of Commons the Motion he had set down criticizing the Leader of the Opposition in connection with his recent visit to Spain. The concluding words of Mr. Liddall's statement issued to the Press read:

> However, in view of what was said by the Prime Minister, and with the approval of hon. Members whose names were associated with the Motion, I have had the same withdrawn.

House of Commons (Non-Publication of Government Documents).—An unpublished Memorandum[2] was issued by the Government to various electrical and local authority associations indicating the Government's provisional conclusions as to the reorganization of the electricity supply industry. The Memorandum, however, not having been made available to Members, a question was asked on May 31, as to whether a copy of the document could not be placed in the Library.[3] This request was repeated in a further question on June 2, but the Minister replied that it was a confidential document. On June 3, the request that the document be made public was again urged, especially as Members had been invited to attend conferences on the subject. On the 11th *idem*, the Minister in reply to another question on the subject,[4] informed the House that further copies of the Memorandum had been sent to the Vote Office for the use of Members, and that copies would be obtainable from H.M.S.O.

House of Commons (Officers of the Crown: Business

[1] December 14, 1937.
[2] Confidential Memorandum, S.E. 3877-3881 of April 5.
[3] 324 H.C. Deb. 5. s. 269, 677, 1013, 1014, 1169, 1170.
[4] *Ib.*, 2109.

Appointments).—On July 14[1] the Prime Minister was asked whether he was in a position to state the results of the examination into the question of the acceptance by Officers of the Crown services of business appointments to which reference was made in paragraph 15 of Command Paper 5451 issued last May? The Prime Minister's reply was:

> Yes, Sir. The Government have completed their study of this question and it is proposed that a White Paper should be presented forthwith giving the conclusions the Government have reached.

As this subject is one which seriously affects also the various Oversea Governments in the British Empire, all equally anxious with the Imperial Government to preserve the finest traditions of the Civil Service, the White Paper[2] referred to by the Prime Minister of the United Kingdom is given at length as follows:

MEMORANDUM ON THE SUBJECT OF THE ACCEPTANCE OF BUSINESS APPOINTMENTS BY OFFICERS OF THE CROWN SERVICES.

As stated at the end of paragraph 15 of Cmd. 5451 ("Statement relating to Report of the Royal Commission on the Private Manufacture of and Trading in Arms, 1935-36"), the question of the acceptance of business appointments by officers of the Crown Services is one which "calls for careful study, and is not being overlooked."

After close examination of this question, His Majesty's Government have reached the conclusions set out in the following paragraphs:

2. The surest guide for the conduct of officers of the four Crown Services must always be the existence and maintenance of great traditions and high standards in those Services; no rules, however elaborate, can be a substitute for this all-important condition. The Appendix to this paper contains an extract from the Report of a Board of Enquiry published in 1928 (Cmd. 3037) enunciating certain general principles by which the conduct of Civil Servants should be regulated; these received governmental approval, and are, of course, equally applicable to the Royal Navy, the Army, and the Royal Air Force.

3. At the same time, His Majesty's Government recognize that it is in the interest of the Services themselves, as well as of the country, that public confidence in the disinterestedness and integrity of the Crown Services should be maintained at the highest point, and that there should be no possibility of a suggestion—however unjustified—in the public mind that members of those Services might be influenced in the course of their official relations with business concerns by hopes or offers of future employment in any of those concerns.

[1] 326 H.C. Deb. 5. s. 1248. [2] Cmd. 5517 of 1937.

4. In emphasizing the importance of preserving public confidence, His Majesty's Government in no sense imply that there is anything intrinsically improper or undesirable in officers, on retirement at the end of their Service career, accepting business appointments. But they realize that there are types of case which might lend themselves to misunderstanding, and they have decided to require Government assent to the acceptance of appointments within these types.

5. These would include businesses and other bodies:

(*a*) which are in contractual relationship with the Government;
(*b*) which are in receipt of subsidies or their equivalent from the Government;
(*c*) in which the Government is a shareholder;
(*d*) which are in receipt from the Government of loans, guarantees or other forms of capital assistance;
(*e*) with which Services or Departments or Branches of Government are, as a matter of course, in a special relationship;

and semi-public organizations brought into being by the Government and/or by Parliament.

6. In such cases all Officers of the rank of Assistant Under-Secretary of State (or Principal Assistant Secretary or, in Missions abroad, Ministers), Rear-Admiral, Major-General, Air Vice-Marshal—and above—will be required to obtain the assent of the Government before accepting an offer of employment.

In addition, in each of the four Services there are posts of a special or technical character not covered by the preceding sentence to which a similar requirement will apply. Lists of such posts will be prepared in the respective Departments, in conjunction with the Treasury, to ensure parity of treatment.

7. The prior assent of the Government will take the form of approval by the Minister concerned after consultation with the Treasury; but, after the lapse of two years from the date of retirement, such assent will no longer be required.

8. The like principles will apply in the case of officers who, in exceptional circumstances, may wish to resign from the Services to take up outside occupations.

APPENDIX

We think, in conclusion, that we shall not be travelling outside our terms of reference if, as three Civil Servants of some experience and jealous for the honour and traditions of the Service, we indicate what we conceive to be the principles which should regulate the conduct of Civil Servants—whether engaged in Home Departments or on diplomatic missions—in their relation to the public.

His Majesty's Civil Service, unlike other great professions, is not and cannot in the nature of things be an autonomous profession. In common with the Royal Navy, the Army, and the Royal Air Force, it must always be subject to the rules and regulations laid down for its guidance by His Majesty's Government.

This written code is, in the case of the Civil Service, to be found not only in the Statutes but also in Orders in Council, Treasury Circulars and other directions, which may from time to time be promulgated; but over and above these the Civil Service, like every other profession, has its unwritten code of ethics and conduct for which the most effective sanction lies in the public opinion of the Service itself, and it is upon the maintenance of a sound and healthy public opinion within the Service that its value and efficiency chiefly depend.

The first duty of a Civil Servant is to give his undivided allegiance to the State at all times and on all occasions when the State has a claim upon his services. With his private activities the State is in general not concerned, so long as his conduct therein is not such as to bring discredit upon the Service of which he is a member. But to say that he is not to subordinate his duty to his private interests, nor to make use of his official position to further those interests, is to say no more than that he must behave with common honesty. The Service exacts from itself a higher standard, because it recognizes that the State is entitled to demand that its servants shall not only be honest in fact, but beyond the reach of suspicion of dishonesty. It was laid down by one of His Majesty's Judges in a case some few years ago that it was not merely of some importance, but of fundamental importance, that in a court of law justice should not only be done, but should manifestly and undoubtedly be seen to be done, which we take to mean that public confidence in the administration of justice would be shaken if the least suspicion, however ill-founded were allowed to arise that the course of legal proceedings could in any way be influenced by improper motives. We apply without hesitation an analogous rule to other branches of the public service. A Civil Servant is not to subordinate his duty to his private interests; but neither is he to put himself in a position where his duty and his interests conflict. He is not to make use of his official position to further those interests, but neither is he so to order his private affairs as to allow the suspicion to arise that a trust has been abused or a confidence betrayed. These obligations are, we do not doubt, universally recognized throughout the whole of the Service; if it were otherwise, its public credit would be diminished and its usefulness to the State impaired.

We content ourselves with laying down these general principles, which we do not seek to elaborate into any detailed code, if only for the reason that their application must necessarily vary according to the position, the Department and the work of the Civil Servant concerned. Practical rules for the guidance of social conduct depend also as much upon the instinct and perception of the individual as upon cast-iron formulas; and the surest guide will, we hope, always be found in the nice and jealous honour of Civil Servants themselves. The public expects from them a standard of integrity and conduct not only inflexible but fastidious, and has not been disappointed in the past. We are confident that we are expressing the view of the Service when we say that the public have a right to expect that standard, and that it is the duty of the Service to see that the expectation is fulfilled.

House of Commons (Salaries of M.P.'s).—In reply to a question in the House on April 7[1] as to whether he was aware that under the regulations affecting the salaries of civil servants, those who would prior to the war have drawn £400 per annum now received £515; and whether he would take steps to have the question of Members' salaries reconsidered with a view to their being given somewhat similar increases, the Prime Minister (Rt. Hon. Stanley Baldwin) said, he could see no close analogy between Government employment and Membership of the House of Commons. In regard to the second part of the question, the Prime Minister noted the suggestion made by the Member, but he (the Prime Minister) would not care to commit himself to any statement upon it until he had made further inquiries. Supplementary questions were then asked, including the statement that the cost of living had increased 50 per cent. since Members' salaries had been fixed at £400 per annum.

In reply to a further question asked by the same Member on May 27,[2] the Prime Minister replied that he had made inquiries whether the salaries of M.P.'s should be increased. The existing figure of £400 per annum was fixed in 1911, and it was obvious that if £400 was adequate in circumstances then existing, it cannot be so regarded in the very different conditions prevailing to-day. The Prime Minister concluded by stating that after careful consideration the Government had decided to propose to the House that the figure should be increased to £600, and that the necessary steps would be taken at an early date.

Certain supplementary questions were asked, including one enquiring if the proposal would be framed in such a way as to enable the House, if it so wished, to use a fraction of the sum to create a scheme for a pension fund for Members of Parliament?

On June 3[3] the Prime Minister was asked when it was proposed to take the Supplementary Estimate dealing with an increase of the Members' salaries, and whether the decision would be left to a free vote of the House? Another Minister, in replying to the question, said that it was proposed to embody the Government's proposal in a Resolution which would be placed upon the Paper at an early date, and that a supplementary vote would be presented in due course. The answer to the second part of the question, said the Minister, was in

[1] 322 H.C. Deb. 5. s. 180, 181.
[2] 324 *ib.*, 425, 426.
[3] 324 H.C. Deb. 5. s. 1165.

the negative. Among the supplementary questions was one inquiring whether the usual practice be followed and Members be allowed to return this increase to the Treasury if they did not want it, to which the Minister answered: "Nobody can have this forced upon them."

On June 9[1] the Financial Secretary to the Treasury (Lt.-Col. the Rt. Hon. D. J. Colville) was asked how many M.P.'s there were whose expenses of office for Income Tax purposes absorbed their whole salary: and what was the average proportion of salary absorbed by expenses among Members as a whole. The Financial Secretary in reply said that it was not the practice to give particulars of Income Tax assessments, but he could inform his hon. Friend that there was a large number of cases of M.P.'s in which the deduction allowed for expenses exceeded the flat-rate deduction of £100 fixed under the Rules applicable to Schedule E of the Income Tax Act, 1918.

On June 10[2] a similar question was asked to the supplementary question on this subject on May 27, and the Prime Minister (Rt. Hon. Neville Chamberlain) replied: that he could not anticipate the Ruling of the Chair, but it was possible that the debate on the Resolution which it was proposed to move in regard to Members' salaries might afford a suitable opportunity for discussing conditions which hon. Members may wish to attach to the proposed increase.

On June 22[3] the Prime Minister (Rt. Hon. Neville Chamberlain) in moving the following Motion in the Commons:

> That in the opinion of this House, the rate at which salaries are payable to Members of this House should be increased to £600 a year,

said that the salary[4] now paid M.P.'s, with the exception of those in receipt of salaries as Officers of the House, Ministers or Officers of His Majesty's Household, was fixed in August, 1911. In 1920 a Select Committee[5] of the Commons was set up to inquire into the expenses of Members, which amongst other recommendations said:

> Your Committee are agreed that if the sum of £400 per annum was necessary in 1914—and no evidence has been submitted to the contrary—such an amount is inadequate to-day.

[1] 324 H.C. Deb. 5. s. 1764, 1765. [2] 324 H.C. Deb. 5. s. 1953.
[3] 325 *ib.*, 1049 to 1122. [4] £400 p.a. [5] H.C. Paper 241 of 1920.

That Committee, however, did not recommend any change of the amount as it then stood, but added:

> Your Committee were impressed by the evidence submitted and by their private information as to the difficult financial position of certain Members at the present time. They are satisfied that further consideration should be given to this matter in the near future, but in view of the present position consider it inadvisable to make any specific recommendation at this time.

But the Committee did make certain recommendations as to the railway fares of Members to and from their constituencies. The Prime Minister, in the course of his speech, quoted certain words used by the then Prime Minister during the debate on the Second Reading of the Ministers of the Crown Bill,[1] as follows:

> I want either by myself, or possibly with one of my colleagues, to make my inquiries of one or two right hon. or hon. Members who can give me the information I require, and make up my mind as to whether there ought to be a change or not. I propose to do that as soon as I can. If I and whoever joins with me in these discussions are convinced that there is a real reason and case for some increase in the present amount, then I shall be prepared to recommend to my colleagues further action; if not convinced, then to drop it. But from what we have heard from making careful inquiries through the usual channels, I fancy that the general feeling of the House coincides very much with what I have indicated. I am quite convinced that if the House as a whole believe and realize that there is a necessity for such an increase, they will support me, and, after all, if anybody objects, supposing the Government should recommend some increase, it is always open to hon. Members to do as I did when the salaries were first paid, that is not to take the cheque.[2]

In the abovementioned inquiry, continued Mr. Chamberlain, in which the then Prime Minister associated the Chancellor of the Exchequer, opportunity was offered of looking into the budgets of a number of hon. Members who were good enough to submit them, in confidence, for the information of the Government. This inquiry disclosed a considerable number of cases of hon. Members not possessed of any other means than that afforded by their Parliamentary salaries, and who were reduced to expedients which it was felt were inappropriate and improper to be imposed upon a Member of the House.[3]

Among the considerations to be borne in mind, continued

[1] *See* p. 12 *ante*.
[2] 322 H.C. Deb. 5. s. 1050.
[3] 325 H.C. Deb. 5. s. 1050, 1051.

the Prime Minister, were that (1) the cost of living was still 50 per cent. higher than when the salary was fixed; (2) the number of electors in many constituencies had increased; (3) the volume of Parliamentary business was greater.

The Prime Minister said:

> On the other hand, one does not want to fix the salary so high that it becomes an inducement to people to enter this House for the purpose of earning more than they would earn outside and, on the other, we do not want to fix it so low that men or women who could give valuable service to the House should be prevented from doing so merely by the fact that they have not sufficient means to afford it.[1]

The Prime Minister therefore remarked that it had been decided to recommend to his colleagues in the Ministry, and subsequently to this House, the figure of £600, which would mean an extra cost of £112,000 a year.[2]

During the course of the debate an hon. Member quoted an amendment moved when the proposal for the £400 allowance to Members was under consideration by the House, namely—to leave out from the word "That" to the end, and to add the words:

> this House declines to provide money for the payment of Members of Parliament, because such payment would be an indefensible violation of the principle of gratuitous public service, would involve the taxpayers in heavy and unnecessary expense, and would encourage a demand on the part of members of local bodies to be paid for their services, and further because, in the opinion of this House, there would be a peculiar impropriety in Members of Parliament voting salaries to themselves.[3]

Another hon. Member made the following observation during the debate:

> It is very undesirable that we should have a class of professional politicians, and that a young man should say, "Shall I become a barrister, solicitor, or join one of the great trades, or shall I try to get £600 a year as a Member of Parliament?" Such a person necessarily loses independence. It would be impossible for a person who depended on the £600 a year and who had no outside job of any kind, to be independent. He would have to do as he was told by the Government of the day and by the Whips of the day, who, as everyone knows, have quite enough power as it is.[4]

Another quotation from the debate on the subject in 1911 was:

[1] *Ib.*, 1052.
[2] 325 H.C. Deb. 5. s. 1052.
[3] 29 H.C. Deb. 5. s. 1384.
[4] 325 H.C. Deb. 5. s. 1073.

> It is absolutely inevitable that once salaries are paid to Members of Parliament who have control over the amount of their salaries, like all other classes who are paid wages, they will seek to raise those wages whenever they get the opportunity.[1]

An amendment was moved during the debate, namely—after "increased" to insert, "as from the beginning of next Parliament."[2] The hon. Member in moving this amendment urged in its support, that it was somewhat indecent for Members to add 50 per cent. to their salaries without giving the electorate a chance to object; that hon. Members seem to have forgotten the precedent of 1911, and quoted from the debate at that time, as follows:

> CHANCELLOR OF THE EXCHEQUER (Mr. Lloyd George): The Prime Minister, immediately before the last General Election, stated to the House of Commons that he proposed, if we got a majority in the new Parliament, to submit a Resolution . . . for the purpose of paying the Members.[3]
>
> The PRIME MINISTER (Mr. MacDonald): It is the intention of the Government, if they have the opportunity, and the requisite following, next year, to propose provision out of public funds for the payment of Members, and they think that that intention being announced before the General Election takes place, there will be no constitutional impropriety in the provision being made effective, if Parliament sees fit to approve it, in the Parliament which will assemble after the General Election.[4]

Another hon. Member observed during the course of debate, that he opposed only the principle that Parliament should vote this increase to itself, and that they were in the position of directors of a company, of which the country—the electorate—are the shareholders. "Who can conceive of the directors of a company," remarked the hon. Member, "deciding to raise their own fees without reference to the shareholders?" The same hon. Member quoted that in South Australia they desired to raise their own salaries, but decided that they could not do it with propriety without consulting the electorate; and according to the Constitution of the State they held a referendum, in which the increase of salaries was defeated by two votes to one.[5]

The same hon. Member quoted some remarks by various classes of people upon the question of M.P.'s salaries, all of whom agreed that Parliament should not vote an increase to its own Members. One of these members of the public said:

[1] 29 H.C. Deb. 5. s. 1394.
[2] 325 H.C. Deb. 5. s. 1086.
[3] 29 H.C. Deb. 5. s. 1366.
[4] *Ib.*, 1401.
[5] 325 H.C. Deb. 5. s. 1093, 1095.

> Members were elected to Parliament with their eyes open to the fact that they would be there for five years at £400 a year. They made the bargain with the electors and should stick to it.[1]

Upon the amendment being put, a division was claimed: Ayes, 31; Noes, 326. The main question was agreed to, the voting being: Ayes, 325; Noes, 17.

On June 24,[2] the Chancellor of the Exchequer (Rt. Hon. Sir John Simon, G.C.S.I., etc.) was asked in what way the Government proposed to implement the Resolution on Members' salaries and from what date it would take effect, to which was replied, that it was proposed to present to the House early next month a Supplementary Estimate, providing for the additional cost as from July 1.

House of Commons (Absent Members).—An interesting correspondence and sub-leader on this subject appeared in *The Times*.[3] It originated with a letter by Lord Midleton, K.P., etc., a distinguished Member of the House of Lords who succeeded to the title in 1907 and who previous to that was for 26 years a Member of the Commons, when for some time he held the office of Secretary of State for War and Secretary of State for India. Lord Midleton drew attention to the small attendance of M.P.'s on October 21,[4] during the debate on vital foreign questions on which the public mind had been concentrated since Parliament adjourned. There was at that time 430 supporters of the Government in the House, of which, he said, only 204 attended to support their leaders, and concluding by asking: "Is it not time for the constituencies to insist on a higher conception of public duty by their representatives?"

To this letter "Absent Member" replied that times had changed since Lord Midleton took an active part in Parliament, and electorates were small. To-day, September, to some extent and October alone were available as priceless months in which an M.P. could get in touch with an electorate, which in his case had trebled since the war, and do invaluable work for the Government, while at the same time attending to the professions and callings by which, far more than in Lord Midleton's time, Parliament was in active touch with the life of all sections of this and other nations. Further, that it was no longer a proud Member's duty or necessity to sit, as they would have preferred, to listen to the speeches they

[1] *Ib.*, 1098. [2] 325 H.C. Deb. 5. s. 1098.
[3] *October* 23, 26, 27 *and* 30, 1937.
[4] 327 H.C. Deb. 5. s. 57 to 178.

could read in *Hansard* next day, and that their leaders were better served by the M.P. explaining to his electorate the remarkable services rendered on their behalf by the Government in national and international affairs.

Another correspondent attributed the lack of attendance of Government supporters during part of that debate and at the division to two principal causes, namely—(1) The fact that to-day such debates offer few opportunities for back-benchers to speak (only five back-bench supporters were called on Thursday); and (2) Signor Mussolini's unexpected action on Wednesday which, to use the Prime Minister's own words, "... very largely knocked the bottom out of this debate." Another correspondent and long-experienced M.P. remarked that the idea that there are ever 400 or 500 present in the House of Commons was simply a myth. One had only to count the seating space.

In its sub-leader, however, *The Times* remarked that the point that small divisions on great subjects might give rise to misconceptions was not one that could be neglected, particularly because misconceptions might easily arise, not so much at home, where the details and the setting of a parliamentary occasion were generally well known, as abroad, where critics were only too often ready to be misinformed.

House of Commons (Broadcasting Parliamentary Proceedings).—On February 15[1] an hon. Member asked the Postmaster-General whether he was aware that in the daily reports issued by the B.B.C. regarding proceedings in Parliament an impression of bias had been aroused frequently, owing to lack of proportion and perspective; and, in order to avoid this in future, would the Minister consider requiring the B.B.C to submit proposed bulletins to the Whips of each Party before they were issued. The Minister in his reply remarked that he didn't think, even if the proposal were practicable, it would be welcomed either by the Whips or by the House.

In his reply, as above, the Minister referred to what he gave earlier in the session to a similar question[2] by another Member, in which the Minister said that, since March, 1928, the B.B.C had been empowered to broadcast speeches and statements on topics of political controversy on the understanding that such broadcast material should be distributed with scrupulous fairness. In reply to supplementary questions,

[1] 320 H.C. Deb. 5. s. 829 to 831. [2] 319 *ib.*, 565, 566.

the Minister stated that there had been unquestionably complaints from both sides . . . but that the Government's decision had been that the Corporation should refrain from broadcasting its own opinion by way of editorial comment on current affairs. As stated in the White Paper, this rule was extended by the Government to the publications of the Corporation as well as to the broadcast programmes.

Parliamentary Catering at Westminster.—When Parliament reassembled on October 26 after the Recess, it was noticed in the House of Commons that certain changes had been made. For instance, floodlighting had been thrown on some of the oak-panelling, a drastic alteration had been made in the dining-room accommodation, and dinners had become dearer. These changes followed the Report of a Joint Committee of both Houses.[1] Up to 1922 the dining-rooms received a subsidy from the Treasury, since when the Kitchen Committee has been trying to make both ends meet. The deficiency during recent years has already been given in these columns. The Report of the Joint Committee abovementioned, which was appointed to consider and report upon the accommodation for refreshment rooms and lavatories in the Palace of Westminster, stated that the House of Lords employed a firm of contractors to provide meals and refreshments for Peers and for the staff, without a subsidy from the Treasury or from any other source, an arrangement which has given satisfaction and proved economical. In the House of Commons, on the other hand, though its Kitchen Committee is directly responsible for its own catering, no contractor is employed and no change is desired. It appeared to the Joint Committee therefore that no alteration at present was possible in that respect. The Committee, however, commended certain extension of accommodation in the Commons dining-rooms and serveries, as well as improvement in conveniences, and ventilation, with additional lavatory accommodation; each House being directly and solely concerned with its own requirements. The Committee therefore suggested that Parliament should sanction the expenditure necessary to carry out what was required in both Houses.

In June, 1937, the Kitchen and Refreshment Rooms Select Committee of the House of Commons issued a Special Report[2] showing that for the year ended December 31, 1936, the total receipts amounted to £29,061 17s. 10d., as against

[1] H.L. Papers, 170 and H.C. Paper 149 of 1936.
[2] H.C. Paper 134 of 1937.

£25,931 17s. 1d. in 1935, and the total expenditure for 1936 £29,485 19s. 9d., showing a deficit of £424 1s. 11d. on the year as compared with a deficit of £603 13s. 4d. for 1936, after, in both instances, providing free meals during the Session to all staff and defraying the expenditure of £9,756 10s. 3d. on wages, salaries, health and pension insurance; £506 16s. 7d. on expenses, laundry, postage, etc.; and £640 3s. 1d. on repairs and renewals. Purchases amounted to £18,582 9s. 10d. as against £16,525 17s. 6d. for 1935.

During the year 1936 the House sat in Session 156 days in comparison with 144 in the previous year, and the number of meals served (including teas and meals served at bars) was: Breakfasts 323; Luncheons 21,050; Dinners 37,315; Teas 88,730; Suppers 802; and Bar meals 11,029.

The Committee point out that the increase in revenue and number of meals served as compared with the previous year is mainly accounted for by the business of the House occupying 156 as against 144 days in 1935.

After providing for all liabilities the amount standing to the credit of Capital Account in the Balance Sheet, represented by Stock-on-hand, Cash-in-hand and at Bank, and Sundry Creditors, was £4,029 10s. 9d.

The Committee viewed with concern the continued trading loss which had been made in every year but one since 1928. Only its reserve, represented by stock-on-hand, etc., had made it possible for it to carry on; moreover, the position had been made more difficult by a demand among Members for a lower minimum tariff in the Members' dining-rooms, while the rise in the prices of all commodities and equipment would make it necessary, if the then present conditions continued, for the prices of meals to be raised. The question of the abolition of tipping had also been raised in the House, and it was estimated that the corresponding addition to the wages of the staff would amount to £3,000 per annum, a sum which could not possibly be raised from the present resources of the Committee.

The Committee therefore were of opinion either that the time had come for the restoration of the annual subvention on a sufficient scale to cover its present difficulties, or, for the Treasury to defray the costs of staff and equipment, as in other departments of the House.

To bring this subject up to the end of the year under review, however, it is necessary to deal with the Special Report[1]

[1] H.C. Paper 122 of 1938.

from the House of Commons Kitchen and Refreshment Rooms Select Committee ordered on May 26, 1938, to be printed.

The total receipts for the year ended December 31, 1937, amounted to £31,433 16s. 2d., and the total expenditure, including £14 14s. 10d. to Bank Charges for overdraft, to £32,461 18s. 1d.

After providing free meals to all the staff and expenditure for: wages, salaries, health and pensions insurance £10,710 17s. 8d.; expenses, laundry, postage, etc., £542 8s.; repairs and renewals, £547 19s. 1d., and the overdraft abovementioned, the Trading and Profit and Loss Account showed a deficit on the year of £1,028 1s. 11d. The purchases amounted to £20,645 18s. 6d. During the year the House sat in Session 166 days, and the number of meals served (including teas and meals at bars) was: Breakfasts 1,074; Luncheons 23,286; Dinners 38,119; Teas 92,580; Suppers 454; and Bar meals 11,990.

The increase in revenue and number of meals served as compared with the previous year was accounted for by the business of the House occupying ten more days, and the amount received for refreshments on Coronation Day.

Of the amount paid for wages, etc., as above, £2,280 18s. 5d. was paid for periods when Parliament was adjourned or prolonged, as against £2,222 5s. 2d. in 1936.

The Committee concludes its Report as follows:

> 4. Your Committee are of the opinion that the trading loss of £1,028 1s. 11d. which was incurred last year is largely due to the peculiar difficulties which have to be faced by the Refreshment Department.
> The main difficulties are as follows:
>
> (*a*) The dining-rooms are open only about 34 weeks out of 52, and there are not more than 4½ working days in any one week.
> (*b*) There is great uncertainty as to the number of meals which may be required in any given day.
> (*c*) Full wages are paid to all employees during the Easter and Whitsun recesses, and more than one-third of the staff receive either full pay or a retaining allowance during the Christmas and summer recesses.
> (*d*) No receipts are available during these periods to meet the wages.
>
> 5. Although the best food and wines are supplied, your Committee consider that the prices charged are very moderate, and they feel that it is impossible to reduce expenditure by cutting down wages or impairing the quality of commodities.

They are convinced that the receipts of the Refreshment Department can be considerably increased if Members of the House will co-operate by availing themselves more frequently of the amenities which are offered for entertaining their friends, and they are of the opinion that a 20 per cent. increase of sales should be sufficient to meet the present expenditure and make provision for new equipment.

6. After providing for all liabilities, the amount standing to credit of Capital Account in the Balance Sheet represented by Stock-on-hand, Cash-in-hand and at Bank, and Sundry Creditors, is £3,001 8s. 10d. Your Committee find the Accounts presented, with the working results and explanations given, satisfactory.

House of Commons (A.R.P.).—On December 13[1] the question was asked whether any air-raid precaution schemes had been prepared for the protection of the staff and Members of the House of Commons, to which the First Commissioner of Works (Rt. Hon. Sir Philip Sassoon, Bt., G.B.E., etc.) replied in the affirmative, and said that the scheme comprised refuge accommodation, together with a plan of gas-proofing and a reserve of sand-bags for additional protective work, and that the fire-fighting arrangements had also been strengthened and also that a stock of gas masks would be kept on the premises, and squads for rescue and clearance and decontamination work would be raised from the industrial staff employed on the site.

In reply to a supplementary question by the same Member, as to whether any steps would be taken to organize the Members of the House into fire squads or drill squads with buckets and spades, the Minister said he would look into it.

House of Commons (Members' Air Travel Facilities).—On March 2[2] a question was asked, whether authority would be given for Members of Parliament to obtain tickets for travel by air between London and their constituencies in exchange for Parliamentary travelling vouchers? The Chancellor of the Exchequer (Rt. Hon. Neville Chamberlain) replied that:

> A scheme under which Members may travel to and from their constituencies by air, where suitable arrangements are available, was announced in the House on July 15, 1935, and particulars were circulated in the OFFICIAL REPORT of that date.[3] Special warrants are issued for this purpose and are obtainable on application to the Fees Office.

[1] 330 H.C. Deb. 5. s. 802.
[2] 321 H.C. Deb. 5. s. 176, 177.
[3] *See* JOURNAL, Vol. IV, 37, 38.

The same Member then put the following supplementary question:

> Does this enable Members to travel by air without paying the excess cost over the railway fare?

To which Mr. Chamberlain replied:

> My recollection is that they are asked to pay the difference between the railway fare and the air service fare.

House of Commons (Ventilation).[1]—Questions relative to this subject were asked on June 14,[2] July 19[3] and July 20,[4] and in reply to the first question, information was given shewing that in the printed note circulated to Members in July, 1936, the approximate figures there given were:

	£
Provision of local heating to enable air to be brought in at a lower temperature	6,000
Alteration of method of admission and distribution of air	5,000
Complete conditioning plant, including control of humidity	20,000

In reply to the last question, the First Commissioner of Works (Rt. Hon. Sir Philip Sassoon) said that the maximum temperature and humidity in the House during last week were 75° F. and 84 per cent., also that consideration was being given to a scheme for the better ventilation of the House.

House of Commons (Tipping of Waiters).—On December 13[5] a Member asked the Chairman of the Kitchen Committee (Sir J. Ganzoni) if he was aware that the waiters employed in the House received a weekly wage of 31*s.* 6*d.* plus tips; and whether arrangements could now be made for the waiters to be paid a regular and reasonable wage and tipping be abolished? The Chairman replied that the Committee was in sympathy with the suggestion, but as wages at present absorbed 34·68 per cent. of the total receipts he regretted it was not possible to abolish the system, unless hon. Members were willing to provide for the increased wage cost by agreeing to the addition of a fixed percentage on their bills. In reply to a supplementary question by another Member, the Chairman said the wage addition required to cause the staff to agree to the abolition of the tipping system would amount to £3,000 p.a.[6]

[1] *See also* JOURNAL, Vol. V, 27.
[2] 325 H.C. Deb. 5. s. 18, 19.
[3] 326 *Ib.*, 1771.
[4] *Ib.*, 1996.
[5] 330 H.C. Deb. 5. s. 978, 979.
[6] *See* p. 32 *ante*.

Canada (Succession to the Throne Bill).[1]—The passing of this Bill was referred to in Article II of the last issue of the JOURNAL.[2] The Bill, which opens with a preamble in which is recited the second paragraph of the Statute of Westminster, contains one clause, which reads:

ASSENT TO ALTERATION IN THE LAW TOUCHING SUCCESSION TO THE THRONE

1. The alteration in the law touching the succession to the Throne set forth in the Act of the Parliament of the United Kingdom intituled "His Majesty's Declaration of Abdication Act, 1936," is hereby assented to.

Schedule One of the Bill sets forth the Instrument of Abdication,[3] and Schedule Two recites the Imperial Act (1 Edw. VIII, c. 3).

Upon moving the Second Reading of the Bill in the Senate, the Senator in charge of the Measure (Hon. Mr. Durand) said:[4]

> The purpose of this Bill is to secure the assent of the Parliament of Canada to the alteration in the law touching the succession to the Throne set forth in the Act of Parliament of the United Kingdom. . . . To make clear exactly what is intended by the provisions of His Majesty's Declaration of Abdication Act I will read to the House what was said at Westminster by the Prime Minister of the United Kingdom in the Second Reading of the Bill.[5]
>
> • • • • •
>
> Accordingly the Dominion Government passed an Order in Council[6] delegating its powers to the Imperial Government and requesting the Imperial Parliament to pass the legislation in order that the sovereignty of George VI should be declared as well in Canada as in the British Isles. This was done and, as will be seen by the British Act, the Dominion joins with Great Britain in its enactments.
>
> • • • • •
>
> Now the question has arisen whether the Canadian Government having given that consent, it is necessary for the Dominion Parliament to pass supplementary legislation. It is necessary in order to comply with the express terms of the preamble of the Statute of Westminster.
>
> • • • • •
>
> As will be observed, the scope of this Bill is limited to subsection (2) of section 1 of the British Act which affects the order

[1] 1 Geo. VI, c. 16.
[2] *See* JOURNAL, Vol. V, 66 *n*.
[3] *See* JOURNAL, Vol. V, Art. II.
[4] P. 69 *n*.
[5] Can. Sen. Deb. No. 3, 33-34.
[6] December 10, 1936.

of succession. It has been objected that this legislation is superfluous. I think we owe it to the declaration of the Statute of Westminster to assert our right to have the Parliament of Canada enact this Measure.

During the debate, the hon. Senator (Rt. Hon. A. Meighen) made the following observations:[1]

> Now while I do not oppose the Measure, I want to place upon the records of the House my views as to the correctness of the procedure which has been followed. I am afraid the Government, or perhaps, to put the blame just where it belongs, the law officers of the Crown, did not give the subject that close, attentive thinking which it merited. In my opinion there is no need of this Bill at all. I know the Government is in good faith in presenting it, and I intend to support it.
>
> I listened carefully to the argument of the honourable leader of the Government in this House, who tried to convince us of the necessity of the Measure and based his contribution upon the Statute of Westminster. I know the Statute of Westminster is in effect. I never thought it really registered much of an advance, if any, and I have always been very doubtful of the wisdom of solidifying into words a constitutional position which has grown through the years, my own faith being that it would have been better left as it was, in the form of a constitutional established practice, than in the form of a definite and fixed Statute. But we have the Statute. Therefore it becomes us to see just what Canada should do in the presence of the Statute and the circumstances that surround it.

Canada (the Coronation Oath).[2]—On March 3,[3] the following question was asked in the Canadian House of Commons:

> 1. What changes, if any, have been made in the Coronation Oath to be taken on May 12 next?
> 2. Was Canada consulted, and what reply was given?
> 3. Did the Government ask for any changes? If so, what are they?
> 4. Will any correspondence with His Majesty's Government of Great Britain and Canada on the subject be laid on the Table of the House?

To which the Prime Minister (Rt. Hon. Mackenzie King) made the following reply:

> 1. The Coronation Oath taken by His Majesty King George on June 22, 1911, was as follows:
>
> "*Archbishop.* Will you solemnly promise and swear to govern the people of this United Kingdom of Great Britain and Ireland, and the Dominions thereto belonging, according to the Statutes in Parliament agreed on, and the respective laws and customs of the same?

[1] Can. Sen. Deb. 1937, 33.
[2] *See also* JOURNAL Vol. V, 34, 35.
[3] CCXII, Can. Com. Deb. 1442, 1443.

King. I solemnly promise so to do.
Archbishop. Will you to your power cause law and justice, in mercy, to be executed in all your judgments ?
King. I will.
Archbishop. Will you to the utmost of your power maintain the laws of God, the true profession of the gospel, and the Protestant reformed religion established by law ? And will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England ? And will you preserve unto the bishops and clergy of England, and to the churches there committed to their charge, all such rights and privileges, as by law do or shall appertain to them, or any of them ?
King. All this I promise to do."

The Coronation Oath to be taken by His Majesty King George VI on May 12, 1937, is as follows:

Q. Will you solemnly promise and swear to govern the peoples of Great Britain, Ireland, Canada, Australia, New Zealand and the Union of South Africa, of your possessions and the other territories to any of them belonging or pertaining, and of your Empire of India, according to their respective laws and customs ?
A. I solemnly promise so to do.
Q. Will you to your power cause law and justice, in mercy, to be executed in all your judgments ?
A. I will.
Q. Will you to the utmost of your power maintain the laws of God and the true profession of the gospel ? Will you to the utmost of your power maintain in the United Kingdom the Protestant reformed religion established by law ? And will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England ? And will you preserve unto the bishops and clergy of England, and to the churches there committed to their charge, all such rights and privileges as by law do or shall appertain to them, or any of them ?
A. All this I promise to do.

In view of Press reports, it may be added that the King's Title, which was settled by proclamation issued under the Royal and Parliamentary Titles Act of 1927, does not appear in the form of Coronation Service, and has not been changed in any way.
2. The Canadian Government was consulted and concurred in the changes applicable to Canada.
3. The Canadian Government did not initiate the question but expressed the view that the phrasing of the first section of the oath as formerly administered was not in accordance with the existing constitutional relations, and that it would be appropriate that each of the members of the Commonwealth should be enumerated.
4. It would not be in accordance with established practice to Table the correspondence, which indicates the views of other Governments.

Canada (Elections and Franchise).—On February 2[1] the following Motion was moved by the Minister of Justice (Hon. Ernest Lapointe) and agreed to:

> That the special committee appointed to study the Dominion Elections Act, 1934, and amendments thereto, and the Dominion Franchise Act, 1934, and amendments thereto, be instructed to study and make report on the methods used to effect a redistribution of electoral districts in Canada and in other countries and to make suggestions to the House in connection therewith.

The First Report of the Committee was tabled on the following day, and agreed to.[2] On April 6[3] the Second Report was presented, but on April 10[4] it was decided to print only the Report and evidence. The Report, however, presents many interesting features and is therefore given as it appeared in the Commons debates as follows:

> The Special Committee on Elections and Franchise Acts begs leave to present the following as its second and final report:
> Your Committee has held eighteen meetings for the purpose of studying the matters referred to it under orders of reference of January 26, and February 2, 1937, as follows:
>
> (*a*) The proportional representation system.
> (*b*) The alternative vote in single member constituencies.
> (*c*) Compulsory registration of voters.
> (*d*) Compulsory voting.
>
> Your committee has also made a study of the Dominion Elections Act, 1934, with amendments thereto, and the Dominion Franchise Act, 1934, with amendments thereto, as instructed in the order of reference of January 26, 1937.
> Every suggestion received by your committee since the 1935 election, whether from Members of Parliament, election officers, franchise officers, political and other organizations or private individuals, and whether received in writing or by personal representation, was carefully considered by your committee. All witnesses who expressed a wish to be heard by your committee were duly heard and their representations given all possible consideration.
> Your committee wishes to confirm their fourth and final report of 1936, a copy of which is hereto attached, with respect to:
>
> (*a*) The proportional representation system,
> (*b*) The alternative vote in single member constituencies.
>
> Your committee has also considered compulsory registration and compulsory voting and has decided that it cannot recommend either to the favourable consideration of the House. With regard to the former it is of the opinion that it could not be enforced

[1] CCXI, Can. Com. Deb. 464, 465.
[2] CCXIII, *Ib.*, 2638-2640.
[3] *Ib.*, 531.
[4] *Ib.*, 2891-2892.

without continuous registration, a large staff of permanent officials, an annual house-to-house check-up of the names of the electors on the lists, and by other means, and your committee believes that the cost would be prohibitive under such circumstances. With regard to compulsory voting your committee has carefully considered the evidence submitted and in view of the high percentage of electors who voted in Canada at the last two general elections, and of the doubtful value of compelling unwilling electors to cast their votes, together with the probable additional cost, has concluded that it would be inadvisable to adopt that system in Canada at this time.

Your committee is unanimously of the opinion that the system of the annual revision of lists of electors, as provided in the Dominion Franchise Act, 1934, has proved unsatisfactory. Experience has shown that the basic lists prepared in 1934 were almost obsolete within six months after they were completed, and that the annual revision held in the year 1935 was not adequate to remedy the situation. The conclusion arrived at is that the yearly revision under the provisions of the Dominion Franchise Act, 1934, could not produce satisfactory results, and that only through voluntary efforts on the part of Members of Parliament, candidates and political organizations, involving great cost in time and money, could the lists of electors be brought up to date and thoroughly purged. Your committee is unanimously of the opinion that it would be advisable to return to the system of preparation and revision of the lists of electors immediately after the issue of the writs of election, with closed lists in urban polls, and open lists in rural polls, as in 1930.

Your committee recommends that the Dominion Franchise Act, 1934, be repealed, and the provisions relating to the preparation and revision of the lists of electors be again embodied in the Dominion Elections Act.

Your committee recommends that the particular sections in the Dominion Elections Act providing for absentee voting should be repealed. The intricacy of the procedure, the large number of rejected ballots, and the excessive cost to the country, have convinced your committee that it would be unwise to continue this manner of voting. Furthermore, with the adoption of the 1930 procedure, your committee is of the opinion that absentee voting will no longer be necessary.

A suggestion was made to your committee that publication of election returns from east to west throughout Canada should be synchronized, or hours of polling should vary. It was represented that election returns from the maritime provinces were being received in the western provinces, from one to three hours before the close of the polls in the latter provinces, and that undue influence was consequently exercised upon late voters, by radio broadcasts and by the publication of early returns in extra editions of newspapers in the west. On account of objections raised to every remedy proposed, your committee has decided that the matter should be brought to the attention of Parliament in order that it may be further considered.

Special reference should be made to a suggestion approved by

your committee to the effect that a revision of the Dominion Elections Act, embodying the recommendations made, together with such further amendments as may be found necessary be prepared for submission to Parliament at its next session. This is deemed necessary in order that election officers may have ample time to perform all preliminary work well in advance of the next general election.

Your committee also gave careful consideration to many other suggestions that were received but not adopted. These suggestions are all contained in the minutes of proceedings and evidence, and your committee did not deem it necessary to enumerate them in this report.

Your committee has received representations from Canadian citizens of Japanese origin, asking that the privilege of the franchise be extended to them, but your committee is not prepared to recommend any alteration of the existing law.

Your committee herewith submits for the favourable consideration of the House the complete list of suggestions which it has approved, as follows:

1. That instead of having a permanent list of electors and an annual revision, the procedure followed in 1930, in the preparation and revision of the list of electors after the issue of the writ for an election, should be again adopted.
2. That the Dominion Franchise Act should be repealed and the franchise provisions embodied in the Dominion Elections Act, as in 1930.
3. That a longer period of time should be given to the various returning officers to revise the arrangement of polling divisions of their respective electoral districts, and with that purpose in view the proposed new Dominion Elections Act should be passed not later than the year 1938.
4. That all incorporated cities or towns having a population of 3,500 persons or more be treated as urban polling divisions.
5. That the chief electoral officer be empowered to declare urban any area in which the population is of a floating or transient character or in which a large number of persons are temporarily employed on special work of any kind.
6. That absentee voting be abolished.
7. That, where possible, all lists of electors for both urban and rural divisions be printed.
8. That a method of speedy payment of election officers receiving a fixed fee be adopted.
9. That enumerators shall insert on their lists of electors the names of young persons who will attain 21 years of age on or before polling day.
10. That voters' lists be printed locally wherever and whenever possible.
11. That, in urban areas, a printed copy of the list of electors be sent by mail as soon as the printing is completed to each dwelling situated within the appropriate polling division, and a notice advising electors of the time and place of the sittings of the revising officers and of the location of the polling stations be printed on each such copy of the list.

12. That the sending of a notification post card advising each elector as to time and place of poll be abandoned.
13. That the list of electors for rural polling divisions be " open lists " as in 1930.
14. That all election officers should be qualified as electors in their respective electoral districts.
15. That the use of radio for election speeches on polling day and on the Sunday immediately preceding it should be prohibited.
16. That all electors in line at the door of the polling station awaiting their turn to vote at the hour provided for the closing of the poll shall be permitted to cast their votes before the outer door of the poll is closed.
17. That no list of electors shall be split up for the taking of the vote unless it contains more than 350 names.
18. That printed lists of electors in urban polling divisions, containing more than 350 names, should, for the taking of the vote, be divided numerically instead of geographically.
19. That the names of teachers, students and clergymen shall be placed on lists of electors for polling divisions to which they have recently moved, as in 1930.
20. That the returning officer should be directed that either he or the election clerk should remain in the returning officer's office throughout the whole of polling day.
21. That in rural polling divisions only one day be fixed for the correction of the lists of electors by rural enumerators, instead of three days as was the case in 1930.
22. That no entry should be made in the poll book until the poll clerk has ascertained that the name of the elector appears on the official list of electors used at the polling station, or is otherwise entitled to vote.
23. That the election clerk should be authorized to issue transfer certificates on behalf and in the name of the returning officer.
24. That a record of all transfer certificates issued be kept by the returning officer or the election clerk.
25. That, when a candidate withdraws after nomination, and after the ballots have been printed, the election officer should notify all electors of such withdrawal in the most effective manner possible.
26. That a penalty clause be inserted in the Act for employers who refuse to grant, or who interfere in any way with the granting of, two additional hours to their employees for voting.
27. That the use of the official stamp be discontinued, and a printed impression from an electro or printer's block be substituted therefor, on the back of the ballot paper.
28. That candidates' agents shall not be allowed to vote on a transfer certificate until after they have subscribed to both the oath in form 17, and form 22.
29. That flags, bunting and loud speakers on cars and trucks and other vehicles should be prohibited on election day.
30. That candidates' agents should, to a reasonable extent, be permitted by law to absent themselves from, and to return to, the polling station at which they are acting.
31. That after the words " shall publish " in section 63, sub-

section 5 of the Act, the words " in the form prescribed by the Chief Electoral Officer," should be inserted.

32. That the statement of the poll in form 31 and the certificate of the votes polled in form 32 should be prepared on similar forms, preferably form 31.

33. That the letter " W " should not be used in the description of women's names on the list of electors.

Owing to the shortness of the session, your committee has been unable to complete its study of the methods used to effect redistribution of electoral districts in Canada and other countries, and the evidence at present before it does not warrant a final report thereon. Your committee therefore suggests that this subject be further considered during the next session of Parliament.

Your committee wishes to express its appreciation of the assistance and advice received at all times from the Chief Electoral Officer and the Dominion Franchise Commissioner, as well as from the counsel to the committee. Mr. Butcher has made an exhaustive study of all phases of franchise, election and redistribution legislation of other parts of the Empire and of other countries, the laws of which might afford information valuable to the committee. The result of his study will be found in the minutes of proceedings and evidence. Your committee therefore endorses the action of the Government in furnishing counsel.

Your committee further recommends that the evidence taken, together with an index, be printed as an appendix to the Journals of the House. A copy of the minutes of proceedings and evidence taken by the committee is attached hereto.

Canada (Broadcasting of House of Commons Debates).—On March 31 a question was asked as to what would be the annual cost of broadcasting the debates from the short wave station at Ottawa, and if the Government has given consideration to the desirability of such broadcasting. The Prime Minister (Rt. Hon. Mackenzie King) replied that the Government did not think it advisable to broadcast the debates of the House.

Province of Saskatchewan.—In regard to the question of the relations between the Central Legislature and those of the States or Provinces (a burning problem certainly in two of our Dominions), an official publication of the Province of Saskatchewan, prepared under the direction of its Attorney-General (Hon. T. C. Davis, K.C.), and printed by the King's Printer, Regina, Sask., will prove of interest. It is a most comprehensive treatment of the subject from the Province's point of view, and covers 434 pages with ample statistics. The book is divided into 13 parts, with Appendix A and B

[1] CCXII, Can. Com. Deb. 1442.

and an index of tables as well as a general index. Parts I to XII deal with such subjects as Canada and the Provinces under the B.N.A. Act; Public Finance; Provincial taxation; Economy; Social services; etc.

Part XIII, which contai ns the recommendations, includes the suggested Constitutional amendments, which are as follows:

The Public Debt of the Province.—The Government feels that careful consideration should be given to the problem of refunding and consolidating the public debt of the Province. The Government is not in favour of compulsory refunding which involves repudiation, but would be prepared to support a proposal which would give the holder of any bond of the Province the right to elect whether he would take a new bond for an extended term at a lower rate of interest, or in lieu thereof accept payment of the face amount of his bond in cash. As to repudiation it is felt that a Government which will not attempt to keep faith with its creditors cannot be trusted to keep faith with its people.

Any such scheme would necessitate definite sinking fund provisions to retire the new bonds at maturity. The proposal would also of necessity involve assistance from the Federal Government to procure the funds necessary to retire the bonds of such holders as might elect to take their money instead of new debentures.

The Government feels that little relief would be secured if the consolidated bonds bore interest in excess of three and one-half per cent. In the alternative, the Government feels that some provision might be made for refunding its maturities as they come due to lower rates of interest. The Government is definitely of the opinion that it cannot meet its existing obligations unless its fiscal position is greatly improved. Measures looking to such improvement will be proposed in the following recommendations.

It is specifically recommended that the portion of the public debt of Saskatchewan attributable to the payment of direct relief shall be regarded as having been incurred in the discharge of a national obligation, and that responsibility for the retirement of this portion of the debt shall be assumed by the Dominion of Canada.

Adjustment of the National Economy.—Three recommendations will be made under this heading, and the Government of Saskatchewan desires to point out that as respects the first of these the need for adjustment is absolutely imperative if

the economic life of this Province is to develop in a satisfactory manner:

(1) That the customs tariff shall be completely removed from all instruments of production and shall be drastically reduced on all necessities of life.

(2) That the provision of transportation facilities shall be considered from a national point of view and that the freight rates structure of the railways shall be examined with a view to giving some relief to the exporters of primary products from Western Canada.

(3) That the Government of Canada shall construct and maintain a trans-Canada highway of a permanent type as well as permanent highways from the Canada-United States border to the several national parks of Canada.

Social Services.—The Government of Saskatchewan is of the opinion that several satisfactory adjustments may be made under this head. The following specific recommendations are made:

(1) That entire responsibility of old-age pension payments shall be assumed by the Dominion of Canada.

(2) That a national scheme of unemployment insurance shall be enacted forthwith by the Dominion Parliament. It is suggested that such scheme should be of a contributory nature.

(3) That consideration should be given to the enactment of a national scheme of crop insurance by the Dominion of Canada. In the alternative that special assistance shall be given to the Province of Saskatchewan in connection with the administration of a provincial scheme of crop insurance in case it should be decided that such a scheme is feasible. On the one hand, it may be pointed out that a national scheme of unemployment insurance will be of less assistance to the Province of Saskatchewan than to the other Provinces, while, on the other hand, it is fairly obvious that Saskatchewan has greater need for a scheme of this character than has any other Province of Canada.

(4) That such matters as minimum wages, hours of labour, periods of rest and generally all matters pertaining to labour shall be dealt with by the Parliament of Canada under a national policy in that regard.

(5) That the burden of direct relief shall be definitely assumed by the Dominion of Canada as a social service of national concern.

(6) That consideration should be given to the enactment

of a national scheme of health insurance by the Dominion of Canada.

(7) That consideration should be given to a plan for the payment of pensions to all persons who have reached the age of sixty-five years, regardless of financial need. Said pensions to have been contributed to by the recipients during their earning years.

(8) That consideration should be given to the amendment of the introductory portion of section 91 of the British North America Act in such a manner as to give complete power to the Parliament of Canada to deal with any social services as it shall see fit.

Taxation.—(1) That the levying of succession duties, using that term in its widest significance, shall be assigned exclusively to the Dominion of Canada and that the moneys derived from the collection of such duties shall be paid to the Provinces on an equitable basis. It is further proposed that the income tax field, including a tax upon the incomes of corporations, should be similarly reserved to the Dominion Parliament.

(2) That the Provinces of Canada should be given powers of indirect taxation.

(3) That consideration should be given to the constitutional handicap under which the Province of Saskatchewan operates in the matter of the taxation of railways.

Subsidies.—(1) That the unconditional subsidy presently payable by the Dominion of Canada to the Province of Saskatchewan should be increased. It is impossible to indicate the amount of the necessary increase in the absence of knowledge concerning the extent to which the other recommendations submitted herewith will be accepted. It is suggested, however, that this matter must be determined on the basis of the fiscal need of the Province as indicated by the material which appears in this submission, or which may otherwise be brought to the attention of the Commission.

(2) That a permanent Grants Commission shall be established forthwith with duties as set out in earlier parts of this submission.

Provincial Powers.—In addition to matters mentioned above it is suggested that the powers of the Provinces should be enlarged so as to enable them to deal effectively with companies incorporated by the Dominion of Canada. Such enlarged powers would enable the Provinces to deal more effectively with such companies in the matter of taxation as well as in the prevention of security frauds.

Constitutional Amendments.—In the opinion of the Government of Saskatchewan the British North America Act should be amended in several particulars. The following recommendations are hereby suggested. The recommendations are made under several heads and a measure of overlapping is involved.

I. That such amendments be made as will permit the carrying out of the recommendations contained in the earlier portions of the present Part (XIII) of this submission.
II. That an amendment be procured that will definitely establish a national status for the Dominion of Canada including effective treaty-making capacity. It is suggested that this be done by the amendment of section 132 of the British North America Act.
III. That the constitutional powers of the Dominion of Canada to deal with several matters be made certain. It is suggested that this end be achieved by amendments (in the form of additions) to section 91 of the British North America Act. It is proposed that the enlargement of Dominion powers shall extend to the following matters:

(1) The granting of money raised by taxation or otherwise to any Province or Provinces to be used for Provincial Purposes.
(2) Unemployment insurance.
(3) Health insurance.
(4) Crop insurance.
(5) Conciliation and arbitration for the prevention and settlement of industrial disputes, and compulsory settlement of such disputes.
(6) Invalid and old-age pensions.
(7) Regulation of labour conditions, and, without restricting the generality of this power, regulation in particular of the following matters, namely:

(*a*) the right of association for all lawful purposes by the employed as well as by the employers;
(*b*) the payment to the employed of a minimum wage adequate to maintain a reasonable standard of life;
(c) the determination of maximum daily or weekly hours of labour;
(*d*) the adoption of a weekly or other periodic rest period;
(*e*) the abolition of child labour and the imposition of limitations on the labour of young persons; and
(*f*) prescribing systems of inspection to ensure the enforcement of laws and regulations for the protection of the employed.

IV. It is deemed essential that the powers of the Province should be enlarged in certain particulars. The following recommendations are respectfully suggested:

(1) That head 2 of section 92 of the British North America Act be repealed and the following substituted therefor: " (2) The raising of money by any mode or system of taxation within the Province, not including the impositions known as Customs and Excise, but inclusive of the taxation of companies authorized to carry on business in Canada by reference to the amount of gross or net revenues received by such companies from persons resident within the Province."
(2) That the Provinces be given the necessary powers to deal with Dominion companies as already suggested.

V. Co-operation between the Dominion and a Province.
In order that co-operation may be made possible, especially when consent to a constitutional amendment cannot be obtained, and in order that uncertainties be removed from the law in this regard, it is proposed that powers shall be given to the legislatures of the Provinces touching the following:

(1) Incorporation in the statute law of any Province of any enactment passed by the Parliament of Canada by reference to such enactment to the extent to which the subject-matter of such enactment is within the legislative competence of the Province.
(2) Delegation to the Parliament of Canada of legislative jurisdiction with respect to any subject-matter otherwise within the exclusive legislative jurisdiction of the Provinces.

It is further proposed that the Parliament of Canada shall be endowed with reciprocal powers in this regard. It should be pointed out that these suggested amendments will in no sense involve a surrender of sovereignty.

These representations and recommendations were respectfully submitted by the Government of Saskatchewan to the Royal Commission on Dominion-Provincial Relations.

Similar briefs to the above were submitted to the Royal Commission on Dominion-Provincial Relations (referred to in Article VII of this Volume) by the Provinces of Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island and Alberta. The Province of Ontario, however, did not submit a brief; and the Province of Alberta, while it did not submit a brief directly to the Commission, did submit " The Case for Alberta to the Sovereign People of Canada and their Governments." It is understood that the Chamber of Commerce at Edmonton, Alberta, submitted a brief of their own to the Commission.

W. R. Alexander, C.B.E., J.P.—Mr. Alexander, who held the dual office of Clerk of the Legislative Assembly and Clerk of the Parliaments of the State of Victoria, retired in July after

a service of 48 years. On the 27th of that month,[1] the Premier and Treasurer of that State (Hon. A. A. Dunstan), when moving, in the Legislative Assembly, the following Motion:

> That this House places on record its high appreciation of the valuable services rendered to it and to the State of Victoria by William Robert Alexander, Esquire, C.B.E., J.P., as Clerk of the Parliaments and Clerk of the Legislative Assembly, and in the many other important offices held by him during his forty-eight years of public service, of which forty-one years were spent as an officer of Parliament, and its acknowledgment of the zeal, ability, and courtesy uniformly displayed by him in the discharge of his duties,

referred to the splendid services rendered by Mr. Alexander by whose retirement they were losing not only a most capable, remarkably efficient and very conscientious officer, but a good and faithful friend, whose advice and assistance had been at the disposal of all. Mr. Alexander had been most obliging and most courteous to all, and he had been extremely fair and impartial in his judgments. In his very long and very meritorious career he had solved, or helped to solve, many knotty problems that had arisen. The Prime Minister was sure that all hon. Members would regret exceedingly his retirement, not only because of his outstanding qualifications, but also because of his personal charm.

Sir Stanley Argyle, Leader of the Opposition, in seconding the Motion, supported the remarks of the Premier and said that Mr. Alexander had always been a friend to every Member of the House who was in difficulties over matters of procedure and had always been ready, at great personal sacrifice at times, to assist any Member of any party at any time. Mr. Alexander would always be able to look back, after he had laid down the reins of his office, with the knowledge that he possessed the good will, friendship, and respect of every Member of that House who was then in it or had been in the House during that period.

The Speaker (Hon. W. H. Everard) then said:

> Before putting the Motion, I should like to add my tribute to those already expressed by Honourable Members. I owe a deep debt of gratitude to Mr. Alexander. I look on him as a walking encyclopedia of parliamentary law and practice, and consider that he is a perfect officer. Through his retirement we lose one who has made many friends and is held in the highest esteem, not only in this Chamber, but in all parts of the State. He has been wonderfully efficient in what might be

[1] No. 4, Vict. Parl. Deb. 1937, 263-266.

described as the routine part of his duties, and he is also fully qualified to talk plainly on the subject of the principles of parliamentary practice. Even when we have been feeling the strain of all-night sittings, Mr. Alexander has never lost his remarkable charm of manner. I really think that no words of mine can better express my sentiments than the Motion by the Premier, which I now submit to the House.

The motion was agreed to unanimously.

The Speaker then continued: As it is not in accordance with parliamentary practice for the Clerk to address the House personally, Mr. Alexander has addressed the following letter to me:

LEGISLATIVE ASSEMBLY, VICTORIA,
PARLIAMENT HOUSE,
MELBOURNE.

July 27th, 1937.

DEAR MR. SPEAKER,

I beg to tender to you, and through you to the Members of this honourable House, my sincere thanks for the Resolution in appreciation of my humble services which the Assembly has been so good as to pass on the occasion of my retirement.

In saying farewell to the House may I be permitted to express to you, Sir, and to all Honourable Members my grateful sense of the unvarying kindness, consideration, and appreciation which I have received during the 35 years I have been connected with the Table.

The pride I feel in having attained to the high and honourable offices of Clerk of the Parliaments and Clerk of the Legislative Assembly, will endure for the remainder of my life.

I am, Dear Mr. Speaker,
Your obedient servant,
W. R. ALEXANDER.

We should also like to add our tribute to Mr. Alexander upon his retirement and to express our warm appreciation of his ardent, able and devoted services as a valuable, esteemed and active member of our Society.

On the following day,[1] Mr. Speaker announced that "in accordance with the powers vested in me," he had nominated Mr. F. E. Wanke, the Clerk of the Committees and Serjeant-at-Arms, as Clerk of the Legislative Assembly in place of Mr. Alexander, retired, and Mr. H. K. McLachlan, the Clerk of the Papers, in the place from which Mr. Wanke was promoted; and that the Governor-in-Council had been pleased

[1] *Ib.*, 310.

to make appointments in accordance with the said nominations. The office of Clerk of the Parliaments will now be held by Mr. P. T. Pook, B.A., LL.M., J.P., the Clerk of the Legislative Council.

Victoria (Constitutional Amendment).—During the year under review in this Volume an amendment was made to the Constitution of this State by the passage of the Constitution (Reform) Act, 1937,[1] which, to quote from the short title section, is to be read and construed as one with the Constitution Act Amendment Act, 1928 (referred to in Act No. 4533 as the Principal Act) and any Act amending the same, all of which are cited as the Constitution Act Amendment Acts.[2] The long title of the new Act reads:

> An Act to make provision with respect to the relations between the two Houses of Parliament and for other purposes.

The Act was Reserved by the Governor, December 24, and the Royal Assent, the Proclamation promulgating the Act, appeared in the Victoria Government Gazette of March 30, 1938.

Deadlocks between Houses.—Section 2 of the new Act substitutes for the practice laid down in section 37 of the Constitution Amendment Act, 1928, the following procedure:

> If the Assembly pass a Bill and the Council rejects it, the Assembly may be dissolved by a proclamation declaring such dissolution to be granted in consequence of a disagreement between the two Houses upon the Bill: Provided that the Assembly shall not be so dissolved later than 6 months before the date of the expiry of the Assembly by effluxion of time.
>
> If the Assembly in the next Session (but not earlier than 9 months after the date of the Second Reading of the Bill in the Assembly in the preceding Session) again passes the Bill and the Council again rejects it the Council may be dissolved: Provided that the Council shall not be dissolved within 1 month after the Bill has been last rejected by the Council or within 9 months after any general or periodical election therefor.
>
> If in the same or the next succeeding Session the Assembly again passes the Bill and the Council again rejects it, the Governor may convene a Joint Sitting of the two

[1] No. 4533.
[2] Nos. 3660, 4278, 4305, 4334, 4350, 4367, 4409 and 4468.

Houses, when it may, by an absolute majority of the total number of Members of both Houses, amend the Bill, and if the Bill so amended or without amendment is affirmed by such an absolute majority it is deemed to have been duly passed by both Houses and is presented for Royal Assent.

Exemptions to the above are a Bill to abolish the Council or to alter Schedule D to the Constitution Act or to amend or repeal these new provisions.

Appropriation Bills.—Section 3 provides that the annual Appropriation Bill shall deal only with appropriation.

Absolute Majorities.—Section 4 requires that a Bill to alter the constitution of the Council or the Assembly or Schedule D to the Constitution Act shall not be presented for the Royal Assent unless the Second and Third Readings of such Bill have been passed by an absolute majority in the Council and in the Assembly. This provision was inserted because a similar provision in section 60 of the Constitution Act has been interpreted to apply only to Bills amending the Constitution Act and not to Bills amending an amendment of the Constitution Act.

Qualification of Candidates for the Legislative Council.—Section 5 reduces the age qualification of candidates for the Legislative Council from 30 to 21 years and the property qualification from £50 net annual value to £25 net annual value.

Candidate's Deposit.—Section 6 reduces the deposit to be lodged on nomination of a candidate for the Legislative Council from £100 to £50.

Plural Voting Abolished and Compulsory Voting Provision Modified.—Sections 7 and 8. Hitherto, an elector for the Council was compelled to vote for the Province in which he resides, but he could also vote for any other Province or Provinces for which he was enrolled if he attended personally in such Province or Provinces on Polling Day. Under sections 7 and 8 of the new Act, however, an elector for the Council is compelled to vote only for one Province, but if he is enrolled for more than one Province he may choose to vote either in the Province in which he resides or, if he gives notice to the Chief Electoral Officer at least 7 days before Polling Day, in any one other Province for which he is enrolled.

There was considerable debate upon the old Bill for this Act, both in the Legislative Council and in the Legislative Assembly, as reference to the Parliamentary Debates will shew. The question for the Third Reading, however, was passed by an absolute majority of the Legislative Assembly, as required by the Constitution Act, the pairs being also shewn under the division list in the Parliamentary Debates.

Conference.—The Legislative Council requested a Free Conference with the Legislative Assembly for which the following Motion was moved:[1]

> That a free conference be devised with the Legislative Assembly on the subject of the relations between the two Houses and the provisions contained in the Constitution (Reform) Bill;

and when agreed to, a Resolution was passed appointing a certain seven named Members to represent that House, which action was communicated to the other House by Message. To this proposal the Legislative Assembly by Message agreed, intimating that it " had appointed seven Members to confer with a like number of Members of the Legislative Council " and named the Legislative Council Committee Room as the place and " 3.30 p.m. to-morrow " as the time of meeting of the Conference.

The Clerk of the Parliaments, however, also reports that it was contended that this request was quite unusual, if not unprecedented, in that it was made before a dispute as to the Bill had arisen between the two Houses—that is, before the Bill had been read a third time and passed with amendments; but it should be noted that the subject-matter of the Conference was stated quite generally and did not refer to amendments or to a dispute, though, of course, it may be said that if a dispute had not arisen it would have been more correct to have proceeded by a Joint Select Committee than by Free Conference. However, before the Assembly considered the Council's Message requesting a Conference the Bill had been read a third time, passed by the Council and returned to the Assembly with amendments.[2]

The Assembly then agreed to the Conference which was held without agreement being arrived at[3] by that method, although agreement between the two Houses was subsequently effected by the transmission of Messages between the two Houses.

The Clerk of the Parliament also observes that the reason

[1] No. 5-1937 Vict. Parl. Deb. 741-743.
[2] No. 6-1937. Vict. Parl. Deb. 787-788.
[3] *Ib.*, 1009, 1053 for Manager's Report.

stated in debate for requesting a Conference before the Bill was read a third time was to ensure that the Assembly would grant the request for a Conference and thus enable the Council to learn the probable fate of the amendments before deciding the Third Reading of the Bill.[1]

When the Government promised that the Conference would take place the Council passed the Third Reading and returned the Bill to the Assembly, so that when the Conference took place the Bill was not in the possession of the House which asked for the Conference.[2]

Victoria (Parliamentary Debates).—During the year under review an Act was passed by the Parliament of this State, adding to section 43 of the Constitution Act Amendment Act, 1928, a provision by which the Government Printer shall always be deemed to have been authorized by each House of Parliament to publish their debates, and in relation to section 44 (3) of such Constitution Act, it is provided that any reference to the publication of proceedings of either House shall be deemed to include the reports of their debates.

Queensland (Ministerial and M.P.'s Salaries).—As and from uly 1, 1936, the following are now the salaries of Ministers nd Members of Parliament: Premier and Chief Secretary, £1,450; other Ministers, £1,150; Speaker, £1,150; Chairman of Committees and Leader of the Opposition, £850; and other Members, £650, thus shewing an increase of £150 *p.a.* in each class.

South Australia (Constitutional Amendment).—During the year under review in this Volume the Constitution Act Amendment Act[3] was passed which provides for the extension of the duration of the House of Assembly from 3 to 5 years. The original Constitution Act of 1855-56 provided for a normal term of 3 years for the Assembly and 12 years for the Legislative Council. In 1881 the term in the Council was reduced to 9 years, and in 1908 to 6 years, half the Members normally retiring every 3 years. The effect of the Amending Act of 1937 is that the term of the Legislative Council is automatically extended to 10 years, half the Members normally retiring every 5 years.

The Constitution Amendment Act of 1934 extended the term of the then House of Assembly for 2 years but applied to the existing Parliament only.

[1] No. 5-1937 Vict. Parl. Deb. 742 and 788. [2] *Ib.*, 787.
[3] No. 2381 (1 Geo. VI) Reserved December 8, Royal Assent proclaimed, March 30, 1938.

The 1937 Act provides also for the establishment of a Joint Standing Committee to which all Rules, Regulations, By-laws and Orders made pursuant to any Act shall be submitted for report to Parliament.

The Electoral Act Amendment Act, 1937, includes a small amendment of the original code in regard to the provision for names of candidates at an election to be placed on the ballot-paper alphabetically. This is amended to allow the order of names within groups to be other than alphabetical, the position of the groups only being governed by the previous rule. The provision for voting by post when outside an Assembly district or Council division is repealed in favour of the right to vote as an absent voter at any polling-place within the State instead of only at another polling-place within the district or division.

Western Australia (Constitutional).—An Act[1] was passed by the State Parliament of Western Australia during the year under review, amending the Constitution[2] of this State in regard to the powers and relationship between the two Houses upon Money Bills, which are defined by section 2 very much on the lines of section 1 (2) of the Parliament Act[3] of the United Kingdom. Section 2 also defines " Representative Vote " as meaning:

> a vote of the Members of either the Legislative Assembly or Legislative Council, or of a joint sitting thereof whereat each Member is allowed a number of votes equal to the number of persons enrolled at the date of the last preceding general election of members of the Legislative Assembly or Legislative Council respectively for the district or Province he represents.

Section 2 of the principal Act[2] was amended by adding a new section, 2A, paragraph (i), which provides that if a Legislative Assembly Bill is rejected by the Legislative Council, the President thereof may and shall, at the request of the Speaker of the Legislative Assembly, convene a joint sitting of the two Houses and submit to the vote of the Members there present such Bill in the form in which the Council so received it, and that if there was a majority upon a representative vote in favour of the Bill it shall be considered to have been passed by both Houses and presented to the Crown for assent.

Paragraph (ii) of the new section enacts that if a Money Bill sent up to the Council by the Assembly at least one

[1] Constitution Acts Amendment Act, 1937.
[2] Constitution Act, 1889 (52 Vict. c. 23).
[3] 1 & 2 Geo. V, c. 13.

month before the end of the Session is not passed by the Council without amendment within one month after being so sent, the Assembly may by resolutions passed by a representative vote direct that the Bill be presented to the Crown for assent.

Paragraph (iii) of the new section provides that if any Bill other than a Money Bill in same form is passed by the Assembly in two successive Sessions and sent to the Council at least one month before the end of the Session, is rejected by the Council in each of those Sessions, and the Bill in same form is again passed by the Assembly of the next succeeding Parliament, and having been again sent up to the Council at least one month before the end of the Session is again rejected by the Council, then the Assembly may by resolution passed by a representative vote direct that the Bill be presented to the Crown for assent.

Paragraphs (iv) and (v) of the new section are the same as sections 2 (2) and 2 (3) of the Parliament Act, 1911, of the Imperial Parliament.

Paragraph (vi) of the new section also follows the Parliament Act in its section 2 (4) with the exception of the latter's proviso, and paragraph (viii) is equivalent to section 4 of such Act.

The late Clerk of the Parliaments of Western Australia, who was previously for many years Clerk of the Legislative Assembly, to whose record of service on his retirement a tribute was paid in our last Volume,[1] made a special study of the subject of the relationship between the two Houses in respect of Money Bills, and his "Memories of Parliament" contains many instructive and interesting references to this much debated question which are well worthy of study. We should like to take this opportunity, on behalf of our Society, of expressing our regret that Mr. Grant is now lying very seriously ill at his home at Cottisloe, Western Australia.

Australian States (Air Navigation Acts).—Reference was made in the last Volume of the JOURNAL[2] to two important interpretations of the Commonwealth Constitution. In consequence of the rejection at the Referendum of the suggested aviation amendment and following a conference (to quote the preamble of the Air Navigation Act[3] of Western Australia) of representatives of the Governments of the Commonwealth and of the States held in April, 1937, it was resolved that there should be uniform rules throughout the Commonwealth applying to air navigation and aircraft, and in particular to

[1] Pp. 11, 12.
[2] Vol. V, 111-118.
[3] 1 Geo. VI (No. 6 of 1937).

the air-worthiness of aircraft, the licensing and competence of pilots, air traffic rules, and the regulation of aerodromes, and it was agreed that legislation should be introduced in the Parliament of each State to make provision for the application of the Commonwealth Air Navigation Regulations, as in force from time to time, to air navigation and aircraft within the jurisdiction of the State.

The same Act was passed in four other States,[1] but the reference for New South Wales is not yet available.

Tasmania (Constitutional Bills).—Two Bills of a constitutional nature were introduced into the Parliament of this State during the year under review, a Bill (No. 35) designed to remove the Legislative Council's powers in regard to Money Bills and to ensure in the case of other Bills that after rejection by the Council in three successive sessions the will of the House of Assembly shall prevail. However, the Bill which was introduced by the Government and passed through the Assembly in amended form was subsequently rejected by the Council, as was also a Bill (No. 75) proposing that Ministers from the House of Assembly could be in the Council when their presence was required to give Members information upon new and involved legislation. The records and other particulars received from the Clerk of the Legislative Council in regard to these two Bills will, however, be kept for reference should these measures become law.

New Zealand (Abdication of Edward VIII and Succession of George VI).—The following reference, which was not available at the time of the last Volume going to press, may be added to those appearing as footnotes to page 69 thereof.

In connection with the Abdication of King Edward VIII and the Succession of King George VI to the Throne, the following Motion was moved in the Legislative Council[2] by the Leader of the Council, the Hon. Mark Fagan (Minister without Portfolio), and by the Prime Minister (Rt. Hon. M. J. Savage) in the House of Representatives,[3] being preceded by the statement given below:

> *Statement*: It is necessary, in connection with the abdication of his former Majesty King Edward VIII, for the assent given by His Majesty's Government in New Zealand to the Act of the Parliament of the United Kingdom, intituled His Majesty's Declaration of Ab-

[1] Queensland, 1 Geo. VI, No. 8; S. Australia, No. 2352, 1 Geo. VI; Tasmania, 1 Geo. VI, No. 14, and Victoria, No. 4502, 1 Geo. VI.
[2] 248 N.Z. Parl. Deb. 5. [3] *Ib.*, 7.

dication Act, 1936, to be ratified and confirmed by the New Zealand Parliament.

Motion: Whereas in conformity with the provisions of the preamble to the Statute of Westminster, 1931, the assent of His Majesty's Government of the Dominion of New Zealand was duly given to the Act of the Parliament of the United Kingdom intituled His Majesty's Declaration of Abdication Act, 1936; and whereas it is desirable that the assent so given should be ratified and confirmed by Parliament; the assent given by His Majesty's Government in New Zealand to the Act of the Parliament of the United Kingdom intituled His Majesty's Declaration of Abdication Act, 1936, be and the same is hereby ratified and confirmed accordingly;

which Motion was agreed to in each House of the General Assembly.

Union of South Africa (Constitutional Amendment).—During the year under review, section 34 of the South Africa Act, 1909, was amended by the Electoral Quota Act,[1] which provides a new electoral quota for the Union which shall be obtained by dividing by 150[2] the total number of European adult Union nationals as ascertained at the census of 1936, and for this purpose both males and females are taken into account.

Union of South Africa (Royal Assent to Bills).—In the Colony of the Cape of Good Hope (now one of the Provinces of the Union) Parliament it was always held that the Royal Assent to Bills "being the complement and perfection of a law" must be declared to both Houses of Parliament before prorogation and that if not so declared the Bill would drop like any other business pending at the time of prorogation.[3]

The Royal Assent was consequently announced in both Houses to all Bills before prorogation and this practice was observed by the Union Parliament until the Session of 1915-16. In that Session, however, the Royal Assent to the Additional Loan Appropriation Bill was announced in the *Government Gazette* during a long adjournment without being declared to the two Houses, and since 1919 the Royal Assent to Bills passed towards the end of a Session has been published in

[1] No. 21 of 1937.

[2] *i.e.*, the number of Members composing the House of Assembly not including the 3 European Members representing the 3 Native divisions into which the Cape Province is divided. *See* JOURNAL, Vol. V, 35-39.

[3] May, 13 Ed. 43, 202, 203, 491. Hakewell, 179, 180.

the *Government Gazette* after prorogation without prior announcement to the two Houses. Owing to what was probably a misunderstanding the Royal Assent to every Bill passed during the 1937 Session was published in the *Gazette*, in some cases before and in some cases after prorogation, without announcement to the two Houses. In view of the wide terms of section 64[1] of the South Africa Act as amended by section 8 of the Status of the Union Act (No. 69 of 1934) and of the Appellate Court decision referred to in Article IX hereof, it was not suggested that these measures were thus rendered invalid, but the principles involved are too sound and too well established to be set aside. It was therefore represented that, if only out of courtesy to the two Houses of Parliament, the Royal Assent should be announced to them before prorogation whenever possible.

South-West Africa (Constitutional).[2]—On April 22[3] the Legislative Assembly passed a Resolution seeking the amendment of sections 26 and 27 of the S.W.A. Constitution Act, 1925 (Union Act No. 42 of 1925), by the addition of a proviso on the following lines:

> Provided that, where an Ordinance deals only incidentally with any one of the reserved subjects herein specified, such Ordinance may be provisionally passed by the Assembly but shall be reserved for the consent of the Governor-General in terms of section 32.

It was considered that the amendment might avoid delay in passing measures in which provisions, as contemplated by sections 26 and 27, had been discovered while the House was in Session. The amendment of the Act, however, has not yet been effected by the Union Parliament.

South-West Africa (Remuneration to Members).—The remuneration to Members of the Legislative Assembly has been fixed by the Governor-General of the Union at £180 as from April 1, 1937.

[1] *i.e., Royal Assent to Bills.* 64. When a Bill is presented to the Governor-General for the King's assent he shall declare according to his discretion, but subject to the provisions of this Act, and to such instructions as may from time to time be given in that behalf by the King, that he assents in the King's name, or that he withholds assent. The Governor-General may return to the House in which it originated any Bill so presented to him and may transmit therewith any amendments which he may recommend, and the House may deal with the recommendation (9 Edw. VII c. 9).

[2] *See also* JOURNAL, Vols. IV, 22-28; V, 42-48.

[3] VOTES, No. 13 of 1937, 56.

Ireland (Eire) (Seanad Elections).—The composition of the Senate (Seanad Eireann) under the new Constitution was given in Volume V of the JOURNAL[1] and the character of the panels was indicated, but the Constitution did not prescribe the actual number to be elected from each panel, the manner in which they were to be formed, or the electorate by which selection is to be made from the panels. The Seanad Electoral (Panel Members) Act, 1937, now under review, provides for such selection as follows: 5 for the cultural and educational panel, 11 each for those of agriculture and labour, 9 for the industrial and commercial and 7 for the administrative panel. The character of the panels is described in greater detail in section 4 of the Act than in the Constitution itself. The remainder of Part I of the Act deals with preliminary and general matters, including power to the Minister to make Regulations thereunder. Part II provides for the registration of nominating bodies. Under section 21 of Part III, not less than two Members of Dáil Eireann may nominate a person for election to the Seanad, and no such Member may join in more than one such nomination. Any registered nominating body in respect of any particular panel is entitled to nominate to such panel the number of persons indicated below, and the several nominating bodies entitled to nominate persons to a particular panel may each nominate the same number of persons to such panel, which number is to be ascertained as follows:

(*a*) if the number of nominating bodies entitled to nominate persons to such panel is not less than the number of members of Seanad Eireann to be elected from persons nominated to such panel by nominating bodies, each such nominating body shall be entitled to nominate two persons to such panel;

(*b*) if the number of nominating bodies entitled to nominate as aforesaid is not less than one-half but is less than the whole of the number of members of Seanad Eireann to be elected as aforesaid, each such nominating body shall be entitled to nominate three persons to such panel;

(*c*) if the number of nominating bodies entitled to nominate as aforesaid exceeds one but is less than one-half of the number of members of Seanad Eireann to be elected as aforesaid, each such nominating body shall be entitled to nominate four persons to such panel;

[1] Pp. 162, 163.

(*d*) if only one nominating body is entitled to nominate as aforesaid, such nominating body shall be entitled to nominate to such panel a number of persons equal to twice the number of members of Seanad Eireann to be elected as aforesaid.

Section 23 lays down the method of nomination by nominating bodies, and section 24 provides for the preparation of provisional panels. The method of nomination by Members of Dáil Eireann is that the nomination must be in writing with the required particulars and qualifications for the particular panel and signed by every one of the Members of Dáil Eireann making the nomination.[1]

The Prime Minister (*Taoiseach*) is entitled to nominate not more than 2 persons to the administrative panel. An ex-Prime Minister or an ex-President of the Executive Council (other than the Prime Minister for the time being), or one who has held both these offices, is also entitled to make not more than 2 nominations.[2] The Prime Minister may also nominate to complete sub-panels.[3] The remaining sections in Part III make other provisions in regard to the panels. Part IV deals with the poll and section 36 defines the electorate, and in the case of the first Seanad election the electorate is to consist of the Members of Dáil Eireann (*vide* Article 54 of the Constitution) or, in the case of subsequent Seanad elections, the Members of Dáil Eireann elected at the Dáil election consequent on the dissolution of Dáil Eireann which occasioned such Seanad election. The other component part of such electorate is composed of the persons elected for the purpose by the councils of counties or county boroughs or the former members of such councils, according to the Act.

Ballot papers are sent by registered post to each person on the voters' roll for that election at the address there stated together with a form of declaration of identity,[4] and voting is by post. The other sections of Part IV deal with administrative and other matters in connection with the poll. The resignation of elected Senators is effected in the same manner as hereinafter described in regard to University Senators.

Although it occurred outside the 1937 orbit, it is pertinent to the subject to report that the Senate elections completed on August 18, 1938, proved that the party ticket was the deciding factor at the polls, notwithstanding the fact that the

[1] Sec. 25. [2] Sec. 26. [3] Sec. 29. [4] Sec. 42.

Seanad was intended by the Constitution to be vocational in its composition. Many of the most distinguished candidates nominated by cultural bodies did not receive a single first preference vote. The new Second House consists of 60 Senators, 11 nominated by the Prime Minister, 3 from each of the two Universities, and the remaining 43 selected by an electoral college consisting of all the Members of Dáil Eireann and 7 members from every county and borough council, making a total electorate of 354 persons. For these 43 seats there were 129 candidates.

The election of the 6 University Senators is provided for under the authority of section 18 (6) of the Constitution, by the Seanad Electoral (University Members) Act, 1937, which is divided into four parts, preliminary and general; constituencies, franchise and registration; conduct of elections and miscellaneous. The three schedules deal respectively with the registration rules, the conduct of elections and the counting of votes, the system of election being P.R. with the single transferable vote, and the voting by post. The electorates[1] in respect of the university Senators, for each of the two universities—the National University of Ireland and the University of Dublin—consist of every person registered as an elector for the particular university, and the qualifications for such franchise are that a person must also be an adult citizen of Ireland and a graduate (other than an honorary degree) of the particular university. In regard to the University of Dublin, however, there are the alternate qualifications to a degree, of a foundation scholarship in that university, or, in the case of a woman, a non-foundation scholarship. The resignation of a university Senator is effected by letter to the Chairman (Cathaoirleach) of Seanad Eireann, who must announce such resignation at its next sitting, upon which the resignation takes effect.[2] Sections 31 and 32 make the usual provisions in order to prevent a person being elected to the Senate in more than one capacity.

Ireland (Eire) (Speaker of Dáil Eireann).—Under section 54 (3) of the new Constitution,[3] that Member of the Chamber of Deputies (*Dáil Eireann*) who was immediately before the repeal of the old Constitution Speaker of Dáil Eireann, became *ipso facto* Speaker of the new Chamber, and the Electoral (*Ceann Comhairle Dáil Eireann*, Chairman of Dáil Eireann) Act passed during the year under review in this Volume under the authority of section 16 (6) of the Constitu-

[1] Sec. 7. [2] Sec. 29. [3] *See* JOURNAL, Vol. V, 125-136.

tion, provides that the Member of Dáil Eireann who was Chairman immediately before a dissolution of such Chamber, is to be deemed, without any actual election, to be elected a Member of the Dáil Eireann at the ensuing general election, for the constituency for which he was a Member immediately before such dissolution or, if a revision of constituencies has taken place on such dissolution, for that constituency declared on such revision to correspond to the constituency aforementioned. Subsection (2) of section 3 of this Act provides that whenever an outgoing Speaker is deemed under such section to be elected at a general election a Member of Dáil Eireann for a particular constituency, the number of Members actually elected at such general election for such constituency shall be one less than would otherwise be required to be elected therefor.

Section 4 of the Act lays down the procedure to be followed in relation to the election of an outgoing Speaker, by requiring that the writ for the outgoing Speaker's constituency shall be so worded that it directs the returning officer to cause an election to be held of one less than the full number of Members for that constituency. The Clerk of Dáil Eireann is required to send to such returning officer, and to *Gazette*, a certificate in the prescribed form certifying that the outgoing Speaker did not announce to Dáil Eireann before its dissolution that he did not desire to become a Member of Dáil Eireann at the general election consequent upon such dissolution, and the returning officer is required to include amongst the names of candidates elected the name of the outgoing Speaker.

Section 5 makes provision in case of the death of an outgoing Speaker, and section 6 provides that when an outgoing Speaker is deemed under the Act to be re-elected a Member he shall not be considered to be a candidate at such general election within the meaning of the Constitution or of the Prevention of Electoral Abuses Act (No. 38 of 1923).

Southern Rhodesia (Constitutional).[1]—With reference to the Constitution Amendment Bill outlined in the previous issue of the JOURNAL,[2] a further provision was inserted in the Bill during its subsequent passage through the Legislative Assembly on October 19, by which section 22 of the Constitution was amended by the insertion of the following words after the words " half-pay in sub-section (8) thereof ":

> or that of an officer or member of the Defence Forces of the Colony whose services are not wholly employed by the Colony,

[1] *See also* JOURNAL, Vol. IV, 32, 33.
[2] Vol. V, 48-50.

which indemnifies M.P.'s who were Members of the Defence Force against the consequences of accepting an office of profit under the Crown. The Bill, which became Act No. 22 of 1937, was published in the *Government Gazette* of October 23. The following instruments were published by the Government for general information and came into force from October 22, 1937:

(*a*) Letters Patent dated March 25, 1937 passed under the Great Seal of the Realm, further amending the Southern Rhodesia Constitution Letters Patent 1923 and revoking Articles 79 and 80 and 82 to 89 inclusive, of the Southern Rhodesia Order in Council 1898, and the Southern Rhodesia Order in Council 1920 and (*b*) Additional Instructions of the same date passed under the Royal Sign Manual and Signet, to the Governor and Commander-in-Chief of the Colony.

Southern Rhodesia (Limitation of Debate). — Standing Orders[1] of the Legislative Assembly provide that when Mr. Speaker is in the Chair, Members may not speak longer than 30 minutes upon any question before the House, except in the case of the Minister and Member in charge of Bills or Motions who are not restricted in regard to the length of time they may speak in moving 2 R. of a Bill (or a Motion) and in reply thereto. Such restriction, however, does not apply to Members speaking on the Motion to go into Committee of Supply, the debate upon which is governed by the provisions of S.O. 100 to be referred to later.

In regard to Financial Business,[2] subject to the limitation hereinafter described, full debate is allowed on the Motion to go into Committee of Supply upon the annual Estimates of Expenditure from the Consolidated Reserve Fund, but a day of debate does not include the day or days on which the Financial Statement is made or the days on which the Order for the resumption of debate does not stand first on the Order Paper for the day and is so taken. Further, for the purpose of this Standing Order,[2] 2 days of debate on which the discussion is not continued at the resumption of business at 8.0 p.m. are considered as equivalent to 1 day.

Paragraph (3) of this Standing Order provides that the debate on the Motion to go into Committee of Supply must not exceed 3 days as abovementioned, and at 10.55 p.m. on the last of such days, if Tuesday or Thursday, and at 5.55 p.m. if on any other sitting day, should the debate not have been previously concluded, business must be interrupted by Mr.

[1] S.O. 67 (1). [2] S.O. 100.

Speaker. Should the reply or replies not have then been delivered, Mr. Speaker on such interruption ascertains from the Minister in charge of the Motion to go into Committee of Supply, or in his absence some other Minister, the date upon which resumption of debate is to be set down, in order that such reply or replies may be made. If he thinks fit, however, he may have such resumption set down with precedence over all other business on the first following day upon which Government Business has precedence. When the reply or replies on the debate have been made, Mr. Speaker proceeds to put all such questions as may be necessary to determine the decision of the House on the Motion to go into Committee of Supply.

In Committee of the Whole House, however, the Standing Orders[1] provide that on a Bill, instruction, address or other matter, Members are not allowed to speak to any question for longer than 15 minutes, nor speak for more than one such period consecutively, except in the case of Ministers and Members in charge of Bills or Motions, who are not so restricted. Further,[2] in Committee of Supply, when the Chairman is required to put the Estimates Vote by Vote, or Head by Head, as the case may be, no Member may speak to any such Vote or Head for more than 10 minutes at a time nor address the Committee for more than one such period consecutively; this does not, however, apply to a Minister in charge of the class of Estimates under consideration or when an amendment is proposed by which a Minister's salary is specifically and *bona fide* challenged on a question of policy, when the mover of such an amendment is allowed to speak for a period not exceeding 40 minutes provided that such extended periods shall not be permitted to more than 2 Members on any Vote or Head.

In addition,[3] in Committee of Ways and Means, the details of the proposed method of raising funds is open to discussion, but in such discussion, whether on the original Motion or on any amendment thereof, no Member may address that Committee more than twice on each question proposed from the Chair, nor speak for longer than 15 minutes on each occasion, except the Minister in charge of the proposal to raise funds, or in respect of any alternative proposal, the Member submitting it, in which case neither Minister nor Member is restricted either in regard to the length of time they may address the Committee or the number of times they may speak; provided that should an amendment be proposed

[1] S.O. 67 (2). [2] S.O. 106 (1). [3] S.O. 118.

which in the opinion of the Chairman is submitted merely for the purpose of raising debate, and thus evading S.O. 118, he is empowered forthwith to put the question to such Committee, when it shall be decided without debate whether such amendment shall be allowed.

In regard to the limitation of debate, during the 1937 session a system of " beacon " or " traffic lights " was installed in the House, namely, 2 robots about 8 by 6 inches with three-sided glass panels are placed one at each end of the Clerk's Table and are operated by a switch controlled by the Clerk. The lights are only operated when Mr. Speaker is in the Chair—*i.e.*, for the 40-minute speeches. The " traffic lights " are operated as follows: when a Member rises to speak a green light appears; when he is within 5 minutes of the termination of his period, a yellow light appears, when the time limit is reached a red light, which last-named is the signal for the Member to stop.

The Clerk of the House reports that there exists no doubt s to the convenience of the system to a Member, as the varning light enables him to summarize his speech and make ais points, whereas under the old system he was often caught out by the time limit.

In the Committee of the Whole House, or of Supply or of Ways and Means, however, although the robots could be operated in Committees, it has been found that in the absence of an *automatic* timing device, sand-glasses are more convenient. These are 15- and 10-minute glasses, controlled by the Clerk, who has 3 of each such glasses, in addition to the 2-minute division sand-glass, in front of him. The appropriate sand-glass is turned over as each Member rises to speak. After a little while the Clerk gets to know the Members who are likely to exceed the time limit and no difficulty is experienced in operating the glasses. Both systems are reported as working to satisfaction.

Southern Rhodesia (Remuneration to Members).—On the recommendation of the Committee on Standing Rules and Orders, which Committee also functions as the Internal Arrangements Committee, Mr. Speaker's salary has been increased to £1,000 p.a., and Members' allowances to £400 p.a., with effect from April 1, 1937, in both cases payable monthly, instead of quarterly, as heretofore.

Amalgamation of the Rhodesias.[1]—On November 22[2] a

[1] *See also* JOURNAL, Vols. IV, 30-32, and V, 50-52.
[2] 329 H.C. Deb. 5. s. 1023-1025; *see also* 254 *ib.*, 1471, 1473.

question was asked in the House of Commons as to whether the Secretary of State for Dominion Affairs was in a position to make a statement regarding the question of closer relations between Southern and Northern Rhodesia and Nyasaland, to which the Marquess of Hartington (Under Secretary of State for Dominion Affairs) replied recalling that in 1931 H.M. Government in the United Kingdom had the subject under consideration, and their view was that for some time to come Northern Rhodesia should continue to work out its own destiny as a separate entity, observing the closest possible co-ordination with its neighbours and especially with Southern Rhodesia. As a result of discussions with the Prime Minister of Southern Rhodesia, with the Governor and two unofficial members of the Legislative Council of Northern Rhodesia and with the Governor of Nyasaland, H.M. Government had reached the conclusion that with due regard to their special responsibility for the interests of the natives, consideration should be given in detail to the possibility of further promotion of closer co-operation or association between the three Territories. Some of the subjects for examination are, transport and communications, scientific and technical research and services, labour, especially the inter-territorial migration of labour, trade and economic policy, judicial arrangements, defence, and, so far as international obligations affecting the Territories permit, customs duties. H.M. Government had therefore proposed to advise His Majesty to appoint a Royal Commission to visit the Territories concerned with the following terms of reference:

> to inquire into and report whether any, and if so what, form of closer co-operation or association between Southern Rhodesia, Northern Rhodesia and Nyasaland is desirable and feasible, with due regard to the interests of all the inhabitants, irrespective of race, of the Territories concerned and to the special responsibility of His Majesty's Government in the United Kingdom for the interests of the native inhabitants.

The Report of the Commission, which visited the Territories in question in 1938, has not yet been issued and will be dealt with in the next issue of the JOURNAL.

India (Governor-General in Council).—On September 27,[1] in the Central Legislative Assembly the Member for Commerce and Railways (Hon. Sir Saiyid Sultan Ahmad) moved the following Motion:

[1] India Leg. Deb., Vol. VI, No. 7.

> That this Assembly recommends to the Governor-General in Council that the International Agreement regarding the Regulation of Production and Marketing of Sugar, signed in London on the 6th May, 1937, be ratified by him;

to which an amendment was moved by the Member for United Provinces: European (Mr. J. Ramsay Scott): " That for the original Resolution the following be substituted:

> That this Assembly recommends to the Governor-General in Council that the International Agreement regarding the Regulation of Production and Marketing of Sugar, signed in London on the 6th May, 1937, be not ratified by him and expresses its strong disapproval of the action of the Central Government in agreeing to prohibit the export of sugar by sea except to Burma for the next five years without the knowledge and consent of the Industry.
>
> This Assembly further recommends that the Central Government explore all possible avenues for the export of sugar and take such other steps for the purpose of developing export markets, both by land and by sea, for sugar.

Upon the amendment being put the voting was: AYES, 66; NOES, 52.

Under Indian Legislature Rule 24,[1] the Resolution, in the form in which it was passed, was duly communicated by the Secretary of the Chamber to the Governor-General in Council.

The Amendment being merely a recommendation, the Governor-General in Council was entirely free to accept or reject it, and on November 22, it was announced that the Government of India had informed the Secretary of State of their decision to overrule a recommendation of the Legislative Assembly, which had opposed ratification.

On October 2, the Council of State adopted a Motion identical in form to the original Motion moved in the Legislative Assembly by the then Member of the Government for Commerce and Railways.

India (Opening of Central Legislature).—As a rule there is no formal opening of a Session by the King's Deputy, but copies of the summons to Members of the Council of State and of the Legislative Assembly, in each case signed by the Secretary of the Chamber, are given on the next page.

[1] I.L.R. 24 reads:

> A copy of every Resolution which has been passed by either Chamber shall be forwarded to the Governor-General in Council, but any such Resolution shall have effect only as a recommendation to the Governor-General in Council.

COUNCIL OF STATE

ORDER

SIMLA, *the 19th August*, 1937.

In pursuance of subsection (3) of section 63A of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935, I, Victor Alexander John, Marquess of Linlithgow, hereby require the attendance of the members of the Council of State in the Legislative Assembly Building at Simla at 11 a.m. on Monday, the 13th September, 1937.

By order of the Governor-General.

LEGISLATIVE ASSEMBLY

SUMMONS

NEW DELHI, *the 20th November*, 1937.

His Excellency the Governor-General, in exercise of the power conferred by subsection (2) of section 63-D of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, having been pleased to direct that a session of the Legislative Assembly be held at New Delhi and to appoint Monday, the 31st January, 1938, as the date for the commencement of the said session, you

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are hereby summoned to the said Assembly at the place and on the date aforesaid.

By order of the Governor-General.

The following is the Circular (XXII) issued to all Members of the Council of State, signed by the Secretary of that Chamber, on the occasion of the Governor-General addressing the Indian Legislature:

SIMLA, *the 1st September*, 1937.

SIR,

In continuation of the circular from the Council of State No. XXI, dated the 31st August, 1937, I am directed to state that on the occasion of His Excellency the Governor-General's Address to the Members of the Indian Legislature at 11 a.m. on Monday, the 13th September, 1937, Levee Dress should be worn by Members who are entitled to wear uniform. Others should wear morning dress or the most formal dress of which they are in possession.

I have the honour to be,
Sir,
Your obedient servant.

India (Princes and Federation).—The Constitutional Committee of the Chamber of Princes[1] met on January 25 to consider the questions affecting the States' accession to Federation, with particular reference to the proposals by the Hydari Committee.[1] Most of the 25 representatives present had consultations with the Viceroy's emissaries about the draft Instruments of Accession which were examined in the light of the proposals made by the Hydari and the Punjab States Committees.

The Chamber of Princes, as mentioned in the previous issue of the JOURNAL,[2] consulted independent legal authorities, and one of them in a statement to the *Times of India* said:[3]

> that the Princes' deliberations over Federation had reached a stage where attention was fixed upon the terms of the Instruments of Accession. He said the recent committees, including the Hydari Committee and the Constitutional Committee under the chairmanship of the Maharajah of Patiala, were of the unanimous opinion that the following clauses must be added to them:
>
> 1. A provision that nothing in the Instrument shall affect the Ruler's rights and obligations in relation to the Crown respecting any matter not within the functions of the Federation, and that no Federal legislative authority shall have jurisdiction respecting such Crown rights and obligations.
> 2. A provision that no function respecting Federal matters shall be exercised in relation to the States by any authority other than the Federal authority and in accordance with the terms of the Instruments.
> 3. A provision that the Federal Legislature shall not have power to make laws for States respecting matters specified in a list annexed to the Instrument.
> 4. A fundamental provision referring to the relation of the Ruler to the Federation, declaring that he transfers only certain specific powers, and that other powers, authority and rights are reserved to him. Such a clause when proposed last year in London had been criticized as appearing to attempt to limit the sovereignty of the Crown. This had not been its intention, and it had been redrafted in the hope of

[1] *See also* JOURNAL, Vols. IV, 77-78; V, 53.
[2] *Ib.*, V, 53. [3] *The Times*, March 3, 1937.

meeting this objection. It now read: "Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by the Instrument or by Federal law, the continuance of any of my powers, authority or rights, and the exercise thereto, save as above reserved for me."

On November 1,[1] a question was asked in the House of Commons as to what steps were being taken for producing a complete scheme to be placed before the Princes of India showing how the Federal portion of the Government of India Act would be brought into operation, to which the Under-Secretary of State for India (Lord Stanley) answered that the replies of the States had been received to the Viceroy's invitation to the rulers to specify the limitations on the exercise of the legislative and executive authority of the Federation to which they would wish their accession to be subject, and that the suggestions of the Princes for adapting their individual requirements to the scheme of Federation under the Constitution were still under active consideration.

India (Provincial Autonomy).—References to the new Constitution[2] for India have already been made in previous issues of the JOURNAL[3] and the year under review in this issue marks the introduction of Provincial autonomy in the 11 Governors' Provinces, as well as the separation of both Burma and Aden from India and the supersession of that statutory corporation known as the Secretary of State for India in Council, which had been in existence for nearly 80 years, by advisers appointed by the Secretary of State for India under section 278 of its new Constitution. All these operations came into force on April 1, but Part II of such Constitution, which deals with Federation, has yet to be put into effect. The old central legislative authority for India, therefore, still continues, but both the Council of State and the Legislative Assembly have lost their Burma representatives, and Berar, to which special reference will be made later, and which is now included in the Central Provinces, has been given an elected seat in the Council of State. As a result, however, of the coming into operation of the new Constitution with the exception of Part II thereof, certain changes have taken place, especially with regard to the distribution of subjects to be dealt with by

[1] 328 H. C. Deb. 5. s. 509.
[2] 26 Geo. V, c. 2.
[3] Vols. IV, 61-99; V, 52, 53.

the Central Legislature *vis-à-vis* the Provincial Legislatures (*vide* the Seventh Schedule of the Act). The general elections to appoint the Members of the new Legislative Assemblies in such 11 Provinces, namely, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa and Sind, as well as for the election of the Members of the new Legislative Councils for the 6 bicameral Provinces—Madras, Bombay, Bengal, the United Provinces, Bihar and Assam—took place on various dates in the early part of the year. In some Provinces the voting was carried out on a single day, while in others it took considerably longer. Separate Polling Days were, in some cases, even allotted to various interests and communities in several of the Provinces. More than 5,000 candidates stood for the 1,585 seats in the Provincial Assemblies and 254 to 263 seats in the Legislative Councils of the 6 bicameral Provinces. The electors numbered nearly 30 million, of whom more than $\frac{1}{8}$ were women. For the first time in the history of India *purdah* women exercised the franchise, special voting arrangements being made for them. Motor cars were freely used at the elections, some parties even hiring buses to bring their supporters to the poll; and flags and loud speakers were in evidence. Preliminary elections were held on the basis of the Poona Pact for representation of the scheduled castes.

Many political parties, together with other sections and interests, were represented at the Polls in the several Provinces, but as the political aspect of Parliamentary government does not come within the sphere of this JOURNAL, those of our readers seeking such information are referred to other and more appropriate sources.

It may here be said, however, that, constitutionally, difficulties arose in some of the Provinces, owing to the special powers vested in the Governors under the Constitution, to such a degree that the majority parties in certain Provinces declined to accept office, and consequently minorities had to be called upon by the Crown to form Ministries. Confidence, however, was eventually restored, the minority Ministries resigned, and Ministries representing the majorities in the particular Legislative Assemblies in question assumed office as contemplated under the Constitution, which thereupon proceeded along its normal course.

During this time, the introduction of Provincial autonomy was the subject of much attention at Westminster, both by

Question[1] and Ministerial Statement,[2] as during debate;[3] a memorable message on the subject was issued by the Viceroy,[4] which space does not admit of being referred to here. The footnotes hereto, however, will guide those who wish to pursue these subjects.

As has been already mentioned, amongst the changes in regard to the Provinces was the attachment of Berar to the Central Provinces. This was effected by an Agreement entered into between the Viceroy and His Exalted Highness the Nizam of Hyderabad, India's premier State,[5] following discussions which had taken place before even the Round Table Conferences upon All-India Federation. Berar, which covers about 18,000 square miles and embraces a population of nearly 4 millions, had been under British administration since 1853, when it was temporarily assigned to the East India Company in order to meet certain obligations by the Nizam's Government. In order, however, to meet the repeated claims by the Nizam for the restoration of Berar, the Viceroy (Lord Curzon) in 1902 (the year of King Edward VII's Durbar) negotiated with the father of the present Nizam for a perpetual lease of the territory on payment of Rs. 25 lakhs[6] p.a. The Agreement above mentioned, which was dated October 24, 1936, however, removed all controversies and placed on record the recognition and reaffirmation of the sovereignty of the Nizam over Berar, which, with that part of British India known as the Central Provinces, is henceforth to be administered together as one Province under the Government of India Act, 1935. This Agreement possesses an added interest in that it represents the first Accession of an Indian State to the new All-India Federation, although section 6 of that Constitution does not apply to the Agreement. The Agreement, which was published in a *Gazette of India, Extraordinary*, of November 13, 1936, contains many other provisions, which there is not space to deal with. It is, however, to be noted, in regard to the question of Accession to Federation, that the Agreement provides:

[1] 104 H.L. Deb. 5. s. 867-890; 105 *ib.*, 182-196; 107 *ib.*, 744, 745; 317 H.C. Deb. 5. s. 42, 479, 480, 482, 832; 318 *ib.*, 4, 810, 811, 855; 319 *ib.*, 14, 590; 320 *ib.*, 56, 811, 812; 321 *ib.*, 1, 2, 809, 810, 1611, 1660, 1661, 2535; 322 *ib.*, 35, 38, 361-363, 586, 1398; 323 *ib.*, 1-4, 765, 766, 1249; 324 *ib.*, 12, 13, 650, 1396, 1397; 325 *ib.*, 2-4, 552-557, 813; 326 *ib.*, 22, 30-33; 328 *ib.*, 509; 329 *ib.*, 825, 826, 828, 1660, 1662.

[2] 104 H.L. Deb. 5. s. 867-890; 325 H.C. Deb. 5. s. 554-557.

[3] 103 H.L. Deb. 5. s. 17, 18, 25; 104 *ib.*, 867-890; 105 *ib.*, 408-420 325 H.C. Deb. 5. s. 163-170.

[4] *The Times*, June 22, 1937.

[5] *See* JOURNAL, Vol. IV, 77-78.

[6] 1 lakh=£7,500.

that nothing therein affects the rights of His Exalted Highness with respect to his territories other than Berar, and it is hereby declared that this agreement has effect whether or not His Exalted Highness is pleased to execute or His Majesty is pleased to accept, any such Instrument of Accession to the Federation of India as is contemplated by the provisions of Part II of the Government of India Act, 1935.

The same *Gazette* announces that His Majesty has been pleased to command that the Nizam of Hyderabad and his successors shall henceforth hold the dynastic title of "His Exalted Highness the Nizam of Hyderabad and Berar" in recognition of such sovereignty and that the heir-apparent of the Nizam shall have the title of Prince of Berar. The reigning Nizam has often been referred to both officially and otherwise as our "Faithful Ally," and indeed the pages of Indian history are rich in proof of this attribute.

We now come to the procedure followed at the opening of the new Provincial Legislatures. In the consideration of this subject it should be borne in mind that the status of the Provincial Legislatures even under the new Constitution, although in very considerable advance of that of their predecessors, is not that of a Parliament under what is known as "Responsible Government." Therefore the procedure at the opening of the new Provincial Legislatures is relative, having closer application to constitutional conditions in India.

The Provincial Legislatures first met under the new Constitution on various dates during the period July-September, and while it is not possible to refer separately to the procedure in every Province, certain references will be made to indicate the general course followed. In the first place, the time and place of meeting was fixed by the Governor of the Province under section 62 (2) of the Constitution. In the senior Province—Madras—the Legislative Council and the Legislative Assembly met respectively in the Council Chamber, Fort St. George, and in the Senate House, at 11.0 a.m. on July 14, when, as required by section 67 of the Constitution, each M.L.C. and M.L.A. (to give the suffixes now in use) then made and subscribed to that particular form of Oath of Allegiance laid down in the Fourth Schedule to the Constitution as appropriate to his case. As the President and Speaker had not at that stage been elected and the Governor did not exercise his authority to do so, the Oath was administered by a Member of each House appointed for that purpose by the Governor under section 65 (3) of the Constitution. The

Chairman having previously subscribed to the Oath, before the Secretary of the House concerned, after bowing to the empty Chair took his seat thereon and thereupon administered the Oath to the other Members present. As the Members of the Council of Ministers and those of the Interim Ministry had already taken the Oath before the Governor, the names of the other Members of the House were called out by the Chairman in the order in which they appeared in the alphabetical list of Members. The Members then came up to the Secretary's table and after each taking the particular form of Oath took their seats in the House, which was then adjourned for the day.

The Governor may under section 63 (1) of the Constitution address both Houses assembled together, and such a meeting was held by the Governor of Madras in the Assembly Chamber on August 31.

As regards visitors, tickets of admission to the various galleries, namely the Ordinary Visitors' Gallery, the Ladies' and the Distinguished Strangers' Galleries, were issued on the previous day, in accordance with the rules prescribed therefor.

Under Rule 47 of the Madras Legislative Assembly, Members sit in such order as the Speaker appoints, and, in accordance with the usual practice, the *bloc* of seats to the right of the Speaker was allotted to the Ministers and the Members supporting the Government, that to the left of the Chair set apart for the Members in Opposition. Every Member was provided with a seat to which was affixed a card bearing the name of the occupant to whom it had been allotted, the *blocs* being according to political parties. A similar procedure obtained in the Legislative Council. In each House the Secretary thereof sat at a table in front of President or Speaker (who was neither bewigged nor gowned) as the case may be, in the accustomed manner. The Acting Chairman next informed his particular House of the day appointed by the Governor for the election of President, or Speaker, and stated a previous date and time within which nominations therefor had to be handed in to the Secretary. The same procedure was also followed in regard to the Deputies to such offices.

In the Legislative Councils announcement was made in accordance with the notification sent round intimating that the method by which certain M.L.C.'s (*vide* para 18, Fifth Schedule to the Constitution) would in the first composition of the Legislative Council be required by the Governor to retire before the expiration of the 9-year period in order that

⅓ of the total number of M.L.C.'s retire every third year thereafter, would be postponed until further orders.

In Assam, the Oath of Allegiance was administered by the Governor beforehand to the Members appointed by him to act as Chairmen until the President and Speaker were elected. Therefore after taking the Chair of the Legislative Council on April 8, the Acting Chairman administered the Oath to the other Members present, after which he notified the names of the 4 candidates (together with those of their respective proposers and seconders) for the office of President, and, 2 candidates having withdrawn, the election was proceeded with by ballot, Members putting a cross against the candidate of their selection. The voting papers were then scrutinized and counted and the name of the chosen candidate was announced to the House by the Chairman, who requested him to take the Chair as President. Mr. President was then congratulated upon his appointment, first on behalf of the Ministry and Government and afterwards by Members representing the various political sections in the House. It is interesting to note in these speeches reference to the time-honoured traditions, as they are understood in Parliaments of the British Empire, as attached to the office of Speaker. One Member observed that whatever party or group the new President belonged to before the elections, from the moment of his election to the Chair he was expected to give all Members even-handed support, and a Member representing the "scheduled castes," expressed the sincere wish that the new President would discharge his functions with impartiality and remove any "untouchability." To all the congratulations the new President then suitably responded, after which the House proceeded to the election of Deputy-President, to which office it unanimously elected a Lady Member. A panel of Chairmen was then nominated by the President, after which he read a message from the Governor (for which the President requested all Members to rise in their seats), requiring the attendance of the Members of the Legislative Council on the following day in the Assembly Chamber at 2.30 p.m. A Committee was then formed to draw up Rules of Procedure and the Business of the Session was proceeded with.

In the Assam Legislative Assembly at 11.0 a.m. on the previous day a similar procedure was followed in regard to the swearing-in of M.L.A.'s as has already been described in regard to the Legislative Council of that Province, after which the House adjourned for lunch. Upon reassembling the

election of Speaker was similarly proceeded with; 8 nominations had been sent in, each with the name of the proposer and seconder, whereupon 6 of these withdrew, which left only 2 in the contest. The ballot was also here resorted to, the voting being 56 for and 51 against. The Speaker-elect thereupon took the Chair and was the recipient of congratulatory speeches from various parts of the House, one Member remarking that although no *balance* and *mace*—emblems of *justice* and *fairplay*—were to be seen in the House, they all hoped that the new Speaker would constantly have a picture of those two emblems before him—the Member adding: " From this very moment, Sir, you belong to no party. Henceforth you are no man's man, but every man's man." Another Member (indeed it would be invidious to make any distinction by mentioning Members by name) during the course of his speech said:

> Mr. Speaker, we are now entering upon a new era. We have got our own traditions to create, and on your judgment, on your ruling, on your decision, will depend the growth, the power, the justice and influence of this House.

Upon the conclusion of the congratulatory speeches, Mr. Speaker thanked the House in words which were in full accord with the best Parliamentary traditions.

The new Speaker was soon, however, faced with responsibility, for a Motion of no confidence in the Government was immediately moved, which he ruled out of order, and notice was given. The Chamber then proceeded to the election of Deputy-Speaker, following the same procedure as upon the election of Speaker. The Speaker then read the Governor's message requiring the attendance of the two Houses in the Legislative Assembly Chamber on the morrow.

At the joint meeting of the two Houses on April 9, which assembled at 2.30 p.m. in the Assembly Chamber, the Governor delivered his own opening speech, at the conclusion of which His Excellency, accompanied by his personal staff, then left the Assembly Chamber and the Speaker adjourned the House until 3.5 p.m. the same afternoon, when Business was entered upon.

Upon the return of the Members of the Legislative Council to their Chamber with their President, he informed the House that in the exercise of the Governor's powers under section 62 (2) (*b*) of the Government of India Act, 1935, the Governor had declared that at the conclusion of the meeting of the Council that day, it would stand prorogued.

At the election of Speaker in the Legislative Assembly of the new and unicameral Province of Orissa, there was only one nomination and the Acting Speaker declared the candidate duly elected, after which he was conducted into the House by the Secretary, Assistant Secretary and Ministers. Here the proceedings were more spectacular, for on the new Speaker's assumption of the Chair the *Bande Mataram* was sung, the House standing. The Speaker was then the object of many congratulatory speeches upon his appointment, to which he suitably responded in full accord with the best Parliamentary traditions. After the transaction of formal business, the House was adjourned until August 30, at 11.0 a.m.

Space will not admit of information being given in this issue as to the other business taken in the various Provincial Legislatures on the opening days, such as the salaries of Ministers, Members, and their travelling allowances, the new Rules of Procedure, Library Rules, etc. These will be reserved for a future issue of the JOURNAL.

Such description, however, as has been given, will serve to show broadly the procedure followed by the new Indian Provincial Legislatures in connection with their opening proceedings.

Madras (Parliamentary Prayers).—Ever since July 14, 1937, when the Legislative Assembly of this Province, under the new Constitution for India, met for the first time, with the exception of January 28, 1938, the first two to four lines of the following Bengali song has been sung in the House by one of the Members, all other Members present, including the Speaker, standing:

॥ वन्दे मातरम् ॥

सुजलां सुफलां मलयज शीतलां
सस्यश्यामलां मातरम् ।
शुभ्र-ज्योत्स्ना पुलकित यामिनीम्,
फुल्लकुसुमित-द्रुमदलशोभिनीम्,
सुहासिनीं सुमधुरभाषिणीम्
सुखदां वरदां मातरम् ॥

(*Transliteration in English.*)

Vandē Mātaram !
Sujalām, Suphalām,
Malayaja Sēētalām,
Sasya Syāmalām,
Mātaram !
Shubhra Jyotsnā Pulakita Yāminēēm,
Phulla Kusumitā Druma Dala Shōbhinēēm,
Suhāsinēēm, Sumadhura Bhāshinēēm,
Sukhadām, Varadām, Mātaram.

(*Translation in prose by Sri Aurobindo Ghose.*)

I bow to thee, Mother,
richly-watered, richly-fruited,
cool with the winds of the south,
dark with the crops of the harvests,
the Mother !
Her strands rejoicing in the glory of the moonlight,
her lands clothed beautifully with her trees in flowering bloom,
sweet of laughter, sweet of speech,
the Mother, giver of boons, giver of bliss !

Objection, however, was taken to the singing of this song on September 23, by a Mussalman Member, upon which Mr. Speaker justified it on the analogy of prayers in other Parliaments before the commencement of their proceedings and described the song as a prayer common to all, being the prayer of their motherland. At the same time Mr. Speaker remarked that he was thinking of supplementing it by other forms of religious prayer, and on December 21 a prayer from the Holy Koran was recited by a Moslem Member after the singing of the *Bande Mataram*, and on the January 28 above-mentioned, which was a Friday and as such sacred to Mussalmans, there was only a Mussalman prayer, recited by another Moslem Member.

Since January 27 Mr. Speaker has supplemented the singing of the *Bande Mataram* song by the following prayer in English, read by Mr. Speaker himself:

> O Eternal and Almighty God,
>
> We, the Representatives of the People of the Madras Presidency assembled here in Parliament, fervently pray that our hearts may be so enlightened that we may be freed from all passions and prejudices, and that our

minds be so constituted that in our deliberations we may not purpose or decide otherwise than in the best interests and welfare of the People.

We heartily pray that we may possess wisdom and understanding to pass Laws and Resolutions for the maintenance of Truth and Justice, wealth, health and happiness of the People, and that we may also possess strength and determination to devote ourselves to the service of our motherland and harness all energies and resources for the attainment of Freedom and Peace.

Om Santih, Santih, Santih.

Mr. Speaker has ruled that Members are not bound to be in attendance during prayer, and to facilitate the attendance of Members who are not interested in these prayers, bells are rung 3 minutes before the commencement of a sitting and also again after the completion of the prayer, so that Members remaining outside the Chamber may know that prayers are over and the business of the House is being begun.

Owing, however, to the objection raised by some Moslem Members, Mr. Speaker convened a Conference representative of various sections of the House, which met on December 22 to discuss the question of prayer in the Legislative Assembly. No decision was arrived at, but it is believed that the Conference would meet again to continue the discussion.

Northern Rhodesia (Unofficial Members).—On December 8,[1] in reply to a question in the House of Commons as to what changes had recently been effected in Northern Rhodesia, the Secretary of State for the Colonies (Rt. Hon. W. G. A. Ormsby-Gore) said that after consultation with the Governor, a proposal made by the elected Members of the Legislative Council of that Colony had been approved of, by which the numbers of official and unofficial Members of such Council be equalized by the addition of a nominated unofficial Member to represent Native interests and the reduction by one of the number of official Members. The practice had also been approved of, by which elected Members would be consulted whenever possible on major questions of administration and financial policy and serve as members of various advisory boards and be represented at the annual conference of Provincial Commissioners. The new nominated Member above-mentioned would be included in this consultation.

[1] 330 H.C. Deb. 5. s. 378.

Ceylon[1] (Governor's Powers).—On November 3, 1936, the Minister for Home Affairs (Hon. Sir D. B. Jayatilika) introduced into the State Council a Motion to approve the new scale of salaries for non-new entrants of certain grades in the Police, which was rejected.

On June 1, 1937, the Supplementary Estimate to give effect to such new scales was introduced by the Hon. the Financial Secretary (one of the three Official Secretaries to the Government) under Article 22 (1), *(a)*[2] of the Constitution, upon which debate was adjourned on May 18, June 1 and 3.

On July 13, 1937,[3] His Excellency addressed the following Message to the State Council:

QUEEN'S HOUSE, COLOMBO,
June 30, 1937.

SIR,

I have the honour to refer to the Supplementary Estimate for Rs.47,788 which the Acting Financial Secretary, on my authority and on my instructions, proposed to the State Council

[1] *See also* JOURNAL, Vols. II, 9-10; III, 25-26.
[2] Article 22:

Governor's powers in matters of paramount importance and matters essential to give effect to the provisions of this Order.

22. (1) If the Governor shall consider that it is of paramount importance to the public interest, or essential to give effect to any of the provisions of this Order, that any Bill, Motion, Resolution, or Vote which the Council is empowered to pass, in the exercise of either its legislative or its executive functions, should have effect, then in such case, notwithstanding any of the provisions of this Order or of any Standing Orders made under this Order:

(*a*) it shall be lawful for any Officer of State, acting by the authority and under the instructions of the Governor, to propose any such Bill, Motion, Resolution or Vote to the Council and the same shall have priority over all other business of the Council;

(*b*) the Governor may declare that any such Bill, or any part of any such Bill or any such Motion, Resolution, or Vote is of paramount importance or is essential to give effect to the provisions of this Order, and thereupon such Bill, or part of a Bill, Motion, Resolution or Vote shall have effect as if it had been passed by the Council. Such declaration may be made by the Governor by message addressed to the Speaker or by an Officer of State, acting by the authority and on the instructions of the Governor, either before or after the votes of the members have been taken.

(2) Any Bill which shall have effect, in whole or in part, by reason of a declaration made by the Governor in accordance with this Article, shall be expressed to be enacted by the Governor and, upon being signed by the Governor, shall be of the same force and effect as though it had been passed by the Council and had received the Governor's assent and shall be subject to disallowance by His Majesty in like manner; and all the provisions of this Order which relate to Bills passed by the Council, or to the assent of the Governor to such Bills, shall apply to Bills enacted by the Governor in accordance with this Article, or to the signing of such Bills by him, as the case may require.

[3] Ceylon Debates, 1937, 1547.

on May 18, 1937, for the purpose of securing the necessary provision to give effect to certain changes of the non-new-entrant scales of salary of the gazetted ranks of the Police. As I considered that it was of paramount importance to the public interest that this vote should have effect, it was proposed to the State Council under Article 22 of the Ceylon " State Council " Order in Council, 1931. It has been reported to me that on three occasions, namely, May, 18, 1937, June 1, 1937, and June 3, 1937, the consideration of the vote was deferred on a Motion for the adjournment of the debate thereon. These repeated adjournments have had the effect of postponing unduly the consideration of the vote.

2. I accordir gly by this message addressed to you, as the Speaker of the State Council, declare the vote proposed by the Acting Financial Secretary to be of paramount importance, and I request you to inform the State Council at its next meeting, that I have made this declaration.

I have the honour to be, Sir,
Your Obedient Servant,

R. E. STUBBS,
Governor.

The Honourable The Speaker,
State Council.

But upon the Speaker announcing the " second item on the Agenda " for the day, a Member questioned the right of the Speaker to read the Message and another Member questioned the Message for other reasons.

Mr. Speaker, however, during the course of his Ruling[1] said:

If the Governor considers any vote which is of paramount importance to the public interest should have effect then: under Article 22 (1) (*a*) he gets an Officer of State to propose such vote to the Council; under Article 22 (1) (*b*) he is empowered to make a declaration that such vote is of paramount importance and thereupon any such vote shall have effect as if it had been passed by the Council notwithstanding the provisions of Article 21. It is clear from the provisions of this Article that the proposal should be submitted to the Council by way of Bill, Motion. Resolution or Vote, and a decision thereupon should be given either by a majority of votes or by the special power of declaration which the Governor is empowered to make under Article 22 (1) (*b*).

In the present case the vote was submitted to Council for consideration and decision under Article 22 (1) (*a*) on the 18th May, 1937, and the Motion is still pending in the Orders of the Day. The Governor now by his message addressed to the Speaker under Article 22 (1) (*b*) makes a declaration that this " vote is of paramount importance and shall have effect as if it had been passed by the Council." This declaration overrides the normal procedure under Article 21 for obtaining a decision of the

[1] *Ib.*, 1546, 1547.

> Council on this Motion by a majority of votes and has the same effect as if the Council had passed the vote.
> In my opinion the Governor is entitled to make his declaration during the pendency of the Motion introduced under Article 22 (1) (*a*). The words " either before or after the votes are taken " are clear and unambiguous and do not mean immediately before or after the votes are taken.

Mr. Speaker therefore concluded by saying that it was his duty as the medium of communication between His Excellency the Governor and the Council to read the Message, which he did, and at its conclusion stated as follows:

> Upon the reading of this Message item No. 8 will have the same effect as if it had been passed by the Council.

The Ruling was, however, questioned on July 27, 1937,[1] by the Member for Dumbara (Mr. A. Ratnayake), by means of the following Motion, which was agreed to:

> " In the opinion of this House the ruling of the Speaker on July 13, 1937, on the point of order raised by the hon. Member for Kandy, is incorrect, and in its place there should be substituted a ruling that a Message purporting to certify as of paramount importance any Bill or any part of such Bill or any Motion, Resolution or Vote should be read by the Speaker or by any Officer of State only at the conclusion of the discussion on such item either just before or just after the votes of the members have been taken."

Constitutional Amendment.[2]—On December 9, 1937,[3] a question was asked in the House of Commons as to whether the Secretary of State for the Colonies had considered the memorial prepared by a Committee in Ceylon, asking for the appointment of a Royal Commission to inquire into the working of the Ceylon Constitution,[4] but the Minister (Rt. Hon. W. G. A. Ormsby-Gore) replied that he was not in a position to make any statement.

On December 13,[5] the same Minister in the House of Commons was asked what representations he had received alleging the unsatisfactory working of the Ceylon Constitution, and whether there existed any considerable demand by the citizens of Ceylon for fundamental changes, and whether he was contemplating any changes in the near future. The Minister replied that he had received representations from a

[1] Ceylon Deb. July 27, 1937. 1757.
[2] *See also* JOURNAL, Vols. II, 9-10; III, 25-26.
[3] 330 H.C. Deb. 5. s. 596.
[4] The Ceylon (State Council) Order in Council, 1931.
[5] H.C. Deb. 5. s. 808 to 810.

number of societies and individuals in Ceylon suggesting changes in its Constitution, which he gathered were fairly widespread, although there was no general agreement as to the nature of the amendments desired, but the Governor had been asked to furnish a report on the subject. To supplementary questions the Minister replied that he had had representations about the Committee system, the representation of minorities and a variety of subjects arising out of the Constitution.

Certain correspondence relating to the enactment of the Ceylon (State Council) Amendment Order in Council, 1937, was recently published in Ceylon as an official paper.[1] The correspondence opens with a letter dated December 18, 1937, from the Governor to the Board of Ministers transmitting the Secretary of State's Despatch, Ceylon No. 763 of November 25, which refers to the memorandum addressed to the Governor by the Board of Ministers on March 19, 1937, and the previous memorandum therefrom dated April 21, 1933, as well as to a number of memorials from important communities, societies and individuals in the Island. The representations are grouped as follows:

(1) a demand for some relaxation or diminution of the special powers of the Governor;
(2) alteration in the method of selection of Ministers, and in the relations between Ministers, Executive Committees and the State Council;
(3) changes in the arrangements for the representation of minority communities; and in
(4) the franchise.

As regards (1) the Secretary of State expressed himself as in entire accord with his predecessors that the time was not ripe for any relaxation of the powers of the Governor, but that they required to be more clearly defined. In regard to (2), (3) and (4) the Minister realised the desirability of some modification of those provisions of the Constitution which have not proved in practice so successful as had been hoped by their originators and invited the Governor's recommendations, after ascertaining the views of all sections in the Island thereon. The Secretary of State said, however, that the question of the Governor's powers was one of more immediate urgency. The Secretary of State then went on to refer to the attempts which had been made by the State Council to deprive the Governor of his powers of appointment, promotion and disciplinary control of public officers vested in him by the Ceylon (State

[1] Ceylon Government Press, Colombo, 1938.

Council) Order in Council 1931.[1] Reference was then made to the powers under the Order in Council reserving to the Secretary of State the final decision in all matters affecting the salary, etc., of all public officers in Ceylon whose appointment was subject to his approval. In order to enable the Governor to exercise his responsibilities under the Order and to enforce the Secretary of State's decisions under Article 87, provision is made in Article 22 for effect to be given to the measures which the Governor considers essential. The Order in Council prescribed the observance of certain formalities preliminary to the exercise by the Governor of his legislative powers. The necessity, however, for a declaration of paramount importance in cases not covered by Article 87 (4) had tended to limit the Governor's powers in a measure not contemplated. He therefore felt it necessary to adopt provisions based upon Section 44 of the Government of India Act, 1935,[2] and to give the Governor powers of legislation to be exercised when he considers it necessary " in the interests of public order, public faith or other essentials of good government." His Majesty would therefore be advised to amend Article 22 of the Ceylon (State Council) Order in Council. The Secretary of State, in conclusion, stated that he did not intend to diminish in any way the legitimate exercise of the powers given to Ministers or to the State Council by the Order in Council of 1931, but only to prevent the encroachment on the powers which it was intended by that Order and by the recommendations of the Special Commission to reserve to the Governor and to the Secretary of State.

The Governor then by letter[3] addressed to the Chairman of the Board of Ministers forwarded for the information of such Board, copy of the Secretary of State's Despatch, Ceylon No. 820 of December 16, 1937, transmitting copies of the Order in Council amending the Ceylon (State Council) Order in Council, 1931, the Secretary of State asking the Governor to inform him the date on which such Order was to be brought into force.

The Ceylon (State Council) Amendment Order in Council[4] revokes Articles 22 and 23 of the principal Order[5] and substitutes two new Articles embodying the following provisions:

[1] Articles 86 and 87 which deal respectively with—(86) the appointment, promotion, transfer, dismissal and disciplinary control of public officers vested in the Governor with power of delegation; and (87) the preservation of conditions of service of public officers.

[2] 26 Geo. V, c. 2. [3] No. C. 34 dd. Jan. 6, 1938.

[4] Article 2. [5] Ceylon (State Council) Order in Council, 1931.

Article 22 empowers the Governor whenever he considers it necessary in the interests of public order, public faith, or other essentials of good government, or to give effect to any of the provisions of this Order, that provision should be made by legislation, by message (which is to have priority and to be read at the next Council meeting) to explain to the State Council addressed to its Clerk the circumstances which in the opinion of His Excellency render legislation necessary, and either—

(*a*) enact forthwith, as a Governor's Ordinance, a Bill containing such provisions as he may consider necessary; or

(*b*) attach to his message a draft of the Bill which he considers necessary.

Where the Governor takes such action as is mentioned in paragraph (*b*) he may at any time after a period of one month reckoned from the date upon which he signed the message, enact, as a Governor's Ordinance, the Bill proposed by him to the State Council either in the form of the draft attached to the message or with such amendments as he deems necessary, but before doing so he shall consider any address which may have been presented to him within the said period by the State Council with reference to the Bill or to amendments suggested to be made therein.

Any such Ordinance (which is expressed to be enacted by the Governor) upon signature is to be of the same force as an Ordinance of the Council and to be subject to the power of disallowance.

Article 23 requires the Governor to report to the Secretary of State the reasons for the enactment of a Governor's Ordinance, and should any member object to any such Ordinance enacted under paragraph (*a*) above mentioned, within seven days of the reading of the message, he may submit to the Governor a statement in writing of his reasons for so objecting, whereupon the Governor appends to his report a copy of such statement and in respect of any such Governor's Ordinance under paragraph (*b*) above mentioned a copy of any address above referred to.

Article 3 of the Amending Order requires the presence of a quorum upon the reading in the Council of such a Governor's Message and Article 4 repeals Article 87 (4) of the principal Order, which Article deals with the preservation of conditions of service of public officers, and substitutes the following:

(4) Any provision necessary in order to preserve rights or privileges which by this Article may not be varied without the approval of the Secretary of State shall, to the extent required by any decision of the Secretary of State, be deemed to be necessary to give effect to the provisions of this Order within the meaning of Article 22.

The Board of Ministers then, through the Governor, asked the Secretary of State to stay the operation of the new Order

until they had had the opportunity of submitting their views.[1] To this the Governor replied by informing the Board of his duty to bring an Order of His Majesty in Council into operation immediately after its receipt and stayed his hand in regard to its promulgation until the reading of the despatch in the State Council, at the same time expressing his regret that the terms of the Order had " through some agency unknown to me appeared in the local press before the communication of the despatch to the State Council."

To this letter of the Governor, the Acting Vice-Chairman of the Board of Ministers replied on January 21, 1938, stating that the Order in Council represented a definite infringement of the rights and privileges hitherto enjoyed by the State Council and that no action taken by the State Council was of sufficient gravity to justify the Order in Council; and stating that " It is our duty therefore to advise Your Excellency that in the public interest the Order in Council should be withdrawn." The Governor was asked to transmit these representations by cable to the Secretary of State, which was duly done on the date abovementioned; the Governor, by despatch No. 37 four days later, reporting what he had done and reciting the facts of the situation. The Governor also forwarded by despatch No. 52 dated January 29 *idem* a Memorandum by the Acting Minister (Mr. G. G. Ponnambalam), who did not share the views of his colleagues.

The last letter in the correspondence is a despatch No. 7(dated February 16, 1938, from the Secretary of State to th Governor reciting the facts in connection with the subje t and saying that it had long been clear to his predecessors and to himself that there was a tendency on the part of certain elements in the State Council to encroach on the Governor's rightful powers, especially in relation to the public service. The despatch concluded by stating that the time was not ripe for any diminution of the powers reserved to the Governor and the Secretary of State by the Order of 1931 and that he could not consider its withdrawal; but at the same time the issue of the Order in no way prejudiced the consideration of any proposals which Ministers might put forward for the amendment of the Constitution in other directions, provided that no impairment of the Governor's powers was involved.

Motions of protest against the action of the Secretary of State in advising His Majesty the King to promulgate the Ceylon (State Council) Amendment Order in Council, 1937,

[1] Letter No. B.M. 29/31 dd. Jan. 13, 1938.

were discussed at great length[1] in the State Council on January 18 and 19 and on March 1, 2, 3 and 4, 1938, on which last mentioned date the following motion was negatived on division:

> That this House emphatically protests against the action of the Secretary of State in advising His Majesty the King to promulgate the Ceylon (State Council) Amendment Order in Council, 1937, without giving this Council and the country an opportunity of expressing their views and respectfully requests His Majesty the King to repeal this Order which is calculated to curtail the powers and privileges granted to this Council and the country under the Ceylon (State Council) Order in Council, 1931, and has undermined the confidence of the people in British justice and fair play.

On June 1, 1938, the following Motion moved by the Member for Balapitiya (Mr. F. de Zoysa) was carried:

> " In the opinion of this Council the ' moderate improvement of the salaries of police officers ' proposed in the Motion which was rejected by this Council on November 3, 1936, is not of paramount importance and should not be certified by His Excellency the Governor under Article 22 of the Ceylon (State Council) Order in Council, 1931."

Air-Mail Rates.—Members of the Society are asked to note that air-mail is compulsory for letters to South Africa from the countries mentioned below, and the rates are as follows:

From.	*Per ½ oz.*
United Kingdom	1½d.
Canada	6 cents.
Australia	5d.[2]
New Zealand	1½d.[2]
India	2½ annas.
Ceylon	20 centimes.

October 29, 1938.

[1] Ceylon Deb. 1938, 43-68; 621-692; 665-704: 707-746; and 748-756.
[2] With option of surface mail at 2*d. per oz.*

II. THE REGENCY ACT, 1937 [1]

BY THE EDITOR

NORMALLY any references in the JOURNAL to constitutional movements or unusual instances of Parliamentary procedure occurring in the Parliaments of the Empire during the year under review in each issue, are dealt with under "Editorial." In this case, however, even an outline on the subject was found to be too lengthy for treatment in that manner.

Upon a perusal of the debates and proceedings of the Imperial Parliament in connection with the passage of this Measure through the Houses of Lords and Commons, two factors emerge as prompting its introduction — namely, the new situation created by a change in the occupant of the Throne and the desire for a comprehensive scheme in regard to the question of Regency, in place of dealing separately with each case as it arose.

In the Royal Message to both Houses, later translated into the Preamble of the Bill, His Majesty, among other matters, referred to it being:

> within your recollection that during my beloved father's reign it became necessary to make temporary provision to meet the difficulties which arose in relation to the exercise of the Royal authority at the time of his illness in the year 1928 and of his last illness in the month of January, 1936;

and that:

> My father had, after his illness in the year 1928, given much thought to the inconvenience which resulted, or might result, from the absence of statutory provision for dealing with any incapacity which might overtake the Sovereign, with the Accession of the Sovereign during infancy, and with the absence of the Sovereign from the realm, and it was his intention, if he had lived, as it was also the intention of my predecessor to address a message to you drawing attention to the matters to which I have referred.

His Majesty recommended that Parliament should take into consideration the making of permanent provision for the above purposes.

It is not proposed to go into the whole question or history of Regency in relation to our Sovereigns, but to take the reader with us in the observation of the passage of this Bill through both Houses at Westminster.

[1] 1 Edw. VIII and 1 Geo. VI, c. 16.

First, the Bill[1] originated, as has been seen, upon a written Message from the King; and being under Royal Sign Manual, the Message to the Commons was brought in this case by the Prime Minister (then the Rt. Hon. Stanley Baldwin), who appeared at the Bar, where he informed Mr. Speaker that he had a Message from the King to that House signed by His Majesty. Whereupon he was desired by Mr. Speaker to bring it up to the Chair, where he delivered it to Mr. Speaker, who read it at length to the House, all Members being uncovered, as is the case with messages from the Crown under the Sign Manual, except in certain instances.

In the Lords the procedure was the same in that all Peers were uncovered, but the Message was delivered by a Peer charged therewith, who acquainted that House from his place that he had a message under the Royal Sign Manual, " which His Majesty had commanded him to deliver to their Lordships."[2] In this instance the bearer of the Message was the Lord Chamberlain (Rt. Hon. the Earl of Cromer, G.C.B., etc.). The Lord Chancellor then read the Message at length, after which t is read " or supposed to be read by the Clerk."[3] The Message was delivered to both Houses on January 26,[4] and immediately following the reading of the Message in the Commons the Prime Minister moved that an humble Address be presented to His Majesty assuring Him that the House would " with the least possible delay " proceed to the discussion of the important question and provide such measures " as appear necessary or expedient for securing the purpose to which His Majesty has alluded." Question was then put and agreed to *nemine contradicente* and the Address in reply was ordered to be presented to His Majesty by Privy Councillors or Members of His Majesty's Household.

In the Lords the Message was taken into consideration on the following day,[5] when a similar Address, but in other words, was agreed to *nemine dissentiente*[6] (to use the phrase peculiar to that House), the said Address to be presented to His Majesty " by the Lords with White Staves." The Lord Privy Seal (Rt. Hon. Viscount Halifax, K.G., etc.), in moving for the Address in the Lords, said: " Their Lordships will, I understand, receive in due course from another place the Bill con-

[1] H.C. 68. The Bill does not of course alter " the law touching the Succession to the Throne or the Royal Style and Titles " to quote from the Statute of Westminster (22 Geo. V, c. 4).

[2] May 13th Ed., 596, 597. [3] 66 L.J. 958 (*vide* May, *Ib.*).

[4] 104 H.L. Deb. 5. s. 1, 2; 319 H.C. *ib.*, 766-767.

[5] 104 H.L. Deb. 5. s. 2. [6] *Ib.*, 8-9.

taining the proposals of His Majesty's Government to meet His Majesty's wishes."

The full texts of the Royal Message and the Addresses in reply thereto from both Houses will be found upon reference to the respective *Hansards* as given in the footnotes hereto.

The Bill was presented in the Commons on January 27,[1] and ordered to be read a Second time on the following day. As reference for those who wish to study this subject in detail, the dates of the subsequent stages in the two Houses were as follow: *in the Commons :* 2 *R.* February 2;[2] *C.W.H., Cons.* and 3 *R.* 4, *idem*;[3] *in the Lords :* 2 *R.* February 10;[4] *C.W.H.* 16, *idem*;[5] *Cons.* 18 *idem*;[6] and 3 *R.* 23 *idem*.[7]

The Lords' amendments were considered and agreed to by the Commons on March 1;[8] and *R.A.* was signified by Royal Commission in the Lords on March 19, Mr. Speaker announcing it upon his return to the Commons on the same day.

The Minister in charge of the Bill in the Commons was the Secretary of State for the Home Department (Rt. Hon. Sir John Simon, G.C.S.I., K.C., etc.), who, in moving the Second Reading, referred to some occasions in Parliamentary history when Regency Bills had passed into law, such as in the reigns of Henry VIII (1536), George II (1751), George III (1811) William IV (1830) and George V (1910), giving briefly reasons in each case. The Minister during the course of his speech, which is both instructive and illuminating to the constitutional student, suggested two relevant reflections in connection with the subject, first, that their ancient common law proceeded on the assumption that the Sovereign was always available there in that country, in good health of body and mind and therefore ready promptly to discharge day by day his Royal functions —sometimes called by the old lawyers, " the doctrine of perfection "—which led to the conclusion that however youthful the Monarch might be, he was treated in law as always old enough to undertake and discharge his duties; and that when occasion arose, or seemed likely to arise, when, either from his ill-health or his incapability of carrying out his duties, the common law had then always to be supplemented by legislation.

The second reflection was that Regency Bills had always been passed in connection with or in contemplation of some special case. The present Bill, however, sought to make a general provision, applicable as occasions arose, and so avoid

[1] 322 H.C. Deb. 5. s. 946. [2] *Ib.*, 1449-1475. [3] *Ib.*, 1805-1853.
[4] 104 H.L. Deb. 5. s. 88-99. [5] *Ib.*, 150-169. [6] *Ib.*, 225-226.
[7] *Ib.*, 279-282. [8] 321 H.C. Deb. 5. s. 107-111.

legislation having to be passed in a hurry on each occasion as it arose. The three contingencies, continued the Minister, involved in the Bill were: (1) the minority of the Sovereign on his accession; (2) any incapacity of the Sovereign occurring during his reign; and (3) his absence from the Kingdom. The Minister remarked that the range of the Measure had not overlooked the principles recognized as governing the relation between laws passed by the United Kingdom Parliament and those of the Dominions. The Bill dealt with the exercise of the Royal functions, and when an Act it would be effective in the United Kingdom and the Colonies. The question of introducing legislation of this kind had been informally discussed with the Dominion Prime Ministers in London in May, 1935. The provisions contemplated were explained and discussed with such Prime Ministers at that date and found generally acceptable to them. So far as the Dominions were concerned, continued the Minister, each such Government would have to decide whether any legislation was necessary. Different lines were therefore being followed from those in the Abdication Act[1] of December, 1936. That Act was a law "touching the Succession to the Throne"—to quote from the Statute of Westminster,[2] therefore, observed the Minister, it was proper that in the preamble to the Abdication Act, Dominion assent should be indicated. But the present Bill was only a piece of machinery to be used, if, for one reason or another, the existing Sovereign could not for the moment discharge all his normal functions. After consultation with the Dominions, it had been agreed that it would be better and simpler to take the course of legislating there and then in the United Kingdom Parliament (or as it is more commonly referred to in the Dominions, "the Imperial Parliament") in terms of the Bill before it, and of recognizing that the Dominions would prefer to take no positive action unless and until the occasion arose.

The Minister further remarked that there was a very good practical reason why the course, in which the Dominion Governments and the Imperial Government concurred, should be followed, and it was that a Dominion which had a Governor-General got its ordinary day-by-day business done in the name of the Crown by the executive action of the Governor-General. The state of health or absence of the Sovereign did not hold up the machinery at all. Therefore, continued the Minister,

[1] 1 Edw. VIII, c. 3.
[2] 22 Geo. V, c. 4; *see also* JOURNAL, Vol. V, 63-73.

the incapacity of the Sovereign for the time being to discharge his day-to-day functions had not the importance to the Dominions that it had to the United Kingdom. As was remarked in a leader of *The Times*,[1] in each self-governing Dominion the King's status is exactly the same as in the United Kingdom; yet in each he is as a rule physically absent, and his powers are exercised by a personage who is none the less a Regent of the Dominion because his official title is Governor-General.

When the Question for the Second Reading was put to the House, a division was claimed, the voting being: Ayes, 305; Noes, 1.

In dealing with the details of the Bill and its amendment during its passage through the two Houses, certain amendments were made, some of which may not be without special interest.

Clause 1 (Regency while the Sovereign is under eighteen) appointed a Regent if the Sovereign on Accession is under eighteen years of age, which is the age which has always been acknowledged as the attainment of " majority " in the case of our Sovereigns. This Clause should be read with Clause 3.

Clause 2 (Regency during total incapacity of the Sovereign) provided for the Regency during the total incapacity of the Sovereign from whatever cause, and dealt with the second of the three contingencies, already referred to, namely the possibility of the total physical, or it might be mental incapacity of the Sovereign during his reign, six persons being named in the Clause as the persons, " three or more " of whom are empowered to " declare in writing that they are satisfied on the evidence of physicians or otherwise, that the Sovereign is by reason of infirmity of mind or body wholly incapable for the time being of performing the royal functions," and establish the necessity for a Regency being created. Subsection (2) of this Clause required such declarations to be made to the Privy Council and " communicated to the Governments of His Majesty's Dominions and to the Government of India."

The six persons above mentioned were, the wife or husband of the Sovereign, the person (excluding anyone disqualified under the Act from becoming Regent) next in succession to the Crown, the Lord Chancellor, the Speaker of the House of Commons, the Lord Chief Justice of England, and the Master of the Rolls. The Commons, however, in Committee increased the " three or more " to four or more, but on Report reversed its decision and excluded the person next in succession

[1] January 29, 1937.

to the Crown on the ground of the danger of personal interest. Certain other amendments to the Clause were made in both Houses as to the evidence upon which the five persons are to act. The Lords further amended the Clause in regard to the availability of the Sovereign to discharge the royal functions.

Clause 3 (The Regent) provided that the Regent must be the next person in the line of succession to the Crown being of full age, namely (unlike that laid down in the case of the Sovereign) twenty-one years and who is subject to no disqualification, such as not being a British Subject, not resident in some part of the United Kingdom nor a person who would be disqualified under the Act of Settlement.[1] Residence in the United Kingdom, however, was altered by the Commons to " domiciled in some part of the United Kingdom."

Clause 4 (Oaths to be taken by, and limitation of power of, Regent) requires to be read with the Schedule to the Bill setting out the three Oaths, namely, of allegiance, of office, and of the maintenance of the Protestant faith, which last named was amended during the close review of the Bill in he Lords in order to make the position of England also clear. ı the Bill as drafted this oath was in a more expanded form ıan in the Regency Act of 1910,[2] due to the alteration in the ıccession Oath consequent upon the passing of the Church of Scotland Act of 1921[3] and to the ensuing union of the Church of Scotland and the United Free Church. After the amendment made by the Lords, and concurred in by the Commons, this Oath now reads as follows:

> 3. I swear that I will inviolably maintain and preserve in England and in Scotland the Settlement of the true Protestant religion as established by law in England and as established in Scotland by the laws made in Scotland in prosecution of the Claim of Right, and particularly by an Act intituled " an Act for Securing the Protestant Religion and Presbyterian Church Government " and by the Acts passed in the Parliament of both Kingdoms for the Union of the two Kingdoms, together with the Government, Worship, Discipline, Rights, and Privileges of the Church of Scotland. So help me God.

Under Sub-clause (2) of Clause 4, the Regent is not allowed to assent to any Bill changing the order of Succession to the Crown, or for repealing or altering the " Act for Securing the Protestant Religion and Presbyterian Church Government in Scotland."[4]

[1] 12 and 13 Will. III, c. 2.
[2] 10 Edw. VII and 1 Geo. V, c. 26.
[3] 11 and 12 Geo. V, c. 29.
[4] 5 Anne, c. 8, Art XXV, 2.

Clause 5 (Guardianship, etc., of Sovereign during Regency). Under this Clause, unless Parliament otherwise provides, if the Sovereign is under eighteen years and unmarried His mother has the guardianship of His person, or if married and under eighteen, or declared by the act incapable for the time being of performing the royal functions, then the wife or husband of the Sovereign acts as guardian. The Lords amended this Clause by substituting a new paragraph (*c*) for the one in the Bill, reading as follows:

> (*c*) The Regent shall, save in the cases aforesaid, have the guardianship of the person of the Sovereign; and the property of the Sovereign, except any private property which in accordance with the terms of any trust affecting it is to be administered by some other person, shall be administered by the Regent.

Clause 6 (Power to delegate royal functions to Counsellors of State) dealt with the third contingency, namely the absence of the Sovereign from the United Kingdom and also with the event of illness not so extreme as to amount to complete incapacity, but nevertheless such as to make it necessary for day-by-day functions to be discharged in the King's name by someone else. If there was a case of infirmity of mind or body not amounting to complete incapacity then no Regent would be appointed, but certain royal functions would be discharged by Counsellors, subject to certain limitations under the Act. In the course of this Clause being used in the intended absence of the Sovereign from the United Kingdom, remarked the Minister, then the Letters Patent would reserve to the Sovereign the personal exercise of his functions in so far as that was found to be practicable. The Commons amended this Clause in certain particulars, one being the exclusion of the Regent from such Counsellors of State, thus conforming to a similar principle applied by amendment to Clause 2. The five Counsellors are now, therefore, the Sovereigns' wife or husband, and, at present, the Dukes of Gloucester and Kent, the Princess Royal and the Duke of Connaught.

Clause 7 repeats the Lord Justices Act, 1837,[1] and Clause 8, the title Clause, interpreted " royal functions " as including all powers and authorities belonging to the Crown, whether prerogative or statutory, together with the receiving of any homage required to be done to his Majesty.

Certain other amendments were made in the Commons at the Report Stage.

Upon the Third Reading in the Commons, the Attorney

[1] 7 Will. IV and 1 Vict., c. 72.

General in quoting certain sentences in the speech of the Minister upon moving the Second Reading, relating to the Bill and the Dominions, remarked that the Dominions had been kept informed of what the Imperial Government had been doing and fully agreed to it passing the Bill; the exact position in regard to each Dominion being a matter much better left for them to consider and for them to make any statement about in the first instance.

The Bill was under close review in the House of Lords, which made certain amendments (in addition to those which have been dealt with in detail) removing doubts and in pursuance of the consequential effects of amendments made by the Commons.

An interesting amendment—not, however, agreed to—was moved in the Lords by Lord Dickinson, namely—to insert after " shall " in sub-clause (1) of Clause 3 (The Regent), the words " unless Parliament otherwise determines." The noble Lord considered the Bill too rigid in its provisions regulating who should have the custody of the infant Sovereign and the management of his estate. He thought the Bill tied the hands of Parliament in regard to the choice of Regent and quoted instances of departures which had been made in history from the practice the Bill sought to lay down. As, however, was pointed out by another noble Lord, the automatic system in regard to the Royal Succession was comparatively recent in the history of the monarchical system, which used to be more selective for obvious reasons.

The Lords' amendments were duly communicated to the Commons and concurred in. The debate in both Houses upon this Bill presents many interesting features to the constitutional student and is well worthy of more detailed study by direct reference to the *Hansards* of both Houses.

III. HOUSE OF COMMONS PROCEDURE RELATING TO COMMITTEE MONEY RESOLUTIONS

BY THE EDITOR

ONE of the most important functions of Parliament under the British constitutional system is its control over public money.[1] The earlier pages of our history record many contests between the Monarch and his Parliament over the former's demands for public money both for national and private purposes. It was largely these ever-increasing and often unreasonable and burdensome demands which brought about the Civil War of 1642-1651 as well as the "bloodless Revolution" of 1688, and caused the passing of those two great charters of British Liberty, the Petition of Right (1628) and the Bill of Rights (1689). One outstanding consequence of this age-long contest between the Crown and Parliament has been that the Monarch's need of public money gradually came to be used by Parliament as the fulcrum upon which to rest the lever to secure further powers and privileges.

Passing to another sphere of the British Constitution, control over public money has also frequently been the cause of disagreement and dispute between the two Houses of Parliament themselves, owing to the insistence by the House of Lords upon its amendments dealing with public money, which the House of Commons claimed were an infringement of its privileges. This field of dispute, however, of later years has been cleared to some extent of many of its difficulties by the passing of the Parliament Act of 1911.

The relationship between the three Estates of the Realm, in the respective exercise of their particular constitutional functions in regard to the control over public money, has been described as: the Crown (through its Ministerial Executive) requests, the Commons grant, and the Lords assent. Much of the financial procedure between these two Houses, however, affords yet further instance of the many advantages of working under what is practically an unwritten Constitution, as the Commons is able to waive its privileges, with or without recording a special entry in its Journals, by allowing Lords' amendments of incidental monetary provisions in Bills not coming within the scope of the Parliament Act, which amend-

[1] *i.e.*, Government Taxation, Revenue and Expenditure.

ments would otherwise be open to objection by the Commons on constitutional grounds.

The two Houses of most Oversea Parliaments, however, under their Constitutions, are uncompromisingly confronted by the rigidity of the written word, which denies them that elasticity of procedure enjoyed by their counterparts at Westminster. In consequence, the practice of what has come to be known as "the process of suggestion"[1] has been conceived and successfully applied in some of the Oversea Parliaments; a procedure by which the Upper House is allowed a hint in regard to the alteration by reduction in the monetary provisions of Bills, which provisions such House cannot, under the Constitution, amend. This hint the Lower House may either accept and act upon by making the necessary amendment, or abstain from action, as it may deem fit.

In this Article, however, we have to deal with yet another aspect of Parliamentary financial procedure, namely, the facilities of the private Member to move amendments in Bills which, although not coming under the sway either of the Committee of Ways and Means, or that of Supply, yet, under the Standing Orders of the House of Commons, require the authority of an antecedent Money Resolution originating in a Committee of the Whole House.

The instance which ultimately brought about the agitation which is the subject of this Article can perhaps be said to have arisen owing to the difficulties experienced by the private Member in regard to amendment of the Special Areas Bill in 1937.

As the principle involved is one which is of interest to Lower Houses throughout the Empire, it is proposed to go into the matter fully. For those who desire a closer study of the subject the footnotes will serve as a guide.

For purposes of ready reference, the relative Standing Orders of the House of Commons on this subject are given below, together with the dates on which they were passed and/or amended, although some of the principles these Orders embody have existed for centuries and are part of the British Constitution itself:

Standing Orders.

Public Money.[2]

63. This House will receive no petition for any sum relating to public service or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the

[1] *See* JOURNAL, Vols. I, 31-36, 81-90; II, 18.

[2] S.O.'s 13-15 deal with the Committees of Supply and Ways and Means.

consolidated fund or out of money to be provided by parliament, unless recommended from the crown. (June 11, 1713, June 25, 1852, March 20, 1866.)

Certain proceedings relating to public money to be initiated in committee.

64. This House will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the crown, but in a committee of the whole House. (March 29, 1707.)

Restriction on receipt of petitions relating to public money.

65. This House will not receive any petition for compounding any sum of money owing to the crown, upon any branch of the revenue, without a certificate from the proper officer or officers annexed to the said petition, stating the debt, what prosecutions have been made for the recovery of such debt, and setting forth how much the petitioner and his security are able to satisfy thereof. (March 25, 1715.)

Procedure on address to crown for issue of public money.

66. This House will not proceed upon any motion for an address to the crown, praying that any money may be issued, or that any expense may be incurred, but in a committee of the whole House. (February 22, 1821.)

Procedure on application for charge on revenues of India.

67. This House will not receive any petition, or proceed upon any motion for a charge upon the revenues of India, but what is recommended by the crown. (July 21, 1856.)

Procedure on motion for charge on public revenue.

68. If any motion be made in the House for any aid, grant, or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by parliament, or for any charge upon the people, the consideration and debate thereof shall not be presently entered upon, but shall be adjourned till such further day as the House shall think fit to appoint, and then it shall be referred to a committee of the whole House before any resolution or vote of the House do pass therein. (March 20, 1866.)

Money committees.

69. When notice has been given of a resolution authorizing expenditure in connection with a bill, the House may if the recommendation of the crown is signified thereto, at any time after such notice appears on the paper resolve itself into committee to consider the resolution. (February 20, 1919, and June 21, 1922.)[1]

Consolidated Fund Issues.

70. A resolution authorizing the issue of money out of the consolidated fund reported from the committee of ways and means may be considered forthwith by the House, and the

[1] The amendments made in this Order in 1922 are shown below, the omissions within [square brackets] and the insertion underlined:

[Notwithstanding any Standing Order or custom of the House if notice is] When Notice has been given of a Resolution authorizing expenditure in connection with a Bill, the House may, if the recommendation of the Crown is signified thereto, at any time after such notice appears on the Paper resolve itself into Committee to consider the Resolution, [and the Resolution when reported, may be considered forthwith by the House]. 155 H.C. Deb. 5. s. 1469-1470.

> consideration on report and third reading of a bill ordered to be brought in upon such a resolution or resolutions may be taken forthwith as soon as the bill has been reported from committee of the whole House. (February 20, 1919.)

It is, however, with S.O. 68 and 69 that we are specially concerned in this Article, although S.O.'s 63 to 66 have also a distinct bearing on the subject; in fact, so important are their principles, that in the Order of Reference setting up the Select Committee of 1937, with whose report we shall later deal, the House of Commons was particular to state that the inquiry was instituted " subject to the unimpaired maintenance of the principles embodied in " such Orders.

The Agitation in the Commons.

For some years past the rights of the Private Member in regard to his scope of amendment of Committee Financial Resolutions and in the corresponding provisions of Bills initiated by them, have caused the House of Commons some concern; in fact, in 1932[1] a former Select Committee on the subject was appointed, but its Report not acted upon. During the year under review in this volume, however, growing dissatisfaction among private Members was evident, the matter coming to a head upon the Financial Resolution for the Special Areas (Amendment)[2] Bill, an extension of the Act of 1934,[3] the Financial Resolution to which Bill ruled out amendments thereto, extending the areas thereunder or to put them in charge of a special Minister.

On March 8,[4] the Leader of the Opposition (Rt. Hon. C. R. Atlee) moved the following Motion:

> That the Standing Orders relating to public business be amended by the omission of Standing Order No. 69.

In his introductory speech[5] Mr. Atlee observed that it really was a question as to the way in which the machinery of the House was being utilized. " This House," he said,

> " has never been a mere assembly for registration. It has never been a mere debating society. It has never been a House which the Government use as an instrument of registration. . . . The Members have shaped legislative proposals. A Bill . . . although it is a Government's Bill . . . has been framed by the co-operation of the Members of this House. . . . Therefore every Bill that goes through the House becomes in that way

[1] *See* JOURNAL, Vol. I, 42-44.
[2] 1 Edw. VIII and 1 Geo. VI, c. 31.
[3] 25 Geo. V, c. 1.
[4] 321 H.C. Deb. 5. s. 815-932.
[5] 321 *Ib.*, 815-823.

the work of the whole House. The importance of that procedure is that the experience and ideas of the Members of the House are brought into the common pool. That is the traditional British and democratic method."

The hon. Member remarked that there were two elements to be considered: First, the King's Recommendation, without which a demand for the imposition of a charge cannot go forward, and then the Financial Resolution, which, once it is passed, becomes part of the Bill and cannot be amended. The old procedure of 1919, which lasted up to 1922, was that a Motion was made setting up a Committee to consider the Financial Resolution, and to that Motion was attached the King's Recommendation. The result of that was that that Motion, containing a certain amount of restriction on what the House could do having the King's Recommendation attached to it, laid down the limits, but the Financial Resolution which came forward had not the King's Recommendation attached and therefore could be amended. That was the prime distinction between that method of procedure and that which they were following at the present time. In 1919, however, it was decided to short-circuit the procedure. The Motion to set up a Committee had disappeared and what they had now was a Financial Resolution to which the King's Recommendation was attached.

In the early days, continued the Member, the practice was to draw the Motion very widely and to confine it strictly to the financial parts of the Measure, those clauses being printed in italics. The result of the new procedure, however, had in effect made the Financial Resolution unamendable, as only the Government in whose hands the King's Recommendation rests could amend such Resolution. But no great evil would have followed from that had the Financial Resolution been kept general. What had happened, however, had been that more and more the Financial Resolution had been extended, until, in effect, almost the whole of the operative clauses of a Bill were embraced by the Financial Resolution.

The hon. Member did not dissent from the contention that the Government must decide on the spending of money. The whole point which arose was as to the degree of particularity, and on Bill after Bill protest had been raised against the way in which Financial Resolutions were drawn. The hon. Member therefore urged a return to the former practice.

At this point another Member asked for Mr. Speaker's guidance as to whether the Financial Resolution contravened

the spirit of the Standing Orders. Whereupon Mr. Speaker said:[1]

> The hon. Member asks me, on a point of order, whether I would make some remarks upon this Motion. The House will understand that the course of this discussion has put me in rather a difficult position. After all, my duty ever since I have occupied the Chair has been, to the best of my ability, to protect the minority in this House and to safeguard the rights of Members, and on any question of controversy, if it comes to controversy, it is very difficult for me to give a decision. My business has always been to carry out in the letter and the spirit both the Rules of the House and the Standing Orders, where Standing Orders exist. The House will recollect—certainly it is not allowed to forget—that I made some remarks on this question on 3rd December, 1934,[2] when the original Special Areas Bill was introduced.
>
> It must not be gathered that my remarks on that occasion can be used to cover every case. The Bill on which my remarks were made, although on the same subject, was a different Bill from the present one, for which the Money Resolution is submitted. The original Bill, in December, 1934, was an entirely new Bill, and what makes the difference is that it was not founded upon a Money Resolution. It was not a Money Bill—I do not mean that in the sense of a Money Bill under the Parliament Act, but in the ordinary sense of the word. Its main function was not money. The Bill which we shall shortly be discussing, after the Money Resolution is disposed of, is founded on a Money Resolution. As the Rt. Hon. Gentleman has said, it is distinct from the other Bill in that it is a continuing Bill; that is to say, it continues the old Bill, and is not a new Bill in any sense of the word. I do not think my remarks on the occasion to which reference has been made can be held to have a bearing on the present situation, and, as far as a ruling is concerned, I must leave it entirely to the House to decide.

The Prime Minister (Rt. Hon. Stanley Baldwin) said[3] there was a world of difference between ordinary legislation and legislation founded upon a Money Resolution. Bills founded upon Money Resolutions were different in character and different in their origins, and there were very grave reasons why the Government of the day should adhere closely to the financial procedure involved. The whole of our financial procedure was based upon S.O. 63, which reserved to the Government of the day the right of initiating or of increasing expenditure. It was not a thing which should be in the hands of private Members or of private parties.

The ancient Standing Order to which he had referred would

[1] *Ib.*, 823, 824.
[2] 295 H.C. Deb. 5. s. 1235-1238.
[3] 321 H.C. Deb. 5. s. 824 to 831.

be rendered completely valueless if the Crown's Recommendation was to be signified to a Financial Resolution brought in in such general terms as to enable Members of the House, other than Ministers, to initiate proposals for increasing the charge in ways that had not been contemplated when the Crown's Recommendation was given for the Resolution. To-day the calls upon the exchequer were so many and so various that it would be difficult for a Chancellor of the Exchequer to keep the nation's expenditure within its income if he did not possess this ancient power of limiting the initiative for expenditure to the Government.

However, they were conscious, continued the Prime Minister, that these Financial Resolutions did impose certain restrictions in debate, and they desired to do what was wanted, and they knew that some time they would be in Opposition; instructions had therefore been given during the last two years that the Resolutions should be drafted as flexibly as is consistent with the fundamental principle of that underlying S.O. 63.

If S.O. 69 were rescinded then the procedure would rest o S.O. 68, which was the procedure upon which they normall relied until 1922. Up to that time the procedure had been for the House to resolve that on a future day it would resolve itself into a Committee to consider a Motion for a charge. Standing Order 69 was one of the results of certain changes in procedure which were carried out following on the recommendations of a small but extraordinarily expert committee which had been examining the procedure with a view to quickening the pace. At that time the procedure which preceded the introduction of this peccant S.O. 69 involved three stages on separate days. There was the setting-up Resolution, to the effect that on a future day the House would resolve itself into a Committee to consider the voting of money for a certain object. That stage was formal and could take place immediately after Questions, or at the end of Public Business, and the King's Recommendation was given at that juncture. When the House went into Committee it considered the object in view and the passing of the Resolution, of which it was by no means the general practice to give notice on the Paper. The Resolution, more often than not, was read at the Table, and not put on the Paper as it is to-day. Then came the Report Stage, and the first proposal made in 1919 was that of an alternative procedure, and the purpose of the new Standing Order was expedition, namely, by doing away with the setting-up Resolution and providing that the Committee and Report Stages of a Money

Resolution could be taken on the same day. But the Standing Order was permissive. It was to apply only in cases where notice of the Resolution appeared on the Order Paper. That Standing Order was very like the one which emerged in its final form in 1922.

What brought S.O. 69 into use—which showed what private Members could do—was the decision given by the then Deputy-Chairman of Ways and Means,[1] which was that the effective Resolution which governed a Bill was the first one and not the second one, which, in practice, had always been the tighter and closer Resolution. In effect, that decision threw open a question which everyone thought had been settled for two centuries. It was after that decision that the practice which had subsisted ever since was made general. The King's Recommendation which the Deputy-Chairman said only covered the setting-up Resolution now applies to the actual Resolution which governs the Bill.

It was felt that with regard to the Special Areas this Resolution was restricted to the points which were fundamental to the

[1] During the consideration in Committee of the Whole House of a Money Resolution in connection with the Unemployment Insurance Bill, on March 30, 1922,* an hon. Member gave notice of an amendment† which would increase the charge.

Upon which the ruling of the Deputy Chairman of Committees (Rt. Hon. Sir Edwin Cornwall, Bart.) was:

> I have been asked whether it would be in order to move an Amendment which would increase the charge. It is a very old, in fact, one of the oldest traditions of this House, that a private Member cannot move an Amendment or a Motion which would increase the charge beyond the amount in the Motion put forward by a Minister of the Crown. But in this case the Resolution setting up this Committee and the Motion that is put down by the Minister of the Crown, with the King's Assent signified,'are rather wide and, so far as I can read the Resolution, there is no limitation of the amount of money that might be moved in this Committee on this Resolution. It is often thought by Members of the Committee that the words of a Motion on the Paper are the governing words, but the words which govern this Committee are the words setting up this Committee, and the words setting up the Committee are:
>
> > "The Committee to consider of authorizing the payment out of moneys provided by Parliament of an increased contribution towards the unemployment benefit."‡
>
> There is no limitation there. The hon. Member for Govan (Mr. M. Maclean) has given me notice of an Amendment which would increase the charge. It is not within my power to move it out of order, because of the setting-up Resolution. When the Bill goes into Committee the Resolution that governs that Committee is the Resolution we pass, but the Resolution that governs us is the Resolution of the House setting up this Committee, and in it I see no limitation.

* 152 H.C. Deb. 5. s. 1586 to 1588. † *Ib.*, 1581.

‡ *Ib.*, 1349. These are the opening words of the setting-up Resolution, and at the end thereof is—("King's Recommendation signified.")

financing of the Government's proposals. The Bill itself was restricted to financial matters, and so much so that it required not only to be supported by a Financial Resolution but to be founded upon one. In regard to Bills founded upon Financial Resolutions, it is commonly the case that the Resolution is, and must be, largely identical with the Bill. If it were not so it would be giving the House a blank cheque instead of keeping the responsibility in the hands of the Government, with whom alone that responsibility should rest. As the Resolution had to cover the whole of the Bill, it was inevitable that this should generally be the case. As far as the alteration of procedure was concerned, the Prime Minister could not see that it would touch the principle, because what the Leader of the Opposition said would inevitably happen. Whatever Resolution was the pertinent Resolution governing the Bill would be drawn in such a way as to protect the right of the Government to initiate expenditure, and they would be as they were. " In view of those considerations," concluded the Prime Minister, " I regret I am unable to accept the Motion."

The hon. Member for Dundee (Mr. Dingle Foot) said[1] that the point with which they were concerned was not whether they should abrogate S.O. 63, but the choice between S.O. 68 and S.O. 69. They were not suggesting that private Members should be put in the way of temptation and have all sorts of opportunities of moving to increase the charge. Their criticism was that the Resolutions were used, not simply to limit expenditure and protect the public purse, but to determine both the purposes of the Bill which follows and the methods by which those purposes were to be carried out. That was an entirely different thing from merely giving protection to the public purse. A point which should be in the mind of every Member was that the old procedure served this House perfectly well up to 1919. It was not until that year that S.O. 69 was introduced and received its present form in 1922.

The original intention, as the Prime Minister had said, was that it might have been done in one day, but that was circumvented by Sir Frederick Banbury's amendment in 1922.[2] The whole reason that was given, and it was the only suggestion the House had, for making this change in 1919 and 1922, was to expedite the manner of dealing with Money Resolutions. It had never been suggested by anybody from the Front Bench at that time, and certainly it was never contemplated by the

[1] 321 H.C. Deb. 5. s. 831 to 836.
[2] *See* footnote to S.O. 69, p. 99, *ante n.*

House of Commons, either in 1919 or 1922, that this new machinery would be used in the way in which in fact it had been used by successive Governments ever since.

The number of Private Members' Bills which reached the Statute Book was very much smaller than it used to be, and if they were to reach the Statute Book at all, they could only deal with small and non-controversial matters, which meant that in recent years the initiative, with regard not simply to financial matters but to practically all legislation, had passed into the hands of the Executive of the day. It was therefore all the more important that Members should have every opportunity to scrutinize and examine all the Measures which the Government chose to bring forward. Members found themselves in this dilemma: they objected very strongly to some particular provision in a scheme, but were unable to express their objection in the Division Lobby without rejecting the scheme as a whole. It was precisely that difficulty in which Members were put when Money Resolutions were so tightly drawn.

There have been various practices adopted in recent years to deprive the House of Commons of the right to amend. If the Government was going to cut down the right of effective criticism in the House then the House simply became a machine for registering the decrees of an omnipotent executive.

The hon. Member for Antrim (Rt. Hon. Sir Hugh O'Neill), in recalling the procedure under the old Standing Orders, said[1] that there was first a formal setting-up Resolution that the House would, on a future day, resolve itself into a Committee to consider certain financial proposals. That was a formal stage. There was no notice of it on the Paper, for it was the kind of Motion that did not require notice, and he thought there was practically never any debate. At that stage, however, the King's Recommendation was signified by a Minister of the Crown. The next stage was that the actual Financial Resolution arising out of that setting up of the Committee appeared on the Paper. Instead of having, as they saw to-day, against it the words, " King's Recommendation to be signified," there were the words, " King's Recommendation signified." because that had been notified by a Minister at the time of setting up. If they were to go back to the old procedure before 1922, they would gain nothing at all, because it would be possible for the Government to draw their setting-up Resolution just as widely or narrowly as they liked. In fact, even if

[1] 321 H.C. Deb. 5. s. 836 to 838.

S.O. 69 were to go, the Leader of the Opposition would not gain any actual advantage from it. If Financial Resolutions to-day were drawn tighter and in greater detail than they used to be, the reason was not because there was no great desire to stifle discussion, but because the whole attitude of the House of Commons with regard to finance and expenditure had been completely altered in the last generation. In the old days a widely drawn Financial Resolution may have come up with possibly no limits to the expenditure proposed. It could be amended, and it was nearly always amended, if at all, by some Members who were exponents of economy. The reason for drawing up those Resolutions so widely was that there was not the tendency that there was to-day, both in the House and in the country, to demand greater expenditure for all kinds of things. Formerly, the House of Commons used to be regarded as the guardian of the public purse, but to-day it could more properly be described as the despoiler of the public purse. It was this changed attitude as regards expenditure in the House which was the real reason why it had become absolutely necessary for governments to draw their Financial Resolutions much more closely and in greater detail than before. The hon. Member felt that in the present day, when there was so much expenditure, it was more necessary than ever in the history of Parliament to maintain unimpaired the great principle on which their financial procedure in the Commons rested namely, that no proposal for expenditure could be made except upon the recommendation and responsibility of the Government. Under conditions to-day, concluded the hon. Member, the Government really had no alternative but to frame Financial Resolutions much more strictly than formerly.

The hon. Member for North Aberdeen (Mr. G. M. Garro Jones) observed[1] that S.O. 69 provided a safety valve for the House. Standing Order 69 not only required them to cut the coat according to the cloth, but enabled the Government to decide in advance what the pattern of the coat was going to be. It was in the light of these considerations that the Select Committee on National Expenditure of 1919 proceeded to examine not the possibility of increasing the initiative and control of the executive but of diminishing both. There was a widespread feeling that there should be no further restriction upon the initiative of private Members. The House should mark well, continued the hon. Member, that the Financial Resolution which was the proximate cause of the Motion before them was

[1] *Ib.*, 840.

of little service as a restriction upon expenditure. The House could not deduce from it whether they were to spend £10 or £10,000,000. The only restriction contained in the Resolution was under heading (*d*)[1] which limited the amount for loans to persons carrying on certain business, the limit being £2,000,000. There was no limit whatever upon the expenditure other than that one, and the amounts which were entirely unspecified could be expended under other heads.

The hon. Member for Aylesbury (Mr. M. W. Beaumont) said[2] it was a mistake to believe that S.O. 68 gave more right of discussion than S.O. 69. The only difference was that the setting-up Resolution was drafted not by the Treasury but by the Public Bill Office. That was not a matter of obligation, but merely the practice. If S.O. 69 were repealed, there was nothing to prevent the Government having that setting-up Resolution drafted by the Treasury just as tightly as the Second Resolution. The hon. Member thought that the House should distinguish between Bills founded on Money Resolutions and Bills which a Money Resolution followed. When a Bill was founded on a Money Resolution, continued the hon. Member, it inevitably followed that the Financial Resolution must be drawn much tighter than if the Resolution followed a Second Reading, and quoted May:[3]

> Where the main object of a Bill is the creation of a Public Charge, resort must be had to this procedure, before the Bill is introduced, and upon the Resolution of the Committee of the whole House, when agreed to by the House, the Bill is ordered to be brought in.[4] If the charge created by the Bill is a subsidiary feature resulting from the provisions it contains, the Royal Recommendation and preliminary Committee are not needed before the introduction of the Bill. . . .

The significance of that was, observed the Member, that when a Bill was founded on a Money Resolution, such Resolution must contain the main provisions of the Bill. On the general question of the drafting of Financial Resolutions, the House had a very serious complaint. Whether it was intended or not, the fact remained that discussion was unreasonably fettered. Matters arising on the Second Reading of the Bill were, in fact, prevented from having proper attention in Committee, and from having amendments moved in respect of them. The hon. Member suggested that the House should,

[1] *Ib.*, 997. [2] *Ib.*, 855 to 859. [3] 13 Ed. p. 506.
[4] 55 C.J. 396; 98 *Ib.*, 167; 101 *Ib.*, 615; 104 *Ib.*, 412; 113 *Ib.*, 31; 147 *Ib.*, 67, 79; 1 Parl. Deb. 4. s. 315.

after consideration, pass a Resolution laying down the broad lines upon which it wished Financial Resolutions to be founded, and it should be left to Mr. Speaker and the Officers of the House to see that Financial Resolutions came within those broad lines. In that way Members would have, if they had not at present, protection by Mr. Speaker when, in their view, a Financial Resolution was too narrowly drawn. By that method alone could the difficulty in which they were placed be met.

The hon. Member for Bolton (Sir C. Entwhistle, K.C., M.C.) remarked[1] that the purpose of the Bill in question was to give money to certain interests in Special Areas, and therefore it had to be founded on a Financial Resolution. Surely if the general objects of the expenditure were not defined, it would be open to any hon. Member to move any amendment, however much it would increase the charge on the revenue, for any purpose connected with the broad objects of the Bill, which would be against the spirit of S.O. 63. The carrying of the Motion before the House would not improve matters but merely bring the House back to the procedure under S.O. 68.

The hon. Member for Yorkshire W.R., Keighley (Rt. Hon H. B. Lees-Smith), said[2] that it was since S.O. 69 had been passed that there had been a continual series of complaints debates and Speaker's Rulings. Standing Order 69 had been completely twisted out of the purpose for which it was introduced. The hon. Member drew attention to the effect on the nature of their debates of the exaggerated importance which was attached to Financial Resolutions. In case of many Bills they spent more time on the Financial Resolution than on all other stages. It was never intended that the real, vital debates should take place on the Financial Resolution. The whole procedure of the House was built up on the principle of having a Second Reading debate, and then a Committee Stage, during which one could move amendments, provided that they did not increase the charge on the public.

The Attorney-General (Rt. Hon. Sir Donald Somervell, O.B.E., K.C.), who closed the debate, remarked[3] that before 1922 it had always been assumed that the latter detailed Resolution defined the limits within which amendments could subsequently be moved. In 1922, on the Unemployment Insurance Bill, the Deputy Chairman of that day ruled, to the surprise of the Committee, that it was not the detailed Resolution but the setting-up Resolution, when the King's Recom-

[1] 321 H.C. Deb. 5. s. 879.
[2] *Ib.*, 918, 920.
[3] *Ib.*, 923-924, 926, 927.

mendation was given, which laid down the lines within which amendments could subsequently be in order. That setting-up Resolution was drawn in the widest and most general terms, which extended the area within which amendments would be in order beyond anything that had been contemplated prior to that date, and it was because that Ruling introduced an element into the procedure which had not previously been contemplated, that as from that date successive Governments had adopted S.O. 69 instead of the old procedure.

The kernel of the problem, continued the Attorney-General, was S.O. 63, which prevented private Members making Motions for the grant or use of public money, and the principle that Standing Order embodied had been one of the great factors in making the House of Commons the responsible and effective instrument of Government which it was. If S.O. 63 was to be preserved it must be preserved so far as Bills were concerned in cases where those Bills involved the spending of money, whether that was the main primary object of the Bill or whether it was only the subsidiary object.

Continuing, the Attorney-General said they were dealing with a Bill based on a Financial Resolution, and that if anybody referred to the debates of the last century they would see that the point was raised as to whether amendments were in order which increased the charge under a Bill if they were within the Financial Resolution. The Ruling of the Chairman of those days was that amendments increasing the charge under a Bill might be in order if they were within the Financial Resolution, but it was felt that such amendments, though in order, were not really within the spirit of S.O. 63. In regard to the suggestions made by certain Members, he was authorized to inform the House that the Government was prepared to consider the matter, and if, after discussion with the Leader of the Opposition, it seemed desirable to set up a Select Committee to consider the working of the Standing Order, the Government was prepared to do so.

Question was then put on the Motion, the voting being: Ayes, 136; Noes, 208.

The Select Committee.

On March 23[1] a question was asked (by *Private Notice*) by the Leader of the Opposition as to whether the Government had any proposals to make in regard to the proposed Select Commit-

[1] 321 H.C. Deb. 5. s. 2759.

tee, to which the Prime Minister replied in the affirmative, and on April 26[1] the House Ordered:

> That a Select Committee be appointed to consider the working of the Standing Orders relating to public money and, subject to the unimpaired maintenance of the principles embodied in Standing Orders Nos. 63 to 66 (both inclusive), to report as to whether any or what changes are desirable in Standing Orders No. 68 and No. 69 or in the procedure relating to Money Resolutions,

the Committee to have power to send for persons, papers and records and five to be the quorum.

On July 9[2] it was Ordered that the Report of the Select Committee on Procedure in Session 1931-32 be referred to the Select Committee relating to Money Resolutions.

On July 13[3] the Report[4] from the Select Committee relating to Money Resolutions with Minutes of Evidence and Appendices was brought up and Ordered to lie upon the Table and to be printed.

The Report, together with Minutes of Evidence and Appendices, covers 179 pp. The Select Committee sat ten times and heard thirteen witnesses, the evidence containing 1,677 questions. Part I of the Appendix gives the Memorandum by Mr. Speaker (which is given in full later); Part 2, the Directions given by the Treasury in 1919 regarding responsibility for Money Resolutions, signed by the Prime Minister, the Public Bill Office of the House of Commons being authorized to carry out the procedure by Mr. Speaker; Part 3, Letter to the Committee by the Under Secretary to the Treasury regarding the instructions given by the Prime Minister in 1934; Part 4, Figures indicating proportions of wide and narrow Financial Resolutions at various times, Comparison of Setting-up Resolution with eventual Committee Resolution, and the comparative numbers of Resolutions connected with Money Bills and with other Bills, put in by Mr. (now Sir G. F. M.) Campion, then Clerk-Assistant and now Clerk of the House of Commons.

The Report[4] of the Committee now under consideration contains 16 paragraphs.

The Committee states[5] that of the principles embodied in S.O. 63 and 66 which they were instructed to maintain, the first (S.O. 63) and more important, " vests in the Crown the sole responsibility of incurring national expenditure (and) forbids an increase by the Commons of a sum demanded by

[1] 323 H.C. Deb. 5. s. 145, 146.
[2] 326 *Ib.*, 743.
[3] *Ib.*, 1063.
[4] H.C. Paper 149 of 1937.
[5] Para. 11

or on behalf of the Crown for the service of the state," and, the second (S.O. 64) is that a preliminary stage shall be taken on any proposal for expenditure before the House commits itself to that expenditure.

Paragraph 2 of the Report, in addition to dealing with the history of this financial procedure, recites the main features of the financial procedure of the House which are attributable to S.O. 63 and 64, namely, (i) the King's Recommendation given to a Motion which it states is given once only to a measure for incurring expenditure and to a general and not a detailed proposal; (ii) the relation between Motion and Bill; and (iii) the limits of King's Recommendation binding on Ministers. The Committee here emphasizes the fact that once the King's Recommendation has been given, though a new Resolution may be brought forward, a Minister is as much bound by the terms of a Resolution as a private Member.

The main provision of Paragraph 3 is quoted at length:

> 3. By S.O.'s 68 and 69 the House is empowered to adopt either of two forms of procedure on a motion for a charge on the public revenue. Under S.O. 68 the Government may move, without notice, a motion that to-morrow or on some future day the House will resolve itself into a Committee " to consider of making provision " for certain expenditure. This " setting-up " resolution to which the King's Recommendation is attached has, in the past, been in wide terms, and these are the only terms which have bound the Committee on the Money Resolution itself. This latter Resolution may or may not be in more detailed terms than the " setting-up " resolution, but such limitations as it possesses when passed govern amendments at the Committee stage of the Bill. This procedure, though it has now fallen into disuse, was the normal one until 1922, when S.O. 69 was adopted in its present form.

Standing Order 69 was designed, *inter alia*, to expedite the business of the House by enforcing the appearance on the Paper of Money Resolutions and thus enabling discussion to take place at once without the stage of the " setting-up " resolution. Procedure under this new Order, continued the Select Committee,[1] was not adopted until 1922 and its adoption coincided with a Ruling, by Sir Edwin Cornwall,[2] of great importance, to the effect that it was the terms of the " setting-up " resolution, to which the King's Recommendation had been given, which governed the deliberations of the Committee on the Money Resolution and not the terms of that Resolution itself. Following such Ruling, the Treasury, who in 1919 had with

[1] Para. 4. [2] *See* p. 104, *ante n.*

the approval of the Speaker taken over the drafting of Money Resolutions from the Public Bill Office of the House of Commons, were thenceforward in a better position to influence the scope of discussion and amendment in the House. It is the manner, continued the Report, in which certain Resolutions have been drafted (notably those in connection with the Unemployment Insurance Bill, 1933, the Depressed Areas (Development and Improvement) Bill, 1934, the Tithe Bill, 1936, and Special Areas (Amendment) Bill, 1937) which has led to the criticisms made in the House during the last few years. Paragraph 4 then refers to May[1] in regard to the scope of the Bills founded on Resolutions of the Committee of Ways and Means and those in which expenditure is a minor feature and are the subject of inquiry by the Select Committee; the clauses of which are italicized.

Paragraph 5 states that the substance of the complaints made is that, owing to the narrow and detailed drafting of Money Resolutions, not only is debate on the Resolution curtailed, but also that it is impossible to move other than restrictive amendments at the Committee stage of the Bill, and quote in support a remark made by Mr. Speaker in 1934[2] in reply to a Question, namely—

> That it must be evident to all hon. Members that under the new procedure . . . Members are very much restricted in their powers to move Amendments either on a Resolution . . . or . . . on the Committee stage of the Bill. If I were asked for my opinion, I should say that not only has the limit been reached but that it has been rather exceeded by the amount of detail which is put in a Money Resolution.

As a result of this, verbal instructions were given by the then Prime Minister to the Treasury[3] that Resolutions were to be "drafted as flexibly as is consistent with the fundamental principle of that underlying S.O. 63," but complaints continued until 1937 when the Leader of the Opposition moved his Motion already dealt with, and the Select Committee was set up.

Paragraph 6 refers to the initiation of expenditure being the sole right of the Crown and Paragraphs 7 and 8 will be quoted *verbatim*:

> 7. The extent to which the House should permit itself to control and criticize the financial proposals of the Crown appears to your Committee to be the crux of the problem before them. The burden of the dissatisfaction which has been increasingly felt of late years, is that the Government have presented their

[1] 13th Ed., 506. [2] 295 H.C. Deb. 5. s. 1236. [3] Appendix 3.

proposal with such minute detail regarding the purposes of expenditure that the House has been debarred not only from increasing the charge but from varying those proposals. Members who wish to amend a Money Resolution in detail are sometimes driven to opposing it as a whole. That the House may not increase the charge is part of the principle underlying Standing Order No. 63, and is not questioned, but your Committee are of opinion that the House should not be prevented, by the manner in which the Resolution is drawn, from varying the purposes of expenditure within the framework of the Crown's proposals, and thus making its criticism constructive. This freedom the House has enjoyed in the past, and any tendency to curtail it is to be deprecated.

8. It must be borne in mind that the difficulties with which the House is now faced of reconciling the separate functions of the Crown and the Commons in providing for expenditure have "come to a head owing to the greatly increased output of social legislation in recent years." In this connection your Committee cannot do better than quote from a memorandum submitted to them—"Bills of this nature inevitably require financial provision, and indeed the money is often the very kernel of the Bill. In the past . . . the natural attitude of the House, representing the taxpayers, was expected to be a desire to cut down the expenditure they contained. But now there is a varying but considerable body of opinion . . . which wishes to increase the financial provision proposed by the Government for social purposes." In the different conditions of to-day your Committee are of opinion that "a complete revision to the position existent before 1922" is neither possible nor desirable.

Paragraph 9 of the Report alludes to the terms in which the resolutions receive the King's Recommendation under S.O. 63.

Paragraph 10 states that if the financial provisions of a measure are not to the liking of the House, the stage at which Members can most effectively amend them is the Committee stage, and it is there that the Select Committee consider greater freedom should be aimed at. To secure this greater freedom, continued the Report of the Select Committee, it is clear that the terms of the Money Resolution (under S.O. 69) should be wider than the terms of the Bill, so that amendments can be moved in Committee up to the limits prescribed in the Resolution:

> Your Committee have arrived at the general conclusion that some intermediate standard of drafting between the undue narrowness of some modern Resolutions and the extreme freedom existing before the War is desirable.

The Report then goes on to deal[1] with the question of the method by which its recommendations could be brought about,

[1] Paras. 10, 11, 12.

whether by a declaratory Resolution or by Standing Order, and refers to a Chairmen's Panel and the position of Mr. Speaker.

The Committee suggested[1] that in order to ensure that Members should have both Resolution and Bill before them together, either a draft of the Bill should be available when the Resolution first appeared or alternatively the procedure on Bills founded on a Resolution should be altered.

The Report then goes on[2] to refer to the Report of the Select Committee on Procedure in 1932[3] and to the question of taking the Committee Resolution after Second Reading of the Bill as well as other suggestions in regard to drafting and " reasoned amendments."

The Recommendations are given in the last paragraph of the Report (16) in which the following declaratory Resolution is recommended:

> That this House, while affirming the principle that proposals for expenditure should be initiated only by the Crown, is of opinion that Standing Order No. 63 is capable of being applied so as to restrict unduly the control which, within the limits prescribed by that principle, this House has been accustomed to exercise over legislation authorizing expenditure; and that any detailed provisions which define or limit the objects and conditions of expenditure contained in a Bill should, if and so far as they are set out in a Financial Resolution, be expressed in wider terms than in the Bill so as to permit amendments to the Bill, which have for their object the extension or relaxation of such provisions, and which do not materially increase the charge.

The Select Committee here observed that the enforcement of this declaratory Resolution involved a comparison between the Financial Resolution and the financial provisions of the Bill.

In sub-paragraph (ii) *Money Bills*—the adoption of the recommendation of the Select Committee of 1932 was recommended, in that Financial Resolutions should be taken after the Second Reading of Bills of which the primary purpose is the expenditure of public money, thereby assimilating the practice in respect of Bills the financial provisions of which are a subsidiary feature thereof.

And finally, the Select Committee suggested a new Standing Order drafted in some such terms as the following, but to bring the matter up to date the amendments embodied in what has since become the new S.O. 68*a* are also shown, the word omitted in [square brackets] and those inserted underlined:

[1] *Ib.*, 13. [2] *Ib.*, 14 and 15. [3] H.C. Paper 129.

> A Bill (other than a Bill which is required to originate [originates] in Committee of Ways and Means) the main object of which is the creation of a public charge may either be presented, or brought in upon an order of the House, by a Minister of the Crown and, in the case of a Bill so presented or brought in, the creation of the charge shall not require to be authorized by a Committee of the Whole House until the Bill has been read a second time, and after the charge has been so authorized the Bill shall be proceeded with in the same manner as a Bill which involves a charge that is subsidiary to its main purpose.

As the subject-matter of the Committee's inquiry is one which will closely interest every Clerk-at-the-Table in the Oversea Parliaments, it is proposed to quote certain extracts rom the evidence, published with the Report, though not ıcluding evidence upon which the Select Committee based uch Report, except in such cases where it is useful for other purposes. The witnesses were, almost all, persons with special technical qualifications in regard to the questions at issue. The first witness to be examined was Sir Horace Dawkins, K.C.B., M.B.E., then Clerk of the House of Commons. His Memorandum put in, which recited the various precedents, will be found of particular interest to readers of this JOURNAL.

To the question[1]—" Does the Public Bill Office act on the instructions of the Government in drawing up Resolutions, and so forth ?"—the witness said—" The Public Bill Office is entirely independent of the Government. My department considers itself entirely independent of any Government."

In reply to the question[2]—" Do you regard yourself as a servant of the House of Commons or of the Government, Sir Horace ?" the witness said—" Of the House of Commons "; and in reply to another question[3]—" I am inclined to say that my department cannot be instructed by a Government department. We are the servants of the House entirely."

In reply to another member of the Committee, who asked what was the function of the Public Bill Office and if they drew up ordinary Bills, the witness said[4]—" It does not draw them; it sees that they conform to the Orders of the House and the Rules of the House, and that they are covered by Resolutions which have been passed."

In regard to questions put as to the responsibility of Mr.

[1] Q. 50. [2] Q. 59. [3] Q. 62. [4] Q. 65.

Speaker in regard to Resolutions, the witness said that the Speaker was " responsible for the privileges of the House, and if he considered that a Resolution is entirely unfit to appear and is tying the House too much, he can, as guardian of the privileges, refuse to permit it to appear on the Paper."

The witness was then asked:

> 97. Supposing the Government put down a Resolution which the Speaker thought was unduly curtailing the liberties of the House: Could he refuse it admission to the Order Paper ?—I could not say he could technically refuse, but he could put such strong pressure upon the Government that no Government would dare produce it.

In reply to a question[1] as to the vesting of certain authorities in connection with financial procedure, in the Speaker's or the Chairman's Panel, another member of the Committee asked the witness—" Can you conceive that if you give these delicate functions to the Speaker and compel him to make decisions on matters which are going to be controversial in the House itself, you put him in a position which he might find almost impossible. I always feel myself that his position is far more delicate than we realize. You have only to get half a dozen important Members to put down a Motion condemning one of his Rulings in the House, and he has really to consider whether he will go on or not ?"—in which the witness concurred.

The second witness was the Rt. Hon. Sir Dennis Herbert, K.B.E. (Chairman of Ways and Means), who in his Memorandum said that it was beyond a doubt that Members had on various occasions had good reason to complain of the way in which Financial Resolutions had been drawn; the grievance usually was that the Resolution had been so lengthy, and had set out the Government proposals in such detail, that it was difficult or impossible to draft any amendments to the Bill (or to the money clauses of the Bill) which would not be out of order, either (1) because they would or might increase the Charge, or (2) because they were inconsistent with the King's Recommendation.[2]

Question 264 quoted S.O. 64 and the following question stated that it was the practice in some Bills, by common agreement, to take the Second Reading and put down the Financial Resolution before the Committee stage to the clause which involved a Charge. To which the witness replied—" Yes, because the Bill itself is not a Petition or Bill

[1] Q. 163. [2] Q. 192.

for spending money. It is a Bill for other purposes, and there are certain clauses in it which are merely subsidiary to it."

> Q. 266. Then there are three classes of Bills. There is the Committee of Ways and Means Bill, which is like a Budget; there is the Special Areas Bill, which is mainly to grant money, and the ordinary Bill, which incidentally, involves a charge?—Yes. Of the Bills which have to be founded upon a Resolution, it may be on a Resolution of Ways and Means, or it may be on another class of Resolution, one in Committee of the Whole House, not Ways and Means.

In reply to a question,[1] Captain the Rt. Hon. R. C. Bourne (Deputy Chairman of Ways and Means) said—" Sir Edwin Cornwall's decision[2] was merely a repetition of that given by Mr. Speaker Lowther, when Chairman of Ways and Means, I think in 1901, so why that should have come as a surprise is ɔt quite clear. It is possible that the practice altered during ɜ War, when things were not run very strictly; that the idea d grown up in the War that it was the Resolution and not e setting-up Resolution which governed the Bill, and the eversion to the older and more correct form came as a surprise because it had been forgotten.

The next witnesses were Sir Maurice Gwyer, K.C.B., K.C.S.I., K.C., Parliamentary Counsel to the Treasury, and Mr. L. A. J. Granville Ram, C.B., who put in a Memorandum, from which certain extracts will be quoted.[3]

> 2. . . . It seems therefore desirable, before dealing with the operation of Standing Orders 68 and 69, to explain that these restrictions are the direct—and in some degree the inevitable—result of the maintenance of the principle embodied in Standing Order 63, and that for a Committee of the House to alter the Government's proposals as to the destination of money or as to the conditions upon which it is to become payable would be, in the vast majority of cases, as much a violation of that principle as a direct increase in the amount proposed.
>
> 3. This may be illustrated by examining the suggestion sometimes made that the Crown's control over new expenditure could be sufficiently exercised if Financial Resolutions were so drafted as merely to state in general terms the purposes for which money is required and to limit the amount of the proposed expenditure to a specified sum, so that the detailed application of the money would be left open for subsequent decision by the Committee on the Bill. The first thing to be said about this suggestion is that it is never possible to specify a maximum limit of expenditure in a Resolution unless it is also possible to insert the same limit in the Bill itself. A Financial Resolution must cover the whole

[1] Q. 354. [2] *See* p. 104, *ante n.* [3] P. 45.

charge to be imposed by the Bill to which it relates, and therefore it must be plain upon the face of the two documents that the Bill does not go beyond what the Financial Resolution authorizes.

* * * * *

5. . . . it is not only permissible but essential that Financial Resolutions should define with *some* precision both the objects and the conditions of the expenditure for which authorization is sought.

* * * * *

14. . . . Up to the date of that Ruling[1] it had been generally assumed that it was not the preliminary Resolution to set up the Committee but the subsequent Resolution brought before the Committee when set up which governed the deliberations of the Committee; it was therefore only the latter Resolution which was carefully drafted. After it had been ruled that the "setting-up" Resolution was the important one it would have been easy merely to have devoted to it the same care in drafting as had hitherto been given to the subsequent Resolution; but when the whole matter was thus brought under consideration the advantages of the new procedure laid down by what was then Standing Order No. 71A (now Standing Order 69) came to be appreciated simply from the point of view of saving an extra preliminary stage, and it was for this reason only that the procedure under the new Standing Orders came to be adopted instead of the old procedure.

* * * * *

15. . . . there is no substance in the allegation that tightly drawn Financial Resolutions can prevent *discussion*.

* * * * *

19. . . . Modern legislation, and especially social legislation, tends with the complexity of modern civilization to become more and more elaborate, and to be bound up more and more with questions of finance. . . . The principle of Standing Orders relating to finance can, we submit, only be preserved by rigidly maintaining the line which divides the functions of the Executive from those of the Legislature in that respect.

In reply to a question[2] following one in regard to blanks in Bills, Sir Maurice Gwyer said:

I should like to make it clear that the considerations governing the question what is a Money Bill for the purposes of the Parliament Act are not the same as those governing the question what is a Money Bill for the purposes of determining whether it is to be founded upon a Resolution. There have been many instances where Bills have been founded on a Resolution, but have been held not to be Money Bills within the meaning of the Parliament Act, which is a highly technical, closely drawn Section. The two things are not parallel necessarily, at all.

[1] *See* p. 104, *ante n.* [2] Q. 395.

In reply to a question[1] that if an amendment was on some matter which did not affect the expenditure of money it would not be out of order merely technically because it changed some terms in a strictly drawn Financial Resolution, Mr. Granville Ram answered—"No; such amendments are constantly moved."

The eighth witness was Sir Bryan Fell, K.C.M.G., C.B. (late Principal Clerk of the Public Bill Office of the House of Commons), who also put in a Memorandum upon which he was questioned. Before quoting from his evidence, however, attention will be drawn to certain parts of such Memorandum. Dealing with the principle of the initiation of expenditure being vested in the Executive, the witness said:[2]

> . . . for over 200 years the Executive were content to use quite general terms in initiating their proposals for expenditure, leaving the House of Commons free to amend the details of those proposals, provided that such amendments kept within the general terms of the proposals recommended and did not increase the total sum asked for, if a specified sum had been named for the cost or as the upper limit of the cost. But within the last 15 years a change has occurred in the attitude of the Executive. Governments are no longer content to initiate their proposals in general terms, leaving the details to be filled in by the Bill, but instead, draft these proposals in extreme detail and taking advantage of S.O. No. 69, which was intended for use in emergencies, to accelerate financial procedure, they have applied the Recommendation of the Crown to their detailed propositions.
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> The appointment of this Committee is the outcome of the dissatisfaction caused by this change.
>
> * * * * *
>
> Control over expenditure has always been a function of the House and, as an old servant of the House, I view with suspicion any encroachment of the Executive upon the rights of the House. Moreover, I feel that, if no action is taken as the result of this inquiry, and the Executive are allowed to establish their right to put detailed proposals before the House and to use the procedure of the House to prevent any amendment being moved to these proposals, the temptation to push the doctrine further will be irresistible, until, at length, the House will be debarred from making any amendment to the Executive's proposals and be allowed only to accept or reject them as they stand.

During the course of his reply to a question,[3] the witness said—"Under the present practice you get two Second Readings: you get a Second Reading on the Financial Resolution and you get a Second Reading on the Bill."

In regard to the terms of a Financial Resolution upon which the consequent Bill is founded, which Resolution and the

[1] Q. 480. [2] P. 89. [3] Q. 768.

long title of the Bill have to cover everything inside the Bill, the witness quoted a certain Bill the long title of which occupied about one-third of a column of the Commons Journals, but the Resolution upon which the Bill was founded occupied two and one-third columns. In other words, said the witness, " the Resolution was about seven times as long as the Bill.[1]

The ninth witness was Mr. W. R. Gibbons (Principal Clerk of the Public Bill Office), the following paragraphs of whose Memorandum[2] are of particular interest:

> Until December, 1919, both the setting-up and the Money Resolution itself were drafted by the Public Bill Office. December, 1919, till May, 1922, the setting-up Resolution was drafted by the Public Bill Office, and the Money Resolution by Parliamentary Counsel.
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> • • • • •
>
> The setting-up Resolution was moved formally without notice at the beginning or end of business. The Money Resolution appeared the next day on the notice paper, if it was thought necessary, but except in the cases of important Bills (*e.g.*, Government of Ireland Bill, 1912) Money Resolutions were not usually put on the Paper till May, 1919, when it became the regular practice. When the financial proposals of a Bill were complicated the Public Bill Office consulted Parliamentary Counsel about the wording of Money Resolutions, but there was no Treasury control over the wording.
>
> *Bills introduced on Money Resolutions.*
>
> In these cases the Money Resolution was drafted to cover all the main provisions in the draft Bill sent to the Public Bill Office.
>
> *Bills with subsequent Resolutions.*
>
> In these cases the Resolutions were based on the words in the Bill which the Public Bill Office had italicized as imposing a charge.
>
> Occasionally the Minister in charge of the Bill notified the Public Bill Office that he wanted the Money Resolution drawn wide enough to cover amendments to the Bill that he wished to move or accept.
>
> In December, 1919, Mr. Speaker authorized the change in practice whereby Money Resolutions were drafted by Parliamentary Counsel and put on the notice paper in the name of the Financial Secretary to the Treasury, after the Public Bill Office had received notice in writing of the Financial Secretary's authority for this. Hitherto Money Resolutions had been put down generally in the name of the Minister in charge of the Bill.
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> • • • • •
>
> . . . It may be noted that the procedure took no longer under S.O. 68 than under S.O. 69, since the setting-up was done without notice.
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> • • • • •

[1] Q. 815. [2] Pp. 102, 103.

. . . It will be seen . . . that in reference to the Committee stage of a Bill it makes no difference whether the procedure of S.O. 68 or 69 has been adopted for the Money Resolution. The Committee on the Bill is bound by the Money Resolution in both cases. . . . Under S.O. 68 any amendments are permissible which are within the setting-up Resolution. This does not seem to have been realized before 1922, and is probably the reason why the setting-up Resolution was drawn in very general words. Under S.O. 69 the only amendments which can be moved are those which do not increase the charge or alter the objects set out in the Money Resolution.

• • • • •

. . . The earlier (Money) Resolutions were drafted to cover only the words in a Bill which imposed a charge and which the Committee on a Bill could not consider without a Money Resolution. Whereas some recent Resolutions have often covered in addition provisions of a Bill which do not in themselves impose a charge and which the Committee on the Bill could consider without a Money Resolution.

In answer to another question,[1] the witness said—" Under S.O. 68 the setting-up Resolution has had the King's Recommendation, so in the Money Committee any amendments to the Money Resolution itself can be moved which are within the setting-up Resolution. If you proceed under Standing Order 69, there is no setting-up Resolution. The Money Resolution itself has had the King's Recommendation and any amendment increasing the charge in that is out of order. The following questions were then put to the witness:

Q. 974. Of course, S.O.'s 68 and 69 are really alternative procedures, are they not ?—Yes, exactly.

Q. 975. And it is now the custom of the Government, apparently, to proceed under S.O. 69 ?—Yes.

Q. 976. I suppose if they proceeded under S.O. 68 they could similarly restrict discussion by drawing up the setting-up Resolution in a restricted form ?—Yes.

In answer to a further question,[2] the witness said—" The setting-up Resolution certainly was drawn in wider terms than the Money Resolution itself. It sometimes had a money limit put in, even in the setting-up Resolution."

The following question was put to the witness:

Q. 1002. If it is mainly a Money Bill, then there must be that preliminary Money Resolution ?—Yes. We get a good many difficult cases really. That is what Erskine May says: that the main object of the Bill is to grant money, it is a Money Bill. In practice, we rather apply this test: If you take away the clauses which will not work without money, what have you left ? If it is anything substantial, it is not a Money Bill.

[1] Q. 970. [2] Q. 978.

The next and tenth witness was Sir Frederick Phillips, K.C.M.G., C.B. (Under-Secretary of the Treasury), and in paragraph 3[1] of the Memorandum he put in it was stated that:

> The sole concern of the Treasury is to see that Financial Resolutions define with sufficient clarity the financial proposals of the Government in order to enable the rule of the House embodied in S.O. 63 to be carried out in the spirit as well as the letter.

Paragraph 10[2] of this Memorandum shows the advantage of the new procedure over the old, as follows:

A. S.O. 64 and 68: THE OLD PROCEDURE.

First Stage.

The "setting-up" Resolution. Motion made without notice that the House would on a future day resolve itself into a Committee to consider certain expenditure. This preliminary stage was purely formal and the Motion was made without notice either immediately after Questions or at the end of public business. The King's Recommendation was signified at this point.

Second Stage.

On the day appointed the House went into Committee to consider the object in view and passed the main Resolution, of which it was unnecessary and by no means the general practice to give previous notice on the Order Paper.

Third Stage.

The Resolution reported.

B. S.O. 69 (late 71A): THE ALTERNATIVE PROCEDURE.

First Stage.

The House goes into Committee to consider a Financial Resolution, of which previous notice must be given.

Note.—The alternative procedure under S.O. 69 can only apply in cases where notice of the Resolution appears on the Order Paper.

The King's recommendation is signified at this stage.

As to whether the present method of drawing detailed Money Resolutions is necessary or desirable, it is stated in paragraph 12 (i) of the Memorandum:

> Yes, provided that care continues to be taken that no more restriction is contained in the Resolution than is necessary to carry out the principle behind S.O. 63.

At the conclusion of the Memorandum the view was expressed that a return to the practice of loosely drafted resolutions would be advisable.

[1] P. 115. [2] P. 116.

In reply to a question[1] as to whether the Private Bill Office or the Treasury should draft the Resolutions, the witness said that the Resolutions were Government property and presumably it would always rest with it to decide whom it should ask to draft the particular amendments. The Treasury had no independent existence in the matter. They were simply carrying out such instructions as Ministers gave from time to time.

The witness was asked,[2] in the event of a Bill being drafted by a Government Department containing any suggestion of money, would it be sent to the Parliamentary Counsel at the Treasury, to which the reply was—" That is so, yes. I imagine the Departmental Solicitor might draw up general heads of a Bill, but it would come, before the actual final drafting, to the Parliamentary Counsel."

> Q. 1081. So that Bills, whether mainly financial or not, all have to be subject to the inspection of Parliamentary Counsel ?—That is so.

In reply to another question[3] the witness expressed the view that if the old procedure was reverted to they would have the old difficulties which produced the change in 1919.

When asked to interpret the spirit of S.O. 63, the witness replied:[4]

> Well, Sir, the spirit of S.O. 63 I take to be this: that the Government is charged with an onerous responsibility of putting forward all proposals for taxation; it is likewise charged with the responsibility of putting forward all proposals for expenditure, estimates and supply, and it seems to follow that it should have a like responsibility in respect of proposals for expenditure contained in Bills which may be much more important and have more lasting effects than any Supply Estimates. It seems to follow, therefore, that the responsibility for making financial proposals in connection with Bills should rest with the Government, and that amendments ought not to be accepted which increase the charge. I agree that thereafter you come to a kind of border-line where the question of how far you can amend the provisions arises.

In reply to a question,[5] why the House was more restricted in discussion under S.O. 69 than under 68, the witness said:

> In the case of S.O. 68, which was the old procedure, you will remember there was a Resolution put down by the Public Bill Office in quite vague terms: " Committee to meet to consider of such and such business," and to that recommendation was

[1] Q. 1072. [2] Q. 1080. [3] Q. 1084.
[4] Q. 1103. [5] Q. 1140.

attached the King's Recommendation, and the ruling of 1922 was that it was that setting-up Resolution which governed the debates in the Committee on the Resolution, and that therefore amendments could be moved freely to the subsequent later Resolution put up by the Government; but now, under S.O. 69, you have this position, that the first thing that happens is that the Government Resolution is put down on the paper; it is that which receives the King's Recommendation and the Committee, as I understand, is set up to consider that Government Recommendation.

During the course of the second attendance of the Deputy Chairman of Ways and Means, who could not remain longer when previously giving evidence on account of having to take the Chair for Mr. Speaker at 5 o'clock, in reply to a question[1] he said—" . . . The Chair has expressed an opinion, but that is not giving a ruling."

In reply to the question[2] as to whether everything in the Estimates had at some time or other to be sanctioned by legislation in Parliament, the witness said—" . . . a good deal of the Estimates is not. There have been cases of the Appropriation Act being the first authority, and legislation coming afterwards."

The twelfth witness was Sir William Graham-Harrison, K.C.B., K.C. (late Parliamentary Counsel to the Treasury), who, in regard to the drafting of Financial Resolutions, and their alteration in detail when before Parliament, and the question of having a maximum sufficient for the purposes the Government had in mind, was asked:

Q. 1345. . . . Could you tell me what would happen supposing a piece of legislation is passed that a benefit is to be given under certain conditions, that a person is entitled to a benefit or to a pension on certain conditions. Then suppose those conditions are not specified in the Financial Resolution, although the Government have got certain conditions in mind on which they then estimate the expenditure. Now suppose a lot of conditions are added to that and you have still got a maximum, is not anyone entitled, who comes within that condition, to the benefit due to him for it, and might not the maximum be exceeded? And then what happens?—I should think, probably, what ordinarily happens is that he might not be entitled to it in law, but let us assume for a moment he is.

Q. 1346. He might have a petition of right?—I am not certain, because the thing depends sometimes on discretion. But what would happen would be this, that under the ordinary practice in those cases, as I understand, the Department concerned would provide the necessary amount of money and could get it put right in the next Appropriation Bill, but having done it, it would have to come and get fresh legislation.

[1] Q. 1269. [2] Q. 1309.

Q. 1347. So, in fact, the maximum would be exceeded. The maximum is a pure farce in those circumstances ?—No, I do not think that is true. It is not a farce, because according to the rule, which I understand is the established rule of the House, you can only do that once; you cannot do it a second time.

Q. 1348. I do not quite follow ?—You may do it one year and get it covered by the Appropriation Act, but you cannot do it a second year and get it covered by the Appropriation Act. You must get the amendment by specific legislation.

The witness was also asked[1] how it was that under S.O. 69 Financial Resolutions were now drawn tightly, to which the reply was—" They are now drawn under the direction of the Treasury and the Treasury have the control. They see all these Resolutions, and they have to be approved by the Treasury before they can be put on the Paper, and they are drawn in terms which will, in the opinion of the Treasury, precisely limit the expenditure to the heads under which the Treasury wish money to be spent, and in respect of the matters upon which they wish money to be spent." In answer to nother question[2] the witness said—" I am quite certain that 10 Government would contemplate surrendering its power of having the whip hand in financial matters."

In reply to a question[3] as to the interpretation of S.O. 63, the witness said:

As I understand it there are two possible interpretations. One, that S.O. 63 insists upon the Crown, that is the Government, initiating expenditure in general terms. There is another possible explanation, that S.O. 63 necessitates the Crown authorizing expenditure in detail, item by item, and that no expenditure exceeding or altering those items can possibly comply with S.O. 63.

The last witness was Mr. G. F. M. Campion, C.B., Clerk-Assistant[4] of the House of Commons, who stated in paragraph 1 of his Memorandum that the terms of the Financial Resolutions should be wider than those of the Bill. Otherwise no amendment to extend the terms of the Bill would be possible. In regard to the control by the House of the form of Budget Resolutions, the witness stated that if it was accepted that in practice the House exercised some control over the form of the Estimates and Budget Resolutions,[5] there seemed no reason why it should not exercise some control also over the remaining method by which the Crown submits its financial demands, namely,

[1] Q. 1385. [2] Q. 1400. [3] Q. 1407.
[4] Now Sir Gilbert Campion, K.C.B., Clerk of the House of Commons.
[5] May, 13th Ed., 543.

Financial Resolutions. The concluding words of this most interesting and instructive Memorandum are:

> It is not the frequency with which such Resolutions are presented that has given rise to complaint in the House of Commons, but rather the fact that, in the cases in which Resolutions have been complained of, the matters they dealt with were important and controversial.

In reply to Question 1428, the witness said:

> . . . the King's Recommendation combines two things: it combines, perhaps, a maximum sum of money, the Charge, and also the purposes. An amendment is equally out of order if it increases the amount of money, or if it introduces a new purpose, but there are always both considerations present in every Financial Resolution.

Certain questions and their replies by this witness will now be quoted verbatim:

> Q. 1433. There is only one other question. I know you are an authority on the constitutional and historical aspects of it. Could you tell us very briefly what the purpose of S.O. 64 was? What is the purpose of making these things originate in Committee? What is the big purpose to be achieved?—I think it undoubtedly was to give an opportunity of considering, before the House was committed to anything; to introduce a stage which was non-committal before the House committed itself to expenditure. I believe that is a very old principle, older than the Standing Order; it was in existence in the early seventeenth century.
>
> Q. 1434. So S.O. 64 was merely declaratory of the then constitutional practice?—Yes. I think S.O. 63 was also.
>
> * * * * *
>
> Q. 1445. So that a Resolution of the House touching the conduct of business is binding upon the Speaker, although a Resolution of the House touching legislation is not binding upon the Government?—Certainly, a Resolution by the House does not make legislation.

Referring to the King's Recommendation of Money Resolutions the witness said[1]—"All we mean by recommendation is the signification of the recommendation by a Minister."

In reply to the following questions the witness said:

> Q. 1471. A new service may appear in a Supply Vote?—That requires some authority; either statutory authority or some other authority.

[1] Q. 1454.

Q. 1472. Are you sure that is right, Mr. Campion? Is it not a fact that the Estimate, when passed and become the Consolidated Fund Bill, or whatever it does become, is as much legislation as any other legislation, and requires no support from any other statute?—No, I think not. I think the Public Accounts Committee invariably insist upon some authority.

Q. 1473. Outside the Estimate?—Outside the Appropriation Act. After all, the Appropriation Act only gives authority for one year.

The following question will also be of interest to some Oversea Parliaments:

Q. 1477. To take the question of the payment of Members in 1911, which was a totally new thing: Is it not the fact that that was just introduced in an Estimate?—That was so. I think everybody has been very doubtful as to whether that did not really require legislative authority.

* * * * *

Q. 1567. I have in mind the fact that it was apparently open for the House to discuss matters in, at any rate, much greater detail, and to propose additional expenditure prior to 1920 or thereabouts?—Yes. Of course, the remarkable thing is how seldom that was made use of. Those very loosely drawn Resolutions, and also the setting-up Resolutions continued for a very long time without any Member availing himself of the opportunity.

* * * * *

Q. 1603. Is not the Paper full every day of propositions that are out of order?—Yes, but not put down by the Government.

In reply to a question,[1] the witness said—"I think undoubtedly Financial Resolutions have grown stricter. I think perhaps the case of a Resolution which was most tightly drawn was the first Special Areas one of 1934,[2] which contained a schedule.

Q. 1649. Of course a good many of the Budgets are not Money Bills at all?—Many have been refused a certificate.[3]

Q. 1650. There was in fact a doubt over the first Budget?—I am not quite sure. I do not remember, but I think very few Finance Bills in the last 20 years have received the Speaker's certificate.

At the close of Mr. Campion's evidence, he said[4] that his whole object was to try to maintain the principle that the initiative belonged to the Crown alone, and to give that a reasonable interpretation, neither an extremely rigid interpretation nor yet too lax an interpretation. That was, of course, the

[1] Q. 1613.
[2] 295 H.C. Deb. 5. s. 1377 to 1390.
[3] *Vide* Parliament Act, 1911.
[4] Q. 1669.

principle, and the whole problem was to find the right balance between the claims of the Government and the rights of private Members, but in the case of finance, he thought the Government ought to be in a stronger position than they were in other matters in view of the principle that the initiative belonged to them.[1]

The following is the Memorandum Captain the Rt. Hon. E. A. FitzRoy, the Speaker of the House of Commons, put in possession of the Select Committee:

> It has been suggested that some form of declaratory Resolution should be passed by the House, defining to some extent the terms of Financial Resolutions, so as to give wider powers of amendment to the Committee stage of the Bill which is subsequently to be introduced.
>
> That is a matter entirely for the House to decide for itself. If that were the procedure adopted, it would necessarily follow that some authority would have to be responsible as to whether the Financial Resolution conformed to the standard laid down by the Resolution of the House.
>
> The only obvious authority for the purpose would be the Speaker. His decision would be final and could be given without delay.
>
> It is upon that suggestion that a few remarks are offered.
>
> The Speaker is the servant of the House, and as such is always willing to undertake duties put upon him by the House. When it is suggested that a new and difficult task is to be added to the existing burdens of the Speaker it is as well, before doing so, fully to consider the effect that the exercise of these duties might have upon his status in the House, and his relations to its Members.
>
> How wide Governments should frame their Money Resolutions so as to give scope for amendments to the Bills which are to be founded upon them is a question which may give rise to extreme controversy between different parties in the House.
>
> A Speaker's authority and status rest upon his absolute impartiality and the confidence which Members repose in him. This is the very foundation stone upon which the constitution and procedure of the British House of Commons is built. Any weakening or break in it would bring the whole structure to the ground.
>
> The initiative in expenditure is reserved to the Crown under S.O. 63. The responsibility for drafting a Money Resolution upon which a Bill is to be founded rests, therefore, with the Executive and the King's Recommendation signified by a member of the Cabinet. It is true that the Speaker is the guardian of the privileges, rights and liberties of the House against the power of the Executive, and he has from time to time expressed opinions in the case of Money Resolutions.
>
> Would it be wise definitely to place upon the Speaker a task

[1] Q. 1672.

which may call upon him to give a decision on a matter which may be highly controversial, and which might bring upon him the accusation of having favoured one side or the other in the controversy ?

No doubt in practice few Financial Resolutions would need to be referred to the Speaker on the ground that they were in too detailed terms. In these matters it is essential to look ahead, and the time might come, especially if it is to become the practice to oppose the Speaker in his constituency at Election times, that such a ruling might be referred to at the time of an Election.

Questions.

On July 28,[1] a question was asked if the Report of the Select Committee had been considered and whether the Government accepted the Committee's recommendations, to which the Prime Minister replied that the matter was being considered.

On October 21,[2] in reply to a similar but supplementary question the Prime Minister said that the Minutes of Evidence of the Select Committee contained Mr. Speaker's Memorandum, and addressing Mr. Speaker, said:

> In view of your expression of opinion, the Government consider that you, Sir, should be consulted on the whole question, and that is now being done,

adding that he (the Prime Minister) regretted therefore not to be in a position to make a statement that day, but hoped to be able to do so early in the new Session.

On November 9,[3] the Prime Minister was asked by an hon. Member (the Rt. Hon. G. Lambert, South Molton), and a Member of, and for several meetings Chairman of, the Select Committee on Money Resolutions of 1937, what action the Government proposed to take with regard to the Report of that Committee, to which the Prime Minister (Rt. Hon. Neville Chamberlain) in his reply stated that the Government had very carefully considered the recommendations of the Select Committee, and while not accepting all the criticisms directed against the present practice as well founded, it had approached the question with every desire to remedy, so far as it might be consistent with its responsibilities, any features in the present position which appeared to hon. Members as unsatisfactory. The Government were prepared to accept in substance the second of the two main recommendations of the Select Committee—namely, the alteration of Standing Orders, so as to

[1] 326 H.C. Deb. 5. s. 3081-3082.
[2] 327 *Ib.*, 22, 27.
[3] 328 *Ib.*, 1593-1600

allow the Second Readings of Money Bills (other than those originating in Committee of Ways and Means) to be taken before consideration of the relevant Financial Resolutions in Committee; as enabling hon. Members to express their views on the detailed provisions of the Bill at an early stage; and as meeting the criticism that the House should not be required to examine and discuss the terms of the financial provisions as set out in the Financial Resolution before being fully informed of the Government's intentions as detailed in the clauses of the Bill. The Government noted that the new procedure was permissive and not mandatory and, as was the case with the similar recommendation of the Select Committee of 1932,[1] the right of the Government to proceed by preliminary Resolution was left unimpaired.

In regard to the recommendation of the Select Committee in respect of Declaratory Resolutions, however, the Government did not feel that the directions contained in such recommendation were compatible with S.O. 63, and that there were certain practical difficulties such as placing upon Mr. Speaker the duty of giving decisions on highly controversial matters. The Government, however, was in sympathy with the desire of hon. Members to be in a position to offer constructive criticism of financial measures, and that Financial Resolutions in respect of Bills would be so framed as not to restrict Committees in amending Bills further than was necessary to enable the Government to discharge its responsibilities in regard to public expenditure and leave freedom for discussion and amendment of details compatible with the discharge of those responsibilities.

Written instructions, continued Mr. Chamberlain, were being given to Government departments and the Parliamentary Counsel's Office drawing attention to the Committee's Report and to the statement he was then making, and requiring that in future such Financial Resolutions would be drawn so as not to involve undue restrictions, whereupon he quoted in full the actual letter conveying such instructions as follows:

SIR,

Financial Resolutions.

I am directed by the Lords Commissioners of His Majesty's Treasury to invite your attention to the Report of the Select Committee on Procedure relating to Money Resolutions (H.C. 149 of 1937) and to the reply given by the Prime Minister to a Question in the House of Commons on the 9th November, 1937,

[1] H.C. Paper 129 of 1932.

and in particular to the declaration that it is the definite intention of His Majesty's Government to secure that Financial Resolutions in respect of Bills shall be so framed as not to restrict the scope within which the Committee on the Bills may consider amendments further than is necessary to enable the Government to discharge their responsibilities in regard to public expenditure, and to leave to the Committee the utmost freedom for discussion and amendment of details which is compatible with the discharge of those responsibilities.

I am further to request that the necessary steps be taken to acquaint all those concerned with the requirement that the terms of any Financial Resolution, in the drafting of which they are concerned, shall not be so drawn as to involve undue restrictions and that the Government's declaration shall be complied with in all cases.

I am, etc.

The Prime Minister concluded by expressing his thanks to the hon. Member for South Molton and to the other members of the Select Committee for their valuable Report.

Mr. Speaker's Opinion.

After a couple of Supplementary Questions, the Leader of the Opposition (Rt. Hon. C. R. Attlee) asked Mr. Speaker whether, in view of this being a matter relating to the procedure of the House, he would care to express an opinion on these suggestions, whereupon Mr. Speaker read a written statement consisting of five paragraphs of which the following is a précis:[1]

The real questions at issue—namely, the amount of latitude properly to be allowed to private Members in proposing amendments which involve expenditure, and how Financial Resolutions should be drawn so as not to restrict unduly the scope of such amendments are questions of degree which admitted of an almost infinite variety of opinion as to where the line should be drawn and for which it was almost impossible to lay down rules of general application in advance of particular cases. Every case would have to be judged upon its merits, but a right judgment would not be possible without some guiding principle.

* * * * *

Mr. Speaker said that he found himself in considerable agreement with the Select Committee, but he did not agree that the conformity of Money Resolutions to the standard laid down by the Report should be subjected to his decision, his objections to which were laid down in his Memorandum[1] to the Committee, and that while always willing to undertake duties put upon him by the House, he questioned the wisdom of imposing upon the Speaker a duty which in his opinion would have the effect of involving him in party controversy.

* * * * *

[1] 328 H.C. Deb. 5. s. 1596.

Mr. Speaker remarked that the mere issuing of the Government instruction (already referred to) was a considerable advance and more favourable to the House than the situation that previously existed. He noted that under the Government's proposals the direct responsibility would now not be laid upon him, which was the sole real difference between the Government and the Committee.

* * * * *

Mr. Speaker expressed himself in agreement with the statement in the Committee's Report, in which the Committee described its own intentions that the "declaratory Resolution" it recommended, so far from proposing any "innovation in practice," aimed at no more than maintaining:

> "what had long been (and still is except in rare instances) the established parliamentary practice in the authorization of expenditure."[1]

This was borne out, continued Mr. Speaker, by the terms of the declaratory Resolution (already quoted), which he took to mean that the details of expenditure should be expressed more widely in a Financial Resolution than in a Bill in order to make it possible to amend such details. Comparing with this the standard laid down in the Government's instruction, Financial Resolutions should:

> "be so framed as not to restrict the scope within which the Committee on a Bill may consider amendments further than is necessary to enable the Government to discharge their responsibilities in regard to public expenditure, and to leave to the Committee the utmost freedom for discussion and amendment of detail which is compatible with the discharge of these responsibilities."[2]

This seemed to him, observed Mr. Speaker, to mean that Financial Resolutions should be so drawn as to enable the details of expenditure to be amended in Bills, and he reminded the House that they could not be so amended unless they were expressed more widely (or with less "particularity") in the Financial Resolution than in the Bill. Nor, continued Mr. Speaker, was this the only similarity, for both the declaratory Resolution and the instructions laid down an upper limit for such amendments of detail. According to the former, such amendments "must not materially increase the charge." According to the latter they must be "compatible with the discharge by the Government of their financial responsibilities."

In conclusion, Mr. Speaker said that it was not for him to express an opinion as to the efficacy of the machinery by which under the Government's plan the standard for Financial Resolutions would be enforced, especially as he was doubtful, for the reasons which he had stated, of the suitability of the only other possible machinery which had been suggested, namely, its enforcement by the Speaker. He thought, however, it would be a mistake

[1] Report, § II. [2] S.C. Report, para. 16 (i).

> for any section of the House to belittle the extent of the advance which the Government had made in their desire to meet the wishes of Members. The instructions which the Government had undertaken to issue for the drafting of Financial Resolutions would be on record, and every future case could be judged with reference to the standard therein laid down.

After a further Supplementary Question asked of the Prime Minister, the Leader of the Opposition then echoed what Mr. Chamberlain had said in his appreciation of the debt the House owed to the Select Committee.

The New Standing Order.

On February 1, 1938,[1] the Prime Minister moved the Motion[2] which has since become S.O. 68A, of the House of Commons.

Mr. Chamberlain in his opening speech took very much the line already dealt with in his reply to the question asked of him on November 9, and said the Government had followed very closely the draft Standing Order recommended by the Select Committee, which the Government had amended in two respects designed to make more clear the intention of the Motion.[3] The Prime Minister then referred to three other points—namely, that the clauses in these Bills would still be printed in italics so that Members might have them first brought to their notice on Second Reading, except in cases where it would be necessary so to print nearly all the clauses, when it might be desirable to adopt some other method of distinguishing them. He took it that the Clerks-at-the-Table would see that whatever was done would be in a manner most convenient for the House.

In concluding the Prime Minister said that although under the new Standing Order the Financial Resolution would follow the Second Reading, the right of the Government to retain the present procedure in any particular instance remained unimpaired. The Order was permissive, not mandatory. Special reasons under special circumstances might require that the Financial Resolution be taken first, also that under the new procedure more than one stage would be possible in the one day; but that did not mean that the House could proceed in Committee any further than such clauses as did not entail the passing of the Financial Resolution to vitalize them.

[1] 331 H.C. Deb. 5. s. 67 to 70.
[2] Already quoted, pp. 115, 116, *ante* [Ed.].
[3] These amendments have already been shown in square brackets and underlined in dealing with the Select Committee's Report.

The hon. Member for Keighley (Rt. Hon. H. B. Lees-Smith) said[1] that for some years there had been a general idea expressed in these words, "Here is a difficulty, leave it to the Speaker to decide." More and more decisions of this sort had been put into his hands, such as the acceptance of the Closure, the acceptance of dilatory Motions for adjournment and the certification of Money Bills under the Parliament Act. Mr. Speaker's Memorandum to the Select Committee was therefore a public document of great importance. The hon. Member doubted if the House fully realized how delicate the position of the Speaker was becoming. Mr. Speaker depended upon the goodwill of the House and certainly upon the goodwill of the Opposition, because undoubtedly if there were a strong feeling against the Speaker in any section of the House, his position would become almost impossible.

The hon. Member for Dundee (Mr. Dingle Foot) observed[2] that the new procedure would enable the Government in passing a Money Resolution to take into account the views expressed in the House on Second Reading, as well as avoid a duplication of debate. Under the present procedure it not infrequently happened that a discussion on a Money Resolution tended to become a kind of dress rehearsal to the Second Reading debate.

He did not want it to be supposed, however, continued the hon. Member, that they were entirely satisfied with this alteration in the Rules of Procedure or that they regarded it as sufficient in itself to meet the grievances which had been so often expressed in the House. The hon. Member maintained that the House had not been fairly treated by the departments and that S.O. 69 had been used in such a way as to deprive Members of legitimate opportunities of moving amendments to Government Bills.

The hon. Member for South Molton (Rt. Hon. G. Lambert) said[3] he was glad to see inscribed in the Report from the Select Committee the principle of the sole right of the Crown to initiate expenditure, a principle which has been described as "one of the sheet anchors of good government."[4] The hon. Member maintained that it would be impossible to allow Members to run riot with expenditure and to propose public expenditure. That was as much in the interests of the party opposite as it was in the interests of any Government.

[1] 331 H.C. Deb. 5. s. 71 to 73.
[2] *Ib.*, 74. [3] *Ib.*, 77, 78.
[4] *The System of National Finance*, by Hilton Young, 2nd ed., p. 48.

The hon. Member for Glasgow, Camlachie (Mr. C. Stephen), said[1] that the position he took up in the Select Committee was that the House should return to the procedure which obtained before the original passing of S.O. 69 in 1919 and its amendments in 1922. He would like to see every Member have the opportunity of bringing forward any proposals for expenditure which he thought necessary.

The hon. Member for Bolton (Sir Cyril Entwistle, K.C.M.G.) said[2] that one of the difficulties which the Select Committee had to face was the devising of a Declaratory Resolution which would maintain inviolate the principle embodied in S.O. 63. In his opinion such a Resolution would have meant that there would have been some control over the initiating of expenditure. Any amendment that increased the charge would be out of order because it violated S.O. 63 unless such amendment was within the terms of the Financial Resolution authorizing the charge.

The hon. Member for Ebbw Vale (Mr. A. Bevan) observed[3] that the reason why in the past private Members never wished to increase expenditure was that it was the King who wanted the money, and they always wanted to give him less than he asked. So it was not very remarkable that in the past the House of Commons was not anxious to initiate expense and was always putting a restraint upon the demands of the Crown. When the Executive became dependent upon the votes of the Commons and not upon the devotees of the King, the Commons had to take steps to prevent the King's men from initiating expenditure on behalf of the King. The restriction upon the initiation of expenditure was imposed because the King had been trying in that way to get round the position. He would make a demand upon his Ministers, his Ministers would refuse it, and then he would use the King's party in the House to impose an increase of expenditure upon the Executive.

The limitation was imposed in the first place to protect the House of Commons against the Crown. It was now used to protect the Executive against the Commons.

The hon. Member for Leeds, S.E. (Major J. Milner, M.C., LL.B.), remarked[4] that he was a little concerned about what the Prime Minister said on November 9, and also that day in apparently emphasizing the point that the operation of the Motion will be primarily permissive, as though he expected there would be occasions upon which advantage would not be taken of it

[1] 331 H.C. Deb. 5. s. 81.
[2] *Ib.*, 90, 91.
[3] *Ib.*, 94, 95
[4] *Ib.*, 99, 100.

and of the wishes of the House. In now passing the Motion he could not conceive of the circumstances which would lead the Government to have a Financial Resolution first and a Second Reading second, unless for some special reason the Government desired to restrict the opportunities of amendment afforded to the House. If that were proposed, he was sure the attention of the House would be called to it and a very serious view taken.

Italicization.

On February 15, 1938,[1] the hon. Member for Buteshire and N. Ayrshire (Colonel Sir Charles MacAndrew) raised the point of Order, that under the new Standing Order (68A) Members had no means of distinguishing between a Bill the main object of which was the creation of a public charge, and a Bill which involved a charge that was subsidiary to its main purpose. That day, the first Bill involving expenditure since the passing of the new Standing Order was down for Second Reading, and he understood that the Government proposed only to take one stage at that day's sitting. The hon. Member concluded that such was the first Bill to be italicized. Now that both types of Bills involving expenditure were to be italicized, it would not be possible for Members to distinguish them. The hon. Member, therefore, suggested that for the convenience of the House some method of labelling such Bills be adopted, so that Members could tell to which class a particular Bill belonged.

Upon which, Mr. Speaker said:

> If I can be assured that the general wish of the House is that some distinguishing mark should be put on the Order Paper, to distinguish between Bills which will come under the new Standing Order and those in which monetary proposals are subsidiary to the main purpose of the Bill, I shall be quite prepared to consider what method of distinguishing such Bills will be most convenient. I suggest something of this kind, that the words "in pursuance of S.O. 64A" might be attached to the Motion for presentation of the Bill or Financial Resolution. If something of this kind will meet the convenience of the House, I shall be glad to see if it can be done.

Another hon. Member (Rt. Hon. H. B. Lees-Smith), in supporting the Member for Buteshire and N. Ayrshire, also observed that it was the general desire of the House that there should be an interval of, at any rate, a day between taking the Second Reading and taking the Financial Resolution. For

[1] 331 H.C. Deb. 5. s. 1713, 1714.

that purpose, it would be necessary to know whether Bills of that kind would be within the scope of the Standing Order or not.

To which Mr. Speaker said:

> If something of the kind will meet with the approval of the House I am prepared to consider it and see whether it can be carried out.

Another Member asked whether it was possible for something to be printed on the Bill for the convenience of private Members, upon which the Prime Minister suggested that the views of the House be collected through the usual channels and

> convey them to you, Sir.

Mr. Speaker:

> I can only ascertain the views of the House in that way.

The full Report from the Select Committee, the evidence ıid before it and the debate in the House of Commons both ıefore and after the presentation of the Report, should be read in detail certainly by every Clerk-at-the-Table oversea in the Lower House, if not in the Upper House also. It is in such reports and proceedings where the real practical reasons and the history of Parliamentary procedure of the House of Commons are to be found. But until the reader can find time for such a task it is hoped that this article will give a useful outline of the subject.

IV. HOUSE OF COMMONS: PENSIONS SCHEME FOR M.P.'S

BY THE EDITOR

A QUESTION in the House of Commons on this subject was dealt with in the last issue of the JOURNAL,[1] and on June 22, during a debate[2] in the House of Commons upon the Motion for increasing the salaries of M.P.'s from £400 to £600 p.a., the Prime Minister (Rt. Hon. Neville Chamberlain) remarked, that he was aware that a number of Members were very much concerned about cases which had come to their knowledge where a man had been a Member of the House for a number of years and having ceased to be a Member, either through age or infirmity, or because he had lost his seat, found himself without means of employment and therefore without means of subsistence. He (the Prime Minister) knew that hon. Members thought it would be a proper and gracious thing if, on the occasion of raising the general level of salaries of the House, they were to institute at the same time some kind of pension fund to be contributed to by some compulsory deduction from the new salary from which a pension might be awarded to persons who had served a certain number of years in the House, and had arrived at a certain age. Whatever its merits, it could not, said the Prime Minister, be carried into operation by Resolution. It would require legislation. But it was not a matter which in his judgment should be hastily decided, because any scheme of pensions must be actuarially sound. If eventually some scheme was evolved from an inquiry he did not exclude the impossibility of introducing legislation to give effect to it. There was, however, really very little analogy between such a pension scheme as he believed had been suggested and an ordinary pension scheme for employees. An ordinary pension to an employee is one of the inducements offered to him to enter employment and to give continuous and whole-time service. In this case a pension based on the salary that a Member receives would not be an inducement to him to enter the House. The question whether he would be in a position to obtain a pension would be quite problematical and not one that depended upon himself, for his constituency might not always choose to return him, and, of course, there was no

[1] Vol. V, 28.
[2] 325 H.C. Deb. 5. s. 1053 to 1055.

contract on the one side or the other for continuity or for whole-time service.

Therefore, continued the Prime Minister, there really was no analogy between the two, and, if one took a common form of pension, such, for example, as was in existence in the case of civil servants, teachers and local government officials, the pension was either one-half the existing salary plus a lump sum, or two-thirds the existing salary without a lump sum, the two being practically equivalent to one another, for service which had been continuous for forty years. There was clearly nothing, continued Mr. Chamberlain, that could be compared with that in considering the position of M.P.'s, and if an arbitrary number of years' service in the House was to be fixed as a condition to be fulfilled if a Member was to be eligible for a pension, he thought difficulties would arise at once. There would be the case of the man who was just short of the stated number of years, because the Government had chosen to dissolve a few months earlier than they might otherwise have done. It did not seem that such hard cases, which had given rise to the suggestion, would be met by a pension scheme of that character. "Any scheme," remarked the Prime Minister in conclusion, "on the lines of the schemes in force in the Civil Service and in the local government service is really entirely inappropriate to the circumstances in which hon. Members find themselves in this House. . . . There were considerable difficulties in what seems the simplest and easiest way of introducing a scheme of this kind, and I would like to suggest that if this matter is to be proceeded with, it should be only after the most careful and thorough inquiry into the possible methods of dealing with it."

On July 15,[1] the Prime Minister (Rt. Hon. Neville Chamberlain) was asked in the House of Commons whether he could state the decision of the Government with regard to the suggested inquiry into the question of a pensions scheme for ex-M.P.'s, to which he replied that he had appointed a Departmental Committee to examine the practical aspects of the suggestion for a pensions scheme for M.P.'s, the necessary funds to be raised and maintained by personal contributions from Members (whether compulsory or voluntary) without any charge to the taxpayer, and to report the various alternatives. The Prime Minister concluded by saying that on receipt of such report he proposed consulting further with representative M.P.'s on the matter.

[1] 326 H.C. Deb. 5. s. 1479.

On October 21[1] another question was asked as to whether the Prime Minister could state the recommendations of the Departmental Committee, to which he replied that the Recess had delayed the investigations of the Committee and that he was not in receipt of their Report which he understood would be ready in the course of a month or thereabouts.

On November 30[2] and December 14[3] further questions of a similar nature were asked by the same Member. December 23[4] he asked the Prime Minister what action the Government intended to take on the Departmental Committee Report recently issued on the subject, to which another Minister replied, on behalf of the Prime Minister, that he was making some inquiries but was not then in a position to make any statement on the subject.

A further question was asked on December 23.[5]

The Departmental Committee appointed by the Prime Minister, which consisted of Sir Warren Fisher, G.C.B. (Chairman), Permanent Secretary to the Treasury; Mr. G. S. W. Epps, C.B., etc. (Actuary); Sir H. E. Fass, K.C.M.G., etc. (ex-Financial Secretary, the Sudan); and Sir James Rae, K.C.B., etc. (Under-Secretary to the Treasury), duly presented their Report.[6] It consists of fourteen pages medium 8vo and an Appendix showing: I, Composition of House of Commons on July 30, 1937, by age and Parliamentary service; II, Terminations of Membership in period January 8, 1924 to July 30, 1937: Part 1, giving an analysis by duration of service and number of times returned, and Part 2, an analysis, by cause of termination (excluding terminations after service in a single Parliament); III, giving an outline of the French Parliamentary scheme; and IV, quoting Statutory Rules and Orders, 1936, No. 1310, Clause 12, governing the investment of funds.

The Report, which is addressed to the Rt. Hon. the Prime Minister, states in its opening paragraph:

> We were appointed by you to examine the practical aspects of the suggestion for a pension scheme for Members of Parliament, the necessary funds to be raised and maintained by personal contributions from Members (whether compulsory or voluntary) without any charge to the taxpayer and to report to the Prime Minister what are the various alternatives.

Paragraph 4 of the Report states that out of a total House of 614 Members (one bye-election pending) during the period given above in Appendix I, 100 Members commenced their service

[1] 327 *ib.*, 20, 21. [2] 329 *ib.*, 1875. [3] 330 *ib.*, 1328.
[4] 330 *ib.*, 2147. [5] 330 H.C. Deb. 5. s. 2147. [6] Cmd. 5624 of 1937.

in the present Parliament, 336 served continuously in more than one Parliament, and 178 served in more than one Parliament but with breaks of an average of 4½ years. Of Members who have served over 10 years, who represent over one-third of the House, at least 100 are over 60.

Paragraph 6 deals with the analysis shown in Appendix II, and states that during the 13½ years under review there had been 1,438 M.P.'s, of whom 614 were sitting Members on July 30, 1937. Of the remaining 824, whose membership had terminated, 309 had sat in one Parliament only, 157 in two, 93 in three, and the balance, 265, had been elected to Parliament four times or more. Analyzing the terminations by years of membership, 427, *i.e.*, over half had 5 years or less and 175 from 6 to 10 years. Of the remaining 222 who had been in the House for 11 years or more, one half only, *i.e.*, about one-eighth of the total number whose membership had terminated in that period, had served for 16 years or over.

The causes of termination of membership after sitting in two or more, or three or more Parliaments were classified as follows:

Terminations.	*Number of Times Elected.*	
	Two or more.	*Three or more.*
By Death	91	72
By Peerages, Judgeships, Governorships, etc.	59	53
At Dissolutions—		
(i) seeking but not securing re-election ..	179	98
(ii) not standing for re-election	155	113
Others (during course of a Parliament) ..	31	22
Totals all causes	515	358

These figures, the paragraph continues, may serve to indicate the field from which beneficiaries under a pensions scheme would emerge. If, therefore, a grant had been made to all Members who were over 60 years of age at termination, who had served in at least 3 Parliaments, and whose total membership was: (*a*) 11 years and over, or (*b*) 6 years and over, it would be seen that the total numbers fulfilling these alternative conditions would be:

	(*a*)	(*b*)
At Dissolutions—		
Not re-elected	29	41
Not standing	49	68
Other terminations (excluding Peerages, Judgeships, Governorships, etc.)	8	9
	86	118

Paragraph 7: The Committee then considered the practicability of a scheme on the analogy of those in force in many employments, whereby, in consideration of suitable contributions from all Members, a pension would be granted on termination of membership to each Member who satisfied the appropriate conditions. As membership of the House of Commons, however, began and ceased at varying ages and its duration might be no more than a few months or years, or may even extend to several decades, the lack of homogeneity and the impossibility of predicting the average rate of cessation of membership in future precluded even approximate actuarial calculation of the probable cost of a pension system as generally understood, but it was clear that the individual contributions required to finance such a system would be extremely high in relation to a given rate of pension.

Paragraph 8 shows the following statement giving the average of the annual premiums required by eight of the leading insurance companies under policies taken out at various ages for deferred annuities commencing at ages 60 and 65:

Age next Birthday at Entry.	*Annual Premium for Annuity of £100 Commencing at Age—*	
	60	65
	£ s. d.	£ s. d.
30	24 16 8	16 8 4
40	44 12 6	27 13 4
50	106 8 4	55 3 4

The annual premiums at ages over 50 at entry increased very rapidly, and, in the extreme case of a Member aged 60, the provision of an annuity of £100 commencing at that age would involve a lump sum payment of about £1,230. Again, immediate value of an annuity of £100 commencing at 65 was about £1,040. In its application to the older existing Members of the House, therefore, a contributory pensions scheme of this type would either require contributions of prohibitive amount, or result in such meagre pensions as to be of little use. Arrangements of this nature, moreover, would involve considerable difficulty when membership was interrupted and the ex-Member was unable to continue his contributions. The Committee therefore concluded that a scheme in which the

pension was related in each case to the Member's own contributions would be unsuitable.

Paragraph 9 deals with the French Parliamentary Pension Scheme, details of which are outlined in Appendix III, but as the scheme in force in the French Parliament involves a subsidy from the Exchequer, and as it had been laid down in connection with the proposal for the institution of a pension scheme for the House of Commons that no liability should be imposed on the taxpayer, the French scheme was outside the Committee's terms of reference and did not afford a useful precedent. This scheme is, however, dealt with more fully later.

Paragraphs 10 and 11 read as follows:

> 10. *Members' Fund.*—We next turned to a suggestion which had been made by a number of Members of Parliament that a House of Commons Members' Fund could be instituted, contributions to which would be fixed at a moderate level while the grant of pensions on termination of service would be confined by a process of selection to a sufficiently small number of beneficiaries to enable sums of reasonable amount to be available for ex-Members of long Parliamentary service who on cessation of membership had passed the age for renewed employment and who had not adequate means of financial support. In our view a scheme of this sort is both practicable and suited to the very special circumstances which require to be taken into account. On the one hand, the majority of Members do not require financial provision to be made for them after the conclusion of their membership. On the other, it is found that in a certain number of cases a Member who has spent many years in Parliament is unable after the cessation of his Parliamentary salary to support himself in the most modest manner which comports with the dignity of that Institution. It is with such cases that the suggested Fund is intended to deal.
>
> 11. Before a scheme of this sort is adopted, decisions will have to be taken on the following matters:
>
> (i) The extent of the field from which contributions are to be drawn and the amount of those contributions.
>
> (ii) The qualifications to be prescribed as to age and service as a condition for the grant of a pension.
>
> (iii) The measure of discretion in the administration of the scheme to be conferred on the managing body; this body might either be required to apply without deviation the qualifications and rules laid down or be subject only to a general observance of such qualifications and rules as guiding principles, or again the administration of the available funds might be left to its sole discretion without any limitation.
>
> (iv) The amount of pension to be granted, *e.g.*, whether it should be a uniform flat rate of a prescribed amount or such pension as would bring the income of the ex-Member to that amount.

(v) The reconsideration of the amount of the pension either in the light of a change in the financial circumstances of the recipient, or in the light of the resources of the Fund.

(vi) The inclusion of power to make non-recurrent grants to ex-Members who are not eligible for pension under the prescribed conditions, either pending an election or in other circumstances.

(vii) The inclusion of power to grant pensions to widows or other dependents of ex-Members, and if so the amount of such pensions.

(viii) The date from which the scheme should become effective for the purpose of award of pensions and the definition of its scope as regards persons who had already ceased to be Members of the House at that date.

Paragraph 12 stated that the difficulties of forecasting impending calls upon the Fund and of administering its available resources to the best advantage would in any case be great. Apart, therefore, from any other objection which might be felt to reliance on optional contributions, the necessity of assuring to the management of the Fund a known and permanent income over a definite period pointed, as a practical measure, to placing a statutory obligation on all Members of the House of Commons to contribute to the Fund.

Paragraph 13 was as follows:

> As to the amount of the contribution, our investigations lead us to believe that a contribution of £12 a year, involving a levy by deduction from salaries of an exact £1 a month, would be generally acceptable, and that it would not raise questions of the return of their contributions to Members not personally benefiting from the Fund. We have accordingly taken this figure as a basis for the calculations below. With a house of 615 Members, it produces an income of some £7,000 per annum when allowance is made for temporarily vacant seats and for intervals between Parliaments.

The first part of paragraph 14 dealt with the finance, scope and benefits of a pensions scheme. The Committee were therefore accordingly of opinion that in the grants of pensions regard must always be had to their capital value. In other words, the total amount received in contributions during any Parliament should be treated as representing, in effect, the sum available for the purchase of annuities. With an annual income of £7,000, representing about £25,000 during a Parliament of average duration, they estimated on certain assumptions, the more important of which were indicated in the

Report, that it would not be prudent to award new pensions involving an annual charge of more than about one-tenth of the latter sum for cases selected in respect of the Parliament in question. The Committee's fraction of one-tenth was related to the estimated average cost of the pensions, namely, about ten years' purchase.

The Committee also considered that it was impossible to forecast what the probable number of cases to be met from the Fund would be, and indeed it had not been possible to ascertain with any precision how many pensions might be required during the period 1924 to 1937, if a Fund had then been in existence. The Committee had, however, made certain calculations as to the extent of assistance in the form of pensions which the Fund could afford, and for that purpose they had made the following assumptions:

(i) that eligibility for pensions will be confined to present and future Members who have had considerable Parliamentary experience, measured either in years of Parliamentary service (*e.g.*, ten years) or by the number of times they have been returned, and who, except in cases of breakdown of health, are over 60 years of age at the date of termination of service;
(ii) that pensions on termination of membership owing to ill health before the age of 60 will be a small proportion of the whole;
(iii) that the pension will be such amount as is required to bring the income from all sources of the ex-Member up to £150 a year;
(iv) that grants to dependents will be confined to the award of pensions to widows of ex-Members who die while in receipt of a pension or of Members who would themselves have been eligible for pension; and
(v) that the pension to a widow will be such amount as is required to bring her income from all sources up to £75 a year.

The resources of the Fund, based on the suggested compulsory contributions of £1 a month, would enable the provision of about eighteen awards on average to ex-Members and their widows during the course of each Parliament if the full pension on the rates mentioned above was needed in each case, the position being proportionately improved if, owing to private means, full pensions were not always required.

The Committee in paragraph 16 stated that on the assumptions made above as to the number of pensions granted the accumulated Fund would ultimately reach a total in excess of £50,000. It was evident that in a scheme under which the grant of pensions was elastic, not only as regards the amount of the award but also the age at which it commenced and other matters, the assessment of future liabilities could only be

measured on somewhat broad lines. Actual valuations of the Fund should, however, be made at periodical intervals, say every five years, to ascertain its progress and to ensure that the proper relationship was maintained between the liabilities and the assets.

Paragraph 17 read as follows:

> *Donations and Bequests.*—It is probable that once a Fund of this character has been instituted, it will attract substantial donations and bequests over and above the statutory contributions which constitute its secure income. Such has been the experience of other foundations, and in view of the prestige of the body with which this Fund will be associated and the corporate spirit characteristic of the House of Commons, the additional revenues so made available for the objects of the Fund may eventually be large. We are obviously not in a position to take account in our calculations of any such problematical income.

Paragraph 20 refers to the appointment of a Custodian Trustee and a Committee of Management and remarks that the collection from Members' salaries of the fixed contribution if authorized by Statute could be effected by existing machinery, and it should be possible to provide in considerable measure any secretarial and clerical assistance required by the Trustee or Committee of Management without extra cost to public funds, or charge against the Fund. The Statute should, however, give power to employ and remunerate from the Fund such staff as might be required, and to defray any incidental expenses incurred.

This paragraph then went on to deal with the system of investment of the funds, and stated that it was usual in the case of superannuation funds established in connection with trade or industry for contributions to the Fund to be allowed as deductions for Income Tax (and Sur-Tax) purposes from the income of the contributors and for the income of any invested fund to be exempt from Income Tax. The Committee thought that any scheme such as they had described should enjoy similar treatment, and they suggested that steps should be taken by means of a provision in the Finance Act next following the initiation of the scheme to give the scheme the same exemption privileges.

Paragraph 21 read as follows:

> It would no doubt be desired that the accounts of the Trustee, including the annual account of the Fund, should be audited by the Comptroller and Auditor General. Subject to the exclusion therefrom of all names of beneficiaries, the audited accounts and

the Report of the Auditor thereon should be required to be presented to the House of Commons. Provision should be included accordingly in the Statute.

It would probably be desired also that the actual valuations of the Fund, which we have suggested should be made quinquennially, should be carried out by the Government Actuary, who would of course be available at any time to give such actuarial advice as might be required. Any valuation of the Fund should be required to be presented to the House of Commons.

Nothing further, however, in regard to pensions for Members of the House of Commons has transpired up to the time of going to press with this issue, except that on February 3, 1938,[1] a similar question to the previous ones was asked to which the Prime Minister replied that when he announced the appointment of the Committee, he said that when he received their Report he would consult certain hon. Members on the subject, but that he had not yet had an opportunity of doing so.

The French Parliamentary Pensions Scheme. This scheme is a contributory scheme for Members of the Lower House (Chamber of Deputies), whose present Parliamentary salary at the then current rate of exchange is £440 p.a. The scheme provides that in return for compulsory contributions of about £24 p.a. in the 4 years following a Deputy's first election and £12 p.a. thereafter, a pension is payable as of right at the age of 55, varying according to length of membership from £55 p.a. after 8 years' membership to about £139 after 28 years' membership. In addition, a pension is payable at half the appropriate rate to the widow of a Deputy who has satisfied the prescribed qualifications and who dies, whether before or after commencing to draw pension, together with orphans' allowances of one-twentieth the Deputy's rate for each child during minority. Deputies have the option of paying twice the above rates of contribution and receiving double the benefits. Pensions are not payable during membership of either House. A Deputy under pension age who fails to retain his seat at an election or who becomes a Senator must continue to pay contributions to maintain his pension rights, but if he has contributed on the higher scale he may continue payment on the lower, with appropriate modifications of pension.

To quote from a recent report in *The Times*,[2] however, in order to qualify for a maximum pension of 40,000 f. (£225) a Deputy must be 55 years of age and have paid a monthly contribution of 900 f. over a period of two Parliaments (8 years),

[1] 331 H.C. Deb. 5. s. 371, 372.
[2] August 10, 1938.

making a total of 86,400 f. (£487), but he need not have sat in two Parliaments, for if not returned after only sitting in one Parliament he may continue paying into the Fund and in due course draw a pension. On the other hand, a Deputy who is reasonably sure of constant re-election can spread his contributions over a greater number of years and so reduce their incidence. Furthermore, a Deputy may choose to pay smaller contributions with a lower aggregate and receive a pension in proportion. The salary of a Deputy now stands at 83,000 f. (£472) p.a.; he also enjoys such facilities as, free first-class railway pass, underground and 'bus transport, a generous free travel allowance for his family, franking privileges, stationery, free baths, unlimited food and drink at the Parliamentary buffet for 30 f. p.m., and free typing service with a slight charge for stenography. His unavoidable outgoings are 300 f. p.m. towards the cost of railway vouchers.

Much, however, depends upon the political party to which a Deputy belongs. The Financial Secretary of the Communist Party draws all the salaries of its Deputies *en bloc* and doles out 2,500 f. (£14) p.m. to each Deputy, the remaining 4,000 f., or so, going to the Party funds. In return, the Party provides a research service for documenting speeches and a special free correspondence service with stenographers, and thereby keeps a watch upon the contents of all outgoing letters. A particularly active Deputy belonging to this Party may be returned a little extra of his own money, provided he makes an unusual number of speeches in the right vein. Deputies belonging to the Socialist Party receive their Parliamentary salary in full, but contribute 1,000 f. p.m. to their Party, and the Radicals 500 f., but not all the Radicals remember to do so. In addition there are certain obvious expenses incurred by a Deputy in his own constituency, and rents in Paris for those representing distant constituencies.

In a sub-leader of *The Times*,[1] however, it was reported that a large number of the Government's supporters in the House of Commons had indicated to the Prime Minister their dissent from the proposals of the Departmental Committee, whose Report has been already dealt with, to grant pensions to beneficiaries selected from ex-M.P.'s, and that it cannot be said that the Report has been greeted with any fervour, and the representations which were made to the Prime Minister were the result of the further consultations which Mr. Chamberlain foreshadowed before the Report was issued. The recent

[1] July 29, 1938.

increase of the M.P.'s salary from £400 to £600 is also referred to. The application of a means test may also not find favour, and the leader concludes by saying that: "Enough has been said to make it doubtful whether a satisfactory scheme has yet been devised for a body like the House of Commons, which differs so profoundly from other bodies."

V. HOUSE OF COMMONS: PRIVATE BILL PROCEDURE—LOCAL LEGISLATION CLAUSES

BY THE EDITOR

IN pursuance of the Prime Minister's reply to a question,[1] towards the end of 1936, the House ordered[2] the appointment of a Select Committee on this subject consisting of 7 Members, 3 to form a quorum, with power to send for persons, papers and records, the terms of reference being those stated by the Prime Minister in his reply abovementioned. On April 22,[3] the Report was duly Tabled and ordered to be printed.[4] The Committee sat on ten days and took evidence from the Chairman of Ways and Means, the Deputy Chairman, Mr. Speaker's Counsel, the Chairman of the Committee of Selection, the Clerk of the House, and from representatives of the Committee and Private Bill Office, of two Government Departments, of the Society of Parliamentary Agents and of the Association of Municipal Corporations.

The Committee, in its Report, begins by stating that by the terms of reference it was directed to examine two questions: (1) The need for any alteration in the present procedure in Committee on Private Bills containing Local Legislation Clauses; and (2) the advisability of any rearrangement in the respective functions of the Chairman of Ways and Means and the Committee of Selection in regard to Private Bills in general. To quote from certain paragraphs of the Report:

> 3. In their consideration of the first of these questions your Committee heard conflicting evidence. On the one side it was represented to them that the present procedure in Opposed Bill Groups was resulting in a serious lack of uniformity in Local Legislation clauses. Two reasons for this were advanced. It was said that committees of this nature must, to some extent, lack continuity of experience. It was also stated that when some clauses in a Bill were hotly opposed and the fight between parties engaged the attention of a Committee for a considerable period of time, there was a danger of the unopposed Local Legislation clauses receiving less attention than their importance merited.
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> On the other side it was admitted that in the past there might have been a lack of uniformity of decision in regard to Local Legislation clauses. . It was felt, however, that the application

[1] *See* JOURNAL, Vol. V, 20.
[2] 318 H.C. Deb. 5. s. 1518, 1519. [3] *Ib.*, 1928.
[4] H.C. Paper 112 of 1937, with evidence (H.M.S.O., 3*s.* 6*d.*).

of the new Standard Clauses which had been drafted as a result of the Report of the Committee on Common Form Clauses[1] of the Session 1935-36 and which were now generally accepted, would go some way towards removing this objection.

* * * * *

4. It was pointed out in all the relevant evidence taken before your Committee that the objections already indicated did not apply to the Committee on Unopposed Bills. But it was said that this Committee was overburdened with work and it was feared that, unless some relief could be found for them, they would be unable adequately to examine, within the time at their disposal, the increasing number of Bills and Provisional Orders referred to them. This was advanced and was accepted as an additional argument for some alteration of the existing procedure.

* * * * *

8. After a careful consideration of the alternative proposals and of these[2] objections, your Committee have come to the conclusion that a case has been made for a more fundamental alteration in the present procedure in regard to Local Legislation Bills than is represented in this second body of evidence. While they would be very unwilling to involve parties in unreasonable inconvenience or expense, they believe that, if effect were given to their recommendations, the additional cost or delay would be inconsiderable. They are, therefore, of the opinion that an alteration of procedure is desirable, but they consider that, in principle, opposed Local Legislation clauses should continue to be sent to Private Bill Groups.

9. Your Committee recommend that provision be made at the beginning of each session for the appointment of a Chairman and the nomination of a panel by the Committee of Selection for the consideration of unopposed Local Legislation Bills and clauses.[3] They recommend that four members should be chosen from this panel from time to time to sit with the Chairman and consider Bills and portions of Bills referred to them, and that three should be the quorum. They recommend that Mr. Speaker's Counsel should act as assessor to this Committee and that, on the recommendation of the Chairman of Ways and Means and by leave of the House, they should have power to hear Counsel in exceptional circumstances.

10. They recommend that the partition of Bills should be the responsibility of the Chairman of Ways and Means. They consider, moreover, that he should be allowed full discretion both in partition and in the reference of Bills and parts of Bills to the different Committees. But they think that, where possible, partition should be avoided. If, for example, an opposed Bill contained only one or two unopposed Local Legislation clauses

[1] H.C. Paper No. 162, 1936.

[2] *See also* paragraphs 6 and 7 of the Report.

[3] Out of a total number of 1479 clauses in Private Bills in one Session, 776 were "local legislation" clauses, and of these 87 had Petitions against them (9. 632).

of minor importance, in their opinion, the Chairman of Ways and Means should direct the Group to examine the Bill as a whole.

In the case of unopposed Bills they consider that a Bill largely Local Legislation in character should be referred to the new Committee and that one containing only a few Local Legislation provisions should be referred to the existing Unopposed Bills Committee.

11. These recommendations lead your Committee to the expression of their views in regard to the second part of their orders of reference. If the new procedure is to function smoothly, it seems to them that the Chairman of Ways and Means must be in even closer touch with the progress of Private Bill Legislation than he is at present.

They accept the evidence of the Chairman of the Committee of Selection with reference to the successful working of that Committee in relation to the grouping of Bills under the existing system. But, in view of other evidence they have heard, they consider that, if effect were given to their recommendations, it would be necessary for the Chairman of Ways and Means to have in his hands the grouping of opposed Bills and the fixing of dates for their hearing, as well as the reference of Bills to the new Local Legislation Committee and to the Unopposed Bills Committee. The Committee of Selection would continue to nominate members to serve on Groups.

12. Your Committee realize that, if their recommendations were adopted, the work and the responsibility of the Chairman of Ways and Means and the Deputy Chairman would be considerably increased. It has, indeed, been in their mind that, under existing arrangements, the additional burden might be too heavy. They, therefore, recommend that, in order to strengthen the position of the Chairman of Ways and Means and to facilitate his task, he should be given a greater measure of control over the progress of Private Bills in their passage through the House.

Some of the stages through which Bills must pass are narrowly controlled by Standing Orders. Your Committee do not consider that the Chairman of Ways and Means should have power to override existing limits. But they believe that, if he had the right to direct within those limits the setting down of Bills on the Order Paper, it would contribute both to his convenience and to a general acceleration of Private Business.

The above information in regard to the Report from the Select Committee in Private Bill Procedure (Local Legislation Clauses) would, however, be incomplete without some reference to the Report of the Committee on Common Form Clauses in Private Bills already referred to and quoted in the last issue of the JOURNAL.[1] This was a Committee appointed by the Chairman of Ways and Means with the following terms of reference:

[1] H.C. Paper 162 of 1936 (H.M.S.O., 4*d.*); JOURNAL, Vol. V, 20, *n.* 2.

> To consider clauses included in recent Private Bills as clauses of common form, to which objection has been taken with a view to forming an opinion whether or to what extent such clauses or any of them are necessary or expedient, and whether or to what extent they go further than is requisite for dealing with the mischief they are intended to remedy; and to report what action should be taken thereon.

To show the nature of the personnel of such a Committee it consisted of the Deputy-Chairman of Ways and Means (Captain the Rt. Hon. R. C. Bourne, M.P.), Colonel Geoffrey Cox, C.B.E. (Parliamentary Agent); Sir Frederick Liddell, K.C.B., K.C.; Mr. J. M. Newnham, LL.D. (Solicitor); Sir Harry Pritchard (Parliamentary Agent); Sir David Reid, M.P.; and Mr. H. G. Williams, M.P. This Committee was assisted by memoranda supplemented by oral explanations and suggestions by Government officials, two being from the Home Office, four from the Ministry of Health, and one from the Ministry of Transport, all Departments closely concerned in proposed Private Bill Legislation in its relation to subjects coming under their administration.

Some 200 clauses were passed in review as being of frequent occurrence in local legislation Bills, ranging over the sets of subjects given in the Four Schedules to the Report, such as streets, buildings, sewers and drains, sanitary, infectious disease, food, public buildings, parks, lands, aerodrome undertakings, etc.

The object of the Committee was to arrive at clauses of common form in regard to the above range of subjects, so that Private Bill Legislation thereon shall be uniform to whatever local authority, etc., the particular Bill would apply.

It may be specially mentioned that in regard to the aerodrome undertaking clause,[1] the Committee came to the conclusion that, apart from this clause, the settlement of the form of aeronautical clauses must be deferred until some experience had been gained of the working of the Air Navigation Bill,[2] which was about to be placed on the Statute Book. Certain principles, however, emerged from the discussions, namely:

(1) That it is essential that the regulation of aircraft *whilst in the air* should be entrusted to the central authority, and that, therefore, no clause in a Private Bill giving any such jurisdiction to a local authority should be allowed;
(2) Subject to (1), that Harbour Authorities may be given regulations and charging powers in respect of seaplanes on the

[1] Second Schedule.
[2] 26 Geo. V and 1 Edw. VIII, c. 44.

lines allowed in the Mersey Docks and Harbour Board Act;[1]

(3) That where clauses are inserted enabling Local Authorities to require the raising of the height of chimneys (*vide* 116, Third Schedule to the Report) the Secretary of State for Air must be given a voice when the chimney is within one mile from an aerodrome.

The investigations of these two Committees furnish much information of interest to Parliaments oversea as showing both the usefulness and justice of a uniform system in regard to the provisions of Private Bills in order that local legislation on the same subject may not vary overmuch from district to district.

On November 24[2] the Prime Minister was asked whether he had now considered the recent Report of the Select Committee on Private Bill Procedure (Local Legislation Clauses); and, if so, what action he proposed to take with regard to its recommendations.

The Prime Minister (Rt. Hon. Neville Chamberlain) replied that it was the intention of the Government to bring forward an experiment which would, he hoped, secure the main objects of the Committee's recommendations and at the same time meet the somewhat divergent views expressed before the Committee. Should the experiment not prove successful said the Prime Minister, the matter will no doubt requir further consideration. The following outline of the proposal were circulated in *Hansard :*

> The objects which the recommendations of the Select Committee, presided over by my Rt. Hon friend, were designed to achieve were:
>
> (1) to relieve the Deputy-Chairman from the very heavy burden which the present system imposes on him:
> (2) to secure greater uniformity in the treatment of clauses of a Local Legislation character contained in Opposed Private Bills.
> (3) to give to the Chairman of Ways and Means greater power of control for expediting the progress of Private Bills.
>
> It is hoped that these objects may be realized by the adoption of the following proposals:

[1] 1936. [2] 329 H.C. Deb. 5. s. 1213 to 1215.

Object (1):

(*a*) by increasing somewhat the number of members on the panel from which the Committee on Unopposed Private Bills is selected,

(*b*) by enabling that Committee to sit in two divisions,

(*c*) by authorizing the Chairman of Ways and Means to nominate one of the members of the panel to act as Chairman at any meeting of the Committee of a division thereof at which neither the Chairman of Ways and Means nor the Deputy-Chairman is present.

Object (2):

by providing that the Counsel to Mr. Speaker shall sit as an assessor to any Committee on an Opposed Private Bill when considering any local legislation clauses contained in the Bill,

Object (3):

by making arrangements for securing closer co-operation between the Chairman of Ways and Means, the Committee of Selection, and the Committee and Private Bill Office.

The proposals under heads 1 (*b*) and (*c*) and (2) will require certain modifications of Standing Orders. As the proposals are of an experimental nature the modifications will be submitted to the House in the form of a Motion for a Sessional Order.

VI. 1937: COMMONS PUBLICATIONS AND DEBATES COMMITTEE[1]

BY THE EDITOR

FROM time to time the Select Committee of the House of Commons appointed by the House each Session to assist Mr. Speaker in the arrangements for the Reports of Debates, and to inquire into the business side of these important subjects, has referred to it, for investigation, other matters of special interest. Such a subject, in 1937, was the rules of the House with regard to the distribution of evidence taken by Select Committees and of documents put in before them, which have not been presented to the House. It is therefore proposed in this Article to follow the course of events in connection with this inquiry and to give extracts from the Committee's Reports, from the evidence taken by it and from the documents there presented, all of which are of first-rank interest and importance, not only to Clerks-at-the-Table in Oversea Parliaments and Legislatures and to the other officials thereof whose special duty it is to be responsible for the multitudinous details in connection with Select Committee work, but to M.P.'s, to Government Departments and to members of the public coming into contact with Parliamentary investigation by Select Committees with power to take evidence and call for papers. Another aspect of the subject-matter of this Article is its business side—for Parliaments are becoming more and more expensive to run—in the printing and publication for Parliament of its debates and other matter, so necessary if the people of the country concerned are to be informed directly and officially of what is going on in their representative assembly.

On November 16, 1936,[2] the House of Commons set up this Committee with the usual terms of reference, the Order being:

> That a Select Committee be appointed to assist Mr. Speaker in the arrangements for the Reports of Debates and to inquire into the expenditure on Stationery and Printing for this House and the public services generally.

Members were nominated and the Committee was given power " to send for persons, papers and records," and to report from time to time, 3 to be the quorum.

[1] *See also* H.C. Paper 126 of 1932; JOURNAL, Vols. I, 44, 45 and V, 26-27.
[2] 317 H.C. Deb. 5. s. 1474.

Instruction.—The subject with which we have principally to deal, however, was instituted on February 4[1] by the following Order of the House:

> That it be an Instruction to the Select Committee on Publications and Debates to consider the rules of this House with regard to the distribution of evidence taken by any Select Committee of this House, and of documents presented to any such Committee, which have not been reported to the House, and to report on the desirability of regulating the procedure by Standing Order.

First Report.—On March 2[2] the First Report[3] of the Committee was presented to the House and "ordered to lie upon the table, and to be printed." This First Report in reporting progress stated that it had been brought to its notice that the Controller of His Majesty's Stationery Office—usually referred to as "H.M.S.O"—would shortly be obliged to buy new type for use in the Official Report,[4] and that the Committee therefore met to consider the choice of type and style to be used in the future. Technical evidence was taken, with the result that the Committee decided to suggest to Mr. Speaker the adoption of the type and style now actually in use.

On March 3[5] it was ordered that a message be sent to the Lords requesting that their lordships will be pleased to give leave to a certain Lords official to give evidence, and on the following day a reply message was received acceding to the request.

Report pursuant to Instruction.—On May 26[6] the Report[7] from the Committee (pursuant to the Instruction above-mentioned) was tabled and ordered to be printed. The Committee reported that they had taken the evidence of the Principal Clerk, Committee and Private Bill Office of the Commons (Mr. O. C. Williams, M.C.); the Principal Clerk of Private Bills and Private Committees of the Lords (Mr. E. C. Vigors, C.B.); the Clerk of the House of Commons (Sir Horace Dawkins, K.C.B., M.B.E.), and the Controller H.M.S.O. (Sir William Codling, C.B., etc.).

In paragraph 4 of this Report the Committee quoted the following Resolution of the House as the basis of the present practice in regard to the distribution of evidence:

> That according to the undoubted privileges of this House, and for the due protection of the public interest, the evidence taken by any Select Committee of this House, and documents pre-

[1] 319 *ib.*, 1932. [2] 321 H.C. Deb. 5. s. 187.
[3] H.C. Paper, 74 of 1937.
[4] *i.e.*, *Hansard*. *See also* JOURNAL, Vol. V, 26, 27.
[5] 321 H.C. Deb. 5. s. 370. [6] 324 *ib.*, 278.
[7] H.C. Paper, 74, 127 of 1937.

> sented to such Committee, and which have not been reported to the House, ought not to be published by any member of such Committee, or by any other person. (April 21, 1837.)

This resolution, the Report went on to say, was strictly interpreted, in accordance with an Instruction given by Mr. Speaker to the Committee and Private Bill Office in December, 1932, as follows:

> I am informed that there is a growing tendency on the part of Committees to ignore the rule prohibiting the issue of copies of evidence during the progress of an inquiry. The rule must be strictly observed except in cases where a Committee, which holds its sittings in private, considers it desirable to issue copies to a Government Department.

The present position, observed[1] the Committee, therefore, is that neither a Committee as a whole, nor individual members of it, nor the Clerk, have any authority to issue copies of the Minutes of Evidence or of papers printed for the use of the Committee (before such evidence or papers are reported to the House) to any person outside the Committee, except for the witnesses' copies which are to be returned with corrections.[2] Exceptions have occasionally been made where it has been thought desirable that a prospective witness should comment on the evidence given by a previous witness. But such an exception can only be made with the permission of Mr. Speaker.

The Committee further observed[3] that nevertheless, although it was a breach of privilege for any person to publish evidence taken before a Select Committee until such evidence had been reported to the House, such privilege was not ordinarily enforced; meetings of Select Committees were normally open to the public and reports of the proceedings appeared in the Press from time to time. The privilege, however, did exist and might be enforced when it was thought that an abuse had occurred in reporting. Thus there was a certain anomaly in the position.[4]

Sir Horace Dawkins[5] did not consider that there was any real demand for a change from the present practice.[6] Under it, the privilege of the House over all reporting was maintained; while Mr. Speaker had a discretion with regard to the issue of copies of evidence to prospective witnesses. Sir Horace pointed out that if publication, or a considerably wider distribution, of (uncorrected) evidence not yet reported were allowed, a fresh anomaly would arise, since the House was not

[1] Para. 5. [2] For new S.O. 56A, *see* JOURNAL, Vol. VI, 26.
[3] Para. 6. [4] Para. 7. [5] Para. 9. [6] *See also* Q. 191.

allowed to discuss any matter which was under consideration by any of its Committees. Thus Members of the House would be debarred from discussing a matter which might have become one of public comment.

Paragraphs 11 and 12 of the (Instruction) Reports, which contain the Committee's recommendations, read as follows:

> 11. Your Committee have made a very careful comparison between the difficulties inherent in the present practice and in suggested alternatives, and have considered the desirability of regulating the procedure by Standing Order. They are of the opinion that there are not sufficient grounds for recommending any change in the present practice.
>
> 12. But your Committee are of opinion that the attention of the Chairman of any Select Committee should be specifically drawn to the practice with regard to the distribution of evidence, and to the power of any Select Committee to ask leave of the House to report from time to time, if, for particular reasons, they deem it desirable to publish evidence taken before them from day to day.

Second Report.—On July 27[1] the Second Report[2] of Select Committee was tabled and ordered to be printed. This Report deals principally with recommendations upon the evidence taken from the Controller of His Majesty's Stationery Office.

The Committee considered the system under which H.M.S.O. publications were classified, issued and priced, to be satisfactory. The gross annual revenue from sales of such publications was about £250,000, and moreover this sum is increasing by about £5-10,000 every year.

The publications issued by H.M.S.O. are divided into two classes, Parliamentary Papers and Non-Parliamentary Papers.

Treasury Circular.—The decision as to whether a particular departmental paper shall be classed as " Command " or " Non-Parliamentary " is taken by the department concerned, subject to a Treasury Circular of September 6, 1921, an extract from which is given as Appendix III of the Report, which reads as follows:

EXTRACT FROM TREASURY CIRCULAR NO. 38/21

TREASURY CHAMBERS,
6th September, 1921.

FORM AND DISTRIBUTION OF GOVERNMENT PUBLICATIONS

SIR,

I am directed by the Lords Commissioners of His Majesty's Treasury to refer to Treasury Circular 20A 21 of 13th May last, and to state that My Lords have had under consideration the

[1] 326 H.C. Deb. 5. s. 2876. [2] H.C. Paper 74, 127, 160 of 1937.

steps necessary to secure an immediate reduction in the expenditure on stationery and printing incurred by H.M. Stationery Office on behalf of Public Departments.

ISSUE OF PARLIAMENTARY PAPERS

(1) In continuance of Treasury Letters S/5948 of the 25th April last, My Lords have further reviewed the present practice in regard to the issue of departmental publications as Parliamentary Papers. Parliamentary publications comprise:

(*a*) those issued by Order of either House or in response to an address to the Crown;
(*b*) those presented to either House or both Houses in compliance with statutory requirements; and
(*c*) " Command " Papers.

Papers issued by Order of either House or in response to an address to the Crown will continue to be printed under the present arrangements. With this exception, My Lords consider that the present practice of issuing Departmental publications as Parliamentary Papers should be drastically modified, not only in the urgent interests of economy but to meet the expressed wishes of the Authorities of the House of Commons.

The presentation by Departments to the Houses of Parliament of papers " By Command " should be discontinued except in the cases of documents relating to matters likely to be the subject of early legislation, or which may be regarded as otherwise essential to Members of Parliament as a whole to enable them to discharge their responsibilities. Other documents hitherto issued as Command Papers should in future be issued as Stationery Office publications, or, wherever possible, be discontinued.

In particular those publications, the issue of which was suspended during the war and has since been revived, should again be suspended.

In the case of documents at present presented " pursuant to statute," My Lords understand that the act of presentation is not always a statutory requirement, and that in any case the requirement can be met by the presentation of the document either in manuscript or after being printed as a Stationery Office publication. The question whether these documents should be printed as Parliamentary Papers can thus be determined in the same manner as in the case of " Command " publications.

In order that early effect may be given to these decisions, Heads of Departments (in co-operation with the Departmental Stationery Committees which, My Lords understand, have been or are about to be set up in the principal Departments) should arrange for an immediate revision of the existing list of papers at present presented to Parliament by their Departments, whether pursuant to statute or otherwise. As soon as this revision is completed, and in no case later than 25th inst., a report should be furnished to Their Lordships giving a list of such publications showing:

(*a*) those which it is proposed to discontinue; and
(*b*) those which will in future be issued as Stationery Office publications.

In regard to future practice no new paper should be forwarded to the Stationery Office for printing as a Command Paper except through the permanent head of the Department.

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GENERAL

(3) With a view to securing further economies on stationery and printing, My Lords desire to bring the following points to the notice of Departments:

(*a*) Certain publications, *e.g.*, the "Labour Gazette" and the "Weekly Return of Market Prices" are at present distributed free to members of the public. All such arrangements, whether covered by standing authority or otherwise, should be reviewed forthwith with a view to their early termination. In no case should they be continued beyond December 31st next, without further reference to their Lordships.

(*b*) In a few cases the Minutes of Committees appointed by Government Departments (*e.g.*, of the Employment Committees of the Ministry of Labour) are printed. This practice should now cease unless the Controller of the Stationery Office is satisfied in any particular case that the cost of printing is less than that of duplicating. My Lords propose to instruct the Controller of the Stationery Office accordingly.

(*c*) The further utilization of Government publications for advertising purposes should be carefully considered, and Heads of the Departments, in co-operation with the Controller of the Stationery Office, should bring to Their Lordships' notice cases in which, under existing arrangements, it appears that due advantage has not been taken of this source of revenue.

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(*e*) The Select Committee on Publications and Debates Reports, in their second report dated 27th July, 1920 (House of Commons Paper 165 of 1920), recommended that Departmental Stationery Committees should be set up in all public Departments. My Lords understand that effect has already been given to this recommendation in many Departments. They attach great importance to the prompt establishment of such Committees working in close touch with the responsible officials of the Stationery Office (as recommended by the Select Committee on Publications), and they would be glad to be informed whether such a Committee has now been set up in your Department. Their Lordships are convinced that the steady co-operation of Departmental representatives on such Committees with the Stationery Office forms a most practical means of securing the economies necessary in the existing financial circumstances and demanded by Parliamentary opinion.

I am,
Your obedient Servant,
G. L. BARSTOW.

The rest of the Report which deals with matters of an administrative nature is quoted at length:

6. All publications of the Stationery Office are announced in the "Daily Publishing List," copies of which are filed at the Vote Office and in the Library. A Member is entitled to one copy of all such publications of the Stationery Office of the current session as are required for his Parliamentary duties.

In addition, the publication of every Parliamentary Paper is announced in the daily "Supplement to the Votes" (under the heading "Sessional Printed Papers Delivered"). Bills and Estimates are generally distributed to Members, and in the case of other papers thought to be of exceptional importance a general distribution may be made at the request of the Minister concerned. Members receive further notification of Parliamentary Papers not generally distributed, on the "Pink Form," which is circulated to Members twice a week. They can obtain one copy each of such papers by marking this form and returning it to the Vote Office.

Non-Parliamentary Papers can be ordered by means of the "Green Form," which can be obtained at the Vote Office.

7. Since 1931, publications of the Stationery Office, whether Parliamentary or Non-Parliamentary (with certain exceptions), have been priced on a scale system based on the amount of printing in them. Under this system two publications of the same size would be published at the same price irrespective of the probable demand for each. The scale has stood up to now without alteration, and has proved far simpler and more satisfactory than any pricing system previously used.

For publications from crown octavo to royal octavo (which includes all Parliamentary Publications, since they must be in royal octavo size), the basic rate is six pages for a penny.

For publications larger than royal octavo (including foolscap volumes of statistics and Non-Parliamentary volumes of evidence and appendices supplementary to the reports of Royal Commissions and Departmental Committees), the basic rate is two pages for a penny.

There is also a low-priced scale of 36 pages for a penny for pocket size publications smaller than crown octavo, but these are mainly training manuals with regular circulations far exceeding those of normal Government publications.

The finance of the scale system takes into account a rounding up to the nearest price unit; for example, a Parliamentary Publication of 30 pages would be priced at 6d. because 5d. is not used as a price unit.

Illustrations (other than diagrams in the text), maps and special bindings add to the price and are calculated separately.

Where scales for particular classes of publications existed before 1931 they have been or are gradually being assimilated to the general scale. There was, before 1931, a scale for Parliamentary Publications, but the present general scale is a little more advantageous to the purchaser.

Periodicals have to be published at a uniform price irrespective of the varying sizes of the weekly or monthly issues. For

certain annual reports an effort is made to stabilize the price and avoid upward or downward fluctuations each year. For publications forming part of a definite series a uniform price based on average size is adopted where it seems to be a convenience to the public.

The scale system is not applied to certain works outside the normal ambit of the political, economic, and sociological publishing of the Government—for example, legal and artistic publications of a specialist kind.

8. Your Committee have considered suggestions for securing increased circulation. Experience has shown that lowering the price of a popular work does not tend materially to increase the sales. Free issue can be made on occasion; but in general is subject to Treasury control.

9. The amount of advertising possible is limited by financial and other considerations. The daily, monthly, and specialized lists of Stationery Office publications are sent to all booksellers and libraries that will take them, and to any public men who may make use of them. Newspapers also receive the daily list and review copies. Arrangements are made for publications likely to be of general interest to be announced on the wireless.

10. The system of pricing is substantially self-balancing. Any general system of cheap or free issue is a matter of policy to be decided by Parliament.

The Committee, however, did not make any recommendation on this subject.

The Evidence.[1]—It is now proposed to quote from the evidence taken by the Select Committee, upon subjects both of general and special interest.

The names of the witnesses have already been given; 416 questions were asked and a valuable and interesting memorandum and additional memorandum were put in by Mr. Williams, and form Appendix I and II of the Select Committee's Report, both of which contain information of value to those members of a parliamentary staff engaged upon this particular branch of the work. These memoranda, however, are too long to reproduce verbatim here, but they will be freely quoted from later.

Mr. Williams was the first witness, and in reply to a question that the chief point was that the practice in regard to the issue of evidence by Select Committees varied, the witness said,[2] " it can vary, but the present Speaker has made it fairly strict; there is not much variation now," the witness continuing:[3]

> Yes. The Speaker has let it be known that he will not give permission for copies of evidence to be issued to any person outside the Committee unless there is a good case made out for doing so. He said that recently in a letter to a Member of this

[1] *See also* S.O., 56A (July 15, 1935). [2] Q. 5. [3] Q. 6.

House who raised the point, and it was owing to that that this question has been referred to you; because I think the Speaker felt that the subject had not really been considered in all its bearings for a long time, and it has never been considered by a Committee of the House, and therefore it might be advisable that the Committee should decide whether the present practice was satisfactory from the point of view of general public opinion, including the opinion of Members of this House, on the subject; but he felt he could not make any variations until the House itself had approved some modification specifically. Of course, as you say, it can vary, because other Speakers have taken a different point of view of exactly the same Resolution.

To a question[1] as to the collateral evidence taken from time to time over which there is no control, the witness replied:

"I would not say there is no control, because the control of privilege still exists, namely, that Parliament can at any moment come down upon a reporter or upon a newspaper, and say there has been a breach of privilege, simply from the fact that they have reported it. It is strictly a breach of privilege, but it is not invoked unless there is misrepresentation. It is that power to protect itself against misrepresentation that is the most important thing about the House's privileges in this matter. I do not suppose that it is likely that, whatever alterations were recommended, it would be thought desirable to do away with that; because it is the only protection that the House has against misrepresentation.

As to the difficulty in regard to Joint Select Committees the witness was then asked to describe briefly how the practice of the House of Lords differed from that of the House of Commons, to which he replied:

It is the fact that for all Select Committees of the House of Lords and Joint Committees this formal entry is made in the Lords' Minutes, which answer to our Votes and Proceedings that the evidence taken before the Joint Committee or the Select Committee, as the case may be, from time to time may be printed, but no copies are to be delivered out except to Members of the Committee and to such other persons as the Committee shall think fit, until further notice. That is simply a book entry; it is not moved as a Motion in the House. That empowers the Committee Office of the House of Lords, in fact, to give out copies to such persons as they think fit; and they do sell them, I understand. The money is collected by some junior clerk; I think as a matter of fact it is a lady typist, or something like that, but the whole of the money that is received is remitted to the Stationery Office. Members of the House of Commons who are members of Joint Committees do in fact connive at a practice which is a breach of the privileges of their own House.[2]

[1] Q. 10. [2] Q. 11

In reply to Question 13, in regard to persons getting a copy of the Minutes having to give an undertaking of some kind, the witness said—" They have to give an undertaking not to publish them again, to print them or misuse them. They have to do that except where they are Members of the House of Lords or Members of the House of Commons."

In reply to Question 24, the witness said—" I would like to say at the outset on this point that my own opinion is this: I doubt if there is any substantial half-way house between two alternatives: (1) to leave the practice as it is, and (2) openly to abolish it and make available the uncorrected evidence taken by Select Committees sitting in public. I look on my paragraphs 9 and 10[1] as really amplifications of that opinion in the way of showing how difficult it is to find a half-way house."

The witness was then asked[2] to tell the Committee his point of view with regard to helping witnesses giving evidence in the present position, to which he replied that:

> As regards witnesses themselves, I do not think they would be at any particular advantage. If they wished to be heard in private, they would ask the Chairman to clear the room and hear them in private.
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> Q. 31. You are telling us what advantages there are in the present position ?—I do not think the witnesses are under any particular advantage. I do not think it would make much difference to them, except that if you do publish openly, you are circulating uncorrected evidence, and that does, of course, to a certain extent, or may, redound to the disadvantage of the witness. If a man has not been rather specially careful of every word he says, he sometimes finds he has committed a small inaccuracy which he is quite entitled to correct.

The two following questions then put to the witness together with his replies are quoted at length:

> Q. 32. In any law court they can report ?—Yes.
> Q. 33. They might make mistakes ?—I do not put it too high. On that I would only quote for record what was said by the Departmental Committee on the Procedure of Royal Commissions, which sat in 1910. In their recommendations they said: " The question as to admitting the Press or public to any and what meetings of the Commission is one for each Commission itself to decide. Similarly, the question whether to publish the evidence from time to time or simultaneously with or subsequently to the Report is one which each Commission can best decide for itself. The generally accepted view has been that

[1] *See* Appendix I, Part III.

[2] Q. 30.

all evidence given before the Commission and all matters relating to the business and consultations of the Commission should be considered as confidential until publication of the same was specifically agreed on by the Commission as a whole." I only have put that on record. I have no extremely strong views myself, but I do wish, if it is thought desirable that the second alternative[1] should be adopted, to put forward certain considerations upon the actual practical way of doing it.

In regard to a comparison being made between Select Committee publications and *Hansard*, the witness remarked[2] that "*Hansard* is a Government publication published by the Stationery Office, but it is not printed by Order of this House."

The witness was then asked if *Hansard* was not included in the Resolution passed at the beginning of every session about committing it to the Speaker to have the Report printed, to which the witness replied:

There is an entry about the printing of the Votes and Proceedings in the JOURNAL, but I do not think *Hansard* comes into it. The Reports of Select Committees are printed by Order of the House, and, of course, that Order at present only begins when the Report has been received. The printing, which is done for use of the Members of the Committee by order of the Speaker, is really an anticipation of the Order of the House. If it were thought desirable that the proceedings of Select Committees sitting in public should be published in something the same way as the Reports of Standing Committees are, the first necessity would be for the House in some way or other to make an Order to that effect, either by Standing Order, which should refer to all Select Committees, or in the Order setting up the Committee. I think that latter course would be preferable: that a special paragraph should come into the setting-up Order or Resolution. The Order would permit the printing of evidence.

Q. 39. And publication ?—The result you want to get is that the evidence given before a Select Committee should be deemed to be printed by Order of the House. If it is printed by Order of the House, of course, it can be circulated; you need not say published. The only question is whether such an Order should be general or whether it should be specific to each Committee; and again, whether it should be mandatory or permissive. On those points the Committee will probably make up their minds.

Q. 40. And whether it should be complete. Suppose the Select Committee decides to clear the room ?—I do not think anything except an Order of the House could alter the present position in that respect. A Select Committee can always sit in private if it wishes and it can always give directions to the Shorthand Writer not to take down certain parts of the evidence.

In reply to a previous question,[3] the witness had said, with reference to the Resolution of 1837, that it would still exist, but

[1] *See* Appendix II, last paragraph. [2] Q. 38. [3] Q. 46.

it would become perhaps more an interesting feature of antiquity than a guide in practice. In further reference to that Resolution the witness said:[1]

> But if you were to recommend that the setting-up Motion of a Select Committee should contain some kind of Order which sanctioned publication from day to day of evidence taken in public, it would very largely take away from that Resolution the authority which it now has for regulating the procedure. In fact, the result of such an Order would really be the same as reporting from day to day, which is now done in certain select instances and makes the whole thing perfectly legal from the House of Commons point of view. Then the result would be that the evidence taken before a Select Committee would be looked on as having been reported to the House from day to day. Therefore you would be keeping within the Resolution of 1837 all the time.
> *Q.* 48. But that Report from day to day must be qualified by the fact that there may be errors in it such as you have suggested previously in your evidence?—Yes, certainly.

The following questions were then put to the witness:

> *Q.* 49. It is not a final Report?—It is not the Report of the Committee. It is not the final Blue Book, which, of course, will contain the corrected evidence. But that was just the same in the case of the Joint Committee on Indian Constitutional Reform. The uncorrected evidence was reported to the House from day to day, or rather, it was reported and printed without correction because there was no time to correct it, and the correction only took place when the final Blue Book came out.
> *Q.* 50. The same thing applies to *Hansard*?—Yes, naturally. May I now in conclusion put on record that the reporting of Select Committees is done by the staff of the Official Shorthand Writer and not by the staff of the Official Reports of Debates? The printing is done by the Stationery Office under the direction of the Committee Clerk and not under the direction of the Editor of the Official Reports. There is no reason why this should not continue. Indeed, it would be much better that it should, because the Shorthand Writer's staff is well equipped for the work of reporting Select Committee evidence. They do not work upon quarter-hour reliefs, as the Standing Committee reporters work, and I think it is important for a Select Committee to have only one Shorthand Writer, who then becomes familiar with the whole subject; and it gives the Committee much more control over the reporting of evidence in cases where they wish to vary it. . . .

During the course of the reply to a question[2] as to cost and speed, the witness observed that: "Their contract for printing Select Committees' evidence does not enjoin anything like the speed at which *Hansard* comes out. I think the contract

[1] Q. 47. [2] Q. 51.

time for evidence before a Select Committee is 48 hours after they receive the transcript from the Shorthand Writer."

When replying to Question 54, the witness said:

> The authority of the House for printing evidence from time to time would have to be in such a form that the Speaker or the Clerk of the House could give an affidavit, under the Parliamentary Papers Act, 1840,[1] to protect any person from a libel action. The effect of that Act is that where anything has been printed by Order of the House and contains matter that might otherwise be a ground for a libel action, that action can be barred on the Speaker or the Clerk of the House giving an Affidavit that it was printed by Order of the House.

In regard to the interpretation to be placed upon "publication," the following question is of interest:

> *Q.* 65. The word "publication" here bears two meanings. "Publication" may be printing the Minutes of Evidence in a complete form. Then the other meaning of "Publication" is issuing, before the matter is reported to the House, certain parts of the evidence to prospective witnesses. That is another form of publication?—Yes, or, of course, issuing it to people who were not prospective witnesses.

The second witness was Mr. E. C. Vigors, C.B. (Principal Clerk of Private Bills and Private Committees, attending by permission of the House of Lords); in reply to a question,[2] as to what was the practice of the House of Lords, the witness said:

> When a Committee on a public matter, or public Bill, is set up, as opposed to a Private Bill Committee, an entry is made in the Minutes of the House of Lords requiring that the evidence should be printed, but that no copies should be delivered out except to Members of the Committee and to such other persons as the Committee shall see fit. That gives a Committee the discretion to show copies of the evidence to anyone to whom they think it is desirable to show them. If anyone applies, as people constantly do, for a copy of the evidence, the Chairman is consulted, and, through him, the Committee, and if the consent of the Committee is given for a person to have the evidence, he is required to sign the following document: "Uncorrected proofs of the Evidence taken before the Committee, from day to day, are supplied on the following conditions: (1) That it is recognized that the copies sold are uncorrected proofs and are not of necessity accurate in detail. (2) That they are supplied only for the personal use of the purchaser. (3) That they are not to be published in the Press, or quoted from *in extenso* in a newspaper or any other document. I/We agree to observe these conditions." Then the Minutes are printed in proof, if the Committee has met each day, and on the top of the copy

[1] 3 and 4 Vict. c. 9.

[2] Q. 77.

that is sold or supplied this is printed: "This copy is available only to the person authorised by the Committee to receive it, and is not for publication."

Q. 78. In point of fact, what is the actual machinery by which that is carried out?—In the case of such a Committee as the Committee which is now sitting on Gas Prices downstairs, or a Committee on Hybrid Bills, which is a Public Bill Committee considering Bills like the Post Office Sites Bill or the Land Drainage Provisional Order Bills, in which the evidence is not printed by the parties themselves, as in the case of a Private Bill, but by the House, there is a very large demand for the evidence; and it is, in my view, almost essential that they should have it, because Counsel cross-examine on it the next day; they are doing it downstairs now. The Agents, or private individuals —in those cases mostly Agents—apply to the Clerk to the Committee for the number of copies that they want, and if the Clerk to the Committee gets the authority of the Chairman to supply them, they sign that form and deposit it in the Accountant's Office.

To the question[1] "Are these Committees held in private or is the public allowed to go in?" the witness said: "I am speaking only of Committees to which the public is admitted. For many years past there has not been a Committee in the House of Lords from which the public has been excluded."

During the course of the reply to another question,[2] the witness observed: "I should say that in the case of the India Committee, for instance, there was a certain amount of evidence there that was taken *in camera*. That Committee sat in public, but they took a certain amount of evidence which was not in public at all. Lords Committees sometimes do have evidence taken in private. In that way that evidence is kept private, and the private part of it does not go out on these documents at all."

In regard to the presence of the Press and the public at open Committees the following questions were asked:

Q. 98. The Press is present?—The Press is present through all these open Committees, unless they are turned out: but at intervals on several Committees they have been asked to retire.

Q. 99. They can print as full a report as they like?—On everything that takes place while they are present.

Q. 100. They could make a verbatim report, if they chose?—Yes, I think they could.

Q. 101. Therefore, there would be no breach of privilege if a reporter published in the Press fairly *in extenso* a report of what he had seen and heard at a Committee?—None.

Q. 102. There would be no breach of privilege?—No, I think not.

Q. 103. There is no privilege about the present practice in the

[1] Q. 81. [2] Q. 96.

House of Lords?—No, not in the publication of what they take down.

Q. 104. Is there any sort of discrimination as to who shall attend to represent the public, or do they just walk in and sit down, as they do in these Committees here?—Anyone can come; if it is an open Committee, anyone from the street can come in.

The following question[1] was then put to the witness: "Mr. Vigors, supposing we suggested that we should go further than the House of Lords, and make the evidence available for every member of the public, just like reports in the newspapers, what would be the attitude of the House of Lords or yourself to that suggestion?"—"I could only speak, of course, of my own attitude. With regard to that, I should see a certain danger in publishing a document which was not absolutely correct. It is done in *Hansard*, but to extend the practice to Committees, unless it were necessary, might be inadvisable."

The witness was then asked:[2] "Is not the objection in the case of the Select Committee a technical one, that the proceedings of the Select Committee are not known to the House of Commons, and therefore it becomes a breach of privilege and undesirable to publish the evidence that is taken? Whereas in the case of *Hansard*, the House of Commons is already in possession of the speech vocally, and therefore publication would not be a breach of privilege of the House. But when it is published by a Committee before the House has any cognizance of it whatever, there you have a technical breach; is that not so?" To which he replied: "Of course I speak with great diffidence on any question affecting privilege, but I rather thought that each House was guardian of its own privilege, and if the House of Commons chooses to make an order, such as is made in the House of Lords, to the effect that one of their Committees may hand out these documents to people to whom it chooses to hand them out, there can be no breach of privilege."

In reply to Question 110, the witness said: "In a Joint Select Committee, the House of Lords procedure has always ruled and governed the proceedings traditionally from the time when they first started; the question is put in the House of Lords form. There is no casting vote, and all the procedure that is followed is that of the House of Lords; and the Chairman of the Committee has regularly, in the case of these proceedings, sanctioned on his discretion the sale of copies to persons."

The witness was then asked:[3] "It is evidence of a Joint Select Committee?"—"Yes. It is evidence of a Joint Select

[1] Q. 105. [2] Q. 108. [3] Q. 117.

Committee. It is the property of the Lords, too, and the Lords I suppose might say, 'You can do what you like with your half of it, but we are going to do what we like with our half of it, and we are going to issue our half.'"

Mr. Williams, the first witness, was then recalled and further examined, and in reply to Question 151 he said: "At present all Select Committees have complete discretion whether to report their evidence or not, and whether to hear it in public or not, or whether portions of it should be taken down or not. There is no reason to change that, whatever other change you make."

The following questions were then put to the witness:

> I cannot see if we propose to make that change that we are doing anything that hampers the prestige of the Committee, or its powers, or the secrecy of its movements as it wants. All we are doing is to simplify the whole procedure by letting the public have what we are getting ourselves if they like to pay for it, and if they want it?—I quite agree. If the Committee decide to recommend that, all I put forward is that it should be done in some way or other by Order of the House, and I think the most convenient way would be to have some formula in the setting-up Resolution of the Committee which did secure that the Committee could print its evidence from day to day, or such evidence as it thought fit, and that that evidence should be deemed to be printed by Order of the House, and be deemed to be reported to the House. If that were secured, all difficulties of privilege and all difficulties as to the Resolution of 1837 would be disposed of.[1]
>
> *Q.* 154. How do you get over the question of privilege in that event? Is the comparison between *Hansard* and the publication of Minutes of a Committee a good comparison to make? For instance, *Hansard* is simply a report of the proceedings in the House of Commons which, although the question of privilege still remains, leaves the publication free as far as the public is concerned; but when you come to the Report of a Select Committee, which should have no direct contact with the public, but is a servant of the House, is it not going beyond what a Committee should do to publish its evidence, and sell copies of the evidence?—It would be so, I quite agree, and I have said it would be so, unless it is done by Order of the House. If it is done by Order of the House, the House waives its own privilege.

The witness was then asked:[2] "If you like we will take it from the point of view of privilege and convenience to the public—convenience to the operation of the Select Committee itself?"—"What I have been urging is that if you make any changes you should go further than the House of Lords has gone."

[1] Q. 153. [2] Q. 169.

In reply to Question 172, the witness said: "The House has never taken up the position that a Committee is at liberty to publish its evidence. On the contrary."

The following questions were then put to the witness:

Q. 181. You suggest a definite Resolution of the House rather than an amendment of the Standing Order?—Those are the two alternatives. I think it is harder to amend Standing Orders. If you do the whole thing by amending the Standing Order, you have got to foresee all possible exceptions, whereas if you can make it specific to a Committee, you can always vary your Order for the particular Committee.

Q. 182. That would apply particularly to the instruction when a Committee is appointed; the words are added: "with power to call witnesses," and so on. That is where you would suggest it would be put?—Yes. It would have the same effect, of course, because it is an Order of the House.

Q. 183. Do you think, if we did make an amendment to the Standing Order of either of these characters, that there really would have to be time for discussion?—That I cannot say.

Q. 184. A great many Standing Order amendments have been made in the last few years, without discussion?—Yes, but I should say that both Mr. Speaker and Sir Horace Dawkins would say that they did not think that a change of this kind could be made without some notice being taken of it in the House. That is my opinion.

Q. 185. That is what I wanted to get at, that there would almost inevitably have to be discussions?—Yes; that is my opinion.

Q. 186. Do you think you can get something on paper for us definitely to consider, which would be the actual practical steps we should have to take in order to give effect to the alternative which we have been considering this afternoon?—Yes.

The third witness was Sir Horace Dawkins (to whom the Chairman put the following question); Mr. Williams was at the same time also called and examined.

Q. 191. Will you, first of all, tell us your own feeling as regards the difficulties of the present procedure, out of which this enquiry has arisen?—I do not think the present procedure is working at all badly. There is no real demand, as far as I know, for any change. This arose out of one case of one Committee, but it is very rare that there is a considerable demand. If the present procedure remains, when a Committee particularly wishes to give its evidence out to other people, it only has to go to the Speaker and ask for leave. Then it is not a formal publication, and it retains all the rights of privilege. I feel that, if you officially publish the evidence, you at once lose all control of it. At present, in the House, the proceedings of the House are only published really by the kindness of the House itself. We retain the power of privilege over all proceedings, and if the proceedings in the House are reported unfairly or in any way garbled, we have a right to proceed against any newspaper

that does so. It is a right that has not been often exercised, but it certainly remains. It has been used in the past and may very well be wanted to be used in the future. In fact I may say that a few years ago the Speaker was seriously considering using the right against a certain newspaper which was reporting proceedings on a Bill in an unfair way. There were several discussions as to whether action should be taken. That was brought up by a Member, and the Speaker was quite prepared to rule then that it was a matter of privilege, that the proceedings on that Bill were reported in an unfair and an improper way. I think that is an extremely valuable privilege to be maintained, and it should be maintained just as much by a Committee or perhaps more by a Committee, than by the House. Also, there is another point that I may mention: That the House is never allowed to ask questions or to discuss in any way a matter which is under consideration by one of its own Committees. If you publish reports officially, you will get the position that every paper and everybody else in the world will discuss these things. The House of Commons will be the only people who are debarred from taking any part in a discussion. I feel that that is putting the House in rather an unsatisfactory position. At present, the reports are not published officially, and, of course, you have got entire control, but, if you once publish them officially, you lose nearly all that control.

To the question[1] that the Speaker can permit a printed copy of the evidence to be given if he wishes to the reply was: "His position is this: He adopts the same attitude as the Speaker did in 1837. The proceedings of a Select Committee are printed by his direction for the use of the Members of the Committee. He feels he has discretion to give the Committee leave to send these printed copies of the evidence to certain persons. The present Speaker has expressed the opinion that, so long as the Resolution of 1837 stands, although he is ready to consider all cases on their merits, his discretion does not really go further than giving the Committee leave to send evidence to genuinely prospective witnesses, but not to outside persons, even Members of the House themselves, who are interested in the discussion and who might come in and listen to the evidence."

The Chairman then asked the following question:[2] "May I just remind the Committee of the definite ruling of the Speaker, who said in 1932: 'I am informed that there is a growing tendency on the part of Committees to ignore the rule prohibiting the issuing of copies of evidence during the progress of an inquiry. The rule must be strictly observed, except in cases where a Committee, which holds its sittings in private, considers it desirable to issue copies to a Govern-

[1] Q. 202. [2] Q. 209.

ment Department.' It is quite clear. That means that that forbids them to issue copies, either to prospective witnesses or to Counsel or to anybody else, does not it? That is so, Mr. Williams, is not it?"—"Yes."

The following questions were then asked:

> *Q.* 210. What is the procedure when an application is made to the Committee for the printed evidence? Does it go through the Committee before it reaches the Speaker?—That would all depend upon how the particular person addressed his letter. As a matter of fact the latest instance was a letter from a Member of the House to Mr. Speaker asking if (he or other persons; I cannot remember the terms of the letter) could have copies of the evidence that was being given before a certain Select Committee, and the Speaker said he was precluded from giving that permission, so long as the Resolution of 1837 held good.
>
> *Q.* 211. Yet there have been cases where the Speaker has given permission for the evidence of a witness to be supplied to another witness who had evidence to give on the same matter, but from a different point of view?—As I say, I do not think there would ever be any difficulty in that, if the person was a prospective witness and the Committee thought it desirable that he should have it; but, in the first place, no prospective witness could claim that as a right, and, in the second place, no person who was not a prospective witness, but who was interested in the discussion, could claim it as a right.

The Chairman then put the following question:[1] "I will ask Sir Horace Dawkins, if we decide that the present rule should be continued, is he prepared to have a growth of this system by which Select Committees may ask for leave from the Speaker, which might, of course, grow to a very large extent? Will that not rather interfere with business, if a Select Committee have in every case to come before the Speaker and ask for leave?"—"I do not think so, because I think it is very rarely that it will be wanted, judging by one's experience in the past."

The witness was then asked:

> *Q.* 226. Then your opinion is that the first alternative is best? At the end of the second alternative it says in paragraph (*e*): "The fact that this form of Order would more closely conform to the practice of the House of Lords is not an advantage. Would not it be an advantage if the House of Lords and the House of Commons had the same procedure in both cases?—I do not think so really. I think the position of the House of Lords and that of the House of Commons are very different. As was pointed out by a certain high authority some time ago, when a somewhat similar discussion was going on, there is a great difference between the House of Lords and the House of Commons. The Members of the House of Commons have got

[1] Q. 213.

constituents. If this sort of thing is open and pressure is put upon Members to hear witnesses or to hear important bodies, the pressure on a Member of Parliament who has got constituents behind him is much stronger than the pressure on a Member of the House of Peers.

To the question[1] that " It has been stated that the present system is a breach of the Privileges of the House, by reason of the fact that, on these exceptional occasions when evidence is communicated to a prospective witness, the House having no knowledge of the proceedings, it therefore becomes a breach of Privilege, in spite of the fact that the Speaker gives his permission ?"—the reply was: " I do not think you could say that is quite a breach of the Privileges, any more than you could say that the present publication in every newspaper of the Debates in this House is a breach of Privilege. Technically it is."

The following question[2] was then put: " It is the business of the House from the date of the appointment of the Committee. The House gives instructions to that Committee, and nothing should come between that Committee and the House until that Committee has reported, otherwise it is a breach of Privilege if any information concerning the proceedings of the Committee go outside the Committee ?"—" I do not quite agree. I do not think the House quite comes into that. It is a breach of Privilege technically to publish anything either way, but I do not think the fact that the House does not know makes it any more a breach. It makes it more inconvenient, as I was saying, because the House is the only place where it cannot be discussed. That is really my objection to publication, but that is not a question of Privilege. It is an unfortunate situation in which the House finds itself."

The fourth witness was Sir William Codling, who to the question,[3] whether there was a separate staff for Select Committee and for *Hansard*, replied: " *Hansard* is printed by a night staff, and at present the evidence given before House of Commons Select Committees is printed by a day staff. They are not the same personnel."

During the course of his reply to Question 255, the witness said: " If, however, copies of each day's evidence taken before House of Commons Select Committees were required to be available the morning after each meeting of each Committee, I estimated the cost would be at least £500 a year. If, in addition, each day's evidence were presented, a further cost of £100 to £150 a year would be incurred, owing to the

[1] Q. 241. [2] Q. 245. [3] Q. 251.

number of additional copies which would be required for the Vote Office, subscribers to sets of Parliamentary publications, official distribution, and so on."

In reply to Question 256, the witness said: "The cost of printing Select Committee evidence in the House of Commons is approximately £1,000 a year. If that were done by a night 'ship,' it would cost 50 per cent. more, so the additional cost would be £500 a year."

At this point in the proceedings Sir William Codling and Lt.-Colonel N. G. Scorgie, C.V.O., C.B.E. (Deputy Controller H.M.S.O.), were both called in and examined.

To the following question,[1] put by the Chairman:

You will see the first point we want information about, in our ignorance, is the system on which Stationery Office publications are classified as "Command" and as "Non-Parliamentary" papers?

Sir William replied:

> Publications issued by the Stationery Office are divided into two classes, (1) Parliamentary Papers, and (2) Non-Parliamentary Papers. Parliamentary Papers come into one of three categories (*a*) those issued by Order of either House, or in response to an address to the Crown, (*b*) those presented to either House or both Houses in compliance with statutory requirements, and (*c*) Command Papers. Classes (*a*) and (*b*) are, I think, self-explanatory. Class (*c*), Command Papers: these are presented by a Department, in theory by Command of the Crown, without a formal Order of either House. The presentation by Departments to the Houses of Parliament of Papers by Command is limited to the cases of documents relating to matters likely to be the subject of early legislation, or which may be regarded as otherwise essential to Members of Parliament as a whole to enable them to discharge their responsibilities. All publications issued by the Stationery Office other than those contained in the three categories I have mentioned—that is (*a*), (*b*) and (*c*), of Parliamentary Papers—are classed as Non-Parliamentary Publications.

The following questions were then asked in regard to "Command" Papers:

> *Q.* 266. You say they are theoretically by Command of the Crown?—Yes.
> *Q.* 267. In actual practice, what happens?—The Minister presents them, in actual practice.
> *Q.* 268. The Minister of the Department concerned?—Yes.
> *Q.* 269. If he presents them, they are then Command Papers?—Yes.

In the course of the reply to Question 277, it was stated that: "Command Papers are limited to Royal Octavo in size, and Non-Parliamentary Papers may be any size."

[1] Q. 263.

The following questions were then put in connection with the "Pink" and "Green" forms:

Q. 293. How do you deal with them in relation to the Pink Form?—The Pink Form exists for the convenience of Members in obtaining copies from the Vote Office.

Q. 294. Would all Papers be put on that form?—No. If they are non-Parliamentary Papers, Members can obtain those by filling up the Green Form and sending it to me.

Q. 295. Does that mean that they can get any copy of any publication by sending you the Green Form?—Within reason.

Q. 296. Within reason. Only one copy is issued to each Member?—Yes, and that has to be a copy of a publication of the current Session—(Colonel Scorgie.) The actual rule is that it must be the current Session, and required for the Member's Parliamentary duties.

Q. 297. How is the Green Form circulated?—In the Vote Office.

Q. 298. In the Vote Office itself? Is there any other information?—There is a daily list of all non-Parliamentary Papers in the Vote Office.

Q. 299. I take it that all the Parliamentary Papers are circulated on the Pink Paper; is that so?—(Sir William Codling.) They are asked for by Members on the Pink Paper.

Q. 300. Are they all included on the Pink Paper?—Yes, they are all circulated on the Pink Paper.

Q. 301. They are all on the Pink Paper?—Yes.

Q. 302. The Pink Papers are Parliamentary Papers; the others come round in a Roneo-ed issue to us?—Day by day, in the Vote Office.

During the course of the reply to Question 303, the witness made the statement below:

> Papers are priced according to the amount of type area there is in them. Before that, Parliamentary Papers were priced on a scale, so many pages for so much money, and non-Parliamentary Papers were priced, each of them individually, according to their actual cost, compared with their estimated sales. Now all Papers included in the scale system are priced on this one uniform system. At the end of the year we take out the cost and we take out the revenue, including an allowance for the official copies, and we aim at balancing those two, so that there is neither a profit nor a loss over the whole business.

During the course of the reply to Question 305, the following information was given: "We have abolished all distinction between statistics which cost more money to print and ordinary letter-press."[1]

"The Stationery Office aims at making neither a profit nor a loss, so that we have very little to play with. There is always a lag in private industry, but there is no lag with us, where we are not making profits."[2]

[1] Q. 305. [2] Q. 306.

The following questions were then put:

Q. 310. How does the annual turnover compare year by year in the quantity that you sell?—It is slowly increasing. The gross turnover is now about a quarter of a million, and it is going up by about £5,000 to £10,000 every year.

Q. 311. About what percentage of that is on-cost?—By "on-cost" you mean overheads and discounts to booksellers?

Q. 312. Yes—all that sort of thing?—And waste copies?

Q. 313. No, I should not put waste copies in it; I do not think that is an on-cost—but standing charges, and all that sort of thing?—50 per cent. is our normal percentage for on-cost.

Q. 314. That must be very heavy compared to printing in, for instance, newspaper offices, and that sort of thing, must it not?—Private publishers allow 100 per cent. for their on-costs, almost automatically.

To the question[1] as to what the booksellers got for handling the Coal Commission Report, 1931, the reply was: "They get 25 per cent."

Q. 324. That is very steep; that is a good commission?—It is less than many private publishers give.

In reply to Question 346 the witness said: "The price of *Hansard* does not depend on the general scale. The price of *Hansard* has been fixed now for many years. Many Members will remember that two or three prices were tried and again, of course, the argument was, and still is used, that if *Hansard* is priced at 1d., it will be in every home, particularly every working-class home. But I think one has only to look at the verbatim report in the newspapers to see how they are being cut down year after year, and libraries can get *Hansard* at half-price, as they can get all Government publications at half price, but again, I think from what I myself have heard from libraries, the demand for the verbatim reports from their readers is not great."

The following questions and replies refer to *Hansard*:

348. Are Members taking more or fewer free copies?—They all take free copies.

349. They all get one free copy?—That must vary very considerably.

How many free copies will Members ask for in the House? Do you know the number of free copies that are given out to Members?—In the Vote Office?

350. Yes.—But we have no control whatever.

351. It is all costing money?—Yes.

352. You would know how many copies went out without being paid for?—Yes, but we could not distinguish between the free copy which the Member took, for example, from the Vote Office, to give to a friend who was interested, and a free copy

[1] Q. 323.

which he bona fide wanted because a Debate was being referred to, and he had left his own at home.

354. Coming back to *Hansard*, it would hardly be worth while, from the public standpoint, to consider whether to lower the price again to 3d., as against 6d. ?—It would not, on our experience, on all the figures we have got. It would not increase the effective circulation, which I assume is the thing you are interested in.

356. (Sir Wm. Codling.) I think the honourable Member has to remember that one big factor is that on 6d. a copy the bookseller gets 1½d., and on 3d. a copy he only gets ¾d., and he is nothing like so interested in distributing a copy at ¾d. as he is at 1½d.

357. Could you say off-hand how many libraries do take *Hansard*? —(Colonel Scorgie.) It is about 150.

361. What is the definite charge at present for an annual subscription to *Hansard* ?—(Sir Wm. Codling.) The subscription price for the *Hansard* daily parts is £2 10s. (per session).

372. What would be the total circulation of *Hansard* ?—It is somewhere in the neighbourhood of 3,000 or 3,500.

The following information in regard to revenue from waste paper is of administrative interest:

383. May we pass on to the third item, which was raised by one of our Members as regards the amount of Waste Paper sent back from public Departments ? Have you any statement about that ?—That varies round about 10,000 tons a year, in total.

385. Do you have a contract for that ?—Yes.

387. Removal ?—Removal, the provision of bags, cartage and so on, and certain restrictions on disposal. So we never get what might be called the full market value of waste as it appears in the trade journals, because a contractor has to do a good deal more than an ordinary waste-paper buyer in the open market.

389. This waste is mainly what comes from the waste-paper baskets of Government Departments ?—It is a very mixed lot of waste.

398. That would only be a thousand. What would a thousand tons be worth ?—about £1,500.

The Memoranda.—The MEMORANDUM and an ADDITIONAL MEMORANDUM put in by Mr. Williams cover 15 pages and are brimful of information of interest and importance not only to the Clerk-at-the-Table, but to other members of a Parliamentary staff as well as to all others interested in the subject.

Mr. Williams's first Memorandum constitutes Appendix I to the Committee's Report; the Additional Memorandum forms Appendix II.

The Appendix I Memorandum, dated February 8, 1937, consists of three parts: I—PRESENT PRACTICE, II—HISTORICAL,

and III—POINTS FOR CONSIDERATION. Part I contains 5 paragraphs, which will be given in full:

(1) *Reporting and Printing of Evidence.*—By a practice of the House dating at least from 1814, evidence given before a Select Committee is, unless the Committee otherwise decide, taken down verbatim by an official shorthand writer. From the shorthand writer's transcript, which is sent by him to the Stationery Office printing press, the proof copies of the Minutes of Evidence are printed. When so printed they are still technically in the custody of the Clerk to the Committee, and he alone gives instructions to the Stationery Office printer. Papers ordered to be printed for the use of the Committee are sent by the Clerk to the printer.

(2) *Members' and Witnesses' Copies.*—Under the direction of the Clerk to the Committee a proof copy of each day's Minutes of Evidence and of any papers ordered to be printed from time to time is sent by the printer to each Member of the Committee; a few complete copies are also sent to the Clerk, together with the special witnesses' copies. A witness's copy consists solely of that portion of the evidence that covers the examination of the witness in question; and it is sent to the witness for correction and return, this being stated on a slip gummed to the copy. From corrected copies received from witnesses and from Members the Clerk makes up a corrected copy of the Minutes of Evidence, which he sends to the printer, so that the corrections may be embodied in the Minutes of Evidence when published with the Committee's report. If the Committee considers it undesirable to report the evidence, the Clerk recalls all copies that have been issued to Members and any witnesses' copies not returned, and sees that they are destroyed. Any unissued copies remaining at the printer's are destroyed, and the type is broken up. The shorthand writer's transcript and any copy of it are returned to the Clerk.

(3) *Issue of Copies to Other Persons Prohibited.*—The following statement is printed at the bottom of the front page of each proof copy of the Minutes of Evidence and of any papers printed during the Committee's inquiry:

"Great inconvenience having arisen from the Publication of Minutes of Evidence taken before Committees, and of Papers, etc., laid before them, it is particularly requested that members receiving such Minutes and Papers will be careful that they are confined to the object for which they are printed—the special use of the Members of such Committees."

Also, by the notice attached to a witness's copy, on which the above statement is not printed, the witness is prohibited from making "any public use of this Evidence."

The statement is based upon the rule of the House as stated in a Resolution of the House of 21st April, 1837 (92 C.J. 282), and has already been given,[1] and upon the remarks made by the Speaker in the debate on that Resolution (H.D. 3rd Series, 38 col. 196) (see sec. 6 below), where he stated definitely that

[1] *See* p. 158 *ante.*

evidence was only printed "on the faith and clear understanding that it was printed for the use only of Members of the Committee" and that "the Committee has not any power to print without the permission of the Speaker, and that does not go further than to print for the use of the Committee."

The effect of this as regards Minutes of Evidence is that not only is publication, in the everyday sense of the word, forbidden, but also any act which might, in a legal sense, amount to "publication." In practice, the matter is at present regulated by an Instruction to the Committee and Private Bill Office, signed by the present Speaker in December, 1932, which runs as follows:

EVIDENCE BEFORE SELECT COMMITTEES

"I am informed that there is a growing tendency on the part of Committees to ignore the rule prohibiting the issue of copies of evidence during the progress of an inquiry. The rule must be strictly observed, except in cases where a Committee, which holds its sittings in private, considers it desirable to issue copies to a Government Department."

In accordance with this Instruction, neither a Committee as a whole, nor individual members of it, nor the Clerk, have any authority to issue copies of the Minutes of Evidence or of papers printed for the use of the Committee to any person outside the Committee, except for the witnesses' copies that are to be returned with corrections. It is to be noted that, strictly interpreted, this Instruction prohibits the issue of any part of the Minutes of Evidence even to a prospective witness: but this strict interpretation has not been followed when, for the purposes of the inquiry, it was desirable that a prospective witness should comment on evidence given by a previous witness. But in such a case the Chairman ought properly to obtain the permission of Mr. Speaker, who has let it be understood that, while he wishes his Instruction to be strictly observed so long as the Resolution of the House of 1837 holds good, he is always ready to consider on their merits applications made to him by the Chairman for relaxations of the strict rule.

Therefore, as the matter stands at present, any application by a person or body of persons, including a Member of the House, outside the Committee for copies of the Minutes of Evidence has to be refused, whether or no payment is offered.

(4) *Position as regards the Public.*—Unless a Select Committee decides to sit in private, members of the public, including Press reporters, are admitted to the Committee room while evidence is being taken.

As regards the Press, the position is analogous to that of the reporting of debates in the House or in Standing Committees (see May, 13th ed., pp. 82-84). To put the matter shortly, although orders prohibiting the publication of debates and proceedings of the House are still retained upon the Journals, they are not enforced except in cases of misrepresentation. May says: "So long as the debates are correctly and faithfully reported, the privilege which prohibits their publication is waived." Under the same practice, no objection is taken to faithful reports published in the Press of public sittings of Select

Committees. As a rule such reports are short and selective, for obvious reasons of space.

It is to be noted, however, that another and special declaration of privilege can be invoked against the reporter of evidence taken before a Select Commitee, since it is declared a breach of privilege to publish evidence taken before a Select Committee *until it has been reported to the House* by the Resolution of 1837. This privilege also is waived in general, but comes into force if any abuse occurs, cases of which are cited in May, 13th ed., p. 83. A recent instance of an abuse occurred in the Select Committee on the Betting Duty in 1930, when, a précis of a witness's evidence having been handed by courtesy to the Press reporters, certain of them published a summary of the whole précis, although the witness had only been examined on certain paragraphs. The Chairman, in taking notice of the matter, commented severely on the " breach of courtesy " (which was also a breach of privilege).

Whether other members of the public are debarred from taking notes of a Select Committee's proceedings (for they are not allowed to do so in the galleries of the House) has never been tested. There is reason to suppose that members of the public, other than Press reporters, have taken notes of evidence before Select Committees. It has even been alleged that a custom has grown up of permitting outside shorthand writers to attend Committees and to sell copies of their reports to persons interested in the inquiry. To say that such a custom is recognized by Members or officials of this House is quite untrue: in any case, where such a proceeding were discovered immediate notice should be taken of it, for it is a breach of privilege. Nevertheless notes may have been taken by persons for their own use, thougl no official cognizance has been taken of their action. They do so at their own risk.

In fine, as May remarks, there is a certain anomaly in the position, which is accentuated in this case by the fact that, whereas any publication of evidence taken before a Select Committee before report is prohibited, reporters *are* permitted to take notes and the persons who attend the sittings actually *hear* the evidence before the House receives it.

(5) *Practice of the House of Lords.*—The anomaly, partly real, partly apparent, is accentuated by the difference between the practice of this House in respect of Minutes of Evidence and that of the House of Lords, which also governs, by custom, the practice of Joint Committees. This practice, unlike that of this House, is not based on any consideration of " privilege." Briefly stated, it is as follows: when a Select or Joint Committee is going to hear and print evidence, an entry is made in the Lords Minutes of Proceedings, without formal Motion in the House, in these words:

" . . . Bill (or Matter)—The Evidence taken before the Joint (or Select) Committee from time to time to be printed, but no copies to be delivered out except to Members of the Committee and to such other persons as the Committee shall think fit, until further notice."

Under the authority of this order, the Committee Office of the

House of Lords issues copies of Minutes of Evidence (uncorrected) as they are printed, both to any Peer who desires them, and also to responsible persons or bodies interested in the subject of the inquiry who give a written undertaking not to make any misuse of them and who pay so much a copy on a scale computed by the Stationery Office. Payment is made to the Committee Office of the House of Lords, but all the money is remitted to the Stationery Office. Such sales have often resulted in a considerable payment from the public towards the cost of publication. If any evidence were required upon the practice of the House of Lords, no doubt that House would give their Principal Clerk of Committees leave to attend for the purpose of giving it. One result of this divergence of practice is that, whereas Commons Members of a Joint Committee are still bound by the rule of privilege in their own House, they do in fact connive at a practice which infringes it. It was therefore thought essential that, for a Joint Committee so important as the Joint Committee on Indian Constitutional Reform in 1934, this House should give explicit leave to the Commons Members of this Committee to report from time to time, and the evidence of that Joint Committee was formally reported every day, thus legalizing a very extensive publication which would otherwise have been a glaring breach of the privilege of this House.

It is, however, undeniable that the Minutes of Evidence taken before a Select Committee of the House of Lords or before a Joint Committee (unless formal objection be taken or some regularizing procedure be adopted) are in fact issued on request to persons outside the Committee in a manner which is not countenanced for evidence taken before a Select Committee of this House, although they are not made available in the Vote Office.

Part II, HISTORICAL: THE RESOLUTION OF 1837 AND FLUCTUATIONS OF PROCEDURE IN RECENT YEARS cover paragraphs 6 to 8 of the Memorandum and deal with *The Resolution of* 1837*; Copies of Evidence sent to a Government Department ; Publication in the Press ; Reference in the House to Proceedings before Select Committee ; Parliament and the Press and Lord Hartington's Motion of* 1875; *Forwarding evidence to prospective witnesses ; More recent lapses from strict procedure, embracing evidence of practice in* 1914; *Speaker's permission dispensed with in* 1915; *Payment for evidence sent to outside persons ; the Select Committee on Sky-Writing in* 1932; and *Exceptions and Rulings since* 1932.

The following is an extract from PART III—POINTS FOR CONSIDERATION:

(9) Is the present procedure satisfactory? If not, how can it best be changed so that the important privileges of the House are still maintained? These are the fundamental questions to be answered; but it is not easy to find simple answers which

equally fit all the aspects from which procedure with regard to evidence requires to be considered.

(*a*) *Witnesses.*—Sufficient distinction has not hitherto been drawn between the supplying of evidence to witnesses or prospective witnesses and the supplying of it to persons or bodies who are simply interested in the proceedings. At present Mr. Speaker must be asked for his permission in both cases, though he is more likely to withhold it in the second than in the first. It is indisputable that a Committee will often wish to hear the views of one witness upon the evidence given by another, for which purpose it is an obvious convenience to send the prospective witness confidentially a copy of the evidence on which he will be asked to comment. The difficulty, however, is to draw the line between what is done *for the convenience of the Committee* and what may be claimed *as a convenience, or even a justice, to a witness.* When a Select Committee is set up on a controversial matter, persons and associations of considerable importance are often involved in the issue, which they come to regard as analogous to an issue in civil litigation. On this analogy they claim a right to see all the evidence. If this is refused, one witness may object that he has not had the opportunity of fairly meeting an opponent's case, another may say that he cannot decide whether to offer evidence at all (when this is left voluntary) without knowing what has been said; and all point out the anomaly that, while they may attend the Committee and make as copious notes as they please, the printed transcript of what they have heard is denied to them. They also refer to the different procedure in the House of Lords.

If, therefore, discretion were to be given by the House to a Committee to send evidence to prospective witnesses, the questic would still remain whether any safeguard could be devis which would prevent abuse and, in particular, the growth the view of a Committee as a semi-judicial body, with the co sequential growth of a claim *on the ground of justice to a par.* for what was only intended to be *a convenience to the Committe* —a development which would be against all the traditional conception of the functions of a Select Committee.

(*b*) *Persons or bodies interested in the Inquiry.*—To persons or bodies interested in a Committee's inquiry, so far as they are prospective witnesses, the considerations in (*a*) apply. But claims to receive printed proofs of evidence are often made by them, apart from any prospect of giving evidence, either on the general ground that there is no real distinction between permission to attend sittings and permission to receive (or buy) the transcript of evidence given at the sittings, or on some particular ground, *e.g.*, that another interested body, one of whose members is a witness, is receiving the printed proofs of evidence.

It must be definitely said that the issue of printed proofs of evidence to other persons than prospective witnesses amounts to "publication" and is contrary to the Resolution of 1837. There is no logical division between issue of evidence to such persons and issue to the public at large, including Members of the House. If it were to be thought desirable that this House

should permit proofs of evidence to be subscribed for by any members of the public, even with an undertaking not to reprint, or republish, the only logical procedure would be for the House to waive its privilege specifically and allow the Stationery Office to sell copies of the (uncorrected) proofs, copies being also made available for Members in the Vote Office. This would amount to doing what can now be done if a Committee has leave to report the evidence day by day. It must be remembered, however, that by existing practice it lies with the Committee to determine whether their sittings shall be held in private or be open to the public. In the event of a day to day publication of the uncorrected proof of the evidence becoming the recognized procedure for a Select Committee sitting in public, it might well be that many more such Committees than hitherto might elect to sit in private. If this were to occur, the slight advantage gained by interested parties in certain cases would be more than offset by their complete exclusion in others. On the other hand, to adopt the procedure of the House of Lords without the specific surrender of privilege by the House would seem to be impossible.

(*c*) *The Press.*—The present practice whereby Press reporters can attend public meetings of a Committee and take down reports is, as has already been pointed out, an anomaly. It is only because the news-value of Select Committee proceedings is usually small, and space in newspapers is limited, that the anomaly is not more glaring than it is. Yet it must be remembered that the *whole* reason for passing the Resolution of 1837 was unauthorized publication in the Press of evidence taken before a Select Committee, after the Committee, by a majority, had decided not to report the evidence from day to day. It is interesting to observe that this decision was reversed a week after the passing of the Resolution.

It is also interesting to note that whereas, sometime before 1875, the reporting by the Press of proceedings in Select Committees of the House of Commons became a tacitly recognized institution in spite of the Resolution of 1837, the effect of this Resolution has had a precisely opposite effect in the House of Assembly of the South African Union, which permits no reporting or publication of any proceeding in a Select Committee—a practice which rests upon a strict interpretation of the Resolution given in 1861 by the then Speaker of the Cape Parliament.

* * * * *

. . . if a Select Committee's proceedings held in public excited sufficient public interest (in this case) the House[1] undoubtedly waives, while preserving, its expressed privilege, by which it has power to protect itself against misrepresentation. Yet, it cannot be doubted that the resultant anomaly weakens the case for a strict application of the Resolution in other ways.

(*d*) *The Speaker, the Committee and the House.*—Any suggested change in the present practice must affect the Speaker, the Select Committee and the House; the first because he is the interpreter of the rules and practices of the House, the second if any discretion which it does not now possess is given to a Committee with regard to the issue of evidence, and the third

[1] *i.e.*, of Commons.

since it is difficult to conceive that any such change could properly be made except by Order or Standing Order of the House. Indeed, it is urged that to propose conferring any further discretion on Mr. Speaker than he now conceives himself to have in this matter, or conferring such discretion on a Select Committee, except by Order of the House, would be improper.

(10) *The Possibility of Regulation by Order or Standing Order.*—The view that, all things considered, the present practice, as it exists under the authority of the present Speaker, best suits the purposes and traditions of this House could well be sustained; but, even so, the fact that in recent years different Speakers have taken different views of their discretion in the matter points to the desirability of re-enacting, perhaps in a more precise form, the Resolution of 1837. All the more, if, after full consideration of all the aspects of the matter, it were held that an attempt should be made to remove anomalies or present restrictions and definitely to change the procedure, would this best be done by amendment to the Standing Orders. As an example of more precise regulation by Standing Order, the Standing Orders 237-238 and 240 of the New Zealand House of Representatives may be quoted:

Standing Orders of the House of Representatives of New Zealan (1909):

> 237. The evidence taken by a Select Committee of the Hous and documents presented to such Committee, and which have not been reported to the House, ought not to be published by any Member of such Committees nor by any other person.
>
> 238. The preceding Order shall not apply to the proceedings of a Committee if the House shall have ordered that such proceedings be open to accredited representatives of the Press; and any Committee may, by Resolution reported to and adopted by the House, direct that the whole or part of the proceedings shall be so open.
>
> 240. Proof copies of the evidence given before a Select Committee shall be distributed to Members of the Committee only.

It will be observed that No. 237 repeats the wording of the Resolution of 1837, except for the first clause. "That according to the undoubted privileges of this House and for the due protection of the public interest"; No. 238 makes the House, not the Committee, the arbiter whether the proceedings of the Committee shall be open to the Press, though the Committee may ask the House to adopt a Resolution directing that the proceedings shall be so open; No. 240, on the other hand, is extremely definite, and appears to forbid the issue of proof copies of evidence even to prospective witnesses.

Recently, when this matter was being discussed with the Clerk of the House, the following suggestions for amendments of Standing Orders were tentatively put forward:

> (A) *Suggested new Standing Order : Evidence before Select Committees.*—Copies of the Minutes of Evidence taken before a Select Committee having power to send for persons,

papers and records may be sent to such persons as the Committee may think fit. Provided always that nothing in this Resolution shall be taken to deprive the House of the right to proceed against any person publishing such evidence before it has been reported to the House.

(B) *Suggested Amendments to S.O.* 61, which gives to Select Committees power to report their opinion and observations, together with the Minutes of Evidence taken before them, to the House,

(i) to add at the end:

" and to send during the course of their proceedings a copy of any part of the evidence taken before them to such persons as the Committee may think fit."

(ii) to add at the end:

" The evidence taken from time to time before a Select Committee shall, unless otherwise ordered, be printed for the use of the Committee, but no copies thereof shall be sent except to the Members of the Committee and such other persons as the Committee may think fit."

These three suggestions were made on the assumption that the House would not desire specifically to surrender any privilege or to repeal the Resolution of 1837. Suggestion (A) is the more specific in asserting the privilege, though it is implied in the others. (B) (ii) comes nearest to the order made in the House of Lords when a Select Committee of that House, or a Joint Committee, hears evidence. All of these suggestions, however, are unsatisfactory, since they leave some important questions still in doubt, the most important being whether the discretion thus to be given to a Committee were intended, or not intended, to cover the issue of proof copies of evidence to other than prospective witnesses and whether, in fact, any such words could be interpreted as giving that wider discretion. Moreover (A) uses the phrase " publishing " without any definition of what constitutes publishing. None of them, in fact, would entirely be free from doubt in their application.

It is therefore urged, in conclusion, that satisfactory amendments to the Standing Orders can only be framed after specific conclusions have been reached on the following questions:

(1) Should the Resolution of 1837 be re-enacted in the Standing Orders, and, if so, in what form ?

(2) What specific interpretation is it intended should be given to any such re-enactment as regards (*a*) the sending of proofs of evidence to witnesses; (*b*) the issue of such proofs to other persons outside the Committee; and (*c*) the reporting of proceedings in the Press ?

(3) What discretion, if any, should be given to a Select Committee in this matter, and is the discretion, if given, in any way to be limited ?

(4) Even if thought desirable, is it possible to adopt any practice analogous to that of the House of Lords so long as the declared privilege of the House exists, since it would amount to publication (in the fullest sense) of unreported evidence ?

Mr. Williams's ADDITIONAL MEMORANDUM, dated March 22, 1937, deals with the publication of evidence taken before Select Committees and is headed, "Note on Alternative Methods of Enacting Change of Procedure."[1] This Memorandum is given at length:

> If the present procedure with regard to publication of evidence is held to be too restrictive and a change in the direction of greater freedom to be desirable, there are two alternative courses open:
>
> (1) that the House should order such uncorrected proofs of evidence to be published as a Select Committee saw fit;
> (2) that the House should, by order, give a Select Committee discretion to send or deliver out copies of the uncorrected evidence to "such persons as they may think fit."
>
> Since all the results of instituting a new procedure cannot be foreseen, it would be better to enact either of these alternatives by an additional order in the Resolution setting up a Select Committee than by a Standing Order, any amendment of which must be made by Motion in the House and therefore occupy time.
>
> The following forms of words are suggested:
>
> For alternative (1)—
>
> "That if the Committee resolve: 'that it is expedient that the Minutes of Evidence taken before them, or documents presented to them, or any parts of the same, be published from time to time,' and report such Resolution to the House, then such Minutes of Evidence and Documents shall be deemed to have been also reported to the House and shall be ordered to be printed."
>
> (*Note.*—It is envisaged that the Resolution of the Committee would be reported to the House in the same way as a Resolution from the Standing Orders Committee and that a book-entry will be made: "Ordered that the said Minutes of Evidence and Documents be printed [No.].)"
>
> The adoption of this form of order would have the advantages:
>
> (*a*) that it would bring the publication of the evidence strictly within the ancient rules and privileges of the House, and therefore within the Resolution of 1837;
> (*b*) that the House would be informed in each case that publication of evidence had been resolved on;
> (*c*) that the existing machinery for the distribution of parliamentary papers, *i.e.*, the Vote Office and the Stationery Office, could be utilized for the distribution of evidence;
>
> but would have the disadvantage that Committees might be subjected to pressure to come to conclusions other than those indicated by the evidence they have heard.
>
> For alternative (2)—
>
> "That such Minutes of Evidence taken from time to time before the Committee, and such Documents presented to

[1] *See* Qq. 180-186.

them, as the Committee think fit, shall be printed, but that no copies thereof be communicated except to Members of the Committee and such other persons as the Committee think fit."

The disadvantages of this form of order are the following:

(*a*) The House would be giving Committees a discretion which, if properly exercised, would impose upon them the invidious task of discriminating between the various applicants for evidence, but which being undefined, would authorize Committees to publish evidence that had not been reported to the House, *i.e.*, to do something contrary to the ancient rules of the House, part of which were expressed in the Resolution of 1837; so that

(*b*) this order could only properly be enacted after an explicit alteration of these rules of the House; such an alteration would not only deprive the House of a protection against misuse of unreported evidence, but also cancel the well-established and salutary rule that proceedings before a Committee cannot be discussed in the House before they have been reported.

(*c*) Any extensive supply of evidence to outsiders under the Committee's discretion would inevitably lead to a demand for Members of the House to be supplied with copies—a demand which it would be impossible to refuse—and so the evidence would be in fact published.

(*d*) The evidence would not be available as are all other papers published by Order of the House, and so the existing machinery for distribution could not be used, and some addition might have to be made to the staff of the House of Commons for this purpose.

(*e*) The fact that this form of order would more closely conform to the practice of the House of Lords is not an advantage, for the needs, interests and machinery of the two Houses are, and always have been, different. Also it is to be noted that even in the House of Lords, in the case of the Joint Committee on Indian Constitutional Reform, it was held that the usual practice would not cover communication to the Press.

VII. CANADA: CONSTITUTIONAL REFORM

BY THE EDITOR

CONSTITUTIONAL reform continues to engage the earnest attention of statesmen in Canada both at Ottawa and in the Provinces and consequent upon debates in the Dominion Parliament during the year under review, and in view of the general desire throughout the Dominion that the British North America Acts—the Constitution of Canada—should either be amended or displaced by a new Constitution, a Royal Commission was appointed towards the end of that year, the terms of which are given below.

The questions of constitutional amendment and reform and that of appeals to the Judicial Committee of the Privy Council in Whitehall against the findings of the Supreme Court of Canada in respect of Dominion legislation have already been a subject of reference in the JOURNAL.[1] An interesting debate upon the recent Privy Council decisions of 1935 took place in the House of Commons on April 5.[2]

The object of this Article, therefore, is to keep the reader on the course of the subject. When the Royal Commission has made its report, which is expected towards the end of 1938, its recommendation will duly be dealt with in the JOURNAL.

Attention will first be drawn to an initial debate in the House of Commons at Ottawa.

Debate upon Motion to go into Committee of Supply.—On January 26, during the above-mentioned debate, the Leader of the Opposition (Rt. Hon. R. B. Bennett[3]) raised the issue of constitutional reform, and said that no one failed to realize that a sharp conflict was taking place between the Legislatures and the Parliament of Canada. Some of the Provinces were suggesting the possession of a sovereignty entirely out of keeping with the general principles which had governed them in the past. In fact, this suggested exercise of sovereignty by the Provinces had gone further than ever before.

The second point to which attention might be directed was the ever-present conflict between the Provincial Legislatures and the Parliament at Ottawa in the exercise of their constitutional jurisdiction. In other words, the interpretation of

[1] Vols. IV, 14-18; V, 91-99. [2] CCXIII, Can. Com. Deb. 2574-2598
[3] CCXI, Can. Com. Deb. 267-271.

their Constitution had become more difficult and the exclusive powers exercised by the Provincial Legislatures on the one hand and by the Dominion Parliament on the other had come into conflict so frequently with respect to national questions that it was time some remedy was applied. The Dominion Parliament had no power of supervision nor yet the right of effective criticism. Under the Constitution the Provinces in the exercise of their legislative powers had the same plenary right as the Parliament at Ottawa had within the ambit of its jurisdiction. Note the character of the conflicts, continued the speaker; they have been going on, but they had never been seriously dealt with during the 70 years of confederation. For instance, there was the debt problem, and a far more serious problem, that which arose out of the breach of contracts by Provincial Legislatures. Lord Grey, when Governor-General, had pointed out that the lack in their Constitution of any effective powers to prevent those Legislatures from making contracts was a matter for most serious consideration. Take another question, observed Mr. Bennett, the administration of justice: the Parliament of Canada made the criminal law, but the administration rested with the Provinces and the result had not always been entirely satisfactory. Then there was the administration of civil justice; the Provinces determined the number of judges which the Parliament at Ottawa had to provide both for their appointment and salaries, and it was well known that in some Provinces the judiciary were notoriously without work. Then there was another power which had fallen into disuse, the power of disallowance. An ever insistent and increasing demand upon the Federal Treasury had come about, to provide money for the Provincial Legislatures by increased subsidies and grants in order that they might expend it without any limitation or control being imposed upon that expenditure by the power that granted it to them. Canada had enacted a statute that did not provide for a purely federal union. The speaker therefore suggested that a constitutional convention be held consisting not merely of representation of the Provinces by their Premiers, but representative of all phases of political thought, and the same would apply to representation of the Dominion Parliament at such a convention. They would then have a constitutional convention or conference in accordance with the general principles which governed the conference that brought into being the Constitution of their country, the British North America Act. Unless democracy

can be as efficient as a dictatorship it cannot survive, said Mr. Bennett, and it could not be efficient in Canada with these sharp conflicts between provincial jurisdiction on the one hand and federal on the other.

The Prime Minister (Rt. Hon. Mackenzie King),[1] in reply, said that there was no more important question confronting the Canadian Parliament than that of the necessary amendment of the British North America Act. On all sides there was agreement that amendment was necessary. He remarked that the subject had been very carefully considered by a Select Committee[2] of their House. Mr. Mackenzie King drew attention to the fact that the suggestion made by his Rt. Hon. Friend had been brought before that Committee " by no less a distinguished person than the Clerk of their House of Commons,"[3] but who suggested that a new Constitution be drafted.

Then the Dominion-Provincial Conference[4] was held which did not help to disclose too obvious a method of amending the Constitution. As to amendments, continued the speaker, which were less comprehensive than a new Constitution, the question arose as to whether it would not be better to proceed in the first instance by having a representative commission consider possible amendments, with all parties in the Provinces and in the Parliament at Ottawa entitled to appear before the commission and give it the benefit of their views and opinions. In conclusion, the Prime Minister said that he agreed entirely with the Rt. Hon. the Leader of the Opposition that a way must be found to have the question of the revision of their Constitution considered; and that if there was one problem above another which could only be satisfactorily settled as a result of a united public opinion, it certainly was that of the alteration of their Constitution or the creation of a new Constitution to supplant that under which, thus far, their country had been governed.

Suggested Amendment of B.N.A. Acts.[5]—An interesting debate also took place in the Canadian House of Commons on February 1,[6] in regard to the proposed amendment to the above Acts, which represent the Constitution of Canada, the subject having been raised by the following Motion by the hon. Member for Rosetown-Biggar (Major J. W. Coldwell), which was negatived:

[1] *Ib.*, 278-282.
[2] *See* JOURNAL, Vol. IV, 14-18.
[3] Dr. Arthur Beauchesne, K.C., C.M.G., etc.
[4] *See* JOURNAL, Vol. IV, 16-18.
[5] *See* JOURNAL, Vol. V, 91-95.
[6] CCXI, Can. Com. Deb. 425-463.

That in the opinion of this House, in view of the urgent necessity of effective action, for the improvement of the social and economic conditions of the people of Canada, and in view of the condition of social and other legislation passed by Parliament, during the tenure of office of the late Government, and, in view of the forward-looking legislation recently enacted in the United States and other democratic countries, a special Select Standing Committee be set up to recommend the specific amendments to the British North America Act required to enable this Dominion Parliament to enact necessary and desirable legislation for the better social conditions of the Canadian people.

Appointment of Royal Commission on Dominion-Provincial Relations.—On February 15[1] the Prime Minister (Rt. Hon. Mackenzie King) by statement in the Canadian House of Commons intimated that the Government had been considering the desirability of appointing a Royal Commission to study certain aspects of the relationship between the Dominion and the Provinces including the allocation of sources of revenue and the financial capacity of the Provinces to discharge their responsibilities, which problem had become acute in the case of the Provinces of Manitoba and Saskatchewan, the depression intensified by drought having drastically reduced the income of the people and consequently the revenue-raising capacity of their Governments. The Commission would investigate the whole system of taxation in the Dominion; study the division of financial powers and financial responsibilities between the Dominion and the Provinces, and make recommendations as to what should be done to secure a more equitable and practical division of the burden to enable all governments to function more effectively and more independently within the spheres of their respective jurisdictions.

Below are given the terms of reference of the Royal Commission and other particulars in connection therewith:

THE ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

OTTAWA, CANADA,
November 20, 1937.

DEAR SIR,

The public hearings of the Royal Commission on Dominion-Provincial Relations open at Winnipeg on November 29. Eventually all provincial capitals will be visited, and there will also be sittings at Ottawa. All governments have been invited to make representations, and the Commission will hear recognized public organizations on the matters covered by the reference.

[1] CCXI, Can. Com. Deb. 921-923.

Requests have come in from editors for information about the Commission's work, and in the hope that it may be useful for reference, I am sending you herewith a copy of the Order-in-Council which defined the scope of the inquiry, also a dispatch sent out by the Canadian Press from Ottawa on November 3, following an interview given to the Press by the Chairman, Chief Justice Rowell. This outlines the programme of work for the coming year.

Sincerely yours,
ALEX SKELTON,
Secretary.

PRIVY COUNCIL, CANADA

The following is a copy of a Minute of a Meeting of the Committee of the Privy Council, approved by the Deputy of His Excellency the Governor-General on August 14, 1937.

The Committee of the Privy Council have had before them a report, dated August 5, 1937, from the Right Honourable W. L. Mackenzie King, the Prime Minister, submitting—with the concurrence of the Minister of Finance and the Minister of Justice:

1. That, as a result of economic and social developments since 1867, the Dominion and the provincial governments have found it necessary in the public interest to accept responsibilities of a character, and to extend governmental services to a degree, not foreseen at the time of Confederation;
2. That the discharge of these responsibilities involves expenditures of such a magnitude as to demand not only the most efficient administrative organization on the part of all governments, but also the wisest possible division of powers and functions between governments. That particularly is this the case if the burden of public expenditures is to be kept to a minimum, and if the revenue-raising powers of the various governing bodies are to possess the adequacy and the elasticity required to meet the respective demands upon them;
3. That governmental expenditures are increased by overlapping and duplication of services as between the Dominion and provincial governments in certain fields of activity. That in other respects the public interest may be adversely affected by the lack of a clear delimitation of governmental powers and responsibilities;
4. That representations have been made on behalf of several provincial governments and by various public organizations that the revenue sources available to provincial governments are not in general adequate to enable them to discharge their constitutional responsibilities, including the cost of unemployment relief and other social services and the payment of fixed charges on their outstanding debt; that, consequently, if they are to discharge their responsibilities, either new revenue sources must be allotted to them or their constitutional responsibilities and governmental burdens must be reduced or adjustment must be made by both methods;

5. That representations have been made by provincial governments that municipal governments which have been created by, and derive their powers and responsibilities from, the provinces, are confronted with similar problems; that, in particular, necessary municipal expenditures have placed an undue burden on real estate and are thereby retarding economic recovery; also that the relations between provinces and municipalities are an essential part of the problem of provincial finances;

6. That, finally, it has been represented that unless appropriate action is taken the set-up of governmental powers and responsibilities devised at the time of Confederation will not be adequate to meet the economic and social changes and the shifts in economic power which are in progress without subjecting Canada's governmental structure to undue strains and stresses. The Prime Minister, therefore, with the concurrence of the Minister of Finance and the Minister of Justice, recommends:

1. That it is expedient to provide for a re-examination of the economic and financial basis of Confederation and of the distribution of legislative powers in the light of the economic and social developments of the last seventy years;

2. That for this purpose the following be appointed Commissioners under Part I of the Inquiries Act:

The Honourable Newton W. Rowell, LL.D.,
Chief Justice of Ontario;

The Honourable Thibaudeau Rinfret,[1]
Justice of the Supreme Court of Canada;

John W. Dafoe, Esquire, LL.D.,
of the City of Winnipeg, Man.;

Robert Alexander MacKay, Esquire, Ph.D.,
Professor of Government, Dalhousie University, Halifax, N.S.; and

Henry Forbes Angus, Esquire, M.A., B.C.L.,
Professor of Economics, University of British Columbia, Vancouver, B.C.

3. That, without limiting the general scope of their inquiry, the Commissioners be instructed in particular:

(*a*) to examine the Constitutional allocation of revenue sources and governmental burdens to the Dominion and provincial governments, the past results of such allocation and its suitability to present conditions and the conditions that are likely to prevail in the future;

(*b*) to investigate the character and amount of taxes collected from the people of Canada, to consider these in the light of legal and Constitutional limitations, and of financial and economic conditions, and to determine whether taxation as at present allocated and

[1] Since the original appointments were made, the Hon. T. Rinfret had to retire because of indifferent health and his place was taken by Dr. Joseph Sirois, Professor at Laval University.

imposed is as equitable and as efficient as can be devised;

(*c*) to examine public expenditure and public debts in general, in order to determine whether the present division of the burden of government is equitable, and conducive to efficient administration, and to determine the ability of the Dominion and provincial governments to discharge their governmental responsibilities within the framework of the present allocation of public functions and powers, or on the basis of some form of re-allocation thereof;

(*d*) to investigate Dominion subsidies and grants to provincial governments.

4. That the Commissioners be instructed to consider and report upon the facts disclosed by their investigations; and to express what in their opinion, subject to the retention of the distribution of legislative powers essential to a proper carrying out of the federal system in harmony with national needs and the promotion of national unity, will best effect a balanced relationship between the financial powers and the obligations and functions of each governing body, and conduce to a more efficient, independent and economical discharge of governmental responsibilities in Canada.

The Prime Minister, with the concurrence of the Minister of Finance and the Minister of Justice, further recommends that the Honourable Newton W. Rowell, LL.D., Chief Justice of Ontario, be Chairman of the said Commission.

The Committee concur in the foregoing recommendations and submit the same for approval.

E. J. LEMAIRE,
Clerk of the Privy Council.

PROGRAMME OF ACTIVITIES OUTLINED BY CHAIRMAN

(*By the Canadian Press*)

Ottawa, November 3.—Working plans for Royal Commission study of Dominion-provincial relations, which will centre on distribution of responsibilities and taxing powers between the Dominion and the provinces, were announced to-day by Chairman Newton W. Rowell.

The Chairman released the schedule of public hearings, planned in the nine provincial capitals and Ottawa and the personnel of the group of economists retained to advise the Commission.

Mr. Rowell said the Commission expected to conclude its hearings by next July 1, if given the co-operation promised. Hearings start in Winnipeg, November 29. The Commission aims to have its report in the hands of the Government by the end of 1938.

The Chairman emphasized the Commission's function is purely advisory. What further steps were taken after its report was submitted were Government responsibilities.

The Commission was not concerned with any general over-

hauling of the British North America Act, he said. Its prime purpose was to make an economic and financial study which might ultimately involve a redistribution of powers of taxation and some amendments to the B.N.A. Act.

Recently returned from a trip on which he visited all the provincial Premiers, Mr. Rowell said: " In all cases they promised co-operation with the Commission.

" All provinces are preparing briefs which will be submitted to us in due course, I expect," the Chairman continued. " After we left Edmonton a Resolution was passed in the Legislature there against presentation of a brief to the Commission. The Premier announced later they would proceed with the printing of the brief."

While the Aberhart Government would undoubtedly keep in view the wishes of the Alberta Legislature in this regard, the Chairman " presumed " the brief would reach the Commission " in some form so that the views of the Government will be known to the Commission."

Data from Four Sources.—The Commission would gather information from four sources on the matters it was investigating: from the federal and provincial governments; from " recognized public organizations " interested in some phase of the investigation; from a staff of experts conducting private investigations and studies for the Commission; and from competent witnesses it might call to appear before it.

As a preliminary to studies on taxation and a " re-examination of the economic basis of Confederation," regional wealth and income would be appraised by a group of outstanding economists under Dr. W. A. Mackintosh, head of the economics department at Queen's University, a member of the National Employment Commission and an authority on the economy of the western provinces.

His associates in various phases of that work will include D. C. MacGregor of the economics staff of the University of Toronto; Dr. Henry Laureys, dean of the School of Higher Commercial Studies, University of Montreal, and director of technical education for Quebec Province; Frank A. Knox, associate professor of economics, Queen's University; Dr. Paul LeBel, professor of l'École Supérieure du Commerce of Quebec City; and Dr. S. A. Saunders, Saint John, N.B., a recognized authority on problems of the Maritime Provinces. Additional western economists will be retained to assist Dr. Mackintosh in his work in the west.

The taxation field will be studied by Dr. W. H. Wynne, graduate of Queen's and Cambridge, who has been engaged in Toronto for the past year on a survey of Canadian taxation; by Prof. François Vezina of the School of Higher Commerical Studies, University of Montreal, who has been directing a survey of Quebec natural resources, and Carl Goldenberg, Montreal, economist of the Canadian Federation of Mayors and Municipalities and extension lecturer at McGill University.

Analysis of the financial history and present financial position of government bodies in Canada will be directed by J. C. Thompson, Montreal, for 12 years provincial auditor of Alberta, and Stewart

Bates of Glasgow, Edinburgh and Harvard Universities, former secretary of the Economic Council of Nova Scotia.

Governments to aid.—Dominion and provincial governments have been asked to assist in compilation of federal, provincial and municipal data on a uniform basis for this study, which will include investigation of overlapping services and jurisdictions, provincial subsidies and grants, and Government debts.

Dr. A. E. Grauer, director, social science department, University of Toronto, and Prof. Esdras Minville, University of Montreal, will review the field of social services. Prof. Alex. Corry, professor of political science, Queen's University, and formerly of the University of Saskatchewan, is surveying the growth of Government functions since Confederation.

Constitutional studies for use of the Commission will be prepared by Dr. Leon Mercier Gouin, Montreal lawyer and professor of the faculty of commerce, University of Montreal, and Vincent C. MacDonald, dean of the law school, Dalhousie University, former editor-in-chief of the Dominion Law Reports.

Schedule of sittings.—The Commission's planned itinerary follows: November 29, opening at Winnipeg; December 9, open at Regina, adjourning before Christmas; mid-January, sit at Ottawa to hear Dominion-wide organizations, of which 15 to 20 already have indicated their desire to make representations; first three weeks of February in the three Maritime provincial capitals, then moving to Alberta and British Columbia for March; Quebec and Ontario in April on dates not yet determined.

A final sitting is planned for Ottawa, beginning June 1, at which all governments will be represented. It is hoped this sitting will be concluded by July 1.

"This gives us autumn in which to do the hard work of writing the report," said Mr. Rowell. "With the co-operation of all parties we hope to keep to schedule and get the report to the Government by the end of the year. We are very anxious to conclude at the earliest possible moment consistent with being thorough."

Asked if the economists' reports would be available to those appearing before the Commission, the Chairman said they would if the representations covered the same field.

"We want everyone to feel they have every possible opportunity to examine everything that comes before the Commission, whether they are for it, partly for it, or against it," he said.

A Constitutional Survey suggested.—On February 17,[1] the following Motion was moved by the Hon. Member for Broadview (Mr. T. L. Church):

That, in the opinion of this House, Constitutional, Parliamentary Cabinet and Law reform are long overdue in Canada.

That with a view of increasing the efficiency of Parliament and of government in this country and also of considering the whole question of over-government and over-taxation and giving the people a more modern Constitution adapted to the solution of

[1] CCXI, Can. Com. Deb. 969-982.

> Canada's present-day problems, a survey and study should be made either by a Select Committee of this House or by a Joint Committee of both Houses of Parliament with a view of having a report presented to both Houses of Parliament for these very necessary reforms and for legislation accordingly so as to increase the efficiency as well as the stability of Government in Canada. Any such suggestion as aforesaid to be subject to the existing rights of minorities which are not to be interfered with but preserved.

This Motion was on the Order Paper in the Sessions of 1935 and 1936 and in its terms cover, to some extent, that by the Hon. Member for Rosetown-Biggar, already given.[1] The debate upon Mr. Church's Motion is full of interesting matter from a constitutional point of view and well worthy of reference by the constitutional student, but space does not admit of it being analysed here. Several Members took part in the debate, including the Minister of Justice, but eventually the mover obtained leave to withdraw his Motion.

[1] P. 193-194, *ante*.

VIII. AUSTRALIA: STATUTE OF WESTMINSTER

BY THE EDITOR

ON June 22[1] in the Commonwealth House of Representatives on the Motion of the Attorney-General (Rt. Hon. J. G. Menzies, K.C.), leave was given to bring in a

> Bill for an Act to provide for the adoption of sections 1, 2, 3, 4, 5 and 6 of the Statute of Westminster 1931, and for other purposes,

and on the following day[2] the Bill was read the First Time. On August 25[3] in moving the Second Reading of the Bill, the Attorney-General, when reciting the objects of the measure and reviewing the incidents which, starting with the Balfour declaration, led up to the passage of the Statute of Westminster, said, that after the War it had been found in most British Dominions there had been a substantial development in the theory which underlies Dominion self-government. He was not prepared to say that there had been a very great change in constitutional practice, because, for years before the War, actual interference with the government of any self-governing dominion was substantially unknown; but there still remained theoretically the possibility of such interference. After the War that theory changed and a state of mind developed in which it was thought that, not only in practice, but also in theory, complete independence of the self-governing dominions should be assured. The Balfour declaration referred both to the British Empire and the British Commonwealth of Nations. They both continue to exist. One sometimes used the expression " British Commonwealth of Nations " as if it had been substituted for the older term " The British Empire," but that was not so. Parts of the Empire are not included in the British Commonwealth of Nations. India and all the non-self-governing areas, such as the Crown Colonies, still remain part of the British Empire, but they are not members of the British Commonwealth of Nations. " I take the view," continued the speaker, " that Australia is part of the British Empire, but that it has a substantial status within the Empire as a member of the British Commonwealth of Nations."

One of the recommendations of the Imperial Conference of 1930 was that the Statute of Westminster should not be introduced until it had been requested and consented to by the various Dominion Parliaments, and Resolutions giving

[1] 153 Com. Parl. Deb. 192. [2] *Ib.*, 250. [3] 154 *ib.*, 83-95.

such authority were passed by the Commonwealth House of Representatives on June 28 and October 27, 1931 and by their Senate on June 29 and October 28 of that year. The result was that the Statute of Westminster received the Royal Assent on December 11 following. The Attorney-General then observed that they were not then considering the wisdom of passing the Statute of Westminster itself, but the wisdom, or otherwise, of adopting certain sections of it and making them applicable to Australia. The present Bill was being introduced because it was expressly provided in the Statute of Westminster that sections 2 to 6 thereof were not to apply to Australia, New Zealand or Newfoundland unless adopted by the relevant Parliaments.

The Attorney-General then drew particular attention to the recitals of the preamble to the Statute and emphasized that such recitals were in effect to-day, whether they adopted the Statute or not. They were offered as a deliberate recital by the Parliament of the United Kingdom of what it understood to be the position of the Dominions. Therefore whatever constitutional significance attached to the preamble to the Statute was attached to it irrespective of what the Commonwealth Parliament might do. These recitals were very significant. The first was a recital of the resolutions and declarations made by the Imperial Conferences of 1926 and 1930. Then there were the recitals in regard to the Royal Style and Titles and Succession to the Throne;[1] and that no law passed by the Parliament of the United Kingdom can extend to a Dominion without its consent. The Attorney-General here remarked that he did not suggest there was legislative force in the preamble, but there was the completely binding constitutional force in it. The speaker then dealt with the operations of the sections of the Statute of Westminster it was proposed to adopt, at the same time drawing attention to section 8 of that Statute, safeguarding any amendment of the Commonwealth Constitution except in accordance with the law passed before the coming into force of the Statute of Westminster, and section 9, which provides that the Commonwealth Parliament cannot go beyond its legislative powers because of anything contained in the Statute itself, and also provides that the concurrence of the Commonwealth will not be necessary to any law of the United Kingdom touching a matter which is exclusively within the jurisdiction of the States. The position of the States is to that extent protected.

[1] *See also* JOURNAL, Vol. V, 69 *n.*

Mr. Menzies then said:

> I think that the business of devising the Balfour declaration in 1926, and the business of devising and drafting the preamble of the Statute of Westminster in 1931 were both open to very grave criticism, and I shall state in a few moments what, in my opinion, that criticism is. But whatever criticism I may feel those things are exposed to, they have been done; nobody to-day can recall the Balfour declaration of 1926, and nobody to-day can blot the Statute of Westminster from the Statute Book of the United Kingdom. These things have been done; they are purely a cold matter of fact, and for me to complain that they should not have been done, or to offer criticism of them, is simply to beat the air.[1]

It is now proposed to quote from the debate:

> MR. MENZIES. I believe that the 1926 declaration, followed up as it was by subsequent action, was, in substance, a grave disservice. But that does not prevent me from saying that these things have been done.
> MR. BEASLEY. Why do you say that they are a great disservice?
> MR. MENZIES. I shall indicate my reasons very briefly, and, I hope, quite dispassionately—I know that honest people can disagree on this matter. In the first place the whole of this process of devising a written formula was open to the criticism that it reduced to cold legal form, and therefore to a relatively rigid form, a relationship some of the supreme value of which has always been its vagueness and elasticity. That is the first criticism. I was very much struck by a passage in an article written by a celebrated Australian scholar:
>
> > Our nation has always excelled in political artistry rather than in political science, and the artist's skill can never be reduced to formulæ.
>
> I think that is a pretty profound truth on all matters of constitutional relationships.
> The next criticism I would offer is that the process—I am talking about the 1926-30 process—emphasized the legal aspects of independence, and, therefore, tended to give far too little weight and significance to the family relationship, which is a relationship well above the law.
> MR. BRENNAN. I suggest that the legal aspects were developed only after the declaration of 1926.
> MR. MENZIES. I suggest not. My criticism is criticism of the whole of the 1926-31 process, and that begins and has its roots in what I would have thought was a misguided attempt in 1926 to reduce to written terms something which was a matter of the spirit and not of the letter.
> My next criticism is that, to some extent, the whole process of self-assertion ignored the physical facts. It is a very fine thing to state loudly that I am politically independent—I believe in being politically independent; my difference from those acting in 1926 and 1930 simply is: I do not feel it necessary to talk about my political independence; I know it is there; but for me[2]

[1] 154 Com. Parl. Deb. 92. [2] *Ib.*, 92-93.

to go talking about political independence, talking almost provocatively at a time when my physical, my military independence, is by no means so clear, is to provoke obvious criticism and invite obvious difficulty.

My final criticism of the process I have been referring to—and I offer these criticisms in an historical sense, because I am in favour of adopting the statute—is that it tended too much to produce problems without solving them. That may seem a little cryptic, but let me explain what is in my mind. These are some of the grave questions that I submit very earnestly to the consideration of Honourable Members on both sides of the House. In the first place it produces the problem of reconciling the most favoured nation clause in foreign treaties with the whole principle of Imperial Preference. I wonder if Honourable Members clearly realize that Imperial Preference is able to exist as one of our tariff doctrines simply because other countries have agreed that we are not all to be regarded as independent nations. If they regarded all British countries as completely independent nations they would be in a position to say, "You have a treaty with us under which you are bound to give us most favoured nation treatment. *Ergo*, give us the preference you accord to New Zealand and Canada." Our answer is "Oh, no; it is true we are independent and separate nations, but there is a little qualification on that due to our common allegiance to a common Crown which justifies us in saying that, for tariff purposes, the other Dominions are not foreign and independent, but stand on a special footing in relation to ourselves."

MR. BRENNAN. A very good answer!

MR. MENZIES. It is a plausible answer, and we are fortunate that the world has agreed to receive our plausible answer with a degree of complaisance. I mention it, however, because, if we talk about complete independence as if we were foreign nations, there are a few problems of the kind I have just referred to, and some important ones to which we shall have to devote a lot of attention.

(*Leave to continue given.*)

The second problem which, I suggest, has been produced without being solved is that of how far a Dominion owing allegiance with other Dominions to a common Crown can be neutral in a war to which that common Crown is a party. I am not going to enter into a controversy about this, but I remind Honourable Members of it because, as they know very well, it is one of the live problems that might become very much more alive in less happy circumstances than those in which we live at the moment. Finally, I confess to a feeling of great doubt as to the virtue of a bold declaration, such as is found in the Balfour Declaration, that we are equal in all things, equal in all ways with, for example, Great Britain, in all matters of foreign policy, when we know perfectly well that the completely independent conduct of foreign policy by each individual member of the British Commonwealth of Nations would lead to nothing but chaos and disaster.

My leader and colleague, the Prime Minister, has just come back from the Imperial Conference at which one of the great[1]

[1] *Ib.*, 93.

achievements, not yet perhaps recognized, but, nevertheless, one of great moment, has been the production of a united declaration by all members of the British Commonwealth of Nations on the question of foreign policy. I can well imagine how difficult it is to take all the various views existing in the various countries and reconcile them on a matter of foreign policy, and to my mind the moment we said in the Balfour Declaration that we were all equal with each other, all with the same authority, power and responsibility on matters of foreign policy, we created a problem, and a very real one, to which a great deal of attention will have to be given within the next ten years: the problem of translating what is at the moment very little more than a rhetorical statement into a working statement, into something which will enable us to go on as a united British Commonwealth of Nations, while at the same time giving as much force as possible to the individuality and independence of each member of that Commonwealth.

All of these criticisms I have been referring to, I want to suggest to those who are troubled about this legislation, are now too late. That is why I said I was referring to them as a matter purely of historical interest, because for better or for worse we have the Balfour Declaration and the history of 1926 and 1930, and the only question that remains is whether we are to proceed upon the footing that those are the facts, and get whatever relatively minor advantages are to be obtained by adopting the particular provisions of the Statute of Westminster to which I have referred.

MR. BLACKBURN. In what substantial respect do the sections we have been asked to adopt now alter the practice that existed for a great many years even prior to the war?

MR. MENZIES. I think they do so to a very trifling extent. In the case of two or three sections, possibly doubt is removed by a clear declaration, but in point of practice, I think the differences are negligible. That is why I said at the beginning of my speech that this post-war development has been a development of theory rather than of practice. In point of practice the real and administrative legislative independence of Australia has never been challenged since the Commonwealth was created. It did not need any new theory to tell us that.

I think, and I suggest to the House, that, having regard to these circumstances, we ought at this stage to recognize the facts, and to come into line uniformly with the other Dominions. I think that on all these matters of constitutional doctrine and practice as much uniformity as possible throughout the British world should be aimed at.

Above all things, it seems very desirable indeed that when Australia adopts the Statute of Westminster, as it unquestionably will sooner or later, it should adopt it in circumstances of friendliness, without passion and without heat.[1]

• • • • •

I want to remind hon. Members that this adoption, and the whole of the constitutional process to which I have been referring,

[1] *Ib.*, 93, 94.

merely begin a series of responsibilities. We do not conclude this matter simply by saying " that is the end of that chapter." It is not the end of the book and the book is one in which we have to write.

We have now to deal with a very much more difficult problem than that of determining and asserting our own rights. We have to approach the problem of reconciling our own independence—all our own independent, national aspirations—with all the duties that attach to our membership of the British Commonwealth of Nations. That is the big problem of practical statesmanship for the future. That is the real constitutional problem for the future. We are not merely the Australian Commonwealth; we have also an association with other members of the British Commonwealth; and it is because we have that association and because the independence of every one of us is, to an extent, dependent upon the independence of the other that we are a Commonwealth of Nations, and not a mere alliance. That, I believe, is the thing we must constantly keep in mind, because, if we degenerate in the British world to being merely friendly allies, who may cast off the alliance to-morrow, our very security in the world, to say nothing of all those other intangible elements which mean so much to us, will be threatened. That, I think, is the task we approach when, by adopting this statute, we conclude this particular post-war constitutional chapter.[1]

On September 1,[2] a Question was asked in the Senate as to whether ample time would be allowed for a full discussion of this important matter in the Senate, to which the Minister for External Affairs and Minister-in-Charge of Territories (Senator the Rt. Hon. Sir George Pearce, K.C.V.O.) answered in the affirmative.

On September 8,[3] in the Commonwealth House of Representatives, the Attorney-General was asked whether the Government intended to proceed with the discussion of the Statute of Westminster Bill with a view to its enactment or whether it was proposed to shelve the Measure, to which the Attorney-General replied that he was unable to make any statement as to the order of business in the next few days.

On the following day the Leader of the Senate was asked[4] whether the Government had received a letter from the Premier of Western Australia intimating that the State Government viewed very unfavourably, and is opposed to, the Bill for the adoption by the Commonwealth Parliament of the Statute of Westminster; if so, would he give full consideration to the representations contained in the letter before proceeding further with the measure? The Minister for External Affairs replied that the Government had received the

[1] 154 Com. Parl. Deb. 94-95. [2] *Ib.*, 345. [3] *Ib.*, 730. [4] *Ib.*, 788, 789.

letter referred to, and, of course, would give full consideration to the representations contained in it.

The following Question and Supplementary Question were asked on the same day[1] in the Commonwealth House of Representatives:

> MR. HAWKER. Will the Prime Minister indicate whether the Government has received any representations from the States on the subject of the Statute of Westminster? More particularly, has any notification been received which would confirm the published expression of opinion by the Labour Premier of Western Australia, that while the present arrangement was working satisfactorily in every way, it seemed a great pity to introduce rigidity, with a possibility of danger arising from friction and trouble in the future?
> The PRIME MINISTER (Rt. Hon. J. A. Lyons, C.H.). A communication has recently been received from Western Australia, and previously there were some communications from other States. I shall look into the matter and inform the Honourable Member of the attitude of the States.
> MR. PROWSE. With reference to the Bill to ratify the Statute of Westminster, has the Prime Minister seen in newspapers published in Western Australia a statement by the Premier of that State that he considers that Australia would be better off under the bonds that bind us at present, and has the right honourable gentleman received any communication from the Government of Western Australia on the subject?
> MR. LYONS. I have not seen the published statement of the Premier of Western Australia, to which the Honourable Member has referred. In reply to the Honourable Member for Wakefield, I have already answered a question similar to that contained in the second part of the Honourable Member's question.

On September 15[2] the Prime Minister of the Commonwealth then gave his promised reply, as follows: On September 9, the honourable Members for Wakefield (Mr. Hawker) and Forrest (Mr. Prowse) asked me questions, *without notice*, regarding representations received from the Governments of the States on the subject of the Statute of Westminster. I am now in a position to supply the honourable Members with the following summary of the views expressed by the State Governments in the matter:

> *New South Wales.*—The Premier of New South Wales (under date September 10, 1937) reiterated a suggestion previously made by him that in the proposed adopting Bill there should be inserted a recital and declaratory clause asserting that the constitutional position was that it would not be proper for the Commonwealth, without the concurrence of a State, to request

[1] *Ib.*, 839. [2] *Ib.*, 1152.

or consent to any amendment of the Statute of Westminster affecting the legislative powers of the State.

Victoria.—The Government of Victoria has expressed a desire for the insertion of a declaratory clause similar to that sought by New South Wales.

Queensland.—The State of Queensland has associated itself with the desire expressed by the State of Victoria.

South Australia.—The State of South Australia has not yet indicated an attitude, either in favour of, or opposed to, the measure.

Western Australia.—In a communication dated August 31, 1937, the Premier of Western Australia states that, in the light of the legal advice received and the consideration which has been given to the matter, his Government holds the opinion that it would be preferable to allow the relationship between the United Kingdom and the Commonwealth of Australia to be left to flexible constitutional understandings as at present rather than to attempt to define their relationship in legal form by the adoption of sections 2 to 6 of the Statute of Westminster, which that State considers will inevitably give rise to doubts, fears and uncertainties concerning the effect of such adoption upon the States of the Commonwealth. The Premier states that his Government is opposed to the measure.

Tasmania.—The Government of Tasmania has indicated that it is in favour of the adoption by the Parliament of the Commonwealth of sections 2 to 6 inclusive of the Statute of Westminster.

IX. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY, 1937

BY

D. H. VISSER, J.P.

(*Clerk of the House of Assembly*)

THE following points of procedure occurred in the House of Assembly during the 1937 Session:

Rule of Anticipation.—On the opening day of the Session the Minister of the Interior gave notice of a Motion to introduce a Bill to restrict the immigration of aliens and was followed by the Leader of the Opposition, who gave notice of a Motion of censure on the Government for neglecting in the past to take adequate measures in dealing with aliens. As the Bill dealt with future immigration and the Motion of censure dealt with the attitude of the Government in the past, the Motion was allowed, but Mr. Speaker pointed out that had it not been a Motion of censure, it might have been necessary to rule a discussion out of order as anticipating a debate on the Bill.[1]

Consideration of Assembly Bill by Joint Committee.—After the Native Laws Amendment Bill[2] had been introduced in the House of Assembly, and read a First Time, it was proposed to refer to it a Joint Select Committee. It was realized, however, that it would be impracticable to refer an Assembly Bill to a Joint Committee which would report it to both Houses. The order for the Second Reading of the Bill was therefore discharged and after the Bill had been withdrawn a Joint Committee was appointed to consider the subjects specified in the title. The Joint Committee subsequently brought up a Report containing the draft of a revised Bill and this Bill[3] was introduced by the Minister of Native Affairs, and passed in the usual way.[4]

Amendment of "Words of Enactment."—Before His Majesty King Edward the Eighth's Abdication Bill[5] was read a Second Time it was noticed that the customary words of enactment "Be it *enacted* by the King's Most Excellent Majesty," etc. had been altered to "Be it *declared and enacted* by His Majesty

[1] VOTES, 1937, 27. [2] Act No. 46 of 1937. [3] A.B. 63—'37.
[4] VOTES, 1937, 98, 514. [5] *See also* JOURNAL, Vol. V, 70-72.

the King," etc. This departure from the customary formula was considered to be unnecessary, but as Standing Order No. 164 provided that the enacting words should not be put in Committee, there was no opportunity for altering them. Mr. Speaker therefore suggested that in this case the enacting words should be put when the House went into Committee. The House ordered accordingly, and the customary formula was subsequently adopted in Committee.[1]

Control of Expenditure by House of Assembly.—The Select Committee on Railways and Harbours[2] drew attention in a special report to the fact that gratuities to railway servants and *ex gratia* payments continue to be made without the prior consent of Parliament. The Report was printed in the Votes and Proceedings and set down for consideration on a future day, but as in 1936 when the Committee made a similar report the Order dropped owing to prorogation.[3]

Delegation of Question to body of persons unconnected with Parliament.—The principle laid down by Mr. Speaker Krige in 1922 and 1923[4] that it is irregular for the House to delegate a question to a body of persons unconnected with Parliament was applied on an amendment to a motion for the appointment of a Select Committee to enquire into the price of wheat. The amendment proposed that the subject should be enquired into by the Board of Trade and Industries, but, with the consent of the mover, it was altered at the Table into a superseding amendment recommending that the Government should cause an enquiry to be made by the Board of Trade and Industries.[5]

Translation of Bills.—Section 137 of the South Africa Act provides that "all Bills . . . shall be in both [official] languages." On February 16,[6] a Member drew attention to the fact that the amendments proposed in the Transvaal Asiatic Land Bill[7] were printed in Dutch but not in English. The Bill proposed to insert provisions in a law of the Transvaal[8] of which Dutch was the only official version, and Mr. Speaker stated that under these circumstances the practice was to employ the language of the official version.[9]

[1] VOTES, 1937, 132, 150.
[2] A Department of State,
[3] VOTES, 1937, 168.
[4] VOTES, 1922, 688; *ib.*, 1923, 366.
[5] *Ib.*, 1937, 188.
[6] VOTES, 1937, 280.
[7] A.B. 40—'37.
[8] Law, No. 3 of 1885.

[9] In this instance the Dutch provisions proposed to be inserted were preceded by the words: "Section *three* of Law No. 3 of 1885 of the Transvaal is hereby repealed and the following sections substituted therefor." For the convenience of Members and the public generally it is suggested that under similar circumstances in future a translation of the provisions might

Use by Members of information gained in Select Committees.—On February 22, the Chairman of the Select Committee on Public Accounts drew the attention of the Clerk of the House to a Question on the Notice Paper which he stated was framed on information recently elicited by the Select Committee. On the Member being informed that it was contrary to the practice of the House to make use of such information before the Committee had reported, he agreed to withdraw the question.[1] Subsequently the Question was again placed on the Notice Paper, but before it was reached the Chairman of the Select Committee on Public Accounts drew attention to it and asked for Mr. Speaker's ruling as to whether the Question could be asked before the Committee had reported. Mr. Speaker stated that information gained at the proceedings of a Select Committee should not be published or used for the purpose of debate or of asking Questions until the report of the Committee had peen printed by order of the House, but allowed the Question in this instance as it had been printed and a Minister was prepared to answer it.[2]

Charges against Members :

(i.) *Contracts.*—On March 3, the hon. Member for Illovo (Mr. J. S. Marwick) proposed to give notice of a Motion for the appointment of a judicial commission to enquire *inter alia* into a letter from the Hon. F. C. Sturrock (Minister without Portfolio) to one of his business managers stating that Colonel D. Reitz (Minister of Agriculture and Forestry) had shown him in strict confidence the list of tenders for tents to be supplied to the National Park and furnishing the lowest price on the list. At the request of the Prime Minister the House agreed to dispense with the notice and, after Colonel Reitz and Mr Sturrock had been heard in their places, agreed to the Motion On March 8, it was announced that a judicial commission consisting of Mr. Justice Centlivres, Advocate R. R. B. Howes, K.C., and Mr. St. John Cole-Bowen had been appointed. On April 23, the Commission reported that the letter from Mr. Sturrock had been written before Mr. Sturrock and Colonel Reitz were Ministers and that there was no impropriety in the conduct of either of them.[3]

be made, preceded by words such as " Section *three* of Law No. 3 of 1885 of the Transvaal is hereby repealed and the sections, *of which the following is a translation*, substituted therefor." This wording would be in accordance with the practice followed in Bills containing documents, such as agreements, of which there is only one official version.

[1] VOTES, 1937, 318, 324.

[2] *Ib.*, 369-370.

[3] VOTES, 1937, 383, 410, 705.

(ii.) *Personal honour.*—On March 30, in the course of a speech, Mr. L. J. Steytler, the hon. Member for Albert, made certain allegations as to speculations in wheat by the hon. Member for Wodehouse (Mr. S. Bekker), when a director of a farmers' co-operative society known as "Sasko." These allegations were not regarded by Mr. Speaker at the time as reflecting on Mr. Bekker's personal honour. Mr. Bekker, however, took a serious view of the allegations, which he regarded as amounting to a charge of fraud. On April 2, he accordingly moved for the appointment of a Select Committee, consisting of five members to be nominated by Mr. Speaker, to investigate the charge that "when a director of Sasko he speculated in wheat belonging to Sasko and kept the profits which should have been paid to the farmers." The Motion was agreed to, and on April 21 the Committee reported that on the date of the transaction referred to Mr. Bekker had ceased to be a member of Sasko and that the allegation was therefore devoid of foundation.[1]

(iii.) *Procedure of Select Committee.*—During the sittings of the Select Committee on the charge against Mr. S. Bekker referred to above, both Mr. Bekker and Mr. Steytler exercised their right as Members of the House of being present while witnesses were being examined. At an early stage of the proceedings Mr. Bekker applied to the Committee for leave to examine witnesses through the Chairman and the question arose as to whether the Committee had the power to grant the application. In 1932 the Committee on the case of Mr. Munnik granted a similar application by Mr. Munnik without leave of the House,[2] but when Select Committees have been appointed to enquire into matters in which the character of conduct of Members is concerned the Committees have been empowered by order of the House to hear counsel on their behalf,[3] and in this case it was decided to report specially to the House recommending that "leave be granted to Mr. S. Bekker and Mr. Steytler to appear before the Select Committee personally and examine witnesses through the Chairman." Subsequently it was found unnecessary for either of the Members to examine witnesses and the report was not brought up.[4]

Motion censuring conduct of public servant.—On February 2, a Member ascertained by means of a question that Dr. H. D. J. Bodenstein (Secretary to the Prime Minister and Secretary

[1] *Ib.*, 575, 592 and S.C. 16—'37.
[2] S.C. 18—'32, p. x.
[3] May, 11th ed. 414.
[4] S.C. 16—'37, xvii.

for External Affairs) had, with the consent of the Prime Minister, contributed an article on the " divisibility of the Crown " to a German periodical. On March 4, the Prime Minister laid a copy of the article on the Table of the House and on the following day the hon. Member for Turffontein (Colonel C. F. Stallard, K.C., D.S.O., M.C.) moved in general terms that in the opinion of the House the publication of the article expressing Dr. Bodenstein's personal views " on a current political question affecting the domestic and external relations of the Union, which is a matter of controversy, is incompatible with the duty of a public servant." After an amendment had been moved which sought to place the responsibility for the publication of the article on the Prime Minister, the debate was adjourned and the order for its resumption was discharged towards the end of the Session.[1]

Executive matters.—The constitutional principle that the House has the right to enquire into and control the acts of the Executive Government without directly interfering with the details of administration was again exemplified by the proceedings on the petition of S. J. Gillmor. Mr. Gillmor, an official in the Department of Posts and Telegraphs, availed himself of the proviso to section 20 (1) (*g*) of Act No. 27 of 1923 to petition the House for the redress of a grievance in connection with the adjustment of his salary, and the Select Committee to which the petition was referred explicitly refrained from making any recommendation which would directly interfere with the details of administration.[2]

Motions of censure on Chairman and Deputy-Chairman.—On February 19, the hon. Member for Benoni, the Hon. W. B. Madeley (Leader of the Labour Party), being under the impression that the Chairman of Committees had invited a Member to move the closure, gave notice of a Motion of censure. The Motion was given precedence for the next sitting day, but, on being called upon to move it, Mr. Madeley stated that he did not propose to do so as he found there had been a misunderstanding.[3]

On April 27, the hon. Member for Winburg, Dr. N. J. van der Merwe, gave notice of a Motion disapproving of the action of the Deputy-Chairman of Committees in accepting a Motion for the application of the closure. The Motion was given precedence on the following day when a superseding amendment approving of the Deputy-Chariman's action and placing on record " the necessity for upholding the authority of the Chair

[1] VOTES, 1937, 403. [2] S.C. 17—'37. [3] VOTES, 1937, 308.

and supporting the presiding officer in the discharge of his difficult duties" was adopted.[1]

Suspension of rules for expedition of Business.—Towards the close of the Session the Acting Prime Minister gave notice of a Motion for the suspension of S.O. 51 (Motions without Notice) and S.O. 159 (Stages of Bills) in their application to certain specified measures. On being called upon to move the Motion, however, he stated that it would not be necessary to do so as arrangements had been made by the party whips which would bring the work of the Session to a conclusion as soon as possible.[2]

Refusal of Railway Administration to furnish papers ordered by a Select Committee.—During the sittings of the Select Committee on Pensions a case arose similar to that known as the "McTaggart case."[3] Owing to the refusal of the Railway Administration to furnish papers dealing with disciplinary action taken by the Administration against G. W. Golding (a petitioner), the Select Committee adjourned *sine die.* Mr. Speaker, however, ruled that the Resolution was irregular nd informed the Committee that if it considered that the apers required were relevant and necessary to its enquiry t could formally order their production and the Clerk of the House would thereupon notify the Department concerned. Mr. Speaker added that in the event of the Department refusing to produce the papers it would then be competent for the Committee specially to report the circumstances to the House for its decision under section 20[4] of the Powers and Privileges of Parliament Act.[5] The papers were then formally ordered, but subsequently the General Manager of Railways informed the Clerk by letter that acting on instructions from the Minister he was unable to comply with the request of the Committee as it was not considered in the public interest to disclose the documents and no further action was taken.[6]

[1] *Ib.*, 745. [2] *Ib.*, 886, 889.

[3] VOTES, 1927-28, 429, 844; Union Assem. Deb. 1927-28, 3952-3991, 4418.

[4] *Objections to answer questions or to produce papers to be reported to Parliament for decision.* 20. If any person ordered to attend or produce any paper, book, record, or document before Parliament or any Committee refuse to answer any question that may be put to him or to produce any such paper, book, record, or document on the ground that the same is of a private nature and does not affect the subject of inquiry, the President, the Speaker, or the Chairman of the Committee (as the case may be), may report such refusal with the reasons therefor, and the House may thereupon excuse the answering of such question or the production of such paper, book, record, or document, or may order the answering or production thereof.

[5] Act No. 19 of 1911. [6] Annexure No. 808, '37, pp. 55, 57 and 67.

Presence of strangers at Select Committees.—On March 1, the Select Committee on the subject of the Provincial Legislative Powers Extension Bill and of the Transvaal Asiatic Land Bill declined to accede to a request from the Secretary to the Agent-General for India for leave to be present during the sittings of the Committee. On March 5, a further application for leave to be present on specified occasions was also refused. The Secretary to the Agent-General for India then asked to be supplied with copies of evidence given in order to enable him to prepare rebutting evidence and the question arose as to whether this course was permissible under S.O. 239.[1] Mr. Speaker ruled that it was competent for the Committee either to permit strangers to be present in person to hear evidence or to supply them with copies of the evidence given, but the Committee declined to accede to the request.[2]

Failure of Select Committee to report on matter referred.—The subjects of two Bills, namely, the Provincial Legislative Powers Extension Bill and the Transvaal Asiatic Land Bill, were referred to a Select Committee with an instruction to bring up a Report within a certain period. This period was subsequently extended, but on April 5 the Committee having dealt with the first Bill reported that it would be unable to complete its deliberations on the second Bill without a further extension of time. This Report was not considered by the House and as the Committee had adjourned *sine die* it did not meet again.[3]

Scope of Enquiry of Select Committee on Bills referred before Second Reading.—The subject of two Bills was referred to a Select Committee before Second Reading, namely the Provincial Legislative Powers Extension Bill and the Transvaal Asiatic Land Bill. As the former dealt only with the employment of Europeans by non-Europeans and the latter with ownership by Asiatics of properties in the Transvaal, the Chairman considered that evidence on the segregation of

[1] Namely:—

Proceedings not to be published before printed by House

239. The proceedings of, or evidence taken by, or the report of any Select Committee, or a summary of such proceedings, evidence, or report, shall not be published by any member of such committee, or by any other person, until the report of such committee has been printed by order of this House: Provided, however, that the evidence given before, or any papers forming part of the records of, such committee may, with the approval of Mr. Speaker, be printed for the exclusive use of the committee (1912; amended, August 14, 1924).

[2] S.C. 11—'37, vii-viii and xi-xii.

[3] S.C. 11—'37; VOTES, 1937, 581.

Asiatics in Natal was outside the scope of the Committee's enquiry. Mr. Speaker, however, ruled that as the Bills were referred to Select Committee before Second Reading it was competent for the Committee to take evidence on this subject.[1]

Joint Sittings and validity of Acts of Parliament.—In an Article (V) in the last issue of the JOURNAL[2] reference was made to the competency of the two Houses of the Union Parliament, sitting jointly or separately, to deal with certain matters, and the case of Ndlwana (Appellant) *v.* the Minister of the Interior and others (Respondents), on which an appeal was pending, was quoted. The appeal was heard on March 23, and on April 5 (1937) the following full judgment was handed to the Registrar of the Appellate Division of the Supreme Court of the Union:

JUDGMENT: STRATFORD, A.C.J.

The present Appellant made an application to the Cape Provincial Division for an Interdict restraining the Respondents from (1) including his name in the Cape Native Voters' roll and (2) removing his name from the voters' list in which it now appears. Act 12 of 1936, styled "To make special provision for the representation of natives in Parliament and in the provincial council of the Province of the Cape of Good Hope and to that end to amend the law in force in that province relating to the registration of natives as voters for Parliament or a provincial council; to establish a Natives Representative Council for the Union; and to provide for other incidental matters," provides for such inclusion and removal and the application was founded on the contention that this Act was *ultra vires* the South Africa Act because it was passed by a joint sitting of both Houses of Parliament and was not a law which fell within the provisions of section 35 (1) of that Act. There was an alternative contention attacking the validity of the Act on the ground that the joint sitting of the two Houses at which this Act 12 of 1936 was passed was not duly convened to consider this Act but another Bill which was neither proceeded with nor withdrawn. This latter contention was not urged before this Court and in any event in the view we take of the matter need not be considered. The Cape Provincial Division after a careful consideration of all the arguments advanced and of the provision of the Act assailed dismissed the application. Hence this appeal.

On the hearing of the Appeal the Court requested Mr. Buchanan to deal with the preliminary question whether this Court had any power at the present time to pronounce upon the validity of an Act of Parliament duly promulgated and printed and published by proper authority, in as much as Parliament is now, since the passing of the Statute of Westminster, the supreme and sovereign law making body in the Union. Parliament has moreover, in

[1] S.C. 11—'37, xvi, xviii. [2] Pp. 86-89.

the Status Act of 1934, defined its own powers and declared them to be " sovereign."

In effect, and putting his argument in its most plausible form, Mr. Buchanan meets the question put to him by contending that Act 12 of 1936 was not an Act of Parliament: Parliament, he said, consisted of the three constituent elements mentioned in the South Africa Act, viz.: the King, a Senate, and a House of Assembly, and that these constituents had not functioned. This raised the question as to the proof of an Act of Parliament before a Court of Law. An Act of Parliament, in the case of a Sovereign law-making body, proves itself by the mere production of the printed form published by proper authority (See Halsbury, vol. 13, p. 525). We can disregard such fanciful and unusual objections as that the printed Act does not correspond with the original signed by the Governor-General or that it is a forgery. Those highly unlikely objections if urged could be immediately set at rest by the production of the original. We are not concerned with averments of that nature since it is admitted that the printed Act corresponds with the original.

> Parliament's will therefore as expressed in an Act of Parliament cannot now in this country, as it cannot in England, be questioned by a Court of Law whose function it is to enforce that will not to question it. In the case of subordinate legislative bodies Courts can of course be invoked to see that a particular enactment does not exceed the limited powers conferred. It is obviously senseless to speak of an Act of a sovereign law-making body as *ultra vires*. There can be no exceeding of power when that power is limitless

Mr. Buchanan, somewhat hesitatingly, it is true, questioned the sovereignty of the Union Parliament. He said that the Statute of Westminster by removing the fetters upon the legislative powers of the Union Parliament did not confer sovereignty; that the power conferred rested upon a Statute of Great Britain and could therefore be revoked by a similar Statute. We cannot take this argument seriously. Freedom once conferred cannot be revoked. He also urged, in the alternative, that so long as the Union Parliament did not repeal the South Africa Act its provisions remained operative and had to be observed by Parliament whenever it purported to function. On this hypothesis he proceeded to urge that the implication of the South Africa Act was that the constituent elements of Parliament should act separately, the implication getting additional force from the special provisions of sections 35 and 152 where in the cases there mentioned it was allowable to act jointly. He then met the proof of the Act by its production by stating that *ex facie* the document before us was not an Act of Parliament in as much as by its reference to the provisions of section 35 of the South Africa Act it was admittedly passed by the two Houses sitting together and not bicamerally. Now assuming that we are entitled to infer from its reference to the two provisions of section 35 that Act 12 of 1936 was passed by the two Houses sitting together and not bicamerally, the question then is whether a Court of Law can declare that a Sovereign Parliament cannot

validly pronounce its will unless it adopts a certain procedure —in this case a procedure impliedly indicated as usual in the South Africa Act ?

> The answer is that Parliament, composed of its three constituent elements, can adopt any procedure it thinks fit; the procedure express or implied in the South Africa Act is so far as Courts of Law are concerned at the mercy of Parliament like everything else.
>
> I would just observe that this is not a case where one of the constituent elements of Parliament has not functioned. The contrary is clearly to be inferred from the Royal Assent and promulgation. A Resolution of one of the Houses of Parliament is an example of such a case: it is not an Act of Parliament (See Dicey: The Law of the Constitution, 4th ed., p. 52, where the subject is discussed) and a Court of Law would not enforce it.
>
> It is not necessary to refer to the case of *Rex* vs. *N'Dobe*, since that case was decided before the Statute of Westminster. The conclusion then is that the validity of Act 12 of 1936 cannot be questioned in a Court of Law and the Appeal must, therefore, be dismissed with costs.

It is hardly necessary to point out the far-reaching consequences of this decision. It sets at rest the question often raised in the House and elsewhere as to whether the validity of an Act of the Union Parliament can be questioned in a Court of Law, but in doing so it raised fresh issues.

It may now be maintained that the Union Parliament is no longer bound by its own Constitution any more than it is bound by its own Standing Rules. In other words that its Constitution is now as flexible as that of Great Britain. It seems clear that the House will now be able to waive its own financial privileges in certain cases without the amendment to section 60 of the South Africa Act,[1] but I think it may be assumed that the House will not radically depart from the procedure enjoined by the South Africa Act without first amending the Act itself.[2]

[1] In the course of a ruling on the *Native Disputes Bill*, 1912, which originated in the Senate and contained taxation proposals Mr. Speaker Molteno said: " I am unable to recommend that the House of Assembly should waive its privileges in this matter; indeed, I scarcely think it has the power to do so." (V. and P. 1912, p. 290.)

[2] This important Judgment has placed in doubt the question whether the Union Parliament is the only and final authority to determine if legislation affecting the entrenched sections of the South Africa Act, 1909—*i.e.*, Section 33 (number of Members of the House of Assembly); section 35 (Qualification of voters); section 137 (Equality of languages); and section 152 (Amendment of the Constitution)—should be subjected to the special procedure prescribed for a Joint Session of the Two Houses or whether it should be proceeded with in the ordinary manner.—ED.

X. APPLICATIONS OF PRIVILEGE, 1937

COMPILED BY THE EDITOR

Westminster.

Access of Members to the House.—On November 25,[1] in the House of Commons, the Member for Carlisle (Brigadier-General E. L. Spears, C.B., C.B.E., M.C.) asked the Home Secretary whether he was aware that the Sessional Order[2] relating to the access of Members to the House was not being complied with by the police; and whether he would instruct the Police Commissioner that this order must be observed and that upon State occasions, such as the opening of Parliament and the visit of the King of the Belgians, Members of the House must not be treated merely as members of the public but be given access to the House by the shortest available route in so far as this was possible without interfering with processional arrangements ?

To this the Secretary of State for the Home Department (Rt. Hon. Samuel Hoare, Bart., G.C.S.I., etc.) replied that the importance of complying with the Sessional Order was fully appreciated by all members of the Metropolitan Police, who had standing instructions to give all possible facilities in the neighbourhood of the Palace of Westminster to Peers and hon. Members who, on approaching or leaving the House, disclose their identity. On ceremonial and similar occasions special care was taken to secure the free access of hon. Members up to the latest possible moment, but his hon. Friend would appreciate that on such occasions special traffic arrangements have to be made, often requiring that certain streets be temporarily reserved for traffic going only in one direction.

The hon. Member for Carlisle, however, while thanking the Minister for his answer, appealed to Mr. Speaker on a question of Privilege, who said, that if the hon. and gallant Member desired to raise a question of Privilege he must do so at the end of questions, which the hon. Member duly did, when Mr. Speaker said:[3]

[1] 329 H.C. Deb. 5. s. 1390, 1391.

[2] Metropolitan Police—*Ordered*, That the Commissioner of Police of the metropolis do take care that during the session of parliament the passages through the streets leading to this House be kept free and open and that no obstruction be permitted to hinder the passage of members to and from this House, and that no disorder be allowed in Westminster Hall, or in the passages leading to this House, during the sitting of parliament and that there be no annoyance therein or thereabouts and that the serjeant-at-arms attending this House do communicate this order to the Commissioner aforesaid (November 21, 1933).

[3] *Ib.*, 1417 to 1419.

" I do not think that any question of Privilege arises. Since the question of the hon. and gallant Member for Carlisle appeared on the Paper, I have taken the opportunity of consulting the Rulings of some of my predecessors. I notice that one of them, Mr. Speaker Gully, said—and I agree with what he said—that great care should be taken that the Sessional Order should be duly enforced and that the access of Members to the House should be secured. I think I express the view of the House generally when I say that the Sessional Order is duly carried out, and that the police perform their duties to the satisfaction of Members. I note, however, that Mr. Speaker Gully in his Ruling, used the words

' near the House.'

I think it has always been held that in the Sessional Order the words

> ' passages through the streets leading to this House be kept free and open '

refer to the neighbourhood of the House, and not to streets remote or at any indefinite distance from the House. Traffic has certainly not become easier, and such an interpretation of the Order would be impossible to carry out. I may add that by arrangement with the Commissioner of Police, Members will be informed in future of any traffic diversions which are necessary on important ceremonial occasions and which might interfere with their access to the House during the Session."

The hon. Member for Carlisle: " I thank you very much indeed, Mr. Speaker."

South Australia.

Reflections upon Parliament.—In the House of Assembly of the Parliament of the State of South Australia, on September 7, an hon. Member (Mr. Hamilton) asked Mr. Speaker if his attention had been drawn to very damaging statements in *The Advertiser*[1] of that day alleged to have been uttered by the Rev. W. G. Clarke ? " I do not propose to repeat the state-

[1] MINISTER'S ATTACK ON STATE'S SOCIAL POLICY.

BRISBANE,
September 6.

Speaking at the official dinner tonight given by the Queensland Temperance League to visiting delegates to the All-Australian Temperance Convention, the Rev. W. G. Clarke, of Adelaide, said that the South Australian Parliament was the " wettest," and, from the standpoint of moral

ments. In view of the nature of the statements, do you, as Speaker of this House, propose to take steps to maintain the honour of this Chamber ?"

Mr. Speaker: I have seen the published report of the Rev. W. G. Clarke's statements, and if he has been correctly reported they are a grave reflection on the Parliament of this State. In my opinion the statements are not correct, and as such unfounded implications damage the reputation and integrity of this Parliament, and the public life of this State, I take the opportunity to deprecate and refute the unqualified expressions.

On October 14, the following Question was put to Mr. Speaker:

Mr. Dunks: On September 7, Mr. Speaker, you were asked by the hon. Member for East Torrens, Mr. Hamilton, whether your attention had been drawn to a very damaging statement, published in *The Advertiser* that morning regarding this Parliament, which was alleged to have been uttered by the Rev. W. G. Clarke. Have you received any correspondence or apology from Mr. Clarke since his return to South Australia ?

Mr. Speaker: On his return to Adelaide the Rev. W. G. Clarke wrote me a letter in which he stated that the correct interpretation of his remarks would be that it was not his intention to reflect upon members personally, but his remarks were only in regard to legislation which had been passed by this Parliament.

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and social legislation, perhaps the worst that South Australia had ever had or was likely to have.

He did not say that there were no staunch temperance men in the South Australian Parliament, but the majority of the legislators had been willing to be dedicated to the evil to an extent that would make them in future unwept, unhonoured, and unsung. The betting shops were the foulest blot on South Australia. Far from reducing betting, they were an encouragement to it.

XI. SOME RULINGS BY THE SPEAKER AND HIS DEPUTY AT WESTMINSTER, 1937

COMPILED BY THE EDITOR

THE following Index to some points of Parliamentary Procedure as well as Rulings by the Speaker and Deputy-Speaker of the House of Commons given during the Second Session of the Thirty-seventh Parliament of the United Kingdom of Great Britain and Northern Ireland and the First of His Majesty King Edward VIII and later of His Majesty King George VI, are taken from the General Index to Volumes 317 to 327 of the House of Commons Debates (Official Report), 5th series, comprising the period 3rd November, 1936, to 22nd October, 1937. The Rulings, etc., given during the remainder of 1936 and falling within the Third Session of the Thirty-seventh Parliament will be treated in Volume VII of the JOURNAL.

The respective volume and column reference number is given against each item, thus—" (283 – 945) " or " (284 – 607, 608 and 1160)." The items marked with an asterisk are indexed in the Commons *Hansard* only under the heading " Parliamentary Procedure."

Note.—1 *R.*, 2 *R.*, 3 *R.*=Bills read First, Second or Third Time. *Amdt(s).*=Amendments. *Com.*=Committee. *Cons.*=Consideration. *Rep.*=Report. *C.W.H.*=Committee of the Whole House. *Q.*=Questions to Ministers. *Sel. Com.*=Select Committee. *R.A.*=Royal Assent.

Address-in-Reply.

—Selection of *amdts.* to, matter for Mr. Speaker (317 – 257, 258).

Adjournment.

—of debate.

—for purpose of Ministers making a statement (326 – 1194).

—not allowed, considered an abuse of the Rules of the House (326 – 727).

—of House.

—cannot be moved on question for 3 *R.* (326 – 1193, 1194).

—irrelevance (318 – 2730); (324 – 997, 982, 984).

—lapsed under 11 o'clock rule (318 – 2780).

Adjournment.
—of house (*continued*):
—legislation not debatable on (324 – 967, 972, 981).
—precedence of Member, on motion for (326 – 1763).
—subject not raised on (321 – 939).
—of House (urgency),
—motion not allowed (322 – 1187 to 1189); (323 – 35, 36, 349).
—request for leave to move, motion stood over until 7.30 under S.O. 8 (317 – 880); (326 – 1491).

Amendment(s).
•—cannot be withdrawn if Member speaks (318 – 164); (323 – 581); (326 – 592).
—manuscript (321 – 83, 84).
—moving *amdt.* to, of substituting words (326 – 2335 to 2337).
—" privilege " (monetary) in Commons (326 – 1401, 1402, 1403).
—selected—*see* Mr. Speaker.
—time for moving, to proposed *amdt.* (318 – 1744, 1745).
—to Address-in-Reply, selection of, a matter for Mr. Speaker (317 – 257, 258).
—unselected, Member allowed explanation (318 – 1693, 1694).
See also Bills, and Lords' Amendments.

Bills, Private.
—objection to 2 *R.* (321 – 2076, 2077).

Bills, Public.
—ballot for, (317 – 80).
—debate
—instructions } *See* those Headings.
—introduction in House of Lords (324 – 837).
—2 *R.*
—*amdt.* outside Bill (318 – 1465).
—Expiring Laws Ordinance Bills, not discussed on (317 – 1053, 1579, 1580).
—*C.W.H.*
—*amdt.*
—too late (318 – 2231).

Bills, Public *(continued)*:
—*Cons.*
—*amdt.*
—formally moved (322 – 1277).
—cancellation of Order for, on certain date (324 – 276, 277).
—consequential (325 – 408, 469).
—inconsistent (326 – 1647, 1648).
—irrelevance (325 – 615).
—new clause not in order (321 – 95).
—no voting on Question "That clause stand part of the Bill" (323 – 921).
—Question: "That Clause as amended stand part of the Bill" not put on *Cons.* of Bill from Standing *Com.* (323 – 921).
—repetition (325 – 657).
—selected (326 – 1374, 1375).
—to proposed *amdt.* cannot be moved until main *amdt.* proposed (326 – 1536).
—when considered moved (326 – 1175).
—Report stage passed (326 – 1191).
—3 *R.*
—adjournment of House cannot be moved on question for (326 – 1193).
—adjournment of debate cannot be moved until question for 3 *R.* proposed (326 – 1194).
—must be awaited (317 – 1030).
—opposition to,
—method (324 – 276, 277).
—point cannot be raised now (324 – 250).
*—Private, Bill (318 – 782); (325 – 1759, 1760).
—withdrawal,
—cannot be effected after Bill negatived (319 – 2011).
—of, refused (320 – 1598).

Business of the House.
—arrangement of, not a matter for Mr. Speaker (323 – 540).
—Expiring Laws Continuance Bill not debated on 2 *R.* (317 – 1053, 1579, 1580).
—7.30 interruption of, for Private Business (S.O. 6) effect upon Member's speech (322 – 257).

Calling of the House.
—before date appointed, procedure (326 – 3531); (326 – 2412).

Chair.
—absence of Minister not matter for (326 – 404).
—calling of a Member is within the discretion of (318 – 782); (326 – 2327).
*—conduct of, cannot be discussed (322 – 2122).
—duty of, to protect Ministers as well as other hon. Members (326 – 1490).
—Member always at liberty to put a Point of Order to (320 – 2418).
—must address (317 – 1003).
—selection of *amdts.* rests with (326 – 1375).
—" You " means the (317 – 433).
—*See also* Mr. Speaker and Chairman.

Chairman.
*—matters of taste, not to judge on (324 – 383).
*—motion, " That the, do now leave the Chair," non-acceptance (322 – 2119 to 2122).

Christmas and New Year's Wishes (318 – 2892).

Clerk of the House of Commons.
—retirement of Sir Horace Dawkins (326 – 3493, 3494); (327 – 37 to 40).

Closure.
—accepted (318 – 806).
*—cannot be discussed (322 – 2118).

Debate.
—Address-in-Reply.
—anything said by His Majesty not to be quoted to influence (317 – 71).
—irrelevance (317 – 790).
—Address on.
—motion for, on Orders-in-Council, several taken together (317 – 1159, 1172, 1548); (325 – 1738, 1741, 1742).
—adjournment of—*see* that heading.
—*amdt.*
—debate upon an, cannot be anticipated (324 – 1212).
—discussion of an unselected, not allowed (322 – 1370).
—terms of, must be kept to (318 – 1742).

Debate (*continued*).
—" Another Place."
—debate in.
—must not be quoted (326 – 3481).
—must not be quoted too literally (326 – 2613).
—reference to, permissible when an official statement of Government policy (326 – 3215).
—quoting speeches made in (322 – 573); (326 – 2613).
—reference to statements in (326 – 2315).
—apology by Minister to representative of a Foreign Power for statement made by a Member (317 – 260, 261).
—asking *Q.* during (319 – 1953).
—Bill(s).
—2 *R.*
—interruptions not allowed (318 – 781).
—cannot discuss provisions of main Bill on (226 – 1132).
—Expiring Laws Continuance Bill, not discussed on (317 – 1053).
—irrelevance (322 – 540); (319 – 1177); (320 – 249); (321 – 457).
—merits of, not discussed on (326 – 1108).
—*C.W.H.*
*—2 *R.* speech (318 – 871).
—*Rep.*
—after committal of Bill to Standing *Com.*, Rule as to speaking more than once (325 – 701).
—*Cons.*
—Committee, not allowed on (318 – 1697, 1698).
—irrelevance (325 – 239).
—not a 2 *R.* discussion (323 – 113).
—where more than one speech allowed on (325 – 701).
—3 *R.*
—irrelevance (318 – 1499, 1505).
—limited to what is in Bill (324 – 952); (321 – 567, 568, 600, 623).
—must be confined to what is in Bill (318 – 1499, 1777); (321 – 567, 568, 640, 651); (323 – 88, 1318); (324 – 952, 1149).
—civil servants, reference to (32 – 1592).
*—Committee, point decided in, cannot be debated again on Committee stage (323 – 558).
—epithets, not allowed in (319 – 28, 329).
—Foreign State, references to Representative of (317 – 261, 348); (320 – 23, 226, 227).

Debate (*continued*).
—Finance.
—Bill.
—Member entitled to an answer (326 – 1310).
—Budget proposals, irrelevance (323 – 212).
*—Estimates, Supplementary, policy cannot be discussed (320 – 305, 307, 308, 309, 357).
—Import Duties, discussion of two together (318 – 339); (321 – 113).
—irrelevance (321 – 116, 123).
—Resolutions, debate on (321 – 998 to 1002, 1003 to 1007).
—Supply, *Com.* of.
—anticipation of debate not allowed (321 – 2302).
—irrelevance (321 – 1987, 1436, 2371).
*—matters requiring legislation cannot be discussed (324 – 360); (325 – 783).
—questions asking of (326 – 2928, 2963).
—time passed for moving reduction (321 – 2328).
*where subject has a separate Vote, it can only be discussed on that Vote (324 – 1660).
—on *Rep.*
—*amdt.* not allowed on, without notification (321 – 2293, 2294).
—discussion on Vote taken with another Vote (321 – 2621 to 2623).
—innuendoes (317 – 1924).
—irrelevance (321 – 2618, 1743, 1748); (322 – 2147); (321 – 2299, 2301); (326 – 2907, 2709, 2920, 2929).
—wide discussion on Vote (321 – 2579, 1783, 2375 to 2379).
—Ways and Means.
—On *Rep.*
—irrelevance (320 – 1792).
—Foreign Representatives in this country, references to, not allowed (317 – 260, 261, 348).
—Foreign Secretary has as much right to say what he likes as other Members (317 – 1924).
—innuendoes (317 – 1924).
—interruptions (318 – 781); (319 – 99); (321 – 2969, 3041); (322 – 1043).
—irrelevance (320 – 1550, 1572); (321 – 876, 891, 895, 896, 902 to 905, 907, 913 to 916); (326 – 1584, 2047).
*—Judges, criticisms of judgments of (325 – 768).

Debate (*continued*).

—Justiciary, may not be criticized by Member (322 – 316).
—Lords, House of, see " Another Place " hereof, and Lords' Amendments.
—matter cannot be pursued (317 – 514).
—Member } —*see* those headings.
—Minister }
—Minister, cannot speak for German Minister (326 – 316).
—motion(s).
—cannot be discussed until *amdt.* disposed of (318 – 1369).
—for presentation of List of Stocks (*vide* Colonial Stock Act, 1900), not then debatable (326 – 2376).
—irrelevance (319 – 994); (326 – 1584); (317 – 996).
—Progress, motion to report.
*—not accepted (326–947).
*—question involved cannot be debated (326 – 598).
—Parliamentary expressions.
—*allowed.*
—" humbug " used impersonally (324 – 1831).
—*not allowed.*
—" a bloody swine " if said with Mr. Speaker's knowledge (320 – 599).
—cupidity (322 – 565).
*—" offensive " epithet must not be used about other Members (318 – 618).
—stupidity (322 – 565).
—reading of speeches forbidden, but Members permitted to make copious use of notes and to have statements written out (321 – 1011).
—refusal to accept Ruling of Speaker, remark must be withdrawn (326 – 1782).
*—remark must be withdrawn (320 – 1492); (322 – 2122).
—reply, right of (322 – 1067).
—repetition (320 – 2418).
*—selection of speakers within discretion of Chairman (320 – 1492).
—statements in *The Times* not taken as evidence (324 – 254).
—vote of censure on Government, narrow limits of (319-861).
—" you " means the Chair (317 – 433).

Division.

*—Member bound by his voice (326 – 2811).
*—Members standing up, non-announcement of figures (326 – 2813 to 2815).

Division (*continued*).
—not necessary to achieve object (317 –660).
—recording vote of Member (319 – 1691).
—unnecessarily claimed (326 – 2366, 2367).
—vote, recording of (319 – 1681)

Document, distribution of, to Members by Foreign Embassy, no Ruling *re* (320 – 228).

Eleven o'Clock Rule.
— exact hour is first stroke (318 – 2780, 2781).

Estimates. *See* Finance.

Expiring Laws Continuance Bill[1] (317 – 1053, 1579, 1580).

Finance.
—" continuance of existing policy " (326 – 1402 to 1406).
—debate—*see* that heading.
—Financial Resolutions.
*—*amdts.* going beyond terms of, out of order (322 – 144' to 1459, 1461).
—required (326 – 1404 to 1406).
—S.O. 69 motion for omission of (321 – 823, 824).

Government.
—narrow limit in debate on Vote of Censure upon (319 – 861).

Instructions.
—out of order (319 – 427)
—*See also* Debate.

Lords, House of. *See* Debate (" Another Place") and Lords' Amendments.

Lords' Amendment(s).
—" Another Place." *See* Debate.
—*Amdts.*
—Bill cannot be discussed on (326 – 2632).
—consideration of (326 – 2608, 2609).
—only one speech on clause (326 – 3042).
—procedure upon (326 – 2609).
—put *en bloc* (326 – 3268, 3270).

[1] 1 Geo. VI, c. 1.

Lords' Amendment(s) (*continued*).
—Privilege.[1]
—*amdt(s)*.
—by Lords, may be accepted or not (326 – 1143, 1145).
—raising question of (326 – 1167 to 1169).
—social entry (318 – 2785); (326 – 1168, 1170).
—not raising question of (326 – 1162).
—extending powers of local authorities as might affect local rates (326 – 1162).
—charges from Treasury (326 – 1158).
—payment:
—of subsidy (326 – 3481 to 3483).
—to farmer (326 – 3487).
—question of:
—as allowing a longer period to count for superannuation (326 – 3053).
—as affecting the term of service (326 – 3491).
—as bringing in more persons for allowance in Superannuation Bill (326 – 3052).
—as not applying registration to certain cases (326 – 3490).
—as restricting the service in calculating superannuation allowance (326 – 3054).
—of adding a committee (326 – 3491).
*—waiving of (326 – 1778 to 1780).

Member(s).
—addressing Chair (325 – 2102); (326 – 677).
—always at liberty to put a Point of Order to Speaker (320 – 2418).
—anticipation (318 – 2583 to 2585).
—calling of a, within discretion of Chair (326 – 2327).
—cannot:
—address one another (317 – 185, 189).
—criticize actions of an Ambassador of a Foreign State (317 – 348).
*—intervene unless Member in possession of House gives way (321 – 1257); (325 – 1561).
—quote anything said by His Majesty, to influence debate (317 – 71).
—repeat peroration of another (319 – 1888).
—speak more than once in House (321 – 2968).

[1] *i.e.*, "monetary."

Member(s) (*continued*).
—debate—*see* also that heading.
—decease of, reference to be made from Chair (326 – 2208, 2209, 3100).
—entitled to a hearing (319 – 1706); (320 – 2338).
—Foreign Power, apology by Minister for statement made by (317 – 260, 261).
—indication of desire by, to speak (326 – 2328, 2329).
—in possession of House.
—no other has right to be on his feet (326 – 1911).
—unless gives way (322 – 1692).
—in charge of Bill from Standing *Com.* not restricted to one speech on *Rep.* (325 – 701).
—interrupted speech, for Private Business (S.O. 6) may be resumed (322 – 257).
—interrupting, warned by Mr. Speaker (322 – 1043).
—irrelevance (317 – 1637, 1638, 1718); (321 – 640, 642, 649 to 651, 657).
—Justiciary may not be criticized by (322 – 316).
—making personal explanation, may not use that opportunity to attack another Member (320 – 560).
—may not:
—ask if Minister's attention has been drawn to statement in a newspaper (325 – 175).
—speak twice on 2 *R.* (321 – 2968); (318 – 2709).
—must be referred to, in debate, in third person (320 – 2267)
—must:
—address Chair (317 – 1003); (326 – 685).
—remain seated when Chairman rises (325 – 1561).
—resume seat unless Member gives way (322 – 1692).
—must not:
—address one another (317 – 185).
—interrupt unless Member gives way (321 – 1257).
—quote anything said by His Majesty with view to influencing debate (317 – 71).
—refer to other Members personally but address remarks to Chair (317 – 188).
—named for disregarding authority of Chair (322 – 2123).
—not answerable for what appears in papers (320 – 816).
—notice of motion, ballot for, allowable on behalf of friend (317 – 1796).
—order of calling (326 – 2327 to 2329).
—personal explanations (320 – 600).
—petition, must not read whole of (323 – 1129).

Members (*continued*).
—pointing at another (326 – 3210).
—Private, Bills (318 – 782).
—requested to withdraw (326 – 1782, 1783).
—rising during debate, in interruption (321 – 2969, 3041).
*—remarks of, should be addressed to Mr. Speaker (317 – 1003).
*—right of, to draw attention of Chair to fact that not forty present (321 – 633).
—should not make accusation of lying against a (323 – 1355).
—suspended from service of House for disregarding authority of the Chair (320 – 1493 to 1495).
—suspension of, only recourse of redress to put down motion complaining of treatment (320 – 2192, 2193).
*—too late, Adjournment moved (319 – 1380).
—unselected *amdt.*, mover allowed explanation (318 – 1693, 1694).
—vote of, recording (319 – 1681).
—withdrawal of, requested (326 – 1782, 1783).

Minister.
—absence of (317 – 623).
—assurance of (326 – 1191 to 1193).
—cannot:
—give answer to *Q.* if not responsible (323 – 519).
—reply again except by leave of the House (321 – 2379).
—speak for the German mind (326 – 316).
—speak more than once in the House (321 – 2994)
—duty of Chair to protect, as well as other hon. Members (326 – 1490).
—may not:
—be asked whether his attention has been drawn to statement in a newspaper (325 – 175).
—speak twice in the House if leave not given (321 – 2994).
—must be allowed to make own reply (319 – 486).
—not:
—required to be in his place during debate on his Bill (325 – 1802).
—responsible for Press reports (318 – 9).
—out of order to make statement (321 – 2141).

Motion(s).
—ballot for notice of, Member may give notice on behalf of friend (317 – 1796).
*—to report Progress (321 – 1800 to 1801).

Notice(s).
—of motion, not time to give (321 – 173).

Order.
—not a point of (317 – 1368, 1668, 1670); (317 – 1670); (318 – 6, 2623); (318 – 2672); (320 – 599); (322 – 573, 576, 1362); (323 – 772, 963); (324 – 565, 761, 1830); (325 – 188, 658, 1173); (326 – 2187, 3259, 3595); (326 – 3237).
—point of, Member always at liberty to put (320 – 2418).
—record of vote of Member (319 – 1681).
—*See also* Members.

Order of the Day.
*—right of Government to arrange (323 – 497).

Petition.
—Member must not read whole of (323 – 1129).

Press Reports.
—Minister not responsible for (318 – 9).

Privilege.[1]
—Mr. Speaker sole guardian of, in House (326 – 595).
—*See* " Lords' Amendments " for monetary privilege.

Prorogation.
—King's Speech upon (327 – 185).

Questions to Ministers.
—all possible information given by Minister (323 – 32, 33).
—answer to, may be given to Member before given to House (320 – 1003).
—argument developing (325 – 347).
—answered orally in private (325 – 1531, 1532).
—asked yesterday, cannot be gone back to (326 – 555).
—asking of, after 3.45 p.m. not allowed (323 - 342).
—asking of, in order, but not making of statement (321 – 543).
—cannot be debated (321 – 782); (326 – 843).
—debate developing and not allowable* (318 – 1837);* (321 – 782); (322 – 1409); (323 – 1252); (326 – 843, 2648, 2663).

[1] *i.e.*, " non-monetary."

Questions to Ministers (*continued*).
—during debate (318 – 2518 to 2519).
—duty of Chair to protect Ministers as well as Members (326 – 1490).
—expression of thanks (323 – 1234).
—factory extensions (321 – 539).
*—failure to answer and enquiries being made (317 – 1333 to 1334).
—Foreign Representative, reference to (320 – 225 to 227).
—for written answer (324 – 1595).
*—arrangements for prevention of delay (326 – 2405, 2406).
*—speed of reply (323 – 1163, 1164).
—further aspects of subject can be dealt with in debate (317 – 254).
—hearsay, questions based on (321 – 776).
—hypothetical (323 – 7); (324 – 667).
—inaccurate statements, penalty, inaccuracy must first be proved (325 – 188).
—information being given (318 – 835); (321 – 1145); (322 – 1165); (324 – 1734).
—interruption (324 – 1738).
—Iraq (318 – 319).
-King's name must not be brought in (318 – 532).
length of (318 – 837); (318 – 2166); (325 – 371).
many more on Paper (322 – 1421).
·matter:
—debated for last ten minutes (32 – 833).
—cannot be debated (318 – 1937); (326 – 2648).
—to be discussed in House (326 – 742).
—cannot be gone into (321 – 165); (326 – 1053).
—cannot be pursued (324 – 263).
—Member(s):
—cannot be answerable for what appears in the papers (320 – 816).
—not present should ask another Member to put (325 – 187).
—making attacks in, make themselves responsible for (324 – 993).
—responsible for statement in (318 – 5); (320 – 815); (324 – 253, 1155).
—responsible for information in (320 – 1155); (324 – 253).
—salaries (324 – 1765).
—speaking without confirmation (323 – 319).
—Minister not responsible for German Press (325 – 1941).

Questions to Ministers (*continued*).
—Minister, request for pamphlet (318 – 542).
—must be carried on in orderly way (326 – 1490).
—newspaper reports, references to (325 – 821, 822).
—next (317 – 865); (318 – 527, 1634, 2139); (320 – 25, 168); (321 – 782, 1329, 2053); (322 – 1913); (325 – 187, 1196); (326 – 149).
—no epithet heard (325 – 827).
—no such, heard (318 – 1822).
—no actual rule that Members should concentrate on matters affecting own constituencies (325 – 186).
—not allowed (320 – 1617).
—not a proper (325 – 344).
—nothing more to ask (321 – 2875).
—notice:
—given to raise question on Adjournment (322 – 1410).
—required and question should be put down (320 – 840), etc.
—not *Q.* for Mr. Speaker to answer (322 – 588).
—number:
—on Order Paper (317 – 213).
—on Paper and rights of Member must be protected (326 – 1229, 1230).
—on Constitutional position (318 – 1643, 1644).
—on Indian affairs (325 – 371, 553, 554, 557).
—one at a time (326 – 842).
—open to some possible misinterpretation but not out of order (318 – 5).
—opinion:
—being given (319 – 28).
—matter of (321 – 955), etc.
—opportunity lost (320 – 404).
—past incidents cannot be gone into (321 – 3066).
—postponement (325 – 553, 567).
—Prime Minister, Minister can act as intermediary (325 – 1349).
—Private Notice (320 – 409, 410); (321 – 2759); (326 – 1488).
—latter part of question as addressed to Minister not in Notice submitted (326 – 1487).
*—must be framed in accordance with notice given (326 – 1488).
—not called, explanation (326 – 1492, 1493).
—putting of a, matter for Mr. Speaker (326 – 2201).
—to be put on Order Paper (325 – 1969).

Questions to Ministers (*continued*).
—proceedings pending (323 – 518).
—reflection on Chair, *Q.* not taken as (318 – 2598).
—rejection of (324 – 681).
—repetition (324 – 826).
—repetition of reply to previous question might set bad precedent (318 – 424).
—replies (321 – 2054); (326 – 1229, 3093).
—given (319 – 7); (320 – 1336); (323 – 773); (326 – 1053).
—information would have been given, if possessed (321 – 1625).
—no more can be said (324 – 655, 657).
*—orally, in Private (325 – 1531, 1532).
—point dealt with in (324 – 17).
*—provision of, to Member before given to House (320 – 1003).
*—request by Minister for pamphlet (318 – 542).
*—return to, to clear up misunderstanding (326 – 3094).
—Secretary of State
—for Scotland, not responsible for matters in England (318 – 2456).
—for Foreign Affairs, explanation of absence of (322 – 620).
—should be put:
—down (317 – 1921); (320 – 981).
—to Department concerned (325 – 1349).
*—to Lord President of Council, to be addressed to him (324 – 1425).
—slow progress (326 – 1057).
—speech must not be made (325 – 1634, 1778).
—statement in respect of, not reached, cannot be allowed (317 – 253).
—suggestions must not be made at *Q.* time (321 – 1145).
—Supplementary:
—another issue (318 – 533, 2155, 2157); (323 – 1223).
*—another matter (321 – 1315); (325 – 363, 1190, 1644).
*—another point (325 – 545).
—another *Q.* (317 – 685); (318 – 36); (320 – 825); (326 – 330).
—another subject (318 – 1404); (319 – 32).
—answer already given (321 – 780).
—asking something disallowed in original *Q.* (324 – 1954).
—beyond *Q.*, on Order Paper (320 – 976); (321 – 2054); (326 – 2644).

Questions to Ministers (*continued*).
—Supplementary (*continued*).
*—different (317 – 504); (318 – 1407, 1625, 1807, 1838, 2438, 2450, 2614).
—different from, on Order Paper (322 – 780).
*—different issue (318 – 2801), etc.
—language should not be used in (320 – 2174).
—long *Q.*, put and reply received (324 – 1398, 1399).
—may not be read by Member and must be spontaneous (326 – 2200, 2201).
—Member cannot keep on asking the same (325 – 540).
—Minister may not be asked whether his attention has been drawn to a statement in a newspaper (325 – 175)
—much larger (317 – 1913).
—no more can be asked (325 – 345).
*—no resemblance to, on Paper (322 – 1405).
—not arising (318 – 2137), etc.
—nothing to do with, on Paper (325 – 1196).
—nothing to do with Private Notice *Q.* (325 – 205).
—number of (323 – 519).
—one or two already asked (323 – 774).
—out of order (325 – 199).
—outside the (321 – 1516).
—outside the *Q.* on Paper (326 – 3279).
—point raised further than that in original (325 – 361).
—reading of, not allowed (326 – 2200, 2201).
—refusal of permission to ask (318 – 1639).
*—separate (318 – 206); (320 – 1366); (321 – 2542); (323 – 6), etc.
*—separate matter (319 – 338); (323 – 505).
*—subject cannot be dealt with in answer to (320 – 555).
*—too far from, on Paper (317 – 849).
—usually asked after reply to *Q.* (323 – 963).
—which would not be allowed as *Q.* on Paper, not to be asked (326 – 1040).
*—wider than, on Paper (317 – 507); (320 – 216, 2345, 2346); (326 – 3285).
—too much time spent on (320 – 988).
—transfer from one Minister to another (318 – 1027, 1028); (326 – 2856).
—two answers already given (320 – 1326).
—when notice given of intention to raise matter on future occasion, very unusual to pursue (318 – 2139).

Quorum.

—House counted at 8.9 o'clock (321 – 633).

Regulations.

—Prayer to, must be withdrawn before an amended Regulation can be brought forward (324 – 1308).

Return.

—assent of Department, when required before House can Order (326 – 1936).

Seven-Thirty Rule (S.O. 6).[1]

—Member's speech interrupted by, may be resumed (322 – 257).

Sitting Suspended.

—for *R.A.* to His Majesty's Declaration of Abdication Bill (318 – 2233).

—for Message from King Edw. VIII (318 – 2186).

Speaker, Mr.

—absence of (318 – 2429, 2591, 2793).

—*amdt(s)*.

—new clause not selected (324 – 1191).

—not called (326 – 1191).

—not selected (325 – 2343); (325 – 1618).

—not selected, decision must be accepted (326 – 1375).

—selected clause (326 – 1321).

—selection of (325 – 2291).

—selection of, rests with (326 – 1375).

—to Address in Reply, selected by (317 – 257, 258).

—under no obligation to make explanation as to selected (322 – 2229).

—arrangement of Business, not a matter for (323 – 540).

—" catching eye of " (326 – 2327 to 2329); (318 – 782).

—declaration by, that the " Ayes " have it (326 – 1021, 1022).

[1] Paragraph (4) of the S.O. reads:

" (4) Private business, if so directed by the Chairman of ways and means, shall be taken at half-past seven of the clock on Monday, Tuesday, Wednesday or Thursday, or as soon hereafter as any motion for the adjournment of the House standing over has been disposed of, provided that such business shall be distributed as near as may be proportionately between the sittings on which Government business has precedence and the other sittings."

Speaker, Mr. (*continued*).
—defends " Clerk-at-the-Table " (321 – 2076, 2077).
—Deputy takes chair, on daily notification of absence of (318 – 2429, 2591, 2793).
—not prepared to act as judge as to what is true and untrue (319 – 205).
—not prepared to be accused of waiving the privileges (monetary) of the House (326 – 1199).
—refusal to accept Ruling of, remark must be withdrawn (326 – 1782).
—says, " *Orderly debate and the right of reply is the common tradition of the House which we regard as one of our greatest prizes* " (322 – 1067).
—sole guardian of Privilege in House (326 – 595).
—suspension of Member, reported from *C.W.H.* (322 – 2123, 2124).
—unwilling to give Ruling on motion of omission of S.O. 69 (Money Committees) leaving matter for House to decide (321 – 823, 824).

Supply. *See* Finance; *also* Debate.

"You."
—means the Chair (317 – 433).

XII. LIBRARY OF PARLIAMENT

BY THE EDITOR

VOL. I of the JOURNAL contained[1] a list of books suggested as the nucleus of a Statesmen's Reference Collection in the Library of an Oversea Parliament. Volumes II,[2] III,[3] IV[4] and V[5] gave lists of books on economic, legal, political and sociological questions of major importance, published during the respective years, and below is given a list of works on such subjects published last year. Biographies, historical works, and books of travel and fiction, as well as books on subjects of more individual application to any particular country of the British Empire, are not included in these lists, it being considered unnecessary, in any case, to suggest to the Librarian of each Parliament books on any such subjects.

A good Library available to Members of Both Houses of Parliament during Session, and by a system of postal delivery (with the exception of standard works of reference), also during Recess, is a great asset. The Library is usually placed in charge of a qualified Librarian, and in most of the Oversea Parliaments is administered by a Joint Committee of Both Houses under certain Rules.[6] The main objective should be to confine the Library to good material; shelves soon get filled, and there are usually Public Libraries accessible where lighter literature can be obtained. By a system of mutual exchange, the Statutes, Journals and *Hansards* of the other Parliaments in the Empire can easily be procured. Such records are of great value in obtaining information in regard to the framing and operation of legislation in other parts of the Empire, as well as looking up the full particulars in connection with any question of procedure referred to in the JOURNAL.

Armstrong, J. W. Scobell.—The Taxation of Profits. (Virtue. 7*s.* 6*d.*)

Bainville, Jacques.—Dictators. (Trans. by J. Lewis May.) (Cape. 10*s.* 6*d.*)

Baskerville, Beatrice.—What Next, O Duce? (Longmans. 10*s.* 6*d.*)

Binkley, R. C.—Realism and Nationalism, 1852-1871. (Harpers. 15*s.*)

Bowman, William Dodgson.—The Story of the Bank of England. (Jenkins. 10*s.* 6*d.*)

The British Empire: A Report on its Structure and Problems by a Study Group of Members of the Royal Institute of International Affairs. (Milford. 15*s.*)

[1] P. 112 *et seq.* [2] P. 132 *et seq.* [3] P. 127 *et seq.*
[4] P. 148 *et seq.* [5] P. 218 *et seq.* [6] *See* JOURNAL, Vol. V, 166-197.

Brooks, Leslie.—Matrimonial Causes (Butterworth. 7*s.* 6*d.*)
Brown, Ina Corinne.—The Story of the American Negro. (Student Christian Movement Press. 5*s.*)
Busschau, W. J.—The Theory of Gold Supply. (Milford. 10*s* 6*d.*)

Cummings, Homer and McFarland, Carl.—Federal Justice. (Macmillan. 20*s.*)

Dover, Cedric.—Half-Caste. (Sekker and Warburg. 10*s.* 6*d.*)

Einzig, Paul.—Will Gold Depreciate? (Macmillan. 7*s.* 6*d.*)
—The Theory of Forward Exchange. (Macmillan. 21*s.*)
Ellis, Havelock.—The Soul of Spain. New Ed. (Constable. 6*s.*)
Evans, John D. E.—Belgrade Slant. (Hurst and Blackett. 5*s.*)

Finer, Herman.—The British Civil Service. (Allen and Unwin. 5*s.*)
Friend, J. W., and Feibleman, J.—The Unlimited Community. (Allen and Unwin. 15*s.*)

G. E. C. (Ed. by H. A. Doubleday and Lord Howard de Walden).—The Complete Peerage. Vol. IX. (St. Catherine's Press. 73*s.* 6*d.*)

Hall, R. L.—The Economic System in a Socialist State. (Macmillan. 7*s.* 6*d.*)
Hancock, W. K.—Survey of British Commonwealth Affairs. (Milford. 15*s.*)
Hudson, G. F.—The Far East in World Politics. (Milford. 7*s.* 6*d.*)
Hyde, H. Montgomery and Nuttall, G. R. Falkiner.—Air Defence and the Civil Population. (Cresset Press. 12*s.* 6*d.*)

Ishii, Ryoichi.—Population Pressure and Economic Life in Japan. (P. S. King. 12*s.* 6*d.*)
Iversen, Carl.—Aspects of the Theory of International Capital Movements. (Milford. 15*s.*)

Johnson, A. Campbell.—Peace Offering. (Methuen. 5*s.*)
Joshi, G. N.—Indian Administration. (Macmillan. 6*s.*)

Kennedy, A. L.—Britain Faces Germany. (Cape. 5*s.*)
Kent, P. H. B.—The Twentieth Century in the Far East. (Edward Arnold. 16*s.*)
de Kiewiet, C. W.—The Imperial Factor in South Africa. (Cambridge University Press. 15*s.*)

Lewis, Wyndham.—Count Your Dead: They are Alive! (Lovat Dickson. 7*s.* 6*d.*)
Lippman, Walter.—The Good Society. (Allen and Unwin. 10*s.* 6*d.*)

Macardle, Dorothy.—The Irish Republic. (Gollancz. 25*s.*)
Macartney, C. A.—Hungary and Her Successors. (Milford. 25*s.*)
Main, Ernest.—Palestine at the Crossroads. (Allen and Unwin. 7*s.* 6*d.*)
McCleary, G. F.—The Menace of British Depopulation. (Allen and Unwin. 4*s.* 6*d.*)

Meshlank, V. I.—The Second Five Year Plan for the Development of National Economy of the U.S.S.R., 1933-37. (Lawrence and Wishart. 8*s.* 6*d.*)

Mogannam, Mrs. Matiel E. T.—The Arab Woman and the Palestine Problem. (Herbert Joseph. 12*s.* 6*d.*)

Morris, Nathan.—The Jewish School. (Eyre and Spottiswoode. 10*s.* 6*d.*)

Mumford, W. Bryant (in consultation with Major G. St. J. Orde-Brown).—Africans learn to be French. (Evans Brothers. 5*s.*)

Notcutt, L. A., and Latham, G. C.—The African and the Cinema. (Edinburgh House Press. 3*s.* 6*d.*)

Paul, W. Rodman.—The Abrogation of the Gentlemen's Agreement. (Cambridge, Mass.: The Society. London: Milford. 6*s.*)

Perham. Margery.—Native Administration in Nigeria. (Milford. 17*s* 6*d.*)

Plummer, Alfred.—Raw Materials or War Materials? (Gollancz. 3*s.* 6*d.*)

Rawlinson, H. G. (Ed. by Professor C. G. Seligman).—India: A Short Cultural History. (Cresset Press. 30*s.*)

The Republics of South America.—A Report by a Study Group of Members of the Royal Institute of International Affairs. (Milford. 21*s.*)

Roberts, Stephen H.—The House that Hitler Built. (Methuen. 12*s.* 6*d.*)

Roosevelt, Theodore.—Colonial Policies of the United States. (Nelson. 7*s.* 6*d.*)

Siegfried, Andre.—Canada. (Trans. by H. H. Hemming and Doris Hemming). (Cape. 10*s.* 6*d.*)

Smith, W. Millar.—The Marketing of Australian and New Zealand Primary Products. (Pitman. 12*s.* 6*d.*)

Snow, Edgar.—Red Star Over China. (Gollancz. 18*s.*)

Swynnerton, C. F. M.—The Tsetse Flies of East Africa. (The Royal Entomological Society of London. Vol. 84. £5 10*s.*)

Thompson, Virginia.—French Indo-China. (Allen and Unwin. 21*s.*)

Watts, Alan W.—The Legacy of Asia and Western Man. (John Murray. 6*s.*)

Whitaker, John T.—Fear came on Europe. (Hamish Hamilton. 10*s.* 6*d.*)

Whitehead, T. N.—Leadership in a Free Society. (Milford. 10*s.* 6*d.*)

Willert, Sir Arthur; Long, B. K., and Hodson, H. V.—The Empire in the World. (Oxford University Press. London: Milford. 10*s.* 6*d.*)

Wolff, T.—Through Two Decades. (Trans. by E. W. Dickes.) (Heinemann. 15*s.*)

Wyndham, H. A.—The Atlantic and Emancipation. (Milford. 12*s.* 6*d.*)

Zweig, Arnold.—Insulted and Exiled. (Trans. by Eden and Cedar Paul.) (John Miles. 10*s.* 6*d.*)

XIII. LIBRARY OF "THE CLERK OF THE HOUSE"

BY THE EDITOR

THE Clerk of either House of Parliament, as the "Permanent Head of his Department" and the technical adviser to successive Presidents, Speakers, Chairmen of Committees and Members of Parliament generally, naturally requires an easy and rapid access to those books and records more closely connected with his work. Some of his works of reference, such as a complete set of the Journals of the Lords and Commons, the Reports of the Debates and the Statutes of the Imperial Parliament, are usually more conveniently situated in a central Library of Parliament. The same applies also to many other works of more historical Parliamentary interest. Volume I of the JOURNAL contained[1] a list of books suggested as the nucleus of the Library of the "Clerk of a House," including books of more particular usefulness to him in the course of his work and which could also be available during Recess, when he usually has leisure to conduct research into such problems in Parliamentary practice as have actually arisen or occurred to him during Session, or which are likely to present themselves for decision in the future.

Volume II[2] gave a list of works on Canadian Constitutional subjects and Volumes IV[3] and V[4] a similar list in regard to the Commonwealth and Union Constitutions respectively.

Volumes II,[2] III,[5] IV[6] and V[7] gave lists of works published during the respective years. Below is given a list of books for such a Library, published last year:

Alfange, Dean.—The Supreme Court and the National Will. (Hodder and Stoughton. 12*s.* 6*d.*)

Clementi, Sir Cecil.—A Constitutional History of British Guiana. (Macmillan. 20*s.*)

Edwards, William.—Crown, People and Parliament. 1760-1935. (Arrowsmith. 8*s* 6*d.*)

Friedrich, Carl Joachim.—Constitutional Government and Politics. (Harpers. 15*s.*)

Jennings, Ivor.—Cabinet Government. (Cambridge University Press. 21*s.*)

McLaughlin, A. C.—Constitutional History of the United States. (Appleton-Century. 1935. 21*s.*)

[1] Pp. 123-126. [2] Pp. 137, 138. [3] Pp. 153-154.
[4] P. 223. [5] P. 133. [6] Pp. 152-154. [7] Pp. 222, 223.

Panikkar, K. M.—The Indian Princes in Council. (Oxford University Press. London: Milford. 5*s.*)

Radcliffe, G. R. Y., and Cross, Geoffrey.—The English Legal System. (Butterworth. 16*s.*)

Senning, John P.—The One-House Legislature. (McGraw Hill. 8*s.* 6*d.*)

Smellie, K. B.—A Hundred Years of English Government. (Duckworth. 15*s.*)

Wilkinson, B.—Studies in the Constitutional History of the Thirteenth and Fourteenth Centuries. (Manchester: University Press. 12*s.* 6*d.*)

The Society of Clerks-at-the-Table in Empire Parliaments.

Name.—1. That a Society be formed, called "The Society of Clerks-at-the-Table in Empire Parliaments."

Membership.—2. That any Parliamentary Official having duties at the Table of any Legislature of the British Empire as the Clerk, or a Clerk-Assistant, or any such Officer retired, be eligible for membership of the Society upon payment of the annual subscription.

Objects.—3. That the objects of the Society be:

(*a*) to provide a means by which the Parliamentary practice of the various Legislative Chambers of the British Empire be made more accessible to those having recourse to the subject in the exercise of their professional duties as Clerks-at-the-Table in any such Chamber;

(*b*) to foster a mutual interest in the duties, rights and privileges of Officers of Parliament;

(*c*) to publish annually a JOURNAL containing articles (supplied by or through the "Clerk of the House" of any such Legislature to the Editor) upon questions of Parliamentary procedure, privilege and constitutional law in its relation to Parliament;

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Subscription.—4. That the annual subscription of each Member be £1 (payable in advance).

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Canada for the second year, the Senate and House of Representatives of the Commonwealth of Australia the next year, and thereafter those of New Zealand, the Union of South Africa, Irish Free State, Newfoundland and so on, until the Clerk of the House of every Legislature of the Empire who is Member of the Society has held office, when the procedure will be repeated.

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Accounts.—10. Authority is hereby given the Honorary Secretary-Treasurer and Editor to open a banking account in the name of the Society and to operate upon it, under his signature, a statement of account, duly audited, and countersigned by the Clerks of the Two Houses of Parliament in that part of the Empire in which the JOURNAL is prepared, being published in each annual issue of the JOURNAL. (*Amended* 1936.)

LONDON,
9th April, 1932.

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Office of the Society.

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Cable Address : CLERDOM CAPETOWN.

Honorary Secretary-Treasurer and Editor : E. M. O. Clough.

* Barrister-at-law or Advocate.

XV. MEMBERS' RECORDS OF SERVICE

Note.—*b.*=born; *ed.*=educated; *m.*=married; *s.*=son(s); *d.*=daughter(s); *c.*=children; *cr.*=created.

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat these records in subsequent issues of the JOURNAL, *except upon promotion, transfer or retirement, when it is requested that an amended record be sent in.*

Beauchesne, Arthur, C.M.G., B.A., M.A., K.C., LL.D., Litt.D., F.R.S.C.—Barrister, Clerk of the House of Commons; *b.* Carleton, Bonaventure Co., P.Q., June 15, 1876, *s.* of late Pierre Clovis Beauchesne, Notary, who represented that county in Quebec Legislative Assembly, 1874-76, and in the House of Commons, 1879-1882, and Caroline (Lefebvre de Bellefeuille) Beauchesne; *ed.* St. Joseph's (Classical Course), Memramcook, N.B.; B.A., M.A., and Litt. D.; Valedictorian 1895; studied Law at Laval, Montreal. Private Secretary to Sir Adolphe Chapleau, January-July, 1897; Journalist from 1897-1904; admitted to Bar of Quebec in 1904; K.C. in 1914; *m.* Florence Le Blanc of Ottawa, formerly of Dorchester, N.B., June 14, 1916; twin daughters; unsuccessfully contested Bonaventure for Federal seat in 1908 and for the local in 1912; founded and edited "L'Opinion" in Montreal in 1905; Legal Adviser, Justice Dept., 1913-16, when appointed Clerk-Assistant of the House of Commons and Commissioner to administer the Oath of Allegiance; author of "Beauchesne's Parliamentary Rules and Forms," "Ecrivains d'autrefois" and of several lectures and pamphlets; one of the founders and Hon. President of l'Association Technologique de Langue Française d'Ottawa; Life Member of l'Institut Canadien Français d'Ottawa; member of Canadian Institute of International Affairs; Fellow of the Royal Society of Canada, 1924; Hon. Secretary of the Empire Parliamentary Association (Canada Branch), and of the Inter-Parliamentary Union, Canadian group; Vice-Treasurer Association of Canadian Clubs, also President of the Canada Club, Ottawa, 1931-32, Member of Executive Board of Canadian Geographical Society; LL.D., Ottawa University, 1931; past President of Section I of Royal Society of Canada; appointed Secretary, Royal Society

of Canada, May, 1936. Appointed Clerk of the House of Commons January 7, 1925; Notary Public for Ontario. *Cr.* C.M.G. New Year's Honours, 1934. Member of Royal Ottawa Golf Club and Rideau Club; Religion, Catholic. Address 417 Laurier Ave., East, Ottawa, Ontario.

Blount, Austin Ernest, C.M.G.—Clerk of the Parliaments and Clerk of the Senate since February, 1917; *b.* May 30, 1870, at Stanstead, Quebec. *S.* of M. Blount and his wife, *née* C. Powell, both Canadians; *m.* July 23, 1894, Alice Dalpe, *d.* of S. Dalpe (deceased April, 1919). One *s.* James; *m.* secondly January, 1922, Louise Rankin Thomson, of Glasgow, Scotland; Private Secretary to the Rt. Hon. Sir Charles Tupper, Bart., 1896-1901 and 1901-1917; Private Secretary to the Rt. Hon. Sir Robert L. Borden, Prime Minister of Canada. *Cr.* C.M.G., Birthday Honours, 1918. Address: The Senate, Ottawa.

Ferris, C. C. D.—Clerk of the Legislative Assembly of Southern Rhodesia since March 7, 1937; Clerk-Assistant 1926-1937; *b.* 1890, Douglas, Cape Colony; youngest *s.* of the late Robert Charles Ferris, Civil Commissioner and Resident Magistrate; *m.* Estella Blanche, youngest *d.* of the late Egerton Griffiths of Aliwal, North, Cape Colony; 4 *c.*; *ed.* Diocesan College, Rondebosch, Cape Colony; entered Southern Rhodesian Civil Service 1911; Clerk in the Mines Department, Salisbury; acting Accountant Mines and Works Department, 1920; Acting Registrar of Claims, 1921; transferred to the Treasury, 1922; seconded to the Legislative Assembly, 1924; transferred to the Premier's Office, 1926; Acting Clerk of the Legislative Assembly and Secretary to the Premier, July-September, 1926, January-March, 1927 and September, 1929 to February, 1930; served in South African Rebellion and German South West Africa with 1st Rhodesian Regiment, 1914-1915; and in France with R. F. A. 1916-1918, with rank of Captain.

Garu, D.K.V., B.A., B.L.—Deputy Secretary, Madras Legislature and Secretary, Madras Legislative Council March 15, 1937; *b.* July 23, 1896. Entered the service March 5, 1929; Bachelor of Laws of the Madras University; Practised at the Bar; Assistant Secretary to the Madras Legislative Council, March 5, 1929-March 14, 1937; Deputed to England to study Parliamentary procedure and practice from October 31, 1929-July 29, 1930; Captain in the Army in India Reserve of Officers; Officiated as Secretary to the Legislative Council from July 30-

August 10, 1935, August 27-October 2, 1935, January 28-April 28, 1936 and August 1-October 22, 1936. Awarded the Coronation Medal in 1937.

Hemeon, C. R., I.C.S.—Legal Remembrancer to Government and Secretary to the Central Provinces Legislature since 1932; *b.* 30th January, 1897; served in Mesopotamia and the North-West Frontier in the Great War; joined the Indian Civil Service, 1st November, 1921.

Jamieson, H. B.—Clerk-Assistant and Clerk of Committees, Legislative Council, Victoria, Australia, since 1931; *b.* Melbourne, 1899; appointed to Public Service as Clerk to the Crown Solicitor, 1916; on active service with the Australian Military Forces, 1918-1919; Associate to His Honour, Mr. Justice McArthur of the Victoria Supreme Court, 1924; Clerk of the Records and Legislative Council, 1926.

Khan Hidayatullah Khan, M.A.—Secretary, N.W.F.P. Legislative Assembly; *b.* Toru (Mardan District) 7th January, 1907; *ed.* at Edward's High School, Peshawar; graduated from Edwardes College, Peshawar, in 1927; took M.A. degree of the Punjab University in 1930; joined the N.W.F.P. Civil Service through competitive examination in 1931, standing first therein; Secretary, Legislative Assembly from April, 1938.

Krishna R. V., Diwan Bahadur, Ayyar, B.A., M.L.—Secretar to the Madras Legislature, March 14, 1937; *b.* August, 1884 Entered the service July 18, 1910; Master of Laws of the Madras University; practised at the Bar; Member of the Madras Judicial Service from July 18, 1910-July 22, 1921; Assistant-Secretary to Government in the Law Dept., July 23, 1921-January 5, 1924; Secretary to the Madras Legislative Council, January 6, 1924-April, 1937; was Legal Adviser to the Indian Taxation Enquiry Committee; nominated Official Member of the Indian Legislative Assembly, August, 1935-December, 1936; was conferred the title of " Rao Bahadur," June 3, 1924, and " Diwan Bahadur," June 3, 1933; Awarded Coronation Medal, 1937.

McLachlan, H. K.—Clerk of Committees and Serjeant-at-Arms, Legislative Assembly, Victoria, Australia, since 1937; *b.* 1896, Hawthorn, Victoria; Clerk in Lands Department, 1914, and in State Public Service Commissioner's Office, 1914-17; appointed to the Parliamentary Staff in 1917; Assistant Clerk of the Papers, 1922-7; Clerk of the Papers, 1927-37.

Diwan Bahadur C. G. Nayar, B.A., B.L., Bar.-at-Law (Certificate of Honour). Secretary of the Orissa Legislative Assembly since April 1, 1937. Joined Madras Provincial Judicial Service 1910 as District Munsif and served in Province as District Munsif, Subordinate Judge, Assistant Sessions Judge and District and Sessions Judge, in which office he was confirmed in 1933; Special Sessions Judge, Pudukkottai Durbar 1932-1933; Assistant Secretary, Law Department, Under Secretary (Drafting) and Joint Secretary in the Law and Education Department of the Madras Government at different times; for some time Deputy Secretary to the Government of India, Legislative Department; Secretary Government of India Drugs Enquiry Committee; Joint Secretary Reforms Department, Government of Bihar and Orissa, 1936, and, since formation of new Province of Orissa, has been the Law and Commerce Secretary and Legal Remembrancer to that Government since 1936. Nominated Member, Madras Legislative Council, the Legislative Assembly (Central) and the Council of State at different times; also for some time Secretary to the Council of State; and Secretary to the Advisory Council, Orissa, 1936-1937. Barrister-at-Law, England, First Class in all the Preliminary Examinations and heading the list in the first class in the Bar Final. Author of a commentary on the Malabar Tenancy Act and an elected member of the Senate of the Madras University representing the Registered Graduates Constituency; Examiner for the M.L. Degree Examination, Madras University, 1924-1936.

The title of "Diwan Bahadur" conferred January 1, 1936.

Parker, Captain F. L.—Clerk of the House of Assembly, South Australia, since 1935; Chief Secretary's Dept., 1901; Chief Clerk, 1915; Chief Clerk and Accountant, Premier's Dept., 1917 and Police Dept., 1917-1918; Office Clerk, House of Assembly, Accountant to Parliament and Controller of Accounts, 1918; Clerk-Assistant and Serjeant-at-Arms, House of Assembly; Lieut. Australian Military Forces, 1909; Captain, 1913; served with Australian Imperial Forces, 1914-1916, in Egypt, Gallipoli and Sinai Peninsulas; Hon. Secretary, Empire Parliamentary Association (South Australia Branch), since 1926, and of the Royal Geographical Society of Australasia (South Australia Branch) since 1922, Vice-President, 1932, President, 1933-1936; Member Board of Editors "The Centenary History of South Australia," 1935-1936; appointed

Member Board of Governors, Public Library, Museum and Art Gallery, Adelaide, 1936; appointed also Clerk of Parliaments, 1937.

Pickering, Allan, M.Ec. (Syd.).—Second Clerk-Assistant, Legislative Assembly, New South Wales; joined the Clerk's Staff, 1922; *b.* 1901; graduated Bachelor of Economics, 1922, and Master of Economics, 1935, Sydney University.

Pook, P. T., B.A., LL.M., J.P.—Clerk of the Legislative Council, Victoria, Australia, since 1928 and Clerk of Parliaments since 1937; *b.* 1882, Tennyson, Victoria; Teaching Staff, Education Department, 1900-1908; Chief Secretary's Office, 1908-1911; Clerk of the Papers, Legislative Council, 1911; Clerk of Records, 1917; Usher, Clerk of Committees and Accountant, 1926.

Sarah, R. S.—Usher and Clerk of the Records of the Legislative Council, Victoria, Australia, since 1935; Secretary to the House Committee since 1933; *b.* Gisborne, 1899; appointed to the Public Service as Clerk in the Official Accountant's Branch of the Department of Law, 1916; Assistant Clerk of Courts, 1916-17; Clerk in the Office of the Crown Solicitor, 1917; Clerk of the Records and Clerk assisting at the Table, Legislative Council, 1931.

Schreve, K. W.—Clerk of the Legislative Assembly, South West Africa, since 1937; *b.* Mamre, Cape Province, 1902; first appointment to Union Public Service, 1923, Magistrate's Clerk at Maltahohe, South West Africa; seconded to the Legislative Assembly as Clerk-Assistant, 1926; Personal Clerk to the Secretary for South West Africa, 1934.

Valladares, E.—*b.* 1908; *ed.* Daniel Stewart's College, Edinburgh; clerk Transport Department, British Guiana, 1924; Clerical Assistant, Medical Department, 1926; probationary officer of Customs, 1927; 6th Class Clerk, Colonial Secretary's Office, 1932; 5th Class Clerk, 1933; Appointed Clerk Legislative Council 15th May, 1936.

Wanke, F. E.—Clerk of the Legislative Assembly, Victoria, Australia, since July, 1937; appointed to the Public Service as a Clerk in the Law Department, 1907; Assistant Clerk of the Papers, Legislative Assembly, 1913; Clerk of the Papers, 1922; Clerk of Committees and Serjeant-at-Arms, 1927.

Yusoof, S. Anwar.—Secretary to the Legislature of the Province of Bihar, Secretary of the Legislative Council of the Province of Bihar and Orissa since 1930; called to the Bar (Middle Temple) 1912, and practised in the High Court at Fort William, Bengal, and the High Court at Patna; 1924, Assistant Secretary to the Bihar and Orissa Legislative Council and Assistant Secretary to the Government in the Legislative Department; 1926 and 1928, acted as the Secretary to such Council and Deputy Secretary to the Government in the Legislative Department; 1929, served on a Deputation to India in the Legislative Department; 1931, also officiated as Deputy Secretary to the Government in such Department; and in 1934, in addition to the duties of Secretary to the Bihar and Orissa Legislative Council, officiated again as Deputy Secretary to the Government of Bihar and Orissa in the Legislative Department.

XVI. STATEMENT OF ACCOUNT AND AUDITOR'S REPORT, 1936-1937

I REPORT that I have audited the Statement of Account of "The Society of Clerks-at-the-Table in Empire Parliaments" in respect of Volume V.

The Statement of Account covers a period from 1st April, 1937, to 31st August, 1938. All the amounts received during the period have been banked with the Standard Bank of South Africa, Limited.

Receipts were duly produced for all payments for which such were obtainable, including remuneration to persons for typing and clerical assistance and roneoing, and postages were recorded in the fullest detail in the Petty Cash Book.

I have checked the Cash Book with the Standard Bank Pass Book in detail and have obtained a certificate verifying the balance at the Bank.

The Petty Cash Book has been checked to the Cash Account for amounts paid to the Editor to reimburse himself for money spent by him in postages and other expenses of a small nature. Amounts received and paid for Volume VI have been excluded from the Revenue and Expenditure Account.

The following amounts are owing:

	£	s.	d.
For printing Volume V	23	5	10
For postage and packing Volume V	8	0	10
Due to the Treasurer for postage		6	10
	31	13	6

Against this there is due and in hand:

	£	s.	d.
For Subscriptions	14	0	0
For Parliamentary Grants	15	0	0
In hand	1	9	6
	30	9	6

CECIL KILPIN,
Chartered Accountant (S.A.).

SUN BUILDING,
CAPE TOWN,
27th September, 1938

The Society of Clerks-at-the-Table in Empire Parliaments

STATEMENT OF ACCOUNT FOR THE PERIOD FROM 1ST APRIL, 1937, TO 31ST AUGUST, 1938

REVENUE.	£ s. d.	£ s. d.
Balance as at 31st March, 1937, being excess of Income over Expenditure at that date		1 12 5
Parliamentary Grants:		
Dominion Parliament of Canada	10 0 0	
Federal Parliament of Australia	10 0 0	
New Zealand	10 0 0	
Union of South Africa	10 0 0	
Southern Rhodesia	5 0 0	
New Brunswick (Vols. IV and V)	10 0 0	
Transvaal	5 0 0	
N.W. Frontier Province (India)	9 0 0	
		69 0 0
Subscriptions:		
Volume I	1 17 6	
Volume II	1 17 6	
Volume III	2 17 6	
Volume IV	2 17 6	
Volume V	60 0 0	
		69 10 0
Sales:		
Volumes I to V, both inclusive		77 8 4
		£217 10 9

EXPENDITURE.	£ s. d.	£ s. d.
Volume V for 1936:		
Postage and Telephone	9 11 6	
Bank Charges	1 15 9	
Cables and Telegraphic Address	12 4 2	
Publications and Newspapers	11 5 4	
Typing and Clerical Assistance and Roneoing	42 13 1	
Printing and Publishing Volume V on account	100 0 0	
Printing and Publishing balance Volume IV	8 8 1	
Stationery	7 17 3	
Travelling Expenses and Carriage	12 11 7	
Office cleaners	2 6 0	
Gratuities to Messengers	3 15 0	
Audit Fee	3 3 0	
Insurance	10 6	
		216 1 3
Cash Balance, being Excess of Receipts over Expenditure		1 9 6
		£217 10 9

OWEN CLOUGH
Honorary Secretary-Treasurer and Editor.

Countersigned:
MAURICE J. GREEN,
Clerk of the Senate.
DANL. H. VISSER,
Clerk of the House of Assembly.
PARLIAMENT OF THE UNION OF SOUTH AFRICA.

Audited and certified correct:
CECIL KILPIN,
Chartered Accountant (S.A.),
Sun Building,
Cape Town,
South Africa.

27th September, 1938.

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