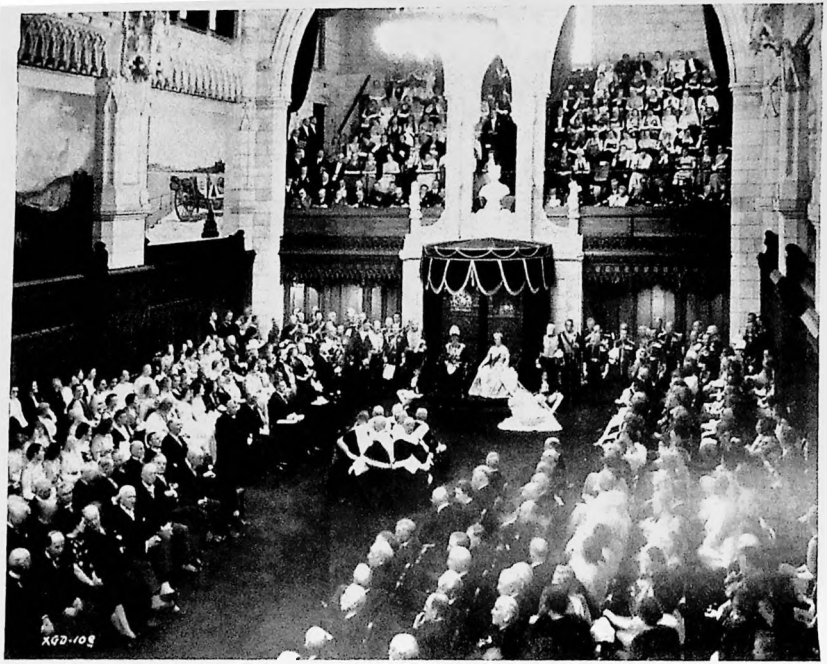

THEIR MAJESTIES IN THE SENATE HOUSE AT OTTAWA

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. VII

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1939
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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							*	*	*	*	*	*
NEW ZEALAND						*	*	*	*	*		
UNION OF SOUTH AFRICA ..	*	*	*	*	*	*	*					
UNION PROVINCIAL:												
Cape of Good Hope		*			*				*			
Natal			*	*	*	*						
Transvaal			*	*	*							
Orange Free State			*				*					
SOUTH WEST AFRICA			*	*	*							
IRELAND (EIRE)	*	*	*	*	*	*	*			*	*	*
SOUTHERN RHODESIA			*	*	*					*		
INDIAN CENTRAL	*	*	*	*				*	*	*		
INDIAN PROVINCIAL:												
Madras	*	*	*					*				
Bombay		*	*			*			*	*		
Bengal				*	*			*	*			
United Provinces	*	*	*	*				*		*	*	*
The Punjab		*	*				*		*		*	
Bihar	*	*	*					*	*			
Central Provinces and Berar ..	*	*	*					*				
Assam		*	*	*					*	*		
North-West Frontier ..			*							*	*	
Orissa		*	*					*	*			
Sind		*	*					*	*			
BURMA		*	*					*	*			
BERMUDA												
CEYLON	*	*		*	*	*	*	*	*	*	*	*
BRITISH GUIANA				*	*	*				*	*	*
JAMAICA												
STRAITS SETTLEMENTS												

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

VOL. VII. FOR 1938

I. EDITORIAL

Introduction to Volume VII.—The year under review in this Volume has been particularly fruitful in the main subjects coming within the scope of the Society's investigations. It is therefore regretted that the large amount of matter dealing with standing orders and privilege, etc., which it was remarked in our last issue[1] could not be published for want of space, has still to be held over for future Volumes, but it is hoped definitely to make an inroad upon this in Volume VIII, especially as some of this accumulation had already been prepared for inclusion in the present issue. We are glad, however, to report that all the other subjects which have been dealt with in the JOURNAL have been closely followed up from year to year, so that it only now remains to catch up back work on those above referred to.

The happy precedent set by His Majesty the King and Her Majesty the Queen in being present in the King's Parliament at Ottawa has undoubtedly been a red-letter day in the annals of the Parliament of Canada, and although the report of such visit properly belongs to Volume VIII, in which the year 1939 falls to be reviewed, it was felt that the details in connection therewith should be made known to other Oversea Parliaments without delay in the event of such precedent being valuable. It was fitting too that the first such

[1] *See* JOURNAL, Vol. VI, 7.

visit to the Dominions by a reigning Sovereign should have been to that in British North America.

During 1938, the principal questions coming within the range of our inquiries, which have engaged the attention of Empire Parliaments, have been—in the United Kingdom, the Sandys case of privilege, the Speaker's Seat, the quotation of speeches in "another place," and the position of Ministers in several respects; in Canada, the procedure upon the Royal visit and the validity of certain Provincial Statutes; in Australia, the attempts, both in the Commonwealth and in the Parliament of the States, to keep Parliament in closer touch with that growing problem, "delegated legislation," Members' allowances and disqualifications, and the basis of representation of the States in the Commonwealth House of Representatives; in British India, the power of the Governor-General in Council and the distribution of the legislative power and certain Ministerial difficulties in connection with the operation of Provincial autonomy; in the Indian States, the introduction of constitutional reform; in Burma, the exercise by the Governor of his emergency powers under the new Constitution; and in Ceylon, further difficulties in the working of the Constitution.

Pensions for M.P.s at Westminster, although its consideration by Parliament continued into 1938, was dealt with in Volume VI; its finality remains to be included in Volume VIII for 1939, when some account may also be given of the movements in that direction in the Union House of Assembly. That Volume, among other subjects, will also deal with the Report of the Dominion-Provincial Relations Royal Commission in Canada[1]; the Report pursuant to a Resolution of the Senate to its Speaker by the Parliamentary Counsel relating to the British North America Act, 1867; the Rhodesia-Nyasaland Royal Commission; and the new Constitution for Malta.

Certain publications are reviewed in this issue, but we would request publishers to note that only those books are acceptable for review which have close relation to the objects of this Society.[2]

Acknowledgments to Contributors.—In the last Volume, owing to force of circumstances in many Parliaments of the Empire, most of the matter had to be supplied by the editor. In this Volume, happily, we have pleasure in acknowledging

[1] *See* JOURNAL, Vol. VI, 194-199.

[2] *See* Rule 3.

contributions from Mr. L. Clare Moyer, D.S.O., K.C., B.A., the new Clerk of Parliaments at Ottawa, Dr. Arthur Beauchesne, C.M.G., K.C., LL.D., etc., the Clerk of the Canadian House of Commons, Mr. J. E. Edwards, the new Clerk-Assistant of the Commonwealth Senate, and Mr. D. H. Visser, J.P., Clerk of the Union House of Assembly.

In regard to those who are not members of our Society, our thanks are due to the Clerk of the House of Commons, Sir Gilbert Campion, K.C.B., for his kind co-operation by the contribution of an article by Mr. L. A. Abraham, Assistant Clerk on the staff of the Clerk of the House of Commons, whose work as Clerk to the respective Select Committees on the Official Secrets Acts has brought him in such close touch with what is known as "the Sandys case." We are equally grateful to Mr. Kenneth Binns, the Librarian of the Commonwealth Parliament, for his valuable and useful contribution, for it is the Parliamentary library to which Members look for much of their ammunition.

We also acknowledge with equally grateful thanks the splendid co-operation which is being accorded the Society and its JOURNAL by our members throughout the Empire. So much of our work depends upon the regular and prompt supply of the required documents, facts and references by those best qualified to do so. Particularly, however, should we appreciate being allowed to mention the ready and willing assistance rendered by the Librarian and staff of the Parliament at Cape Town, where much of our reference work is carried out.

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

The outstanding subjects abovementioned include the

following: Cases of Privilege, Tampering with Witnesses, Suspension and important alterations in Standing Orders, Pecuniary interest of M.P.s, the Crown's Powers under Oversea Constitutions in the amendment of Bills, Approval and Resignation of the Speaker, Parliamentary Expressions *allowed* or *disallowed*, the Address-in-Reply, and Censure of the Chair. The Tables of Precedence in the British Empire have now been prepared, but they are too long for inclusion in the JOURNAL at any time. The question will therefore be considered of publishing these Tables separately, upon which members of the Society will be consulted when the Annual Report of the Secretary-Treasurer and Editor in respect of this Volume is sent out.

A. E. Blount, C.M.G.—Mr. Blount retired from the position of Clerk of the Senate and Clerk of the Parliaments at Ottawa in December, 1938, after a total service of nearly 50 years, the first 6 and the last 21 of which were in the service of the Senate, during the former period as a junior official, and during the latter as Clerk of the Parliaments. In the intervening years Mr. Blount was, from 1896 to 1901, private secretary to the Rt. Hon. Sir Charles Tupper, Bart., Secretary of State, and during 1901-17, in a similar office to the Rt. Hon. Sir Robert L. Borden, first when Leader of the Conservative party and also from 1911 to 1917, when he was Prime Minister, in which year Mr. Blount returned to the Senate as Clerk of the Parliaments. The Companionship of the Order of St. Michael and St. George was conferred upon Mr. Blount in 1918. He had 4 predecessors in the Clerkship since Confederation in 1867—namely, John Fennings Taylor, Robert Le Moine, Edward J. Langevin, and S. E. St. Onge Chapleau.

On January 17, 1939,[1] the following Motion was moved in the Senate:

> That, in view of the long and faithful services of Mr. Austin Ernest Blount, C.M.G., former Clerk of the Senate, he be continued an honorary officer of this House and be allowed the entrée of the Senate and a seat at the Table on occasions of ceremony.

The Hon. Raoul Dandurand, LL.D., K.C. (a former Speaker of the Senate[2] and later Minister of State,[3] and now again the Minister representing the Government in that House), in

[1] LXXV, Can. Sen. Deb. No. 2, 10, 11.
[2] 1905-1909.
[3] 1921-1930, and since 1935.

moving the Motion, remarked that having been closely interested in the procedure of the Senate he was able to judge of the value of the services which Mr. Blount had rendered, and he never saw a more zealous and devoted official of Parliament. Senator Dandurand was quite sure that what he stated could be repeated by all the Members of the Chamber who had called upon Mr. Blount for information or advice. Mr. Blount had retired because of the regulations governing the Senate's personnel, but he had said that if the new Clerk should ever need his services he would be glad to be of service. Under those circumstances, continued the Minister, he felt that they should continue what had since 1867 been the custom and tradition of the House when its Clerks had left under the conditions governing the departure of Mr. Blount.

The Rt. Hon. Arthur Meigen (a former Prime Minister),[1] in supporting the mover of the Motion, remarked that he had never known a more efficient private secretary than Mr. Blount, nor a harder worker, nor even a man who could locate information more quickly. While he was Clerk of that House, the Senator said that he had had occasion to differ from Mr. Blount two or three times on matters of procedure, but in each case Mr. Blount was right. The Senator remarked that conferring the same honour upon Mr. Blount as upon Mr. Chapleau was well deserved. The Motion was then agreed to unanimously. Mr. Blount was also the recipient of a presentation from the Senate Staff.

On December 27, 1938, the Governor-General received Mr. Blount (Clerk of the Senate and Clerk of the Parliaments) at Government House, Ottawa, on his retirement.

As a member of this Society since its foundation, Mr. Blount was a most ardent, prompt and faithful colleague as well as a valued correspondent. His contributions were always reliable and thorough, a very important factor in connection with the production of the JOURNAL.

Mr. Blount will take with him in his retirement the good wishes of his colleagues on the Parliamentary staff, and of all his many friends throughout the Dominion. We too ask to be allowed to share those good feelings and to wish Mr. Blount all the best of good health and happiness in his retirement. Should his travels take him to the Cape of Good Hope, a warm welcome will await him.

G. H. Monahan, C.M.G., J.P.—Mr. Monahan retired

[1] 1920-1921 and 1926.

from the Clerkship of the Commonwealth Senate on December 31, after a total service of almost 49 years.[1] He became Clerk of the Senate in 1920, and four years later his long and honourable service both in New South Wales and at Canberra was recognized by His Majesty when a C.M.G. was conferred upon him. He also held the position of hon. secretary of the Empire Parliamentary Association (Commonwealth Branch) from 1924 to the date of his retirement.

When informing the Senate of retirement of Mr. Monahan, the President of the Senate (Senator the Hon. J. B. Hayes, C.M.G.) referred to the zeal and ability displayed by him in the discharge of his duties, to his long and honourable association with the public service of the Commonwealth, and expressed the wish that he would have a long and happy future life in which to enjoy his retirement. A Resolution[2] of appreciation was then moved by the Vice-President of the Executive Council of the Commonwealth (Senator McLeay), supported by the Leader of the Opposition in the Senate (Senator Collings).

Mr. President then referred to Mr. Monahan as a most zealous officer and one whom the Commonwealth could ill afford to lose. He had outstanding ability and a remarkable knowledge of Parliamentary procedure.

During the debate the Vice-President of the Executive Council read a letter from the Prime Minister (Rt. Hon. J. A. Lyons, C.H.) regretting his inability to be present, and saying that the courtesy and efficiency which had always characterized Mr. Monahan's service had been patent to him, and that as Leader of the Government he wished to express his keen appreciation of Mr. Monahan's services. The Vice-President referred also to Mr. Monahan as " one whom we have come to regard as a wise counsellor in matters appertaining to the conduct of business in this chamber." Other prominent Senators also paid tribute to Mr. Monahan. The Chairman of Committees (Senator J. McLachlan) said he was reminded of a Speaker in a State Parliament who in delivering a speech on his retirement from the Chair said that he had only erred once, and that was when he had not done as he had been directed by the Clerk; adding that any presiding officer could have said the same of Mr. Monahan. Upon the conclusion of the debate, Mr. President stated that Mr. Monahan had requested him to thank hon. Senators for their kind remarks, " tributes," observed Mr. President, " which I may add were

[1] For Record of Service *see* JOURNAL, Vol. I, 134. [2] 51 Sen. J.

well deserved." The Senate presented Mr. Monahan with a specially printed and beautifully bound copy of the extracts from the Senate Journals and Debates reporting the proceedings upon his retirement.

Mr. Monahan was popular with the Members of both Houses of the Parliament at Canberra, for the Members of the House of Representatives also came into contact with him in connection with his Empire Parliamentary Association and Joint House Committee work. In 1935 he accompanied the Commonwealth Parliament Delegation to the United Kingdom on the occasion of King George V's Jubilee, where the delegates from other parts of the Empire had the opportunity of appreciating Mr. Monahan's charm of manner.

As a member of this Society, Mr. Monahan was a tower of strength, and could always be relied upon to furnish the information necessary to keeping in close touch with events, and what is more, one could always implicitly rely upon the accuracy of any matter or information received from him, which also invariably came with promptitude.

Mr. Monahan 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 and especially from his home State, New South Wales, of which he was very proud. We too ask to be allowed to share those good feelings and to wish Mr. and Mrs. Monahan every enjoyment on their travels before settling down again in their home at Canberra, where Mr. Monahan will be able to enjoy the company of one who was his "opposite number"[1] at Canberra for so many years, and who retired last year.

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

C.M.G.—T. D. H. Hall, LL.B.,[2] *Clerk of the House of Representatives of New Zealand.*

C.I.E.—Diwan Bahadur C. Govindan Nair, B.A., M.L.,[2] *Secretary of the Legislative Assembly of Orissa and Judicial Secretary and Legal Remembrancer of that Province.*

[1] E. W. Parkes, C.M.G., formerly Clerk of the Commonwealth House of Representatives.

[2] Barrister-at-Law.

House of Lords (Ministers in both Houses).[1]—On July 6, 1938,[2] the Earl of Mansfield had given notice that he would move to resolve

> that His Majesty's Government should investigate the question of the advantages that would ensue from Cabinet Ministers being able to address either House of Parliament.

The noble Earl said that for some time past it had appeared to a number of people, both inside and outside Parliament, that a great measure of elasticity in their arrangements, whereby Ministers of the Crown, and particularly Cabinet Ministers, might be enabled to address the other legislative chamber of which they were not members, would be an advantage to the general conduct of affairs. There was a tendency in certain quarters to assume that no really great office should be held by a member of their Lordships' House, simply because, in these circumstances, the holder of such an office was not able to be cross-examined at length by the elected representatives of the people. At the present time there was no constitutional reason why the Prime Minister should not be a Peer, but it would be a matter of considerable difficulty to get general consent for his being chosen to such a position. It has also been shown that other high offices were subject, in lesser degree, to the same apparent disqualification, in the minds of certain people. That a Cabinet Minister should have to give up his office simply because of his succession to a Peerage did not seem to be in the national interest. It would therefore be worth while to hold an investigation to see whether some system could not be devised whereby Members of either House could speak in the other House if and when occasion demanded. The way in which such a proposal could be put into effect might be that on the Order Paper of " another place " a Motion be put down:

> That this House requests the presence of the Secretary of State for X during the debate on the Y Bill to-day,

and that some similar Motion *mutatis mutandis* be put down upon the Order Paper of their Lordships' House.

Lord Strabolgi remarked that their Lordships had a certain ground for grievance in that, for example, there was no Defence Minister in their Lordships' House. Yet they had a good many noblemen of long and eminent service in the Defence Forces, and with great knowledge and experience, who were admirably

[1] *See also* JOURNAL, Vols. I, 76-79; (India), IV, 84; (Ireland), V, 160.
[2] 110 H.L. Deb. 5. s. 579-611.

equipped to raise direct, with one or other of the Ministers of Defence, matters of which they had such valuable knowledge. On the other hand, the other place had a grievance in that the most important portfolio was held by a Member of their Lordships' House—namely, that of education.

They had there many eminent agriculturists and many Peers who took a great and personal interest in farming. They would therefore like to have the Prime Minister or Minister of Agriculture in the House of Lords. The system of a Minister being able to address both Chambers worked well in France. The noble mover, however, did not say from where the Minister from another place would address them. It was presumed he would stand at the Bar. He did not see any difficulty about that. If the Speaker of the Commons could stand there to hear a Royal Commission read and for other business, he did not see why a Cabinet Minister should not also stand there. The alternative would be on the steps of the Throne, where a Privy Councillor is entitled to sit during sittings of the House, but then technically he would be outside the House. He believed that the Judges of the High Court had the right to sit on the Woolsack, but from where would they address the House? In regard to women Ministers, so far, the House of Lords had not even admitted Peeresses in their own right. A Member of their Lordships' House who came there voluntarily had no complaint if he suffered under the disabilities of being a Member of that House, but the Peer who inherited got the worst of both worlds. He might be debarred from seeking office because, through no fault of his own, it was against public policy that because of the accidents of birth a man should be precluded from holding an office for which he was otherwise well fitted.

The Marquess of Crewe remarked that his first objection to the Motion was the extra burden it would be likely to throw upon Ministers. The other objection was the disappointing effect upon Parliamentary Under-Secretaries in not being allowed to stand on their own legs in another place. The speaker here quoted a number of instances of the value of such apprenticeship. The real difficulty and objection to the proposal was the total difference which existed between the practice and atmosphere of the two Houses. The noble Marquess then observed that even the Ministers were not altogether enamoured of the practice in France, which also included their having to appear before Standing Committees of the Senate. What the noble Marquess was not quite clear

about was, What exactly was it proposed should happen? If the Minister from another place had to make statements he did not see much advantage in the practice, but if the Minister came to take part in debate and amendments in Committee on a Bill, he would then have to sit among his colleagues. He could not help feeling that their Lordships' House would be heavy losers on the transaction.

The Marquess of Londonderry quoted the instance of a government in power with a small majority, and that when the Division Bell rang in another place the Minister, in the middle of a Second reading speech, might have to adjourn the House to go and vote. Their Lordships were aware that there was a quota[1] by which a certain number of Secretaries of State had to be in the Lords, and he believed the quota also extended to Under-Secretaries. He would have thought it quite easy to have allocated those offices to both Houses in in such a way as would fit in with the desires of those Houses.

Lord Rankeillour said that he was for 26 years a Member of the Commons, and continually adjournments of debate were moved on the ground that the Minister, himself a Member of the Commons, was not there and that he left the reply to his Under-Secretary, or perhaps to a junior Lord of the Treasury. Continuing, the noble Lord observed that every time a burning subject was under discussion and the Minister was not able to be in his place because he belonged to another House, there would be, in the other place, somewhat ribald cries of "Send for him." Then a Member of the Opposition would move that the debate be adjourned, and n practice the Minister would have to go from one House to he other when summoned. The noble Lord submitted that that would be absolutely crushing, not only to the physique of the Minister but to the ordinary despatch of business. It would be exceedingly difficult for a Member of either House, especially if he had spent considerable time in one House, to adapt himself to the procedure and still more to the atmosphere of the other House. Referring to the French system, the noble Lord remarked that quite early in the War he remembered Sir Austen Chamberlain telling him that he had been in consultation with one or two French Ministers, and that at the very crisis of the War they were summoned to attend Committees when they ought to have been straining every nerve in the work of their departments. To answer cross-examination in the Committees was their chief task. The speaker

[1] *See* JOURNAL, Vol. VI, 13.

then quoted from Bodley on the working of the French Constitution, who said:

> We have seen that in the more centralized departments of the government the power (*Executive*) is exercised less by its titular head than by Deputies or Senators, who have acquired an irregular authority in controlling the bureaucratic machine outside their corporate capacity as Members of Parliament.

That was a thing they should avoid with all their power, and the suggestion, if adopted, would be the thin end of the wedge.

Lord Balfour of Burleigh remarked upon the possibility that the day might come when the most suitable person to hold the office of Prime Minister would be a Member of their Lordships' House. They lived in times of great crises, and it was not at all difficult to foresee circumstances when the selection of the right man as Prime Minister might be a deciding factor in the fate of the country. It was an essential thing that a change in their unwritten Constitution should be brought about by which a Member of the Lords, if he were the right man, should be able to be Prime Minister.

The Chairman of Committees (the Rt. Hon. the Earl of Onslow, G.B.E.) observed that in their House they negatived the Committee stage of the Finance Bill, but they were not required to do so. They could have a Committee stage and under the proposal the Chancellor of the Exchequer might be severely cross-examined in every clause. The speaker thought the proposal would lead to the gravest difficulties. Their membership consisted of two categories. First there were those who were not regular attendants but who were greatly eminent in the professions which they adorned, and who came there to give their expert views upon any subject which might be their own. They had probably in their House experts in more professions and callings than any other Parliamentary institution in the world. One could not however expect such men to do the ordinary day-to-day work of the House.

Lord Rennell said that in most of the countries of the world in which he had lived the faculty existed for Ministers to address either House, and there certainly had been occasions where the acceptance or rejection of a Government Bill had hung in the balance, and where the fact that the responsible Minister, or at any rate the Prime Minister, had this faculty, was able to turn the scale. The faculty of addressing both Houses on exceptional occasions, continued the speaker, should be restricted to the Prime Minister and the Secretaries of

State, and of those he would be inclined to include only one Secretary of State for Foreign Affairs.

The Secretary of State for Foreign Affairs (the Rt. Hon. Viscount Halifax, K.G., etc.) believed that the main countries where the practice of Ministers having the right to speak in both Houses prevailed were in Eire, the Union of South Africa and Northern Ireland. The Minister observed that it would not only be a question of debates, but, if the practice were adopted, one would find Ministers with offices that happened to be in the public eye, not only pressed to take part in debates, but also to be there to answer Questions. It might interest their Lordships, said the speaker, if he were to tell them the degree of attention accorded to the Foreign Office during the last few months in Parliament. In their Lordships' House, since the beginning of the year, there had been 8 debates on foreign affairs. That was very moderate. In another place there had been 24 such debates, and of the Foreign Office 1,010 Questions, not counting Supplementary Questions, had been asked. The conclusion the Minister drew was, that it certainly was not an argument for the Foreign Minister being expected to be in both Houses. The speaker could not help feeling that, on the whole, he would rather see them preferring to remain themselves than trying to imitate someone whom they were not naturally. Then he thought that each House of Parliament had a collective and very distinctive individuality of its own, quite irrespective of party ties. The speaker did not believe that to add to the Minister's burden would add to efficiency.

In his reply, the mover added that he believed that the matter in future would become of even greater importance than that which some of their Lordships granted it at the present time. The Motion was then, by leave, withdrawn.

House of Lords (Judicial Business).—On July 13, 1938,[1] Lord Newton asked His Majesty's Government

> whether there are any Constitutional objections to conducting the judicial business of the House in one of the Committee Rooms, thereby enabling the House to meet at an earlier hour for legislative business; and whether they will appoint a Committee to consider the matter.

The noble Lord said that he hoped that it would not be thought that in putting the Question on the Paper he was wanting in respect for the Law Lords, and that he was meditating an attack upon the Constitution. The speaker observed

[1] 110 H.L. Deb. 5. s. 792-820.

that anyone who had experience of the House of Lords must have realized that business flowed with a very unequal current; usually they had very little to do and at other times they were overwhelmed with business. When he was a Member 40 years ago the House sat on 4 days a week: Mondays, Tuesdays, Thursdays and Fridays, and so far as he remembered there was never any objection to sitting after dinner. At the present time they sat 3 days a week, and there were only about 8 hours available in the week for what he would call effective debates, as against ineffective debates. Debates do not usually begin before 4.30, and if they were continued to 6.30 or 7 o'clock, everybody who rose did so with abject apologies. The attendance of Members gradually dwindled and sometimes reached perfectly derisory proportions. In former days the Press used solemnly to report every debate which took place in Parliament. If their Lordships studied the newspapers they would find that many of them practically ignored Parliament altogether. The speaker remarked that he had constantly heard admirable speeches made by noble Lords, not a word of which had appeared in the newspapers. It was due largely to the fact that they met too late and the reason they did not meet before 4.30 was that the Law Lords had the joint use of the Chamber. He would have thought that it might have been possible to have arrangements by which the Chamber could be vacated at an early hour and they could obtain possession of it if necessary. The noble Lord did not suggest that it would be necessary for them to meet at 3 o'clock, but it did seem that 4.30 was very late at which to start important debates, and yet that was what they did every day except Wednesday, when the Law Lords did not sit.

The alternative which he suggested was simple. There were several Committee rooms in the House, admirably adapted for the purpose. They were constructed to serve as Courts, whereas their Chamber was not constructed to serve as a Court, but to serve as a place in which to hold debates.

The Marquess of Crewe remarked that if a distinguished foreigner paying a visit to England were told on no account to miss visiting their Lordships' House sitting as the Final Court of Appeal in the country, and if he attended a sitting of their House he might go away with a certain feeling of disappointment.

The Chairman of Committees (the Rt. Hon. the Earl of Onslow, G.B.E.) referred to the interference which any altera-

tion in their time of meeting might make in the business of their Private Bill Committees. That business was as important as the other business done in their Lordships' House, and he felt certain that none of their Lordships would wish to interfere with the efficiency of those tribunals. He did not think that meeting at 3 o'clock would matter very much at that time of year because Committees were not sitting, but from the beginning of March to the end of May or the middle of June there were sometimes several Committees sitting at once, and five Peers were occupied in each Committee; a very considerable proportion of the regular attendants in their Lordships' House gave their time and great abilities to the consideration of Private Bills in Committee. Were the House to sit at 3 o'clock it would hardly be worth while for a Private Bill Committee to reassemble at 2.30 and sit until 3 o'clock. These Committees met at 11 o'clock and sat until 1.30. They then adjourned until 2.30 and sat until 4 o'clock. If the House met at 3 o'clock three afternoons might be lost every week which would mean considerable expense and inconvenience to the parties and the local authorities who came there to argue their cases before such Committees.

The Rt. Hon. Lord Atkin (a Lord of Appeal), in voicing the opinion of his colleagues who sat as Lords of Appeal in Ordinary, reminded their Lordships of the position of the House of Lords in judicial matters. From time immemorial it had been the highest Court of Law in the country. It exercised original jurisdiction over its own members and it sat as a House of Lords. It exercised jurisdiction, in the past very important jurisdiction—and though it was now said to be obsolete he was not so sure of that—in matters of impeachment. It also exercised the power of being the Supreme Court of Appeal in the country. In the early days all the Members of the House of Lords felt qualified to take part in deciding points of law, and there were cases in the books in which 17 Peers were on one side and 23 on the other, including some Bishops, but for a long time the lay Peers had taken no part in a decision, and advice was tendered to them nearly 80 years ago, from which time no lay Peer had taken part in discussions on judicial matters. In 1873 a Bill was passed which deprived the House of Lords altogether of its power to hear appeals, but sections of the Act of 1873[1] did not come into force—wiser counsels prevailed. In 1876 an Act[2] was passed restoring to the House of Lords its power

[1] 36 and 37 Vict., c. 66. [2] 39 and 40 Vict., c. 59.

to hear appeals. It created the right of appeal and the right of appeal was to the House of Lords and to no other body. The view that civil appeals could be conducted by the Law Lords as though they were a Committee of their Lordships' House was quite untenable. It was impossible for any appeal to be heard or to have any validity unless heard by the House of Lords. That House could not sit in two places at the same time and could not perform two different functions at the same time. There was only one House of Lords and it could only do one thing at a time. Therefore the suggestion that you could have the Law Lords sitting at one time and the House of Lords sitting here at the same time was one quite impossible in law. If a change were desired, it would have to be done by Act of Parliament. The dignity and grandeur of the House of Lords sitting as the Court of Appeal was not derived from its external surroundings, but from its long history and the position which the House of Lords has held in the legal history of the country. The noble Lord also pointed out that the pressure upon the House generally came in July, at the end of the Session. In that month, as a general rule, the House did not sit for judicial business as the services of the Law Lords were required at the Privy Council. There was no such inconvenience as was suggested, sufficient to justify what the noble Lord could not help thinking would be a very dangerous innovation, to try to turn the House of Lords in its judicial capacity into a Committee or separate Court, or a separate body.

Lord Rankeillour remarked that there was grave inconvenience in the present practice, not only to their Lordships' House but to counsel and to the parties herded together in that small place,[1] the counsel right up against one another, the parties in the greatest inconvenience with scant opportunity for making notes or for consultation. The noble Lord, continuing, suggested that the Law Lords should cease as regards their judicial functions and have their life and being in an enlarged and glorified Judicial Committee of the Privy Council.

Lord Snell urged that the real way in which to make the debates of the House more alive, to ensure an increased interest, to bring a large attendance of noble Lords to its sittings, would be to have an increased Opposition. The whole temper of their Lordships' House would then be altered, interest in it would be increased, and it would quickly be proved that the question of hours was of no importance at all.

[1] *i.e.*, situated within the House of Lords Chamber.

The Rt. Hon. Lord Harlech, speaking as an ex-First Commissioner of Works, believed that as long as certain of the furniture in the House of Lords was practically irremovable, and as long as the House was designed in its present lay-out, it was quite impossible to make the judicial sittings of the House either dignified or convenient. The speaker was convinced that a Committee of Inquiry was desirable, if only to go into the question. The noble Lord was convinced that sooner or later it would be necessary to define in words the distinction between the judicial functions of the House and its functions as a whole, just as the practice of the Committee of the Privy Council, which was known as the Cabinet, was clearly defined and known, because it was called the Cabinet, as distinct from the Judicial Committee of the Privy Council. In the early days the whole of the King's Justices were in the Parliament, when no doubt the original jurisdiction arose. The noble Lord was abundantly satisfied that reform was needed in the physical surroundings and the physical arrangements made for the meetings of the House of Lords sitting in a judicial capacity.

Lord Killanin, as a journalist, remarked that speeches made at 11 o'clock at night instead of 4 o'clock in the afternoon had far more chance of being reported, especially to-day when the competition for the latest news was so great.

Viscount Mersey, C.M.G., etc., remarked that when the House of Lords sat in its judicial capacity the Woolsack was not covered up and the Mace was in the House, but that the Throne was covered up as it always was except when the Sovereign was present or a Royal Commission was in progress. A distinguished member of " another place " had informed him that one of the most impressive sights to his constituents and foreigners who had come to see the Houses of Parliament was a judicial sitting of their Lordships' House.

The Lord Chancellor (the Rt. Hon. the Lord Maugham) said that the objection to " the judicial business of the House " sitting in one of the Committee rooms was that the House could not divide itself into two portions. The matter turned largely on the provisions of the Appellate Jurisdiction Act, 1876,[1] from which it was quite clear that the Appeal Tribunal, both for hearing and deciding the appeals submitted to them, was the House of Lords. Of recent years it had been the custom that only the Law Lords and the Lord Chancellor were allowed to vote on any question that arose of a strictly

[1] 39 and 40 Vict., c. 59.

judicial kind, and in consequence, very few of their Lordships attended when an intricate question of law was being decided. It was the House of Lords that determined those judicial questions and according to the law no other body could do it. If they were going to give the judicial business to a body which was not the House of Lords, they were going a long step in the direction of severing from the House of Lords the whole of its judicial functions and atmosphere and all the Lords who had been selected for the position of Lords of Appeal. Continuing, the Lord Chancellor observed that the matters which came before their Lordships now were matters which undoubtedly, time after time, were connected with questions of a purely legal character. There had been half a dozen Bills during the past week and it would be disastrous if their Lordships had to determine those questions without having anybody in the House not merely accustomed to reading Statutes but with years of experience in the Courts and accustomed to know how such things were dealt with and the sort of questions that constantly arose in relation to them. With all respect to the noble Lord who asked the Question, that was a matter of very great importance. As soon as one began to discuss the question whether the jurisdiction of the House of Lords in legal matters was going to come to an end, all sorts of other questions were at once started. The Lord Chancellor then concluded by stating that the answer to the Question was that His Majesty's Government thought that there were vital and conclusive constitutional objections to the course which the noble Lord had suggested in his Question. On the other hand, that did not mean that there might not be an Act of Parliament, but for the moment His Majesty's Government did not consider the time opportune for raising very serious questions involving, of course, the reform of the House of Lords in other respects which would be needed were the judicial functions of the House to be put an end to. In those circumstances the Government did not think it a proper moment for appointing a Committee which so far as the present matter was concerned would have nothing to consider.

House of Lords (Quotation of Commons Speeches).—On December 7, 1938,[1] the Viscount Cecil of Chelwood moved the following Motion:

> That the practice precluding the quotation in this House of speeches made in the House of Commons should no longer be insisted upon.

[1] 111 H.L. Deb. 5. s. 386-410.

In moving the Motion the noble Viscount said that the most recent decisions upon this subject in " another place " made a variety of exceptions. When the matter came up in the other House in 1891, objection was taken to a reference to a statement made by a Minister in the House of Lords, when Mr. Speaker Peel gave a ruling[1] on the subject, and in point of fact after that ruling a statement of several hundred words made by a Minister in the House of Lords was quoted without further objection. Gradually there grew up a number of exceptions of that kind; in fact the rule was continually being evaded, and if anyone wished to quote a speech made in the other House, as long as he did not mention it was a quotation, no one thought of interfering with what he was saying.

Continuing, the speaker observed that no doubt the practice sprang up when conditions were different from what they were to-day. When it originally came into existence no doubt it

[1] On March 19, 1891, during the debate on the Tithe Rent Charge Recovery Bill in the House of Commons, upon Mr. S. T. Evans referring to a debate in the Lords, another Member, Mr. Tomlinson, asked Mr. Speaker whether it was in order for the hon. Member to quote from debates in the other House during the present Session. Whereupon the following proceeding took place:

> Sir W. Harcourt: Upon that point, Sir, may I ask you whether on consideration of Lords' Amendments, it is permissible, or not, to discuss the grounds upon which an Amendment was adopted in another place?
>
> Mr. Speaker*: No doubt it would not be the proper Parliamentary course to refer at length to debates in another place, but it may be necessary to refer in some form to a statement upon which an Amendment has been founded.
>
> Mr. S. T. Evans: Following upon your Ruling, Sir, I venture to think that the House would prefer that I should not use words of my own in giving my impression of what took place, but that I should cite the very words used by the Prime Minister. This is the *Hansard* record of what was said—
>
> > After the matter has been enormously discussed in private, though no doubt it is surrounded with difficulties on every side——
>
> Mr. J. G. Talbot: I rise to order, Sir. I understand you to say, Sir, that it would be out of order to quote words used in Debate in another place, though an hon. Member has a right to refer to arguments used.
>
> Mr. Speaker: No, I did not say that, if the hon. Gentleman will excuse me for saying so. I did not say it would be irregular or unparliamentary; I said to follow in detail the arguments used in another place would be irregular, but simply to quote words used would be to quote the foundation of the Amendment. (351 H.C. Deb. 3. s. 1500.)
>
> The House of Commons Rule at that time read:
>
> > 182. The Debates or the provisions of Bills in the other House of Parliament may not be reflected upon in this House (Rules, Orders and Forms of Procedure relating to Public Business, 11th Ed., 1896).

* Peel.

was a breach of Privilege to report anything which took place in one House anywhere outside the walls of that House. One of the other doctrines was that it might cause bad blood between the speaker who was quoted and the speaker who quoted him in either of the two Houses, which seemed to be a matter of great anxiety in those days. The noble Lord then quoted from a Ruling by Mr. Speaker Lowther in the House of Commons in 1907.[1] That seemed to indicate that the rule as it existed at the present time was that one must not enter into a discussion with a Member of one House under cover of a debate in the other. The mover saw a great disadvantage in shutting out from their debates facts which were of real importance in enabling their Lordships to

[1] On Aug. 16, 1907, during the Debate on a Bill an hon. Member asked the Speaker's Ruling on a point of order. . . . The rt. hon. Gentleman had quoted from a speech made by Lord Lansdowne in the House of Lords in the last few days, but he found that the following rule still stood in the Manual of Procedure:

> A Member while speaking on a Question must not refer to any debate in the House of Lords.

The hon. Member thereupon asked the Speaker's ruling on this because it seemed to him that if this were allowed it would grow to be regularly permitted and might be highly inconvenient in consequence. Whereupon Mr. Speaker* said:

> The rt. hon. Gentleman has referred me to the Rule set out in the "Manual of Procedure of Public Business of the House of Commons."† That Rule to which he refers contains also the note:
>
> It is not always easy to enforce this rule.
>
> In my view the rule stands thus: If an hon. Member enters into a controversy with regard to something that has been said in the other House, and endeavours to reply to a speech made in the other House, that would clearly be out of order, and very undesirable, because the noble Lord, not being present here, cannot answer or explain any quotation which may be made. But I do not think the rule can be carried out in its entirety, because it might, under certain circumstances, become not only very desirable but absolutely necessary to refer to a statement made in the other place—such as a statement upon some great question of policy or a statement by a Minister giving a concession with respect to a Bill. I think it would be mere pedantry on our part if we were to insist on closing our own mouths, so as not to be able to refer to that fact at all. Therefore we must observe a certain amount of elasticity and allow to the Chair some discretion in administering the Rule. (180 H.C. Deb. 4. s. 1884.)

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* Mr. Speaker Lowther.

† The Rule then read:

> 153. A Member while speaking on a question must not . . . (iv) refer to any debate in the House of Lords;[3] nor . . .

[3] It is not always easy to enforce this rule. May, 10th Ed., 311. (Manual of Procedure in the Public Business of the House of Commons, 12th Ed.)

make up their minds on any question which was being debated in their own House. The opinions of Ministers, certainly on foreign affairs, was part of the very substance of their discussions, and it was a matter of the greatest importance to know what Ministers had said on the subject. It was a matter perhaps of even more importance to know what 3 or 4 or perhaps more leading Members of the House of Commons had said in like manner; and to say that they were not to be allowed to bring what they had said into the consideration of matters that were discussed in their House seemed to be a grave limitation of the material with which they had to deal in order to arrive at their conclusions. The noble Lord then moved his Motion.

Lord Addison, in supporting the Motion, remarked that it was entirely artificial that the so-called rule should exist. It had been more honoured in the breach than in the observance in both Houses for a very long time past, by the introduction of that convenient phrase " in another place." When the House of Lords had not the responsible head of a State Department among its Members, it was inevitable and most useful that they should be able to refer to his speech in another place. It was a custom to refer to such a statement in the form of a paraphrase, lest they would be held to be out of order if the statement was quoted verbatim. The noble Lord suggested that it would be altogether advantageous that they should quote such statements accurately, and without being disorderly in so doing. He was sure that Members in both Houses could be relied upon not to abuse the privilege.

The Marquess of Crewe observed that the general practice vas that a general reference was permitted, but an argument ounded upon the actual wording of the speech in another place would be objected to. In 19 cases out of 20 it sufficed for the purpose of a speech to describe in general terms what had been said on behalf of the Government or some Member of the Opposition in another place. The twentieth case is that of a definite Ministerial statement, of which the actual wording, and even the placing of a comma, might be of importance. But it had always in the past been—he did not say now—the rule that, so far as possible, statements of that kind should be made at the same time on the same day in both Houses of Parliament. Therefore the suggested change did not seem to be precisely necessary. If the rule were laid down, by adopting the plan of the noble Viscount, that the debates in one House were freely open for discussion in the other, it

seemed to him to be running certain risks. It would almost invite the possibility of some indiscreet speech or some apparently contradictory observation becoming the subject of a Question or Motion in the other House. Then there was another point. When a Bill had passed through one House and went to another, there would be a certain temptation were free quotation from what had happened in the first House allowed, and there might even be an attempt to make a point either for or against the measure by quoting verbatim what had been said elsewhere.

The Marquess of Salisbury remarked that in the House of Lords they had no Speaker in the sense of a presiding ruler, who told them what were the rules of the House. They decided for themselves. According to recent precedents there was nothing at all irregular in quoting anything which had passed, so long as it had occurred in a past Session. The rule did not apply to a Ministerial statement in either House which might be quoted even in the same Session, but there was a limitation upon a statement made by a Member of Parliament who was not a Minister. Were they to balance the rule upon a foundation so slight as that? According to the rigid rule one must not quote the *ipsissima verba*. The rule was being continually broken in the House of Commons. In the House of Lords, he did not suppose a week passed in which the rule was not violated. There was, however, no Standing Order to that effect. It was only a practice. Of course, they did not want recrimination between the two Houses of Parliament.

Lord Rankeillour[1] remarked that in the House of Commons the words of a Member of another House might not be quoted for the purpose of answering them. Anything like a bitter personal wrangle between Members of the two Houses should be avoided. The noble Lord was afraid that it might easily degenerate into a personal duel at long range. An instance of this was when Lord Ashburton in 1847, or it may have been 1850, wanted to reply to some criticism by Lord Palmerston in the House of Commons on a mission he had to America, or Canada; and Lord Ashburton proceeded to a bitter attack upon Lord Palmerston, whereupon Lord Lansdowne, the then Leader of the House under a Whig Government at that time, stopped him. If there was a danger at that time, there was surely a greater danger to-day. The noble Lord suggested that if a Member made a personal explanation in one House

[1] Chairman of Committees of Ways and Means in the House of Commons, 1921-24 and 1924-1929.

attacking a statement made in another, then the Member attacked would have a right to reply, and one could not tell where it would end. The noble Lord could not see much hardship in the present rule. A noble Lord in that House or an honourable Member in another could always say " it has been stated," or " it has been alleged," and he can make his position perfectly clear, but no personal element was necessarily involved, and he was afraid it certainly would be involved if the Motion were adopted, as it would probably be adopted in the other House. If it was sought to pursue the subject further, the noble Lord suggested that the proper course was the appointment of a small Joint Select Committee of both Houses.

Lord Newton, speaking as one who had been in Parliament for over half a century, said that one of the lessons he had learned was that disputes between the two Houses were productive of nothing but danger and difficulty. The noble mover brought forward a Motion which apparently was not reciprocal. That was bound to lead to difficulty. If they were foolish enough to adopt the Motion it would not only lead to difficulties in another place, but would very much inconvenience their procedure. They would have people perpetually quoting long extracts, almost White Papers, in explanation of what they were talking about, and it would ultimately be provocative of personal incidents and personal explanations which were almost invariably very mischievous incidents. In such circumstances the noble Lord trusted that the Government would not support the Motion.

Lord Harlech, speaking as a very new Member of the House of Lords who had spent 28 years in the House of Commons, said that he had known Members of the House of Lords quoted quite correctly and *ipsissima verba* in the House of Commons without the least objection taken. The rule in the House of Commons turned on the purpose to which the quotation was put. He was quite sure that no Speaker of the House of Commons would have ruled Lord Snell[1] out

[1] On Nov. 3, 1938, Lord Snell, during the Debate on the Anglo-Italian Agreement, read from the Commons *Hansard* that the late Secretary of State for Foreign Affairs said:

> We have been told that 10,000 Italian infantrymen have been withdrawn and everyone welcomed that, but the main contribution of Italy to the Salamanca authorities——

whereupon the Marquess of Crewe interjected, by saying:

> Surely the noble Lord is aware that it is completely out of order here to quote textually from a debate in another place. Mr. Speaker there

of order if he had made that quotation in the House of Commons.

Upon an interjection by the Marquess of Crewe who asked:

> Does the noble Lord say it is absolutely permitted to hold up, in another place, the OFFICIAL REPORT of one of the debates in this House and to read an extract from it? My impression was that that had been stopped.

Lord Harlech replied:

> I think I have frequently seen it done, but it is always prefaced by the statement, "I am not proposing to base any argument on this." The Member is quoting it for purposes of illustration.

Lord Harlech continuing, thought that Lord Snell was using the quotation the other day purely for illustrative purposes. That seemed to him to be absolutely innocuous and in accordance with the custom of Parliament.

Lord Snell said he was very sorry to have been the innocent cause of provoking the very interesting discussion, and remarked that he could only say that the next time he wanted to quote from another place he would very carefully hide the document concerned and try to get a reputation for wisdom which he did not deserve.

The First Lord of the Admiralty (the Rt. Hon. Earl Stanhope, K.G., etc.) remarked that officially they took no cognizance of what happened in another place. That was subject to a great deal of qualification, because Bills sometimes came from another place, but speaking broadly, a statement made in another place was not taken official cognizance of in the House of Lords. Continuing, the speaker said he would regret it very much if a Resolution were passed on the subject; they had much better leave the matter where it was, and that they should guard against any new cause of disagreement between the two Houses.

Viscount Cecil of Chelwood, in reply, said that after the speech of the Leader of the House, he would not dream of putting the Motion to a division. The Motion was then, by leave, withdrawn.

House of Lords (the Woolsack).—It was reported in the Press[1] that on June 14, 1938, the Lord Chancellor took his seat on the Woolsack, which during the Whitsuntide adjourn-

is always most active in at once stopping any quotation from a debate in your Lordships' House. I am very sorry to interrupt the noble Lord, but that is the rule here, though it has not always been strictly observed. (110 H.L. Deb. 5. s. 1634.)

[1] *The Times*, June 15, 1938.

ment had been restuffed with wool and the horsehair removed. The Woolsack was originally stuffed with wool to represent one of Britain's staple industries. When therefore an offer was made by the International Wool Secretariat, the Lord Great Chamberlain[1] (the Lord Ancaster) gave sanction for the Woolsack to be stuffed with a blend of Dominion, English, Scottish and Welsh wool, as well as wool from Northern Ireland. Roughly a bale of wool (200 lbs.) was needed. On the day abovementioned, delegates to the International Wool Conference, headed by Sir Dalziel Kelly (Chairman of the Australian Wool Board); Mr. J. P. Abbott (Vice-Chairman of the Australian Wool Board); Mr. M. J. Joubert (Chairman of the South Africa Wool Council); and Mr. H. M. Christie (Chairman of the New Zealand Wool Council), invited the House of Lords to satisfy themselves that the Woolsack fulfilled its purpose.

In the time of Edward III when the Strand was being constructed a tax was put on various articles and defaulters appeared before a special court to make their excuses. In order to indicate that it was just a commercial court, the judge or judges sat on woolsacks, an easily recognized way of indicating the nature of the business.

Indeed the Standing Orders of the House of Lords to-day contain references to the Woolsack, and in Appendix I thereof is given Act 31 Hen. VIII, c. 10, which provides " For Placing of the Lords." Section VII thereof enacts that if any person under the degree of a Baron shall happen to hold the office of Lord Chancellor, Lord Treasurer, Lord President of the King's Council, Lord Privy Seal or Chief Secretary, " by reason whereof they can have no interest to give any assent or dissent in the said House," then they shall sit and be placed at the uppermost part of the sacks in the midst of the Parliament Chamber. Standing Order XX provides that if the Lord Chancellor will speak to anything particularly he is to go to his own place as a Peer. Standing Order XXIV requires a Peer, if he has occasion to speak with another, to retire to the Princes' Chamber and not to converse in the space behind the Woolsack. In S.O. XXXII the Speaker is referred to as " the Lord on the Woolsack, or in the Chair," and the vote of the Lord on the Woolsack or in the Chair has to be taken first. Standing Order XL, which deals with Committees, states that " Committees of the whole House sit in the Upper House, but there the Lord Chancellor sits not upon the Wool-

[1] *See also* JOURNAL, Vol. III, 35, 36.

sack as a Speaker." Standing Order XLV requires that every Motion, after it has been moved, be proposed from the Woolsack or the Chair before debate thereon.

Mr. A. F. Pollard in his " Evolution of Parliament " says[1] that in Edward I's time the King's Council sat in the midst of this assembly on 4 woolsacks (of which 1 remains) facing one another—ostensibly for confidential deliberation. On the uppermost Woolsack sits the Chairman,[2] and in early times the Clerks of Parliament sat or knelt behind the Woolsack. Technically the Woolsack is not in the House of Lords and in fact a commoner could be and has been appointed Speaker.

When their Majesties were present in the Senate Chamber of Ottawa on May 19, 1939, and His Majesty gave his assent to certain Bills passed by the Canadian Parliament, the Woolsack had to be moved from its usual position to a point 15 feet from the foot of the Throne, and the photograph of the ceremony shows the judges in their robes seated on the Woolsack.

House of Lords (Initiation of Private Bills).—Private Business S.O. 87 of the House of Commons provides that the Chairman of Ways and Means or the Counsel to Mr. Speaker shall each year, on or before January 8, seek a conference with the Chairman of Committees of the House of Lords or with his Counsel to determine in which House the respective Private Bills shall be first considered, duly reporting to the House. In their report to the House of Commons on December 15, 1937,[3] 31 Private Bills were set down for initiation in the Lords.

House of Lords (Reform).[4]—In reply to a Question in the House of Commons on March 7, 1938,[5] as to what steps he proposed to take during the present Parliament to reform the House of Lords, the Prime Minister said that he was not in a position to make any statement on the subject.

House of Lords (Acoustics).—On July 26, 1938,[6] upon consideration of the Second Report from the House of Lords Offices Select Committee,[7] paragraph (1) of which dealt with the acoustics of the Chamber, the Chairman of Committees remarked that the acoustics of the Chamber were not what they should be and that it was impossible in many parts of the House to hear what noble Lords said. Improvement of the acoustics of the House would be greatly welcomed not only by their Lordships but by those who came there to listen to debates,

[1] P. 121. [2] P. 248. [3] 330 H.C. Deb. 5. s. 1169, 1170.
[4] *See also* JOURNAL, Vols. I, 9, 10; II, 14, 17; V, 14, 15.
[5] 332 H.C. Deb. 5. s. 1528.
[6] 110 H.L. Deb. 5. s. 1197-1199. [7] (186) of 1938.

and that much the same disability existed in the Reporters' Gallery. Various experiments had been considered by the authorities of the House and by the Office of Works and it was proposed in the first instance to instal a microphone which would be hung from the ceiling just above the Cross Benches, and to connect it with the Strangers' Gallery by means of 12 ear-pieces, so that ear-pieces connected with the microphone would be used for the Strangers' Gallery as well as for their Lordships' House. Various other experiments were under consideration and would be tentatively introduced. The microphone installation was temporary, but it was hoped by experiment to improve the acoustics.

House of Commons (Mr. Speaker's Casting Vote).[1]—1938. On April 13, on the Motion

> That leave be given to bring in a Bill to extend Palestinian nationality,[2]

Mr. Speaker gave his casting vote with the " Ayes " for the reason that:

> I must give my vote for leave to bring in the Bill, in order that the House may be able to deal with it as it sees fit.[2]

The last occasion of Mr. Speaker giving his casting vote occurred in 1910.[1]

House of Commons (Ministers' Powers).[3]—On July 5, 1938,[4] a Question was asked the Prime Minister—(1) whether the Government had considered the recommendations contained in the Report of the Committee[5] on Ministers' Powers that a small Standing Committee should be set up in each House at the beginning of every Session to consider and report upon every Bill containing a proposal to confer law-making power on a Minister and to consider and report upon every regulation and rule made in the exercise of delegated legislative power and laid before the House in pursuance of statutory requirement; and whether the Government intended to give effect to that recommendation; and (2) whether the Government had considered another recommendation of that Committee, that Standing Orders be framed in both Houses requiring that every Bill presented by a Minister which proposed to confer law-

[1] *See also* JOURNAL, Vol. II, 68-72.
[2] 334 H.C. Deb. 5. s. 943-947. It was reported in *The Times* (April 13, 1938) that the voting on each side being 144, caused a Parliamentary humorist to declare that the proceedings were " just too gross."
[3] *See also* JOURNAL, Vols. I, 12; IV, 12.
[4] 338 H.C. Deb. 5. s. 183, 184. [5] Cmd. 4060 (1932).

making power on that or any other Minister should be accompanied by a memorandum drawing attention to the power, explaining why it was needed and how it would be exercised if conferred, and stating the safeguards against its abuse; and whether the Government intended to propose new Standing Orders giving effect to this recommendation ?

The Prime Minister in reply repeated the assurances he had already given that the views expressed in the Report were carefully borne in mind in relation to current legislation.

House of Commons (Minister in Lords).[1]—On February 28, 1938,[2] a Question (*by Private Notice*) was asked the Prime Minister by the Leader of the Opposition (the Rt. Hon. C. R. Attlee) as to what arrangement he proposed to make with regard to the answering of Foreign Office Questions in view of the fact that the new Foreign Secretary[3] was not a Member of that House, to which the Prime Minister replied that he proposed himself to deal with all important aspects of foreign affairs which were the subject of debate or question. He thought the best arrangement would be for Foreign Office Questions to be addressed to him as Prime Minister and that they should be placed in the position occupied by the Foreign Office in the order of Questions. The Prime Minister continued that after consultation with Mr. Speaker, arrangements had been made to make this distinction in the Notices of Questions. As he had already said, he proposed himself to answer all Questions of major importance and his hon. friend, the Under-Secretary for Foreign Affairs, would answer other Questions. The Prime Minister concluded by hoping that this arrangement would meet with the general convenience of the House.

As Labour Members were not satisfied with the above arrangement, the Government moved the Adjournment of the House earlier than usual to give the Labour Members an opportunity of stating their views.[4] Mr. Attlee then said that they now had for the first time since 1923, except for a very brief period in 1931, a Foreign Secretary who was not a Member of that House. There was no law laying it down that a Foreign Secretary must be a Member of the House of Commons, and there was equally no law laying it down that the Chancellor of the Exchequer must be a Member of that House. Indeed, when they discussed recent legislation in regard to Ministers, the Chancellor of the Exchequer pointed

[1] *See also* JOURNAL, Vol. VI, 17, 18.
[2] 332 H.C. Deb. 5. s. 747, 748.
[3] Rt. Hon. Viscount Halifax, K.G., etc.
[4] 332 H.C. Deb. 5. s. 862.

out an occasion on which there had been a Chancellor of the Exchequer in another place;[1] but it was quite unthinkable that the Chancellor of the Exchequer should be in another place to-day. Up to the opening of the present century and more often than not, he thought, the Prime Minister had been a Member of another place. Gradually the practice had been built up of the Prime Minister being a Member of the House of Commons. On the resignation of Mr. Bonar Law[2] the present Lord Baldwin was preferred to Lord Curzon despite the latter's great services. In the life of Lord Curzon by the Marquess of Zetland it is stated that:

> The decision of the King that since the Labour Party constituted the Official Opposition in the House of Commons and is not represented in the Lords, the objection to a Prime Minister in the other Chamber is insuperable.

Thereupon, continued Mr. Attlee, that constitutional practice became firmly established. His contention was that the reasons for having a Foreign Secretary in the Commons were very compelling, and that when that state of things existed it was more important than at any other time that there should be a Minister for Foreign Affairs in the House of Commons and responsive to public opinion. They should also take the utmost care that the popularly elected House kept a close watch and control over foreign policy. An admirable statement on the subject had been made by the present Colonial Secretary[3] who in the House of Commons on May 15, 1919, said:

> It is absolutely essential that this House should realize that it alone is responsible for the conduct of foreign affairs.

After quoting other authorities the Rt. Hon. Member said that the present arrangement, with a Secretary of State for Foreign Affairs in another place, would either result in duality of control of foreign affairs or in removing foreign affairs from the purview of the House of Commons. It was desirable that the Foreign Secretaryship should be held by someone who was himself an elected representative and who was in close and constant contact with the elected representatives of the people. Several other speakers then took part in the debate.[4] The Prime Minister in his speech remarked that he had said that, other things being equal, it was in his view desirable that the Foreign Secretary should be a Member of

[1] *i.e.*, House of Lords. [2] Prime Minister.
[3] Rt. Hon. W. G. A. Ormsby-Gore (now Lord Harlech).
[4] 332 H.C. Deb. 5. s. 862-884.

the House of Commons where his policy could be challenged by a powerful Opposition and where he would be in a position to defend himself. At the present time he did not think the qualifications of any one of his Rt. Hon. Friends were as good for this particular office as those of his noble Friend. " It is on that ground that I justify this choice."

House of Commons (Attendance of Ministers).—On May 24, 1938,[1] a Question was asked (*by Private Notice*) by the Leader of the Opposition (Rt. Hon. C. R. Attlee) as to whether the Prime Minister's attention had been drawn to the absence from the Front Bench of any Cabinet Minister during the proceedings on the Air Navigation Bill on the previous night; and whether steps would be taken to see that in future a responsible Minister was in attendance for all Debates. To which the Prime Minister (Rt. Hon. Neville Chamberlain) in his reply stated that his attention had been drawn to it. Unfortunately his Rt. Hon. Friend, the Secretary of State for Air, was called away on urgent business affecting the work of his Department, otherwise he would have been in his place. It had always been and would continue to be the practice that, as far as circumstances permit, Cabinet Ministers should be present during Debates in the House.

House of Commons (Ministers and Income Tax Assessments).—An interesting debate on this subject took place on June 28, 1938,[2] during the Committee stage of the Finance Bill, when the following new Clause was brought up by an hon. Member (Kent: Gravesend):

> New Clause (*Relief in respect of Income Tax assessment for Ministers of the Crown who are Members of the House of Commons*). —For the purposes of assessment of Income Tax and Surtax, the first six hundred pounds of the salary of a Minister of the Crown who is also a Member of the House of Commons shall be deemed to be a salary on account of services rendered as a Member of Parliament.

The points brought forward by the Mover were that when an M.P. was promoted to be a Minister of the Crown, perhaps as a junior Minister or junior Whip, he became entitled from his salary of £600 p.a. as an M.P., which he had to relinquish, to one of say £1,000 p.a., but from that time he no longer had the right to relief on account of his expenses as an M.P.—namely, £100 p.a. To this the Chancellor of the Exchequer replied that the holder of any public office who was paid a

[1] 336 H.C. Deb. 5. s. 1045, 1046.
[2] 337 H.C. Deb. 5. s. 1825-1827, 1834, 1835.

salary because he held that office, was entitled, for the purpose of income tax, to deduct only those expenses which he incurred wholly, exclusively and necessarily in the performance of the duties of that office. That was the ordinary law which applied to everyone, whatever his office. As hon. Members knew, £100 was allowed as a matter of course, and, if any M.P. could prove, as many could, that the expenses which were wholly, exclusively and necessarily incurred by him in the performance of his duties as an M.P., amounted to more than that, he could make a further deduction. The expenses, however, which the M.P. incurred in discharging his duties as a Minister would be at any rate almost entirely met out of public funds as part of the expenses of the office, and therefore no deduction for income-tax purposes was allowed and the Minister had to suffer income tax on his salary as such. The Chancellor also drew attention to the Ministers of the Crown Bill[1] when it was before the House and to the salaries thereunder, which were put upon a more orderly level and in some cases raised; one of the reasons given at that time on behalf of the Government was that it was thought that a certain readjustment was justified, among other grounds, on that of a man becoming a Minister when he had to pay income tax on the whole of his Ministerial salary. Frankly, he thought it operated a little harshly, for where a man became a Minister, his correspondence with his constituents and so on did not cease, nor did he in practice do all that work at the expense of the State; and he imagined that a good many Ministers found that the expenses connected with such work were not in fact met out of the salary or out of the provision made in the Departments for official purposes. The Chancellor, however, could only advise that the amendment should be rejected.

The hon. Member for Tottenham, N., said that not enough attention was paid to the fact that an M.P. could not become a Minister of the Crown without being an M.P. and could not remain a Minister of the Crown without being an M.P. To this the Chancellor rejoined, that M.P.s were permitted to deduct expenses wholly, exclusively and necessarily incurred in the performance of the office for which they were receiving a salary. If a Member was not receiving a salary, there was nothing from which to make deductions. The moment an M.P. became a Minister it was true that he remained an M.P., but he ceased to be an M.P. in receipt of a salary, and unless he could show that the expenses he wanted

[1] *See* JOURNAL, Vol. VI, 12-16.

to deduct were expenses due to discharging his office, for example as Chancellor of the Exchequer, it was nothing to the point to say: "They are expenses that I have to pay because I am discharging my duty as a Member of Parliament."

The hon. Member for N. Aberdeen thought that they ought to be able to make out a case that a greater part of the expenses which fall on an M.P. in that capacity ought to be deductable from his income-tax assessment in his capacity as a Minister. The first expense of an M.P. was the private office which he kept for his constituency correspondence and other duties; the second was the secretary or part-time secretary; the third was postages and stationery; and the fourth was extra domicile. Ministers fell into two classes: those whose duties were so important that they were provided with offices and secretarial assistance by the State, and those whose duties were not so important. He had served in various Government Departments and did not recollect any Minister having gone to the trouble of separating his postages for constituency correspondence and those for official duties. It was never expected that he should. The same thing applied to stationery. He was told that it was the rule that M.P.s could not use official stationery in their private offices without buying it. In the House they got it free. He did not think that any Minister who was provided with an office ever paid for his stationery and it was foolish to expect that he should. The largest expense incurred was that of maintaining two domiciles.

When the Question was put, "That the Clause be read a second time," it was negatived without a division.

House of Commons (Minister's Private Practice as Solicitor).[1]—On July 5, 1938,[2] a Question was asked the Prime Minister whether it was consistent with Government policy for a Cabinet Minister to remain a partner of a legal firm and still remain a member of the Government. In reply the Prime Minister referred the hon. Member to the statement he made on this subject last year.[1] Upon which the hon. Member in a Supplementary Question asked the Prime Minister if he was aware that Members of the Government, according to a case in the Courts last week, had been taking an active part in granting interviews in cases in 1935 and 1936, and did he not think it was an unfair advantage over their competitors, as people tended to go to a Member of the Government because of his position. To this the Prime Minister replied on the lines of the previous occasion,[1] whereupon the hon. Member

[1] *See* JOURNAL, Vol. VI, 16, 17. [2] 338 H.C. Deb. 5. s. 184, 185.

asking the Question put a Supplementary Question, as to whether the Prime Minister was aware that this case did not come within that scope at all, and did he think that the Minister of Transport, holding a responsible position, ought to be allowed to continue to dabble in ordinary business while a Member of the Government and paid a substantial salary? Another Supplementary Question was then put to the Prime Minister by another Member inquiring whether the Prime Minister did not think that in the public interest it would be advisable to extend Lord Baldwin's formula prohibiting Ministers from undertaking certain private business during their term of office, and to extend that formula to include Ministers who are active participants as private partners in a business? To this the Prime Minister said that the rule was extended to cover the case of solicitors in private practice, to which he supposed the hon. Gentleman referred; he was not aware that it was suggested to extend that.

House of Commons (Publications and Debates).[1]—The Select Committee on this subject is set up practically every Session. In 1938, the only Order of Reference[2] was:

> That a Select Committee be appointed to assist Mr. Speaker in the arrangements for the Report of Debates, and to inquire into the expenditure on stationery and printing for this House and the public services generally,

and the Select Committee was given power "to send for persons, papers and records" and "to report from time to time," 3 being the quorum. This Committee is an important one also from a business point of view as the sum for printing and stationery on the House of Commons Vote alone amounts to over £60,000 a year.[3] The Report now under consideration was tabled on July 4, 1938,[4] and, together with its proceedings, ordered to be printed.[5] It consists of 4 paragraphs. The Select Committee had these points to consider: (1) whether the present practice of circulating to Members copies of amendments to be moved in Standing Committees should be changed; (2) the question of keeping an up-to-date index to Questions in the unbound copies of *Hansard* in the Library of the House; and (3) several suggested improvements in the daily copies of *Hansard*.

On (1) the Committee heard evidence[6] which was sum-

[1] *See also* JOURNAL, Vols. I, 45, 46; III, 83; and VI, 176-180.
[2] 327 H.C. Deb. 5. s. 719, 720.
[3] *See* JOURNAL, Vols. III, 83; VI, 176-180.
[4] 338 H.C. Deb. 5. s. 43.
[5] H.C. Paper 148 of 1938.
[6] Rep. § 2.

marized as follows. Before 1917 Amendment Papers were circulated to all M.P.s with the Votes, but in March of that year their circulation was, as a war measure, discontinued even to Members of Standing Committees, which practice has continued, and now only those M.P.s who make application at the Vote Office have such Papers supplied to them. It was represented that Members, in consequence, did not see, and were unable to consider, fresh Amendments put down on the previous day until they actually came to the House, usually at the time the Standing Committee met. In considering the question either of circulating Amendment Papers with the Votes to the Members of the respective Standing Committees, or of reverting to the old practice of circulating to all M.P.s, the Select Committee stated that there were objections to both courses. The former, requiring discrimination by those delivering the Vote, would cause delay of half an hour or more; the latter would be a very great—and, to most M.P.s, troublesome—increase in the number of papers circulated to them. The Select Committee came to the conclusion that any inconvenience in the present practice could be overcome if every Member serving on a Standing Committee were sent an application form before the first meeting of the Committee, with a letter informing him that only those who forwarded this application to the Vote Office would have Amendment Papers circulated with the Votes. Members would also have such Papers circulated to them, by application at the Vote Office as at present. In paragraph (3) of the Report, which dealt with point (2), the Committee stated that they had not reviewed the particular forms which the proposed index might take, but expressed the opinion that an up-to-date index, which could be consulted by both Members and Officials of the House, would be of great use and the Select Committee recommended to that effect. With regard to point (3) the Committee observed that it had considered whether it would be possible to print the number of the Clause or Schedule under debate at the head of each column in *Hansard* when the House was discussing the Committee or Report stages of a Bill, and whether, at the point where a decision on a question was recorded, reference to the page and column on which the question appeared, could be made, but the Committee made no recommendation thereon to the House, being of opinion that the clauses under consideration might usefully be indicated on the cover.

The Committee met once and only Mr. E. H. Keeling,

M.C., M.P., and Mr. T. H. Parr, O.B.E. (Editor of the Official Report), were examined.

House of Commons (M.P.s' Pensions).—Although the debate took place in the year under review in this Volume, this question was dealt with in the previous issue of the JOURNAL.[1] Subsequent to the publication of that Volume, however, a Question was asked the Prime Minister in the House of Commons on the subject on December 12, 1938[2] —namely, whether he could state the decision of the Government with regard to the suggested scheme for pensions for M.P.s involving no charge upon the taxpayers. The Prime Minister replied that the Government hoped to afford an opportunity before the Christmas Recess for a debate on the proposed scheme for pensions for Members of Parliament without imposing any additional charge upon the taxpayer. The Prime Minister added that he would invite his hon. and gallant Friend and those associated with him to Table a Motion for that purpose and said—" I may add that the question will be left to a free vote of the House."

House of Commons (Private Members' Time).—An interesting letter by Sir Bryan Fell, K.C.M.G., C.B. (at one time Principal Clerk of the Public Bill Office of the House of Commons), appeared in *The Times*,[3] in which he quoted the appointment of the Cadman Committee and its devastating report on the subject of civil aviation, due to the luck of a Private Member of the House of Commons drawing the first place in the ballot for Private Members' resolutions, and said that one was tempted to ask whether any Executive action would have been taken if Mr. Perkins had not been so lucky in having his name drawn out first from the ballot box on the Table of the House. The writer of the letter also quoted the passing of the Matrimonial Causes Act and the appointment of the Cadman Committee being two outstanding instances of the importance of Private Members' time to the House and to the country. In conclusion, the writer observed that the Private Member was the liaison officer between the Executive and the constituencies and that it was not too much to say that the position which Parliament held in the country depended as much on the status of the Private Member as it did on the status of the Government.

House of Commons (Private Business).—On July 28, 1938,[4] certain amendments to Private Business Standing Orders, of

[1] *See* JOURNAL, Vol. VI, 139-150.
[2] 341 H.C. Deb. 5. s. 1594.
[3] March 11, 1938.
[4] 338 H.C. Deb. 5. s. 3266, 3267.

which the details were given, were approved of by the House. Only S.O. 41, 41A, 204 and 206 were involved, and the amendments concerned the delivery of copies of Bills to certain authorities, the substitution of a fixed date for Whitsuntide, after which no Bill for confirming a Provisional Order or Certificate may be read the first time; and with the registration of the addresses of Parliamentary Agents. These amendments have been carried out in the 1938 Edition[1] of the Standing Orders of the House of Commons.

House of Commons ("Parliamentary" Committees).—On December 16, 1938,[2] an hon. Member, for guidance, asked Mr. Speaker if there was any restriction on the use of the word "Parliamentary" as applied to committees and bodies of a certain nature, stating that he had, with other Members, received a pamphlet under the ægis of the "Parliamentary Committee for Spain." He did not know of what that body consisted and quoted the names of persons forming an advisory committee, 3 of whom were Peers. The hon. Member also asked if there was anything to prevent any body outside the House arrogating to themselves the title of "Parliamentary Committee." Should not that expression be restricted to a committee set up either by that House, or by another place, or by both Houses? Another hon. Member also drew attention to the use of the expression in regard to a Parliamentary Committee on Transport.

Mr. Speaker said that he had no authority in the matter and did not know that there was any authority to decide whether a committee could call itself a Parliamentary Committee or not. He could only express the view that he thought it was unfortunate that any committee should call itself a "Parliamentary Committee" unless it was either appointed by Parliament or was fully representative of Parliament.

House of Commons (Members' Private Secretaries).—On March 9, 1938,[3] a Question was asked the Chairman of the Kitchen Committee of the House of Commons by the hon. Member for Camberwell as to whether arrangements could be made for a hot meal to be available for Members' secretaries at lunch time. To which the Chairman replied that there were already facilities for Members' private secretaries to have hot luncheons, but that the limited accommodation of the Strangers' dining-room did not permit of more than 12 being allowed that privilege, and that application should be made by Members to the Chairman, Private Secretaries Committee, who,

[1] No. 171. [2] 342 H.C. Deb. 5. s. 2346, 2347. [3] 332 *ib.*, 1910.

if the full complement of permits had not been issued, would submit their names to the Serjeant-at-Arms. On March 22[1] a Question was asked the same Member, whether accommodation could not be found to increase that number.

On March 23[2] a Question was asked in the House of Commons as to whether the attention of the First Commissioner of Works had been drawn to the overcrowding in the Members' secretaries' rooms between the hours of 3 and 7 and also in the small room provided for typing and whether increased accommodation could not be arranged for. To which the Minister replied that all available space in the building was fully occupied and he regretted that it was not practicable to allocate additional space for Members' secretaries and for typing. The Minister was then asked by Supplementary Question if he was aware that not more than 12 Members could have accommodation for themselves and for their secretaries at a given time.

House of Commons (Films).—On July 28, 1938,[3] a Question was asked in the House of Commons, for what purpose pictures of the Speaker's procession were taken last Friday, and if Members would be given an opportunity of seeing them. To which the First Commissioner of Works said that he understood that the film formed an incident in one of a series of films designed to illustrate, for teaching purposes, the work of democratic institutions, especially the Parliamentary system.

House of Commons (Ventilation).[4]—Questions relative to this subject were asked on May 9, 1938,[5] to which the First Commissioner of Works replied that although the present system left something to be desired from the point of view of comfort during the summer months, the results of exhaustive study of the conditions in the Chamber, together with expert advice, pointed to the conclusion that the conditions are in no way prejudicial to health. Much careful study had been given to an improved ventilation scheme, but in view of the heavy demands at present being made by the defence programme on the engineering industry, it was desirable to keep this scheme in reserve for consideration when the peak of the rearmament programme had been passed.

Houses of Parliament (A.R.P.).[6]—The Secretary of State for the Home Department remarked in Committee of Supply during the consideration of " Civil Estimates 1938, Class III,

[1] 333 *ib.*, 988.
[2] *Ib.*, 1202, 1203.
[3] 338 H.C. Deb. 5. s. 3336.
[4] *See also* JOURNAL, Vols. V, 27; VI, 35.
[5] 335 H.C. Deb. 5. s. 1225.
[6] *See also* JOURNAL, Vol. VI, 34.

Air-Raid Precautionary Services" on June 1, 1938,[1] that, as a result of a survey of the Palace of Westminster, the rooms and adjoining corridors on the ground floor facing the terrace were regarded as providing the safest refuge accommodation. The rooms had overhead protection and the fact that at low water the retaining wall and parapet of the terrace would act as a buttress was a further point in their favour. The windows were comparatively small and could be protected by sandbags if necessary. It was proposed to instal a special auxiliary pumping plant, fed directly from the Thames, in order to make the fire-fighting arrangements independent of the public mains. A rescue clearance party and a decontamination party were being raised from workmen at the Office of Works[2] depot at the Houses of Parliament. These men were being trained in air-raid precaution measures. The Minister said that he had given the details to show that the Government, so far as they could, were setting an example to the local authorities and to other employers.

Parliamentary Catering at Westminster.—A special report[3] from the Select Committee appointed to control the Kitchen and Refreshment-Rooms (House of Commons) in the department of the Serjeant-at-Arms at Westminster was issued early in 1939 in respect of the calendar year 1938. It contains information of interest to the Clerks of the Two Houses of Parliament Oversea, who are usually in charge of this work under a corresponding or joint committee.

The total receipts amounted to £30,934 5s. 7d., as against £31,433 16s. 2d. in 1937, and the total expenditure for 1938 £31,198 10s. 2d., showing a deficit of £264 4s. 7d. on the year as compared with a deficit of £1,028 1s. 11d. for 1937, after providing free meals during the Session to all staff and defraying the expenditure of £10,189 8s. 9d. on wages, salaries, health and pension insurance; £501 7s. 5d. on expenses, laundry, postage, etc.; and £638 11s. 10d. on repairs and renewals. Purchases amounted to £31,198 10s. 2d. as against £32,461 18s. 1d. for 1937.

During the year 1938 the House sat in Session 158 days in comparison with 166 in the previous year, and the number of meals served (including teas and meals served at bars) was: Breakfasts nil; Luncheons 20,627; Dinners 38,809; Teas 93,067; Suppers 162; and Bar meals 11,670.

The Committee point out that the decrease in revenue and number of meals served as compared with the previous year

[1] 336 H.C. Deb. 5. s. 2087. [2] *i.e.*, P.W.D. [3] H.C. Paper 86 of 1939.

is mainly accounted for by the business of the House occupying 8 days less than in 1937. The Committee was of opinion that the small trading loss incurred last year was largely due to the peculiar difficulties which had to be faced during the latter part of the Session; and also because a semi-permanent staff had to be maintained during the Recesses to meet any emergency call, such as that of September, 1938.

The Committee also reported[1] that:

> **Last year your Committee appealed to Members of the House to co-operate with the Refreshment Department by availing themselves more freely of the services offered to them, but this did not meet with the anticipated response. They sincerely hope that greater patronage will be given to the Refreshment Department in the coming year.**

After providing for all liabilities the amount standing to the credit of Capital Account in the Balance Sheet, represented by Stock-on-hand, Cash-in-hand, and at Bank, and Sundry Creditors, was £2,737 4s. 3d.

The total Membership of the House is 615—namely, 492 representing England, 36 Wales and Monmouth, 74 Scotland, and 13 Northern Ireland.

Various Questions were asked in the House of Commons as to the cost of commodities.[2]

Westminster, Palace of (Guides).[3]—On November 3, 1938,[4] a Question was asked in the House of Commons as to whether arrangements had been considered for official guides to conduct the public over the Houses of Parliament on Saturdays and, if so, with what effect. To which the First Commissioner of Works replied that he had consulted the appropriate authorities. The position was that permits were issued to approved guides to conduct the public over the Houses of Parliament on Saturdays and it was not felt advisable to appoint official guides in addition.

Westminster, Palace of (Repairs to).[5]—In reply to a Question in the House of Commons on November 8, 1938,[6] as to the cost of repairs of the stonework of the Houses of Parliament to the nearest practicable date and the anticipated date of completion, the First Commissioner of Works said

[1] *Ib.*, § 4.
[2] 336 H.C. Deb. 5. s. 1059; 330 *ib.*, 802, 803; 328 *ib.*, 1779; and 338 *ib.*, 413, 414.
[3] *See also* JOURNAL, Vol. V, 31, 32. [4] 328 H.C. Deb. 5. s. 328, 329.
[5] *See also* JOURNAL, Vols. II, 18, and V, 29, 30.
[6] H.C. Deb. 5. s. 1410, 1411.

that the expenditure to September 30 last was approximately £437,500, and that completion was anticipated by March, 1942.

Isle of Man (Conference—Joint Sittings and Ministers in both Houses).—Among other correspondence in *The Times* on the above subject during 1938, was a letter[1] by Mr. Samuel Norris, a Member of the House of Keys, who observed that in the Isle of Man, Tynwald—which consists of both Houses (*i.e.*, the Legislative Council[2] and the House of Keys[3])—sat in Joint Session for taxation, appropriation and certain administrative purposes, and were then called the Tynwald Court, where the Lieutenant-Governor presided and as Chancellor of the Exchequer made his Budget Statement and might, on occasion, make a statement on general policy, but he did not take part in debate. Every other Member of both Houses had equal rights of speech, and the members of the Lieutenant-Governor's Advisory Council and the Chairmen of all Government Boards there explained and defended Government proposals. Although legislation was not debated by this body, every Bill passed by both branches must here, jointly and separately, receive formal approval by signature before being sent forward for Royal Assent. In case of dispute between the House of Keys and the Legislative Council on Bills, whether of Government or of Private Members, a joint conference might be requested by either branch, and invariably took place, by 5 Members of the House of Keys meeting the Governor and Council and agreeing, if possible, to compromise, rather than that the Bill should be lost. Such Conferences were frequently successful. The House of Keys had also the right to request His Excellency to depute the Attorney-General or some other Member of the Second Chamber to explain Government Bills before the House, but the House was jealous of allowing "strangers" to appear before them, and had seldom exercised this right. There have been several instances, however, continued Mr. Norris, where the House of Keys had agreed to meet the Governor and the Legislative Council in private Session, when matters of great importance were to be proposed, the most recent case being only a few weeks ago, when the present Governor received the suggestion that the Isle of Man should voluntarily

[1] *The Times*, July 26, 1938.

[2] This consists of the Lt.-Governor, the Lord Bishop of Sodor and Man, the first Deemster and Clerk of the Rolls, the Second Deemster, the Attorney-General, 2 Members appointed by the Lt.-Governor and 4 by the House of Keys.

[3] This is composed of 24 Members elected by adult suffrage.

offer the Imperial Government, as a gesture of sympathy, the sum of £100,000 towards the increased cost of national rearmament.

Canada (the Coronation Oath).[1]—During the debate on the Address in Reply on January 31, 1938,[2] the Prime Minister stated that the Coronation Oath administered at the Coronation Ceremony of King George VI was:

> Will you solemnly promise and swear to govern the peoples of Great Britain, Ireland, Canada, Australia, New Zealand and the Union of South Africa, of your possessions and the other territories to any of them belonging or pertaining, and of your Empire of India, according to their respective laws and customs?

The reply was:

> I solemnly promise so to do.

Continuing, Mr. Mackenzie King said: "That oath marks the end of a suggestion, remote or otherwise, of anything in the nature of subordinate or Colonial status. It is the enunciation by the Crown itself of the complete nationhood of Canada on equality, so far as status is concerned, with all other nations of the British Commonwealth."

Canada (Elections and Franchise).—Following the recommendations of the Select Committee of the House of Commons given in our last issue,[3] two Bills were introduced into that House and became law, the Dominion Franchise Bill,[4] which postponed for another year the revision of existing electoral lists that the law required should be done annually, and the Dominion Elections Act Amendment Bill,[5] which repealed the Dominion Elections Act, 1934,[6] the Dominion By-elections Act of 1936[7] and the Dominion Franchise Act of 1934,[8] and gave effect to certain of the recommendations of the Select Committee, which however did not include the alternative vote, proportional representation, compulsory registration or compulsory voting. Absentee voting was abolished on account of its expense,[9] complication and ineffectiveness, and certain routine and other provisions were provided for.

Canada (Clerk of the Parliaments).—The following extract from the JOURNALS of the Senate[10] is given to show the

[1] *See* JOURNAL, Vol. VI, 37, 38.
[2] CCXIV, Can. Com. Deb. 51.
[3] *See* JOURNAL, Vol. VI, 39-43.
[4] 2 Geo. VI, c. 8.
[5] 2 Geo. VI, c. 46.
[6] 24 and 25 Geo. V, c. 50.
[7] 1 Edw. VIII, c. 35.
[8] 24-25 Geo. V, c. 51.
[9] It was estimated that an electoral vote cost $46 and every valid ballot cost $65.
[10] No. 1, Jan. 12, 1939, 2-4.

form of appointment of a new incumbent to the office of Clerk of the Parliaments, Clerk of the Senate and Master in Chancery of the Dominion, and proceedings followed immediately after Mr. Speaker had informed the Senate that he had received a communication from the Secretary to the Governor-General stating that His Excellency the Governor-General would proceed to the Senate Chamber to open the Fourth Session of the Dominion Parliament that day at 3 o'clock in the afternoon. Mr. Speaker made the notification immediately after Prayers:

> The Honourable the Speaker informed the Senate that a Commission under the Great Seal had been issued to Leslie Clare Moyer, Esquire, appointing him Clerk of the Senate of Canada to be known and designated as the Clerk of the Parliaments and Master in Chancery.
>
> The said Commission was then read, as follows:—

CANADA

TWEEDSMUIR
(L.S.)

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 Leslie Clare Moyer, of the City of Ottawa, in the Province of Ontario, in Our Dominion of Canada, Esquire, one of Our Counsel learned in the law.

GREETING:

C. P. PLAXTON,
Acting Deputy Minister of Justice,
Canada.

Know You, that reposing trust and confidence in your loyalty, integrity, and ability, We have constituted and appointed, and we do hereby constitute and appoint you the said Leslie Clare Moyer to the Office and place of Clerk of the Senate of Canada to be known and designated as the Clerk of the Parliaments, and Master in Chancery of Our Dominion of Canada.

To have, hold, exercise and enjoy the said office of Clerk of the Senate of Canada to be known and designated as the Clerk of Parliaments, and Master in Chancery of Our Dominion of Canada, unto you the said Leslie Clare Moyer, with all and every the powers, rights, authority, privileges, profits, emoluments and advantages unto the said office of right and by Law appertaining during Our pleasure.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

Witness: Our Right Trusty and Well-beloved John, Baron Tweedsmuir of Elsfield, a Member of Our Most Honourable Privy Council, Knight Grand Cross of Our Most Distinguished

Order of Saint Michael and Saint George, Member of Our Order of the Companions of Honour, Governor-General and Commander-in-Chief of Our Dominion of Canada.

At Our Government House, in Our City of Ottawa, this twentieth day of December, in the year of Our Lord one thousand nine hundred and thirty-eight and in the third year of Our Reign.

By Command,
E. H. COLEMAN,
Under Secretary of State.

Ordered, That the same be placed upon the Journals.

The Honourable the Speaker informed the Senate that by the usage of Parliament the Clerk of the Senate is required to take the Oath of Office before the Honourable the Speaker of the Senate.

The Clerk of the Senate then took and subscribed the Oath of Office, as follows:—

Ye shall be true and faithful, and troth ye shall bear to Our Sovereign Lord King George, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and to His Heirs and Successors; Ye shall nothing know that shall be prejudicial to His Highness, the Crown, Estate, and Dignity Royal, but that you shall resist it to your power, and with all speed you shall advertise His Excellency the Governor General thereof, or at least some of His Council, in such wise as the same may come to His knowledge. Ye shall also well and truly serve His Highness in the Office of Clerk of the Senate of Canada, to attend upon the Senate of this Dominion, making true entries and records of the things done and passed in the same. Ye shall keep secret all such matters as shall be treated in the said Senate, and not disclose the same before they shall be published, but to such as they ought to be disclosed unto; and generally Ye shall well and truly do and execute all things belonging to you or to be done appertaining to the Office of Clerk of the said Senate. As God you help.

L. C. MOYER,
Clerk of the Senate.

Sworn this twelfth day of January, A.D. 1939, before me.

W. E. FOSTER,
Speaker of the Senate.

The Honourable the Speaker informed the Senate that a Commission under the Great Seal had been issued to Leslie Clare Moyer, Esquire, appointing him a Commissioner to Administer the Oath of Allegiance to Members of the Senate, and also to take and receive their Declarations of Qualification.

The said Commission was then read, as follows:—

CANADA

TWEEDSMUIR
(L.S.)

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 all to whom these Presents shall come,—GREETING:

C. P. PLAXTON,
Acting Deputy Minister of Justice,
Canada.

Whereas, in and by the One hundred and twenty-eighth section of a certain Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the Session thereof held in the thirtieth and thirty-first years of the Reign of Her late Majesty Queen Victoria, and called and known as "The British North America Act, 1867," it is amongst other things in effect enacted that every Member of the Senate of Our Dominion of Canada shall, before taking his seat therein, take and subscribe before Our Governor General or some person authorized by him, the Oath of Allegiance contained in the fifth schedule to the said Act, and also the Declaration of Qualification contained in the said schedule.

And Whereas it appears to Us expedient to appoint Leslie Clare Moyer, Esquire, D.S.O., K.C., of the City of Ottawa, in the Province of Ontario, Clerk of the Senate of Canada, known and designated as the Clerk of the Parliaments, to be a Commissioner to administer the Oath of Allegiance to the Members of the Senate of Canada, and also to take and receive their Declarations of Qualification.

Now therefore know ye that confiding in the loyalty, integrity and ability of the said Leslie Clare Moyer, We of Our certain knowledge and mere motion and by and with the advice of Our Privy Council for Canada do by these Presents assign, constitute and appoint the said Leslie Clare Moyer to be a Commissioner to administer to the Members of the Senate of Canada the Oath of Allegiance, and to take their Declarations of Qualification, so required as aforesaid, and to receive their subscriptions to such Oath and Declaration.

To have, hold and exercise the said office of Commissioner as aforesaid and the power and authority hereinbefore mentioned unto the said Leslie Clare Moyer during Our pleasure.

In Testimony Whereof, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

Witness: Our Right Trusty and Well-beloved John, Baron Tweedsmuir of Elsfield, a Member of Our Most Honourable Privy Council, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Member of Our Order of the Companions of Honour, Governor-General and Commander-in-Chief of Our Dominion of Canada.

At Our Government House, in Our City of Ottawa, this sixth day of January in the year of Our Lord one thousand nine hundred and thirty-nine and in the third year of Our Reign.

By Command,

W. P. J. O'MEARA,
Acting Under Secretary of State.

Ordered, That the same be placed upon the Journals.

Canada : Quebec (Validity of Statute).—On February 24, 1938,[1] the Leader of the Opposition asked the Minister of Justice whether or not the Government would hear counsel when the matter of considering the disallowance of the so-called padlock law[2] of Quebec was before it. Since then, Mr. Bennett continued, he had found that in many cases the Minister of Justice sitting alone had heard counsel; in one or two cases the Prime Minister had sat with him, and in another case, a committee of the Cabinet sat to hear argument. Apparently there was a long line of precedents to indicate that counsel had been heard on such applications and the Questioner was wondering whether the Minister had arrived at a conclusion. To which the Minister replied that on two occasions a committee of the Council heard interested parties in connection with the disallowance of Provincial Legislation, but in both cases private companies were interested and had to be heard. The legislation did not concern the citizens at large; in both instances it had to do entirely with the rights of private corporations. Whereupon Mr. Bennett interjected that one case was the Commercial Travellers of British Columbia in 1905. The Minister (Mr. Lapointe) then further replied that he had no objection at all to receiving any counsel who wanted to present argument in the matter, but as far as delegations were concerned, he would not receive any.

Canada : Quebec (Language Rights).[3]—In 1937 an Act[4] was passed by the Quebec Parliament providing that when there was a difference between the French text and the English text of a statute, the French text shall prevail. The Act included provision for applying such principle to the Interpretation Act,[5] the Civil Code,[6] the Code of Civil Procedure,[7] the Municipal Code,[8] Act 15, Geo. V, c. 8, and to proclamations and Orders-in-Council.

[1] CCXIV, Can. Com. Deb. 759, 760.
[2] An Act to protect the Public against Communistic Propaganda (Ch. 11 of 1937).
[3] *See also* JOURNAL, Vol. IV, 104-106.
[4] 1 Geo. VI, c. 13.
[5] R.S. 1925, c. 1.
[6] Arts. 12, 2615.
[7] Art. 2.
[8] Art. 15.

In 1938, however, an Act[1] was passed, of which the following was the preamble:

> Whereas the application of act 1 George VI, chapter 13, may give rise to friction and problems difficult of solution, which it is expedient to avoid;
> whereas the present Government has appointed a committee of jurists to revise the laws of this Province and the selection of the members of such committee has earned for it the unanimous praise of the press, without distinction of race or party;
> whereas it is expedient to await the definite reports of such committee in order to decide upon the matter contemplated by the said act 1, George VI, chapter 13.

The Act then by section 1 repeals the Act of the previous year, and section 2 of the Act of 1938 enacts that the provisions repealed or amended under the Act 1, George VI, chapter 13, shall again have force and effect as they existed prior to the date of the sanction of the said Act. The Act of 1938 was assented to on April 8, 1938.

Canada : Saskatchewan (Constitution Act).—The 9 Canadian Provinces, the Constitutions of Ontario, Quebec, Nova Scotia and New Brunswick, are embodied in the British North America Act, 1867,[2] and the Imperial Order in Council of May 22 of that year. The legislative process of the remainder is conferred either by its own Provincial Act or by Imperial Order in Council, and in the case of Manitoba by both. That of Saskatchewan is conferred by its own Act of 1905.[3] During the year under review in this Volume, however, a revised Legislative Assembly Act[4] was passed upon a redistribution of seats. By this Act, which was assented to on March 23, 1938, the following statutes were repealed: the Revised Statutes of Saskatchewan, 1930, c. 3; 22 Geo. V, 1932, c. 3; 25 Geo. V, 1934-35, c. 2; 1 Edw. VIII, 1936, c. 2; and 1 Geo. VI, 1937, c. 95, sec. 3.

It is regretted, however, that space does not admit of a description of this form of Canadian Provincially enacted Constitution in this issue, but it is hoped to deal collectively with the subject of Canadian Provincial Constitutions in a future Volume.

Canada : Alberta (Validity of Bills).—In a former issue[5] reference was made to the question of validity of certain Acts passed by the Dominion Parliament, popularly known

[1] 2 Geo. VI, c. 22.
[2] 4 and 5 Edw. VII, c. 42.
[3] 30 Vict., c. 3.
[4] Ch. 2 of 1938.
[5] *See* JOURNAL, Vol. V, 95-99. Texts of the Acts and of both judgments are printed in pamphlet form by the King's Printer, Ottawa, 1937.

as the "New Deal" social legislation, which were taken by certain of the Provinces to the Judicial Committee of the Privy Council. The same question—namely, the division of the legislative power under the British North America Act, 1867, between the Federal Government and the Provinces—is now at issue, but in this case it is the Dominion Government which is disputing the validity of legislation by one of the Provinces, as represented in the three following Bills[1] which have connection with Social Credit legislation, passed by the Provincial Parliament of Alberta:

Bill, *A*.—Bank Taxation Act, Bill No. 1 of 1937, Third Session;
Bill, *B*.—An Act to amend and consolidate the credit of Alberta Regulation Act, Bill No. 8 of 1937, Third Session; and
Bill, *C*.—An Act to ensure the publication of accurate news and information, Bill No. 9 of 1937, Third Session.

Bill *A* applied to every corporation or joint stock company, other than the Bank of Canada, incorporated for the purpose of doing banking or savings bank business and transacting such business in the Province. The Bill imposed on every such Bank an annual tax, in addition to any tax payable under any other Act, of (*a*) ½% on the paid-up capital, and (*b*) 1% on the reserve fund and undivided profits. Penalties were provided for default in payment of tax, and the tax was declared to be payable to the Provincial Secretary on behalf of His Majesty for the use of the Province.

Bill *B*, which applied to "credit institutions" (that was,

[1] The following Bills, dealing with or consequent upon the Social Credit System, have also not been allowed on the Statute Book:

(i) Held by the Canada Courts to be *ultra vires*:
Reduction and Settlement of Debts Act, Statutes of Alberta, 1936, Second Session.
Provincial Securities Interest Act, Chapter 11, Statutes of Alberta, 1936, Second Session.
Provincially Guaranteed Securities Proceedings Act, Chapter 11, Statutes of Alberta, 1937.
Provincial Guaranteed Securities Interest Act, Chapter 12, Statutes of Alberta, 1937.
Agricultural Land Relief Advances Act (Production Tax, 7%), Chapter 6, Statutes of Alberta, 1938 (not proclaimed).

(ii) Disallowed by the Governor-General in Council:
Credit of Alberta Regulation Act, Chapter 1, Statutes of Alberta, 1937, Second Session.
Bank Employees Civil Rights Act, Chapter 2, Statutes of Alberta, 1937, Second Session.
Judicature Act Amendment Act, Chapter 5, Statutes of Alberta, 1937, Second Session.
Home Owners' Security Act, Chapter 29, Statutes of Alberta, 1938.
Securities Tax Act, Chapter 7, Statutes of Alberta, 1938.

persons or corporations whose business was that of dealing in credit), required credit institutions carrying on business in the Province to take out licences from the Provincial Credit Commission constituted by section 4 of the Alberta Social Credit Act. Applications for licences were to be accompanied by an undertaking signed by the applicant to refrain from acting, or assisting or encouraging any person to act, in a manner which restricted or interfered with the property and civil rights of any person in the Province. Before a licence was granted to a credit institution one or more local directorates were to be appointed to supervise, direct, and control the policy of the institution's dealing in credit, for the purpose of preventing any act constituting a restriction or interference with full enjoyment of property and civil rights by any person within the Province. Carrying on the business of dealing in credit in the Province without a licence involved a monetary penalty for each day of breach.

Bill *C* applied to newspapers or periodicals published in the Province. Where any such paper had published a statement relating to any policy or activity of the Provincial Government, the proprietor, editor, publisher or manager was to be bound, when so required by the Chairman of the Social Credit Board, to publish in the paper a statement of no greater length than and of equal prominence and type with the previous statement. The object of the Chairman's statement was to be the correction or amplification of the previous statement, and it was to be stated that it was published by his direction. The Bill further provided that the proprietor, editor, publisher, or manager of a paper should be obliged on requisition of the Chairman of the Social Credit Board to divulge the particulars of every source of information on which any statement appearing on his paper was based. Any contravention of the provisions of the Bill was liable to be published by money penalties, and might entail the suspension of the paper, or part of its material.

These three Bills were passed by the Alberta Legislature in its Third Session, 1937, and duly presented to the Lieutenant-Governor of the Province on October 5, 1937, who withheld his consent and reserved them for the signification of the pleasure of the Governor-General of the Dominion under sections 90, 55 and 57 of the B.N.A. Act, 1867.[1] The Governor-General then, on the instructions of the Federal Government, disallowed the Bills and, after exchange of correspondence with

[1] 30 Vict. c. 3.

the Alberta Government, referred them to the Courts under section 55 of the Supreme Court Act of 1891.[1]

During debate upon the Address in Reply on February 4, 1938,[2] the Minister of Justice stated that since Federation and prior to the abovementioned legislation, altogether 100 Provincial Statutes had been so disallowed, 72 between 1867 and 1900 and 28 from 1900 until the present instance. Thousands of them had been submitted after a petition had been presented for their disallowance, but the Governor-General in Council had refused to disallow them; and a number of them had been amended after representation made by the Minister of Justice to the Provincial Governments concerned.

The questions referred to the Supreme Court of Canada were, whether the three Bills or any provisions thereof, or to what extent, were *intra vires* the Legislature of Alberta.

On March 4, 1938,[3] the Supreme Court of Canada upheld the position of the Federal Government and found unanimously that the 3 Bills referred to it were not *intra vires* the Alberta Legislature. The Court also upheld the Federal Government's power of disallowance of Provincial legislation, provided that it was exercised within the prescribed period of one year after receipt of an authentic copy of the Act by the Governor-General. The Court also sustained the right of Lieutenant-Governors to reserve for the pleasure of the Governor-General, Bills passed by Provincial Legislatures, provided that the discretion of the Lieutenant-Governor was exercised subject to any relevant provision in his instructions from the Governor-

[1] Subsection (1) of section 55 of R.S. c. 139 reads:
References by Governor in Council:
Important questions of law or fact touching:

(*a*) the interpretation of the British North America Acts; or
(*b*) the constitutionality or interpretation of any Dominion or provincial legislation; or
(*c*) the appellate jurisdiction as to educational matters by the British North America Act, 1867, or by any other Act or law vested in the Governor in Council; or
(*d*) the power of the Parliament of Canada, or of the legislatures of the Provinces, or of the respective governments thereof, whether or not the particular power in question has been or is proposed to be exercised;
(*e*) any other matter, whether or not in the opinion of the Courts *ejusdem generis* enumerations, with reference to which the Governor in Council sees fit to submit any such question

may be referred by the Governor in Council to the Supreme Court for hearing and consideration; and any question touching any of the matters aforesaid, so referred by the Governor in Council shall be conclusively deemed to be an important question.

[2] CCXIV, Can. Com. Deb. 177

[3] *The Times*, March 5, 1938.

General. The Chief Justice (Rt. Hon. Sir Lyman Duff) decided that the Alberta Social Credit legislation, the general scheme and history of which he found it necessary to examine, transgressed the legal powers of a Provincial Legislature as defined in the B.N.A. Act.

Although different reasons were given by some of the judges, their judgment was unanimous.

On March 4, 1938,[1] in the House of Commons, the Minister of Justice (Rt. Hon. E. Lapointe, K.C.), at the request of certain Members, Tabled copies of the answers of the Supreme Court of Canada to certain questions, by way of reference by the Governor-in-Council of certain Alberta matters, and the reasons for such answers. The questions and answers are:

Q. Is power of disallowance a still subsisting power?
A. Yes.
Q. Is power, if subsisting, subject to any restriction, and, if so, what is nature of restriction?
A. No.
Q. Is Bill No. 1, entitled an Act respecting the taxation of Banks, *intra vires*?
A. No.
Q. Is Bill No. 8, entitled an Act to Amend and Consolidate the Credit of Alberta Regulations Act, *intra vires*?
A. No.
Q. Is Bill No. 9, entitled an Act to ensure the publication of Accurate News and Information, *intra vires*?
A. No.
Q. Is power of reservation a still subsisting power?
A. Yes.
Q. Is power, if subsisting, subject to any restrictions, and, if so, what is the nature of restrictions?
A. No.

The Bills were then taken to the Privy Council, the parties being the Attorney-General for Alberta *v.* the Attorney-General for Canada and others.[2]

On May 10, 1938, their Lordships, the Judicial Committee of the Privy Council, granted a petition by the Attorney-General of Alberta for special leave to appeal from the answers from the Supreme Court of Canada to questions referred to the Court by the Governor-General of Canada under section 55 of the Supreme Court Act.[3] The questions referred to the power of the Alberta Legislature to pass the Bills which had

[1] CCXV, Can. Com. Deb. 1033, 1034.
[2] The Canadian Press and Newspapers Associations; the Alberta Press; the Chartered Banks of Canada; and the Attorney-General of British Columbia.
[3] *See* p. 52 *ante*.

been duly presented to the Lieutenant-Governor and reserved by him, as abovementioned.

The petition was not opposed and leave for appeal was granted.

On July 5 following, their Lordships began the hearing of the appeal by the Attorney-General for Alberta from a unanimous judgment of the Supreme Court of Canada, dated March 4 in the same year, that all 3 Bills were not within the domain of Provincial legislative competence.

The appellant stated in his case that the respondent's factums included a great deal of material in the form of evidence such as quotations from books, pamphlets, speeches and broadcast addresses by persons connected more or less intimately with the Government of the Province, by reference to which it was, *inter alia*, contended that all the Bills formed part of a scheme of which the central measure was the Alberta Social Credit Act, which had been repealed on April 8 last.

The appellant contended that there was no ground afforded either by the provisions of the Bills themselves or by any other matter which might properly be referred to for treatment of any Bills as ancillary to or dependent upon the Alberta Social Credit Act or any general scheme of legislation; that Bill *A* would, if assented to, be *intra vires* the Alberta Legislature as imposing direct taxation within the Province under section 92 (2) of the B.N.A. Act, 1867; that Bill *B* would be *intra vires* as a regulation of a particular kind of business carried on within the Province under its powers, *vide* section 92 (13) and (16) of the said Act; and that Bill *C* would be *intra vires* under powers conferred on the Province by the same section.

On July 7, 1938, the hearing was concluded and the Judicial Committee held that, inasmuch as the Social Credit Board and the Provincial Credit Commission, as constituted under the Alberta Social Credit Act, no longer existed, that Act being now repealed, those bodies could not perform the powers proposed to be conferred on them in respect of Bills *B* and *C*, which Bills were therefore inoperative, and their Lordships in accordance with the practice of the Board would not deal with them. The appeal then accordingly proceeded in respect of Bill *A* alone, their Lordships reserving judgment.

Counsel for the appellant submitted that in regard to Bill *A* it was quite impossible for a Court to say that the tax in question was not being raised as revenue for Provincial purposes and that it was not within the competence of the Provincial Legislature under section 92 (2) of the B.N.A. Act, 1867.

Counsel for the Attorney-General of Canada submitted that Bill *A* was legislation in relation to banking, a subject-matter within the exclusive legislative competence of the Dominion Parliament. It was not " direct " taxation or taxation " within the Province " within the meaning of section 92 (2) of the B.N.A. Act.

On November 5, 1938, the Lord Chancellor, during delivery of the reasons for dismissing the appeal, said that Bill *A* was in a different position from Bills *B* and *C*. Bill *A* contained no reference to the Alberta Social Credit Act. The taxation was aimed simply at banks, including savings banks, and by section 91 of the B.N.A. Act such banks were within the exclusive legislative authority of the Dominion. Their Lordships therefore agreed with the opinion expressed by Mr. Justice Kerwin, concurred in by Mr. Justice Crocket, both of the Supreme Court of Canada, that there was no escape from the conclusion that, instead of being in any true sense taxation in order to the raising of a revenue for Provincial purposes, Bill *A* was merely " part of a legislative plan to prevent the operation within the Province of those banking institutions which have been called into existence and given the necessary powers to conduct their business by the only proper authority, the Parliament of Canada." That was a sufficient ground for holding that Bill *A* was *ultra vires*.[1]

Their Lordships therefore humbly tendered to His Majesty their advice to dismiss the appeal.

There have been[2] from the Provincial Courts between 1867 and 1938, 329 appeals to the Privy Council. In 187 cases the judgment was affirmed, in 131 cases the judgment was reversed, and in 10 cases it was modified.

From the Supreme Court there have been since the creation of the Court 198 appeals to the Privy Council. In 117 cases the judgment was affirmed, in 74 cases the judgment was reversed, and in 5 cases it was modified.

From the Exchequer Court there have been 3 appeals. In 1 the judgment was affirmed, and in the other 2 judgment was reversed.

The Constitutional cases in which appeals have been heard by the Privy Council, indicating the Court, Dominion or Provincial, from which the appeal was taken, are: from the

[1] *The Times*, May 10; July 5, 7, 14; and November 4, 1938.
[2] Statement by the Minister of Justice during the Debate on 2R of the Privy Council Appeals Bill (No. 19 of 1938), CCXVI, Can. Com. Deb. 2163.

Provincial Courts 70 appeals have been taken on Constitutional matters; in 35 cases the judgments were affirmed, in 4 they were modified, and in 31 they were reversed. From the Supreme Court of Canada there have been 68 appeals in Constitutional cases; 49 judgments have been affirmed, 15 have been reversed, and 4 have been modified.

Australia (Parliamentary Representation).—The Constitution directs that the representation of the States in the House of Representatives shall be in proportion to the numbers of the people in the respective States subject to no State being represented by less than 5 Members. The Representation Act, 1905, provided that for the purpose of determining the numbers of Members to which the several States are entitled, there shall be an enumeration every 5 years, and an Act[1] was passed amending the existing law so as to determine that such enumeration shall take place upon an actual census.

Australia (Capital Federal Territory).—An Act[2] was passed during 1938, changing the name of "The Territory for the Seat of Government" from "Federal Capital Territory" to "The Australian Capital Territory."

Australia (Payment to Minister and Members).—An Act[3] was passed in 1938 providing for the adjustment of the salaries and allowances of Ministers of State and of the allowances of Members of both Houses of the Commonwealth Parliament. This Act deals primarily with the removal of the last reductions of the salaries and allowances of Ministers,[4] the holders of Parliamentary offices[5] and Members of both Houses, imposed by the financial emergency legislation.[6] The last of the reductions imposed upon the Commonwealth Civil Service was restored in 1936. Section 6 amends the Ministers' of State Act, 1935-1936[7] by providing that there shall be paid to the Prime Minister out of the Consolidated Revenue Fund an additional allowance of £1,500 p.a. The ordinary Member's Parliamentary allowance had been reduced by £200 p.a. upon his appointment to a Ministerial or Parliamentary office. This the present Act now removes, as also the taxation of Ministerial and Parliamentary salaries under sections 19 and 20 of Act No. 10 of 1931.

[1] No. 9 of 1938. [2] Act No. 12 of 1938. [3] No. 2 of 1938.
[4] There are 10 Ministers of State and 4 Assistant Ministers. Whips are also paid out of the Cabinet Fund, which is now increased to £16,950 p.a.
[5] President, Speaker and Chairmen of Committees.
[6] Financial Emergency Act, 1931-36 (Acts Nos. 10 of 1931; 47 of 1931; 35 of 1932; 6 and 17 of 1933; 16 of 1934; 35 and 36 of 1935; and 29 of 1936). [7] Act Nos. 35 and 36 of 1935 and 29 of 1936.

Australia: New South Wales (Members' Allowances).—During 1938 an Act[1] was passed by the Parliament of this State and received Royal Assent, October 31, which amended section 28 of the Principal Act,[2] as last amended by section 3 of Act No. 48 of 1932, by increasing as and from July 1, 1938, the salaries of Members of the Legislative Assembly from £670 to £875, and the salaries of Members of the Legislative Council from £176 to £250 p.a. in both cases.

By section 3, the Principal Act as last amended by section 4 of Act No. 48 of 1932 was also amended by raising the sum annually payable to the Civil List and of the Consolidated Revenue Fund for Ministerial salaries from £21,790 to £22,345, and by omitting from the Third Schedule the figures £1,390 and substituting £1,945, as well as substituting £14,295 for £13,740.

Section 4 authorized the special appropriation out of the consolidated Revenue Fund of an annual amount of £23,420, for the salaries of Ministers of the Crown, being Members of the Executive Council, as follows:

	£
The Premier[3]	2,445
The Attorney-General	2,095
The Vice-President of the Executive Council ..	1,375
Nine other Ministers of the Crown, £1,945 each	17,505

Section 5 similarly authorized the appropriation of £4,690 as follows:

	£
The President of the Legislative Council	1,200
The Speaker of the Legislative Assembly ..	1,675
The Chairman of Committees of the Legislative Council	700
The Chairman of Committees of the Legislative Assembly	1,115

Act No. 48 of 1932 is therefore repealed.

Australia: Victoria (Members of Parliament Disqualification Bill).—No amendments were made in the Constitution during the 1938 Session, but amendments were proposed during such Session in a Bill entitled the Members of Parliament (Disqualification) Bill.[4] Any description of these

[1] Geo. VI, Act No. 18 of 1938.

[2] The Constitution Act (No. 32 of 1902 as amended by subsequent Acts), which deals with the salaries of the Judges, Auditor and Solicitor-General and the Governor's Private Secretary.

[3] In Australia, only in the case of the Commonwealth is the expression "Prime Minister" used (Ed.).

[4] No. 67.

amendments, therefore, will be held over until the Bill has become law.

Australia: Queensland (Delegated Legislation). — With reference to Article VI hereof, the Parliament of Queensland[1] has passed the following new Standing Order, which received the approval of the Governor of the State on November 3, 1938:

Disallowance of Regulations, Rules, or Orders in Council.

37A. When notice of a motion to disallow any Regulation, Rule, or Order in Council to which objection may be taken within a time specified has been given, Mr. Speaker shall decide whether the subject-matter of the proposed motion has been discussed during the currency of the present Session or whether an opportunity for discussion of the subject-matter of the proposed motion will arise within the next succeeding period of seven days.

In the first instance the motion, when called, shall be decided by the House without amendment or debate.

In the second instance, such motion shall be held over until after the conclusion of the stated debate, or the period of seven days, whichever is the earlier. It shall then be placed on the Business Paper and when called shall be decided by the House without amendment or debate.

If the subject-matter of the proposed motion has not been discussed during the currency of the existing Session, or if no opportunity to do so will arise during the next succeeding period of seven days, the following provisions shall apply:—

(*a*) Such motion shall be set down to be considered on the next sitting day upon which General Business has precedence of Government Business: Provided that if there is no specified day upon which General Business has precedence of Government Business such motion shall be set down to be considered within seven days after which notice has been so given.

(*b*) On the day appointed for consideration, such motion—

(i) Shall have priority on such day in the order in which notice was given;

(ii) Shall take precedence over all other business on such day;

(iii) If not moved on that day, shall lapse.

(*c*) Mr. Speaker shall put the question when Debate on any such motion shall have occupied one hour, allocated as follows:—Mover of the motion, ten minutes; seconder of the motion, five minutes; any other member, five minutes; Minister in reply, fifteen minutes.

Australia: South Australia (Delegated Legislation).—In our last Volume[2] reference was made to a statutory provision[3] providing for the setting up of a Joint Standing Committee of both Houses to examine and to report to each House upon all regulations, rules, by-laws and orders (not being orders

[1] Unicameral.

[2] *See* JOURNAL, Vol. VI, 54, 55.

[3] Act No. 2381, sec. 4.

made in judicial proceedings) made pursuant to an Act of Parliament.

The Members of the Committee were appointed by the respective Houses and the Committee functioned as from the end of September, 1938. The Committee met on 13 occasions and considered 36 papers, of which 5 were subsequently disallowed by the Houses, as a result of the Committee's reports.

The Committee has the full confidence of the respective Houses and is exercising a much-needed close supervision over the class of legislation covered by the new Joint Standing Order.

As this is a new practice, which has also been introduced into other Australian Parliaments, as a supervision of delegated legislation, the Joint Standing Orders on the subject, adopted by both Houses and approved by the Governor of this State in 1938, are given below:

19. In Joint S.O. No. 20 to 31 inclusive— Interpretation.

"regulation" means regulation, rule, by-law, order or proclamation which under any Act is required to be laid before Parliament and which is subject to disallowance by the resolution of either House or both Houses of Parliament.

20. There shall be a joint committee to be called "The Joint Committee on Subordinate Legislation." Constitution of Committee.

The Committee shall consist of three Members of each House.

A quorum of the Committee shall consist of two Members from each House.

21. The Members to serve on the Committee shall be nominated in each House by the Member moving the motion for their appointment; but if any Member in either House so demands, the Members of the Committee for that House shall be elected by ballot. Manner of appointment.

22. Notwithstanding any Standing Order of either House, the Members of the Committee shall be appointed by each House forthwith after every general election of the House of Assembly: Provided that the Members of the first Committee to be appointed as soon as may be after this Joint Standing Order is approved by the Governor. Time for appointment.

23. The Committee shall hold office until the next dissolution or expiration of the House of Assembly after its appointment. Term of appointment.

24. The Committee shall appoint a Chairman. The Chairman shall be entitled to vote on every question, but when the votes are equal, the Question shall pass in the negative. Chairman.

25. It shall be the duty of the Committee to consider all regulations. If the regulations are made whilst Parliament is in session, the Committee shall consider the regulations before the end of the period during which any motion for disallowance of those regulations may be moved in either House. Duties of Committee.

If the regulations are made whilst Parliament is not in session, the Committee shall consider the regulations as soon as conveniently may be after the making thereof.

Consideration of Regulations.

26. The Committee shall with respect to any regulations consider—

(*a*) whether the regulations are in accord with the general objects of the Act, pursuant to which they are made;
(*b*) whether the regulations unduly trespass on rights previously established by law;
(*c*) whether the regulations unduly make rights dependent upon administrative and not upon judicial decisions; and
(*d*) whether the regulations contain matter which, in the opinion of the Committee, should properly be dealt with in an Act of Parliament.

Report of Committee.

27. If the Committee is of opinion that any regulations ought to be disallowed—

(*a*) it shall report that opinion and the grounds thereof to both Houses before the end of the period during which any motion for disallowance of those regulations may be moved in either House; and
(*b*) if Parliament is not in session, it may report its opinion and the grounds thereof to the authority by which the regulations were made.

If t e Committee is of opinion that any other matter relating to any regulations should be brought to the notice of Parliament, it may report that opinion and matter to both Houses.

Presentation of report.

28. A report of the Committee shall be presented to each House in writing by a Member of the Committee nominated for that purpose by the Committee.

Duty of Under-Secretary.

29. The Under-Secretary shall forthwith upon any regulations being made, or in the case of by-laws made by a municipal council or district council, forthwith upon their being certified by the Crown Solicitor or a Judge, forward sufficient copies thereof to the Clerk of the Parliaments for the use of the Members of the Committee.

Power to send for persons, etc.

30. The Committee shall have power to act and to send for persons, papers, and records, whether Parliament is in session or not.

Procedure.

31. The procedure of the Committee shall, except where herein otherwise ordered, be regulated by the Standing Orders of the Legislative Council relating to Select Committees.

Australia : South Australia (Numbering of Acts).—It has been the practice in this State to number Acts consecutively irrespective of years. On August 11, 1938, however, an amendment to the Joint Standing Order was approved, by which an Act in future shall bear as part of its short title the number of the year in which the Bill for that Act was introduced, or where the Bill for that Act was a lapsed Bill restored to the Notice Paper, then the year in which the Bill was so restored. Every

Act, however, will now be numbered as an Act of the year mentioned in its short title.

Australia : Western Australia (Government Contract).—During 1938 a question was raised in the Legislative Assembly as to the eligibility of a Member of the House—namely, Mr. Speaker—to sit in Parliament owing to the fact that he had entered into a contract with the Agricultural Bank, a semi-Government Department, to repay the principal moneys borrowed by him, with interest thereon, on a farming property of which he was owner.

The question was submitted to the Crown Law Authorities who expressed doubts as to whether Mr. Speaker should, or should not, continue as a Member, with the result that the Government introduced a Bill to remove doubts as to the scope of Sections 32 and 34 of the Constitution Acts Amendment Act, 1899,[1] which sections disable persons concerned in contracts, agreements or commissions made or entered into with, under or from any person whomsoever for or on account of the Government, from being elected or sitting and voting as Members of either House. The doubt was whether such sections did or did not extend to certain classes of contracts, etc.

Australia : Western Australia (Constitutional).—With reference to Volume VI, page 55, the Act, there referred to as the "Constitution Acts Amendment Act, 1937," was a "Bill for an Act" and still has not yet become law. The Index to that Volume has been therefore amended accordingly.

Union of South Africa. (Speakership).—Upon the closing day of the last (VI) Session of the VIIth Parliament of the Union, the following Resolution[2] was passed:

> That this House places on record its thanks to the Honourable Ernest George Jansen for the dignified and impartial manner in which he has upheld the high office of Speaker of this House during the Seventh Parliament of the Union of South Africa and for the uniform courtesy he has manifested towards its members.

The Motion, which was carried unanimously, was moved by the Prime Minister and supported by the Leaders of the Parties in Opposition.

Since the advent of Union in 1919, the Speakers of the House of Assembly, who have always been members of the Party in power, are as given below, and in each case the election as Speaker has taken place in a new Parliament following a general election:

[1] 63 Vict., No. 19. [2] 31 Union Assem. Deb. 1733-35.

Date.	*Name.*	*Constituency.*	*Date of Election to Chair.*
1910.	Molteno.	Ceres.	November 1.
1915.	Krige.[1]	Caledon.	November 19.
1920.	Krige.	(*again*).	March 19.
1921.	Krige.	(*again*).	March 11.
1924.	Jansen.	Vryheid.	July 25.
1929.	de Waal.[2]	Piquetberg.	July 19.
1933.	Jansen.[3]	Vryheid.	May 26.
1938.	Jansen.	(*again*).	July 22.

Therefore although there has not been that continuity in office which is such a feature of the Speakership at Westminster, Union Speakers have been more than once re-elected.

Union of South Africa (Ministry).—Under the Constitution[4] at the time of the Union of the four South African Colonies of the Cape of Good Hope, Natal, the Transvaal and Orange River Colony, section 14 of the such Constitution provided for 10 Ministers administering Departments of State, as distinguished from Ministers without Portfolio, which latter may only sit, speak or vote in that House of which they are Members. In 1925 this number was increased[5] to 11. Now by the 1938 Act[6] such number is increased to 12.

Union of South Africa (Further Facilities granted to Members).—In consequence of representations made to it, the Committee on Standing Rules and Orders, on September 14, 1938, extended further facilities to members as follows:

Conveyance of Members' Motor Cars.—On the verbal intimation to the Committee of the approval of the Minister of Railways and Harbours, subsequently confirmed in writing by the General Manager, it was agreed that where a holder of a free Parliamentary railway pass desired to transport his or her motor car to Cape Town and return in respect of a Session of Parliament, he or she will be entitled to do so, on production of the free pass, at the special tariff now in operation for members of the public who purchase two or more adult first or second class railway tickets.

Additional Free Railway Ticket during Session for the Use of the Wife or Husband of a Member.—In addition to the free transport to and from Cape Town of the wife or husband, minor children and servant of a Member in connection with each session of Parliament, a Member will in future be entitled

[1] Mr. Molteno was not returned.
[2] Mr. Jansen was appointed a Minister of the Crown.
[3] Mr. de Waal was returned but was not re-elected Speaker under the new Coalition Government.
[4] 9 Edw. VII, c. 9. [5] Act No. 34 of 1925. [6] Act No. 13 of 1938.

to obtain a warrant from the Clerk of the House enabling his wife (or her husband) to obtain a railway ticket at the expense of the House of Assembly Vote to visit her or his home during the course of a session.

Families of Members permitted to Travel by a Route other than the Direct one.—Where a Member represents to Mr. Speaker that it will be more convenient for his or her family to travel to Cape Town for a Session of Parliament by a route other than the direct one, Mr. Speaker is now authorized, in his discretion, to allow the extra cost so involved to be a charge on the House of Assembly Vote.

Free Trunk Line Telephone Calls.—As from next Session a Member will be entitled to the free use of the telephone service for trunk calls for a period of 6 minutes per week during a Session of Parliament—that is to say, either 1 call of 6 minutes' duration or 2 separate calls of 3 minutes each. This free service will be restricted to calls to places within the electoral division of a Member or to his or her home—whether in such electoral division or elsewhere—and calls thus allowed may not be accumulated. Trunk line calls in excess of 6 minutes per week will require to be paid for by Members as has hitherto been the case.

Provision has been made on the Estimates for the ensuing financial year to cover the extra cost involved.

Union of South Africa : Provinces (Payment to Members of Executive).—The allowance to Members of the Executive Committees of the four Provinces of the Union—Cape of Good Hope, Natal, Transvaal and Orange Free State—has been increased from £560 to £700 p.a. Such Members, however, do not receive £180, the annual allowance of Members of the Provincial Councils of those Provinces.

South West Africa (European Female Franchise).—During 1938[1] the following Motion was moved on March 29:

> That this House is of opinion that the franchise at elections of Members of the House of Assembly should also be granted to European women, and therefore respectfully requests the Union Government to amend the South West Africa Constitution Act accordingly.

The debate was adjourned, and on April 4, following on Question put, it was Resolved in the Affirmative (Ayes, 9; Noes, 10).

Section 45 of the Constitution[2] provides that the Constitution can be amended by the Governor-General of the Union, provided such amendment is embodied in a Resolution of the S.W.A. Legislative Assembly, certified by its Chairman

[1] Votes, 1938, 9. [2] Union Act No. 42 of 1925.

that not less than two-thirds of its Members voted and that such proposals shall lie on the tables of both Houses of the Union Parliament for one month, during which neither House has expressed its disapproval. As, however, the above voting did not show this result, the Motion was submitted to the S.W.A. Assembly on March 28, 1939, when the voting was: Ayes, 11; Noes, 6. And the question being a Constitutional one, the Chairman directed that his vote be recorded with the Ayes (VOTES, 1939, p. 6). The Resolution in question was Tabled both in the Union Senate and in the Union House of Assembly on May 1, 1939, and on June 2, following a Governor-General's proclamation, was issued[1] amending paragraph 1 of Part I of the Schedule to the S.W.A. Constitution by the deletion of the word " male " wherever it occurs.

South West Africa (Mandate Citizenship and German Language).—The following Motion was moved on April 7, 1938, by Dr. Hirsekorn and seconded by Mr. J. C. T. Meinert:

> That this House is of opinion that it is desirable and expedient, in order to appease the minds of the different sections of the population, and in order to ensure a more equitable participation in the government of the Territory by all sections of the population, that legislation should be introduced by the Government of the Union of South Africa, providing for:—
>
> (*a*) The acknowledgment of German as an official language of the Territory as set out in the resolution passed unanimously in this House on the 27th of April, 1932; and
>
> (*b*) the institution of a mandate citizenship open to all European settlers and immigrants to qualify for the exercise of the franchise in the Mandated Territory of South West Africa.

After discussion, upon the Question being put, it was negatived: Ayes, 6; Noes, 9.

South West Africa (Payment to Members of Executive, Advisory Council and Legislative Assembly).—In addition to the facilities stated in Volume I (p. 106), since April, 1938, the allowances of Members of the Legislative Assembly have been increased from £120 to £180 p.a.[2] The allowance of Members of the Executive Committee is £560, and of Members of the Advisory Council £250.

Ireland (Eire) (Confirmation of Agreements).—The Eire (Confirmation of Agreements) Bill[3] was presented in the House

[1] Union Government Gazette Extraordinary, No. 2645 of June 5, 1939.

[2] Further details will be given when the whole subject is dealt with in a general composite article.

[3] 1 and 2 Geo. VI, c. 25; *see also* Cmd. 5728, 5748 and 5809 of 1938 and S.R. and O., No. 510 of 1938. Eire, P. 3104. References to the subject in the Chamber of Deputies were LXXI, Eire: Dáil Deb. 30, 463, 465, 466, 1536, and LXXIII, *ib.* 7.

of Commons on April 27, 1938.[1] The Motion, "That the Bill be now read a Second Time," was moved by the Prime Minister (Rt. Hon. Neville Chamberlain) on May 5, 1938,[2] and the Constitutional or procedure points referred to in the speech are as follow. The Prime Minister said that, as stated in the Preamble, the Agreements are subject to Parliamentary confirmation, and the Bill was designed to provide that confirmation and to do anything else that may be necessary to carry them into effect. If the Bill was carried it was proposed to ask the House to go into Committee on the Financial Resolution required for part of Clause 2.[3] That Resolution dealt, first, with the disposal of a sum of £10,000,000 to be paid by the Eire Government and the method of disposal was dealt with in the Memorandum accompanying the Bill. Secondly, there was the transfer to the Consolidated Revenue Fund of certain charges in connection with the service of the land purchase scheme dealt with in the Second Schedule to the Bill. There was also a Resolution to be moved in Committee of Ways and Means covering Clause 3 (4),[4] providing for the levying of Customs Duties in certain events. The 3 Agreements are linked together by a general Preamble saying that they are to be treated as a whole. The first provides that goods from Eire can be admitted to the United Kingdom of Great Britain and Northern Ireland free of Customs Duty other than revenue duty and subject to certain quantitative regulations on agricultural produce. On the other hand, the Government of Eire guarantees the continuance of free entry into Eire for United Kingdom goods which already enjoy entry free of duty. The Eire Government undertakes to remove or reduce its duties upon certain other United Kingdom imports and to arrange for a review of the existing protective tariffs by the Prices Commission. Existing preferential margins were to be maintained and a preference assured for United Kingdom goods in any new duties or adjustment of existing duties. In cases of difficulty provision was made for consultation between the two Governments.

In regard to Clause 3 (4) requiring a Resolution in Committee of Ways and Means, that subsection refers to Article 4 (3) on p. 9 of the Agreement. Under that subsection in certain circumstances it was contemplated that the United Kingdom Government might impose such duties as may be necessary upon eggs and poultry exported from Eire to the United

[1] 335 H.C. Deb. 5. s. 124, 125.
[2] *Ib.*, 1185, 1378, 1379.
[3] *Ib.*, 1071-1184.
[4] *Ib.*, 1185-1189.

Kingdom. As there was no present power to impose such duties such a Resolution was necessary. The Prime Minister, continuing, said that the Agreements on Defence and Finance were of a different character. Excluding the annual sum of £250,000 payable by the Eire Government in respect of damage to property, the British claims against that Government, if capitalized, amounted to over £100,000,000. It was true that the Eire Government did not admit those claims. But the fact remained that the special duties imposed by the United Kingdom in order to recoup themselves for the sums which in their view were wrongfully withheld, amounted to over £4,000,000 a year, and in the absence of the Agreement there was no reason why those duties should not be continued. Under the Agreement, however, the special duties were wiped out and the United Kingdom Government had withdrawn all financial claims in return for a lump sum of £10,000,000. The Prime Minister then passed to the Agreement on Defence.

In consequence of the financial nature of the Bill, as has already been explained, the House of Commons went into Committee of the Whole House under S.O. 69 upon a Resolution[1] with reference to the payment into the Exchequer of £10,000,000 and of certain sums out of the Consolidated Revenue Fund, and into Committee of Ways and Means upon a Resolution in regard to the duties on eggs and poultry,[2] which was reported on May 9, 1938.[3]

The Committee Stage of the Bill was taken, the Bill Reported without amendment, and read 3*R* on May 10,[4] transmitted to the House of Lords, and received Royal Assent on May 17, 1938.[5]

Ireland (Eire) (Constitutional: Consequential Provisions).—On November 24, 1937,[6] leave was given to introduce a Bill, "to make divers provisions consequential on or incidental to the coming into operation of the Constitution of Ireland (1937),[7] lately enacted by the people." In moving, in Dáil Eireann, or Chamber of Deputies, "that the Constitution (Consequential Provisions) Bill be now read a Second Time," the Minister for Justice said that the repeal of the old, and the coming into operation of the new, Constitution took place

[1] 335 H.C. Deb. 5. s. 1185. [2] *Ib.*, 1185, 1189. [3] *Ib.*, 1378, 1379. [4] *Ib.*, 1517-1547. [5] 336 *ib.*, 301. [6] LXIX, Dáil Eire. Deb. 2218.

[7] The Bill for the Constitution was introduced in the Chamber of Deputies March 10, 1937; published and circulated May 1; approved by the Chamber of Deputies June 14; enacted by the People July 1; the voting being: for 685,105; against 526,945. It came into operation December 29, all in 1937. The first meeting of the Senate was April 27, 1938.

on November 29. Article 50 of the Constitution provided for the continuance of all laws at present in force, so far as they were not inconsistent with the present Constitution. It was, however, necessary to have some adaptation of existing enactments so as to ensure that the change in the Constitutional position should take effect as smoothly as possible. A somewhat similar situation arose in setting up the Free State in 1922. The Bill duly passed through all its stages in the Chamber of Deputies without amendment. Section 1 requires that the Act shall come into operation at the same time as the new Constitution. Section 2 provides for the general adaptation of the expressions " Saorstat Eireann " and " Irish Free State," and section 3 provides for similar adaptation in regard to references to the President of the Executive Council and his Department to the new style of " Department of the Taoiseach " (Prime Minister) as well as in regard to moneys voted for that department for the Financial Year which began on April 1, 1937. Section 4 carries on the same general adaptation in regard to references to officials and authorities. Section 5 gives the Government power to make special adaptations and modifications by Order, every one of which must be Tabled in both Houses of Parliament. Section 6 deals in the same manner with the Central Fund and the Exchequer of the Irish Free State, which now become respectively the " Central Fund of Ireland " and the Exchequer of Ireland, and consequential provisions are contained in section 7 in respect of the moneys, etc., in the Central Fund of the Irish Free State. Section 8 requires the official Seal of the Government[1] to be officially and judicially noticed. In case no such seal has been provided the seal of the old Irish Free State shall be valid and the following section applies the temporary usage of the seal of the President of the Executive Council under the old Constitution, and section 9 deals with the temporary users of existing official seals.

Seanad Eireann.—Sections 10 and 11 deal with the Senate. Section 10, in repealing the Seanad Eireann (Consequential Provisions) Act, 1936,[2] brings into re-operation every Act or provision thereof repealed by such Act as from the date of the first assembly of Seanad Eireann. The above, however, does not revive any of the following:

> Part VII of the Electoral Act, 1923 (No. 12 of 1923), and certain provisions of section 65 thereof.

[1] Act 37 of 1937. [2] No. 26 of 1936.

Seanad Electoral Act, 1928 (No. 29 of 1928).
Seanad Bye-Elections Act, 1930 (No. 1 of 1930); and section 4 of the Electoral (Amendment) Act, 1933 (No. 14 of 1933);

and subsection (5) of section 10 reads:

(5) Nothing in this section shall prejudice or affect any specific repeal, revocation or amendment of any Act, order, regulation, or instrument affected by the Act of 1936 made after the passing of that Act.

Section 11 provides for certain adaptations in relation to the first assembly of the Senate and section 12 deals with temporary users of existing forms of official documents. Section 13, which relates to convictions by the Constitution (Special Powers) Tribunal,[1] reads:

13—(1) Except in capital cases, the Government may, in their absolute discretion, at any time remit in whole or in part or modify (by way of mitigation only) or defer (conditionally or unconditionally) any punishment imposed by the Constitution (Special Powers) Tribunal.
(2) Whenever a free pardon has been granted by the President to a person convicted by the Constitution (Special Powers) Tribunal, any forfeiture or disqualification occasioned by such conviction shall, as from the date of such pardon, be annulled.

Section 14 gives the short title. The Bill passed the Senate, was assented to December 17, 1937, and became Act No. 40 of 1937.

Ireland (Eire) (Presidential Elections).—Another Act passed in 1937 was the Presidential Elections Act,[2] "to regulate for the purpose of the Constitution of Ireland lately enacted by the people, elections for the office of President of Ireland, and to provide for matters incidental to or connected with such elections." This Bill, which duly passed its stages in both Houses and became Act No. 32 of 1937, after receiving assent on November 19 of that year, was introduced under Article 12 of the Constitution (1937).[3] The Act, which consists of 41 sections and 3 schedules embracing in all 99 pages, provides for carrying into effect the provisions of the Constitution in regard to the election of President; for regulating the nomination of candidates and, if necessary, for taking a poll. Taken as a whole, the procedure under the Act is one for which no model exists. Part I of the Act consists of the preliminary and general provisions and lays down the dates for the various

[1] Act No. 37 of 1931.
[2] No. 32 of 1937.
[3] *See also* JOURNAL, Vol. V, 131-135.

stages of the election, which are appointed by order of the Minister for Local Government and Public Health; the election of the first President must be completed in time to enable him to enter upon his office not later than 180 days after the coming into operation of the new Constitution, subsequent elections after the 60th day before the expiration of office of the outgoing President. Part II deals with the nomination of candidates, which nomination requires to be made by not less than 20 Members of Parliament[1] or by the Councils of 4 county or county borough councils. Should an M.P. sign more than one nomination form, only the one first received is valid. A local council as abovementioned must nominate by its resolution, and not less than 3 clear days' notice must be given to each member thereof, but such resolution nomination paper must bear the seal of the Council and cannot be passed before the order appointing dates and it cannot be rescinded, and the nomination of the same person by 4 such Councils is required. The form of nomination paper is given in Form 2 of the Second Schedule to the Act. Should a local council send more than one nomination all will be invalid. All nominations are to be produced by the returning officer at the place appointed at noon on the last day for receiving nominations, when he will rule on the nominations. A candidate is required to attend the ruling on nominations either in person or by an authorized representative, and to furnish such information in connection therewith as may be reasonably required. Every question relevant to such nominations must be open and may be raised by the returning officer or anyone else entitled to be present. The decision of the returning officer will be final but subject to reference to the President of the High Court (or some other Judge of that Court), who is the judicial assessor under the Act and has certain defined powers. Provision is made for the withdrawal of a candidate, and if only one person is declared to stand nominated, the returning officer is to declare him elected. Otherwise the returning officer will adjourn the election for a poll to be taken. Provision is made for countermanding an election in case of the death of a candidate. The election is taken by secret ballot and the poll is taken on the same day throughout Eire, in every constituency of the Chamber of Deputies as at a general election therefor and according to the same procedure. Provision is also made in case of riot at the ruling upon nominations or at the poll, as well as in case

[1] *i.e.*, Senators and/or Deputies.

of ballot boxes or papers being destroyed or tampered with. Schoolrooms may be used free of charge. Every registered elector is entitled to votes and postal voting is provided for. Candidates are allowed free postage facilities.

There is, however, no provision for challenging or trying the validity of a presidential election in case of alleged corrupt practices. In his speech on the Bill the Minister in referring to this question stated that if a corrupt practice occurred it would have to be dealt with specially by Parliament. Accordingly, the Act incorporates such portions of the Prevention of Electoral Abuses Act, 1923,[1] as relate to corrupt practices by individuals other than a candidate and his agents, for the candidate is to have an agent, and also local agents, as a candidate for Parliament has an agent.

At the conclusion of the poll in each constituency, the ballot boxes will be collected and opened by the local returning officer, who decides as to the validity of ballot papers. He then sorts such papers and proceeds in accordance with the system of P.R. with the single transferable vote. The quota is half the total number of valid votes plus one. If there are only 2 candidates no further counting will be necessary. In case of an equality of votes the returning officer is to decide the issue by lot to be taken as by rule prescribed. Should there be 3 or more candidates and no candidate has the quota, then the elimination process is put into operation in accordance with P.R. Candidates' agents are allowed to be present at the counting and upon its completion the returning officer sends to the Prime Minister a certificate stating the name of the candidate, the total number of votes given to each candidate and any transfer of votes made. A copy of this certificate is published in the *Irish Gazette*. The documents sent to the Prime Minister are retained by him for 6 months and then destroyed. No sealed packet of counterfoils may be opened and no counted ballot paper may at any time be inspected save upon an Order of the High Court, and no such order may be made unless the reason therefor is necessary and proper. The First Schedule deals with the functions of a Returning Officer as well as of the Presidential Returning Officer. The Second Schedule gives the various forms of nomination paper, including a special one for cases of a retiring President nominating himself.

On May 4, 1938, Dr. Douglas Hyde, an agreed candidate, having been nominated jointly by the two big political parties,

[1] No. 38 of 1923.

was declared elected. There being no other candidate no poll was necessary. The Presidential Returning Officer therefore sent in his certificate on the special form provided by the Act in such instances. He entered upon the duties of his office June 25, 1938.

Ireland (Eire) (Application of Name).—Among the Questions asked during the year in regard to constitutional matters relating to Eire, was the Question to the Secretary of State for the Dominions (the Rt. Hon. Malcolm MacDonald) on May 4, 1938[1]—namely, as to how the title " Eire " had come to be adopted in documents of the United Kingdom Government in place of the term Irish Free State, as laid down in the Agreement; and by what authority had the change been made. The Minister replied that in the new Constitution approved by the Parliament of the Irish Free State in June 14, 1937, the territory to which it relates is described as " Eire " or " Ireland."[2] The Minister then quoted the following extract from a statement published on behalf of His Majesty's Government in the United Kingdom on December 30, 1937:

> His Majesty's Government in the United Kingdom take note of Articles 2, 3 and 4 of the new Constitution. They cannot recognize that the adoption of the name of Eire or Ireland, or any other provisions of those Articles, involves any right to territory or jurisdiction over territory forming part of the United Kingdom of Great Britain and Northern Ireland, or affects in any way the position of Northern Ireland as an integral part of the United Kingdom of Great Britain and Northern Ireland. They therefore regard the use of the name Eire or Ireland in this connection as relating only to that area which has hitherto been known as the Irish Free State.

Since that time, continued the Minister, the term " Eire " has been generally employed for the sake of convenience and in order to avoid misunderstanding, in documents issued by the Government of the United Kingdom, other than documents issued under statutes in which the term " Irish Free State " is used. The position as regards the statutory use of the term " Irish Free State " is dealt with in the Eire (Confirmation of Agreements) Bill now before the House.[3]

Ireland (Eire) (Presidential Seal).—The Presidential Seal Act,[4] which was assented to on November 25, 1937, provides that, as and from the coming into operation of the Constitution (1937) of Ireland lately enacted by the people, the President

[1] 335 H.C. Deb. 5. s. 899-901.
[2] Sec. 2 reads: The national territory consists of the whole island of Ireland, its islands and the territorial seas.
[3] Now 1 and 2 Geo. VI, c. 25, sec. 1.
[4] No. 37 of 1937.

of Ireland shall have a seal, and makes provision for matters connected with the seal and for the proof of instruments made by the President or by a commission exercising his powers or performing his functions. Expenditure under the Bill was authorized by a Resolution in Committee on Finance.[1]

As in the case of Act No. 40 of 1937, this Act came into operation immediately after the Constitution. The Bill passed both Houses, was assented to November 25, 1937, and duly became Act No. 37 of 1937.

Ireland (Eire) (Ministerial and Parliamentary Offices).—An Act was passed by Parliament during 1938 making provision for the salaries and pensions to Ministers, Speakers, etc., and allowances to Leaders of certain political parties.

Part I of the Act is formal. Part II deals with payment to Ministers, Parliamentary Secretaries, the Attorney-General, Speakers, etc., as hereinafter described.

Prior to 1932, the salaries of Ministers and Parliamentary Secretaries were laid down by the Ministers and Secretaries Act,[2] as shown in the first column below; as from March 9, 1932, such salaries were, by administrative action, reduced as shown in column 2; the salaries recommended by the Committee of Inquiry of June 4, 1937, are given in column 3, and those now provided for by this Act are shown in column 4.

Office.	1	2[3]	3	4[4]
	£ *p. a.*	£ *p. a.*	£ *p. a.*	£ *p. a.*
(*a*) Prime Minister	2,500	1,500	3,000	2,500
(*b*) Attorney-General	2,500	1,500	2,500	2,500
(*c*) Other Ministers	1,700	1,000	2,250	1,700
(*d*) Parliamentary Secretaries ..	1,100	900	1,400	1,200
(*e*) Speaker of the Senate ..	1,200	1,200[5]	1,200	1,200
(*f*) Deputy Speaker of the Senate	1,000	1,000[5]	750	750
(*g*) Speaker of the Chamber of Deputies	1,700	1,000	2,250	1,700
(*h*) Deputy Speaker of such Chamber	1,000	700	1,100	1,000

Section 3 of the Act, which deals only with the offices (*a*), (*c*) and (*d*) abovementioned, provides that the total number

[1] LXIX, Dáil Eire. Deb. 1156.
[2] No. 16 of 1924; *see also* 73 Dáil Eire. Deb. 391, 886, 1142, 1143, 1365, 1395, 1397.
[3] Free of tax.
[4] Free of tax only in respect of the proportion of the M.P.'s salary.
[5] These rates remained in force until July 21, 1937.

of persons at any one time in receipt of salaries under this section shall not exceed 22, and that no person so entitled to a salary shall, at any one time, be paid more than one such salary under the section. The position of the Attorney-General, however, is in a different category, in view of the sacrifice acceptance of such office may impose upon a leading member of the Bar.[1]

Provision is made (sections 5 and 6) for the two Speakers to draw their salaries in the interregnum between the dissolution or expiry of each House and the meeting of the new one until their successors are appointed. Where a Member[2] who is the holder of one of the offices [(*a*)-(*h*)] abovementioned, notifies the Minister in writing that he only wishes to draw his salary as such Member (upon which no tax is payable under the Oireachtas (Allowances to Members) Act, 1938), he is entitled to receive the Member's salary only.

Part III of the Act provides that in case there are for the time being more than 2 political parties in the Chamber of Deputies (excluding the Government Party), that Party having, for the time being, the greatest numerical strength in such House, or, in any other case, the Party which is not the Government Party, is defined as " the Second Party," and the non-Government Party of the second greatest numerical strength is described as " the Third Party "; provided either of these Parties, as an organized party, has contested the next preceding general election for such Chamber and not less than 7 members of that Party were elected at such election. Should there be any doubt as to which of these two Parties is " the Second " or " the Third," then the decision rests with the Speaker of the Chamber of Deputies, according to the conditions laid down in section 9. Under section 10, there is payable (tax free) to the Leader of such Second Party and the Leader of such Third Party, annually, the sum of £800 and £500 respectively, in addition to their salaries as Members of such Chamber. No such salary, however, is payable to the Leader of the Third Party should the strength of his party at any time fall below 7, except when such fall is due to death, resignation or disqualification. All allowances paid under Part III are charged upon the Central Fund, which throughout the Act is described as " the Central Fund or the growing produce thereof."

[1] 73 Dáil Eire. Deb. 889.
[2] Unless otherwise stated, " Member " in this article means either a Senatoror a Deputy.—[Ed.]

Part IV of the Act deals with pensions and allowances to former holders of certain Ministerial and Parliamentary offices, to which the following definitions (section 13) apply:

> (1) In this part of this Act the expression "ministerial office" means any office which is one of the following, namely:
>
> (*a*) the office of Member of the Cabinet in, or Chairman of the First Dáil Eireann, the Second Dáil Eireann or the Third Dáil Eireann;
> (*b*) the office of Member of the Provisional Government;
> (*c*) the office of Member of the Executive Council of Saorstat Eireann or of Minister appointed under Article 55 of the Constitution of Saorstat Eireann;
> (*d*) the office of Chairman of the Chamber of Deputies (Dáil Eireann) established by the Constitution of Saorstat Eireann;
> (*e*) the office of Member of the Government;
> (*f*) the office of Chairman of Dáil Eireann;
>
> the expressions "the First Dáil Eireann," "the Second Dáil Eireann," and "the Third Dáil Eireann" have the same meaning as those expressions respectively have in the Interpretation Act, 1923 (No. 46 of 1923);
> the expression "the Provisional Government" means the Government constituted pursuant to Article 17 of the Second Schedule to the Constitution of the Irish Free State (Saorstat Eireann) Act, 1922 (No. 1 of 1922);
> the expression "secretarial office" means the office of Parliamentary Secretary;
> the expression "qualifying office" means an office which is either a ministerial office or a secretarial office.

Subject to certain conditions, pensions are payable under the Act to former holders of Ministerial offices, at the following rates:

Pensionable Service.	*£ p.a.*
Less than 4 years	300
4-6 years	350
5-6 years	400
6-7 years	450

and if ministerial office was held before July 11, 1921, a period equal to twice the length of any period before that day during which he held ministerial office be the period of pensionable service. Special provisions are also made under section 14 in regard to ministerial office held after July 11, 1921, and in regard to secretarial office. Section 14 (5) reads:

> (5) A ministerial pension shall, for the purposes of subsection (1) of section 8 of the Military Service Pensions Act, 1924

(No. 48 of 1924), or sub-section (1) of section 20 of the Military Service Pensions Act, 1934 (No. 43 of 1934), be deemed not to be a pension or allowance payable out of public moneys.

Section 15 provides gratuities to former Attorneys-General, whose "qualifying service," either of the Irish Free State under section 6 (2) of Act No. 16 of 1924, or in case of retirement under the Act of 1938, is 3 years or more, who are entitled under the latter Act to a gratuity equal to half the salary of the office at the date of such cesser, but they cannot draw for both such services. No gratuity, however, is payable in respect of "qualifying service" not under Act No. 16 of 1924, should they be appointed to any whole-time office of over £1,000 p.a. chargeable on public moneys, or should they be appointed on the nomination of the Government or a Minister of State to any office of that value; and should any such gratuity have been paid to a person who is within 12 months after his retirement from the office of Attorney-General appointed to any such £1,000 office, he is required to refund to the Minister of Finance a sum equal to the gratuity.

Pensions are also payable under the Act to former holders of Parliamentary secretarial offices upon not less than 3 years' service at the following rates:

Pensionable Service.	£ *p.a.*
Less than 4 years	200 0 0
4-5 years	233 16 8
5-6 years	266 13 4
6-7 years	300 0 0
7 years or more	333 6 8

under similar conditions to those described above in regard to Ministerial offices.

Section 17 makes provision as to the date of commencement of ministerial and secretarial pensions, and 18 sets up a Committee to determine questions of ministerial service, consisting of:

(*a*) The Prime Minister,
(*b*) The Leader of "the Second Party," and
(*c*) The Speaker of the Chamber of Deputies,

or, in each case, the person appointed by him, and the decision of this committee "shall be final, conclusive and binding on all persons and tribunals whatsoever."

Detailed safeguards are contained under section 19 in prohibition of double pensions.

Under section 20 comprehensive provisions are made in regard to the payment of pensions to widows (who have not remarried) and children of deceased holders of qualifying offices, equal to half the pension to which the deceased husband was or would have been entitled. Similarly, an allowance is payable during the minority of each child of holders of such offices at the rate of £30 p.a. should the mother be living, or of £50 as from the date of her death; and if the mother does not survive the holder of the office then the annual allowance of £50 is payable during such minority.

All applications for pensions, gratuities or allowances must be made (section 20) to the Minister of Finance, and all such conferred under Part IV of the Act (sections 13-24) are granted by him. No pension, gratuity or allowance may be assigned (section 22), taken into execution or otherwise alienated for payment of any debts or liabilities of the person to whom such is granted. Pension, etc., under Part IV may be suspended or proportionately reduced on a scale laid down in event of acceptance by the pensioner of "payment out of public moneys" which is defined (section 23). Every pension, gratuity and allowance payable under Part IV is payable out of the Central Fund.

Ireland (Eire) (Members' Salaries).—During 1938, the Parliament of Eire passed an Act[1] to make provision for the payment of allowances and the granting of free travelling facilities to Members of each House of Parliament (*Oireachtas*).

As this Act is comprehensive some information will be given of its provisions. The expression "Minister" in the Act means the Minister of Finance, and that of "travelling facilities" (sec. 1) means:

(*a*) whichever one or more of the following is appropriate to the case, that is to say:

(i) the provision of free first-class railway travelling, or

(ii) the repayment of fare paid for travelling in any public tram, omnibus, char-a-banc or similar public conveyance, or

(iii) the repayment of expenses of travelling in the traveller's own motor car to such extent as may be sanctioned by the Minister, but, where railway travelling is available over any portion of a journey travelled in such motor car, not exceeding in respect of such portion of such journey the cost of first-class railway travelling over such portion; and

(*b*) the repayment of such other (if any) travelling expenses as the Minister shall be satisfied were reasonably incurred.

[1] Oireachtas (Allowances to Members) Act (No. 34 of 1938).

The law governing payment of allowances and grants for travelling facilities to Members of Parliament is contained in 4 Statutes.[1] Under this consolidating Act the allowance of Members of the Chamber of Deputies (Dáil Eireann) is raised from £30 to £40 p.a., that of Senators remaining at £30 p.a. Section 3 contains the provisions of the existing law under which allowances to Members of Parliament are exempt from income tax (including surtax) and from any provision of any other Act for the abatement or suspension of pensions. The provision is also contained by which the salary of an appointed office[2] held by a Member of Parliament includes the allowance which would otherwise be payable without payment of any further allowance under the Act, but the abovementioned provision as to tax exemption also applies to that proportion of the salary of such office which the Parliamentary allowance bears to the total salary of the appointed office. Both the allowance and travelling facilities operate as and from the day of election or nomination, subject to the condition that within 30 days from that date the Member, by compliance with the S.O., becomes entitled to sit in the House to which he is elected or nominated.

Section 4 of the Act provides that the travelling facilities of Members of both Houses shall be:

(*a*) in the case of a Member of Dáil Eireann who does not reside in his constituency—

(i) travelling facilities between Dublin and any place in his constituency,

(ii) travelling facilities between Dublin and his normal place of residence for the time being,

(iii) on any occasion on which he travels direct from Dublin to any place in his constituency, travelling facilities from any place in his constitituency to such normal place of residence,

(iv) on any occasion on which he travels direct from such normal place of residence to his constituency, travelling facilities between such normal place of residence, and, if he entered his constituency on that occasion by rail, the railway station in his constituency nearest to the point of entrance, or, if he entered his constituency on that occasion by road, the point of entrance;

(*b*) in the case of a Member of Dáil Eireann who resides in his constituency, travelling facilities between Dublin and any place in his constituency;

[1] Nos. 18 of 1923; 29 of 1925; 17 of 1928; and 50 of 1933, all repealed by Act No. 34 of 1938.

[2] Section 3 (7) gives these as Members of the Government, Parliamentary Secretary, Attorney-General and the Chairman and Deputy-Chairman of both Senate and Chamber of Deputies.

(*c*) in the case of a Member of Seanad Eireann, travelling facilities between Dublin and his normal place of residence for the time being;

(*d*) in the case of any Member of the Oireachtas, travelling facilities from and to his normal place of residence for the time being or from and to Dublin or, in the case of any Member of Dáil Eireann, from and to any place in his constituency when undertaking journeys—

(i) to attend, on the invitation of a Member of the Government, State functions, or

(ii) on the invitation of a Member of the Government, to inspect important public works or visit institutions, or places, or districts.

The further provisions of section 4 define " a normal place of residence " as " a normal place of residence within the national Territory." The Regulations governing the prescription and payment of travelling facilities to Members are by subsection (3) delegated to the Minister after consultation with the Speakers (Chairmen) of both Houses. Claims for repayment of travelling facilities must be made within 100 days of their being incurred and lodged with the Clerk of the House in question.

Section 5 (1) deals with the commencement of allowance and travelling facilities in respect of those who were Members on the date of the passing of the Act. In regard to those who become Members thereafter such commencement is:

5. (2) The allowance and travelling facilities to be paid and granted under this Act to a Member of the Oireachtas who becomes a Member of the Oireachtas after the date of the passing of this Act shall, subject to the provisions of this Act, commence—

(*a*) in case such Member, within thirty days after the date of his then last election or (if he is a nominated Member of Seanad Eireann) his then last nomination, becomes entitled, by compliance with the S.O. of the House of which he is a Member, to sit in that House as a Member thereof, as on and from that date, and

(*b*) in any other case, as on and from the day on which such Member first becomes, by compliance with the S.O. of the House of which he is a Member, entitled under the S.O. of that House to sit in that House as a Member thereof.

In regard to absence of Members subsection (3) reads:

(3) If—

(*a*) a Member of the Oireachtas who becomes such Member after the date of the passing of this Act is prevented by illness or by some other involuntary and innocent cause

from so complying with the S.O. of the House of which he is a Member as to become entitled under those S.O. to sit as a Member of the said House within thirty days after the date of his then last election or nomination thereto, and

(*b*) such Member so complies with the said S.O. as to be entitled thereunder to sit as a Member of the said House on the first day on which such House sits after such illness or other cause has ceased,

then and in that case such Member shall be deemed for the purposes of subsection (2) of this section to have so complied with the said S.O. as to have been entitled thereunder to sit in the said House as a Member within thirty days after the date of his then last election or nomination thereto.

Southern Rhodesia (Electoral).—The Constitution Amendment Bill,[1] introduced by the Minister of Internal Affairs on October 17, passed the Third reading on October 25, 1938. Mr. Speaker divided the House on the Third reading in terms of section 26 (2) of the Constitution,[2] and recorded his vote with the " Ayes."

Under the Electoral Act, 1937,[3] the registration of voters is now continuous. There are no longer biennial registrations of voters. In view of this, section 8 has been repealed. New section 8, which is based upon sections 40 to 42 of the Union Constitution,[4] provides for the appointment of a commission, which is empowered to redivide the Colony into electoral districts, and it will no longer be necessary to pass an act of Parliament to give effect to such redivisions.

The new section 8 provides that the Commission shall consist of the Chief Justice and 2 persons selected by him. If in the opinion of the Commission the growth or distribution of the Colony justifies it, the Commission shall divide the Colony into 30 districts each returning one Member. In the redelimitation of electoral districts, the Commission is required to give due consideration to:

(*a*) community of interests;
(*b*) means of communication;
(*c*) physical features;
(*d*) existing electoral boundaries; and
(*e*) sparsity and density of population;

and the Commission, while taking an equal number of M.P.s as a basis of division, to depart therefrom to an approximate extent of 15% more or less.

[1] Act No. 31 of 1938.
[2] Letters Patent, 1923.
[3] Act No. 39 of 1937.
[4] 9 Edw. VII, c. 9.

The Commission is to report its recommendations to the Governor, who may refer for its consideration any matter relating to the list of electoral districts or arising out of the powers and duties of the Commission. The names and boundaries of electoral divisions as certified by the Commission are made known by Proclamation. Should any discrepancy arise between the description of the electoral districts and the maps, the description is to prevail.

British India (Rejection of Finance Bill: Power of Governor-General in Council).—On March 14, 1938,[1] the Under Secretary of State for India was asked in the House of Commons whether he would make a statement respecting difficulties which had arisen out of the recent presentation of the Budget to the India Legislative Assembly. To which the Rt. Hon. Lord Stanley, M.C., replied that the Legislative Assembly had rejected all grants presented in connection with the General Budget, but that these had all been restored in accordance with the provisions of section 67A of the 9th Schedule to the Constitution. The Assembly had further rejected the Motion for the consideration of the Finance Bill, whereupon the Governor-General had " recommended " the Bill under section 67B (1), but the Assembly had refused leave to introduce the " recommended " Bill, which under the provisions of the same section would be laid before the Council of State. In reply to a Question in April 4, 1938,[2] the Under Secretary announced that the Bill had been duly consented to by such Council.[3]

Lord Stanley, in reply to the first Question, said that the action of the Assembly was understood to be intended as a protest against a change, consequential upon the coming into force of the new Constitution, by which certain small items of expenditure of the Defence Department previously treated as voteable could no longer be so treated.

The Declaration made by the Governor-General in Council under such section 67 (A) (7) abovementioned was Tabled in the Assembly by the Hon. the Finance Member on March 9, 1938,[4] and reads:

> In pursuance of subsection (7)[5] of section 67 (A) of the Government of India Act as set out in the Ninth Schedule of

[1] 333 H.C. Deb. 5. s. 1, 2. [2] 334 *ib.*, 1, 2.
[3] *Vide* Constitution (26 Geo. V, c. 2, 9 Sch. sec. 67B [*b*]).
[4] India Leg. Assem. Deb. 1645 to 1647.
[5] Which reads: "The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the Legisla-

the Government of India Act, 1935, the Governor-General in Council is pleased that the following Demands which have been refused by the Legislative Assembly are essential to the discharge of his responsibilities:

(Here follow 80 items totalling Rs. 29,29,20,000).

India (Bihar and the United Provinces: Resignation of Ministries).—During 1938, difficulties arose between the abovementioned Ministries and their respective Governors[1] in regard to the release by the former of certain " political " prisoners convicted by criminal courts of violence or of preparation for acts of violence, and discussions between them thereon were still proceeding when on February 14 a demand was tended by the Premiers of those Provinces for immediate release of all prisoners classed as " political " in such Provinces. The Governors were willing to examine individual cases and to release such class of prisoner, unless circumstances were such as to involve responsibilities laid upon them by the Act,[2] but in the case of Bihar the Premier would not agree to individual examination, and in that of the United Provinces the Ministers were not satisfied with a policy of gradual and individual release.

In these circumstances, having regard to the responsibilities vested in the Governor-General under the Constitution, the Governors in question referred to the Governor-General, who issued instructions to them under section 126 (5) of the Constitution, which reads:

> without prejudice to his powers under the last preceding subsection, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or any part thereof.

which instructions, dated February 15, were to the effect that, despite the advice in the contrary sense by their Ministers, such Governors should decline to agree to the proposed general release of their " political " prisoners.

As therefore the respective Governors then informed their Ministers that they could not accept their advice on the matter, the Ministers tendered their resignations.

In the text of the order for the release of prisoners passed

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tive Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent, or the reduction of the amount therein referred to, by the Legislative Assembly."

[1] Cmd. 5674 of 1938.

[2] 26 Geo. V, c. 2.

by the Prime Minister of Bihar, it is remarked that " political " prisoners have all over the world on such occasions been treated differently from other criminals.

The White Paper[1] presented to the Imperial Parliament by the Secretary of State for India gives the statement issued by the Governor-General on February 22; text of the order for release of prisoners passed by the Prime Minister of Bihar; Minute of the Governor of Bihar thereon; Instruction from the Governor-General to the Governors of the two provinces of February 15; Statements of Ministers in the two Provinces; and a statement showing the names of prisoners and details of sentences.

The matter also formed the subject of Question and Answer in the House of Commons[2] and on February 28 the Chancellor of the Duchy of Lancaster (the Rt. Hon. Earl Winterton), on behalf of the Secretary of State for India, in reply to a Question announced that he was glad to be able to report that in both provinces agreement had been reached between the Governors and their Ministers and that the Ministers had accordingly withdrawn their resignations.[3]

The matter, however, is an interesting one in connection with the working of the Constitution, and the exercise of the powers and responsibilities of the Governor-General, the Governors and Ministers of Provinces thereunder.

British India: Central Provinces and Berar (Validity of Act).—In 1938 the Legislative Assembly of this Province passed the Sales of Motor Spirit and Lubricants Taxation Act.[4] Under Section 213[5] of the Constitution for India,[6] the Governor-General made Special Reference to the Federal Court in regard to the above Provincial Act in the following terms:

> Is the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, or any of the provi-

[1] Cmd. 5674 of 1938.
[2] 331 H.C. Deb. 5. s. 1891-1894, 2076; 332 *ib.*, 3, 4.
[3] 332 *ib.*, 720-721.
[4] No. XIV of 1938.
[5] This section reads: (1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that court for consideration, and the court may, after such hearing as they think fit, report to the Governor-General thereon.
(2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.
[6] Government of India Act, 1935 (26 Geo. V, c. 2).

sions thereof, and in what particular or particulars, or to what extent, *ultra vires* the Legislature of the Central Provinces and Berar ?

In expressing the Opinion of the Federal Court:

> In the Matter of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 (Central Provinces and Berar Act No. XIV of 1938); *and*
> In the Matter of a Special Reference under section 213 of the Government of India Act, 1935,

the Chief Justice of India and President of the Federal Court (the Hon. Sir Maurice L. Gwyer, K.C.B., K.C.S.I.) said: " The Court directed notice of the Reference to be given to the Government of India and the Provincial Government; and intimated that in view of their contingent interest in the matter, the other Provinces ought to be informed. This the Advocate-General of India undertook to do; and subsequently leave was given to the Advocates-General of Bengal and Madras to appear and argue in support of the case of the Government of the Central Provinces and Berar, not on behalf of any particular Province but as representing the general provincial interest."

The following extracts from the Opinion are given:

" Notwithstanding the very wide terms in which the Special Reference is framed, the question to be determined lies essentially in a small compass. It has arisen in the following way. Section 3 (1) of the Provincial Act, to which it will be convenient to refer hereafter as the impugned Act, is in these terms:

> " There shall be levied and collected from every retail dealer a tax on the retail sales of motor spirit and lubricants at the rate of 5% on the value of such sales."

* * * * *

" By section 100 (1) of the Constitution Act, the Federal Legislature (which up to the date of the Federation contemplated by the Act means the present Indian Legislature) has, notwithstanding anything in subsections (2) and (3) of the same section, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in the Federal Legislative List, that is, List I in the Seventh Schedule to the Act. Entry (45) in that List is as follows: ' Duties of excise on tobacco and other goods manufactured or produced in India,' with certain exceptions not here material; and it is said on behalf of the Government of India

that the tax imposed by section 3 (1) of the impugned Act, in so far as it may fall on motor spirit and lubricants of Indian origin, is a duty of excise within entry (45) and therefore an intrusion upon a field of taxation reserved by the Act exclusively for the Federal Legislature.

" By section 100 (3) of the Act, a Provincial Legislature has, subject to the two preceding subsections of that section, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List, that is, List II of the Seventh Schedule. Entry (48) in this List is as follows: ' Taxes on the sale of goods and on advertisements '; and it is said on behalf of the Provincial Government that the tax imposed by the impugned Act is within the taxing power conferred by that entry, and therefore within the exclusive competence of the Provincial Legislature.

" It will be observed that by section 100 (1) the Federal Legislature are given the exclusive powers enumerated in the Federal Legislative List, ' notwithstanding anything in the 2 next succeeding subsections ' of that section. Subsection (2) is not relevant to the present case, but subsection (3) is, as I have stated, the enactment which gives to the Provincial Legislatures the exclusive powers enumerated in the Provincial Legislative List. Similarly Provincial Legislatures are given by Section 100 (3) the exclusive powers in the Provincial Legislative List ' subject to the ' two preceding subsections,' that is, subsections (1) and (2). Accordingly, the Government of India further contend that, even if the impugned Act were otherwise within the competence of the Provincial Legislature, it is nevertheless invalid, because the effect of the *non-obstante* clause in section 100 (1), and *a fortiori* of that clause read with the opening words of section 100 (3), is to make the federal power prevail if federal and provincial legislative powers overlap. The Provincial Government, on the other hand, deny that the two entries overlap and say that they are mutually exclusive. The Government of India raise a further point under section 297 of the Constitution Act, but it will be more convenient to deal with this separately and at a later stage. I should add that it is common ground between the parties that if section 3 (1) of the impugned Act is held to be invalid, the rest of the Act must be invalid also, since it only provides the machinery for giving practical effect to the charging section."

* * * * *

" The Judicial Committee have observed that a Constitution is not to be construed in any narrow and pedantic sense.[1] The rules which apply to the interpretation of other statutes apply, it is true, equally to the interpretation of a Constitutional enactment. But their application is of necessity conditioned by the subject matter of the enactment itself; and I respectfully adopt the words of a learned Australian Judge: ' Although we are to interpret the words of the Constitution on the same principles of interpretation as we apply to any ordinary law, these principles of interpretation compel us to take into account the nature and scope of the Act that we are interpreting—to remember that it is a Constitution, a mechanism under which laws are to be made, and not a mere Act which declares what the law is to be.'[2] Especially is this true of a federal Constitution, with its nice balance of jurisdictions. I conceive that a broad and liberal spirit should inspire those whose duty it is to interpret it; but I do not imply by this that they are free to stretch or pervert the language of the enactment in the interests of any legal or Constitutional theory, or even for the purpose of supplying omissions or of correcting supposed errors."

* * * * *

" The attempt to avoid a final assignment of residuary powers by an exhaustive enumeration of legislative subjects has made the Indian Constitution Act unique among federal Constitutions in the length and detail of its Legislative Lists."

* * * * *

" In Att.-Gen. for Ontario *v.* Att.-Gen. for Canada[3] the Committee observed that in the interpretation of the British North America Act, ' if the text is explicit, the text is conclusive, alike for what it directs and what it forbids. When the text is ambiguous, as for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the Act.' "

* * * * *

" The federal legislative power extends to making laws with respect to duties of excise on goods manufactured or produced in India."

* * * * *

[1] Per Lord Wright in James *v.* Commonwealth of Australia, 1936, A.C. 578, at p. 614.
[2] Att.-Gen. for New South Wales *v.* Brewery Employees Union, 1908, 6 Commonwealth L.R. 469, per Higgins J., at p. 611.
[3] 1912, A.C. 571, at p. 583.

" It was then contended on behalf of the Government of India that an excise duty is a duty which may be imposed upon home-produced goods at any stage from production to consumption; and that therefore the federal legislative power extended to imposing excise duties at any stage. This is to confuse two things, the nature of excise duties and the extent of the federal legislative power to impose them."

* * * * *

" It was argued on behalf of the Provincial Government that an excise duty was a tax on production or manufacture only and that it could not therefore be levied at any later stage. Whether or not there be any difference between a tax on production and a tax on the thing produced, this contention, no less than that of the Government of India, confuses the nature of the duty with the extent of the legislative power to impose it. Nor, for the reasons already given, is it possible to agree that in no circumstances could an excise duty be levied at a stage subsequent to production or manufacture."

* * * * *

" The proposals for Indian Constitutional Reform, commonly known as the White Paper (Cmd. 4268, 1933), and the Report of the Joint Select Committee thereon (H.L. 6 and H.C. 5, 1934) are historical facts, and their relation to the Constitution Act is a matter of common knowledge, to which this Court is entitled to refer; and it may be observed that ' taxes on the sale of commodities and on turnover ' appeared in the White Paper as a suggestion for possible sources of provincial revenue, and that the suggestion was approved without comment by the Joint Select Committee."

* * * * *

" In my opinion the power to make laws with respect to duties of excise given by the Constitution Act to the Federal Legislature is to be construed as a power to impose duties of excise upon the manufacturer or producer of the excisable articles, or at least at the stage of, or in connection with, manufacture or production, and that it extends no further."

* * * * *

" It cannot be too strongly emphasized that the question now before the Court is one of possible limitations on a legislative power, and not possible limitations on the meaning of the expression ' duties of excise '; for ' duties of excise ' will bear the same meaning whether the power of the Central Legislature to impose them is restricted or extended. It is

a fundamental assumption that the legislative powers of the Centre and Provinces could not have been intended to be in conflict with one another, and therefore we must read them together and interpret or modify the language in which one is expressed by the language of the other. Here are two separate enactments, each in one aspect conferring the power to impose a tax upon goods; and it would accord with sound principles of construction to take the more general power, that which extends to the whole of India, as subject to an exception created by the particular power, that which extends to the Province only. It is not, perhaps, strictly accurate to speak of the provincial power as being excepted out of the federal power, for the two are independent of one another and exist side by side. But the underlying principle in the two cases must be the same, that a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Act and operating in the same field, when by reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning."

* * * * *

" . . . if the two legislative powers are read together in the manner suggested above, there will be a separation into two mutually exclusive spheres, and there will be no overlapping between them. Thus the Central Legislature will have th power to impose duties on excisable articles before they becom part of the general stock of the Province, that is to say, at th stage of manufacture or production, and the Provincial Legis lature an exclusive power to impose a tax on sales thereafter."

* * * * *

" The claim of the Government of India must be that any provincial Act imposing a tax on the sale of any goods (other than a turnover tax) is an invasion of entry (45) in the Federal Legislative List, whether the goods are at the time the subject of a central excise or not, and no matter how improbable it is that any excise will ever be imposed upon them. Duties of excise in the nature of things will always be confined to a comparatively small number of articles; but it is a necessary corollary of the argument of the Government of India that the power to impose excise duties, though only exercised with respect to this small group, is an absolute bar to the exercise by the Provinces of any jurisdiction by way of a tax on sales over every other material, commodity and article manufactured or produced in India and to be found in the Province. Nay,

more; for though excise duties can only be imposed in respect of goods manufactured or produced in India, it is part of the Government of India's case that to impose a tax on the sale of goods manufactured or produced elsewhere will infringe the provisions of section 297 (1) (*b*) of the Constitution Act against discrimination."

* * * * *

"Lastly, I am entitled to look at the manner in which Indian legislation preceding the Constitution Act had been accustomed to provide for the collection of excise duties; for Parliament must surely be presumed to have had Indian legislative practice in mind and, unless the context otherwise clearly requires, not to have conferred a legislative power intended to be interpreted in a sense not understood by those to whom the Act was to apply. There were several central excise duties in force in India at the date of the passing of the Constitution Act, imposed respectively upon motor spirit, kerosene, silver, sugar, matches, mechanical lighters, and iron and steel. In all the Acts[1] by which these duties were imposed it is provided (and substantially by the same words) that the duty is to be paid by the manufacturer or producer, and on the issue of the excisable article from the place of manufacture or production."

* * * * *

". . . it seems a not unreasonable inference that Parliament intended the expression 'duties of excise' in the Constitution Act to be understood in the sense in which up to that time it had always in fact been used in India, where indeed excise duties of any other kind were unknown."

* * * * *

"The conclusion at which I have arrived seems to me to be in harmony with what I conceive to be the general scheme of the Act and its method of differentiation between the functions and powers of the Centre and of the Provinces. It introduces no novel principle. It reconciles the conflict between the two entries without doing violence to the language of either, and it maps out their respective territories on a reasonable logical basis. It would be strange indeed if the Central Government had the exclusive power to tax retail sales, even if the tax were confined to goods produced or manu-

[1] Motor Spirit (Duties) Act (No. II of 1917), extended to kerosene by Indian Finance Act (No. XII of 1922); Silver Excise Duty Act (No. XVIII of 1930); Sugar (Excise Duty) Act (No. XIV of 1934); Matches (Excise Duty) Act (No. XVI of 1934); Mechanical Lighters' (Excise Duty) Act (No. XXIII of 1934); Iron and Steel Duties Act (No. XXXI of 1934).

factured in India, when the Province has an exclusive power to make laws with respect to trade and commerce, and with respect to the production, supply and distribution of goods, within the provincial boundaries. In the view which I take none of these inconsistencies will arise. Nor will the effect of this interpretation be to deprive the Centre of any source of revenue which it enjoys at present, nor of any which it is reasonable to anticipate that it might have enjoyed in the future. If I may be permitted to hazard a guess, the anxiety of the Government of India arises from the probability that a general adoption by Provinces of this method of taxation will tend to reduce the consumption of the taxed commodities and thus indirectly diminish the Central excise revenue. This, however, is a circumstance which this Court cannot allow to weigh with it if, as I believe, the interpretation of the Act is clear; though it might be an element to take into consideration if there were real ambiguity or doubt. But I do not think there is either ambiguity or doubt, if the two entries are read together and interpreted in the light of one another. The difficulty with which the Government of India may be faced is of a kind which must inevitably arise from time to time in the working of a Federal Constitution where a number of taxing authorities compete for the privilege of taxing the same taxpayer. In the present case, the result may well be that the Central Government will find itself unable to make such a distribution of the proceeds of excise duties under section 140 of the Act as it might otherwise desire to do; but these are not matters for this Court, and they must be left for adjustment by the interests concerned in a spirit of reasonableness and commonsense, qualities which I do not doubt are to be found in India as in other Federations. The view which I have taken makes it unnecessary for me to consider the difficult question of the interpretation of section 297 (1) (*b*), and I express no opinion upon it.

" I am of opinion that for the reasons which I have given the answer to the question referred to us is that the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, is not *ultra vires* the Legislature of the Central Provinces and Berar, and since that is also the opinion of the whole Court we shall report to His Excellency accordingly."

Sulaiman J.: " I concur in the final conclusion of the Chief Justice, though partly on different grounds " (which were given).

Jayakar J. (after giving reasons) said: " I am therefore of

opinion that the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, is not *ultra vires* the Legislature of the Central Provinces and Berar and that the question referred to us should be answered accordingly."

British India: Assam (Payment of Members).—An Act was passed in 1938 entitled the Assam Legislative Chambers (Members' Emoluments) Act[1] providing for a monthly salary, to Members of both Houses, of *Rs.* 100. to take effect from the date upon which the Member took the Oath of Allegiance, and an allowance was made to Members, not ordinarily resident at the place at which their attendance is required in connection with their duties as Members at the rate of *Rs.* 5 *p.d.*, with a travelling and road mileage allowance at the same rates as Government servants of first grade under the Assam Subsidiary Rules.

Indian States.—On December 19, 1938,[2] in the House of Commons, the Under Secretary of State for India was asked by the hon. Member for Leyton, W., whether he would make a statement respecting the present position of the scheme of Federation envisaged in the India Act; whether any changes or modifications were likely to be made; and whether he was taking any steps to encourage the democratization of the Indian States as a preliminary to Federation being effected?

The Civil Lord of the Admiralty replied that full consideration had now been given to the replies received from Indian Rulers as regard the limitations to which they would wish their Accession to Federation to be subject. In the light of this consideration the Viceroy would be communicating with the Rulers detailed information as to the terms on which their Accession to Federation as envisaged in the Government of India Act[3] could be considered. No changes or modifications were contemplated in the scheme of Federation embodied in the Act. With regard to the third part of the hon. Member's question he was referred to the Minister's reply to a question of December 16, 1938,[4] which was to the effect that the Paramount power would not obstruct proposals for constitutional advance initiated by Rulers, but His Majesty's Government had no intention of bringing any form of pressure to bear upon them to initiate constitutional changes. It rested with the Rulers themselves to decide what form of government they should adopt in the diverse conditions of Indian States.

[1] No. 1 of 1938, *Assam Gazette*, March 9, 1938.
[2] 342 H.C. Deb. 5. s. 2439, 2440.
[3] 26 Geo. V, c. 2.
[4] 342 H.C. Deb. 5. s. 2352.

Indian States : Mysore (Constitutional).—Reference was made in Volume IV[1] to the position of the Indian States *vis-à-vis* British India, in regard to the new Constitution of 1935.[2] The Hindu State of Mysore is, with Hyderabad, Baroda, Jammu and Kashmir, and Gwalior, one of the premier Indian States, all of which are in immediate political relations with the Government of India. The area of Mysore is 29,475 sq. miles, and its population in 1931 was 6,557,302, of whom about 340,000 were Moslems. Its approximate revenue is *Rs.* 358,34 lakhs, and its Ruler, His Highness the Maharaja, is one of the five 21-gun Rulers of Indian States. Mysore, with its uplands, its rivers and falls, is well fitted for progress. Companies, British and Indian, developed its gold and other minerals. It has a magnificent power system from Cauvery Falls, and there are many English planters in the area growing tea and coffee. The Maharaja is famous for his hospitality to the Europeans of Bangalore, the State capital, and those he employs in the State service. In fact, further to quote from General MacMunn's book:[3] " It is not too much to say that it is perhaps *the* model State in India, helped thereto by its half-century of British administrative building."

A Report[4] of the Committee appointed to work out the details of the scheme in connection with further Constitutional developments in Mysore was published during 1938. This Committee was first appointed to work out the details to give effect to the Constitutional developments announced by the Dewan in the Representative Assembly, October 7, 1922. The terms of reference of the Committee are comprehensive and include (1) investigation as to the manner in which the Representative Assembly may be given a definite place in the Constitution, the qualifications for voters, etc., its electorates, qualifications, etc., for candidates and its procedure; (2) similar investigation into the Legislative Council including the distribution of seats between its elected, nominated, non-official and official members, " keeping in mind the representation of special interests and minorities; and (3) to advise as regard certain General Measures, including District Boards and the Economic Development Board."

The question, however, of what further changes should be

[1] Pp. 77-83. [2] 22 Geo. V, c. 2.
[3] *The Indian States and Princes*, Lt.-Gen. Sir G. MacMunn, K.C.B. (Jarrolds), 1936, pp. 200, 201.
[4] Published by the Superintendent Government Press, Bangalore, 1938. Rs. 2.70.

made in the existing system of government in this State has been investigated by a committee which is almost nearing the end of its labours, the Report from which is shortly expected to be placed before the Government.

The Constitutional and administrative position of the Mysore State up to January 1, 1936, will be briefly described.

In the first place, as regards the Executive, the Maharaja (Colonel His Highness Sir Sri Krishnaraja Wadigar, Bahadur, G.C.S.I., G.B.E., who succeeded February 1, 1895) is the ultimate authority in the administration of the State, which is conducted under his control by the Dewan, who is the chief executive officer, and 2 others, which 3 collectively form the Council of His Highness the Maharaja.

The Legislature consists of a Representative Assembly, established in 1881, in order to place before the people through representative citizens an account of the administration of the country and the measures contemplated and to ascertain the wants and wishes of the people at large in regard to matters affecting their wellbeing. The Assembly was placed on a statutory basis by Act XVIII of 1923, which defines its powers, constitution and functions. This body, of which the Dewan (Sir Mirza Ismail, K.C.I.E., O.B.E.) is President, and the 2 other Members of the Council are Vice-Presidents, is composed of 274 Members, mostly elected from the rural and urban areas, and by some special interests and minorities, as well as a few Members nominated to represent such interests, etc., which have no recognized associations for electing their own Members. The Assembly is consulted about every legislative measure before its first reading in the Legislative Council and has the annual budget placed before it. The franchise for both the Legislative Council and for the Assembly is either property qualification, such as payment of land revenue of *Rs.* 25; house tax of *Rs.* 5; income tax; or literary qualification such as being a graduate. The Assembly ordinarily meets twice a year.

The Legislative Council, which was established in 1907, associates with the Government a certain number of non-official gentlemen qualified by practical experience and knowledge of local conditions, etc., to assist the Government in making laws and regulations. The powers of this body were widened by Act XIX of 1923. The Dewan is also President of this body, of which his 2 councillors are *ex officio* Members. The Legislative Council, in which there is an official majority, is composed of 50 ordinary Members, of whom 20 are

nominated officials and 30 non-officials; of the latter 22 are elected. The Legislative Council has the power of making laws and regulations and the budget is put before it for discussion. It also has the power of voting on the budget by major heads for all items, except those affecting the palace, military, public servants' pensions and the relations of the State with the British Government. Should the Council refuse its assent to any of the provisions of the budget, the Government may restore the provision, if it considers such necessary for the carrying on of any department. The Council is also vested with the power to move motions and ask Questions on matters of public interest.

A feature of the Legislature of this State is the system of Standing Committees, formed with the object of associating the people more and more with the Government. Each of these Committees, exclusive of the Chairman and Secretary, consists of 6 members, 4 from the Assembly and 2 from the Legislative Council, selected by the Government from a panel of 15 members elected by ballot by the Assembly, and 10, in the same manner, by the Legislative Council, which latter has a Public Accounts Committee of 6 members, 4 elected by that Council and 2 nominated by the Government.

The Standing Committees are:

(i) Railways, Public Works and Electric Departments;
(ii) Local Self-Government, Medicine, Sanitation and Public Health; and
(iii) Finance and Taxation.

There are also other Committees of official and non-official members for advising the Government on such matters as (*a*) the Central Recruitment Board (to advise the Government in recruitment of officials); (*b*) Stores Purchase; and (*c*) Industries and Commerce.

Local government is conducted by District Committees in the rural areas which have been in operation since 1874, as well as Panchayets in the villages, both of which authorities are partly elected and partly nominated. Between January 1, 1936, and April, 1939, certain other municipalities have been constituted, although Municipal Committees were experimentally set up in the cities of Bangalore and Mysore as far back as 1862.

Municipalities were placed upon a statutory basis by Act VI of 1906, since which other Acts have been passed on the subject. Of these bodies there are 40 in the towns and 64 in

smaller places. Of the 1,730 Municipal Councillors 1,181 are elected, 347 are non-officials nominated by the Government, and 202 *ex officio*.

In 1938 a Political Affairs Committee was appointed to advise the Government on political and Constitutional questions and on other important matters, and a Committee was appointed in the same year to consider the question of Constitutional reforms, the Report from which, we hope to deal with in our next issue.

The Judiciary consists of a High Court of a Chief Justice and Puisne Judges who are appointed by His Highness the Maharaja, and the decisions of this court in civil and criminal matters is final. There are also inferior courts. Since 1936 further improvements have been made in regard to systems of general administration, police, settlement, educational and medical facilities, forests, etc., and primary education is free. There are now in this State 5,919 boys' and 473 girls' primary schools.

Burma (Governor's Emergency Powers).—Under section 43 (1) of the Burma Constitution,[1] powers are vested in the Governor, should it at any time appear that, for the purpose of enabling him satisfactorily to discharge his functions under the Act, it is necessary for him to exercise his individual judgment to issue a "Governor's Act." He may do this by Message, explaining both to the Senate and House of Representatives the circumstances which, in his opinion, render legislation essential, and either (*a*) enact forthwith a Bill containing such provisions as he may consider necessary, or (*b*) attach to his Message a draft of the Bill he considers necessary. Should the Governor take the latter course, certain procedure is laid down under which an Address may be presented to him by either House. A Governor's Act has the same force, etc., as any other Act of the Burma Legislature, and is required to be transmitted to the Secretary of State for Burma at Whitehall.

On July 26, 1938,[2] religious disturbances broke out in Rangoon owing to protests against alleged insults to Buddhism contained in a book by a Burman Moslem entitled *Discourse between a Moulvi and Yogi*. Both the military police and troops were called out to assist the civil police. The disturbances continued at intervals, spreading to other parts, until September 9, by which time the casualties had risen to—killed, 220; injured, 926. Whereupon the Governor, acting

[1] 26 Geo. V, c. 3.

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

under alternative (*a*) abovementioned, enacted the Rangoon (Emergency) Security Act,[1] 1938, transmitting a copy by Message to both Houses of the Legislature. On 10, *idem* the Governor sent a despatch (No. 26) to the Secretary of State for Burma (the Most Hon. the Marquess of Zetland, G.C.S.I., etc.) enclosing an authentic copy of the Governor's Act, under which the police were given wider powers than already conferred upon them by law.

The Act contains 5 sections. Section 1 (1) gives the short title, 1 (2) the duration of the Act as 5 years, and 1 (3) defines the area of operation as " the whole of the city of Rangoon " as defined. Section 2 empowers the Governor to declare a state of emergency, giving the reasons therefor, and also to declare that a state of emergency no longer exists. Section 3 deals with the arrest, detention and trial of offenders, including, in the case of a non-Burman, the onus of showing cause why he should not be expelled from Burma under the Expulsion of Offenders Act. Section 4 denies bail during 15 days after arrest, except by certain police officers; and section 5 provides that no suit, prosecution or other legal proceeding shall lie against any person for anything done in good faith under the Act. The Act, which is dated Rangoon, September 9, is then closed with the following statement above the Governor's signature:

> I enact the above Act under the powers conferred by section 43 of the Government of Burma Act, 1935.

In pursuance of section 43 (4) of the Constitution, the Governor's Act was laid before each House of the Imperial Parliament and approved by Order.

On October 21, however, a notification was issued by the Governor in the *Burma Gazette* declaring that a state of emergency no longer existed in the City of Rangoon.

Burma (Constitutional).—References to the new Constitution of Burma[2] were made in Volume IV.[3] The following provisions in regard to the legislative power were, however, only given in a footnote,[4] and should have special mention.

(*a*) *Legislative Power.*—By section 33 of the Constitution the Legislature is empowered to make laws for the territories in Burma vested in His Majesty or any part thereof. No Act of the Legislature, on the ground that it would have extra-

[1] Burma Act No. V of 1938.
[2] 26 Geo. V, c. 3.
[3] *See* JOURNAL, Vol. IV, 100-103.
[4] *Ib.*, 103, *n.* 1.

territorial operation, is deemed to be invalid in so far as it applies:

(*a*) to British Subjects and servants of the Crown in any part of Burma; or
(*b*) to British Subjects domiciled in Burma wherever they may be; or
(*c*) to, or to persons on, ships or aircrafts registered in Burma wherever they may be; or
(*d*) in the case of a law for the regulation or discipline of any naval, military or air-force raised in Burma, to members of and to persons attached to, employed with or following that force, wherever they may be.

By section 34 of the Constitution legislative powers of the Legislature do not extend to:

(i) making of any law affecting the Sovereign or the Royal family or the succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of Burma or the law of British nationality or the Army Act, the Air Force Act, the Naval Discipline Act, or any similar law enacted by competent authority in India or the Law of Prize or Prize Courts; or
(ii) except in so far as expressly permitted by the Act to make any law amending any provisions of the Government of Burma Act, or any Order in Council made thereunder, or any rules made under the Act by the Secretary of State, or by the Governor in his discretion or in the exercise of his individual judgment.

(*b*) *Meeting of New Legislature.*—By virtue of the powers given by paragraph 5 of the Government of Burma (Commencement and Transitory Provisions) Order, 1936, the old Legislative Council of Burma was dissolved by the Governor before the end of 1936, and in pursuance of the order contained in paragraph 4 of the same Order the House of Representatives was summoned for its First Session on February 15, 1937, and the Senate met for the First Session on March 13, 1937.

Burma (Corrupt Practices at Elections).—Under the Third Schedule to the new Constitution for Burma, His Majesty in Council is empowered to make provision for certain matters in connection with elections for the Legislature, and on July 3, 1936 (the new Constitution came into force on April 1, 1937), the Government of Burma (Corrupt Practices and Election Petitions) Order, 1936, was issued under section 157 (1) of the Constitution. The Order embodies many of the usual legislative provisions on the subject, therefore only those of special interest will be referred to. The Order

consists of 7 Parts. Part I is introductory. Part II is devoted to the election agent and his expenses, and section 6 thereof, in requiring the Burma Act or Rules to fix the maximum scales of election expenses and the numbers and descriptions of persons who may be employed for payment in connection with elections, exempts, however, any elections held before the expiration of 2 years from the commencement of the Act. Except so far as may be prescribed, Part II does not apply to Senate elections. Part III deals with doubts and disputes as to the validity of an election and disqualifications for corrupt practices. " Electoral right " is defined as the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or to refrain from voting at an election.

Election petitions may be presented to the Governor by any candidate or elector on any ground, or by an officer empowered on that behalf by the Governor, exercising his individual judgment. Unless the Governor, in the exercise of his individual judgment, dismisses a petition for non-compliance with the prescribed requirements, he, in the exercising of his individual judgment, appoints 3 judges as Commissioners for the trial of election petitions.

Corrupt practices are set out in the First Schedule to the Order. Part I, Paragraph 1, defines " bribery " as any gift, offer or promise by a candidate or his agent, or by any other person, with the connivance of a candidate or his agent, of any " gratification " to any person, with the object, directly or indirectly, of inducing such person in regard to his " electoral right " or as a reward to:

(i) a person for having so stood or not stood, or for having withdrawn his candidature; or
(ii) an elector for having voted or refrained from voting.

For the purpose of Paragraph 1, " gratification " is not restricted to pecuniary gratifications or gratifications estimable in money, but includes all forms of entertainment or of employment for reward, excepting *bona fide* payments under Order.

Paragraph 5 of Part I of the First Schedule includes as a corrupt practice the publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candi-

date, or in relation to the candidature or withdrawal of a candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

The Report of the Commissioners, which must be expressed in terms of the views of the majority, after being signed by all of them, is made to the Governor, who issues orders in connection therewith which are final, and the Report is gazetted.

Any person reported as guilty of a corrupt practice under Part I or II of the First Schedule is disqualified for voting at an election for 6 years and under Part III for 4 years.

Ceylon (Constitutional).[1]—A number of questions[2] were asked in the House of Commons in 1938 upon the working of the Constitution of Ceylon,[3] and in continuation of the invitation extended to the Governor by the Secretary of State for the Colonies (Rt. Hon. Lord Harlech), as quoted in our last issue,[4] to submit his recommendations in regard to the desirability of some modifications of those provisions of the Constitution which have not proved in practice so successful as had been hoped for by their originators, the Governor in a despatch dated June 13, 1938, transmitted his recommendations to the Secretary of State, which were published in an Imperial White Paper[5] in December of that year. The despatch opens with reference to the Secretary of State's despatch of November 25, 1937, in which the Governor is instructed:

> carefully to examine the constitutional position, and when he had time to form conclusions to acquaint himself with the views of all sections of opinion in the Island and to submit any recommendations that he might desire to make.

The Enclosure to the Governor's despatch gives a list of 15 bodies from whom he had received Memoranda and Memorials as well as 11 organizations or persons who had been received in deputation by him between February 3 and May 26, 1938, on the subject of the unsatisfactory working of the Constitution.

The despatch first recommends the rejection of the following proposals:[6]

(*a*) restriction of the franchise;
(*b*) re-imposition of literary and property qualifications for voters;

[1] *See also* JOURNAL, Vols. II, 9, 10; III, 25, 26; and VI, 83-88.
[2] 330 H.C. Deb. 5. s. 596, 800; 331 *ib.*, 217, 218, 414, 1037, 1872; 337 *ib.*, 156; and 338 *ib.*, 2924, 2925.
[3] Ceylon (State Council) Order in Council, 1931. [4] Vol VI, 84.
[5] Cmd. 5910 of 1938; also published by Ceylon Govt. Press, Colombo, as Sessional Paper XXVIII, 1938. [6] §§ 3-5.

(*c*) alteration of the regulations governing the Indian franchise;
(*d*) curtailment of the Governor's powers and therefore also the introduction of bicameral government;
(*e*) the "fifty-fifty demand"—namely, that seats in the State Council be appointed, half to the "majority community" (*i.e.*, the Sinhalese) and half to the "minority communities."

In regard to (*e*) the Governor was similarly opposed to a "sixty-forty demand," and to any other form of fractional representation on a race basis. His Excellency was of opinion that the elected seats should be continued to be filled on a territorial franchise, with more seats for minority communities.

The Governor's reason for opposition to the "fifty-fifty demand" or to any modification of it was that any concession to the principle of commercial representation would perpetuate sectionalism and preclude the emergence of true political parties on true political issues.

The despatch then outlines the Governor's constructive proposals,[1] which are:

(*f*) reshaping and adding to the number of electoral areas in order to afford more chances for minority candidates by the appointment of a Committee of Inquiry;
(*g*) continuation of the present method of nomination with an increase of Burgher[2] representation;
(*h*) retention in reserve of 2 nominable seats (thus bringing the maximum to the present figure of 8) in case of the unrepresentation of some interests;
(*i*) imposition of a new disability in qualifications for membership of the State Council in order that no Member shall occupy his seat while his allowance is under seizure; and
(*j*) abolition of Executive Committees, but that if this system is continued that Public Service Regulation 13, which requires reference to them on matters of appointment and personnel, be cancelled.

Paragraph 13 summarizes the principal defects of Executive Committee System as follows:

(*k*) Administration has become cumbrous and dilatory, the Committee agenda, which I regularly see, are inordinately overloaded, with a resultant loss of perspective. At the meetings much ado is often made about small things, while big questions receive too summary a treatment.
(*l*) Administration has become centrifugal; each Committee goes its own way without any common direction or control.

[1] §§ 6-12.
[2] Descendants of the Dutch colonists who dispossessed the Portuguese of their settlements in the Island until 1796, when the British took possession of the Settlements, which were annexed to Madras. The basis of law is Roman Dutch, much modified by the introduction of English law and by local Ordinances, also by Kandyan Law and Muslim Law.—[Ed.]

Where overlapping is recognized and a matter dealt with by more than one Committee procedure becomes still more cumbrous and dilatory.

(*m*) The fact that the Ministers owe ministerial office to their having been elected by the Committees as their Chairmen means that they have no common allegiance. Their authority is not original but derivative, and therefore intrinsically weak.

(*n*) Even though collective responsibility for financial measures has been vested in the Board of Ministers by Article 57 of the Order in Council the initial preparation of the estimates has been entrusted to the responsibility of the Executive Committees by Clause 1 of the Statement of Administrative Procedure Gazette Notification No. 7858/1931. The Board wields the blue pencil, but it does not mould the budget.

(*o*) To summarize this summary there is no determining, co-ordinating, eliminating, controlling or designing force behind the administrative machine; everything depends upon bargaining and compromise. As a result there can be no fixation either of policy or of responsibility.

His Excellency considers that the defects of Executive Committees are inherent in the system and not in the manner of its operation and recommends that the functions of both the Executive Committees and the Board of Ministers be entrusted to a Cabinet of the normal type, with, however, no place for the Officers of State, their present position on the present State Council and Board of Ministers being " one of great and acknowledged difficulty."[1]

The Governor is of opinion that the fall of a first or second Ministry after a general election should not necessarily involve a dissolution of the State Council, but that the Governor should at those stages dissolve the Council only if in his judgment there was an issue which could and should be put to determination by a general election. The evolution of major political parties is considered improbable, if not impossible, under the present system, which affords no opportunity for the fall and rise of Ministries.[2] His Excellency's suggestions in regard to the introduction of a Cabinet system are:

(*a*) that the State Council should elect a leader, and the person so elected be appointed Chief Minister by the Governor;

(*b*) that the members of the State Council should each nominate three persons in secret ballot, to be opened by the Governor in the presence of the Chief Justice; and that the person receiving most nominations should be asked by the Governor to form a Ministry: in the case of a tie the Governor would decide between the two nominees;

[1] § 15. [2] § 16.

(*c*) that the Governor should of his own initiative and discretion send for the man most likely, in his opinion, to command public confidence as Chief Minister.[1]

The Governor considers, however, that his right to decline to appoint a person as Minister[2] should be retained and that the Royal Instructions to the Governor should contain a clause similar to that in the Indian Instructions, namely:

> "VIII. In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who in his judgment is likely to command a stable majority in the Legislature, to appoint those persons (*including so far as practicable members of important minority communities*) who will be best in a position to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers."

Paragraph 19 of the despatch deals with changes which would come about in administration by the introduction of the Cabinet system, and the following paragraph suggests reduction of the present remuneration of State Councillors and the appointment of Deputy Ministers, who together with the additional number of State Councillors already proposed could be paid out of the moneys thus saved. Ministers and Deputy Ministers are to resign if requested to do so by the Chief Minister with the consent of a majority of his Cabinet, and the whole Ministry upon a vote of no-confidence being passed in the State Council, otherwise resignation after defeat on any Ministerial measure to be voluntary.[3]

Paragraphs 22 to 27 both inclusive set out the proposed system of re-allocation of the duties of the Officers of State[4] upon adoption of the Cabinet system, but with right to the Financial Adviser to address and have access not only to the Finance Minister but also to the Cabinet and Governor. The Legal Secretary, another Officer of State, would also become adviser to the Governor and to the Cabinet. It is suggested that the Constitution should also lay down that a vote of no-confidence in a Ministry shall not be permissible upon a measure passed by the Council and disallowed by the King or refused assent or ratification by the Governor, or upon any issue arising out of an Order in Council or a Governor's Ordinance.

Paragraphs 28 to 30 both inclusive deal with the question of the Public Service Commission under the proposed amended

[1] § 17. [2] § 21. [3] Ceylon (State Council) Order in Council, 1931, Art. 35 (2). [4] Ceylon (State Council) Order in Council, 1931, Arts. 6 and 33.

Constitution and recommend that the Commission should be beyond the reach of politics on the one hand, and beyond any suspicion of Service influence on the other. Paragraph 31 deals with the question of the time limit within which persons holding office at the commencement of the Order in Council[1] may exercise their option to retire. The readjustment of the duties of the Chief Secretary are dealt with in Paragraphs 32 and 33 and the remainder of the despatch has reference to various matters in connection with the recommendations already given. In the concluding part of the despatch the Governor says:

> It is because I believe that the Cabinet System is necessary in order to fix and develop Government responsibility, to render possible the emergence and evolution of political parties, and so to infuse discipline into democracy, that I have made the recommendations contained in this despatch.

The White Paper then publishes the acknowledging despatch, dated November 20, 1938, of Mr. Malcolm MacDonald, the successor to Lord Harlech, as Secretary of State for the Colonies, in which he remarks that he was not altogether surprised to learn that there was a widespread though by no means universal demand for the abolition of the Committee system in favour of something more nearly approaching a Cabinet system of government. The Governor is then asked to publish the correspondence and to take such steps as he may think proper for the debate of his (His Excellency's) proposals in the State Council.

In the House of Lords on December 20, 1938,[2] the Government was asked by a noble Lord when it was proposed to make a statement as to the future Constitution of Ceylon, and whether the Government would agree not to submit any draft Order for the approval of His Majesty in Council without affording ample time for discussion and approval. In speaking to this Question, in accordance with the practice of the House of Lords, the speaker referred to the Constitution as a very remarkable one—a strange mixture of legislative and executive functions. He did not know if there was any similar Constitution in any country. The powers of the Executive reside in Parliamentary Committees and the minorities[3] complain bitterly that that is so.

[1] Ceylon (State Council) Order in Council, 1931, Art. 88.

[2] 111 H.L. Deb. 5. s. 659-663.

[3] The population of the Island was quoted in debate as made up of: Sinhalese some 3,500,000; Tamils 1,500,000; Moslems 500,000; Burghers 30,000; and 15,000 other Europeans.

The Parliamentary Under Secretary of State for the Colonies (the Most Hon. the Marquess of Dufferin and Ava) assured the noble Lord that the Government fully realized that the Constitution as it existed at present was not perhaps giving full satisfaction, but that it was not the intention of the Government to prevent a full discussion of any proposed changes in such Constitution. The Order in Council itself cannot be a matter of controversy in either House of Parliament. That was a matter for the Prerogative of the Crown and the Government proposed to follow the ordinary procedure in regard to such Orders. The noble Marquess concluded by assuring the noble Lord that full discussion would take place in both Houses of Parliament in regard to the substance of the Order, but, on the other hand, he could not promise that the actual text of the Order could be debated.

Malta (Constitutional).[1]—On July 29, 1938,[2] in the House of Commons, in reply to a Question as to when the Secretary of State for the Colonies would be in a position to indicate proposals for the future government of Malta, the Minister said that His Majesty's Government had now reached conclusions regarding the new Constitution for Malta which it was proposed shortly to submit to His Majesty in the form of draft Letters Patent.[3] Such Constitution would afford the people of the Colony a considerable measure of participation in the conduct of their own affairs. There was no question of restoring responsible government, nor did His Majesty' Government consider that such would be practicable within any period which could then be foreseen. But the new Constitution would provide for a Legislature, in which people would be associated through elected representatives with the government of the Colony. The Legislature, to be known as the Council of Government, would be composed of 8 official members, 2 unofficial members nominated by the Governor at his discretion, and 10 elected members presided over by the Governor, who would only have a casting vote. Ministers of religion would be ineligible as Members. The Constitution would, however, be subject to certain limitations —*e.g.*, the Governor would have certain overriding powers of legislation and be able to restrict discussion on defence matters whenever he considered it desirable in the public interest. Language[4] questions would be excluded from discussion

[1] *See also* JOURNAL, Vols. I, 10-11; II, 9; III, 17; IV, 34; and V, 60.
[2] 338 H.C. Deb. 5. s. 3472, 3473. [3] Malta Letters Patent, 1939
[4] *See also* JOURNAL, Vols. II, 9; IV, 112, 113; and V, 56-61.

or control by such Council. The provisions relating to the franchise would be the same as in the 1921 Constitution for the Assembly elections. After the Letters Patent[1] were passed some months would be occupied in Malta in preparing for the elections.

Malta (Validity of Ordinance).—On March 30, 1938,[2] in the House of Commons, the Secretary of State for the Colonies was asked whether he was yet in a position to make any statement on the position in Malta consequent upon the recent decision in the Court of Appeal, to which the Minister replied that the Governor of Malta had reported that final leave to appeal to His Majesty in Council had been given on March 28, 1938, and that as a stay of execution had been granted no special measures on the part of the Malta Government were required in the interval.

On June 21, 1938, their Lordships, the Judicial Committee of the Privy Council,[3] began the hearing of the appeal (Sammut and Another *v.* Strickland) by Mr. Edgar Sammut, Collector of Customs, Malta, and Sir Harry Luke, Lieutenant-Governor of Malta, from a judgment of the Court of Appeal of Malta, dated March 4, 1938, which had reversed a judgment of the Civil Court of Malta, First Hall, dated October 11, 1937.

The proceedings out of which the appeal arose were brought on April 19, 1937, by the respondent, the Hon. Mabel Strickland, as attorney for her father, Lord Strickland, against the appellant for a refund of 2s. 9d. paid under protest in respect of Customs Duties imposed on certain articles imported into Malta in connection with the Coronation festivities by the Temporary Additional Duties Ordinance, No. XXVII of 1936,[4] enacted by the Governor of Malta under powers purported to be conferred by the Malta Letters Patent Act[5] of August 12, 1936.

This Ordinance enacted by the Governor of Malta provides for additional temporary duties on foreign goods suitable for use in connection with celebrations or with the commemoration of the Coronation of His Majesty. In addition to section 1 (short title), the Ordinance consists of 4 sections and a schedule. Section 2 imposes as from the date of operation of the Ordinance until June 1, 1937, the duties contained in the second

[1] As these were promulgated in 1939, they will be dealt with in Vol. VIII. —[Ed.].
[2] 333 H.C. Deb. 5. s. 1992, 1993.
[3] For full reports see *The Times*, June 22, 24; July 1 and 26, 1938.
[4] *Malta Government Gazette Supplement*, Nov. 30, 1936.
[5] *See* JOURNAL, Vol. V, 56-61.

column of the schedule, upon goods not grown or produced in the British Empire which are imported into the islands and released or taken out of bond for consumption therein. "British Empire" is defined. Section 3 applies the provision of the Principal Ordinance to such goods and section 4 requires a declaration by the importer of any goods enumerated in the Schedule as bearing any representation which renders them suitable for use in connection with the Coronation of His Majesty or souvenirs thereof.

On June 23, their Lordships reserved judgment, and on June 30, their Lordships, stating that they would give their reasons later, allowed the appeal.

The respondent contended that, owing to the circumstances in which Malta became part of the British Empire, the Crown never had *ab initio* a right to legislate by Orders in Council or Letters Patent for Malta; that section 15 of the Letters Patent Act of August 12, 1936, which provided that "the Governor may make laws for the peace, order and good government of Malta," was wholly *ultra vires*, since the Crown did not acquire on the annexation of Malta power to legislate or to delegate legislative power to the Governor; that if it should be held that such power was acquired by usage or otherwise, nevertheless by the Constitution of 1921 such power as regarded non-reserved matters was surrendered, and had not been revived, so that in any case Ordinance No. XXVII of 1936, which imposed taxation and did not deal with a reserved matter, was null and void.

The appellants contended that the Crown had on August 12, 1936, power by Order in Council and Letters Patent to legislate for the Government of Malta and its dependencies, and that the Letters Patent of such date which revoked the Letters Patent of 1921 as amended, and which also, by section 15 thereof, empowered the Governor to make laws for the peace, order and good government of Malta, was a valid exercise of such power, and that the enactment by the Governor of Ordinance No. XXVII of 1936 was *intra vires*, and was legally enforceable.

On July 25, 1938, their Lordships gave their reasons for allowing the appeal, and the Lord Chancellor during the delivery of the judgment of the Board quoted section 41 of the Letters Patent of April 14, 1921, and stated that by section 68 thereof there was reserved to the Crown "full power and authority from time to time to revoke, alter or amend section 41, and all other provisions relating to reserved matters."

Letters Patent of the same date were issued constituting the office of Governor and Commander-in-Chief.

By Letters Patent of August 12, 1936, His Majesty revoked the principal Letters Patent and made provision for the government of Malta, including the exercise of legislative powers, by the Governor under section 15 thereof—namely, that "The Governor may make laws for peace, order and good government of Malta."

Their Lordships came to the conclusion that there was no valid ground, either on principle or authority, for holding that the Royal Prerogative had been so far extinguished when the principal Letters Patent were issued in 1921, that after they were revoked the prerogative did not exist. The right to legislate in relation to local matters was doubtless suspended while the Letters Patent were in force, since so to legislate would be contradictory to and a violation of the instrument granting the powers; but there was nothing in it to preclude the exercise of the Royal Prerogative so soon as the Letters Patent in that respect ceased to be in force. Their Lordships thought it right humbly to advise His Majesty to allow the appeal and to restore the order of the learned Judge of First Hall. No order was made as to costs of appeal.

Newfoundland.[1]—On February 1, 1938,[2] in reply to a Supplementary Question as to whether the Commission of Government was likely to continue, and were the people never to have a form of representative government in Newfoundland, the Secretary of State for the Colonies said that there was no present prospect of the Commission of Government coming to an end; it was little beyond the beginning of its work.

On May 10, 1938,[3] information was asked in a Question as to how soon would representative government be restored in that British Dominion, to which the Secretary of State for the Colonies replied that, under the circumstances, there was no present prospect of restoration of the previous form of Constitution. The hon. Member then, in a Supplementary Question, asked if they were to understand from the reply that it would now be a principle of government that the test for the preservation of democratic institutions would be the ability of the Territory to balance its budget or to pay its way. To which the Minister replied that they were considering the particular question of Newfoundland and were working in

[1] *See also* JOURNAL, Vols. II, 8; IV, 35; and V, 61.
[2] 331 H.C. Deb. 5. s. 9, 10.
[3] 335 *ib.*, 1389, 1390.

accordance with the wishes of the people of the Island as expressed at the time when this new form of government was established.

The Minister was then asked to consider setting up some advisory committee whereby the people of Newfoundland could express themselves to the Commission. Another hon. Member then asked, as a Supplementary Question, whether the Minister was satisfied from the representations he had had from the Island itself that that form of government was, under the circumstances, meeting the need of the people there. To which the Minister replied that, generally speaking, the good government which was being given by the Commission was appreciated throughout the Island.

St. Helena (Announcement of Dependencies).—The following document appeared in the *London Gazette* (No. 34,474) of January 18, 1938, p. 364:

DOWNING STREET,
12th January, 1938.

The KING has been pleased by Letters Patent under the Great Seal in the form following to declare that the Islands of Tristan da Cunha, Gough, Nightingale, and Inaccessible, shall become Dependencies of the Island of St. Helena.

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 all to whom these Presents shall come, Greeting:

Whereas by an Order in Council bearing date the Twenty-seventh day of July, 1863, and by Letters Patent under the Great Seal bearing date the Eleventh day of June, 1890, and the Sixth day of December, 1906, provision was made for the government of Our Island of St. Helena:

And whereas by Letters Patent under the Great Seal bearing date the Twelfth day of September, 1922, it was provided that the Island of Ascension (being part of Our dominions) should become a Dependency of Our Island of St. Helena:

And whereas the islands known as Tristan da Cunha, Gough, Nightingale, and Inaccessible, situated in the South Atlantic Ocean, are part of Our dominions, and it is expedient that they also should become Dependencies of Our Island of St. Helena:

I. Now We do hereby declare that as from the date of these Our Letters Patent the said Islands of Tristan da Cunha,

Gough, Nightingale, and Inaccessible, shall become Dependencies of Our Island of St. Helena.

II. And We do hereby further declare that the Governor and Commander-in-Chief of Our Island of St. Helena for the time being (hereinafter called the Governor) shall be the Governor of Our Islands of Tristan da Cunha, Gough, Nightingale and Inaccessible; and We do hereby vest in him all such powers of government, legislation, or otherwise in relation to the said Islands (hereinafter called Dependencies) as are from time to time vested in Our said Governor in relation to Our Island of St. Helena, subject, nevertheless, to any instructions which may from time to time be hereafter given him under Our Sign Manual and Signet, or through one of Our Principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the Dependencies.

III. Clauses III and IV of the above recited Letters Patent of the Twelfth day of September, 1922, shall apply in relation to the Dependencies mentioned in Clause I hereof as they apply to the Dependency of Ascension Island.

IV. We do hereby reserve to Us, Our heirs and Successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us or Them shall seem meet.

V. These Our Letters Patent shall come into force forthwith, and thereafter the Governor shall cause them to be published in the Saint Helena Government Gazette.

In witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster, this twelfth day of January, 1938, in the Second year of Our Reign.

By Warrant under the King's Sign Manual.

SCHUSTER.

British West Indies (Royal Commission).—On July 28, 1938,[1] in reply to a Question (*by Private Notice*) by the Leader of the Opposition (the Rt. Hon. C. R. Attlee), the Secretary of State for the Colonies (the Rt. Hon. Malcolm MacDonald) said that the King had been pleased to approve of a Royal Commission being set up, the terms of reference of which are:

> To investigate social and economic conditions in Barbados, British Guiana, Honduras, Jamaica, the Leeward Islands, Trinidad and Tobago and the Windward Islands, and matters connected therewith, and to make recommendations.

[1] 338 H.C. Deb. 5. s. 3299, 3300.

The composition of the Commission is: Rt. Hon. Lord Moyne (Chairman), Sir Edward Stubbs (Vice-Chairman), R. Assheton, M.P., Dr. Mary Blacklock, Sir Walter Citrine, Dame Rachel Crowdy, Professor F. L. Engledow, H. D. Henderson, Morgan Jones, M.P., and Sir Percy Mackinnon.

British Guiana (Constitutional History).—We have received as a presentation to the Society from the Secretariat at Georgetown, acting upon the suggestion of Mr. J. J. Rodrigues, the Clerk of the Legislative Council, a copy of Sir Cecil Clementi's *Constitutional History of British Guiana* (Macmillan, 1937), for which we express the Society's thanks. It is a most interesting and comprehensive work, upon a Constitution which, as it existed for more than a century prior to 1928, was, in the words of Mr. E. F. L. Wood (now Lord Halifax), "unique in the Empire." It also reveals the danger involved in the premature grant of representative institutions and in the control of finance by elected legislators not charged with administrative responsibility. Most British Territories give examples of steady Constitutional growth; British Guiana, after a full cycle of Constitutional development, had to revert to an advanced form of Crown Colony Government. To the student of Colonial government this book will be of fascinating interest.

Northern Rhodesia (Financial and Economic Commission).—During the year under review in this Volume, the Imperial Colonial Office Report[1] of the Commission[2] appointed by the Secretary of State for the Colonies at the request of the Government of Northern Rhodesia was published. The terms of reference of this Commission were:

> (i) to enquire into and report on the general financial position of the Territory with special reference to the practicability of:
> (*a*) reducing the cost of administration, whether directly or by reorganization; and
> (*b*) developing and supplementing the existing sources of revenue; and
> (ii) to make recommendations generally.

Space does not admit of the Report being dealt with here even if the nature of this inquiry came within the objects of this Society, but intimation of the Report is made in view of the question of the amalgamation of this Territory with Southern

[1] Colonial No. 145, 1938. [2] Sir Alan Pim and S. Milligan.

Rhodesia and Nyasaland.[1] The Report, which covers nearly 400 pages, is a comprehensive survey of the potentialities, etc., of the Territory and deals with its Native Labour and Reserves, Financial History, Revenue, Government Service, Central Organization, and the various administrative departments.

W. R. Alexander, C.B.E., J.P.—It is much regretted that there was an omission in the retirement notice, appearing in our last volume,[2] of Mr. Alexander, the Clerk of the Parliaments and of the Legislative Assembly of Victoria. Although Mr. Alexander has not drawn attention to it, mention should have been made of the pieces of silver plate which were presented to him by the Members of his House and a pair of binoculars by the House Staff, in both cases accompanied by warm expressions of the high esteem in which this able and popular official was held, not only by those whom he served, but by those who served him.

Letter-Mail Rates.—In consequence of the war, it is understood that the Air-Mail rates given in our last issue[3] have been cancelled and in some cases transferred to Ocean-Mail rates and the former Air-Mail rates reverted to. As the new Air-Mail rates for the whole Empire are not yet known here, it will be well if members will assure themselves of the new rates before posting.

[1] *See also* JOURNAL, Vols. IV, 30-32; V, 50, 51; and VI, 66, 67.
[2] VI, 48-51. [3] *Ib.*, 88.

August 25, 1939.

II. THEIR MAJESTIES IN THE PARLIAMENT OF CANADA (MAY 19, 1939)

BY L. CLARE MOYER, D.S.O., K.C., B.A.

Clerk of the Parliaments, Clerk of the Senate and Master in Chancery.

CLIMAXING the most brilliant scene in Canadian parliamentary history, His Majesty King George VI, accompanied by His gracious consort, on May 19, 1939, from His Canadian Throne in the Senate Chamber at Ottawa, gave Royal Assent to public bills and delivered a speech to the Members of both Houses of Parliament.

The occasion was without precedent in several respects. Never before had a reigning Sovereign visited the Western Hemisphere and not since 1854 had Royal Assent been given by the Sovereign in person in England or elsewhere in the Commonwealth.

Thanks to a highly efficient press and radio service the Empire and the world received comprehensive accounts of the various public functions in which their Majesties participated during their visit to the Canadian capital, but in view of the fact that the ceremony in the Senate Chamber was not broadcast it may be of interest to review some of its details.

Their Majesties arrived in Ottawa shortly before noon on Friday, May 19, lunched at Government House and arrived, with a mounted escort, at the main entrance of the Parliament Buildings at 3 o'clock in the afternoon. They were received by the Prime Minister, the Rt. Hon. W. L. Mackenzie King, P.C., and the Leader of the Senate, the Hon. Raoul Dandurand, P.C.[1] After removing their Cloaks in the quarters of the Speaker of the Senate, Their Majesties entered the Senate Chamber and took their places on two thrones. The Prime Minister took up his position at the King's right and the Leader of the Senate on Her Majesty's left, the remaining space flanking the royal dais being occupied by Members of Their Majesties' staff, Honorary Aides-de-Camp and senior Representatives of the Naval, Military, Air and Mounted Police forces. The Judges of the Supreme Court of Canada were seated on the Woolsack in front of the dais and on the King's right were the Speaker of the Senate, the Clerk of the Senate, the Assistant Clerk of the Senate and the Clerk Emeritus of the Senate (Mr. A. E. Blount, C.M.G.). The chairs on the floor and gal-

[1] Of Canada.

leries of the Senate were occupied by the Senators and their wives, Privy Councillors not of the Government and their wives, representatives of the Church, wives of the Members of the House of Commons, Deputy Ministers and other officers of the Government holding ranking status.

The Speaker of the Senate commanded the Gentleman Usher of the Black Rod to proceed to the House of Commons and to acquaint that House that:

> " It is His Majesty's pleasure they attend him immediately in the Senate Chamber."

The House of Commons being come to the Bar the Assistant Clerk of the Senate read the titles of the bills to be assented to, as follows:

> " An Act respecting a certain Trade Agreement between Canada and the United States of America.
>
> " An Act to carry into effect the provisions of the Convention of 15th of September, 1938, providing for emergency regulation of the level of Rainy Lake and of the level of other boundary waters in the Rainy Lake watershed.
>
> " An Act to Encourage the Co-operative Marketing of Wheat.
>
> " An Act to Assist and Encourage Co-operative Marketing of Agricultural Products.
>
> " An Act to provide for the supervision and regulation of Trading in Grain Futures.
>
> " An Act to amend the Pension Act.
>
> " An Act to amend the Criminal Code.
>
> " An Act to provide for the Training of Young People to fit them for Gainful Employment."

To these bills the Royal Assent was pronounced by the Clerk of the Senate (designated as the Clerk of the Parliaments and Master in Chancery), in English and French in the following words:

> " His Majesty doth assent to these Bills."

The Speaker of the Commons then addressed His Majesty in English and French as follows:

> " MAY IT PLEASE YOUR MAJESTY:
>
> " The Commons of Canada have voted Supplies required to enable the Government to defray certain expenses of the Public Service.
>
> " In the name of the Commons, I present to Your Majesty the following Bill:
>
> " An Act for granting to His Majesty certain sums of money for the public service of the financial years ending the 31st of March, 1939, and the 31st of March, 1940, respectively.
>
> " To which Bill I humbly request Your Majesty's Assent."

After the Assistant Clerk of the Senate had read the title of this Bill the Royal Assent was pronounced by the Clerk of the Senate in English and French in the following words:

"His Majesty thanks his loyal subjects, accepts their benevolence, and assents to this Bill."

His Majesty was then pleased to deliver in English and French the following Speech from the Throne:

"HONOURABLE MEMBERS OF THE SENATE: MEMBERS OF THE HOUSE OF COMMONS:

"I thank you sincerely for your Addresses received on my arrival at Quebec. The Queen and I deeply appreciate your loyal and affectionate messages.

"I am very happy that my visit to Canada affords me the opportunity of meeting, in Parliament assembled, the members of both Houses. No ceremony could more completely symbolize the free and equal association of the nations of our Commonwealth. As my father said on the occasion of his Silver Jubilee, the unity of the British Empire is no longer expressed by the supremacy of the time-honoured Parliament that sits at Westminster. It finds expression to-day in the free association of nations enjoying common principles of government, a common attachment to ideals of peace and freedom, and bound together by a common allegiance to the Crown.

"The Queen and I have been deeply touched by the warmth of the welcome accorded us since our arrival in Canada. We are greatly looking forward to visiting each of the Provinces, and, before our return, to paying a brief visit to the United States.

"It is my earnest hope that my present visit may give my Canadian people a deeper conception of their unity as a nation. I hope also that my visit to the United States will help to maintain the very friendly relations existing between that great country and the nations of the Commonwealth.

"These visits, like the one recently made by the Queen and myself to the continent of Europe, will, we trust, be viewed as an expression of the spirit of our peoples which seeks ardently for closer friendship and better relations not only with our kith and kin but with the peoples of all nations and races.

"HONOURABLE MEMBERS OF THE SENATE: HONOURABLE MEMBERS OF THE HOUSE OF COMMONS:

"May the blessing of Divine Providence rest upon your labours and upon my realm of Canada."

After the Commons had withdrawn, Their Majesties and their escort retired and the proceedings of the Senate were resumed.

Later in the day His Majesty signed each of the original bills, in English and French, to which he had given assent as follows:

In the case of the Money Bill:

"I thank my loyal subjects, accept their benevolence and assent to this Bill. GEORGE R.I."

The other bills were endorsed with the Royal Assent as follows:

"I assent to this Bill. GEORGE R.I."

On his return to Government House His Majesty received the Prime Minister, in his capacity as Secretary of State for External Affairs, approved and caused his Great Seal of Canada to be affixed to the Instrument of Ratification of the Trade Agreement between Canada and the United States of America, which had been signed at Washington on November 17, 1938. In the Instrument of Ratification the King's signature is described as:

"Given at Our court in Ottawa, the nineteenth day of May, in the Year of Our Lord, one thousand nine hundred and thirty-nine, and in the third year of Our reign."

This procedure was in pursuance of "An Act to make provision for the Sealing of Royal Instruments" which Parliament had passed earlier in the Session.

Following Their Majesties' departure from Ottawa on May 21, Parliament resumed its daily sittings until the Session was Prorogued on June 3 by the Rt. Hon. Sir Lyman Duff, G.C.M.G., acting as Deputy Governor-General.

The following is the Official Programme which was issued in connection with Their Majesties' visit to the Houses of Parliament. It will be noticed that provision was also made in the event of circumstances permitting His Majesty to prorogue Parliament.[1]

[1] This Programme will offer valuable precedent in the event of visits by His Majesty to other Oversea Parliaments.—[Ed.]

Prorogation of Parliament.[1]

1. It is anticipated that Prorogation will take place at 3 p.m. on Friday, May 19.

2. Their Majesties will leave Government House in the State Carriage at approximately 2.30 p.m. and will be escorted by a mounted escort. In the event of the weather being unsuitable, a motor car will be used instead of the Carriage. An Equerry will be in attendance. The Procession will be headed by three police motor cyclists, one of whom will be well in front of the escort to provide against cars cutting across the route and interfering with the Procession. Two police motor cyclists will bring up the rear of the escort. The cyclists will not enter Parliament Square, but on arrival at the central gates will turn to the left or Western side of same and permit the State Carriage and escort to proceed through alone. The cyclists will pick up the Procession outside the gates for the return journey to Government House.

3. The route will be as follows: Sussex Street, Stanley Avenue, King Edward Avenue, Rideau Street, Wellington Street to the central gates of the Parliament Buildings via the West side of the East Block to the central entrance. Route.

4. A Guard of Honour will be drawn up opposite the central entrance to the Houses of Parliament. Guard of Honour.

5. A Royal Salute of 21 guns will be fired. Royal Salute.

6. The Carriage, facing West, will draw up at the foot of the steps in front of the central entrance to the Houses of Parliament, where the Prime Minister will await the arrival of Their Majesties. Should the weather be inclement, a motor car will be used and will proceed under the archway to the central entrance. As soon as Their Majesties have alighted, the Carriage will draw off. The King and the Queen, attended by the Prime Minister and such Members of the Staff as may be detailed to be in position at the foot of the steps, will at once proceed into the building. On arrival inside, the Queen will shake hands with the Leader of the Senate. Arrival.

7. As soon as the Queen and those in attendance have started up the steps, the King will face about and take the Salute. His Majesty, however, will not inspect the Guard. The Equerry in attendance will then escort His Majesty up the steps into the building. His Majesty shakes hands with the Leader of the Senate. The King takes Salute.

[1] Acknowledgments are also made to the Clerk of the House of Commons (Dr. Arthur Beauchesne, C.M.G., etc.) for this Official Programme.—[Ed.]

Procession.

8. The Procession is then formed and moves up the stairs, straight down the Hall of Fame, turning to the right to the Speaker's Quarters, where it halts while Their Majesties remove their Cloaks. When Black Rod informs the Field-Officer-in-Waiting that all is in readiness the Procession moves forward, entering the Senate by the South door.

PROCESSION

Honorary Aides-de-Camp (7).
Field-Officer-in-Waiting.

Commander E. M. C. Abel-Smith, R.N., Equerry.

Lieut.-Col. The Hon. P. W. Legh, Equerry.

Captain M. Adeane,
Assistant Private Secretary to the King.
The Gentleman Usher of the Black Rod.
Mr. A. F. Lascelles,
Acting Private Secretary to the King.

Earl of Airlie, Lord Chamberlain to the Queen.

Earl of Eldon, Lord-in-Waiting to the King.

THE QUEEN.

Page. Page.
Lady Nunburnholme, Lady-in-Waiting.
Lady Katherine Seymour, Lady-in-Waiting.

THE KING.

The Prime Minister.

The Leader of the Senate.

MEMBERS OF THE DEFENCE COUNCIL

Associate Members of the Defence Council.
A Senior Officer of the Headquarters Naval Staff.
A Senior Officer of the Headquarters Militia Staff.
A Senior Officer of the Headquarters Air Force Staff.
The Officer Commanding the Ottawa Division, R.C.N.V.R.
The Officer Commanding the 4th Princess Louise Dragoon Guards.
The Officer Commanding the 1st Field Brigade, R.C.A.
The Officer Commanding the Saluting Battery.
The Officer Commanding the 3rd District Engineers, R.C.E.
The Officer Commanding the 3rd Divisional Signals, R.C. Signals.
The Officer Commanding the 8th Infantry Brigade.
The Officer Commanding the Governor-General's Foot Guards.
The Officer Commanding the Cameron Highlanders of Ottawa (M.G.).
The Officer Commanding Le Regiment de Hull.
The Officer Commanding the 1st Corps Troops, R.C.A.S.C.
The Senior Officer Commanding a R.C.A.M.C. Unit, Ottawa.
The Officer Commanding No. 1 Ordnance Store Company, R.C.O.C.
The Commissioner, Royal Canadian Mounted Police.

As will be observed, the King is on the right. When Their Majesties reach the Woolsack they will move slightly to the

right and pass it on the East side. Their Majesties will come to a halt about 8 feet from the foot of the Throne. The King will cross the Queen and take up his position on the dais standing before his chair. The Queen will then curtsey and move forward, taking her position on His Majesty's left. The Pages will follow Her Majesty and take up a position standing together at the foot of the Throne facing the Queen. The Ladies-in-Waiting will hold their positions. The Prime Minister, after the Queen has taken her place, will move to the left, bow to the Throne and take up his position on the right of the King. The Leader of the Senate will walk straight forward, bow to the Throne and take up his position on the left of the Queen. The Ladies-in-Waiting, as soon as the Prime Minister and the Leader of the Senate are in their places, turn to the right and move to their chairs on the left of Her Majesty. The King will seat himself and when he has done so the Gentleman Usher of the Black Rod will say " Pray be seated." The Pages will then arrange the Queen's train, and after bowing to Their Majesties, take up their positions as indicated on the plan, seated on the bottom steps right and left of the Throne. The Ladies-in-Waiting and the Pages will remain seated except in the event of the Speech being read by the Governor-General, when all those within the Chamber will rise. The Honorary Aides-de-Camp, who walk two and two, will keep to their own sides and take up positions right and left of the Throne as the case may be. The Field-Officer-in-Waiting will keep to the right and take up a position on the left of the Queen. Commander Abel-Smith and Lieutenant Colonel the Hon. P. W. Legh will take up positions on the right and left of the Throne respectively. Captain Michael Adeane will bear to the left and take up a position on the right side of the Throne. The Gentleman Usher of the Black Rod will, as usual, walk to the right and take up position on the left of the Queen. Mr. A. F. Lascelles, Acting Private Secretary to the King, will turn to the left and take up a position on the right of His Majesty. Captain Adeane will hold the copies of the Speech until Mr. Lascelles requires them. The Lord-in-Waiting to the King will bear to the left and take up a position on the right of the Throne, while the Lord Chamberlain to the Queen will bear to the right and take up a position on the left of Her Majesty. The Members of the Defence Council and those following them will separate to the right and left and group themselves on each side of the Throne.

Calling of Members of House of Commons.

9. The Speaker of the Senate rises, raises his hat, bows to His Majesty and others and says:

> "Gentleman Usher of the Black Rod, you will proceed to the House of Commons and acquaint that House that it is His Majesty's pleasure that they attend him immediately in the Senate."

This command is repeated in the French language. The Speaker bows again to His Majesty and resumes his seat.

The Gentleman Usher of the Black Rod steps forward in front of Their Majesties, bows, backs three steps, turns and walks towards the Bar. When he reaches half-way he turns and bows to Their Majesties; he then backs three steps, turns and proceeds toward the Bar. When he arrives at the Bar, he turns and bows again, backing three steps before turning and retiring from the Chamber. There is a pause of about five minutes. Upon re-entering the Chamber, Black Rod bows to Their Majesties at the Bar, half-way up the Chamber and in front of the Throne, taking his place to the left of Their Majesties near the Ladies-in-Waiting.

Arrival of House of Commons.

10. The Members of the House of Commons arrive, headed by the Speaker, and take their place at the Bar. When all are in their places, the Gentleman Usher of the Black Rod calls "Order." The Speaker of the House of Commons, standing at the Bar, takes off his hat to His Majesty, who bows in return. The Clerk of the Crown in Chancery, bowing to His Majesty, says:

> "May it please Your Majesty, the Senate and House of Commons have passed the following Bills, to which they humbly request Your Majesty's assent."

After reading the titles of the Bills in English, he again bows to His Majesty and addresses him in the same words in French and reads the titles in that language.

Royal Assent.

11. The Royal Assent is then pronounced in both languages by the Clerk of the Senate, the words used being:

> "His Majesty doth assent to these Bills."

The Speaker of the House of Commons now addresses His Majesty in both languages, as follows:

> "May it please Your Majesty, the Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service. In the name of the Commons I present to Your Majesty a Bill intituled 'An Act, etc.' (the Supply Bill), to which I humbly request Your Majesty's assent."

The Speaker delivers the Bill to the Clerk of the Senate, who hands it to the Clerk of the Crown in Chancery, who reads the title in both languages. The Clerk of the Senate signifies the Royal Assent in both languages, thus:

> "His Majesty thanks his loyal subjects, accepts their benevolence, and assents to this Bill."

Speech from the Throne.

12. If the Speech is to be read by the King, the following will be the procedure:

His Majesty's Secretary moves forward from his place at the right of the King, bows, and hands him a copy of the Speech in English, bows and returns to his place. His Majesty reads the Speech, slightly inclining his head at those points where he says: "Honourable Members of the Senate" and "Members of the House of Commons," the two Speakers respectively lifting their hats in return. When His Majesty has finished reading, his Secretary again steps forward in fron of His Majesty, bows, receives the English Speech, hands i copy in French, bows again, and returns to his place. After this is read (with the same exchange of compliments as before) His Majesty's Secretary steps forward again, receives the French Speech, bows and returns to his place. He then goes towards the Speaker of the Senate, bows to His Majesty, bows to the Speaker of the Senate, hands him a copy of the Speech, bows to His Majesty, turns again and walks down the Chamber to the Bar, turning and bowing to His Majesty when he reaches half-way. On reaching the Bar, he turns again and bows to His Majesty, bows to the Speaker of the House of Commons, turns, bows to His Majesty, walks half-way up the Chamber, bows to His Majesty and returns to his place, bowing once more to His Majesty as he passes the Throne.

Speech from Throne read by Governor-General.

13. If, however, it is decided that the Speech is to be read by the Governor-General, the Secretary will hand a copy of the Speech in English to the King, who will return it to him after requesting the Governor-General to read it. The Secretary will then bow to the King, bow to the Governor-General and give His Excellency the English version. The Secretary will return to his place. The Governor-General will read the Speech. The Secretary will take a copy of the French version, present it to His Majesty, who will return it to him, and he will then present it to the Governor-General in the same way as he did in the case of the English version. On receiving the French version, the Governor-General will hand to the Secretary the English one which he has finished. When the French version

has been read, the Secretary will bow to the King, go to the Governor-General and take back the French version. The Secretary will then proceed to hand copies of the Speeches to the two Speakers as set forth in Paragraph No. 12.

When the ceremony of the reading of the Speeches by either the King or the Governor-General is concluded, the Speaker of the Senate rises and, bowing to Their Majesties, says:

Pronouncing Prorogation.

14. "Honourable Members of the Senate: Members of the House of Commons: It is His Majesty's will and pleasure that this Parliament be prorogued until the day of next (40 days), to be here holden; and this Parliament is accordingly prorogued until the day of next."

Withdrawal.

15. The Gentleman Usher of the Black Rod, having superintended the withdrawal of the Members of the House of Commons, steps forward and bows to Their Majesties. Their Majesties rise, the Pages rise, and the one seated on the King's side of the Throne will back away from the Throne and take up a position with the other Page on the left of Her Majesty. The Ladies-in-Waiting moving from their places and standing together on the Queen's left will remain until Her Majesty is ready to step down from the Throne. The Lord-in-Waiting and the Lord Chamberlain will take up their positions, the first named about 8 feet from the Throne and immediately in front of the King's chair and the Lord Chamberlain in the same relative position in front of the Queen. When the Procession is re-formed, it moves out by the South door in the same order as it entered, and returns to the Speaker's Chambers and halts while Their Majesties resume their cloaks. The Procession then continues to the Central Entrance, escorting Their Majesties down to the foot of the steps where the carriage (facing East) will be ready for departure. The Field-Officer-in-Waiting ensures that the Guard of Honour and Their Majesties' carriage are in readiness.

16. Should a contingency arise which will make it impossible to prorogue Parliament while Their Majesties are in the Capital, it is proposed to ask His Majesty to give a Royal Assent. This will automatically eliminate the procedure outlined in paragraphs Nos. 12 and 13, and withdrawal will take place immediately the Clerk of the Senate has announced the Royal Assent as set down at the end of paragraph No. 11.

Attendance of the Governor-General and The Lady Tweedsmuir.

17. The Governor-General and The Lady Tweedsmuir will arrive at the Main Senate Entrance 10 minutes before the time set for the arrival of Their Majesties. They will use rooms Nos. 152 and 153 as robing rooms, and be escorted

down the East Corridor and up the stairs into the North Corridor and thence through the North-West door to their seats in the Senate Chamber. They will be attended by their Staff. The Governor-General and The Lady Tweedsmuir will leave the Chamber in Procession after Their Majesties have retired at the conclusion of the Ceremony of Prorogation.

Plan of Chamber.

18. A ground plan and photographs of the Senate Chamber are attached. It will be observed that the Woolsack is to be moved back from its usual position to a point 15 feet from the foot of the Throne. The Governor-General and The Lady Tweedsmuir will be seated on the West side of the Chamber on His Majesty's right. When Their Majesties are seated the Governor-General will take his place standing on the right of the King between the Prime Minister and the Lord-in-Waiting.

Transportation of Their Majesties' Staff.

19. Arrangements will be made to ensure that the Members of the Staff will arrive at the Private Entrance to the Speaker of the Senate 30 minutes before the hour set for Prorogation. They will be conducted to their cloak-rooms and thence to the Central Entrance to await the arrival of the King and Queen.

Governor-General's Box.

20. The Members of Their Majesties' suite who are not down as being in the Procession will be provided with seats in the Governor-General's Box in the South Gallery.

III. "THE SANDYS CASE"

By L. A. Abraham

Assistant Clerk on the Staff of the House of Commons and the Clerk to the Official Secrets Acts Select Committees, 1938.

Although once the rather tangled facts had been cleared up the Sandys Case was seen to have been largely a series of misunderstandings, a matter of some errors of judgment and of some curious bungling at the War Office, it raised questions of the greatest importance which, as the Committee that inquired into the case observed in their Report,[1] "not only directly affect Members of Parliament in the discharge of their duties," but "indirectly concern every individual citizen whose right it is in the last resort to have his grievances ventilated by speech and Question on the floor of the House of Commons"—"questions of freedom of speech and the protection of the individual from pressure by the executive which lie at the very roots of our democratic system."

It may be convenient, before setting out the facts of the case, to summarize the relevant provisions of the Official Secrets Acts, 1911[2] and 1920.[3]

Section 1 of the Act of 1911, as amended by the Act of 1920, makes it a felony for any person to obtain or communicate secret documents or information for a purpose prejudicial to the safety or interests of the State, the documents or information being such as might be useful to an enemy.

Section 2 of the Act of 1911, as amended by the Act of 1920, makes it a misdemeanour

(i) for those holding or having held office under His Majesty or for Government contractors or their employees to communicate without authorization official documents or information in their possession;

(ii) for others to receive such information voluntarily if they have reason to believe it is being communicated to them in contravention of the Act;

(iii) for others having received information as in (ii) above to communicate it without authorization to any person other than a person to whom it is their duty in the interests of the State to communicate it.

[1] H.C. Paper 173 of 1938; V, § 2. [2] 1 and 2 Geo. V, c. 28.

[3] 10 and 11 Geo. V, c. 75. A Bill has been introduced into the U.K. Parliament amending sec. 6, and, if passed, will be dealt with in Volume VIII. —[Ed.]

Section 7 of the Act of 1920 makes it an offence to solicit or incite a person to commit an offence under the Act.

Section 6 of the Act of 1920 imposes a duty on every person to give on demand to a Chief Officer of Police or other specified person any information in his power relating to an offence or suspected offence under the Acts.

It provides for the attendance of persons on payment of their reasonable expenses, and makes a failure to attend or to give the information a misdemeanour.

Prosecutions for offences under the Official Secrets Acts can only be instituted with the consent in England of the Attorney-General and in Scotland of the Lord Advocate.

We may now turn to the Sandys Case itself.

On Monday, June 27, 1938,[1] Mr. Duncan Sandys made the following statement in the House of Commons:

> In a conversation which I had recently with the Secretary of State for War, I drew his attention to the grave shortage of anti-aircraft guns and instruments. As my Right Hon. Friend suggested that I was misinformed I offered, before raising the matter in the House, to send him the precise figures of the deficiencies to which I had referred. I accordingly drafted a Parliamentary Question incorporating these figures and sent it to the Secretary of State under cover of a letter of mine of 17th June. The purpose of this letter was to draw the Secretary of State's personal attention to the facts referred to in the Question and to give him the opportunity, if he thought fit, of asking me not to put down my Question. Except for a formal acknowledgment from the Minister's Secretary I received no reply to my letter.
>
> However, on Thursday last[2] I received a letter from the Attorney-General asking me to go and see him that evening. At this interview the Attorney-General informed me that the Question which I had sent to the Secretary of State for War showed, in the opinion of the War Office, a knowledge of matters covered by the Official Secrets Act, and he asked me to reveal the sources of my information. He added that I was under a legal obligation to do so. When I inquired what would be the consequences were I to refuse to comply with his request, he read me the text of section 6 of the Official Secrets Act and pointed out that I might render myself liable to a term of imprisonment not exceeding 2 years. In view of this I asked my Right Hon. and learned Friend not to press me for an immediate reply, as I felt that I must have an opportunity of taking advice in regard to my position. The following morning I consulted you, Mr. Speaker, and asked your permission to raise this matter in the House.
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> On being informed of this, the Attorney-General asked me to come and see him again, and told me that I had been under a misapprehension if I had thought that he had been threatening me with the use of the powers of interrogation under the Official

[1] 337 H.C. Deb. 5. s. 1534-1539. [2] June 23.

Secrets Act. He offered to give me an assurance that " there was at present no intention " to use these powers against me. However, I contended that since the withdrawal of the threat of the use of these powers was qualified by the words " at present " the position, in my opinion, remained unaltered. Thereupon my Right Hon. and learned Friend offered to drop the words " at present " and to give me an assurance that " there was no intention " to take this action against me. But I pointed out that an " intention " might subsequently be changed. In reply to this the Attorney-General said that he was not free to give me more than this rather limited assurance without first obtaining the consent of the Secretary of State for War, who was away in Scotland. However, after I had told the Attorney-General that I was not inclined to abandon my intention to raise this matter in the House, he eventually offered to write me a letter giving an unqualified promise that in no circumstances would these powers of interrogation be enforced against me. I thanked him for this assurance, but told him that I could still not give him any undertaking to drop the matter, since this was a question which concerned not merely myself, but equally all other Members of the House of Commons, and it was in my opinion most desirable that the position of Members under the Official Secrets Act should be clarified without further delay. Accordingly, on receipt of the Attorney-General's letter containing the promised assurance I sent him the following reply, dated 25th June:

DEAR ATTORNEY-GENERAL,

Thank you for your letter of 24th June confirming the assurance which you gave me yesterday—namely, that there is no question of seeking to exercise against me now or hereafter the police powers of interrogation under the Official Secrets Act.

I am naturally relieved to know that no further pressure will be exerted upon me to reveal the sources from which I obtained the information which I communicated to the Secretary of State for War in my letter to him of 17th June. However, as I pointed out to you at our interview yesterday, this does not, of course, entirely dispose of the matter.

The marked reluctance and hesitancy with which you gave me this assurance at our second interview, and the fact that you informed me that in giving this assurance you were exceeding the instructions given to you by the Secretary of State for War, confirm the fact that the possibility of exercising against me the police powers of interrogation was being seriously contemplated.

The use of these powers in circumstances such as these raise an important question of Parliamentary privilege vitally affecting the freedom of the Members of the House of Commons in the discharge of their public duties. You will, therefore, appreciate that in spite of your assurance in regard to my personal position, I should not, in the interest of the House as a whole, be justified in abandoning my intention to seek Mr. Speaker's guidance. I shall accordingly raise the matter after Questions on Monday next.

In conclusion Mr. Sandys submitted that a situation had been created which was unsatisfactory and uncertain for all Members of the House, and asked the Speaker for his guidance as to what steps should be taken to clarify it in the interests of all concerned.

The Attorney-General was then heard in explanation of his conduct. He said:

> Upon Thursday[1] last the Secretary of State for War sent for me. He told me that he had had a communication from my hon. Friend, and that on information he had received from the General Staff the fact that the information contained in the communication was known to my hon. Friend showed that there had been an unauthorized disclosure by someone of highly secret information. It was clear, therefore, that there had been a serious breach by someone of the Official Secrets Act. It seemed fairly clear to me that my hon. Friend could not have realized this. I was asked if I would see him and put the legal position before him, and ask him whether he was prepared to assist in tracing the disclosure by giving either to me or the Secretary of State the source of his information. I said that I would do so. I saw my hon. Friend the same evening. I put the legal position before him and asked him the above question. He said his first reaction was not to commit himself one way or the other. He referred to the powers of compulsory interrogation under the Act, and asked me in what capacity I was asking him. I told him I was not acting under these powers nor threatening him with them. The question whether in the event of his refusal and the disclosure not being otherwise traced these powers should be used had not been considered, and I had not considered them. He said that he would like time to consider his position, and I said that I would not press him. The discussion continued; and I am confining this statement to what is relevant to the present issue. The discussion later came back to the compulsory powers, and I said that I would read him the section, which I did. He asked me what was the maximum penalty for a misdemeanour, and I said, " I think it is 2 years," and added, as he referred to the recent Question which arose on the Bill introduced by my hon. Friend the Member for Dundee (Mr. Foot), that in that case I thought the man was fined £5.
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> The discussion then ended, as my hon. Friend was anxious to get back to the Debate which was taking place on Spain. This was between 7.30 and 8 o'clock last Thursday,[2] or shortly after that time. The position was that he was going to consider whether he would or would not disclose the source of his information. He had told me that he would like to see the Secretary of State on the subject of his communication, and I had told him that the Secretary of State was willing to see him. I heard on the following day that he was proposing to raise the question with Mr. Speaker in this House. I asked him to come and

[1] June 23. [2] June 23.

see me, which he did. I repeated that the question of exercising the police powers under the Act had not been considered, and therefore, as it seemed to me, any question of the kind that I understood he was proposing to raise was quite hypothetical.

He then put this point, and I summarize it as I understood it: He said that in considering what answer he should make to my question he wanted to know, and it was relevant that he should know, whether the police powers might be exercised in the event of his refusal. This struck me as a perfectly fair point. In the letter which he has read my hon. Friend refers to my " hesitation." He ascribed that to the fact that the question had been seriously considered. The opposite is the truth. I took some time to consider it, because I had not previously considered it. I told him it was outside my instructions from the Secretary of State for the same reason—namely, that the Secretary of State had not asked me to consider it. It is, however, in the last resort a decision which rests with the Attorney-General, if he is cognizant of the matter, as his consent is necessary for any prosecution in the event of refusal. Normally I would discuss such a matter with the Department concerned before coming to a decision which would be my sole responsibility.

I considered the circumstances as put before me by the Secretary of State and what my hon. Friend had said to me. I decided—and this was my own decision, arrived at without consultation with or knowledge of anyone else—that this was not a case in which these police powers of interrogation should be exercised, and that my hon. Friend was entitled to be told that at the time. I told him so. He asked me if I would confirm it in writing. I said, " Certainly," and did so. If I had come to the contrary conclusion I would have told him so. I would like to say, in view of one sentence in my hon. Friend's statement, that I did not ask him for or suggest that he should give me any undertaking, and I think he will probably agree. On any view it seemed to me that in the position which the matter had now reached, a decision one way or the other on this question in the circumstances of this case was desirable and fair to my hon. Friend. I came to that decision and gave it to him on my own responsibility.

When the Attorney-General had concluded his statement the Speaker said[1] that he had listened carefully to Mr. Sandys' statement and to that of the Attorney-General and that he was convinced of the importance of the issue that they had raised as to the position of Members with regard to the Official Secrets Acts. At any time the question of their privilege might arise, and it seemed to him that it was important that their position should be made as clear as it could be made as soon as possible. Mr. Sandys had asked him for guidance as to how this could be done. The Speaker said that in his view the proper course for Mr. Sandys to take

[1] 337 H.C. Deb. 5. s. 1539.

was to give Notice of a Motion in suitable terms so that the House might fully discuss the question and itself decide what action, if any, it proposed to take.

Mr. Attlee thereupon asked the Prime Minister whether, if Mr. Sandys or any other Member saw fit to put a Motion on the paper, the Government would give time for its discussion.

The Prime Minister said that in view of the terms in which the Speaker had stressed the importance of the matter, it was clear that time would have to be given for a Motion which would have the effect of clarifying the whole position, and Mr. Sandys at once gave Notice of a Motion for the appointment of a select committee to inquire into the substance of the statement he had made and the action of the Ministers concerned, and generally into the question of the applicability of the Official Secrets Acts to Members of the House of Commons in the discharge of their Parliamentary duties.[1]

It will be observed that Mr. Sandys did not formally complain that a breach of privilege had been committed. It is an interesting speculation whether, if he had done so, the Speaker would have ruled that a *prima facie* case had been made out. It may possibly be inferred from the advice which the Speaker gave Mr. Sandys that he would not have regarded the matter as one which required the immediate interposition of the House in view of the assurance which the Attorney-General had given to Mr. Sandys.

On the following day it was announced in the Press that the Army Council had decided to set up a court of inquiry to inquire into the circumstances in which the disclosure of the information had come to be made. On June 29,[2] Mr. Sandys complained to the House that in his capacity as an officer in the Territorial Army he had received orders to appear in uniform before the court of inquiry the following morning for the purpose of giving evidence. He submitted that, as the question whether it was permissible to compel a Member of Parliament to divulge the sources of information used by him in the discharge of his Parliamentary duties was in the process of being considered by the House, it was a breach of privilege that he should be summoned to give evidence before this military tribunal. The Speaker ruled that a *prima facie* case had been made out, and the Prime Minister moved that the matter of the complaint should be referred to the Committee of Privileges.[3] He said that Mr. Hore-Belisha had given him

[1] 337 H.C. Deb. 5. s. 1543-40.
[2] *Ib.*, 1915-25.
[3] H.C. Paper 146 of 1938.

an assurance that he would at once ask the Army Council to suspend proceedings until the Committee of Privileges had met and reported. The Motion was agreed to.[1]

The next day the Committee of Privileges reported that they had not been able to find any precise precedents for the circumstances of the case, but that, taking all the circumstances of the case into consideration, they found that a breach of privilege had been committed. They based their finding on the facts: first, that the House, having taken note of Mr. Sandys' statement on June 27, had in effect recognized that important issues were involved, and was about to set up special machinery to investigate those circumstances; and secondly, that the court of inquiry was to inquire into the circumstances of the leakage of information which had formed part of Mr. Sandys' statement. In these circumstances, the Committee said, it appeared to them, without making any reflection on the military court, that the summons to Mr. Sandys might well appear to be an attempt to induce him to give certain information at a time when the House was proposing to set up a Select Committee to consider among other things the propriety of his being asked to give such information. The Committee did not, however, recommend that any further action should be taken by the House, presumably because the Army Council had in the meantime given orders that the court of inquiry should be adjourned *sine die*.[2]

It may be permissible to offer some critical remarks on the findings of the Committee of Privileges. It is difficult to see how it could be said that the House was proposing to set up a Select Committee to consider among other things the propriety of Mr. Sandys' being asked to reveal the source of his information. The Prime Minister, as we have seen, had promised only to find time for the discussion of a Motion that would have the effect of clarifying the position. It did not follow that Mr. Sandys' Motion would be the Motion discussed, or that if it was it would be agreed to. Moreover, as it is technically a breach of privilege to publish statements made by Members in the House, it may be contended that the court of inquiry was under no duty to take notice of these statements. Even if it be admitted that the House was proposing to set up a Select Committee, it may be argued that the subject-matter of the proposed inquiry was not the propriety of Mr. Sandys' being asked to give the information in question, but whether he was privileged, as a Member of Parlia-

[1] 337 H.C. Deb. 5. s. 1915-1925. [2] H.C. 146, p. 3 (1937-8).

ment, against proceedings under the Official Secrets Act for refusing to give it, and that though it would have been a contempt of the authority of the House to take disciplinary action against Mr. Sandys for refusing to reveal to the court of inquiry the source of his information, the probability, or even the certainty, that he would be asked to reveal it by the court was not enough to make the summons to attend the court a breach of privilege. Admitting, however, for the sake of argument that, had the House been proposing to set up a Select Committee to consider the propriety of Mr. Sandys' being asked to reveal the source of his information, an attempt to induce him to do so would have been a breach of privilege, it is hard to understand why the Committee of Privileges went no further than to say that the summons " might well have appeared " to be such an attempt, or how, not being prepared to go further than this, they could yet find that the summons constituted a breach of privilege.

It is submitted that the question whether the summons was or was not an attempt to induce Mr. Sandys to reveal the source of his information is irrelevant to the question whether the summons was a breach of privilege. The privilege of the Commons that " no call of an inferior nature, or obedience to the summons of an inferior court, should be permitted to interfere " with the Member's attendance on his more important duty in the High Court of Parliament may have fallen into neglect and desuetude, but it has never been abolished.[1] What was laid down in the reign of Queen Elizabeth as the established law of privilege—namely, " that no subpœna or summons for the attendance of a Member in any other court ought to be served without leave obtained or information given to the House, and that the persons who procured and served such process were guilty of a breach of privilege "[2]—therefore still holds good. It is true that there are no recent precedents of the punishment of persons for serving subpœnas upon Members without the leave of the House, but, then, there have been no recent instances of complaints being made of the service of subpœnas. It is one thing to tolerate the infringement of the privilege so long as it is not formally brought to the notice of the House, but when the matter is brought to its notice, the House cannot refuse to adjudge the summons to be a breach of privilege without by implication abandoning the claim that its right to the attendance and service

[1] 1 Hatsell, 112, 175; Dwarris on Statutes, 2nd ed., p. 159.
[2] 1 Hatsell, 121.

of its Members is paramount; and it would clearly be absurd to draw any distinction between attendance at a civil court and attendance at a military court. It is true that where Members have asked leave of absence on the ground that they have been subpœnaed as witnesses, the House has granted them the necessary leave. It does not follow that because the House has not visited the serving of a subpœna as a contempt in cases where it is willing to waive its right to the attendance of the Member, the service of a subpœna has ceased to be a breach of privilege. Nor is the position affected by the fact that in recent years Members have attended as witnesses elsewhere without obtaining the leave of the House. The privilege of exemption from attending as witnesses during the Session of Parliament is the privilege of the House. The House cannot be deprived of its right to the attendance and service of its Members by any action or inaction on the part of individual Members. It is worth noting that in the United States the House of Representatives "has declined to make a general rule permitting Members to waive their privilege, preferring that the Member in each case should apply for permission."[1]

On June 30, on the Motion of the Prime Minister, a Select Committee[2] was appointed to inquire into the substance of the statement made on June 27 by Mr. Sandys and the action of the Ministers concerned, and generally into the question of the applicability of the Official Secrets Acts to Members of the House of Commons in the discharge of their Parliamentary duties. The Committee was composed of 14 Members. They met on July 4 and elected Sir John Gilmour Chairman. They resolved to sit in private and to take the evidence of all witnesses examined in relation to the first portion of the reference on oath.

On July 11[3] the Prime Minister moved "That this House doth agree with the Report of the Committee of Privileges." He said that the Committee, having been unable to find any exact precedent for the case under consideration, had had to fall back on common sense, and that he thought they had shown a due sense of their responsibility both to the privileges of the House and the safety of the State. Many Members were desirous of discussing the part Mr. Hore-Belisha had played in the affair, but the Speaker ruled that this would not be in order, as the Committee of Privileges had found that the

[1] House Rules and Manual, 76th Congress, sec. 291.
[2] H.C. Paper 173 of 1938.
[3] 338 H.C. Deb. 5. s. 949 *et seq.*

responsibility for committing the breach of privilege rested with the court of inquiry and the question before the House was whether or not it should accept that finding. The Speaker said that Mr. Hore-Belisha's responsibility had ceased after the court of inquiry had been set up, and that the House had appointed a Select Committee to inquire, among other things, into the action of the Ministers concerned. If it was desired to discuss Mr. Hore-Belisha's action, that could be done when the Report of the Committee was considered or the matter could be raised on the appropriate vote of supply. The Prime Minister's Motion was agreed to without a division.

It had been assumed by the Committee of Privileges and by Members generally that the summons to Mr. Sandys had been issued by the court of inquiry, but on July 14[1] a Member informed the House that information had come into his possession which appeared to be inconsistent with that upon which the Committee of Privileges had founded their report, and asked the Speaker for his guidance as to how the doubt raised thereby could be cleared up. The Speaker asked for time to consider the point.[2] On July 18[3] the Speaker stated that statements made in the debate which followed Mr. Sandys's complaint had led the House to assume that the summons which Mr. Sandys had received was an order by the court of inquiry, and the report of the Committee of Privileges implied that the court of inquiry was responsible for the breach of privilege. The information which had been brought to his notice was that " the individual members of the court of inquiry knew nothing of the summoning of Mr. Sandys to appear before them. They had not any say whatever in the summoning of the witnesses to attend at the opening of the court. They had not met when Mr. Sandys raised the point in the House on the 29th June." The Speaker said that this information—of the truth of which he was satisfied—exonerated the members of the court of inquiry, but was of little importance in its bearing on the case of privilege. The essence of the breach of privilege was the summoning of a Member of the House before a military court in the circumstances detailed in the report of the Committee of Privileges. Whether he had been summoned by the officers composing the court or by another officer making the preliminary arrangements for holding the court was immaterial from the standpoint of privilege. He advised the House to let the matter rest where it was.

[1] *Ib.*, 1525-1527. [2] *Ib.*, 1525. [3] *Ib.*, 1807-1813.

Mr. Attlee, the Leader of the Opposition, asked the Prime Minister whether, in view of the fact that the Committee of Privileges had been misinformed and that the House had been misled and had passed a Resolution which had been interpreted as laying blame on persons who were entirely innocent, he would not move that the Resolution of July 11 should be rescinded and the matter referred back to the Committee of Privileges. The Prime Minister said his view was that it would be better to take the Speaker's advice and let the matter rest where it was, whereupon Mr. Attlee said that as the Prime Minister was not prepared to adopt his suggestion he would Table the Motion himself.[1]

Mr. Attlee's Motion was discussed on July 19.[2] Sir Archibald Sinclair moved as an amendment that the Select Committee on the Official Secrets Acts should be instructed to inquire into and report on the circumstances in which the summons had been sent to Mr. Sandys. The Prime Minister assented to this, assuring the House that he also had been under the same misapprehension as the rest of the Members. Mr. Attlee accepted the amendment, and the main question, as amended, was agreed to without a division.[3]

The Report of the Select Committee on the Official Secrets Acts was published on September 28.[4] It was concerned almost entirely with a detailed elucidation of the facts of the case, including the question of the responsibility for the summoning of Mr. Sandys to attend the court of inquiry.

The Report began by explaining that, as the conduct of individuals had been impugned, the Committee had felt that it was better to postpone consideration of the general question of applicability of the Official Secrets Acts to Members of Parliament in the discharge of their Parliamentary duties and to deal with the first portion of their reference as expeditiously as possible. They had, therefore, " set themselves to determine whether, judged by ordinary standards of reasonable conduct and the accepted relationship between Ministers of the Crown and Members of the House of Commons, the actions of the Ministers concerned were open to criticism."[5]

The Report stated that there was " a conflict of recollection " about how long the interview between Mr. Hore-Belisha and Mr. Sandys, to which the latter had referred in his statement, had lasted and what had been said. Mr. Sandys said that he had given Mr. Hore-Belisha " approximate figures regarding

[1] *Ib.*, 1807-14. [2] *Ib.*, 2013-2043. [3] *Ib.*, 2013-2043.
[4] H.C. Paper 173 of 1938. [5] *Ib.*, v, § 1.

the shortage of guns " in the 1st Anti-Aircraft Division and, indeed, almost all the information which had been contained in the question which he had subsequently sent to Mr. Hore-Belisha. Mr. Hore-Belisha, on the other hand, had no recollection of his doing so. The Committee's conclusion was that the differing accounts of the interview were " due to a misunderstanding between the participants." " They think," the Report went on to say, " that the Secretary of State did not appreciate that Mr. Sandys was attempting to give him approximate figures and that consequently he never intended to contradict the figures that were being given him, but merely to tell Mr. Sandys that the position was not as bad as the latter thought. Mr. Sandys, on his part, took the remark of the Secretary of State as a denial of the accuracy of the figures which he thought he had impressed upon the Secretary of State." That Mr. Sandys had thought that the accuracy of his information had been challenged was, said the Report, clear from the fact that he had said so to the adjutant of the Territorial Anti-Aircraft Brigade in which he was serving and from the terms of his letter to Mr. Hore-Belisha.[1]

The Report stated that Mr. Sandys' letter had been deal with by one of Mr. Hore-Belisha's private secretaries, wh had passed it to the General Staff for " an early and detaile report." Mr. Hore-Belisha had not seen the letter unti June 20, when another of his private secretaries " showed him a copy of Mr. Sandys' draft Question, told him that it had been passed to the General Staff, and drew his attention to the fact that the information contained in the draft Question seemed very comprehensive and intimate for a Second Lieutenant to have acquired in the ordinary course of his duties." Mr. Hore-Belisha had asked his private secretary " what were the responsibilities of a Member of Parliament who was also a Territorial Officer?" The private secretary had sent a minute to the Adjutant-General's Department saying that " the Secretary of State would like to know what are the rules of the Territorial Army with regard to the divulging of information by serving Territorial Army Officers." In reply the Adjutant-General's Department had referred him to the Territorial Army Regulations, 1936, paragraph 844, which was as follows:

> " The publication of official documents and information or their use in personal controversy or for any private purpose, without due sanction from superior military authority, will be treated as a breach of official trust under the Official Secrets Acts, 1911 and 1920."[2]

[1] *Ib.*, xii, § 13. [2] *Ib.*, xiv, xv, §§ 20 and 21.

On June 22 Mr. Hore-Belisha had received from the General Staff a detailed report on the draft Question together with the following minute:

> "We are greatly concerned that Mr. Sandys should have been in possession of such information. Not only does it appear that he was conversant with the details of a secret scheme, but that he was kept up-to-date in the subsequent changes agreed to by the A.O.C.-in-C.
>
> "It was quite unnecessary to impart such information to a junior officer and, further, it is obviously not in the public interest that a Question of this nature should be asked."

Mr. Hore-Belisha had sent for Brigadier Loch, the officer who had written the minute. Brigadier Loch had told Mr. Hore-Belisha that the information could only have come from the plan for the defence of London in time of war which had been drawn up in the preceding April.[1]

Mr. Hore-Belisha had sent to the Prime Minister a copy of Mr. Sandys' letter and draft Question, and had informed him of the views of the General Staff and had asked the Prime Minister for his advice as to how he should deal with the matter.[2]

The Committee expressed the opinion that Mr. Hore-Belisha had been fully justified in accepting the views of the General Staff both as to the fact that highly secret information had been improperly disclosed, and as to the seriousness of that fact.[3] They considered that he had been equally justified in thinking that the fact that a leakage of highly secret information had occurred, coupled with the fact that a Member of Parliament was involved, made the matter of sufficient importance to consult the Prime Minister, who, they pointed out, was at once the Leader of the House and the Chairman of the Committee of Imperial Defence.[4]

Mr. Hore-Belisha had seen the Prime Minister the following day, and had suggested that Mr. Sandys should be seen either by the Prime Minister or by him. The Prime Minister had said that he thought it would be better for Mr. Hore-Belisha to see Mr. Sandys, and had advised him before seeing Mr. Sandys to see the Attorney-General and make himself fully acquainted with the legal position as it was possible that some question of Parliamentary privilege might arise. The Prime Minister had not suggested that the Attorney-General should see Mr. Sandys. The Committee expressed the opinion that the conduct of the Prime Minister was not "open to the slightest criticism."[5]

[1] *Ib.*, xv, § 22.
[2] *Ib.*, xvi, xvii, § 25.
[3] *Ib.*, xv, § 23.
[4] *Ib.*, xvii, § 26.
[5] *Ib.*, xvii-xix.

The Report stated that the Committee were " satisfied from the Attorney-General's evidence that the Secretary of State for War was willing to see Mr. Sandys on the subject-matter of his letter, and was anxious that Mr. Sandys should not think that any discourtesy was intended towards him; and that the Attorney-General informed the Secretary of State that he, as Attorney-General, thought that he, and not the Secretary of State, was the proper person to see Mr. Sandys."[1]

The Attorney-General, in his evidence, had stated that he had come to the conclusion that the proper course was for him to see Mr. Sandys for the following reasons:

It was clear that Mr. Sandys was in possession of information of a highly secret character. The Attorney-General thought, judging from the terms of Mr. Sandys' letter to Mr. Hore-Belisha, that Mr. Sandys could not realize this. It was necessary in the public interest to inform him that the information was of a highly secret character. It was also necessary to explain to him that if, after having been informed that the information had been disclosed in contravention of the Official Secrets Acts, he communicated it to anybody, he would be guilty of an offence. The Attorney-General considered that he was the proper person to explain the legal position to Mr. Sandys. In the second place, the circumstances in which the disclosure had come to be made were going to be investigated, and Mr. Sandys was to be asked whether he was prepared to assist in the investigation by revealing the source of his information. As Mr. Sandys was a Member of Parliament it seemed to the Attorney-General " obviously right, as a colleague, that I should see him myself and ask him whether he was prepared to assist in this matter."[2]

It was clear, said the Committee, that the Attorney-General had not considered Mr. Sandys as a potential accused, and that he had not considered using the powers of compulsory interrogation. They expressed the opinion that it was unfortunate that Mr. Hore-Belisha had taken the Attorney-General's advice and had allowed him to see Mr. Sandys, instead of himself seeing Mr. Sandys as the Prime Minister had counselled.[3]

The Committee accepted as giving a " substantially correct account " of the first interview between the Attorney-General and Mr. Sandys a letter which the former had written to Mr. Hore-Belisha immediately after the interview.[4] The material portions of this letter were as follows:

[1] *Ib.*, xxi, § 33. [2] *Ib.*, xx, xxi. [3] *Ib.*, xxi, § 34. [4] *Ib.*, xxvi, § 40.

"I have seen Sandys and explained the position to him, and also the reason why I had seen him before you had written to or seen him. The result is broadly as follows: I said that on information I had had from you the information contained in his Question evidenced a serious breach of the Official Secrets Act by someone. He said that if you had told him that it was contrary to the public interest for the information to be made public he would in that event have withdrawn the Question. He said he would, of course, withdraw the Question and would not communicate the information to anyone else, but he, for understandable reasons, preferred to base this on the fact that its publication would be contrary to the public interest rather than on the legal position. . . . I then asked him whether he was prepared to assist in an investigation as to who had committed the breach of secrecy by telling you or me from whom he got his information. He was aware of the police powers, but I said I was of course not operating under them but asking him whether he was prepared to assist, etc. We discussed this position for some time and I put the various aspects of the matter before him—I did not naturally press him. He said he was not prepared, anyhow, at the moment. He said he believed that assuming a wrongful disclosure had been made he felt that the person making it had done it with a patriotic motive—whether right or wrong. I said I thought obviously wrong. . . . I said that I could not, of course, say what further action might be taken, but if it was felt to be a case in which all the available powers should be used he would be given a further opportunity of considering this aspect of the question. . . . My impression is that he probably got the information not from the original discloser and in circumstances in which he probably felt it was legitimate to tackle you about it—and that he was ready to refrain from publishing it or pressing his Question if assured it was against the public interest."

The letter, said the Committee, made it perfectly clear that, though Mr. Sandys might have been the first to raise the question of the compulsory powers of interrogation, the Attorney-General had given Mr. Sandys to understand that there was at any rate a possibility of their being used. There could be no doubt that Mr. Sandys had taken this possibility seriously. On going home he had burnt a number of incriminating documents fearing that his house would be raided by the police.[1]

The Committee did not "think that the Attorney-General had contemplated exercising the powers of interrogation before they were mentioned by Mr. Sandys," and they thought "that it was unfortunate that he had not, before interviewing Mr. Sandys, considered the possibility of the latter refusing to disclose the source of his information, and whether in that

[1] *Ib.*, xxvi, §§ 40, 41.

event recourse should be had to these powers." As the Attorney-General " had not considered the question of using the compulsory powers of interrogation," the Committee felt that " he ought to have terminated the interview as soon as they were mentioned." It was not, in their view, a desirable practice for the senior Law Officer of the Crown, in whose hands the use of the Official Secrets Act lay, to discuss with another Member of Parliament in one and the same interview the desirability of that Member giving certain information, and the possible use of powers through the exercise of which he might become liable to imprisonment. The Committee said that they acquitted the Attorney-General of any intention to threaten Mr. Sandys, but they thought that he could have prevented the situation arising in which he was understood to have threatened him.[1]

The Committee accepted the Attorney-General's account of the second interview between him and Mr. Sandys. They rejected Mr. Sandys' contention that the assurance which the Attorney-General had given to him at that interview that the police powers of interrogation under the Official Secrets Act should not be exercised against him had been given only in the hope that it would prevent the matter from going any further. They were satisfied, they said, that the Attorney-General had " honestly and properly " come to the conclusion that the powers should not be used in Mr. Sandys' case. They expressed the opinion that it was " unfortunate " that when Mr. Sandys had raised the matter, the Attorney-General had at first said that it was " outside his instructions from the Secretary of State for War." While they unhesitatingly accepted the Attorney-General's explanation that he had used the word " instruction " in the lawyer's sense, meaning thereby that he had not been asked to consider the matter, they felt that the statement was calculated to confirm Mr. Sandys in the belief that the question of using these powers against him had been seriously considered.[2]

In estimating the wisdom of the action of the Ministers concerned, it was necessary, the Report said, to bear in mind the great pressure under which they worked. The Attorney-General in particular was constantly being asked to advise and take decisions upon a great variety of matters, sometimes of necessity with inadequate time in which to consider them. The Committee attributed any errors of judgment of which he might have been guilty to the lack of opportunity he had had

[1] *Ib.*, xxix, § 45. [2] *Ib.*, xxix-xxx, §§ 45, 46.

for considering the matter fully when he had first been called upon to deal with it.[1]

The Committee expressed the opinion that in a course of events which had been largely a series of misunderstandings an element of misunderstanding had been introduced by Mr. Sandys himself. In his letter to Mr. Hore-Belisha he had stated that he was thinking of putting down the Question for answer on June 28, but that as he did not " wish unnecessarily to create alarm," he was " anxious before doing so to give " Mr. Hore-Belisha " an opportunity privately to contradict the statements contained in this Question." This, the Committee considered, had been a somewhat " disingenuous letter." " Mr. Sandys," the Report went on to say, " stated that he had no intention of putting the Question down, and that he fully realized that it would not be in the public interest to publish the figures contained in the Question. He knew that the information contained in the draft Question was accurate and could not be contradicted and yet affected to be anxious to give the Secretary of State for War an opportunity of privately contradicting it. Mr. Sandys states that his only purpose was to bring [home] to the Secretary of State in the most forcible way at his disposal the gravity of the position, and to secure an opportunity of urging him to take drastic action to supply the deficiencies. He says that he put the information which he wished to convey to the Secretary of State in the form of a parliamentary Question, and not in the form of a letter, because he thought that if he put it in the form of a letter he might only receive a more or less formal acknowledgment, whereas if he intimated that he was going to put down a Question on the subject the Secretary of State would be bound to send for him and they would have a really frank conversation on the subject." The Committee added that while they fully accepted Mr. Sandys' explanation, they did not think he had been justified in threatening to do what he would not have considered himself justified in doing.[2]

The Report stated that the circumstances in which Mr. Sandys had been summoned to appear before the military court of inquiry had been as follows:

On the morning of June 27, a statement, which had been obtained by the General Officer Commanding the 1st Anti-Aircraft Division from the officer who had disclosed the information to Mr. Sandys, reached the War Office. Mr. Hore-Belisha was informed by Lord Gort, the Chief of the

[1] *Ib.*, xxx, § 47. [2] *Ib.*, xiv, § 18.

Imperial General Staff, and Sir Herbert Creedy, the Permanent Under-Secretary, that the proper course of procedure was to hold a court of inquiry. Mr. Hore-Belisha approved of that course, but, as the Adjutant-General was at the Treasury, he directed that a meeting of the Army Council should be held when the Adjutant-General was available for the purpose of taking the formal decision and drawing up the necessary instructions. Lord Gort, the Adjutant-General and Sir Herbert Creedy met at about 3 p.m. Lord Gort produced the documents and the Adjutant-General was told that Mr. Hore-Belisha had been informed by Lord Gort and Sir Herbert Creedy that the correct procedure was to hold a court of inquiry. He agreed that this was the appropriate and correct procedure and gave instructions for a letter to be drafted to General Sir Edmund Ironside, General Officer Commanding-in-Chief, Eastern Command, conveying a request from the Army Council that he should cause a court of inquiry to be assembled to inquire into the matter. A letter to that effect was accordingly drafted and sent to Mr. Widdows, one of the Assistant Under-Secretaries of State, for signature and return to the Adjutant-General's Department for issue. Before the letter was despatched it was submitted to Mr. Hore-Belisha, who directed it to be sent to the Attorney-General for his approval. The Attorney-General amended the letter by changing the terms of reference to the court from " to inquire into the circumstances in which the information given in the proposed question was obtained " to " to inquire into the circumstances in which the aforesaid disclosure came to be made."

The letter reached General Ironside some time before 12 noon the following day. The request that he should cause a court of inquiry to be assembled " immediately " showed General Ironside that, in the opinion of the Army Council, the matter was urgent. He therefore sent for his chief administrative staff officer and gave orders that a court of inquiry should be convened for the following Thursday, and that the Commanding Officer of the 51st Anti-Aircraft Brigade, the Adjutant, Mr. Sandys and two other officers should be ordered to appear as witnesses.[1]

The Report stated that General Ironside had made it clear to the Committee that he had directed Mr. Sandys to be summoned to attend because he was a material witness, and not, as had been suggested, merely in pursuance of the regulation which provided that " whenever any inquiry affects the

[1] *Ib.*, xxxvi, § 56.

character or military reputation of an officer or soldier, full opportunity must be afforded to the officer or soldier of being present throughout the inquiry and of making any statement and of giving any evidence he may wish to make or give."[1]

The Committee expressed the opinion that no exception could be taken to General Ironside's action. To enable a court of inquiry on assembling to begin its investigations, it was the normal practice for the assembling authority to cause orders to be issued for the attendance of such military witnesses before the court as appeared to him to be necessary, and the attendance of an officer witness who was subject to military law could only be secured by means of an order to attend given to him by his superior officer. Mr. Sandys had clearly been a material witness, and as an officer on the Active List of the Territorial Army was subject to military law.

The Committee's conclusion was that the summoning of Mr. Sandys to attend the court of inquiry had been the natural and inevitable consequence of the instruction to set up the court and of the subsequent failure to postpone the assembling of the court after the proceedings in the House of Commons on June 27. The instruction had been the act of the Army Council. The failure must be accounted their omission in view of the fact that when Mr. Sandys complained to the House of Commons that he had been ordered to attend the court the Army Council had at once given instructions to General Ironside that the court should be adjourned *sine die.* " For both act and omission the Secretary of State must, and does, take full responsibility."[2]

The Report was not taken into consideration until the following Session. On December 5, however, the House, on the Motion of the Prime Minister, resolved that it agreed with the Committee in their report.[3] The Committee was reappointed with two changes in personnel to inquire into the applicability of the Official Secrets Acts to Members of the House in the discharge of their Parliamentary duties, having regard to the undoubted privileges of the House as confirmed in the Bill of Rights. The Committee took evidence from the Attorney-General and the Clerk of the House and presented their report to the House on April 5, 1939.[4]

The Report began[5] by pointing out that the article in the Bill of Rights " That the freedom of speech and debates or

[1] *Ib.*, xxxvi-xxxvii, § 57.
[2] *Ib.*, xli, § 70.
[3] 342 H.C. Deb. 5. s. 889 *et seq.*; C.J. (1938-9) 38.
[4] H.C. Paper 101 of 1939; 345 H.C. Deb. 5. s. 2798.
[5] H.C. Paper 101 of 1939, 4, § 2.

proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament," was not necessarily an exhaustive definition of the cognate privileges. But even assuming that it was, the privilege was not confined to words spoken in debate or to spoken words, but extended to all proceedings in Parliament. While the term " proceedings in Parliament " had never been construed by the courts, it covered both the asking of a Question and the giving written Notice of such Question, and included everything said or done by a Member in the exercise of his functions as a Member in a committee of either House, as well as everything said or done in either House in the transaction of Parliamentary business.[1]

The privilege of freedom of speech being confined to words spoken or things done in the course of Parliamentary proceedings, words spoken or things done by a Member beyond the walls of Parliament would, generally speaking, not be protected. Cases might, however, easily be imagined of communications between one Member and another, or between a Member and a Minister, so closely related to some matter pending in or expected to be brought before the House, that, though they did not take place in the Chamber or a Committee room, clearly formed part of the business of the House, as, for example, where a Member sent to a Minister the draft of a Question he was thinking of putting down or showed it to another Member with a view to obtaining advice as to the propriety of putting it down or as to the manner in which it should be framed. The Attorney-General had said in his evidence that, should such a case come before the courts, he could not but think that they would give a broad construction to the term " proceedings in Parliament " having regard to the great fundamental purpose which the privilege of freedom of speech served, and that he could " see a possible construction of ' proceedings ' which would extend to matters outside the precedents if they were related to what is to happen in the House."[2]

The Report went on to say[3] that there was authority for saying that an act not done in the immediate presence of the House might yet be held to be done constructively in Parliament and therefore protected. Sir Robert Atkyns, in his Argument upon the Case of Sir William Williams, had said that the Commons' " right and privilege so far extends, that not only what is done in the very House sitting the Parliament, but whatever is done relating to them . . . during the Parliament and sitting the Parliament, is nowhere else to be

[1] *Ib.*, 4, 5, § 3. [2] *Ib.*, 6, 7, § 8. [3] *Ib.*, 5, § 5.

punished but by themselves or a succeeding Parliament, although done out of the House," and that " in a just sense, any offence committed by a Member relating to the Parliament, though done out of the House, is termed an offence in Parliament."[1]

The Report stated[2] that Sir Gilbert Campion had " expressed the opinion that the immunity of Members from the criminal law in respect of acts done by them in the exercise of the functions of their office could not be confined to acts done within the four walls of the House. This conclusion was, he considered, involved in Mr. Justice O'Connor's dictum in *Reg.* v. *Bunting* that a Member of Parliament ' is privileged and protected by *lex et consuetudo parliamenti* ' in respect of ' anything he may say or do within the scope of his duties in the course of parliamentary business.' "[3] Sir Gilbert had drawn the Committee's attention to two American decisions, *Coffin* v. *Coffin*[4] and *Kilbourn* v. *Thompson*,[5] decided by the Supreme Court of Massachusetts and the Supreme Court of the United States respectively, regarding the extent of the protection afforded to members of legislative bodies by constitutional provisions relating to freedom of debate in those bodies. These decisions, he considered, went a long way towards establishing the proposition that privilege extended to every act resulting from the nature of the office of a Member and done in the execution of that office, whether done in the House or out of it, and although they were not binding on the courts in England, he was of opinion that considerable weight must be attached to them because the terms of the constitutional provisions in question were similar to, though not so wide as, those of the article in the Bill of Rights. In view of the broad construction given by the American courts to provisions confined in terms to speeches and debates Sir Gilbert thought it reasonable to suppose that if the courts in England were called upon to construe the wider words in the Bill of Rights, they would go at least as far.[6]

While not prepared to go to the length of saying that a Member had privilege in respect of every act resulting from the nature of his office and done in the execution of that office, whether done in the House of Commons or not, the Committee expressed the opinion that Mr. Justice O'Connor's dictum must command general assent, and that it would be unreason-

[1] 13 State Trials, 1434, 1435.
[2] H.C. Paper 101 of 1939, 5, § 6.
[3] (1885) 7 Ontario Reports, at p. 563.
[4] 4 Mass. 1.
[5] 103 U.S. 168.
[6] H.C. Paper 101 of 1939, 6, § 6.

able to conclude that no act was within the scope of a Member's duties in the course of Parliamentary business unless it was done in the House or a Committee thereof and while the House or Committee was sitting.[1]

The Committee rejected the contention that Parliamentary privilege afforded no protection to Members of Parliament against prosecution under the Official Secrets Acts. They cited *Ex parte Wason*[2] as an authority for the proposition that the immunity secured to Members by the privilege of freedom of speech was an immunity from criminal as well as civil proceedings, and they rejected the contention that the privilege could not extend to new offences created by statute. This contention was, they said, based upon a misconception of the nature and scope of the privilege. It did not merely secure Members from prosecution for words which, if spoken beyond the walls of Parliament, would constitute an offence at common law. In Mr. Justice Stephen's phrase, "nothing said in Parliament by a Member as such can be treated as an offence by the ordinary courts."[3] This had been decided in 1668 when the judgment in Sir John Eliot's Case was reversed by the Lords upon a writ of error and that decision had been confirmed by the Bill of Rights. It was, the Committee said, a question of jurisdiction and not merely of personal privilege. Words spoken in the House of Commons were cognizable by the House alone and exclusively. The Official Secrets Acts, which said nothing express, could not by intendment or implication derogate from the established privileges of the House. Privileges enjoyed by either House of Parliament or by the Members of either House in their capacity as Members could be abrogated only by express words in a statute.[4]

The Committee's conclusion was that disclosures by Members in the course of debate or proceedings in Parliament could not be made the subject of proceedings under the Official Secrets Acts, and that a disclosure made by a Member to a Minister or by one Member to another directly relating to some act to be done or some proceedings to be had in the House, even though it did not take place in the House, might be held to form part of the business of the House and consequently to be similarly protected. On the other hand, a casual conversation in the House could not be said to be a proceeding in Parliament, and a Member who disclosed information in the

[1] *Ib.*, 6, § 7.
[2] L.R. 4, Q.B. 573.
[3] *Bradlaugh* v. *Gossett* (1884), 12 Q.B.D. at p. 284.
[4] H.C. Paper 101 of 1939, 8, 9, § 9.

course of such a conversation would not, in their view, be protected by privilege, though it might be a question whether the evidence necessary to secure his conviction could be given without the permission of the House.[1]

Whether a Member of Parliament who disclosed information in the course of Parliamentary proceedings would be protected by privilege from proceedings under section 6 of the Act of 1920 was, the Committee said, a question of some difficulty. It might well be that the prosecution would be unable to show that he had information relevant to the investigation of an offence or suspected offence unless they could give evidence of his statement in Parliament. By the law of Parliament no Member was at liberty to give evidence elsewhere in relation to any debates or proceedings in Parliament, except by the leave of the House of which he was a Member;[2] and no clerk or officer of the House or shorthand writer employed to take minutes of evidence before the House or any committee thereof might give evidence elsewhere in respect of any proceedings or examination had at the Bar or before any committee of the House without the special leave of the House.[3] The authorities seemed to prove that without the permission of the House there would, to say the least, be difficulty in getting evidence of the Member's statement in Parliament before the court.[4]

Apart from the difficulty of proving the offence, there was, the Report went on to say, a further point which was best explained in a passage in the memorandum of evidence which the Attorney-General had submitted:

> " Could it be said that such proceedings were precluded in principle by the privilege of freedom of speech? It might be said on the one hand that the prosecution was not ' impeaching ' or ' questioning ' anything done in Parliament. It was proceeding against the Member for failing to fulfil out of Parliament the duty of giving the information which Parliament itself had directed should be given.
>
> " It might be said, on the other hand, that the Member found himself interrogated by the police and subsequently in the dock as a result, though an indirect result, of what he had said in debate and that this was contrary to the principle of freedom of speech as formulated in the Bill of Rights and illustrated by the precedents."

The Attorney-General had gone on to say: " How the court or either House might decide this question should it ever arise is a question on which, owing to its difficulty, I ought

[1] *Ib.*, 9, § 10.
[2] May, Parliamentary Practice, XIII Ed., 584.
[3] C.J. (1818) 389.
[4] H.C. Paper 101 of 1939, 9, § 11.

not to be dogmatic. If such a case should ever arise and the authorities felt that the Member was not or might not be protected by privilege, I find it difficult to imagine the police being authorized to interrogate unless the very gravest issues were involved."[1]

Sir Gilbert Campion had pointed out that, by the law of Parliament, as declared by the Bill of Rights, not only might debates and proceedings in Parliament not be questioned elsewhere, but freedom of speech might not be " impeached " in any court or place out of Parliament. He had expressed the opinion that when the Bill of Rights was passed, " impeaching " still retained its original signification of impeding, preventing or hindering. He had mentioned that in 1771 a Select Committee of which the leading lawyers in the Commons had been members, in enumerating the several heads of breaches of privilege and contempts of the House, had distinguished " accusations tending to call into question before courts of law, under the false or pretended denomination of offences not entitled to the privilege of the House, words or actions spoken or done under the protection of the House " from " prosecutions before the courts for words or actions so spoken or done "; and had expressed the opinion that such a prosecution might be held to be an accusation tending to call words spoken under the protection of the House in question before a court of justice, and consequently to constitute a breach of privilege.[2]

The Report stated that as the matter had been treated as one of doubt by both witnesses, the Committee did not think they could usefully offer any opinion to the House on it. Moreover, since the Committee had been appointed, a Bill had been passed by the Lords and read a first time by the Commons, by which it was proposed to restrict the use of the power of interrogation to cases where there was reasonable ground for suspecting that an offence under section 1 of the Act of 1911 had been committed, or, in popular language, to cases of espionage. If the Bill passed into law it should remove any possibility of the power of interrogation being used so as to hamper Members of Parliament in the discharge of their Parliamentary duties.[3]

The Committee expressed the opinion that a Member who disclosed information of the kind in question in a speech in his constituency or anywhere beyond the walls of Parliament would clearly not be protected by Parliamentary privilege from proceedings under the Acts.[4]

[1] *Ib.*, 9, 10, § 12. [2] *Ib.*, 10, § 13. [3] *Ib.*, 10, 11, § 14. [4] *Ib.*, 11, § 15.

The soliciting or receipt of information was, the Report stated, not a proceeding in Parliament, and neither the privilege of freedom of speech nor any of the cognate privileges would afford a defence to a Member of Parliament charged with soliciting, inciting or endeavouring to persuade a person holding office under the Crown to disclose information which such person was not authorized to disclose, or with receiving information knowing, or having reasonable grounds to believe, that the information was communicated to him in contravention of the Official Secrets Acts. It might well be that what the defendant had said in the House had caused the authorities to institute inquiries, but if the prosecution could prove its case without giving evidence of what the defendant had said the proceedings could not be regarded as a questioning of a debate or proceeding in Parliament. If, however, it were necessary, in order to prove the fact charged, to produce evidence of what the defendant had said in the House, it would be in the power of the House to protect him by withholding permission for the evidence to be given.[1]

As regarded the reception of information some protection was afforded to Members of Parliament by the fact that under the Official Secrets Acts information might lawfully be communicated to an unauthorized person provided that it was the duty in the interest of the State of the person who communicated such information to do so. Such a defence would, however, have to be founded on the express words of the Act and was not derived in any sense from privilege. In each individual case the burden of proof would lie upon the official and the Member of Parliament concerned to show that the circumstances of the disclosure were such as to give rise to the duty, and such circumstances could only be shown in exceptional cases. "It would be highly dangerous," said the Committee, "to give any colour to the view that the mere fact of election to the House of Commons creates a general duty towards the person elected on the part of the depositaries of official secrets to disclose those secrets without authorization."[2]

The Committee went on to point out that although the legal position with regard to the solicitation of the disclosure by, or the receipt of information from, a person holding office under the Crown was as had been stated, official information, as the debates of the House showed, was frequently obtained by Members of Parliament from persons who were not authorized to disclose it. Members' sense of responsibility

[1] *Ib.*, 11, § 16. [2] *Ib.*, 12, § 17.

and discretion had, the Committee believed, prevented them from making use of any information thus obtained in a manner detrimental to the interests or safety of the State. Indeed, the information, though technically confidential, often did not relate to matters affecting the safety of the State. As, however, the Official Secrets Acts did not distinguish between the solicitation or receipt of information the disclosure of which would be prejudicial to the interests or safety of the State, and the solicitation or receipt of information the disclosure of which was merely unauthorized, the Acts, if strictly enforced, would make it difficult for Members to obtain the information without which they could not effectively discharge their duty. The Committee went on to say that any action which, without actually infringing any privileges enjoyed by Members of the House in their capacity as Members, yet obstructed them in the discharge of their duties, or tended to produce such results, even though the act were lawful, might be held to be a contempt of the House—the implication being that the use of the Official Secrets Acts in such a way as to obstruct Members in the discharge of their duties might be treated as a contempt.[1]

Apart from the protection afforded by privilege there were three safeguards against the possibility of the Official Secrets Acts being used in such a way as to obstruct Members in th performance of their Parliamentary functions. In the firs place the initiation of the consideration of proceedings woul almost invariably rest with the department whose secret had been disclosed, and though the head of the department need not necessarily be a Member of the House of Commons, the department would be represented in the House. Secondly, no prosecution could be instituted without the consent of the Attorney-General in England or the Lord Advocate in Scotland. It was true that the Attorney-General's discretion had to be exercised judicially. This, however, meant no more than that his decision must be arrived at upon principle and not on grounds of expediency, and while the Attorney-General had told the Committee that it would be impossible to formulate in precise form all the circumstances which would fall to be considered should such an issue be placed before the Attorney-General, it would, he had said, " clearly be proper and inevitable for him to have due regard to the special position and duties of a Member of Parliament." Thus, he had gone on to point out, " you get at both ends of the scale, in the question of Official Secrets prosecution, in the initiation and final consent,

[1] *Ib.*, 12, § 18.

someone who is responsible to this House, and not only responsible to this House, but who is in touch, of course, with its traditions and its privileges."[1]

A third safeguard was the right of a Member who found himself threatened with a prosecution under the Official Secrets Acts to bring the matter before the House as a question of privilege. Unless the incident occurred during a recess the matter could be discussed and considered by the House before any irrevocable step was taken.[2]

The Committee advised against any attempt by legislation or otherwise to define with precision the extent of the immunity from prosecution under the Official Secrets Acts to which Members of Parliament were or should be entitled. It would be extremely difficult, if not impossible, to draw a line between acts which were or ought to be permissible and acts which were or ought to be criminal. The privileges of Parliament, like many other institutions of the British Constitution, were indefinite in their nature and stated in general and sometimes vague terms. The elasticity thus secured had made it possible to apply existing privileges in new circumstances from time to time. Any attempt to translate them into precise rules must deprive them of the very quality which had rendered them adaptable to new and varying conditions, and new or unusual combinations of circumstances, and indeed, might have the effect of restricting rather than safeguarding Members' privileges, since it would imply that, save in the circumstances specified, a Member could be prosecuted without any infringement of the privileges of the House. The Committee quoted with approval Blackstone's observation:

" The dignity and independence of the two Houses are in great measure preserved by keeping their privileges indefinite. If all the privileges of Parliament were set down and ascertained, and no privilege to be allowed but what was so defined and determined, it were easy for the executive power to devise some new case, not within the line of privilege, and under pretence thereof to harass any refractory Member and violate the freedom of Parliament."[3]

The Report emphasized the fact that the privilege of freedom of speech enjoyed by Members of Parliament was in truth the privilege of their constituents. It was secured to Members not for their personal benefit, but to enable them to discharge the functions of their office without fear of prosecutions civil or criminal. The privileges of Parliament, as the Commons

[1] *Ib.*, 13, § 20. [2] *Ib.*, 13, § 21. [3] *Ib.*, 14, § 22; and 1 Commentaries 164.

had declared in their famous protestation of 1621, were the birthright and inheritance of the subject. There were, no doubt, dangers even in the limited immunity from prosecution under the Official Secrets Acts secured to Members by Parliamentary privilege. But they were dangers which had to be run if Members were to continue to exercise their traditional right and duty of criticizing the executive. " Parliaments without parliamentary liberties," the Report said, quoting Pym, " are but a fair and plausible way into bondage," and it remained as true now as it was in 1610 that " freedom of debate being once foreclosed, the essence of the liberty of Parliament is withal dissolved."[1]

The House of Commons had disciplinary powers over its Members, and a Member who abused his privilege of speech might be punished, not merely by suspension from the service of the House, but by imprisonment or expulsion from the House, or both. Expulsion at least could not be considered a light penalty. For the prevention of abuses of Parliamentary privilege prejudicial to the safety of the realm, the Committee advised reliance not so much on penal sanctions as on the good sense of Members themselves. The inquiry had, they thought, brought home to Members the need for discretion on their part in framing Questions or seeking information regarding matters which affected the safety of the realm.[2]

The only action which the Committee recommended to the House was the passing of a Resolution expressing agreement with the conclusions contained in the Report. A Resolution of the House declaratory of the privilege of Parliament, though not binding on the courts, would doubtless be treated by them with respect.[3]

[1] H.C. Paper 109 of 1939, 14, 15, § 23; and Commons' petition to King James I respecting impositions, 1 C.J. 431.
[2] H.C. Paper 101 of 1939, 15, § 24. [3] *Ib.*, 15, § 25.

IV. THE SPEAKER'S SEAT

By the Editor

Every supporter of the system of Parliamentary government with a Lower House under the non-partisan chairmanship of one of its Members elected thereto by his *confrères* as the guardian of its privileges and liberties, the *judex* of its proceedings and the protector of its minorities, will view with satisfaction the recommendation of the Report[1] from the Select Committee on Parliamentary Elections (Mr. Speaker's Seat), that the status of the Speakership of the House of Commons shall be maintained and the traditions surrounding that high and increasingly important office preserved.

The question of continuity in the office of Speaker and consequently his non-opposition when standing for re-election in his constituency had already been dealt with in previous issues of the JOURNAL.[2] Indeed the fact that the present Speaker was opposed in his constituency[3] when submitting himself in 1935, for the third time, for re-election therefor, as Speaker, and the evident desire that no matter what Member is Speaker should be avoided the necessity of a party contest at the polls, may be said to have brought about the appointment of the Select Committee.

This, and probably certain correspondence in the Press,[4] suggesting various innovations by which, by legislation or otherwise, the submission of a Member, as Speaker, could be obviated, may be said to have brought about the following Notice of Motion on the Order Paper by the Prime Minister (the Rt. Hon. Neville Chamberlain):

> [That in the opinion of this House it is not in keeping with the dignity and tradition of the high office of Speaker or in the best interests of this House that the Speaker should be brought into political controversy by having to contest his seat at a general election;
> *That a Select Committee be appointed to consider what steps, if any, should be taken to ensure that, having due regard to the constitutional rights of the electors, the Speaker, during his continuance in office, shall not be required to take part in a contested Parliamentary election.*]

[1] H.C. Paper 98 of 1939.
[2] Vols. III, 48-53; and IV, 11.
[3] Daventry Division of Northamptonshire.
[4] *The Times*, June 8, 1934, and June 25, 1935—Sir Bryan Fell, K.C.M.G., C.B.; *ib.*, June 20, 1935—Sir Terence O'Connor.

And on December 15, 1938,[1] the Prime Minister, when answering a Question put by the Leader of the Opposition upon the Business of the House, also said that he hoped to be able to find an early opportunity for discussion upon the Motion.

Mr. G. Buchanan (*Gorbals*) then asked the Prime Minister whether he was aware that the terms of the first part of the Motion, saying that the Speaker should not be brought into political controversy, committed the House to a certain policy, and that if the Rt. Hon. Gentleman wanted his Motion to go through without discussion he should recast it in such a way that this question was left to the Committee to decide.

To this the Prime Minister replied that all he had in mind was to try to get a Motion which would ensure general agreement in the House and he was under the impression he had done that.

Whereupon Mr. Buchanan put a Supplementary Question to the Prime Minister, inquiring if he was not aware that the first part of the Motion asked the House to agree that Mr. Speaker should not be the subject of an ordinary Parliamentary contest.

Upon further objection being taken by other Members to the first part of the Motion, the Prime Minister said that it was desirable that they should agree on the terms of the Motion and in view of what had been said he would consider it further.

On December 19, 1938,[2] the Select Committee was appointed with the Order of Reference given in italics in the Notice of Motion already mentioned.

The Committee, which consisted of 16 members with th Rt. Hon. David Lloyd George as Chairman, was of opinion tha the solution of its problem was better sought in the carefu deliberation of general principles than in the widespread collection of opinions. For those reasons and because of the somewhat delicate nature of their task, it was decided to call no witnesses.[3] The Report with Appendices and Proceedings covers 74 pages, of which 46 contain the Appendices. These last-mentioned are divided into four parts, of which Appendix A gives an Historical Note on the Speaker's Office by the Clerk of the House of Commons (Sir Gilbert Campion, K.C.B.); a table is attached to Appendix A, showing the names of all Speakers of the House of Commons from 1727 to 1928, giving, in respect of each holder of the office, the further information as to the political party to which each one belonged, the cause

[1] 342 H.C. Deb. 5. s. 2186-2187. [2] *Ib.* 5. s. 2629-2631.
[3] Report § 1.

of his retirement and subsequent history.[1] Appendix B deals with the position of the Speaker in the Parliament of Canada and those of the Provinces of Quebec, Ontario and Nova Scotia; Australia (and the States); New Zealand; the Union of South Africa; Eire (Ireland) and the former Colonies of the Transvaal and Orange River, in regard to:

(1) Continuity in office of the Speaker in successive Parliaments;
(2) Practice as to opposition in his constituency;
(3) Instances of his rejection at the polls;
(4) Being barred by practice from holding election meetings;
(5) Divorcement from party politics;
(6) His remaining an M.P. when no longer Speaker;
(7) Coming from or being appointed a Minister of the Crown;
(8) His speech and deliberative vote in the House; and
(9) His speech and deliberative vote in *C.W.H.*

Appendix C gives the information supplied in reply to a Questionnaire addressed to the United States of America, Norway, Sweden, Denmark, Finland, France, the Netherlands, Belgium and Switzerland in regard to:

(1) The method of appointment of the Presiding Officer of a Legislative Chamber;
(2) His term of office and if he takes part in party politics;
(3) Retention of his seat as a member, and, if not, what is the machinery;
(4) His being allowed participation in party politics outside the Chamber;
(5) Continuity of office, and, if so, is his seat contested at a general election, with instances of rejection;
(6) Similar questions to Nos. 4, 6, 7, 8 and 9, in respect of the Empire Parliaments abovementioned.

A Memorandum by Sir Bryan Fell, K.C.M.G., C.B. (formerly Principal Clerk of the Public Bill Office), forms Appendix D.

The Committee in the introductory paragraph of its Report remarks that no existing constitution has satisfactorily resolved the precise conflict of interests which was the mainspring of the inquiry. The Report then goes on to observe[2] upon the development of the British electoral system, beginning with the days before 1832, when the franchise was strictly limited and the distribution of seats had ceased to bear any relation to the distribution either of the electorate or of the population, and continuing with the extension of the franchise in 1867 and 1885 which brought about the more even distribution of

[1] *Ib.*, p. 31. [2] Report § 3.

seats on a population basis and the reduction of double-member constituencies to a minimum. Before 1832 a candidate for Parliament had something like a 3 to 1 chance in favour of being returned unopposed. To-day such a chance was 30 to 1 against such a contingency.[1] Contemporaneously with these developments, the evolution of the Speaker's Office was taking place, by which it was drawing more and more away from politics, and becoming what it is to-day.[2]

The Report then quotes the practice in other Parliaments in regard to the subject of inquiry, laying particular stress upon the contrast between the often political complexion surrounding the office in Foreign Parliaments and those in the British Empire which seek to follow the Westminster model in that respect, although they have not yet accepted the principle of continuity in office, which has been in practice in Great Britain for over 200 years. By this practice a Speaker is usually re-elected as long as he is willing to serve, irrespective of changes in the political complexion of the House of Commons.[3]

The Report then quotes[4] the constitutional innovations which were introduced in the Transvaal and Orange River Colonies (1906 and 1907),[5] and Eire (Ireland) (1937),[6] in order to compel continuity of office, as well as the conditions and practices surrounding the office of the Presiding Member in other Oversea and some Foreign Parliaments.[7]

Returning to the United Kingdom, the Report observes that before 1722 it was the practice to elect a new Speaker for each Parliament. It was, however, Mr. Speaker (Arthur) Onslow, who held office for 34 years, to whom much of the impartial and non-political character, which the office of Speaker bears to-day, must be attributed.[8]

The Report then goes on to mention holders of the office who did not continue in the Chair—namely, Mr. Speaker Addington, who after 12 years resigned to become Prime Minister; Mr. Speaker Norton, who after 10 years as Speaker was rejected by the House probably on account of his partisan-

[1] Report § 4. [2] *Ib.*, § 5.
[3] *Ib.*, §§ 8 to 11. *See also* JOURNAL, Vol. III, 53. [4] *Ib.*, § 15.
[5] *See* JOURNAL, Vol. III, 49, 50.
[6] Report §§ 12 and 15 and JOURNAL, Vols. V, 129, 130, 131, and VI, 62, 63. To these may also be added the instance of Southern Rhodesia (Letters Patent 1923, sec. 11 [2]), under which a non-Member was eligible for election as Speaker and Mr. L. Cripps, C.M.G., sat as first Speaker (1924-1935), but he was rejected March 11, 1935, upon a division of 24 to 5 votes (one of such 5 being that of the new Speaker), when Mr. A. R. Welsh, M.P., was elected Speaker. Since then an M.P. has occupied the Chair.
[7] Report §§ 12-18. [8] *Ib.*, § 19.

ship; Mr. Speaker Abbot, who held office for 15 years and against whom a Motion of Censure was moved (but defeated) on grounds of political partisanship (in 1817, however, he retired on grounds of ill health); and Mr. Speaker Manners-Sutton, whose re-election to the Chair was contested both in 1833 and 1835, when he was defeated, on account of having taken part in the debate upon certain controversial questions. The criticisms of these three Speakers, however, only served to harden opinion in favour of the Speaker refraining from the expression of political opinions.[1]

Up to 1839, when Mr. Speaker Shaw Lefevre was first elected, it was the practice to contest the election of a new Speaker on party lines. This Speaker, however, so effectively cut himself off from party connections that the practice has since been followed by his successors. The only cases of contest, since 1714, of the Speaker upon submitting himself for re-election in his constituency have been those of Mr. Speaker Abbot in 1806 on changing his constituency from Woodstock to Oxford University; Mr. Speaker Peel in 1885 after a re-distribution of seats under the Reform Act of 1884; Mr. Speaker Gully in 1895,[2] who was elected in the last dates of a dying Parliament when the Chair had been occupied by a Liberal for 46 years; and Mr. Speaker FitzRoy, the present occupant of the Chair, in 1935.

It was with the election of Mr. Speaker Shaw Lefevre, however, that the final dissociation of the Speaker from Government began. Before that time, there were occasions when a Member had been called to the Chair directly from the Treasury Bench.[3] Only 2 instances since 1839 are given,[4] where Speakers of the House of Commons have exercised their right to speak in Committee of the Whole House, and then only upon non-controversial subjects.

In order more effectively to divorce the Speakership from the Executive Government, the Speaker's salary is by Act of Parliament[5] made a charge upon the Consolidated Fund, as in the cases of those holding judicial office. Another practice which has since been followed in some of the Oversea Parliaments is that legislation was passed[6] providing that the Speaker shall retain office after a dissolution until a new Speaker is elected. Other statutory duties conferred upon Mr. Speaker are the certification of Bills under the Parliament Act of

[1] Report, §§ 20-22.
[2] Mr. Speaker Gully, however, was re-elected to the Chair in the same year. [3] Report § 23. [4] *Ib.*, § 25. [5] 2 and 3 Will. IV, c. 105.
[6] 9 and 10 Vict. c. 77.

1911[1] and the determination of the Leader of the Opposition under the Minister of the Crown Act of 1937.[2]

Still another practice of the House of Commons further to remove political complexion from the Office of Speaker is the care taken to secure that the proposer and seconder shall be unofficial Members, one drawn from each side of the House. Most holders of the office in recent years have accepted a Peerage upon retirement from office and only one Speaker has returned to the House as a Private Member.[3]

The Committee in Paragraph 28 of the Report expresses its concern with the increasing responsibilities which have devolved upon Mr. Speaker, as the dissociation of the office from Government influence and Party politics has increased, such as in connection with the closure,[4] the Parliament Act 1911 and the Ministers of the Crown Act, 1937, already mentioned; in 1919 the permanent and inherent power to select amendments[5] and in 1934 the appointment of Chairmen of Standing Committees.[6] "These powers," continued the Committee's Report,[7] "not only place in his (Mr. Speaker's) hands the duty of securing a due balance between the claims of debate and the progress of Government business, but make him the recognized guardian of the rights of minorities."

Paragraphs 29 to 41 deal with the Speaker in relation tc his constituents and recite the four instances, already quoted when Mr. Speaker was opposed in his constituency, to show that the practice of not opposing Mr. Speaker's election as an M.P. is an important factor to obtaining continuity in the office of Speaker. As the Report points out,[8] he clearly cannot stand as a party candidate, but he can stand as the Speaker seeking re-election, the course followed by the present Mr. Speaker FitzRoy in 1935 and by those Speakers in New Zealand who have most closely adhered to the British tradition. Further to quote from the Report[9] as to Mr. Speaker's candidature at the polls:

> As a non-party and independent candidate with no political proposals to put before the electors, he can but offer them the high ideals of his office, the historical background from which these have developed, and the need for their preservation if freedom of speech and a proper regard for minority opinions are to remain outstanding characteristics of the House of Commons. Thus confining himself to the pure statement of a case without

[1] 1 and 2 Geo. V, c. 13 [2] 1 Edw. VIII, and 1 Geo. VI, c. 38.
[3] Report §§ 26, 27. [4] S.O. 26. [5] S.O. 28. [6] S.O. 80 (4).
[7] Report § 28. [8] *Ib.*, § 32. [9] *Ib.*, § 32.

> in any way being drawn into argument with his opponents, or attempting to controvert any statements that they may make, he is placed in the embarrassing position of being a party to a fight in which he can take no part.

The Committee agrees[1] that such a state of affairs is far from desirable. On the other hand it is emphatically of opinion that any departure from these traditions that would bring the Speaker back into the mill of party controversy and so strip him of that great authority he can now wield in the defence of democracy would be a retrograde step which would inevitably tend to cast doubt upon the impartiality of the occupant of the Chair and thus impair that confidence which is essential to its unique influence and prestige.

The Report[2] proceeds to recite the schemes which have been provided by statutory provision for remedying existing difficulties, the proposals by Sir Bryan Fell for the creation of a special constituency, and by Sir Terence O'Connor that immediately upon the election of a Member as Speaker his seat should be declared a 2-member constituency, the election of a second member being then proceeded with.

The Committee, however, are of opinion that in regard to the proposals requiring legislation, they were beset by disadvantages of such weight as could not but fail to produce worse complaints than those they sought to remedy and that in regard to proposals not requiring legislation no rules or regulations which might be designed to overcome those difficulties would be generally accepted.

The conclusions of the Committee are therefore as follows:

> 60. To attempt to deprive a constituency of the right to choose as its member one who is considered most representative of the popular will would be a serious infringement of democratic principles. To alter the status of the Speaker so that he ceased to be returned to the House of Commons by the same electoral methods as other Members or as a representative of a parliamentary constituency, would be equally repugnant to the custom and tradition of the House. To advocate that a Speaker should modify, even in his own defence, the established attitude towards political controversy would be to reverse the whole trend of our Parliamentary evolution. Such are Your Committee's conclusions. No scheme or proposal within their purview offers more than a partial solution, and each introduces new elements which, in Your Committee's considered judgment, would be less acceptable than the ills they seek to cure.

[1] Report § 33. [2] *Ib.*, §§ 42-54.

61. The fact cannot be disguised that the possibility of a contest cannot be excluded even when one of the candidates holds the office of Speaker. That such a state of affairs is undesirable is admitted by all who have considered the matter with care; but the only remedy lies not in attempts at suppression, criticism or evasion, but rather in the fuller education of the electorate towards the recognition and increased understanding of those vital democratic safeguards which it is the duty of the Speaker to defend. Development along these lines cannot be rapid, but it can be most surely expedited by a firm maintenance of that code of principles which has slowly been built up during the last two centuries.

The Select Committee Report was Tabled and Ordered to be printed on April 4, 1939.[1]

The subject has been dealt with at some length, because experience has shown that the development of Parliamentary practice in the Oversea Empire Parliaments gradually approaches that of the House of Commons as the countries governed by those Parliaments pass out of their early growth and increase in wealth, population, and general importance, and especially as the membership of those Parliaments is enlarged and the transaction of business becomes more difficult to accomplish within the limits of an ordinary Session. Thus, it is evident that continuity in the office of Speaker and its complete divorcement from politics and the influences of Executive Government in those Parliaments, will become a more important factor in framing the principles which make up the influence, status and traditions surrounding the Speakership. Supporters of sound Parliamentary government, throughout the Empire, will view with substantial satisfaction the recommendations of this Select Committee as being yet another instance of valued precedent, based upon the practical experience of centuries, for those Oversea Parliaments to have available, also for their help and guidance in conducting the affairs of their respective countries in the various quarters of the globe, where, although conditions are so divergent, and peoples often so different, it is equally important that the highest Parliamentary traditions should be maintained if democratic government is to hold its own in this troubled age.

The following Schedule supplements, in respect of this Article, the list given at the end of the previous Article[2] on the Speaker's Seat:

[1] 45 H.C. Deb. 5. s. 2625.

[2] *See* JOURNAL, Vol. III, 33.

Date.	*Name.*	*Constituency.*	*Date of Election to Chair.*
*1727-28 ..	Onslow (Arthur)	(Surrey)	Jan. 23
*1734-35 ..	Onslow (Arthur)	(*again*)	Jan. 14
*1741 ..	Onslow (Arthur)	(*again*)	Dec. 1
*1747 ..	Onslow (Arthur)	(*again*)	Nov. 10
*1754 ..	Onslow (Arthur)	(*again*)	May 31
*1761 ..	Cust	(Grantham)	Nov. 3
*1768 ..	Cust[1]	(*again*)	May 10
1770 ..	Norton	(Guildford)	Jan. 22
*1774 ..	Norton	(*again*)	Nov. 29
*1780 ..	Cornwall[2]	(Winchelsea)	Oct. 31
*1784 ..	Cornwall[3]	(Rye)	May 18
1789 ..	Grenville[4]	(Buckinghamshire)	Jan. 5
1789 ..	Addington	(Devizes)	June 8
*1790 ..	Addington	(*again*)	Nov. 25
*1796 ..	Addington	(*again*)	Sept. 27
*1801 ..	Addington[5]	(*again*)	Jan. 22
1801 ..	Mitford[6]	(East Looe)	Feb. 11
	(*For intervening record, see Volume III*, 53.)		
*1935 ..	FitzRoy	(*again*)	Nov. 26

* New Parliament following a general election.

[1] Retired through illness.
[2] Norton rejected by 203-134 votes (38 C.J. 6) probably on account of his partisanship.
[3] Died Jan. 2, 1789.
[4] Resigned to become Home Secretary.
[5] Resigned to become Prime Minister.
[6] Resigned to become Lord Chancellor of Ireland.

V. THE TWO-PARTY SYSTEM IN CANADA AND ITS RELATION TO PARLIAMENTARY PROCEDURE

By Dr. Arthur Beauchesne, C.M.G., K.C., M.A., LL.D., Litt.D., F.R.S.C.

Clerk of the House of Commons.

Until the Western Farmers, subsequently styled the Progressives, came into the House of Commons at Ottawa, no other group than the two regular parties, Liberal and Conservative, were recognized. The Progressives, from 1921 to 1925, were 65 strong, while the Conservative Opposition consisted of only 51 Members. There were 2 Labourites and 2 Independents. The total Membership of the House is 245. The Progressives, however, preferred not to be the so-called official Opposition and, although they formed an imposing separate group, they were never considered as a real political party. They were looked upon as Independent Members. They were not given party recognition though they were over one-fourth of the House Membership; but they succeeded in inducing the House to amend its Standing Orders so as to allow them to make an amendment to the amendment to the Motion for the Speaker to leave the Chair for Committee of Supply or Ways and Means. Prior to 1927, it was not permissible in our House of Commons to move such a sub-amendment. Standing Order 49, which was then passed, reads as follows:

> "Only one amendment and one sub-amendment may be made to a Motion for Mr. Speaker to leave the Chair for the House to go into Committee of Supply or Ways and Means."

In the present Parliament, however, the Government's majority is large enough to allow us to adhere to the sound two-party system. There are 178 Ministerial Members in the present House. The 17 Social Credit Members, not one of whom had ever sat in this House, have not had enough experience with its procedure to assume the duties of the Opposition; and the 7 Progressives realize that they cannot claim to be given party recognition. The National Conservatives, 38 in number, have been recognized as the Opposition.

With these facts in mind, arrangements have been made between the Government and the Opposition for the seating of Members. Those who do not support the Government and do not belong to the Conservative Party are considered as

Independents, and it does not matter where they sit as long as they are on the left side of the Speaker.

Not only is the two-party system fundamental in British Parliamentary practice, but in this country it is sanctioned by Statute. Section 42 of the Senate and House of Commons Act (chapter 147, R.S.C., 1927) says:

> "To the Member occupying the recognized position of Leader of the Opposition in the House of Commons, there shall be payable, in addition to his sessional allowance, an annual allowance of ten thousand dollars."

Note the words "in the House of Commons." They show clearly that the additional allowance is not to be paid to the Leader of a party if perchance he should either be a Senator or without a seat in the House. It is payable to the Member who performs in the House the onerous duties of Leader of the Opposition. Under this section, it is the Leader and not the Opposition that is official. If he is recognized as such either by agreement between opposition Groups or because he leads the largest Opposition unit, he becomes, on matters concerning the business of the House, the spokesman of all the Members who do not support the Government, and the Prime Minister is justified in dealing with him alone as the Leader of His Majesty's Loyal Opposition. When at the end of a sitting the official Leader of the Opposition inquires as to the programme for the next day, or when he asks questions with regard to the progress of legislation, he speaks on behalf of all Opposition Members. If the anti-Government Groups who do not owe him allegiance are not satisfied with any arrangement made between him and the Prime Minister, they are free to criticize, but they cannot expect the Government to give special consideration to them in its dealings with the Opposition.

In S.O. 37, under which speeches are limited to forty minutes, an exception is made in favour of the Prime Minister and the official Leader of the Opposition, which is an additional recognition of the British two-party system. If the same exception were made in favour of each of the group leaders, there would be, in this Parliament at least, three more exemptions to add, and the rule would be hardly effective. This Standing Order was passed in 1927 on the principle that the Opposition, no matter in how many groups it may be divided, must be considered as a unit for the proper carrying out of Parliamentary business.

VI. CONTROL OF DELEGATED LEGISLATION IN THE AUSTRALIAN SENATE

By J. E. Edwards

Clerk-Assistant of the Senate.

With the publication in 1929 of Lord Hewart's book, *The New Despotism*,[1] attention was focused throughout the British Commonwealth, and beyond, on the alleged evil of "government by regulation."

Before the receipt of this book in Australia, however, the Senate, on the motion of a private Member, had appointed a Select Committee to report, amongst other matters, upon the advisability or otherwise of establishing a Standing Committee of the Senate upon the Statutory Rules and Ordinances.

The Select Committee in due course recommended the appointment of such a Committee, and the Standing Orders of the Senate were amended to make provision for it. Standing Order No. 36A provides that:

> (1) A Standing Committee, to be called the Standing Committee on Regulations and Ordinances, shall be appointed at the commencement of each Session.
>
> (2) The Committee shall consist of seven Senators chosen in the following manner:
>
> (*a*) The Leader of the Government in the Senate shall, within four sitting days after the commencement of the Session nominate, in writing, addressed to the President, four Senators to be members of the Committee.
>
> (*b*) The Leader of the Opposition in the Senate shall, within four sitting days after the commencement of the Session, nominate, in writing, addressed to the President, three Senators to be members of the Committee.
>
> (*c*) Any vacancy arising in the Committee shall be filled after the Leader of the Government or the Leader of the Opposition, as the case may be, has nominated, in writing, addressed to the President, some Senator to fill the vacancy.
>
> (3) The Committee shall have power to send for persons, papers and records, and to sit during Recess; and the quorum of such Committee shall be four unless otherwise ordered by the Senate.
>
> (4) All Regulations and Ordinances laid on the Table of the Senate shall stand referred to such Committee for consideration and, if necessary, report thereon. Any action necessary, arising from a report of the Committee, shall be taken in the Senate on Motion after notice.

[1] *The New Despotism*, the Rt. Hon. Lord Hewart of Bury (Lord Chief Justice of England) (Ernest Benn), 1929.

The first Committee was appointed on March 17, 1932, and with varying membership the Committee has functioned since that date. On the completion of 6 years of existence a report was issued reviewing its activities. As the appointment of a committee of this nature broke new ground so far as Australian Parliaments were concerned, a brief description of its work may be of interest to readers of the JOURNAL.

Under the provisions of Australian Commonwealth legislation, in more than one-half of the number of Acts passed power is given to the Governor-General to make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to the Act; and, in the case of certain more important Acts, the Acts enumerate particular matters on which regulations may be made.

It has been laid down by authorities who write on the subject of delegated legislation that there should be certain safeguards in existence to prevent the abuse of this regulation-making power. For instance, Dr. Cecil T. Carr, in chapter iv of his book, *Delegated Legislation*,[1] has enumerated the following safeguards:

(1) The delegation of legislative power should be delegation to a trustworthy authority which commands the national confidence.

(2) The limits within which the delegated power is to be exercised ought to be definitely laid down.

(3) In the third place, if any particular interests are to be specially affected by delegated legislation, the legislating authority should consult them before making its laws.

(4) The fourth point to be insisted upon in delegated legislation is publicity.

(5) The fifth and last point is that there should be machinery for amending or revoking delegated legislation as required.

Dr. Carr adds the following on page 38 of his book:

"To add a special safeguard in particular cases, Parliament has invented a device by which it itself supervises delegated legislation. In delegating legislative authority it stipulates that the rules or regulations made thereunder shall be laid before both Houses as soon as made. The rules or regulations take effect forthwith, but, if within a specified number of days either House takes exception to any of them and presents an address on the subject to His Majesty, then the rule or regulation which is objected to may be annulled by Order in Council, though it is usually provided that such annulment shall be without prejudice to the validity of any action already taken under the legislation which is annulled."

[1] *Delegated Legislation*, Cecil (now Sir Cecil) T. Carr, LL.D. (Cambridge University Press), 1921.

Dr. Carr goes on to point out that the advantage of this device is that the rules or regulations are valid from the first moment of their appearance. The disadvantage, however, of thus placing delegated legislation under sentence of death for the first weeks of its life is that the successful working of the " special safeguard " depends upon the amount of time which Members of Parliament can spare to scrutinize every paper which is laid before the House.

The foregoing quotations apply, of course, to Great Britain. In Australia the position is slightly different, but it may be said that all the safeguards exist.

In the Commonwealth Parliament the " special safeguard " was formerly contained in section 10 of the Acts Interpretation Act,[1] which, at the time of the first appointment of the Standing Committee on Regulations and Ordinances, read as follows:

> " 10. Where an Act confers power to make Regulations, all Regulations made accordingly shall, unless the contrary intention appears—
>
> " (*a*) be notified in the *Gazette*;
>
> " (*b*) take effect from the date of notification, or from a later date specified in the Regulations;
>
> " (*c*) be laid before each House of the Parliament within fifteen sitting days of that House after the making of the Regulations.
>
> " But if either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such Regulations have been laid before such House disallowing any Regulation such Regulation shall thereupon cease to have effect."

It will be seen that in the Australian Parliament there already existed the means by which Parliament could exercise a check over delegated legislation. A witness[2] who gave evidence before the Senate Select Committee abovementioned, referring to the position in Great Britain as compared to that in Australia, made the following remarks:

> " The rather alarmed atmosphere prevalent in Great Britain at present about the extent of this application of law-making power to the executive does not find any counterpart, and in my opinion it ought not to, here. In Australia neither the amount of delegation, nor the kind of powers delegated, is so striking. One should draw a clear distinction between a power to make rules and a power given to Ministers to make quasi-judicial

[1] Acts Nos. 2 of 1901; 1 of 1904; 9 of 1916; 23 of 1930; 24 of 1932; and 10 of 1937.

[2] Professor K. H. Bailey (*Dean of the Faculty of Law in the University of Melbourne*).

decisions. I have not directed my mind closely to the latter point, upon which Lord Chief Justice Hewart concentrates in his book, *The New Despotism.*

While the condition of affairs in Australia might not deserve the description of a " despotism," it was realized that regulations had become so numerous, technical and voluminous, that it was practically impossible for Members of Parliament to study them in detail and to become acquainted with their exact purport and effect. A very strong case was made out by various witnesses before the Select Committee, in favour of some systematic check, in the interests of the public, on power of making statutory rules and ordinances. It was contended by several authorities that the Senate was the more appropriate Chamber for exercising this check, for the reason that it could have no influence upon the making or unmaking of Governments.

The Select Committee recommended to the Senate:

(*a*) That a Standing Committee of the Senate, to be called the Standing Committee on Regulations and Ordinances, be established.

(*b*) That all Regulations and Ordinances laid on the Table of the Senate be referred to such committee for consideration and report.

(*c*) That such Standing Committee shall be appointed at the commencement of each session on the recommendation of a selection committee consisting of the President, the Leader of the Senate, and the Leader of the Opposition, shall consist of 7 members, and shall have power to send for persons, papers, and records; and that 4 members shall form a quorum.

(*d*) That such Standing Committee shall be charged with the responsibility of seeing that the clause of each bill conferring a regulation-making power does not confer a legislative power of a character which ought to be exercised by Parliament itself; and that it shall also scrutinize regulations to ascertain—

(1) that they are in accordance with the Statute;

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

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

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

The Motion for the adoption of the Select Committee's Report (including the foregoing recommendations) was not agreed to by the Senate, principally because of the method of

selection proposed in paragraph (*c*). The Report was recommitted, and the Select Committee afterwards presented a Second Report, which repeated recommendations (*a*) and (*b*) above, substituted a different method of appointment from that contained in recommendation (*c*), and omitted recommendation (*d*). The Second Report was adopted by the Senate, and after the Standing Orders had been amended to give effect to it, the Standing Committee on Regulations and Ordinances came into being.

Although the Committee did not have the Senate's formal endorsement of the four principles set out in recommendation (*d*), which were intended for its guidance, it has observed these principles in its work. It was unanimously agreed that questions involving Government policy in regulations and ordinances fell outside the scope of the Committee.

Four reports have been presented to the Senate. It is unnecessary to traverse all the recommendations contained in these reports, some of which have been given effect to, while others have been rejected. Among minor recommendations which affected the form of regulations, and which were immediately put into practice, are the following:

> That where regulations on a particular subject are numerous and extend over a number of years, a periodic consolidation of the regulations should be made;
>
> That when an amending regulation is promulgated, the dates or numbers of the original and all amending regulations be printed upon it;
>
> That when short paragraphs of previous regulations are amended by the omission or addition of certain words, the whole original clause be repealed and the clause as it would read with the omissions or additions be re-enacted.

Arising out of the Committee's Third Report, the Government introduced into the Senate an amending Acts Interpretation Bill, designed amongst other things to legalize certain actions authorized by regulations which the Committee had considered, in view of the decision of the High Court in a particular case, would be held to be *ultra vires*. The members of the Committee took a very active part in the consideration of this Bill, and were instrumental in securing a number of amendments. (For the revised provisions dealing with Regulations, see the appendix to this article.)

The foregoing review deals almost entirely with the subject of regulations. The Committee also has power to consider

Ordinances, which are laws made under a delegated power, either by the Governor-General or by some subordinate legislative body. For example, the Territory of New Guinea is governed by a Legislative Council, which has power (under section 27 of the New Guinea Act, 1920-1935)[1] " to make Ordinances for the peace, order, and good government of the Territory." Such Ordinances are subject to disallowance by the Governor-General. The Commonwealth Parliament, having delegated its power to disallow these Ordinances, would need to amend the New Guinea Act in order to recover such power of disallowance. The Senate Regulations and Ordinances Committee, therefore, takes the view that it would be more or less a waste of time for it to examine the New Guinea Ordinances, which are laid before Parliament merely for its information. In an extreme case, however, the Committee could recommend the amendment of the New Guinea Act or any other action which it might consider advisable.

Other territories of the Commonwealth are governed by Ordinances made by the Governor-General in Council, under which regulations may in turn be made. Both the Ordinances and the regulations made thereunder must be laid before Parliament, and are subject to disallowance in the same way as regulations made under an Act. In actual practice, however, the Committee has devoted very little time to Ordinances, which are usually only challenged in Parliament, if at all, on the policy to which they give effect. In the case of a certain Ordinance of the Australian Capital Territory which had aroused a great deal of resentment, the Committee carefully considered the matter, and agreed that the Chairman should allow one of the aggrieved persons to interview him. This was done, and the Chairman reported back to the Committee that he had considered the particular Ordinance in dispute, and saw no reason to doubt its validity. The Committee discussed the matter very fully, and finally resolved (as stated previously) that Questions involving Government policy in Regulations and Ordinances fell outside the scope of the Committee.

It may be emphasized that the existence of the Committee does not in any way interfere with the right of any Senator to scrutinize Regulations or Ordinances on his own behalf and to move in the Senate for the disallowance of any particular Regulation or Ordinance. This right has been exercised from time to time during the life of the Committee.

[1] Acts Nos. 5 of 1920; 15 of 1926; 51 of 1932; and 63 of 1935.

The Committee concluded its Fourth Report with the following words, which may well form also the conclusion of this article:

> " The Committee has reason to believe, from evidence available, that its efforts in the past to keep a watch on the regulation-making power and on its undue exercise have been widely appreciated by the public—especially as no such scrutinizing body exists in the House of Representatives. The Committee has endeavoured at all times to be reasonable in its recommendations. It is well aware that it has no judicial powers, yet it has been attacked on the score of endeavouring to exercise such powers. Wisely made and rightly regarded, its reports ought to be of assistance in the making of effective legislation; yet some of its few critical recommendations have apparently been regarded by the Executive as hostile. Its activities have not resulted in any appreciable reduction in the number of regulations issued.
>
> " In conclusion, therefore, the Committee expresses the opinion that its appointment, which was in the nature of an experiment, has been justified, and that there still exists a field of activity (although now more limited than formerly) within which it may continue to function with advantage to the people of the Commmonwealth."

APPENDIX

(*Extract from the Acts Interpretation Act*, 1901-1937)[1]

Regulations

Heading. Inserted by No. 10, 1937, s. 13.

48.[2] (1) Where an Act confers power to make regulations, then, unless the contrary intention appears, all regulations made accordingly—

Regulations. Inserted by No. 10, 1937 s. 13.

(*a*) shall be notified in the *Gazette*;

(*b*) shall, subject to this section, take effect from the date of notification, or, where another date is specified in the regulations, from the date specified; and

[1] Act No. 10 of 1937.

[2] Section 14 of the *Acts Interpretation Act*, 1937, is as follows:

" 14. Where, prior to the commencement of this Act, any regulations to which section ten of the *Acts Interpretation Act*, 1904-1934, applied, were expressed to take effect from a date before the date on which those regulations were notified in the *Gazette*, those regulations shall be deemed to have the same force and effect as if this Act had been in force when those regulations were made:

" Provided that nothing in this section shall affect the operation of any judgment, order or conviction obtained or made before the commencement of this Act."

(c) shall be laid before each House of the Parliament within fifteen sitting days of that House after the making of the regulations.

(2) Regulations shall not be expressed to take effect from a date before the date of notification in any case where, if the regulations so took effect—

(a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) existing at the date of notification, would be affected in a manner prejudicial to that person; and

(b) liabilities would be imposed on any person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of notification,

and where, in any regulations, any provision is made in contravention of this sub-section, that provision shall be void and of no effect.

(3) If any regulations are not laid before each House of the Parliament in accordance with the provisions of sub-section (1) of this section, they shall be void and of no effect.

(4) If either House of the Parliament passes a resolution (of which notice has been given at any time within fifteen sitting days after any regulations have been laid before that House) disallowing any of those regulations, the regulation so disallowed shall thereupon cease to have effect.

(5) If, at the expiration of fifteen sitting days after notice of a resolution to disallow any regulation has been given in either House of the Parliament in accordance with the last preceding sub-section, the resolution has not been withdrawn or otherwise disposed of, the regulation specified in the resolution shall thereupon be deemed to have been disallowed.

(6) Where a regulation is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the regulation shall have the same effect as a repeal of the regulation.

Disallowed regulation not to be re-made unless the Motion rescinded or House approves. Inserted by No. 10, 1937, s. 13.

49. (1) Where, in pursuance of the last preceding section, either House of the Parliament disallows any regulation, or any regulation is deemed to have been disallowed, no regulation, being the same in substance as the regulation so disallowed, or deemed to have been disallowed, shall be made within six months after the date of the disallowance, unless—

(a) in the case of a regulation disallowed by resolution—the resolution has been rescinded by the House of the Parliament by which it was passed; or

(b) in the case of a regulation deemed to have been disallowed—the House of the Parliament in which notice of the resolution to disallow the regulation was given by resolution approves the making of a regulation the same in substance as the regulation deemed to have been disallowed.

(2) Any regulation made in contravention of this section shall be void and of no effect.

Effect of repeal of regulations. Inserted by No. 10, 1937, s. 13.

50. Where an Act confers power to make regulations, the repeal of any regulations which have been made under the Act shall not, unless the contrary intention appears in the Act or regulations effecting the repeal—

(a) affect any right, privilege, obligation or liability acquired, accrued or incurred under any regulations so repealed; or

(b) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any regulations so repealed; or

(c) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act or regulations had not been passed or made.

VII. STANDARDS OF TRAINING AND QUALIFICATIONS FOR PARLIAMENTARY LIBRARIANS

By Kenneth Binns

Librarian of the Parliament of the Commonwealth of Australia.

In suggesting standards for training and qualifications for Parliamentary Librarians, it is essential that I should define the type and scope of the Parliamentary Library with which I propose to deal.

Unlike other classes of libraries, there is to be found such a wide divergence of type in Parliamentary Libraries that it is impossible to lay down standards which would be applicable to the training of officers for all of these. It may be said, however, that Parliamentary Libraries fall into the following two distinct classes:

1. Libraries which are not exclusively Parliamentary. The outstanding examples of these are those which combine Parliamentary and National Library functions, such as the Library of Congress, the General Assembly Library of New Zealand, the Commonwealth National Library and, to a lesser extent, the National Library of Ireland.

2. Purely Parliamentary Libraries, as we have in most of the States of the Commonwealth.

It is in respect of this second class that I wish to discuss training and standards. Before doing so, however, I wish to make it clear that I am discriminating between the old and traditional type—the "gentleman's recreational or club" library, in which a limited range of legislative material may be included, and the Parliamentary Library, which is an essential aid to the serious study of legislative and administrative problems. It is pleasing to note that in Australia the latter are becoming more and more an integral part of Parliament in the same way that University libraries are becoming central in the life and teaching of our Universities.

At the same time, I do not wish to appear to minimize the cultural value to Members of a Parliamentary Library. From my own experience I would say that there are two distinct sides to the work of Parliamentary Libraries—the factual and the cultural. The nature and range of the factual is determined very much by the scope of the legislation of the Parliament

which each Library serves. Thus, for example, in the Commonwealth National Library, international relations naturally bulk much larger than with State Parliamentary Libraries, but the latter have a much wider range of domestic and technical matters on which material must be gathered and information provided. The educational and cultural aspect, however, should not be overlooked, and my experience is that Members appreciate and respond to the service and help which the Library can give in regard to their reading.

In submitting tentative proposals for qualifications and standards of training for Parliamentary library work I have taken the main branches of the proposed library curriculum which was prepared by the Secretary of our Institute, Mr. J. Metcalfe, B.A., F.L.A., and recently submitted by him to our Library Group in Melbourne.

Academic Standards.—To be qualified to perform the two functions indicated above, a full University course is, in my opinion, essential. As the modern trend of legislation is in the direction of economics and sociology, I am reluctantly compelled to regard a degree in Economics or Law more valuable to Parliamentary Librarians than an Arts course. At the same time, however, I still regard an Arts course as superior for cataloguers, even those in Parliamentary Libraries.

I would stress the necessity in Parliamentary work of having a high percentage of officers with University qualifications, as these Libraries must always work with small staffs. Specialization of duties cannot be carried to any great extent. It is necessary therefore to have highly qualified officers and for these to be trained in as wide a range of Parliamentary Library duties as possible. This is all the more necessary owing to the unusual hours which Parliamentary Libraries work, which result in officers having to interchange duties in order to provide a working roster.

For the granting of a diploma in Librarianship by our Institute to Parliamentary Librarians, I consider that the academic standard necessary should be graduation in Arts, Law or Economics and that, even so, specialized subjects such as Constitutional History, Modern Political Institutions, etc., should be set down as requisite, unless these form part of the courses which the candidate has completed in his University course.

Cataloguing.—As the service which Parliamentary Librarians have to give Members is of a much more personal and detailed character than that in public reference libraries, the cataloguing has to be of a much more detailed and analytical nature.

Members of Parliament prefer information to be supplied to them in a complete and digested form. They do not go to the catalogue and look out their own references, nor can the Librarian satisfy them by supplying a number of books from which to look out the particular information which they require, as is the case with readers in public libraries. Usually their time is too short to make exhaustive personal searches, and they much prefer to have the relevant material they require carefully noted and marked by the Librarian. Because of this it is necessary to catalogue all material in a much more analytical way than in public libraries. I do not maintain that the bibliographical standards of cataloguing should be higher, but merely that the range of subject headings should be more detailed and specialized than in public reference libraries, within the sphere of Members' requirements. In this respect the work of Parliamentary Libraries and the cataloguing in Parliamentary Libraries approximates more to that of specialized technical libraries than it does to that of the ordinary public reference library. The standard, therefore, in cataloguing for Parliamentary Libraries can be lower than that for public libraries on the purely bibliographical side, but should undoubtedly be higher in subject cataloguing.

Arising out of the large proportion of documents, reports, papers, etc., both of governmental and non-governmental origin, which constitutes much of the material of Parliamentary Libraries, the handling and cataloguing of these constitutes a special problem. This has been recognized in the coining of the special term " documentation." So far little has been done to standardize principles and practice, and there is no generally accepted body of rules or literature relating to it as there is to book cataloguing. Uniform practice in Parliamentary Libraries in Australia is highly desirable and should be aimed at by our Institute.

In American libraries I found that this type of material was more widely collected, not only by Legislative Libraries but also by public reference libraries, than is the case in England or Australia and that the term " vertical files " has been adopted to describe both the material and the physical method of preservation. Undoubtedly, documentation must take an important place in the training of Parliamentary Librarians and more teaching should certainly be given in our public libraries, for my experience has been that few of them can produce even our own official publications readily, and in some cases I know that files are sadly incomplete.

Classification.—As all Parliamentary Libraries in Australia use the Dewey system, and as their collections are much smaller and more specialized than those of public libraries, it is not necessary to require Parliamentary Librarians to study deeply the theory of classification or to have the same knowledge of the various systems of classification as their *confrères* in public libraries. At the same time, the large proportion of law books in Parliamentary Libraries and the unsatisfactory provision which Dewey makes for the classification of these render it desirable that he should be able to adapt and extend Dewey in a scientific and logical way.

Reference Work and Book Selection.—As mentioned previously, the personal nature of the service which Parliamentary Librarians are required to give adds particular importance to training in reference work. This is all the more necessary as speed in reference work is essential in Parliamentary Libraries. Very often the information is wanted in a hurry even though it may be of the widest or most technical character. He must therefore be thoroughly trained in the use of all reference works, indexes, bibliographies, etc. This is all the more important since Parliamentary officers have to take the responsibility for the information provided if it is used by the Member when speaking in Parliament, for it is then recorded in Hansard. He must also have special training in the use of statistical material. As a great deal of his reference work will be the looking up of figures in budgets, cost-of-living figures, comparative tables of production and prices etc., this should be made a special subject in which Parliamentary Librarians are required to attain a high degree of proficiency. This would necessitate special examinations and tests, combined with the submission of a piece of original work in the compilation of statistical or comparative data on some typical major problem in legislation.

Library Service and Library Government.—As the organization and control of Parliamentary Libraries are more simple and direct than those of governmental and municipal libraries, it will not be necessary to require of Parliamentary Librarians a very high degree of knowledge of library administration and law. Merely the main facts of the history and principles of library development and administration should be required. At the same time, however, Parliamentary Librarians should have a knowledge of the rules and practices operating in other Parliamentary Libraries; also a proper understanding of the traditional privileges and rights of Members and also of the

members of the Press. In this connection it would be assumed that Parliamentary Librarians had a thorough knowledge of Standing Orders and Parliamentary government as part of the special technical qualifications required.

Library Administration and Routine.—Again it should be recognized that Parliamentary Libraries are smaller and more simple in their organization than public libraries, but this does not imply that they should not be, within their scope, as thorough and scientific in the detail of their administration.

The training and standards for accessioning, book ordering, accounting, etc., might therefore be at the same level as that expected of librarians of public libraries, provided that this can be related to the actual working conditions and requirements of Parliamentary Libraries.

History of the Book, Book Production, Cataloguing of "Rariora."—I would personally prefer the use of the term "bibliography" to cover these subjects. I am of the opinion that a thorough knowledge of bibliography is essential to any professional librarian. In this connection we have established classes for the training of officers of both the Parliamentary and National sections of our Library and have taken Esdaile's "A Student's Manual of Bibliography" as the standard text-book. At the same time it is not necessary to require of Parliamentary Librarians the same detailed knowledge of historical bibliography and incunabula as should form a part of the training of librarians for public or academic libraries.

Subjects for Special Libraries.—As far as this relates to academic or specialized subjects not forming a part of ordinary library training, I consider that a thorough knowledge of the following subjects should be required of Parliamentary Librarians:

(*a*) Australian History, placing particular emphasis on its constitutional and political aspects.
(*b*) Modern Political Institutions.

In respect to definite library subjects the following might be ones in which Parliamentary officers should be required to take specialized courses:

1. Documentation.
2. Parliamentary procedure.

If by stressing the particular features of Parliamentary Library work I should be thought to maintain the view that

it differs fundamentally from that in other libraries, I desire to correct this impression. The training and standards for Parliamentary Librarians can and should be kept as similar as possible to those which the Institute may set up for librarians of public reference libraries, recognizing that it is only a question of placing greater or less emphasis on certain subjects.

VIII. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY

By D. H. Visser, J.P.

Clerk of the House of Assembly.

The following unusual points of procedure which occurred in 1938 during the Sixth Session of the Seventh Parliament and the First Session of the Eighth Parliament, following the general election for the House of Assembly on May 18, 1938:

A. Sixth Session, Seventh Parliament.

Motion giving Government Business Precedence during the Whole Session.—With a view to accelerating the Session owing to the approaching general election, the Prime Minister moved at the beginning of the Session that Government business have precedence after Questions on Private Members' days throughout the Session. The Leader of the Labour Party asked Mr. Speaker whether such a Motion was in order in view of the fact that it restricted from the beginning of the Session the rights of Private Members, which were secured by the Standing Orders. Mr. Speaker replied that it was entirely a matter for the House to decide and referred to a similar Motion which was agreed to after the 1929 general election. The Motion was agreed to after debate and divisions which lasted from 2.38 to 7 *p.m.*[1]

Letter Tabled by Minister during Debate.—On March 11 a Minister adopted the unusual course of laying a letter upon the Table of the House during a debate on the Part Appropriation Bill in connection with allegations made against a Member.[2]

Suspension of Eleven O'clock Rule.—On March 15, at five minutes to eleven o'clock *p.m.*, Mr. Speaker was about to interrupt business under S.O. 26 when a Government whip moved as an unopposed Motion and with special leave "That S.O. 26—automatic adjournment at eleven o'clock *p.m.*—be suspended for the present sitting." This course was adopted after consultation with the whips of all parties with a view to ending the Session on the following day and no objection was raised. The House adjourned shortly after midnight.[3]

[1] VOTES, 1938, Sixth Session, Seventh Parliament, 16. [2] *Ib.*, 274.
[3] *Ib.*, 290.

B. First Session, Eighth Parliament.

Opening of New Parliament at Noon instead of at 3.30 *p.m.*—Instead of meeting at 10.30 *a.m.* for the swearing-in of Members and the election of Speaker, the House of Assembly met at 9.45 *a.m.*, and the opening ceremony was held at noon instead of at 3.30 *p.m.* This course was followed owing to the increasing difficulty which had been experienced in making arrangements for lunch in the House when Parliament meets on that day both in the morning and afternoon.[1]

Automatic Reference of Petitions to Pensions Committee.—Under S.O. 270 (adopted in 1923) petitions endorsed " For Pensions Committee " stand referred to the Select Committee on Pensions, Grants and Gratuities which has been annually appointed under wide terms of reference. Owing, however, to the growing number and variety of petitions which have been automatically referred to this Committee, it was decided to restrict the Committee's terms of reference to the consideration of minutes and petitions for " pensions, grants and gratuities or other benefits *in respect of service rendered to the State.*" This was done in the appointment of the Committee on July 25. In future, therefore, Petitions which are not for benefits " in respect of services rendered to the State," will have to be referred by ordinary Motion either to the Pensions Committee or to a special Committee.[2]

Question to Private Member on Blocking Motion.—On the opening day of the Session a Member gave Notice of a Motion on the economic position of the wheat industry and soon afterwards left for Australia without removing the Notice from the Order Paper. As the Motion blocked discussion on the budget debate and as there was reason for supposing that another Member had been authorized to take charge of the Motion, a formal Question on the subject was put to the absent Member but was not answered. In view of these circumstances Mr. Speaker subsequently informed Members that he was prepared to exercise the discretion vested in him under S.O. 74 and allow discussion on the subject.[3]

Reply to Budget Debate.—Standing Order 102 (3) contemplates that the financial statements made by the Minister of Finance and the Minister of Railways and Harbours may be made on different days, but paragraph (2) thereof contemplates that the replies of these Ministers shall be made on the same day. For the convenience of the House, however, Mr. Speaker allowed the

[1] VOTES, First Session, Eighth Parliament, 1, 3. [2] *Ib.*, 20. [3] *Ib.*, 190, 198.

Minister of Finance to reply on August 24, and the Minister of Railways and Harbours to move the Adjournment of the Debate in order that he might reply on the following day.[1]

Form of Amendment altered after being moved.—On August 11, the Leader of the Labour Party moved an amendment to a Motion on the National Anthem by omitting the greater part of the Motion and substituting other words. Several other amendments were moved to omit all the words after "That" for the purpose of substituting other words and the Leader of the Labour Party subsequently obtained the leave of the House to alter his amendment to that form in order to simplify the voting.[2]

Amendment to Question for Second Reading.—Since 1925 amendments referring the subject of a Bill to the Government for consideration have not been allowed in that form. Machinery was, however, provided in the Representation of Natives Act[3] by which legislation may be delayed in Parliament until the proposals have been referred to the Natives Representative Council for consideration. On the Second Reading of the Cape Masters and Servants Amendment Bill an amendment was accordingly allowed which proposed that the subject of the Bill be referred to the Government with a view to a Bill being drafted after consultation with the Natives Representative Council.[4]

Oath of Allegiance.—On September 12, Mr. Speaker informed the House that the Oath of Allegiance required to be taken under section 51 of the Constitution had been made and subscribed by Senator Fourie, Minister of Commerce and Industries, before the Governor-General. This was the first time since Union that the Governor-General had personally sworn in a Member of Parliament. It was necessitated by the fact that the Senate had adjourned and Mr. Fourie could not sit in the House of Assembly[5] as a Minister until he had taken the Oath.[6]

Mr. Speaker given Power to accelerate Meeting during Suspension of Business.—On the last day of the Session the House of Assembly having completed its work suspended its proceedings several times in order to exchange messages with the Senate, but as it was impossible to estimate when the

[1] *Ib.*, 265. [2] *Ib.*, 266. [3] Act No. 12 of 1936.
[4] VOTES, First Session, Eighth Parliament, 289.
[5] A Minister administering a department of State may sit and speak in both Houses (Constitution, sec. 52).
[6] VOTES, First Session, Sixth Parliament, 377.

Senate would complete its business the House of Assembly ultimately adopted the following Resolution:

> " That the House suspend business until 7 o'clock p.m.: provided that Mr. Speaker may, if he thinks fit, accelerate the time for the resumption of business by causing the division bells to be rung."

This Resolution, it will be seen, is based on the Resolution adopted by the House in 1933[1] when it adjourned for a long period and gave Mr. Speaker power to accelerate the meeting.[2]

Explanatory Memoranda to Bills.—S.O. 160 (*a*) which was adopted in 1926 provides that brief explanatory memoranda may be prefixed to Bills. This provision has never been made use of, but the underlying idea was adopted in connection with the Finance Bill, when Members were supplied with a memorandum briefly explaining its main clauses. The result was that this Bill passed through all its stages in 40 minutes.[3]

Examination of Clerks of Senate and House of Assembly by Assembly Public Accounts Committee.—During the proceedings of the Select Committee on Public Accounts Mr. Speaker's Ruling was asked as to whether it was competent for the Select Committee to require the attendance of the Clerks of the two Houses for examination on the Report of the Controller and Auditor-General affecting their departments. Mr. Speaker ruled that both Clerks could be requested to attend but that the Clerk of the Senate could not attend without the consent of the Senate, or, during an adjournment, of the President of the Senate. He pointed out, however, that it would not be proper for the Committee to question them in such a manner as to invite an expression of their views on matters decided by Sessional Committees over which the President or Speaker presided. Subsequently, on the Clerk of the Senate being requested to attend, the Committee was informed that Mr. President, during the adjournment of the Senate, had withheld his assent until it was known on what points the Clerk would be examined and until the matter had been considered by the Standing Orders Committee of the Senate.[4]

[1] VOTES, 1933, (2) 139. [2] VOTES, First Session, Eighth Parliament, 461.
[3] *Ib.*, 430, 440, 441. [4] S.C. 8—38, I-liii.

IX. APPLICATIONS OF PRIVILEGE, 1938

COMPILED BY THE EDITOR

Westminster.

Newspaper Libel upon Mr. Speaker.—On April 14, 1938,[1] the Member for Leeds, W. (Mr. Vyvyan Adams), raised the following question of Privilege. In the *Daily Worker* of April 13, on the front page, under heading "M.P.'s Barred from Debate on Spain," the following sentences occurred in leaded type:

> The Speaker of the House of Commons yesterday privately notified Opposition leaders that Spain will be "out of Order" in the Debate on the Adjournment of the House of Commons next Thursday.
>
> • • • • •
>
> This disgraceful ruling is based nominally on the allegation that there has been "too much talk about Spain already,"

and the hon. Member submitted that these quotations established a *prima facie* case for a gross breach of Privilege.

Mr. Speaker then ruled that the hon. Member had established a *prima facie* case of breach of Privilege against the newspaper and asked him to bring a copy of the newspaper to the Table. Upon which the hon. Member for Leeds, W., then moved:

> That the statements complained of contained in the article in the *Daily Worker* are a gross libel on Mr. Speaker, and that the publication of the article is a gross breach of the Privileges of this House.

The hon. Member for Bassetlaw (Mr. F. J. Bellenger) then rose to a point of Order and asked Mr. Speaker to rule as to procedure, remarking that if a *prima facie* case had been made out, was not the next step to call the editor of the paper before the House? To this Mr. Speaker replied that that step was sometimes taken, but by no means on every occasion, and that the hon. Member was entitled to make whatever Motion he liked; it was for the House to decide what action it would take.

The hon. Member for Leeds, W., then observed that every Member of the House was aware that each one of them who had the good fortune to catch Mr. Speaker's eye was entitled, on the Adjournment Motion, to raise almost any question under

[1] 334 H.C. Deb. 5. s. 1317-1320.

the sun which did not require legislation. But the important element was that no newspaper had any right to stigmatize Mr. Speaker's conduct, actual or alleged, as "disgraceful." Continuing, the hon. Member submitted that the House alone was entitled to criticize anything that Mr. Speaker, in his discretion, might or might not do, and therefore asked the House to agree that the *Daily Worker* had been guilty of a gross breach of the privileges of the House.

After the Motion had been formally seconded the Prime Minister remarked that every Member of the House would feel with him that an attack of this kind on Mr. Speaker was an attack on the House as a whole. They were accustomed in their own persons to be criticized outside the House, but it was another matter altogether when allegations of partiality were made against their Speaker. In regard to the remark of the hon. Member for Bassetlaw that there had been cases in the past when it had been thought necessary to follow up a Motion of this kind by some further expression of the indignation of the House, by summoning the offending party to the Bar of the House, he hoped the House would be content, after having accepted the Motion, to let the matter rest there. They did not want to magnify the importance of an incident of that kind or of the parties who made such an allegation. There were precedents for the House passing a Motion of that kind and leaving it there, which would be in the best interests of the dignity and honour of the House.

The Leader of the Opposition, in associating himself with what the Prime Minister had said, observed that Mr. Speaker was the guardian of their liberties and any attack on him was an attack on the House. The statement appeared entirely baseless. He agreed with the Prime Minister in saying that there should not be too much made of the matter and that the House would be best advised to be content with passing the Motion. After 2 other speeches the Question was put and agreed to.

Newspaper Libel upon Mr. Speaker.—On October 6, 1938,[1] an hon. Member rose upon a point of Order to call attention to the following paragraph which appeared in *The Times* that morning:

> Domestically much interest has been attached to the strength and intentions of the dissident Conservatives, but it now seems that they are stronger in quality than in number. They are expected to number about 25, and will register their dissent by

[1] 339 H.C. Deb. 5. s. 479.

abstaining from voting on the confidence Motion. They are believed to include Mr. Churchill, Mr. Eden, Lord Cranborne, Sir Sydney Herbert, Mr. J. P. L. Thomas, Mr. Cartland and Mr. Law. They are to some degree indignant that their quota of debating time has now been exhausted, and that no more of them will be allowed to speak to-day.

The hon. Member did not know whether a question of Privilege arose, but asked for the guidance of Mr. Speaker. It was quite clear, the hon. Member continued, that the paragraph contained a very grave reflection upon Mr. Speaker's impartiality, which would be justifiably resented by hon. Members on both sides of the House.

Mr. Speaker then said:

I do not think that we ought to treat this matter so seriously as to make it a matter of Privilege, but I should say that it is very unfortunate that a pronouncement of that kind should be made regarding my action as to which Members I have selected as having caught my eye. It has been made without any foundation of fact. Newspapers have very wide circulation, and quite a wrong impression may be given of the action of the Chair by statements of this kind. The statement had no authority at all.

New Zealand.

Libel upon a Member by a Member.—On Friday, August 12, in the House of Representatives Mr. Speaker drew attention, as a matter of privilege, to the last two paragraphs of a letter from Mr. W. J. Polson, Member for Stratford, which appeared in the *Auckland Star and Taranaki Herald*, on Wednesday, August 10, 1938, and the same were read by the Clerk as follows:

I would not have asked for your space, sir, but for the fact that although these innuendoes and suggestions were made in Parliament, I was not only not allowed under the Standing Orders to reply to them, having already spoken in the debate, but also my colleague, Mr. Broadfoot, M.P., was prevented by the Speaker from uttering a word in my wife's defence when following Mr. Schramm.

It may be that this letter will be made a pretext for attacking me for the breach of some "privilege" of the House, but I am indifferent to "privileges" which allow innocent women to be defamed, and am quite willing to ignore them (if they exist) in defence of my wife particularly, or womenkind generally.

Mr. Speaker thereupon ruled that a *prima facie* case had been made out for a breach of privilege.

On the Motion of the Prime Minister (the Right Hon. J. W.

Savage), it was Resolved—that the matter be referred to the Privileges Committee.[1]

On September 1, Mr. Howard, from the Committee of Privileges, brought up Reports and the same were ordered to lie upon the Table, the Reports being read as follows:

> I have the honour to report that the Committee of Privileges has carefully considered the matter of privilege contained in the last two paragraphs of a letter from Mr. W. J. Polson, Member for Stratford, which appeared in the *Auckland Star and Taranaki Herald* of Wednesday, August 10, 1938.
>
> The Committee is unanimously of opinion that the publication of the said two paragraphs constituted a breach of the privileges of the House by the newspapers named, but the editor of each of the newspapers having explained to the Committee that there had been no intention of infringing the privileges of the House and having expressed regret for so doing, the Committee recommends that the apologies be accepted and no further action be taken.
>
> I have the honour to report that the Committee of Privileges has carefully considered the matter of privilege contained in the last two paragraphs of a letter from Mr. W. J. Polson, Member for Stratford, which appeared in the *Auckland Star and Taranaki Herald* of Wednesday, August 10, 1938, and the Committee is unanimously of opinion that the said last two paragraphs of Mr. Polson's letter constituted a breach of the privileges of the House.
>
> The Committee recommends that Mr. Polson be afforded an opportunity, on the presentation of this Report, of expressing regret to the House for such breach of privilege.

Whereupon Mr. Polson, having made an explanation, expressed regret.

On motion of the Prime Minister (the Right Hon. J. W. Savage), it was Resolved—That in view of the explanation and expression of regret, no further action be taken.[2]

Ceylon.

Newspaper Libel on Mr. Speaker.[3]—On February 8, 1938,[4] an hon. Member of the State Council drew the attention of Mr. Speaker to a question of privilege and moved the following Motion:

> That in the opinion of this House the Editorial appearing in *The Times of Ceylon*, Monday, January 24, 1938, under the caption "Deputy Speaker's Apologia," constitutes a false, malicious and scandalous libel, highly reflecting on the character of the Deputy Speaker of this House, who, at the time the rulings mentioned therein were given, was officiating for the Speaker, and resolved that the general permission granted to the representatives of that

[1] 252 N.Z. Parl. Deb. 270.
[2] 331 H.C. Deb. 5. s. 1532.
[3] 253 N.Z. Parl. Deb.108 *et seq.*
[4] 1938 Ceylon Deb. No. 5, 220, 242-261.

journal to attend the sittings of the Council be revoked, and that all communications to the Press from the State Council be withheld from that journal until it publishes a full and unqualified apology for the libel made on the conduct of the Deputy Speaker; and further calls upon the Government to take such departmental action as is necessary against that journal till such apology has been made.

The newspaper statements to which exception was taken are:

> The initial mistake which Mr. de Fonseka made was in not divesting himself of his party affiliations when he was called upon to preside at the debates on Police Officers' salaries last year. Unlike the Speaker, who is scrupulous in holding the scales evenly, Mr. de Fonseka felt he must take up the cudgels on behalf of the Council and fight the Officers of State, the Governor and even the Secretary of State for what he felt was an invasion of the rights of the House.
>
> • • • • •
>
> What was extremely surprising was that the Deputy Speaker should have so far forgotten himself as to join those misguided Members. . . .
>
> • • • • •
>
> Making himself the mouthpiece of this ill-informed group, he delivered a ruling which will stand in Hansard as a prime example of muddled reasoning.
>
> • • • • •
>
> This was not his only blunder. Having given this manifestly absurd ruling, he went on to indulge the House to an extent which amounted to obstruction, his view being that an attempt was being made by the Governor " to override a considered decision of the House " and that it was " open to the House by every constitutional method known to it " to prevent it.
>
> • • • • •
>
> He does well to make an apologia, but it should more properly be an apology.

The mover then quoted a number of instances[1] which had occurred in the House of Commons in support of the jealousy with which that House had safeguarded the person of their Speaker. In Ceylon there was no Powers and Privileges of Parliament Act.[2] The mover also quoted the Council's S.O. 34 (3), which reads:

> The Speaker may grant a general permission to the representative or representatives of any journal to attend the sittings of

[1] May, XIII. 73.

[2] Art. 73 of the Ceylon (State Council) Order in Council, 1931, reads: A law may be enacted in accordance with this Order defining the privileges, immunities and powers to be held, enjoyed and exercised by the Council and the members thereof; provided that no such privileges, immunities or powers shall exceed those for the time being held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Northern Ireland and the Members thereof.

the Council, provided that, if the journal publish a report of the proceedings which the Speaker considers unfair, such permission may be revoked.

Upon Question being put, the Motion was agreed to: Ayes 31; Noes 5; declined to vote 1.

Mr. Speaker thereupon intimated in reply to a Question that he would give effect to the Resolution by means of a letter.

On February 10, 1938,[1] an hon. Member asked the Leader of the House whether he had seen the news paragraph appearing in that day's *Ceylon Daily News* to the effect that an action had been filed in the Police Court, Colombo, the previous day charging the hon. the Speaker and two Police Officers who were acting on the orders of the Speaker with preventing certain newspaper reporters from entering the Council Chamber. As he was no doubt aware, in that matter the hon. the Speaker had been acting in terms of a Resolution formally adopted by the Council on the 8th of that month. The hon. Member desired to know what steps the Board of Ministers proposed to take to safeguard the honour and dignity of the Chair and of the Council and to vindicate the undoubted right and privilege of the Council to exclude at any moment any stranger from the Council precincts if it was considered desirable or necessary, and to prevent the Speaker from being placed in the intolerable position of being the accused in a case for implementing a decision of the House.

The hon. Member further inquired, in view of the developments which had arisen as a result of the hon. the Speaker carrying out a resolution of the House, what action the Board of Ministers proposed to take to safeguard all privileges in general of the House.

The Leader of the House (Hon. Mr. Senanayake) replied that he had read the report referred to and a meeting of the Board of Ministers had been summoned for noon that day. He assured the House that they could rest content that all steps necessary to protect the honour and dignity of the Chair would be taken.

Whereupon another hon. Member drew attention to the presence of the representative of the particular paper taking down the proceedings of the Council, which presence was verified by the Clerk of the Council.

Mr. Speaker then said that, as the House had been previously informed, he had communicated the Resolution to the editor

[1] 1938 Ceylon Deb. 336, 337.

of the newspaper, from whom the following letter had been received:

> I am in receipt of your letter of the 9th February in which you, on the direction of the Hon. the Speaker, sent me a copy of the Resolution passed by the State Council at the meeting on February 8th, 1938, and request me to return to you the cards forwarded to me with your letter dated the 7th January, 1938, for the admission of our representatives and messengers to the Press galleries.
>
> In accordance with this request, I send you herewith seven cards, but I do this without prejudice to the right we consider we have to admission to the Press galleries.

Whereupon, at Mr. Speaker's request, the representatives of the *Times of Ceylon* withdrew from the Press Gallery.

On February 15, 1938,[1] Mr. Speaker announced that in pursuance of the Resolution of the Council of 8th *idem* he had refused the representatives of that newspaper admittance to the Press Gallery on the 9th *idem*, and that he had since received a summons to appear in the Police Court of Colombo upon a plaint by the Chief Representative Officer of the newspaper, of wrongful restraint under section 380 of the Penal Code against both Inspectors of Police and against the Speaker as abetting.

But Mr. Speaker thereupon informed the House that the proceedings had been terminated and the Managing Director and Editor-in-Chief of the *Times of Ceylon* had addressed him as follows:

> DEAR SIR,
>
> We are pleased to intimate that, in view of the honourable settlement reached this morning between your legal representatives and the legal representatives of this Company, we are taking steps immediately to have withdrawn the plaint which has been filed against you by a member of our Editorial staff.
>
> We may say that we greatly regret the necessity which prompted a member of our Editorial staff to institute proceedings against you, and we are happy to take this opportunity of reiterating that where we ourselves are concerned, we hold you in the highest possible regard both personally and in your official capacity.
>
> We are, Dear Sir,
> Yours faithfully,
> (*sgd.*) P. J. MATTHEWS,
> *Managing Director*,
> (*sgd.*) A. C. STEWART,
> *Editor-in-Chief*.
>
> P.S.—We are happy to be able to advise you that since the above was written the case has been withdrawn.

[1] 1938 Ceylon Deb. 420, 421.

The letter addressed to the Hon. the Speaker was as follows:

SIR,

We have the honour to refer to the leading article published in our journal on the 24th January last, in connection with which we desire to assure you that we have always held the office of Speaker of the State Council in the highest regard. In publishing the article in question we were not actuated by any improper motive or by any desire to attack either the office of Speaker or the honour of any Member of the Council who has filled that office at any time. If, however, it is your opinion that the article is calculated to reflect in any way upon the dignity of the office of Speaker, we should most earnestly desire to correct any such impression and to apologize sincerely to you and to the Deputy Speaker.

We have already publicly stated, in our journal on the 9th February last, and we now repeat, that we hold Mr. de Fonseka in the highest regard and that if he considers that anything we have said is a reflection on his character we gladly and willingly apologize.

We have the honour to be, Sir,
Your obedient Servants,
(*sgd.*) P. J. MATTHEWS,
Managing Director,
(*sgd.*) A. C. STEWART,
Editor-in-Chief,
"*Times of Ceylon*" *Co., Ltd.*

Mr. Speaker then said:

In view of these facts I have invited the representatives of the *Times of Ceylon* to be present as usual in the Press Gallery.

In reply to a Question Mr. Speaker said:

There was no attempt made by any particular party, but a settlement has been arrived at and these are the terms of the apology. I think the House will now be satisfied that its prestige and dignity have been maintained.

Regulation of Admittance Bill.—On February 18, 1938,[1] the Hon. the Legal Secretary moved for leave to introduce a Bill in the form of a Draft of a proposed Ordinance:

to make provision for the regulation of admittance to the State Council Chamber of members of the public and representatives of the Press and for other matters incidental to such regulation or connection therewith.

The Bill contains 10 Clauses and its objects and reasons are given at the end of the Bill as:

to empower the Speaker to regulate the admittance to the Council Chamber of members of the public and representatives of the Press. The powers to be conferred on the Speaker will

[1] 1938 Ceylon Deb. 589-592.

be supplementary to those which he now possesses under the S.O. Clause 7 of the Bill accordingly includes a contravention of the rules which the Speaker is empowered to make under S.O. 34 among the acts which will be penalized under the new law. The purpose of Clause 8 of the Bill is to protect the Speaker and any Officer of the Council against civil or criminal proceedings in respect of acts done after the new law comes into operation under the powers conferred by such law or the Standing Orders.

During the course of his speech the Legal Secretary referred to a Privileges Bill having been introduced in the last State Council, which Bill was withdrawn, and that during the present Council the Committee on S.O. had had under consideration the provisions of a further Privileges Bill which it was hoped to introduce at an early date. The provisions contained in the Bill before the House would be more proper to a Privileges Bill and therefore it was a matter for consideration whether this Bill should be passed or whether its provisions should await the Privileges Bill.

There being no further debate, the Motion for leave was agreed to and the Bill read the First Time.

South Australia.

Newspaper Libel upon the House.—On October 26, 1938, in the Legislative Council of the State of South Australia, a Member, on a Question of Privilege, drew the attention of the House to an article appearing in *The Patriot* of October 1, headed " The Liquor Bill," edited by the Rev. W. G. Clarke and published by Sharpke Printers, Ltd. That part of the article (which was subsequently read at the Table by the Clerk of the Council) which specially referred to Members of the Council was:

> THE LIQUOR BILL: WHAT WILL THE HOUSE OF ASSEMBLY DO?
>
> The hope that the Liquor Bill would have received its quietus at the hands of Members of the Legislative Council failed to bear fruit. Any hope—or delusion—we may have had was dispelled as succesive speakers voiced their support of the Bill.

Whereupon Mr. President informed the House that the newspaper article was brought to his attention last week and as custodian of the privileges of that House he had written to the Crown Solicitor for advice as to whether the article constituted a breach of the Privileges of the Legislative Council,

to which he had received a reply which he read to the House and was to the effect that the article was, in the opinion of the Crown Solicitor, highly libellous of the Legislative Council and a breach of Privilege, for which the printer and publisher could be called to account. In addition, he considered that the libel rendered the persons responsible for its publication liable to criminal prosecution and to civil proceedings for damages, which could be instituted by individual members who were libelled. In support of the powers of the Council in regard to its privileges, the Crown Solicitor quoted:

(*a*) The Constitution Act, 1934-1936, section 38 of which provided that the privileges, immunities and powers of the Legislative Council and House of Assembly respectively, and of the Committees and Members thereof shall be the same but not greater than those which on October 24, 1856, were held, enjoyed and exercised by the House of Commons and by the Committees and Members thereof, whether such privileges, immunities and powers were so held, possessed, or enjoyed by custom, statute or otherwise.

(*b*) Similar legislation in force in Victoria in 1862 was considered by the Judicial Committee of the Privy Council in the case of Bill *v.* Murphy, 1 Moore N.S. 487, and it was then held that unrestricted power to reprimand or imprison persons guilty of a libel on Parliament which amounted to a breach of Privilege . . .

(*c*) May, XII. Ed., pp. 77-79.

After the above quoted extract from the article had been read by the Clerk of the Council, the Chief Secretary, Minister of Health and Mines (the Hon. Sir George Ritchie, K.C.M.G., M.L.C.), moved:

> That the article appearing in *The Patriot* dated October 1, 1938, and headed "The Liquor Bill" is a distinct breach of the Privileges of Parliament.

It was Resolved accordingly.

No further action was taken by Parliament, but action was taken by a Member privately in the issue of a writ against the editor of the paper complained of.

Queensland.

Parliamentary Precincts.—During 1938 a Member was suspended for a period of 8 sitting days for persisting in disregarding the authority of the Chair. The Member was a Country representative and, in common with a certain number of other Country Members, had the use of a room in a separate

building adjoining Parliament House, and in the Parliamentary grounds, known as the " Lodge." Members who are accommodated at the " Lodge " pay a small amount annually for the privilege. Upon the suspension of this Member instructions were given by Mr. Speaker that the Member was to be excluded from this residence, which was considered to be part of the Parliamentary Buildings, as part of the penalty of suspension. At the next sitting a Question of Privilege was raised in regard to the Member's exclusion from the Country Members' residence in consequence of his suspension, and a Motion was moved:

> That in the opinion of this House the Country Members' Residence adjoining Parliament House does not come within the purview of Standing Order 125.[1]

Upon the Question being put, the Motion was negatived on a party division.[2]

[1] " When a Member is suspended from the service of the House, he shall be excluded from the House and from all rooms set apart for the use of Members."

[2] VOTES, 1938, 199-205.

X. REVIEWS[1]

By the Editor

Legislative Drafting and Forms.[2]—This is a most comprehensive and up-to-date authority on the subject and its lay-out is admirable; not only is there a 41-page index but each of the 3 divisions of the book has its own detailed table of contents. Division 1, which opens with a preliminary essay on the technique of legislative drafting, deals with the general frame of many types of Bills in their varying particulars, right down to punctuation and the use of common words and phrases. Division 2 gives many forms (there are over 1,800 in the book) showing models of almost every subject and type of clause, with statutory reference in most cases and 73 pages of definitions. Crown Colony references, contained in an Appendix, include the drafting of legislation and proceedings thereafter; forms referring to legislation; model of an interpretation and general clauses ordinance and of a revised edition for a colonial statute book, as well as many miscellaneous forms; and even references to Martial Law are not omitted.

This book has the fast-developing British Empire as its nursery, where almost every conceivable type of constitution and legislature is either in full growth or in process of change or development. To give some idea of the wide legislative range of the book, it was recently the writer's task annually to review the legislation passed only by the British-Power Territories of Africa, which laws numbered over 600 each year.

Sir Alison Russell's work also contains much good counsel to the draftsman, who is advised (p. 17) that:

> When time admits, it is a very good plan for the draftsman to put away his Bill when completed, for a week or more, and then return to it with fresh intelligence. After sustained consideration and drafting, a draft gets so familiar that it is difficult to see it steadily and see it whole.

Special reference is made to that increasing Empire problem, 'delegated legislation," the extended use of which has lately been causing legislators much concern in both the Federal and State Parliaments of Australia, and attention is drawn

[1] Only books having close relation to the objects of this Society (Rule 3, p. 218 *ante*) are accepted for review.—[Ed.]

[2] By Sir Alison Russell, K.C., 4th ed. (Butterworth and Co. (Publishers), Ltd.) 1938. Royal 8vo. 716 pp. 40*s. post free.*

(p. 71) to that excellent treatise[1] on the subject by Dr. C. T. (now Sir Cecil) Carr, LL.D., the Editor of the Revised Statutes at the Treasury, who gave such valuable evidence before the Select Committee on Ministers' Powers,[2] 1932.

When reading the reference (p. 20, *n.*) to the procedure followed in the ancient Greek Republic of Locria, by which a citizen who proposed any new law had to stand forth in the assembly of the people with a cord round his neck, and if the law was rejected to submit himself to instant strangulation, one could almost hear the harried modern-day Minister thinking what a useful deterrent such a practice might not prove to-day.

Clear conciseness is still the aim of every draftsman and there comes to mind the tribute paid by the renowned Lord Thring, the First Parliamentary Counsel to the Treasury upon the creation of that office in 1875, when he referred to the Papal Legate, Stephen Langton, as " the prince of all draftsmen," in that most famous of all written enactments, his Magna Carta, from which Thring quotes as a unique example of conciseness and unambiguous expression, its Article 40:

> To no one will we sell, to no one will we refuse or delay right or justice.[3]

Upon closing Sir Alison Russell's voluminous work, the first thought which struck one was how the draftsman got along before this book was published, when, for ready reference, practically all he had to rely on was his own research and experience. It is true that before the first edition of Sir Alison's book in 1924 there were the works of Thring[4] and later that of his disciple Ilbert[5] (later Clerk of the House of Commons), but neither, admirable as they are (if copies are still procurable), affords the wealth of example, reference and information contained in this fourth edition of *Legislative Drafting and Forms*.

As one continually consulting the statutes of many countries of the Empire in connection with the production of this

[1] *Delegated Legislation*, Cecil T. Carr, LL.D. (University Press, Cambridge), 1921.

[2] Cmd. 4060.

[3] Nulli vendemus, nulli negabimus aut differemus rectum aut justitiam.—*Select Charters*, W. Stubbs (Clarendon Press), 1870, 293.

[4] *Practical Legislation*, Lord Thring, K.C.B. (John Murray), 1st ed. 1877; 2nd ed. 1902.

[5] *Legislative Methods and Forms*, Sir Courtenay Ilbert, K.C.S.I., C.I.E. (chapters xi and xii of which are supplementary to Thring) (Clarendon Press), 1901.

JOURNAL, one would like to remark that it would be of great assistance if the method of numbering, classification, coordination and indexing were more uniform. Some of these statute books do not even bear on the spine the name of the country and the year to which they refer.

Sir Alison Russell's book, which has been adopted by 37 Crown Colonies and Protectorates and is in use in the United Kingdom, the Dominions, India and the United States, should be in the libraries of all Parliaments, practioners, Attorneys-General, Government Legal Advisers and Government as well as Parliamentary draftsmen and Clerks at the Table in the various countries of the Empire. The book is well printed, in clear bold type, on good paper and in a strong cloth binding, which will stand the constant handling it will most certainly receive at the hands of those concerned in the increasingly important work of initiating and drafting the legislation of the Empire.

The Parliament of the Cape.[1]—This book was first published in 1930 under the title of *The Romance of a Colonial Parliament*. The present issue took place in November, 1938. Mr. Ralph Kilpin was nurtured in the Parliamentary atmosphere, for his father, the late Sir Ernest Kilpin, K.C.M.G., was an official of the Parliament of the Cape of Good Hope and a Clerk at the Table of the House of Assembly for 30 years, following the late Mr. John Noble as Clerk of that House in 1897, a position he occupied until the advent of Union in 1910. Mr. Kilpin chose the same career and joined the Cape House of Assembly staff in 1905, continuing on that of the Union House of Assembly in 1910, of which House he has been Clerk-Assistant since 1920. Therefore Mr. Kilpin is well qualified to write on this subject. To this the reader will testify. The book is scrupulously accurate in all its dates and constitutional and Parliamentary references and is a valuable reference work on that account alone. It reveals, in pleasant style, both a fascinating and interesting record of constitutional history extending over a period of nearly 300 years, beginning with the first meeting of the Council of Policy under the Dutch United East India Company when its first Governor, Johan van Riebeeck, summoned his 3 sea captains to pull over to him on board *Dromedaris* in the English Channel on December 30, 1651, when on his way out to establish the first European settlement at the Cabo da Boa Esperança, and continuing under

[1] *The Parliament of the Cape*, Ralph Kilpin (Longmans, Green), 1938. 170 pp. 4*s*. 6*d*.

the British occupation from 1795 to 1803, as well as again under the Dutch Company from 1803 to 1806, when the Cape of Good Hope finally came under Great Britain. After an intervening period of Governor's rule, a Council of Advice was substituted from 1825 to 1834. Then came the long struggle for Parliamentary institutions, first the chafing under Crown Colony government from 1834 to 1853, followed by the sop to Cerberus in the grant of " representative " government in that year and the achievement of " responsible " government in 1872. Thereafter, the story carries on until the eve of the advent of dominion government in 1910. This book is both a useful and an interesting record and should be in the library of every student of Parliamentary institutions, whether from a constitutional, historical or procedure point of view.

Private Bill Procedure[1] **(Union of South Africa).**—The second edition of this pamphlet by Mr. Ralph Kilpin, the Clerk-Assistant of the House of Assembly and a keen student of Parliamentary procedure in all its branches, is a reprint from the *South African Law Journal* of February, 1939. The value of this publication is not in the number of its pages but in its quality. It is well footnoted with authorities and references. The pamphlet opens with a history of Union as well as of pre-Union practice in the old Cape Colony, in regard to Private Bills, from the days of Legislative Council government in 1834, when the Private Bill Standing Orders numbered only 11, through the intervening stages of " representative " and " responsible " government in that Colony and under Union from 1910 to the present day, when such Orders number 99, and are published with a comprehensive appendix.[2] A large field of practical experience is thus traversed, during which many editions of Private Bill Standing Orders have been revised. The pamphlet then deals with the definition of a Private Bill, and what has to be done in connection with the Preliminary Notice and the various stages of the Bill during its passage through both Houses of Parliament. Petitions in opposition, and the procedure before Select Committee, are also most usefully treated.

In two important respects the Union Private Bill Procedure differs from that of the Houses of Commons, for, in the case of the former, Bills are referred to Select Committee after First

[1] *Private Bill Procedure*, Ralph Kilpin, 2nd ed. 1939. (Capetown: Juta and Co., Ltd.) 8vo. 15 pp. 1s. 6*d*.

[2] *Standing Orders of the House of Assembly*. Vol. II., Private Bills. (Government Printer, Cape Town.) 1s. 8*d*. *post free*.

and not Second Reading, and no attorney is admitted to practice as Parliamentary agent unless actively engaged in promoting or opposing a Private Bill. The Union Senate has not adopted the practice of Westminster by initiating Private Bills in order to save the time of the House, its Members and Staff. Private Bill legislation has not assumed such dimensions in the Overseas Parliament as to admit of a special branch of the department of the Clerk of the House being appointed for that purpose, so that he and his Staff have to deal with it in addition to their ordinary work. This pamphlet, read with the Standing Orders above referred to, forms a valuable adjunct to May and the other standard reference works on the subject, and should be read by all officials of Overseas Parliaments responsible for the administration of this very important branch of Parliamentary official work.

XI. SOME RULINGS BY THE SPEAKER AND HIS DEPUTY AT WESTMINSTER, 1938

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 Third Session of the Thirty-seventh Parliament of the United Kingdom of Great Britain and Northern Ireland and the First and Second of His Majesty King George VI, are taken from the General Index to Volumes 328 to 340 of the House of Commons Debates (Official Report), 5th series, comprising the period October 26, 1937, to November 4, 1938. The Rulings, etc., given during the remainder of 1938 and falling within the Fourth Session of the Thirty-seventh Parliament will be treated in Volume VIII of the JOURNAL.

The respective volume and column reference number is given against each item, thus—"(328 – 945)" or "(332 – 607, 608, 1160)." The items marked with an asterisk are indexed in the Commons *Hansard* only under the heading "Parliamentary Procedure."

Note.—1 *R.*, 2 *R.*, 3 *R.*=Bills read First, Second or Third Time. *Amdt(s).*=Amendments. *Com.*=Committee. *Cons.*=Consideration. *Rep.*=Report. *C.W.H.*=Committee of the Whole House. *Q.*=Questions to Ministers. *Sel. Com.*=Select Committee. *R.A.*=Royal Assent.

Address to the King.
—several orders taken together (332 – 646).

Adjournment.
—motions (S.O. 8)[1] (338 – 3070).
—of Debate (332 – 1849, 1852, 1853, 1856).
—of House.
—anticipation (336 – 774 to 781).
—as a protest, not accepted (335 – 626).
—by Government on Private Members' day (336 – 774 to 781).
—debate on Easter Adjournment, matters requiring legislation cannot be discussed on (334 – 1369, 1370).
—debate on Motion for (336 – 801).
—debate on an adjourned Motion cannot be referred to on Motion for (339 – 454 to 458).
—irregular subject for debate upon (330 – 2132).

[1] "Time for taking Private Business."

Adjournment (*continued*):
—of House (*continued*):
—legislation cannot be raised on Motion for (335 – 1660, 1661); (336 – 1783); (328 – 1737); (336 – 801).
—limitation of debate upon Motion for (S.O. 3)[1] (333 – 512).
—matters arising out of Motion on Order Paper cannot be discussed on Motion for (336 – 775 to 801).
—Notice given during debate of matter to be raised on (328 – 1770).
—Notice given that matter will be raised on (335 – 1555).
—power of Government at any time to move (336 – 774, 775).
—question of Secretary of State for Foreign Affairs being a Member of Lords, raised on (332 – 862 to 884).
—raising of certain matters on, will very likely be out of Order (329 – 837).
—reference to motion upon which debate adjourned, not allowed (339 – 454, 455).
—subjects raised on, must be those for which Government responsible (335 – 1668, 1678).
—when Notice given to raise question on, general practice that no further Questions asked (334 – 1090).
—of House (urgency).
*—motion allowed on " Bombing of British Ships " (337 – 1272, 1273).

Amendment(s).
*—cannot be withdrawn if Member insists on speaking (330 – 1731); (332 – 454).
*—forming part of composite scheme, putting down of (329 – 327).
—Member must not make a speech if he wishes withdrawal of (332 – 454).
See also Bills, and Lords' Amendments.

Bills, Private.
—*amdts.*, of which Notice given by Agent for Promoters on *Cons.*, 3 *R.* and Lords' *Amdts.*, put *en bloc* (334 – 315, 316).
—debate
—instructions } *see* those Headings.
—2 *R.*
—irrelevance (332 – 648).
—Return Ordered (338 – 3071).

Bills, Private Members'.
See Bills, Public and Members.

Bills Public.
—*amdt.* involving charge upon the rates (331 – 2198, 2199).
—ballot for, system (328 – 86).
—clauses by same Member dealing with similar matter, Speaker's action (338 – 1029).
—debate
—instructions } *see* those Headings.

[1] " Termination of Friday Sittings."

Bills, Public (*continued*):
—*Cons.*
—*amdt.*
—contrary to decision of House already taken (338 – 1277, 1279).
—discussed together, but voted upon separately if desired (334 – 1205).
—out of Order (332 – 495).
—withdrawn from House by Chair (338 – 1280).
—clause ruled out of order (334 – 271).
—from *Standing Com.* as amended.
—recommittal to *C.W.H.* in respect of certain clauses (338 – 215).
—*Rep.*
—clause cannot be withdrawn and another proposed without notice (338 – 1060).
—stage can only be taken by Motion (336 – 1618).
—3 *R.*
—declared null and void to rectify omission to delete a bracketed provision in a Lords' Bill (338 – 1480 to 1484).
—matters not in Bill, not debatable (334 – 232, 261, 262, 672, 1270); (337 – 466, 475, 477, 479, 481 to 484).
—Member cannot object to taking of, after a suspension Motion (338 – 1281, 1282, 1283, 1285).
—Members can rise to oppose but cannot object to (338 – 1281).
—money—*see* Finance.
—Private Member's opposition to Motion for leave (332 – 1119).
—withdrawn after presentation and represented to remedy an error (338 – 41, 42).

Business, Private.
—alteration in procedure (334 – 315, 316).
—Return Ordered (338 – 3071).

Business, Public.
—adjournment Motion on Private Members' Day (336 – 774 to 781).
—Motion on Government Business cannot be debated (333 – 1832).
—Question time, explanation required cannot be given at (332 – 903).
—statement to be awaited at end of *Q.*, (335 – 13).

Calling of the House.
—on earlier day during adjournment (338 – 3517).

Chair.
—Member must address (334 – 993, 1259); (329 – 2374).
—suggestions may not be made to (328 – 2073); (334 – 234); (336 – 462, 1315).
See also Mr. Speaker *and* Chairman.

Closure.
—applied, on *amdt.* to 2 *R.* (334 – 480).
—Mr. Speaker comes to own conclusions as to whether put or not (331 – 1497).
—not accepted by Mr. Speaker, though time considered for decision on question under debate (335 – 662).
—Return Ordered (338 – 3070).

Committee, Select.
—as to Notice of sitting of (335 – 1895).

Committees, Standing.
—Return Ordered (338 – 3073).

Debate.
—adjournment—*see* that Heading.
—aimless interruptions (328 – 211).
—*amdt.*
—limits discussion (332 – 2205).
—no second speech on, in House (338 – 2616).
—no speech on withdrawal of (332 – 454).
—on which, to take place (334 – 1185).
—" Another Place."
—debate in, must not be quoted (338 – 487, 488, 758, 761).
•—speech in, must not be quoted unless dealing with Government policy (338 – 1444).
•—statements made in, repeating of (338 – 487, 488).
—anticipation of (336 – 516, 517, and 774 to 781).
—apology made, custom of House to accept (333 – 964).
—Bills, Public.
—2 *R.*
—discussion of extension of principle (338 – 69, 70).
—only one speech on each question (336 – 490).
—restriction upon (329 – 2369).
—*C.W.H.*
—amendments, several cannot be discussed together if objection raised (338 – 1217, 1218).
—irrelevance (338 – 295).
—*Cons.*
—*Amdt(s).*
—dealing with Schedule and Clause discussed together (333 – 606).
—not yet selected, effect upon (334 – 649).
—clauses referred to together (338 – 1262).
—combined discussion on new clauses (338 – 240, 241).
—3 *R.*
—discussion must be within the (334 – 232, 262).
—irrelevance (335 – 1898, 1906, 1907).
•—Members can rise to oppose but cannot object to (338 – 1281)
—objection to (338 – 3070).
—strict rule that Members must not deal with anything not in Bill (334 – 232, 261, 262, 672, 1270); (337 – 446, 475, 477, 479, 481 to 484, 494).

Debate (*continued*):

—cannot be done by Question and Answer (328 – 661).
—catching Mr. Speaker's eye (339 – 282, 283).
—explanation required cannot be given at Question Time (332 – 903).
—Finance.
—Budget Resolutions.
—on Report, debate limited to Resolution before House (335 – 804, 805).
—Consolidated Fund (Appropriation) Bill, 3 *R.*, matters requiring legislation cannot be discussed on (338 – 3412).
—Import Duty Orders.
—discussed together (336 – 2388).
—irrelevance (331 – 796, 1642, 1965, 1966).
—range of discussion (331 – 1611, 1645).
—Supply, *Com.* of.
—allocation of time between supplementary Estimates (332 – 1911).
—general discussion on Defence Votes A in or on Report (332 – 2122, 2123).
—matters requiring legislation cannot be discussed in (335 – 1838, 1839); (337 – 284, 603, 654); (338 – 1839, 1844).
—not matter arising on Supplementary Estimates (333 – 553).
—Ways and Means, *Com.* of.
—*Rep.*
—details cannot be discussed on (335 – 941).
—discussion of general proposals of Budget, not allowed on (335 – 805).
—irrelevance (335 – 819, 834, 835).
—no general, on permanent tax when other taxes under consideration (335 – 788, 803, 804).
—two Resolutions considered together (335 – 955).
—Friendly States, reference to (334 – 42).
—instructions—*see* that Heading.
—interjecting Member may not make a speech (334 – 132).
—interjections (332 – 222).
—interruption not allowed (334 – 41).
—interruptions (328 – 211); (330 – 2097); (331 – 583); (336 – 886); (340 – 74).
—irrelevance (332 – 2326); (334 – 269, 1175); (336 – 1495, 2321); (338 – 1152).
•—irrelevant remarks (332 – 1324, 1325).
—King's name may not be used in (336 – 1736).
—Leader of Government has right of reply (332 – 222).
—Leader of Opposition moved Adjournment of House to attack the Government, therefore right to allow Government to reply without interruption (337 – 1353, 1354); (333 – 532).
•—legislation cannot be discussed on motion for Adjournment (328 – 1737); (335 – 1660, 1661); (336 – 801); (339 – 454 to 458).
—Lords, House of—*see* "Another Place" and Lords' Amendments.

Debate (*continued*):
—matters.
—cannot be discussed which have been ruled out of order (335 – 1663).
—raised on 2 *R.* Appropriation Bill (338 – 3189, 3413).
—Member } *see* those Headings.
—Minister }
—Motion.
—amendments to, not called by Chair, in order that debate may range over field of (330 – 477).
—Lord Chief Justice cannot be criticized on incidental (330 – 1249).
—remark not personal (331 – 1844).
—wide subject (330 – 1259).
•—motives must not be imputed (338 – 9, 702).
—newspapers, extracts from, may be read for purposes of (333 – 952).
—no Question before House (339 – 478).
—no reference to previous, in same Session (336 – 499).
—notice given by Member to raise matter on the Adjournment (328 – 1770).
—official documents quoted in, must be Tabled (332 – 354).
—outside *Sel. Com.* terms of reference (331 – 96).
—reading speeches (336 – 438).
—same rules apply to all Members of House (337 – 494).
—statement to be awaited (335 – 13).
—statutory body set up by House cannot be criticized (331 – 1611, 1612).

Divisions.
•—count cannot be called between 8.15 and 9.15 p.m. (335 – 993).[1]
—in view of impression that, was called off, Question put again by Speaker (337 – 1093).
—locking of Lobby doors (338 – 394, 1161, 1162, 1163).
—Quorum, want of, correct procedure is to call attention of Chair to fact that there is not a Quorum present (336 – 780, 781).

Eleven o'Clock Rule.
—custom to suspend, on Estimates day (332 - 2122).
—interruption of debate by Mr. Speaker (333 – 169).

Estimates. *See* Finance.

Finance.
—*amdt.* not a charge (334 – 996, 997).
—Bill, Public.
—charge upon the rates, on *Cons.* (331 – 2198, 2199).
—involving Money, procedure, how monetary provisions to be distinguished (331 – 1714).[2]
—monetary commitment of (336 – 2358).

[1] *Vide* S.O. 25 (counting out).
[2] *See also* JOURNAL, Vol. VI, 137, 138.

Finance (*continued*):
—debate—*see* that Heading.
•—Estimates, Supplementary (332 – 1070, 1071, 1749, 1913).
—Import Duty Orders.
—taking 2 or more together (331 – 1610).
—Lords' Bill, failure at first to remove bracketed provision, procedure (338 – 1480 to 1484).
—Resolutions.
—amendment not in order (336 – 1549).
—increase cannot be suggested (336 – 1550).
•—irrelevance (331 – 2168).
—Member cannot suggest anything which would increase amount laid down in (336 – 1550).
—procedure, Mr. Speaker's opinion (328 – 1596 to 1599).[1]
—Ways and Means.
—reduction *amdt.* allowed (335 – 713).
—*Rep.*
—two Resolutions considered together (335 – 955).
See also Debate *and* Lords' Amendments.

Instructions.
—to Committee (Private Bill) debate upon (338 – 712).
—on Public Bills, time for (332 – 1812).
—to *C.W.H.* on Bill, time for taking (332 – 1812, 1822).
See also Debate.

Lords, House of.
—failure at first to remove bracketed provision, procedure in the Commons (338 – 1480 to 1484).
See also Lords' Amendments.

Lords' Amendment(s).
—" Another Place "—*see* Debate.
—*Amdts.*
—discussed together (333 – 606, 1703).
—irrelevance (333 – 1690, 1691).
—may not be moved after question proposed: " That this House doth agree with the Lords in the said Amendment " (338 – 637, 638).
—if insisting, *amdt.* considered *de novo* (338 – 479).
—irrelevance (338 – 740, 757, 759, 760).
—objection to (336 – 1750).
—Privilege.[2]
—*Amdts.*
—raising question of (338 – 473, 654, 3253 to 3258, 3260).
—rejected, not on grounds of (338 – 479).
—Mr. Speaker draws attention to (331 – 1662).
—Mr. Speaker orders Special Entry (331 – 1665).
—Mr. Speaker informs House may waive (338 – 479).
—waived with special entry in Journals (338 – 654).
—waived (338 – 655, 664).

[1] *Ib.*, 132-134.

[2] *i.e.*, " monetary."

Members.

—addressing Chair (329 – 2370); *(331 – 165); *(336 – 1982); (340 – 244, 296).
—against whom a Point or Order is directed should have right of reply (334 – 232).
—always allowed to make personal statement if exception taken to conduct of (333 – 840).
—apologies by, for breaches of order (334 – 7).
—as to notice to Members of sitting of *Sel. Com.* (335 – 1895).
—calling of, to speak, better left to discretion of Chair (339 – 283).
—calling on, to speak (337 – 969, 970).
—can put down a substantive Motion about anything (330 – 566).
—cannot:
—intervene in debate second time after being ruled out of order (339 – 458).
—intervene unless Member addressing House gives way (329 – 1828); (332 – 791); (333 – 77).
—catching Mr. Speaker's eye (339 – 282, 283).
—clauses by same, dealing with similar matter, Mr. Speaker's action (338 – 1029).
—conduct of, statement (334 – 195, 196).
—continuing to interrupt, will have to leave House (340 – 74).
—custom to accept an apology (333 – 964).
—debate—*see also* that Heading.
—exhausted right to speak (336 – 743); (332 – 625); (338 – 1265).
—give way (333 – 1418).
—had better write facts to Minister (336 – 1013).
—has expressed regret for what he said (328 – 1550).
*—having floor of House, not obliged to give way (337 – 1034).
—in wrong Lobby (338 – 1161, 1162, 1163).
—may ask Question, but not make a speech (329 – 1834).
—may not:
—insult Mr. Speaker beyond the Bar (328 – 1773).
*—suggest anything on Motion for Adjournment of House requiring legislation (328 – 1737); (335 – 1660, 1661); (336 – 801); (339 – 454 to 458).
—tender advice to Ministers when asking Questions (333 – 1367).
—must address Chair (329 – 2374); *(332 – 1044); (334 – 993, 1250, 1259); *(338 – 1856, 2317); (340 – 296, 297).
—must not:
*—debate subjects already ruled out of order (335 – 1663).
—impute motives to another (338 – 9, 702).
—make a speech if he wishes withdrawal of an *amdt.* (332 – 454).
—make another speech (332 – 466).
—make such charges (338 – 3093).
—speak while Mr. Speaker standing (331 – 45).
—names of, supporting notices of Motion to be put down (336 – 39, 40).
*—not entitled to suggest anything on Adjournment motion that requires legislation (328 – 1737); (335 – 1660, 1661); (336 – 801); (339 – 454 to 458).
*—on Motion "That the Clause stand part," Member cannot discuss *Amdt.* not selected because out of order (332 – 1363).

Members (*continued*):
•—no speech on withdrawal of *amdt.* (332 – 454).
—opposition to Motion for leave to introduce a Private Member's Bill (332 – 1119).
—Private Day, Government Adjournment Motion anticipating Private Member's Notice of Motion (336 – 774 to 781).
—Private Member's Bill.
—Front Bench Member rising does not close debate (338 – 1222).
—opposition to Motion for leave (332 – 1119).
—protection from discourtesy of other Members (328 – 1753).
—ruled out of order, cannot again intervene a second time (339 – 458).
—Standing *Com.*:
—in charge of Bill from, can speak more than once on *Rep.* without asking for leave (333 – 1913).
—moving *amdt.* to Bill from, can speak more than once on *Rep.* without asking leave (333 – 1913).
—statements by, must be assumed to be said in good faith (338 – 701, 702).
—should be allowed to make own speeches (338 – 1855).
—should not:
—impute motives to others (338 – 702).
—make such suggestions to Chair (328 – 2073).
•—speaking second time (332 – 661).
—suspension of,
—for disregarding authority of Chair (328 – 1770 to 1773).
—why moved after Member had left House (328 – 1773).
—to be allowed:
—to state his case (331 – 583).
—to make his defence (339 – 300).
—usual courtesy to call Front Bench Member when he rises, but no indication that such closes debate (338 – 1222).
—withdrawal of, requested (328 – 1770, 1771).

Minister(s).
—accusations cannot be made against a, on a Point of Order (331 – 385).
—as to Secretary of State for Foreign Affairs being a Member of Lords (332 – 747, 862 to 884).
—cannot:
—be attacked except by substantive Motion (333 – 953, 958).
—be expected to interpret Signor Mussolini's speech (336 – 15).
—debate—*see also* that Heading.
—exhausted right to speak (339 – 456).
—in charge of Bill from Standing *Com.* can speak more than once on *Rep.* stage, without leave (333 – 1913).
—often asked for personal opinions (340 – 338).
—Prime Minister must be allowed to speak, without further interruptions (335 – 1181).
—Secretary of State for Foreign Affairs,
—as to which House new Minister will be Member of (332 – 682).
—to be allowed reply (337 – 492).
•—would not be allowed to answer *Q.* (329 – 1845).

Motion(s).
*—cannot be debated (333 – 1832).
*—to Report Progress.
—negatived, another Motion for cannot be moved until fresh *Q.* has intervened (336 – 1001, 1002).
—not accepted (331 – 955, 956).
—substantive can be put down about anything (330 – 566).
See also Members.

Notice(s).
—given that a matter will be raised on adjournment (335 – 1555).
—of motion, names of Members supporting, to be put down on Order Paper (336 – 39, 40).
—of *Q.*, if not addressed to correct Minister and transferred to him (331 – 384, 385).

Official Secrets Acts.[1]
—*Amdt.* Bill, debate upon Motion for leave (336 – 1050).
—and M.P.s (337 – 1539, 1540).
—*Sel. Com.*
—debate on Motion for (337 – 2155 to 2237).
—*amdt.* to Motion (338 – 2117 to 2143).
—Notice of Motion (337 – 1540).
—Report debate no opportunity for during present Session (340 – 43).
—Report and evidence, printing and circulation of, Motion (338 – 317 to 340).
—sitting notwithstanding Adjournment of House, Motion (338 – 3137 to 3140).
—special Report (338 – 2914, 2915).

Order.
—apologies by Members for breaches of (334 – 7).
—Foreign Statesman, improper reference to (331 – 1239).
—point of,
—Member against whom directed should have a right of reply (334 – 232).
*—Member asked to adhere most closely to Rules (329 – 1954).
*—one to be dealt with at a time (336 – 976).
*—such accusations, should not be made on (331 – 385).
*—not a point of (328 – 1592); (329 – 1364, 1958); (332 – 1168, 1623); (334 – 1110); (335 – 1686); (336 – 76, 329, 972, 974, 975, 1181, 1187, 1900); (338 – 1285, 2828).

Papers.
*—confidential inquiry, no inherent right to compel Government to Table papers dealing with (336 – 998, 999).
*—documents, Tabling of (332 – 354); (336 – 971 to 973, 988 to 990, 1865 to 1875).
*—dummy, presentation in, of (330 – 42).

[1] 1 and 2 Geo. V, c. 28; 10 and 11 Geo. V, c. 75; *see also* Article III hereof.

Petitions, Public, Return Ordered (338 – 3071).

Privilege.[1]
—Access of Members to House (329 – 1390, 1391).[2]
—application of—*see* Article IX. hereof.
—must be raised at end of *Q.* (329 – 1391).
See Lords' Amendments for Monetary Privilege.

Quorum.
•—count cannot be called between 8.15 and 9.15 p.m. (335 – 993).

Questions to Ministers.
—a matter between hon. Members (328 – 1102).
—a number on the Paper (328 – 1825); (329 – 1223); (333 – 1988); (334 – 506); (335 – 859); (340 – 362).
—accusations may not be made against friendly countries (338 – 2890).
—accusation against a Minister cannot be raised on a Point of Order (331 – 385).
—already dealt with (331 – 1883).
—argument developing (336 – 1191).
—argument being raised (338 – 1511).
—Army Council, proceedings of, not usually made subject of *Q.* and Answer (338 – 150, 151).
—asking of, for another Member, if so authorized (335 – 685, 686).
—asking if a report true, not allowed (329 – 1216).
—" British," use of term (329 – 378).
—by Private Notice:
—does not take precedence of *Q.* on the Order Paper (329 – 1040, 1041).
—permitting of, when *Q.* already on Order Paper (335 – 124).
—ruled out on account of character, and being too late (339 – 335).
—to enable statement of Government policy (330 – 208 to 210).
—case cannot be reopened (331 – 1248).
—care should be taken in framing of, to avoid offence to friendly governments (337 – 1510 to 1513).
—concerning matters outside jurisdiction of House (329 – 828).
•—could not be answered in form of supplementary (332 – 1275).
—critical reference to religious views in, objectionable (337 – 1252).
—dealing with Russia, not proper time to put (330 – 1759).
•—debates, not allowable (331 – 40, 45, 46, 2037); (337 – 1885).
—errors in wording of, responsibility for (329 – 378).
•—explanation cannot be given at *Q.* time (332 – 903).
•—friendly governments, references to (337 – 1512, 1513).
—further, should be put on the Paper (329 – 1569, 1570).
—going too slowly (332 – 2002).
•—hypothetical (329 – 10, 1220, 1881); (332 – 894, 901); (336 – 1392, 1836); (337 – 26); (340 – 373).
—if Member " shuttlecocked " between two Departments, should put Notice of *Q.* down to both (332 – 1709).
•—improper (330 – 374, 375).

[1] *i.e.*, " non-monetary."

[2] *See* JOURNAL, Vol. VI, 219, 220.

Questions to Ministers (*continued*):
—in prejudicial or propagandist terms, not desirable (331 – 1858).
—in, many suggestions are made (337 – 1511, 1512).
—information:
—being given (329 – 181); (330 – 182); (332 – 1718); (334 – 1300); (338 – 2425).
—not available (329 – 188); (332 – 896).
—lack of justification for obtaining, on ground of expense, etc. (337 – 1243).
•—large numbers on Paper (331 – 1233); (334 – 1109); (335 – 1685).
—many on one subject, Mr. Speaker unwilling to select (333 – 2170).
—matter cannot:
•—be dealt with by, and answer (332 – 524).
•—be gone into at *Q.* time (332 – 515).
•—be gone into (329 – 28).
—matter:
—of opinion (329 – 386, 1021); (328 – 573).
—for Madras Government (330 – 2).
—must not be raised by (331 – 1894).
•—should be subject to another *Q.* after Recess (334 – 1302).
—to be discussed (328 – 1389).
•—Member cannot give advice in asking a (333 – 1367).
—Minister:
—has promised to inquire (337 – 1246).
•—has said he cannot give the information (332 – 896).
—not called upon to give opinion at *Q.* time on (330 – 183).
—misrepresentations (334 – 499).
—must be:
—asked seated (328 – 1772).
—got on with (337 – 677).
—Mr. Speaker will explain to Member why his, ruled out (329 – 197).
—more time cannot be spent on (331 – 1135).
•—must not be raised (331 – 1894).
—next, called (328 – 1837, 1838); (329 – 567); (331 – 1882); (332 – 1512); (333 – 1176); (334 – 327); (340 – 36).
—no debate upon (331 – 40, 45, 46, 2037); (333 – 1988).
—no further, asked on *Q.* of which Notice has been given to raise on the adjournment (334 – 1090).
—no more time can be spent on (338 – 3094).
—no use putting same over and over again (338 – 2696).
—not one for Mr. Speaker to answer (329 – 547).
—not one Mr. Speaker can answer (333 – 386).
—not obligatory on Minister to give information not practice to give (337 – 1708).
•—Notice required and *Q.* should be put down (328 – 222, 252, 510, 517, 519, 522), etc.
•—number on the Paper and number dealt with (330 – 558).
•—one *Q.* only can be dealt with at a time (334 – 507).
•—opinion, matter of (328 – 1382); (329 – 386, 1021); (338 – 573).
—oral, limitation by general agreement of number to be asked by Member on one day to 3 (333 – 1636 to 1638).

Questions to Ministers (*continued*):
—order of taking, in respect of Ministerial Departments (331 – 1055).
—out of order (328 – 1592).
—practice for Under-Secretary to answer. in absence of Minister (336 – 228, 229).
—Prime Minister—*see* Questions to Prime Minister.
•—Private Notice (339 – 467).
—and *Q.* on Paper, priority (329 – 1040, 1041).
—permitting of, when *Q.* already on Order Paper (335 – 124).
—Ruling out of (339 – 335, 344).
—to enable statement of Government policy (330 – 208 to 210).
•—Progress (338 – 188, 189).
—racial prejudice to be avoided in (336 – 1386).
•—Religious views, reference to (337 – 1252).
—repetition (328 – 1770); (330 – 1585).
—replies:
—cannot be given (329 – 377).
—given (330 – 1960); (332 – 728); (333 – 383, 385, 387, 585, 1176); (334 – 914, 1089); (335 – 859, 1697); (336 – 378, 382); (337 – 688, 2099, 2100); (338 – 10, 893); (340 – 365).
—made that no further *Q.* could be answered (330 – 787).
—sending of, to Member personally (336 – 567).
—request to Minister to persuade himself (329 – 1689).
—résumé of case cannot be given (330 – 1600).
•—ruled out (329 – 196, 197)
—several, already answered (336 – 379).
—should not have been allowed (338 – 11, 375).
—speech not allowed (330 – 565).
—*sub judice* (336 – 1632).
—subject cannot be pursued further (337 – 687).
•—suggestions making of (337 – 1511, 1512).
•—supplementary answer, too large undertaking for (331 – 353).
•—Supplementary:
•—a bigger *Q.* (336 – 200).
•—a broader *Q.* (335 – 676).
•—a different issue (336 – 1368).
•—a different matter (329 – 29); (334 – 1300).
—a different matter (332 – 727).
•—a different point (336 – 210); (338 – 1515).
—a different *Q.* (328 – 522, 1563); (330 – 373); etc.
•—a larger *Q.* (335 – 1227); (338 – 1295).
•—a long way from original (333 – 584).
•—a separate *Q.* (328 – 240, 1089); (329 – 16, 375); (330 – 978); (332 – 518); (334 – 30); (335 – 1386); (336 – 198, 1214, 1388); (337 – 1903); (339 – 2).
•—a separate subject (338 – 588).
•—a very wide issue (336 – 2212).
•—a wider *Q.* (333 – 822); (335 – 3); (336 – 405, 1017, 1820, 2046); (337 – 8, 206); (338 – 2421, 1707).
—abuse of (334 – 1097).
•—another issue (330 – 539); (335 – 1406).
•—another matter (328 – 510); (329 – 2243).
•—another point (333 – 182).

Questions to Ministers (*continued*):
—Supplementary (*continued*):
•—another *Q.* (328 – 1382), etc.
•—another *Q.* on Paper dealing with (333 – 1973, 1975); (335 – 288).
—another *Q.* (332 – 908); (335 – 1685).
—" Answer, Answer !" not a legitimate *Q.* (328 – 1753).
—beyond, on Paper (331 – 234); (333 – 820, 821, 823, 832).
—cannot be asked as *Q.*, passed over (328 – 2410).
—endless flow of, not allowed (332 – 1514).
—examples of (331 – 1531); (333 – 387); (337 – 688); (338 – 2880).
—excessive number of (328 – 1838, 1839); (336 – 385).
•—extension of previous *Q.* (328 – 1748).
•—far beyond scope of original (330 – 558).
—form of, not allowed (331 – 40); (336 – 1628).
•—general on totally different aspect (337 – 1248).
—improper (328 – 221); (333 – 1615); (337 – 1883).
•—increase in number (331 – 1055).
—limiting of, desirable (338 – 2895); (340 – 362).
•—little to do with *Q.* on Paper (336 – 1029).
—long way from original (333 – 584).
—Member can reply, if he cares to (332 – 1696).
•—Minister can reply, if he cares to (332 – 1696).
—must not:
—be asked in that form (337 – 1514, 1517).
—be continued (328 – 892).
•—no connection with *Q.* on Paper (328 – 1567); (329 – 839).
—no good asking (331 – 370).
—no more possible on this *Q.* (337 – 1506).
—not allowed (338 – 11).
—not arising (329 – 26, 175); (331 – 9, 1022); (332 – 725); (333 – 407, 747, 838); (334 – 17); (335 – 1218); 336 – 575, 1039); (338 – 1300, 1981).
—not following on *Q.* (329 – 26).
—not proper way to put (334 – 6).
—not relevant (321 – 181); (334 – 328).
•—not supplementary to original (328 – 1574).
—nothing to do with, on Paper (328 – 1389).
—Notice given to raise matter on the adjournment (328 – 1770).
—number of (338 – 1512).
•—of that kind must not be put (337 – 1883).
•—on Paper must be got on with (336 – 1638).
—practice not to ask further, when Member says he will raise matter on the Adjournment (328 – 1770).
—put and replied to (333 – 1988).
—remark cannot be stopped after it has been made (330 – 209).
—repetition of *Q.*, on Paper (338 – 157).
—Ruling in regard to, would be at considerable length (335 – 686).
—same *Q.* (335 – 685).
—same as *Q.* on Paper (331 – 1886).
•—same *Q.* in another form (334 – 925).
•—same *Q.*, no use putting over and over again (338 – 2696).

Questions to Ministers (*continued*):
—Supplementary (*continued*):
—separate *Q.* (329 – 16, 375).
—separate *Q.*, necessary (329 – 181).
•—shorter *Q.* would have been better (338 – 13).
—terms not liked (334 – 914).
—usually asked by Member in whose name *Q.* stands on the Order Paper (333 – 387).
•—wider issues raised (335 – 1680).
—too few got through in the hour, on account of large number of Supplementary (338 – 188, 189).
—too long (332 – 1512).
—too long and historical 329 – 28).
—transfer between Ministers (331 – 385); (340 – 368).
•—transferred from Prime Minister to Secretary of State for Scotland (340 – 386).
—treatment of, method (331 – 2037).
•—unanswered, position as to, and remedy (338 – 914).
—unusual language in answering (333 – 2186).
—use of term " Nationalist " *re* Spain, not a point for Mr. Speaker (337 – 1510).
—vetoing of, power (337 – 1513).
—with regard to views of Under-Secretary, not practice of House to allow (333 – 838 to 840).
•—written, arrangements made to avoid unnecessary delay in replying to (330 – 994).

Questions to Prime Minister.
•—on a substantive Motion (330 – 566, 567).
•—position on Order Paper (340 – 368).
—Prime Minister judge of what *Q.* he will answer himself (333 – 386, 387).

Mr. Speaker.
—action of, when clauses dealing with same matter by same Member (338 – 1029).
—*Amdt(s).*
—asked if Member is going to move *amdt.* on Order Paper (335 – 1272).
—discussed together, but voted upon separately if desired (334 – 1205).
—not accepted (334 – 1246, 1247).
—not called by (326 – 628).
—matter will be looked into (335 – 1205).
—not selected (335 – 1205).
—refers to Ministers (335 – 1205).
—appoints time for ballots for Bills (328 – 86).
—casting vote of (334 – 947).
—catching eye of (339 – 282, 283).
—Closure—*see* that Heading.
—draws attention to *amdt.* raising question of privilege (335 – 457, 458); (338 – 473, 654, 655, 664, 775, 779, 788).
—leaves matter to House (331 – 1610).

Mr. Speaker (*continued*):
—newspaper reference involving partiality of (339 – 479).
—not a *Q.*, can answer (333 – 386).
—not called upon to express opinion as to which House a new Minister should belong to (332 – 682).
—puts *Q.* and does not accept Closure (335 – 662).
—reserves right to reverse his Ruling on matter of which notice has been given for discussion on the Adjournment (332 – 747, 862 to 884).
—said he was sorry he had overlooked the hon. Member, but the voices had then been collected and 3 *R.* carried (338 – 1479, 1480).
—says, "*We have here the priceless possession of a democratic House of Commons with a long tradition of orderly conduct in Debate, and never was it more important that that tradition should be maintained than it is today*" (334 – 195, 196).
—takes responsibility for the wording of Questions (329 – 378).
—unwilling to select from numerous Questions on one subject (333 – 2170).
See also Lords' Amendments.

Standing Orders.
—Sittings of the House, Motion for exemption from:
•—division into two (338 – 1117, 1118).
—Eleven o'clock Rule, of Government Business and a Private Bill (338 – 1118).
•—for Private Member's Bill (338 – 1116 to 1118).
—suggested alteration of, to avoid the reading of Sessional Returns Motions (338 – 3073).

Statutory body set up by House.
—actions of, cannot be discussed (331 – 1636, 1637).
—cannot be criticized (331 – 1611, 1612).
—composition of, cannot be discussed on Import Duty Orders (331 – 1645).

Supply. *See* Finance; *also* Debate.

XII. LIBRARY OF PARLIAMENT

By the Editor

Vol. I of the JOURNAL contained[1] a list of books suggested as the nucleus of a Statesmen's Reference Collection in the Library of an Oversea Parliament. Volumes II,[2] III,[3] IV,[4] V[5] and VI[6] 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 in 1938. 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.[7] 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.

A Century of Diplomatic Blue Books, 1814-1914. *Ed.* by H. Temperley and L. M. Penson. (Cambridge University Press. 30*s.*)

Allen, G. C.—Japan: The Hungry Guest. (Allen and Unwin. 10*s.* 6*d.*)

**Alport, C. J. M.*—Kingdoms in Partnership. (Lovat Dickson. 8*s.* 6*d.*)

**Amos, Sir Maurice Sheldon.*—Lectures on the American Constitution. (Longmans. 7*s.* 6*d.*)

Angell, Norman.—Peace with the Dictators? (Hamish Hamilton. 7*s.* 6*d.*)

Antonius, George.—The Arab Awakening. (Hamish Hamilton. 15*s.*)

[1] 112 *et seq.* [2] 132 *et seq.* [3] 127 *et seq.* [4] 148 *et seq.*
[5] 218 *et seq.* [6] 240 *et seq.* [7] *See* JOURNAL, Vol. V, 166-197.

At the Cross Roads of Europe. By Six Members of the Prague P.E.N. Club. (Hutchinson. 10*s.* 6*d.*)

Bidwell, Percy Wells.—Our Trade with Britain. (Royal Institute of International Affairs. 6*s.*)
Borgese, G. A.—Goliath. (The March of Fascism.) (Gollancz. 16*s.*)
Borkenau, F.—A Communist International. (Faber and Faber. 12*s.* 6*d.*)
—Austria and After. (Faber and Faber. 8*s.* 6*d.*)
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Democratic Sweden. *Ed.* by Margaret Cole and Charles Smith. (Routledge. 12*s.* 6*d.*)
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—World Finance, 1937-38. (Kegan Paul. 12*s.* 6*d.*)

Foundations of British Foreign Policy, 1792-1902. *Ed.* by H. Temperley and L. M. Penson. (Cambridge University Press. 25*s.*)

Gayer, A. D. (*Ed.*).—The Lessons of Monetary Experience. Essays in honour of Irving Fisher. (Allen and Unwin. 12*s.* 6*d.*)
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Reed, Douglas.—Insanity Fair. (Cape. 10*s.* 6*d.*)
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Steed, Henry Wickham.—The Press. (Penguin Books. 6*d.*)
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**Strateman, Catherine (Ed).*—The Liverpool Tractate. An Eighteenth-Century Manual on the Procedure of the House of Commons. (P. S. King. 11*s.* 3*d.*)

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Whitehead, T. N.—The Industrial Worker. (Milford. 21*s.*)

XIII. LIBRARY OF "THE CLERK OF THE HOUSE"

By the Editor

The Clerk of either House of Parliament, as the "Permanent Head of his Department" and the technical adviser to successive Presidents, Speakers, Chairmen of Committees and Members of Parliament generally, naturally requires an easy and rapid access to those books and records more closely connected with his work. Some of his works of reference, such as a complete set of the Journals of the Lords and Commons, the Reports of the Debates and the Statutes of the Imperial Parliament, are usually more conveniently situated in a central Library of Parliament. The same applies also to many other works of more historical Parliamentary interest. Volume I of the JOURNAL contained[1] a list of books suggested as the nucleus of the Library of the "Clerk of a House," including books of more particular usefulness to him in the course of his work and which could also be available during Recess, when he usually has leisure to conduct research into such problems in Parliamentary practice as have actually arisen or occurred to him during Session, or which are likely to present themselves for decision in the future.

Volume II[2] gave a list of works on Canadian Constitutional subjects and Volumes IV[3] and V[4] a similar list in regard to the Commonwealth and Union Constitutions respectively.

Volumes II,[2] III,[5] IV,[6] V[7] and VI[8] gave lists of works published during the respective years. A list of books for such a Library, published in 1938, will be found "starred" in the previous Article (XII).

[1] 123-126. [2] 137, 138. [3] 153-154. [4] 223.
[5] 133. [6] 152-154. [7] 222, 223. [8] 243, 244.

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 a 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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Office of the Society.

c/o The Senate, Houses of Parliament, Cape Town, South Africa.

Cable Address : CLERDOM CAPETOWN.

Honorary Secretary-Treasurer and Editor : E. M. O. Clough.

* Barrister-at-law or Advocate.

XV. MEMBERS' RECORDS OF SERVICE

Note.—*b.*=born; *ed.*=educated; *m.*=married; *s.*=son(s); *d.*=daughter(s); *c.*=children; *cr.*=created.

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat these records in subsequent issues of the JOURNAL, *except upon promotion, transfer or retirement, when it is requested that an amended record be sent in.*

Advani, Shivaram T., B.A., LL.B. — Secretary, Sind Legislative Assembly, and Assistant Secretary, Legal Department; *b.* November 16, 1904; *ed.* at D. J. Sind College, Karachi; B.A. (Hons.), 1927, and Fellow of the College; LL.B., 1929; appointed Sub-Judge, 1933; deputed as Secretary, Sind Legislative Assembly, 1937; and appointed to do duty as Assistant-Secretary in the Legal Department in addition, in 1938.

Bense, H. H. W.—Clerk of the Provincial Council and of the Executive Committee, Province of the Cape of Good Hope, since 1936; *b.* Port Shepstone, Natal, 1890; served with Union Forces in the Union and South-West Africa, 1914-1915; Union Public Service, Administrator's Office, Windhoek, 1915; Clerk to the Advisory Council, South-West Africa, 1921-1926; Private Secretary to the Administrator, 1923-1926; accompanied Administrator on official visits to Geneva, 1924 and 1935; Clerk of the Legislative Assembly, Executive Committee and Advisory Council, South-West Africa, 1926-1936; Secretary various Government Commissions, South-West Africa; Silver Jubilee Medal, 1935.

Dollimore, H. N., LL.B. — Second Clerk-Assistant and Reader, House of Representatives, New Zealand, since 1933; *b.* October 20, 1905, at Gisborne, New Zealand; appointed Cadet, Stamp Duties Department, 1921, resigned, 1922; appointed Railways Department, 1923, resigned 1927; appointed Public Service Commissioner's Office, 1928; transferred to Parliamentary Staff, 1929; graduated LL.B., 1935.

Edwards, J. E.—Clerk-Assistant of the Commonwealth Senate since January 1, 1939; *b.* 1890, Daylesford, Victoria; entered Australian Commonwealth Public Service, 1911;

Secretary to the Leader of the Opposition in the Senate, 1913; Private Secretary to the Attorney-General, 1915; transferred to the clerical staff of the Senate in the same year, Clerk of Records and Papers, 1920; Usher of the Black Rod and Clerk of Committees, 1930; and Clerk-Assistant and Secretary of the Joint House Department, 1939.

Lal, Shavax Ardeshir, M.A., LL.B. — Secretary of the Council of State; *b.* November 12, 1899; joined the Service, June, 1930; 2nd class Sub-Judge, Bombay, 1930-1932; Assistant Secretary, Legal Department, Government of Bombay, 1932-1936; Deputy Secretary, Legislative Department, April, 1936; appointed to present position, 1939.

Moyer, L. Clare, D.S.O., K.C., B.A.—Clerk of the Parliaments, Clerk of the Senate and Master in Chancery of the Dominion of Canada; *b.* October 22, 1887, at Preston, Ont.; *s.* of Dr. Sylvester Moyer and Jane Hunter, both Canadians; *m.* Mary Louise, *d.* of Samuel Jefferson Chapleau, of Ottawa; appointed to present position December 20, 1938; matriculated at Galt, Ont., and graduated from University of Toronto (B.A.—Pol. Sc.), 1910; in newspaper work at Toronto and Regina; a member of the Bars of Ontario and Saskatchewan; appointed K.C. (Ont.), 1936; served oversea (France, Belgium, and Germany), 1916-1919; awarded D.S.O., 1918; on demobilization practised law in Regina; Law Officer Attorney Genl's. Dept. of Saskatchewan, 1921-1922; secretary to Rt Hon. W. L. Mackenzie King, Prime Minister of Canada 1922-1927; Secretary of Dominion-Provincial Conference, 1927; in private practice of law in Ottawa, 1928, to date of appointment. Clubs: Rideau Club, Royal Ottawa Golf Club, University Club of Montreal. Religion: Presbyterian. Address: The Senate, Ottawa, Ont.

Rodrigues, J. J.—Clerk of the Legislative Council of British Guiana; *b.* 1908; *ed.* Herne Bay College, Kent, England; joined Colonial Secretary's Office, British Guiana, 1927; 6th Class Officer, Customs, 1931; seconded to Colonial Secretary's Office, 1933-1937; appointed 3rd Class Clerk, Colonial Secretary's Office, 1937. In addition to duties in the Secretariat, Secretary, Mitchell Trust Fund and Clerk of the Legislative Council, October, 1936-November, 1937, and from February, 1938.

Shah, A. N., I.C.S.—Legal Remembrancer and Secretary to the Central Provinces and Berar Government in the Judicial and Legal Departments, and Secretary to the Central Provinces

and Berar Legislative Assembly, Nagpur, since February, 1939; *b.* September 29, 1896; joined the Indian Civil Service on November 9, 1921; served as Deputy Commissioner, Registrar of Co-operative Societies, Director of Industries and District and Sessions Judge.

Sardesai, V. N., I.C.S.—Secretary of the Bombay Legislative Assembly and Assistant Remembrancer of Legal Affairs since April 1, 1938.

Shujaa, Ahmed Khan Bahadur Hakeem, B.A.(Alig.).—Deputy Secretary to the Legislative Assembly, Punjab; *b.* at Lahore, October, 1893; *ed.* at the M.A.O. College, Aligarh—Harrington Scholar; graduated from the Allahabad University in 1914; Assistant Secretary to the Legislative Council, Punjab, from November, 1922; Assistant Secretary to the Legislative Assembly from April, 1937; Deputy Secretary to the Legislative Assembly, Punjab, from November, 1938.

Singh, Abnasha Sardar Bahadur Sardar.—Secretary to the Legislative Assembly, Punjab; *b.* at Gujranwala, August, 1893; Assistant Secretary to the Legislative Council, Punjab, March, 1922; Secretary to the Legislative Council, Punjab, 1922-1937; called to the Bar (Gray's Inn), 1931; Secretary to the Legislative Assembly, Punjab, since April, 1937.

Tatem, G. S. C.—Clerk-Assistant, House of Assembly, Bermuda; appointed by His Excellency the Governor, September 1, 1938; Oath of Allegiance administered by His Honour the Speaker, October 26, 1939.

Wanke, F. E.—Clerk of the Legislative Assembly, State of Victoria, since July, 1937; appointed to the State Public Service as a Clerk in the Crown Law Department, 1907; Assistant Clerk of the Papers, Legislative Assembly, 1913; Clerk of the Papers, 1922; Clerk of Committees and Serjeant-at-Arms, 1927.

XVI. STATEMENT OF ACCOUNT AND AUDITOR'S REPORT

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 VI.

The Statement of Account covers a period from 1st September, 1938, to 31st August, 1939. All the amounts received during the period have been banked with the Standard Bank of South Africa, Ltd.

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 for postages and other expenses of a small nature. Amounts received and paid for Volume VII, which are paid into a Special Account not operated upon, have been excluded from the Revenue and Expenditure Account.

The following amounts are owing:

	£	s.	d.
For printing Volume VI	25	0	0
Due to the Treasurer for postage		18	0
	25	18	0

Against this there is due and in hand:

	£	s.	d.
For Subscriptions	12	0	0
For Parliamentary Grants	5	0	0
In hand		19	11
	17	19	11

CECIL KILPIN,
Chartered Accountant (S.A.).

SUN BUILDING,
CAPE TOWN,
3rd October, 1939.

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

STATEMENT OF ACCOUNT FOR THE PERIOD FROM 1ST SEPTEMBER, 1938, TO 31ST AUGUST, 1939

REVENUE.

	£ s. d.	£ s. d.
Balance as at 31st August, 1938, being excess of Income over Expenditure at that date		1 9 6
Parliamentary Grants:		
Dominion of Canada	10 0 0	
Province of Nova Scotia (Vols. V and VI)	20 0 0	
Commonwealth of Australia	10 0 0	
State of New South Wales	5 0 0	
State of Western Australia (V and VI)	10 0 0	
New Zealand	10 0 0	
Union of South Africa	10 0 0	
Province of Cape of Good Hope ..	5 0 0	
Province of Natal (Vols. V and VI) ..	10 0 0	
Southern Rhodesia	10 0 0	
		100 0 0
Subscriptions:		
Volumes I to VI, both inclusive ..		80 1 8
Sales:		
Volumes I to VI, both inclusive ..		55 9 1
		£237 0 3

EXPENDITURE.

	£ s. d.	£ s. d.
Volume VI for 1937:		
Postage and Telephone	5 10 8	
Bank Charges	0 13 11	
Cables and Telegraphic Address ..	4 11 11	
Publications and Newspapers	9 14 6	
Typing and Clerical Assistance and Roneoing	40 16 3	
Printing and Publishing Volume VI on account	120 0 8	
Printing and Publishing balance Volume V	31 6 8	
Stationery	5 2 7	
Travelling Expenses and Carriage ..	9 4 8	
Office cleaners	0 12 0	
Gratuities to Messengers	3 15 0	
Audit Fee	3 3 0	
Insurance	1 8 6	
		236 0 4
Cash Balance, being Excess of Receipts over Expenditure		0 19 11
		£237 0 3

OWEN CLOUGH
Honorary Secretary-Treasurer and Editor.

Countersigned:

MAURICE J. GREEN,
Clerk of the Senate.

DANL. H. VISSER,
Clerk of the House of Assembly.

PARLIAMENT OF THE UNION OF SOUTH AFRICA.

Audited and certified correct:

CECIL KILPIN,
Chartered Accountant (S.A.),
Sun Building,
Cape Town,
South Africa.

3rd October, 1939.

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