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. V

FOR 1936

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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							*	*	*	*	*	*
W ZEALAND							*	*	*	*		
NION OF SOUTH AFRICA ..	*	*	*	*	*	*	*					
JNION PROVINCIAL:												
Cape of Good Hope		*			*				*			
Natal			*	*	*	*						
Transvaal			*	*	*							
Orange Free State			*				*					
SOUTH WEST AFRICA			*	*	*							
IRISH FREE STATE	*	*	*	*	*	*	*			*	*	*
SOUTHERN RHODESIA			*	*	*					X		
INDIAN CENTRAL	X	*	*	*				*	*	X		
INDIAN PROVINCIAL:												
Madras	*	*	*					*				
Bombay		*	*			*	*		*	*		
Bengal			*	*				*	*			
United Provinces		*	*			*				*		*
The Punjab		*	*				*		*		*	
Bihar	*	*	*					*	*			
Central Provinces and Birar ..	*	*	*					*				
Assam			*						*			
North-West Frontier ..												
Orissa		X	X					X	X			
Sind												
BURMA		*		*	*			*				
CEYLON	*	*		*	*	*	*	*	*	*	*	*
BRITISH GUIANA										*	*	

Burma
in Vol. VII

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

VOL. V. FOR 1936

GEORGE VI

WE as a Society, whose members sit at the Table in the Houses of His Majesty's Parliaments or Legislatures, in Canada, Australia, New Zealand, South Africa, the Irish Free State, the Empire of India, Southern Rhodesia, the Bahamas, Ceylon, British Guiana and the Mandated Territory of South West Africa, respectfully tender to His Majesty King GEORGE VI and to Her Majesty the Queen, our loyal and deep-felt congratulations upon His Majesty's Accession to the Throne, which we pray he may long honour and adorn. We wish His Majesty a long and glorious reign in the true traditions associated with his high and mighty office, an office which has grown in importance and significance as his dominions have increased in development, wealth and strength, in their advance along the path of progress and civilization.

We, the members of this Society, fervently pray that their Majesties may ever have God's bountiful blessing in their work and in their lives, and that He may give them health and strength to discharge their onerous and important duties.

In reply to the above message, His Majesty graciously intimated that he had received the loyal assurances and good wishes to the Queen and himself and commanded to be conveyed to the members of this Society, his sincere thanks for their kind congratulations on his Accession.

As a small but none the less devoted tribute from our members, the Crown in the badge of the Society on the cover of this Volume is expressed in gold, to mark our humble commemoration of the glorious event.

We regret to announce the sudden death, on October 20, at Nassau, the Bahamas, of Kenneth Maclure, the Chief Clerk of the House of Assembly. Mr. Maclure was the youngest son of the late Mr. W. G. Maclure of Nassau, and a grandson of the late Dr. W. G. Maclure, a former President of the Bahamas Legislative Council. Mr. Kenneth Maclure was born in Nassau in 1894, where he received his education. He was appointed to the House of Assembly staff in 1913 and to the Clerkship of the Lower House of the Colony in 1919. Previous to that, he had been in the Ward S.S. Line and, later, on the staff of the *Nassau Guardian*. Since 1920 he also held the position of Chief Store Officer and Secretary of the Bahamas Branch of the Imperial Lighthouse Service, an appointment directly controlled and administered by the Imperial Board of Trade.

At five o'clock p.m. on the day of his death, Mr. Maclure attended a meeting of the Finance Committee of the House of Assembly and left shortly afterwards, when told by the Deputy-Speaker that he would not be required at the meeting, although he did not complain of feeling ill.

The funeral took place at Nassau on October 21, and our late colleague was interred in the family vault at the Western Cemetery, the service being conducted by the Reverend Andrew Douglas.

The *Nassau Guardian* of the 21st October, in a leader, referred to Mr. Maclure's death as a tragic loss and a severe shock to the entire community. In a tribute to his memory, that Journal spoke of Mr. Maclure as thorough, meticulous and even exacting in his work, and that the results of his conscientious efforts were evident in the permanent records of the House of Assembly. It would be difficult to express in words the high esteem in which Mr. Maclure was held in the community.

He was a gentleman of the finest type, good and true. He will long be remembered for his very real service to the Colony. Mr. Maclure was unmarried, but our sincere sympathies are respectfully offered to his widowed mother, sisters and brothers.

The House of Assembly has also recently lost the Hon. Harcourt M. Malcolm,[1] K.C., C.B.E., who had been its Speaker for 21 years and for 13 years previously, Deputy-Speaker. Mr. Malcolm had been selected to represent the Colony at the Coronation.

The late Mr. Speaker Harcourt and Mr. Maclure have left behind them a long record of sound precedent, which cannot but be of great usefulness and value to the General Assembly of the Bahamas.

Introduction to Volume V.—The year under review in this the fifth annual issue of our JOURNAL has been truly prolific in constitutional issues within the British Empire. If we continue at the pace we have been making in recent years in the manufacture of constitutions and in putting to test their provisions, as a commonwealth of peoples, we shall soon have in stock almost every conceivable type of constitutional pro- vision which any democratic nation may require, and what is more, be able to inform the anxious inquirer how each particular provision works in practice; even whether it is likely to withstand the wear and tear of time and the susceptibilities of any particular type of national consciousness.

In our last issue we dealt at some length with the Constitution and Legislative procedure of that wonderful country, the Empire of India, truly a realm in itself of the greatest importance, complexity and magnitude. This year, the checks and balances of the federal and provincial or State systems of the Dominion of Canada and the Commonwealth of Australia have caused their statesmen and citizens much concern; the Constitution of the Union of South Africa has undergone further changes; the two Rhodesias are seeking alliance, while

[1] *See also* JOURNAL, Vol. IV, 33.

on the other hand, the ancient Island of Malta has been divorced from constitutional government and the Dominion of Newfoundland is still in constitutional "retreat." The latest constitutional edifice in the course of construction is the new "Draft Constitution" of the Irish Free State, which as an architectural design is, without doubt, unique in its conception and not according to Dominion Constitutions in its outlook. This State has also produced the latest investigation into the question of a Second House, a document of striking interest.

The rate at which our modest publication is growing is amazing. Difficulty is already being experienced as to where the constitutional references are to end and those in regard to the procedure of Parliament to be acknowledged. It is hoped, however, in our next Volume, to catch up some of the latter subjects, now that the road has been made clearer by this issue. Anyway every effort will be made to breast the tide in this respect and not to make further leeway. We trust, therefore, that the "Clerk of the House," including his Assistants-at-the-Table in training for that onerous office in the many Parliaments of the Empire, as well as the constitutional student at our Universities, the Parliamentarian and the members of the public who take an interest in Parliament as a national institution of government, will find in these pages and in those of our previous issues, much matter, not only of interest, but of practical usefulness to them in their work or studies, and thus enable them to render valuable service to the Parliament of the country where lie their hearts and interests.

We continue to receive the greatest encouragement in our work as a Society from the Parliaments of the Empire. Especially do we as a Society appreciate and welcome the new addition to our ranks of the Officers of the Indian Provincial Legislatures.

Acknowledgments to Contributors.—In regard to the contribution of special articles for this issue the thanks of the Society are especially extended to Dr. Arthur Beauchesne, C.M.G., K.C., etc., Mr. T. D. H. Hall, LL.B., Mr. D. H. Visser, J.P., and especially to the author of "The December Crisis," who prefers to remain anonymous.

We acknowledge also with grateful thanks the great help which we have received from our members in all the Parliaments of the Empire and our appreciation of the official papers, memoranda, etc., which have been sent in from all countries.

In this connection we gratefully make special acknowledgments of the ready help rendered by Mr. A. E. Blount, C.M.G., and Mr. G. H. Monahan, C.M.G., respectively the Clerks of the Senates of Canada and Australia. Without their valuable co-operation and support, the success of this issue would have been impossible; and we would like to make special mention of the great willingness with which our colleagues in India are assisting us in the production of the JOURNAL and the attainment of the aims and objects of our Society. Particularly do we mention the ready and willing assistance rendered by the Librarian and his staff at Cape Town, where our research work is now conducted.

In regard to the Article on Library Administration, we are particularly grateful to Mr. Charles T. Clay and Mr. Austin Smyth, C.B.E., respectively, the Librarians of the Houses of Lords and Commons, for their courtesy in contributing information in regard to this subject, as well as to Mr. Martin Burrell, one of the Joint Librarians of Parliament at Ottawa, Mr. Kenneth Binns, Mr. G. H. Scholefield, O.B.E., D.S.C., F.R.Hist.S., and Mr. Paul Ribbink, the Librarians of Parliament at Canberra, Wellington, and at Cape Town.

Questionnaire for Volume V.—The year under review in this issue has been so rich in constitutional happenings in various parts of the Empire and provided so many interesting Parliamentary incidents at Westminster, that most of the matter contained in the Questionnaire for this Volume has had to stand over, as well as supplementary information in regard to subjects dealt with in previous issues. This, however, will be duly included in Volume VI. There has been such a general demand for the Article on "Parliamentary Library Administration," an item standing over from the Questionnaire for Volume III, and for the full Rules to be given thereon, that it was felt the treatment of the subject could not be further delayed. This will also clear the way for many other questions, the subject of items of the Questionnaire for Volumes IV and V, such as, Cases of Privilege, Tampering with Witnesses, Suspension of Standing Orders, Pecuniary Interest of M.P.'s, Crown's Powers under Oversea Constitutions in regard to Amendment of Bills, Approval and Resignation of Speaker, Parliamentary and Un-Parliamentary Expressions, the Address-in-Reply, Official Orders of Precedence, and the many other subjects which are being continually sent in for treatment in the JOURNAL.

E. W. Parkes, C.M.G.—Mr. Parkes retired from the Clerkship of the Commonwealth House of Representatives in March, 1937, after a total service of 40 years, first in the State of Victoria, on the staff of the Upper House, to which he was promoted in 1895, and afterwards in the House of Representatives at Canberra, of which he was one of the original staff in 1901. From Assistant Reader and Assistant Clerk of the Papers, he worked through the various House offices until his appointment to the Table in 1925. Upon the relinquishment of the Clerkship by that renowned Australian constitutional and Parliamentary authority, the late Mr. Walter A. Gale, C.M.G., in 1927, Mr. Parkes was appointed to the Clerk's Chair. Mr. Parkes was born in Melbourne in 1873 and educated in his home State. During the writer's visit to the Commonwealth in 1926, he met the President, Speakers and many of the Members of the seven Parliaments and Mr. Parkes was everywhere held in the greatest esteem, especially in his own State and at Canberra. Mr. Parkes was universally popular with his Members, who all spoke in admiration of his ability and of his quiet manner, no matter how forcibly the Member may urge his point in any office or "at-the-Table discussion" upon coming up against precedent and practice in his attempt to achieve any particular objective in the House.

As a member of this Society Mr. Parkes was a most ardent, prompt and faithful colleague as well as a valued correspondent. His contributions were always reliable and thorough, a factor most important in giving in our JOURNAL an accurate account of any subject in connection with any particular Constitution or House of Parliament. All those engaged in representing constitutional or Parliamentary matters know how important it is to have the information from the fountain source with selection by the man on the spot.

Mr. Parkes will take with him in his retirement the good wishes of his colleagues on the Parliamentary Staff and of all his many friends throughout Australia. We, too, ask to be allowed to share those good feelings and to wish Mr. and Mrs. Parkes *bon voyage* on their travels before settling down again in their home at Canberra.

D. J. O'Sullivan, B.L.—Upon the abolition of the Senate (Seanad) of the Irish Free State, which took effect on May 29, Mr. Donal O'Sullivan ceased to hold office as the Clerk of the Seanad and retired from the Civil Service at the end of September, by which time the records of the Seanad

for its last period[1] had been completed. The abolition of the Seanad also affected the Clerk-Assistant, Mr. D. Coffey, B.L., who was transferred to another Branch of the Service. Mr. O'Sullivan was transferred from the British Civil Service to Dublin shortly before the Treaty, and served for some time in the Department of Local Government and Public Health and other Departments. At the inauguration of the new Constitution he was appointed Clerk-Assistant of the Seanad and Clerk of that House on December 14, 1925. In the retirement of Mr. O'Sullivan our Society loses a most valued authority and helpful correspondent upon all matters connected with the Constitution of the Irish Free State and the procedure of the Seanad. Mr. O'Sullivan was always spoken of most highly and with great esteem, not only by the Members of his own House but also by many Members of Dáil Eireann, whom we have had the pleasure of meeting. Even during the trying times through which the Seanad went before its eventual abolition, Mr. O'Sullivan's attitude was always one of the utmost loyalty to his country and the House he so ably and devotedly served.

We desire therefore to express our sincere regrets upon the retirement of these two " Clerks-at-the-Table," and wish them every happiness and success in whatever walk of life may be theirs in the future.

A. R. Grant, B.A., I.S.O.—Mr. Grant's retirement makes yet another gap in the ranks of our veterans. Mr. Grant was born in 1861 and was educated at Aldeburgh, Charterhouse and Corpus Christi College, Cambridge, where he graduated B.A. in second-class classical honours. On first coming to Western Australia, in 1892, he was engaged in teaching until 1895, when he was appointed Clerk-Assistant of the Legislative Assembly and Clerk of that House in 1911, which position he occupied until 1931, when he was transferred to the post of Clerk of the Parliaments in " Another Place."

Upon making the presentation of a gold watch on his retirement, April 20, 1937, Sir John Kirwan, the President of the Legislative Council, in the presence of the Speaker and practically every Member of both Houses, referred to Mr. Grant's services as follows:

> " For 41 years Mr. Grant was a most efficient and highly respected officer of the Houses of Parliament of Western Australia. His extensive knowledge of the meaning and working of our State Constitution and of Parliamentary Procedure, and his

[1] Unlike other Houses of Parliament, the Seanad had no Sessions and sat almost throughout the year.

> always correct interpretation of the Standing Orders were of inestimable value. Greatly as we regretted the loss of his aid in these matters, what some of us, old Parliamentarians, regretted even more was the loss of the personal touch with his brilliant intellect, scholarly attainments and shrewdly kindly nature.

The President's announcement that the freedom of Parliament House had been extended to Mr. Grant for the rest of his life was received by the Members with genuinely sincere applause. The Premier and Leaders of the Parties in Opposition then added their sincere eulogies of Mr. Grant's valued services.

We hear that Mr. Grant is writing his memoirs, which, from his ready pen, should prove not only pleasant but interesting. Here, again, our Society loses a valued member, but we trust that the torch will be readily taken up by his successor. We wish Mr. and Mrs. Grant, with whom the writer spent a most enjoyable visit at their country home near Perth in 1926, good health and a happy life among their many friends.

J. G. Jearey, O.B.E.—In September, Mr. J. G. Jearey, the Clerk of the Legislative Assembly of Southern Rhodesia, and Secretary to the Prime Minister's Department, retired after an official service of nearly 41 years. Mr. Jearey first entered the Southern Rhodesia Civil Service in 1897 as a clerk in the Administrator's Office at Salisbury and later became Clerk-Assistant of the Legislative Council under the old Constitution. Upon the advent of " responsible government " in 1924 he was selected for the dual-appointment from which he has now retired. Mr. Jearey is highly esteemed in the Colony where he is well known for his abounding energy and zeal. He was on active service in the Bechuanaland Rebellion (1897) and served in the South African Infantry in the Great War (1918). Mr. Jearey has also taken a keen interest in the Volunteer movement in the Colony, and at one time was a member of the Rhodesian Bisley team. Mr. Jearey also occupied the position of Honorary Secretary of the Southern Rhodesian Branch of the Empire Parliamentary Association, which at their Annual General Meeting on May 14, with the Speaker (the Hon. A. R. Welsh, M.P.) in the chair and fully attended by the Ministers and M.P.'s, made Mr. Jearey a presentation of a fitted dressing-case and cheque. In the tribute which was paid to Mr. Jearey, Mr. Speaker said that it was chiefly, if not almost entirely, owing to Mr. Jearey's efforts and knowledge and enthusiasm that the business of the House had gone as smoothly as it had done

during the 12 years of the present form of government. Every Member was largely indebted to Mr. Jearey for his advice and assistance in all matters that had arisen in connection with Parliamentary work; he had proved himself a mine of information and had given good service to all the Members. In adding his own appreciation, Mr. Speaker said that during the last 12 months, when he had acted as Speaker, he was satisfied that he could never have performed his duties in any way satisfactory to the House had it not been for the advice and assistance of Mr. Jearey.

Mr. C. C. D. Ferris, the Clerk-Assistant, on behalf of the staff, then presented Mr. Jearey with an inscribed cigarette-case. Mr. Ferris, in paying tribute to their Chief, remarked that the Standing Orders which were drafted by Mr. Jearey, were adopted with very few alterations and were in operation to-day. The staff expressed their sorrow at Mr. Jearey's retirement and wished Mrs. Jearey and himself every happiness. In associating himself with all these tributes, the Prime Minister (the Hon. G. M. Huggins) said there was no doubt that their first Prime Minister (Sir Charles Coghlan) made a great find when he discovered Mr. Jearey. Mr. Huggins had a more intimate knowledge than most Members of Mr. Jearey's work in his capacity as Secretary of his Department, and it would be many years before the House and the Colony would have a more devoted and loyal public servant. Warm tributes were then paid by the Leader of the Opposition (Mr. H. H. Davies) and the Leader of the Reform Party (Sir Hugh Williams), who hoped one day to see Mr. Jearey sitting in the House as a Member.

Honours.—On behalf of all their fellow-members in the Society, we wish to congratulate the undermentioned members of our profession who have been marks of Royal Favour since the issue of our last Volume of the JOURNAL:

C.M.G.

W. R. McCourt,
Clerk of the Legislative Assembly of New South Wales.

O.B.E.

J. R. Dhurandhar, LL.B.,
Secretary of the Bombay Legislative Council[1] *and Deputy Secretary to the Government of Bombay in the Legal Department.*

[1] *i.e.*, the new Upper House of the Province.

Oath of Allegiance to King George VI at Westminster.—On Saturday, December 12, both Houses met pursuant to the Succession to the Crown Act, 1707,[1] at 2.45 p.m. to take the Oath of Allegiance to King George VI.

In the Lords,[2] after Prayers had been said by the Archbishop of Canterbury, the Chairman of Committees (Lord Onslow) first took the Oath and subscribed to the Roll, and then, in the absence of the Lord Chancellor, took his place on the Woolsack. He was followed by the members of the Government, and then by a long queue of Peers, who filed up to the Clerk's Table and recited the Oath:

> I swear by Almighty God that I will be faithful and bear true Allegiance to His Majesty King George, his Heirs and Successors, according to law, so help me God.

After each Peer had taken the Oath he shook hands with the Earl of Onslow.

In the Commons,[3] the Speaker rose and said: "I shall first take the Oath myself, after which I shall call Members to the Table." A Bible and a Roll of Parliament were then carried by the Clerk to the Speaker's Chair, where Captain Roy, standing, took the Oath and signed the Roll. The Prime Minister and Members of the Cabinet then took the Oath, followed by the junior Ministers and Officials of the Royal Household and other Members on the Government side of the House. Then followed the Leader of the Opposition and the Members of the Front Opposition Bench. Mr. Speaker then called upon the Privy Councillors.[4]

Further references in the *Hansards* of both Houses to the Abdication of King Edward VIII and the Accession of King George VI will not be given, the subject being referred to in Article II hereof.

House of Lords Reform.[5]—In answer to a question in the House of Commons on February 24,[6] the Prime Minister said that it was not the intention of the Government to introduce legislation during the present Session for the reform of the House of Lords.

On July 13, the Prime Minister received a deputation of Members of both Houses of Parliament to urge the importance of the reform of the House of Lords during the life of the present Parliament. About 150 Members of the two Houses

[1] 6 Anne, c. 41.
[2] 103 H.L. Deb. 5. s. 779.
[3] 318 H.C. Deb. 5. s. 2235-2236.
[4] *The Times*, December 14, 1936.
[5] *See also* JOURNAL, Vols. I, 9-10 and II, 14-17.
[6] 309 H.C. Deb. 5. s. 32.

were present. The Prime Minister, however, stated that, owing to the grave problems which now occupied the whole attention of the Government, the pressure upon Parliamentary time, and the lack of agreement on the subject throughout all sections of the National Government, he could not at present in any way promise that the Government would initiate any legislation upon the subject.[1]

House of Lords (Reading of Speeches).—On June 17[2] the following motion was moved by the Earl of Crawford:

> That in the opinion of this House the growing practice of reading speeches is to be deprecated as alien to the custom of this House, and injurious to the traditional conduct of its debates.

The mover of the motion in his opening speech said that they would cease to be a deliberate assembly if they ceased to deliberate and fell into the easy-going habit of reading their speeches. There were occasions on which it was correct to read speeches in that House or in the House of Commons: when a motion of confidence had to be made; where a personal explanation was desired; or where some subject dealing with the intricacies of finance or of naval construction required a series of carefully-prepared phrases or facts. But those were rather in the nature of announcements and pronouncements. The growing tendency to read speeches undoubtedly spoiled debates. The noble Lord went on to remark, that people read their speeches because they had not mastered the subject-matter of their address. Set speeches inevitably lead to set debates. He had a strong impression that this growth of the practice of reading speeches tended to increase the conversation of Peers during the debates.

Lord Snell remarked, that the ideal debate in that House would be one of free and spontaneous discussion, where thought clashed with thought in the hope that at the end they would have seen the weakness in their opponent's armour and come to some generally useful conclusion. The styles and the atmospheres of the two Houses differed. Disraeli once said—quoted the noble Lord—

> "A man may speak very well in the House of Commons and fail very completely in the House of Lords. There are two distinct styles requisite."

Lord Halifax observed, that there were, and always will be, two elements in any speech—one the actual speech itself

[1] *The Times*, July 14, 1936.

[2] 101 H.L. Deb. 5. s. 82 to 119. It is regretted that space admits of only a brief résumé of some of these excellent speeches being given.—[ED.]

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House of Lords (Reading of Speeches).—On June 17[2] the following motion was moved by the Earl of Crawford:

> That in the opinion of this House the growing practice of reading speeches is to be deprecated as alien to the custom of this House, and injurious to the traditional conduct of its debates.

The mover of the motion in his opening speech said that they would cease to be a deliberate assembly if they ceased to deliberate and fell into the easy-going habit of reading their speeches. There were occasions on which it was correct to read speeches in that House or in the House of Commons: when a motion of confidence had to be made; where a personal explanation was desired; or where some subject dealing with the intricacies of finance or of naval construction required a series of carefully-prepared phrases or facts. But those were rather in the nature of announcements and pronouncements. The growing tendency to read speeches undoubtedly spoiled debates. The noble Lord went on to remark, that people read their speeches because they had not mastered the subject-matter of their address. Set speeches inevitably lead to set debates. He had a strong impression that this growth of the practice of reading speeches tended to increase the conversation of Peers during the debates.

Lord Snell remarked, that the ideal debate in that House would be one of free and spontaneous discussion, where thought clashed with thought in the hope that at the end they would have seen the weakness in their opponent's armour and come to some generally useful conclusion. The styles and the atmospheres of the two Houses differed. Disraeli once said—quoted the noble Lord—

> "A man may speak very well in the House of Commons and fail very completely in the House of Lords. There are two distinct styles requisite."

Lord Halifax observed, that there were, and always will be, two elements in any speech—one the actual speech itself

[1] *The Times*, July 14, 1936.

[2] 101 H.L. Deb. 5. s. 82 to 119. It is regretted that space admits of only a brief résumé of some of these excellent speeches being given.—[ED.]

and the other the thought that was behind the speech. It was a question on which opinion would always differ as to which was better—a good speech badly delivered that was worth reading afterwards, or a speech that was in itself bad but still at any rate conveyed the personality of the speaker, although, devoid of that personality, it would not deserve reading by a wider circle. When did a note cease to be a note and become a manuscript which paralyzed their thoughts and powers of expression and interfered with their ability to get in contact with the thoughts and minds of those in other parts of the House? They should all feel it to be of the greatest importance that their House should be at pains to continue to justify the reputation at present enjoyed by its debates. That reputation would certainly be prejudiced if it were ever to travel far along the road of changing its character of a debating chamber for that of a prize essay society. That would be a disaster.

Lord Rankeillour said, that he thought it quite impossible for those unhappy Junior Ministers, who had to go from department to department and present to the House such crumbs of argument as their departments allowed them, to present their arguments without having them written down.

The Earl of Crawford in his reply observed that it had been a real debate. There had been no read speech that afternoon; there had been no intrusion of typewriting. He objected to typewritten speeches because they had ruined debate. The written speech was not a debating speech.

Question on the motion was put and agreed to.

House of Lords (Ministerial Representation).—On July 23,[1] Lord O'Hagan (on behalf of another Peer) moved to resolve:

> That in the opinion of this House it is to be deprecated that neither the Minister nor the Parliamentary Secretary of the Ministry of Agriculture and Fisheries is a Member of this House, whereby the agricultural interest is injuriously affected; and to move for papers.

After a sympathetic discussion, the motion was withdrawn.

House of Lords (Irish Representative Peers).[2]—On May 8,[3] in the House of Commons, the Home Secretary (Rt. Hon. Sir J. Simon), in reply to a Question, said that he was aware that no election of Irish Representative Peers had been held since the formation of the Irish Free State in 1922; that there were at

[1] 102 H.L. Deb. 5. s. 142 to 157.
[2] *See* JOURNAL, Vol. IV, 50, *n.* 1.
[3] 311 H.C. Deb. 5. s. 2024-2025.

present certain vacancies in the number[1] of such Peers; that the Courts had decided that a Peer of Ireland was not entitled to vote at Parliamentary elections unless he had a seat in the House of Commons, but that he could not undertake to introduce legislation to deal with the matter.

House of Lords (Bishops'[2] Powers).—In reply to a Question in the House of Commons on February 12,[3] the Prime Minister (Rt. Hon. Stanley Baldwin) said that he was not prepared to take into consideration the introduction of legislation to restrict the power of the Lords Spiritual in the House of Lords to intervention in matters concerning the spiritual affairs of the Church.

House of Commons (Presentation of Address: Edward VIII and Queen Mary). On January 23[4] it was Resolved that Addresses of condolence upon the death of King George V be presented to King Edward VIII and to Queen Mary. Motion was made that the Address to Queen Mary be presented by certain M.P.'s named in the Motion. That to His Majesty was presented by a deputation representing, in accordance with the practice in the case of the Address to a new Sovereign, all shades of political opinion in the House and consisting of Members of the Privy Council, headed by the Prime Minister. When the swearing-in of Members had been completed on February 4,[5] the Treasurer of the Royal Household (Sir G. Penny, Bart.) came to the Bar, and announced that he had a Message from the King in reply to the House of Commons' loyal and dutiful Address, whereupon he advanced to the Table and delivered the Message, which was in similar terms to that delivered in the House of Lords.

House of Commons (Presentation of Address: George VI).—On December 14, following the Abdication of King Edward VIII,[6] and upon receipt of a Message from His Majesty George VI announcing his Accession to the Throne, it was resolved in both Houses[7] that the following Address be presented to His Majesty:

> That an humble Address be presented to His Majesty to offer to His Majesty our loyal thanks for His Gracious Message; to express to His Majesty our devotion to His

[1] There are at present 15 out of the original number of life Irish Peers in the House of Lords, which it was the object of one of the articles of the legislative union with Ireland (1801) to keep up to 100, exclusive of Irish Peers entitled to hereditary seats in the House of Lords of the United Kingdom (May, 13 Ed., p. 11).

[2] *See* JOURNAL, Vol. IV, 50, *n.* 1.

[3] 308 H.C. Deb. 5. s. 936.

[4] 308 H.C. Deb. 5. s. 10 to 22.

[5] *Ib.*, 24.

[6] *See* Article II hereof.

[7] 318 H.C. Deb. 5. s. 2241-2245; 103 H.L. Deb. 5. s. 780-787.

> Royal Person and to Her Majesty the Queen, and to assure His Majesty of our conviction that His Reign, under the blessing of Divine Providence, will safeguard the liberties of the country and promote the prosperity and contentment of his people.

House of Commons (Cabinet Ministers in the Lords).—On March 19,[1] a Member asked the Prime Minister if he intended to continue the present arrangement by which two of the Cabinet Ministers representing Defence Forces (the First Lord of the Admiralty and the Secretary of State for Air) did not sit in the House of Commons? The Prime Minister replied that he was not contemplating any change at present. To supplementary questions he replied that he was aware that it was preferable to have a rather larger representation in the House of Commons, but that it was not always feasible to do what one desired, but that he appreciated the importance of having the heads of the chief spending departments in the House of Commons.

House of Commons (Ministers and Press Articles).—On February 20,[2] question was asked whether, in view of the fact that some years ago it was decided by the Cabinet that no Minister of the Crown should be allowed to write articles for the Press, he had given permission, as an exception, for the publication of the articles now appearing in a certain Sunday newspaper under the name of the present Secretary of State for War. In reply, the Prime Minister (Rt. Hon. Stanley Baldwin) said, that the decision referred to did not apply to writings of a scientific or historical character.

House of Commons (Ministers' Salaries).—On March 25,[3] the following motion was moved:

> That, in the opinion of this House, the anomalies in the existing scale of Ministerial salaries should be removed as soon as possible, that all members of the Cabinet, with the exception of the Prime Minister, should receive the same salary irrespective of the office held, that the salary of the Prime Minister should be increased, and that all offices held by Ministers should be classified on the lines recommended in 1920[4] by a Select Committee of this House.

To which an amendment was moved, to leave out the words after "possible" and add, "but without incurring any

[1] 310 H.C. Deb. 5. s. 602-603.
[2] 308 H.C. Deb. 5. s. 1957-1958.
[3] 310 H.C. Deb. 5. s. 1251-1314.
[4] H.C. Paper 241 of 1920 (H.M.S.O., 1*d*.).

addition to the present aggregate expenditure." On Question put "That the words proposed to be left out stand part of the Question," the voting was, Ayes, 157; Noes, 101. The amendment was therefore defeated, and the Main Question agreed to: Ayes, 150; Noes, 56.

The Select Committee, above referred to, which heard evidence, recommended the following salaries, arrived at by certain increases and also certain reductions:

Prime Minister	.. .. ..	£8,000
Ministers—		
(12) Class I	.. .. ..	£5,000
(4) „ II	.. .. ..	£3,000
(6) „ III	.. .. ..	£2,000
(18) „ IV	.. .. ..	£1,500
(3) „ V	.. .. ..	£1,000

The Lord Chancellor and the Law Officers of England and Wales, Scotland and Ireland, being dealt with separately.

The Select Committee Report of 1930 (H.C. Paper No. 170) is very much on the same lines as that of its predecessor.

Further Questions on this subject were asked in the House of Commons during the year under review in this Volume, but definite action was not taken thereon until 1937, in the Volume for which year this subject will be continued.

House of Commons (Rights of Under-Secretaries).—On March 2,[1] in the House of Commons, a Member (Mr. Garro Jones) asked the Prime Minister whether he was aware that the Secretary of the Department of Overseas Trade was by the Statute creating his office required to discharge the functions of an Under-Secretary of State for Foreign Affairs; that while under that Statute such Minister was absolved from incapacity to sit and vote in the House of Commons, the 6 remaining Under-Secretaries were protected by no such provision; that, therefore, the Minister above first-mentioned. being classified as an Under-Secretary, brought the number of Under-Secretaries sitting in such House to 7, of whom 6 came within the penal provisions of the House of Commons (Vacation of Seats) Act, 1864;[2] and whether, in the light of these statutory provisions, he would take conference with the Law Officers of the Crown.

In reply the Prime Minister referred the Member to the Under-Secretaries of State Act, 1929.[3]

[1] 309 H.C. Deb. 5. s. 997-998.
[2] 27 and 28 Vict., c. 34.
[3] 20 Geo. V, c 9.

The Member then raised the matter as a question of Privilege, but Mr. Speaker did not accept that a *prima facie* case had been made out, and invited the Member to confer with him.

House of Commons (Procedure).—On March 30,[1] in the House of Commons, a Member asked the Prime Minister:

(1) whether he is prepared to consider the appointment of a representative Committee of the House to consider an amendment of the Standing Order allocating time for Private Members' business in order that, if possible, more of the time of the House may be devoted to normal legislative business.

(2) whether he is prepared to consider the desirability of imposing by Standing Order a limitation on the time occupied by individual Members addressing the House in order to facilitate the avoidance of unnecessary repetition, or, alternatively, to provide that typewritten and manuscript speeches should be printed and circulated instead of being read by Members in Debate?

The Prime Minister replied that no useful purpose would be served by such an inquiry, the procedure of the House having been considered by Committees as recently as 1931 and 1932. No satisfactory remedy for a time limit in the length of speeches had been found. The Prime Minister suggested that the solution rests with the Hon. Members themselves, and commended to their notice remarks made on various occasions by Mr. Speaker.

House of Commons (Private Bill Procedure).—In reply to a Question in the House of Commons on November 26,[2] the Prime Minister said, that at the request of the Chairman of Ways and Means, the Government proposed to set up a Select Committee with the following terms of reference:

> To consider the procedure on Private Bills containing clauses commonly known as "Local Legislation" clauses, and the respective functions of the Chairman of Ways and Means and the Committee of Selection (other than the selection of Members to serve on Committees), in relation to Private Bills; and to report whether any alteration in such procedure or any re-arrangement of such functions is desirable.

House of Commons (Budget Disclosure Inquiry).—In reply to a Question in the House of Commons on May 4,[3] the Chancellor of the Exchequer (Rt. Hon. Neville Chamberlain) informed the House that with reference to an alleged leakage

[1] 310 H.C. Deb. 5. s. 1625-1626.
[2] 318 H.C. Deb. 5. s. 551, 1518-1519. *See also* 315. *Ib.*, 1691-1692 and H.C. Paper 162 of 1936.
[3] 311 H.C. Deb. 5. s. 1345-1349.

of Budget secrets it had been decided to set up a Judicial Tribunal under the Tribunals of Inquiry (Evidence) Act, 1921[1]), presided over by a High Court Judge with two eminent members of the Bar. For this purpose a resolution of each House was required, and he was tabling such a resolution that day.

In reply to a Question by the Leader of the Opposition (Rt. Hon. C. R. Attlee), who asked why this method had been chosen instead of the method of Select Committee which was more usual in a matter of that kind, Mr. Chamberlain said:

> Cases which have occurred previously were exactly in point, and they show how very undesirable it is that this kind of matter should be investigated by a Select Committee of the House of Commons, where one cannot be quite certain that all Members would be strictly impartial.

On the next[2] day, the following Resolution was passed by both Houses of Parliament:

> That it is expedient that a tribunal be established for inquiring into a definite matter of urgent public importance, that is to say, whether, and, if so, in what circumstances and by what persons, any authorized disclosure was made of information relating to the Budget for the present year, or any use made of any such information for the purposes of private gain.

On May 6,[3] in reply to a Question (by Private Notice) asked by Mr. Attlee, the Chancellor of the Exchequer informed the House of the personnel of the Tribunal.

The Report of the Tribunal was published as Command Paper No. 5184 (Session 1935-1936), the Minutes of Evidence being issued separately as a Home Office publication.[4]

House of Commons (Committee of Supply).—An interesting situation arose in the House of Commons on April 1,[5] on the motion, "That Mr. Speaker do now leave the Chair," on going into Committee of Supply on the Civil Estimates, when a Member (Miss Wilkinson) moved the following amendment (duly seconded), namely, to leave out from the word "That," to the end of the Question, and to add instead thereof:

> in the opinion of this House, the time has come when the Government should give effect to the Resolution adopted by the House on the 19th May, 1920, and forthwith place women employed in the common classes of the Civil Service on the same scales of pay as apply to men in those classes.

[1] 11 Geo. V, c. 7.
[2] *Ib.*, 1707.
[3] 310 H.C. Deb. 5. s. 2017 to 2096.
[4] H.M.S.O., 5*d.* and 17*s.* 11*d.* respectively.
[5] 311 H.C. Deb. 5. s. 1551 to 1580.

On the Question being put—" That the words proposed to be left out stand part of the Question, the House divided: Ayes, 148; Noes, 156; and all the words after the first word " That " were omitted.

The Parliamentary Secretary to the Treasury (Captain Margesson) then moved:

> That Mr. Speaker do now leave the Chair.

whereupon the Leader of the Opposition (Rt. Hon. C. R. Attlee) moved:

> That this House do now adjourn.

Mr. Attlee's motion to adjourn now superseded Captain Margesson's motion, for the Speaker leaving the Chair.

Mr. Speaker then put " the Question as amended," namely:

> " That, in the opinion of this House, the time has come when the Government should give effect to the Resolution adopted by the House on the 19th May, 1920, and forthwith place women employed in the common classes of the Civil Service on the same scales of pay as apply to men in those classes."

The House divided: Ayes, 134; Noes, 149.

Upon which Captain Margesson again moved, " That Mr. Speaker do now leave the Chair," and Mr. Attlee, " That this House do now adjourn."

The position now was, that the motion, " That the Speaker do now leave the Chair," had been defeated, and the Question before the House was, " That this House do now adjourn."

During the debate a Member (Mr. Mabane) then rose on a Point of Order to quote from May,[1] as follows:

> The Committee of Supply must be kept on foot throughout the Session, until closed in due course (see p. 538). Accordingly, when the House, by the acceptance of an amendment to the question for the Speaker's leaving the Chair or by negativing that question, has thereby superseded the Order of the Day for the Committee of Supply, that order is revived by a Motion made forthwith, either that the House will immediately or upon a future day resolve itself into the Committee of Supply.

Mr. Speaker, on being appealed to by the Leader of the Opposition, said that his interpretation of the position was that the Question, " That the Speaker do now leave the Chair," had not been decided; that there were several precedents on the point, but he had not had time to look them

[1] 13 Ed., p. 528.

up, and that the passage from May, quoted by Mr. Mabane, was quite correct. " The Patronage Secretary,"[1] continued Mr. Speaker,

> could have moved that the House do resolve itself into Committee of Supply forthwith or upon a future day, and that Motion could have been debated and voted upon. If it was carried, then the Motion, " That Mr. Speaker do now leave the Chair," could have been put again. That would have been the correct procedure.

After further debate, the Prime Minister agreed to an appeal from various quarters of the House to adjourn, which was put and agreed to at " Fourteen Minutes before Nine o'clock."

On the following day[2] the Leader of the Opposition again brought up the matter of the Government's defeat. The Prime Minister, in the course of his remarks, admitted there was a great deal of confusion in the House as to what really happened on the previous day. The first division which cleared the way in the wording of the amendment to be put, went against the Government. . . . What really happened in effect was that the House within 5 minutes gave a contrary vote. . . .

During the debate Mr. Speaker acknowledged that his difficulty was that there appeared to be no precedent for the present situation, because on previous occasions either the motion, " That Mr. Speaker do now leave the Chair," had been defeated on a direct vote, or the amendment moved to that motion had been carried.

Mr. Speaker observed:

> On this occasion neither of these things occurred. It is true that the way I put the Question is the way the Question is always put on the Motion " That Mr. Speaker do now leave the Chair " and an Amendment has been moved— " That the words proposed to be left out stand part of the Question." That is really only a preliminary to putting the Question that the words of the Amendment be added. It is stated in Erskine May that a vote against words standing part of the Motion, " That the Speaker do now leave the Chair," is usually taken as a vote for the Amendment, and not as a direct vote on the Question, " That Mr. Speaker do now leave the Chair "; the vote given was for the Amendment. The natural sequel to that, which I am sorry to say I omitted, was to put the Question, " That those words be there added." I ask the House to forgive me for not having put that Question. Had I put the Question, the word " That " would have remained part of the original Motion. But what I put was what would be a substantive Motion, so that the whole Amendment included the word " That." On

[1] Captain Margesson. [2] 310 H.C. Deb. 5. s. 2136 to 2158.

that occasion the Amendment was lost. So that we have the curious circumstance that the vote in the first instance was in favour of the Amendment, and then the vote 10 minutes afterwards was against the Amendment. That puts me rather in a quandary as to what is the proper procedure to adopt, but the rules laid down for the practice of the House relieve me of any responsibility. It is laid down that:

> the Committee of Supply must be kept on foot throughout the Session.

According to Erskine May, as was stated by the hon. Member for Huddersfield (Mr. Mabane) last night:

> when the House, by the acceptance of an Amendment to the question for the Speaker's leaving the Chair or by negativing that question, has thereby superseded the Order of the Day for the Committee of Supply

in the case where the first motion was defeated or an amendment was accepted,

> that Order is revived by a Motion made forthwith, either that the House will immediately or upon a future day resolve itself into the Committee of Supply.

That is the rule laid down in Erskine May dealing with similar circumstances to those which have arisen. As to whether it is the proper thing to do, to debate the whole question on the Question, "That this House do resolve itself into Committee of Supply," it is not really for me to say before I hear the discussion as to whether it is in order or not; but certainly the question of putting down a Motion, that the House do resolve itself into Committee of Supply on an early day, is the proper procedure to take.

In reply to a question as to which amendment would be taken should the House come to the motion again, Mr. Speaker said that:

> on first going into Committee of Supply, when the Motion is "That Mr. Speaker do now leave the Chair," the Rt. Hon. Gentleman knows that we have a ballot and once a Member has succeeded in the ballot he puts down an Amendment to the Motion, "That Mr. Speaker leave the Chair. . . ." Erskine May lays it down that on the first occasion of going into Committee of Supply only one Amendment is taken; that is to say, that if the Amendment is negatived no further Amendment is taken. On an occasion such as this, when the same Motion will have to be put on another day, I think it remains within my discretion whether I take the Amendment or not. That will be the position.

The Leader of the Opposition said that the most recent precedent was in 1923,[1] when the motion, "That Mr. Speaker do leave the Chair," was defeated. It was then put down again and the Speaker's predecessor ruled that that was on

[1] Commons Manual, 6th ed. (1934), p. 207.

first going into Committee of Supply, because owing to the defeat of the original motion, the House had not gone into Committee of Supply. On the present occasion there was a variation, because the amendment was actually put and carried, but at the same time the substantive motion was defeated. The effect of that was that the motion, "That the Speaker do leave the Chair," was defeated. It now had to be put again. What he (the Member) asked was whether that action did not revive the right to raise an amendment on first going into Committee of Supply, because the House had not yet gone into Committee of Supply on the Civil Estimates.

Later in the debate Mr. Speaker said, he could not draw on any precedent when precedents were contradictory, and

> that if this Motion on Monday is carried and the Question arises that I leave the Chair, I am inclined at the present moment to allow an Amendment which is in my discretion, so as to safeguard the rights of the House.

When asked whether Miss Wilkinson would be able to put down her amendment again for Monday, Mr. Speaker said: "The answer is definitely, 'no.'"

On April 6,[1] the Prime Minister in moving:

> That this House will Tomorrow resolve itself into Committee of Supply

said:

> Members will have noticed that among the Orders of the Day, most exceptionally, following the precedent of last Friday and Thursday, there is no Order for Supply-Committee, without which the list of Orders seems to be incomplete. That incompleteness we have to remedy before the business of the House can be properly proceeded with. Events are fresh in Members' minds as to the cause that has led to this Motion, and they will remember that the Government suffered a defeat and are paying the usual consequences of that defeat.
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> • • • • •
>
> There are cases, of course, in which a Government defeat is a clear indication that the Government had lost the confidence both of the House and of the country, and in that case there is but one course for it, that is either to resign or to dissolve. I do not take the view that last Wednesday's proceedings—important as they may have been—showed that the Government has lost the confidence either of the House or of the country.
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> • • • • •
>
> It was suggested by the Right Hon. Gentleman who leads the Opposition that it is the duty of the Government to give effect

[1] 310 H.C. Deb. 5. s. 2441 to 2446.

> forthwith to what he described as the will of the House as expressed in the amendment of the Hon. Member for Jarrow (Miss Wilkinson). If the purpose of the amendment were carried out the result would be an increase of expenditure, and the House by its own Standing Orders has put it out of its own power to effect such an increase, except on the recommendation of the Government in power at the time . . . the principle involved in the amendment is one which the Government cannot accept. . . . I must ask for the support of the House as a matter of confidence.

At the conclusion of the debate, the Question, " That this House will tomorrow resolve itself into the Committee of Supply," was put and carried: Ayes, 361; Noes, 145.

House of Commons (Witnesses).—With reference to the Article in last issue, on " Witnesses,"[1] the recommendation of the Select Committee contained in paragraph 15 of its Report[2] has since been embodied in House of Commons Standing Order No 56A, which reads:

> 56A. No document received by the clerk of any select committee shall be withdrawn or altered without the knowledge and approval of the committee. (Adopted, July 15, 1935.)[3]

House of Commons (Member's Apology).—On July 28,[4] Mr. F. S. Cocks (Broxtowe) asked leave to make a personal statement concerning a reflection he had made in unParliamentary terms upon the Secretary of State for the Home Department in the House on the 24th *idem.*[5] The Member asked leave to withdraw his observation and to express deep regret for having made it, as well as to tender his sincere apology to Mr. Speaker, to the Home Secretary and to the House. Upon which the Home Secretary (Rt. Hon. Sir John Simon) thanked the hon. Gentleman and said that he had never regarded his remark as having been seriously made, and that he very willingly accepted his withdrawal and apology.

House of Commons (*Hansard*).—In reply to a Question by a Member in the House on November 26,[6] as to whether a decision had yet been reached as to the setting up of the Parliamentary Debates in a type and style different from that now used, the Financial Secretary to the Treasury (Lt.-Col. Colville) said, that arrangements had been made for placing in the Library, for the information of Members, copies of the daily part of the House of Commons debates printed with a

[1] JOURNAL, Vol. IV, 114-125.
[2] Com. Paper 166, 1936.
[3] Com. Paper 34, 1935.
[4] 315 H.C. Deb. 5. s. 1323-1324.
[5] *Ib.*, 845.
[6] 318 H.C. Deb. 5. s. 554.

new face type, which it was proposed to introduce early next year.[1]

House of Commons (M.P.'s Free Sleeping Berths).—On July 31,[2] in reply to a Question by the Leader of the Opposition, a Minister, on behalf of the Chancellor of the Exchequer, said that representations had recently been received from a number of Members of all parties whose constituencies were distant from London, urging that the present travelling facilities for Members be extended by the provision of free first-class sleeping berths between London and their constituencies, and that the Government were prepared to accept the proposal, the new arrangement to come into operation on the re-assembly of the House after the Summer Recess.

House of Commons (Ventilation).—The First Commissioner of Works[3] (Lord Stanhope) issued, in July,[4] for the information of M.P.'s, a Note on the Ventilation of the House of Commons. After explaining the system and referring to the tests that had been made from time to time, the Note stated that investigations had been made by the Government Chemist as to the quality of the air in both the Lords and Commons and the question was remitted to the Joint Committee of the Department of Scientific and Industrial Research and the Medical Research Council on research in heating and ventilating. Hygrometers for measuring the relative humidity or amount of moisture in the air were to be installed. Some temporary radiant electric panels were also to be installed in the Commons for heating and, if successful, the system completed. These systems, together with provision for the ventilating and cooling of the Chamber in the summer months, might cost to complete altogether about £20,000. It was stated that authority would be sought later for installing a similar system in the House of Lords.

House of Commons (Members and Microphones).—In reply to a Question in the House of Commons on February 24,[5] as to whether his attention had been drawn to the bad acoustic properties of the House of Commons, and the difficulties experienced by Members sitting on the back-benches in hearing the speeches of Ministers; and would he consider

[1] This improved face type will be seen in Volume 319 (January 19 to February 5, 1937). So many of the Oversea Parliament *Hansards* are printed in a small type, that a comparison of their type with that in H.C. Deb. Volumes 318 and 319 may be instructive.—[ED.]

[2] 315 H.C. Deb. 5. s. 1858.

[3] *i.e.*, P.W.D.

[4] *The Times*, July 30, 1936.

[5] 309 H.C. Deb. 5. s. 27.

having installed in the House microphones and loud-speakers, the First Commissioner of Works said:

> I do not consider that the acoustics of this Chamber are unsatisfactory and I knew of no system of microphones and loud-speakers, which would be suitable for installation in this House, when it is the practice for hon. Members to speak from different places.

The Minister was then asked if he would consider introducing the same system that is installed in "another place," to which he replied:

> No, for the reason I have already given. The reason why the system referred to works in "another place" is, I gather, because the microphones are on the Table there, but as hon. Members in this House speak from many different parts of the House, it would not be practicable.

Another Member then asked as a supplementary Question:

> although my Right Hon. Friend can be heard anywhere in the House when he replies at Question Time, would it not be desirable to have some installation of the kind mentioned, in the Press Gallery, so that the answers to questions given by some other Ministers might be heard in the Press Gallery?

To which the Minister replied:

> I remember Mr. Speaker once saying that anybody who was worth hearing could be heard in this House.

House of Commons (Pensions for M.P.'s).—On March 19,[1] a Member asked the Chancellor of the Exchequer whether, seeing that M.P.'s only received an annual sum[2] for expenses necessarily incurred while carrying out their Parliamentary duties, he would consider an optional pension scheme for M.P.'s who had served one or more constituencies for 15 or 20 years or more and had attained 60 or 65 years of age, such optional pension to be paid only after ceasing Membership of the House of Commons. The reply was: "I do not feel able to entertain this suggestion." In reply to a supplementary Question, the Chancellor said that he would be pleased to have representations from any Member desiring to discuss the Question with him.[3]

Mother of Parliaments.—History of Parliament—Biographies of the Members of the Commons House, 1439-1509. The Committee on the History of Parliament.

This history was planned after a Committee, appointed by

[1] 310 H.C. Deb. 5. s. 611, 612.
[2] £400.
[3] The treatment of this subject will be continued in Volume VI of the JOURNAL, a Departmental Committee of Inquiry having been appointed in July, 1937.—[ED.]

the Prime Minister, had reported that sufficient material was available for a record of the personnel and politics of the House of Commons from A.D. 1264, and had recommended that the work should be undertaken.

A Committee was accordingly formed after a joint meeting of members of both Houses to supervise the work. The History will describe the people in Parliament, their ideas, standing and politics, and will trace the gradual growth of Parliamentary representation and government from its earliest beginnings in A.D. 1264 to the Representation of the People Act of 1918. The story of these 650 years of slow development will be divided into 17 or 18 periods, to each of which two or three volumes will be devoted. These volumes will provide:

BIOGRAPHIES, arranged in alphabetical order, of the Members of the Commons House, together with a commentary on the facts disclosed in these biographies.

LISTS, with ample identification, of all the Members of both Houses in each Parliament, arranged in chronological order, showing by-elections and the numbers voting in each contested election.

PREFACES to the account of each Parliament will summarize what is known of its composition and work.

A series of general volumes, including documents, debates, etc., illustrating the growth of the Institution, will also be provided. An account of the Parliaments between 1439 and 1509 will form the subject of three volumes. The first of these, compiled by the Rt. Hon. J. C. Wedgwood, M.P., and Miss A. D. Holt, M.A., is now published. When completed it is expected that the History will comprise some 40 volumes.[1]

Palace of Westminster (Stonework).—On February 24,[2] in the House of Commons, the First Commissioner of Works (Rt. Hon. W. Ormsby-Gore), in reply to a Question as to what arrangements were made for the disposal of stone removed from the Houses of Parliament in connection with the restoration work now in progress, said: Large stone suitable for rock gardens is being disposed of in large or small quantities at 10*s.* a ton, and smaller stone at 5*s.* a ton, purchasers to pay or provide for cartage. Ornamental pieces suitable for sun dials, garden ornaments, etc., are available at various fixed prices.

[1] H.M.S.O. Super Roy. 8vo lvi+984 pp. Six coloured plates, £2.0.10, 6 lb. 14 oz.

[2] 309 H.C. Deb. 5. s. 27-28.

The stone available, added the Minister, may be seen on application to the Superintendent of Works (Mr. Holman) at the Houses of Parliament, Westminster.

Captain M. J. Green, the Clerk of the Union Senate, when recently in England, arranged to obtain a fine specimen of an unicorn from the Royal Arms, which has been erected, with an inscription, in the main entrance Lobby of the Houses of Parliament at Cape Town.

In reply to another Question on this subject on November 23,[1] the Parliamentary Secretary to the Minister of Health, on behalf of the First Commissioner of Works, said:

> It is anticipated that the restoration of the stonework of the exterior of the Houses of Parliament will be completed by March 1942.

Palace of Westminster (School Privilege).[2]—Westminster School, founded in 1339, occupies some of the buildings of the former Westminster Abbey. In olden times the Abbot of Westminster was a Peer of Parliament, and possessed many privileges, now enjoyed by the Dean. At one time the Commons sat in the Chapter House of the Abbey. The school also takes day boys and they are to be seen in London during term, in dark coat and trousers, wearing a black silk top hat, when going to and from school. At the Coronation ceremony the boys enjoy the special privilege of witnessing the ceremony and shouting " Vivat " as the King enters.[3]

On Saturday, May 16, the privilege of Westminster School of landing at the water stairs of the Palace of Westminster, revived last year after a lapse of a century, was again exercised when the first Eight, accompanied by two launches carrying masters and guests, rowed from Putney and disembarked at Black Rod's Stairs. Until 1864, the school boat-houses were on the Lambeth shore of the River Thames, just opposite the Palace, where St. Thomas's Hospital now stands, and until the Great Fire of 1834, which destroyed the old Houses of Parliament, the boys were accustomed to make their way through the Palace to the waterside and ferry across to their boats. The rebuilding after the fire naturally prevented their usual access, and in 1838 the then Headmaster asked the Home Secretary that a temporary " floating quay " might be built by the wharves in Abingdon Street, and that at the completion of the work, stairs might be made in the Palace for the use of the school, but no school crew seems to have set foot

[1] 318 H.C. Deb. 5. s. 25, 26.
[2] *Whitaker's Almanack*, 1937, p. 225.
[3] *The Times*, May 18, 1936.

on them until, by the courtesy of the Lord Great Chamberlain, the privilege was revived last year.

Palace of Westminster (Rights of Guides).—It was reported in *The Times*,[1] that one H. J. Cole, a guide, appeared on remand at Bow Street Police Court, charged with obstructing a Police Officer at the entrance to the House of Commons on January 29. It appears that the defendant claimed the right to enter the Palace of Westminster and refused the right of the police to bar his admission. Before the adjournment of the hearing *sine die*, the magistrate said that his present impression was that the Lord Great Chamberlain,[2] particularly when neither the House of Lords nor the House of Commons was sitting, had the right to do what the defendant said he had no right to do. There was no written evidence, or very little, on the subject; but the matter had been investigated at considerable length by a Joint Select Committee in 1901,[3] and he would examine their report before giving his decision.

The same person was defendant in a similar case[4] in respect of the Monday following the 29th January.

On the 8th May, Cole was fined 20*s*. and ordered to pay one guinea costs for obstructing a certain police officer in the execution of his duty. Cole gave notice of appeal. In giving judgment on such date the magistrate said[5] that he found that the police officer received a written order from the secretary to the Lord Great Chamberlain dated 6 November, 1935, to exclude the defendant. On the appointment of each new Serjeant-at-Arms the Lord Great Chamberlain issued warrants for the custody of such parts of the Palace of Westminster as were occupied by the House of Commons. Although no such warrants were issued to the House of Lords, they also exercised an inherent right to make regulations for the use of that part of the Palace they occupied. It appeared also that all repairs and structural work were carried out by the Office of Works,[6] though a request or instructions as regards the House of Lords was issued by the Lord Great Chamberlain.

Nevertheless, notwithstanding the powers of the House of Lords, the Serjeant-at-Arms, and Office of Works, the Lord Great Chamberlain remained the nominal head of all authority. He exercised a general authority at all times, and when the Houses were not sitting a complete one. The finding of the Joint Select Committee and Halsbury's *Laws of England*

[1] March 23, 1936.
[2] No. 212, 1901.
[3] *Ib.*, May 8, 1936.
[4] *See also* JOURNAL, Vol. III, 35-36.
[5] *The Times*, March 25, 1936.
[6] *i.e.*, P.W.D.

(Vol. 21, p. 631) was that when the Houses were not sitting the Lord Great Chamberlain had an absolute authority over all the buildings and issued orders for the admission of strangers. On the day of the alleged offence the Houses were not sitting, and he found that the constable was obstructed while executing orders lawfully given.

Acoustics.[1]—On March 11,[2] an address before the Royal Society of Arts, London, was given by Mr. G. W. Kaye, Superintendent of the Physics Department of the National Physical Laboratory on "The Acoustics of Halls," of which the following references may be of interest to our readers.

> The lecturer opened by saying that the folly of erecting auditoriums, however beautiful and dignified, in which it was impossible to hear either speech or music to advantage, was becoming recognized. There were many halls in this country, particularly those domed monuments erected in prosperous times a generation ago, the acoustics of which were lamentable. Thanks mainly to the pioneer work of W. C. Sabine and the American school of workers, together with that of Hope Bagenal and others in this country and in Germany, architectural acoustics was no longer shrouded in mystery and empiricism, but was a science of which most of the physical principles were simple and well established and the practical outcomes were mainly predictable. In the meantime there were grounds for encouragement, and the architectural profession was no longer likely to embark on a big building project without seeking advice on the several acoustic aspects. This was exemplified by the new Palace of the League of Nations, in which the acoustics of the large Assembly Hall (with a volume of 700,000 c. ft. and seating some 2,000 persons) had been entrusted to the Architectural Acoustics Committee of the Department of Scientific and Industrial Research.
>
> The requirements for satisfactory hearing in a hall were simple. There should be freedom from troublesome extraneous noise; the shape and size of the hall should be such that the loudness of sounds was everywhere adequate and uniform; there should be appropriate degrees of reverberation throughout the speech and musical ranges of frequencies, so that rapidly succeeding sounds did not overlap unpleasantly and the original quality of speech and music was not impaired.

Discussing the size and shape of a hall, the lecturer said, a properly designed ceiling was by far the most effective reinforcer of sound by reflection. The principle was exemplified very well by a comparison of the House of Lords and the House of Commons, which were erected in 1848. Both Houses were given very high ceilings and their acoustics were manifestly bad. The complaints in the Commons were so

[1] *See also* JOURNAL, Vol. I, 50-52. [2] *The Times*, March 12, 1936.

great that the Chamber was fitted after two years with a false glass ceiling about 35 ft. high,[1] a remedy which was completely successful. The volume was now 127,000 c. ft., and the reverberation period with a full House about 1·5 seconds.

Victoria (Constitutional Amendment).—During the year amendments to the Constitution of particular interest were made for the following purposes:

(*a*) to make provision for an additional salaried Minister of the Crown (Act No. 4367).
(*b*) to make provision for the re-division of the State of Victoria into Electoral Provinces for the Legislative Council and preferential voting at General Elections for the Legislative Council, and for other purposes (Act No. 4409).
(*c*) to provide for the retirement of Judges of the Supreme Court of Victoria at 72 years (Act No. 4437).

During the year 1935, the following amendments of particular interest were made to the Constitution:

(*d*) to allow railway employees and civil servants to contest any Parliamentary election without having to resign from the service (Act No. 4334).
(*e*) to provide for compulsory voting at elections for the Legislative Council and for a new method of compiling the rolls (Act No. 4350).

South Australia (Electoral Reform).—An Act, the Constitution Act Amendment Act, was passed during the 1936 Session (and reserved for His Majesty's Assent) reducing the number of Members of the House of Assembly from 46 to 39, to be returned by 39 single electorates instead of 46 Members returned by 19 constituencies. This amendment of the Constitution is to take effect at the next General Election of the House of Assembly, which, in ordinary circumstances, will be held early in 1938. The Legislative Council is not affected, except in respect to an adjustment of boundaries of Districts to conform with the altered House of Assembly Districts.

New Zealand (Constitutional Amendment).—*Parliamentary Under Secretaries.*—Strictly speaking, there was no amendment to the Constitution during the year under review, but provision was made for the appointment of Parliamentary Under-Secretaries under the Civil List Amendment Act[2]

[1] *See* JOURNAL, Vol. IV, 37 on alterations to Union House of Assembly.
[2] 1 Edw. VIII, No. 21.

from amongst the Members of either House to any of the Ministerial Offices specified in the Third Schedule to the Principal Act,[1] including any other such office, whether created before or after the passing of Act No. 21. Vacation of such office, however, is necessary upon ceasing to be a Member of either House or upon dissolution of Parliament. Parliamentary Under-Secretaries are required, as soon as may be after appointment, to take an oath of office as prescribed in the Schedule to the Act, administered by any Member or by the Clerk of the Executive Council. A salary of £600 p.a. is attached to an Under-Secretaryship, with the usual allowances to which Members of such Council are entitled. The functions of an Under-Secretary are described as, such of the powers, duties and functions of a Minister of the Crown, under the direction of the particular Minister to whom such Under-Secretary is assigned, as may be conferred, but, with the right of such Minister to exercise any powers, etc., assigned to his Under-Secretary.

Increase in Cabinet.—Provision is also made in the Act for payment to be made to 11 Ministers of the Crown, in addition to the Prime Minister, in place of 10 such Ministers, without the increase of the total salaries, individual salaries being reduced accordingly. In respect of each portfolio held by a Minister, there are one or more of the private members attached in an advisory capacity and the Minister apparently confers with them and allots certain matters for their investigation and recommendation.

Concessions to M.P.'s.—As the legal point had been raised as to whether the grant of rail and other concessions to Members of Parliament was a payment in addition to their Parliamentary honorarium, the Act provides[2] that the appropriation of moneys providing benefits or privileges of a specified kind to Members or former Members of Parliament or to members of their families shall be sufficient authority for such grant.

Union of South Africa (Coronation Oath).—During the year an Act[3] was passed, providing for an Oath to be administered to the King, either on assuming the government of the Union or at his coronation, the purport of which shall be that he will govern the people of the Union, and of any territory under its jurisdiction, according to the statutes agreed on in the Parliament of the Union and according to their other laws

[1] Civil List Act (11 Geo. V) (No. 31 of 1920).
[2] sec. 10.
[3] No. 7 of 1937.

and customs; and that he will cause law and justice, in mercy, to be executed in all his judgments. The other section of the Act empowers the Governor-General of the Union to appoint and authorize a person to administer the Oath abovementioned and to arrange with all or any of the other Members of the British Commonwealth of Nations for a collective Oath to be administered to and to be taken by the King in a form to be agreed upon: provided that the purport of the Oath as above set forth be embodied in such collective Oath.

Union of South Africa (Parliamentary Franchise).— During the year under review in this Volume, sec. 35 of the Union Constitution[1] was amended by the Representation of Natives Act,[2] an Act which, under the Constitution, as it sought to amend one of its " entrenched provisions,"[3] had to be passed at a Joint Sitting of both Houses of Parliament and supported by $\frac{2}{3}$ of its total number of Members. This Act, in addition to providing for other Native representation, to be dealt with later, removed all Native voters from the Parliamentary and Provincial Council voters' rolls in the Cape Province, where they voted with European voters, and transferred them to a special " Cape Native Voters Roll " divided into 3 additional and purely Native constituencies for the Union House of Assembly, and 2 such constituencies for the Cape Provincial Council, in both of which representation is by Europeans only. Under the Act of Union, Non-Europeans could be elected representatives in the Cape Provincial Council, but since the passing of the Representation of Natives Act abovementioned, representation of Non-Native Constituencies in the Cape Provincial Council will be confined either to Europeans or to Coloured Persons (*i.e.*, Non-Europeans, excluding Natives). This Act, however, did not take away the Parliamentary and Provincial vote from the Non-Europeans in the Natal Province, where owing to the required qualifications their number is small.

To understand the position in the Union today, in regard to the Parliamentary franchise, it is necessary to go back to the conditions prevailing immediately prior to Union in 1910, when the 4 present Provinces thereof were 4 separate " responsible government " Colonies, the Cape of Good Hope, Natal, the Transvaal and the Orange River Colony, which last-named in 1910 reverted to its old name of Orange Free State.

[1] South Africa Act, 1909 (9 Edw. VII, c. 9).
[2] secs. 33, 35, 137 and 152.
[3] No. 12 of 1936.

In the inland Colonies of the Transvaal and Orange River, the franchise was limited to European male adults, British born, or naturalized, of 6 months' residence. In the Cape Colony and Natal, the coastal Colonies, however, the Parliamentary franchise was more qualified.

In the two coastal Colonies the requirements as to age, sex and citizenship were the same. In the Cape, the franchise was open both to European and Non-European male adult alike who could write his name, address and occupation and who was the occupier for 12 months of property worth £75 within the electoral division for which he sought registration; or, had been in the receipt of salary or wages of not less than £50 p.a. for 12 months, provided he had resided during the last 3 months within the electoral division for which he claimed registration. There was also a special qualification in regard to persons on the voters' roll of Griqualand West.

In Natal, there was no educational qualification, but the voter must have resided in the Colony for 3 years and have (*a*) an income worth £96 p.a.; or (*b*) own immovable property within the constituency worth £50; or, rent immovable property in the constituency worth £10 p.a. Persons on the Utrecht and Vryheid Burghers Roll of the South African Republic, districts which were transferred from the Transvaal to Natal after the Anglo-Boer War of 1899-1902, were also qualified to vote in the absence of other qualifications. The process for qualification of a Non-European, however, was as follows: a "Native," which term was defined as including Coloured people, must have had (*c*) 12 years' residence in the Colony; (*d*) have been exempted from the operation of Native Law for 7 years; (*e*) have been recommended by 3 duly qualified European electors and have thereafter received a certificate from the Governor, the grant or refusal of which lay in discretion of the Governor-in-Council, entitling the voter to be registered as a Coloured voter. Further, no persons could so vote who were Natives, or descendants in the male line of Natives of countries who had not prior to May 23, 1896, possessed representative elective institutions founded on the Parliamentary franchise, unless they had obtained an order of exemption from the Governor-in-Council.

In regard to all 4 Colonies, there were the usual legal disqualifications, such as lunacy, treason, imprisonment, etc., with minor differences. Many of these, however, were after Union made more uniform, and the electoral laws consoli-

dated by Union Acts.[1] By Union Act No. 23 of 1926 special provision was made for diamond diggers in the Cape Province.

Apart from such minor exceptions, the four old Colonial franchises continued after Union until 1930, when by the Women's Enfranchisement Act,[2] the European male adult franchise of the Transvaal and Orange Free State Provinces was conferred upon all European adult females who were "Union Nationals," throughout the Union. In the following year, the European franchise was further extended by the Franchise Laws Amendment Act,[3] which applied the European male adult suffrage also to the coastal Provinces. Thus, property, wage and educational qualifications now only remain in the Cape Province for the non-Native non-Europeans who qualify for the general voters' roll. In the Natal Province, the special qualifications for the non-European franchise for the Union House of Assembly and Provincial Council remain as before, and on the general voters' roll.

The Representation of Natives Act abovementioned, which is of fundamental importance to the constitutional position of Natives as distinct from Europeans and Coloured persons in the Union of South Africa, makes special provision for:

(*a*) the representation of Natives in the Senate by (at present) 4[4] Senators of European descent (secs. 4 and 8-11); (*see also* para. (*e*) hereof).

(*b*) the representation of Natives in the House of Assembly by 3[5] European Members elected by the registered Native voters only of the Cape Province (secs. 6 and 12-15);

(*c*) the representation of Natives in the Provincial Council of the Cape Province by 2[6] Provincial Councillors of European descent elected by the registered Native voters of that Province (secs. 6 and 16-19); and

[1] Nos. 12 of 1918, 11 of 1926, and 24 of 1928.
[2] No. 18 of 1930. [3] No. 41 of 1931.
[4] These are in addition to the 40 Senators, 8 elected according to P.R. by the Members of the House of Assembly and of the Provincial Council of each of the 4 Provinces and 8 nominated by the Governor-General-in-Council, 4 of whom are selected "on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races."
[5] These are in addition to the 150 M.P.'s representing Union general constituencies elected by the European voters, and in the Cape Province together with the Coloured voters, as well as in the Natal Province together with a certain number of non-Europeans.—[ED.]
[6] These are in addition to the 61 Provincial Councillors elected by the general constituencies of the Province.

(*d*) a Natives' Representative Council of Native Members for the Union (secs. 20-29) consisting of 6 official Members, namely, the Secretary for Native Affairs and the 5 Chief Native Commissioners, 4 nominated Native Members appointed by the Governor-General, 1 for each of the electoral areas into which the Union is divided for the election of Senators (as above) and 12 Elected Native Members, 3 for each electoral area. In the Transkei all 3 will be elected by the electoral college. In the other electoral areas, such college, excluding the Native Advisory Boards, will in each case elect 2 Members and such Boards 1, thus ensuring the Native urban population in each of these areas will have at least 1 representative. The Non-Official Members of the Council hold their seats for 5 years;

(*e*) for the division of the Union into the following four electoral areas for the election of the 4 Senators under Act No. 12 of 1936 the delimitation is as follows:

(i) Natal Province.
(ii) Transvaal and Orange Free State Provinces.
(iii) Transkeian Territories.
(iv) Cape of Good Hope Province (excluding the Transkeian Territories).

These Senators are elected by electoral colleges, each composed of a certain number of voting units, which differ in the various electoral areas owing to differences in local conditions. The voting units of the electoral college for the Transkeian electoral area are the Native Members of the United Transkeian Territories General Council. The voting units in other electoral areas include the Chiefs of certain Tribes, local councils, Native Advisory Boards, and certain other persons or bodies of persons representing the Natives of the particular electoral area.

The Governor-General[1] is, however, empowered to increase the number of the electoral areas abovementioned, if he is satisfied that civilization and local government amongst Natives have progressed to such an extent as to justify such increase. Such increase in the number of electoral areas may, however, not be made until after the expiration of 7 years from the Act, but the total number of such areas may not exceed 6.

Both the Senators and House of Assembly Members elected

[1] *i.e.*, Governor-General-in-Council.

in terms of the Representation of Natives Act hold office for 5 years, and are unaffected by any dissolution, or in the case of the 2 Members of the Cape Provincial Council, by the expiration of such body after the fixed period of 5 years for which each Provincial Council is elected.

Should the seat of any such Senator, M.P. or Provincial Councillor become vacant before the expiry of the period of 5 years, another may be elected in his stead to represent his electoral area, who holds office for the remainder of the period.

The qualifications for election as a Senator, M.P. or M.P.C., under the Act, are those laid down in sections 26 and 44 respectively of the South Africa Act, but such Senator, M.P. or M.P.C. is also required to have lived for 2 years within a Province embracing the electoral area he wishes to represent. Sections 51 to 56 inclusive apply also to such Senators, M.P.'s and M.P.C.'s who are given all the rights, powers, privileges, etc., enjoyed by the other Senators, M.P.'s and M.P.C.'s, except that neither the 3 Native Representative M.P.'s nor the 2 M.P.C.'s in the Cape may vote at the election of the 8 Senators representing that Province.

Union Provincial Councils.—By authority of the Governor General of the Union of South Africa, in accordance with the power vested in him by section 76 of the South Africa Act, 1909,[1] the allowance to Members of the Provincial Councils of the four Provinces of the Union has been increased from £120 p.a. to £180 p.a. as from April 1, 1935.

Union of South Africa (Transvaal Province).—On September 30,[2] His Honour the Administrator of the Province, who under the Constitution[3] has the right to sit and speak but not to vote, in the Provincial Council, by leave of the Council, made the following statement in regard to the appropriation of funds and the Administrator's powers, which statement was Ordered by the Council to be incorporated in the Votes and Proceedings:

> Yesterday the Hon. Member for Gezina [Mr. Brink (*M.E.C.*)] raised an important constitutional point. The Hon. Member questioned my power to refuse to recommend the appropriation of funds from the Provincial Revenue Fund for the purpose of expenditure on a specific service—in this case the restoration of Teachers' Salary Cuts. The Hon. Member said that when the members of this Council practically unanimously adopted a resolution which involved the appropriation of revenue, then

[1] 9 Edw. VII, c. 9.
[2] 9 Edw. VII, c. 9, sec. 79.
[3] VOTES, 1936, No. 4, 25-26.

the will of the Council should over-ride the power of the Administrator to refuse to recommend the appropriation. The Hon. Member further stated that in 1909 when the South Africa Act was passed, the conditions were different from those appertaining to-day. He said that because, at that period, the full revenue of the Province was provided by the Union Government, power was vested in the Administrator to control expenditure and that, as the Province is now autonomous, the power of the Administrator in that direction ceased to exist.

I regard it as my duty to place the facts before the Council in order that the Members and the Province as a whole may not be misinformed.

Section 89 of the South Africa Act, 1909,[1] says:

> "A provincial revenue fund shall be formed in every province, into which shall be paid all revenues raised by or accruing to the Provincial Council, and all moneys paid over by the Governor-General-in-Council to the Provincial Council. Such fund shall be appropriated by the Provincial Council by ordinance for the purposes of the provincial administration generally, or, in the case of moneys paid over by the Governor-General-in-Council for particular purposes, then for such purposes, but no such ordinance shall be passed by the Provincial Council unless the Administrator shall have first recommended to the Council to make provision for the specific service for which the appropriation is to be made. No money shall be issued from the provincial revenue fund except in accordance with such appropriation and under warrant signed by the Administrator: Provided that, until the expiration of one month after the first meeting of the Provincial Council, the Administrator may expend such moneys as may be necessary for the services of the Province."

The conditions obtaining when this section was passed in 1909 have been altered only in the fact that, in addition to the moneys provided by the Union Government in the form of subsidy and assigned revenue, funds are also derived from local taxation imposed by the Council. This section has not been repealed, and until it is repealed the Administrator's recommendation for the appropriation of funds is necessary. The responsibility of making or withholding such recommendation rests with me, and I shall not evade my duty.

It may be mentioned that the Governor-General has a similar responsibility placed upon him by section 62 of the South Africa Act.

South Africa (Natal Mace).—The four Provinces constituting the Union of South Africa, were, before the consummation of such Union in 1910, four separate Colonies, each under its own form of "Responsible Government." The principle of the Union Constitution being "unitary," practically all the power, both executive and legislative, is

[1] 9 Edw. VII, c. 9.

vested in the Union Government and Parliament, the Provinces only retaining local and subordinate control. Each Province was given a Provincial Council, with representatives elected for a fixed period, at first for 3, but now for 5 years, from the same electoral divisions as those for the Union House of Assembly, except in the less populated Provinces of Natal and the Orange Free State. The chief executive official in each Province is the Administrator, the agent of the Union Government, who is also empowered to sit and speak in the Provincial Council, but has no vote. In other respects, he enjoys very much the position of a Lieutenant-Governor. The Presiding Member of the Provincial Council is the Chairman and there is also a Chairman of Committees. Otherwise the procedure and the ceremonial of the Provincial Councils is very much that of the old Colonial Parliaments, but the use of the Mace has not been retained, neither are the Chairman nor Clerks-at-the-Table bewigged, although they wear gowns and the Parliamentary uniform. With the exception of that of the Cape—whose Parliament Buildings were taken over by the Union Parliament—the Provincial Councils sit in the old Colonial Lower House. At the opening of last Session however, owing to the keen interest taken in the subject by the Clerk—Mr. C. A. B. Peck—and following upon a unanimous resolution on the subject at the previous Session of the Council, the old Natal Parliament Mace was restored to the Natal Provincial Council and carried at the Opening Ceremony by the Chief Messenger of the Council, wearing the traditional black uniform of Parliament (there being no longer the office of Serjeant-at-Arms), followed by Mr. Chairman, his two sponsors and attended by the Clerk and Clerk-Assistant. The Mace, which is silver-gilt and a beautifully fashioned piece of workmanship, was made in Pietermaritzburg, the old Colonial and now the Provincial Capital, in 1902. On the facets below the Crown, orb and cross are the Royal Cypher of Edward VII, the arms of Natal—" two wildebeeste in full course at random all proper "—and the letters, " L.A.", denoting Legislative Assembly. Supporting the Crown, where it is attached to the body of the Mace, is skilfully fashioned leaf-work. The Mace is about 4 ft. 9 ins. long, and its restoration to its old place on the identical Natal Assembly Table was much appreciated by all attending the Opening Ceremony, as well as by the M.P.C.'s, who will watch its participation in the proceedings of the Council, to which it will add greater dignity.

South West Africa (Constitution).—Reference was made in our last issue[1] to Resolutions passed by the Legislative Assembly of this Mandated (C) Territory, to certain suggested alterations in the system of government, and to the appointment by the Union Government of a Commission, the terms of reference of which were there quoted. The Report[2] of the South-West Africa Commission which was laid on the Table of both Houses of the Union Parliament on June 12, 1936, covers 104 folio pages and contains nine chapters. Chapter I gives a description of the country, Chapter II a historical survey, and Chapters III and IV respectively deal with Non-Europeans and Europeans. The causes of dissatisfaction are contained in Chapter V, and the public finances of the Territory are dealt with in Chapter VI, while the effectiveness of the existing form of government is treated in Chapter VII.

The joint recommendations[3] of the Commission, in so far as the Commissioners have been able to arrive at a common conclusion, after reference to the questions of the Non-European races, the naturalization of Germans, Bushmen eserves, agriculture, Ovamboland, the Hereros, mineral eposits and finance,[4] are as follow:

> 401. After the most careful consultation and consideration, however, we regret that in regard to some of our recommendations we have been unable to find common ground. Our individual views we submit to Your Excellency[5] in separate memoranda. Although we approach the matter from different angles we are in agreement that
>
> (*a*) The present form of government of the Territory is a failure and should be abolished.
>
> (*b*) There is no legal obstacle to the government of the Mandated Territory as a province of the Union subject to the Mandate.

The individual Memoranda of the three Commissioners are contained in Chapter IX. The first is that of the Chairman of the Commission, the Hon. Mr. Justice H. S. van Zyl, President of the Cape Division of the Supreme Court of the Union, who in recommending the repeal of the South West Africa Constitution Act,[6] draws attention to the very unsatisfactory position which has arisen among the European inhabitants of the Territory, the German section of which, supported by persons in authority in Germany, have for the last 2 or 3 years

[1] JOURNAL, Vol. IV, pp. 22-28.
[2] Chapter viii.
[3] U.G. No. 26, 1936.
[4] *vide* §§ 393-400.
[5] *i.e.*, the Governor-General of the Union.
[6] Union Act No. 42 of 1925.

made no secret of their aspirations that South West Africa should revert to Germany in the near future. Mr. Justice van Zyl goes on to say:

> That this will soon come to pass as a result of international negotiations in Europe is firmly believed and openly said by them. Moreover, they have associated themselves with persons of position in Germany who openly make propaganda for the return to Germany of her former colonies. This brings into the local politics of the Territory an international question with which, in view of the Territory's position under the Terms of the Treaty of Versailles, and the Mandate,[1] the residents of the Mandated Territory should not concern themselves. All this has had a very disturbing effect upon the Union section, who see therein an attempt to go behind the Mandate. On the other hand, the leading political organization of the Union section has, since 1933, openly advocated the incorporation of the Territory in the Union as a fifth province subject to the provisions of the Mandate. This is resented by the Germans who regard it as the first step towards the annexation of the Territory by the Union.

Judge van Zyl, in paragraph 405 of the Report, remarks that as a result of the two opposing movements, the future of the Territory has become an all-absorbing question among the European population, in fact, that it is seriously interfering with the economic development and good government of the Territory, and that representative government has been converted into a farce. He further observes that if this situation is to be properly regulated, it will have to be taken charge of by the Union Government itself.

Dealing with the particular type of Mandate, Judge van Zyl observes[2] that there is no limit placed on the extent to which South West Africa may be administered as part of the Union, as long as it is kept sufficiently distinct from the Union to enable the Mandatory to furnish, in terms of Article 6 of the Mandate, the annual report to the Council of the League of Nations. After reciting certain facts in connection with the administration of the Territory, Judge van Zyl states:

> 426. In all the circumstances, I have come to the definite conclusion and I recommend that the Union should take direct charge of the administration of South West Africa and do so through the Union Parliament and the Union Ministerial Departments, *i.e.* that the Territory be administered as an integral part of the Union, that the Union Parliament legislate for it, that the Union Ministers, in and through their respective departments of State, assume in relation to South West Africa

[1] Mandate C, League of Nations dated December 17, 1920.
[2] § 413.

> the same direct authority and functions as they do in relation to the Union, that provision be made for the election of members to represent South West Africa in the Union Parliament, that, as regards the subject matters which in the Union are delegated to the Provinces, provision be made to delegate such subject matters with such modifications as circumstances may require, to a local Assembly and Administrator with executive on lines similar to those obtaining in the provinces of the Union.

Judge van Zyl suggests,[1] if the disturbed state of the Territory makes it undesirable under present circumstances to institute a provincial legislature, that in any case, provision be made for the representation of the Territory in the Union Parliament, and he further recommends that:

> 429. An Administrator and a nominated Advisory or Executive Committee could, in the absence of a local legislature, take charge of the functions which would ordinarily vest in the Administrator and Executive Committee of a province while the local legislative functions could be exercised by the Governor-General-in-Council. My recommendations, of course, envisage that, subject to any necessary modifications, the Union Parliament and the Union Government respectively should take charge of all the functions which in the Union fall outside the scope of provincial authorities.

In the conclusion of his " Individual Memorandum " to the Report, Judge van Zyl recommends that when the disturbed political situation in the Territory has sufficiently improved to permit of co-operation between the European inhabitants for the development of the Territory, the desire of the Germans for greater language rights be sympathetically treated.

The Second Commissioner, the Hon. Mr. Justice F. P. van den Heever, in his Memorandum,[2] advocates the discontinuance of the present form of administrative and legislative government in the Territory, and the substitution of government by Commission, as provided for in the Schedule to the Union Constitution[3] in regard to the transfer to the Union of any territory under the protection of His Majesty, such Commission to be appointed for 5 years and its members selected on the basis of their ability to represent the various industrial interests in the Territory, candidates being put forward to the Government by organizations representing farming, mining and commerce, thereby cutting across both racial and political divisions. It is also suggested that the Minister for External Affairs represent the interests of the Territory in the Union Parliament.

[1] Para. 427. [2] §§ 434-478. [3] South Africa Act, 1909 (9 Edw. VII, c. 9).

The remaining Commissioner, Dr. J. E. Holloway, does not find himself in agreement with the recommendations of Judge van den Heever, and recommends that there should be closer administrative integration with the Union. He is not, however, in favour of delegating to the local Assembly the power of legislation upon such subject matters as have been assigned to Union Provincial Councils. Dr. Holloway, therefore, does not support the request of the South West Africa Legislative Assembly that the Territory be administered as a fifth province of the Union. He would rather see such subjects as Native affairs, land settlement, education, mining, administration of justice and police be integrated with the respective departments of the Union, with certain powers in regard to education vested in the Administrator of the Territory, the Union Department of Education only dealing with higher education. Dr. Holloway agrees with the suspension of the Territory's present Constitution until times when there is better feeling between the Union and German sections in the Territory, and that in the meantime such remaining subjects as agriculture, postal services, public works, roads and bridges, game preservation and other local government activities, none of which excite racial passions, should be reserved for the competence of a future local legislature and that in the meantime, while representative institutions are in suspense, they should be controlled by the Administrator, acting with the advice of a nominated advisory council and under the close supervision of the Union Government.

Early in December, the Union Government, after consideration of the Report of the Commission, issued a Declaration, in the form of a Press *communiqué*, concerning the administration of South West Africa, in which the Union Government, amongst other things, declared:

> Although it is of the opinion that to administer the Mandated Territory as a fifth Province of the Union, subject to the terms of the Mandate, would not be in conflict with the terms of the Mandate itself, it feels that sufficient grounds have not been adduced for taking such a step.
>
> * * * * *
>
> The Mandate has been conferred on the Union irrevocably under a solemn Treaty and the Union cannot legitimately be deprived of the Territory against its wish. The Union Government is not prepared to consider the possibility of the transfer of the Mandate to another power, and wishes to assure the

people of South West Africa, that it has as little thought of abandoning the Mandate as it has of abandoning its own Territory.

* * * * *

To its regret the Union Government is bound to place on record, that it has been brought under the impression that a considerable part of the German section of the population, whether Union Nationals or not, is, either by conviction or through moral pressure, intimidation, or infringements upon the liberty of the individual, grouped in a separate political organization, in which those who wish to use it as a means of creating and maintaining a state of affairs favourable to a return of the Territory to Germany hold sway . . .

* * * * *

Furthermore, the doctrine is generally preached that the Germans who have become Union Nationals under the automatic naturalization are entitled to their full German Nationality within the Territory. This attitude is not only devoid of any legal justification but is also directly in conflict with the spirit and letter of the London Agreement of 1923 and the provisions of the Naturalization Act of 1924.

* * * * *

The Union Government has, therefore, decided to render it impossible for aliens to become, or to be, members of political organizations, or of such public bodies and other organizations in regard to which the Administrator considers it undesirable that aliens should be members.

* * * * *

The Union Government cannot tolerate any unlawful infringement upon the liberty of the person and is determined to protect the individual against unlawful pressure or compulsion in the exercise of his public or private rights.

* * * * *

The Government also does not recognize the validity of any claim to double nationality within the Territory. This claim has no foundation either in law or in fact.

* * * * *

The Union Government demands the full and undivided loyalty of its nationals and will be bound to take all available measures against acts which are incompatible with such loyalty.

* * * * *

Already in 1932 the Union Government indicated that it was prepared to introduce in the Union Parliament supplementary legislation which might be required to give full effect to an Ordinance of the Legislative Assembly of the Mandated Territory recognizing German as an official language in South West Africa. This attitude has not changed.[1]

* * * * *

[1] A Draft Ordinance was published in *Official Gazette Extraordinary* (p. 7914) of S.W. Africa, of April 25, 1932, providing that the English, Dutch and German languages shall be the official languages of the Territory and be treated on a footing of equality and possess and enjoy equal freedom, rights and privileges.

The Union Government has also considered the wish of the German section that the law on the naturalization of aliens be amended by reducing to 2 years the period of residence in the Territory required by law.

The Union Government has also considered the question in what manner the finances of the Territory can be placed on a sound basis in order to enable the people of the Territory to balance the budget without having regularly to approach the Union for loans to cover deficits.

In the closing paragraph of the *communiqué*, the Union Government makes the following appeal:

> Inasmuch as no part of the population has, up to now, been called upon, or is expected in the future, to relinquish any spiritual asset which is essential to its existence as a separate cultural group of the population, the Government would finally appeal to all sections of the population of the Territory to give their earnest consideration to the matters in regard to which they have received a share in the government of the Territory, to co-operate in a spirit of devotion to the interests of the whole population in promoting the welfare of the Territory and to abstain from propagating ideas as to the abolition of the Mandate, in whatever direction.

A Proclamation upon South West African affairs by the Governor-General of the Union, dated March 27, was then issued in the English, Afrikaans and German languages by the Union Government.[1] After reciting certain definitions, the Proclamation empowers " the competent authority " by notice in the *Gazette* to declare what are public bodies or political organizations, and provides that:

> no person who is not a British subject shall unless the " competent authority " has otherwise ordered be eligible for membership of any " public body," and that any such person who is such member at the " declaration date," unless the " competent authority " has otherwise ordered, cease to be a member thereof.[2]

Then follow provisions dealing with office bearers of public bodies, and persons addressing meetings thereof or voting upon any matter submitted thereto.[3] Neither may any person who is not a British subject, except with the permission of the " competent authority," become a member, office-bearer or employee in the Territory of any political organization after the " declaration date," or remain one after the " fixed date."[4] Similar provisions as above in regard to " public bodies " are applied to political organizations.

[1] No. 51, 1937 (Union), S.W.A. *Official Gazette Extraordinary*, April 2, 1937.

[2] *Ib.*, s. 3 (i). [3] *Ib.*, s. 3 (2) (3). [4] *Ib.*, s. 4 (1).

Any British subject taking within the Territory any oath, etc., or promise, to be faithful or bear allegiance to, or obey the orders of:

(*a*) any sovereign or head of state other than His Majesty the King, or
(*b*) the Government or any member or official of the Government or any state other than the Union of South Africa; or
(*c*) any foreign political organization or any office-bearer, member or employee thereof

is guilty of an offence.[1]

The Undesirables Removal Proclamation is amended in certain respects.[2] Offences under sections 3, 4 and 5 range from a fine not exceeding £100, or imprisonment for not exceeding one year, or to such imprisonment without the option of a fine or to both such fine and such imprisonment.[3]

By Government Notice No. 61, dated April 17, 1937[4] issued under section 2 of the abovementioned Proclamation, certain stated organizations are declared " political organizations."

In regard to the Report of the Commission, which, in addition to being a most important official publication, is also of international interest, it is to be regretted that it has no index; reference to its provisions is thus a laborious process and may discourage many from studying this valuable and carefully prepared document.

One cannot do better, in conclusion, than quote a paragraph from the Declaration by the Union Government concerning the Administration of South West Africa, officially made to the South African Press, as appearing in the *Windhoek Advertiser* of December 12, 1936:

> Although the Union Government is of the opinion that to administer the Mandated Territory as a fifth Province of the Union, subject to the terms of the Mandate, would not be in conflict with the terms of the Mandate itself, it feels that sufficient grounds have not been adduced for taking such a step. It is, moreover, not convinced that the existing form of administration does not answer its purpose, or that the administration of the Territory as a Province of the Union would contribute materially to that greater measure of security which the Union section desire. The Union Government also very much doubts whether any of the other solutions which have been suggested would give greater satisfaction than the existing form of administration.

Southern Rhodesia (Constitutional Amendment).[5] — A Southern Rhodesia Command Paper was published in June,

[1] *Ib.*, s. 5. [2] *Ib.*, s. 7. [3] *Ib.*, s. 6.
[4] S.W.A. *Official Gazette Extraordinary*, April 17, 1937.
[5] *See also* JOURNAL, Vol. IV, 32-33.

1936, containing a Despatch of May 15, 1936, by the Governor of Southern Rhodesia to the Secretary of State for Dominion Affairs, and 8 Annexures dealing with the amendment of the Constitution and other draft legislation incidental thereto. As will be seen from the previous treatment of this subject, and the motion moved thereanent on May 13[1] in the Legislative Assembly, it was suggested that certain restrictions and reservations should be removed from the Constitution Letters Patent of 1923, etc., and the Despatch shews in how far the Imperial Government is prepared to meet these requests. Most of these Constitutional changes deal with Native lands and administration and the transfer of certain powers in the Constitution vested in the High Commissioner[2] for South Africa, to the Governor-in-Council, Secretary of State, etc. It is, however, with these Constitutional amendments affecting more closely Parliament itself that we have here to deal.

It was agreed to by the Imperial Government that Section VII (Reserved Bills) of the Royal Instructions of September 1, 1923, be amended by the deletion of:

Head 1, any law for divorce.

Head 4, any law imposing differential duties.

The following is the extent to which the Imperial Government is prepared to accede to the desires of Southern Rhodesia to remove certain provisions from the Constitution, etc.:

> 23 (2); to remove the requirement for the subjection to the approval of the Governor-in-Council of Standing Rules and Orders made by the Legislative Assembly for the conduct of its business.
>
> 54 (1); to remove the present restriction which debars such Assembly from passing any law, vote or resolution which would have the effect of imposing, altering or repealing any rate, tax or duty, unless such law, vote or resolution had been first recommended to the Assembly by message of the Governor. Such requirement is to be retained, however, in respect of the origination or passing of any vote, resolution, address or Bill for the appropriation of any part of the Consolidated Revenue Fund or of any tax or impost to any purpose.

A Bill, entitled the Constitution Amendment Act, 1937,[3] was introduced into the Legislative Assembly by the Prime Minister (Hon. G. M. Huggins, F.R.C.S., M.P.) on the last day of the

[1] C.S.R. 26, 1936.

[2] This Imperial Government Official acts in 2 capacities, namely as High Commissioner in the Union of S.A. for H.M. Government in the U.K., and as High Commissioner, possessing legislative authority over the Native Territories of Basutoland, Bechuanaland Protectorate and Swaziland, with certain powers in respect of Northern and Southern Rhodesia.

[3] AB, 2, 1937.

Session early in 1937 and read the First Time, the main provisions of which are to amend the Constitution[1] by repealing sec. 23 (2) requiring the Rules and Orders of the House to be approved of by the Governor-in-Council; to repeal sec. 54 (1) and substitute the following:

> (1) The Legislative Assembly shall not originate or pass any vote, resolution, address, or bill for the appropriation of any part of the Consolidated Revenue Fund or of any tax or impost to any purpose unless such appropriation has been recommended by message from the Governor during the Session in which such vote, resolution, address or bill is proposed.

to transfer the authority conferred on the High Commissioner under sec. 58 to the Governor-in-Council; to amend sec. 62 by the addition of the definitions " Board of Trustees " and " Native," the latter to mean—

> any member of the aboriginal tribes or races of Africa or any person having the blood of such tribes or races and living among them and after the manner thereof.

and, to repeal the Native Reserves Augmentation Act, 1925, and the High Commissioner's Title Act, 1935.

Amalgamation of the Rhodesias.—At the opening of the Third Session of the Legislative Council of Northern Rhodesia, on October 10, the Governor, when referring in his Address to the motions[2] moved earlier in the year in regard to the proposed amendment of the Constitution and amalgamation of the two Rhodesias, and the Victoria Falls Convention,[3] communicated the following decision[4] in regard to the subject by the Secretary of State:

> "The question of the amalgamation of the territories is governed by the decision announced by His Majesty's Government in 1931, which was only taken after a most thorough examination of the whole problem, and also after consultation with members of the Parliamentary Parties then in opposition. Although it was made clear in that announcement that His Majesty's Government did not wish to reject the idea of amalgamation in principle, if circumstances should justify it at a later date, the announcement was definitely intended as settling the question for some time to come, and I do not feel that during the period of five years which has elapsed there has been such a material change in conditions as would justify re-consideration of the decision reached after so much thought in 1931. A further point that arises is that, although there may be a body of opinion among the European agricultural settlers in Northern Rhodesia which favours amalgamation, the unanimity which was reached

[1] Letters Patent, 1923.
[2] *See* JOURNAL, Vol. IV, 30.
[3] *Ib.*, 31.
[4] N.R.L.C. Deb., 1936, cols. 2-3.

at the Victoria Falls Conference was obtained only on the basis of a constitution conferring the right of " complete self-government," and I understand that there are some members of the Legislature of Southern Rhodesia who would definitely reject the idea of amalgamation on any basis short of this. The attitude of His Majesty's Government to this suggestion so far as it relates to Southern Rhodesia will have been made clear by the recent publication of Sir Herbert Stanley's despatch relating to the proposed amendment of the Southern Rhodesia Constitution."

On October 29, the following motion was moved[1] by the Hon. L. F. Moore[2] (elected Unofficial Member representing the Livingstone and Western Electoral Area):

> That this Council deplores the Secretary of State's rejection of the proposals for their amalgamation submitted by the peoples of Northern and Southern Rhodesia.

Upon being put to the vote, the question was negatived, the voting being Ayes, 7; Noes, 9, all the Unofficial Members voting " aye " and the Official Members " No."[3]

Northern Rhodesia (Central African Federation).—On October 29, 1936,[4] the following motion was moved in the Legislative Council of Northern Rhodesia by Lieut.-Colonel S. Gore Browne, D.S.O. (*Elected Member for the Northern Electoral Areas*):

> That this Council requests the Government of Northern Rhodesia to consider the re-organization of this Territory so as to make federation with Southern Rhodesia and Nyasaland possible in the event of these two countries desiring it.

The proposal is for a common form of government embracing also the adjoining territories of Southern Rhodesia and Nyasaland, the former being a " Responsible Government " Colony and the latter a Protectorate, by a re-orientation of certain parts of the Protectorate of Northern Rhodesia, by which its Central Province (*i.e.*, the railway strip) would become part of Southern Rhodesia under its present form of government, the Northern and Eastern Provinces transferred to Nyasaland, and the North-Western and Barotse Provinces to remain as they are, but under the control of a Resident Commissioner. The seat of this Federal Government would be Lusaka, the new capital of Northern Rhodesia. The Constitution of this new federal body, it is proposed, should be an Executive Council, on which the three Territories of Southern Rhodesia, Northern Rhodesia and Nyasaland would be represented, this Council

[1] *Ib.*, cols. 268-286.
[2] Knighted 1 February, 1937.
[3] Leg. Co. Min., October 29, 1936.
[4] N.R.L.C. Deb., cols. 245-268.

to deal with such subjects as defence, communications, posts and telegraphs, customs research and civil aviation.

After debate, the motion was by leave withdrawn.

India[1] (Constitutional).—During the year under review in this issue, further steps were taken in connection with the putting into operation of part of the new Constitution for India.[2] Conferences have been held between representatives of the Government of India and the Provincial Governments in preparation of the ground for Provincial Autonomy. Draft Orders were submitted to both Houses of the Imperial Parliament in the form of humble Addresses to His Majesty, setting up the new Provinces of Sind and Orissa[3] as recommended by the Joint Select Committee of the Lords and Commons on Indian Reforms. These were the forerunners of many other draft Orders under the Government of India Act, 1935, dealing with the details in connection with the new Constitution and left by it to be dealt with in this manner.

In March, the Indian Delimitation Committee issued its Report.[4] Variations in this Report are given in a Memorandum by the Secretary of State for India.[5]

Orders additional to those abovementioned were issued covering—Excluded and Partially Excluded Areas;[6] Provincial Legislative Assemblies, Provincial Legislative Councils and Scheduled Castes;[7] Commencement and Transitory Provisions, Distribution of Revenues and Explanatory Memorandum, etc.,[8] and the Provincial Elections, Corrupt Practices and Election Petitions,[9] and many other subjects not directly affecting the Legislatures.[10]

Provincial Autonomy and the separation of both Burma and Aden[11] from India were all dated to take effect on April 1, 1937. The Federal Part (II) of the India Constitution, as explained in the last issue of the JOURNAL,[12] is to come into force later.

An important document upon which much of the financial procedure in connection with the inauguration of the Con-

N.B.—Superseding Statutory Rules and Orders are shown in the footnotes in italics.—[*Ed.*]

[1] *See also* JOURNAL, Vol. IV, 61-99.
[2] 26 Geo. V, c. 2.
[3] *S. R. & O., 164, 165* (1936).
[4] ("Hammond" Committee) Cmd. 5099, 5100 (1935-6).
[5] Cmd. 5133 (*ib.*).
[6] Cmd. 5064 (*ib.*); *S. R. & O., 166* (1936).
[7] Cmd. 5133 (*ib.*); *S. R. & O., 415, 416* (*ib.*).
[8] Cmd. 5181 (*ib.*); *S. R. & O., 672, 676* (*ib.*).
[9] *S. R. & O., 675* (1936).
[10] *S. R. & O.* (1936), *85, 106, 844, 860, 1033.*
[11] Cmd. 5222 (1935-36); *S. R. & O., 1031* (1936).
[12] Vol. IV, 98.

stitution for India is based, is the Report of the Indian Financial Enquiry,[1] and other papers.[2]

In regard to the Accession of the Indian States, the provisional draft of the Instrument of Accession to be executed at the option of every individual Ruler of an Indian State published in 1935 (Cmd. 4843) has been revised since the passing of the new Constitution for India and discussions have taken place between representatives of the Viceroy and the Indian Princes. Committees of the Chamber of Princes and the Indian State Ministers, the most important of which have been the Hydari Committee and the Constitutional Committee, the latter under the Chairmanship of H.H. the Maharajah of Patiala, since elected Chancellor of the Chamber of Princes, have also made investigation into the many important subjects in connection with the accession of Indian States to the Federation, such as: the Ruler's rights and obligations in relation to the Crown, Federal powers, the sovereignty of State Rulers, legislation and finance. The Princes have also appointed legal authorities to advise them.

Draft Instruments of Instruction to Indian Governors have formed the subject of Address by the Lords and Commons to the King.[3]

In view of the magnitude of the task of putting into motion the new Constitution for India, an outline of which was given in our last issue,[4] it is not surprising that so many preparations have had to be made. Quite apart from many important questions of administration, in British India alone, there are nearly 2,000 constituencies with a total of 30,000,000 voters (of whom 5,000,000 are women). However, so much is still transpiring in 1937, in regard to the introduction of Provincial Autonomy and the Accession of the Indian States, that it would be encroaching upon the field of next year's Volume of the JOURNAL to refer to such recent events now. In any case, however, it is quite impossible to discuss these problems, or even to give more than a mere finger-post to them in our JOURNAL. Those desiring to study them can do so by reference to the authorities given in the footnotes to the Article on the India Constitution in our last issue,[4] as well as to those given hereto, and by reading the various debates in the Lords and Commons, all of which will afford the constitutional student much information of the greatest value and interest.

[1] ("Niemeyer" Report) Cmd. 5163, 5181 (1935-36).
[2] *S. R. & O.*, *1033* (1936).
[3] Cmd. 4805 (1935); Com. Paper 1, 1936.
[4] Vol. IV, 76-99.

India (Order in Debate).—During the debate upon a motion for adjournment of the House in the India Legislative Assembly on September 2,[1] for the purpose of censuring the Government, the closure was moved, but not accepted by the Chair, the President pointing out to the Treasury Benches that if any Member of the Government wanted to speak, it was time they should rise and take an early part in the debate. Whereupon, a number of Members loudly crying, " Shame, Shame," walked out of the House as a demonstration against the Chair.

On the following day[2] the President (the Hon. Sir Abdur Rahim) before the commencement of Government business, made a statement to the House with reference to the demonstration and also said that he had received in his Chambers 2 or 3 letters from Members of one of the Parties calling in question his decision on the admissibility of questions or other Rulings, couched in very disgraceful language. Upon which certain Members called out " Shame," which expression was ruled out of order by the President as not being Parliamentary. The President pointed out that if there was any desire to question his Ruling there was a proper method of doing so, for which he would give an early opportunity.

On September 4,[3] the Leader of the Opposition (Mr. B. J. Desai, *Bombay N. Division Non-Muhammadan Rural*) made reference to the President's Ruling, explaining that the conduct of the Members who walked out of the House on such occasion was not intended to express any personal want of confidence in the President, but to express an active protest against the Government and a feeling of disappointment at being prevented from the defeat of a measure, owing to the question having been talked out, by interruption at 6 o'clock under the Standing Order.

India (Urgency Adjournment Motions).—On September 3[4] a Member (Mr. Satyamurti—*Madras City, Non-Muhammadan Urban*) desired to move an urgency adjournment motion, but it was pointed out by the President that the discussion of the subject had been disallowed by the Governor-General under Rule 22 (2), " on the grounds that the moving of such a motion would be detrimental to the public interest or that it is not primarily the concern of the Governor-General-in-Council."[5] A discussion then arose in regard to the interpretation of the Rules and Standing Orders, at the con-

[1] VI India Leg. Assem. Deb. No. 3, 41.
[2] *Ib.*, No. 331. [3] *Ib.*, No. 5. [4] *Ib.*, No. 4. [5] *Ib.*, No. 5.

clusion of which the President said he would consider the point raised as to whether the House had the right to discuss a question, while still a motion, before the operation of the Governor-General's disallowance.

On the following day[1] the President gave his Ruling, reversing a previous Ruling, which was to the effect that the proper time for the disallowance order of the Governor-General to be applied was after the raising of the subject had received the consent of the President. The President also drew attention to certain discrepancy between paragraph 49 of the Manual and I.L. Rule 22.

Another urgency adjournment motion was moved on September 16[2] by a Member, namely, to consider "the unsatisfactory attitude of the Government of India in respect of the freedom of individual Members of Government to express personal opinions, out of accord with the accepted policy of the Government." Objection was taken to the question being a proper one for such a motion and the President undertook to give his Ruling on the following day. On September 17[3] the President ruled that the subject could not be considered as a matter of urgency and that therefore the motion was out of order. In the Ruling the President also pointed out that an answer to a question in itself, because it is considered unsatisfactory, furnishes no ground for a motion for adjournment of the business of the House, but whether a matter is a definite matter of urgent public importance is to be judged with reference to the question whether the subject-matter of the question and the answer satisfies the requirements of a motion for adjournment.

Burma.[4]—It is not yet wholly possible to dissociate Burma from India in regard to documents of reference, as the separation only came into force on April 1, 1937.

On June 11, in reply to a Question[5] in the House of Commons, the Prime Minister (Rt. Hon. Stanley Baldwin) said that the Government have come to the conclusion that following the separation of Burma from India, there should be a separate Secretaryship of State for Burma and also a new office of Parliamentary Under-Secretary of State for Burma, but for reasons of practical convenience such offices will, for the present, be held by the same persons as hold the similar offices in regard to India, and the Burma Office will be housed at the India Office.

[1] *Ib.*, No. 5. [2] VII India Leg. Assem. Deb., No. 2. [3] *Ib.*, No. 3.
[4] *See also* JOURNAL, Vol. IV, 100-103. [5] 313 H.C. Deb. 5. s. 401.

Many of the Parliamentary and administrative actions which were taken in regard to the introduction of the new Constitution for India were also taken in regard to the introduction of that for Burma.[1] The Delimitation of Constituencies was dealt with in the "Hammond" Report.[2] Other official publications covered such subjects as the Senate and House of Assembly Elections,[3] and Commencement and Transitory Provisions.[4] Orders were issued in regard to the House of Assembly and Senate Elections,[5] Corrupt Practices and Election Petitions,[6] Karen Hill Tracts,[7] and India and Burma Income Tax Relief.[8] The new Legislature for Burma did not meet until 1937.

Malta (Constitutional).—The changing phases of the Constitution of Malta during the last few years have been dealt with in previous issues of the JOURNAL.[9] During the year under review in this issue, however, a still greater change has taken place, for, consequent upon the passing, by the Imperial Parliament, of the Malta (Letters Patent) Act,[10] in July, 1936, Letters Patent dated the 12th of the following month have been issued revoking the original Malta Letters Patent and Royal Instructions, both of April 14, 1921, the amending ones of 1933 and 1934 and those of March 18, 1936.[11]

The Bill for the Malta (Letters Patent) Act abovementioned was initiated in the Lords, and in moving the Second Reading on May 5 Lord Plymouth (*Parliamentary Under-Secretary of State for the Colonies*) said[12] that it was intended that the form of government to be set up in Malta would be on Crown Colony lines, and that the Imperial Government proposed, as soon as the Bill was passed, to take the first step by establishing an Executive Council comprising together, with officials, a number of nominated unofficials. It was hoped in this way to associate with the Government a number of Maltese of standing and experience of local affairs, which would provide a channel through which unofficial opinion might be expressed in the day-to-day business of administration. The Imperial Government intended that this Constitution should be of more than an interim and provisional character. "After the vicissitudes of the last few years," continued Lord Plymouth,

[1] 26 Geo. V, c. 3.
[2] Cmd. 5101 (1935-36).
[3] Cmd. 5133 (1935-36); *S. R. & O.*, *401* (1936).
[4] *Ib.*, 5181; *S. R. & O.*, *673* (1936).
[5] *S. R. & O.*, *402*, *401* (1936).
[6] *Ib.*, *674*.
[7] *Ib.*, *1032*.
[8] *Ib.*, *1033*.
[9] *See* Vols. I, 10-11; II, 9; III, 27 and IV, 34.
[10] 26 Geo. V and 1 Edw. VIII, c. 29.
[11] L.P., 1936, 1.
[12] 100 H.L. Deb. 5. s. 744 to 784.

" the Island's greatest need is a rest from elections and political dissensions." In his reply to the debate on the Second Reading, on the same day, his Lordship stated:

> It was not the intention of the Government to withhold permanently representative institutions from the Maltese people. . . . They felt they were quite entitled to look for the re-establishment of representative government, though not responsible government, in the course of time.

In moving the Second Reading of the Bill in the Commons on July 1, the Rt. Hon. W. Ormsby-Gore (*Secretary of State for the Colonies*) said[1]:

> The Bill has two main objects. The first is to restore the powers which the Crown possessed relating to the Constitution of Malta, from the time when Malta became of its own wish and volition a British Colony more than 130 years ago until the year 1921—to restore to the Crown its powers to change the Constitution of Malta from time to time, if circumstances seemed to dictate that it would be wise to do so, by Letters Patent. The second object is to validate all Ordinances promulgated by the Governor of Malta with the approval of His Majesty's Government in the United Kingdom since the second suspension of the 1921 Constitution, which suspension took place in the autumn of 1933.

Under the new Letters Patent of August 12, 1936, which are printed in both English and Maltese and published by the Government Printing Office, Malta, the Government of Malta and its Dependencies is vested in a Governor, to whom certain Instructions of the same date are issued.[2] The Island, in addition to being a naval base, is also an important fortress, and the Governor has usually been a retired General.[3] The office of Lieutenant-Governor is continued.[4] An Executive Council is constituted[5] to advise the Governor, who is empowered[6] to make laws for the peace, order and good government of Malta. Power to legislate is also reserved to the King-in-Council.[7] Subject to the Letters Patent, all laws, etc., in force in Malta at the date such Letters Patent came into operation, are to remain in force, except so far as they may be repealed, amended or affected by other legislation.

Executive.—The Royal Instructions of August 12, 1936, provide[8] that the Executive Council shall consist of the persons occupying the respective offices of Lieutenant-Governor, of Legal Adviser to the Governor, of Treasury Counsel, of Treasurer and Secretary to the Government, as *ex officio*

[1] 314 H.C. Deb. 5. s. 287-540.
[2] *See also* Cmd. 3993, pp. 95, 96.
[3] Letters Patent, 1936, 2 and 3.
[4] L.P., 1936, 5.
[5] *Ib.*, 7.
[6] *Ib.*, 15.
[7] *Ib.*, 17.
[8] R.I. 4.

members, and such other persons, not less than 3, to be styled Nominated members, appointed for 3 years but eligible for reappointment. On the 2nd September, it was announced in Malta that the Governor had nominated the following as Official Members, Vice-Admiral French as representative of the Dockyard, the greatest employer of labour in Malta, and Captain Ramage, besides the following 5 Unofficial Members: Baron Depiro, Mr. Edgar Arrigo, Professor de Bono and Doctors Boffa and Mifsud Bonnici, the latter a former Minister of the Treasury. Persons may also be summoned by the Governor on special occasions as Extraordinary Members, and provision is made for the filling of casual vacancies. The seat of an Official member of the Executive Council becomes vacant directly he ceases to hold office in the Colony.[1] The Executive Council is summoned by the Governor, who presides at its meetings. There are also the usual provisions as to quorum (from which the Governor or member presiding is excluded).

Minutes, etc.—The Governor is to consult his Executive, except in cases where H.M. Service would sustain material prejudice, or when matters are too unimportant, or too urgent to admit of delay by such consultation.[2] The Governor alone is entitled to submit questions to the Executive Council, but should he decline to do so, when requested by any Executive Councillor, such Councillor may have the facts recorded in the Minutes.[3] The Governor may act in opposition to advice tendered by his Executive, but must then fully report the matter to Whitehall by the first convenient opportunity, stating the grounds and reasons of his action.[4]

The Governor is also empowered, in the King's name, to make and execute, under the Public Seal, grants or dispositions of land in Malta.[5] He is also enjoined to communicate to the Executive Council any Royal Instructions issued to him, which he may find convenient to impart.[6]

An Ordinance of special constitutional significance was passed since the promulgation of the new Letters Patent, namely, the Executive Powers Ordinance,[7] which, to quote the official "Objects and Reasons" given at the foot of Ordinances, provides:

> (*a*) that the powers which, under any law, are vested in Ministers, be now vested in the Governor (with power of delegation);

[1] R.I. 5 and 6. [2] R.I. 8-11. [3] R.I. 12. [4] R.I. 13.
[5] L.P., 1936, 8. [6] R.I. 7. [7] No. XIX of 1936.

(*b*) that the powers which under any law are to be exercised by the Governor-in-Council, be now exercised by the Governor-in-the-Executive-Council as constituted by the new Letters Patent;

(*c*) that the expenditure of money and the execution of works in certain cases shall take place on the authority of the Governor in the Executive Council, former Parliament procedure, where mentioned in any existing law, being incompatible with the Letters Patent, 1936.

Legislation.—Laws, which are styled Ordinances, are enacted by and in the name of the Governor, and must be published in the *Malta Gazette* in both the English and Maltese languages. Certain rules and regulations, however, are imposed upon him under which Ordinances are to be drafted and enacted. They are also required to be so published in draft form for at least one month before enactment, unless in the opinion of the Governor it is in the public interest that such publication be dispensed with.[1] There are certain subjects, however, upon which the Governor may not legislate without permission from Whitehall, namely, Ordinances dealing with currency, naturalization of aliens, the discipline or control of H.M. Forces, affecting the Royal Prerogative, prejudicing the rights or property of British subjects not residing in Malta, the trade and shipping of any British Dominion; affecting Treaties, making grants of land or money to himself, dealing with provisions to which the Royal Assent has been refused, or which have been disallowed.[2] The Governor is, however, empowered in case of urgent necessity to enact Ordinances, reporting the circumstances to Whitehall later.

All laws are to be printed in the *Malta Gazette* both in the English and Maltese languages and enrolled in the office of the Registrar of the Superior Courts. In case of any conflict between the English and Maltese texts of any law, the former is to prevail.[3]

Clause 16 of the new Letters Patent provides for the exercise by the King, of his power of disallowance in regard to any law enacted, notice of which the Governor is required to publish in the *Malta Gazette*, and a certificate thereof enrolled in the office of the Registrar of the Superior Court of Malta, and every law so disallowed ceases to have effect upon the publication of such notice.

[1] R.I. 14. [2] R.I. 15. [3] L.P., 1936, 19, 20 (3).

Religion.—Full liberty of conscience and the free exercise of their receptive modes of religious worship are accorded to all persons in Malta, and no person may be subjected to any disability or excluded from holding any office by reason of his religious profession.[1]

Language Rights.—The history of Malta is veiled in antiquity. The Phœnicians, Carthaginians, Romans, Arabs and Normans have each in turn ruled the island, and in later years the Turks and Aragonese until the establishment of the Order of the Knights of Malta about 1500. Nelson blockaded Malta in 1799 and 3 years later it was returned to the Order of St. John under the Treaty of Amiens. Great Britain came into possession of Malta under the Treaty of Paris in 1814, and in 1858 the rule of Military Governors was established. Therefore the foundation of the Maltese language is Arabic influenced by Phœnician, with later supplementation of Italian to the older forms.

Under the Letters Patent the English and Maltese languages are made the official languages. English is made the official language of the administration and Maltese that of the Courts of Law, but the Governor may provide by Ordinance for the use of English in legal proceedings where any party or any accused person does not speak Maltese as the principal language to which he is accustomed. Any law in force at the time of the coming into operation of the new Letters Patent of which there is no Maltese text, must be translated into Maltese, the English in the meantime being the official text.[2]

Since the promulgation in Malta on 2nd September, 1936, of such Letters Patent by Governor's Proclamation No. XXI of 1936, certain Ordinances[3] have been enacted dealing with language reforms, too lengthy to be gone into here, but which are well worthy of careful study by those specially interested in the subject. The use of the two languages in the old Malta Parliament has already been dealt with.[4]

General.—The new Letters Patent also contain provisions in regard to the Governor's Oath, his Commission and deputy,[5]

[1] *Ib.*, 21.
[2] L.P., 1936, 20.
[3] The Criminal Laws Amendment (No. 2) Ordinance (No. XX of 1936), the Laws of Organization and Civil Procedure Amendment Ordinance (No. XXI of 1936); the Notarial Profession and Notarial Archives Amendment Ordinance (No. XXIV of 1936); and the Public Educational Institutions (Teaching and use of English and Italian languages) (repeal) Ordinance (No. XXV of 1936).
[4] *See* JOURNAL, Vols. II, 9; and IV, 112-113.
[5] L.P., 1936, 4, 14, 22, and 23 and R.I. 23 and 24.

the Public Seal,[1] appointments,[2] judges,[3] dismissal and suspension of officers,[4] pardon,[5] and succession to Government.[6]

The Royal Instructions of the same date which revoke those of April 14, 1921, also contain detailed provisions in regard to the office of Governor,[7] and the annual Blue Book.[8]

Power to revoke, alter or amend the present Letters Patent is reserved to His Majesty under Clause 24 thereof.

Motion in Lords.—On December 2, Lord Strickland in the House of Lords " moved to resolve ":[9]

> That this House deplores delay in implementing obligations to respect representative institutions in Malta and regrets the too elastic interpretation given to the Malta (Letters Patent) Act, 1936, which only gives power to revoke and amend Letters Patent, but does not specify, as is necessary in law, any power to withdraw representative institutions or to issue enactments irreconcilable with the Common Law of the Empire.

Lord de la Warr (*Parliamentary Under-Secretary for the Colonies*) stated that while the Government did not recognize that they were under any obligation in regard to representative institutions in Malta, they did not regard the present Constitution as anything other than an interim measure, and it was their most earnest hope that in course of time, as and when circumstances permitted, some more liberal form of constitution compatible with the admittedly high level of development and culture of the Maltese people might be evolved. There was no justification for the accusation of delay in introducing a more liberal form of Constitution in Malta, and the Government were quite unable to agree that they had been guilty of the breaches suggested in the motion. The motion was negatived.

Newfoundland.[10]—On April 21[11] the Question was asked in the House of Commons whether the Minister for Dominion Affairs had any statement to make on the position of affairs in Newfoundland. The Minister replied that a report[12] by the Commission was recently presented to both Houses of Parliament.

Fiji (Constitutional Reform).—In reply to a Question in the House of Commons, on July 20,[13] the Secretary of State

[1] L.P. 6. [2] *Ib.*, 9. [3] *Ib.*, 10. [4] *Ib.*, 11. [5] *Ib.*, 12.
[6] *Ib.*, 13. [7] R.I. 1-3. [8] R.I. 22. [9] 103 H.L. Deb. 5. s. 564.
[10] *See also* JOURNAL, Vols. II, 8-9 and IV, 35.
[11] 311 H.C. Deb. 5. s. 8.
[12] Cmd. 5117. This report, however, dealt only with trade and revenue.
[13] 315 H.C. Deb. 5. s. 34, 35.

for the Colonies (Rt. Hon. W. Ormesby-Gore) said, that as a result of representations made to him, he had decided to recommend to His Majesty that the Legislative Council should be reconstituted to consist of the Governor, 16 Official Members, 5 European Members (3 elected on a communal franchise and 2 nominated); 5 Fijian Members (all to be selected as at present)[1]; and 5 Indian Members (3 elected on a communal franchise and 2 nominated. The life of the present Legislative Council is to be prolonged until, but not later than, the 14th July, 1937, as fixed by Proclamation by the Governor.

New Royal Cypher.[1]—The design here shown is that of the new Royal Cypher, as approved by the King, used by all departments of State and public bodies and usually appearing on regimental colours, standard guidons, badges, arms and appointments, Parliamentary chairs and in any new internal and external decorations.

[1] With acknowledgments to *The Times* of December 29, 1936.

II. THE DECEMBER CRISIS

BY

AN AUTHORITY ON CONSTITUTIONAL LAW[1]

SHAKESPEARE has something apt for every situation. In the Third Part of " Henry the Sixth " he makes a King Edward ask his brothers, " You'ld think it strange if I should marry her ?" Whereto the Duke of Gloucester replies, " That would be ten days' wonder at the least." The ten days' crisis of last December, arising from another King Edward's marriage project, has now passed into history. The history must be left to the historian, the moral to the moralist. Meanwhile it may be useful to record certain aspects in their relation to Parliamentary machinery and constitutional practice.

The right of interpellating Ministers is so familiar a characteristic of democratic assemblies that we may easily overlook its twofold value. It serves not only to saddle the Executive with responsibility, but also to satisfy the public thirst for definite news in times of uncertainty. On Tuesday, December 1st, an English Bishop[2] discussed in the domestic atmosphere of a diocesan conference the religious implications of the Coronation ceremony. Next day some of the provincial newspapers in Britain, breaking at last an honourably self-imposed silence about rumours long current in private, attributed to a passage in his speech an allusive interpretation whereof neither the speaker nor his audience had been conscious. On Thursday, December 3rd, the papers in London and elsewhere gave prominence to King Edward's matrimonial intentions. In the general bewilderment, the right to put a question in Parliament was naturally seized upon. On the Thursday afternoon the Leader of the Opposition (Rt. Hon. C. R. Attlee), by private notice, asked the Prime Minister " whether any constitutional difficulties have arisen and whether he has any statement to make."[3] Mr. Baldwin replied that he had nothing to say that day: there was not at present any constitutional difficulty, but the situation was such as to make it inexpedient that he should be questioned. Supplementary questions from Mr. Attlee and Mr. Winston Churchill elicited nothing more, but there was never any doubt that the country's representatives in Parliament had a right to know what was going on.

[1] —who is neither an ex-Clerk nor a " Clerk-at-the-Table."
[2] Dr. Blunt, Bishop of Bradford. [3] 318 H.C. Deb. 5. s. 1440-1441.

Next day, Friday, December 4th,[1] Mr. Attlee renewed his question at the beginning of business. The Prime Minister still had nothing to say. Just before 4 p.m., however, on the usual motion for the adjournment at the week-end, Mr. Attlee tried again with better success.[2] The House of Lords stood adjourned from the Thursday night till Monday; by the diminished frequency of their sittings Second Chambers may lose opportunities. The House of Commons was ready to hear the Prime Minister, and the British Broadcasting Corporation's wireless service was alert to publish the answer in the homes of the people the same evening. They heard Mr. Baldwin dispose of the maladroit suggestion of a morganatic marriage. There was no such thing known to our law. The lady whom the King married would, by the very fact of the marriage, necessarily become Queen with all the status, rights and privileges familiar in the case of the late Queen Alexandra and of Her Majesty Queen Mary. In fact, provision for a Queen, in the event of King Edward VIII marrying, had of course been made by law.[3] The children of such a marriage would be in direct succession to the Throne.

> "The only possible way in which this result could be avoided would be by legislation dealing with a particular case. His Majesty's Government are not prepared to introduce such legislation. Moreover, the matters to be dealt with are of common concern to the Commonwealth as a whole, and such a change could not be effected without the assent of all the Dominions. I am satisfied, from inquiries I have made, that this assent would not be forthcoming. I have felt it right to make this statement before the House adjourns to-day in order to remove a widespread misunderstanding. At this moment I have no other statement to make."[4]

This cleared the air. Many men and women had been hoping that, though King Edward had set himself the choice between throne and personal affection, a compromise might be found which would prevent the country from either losing a popular and gallant monarch or seeming to coerce him in the selection of a wife. Mr. Baldwin had narrowed the issue. At the same time he had brought into the foreground the implications of the Statute of Westminster.

Even before the Statute was passed in 1931, the King's Government in London would have felt obliged to consult the Dominions upon a matter of so wide concern. In 1931, after

[1] *Ib.*, 1529. [2] *Ib.*, 1611.
[3] Civil List Act, 1936 (26 Geo. V & 1 Edw. VIII, c. 15).
[4] 318 H.C. Deb. 5. s. 1612.

preparatory discussions at Imperial Conferences, the Statute had recorded the unanimous acceptance by the Members of the British Commonwealth of Nations of the principle that it was

> "meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom."[1]

Whatever these words may have seemed to prevent, they were now seen to give the Dominions the power to prevent the Parliament at Westminster from tampering with the succession to the Throne.

The opponents of the Statute of Westminster had criticized its prospective operation on the ground that consultation between the members of the British Commonwealth of Nations would involve interminable delay. But here, by some miracle of administrative organization, was the triumph of unanimity already attained in a crisis only a few days old.

In a statement to the Press[2] next day (Saturday, December 4th) Mr. Winston Churchill appealed for patience and tolerance. No Ministry, he contended, had the authority to advise the Sovereign's abdication.

> "If the King refuses to take the advice of his Ministers, they are, of course, free to resign. They have no right whatever to put pressure upon him to accept their advice by soliciting beforehand assurances from the Leader of the Opposition that he will not form an alternative Administration in the event of their resignation and thus confronting the King with an ultimatum."

The Leader of the Opposition repudiated the natural interpretation of these words. The practice of keeping the leaders of other parties in touch with developments of great national significance is, of course, by no means unusual.

After a week-end of general depression and anxiety the Prime Minister on Monday, December 7th,[3] notably consolidated the position of the Imperial Government by making it clear that no inconsiderate pressure was being brought to bear upon the Sovereign. Asked by Mr. Attlee (by private notice)

[1] Preamble to 22 & 23 Geo. V, c. 4 (Statute of Westminster).
[2] *The Times*, December 7, 1936. [3] 318 H.C. Deb. 5. s. 1642.

if he had anything to add to the statement made on Friday, Mr. Baldwin read in the House of Commons a statement which was simultaneously delivered by Lord Halifax in the House of Lords. He emphasized that it was, and always had been,

> " the earnest desire of the Government to afford to His Majesty the fullest opportunity of weighing a decision which involves so directly his own future happiness and the interests of all his subjects.
>
> At the same time they cannot but be aware that any considerable prolongation of the present state of suspense and uncertainty would involve risk of the gravest injury to National and Imperial interests and indeed no one is more insistent upon this aspect of the situation than His Majesty.
>
> In view of certain statements which have been made about the relations between the Government and the King, I should add that, with the exception of the question of morganatic marriage, no advice has been tendered by the Government to His Majesty with whom all my conversations have been strictly personal and informal. These matters were not raised first by the Government but by His Majesty himself in conversation with me some weeks ago when he first informed me of his intention to marry Mrs. Simpson whenever she should be free. The subject has, therefore, been for some time in the King's mind and as soon as His Majesty has arrived at a conclusion as to the course he desires to take he will no doubt communicate it to his Government in this country and the Dominions. It will then be for those Governments to decide what advice, if any, they would feel it their duty to tender to him in the light of his conclusion."[1]

The speakers in both Houses of Parliament concluded with an earnest expression of deep and respectful sympathy with His Majesty. The statements were received in a manner which indicated overwhelming support. The King's subjects resigned themselves to await his decision.

On Monday, December 10th, King Edward's decision was made known. That morning he executed an Instrument of Abdication,[2] witnessed by his three brothers. Its terms were

[1] *Ibid.*

[2] I, Edward the Eighth, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Emperor of India, do hereby declare My irrevocable determination to renounce the Throne for Myself and for My descendants, and My desire that effect should be given to this Instrument of Abdication immediately.

In token whereof I have hereunto set My hand this tenth day of December, nineteen hundred and thirty-six, in the presence of the witnesses whose signatures are subscribed.

Signed at Fort Belvedere — EDWARD R.I.
in the presence of
ALBERT.
HENRY.
GEORGE.

communicated to Parliament in the afternoon in a " Message from His Majesty the King to this House, signed by His Majesty's own hand." The Prime Minister presented the Message at the Bar of the House of Commons, and " it was read out by Mr. Speaker, all the Members of the House being uncovered." Mr. Baldwin then moved " That His Majesty's most gracious Message be now considered," and gave a frank and unembittered summary of the events leading up to the crisis.[1] He narrated the four interviews of October 20th, November 16th, November 25th and December 2nd. At the second of these he had submitted his views that the contemplated marriage was not one that the country would approve.

> " I pointed out to him that the position of the King's wife was different from the position of the wife of any other citizen in the country; it was part of the price which the King has to pay. His wife becomes Queen; the Queen becomes the Queen of the country; and therefore in the choice of a Queen the voice of the people must be heard."

That last sentence may be historic as a modern authority for the constitutional view that the people—in other words, Parliament acting through the Cabinet and expressing its will through the Prime Minister—may veto the Monarch's choice of a bride. If earlier precedents are sought, the second marriage of the Duke of York, who was afterwards King James II, offers a partial analogy. On September 30th, 1673, the Duke married the Princess Mary of Modena. Parliament was known to be hostile and, in order to carry out his design before Parliament could meet to protest, the Duke wedded the Princess by proxy. Meeting on October 20th, the House of Commons at once voted an address to the King, praying that the marriage should not be consummated and that the Duke should not marry " any person but of the Protestant religion." King Charles II was equal to the occasion. He promptly adjourned Parliament for a week and, on its reassembly, announced that the marriage had been completed. The House of Commons, nursing other grievances as well, took its remedy of refusing supply and voted another address to the King in favour of a dissolution of the proxy marriage. Next morning, before the address could be presented, the King came down to the House of Lords and prorogued Parliament for two months. Since those old times when a Stuart monarch could impose his wishes upon a reluctant country, the full doctrine of ministerial advice to the

[1] 318 H.C. Deb. 5. s. 2176-2186.

Crown has been developed. Today the Prime Minister would presumably advise the Crown over such a matter in just the same way as over any other. Some commentators spoke of the ten days' crisis of last December as a struggle between King and Parliament. As a constitutional monarch King Edward VIII never permitted any such struggle to begin. His answer to the Prime Minister's advice was simply, " I am going to marry Mrs. Simpson and I am prepared to go." He scrupulously refrained from fomenting any struggle; he anxiously sought to make the succession of his brother as little difficult as possible.

Mr. Baldwin's great speech, unembarrassed by a minor misadventure to the scanty notes he had prepared, had the supreme merit of sympathy both with its subject and with its audience. It was punctuated with generous murmurs of approval: when it ended, the Leader of the Opposition asked[1] if the sitting might be suspended in order that Members might give the Message due consideration. A suspension was agreed upon; after an interval of an hour and a half Mr. Speaker resumed the Chair at 6 p.m. Members of all parties now said their say. The question was put and agreed to. " Motion made, and Question ' That leave be given to bring in a Bill, to give effect to His Majesty's declaration of Abdication and for purposes connected therewith ' put and agreed to."[2] The Bill was ordered to be brought in, " presented accordingly and read the first time: to be read a Second time tomorrow; and to be printed."[3]

The Second Reading of the Bill was taken next morning (Friday, December 11th).[4] The framing of its terms had engaged the concentrated attention of the Law Officers, the Home Office and the Privy Council. It was fortunate that the senior Government draftsman, Sir Maurice Gwyer (now Chief Justice designate of the new Federal Court of India), was a recognized authority upon constitutional law and one who had played no small part in framing the Statute of Westminster. At this point, perhaps, we should interrupt the narrative to recall the technical effect of that Statute. A passage in its preamble declares that

> " it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion:"

[1] 318 H. C. Deb. 5. s. 2186. [2] *Ib.*, 2197. [3] *Ib.*, 2198. [4] *Ib.*, 2203.

Words in a preamble have less weight than if enacted in the body of a statute. This passage in the preamble, however, is caught up and confirmed by Section 4 of the Statute of Westminster, which lays down that no future Act of the United Kingdom Parliament shall extend to a Dominion,

> " unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof."

This is clear enough; but, by virtue of Section 10, three Dominions (Australia, New Zealand and Newfoundland) remained outside Section 4 till their Parliaments should decide to come within it. The Abdication Bill reflects this complex. Canada (being within Section 4) is recited as having " requested and consented."[1] Australia and New Zealand (being outside Section 4 and not yet having come within it) might—apart from " the established constitutional position "—on a narrow legalistic view have been bound by the Bill if nothing had been specifically said of them; but, at their very proper request, their " assent " was expressly recited.[2] Newfoundland (outside

[1] The insertion of these words in the Imperial Act was secured in Canada Parliament being then in Recess, by Order in Council on December 10 Upon Parliament meeting His Majesty's Declaration of Abdication A was passed on January 19, 1937.

[2] On December 9* a Ministerial statement was made on the motion fo adjournment both in the Senate and the House of Representatives that the Commonwealth of Australia concurred in the decision of the Government of the United Kingdom not to legislate for something in the nature of a morganatic marriage, and on December 11† the following motion was submitted to each House " in order to give effect," as the Prime Minister (Rt. Hon. J. A. Lyons) said in the House of Representatives,‡ " to the Constitutional Convention recorded in the Preamble to the Statute of Westminster, which sets out in substance that any alteration of the law affecting the succession to the Crown requires the assent of the Parliaments of the Dominions ":

That—

> Whereas His Majesty King Edward the Eighth by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, has, by an Instrument of Abdication executed on the tenth day of December, One thousand nine hundred and thirty-six, been pleased to declare that He is irrevocably determined to renounce the Throne for Himself and His descendants, and has for that purpose executed an instrument of abdication and has signified His desire that effect thereto should be given immediately:
>
> And whereas a Bill intituled An Act to give effect to His Majesty's Declaration of Abdication and for purposes connected therewith has been introduced into the Parliament of the United Kingdom:
>
> And whereas it is proposed to be enacted by that Bill that immediately upon the Royal assent being signified thereto the Instrument of Abdication so executed shall have effect, and thereupon His Majesty

* Com. Parl. Deb. No. 32. † *Ib.*, 2893, 2901. ‡ *Ib.*, 2901.

Section 4 and at present lacking a Parliament) needed no specific mention.[1] The case of South Africa is exceptional. She was within Section 4 of the Statute of Westminster and accordingly the Abdication Bill recites her " assent." In addition, her Status of Union Act, 1934 (wherein she emphasized her position as a sovereign independent State), expressly

shall cease to be King, and there shall be a demise of the Crown, and, accordingly, the member of the Royal Family next in succession to the Throne shall succeed thereto and to all the rights, privileges and dignities thereunto belonging, and His Majesty, His issue (if any) and descendants of that issue shall not, after His Majesty's abdication, have any right, title or interest in or to the succession to the Throne, and section one of the Act of Settlement shall be construed accordingly, and the Royal Marriages Act 1772 shall not apply to His Majesty after His abdication, nor to the issue (if any) of His Majesty or descendants of that issue:

And whereas it is by the Preamble to the Act of the United Kingdom known as the Statute of Westminster, 1931, among other things provided that it is meet and proper to set out by way of preamble to that Statute that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne should thereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

And whereas the Bill intituled An Act to give effect to His Majesty's Declaration of Abdication and for purposes connected therewith will, upon the Royal assent being signified thereto, involve an alteration in the law touching the Succession to the Throne and it is desirable that the Parliament of the Commonwealth should assent to such alteration:

this Senate (House of Representatives) of the Parliament of the Commonwealth hereby assents to such alteration.

During the debate, the Attorney-General (Rt. Hon. R. G. Menzies) remarked that it was highly doubtful whether the Parliament of the Commonwealth, the powers of which are enumerated in section 51 of the Constitution, had any direct power of its own motion to pass a substantive law dealing with the succession to the Throne.*

The motion was agreed to by each House.

The only State Parliament of Australia to pass any Act in connection with the abdication was that of New South Wales, by the Demise of the Crown (Amendment) Act, which also amended the Constitution (sec. 12) of the State by including " abdication " within the meaning of " demise."

* *Ib.*, 2908.

[1] Questions were asked in the India Legislative Assembly on January 25, 1937,† as to what opinion the India Government tendered to His Majesty's Government in regard to the marriage plans of His Majesty King Edward VIII; and, as to whether the Indian Government was consulted. The replies given by the India Government were that it had not been consulted, but that consultation of the Dominion Governments about any change in the Succession Act was obligatory under the Statute of Westminster.

† Q. Nos. 148, 167, 189 and 207. I. India Leg. Assem. Deb., 25th January, 1937.

incorporates as part of her own law the preamble and Section 4 of the Statute of Westminster. She does not rely exclusively upon any extension of a United Kingdom Act under Section 4. Her " assent," recited in the Abdication Bill, is followed up by legislation of her own which is referred to later. Lastly, the Irish Free State exhibits a further peculiarity. She was not mentioned in the Abdication Bill but, during the debate on the Bill, it was officially stated that she was passing legislation to deal with the position. She eventually produced her own solution—a metaphysical in-and-out membership of the British Commonwealth of Nations. In the Executive Authority (External Relations) Act, 1936,[1] passed in Dublin on December 12th, there are echoes of ancient controversies; the ghost of the famous " No. 2 Document " is being laid at last; but the Dublin legislation does recognize the abdication of King Edward VIII and the accession of King George VI. Such are the several divergencies for which the abdication of Edward found illustration and opportunity.[2] Before leaving this aspect of the crisis, one other question perhaps deserves notice. Abdication is happily unusual; it exists, of course, as the last step of a monarch faced with distasteful advice or, as in King Edward's case, determined upon a course which he sees that his advisers would, if consulted, feel obliged to advise against. Queen Victoria used to hint the threat of abdication. Her great-grandson actually abdicated. His action raised the problem whether the monarch can abdicate by unilateral motion. If so, King Edward ceased to be King on December 10th when he signed the formal declaration of his irrevocable decision. But, as he wore the Crown by virtue of the Act of Settlement of 1700, in the view of his advisers in London, he could not properly lay it aside until another Act of Parliament confirmed his intention to do so. His Majesty's Declaration of Abdication Act[3] was passed at Westminster on December 11th. The legislation afterwards enacted by the Parliament of South Africa[4] fixes the date of abdication as December 10th, the date

[1] Irish Free State Act No. 58 of 1936.

[2] The subsequent enactment of the Regency Act in London, another opportunity for inter-Dominion difference, has not been deemed—

> " an alteration in the law touching the Succession to the Throne or the Royal Style and Titles."

It therefore does not " require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom."

[3] 1 Edw. VIII, c. 3.

[4] His Majesty King Edward the Eighth's Abdication Act (No. 2 of 1937) promulgated in the *Union Gazette*, 10th February, 1937. An interesting feature in connection with the Act is that when it was published as a Bill

on which King Edward VIII signed the Instrument of Abdication. The discrepancy is due to the fact that the Government of the Union of South Africa held that the King can abdicate by unilateral action and therefore that he ceased to be King when he signed the Instrument of Abdication.

As against the view of the Union Government, it was argued in South Africa, that the question as to whether the King had the right to abdicate by unilateral action did not affect the position, because in the Instrument of Abdication, he had merely expressed the desire that effect should be given to his intention to abdicate and that effect was given by the Act passed at Westminster on December 11th.

Such discrepancies can be inconvenient; had the point been taken in time, there is no reason to suppose that uniformity of date could not have been agreed among the members of the British Commonwealth. We must be content to rejoice, even amid some sacrifice of uniformity of detail, in the unanimity which, without revolution or party strife, accepted King George VI in place of King Edward VIII.

We now leave these formidable issues of constitutional law and return to the story of the Second Reading of the Abdication Bill in the Parliament at Westminster on the tenth and last day of the crisis. The Bill treated the abdication as a demise of the Crown; King Edward and his issue, if any (" and," in an apparently otiose phrase, " the descendants of that issue ") were barred from the succession to the Throne; the Royal Marriage Act of 1772[1] was excluded from application to the outgoing sovereign. The Second Reading was voted in the House of Commons after an hour and a half by 403 votes to 5;[2] the Committee stage and Third Reading took less than an hour; within

in the *Union Gazette Extraordinary*, 7th January, 1937, it contained the following as the second paragraph in its preamble:

> AND WHEREAS by the aforesaid Instrument of Abdication the Throne became vacant and King Edward the Eighth ceased to be supreme Lord in and over the Union of South Africa.

which paragraph did not appear in the Bill introduced into Parliament. Such Bill both in the preamble and in Clause 1 referred to the Instrument of Abdication (as set forth in the schedule of both Bills) as, " a copy of which is set out (forth) in the Schedule to this Act," which words did not occur in the Bill as published in the *Gazette*. The Bill introduced into Parliament and which became law also differed in respect of a new sub-clause (2) to Clause 1, as follows:

> (2) Everything purporting to have been done in the name of the late King Edward VIII in accordance with law after the said Instrument of Abdication and before the passing of this Act, shall be deemed to have been lawfully done and to have and have had full force and effect, the provisions of the preceding sub-section notwithstanding.

[1] 12 Geo. III, c. 11. [2] 318 H.C. Deb. 5. s. 2222.

another half-hour the Bill was through the House of Lords, where the three peers who formed the Royal Commission sat ready in robes and cocked hats to give the Royal Assent. The faithful Commons were summoned to attend the ancient ceremony. The Reading Clerk bowed and read the Commission. The Clerk of the Crown bowed, took his stand on the right of the Table and read the title " His Majesty's Declaration of Abdication Act." The Clerk of the Parliaments, on the other side of the Table, bowed and flung over his shoulder to the representatives of the House of Commons under the gallery at his back the centuries-old formula *Le Roy le veult*.[1] It was the end of a reign. Students of history could note the coincidence that on another December 11th (in 1688) James II left England and, as the Bill of Rights afterwards declared, " abdicated the Government." His marriage fifteen years earlier, distasteful to a majority of his countrymen on grounds both of religion and of international politics, had contributed to his unpopularity and thus was an element, however remote, in ensuring a welcome for William of Orange.

Swift and mercifully peaceful as was the revolution of 1688, the departure of Edward VIII from England in 1936 was an even more amazing instance of national quietism. Next morning, on the 12th December, the Lords, Spiritual and Temporal, the late King's Privy Councillors, and " numbers of other principal gentlemen of quality," with the Lord Mayor, Aldermen and Citizens of London (representing, as the historians say, the ancient Witan gathered to choose and proclaim a new King) were solemnly assembled at an Accession Council.[2] Then, in St. James's, at Charing Cross, Temple Bar and the Royal Exchange, the heralds with their mediæval chivalry proclaimed that—

> the High and Mighty Prince **Albert Frederick Arthur George** is now become our only lawful and rightful Liege Lord **George** the Sixth by the Grace of God, of **Great Britain, Ireland** and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of **India**: to whom we do acknowledge all Faith and constant Obedience, with all hearty and humble Affection: beseeching God, by whom Kings and Queens do reign, to bless the royal Prince **George** the Sixth with long and happy Years to reign over us.
>
> **GOD SAVE THE KING.**

[1] 103 H.L. Deb. 5. s. 775.
[2] *London Gazette Extraordinary*, December 12, 1936.

III. SPEAKER'S DECISIONS ON POINTS OF PROCEDURE RAISED IN THE HOUSE OF COMMONS IN CANADA, 1936

BY

ARTHUR BEAUCHESNE, C.M.G., K.C., LL.D., M.A., LITT.D., F.R.S.C.
Clerk of the House of Commons.

ON February 20, Mr. Heaps moved:

> That, in the opinion of this House, the Government be requested to immediately introduce legislation granting adequate retiring allowances to all citizens over sixty years of age, thereby giving an opportunity to large numbers now unemployed to be re-absorbed into useful productive activity.

As the Government was requested to introduce immediately legislation involving an expenditure, the Speaker ruled that the motion was out of order because it was introduced by a private member and it purported to authorize an expenditure without the previous consent and recommendation of the Governor-General.

On February 21, Mr. Pouliot asked leave to introduce an Act to repeal 24-25 George V (1934), Chapter 25, "An Act respecting the Bureau for Translations." As there was a clause in the Bill providing for the abolition of the existing staff and appointment of translators under a new system, the Speaker decided it involved an expenditure and should have been moved by a Minister on the recommendation of the Governor-General and have been preceded by a resolution in Committee of the Whole House.

On February 24, Mr. Perley (Qu'Appelle) moved the following Resolution:

> That, in the opinion of this House, the domestic freight rate on grain and grain products moving from any point in the provinces of Manitoba, Saskatchewan, Alberta, and British Columbia, to a point in any of the said provinces, or from any point, to another point, in any of the said provinces, be adjusted or reduced to at least not more than three cents per hundred pounds over the existing export rates.

A point of order being raised, the Speaker gave the following decision:

> The adjournment of the debate, last Thursday, on the second reading of Bill No. 2, an Act to amend the Railway Act (Rates on grain), means that the question shall again be considered at a future sitting when the order for Public Bills will

be reached. This is what is called, in Parliamentary procedure, appointing a matter for consideration by the House. May, page 272, gives many precedents showing that the discussion of an appointed matter cannot be anticipated by a motion. The Bill proposes to extend to the westward traffic, from Fort William to Vancouver and the Pacific coast, the rates on grain and flour agreed to in the Crow's Nest Pass Agreement embodied in its essence as follows in the annual statutes of 1897:

" That there shall be a reduction in the company's present rates and tolls on grain and flour from all points on its main line, branches or connections, west of Fort William to Fort William and Port Arthur and all points east, of three cents per one hundred pounds."

The Order adjourning the debate had been passed by the House when Mr. Perley, the honourable member for Qu'Appelle, moved that domestic freight rates on grain products, from and to any point in the provinces of Manitoba, Saskatchewan, Alberta and British Columbia, be reduced to at last not more than three cents per hundred pounds over the existing export rates.

There is sufficient similarity in the Bill and the Motion to confine them to one debate. The domestic rates dealt with in the Motion are included in the rates and tolls on grain and flour mentioned in the Crow's Nest Pass Agreement. The question centralizes on grain rates in western Canada, and debate thereon could not be allowed last Thursday a few minutes after the House had adjourned it to a future sitting. The difference in details between the two propositions may be dealt with by moving amendments when the Bill is in Committee of the Whole, but it is not sufficient to justify a duplication of the debate. It is a well-known principle that the same question cannot be raised twice in the same session.

The main object sought both by the Bill and the Motion is the reduction of rates on grain and its products moving westwardly in the prairie provinces and British Columbia. They are both intended to put an end to an alleged unfairness in the present rates, and the whole debate, which will be centred on that grievance, must take place on the Bill and not on the Motion.

As Campion says, " in applying the Anticipation rule, preference is given to the discussion which leads to the most effective result," and this has established a descending scale of values for discussions—Bills, Motions, Amendments, etc.[1] A Bill has the right-of-way and cannot be sidetracked by a Motion.

I cannot follow any other course than to decide that the discussion of Mr. Perley's Motion is blocked by the adjournment of the debate on Bill No. 2, and for that reason I have to declare that the Motion cannot now be debated and must be struck off the Order Paper.

This decision does not prevent the subject matter of Mr. Perley's Motion from being discussed when the Bill is under discussion.

[1] *An Introduction to the Procedure of the House of Commons*, G. F. M. Campion, C.B. (now Clerk-Assistant of the House of Commons). P. Allen and Co., Ltd., 1929.

On March 2, Mr. Thompson moved:

> That, in the opinion of this House, all rural telephone companies should be exempt from federal income tax.

Mr. Speaker ruled the said proposed motion out of Order for the reason that it was not framed in such abstract or general terms that it could be entertained by the House. The proposal made therein was for a special reduction in the public revenue. The item to be struck out is mentioned, namely, the income tax levied on rural telephone companies. Such a proposal can only be entertained in the Committee of Ways and Means, and, as May says,[1] " these proposals must be grafted upon the financial scheme submitted by the Government and must not affect the balance of ways and means voted for the service of the year." True, the motion says that the exemption of the tax " should " and not " shall " be made, but even at that I think the proposal ought to be considered in the committee and not by the House, for it is essentially a ways and means resolution.

On March 6, Mr. Boulanger moved the Second Reading of a Bill to amend the Post Office Act, so that contracts for the transportation of mail, for amounts exceeding $1,000, be awarded with the approval of the Governor-in-Council. The Speaker gave the following ruling:

> This Bill provides that the Postmaster General may award contracts for the transportation of mail, that no contract for an amount exceeding $1,000.00 per year may be awarded without the approval of the Governor in Council, that the contractors shall be paid according to a fixed rate between 35 cents and 70 cents per mile per day unless otherwise authorized by the Governor in Council.
>
> Moreover, the sponsor states in the explanatory notes that it is sought by this Bill to allow the Postmaster General properly to remunerate the mail carriers who perform the important function of transporting the mail of Canada.
>
> In the Session of 1929, Mr. Guthrie moved as an amendment to the motion for the Committee of Supply that rural mail carriers should be appointed by the Civil Service Commission upon a permanent basis with a definite rate of pay based upon mileage and the physical conditions of the territory involved, having regard to the amount paid to other civil servants for similar employment. This was in order because it was not a bill; it was a proposed resolution drafted in general terms which had no immediate effect and would have had to be followed by a Bill amending the Post Office Act; but a Bill like this one, authorizing the Postmaster General to enter into contracts for carrying the mail, involves the appropriation of public revenue

[1] May, 13th Ed., 544.

and must be recommended by the Governor General and originate in a Committee of the Whole specially set up for that purpose. A resolution must first be submitted which, under Standing Order 60, cannot be considered on the day it is introduced but must then be adjourned to a future sitting. A Bill founded on that resolution is then introduced. Such measures are always sponsored in our House by Ministers of the Crown.

This Bill does not follow these requirements, which are obligatory under the British North America Act, the Standing Orders and our practice, and I am bound therefore to rule it out of order.

On April 24, Mr. Reid moved to amend the Bank of Canada Act, and a point of order being raised, the Speaker gave the following decision:

The objects of the Bill which the Honourable Member for New Westminster is seeking to introduce in amendment to the Bank of Canada Act are to allow the Bank of Canada to hold silver coin and bullion in conjunction with gold as a reserve against the note issue and deposit liabilities and also to authorize the issue of certificates against the silver held in the reserve.

Under Section 31 of the Act, the Receiver-General of Canada is entitled to share in the profits of the Bank. If the reserve required as security against outstanding notes and deposit liabilities is to consist of silver bullion as well as gold, the fluctuations in the price of silver may cause the Bank to sustain serious losses and therefore its profits may be substantially curtailed with an accompanying reduction of the Receiver-General's share therein and therefore a diminution of the public revenue.

It is an established principle in British Parliaments, which was set down by a Standing Order passed in the British House of Commons as far back as 1707, that financial business must originate in a Committee of the Whole House.

Private Members cannot introduce a Bill of this character which ought to be preceded by a resolution on motion of a Minister with the recommendation of His Excellency the Governor General. Moreover, there is now on the Order Paper a Resolution in the name of the Minister of Finance antecedent to a Bill to amend the Bank of Canada Act, so as to increase the capital stock of the Bank and to assure ownership of a majority of shares by the Government. Full discussion on this measure cannot be anticipated by a private member's Bill, and in determining whether a discussion is out of order on the ground of anticipation, the authors say that regard shall be had by the Speaker to the probability of the matter anticipated being brought before the House in a reasonable time. I am well aware that a motion for leave to bring a Bill is in order even if another similar motion with regard to a Bill dealing with the same subject-matter stands on the Order Paper, but when the latter is a Government measure announced in the Speech from the Throne, and bound to be taken up by the House, I doubt if the discussion of some of its provisions can be forestalled by the introduction of a private

member's Bill. For this reason and also because the Bill sought to be introduced deals with a part of the Dominion's finances, I rule it out of order.

On May 1, Mr. Pouliot having been asked by the Speaker to withdraw a statement which he made concerning the Leader of the Opposition refused to do so and walked out of the House. During a sitting of the Committee of the Whole House, he endeavoured to make his withdrawal, but was prevented from doing so by the Deputy Speaker on the ground that Mr. Pouliot, having been asked by the Speaker, should make his withdrawal when the Speaker was in the chair. Mr. Pouliot was absent from the House for two weeks, but finally gave in, and, at the opening of the sitting, made satisfactory retraction.

The Speaker's decision given on May 1, was as follows:

On Monday last, the Honourable Member for Témiscouata was asked by me, as Speaker of this House, to withdraw a statement he made concerning the Leader of the Opposition and which the Right Honourable Gentleman denied. The Honourable Member utterly refused to conform to my ruling and went as far as to defy the Chair by saying: " If I am wrong, I will withdraw; if I am not wrong, I will not withdraw. . . . I will see the book before withdrawing." He walked out of the House while repeating this statement. In doing so, he offended not only against parliamentary practice but also against the proprieties of the House of Commons.

It is my duty as Speaker to keep intact the rules of debate and to safeguard the dignity of the Chair. I have waited a few days before taking action because I felt the Honourable Member for Témiscouata would realize the gravity of his conduct and take the first opportunity to make the withdrawal asked by the Chair. I note in the official debates that he was willing to withdraw his statement in Committee of the Whole yesterday but was prevented from doing so by the Chairman, who rightly decided that the offence having been committed in the House retraction must be made when the Speaker is in the Chair.

As a refusal to yield to the Speaker's authority is a serious matter which cannot be overlooked, I must insist on the Honourable Member for Témiscouata withdrawing the statement he made regarding the Right Honourable Leader of the Opposition, and I trust that in his desire to ensure the true observance of parliamentary practice, he will do so in good grace.

On June 1, when the Committee of the Whole was considering a Resolution to amend the Bank of Canada Act, Mr. Woodsworth made the following amendment to the Resolution:

That it is expedient to bring in a measure to amend the Bank of Canada Act to provide that all shares thereof shall be purchased by the Minister of Finance out of the Consolidated Revenue

Fund in order to assure ownership of the shares by the Government, and to provide for appointment of directors in such manner as to assure control of the board by the Government.

The Chairman gave the following decision:

This is not a motion for appropriation of public moneys. It is a proposed resolution under Standing Order 60 for a charge upon the people to be voted on another occasion and it is required in order that the Bank of Canada Act, a Bill involving an expenditure, be introduced.

The fundamental terms of the resolution submitted to the House with the Governor General's recommendation upon which this Committee was appointed cannot be amended. Amendments will only be in order if they fall within the terms of the resolution.

May[1] says that the procedure in Committees on money resolutions follows in principle the procedure of the Committee of Supply, and that amendments are out of order if they are proposed with a view to substituting an alternative scheme to that proposed with the Royal recommendation.

The point was decided by Mr. Whitley, then Chairman of Committees in the British House of Commons on the 22nd October, 1917.

I therefore ruled the amendment out of order.

[1] 13th Ed., 546.

IV. BROADCASTING PROCEEDINGS IN THE NEW ZEALAND PARLIAMENT

BY

T. D. H. HALL, LL.B.
Clerk of the House of Representatives.

PRIOR to the last General Election in New Zealand in 1935 the Labour Party indicated that if returned they would reorganize the national broadcasting service and would make provision for the people of the Dominion to hear the discussions in Parliament on national questions. When Parliament met therefore, in March, 1936, the Chamber of the House of Representatives was equipped for broadcasting. The equipment takes the form of four microphones, the fading in or out of each of which is under the control of the relay operator. The latter and the announcer are located in an inconspicuous corner of the Chamber where they are able to get a good view.

The microphones are effective both back and front, and are suspended in a line down the centre of the Chamber. It is thus possible for the relay operator to use the microphone which is nearest to the Member who is addressing the House. It has been found that with this arrangement all Members who talk sufficiently loud to be heard in the Chamber can be readily picked up for broadcasting. The three microphones not in use are faded out, otherwise the room noises and incidental conversation of Members is disturbing.

The announcer sits with the relay operator and is provided with a fifth microphone to enable him to interpolate the names of the Members addressing the House and any other descriptive matter that may be necessary.

The opening ceremony of Parliament was broadcast, temporary arrangements being made for the transmission of the Governor-General's speech from the Legislative Council Chamber.[1] Preliminary proceedings in the House dealing with the swearing-in of Members and the election of the Speaker were also broadcast. Subsequently the Government selected the occasions on which debates would be broadcast—usually on questions of national importance such as control of the Reserve Bank and the Government's scheme for the marketing of produce. The debates were broadcast over the national system and consequently had to break into the

[1] *i.e.*, The Upper House.

programmes that had been arranged. The broadcasting authorities had therefore to be advised as early as possible so that listeners could be notified of the break in the national programme and what the subject of the debate was to be. As a rule, a definite time was allotted for the broadcast—three hours was the usual time. That time was allotted to Members of the Government, Members of the Opposition and perhaps an Independent. The matter was in the hands of the Prime Minister. Having selected the occasion he notified the Leader of the Opposition and the Independents and indicated the time to be allotted to each speech (usually as fixed by the Standing Orders).[1] The Leader of the Opposition and the Independents selected their own speakers who were to take part in the broadcast. The Speaker announced at the beginning of the day's proceedings that the broadcast was to take place.

It was the first time that there had been a Labour Government in power in New Zealand and the broadcasting of the proceedings aroused a great deal of interest, at any rate at the start. Experience, however, showed that there were difficulties. For instance, the interference that necessarily had to take place with arranged and advertised programmes caused some inconvenience and disappointment. Then, too, it was difficult to fill in exactly the time allotted. A Member allotted half an hour for a speech might find he had exhausted all he had to say in twenty minutes, and there was then a awkward hiatus. There was a feeling, too, that there w undue preference to front-benchers in such an arrangemei It was felt that if the broadcasting were to continue it wou have to be from a subsidiary station and not from the main national stations. Towards the end of the 1936 Session there were fewer broadcasts. The Government has indicated that it is prepared to consider a special station for broadcasting Parliamentary proceedings, but up to the present definite steps have not been taken.

[1] S.O., 100, 101; 126-128; 131, 143, 156, 157, 233, 260, 305 and 311.

V. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY, 1936

BY

D. H. VISSER, J.P.
Clerk of the House of Assembly.

THE following points of procedure occurred in the House of Assembly and Joint Sittings of the two Houses of Parliament during the 1936 Session:

A. House of Assembly.

Amendment to alter certain words wherever they occur.—In 1927,[1] for the convenience of the Committee of the Whole House on the Medical, Dental and Pharmacy Bill, an amendment was allowed to the effect that whenever the word " midwife " occurred in the Bill it should follow instead of precede the word " nurse." This precedent was followed on February 17, when an amendment was allowed on Clause 5 of the Medical, Dental and Pharmacy Amendment Bill to alter " director " to " directors " and " person " to " persons " wherever the words occurred in the Clause.[2]

Motion for closure withdrawn.—On March 20, during a prolonged debate on the Third Reading of the Part Appropriation Bill, a motion was moved and seconded " That the question be now put." After Mr. Speaker had put the motion and a division had been called, the motion and the call for the division were, with leave of the House, withdrawn.[3]

Select Committees given leave to revert to resolutions.—Owing to the absence of Members it was impossible to obtain the unanimous consent of all the Members of certain Select Committees to revert to resolutions which had been adopted. Leave was therefore obtained from the House.[4]

Leave given Select Committee to bring up amended Bill after Second Reading.—Leave is customarily given to Select Committees to bring up amended Bills when such Bills are referred to Select Committees before second reading as principles have not been decided by the House. The Select Committee, which was appointed on the Arms and Ammunition Bill after second reading, desired to make numerous amendments which

[1] VOTES, 1927, 114.
[2] *Ib.*, 1936, 336.
[3] *Ib.*, 1936, 159.
[4] *Ib.*, 363-578.

were not in conflict with the principle of the Bill and which did not introduce new and important principles requiring an instruction. Leave was accordingly granted to the Select Committee to bring up an amended Bill.[1]

Failure of Select Committee to meet within three sitting days of its constitution.—The Select Committee on the subject of the Mine Trading Amendment Bill failed, owing to the absence of a quorum, to hold its first meeting within the time prescribed by S.O. 230. Under ordinary circumstances the Clerk, in consultation with the Chairman of the Committee, would have convened the next meeting of the Committee, but as no Chairman had been elected the Committee lapsed and was revived by the House in accordance with the precedent established under similar circumstances in connection with the Select Committee on the subject of the Newspaper Libel Bill, 1931.[2]

Bill dropped and House adjourned owing to absence of quorum.—The Transvaal and Natal Masters and Servants Amendment Bill was introduced as a public bill by a Private Member. In Committee of the Whole House on the Bill a division was called. During the division a member called attention to the fact that there was no quorum. Ordinari[1] the fact that there was no quorum would appear from t division lists, but in this instance as the minority consis of fewer than 10 Members only the names of the mino would be recorded and there would be no division lists disclose the absence of a quorum. The Committee was therefore counted, and on it being found that there was no quorum the bells were rung for two minutes under S.O. 213. As it appeared that there was still no quorum the Chairman left the Chair and reported the fact to Mr. Speaker. The bells were again rung under S.O. 214 with Mr. Speaker in the Chair, and on it being found that there was still no quorum the House was adjourned until the next sitting day and the Bill dropped.[3]

Charges against Members.—On May 6, the Leader of the Opposition in Committee of Supply moved the reduction of the Prime Minister's Vote, and in the course of his speech made allegations of administrative malpractices involving the conduct of Members. The Chairman pointed out[4] that the conduct of Members and charges of a personal character could only be raised upon a direct and substantive motion,[5] and subsequently the Leader of the Opposition was given precedence

[1] VOTES, 1936, 447. [2] *Ib.*, 507. [3] *Ib.*, 530.
[4] 27 Union Assem. Deb. 3079. [5] May, 11th Ed., 277.

for a motion for the appointment of a Select Committee, to be nominated by Mr. Speaker, to inquire into the facts and circumstances in connection with the granting of a certain Land Bank loan,[1] the terms of appointment being wide enough to cover investigations into the conduct of members.[2]

On the last day of the Session during the debate on the Third Reading of the Appropriation Bill a Member, in criticizing the Department of Justice and the direction of public prosecutions, quoted two instances " to show that there is not the same rigorous prosecution of offences of persons who have political influence as there is of those who have none." After outlining the nature of these offences he stated that in both instances they had been committed by Members of Parliament (unnamed), and that but for the influence they possessed they would have been proceeded against. The Deputy Speaker thereupon called upon the Member to withdraw the reflections he had made upon Members of the House, and upon his declining to do so he was named and suspended.[3]

Direct pecuniary interest.—On May 8, the Chairman of Committees and Mr. Speaker applying the principles laid down by Mr. Speaker in 1934,[4] ruled that a Member could not be held to have a direct pecuniary interest unless the question before the House was actually to confer upon him a personal pecuniary advantage or diminish his pecuniary loss. It was held in this case that on the Vote containing the salary of the Minister of Lands there was nothing to prevent Members from defending the purchase of their land by the Government, since the Vote did not contain any provision for such purchase.[5]

Division of complicated question.—Acting on the principle that the House may order a complicated question to be divided (S.O. 84), Mr. Speaker, at the request of a Member on the consideration of the report of the Select Committee on Irrigation Matters, put a comprehensive amendment in three parts.[6]

Respective powers of Speaker and House to deal with conduct of a Member.—On June 5, the question arose as to whether the Speaker (under S.O. 93 and 94) or the House (S.O. 91) should take action against a Member whose conduct was grossly disorderly. Mr. Speaker stated that the powers vested in him by the House under its Standing Orders did not preclude the House from taking further action.[7]

[1] VOTES, 1936, 537.
[2] S.C. 18-36, pp. xxxi, xxxii.
[3] VOTES, 1936, 793.
[4] *Ib.*, 402.
[5] *Ib.*, 579.
[6] *Ib.*, 1936, 699, 700.
[7] May, 11th ed., 923. Union Assem. S.O. 18 (6) and VOTES, 1936, 713.

B. Joint Sitting of the Senate and House of Assembly under Sections 35 and 152 of the Constitution.[1]

(1) *Scope of proceedings at Joint Sitting.*—

(*a*) *Message convening Joint Sitting.*—In 1918 and 1925 Joint Sittings were convened by Message from the Governor-General transmitting Bills for consideration and Mr. Speaker held that the Joint Sitting was confined to the Bill submitted.[2] In 1929 and 1930, with a view to giving the Joint Sitting greater latitude the message referred to the long titles of the proposed Bills and no copies were attached, but even this procedure was found to place unnecessary restrictions on the Joint Sitting, and in the latter Session a further message was necessitated giving the Joint Sitting power in general terms to consider "other and further measures which require a Joint Sitting." Consequently in 1936 the message convening the Joint Sitting was framed in the widest terms possible and after the Representation of Natives Bill had been introduced, Mr. Speaker ruled that there was nothing to prevent the introduction of an alternative Bill.[3]

(*b*) *New Member of House of Assembly sworn in and death of Member announced.*—During an adjournment of the House of Assembly for the holding of the Joint Sitting, the election of a new Member of the House of Assembly (Brig.-General Botha) was reported and the question arose as to whether he could take part in the proceedings of the Joint Sitting. Mr. Speaker decided that he was not entitled by virtue of his election to sit and vote in this Joint Sitting until he had taken the oath of allegiance under section 51 of the Constitution, and that as both Houses of Parliament were present at the Joint Sitting it was competent for Mr. Speaker to administer the oath there. General Botha accordingly took the oath at the Joint Sitting,[4] and the fact was reported to the House of Assembly when it reassembled.[5] Acting on this precedent Mr. Speaker subsequently announced at the Joint Sitting that a vacancy had arisen in the House of Assembly owing to the death of a Member (Mr. Struben), and took the first opportunity of making a similar announcement to the House of Assembly.[6]

(*c*) *Competency of Joint Sitting, instead of two Houses sitting separately, to legislate on certain matters.*—Section 152 of the

[1] 9 Edw. VII, c. 9.
[2] JOINT SITTING MIN., 1918, 10.
[3] *Ib.*, 18. *See also* § (*c*) (iv) hereof.
[4] JOINT SITTING MIN., 1936, 13.
[5] ASSEM. VOTES, 1936, 210.
[6] J.S. MIN., 1936, 22; ASSEM. VOTES, 1936, 225.

Constitution prescribed that a bill " embodying " a repeal or alteration of section 35 must be passed at a Joint Sitting, but in the case of Rex *v.* Ndobe,[1] the Chief Justice stated that to assume that an Act dealing with matters other than those contemplated by section 35 of the South Africa Act was passed by the two Houses sitting together as prescribed by section 35, would be " to assume that the Act was not validly passed." In view of this *obiter dictum* the question was raised, on April 6, as to whether it was competent for the Joint Sitting to deal with any provisions in the Bill before it, which related to " matters other than the qualifications necessary to entitle persons to vote at the election of Members of the House of Assembly." Mr. Speaker held that in his opinion " the Joint Sitting is competent to deal with all the clauses which formed part and parcel of the Bill embodying the scheme for the proposed alteration of section 35 of the South Africa Act."[2]

On the following day an attempt was made to interdict the Speaker from presenting the Bill to the Governor-General for his assent or to show cause why the Cape Provincial Division of the Supreme Court should not inquire into and determine the existing and future rights of the applicant Masui, a Native registered voter, under the Bill, but the application failed.[3]

After the Act had been promulgated the Court on October 14, 15, heard another application from a Native registered voter, Ndlwana, challenging the validity of the Act on the following grounds:

(i) That the Joint Sitting can only validly pass an Act disqualifying a person from being registered as a *voter* by reason of his race or colour and that the Act does not disqualify any person;

(ii) That even if certain sections do disqualify certain persons a large portion of the Act has nothing to do with the disqualification of voters and therefore the whole Act is invalid;

[1] 1930, A.D. 484. [2] J.S. MIN., 1936, 80.

[3] ASSEM. VOTES, 1936, 393 and Report of the Clerk of the House, which was referred to the Standing Rules and Orders Committee.

The Report dealt *inter alia* with the question of whether breaches of privilege had not been committed by the applicant in attempting to serve a notice of motion on Mr. Speaker in the precincts of the House (see May, 11th ed., p. 80, and Act No. 19 of 1911, sect. 36), and by commencing proceedings in a Court of Law against Mr. Speaker for his conduct in obedience to the orders of Parliament (see May, 11th ed., p. 86). It also dealt with the question as to whether process could be stayed under section 5 of the Powers and Privileges of Parliament Act (No. 19 of 1911).

(iii) That in any event, if the Act disqualifies certain persons it is invalid so far as it affects persons already registered as voters who are safeguarded under section 35 (2) of the South Africa Act; and

(iv) That the Joint Sitting was not duly convened to consider this Act but the original draft Bill which was not proceeded with.

This application was refused in a judgment given on November 4, by the Judge President (Mr. Justice van Zyl), Mr. Justice Sutton and Mr. Justice Centlivres concurring. In the reasons for judgment it was held:

(i) That the removal of persons from the ordinary voters' lists and the placing of such persons on other voters' lists was a disqualification within the meaning of section 35 (1) of the South Africa Act, which required a Joint Sitting.

(ii) That section 35 (1) contemplated the consideration at a Joint Sitting of a Bill which dealt generally with the qualification of voters and contained a provision or provisions disqualifying any person from being registered on the ground of race or colour, and similarly that bills containing disqualifying provisions may also contain compensatory provisions.

(iii) That even if section 35 (2) of the South Africa Act could not be amended by the Union Parliament under section 152 before the passing of the Statute of Westminster it could since the passing of the Statute of Westminster be amended under that section.

(iv) That the Court could not enquire into the form of the Message convening the Joint Session, but that even if it could the terms of the Message were sufficiently wide to cover the second Bill which was eventually passed.

An appeal was made against this decision but dismissed by the Appellate Division of the Supreme Court of the Union on April 5, 1937.

(*d*) *Competency of two Houses sitting separately, instead of Joint Sitting, to legislate on certain matters.*—The Native Trust and Land Bill which was complementary to the Representation of Natives Bill was introduced in the House of Assembly, and Mr. Speaker was asked whether certain clauses placing restrictions on Natives in the acquisition of or residence on land would not involve disqualifications of voters requiring

a Joint Sitting under section 35 of the South Africa Act. Mr. Speaker, after considering the point, said that he did not feel called upon to give a ruling on a question that might depend on nice points of legal construction and interpretation, and that he was not prepared to rule any provisions of the Bill out of order on the ground that a Joint Session may be considered necessary.[1]

(*e*) *Power of Houses sitting separately, instead of Joint Sitting, to amend entrenched sections of South Africa Act.*—In 1931 the House of Assembly and the Senate[2] approved of certain provisions to be made in the proposed Statute of Westminster " on the understanding that the proposed legislation will in no way derogate from the entrenched provisions of the South Africa Act." Later in the same year the Union Parliament, under section 2 of the Statute of Westminster, acquired the right to pass legislation repugnant to the laws of England such as the South Africa Act, and the question was raised in 1934 as to whether this right could be exercised by the two Houses sitting separately to amend sections which under the South Africa Act could only be amended by a Joint Sitting. On that occasion[3] Mr. Speaker said: " I have come to the conclusion that the Statute of Westminster does not in any way derogate from the entrenched clauses of the South Africa Act and that the position will not be changed by the passing of the Status Bill or the Constitution Bill. The whole existence of this Parliament is based on the South Africa Act which is our Constitution, and in my opinion, until they are repealed, we are bound by the provisions of that Constitution regarding the procedure to be followed in connection with the amendment or repeal of any of the entrenched clauses. Notwithstanding the provisions of the Statute of Westminster, I am of opinion that if we desire to amend or repeal any of the entrenched clauses, then we must follow the procedure laid down in the South Africa Act."

At the Joint Sitting on the Representation of Natives Bill, 1936, the question was again raised and Mr. Speaker was asked whether a proposed amendment in the Bill to an entrenched section[4] of the South Africa Act would be valid if passed by the Joint Sitting, and if so whether the section as amended could in future be amended only by a Bill passed at a Joint Sitting. To this Mr. Speaker replied that the point was hardly one of order and that he was not prepared to

[1] VOTES, 1936, 500.
[2] SEN. MIN., 1936, p. 91; ASSEM. VOTES, 1931, 530-629.
[3] ASSEM. VOTES, 1934, 506. [4] sec. 35.

express an opinion as to the validity or otherwise of any Bill or part of a Bill that may be passed. Such an opinion would fall outside the scope of his functions.[1]

In the case of Ndlwana *v.* The Minister of the Interior and Others (see par. (*c*) above), the Judge President (Mr. Justice van Zyl) remarked that " for the purposes of this case it is not necessary to decide whether in view of the Statute of Westminster, Parliament, as ordinarily constituted, can repeal or amend any of the entrenched sections."

(2) *Adjournment of House during Joint Sittings.*—Hitherto the Joint Sittings on entrenched clauses have been held in the morning without interfering with the afternoon sittings of the House of Assembly. On the present occasion, however, morning sittings were considered inadequate and sessional orders were passed,[2] facilitating the adjournments of the House for Joint Sittings and empowering Mr. Speaker to shorten or prolong the length of the adjournments.[3] Leave was also granted to Select Committees of the House of Assembly to meet during the adjournments for the Joint Sitting.[4]

(3) *Petition for leave to be heard at Bar.*—On February 17 a petition was presented at the Joint Sitting from Natives adversely affected by the Native Representation Bill, praying for leave to be heard at the Bar, by the Rt. Hon. Sir James Rose-Innes.[5] As the petitioners were particularly and directly affected by the measure before the Joint Sitting and had interests which were distinct from the general interests of the country, the petition was in order, but no further action was taken as the Bill in question was not proceeded with and another Bill was introduced.[6]

(4) *Expedition of business.*—In order to expedite the business of the Joint Sitting a " guillotine " resolution was, for the first time in South Africa, adopted on March 6. Subsequently it was found possible by arrangements with the parties in opposition to dispense with the order, and it was consequently discharged before being put into operation.[7]

(5) *Two Bills dealing with same subject.*—In conformity with the practice and rules of the House of Assembly two Bills on the same subject were allowed to run concurrently, and when one was passed the other was discharged by Mr. Speaker under S.O. 178 (2).[8]

[1] J.S. MIN., 1936, 79. [2] ASSEM. VOTES, 1936, 169, 185.
[3] *See ib.*, 181 ad J.S. MIN., 1936, 23. for meeting of House accelerated.
[4] ASSEM. VOTES, 1936, 170.
[5] A former Chief Justice of the Union.—[ED.]
[6] J.S. MIN., 1936, 8. [7] *Ib.*, 46, 50. [8] *Ib.*, 81.

(6) *Amendment hostile to motion for leave to introduce Bill.*— On the principle that on a motion for leave to introduce a Bill amendments may be moved that are either hostile to a Bill or to effect an alteration,[1] an amendment was allowed to omit all the words after " That " for the purpose of substituting words having the effect of delaying the Bill until the Bill had been adequately made known to the people of the Union and until the Union Native Conference had been consulted. The amendment was negatived and the first reading of the Bill was agreed to after a division.[2]

[1] May, 11th ed., p. 462.

[2] J.S. MIN., 1936, 5-6.

VI. FEDERAL POWERS IN CANADA

BY THE EDITOR

Amendment of the Constitution.—Following upon the references in last issue of the JOURNAL[1] to the movement to amend the Constitution of the Dominion,[2] two debates of considerable constitutional interest and importance took place in both Houses of the Dominion Parliament during the early part of the year under review in this issue; the first upon a motion in the Senate by the Hon. George Lynch-Staunton, to enable the Parliament of Canada to amend, by its own Act, the Canadian Constitution; and the second, upon a motion initiated in the Commons for a Joint Address to the King for certain definite amendments of section 92 of such Constitution in connection with Provincial taxation and Provincial loans.

Authority to Amend B.N.A. Act.—The first debate abovementioned was opened by Senator Lynch-Staunton, who rose in the Senate on April 29, in accordance with the following notice:

> That he will draw the attention of the Senate to and inquire of the Government whether it is the intention of the Government to take steps to have legislation passed by the Imperial Parliament to the end that the Parliament of Canada shall have the authority to, from time to time, amend the British North America Act as it may deem proper.

This debate,[3] which continued during several sittings, centred upon the legislative powers of the Dominion Parliament and those of the Provinces. It is too lengthy to deal with here, but the debate well merits careful study, as indicating the difficulties which surround sections 91 and 92 of the Constitution, commonly known as "the distributive sections," the former setting out the powers of the Federal and the latter those of the Provincial Parliaments.

B.N.A. Acts—Joint Address.—In opening the second debate abovementioned, the Minister of Justice (Hon. Ernest Lapointe, M.P.) moved in the Commons on May 14,[4] the fol-

[1] Vol. IV, pp. 14-18.
[2] British North America Act (30 Vict. c. 3 as amended).
[3] LXXII, Can. Sen. Deb. No. 21, pp. 223-228; *ib.*, No. 22, pp. 242-246; *ib.*, No. 34, pp. 445-454; *ib.*, No. 35, pp. 461-464; *ib.*, No. 39, pp. 517-520; *ib.*, No. 42, pp. 550-555; *ib.*, No. 43, pp. 571-574; *ib.*, No. 44, pp. 585-589; *ib.*, No. 45, pp. 616-621.
[4] LXXII, Can. Com. Deb. No. 64, pp. 3034-3035.

lowing motion for a Joint Address to the King for amendment of the Constitution:

That an humble address be presented to His Most Excellent Majesty the King in the following words:

To the King's Most Excellent Majesty;

Most Gracious Sovereign,

Resolved, that an humble Address be presented to His Most Excellent Majesty the King, in the following words:

To the King's Most Excellent Majesty;

Most Gracious Sovereign:

We, Your Majesty's most dutiful and loyal subjects, the . . . . . Commons of Canada in Parliament assembled humbly approach Your Majesty praying that you may graciously be pleased to give your consent to submitting a measure to the Parliament of the United Kingdom of Britain and Northern Ireland to amend the British North America Acts, 1867 to 1930, and the British North America Act, 1907, and that such measure be expressed as follows:

An Act, to amend the provisions of the British North America Acts, 1867 to 1930, relating to taxation and to enable the Government of Canada to guarantee debts of the Provinces of Canada.

Whereas an address has been presented to His Majesty by the Senate and Commons of Canada requesting the enactment of the provisions hereinafter set forth:

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and the Commons, in this present Parliament, assembled, and by the authority of the same, as follows:

1. (1) Section ninety-two of the British North America Act, 1867, is amended by adding thereto, as clause 2A, the following:

2A. Indirect taxation within the province in respect of:

(i) retail sales, other than of all alcoholic beverages, spirits, malt, tobacco, cigarettes and cigars which are subject to customs and excise duty or tax in Canada or other than of all goods and articles for delivery without the province;

(ii) the patronage of hotels, restaurants and places of amusement or entertainment:

in order to the raising of a revenue for provincial purposes.

(2) The said clause 2A shall be deemed to have retroactive effect with respect to provincial legislation in force at the passing of this Act.

2. The Parliament of Canada may authorize the Government of Canada to guarantee the payment of the principal, interest and sinking fund of any securities (hereinafter called "guaranteed securities") which any province of Canada may from time to time make or issue, and subject to the provisions of this Act may prescribe the terms and conditions upon which any guarantee so authorized shall be given,

and the provisions of this Act shall, in the event of any such guarantee being given, apply and have full force and effect notwithstanding anything contained in the British North America Acts, 1867 to 1930, the British North America Act, 1907, the Parliament of Canada Act, 1875, the Canada (Ontario Boundary) Act, 1889, the Canada Speaker (Appointment of Deputy) Act, 1895, Session 2, or any Acts, orders, rules and regulations passed or made thereunder or pursuant thereto establishing a province or admitting a colony or province into the Union or affecting the constitutional relationship between Canada and a province.

3. The Legislature of any province of Canada may, with reference to the principal, interest and sinking fund of securities which the province may from time to time make or issue, authorize the government of the said province to enter into an arrangement with the Government of Canada whereby the Government of Canada shall guarantee the payment of the principal, interest and sinking fund of such securities.

4. (1) For the purpose of securing Canada against loss resulting from the giving of a guarantee under the authority of this Act, the Government of Canada, whenever in its opinion any default has occurred in respect of any payment on account of principal, interest or sinking fund of the guaranteed securities, may:

(*a*) withhold any payment to the province on account of any grant payable by the Government of Canada to the province for its local purposes or for the support of its Government and Legislature or on account of interest in respect of its public debt or in lieu of public lands or on any other account whatsoever:

(*b*) effect payment in whole or in part of any such grant by payment direct to a creditor of the province of any amount owing to such creditor on account of the guaranteed securities. In this and the next succeeding paragraph " creditor " shall include a trustee of a sinking fund;

(*c*) out of any revenue received or collected by the Government of Canada or any department or officer thereof for or on behalf of the province, make payment direct to a creditor of the province of any amount owing to such creditor on account of the guaranteed securities.

(2) The Legislature of any province may charge the principal, interest or sinking fund of the guaranteed securities on any revenue of the province, upon terms that such revenue shall, if the Government of Canada so requires, be disbursed exclusively in payment of such principal, interest or sinking fund and may, if the Government of Canada so requires, provide for the depositing of all funds from the revenue so charged in a trust account in a bank or banks for the purpose of implementing the said charge.

5. This Act may be cited as the British North America Act, 1936, and the British North America Acts, 1867 to 1930, the British North America Act, 1907, and this Act may be cited together as the British North America Acts, 1867 to 1936.

The debate[1] upon the motion in the Canadian Commons for a Joint Address is also deserving of careful study by all interested in the relative powers of a Central Parliament and those of its States or Provinces.

The Resolution authorizing the Joint Address to the Crown for amendment of the Constitution by the Imperial Parliament was adopted by the Commons after division on May 15, and the following motion by the Minister of Justice was thereupon agreed to:

> That a message be sent to the Senate informing their Honours that this House has passed an Address to His Most Excellent Majesty the King, praying that he may graciously be pleased to give his consent to submitting a measure to the Parliament of the United Kingdom of Great Britain and Northern Ireland to amend the British North America Acts, 1867 to 1930, and the British North America Act, 1907, and requesting their Honours to unite with this House in the said Address hereto attached. And that the Clerk of the House do carry the said message to the Senate.

Upon the consideration by the Senate of the Commons message transmitting the proposed Joint Address, the Hon. Raoul Dandurand, as representing the Government, moved:

> That the Senate do unite with the House of Commons in the said Address and do insert in the blank space therein the words "Senate and."

Debate in the Senate continued on the 26, 27 *idem*, and the 3, 8, and 10th of June.[2]

On May 26, however, the Hon. Mr. Donolly proposed the following motion, which was duly carried:

> That this resolution now being considered by the Senate be referred to the Standing Committee on Banking and Commerce.

On June 3 the Chairman of such Committee brought up the following Report:[3]

> The Standing Committee on Banking and Commerce begs to report that pursuant to reference made by the Senate on the 27th May, 1936, an Address to His Most Excellent Majesty the King, praying that he may graciously be pleased to give his consent to submitting a measure to the Parliament of the United Kingdom of Great Britain and Northern Ireland to amend the British North America Acts, 1867 to 1930, and the British North America Act, 1907, has been under its consideration, and the Committee

[1] LXXII, Can. Com. Deb. No. 64, pp. 3034-3082; and No. 65, pp. 3085-3116.

[2] LXXII, Can. Sen. Deb. No. 29, pp. 347-361; *ib.*, No. 31, pp. 378-390; *ib.*, No. 32, pp. 392-408; *ib.*, No. 35, pp. 455-456; *ib.*, No. 37, pp. 470-471, and *ib.*, No. 39, pp. 510-517.

[3] *Ib.*, No. 35, pp. 455.

has heard representatives bearing on that portion thereof respecting the conferring on the provinces of certain powers of indirect taxation and recommends that such portion be not concurred in.

The Report was adopted, the voting being, Contents, 49; Non-Contents, 10.

On June 8,[1] the Hon. Raoul Dandurand moved the following motion, which was agreed to:

That the order for resuming the further adjourned debate on the motion that the Senate do unite with the House of Commons in an Address to His Most Excellent Majesty the King, be restored to the Orders of the Day, and that it be the first Order after third readings tomorrow.

On June 10[2] the same Senator again moved the original motion:

That the Senate do unite with the House of Commons in an Address to His Most Excellent Majesty the King praying that he may graciously be pleased to give his consent to submitting a measure to the Parliament of the United Kingdom of Great Britain and Northern Ireland to amend the British North America Acts, 1867 to 1930, and the British North America Act, 1907, and that the Senate do insert in the blank space therein the words " Senate and."

To this Question the Hon. A. C. Hardy moved the following amendment:

That the said Address be amended at the end of the paragraph 1 of Clause 2A, the following:

provided that such taxation does not favour or discriminate against the sales of any goods or articles of the growth, produce or manufacture of any province or of any country;

to which, no objection being made, he moved the addition of the following words to his amendment:

or in favour of or against any person, partnership or company domiciled in another province or country.

The amendment was, however, negatived, the voting being: Contents, 15; Non-Contents, 40, and the original motion was declared lost on the same division. For the present, therefore, the proposal to amend section 92 of the Constitution in terms of the Joint Address abovementioned, is defeated.

Validity of Certain Acts.—It is the question of the division of legislative powers between the Dominion and the Provinces, referred to above, which has been the cause of the recent testing in the Supreme Court of Canada of certain measures dealing

[1] LXXII, Can. Sen. Deb. No. 37, pp. 469-471.
[2] *Ib.*, No. 39, pp. 510-517.

with social reform passed by the Dominion Parliament in 1935, and the subsequent appeals to the Judicial Committee of the Privy Council.

The Acts in question, which all concern industrial legislation,[1] are:

A. Farmers' Creditors Arrangement Act, 1934, as amended by the Farmers' Creditors Arrangement Act Amendment Act, 1935.
B. Weekly Rest in Industrial Undertakings Act, 1935.
C. Minimum Wages Act, 1935.
D. Limitation of Hours of Work Act, 1935.
E. Employment and Social Insurance Act, 1935.
F. Natural Products Marketing Act, 1934, as amended by the Natural Products Marketing Act Amendment Act, 1935; and
G. Criminal Code.

It is outside the sphere of this JOURNAL to go into these cases. Our object is merely to point them out in order to show that there is difficulty in regard to the question of the division of legislative powers between the Dominion and the Provinces under the Constitution. To those who wish to study the cases in detail, reference can be made to the Law Reports, and the reports of the Proceedings before the Judicial Committee of the Privy Council as reported in *The Times*.[2]

Act *A*.—The judgment of the Supreme Court of Canada in the case of this Act is dated June 17, 1936, answering the following question referred to the Court by order of the Governor-General-in-Council of November 18, 1935 :— " Is Act *A*, or any of the provisions thereof, and in what particular or particulars, or to what extent, *ultra vires* the Parliament of Canada? The Chief Justice and four of the Judges held that the Act was *intra vires*, and one Judge held that the Act, except sec. 17, was *ultra vires*, and that such section was *intra vires*. Special leave was given for appeal to the Judicial Committee of the Privy Council, the parties being Attorney-General for British Columbia *v.* Attorney-General

[1] It is not proposed to refer to the appeals to the Privy Council in Forbes *v.* Attorney-General for Manitoba and the Judges *v.* Attorney-General for Saskatchewan, heard by the P.C. about the same time and both dealing with questions of liability of certain persons to income tax, or to the appeal by the Attorney-General for Ontario concerning the validity of an Act of the Parliament of Canada in regard to Trade Mark Legislation.—[ED.]

[2] *The Times* of November 6, 7, 10, 27, 28, 1936 and January 30, 1937.

for Canada and others. Their Lordships began the hearing on November 26, 1936, and the hearing was adjourned to the 28th *idem* when judgment was reserved without calling on counsel for the Attorney-General of Canada. On January 29, 1937, their Lordships " humbly advised His Majesty that the appeal be dismissed, without costs, and that the opinion of the majority of the Supreme Court should be confirmed."

Acts *B*, *C* and *D*.—The judgment of the Supreme Court of Canada in the case of these three Acts is dated June 17, 1936, answering the questions referred to the Court by order of the Governor-General-in-Council, dated November 5, 1935:—" Are Acts *B*, *C* and *D*, or any of the provisions thereof, and in what particular or particulars, or to what extent, *ultra vires* of the Parliament of Canada?" The Chief Justice of Canada and two of the Judges were of opinion that (except as to section 6 of Act *C*) the Acts were *intra vires*, and three Judges held that they were *ultra vires*.

Special leave was given for appeal to the Privy Council, the parties being Attorney-General for Canada *v.* Attorney-General for Ontario and Others. Their Lordships began the hearing on November 13, 1936, it was continued on the 19th, 20th, and 23rd *idem*, on which lastmentioned date judgment was reserved. On January 29, 1937, their Lordships, in delivering judgment, stated that the Supreme Court was equally divided, and therefore the formal judgment could only state the opinions of the three Judges on either side. Their Lordships were of opinion that the answer to the three questions should be that the Act in each case was *ultra vires* of the Parliament of Canada, and they would humbly advise His Majesty accordingly.

Act *E*.—The judgment of the Supreme Court of Canada in the case of this Act is dated June 17, 1936, answering in the affirmative, by a majority of four to two, the following question referred to the Court by order of the Governor-General-in-Council dated November 5, 1935:—" Is Act *E*, or any of the provisions thereof, and in what particular or particulars, or to what extent, *ultra vires* of the Parliament of Canada?"

Special leave was given to appeal to the Privy Council, the parties being as in the case for Acts *B*, *C* and *D*. Their Lordships began the hearing on November 5, 1936. It was continued on the 6th and 9th *idem*, when judgment was reserved. On January 29, 1937, their Lordships dismissed the appeal, agreeing with the majority of the Supreme Court.

Act *F*.—Their Lordships dismissed the appeal brought from the judgment of the Supreme Court of Canada dated June 17, 1936, in the case of Act *F*, which Court held unanimously that such Act was *ultra vires* of the Parliament of Canada. Their Lordships found that there was no answer to the contention that the Act in substance invaded the Provincial field and was invalid. They were unable to support the Dominion legislation as it stood and therefore advised His Majesty that the appeal be dismissed.

Act *G*.—The Board on November 9, 1936, began the hearing of an appeal, by special leave, by the Attorney-General for British Columbia from a judgment of the Supreme Court of Canada dated June 17, 1936, holding that sect. 498A of the Criminal Code of Canada (Act *G*) was *intra vires* the Parliament of Canada. On January 29, 1937, their Lordships dismissed this appeal, being in agreement with the decision of the majority of the Supreme Court, that no part of section 498A was *ultra vires* and advised His Majesty accordingly.

General.—A few facts[1] in connection with the Constitution of Canada and her Provinces may be of interest to our readers in connection with these two debates.

The original federation of Canada can be dated from the effect of the United States Civil War in 1860 upon the establishment of a British nation on the North American Continent. At first the federation only included the four Provinces, Upper and Lower Canada (*i.e.*, Ontario and Quebec), and the maritime Provinces of Nova Scotia and New Brunswick. This Constitution was embodied in the British North America Act, 1867 (an Act of the Imperial Parliament commonly known as "the B.N.A. Act"). The five Provinces which joined the Federation later have their Constitutions, not in the B.N.A. Act, but in Acts of the Parliament of Canada passed when such Provinces came into existence—namely, Manitoba (1870); British Columbia (1872); Prince Edward Island (1873); Saskatchewan (1905); and Alberta (1905).

The B.N.A. Act provides that its amendment can only be effected by the Imperial Parliament, upon the presentation of an Address to the Sovereign by both Houses at Ottawa. There have been seven of such amending Acts, but until the Dominion-Provincial Conference, 1935,[2] there has never been a proposal

[1] *Vide* a speech by the Attorney-General (Hon. T. C. Davis, K.C., M.P.P.) in the Legislative Assembly of Saskatchewan, March 24, 1936. *Printed by Order of the Legislature.* (The speech covers 19 pp., and is well worthy of study.—[ED.])

[2] *See* JOURNAL, Vol. IV, pp. 14-18.

to amend what are called " the distributive sections "—namely, sections 91 and 92.

Hitherto, any changes in respect of Dominion and Provincial legislative powers in Canada have come about by judicial interpretation of the two sections quoted above, largely decisions by the Judicial Committee of the Privy Council in London. But a feeling seems to be growing in Canada that the Constitution needs revision to meet modern conditions and that provision should be made by which the B.N.A. Act can be amended in Canada by Act of her own Parliament. A reconstruction of the Constitution is therefore urged in many quarters, but in any such reconstruction, the Provinces are anxious to ensure that the authority of the Dominion Parliament by legislation on matters within the exclusive powers of the Provinces shall not be extended. In fact, when the Statute of Westminster was being drawn up, it was this Provincial anxiety that resulted in the insertion of section 7.[1]

In the Federal-system Constitutions of Canada, Australia and the United States, the question of the division of the Central and the State, or Provincial, legislative powers is becoming an ever-growing problem.

[1] *Saving for British North America Acts and application of the Act to Canada.*

7.—(1) Nothing in this Act shall be deemed to apply to the repeal amendment or alteration of the British North America Acts, 186 to 1910, or any order, rule or regulation made thereunder.
(2) The provisions of section two* of this Act shall extend to law made by any of the Provinces of Canada and to the powers of th Legislatures of such Provinces.
(3) The powers conferred by this Act upon the Parliament of Canada or upon the Legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the Legislatures of the Provinces respectively.

* Validity of laws made by Parliament of a Dominion 28 and 29 Vict. c. 63.

VII. ADELAIDE CONFERENCE OF COMMONWEALTH AND STATE MINISTERS, 1936

BY THE EDITOR

DURING the year under review in this Volume, the Commonwealth has been undergoing difficulties, both in regard to the distribution of the legislative power and the financial relations as between the Commonwealth and the States. Reference is made in this Volume,[1] to the two important judicial decisions given during the year, in regard to interpretations of the Commonwealth Constitution, the one by the Privy Council and the other by the High Court of Australia, the former given before, and the latter after the Adelaide Conference, both of which were subsequently submitted to Referendum. We will now take note of some of the proceedings of the Conference. It is not, however, the object of our Society, through its JOURNAL, to examine legislation either generally or, in every case, when such may involve any constitutional amendment, but rather to confine ourselves to the treatment of such amendments as relate to Parliament, its powers, constitution or composition, or concern its privileges, Members or Officers. Therefore, only those proceedings of the Conference which come within this ambit, including the distribution of the legislative power between the Federal Parliament and those of the States, will be dealt with here.

Quick and Garran, in their monumental work[2] on the Commonwealth Constitution, referring to the legislative powers of the Federal Parliament enumerated in section 51 of the Constitution, say:

> They are not expressly described as either exclusive powers or concurrent powers, but an examination of their scope and intent, coupled with subsequent sections, will show clearly that, whilst some of them are powers which either never belonged to the States, or are taken from the States and are vested wholly in the Federal Parliament to the exclusion of action by the State Legislatures, others are powers which may be exercised concurrently by the Federal Parliament and by the State Legislatures.

Space does not admit of the recital here of the sections of the Commonwealth Constitution bearing, directly or indirectly, upon its legislative power, but they may be given as: 51 (Legislative powers of the Parliament); 52 Exclusive powers

[1] Article VIII.

[2] *The Annotated Constitution of the Australian Commonwealth*, by Quick and Garran. London, The Australian Book Company, 1901, 508-9.

of the Parliament); 88 (Uniform duties of customs); 89 (Payment to States before uniform duties); 90 (Exclusive power over Customs, excise and bounties); 91 (Exceptions as to bounties); 92 (Trade within the Commonwealth to be free); 93 (Payment to States for five years after uniform Tariffs); 94 (Distribution of surplus); 95 (Customs duties of Western Australia); 96 (Financial assistance to States); 98 (Trade and commerce includes navigation and State railways); 99 (Commonwealth not to give preference); 100 (Nor abridge right to use water); 101 and 103 (Inter States Commission); 102 (Parliament may forbid preferences by State); 105, as amended by Acts Nos. 3 of 1910 and 1 of 1929 (taking over public debts of States).

Chapter V deals with certain of the legislative powers of the States and certain restrictions imposed upon them.

Adelaide Conference, 1936.—On the 26th to 28th August inclusive, a Conference of Commonwealth and State Ministers met in the Legislative Chamber, Parliament House, Adelaide, the Capital of South Australia, attended by the number of Delegates given against the names of the following Parliaments: Commonwealth (13); New South Wales and Victoria (each 4); Queensland (2); South Australia (6); Western Australia (1) and Tasmania (3); for the purpose of discussing certain subject

The Commonwealth Delegation was headed by the Prin Minister (who was Chairman of the Conference), and that c each State by its Premier or Acting Premier, except in the case of Western Australia, which, on account of the Premier's retirement, upon resignation from office on grounds of ill-health, was represented by their Minister for Works and Water Supplies.

The Agenda was as given below, and the notation in brackets after each item indicates which Government asked for the subject to be included. The more important subjects were dealt with in full Conference, but the following items were considered by Sub-Committees which subsequently reported to the Conference:—Agriculture and Commerce; International Conventions; Commonwealth Constitution; Defence; Health; Transport, etc.; Development, etc.; Customs, etc.; Finance, etc.; Taxation; and Unemployment.

AGENDA

Full Conference.

1. Federal Aid Roads Agreement. (N.S.W.; Vic.; S.A.; Tas.)
2. Financial relations between the Commonwealth and States:
   (*a*) Relations of the Commonwealth and States in regard to finance generally. (N.S.W.; Q'land; W.A.; and Tas.)

(*b*) Increased annual payments by the Commonwealth to the States for a fixed period of years. (Vic.)
(*c*) Assumption by Commonwealth Government of the liability for portion of certain debts of the States, *e.g.*, Soldier Settlement, etc. (Vic.)
(*d*) Discontinuance by Commonwealth Government of appropriating revenue surpluses to trust Funds instead of making them available to the States. (Vic.)
(*e*) Annual increasing payments to the Sinking Fund by the Commonwealth on account of States' debts, with a corresponding relief of Sinking Fund payments by the States. (Vic.)
(*f*) Amendment of the Financial Agreement. (Vic.)
  (i) The question of increasing the fixed payments made by the Commonwealth towards interest and sinking fund on States' debts.
  (ii) The substitution of a more equitable formula for the allocation of loan moneys to the various Governments.
  (iii) Reduction of the 4 % sinking fund contribution in respect of loans raised for deficits.
  (iv) Variation of the rate of 4½ % payable on the amount of repurchased securities.
(*g*) Request for a Commonwealth grant for technical education. (N.S.W. and Vic.)
(*h*) Question of the contribution by the Commonwealth towards the maintenance of services, particularly in regard to education, health and social services of the States. (Q'land.)
(*i*) Basis of Commonwealth Grants. (W.A.)
(*j*) Commonwealth grants for special purposes—imposition of conditions requiring contributions from State revenue. (Vic. and Tas.)
(*k*) Administrative cost of distribution of Commonwealth grants to the States for special purposes. (Vic. and Tas.)

3. Section 92 of the Commonwealth Constitution.
4. Development and Migration. (C'wealth.)
5. Hours of Labour. (C'wealth, Vic., W.A. and Tas.)
6. Statute of Westminster. (C'wealth.)
7. Question of regularity of Conferences of Commonwealth and State Ministers and Rules governing such Conferences. (Tas.)

On the first day of the Conference, after a welcome to the Delegates by the Premier of South Australia (Hon. R. L. Butler, M.P.), the Prime Minister of the Commonwealth (Rt. Hon. J. A. Lyons, C.H., M.P.) in his Opening Address said:

Inter-State Trade.

In the forefront of our programme is the situation arising from the recent Privy Council decision in what is known as the James Dried Fruit Case. The interests affected are Commonwealth-

wide, and the people will expect this Conference to decide what action shall be taken, following that very important decision. For some years prior to the delivery of this judgment it was thought that Section 92 of the Commonwealth Constitution, which provides that trade, commerce and intercourse among the States shall be absolutely free, operated only in respect of the States, and did not prevent the enactment of legislation by the Commonwealth imposing restrictions upon such trade, commerce and intercourse. This view was based upon a decision of the High Court given some 16 years ago[1]—a decision which has since been followed by the High Court in many cases.[2]

Statute of Westminster.—After referring to the subjects of the financial relations between the Commonwealth and the States and hours of work, Mr. Lyons said:

Another matter upon which it is desirable that this Conference should record its views is the adoption by Australia of the Statute of Westminster. The Commonwealth Government is of opinion that the time has now come when the Statute should be adopted, and it has circulated the Bill among the State Governments for their review. The measure is designed to give precise legal form to the conception of equal national status in the British Commonwealth, and to terminate the operation of all rules of law and constitutional conventions inconsistent therewith. The Statute is already in force in Canada, South Africa and the Irish Free State. It has not yet been adopted by Newfoundland, New Zealand and Australia, and these Dominions are under no compulsion to adopt it unless they see fit. As far as Australia is concerned, it is clear that the growing responsibilities in regard to external affairs make it desirable that the basic relations of the nations of the British Commonwealth should be uniform. . . . Australia being a Federation, care has been taken to see that the wording does not disturb the constitutional relationship existing as between the Commonwealth and the States or between them and the Crown. When the draft measure was first under discussion at Westminster, some of the States expressed fears that their rights, especially in regard to access to the Crown, were imperilled. Amendments were introduced to allay these fears and the Statute as it stands today is believed to afford full assurance.[3]

Press.—The first action of the Conference was to resolve that the Press be admitted, after which Sub-Committees were appointed to deal with the subjects already enumerated.

Inter-State Trade: Section 92 of the Constitution.—After dealing with the questions of the financial relations between the Commonwealth and the States and the Federal Aid Roads Agreement, the Conference on Thursday, August 27, when resuming at 10.30 a.m., considered the question of section 92 of the Commonwealth Constitution as affected by

[1] W. and A. McArthur Ltd. *v.* Queensland (1920), 28, C.L.R. 530.
[2] Conference Report, p. 7. [3] Conf. Rep., pp. 9-10.

the recent decision of the Judicial Committee of the Privy Council in the James case, to which the Prime Minister made reference in his Opening Address.

Interesting and instructive as are many of the speeches made at the Conference on this subject, space only admits of very brief extracts from such debate being given here.

Towards the conclusion of this debate, the Commonwealth Attorney-General and Minister of Industry (Hon. R. G. Menzies, K.C., M.P.) indicated six suggested amendments of the Constitution to deal with the problems under discussion, namely:

(1) A proposal to confer full trade and commerce power on the Commonwealth, with freedom from the provisions of Section 92.

(2) An amendment of Section 92 to provide that it shall not bind the Commonwealth, the Commonwealth trade and commerce power being otherwise left as it is.

The second is the one I referred to as, in substance, restoring the position which existed before the Privy Council gave its decision.

(3) An amendment to confer on the Commonwealth an additional power, not limited by Section 92, in some such terms as this:

"The regulation of trade and commerce, whether external or internal, in relation to the organized marketing of primary produce within the Commonwealth."

(4) An amendment to set up in the Constitution, a power in relation to the marketing of goods, on the model of the Financial Agreement power. It might be stated in approximately the following terms:

(1) The Commonwealth may, on the recommendation of the Inter-State Commission, make agreements with the States with respect to the regulation and control of the marketing of any primary produce: Provided that any such agreement shall not have any force or effect unless—

(*a*) It is made with all the States in which the primary produce is produced and from which it is exported; and,

(*b*) The agreement is approved by the Parliament of the Commonwealth and by the Parliament of each of the States with which the agreement has been made.

(2) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.

(3) Any such agreement and any laws made by the Parliament under this section shall have effect, notwithstanding the provisions of sections 92 and 99.

(5) An amendment to Section 92 to provide that the States should not be bound by it where the State legislation in

question provides for the organized marketing of primary produce within the State.

(6) An amendment along the lines of the one suggested heretofore by New South Wales, that is, to substitute for Section 92 some such words as the following:

"A State shall not impair the freedom of trade, commerce, and intercourse among the States and the Territories of the Commonwealth by any discriminatory law or executive act, nor shall a State impose any pecuniary impost on any goods coming into that State from any other State or Territory of the Commonwealth."

During the course of his speech Mr. Menzies said, "The Commonwealth, I suggest, has made it perfectly clear that it recommends that the Constitution be amended."[1]

The Premier of Queensland (Hon. W. Forgan Smith, LL.D., M.L.A.) then moved:

That the Conference meet tonight in Committee to determine the methods that may be adopted to continue the principles involved in orderly marketing, including the problem of the amendment of the Constitution.[2]

which, after being seconded, was agreed to.

In Committee.

The Premier of Queensland moved:

That this Conference is of opinion that the Commonwealth Government should exercise its legislative authority with reference to bounties and excise in order to preserve to primary producers those standards of prices which the various marketing Acts, now declared to be invalid, sought to attain,[3]—which motion was seconded.

Chairman's Ruling.—The Chairman, however, ruled the motion out of order on the grounds that it was in conflict with the authority given to the Committee by the adoption of Mr. Forgan Smith's (the Queensland Premier) earlier motion in open Conference, and that the Commonwealth Government could not accept a direction from the Conference in regard to the imposition of an excise duty, which was entirely a prerogative and responsibility of the Commonwealth.

The Acting Premier of New South Wales (Hon. M. F. Bruxner, D.S.O., M.L.A.) then moved:

That a referendum of the people be taken with a view to securing an amendment of the Constitution to provide for orderly marketing.[4]

and the motion being seconded, it was voted upon as follows:

[1] Conf. Rep., pp. 50-51.
[2] *Ib.*, pp. 53-54.
[3] *Ib.*, p. 54.
[4] *Ib.*, p. 54.

For : New South Wales, Victoria, Queensland.
Against : South Australia, Western Australia, Tasmania.[1]

The motion was thereupon declared negatived and the Conference adjourned at 11 p.m.

Upon the Conference meeting next morning (the 28th) at 10.30 o'clock, the Chairman (the Prime Minister), during the course of certain personal explanations, which need not be dealt with here, said:

> I would emphasize, as I did last night, that the legislation placed upon the Commonwealth Statute Book in regard to marketing was placed there at the request of the States and was complementary to the legislation that the States themselves had brought into operation. There was co-operation between Commonwealth and States in that matter, but as regards excise there is no co-operation—it is the responsibility of the Commonwealth alone. On those grounds I would not be prepared to submit, to this Conference, a motion containing a direction as to excise, but that is shewing no disrepect to the Conference itself.[2]

Statute of Westminster.—Following the references to this subject by the Prime Minister in his Opening Address,[3] the Conference proceeded, on August 28, to discuss the question of the adoption by the Commonwealth Parliament of the relevant parts of the Statute of Westminster.

The Delegates chiefly taking part in the discussion of this subject were the Attorneys-General, and the subject of the debate being of Empire-wide interest, extracts from some of the speeches will be given.

During the course of the debate the Attorney-General of New South Wales (Hon. H. E. Manning, K.C., M.L.C.) stated that when this matter was being considered before, a safeguard was drafted in the following form:

> Nothing in this Act shall be deemed to authorize the Parliament or Government of the Commonwealth without the concurrence of the Parliament and Government of the States concerned, to request or consent to the enactment of any Act by the Parliament of the United Kingdom on any matter which is within the authority of the States of Australia not being a matter within the authority of the Parliament or the Government of the Commonwealth of Australia.[4]

which " was omitted," continued Mr. Manning, " not because it was unacceptable, but because it was thought that the risk was so remote that its inclusion was unnecessary." Mr. Manning continued:

[1] Conf. Rep., p. 54.
[2] *Ib.*, p. 55.
[3] *Ib.*, pp. 9-10.
[4] *Ib.*, p. 76.

It was felt that subsection (2) of Section 9 was adequate. That, of course, deals with only half of the story. The other half arises if an application is made by the Commonwealth to the Imperial authorities for legislation of this kind which would vitally affect the constitutional structure of, say, New South Wales. It should be done only after New South Wales had first been informed of the request and the proposed legislation so that the State might be heard in support of, or opposition to, it.[1]

The Commonwealth Attorney-General (Hon. R. G. Menzies, K.C., M.P.):

Section 9 (2) excludes any necessity for getting the concurrence of the Commonwealth. You think it ought to go further and provide that there ought to be the necessity for consultation with the States concerned in the event of such proposed legislation ?[1]

Mr. Manning:

Yes, when it affects a State. That would mean an amendment of the Statute of Westminster, and I do not feel justified in asking for that.[1]

* * * * *

I make this a condition of the support of New South Wales—that it should be recited in the preamble to any adopting Statute. I suggest that the recital should be in some such words as these:

> That whereas it would be against constitutional usage to enact any law affecting the laws of the State without consultation with the States, and whereas, in order that that should be done, it is desired and recognized as constitutionally proper and necessary that the States should be informed of the nature of the contemplated legislation and asked for their opinions thereon.[1]

Mr. Menzies:

The point you are making is clear enough. I suggest that you draft your suggested recital and forward it to us for consideration.[1]

Mr. Manning:

I shall do so. Section 2 of the Statute of Westminster provides:

> The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

That can only refer to the Commonwealth.[1]

Mr. Manning's suggestion was supported by the Attorney-General for Victoria (Hon. A. L. Bussau, M.L.A.), who added:

It should be considered whether the States should, like the Canadian Provinces, seek exemption from (1) the provisions of the Colonial Laws Validity Act, 1865, and (2) the provisions in the Merchant Shipping Acts requiring a reservation of certain

[1] *Ib.*, p. 76.

dominion laws for the King's assent. Special attention should also be given to the position which arises from the provisions of Section 4 of the Statute of Westminster. It has been suggested that further recognition of the Constitutional position of the States might be secured by inserting in the preamble to the Commonwealth adopting measure, as was proposed by Mr. Manning, the Constitutional convention regulating the exercise by the Commonwealth of its implied powers to request the enactment by the Imperial Parliament of measures having the force of law in Australia.[1]

Mr. Bussau then quoted the preamble which had been suggested by Professor K. H. Bailey,[2] in his *Opinion* (copies of which had been forwarded to all the States), which preamble read as follows:

> Whereas it would be in accord with the established constitutional position of the Commonwealth and the States in relation to one another that the Parliament and the Government of the Commonwealth, without the concurrence of the Parliament and Government of the State or States concerned, should not request or consent to the enactment of any Act by the Parliament of the United Kingdom on any matter other than a matter which is within the exclusive authority of the Parliament or the Government of the Commonwealth of Australia.[3]

Mr. Bussau then moved:

> That this Conference desires the insertion in the preamble of the Commonwealth adopting the Statute of a constitutional convention regulating the exercise by the Commonwealth of its implied power to request the enactment by the Imperial Parliament of a law on a matter within the exclusive competence of the States.[3]

In the debate that followed the Queensland Premier was doubtful if any advantage would accrue to the Commonwealth and its people by adopting the Statute of Westminster, remarking:

> There is always difficulty in laying down any inflexible form of constitution regulating the relations between one Government and another, adding the remark—"We have had evidence of that in full during the last few days."

South Australian, Western Australian and Tasmanian Delegates expressed themselves as being unable to give any definite promises on the subject without consultation with their respective Governments, and Mr. Menzies concluded the debate by urging that any criticism or suggestion that was to be made should be conveyed to the Federal Government

[1] Conf. Rep., p. 77.
[2] Professor of Public Law in the University of Melbourne.
[3] Conf. Rep., p. 77.

within a month, so as to enable the Government to present the legislation during the coming Session, undertaking to forward to the States a copy of the new Draft Bill after he had received the requests from the States.[1]

The motion was then withdrawn.

Commonwealth Constitution Convention.—The Federal Attorney-General presented to the Conference on Friday, August 28, the following report from the Sub-Committee on this subject:

> The sub-committee reports that it has met and considered the matter referred to it by the Conference. The sub-committee is unanimously of opinion that the appointment of a Convention to revise the Commonwealth Constitution is not advisable at the present time.[2]

The Report was adopted by the Conference.

After the adoption of the reports from other Sub-Committees, the proceedings of the Conference were brought to a close by the Commonwealth Minister for External Affairs (Rt. Hon. Sir George Pearce, K.C.V.O.), who, on behalf of the Prime Minister, unavoidably absent, presented the thanks of the Conference to the Premier of South Australia, for the warm welcome and kind hospitality that had been extended to them and for the courtesy and attention they had received from the Officers of the South Australian Parliament.

The Conference terminated at 6.45 p.m., Friday, August 28, 1936.

General.—When the Fathers of Australian Federation were engaged in drawing up a Dominion Constitution, they framed it strictly on federal lines, the States delegating certain legislative powers to the Federal Parliament, as carefully enumerated in the 39 paragraphs of section 51 of the Commonwealth Constitution, which contains no corresponding sections to those of the Constitutions of Canada and South Africa, defining the subjects upon which the Provinces may only legislate. In Australia, the position is reversed, for the States may legislate upon any subject not delegated in the Constitution to the Commonwealth. The principal subjects upon which the States legislate are: health, education, police, justice, roads, development, land settlement, irrigation, mining, forestry and railways. Each State is also under its own Constitution and nominates its own Governor, without consultation with the Government

[1] A Statute of Westminster Adoption Bill was duly introduced in the Commonwealth House of Representatives on December 2, 1936, and read 1 R., but not further proceeded with that year.—[ED.]

[2] Conf. Rep., p. 78.

of the Commonwealth, and has its own Agent-General in London. It is, however, one of the misfortunes of government under a written constitution that problems of interpretation and defects inevitably crop up. Therefore, the people of the United Kingdom are envied their practically unwritten Constitution, capable of easy adaptation to almost every changing phase.

The 1936 decision of the Privy Council in the James case under consideration by the Conference, that section 92 of the Constitution does bind the Commonwealth, has disclosed a sort of legislative " no man's land," a sphere in which neither the Commonwealth nor the States may legislate, even jointly.

In fact, as the Commonwealth Attorney-General described it, in one of his many interesting and informative speeches during the Conference,—" Federation has created a gap in the total legislative powers of both Commonwealth and States." Therefore, only an amendment of the Commonwealth Constitution, to confer full power on the Commonwealth in regard to inter-State trade and commerce, can put this right, and this can only be effected by referendum.[1]

See Article VIII hereof.

VIII. AUSTRALIA—TWO IMPORTANT CONSTITUTIONAL INTERPRETATIONS

BY THE EDITOR

DURING the year under review in this Volume, the Commonwealth of Australia has been much concerned over two important judicial decisions, one by the Privy Council and the other by the High Court of Australia, which declared two Acts of the Federal Parliament invalid, and involved the introduction of Bills for the amendment of the Constitution which were subsequently submitted to Referendum but rejected.

The difficulties arose in the cases of James *v.* The Commonwealth heard before the Judicial Committee of the Privy Council, and the King *v.* Burgess (*ex parte* Henry) before the High Court of Australia, on appeal.

Privy Council Decision in James *v.* The Commonwealth.

The case of James *v.* The Commonwealth concerned certain marketing legislation dealing with inter-State trade[1] passed by the Federal Parliament in the exercise of its legislative power under sec. 92[2] of the Constitution,[3] and at the request of the States, the legislation in question being the Commonwealth Dried Fruits Act, 1928-1935.[4] The appellant, Frederick Alexander James, a fruit merchant carrying on business in the State of South Australia, commenced an action in the High Court against the Commonwealth. In his statement of claim the plaintiff alleged that purporting to act in pursuance of the Act abovementioned and the regulations and determinations made thereunder, the defendant Commonwealth:

[1] " Inter-State trade is not the exclusive domain of the Commonwealth, but is open to concurrent legislation by both Commonwealth and States."—Adelaide Conf. Rep., 1936, p. 32.

[2] *Trade within the Commonwealth to be free.* 92. On the imposition of uniform duties of Customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of Customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation.

[3] 63 and 64 Vict. c. 12.

[4] Acts No. 11 of 1928—No. 5 of 1935.

(1) had caused to be seized the plaintiff's consignments of dried fruit in the course of delivery to purchasers in New South Wales; and,
(2) had notified shipping companies and other carriers that, if they carried dried fruits tendered for carriage by any person not holding a license under the Act abovementioned, they would incur penalties.

The plaintiff further alleged that, by determinations made under the Act, the holder of an owner's license was required to export from Australia a fixed percentage of each class of dried fruits produced by him. The plaintiff also alleged that the defendant Commonwealth was wrongfully insisting upon his taking out a license as a condition of his being allowed to sell his dried fruits in other States of the Commonwealth, and was wrongfully preventing him from fulfilling his inter-State contracts. The statement of claim claimed a declaration that the Act and regulations thereunder were *ultra vires* as contravening sec. 92 of the Constitution, together with an injunction and damages.

The defendant Commonwealth demurred to the statement of claim and the demurrer came before the full Court for hearing. In support of the demurrer the Commonwealth relied upon the decisions in *W. and A. McArthur Ltd.* v. *Queensland*[1] and *James* v. *The Commonwealth*,[2] as establishing that the Commonwealth was not bound by sec. 92 of the Constitution.

The High Court allowed the demurrer. In agreeing with the order proposed, Dixon, J., said[3] that while he recognized the strength of the considerations which led to the previous decision of the Court in W. and A. McArthur Ltd. *v.* Queensland to the effect that the Commonwealth was not bound by sec. 92, he had never felt satisfied that they sufficed to raise a necessary implication limiting the application of sec. 92 to the States. Evatt and McTiernan, J.J., in a joint judgment,[4] said that they were definitely of opinion that sec. 92 laid down a general rule of economic freedom and necessarily bound all authorities within the Commonwealth, including the Commonwealth itself. Their Honours added that although they were of opinion that the Commonwealth had no legal authority to maintain its prohibitions of the inter-State marketing of dried fruits, the ruling in *McArthur's* case to the contrary should be followed until the Privy Council finally dealt with the matter.

[1] (1920) 28 C.L.R. 530.
[2] (1928) 41 C.L.R. 442.
[3] (1935) 52 C.L.R. 592.
[4] (1935) 52 C.L.R. 602-3.

On December 4, 1935, the Privy Council gave special leave to the plaintiff to appeal. The States of New South Wales, Queensland and Victoria obtained leave to intervene in support of the contentions of the Commonwealth and the States of Tasmania and Western Australia in support of the contentions of the appellant.

The case was heard before the Privy Council on May 4, 5, 7, 8, 11, 12, 14, 18, 19 and July 17, 1936.[1]

Their Lordships in their judgment held that sec. 92 applied to the Commonwealth and that the Dried Fruits Act and regulations thereunder should be declared invalid as contravening the said section; and humbly so advised His Majesty. Their Lordships observed that they were giving effect to the declared opinion of three of the five Judges of the High Court who sat in the case, while the other two seemed to indicate that their individual opinions tended the same way. But that all five Judges thought they should follow what had been regarded as the law in the High Court for many years, and leave its reconsideration to the Judicial Committee, where, as stated in James *v.* Cowan,[2] it was an open question and must be dealt with on that footing.

Decision of High Court of Australia in The King *v.* Burgess (Ex parte Henry).—This case concerned the question of air navigation—a pilot flying without a license—as laid down by the Commonwealth Air Navigation Regulations (Statutory Rule No. 33 of 1921). Judgment was given on November 10 in the High Court of Australia, which declared, on appeal, the Commonwealth Air Navigation Act[3] unconstitutional. This appeal raised the Question whether the Commonwealth Parliament had power to legislate with respect to flying operations carried on within the limits of a single State.

The conclusions come to by such Court on the whole case were:

(1) That the Commonwealth Parliament has no general control over the subject matter of civil aviation in the Commonwealth.
(2) That the Commonwealth has power both to enter into International agreements and to pass legislation to secure the carrying out of such agreements according to their tenor even although the subject matter of the agreement is not otherwise within Commonwealth legislative jurisdiction.
(3) That the subject matters of these agreements may properly include such matters as, *e.g.*, suppression of traffic in drugs, control of armament, regulation of labor conditions and control of air navigation.

[1] (1936) 55 C.L.R. 1-62.
[2] (1932) A.C. 542; 47 C.L.R. 386.
[3] No. 50 of 1920.

(4) That it is an essential condition of the power to carry out such international agreements that the local legislation should be in conformity with the terms of the agreement.
(5) That Section 4 of the Air Navigation Act[1] is invalid so far as it purports to authorize the Executive to control civil aviation in the Commonwealth, but is valid so far as it authorizes the executive to carry out within Australia the International Air Conventions.
(6) That in their present form the regulations made by the Commonwealth Executive are invalid because they are not stamped with the purpose of executing the Air Conventions, but are stamped with the unauthorized purpose of controlling civil aviation throughout the Commonwealth.

The Court therefore held that the regulations in their present form were *ultra vires* the first part of sec. 4 of the Air Navigation Act and were void, and that even if they could be regarded as having some application to the territories, the present conviction had no relation to the territories and could not be supported. The result was that the appeal was allowed and the conviction quashed.

The finding is given more fully in The King *v.* Burgess, as the judgment (the reasons for which cover 84 typewritten folios) is looked upon in Australia as of a very far-reaching nature, giving a much extended interpretation to the Commonwealth's external affairs powers and conferring on it legislative power hitherto unavailable. Two of the Judges (Evatt and McTiernan) held that if the Commonwealth Air Navigation Act had been consistent with the International Air Convention it would have been valid by virtue of the Commonwealth's powers in external affairs.

Proceedings in Parliament upon Amendments to Constitution.—The decisions in both these cases formed the subject of amendments to the Commonwealth Constitution, namely, in the dried fruits case, the addition to sec. 92 thereof, of the following:

> 92A. The provision of the last preceding section shall not apply to laws with respect to marketing made by[2] the Parliaments in the exercise of any powers vested in the Parliament by this Constitution.

and in the aviation case, the addition to sec. 51 thereof (which enumerates the spheres in which the Commonwealth shall have power to make laws) of the words:

> Air navigation and aircraft.

[1] No. 50 of 1920.
[2] Subsequently amended by the insertion after this word " by " of the words, " or under the authority of."

The Bills were entitled, respectively, the Constitution Alteration (Marketing) Bill and the Constitution Alteration (Aviation) Bill of 1936 and the debates thereon in both the Senate and the House of Representatives " From the Parliamentary Debates " have been published officially.[1]

The Constitution Alteration (Marketing) Bill.—The following amendment was moved in the House of Representatives to the Question for the Second Reading of this Bill on October 22, by Mr. J. Curtin, Leader of the Opposition (Fremantle: Western Australia):

> That all the words after " That " be omitted and the following words substituted:
>
> this House is of opinion that the proposed alteration of the Constitution is inadequate, and that the Referendum costing approximately £100,000, should have for its purpose such alteration of the Constitution as would grant to this Parliament wider and more comprehensive powers.

After prolonged debate, however, the amendment was defeated on division by a majority of 14 in a House of 66 Members. The Bill was read the Second Time, on October 29, when the House went into Committee.

The Attorney-General (the Hon. G. R. Menzies)[2] during the consideration of Clause 2, moved to amend 92A, as above quoted, by the insertion: after the word " by " where first occurring, the words, " or under the authority of," which was agreed to. Another amendment was moved by Mr. Blackburn (Bourke: New South Wales) to add to clause 92A, as amended, the following proviso:

> Provided that no law with respect to the marketing of any goods produced or manufactured in any State or States shall be made by the Parliament of the Commonwealth, until the Parliament or Parliaments of such State or States have referred to the Parliament of the Commonwealth the matters of—
>
> (1) the regulation of the price at which such goods are sold in such State or States, and
> (2) the regulation of the wages, hours and other conditions of employment of workers employed in or in connection with the production or manufacture of such goods.

Mr. Blackburn's amendment was defeated by a majority of 17 in a House of 61 members, the Bill was reported with an amendment, which was adopted, and the question for the

[1] Constitution Alteration Bills, F. 21, 407 pp. Government Printer, Canberra, F.C.T.

[2] Since raised to the Privy Council.

Third Reading put to the vote. Whereupon Mr. Speaker said:

> The result of the division being Ayes 45; Noes 21, I certify that the Third Reading of the Bill has been agreed to by an absolute majority of the Members of the House, as required by the Constitution.

The Bill was then read the Third Time and ordered to be carried by messenger to the Senate for its concurrence.

The Senate read the Bill the First Time on November 10, the Second Reading being taken on November 12, 13 and 18, when the Second Reading was agreed to by a majority of 22 in a House of 30 Senators, and the House went into Committee on the Bill. Upon the consideration of clause 2,[1] Senator Badman (South Australia) proposed the following amendment, namely, that the word "marketing" be left out, and the following words be substituted:

> the marketing of either raw or processed primary products, being foodstuffs.

Progress was reported and the Bill was again taken in Committee on November 19, when Senator Badman's amendment was negatived by a majority of 10 out of a House of 30 Senators. Another amendment was proposed to this clause by Senator Payne (Tasmania), namely, to insert after "exercised" the words:

> at the request of States concerned in the disposal of products overseas.

Upon the amendment being put to the vote it was defeated by a majority of 10 in a House of 30 Senators, the clause was then agreed to and the Bill reported without amendment.

The Third Reading took place on December 2, the question being agreed to with a majority of 23 in a House of 33 Senators, the President stating:

> There being more than an absolute majority of the whole Senate voting in the affirmative, as required by the Constitution, I declare the question resolved in the affirmative.

The Bill was then read a Third Time and a Message ordered to be carried to the House of Representatives conveying the Senate's concurrence in the said Bill.

The Constitution Alteration (Aviation) Bill was formally

[1] *i.e.*, 92A as amended.

introduced into the House of Representatives on November 12, by the Attorney-General (the Hon. R. G. Menzies), the motion for leave reading as follows:

> That he have leave to bring in a Bill for an Act to alter the Constitution with respect to air navigation and aircraft.

Whereupon Mr. Curtin proposed the addition of the following words to the motion for leave:

> trade and commerce, industrial matters, broadcasting and television.

After debate, the House divided on the amendment as follows: Ayes, 22; Noes, 32, the motion for leave was agreed to and the Bill read the First Time. The Second Reading was taken on the following day, and continued on November 18, when it was agreed to and the House went into Committee, from which the Bill was reported without amendment and read the Third Time on November 18, by a majority of 43 in a House of 57, the Speaker making his statement, as on the Third Reading of the Marketing Bill.

The Bill was received by the Senate on November 18, the Second Reading and Committee stage being taken on the following day. The Bill was read the Third Time or December 2, when, *after the bells having been rung*, Mr. President stated:

> There being no dissentient voice, and there being more than an absolute majority of Honourable Senators present as required by the Constitution, I declare the question resolved in the affirmative.

The Bill was then read the Third Time and a Message was carried to the other House informing it of the Senate's concurrence.

Referendum.—As both Bills involved amendments of the Commonwealth Constitution, it was necessary for them to be submitted to Referendum according to law in each State, to the electors qualified to vote for the election of Members of the Commonwealth House of Representatives. Amendment was necessary in the case of the Aviation Bill, in order to permit Parliament to legislate outside the Air Convention, in controlling intra-State aviation. The following are the figures published in the *Commonwealth Gazette* of April 15, 1937, by the Chief Electoral Officer for the Commonwealth.

The Referendums took place on March 6, 1937:

Constitution Alteration (Aviation), 1936.

State.	*Number of Votes Given IN FAVOUR of the Proposed Law.*	*Number of Votes Given NOT IN FAVOUR of the Proposed Law.*	*Number of Ballot-papers rejected as INFORMAL.*
New South Wales ..	664,589	741,821	55,450
Victoria	675,481	362,112	36,685
Queensland ..	310,352	191,251	18,330
South Australia ..	128,582	191,831	21,031
Western Australia ..	100,326	110,529	10,977
Tasmania	45,616	71,518	7,882
Totals for the Commonwealth ..	1,924,946	1,669,062	150,355

Constitution Alteration (Marketing), 1936.

State.	*Number of Votes Given IN FAVOUR of the Proposed Law.*	*Number of Votes Given NOT IN FAVOUR of the Proposed Law.*	*Number of Ballot-papers rejected as INFORMAL.*
New South Wales ..	456,802	896,457	108,601
Victoria	468,337	537,021	68,920
Queensland ..	187,685	296,302	35,946
South Australia ..	65,364	248,502	27,578
Western Australia ..	57,023	148,308	16,501
Tasmania	24,597	87,798	12,621
Totals for the Commonwealth ..	1,259,808	2,214,388	270,167

But, as the voting on the aviation amendment did not also show a majority of the total votes in a majority of the States—four States having majorities against it—this amendment was also rejected. Voting is compulsory.

IX. THE IRISH FREE STATE CONSTITUTION[1]

BY THE EDITOR

CONSIDERABLE constitutional activity has been taking place in the Irish Free State since the publication of our last yearly Volume. During the year under review in this issue, certain Articles of the Constitution[2] have been amended by the discontinuance of University representation after the next General Election;[3] by the abolition of the Senate,[4] and the removal from the Constitution of certain executive functions vested in the Crown.[5] Although the last-mentioned Act appears as the 27th amendment, owing to the practice of numbering the amendment in the Bill, this is actually the 25th amendment, as the Bills for the 19th and 25th amendments did not become law. Appended to this Article is a schedule of the amendments to the Constitution, shewing also the nature of the two Bills abovementioned.

Just as this Volume of the JOURNAL was about to go to press, however, a "Draft Constitution" was "approved" by Dáil Eireann, or Chamber of Deputies (now under a unicameral constitution), of a very wide and far-reaching nature, and submitted to a Referendum, or plebiscite, to be referred to later.

In order to view the question of the present constitutional situation in the Irish Free State in better perspective, however, it is necessary first to be acquainted with the manner in which the present Constitution (1922) was brought into being. The existing Constitution of the Irish Free State was enacted on October 25, 1922, by Dáil Eireann, a provisional body, and came into operation on December 6 of the same year by Royal Proclamation of that date pursuant to Article 83 thereof. Its 83 Articles were contained in the First Schedule to the Constitution Act (Irish Act No. 1 of 1922), which consists of 3 sections. The Constitution Act is also scheduled to the British Act[6] for implementing the Treaty between Great Britain and Ireland signed in London December 6, 1921. The second schedule to the Constitution Act recites the Articles of Agreement of such Treaty, which was registered by the

[1] *See also* JOURNAL, Vols. II, 10, 11; III, 21-23; and IV, 28-30.
[2] Act No. 1 of 1922.
[3] Constitution (Amendment No. 23) Act (No. 17 of 1936).
[4] Constitution (Amendment No. 24) Act (No. 18 of 1936).
[5] Constitution (Amendment No. 27) Act (No. 57 of 1936).
[6] 13 Geo.V, c. 1.

Government of the Irish Free State, but not by the British Government, with the League of Nations, July 11, 1924. Such Articles were scheduled to the British Act of 1922,[1] the Irish Free State Agreement Act. There were also other agreements made between Great Britain and the Irish Free State, supplementing and amending the Treaty, in 1924,[2] 1925[3] and 1929.[4]

To quote from the preamble of the Constitution Act this Chamber of Deputies (in Irish, Dáil Eireann), in enacting the Constitution, sitting as a Constituent Assembly:

> in this Provisional Parliament, acknowledging that all lawful authority comes from God to the people and in the confidence that the National life and unity of Ireland shall thus be restored, hereby proclaims the establishment of the Irish Free State (otherwise called Saorstát Eireann), and in the exercise of undoubted right, decrees and enacts as follows:

Section 1 of the Constitution Act states that the Constitution set forth in the First Schedule to the Act shall be the Constitution of the Irish Free State.

Section 2 of the Constitution Act provides that the Constitution shall be construed with reference to the Treaty, and since this section has an important bearing upon the provisions of the Constitution, it is given at length:

> 2. The said Constitution shall be construed with reference to the Articles of Agreement for a Treaty between Great Britain and Ireland set forth in the Second Schedule hereto annexed (hereinafter referred to as "the Scheduled Treaty") which are hereby given the force of law, and if any provision of the said Constitution or of any amendment thereof, or of any law made thereunder, is in any respect repugnant to any of the provisions of the Scheduled Treaty, it shall, to the extent only of such repugnancy, be absolutely void and inoperative and the Parliament and the Executive Council of the Irish Free State (Saorstát Eireann) shall respectively pass such further legislation and do all such other things as may be necessary to implement the Scheduled Treaty.

It was subsequently provided by Irish Act[5] that all references in section 2, to the Treaty of 1921, shall be construed and have effect as references to the said Treaty as amended by the Agreement set forth in the Schedule to such Act, and accordingly all references in the Constitution to "the Scheduled

[1] 12 Geo. V, c. 4.
[2] 14 and 15 Geo. V, c. 41 and Irish Act No. 51 of 1924.
[3] 15 and 16 Geo. V, c. 77 and Irish Act No. 40 of 1925.
[4] 20 Geo. V, c. 4 and Irish Act No. 36 of 1929.
[5] No. 40 of 1925.

Treaty " must be construed as references to such Treaty as amended by the said Agreement.

It is proposed first to take the amendments of the present Constitution and thereafter to give an outline of the new " Draft Constitution."

Constitution.—As the title of the Act for the 18th constitutional amendment explains itself, and the Act for the abolition of the Seanad is dealt with in the succeeding Article in this Volume, only the details of Constitution (Amendment No. 27) Act remain for notice in connection with constitutional amendments in 1936. It is not a function of this Society to give expression of opinion for or against any particular constitutional provision, or point of Parliamentary practice, in its application to any special country, therefore the pros and cons of this 27th amendment will not be gone into here, but each amendment will be quoted so that the reader may have reference thereto.

The Act for the 27th Constitutional amendment, which was passed toward the end of the year by the Dáil (the late Lower and now the only Legislative Chamber under the Constitution), is entitled " an Act to effect certain amendments of the Constitution in relation to the Executive Authority and power and in relation to the performance of certain Executive functions." This Act contains two sections, the amendments to the Constitution being embodied under ten items of the Schedule.

The *first* item deleted from section 4 (2) of Article 2A, the words, " Governor-General acting on the advice of the." But, presumably by inadvertence, similar words occurring in section 25 of the same Article were not deleted.

The *second* item deleted from Article 12 the words " the King and," thus withdrawing the King as a constituent part of the Legislature.

The *third* item amended Article 24 by striking out the words, " Representative of the Crown in the name of the King " and substituted " Chairman of Dáil Eireann on the direction in writing of the Executive Council signed by the President of the Executive Council." This amendment removed from the Crown the right to summon or dissolve the Legislature and conferred such power on the Chairman of the Legislature itself upon the authority given in the substituting words of the amendment, although, once the Legislature has been dissolved, there would be no Chairman of it, and therefore no person with constitutional right and duty to summon it, unless special provision has been made in some other law.

The *fourth* item amended Article 41 by deleting the following words:

> The Executive Council shall present the same to the Representative of the Crown for the signification by him, in the King's name, of the King's assent, and such Representative may withhold the King's assent or reserve the Bill for the signification of the King's pleasure: Provided that the Representative of the Crown shall in the withholding of such assent to or the reservation of any Bill, act in accordance with the law, practice, and constitutional usage governing the like withholding of assent or reservation in the Dominion of Canada.

The words therefore remaining in Article 41 are:

> "So soon as any Bill shall have been passed by Dáil Eireann," and the 27th Amendment Act adds the following words thereto: "the Chairman of the Dáil Eireann shall sign such Bill and the same shall become and be law as on and from the date of such signature."

The *fifth* item amended Article 42 by deleting the words "received the King's assent" and substituting the words, "been signed by the Chairman of the Dáil Eireann;" and by deleting the words "Representative of the Crown," wherever they occur, and substituting, "Chairman of Dáil Eireann."

The *sixth* item amended Article 51[1] as follows, the words inserted being shown in italics and those deleted within square brackets:

> [The Executive Authority of the Irish Free State (Saorstát Eireann) is hereby declared to be vested in the King, and shall be exercisable, in accordance with the law, practice and constitutional usage governing the exercise of the Executive Authority in the case of the Dominion of Canada, by the Representative of the Crown.] There shall be a Council to [aid and advise in the government] *exercise the executive authority and power* of the Irish Free State (Saorstát Eireann), to be styled the Executive Council; *Provided that it shall be lawful for the Executive Council, to the extent and subject to any conditions which may be determined by law to avail, for the purposes of the appointment of diplomatic and consular agents and the conclusion of international agreements of any organ used as a constitutional organ for the like purposes by any of the nations referred to in Article 1[2] of this Constitution.* The Executive Council shall be responsible to Dáil Eireann, and shall consist of not more than twelve[3] nor less than five Ministers appointed [by the Representative of the Crown on the nomination of the President of the Executive Council] *in the manner hereinafter provided.*

[1] *See also* Ministers and Secretaries Act (No. 16 of 1924) and Ministers and Secretaries (Amendment) Act (No. 6 of 1928).

[2] Article 1 reads: The Irish Free State (otherwise hereinafter called or sometimes called Saorstát Eireann) is a co-equal member of the Community of Nations forming the British Commonwealth of Nations.

[3] Altered from 7 to 12 by Amendment No. 5 Act.

The *seventh* item amended Article 53 as follows, the words inserted being in italics and those deleted within square brackets:

> The President of the Council shall be [appointed on the nomination of] *elected by* Dáil Eireann. He shall nominate a Vice-President of the Council, who shall act for all purposes in the place of the President, if the President shall die, resign, or be permanently incapacitated, until a new President of the Council shall have been elected. The Vice-President shall also act in the place of the President during his temporary absence. The other Ministers who are to hold office as members of the Executive Council shall be appointed [on the nomination of] *by* the President, with the assent of Dáil Eireann, and he and the Ministers [nominated] *appointed* by him shall retire from office should he cease to retain the support of a majority in Dáil Eireann, but the President and such Ministers shall continue to carry on their duties until their successors shall have been *respectively elected and* appointed: Provided, however, that the Oireachtas shall not be dissolved on the [advice] *direction* of an Executive Council which has ceased to retain the support of a majority in Dáil Eireann.

The *eighth* item amended Article 55 as follows, the words inserted being in italics and the words deleted within brackets:

> Ministers who shall not be members of the Executive Council may be appointed [by the Representative of the Crown.][1] Every such Minister shall be nominated] by Dáil Eireann on the recommendation of a Committee of Dáil Eireann chosen by a method to be determined by Dáil Eireann, so as to be impartially representative of Dáil Eireann. Should a recommendation not be acceptable to Dáil Eireann, the Committee may continue to recommend names until one is found acceptable. The total number of Ministers, including the Ministers of the Executive Council, shall not exceed twelve.

The *ninth* item deleted Article 60 which read as follows:[2]

> [The Representative of the Crown, who shall be styled the Governor-General of the Irish Free State (Saorstát Eireann), shall be appointed in like manner as the Governor-General of Canada and in accordance with the practice observed in the making of such appointments. His salary shall be of the like amount as that now payable to the Governor-General of the Commonwealth of Australia and shall be charged on the public funds of the Irish Free State (Saorstát Eireann) and suitable provision shall be made out of those funds for the maintenance of his official residence and establishment.]

[1] Following this word, were the words " and shall comply with the provisions of Article 17 of this Constitution," until struck out by Amendment No. 10 Act.

[2] *See also* Governor-General's Salary and Establishment Act (No. 14 of 1923).

The *tenth* item amended Article 68[1] by transferring the appointment of all judges in pursuance of the Constitution, from the Representative of the Crown on the advice of the Executive Council to the Executive Council itself.

Another Act of Constitutional interest passed by the Dáil during the year under review in this Volume was the Executive Authority (External Relations) Act.[2] This Act made provision, in accordance with the Constitution, for the exercise of the Executive Authority of the Irish Free State, " in relation to certain matters in the domain of external relations and for other matters connected with the matters aforesaid."

After providing, in section 1, for the appointment by the Executive Council of diplomatic and consular representatives in other countries, and, by section 2, for every international agreement concluded on behalf of the Irish Free State to be concluded by or on the authority of the Executive Council, the Act, in section 3, dealt with the exercise of the Treaty-making power conferred by the preceding section, as follows:

> 3—(1) It is hereby declared and enacted that, so long as Saorstát Eireann is associated with the following nations, that is to say, Australia, Canada, Great Britain, New Zealand and South Africa, and so long as the king recognized by those nations as the symbol of their co-operation continues to act on behalf of each of those nations (on the advice of the several Governments thereof) for the purpose of the appointment of diplomatic and consular representatives and the conclusion of international agreements, the King so recognized may, and is hereby authorized to, act on behalf of Saorstát Eireann for the like purposes as and when advised by the Executive Council so to do.
>
> (2) Immediately upon the passing of this Act, the instrument of abdication executed by His Majesty King Edward the Eighth on the 10th day of December 1936 (a copy whereof is set out in the schedule to this Act) shall have effect according to the tenor thereof and His Majesty shall, for the purposes of the foregoing subsection of this section and all other (if any) purposes, cease to be king, and the king for those purposes shall henceforth be the person who, if His said Majesty had died on the 10th day of December 1936, unmarried, would, for the time being, be his successor under the law of Saorstát Eireann.

Then followed the Schedule to the Act, containing the instrument of abdication, signed by King Edward VIII, which instrument was expressed to take effect from the date of the passing of the Irish Act (December 11, 1936).

Questions in the House of Commons.—On January 25, 1937, in the House of Commons,[3] Sir Donald Ross, Bart. (represent-

[1] *See also* Courts of Justice Act (No. 10 of 1924).
[2] Act No. 58 of 1936.
[3] 319 H.C. Deb. 5. s. 569.

ing Londonderry: Northern Ireland), asked the Prime Minister (Rt. Hon. Stanley Baldwin):

> whether the claim of the Government of the Irish Free State to be a republic as regards internal affairs, and a Dominion as regards external affairs, is recognized by His Majesty's Government?

To which Mr. Baldwin replied:

> The question of the effect of the recent Irish Free State legislation on that country's relations to the British Commonwealth of Nations is now under examination, and until the examination is complete no statement can be made on the matter.

The same Member asked the Secretary of State for Dominion Affairs[1] (Rt. Hon. Malcolm MacDonald):

> whether his conversations with Mr. de Valera covered matters affecting the interests of Northern Ireland; and, if so, whether he has consulted the Government of Northern Ireland thereon?

To which Mr. MacDonald replied:

> In the course of our recent conversations Mr. de Valera urged strongly that steps should be taken towards the establishment of a United Ireland. No scheme was, however, put forward, and the matter was not discussed further. The second part of the question does not, therefore, arise.

The "Draft Constitution" of 1937.—Although the treatment of this subject really appertains to Volume VI (for 1937) of this JOURNAL, as the new draft constitution for Ireland has just arrived, the going to press of the present Volume is being held back in order to make the reference to this subject as up to date as possible. This Bill, which bears the title "Draft Constitution," was introduced into Dáil Eireann on March 10, 1937, by the President of the Executive Council (Mr. Eamon de Valera). It was stated by his Parliamentary Secretary[2] that when the measure reached its final stage, it would not be passed as an Act but approved as a recommendation to the Irish people for agreement by them and that the Standing Orders would be adapted to that purpose.

The second reading was moved on May 11, 1937. After minor alterations in Committee and on Report, which alterations have been embodied in this article in regard to each constitutional provision dealt with, the Draft was finally "approved" by Dáil Eireann on June 14, 1937. It was submitted to a plebiscite under the provisions of a specially passed Plebiscite (Draft Constitution) Act, 1937, which provided that the plebiscite should be held on the same day as the General Election (July 1,

[1] *Ibid.* [2] *The Times*, March 11, 1937.

1937). The result of the plebiscite, or Referendum, was: Total electorate, 1,771,147; Votes for, 686,042[1]; Votes against, 528,296; Spoiled votes, 116,196; Majority for, 157,747.

The result of the General Election was: De Valera Party, 69; Cosgrave Party, 48; Labour, 13; Independents, 8; Total, 138.

The Bill as finally amended and "approved" by Dáil Eireann covers 117 pages, those on the left hand giving the English and those on the right hand, the Irish text; the latter is printed in Irish characters. The document contains 63 Articles, as the sections are called, of which 13 deal with Parliament, and 3 with the office and duties of President, and references to his powers and functions are included in many other Articles throughout the Bill.

Although it is the purpose of this Society only to deal with constitutional law in its particular relation to Parliament, its powers and privileges, etc., it is nevertheless necessary to give an outline of the "Draft Constitution," in order more clearly to locate the position of Parliament thereunder. The "Draft Constitution" opens with the following Preamble:

> In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred,
> We, the people of Éire,
> Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our Fathers through centuries of trial,
> Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation,
> And seeking to promote the common good, with due observance of Prudence, justice and charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations,
> Do hereby adopt, enact, and give to ourselves this Constitution.

Article 1 asserts the sovereign rights of the Irish Nation, the following Article defines its boundaries as embracing the whole of Ireland, its islands and the territorial seas, and Article 3 deals with the extra-territoriality of legislation.

The name of the State, which is declared to be a sovereign, independent, democratic state, is to be "Éire, or, in the English language, Ireland."[2] Article 6 defines the powers of government, 7 the flag, "the tricolour of green, white and orange," and 8 states that Irish is the national and the first official language, while English is recognized as the second official language, with special provision for the use of these languages.[3] Other Articles deal

[1] These represent 39 per cent. of the electorate.

[2] *See also* Art. 25 (4) (5); Art. 63.

[3] Arts. 4 and 5.

with Nationality (9); State Rights (10) and Revenues (11). Article 25 deals with the promulgation, etc., of laws; 26 with reference of Bills to the Supreme Court; and 27, with submission of Bills to the people by Referendum. The Executive Government is to consist of 7-15 Ministers, of whom not more than 2 may be Senators, with the right to sit and speak in both Houses. The Government, whose powers are defined, is to be responsible to Dáil Eireann (Art. 28). Article 29 provides for international relations and for international agreements (with the exception of agreements of a technical and administrative character) to be laid before the Dáil; and Article 30 deals with the office of Attorney-General, the holder of which is not to be a member of the Government.

Article 33 provides for the office of Comptroller and Auditor-General. Articles 34 to 38 deal with the administration of justice. Article 37 reads:

> Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorized by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution.

Article 38 also includes provision for the establishment of military tribunals and special courts, otherwise "no person is to be tried in any criminal charge without a jury." Article 39 defines treason, and Article 40 the personal rights of the citizen; Article 41 deals with "the Family"; 42, with education; 43, with private property; and Article 44 with Religion, with recognition by the State of the special position of the Holy Catholic Apostolic and Roman Church; and 45 declares Social Policy.

Amendment of the Constitution[1] is to be effected by legislation introduced into the Dáil, passed by both Houses and submitted to Referendum by the people. No "tacking" is to be allowed in regard to any such Bill. The Referendum is provided for in Article 47. For amendment of the Constitution a majority of the votes of the people is necessary. In regard to other subjects of referendum a veto can only be effective if the majority amounts to not less than 35 per cent. of the voters on the Register, and for the purposes of Article 27 will not be held to have been approved by the people unless

[1] Art. 46.

vetoed by them, *vide* Article 47 (2) (1). Every citizen possessing franchise rights for the Dáil has the right to vote at a Referendum.

Article 48 is to repeal the Constitution of Saorstát Eireann in force immediately prior to the date of the coming into operation of the "Draft Constitution," as well as the constitution of the Irish Free State (Saorstát Eireann) Act, 1922, in so far as that Act, or any provision thereof, is then in force, and Article 49 provides for the continuance of powers, etc., under the present Constitution, also under the "Draft Constitution." Sub-article (1) of this Article reads:

> All powers, functions, rights and prerogatives whatsoever exercisable in or in respect of Saorstát Eireann immediately before the 11th day of December 1936, whether in virtue of the Constitution then in force or otherwise, by the authority in which the executive power of Saorstát Eireann was then vested, are hereby declared to belong to the people.

Article 50 deals with the continuance of laws, and 51, which is of a temporary nature, allows for the amendment of any provisions of "Draft Constitution" (with the exception of Article 46 thereof) by the Parliament within 3 years of the first President entering upon his office. Article 52 deals with the transitory period; 53 with the first general election for the new Seanad; by 54 the Dáil then in existence becomes the new Dáil, whose Speaker continues in office; and 55 provides for the Parliament being unicameral until the new Seanad is appointed and for other transitory purposes. Under Articles 56 and 58 to 61 inclusive, the Government, its departments and officials, Judges, Attorney-General, Comptroller and Auditor-General and police and defence forces in office immediately before the coming into operation of the "Draft Constitution" are to continue upon the "Draft Constitution" coming into force. By Article 62 it is provided that the "Draft Constitution" shall come into operation:

(i) on the day following the expiration of a period of 180 days after its approval by the people signified by a majority of the votes cast at a plebiscite thereon held in accordance with law; or,
(ii) on such earlier day after such approval as may be fixed by Resolution of Dáil Eireann elected at the general election the polling for which shall have taken place on the same day as the said plebiscite.

The last article—63—provides for the enrolment of the "Draft Constitution" in the office of the Registrar of the Supreme Court and that in case of conflict between the Irish and English texts, the Irish text is to prevail.

Parliament.—Having provided the framework for the consideration of the position of the Legislature under the "Draft Constitution," we will now view the draft more closely.

Article 15 (1) (2) defines Parliament (the Oireachtas) as consisting of the President and two Houses—namely, a House of Representatives (Dáil Eireann) and a Senate (Seanad Eireann). As the Seanad is dealt with in the succeeding article in this Volume, the powers and duties of Parliament's other two constituents, Dáil Eireann and the President of the State, will now be described.

Dáil Eireann.—Subject to constitutional disabilities or incapacities, every adult citizen, "without distinction of sex," eligible for membership of Dáil Eireann is to be entitled to the Parliamentary franchise on the principle of "one man one vote," and the ballot is secret.[1] The seat of Parliament is to be in or near Dublin, or in such other place as Parliament may from time to time determine.[2] Parliament has the sole and exclusive right to legislate.[3] Power is given to create subordinate legislatures and provide for their powers and possessions;[4] Parliament may also provide for the establishment or recognition of functional or vocational councils representing branches of the social and economic life of the people and define their rights, powers and duties in their relation to Parliament and Government.[5]

Parliament may not enact any law repugnant to the "Draft Constitution," neither may it declare Acts infringements of the law which were not so at the date of their commission.[6]

The right to raise and maintain armed forces is vested exclusively in Parliament,[7] which must hold at least one Session a year. Its sittings must be in public, except in cases of special emergency, when either House may hold a private sitting, with the assent of two-thirds of the Members present.[8]

Each House has the right to elect its own Chairman (the Speaker) and Deputy-Chairman and prescribe his powers, duties and remuneration. All questions in each House, except where otherwise provided in the "Draft Constitution," are to be determined by a majority of the votes of the Members present, other than the Presiding Member, who may only exercise a casting vote in case of an equality of votes.[9]

Each House has power to make its own Rules and Standing Orders (under which the respective House quorums are laid

[1] Art. 16 (1) (1-3).
[2] Art. 15 (1) (3).
[3] *Ib.* (2) (1).
[4] *Ib.* (2).
[5] Art. 15 (3).
[6] *Ib.* (4) (5).
[7] *Ib.* (6).
[8] *Ib.* (7) (8).
[9] *Ib.* (9) (11) (1) (2).

down), and to attach penalties for their infringement. Freedom of debate is ensured and official documents and the private papers of Members are to be protected. Each House may also protect itself and its Members against any person interfering with, molesting or attempting to corrupt its Members in the exercise of their duties,[1] and all official reports and publications of Parliament, or of either House thereof, and utterances made therein, wherever published are to be privileged.[2] Except in the case of treason, as defined in the "Draft Constitution," felony or breach of the peace, Members of each House are to be privileged from arrest in going to and returning therefrom, and while within the precincts of either House, and are not to be amenable, in respect of any utterance in either House, to any Court or authority other than the House itself.[3]

No Member may be, at the same time, a Member of both Houses; should he become a Member of the other House, his first seat automatically becomes vacant.[4] Parliament is to make provision by law for the payment of Members and for the grant to them of free travelling facilities, etc.[5]

Dáil Eireann is to be composed of Members representing constituencies determined by law, whose number will be so fixed, but their total must not be less than one Member for every 30,000 population, or more than one for each 20,000. The ratio between the number of Members to be elected at any time for each constituency and its population, according to the last preceding census, so far as practicable, is to be the same throughout the country. Parliament is empowered to revise the constituencies, at least once every 12 years, having due regard to changes in the distribution of population. Such alterations, however, are not to take effect during the life of that Dáil Eireann sitting when such revision is made. Members are to be elected according to P.R., and no constituency is to have less than 3 Members.[6]

A general election for Dáil Eireann must take place not later than 30 days after its dissolution and all polling, so far as practicable, must be on the same day, Dáil Eireann having to meet within 30 days thereafter. The life of Dáil Eireann is to be 7 years from the date of its first meeting, but a shorter period may be fixed by law. Provision is also to be made by

[1] Art. 15 (10) (11) (3). [2] *Ib.* (12).
[3] *Ib.* (13). [4] *Ib.* (14). [5] *Ib.* (15).
[6] Art. 16 (2). The summoning and dissolution of Dáil Eireann is dealt with under "President."

law for the Member who is Chairman immediately before a dissolution of Dáil Eireann to be deemed to be a Member thereof, without any actual election, at the ensuing general election. Elections for Dáil Eireann and the filling of casual vacancies are to be as provided by law.[1]

Dáil Eireann is to be required to consider the Estimates for the financial year as soon as possible after their presentation, and legislation therefor must be passed within the year.[2] Dáil Eireann may not pass any vote or resolution, and no law may be enacted for appropriating revenue or other public moneys unless recommended to it by Government message signed by the Prime Minister.[3]

President.—We now come to the most interesting feature of the " Draft Constitution," the powers and functions of the President of the State.[4] Apart from the right of veto in regard to legislation, a prerogative which has not been exercised in the United Kingdom in recent times, the powers and functions of the Crown as Head of the State are limited to the summoning and proroguing of Parliament and its dissolution, all of which are usually done on the advice of its Ministers. Should the Crown act independently in regard to dissolution it accepts the responsibility. The Crown also offers counsel confidentially to the Prime Minister on any matter of policy, and the Prime Minister may consider such counsel or not as he deems fit. With the exception of certain acts such as free pardon and commutation of criminal sentences, both of which are done " in-Council," the above are broadly the limits of the powers and functions of the Crown or its representative under full Parliamentary government. In the new State of " Éire," however, the Crown is to have no representative internally, although it is to be recognized externally. The powers and functions vested in the office of the President of the State under the " Draft Constitution " are considerable. First, however, let some outline be given of the position the President occupies in the State.[5] He is described as the " President of Éire " (*Uachtarán na hÉireann*) and is to take precedence over all other persons in the State. His appointment is to be by direct vote of the people, according to P.R., the electorate being the voters for Members of Dáil Eireann, and the ballot secret. He holds office for 7 years from the date of entering it, " unless before the expiration of that period he dies, resigns, becomes permanently incapacitated, or is removed from

[1] Art. 16 (3) (2); (4) (5) (6) and (7). [2] Art. 17 (1). [3] *Ib.* (2).
[4] Art. 12, 13, 15, 18, 22, 24 to 28; 30 to 35, 46, 51, 56, 61. [5] Art. 12.

office"; he is eligible for re-election. A Presidential election is to be held on the sixtieth day before the date of the expiration of his term of office, and on such vacancy occurring, to the satisfaction of the Council of State, the election of the successor must take place. Every citizen of 35 years of age, not incapacitated therefor by law, is eligible for election as President, but every such candidate, not being a former or retiring President, who is eligible for re-election only once, must be nominated either by:

(i) not less than 20 persons, each of whom is at the time a member of one of the Houses of Parliament; or
(ii) by the Councils of not less than 4 administrative Counties (including County Boroughs) as defined by law.

No person and no such Council is to be entitled to subscribe to the nomination of more than one candidate at an election. Former or retiring Presidents, however, may nominate themselves, and when only one candidate is nominated, the ballot is dispensed with. A candidate for the Presidency may not be a Member of either House; if he is, his seat thereupon becomes vacant.

The President may not hold any other office of emolument and the first President assumes office, as soon as may be, after his election, and his successor, on the day following the expiration of office of his predecessor, or as soon as may be after the election. The President assumes office by taking and subscribing publicly, in the presence of Members of both Houses, the Judges of the Supreme and High Courts, and other public personages, the oath of office prescribed in the Constitution. The President may not leave Ireland during his term of office without the consent of the Government. Provision is made for his official residence in or near Dublin, and the emoluments and allowances attached to the office are to be determined by law, but may not be diminished during his term of office. Under Article 28, the Prime Minister is—"to keep the President generally informed on matters of domestic and international policy."

One of the most interesting features in connection with the powers of the President is the Council of State, which is a body apart from the Cabinet and Executive Government and Parliament, but yet advisory to the President in connection with several of his important powers and functions under the "Draft Constitution." The Council of State[1] is to be composed of:

[1] Art. 31, 32.

(*a*) As *ex-officio* members, the Prime Minister, Deputy Prime Minister, Chief Justice, President of the High Court, the Chairman of Dáil Eireann and of the Seanad, and the Attorney-General;

(*b*) every person able and willing to act as such member who has been President, Prime Minister, Chief Justice or President of the Executive Council of Saorstát Eireann (the Irish Free State).

(*c*) Such other persons, not exceeding 7, as may be appointed by the President in his absolute discretion.

Such members are required to subscribe to a special oath, and those appointed by the President hold office until the appointment of their successors. A nominee of the President to this body resigns from office by placing his resignation in the hands of the President, who may, " for reasons which to him seem sufficient by an order under his hand and seal," terminate the appointment of any member of the Council appointed by him. Meetings of the Council are convened by the President, " at such times and places as he may determine." Article 32 provides that the President may not exercise or perform any of the powers or functions conferred upon him under the " Draft Constitution " after consultation with the Council, unless, and on every occasion before so doing, he has convened a meeting thereof and the members present thereat " shall have been heard by him."

The President, after consultation with this body, may:

(*a*) At any time convene a meeting of either or both Houses of Parliament [Art. 13 (2) (3)].

(*b*) With the approval of the Government, communicate with the Houses of Parliament by message or address on any matter of national or public importance [Art. 13 (7) (1)];

(*c*) with the approval of the Government, address a message to the Nation at any time on any such matter [(Art. 13 (7) (2)];

(*d*) decide or refuse the request of Seanad Eireann to appoint a Committee of Privileges in a difference of opinion between the two Houses as to whether a Bill certified under Art. 22 (2) is or is not a " Money Bill " [Art. 22 (2) (3)];

(*e*) abridge the Seanad delaying period in connection with emergency legislation passed by Dáil Eireann under Article 24 [Art. 24 (1)];

(*f*) refer any Bill under Article 26 to the Supreme Court

for decision as to whether it is repugnant to the Constitution [Art. 26 (1)]; or

(*g*) decide whether a Bill of national importance on petition to him by specially reported vote of both Houses be, or be not, referred to the will of the people by Referendum or approved by the Dáil [Art. 27 (5)].

(*h*) within three years of the first President entering upon his office, under Article 51 of the "Draft Constitution," after message to the Chairman of both Houses, refer any Bill for the amendment of such Constitution to Referendum by the people (Art. 51).

The President is not to be answerable to either House of Parliament for the exercise of the powers and functions of his office or for any act done or purporting to be done by him in the exercise and performance of such powers and functions, but provision is made for his behaviour to be brought under review by Parliament [Art. 13 (8)].

Article 13 (9) provides that:

> The powers and functions conferred on the President by this Constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided by this Constitution that he shall act in his absolute discretion, or after consultation with or in relation to the Council of State, or on the advice or nomination of, or on receipt of any other communication from, any other person or body.

Article 13 (10) provides that, subject to the Constitution, additional powers and functions may be conferred on the President by law.

The President may terminate the appointment of:

(*a*) The Attorney-General on the advice of the Prime Minister (Art. 30 (5)].

(*b*) The Comptroller and Auditor-General or a Judge on resolutions of both Houses [Art. 33 (3) and (5)].

(*c*) Any Minister, on advice of the Prime Minister [Art. 13 (1) (3)].

The President appoints:

(*a*) The Judiciary [Art. 35 (1)] and determines the time within which a Judge shall make his declaration of Office (Art. 34).

(*b*) The Comptroller and Auditor-General on nomination of Dáil Eireann [Art. 33 (2)].

(*c*) The Attorney-General on the nomination of the Prime Minister [Art. 30 (2)].
(*d*) The Prime Minister, on the nomination of Dáil Eireann [Art. 13 (1)] and the other Ministers on the nomination of the Prime Minister, and with the approval of Dáil Eireann [Art. 13 (1) (2)].
(*e*) On the advice of the Prime Minister, the day of first meeting of Seanad Eireann after a general election [Art. 18 (8)].

The President summons and dissolves Parliament on the advice of the Prime Minister, but the President may in his absolute discretion refuse to dissolve Dáil Eireann on the advice of a Prime Minister who has ceased to retain the support of a majority in Dáil Eireann [Art. 13 (2)].

The President assents to and promulgates all laws in the *Gazette* (*Iris Oifigiúil*) [Art. 13 (3) (1) (2)] and the signed text is to be enrolled in the office of the Registrar of the Supreme Court, and is to be conclusive evidence as to the provisions of such law (Art. 25). The President, however, has not the power of veto upon legislation.

The President has supreme command, subject to regulation by law, of the defence forces, all officers whereof holding their commissions from him [Art. 13 (4) (5)]. He also has the right of pardon and commutation or remission of punishment imposed by any criminal court, but such power of commutation may, in exceptional cases, also be conferred by law on other authorities [Art. 13 (6)].

Under Article 14, a Commission is appointed to act in event of the absence, etc., of the President.

The President may be impeached[1] at the instance of either House, for stated misbehaviour, but the other House must investigate the charge, or cause it to be investigated. The President has the right to appear and be represented at the investigation of the charge, and if, as a result of such investigation, a Resolution is passed, supported by not less than two-thirds of the total membership of that House investigating, etc., the charge, declaring that the charge against him has been sustained, and that the misbehaviour the subject of the charge was such as to render him unfit to continue in office, such Resolution shall operate to remove him from office.

In the final consideration of this subject two observations present themselves to the constitutional student, in comparing

[1] Art. 12 (10).

the " Draft Constitution " with the Constitution now in force (Act No. 1 of 1922), upon which it would be interesting to have information:

(1) The " Draft Constitution " does not seem to profess to operate as an amendment of the existing Constitution; and,

(2) Was the Dáil Eireann, by which the " Draft Constitution " was " approved," " a Constituent Assembly " *vide* the Preamble to the existing Constitution ?

AMENDMENTS OF THE CONSTITUTION OF THE IRISH FREE STATE (SAORSTÁT EIREANN) ACT (No. 1 of 1922)[1]

Amendment No.[2]	*Act No.*	*Constitution Article Affected.*	*Subject.*
1	30 of 1925	New 31A, 32A; Art. 34	Defining tenure of seat by Senator; time of Seanad elections periodical retirement of Senators.
2	6 of 1927	Art. 21	Re-election of Dáil Chairman at General Elections.
3	4 of 1927	Art. 28	Cession of Public Holiday for General Election polling day.
4	5 of 1927	Art. 28	Maximum duration of Dáil increased from 4 to 6 years.
5	13 of 1927	Art. 51	Maximum increase of Executive Council from 7 to 12.
6	13 of 1928	Art. 14 and 32	Abolition of I.F.S. as one electorate for Seanad; substituting indirect election therefor by Members of Dáil and Seanad voting together by P.R.
7	30 of 1928	Art. 31, 32, and 34; New 32B	Reducing office tenure of certain class of Senators from 12 to 9 years; panel of Senators to be $\frac{1}{3}$ in place of $\frac{1}{4}$; alteration of tenure of seat by Senators retiring periodically and casual vacancies.
8	27 of 1928	Art. 31	Senators' age qualification reduced from 35 to 30 years.

[1] Also scheduled to the British Act entitled the Constitution of the Irish Free State (Saorstát Sireann) Act, 1922 (5th December, 1922), 13 Geo. V, c. 1. The *Articles* of the I.F.S. Constitution are contained in the Schedule to the Constitution Act.

[2] The title of these Acts is given as Constitution (Amendment, No. ...) Act, 19....

9	28 of 1928	New 33	Alteration in regard to panel of candidates for election to Seanad (Panel Act No. 29 of 1928).
10	8 of 1928	Art. 14; deletion 47 and 48	Abolition of Initiative and removal of Referendum in regard to suspended Bills.
11	34 of 1929	Art. 34	Filling of casual vacancies in Seanad by Members of Dáil and Seanad.
12	5 of 1930	Art. 35	Certification of "Money Bill" by Chairman of Dáil; reference to Committee of Privileges.
13	14 of 1928	Art. 38; New 38A	Abolition of 270 day suspensory period for Non-Money Dáil Bills and power of Seanad to request Joint Sitting Debate and substitution of the "stated period" (usually 18 months) and 60 day, or longer, suspensory period.
14	8 of 1929	Art. 39	Seanad Bill rejected by Dáil may be introduced again in same Session.
15	9 of 1929	New 52	Alteration in composition of Executive Council to allow inclusion of one Senator.
16	10 of 1929	Art. 50	Extending period, commencing with date of operation of Constitution, within which Constitution may be amended from 8 to 16 years.
17	37 of 1931	New 2A	Constituting Special Powers Tribunal to deal with public disorder.
—[1]	6 of 1933	(Deletion sec. 2 of Constitution of I.F.S. (S.E.) Act, 1922); and deletion Art. 17 and amdt. Arts. 50 and 55[2]	Removal of Oath; deletion of words "within the terms of the Scheduled Treaty" from Art. 50 in connection with amendments of the Constitution by the I.F.S. Parliament; removal of Oath by Ministers not Executive Councillors.

[1] Constitution (Removal of Oath) Act, 1933.

[2] The Constitution forms the First Schedule to the Constitution of the Irish Free State (Saorstát Eireann) Act, 1922, and the Treaty of 1921 forms the Second Schedule. Section 2 of such Act, which is purported to be deleted by the Constitution (Removal of Oath) Act, reads as follows:

> 2. The said Constitution shall be construed with reference to the Articles of Agreement for a Treaty between Great Britain and Ireland set forth in the Second Schedule hereto annexed (hereinafter referred to as "The Scheduled Treaty") which are hereby given the force of

20[1]	40 of 1933	Art. 37	Transferring from Crown to Executive Council the remendations in regard to the appropriation of money.
21	41 of 1933	Art. 41	Abolition of Crown's power to withhold assent to, or to reserve Bills.
22	45 of 1933	Art. 66	Abolition of appeals to Privy Council.
23	17 of 1936	Deletion 27 and Amdt. 28	Abolition of University representation.
24	18 of 1936	Deletion 30, 31, 31A, 32, 32A, 32B, 34, 38, 38A, 39, and 82; Art. 12, 16, 20, 21, 24, 25, 35, 52, 57, 63, and 68	Abolition of the Seanad.
26[2]	12 of 1935	Art. 3	Extra-territoriality to I.F.S. citizenship.
27	57 of 1936	Deletion 60; Art. 2A, 12, 24, 41, 42, 51, 53, 55, and 58	Removal of certain executive functions vested in the Crown.

law, and if any provision of the said Constitution or of any amendment thereof or of any law made thereunder is in any respect repugnant to any of the provisions of the Scheduled Treaty, it shall, to the extent only of such repugnancy, be absolutely void and inoperative and the Parliament and the Executive Council of the Irish Free State (Saorstát Eireann) shall respectively pass such further legislation and do all such other things as may be necessary to implement the Scheduled Treaty.

[1] The Constitution (Amendment No. 19) Bill, which reduced the Seanad "stated period" in regard to the delay of Bills from 18 to 3 months, was initiated in the Dáil and sent to the Seanad on 28th June, 1933. On the 11th July following, the Seanad on the Second Reading carried the following amendment:

> The deletion of all words after the first word "That," in the question for Second Reading, and the substitution of the following words:
>
> the Second Stage of Constitution (Amendment No. 19) Bill, 1933, be postponed pending the consideration by and the report of a Joint Committee of both Houses of Oireachtas on the changes, if any, necessary in the constitution and powers of the Seanad (XVII, I.F.S. *Sen. Deb.* 5. 110).

The Dáil took no notice of this request and the 18 months period expired 27th December, 1934. On 11th April, 1935, the Bill was again sent to the Seanad and rejected by it, 1st May, 1935. The 60 days period expired 10th June, 1935. The Bill, however, never became law, the Government failing to introduce the necessary enacting Resolution in the Dáil, presumably because of the impending abolition of the Seanad under Constitution (Amendment No. 24) Act (No. 18 of 1936).

[2] The Constitution (Amendment No. 25) Bill, to restore the Referendum for amendments to the Constitution, was initiated in the Seanad, passed by it, and sent to the Dáil 6th June, 1934, but no date for its Second Reading in that House was ever fixed. In the ordinary way, the Bill would have become dead after the following dissolution, but the Seanad was abolished by Constitution (Amendment No. 24) Act, abovementioned.

X. BI-CAMERALISM IN THE IRISH FREE STATE

BY THE EDITOR

THE young life of the Second Chamber in the Irish Free State has been fraught with difficulties and subjected to many changes, culminating on May 29, 1936, in the abolition of the Senate, but succeeded by the appointment, on the 9th of the month following, of a Commission to investigate the question of a Second House and in 1937 by the provision for the bicameral system in the new "Draft Constitution." The terms of reference of the Commission were:

> to consider and make recommendations as to what should be the functions and powers of the Second Chamber of the Legislature in the event of its being decided to make provision in the Constitution for such Second Chamber and further, to consider and make recommendations as to how in that event such Chamber should be constituted as regards number of members, their qualifications, method of selection and period of office, and what allowances (if any) should be made to such members.[1]

Seanad Eireann under Constitution of 1922.

Article 12 of the above Constitution[2] provided for a Parliament consisting of the King,[3] and two Houses, a Lower House,[4] or Dáil Eireann, directly elected upon an adult franchise on the P.R. system,[5] and an Upper House, or Seanad Eireann.

Article 30 of such Constitution provided that:

> Seanad Eireann shall be composed of citizens who shall be proposed on the grounds that they have done honour to the Nation by reason of useful public service or that, because of special qualifications or attainments, they represent important aspects of the Nation's life.

The first Seanad Eireann numbered 60, 30 nominated and 30 elected, and the minimum age of Senators was 35 years. Article 82(*b*) of the Constitution provided for the appointment of the 30 nominated Senators by the President of the Executive Council who, in making such nominations, was required to

[1] Report of the Second House of the Oireachtas Commission, 1936, PN. No. 2475 (hereinafter referred to as the "Report"), p. 4.

[2] Irish Act No. 1 of 1922.

[3] The words "the King and" were deleted by Constitution (Amendment No. 27) Act (No. 57 of 1936).

[4] Of 153 Members, including 3 each for the two Universities.

[5] "P.R." as here used means Proportional Representation with the single transferable vote.

have special regard for the representation of groups or parties not then adequately represented in Dáil Eireann. Of these 30, 15 had to be selected by lot, for the full period of 12 years, but the remaining 15 only for 6 years.

With regard to the nominated Senators, Dáil Eireann passed the following Resolution on 25th October, 1922:

> That it is expedient that the President of the Executive Council, in nominating the nominated members of the Senate, should, with a view to the providing of representation for groups of all parties not adequately represented in the Chamber, consult with representative persons and bodies, including the following: Chamber of Commerce, the Royal College of Physicians of Ireland, the Royal College of Surgeons in Ireland, the Benchers of the Honourable Society of King's Inns, Dublin, the Incorporated Law Society of Ireland, Councils of the County Boroughs of the Irish Free State.[1]

Amongst the first nominations of Senators were 1 Marquess, 5 Earls, 1 Countess, 1 Baron, 4 Baronets,[2] 2 Knights and 2 Privy Councillors.

The other 30 Senators were originally elected by the members of Dáil Eireann by P.R. Of these, the first 15 were elected to hold office for 9 years and the remainder for 3 years. A Second Chamber was thus contemplated with $\frac{1}{4}$ its membership renewable every 3 years. Casual vacancies were to be filled by co-option of the Senate itself, such Members only to hold their seats for the then current triennial period. These periods commenced on December 6, 1922.

Vacancies arising at the end of each triennial period were to be filled by an electorate consisting of all citizens of the Irish Free State (as one constituency) duly qualified, who had reached the age of 30 years, by P.R. on a Panel composed of three times as many qualified persons as there were Members to be elected, of whom $\frac{2}{3}$ were to be nominated by Dáil Eireann and $\frac{1}{3}$ by Seanad Eireann; plus such former Senators as desired to be included in the Panel. At this election held on September 17, 1925, which was the only one under this system, there were 76 candidates for 19 seats (15 plus 4 casual vacancies), and the general opinion was that the system was unsatisfactory,[3] and its progress and

[1] *Free State Parliamentary Companion*, 1932. Ed. by W. J. Flynn (the Talbot Press, Ltd., Dublin, and Cork), p. 89. In the preface to the 1932 edition, the Editor expresses himself as under a special obligation to Mr. Donal O'Sullivan, B.L., Clerk of the Seanad, for preparing and arranging the section of the book dealing with the Constitution, etc.

[2] One of whom was also a Privy Councillor.

[3] *I.F.S.P. Companion*, 1932, p. 90.

result were considered to have proved the impracticability of the electoral system introduced by the Constitution. Only one quarter of the electorate had participated in the voting, a fact attributed in part to the technical complication of the transferable vote system when applied to a lengthy list of preferences, in part to the treatment of the whole country as a single constituency, which precluded any personal contact between candidates and voters. A Joint Committee of both Houses was set up, which recommended the abolition of the system. Its proposals resulted in a comprehensive amendment of Articles 31, 32 and 33 of the Constitution,[1] all passed in 1928,[2] by which $\frac{1}{8}$ of the Senators were to retire every 3 years and their successors to hold office for 9 years. Some provisions were of a transitory character, such as the tenure of seat of Senators elected in 1928 and 1931, in order that, after the 1931 election, there would be 20 Senators holding their seats for 3, 20 for 6, and 20 for 9 years, the whole Chamber thus being renewable in 9-year periods. The minimum age for Senators was reduced to 30 years and the system of election was to be by Members of Dáil and Seanad Eireann sitting together, according to P.R., Senators being chosen from a Panel composed pursuant to the provisions of the Seanad Electoral Act of 1928,[3] which enacts that as many qualified persons as there are Members to be elected shall be nominated by Seanad and Dáil Eireann respectively, casual vacancies being filled by such bodies voting together. The effect of the amendment was to divest the Senate of the element of popular authority which it might have claimed under the previous system.[4]

In neither of the two elections held under this system has a full Panel of twice the number of candidates been formed, as appears to be the intention of the Act.[5] In 1928 there were 19 vacancies but only 27 candidates; Dáil and Seanad Eireann each formed a Panel of 19 names, but the Seanad Panel duplicated 11 names in the Dáil Panel. In 1931, there were 23 vacancies, and the Seanad nominated the 23 outgoing Senators as the Seanad portion of the Panel. The Dáil portion of the Panel comprised only 16 names, and of these, 11 were already on the Seanad Panel.

[1] Namely, Constitution (Amendment Nos. 8, 13, 14, 27, 28, 30) Acts.
[2] *The Constitution of the Irish Free State*, by Leo Kohn, 1932. (Allen and Unwin.)
[3] Act No. 29 of 1928.
[4] *The Constitution of the Irish Free State*, by Leo Kohn, 1932. (Allen and Unwin.)
[5] Irish Act No. 29 of 1928, sec. 5.

Except in regard to Money Bills, the Seanad had co-ordinate powers of legislation with the Dáil as to the initiation of legislation. In regard to " Money Bills " as defined in Article 35 of the Constitution, Dáil Eireann had exclusive legislative authority. The certification of " Money Bills " rested with the Speaker of Dáil Eireann, but a method was provided by which his decision could be challenged,[1] by reference to a Committee of Privileges. Seanad Eireann was not allowed to amend this class of Bill, but could make recommendations[2] in regard to such a Bill to the other House, subject to its acceptance.

In regard to non-Money Bills, Seanad Eireann had full power of amendment.

In case of continued disagreement between the two Houses on a Dáil Bill, amended or otherwise by the Seanad, it was originally provided by the Constitution[3] that the Bill should, not later than 270 days after it had first been sent to Seanad Eireann, or after such longer period as might be agreed upon between the two Houses, be deemed to be passed by both Houses in the form the Bill had left Dáil Eireann. This period was, however, later amended[4] by Constitution (Amendment No. 13) Act,[5] which provides for a maximum delay period of one year and 8 months. Such period, however, might be reduced by a dissolution of Parliament.

Formerly Seanad Eireann could demand a Referendum on any Bill which had been passed by both Houses, on fulfilment of the conditions laid down in Article 47 of the Constitution, but this power was never exercised and the Article was deleted by Constitution (Amendment No. 10) Act.[6]

Originally no Senator could be a Minister, but Article 52 of the Constitution was amended by Constitution (Amendment No. 15) Act,[7] by which one Senator could be appointed to the Executive Council. No such appointment, however, was made until 1932.[8]

Under Section 7 (1) of the Ministers and Secretaries Act, 1924,[9] Members of either House, not exceeding 7, could be appointed Parliamentary Secretaries to the Executive Council

[1] *I.F.S.P. Companion*, 1932, p. 91.
[2] *See also* JOURNAL, Vols. I, 81-90 and II, 18, for this practice elsewhere.
[3] Art. 38. [4] Art. 38A.
[5] Act No. 14 of 1928.
[6] Act No. 8 of 1928; for Referendum in regard to amendment of the Constitution *see Referendum*.
[7] Act No. 9 of 1929.
[8] Senator J. Connolly as Minister of Posts and Telegraphs.
[9] Act No. 16 of 1924.

or to Executive Ministers, but no Senator has been so appointed.[1]

In 1934 a Constitution (Amendment No. 25) Bill was initiated in and passed by the Seanad, proposing so to amend the Constitution as to provide for the submission to a Referendum of the people of amendments made thereto by way of ordinary legislation within the (extended) period of 16 years from the date of the coming into operation thereof; this sought to re-establish the original position with regard to constitutional amendments. The Bill, however, was ignored by Dáil Eireann and lapsed with the abolition of the Seanad.

Eventually, in 1936, this gradual reduction of the powers of Seanad Eireann ended in its abolition by Constitution (Amendment No. 24) Act,[2] and the establishment of a unicameral Legislature. This Bill was passed by the Dáil and sent to the Seanad on May 25, 1934, where it was rejected on the first of the following month, whereupon Dáil Eireann, under Constitution (Amendment No. 13) Act (No. 14 of 1928), after expiration of the suspensory period on November 24, 1935, by Resolution, adopted May 28, 1936, such Bill became law.

The Constitution also provided that no person could be a Member both of Seanad and Dáil Eireann at the same time, and that if a Member of one House was chosen for the other, his first seat became *ipso facto* vacant;[3] that each House had power to make its own Rules and Standing Orders, with power to attach penalties for their infringement, and that there should be freedom of speech; that official documents and the private papers of Members be protected as well as the persons of its Members against interference, molestation or attempt to corrupt its Members in the exercise of their duties;[4] for the election of its Chairman, etc.;[5] that Parliament shall hold at least one session a year, and as to its summoning, etc., special provision being made that the Sessions of the Seanad shall not be concluded without its own consent;[6] that the sittings of each House shall be public, but that in cases of special emergency, either House may hold a private sitting with the assent of $\frac{2}{3}$ of the Members present;[7] and for casual vacancies in the

[1] *I.F.S.P. Companion*, 1932, p. 92.

[2] Constitution (Amendment No. 24) Act (No. 18 of 1936); *see also* an interesting brochure, *Pro Domo Sua*, containing the speeches of Senator T. W. Westropp Bennett, Chairman of Seanad Eireann, and of the Vice-Chairman, Senator M. F. O'Hanlon, in defence of the Second Chamber system (Talbot Press, Dublin), 1934.

[3] Art. 16.

[4] Art. 20.

[5] Art. 21 as amended by Act No. 6 of 1927.

[6] Art. 24.

[7] Art. 25.

Seanad.[1] A Resolution also of the Seanad was required for the removal of the Comptroller and the Auditor-General or the Judges.[2]

With this brief sketch of the pre-abolition conditions in regard to the Second Chamber in the Irish Free State, attention will now be directed to the provisions of the inquiry into the setting up of a new Second Chamber.

The Commission's Report.

The Commission appointed on June 9, 1936, the terms of reference of which have already been given, consisted of 23 persons, with the Chief Justice as Chairman and the Attorney-General as Vice-Chairman, and included 7 Members of Dáil Eireann, 5 professors and other selected persons, including three Civil Servants.

The letter of the Chairman addressed to the President of the Executive Council, covering the Report of this Commission and other documents, was dated September 30, 1936. The Commission held 27 sittings. The result of the Commission's investigations are embodied in the recommendations of the Majority Report, with 5 reservations, and 3 Minority Reports, with reservation by 2 Members to the Second Minority Report. It is proposed in this article to take the course laid out by the Majority Report, and to deal with the recommendations of the Minority Reports and reservations to both types of report, under the respective subjects, as they come up for treatment.

It was ruled early in the proceedings, as a matter of interpretation of the terms of reference, that the Commission was not to consider whether a Second House should be established or not.[3] The Commission, therefore, proceeded on the basis that the constitution of Dáil Eireann and its constitutional position should continue substantially as they were, subject only to such changes as may be entailed by the establishment of a Second House.[4]

Functions of the Second House.—This subject is also dealt with later under the various types of Bills, but, broadly speaking, the Majority Report recommended that the Second House should have:

(*a*) the consideration of all proposed legislation;[5]

(*b*) a suspensory veto, but not an absolute veto upon Dáil Bills;[6]

[1] Art. 34 as amended by Acts No. 30 of 1925, 30 of 1928, and 34 of 1929.
[2] Arts. 63 and 68. [3] Report, p. 6, § 4. [4] *Ib.*, § 5.
[5] Report, p. 7, § 6 (iii); also supported by First Minority Report, p. 25, § 29.
[6] *Ib.* (iii) (iv) (v) and (vi); also supported by First Minority Report, p. 25, § 29.

(*c*) the right of initiation (also to the Government) of non-Money Bills;[1]
(*d*) the treatment of Consolidation Bills;[2] and
(*e*) the examination of Statutory Rules and Orders.[3]

In the First Minority Report, described in the official publication as "Additional Report from the Chairman," the Chief Justice expressed the following opinions, in regard to what should be the functions of the body he would like to see created:

(*f*) if a Second House be set up at all, its *raison d'être* must depend upon its authority to command a hearing with respect from the Dáil and the people, while I see it as a body primarily having advice and criticism to offer, the Dáil continuing to be the primary predominant and effective legislative member of the Oireachtas.[4]

(*g*) As the existence of a third constituent of the Oireachtas must spring from the volition of the Dáil and therefore be a body designed to co-operate with the Dáil, to help in its work of legislation and to accept tasks delegated to it by the Dáil. Its establishment would be further inspired by the motive of reassuring minorities in the population as to regard for justice and equal dealing in legislation and other matters.[5]

(*h*) The Second House, to be called the "Council of Ireland," be an integral part of the Oireachtas, but with functions quite different from the other two constituents of that body.[6]

(*i*) that the main purpose of such Council should be, to help on the work of the Legislature and (so far as may be necessary) to protect the people from the consequences of panicky, over-hasty, ill-considered or misunderstood legislation. While the body might have one or two debates in the Session, if the occasion arose, on some matter of real public importance, the work of the Council would usually be rather of "Committee character," and that after a Bill has been brought up to just before the passing stage, it should be sent to the Council for advice, the Council reporting thereon in writing to the Dáil, both in regard to the principle of the Bill and any suggested amendments. Should the Council then report that the principle of the Bill should not be made law, the Council is to report in writing to the Dáil its reasons for such advice. Such Reports (including minority reports) to be public documents, but it would be in the sole power and responsibility of the Dáil to disregard such advice or to go on with the Bill and make it law.[7] (Certain reservations were made as to constitutional amendments which will be dealt with under "Referendum.")

[1] *Ib.*, p. 7, §§ 7 and 8; also suggested in the Second Minority Report, p. 28, § 6 (*f*).
[2] *Ib.*, § 8.
[3] Or by a Special Joint Committee, *Ib.*, § 9.
[4] Report, p. 18, § 5; also supported by Mr. Geoghegan, *ib.*, p. 15, § 2.
[5] *Ib.*, pp. 18-19, § 6. [6] *Ib.*, § 8. [7] *Ib.*, pp. 21-22, § 18.

(*j*) Should, on the other hand, the Council not report against the Bill in principle, but point out the amendments suggested, stating the reasons for each, then the Council's suggestions would be dealt with by the Dáil in the same manner as objections to the principle of a Bill.[1]

(*k*) The Council not to be given the power of initiation of legislation, except in the nature of prompting or inspiring such in a proposed Dáil Bill, to be transmitted to the Dáil with a Report thereon.[2]

(*l*) That the Council by its Committee investigate and report upon consolidation measures, transmitting such to the Dáil, with a certificate that it contains no new legislation, nor any amendment of an existing Act and advising that such measure be passed into law. The Dáil, in such cases, to be able, if it deems necessary, to submit such draft measure to the Attorney-General for examination and certificate in accord with that of the Council, whereupon the Bill would proceed as a non-controversial measure to the Statute Book.[3]

It was also suggested in the First Minority Report that the Second Chamber " suspensory period " of Bills be 3 months after the receipt of the Dáil Bill by the Second Chamber, at the expiration of which period such Chamber should be assumed to have reported that it had no advice to offer on the subject-matter.[4]

In the Second Minority Report, signed by 8[5] of the 23 Members of the Commission, it was considered that:

(*m*) Reviewing powers of legislation by the Second House was a secondary consideration and not in itself sufficient to justify the creation of a Second House, which powers could be just as efficiently discharged by Committees of experts appointed and remunerated by the Dáil.[6]

(*n*) In a democracy like the Irish Free State, the primary function of a Second Chamber was to safeguard fundamental human rights, as well as the continued existence and peaceful development of democratic institutions, against encroachments by the Executive and the majority in the Dáil, and that while realizing that at present there is no reason to apprehend any serious encroachments, yet the example of many other countries leads one to envisage the possible emergence in the Irish Free State also of movements and parties which would use the forms of democracy for the purpose of destroying democracy itself. Therefore if a Second Chamber were to be established it should be regarded as the defence of popular liberties against any such dangers as its primary function.[7]

[1] Report, p. 22, § 19.
[2] *Ib.*, p. 23, § 22.
[3] *Ib.*, pp. 23-24, § 23.
[4] *Ib.* p. 23, § 21.
[5] Ex-Senator Sir John Keane, Bart., Professor Daniel A. Binchy, M.A., Ph.D., B.L., Eamon Lynch, Frank MacDermot, T. D. John Moynihan, Professor Alfred O'Rahilly, M.A., Ph.D., B.Sc., Professor Michael Tierney, M.A., and Ex-Senator Richard Wilson.
[6] Report, p. 26, § 2.
[7] *Ib.*, § 3.

(*o*) it was not in favour of a suspensory veto on Bills, but that the secondary powers of the Second House should be strictly limited to the work of improving Dáil legislation.[1]

Duration of Second House.—The Majority Report recommended[2] that the Second House be reconstituted after each general election (for the Dáil), namely, every 4 years.[3]

In the First Minority Report (§ 12) 6 years was suggested for the " Council of Ireland."

The Second Minority Report recommended (§ 21) that the nominated element should retain their seats until the first meeting of the Dáil after a general election therefor, next following the date of such Senator's nomination, and that the elected element of the Seanad sit for 5 years and be elected and retire as a body.

System of Selection.—The Majority Report stated[4] that there was substantial agreement among the members of the Commission that the number of Members of the Second House should be 45; the Membership of the Dáil being then 153. The greatest diversity of opinion, however, prevailed among the Members of the Commission as to the method of selection of Members of the Second House, but there was only one exception to the inclusion of nomination as a method for obtaining part of the 45. A proposal which commended itself to some Members was, that a proportion of the Second House should be selected on the basis of vocations or occupations, but such Members did not reach a scheme which satisfied a majority of the Commission.[5] Such selection, however, was not contemplated with the object of making the Second House representative of such vocations, etc., but rather with the object of forming a Panel of persons who had attained positions of responsibility and distinction in their own particular sphere who would be competent to deal with all the business of the House, whatever it might be, so as to afford a wide choice; also in order that the selection might not be made on a political party basis.

Mr. Seamus Moore, T.D., a co-signatory to the Majority Report, made a reservation thereto;[6] namely, that in the composition of the Second House very liberal use should be made of the wide knowledge and experience of persons engaged in the task of Local Government, who have served for 3 years or upwards as Chairmen of County Councils,

[1] *Ib.*, p. 27, § 5. [2] *Ib.*, p. 11, § 26.
[3] Reduced by Constitution (Amendment No. 4) Act (No. 5 of 1927) from 6 to 4 years.
[4] Report, p. 9, § 17. [5] *Ib.*, p. 11, § 27. [6] *Ib.*, p. 17.

Boards of Health or Municipal Corporations and who should be entitled automatically to membership of any Panel to be formed for election to the Second House, particularly persons who have continued to give their time and abilities to public affairs without personal recompense or reward, as in the case of the Chairmen abovementioned, and likely to exhibit the independence of mind and other qualities desired in members of a Second House.

In the First Minority Report it was suggested that the Council of Ireland should consist of 40 members, in order to afford 8 members each for 5 committees, specially selected for possession of special character and ability fitting them for the discharge of the onerous and responsible tasks entrusted to them.[1] A type of person experienced in affairs, rather than "educated," with general knowledge of the business of life, "not the scholar, but the man who reads the newspapers, knows and understands broadly what is going on around him," and "who has a responsive mind."[2]

The Second Minority Report rejected any form of popular election, but favoured selection on a functional basis, as a method to provide a division of type and a variety of expert knowledge[3] which it was generally agreed should characterize a Second Chamber, and would minimize party conflicts and secure the services of persons who normally would remain out of public life, although exceptionally fitted for the task of criticizing and improving particular types of legislation.[4] The signatory of the First Minority Report, however, was strongly opposed to a vocational or occupational basis for the composition of the Second House.[5]

The signatory to the Third Minority Report agreed with the principle of Functional representation for the Second House, not in terms of ownership only, but as participants in a real wealth-creating service, and that whenever truly representative functional organizations become general they should be availed of for the formation of a House of Legislature, with the operative and administrative staffs as dominant factors, as distinct from the owners as owners.[6]

Qualification for Membership.—It was recommended in the Majority Report that the Second House should be composed of persons chosen on account of their ability, character, experience and knowledge of public affairs;[7] also that some of

[1] Report, p. 19, § 9.
[2] *Ib.*, § 10.
[3] *Ib.*, p. 30, § 11.
[4] *Ib.*, § 12.
[5] *Ib.*, p. 18, §§ 3 and 4.
[6] *Ib.*, p. 36.
[7] *Ib.*, p. 9, § 18.

the Members should be women;[1] and that the minimum age be 35 years.[2]

In the First Minority Report it was suggested that the qualifying age for Members of the Second House should be not less than 35 and not more than 70 years, at the time of becoming a Member.[3]

Composition of Second House.—The Majority Report summarized the main proposals for the composition of the Second House—other than those embodied in their Report—as follow:

(i) That the Members of the Second House should be elected by a direct vote of the people;
(ii) That the Second House should be, in part, nominated, and, in part, elected—the election to be held in constituencies based on provinces;
(iii) That it should be, in part, nominated, and, in part, constituted by dividing the elected First House—a certain number of members at each General Election being elected to Dáil Eireann in excess of those required to constitute that body;
(iv) That it should be, in part, nominated, and, in part, elected by a system of vocational election;
(v) That it should be, in part, nominated, and, in part, elected by Dáil Eireann from a Panel of persons actively concerned in certain specified public interests or services—the nominating authority to the Panel to be (among other suggestions) a Committee of Dáil Eireann;
(vi) That it should be obtained, in part, by election by Dáil Eireann from a Panel prepared by a nominating authority having regard to the qualifications specified in paragraph 22[4] and, in part, by uncontrolled nomination, the nominating authority in both cases being the President of the Executive Council;
(vii) That it should be obtained, in part, by controlled nomination, and, in part, by uncontrolled nomination, the nominating authority in both cases being the President of the Executive Council.[5]

The Majority Report, however, recommended that $\frac{1}{8}$ of the Second House be nominated by the President of the Executive Council[6] and the remainder selected from a Panel who then are, or have been, actively concerned in public interests or services to be specified, the Panel being prepared for each election,[7] and the selection made by a nominating authority or committee of persons (not necessarily members of the Dáil) elected by

[1] *Ib.*, p. 9, § 18.
[2] *Ib.*, § 19; this age was also recommended in the Second Minority Report, p. 29, § 10.
[3] *Ib.*, p. 19, § 10.
[4] Namely, persons who are or have been actively concerned in public interests or services to be specified, the Panel being prepared for each election.
[5] Report, pp. 9-10, § 20 (i-vii). [6] *Ib.*, § 21. [7] *Ib.*, § 22.

the Dáil for that purpose, by P.R., such authority being required by its terms of reference, to nominate for the Panel not fewer than twice the number of persons to be elected, having regard in each case to the qualifications set forth in paragraph 22[1] and as far as practicable, to the representation of the public interests and services indicated in paragraph 25.[2] Any 2 members[3] of the nominating authority were to be entitled to make 6 nominations to the Panel, such authority to consist of 7, of whom one would be Chairman.[4]

The Majority Report was of opinion that the elected element of the Second House should be so elected by an Electoral College, consisting of every person who had been a candidate at the immediately preceding general election for the Dáil. Election to the Second House was to be conducted in accordance with a scheme whereby each such elector is entitled to one vote for every 1,000 first preferences he received as candidate for election to the Dáil, a fraction of 1,000 exceeding 500, to be reckoned as 1,000, the election to be by P.R., by postal ballot, and the whole country to be one constituency.[5] Mr. John Hearne, B.A., LL.B., B.L., one of the signatories to the Majority Report, however, made a reservation to the opinion expressed by his co-signatories, namely, that while being in agreement with the other members of the Commission in rejecting a proposal that the Second House should be elected by direct vote of the people, he suggested[6] that the only practicable method was election of the elected element in the Second House by the Dáil, according to P.R.

The signatory to the First Minority Report was of opinion that the Panel idea was wholly impractical and that the exclusion of all popular election for the Second House would deprive it of all authority or claim to respect from the people. This signatory was also against the vocational or occupational basis of representation.[7] In his proposed "Council of Ireland," to which reference has already been made, the signatory suggested that one-half (20) of such Council be elected and the other half nominated,[8] and that the former element be so

[1] See footnote 4 on previous page.
[2] Namely, National Language and Culture, the Arts, Agriculture (in all its forms) and Fisheries, Industry and Commerce, Finance, Health and Social Welfare, Foreign Affairs, Education, Law, Labour, Public Administration (including Town and Country Planning).
[3] Dissented from by Mr. Connolly, Report, p. 14.
[4] Report, pp. 10-11, § 23.
[5] *Ib.*, p. 11, § 24.
[6] *Ib.*, p. 16.
[7] *Ib.*, p. 18, §§ 2, 3 and 4; popular election was also supported by Mr. Geoghegan. *Ib.*, p. 15, § 2.
[8] *Ib.*, p. 19, § 11.

elected by 4 constituencies, 5 by each Province of the Saorstát, according to P.R., the electors not to be less than 30 years of age and the suffrage to be universal, voting to be compulsory, enforced by penalties and loss of privileges (*i.e.*, income tax deductions for children and the like), with tenure of seat for 6 years. The Provincial basis, it was calculated, would "avoid local, Dublin, or Cork, or other cliques," and get a broader basis of opinion.[1] In regard to the nominated half of the "Council of Ireland," he suggested appointment by a body consisting of:

> The Speaker (Ceann Comhairle) of the Dáil;
> The then President of the Executive Council;
> The Leader of the Opposition, and of every party of not less than 5 Members, and a representative chosen by the independent Members of the Dáil.[2]

It was further suggested by such signatory that the choice of the nominating committee be limited by the age restriction, already referred to in his Minority Report, and that if a further limitation was desired, such choice be confined to those belonging to any of the following classes, or extension to other responsible groups, but not with the purpose of representation of any such classes:

(i) Ex-Ministers of State 7 years in office.
(ii) Retired Judges and (First Class) Civil Servants.
(iii) 10 years' practice in one of the learned professions, medicin law, engineering, architecture, or
(iv) Mayors or Chairmen of Town or County Councils for 2 years or members of such bodies for 5 years;
(v) University Professors of History, economics, philosophy or law;
(vi) Ex-Presidents of Chambers of Commerce.
(vii) Ex-Presidents or Secretaries of Trade Unions, etc., or organizations of farmers.[3]

He also suggested that the tenure of seat be for 6 years, the nominated Members to vacate their seats simultaneously with the elected Members, with fresh nomination after each election.[4]

The Second Minority Report suggested a Second House of 50 members, of whom 10 were to be nominated by the President of the Executive Council, and 40 elected by the Dáil from Panels, both elements to be chosen in the manner stated below.[5] The signatories to this Report remarked[6] that if all or any of the "Functional and Vocational Councils representing branches of the social and economic life of the nation" had already been

[1] *Ib.*, pp. 19-20, § 12; also supported by Mr. Geoghegan, p. 15, § 2.
[2] *Ib.*, p. 20, § 13. [3] *Ib.*, § 14.
[4] *Ib.*, p. 20, § 15. [5] *Ib.*, p. 29, § 9. [6] § 13.

established by the Oireachtas, as envisaged in Article 45 of the Constitution, they would favour direct election to the Second House by such Councils, and in event of such establishment in the future they recommended such method of election be adopted. In the present circumstances, however, they recommended that, where substantially representative vocational organizations existed, they be given a direct voice in the selection of candidates for membership of the Second House according to the system of Panels hereinafter detailed.[1] The Second Minority Report therefore suggested that the elected members (40) of the Second House be elected by the Dáil from Panels formed before each General Election to the Second House, constituted largely by vocational organizations of a substantially representative character. Under this scheme, the representation of unorganized or insufficiently organized vocational groups would be secured by a system of controlled nomination to the Panels, which were to be 4 in number,

namely:

(i) Farming and Fisheries;
(ii) Labour;
(iii) Industry and Commerce; and
(iv) Education and the learned Professions.

each such Panel to consist of 20 persons and to be presented to the Dáil, 10 Members being elected from each Panel.[2]

The following were the detailed recommendations in regard to the formation of the 4 Panels:

(*a*) *Farming and Fisheries.*—Twelve elected by the General Council of County Councils; 2 by the Irish Agricultural Organization Society; 4 nominated by the Minister of Agriculture, after consultation with appropriate organizations, and 2 actively engaged in the Fishing Industry. All the persons except the last 2 to derive their livelihood wholly or mainly from Farming.

(*b*) *Labour.*—Fourteen elected by the Irish Trades Union Congress, and 6 nominated by the Minister of Industry and Commerce after consultation with his Colleague for Agriculture, as workers wholly or for the greater part unorganized.

(*c*) *Industry and Commerce.*—Six elected by the Federation of Saorstát Industries; 2 by the National Agricultural and Industrial Development Association; 3 by the Association of Chambers of Commerce of the Irish Free State; 1 by the Standing Committee of Irish Banks; 1 by Cumann na n-Innealthóirí;[3] 1 by the Institute of Civil Engineers of Ireland; 1 by the Institute of Chartered Accountants in Ireland; 1 by the Royal Institute of the Architects of Ireland;

[1] Report, p. 30, § 13.
[2] *Ib.*, pp. 30-31, § 14.
[3] *i.e.*, The Engineers' Society (or Club).—[Ed.]

and, the remaining 4 to be nominated by the Minister for Industry and Commerce as persons actively engaged in transport or in branches of industry, commerce, finance and the professions associated therewith, which, in his opinion, are not otherwise adequately represented on the Panel.

(*d*) *Education and the Learned Professions.*—One, elected by the Academic Council of each of the 3 Constituent Colleges of the National University of Ireland; 2 by the Board of Trinity College, Dublin; 4 by the Irish National Teachers Organization; 1 by the Secondary Teachers Association of Ireland; 2 each by the Bar of Saorstát Eireann and Incorporated Law Society; 3 by the registered medical practitioners resident in Saorstát; and 3 (1 of whom to be actively associated with Vocational Education) nominated by the Minister for Education after consultation with other organizations representing teachers and managers of schools.[1]

The signatories to this Report recommended that the Members of the Second House to be chosen by the Dáil, be elected at a separate election for each Panel, by P.R.,[2] and that such elected Members hold their seats for 5 years and be elected and retire in a body.[3] In connection with the proposed machinery for selection of the Second House, however, only the broad principles were to be embodied in the Constitution, leaving the details to be fixed by ordinary legislation, which should deal with the election to the Panels by organizations (other than the General Council of County Councils, the Academic Councils of the Constituent Colleges of the National University of Ireland and the Board of Trinity College), and merely name each organization, designating an official thereof as Returning Officer, and duly notifying the Clerk of the Dáil with the result of the election. Only citizens of Saorstát Eireann were to have the right of voting at election to Panels. It was suggested that the Dáil appoint a Credentials Committee to examine the lists on each Panel, and hear and decide any objections,[4] and also that the number of Ministerial nominations be limited by the Constitution to a maximum of 6 for each Panel, with the hope that such nominations would progressively diminish with the further development of vocational organizations and that ultimately the Constitution would provide for direct election by Functional Councils, as already referred to.[5]

In addition to the 40 elected Members of the Second House the signatories to the Second Minority Report suggested that 10 be nominated by the President of the Executive Council, as detailed below, so as to include men and women to represent

[1] Report, pp. 31-32, § 16.
[2] *Ib.*, p. 33, § 17.
[3] *Ib.*, p. 34, § 21.
[4] *Ib.*, p. 33, § 18.
[5] *Ib.*, § 19.

aspects of the national life and public services for which it would be difficult to provide suitable representation on the Panels.[1] In regard to the nominated element (10) it was suggested that:

(*a*) 3 be persons prominently associated with the movement for National Language and Culture;
(*b*) 4 have special knowledge or experience of public administration, economics or foreign affairs;
(*c*) 2 with special experience in public health and social services; and
(*d*) 1 be prominently associated with Literature and the Fine Arts.

It was suggested that the nominated element should hold their seats until the first assembly of the Dáil after the General Election thereto next following the date of their nomination.[2]

The 2 signatories to the Third Minority Report concurred in the Second Minority Report, with the following reservations. They regarded as very objectionable, the election to the Second Chamber by the Dáil, even from narrowly restricted vocational Panels, because it gave a degree of dependence on the Dáil injurious to the prestige of the Second House, and on account of the political canvassing and pledging it would entail. In substitution, they suggested either:

(*a*) that each vocational group directly elect 10 persons to the Second House; or,
(*b*) that the selection from Panels should be by lot.

They considered that the laws of chance were more likely to do justice than a politically coloured election by the Dáil.

In regard to the 10 nominated Senators, they preferred the nominating authority to be the Head of the State, if one was created under the new Constitution, rather than the President of the Executive Council. They also felt that the categories to which the nominating authority was restricted should be enlarged as time goes on, and should not be regarded as final and exhaustive.[3]

In the Third Minority Report, Mr. Thomas Johnson dissented upon the Second Minority Report in regard to representation of functional organizations by which statutory privileges were conferred upon specified organizations, respecting the nomination of Senators, on account of several of the organizations named being of a voluntary nature, with no assured permanence. This signatory concurred in the Second Minority Report in regard to paragraphs 14-16 and 20-22

[1] Report, p. 31, § 15.
[2] *Ib.*, pp. 33-34, §§ 20, 21.
[3] *Ib.*, p. 35, §§ 1 and 2.

(*i.e.*, the system of election and nomination and tenure of seat) if applied only to the first election; provided a new schedule defining the organizations entitled to make nominations was devised for each subsequent election in the light of circumstances then existing.[1]

Non-Money Bills.—The Majority Report recommended that no Bill initiated in the Dáil should become law until it had been sent to the Second House for consideration,[2] but that such House should not have the power to impose a veto on any Dáil Bill.[3] It was recommended, however, that the Second House should have the power to return to the Dáil any Dáil Bill with amendments (if any) within 3 months from the date when it had been first sent to the Second House, subject to the extension of such term by agreement with the Dáil, and subject to provision for special matters,[4] but that the refusal of the Second House to pass a non-Money Bill or the passing of such a Bill with amendments which the Dáil did not accept, should not have the effect of delaying such Bill longer than 3 months after the date on which it was first sent to the Second House; provided that in computing the term of 3 months any Recess of the Dáil of one month or upwards be excluded.[5]

The Majority Report also recommended[6] that the Second House should have the right to initiate non-Money Bills, and that such right should also be vested in the Government, on the motion of a Minister, it being indicated that this power could be usefully exercised for the purpose of initiating consolidation measures, a form of legislation of which, the Commission remarked, there was urgent need.[7]

The procedure in regard to the treatment of Bills under the " Council of Ireland " system, suggested in the First Minority Report, has already been dealt with under " Functions of the Second House."

The Second Minority Report suggested that all non-Money Bills (excluding emergency legislation and Private Bills) passed by the Dáil be submitted to the Second House before enactment[8] and that such House have power to amend, at its discretion, and to pass, or refuse to pass, Bills.[9] In the case of non-Referendum Bills not passed by the Second Chamber,

[1] *Ib.*, pp. 36-37.
[2] *Ib.*, p. 7, § 6 (iii); also supported by First Minority Report, p. 25, § 29.
[3] *Ib.*, § 6 (iv); also supported by First Minority Report, p. 25, § 29.
[4] *Ib.*, § 6 (v); also supported by First Minority Report, p. 25, § 29.
[5] *Ib.*, p. 7, § 6 (vi); also supported by First Minority Report, p. 25, § 29.
[6] *Ib.*, § 7. [7] *Ib.*, § 8. [8] *Ib.*, p. 27, § 6 (*a*). [9] *Ib.*, p. 27, § 6 (*b*).

or passed with amendments which the Dáil did not accept, the Second Minority Report suggested that the Dáil have power, at the expiration of 90 days from the date on which the Bill was first sent to the Second Chamber, to order, by Resolution, that the Bill be deemed to have been passed by both Houses in the form in which it was so sent.[1]

Money Bills.—The Majority Report recommended[2] the following definition of " Money Bill " as originally defined in Article 35 of the Constitution:

> A Bill only providing for:
> (i) the imposition, repeal, remission, alteration or regulation of taxation;
> (ii) the imposition for the payment of debt or other financial purposes of charges on public moneys or the variation or repeal of any such charges;
> (iii) supply, the appropriation, receipt, custody, issue or audit of accounts of public money;
> (iv) the raising or guarantee of any loan or the repayment thereof;
> (v) subordinate matters incidental to any of the subjects referred to in (i)-(iv) hereof, except that " taxation," " public money," and " loan " shall not include such raised by local authorities or bodies for local purposes.[3]

The Majority Report recommended that the Second House should not have power to reject a " Money Bill," nor to amend it so as directly to impose or increase any charge on State Funds,[4] but that such House should be able to make recommendations[5] for acceptance or rejection by the Dáil, within 21 days after such Bill has been sent to the Second House by the Dáil.[6]

The First Minority Report concurred in this recommendation as to time,[4] but stated that as the powers of the " Council of Ireland " were to be only advisory, " Money Bills " should be treated in the same way as other proposed legislation, and that such Council might, if called upon to do so, for instance, on some big question of administration, advise confidentially in private session by written report to the Dáil, without such advice being binding either upon the Government or the Dáil.[7]

The Second Minority Report suggested that the functions and powers of the Second House in relation to " Money Bills " should be those exercised by the Seanad before its abolition (*vide* Article 35 of the Constitution).[8]

[1] Report, p. 28, § 6 (*e*), and § 5. [2] *Ib.*, p. 8, § 11.
[3] *See also* Constitution Art. 35. [4] *Ib.*, p. 8, § 11.
[5] *i.e.*, the " Process of Suggestion "; *see* JOURNAL, Vols. I, 81-90 and II, 18.
[6] Report, p. 8, § 12. [7] *Ib.*, p. 24, §§ 25, 26. [8] *Ib.*, p. 28, § 7.

Emergency Legislation.—The Majority Report recommended that, in cases in which the President of the Executive Council, on the introduction of a Bill, certified by Message to both Houses that the Bill, the subject of such Message, was urgent and immediately necessary for the preservation of the public peace or safety, or was rendered necessary by the existence of a national emergency, whether internal or international, the time for consideration by the Second House should, by Dáil Resolution, be abridged to such period as the said Resolution might determine; provided that a Bill so certified, as enacted (if the Second House so required), should contain a clause limiting the duration of the Bill, when enacted, to a period of 4 months, and provided further that such consideration time should not be abridged to less than 7 days dating from the day such Bill was sent by the Dáil to the Second House.[1]

The Second Minority Report suggested that in the case of any non-Money Bill in regard to which the President of the Executive Council, in a signed Message to the Second Chamber, sent with the approval of a majority of the Members of the Dáil, declared that in his opinion delay in enactment would put in serious jeopardy the internal peace and order of the State, its security from or defence against external attack or its financial stability:

(*a*) the Second Chamber have power to recommend amendments to pass without amendment or to recommend the withdrawal of the Bill;
(*b*) should the Dáil not accept such recommendations, the Dáil have power, after 21 days from the date on which the Bill was first sent to the Second House, by Resolution to declare the Bill passed by both Houses in the form in which it was first so sent;
(*c*) in the event of the Dáil adopting such Resolution, the Second House to have power, within 40 days thereafter, by Resolution adopted by a majority of its members, to submit the Bill to Referendum, as hereinafter described.[2]

Private Bills.—This subject was only referred to in the First and Second Minority Reports. In the First, it was stated that under the type of body suggested in place of the Seanad, Private Bill legislation would not present any special problem, as such legislation would be reported upon as in the case of any other Bill,[3] and in the Second it was suggested that the functions and powers of the Second House in relation to Private Bills, be those exercised by the Seanad before its abolition.[4]

[1] *Ib.*, p. 9, § 16; also supported by First Minority Report, p. 25, § 29.
[2] *Ib.*, pp. 28-29, § 8. [3] *Ib.*, p. 24, § 24. [4] *Ib.*, p. 28, § 7.

Referendum.—In the Act[1] which abolished "the initiative," the Referendum was cut out of the Constitution except in regard to the amendment of the latter. Article 50 of the Constitution provided that amendments thereto might be made by ordinary legislation within 8 years of it coming into operation, but that any amendment after the expiration of such period could only be effected by Referendum. This period was by Constitution (Amendment No. 16) Act (No. 10 of 1929) altered to 16 years, which meant that the period within which constitutional amendments could be made by ordinary legislation would expire on December 5, 1938.

The Majority Report recommended that so long as there was no operative provision in the Constitution for a Referendum, it should be provided that the Second House have the right by a majority of its total number of Members to call for a Referendum on any legislation involving an amendment of the Constitution and that the Dáil should be bound by such Referendum.[2] The Report also stated that some members of the Commission were of the opinion that the Second House should have the right to call for the submission of other major matters of legislation to the people by Referendum for decision in case of irreconcilable conflict between the two Houses.[3]

In the Memorandum[4] to the Majority Report, Mr. James Geoghegan, S.C., T.D., expressed himself as against any Referendum unless demanded by at least $\frac{3}{5}$ of the Members of the Second House.

A Reservation[5] to the Majority Report was made by Mr. Joseph Connolly, to the effect that if provision was made for a Referendum, it should be by specific Article in the Constitution, and that if the Second House was to have the right to call for a Referendum, such call should require a majority vote of $\frac{3}{5}$ the total number of Members of such House.

In the First Minority Report it was suggested, in regard to the advisory body, the "Council of Ireland," purposed to be set up in place of the Seanad, that, should the reason for the "advice" be that the Bill proposed to amend the Constitution and that the people had not given a clear mandate for such amendment, the Council be given the right to insist that the Bill be not passed into law until it had been submitted to the people by Referendum for decision, such to be final and

[1] Constitution (Amendment No. 10) Act (No. 8 of 1928).
[2] Report, p. 8, § 13; also supported by First Minority Report, *ib.*, p. 25, § 29.
[3] *Ib.*, p. 8, § 14. [4] *Ib.*, p. 15. [5] *Ib.*, p. 14.

binding; the Bill then automatically to be considered as passed or rejected, according to such decision.[1]

In the exercise of the functions of the Second House, as already outlined, the Second Minority Report suggested[2] that in case of a Dáil Bill, the Second House should have power, within a period of 40 days from the date in which such Bill was first sent to it, to demand by resolution of a majority of the entire House, that the principle of the Bill be submitted to Referendum, on the ground that its passage into law would raise an issue of vital national importance upon which the electorate had not yet given a clear decision, and that if such demand be made, it be mandatory on the Executive Council either to withdraw the Bill or to provide for the holding of a Referendum within 50 days of the date on which the demand was made by the Second House. It was further suggested that a Bill rejected by the majority of voters at a Referendum be not further proceeded with.[3]

Casual Vacancies.—The Second Minority Report suggested that vacancies among nominated Senators be filled by the appointment, by the President of the Executive Council of a person belonging to the same category, and that suc vacancies among the elected Members of the Second Hou be filled by the Dáil from among the remaining members o the Panel from which such Member had been elected, or, in event of no person being available from that Panel, by the election by the Dáil at its discretion, of a person drawn from the vocational group to which such person belonged, and that a person chosen, either for a nominated or an elected vacancy, hold his seat only for the unexpired term of the Member whose place he filled.[4]

In a Reservation to this Minority Report, 2 signatories thereto suggested that casual vacancies be filled by co-option.[5]

The signatory to the Third Minority Report concurred in the suggestion made by the Second Minority Report, but only in regard to the first election and nomination to the Second House.[6]

Language.[7]—The Majority Report in Paragraph 18[8] expressed the opinion that a proportion of the persons nominated to the Second House, and of those nominated for election, should have a competent knowledge of the National Language.

[1] *Ib.*, p. 22, § 18.
[2] *Ib.*, pp. 26-27, § 4.
[3] *Ib.*, pp. 27-28, § 6 (*c*) and (*d*).
[4] *Ib.*, p. 34, § 22; this is also advocated in the First Minority Report, pp. 20-21, § 15.
[5] *Ib.*, p. 35, § 1.
[6] *Ib.*, p. 37.
[7] *See also* JOURNAL, Vol. IV, pp. 109-110.
[8] Report, p. 9.

The 9 undermentioned members of the Commission, however, in a Reservation[1] to such paragraph, were of opinion that it was due to the dignity of the National Language that effective provisions should be made at the outset to ensure and maintain the gradual predominance of Irish as the language of the Second House: Mrs. Helena Concannon, M.A., D.Litt., T.D.; Joseph Connolly; George Gavan Duffy, S.C.; James Geoghegan, S.C., T.D.; John J. Hearne, B.A., LL.B., B.L.; Dr. R. P. Farnan, Séamus Moore, T.D., Professor W. Maginess, M.A., and the Hon. Aodh Ua Cinneidigh, C.J. (Chairman of the Commission).

The signatory to the First Minority Report suggested[2] that it should be a special charge of the nomination committee to see that persons with a real and competent knowledge of the National Language form as large a proportion as possible of the personnel of the "Council of Ireland"—the advisory body, suggested in that Report, in place of a Second House.

Ministers' Rights in Both Houses.[3]—The Majority Report recommended that every Minister should have the right to attend and be heard in the Second House.[4] This recommendation was concurred in by the signatory to the First Minority Report.[5]

Chairman.—The Majority Report recommended that the Second House have power to elect its own Chairman. This recommendation was concurred in by the signatory to the First Minority Report.[6]

Privileges.—The Majority Report recommended that the Members of the Second House should have the same immunities and privileges as are conferred by the Constitution on Members of the Dáil Eireann.[7]

Standing Orders.—The Majority Report recommended that the Second House have power to regulate and control all its own business and for that purpose to make any Standing Orders it might consider necessary or desirable.[8]

Payment of Members.[9]—It was recommended in the Majority Report that membership of the Second House should carry with it the same allowances as those applicable to Members of the Dáil.[10] This recommendation was concurred in by the signatory to the First Minority Report,[11] and in the Second Minority Report.[12]

[1] Report, p. 13.
[2] *Ib.*, p. 21, § 16.
[3] *See also* JOURNAL, Vol. I, pp. 76-79.
[4] Report, p. 8, § 15.
[5] *Ib.*, p. 25, § 29.
[6] *Ib.*, p. 6, § 6 (i) and *ib.*, p. 25, § 29.
[7] *Ib.*, p. 7, § 6 (ii).
[8] *Ib.*, § 6 (i).
[9] *See also* JOURNAL, Vols. I, 101-106; II, 17; IV, 39.
[10] Report, p. 12, § 28.
[11] *Ib.*, p. 25, § 29.
[12] *Ib.*, p. 34, § 23.

Judges.—The Majority Report recorded its view that a Resolution for the removal of a Judge, or for the removal of the Comptroller and Auditor-General, for stated misbehaviour or incapacity, should, in addition to being passed by the Dáil, be passed also by the Second House, before it could become effective.[1] This view was also concurred in by the signatories to the Second Minority Report, but without the qualification.[2]

The signatory to the First Minority Report suggested that every proposed appointment to the office of the High Court and the Supreme Court be submitted for the approval of the "Council of Ireland," as in the case of the United States Senate in regard to the bench of the Supreme Court,[3] and that any question of the removal of a Judge or the Comptroller and Auditor-General of the Irish Free State, for stated misbehaviour or incapacity, should require a Resolution of the "Council of Ireland," as well as of the Dáil, before becoming effective.[4]

Secret Societies.—The signatory to the First Minority Report suggested that, in order that there should be no foundation for suspicion that the members of the "Council of Ireland" were amenable to any outside control, every member thereof should be required, before he took his seat, to make a solemn affirmation that he was not, and so long as he may continue a member of the Council, would not become, a member of any secret or oath-bound society or association.[5]

Delegated Legislation.—The signatory to the First Minority Report, referring to the growing practice of delegation to Ministers of making Statutory Rules and Orders for giving effect to Acts of Parliament, and to the feeling that Parliamentary control of such Rules and Orders was becoming more and more necessary, suggested that every such Rule, etc., be sent to the "Council of Ireland," which should be required to report to the Dáil within a limited time (say 3 months) stating whether the "Council of Ireland" approved of such Rules, etc., or not. If such Report were favourable, then the Rule or Order, it was suggested, should come into force at once, but, if not, the reason for so reporting was to be stated in writing in the Report, whereupon such Rule, etc., would not come into force unless and until the Dáil itself had pronounced in its favour by Resolution to that effect.[6]

This concludes the review of the Report of the Second House Commission. A close consideration of this inter-

[1] *Ib.*, p. 7, § 10.
[2] *Ib.*, p. 28, § 6 (*h*).
[3] *Ib.*, p. 24, § 27.
[4] *Ib.*, § 28.
[5] *Ib.*, p. 21, § 17.
[6] *Ib.*, pp. 22-30, § 20.

esting document will afford much explanation of the provisions which are to be made in that respect in the new " Draft Constitution " for Ireland, which document will now be considered with special regard to the position of the new Second House thereunder, the other provisions of the " Draft Constitution " having been dealt with in the previous Article (IX) in this Volume.

Seanad Eireann under " Draft Constitution " of 1937.

Selection.—The Second House under the " Draft Constitution," which retains the name " Seanad Eireann," is to be composed of 60 Members, 11 nominated and 49 elected.[1] Anyone eligible for election to the Dáil will be eligible for membership of the Seanad. The nominated Senators are to be appointed by the *Taoiseach*, or Prime Minister, subject to their prior consent, and casual vacancies are to be filled in the same manner.[2]

The 49 other Senators are to be elected as follows:

(i) 3, by the National University of Ireland;
(ii) 3, by the University of Dublin; and
(iii) 43, by the electorate given below upon a system of Panels.

The system of election is to be P.R. with secret postal ballot,[3] and the University Senators are to be elected on a franchise and in the manner to be provided by law.

Before each general election of such Members five Panels of candidates are to be formed containing respectively the names of persons having practical knowledge and experience of the following interests and services:

(i) National language and culture, literature, art, education, and such professional interests as may be defined by law for the purpose of the Panel;
(ii) Agriculture and allied interests and fisheries;
(iii) Labour, organized or unorganized;
(iv) Industry and Commerce (including banking, finance, accountancy, engineering and architecture); and
(v) Public administration and social services, including voluntary social activities;[4]

Not more than 11, and, subject to the provisions of Article 19, not less than 5 Members of Seanad Eireann may be elected

[1] Art. 18 (1).
[2] Art. 18 (10) (2).
[3] Art. 18 (5).
[4] Art. 18 (7) (1).

from any one Panel,[1] and the number of Senators to be so elected and the method of their nomination to such Panels is to be determined by law, the Bill for which, at the time of going to press, has not been published. A general election for the Senate must take place not later than 90 days after a dissolution of the Dáil, which is elected for 7 years from the date of its first meeting, though a shorter period may be fixed by law.[2] The first meeting of the Seanad after a general election is fixed by the President of the State on the advice of the Prime Minister. The tenure of the seat of a Senator continues until the day before the polling day for a Seanad general election.[3] Subject to the above, these elections are to be regulated by law. Article 19, however, provides for the direct election by any functional or vocational group or association or council of so many Members of Seanad Eireann as may be fixed by such law in substitution for an equal number of the Members to be elected from the corresponding Panels of candidates constituted under Article 18. Casual vacancies amongst the elected element are to be as laid down by law.[4]

Legislative Power.—Except as to "Money Bills," the Seanad is to have co-ordinate legislative powers with the Dáil, subject to the reservations given hereunder.

"Money Bills,"[5] which may only be initiated in the Dáil, must be sent to the Seanad for its recommendations, but such a Bill must be returned to the Dáil, not longer than 21 days after it has been sent to the Senate, when the Dáil may either accept or reject all or any of such recommendations. Should such a Bill not be so returned within such period, or is returned within that period with recommendations which the Dáil does not accept, it shall be deemed at the expiration of that period to have been passed by both Houses.[6] The same definition is provided of a Money Bill, as already defined in regard to section 35 of the existing Constitution.[7]

It is provided that all "Money Bills" shall be so certified by the Chairman of the Dáil, and the Seanad may, by resolution at a sitting at which not less than 30 Senators are present, request the President of the State to refer the question, whether the Bill is, or is not a Money Bill, to a Committee of Privileges. Should the President, after consultation with the Council of State,[8] decide to accede to the request, he appoints such a Committee consisting of an equal number of Members of

[1] Art. 18 (7) (2). [2] Art. 18 (8). [3] *Art.* 18 (9).
[4] *Art.* 18 (10) (3). [5] Arts. 21, 22. [6] Art. 21.
[7] Act No. 1 of 1922. [8] See previous Article (IX) in this Volume.

both Houses, with a Judge of the Supreme Court as Chairman, who shall only have a vote in case of an equality of votes. The question is referred to such Committee by the President, which must report to him within 21 days after the Bill was sent to the Seanad, and the decision of the Committee is to be final. Should the President, after such consultation, not accede to the request of the Seanad or should the Committee fail to report within such time, the certificate of the Chairman of the Dáil is to stand confirmed.[1]

In regard to non-Money Bills, a Seanad Bill if amended by the Dáil is to be considered as a Bill initiated in the latter House.[2] A time limit is also imposed upon the Seanad in regard to a non-Money Bill or a Bill, the time for the consideration of which by the Seanad has been abridged under Article 24, for whenever any such Dáil Bill is either rejected by the Seanad or passed by it with amendments to which the Dáil does not agree, or is neither passed (with or without amendment) nor rejected by the Seanad within the "stated period,"[3] such Bill shall, if the Dáil so resolves within 180 days after the expiration of the "stated period," be deemed to have been passed by both Houses on the day in which such Resolution is passed. The above provisions also apply to a Seanad Bill amended by the Dáil, in which case the "stated period" begins on the day when the Seanad Bill as amended by the Dáil is first sent to the Seanad.[4]

If and whenever in regard to any Bill, on being passed by the Dáil, other than a Bill to amend the Constitution, the Prime Minister certifies by written messages addressed to the President of the State, and to the Chairman of each House, that in the opinion of the Government the Bill is urgent and immediately necessary for the preservation of the public peace and security, or by reason of the existence of a public emergency, whether domestic or international, the time for the consideration of such a Bill by the Seanad (if the Dáil so resolves, and if the President, after consultation with the Council of State, concurs) shall be abridged to such period as specified in the Resolution. Should the Seanad then fail to pass a Bill, the time for the Seanad's consideration of which has been abridged under Article 24, within the specified period, or pass it with amendments, or recommendations, to which the Dáil does not

[1] Art. 22. [2] Art. 20 (2).

[3] *i.e.*, 90 days, beginning on the day the Bill is first sent by the Dáil to the Seanad or any longer period agreed upon in respect of the Bill, by both Houses. Art. 23 (1) (2). *See also* (2) (2).

[4] Art. 23 (2)

agree, the Bill is to be considered as having passed both Houses. But the Act for such a Bill shall only remain in force for 90 days from the date of its enactment, unless before the expiration of that period both Houses have agreed that the Act shall remain in force for a longer period, to be duly specified in their Resolutions.[1]

Conclusion.

As will be seen from the previous Article (IX) in this Volume, the "Draft Constitution" was duly approved of at a Referendum of the voters for Dáil Eireann and is (*vide* Article 62 thereof) to come into force on the day following the expiration of a period of 180 days after its approval (on July 1, 1937) by the people. At the time of going to press, the Seanad implementing Bill had not been published.

The re-constitution of the Second House in the Irish Free State presents many features of interest to the Parliamentary and constitutional student, but it is not the policy of this Society to express in its JOURNAL, opinion upon any particular subject in its application to any particular country. In regard to the Report of the Irish Free State Commission on the Second House of the Oireachtas, however (and the same has been observed in connection with another important Commission's Report dealt with in this issue),[2] the writer would like to remark that it is a pity it has not been indexed. Perhaps he may be pardoned for speaking thus feelingly, it having fallen to his lot to dissect the 37 solid pages of the Report in order to display their interesting contents to readers of this JOURNAL. The Reports of these two Commissions contain too much matter of value and importance not only to the constitutional student and Parliamentarian, but to the public generally, to be hidden away in the maze of an unindexed official document.

[1] Art. 24.

[2] *i.e.*, S.W. Africa Commission.

XI. PARLIAMENTARY LIBRARY ADMINISTRATION

BY THE EDITOR

IT was suggested that the *Questionnaire* for Volume III of the JOURNAL should call for particulars from the various Parliaments in regard to their Library Rules, with remarks as to their working. The information thus obtained, now given in this Article, had, however, unfortunately to be held over until the publication of this Volume, owing to lack of space in the two previous issues.

There may be some repetition in the recitation of the various types of Library Rule, but as such Rules are not usually published in the Standing Orders book, it was thought better, wherever possible, to leave the particular Rule intact, in order that it might be more readily available for adaptation by any other Library of Parliament, to which it might be found to apply. Where Rules differ from those of other Parliament Libraries in the same Dominion, they are shown in full.

Considerable space has been allotted to this subject, for although it is not directly connected with the proceedings of Parliament or with constitutional law in its relation to the working of the Parliamentary machine, yet the Library of Parliament is an important factor in the exercise by Parliament of its legislative and general functions. A good Statesmen's Reference collection, kept judiciously up to date, is, as it were, the coal which makes the fire burn more brightly. The Library, therefore, is one of the departments of Parliament which the legislator should care for and foster in every way, the while himself firmly supporting the enforcement of the rules for its better administration.

Westminster.—There is no Joint Library of the two Houses of the Imperial Parliament, as in the Dominions, for the House of Lords and the House of Commons each has its own library under its own management and control.

House of Lords.—In response to the request for information in regard to the Library of the House of Lords, Mr. Charles T. Clay, the Librarian, courteously informs us that there is nothing in the form of any codified set of rules for the administration of this Library. It is primarily for the use of Members of the House of Lords, and for their legislative and judicial work. The only rules which can be quoted are those which have been drawn up for the admission of visitors to view the Houses of Parliament.[1]

[1] Sir Bryan Fell's *Guide to the Houses of Parliament.*

House of Commons.—In response to the request for information in regard to the Library of the House of Commons, Mr. Austin Smyth, C.B.E., the Librarian, courteously informs us that they have no printed rules, but that the lines on which the Library is run were laid down in the Reports[1] (long since out of print) of the old Library Committees, which finally petered out, leaving the Library entirely in the hands of the Speaker, whom they had been appointed to assist. Decisions, however, have been given from time to time in answer to complaints, and these have been handed down and acted upon by successive Librarians, but there has been no formal body of Rules. Mr. Smyth has also kindly supplied a copy of some notes he wrote recently and which have been reprinted from the Proceedings of the Twelfth Conference of the Association of Special Libraries and Information Bureaux, 1935 (more familiarly known as the " ASLIB "), entitled *Libraries and Sources of Information in Government Departments.* This Reprint also includes notes on the Libraries of the Foreign, India, Home, Dominions and Colonial Offices, Air and Health Ministries, Boards of Trade and Education, Imperial Institute, General Register Office—Somerset House, Forestry Commission, Registry of Friendly Societies, Post Office Savings Bank, the Accountant-General's Department and Engineering Research Station of the G.P.O., the Meteorological Office and the Research Department at Woolwich. The Librarians of these Departmental Libraries are associated in what is called the " Circle of State Librarians," which consists of 42 Government Librarians and meets three times a year. The notes abovementioned were presented to the Conference by Sir Stephen Gaselee, K.C.M.G., C.B.E., Librarian of the Foreign Office, and well deserve examination by the Librarians of the Oversea Parliaments. However, it is proposed only in this article to give, from such Reprint, the notes of the Librarian of the House of Commons, which are as follows:[2]

> The House of Commons Library dates from the year 1818, when a Librarian was first appointed to look after the Acts of Parliament, Journals and Records, Sessional Printed Reports and

[1] Those of which we have note in our Society's records are here given, in case copies are filed in the records of any of the Dominion Parliaments, the Commons numbers in brackets being those of the Reports and the other numbers against them, the respective years:—(496), (515), (516), 1825; (496), 1830; (600), 1831-2; (463), (480), 1834; (104), 1835; (63), 1836; (468), 1837; (691), 1837-38; (406), 1839; (422), 1841; (610), 1845; and (453), 1852.

[2] pp. 3, 4 and 5 of the Reprint.

Papers, which had accumulated in quantity under the charge of the Clerk of the Journals, and to make them more readily accessible for the use of Select Committees.

For the better disposition of these volumes a new Library was erected in 1827, and so convenient were the new arrangements found to be that in the following year the sum of £2,000 was voted for the purchase of books. The catalogue of 1830 shows that this sum was expended on a variety of works of History, Antiquities, Topography, Commerce, Political Economy and Law, together with Books of Reference, Dictionaries and Maps.

By the fire of 1834 the old Palace of Westminster, including the Library, was burnt down. A great proportion of the books was saved by being thrown out into the street, but a valuable collection of Tracts relating to English History was destroyed. The unprinted papers of the House, which had remained in the keeping of the Clerk of the Journals, were all destroyed, with the consequence that the House of Commons had no collection of archives similar to those which have been published by the House of Lords, on the model set by the Historical Manuscripts Commission. The manuscript volumes from which the Journals had been printed were, however, saved and are kept in the present Library.

In the new Houses of Parliament the Library, while obtaining more ample accommodation, continued to preserve the same general character as before, consisting of two main divisions, (1) Parliamentary and Official Publications, and (2) Works of more general interest, such as might assist Members of Parliament in the discharge of their duties.

(1) The former class dates back to the year 1731, but it is only from about the beginning of last century that entire sets of the Parliamentary Papers and Reports of each year have been preserved. From 1801 to the present time this collection of official information is complete and has been carefully indexed. The Accounts and Papers of each Session, together with the Parliamentary Debates, Acts of Parliament, Colonial and Dominion Acts and Debates and Reports and Papers, and some analogous documents received in exchange from foreign legislatures, form a regular increment to the contents of the Library, amounting to many volumes in a year.

(2) As regards the more general part of the Library, while the country gentleman was the prevailing type of Member of Parliament the original design expanded into something between a good London club library and a good country house library, including the Greek and Latin Classics, Poetry and *Belles-Lettres* in English and other modern languages, and works on Fine Art, Architecture and Natural History. Professed fiction, controversial divinity, natural science, and mental and moral philosophy have, speaking generally, always been excluded, as have all works of a highly partisan character on other subjects. In later years the multiplication of published books and the diminution of vacant space have enforced on the library, as on most similar institutions, the necessity of specializing in books connected with the work of the organ of government to which it is attached, and of trusting for information on other subjects

to extensive works of reference. The desire of Members of Parliament to adorn their speeches with quotations affords a welcome excuse for adding to the Library such works as may be considered to have taken rank as literature of the finer sort.

The choice of books to be added to the Library rests with the Librarian, subject to the approval of the Speaker, to whom the House has committed the management of its Library. Latterly the Speaker has appointed a small unofficial committee of members to assist him with their advice, and in practice the Librarian submits a list of suggested books to this committee and receives suggestions from it. The additions made each year, other than those which are automatic, are chiefly in the departments of History, Biography, Political Memoirs, Political Economy, Statistics and Law; but standard works in other departments are added also. The leading English reviews and magazines are taken in, and one or two foreign ones. Newspapers are not taken in by the Library (except *The Times*, which is bound and preserved), but are to be found in the Members' Reading Room, in another part of the House.

An author catalogue, with a separate index of subjects, is employed. It was last reprinted in 1910, and annual supplements have been printed since, but neither they nor the catalogue have been published. A card catalogue also exists for the purpose of checking the volumes on the shelves.

A sum of £1,200 a year is allowed for books, binding and stationery, but furniture and salaries of staff are not included in it.

The staff of the Library consists of: The Librarian, the Assistant Librarian, two clerks and two messengers.

The appointment of these officers rests with the Speake The full staff is usually present till about 7 p.m., after whic one half remains on one night, and the other half remains o the next night, till the close of the sitting of the House.

The use of the Library is confined to Members and Officers of the House of Commons, but admission is extended by courtesy to Peers, who reciprocate the courtesy in regard to the House of Lords Library, and Members of Dominion Parliaments are admitted during hours when the House of Commons is not sitting. Members of the general public are admitted when accompanied by a Member of the House, unless the House is sitting, but the use of the Library for the purposes of study by the outside public requires special permission from the Speaker, who will usually accord it if he is satisfied that the required documents or books cannot be found elsewhere.

Canadian Dominion Parliament.

In this and the other Oversea Parliaments there is a Joint Library for the two Houses. In the Library of the Dominion Parliament at Ottawa there are two Joint Librarians, one English, Mr. Martin Burrell, the Parliamentary Librarian, and the other French, Mr. Félix Desrochers, the General Librarian, and we are indebted to the courtesy of Mr. Burrell for the information here given.

The Library of Parliament is not a National Library in the usual sense of the word. At the time of the Union, in 1841, the libraries of the Parliaments of Upper and Lower Canada were merged into one, consisting of some 6,000 volumes. In 1849 the collection had swollen to about 25,000 volumes. In that year the Parliament Buildings of the then Canada, in Montreal, were burned down and only some 200 books were saved. Five years later, when the Library had grown to 17,000 volumes, came the second disastrous fire (in Quebec), but this time 8,000 volumes were saved. At the time of Confederation, 1867, the Library contained about 55,000 volumes, and it then became the Library of Parliament of the Dominion of Canada. It was not until 1876 that the present building was ready for occupation, and by that time roughly 100,000 books were moved into the new structure. That number has since increased to approximately 400,000 volumes.

The Library is the only part of the Parliament Buildings which was not destroyed in the disastrous fire on February 3, 1916. Seen from the outside the building, with its flying buttresses, is a noble architectural design. The interior is circular in form, in diameter about 100 ft., the height from the floor to the top of the cupola rather more than 130 ft. The beautiful floor, of oak, cherry, and walnut, though damaged by the rush of water under the closed doors during the fire, remains much as it was in 1876.

The Members of the permanent staff—17 in number—are appointed by the Civil Service Commission, which body also concerns itself with promotions and with the salaries of the staff. Temporary employees, of whom there are now 8, are appointed on the recommendation of the two Speakers. It might here be noted that as the debates in Parliament are carried on in both French and English, and as about one-third of the volumes in the Library are in the French language, it is necessary that the staff should consist of both English-speaking and French-speaking members. There are two Librarians, one English, one French, called Joint Librarians, who are appointed by the Government. The general conduct of the institution is under the jurisdiction of Parliament itself, acting through a Joint Committee of both Houses, and presided over by the Speakers of the Senate and the House of Commons, and the Librarians have the rank of Deputy-Ministers.[1]

Year after year, the old Rules, given below, which were

[1] *i.e.*, Heads of Departments.

formulated in the very early days of the Dominion, have been printed. It may frankly be said that in later times some of them have been more honoured in the breach than in the observance, and almost necessarily so. For instance, it is not now customary to prevent anyone coming into the Library during the Session, or to require the written permission of the Speakers before they can be admitted. Being a Parliamentary Library, however, its privileges are not extended indiscriminately to those who are not connected with Parliament. Students are permitted to study in the Library itself, and a limited number of people are permitted to borrow books, though this is discouraged during the Session. Reference books cannot be taken from the Library, even by Members, and this also applies to all bound volumes of newspapers, of which there are some ten thousand.

The following are the Rules:

(*a*) A proper Catalogue of the Books belonging to the Library shall be kept by the Librarians in whom the custody and responsibility thereof shall be vested; and who shall be required to report to the Houses through Mr. Speaker, at the opening of each Session, the actual state of the Library.

(*b*) No person shall be entitled to resort to the Library during the Session of Parliament except the Governor-General, the Members of the Privy Council, and of the Senate and House of Commons, and the Officers of both Houses, and such other persons as may receive a written order of admission from the Speaker of either House. Members may personally introduce strangers to the Library during the day-time, but not after the hour of seven o'clock P.M.

(*c*) During a Session of Parliament no books belonging to the Library shall be taken out of the Building, except by the authority of the Speaker or upon receipts given by a Member of either House.

(*d*) During the Recess of Parliament, the Library and Reading Room shall be open every day in each week, Sundays and holidays excepted, from the hour of ten in the morning until four in the afternoon; and access to the Library shall be permitted to persons introduced by a Member of the Legislature, or admitted at the discretion of the Librarians; subject to such regulations as may be deemed necessary for the security and preservation of the collection; but no one shall be allowed to take any book out of the Library except members of the Legislature, and such others as may be authorized by the Speaker of either House.

(*e*) During the Recess of Parliament, no Member of either House not residing at the seat of Government shall have liberty to borrow or have in his possession at any one time more than three works from the Library, or to retain the same for a longer period than one month.

(*f*) No other person who may be privileged by card, by the Speaker of either House, to borrow books from the Library,

shall be allowed to have in his possession more than two books at any one time, or to retain the same longer than three weeks, and all such persons shall return the books so taken when required by the Librarians.

(*g*) No books of reference or books of special cost and value may be removed from the seat of Government under any circumstances.

(*h*) At the first meeting of the Joint Library Committee at every Session of Parliament, the Librarians shall report a list of the books absent at the commencement of the Session, specifying the names of any persons who have retained the same in contravention of the foregoing Rules.

(*i*) In addition to the foregoing rules, the Joint Library Committee have agreed to the following New Rules, to which the attention of persons frequenting the Library, or making use of any books belonging thereto, is specially requested:

1. It is strictly forbidden to make any mark by pencil or otherwise, in any books belonging to the Library, or to turn down leaves therein, or otherwise deface the same.
2. No person (other than a Member of Parliament) is permitted to have access to any of the Galleries surrounding the Library without the express permission of the Librarian or unless accompanied by an officer of the Library.
3. No visitor shall be permitted to remain in the Library with his hat on; nor will smoking, or spitting on the floor or carpet be permitted in any of the Library apartments.
4. No audible conversation will be allowed in the reading room; nor shall any person be permitted to partake of refreshments therein; and no dogs shall be allowed in the Library.

Canadian Provincial Parliaments.

In the Canadian Provinces the Rules governing the Libraries of the Provincial Parliaments are based mainly upon those in force at Ottawa, the modifications being shown below:

Ontario.—Rule 106 is the same as Ottawa Rule (*a*). Rule 107 reads:

107. No person shall be entitled to resort to the Library during a Session of Parliament, except the Lieutenant-Governor, the Members of the Executive Council and Legislative Assembly, and the Officers of the House, and such other persons as may receive a written order of admission from the Speaker. Members may personally introduce strangers to the Library during the daytime, but not after the hour of 6 o'clock p.m.

Rule 108 is equivalent to Ottawa Rule (*c*). Rule 109 reads:

109. During the Session, the Library shall be open daily, from 9 o'clock a.m. until 9 o'clock p.m.; and should the House remain in session after such hour, the library shall remain open until the House adjourns.

Rule 110 is the same as Ottawa Rule (*d*) up to the word "collection," but allowing also the Clerk to grant admission to the Library at his discretion. Rule 111 makes the same provision as made by Ottawa Rules (*e*) and (*g*), and Rule 112 that of Ottawa Rule (*h*).

Quebec.—The English version of Rules 678 to 682 reads as follow:

> 678. The Librarian shall have the custody and responsibility of all the books belonging to the Library and keep a proper catalogue thereof.
> 679. The Librarian shall, at the opening of each Session, present to the House, through the Speaker, a printed report on the actual state of the Library with, appended thereto, a catalogue of the books added to the Library since the preceding report.
> 680. The Library and reading room shall be open daily, Sundays and holidays excepted. During the Sessions, they shall remain open from the hour of 9 a.m. until 9 p.m., or until after the adjournment of the House or of its committees, if such adjournment takes place after nine.
>
> During the Recess of the Legislature, they shall remain open from the hour of 10 a.m. till 4 p.m. except on Saturdays, when they may be closed at 1 p.m.
> 681. During the Sessions, the Lieutenant-Governor, the Members and Officers of the two Houses, the heads and deputy heads of departments, the bearers of an order of admission from the Speaker of either House, and the persons accompanying any Member of the Legislature, shall alone be entitled to resort to the Library and reading room.
>
> During the Recess of the Legislature other persons may be admitted to the Library, at the discretion of the Librarian.
> 682. No books belonging to the Library shall be taken out, except by the authority of the Speaker of either House, or upon a receipt given by any Member of the Legislature, or by any head or deputy head of a department.

Rules 683, 684, and 685 are Ottawa Rules (*e*), (*f*) and (*g*) respectively.

Rule 686 reads: All persons admitted to the Library or to the reading room shall comply with the internal regulations in force. Rule 687 is Ottawa Rule (*h*) and Rule 688 authorizes the Clerk of the House to subscribe for such papers as may be directed by the Speaker.

Manitoba.—Rule 104 is Ottawa Rule (*a*), Rule 105 is Ontario Rule 107, except as to a limitation of the hour after which Members may personally introduce strangers. Rule 106 is Ottawa Rule (*c*). Rule 107 reads:

> 107. During the Recess of the Legislature, the Library shall be open every day in each week (Sundays and holidays excepted) during the hours of Government business, and access to the

> Library shall be permitted to persons introduced by a Member of the Legislature, or admitted at the discretion of the Clerk or Librarian, subject to such regulations as may be deemed necessary for the security and preservation of the collection, and such others as may be authorized by Mr. Speaker, but no one shall be allowed to take any books out of the Library, except by permission of the Librarian.

Rule 108 embodies Ottawa Rules (*e*) and (*g*) except that the Manitoba Rule applies to Members wherever resident. Rule 109 is Ottawa Rule (*h*).

British Columbia.—Rule 123 is Ottawa Rule (*a*); Rules 124 and 125 respectively Ontario Rules 107 and 108. Rule 126 reads:

> 126. During the Recess of Parliament, the Library shall be under the charge of the Provincial Secretary, and access to the Library shall be permitted to persons introduced by a Member of the Legislature, or admitted at the discretion of the Provincial Secretary, subject to such regulations as may be authorized by Mr. Speaker, but no such person shall be allowed to take any book out of the House.

Rule 127 is Manitoba Rule 108 and British Columbia Rule 128, Ottawa Rule (*h*).

Saskatchewan.—Rule 99 is Ottawa Rule (*a*), Rule 100 Ontario Rule 108, Rule 101 is Manitoba Rule 107 with the omission of all words after "Mr. Speaker." Rules 102 and 103 are Manitoba Rule 108, and Saskatchewan Rules 104 and 105 are Ottawa Rules (*f*) and (*h*).

Alberta.—Rule 596 is Ottawa Rule (*a*), Rule 597 British Columbia Rule 124, and Rule 598 Ottawa Rule (*c*). Rule 599 is the same as Saskatchewan Rule 101, but with the addition of the words—"but no one shall be allowed to take any book out of the House." Rule 600 is British Columbia Rule 127. Rule 601 reads:

> 601. The direction and control of the Library shall, during the sittings of the Legislative Assembly, be vested in the Speaker, and at other times in the President of the Executive Council.

Rule 602 is Ottawa Rule (*a*).

Australian Federal Parliament.

The following information has been courteously furnished by the Clerk of the Commonwealth Senate, Mr. G. H. Monahan, C.M.G. The Library of Parliament and appointments thereto fall under the President of the Senate and the Speaker of the House of Representatives jointly. The Library is administered by the Librarian, his department being a scheduled one under

the Commonwealth Public Service Act, 1922-1924. We are indebted to Mr. Kenneth Binns, the Librarian, for the courtesy of the following information. Mr. Binns states: The Rules for the government of the Library as revised and adopted by the Library Committee (a Joint Committee) on 8th December, 1927 (given below), have proved satisfactory and sufficient for the smooth working of the Library. Occasional difficulties, however, have arisen with regard to the enforcement of Rules 6 and 7 governing the loan and retention of books. The matter has been brought to the notice of the Library Committee, which is seriously considering whether some more liberal number of books may not be allowed Members, and whether a stricter enforcement of the time-limit in cases where there is a demand for the book in question should not be insisted upon. It is the increasing use made of the Library in connection with Members' official duties which led to a consideration of these changes. Rules 2, 3, 4 and 5 relating to the use of the Library by others than sitting Members are interpreted very liberally and, in fact, the reference requirements of officers of the Commonwealth Public Service are met almost exclusively by the Library. The specialized collection of Australian history and literature are freely available for reference use t students throughout Australia.

The Rules, which are usefully printed on both sides of bookmarker, with a semi-circular slit at the top for gripping the last reading-page, and headed, " Commonwealth Parliament Library," subscribed with the date of their adoption and showing the arms of the Commonwealth, read as follow:

1. Any Senator or Member of the House of Representatives of the First Parliament of the Commonwealth shall be entitled for life to all such privileges connected with the Commonwealth Library as are from time to time enjoyed by the sitting Members of Parliament.
2. The like privileges shall also be enjoyed for life by any person who shall have, for a period of not less then three years, occupied a seat in the Parliament of the Commonwealth, or for any period shall have held office as President, Speaker, or as a Minister of the Crown, provided that this privilege shall not extend to books acquired within three months.
3. Such Officers of Parliament as are from time to time approved by the Library Committee shall be entitled to the use of the Library.
4. In addition to the above-mentioned, Judges of the High Court, Ministers of the Crown in the State Parliaments, and Permanent Heads of the Departments of the Commonwealth, may, on application, be entitled to borrow specified books for the period allowed to Members, and so far as is required in the course of their official duties.

5. The Library shall be available, for reference purposes only, to Members of the State Parliaments, and to such other persons as the Chairman of the Library Committee shall from time to time approve; also to Officers of the Commonwealth Public Service engaged in research or requiring information in connection with their official duties, and to accredited representatives of the Press.
6. Those entitled to borrow books from the Library may not have on loan more than ten volumes at any one time, and shall sign a Library borrowing card for each work taken out.
7. Books may not be kept for more than three months, and every two months the Librarian shall cause a notification to be sent to persons entitled to the use of the Library giving a statement of all books held by them, with a request for the return of any overdue books, or the renewal thereof for a term not exceeding three months.
8. In respect of books acquired within three months, the Librarian is empowered to limit the time they may be on loan to any one person to one month.
9. In the event of a book issued on loan being required for any important or urgent purpose, the Chairman of the Library Committee may instruct the Librarian to request its immediate return.
10. The Librarian shall report to the Chairman of the Library Committee any instances in which books held by Members, or others entitled to the use of the Library, have been unduly retained when applied for.
11. Works of special value, works of reference, works on Constitutional law, Law Reports, maps. and on the direction of the Chairman of the Library Committee, any books likely to be in request in relation to any debate, shall not be removed from the Parliament Buildings.
12. Bound volumes of newspapers or magazines shall not be removed from the Library except to the Chamber of the Senate, or the House of Representatives, for use in debate, and shall be returned as soon as done with.
13. Anyone entitled to the use of the Library losing or defacing a book shall replace it, or the set, if it form part of a set, to the satisfaction of the Committee.
14. No magazine, periodical, or weekly newspaper shall be removed from the Library after its arrival until the receipt of the next issue.
15. Except by special permission of the Chairman of the Library Committee, only those entitled to the use of the Library shall be admitted to the Reading Room and the bookstacks.
16. Smoking in any part of the Library is prohibited.
17. The Librarian is required to report to the Chairman of the Committee any infringement of these Rules.

Australian State Parliaments.

New South Wales.—The Rules of the Library of Parliament are as follow:

1. The Library shall be open as follows:

During the Session, from 9 a.m. to 4 p.m., or so long as either House is sitting; Saturdays, 9 a.m. to 12 noon; during Recess, from 10 a.m. to 4 p.m.; and Saturdays, 10 a.m. to 12 noon.

2. Any Member may take not more than three volumes at a time from the Library nor retain the same for a period exceeding ten days; but no book shall be available for loan until it has been in the Library for a period of one week.

3. Any Member desiring to retain a Book for a longer period may renew the loan at the expiration of each successive ten days, provided no other Member shall have in the meantime expressed a wish to have the book; but no book can be retained for a longer period than one month.

4. Any unbound periodical which has been in the Library for one week may be taken on loan for a period not exceeding two days if there be more than one copy available.

5. A register shall be kept of the loan, return, and condition of the books, and no book, periodical, or pamphlet shall be taken out of the Library until an entry of the loan has been made, which entry the Member will be required to sign, or upon a written order from a Member.

6. *See* Canberra Rule 13.

7. Books of general reference, including bound Acts of Parliament and Debates, files of newpapers, atlases, maps, and such other works as the Committee may from time to time determine shall not be allowed out of the Library except when in demand during a Sitting of either House for the purpose of reference in debate, and any volumes so required shall be returned at the close of the Sitting.

8. Members of the Legislatures of the other Australian Colonies (including New Zealand) and of the Parliament of Great Britain and Canada may be admitted to the Library on the introduction of a Member, provided the name of the visitor so introduced, with that of the Legislature to which he belongs, be entered and authenticated by the Member introducing him in a book to be kept in the Library for that purpose.

9. No stranger will be admitted into the Library unless accompanied by a Member, or with the permission of the Librarian in charge.

10. Smoking and the serving of refreshments in the Library or reading rooms are strictly prohibited.

11. The Librarian shall report to the Committee any infraction of these Rules.

12. The foregoing Rules shall be printed, framed, and exhibited in the Library and reading rooms for the information of Members.

Queensland.—The Rules governing the Library of Parliament are as follows:

Members have the right to the use of the Library on the following conditions:

1. During Recess the Library shall be open on Mondays, Tuesdays, Wednesdays, Thursdays, and Fridays, from 9 a.m. to 4 p.m.,

and on Saturdays from 9 a.m. to 12 noon. During Session the Library will remain open until the close of any sitting of the House.

2. The books in the Library are divided into books of general reference and books which may be lent out to Members. The former (in which are included Parliamentary Papers) are not to be removed from the Library without special permission from the Librarian unless they be required by a Member in course of debate or while sitting on Committee. Valuable illustrated works, maps, etc., are not to be removed from the Library.

3. Newspapers shall on no account be taken out of the Library except for binding purposes and for reference in the Chamber and Committee Rooms; and no paper shall be cut or removed from its file.

4. The Librarian, or in his absence the Assistants, shall issue volumes to Members, which issue shall be recorded on a card kept for that purpose and signed by the borrower, and which shall record the date of removal from the Library.

5. Members must not exchange Library books with one another. These books must be returned to the Librarian, after which the card bearing the receipt for the book will be returned to the borrower.

6. No Member will be allowed to take more than three volumes at a time, for the reading of which fourteen days will be allowed, but upon a formal application to the Librarian a renewal of the loan may be made for seven days longer.

7. If any work be kept by a Member a fortnight beyond the time permitted by the preceding Rule, and the ordinary notice has been disregarded, the Librarian shall send a notice, in the name of the Committee, requesting that it be returned without further delay, and if the book is not then returned within a reasonable time it shall be charged to the Member by whom it is so detained.

8. No quarterly or monthly periodical shall be considered within the class of books Members may borrow until it shall have been upon the Library table for one month, but the Librarian may permit quarterlies to be lent after they have been a week on the table, if not in particular request at the time. Periodicals when bound up in volumes may be considered as books to be issued to Members.

9. In the event of a Member applying for a book which at the time is in use by another Member, a memorandum book shall be kept in which the name of the required book shall be entered, and the Member making the application shall be the first to obtain the book after its return.

10. *See* Canberra Rule 13.

11. Smoking in the Library is strictly prohibited.

12. The Librarian is required to report to the Library Committee any infringement of the foregoing Rules or any injury to the books.

South Australia.—The Rules for the management of the Parliamentary Library, which are signed by the Chairman of the

Joint Library Committee and issued by order of such Committee, are given hereunder. The Clerk of the Parliaments and the Clerk of the House of Assembly report that the Rules work satisfactorily.

> The Library shall be open as follows: Sitting days, 9 a.m. to 9 p.m.; Non-sitting Days, 9 a.m. to 5 p.m., and Saturdays 9 a.m. to 12 noon.
> 1. Members shall be entitled to have on loan from the library not more than four volumes at any one time.
> 2. Books may not be kept for more than fourteen days from the date of taking from the Library.
> 3. *See* Canberra Rule 11.
> 4. Anyone entitled to the use of the Library losing or defacing a book shall replace it, or the set (if it form part of a set), to the satisfaction of the Committee, and, failing to do so, may by resolution of the Committee, be debarred from any further use of the Library.
> 5. The Librarian shall report to the Chairman of the Library Committee any cases in which books held by Members and users of the Library have been unduly retained when applied for.
> 6. Except by the permission of the Librarian, no stranger shall be admitted to the Library unless accompanied by, or having an order from, a Member of Parliament or the head of a Government department.
> 7. Once in each year the Librarian shall cause an account of stock to be taken, and shall subsequently submit a report to the Library Committee, with a list of the books lost or unduly retained during the year.
> 8. On sitting days the reading room shall be reserved for Members only.
> 9. Any person having occupied a seat in Parliament for one term shall be entitled for life to all the same privileges connected with the Library as Members.
> 10. Such Officers of Parliament as are approved by the President or the Speaker shall be entitled to the use of the Library.
> 11. Members of the Commonwealth and other State Parliaments may use the Library, but shall not be permitted to take books out of the State.
> 12. The Librarian shall be the sole custodian of the Library and its contents, and Members and others are not permitted to use same when the Library is closed.
> 13. The Librarian is required to report to the Chairman of the Committee any infringement of these rules.
> 14. Any person infringing any of the foregoing rules shall, at the will of the Committee, be liable to the forfeiture of all his privileges connected with the Library.

Tasmania.—The Rules for the Regulation of the Library of Parliament, which are issued by order of the Library Committee and signed by the Clerk of the House of Assembly, who is also Librarian, are as follow:

1. No book shall be taken from the Library unless with the knowledge of the Librarian or Assistant Librarian.
2. The books in the Library are divided into books of reference and books which may be circulated: the former are not to be removed from the Library.
3. No book shall be issued to a Member for a longer period than fourteen days; but upon special application a renewal, not exceeding seven days, may be granted.
4. The number of volumes which any Member shall be allowed to retain in his possession at one time shall not exceed four.
5. In the event of any Member applying for a book which at the time is not in the Library, an entry shall be made of his application, if the Member so desire it; and the applicant shall be the first to obtain it after its return to the Library.
6. Quarterly and monthly periodicals shall lie upon the table of the Library for one week after their arrival. No Member shall be allowed to hold more than one at a time, or to retain the same for a longer period than seven days.
7. Within a fortnight from the meeting of Parliament, annually, all books belonging to the Library shall be called in, and their circulation suspended until seven days after the opening of the Session. This Rule shall not apply to new magazines and reviews.
8. *See* Canberra Rule 13.
9. The Library shall be reserved for the exclusive use of Members during the Session. During Recess ex-Members may be admitted from 10 till 4 daily. Visiting Members of the Commonwealth and State Parliaments are privileged to have the use of the reading room at all times.
10. Any Member failing to comply with these Rules and Regulations may be suspended by the Library Committee from the privilege of having books issued to him from the Library.
11. An Annual Report shall be presented to Parliament of the proceedings of the Committee, showing the condition of the books in the Library generally, giving a list of the works added during the year, and of the books missing; and stating what measures have been taken to recover or replace the latter.
12. Smoking in the Library and reading room is strictly prohibited.

Victoria.—The Clerk of the Parliaments states that the Rules for the regulation of the Parliamentary Library are as follow:

1. Members may not take out more than six volumes at any one time, and in every case are requested to report the books taken to the Librarian or Clerk, that they may be entered in a book to be kept for that purpose.
2. Seven days are allowed for each volume, but, unless when inquired for, a strict compliance with this rule will not be insisted on. Books newly received shall be issued according to priority of application, and must not be kept for more than four days.

3. Valuable illustrated works, maps, and books of reference generally are not to be removed out of the Parliament buildings.
4. Overdue books, which have been written for, must be returned within three days at furthest.
5. Once in each year the Librarian shall take an account of stock, and for that purpose shall address a circular to each Member who has books in his possession, requesting that they may be returned within a given time. After stock is taken the Librarian shall submit a Report to the Library Committee, to which he shall attach a schedule specifying such books as have been lost (if any) during the year, or unduly withheld.
6. *See* Canberra Rule 13.
7. Any works may be purchased for the Library upon the request of a Member of Committee.
8. No Member will be at liberty to take from the Library more than one periodical publication at any time, and a quarterly publication may not be kept for more than one week.
9. No newspapers or periodicals may be removed from the table of the Library during the first month after their receipt.
10. No monthly magazine or other periodical may be kept for more than three days during the first month after such work may have been received into the Library.
11. No stranger will be admitted into the Library unless accompanied by a Member, and then only for the purpose of viewing the Library.
12. No ex-Member of Parliament, unless he be an Executive Councillor, is entitled to any of the privileges of the Library.[1]
13. Duplicate works are not to be sold either to Members of the Committee or Officers of the House.
14. Smoking in any part of the Library is prohibited.
15. The Librarian is required to report to the Library Committee any infringement of these Rules.

Western Australia.—The Clerk of the Parliaments and the Clerk of the Legislative Assembly, the latter acting also as Librarian, give the Library Rules as follow:

1. Members may not have on loan from the Library more than three volumes at any one time, and when taking out a book shall enter same on slips provided in the Library.
2. Books may not be kept for more than fourteen days.
3. *See* Canberra Rule 11.
4. The Librarian shall report to the Chairman of the Library Committee any cases in which books held by Members, or others entitled to the use of the Library, have been unduly retained when applied for.
5. *See* Canberra Rule 13.
6. *See* Canberra Rule 14.

[1] Since 1898 this Rule has been interpreted to include those ex-Members who have been Members for not less than 5 years and such ex-Members are permitted to borrow only those books which have been in the Library for not less than 12 months. Certain Commonwealth Members and ex-Members and Senior Officers with Commonwealth privileges have also been given similar privileges.

7. Except by permission of the Librarian, no stranger shall be admitted to the Library unless accompanied by, or having an order from, a Member of Parliament.
8. While Parliament is in Session, persons actually engaged in reporting the proceedings of Parliament may be allowed access to the Library for purposes of reference.
9. The Library shall not be used for the purpose of receiving deputations, for the meetings of Royal Commissions or Select Committees (except the Library Committee), or for meetings of any sort whatever, without the express consent of the Chairman of the Library Committee previously obtained.
10. Any ex-Member of the Legislative Council or Legislative Assembly who has served in two Parliaments, and sitting Members representing the State in the Federal Parliament, and sitting Members of any Parliament in the British Empire, shall be entitled to all such privileges connected with the Library as are from time to time enjoyed by the sitting Members of Parliament.
11. The like privileges shall also be enjoyed for life by any person who shall have held office as President, Speaker, or as a Minister of the Crown.
12. The Librarian is required to report to the Chairman of the Committee any infringement of these rules.

New Zealand.

We are indebted to the Clerk of the House of Representatives and to the Librarian, Mr. G. H. Scholefield, O.B.E., D.S.C., F.R.Hist.S., for the information in regard to the Library. The Library Committee is authorized by Resolution of the House to make and enforce rules for the Library of the General Assembly (as the Parliament is named):

1. For the convenience of Members of both Houses of the Legislature.
2. For the regulation of privileges to be granted to Members, ex-Members, and other persons.
3. For the recovery of the amount of damage for loss of any books or other property under the control of the Library Committee.
4. For any other matters incidental to or consistent with the control and management of the Library and for the more effectual carrying out of the same.

The granting of recess privileges to members of the public has grown to such an extent as to constitute a problem from the point of view both of staffing and of the wear and tear on books. The General Assembly Library is recognized as a National Library as well as a Parliamentary Library. Proposals for reorganization with a view to improving both sides and better defining their respective functions are under consideration.

The Rules for the management of the Library of Parliament are as follow:

1. (1) During each Session the Library shall be open—
   (*a*) When either House is sitting;
   (*b*) From 8 a.m. to 11 p.m. on week-days;
   (*c*) From 9 a.m. to 10 p.m. on Sundays;
   (2) During the Recess the Library shall be closed on those days on which the Government offices at Wellington are closed, and shall be open—
   (*a*) From 9 a.m. to 5 p.m. on week-days other than Saturdays;
   (*b*) From 9 a.m. to 1 p.m. on Saturdays.
2. The Joint Library Committee shall from time to time prepare and may alter—
   (1) A "List of persons with full privileges," who shall be entitled—
   (*a*) To enter, remain in, and use the Library;
   (*b*) To borrow books, but so that no such person shall have more than ten books at any one time:
   (*c*) If a Member of Parliament not residing in the City of Wellington or its suburbs (but not otherwise), and during a Recess only, to borrow books by post.
   (2) A "List of persons with limited sessional privileges," who shall, subject to any limitations noted on the list, be entitled, during each Session only—
   (*a*) To enter, remain in, and use the Library, with the exception of the sociology room, on days on which either House sits, during the hours of 12.30 p.m. to 2 p.m., and 6 p.m. to 7 p.m., and on other days during the hours when the Library is open;
   (*b*) To borrow books, but so that no such person shall have more than two books at any one time, nor borrow any book which has been in the Library for less than three months.

   The Joint Library Committee (and during a Recess the Recess Committee) shall from time to time prepare and may alter—
   (3) A "List of persons with limited recess privileges," who shall, subject to any limitations noted on the list, be entitled during each Recess only—
   (*a*) To enter, remain in, and use the Library only for the purpose of referring to or studying such books not being works of fiction, relating to a special subject, as he shall specify to a member of the Library staff;
   (*b*) To borrow any such books but so that no such person shall have more than two books at any one time.
3. Such lists shall be entered in full in a register-book to be provided for that purpose, and every alteration thereof shall also be entered in full therein, and such register-book shall be produced at every meeting of the Joint Library Committee and of the Recess Committee. Copies of the lists for the time being in force, signed by the Chairman, shall be kept at the Library, available for reference and exhibition when required.

4. Privileges shall not be extended to any person other than in accordance with such lists, provided always—
   (*a*) That the Chairman of the Joint Library Committee (or during the Recess the Chairman of the Recess Committee or the Chief Librarian) may, in his discretion, give written permission to literary workers, students, or visitors to Wellington to make temporary use of the Library (not exceeding one calendar month at any one time) for such specific or general purposes as are mentioned in such permission. The granting of such permission, and the terms thereof, shall in each case be entered in a separate part of the register-book hereinbefore mentioned:
   (*b*) That wives and daughters of Members of Parliament are permitted to use the main reading room upstairs during each Session of Parliament, but are not to occupy any of the writing-tables;
   (*c*) That any person introduced personally or in writing by a Member of Parliament, may, on the day when so introduced, be shown over the Library.
5. All privileges shall be subject to the regulations for the time being in force, and any or all may be suspended or revoked in any particular case by the Joint Library Committee (or during a Recess by the Recess Committee).
6. The main reading room and the sociology room shall be for the general use of Members, and no seat or table may be appropriated by an individual Member to the exclusion of others.
7. Persons using books in the main reading room or sociology room must not attempt to replace such books on the shelves, but must leave them on the table to be replaced by the attendants.
8. Any private papers or correspondence left on the tables in the main reading room or sociology room must be removed by the attendants and handed to the Chief Librarian, who shall return such papers or correspondence to the owners.
9. (1) The term "works of reference" for the purpose of this rule includes—
   (*a*) Statutes, *Gazettes*, Parliamentary journals, reports, and publications, Law Reports, law books, and maps;
   (*b*) valuable illustrated books;
   (*c*) old and rare editions;
   (*d*) bound newspapers, magazines, and periodicals;
   (*e*) any book which the Chief Librarian shall for the time being label "Reference," or "Not to be taken out of the Library."
   (2) Works of reference shall not be taken out of the Library in any case, save only that, at the written request of a Member of Parliament for the purpose only of use in a debate in a Legislative Chamber, any work of reference, not being within either of the classes (*b*) or (*c*), may be obtained from a member of the Library staff, in which case it must be signed for and be returned to a member of the Library staff not later than the time for the closing of the Library on the day when obtained.

10. The borrower of a book shall, personally, or by his agent specially authorized in writing signed by him, indicate it to a member of the Library staff, who shall enter it in a book kept for that purpose, and obtain therein a signed receipt. A record shall be kept separately showing the books borrowed, and by whom, and when.
11. Any Member entitled and desiring to borrow books by post during a Recess may, in writing, request the Chief Librarian to send him certain specified books, whereupon the Chief Librarian shall cause the books to be depatched by parcel-post. The like entries and record shall be made as in the case of a book borrowed in person (the Chief Librarian signing a receipt), and the person to whom the books are despatched shall be deemed " the borrower " for the purposes of these rules. All books despatched by post must be returned by the borrower within three days after the gazetting of a Proclamation convening Parliament for the despatch of business.
12. Every borrower must return every book borrowed by him or by his authority not later than one month during a Session, or two months during a Recess, after the date of its issue. It must be handed to a member of the Library staff in order that its return may be duly noted and recorded. Should a borrowed book be urgently needed for a special purpose the Chairman may direct that it be returned forthwith, in which case it shall be returned accordingly, notwithstanding that a month may not have elapsed since the date of issue.
13. On the first day of each month the Chief Librarian shall send to each borrower of a book who has had it for upwards of one month a notice reminding him that it has not yet been returned. At each meeting of the Joint Library Committee or the Recess Committee, as the case may be, the names shall be read of all borrowers who have failed to return books for one month after issue during a Session, or two months during a Recess.
14. The borrower of a book shall return it in as good condition as when issued to him. If it shall be meanwhile damaged he shall pay to the Chief Librarian such sum as the Joint Library Committee or the Recess Committee shall fix as properly payable in respect of such damage. If it shall not be returned within three months after issue he shall pay to the Chief Librarian such sum as the Joint Library Committee or the Recess Committee shall fix as the value of the book, and if it be one of a set, such Committee may fix the value of the set as the value of the book, in which case the borrower shall on payment be entitled to the remainder of the set.
15. Every other member of the Library staff shall report to the Chief Librarian any breach of rules that shall come to his notice and the Chief Librarian shall report to the Committee at every meeting all breaches of rules which have occurred since the last meeting, in order that the Committee may take such steps to punish the offender or otherwise as may be thought desirable.
16. All rules and alterations of rules, and all resolutions with

reference to the Library passed by either House, shall be entered in full in the minute-book.

17. A copy of the rules shall be sent to each person admitted to the privileges of the Library.

LIST OF PERSONS ADMITTED TO LIBRARY PRIVILEGES

No. 1.—Full Privileges.

Entitled—

(*a*) To enter, remain in, and use the Library;

(*b*) To borrow books, but so that no such person shall have more than ten books at any one time:

(*c*) If a Member of Parliament not residing in the City of Wellinton or its suburbs (but not otherwise), and during a Recess only, to borrow books by post:

His Excellency the Governor-General.
Members of both Houses.
Members of any Parliament within the Empire visiting New Zealand.
Members of the various Empire Parliamentary Associations visiting New Zealand.
Judges of the Supreme Court.
The Senior Officer, New Zealand Naval Division.
The General Officer Commanding the New Zealand Military Forces.
The Governor-General's Staff.
The Auditor-General.
The Solicitor-General.
The Clerk and Clerks-Assistant of each House.
H. Otterson, Esq., ex-Clerk of the House of Representatives.
The Gentleman Usher of the Black Rod.
The Serjeant-at-Arms.
The Law Draftsman.
The Chief *Hansard* Reporter.
The Reader of the House of Representatives.
The Record Clerk of the House of Representatives.
The *Hansard* Supervisor.
The *Hansard* staff.
The Government Printer.
The Director, Dominion Museum.
Mrs. J. Ballance.
Mrs. R. J. Seddon.
Mrs. W. F. Massey.
Ex-Prime Ministers and their wives.
Ex-Members of the General Assembly having not less than six years' service.

Union of South Africa Parliament.

We are indebted to Mr. P. Ribbink, the Joint Librarian, for his courtesy in supplying the following information in regard to the Library of Parliament at Cape Town:

The Library of the Parliament of the Union was actually started when the old Cape Legislative Assembly, on the 25th July, 1854, took the first step towards the establishment of a library for the use of both Houses of Parliament of the Cape of Good Hope and asked for a sum of £100 for the purchase of reference books. The Library now possesses about 80,000 volumes, of which 23,000 consist of Parliamentary documents of the British Empire, serial publications, etc., and 27,000 volumes of other literature dealing with political science and such other subjects as are required to keep Members of Parliament informed of the past and present tendencies of human thought and progress; and, finally, 30,000 volumes dealing with the continent of Africa, the nucleus of which was the Mendelssohn Collection of Africana bequeathed to Parliament by the late Sidney Mendelssohn in 1917. The Library of Parliament is open to those persons mentioned in Rule 7, as amended. The Africana Collection, to which there is a special entrance, is open to students and the public for research purposes. The control of the Library is regulated by certain Standing Rules and Regulations drawn up and issued from time to time by Mr. President and Mr. Speaker, subject to the confirmation thereof by the Joint Library Committee of the two Houses. It may be of interest to know the value of the regulation obliging the Librarian to report once a year what books he has been unable to recover from Members. Indeed, for 15 years not a single book has been lost to the collection through non-return. Books, of course, have been lost by Members, but they have in each case provided new copies at their own expense, rather than be reported. A great factor in preventing the loss of books by Members is a careful system of " reminders " which is unfailingly followed up by correspondence. Another matter which also calls for unceasing vigilance on the part of the staff is the insufficiency of packing used by Members in returning books by post. Each package sent to Members is accompanied by a franked label and a printed request to use the cardboard packing provided when returning books. This request, however, is often ignored and books are received in paper wrappers only, but an immediate letter sent to the offending Member generally prevents a repetition of the negligence.

A card catalogue on the Dewey Decimal Classification Scheme is maintained in the Library, which fits in with the majority of the schemes in practice in Great Britain, the Union, and the other Dominions, and in the United States of America,

etc. The Catalogue provides a key for reference to authors, subjects and titles. The Librarian reports to the two Houses through Mr. President and Mr. Speaker at the opening of each annual Session the actual state of the Library. In addition, the Librarian issues printed periodical lists of books added to the Library, each title being accompanied by a descriptive note of the volume. Also, bibliographies of important subjects are published from time to time, such as " The Afrikaans Language and Literature " and " The Relationship between European and Coloured Races."

In all, about 200 persons are privileged to take out books on loan from the Library, while approximately 12,000 volumes per year are used in the Library of Parliament. 5,000 works are lent out of the Library, while 500 students and research workers utilize the Africana Collection. Of the books lent out each year, the following figures indicate the main subjects dealt with:

Sociology	1,988	Religion	45
Biography ..	755	Philology	40
Africana	598	Philosophy	32
Serials	260	Literature	29
History	240	Fine arts	20
Geography and travel	172	Natural science ..	10
Useful arts ..	52	General	10

Both the Senate and the House of Assembly have their own Members' Newspaper Room, which come under the Clerk of each House, subject to their respective Internal Arrangements Select Committees.

With exception of the amendments given in the respective footnotes, the following rules relating to the appointment, office and duties of the Joint Parliamentary Librarian were recommended by the Joint Library Committee of the two Houses and concurred in by both Houses, 7th June, 1913.

1. A proper catalogue of the books belonging to the Library shall be kept by the Librarian, in whom the custody and the responsibility therefor shall be vested, and who shall be required to report (in duplicate original) to the two Houses through Mr. President and Mr. Speaker, at the opening of each annual Session, the actual state of the Library.

2. The Library Committee appointed each Session of Parliament by each House with power to confer with the corresponding Committee of the other House will aid Mr. President and Mr. Speaker with their counsel and advice in carrying out the Rules in regard to the Library of Parliament, and in suggesting

further improvements and additions to the collection. (See also Rule No. 9.)

3. At the first meeting of the Library Committee every Session of Parliament, the Librarian shall report a list of books the return of which he has been unable to secure, specifying the persons in whose names such books are standing.

4. The Library shall be open:

(*a*) when Parliament is in Session upon every day, Saturday afternoons and Sundays excepted, between the hours of nine o'clock in the morning and six o'clock in the afternoon, and upon every day upon which either House or both Houses of Parliament is sitting until the rising of whichever House is last sitting, and the Librarian shall make the necessary arrangements in regard thereto.

(*b*) during the Recess upon every day (Sundays and Public Holidays excepted) during such hours as may be determined by Mr. President and Mr. Speaker.

5. No books belonging to the Library shall be taken out of the Library without being entered opposite the Member's name in a book provided for that purpose, and on no account is any valuable illustrated work, map or book of reference, to be removed from the Houses of Parliament at any time either during the Session or Recess except with the signed authority of Mr. President or Mr. Speaker, anything to the contrary in these Orders notwithstanding.[1]

6. (*a*) Subject to the discretion of Mr. President and Mr. Speaker. any Member of either House shall be allowed, durin the Recess, to have forwarded to his place of residenc books[2] from the Library of Parliament on depositing wit the Librarian the sum of £1 (one pound) sterling as guarantee against loss, or damage to, any such book, no such book to be retained by any Member for a longer period than fourteen days if such Member reside in Cape Town or suburbs, or thirty-one days if such Member reside elsewhere; and no book shall be taken or sent beyond the Union.[1]

(*b*) Members will be held responsible for the condition and safe-keeping of volumes standing in their names, and any volume, or the set, if it form one of a set, lost or defaced must be made good by the Member in whose name it stands.

(*c*) Overdue volumes will be written for by the Librarian and must be returned immediately on such application. A Member desiring to keep a work more than fourteen or thirty-one days as the case may be, may make a fresh or new application.

[1] Amended in 1929: That in the case of a Member of Parliament not returning a library book, etc., during a Session, within 14 days after the date such book, etc., has been taken out and during a Recess within the times prescribed in Rule 6(*a*), such Member shall not be allowed to take any further book, etc., from the Library until the missing book has been so returned or the value thereof paid to the Librarian.

[2] The Rules amended generally in 1925: That during a Recess of Parliament, no Member be permitted to take out more than four volumes at a time; provided that in the case of reference works such number may be increased at the discretion of the Librarian.

(*d*) Whenever a Member returns any volume he shall hand it in to one of the Library staff who shall notify the date of its return in the column set apart in the delivery book for that purpose.

(*e*) Any Member desirous of having a work or volume added to the Library shall enter such request in a book to be kept for that purpose, and such application shall be considered by Mr. President or Mr. Speaker, who will, if the same be approved of and if there be funds for that purpose, authorize such purchase.

(*f*) Members shall be entitled to take out reference books for use only within the precincts of the building, but such books shall be returned to the Library immediately they are finished with.

7. No person shall be entitled to resort to the Library except the Governor-General, the Chief Justice and Judges of the Supreme Court, the Members and Officers of Parliament, and such other persons as may receive a written order of admission from Mr. President or Mr. Speaker.[1]

8. Mr. President and Mr. Speaker are empowered to appoint and remove, subject to the concurrence of the Library Committee of each House sitting together, a Librarian, Assistant Librarian and any Clerk or Messenger who may from time to time be employed in connection with the Library, whose salaries shall be fixed by such Committees and charged against the vote of the Joint Parliamentary Expenses.

9. Mr. President and Mr. Speaker shall, from time to time, issue such rules in regard to the Library and the duties of the Librarian and his staff, or amend or cancel any of the foregoing rules as they shall deem expedient, subject to the confirmation thereof by the respective Library committees of the two Houses sitting together at their next meeting, and in them shall be vested the control and supervision of the said Library.

10. The Librarian shall address all communications and shall apply for instructions in regard to his duties to the Speaker of the House of Assembly, or if he be absent from the seat of Parliament then to the President of the Senate, from whom he shall receive all direction and authority in reference to the Library and its efficient working.

11. For the addition of new books[2] to the Library, the Librarian shall prepare from time to time lists of books which shall be entered in a book retained for that purpose and signed, if approved, by either Mr. President or Mr. Speaker.

[1] Amended in 1926, to provide that no person shall be entitled to resort to, or take books out of, the Library, except the Governor-General, the Chief Justice and Judges of the Supreme Court, the members and officers of Parliament; ex-Members of Parliament also to be permitted to resort to the Library and, during Recess, to take out books on payment of a deposit of £2. Mr. President or Mr. Speaker may give permission to persons other than those named above to resort to the Library without having the privilege of taking out books.

[2] The Rules generally were amended in 1928: That in future magazines be not removed from the Library earlier than a week after the date of their arrival, save in special circumstances at the discretion of the Librarian.

12. Any Officer of Parliament shall be allowed at all times to apply for and obtain any volume or work required by him, and such application directed to the Librarian shall be entered by him, and on return of such volume or work an entry thereof shall be duly made, but such work shall not be removed from the building during Session, or retained by him during Recess after the President or Speaker or any member has made application therefor.

13. Subject to such rules as may from time to time be framed by Mr. President and Mr. Speaker:

(*a*) A catalogue of the books shall be kept by the Librarian as well as a card index of subjects, the former to be placed on the table of the Library and the latter made available for consultation in a suitable place.

(*b*) The Librarian's annual report and official documents shall be in duplicate original and addressed and forwarded to Mr. President and Mr. Speaker.

(*c*) A manuscript book shall be used by the Librarian, to be called "the Official Requisition and Pass Book." All communications and applications by the Librarian shall be entered in this book in the proper form and column and be by him (or his assistant) handed to Mr. President and Mr. Speaker, who will approve or dissent, or give directions in regard to any applications or communications.

(*d*) Whenever Mr. President and Mr. Speaker desire to give directions to the Librarian, they shall be furnished with this book and enter therein anything necessary to explain such directions, and the fulfilment thereof shall by the Librarian be entered with the date and his initial thereto at the foot of the same in the column "Librarian's Remarks."

(*e*) The Library Staff shall assist the Librarian in any work he may direct them to do in connection with the Library. No absence of any Officer is allowed without the leave of Mr. President or Mr. Speaker, and such leave and the application for same shall be entered as an application in the book.

(*f*) The Librarian shall have authority to replace any books or reviews not returned after due notice and to charge the cost of the same against the deposit of a member, who shall forthwith be notified of the amount.

(*g*) The Librarian shall keep a deposit book showing the amount paid by each Member and any charges made on account of books, not returned, and shall be responsible for the return of the balance due to the Member on notification that books are no longer required to be forwarded.

14. For the purpose of these rules the Clerk of the Senate shall act in the absence of Mr. President and the Clerk of the House of Assembly in the absence of Mr. Speaker.

15. For the purpose of these rules, "Officer of Parliament" shall mean the Clerk and Clerk-Assistant of either House, the Joint Parliament Draftsman, and all members of the permanent clerical staff of either House.

Union Provincial Councils.

As Cape Town became the seat of the Parliament upon the advent of Union, and the Union Parliament occupied and extended the Houses of Parliament buildings of the old Colony of the Cape of Good Hope, the newly created Provincial Council of that Province had to be provided with new quarters, and the Library of the old Cape Parliament became that of the Union Parliament. In the other three Provinces, Natal, Transvaal and the Orange Free State, the Provincial Councils took over the Libraries of the Parliaments of those former Colonies. Today, no particular Rules exist in regard to the management of those Libraries, neither have any Librarians, or Provincial Council officials to act as such, been appointed.

South West Africa.

No separate library exists for the use of Members of the Legislative Assembly.

Irish Free State Parliament.

The following Rules for the administration of the Joint Library were adopted by the Joint Library Committee of the Seanad and the Dáil, on 19th May, 1926:

1. The direction and control of the Library shall be vested in the Ceann Comhairle[1] and the Cathaoirleach[2] jointly, who shall be empowered to add to, alter or cancel these rules as occasion may require.
2. The Joint Library Committee set up by both Houses will assist and advise the Ceann Comhairle and the Cathaoirleach in carrying out the rules and in suggesting further improvements and additions to the collection.
3. Except on Sundays, Public Holidays and Saturday afternoons (after 1 p.m.), the Library shall be open upon every day when either House of the Oireachtas is sitting until the rising of whichever House is last sitting, and when neither House is sitting between the hours of 11 a.m. and 6 p.m.
4. The Ceann Comhairle and the Cathaiorleach shall, from time to time, issue such directions as to them shall seem expedient in regard to the Library, and the duties of the Librarian and his staff.
5. The Librarian shall prepare, keep and be responsible for a Catalogue of the books belonging to the Library.
6. (*a*) The Librarian shall prepare lists of books from time to time, which lists shall be submitted to the Joint Library Committee, who shall recommend purchases when desirable.
   (*b*) Any Deputy or Senator desirous of having a work or volume included in the Librarian's lists shall enter a request for such work or volume in a book to be kept for that purpose.

[1] President of the Senate. [2] Speaker of the Dáil.

7. Subject to the discretion of the Librarian any Deputy or Senator may take books from the Library for use only within Leinster House, but such books shall be returned to the Library before closing hour on the day of issue. Provided that the Librarian shall have discretion not to allow valuable works to be removed from the library.
8. Readers shall be responsible for the safe keeping of any work or volume borrowed by them and any work or volume lost or defaced must be made good by the borrower.
9. No person shall be entitled to resort to the Library except Deputies, Senators and Officers of the Oireachtas,[1] and such other persons as may receive a written order from the Ceann Comhairle or the Cathaoirleach.

Southern Rhodesia.

Mr. J. G. Jearey, O.B.E., when the Clerk of the Parliament, informed us that the Librarian of the Parliament Library is also Serjeant-at-Arms, and that the Rules work fairly well. The deposit of £1 when taking out books during a recess is not insisted upon. Mr. Speaker is also empowered by a Resolution of the Library Committee to order any new books he considers advisable.

The Rules for the administration of the Library are as follow:

1 to 5 both inclusive. (*See* Union Rules 1 to 5 both inclusive but without the amendments.)
6 (*a*). (*See* Union Rule 6 (*a*) substituting "Salisbury" for "Capetown" and "Southern Rhodesia" for "Union.")
6 (*b*) to (*f*). (*See* Union Rules 6 (*b*) to (*f*), without amendments.)
7. No person shall be entitled to resort to the Library except the Governor, the Senior Judge and Judges of the High Court, the Members and Officers of Parliament, Heads of Government Offices and such other persons as may receive a written order of admission from Mr. Speaker.
8 and 9. (*See* Union Rules 8 and 9.)
10. The Librarian shall address all communications and shall apply for instructions in regard to his duties to the Speaker of the Legislative Assembly, or if he be absent from the seat of Parliament, then to the Clerk of the Legislative Assembly, from whom he shall receive all direction and authority in reference to the Library and its efficient working.
11 to 15 both inclusive. (*See* Union Rules of those numbers, but without the Union amendments.)

Otherwise, with the exception of the reference in the Union Rules to two Houses of Parliament and in those of Southern Rhodesia only to one House (the Upper House not having yet been constituted), the Rules are the same.

[1] Parliament.

Indian Central Legislature.

Mian Muhammad Rafi, B.A., the Secretary of the Legislative Assembly, kindly informs us that there is one common Library for the use of the Members of the Council of State and the Legislative Assembly. The Rules under which it is governed are as follow:

1. The Library is intended for the use of the Members of the Council of State and the Legislative Assembly. It is also open to use by the Princes during their meetings in New Delhi.
2. All applications for the loan of books or other publications should be made to the Librarian.
3. Ordinarily not more than four volumes at a time can be taken on loan by Members.
4. Members must return the books taken on loan by them within *seven* days from the date of issue. No fresh books will be issued to any Member who has already in his possession a book or books for more than seven days.
5. Encyclopædias, Dictionaries, Year-books, Atlases, Periodicals, books on art, paintings and other illustrated books and books of general reference shall not be removed from the Library.
6. From the time books are issued to Members until they are received back by the Librarian, Members will be responsible for their condition and will be required to replace any such books if lost or damaged.
7. No notes or marks of any kind shall be made on Library books.
8. Members are requested to observe silence in the reading room of the Library.
9. Outsiders, unaccompanied by Members, are not allowed to come into the reading room of the Library.
10. Suggestions for purchase of new books and newspapers may be made by Members in the " Suggestion Register " which is placed in the Library. A list of books and newspapers suggested will be circulated to the Members of the Library Committee for their opinion and the books and newspapers recommended by all or majority of the Members of the Committee will be purchased.
11. In case of emergency, the Secretary of the Library Committee shall have the power to authorize purchase of books and newspapers.

Indian Provincial Legislatures.

Madras.—Diwan Bahadur R. V. Krishna Ayyar, B.A., M.L., now the Secretary to the Madras Legislature, kindly informs us that the Rules of the old Madras Legislative Council Library were as follow:

1. The Library will be open daily from 11 a.m. to 4 p.m. except on Sundays and public holidays.
2. Books in Part I in the catalogue should not be removed from the Library.

3. No book may be taken out on loan except in accordance with these rules.
4. Books should be applied for in the prescribed form and a separate form should be used for each book.
5. Books (not exceeding 3 in number or 5 volumes in all) may be lent for a week at a time. If they are wanted for a longer period, the application may be renewed at the end of every week, provided that the books are returned to the Library at the end of one month from the date of issue; they should not be taken out again for one week.
6. Any book may be recalled at any time by the Secretary at twenty-four hours' notice.
7. The cost of books not returned will be recovered by the Secretary after due notice to the person responsible for their non-return or loss.
8. The Library is primarily intended for the use of Members of the Legislative Council. Books may be consulted by, and issued to, officers of the Secretariat holding gazetted rank, and subject to the same rules as in the case of Members of the Legislative Council.
9. Those who take out books on loan are requested to see that when returning books the signed forms kept in the Library as vouchers are returned to them, as they will be held responsible for the books so long as the above forms remain with the Librarian.

United Provinces.—Mr. G. K. Hydrie, B.A., LL.B., now the Secretary of the Legislative Assembly, kindly informs us that the Rules for the management of the old Legislative Council, which worked satisfactorily, were as follow:

1. A Member may borrow three books at a time for a period not exceeding two weeks, provided that a book which is in special demand should be returned by such date as the Librarian may specify.
2. No Member may take a book out of the Library without getting it charged to his name or take it upon himself to lend it to any other person.
3. No books of reference will be issued, and certain other important books and official publications will be issued only for use within the precincts of the Council Chamber and must be returned on the same day.
4. If a book is not returned within ten days of the despatch of the second request for its return, it will be taken as lost and a bill for its price will be presented for payment to the Member concerned.

General Remarks.—A Library of Parliament is essentially a "Statesmen's Reference Library"; if there is a National Library or any other collection of works also under the control of the Librarian, that is a collection extraneous to the real purpose of a Library of Parliament. Even in regard to a

"Statesmen's Reference" collection, as new works are published, the Library, like a garden, is all the better for a periodical weeding out. The great difficulty in the administration of Libraries of Parliament is the suggestions made by individual M.P.'s as to additions to the Library; many of these include books of little or no service to a Statesmen's Reference collection. A Parliamentary Library is a departmental library. Much money can be wasted in the duplication of "other subject" books, which would normally be included in a National or any public library, especially where the Parliamentary Library is not at the same time the National Library and where the latter is also located at the Seat of Parliament. If such National Library is housed in the Parliament buildings, there is the danger of that Library growing to such dimensions as seriously to curtail the accommodation in those buildings necessary for Members and other Parliamentary purposes. In New Zealand, it is noted, the privileges granted to members of the public and the character of the Library has constituted a problem, and proposals are under consideration better to lefine the respective functions of a National Library and a 'arliamentary Library.

What is required in a Parliamentary Library are works such as assist M.P.'s in the discharge of their duties. The Librarian should submit a list of books to the Library Committee and take suggestions from it. Even, however, when there is a controlling select committee of either, or both, Houses of Parliament, it is well for it to appoint three or four well-qualified Members of either House who are resident at the seat of Parliament also during Recess, to advise Mr. President and Mr. Speaker as to the books to be bought throughout the year out of the sum annually voted by Parliament for the purpose. They, too, can act as a good stand-by for the Librarian, when he submits to the Library Committee the list of the books to be purchased and the cost incurred, reports missing books or those to be discarded, and renders his annual report. In that way the money voted is expended to the best advantage and only upon works of practical usefulness to Members of Parliament and appropriate to a "Statesmen's Reference" collection.

A good example of these principles is afforded by the practice in regard to the House of Commons Library at Westminster which, with its vast experience gained over many years with a wide range of subjects, has remained true to its purpose, and where:

(*a*) with regard to the choice of books, "Mr. Speaker has appointed a small unofficial committee of Members to assist him with their advice, and, in practice, the Librarian submits a list of suggested books to this committee and receives suggestions from it."

(*b*) access is restricted to Members and Officers, and where, with regard to the use of the Parliament Library for the purpose of study by the outside public, Mr. Speaker gives special permission when—
"satisfied that the required documents or books cannot be found elsewhere."

(*c*) "two main divisions are observed:
(i) Parliamentary and Official Publications; and
(ii) Works of more general interest, such as might assist Members of Parliament in discharge of their duties. Under this head, professed fiction, controversial divinity, natural science, and mental and moral philosophy have, generally speaking, always been excluded, as have all works of a highly partisan character on other subjects."

(*d*) "... the multiplication of published books and the diminution of vacant space have enforced on the Library ... the necessity of specializing in books connected with the work of the organ of government to which it is attached"; and

(*e*) a staff of five (including messengers) assist the Librarian to serve 615 Members of a House which sits for long hours in a Session extending over three-quarters of the year.

The Librarian, the specially appointed custodian of the collection and its protector, on the other hand, requires the support and assistance of Members at all times in the carrying out of the Rules for the administration of the Library. A scholarly man and scientifically trained librarian in this position can be invaluable to Members, of all parties, in connection with their work in Parliament.

Newspapers should not be kept in the Parliamentary Library but in charge of one of the messengers of the House specially appointed for that duty by the Black Rod and Serjeant-at-Arms respectively.

To a new Parliament, the selection of works to form the nucleus[1] of a Parliamentary Library is an investment of the greatest value. Upon this, a collection proper to a Statesmen's Reference Library can then be built up, which will prove of the greatest usefulness to Parliament and its individual Members in their legislative work.

[1] *See* JOURNAL, Vol. I, pp. 112-122.

XII. APPLICATIONS OF PRIVILEGE, 1936

COMPILED BY THE EDITOR

Westminster.

Newspaper Libel upon Members.—On May 4,[1] in the House of Commons, the Member for the Moseley Division (Sir P. Hannon) submitted the following motion:

> That the statement embodied in the article written by the Hon. Member for Clackmannan in the issue of *Forward*, dated the 2nd May, 1936, is a gross libel upon Hon. Members of this House and a grave breach of its Privileges.

and quoted the following extract from an article in such newspaper:

> "This year different. Dull. A vacant seat on Budget day is strange and significant. Many vacant seats on Tuesday. It may have been that this lack of interest was due to the fact that the usually jealously guarded secrets of the Budget had already been divulged. Somebody had spilled the beans, and Members who should have been listening to the Chancellor were busy elsewhere making a bit by turning their advance knowledge to advantage. The fortunate folk in the know were in the City making easy money at Lloyds.

The Member for Moseley Division then quoted the following references from May (13th Ed.):

> Indignities offered to the character or proceedings of Parliament, by libellous reflections, have been punished as breaches of Privilege (p. 85).

and:

> Libels upon Members have also been constantly punished; but to constitute a breach of Privilege they must concern the character or conduct of Members in that capacity; and the libel must be based on matters arising in the actual transaction of the business of the House (p. 91).

Mr. Speaker ruled that a *prima facie* case had been made out for a breach of Privilege and put the question. After which the Member for Clackmannan (Mr. MacNiell Weir), who was responsible for the article, made an explanation and asked permission of Mr. Speaker, unreservedly to withdraw the words casting the reflection and sincerely apologized. Mr. Speaker then asked the Member for Clackmannan to leave the House while the matter was discussed, and he accordingly withdrew.

[1] 311 H.C. Deb. 5. s. 1349-1352.

Sir Austen Chamberlain said:

> The Hon. Member for Clackmannan has made what he now recognizes as a grave and unjustified reflection upon Members of the House, but he has made a very handsome apology; he has withdrawn the offensive words, and I venture to suggest to the House that it will serve its own dignity, and show a proper appreciation of the apology of the Hon. Member, if it proceeds no further in the matter.

The Hon. Member for the Moseley Division then asked permission to withdraw the motion, which was allowed, and the motion was withdrawn.

Canadian Dominion Parliament.

House of Commons Employees. —On February 13[1] the Leader of the Opposition (Rt. Hon. R. B. Bennett) on the Orders of the Day raised, as a matter of privilege, the question of dismissal of certain House of Commons employees belonging to the Sessional Staff. In his speech Mr. Bennett quoted sec. 21 of Chapter 145 of the Revised Statutes of Canada, 1927, namely:

> If any complaint or representation is at any time made to the Speaker for the time being of the misconduct or unfitness of any clerk, officer, messenger or other person attendant on the House of Commons, the Speaker may cause an inquiry to be made into the conduct or fitness of such person.
> If thereupon it appears to the Speaker that such person has been guilty of misconduct, or is unfit to hold his situation, the Speaker may, if such clerk, officer, messenger or other person has been appointed by the Crown, suspend him and report such suspension to the Governor-General, and, if he has not been appointed by the Crown, suspend or remove him.

The Prime Minister (Rt. Hon. W. L. Mackenzie King) in reply quoted the next section of the Statute above referred to, as follows:

> 22. (1) The Clerk of the House of Commons shall subscribe and take before the Speaker the oath of allegiance, and all other officers, clerks and messengers of the House of Commons shall subscribe and take before the Clerk of the House of Commons the oath of allegiance.
> (2) The Clerk of the House of Commons shall keep a register of all such oaths.

and stated that he had asked the Clerk to have in the House this afternoon a record of the registration of oaths of persons included under sec. 22, and was advised that not a single one of these persons had been dismissed. The Prime Minister

[1] CCVII. Can. Com. Deb. 152-158 and 8-12.

suggested that when the Committee on Privileges had been appointed, the question as to the right and proper procedure to be adopted with respect to the retention or dismissal of employees of the House of Commons might be referred to such Committee.

Union of South Africa Parliament.

Newspaper disclosure: Appointment of Chairman of Select Committee.—On February 20,[1] in the House of Assembly, complaint was made that *The Cape Argus* had disclosed certain proceedings in connection with the election of the Chairman of the Select Committee on Public Accounts before the proceedings of the Committee had been reported to or printed by the House.

Mr. Speaker agreed that under S.O. 239 a *prima facie* case for investigation had been established, but suggested that attention having been drawn to the matter, no further action need be taken if he emphasized the disadvantage at which some newspapers might be placed if the rule were disregarded by others.

India Central Legislature.

Newspaper Republication of a Speech.—In the India Legislative Assembly, on February 10,[2] the President (Hon. Sir Abdur Rahim) drew attention to the following notice of motion by a Member (Sardar Sant Singh):

> In view of the action of the Local Government in demanding security from the *Abhyudaya* of Allahabad for printing the full text of the speech of Pandit Krishna Kant Malaviya made in the Assembly on the 6th September, 1935, in Simla during the discussion on the Criminal Law Amendment Bill, the Assembly do proceed to discuss the question of the privilege of the freedom of speech and its publication in the Press enjoyed by the Members of the Assembly.

The Member inquired whether this speech was published in the Press in this paper at the instance of the Member concerned who made the speech.

A lengthy debate[3] took place on the subject, the President expressing himself willing to hear arguments from both sides, in order to see whether a *prima facie* case had been made out for a breach of privilege.

[1] VOTES, 1936, 184; 26 Deb. 687-8.
[2] I, India Leg. Assem. Deb. No. 6, 1.
[3] *Ib.*, 1-34.

The production of a copy of the newspaper by a Member other than the Member in whose name the notice of motion stood, was allowed.

The Leader of the House (Hon. Sir Nripendra Sircar), amongst other objections, stated that the motion was not made at once but after notice; that the headlines in the translated publication of the speech in the *Abhyudaya* did not form part of the speech as delivered in the Chamber; that the paper had, as an inset, a poem, which was not in the original speech; that the speech in such paper was therefore more than a re-publication of the speech; that under Rule 12 taken with S.O. 23, no business other than Government business could be taken today except with the consent of the Governor-General; that under Rule 24A (1) the motion was out of order; and that this subordinate Legislature has no " privilege " like that enjoyed by Parliament, under ancient custom.

At the conclusion of the debate, the President reserved his Ruling, which was given on the 27th *idem*,[1] to the following effect:

> The President quoted an Order of the Governor-in-Council (United Provinces) of January 10, 1936, issued under sec. 7 (3) of the Indian Press (Emergency Powers) Act of 1931[2] requiring the publisher of the *Abhyudaya* of Allahabad to deposit security, because such paper had published an article containing words in contravention of sec. 4 (1) (*b*) of such Act. The President cited the other methods by which the Hon. Member (Sardar Sant Singh) had attempted to bring the subject-matter of the motion to the attention of the Assembly. The President ruled that a motion for adjournment under Rule 11 was not the proper procedure for raising a question of privilege pure and simple, and quoted Rulings of his predecessors in support.
>
> * * * * *
>
> That a Resolution under S.O. 59[3] and Rule 23[4] was clearly not an appropriate procedure for discussing a matter of breach of privilege, when the question was sought to be raised by a Non-Official Member. Further, by Rule 23, every resolution must be in the form of a specific recommendation to the Governor-General in Council.

[1] II, India Leg. Assem. Deb. No. 8, 1-4.
[2] Act No. XXIII of 1931.
[3] (Form and Contents of Resolutions.)
[4] (Procedure to be followed in debate upon urgency motions.)

The President held that a question of privilege such as was involved in the notice could be discussed on a motion under Rule 24A;[1] but that the Member had not conformed to such Rule, which barred such a motion as this, being neither a resolution under S.O. 59 of the Manual of Business nor conforming to the requirements of Rule 24A. In any event, since questions of privilege were undoubtedly of considerable importance to the Assembly and were of an urgent nature, as stressed by the Leader of the House, and no provision had been made for business of this class in the Rules and Standing Orders, it might well be expected of the Government to find time for this purpose. That he was sure the House generally would recognize the importance of protecting the honour and privilege of the Legislature . . . and unless effective means were provided by which Members could be assured of being able to carry on their deliberations in the Chamber without interference and molestation and by which the dignity of the Legislature was duly protected from outside attacks, it could not be expected to function to the best advantage. The Assembly and the Government might perhaps consider whether the Rules and Standing Orders (especially Rules 24A and 6) should not be suitably amended, so that such difficulties as existed at present, and have been emphasized by the Honourable the Law Member, in the way of raising a question of privilege might be removed.[2]

Referring to the question as to whether a *prima facie* case of privilege had been made out in the present instance, the President quoted sec. 67 (7)[2] of the Government of India Act, and stated that the privilege enunciated there did not go further than exempt a Member of the Assembly from any proceedings in a Court of Law by reason of his speech or vote in the Chamber, or by reason of anything contained in any official report of the proceedings.

But having regard to the language of sec. 67 (7) abovementioned, even a fair and faithful report of the whole debate, except in the official reports, was not protected.

* * * * *

[1] (Limitation of time of discussion.)

[2] (7) Subject to the rules and standing orders affecting the Chamber, there shall be freedom of speech in both Chambers of the Indian Legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either Chamber or by reason of anything contained in any official report of the proceedings of either Chamber.

That if any action had been taken in any court against Pandit Krishna Kant Malaviya[1] for publishing his speech in the *Abhyudaya*, he could not plead privilege as a defence of such action.

* * * * *

"I must further point out that the action of the United Provinces Government was taken under certain statutory powers vested in that Government and if privilege had been made out, that fact would have entailed interpretation of section 67 (7) side by side with the India Press (Emergency Powers) Act, before a decision could be arrived at whether there has been a breach of privilege or not."

No such powers as were enjoyed by the Lords and Commons in regard to privilege had been vested in India Legislatures under the Government of India Act, 1919, creating them and section 28 of the Government of India Act, 1935, forbade the enacting of any law conferring on the Federal Legislature punitive or disciplinary powers or the status of a court other than a power to remove or exclude persons infringing the Rules or Standing Orders or otherwise behaving in a disorderly manner.

In conclusion, the President said:

"The same section, I may also mention, defines in sub-section (1) the freedom of speech in the Legislature in the same terms as section 67 (7) of the present Government of India Act, and by sub-section (2) it empowers the Federal Legislature to define the privileges of the Members of the Legislature and until that is done those privileges will be such as are enjoyed by the Member of the Indian Legislature at present. The extent of thos privileges may be briefly indicated in general terms as being suc as are necessary for the proper discharge of their duties by th Members in the Council Chamber. In addition to the President exercising such powers as have been conferred on him by the Rules and Standing Orders, the House itself, when a breach of privilege is made out, can always, upon a proper motion, express its condemnation and, in suitable cases, make such recommendation to the Governor-General in Council as it thinks fit."

The President concluded by stating that the motion for the reasons mentioned was disallowed.

It may here be mentioned that, in consideration of any question of Indian Parliamentary procedure,[2] it must be borne in mind that such procedure is not only governed by the Indian Legislative Rules, but by the Standing Orders of the House and frequently by statute, both generally, and in regard to the particular powers of the Governor-General.

[1] The owner of the *Abhyudaya*.

[2] *See also* article by Mian Muhammad Rafi, Secretary of the Legislative Assembly, JOURNAL, Vol. IV, 61-76.

XIII. SOME RULINGS BY THE SPEAKER AND HIS DEPUTY AT WESTMINSTER, 1936

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 First Session of the Thirty-seventh Parliament of the United Kingdom of Great Britain and Northern Ireland and the Eleventh of His Majesty King George V, are taken from the General Index to Volumes 307 to 316 of the House of Commons Debates (Official Report), 5th series, comprising the period 26th November, 1935, to 30th October, 1936. The Rulings, etc., given during the remainder of 1936 and falling within the Second Session of the Thirty-seventh Parliament will be treated in Volume VI 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.

Adjournment.

—of debate,
  —Chair might consider motion for, if Member caught Speaker's eye (315 – 498).
  —Member only entitled to give reasons for motion to (315 – 920).
—of House,
  —legislation cannot be raised on motion for (310 – 571, 572); (312 – 682, 687, 688, 696, 698).
  —motion for, declined by Mr. Deputy Speaker as an abuse of Rules of House (311 – 783, 784).
  —question could be raised on (315 – 244).
—of House (urgency),
  —motion allowed (314 – 39).
  —motion not allowed (312 – 1626, 1627); (313 – 997, 998).

Amendment(s).
—altering character of (311 – 1312).
—consequential on Members first (310 – 1845, 1846).
—in later line (308 – 1890).
—out of order as charge would be imposed (313 – 2003).
—out of order as contrary to decision of House (310 – 978).
—which might create a charge (313 – 2005).
—withdrawn (313 – 1868, 1869).
See also Bills, and Lords' Amendments.

Bills, Private.
—effect of *amdt.* which may create *opposed* business (315 – 1284).

Bills, Public.
—ballot for (308 – 64).
—clauses.
—cannot be withdrawn if Member speaks (313 – 330).
—postponement of (313 – 161 to 163, 176 to 178).
—consolidating laws.
*—*amdts.* cannot be moved to Bills for, which would make an alteration in the law (314 – 1832).
*—practice to take clauses in Bills for, in blocks (314 – 1832).
—debate
—instructions } *See* those Headings.
*—Private Members' Bills passed under 10-minute Rule in 2 consecutive Sessions, giving of facilities for 2 *R.* discussion, not proposed, and reasons (312 – 1826).
—2 *R.*
—subject matter of Bill (310 – 2311 to 2316).
—*C.W.H.*
—*amdt.*
—cannot be proposed until clause read second time (313 – 2015), 2020.
—imposing a charge (313 – 2003).
—in later line (308 – 1890).
—to substitute new sub-section, not in order until old sub-section dealt with (313 – 2058).
—*Cons.*
—*amdt.*
—interpretation of an (312 – 1886).
—making charge on rates out of order (312 – 1878, 1879, 1902 to 1905).
—manuscript, allowed on (311 – 1287).

Bills, Public.
—*Cons.*
—*amdt.* (*continued*):
—no second speech on (313 – 2068).
—Recommittal, motion for (314 – 639, 640).
—3 *R.*
—*amdts.* to question for, must be relevant to Bill (314 – 718).
—Member cannot move to report progress (314 – 1830).
—nothing unusual in Parliamentary Secretary moving (414 – 49).
—objection to, without notice (314 – 190, 191).
—preamble cannot be amended on (310 – 2742, 2743).
—Resolution, statutory *amdts.* must be voted *en bloc* (307 – 1699).

Budget proposals.
—alleged leakage, Tribunal of Inquiry, debate upon (311 – 1578, 1579); (313 – 427, 437, 438).

Business of the House.
—arrangement of, Mr. Speaker not concerned in (313 – 641, 1213).
—Regulations are " exempted Business " when pursuant to an Act of Parliament (315 – 785).
—when " exempted " (313 – 1910, 1911).

Calling of House.
—before date fixed for resumption, motion for, and position if desired by Opposition (315 – 1889).

Chair.
—always gives protection to those who are doing right (314 – 611).
*—Member not entitled to criticize, and remark must be withdrawn (313 – 931).
—word " you " means (309 – 1480).
—*See also* Mr. Speaker and Chairman.

Chairman.
*—decision, whether or not to put question rests with (313 – 170).
*—selection of *amdts.* vested in, and explanation need not be given (313 – 756).

Closure.
—can be moved at any hour (315 – 786).
*—reflection on, when carried, out of order (309 – 823, 824, 831).

Debate.
—adjournment motion.
—Minister only one speech, except by leave (313 – 519).
—only one speech in, on (313 – 521, 522).
—*amdts.*
—confined to (310 – 1655).
—discussed together (310 – 1847, 1898).
—" Another Place."
—exceptions to practice (314 – 507).
—reference to proceedings in (314 – 505, 507).
—speeches in, must not be quoted (309 – 1894).
—statement of policy made in, may be referred to, but not criticisms of speeches or references to them with view to influencing debate (315 – 949).
—statements made in, during same Session, not permissible (310 – 1171); (312 – 2266); (315 – 1009).
—anticipation of (308 – 1014).
—Bill(s).
—2 *R.*
—discussion on, of matter already decided (308 – 1194, 1241, 1270).
—interruptions not allowed (308 – 1712, 1714).
—merits or demerits of main Act, cannot be discussed on (307 – 1455).
—Members may only speak once (310 – 1776).
—Ministers also not entitled to speak more than once on (310 – 1771, 1777).
—outside scope of Bill (308 – 1642).
—*C.W.H.*
—discussion of series of *amdts.* together (313 – 2087).
—2 *R.* debate not allowed in (312 – 46).
—Recommittal.
—clause only debatable on *amdts.* thereto (314 – 1053, 1065).
—restriction of debate (314 – 639, 640).
—Report.
—Bill referred to Standing *Com.*, right of Member in charge of Bill or of Member having moved new clause or *amdt.*, to address House second time (311 – 1292).
—*Cons.*
—Bill cannot be debated on (312 – 1944).
—discussion of *amdts.* together (312 – 1919); (314 – 1099).
—of manuscript *amdts.* permissible (311 – 1287).
—on question for, restricted as on 3 *R.* (312 – 2108).

Debate.
—Bill(s) (*continued*):
—3 *R.*
—copious notes of Member (310 – 1749).
—debate must be limited to subject matter (309 – 1146); (310 – 750); (311 – 2093).
—irrelevant (310–758, 760, 1919, 1954); (314–753, 754).
—Member cannot move to report progress (314 – 1830).
—Members must refer to things which are actually in the Bill (311 – 2055).
*—on same day as Report stage (313 – 1180, 1181, 2107, 2111).
*—reasoned *amdts.* (314 – 718).
—Closure can be moved at any hour (315 – 786).
—Courts of Law, individual decision of, cannot be challenged (309 – 1739, 1740).
—essence of (314 – 1329).
—Finance.
—additional import duties, debate on several taken together, but with freedom for individual vote (307 – 1249).
—Appropriate Bill, legislation cannot be discussed on (315 – 1795, 1796, 1819).
—Bill, restriction of debate on (314 – 772, 785, 800, 824).
—Budget Resolution(s).
—discussion of several together (311 – 634).
—irrelevance (311 – 580).
—Consolidation Fund Bill, restriction of debate on (310 – 1152, 1153).
—Resolution on *Rep.*, restriction of debate on (311 – 769, 774 to 777).
—Supply, *Com.* of.
—argument irrelevant to Estimates and Notice Paper (310 – 333).
*—criticisms of cases in previous years not allowable (314 – 1564, 1565).
*—discussion in (315 – 79).
*—matters requiring legislation cannot be discussed in (312 – 636), etc.
—on *Rep.*
—debate must be confined to substance of Vote (310 – 647, 669).
—legislation cannot be discussed (309 – 2474); (310 – 717).

Debate.
—Supply on *Rep.* (*continued*):
—question of policy should be raised on Main Vote (309 – 400 to 402).
—Instruction, debate on motion for, to Committee (313 – 1516).
—interruptions (307 – 691, 692); (308 – 1712 to 1715); (309 – 1042); (311 – 2099); (314 – 1329); (315 – 295, 296, 492, 762).
—irrelevance in (310 – 1725, 2359).
*—length of (310 – 2610).
*—limitation of, position as to (310 – 1626, 1822).
—Lords, House of. *See* "Another Place" and Lords' Amendments.
—Member(s). *See* that Heading.
—motion(s).
—debate on several of same nature taken together, and question in each put separately after general debate (310 – 1650).
—irrelevant to (308 – 984); (314 – 119, 121, 122, 132, 133, 143).
—not way to conduct (314 – 1329, 1330).
—Parliamentary expressions.
—*allowed.*
—" a sober man would not have made that statement," treated with the contempt it deserves (315 – 587).
—" playing the fool " not necessarily " unparliamentary " (315 – 364).
—" tripe," expression inelegant, but exception cannot be taken (314 – 1070).
—*not allowed.*
—" humbug " (313 – 2157).
—" if the hyena opposite would give his attention " (310 – 923).
—" liar," " damned liar " (315 – 834, 837).
—" lie " (315 – 836); (313 – 2157).
—Member must not accuse another Member of making deliberate and conscious false statement (313 – 2156).
*—" organized obstruction " (309 – 923).
*—remarks quite out of order (307 – 1177).
—" some unprincipled blackguards " (312 – 1995).
—" swine," as referring to a Member (313 – 437, 438).
—" when a Minister . . . he is lying " (315 – 836, 837).

Debate (*continued*):

—personalities should be avoided (315 – 745, 761).
—" point of " (309 – 552).
—printed speeches, reading of (312 – 2454).
•—Provincial Police, conduct of, cannot be discussed in the House (314 – 1553 to 1559, 1566 to 1568).
—Questions asked in debate, limit to (310 – 1778).
—reading of speeches (307 – 385, 386).
—repetition (315 – 494).
—reply not allowed on Order of the Day, unless *unopposed* (310 – 1763, 1764).
—Royal Family, improper references to, by Member (307 – 239, 240).
—speeches.
•—reading of (307 – 385, 386).
—time taken in, by other than back-benchers (310 – 2610).
•—statement at end of (312 – 812, 838, 846).

Eleven o'clock Rule.

—suspension of (309 – 1577, 1578).

Estimates. *See* Finance.

Finance.

—Budget Resolutions put separately (311 – 634).
—debate. *See* that Heading.
•—Estimates, Supplementary (309 – 329, 330), etc.
—Financial Resolutions.
•—drafting of (312 – 381, 382).
•—practice first to debate generally upon, *amdts.* called at later stage (312 – 1029).
—Import Duties Orders.
•—discussion of, together, but voting upon separately (308 – 907).
•—taking of (308 – 861).
—" State maintenance " and " Government grants " (308 – 984).
—Supply, *Com.* of.
—*amdt.*, motion for, importance of word " that " (310 – 2090, 2091, 2129, 2140 to 2144, 2146, 2149 to 2152, 2453, 2454).
—motion for (310 – 2441).
—Order of Day, ballot for *amdt.* (310 – 2141).

Instructions. *See* Debate.

Lords, House of. *See* Debate (" Another Place ") and Lords Amendments.

Lords Amendment(s).

—" Another Place." *See* Debate.
—debate upon several drafting, dealt with together, but put separately (312 – 2371).
—" privilege."[1]
—does not necessarily mean an increased charge (315 – 1005).
—raised (315 – 948, 1001 to 1004, 1006, 1012).
—special entry ordered (315 – 1678); (312 – 2151); (315 – 1013).

Member(s).

—can only speak by leave of House (309 – 1513); (314 – 550).
—cannot:
—be on his feet when occupant of the Chair is standing (312 – 694).
*—in Consolidating Bills discuss any alteration in law on question for clause standing part of Bill (314 - 1832).
—interrupt unless Member in possession gives way (307 – 245); (308 – 175).
—speak after motion proposed from Chair (314 – 1830).
—count of (310 – 2230).
—copious notes of (310 – 1749).
—debate. *See* that Heading.
—has already spoken (313 – 521, 522, 2039).
—has exhausted right to speak (307 – 1184); (310 – 2299); (312 – 290); (313 – 2068).
—in possession of House.
—(312 – 693); (308 – 175); (308 – 1714, 1715); (307 – 245).
—gives way to whom he chooses[2] (315 – 307, 308).
—latitude allowed a, in maiden speech (308 – 1834).
—maiden speech, customary not to call a, to order (315 – 652).

[1] *i.e.*, " monetary."
[2] " It is generally the rule of this House that when a very old Member of the House gets up, even if a Minister feels that he ought not to give way, he does so " (Minister of Labour [315 H.C. Deb. 5. s. 308]).

Member(s) (*continued*):

—may approach Government Officials " under the Gallery " for information (309 – 2507).

—must:

—address Chair (309 – 552, 1276, 1480, 1492), etc.

—not make a question, during debate, into a speech (309 – 1084).

—resume seat when Speaker rises (312 – 707).

—wait until there is a question before the House (308 – 897).

—" named " (315 – 837, 842, 843).

*—no rule of House as to, sitting in any particular place (313 – 1202 to 1204).

*—not entitled to criticize Chair, and remark must be withdrawn (313 – 931).

—not to read his speech (307 – 385, 386).

*—objection to a, attempting to rise to point of order, merely to make point in debate (312 – 132).

—only entitled to speak once, except in *Com.* (310 – 1771, 1778).

—personally attacked, not to be interrupted (310 – 2361).

*—printed speeches, reading of, by (312 – 2454).

*—Private Members' Bills passed under 10 min. Rule in two consecutive Sessions, giving of facilities for 2 *R.* discussion, not proposed, and reasons (312 – 1826).

—privilege of, old Rule of House in regard to (313 – 209).

—reading of speeches (307 – 385, 386).

—selection of speakers (307 – 301, 302).

*—should not raise point of Order on which Ruling already given (314 – 2190).

*—should wait for Chairman to call for Order (315 – 74).

—speaking on Bill, who would derive advantage therefrom (308 – 657, 658).

—suspended for obstruction (315 – 842, 845, 846).

—two:

—cannot be on their feet at the same time (515 – 593).

—trying to speak at once (311 – 1374).

—who has been personally attacked and wishes to reply, should not be interrupted (310 – 2361).

Minister.

—absence of (315 – 1317).

—reply only with leave of the House (310 – 1763, 1764).

Motion(s).
—mover of, right of reply (309 – 418 to 422).
—*See also* Debate.

Order.
*—Member should wait for Chairman to call for (315 – 74).
—not a point of (307 – 197, 245); (314 – 224); (308 – 175); (309 – 1435); (313 – 206, 208); (316 – 128), etc.
—not a point of, but a point of debate (309 – 552).
*—objection to Member attempting to rise to, in order merely to make a point in debate (312 – 132).
—point of, must be addressed to Speaker (308 – 175).
—Police in lobby, reference to, on suspension of Member (315 – 841).
—rising to interject an argument, not a point of (307 – 245).
—sitting suspended owing to grave disorder (315 – 838).

Perth Corporation *Order* Confirmation Bill.
—Same procedure as on *Rep.* of an ordinary Bill (309 –1511, 1512).

Police—in Lobby, reference to (315 – 841).

Privilege.[1]
—complaint of, concerning number of Under-Secretaries of State. *See* Editorial, p. 19 hereof.
—newspaper libel on Members. *See* Article XII hereof.

Questions to Ministers.
*—a wider *Q.* (312 – 1834); (314 – 1366).
*—already answered in reply to another *Q.* (307 – 1761, 1762).
—answer that information desired as to purpose behind *Q.* (314 – 2053).
—automatically wiped off Order Paper can be put down again (315 – 1090).
—Business of the House, upon, must come before Motion for Adjournment (313 – 998).
*—cannot be answered (307 – 290).
—consideration of all rash assertions not possible (313 – 638).
—correspondence with Post Office instead of *Q.*, matter for Member and not for Speaker (310 – 2406).
—debate,
—developing (307 – 900); (316 – 31).
—not allowable (312 – 370); (313 – 1148); (314 – 1191).
—on every question not possible (311 – 1507).

[1] *i.e.*, non-monetary.

Questions to Ministers (*continued*):

—delegation of, to another Minister to answer (313 – 1428, 1429).
—discretion of Mr. Speaker as to allowing (309 – 43, 44).
—extra 10 minutes for, in consequence of Black Rod intervening, not allowed (310 – 2948).
—facts and not what Ministers think desired at *Q.* Time (314 – 1860).
—forthcoming debate on subject (313 – 1167).
—handed in, but not on Order Paper (308 – 1380).
—House not concerned with newspaper correspondents (314 – 2025).
—hypothetical (310 – 2425); (311 – 1500); (314 – 11, 2232).
—information being given, instead of being asked for (314 – 611).
—large number on Paper (307 – 1934); (310 – 2121, 2127); (312 – 1815); (313 – 1149); (315 – 1508).
—lot more on Order Paper (315 – 1306, 1696).
—matter cannot be further gone into (311 – 731).
—matter cannot be pursued indefinitely (314 – 228).
—Member:
  —cannot be helped to obtain more satisfactory answer (312 – 809).
  —has already put three, (315 – 1090).
  —had better put down *Q.* again (309 – 39).
  —not entitled to ask for any opinion from Ministers at *Q.* Time (309 – 1163).
  —not seen when asking *Q.*, without rising in seat (312 – 1174).
  —responsible for statements in (310 – 2402); (314 – 848).
—Minister's opinion on subject, hearing of, not desired (311 – 296).
—must be asked instead of making statement (307 – 896).
—next *Q.* (308 – 739), etc.
—notice not received (314 – 29).
*—notice required and *Q.* should be put down (307 – 266), etc.
—number:
  —done in three-quarters of an hour (311 – 1517).
  —of *Q.* on Paper should be considered (314 – 2206).
  —of, on Paper (315 – 434).
*—on subject, answered several times (312 – 978).
—on uncorroborated evidence, rules adequate to deal with matter (312 – 1202).
—opinion, matter of (310 – 1393).

Questions to Ministers (*continued*):
*—oral, limitation of number asked for by any Member in one week by arrangement made by Mr. Speaker in 1920 and position as to alteration (312 – 1629).
—passed (315 – 425).
—point of Order *re*, no complaint *re* (312 – 1836).
—postponement (315 – 1090).
—Press statements, *Q.* cannot be asked as to accuracy of (308 – 1762).
—private notice (308 – 1613, 1977, 1978); (309 – 43, 44).
—private notice, *Q.* already answered in reply to another *Q.* (307 – 1761, 1762).
—rather wide subject opened up by (315 – 243).
—should be put down (310 – 1041, 2127); (312 – 1801, 2173); (314 – 611).
—Supplementary,
—a different *Q.* (311 – 1703); (313 – 979); (315 – 443).
—adjective would not have been allowed if *Q.* had been submitted (307 – 1381).
—another *Q.* (310 – 2589); (313 – 976).
—beyond *Q.* on Paper (308 – 52).
—cannot be asked in form in which they would not be accepted as Questions to be put on Paper (312 – 813).
—different point raised (314 – 592).
—ground covered by other Questions (310 – 1232).
—information required cannot be given in answer to (308 – 1587).
—large number on subject (315 – 1514).
—Member may not ask Questions arising out of (311 – 310).
—must be concluded (314 – 228).
—no connection with Original (345 – 425).
—not arising (308 – 1580, 1582); (310 – 1060, 1220, 1794); (312 – 359, 1184); (315 – 1499); (316 – 33).
—not related to *Q.* on Paper (307 – 1383).
—nothing to do with original (310 – 2425).
*—not *Q.* on Paper (308 – 569); (312 – 472).
*—not the *Q.* (311 – 1673).
—number of, on point (314 – 2208).
—*Q.* on Paper (314 – 378).
—reading of (313 – 995); (314 – 610).
—separate *Q.* (309 – 1364).
—several, and Questions on the Paper must be got on with (314 – 1015).

Questions to Ministers.
—Supplementary (*continued*):
—to Foreign Secretary, better put on Paper (312 – 1175, 1176).
*—too far from *Q.* on Paper (312 – 543).
—too long (307 – 1551).
—too much time taken up by (313 – 1149).
*—very long (310 – 2132).
—removal from Order Paper (315 – 1509).
—replies.
—containing number of figures (311 – 1859, 1860).
—given (309–1534); (311–1858); (312–362); (315–1522).
—given to *Q.* on Paper (307 – 736); (314 – 391).
—House only entitled to get the answers it does get (309 – 2281) with (309 – 1582, 1583).
*—not the way to treat (313 – 1405).
—that information desired as to purpose behind *Q.* (314 – 2053).
—will be received if Rt. Hon. Gentleman given a chance (314 – 226).
—rights of Ministers in connection with (313 – 1405).
—same as put by Leader of Opposition on previous day (313 – 619).
*—theoretical (708 – 751).
—transfer from one Minister to another (312 – 2389; 315 – 242).
*—unintelligible *Q.* a reflection on everybody (310 – 219).
*—upon Business of House must come before motion for adjournment (313 – 988).
—when ruled out of order, the end of it (315 – 424).
—wide subject opened up by (315 – 243).

Royal Family.
—references to conduct of (307 – 239, 240).

Sitting Suspended.
—for 15 minutes owing to grave disorder (315 – 838).

Speaker, Mr.
—*amdt(s).*
—acceptance of (311 – 507).
—could not be called (311 – 1319).
—not selected (311 – 817); (314 – 1113).

Speaker, Mr.

amdt(s). (*continued*):

—selection of, by (310 – 907, 908, 913, 957); (311 – 1247); (314 – 305, 444).

—selection of, by, *amdt.* withdrawn on assurance that later *amdt.* will be called (313 – 2151, 2152).

—giving matters of opinion not business of Chair (307 – 1458).

—latitude allowed in debate on certain *amdt.*, by Deputy-Speaker, with concurrence of (310 – 2199).

—must not be accused of inviting Members to be out of order (314 – 785).

—no control over speakers, " the only control I have is in regard to catching the Speaker's eye " (315 – 669).

—reflection on conduct of, cannot be allowed (315 – 590).

—says—" *one of the most priceless possessions of this House is its reputation for fair play and I hope we shall do nothing to destroy it* " (315 – 595).

—selection of speakers (307 – 301, 302).

Supply. *See* Finance; *also* Debate.

XIV. 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] and IV[4] 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.[5] 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.

Agar, Herbert.—What is America? (Eyre and Spottiswoode. 12*s.* 6*d.*)

Baker, Philip Noel.—The Private Manufacture of Armaments. Vol. I. (Gollancz. 18*s.*)

Baker, Ray Stannard.—Woodrow Wilson. Vol. V. (Heinemann. 15*s.*)

Beaglehole, J. C.—New Zealand. A Short History. (Allen and Unwin. 3*s.* 6*d.*)

Bone, William A., and Himus, G. W.—Coal: Its Constitution and Uses. (Longmans. 25*s.*)

Buxton, Charles Roden.—The Alternative to War. (Allen and Unwin. 4*s.* 6*d.*)

[1] P. 112 *et seq.* [2] P. 132 *et seq.* [3] P. 127 *et seq.*
[4] P. 148 *et seq.* [5] *See* Article XI hereof.

The Cambridge History of the British Empire. Vol. VIII, South Africa, Rhodesia and the Protectorates. Editors: *A. P. Newton and E. A. Bemans; S.A. Adviser: Eric A. Walker.* (Cambridge University Press. 42*s.*)

Canadian Research Committee of the League for Social Reconstruction. Social Planning for Canada. (Nelson. 18*s.*)

Cassel, Gustav.—The Downfall of the Gold Standard. (Milford. 6*s.*)

Chamberlain, Joseph P.—Legislative Processes. (Appleton-Century. 16*s.*)

Coatman, J.—Magna Britannia. (Cape. 10*s.* 6*d.*)

Daniels, G. W. and Campion, H.—The Distribution of National Capital. (Manchester University Press. 3*s.* 6*d.*)

De Traz, Robert (Tr.).—The Spirit of Geneva. (Milford. 6*s.*)

Dodwell, H. H.—India: Part I to 1857. Part II, 1858-1936. (Arrowsmith. 3*s.* 6*d.* each.)

Duff, Douglas.—Palestine Picture. (Hodder and Stoughton. 12*s.* 6*d.*)

Duncan, W. G. K. (Ed.).—Trends in Australian Politics. (Angus and Robertson. 5*s.*)

Dunnage, J. A.—Transport and the Public. (Routledge. 6*s.*)

Dutt, R. Palme.—World Politics. 1918-1936. (Gollancz. 7*s.* 6*d.*)

Ellis, Havelock.—Studies in the Psychology of Sex. 4 vols. (John Lane. 84*s.*)

Einzig, Paul.—The Exchange Clearing System. (Macmillan. 8*s.* 6*d.*)

—Monetary Reform in Theory and Practice. (Kegan Paul. 12*s.* 6*d.*)

Fletcher, Basil A.—Education and Colonial Development. (Methuen. 5*s.*)

Foster, Henry A.—The Making of Modern Iraq. A Production of World Forces. (Williams and Norgate. 15*s.*)

Gangulee, N.—The Making of Federal India. (Nisbet. 12*s.* 6*d.*)

Garrigues, Charles Harris.—You're Paying for it! A Guide to Graft. (Funk and Wagnalls Co. 10*s.* 6*d.*)

Gibbons, John.—Abroad in Ireland. (Muller. 7*s.* 6*d.*)

Goblet, Y. M. (Tr.).—The Twilight of Treaties. (G. Bell. 7*s.* 6*d.*)

Gunther, John.—Inside Europe. (Hamish Hamilton. 12*s.* 6*d.*)

Gutierrez, Dr. Viriato.—The World Sugar Problem. (Norman Rodger. 6*s.*)

Hall, Sir A. Daniel.—The Improvement of Native Agriculture in Relation to Population and Public Health. (Milford. 10*s.* 6*d.*)

Hoffmann, Walter Gailey.—Pacific Relations. The Races and Natives of the Pacific Area and their Problems. (McGraw Hill. 7*s.* 6*d.*)

Howard, Louise E.—Labour in Agriculture. (Milford. 18*s.*)

Hughes, W. M.—Australia and War To-day. (Australian Book Co. 6*s.*)

Jerrold, Douglas.—They that take the Sword. (John Lane. 6*s.*)

Kahn, Dorothy Ruth.—Spring up, O Well. (Cape. 10*s.* 6*d.*)

Keith, A. Berriedale.—*See* p. 222.

Keynes, John Maynard.—The General Theory of Employment, Interest and Money. (Macmillan. 5s.)
Knight, Frank Heyneman.—The Ethics of Competition and Other Essays. (Allen and Unwin. 12s. 6d.)
Knowles, L. C. A. and C. M.—The Economic Development of the British Overseas Empire. Vol. III: The Union of South Africa. (Routledge. 10s. 6d.)

League of Nations. Bulletin of League of Nations: Teaching. No. 2. December, 1935. (Allen and Unwin. 2s. 6d.)
—The Migration of Workers. (International Labour Office No. 5.) (P. S. King. 6s. 6d.)
Lee, H. W.—(Part I.) } Social Democracy in Britain. (Social
Archbold, E.—(Part II.) } Democratic Federation.) (7s. 6d.)
Leftwich, Joseph.—What will happen to the Jews? (P. S. King. 7s. 6d.)
Leugyel, Emil.—Millions of Dictators. (Cassell. 7s. 6d.)

Machray, Robert.—The Poland of Pilsudski. (Allen and Unwin. 15s.)
MacInnes, C. M.—An Introduction to the Economic History of the British Empire. (Rimingtons. 7s. 6d.)
MacMunn, Lt.-Gen. Sir George.—The Indian States and Princes. (Jarrolds. 18s.)
Mair, L. P.—Native Policies in Africa. (Routledge. 12s. 6d.)
Marshall-Cornwall, Major-Gen. J. H.—Geographic Disarmament. (Milford. 12s. 6d.)
Mills, John.—A Fugue in Cycles and Bels. (Chapman and Hall. 13s. 6d.)
Moreland, W. H., and Chatterjee, Atul Chandra.—A Short History of India. (Longmans. 12s. 6d.)
Morrow, Ian F. S., and Sieveking, L. M.—The Peace Settlement in the German-Polish Borderlands. (Milford. 25s.)
Mowat, R. B.—Europe in Crisis. The Political Drama in Western Europe. (Arrowsmith. 3s. 6d.)
Mowat, R. B., and Others.—Problems of Peace: Anarchy or World Order. (Allen and Unwin. 7s. 6d.)

Newsholme, Sir Arthur.—The Last Thirty Years in Public Health. (Allen and Unwin. 15s.)
Notestein, Wallace, and Others.—Commons Debates, 1621. (7 vols.) (Milford. 147s.)

Radford, Arthur.—Patterns of Economic Activity. (Routledge. 12s. 6d.)
Reynolds, Lloyd G.—The British Immigrant: His Social and Economic Adjustment in Canada. (Milford. 12s. 6d.)
Richardson, J. Henry.—British Economic Foreign Policy. (Allen and Unwin. 10s. 6d.)
Roberts, Harry.—Euthanasia and Other Aspects of Life and Death. (Constable. 7s. 6d.)
Roe, F. Percy.—How is the Empire? (Pitman. 6s.)
Rowan-Robinson, General H.—Sanctions begone! A Plea and a Plan for the Reform of the League. (William Clowes. 7s. 6d.)
Russell, Bertrand.—Which way to Peace? (Michael Joseph. 7s. 6d.)

Sharp, Henry A.—Libraries and Librarianship in America. (Graftson. 7*s.* 6*d.*)

Shepardson, Whitney H., and Scroggs, William O.—The United States in World Affairs: An Account of American Foreign Relations. 1934-35. (Harpers. 12*s.* 6*d.*)

Slocombe, George.—The Dangerous Sea: The Mediterranean and Its Future. (Hutchinson. 10*s.* 6*d.*)

Smith, T. V.—The Promise of American Politics. (Cambridge University Press. 11*s.* 6*d.*)

Steed, Henry Wickham.—Vital Peace—A Study of Risks. (Constable. 10*s.*)

Stimson, Henry L.—The Far Eastern Crisis. (Harpers. London: Royal Institute of International Affairs. 15*s.*)

Stuart, E.—Modern Translation. (Milford. 6*s.*)

Thomas, H. B., and Scott, R.—Uganda. (Milford. 15*s.*)

Thurnwald, Richard C.—Black and White in East Africa. (Routledge. 21*s.*)

Toynbee, Arnold J.—Survey of International Affairs. 1934. (Milford. 28*s.*)

Usborne, Vice-Admiral C. V.—The Conquest of Morocco. (Stanley Paul. 18*s.*)

Utley, Freda.—Japan's Feet of Clay. (Faber and Faber. 15*s.*)

Wedgwood, Col. the Rt. Hon. J. C., and Holt, Anne D.—History of Parliament: Biographies of Members of the Commons House. 1439-1509. (H.M.S.O. 40*s.*)

Westermarck, Edward.—The Future of Marriage in Western Civilization. (Macmillan. 12*s.* 6*d.*)

Wickwar, W. Hardy, and Wickwar, K. Margaret.—The Social Services. A Historical Survey. (Cobden-Sanderson. 10*s.* 6*d.*)

Williamson, J. A.—The British Empire and Commonwealth. (Macmillan. 6*s.*)

Wilson, Francis Graham.—The Elements of Modern Politics. (McGraw-Hill. 24*s.*)

Zimmern, Alfred.—The League of Nations and the Rule of Law, 1918-1935. (Macmillan. 12*s.* 6*d.*)

XV. 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.

Volumes II,[2] III[3] and IV[4] gave lists of works published during the respective years. Below is given a list of books for such a Library, published last year:

Chalmers, Dalzell, and Hon. Cyril Asquith.—Outlines of Constitutional Law. 5th Ed. (Sweet and Maxwell. 15*s.*)

Evatt, Mr. Justice Herbert Vere.—The King and His Dominion Governors. (Milford. 15*s.*)

Keith, A. Berriedale.—Letters and Essays on Current Imperial and International Problems. 1935-36. (Milford. 8*s.* 6*d.*)

—The King and the Imperial Crown. (Longmans. 21*s.*)

—A Constitutional History of India. 1600-1935. (Methuen. 15*s.*

—The Governments of the British Empire. (Macmillan. 21*s.*)

Mansergh, Nicholas.—The Government of Northern Ireland. (Allen and Unwin. 12*s.* 6*d.*)

Rao, R. Shiva (Ed.).—Select Constitutions of the World. (Heffer. 15*s.*)

Terry, William H.—The Life and Times of John Lord Finch. (Simpkin Marshall. 18*s.*)

Wynes, W. A.—Legislative and Executive Powers in Australia. (Law Book Company of Australia, Sidney, N.S.W. 32*s.* 6*d.*)

[1] P. 123 *et seq.*
[2] P. 133.
[3] P. 137 *et seq.*
[4] P. 152 *et seq.*

Volume II[1] gave a list of works on Canadian constitutional subjects and Volume III,[2] a similar list in regard to the Commonwealth Constitution. Below is given a list of such works in regard to the Constitution of the Union of South Africa, recommended to readers of this JOURNAL wishing to study the Union Constitution.

Brand, Hon. R. H.—The Union of South Africa. (Oxford: Clarendon Press, 1909.)

Closer Union Society (Issued by).—

—The Framework of Union. 1908. (Cape Times Ltd., Cape Town.)

—The Government of South Africa. 1908. (Central News Agency Ltd., Cape Town.)

Eybers, G. W.—Select Constitutional Documents illustrating South African History, 1795-1910. 1918. (Routledge.)

Great Britain.—Imperial Parliamentary Papers *re* Federation of South African Colonies, etc. (Cmd. 3564, 1907; Cmd. 4525, 1909; Cmd. 4721, 1909.) (London, H.M.S.O.)

Hofmeyr, Hon. J. H.—South Africa. 1931. (E. Benn, Ltd.)

Kennedy, W. P. M., and H. J. Schlosberg.—The Law and Custom of the South African Constitution. London, 1935. (Oxford University Press.)

Nathan, M.—The South African Commonwealth. 1919. (Specialty Press of S.A., Ltd., Johannesburg.)

Newton, A. P.—The Unification of South Africa. 2 vols. 1924. (Longmans, Green.)

Selborne, Earl of, and Others.—Memorandum prepared by the Parliamentary Committee for Studying the Position of the S.A. Protectorates. London, 1934. Supplement to *Journal of African Society*, Vol. 33, No. 133, August, 1934.

Selborne, Earl of.—The Selborne Memorandum: Review of Mutual Relations of British South African Colonies in 1907. London, 1925. (Milford.)

South African National Convention.—Minutes of Proceedings of the S.A. National Convention held at Durban, Cape Town and Bloemfontein, October, 1908, to May, 1909. Cape Town, 1911. (Cape Times Ltd.)

South Africa Act.—The South Africa Act, 1909 (9 Ed. 7, ch. 9). " An Act to constitute the Union of South Africa." London, 1909. (H.M.S.O. and Govt. Printer, Pretoria.)

Walton, Sir Edgar.—The Inner History of the National Convention of South Africa. 1912. (T. M. Miller, Cape Town.)

Worsfold, W. B.—The Problem of South African Unity. 1900. (G. Allen.)

[1] P. 138. [2] P. 153.

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;

(*d*) it shall not, however, be an object of the Society, either through its JOURNAL or otherwise, to lay down any particular principle of Parliamentary procedure or constitutional law for general application; but rather to give, in the JOURNAL, information upon those subjects, which any Member, in his own particular part of the Empire, may make use of, or not, as he may think fit.

Subscription.—4. That the annual subscription of each Member be £1 (payable in advance).

List of Members.—5. That a list of Members (with official designation and address) be published in each issue of the JOURNAL.

Officers.—6. That two Members be appointed each year as Joint Presidents of the Society who shall hold office for one year from the date of publication of the annual issue of the JOURNAL, and that the Clerk of the House of Lords and the Clerk of the House of Commons be invited to hold these offices for the first year, of the Senate and House of Commons of the Dominion of

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.

Records of Service.—7. That in order better to acquaint the Members with one another and in view of the difficulty in calling a meeting of the Society on account of the great distances which separate Members, there be published in the JOURNAL from time to time, as space permits, a short biographical record (on the lines of a Who's Who) of every Member.

Journal.—8. That two copies of every publication of the JOURNAL be issued free to each Member. The cost of any additional copies supplied him or any other person to be at 20s. a copy, post free.

Honorary Secretary-Treasurer and Editor.—9. That the work of Secretary-Treasurer and Editor be honorary and that the office may be held either by an Officer or retired Officer of Parliament, being a Member of the Society.

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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Note.—*b.*=born; *ed.*=educated; *m.*=married; *s.*=son(s); *d.*=daughter(s); *c.*=children.

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.*

The Society has recently enrolled a number of new Members, Secretaries of Legislative Chambers in the Indian Provinces, but there has not been time to obtain their records of service for inclusion in this Volume.

Hamid, Sheik Abdul, B.A., LL.B.—Secretary to the Legislative Assembly, N.W.F.P.; *b.* at Peshawar, November 29, 1902; *ed.* at Government High School, Peshawar; graduated from the Edwardes College, Peshawar, in 1922; stood first in the Punjab University in Philosophy Pass and Honours and was awarded University Scholarship of merit; passed LL.B. examination of the Punjab University and stood first in the University in both the Law examinations and was awarded two Gold Medals for the same one each year; joined the N.W.F.P. Civil Service in 1925 through competitive examination; was awarded State Scholarship for studies in England in 1925 of which he did not avail himself; Secretary, N.W.F.P. Legislative Council from 1932 until the creation of the new Legislative Assembly.

Krishna R. V., Diwan Bahadur, Ayyar, B.A., M.L.—Secretary to the Madras Legislature, 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.

Williams, I.C.S., the Hon. Mr. A. de C.—Additional Joint Secretary to the Government of India, Legislative Department, and Secretary of the Council of State; *b.* 27th September, 1890; joined the Indian Civil Service, 29th March, 1915.

XVIII. STATEMENT OF ACCOUNT AND AUDITOR'S REPORT, 1935-1936

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 IV.

The Statement of Account covers a period from 23rd April, 1936, to 31st March, 1937. 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 V have been excluded from the Revenue and Expenditure Account.

CECIL KILPIN,
Chartered Accountant (S.A.).

SUN BUILDING,
CAPE TOWN,
7th April, 1937.

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

STATEMENT OF ACCOUNT FOR THE PERIOD FROM 23RD APRIL, 1936, TO 31ST MARCH, 1937

REVENUE.

	£ s. d.	£ s. d.
Balance as at 23rd April, 1936, being excess of Income over Expenditure at that date		1 5 2
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	
Nova Scotia	10 0 0	
		55 0 0
Subscriptions:		
Volume I	1 0 0	
Volume II	1 0 0	
Volume III	2 0 0	
Volume IV	56 14 6	
		60 14 6
Sales:		
Volume I	8 17 6	
Volume II	10 10 0	
Volume III	12 5 0	
Volume IV	20 18 0	
		52 10 6
		£169 10 2

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PARLIAMENT OF THE UNION OF SOUTH AFRICA.

EXPENDITURE.

	£ s. d.	£ s. d.
Volume IV for 1935:		
Postage and Telephone	6 14 3	
Bank Charges	1 19 0	
Cables and Telegraphic Address	3 5 7	
Publications and Newspapers	13 3 8	
Typing and Clerical Assistance	39 14 4	
Roneoing	5 0 0	
Printing and Publishing Volume IV	67 8 3	
Stationery	10 6 11	
Travelling Expenses and Carriage	13 12 7	
Registration Fee—Stationers' Hall	10 2	
Gratuities to Messengers	3 0 0	
Audit Fee	3 3 0	
		167 17 9
Cash Balance, being Excess of Receipts over Expenditure		1 12 5
		£169 10 2

Audited and certified correct:

CECIL KILPIN,
Chartered Accountant (S.A.),
Sun Building,
Cape Town,
South Africa.

7th April, 19—

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