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

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FOR 1939

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USUAL SESSION MONTHS OF EMPIRE PARLIAMENTS

27K

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		*	*					*	*			
INDIAN STATES: Mysore ..	*					*				*		
Jammu and Kashmir ..												
Gwalior												
Baroda												
BURMA		*	*					*	*			
BERMUDA												
CEYLON	*	*		*	*	*	*	*	*	*	*	*
BRITISH GUIANA				*	*	*				*	*	*
JAMAICA												
STRAITS SETTLEMENTS												

CONTENTS

* A subject standing over from *Questionnaire* for Vol. V.

† A subject contained in the *Questionnaire* for the present volume.

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

VOL. VIII. FOR 1939

I. EDITORIAL

Introduction to Volume VIII.—Our Society now passes its eighth milestone. Its membership increases and the officials of over 60 legislative chambers in the Empire co-operate in the production of its JOURNAL, the circulation of which extends to University and Public Libraries as well as to persons outside the Parliamentary circle, where interest is taken in the subjects which come within the orbit of the Society's investigations.

The year 1939, under review in this Volume, has been as full of interest in regard to constitutional and Parliamentary matters as its predecessor. The year reflects, to some extent, the beginning of the War, but what effect war emergency legislation will have upon Parliament itself remains to be considered in our Volume for 1940. Acts, however, have been passed by many Parliaments in 1939 in regard to M.P.'s and war service. The practice of sitting in Secret Session, suspended since the War period of 1914-1918, has again been resorted to by the House of Commons and discussed in the House of Lords. Instances still occur in the House of Commons of the continued watchfulness of its Members in regard to the duties and powers of Ministers and their relation to directorships of limited liability companies. The question of pensions to M.P.'s has been discussed both at Westminster and at Cape Town. This Volume therefore contains an instance both of the non-taxpayer method and that to which

the taxpayer would have to contribute. Although the latter method did not become an accomplished fact, it nevertheless affords a useful illustration. In Canada, the British North America Act, appeals to the Privy Council and electoral laws have again engaged attention.

A Minister of the Australian Commonwealth has been sworn in by the Chief Justice of Canada before the Governor-General in the capital of that Dominion. In some of the State Parliaments of Australia the question of a Member's disqualification has been raised and the electoral law has again come under review.

A Royal Commission has been sent by the Imperial Government to South Central Africa to investigate the much discussed question of the amalgamation of the two Rhodesias and Nyasaland, and the Report of the Commission was debated in the House of Lords.

Constitutional issues have arisen in many of the Provinces of India, resulting in the Governors of some of them having, under the India Contitution, to assume the responsibility of government, while constitutional progress in some of the Indian States has been promoted by their Rulers. The reform of the Constitution of Ceylon is still the subject of deliberation, and Malta has begun to retrace her steps toward more representative government, after a period of the suspension of her former Constitution.

King George V Memorial.—On June 20, 1939,[1] the House of Commons by Resolution approved, *nemine contradicente*, of the proposal of the Government to devote to the purposes of the National Memorial to His late Majesty, King George V, certain property in the vicinity of the Houses of Parliament to form an open space surrounding a statue of His late Majesty.

Return of Their Majesties, the King and Queen.—On June 22, 1939,[2] the Prime Minister moved in the House of Commons for an Address to welcome Their Majesties upon their return from Canada and the United States, and notified that the sitting of the House would be suspended[3] at 5.15 p.m. that afternoon in order to give Members of the House the opportunity of assembling on the pavements adjoining the New Palace Yard and opposite to join in the welcome. The sitting was resumed at 6 p.m.[4]

Similar proceedings were taken in the House of Lords, the Motion for Address, however, being moved on June 20.

[1] 348 H.C. Deb. 5. s. 2051-2054.
[2] *Ib.* 2491-2494.
[3] *Ib.* 2017, 2018, 2491, 2492.
[4] *Ib.* 2513.

Acknowledgments to Contributors.—We have pleasure in acknowledging an Article for this Volume on Secret Sessions (with permission of Sir Gilbert Campion, K.C.B., Clerk of the House of Commons) by Mr. S. St. G. S. Kingdom, a Senior Clerk on the Clerk's Staff. Other contributions are from Mr. T. D. H. Hall, C.M.G., LL.B., the Clerk of the New Zealand House of Representatives, and Mr. D. H. Visser, J.P., Clerk of the Union House of Assembly. War service has unfortunately prevented the supply of certain Articles from Canada. For the rest of the information sent in, we are indebted to the various members of our Society throughout the Empire; so much of our work depends upon the regular supply of the required documents, facts and references, by those best qualified to do so. Special mention, however, must be made of the help rendered by those of our members serving the Indian Provincial Legislatures in regard to the care taken by them to avoid any partisan attitude in reporting the facts in the case of the resignation of certain of the Ministries, which shows that the officials of those Legislatures are just as keen protectors as those long in Parliamentary service, of the principle of absolute detachment from politics of the officers of the Legislature, whose duty it has always been to treat all Members of Parliament alike, no matter to what Party they may belong. Particularly, however, should we appreciate being allowed to mention the ready and willing assistance rendered by the Librarian and his Staff of the Parliament at Cape Town, where much of our reference work is carried out.

Questionnaire for Volume VIII.—The *Questionnaire* for Volume VIII contained XVII items, some of which are perennials dealing with automatic information, but Items VI (Supplementary Questions), XI (the rights of Private Members in regard to public moneys), XIII (Privileges granted to Clerks-at-the-Table after retirement), and XIV (Use of Legislative Chambers for other purposes) have been included in this Volume, and the subject of Library Administration, an Item in the *Questionnaire* for Volume III, has been kept up to date. The procedure upon the "Address in Reply," an item standing over from the *Questionnaire* for Volume V, has also been included in the present Volume.

The remaining items of *Questionnaires* for Volumes IV, V, VI and VII have, however, still to be dealt with, such as: Cases of Privilege, Tampering with Witnesses, Suspension of and important alterations in Standing Orders, Pecuniary

interest of M.P.'s, the Crown's Powers under Oversea Constitutions as to the amendment of Bills, Approval and resignation of the Speaker, Parliamentary Expressions, Censure of the Chair, the Presiding Member's Power during Adjournment to Accelerate or Postpone Sittings of his House, Duties and status of Parliamentary Secretaries, Methods of treatment of Private and Hybrid Bills, Power and instances of rescinding Resolutions, and a large number of cases of the application of Privileges in many Parliaments of the Empire. Dissolutions of Parliament it is hoped to include in Volume IX.

In regard to the Tables of Precedence of the British Empire, although practically all the material for their separate publication has been prepared, it has been decided to postpone its publication until after the War. However, we thank members for the many orders sent in for this publication, which must essentially be run quite separate, in regard to finance, from the JOURNAL.

In view of the delay in the publication of the last Volume, it has been decided to go to press with this one earlier than usual in order to counteract any delays in transmission, printing, etc., due to a state of war. For that purpose, therefore, the index of the Rulings of the Speaker and Deputy Speaker at Westminster have had to be left over for inclusion in the next Volume.

G. H. C. Hannan.—Although Mr. Hannan retired from the dual office of Clerk of the Executive Committee and Clerk of the Provincial Council of the Transvaal Province of the Union of South Africa on January 31, 1939, as he almost immediately proceeded on a long-anticipated travel in the United Kingdom and the Continent of Europe, the presentations on his retirement were only made on February 6, 1940. Mr. Hannan was born at Downton, Wiltshire, England, on August 30, 1879, and was the son of Dr. F. J. Hannan, M.D., and his wife Harriet Mary Crawford. Mr. Hannan was educated at the Mercers' School and went to South Africa as a Volunteer during the South African War, 1899-1902, through which he served first with the City of London Yeomanry and afterwards with the South African Constabulary, receiving both the Queen's and King's Medals with 5 clasps. He joined the staff of the Clerk of the Executive and Legislative Councils under the Crown Colony Government when Lord Milner was Governor and Sir Arthur Lawley, K.C.M.G., Lieutenant-Governor, as Second Grade Clerk on October 29, 1902, and remained in that office until the grant of responsible govern-

ment to that Colony, when he was, on March 27, 1907, appointed to the office of Gentleman Usher of the Black Rod in the Upper House of Parliament, which post he held until he became, upon the advent of the Union of South Africa, Clerk-Assistant of the Provincial Council of its Transvaal Province, September 1, 1910; his promotion to the Clerkship took place on November 29, 1917.

In making the Staff presentation to Mr. Hannan on February 6, 1940, His Honour the Administrator of the Transvaal Province, General the Hon. J. J. Pienaar, said that everyone would agree that Mr. Hannan had a record of which he might well be proud, with the distinction that he had, during the whole 38 years of his official career, only one love, the Transvaal. His Honour regretted very much that, as he only recently became Administrator, he would not have the benefit of Mr. Hannan's ripe experience. Mr. Hannan had impressed all by his thoroughness and intimate knowledge of his work. He had always shown himself an official who believed in giving of his very best. One could always expect great things from a man who took a pride in his work. Mr. Hannan had that quality and the Transvaal Province had reaped the benefit of it. His Honour then presented Mr. Hannan with a cheque and said it was desired that he should have inscribed on whatever he might buy with it:

> With the best wishes of the Staff of the Transvaal Province, a token of esteem to Mr. G. H. C. Hannan, Clerk of the Provincial Council, Transvaal, on the occasion of his retirement, January 31, 1939.

Mr. Brink, M.P.C., a Member of the Executive Committee of the Province, then made the presentation of a pair of binoculars to Mr. Hannan on behalf of the Members of that Committee, as a special token of their appreciation of his services as the Clerk of the Executive Committee.

The third presentation was a cheque from the Members of the Provincial Council, which had passed the following Resolution:

> That this Council expresses its keen appreciation of the excellent services rendered by Mr. G. H. C. Hannan during the period he was Clerk of the Provincial Council and the Executive Committee.

The writer of this appreciation had the privilege of working as a colleague with Mr. Hannan in the Transvaal for several years, and can testify, from close personal relationship, to Mr. Hannan's many and excellent qualities. He was a most accurate and reliable official, with strong resolution, at all

times, as to what was his duty; in fact, he had all those attributes which go to make the ideal " Clerk of the House," upon whom his Presiding Member could always implicitly rely and in whom his Members could always have confidence. We wish Mr. Hannan long life and good health in his retirement, but we cannot imagine him ever inactive.

K. N. Majumdar, M.A.(Cantab.).—Mr. Majumdar, the Secretary of the Bengal Legislative Council, retired from office on December 31, 1939. Mr. Majumdar graduated at St. John's College, Cambridge, and in 1907 was called to the Bar from Gray's Inn, afterwards being enrolled in the King's Bench Division of the High Court in London. Later he returned to India and practised as a Barrister before the Calcutta High Court. Mr. Majumdar was also for several years Professor of Law at the Calcutta University Law College. In 1919 he entered the Government service, becoming Assistant Secretary in the Legislative Department, and brought out 3 volumes of the Bengal Local Statutory Rules and Orders. Mr. Majumdar in due course was promoted to First Assistant Secretary. In 1933, when the Government wanted an officer who had specialized in subsidiary legislative work for the purpose of framing rules under the Calcutta Improvement Trust Act, it was Mr. Majumdar who was selected as the most suitable man for the post. In the following year Mr. Majumdar's services were placed under the Government of India, he being the first non-I.C.S. Indian Officer sent to that Government for training in legislative drafting. In 1935 Mr. Majumdar was appointed special officer to revise the Statute Law of Bengal, and in 1937 he was appointed to the Secretaryship of the Legislative Council of Bengal, duly becoming a member of the Society.

On December 21, 1939,[1] before the adjournment of the Council, Mr. President drew the attention of the House to the fact that when they met again on January 3 they would miss their secretary, who was retiring at the end of the year. Mr. President said that the House was well aware with what devotion and sense of responsibility Mr. Majumdar had been discharging his duty during the last few years. He had known Mr. Majumdar as the Assistant Secretary when he himself was in 1924 a Member of the old Bengal Legislative Council. Since then he had sufficient opportunities of seeing him at work from close range, and he was glad to acknowledge that on many occasions he had received advice in respect of the

[1] Bengal Leg. Co. Deb., December 21, 1939.

interpretation of Statutory Rules which had been very helpful to him. Mr. President then said that if it was the unanimous desire of the House he would like to place on record their high appreciation of Mr. Majumdar's services by moving the following Motion:

> That this Council desires to express its appreciation of the manner in which Mr. K. N. Majumdar has uniformly discharged the duties of his important office during the long period spent by him in the service of this Council as its Secretary, and in the Bengal Legislative Council before and after the Montagu-Chelmsford Reforms.

Mr. President was supported by the Hon. Mr. H. S. Suhrawardy, on behalf of the Government, who said that few of them realized how the smooth working of the Legislature was dependent upon the work of the Secretary. The Government had received from Mr. Majumdar the greatest help in their work before the Legislature, which, he desired to tell Mr. Majumdar and the House, the Government appreciated very much.

The Leaders of the several parties and other Members in the House then paid many glowing tributes to Mr. Majumdar and his work as well as to his efficiency and the quiet, courteous manner in which he had invariably discharged the duties of his important office, one Member remarking of Mr. Majumdar:

> I found him a perfect gentleman, a good lawyer, and an officer with a good administrative ability.

The Motion was carried unanimously.

We wish Mr. Majumdar, as a member of this Society, good health and every happiness.

United Kingdom (Ministers of the Crown: Emergency Appointments).—An Act[1] was passed[2] during the year to make provision with respect to Ministers appointed in connection with the prosecution of the War, under which His Majesty may by Order in Council direct that the Act shall be applied to any Minister of the Crown appointed for the purpose of exercising functions connected with the prosecution of any war in which His Majesty may be engaged. The office of a Minister to whom the Act applies, or of a Secretary appointed by him, does not render either incapable of being elected to, or sitting or voting as an M.P., but not more than one Secretary in each Ministry may sit as an M.P. at the same time. Under section 1 (3) of the Act, it is provided that section 2 of the Re-election of Ministers Act, 1919,[3] which enables certain Ministers to sit in the House of Commons, shall not apply to any Minister under

[1] 2 and 3 Geo. VI, c. 77.
[2] 351 H.C. Deb. 5. s. 212-215.
[3] 9 and 10 Geo. V, c. 2.

the Ministers of the Crown (Emergency Appointments) Act, 1939. Section 2 thereof requires that every Minister appointed under the Act shall take the oaths of allegiance and office.[1] Section 3 provides that a Minister under the Act may incur such expenses and appoint such staff as he may with the consent of the Treasury determine, such being defrayed out of moneys provided by Parliament. The Minister is also empowered to adopt such official seal and describe himself as specified in his appointment, which seal is to be officially and judicially noticed and duly authenticated; every order, certificate, etc., issued by the Minister is to be received in evidence without further proof, unless the contrary is shown.[2] Certain provisions of the Documentary Evidence Acts of 1868 and 1882 are applied,[3] and section 5 provides for the transfer of statutory functions from Government Departments to a Minister appointed under the Act.

United Kingdom (Meetings of Ministers).—On October 18, 1939,[4] in answer to a Question in the House of Commons, the Prime Minister said the Committee of Ministers concerned with the various aspects of Civil Defence, set up a year ago under the chairmanship of the Member for the Scottish Universities (Sir John Anderson), then Lord Privy Seal, was reconstituted on the outbreak of war as a Standing Committee. This Civil Defence Committee was presided over by the Minister of Home Security. A further Standing Committee of Ministers, the Home Policy Committee, was set up on the outbreak of war under the chairmanship of the Lord Privy Seal. The Committee covered all domestic questions other than those specifically referred to other Committees, and reviewed all proposals for Government legislation on Regulations under the Emergency Powers (Defence) Act, 1939.[5] Particulars in regard to the Ministerial Committee on Economic Policy were given in the answer the Prime Minister gave on October 9 to the Hon. Member for Central Leeds. All these Committees held regular meetings. In addition to the above, many other meetings of Ministers were, of course, held from time to time, often in the form of *ad hoc* or temporary committees or sub-committees appointed to consider specific questions.

United Kingdom (Official Secrets).—As reference was made to this subject in our last Volume,[6] it is mentioned that the

[1] 31 and 32 Vict., c. 72.
[2] 2 and 3 Geo. VI, c. 77, sec. 4.
[3] 31 and 32 Vict., c. 37; 45 and 46 Vict., c. 9.
[4] 352 H.C. Deb. 5. s. 873.
[5] 2 and 3 Geo. VI, c. 62.
[6] *See* Vol. VII, 122-149, dealing with the *Sel. Com.* Reports H.C. Papers Nos. 146, 173, of 1938; 101, of 1939.

Official Secrets Act, 1920,[1] was amended by the Official Secrets Act, 1939,[2] by substituting a new section 6 in the Act of 1920, thereby limiting the special powers of interrogation to cases of offences or suspected offences under section 1 of the Act of 1911,[3] and that, except in cases of great emergency, the permission of the Secretary of State must be obtained before the powers of interrogation are exercised.[4]

House of Lords (Debate for Secret Session).—On November 15, 1939,[5] Lord Arnold rose:

> to call attention to the desirability of the House of Lords meeting for a Secret Session; and to move for Papers.

The Noble Lord drew attention to the need for a Secret Session becoming more and more urgent, and referred to the Secret Session held by the House of Lords on April 25, 1916, and the 5 Secret Sessions held during the Great War in " another place." He urged that Noble Lords, with their knowledge and experience, were not making anything like the full contribution which they could make to the solution of the various problems which faced the country. Their Lordships had the weekly statements by the Noble Earl, Lord Stanhope, about the War. Each Thursday he gave them a statement which purported to be on the progress of the War, but, in fact, practically all that he said they knew before he got up. Actually, of course, no really free discussion was possible because they were at war. Some points of great substance had never been replied to at all. Hence, in the Noble Lord's submission, there was a strong case for holding in their Lordships' House a Secret Session at which they could speak freely and the Government also could speak much more freely than they did at present. The view that a Secret Session would be in the national interest was supported and confirmed by experience. Nearly all the argument against a Secret Session was rendered untenable by the fact that in the last war the 6 Secret Sessions were held over nearly 2 years, approved and arranged by both the Coalition Governments. The Noble Lord referred to the large and important meetings of M.P.'s which had been recently addressed by Ministers at which confidential speeches had been made. If that sort of thing was going on, a confidential speech could also be made to their Lordships' House. The request for a Secret Session really arose, not so much

[1] 10 and 11 Geo. V, c. 75.
[2] 2 and 11 Geo. V, c. 75.
[3] 114 H.L. Deb. 5. s. 1801-1831.
[4] 2 and 3 Geo. VI, c. 121.
[5] 353 H.C. Deb. 5. s. 783-791.

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because of what the Government would say to the House, as because of what the House would say to the Government. The views which a Noble Lord desired to put before the Government and which he would put in a Secret Session were far too long to be incorporated in a letter. Next he would base his appeal on the ground that a Secret Session was a means of giving protection to minorities.

Lord Noel-Buxton, in supporting the proposal, said that as a Member of "another place" during the last war he saw the advantage that accrued to the Government, as much as to those Members who wished for a Secret Session, from the several Secret Sessions which were then held. He felt most strongly the objection to free public discussion, for instance, of war aims.

The Marquess of Crewe said it was unfortunate that the adjective "secret" was one applied to these unreported Sessions. On the other hand there were subjects which might quite conceivably be discussed in an unreported Session better and more fruitfully than they could be at one of their ordinary meetings. As regards domestic questions, there were matters connected with various features in the emergency legislation, and the hardships to some classes and some individuals which that legislation was bound to produce, which if publicly discussed might create, particularly in enemy countries, false impressions as to the temper of the people and their determination to carry through the war. It would be clearly difficult to hold a Secret Session in one House and not in the other.

Viscount Astor did not see that the Government had anything to lose by a Secret Session. It would be an opportunity to give information, to remove misgivings and suspicions, and to hear what many Private Members, who did not hold office, had to say on certain major questions. Looking back, his clear recollection was that nothing but good came out of those Secret Sessions. Secret Sessions were held for two reasons. The first was discontent with the way in which the Government of the time were prosecuting the War; and the second was probably, at a subsequent stage, a desire on the part of the Government to speak to Members, of all Parties, with a frankness which was impossible for them to adopt in the ordinary open Session. Therefore, the Noble Viscount suggested that the Government should not wait until events and clamour forced them to have a Secret Session. There were some of their Lordships who felt that industry had not been

sufficiently notified. There were some who felt that they might get into a spiral where wages and prices chased each other because there had not been a sufficiently-thought-out policy on the part of the Government.

Lord Harmsworth was strongly in favour of Secret Sessions, and said that there was only one argument against them, and that was overcome years ago; it was the possibility that they might excite apprehension in the public mind, but that was not the result of Secret Sessions in the last war in " another place." No secrets were divulged by Ministers, nor were they expected. It was a case, not so much of extracting secret information from Ministers, as of affording Parliament—this House and the other House too, if they chose—an opportunity of telling Ministers what Parliament thought about them. The Noble Lord remembered one Secret Session in the Great War that ran over 2 days, which was devoted to the food supply of the country. He had no hesitation in saying that Secret Sessions brought about nothing but the best possible results. He knew of no experience of past Secret Sessions that would lead them to have any misgivings that confidences given in their Lordships' House or in " another place " would ever go outside the walls of Parliament.

Viscount Trenchard remarked that there were subjects of which one could not speak except in Secret Session. He felt that if suggestions could be made in a Secret Session in the House of Lords, implying in some cases criticisms or suggestions of something different from what was being done at the present time, it would give the Government an idea of what the public were thinking. The Noble Viscount suggested that it should be a 2-day Secret Session; that all suggestions or subjects discussed on the first day be re-discussed and followed up on the second day, and that no new matter be introduced on the second day so as to give the Government an opportunity of considering whether they saw a general pressure of opinion on one particular point.

Lord Ponsonby of Shulebrede remarked that a Secret Session was merely a matter of allowing them an opportunity to say fully what they thought.

Viscount Sankey urged the Government to consider that there might be men in their House who could make suggestions in perfect good faith, perfect generosity, without any desire to run the Government down or to get any advantage to themselves, which might be a very considerable help to the prosecution of the War.

The Marquess of Londonderry, supporting the Motion, said there were many Members who were most anxious to play their part as Members of their Lordships' House but who felt themselves muzzled and controlled because some of their speeches might savour of criticism of the Government. Those criticisms would go out to the Press and run the risk of being misrepresented, and one would no doubt find in the German broadcast an interpretation quite different from what was intended, and those opinions would go out to neutral countries all over the world. That was why many of their Lordships had remained silent through all these debates. The only opportunity they could have was in some form of Session not open to the public and not reported in the Press.

The Earl of Crawford remarked that there were very few subjects which had been suggested during the debate which could not be discussed in open Session. He quite understood, however, that the time might come when it might be necessary for the Government to make communications of a very serious nature to Parliament, but he hoped that until the very last moment their traditional policy of open and public Sessions of Parliament would be retained both for the benefit of Parliament and for the public.

Lord Elton remarked that he would like to hear a searching debate upon their war aims.

Lord Rennell said that it may be sometimes impossible publicly to explain a source of information or even general sources of information, whereas in a Secret Session one would be able to go much further in making known what was the source of information and how far it might be regarded as trustworthy.

The Lord President of the Council (the Rt. Hon. Earl Stanhope) pointed out that at each of the Secret Sessions which had been held in both their Lordships' House and in "another place," there was a definite object for discussion. The subject of discussion in the Secret Session in their Lordships' House was the question of compulsory military service, upon which there was great division of opinion, not only in both Houses of Parliament but throughout the country, and no doubt the Government of the day found it a great advantage to discuss with Members of both Houses that extremely important question to find out how they were likely to get support in proposing compulsory service. The Noble Earl could conceive of no such question to-day. There was no substantial division of opinion in the country on any great matter. Another

point was that there was far more publicity to-day in every kind of way than there was 25 years ago. There was also now another medium through which publicity was given, that was through the radio. The moment the Government agreed that a Secret Session should be held, the public at once felt that they were not being taken into the full confidence of the Government and were not being given all the truth. The only thing that the Government felt that it was necessary to hide was anything which might assist the enemy. He had no reason to think that suggestions and criticisms made to him had received less consideration because they were made in a private manner than they would have received if they had been made in a Secret Session when obviously no record of them could be kept. In referring to the effect of a Secret Session abroad the effective means of considering untrue propaganda was not merely to deny it. Chapter and verse had to be given if it was to be met adequately. That, of course, could not be done after a Secret Session. Many questions had been suggested for discussion at a Secret Session, but was there any topic at that moment really ripe for such a discussion?

At the conclusion of the debate the Mover, however, having regard to wider considerations, begged leave to withdraw the Motion, which was allowed.

House of Lords (Addressing House in Uniform).—On October 11, 1939,[1] the Lord President of the Council (the Rt. Hon. Earl Stanhope), during the course of debate, said: "We have had a broadside attack on the Government from several Noble Lords, including one who appears here in uniform, which I am bound to say is unique in my experience."

Lord Strabolgi thereupon interrupted the Lord President and, drawing attention to what had been said, suggested that it raised rather an important question of Privilege, and they might all appear in uniform at any time. The Noble Lord called for a ruling from the Lord President. The Lord President replied that he was not prepared to give a ruling, but there was a Motion passed in "another place" as regards Members of that House, and it was then asked whether a similar rule applied here, and the Government of that day said that undoubtedly it applied to all Members of Parliament and that they should not take part in debates on political matters while they were serving in His Majesty's Forces.

Lord Strabolgi then drew attention to a speech delivered in

[1] 114 H.L. Deb. 5. s. 1354-1356.

their House last week by Lord Birdwood, wearing the full uniform of a Field-Marshal, and no objection was taken. "Is not a Lieutenant-Commander allowed to address your Lordships?"

Viscount Swinton observed that during the last war, on many occasions, and particularly when important debates were going to take place in Parliament, Members of both Houses who were serving with the Forces were given special leave to enable them to attend Parliament.

The Marquess of Crewe then confirmed what Lords Strabolgi and Swinton had said, remarking that he hoped the Noble Earl would agree that there could hardly be an objection to one of their Lordships appearing in His Majesty's uniform.

Lord Gifford then said:

> I am only a very junior Member of your Lordships' House, but I would like to say that I am now serving in a Department of which the Noble Earl, Lord Stanhope, was recently Minister, and I am also trying to run a business of my own and do my duty in this House. As a serving officer I am quite aware of the rules concerned with the wearing of uniform during wartime. I have been to the Admiralty this evening, and hurried up with my job there, and asked permission of the Director of my Department to come down for three-quarters of an hour to take part in this debate, which I felt was important. I feel therefore I am justified in appearing in this uniform.

The Lord President then said:

> I apologize to your Lordships. Undoubtedly I was wrong in the matter, and I say so quite frankly. I had forgotten what had taken place in the last war, of which I am now reminded, and the Noble Marquess opposite, of course, is quite right. I need hardly say that whether Noble Lords are in uniform or otherwise, I am always glad to welcome criticism when it is helpful, whether it is against the Government or against any other Party. After all, we are all united in our object of winning this war at the earliest possible moment, and if Noble Lords come in uniform to help us to that object that is, of course, something to which no exception can be taken. I apologize to the Noble Lord for having said what I did, because undoubtedly I was wrong.

House of Lords (Peers and the Official Secrets Acts).—On May 2, 1939,[1] Lord Snell asked the Government:

> Whether in view of the findings of the Select Committee appointed by the House of Commons[2] in December last, "to inquire into the applicability of the Official Secrets Acts" to

[1] 112 H.L. Deb. 5. s. 853.
[2] H.C. Paper 101, 173, of 1939; *see also* JOURNAL, Vol. VII, 122-149.

> Members of that House, they are prepared to make any statement as to the applicability of those Acts in equal degree, and in comparable circumstances, to Members of the House of Peers; and to move for Papers.

To which the Lord Chancellor (the Rt. Hon. Lord Maugham) replied that the best course to adopt would be for him to put a Motion on the Paper that a Select Committee be appointed to consider the matter.

Lord Snell observed that they ought to be able to claim the same privileges in this House that are accorded to Members in " another place."

In moving for the appointment of the Select Committee on May 9, 1939,[1] the Lord Chancellor said that the privileges of Noble Lords, both historical and otherwise, were not the same in a number of respects as the privilege claimed by Members in " another place," and it seemed desirable that the matter should be gone into by a Committee.

On July 20, 1939,[2] the Select Committee reported that they had met and considered matters referred to them, and had examined the Clerks of the Parliaments thereon. The Committee was satisfied that no Statute could be construed as being intended to diminish or destroy the Privilege of Members of the House of Lords unless express words having that effect were used in the Act. In the opinion of the Committee the extent to which Privilege extended immunity to Members of the House of Lords from prosecution was not affected by the operation of the Official Secrets Acts 1911 and 1920.

The Report of the Select Committee[3] was then adopted.

House of Commons (Secret Session: Question and Rulings). —On December 5, 1939,[4] the Leader of the Opposition (Rt. Hon. C. R. Attlee), (*by Private Notice*) asked the Prime Minister whether he had considered the request for a Secret Session. To which the Prime Minister replied that he was prepared to agree with the Rt. Hon. Gentleman's request and give one day for a Secret Sitting of the House to consider those matters for which the Minister of Supply was specially responsible. The date of the Sitting would be for arrangement through the usual channels.

Mr. Attlee then asked as a Supplementary Question whether Mr. Chamberlain proposed that the debate should take place on a particular Motion, and stated that they were to be restricted to the Ministry of Supply, but the points put forward

[1] 112 H.L. Deb. 5. s. 998, 999.
[2] 114 *ib.* 315, 316.
[3] H.L. Paper 158 of 1939.
[4] 355 H.C. Deb. 5. s. 452-454.

embraced not only that Ministry, but general supplies of war materials and equipment. To this Mr. Chamberlain replied that the debate would be on the Motion for the Adjournment.

The Hon. Member for Caithness and Sutherland (Rt. Hon. Sir Archibald Sinclair) then asked if the Prime Minister would make it clear that they would be able to discuss the general question of supply, and that they would not be limited to those measures of supply which ordinarily came under that Ministry. To this the Prime Minister replied that the debate would be on matters generally connected with the question of supply.

To another Supplementary Question Mr. Chamberlain said that he could not give more than one day.

The Hon. Member for Lewes (Rear-Admiral T. Beamish) then asked Mr. Speaker whether there was any Standing Order which controlled Members in regard to what took place at a Secret Session, because, upon looking at S.O. 89, it seemed clear that if a Member only gave information in the course of conversation he was at liberty to say exactly what took place at a Secret Session, and that it was only if he permitted publication, either in a speech or in some form of printed publication, that he could get into trouble with the House. The hon. Member asked for a ruling as to whether he was at liberty to tell his constituents, which it was his intention to do, unless there was a reason against it, as to what occurred at the Secret Session.

Mr. Speaker: "There is no Standing Order dealing with a Secret Session, but the idea of a Secret Session is that it should be secret."

In connection with remarks as to whether the Ladies' Gallery would be open during a Secret Session Mr. Speaker said: "I understand that the Ladies' Gallery is not part of the House, and in the last war ladies were not admitted to it during a Secret Session."

On December 7, 1939,[1] in course of reply to the Leader of the Opposition in regard to the business of the House for the following Wednesday, the Prime Minister said that on Wednesday arrangements would be made for a Secret Session to consider the organization of supplies.

In reply to a Supplementary Question by another Member, the Prime Minister said that the Motion that strangers withdraw could certainly be left to the free vote of the House.

In reply to further Supplementary Questions, the Prime

[1] *Ib.*, 824-827.

Minister said: " Mr. Speaker has pointed out there will have to be a Motion ' That there be a Secret Sitting,' and the Government Whips will be put on for that."

On December 12, 1939,[1] an hon. Member asked for Mr. Speaker's ruling:

> Mr. Foot: I would like to ask your guidance, Mr. Speaker, on a question relating to the proposed Secret Session to-morrow. I wish to ask whether it is not the fact that any Member who repeated outside, even in private conversation, anything said in this House during a Secret Sitting would be guilty of a breach of Privilege or, alternatively, of a gross contempt of this House, and would be liable to such penalties as the House is able to impose ?
>
> Mr. Speaker: I have been asked whether it is not the fact that any Member who repeated outside, even in private conversation, anything said in this House during a Secret Sitting would be guilty of a breach of Privilege or, alternatively, a gross contempt of this House, and would be liable to such penalties as the House is able to impose.
>
> Before I deal with the specific point raised in the hon. Member's question, it may be well if I remind the House that the right to publish Debates which take place here has never been conceded by the House, and it is only by the sufferance of the House that they are published in the ordinary course. Many Orders forbidding the publication of Debates remain on the JOURNALS, and the House has expressly refused to waive this prohibition (Parliamentary Debates [1875], 224, Chapters 48 and 1165). Some of these Orders are cited in Erskine May, thirteenth edition, p. 82, and others are referred to in footnote 3 on the same page.
>
> These Orders refer primarily to publication in print, and might not be held to apply to the disclosure of Debates in private conversation. I refer to them here as showing that the House has always claimed the right to control the communication of its Debates to the public.
>
> With regard to the disclosure in private conversation of what has passed in a Secret Session, I should prefer to found myself on the fundamental rule of Privilege that wilful disobedience of an Order of the House constitutes a contempt of the House and may be punished at its discretion as a breach of Privilege.
>
> A Secret Sitting is preceded by an Order that strangers do withdraw, and also by a resolution that " the remainder of this day's Sitting be a Secret Session." The intention of the House that the proceedings at such a sitting should not be divulged could not be more clearly indicated. A Member who discloses even in private conversation what has taken place at such a Sitting will be wilfully disobeying an order of the House, and will be thereby committing a gross breach of Privilege. He will render himself liable to punishment by such of the penalties, within its power to inflict, as the House of Commons deems to

[1] *Ib.* 1034.

be appropriate to the offence—by reprimand, by commitment, or even, in an extreme case, by expulsion.

In order to complete my statement on the general position as I see it, I may refer to the Regulation prohibiting publication of the proceedings at a Secret Session made by Order in Council under the Emergency Powers (Defence) Act. The penalties for a breach of this Regulation would, of course, be inflicted by a court of law, and it is no part of my duty to seek to determine what particular actions are covered by this Regulation. But I may say confidently that the statutory offence created by this Regulation is in addition to the offence subsisting under parliamentary law, which would be constituted by wilful disobedience of an Order made by this House, and does not have the effect of ousting the jurisdiction of the House to punish the offence committed against itself.

Sir I. Albery: Arising out of the statement you have just made to the House, Sir, may I ask what would be the position of a Member who had attended the Secret Sitting conversing with a fellow Member who had not been present?

Mr. Speaker: It would seem to be rather a harmless offence.

Mr. Denman: With regard to the procedure to-morrow, I understand there is to be a short discussion on the Motion that we go into this Secret Sitting. Will that be reported or will the Reporters' Gallery be cleared?

Mr. Speaker: No, the discussion will not be reported.

Mr. McEntee: What would be the position of a Member who was present in the House if he conversed with a Member who was not present in a tone of voice loud enough to be heard by somebody else?

Mr. Speaker: That is a question I could not answer.

On December 13, 1939,[1] Mr. Speaker was again asked for a ruling, as follows:

Mr. Mander: I rise, Mr. Speaker, to ask you to be good enough to give a Ruling on the following point: whether Members of the House of Commons will be entitled to communicate to Members of "another place" who have not been present at the Secret Session information as to what took place at such Session?

Mr. Speaker: In reply to the hon. Member, under S.O. 89 it is conceded, as a matter of courtesy not of right, that Members of the other House may remain here during Secret Sessions when other Strangers are ordered to withdraw. If a Member of this House who is present at the Debate discloses what has taken place at the Secret Session to a Member of the other House who was not present, but who could have been present had he so desired, he might be adjudged to have committed a technical offence, but it would be for the House to decide whether a breach of Privilege had been committed and on the gravity of the offence.

Mr. Thorne: I take it for granted that the Ruling you have given, Sir, will apply to absent Members of this House as well?

Mr. Speaker: Their position is very much the same.

[1] *Ib.* 1210.

Mr. G. Griffiths: If a Member of "another place" divulges to his wife what has gone on in this House, what is to be the penalty for him?

Mr. Speaker: Perhaps it would be as well for me to say what, in my opinion, is the position in this matter of Members of the other House. I said just now that it is conceded, as a matter of courtesy not of right, that Members of the other House may remain here during Secret Sessions when other Strangers are ordered to withdraw. If a Member of the other House were guilty of disclosure of the proceedings at such a Session it would be left to the House of which he is a Member to inflict the appropriate penalty. The usual proceeding would be to examine into the fact and to lay a statement of the evidence before the other House, whose duty it would be, upon being apprised of the fact, to take proper measures to inquire into it and punish the offender. In this connection, it is not necessary to refer to any liability to prosecution which exists under the Defence Regulation made under the Order in Council of December 11.

Sir J. Lamb: In view of the limited accommodation usually provided here for Members of the other House, would it be possible to allow them, if they so desire, to be accommodated in the Public Gallery?

Mr. Speaker: I see no objection to that.

House of Commons (Ministers and Directorships).—On April 20[1] the Prime Minister was asked whether he was aware that the President of the Board of Trade was a Director of Prescot Proprietary Ltd., and whether he would take steps to ensure compliance with the rule that Ministers of the Crown should not hold company directorships. The Prime Minister replied that such a private company was not subject to the rule referred to, and that in any case the Minister was not a director of the company, although he had power to act as a director in event of another being abroad. He had no interests in the profits of the company, and, in fact, had never been called upon to act as a director.

On May 9[2] the Prime Minister was asked whether he was aware that the Lord President of the Council was a director, on leave, of the London, Midland and Scottish Railway Company and of the Moor Line, Runcimans (London) Ltd. and Runciman Shipping Company Ltd., and whether he would require him to resign such directorships. The Prime Minister replied to the first part of the Question in the affirmative, and said that his Noble Friend had informed him of his position in regard to these directorships before he accepted invitation to join H.M. Government. The reply to the second part of the Question was that such were private companies. As

[1] 346 H.C. Deb. 5. s. 512. [2] 347 *ib.* 287-290.

regarded the Moor Line, the Minister was only technically a director because under a legal instrument the President of the Runciman Shipping Company was *ex officio* on the board of the Moor Line. In the case of the L.M. & S. Railway, the Minister, though nominally still recorded as a director, had, since he took office, entirely ceased to have any part in the direction of the company, nor had he received any emoluments as a director.

After other Questions[1] on the subject of Ministers and directorships, the Prime Minister on July 31[2] was asked whether he could make any statement in regard to the memorandum recently submitted to him by the Hon. Member for Hammersmith North on the subject of Ministers holding company directorships. In his reply the Prime Minister quoted the Campbell-Bannerman rule of 1906[3] and said:

> At the time when this rule was announced the term " private company " had no statutory significance and was used probably to cover companies dealing wholly or mainly with family interests. Since then the term has received a statutory definition which covers a very wide field, and examples of existing private companies submitted by the Hon. and learned Gentleman show that such companies may control very large amounts of capital while their shares may be in turn controlled by public companies engaged in the widest possible range of activities. In these circumstances it is clear that if the term " private companies " in Sir Henry Campbell-Bannerman's ruling were to be interpreted in the statutory sense it would travel far beyond the intentions of the original framers of the rule.
>
> Accordingly, after consultation with my colleagues, I propose to interpret the term in future as applying only to concerns dealing wholly or mainly with family affairs or interests and not primarily engaged in trading. Since this is not a rigid definition the Prime Minister of the day must be the final judge of whether any particular directorship held by a colleague comes within the rule or not, and Ministers will, therefore, doubtless submit to his consideration any case about which there might be a doubt. This applies to honorary directorships as well as to dictatorships of private companies. I would add that, as

[1] *Ib.* 983, 1186, 1187; 348 *ib.* 911; 349 *ib.* 1497, 2410; 350 *ib.* 1642.
[2] *Ib.* 1937.
[3] *See* JOURNAL, Vol. VI, 16 *n.*

was observed by Lord Baldwin when he was Prime Minister on July 5, 1926:[1]

> the safeguard against any difficulty such as the hon. Member appears to have in mind lies in the traditional standards of public life in this country.

An hon. Member then asked, as a Supplementary Question, whether that rule applied to Members of the present Cabinet and whether the Prime Minister proposed to take any steps to ascertain whether any Members of his Cabinet came under the rule, to which the Prime Minister replied: "It applies to the present Cabinet, and I have already taken such steps."

House of Commons (Ministers' Shareholdings).—On May 18[2] the Prime Minister was asked what was the rule concerning the holding by Members of the Government of shares in undertakings, the operations of which may be affected by Government policy, to which the Prime Minister replied: "There is no such rule." The Questioner then asked, as a Supplementary Question, whether it was not the case that if a Member of that House who was a partner in a private firm which was contracting with the Government voted on a matter affecting that contract he was liable to a penalty; and, if that was so, what was the position of a Member of the Government who was a director of a type of company which was controlling a public company which was contracting with the Government? The Prime Minister replied: "That appears to be a complicated Question, and perhaps the hon. and gallant Member will put it down."

Another Member then asked if the Prime Minister was aware that if such Member sat on a local authority he would be liable to prosecution.

House of Commons (Ministers' Powers).—On June 27, 1939,[3] the Prime Minister was asked whether his attention had been called to the extensive law-making powers conferred upon Ministers by recent statutes; and whether the Government would now consider giving effect to the recommendation of the Committee on Ministers' Powers that a small Standing Committee should be set up in each House of Parliament at the beginning of each Session to consider and report on every Bill containing a proposal to confer law-making power on a Minister, and also to consider and report on any regulation

[1] 197 H.C. Deb. 5. s. 1609. [2] 347 H.C. Deb. 5. s. 1610.
[3] 349 H.C. Deb. 5. s. 206; *see also* JOURNAL, Vols. I, 12; IV, 12; VII, 30-31.

and rule made in the exercise of delegated legislative powers and laid before the House in pursuance of statutory requirement. The Prime Minister replied that the hon. Member perhaps had in mind the Orders recently made under the Military Training Act and the Reserve and Auxiliary Forces Act. The powers given by the two Acts in question were, of course, entirely exceptional, and the Government had no intention of treating them as a precedent to be followed in ordinary circumstances. "As regards the last part of the Question, I can add nothing to what has been said in reply to previous Questions on this subject, except to repeat the assurances already given that the views expressed in the Report are carefully borne in mind in relation to current legislation."

The same hon. Member then asked, by Supplementary Question, whether the Prime Minister was aware that the Report of the Committee on Ministers' Powers had now been published for 7 years; and how much longer did the Government need to make up their mind on these recommendations.

House of Commons (Members' Speeches).—On May 25, 1939,[1] in the House of Commons, an hon. Member asked Mr. Speaker whether he would be prepared to advise the House as to the best step that should be taken to enable a greater number of Members to take part in debates on subjects which aroused general interest, such as foreign affairs. The hon. Member then referred to a recent debate when out of 11 hours' debate official party speakers and Privy Councillors occupied just over 8 hours, with an average length of speech of 40 minutes, only 7 ordinary back-bench Members having spoken. Excluding these only 4 completely ordinary back-benchers spoke, with a speech limit of 20 minutes. The hon. Member observed that for only some 6 out of 600 Members to be able to speak was really a denial of free speech and a negation of Parliamentary government.

In reply, Mr. Speaker said he was quite prepared to advise the House as to what steps to take to enable a greater number of private Members to take part in debates, but whether it followed his advice or not was quite another matter. The suggestion he would make was that Members[2] should all curtail the length of their speeches, but the remedy was entirely in the hands of the Members themselves. Under the system now often operated in the House, of a time table either by

[1] 347 H.C. Deb. 5. s. 2500-2504.
[2] *I.e.*, Ministers, Privy Councillors and Private Members.

agreement or by guillotine, under which debate is curtailed, it seemed almost an obvious corollary that there must be some time limit of speeches. Mr. Speaker assured the House that, with few exceptions, the short speeches were the best and most effective. Disraeli was reputed to have said in reply to a new Member who asked him whether he advised him to take part often in debate, "No, I do not think you ought to do so. It is much better that the House should wonder why you do not speak, than why you do." Mr. Speaker also remarked that on matters of great importance, such as foreign affairs, it was generally the Members who had some special knowledge of the subject before the House who often spoke as representing a considerable body of opinion. Privy Councillors, by tradition, had a greater right to be called than other Members, but he suggested that they showed consideration for other Members.

House of Commons (Hansard Corrections).—On June 8, 1939,[1] an hon. Member asked for the advice of the Deputy Speaker as to whether there were any means by which M.P.'s might correct mistakes in *Hansard* in such a way as to make such corrections known before publication. The Deputy Speaker replied that the only way for the Member to achieve his purpose was by applying to the reporters immediately afterwards in order to get the proof. Another hon. Member wished that Mr. Speaker would warn M.P.'s that they should not follow the practice of altering speeches but should rather correct them to appear in the bound volumes — not correct them to appear next morning different entirely from what they had spoken in the House.

House of Commons (M.P.'s and Military Service).—An Act[2] was passed during the year to prevent membership of any of His Majesty's Forces from being a disqualification for Membership of the House of Commons, under which it is provided that notwithstanding an M.P., as a member of any of His Majesty's Forces, holding an office or place of profit under the Crown, he shall not thereby be incapable of being elected to, or of sitting or voting in, the House of Commons. In subsection (2) of the short title and duration of the Act section, the Act is to continue in force until such date as His Majesty may by Order in Council declare to be the date on which the emergency that was the occasion of the passing of the Act has come to an end, when it shall then expire, except as respects things previously done or omitted to be done. In his speech on

[1] 348 *ib.* 597-599. [2] 2 and 3 Geo. VI, c. 8

the Second Reading of the Bill,[1] the Attorney-General observed that the incapacity, if any, which made the Bill necessary, arose under Section 24 of the Succession to the Crown Act, 1707.[2]

House of Commons (M.P.'s Serving as Officers).—On September 26, 1939,[3] the Secretary of State for War was asked what instructions had been issued to commanding officers, and what transport facilities had been arranged, to enable M.P.'s serving in the Army to attend meetings of Parliament, visit their constituencies and otherwise, so far as practicable, perform their Parliamentary duties. The Minister replied that the rights of an M.P. to attend upon the House could not be impugned, but if it were unreasonably or inappropriately invoked, it might become impossible for the military authorities to allow the M.P. to continue to serve in his unit. Normally these matters could be arranged between the serving M.P. and his commanding officer. The Chancellor of the Exchequer had arranged that serving M.P.'s would in appropriate cases receive similar transport facilities in the United Kingdom, to and from their units for the purpose of attending Parliament, to those they received when travelling to and from their constituencies.

House of Commons (M.P.'s Salaries).—In reply to a Question on April 5, 1939,[4] in the House of Commons, the Financial Secretary said that one M.P. had declined to receive the Parliamentary salary of £600 and 7 accepted only part of the allowance.

United Kingdom (Numbering of Acts).—Reference was made in our last issue[5] to the future numbering of Acts in South Australia. During 1939, it has been decided by the Statute Law Committee, as a matter of routine of publishing legislation, to make its annual volume, or volumes, of the United Kingdom Public General Statutes, in future, calendar year volumes in place of sessional volumes. Therefore the two volumes of 1939, which would ordinarily have contained the Acts of the Session 2 and 3 Geo. VI (autumn 1938 to autumn 1939), will contain also the two Acts of the new session 3 and 4 Geo. VI, which were passed at the end of 1939. All modern Imperial Acts will also have the calendar year attached to the short title.

House of Commons (Suspension of Sitting).—On August 24, 1939,[6] in the House of Commons Mr. Speaker said:

> I propose to suspend the sitting of the House until the Bill which has just left the House has been returned from "another place."

[1] 351 H.C. Deb. 5. s. 277. [2] 5 Anne, c. 8, given by 59 and 60 Vict., c. 14.
[3] 351 H.C. Deb. 5. s. 1183. [4] 345 H.C. Deb. 5. s. 2803.
[5] *See* JOURNAL, Vol. VII, 60. [6] 351 H.C. Deb. 5. s. 110.

On September 2[1] following, Mr. Speaker said:

> I understand that the Prime Minister will make a statement in a short time, and I will suspend the Sitting. The bells will be rung when the House is to reassemble.[2]

On September 3,[2] in Committee, the Chairman said:

> There is to be a Royal Commission in a very short time, and I think it would be convenient to suspend the Sitting.

After the suspension Mr. Speaker resumed the Chair.

Parliamentary Catering at Westminster.—*House of Commons.*—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 was issued early in 1940 for 1939.

The total receipts amounted to £31,416 10s. 9d. as against £30,934 5s. 7d. for 1938. The total expenditure for 1939 was £32,197 5s. 9d. compared with £31,198 10s. 2d. for the previous year, showing a deficit of £780 15s. as against £264 4s. 7d. for 1938, after providing free meals to all staff and defraying the expenditure of £10,690 9s. 6d. in wages, salaries, health and pension insurance; £554 11s. 6d. on expenses, laundry, etc.; and £705 19s. 1d. on repairs and renewals.

During 1939 the House sat in Session 176 days compared with 158 days in 1938, and the number of meals served was: breakfasts, 70; luncheons, 23,928; dinners, 38,128; teas, 103,226; suppers, 539; and bar meals, 10,385.

The Committee pointed out that the increase in revenue and the number of meals served as compared with the previous year was due to the Session being 18 days longer. The Committee regretted that there was again a loss on the year's trading, which was due to the many difficulties experienced as a result of the emergency and the irregular sittings of the House since the outbreak of war,[4] and the Committee was convinced that if normal conditions had continued a profit would have been shown on the year. After providing for all liabilities the amount standing to the credit of Capital Account in the Balance Sheet represented by stock in hand, cash in hand and at the Bank, and sundry creditors was £3,456 9s. 3d.

[1] *Ib.* 280. [2] *Ib.* 359. [3] H.C. Paper 105 of 1940.

[4] In view of this the Treasury presented a Supplementary Estimate for 1939-40 of £2,500, so that the Committee might carry on until the end of that Financial Year (353 H.C. Deb. 5. s. 857).

House of Lords.—On August 4, 1939, the House of Lords Offices Committee in its Third Report[1] reported that it had accepted the resignation of the firm which at present undertook the catering for the House and referred to the Subcommittee on the Refreshment Department the question of making temporary arrangements for the provision of meals pending a future decision as to the amalgamation of the Kitchen of the House of Lords with that of the House of Commons.

Canada (The King's Appreciation upon the Royal Visit).—A letter dated July 13, 1939, from His Majesty the King to the Prime Minister was communicated to both Houses of Parliament[2] on the opening day of the Fifth Session of the XVIII Parliament, September 7, 1939, expressing to the Prime Minister and his colleagues " in my Canadian Government " His Majesty's deep gratitude for all that was done by them in connection with the recent visit[3] of Her Majesty the Queen and His Majesty to Canada. His Majesty also referred to the safe arrival of the gold bowl given to Their Majesties by the Canadian Government, and conveyed their cordial thanks for the beautiful present, which was a delightful memento of their long journey.

In the Senate the Hon. Raoul Dandurand, the Leader of the Government there, said that he felt that they as Members had listened with much pleasure to this letter from His Majesty.

In the House of Commons the announcement was made by the Prime Minister, who said it was his intention to have the letter itself placed in the Canadian Archives.

Canada (British North America Act[4]: the " O'Connor Report ").—This Senate Parliamentary Paper[5] of over 600 pp. is a valuable and up-to-date insight into the growth and working of the Constitution of Canada, and relates to " the enactment of the British North America Act, 1867, any lack of consonance between its terms and judicial construction of them and cognate matters." Its author is Mr. W. F. O'Connor, K.C., the Parliamentary Counsel to the Speaker of the Senate, and the book is in the form of a Report by Mr. O'Connor to the Speaker, pursuant to a Resolution of that House.

[1] 187.
[2] 1939 Can. Sen. Deb. 1, 2; 1939 Fifth (Special War) Session Can. Com. Deb. 3.
[3] *See* JOURNAL, Vol. VII, 111.
[4] 30 Vict., c. 3.
[5] Published by the King's Printer, Ottawa, 1939.

The Report is divided into 5 Annexes, each one separately page-numbered. The Resolution of the Senate, which is dated June 30, 1938, reads:

> That during the coming recess of Parliament the Parliamentary Counsel of the Senate be authorized and commissioned as follows:
>
> 1. To examine the records of the Quebec Conference and such other pre-Confederation records as disclose the scope of the intended legislative powers of that precise central or general union which was presented to and accepted by the three original Provinces of Canada; and
>
> 2. To compare the text of Part VI of the British North America Act, 1867, headed "Distribution of Legislative Powers," with (*a*) such pre-Confederation records and (*b*) such pronouncements of the Judicial Committee of the Privy Council as define or disclose the legislative powers of the Parliament of Canada at the present time; and
>
> 3. To report to His Honour the Speaker for the information of the Senate
>
> (*a*) Any material differences between the scheme of distribution of legislative powers between Dominion and Provinces as apparently intended at the time of Confederation and the like legislative powers as expressed by the text of Part VI of the British North America Act, 1867; also any material differences between either such pre-Confederation scheme of distribution or such text and such pronouncements of such Judicial Committee as define or disclose as aforesaid with relation to Dominion legislative powers as of the present time; and
>
> (*b*) In what respects, if at all, it would be necessary to cause the British North America Act to be amended so as to produce consonance (so far as distribution of legislative powers is concerned) with the apparent intent of the Provinces which originally constituted this Dominion. Also, in what respects, if at all, it is necessary to cause that Act to be amended in order to render it (so far as distribution of legislative powers is concerned) competent to meet, and sufficient for, the present legislative requirements of the Dominion, so far as these have become apparent or are determinable; and
>
> (*c*) Concerning any other matter or thing appearing to be relevant to the examination and report hereby authorized.

In his prefatory letter, dated March 17, 1939, to the Speaker of the Senate, Mr. O'Connor remarks:

> that the scope of the intended legislative powers of the Dominion of Canada is that disclosed by Part VI of the British North America Act, 1867, by which I mean, for nearly all practical purposes, by sections 91 and 92 of that Act, read together.

* * * * *

2. I have not merely, as commissioned, compared the text of the British North America Act, 1867, with the decisions of the Judicial Committee of the Privy Council. I have, in addition, included in Annex 3 hereto more or less lengthy extracts from seventy-one of such decisions, selected principally because of their relation to (*a*) the general residuary, or " peace, order and good government " legislative power of section 91 of the Act; (*b*) the " Regulation of Trade and Commerce " legislative power of section 91 of the Act; (*c*) the " Property and Civil Rights in the Province " legislative power of section 92 of the Act; or (*d*) " the aspect doctrine " which relates to the competing claims of sections 91 and 92 where the proper assignment of specific legislation, whether to Dominion or Provincial jurisdiction, is in doubt.

* * * * *

I think that the failure of the Act fully to achieve the intent of those who framed it has not been owing to any defect in draftsmanship, but has been caused by demonstrable error in the interpretation of its terms. Many pronouncements of the Judicial Committee which, in the words of paragraph 3 of the Resolution, " define or disclose as aforesaid with relation to Dominion legislative powers as of the present time," are materially in conflict with the pre-Confederation scheme of distribution of legislative powers and also (since that pre-Confederation scheme and that of the Act agree) with the scheme of distribution provided by the Act. I have found most serious and persistent deviation on the part of the Judicial Committee from the actual text of the Act. In amplification as well as justification of what I have just written I respectfully request reference to Annex 1 and the discussions therein under the following heads:

1. Judicial Deviations from the Text of the B.N.A. Act.
2. The Residuary Clause of section 91 of the B.N.A. Act.
3. The Regulation of Trade and Commerce, section 91 (2) of the B.N.A. Act.
4. " Property and Civil Rights in the Province," section 92 (13) of the B.N.A. Act.

* * * * *

In my opinion, the Act does not require amendment in any respect whatever " so as to produce consonance (so far as distribution of legislative powers is concerned) with the apparent intent of the Provinces which originally constituted this Dominion," or at all. I think that consonance with that intent exists. I think that the scheme of distribution of legislative powers under the Act is one so flexible, so well fitted to keep in step with time, that those who framed it might justifiably have hoped that such a simple and efficient scheme in relation to legislative authority could not be misunderstood and might always endure.

* * * * *

For over twenty years the legislative machinery of the Act worked well. Then it began to experience judicial disinclina-

tion to apply its precise terms. Ultimately, in 1896 it was *repealed* by *judicial legislation* and different legislative machinery was substituted. In these circumstances I think that not amendment of the Act, but enforced observance of its terms is the proper remedy.

* * * * *

I advise the causing of an enactment by the Imperial Parliament of a British North America Act Interpretation Act, which should declare, saving the effect of all things already decided and done, that the true intent of the British North America Act, 1867, is and always has been, etc. (as per a formula to be stated in the words of one or more of the decisions of the Judicial Committee rendered before the decision in 1896, of the Prohibition Case), and that henceforth the Act should be interpreted and construed accordingly.

* * * * *

it has seemed to me in the past that because of the severe limitations placed by the Judicial Committee upon the legislative power of the Dominion it may become necessary for the latter, in a proper case, availing itself of its new equality of status, to resort to the Prerogative power in order to bring into effect thereunder certain public services by a means to which the doctrine of *ultra vires* could not apply; for example, by the Dominion Crown going into the social insurance business itself and conducting it as a government service, such as the Post Office or the Government Annuities Branch. In order better to enable a study of the true extent of that power, and incidentally to familiarize the members of the Senate with the true position of a Dominion such as Canada, within the Empire, I have included in Annex 5 to this Report a number of apposite documents, of which the Statute of Westminster is one, and discussed and explained them as well as my own ability and their comparative newness enable.

Annex 1 gives notes and arguments of the Parliamentary Counsel relating to Confederation, the original and subsequent Provinces thereof, sections 91 (Power of Parliament) and 92 (Exclusive Powers of Provincial Legislatures) (which are quoted in full on pp. 16 and 17) of the British North America Act, 1867, Deviations from its Text, and the Executive Power of the Dominion. In this Annex is given the constitutional status of the 9 Provinces now forming the Dominion of Canada.

Annex 2 contains extracts from the Journals and Parliamentary Debates of the Provinces of Canada, Nova Scotia and New Brunswick from 1864 to 1869, in regard to Confederation.

Annex 3 cites applicable decisions and extracts from decisions of the Judicial Committee of the Privy Council from 1874 to

1938 inclusive, with occasional notes in regard to the 71 Cases during that period.

Annex 4 deals with various constitutional documents and information from the Capitulation of Quebec, 1739, to the "Treaty" or "Compact" Theory with relation to the Confederation of the Provinces as viewed in recent years, *Pro* by the Hon. G. H. Ferguson in 1930, and *Con.* by the Hon. N. McL. Rogers in 1931, with a Memo. by Mr. O'Connor in 1939.

Annex 5 deals with Documents, etc., relating to the Dominion Status of Canada, of wider interest, namely:

Report of Imperial Conference on Operation of Dominion Legislation (1929)—

(*a*) *Re* Disallowance, Reservation, etc.
(*b*) *Re* Colonial Laws Validity Act.
(*c*) General Recommendations.

Report of Imperial Conference (1930) on Colonial Laws Validity Act.

Text of Colonial Laws Validity Act.

Notes on Dominion Status.

Text of the Statute of Westminster (1931).

Notes on the Statute of Westminster (1931).

In this Annex there are certain notes, both on Dominion Status and the Statute of Westminster, by Mr. O'Connor, which will be quoted; those on Dominion Status will be taken *verbatim*, but in regard to those on the Statute of Westminster space will only allow extracts to be given.

A. Notes on Dominion Status.

The chronology of the attainment by Canada of Dominion Status may be written as follows:

1. Responsible government.
2. Dominion's war service.
3. Participation in the War Cabinet.
4. Consequent individual participation at Peace Conference.
5. Individual membership in League of Nations.
6. Acknowledgement and grant of the right of individual representation at Foreign Courts.
7. Definition of Dominion Status as between Great Britain and the Dominions at Imperial Conference of 1926, that "They (Great Britain and the Dominions) are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations."

8. Discussions at London during the Conference of experts of 1929 and settlement at the formal Conference of 1930, upon means for giving legal effect to the new status so acquired.
9. Enactment of the Statute of Westminster, 1931.

RESULTS OF CANADA'S DOMINION STATUS.

(*a*) *As to Internal Affairs.*
(*b*) *As to External Affairs.*

(*a*) *Internal Affairs.*

(1) The Governor-General is now appointed by the King on the advice of the Prime Minister of Canada. He represents the King only, and his relations with the Dominion Government are the same as those of the King with the Imperial Government. The Governor-General is no longer subject to instructions from the latter Government.
(2) The Crown is now obliged conventionally to assent, as advised by the Dominion Government alone, to Dominion legislation. Legal provisions to the contrary remain unrepealed in the British North America Act, but, conventionally, if and whenever Canada so requests they will be repealed.
(3) The Dominion Parliament may now legislate with extra-territorial effect, and it has attached to all Canadian legislation that effect. It can repeal any Act of the Imperial Parliament in force in Canada, in so far as its extension to Canada is concerned, except the Statute of Westminster and the various British North America Acts and amendments thereto.
(4) The Colonial Laws Validity Act, 1865, does not now extend to any Act of the Dominion or of any Province of the Dominion.
(5) No Imperial Act passed after December 11, 1931, extends to the Dominion as part of the law thereof unless it is expressly declared in such Act that the Dominion had requested and consented to its enactment.
(6) The Dominion's legislative power to enact laws in relation to shipping is now, by law, unrestricted, and by convention it is, as between the Imperial and Dominion Parliaments, exclusive, in so far as the Imperial Crown can assure and provide.
(7) The Dominion is now free to abolish all appeals to the King in Council, whether as of right or as of grace, concerning matters over which the Dominion has legislative or other jurisdiction.

(*b*) *External Affairs.*

(1) Canada's relations with the League of Nations are carried on by the Governor-General on the advice of the Dominion Government. Canada's delegates to the League are accred-

ited by him on the same advice. In practice they consult with Imperial and other British Commonwealth delegates, but they are not under obligation to do so, and they vote and act independently. Like autonomy exists as to Canada's relations with the Labour Organization of the League. Also, all conventions concluded under League auspices are ratified solely by the Governor-General in Council.

(2) The Dominion can be, and is, represented as it may desire, at foreign courts, and it can, and does, receive foreign ministers. In practice, the British Foreign Office secures, at Canada's request, assent for representation at foreign courts by such persons as the Governor-General in Council nominates.

(3) The Dominion may, and does, enter into formal treaties with foreign governments. In such cases full powers are granted by the King at the request of his Canadian Ministers. In practice, the Imperial Foreign Secretary countersigns, but he does so merely as agent of the Governor-General in Council and upon his responsibility. In the case of agreements (viz., other than formal treaties) with foreign governments the Dominion Government may, and does, act without royal intervention.

(4) Pursuant to constitutional convention the Dominion informs all other components of the British Commonwealth of its intention to negotiate a treaty or convention. Such action is reciprocal. The reason is so that every other component may, in its own interest, if any, make representations or suggest joint action. When, for convenience, British delegates are authorized by the Dominion to act for it in the negotiation of a treaty or agreement they must sign as well for the Dominion, separately, as for Great Britain.

(5) Whether the Dominion shall be bound by a treaty in the negotiation whereof it has had no part is, by constitutional convention, for the Dominion to decide.

(6) Whenever the common Sovereign of the British Commonwealth is at war, whether on the advice of his Imperial advisers or otherwise, the whole British Empire is at war, by the law of nations, which is recognized as part of the common law of England. Consequently, in such event, neutrality on the part of any one or more components of the Empire is in law unrecognizable and impossible in fact, for neutrality would entail a declaration by Order in Council, running in the King's own name, or by his authority, that he stands neutral with relation to his own war. The Sovereign's personality is legally indivisible. Such merely theoretical division of the Sovereign's *office* as is spoken or written of at times is made for the internal purposes of Empire administration, and not otherwise, in law or in fact.

B. Extracts from Notes on the Statute of Westminster.

It is not open to doubt that the Imperial Parliament may, so far as constitutional law is concerned, legislate for Canada, notwithstanding the British North America Act, and without Canada's consent or request, indeed, against Canada's will, to as full an extent as it may see fit. Nor can there be any doubt that, notwithstanding the Statute of Westminster, the Imperial Parliament may, so far as such *law* is concerned, as fully, freely and extensively so legislate. The British North America Act and the Statute of Westminster, alike, are, in the eye of the law, merely statutes of Parliament, and, at law, no Parliament can bind either itself or a future Parliament. Both of these Acts are *results* of legislative compacts, the first between the Imperial government and the three original Provinces of confederation, the second between the Imperial government and the Dominions, including the Dominion of Canada. But these compacts are now, *at law*, merely part of the history of the two statutes. They have been executed by, and they are at law merged into, the respective statutes, both whereof, so far as law is concerned, could be totally repealed by the Imperial Parliament, at any time, without Canada's consent and despite Canada's protest, notwithstanding the history, terms, intent or purpose of either statute, but especially the latter, which expressly enacts in promissory terms.

The Imperial Parliament, in its legal omnipotence, *could* lawfully so enact. It *could*, also, enact Herod's law for the slaughter of the innocents. But it won't in either case. The legal power of the Imperial Parliament is tempered and controlled by constantly expanding and improving constitutional conventions (usages) which, in time, become recognized as of a force equal or superior to that of any statute of a constitutional nature. They tell statesmen and legislators what is or is not " done " in polite constitutional circles, and, nowadays at least, that is enough. There are no sanctions, yet the system works. The Statute of Westminster is one that enacts as *law* certain of these constitutional conventions so far as evolved at the time of its enactment.

Referring to the Imperial Conferences of 1926 and 1930, the author says:

Complete reconciliation was, for one reason or another, not desired by any of the Dominions. Their right to it, and a means to attain it, so far as possible, were conceded and accorded. The enactment of the Statute of Westminster and the repeal of the Colonial Laws Validity Act go far towards establishing equality of status in law. The first-mentioned statute declares certain conventions and enacts consonantly with others. It was, and must remain, impossible in one respect—and the fact must be faced—to provide by Imperial statute for strict equality of status by law as between Great Britain and the Dominions,

because Great Britain's Parliament must, in law, remain free to repeal or amend any Imperial statute. even that which would acknowledge or enact the equality. Not so, however, as to constitutional convention, which requires on Great Britain's part mere compact, followed by honourable self-denial. Hence the Statute of Westminster, whilst it provides for the practical operation of equality of status, does not in terms enact it, but leaves its fullness and perpetuity of operation to convention. It is not necessary for present purposes to set out in detail what the concerned inequalities of status were, nor to distinguish between those dependent upon convention and those dependent upon law. But it is necessary to remember that the Statute of Westminster does not embrace or mention all the components, legal and conventional, of Dominion status.

In regard to the third paragraph of the Statute of Westminster, the author observes:

The third paragraph of the preamble declares a convention which relates to the same matter as that which section 4 of the Bill enacts as law. The undeniable right in law of the Imperial Parliament is not affected by the terms of section 4. The declaration of the preamble aids section 4, and, practically, that declaration is more powerful, in its declaration of a convention (binding as it is until Parliament is released from it) than section 4 itself, which, although it alters the law, by enacting a rule of construction, cannot ensure that the alteration will be permanent. (*Re* British Coal Corporation [1935], A.C. 500 at 520.) So far as law is concerned, the Imperial Parliament is free to enact, at any time, anything whatsoever concerning a Dominion, without that Dominion's request or consent, by merely prefacing the enactment with the words " Notwithstanding anything in section 4 of the Statute of Westminster." The preamble can be ignored or included within the *non obstante* provision with, in either case, the same result in law.

Again, as to the " equality of status " said to exist, it cannot, as already stated, exist, *in law*, for the plain reason that, *in law*, the Imperial Parliament cannot deprive itself of its sovereign power to legislate for the Dominions, and the Dominions have never had, nor have they, like power to legislate for the Empire or for Great Britain or for another Dominion or colony. Further, the King, the connecting link between the various components of the Empire (or " British Commonwealth of Nations "), succeeds and reigns under an Imperial Statute, and nothing in the *operative* part of the Statute of Westminster alters this situation, or, *in law*, prevents the Imperial Parliament from altering that situation, or, indeed, prevents it from repealing or amending even the Statute of Westminster itself. No other Parliament of the Empire has power or status comparable to this. If the Parliaments of the components having the alleged " equal status " could do, *in law*, what the Imperial Parliament can do the " Commonwealth " could have as many lawful kings as it has lawful components. In that event no component could segregate " the symbol of the free association of the members," nor

could the components be " united by a common allegiance " to any one Crown. Wherefore it was meet and proper *to set out by way of preamble*, not by enacting words but as a convention of the constitution of the " Commonwealth," that "it would be in accord with the *established constitutional position* of all the members of the Commonwealth in relation to one another " that thereafter " the law touching the Succession to the Throne or the Royal Style and Titles " shall require the *assent* of the Parliaments of the Dominions as well as of the Parliament of the United Kingdom. The word " assent " relates to those Parliaments and that Parliament alike, and the statutorily declared convention would thus seem to require *assent by statute* of all of them. The declared convention does not accord any primacy to the Parliament of the United Kingdom. It is evident that such a convention carries with it infinite possibility of deadlock, but, happily, the legal power of the Parliament of the United Kingdom to repeal the paragraph, if that be ever necessary, still survives.

In the conclusion of his report Mr. O'Connor deals with the purely legal effects of the Statute.

MOTION.

On May 8, 1939,[1] the following Motion was moved in the Canadian Senate by the Hon. J. W. de B. Farris:

> That the Senate formally acknowledge receipt of the Report made by Mr. W. F. O'Connor, K.C., Parliamentary Counsel, relating to the British North America Act and made in response to the instructions given him by this House; and that the Senate express to Mr. O'Connor their appreciation of the work he has done—his scholarly research, the accumulation and arrangement of material, and his able presentation of his opinions and comments.

who in the course of his speech remarked that the Report was a useful book for the practising lawyer in constitutional matters and for the Judges dealing with these questions, as well as for all students of the Canadian Constitution and the history of their institutions. It was a valuable book of reference, and the vigorous opinions expressed by the author were enlightening and stimulating. Mr. O'Connor, continued the speaker, had not attempted to discover what might have been the fate of the Canadian Constitution if there had been no Privy Council and if the B.N.A. Act had been left to the tender mercies of their Canadian Courts.

Canada (Bill to Abolish Appeals to the Privy Council).—In 1939 a Bill[2] was introduced into the House of Commons by a Private Member[3] to abolish appeals to the Privy Council,

[1] 1939 Sen. Deb. 318-319.
[2] Bill No. 9.
[3] CCXVIII, Can. Com. Deb. 211.

entitled "A Bill to amend the Supreme Court Act," but the Minister of Justice (Rt. Hon. E. Lapointe, K.C.), who moved the adjournment of the debate at its Second reading, said that if they had in Canada full jurisdiction it was clear the Parliament of Canada had the power to establish a final court of appeal under section 101 of the B.N.A. Act, as well as under the residuary powers which their Parliament possessed. There was no doubt as to the power to abolish appeals in any matters within the competence of the Parliament of Canada, but he had some doubts whether or not they had full power to do away with appeals from Provincial Courts. Under section 55 of the Supreme Court Act[1] they could refer the question of the constitutionality of any legislation, whether federal or provincial, to the Supreme Court. His intention therefore was to recommend to the Governor in Council that this power be used. The debate on the Second reading was adjourned and on April 24, 1939,[2] the Minister tabled a copy of the Order in Council.

Canada (Seals Act).[3]—This Act, making provision for the sealing of Royal Instruments, has a twofold effect. The first part of the Act was necessitated by the presence of His Majesty the King in Canada,[4] and the second part is for regularizing what has hitherto been done by custom or convention.

In moving for leave to introduce the Bill for the above-mentioned Act into the House of Commons the Minister of Justice (Rt. Hon. E. Lapointe) said that the Bill was intended to serve a double purpose, the first of which arose as a result of the visit of His Majesty the King to Canada. Under the existing laws and practice it was not possible to issue Royal Instruments under the great seal or the signet. The Bill therefore made provision for passing such instruments under the great seal of Canada, in relation to Canadian affairs, such as treaties and so forth. The second purpose was to make provision for Canadian Royal seals for use in Canadian matters, such as for exequaturs, leaves of absence to the Governor-General. This provision would be permanent. The Bill was designed to enable Canadian transactions involving the use of the Royal seals to be subjected, in form as well as in substance, to the direct control of responsible Canadian Ministers.[5]

During the Committee stage of the Bill in the House of Commons, when speaking upon clause 3, the operating pro-

[1] 1891.
[2] CCXVIII, Can. Com. Deb. 3089.
[3] 3 Geo. VI, c. 22.
[4] *See* JOURNAL, Vol. VII, 111.
[5] CCXX, Can. Com. Deb. 2606-2607.

vision of the Bill, the Minister of Justice said that this clause arose more particularly from the prospective visit of His Majesty the King. During His Majesty's presence in Canada it would not be possible, under existing laws and practice, to issue Royal instruments in relation to Canadian matters under the great seal or signet of the United Kingdom. Clause 4 enabled permanent provision to be made for subjecting Canadian transactions involving the use of the Royal seal, in form as well as in substance, to the direct control and responsibility of Canadian Ministers. At present, when the use of the Royal seal was necessitated on instruments—treaties, for instance—it was done on the recommendation of a Secretary of State in the United Kingdom but at the request of a Dominion Minister, and was usually countersigned by a responsible Canadian Minister, but this was merely convention. It might be done in the same way but under Order in Council of Canada, always subject to the approval of His Majesty. This legislation made the situation agree with the constitutional development of Canada.

In reply to a question, the Minister said that the Irish Free State had done the same thing in 1931 but without legislation; the Irish Foreign Minister went to Buckingham Palace with a seal and His Majesty accepted it. In the Union of South Africa, however, there was legislation.[1]

In reply to a further question inquiring in what respect the Bill altered the practice in connection with the signing of treaties for instance, the Minister said that the present arrangements would continue under Order in Council of Canada. The grand seal of the realm may still be used, but it would be under the authority of the Canadian Parliament. Clause 3 authorized the use of the great seal of Canada, but it would be when the King was in Canada. The great seal of Canada would be kept there, and of course have to follow the present arrangements over there, but it would be done under this legislation instead of according to usage as to-day.

In reply to a further question the Minister said that when the great seal of the realm is used (it was formerly the great seal of the United Kingdom) it is done by warrant issued by some responsible Minister in Great Britain and at the request of a Canadian Minister. It is a matter of procedure which had been adopted, but it might be changed if it was thought that matters might be facilitated under some other arrangement.[2]

[1] Acts Nos. 69 and 70 of 1934.
[2] CCXX, Can. Com. Deb. 2688-2689.

During the subsequent debate in the Senate the Hon. Raoul Dandurand, P.C. (Government Leader in the Senate), said the primary object of the Bill was to enable the King's Canadian business to be done during his absence from England and presence in Canada. While His Majesty was in Canada the Royal functions in respect of United Kingdom business would be performed by Counsellors of State under the Regency Act, 1937.[1] They had no legal authority to perform any Royal functions in respect of Canadian business. The great seal of the realm and the signet would be kept in England. The same problem would arise were the King to leave England on a visit to another country situate far away, such as to India, Australia or South Africa. Existing channels of communication were left undisturbed by the Bill, continued the Senator, but two points might require special consideration. The first was the lack of any limitation of the statutory provision to special occasions such as the King's absence from England. Under existing law, with one possible exception, the authority to approve and to establish a Royal seal is part of the Royal prerogative. Without legislation the use of a new Royal seal, and of the great seal of Canada, or of either, could be authorized by an Order in Council approved by the King. The possible exception included full powers and instruments of ratification, but does not extend to any other Royal instruments. It would not therefore have been possible to have limited the power given by clause 3 to special occasions without creating a statutory curtailment of an authority which is now recognized as being within the Royal prerogative.

The second point was the making of permanent provision for Canadian Royal seals for use in Canadian matters. Under the existing law, subject to the possible exception already referred to, the King could authorize a new Royal seal for use in Canadian business, acting upon the advice of his Canadian Ministers. The purpose of making specific reference to " other Royal Seals " in clause 3 and of the detailed provisions of clause 4 was to place the existing position upon a statutory basis; to eliminate the doubt as to the position of full powers and instruments of ratification; and to make provision for the formulation of clear and simple rules with regard to the conduct of Canadian business requiring the issuing and sealing of Royal instruments and for the publication of the rules thus formulated. The method adopted—namely, by Order in Council approved by His Majesty and based upon

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

an Act of the Parliament of Canada—appeared to conform with the existing constitutional position.[1]

Orders in Council, P.C. 1175 and 1176, were issued under the Seals Act on May 16, 1939, in respect of the Instruments of Ratification of the Canadian-United States Trade Agreement and the Convention *re* Rainy Lake and other boundary waters.

Canada (Monetary Privilege).—On June 1, 1939,[2] the House of Commons considered certain amendments by the Senate to a Bill[3] to amend the Income War Tax Act.[4] The Minister of Justice (Rt. Hon. E. Lapointe) remarked that the Senate's amendments provided that section 6 should be applicable to the income of the year 1939 and changed the financial scheme submitted by the Government, consequently affecting the balance of ways and means needed for the service of the year. The action taken by the Senate was inconsistent, the Minister believed, with the undeniable control exercised by the elected representatives of the people over taxation and all financial measures.[5] The House of Commons, adhering to the B.N.A. Act and the fundamental principles of responsible government, could not renounce its inalienable right to initiate and regulate taxation, and it had never acknowledged the right of the Senate to pass legislation imposing a charge upon the people. The Minister, continuing, said that were it not so near prorogation they should certainly refuse the amendment, but a conference with the Senate for the discussion of this important question would last several days. It was hoped, therefore, that the Senate would not persist in future in a course which was deemed contrary to the principles of Parliamentary practice and which might lead to constitutional conflict. Later in the debate this Minister observed that obviously there would have to be a settlement of this conflict some day. The Minister referred to the instance cited in Beauchesne's *Parliamentary Rules and Forms*[6] and to the report adopted by the Senate on May 22, 1918, claiming the right of reduction, but the Commons had never accepted that theory.

The House of Commons then resolved:

> That this House concur in the said amendments, and while doing so it does not think it advisable at this period of the Session to insist on its privileges in respect thereto, but that the waiver of the said privileges in this case be not, however, drawn into a

[1] 1939 Can. Sen. Deb. 222.
[2] CCXXI, Can. Com. Deb. 4845-4847.
[3] No. 142.
[4] R.S. 97.
[5] Redlich, Vol. III, 119-120.
[6] *Id.* p. 582-584 and Form 59.

precedent; that the Clerk do carry back the Bill to the Senate and acquaint their honours that this House has agreed to their amendments.

Canada (Official Secrets Act).—On April 11, 1939,[1] in the House of Commons, the Minister of Justice (Rt. Hon. E. Lapointe, K.C.), in moving for leave to introduce the Official Secrets Bill,[2] said that the law in force in Canada dealing with official secrets is the (Imperial) Official Secrets Act of 1911,[3] which, in its terms, was made applicable to Canada. Since then, however, amendments had been made, more particularly by the Imperial Act of 1920,[4] which was not applicable to Canada. The purpose of the Bill, therefore, was to consolidate the two Acts and by an Act of Parliament make them law in Canada.

During the debate in the House of Commons on May 30, 1939,[5] the same Minister observed that the Imperial Act of 1920 expressly provided that its provisions should not be enforced in Canada. Under the Statute of Westminster, 1931, they would make both Imperial Acts a Canadian Statute; there was no difference except that they were made applicable to Canada and Canadian conditions.

The Bill was amended in Committee of the Whole House and became 3 Geo. VI, c. 49.

Canada (Electoral).—On March 13, 1939,[6] in the House of Commons, a Resolution was passed setting up a Special Committee to study and report on the following subjects:

(*a*) Methods used to effect a redistribution of electoral districts in Canada and in other countries, and to make suggestions to the House in connection therewith.

(*b*) Methods whereby: (i) the source and disposition of sums received and expended in promoting the return of Members of the House of Commons may be readily traceable; (ii) publicity may be given to all receipts and expenditures in connection therewith; (iii) the cost of elections to candidates may be reduced; (iv) the amount which may be spent by or on behalf of a candidate in his election campaign may be limited.

(*c*) Methods whereby certain lumbermen, fishermen, seamen and miners absent from their electoral districts may be enabled to exercise their franchise in Dominion elections.

power being given the Committee to send for persons, papers and records, to examine witnesses on oath and report from time to time.

[1] CCXX, Can. Com. Deb. 2705.
[2] Bill No. 92.
[3] 1 and 2 Geo. V, c. 28.
[4] 10 and 11 Geo. V, c. 75.
[5] CCXXI, Can. Com. Deb. 4718-4719.
[6] CCXIX, Can. Com. Deb. 1807 to 1841.

The Committee's First Report was tabled on March 17 and adopted.[1] The Second Report, which was tabled on April 4,[2] recommended that the Bill (No. 11) it had had under consideration respecting balloting on questions of national importance be not proceeded with, because its adoption would place in the hands of the Governor in Council a prerogative now exercised by Parliament.

The Third Report from the Committee was tabled on May 4,[3] and stated that it had considered methods whereby the disposition of sums received and expended in promoting the return of Members of the House of Commons may be readily traceable and due publicity may be given thereto; also methods whereby the cost of elections to candidates may be reduced and the amounts that may be spent may be eliminated; and as the result of its deliberations therewith submitted a proposed draft Bill it recommended to the favourable consideration of the House.

The Fourth Report was tabled on May 10,[4] the Committee stating that it had given consideration to the methods in use in Great Britain, Australia, New Zealand, the Union of South Africa and in the United States, together with suggestions made by counsel as to how redistribution could be effected in Canada, and submitted, without comment, the methods employed in other countries.

In the Fifth and Final Report, which was also then tabled, the Committee was of opinion that the Act as now drafted amply assured the right of all electors to exercise their franchise. The Committee then recommended amendments to the Dominions Election Act of 1938,[5] altering the number of junior permanent staff to be employed and substituting the following new Rule 3 of Schedule A to section 17:

> Candidates and political organizations may nominate to the returning officer an enumerator for each urban polling division as aforesaid. The returning officer shall, except as hereinafter provided, appoint from the number so nominated one enumerator to represent the particular interest that at the last preceding election was elected to office, and one to represent the different and opposed political interest that received in the last preceding election the highest or the next highest number of votes, as the case may be.

Rule 23 of the said Schedule it was recommended should be amended in regard to the number of copies of certain notices.

[1] *Ib.* 1990.
[2] CCXX, *ib.* 2558.
[3] *Ib.* 3553.
[4] *Ib.* 3810.
[5] 2 Geo. VI, c. 46. *See also* JOURNAL, Vol. VI, 39-43; VII, 44.

Section 45 (4) was recommended by imposing certain duties upon deputy returning officers in regard to spoiled ballot papers, and making the wilful destruction of a ballot paper by the voter an illegal offence.

Only the First and Third[1] Reports of the Committee, however, were adopted by the House.

Australia (Swearing-in New Minister in another Dominion).—At 10 a.m. on November 14, 1939, in Ottawa, the Hon. J. V. Fairbairn was sworn in as Minister of State for Air for the Commonwealth of Australia, by the Chief Justice of Canada (Rt. Hon. Sir Lyman P. Duff, G.C.M.G.), in the presence of His Excellency the Governor-General the Rt. Hon. the Lord Tweedsmuir, G.C.M.G., etc.), the form of Oath being:

> I, James Valentine Fairbairn, do swear that I will well and truly serve His Majesty King George the Sixth, in the Office of Minister of State for Air. So help me, God.

Australia: Victoria (Members of Parliament Disqualification Act).[2]—The Bill for this Act, referred to in our previous Volume,[3] was, in 1938, passed by the Assembly and also by the Council, but with amendments, some of which were agreed to by the Assembly and others were not insisted on by the Council. The Assembly, however, would not agree to the amendment of the Council to omit clause 3 of the Bill (which is referred to hereunder), and all efforts to arrive at agreement on this matter (including a free conference) having failed, the Bill was eventually laid aside by the Assembly.

Clause 2 of the Bill aimed at removing doubts as to the scope of sections 24 and 25 of the Constitution Act Amendment Act, 1928. These sections (*inter alia*) provided for the disqualification of Members (or candidates) who are concerned or interested in any contract entered into by or on behalf of His Majesty, and the Bill proposed to define such contracts for the future as contracts entered into (*a*) by any Government department or any Minister of the Crown in his capacity as such, and (*b*) by certain named governmental or semi-governmental bodies. The Bill went on to limit the classes of contracts which should be regarded as coming within the disqualifying provisions of the Constitution Act Amendment Act.

Clause 4 of the Bill exempted certain offices of profit from the disqualifying provisions of the Constitution Act Amendment Act.

[1] CCXXI, Can. Com. Deb. 3878.
[2] No. 4718.
[3] *See* JOURNAL, Vol. VII, 57.

There was no disagreement between the two Houses as to clauses 2 and 4 of the Bill.

Clause 3 of the Bill, upon which the Houses could not arrive at agreement, aimed to amend section 26 of the Constitution Act Amendment Act, which provided that the disqualification provisions of the Constitution Act Amendment Act shall extend to any bargain or contract entered into by any company, etc., consisting of more than 20 persons where such bargain or contract is entered into for the general benefit of such company. The Bill (in clause 3) proposed to raise this number to 50 persons. The Council struck out this clause, but the Assembly insisted on disagreeing with the Council's amendment. A conference was held without arriving at any agreement, and the Council then abandoned their amendment to omit clause 3, but amended the clause, offering as a compromise to fix the number of persons at 25. The Assembly then laid the Bill aside.

In Session 1939 the Bill was again introduced in the Assembly in its original form, but on December 5, 1939, in consequence of an undertaking by the Premier, that on account of the War no contentious legislation would be dealt with during the remainder of the Session, the contentious clause of the Bill (clause 3) was struck out.[1] Other amendments were made and the Bill was then passed by both Houses.

The Bill as passed[2] amended the Constitution in two respects, as follow:

Government Contractors.—The Victorian Constitution contains the usual provision disqualifying a Member who becomes concerned in a contract with the Crown,[3] but doubts had arisen as to what instruments of Government should be regarded as the Crown in this regard. To remove such doubts the Act names certain emanations from the Crown which shall be regarded as the Crown in relation to such contracts—any Government Department, any Minister of the Crown as such, and certain named governmental Boards and Commissions; so that a contract with any of these *shall* disqualify a Member. The amending Act also defines in general terms certain classes of contracts with the Crown which *shall not* disqualify a Member, as *e.g.* an isolated casual sale of goods, chattels or services made without knowledge that such sale was to the Crown.

Offices of Profit.—The Constitution also contains the usual

[1] 208 Vict. Parl. Deb. 2412.
[2] Act No. 4718.
[3] *See* Act No. 3660, sections 24, 26.

provision disqualifying a Member who accepts an office of profit under the Crown,[1] but it also includes (section 27) a list of offices such as President, Speaker, etc., which are exempted from this disqualifying effect. The amending Act adds to this list of exempted offices the following offices: (1) Unofficial Leader of the Legislative Council, and (2) Leader in the Assembly of any recognized party of at least 15 Members of the Assembly, none of whom is a responsible Minister of the Crown. These two offices have in the past been honorary, but the Government proposed to make them offices of profit by providing in the Estimates for payment to the holders thereof of a special allowance in addition to the sums paid to them as reimbursement of their expenses as Members. Hence the necessity for the amending Act to exempt them from disqualification. Since the Act was passed an allowance at the rate of £250 per annum has been provided on the Estimates for the holders of these offices.

Leaders in Opposition.—With reference to the Unofficial Leader of the Opposition in the Legislative Council, there has never been any formal Leader of the Opposition in the Victorian Legislative Council, but for the past 50 years or so it has been the custom for the Members (other than Ministers of the Crown) at a private meeting held outside the Chamber to select one of their number to act as their "unofficial leader." The Member thus selected undertakes to watch the progress of all Bills introduced in the House, to examine critically the provisions of such Bills, and to advise the House of any provisions therein which in his opinion are not in the best interests of the State. In the debate on the Second reading of Bills the Unofficial Leader follows the Minister or Member in charge of the Bill, and he usually states fully the case for and against the Bill and in summing up indicates how he proposes to vote.

It has often been stressed that the Unofficial Leader is not to be regarded as a Leader of the Opposition, and even though he may advise or urge Members to vote against a Bill it is understood that Members are free to vote as they think fit and that there is no obligation on those who selected the Unofficial Leader to follow any lead that may be given by him.

In regard to the position above-mentioned of "Leader in the Assembly of any recognized Party, etc.", the importance of the proposal to provide a special allowance for the holder of this office indicates a tendency to give recognition to third parties in Parliament.

[1] Act No. 3660, sections 25, 27.

Very little reference was made to this aspect in the debates in the House on the Bill, but a view in support of the proposal was expressed during the debate[1] as well as a view opposed thereto.[2]

Australia: Victoria (Electoral Law).—Another amending Act[3] made minor amendments in the Electoral Law with regard to rolls, writs, elections, etc.—*e.g.* provision that where a candidate dies between nomination day and polling day a new writ is to be issued and a new election held; gifts by a candidate to a club or association between vacancy and polling day deemed to be bribery; false statement likely to mislead an elector declared an illegal practice; and regulation of publication and broadcasting of electoral matter.

Australia: Queensland (Question of Member's Disqualification).—In the Session of 1932 the Constitution (Legislative Assembly) Act[4] was passed to remove doubts as to whether certain persons have incurred any penal consequences by sitting and voting as Members of the Legislative Assembly and to validate the election of such persons and to provide for their continuance in office as Members of Parliament.

Under section 6 of the "Constitution Act of 1867,"[5] any person who undertakes, executes, holds or enjoys any contract or agreement for or on account of the Public Service is declared incapable of being elected or sitting as a Member of the Legislative Assembly. It also provides for a heavy penalty. Under various State instrumentalities the Crown has become the mortgagee of numerous citizens—*e.g.* under "The Public Curator Acts"[6] the Crown lends money from public or trust funds; "The Agricultural Bank Acts"[7] give assistance to farmers by loans on the security of their farms; and under "The State Advances Act"[8] and "The Workers' Homes Acts"[9] thousands of homes have been built for citizens of the State.

All those transactions are contracts for and on account of the Public Service and come within the meaning of section 6 quoted above.

The Crown Law Department investigated the question in regard to its effect upon Members and came to the conclusion that Members of Parliament who had obtained loans under the provisions of the above-named Acts were liable to a heavy penalty for sitting or voting in the Chamber and that persons

[1] 208 Vict. Parl. Deb. 2645.
[2] *Ib.* 2416.
[3] No. 4691.
[4] 24 Geo. V, No. 1.
[5] 31 Vict., No. 38.
[6] 1915-1938.
[7] 1923-1934.
[8] 1916-1934.
[9] 1919-1930.

who had entered into such a contract were debarred from being Members of Parliament.

This Act removed all doubts in so far as it provided that if a Member of Parliament had received an advance from the State his seat in Parliament cannot thereby be affected, and his election to Parliament shall be valid. It also provided that persons other than Members of Parliament who had secured loans of this kind shall be qualified to contest electoral seats and to sit and vote in Parliament.

In the Session of 1938[1] a Bill was passed to remove doubts as to whether D. J. M. Daniel had incurred any penal consequences by sitting and voting as a Member of the Legislative Assembly and to validate the election of the said D. J. M. Daniel and to provide for his continuance in office as a Member of Parliament. Mr. Daniel had been a Member of the previous Parliament and was re-elected at the General Election on April 2, 1938. He held a Golden Casket (State Lottery) Agency prior to the date of his election to the last Parliament—that is, from April 4, 1936, until the morning of last election day—viz., April 2, 1938—on which day he surrendered the Agency. The question arose whether he came within the disqualification of section 6 of the Constitution Act (quoted in previous case) and was therefore incapable of being elected to or sitting or voting in Parliament. The question also arose whether he was liable to any penal consequences under section 7. The questions were referred to the Solicitor-General, who advised—

> "Under section 53 of the Vagrants, Gaming and Other Offences Act of 1931, the 'Golden Casket' was validated and the Secretary for Health and Home Affairs was authorized and empowered to carry it on.
>
> "Under section 2 of the Vagrants, Gaming and Other Offences Act Amendment Act of 1933, the Minister may dissolve the old committee, and vest the conduct of the 'Casket' in a manager.
>
> "No person can lawfully sell 'Casket' tickets, etc., unless he holds a license from the manager.
>
> "The Governor in Council has power to make regulations prescribing conditions, etc., of licenses.
>
> "The manager, when a 'Casket' is open, forwards books of tickets to the licensee for sale, the licensee retaining a commission on tickets sold, and returning the books with the butts showing the purchasers to the manager.
>
> "There can be no doubt that the 'Casket' is a Crown instrumentality, the proceeds of sale of tickets, less prizes and expenses, going to the Department and being appropriated for certain works.

[1] 2 Geo. VI, No. 2.

"I have no doubt that on each transmission of tickets to a licensee, such licensee in law contracts with the manager on behalf of the Crown, that for an agreed consideration he will sell on terms of his license and will account for the balance.

"The agreement being made by the licensee with the agent of the Government is 'for public service' and accordingly comes within the meaning of section 6 of the Constitution Act of 1867.

"I am therefore of the opinion that any licensee while he holds 'Casket' tickets for sale on behalf of the 'Golden Casket' under license, is disqualified from being elected, or sitting or voting in the Assembly."

As, according to this opinion, Mr. Daniel came within the disqualificaiton of section 6 of the Constitution and incurred the penalties set out in section 7, this Bill was passed to relieve him of any penal consequences through having sat in the last Parliament and also validated his election to this Parliament.

The point was taken in the House that as Mr. Daniel had surrendered his Casket Agency on the morning of last election day, and as he could not be legally elected until the declaration of the poll, he was not actually elected a Member of Parliament while still a Casket Agent. The argument against this was that Mr. Daniel would have to be clear of the contract prior to the date of nomination in order to free himself of the liability of sections 6 and 7 of the Constitution Act. Although there is ground for argument here, the Bill was passed.

Australia: South Australia (Constitutional).—Two Constitution Act Amendment Acts were passed in 1939. Under the first, which was introduced by the Leader of the Opposition, the term of the House of Assembly (increased to 5 years in 1937)[1] reverts to 3 years.

The second Act relates principally to the qualification and disqualification of candidates and Members. It provides—

(1) That any person who has been in the employment of the Government and has retired on pension wholly or partly paid by the Crown shall not be debarred from election to Parliament or from sitting and voting therein;

(2) Two additional grounds for exemption from the provisions relating to the disqualification of Members, namely:

(*a*) The supply or provision of goods or services by or to the Government provided it be on terms no better than those on which similar contracts are made with members of the public;

(*b*) A loan made under any Act by the Government provided it was made to a person while he was not a Member;

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

(*c*) That the seat of a Member shall not become vacant nor the Member liable to fine by reason of his accepting or holding office on any Parliamentary committee or Royal commission and receiving payment in connection therewith;

(*d*) For payment of £100 per annum to the Chairman of the Joint Committee on subordinate legislation and of £50 per annum to each member of the committee.

Australia: South Australia (New Houses of Parliament).—On the morning of June 5, 1939, the new building for the State Houses of Parliament at Adelaide was officially opened by His Excellency the Governor-General of the Commonwealth (The Lord Gowrie, V.C., etc.), who, as Brigadier-General the Hon. Sir Alexander Hore-Ruthven, was previously the Governor of South Australia. The opening was followed, in the afternoon, by a reception and tea on the Government House lawns and an inspection by Mr. President and Mr. Speaker. In the brochure issued in connection with the Centenary Celebrations of this State on December 28, 1936, a sketch is given of the handsome granite-and-marble Parliament building as it now appears. The completion of the structure has come within the original estimate of £250,000 of the scheme approved in 1913 by a Joint Committee of both Houses. A distinguished Parliamentarian and public benefactor of this State, the Hon. Sir J. Langdon Bonython, K.C.M.G., made the munificent donation of £100,000 towards the completion of the building as a worthy object in celebrating South Australia's Centenary. The Government therefore then decided to complete the building, and the necessary Bill was passed for that purpose.

Two commemoration stones have been introduced in the building; one, "The Promise," containing the inscription:

> His Majesty's subjects of the Province of South Australia are to receive a constitution of self-government as soon as the Colony shall be in a state fit to enjoy that inestimable advantage.
>
> EDWARD GIBBON WAKEFIELD
> Founder of South Australia, 1834

and the other, "The Fulfilment," with the inscription:

> This House of Parliament was completed as an expression of faith in the Parliamentary institutions, in appreciation of the benefits wrought by 80 years of self-government and in commemoration of the Century of the State.
>
> Unveiled by His Excellency the Governor, Major-General Sir Winston Dugan, K.C.M.G., C.B., D.S.O., 23rd September, 1936.

We are indebted to Captain F. L. Parker, F.R.G.S.A., the Clerk of the House of Assembly and the Clerk of the Parliaments of South Australia, who took a very active and prominent part in the Centenary Celebrations, for the above information.

Ireland (Eire) (Constitutional).—What is cited as the "First Amendment of the Constitution[1] Act" was passed in 1939, by which the following words were added to Article 28 (3), 3°, of the Constitution:

> In this sub-section "time of war" includes a time when there is taking place an armed conflict in which the State is not a participant but in respect of which each of the Houses of the Oireachtas[2] shall have resolved that, arising out of such armed conflict, a national emergency exists affecting the vital interests of the State.

This subject will, however, be further referred to in the Volume covering 1940 in connection with the reference, on January 8, 1940, by the President (after consultation with the Council of State) of the Emergency Powers (Amendment) Bill to the Supreme Court for a decision as to whether it was repugnant to the Constitution. The subject involved was a question of *habeas corpus*.

Ireland (Eire) (Ministers and Parliamentary Secretaries).—The "Principal Act" dealing with this subject is the Ministers and Secretaries Act, 1924,[3] now amended by Ministers and Secretaries (Amendment) Act, 1939, which sets up a Department of State to deal with Supplies in charge of a Minister. Under section 4 of the Act it is provided that every member of the Government is not required to be a Minister having charge of a Department of State and that he may be a Minister without Portfolio, and the Government may assign to any such Minister a specific style or title which shall be judicially and officially noticed. Departments may also be transferred to and from Ministers or the assignment of a Department terminated by the Prime Minister.[4] Section 6 deals with divers powers of the Government in relation to Departments of State, and the following section provides for the temporary inability of Ministers. A Parliamentary Secretary is entitled to attend and be heard also in that House of which he is not a Member.[5] The Government may, by order made on the request of a Minister, delegate his powers and duties to a Parliamentary Secretary.[6] Bilingualism is provided for in sections 6 (*a*) and (*b*), 10 and Schedule. Sections 11 and 12 of the Principal Act

[1] 1937. [2] *I.e.* Parliament. [3] No. 16 of 1924.
[4] Sec. 5. [5] Sec. 8. [6] Sec. 9.

and section 4 of Act No. 6 of 1928 are repealed. The Ministers and Secretaries (Amendment) Act, 1939, is to be construed with the Acts of 1924 and 1928 as the Ministers and Secretaries Acts, 1924 to 1939.

Southern Rhodesia (M.P.'s and Military Service).—Section 22 (8) of the Constitution[1] provides that if any M.P. accepts an office of profit under the Crown, other than that of a Minister or that of an officer of " Our naval and military forces on retired or half pay," his seat shall become vacant. The Legislative Assembly (Service in His Majesty's Forces) Act[2] was passed in 1939, which it is enacted shall not come into operation until the Governor has declared by Proclamation in the *Gazette* that it is His Majesty's pleasure not to disallow the same, and thereafter the Act shall be deemed to have come into operation on September 3, 1939. " His Majesty's Forces " is defined to mean:

> the regular, reserve and auxiliary forces of the Royal Navy, Army and Royal Air Force, and any forces raised under statutory authority in India, Burma or anywhere within His Majesty's Colonies or self-governing Dominions, and includes the Defence Forces of the Colony.[3]

Section 3 provides that membership of His Majesty's Forces shall not be a disqualification of anyone elected to, or for sitting or voting in, the Legislative Assembly for the reason that he holds an office of profit under the Crown.

Amalgamation of the Rhodesias and Nyasaland.—This subject has been dealt with in previous issues of the JOURNAL.[4] The Report of the Royal Commission (" the Bledisloe Commission ") appointed March 9, 1938, the terms of reference of which were given in Volume VI of the JOURNAL, was published[5] March 1, 1939. The Report is a comprehensive document of 283 pages, with maps, and is signed by all its 6 members with *addenda* Notes by 5 of them. The Report is in 3 Parts: Part I deals with the present position of the Territories, II with factors affecting consideration of the terms of reference, and III embodies the Conclusions. The last of the IV appendices is the Text of the Agreement, dated September 29, 1923, between the Secretary of State for the Colonies and the British South Africa Company in regard to the settlement of outstanding questions relating to Southern and Northern Rhodesia.

The object of this Society, through its JOURNAL, being to

[1] Letters Patent, 1923, September 1. [2] No. 18 of 1939.
[3] *Ib* sec. 2. [4] *See* Vols. IV, 30-32; V, 50-51; VI, 66-67.
[5] Cmd. 5949.

give information " upon questions of Parliamentary procedure, privilege and constitutional law in its relation to Parliament,"[1] it is not proposed to go over the whole range of the Commission's Report, but to refer to those points of particular constitutional interest coming within the sphere of our Society.

Chapter III of Part I deals with the existing constitutions and systems of administration. Part I of this chapter gives the main provisions of the Constitution of Southern Rhodesia, a self-governing colony. Such amendments of the Constitution of the Colony as have been passed since the issue of the first Volume of this JOURNAL (for 1932) have already been given.[2]

Northern Rhodesia and Nyasaland are Protectorates, and persons born therein have the status of, but yet are technically not, British subjects. The Constitutions[3] of these 2 Territories are of the Crown Colony type, with a Governor appointed by the Crown on the advice of the Government of the United Kingdom, who is advised by an Executive Council of Officials (5), who are also *ex officio* Members of a Legislative Council which, in addition, consists, in the case of Northern Rhodesia, also of 3 nominated Official Members, 7 elected Non-Official Members, and 1 nominated Unofficial Member chosen to represent Native interests, and, in Nyasaland, of only Official Members (5) nominated by the Governor. The Executive Council of Nyasaland has 3 Members in addition to the Governor. In both countries the Governor presides both over the Executive and Legislative Councils. These two Protectorates are therefore officially governed, and the legislation passed by their Legislative Councils even after assent by the Governor may be disallowed by the Crown within a certain period or reserved, if affecting such subjects as currency, banking, differential duties, discrimination against persons not of European descent or inconsistent with treaty obligations of the Imperial Government. That Government also has power of legislation by Order in Council.

Chapter VI of Part I recites the history of the closer union movement in the two Rhodesias and Nyasaland, beginning with an account of their administration under the British South Africa Company, whose Charter dates from October 29, 1889. The more recent movements towards closer union have already been dealt with in the JOURNAL,[4] but interest in this subject had been previously revived in regard to Northern Rhodesia,

[1] Rule 3. [2] *See* Vols. V, 49-50; VI, 63-64; and VII, 79-80.
[3] Northern Rhodesia Order in Council, 1924, and Nyasaland Order in Council, 1907.
[4] *See* Vols. IV, 30-32; V, 50-51; VI, 66-67.

Nyasaland and the British Dependencies in Eastern Africa by the Report of the " Hilton Young Commission."[1]

The present co-operation between the two Rhodesias and Nyasaland is an outcome of conferences by their Governors in 1935, 1936 and 1938, upon such questions as migrant Native labour, education, communications, currency, tropical diseases, medical, veterinary and agricultural services; other questions have also been the subject of consultation between their respective Governments.

The Conclusions of the " Bledisloe Commission " cover (1) the need for co-operation; (2) the question of amalgamation; (3) proposals for immediate co-operation; (4) changes in Northern Rhodesia and Nyasaland; (5) amalgamation of those two Territories; (6) other recommendations, such as consultation between Dominions and Colonial Offices and periodical review of developments; (7) the Asiatic and Coloured communities; and (8) relations between Southern Rhodesia and the Bechuanaland Protectorate.

The Commission found that although the 3 Territories have, apart from mere physical contiguity, many features in common, economically, socially and politically, it was unable to recommend " federation," but it believed the 3 Territories would become more closely interdependent in all their activities and interests, which would eventually lead them to political unity. While, however, the Commission was agreed in regarding amalgamation as the ultimate objective, it was also of opinion that there were certain conditions which must be present before that policy could command the confidence and support of the communities and interests involved.[2] The Commission could not therefore recommend immediate amalgamation, but when such a policy is put into operation it suggested that the following broad propositions be recognized in the Constitution of such an amalgamated Territory:

(1) There should be one Governor for the whole Territory, with functions which will correspond generally to those at present vested in the Governor of Southern Rhodesia.

(2) The reservation of assent by the Governor in respect of certain classes of legislation, pending the significance of the pleasure of the Crown, should be retained.

(3) Provision should be made for the adequate representation in the Legislature of Native interests.

(*a*) It is probable that the special representation of Native interests must for some considerable time to come be entrusted to Europeans.

[1] Cmd. 3234 of 1929, 295-297; *see also* Cmd. 3531 and 3573 of 1930 and 4141 of 1932, 46.

[2] §§ 471, 474, 478.

(*b*) It is also probable that during an initial period of shorter duration it will be necessary to leave the selection of those representatives to the Governor.

(*c*) When circumstances permit, the Governor in appointing such representatives should make his selection from a list of nominees prepared by him in consultation with Native authorities and Native Councils. We look forward to the institution of Regional or Provincial Native Councils which will provide a convenient instrument for such consultation.[1]

(*d*) At a later stage, this process of selection should be replaced by the election of representatives by the Regional or Provincial Native Councils. If ultimately suitable Natives are available, the special representation of Native interests need not necessarily be confined to Europeans.

(*e*) The responsibility of deciding when each of the successive steps indicated above can be taken should lie with the Secretary of State, in consultation with the Government of the amalgamated Territory.

(4) In framing the Constitution, provision should be made for respecting the special position of Barotseland under the Concessions.[2]

The Commission realized there would be advantages in the adoption of a bicameral system, but refrained from making any recommendation on this point; its suggestions therefore referred to a unicameral Constitution.[3]

The Commission recommended the creation of an Inter-Territorial Council:

> (i) To examine the existing Government services of the three Territories and bring about the greatest possible measure of co-ordination in those services; and
>
> (ii) to survey the economic needs of the whole area, agricultural, industrial and commercial, and frame plans for future development in the light of that survey.

and suggested that such a Council consist of the Prime Minister of Southern Rhodesia, the Governors (or Governor) of the other 2 Territories, and, associated with them, other representatives therefrom, say 3 for Southern Rhodesia and 2 each for Northern Rhodesia and Nyasaland. The 4 last named, it was suggested, might be Officials or Non-Officials, at the discretion of the Governor. The chairman should be the Governor of Southern Rhodesia, convenor of the Council, and the Council should meet at regular intervals and have a permanent Secretariat.[4]

[1] §§ 490-491; *see also* §§ 408 and 537.
[2] § 491.
[3] §§ 492, 493.
[4] §§ 495, 500.

In regard to Northern Rhodesia and Nyasaland, the Commission recommended that although neither Territory had yet reached the stage of " responsible government " it was considered that their Constitutions should be altered so as to incorporate the two following principles:

> (1) the European population should be more closely associated with, and have greater responsibility for, the government of the Territory; and
> (2) there should be special representation of the Natives in the Legislature.[1]

and that in Northern Rhodesia, apart from the nominated representatives of Native interests, the elected Members of the Legislative Council should at least equal the number of Official Members. In regard to Nyasaland, the question of electing Unofficial Members should be kept in view.[2] It was further recommended that in both these Territories (in event of their remaining separate entities) the Executive Council should contain the Unofficial element by the appointment of 3 such (1 to represent Native interests) and that both Executive Councils be increased to 6. The Commission remarked, however,[3] that there were many reasons which led them to the view that the amalgamation of Northern Rhodesia and Nyasaland might well be effected without delay, and that the creation of a single Legislature would help in solving the difficulty of adopting the elective system also for the Legislative Council in Nyasaland.[4]

Question in Southern Rhodesian Parliament.—On June 14,[5] 1939, in the Legislative Assembly, the Prime Minister (the Hon. G. M. Huggins, F.R.C.S.) was asked to inform the House of the purpose of his forthcoming visit to Great Britain. In the course of his reply the Prime Minister said that the reason for his visit was primarily to discuss with His Majesty's Government in the United Kingdom the Report of the Bledisloe Commission in all its implications as far as it affected Southern Rhodesia. The same Member then asked by Supplementary Question that the Prime Minister would undertake not to commit Southern Rhodesia to any arrangement suggested by that Commission, to which he replied: " The answer to that Question is obvious from all that has happened in the past."

Motion in the House of Lords.—On July 31, 1939,[6] the fol-

[1] § 526. [2] § 528. [3] § 538. [4] § 539.
[5] 19 S. Rhod. Deb. No. 26, 1271. [6] 114 H.L. Deb. 5. s. 683-732.

lowing Question was asked in the House of Lords by Viscount Elibank: to ask His Majesty's Government,

> whether they have now considered the recent Report of the Rhodesia-Nyasaland Royal Commission; whether they have consulted the Governments concerned regarding it, and what action they propose to take in respect to the various recommendations contained in it, and to move for Papers.

(*The debate upon this subject, however, dealt mostly with non-constitutional subjects, but, as in the case of the Report of the Commission already dealt with, only constitutional references in the Lords debate will be referred to.*)

Viscount Elibank, in opening the debate, referred to the great importance of the Motion, not only to the part of Africa to which it refers but to the whole of the Colonial Empire. He hoped that His Majesty's Government would immediately recognize the principle of amalgamation and follow on that decision by immediate amalgamation. In reading the Report it would be seen that the proposed Inter-Territorial Council was clothed in a cloak of such indefiniteness that it was impossible to know when it would be ready to report and to carry on to the stage when it could recommend amalgamation itself.

Lord Harlech agreed with a great part of the conclusion to the Report that the attempt to govern alongside each other Native Protectorates, regarded primarily as Native Protectorates, under a Crown Colony system and historically associated from the beginning with a very vigorous white democracy with self-government, was an extraordinarily difficult thing to perpetuate. The whole position of the white settlers in Northern Rhodesia was for amalgamation with the settlers and colonists in Southern Rhodesia, and there was no doubt that the Crown Colony system of government could only be perpetuated in that country if there was not merely a more economic development—because that, he believed, was coming as a result of the development of the copper field and of the ancillary industries and agriculture that were bound to spring up in connection with that development—but also an absence of what he might call the official answer, the red tape, the official machine. In a position of that kind, unless there was real intimate social as well as administrative association between the officials selected by Downing Street and the unofficial mining, agricultural and trading interests in that country, then Crown Colony government was doomed.

The Under-Secretary of State for the Colonies (the Mar-

quess of Dufferin and Ava) said here they had a Report covering an enormous area, about half a million square miles, with 4 million people, affecting the political, social and economic interests of Europeans, Africans and Asiatics, and it was only natural, therefore, that H.M. Government must take their time before coming to a decision which was of vital importance to the future of that part of Africa. They would have thought long even if certain recommendations had been made unanimously by a Royal Commission, but in that particular instance it was only too clear that they had to go even more carefully because, although it was true that the Commission signed the Report unanimously, yet there are so many glosses and explanations and interpretations of a personal character that it really required most careful judicial consideration to discover exactly what was the position of each individual member even with regard to the main question of amalgamation. It had always been understood that the responsibility of Parliament for the welfare of the races in the various Territories with which they were concerned was a matter in which all parties were keenly interested, and it had always been the practice when a statement on policy on that subject had been contemplated that the Government of the day should consult the Leaders of the Opposition parties before the terms of any such statement were finally settled. His right honourable friend announced in " another place " that in pursuance of that practice there would be a consultation between the Government and the Opposition Leaders before any statement was made on behalf of the Government regarding the Report of the Royal Commission.

British India (Council of State : Presentation of Mace).— On Monday, April 3,[1] the Hon. Maharajadhiraja Sir Kameshwar Singh of Darbhanga, representing in the Council, Bihar: Non-Muhammadan, presented a Mace for the Council of State at Delhi, as a token of his high esteem for the House and its first non-official President. During the course of his address upon the presentation the Maharajadhiraja said that now that second chambers had been established in several Provinces, the character, dignity and conduct of their House were bound to influence them and leave a rich legacy to its successors when the Federal part of the Constitution came into operation. The speaker observed that, if they looked dispassionately at the second chambers throughout the world, they would notice that no State, irrespective of its form of government, whether

[1] 1939 India C. of S. Deb., Vol. I, No. 20, 865-871.

federal or unitary, monarchical or republican, presidential or parliamentary, constitutionally flexible or constitutionally rigid, was willing to dispense with a second chamber. Each country had evolved it to suit its own conditions.

The Mace is a replica of that used by the Lord Chancellor in the House of Lords. After speeches by the Leader of the House and of the various groups therein, Mr. President stepped down from his Chair on to the floor of the House and, standing in front of the Mace, which lay on a table, thanked the Maharaja, who stood facing him, and accepted the generous gift on behalf of the honourable Members of the Council of State. Mr. President then touched the Mace " in token of acceptance and loyalty and saluted it," after which he said: " Let the Mace be installed in its proper place now," which the Maharaja of Darbhanga and the Hon. Raja Charanjit Singh duly did, Mr. President again saluting it before returning to the Chair, from which he addressed the House, saying that it had always been his desire to see that august House—the supreme chamber in India—should have a prestige and dignity on a footing of Parliamentary status with the Mother of Parliaments. In placing the Mace in that House they were indirectly undertaking to shape the policy of that House on the model of the British Parliament. Let the Mace remind them of the past glory and traditions of Parliamentary practice and procedure, and that in future all hon. Members would consider it their sacred duty to work in the House on the same traditional system adopted in the British Parliament and follow the noble, just and ancient traditions of that House.

> Let every one of us and our successors resolve today that the placing of this regal symbol in this House is the exhortation to all of us to maintain and preserve the great dignity of Parliamentary life in the capital of India and to carry on our deliberations as men in power who shall constantly work with due respect to constituted authority and in conformity to our allegiance to the Crown.

The Council then adjourned to the next day.

British India (Constitutional: Emergency Powers).—An Act[1] was passed during 1939, amending the Indian Constitution[2] by the insertion after section 126 thereof (Control of Federation over Province in certain cases) of a new section, 126A, conferring greater power on the Central Executive in the Provincial sphere during war, thereby substantially cur-

[1] 2 and 3 Geo. VI, c. 66.
[2] 26 and 27 Geo. V, c. 2; *see also* JOURNAL, Vol. IV, 76-99.

tailing the powers of the Provincial Legislatures. This new section provides that when a Proclamation of Emergency is in operation, whereby the Governor-General has declared that the security of India is threatened by war—

> (*a*) the executive authority of the Federation shall extend to the direction of a Province as to the exercise of its executive authority;
> (*b*) any power of the Federal Legislature to legislate for a Province shall include the power to confer powers and impose duties upon the Federation as respects that matter notwithstanding the fact that it is one over which the Provincial Legislature has also legislative authority;

but such Bill or amendments require the sanction of the Governor-General, in his discretion, before being introduced or moved, who must be satisfied as to emergency. A consequential amendment is therefore made in section 124 (2) and (3) of such Constitution, and at the end of section 102 thereof the following sub-section is added:

> (5) A proclamation of emergency declaring that the security of India is threatened by war or by internal disturbance may be made before the actual occurrence of war or of any such disturbance if the Governor-General in his discretion is satisfied that there is imminent danger thereof.

The Act, which is cited as the Government of India Act (Amendment) Act, 1939, is deemed to have come into operation on the commencement of Part III[1] of the Government of India Act, 1935.

In moving the Second reading of the Bill in the House of Commons on September 1, 1939,[2] the Under-Secretary of State for India explained that generally speaking the scheme of the 1935 Act[3] was that executive authority followed legislative power. The Central Government has executive authority and exclusive legislative power in connection with the subjects in List I. Likewise the Provincial Governments in respect of the subjects in List II. In respect of matters contained in the Concurrent List, the arrangement is that as the matters are of their nature primarily provincial, the concurrence of the Centre was merely needed in order to secure legislative uniformity where necessary, executive authority, generally speaking, being in the Provinces. No doubt the restriction on the Centre contained in section 313 of the Act of 1935 was insufficiently considered by its framers in its relation to section 102,

[1] The Governor's Provinces (secs. 46-93).
[2] 351 H.C. Deb. 5. s. 151-153.
[3] 26 Geo. V, c. 2.

which recognizes that in war conditions it might be impossible to maintain a rigid legal distinction between the powers of the Central and Provincial Governments, and such section therefore enables the Governor-General to declare by Proclamation that a grave emergency existed whereby the security of India was threatened. By that proclamation the Centre derived exceptional and emergency authority to legislate in connection with matters in the Provincial Legislative List. As the Act stands, however, the restriction imposed by section 313 brought it about that while the Centre could legislate on Provincial subjects they could not acquire the executive authority necessary to deal with those matters. The Government of India therefore requires covering authority in the Government of India Act. In other words, the Act was putting the Government of India in the same position as Parliament had recently placed the Imperial Government when they passed the Emergency Powers (Defence) Act.

British India (Resignation of Provincial Ministries).—Towards the end of 1939 the Ministries in 8 of India's 11 Governor's Provinces resigned,[1] the Governor of each Province accepting such resignations, and, except in Assam, no other Ministries being formed, the Governor issued a Proclamation under section 93 of the Constitution,[2] suspending certain sections thereof and assuming administration of the Province, appointing certain (I.C.S.) advisers—who are, however, unable to relieve the Governor of his personal responsibility—to assist him in the discharge of his duties during the period for which the Proclamation (the terms of which are given below) is in force.

Although no official statement was issued giving reasons for the resignations in respect of the Ministries in Bombay, Bihar, Central Provinces and Berar, Assam, and Orissa, they appear to have been tendered in pursuance of certain principles embodied in a Resolution given below, with such variations as noted, passed by the Legislative Assemblies of Madras, United Provinces, Central Provinces and Berar, and the N.W. Frontier Province.

The way is nevertheless open for the political Party these Ministries represent to return to office, in which event ad-

[1] Madras, October 27; Bombay, November 4; United Provinces, October 30; Bihar, November 2; Central Provinces and Berar, November 8; Assam, November 17; N.W.F. Province, November 7; and Orissa, November 4. The Provinces where no such resignations took place were Bengal, the Punjab and Sind.

[2] Government of India Act, 1935 (26 Geo. V, c. 2).

ministration under section 93 would come to an end, no general election being necessary within the first period for which the Legislative Assemblies were elected to return the Ministries to office. The administration is therefore maintained in the absence of an alternative Ministry.

Resolution.—The Resolution read:

> This Assembly regrets that the British Government have made India a participant in the war between Great Britain and Germany without the consent of the people of India and have further in complete disregard of Indian opinion passed laws and adopted measures curtailing the powers and activities of the Provincial Governments. This Assembly recommends to the Government to convey to the Government of India and through them to the British Government that in consonance with the avowed aims of the present war, it is essential in order to secure the co-operation of the Indian people that the principles of democracy be applied to India and her policy be guided by her people; and that India should be regarded as an independent nation entitled to frame her own constitution and further that suitable action should be taken in so far as it is possible in the immediate present to give effect to that principle in regard to present governance of India. This Assembly regrets that the situation in India has not been rightly understood by His Majesty's Government when authorising the statement that has been made on their behalf in regard to India, and in view of this failure of the British Government to meet India's demand this Assembly is of opinion that the Government cannot associate itself with British policy.

In the United Provinces and the N.W. Frontier Province the wording of the Resolution was as given above.

In Madras the Resolution ended with the word " India " where it last occurs and the following is added: " In view of the failure of the British Government to meet India's just demand on this occasion, and of the far-reaching gravity of the consequences involved in such failure, this Assembly, while expressing its fullest confidence in the Ministry and realizing the grave setback to good government and progress in the Province which their withdrawal will cause, fully approves of the Ministry's intention to tender its resignation to His Excellency the Governor."

In the Central Provinces and Berar, after the word " constitution " in l. 13, the following words appear: " providing, among other things, adequate safeguards for the protection of the rights and liberty of the members of all minority communities in India "; after " India " in l. 15 the following words were inserted: " giving at the same time a voice to important minorities in the machinery that may be devised for the purpose "; in l. 16 after " Assembly " the word " profoundly "

appears; and the following is added (l. 21): "This Assembly, while recording its fullest confidence in the Ministers, calls upon them to tender resignation of their office."

The Resolution was passed by the Legislative Assemblies as follows: Madras, October 26; U.P., October 30; C.P. and Berar, November 8; and in N.W.F.P. on November 7.

Proclamation.—The terms of the Governor's Proclamation were:

> Whereas the Governor of the Province of .....[1] is satisfied that a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of the Government of India Act, 1935 (hereinafter referred to as "the Act"):
>
> Now, therefore, in the exercise of the powers conferred by section 93 of the Act and with the concurrence of the Governor-General, the Governor by this Proclamation—
>
> (*a*) declares that all his functions under the Act shall be exercised by him in his discretion;
>
> (*b*) assumes to himself all powers vested by or under the Act in the Provincial Legislature and all powers vested in *either Chamber of that Legislature*[2] but not so as to affect any power exercisable by His Majesty with respect to Bills reserved for his consideration or the disallowance of Acts;
>
> and he hereby makes the following incidental or consequential provisions which appear to him to be necessary or desirable for giving effect to the objects of this Proclamation, namely:
>
> (1) The operation of the following provisions of the Act is hereby suspended, namely, sections 50 and 51, section 59, so far as it relates to or requires consultation with Ministers, sections 62 to 67 (both inclusive) and 70 to 75[3] (both inclusive), the proviso to sub-section (1) of section 76, sub-sections (1) and (2) of section 78 and so much of sub-section (3) thereof as relates to salaries and allowances of Ministers, sections 79 to 82 (both inclusive), so much of sub-section (1) of section 83 as relates to the passing of a Resolution by the Provincial Legislative Assembly; sub-section (2) of section 83; sections 84 to 90 (both inclusive) and so much of section 169 as relates to the laying of reports before the Provincial Legislature;
>
> (2) In exercising Legislative powers under or by virtue of this Proclamation, the Governor, acting in his discretion, shall prepare such Bills as he deems necessary, and declare as respects any Bill so prepared either that he assents thereto in His

[1] Here was given the name of the Province concerned.

[2] In the Unicameral Provinces the words "the Provincial Legislative Assembly" were used for the words in italics.—[ED.]

[3] In C.P. and Berar, "70 to 75 (both inclusive)" was altered by subsequent Proclamation to read "70 to 74 (both inclusive), the proviso to sub-section (i) of section 75," in order to effect the promulgation of certain Bills which had been passed by the Legislature but not assented to by the Governor when the original Proclamation came into force.—[ED.]

Majesty's name, or that he reserves it for the consideration of the Governor-General; and the reference in sub-section (2) of section 76 to the day on which a Bill was presented to the Governor shall be construed as a reference to the day on which a Bill was so reserved by him;

(3) Any expenditure from the revenues of the Province, whether expenditure charged by the Act on those revenues or not, shall be deemed to have been duly authorised if it is included in an annual estimate of expenditure or a supplementary estimate of expenditure published in the official gazette of the Province;

(4) While this Proclamation is in force it shall, notwithstanding anything in any rules made under the Act relating to elections, be unnecessary for an election to be held for the purpose of filling any casual vacancy in *either Chamber of the Provincial Legislature*[1];

(5) Any reference in the Act to Provincial Acts, Provincial laws, or Acts or laws of a Provincial Legislature, shall be construed as including a reference to Acts made under or by virtue of this Proclamation, and the .....,[2] and so much of the General Clauses Act,[3] ...., as applies to Provincial laws, shall have effect in relation to any such Act as if it were an Act of the Provincial Legislature.

In Assam, however, where the Governor accepted the resignation of the Ministry[4] on November 17, 1939, a new Council of Ministers was duly appointed and notified in *The Assam Gazette Extraordinary*, the oaths of office being administered to them at the Constitutional Hall, Shillong, at 7 p.m., all on the same day.

British India (Provincial Voting System).—On March 6, 1939,[5] the following Address was moved in the House of Commons:

> That an Humble Address be presented to His Majesty in pursuance of the provisions of section 309 of the Government of India Act, 1935, praying that the Government of India (Provincial Legislative Assemblies) Order, 1939, be made in the form of the draft laid before Parliament.

The Under-Secretary of State for India (Lt.-Col. A. J. Muirhead, M.C.), in moving the Motion, explained that the "Hammond Committee,"[6] in considering the voting system

[1] In the Unicameral Provinces the words "the Provincial Legislative Assembly" or "Provincial Legislature" were used for the words in italics.—[ED.]

[2] Here was quoted the respective Provincial General Clauses Act.—[ED.]

[3] Here the year of the Act was given. In the case of the Orissa Proclamation the "General Clauses Act" was omitted.—[ED.]

[4] Coalition.

[5] 344 H.C. Deb. 5. s. 2875, 2512.

[6] Cmd. 5099, 5100 (1935-6).

for constituencies returning more than 1 Member, suggested 3 alternatives—the single, non-transferable vote, the distributive method and the cumulative method. The last mentioned was recommended, by which voters have as many votes as there are seats to be filled, and they are distributed at the choice of the voter.[1] Following a recommendation by the Madras Legislative Assembly the distributive will be substituted for the cumulative system in general constituencies in that Province. The Motion was agreed to, and His Majesty's Answer was reported by the Vice-Chamberlain of the Household on March 14.[2]

British India: Bengal (Ministerial Change).—The Bengal Ministry resigned on June 23, 1938, owing to differences of opinion with the Hon. Mr. Syed Nausher Ali (then Minister in charge of Public Health and Local Self-Government), who refused to resign when called upon to do so by the Hon. the Chief Minister. Thereupon the latter tendered the resignations of himself and of all his colleagues, which were accepted by the Governor, and the Ministry was reconstituted the same day,[3] with the omission of Mr. Nausher Ali (section 51 of the Government of India Act, 1935).

British India: Sind (Ministerial Change).—Resignations of Ministers took place in this Province on October 15, March 21, 1938, and March 18, 1940, but these were tendered in consequence of want of support of a majority in the House; resignations of individual Ministers have generally followed the consensus of opinion of the groups supporting such Ministers.

Indian States (Questions in House of Commons).—On December 16, 1938,[4] the Under-Secretary of State for India was asked in what way the attitude of His Majesty's Government towards constitutional reform in Indian States had recently been notified; and what was the policy of His Majesty's Government towards the present agitation in various Indian States, to which the Under-Secretary replied that His Majesty's Government had replied fully to the statement made by his noble friend the Member for Horsham (Earl Winterton) in his reply on February 21[5] last on this subject. 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

[1] *See* Government of India (Provincial Legislative Assemblies) Order, 1936, Part I, para. 15.
[2] 345 H.C. Deb. 5. s. 185.
[3] Notification No. 3520 A.R., June 23, 1938.
[4] 342 H.C. Deb. 5. s. 2352.
[5] 332 *ib.* 4-5.

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. With regard to the second part of the Question, the obligations of the Paramount Power to the States extended to protecting Rulers against violence and disorder and to advising and assisting Rulers in remedying such legitimate grievances of their subjects as might be found to exist.

On December 19, 1938,[1] a Question was asked in the House of Commons as to whether the Under-Secretary of State for India 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, in reply to the first part of the Question, said that full consideration had now been given to the replies from the Indian Rulers as regards the limitations to which they would wish their accession to Federation to be subject. In the light of that consideration His Excellency the Crown Representative would very shortly be communicating to the Rulers detailed information as to the terms on which their accession to Federation as envisaged in the Government of India Act could be considered. With regard to the second part, no changes or modifications were contemplated in the scheme of Federation embodied in the Act. With regard to the third part, the hon. Member was referred to the reply given on December 16 to the hon. Member for Kidderminster. In reply to a Supplementary Question, as to the inclusion of some proposals towards democratization, the Civil Lord replied in the negative, and said that they (the Government) were not urging anything in that line upon the Princes, but, of course, they were not going to hinder any action which the Princes themselves might think fit to take. In reply to a further Supplementary Question, if the Civil Lord was aware that the Congress Party was pressing and those sympathetic to it were pressing strongly for democratization, the Civil Lord said that he was aware that some members of the Congress Party were pressing for that policy, but Mr. Gandhi, when he was here at the Round Table Conference, said: " we have no right, in my humble opinion, to say to the States what they shall do and what they shall not do." " That is

[1] 342 H.C. Deb. 5. s. 2439.

the line," said the Civil Lord, " the Government are taking in the matter."

In the course of a reply to a further Question in the House of Commons on the above subject on December 22, 1938,[1] the Government representative on behalf of the Under-Secretary of State for India said that in many Indian States representative institutions had existed for some time and the recent grant of further development of such institutions had been announced in others.

During the course of the reply to a Supplementary Question in the House of Commons on February 27, 1939,[2] the Under-Secretary of State for India said that it was quite clear that the Government of India intended to stand by the Treaty obligations. . . . The obligation of the Paramount Power to the States had been stated on many occasions. It was to protect the States from disorder within the States themselves.

On April 6, 1939,[3] a Question was asked the Under-Secretary of State for India in the House of Commons, whether H.M. Government was satisfied that its policy with regard to constitutional changes initiated by Rulers of Indian States adequately safeguarded the continued fulfilment by Rulers of their obligations to the Paramount Power, to which the Under-Secretary replied that the policy indicated in the reply of December 16[4] was not to be taken as implying that the Paramount Power would recognize a Ruler as having endowed any constitutional body which he might create with a greater degree of authority than that which he himself was recognized as possessing. No State would be regarded as relieved of its obligations to the Paramount Power by the fact that its Ruler had divested himself of the control necessary to discharge them, and the Paramount Power would remain free to take such steps as might be required to ensure their fulfilment.

In reply to a Question in the House of Commons on June 8, 1939,[5] the Under-Secretary of State for India said that the proposed terms of accession were communicated to Rulers of Indian States at the end of January, and they were asked to say within 6 months whether they would be prepared to accede to the Federation on the terms proposed. After the Rulers' replies had been received, H.M. Government contemplated the publication of a White Paper on the subject.

[1] 342 H.C. Deb. 5. s. 3116. [2] 344 H.C. Deb. 5. s. 870.
[3] 345 *ib.* 3012. [4] *See* p. 67, *supra*. [5] 347 *ib.* 637.

During the course of a reply to a Question in the House of Commons on June 19, 1939, the Under-Secretary of State for India said that the full wording of the Resolution passed by the Conference of Indian Princes at Bombay on June 12 was understood to be:

> The Conference of Princes and Ministers assembled at Bombay, having considered the revised draft Instrument of Accession and connected papers, resolves:
> That the terms on the basis of which Accession is offered are fundamentally unsatisfactory in the directions indicated in the Report of the Hydari Committee of Ministers and confirmed by recommendations of the Gwalior Conference, and are, therefore, unacceptable.
> At the same time, the Conference records its belief that it could not be the intention of His Majesty's Government to close the door on All-India Federation.

It was stated by the Under-Secretary of State for India in reply to a Question in the House of Commons on June 19, 1939,[1] that he was informed that the Conference above referred to was attended by over 50 Princes and about 50 representatives of Rulers unavoidably absent, as well as by about 100 other Ministers and Secretaries.

On August 4, 1939,[2] a Question was asked in the House of Commons, whether the Under-Secretary of State for India could give an assurance that the pledges given during the passage of the Government of India Bill that no pressure would be brought upon any Prince or Ruler of Native States to enter Federation had been, and would be, honoured, and that no attempt would be made to prevent free choice of action by the use of any influence on the part of the Government of India. To which the Under-Secretary replied he could certainly give that assurance. The policy of H.M. Government remained as stated in reply to the hon. Member for Woodbridge (Mr. Ross Taylor) on December 6, 1937.[3]

Indian States: Mysore (Constitutional).—With reference to the information given on this subject in our previous Volume,[4] the Report[5] of the Committee on Constitutional Reform, there mentioned, which was appointed on April 1, 1938, is dated August 24, 1939, and was presented to the Dewan of Mysore (Amin-ul-mulk Sir Mirza M. Ismail, K.C.I.E., etc.) on August 30-31 following. It is a most

[1] *Ib.* 1826; *see also* 349 *ib.* 3. [2] 350 *ib.* 2841.
[3] 330 H.C. Deb. 5. s. 3.
[4] *See* JOURNAL, Vol. VII, 91-94.
[5] Government Press, Bangalore, 1939. *Rs.* 1.

interesting document, and reveals a thorough and painstaking investigation into the subject.

The terms of reference of the Committee were:

> It has been accordingly decided to appoint a Special Committee for the purpose of examining, in relation both to the public administration and the public life of the State, the development and working of the Representative Assembly and the Legislative Council, as well as the other representative bodies and institutions connected with them, such as Standing Committees.
>
> * * * * *
>
> The Committee is requested to formulate, having due regard to the present state of education and public spirit, the growing political consciousness of the people and other relevant factors, such as the practical efficiency of the District Boards, Municipalities and Panchayets, comprehensive proposals as to the further changes which may be desirable to secure the steady and harmonious constitutional progress of the State from the point of view of all the interests concerned. In particular the Committee is requested to deal with the following questions:
>
> (i) The composition, functions and powers of the Representative Assembly and the Legislative Council, respectively, having special regard, among other matters, to the possibility of the extension of the franchise and to the representation of special interests and minorities which have developed since 1924.
> (ii) The relation of the two Houses to each other and to the Executive Authority of the State.
> (iii) Their Sessions, duration and Dissolution.
> (iv) Their Presidents and other functionaries.
> (v) Allowances and honoraria payable to their Members and officers.
> (vi) Their privileges and the privileges of their Members, and remedies in cases of breach of privilege.
> (vii) Their power to appoint committees and to delegate authority to such committees.
> (viii) The safeguards necessary for minority groups, special interests, and emergencies.
> (ix) The method of appointment of representatives of the State to the two Houses of the proposed Federal Legislature, and their relations with the Government and the legislative bodies in the State.

In addition to the Chairman, the Committee consisted of 2 Official and 17 Non-Official members. It held 20 sessions extending over 64 days and heard 31 witnesses. Resolutions relating to the subject of inquiry were received from 192 persons and organizations.

The book containing the Report, etc., opens with the Ruler's Proclamation dated November 6, 1939, followed by the Government Order on the recommendations of the Committee and a letter from the Chairman submitting the Report. The Report itself covers 173 of the 236 pp., and is divided into 4 chapters—namely, I, Introductory; II, The Background; III, Fundamental Considerations; and IV, The Proposals; with 7 Appendices. Each chapter is divided into sections.

A general outline of the type of Constitution in force in the State of Mysore was given in our last issue, therefore this *résumé* will be confined to the further constitutional changes effected, as stated in the Proclamation above mentioned and issued by His Highness the Maharaja. After referring in the preamble of the Proclamation to the welfare and advancement of his people being his constant aim and endeavour, His Highness ordains that the Representative Assembly which was established 58 years ago by his beloved father, H.H. Sri Chamarajendra Wadiyar Bahadur, will in future function under a consolidated constitution. Privileges of freedom of speech and immunity from arrest under certain conditions will be conferred on the Members of both Houses, whose term will be extended from 3 to 4 years. The powers and scope of the Representative Assembly are to be enlarged and its membership increased ordinarily to 310, in order to provide representation for minority communities, economic and other special interests. The Assembly is to be consulted before the introduction of any legislative measure into the Legislative Council, and the opinion expressed thereon by the Assembly will ordinarily be accepted by His Highness's Government when supported by a prescribed majority, although in exceptional cases where it may be necessary in the public interest or for the ensuring of safety and good government to proceed with a Bill in the Legislative Council, notwithstanding the opinion of the Assembly, His Highness's Government will do so after issuing a statement giving the reasons therefor. The Assembly's powers in respect of the Budget and the restriction of discussion on expenditure pertaining to His Highness's Military Forces are to be relaxed, and greater opportunities are to be given for the transaction of Non-Official business. The electorates for both the Council and Assembly are to be further widened, minority communities being also returned by direct election, wherever possible.

The Assembly is to be composed of:

(1) Rural Constituencies	166
(2) Urban Constituencies	45
(3) Minorities:	
(*a*) Muslims	30
(*b*) Depressed classes	30
(*c*) Indian Christians	5
(*d*) Europeans	1
(*e*) Anglo-Indians	1
(4) Special interests	22
(5) Nomination for special purposes	10
Total	310

The elected element of the Legislative Council is to be further increased in order to secure a statutory elected majority as follows:

(*a*) *Elected:*		
General Constituencies		24
Minorities, namely—		
Muslims	5	
Depressed classes	4	
Indian Christians	1	
Europeans	1	11
Special interests—		
University	1	
Trade and Commerce	1	
Mining	1	
Planting—		
(*a*) Indian	1	
(*b*) European	1	
Labour—	2	
Women	2	9
		44
(*b*) *Nominated:*		
Officials		16
Non-Officials		8
		68

In future, in regard to the Government's powers to restore a provision to the budget, action will only be taken after a formal certification by the Dewan. There are certain heads of expenditure excluded from the control of the Legislature, such as the Royal Household, Defence, Public Servants' Pensions, etc. The property and educational qualifications for voters for the Assembly are to be substantially reduced. Elected representatives of the people are to be given a place

in His Highness's Executive Council, which is to consist, in addition to the Dewan, of not less than 4 Ministers, of whom not less than 2 are to be selected from the elected Members of the Assembly.

The Privileges of Members of the two Houses are to be as follows:

> Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature, and no Member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of such a Legislature of any report, paper, votes or proceedings.

The general elections are to take place in September, 1940, and the Assembly and the Council reconstituted in the following month. The Assembly meets at Mysore twice during the year, for the Budget Session in June (to synchronize with the Birthday of His Highness the Maharaja) and the Badara Session in October, which commences after the Badara festivities. The Legislative Council also meets twice a year, the Budget Session in June, immediately after the close of the Assembly, and again in January.

We have also received from the Secretary of the Representative Assembly and the Legislative Council a copy of the Address of the Dewan to the Assembly on October 16, 1939, and the 2 volumes containing the Proceedings of the Assembly and the Legislative Council, including the Reports of Debates, most of which are recorded in the English language. Both volumes are well arranged, excellently indexed, and printed in clear bold type.

Indian States: Jammu and Kashmir (Constitutional).—Reference was made in a previous issue[1] to the position of the Indian States, *vis-à-vis* British India, in regard to the new Constitution of India.[2] The State of Jammu and Kashmir is, with Hyderabad, Mysore, Gwalior and Baroda, one of the 5 premier Indian States, all of which are in immediate political relations with the Government of India. The State of Jammu and Kashmir consists of the hill state of Jammu, formerly tributory to the Sikhs, the former Afghan Province of Kashmir and the frontier Illaqas of Gilgit and Ladakh (Leh), which were conquered and incorporated into these territories

[1] *See* JOURNAL, Vol. IV, 77-83. [2] 22 Geo. V, c. 2.

by the Dogra Rulers, *i.e.* Maharaja Gulab Singhji, the founder of the State, and his successor, Maharaja Ranbir Singhji. The State of Jammu and Kashmir, alone of the Indian States, is on the outer frontier, its confines marching with China, Afghanistan and almost with Russia. It differs from all the other States of India, first in being established *ab initio* by the British Government, and secondly in having an outer portion with its troops always on frontier service below the Pamirs.[1]

The State covers an area of 85,885 sq. miles. Its population in 1931 numbered 3,646,243, of whom, in Kashmir, the majority were Moslem, and, in Jammu, Dogras. The approximate annual revenue of the State is *Rs.*250 lakhs, of which about one-seventh is devoted to the upkeep of the army. Its Ruler is His Highness the Maharaja Sir Hari Singh, G.C.S.I., G.C.I.E., K.C.V.O., LL.D., who succeeded in 1925—known as the "Shield of the British Empire." His troops consist largely of Rajputs, with Afghans, Dogras and Sikhs in their ranks.[2]

The present Constitution of this State[3] was promulgated by Proclamation of His Highness the Maharaja on 22 Bhaddon, 1996 (September 7, 1939). The Proclamation, which is dated Srinagar, September 2, 1939, in its opening paragraph states that in the Proclamation of February 11, 1939:

> We announced Our decision as to the further steps to be taken to enable Our subjects to make orderly progress in the direction of attaining the ideal of active co-operation between the Executive and the Legislature of the State in ministering to the maximum happiness of Our people.

The Constitution contains 78 sections and is divided into 6 Parts. Part I contains the interpretation section.[4] Section 4 states that:

> The territories for the time being vested in His Highness are governed by and in the name of His Highness, and all rights, authority and jurisdiction which appertain or are incidental to the government of such territories are exercisable by His Highness, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Highness.

Section 5 provides that notwithstanding anything contained in this or any other Act, all powers, legislative, executive and

[1] *The Indian States and Princes*, Lt--Gen. Sir G. McMunn, K.C.B. (Jarrolds) 1936. 129-130.
[2] *India of the Princes*, Rosita Forbes, Gifford, 1939. 276-287.
[3] The Jammu and Kashmir Constitution Act of 1996 (A.D. 1939) (No. XIV of 1996), Kashmir Mercantile Press, Srinagar.
[4] Act No. XIV of 1939; Sec. 3.

judicial, in relation to the State and its government are inherent in and possessed and retained by His Highness, and nothing contained in this or any other Act affects the rights and prerogative of His Highness to make laws, and issue proclamations, orders and ordinances by virtue of his inherent authority.

The Executive.—Part II deals with the Executive. The civil administration is vested in a Council[1] consisting of the Prime Minister and such other Ministers of State as His Highness may by Royal Warrant appoint,[2] who are responsible to His Highness and hold office during his pleasure. The Prime Minister is President of this Council. Members of the Council are required to make and subscribe, before His Highness or such officer as he may authorize to do so, the Oath of Allegiance in the form set forth in Schedule I.

The Prime Minister may with the previous sanction of His Highness make rules for the transaction of the business of the Council.[3] Section 10 provides for the appointment by His Highness of a person qualified to be appointed Judge of the High Court as Advocate-General of the State, who has the right of speech but not to vote, in the Praja Sabha and its Committees, and his duties are laid down in this section.[4] Section 11 deals with authentication of orders. Under section 12 the Council is empowered to make rules in regard to:

(*a*) the term for and conditions under which nominated Members of the Praja Sabha (Assembly of the People) are appointed, casual vacancies, and Members' qualifications;
(*b*) the franchise, constituencies and method of elections;
(*c*) election disputes and corrupt practices;
(*d*) procedure in the Praja Sabha;
(*e*) travelling allowances of Members;
(*f*) the duties of Praja Sabha Under-Secretaries; and
(*g*) generally for the carrying out of the Act.

Certain amendments to these Rules appeared in *The Jammu and Kashmir Government Gazette* of September 11, 1939.

The Legislature.—Part III deals with the Legislature, which consists of His Highness the Maharaja and the Praja Sabha,[5] composed of a President appointed by His Highness for such term as he may fix and by whom he may likewise be removed from office and casual vacancies be filled,[6] and 75 other Members.[7] The members of Council are *ex officio* Members of the Praja Sabha. Forty Members of this Chamber are elected, the rest being nominated by His Highness. Thirty-

[1] *Ib.* 6. [2] *Ib.* 7. [3] *Ib.* 9. [4] *Ib.* 10; 12 (m) and Part III Sec. 13.
[5] *Ib.* 13. [6] Secs. 14 and 19. [7] *Ib.* 14.

three of the elected Members represent the communities and general constituencies shown in Schedule II of the Act, 21 of which are Muslim constituencies, 10 Hindu and 2 Sikh; 7 Members are apportioned, 2 representing certain Tazimi Sardars; 2 from Jagirdars, etc., holding Jagirs, etc., from the State of not less than *Rs.*500 *p.a.*, 2 representing Landholders owning land assessed to land revenue of not less than *Rs.*250 *p.a.*, and 1 to represent those receiving a pension of *Rs.*100 or more *p.a.* Of the nominated Members of the Praja Sabha, 14 represent the areas given in Schedule IV, apportioned to the following communities: 2, Buddhist; 6, Muslim; 4, Hindu; 1, Hindu other than Kashmir Pandit; and 1 Sikh. Not more than 8 of the nominated Members may be officials. The Rules made under section 12 also apply to the constituencies under Schedules II, III and IV.

Sub-section (7) of section 14 provides that:

> His Highness may for the purpose of any Bill introduced or proposed to be introduced in the Praja Sabha nominate not more than two persons having special knowledge or experience of the subject-matter of the Bill, and these persons shall, in relation to the Bill, have, for the period for which they are nominated, all the rights of Members of the Praja Sabha, and shall be in addition to the members above referred to.

Every Praja Sabha continues for 3 years from the date of its first meeting, but His Highness may at any time dissolve it, or extend its term, if in special circumstances he so thinks fit. Within 6 months of the expiry of the Praja Sabha by the effluxion of time or of its dissolution, a date is appointed by His Highness for its next meeting.[1] There must be every year at least one Session at Jammu and another at Srinagar. Power is also vested in His Highness to summon, prorogue or dissolve the Praja Sabha.[2] Communication by His Highness with the Praja Sabha may be in person, by message through a Minister, or sent through the Presiding Member.[3] Communications by the Praja Sabha with His Highness are by formal address in the usual Parliamentary manner.

The Deputy President of the Praja Sabha is chosen by the other Members thereof. Should both the President and Deputy President be absent, His Highness appoints a person to act.[4] The Deputy President may be removed from office by Resolution of the Praja Sabha passed by a majority of the Members then on its roll.[5] Provision is also made for the

[1] Act No. XIV of 1939; Sec. 15 (1) (2).
[2] *Ib.* 15 (3).
[3] *Ib.* 16.
[4] *Ib.* 20.
[5] *Ib.* 21.

appointment out of the Non-Official Members of Under-Secretaries to assist the Ministers in their Parliamentary duties.[1]

The Praja Sabha has power, subject to the provisions of the Act, to make laws for the whole State or any part thereof and for the subjects of His Highness wherever they may be.[2] But certain legislative matters are reserved to His Highness, such as those affecting:

(*a*) His Highness, the Royal Family or the management of the Royal Household;
(*b*) treaties, etc., between the State and the King-Emperor, the Government of India, foreign Powers, or with the Government, or any State in India.
(*c*) frontier policy, including those relating to Ladakh and Gilgit,
(*d*) the organization, discipline and control of the State Forces; and
(*e*) other matters such as relating to certain Jagirs, etc.[3]

All questions in the Praja Sabha are decided by a majority of votes, with only a casting vote by the Presiding Member; one-fifth of its members constitute a quorum.[4]

Members of the Praja Sabha.—Provision is made for the Oath set forth in Schedule I to be taken by Members, their vacation of seats, disqualification for Membership.[5]

Section 29 confers freedom of speech in the Praja Sabha, and no Member is liable to any proceeding in any Court in respect of anything said or any vote given by him in the Praja Sabha or any committee thereof, or in respect of the publication by or under the authority of the Praja Sabha of any report, aper or Votes and Proceedings.[6] Section 30 governs the ılting and travelling allowances to Members and the honoraria › the President, Under-Secretaries, etc.

Legislative Procedure.—When a Bill has been passed by the Praja Sabha the Prime Minister may, instead of presenting it for Assent to His Highness, return it for reconsideration in whole or in part, together with any amendments he may

[1] *Ib.* 22. [2] *Ib.* 23. [3] *Ib.* 24. [4] *Ib.* 25.

[5] The Oath for Members of the Praja Sabha reads:

I . . . . . A.B. . . . . having been elected / nominated a Member of this Praja Sabha do solemnly swear that I will be faithful and bear true allegiance to His Highness Raj Rajeshwar Maharajadhiraj Shri Maharaja Harisingh Ji Bahadur, Indar Mahindar Sipar-i-Saltanat-i-Inglisha, G.C.S.I., G.C.I.E., K.C.V.O., LL.D., of Jammu and Kashmir, his heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.

[6] Act No. XIV of 1939: Sec. 29.

recommend; otherwise the Bill is submitted for the assent of His Highness, and, after being assented to, it is published in the *Gazette* in English as an Act with the force of law. "Act" is substituted for "Regulation" in all Regulations in force upon the passing of the Constitution. Members may not ask Questions or move Motions affecting the religious rights, usages, endowments or personal law of any community than their own.[1]

Language.—The business of the Praja Sabha is transacted in Urdu, but any Member may address the Chamber in English, and the latter language is employed in the texts of Bills, amendments and Acts.[2]

Religion.—Without the previous sanction of His Highness, no Bill affecting the religious rights, usages, endowments or personal law of any community may be introduced, and no such Bill shall be deemed to be passed by the Praja Sabha unless two-thirds of the Members of the Praja Sabha from the community affected are present at the meeting of the Praja Sabha and vote in its favour.[3]

Emergency Powers.—When the Praja Sabha refuses leave to introduce or fails to pass a Bill in the form recommended by the Council, His Highness may declare that it is essential for the good government, safety or tranquillity of the State, and upon such declaration such Bill becomes law.[4]

Should the Prime Minister certify that the discussion of any Bill, Motion, or amendment would affect the safety or tranquillity of the State or any part thereof, he may direct that no proceedings or further proceedings in the Praja Sabha be taken thereon.[5]

The Council may, in case of emergency or when immediate legislation is required affecting the peace and good government of the State, submit to His Highness an Ordinance which on receiving his Assent shall have the force of law for a period not exceeding 6 months from the date of its promulgation, and the Praja Sabha is prohibited from repealing or altering any such Ordinance.[6]

Standing Orders.—The Praja Sabha frames its own Standing Orders, which must not be repugnant to the Constitution or any rules thereunder.[7]

Finance.—Sections 41 and 42 deal with the procedure of the Chamber in regard to the Estimates of income and expenditure, and section 43 sets forth heads of expenditure

[1] *Ib.* 31-32. [2] *Ib.* 33. [3] *Ib.* 36. [4] *Ib.* 34.
[5] *Ib.* 35. [6] *Ib.* 38, 39. [7] *Ib.* 40.

chargeable on the Revenue of the State which are not submitted to a vote of the Praja Sabha. Other expenditure is so submitted in the form of demands for grants, which the Praja Sabha may either assent to, reduce, or refuse, but should the Council consider any such demand, etc., is necessary for any department or for the discharge of the Council's responsibility, the Council has power to act as if such demand had been assented to. His Highness may in case of emergency authorize such expenditure as may in his opinion be necessary for the safety or tranquillity of the State. No demand for a grant may be made unless recommended by the Council,[1] and the Prime Minister has the decision as to whether any expenditure is a charge upon the revenue of the State.[2] Supplementary expenditure is dealt with in section 46.

The sanction of the Prime Minister is required for the introduction of any Bill or amendment affecting taxation, borrowing moneys, giving financial guarantees or declaring any expenditure a charge upon the revenues of the State, but fines or pecuniary penalties, fees or fees for licences or for services rendered are exempt, and the recommendation of the Council is required before a Bill can be passed which involves expenditure from State revenue.[3]

Part IV makes provision for the constitution of a High Court, a Chief Justice and Judges, appointed by His Highness, their tenure of office, precedence, qualifications, salaries, oath of office, seal, jurisdiction, sittings, special commissions, appeals, decisions, rules, etc. The High Court shall comply with any requisition made under the command of His Highness for records, returns and statements.[4]

Section 71 provides for appeals to His Highness from the decisions of the High Court and the duties of His Highness' Board of Judicial Advisers appointed thereunder. The Royal Prerogative is contained in section 72.

Miscellaneous.—Part V deals with certain miscellaneous matters,[5] and section 75 provides that should any dispute arise as to the interpretation or the operation of any of the provisions of the Constitution or Rules thereunder, the decision of the Council, subject to section 5 (His Highness' inherent powers), shall be final.

Section 76 deals with the repeal and savings of Laws and Rules, and under 77 (Transitory Provisions) the existing Praja Sabha (except the *ex officio* Members) continues for its full life of 3 years.

[1] *Ib.* 44, 45. [2] *Ib.* 44. [3] *Ib.* 47. [4] *Ib.* 48-70. [5] *Ib.* 73, 74.

This Constitution has been dealt with at some length under EDITORIAL as presenting many matters of special constitutional interest.

Indian States: Gwalior (Constitutional).—Reference was made in a previous issue[1] to the position of the Indian States, *vis-à-vis* British India, in regard to the new Constitution of 1935.[2] The State of Gwalior is, with Hyderabad, Mysore, Jammu and Kashmir and Baroda, one of the five premier Indian States, all of which are in immediate political relations with the Government of India. Gwalior, the realm of Scindia and the premier Mahratta State, covers an area of 26,383 sq. miles, being larger than Greece. Its population in 1931 was 3,523,070, of whom about 84% are Hindus and 6% Moslem. The approximate annual revenue of the State is *Rs.*241·79 lakhs. Its Ruler, His Highness Maharaja George Jewaji Rao Scindia, Bahadur, was born June 26, 1916, and succeeded his able father on the latter's early and untimely death in 1925. His Highness is one of the five 21-gun-salute Rulers of Indian States. Gwalior, the capital, is famous for its ancient inaccessible fortress, thrice stormed by the British and thrice restored. It stands on a rock in the plain like the hull of a modern battleship; its antiquity is great, and it contains caves and temples dating back "far into the mist of ages."[3]

On June 14, at Jai Vilas, a Proclamation was issued, signed by the Ruler, in which was reiterated the injunction of his "beloved father" that "the object of good government lies in the cultivation of mutual trust between the Ruler and the ruled, so that its aim may ever be to lighten appreciably the burdens of government and retain for the Ruler the abiding love and loyalty of his subjects."

The Proclamation declared, "on the advice of our Nobles and Ministers," that

> "Our subjects are entitled to the fundamental rights of good citizens and shall possess the various civic liberties, which shall include:
>
> (i) Liberty of speech and liberty of the Press;
>
> (ii) Liberty of conscience (freedom of religion, which had always remained the guiding principle of Scindia's Government from time immemorial);
>
> (iii) Liberty of association;
>
> subject to the limitations and duties laid down by law for the maintenance of peace and order."

[1] *See* JOURNAL, Vol. IV, 77-83. [2] 22 Geo. V, c. 2.
[3] *The Indian States and Princes*, Lt.-Gen. Sir G. McMunn, K.C.B., etc. (Jarrolds, 1936).

The Maylis-i-Am (House of Representatives) and the Maylis-i-Kanoon (Legislative Assembly) are to be replaced by 2 Houses of Legislature—namely, the Praja Sabha (House of People) and the Samant Sabha (House of Nobles), the duration of each of which shall be 3 years. The Praja Sabha, or Lower House, is to consist of 85 Members, 50 directly elected and 35 nominated Members (including not more than 15 officials). A Franchise Committee is being appointed to frame rural, urban, vocational and institutional constituencies, with the object of embracing up to 20% of the adult population and to secure the representation of all people irrespective of race, caste, creed or sex.

The Praja Sabha is to have the right of:

(*a*) asking Questions, including Supplementary Questions;
(*b*) passing Resolutions;
(*c*) initiating legislation; and
(*d*) discussing the main heads of the State Budget;

subject, however, to the exclusion of any such Questions, Resolutions, or discussion of any nature regarding:

(*e*) the Ruler, his family, the Household and the Privy Purse;
(*f*) foreign and political affairs, including relations with the Paramount Power, Jahgirdars and the Budget connected with those subjects;
(*g*) the Army, including its Budget;
(*h*) ecclesiastical affairs; and
(*i*) the Constitution.

The Samant Sabha is to be composed of 40 Members, 20 elected and the remainder nominated, including not more than 12 officials. This House will also have the rights (*a*) and (*b*) as above, as well as the right of:

(*j*) initiating and revising legislation; and
(*k*) discussing the State Budget;

subject to the same restrictions as those imposed on the powers of the Praja Sabha.

The powers delegated to the 2 Houses, however, shall not affect the inherent powers and privileges of the Ruler, which include:

(*l*) the power of amendment, suspension and repeal of the Constitution;
(*m*) the vetoing of any Act passed by the Legislature and suspending the progress of any Bill or Resolution;
(*n*) the passing of any legislation at any emergency or otherwise, or of any ordinance; and
(*o*) the certification of any Bill.

Legislation initiated in the Praja Sabha requires the approval of the Samant Sabha and the Assent of the Ruler, but legislation initiated in the Samant Sabha if assented to and in the form assented to by the Ruler.

Each House is presided over by a Speaker, and in his absence by a Deputy-Speaker, and the Speakers will, if possible, be independent of the Executive authority of the Ruler's Government. The Deputy-Speakers are to be elected from the Members of the respective Houses.

It is proposed by the Ruler, in the course of time and in the light of experience gained, to provide opportunities of increasing association of the people with the administration of the State by appointing a Minister from amongst the Members of the Praja Sabha who will be put in executive charge of certain branches of the administration.

The last paragraph of His Highness's Proclamation reads:

> Our earnest desire in announcing these reforms in the constitution is that Our administration should be responsive to the growing political consciousness of Our people and that in the fulness of time they should attain the progressive realization of their legitimate aspirations through peaceful and constitutional means by the healthy progress of natural and organic growth in keeping with their economic and political development. Constitutions cannot be made to order; they have to grow; conventions and traditions have to be established; and for ensuring a healthy and sturdy growth We rely on the loyalty and goodwill of Our people and ultimately on the Grace of the Divine Providence whose merciful aid We humbly invoke on this historic occasion.

Ceylon (Constitutional).—The reform of the Ceylon Constitution[1] has been referred to at some length in previous issues of the JOURNAL.[2] During 1939 the question has again been considered by the submission of the following Motions to the State Council of the Island by the Legal Adviser, one of the 3 " Officers of State " under the Constitution. Some of these Motions were adopted, and others amended, by that Council, and the amendments are shown in the several Resolutions hereunder, the omission between square brackets and the insertions and additions underlined. Under Head A are given those Motions moved by the Legal Secretary which

[1] Ceylon (State Council) Order in Council 1931.
[2] *See* Vols. II, 9, 10; III, 25-26; VI, 81-88; and VII, 98-103.

were either adopted or amended, and under Head B those which were negatived. Head C contains those Motions introduced by Private Members which were not withdrawn.

HEAD A.

FRANCHISE[1]

2.[2] That the qualifications for the entry on the registers of voters for the election of members of the State Council shall remain as prescribed by the Ceylon (State Council Elections) Order in Council, 1931, as amended by the Ceylon (State Council Elections) Orders in Council, 1934 and 1935, provided that regulations governing the Indian Franchise are duly framed and properly implemented in accordance with the proposals of Sir Herbert Stanley and the decision of the Secretary of State contained in Sessional Paper XXXIV of 1929. (AYES: 20; NOES: 8; Declined to vote, 9.)

3. That seats in the State Council for which members are elected shall continue to be filled on a territorial basis. (AYES: 31; NOES: 11; Declined to vote: 4.)[3]

REALLOCATION OF SEATS[4]

4. That with a view to securing greater representation for minority communities and Kandyan rural interests a Committee shall be appointed by His Excellency the Governor with the following terms of reference:

> " to consider the present electoral areas of the Island and to advise what changes or additions could be reasonably made with a view to affording more chances for the return of candidates belonging to minority communities and to securing adequate representation of the Kandyan rural interest." (AYES: 34; NOES: 11.)

5. That the 8 nominated seats in the State Council shall be distributed as follows: (*a*) 4 for Europeans; (*b*) 2 for Burghers; and (*c*) 2 for unrepresented interests, if any. (AYES: 31; NOES: 6; Declined to vote: 6.)[5]

[1] 1939 Cey. Deb. 1407 (May 9), 1461, 1500 (May 11).
[2] Item 1 was formal. [3] *Ib.* 1500, 1710.
[4] *Ib.* 1711, 1830 and 1849 (May 19, 25 and 26), 1793, 1996 and 2222 (June 7, 9 and 30), 2240, 2282 (July 4 and 5), 2339 (July 5).
[5] *Ib.* 2340, 2345 (July 5 and 6), 2372 (July 6).

ABOLITION OF PRESENT FORM OF GOVERNMENT

8. That the administration of the groups of subjects and functions specified in the First Schedule to the Ceylon (State Council) Order in Council, 1931, shall no longer be entrusted to Executive Committees of the State Council as provided by Article 34 of the said Order and such Executive Committees shall be abolished. (AYES: 27; NOES: 16; Declined to vote: 1.)[1]

9. That the Board of Ministers, as constituted by Article 50 of the said Order, shall be abolished. (AYES: 32; NOES: 11; Declined to vote: 1.)[2]

10. That the 3 Officers of State, as constituted by Articles 6 and 7 of the said Order in Council, shall [no longer be charged with the subjects and exercise the functions allotted to them in the Second Schedule to the said Order] not be retained, and the subjects and functions allotted to them in the Second Schedule shall be allotted to duly appointed Ministers. (AYES: 28; NOES: 13; Declined to vote: 1.)[3]

Introduction of the Cabinet System.

11. That the functions of the Executive Committees, Officers of State and Board of Ministers shall be entrusted to a Cabinet with collective responsibility. (AYES: 27; NOES: 9; Declined to vote: 3.)[4]

12. That the resignation of a first or second Ministry after a general election shall not necessarily involve a dissolution of the State Council, but that the Governor shall at these stages dissolve the State Council only if, in his judgment, there is an issue that can and should be put to determination by a general election. The resignation of a subsequent Ministry shall involve a dissolution of the State Council, unless the Governor sees reason to the contrary. (AYES: 14; NOES: 10.)[5]

13. That in the formation of the Ministry the Governor shall, from amongst the Members of the State Council [of his own initiative and in his own discretion, select and appoint

[1] *Ib.* 2379, 2419, 2446 (July 6, 7 and 11), 2474 (July 11).
[2] *Ib.* 2475 (July 11). [3] *Ib.* 2474 (July 11).
[4] *Ib.* 2477, 2486 (July 11, 12), 2506 (July 12).
[5] The Motion as originally moved read: That the Chief Minister in consultation with the Governor shall select the persons to fill the remaining portfolios in the Ministry who shall be appointed by the Governor provided the right of the Governor, as now prescribed by Article 35 (2) of the said Order, to decline to appoint any such person shall be retained.—[ED.]; 1939 Cey. Deb. 2506 (July 12).

as Chief Minister the person most likely in his opinion to command public confidence] call upon that member to form a Ministry who in his opinion is most likely to command the confidence of a majority in the State Council. (AYES: 25; NOES: 11; Declined to vote: 1.)[1]

14. That the Prime Minister shall select the persons to fill the remaining portfolios in the Ministry who shall be appointed by the Governor, provided the right of the Governor, as now prescribed by Article 35 (2) of the said Order, to decline to appoint any such person, shall be retained. (AYES: 23; NOES: 9.)[2]

16. That the approval of the Cabinet shall be necessary for any ministerial measure, decision, programme, order involving increased expenditure, the creation or alteration of general or departmental policy, or departure from established practice on matters of major importance. (*Adopted without division.*)[3]

17. That legislative and executive measures which at present require the [approval or] ratification of the Governor shall continue to require the same. (*Adopted without division.*)[3]

19. That a Minister shall resign if requested so to do by the Chief Minister with the consent of a majority of the Cabinet. (*Adopted without division after being amended by leave.*)[4]

20. That the Ministry shall resign on the passing by the State Council of a Vote of No-confidence, but resignation of the Cabinet in any other circumstances shall be voluntary and not compulsory. (*Adopted without division.*)[5]

Proposals regarding Officers of State.

21. That the " Subject and Functions " as allocated to the Chief Secretary under the present Constitution shall be re-allocated on the lines indicated in paragraph 23 of the Governor's despatch dated June 13, 1938, to the Secretary of State for the Colonies. (AYES: 21; NOES: 7.)[6]

23. That the Legal Secretary shall not be retained and the functions exercised by him shall be transferred to a duly appointed Minister of Justice.[7] (*Adopted without division.*)

[1] *Ib.* 2507 (July 12), 2517 (July 12)
[2] *Ib.* 2521 (July 12).
[3] *Ib.* 2526 (July 12).
[4] *Ib.* 2532, 2539, 2540 (July 12).
[5] *Ib.* 2532, 2539 (July 12).
[6] *Ib.* 2540 (July 12).
[7] *Ib.* 2561, 2564 (July 13); this Motion as originally moved, read: That the Legal Secretary shall be retained with the title of Legal Adviser and exercise the functions allocated to him and specified in paragraph 24 of the Governor's Despatch dated June 13, 1938, to the Secretary of State for the Colonies.—[ED.]

24. That the " Subjects and Functions " under the heading " Establishments " allocated to the Financial Secretary under the provisions of the Ceylon Government Manual of Procedure together with the office and staff of the Controller of Establishments shall [be administered by the Public Service Commission] not be administered by the Public Service Commission, but shall continue to be administered by the Treasury under the control of a duly appointed Minister of Finance. (AYES: 27; NOES: 2; Declined to vote, 6.)[1]

25. That the " Subjects and Functions " [other than those under the heading " Establishments "] allocated to the Financial Secretary under the Ceylon Government Manual of Procedure shall be transferred to a newly constituted Minister of Finance.[2] (*Adopted without division.*)

26. That the Financial Secretary should *not* be retained with the title of Financial Adviser *nor* exercise the functions allocated to him and specified in paragraph 26 of the Governor's Despatch dated June 13, 1938, to the Secretary of State for the Colonies and that a Treasurer shall be appointed who shall be the Head of the Treasury under the Minister of Finance (*Adoped without division.*)[3]

27. That the Constitution shall provide as follows:

> That the Governor's powers to assent to or to refuse assent to or to reserve for the signification of His Majesty's pleasure legislation, shall remain as now.[4] (*Adopted without division.*)

[1] *Ib.* 2564, 2567 (July 13).
[2] *Ib.* 2567 (July 13).
[3] *Ib.* 2568, 2571 (July 14).
[4] *Ib.* 2576. This Motion originally read: That the Constitution shall provide as follows:

(*a*) That no measure with financial or legal implications shall be introduced without prior consultation by the Cabinet with the appropriate adviser.
(*b*) (*As* 27, *adopted above.*)
(*c*) That the reports to the Secretary of State on legislation by the Legal and Financial Secretaries as now required by the Royal Instructions shall in future be made by the Legal and Financial Advisers.
(*d*) That no vote of No-confidence in a Cabinet shall be moved on an issue in which a measure passed by the Council has been disallowed by His Majesty or refused assent or ratification by the Governor or on any issue arising out of an Order by His Majesty in Council or a Governor's Ordinance.

The Legal Secretary then, with leave, moved the Motion, without (*a*) and (*c*) but only (*b*) was adopted by the Council.—[ED.]; 1939 Cey. Deb. 2571 (July 13).

Reconstitution of Public Services Commission

28. That the Public Services Commission shall be composed of 3 persons especially selected and appointed by the Governor who shall not be members of the Executive or the Legislature nor hold any appointment under the Crown in Ceylon.[1] (AYES: 27; NOES: 9; Declined to vote, 4.)

29. That the functions of the Public Services Commission shall be [as specified in paragraph 29 of the Governor's Despatch of June 13, 1938, to the Secretary of State for the Colonies] advisory on matters relating to the Public Services such as appointments, transfers, and disciplinary measures. (*Adopted without division.*)

Compensatory Addition to Pensions.[2]

30. That Article 88 of the said Order in Council shall be [so amended as to allow of the special Pension Regulations being altered to provide that the compensatory addition shall be granted only if the Governor is satisfied that an officer's retirement does in fact represent loss of career] completely rescinded. (*Adopted without division.*)[3]

Reallocation of Subjects and Functions

31. That in the event of the Cabinet system of Government being adopted, " Subjects and Functions " shall be reallocated [as recommended in paragraph 36 of the Governor's Despatch dated June 13, 1938, to the Secretary of State for the Colonies] subject to alterations rendered necessary by the creation of 2 Ministers, of Justice and Finance. (AYES: 25; NOES: 6.)[4]

Governor's Powers

32. That the Governor's powers shall [not be curtailed but shall be defined with more clarity and precision in the Order

[1] *Ib.* 2586. As originally moved this Motion read:

That the number of members of the Public Services Commission shall be increased by the vesting in the Governor of the power to appoint, in addition, 3 unofficial persons for a period of 3 years with the right at his discretion to extend such period of service. Such unofficial members shall be paid an allowance.—[Ed.] *Ib.* 2576 (July 13).

[2] *Ib.* 2586, 2588 (July 13).

[3] *Ib.* 2588, 2589 (July 13).

[4] *Ib.* 2589, 2592 (July 13).

in Council making provision for the Constitution] be curtailed in the following respects:

(1) Removal of Governor's powers of legislation under Article 22 of the State Council Order in Council, 1931, as amended by the Order in Council, 1937.
(2) Restriction of the exercise of the power of certification to clearly defined cases relating to the Public Services.
(3) Deletion of the first part of Article 87 (1).
(4) Restriction of Governor's emergency powers under Article 49 (1) of the Order in Council to cases of danger of enemy action.
(5) Deletion of Clause IV (1) of the Royal Instructions of sub-sections 3 to 7 and 14, 16. (AYES: 22; NOES: 13; Declined to vote, 1.)[1]

HEAD B.

The following Motions, also moved by the Legal Secretar were negatived by the State Council:

QUALIFICATION OF MEMBERS

6. That the Constitution should provide that no Member of the State Council shall occupy his seat whilst the allowance paid to such person as a Member of the State Council is under seizure by a Court of Law. (AYES: 0; NOES: 37; Declined to vote, 6.)[2]

7. That the Constitution should provide that, if the allowance paid to a Member of the State Council is under seizure at any date posterior by 3 months or more to its first seizure, the seat of such Member shall become vacant. (AYES: 0; NOES: 30.)[3]

INTRODUCTION OF CABINET SYSTEM

15. That the Royal Instructions to the Governor shall contain the following clause:

> In making appointments to his Cabinet of Ministers in consultation with the Prime Minister Our Governor should use his best endeavours 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 State Council. But in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers. (AYES: 7; NOES: 25; Declined to vote, 4.)[4]

18. That the Chief Minister shall in consultation with the other Ministers and with the approval of the Governor appoint persons as deputies to each Minister, such persons being styled Ministers' Deputies. (*Negatived.*)[5]

[1] *Ib.* 2593, 2606 (July 13). [2] *Ib.* 2372 (July 6). [3] *Ib.* 2379 (July 6).
[4] *Ib.* 2517, 2606 (July 12, 13). [5] *Ib.* 2526 (July 12).

22. That the Chief Secretary shall be designated " Principal Secretary to the Governor " and be allocated the functions specified in paragraphs 32 and 33 of the Governor's Despatch dated June 13, 1938, to the Secretary of State for the Colonies. (AYES: 5; NOES: 27; Declined to vote, 2.)[1]

HEAD C.

PRIVATE MEMBERS' MOTIONS

(*a*) *Approved.*

1. That in the opinion of this House any new Letters Patent constituting the office of Governor and Commander-in-Chief of Ceylon and its dependencies, and the Instructions passed under the Royal Sign Manual and Signet to the Governor issued as a result of any new Order in Council or Orders in Council making provision for a new Constitution in Ceylon, should not be brought into operation until this Council has been given an opportunity of expressing its opinion thereon. (Dr. N. M. Perera for Mr. S. de Fonseka.) (AYES: 23; NOES: 7.)[2]

2. That in the opinion of this House any new Order in Council or Orders in Council to replace the present State Council (Elections) Order in Council, 1931, and the Ceylon (State Council) Order in Council, 1931, should not be brought into operation until this Council has been given an opportunity of expressing its opinion thereon. (Dr. Perera for Mr. de Fonseka.) (*Adopted without division.*)[3]

3. That in the opinion of this House all items of expenditure provided by special Law and included in the Annual Estimates should in any scheme of Reforms be brought within the purview of this House and be treated as votable items of expenditure. (Dr. Perera on behalf of Mr. de Fonseka.) (AYES: 17; NOES: 10; Declined to vote, 3.)[4]

(*b*) *Negatived.*

5. That this Council requests the Right Honourable the Secretary of State for the Colonies to take immediate steps to advise His Majesty the King to appoint a Commission composed of Members with wide administrative experience and knowledge of the Eastern Empire to inquire into and report on the working of the Donoughmore Constitution and to recommend a Constitution more suitable to the conditions and state of public opinion in Ceylon (Mr. G. G. Ponnambalam). (AYES: 12; NOES: 29; Declined to vote, 1.)[5]

[1] *Ib.* 2540, 2551, 2561 (July 12 and 13).
[2] *Ib.* 2616, 2617 (July 13).
[3] *Ib.* 2617, 2618 (July 13).
[4] *Ib.* 2622 (July 13).
[5] *Ib.* 2623, 2667 (July 13, 14).

A number of questions of an incidental nature were asked in the House of Commons in regard to the Ceylon Constitution, reference to which was made in the Commons *Hansard*.[1]

Malta (Constitutional).—Constitutional changes in Malta since 1932 have been dealt with in previous issues,[2] including the questions of religious[3] and linguistic rights,[4] both prominent problems in the Island. Although the new Constitution[5] gives the people of the Colony a considerable voice in their own affairs, it does not restore responsible government; that was revoked in 1936 after its previous suspension in 1933.

The new Constitution for Malta, " passed under the Great Seal of the Realm, constituting the office of Governor and Commander-in-Chief of Malta and providing for the government thereof," is dated February 14, 1939, and was promulgated by Proclamation No. IX of the same year and published together with the Constitution in both the English and Maltese languages in the *Malta Government Gazette*[6] of February 25, 1939, on which date it was duly proclaimed to be in force.

The same *Gazette* which contained the new Constitution also published the Governor's speech delivered on February 26, in the historic Hall of St. Michael and St. George in the Old Palace of the Grand Masters.

Without going into those provisions which are normal to such types of constitution, its more interesting features will now be given.

The Letters Patent of 1936 are revoked.[7] Malta is defined in section 1 as meaning " the Island of Malta and its dependencies including the territorial waters thereof."

Governor and Executive Council.—The sections dealing with the offices of Governor and Lieutenant-Governor,[8] Public Seal, etc., are contained in Part II, which also constitutes an Executive Council consisting of such persons as the Crown may by Instructions or through the Secretary of State for the Colonies appoint, and all such persons hold office during the pleasure of the Crown and for such period and upon such conditions as laid down in the Instructions.[9]

[1] 341 H.C. Deb. 5. s. 858-860, 1749; 342 *ib.* 405, 406, 1176, 1192; 343 *ib.* 1720; 344 *ib.* 2133; 346 *ib.* 344; 347 *ib.* 2295; 348 *ib.* 2234; 350 *ib.* 2400; 352 *ib.* 1912.

[2] *See* JOURNAL, Vols. I, 10-16; II, 9; III, 27; IV, 34; V, 56-61; and VII, 103-104.

[3] *Ib.* V, 60.

[4] *Ib.* II, 9; IV, 112, 113; and V, 60.

[5] Letters Patent 1939.

[6] No. 8584.

[7] Sec. 3.

[8] Secs. 4-10.

[9] Sec. 12.

Council of Government.—Part III provides for a Council of Government consisting of 20 members—namely, 5 *Ex officio*, 3 Official, 10 Elected and 2 Nominated, with the Governor as President, entitled to the same right of speech in Council as Members.[1] The *Ex officio* Members are: the Lieutenant-Governor, Legal Secretary, Attorney-General, Treasurer and Secretary to the Government. Should an *Ex officio* Member be administering the Government he is not to be considered for the purposes of Part III to continue an *Ex officio* Member during such time.[2]

The Official Members are such persons holding offices of emolument under the Crown in Malta[3] as the Governor may duly appoint. They hold their seats on the Council during the pleasure of the Crown, but such seats become vacant upon a dissolution, or previously thereto should their appointment be disallowed by the Crown or should they cease to hold an office of emolument as aforesaid. Both Official and Nominated Members are eligible for re-appointment.[4]

The Nominated Members, who are appointed by the Governor, and must not hold offices of emolument under the Crown, also hold their seats during the Crown's pleasure. Their seats become vacant upon dissolution of the Council, or previously should their appointments be disallowed by the Crown or should their seats become vacant under the provisions of the Letters Patent.

The Elected Members are chosen under law made in pursuance of the Letters Patent.[5]

Section 18 lays down the precedence of Members of the Council of Government. There is the customary provision in regard to Members taking the Oath of Allegiance.[6] Provisional appointment to fill vacancies on the Council is provided for in section 20.

The Governor is empowered under section 21 to suspend an Official Member by Instrument under the Public Seal, reporting thereon to the Secretary of State, and the suspension remains in force until removed by the Governor in a similar manner to the suspension, or unless disallowed by the Crown. The qualification for Membership by election or nomination is adult British subjecthood and registration as a voter,[7] but every person is disqualified for such Membership who is a minister of religion, holds any office of profit under the Crown,

[1] Sec. 13. [2] Sec. 14. [3] Including teachers at the University.
[4] Secs. 15 and 17. [5] Law No. XXXIV of 1939.
[6] Sec. 19. [7] Sec. 22.

is an uncertificated or undischarged bankrupt, of unsound mind, has acted as Registering, Revising Officer, or Election Commissioner, has been indicted for prodigality by a competent Court in Malta, or has been sentenced by a competent Court in any of the King's dominions, etc., to death, penal servitude, hard labour or imprisonment for one year;

> or, been convicted in Malta of any crime against the peace or honour of families (*vide* ch. II, Title VI, Part I, Second Book of Malta Criminal Laws);

and in either case has not either suffered such punishment, etc., or received a free pardon.[1] An Elected or Nominated Member vacates his seat:

> (*a*) for absence, except for illness, from Council sittings for 2 calendar months any session, without leave thereof;
> (*b*) for being a party for one month to any Government contract, for or on account of the public service;
> (*c*) for taking oath, or making declaration or acknowledgment of allegiance, etc., to a Foreign State or becoming a subject or citizen thereof whether by action, concurrence or adoption; or
> (*d*) for ceasing to be qualified for election or appointment as a Member.

Provision is made for the resignation of Elected or Nominated Members[2]; for penalty in case of unqualified persons sitting or voting in the Council, and as to qualification or vacation of seats.[3]

The duration of the Council is 4 years from the date of the return of the first writ at the last preceding election, if not sooner dissolved.[4]

Legislation.—Legislation and procedure in the Council are dealt with in Part IV. Laws are enacted by the Governor with the advice and consent of the Council.[5] Unless the context otherwise requires, " enactment " includes the whole or any part of the Malta (Use of English Language in Legal Proceedings) Order in Council, 1899, and of any Act, Ordinance or other law enacted or Proclamation issued in Malta, and of any instrument made under any such Act and having the force of law.[6] Sections 31 to 35, both inclusive, deal with the presentation of Bills for assent; Governor's reserve powers; operation; disallowance and *Gazetting* of Bills; enrolment of Acts; and the Royal Instructions.

Religion.—" Minister of Religion " is defined[7] as any clergyman, minister, priest, or other person who exercises

[1] Sec. 23. [2] Sec. 24 (2). [3] Sec. 25.
[4] Sec. 44. [5] Sec. 27. [6] Sec. 45. [7] Sec. 1.

spiritual functions, etc., in respect of any Christian or other church, community or body. Section 56 (Religious Toleration) reads:

> (1) All persons in Malta shall have full liberty of conscience and the free exercise of their respective modes of religious worship.
>
> (2) No person shall be subjected to any disability or excluded from holding any office by reason of his religious profession.

Language.—The proceedings and debates of the Council are to be conducted in English, but should the Governor, or Presiding Member, be satisfied that any Member is unable to express himself adequately in English, he may authorize such Member to address him within the Council in Maltese. Every speech in the Council made in Maltese must be translated orally into English during or immediately after delivery, as the Governor or Presiding Member may direct. Debates in the Council are printed in the delivery language with an English translation by an interpreter appointed by the Governor.[1] Every Bill and amendment thereto is printed in both languages, but the journals, entries, minutes and proceedings of the Council are to be recorded or printed in English only.

Section 46 (Official Languages of Malta) reads:

> (1) The English language as the official language of the British Empire, and the Maltese language, as the language of the people of Malta, shall be the official languages of Malta.
>
> (2) The English language shall be the language of administration and, subject to the provisions of the next succeeding section, the Maltese language shall be the official language of Our Courts of Law in Malta.

Section 47 empowers the Governor to regulate by Proclamation the use and teaching of the official languages, in Courts of Law, the Royal University of Malta and in any school, or the language to be used in any circumstances in which the use of any specified language is prescribed by law, and section 48 excludes Bills, etc., relating to the use or teaching of such languages from consideration by the Council of Government. Should the texts of the two official languages be in conflict the English text is to prevail. All previous laws in force only in English at the date of coming into force of the new Constitution are to be translated into the Maltese language.[2]

Standing Orders.—Under section 36, the Standing Orders of the Council of Government are in the first place made by the Governor but subsequently by the Council, subject to the

[1] Sec. 37. [2] Sec. 49.

approval of the Governor. Sub-section (3), however, lays down that the

> Standing Orders may provide for the regulation, restriction or prohibition of motions, resolutions, questions, discussion or debate relating to the defence of Malta or to the use or teaching of any language therein,

and the Governor is empowered to amend, add to, or revoke any such Standing Order at any time.

The Governor has only a casting vote in the Council, but the Presiding Member acting in his absence has an original as well as a casting vote. The votes of the Members are taken in inverse order of their precedence.[1]

Governor's Reserve Powers.—Section 29, in defining the Governor's reserve power, provides that:

> if the Governor shall consider it is expedient, " in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of Malta as a component part of the British Empire, and all matters pertaining to the appointment, salary and other conditions of service of any public officer or officers)," that any bill, motion, resolution or vote proposed for decision in the Council should have effect, then, if the Council fail to pass such bill, etc., within such time as the Governor considers reasonable and expedient, he may declare that such bill, etc., shall have effect as if it had been passed by the Council, and in the case of any such bill the provisions of this Order as to assent to bills and disallowance of Ordinances shall apply accordingly.

The Governor is to report any such declaration to the Secretary of State with the reasons therefor, and if any Member objects thereto he may within 7 days thereof submit a written statement of his reasons to the Governor, who shall, if such Member furnishes a copy, forward it to the Secretary of State, who may revoke such declaration, if it does not relate to a Bill, which revocation shall be notified in the *Gazette*, with effect from the date of such notification, without prejudice to anything lawfully done thereunder.[2]

Section 41 provides that no Bill, Vote, Resolution, or Motion may be proposed without the consent of the Governor, if in his opinion, or in that of the Presiding Member, such Bill, if enacted, or such Vote, etc., if passed by the Council, would:

> (*a*) dispose of or charge public revenue or public funds of Malta, or revoke, alter or vary any disposition or charge

[1] Sec. 28. [2] Sec. 30.

thereon, or impose, alter or repeal any rate, tax or duty; or

(*b*) suspend the Standing Orders or any of them.

Powers of Crown.—The Crown reserves its power to legislate by Order in Council[1] as well as to amend or revoke the Constitution.[2]

General.—The Schedule to the new Constitution contains the form of Oath of Allegiance and that for execution of the Office of Governor. The Ordinance[3] enacted by the Governor under section 15 of the Letters Patent of 1936 repealing the Electoral Law of 1924[4] and making provision for electoral divisions, voters, election to the Council of Government and the Ordinance[5] by the Governor for the election of Members thereto, were promulgated respectively in the *Gazettes* of April 11 and July 3, 1939.

Questions.—In the course of a reply to a Question in the House of Commons on February 8, 1939,[6] in regard to the new Constitution for Malta, the Secretary of State for the Colonies said that it was of course open to the House to discuss the Constitution if they so desired, though it was not necessary to get the leave of the House for the Letters Patents to come into operation.

Kenya Colony (Executive and Legislative Councils).—Additional Royal Instructions to the Governor, dated May 26, 1938, were published on June 7, 1939, revoking Clauses IV and XVI of the Royal Instructions of March 29, 1934, as amended by the Additional Instructions of June 20, 1935, and substituting new clauses therefor.

New Clause IV provides that in future the Executive Council shall, in addition to the Chief Secretary, Attorney-General, Financial Secretary and Chief Native Commissioner, all *ex officio* Members thereof, consist of such other persons (if any) holding office in the Public Service of the Colony, to be styled Official Members, and such other persons not holding such office, to be styled Unofficial Members, as in both cases the Governor may, in pursuance of Instructions, appoint.

The Governor is also empowered to appoint any person within the Colony or Protectorate of Kenya an Extraordinary Member of such Council, when upon any occasion the Governor desires advice relating to affairs in the Colony.

New Clause XV provides that the *ex officio* Members of

[1] Sec. 58. [2] Sec. 59. [3] No. XIX of 1939.
[4] No. XIV of 1924. [5] No. XXXIV of 1939.
[6] 343 H.C. Deb. 5. s. 938.

the Legislative Council shall be, in addition to the 4 officials above mentioned, also the Commissioner for Local Government Lands and Settlement, the Director of Medical Services, the Director of Agriculture, Director of Education, General Manager of the Kenya and Uganda Railways and Harbours, the Director of Public Works and the Commissioner of Customs.

Tanganyika Territory (Executive Council).—In regard to Public Service Official Members, Unofficial and Extraordinary Members of the Executive Council, similar provisions to those given above in respect of Kenya were made by the Additional Instructions to the Governor of Tanganyika Territory, dated July 25, 1939 (replacing the Additional Instructions of November 3, 1937, and Clauses VI and VIII of the Instructions of August 31, 1920), to be construed as if the new Clauses IV, VI, VIII and XX followed immediately after Clauses III, V, VII and XIX respectively of the said Instructions of 1920. The *ex officio* Members of such Council in Tanganyika Territory, however, consist only of the Chief Secretary, the Attorney-General and the Financial Secretary. Provision is also made for casual vacancies among Official Members and for the term of office of Unofficial Members to be limited to periods of 5 years. New Clause VI lays down machinery for provisional appointments to fill any vacancies on the Executive Council. New Clause VIII deals with precedence of Members of the Executive Council, and new Clause XX for all appointments granted by Governor's Commission to be " during pleasure."

June 19, 1940.

II. SECRET SESSION[1]

By S. St. G. S. Kingdom,
A Senior Clerk on the Staff of the Clerk of the House of Commons.

A distinction must be drawn between a sitting of the House of Commons from which strangers are required to withdraw, as laid down under S.O. 89, and a sitting which by a substantive resolution of the House becomes a "Secret Session." According to ancient usage, the exclusion of strangers from the galleries could, at any time, be enforced without an order of the House; for, on a Member taking notice of their presence, the Speaker was obliged to order them to withdraw, without putting a question. The inconvenience of this rule, which was enforced under somewhat sensational circumstances on April 27, 1875, when, amongst others present in the Peers' Gallery, the Prince of Wales was obliged to withdraw, led to the adoption of a Resolution on May 31, 1875, "That if, at any sitting of the House, or in Committee, any Member shall take notice that strangers are present, Mr. Speaker, or the Chairman (as the case may be), shall forthwith put the question that strangers be ordered to withdraw, without permitting any debate or amendment: provided that Mr. Speaker or the Chairman may, whenever he think fit, order the withdrawal of strangers from any part of the House." This Resolution was made a Standing Order in 1888,[2] the last ordinary occasion on which it was operated being during an all-night sitting on December 2, 1925. At this sitting, when the question was raised whether, after strangers had been ordered to withdraw, a motion for their readmission could be made, the Chairman ruled that the Standing Orders provided no means for their readmission.

If, however, in time of war, when the Government are in possession of special powers, such as, for example, those conferred by the Emergency Powers (Defence) Act,[3] it is considered desirable for the House to deliberate in conditions of absolute secrecy, steps are taken in advance to prohibit the publication or divulging of the proceedings; and in 1916, and again in 1939, an Order in Council was passed with this intention. The text of the Order in Council passed on December 11, 1939, under the Defence (General) Regulations was as follows:

> If either House of Parliament in pursuance of a Resolution passed by that House holds a secret session, it shall not be lawful for any person in any newspaper, periodical, circular or

[1] *See also* pp. 13-17 and 19-23 *supra*.
[2] March 7, 1888.
[3] 2 and 3 Geo. VI., c. 62.

other publication or in any public speech, to publish any report of, or to purport to describe, the proceedings at that session, except such report or description thereof as may be officially communicated through the Press and Censorship Bureau.

The effect of this Order, which is linked with other regulations prescribing penalties, is to make a person, who is alleged to have published or described the proceedings at a secret session, liable to criminal prosecution under the Defence Regulations, and, if found guilty before the court, to punishment. In order to make this Order operative in any particular case, on the occasion of a secret session, the House passes a resolution "That the remainder of this day's sitting be a secret session."

During the war of 1914-1918, secret sessions in the House of Commons were held on April 25 and 26, 1916, May 10 and 11, 1917, July 9, 1917, December 13, 1917, and January 17, 1918. The House of Lords held one secret session, on April 25, 1916.[1]

The most recent secret session in the Commons was on December 13, 1939.[2]

Up till 1918, under the provisions of the Standing Order, the Peers' Gallery was cleared at the same time as the other

[1] Debate was resumed upon the Motion to resolve:

That in the opinion of this House it is necessary, in order to secure the objects for which the country is fighting, that an Act should be passed without further delay rendering all men of military age liable to be called upon for military service during the continuance of the war

The Peer representing the Government said that in view of the statement he proposed to make in the course of a few minutes, he would move the adjournment of the debate, after which the Peer moved:

That the sitting of the House this day shall be secret, upon which there was debate after the Question on the Motion had been agreed to, the record in *Hansard* is:

The Official Reporter then withdrew.

House in Secret Session.

The Marquess of Crewe then made a statement to the House.

At its close the noble Marquess moved:

That the House do resolve itself into committee to consider the said statement: *agreed to*, and ordered accordingly: The Lord Balfour appointed to take the Chair: House in Committee accordingly.

After debate, House resumed.

[2] *Extract from Hansard.*•

The Prime Minister (*Mr. Chamberlain*)—Mr. Speaker, I beg to call your attention to the fact that Strangers are present.

Mr. Speaker—The Question is: "That Strangers be ordered to withdraw."

Question put, and agreed to.

Strangers withdrew accordingly.

(*The remainder of the Sitting was in Secret Session.*)

• 355 H.C. Deb. 5. s. 1232.

galleries; but on November 21, 1917, the Lords passed a Resolution, "That, in order that each House of Parliament may have immediate knowledge at first hand of statements made in the other House in times of national emergency, it is desirable that the privilege of being present at debates, by long custom accorded by each House of Parliament to the Members of the other House, should not be withdrawn on the occasion of any Secret Sitting." A second Resolution provided that notice of any secret sitting in the House of Lords should be sent to the House of Commons, and that Members of the House of Commons, present at the beginning of a secret sitting in the Lords, or seeking admission during the sitting, should be invited to remain. A third Resolution invited the House of Commons to extend similar privileges to the Lords. In response to this invitation, on January 28, 1918, the Commons agreed to an amendment to S.O. 90 (now 89), by which it was provided that any order (for the withdrawal of strangers) should not apply to Members of the House of Lords.

Apart from Members of the two Houses, the only persons allowed to remain in the House of Commons during a secret session are the Clerk of the House, the two Clerks-Assistant and the Serjeant-at-Arms and his Deputy. The Assistant Serjeant-at-Arms is also authorized, in case of emergency, to enter the Chamber and report to the Serjeant, or his Deputy, in the Chair. In the event of a division, the division clerks and messengers would take up their usual places, but would leave the Chamber as soon as the numbers had been announced from the Chair.

The arrangements for securing secrecy are the responsibility of the Serjeant-at-Arms, and under his directions elaborate precautions are taken, before the sitting of the House, to ensure that no unauthorized person may be concealed, so as to be in a position to hear the debate. These precautions can only be carried out, in their entirety, if it is known beforehand that a secret session is to be held; where only very short notice is given, the Serjeant-at-Arms must make the best arrangements possible in the time at his disposal. On one occasion in 1917 only a few minutes' notice was received, and on another in 1918 the secret session began before the Serjeant-at-Arms was able to take any action at all. The arrangements provide for a careful search, which is made prior to the sitting of the House, by the Clerk of the Works and his staff, of all the precincts above and below the Chamber, all doors which give access to those parts being locked by the Clerk of the Works,

and the key being given into the custody of the Inspector of Police attending the Houses of Parliament. The Inspector of Police, assisted by messengers, inspects the Chamber itself and its precincts, including the division lobbies and galleries, and after the Clerk of the Works has reported to him that all employees, except those in possession of a special pass, have left the precincts, the Inspector reports personally to the Serjeant-at-Arms that all precincts of the Chamber have been searched, including the Chamber itself, and that no stranger is within. To provide against any unforeseen emergency, such as failure of light or of heating plant, three special passes are issued to the Clerk of the Works, the Resident Engineer and his foreman authorizing them to be above and below the Chamber while engaged on any necessary duty pertaining to their office, during the secret session. In addition to these arrangements, there are certain general directions restricting the admission of strangers to that part of the Palace of Westminster set aside for the use of the House of Commons on the day of the secret session: no strangers, except persons whose names are on the Lobby List, are allowed into the Members' Lobby, and the Post Office is closed shortly after the meeting of the House, after which Members have to make use of the Post Office in the Central Hall.

The proceedings in the House at the beginning of the secret session must now be described. The Prime Minister, as Leader of the House, calls the Speaker's attention to the fact that strangers are present, and the Speaker, in accordance with the Standing Order, puts the question "That strangers be ordered to withdraw." On this question being agreed to, all the galleries, with the exception of the Peers' Gallery, are cleared by the messengers in charge. As the Ladies' Gallery has never been regarded technically as within the House, it is not normally cleared when S.O. 89 is put into operation; but, on the occasion of a secret session, the Speaker gives directions to the Serjeant-at-Arms that this gallery shall be cleared at the same time as the others. When the galleries have been cleared, the Clerk of the Works locks the four doors which give direct access to the galleries, one to the Press Gallery, one to the Ladies' Gallery, and two to the Members' Gallery; he then proceeds to the door of the Chamber and delivers the key to the Deputy Serjeant-at-Arms, who thereupon reports to the Serjeant-at-Arms that the galleries have been cleared. The latter proceeds up the floor of the House and reports to the Speaker. A further motion is then made "That the

remainder of this day's Sitting be a Secret Session," and this having been agreed to the secret session begins. It should be observed that the doors leading into the Chamber from the Members' Lobby and from the back of the Chair are not locked, but merely closed, so as to allow free access to Members. A curtain is hung over the arch of the inner doorway to deaden the sound of voices and to prevent any view of the Chamber from the Lobby, when the door is open.

While the galleries are being cleared, the Members' Lobby is also cleared by the police and messengers, and thereafter only Members, Peers and certain specified officers of the House and Whips' staff are permitted to pass through the Lobby. The doorkeepers and messengers take up their positions at the entrances to the Lobby to prevent unauthorized persons entering, and messengers are posted at the locked doors which lead into the galleries, and remain there throughout the sitting. It is also customary for members of the official reporting staff to remain on duty in the Press Gallery, outside the locked door, in case the House decides that a note should be taken of any part of the proceedings.

At the conclusion of the sitting, when the House has adjourned, the Serjeant-at-Arms informs the doorkeeper in the Members' Lobby.

Owing to the exclusion of the Press and the official reporters, and to the provisions of the Order in Council prohibiting any publication of the proceedings, no report of the proceedings appears; but it has been usual to issue, under the Speaker's authority, an official report. On December 13, 1939, this merely stated, " The adjournment of the House was moved by the Prime Minister and a debate took place on the organization of supplies for the prosecution of the war." On July 9, 1917, however, a fuller report, summarizing a statement by the Prime Minister on an air raid, which had recently taken place over London, was issued. Fuller reports were also issued on April 25 and 26, 1916, and on May 10 and 11, 1917.

III. HOUSE OF COMMONS: PENSIONS SCHEME FOR M.P.'S

BY THE EDITOR

Motion.

ALTHOUGH the Report of the Departmental ("Warren Fisher") Committee on this subject was dealt with in a previous issue,[1] the Motion consequent upon that Report and the subsequent legislation thereanent was not introduced into the House of Commons until 1939. The thread will therefore be taken up where it was dropped in Volume VII.[2]

The subject is treated somewhat in detail in this article, both on account of its being the first M.P.s' pensions scheme authorized by any Empire Parliament and because it presents many important points and interesting features in a scheme, embracing also widows and children, which is based upon a means test and upon the principle that no demand is made upon the taxpayer.

On February 2,[3] the following Motion was moved in the House of Commons by the same Member who has been active in regard to this subject all along, Sir A. Pownall (Lewisham, E.):

> That this House approves the recommendations of the Departmental Committee on Pensions for Members of the House of Commons and is in favour of the initiation of legislation to carry out its proposals which impose no charge upon the taxpayer.

The hon. Member in introducing the Motion referred in some detail to the Report of the Committee, and said that the scheme would involve no direct charge of any kind upon the taxpayer. Two years ago the salaries of M.P.'s were increased from £400 to £600 *p.a.*[4] The present suggestion was that £1 a month be deducted from each Member's salary, no matter whether the Member be also a Cabinet Minister or Under-Secretary. That deduction would give £7,000 *p.a.* The actuarial cost of a pension given to an individual in his early sixties after 10 years' service was roughly £1,000. That enabled a sum of £25,000 to be raised in a normal Parliament of 3½ to 4 years. There was also a provision not exceeding £75[5] *p.a.* for ex-M.P.s' widows, or those who would have

[1] *See* JOURNAL, Vol. VI, 139-150.
[2] *Ib.* Vol. VII, 38.
[3] 343 H.C. Deb. 5. s. 418.
[4] *See* JOURNAL, Vol. VI, 24-29.
[5] Or such sum as will bring a widow's income up to £125 *p.a.*, whichever is the less.—[ED.]

qualified but for the husband's death. It was suggested that the administration of the Fund be vested in a small body of senior Members. A generation ago there were no autumn sessions; the electorates were ¼ to ⅙ what they were to-day; and legislation had increased. The House of Commons had become more a whole-time occupation than a generation or two ago, and the scheme now before them was for the benefit of those who had not the opportunity of carrying on any other pursuit during Membership. The hon. Member suggested that discretionary power be given the Committee administering the scheme so as to admit of (possibly) a less pension, in exceptional cases, being given after 8½ or 9 years' service. He urged the Government to consider whether it would not be possible, if a man had by his thrift got, say, £100, *p.a.*, only half of it should be taken into account when considering his pension, so that he got £200 *p.a.* in all. If Mr. Speaker would consent and the Government would request him to do so, he would suggest Mr. Speaker preside over this M.P.s' Pensions Committee of 3 or 4 M.P.'s. The hon. Member urged that in this Pensions scheme for M.P.'s there was no question of their being members of an organization of employers or employees.[1]

Sir F. Fremantle (St. Albans), in seconding the Motion, referred to the Smith-Osborne judgment,[2] which had made payment of salaries to M.P.'s illegal, which legislation had since reversed.[3]

The Rt. Hon. H. B. Lees-Smith (Yorkshire, W.R.: Keighley) recognized that a measure of this kind could be carried only by a substantial majority of the House and not on a party vote. A change had come about in the composition of the House; a new representative type of Member had come into it, one who had no resources outside. Another matter in connection with the new composition of the House was the amount of work entailed upon an M.P. outside the Chamber. Since payment of M.P.'s had been introduced, Standing Committees had been set up, at which the attendance of about 200 M.P.'s was required each morning. All the Members of the House had had the increase of their salaries from £400 to £600 *p.a.* on account of the position of the poorer Members, and therefore

[1] 343 H.C. Deb. 5. s. 418-423.

[2] Salaries for M.P.'s are effected by Resolution of the House after this judgment, which held that trade unions were not entitled to apply their funds for paying the salaries of M.P.'s. Since M.P.'s salaries were first voted on August 10, 1911, they have only been shown in the Annual Estimates.—[ED.]

[3] 343 H.C. Deb. 5. s. 424, 425.

it was felt that they surely would not hesitate, if a case were made out on other grounds, to give £12 out of that £200, in order that older Members who had retired might be able to live in a manner consistent with the self-respect of the House itself.[1]

Sir H. Seely, Bt. (Northumberland: Berwick-on-Tweed), considered that the scheme was not so much a pension for Members as a benevolent fund. He was against a means test and preferred a pensions scheme. He drew attention to the Report of the Public Accounts Committee, which stated that about £5,000 *p.a.* was saved on account of a great many Members not drawing their Parliamentary salaries at all.[2]

The Prime Minister observed that this subject was first debated in the House in 1937,[3] on which occasion he moved an increase of Members' salaries and pointed out that any pensions scheme brought forward would require legislation, and that before any such legislation was framed careful investigation should be made by some competent authority so that the scheme was actuarially sound. Pensions enjoyed by civil servants were granted under conditions not at all analogous to the conditions applying to a scheme for M.P.'s. This was borne out by the " Warren Fisher " Committee. The Prime Minister stated that the Government, as a government, had no opinion on the matter, but every Member of the Government, and M.P. supporting the Government, would be free to vote as he pleased. He pointed out that if the scheme was to be effective it would be essential for the deduction to be compulsory, otherwise a definite income could not be counted upon. The salaries of M.P.'s were now laid down by law.[4] These salaries were not affected one way or the other. Public funds were not going to be affected by what use hon. Members chose to make of their own salaries, nor could the public have anything beyond a sympathetic interest in the scheme. Nobody outside the House would be any poorer by the scheme. There would always be a number of cases where Members lose their seats or have to give them up for one reason or another at an age when it was no longer possible for them to obtain employment and to start earning a livelihood in some other way. Under the scheme it would be possible for the trustees to accept gifts or legacies which might be added to the fund, and he could not help feeling that once the fund

[1] *Ib.* 427-451.
[2] *Ib.* 433. This sum also arose from lapses of time pending by-elections, *ib.* 461.
[3] *See* JOURNAL, Vol. VI, 24-29.
[4] Schedule to annual Appropriation Act.—[ED.]

was established it would be found that it would receive benefactions which in time would build up reserves to an extent which would enable the limited grant now contemplated to be increased. For the present he would be glad to see this fund established with the secure income that it would derive from the compulsory deductions proposed under the scheme.[1]

Commander Sir A. Southby, Bt. (Epsom), then moved the following amendment—namely, in line 1, to leave out from the word "House" to the end of the Question and to add instead thereof:

> "Conscious of the fact that salaries were recently increased by an amount deemed not more than sufficient to enable Members properly to carry out their duties, and having in mind the recent decision not to increase old age pensions, declines to consider a scheme of pensions for itself derived indirectly from public funds";

and observed that if the proposed scheme was brought into force Members would not receive the £600 *p.a.* salary, but £600 less £12 *p.a.* People viewed with some misgiving the increase of Members' salaries, and they would certainly view with misgiving pensions to ex-Members. If the House decided that pensions for ex-Members should be paid from a benevolent fund, then raise that fund by voluntary contribution from the Members of the House, but it was not fair that all Members be mulct of even £12 a year. He wondered if the "Warren Fisher" Committee heard the opinions of Members who were opposed to the scheme; it might have made more exhaustive inquiries as to the views of M.P.'s before coming to its conclusions. To many Members, the fact that the Committee was sitting was almost unknown. The only way in which they could deal with the problem of the ex-Member who fell into financial difficulties was by having a definite Government scheme whereby anyone who had served the nation in the House for a certain number of years would be entitled to a pension if such person could show that he was in want. He did not believe, if a national pension fund for M.P.'s were put forward by the Exchequer, that the country would approve of it. If individual cases of hardship among ex-Members were to be dealt with, then the only fair way was either by voluntary assistance from Members of the House for needy ex-M.P.'s, or by the Party funds.[2]

Mr. W. P. Spens (Ashford), in seconding the amendment,

[1] 343 H.C. Deb. 5. s. 434-439. [2] *Ib.* 439-443.

said that that was the same House of Commons which 2 years ago raised their salaries from £400 to £600 a year, and now a majority was being asked to compel the minority to tax themselves £12 *p.a.* If that were a new Parliament and hon. Members were elected knowing that the deduction would be made, and were to accept those terms, well and good, but for a majority of the House to make this compulsory deduction raised great difficulties. The hon. Member could understand a scheme started as a provident or benevolent fund, perhaps under the direction of Mr. Speaker, and built up by voluntary contributions from those who believe in the House as a corporate body. It was most undesirable that any ex-Member, or widow of ex-Member, should be on the verge of starvation as a result of their public work. Let it be a benevolent fund on a voluntary basis, such as existed in the great professions of their country.[1]

During the debate upon the original Question, before the above amendment was proposed, the following references were made to the amendment:

> The mover of the Motion observed, in regard to the amendment, that the £600 a year which Members received was theirs to do with as they thought fit. The subject before them was entirely a House of Commons matter.[2]
>
> The Rt. Hon. H. B. Lees-Smith observed that as obviously the increased salary of £600 *p.a.* was nevertheless insufficient, however modestly a Member lived, to enable him to save an old age pension out of it, he could not come to arrangement with an insurance company for an old age pension.[3]

Mr. M. S. McCorquodale (Sowerby) thought it should be laid down that once an ex-M.P. came on the pensions fund on any scheme, he should consider himself not eligible to return to the House of Commons as a Member.[4]

The Rt. Hon. A. Duff Cooper (St. George's) observed that a benevolent fund was not a benevolent fund if it was compulsory. A man who was for 10 years an M.P. drawing £600 *p.a.*, with the additional advantages he acquired from being a Member, should endeavour to make some provision for his old age, and for those whom he left behind. The hon. Member doubted whether the carrying through of this scheme would add to the dignity of the House of Commons. It would be a misfortune if any decision were taken by the House which would allow it even to be suspected that they were thinking of their own pockets, their own future and their own comfort, rather

[1] *Ib.* 445-447. [2] *Ib.* 422. [3] *Ib.* 429. [4] *Ib.* 449.

than of the terrible demands that were being and would be made on the whole community.[1]

Mr. F. A. Macquisten (Argyll) said this was not a proposal to give pensions to all M.P.'s. If it were, it would mean, judging from the age of many of them and the figures given in the White Paper,[2] taking half their salaries. Referring to the payment of salaries of M.P.'s, he believed it would be far better if it were possible to have the old system of mediæval times when constituencies paid their Members. After payment of income tax and super-tax some Members do not get more than 6 or 7 shillings in the £ on their income, so that for them the payment of the £1 *p.m.* contribution would be £36.[3]

Mr. H. V. A. M. Raikes (Essex, S.E.) said that the scheme put a premium upon safe as against unsafe seats. He would be prepared to advocate, both on the floor of the House and in the country, the addition of some extra sum to the £600 *p.a.* salary to meet cases of difficulty—say £50 *p.a.* extra as a provision for the old age of a Member who required it. That would be far better than a scheme which was halfway between a pension scheme and a benevolent scheme.[4]

Miss F. Horsburgh (Dundee) observed that if it was the case that M.P.'s were not absolutely in need of a salary of £600 *p.a.*, as the House was told last year, then they ought to give up that money to the taxpayer. It was wrong to assume that they were dealing with their own money. They were arranging that Members in future would be paid £588 *p.a.* Continuing, the hon. Member said that when they looked round they saw misery; they saw people wanting, others wanting other forms of insurance or pensions, and yet they as M.P.'s proposed that because M.P.'s did not require the full amount of their salaries they were therefore going to use the money to start a scheme of this kind. Suppose a man had served for a long period in this House and was just under 60 years of age, and suppose he found that if he survived one more election he would be sure of his pension, did not hon. Members think that it would be very difficult in those circumstances to oppose such a man in his constituency?[5]

In reply to a Question, the Chancellor of the Exchequer said that the scheme before them would begin to operate from the time when the necessary Act of Parliament was passed. It was wrong for encouragement to be given to the idea that this

[1] *Ib.* 451-453.
[2] Cmd. 5624 of 1937.
[3] 343 H.C. Deb. 5. s. 453-454.
[4] *Ib.* 459.
[5] *Ib.* 460-462.

was a provision out of public funds for a new pension for a privileged class. If this were done by voluntary arrangement there would be nothing paid out of public funds. They were meeting together as Private Members receiving £600, or if Ministers more, and agreeing that each would put up so much out of their own pockets for the purpose of making a fund. It would be a pity if it were suggested that they were now engaged in considering whether M.P.'s should help themselves out of public funds for a pensions scheme.[1]

The hon. Member for Leeds (Central), interjecting, asked if it was not true that the State would in fact contribute between ¼ and ⅓ the proposed £7,000 by reason of its loss on income tax. M.P.'s would receive a smaller income and pay a lesser tax, and of the £7,000 the Treasury would suffer by reason of that loss of tax.

The Chancellor of the Exchequer replied that might be a point to raise when the Bill was considered.[2]

Question on the first part of the amendment was then put, "That the words proposed to be left out stand part of the Question," upon which the House divided: AYES: 204; NOES: 103. The main Question was then put and agreed to.[3] A free vote was allowed.[4]

Questions.

On June 26,[5] in reply to a Question in the House of Commons as to whether it was the intention of the Government during that session to implement the Resolution of the House of February 2, in favour of legislation to establish a pensions fund for Members of that House, the Rt. Hon. the Prime Minister said he hoped it would be possible to deal with the Members' Pensions Bill that session.

On July 12,[6] a Question was asked the Chancellor of the Exchequer in the House of Commons—namely, whether, in view of the fact that fines paid by a bookmaker on behalf of a runner convicted for street betting are allowed as legitimate deductions in estimating profits for income tax purposes, he would take steps by legislation or otherwise to carry out the principle that a statutory deduction from a non-statutory emolument should be also accepted as a legitimate deduction according to the unanimous recommendation of the Committee presided over by Sir Warren Fisher. The Financial Secretary

[1] *Ib.* 463-466. [2] *Ib.* 466. [3] *Ib.* 468-470.
[4] *Ib.* 206. [5] 349 *ib.* 23, 24. [6] *Ib.* 2259.

replied that opportunity for discussion of the treatment for income tax purposes of the deductions to be made from Members' salaries under the proposals contained in the House of Commons Members' Fund Bill would arise during the course of debate on the Bill.

On July 19,[1] in reply to a Question in the House of Commons, the Prime Minister reiterated that the House of Commons Members' Fund Bill involved no charge upon public funds.

Bill: Presentation and Second Reading.

The House of Commons Members' Fund Bill[2] was presented on July 5,[3] and, to quote the endorsement on the back of the Bill, was "supported by the Chancellor of the Exchequer." In moving, on July 13,[4] "That the Bill be now read a Second time," the Rt. Hon. the Prime Minister said that the Motion approving of the recommendations of the Departmental Committee upon Members' pensions had been carried by a substantial majority[5]—a larger majority than they had obtained on the Third reading of the Finance Bill.[6] As on the Motion, a free vote would be allowed on the Bill before them. He regarded the matter as a domestic issue among the Members of the House. The Bill involved no charge at all, direct or indirect, upon public funds and therefore no public policy was involved. Nobody could say that hon. Members, in voting for the Bill, were voting for some advantage to themselves at the expense of the taxpayer. The only reason for bringing n the Bill at all, apart from the question of income tax, was he necessity for making the deduction from Members' salaries compulsory. Unless it was known for certain what the income of the fund was going to be the task of the trustees administering the fund would be almost impossible. No new principle would be introduced by this statutory deduction from a non-statutory salary. The Bill was not a pensions but a Members' Fund Bill. The word "pension" only occurred in allusion to pensions under the Ministers of the Crown Act.[7] In fact, it would be quite inappropriate to compare the Bill with any Civil Service pensions scheme. The Bill followed the Departmental Committee report except that—(1) the provision which maintained the £12 deduction as being liable to income tax, and (2) the provision that £75 *p.a.* of private income in case of an ex-M.P., or £50 of private income in case of an

[1] 350 *ib.* 395. [2] H.C. Bill 187. [3] 349 H.C. Deb. 5. s. 2259.
[4] *Ib.* 2509. [5] AYES, 204; NOES, 103. [6] AYES, 206; NOES, 141—[ED.]
[7] 1 Edw. VIII and 1 Geo. VI, c. 38.

ex-M.P.'s widow, was to be disregarded in considering the limit of the amount paid out by way of periodic payment to any beneficiary.

Sir P. Harris, Bt. (Bethnal Green), suggested that the spirit behind the Bill was that they were standing shoulder to shoulder to help each other.[1]

Mr. M. R. Hely-Hutchinson (Hastings), in moving the amendment to the Question for seconding, to leave out " now " and at the end of the Question to add " upon this day 3 months," said any measure which, like the Bill, tended to give Members of Parliament or their backers a vested interest in their seats struck at the very roots of its free representative character.[2]

Upon the Question being put, " That the word ' now ' stand part of the Question," the House divided: AYES: 217; NOES: 112. The Bill was then read the Second time and committed to a Committee of the Whole House.

Ways and Means Resolution.

On July 13[3] the following Resolution, relative to Clause 1 (4) of the Bill, was passed in Committee of Ways and Means:

> That for the purposes of any Act for the present session to provide for the making, in certain cases, of grants to, and to the widows of, persons who have been Members of the House of Commons, the salary or pension of a Member from which deductions are to be made under the said Act shall not be treated for any of the purposes of the Income Tax Acts as reduced by reason of the provisions of the said Act or of deductions made pursuant thereto, and a Member shall not be entitled to any allowance, deduction or relief, under any provision of the Income Tax Acts by reason of such deductions and his income shall not be regarded as thereby diminished.

There was no " Financial Resolution " in connection with the Bill, as the funds are entirely subscribed by Members themselves and there is no charge whatever upon public funds. The Ways and Means Resolution was to remove any doubts that might remain as to the existence of the least element of assistance from public funds towards the scheme. This Resolution laid it down that Members' subscriptions to the pensions fund should not be considered as deductions from their salaries, and should thus not escape income tax.

Progress was reported, and on July 19[4] the Resolution was reported and agreed to.

[1] 349 H.C. Deb. 5. s. 2517.
[2] *Ib.* 2517, 2518.
[3] *Ib.* 2573.
[4] 350 *ib.* 569.

Bill in Committee and on Report.

On July 19,[1] the clauses of the Bill were considered in Committee of the Whole House, but only those amendments will be dealt with here which were either adopted, or, if withdrawn or negatived, are of particular interest.

Clause 1[2] (The House of Commons Members' Fund) establishes the Fund of that name from which grants are payable to ex-M.P.'s and their widows subject to the First Schedule (copy of which is given below, showing amendments) to the Bill, by and at the discretion of the trustees thereunder, having regard to the financial circumstances of the persons to whom the grants are made, and subject to the resources and commitments of the Fund. For the constitution of the Fund beginning after September 30, 1939, £12 *p.a.* is deducted from the £600 salary of every M.P. "Salary" also includes references to so much of any salary or pension payable under the Ministers of the Crown Act, 1937,[3] or payable otherwise as such a Minister or as an officer of the House of Commons or of H.M. Household, as payable for service as M.P. The same deductions are also to be made from the salaries of those M.P.'s who do not draw their £600 *p.a.*

Sub-clause (4), which is printed in the Bill in italics, and had previously to receive the sanction of the Committee of Ways and Means,[4] lays down that the salary of an M.P. may not be treated for income tax purposes as reduced by reason of this clause or deductions made thereunder; neither is an M.P. entitled to any allowance, deduction or relief under the Income Tax Acts by reason of such deductions, nor is the income of an M.P. to be regarded as thereby diminished. The trustees of the Fund, however, are entitled under the Bill to exemption from income tax in respect of all income derived from the Fund or any assessment thereof, and any claims to such exemptions in respect of income derived from the Fund or investments thereof, or under sub-clause (5), may be made and allowed in the same manner as exemptions allowed under the Income Tax Act, 1918,[5] section 39 (5).

The debate upon clause 1 was centred in the question of bringing orphan children of ex-M.P.'s into the Bill, and amendments were made in sub-clauses (1) and (2), both in Committee[6] and on Report,[7] with this end in view. An

[1] *Ib.* 569-648.
[2] Bill 187.
[3] 1 Ed. VIII and 1 Geo. VI, c. 38; *see also* JOURNAL, Vol. VI, 12-16.
[4] See p. 111 *supra*.
[5] 8 and 9 Geo. V, c. 40.
[6] 350 H.C. Deb. 5. s. 575.
[7] *Ib.* 1359.

amendment was proposed in Committee to add a proviso to sub-clause (2) preventing payment under the Bill from being made to any person entitled to a pension under the Political Offices Pension Act, 1869.[1] When, however, it was pointed out that, except for one award which was surrendered in six months, no pension made under that Act had been awarded since 1905, and that no pension was drawn under that Act now, the mover (Hon. R. Denman [Leeds, Central]), by leave, withdrew his amendment.

An amendment was proposed on Report but negatived on division (AYES: 71; NOES: 195), to add a proviso to sub-clause (3) to prohibit deductions from an M.P.'s salary who was in receipt of a pension paid from public funds of an amount large enough to disqualify him from the receipt of benefit from the Fund.[2]

Clause 2,[3] which was passed as printed, lays down that the trustees of the Fund shall be appointed and removable by the House of Commons, and shall not number more than 7, one being the Public Trustee, or a corporation entitled by rules made under section 4 (3) of the Public Trustees Act, 1906,[4] to be custodian trustee of the Fund; the remainder to be managing trustees who must be sitting M.P.'s. The managing trustees may act by a majority of those present, provided there is a quorum of 3, and they are to regulate their own procedure. A direction of the managing trustees is to continue in force until revoked by a subsequent direction, notwithstanding changes in personnel or that by a dissolution of Parliament or for other reason there are for the time being no managing trustees. Sub-clause (7) of this clause applies certain provisions of section 4 (2) of the Public Trustee Act, 1906, as modified for the purposes of the Bill and set out in the Second Schedule (which is given below) to the Bill in regard to the functions of the custodian trustee and managing trustees respectively.

In replying to a number of questions on clause 2 in Committee, the Chancellor of the Exchequer said that as the custodian trustee would be paid out of the Fund under the Bill there would be no need for a Financial Resolution. As there would be only a few weeks between the dissolution of one Parliament and the assembly of another, sub-clause (6) provides that all directions of the managing trustees are to continue and operate even if there are no managing trustees for a period. The procedure for the appointment of the managing

[1] *Ib.* 593; 32 and 33 Vict. c. 60.
[2] *Ib.* 1359.
[3] 350 H.C. Deb. 5. s. 650-656.
[4] 6 Edw. VII, c. 55.

trustees would be the same as that for the appointment of Committees, with communications between the usual channels and possibly additional consultation, and by common consent a list would be arrived at and a Motion moved that the list of Members should constitute the managing trustees. Anyone would be able to move an amendment to the list provided the amendment kept within the maximum number.[1]

Clause 3[2] deals with supplementary provisions and governs the Third Schedule (given in full below), which controls the investment of the assets of the Fund. This clause provides that the trustees may accept any property given, devised or bequeathed by any person to the Fund. "Any person," however, was qualified by an amendment at the Report Stage,[3] as any person "who is or has been a Member of the House of Commons." But the trustees, as soon as may be, are to realize any such property, other than money or securities, in which they are authorized to invest the assets of the Fund. The custodian trustee may charge such fees as are authorized under the Public Trustee Act, 1906. The trustees may employ such persons as they may think necessary in connection with the management of the Fund, and such fees and remuneration are to be defrayed out of the Fund. The Government Actuary is, from time to time, as requested by the trustees, to report to them on the general financial position of the Fund on a date specified in the report, and every such report must be "Tabled" in the House of Commons. The specified date in respect of the first report must not be later than the end of 1944; thereafter in quinquennial periods from the date of the preceding report. Accounts of the trustees are to be prepared annually in such form and manner as the Comptroller and Auditor-General may direct, who is required to examine and certify every such account and lay a copy thereof, together with his own report thereon, before the House of Commons. Sub-clause (7) of this clause stipulates that so far as is consistent with the due performance of their respective functions under the Bill, the trustees of the Fund, the Government Actuary and the Comptroller and Auditor-General and their officers and servants shall treat as confidential all information relating to the making or refusal of grants in particular cases, but without prejudice to the generality of the foregoing provision, there shall not be included in any accounts or report laid before the House of Commons, as above-mentioned, any identification of the persons to whom grants have been made.

[1] 350 H.C. Deb. 5. s. 655, 656. [2] *Ib.* 657-666. [3] *Ib.* 1366.

In reply to certain questions in debate in Committee, the Chancellor of the Exchequer said that the managing trustees, being Members of the House, would, of course, not be paid anything at all. The remuneration of the Public Trustee comes under the Public Trustee Act. Sub-clause (3) is inserted in order to provide for remuneration of the corporation entitled by rules made under section 3 (4) of such Act, should that body be substituted for the Public Trustee. These payments would not be chargeable to the public but would be taken out of the Fund itself.[1]

The long title was amended in Committee to include "the children."

Two new clauses were then brought up and read a First Time as follows:

NEW CLAUSE—*Duration of Act.*[2]

This Act shall continue in force until the 30th day of September nineteen hundred and forty-nine, and no longer unless Parliament otherwise determines. (Mr. O. Lewis, Colchester.)

The hon. Member, in moving that this clause be read a Second Time, said that it would be realized that the purpose of the clause was to provide a time limit, after which the scheme must be reviewed by Parliament. This was a novel experiment and was being forced through the House in the greatest possible hurry. Their constituents had not been consulted, and nobody could say that there was any popular mandate for the Bill.[3] To which the Chancellor of the Exchequer replied that once the scheme was started and the Fund to give annuities established, it would be a serious thing to bring it to an end, but it was unlikely in view of the nature of the Fund, and having once planned the structure, a continuing service had to be provided. Of course, if the whole of the financial arrangements for the Fund were to come to an end in 10 years' time it would be a serious matter.

This New clause was then put and negatived, request to withdraw being refused.

NEW CLAUSE—*Act when effective.*[4]

This Act shall not have effect until and unless it is confirmed by an affirmative Resolution of this House in the next Parliament. (Sir A. Gridley, Stockport.)

This new clause after its Second reading had been moved by its proposer was, however, ruled out of order in Committee

[1] *Ib.* 662. [2] *Ib.* 669-671. [3] *Ib.* 669, 670. [4] *Ib.* 671-673.

by the Chairman as contrary to what had been decided and settled in clause 1 (3)—" after the 30th day of September, 1939." The First Schedule (clause 1) was amended both in Committee and on Report, and as its provisions are of considerable importance it is printed below in full, the amendments being shown, the words omitted within square brackets and the words added or inserted underlined.[1]

Limitations on Payments out of the Fund.

1. The annual amount of any periodical payment made to any person by virtue of his past membership of the House of Commons shall not exceed one hundred and fifty pounds or such sum as, in the opinion of the trustees, will bring his income up to two hundred and twenty-five pounds per annum, whichever is the less.

2. The annual amount of any periodical payment made to any person by virtue of her being the widow of a past member of the House of Commons shall not exceed seventy-five pounds or such sum as, in the opinion of the trustees, will bring her income up to one hundred and twenty-five pounds per annum, whichever is the less.[2]

3. No payment shall be made to any person by virtue of his past membership of the House of Commons unless he has attained the age of sixty years or, in the opinion of the trustees, is, by reason of mental or bodily infirmity, incapable of earning his living.

4. No payment shall be made in respect of any child of a past Member of the House of Commons whilst either of the child's parents is living, or after the child has attained the age of sixteen years, and the annual amount of any periodical payment made in respect of any orphan child of a past Member, or of his orphan children taken together if more than one, shall not exceed seventy-five pounds. (*Chancellor of the Exchequer.*)[3]

[4] 5. No payment shall be made to any person unless [that person, or, as the case may be, her husband] the person by virtue of whose membership the payment is to be made was a member of the House of Commons for periods together amounting to ten years:

Provided that the trustees may in special circumstances make payments notwithstanding that the requirements of this paragraph are not complied with. (*Chancellor of the Exchequer.*)[4]

[5] 6. For the purposes of this Schedule the income of any person shall be ascertained in such manner and on such principles as the trustees may determine.

[1] *Ib.* 673, 680, 1377.

[2] The following Proviso to this paragraph was moved and negatived:

Provided that the trustees may in special circumstances make payments notwithstanding that the requirements of this or the preceding paragraph are not complied with (Sir A. Southby, Bt., Epsom: AYES, 68; NOES, 201).

[3] 350 *ib.* 1377, 1378.

[4] *Ib.* 1378.

An amendment[1] was proposed in Committee to extend the age of retirement from 60 to 65 years of age, but defeated on division, the voting upon the Question, " That the word 'sixty' stand part of the Schedule," being sustained. (AYES: 131; NOES: 36.)

The Second Schedule (clause 2), which was passed as printed, reads:

Certain Provisions of Subsection (2) *of Section Four of the Public Trustee Act*, 1906, *as Modified for the Purposes of this Act.*

1. All sums payable to or out of the income or capital of the fund shall be paid to or by the custodian trustee, and the assets of the fund shall be vested in him as if he were sole trustee.

2. The management of the fund and the exercise of any power or discretion exercisable in relation thereto shall be vested in the managing trustees.

3. As between the custodian trustee and the managing trustees the custodian trustee shall have the custody of all securities and documents of title relating to the property of the fund, but the managing trustees shall have free access thereto and be entitled to take copies thereof or extracts therefrom.

4. The custodian trustee shall concur in and perform all acts necessary to enable the trustees to exercise their powers of management or any other power or discretion vested in them, unless the matter in which he is requested to concur is a breach of trust or involves a personal liability upon him in respect of calls or otherwise, but unless he so concurs the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them.

5. The custodian trustee, if he acts in good faith, shall not be liable for accepting as correct and acting upon the faith of any statement of the managing trustees as to any matter of fact, nor for acting upon any legal advice obtained by the managing trustees independently of the custodian trustee, nor for acting in accordance with any directions given to him in writing and purporting to be signed by or on behalf of the managing trustees.

The Third Schedule (clause 3,) which is governed by clause 3 of the Bill, reads:

Powers of Investment.

So much of the assets of the fund as is available for investment may be invested in such securities as the trustees think fit, being either—

(*a*) securities in which the trustee may invest trust moneys under the powers conferred by section one of the Trustee Act, 1925,[2] as extended by any subsequent enactment; or

[1] Sir. A. Gridley's, 350 *ib.* 675.

[2] 15 and 16 Geo. V, c. 19.

(*b*) the stocks, funds, bonds, mortgages or debentures of any public body incorporated in the United Kingdom by or under any Act of Parliament or of the Parliament of Northern Ireland; or

(*c*) the bonds, mortgages, debentures, or debenture or rent-charge stock of any railway, gas, electric light or power company in the United Kingdom; or

(*d*) the preference stock or preference shares of any such gas, electric light or power company which has paid a dividend on its ordinary stock or shares at a rate of not less than three per cent. during each of the five years immediately preceding the date of the investment,

and the trustees may from time to time realize, convert or otherwise deal with any such securities:

Provided that the proviso to subsection (1) of section two of the Trustee Act, 1925 (which restricts the purchase by trustees of securities standing at a premium), shall not apply.

Bill: Report and Third Reading.

As the amendments made at the Report stage have already been dealt with in the description of the Bill, it now only remains to refer to some observations made during the Third reading debate.

The Third reading was taken immediately after the Report stage on July 25.[1] A number of Members opposed the Bill for various reasons, such as preference for a State pensions scheme; its timing, sponsorship and because they had no right at the end of a Parliament of 4 years' duration to introduce a Bill of that kind, and that the Bill was being introduced at a time when they had neither the right nor the mandate to do so,[2] because it would undermine the vitality, independence and a great part of the value of Parliament[3]; and the compulsory contribution.[4]

One hon. Member[5] remarked that they had two great institutions, the Civil Service and Parliament; the former carried out its administrative functions under any Government of whatever political complexion. It was entirely secure in tenure and its future was secured by pensions. The House of Commons was a legislative and critical body. It depended for its force on a changing, varied and virile personnel coming together from all sections of the community. He believed it would be a sad day for their Constitution if they did anything which tended to turn the House of Commons into a second-line

[1] 350 H.C. Deb. 5. s. 1378. [2] *Ib.* 1380 (Sir H. Morris-Jones).
[3] *Ib.* 1382-1385 (Mr. M. Petherick).
[4] *Ib.* 1391 (Brig.-Gen. Sir H. Page Croft).
[5] *Ib.* 1385, 1386 (Mr. M. Petherick).

Civil Service. Anything that might tend to induce any hon. Member to consider his own position all the time, to consider his own future—whether in the Government or outside it—anything which might encourage him to hedge or toady or to try to be over-conciliatory to the electorate in order to keep his seat and thus secure a future for himself when perhaps he had fallen on evil times, was most strongly to be condemned.

The Chancellor of the Exchequer stated that the Bill was not a matter upon which the Government took a view. The Prime Minister had brought the Bill forward, not because he was the head of the Government, but because he was the Leader of the House of Commons. There could not be a freer vote than a vote on a private Motion moved by a private Member. The Motion was carried by 2 to 1. The Chancellor hoped it would be made clear, both by supporters and opponents of the Bill, that it was not a Treasury matter. It was not by any means a self-evident proposition, but a matter which had to be thought over very carefully, but, weighing those arguments on one side and the other, a matter which he hoped hereafter the House of Commons would have no reason to reproach itself.[1]

The Question " That the Bill be now read the Third Time " was then carried after a division. (AYES: 191; NOES: 103.)

The Bill was contested in its passage through the House of Commons; there were 11 divisions in Committee and 4 in the House, including a division on each clause, the First Schedule and upon the amendment to the Question for Second reading as well as upon the Question for Third reading. The House sat from 7.28 p.m. to 11.3 p.m. on July 13, to take the Second reading, from 11.48 p.m. on July 19 to after 7.50 a.m., July 20, for the Committee stage, and from 8.8 p.m. till after 10.22 p.m. on July 25 for the Report and Third reading.

The Bill was then transmitted to the Lords, where it passed all 3 readings in one day unamended, and, being a domestic matter of the Commons, the Committee stage was negatived;[2] Royal Assent was announced on July 28, 1939.[3]

[1] *Ib.* 1391-1393.
[2] 114 H.L. Deb. 5. s. 664.
[3] *Ib.* 680; 2 and 3 Geo. VI, c. 49.

IV. BROADCASTING PROCEEDINGS IN THE NEW ZEALAND PARLIAMENT

By T. D. H. Hall, C.M.G., LL.B.
Clerk of the House of Representatives

In a previous article[1] particulars were given of the inauguration of the broadcasting of certain proceedings of Parliament in New Zealand. It was indicated that the method of selecting debates for broadcasting had revealed certain difficulties and aroused some criticism. It was subsequently decided therefore to broadcast the whole of the proceedings of the House of Representatives from the time of opening until the usual time of closing. The normal sitting days are from Tuesday to Friday, and the hours of sitting from 2.30 p.m. until 10.30 p.m. on Tuesdays, Wednesdays and Thursdays, and 10.30 a.m. until 5.30 p.m. on Fridays. There are, of course, adjournments for meals at the usual hours (5.30 to 7.30 p.m. or 1 to 2.30 p.m.). The broadcast is from the main national station in Wellington, and during the period of Parliamentary broadcast the usual programmes are transferred to a subsidiary station.

If the hours of sitting are extended, the broadcasting shuts down at the usual hour of 10.30 p.m. (or 5.30 p.m.), but if a matter of some importance is being debated the hour may be extended, and if possible an announcement is made over the air that this will be done so that listeners may be aware of it. Occasionally the hour of closing down is extended slightly to enable a speech to be concluded.

Interest in the broadcasting of debates appears to be well maintained. One result is the receipt by some Members of a considerable mail from listeners—to which the term " fan mail " is sometimes given. The measures before Parliament have helped to maintain this interest, and in addition the working out of the Government's policy has furnished much more material for the Opposition Members to use and their criticism has added to the interest taken.

Technical difficulties have disclosed themselves. The microphones are extremely sensitive. They are placed down the centre of the Chamber. If a Member is speaking from the back benches and has not a good carrying voice amplification has to be increased. This means that other noises are magnified,

[1] *See* JOURNAL, Vol. V, 80-81.

particularly those that arise from sources nearer to the microphone than the Member speaking. Complaints from outside of the drowning of Members' speeches are frequent. Reference is made to conversation, coughing, rustling of paper, etc. Judging from letters to the Press and to Members and Officers of the House, partisans of either side are quick to assume that the noise is deliberate and designed to prevent a Member being heard. It is evident that at times an impression is conveyed over the air of the proceedings of the House which is not in accord with that gained by a person present, and which does not do justice to the customary decorum with which the proceedings are conducted. A Member voiced this in the House, and said that being called to his home in the rural areas he had tuned in to Parliament and had been shocked by the impression conveyed. He said it resembled a " Donnybrook."

The broadcasting of the proceedings of the House seems to be firmly established and to be accepted. The proceedings of the Upper House[1] have not yet been put over the air. Different views have been expressed as to the value and possible effect of broadcasting, and there has been criticism of various kinds. These have been voiced both in and out of the House. There is criticism, for instance, in regard to the extension of the hours for broadcasting as tending to favour unduly one Party. This applies more particularly where the time is extended to enable a speech to be concluded while the House is still on the air. The evening sitting is considered to be the best time from the point of view of publicity, and there is a certain amount of manœuvring to secure the floor at this time. The selection of speakers in rotation, whether by the Whips or not, sometimes causes feeling.

It is generally recognized by Members that they are speaking to a wider assembly than Members of the House, and this is frequently referred to by the speakers. This must affect the character of the speeches, and the Member referred to above, who had listened in, urged the House to remember that it was a deliberative assembly and to reconsider the broadcasting of debates. The view that Parliament is endangering its prestige has been expressed in public correspondence, but on the whole the most vocal element in the community on the subject seems to be in favour of continuing.

[1] *I.e.*, Legislative Council.

V. 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 occurred in 1939:

A. Second Session, Eighth Parliament (*February* 3 *to June* 16).

Revival of Bills lapsed owing to prorogation.—Under S.O. 180 " any public bill which lapses by reason of prorogation " may be revived at the next session. During the 1938 Session the orders for the Second Reading of two Bills (the Shops and Offices Bill and the Accountancy Bill) were discharged and the subject of the Bills referred to Select Committees. The Select Committees were unable to complete their enquiries and in the following session the question arose as to whether the Bills could be revived under S.O. 180 in view of the fact that only the " subject " of the Bills and not the Bills themselves was before the House when Parliament was prorogued. As there was a precedent for a Bill being revived under similar circumstances and as the First Reading of the Bills in question had not been discharged and the Bills had not been withdrawn it was decided that Motions for their revival under the Standing Order should be allowed. Eventually when the Committees brought up amended Bills the Orders for the First Reading of the old Bills were discharged and the Bills withdrawn.[1]

During the 1938 Session the Matrimonial Causes Jurisdiction Bill lapsed owing to prorogation while the Bill was in Committee of the whole House. At the commencement of the 1939 Session the Member in charge wished to revive the Bill and refer it to a Select Committee. S.O. 180, however, provides that a Bill can only be revived " at the stage it had reached during the preceding session." The mover accordingly obtained leave to revive it at the stage reached, and it was ordered that the House go into Committee on a future date. The Member in charge then took the first opportunity for moving that the Order for the House to go into Committee on the Bill be discharged and that the Bill be referred to a Select Committee, which was agreed to.[2]

[1] 1939 votes, 20, 42, 499 and 538. [2] *Ib.* 42, 54.

Motions for adjournment of House.—Two unusual incidents took place on Motions for the adjournment of the House at the end of a sitting:

On March 24, 1939, a debate on the management of the Railways and Harbours was adjourned after a division. A Minister then moved the adjournment of the House and on it being found that a considerable discussion would take place as a protest against the adjournment of the previous debate a large number of Members left the Chamber. On attention being drawn to the fact the House was counted and on it being found that there was no quorum, Mr. Speaker declared the House adjourned.[1]

On April 21, 1939, a Private Members' day, the Minister of Finance moved the adjournment of the House at the usual time. A large number of Members on all sides of the House, however, wished to proceed with the next Order. The Motion was accordingly negatived without a division and the House proceeded to the next Order.

Motions impugning the conduct of a Member.—At the commencement of the Session a Member gave Notice of a Motion in general terms for a judicial enquiry into the conduct of the Minister of Lands in connection with certain elections. Mr. Speaker held, however, that Notices of Motion impugning the conduct of a Member should clearly set out the specific charges on which they were based in order to enable Members to reply to them. As the Notice of Motion in question did not comply with these requirements it was discharged from the Order Paper and the Member gave Notice of a Motion in an amended form to comply with the Ruling. At the same time Mr. Speaker held that a Notice of Motion seriously impugning the conduct of a Member should be given precedence until it was decided in the same way as questions of privilege. The Motion also gave rise to the question as to whether a Motion which suggested that a Member was liable to prosecution in the courts of law should be allowed until the ordinary legal remedies had been exhausted, but it seemed quite clear from a considered decision on the point given by Mr. Speaker Berry in 1902[2] that there was nothing to prevent the consideration of such a Motion when the honour of a Member is concerned and the question was not raised as a point of order.[3]

Rule of anticipation.—On the Second Reading of the Railways and Harbours Part Appropriation Bill a Member drew Mr. Speaker's attention to a Motion on the Order Paper

[1] *Ib.* 457. [2] 1902 CAPE VOTES, 261. [3] 1939 UNION VOTES, 84-85.

dealing with a variety of Railway matters, including the " budget policy " of the South African Railways, and asked to what extent the Motion would block discussion on the Motion for the Second Reading of the Appropriation Bill. Mr. Speaker, who had been given notice that the question would be raised, ruled that " a motion in general terms cannot be permitted to block the general discussion allowed on the Second Reading of a Part Appropriation Bill, but discussion on the specific points raised in the Motion cannot be permitted."[1]

Regulation and control of public professions by legislation.—For some time past various attempts have been made to regulate and control a trade, profession or calling by legislation. As much time has been occupied with very little result, a Member who had been asked to introduce a Bill dealing with Estate Agents, moved on March 14, 1939: " That the Government be requested to consider the advisability of introducing legislation at an early date enabling persons engaged in certain trades, callings or professions to apply for registration under conditions which safeguard public interests." The debate on the Motion lasted from 2.40 p.m. to 6 p.m. and was adjourned without being reached again, many Members feeling that it might assist rather than restrict the creation of monopolies.[2]

Same question twice offered.—On March 28, 1939, the Leader of the Opposition moved " The adjournment of the House on a definite matter of urgent public importance "—namely, the serious rioting which had taken place the previous night in the neighbourhood of the Houses of Parliament. The debate continued to the usual hour of adjournment and the Motion was then negatived. A Minister then moved the ordinary Motion for the adjournment of the House, and the question arose as to whether there should not be some intermediate proceeding,[3] but it was felt that the two Motions were of an entirely different character and no intermediate proceeding was required.[4]

Judges invited to give evidence.—During the sittings of the Select Committee on the subject of the Natal Advocates and Attorneys Preservation of Rights Bill it was resolved that invitations be extended to Mr. Justice Feetham and Mr. Justice Hathorn to place their views upon the subject of the Bill before the Committee. Both Judges accepted the invitation and gave evidence.[5]

[1] *Ib.* 308. [2] *Ib.* 355. [3] May, XI Ed. 282.
[4] 1939 UNION VOTES, 478. [5] S.C. 4-39.

B. THIRD SESSION, EIGHTH PARLIAMENT (*September 3 to 5*).

Urgency of meeting and constitutional crisis.—Under sections 24 and 25 of the South Africa Act the term of office of 32 elected Members of the Senate was due to expire by effluxion of time on September 5, after which date the Senate would be without a quorum[1] until reconstituted. Owing to the grave international situation, however, the Government decided that the term of office of the 32 elected Senators, as well as that of 6 nominated Senators whose term of office expired on September 18, should be extended in case it became necessary for Parliament to meet before the date upon which the Senate elections would ordinarily have taken place. By Proclamation dated August 26, Parliament was accordingly summoned to meet on September 2, in order to pass legislation under which the Senate elections would be postponed.

As time did not permit of an opening ceremony in the usual way, there was a complete absence of formality when the Governor-General opened Parliament: no procession, no military salute; the Governor-General walked through the adjacent grounds of Government House instead of driving through the streets; neither were invitations issued to attend the opening ceremony.

In view of the special nature of the session and in order tc expedite the passing of the Senate Bill which it was essentia should take place before midnight on Tuesday, September 5, the Prime Minister (General the Hon. J. B. M. Hertzog), who had previously arranged with the leaders of the opposition parties to grant special facilities to the Government for the precedence of its business, moved the following as unopposed Motions on Friday—namely:

1. That notwithstanding anything to the contrary contained in the Standing Rules and Orders, Government Motions and Government Bills may be introduced without previous notice during continuance of this Session.
2. That during the present Session S.O. 159 (Stages of Bills) be suspended in respect of the various stages of the proposed Senate Bill.
3. (1) That on and after Monday, September 4, the House meet at half-past ten o'clock a.m. on each sitting

[1] Twelve Senators constitute a quorum of the Senate, and as there was only one vacancy only eleven Senators would have remained.

day; that on such days business be suspended at a quarter to one o'clock p.m. and resumed at a quarter past two o'clock p.m., and be again suspended at six o'clock p.m. and resumed at eight o'clock p.m.; and that Government business have precedence; and

(2) That S.O. 26 (automatic adjournment at eleven o'clock p.m.) be suspended for the duration of the Session.

The Motions were agreed to after a short discussion, and the Minister of Justice (General the Rt. Hon. J. C. Smuts) thereupon introduced the Senate Bill, the Motion for the Second Reading being adjourned until Monday.

In the interim between Saturday and Monday, Great Britain declared war upon Germany. A grave constitutional crisis arose in South Africa and, after an expeditious passage of the Senate Bill on Monday morning, the Prime Minister, with leave of the House, made a statement in regard to a difference of opinion in the Cabinet as to whether the Union should actively participate in the war or not. The Prime Minister followed up his statement by a Motion (moved unopposed in terms of the leave granted by the House at the first meeting above referred to) on neutrality.[1] The Minister of Justice (General Smuts) then moved an amendment which contemplated a severance of relations with the German Government and refused to adopt an attitude of neutrality. The debate continued until shortly after 9 o'clock in the evening, when the House by 80 votes to 67 adopted General Smuts' amendment.

As a result of this adverse vote, the Prime Minister asked for a general election, and when this was refused tendered his resignation to the Governor-General. On the afternoon of Tuesday, September 5, General Hertzog moved the adjournment of the House, and on the same afternoon he signed the Proclamation proroguing Parliament. On the following day General Smuts formed a new Government and a Proclamation was issued by the Governor-General under section 6 of the Royal Executive Functions and Seals Act, 1934,[2] declaring the Union to be at war with the German Reich as from September 6.

Leave of absence and payment of Members.—Section 54 of the South Africa Act provides that if a Member fails for a

[1] *See* 1939 (II), VOTES, 5. [2] No. 70 of 1934.

whole " ordinary session " to attend without special leave his seat shall become vacant. The second Session of 1939 (unlike the special sessions of 1914 and 1919) was not referred to in the Proclamation summoning Parliament or in the Governor-General's opening speech as a special session. It was therefore regarded as an " ordinary session " and leave of absence was granted to 4 Members who were not expected to be present.

Formerly " Ordinary Session " was defined in the Payment of Members of Parliament Act, 1916,[1] as " being a Session at which the Estimates of Expenditure for the ordinary administrative services of a financial year are considered," but when the Act was amended in 1926[2] the definition was purposely omitted and section 56 of the South Africa Act now provides that a Member shall be exempted from deductions from his allowance in respect of a period of 25 days " during a session at which the estimates of expenditure for the ordinary administrative services of a financial year are considered." As no such estimates were presented during the Second Session of 1939, no exemptions were allowed under this provision.

[1] No. 21 of 1916. [2] No. 51 of 1926.

VI. UNION HOUSE OF ASSEMBLY: PENSIONS SCHEME FOR SENATORS AND M.P.'S

By the Editor

The Union Parliament had two Sessions in 1939, the first (February 3 to June 16) being the Second Session of the Eighth Parliament, in which the ordinary annual business was transacted, and the second (September 2 to 5) being the Third (a special Session) of that Parliament, summoned, to quote from the speech from the Throne, as a result of the grave international situation and to provide for the existence of a Senate of sufficient numbers to enable Parliament to function during the interregnum between the expiry of the Third Senate and the election and nomination of Senators to complete the composition of the Fourth Senate of the Union.

Motion.

Towards the end of the Second Session, namely on May 24, the following Motion was moved in the House of Assembly by Mr. Leslie Blackwell, K.C., M.C. (Kensington, T.P.):

> That in the opinion of this House a compulsory pensions scheme on a contributory basis should be established for Members of Parliament; and that, with this end in view, a Select Committee be appointed to inquire into and submit such a scheme, the Committee to have power to take evidence and call for papers and to have leave to confer with a Committee of the Senate.

As this is the first scheme of its kind in any Empire Parliament, that of the House of Commons receiving no moneys from the Exchequer and being based upon a means test and the (Imperial) Political Offices Pensions Act, 1869,[1] not being a pensions scheme for Ministers, etc., as visaged under the Union scheme, it is proposed to go somewhat into detail in reporting the proceedings both in the House and in the Select Committee's Report, etc.

The debate upon the above Motion took place in the evening of May 24, and below is a brief summary thereof.

Debate in the House of Assembly.

In introducing the Motion the Mover said that M.P.'s to-day were in a sense professional politicians and that Parliamentary

[1] 32 and 33, Vict. c. 60.

life had become a calling, Members of Parliament being paid a salary which was increased some years ago from £400 to £700 *p.a.*[1] When a man took up Parliamentary life as a career he could expect to say goodbye to a large proportion of his professional or business interests[2]; the life of an M.P. was almost as strenuous during Recess as during Session. The hon. Member urged that the payment of a Parliamentary salary to M.P.'s logically carried with it the creation of some form of pensions fund. Some 2 years ago he wrote to the Minister of Finance asking him to collect information upon the subject.[3] Information had also been obtained from inside the political party to which he belonged, which had been in touch with other Parties, with the result that a draft scheme was submitted to the Government actuaries. The scheme he suggested was both compulsory and contributory, with a £ for £ contribution by the Government.[4] Both Senators and M.P.'s were to be on the same footing, and a qualifying period of service would be laid down, with a refund of contribution to Members who served less than the minimum period.

The pension was not to be paid to ex-Members while holding Offices of Profit under the Crown, and past Members were to be eligible,[5] with a limitation of 15 years at half-rate for arrear contributions, which would make the maximum contributions payable to any Member about £300. It was also proposed that the scheme should include additiona pension benefits for ex-Ministers, Speakers, etc., up to a maxi mum of £1,000 *p.a.*[6]

Dr. N. J. van der Merwe (Winburg, O.F.S.P.), in seconding the Motion, said that to have national representation, people should be able to choose their representatives from all classes of the population. To become an M.P. today meant that a large section of men who might be prepared to offer themselves for this work found it impossible unless they were prepared to sacrifice their ordinary calling in life, or, at any rate, so much of it that to take it up again would not enable them to make a proper living. Every one with ability and aptitude should have opportunity to enter the House.[7] When a person in the full strength of his years had been in the House for 10 to 15 years he felt that there was no longer any opportunity for him to return to his lapsed work or profession; he was therefore then dependent upon his Parliamentary salary.[8]

[1] 35 Union Assem. Deb. 5235. [2] *Ib.* 5236. [3] *Ib.* 5238.
[4] *Ib.* 5239. [5] *Ib.* 5240. [6] *Ib.* 5241. [7] *Ib.* 5244. [8] *Ib.* 5245.

Such a person should be made to feel he knew that if he could express his attitude according to his convictions and lost his seat in consequence, that when he had served the Country for years he would still have his pension.[1]

Mr. F. H. Acutt (Durban, Stamford Hill) considered that Members were well paid at the present time, and that if such a pensions scheme were brought about it was quite possible that some future Parliament might decide that, in view of the £3 10s. per month compulsory contribution by Members, it would be necessary to increase their salaries. He considered that Members were well paid and that the majority of them were well-to-do, therefore they did not need a pension. Why should the State contribute to men who did not need financial assistance when their Parliamentary career came to an end? He suggested that Members of Parliament should contribute £1 a month towards a fund for ex-Members whose income was less than £300 a year, so that their incomes could be brought up to that amount, the scheme also to apply to widows and minor children.[2]

Mr. J. L. V. Liebenberg (Heilbron) considered that the work of an M.P. should be voluntary. No one was compelled to be a Member, nor was he forced to neglect his business or sacrifice himself. If a person was not in a position to become a Member without having to neglect his business and without being able to assure himself of a living when no longer a Member, then he had no right to stand for election. He had noticed that many Members were often absent for long periods on end. It was not his business to say that such Members ought to be there, but for their constituents. While, however, they were absent, other Members had to do their work. Every man should make provision for his old age. He considered that they should not grant themselves pensions with public money. The professional politician would take any step to retain his seat and the income attached to it.[3]

Major P. V. G. van der Byl, M.C. (Bredasdorp) observed that it was wrong that Members who had given the best years of their lives to the service of the State should be allowed to fall into poverty; for that reason he supported the Motion.[4]

Hon. W. B. Madeley (Benoni) said that he did not like the contributory scheme. Just as the State made provision for the salaries of M.P.'s, so should it provide for their pensions. He remarked that he was an estate agent and found that, like

[1] *Ib.* 5246. [2] *Ib.* 5247. [3] *Ib* 5248-5250. [4] *Ib.* 5252.

any other business of a personal character, it depended upon his personal application. If anyone was taken into partnership, one was dependent upon the actions of another over whom one had no control. He therefore had to choose between carrying on his business or his Parliamentary life. Members of Parliament who had to concentrate on the work of the State should not have those energies complicated by financial worries. The circumstances of a Parliamentary career dependent upon the salary made it impossible for a Member to make any provision for a widow. Therefore he would rather have had the widows' fund first and the M.P.'s afterwards.[1]

Hon. J. H. Hofmeyr (Johannesburg, North) said that the House should pay attention to the form of the Motion. They were asked to express the opinion that a compulsory pensions scheme on a contributory basis should be established for M.P.'s, and then, with that end in view, that a Select Committee be appointed to inquire into such a scheme. In other words, they were not asked to agree to the setting up of a Select Committee to inquire into the whole matter. It was not a question of having an investigation first, it was a question of accepting the principle first and having an investigation afterwards. It was that they should at this stage accept the principle, to which he objected. He did not consider the subject one merely to be dealt with from the M.P.'s point of view. It was primarily a matter to be considered from the point of view of the interests of the country and of the Exchequer. The matter could not go further without the consent of the Government; it was only the Government that could introduce the Bill.[2] He emphasised that the public had not been consulted. It had been made clear that a substantial contribution from the Government—that was, from the taxpayer—would be expected. Had the public been asked whether they desired to make that contribution? They were only within a year of the last general election. They were told that this matter had been under consideration for two years. Had any Member put the matter to his constituents at the general election? Had any hon. Member got a mandate from his constituents to support the proposal? He considered that they had no right without more consultation with the public to pass a Motion of that kind. The hon. Member for Benoni wanted the State to bear the whole burden. He (the speaker) believed very strongly that the public was against the proposal. M.P.'s, even during Session, were able

[1] *Ib.* 5254-5256. [2] *Ib.* 5257.

to supplement their incomes and during Recess they were able to give most of their time to carrying on their ordinary business. The work of an M.P. was a part-time job,[1] therefore the question of the principle of pension should not arise. There was only one point in favour of the Motion requiring serious consideration—namely, the case of the Member who fell on evil days. The hon. Member favoured a scheme to which all M.P.'s would contribute without a State contribution, the proceeds of that scheme to be for the benefit of those who needed it. The problem of the impecunious ex-M.P. was a problem which had been realized to exist elsewhere, but nowhere in the British Commonwealth had that problem been met with by the introduction of a full-blooded pension scheme.[2] The hon. Member hated the idea of the professional politician. The public generally did not like the professional politician, and he could not help feeling that the introduction of a scheme of pensions for ex-Ministers was going to be a regrettable concession, calculated to encourage the professional politician. At the time of Union in 1914 the salaries of Ministers were fixed at £4,000 for the Prime Minister and £3,500 for other Ministers. As a Great War economy these salaries were reduced by £500, but had never been restored. These were the only State salaries which were lower than they were 30 years ago, and he considered there was a real case for placing their Ministers on a better financial basis on those lines. He hoped they were not going to give currency to the conception of the professional politician by making a scheme of pensions applicable also to ex-Ministers.[3]

Mr. S. P. Le Roux (Oudtshoorn) remarked that such a Motion as this should have been made on a Private Member's Day and certainly not at that stage of the Session.[3] He felt that by this proposal they were running the risk of opening the way to the professional politician. Was not the proposal going to induce an M.P. to aim at looking after his own interests, so that he could remain in Parliament a sufficient time to draw a pension and, when he had to make the choice between the national and his own interests, then for him to decide to look after the latter?[4] When anyone stood for Parliament he made himself eligible for the service of the people and not for his own service. An M.P. not only got £700 a year, but other privileges. What had they (as M.P.'s) done to educate the public to understand that M.P.'s met there as legislators and not to do ordinary administrative work? They were nothing

[1] *Ib.* 5258. [2] *Ib.* 5259. [3] *Ib.* 5260. [4] *Ib.* 5261.

else but agents for their constituents obtaining, through M.P.'s, certain privileges, such for example as old age pensions.[1] The speaker considered that Ministers were well paid and ought to be in the position of not finding a pension necessary. When it was remembered that Senators were also covered, it was going too far. They must remember that M.P.'s sat there as representatives: if they were to represent the feelings of the great electorate they would not be entitled to vote for the Motion.[2]

Mr. B. K. Long (Cape Town, Gardens) said that the only justification of this proposal was the case of the needy ex-M.P., who either failed to be elected, became too old, or retired from that or "another place" and had not enough to live on. Such, however, would only be a proportion of the Members. Surely there could be no higher testimony to the quality of a Member's service to the State than the fact that he was poor on retirement and had sacrificed his whole life to the service of his country in that way. He was sure that that House and future Parliaments would honour themselves and would honour the country by granting to such Members the relief they required. He would therefore vote against the Motion.[3]

Mr. J. G. N. Strauss (Germiston, South) said that they had not been sent there to pass Acts to benefit themselves at the expense of the constituents who sent them there.[4] If the salaries of Members of their House were not enough, why not alter the Constitution so that there would only be 100 Members and then pay them £900 or £1,000 a year? Another objection to the scheme was that it was obligatory.[5]

Mr. J. G. Hirsch (Port Elizabeth, South) was opposed to any State-aided scheme on the lines suggested and to the State providing funds as suggested. He considered that there were many in the House opposed to such a scheme.[6]

Mr. T. B. Bowker (Albany) regarded the scheme as plundering the State purse. By their own personal vote it was intended to increase their emoluments when hundreds of thousands of their people were living below the bread line and suffering from malnutrition and the diseases associated with it. They all knew that voluntary service was the best, and as M.P.'s they were expected to make a sacrifice. They had no right to dip their hands into the public purse without consulting the public. He would be quite prepared to subscribe to a benevolent fund for needy ex-M.P.'s. Even though they had

[1] *Ib.* 5262. [2] *Ib.* 5263. [3] *Ib.* 5264.
[4] *Ib.* 5265. [5] *Ib.* 5266. [6] *Ib.* 5267.

been told that the scheme placed before them was actuarially sound, they had not been given any figures.[1]

Lt.-Col. W. A. Booysen (Namaqualand) asked on whose initiative the Motion was brought before the House. Had there been a petition from any constituency? Was there a constituency in the country which had expressed the wish that pensions be given to M.P.'s?[2] Was it the wish of the public in the rural areas and in the towns? When they thought of how little had been done for the under-paid officials, for whom such urgent appeals had been made, it was deplorable that the Members of the House should be engaged in making snug for themselves. There were 10,000 impoverished unemployed in the country, but no such proposal had been made for them. There was land hunger among thousands of people who did not draw the salaries of M.P.'s, and who really suffered from lack of food. Was it not their primary duty to assist in that emergency, before M.P.'s thought of themselves?[3] What deprivations had M.P.'s with a salary of £700 a year? It was open to those who could not see their way to come out on that salary to resign. The proposal was a selfish one, and he hoped it would be nipped in the bud. M.P.'s were getting enough allowances and facilities so that there was no reason for this Motion.[4]

Mr. P. V. Pocock (Pretoria, Central) said that they ere being asked, first, to adopt the principle of a scheme hich had not been investigated, and they had no idea what ne cost would be, either to the State or to the individual. The principle should have been investigated by an expert body before the House was asked to pass such a Motion. They were being asked to adopt a pensions scheme for M.P.'s, who usually entered the House after 40, which they had consistently refused to apply to the public service.[5] M.P.'s realized when they undertook their public duty exactly what their responsibilities would be and what they had to face in carrying out those duties. When in 1926, continued the speaker, a resolution was submitted to the House for an increase in the allowances of M.P.'s, all the arguments that had now been put forward in support of this pensions scheme had then been used for asking the House to increase the salaries of M.P.'s by some £200 a year. The salary then paid was £400 a year, plus £100 extra granted a few years later, making £500 in all. It was then pointed out that it was quite impossible for M.P.'s

[1] *Ib.* 5269. [2] *Ib.* 5270. [3] *Ib.* 5271.
[4] *Ib.* 527[2], 5273. [5] *Ib.* 5273.

to carry out their duties and to make any provision for old age, or for any other circumstances. It was recognized then that there were certain necessary amounts which M.P.'s were called upon to pay, so it was agreed to raise the salary to £700 a year. Admitting that M.P.'s were now called upon to do more than they were 10 or 15 years ago, he did not think it could be fairly said that Members of their House depended solely upon their allowance for a living.[1]

Mr. S. E. Warren (Swellendam) remarked that an M.P. was in the service of the people and not of the State. It was not right for an M.P. to be entitled to a pension. In case of poverty, an ex-M.P. could always petition the House for a pension. They were not justified in granting pensions to rich men when there were so many people suffering poverty.[2]

Mr. M. Alexander, K.C. (Cape Town, Castle) was in favour of any scheme that might be evolved being held over until after the next general election before being put into operation, so as to give the public an opportunity of expressing an opinion upon it. That, however, should not stop the inquiry proposed. Every elector would then be given the opportunity of telling his Member whether in his opinion his Member should vote or should not vote for such a scheme. It would depend upon whether it was financially sound and not unduly burden some upon the taxpayer, and upon whether the people of the country as a whole agreed to it.[3]

Mr. J. H. Conradie (Gordonia) said that they were not deciding upon a scheme, but a principle. When each one of them was asked to accept nomination as a candidate for that House, he assumed that all gave it proper consideration, and after weighing the pros and cons decided to enter public life.[4]

The mover of the Motion during the course of his reply observed that the existing scale of Ministers' salaries in the Union was much higher than that in Canada, Australia, New Zealand or anywhere else in the Empire, outside Great Britain. In reply to the Member for Johannesburg (North), he (the mover) asked if it had ever been customary for Parliament to consult the public in dealing with their own matters. All he was asking the House to do was to assent to a proposition that such a scheme on a contributory basis was desirable and to set up a Select Committee to investigate the practical aspect.[5] They should not fasten round the neck of an ex-M.P. the badge

[1] *Ib.* 5274. [2] *Ib.* 5275. [3] *Ib.* 5276.
[4] *Ib.* 5276. [5] *Ib.* 5278.

of shame by asking him to come to that House and plead poverty.[1]

On the Question being put, a division was claimed with the result that out of a total membership of 153, the voting was: AYES 41; NOES 31.

The personnel of the Select Committee was announced in the House of Assembly on May 26,[2] and by Order of the House, June 2,[3] the Committee was given leave (*vide* S.O. 242) to sit during the sittings of the House as from June 5.

Report of Select Committee.

The Report from the Select Committee,[4] which was "Tabled" in manuscript in the House of Assembly on June 12,[5] read as follows:

> Your Committee has considered the subject referred to it and is agreed on the advisability of establishing a Fund for the payment of Pensions to retired Members of Parliament. The particulars of the scheme evolved by your Committee are embodied in the form of a draft Bill, which is submitted as an Appendix thereto.

The Committee sat on May 29, June 2 and 5. There was no conference with a Committee of the Senate.

At the Committee meeting on June 2, the Chairman submitted a draft Bill "to provide for pensions to Senators and Members of Parliament of the Union of South Africa." This draft Bill as amended by the Select Committee on June 2 and 5 became the Appendix to the Report. The Report of the Select Committee, however, was set down for consideration for June 12, and when Parliament was prorogued on June 16 it stood as fourth Order of the Day. The Report, etc., in the two official languages was published about 6 weeks later. The draft Bill as amended by the Committee will now be dealt with.

Clause 1 embodied the interpretations. Clause 2 provided for the establishment of a Fund (hereinafter referred to as "the Fund") constituted out of contributions by "members" (which means a past, present or future Member of Parliament—*i.e.*, both Houses), by the Government from the Consolidated Revenue Fund and out of amounts earned on investment of fund moneys, etc. An attempt was made in Select Committee to remove "Senators" from the operation of the Bill, but was defeated, the voting being AYES, 3; NOES, 5.

[1] *Ib.* 5280. [2] 1937 VOTES (II. Sess.), 844. [3] *Ib.* 888.
[4] S.C. 16-39. [5] 1939 ASSEM. VOTES, 901.

Clause 3 laid down the date at which contributions shall be made, as July 1, 1940, hereinafter referred to as " the fixed date," and prior to that date, subject to a maximum period of 15 years. " Members' " contributions were to be £3 10s. *p.m.* as from " the fixed date," and £1 15s. *p.m.* in respect of service prior to that date.

Clause 3 (3) of the Bill as drafted made the payment of " members' " prior service contributions compulsory and in instalments of not less than £2 *p.m.*, commencing not later than July 31, 1939, at compound interest at the rate of 4 per cent. *p.a.*, calculated monthly as from " the fixed date," upon such contributions as were in arrear, but an amendment made these back contributions permissive, by substituting " may " for " shall " and removing the £2 monthly instalment and the limit of date in order to leave the " member " either to pay them in a lump sum or in such instalments as he may desire, the 4 per cent. interest to apply also to any outstanding balance.

Under clause 4, a " member " who is at " the fixed date " a past Member of Parliament had the option of electing whether or no he would pay contributions in respect of his service prior to " the fixed date." Should he not so elect to pay, and subsequently become a present Member of Parliament then he was required to pay such contributions (*vide* clause 3 (3)).

Clause 5 originally provided that a " member's " contributions to " the Fund " be deducted from his Parliamentary allowances, or at such other time and manner as the Treasury might prescribe. An amendment in Select Committee, however, removed this Treasury control and made payment of the " member's " contributions from and after " the fixed date " by such deduction.

Clause 6 provided that should any " member " become entitled to a pension before the total amounts due by him in respect of service prior to " the fixed date," or under clause 10, had been paid into " the Fund," the amount due was to form a first charge on his pension.

Clause 7 authorized, as from " the fixed date," payment out of the Consolidated Revenue Fund to " the Fund ":

(*a*) at the end of each month—

an amount equal to the aggregate of the amounts which have been paid to the Act Fund by Members during the month, exclusive of amounts paid by them for readmission to membership (*vide* clause 10);

(*b*) every March 31—

interest at the rate of 4 per cent. *p.a.* on the average of the uninvested amounts in the Act Fund at the end of each month during the period in respect of which interest is paid.

Under clause 8, a " member " of not less than 12 years' service was entitled to a pension calculated as follows:

For the first 10[1] years of service £180[2] and £15 *p.a.* for every completed year above 10 years, subject to a maximum pension of £405 *p.a.*

Subject to clauses 12 (Abatements) and 6 (Contributions first charge on pension) pensions were to have effect—

(*a*) from " the fixed date " in case of " members " whose service terminated prior thereto; and,

(*b*) From the date of termination of service in other cases, but pensions are not to be payable before a Member is 60.[3]

Prime Ministers entitled to pension as above were to have an additional pension of £75 *p.a.* for every completed year of service as a Minister up to £1,200 *p.a.* Likewise ex-Presidents of the Senate, ex-Speakers of the House of Assembly and ex-Ministers (whether with or without Portfolio),[4] to whom " members' " pensions are payable, were to have an additional pension of £50 *p.a.* for each completed year of service in such capacities, up to £1,000 *p.a.* Sub-clause (5) of clause 8 originally provided that *pensions would be payable in respect of service before the " fixed date " in excess of 15 years and the* additional pensions payable to ex-Prime Ministers and Speakers, etc., as above, were to be paid out of revenue, but the provision in *italics* was struck out in Select Committee.

Clause 9 provided that should membership of " the Fund " terminate before 10[5] years' service, the Member was to be, within 12 months of application therefor, entitled to the refund of his contributions thereto, exclusive of interest and any amount due by him in respect of service prior to the " fixed date "[6] is to be written off.

[1] Altered in *Sel. Com.* by Chairman's casting vote to 12 years.
[2] Altered in *Sel. Com.* to £210. [3] Altered in *Sel. Com.* to 55.
[4] " Minister without Portfolio " struck out in *Sel. Com.*
[5] Altered in *Sel. Com.* to 12, and the words " within 12 months of application therefor " struck out.
[6] " Or under sec. 10 " inserted here in *Sel. Com.*—[ED.]

Clause 10 permitted readmission to membership, in the case of " members " who have been refunded their contributions under Clause 9, in which case the period of their service prior to cessation of membership was to be added to their service following readmission to " the Fund " by written application within 3 months of the " member's " readmission and subject to his repayment of any sums paid to him under Clause 9, *plus interest at 4 per cent. p.a. compounded annually from the date of payment to that of repayment and*[1] " subject to such other conditions as the Treasury might determine." The Treasury was defined in the Bill as meaning " the Minister of Finance or any officer in the Department of Finance authorized by the said Minister to perform the functions assigned to the Treasury in this Act."

Clause 11 provided that if a Member died:

(*a*) before he is entitled to a pension the amount of his contributions to the Fund exclusive of interest, or

(*b*) before the payments made to him from " the Fund " equal to the amount of his payments to " the Fund " exclusive of interest,

then the difference was to be paid to his estate.[2]

Sub-clause (2) of Clause 11, which read:

(2) The balance of any amount due by a " member " in terms of paragraph (*b*) of sub-section 1 of section 3 or of section 10 at the date of death shall be written off;

was struck out in Select Committee and the following sub-clause substituted:

(2) Any amounts due by such " member " at the date of death in respect of service prior to the " fixed date " or under section 10 shall be written off.

Pensions awarded under the Bill were to cease during any period any " member " was employed in a Government post, or one in its nomination, the salary of which was equal to or exceeded his pension under the Bill, but if the salary of such

[1] The provision in *italics* was struck out in *Sel. Com.* and the following words substituted: " and of any amount written off in terms of sec. 9 together with interest on both amounts at the rate of 4 per cent. compounded annually from the date in which he ceased to be a ' member ' to the date of repayment and."

[2] In *Sel. Com.* the words " his estate " were substituted by, " the surviving spouse or to such other person as he may by testamentary disposition direct, or failing which, to his next of kin."

post was less than the pension, then the difference was to be payable from the pension under Clause 8, and a " member " in receipt of a pension other than that paid under the Bill might continue to receive such pension in addition to the pension payable under the Bill.[1]

In cases where a pension under the Bill exceeded the " members' " Parliamentary allowance (*i.e.*, £700 *p.a.*), an M.P. was entitled to receive, during the period he was a " member," so much of his pension under 8 (1) as when added to such allowance equalled the pension payable under the Bill.[2]

Clause 14 provided that pension rights were not to be cedable or subject to execution, and if any person attempted to do so in respect of any pension or benefit to which he was entitled, the Minister of Finance might direct that such pension, etc., be withheld, suspended or discontinued; such Minister might also direct that such pension, etc., or part thereof, be paid to one or more of the dependants of such person or to a trustee for such person or his dependants for such period as he might determine.

Annuities on sequestration or assignment might not form part of the assets in a " member's " insolvent or assigned estate.[3]

Clause 16 provided that all amounts paid to " the Fund " had to be lodged in the Treasury to the credit of the Fund, and so much of such amounts as not required for current purposes were to be a " deposit " for the purpose of the Public Debt Commissioner's Act, 1911,[4] as amended,[5] but, notwithstanding such Acts, the Public Debt Commissioner was to invest any such available balances in the stock mentioned in sub-clause (3) of Clause 16, which read:

> (3) Any amount so available may be borrowed by the Governor-General, and the Treasury may issue local inscribed stock for any amount so borrowed in accordance with the provisions of the General Loans Consolidations and Amendment Act, 1917[6]: Provided that such stock—
>
> (*a*) shall bear interest at the rate of 4 per cent. *p.a.*, payable half-yearly on the 31st day of March and the 30th day of September in each year;
>
> (*b*) shall be issued at par; and
>
> (*c*) may be redeemed by the Treasury at such times as it may deem fit.

[1] Clause 12. [2] *Ib.* 13. [3] Clause 15. [4] Act No. 18 of 1911.
[5] Secs. 6 and 7 of Act No. 38 of 1921 and by Act No. 50 of 1926.
[6] Act 22 of 1917.

The business of " the Fund " was to be conducted by the Treasury and the cost of its administration and actuarial valuations, etc., to be paid out of revenue.[1] The Treasury was required to cause books and accounts of " the Fund " to be balanced up to May 31 each year, and a balance sheet prepared showing the assets and liabilities of " the Fund " as at that date.[2]

Clause 19 provided that the assets and liabilities as at March 31, 1945, and thereafter quinquennially, were to be valued by an actuary, who must declare any surplus or deficiency appearing and report thereon to the Minister of Finance. Such report was to be Tabled in both Houses within one month of its receipt by such Minister if in Session, or, if in Recess, within one month after the commencement of its next ensuing Session, and if, in any such report, the actuary certified that the contribution specified under Clause 3 (2) (*a*), together with the corresponding contribution from revenue, was apparently higher or lower than the contribution required to provide the benefits payable from " the Fund " in the case of future members, the Minister had power to reduce or increase the contribution of all members to an amount recommended by the actuary, and any such reduction or increase was to have effect from a date to be specified by the Minister. This Clause further provided that there shall be paid from the Consolidated Revenue Fund into " the Fund " such special contributions as may be required to secure its solvency.

Evidence.

The Government Commissioner of Pensions, who had been employed by the Government to make preliminary actuarial inquiries, was given leave by the Select Committee to be present at its meetings. He was the only witness called.

In his letter of May 4, in reply to a letter by the Commissioner of Pensions of April 24, the Consulting Actuary remarked that the proposed M.P.s' pensions fund would differ in many ways from other pension funds whose members entered at younger ages and where older entrants were charged higher rates of contribution. In a fund like that it was therefore possible to estimate what would happen in the future with a relatively small margin of error. In the case of the proposed " members' " fund, however, it was impossible to say what would happen in the future. The time of retirement could not be estimated

[1] Clause 17. [2] *Ib.* 18.

without a large margin of error. Having regard to those and other factors, any estimates made could not be treated as too reliable.[1] In the case of former Members, the Actuary would have liked to know how many were holding Government posts and its annual value in each case.

The Actuary, however, in consequence of an interview with the M.P. who was subsequently Chairman of the Select Committee, made certain estimates based upon (*a*) 4 years as the life of a Parliament; (*b*) £3 10s. as the monthly contribution by the Member plus £ for £ from the Government, and £1 15s. plus £ for £ for back service, but limited to 15 years; and with the age of retirement as 60, upon which the Actuary estimated the initial liability as £206,000, the annual payment from revenue to this 4-year fund being approximately:

	£
(*a*) towards redemption of initial liability	15,000
(*b*) £ for £ for current service	8,100
(*c*) £ for £ for arrear service	3,900
	£27,000[2]

Under the Bill as amended, however, the 15-year period and the age of retirement were reduced respectively to 12 and 55, and in the above estimate pensions to Ministers are not taken into consideration. The figures given can therefore only be considered as approximate, but they may serve as some guide as to what the Government liability may be under the scheme.

[1] Report: Evidence, p. 2. [2] *Ib.*, pp. 13-16.

VII. THE ADDRESS IN REPLY TO THE SPEECH FROM THE THRONE

By the Editor

The *Questionnaire* for Volume V contained the following item:

XI. Please give procedure in regard to debate, etc., on the Address-in-Reply to Crown's speech at opening of Session?

In those Parliaments of the Empire where there is an Address-in-Reply to the Speech from the Throne—which will hereinafter be referred to as the "Address-in-Reply"—the procedure is as follows:

United Kingdom.

As in the case of most other important questions of Parliamentary procedure, the Motion for the Address-in-Reply originates at Westminster. It is today a practice, developed with the creation of political parties, by which the House not only makes its grateful acknowledgements to the Sovereign, and supports its policy as outlined in his speech, but which affords those in Opposition opportunity to criticize that policy.

Upon the opening day of a Session, both Houses usually meet shortly before Noon[1] and, Prayers having been read, the Speaker of the House of Commons, on receipt of the *commana* (or, if Parliament is opened by Commission, the *desire*) to attend in the Lords, goes to that House, followed by as many M.P.'s as are present in the House and can find room at the Bar[2] of the House of Lords, where the Speaker stands while the Speech from the Throne is being read. On his return to the House of Commons, the Speaker passes through it without taking the Chair, which he does not usually resume until 3 p.m. Then, after the House has been informed of new writs issued during the Recess, new Members have taken their seats and other business of a formal or non-contentious nature has been transacted, the usual Sessional Orders, etc., taken (even matters of privilege may be raised), a *pro forma* Bill is read

[1] Upon the opening of a new Parliament the following proceedings are preceded by the election of Speaker and the swearing-in of at least some of the new Members. (H.C. Manual, VI. Ed., 8.)

[2] 190 M.P.'s by tickets obtained beforehand may stand on the right and left of the Bar, by taking up their places there before Mr. Speaker's procession arrives. There are also about 150 seats provided in the galleries, for which a ballot is usually taken beforehand by the Speaker's Secretary. *Ib.* 8.

the First time in the Commons (a similar practice being also followed in the Lords)[1] followed by the usual Resolutions as to printing of the Journal, etc. After these transactions have been taken, in order to assert the ancient right of the Commons to deliberate without reference to the immediate cause of summons, the Speaker reports that the House has been in the House of Lords to hear the King's Speech read, and reads a copy thereof to the House,[2] his words on such occasion being:

King's Speech.

Mr. Speaker: I have to acquaint the House that this House has this day attended His Majesty in the House of Lords and His Majesty was pleased to make a Most Gracious Speech to both Houses of Parliament, of which for greater accuracy I have obtained a copy: which is as followeth:

(*Here the speech is set forth in the records.*)

The Speech from the Throne (which since 1867 has been framed as the speech of the Sovereign) opening the Session gives in broad outline a statement of foreign relations and policy, the attitude of the Government towards matters of home policy and a summary of the legislative programme of the Session. The Speech is addressed to "My Lords and Members of the House of Commons," with the exception of a special paragraph, addressed only to "Members of the House of Commons" promising an early submission of the estimates for the coming year.[3]

It is at this stage that the Motion, which is now moved in the following form, is made that an Address be presented to the Crown, expressing thanks for the Speech:[4]

That an humble Address be presented to His Majesty as followeth:

MOST GRACIOUS SOVEREIGN:

We, your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Northern Ireland, in Parliament assembled, beg leave to offer our humble thanks to your Majesty for the Gracious Speech which Your Majesty has addressed to both Houses of Parliament.

The Address-in-Reply used to echo the Speech paragraph by paragraph, but today it is confined to a simple expression of thanks. Formerly it was moved as a Resolution unprefaced by the preliminary words, "Most Gracious Sovereign—We,

[1] H.L.S.O. II. [2] H.C. Manual, VI Ed., 7, 8, May, XIII, 173.
[3] Redlich, II, 59; Campion 83. [4] H.C. Manual, VI Ed., 10.

Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, beg leave to offer, etc."[1] An amendment to leave out " humble " has been ruled out of order.[2]

Since 1861 and 1888 respectively the appointment of a Committee to prepare the Address has been discontinued both in the Lords and Commons, the Address being now moved in a form suitable for presentation. The Address, however, may contain expressions of condolence on the deaths of members of the Royal Family, and in 1921 (II), when the King's Speech was confined to the Articles of Agreement signed by Ministers and the Irish Delegation, the Address of each House declared its readiness to confirm and ratify those Articles.[3]

The Motion for the Address allows debate upon the Speech and the Address-in-Reply thereto to be untrammelled as to subject-matter. The policy of the Government may be generally criticized from all imaginable points of view, the redress of grievances may be demanded and aspirations and proposals of all kinds stated. In fact, the whole policy, domestic and foreign, is open to discussion. Any body of political opinion represented in the House, any Member who wishes thus early in the Session to influence the Government's Legislative programme at any point or to call the attention of Ministers or the public to any question, may put down an amendment proposing the addition of some words having reference to the Address.[4]

Since the introduction of the Closure, the Government has stopped the debate after a number of sittings have been devoted to it. In 1902 the debate on the Address took up 10 sittings, in 1903, 8 sittings, and the number of amendments proposed were 12 and 13 respectively;[5] even 16 days have been in former years taken for the debate.[6] Today, however, some 5 days are by agreement devoted to the debate on the Address.

Notices of amendments to the Address are not received at the Table until the question for the Address has been proposed from the Chair. S.O. 13 of the Commons (July 28, 1870) does not permit of the Committees of Supply or Ways and Means being set up until the Motion for the Address has been disposed of, but other public business may be transacted in the meantime.

The mover and the seconder of the Address are selected by

[1] May, XIII, 603.
[2] 103 H.C. Deb. 5. s. 112.
[3] May, XIII, 173 *n*.
[4] Redlich, II, 59, 60.
[5] Redlich, II, 61; Campion, 82-83.
[6] 310 H.C. Deb. 5. s. 1778.

the Prime Minister, one Member for a borough and one from a county constituency,[1] and they usually appear in their places in levée dress or uniform. The debate is usually divided into 2 parts, one generally dealing with the policy of the Government as outlined in the Speech and the other on the amendments by the Opposition advocating alternative policies usually expressed in the form of regret for the omission from the Speech of policies advocated.[2]

After the Address has been agreed to, it is ordered to be presented to His Majesty either by the whole House; in the case of the House of Lords by the Lords "with white staves," and in that of the Commons by "such members of the House as are of His Majesty's most honourable Privy Council, or of His Majesty's Household"[3]. When the Address in answer to the King's Speech at the opening of Parliament is to be presented by the whole House, the Lords with white staves in the one House and the Privy Councillors and members of the Household in the other, are ordered "humbly to know His Majesty's pleasure when he will be attended" with the Address. Each House meets when it is understood that this ceremony is to take place and after His Majesty's pleasure has been reported, proceeds separately to the Palace; care must be taken to make a House at the proper time to receive the communication of His Majesty's pleasure. If, before the presentation of the Address by the whole House, any circumstance should be communicated which would make it inconvenient for His Majesty to receive the House, the Address is presented by the "Lords with white staves" and Privy Councillors, etc., as above.[4]

While dealing with this subject, it may be of interest to bring the procedure to completion. When a joint Address is to be presented by both Houses, the Lord Chancellor and the House of Lords, and the Speaker and the House of Commons, proceed in state to the Palace at the time appointed. On reaching the Palace, the two Houses assemble in a chamber adjoining the Throne Room, and when His Majesty is prepared to receive them, the doors are thrown open, and the Lord Chancellor and the Speaker (who is on the left hand of the Chancellor) advance side by side, followed by the Members of the two Houses respectively, and are conducted towards the Throne by the Lord Chamberlain. The Lord Chancellor then reads the Address and presents it, on his knee, to His

[1] May, XIII, 173; Campion, 83.
[2] Campion, 84.
[3] May, XIII Ed., 174.
[4] *Ib.* 174.

Majesty, who returns an answer; and both Houses then retire.

When Addresses are presented separately, the same forms are observed except that the Addresses of the Commons are read by the Speaker. In presenting the Address, the mover thereof in the Lords is on the right hand of the Lord Chancellor and the seconder on his left, but both are on the left of the Speaker in the case of Addresses from the Commons. When the Lord Chancellor or the Speaker reads the Address, he presents it to His Majesty, kneeling upon one knee. The Lords attend His Majesty in levée dress, but the Members of the Commons can assert their privilege of freedom of access to the Throne by accompanying the Speaker in their ordinary attire.

When Addresses have been presented by the whole House, the Lord Chancellor in the Lords and the Speaker in the Commons report the answer of His Majesty; but when they have been presented in the ordinary way, the answer is reported generally, in the Lords, by the Lord Chamberlain in levée dress, with his white staff; and in the Commons by one of the Royal Household, who appears at the Bar in uniform and, on being called by the Speaker, reads His Majesty's answer; the proceedings have sometimes been interrupted for this purpose.[1]

Canada.

The Senate.—Prayers are read by the Speaker before the Leader of the House presents the *pro forma* Bill in assertion of the House's privileges, after which the Speaker of the Senate reports the speech from the Throne thus:

> Honourable Senators,—I have the honour to inform you that His Excellency has caused to be placed in my hands a copy of his Speech delivered this day from the Throne to the two Houses of Parliament. It is as follows:
>
> "Honourable Senators, etc.," and the Speaker, having read a few lines, hears the word *dispense*. He says, "Honourable Senators, is it your pleasure to *dispense* with the reading at length of His Excellency's Speech?"
>
> The Clerk, beginning also to read it, is interrupted in the same way, and sits down.

The Leader of the House then moves: That the speech be taken into consideration on . . .[2]

As a matter of fact it is the practice for the Government Leader, informally, to select from among the more recently

[1] *Ib.* 605, 606. [2] S.O. 20-23.

appointed Senators the mover and seconder of the Address-in-Reply. It is customary for one of the Senators so selected to use the French language in at least a part of his speech.

After the Motion has been proposed from the Chair a general debate may follow and amendments to the Address may be moved. If the debate should continue for more than 2 or 3 days, other business of an urgent character may be taken up, but final action on the Address would not be delayed many days.

When the Question has been put it is then:

> *Ordered.*—That the said Address be presented to His Excellency the Governor-General by such Members of this House as are Members of the Privy Council.[1]

House of Commons.—The Address-in-Reply is usually moved in the English language and seconded in French. The rule is not rigid. In 1932, the motion was made by Mr. Bourgeois, a French-speaking Member from the Province of Quebec, and seconded by Mr. Stitt, Member for Selkirk, Manitoba. Until 1932, a motion was passed giving precedence to the debate on the Address over all orders except introduction of Bills. From 1932 to 1935, consideration of the Address was not given precedence, but in 1933 and 1934 it became a special order which could only be called after the other orders had been disposed of. In 1936 and 1937, the Address was given precedence over everything except introduction of Bills.

Rule 311 in Beauchesne's Manual[2] states that it is a mistake to believe that the debate on the Address-in-Reply allows members to raise all kinds of issues on the mere ground that they relate to the general situation of the country. In the times of Sir John A. Macdonald and Hon. Alexander McKenzie, considerable restriction was placed on that debate. Speaking on the address in the Session of 1875, Sir John A. Macdonald expressed the following opinion: "The practice of discussing the Speech from the Throne at great length and of raising endless issues upon it was simply an obstruction to business. It was his opinion that, unless the Opposition were in a position to move a vote of want of confidence in the Government, which he candidly confessed they were not in a position to do on this occasion, the Address should be passed without delay."[3] Hon. Mr. McKenzie, speaking on the address, in

[1] *I.e.*, of Canada.
[2] Beauchesne's Parliamentary Manual, II Ed. (1927), 102.
[3] Can. Com. Deb. 1875, p. 12.

1878, said: " I quite admit that on this occasion free comments may be made upon ministerial utterances in the Speech from the Throne, although it is now and has been the practice for many years so to construct that document that there shall be nothing which will necessitate on the part of the Opposition the moving of any amendment. It has been thought desirable in our parliamentary practice that it is better to postpone debates upon specific subjects of discussion in the House until those matters are brought forward before us by a Bill or Resolution, and I am glad to know that the honourable gentleman admits that the speech has been constructed this time fairly in that respect."[1]

Rule 410[2] in Beauchesne's Manual states that amendments to the Address are moved by way of additions thereto. A general debate may take place on the Address, but when an amendment is proposed the discussion should be strictly confined to the subject-matter of the amendment.

The form of the Motion for the Address-in-Reply is:

> That the following Address be presented to His Excellency the Governor-General to offer the humble thanks of this House to His Excellency for the gracious Speech which he has been pleased to make to both Houses of Parliament, namely:
>
> *To His Excellency the (here are cited his titles)*
>
> MAY IT PLEASE YOUR EXCELLENCY:
>
> We, His Majesty's most dutiful and loyal subjects, the House of Commons of Canada, in Parliament assembled, beg leave to offer our humble thanks to Your Excellency for the gracious Speech which Your Excellency has addressed to both Houses of Parliament.[3]

The following is the Order for giving precedence to debate on Address-in-Reply:

> That the order for the consideration of the Motion for an Address to His Excellency the Governor-General in reply to his Speech at the opening of the Session have precedence over all other business, except introduction of Bills, until disposed of.[4]

Canadian Provinces.

The practice in the bicameral Provincial Parliament of Quebec and in the remaining 8 unicameral Parliaments of Canada, in regard to the Speech from the Throne and its treatment in Parliament, follows very much the procedure at Ottawa, with the substitution of His Honour the Lieutenant-

[1] *Ib.* 1878, p. 36.
[2] Beauchesne's Manual, II Ed., p. 129.
[3] *Ib.* 291.
[4] *Ib.* 291-292.

Governor of the Province for His Excellency the Governor-General of the Dominion. In New Brunswick and Alberta, however, the reading of the Speech by the Speaker is dispensed with and printed copies are distributed to Members—in fact, in Alberta the Speaker, when informing the House of the Speech, says:

> That in order to prevent mistakes I have obtained a copy of the Speech of His Honour the Lieutenant-Governor, and I now lay the same on the Table.[1]

In the Quebec Legislative Council the Speech is read by its Clerk, after which it is ordered to be printed in the two official languages. In regard to the Provinces of which information is available,[2] the ancient right is exercised of transacting informal business before the consideration of the Speech and the usual *pro forma* Bill is read a First time with an order for the Second reading on a future day, after which no more is heard of it. The subject of this Bill varies in the several Provinces from a Bill " respecting the Administration of Oaths of Office to persons appointed as Justices of the Peace " in Ontario, to a " Bill of Sales " in British Columbia.

In most cases, the debate continues from day to day, often with precedence,[3] until dispensed with, and only amendments of *addition* to the Address are allowed. The wording of the Address varies slightly. That in Ontario reads:

> We, His Majesty's most loyal and dutiful subjects of the Legislative Assembly of the Province of Ontario now assembled, beg leave to thank Your Honour for the gracious Speech Your Honour has addressed to us.

In some cases, the words " at the opening of the present Session " are added. The preceding words in the Motion are, to quote from Saskatchewan:

> That an humble Address be presented to His Honour the Lieutenant-Governor as follows:
>
> *To His Honour the Honourable . . . . . .*
> *Lieutenant-Governor of the Province of . . . . . .*
>
> MAY IT PLEASE YOUR HONOUR

There is some difference in the manner of presentation of the Address to His Honour, after it has been agreed to. In

[1] Alta, S.O. 20.
[2] Information is not available in regard to N.S. and P.E.I.
[3] In Alberta it is especially provided by S.O. 409 that no important matter may be entered upon before the adoption of the Address.

Quebec, Rules 619 to 628 of Geoffrion's Annotated Rules[1] of the Legislative Assembly of that Province, which embody the practice in regard to the Address-in-Reply, state that the Address may be presented to His Honour by the Whole House (when it is read by the Speaker) or by such Members as the House may name for that purpose, but that unless the House otherwise orders, Addresses are presented by members of the Executive Council. Joint Addresses are read by the Speaker of the Legislative Council. Normally, however, Addresses are presented " by the Honourable the Speaker and such Members of the Executive Council as are Members of this Honourable House." In New Brunswick, presentation is made by a Committee consisting of the mover and seconder and a member of the Executive Council, and in all cases His Honour, in due course, sends a message of thanks to the House. The late Mr. George Bidlake,[2] for many years Clerk of the Legislative Assembly of New Brunswick, referred to the procedure in his Province in regard to the Address in his very useful printed notes, in the Standing Orders book,[3] as follows:

> The mover and seconder then deliver their speeches in support of the motion, and are usually followed by the Leader of the Opposition. Some misapprehension seems to exist as to the scope and nature of the speeches that may be delivered on this occasion. The subject under consideration being the Speech from the Throne and the proposed Address-in-Reply thereto, all discussion should be strictly confined to matters contained in the Speech. Formerly the Speech was considered section by section, and the Address-in-Reply framed in the same way; but of late years a general form of Address has been adopted. As a consequence, Members have got into the habit of using the debate on the Address as a peg on which to hang discussion of every kind of subject which comes under governmental control, and many others that do not. This practice is directly contrary to recognized Parliamentary procedure, which requires that all debates should be strictly confined to the subject of the motion under consideration, which in this case is the policies of the Government as outlined in the Speech. It, of course, frequently happens that an amendment is moved by the Opposition, which usually takes the form of an expression of regret that the Government has done or left undone something it should not, or should, have done. In this event the debate can be broadened out to include the subject of the amendment. Ample opportunity is afforded on the motion to go into Supply for the widest discussion of matters of general government concern, which are entirely out of place when considered during the debate on the Speech from the Throne. . . .

[1] Règlement Annoté de L'Assemblée Législative de Québec par L. P. Geoffrion K.C. (Greffier de l'Assemblée Législative) 1915.

[2] *See also* JOURNAL, Vol. IV, p. 8.

[3] King's Printer, Fredericton, N.B. 1930.

Australia.

The Senate.—The practice in regard to the Address-in-Reply at Canberra differs from that at both Westminster and Ottawa in that no *pro forma* Bill is presented before the consideration of the Speech from the Throne, which is only reported by the President. Other "formal business," however, is taken before the consideration of the Speech, in assertion of Parliament's right. Under Address-in-Reply procedure regulated by the Standing Orders,[1] "formal business" is defined as including—"the fixing of the days and hours of meeting, the appointment of Standing Committees and any Motion under S.O. 365 (Printing of Papers)." Presentation to the Governor-General is made by the President, "and such Senators as desire to accompany him." The Standing Orders also make special reference to the Opening of Parliament by Commission.[2] The form of Address is:

To His Excellency the Governor-General

MAY IT PLEASE YOUR EXCELLENCY

We, the Senate of the Commonwealth, in Parliament assembled, desire to express our loyalty to our Most Gracious Sovereign, and to thank Your Excellency for the Speech which you have been pleased to address to Parliament.[3]

House of Representatives.—Similar procedure to the Senate is followed in this House, except that a Committee is appointed to prepare the Address, which is then considered by the House *de die in diem* in advance of any but formal business. Presentation is by the Speaker, unless the House otherwise orders, and the form of address is the same as that of the Senate, with consequential amendments.[4]

Australian States.

New South Wales.—In both Houses of this State Parliament the form of address is as given below. The subject of the *pro forma* Bill in both Houses is "the Law of Evidence." Upon the presentation of the Address both the President and the Speaker of the Legislative Assembly are accompanied by the Officers of the House, the Mover and Seconder of the Address, "and such Members of the House as shall think fit to attend." A Select Committee is no longer appointed to draw up the

[1] S.O. 10-14. [2] *Ib.* 1 (*c*), (*d*), (*f*); and 2 (*f*), (*h*).
[3] 1934 Sen. J. 3, 4, 7, 11, 12, 14, 16.
[4] S.O. 2, 15, 16, 18-21, 399; 1934 VOTES, 9, 14, 15, 17.

Address-in-Reply. When the M.L.A. moves the adoption of the Address he reads it to the House.[1]

To His Excellency . . . . . .

MAY IT PLEASE YOUR EXCELLENCY

We, His Majesty's loyal and dutiful subjects, the Members of the Legislative $\frac{\text{Council}}{\text{Assembly}}$ of New South Wales, in Parliament assembled, desire to express our thanks for Your Excellency's Speech, and to assure you of our unfeigned attachment to His Most Gracious Majesty's Throne and Person.

We beg to assure Your Excellency that our earnest consideration will be given to the measures to be submitted to us.

We join Your Excellency in the hope that, under the guidance of Divine Providence, our labours may be so directed as to advance the best interests of the State.

Queensland.—In the unicameral Parliament of Queensland there are certain special features in the procedure upon the Address-in-Reply, the debate upon which is limited to 4 full Sitting days (unless that period is extended by Motion without notice, amendment or debate[2]), exclusive of the day upon which it is moved and seconded. The debate is interrupted by the Speaker at 10.30 p.m. each day, the discretion resting with him of permitting the Member then speaking to finish his speech. At 10.30 p.m. on the last of such allotted days,[3] the Speaker must then put the Question for the adoption of the Address forthwith, together with any amendment(s), without further amendment or debate. On any of the allotted days, however, formal business may be taken both before 4.30 and after 10.30 p.m., with the exception of the Committees of Supply and Ways and Means, which may not be set up until the Address-in-Reply has been agreed to.[4] Otherwise business, other than that of Private Members, may be proceeded with as usual. Business which may be under consideration at 4.30 p.m. on any of the allotted days automatically stands over as an Order of the Day for the next Sitting of the House until disposed of. Nothing, however, above-mentioned may prevent the interception of the debate on the Address-in-Reply by the passage of a Temporary Supply Bill, provided that the time as above allotted for the Address-in-Reply is not curtailed. Presentation is by Mr. Speaker (unless otherwise ordered),

[1] Leg. Co., S.O. 134-136; 1937-38 MIN. 12, Leg. Assem., S.O. 37-38, 215-217; 1937-38, VOTES, 18, 23, 25-27.

[2] This period has frequently been extended to 7, 8, 9 or even 10 days.

[3] *I.e.*, with daylight sittings in operation: 11 a.m. to 5.30 p.m.

[4] S.O. 305.

" accompanied by such Members as think fit to attend with him," but the Mover and Seconder of the Motion are always included. Members may speak for 40 minutes, with a possible extension to 30 minutes, on the Motion of another Member.

The form of the Address-in-Reply differs somewhat from that in use in the other States, and is, after the usual superscription, as follows:

> We, His Majesty's loyal and dutiful subjects, the Members of the Legislative Assembly of Queensland, in Parliament assembled, desire to assure Your Excellency of our continued loyalty and affection towards the Throne and Person of Our Most Gracious Sovereign, and to tender our thanks to Your Excellency for the Speech with which you have been pleased to open the current Session.
>
> The various measures to which Your Excellency has referred, and all other matters that may be brought before us, will receive our most careful consideration, and it shall be our earnest endeavour so to deal with them that our labours may tend to the advancement and prosperity of the State.

At such times as the approaching departure of a Governor, an extra paragraph is inserted. No *pro forma* Bill is presented before the consideration of the Speech, which, when reported, is taken as read.[1]

South Australia.—The procedure in the Parliament of this State differs in some respects from that given in regard to those preceding. Since the adoption of S.O. 42, providing that only formal business may be taken before the Motion for the Address-in-Reply has been disposed of, the House of Assembly has occasionally agreed to a suspension of the Order on the ground of urgent necessity. After the Speech from the Throne has been tabled, the Leader of the House moves for the appointment of a Committee to prepare a draft Address-in-Reply and the speech stands referred to such Committee, which ordinarily has to report on a given day, when the Leader of the House submits a draft Address, which in practice is agreed to with only verbal amendments, and is read by the Clerk-at-the-Table. The debate usually extends over several days. An instance has occurred of a Motion having been carried making it an instruction to the Committee to embody a paragraph disapproving of the action of the Government, and when the draft Address was brought up an attempt to delete the paragraph was defeated. In such a case, under the South Australian practice, a Motion would be made excusing the original Committee from attending, and setting up another

[1] S.O. 16-20; Rule 5; 1938, Leg. Assem. J., 10, 19, 39, 48, 52, 63, 102, 108.

Committee in its place, to prepare and bring up the Address in conformity with the instruction. Presentation is made by the President and Speaker attended by such Members as may accompany them. No *pro forma* Bill is presented in either House.

The form of Address usually is:

To His Excellency . . . . . .

MAY IT PLEASE YOUR EXCELLENCY

We, the Members of the Legislative Council / House of Assembly thank Your Excellency for the Speech with which you have been pleased to open Parliament. We assure Your Excellency that we shall give our best attention to all matters placed before us.

We earnestly join in Your Excellency's prayer for the Divine blessing on the proceedings of the Session.[1]

Tasmania.—The procedure[2] upon the Address-in-Reply in this State Parliament is less restricted. The *pro forma* Bills are in the Upper House "to amend the Partition Bill," and in the House of Assembly "to amend the Boundary Fences Act, 1908." Both Committees of Supply and of Ways and Means are set up before the adoption of the Address. In fact, the procedure upon the Motion for the Address-in-Reply is very much on the lines of ordinary Motions. The Mover and Seconder accompany the President upon the presentation of the Address. Below is an example of an Address-in-Reply when Parliament is opened by Commission:

To His Excellency . . . . . .

MAY IT PLEASE YOUR EXCELLENCY

We, His Majesty's dutiful and loyal subjects, the Members of the Legislative Council of Tasmania, in Parliament assembled, desire to thank Your Excellency for the Speech which you have been pleased to address to both Houses of Parliament, through Your Excellency's Commissioners. In recording our loyalty to the Throne and Person of His Majesty King *George* the Sixth, we wish to assure Your Excellency that the measures which are to be laid before us during the Session will receive our careful consideration.

Victoria.—In both Houses, a copy of the Governor's Speech, reported respectively by the President and Speaker, is handed to each Member, after which certain Members, by arrangement, move and second the Motion of Adoption of

[1] Leg. Co. S.O. 12-14; 1938, L.C. MIN., 5, 10, 13, 15; H.A. S.O. 37-43, 1938, H.A. VOTES, 3, 5, 10, 13, 15, 17, 21.

[2] Leg. Co. S.O. 6; 1938, L.C.J. 3; H.A. S.O. 20-22; 1938 H.A.J. 7, 8, 18.

the Address which is in the form used at Canberra. Presentation is made by the President and Speaker, and the Debate usually lasts several days.[1] Bills may be introduced before the consideration of the Speech, and even the Committees of Supply and Ways and Means are set up before the Address-in-Reply has been agreed to. No *pro forma* Bill is presented in either House.

Western Australia.—The Address of the Legislative Council is presented by its President " and such Members as may desire to accompany him," and in the Legislative Assembly by the Speaker, " accompanied by the Mover, the Seconder and such other Members as shall think fit to attend." In the Assembly the Speech is read to the House by the Speaker. At one time, the Standing Orders (35) required the Governor's Speech to be considered in Committee of the Whole House, and special procedure was followed in regard to Supply.[2]

New Zealand.

Legislative Council.—No special provision is made in the Standing Orders, except that as soon as conveniently may be after the opening ceremony, Notice is given of Motion for an Address-in-Reply, and presentation is made by the Speaker of the Upper House " accompanied by such Members as desire to attend." No *pro forma* Bill is introduced. In the Session of 1938 an Imprest Supply Bill was taken through all its stages before the adoption of the Address-in-Reply.[3] The form of Address is:

> MAY IT PLEASE YOUR EXCELLENCY
>
> We, His Majesty's dutiful and loyal subjects, the Legislative Council of New Zealand, in Parliament assembled, beg leave to offer our respectful thanks to Your Excellency for the Speech which Your Excellency has addressed to both Houses at the opening of the present Session.
>
> Your Excellency may rest assured that the matters mentioned therein will have our earnest and most careful consideration.
>
> We join with Your Excellency in the prayer that with God's blessing our deliberations may prove to the lasting benefit of the people of New Zealand.

House of Representatives.—As in Tasmania, there is less restriction of the matters which may be taken before the Address-in-Reply, and both the Committees of Ways and

[1] Leg. Co. S.O. 19-22, 138-140; 1938, L.C. MIN. 14, 17, 19, 22, 25, 30; 1938, VOTES, 5, 7, 15, 17, 19, 27, 39; Leg. Assem., Rule 14, 15; S.O. 4 (*b*).
[2] Leg. Co. S.O. 11-15; Leg. Assem. S.O. 30-34.
[3] Leg. Co. 269, 275; 1938 N.Z.; L.C.J. 7, 8, 9, 10, 11.

Means and of Supply may be set up before the Address-in-Reply has been adopted. In the 1938 Session, an Imprest Supply Bill was taken through all its stages, also in this House, before the Motion for Address-in-Reply was taken into consideration. The Standing Orders provide that after the return of the Speaker to the House of Representatives to report the Governor-General's Speech to both Houses of Parliament upon its opening, the House may only transact such business, not involving debate, " as may be conveniently taken." Before the consideration of the Address, however, a *pro forma* Bill (the expiring Laws Continuance Bill) is presented and read the First time, after which Mr. Speaker tables a copy of the Speech, and Notice of Motion of the Address-in-Reply is given. At which time Notice of any amendment may be given, but these are restricted by S.O. 5 to the addition of words. S.O. 6 lays down the form in which such amendments are to be moved, and that " any such amendment, or any amendment thereto, shall for the purpose of debate be deemed to involve consideration and decision of the main Question." If the Motion as originally proposed is agreed to without any words being added thereto, the Address is thereupon prepared and brought up by a Minister, without Question put. Should, however, the Address be amended, a Committee is appointed, consisting of the mover of the particular amendment and 2 other Members, or, if there be more than one such amendment, such Committee as the House may agree upon, to prepare and bring up the Address, which is required to contain at the end thereof any words so ordered to be added by the House. The Address is brought up without Question put. S.O. 9 provides that the Address having been brought in, Mr. Speaker shall read it to the House and put the Question, " That the Address be agreed to," which Question is decided without amendment or debate. Should, however, on a point of order being raised, Mr. Speaker be of opinion that the Address as brought in contains in any part thereof (except in words which the House has ordered to be added) any words or statements of a controversial nature, such Address must stand referred back to the Minister or Committee bringing it in (the Committee being deemed revived for the purpose) for amendment therein.

It is the practice to announce the day upon which the Address-in-Reply is to begin, which is generally in the evening, and the Mover and Seconder wear full evening dress. Only 2 speeches are taken on the first night, the Leader of the Opposition moving the adjournment of debate. No set time

is fixed for the debate, the length of which varies considerably.

The following is an example of the form of the Address in the House of Representatives:

MAY IT PLEASE YOUR EXCELLENCY

We, His Majesty's dutiful and loyal subjects, the House of Representatives in Parliament assembled, beg leave to offer our thanks to Your Excellency for the Speech which Your Excellency has addressed to both Houses of the Legislature.

We join with Your Excellency in trusting that the visit of Your Excellency to Cook Islands and the Mandated Territory of Western Samoa may have useful results and that it may be conducive to that full understanding of mutual problems which is so desirable.

We desire to assure Your Excellency that our most careful consideration will be given to the several matters referred to in Your Excellency's Speech, and we unite with Your Excellency in praying that with God's blessing our deliberations may prove to the lasting benefit of the people of New Zealand.[1]

Union of South Africa.

Neither in the Union Parliament, nor in the Provincial Councils, nor in the Legislative Assembly of the Mandated Territory of South West Africa is the procedure of the Address-in-Reply in force. The Opening Speech is merely tabled, and should it be desired to move in regard to any part of such Speech, then it can only be done by Motion in the ordinary way. Even upon the advent of Union in 1910, of the four "responsible government" Colonies now constituting the four Provinces of the Union, only in the Parliament of Natal was there an Address-in-Reply,[2] although such practice was in use in the early days of the old Cape Colony, both under "Representative Government," from 1853, and for a time under "Responsible Government," which was introduced in 1872.[3]

Ireland (Eire).

In Eire there are no Sessions as generally understood. Both Houses adjourn from time to time throughout the year. Article 15 (7) requires that the Parliament (*Oireachtas*) shall hold at least one Session every year. There is no Speech at the Opening of a Parliament or Session, and therefore no Address-in-Reply.

[1] H.R.S.O. 4-10; 1938, H.R.J. 13, 15, 17, 20, 21, 24, 26.
[2] Clough's South African Parliamentary Manual, 1909, 25-26.
[3] *The Old Cape House*, Ralph Kilpin, 1918 (Maskew Miller, Cape Town).

Southern Rhodesia.

The practice is the same as in the Union Parliament.

British India.

Neither in the Central Legislature at New Delhi nor in any of the Legislatures of the Governor's Provinces does the practice of the Address-in-Reply prevail—in fact, every Session of the Legislature is not opened by the Governor with a Speech, and when it is, it is not open to discussion as such.

Ceylon.

Under S.O. 16 it is provided that as soon as the names of the appointed Ministers have been announced, the Speaker shall inform the State Council whether the Governor desires to address the Members or not, and, if so, at what time, whereupon the sitting shall be so suspended. This Standing Order originally contained the words, " There shall be no reply to the Governor's Address," but these words were struck out by the State Council on June 9, 1932, following a Report from the Standing Orders Committee.

The Bahamas.

The practice of an Address-in-Reply to the Governor' Speech prevails in the General Assembly, the Addres being prepared by the Mover and Seconder thereof. No *pro forma* Bill is presented before the Speaker's report upon the Governor's Speech at the opening of the Legislature, and the Address-in-Reply to the Speech echoes the Speech paragraph by paragraph. After it has been reported by the Committee appointed to prepare it—which, in this case, usually consists of the Mover and Seconder—the House goes into Committee of the Whole House upon it, where it is taken paragraph by paragraph, and after its form is finally settled and reported to the House the Speaker is ordered to sign it.[1]

[1] Harcourt Malcolm's Manual of Procedure, II Ed., 1934, 12, 13, 28, 182, 184.

VIII. SUPPLEMENTARY QUESTIONS TO MINISTERS.

COMPILED BY THE EDITOR.

As the return to item VII of the *Questionnaire* for Volume II on this subject was so insufficient, request was made for the inclusion of the item in the *Questionnaire* for Volume VIII, which read:

> VI. State any restriction as to number and nature of Supplementary Questions.

The replies received are as follow:

United Kingdom.

House of Lords.—Any Question asked may become the subject of debate. There is therefore no restriction on Supplementary Questions except that the Peer who asks the Question has no power to speak again. It is usual for the Peer in whose name the Question stands to make a speech upon it at the time of asking it. If he does not wish to do so, he may "star" his question (*i.e.*, have an asterisk printed in front of it), which is an indication that he does not propose to raise a debate upon it.

House of Commons.—No Standing Orders or written rules govern the number or nature of Supplementary Questions—in fact, a Speaker has ruled in 1915 that nominally they are out of order and only permitted as a matter of grace. But though their control lies entirely at the discretion of the Speaker and has varied widely under successive occupants of the Chair, certain principles have been applied for many years and have now become recognized in practice.

Broadly speaking, Supplementary Questions are only supposed to be permitted when they are necessary for the proper elucidation of the answers that have been given; they ought therefore to arise genuinely out of the original Question or reply. Further, they are subject to the same rules of order as Questions of which notice has been given, and may not be based upon a printed answer. Either the Member asking the original Question, or any other Member, may be allowed to put one or more such supplementaries, but the former is accorded precedence.

The main objection to Supplementary Questions is on the

score of waste of time, hence the Speaker watches the practice constantly, so as to safeguard the rights of Members further down the list when many Questions still stand to be answered, and he has often appealed to Members to restrain their supplementaries and on occasion has refused to allow them to be put.

Another objection is on the ground that Members sometimes ignore the stipulation that supplementaries must conform to the rules governing ordinary Questions, and that they use the opportunity to put Questions which are irrelevant, having already been refused, or are dangerous to the public interest; and attempts have therefore been made from time to time to secure some form of restriction. Up till now, however, the sense of the House has always been in favour of leaving the matter to Mr. Speaker's discretion, in view of the difficulty, in the widely differing circumstances which arise, of framing rules which might not interfere with what is often a valuable right. In the Addendum at the end of this Article is given a Motion on the subject, by a Private Member on June 26, 1939.

Numerous rulings of successive Speakers are cited in Sir T. Erskine May's *Parliamentary Practice*, 13th edition, p. 245, notes 4, 5, 6 and 7.

Canada.

No Supplementary Questions are allowed.

Australia.

Commonwealth Parliament.—A Question arising out of an answer can only be asked to elucidate the answer or to obtain fuller or more definite information. It must relate to the same subject-matter, and must be asked immediately. Whether such a Question may be answered lies in the discretion of the Minister.

Australian States.

New South Wales.—In the Legislative Assembly not more than two Questions without Notice upon the same subject are allowed and no restrictions are laid down as to the asking of Supplementary Questions.

Victoria.—It is not the practice for Supplementary Questions to be allowed. As with other Questions, notice is required unless the Member has arranged for the Minister to answer the Question without notice.

Queensland.—There is no system in operation by which Supplementary Questions may be asked. Should further information be required on a subject, another Notice of Question is given for a future day.

South Australia.—No restriction.

Western Australia.—No Supplementary Questions are allowed.

Tasmania.—In the Legislative Council, no provision is made for Supplementary Questions. Questions may only be asked after Notice, unless by leave of the Council.[1]

New Zealand.

Legislative Council.—S.O. 111 permits a Member to ask a further Question, without notice, arising out of and relevant to the answer to the original Question.

House of Representatives.—Notices of Question are read by the Member to the House at question time. Questions are then placed on the Order Paper and on Wednesdays they are transferred to a Supplementary Order Paper with the replies attached. It is not, however, mandatory for the Government to furnish replies each Wednesday, and if they are not ready the House passes to other business. It often happens that the Questions and replies for 2 or even 3 weeks are issued together, but all Questions and replies are required to be printed in *Hansard.* S.O. 100 requires that when such written replies have been circulated, any Member may, on the day on which they are given, move the adjournment of the House for the purpose of discussing such replies, but discussion must be confined to the subject-matter of any Questions asked or replies given that day; no speech may exceed 5 minutes (10 in the case of a Minister); and the whole discussion must not exceed 2 hours.

Union of South Africa.

The Senate.—The Standing Orders make no provision for Supplementary Questions, but such are the recognized procedure of the House according to the practice laid down by May;[2] and there is no restriction as to their number, although the President would discourage Senators from asking a large number, but they must arise out of the reply to the original Question.

House of Assembly.—The rules of the House of Assembly make no provision for Supplementary Questions, but such Questions were allowed by Speaker Molteno and are now a recognized part of the procedure of the House. They are strictly governed by rules stated in the Eleventh[3] Edition of May's *Parliamentary Practice* at page 252; that is to say, there is no restriction as to their number, although the Speaker

[1] S.O. 79-81. [2] XI. Ed., 252. [3] *Vide* S.O. 286.

discourages Members from asking a large number, and they must arise out of the reply to the original Question. The Speaker has further ruled that they must not " be in the nature of cross-examination and must not ask for information which could have been asked for in the original Question, nor must they seek to supply information to the House."[1]

Union Provincial Councils.—*See* Union House of Assembly.

South-West Africa.—*See* Union House of Assembly.

Ireland (Eire).—Questions to Ministers are not permitted in the Seanad, so that the Dail alone is concerned with this section.

In the Dail, Supplementary Questions are regulated by S.O. 37 relative to Public Business. The number of such Questions is subject to the ruling of the Ceann Comhairle (Chairman), who must be satisfied that the subject-matter of the Supplementary has relevance to the main Question and that its object is for the purpose of elucidating further the information requested in that Question. Generally, two Supplementaries are permitted on a main Question.

Southern Rhodesia.—*See* Union House of Assembly.

British India.

Central Legislature.—In both the Council of State and the Legislative Assembly, unless the President, with the consent of the Member of the Government to whose department the Question relates, otherwise directs, no Question may be placed on the list of Questions for answer until 5 clear days have expired from the time when notice of admission of such Question by the President has been given by the Secretary of the Chamber concerned to the Member to whom it is addressed, and not more than 5 Questions asked by the same Member may be called for answer on any one day.[2]

It is also provided in respect of both Houses, in addition to the ordinary restrictions upon Notices of Question:

(*a*) That in matters which are or have been the subject of controversy between the Governor-General in Council and the Secretary of State or a Provincial Government, no Question shall be asked except as to matters of fact, and the answer must be confined to a statement of fact;[3]

(*b*) That the President may within the period of notice disallow any Question, or any part thereof, relating to a matter not primarily the concern of the Governor-General in Council.[4]

[1] 1931, VOTES, 94; *see also* 1927-28 *ib.* 486.
[2] I.L.R. 8 (ii), (iii). [3] *Ib.* 9. [4] I.L.R. 7.

Neither can a Question be asked in either Chamber:

(*c*) on any matter *sub judice* in any part of the King's Dominions; and

(*d*) save with the consent of the Governor-General in his discretion—

(i) on any matter connected with relations between His Majesty or the Governor-General in Council and any foreign State or Prince;

(ii) on any matter connected with the tribal areas or the administration of any excluded area;

(iii) on any action taken in his discretion by the Governor-General in relation to the affairs of a Province;

(iv) on any matter connected with any Indian State; or

(v) on the personal conduct of the Ruler of any Indian State or a member of the ruling family thereof.[1]

Subject to the above, there is no restriction upon Supplementary Questions for the purpose of further elucidating any matter of fact regarding which an answer has been given, provided Supplementary Questions are oral and do not infringe the Rules as to subject-matter.[2] In practice, Supplementary Questions are not allowed to be put if they are outside the scope of the original Question or do not arise out of the answers given. It has been ruled in Legislative Assembly that supplementaries can be put only when the answer is actually given on the floor of the House.[3]

Big questions of policy are not allowed to be debated upon by supplementaries,[4] nor can supplementaries be put when merely a statement is laid on the Table of the House in answer to a Question.[5]

Governor's Provinces.—In all the 11 Governor's Provinces, acting under section 84 (3) of the Constitution,[6] it is provided by Governor's Rules, which are in many instances included in the Rules of the Chamber concerned, that the Governor, acting in his discretion, may, at any time before a Question is asked, inform the Presiding Member that he disallows the Question or any part thereof on the ground that it affects the discharge by him of his functions in so far as he is required by or under the Act to act in his discretion or to exercise his individual judgment. Should the Governor do so the Question or part thereof may not be entered in the List of Business or, if it has been so entered, the Presiding Member

[1] *Ib.* 8. [2] *Ib.* 10. [3] 1939 India Leg. Assem. Deb. 242 (February 6).
[4] 1935 *ib.* 2168-2169 (March 12).
[5] 1936 L.A. Deb. 996 (September 15).
[6] Government of India Act 1935 (26 Geo. V, c. 2).

will decline to allow the Question to be asked.[1] The other Governor's Rule dealing with Questions reads as follows:

(1) No Question shall be asked save with the consent of the Governor acting in his discretion in regard to any of the following subjects, namely—

(i) Any matter connected with the relations between His Majesty or the Governor-General and any foreign State or Prince;

(ii) the personal conduct of the Ruler of any Indian State or of a member of the ruling family thereof;

(iii) Any matter connected with tribal areas or arising out of or affecting the administration of an excluded area.

(2) No Question shall be asked on any matter connected with any Indian State unless the Governor acting in his discretion—

(i) is satisfied that the matter affects the interests of the Provincial Government or of a British subject ordinarily resident in the Province; and

(ii) has given his consent to the Question being asked.

(3) If the Presiding Member is of opinion that a Question is or may be one which cannot be asked save with the consent of the Governor, he shall, as soon as may be after the receipt of the notice of the Question, forward to the Governor a copy thereof, and, unless the Governor (whose decision in the matter shall be final) decides in his discretion that the Question may be put, it shall not be entered in the List of Business.

(4) Notwithstanding the fact that the Presiding Member has made no reference under sub-rule (3) if the Governor acting in his discretion considers that any Question or part of a Question is one that cannot be asked without his consent, he may withhold his consent to the asking of the Question, and in communication to the Presiding Member of his decision, which shall be final, the Question shall not be entered in the List of Business, or if it has been so entered the Presiding Member shall decline to allow the Question to be put.

(5) The Presiding Member shall disallow any Supplementary Question if in his opinion it infringes the foregoing rules.

In regard to Supplementary Questions not coming within the scope of Governor's Rules, the procedure in the 11 Governor's Provinces is as given below.

Madras.—In both Houses, Supplementary Questions may be asked for the purpose of further elucidating any matter of fact regarding which an answer has been given to a starred Question, but the President or the Speaker, as the case may be, may disallow any Supplementary Question if, in his opinion,

[1] Madras L.C. and L.A.R. 26 and 27; Bombay L.C. and L.A.R. 8 (3) and (4); Bengal L.C. and L.A.R. 25 and 27; United Provinces L.C.R. 52 and 53; L.A.R. 10 and 11; The Punjab, Governor's Rules Bihar L.C.R. 38 and 39; L.A.R. (Governor's Rules); Central Provinces and Berar Governor's Rules 3 and 4; Assam L.C. and L.A.R. 2 and 3 (Part I); N.W.F. Province L.A.R. 23 and 24; Orissa Governor's Rules 4 and 5; and Sind L.A.R. 66 and 67.

it infringes the Rules regarding Questions, or if a sufficient or reasonable number of Supplementary Questions has already been asked in respect of the same Question.[1] Further provision is made under the Rules by which a Member of whom a (Question or) Supplementary Question has been asked may decline to answer it on the ground that to answer it would be against public interest, and a Member of whom a Supplementary Question is asked may decline to answer it without notice.[2]

Bombay.—Legislative Council Rule 61 and Legislative Assembly S.O.10 (Part VI) make the same provision in regard to Supplementary Questions as that outlined under Madras.

Bengal.—Legislative Council and Legislative Assembly Rules 35 and 36 make the same provisions as already given under Madras. In the Bengal Legislative Assembly, however, Supplementary Questions are allowed both to starred and unstarred Questions.

United Provinces.

Legislative Council.—Printed replies to Questions are supplied by the Government to the Secretary, who has them laid on the tables of Members an hour before the meeting of the House, unless Mr. President otherwise directs. Before the copy of the Question which he submits to the Secretary and the reply thereto have been read out, a Member may " star " his Question, unless Mr. President directs that the reply be taken as read, after which any Member is entitled to ask a Supplementary Question.[3] Subject to the above, a Supplementary Question may be asked, subject to the usual restrictions.[4]

Legislative Assembly.—Printed replies to Questions, however, are not required to be placed on Members' tables in the Lower House, and answers to Questions may take the form of laying statements on the Table. Rule 13 makes the usual provision in regard to Supplementary Questions; there is no restriction as to number.

The Punjab.—In this unicameral Legislature, Legislative Assembly Rule 31 makes the same provision as that given in regard to the Legislative Assembly of the United Provinces.

Bihar.

Legislative Council.—The Rules make the same provision as in the case of the Legislative Assembly of the United Provinces.[5]

[1] L.C. and L.A.R. 33.
[2] L.C.R. 62.
[3] L.C. and L.A.R. 34.
[4] *Ib.* 54.
[5] Rule 43.

Legislative Assembly.—The Rules[1] of the Assembly make the same provision as those of the Upper Chamber, except that it is laid down that Mr. Speaker may disallow any Supplementary Question if, in his opinion, a sufficient or reasonable number of such Questions have already been asked in respect of the principal Question, but no Supplementary Questions may be asked in regard to replies to "Tabled" Questions pending from a previous Session.[2] The Speaker, however, may at the request of the Minister to whom a Question is addressed, extend the time for answering a Question for not exceeding 2 weeks, and if at the expiry of that period the Assembly is not sitting the Question must be answered on the first day of the following Sitting, and should the information still not be ready the Minister must explain the cause of delay.

Central Provinces and Berar.—In this unicameral Legislature, Legislative Assembly Rule 52 makes the same provision as that of the Legislative Assembly of the United Provinces.

Assam.—In both Chambers Rule 33 makes the same provision as in the United Provinces Legislative Assembly, but it is specially provided by Rule 44 that a Minister may claim notice of a Supplementary Question to which he is not prepared to reply, in which case the Supplementary Question must be treated as a fresh Question to be answered at a subsequent meeting of the House.

North-West Frontier Province.—In this unicameral Legislature, Legislative Assembly Rule 34 follows that of the United Provinces Legislative Assembly.

Orissa.—In this unicameral Legislature, Legislative Assembly Rule 45 follows that of the United Provinces Legislative Assembly.

Sind.—In this unicameral Legislature, Legislative Assembly Rules 81 and 82 follow those of Assam.

Indian States.

Mysore.—

Legislative Council.—Subject to the restrictions as to matters upon which Questions may not be asked *vide* sections 9 (ii), (*a*), (*d*) and (*f*),[3] of Mysore Legislative Council Regulation

[1] Rule 66. [2] S.O. 33.

[3] *I.e.*, relating to the Ruling Family of Mysore; the provisions of Reg. 9; and such other matters as may, from time to time, be specially reserved by H.H. the Maharaja for consideration by the Government.

XIX of 1923, no Member is allowed to send up more than 8 Questions for any Session of the Council and not more than 4 thereof may be starred for the purpose of asking Supplementaries, which may only be asked upon starred Questions.[1]

Representative Assembly.—The maximum number of Questions which may be put are as follows: Dasara Session and Budget Sessions respectively. Bangalore and Mysore Districts 8 each, other Districts 6 each. The selection of Questions is made by taking votes at a meeting to be held in the District headquarters of each district under the presidency of the Deputy Commissioner at which all Members of the Assembly residing in such district, including representatives of special interests and minorities, shall be invited to attend. In addition to the number so selected not more than 2 Questions concerning any Minority or Special Interest may be sent up to the Secretary by a Member representing each interest.[2] Subject to the same restriction given in respect of the Legislative Council as above quoted, Supplementary Questions may be asked.[3]

Jammu and Kashmir.

Praja Sabha.—A Member of the Praja Sabha may ask only one starred Question on each day of meeting, but he may include in the same notice other starred Questions to be asked at later days in the Session, as well as other Questions which he desires to have included in the ballot for unstarred Questions. No Member, however, may give notice of more than 40 Questions[4] during the Session. A Question is not admitted to the List of Business for the day unless the Member has given not less than 40 clear days' notice thereof. Starred Questions are limited to 63 and not more than 3 other Questions from any one Member may be included in the ballot.[5] Subject to the above and to restriction laid down in Rule 21 and in Sections 7, 29 and 33 of Regulation 1 of 1991 (*i.e.* A.D. 1934), Supplementary Questions may be asked in accordance with the customary practice.[6] The first hour of every day of the Session is set apart for Questions.[7]

Burma.—In regard both to the Senate and House of Representatives, the Burma Constitution[8] provides that, save with the consent of the Governor in his discretion, Questions cannot be either asked or discussed upon any matter connected with—

[1] Rule 2. [2] Rule 24, 24A. [3] Rule 14.
[4] Rule 5. [5] *Ib.* 35, 36, 37. [6] *Ib.* 40.
[7] *Ib.* 7. [8] 26 Geo. V, c. 3. Sec. 29 (i) (*c*).

(i) relations between His Majesty or the Governor of any foreign State or Prince; or

(ii) Territories in Burma not vested in His Majesty or any matters arising out of or affecting the administration of the areas specified in Part I of the Second Schedule to the Constitution.[1] Exception as to discussion, however, is allowed in relation to estimates of expenditure.

Rule 40 of the House of Representatives lays down no restriction as to the number and nature of Supplementary Questions provided they do not infringe the rules governing the asking of Questions, which more or less follow the practice of the House of Commons.

Ceylon.—Supplementary Questions are allowed, subject to the usual restrictions.[2]

British Guiana.—Supplementary Questions are allowed, subject to the usual restrictions.[3]

Addendum.—The following Motion, in the name of a Private Member, stood upon the Order Paper of June 26, 1939, in the House of Commons:

> That this House, taking note that its procedure governing the number of Questions which may be put by Members has from time to time been established by Mr. Speaker taking the genera sense of the House upon successive proposals for limitation mad to him by Honourable Members; observing from the offic reports that the general sense of the House has been on subsequel days challenged or denied; recognising that the practice of th House, as now followed, has not resulted in even and consisten regulation of Supplementary Questions as between Honourable Members desiring to put them, or in adequate opportunities for putting starred Questions to certain Ministers; being of the opinion that the schedule of days allotted to the questioning of various Ministers has reached a complexity which defeats its own object of facilitating oral interrogation of Ministers on specified days; and deprecating in regard to unstarred Questions the frequent failure of Ministers to adhere to the dates named for replies; resolves that the matters abovementioned be referred to a Select Committee to be appointed to consider and report to the House upon the best methods of regulating the right of Parliamentary interrogation within the limits available for that purpose.

This motion was moved at 11.10 *p.m.* but objection was taken (349 H.C. Deb. 5, s. 177, 178).

[1] Federated Shan States and Shan States (both as specified); Arakan Hill Tracts; Chin Hill District; Kachin Hill Tracts, etc.; Somra Tract; The Triangle; Hukawng Valley; Salween District and unadministered tribal territories.

[2] S.O. 50.

[3] S.O. 14.

IX. RIGHTS OF PRIVATE MEMBER IN REGARD TO PUBLIC MONEYS

By the Editor

The *Questionnaire* for Volume VIII contained the following item:

> XI. State rights of Private Member in regard to public moneys?

The information is as follows:

United Kingdom.

House of Lords.—Under Constitutions founded upon the British system the injunction in regard to public money has always been upon the Upper House, therefore the responsibility discharged by the House of Lords in the grant of supplies for the service of the Crown and in the imposition of taxation, is concurrence, not initiation.[1] The position of that House in regard to "Public Money" originates with the Resolutions of 1671 and 1678, namely:

> That in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords;
> That all aids and supplies, and aids to His Majesty in Parliament, are the sole gift of the Commons; and all Bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such Bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords.[2]

By practice and usage based upon the last mentioned Resolution the Lords are excluded, not only from the power of initiating or amending Bills dealing with public expenditure or revenue, but also from initiating public Bills which would create a charge upon the people by the imposition of local and other rates, or which deal with the administration or employment of those charges. Therefore the Lords may not amend the provisions in Bills which they receive from the Commons dealing with the above-mentioned subjects, so as to alter, whether by increase or reduction, the amount of a rate or charge, its duration, mode of comment, levy, collection,

[1] May, XIII Ed., 563. [2] *Ib.* 564.

appropriation or management, or the persons who pay, receive, manage or control it.[1]

The Commons, however, usually accept Lords' amendments which, though not strictly regular, do not materially infringe the privileges of the Commons, if they are otherwise unobjectionable. The Commons have also stated that they were willing to waive their privilege.[2] Even when Lords' amendments are an infringement of privilege, it is not the invariable practice of the Commons to assert their claim regarding amendments made to Bills sent by them to the Lords dealing with the relief of the poor or with municipal, country and local rates and assessments; more especially when such amendments affect charges upon the people incidentally only, and are made for the purpose of giving effect to the legislative intentions of the Commons. The difficulty also of separating those amendments from other legislative provisions or amendments, to which there was no objection, has frequently prompted their acceptance by the Commons.[3]

In 1849 the Commons adopted the Standing Order based upon the Resolution of 1831, S.O. 44 (Pecuniary penalties), being as follows:

> With respect to any Bill brought to this House from the House of Lords, or returned by the House of Lords to this House, with amendments, whereby any pecuniary penalty, forfeiture, or fe shall be authorized, imposed, appropriated, regulated, varied, o extinguished, this House will not insist on its ancient an undoubted privileges in the following cases:
>
> 1. When the object of such pecuniary penalty or forfeiture is to secure the execution of the Act, or the punishment or prevention of offences.
>
> 2. Where such fees are imposed in respect of benefit taken or service rendered under the Act, and in order to the execution of the Act, and are not made payable into the Treasury or Exchequer, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same either in respect of deficit or surplus.
>
> 3. When such Bill shall be a private Bill for a local or personal Act.[4]

In regard to the origination in the Lords of public monetary provisions incidentally involved in Bills, these are struck out on the Third reading and the Bill, drawn up so as to be intelligible after their omission, is sent to the Commons in that form. The Bill is then printed by the Commons containing the omitted provisions, formerly printed in red ink, but now

[1] *Ib.* 564, 565. [2] *Ib.* 566. [3] *Ib.* 567. [4] *Ib.* 889.

marked by underlines and brackets and with a note stating that these provisions are to be inserted in Committee.[1] On July 6, 1860, upon the rejection by the Lords of the Paper Duty Repeal Bill, the Commons passed the 3 following Resolutions:

> That the right of granting aids and supplies to the Crown is in the Commons alone as an essential part of their constitution; and the limitation of all such grants as to matter, manner, measure, and time is only in them.
>
> That although the Lords have exercised the power of rejecting Bills of several descriptions relating to taxation by negativing the whole, yet the exercise of that power by them has not been frequent and is justly regarded by this House with peculiar jealousy, as affecting the right of the Commons to grant the supplies, and to provide the ways and means for the service of the year.
>
> That to guard, for the future, against an undue exercise of that power by the Lords, and to secure to the Commons their rightful control over taxation and supply, this House has in its own hands the power so to impose and remit taxes, and to frame Bills of Supply, that the right of the Commons as to the matter, manner, measure, and time may be maintained inviolate.[2]

As, however, Erskine May will be available to most of our readers, it is unnecessary to deal in detail with the relations between the two Houses of the Imperial Parliament in regard to "Public Money."[3] These are described in Chapter XVIII of the Thirteenth Edition of that indispensable work. The most important event, within recent years, affecting such powers has been the rejection by the House of Lords of the Finance Bill of 1909, with a Resolution declaring—

> That this House is not justified in giving its assent to this Bill until it has been submitted to the judgment of the country;[4]

followed by a Resolution of the Commons declaring—

> That the action of the House of Lords in refusing to pass into law the provision made by the House of Commons for the finances of the year is a breach of the Constitution and an usurpation of the privileges of the Commons.[5]

A dissolution followed, the Finance Bill was passed by both Houses and certain Resolutions[6] were passed by the House of Commons, upon which the Bill which is now the Parliament

[1] *Ib.* 570. [2] *Ib.* 572, 573.

[3] *I.e.*, Government Taxation, Revenue and Expenditure. The imposition of fines and penalties in a Bill is, however, a provision admissible of origination in an Upper House and very often either provided for by the Constitution or Standing Order.—[Ed].

[4] 141, L.J. 453. [5] 164 C.J. 546. [6] May, XIII Ed., 574.

Act, 1911,[1] was founded. This Act has considerably restricted the activities of the House of Lords in regard to public money, and has consequently affected the rights of its Members in regard to moving reductions in expenditure, upon which amendments the Commons would have been able to waive its privileges did it so choose. There is now no question of the House of Commons waiving its privileges in regard to amendments of Bills coming within the purview of the Parliament Act. Both Houses are bound by the written law just as are the two Houses of an Oversea Parliament under a Constitution containing a provision prohibiting the Upper House from amending "Money Bills" as by such Parliament defined.

Most Parliaments of the Empire have experienced difficulty in defining a "Money Bill." The definition laid down in the Parliament Act, 1911, is:

> 1 (2). A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects—namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of Charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions "taxation," "public money," and "loan" respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.

And in connection with this definition, it was interesting to note in the evidence given by one of the witnesses before the Select Committee on Money Resolutions, dealt with in Volume VI of the JOURNAL,[2] that many Budgets had been refused a Certificate by the Speaker to bring them within the Parliament Act; and that, in fact, during the last 20 years very few Finance Bills had received such Certificate.

Another interesting incident in the working of the Parliament Act occurred in 1934 in connection with the Land Settlement (Scotland) Bill, which was presented in the House of Commons following a Financial Resolution moved in Committee of the Whole House, passed through all its stages and sent to the House of Lords for concurrence on May 29 of that year, which, the Session having ended on November 16, was more than the

[1] 1 and 2 Geo. V, c. 13.

[2] Pp. 97-138.

one month before the close of Session, as required by the Parliament Act, 1911.

On May 30, the Lord Chancellor duly acquainted their Lordships' House:

> that the Bill had been endorsed with a certificate from the Speaker that it is a Money Bill within the meaning of the Parliament Act, 1911.

The Bill passed the Lords without amendment, as required by the Parliament Act, 1911, in the case of a certified "Money Bill," but was not read the Third time in such House until July 5, which was more than one month after May 29, on which day the Bill was sent up by the Commons to the Lords.

Section 1 of the Parliament Act, 1911, however, requires that if a "Money Bill" as defined in that Act is sent up to the Lords at least one month before the end of the Session and not passed by that House within one month after being so sent, the Bill shall, unless the House of Commons direct to the contrary, be presented to the King and become an Act of Parliament on the Royal Assent being given, notwithstanding that the House of Lords have not consented to the Bill.

Parliament was now in a quandary, for the Bill had been passed unamended by the Lords, without any question, therefore, had the Commons availed itself of its rights under the Parliament Act, 1911, it might have appeared a discourtesy to the other House. It was then that the House of Commons availed itself of that well-known and elastic provision "*unless the House otherwise directs*"—in this case, the expression in section 1 (1) of such Act was "*unless the House of Commons direct to the contrary*"—and the normal passage of the "Money Bill" was secured. The method adopted was by the Prime Minister moving in the Commons on July 5:

> That in pursuance of the Parliament Act, 1911, this House directs that the provisions of section 1 (1) of that Act shall not apply to the Land Settlement (Scotland) Bill.

Thus by the above Resolution a technical breach of the Parliament Act was overcome, and the Act appears with the usual enactment provision, instead of the one laid down in section 4 of the Parliament Act, 1911, in respect of Bills coming either under Section 1 or 2 of such Act and not passed by the Lords within the required time.

The above is both an interesting and useful illustration of the advisability of a House of Parliament having a loophole in case of emergency. The phrase "unless the House

otherwise directs " has been frequently used in both Houses of the Union Parliament in Standing Orders, Sessional Resolutions, etc., with great success. It acts as a safeguard and often overcomes a difficult situation which had not, or could not, have been foreseen.

From the above will be noted what are the rights of a Member of the House of Lords in regard to " Public Money." The House of Lords also express their opinion upon public expenditure and the method of taxation and financial administration, both in debate and by Resolution, and they investigate those matters by their Select Committees.[1]

A Member of this House, however, is in a different position from that of the Member of any Upper House of an Oversea Parliament, whether directly or indirectly elected, for the latter is responsible to an electorate of some kind, or if life- or term-nominated, is beholden to some political party or other. Whereas, except in the case of the Scottish and remaining Irish representative Peers, the Law Lords and the Lords Spiritual, most of the Members of the House of Lords are there by hereditary right.

House of Commons.—There is no brief answer to this question, which covers a very wide and important field of parliamentary procedure. Certain general propositions can be laid down, though most of them are subject to major or minor qualifications. " Public Money " for the purposes of the Standing Orders of the House of Commons means in relation to expenditure any grant or charge upon the public revenue that is payable out of the Consolidated Fund or out of moneys provided by Parliament, and, in relation to taxation, money that is raised by the Central Government to provide for this expenditure. Thus the raising or expenditure of money by means of local rates is excluded.

It seems convenient to divide the subject into two main headings dealing respectively with (*a*) reductions of, or (*b*) increases in, taxation or the expenditure of " Public Money." For the sake of briefness certain examples will be given to illustrate a proposition, but it is not possible to give anything like a complete list of the cases in which it might be possible for Private Members to *increase* expenditure.

(I) *Reduction of Taxation and Expenditure of Public Money.*

Private Members have perfect freedom to propose reductions of taxation or in the expenditure of public money at any time

[1] *Ib.* 563.

when it would otherwise be legitimate so to do. Thus they may bring in Bills or propose amendments to Ways and Means or Money Resolutions, or amendments in Committee or on the report stages of Public Bills, with these objects in view. The reductions must be simple reductions—that is to say, that, generally speaking, they may not reduce certain items in order to increase other items even though an over-all reduction is shown.

Private Members may equally propose reductions in Votes, or items of Votes, in Committee of Supply.

(II) *Increase of Taxation and Expenditure of Public Money.*

It may be stated as a general proposition that Private Members have no right either to impose new or increase existing taxation, including any alteration in the area of imposition, or to increase expenditure of "Public Money." This result flows from the constitutional doctrine that increases of taxation and expenditure can only be entertained by the House if they have received the sanction or the recommendation of the Crown. This, in effect, puts in the hands of Ministers of the Crown the sole right of initiating proposals for increasing taxation or public expenditure. The doctrine is embodied in S.O. 63-69, several of which are the oldest Standing Orders of the House of Commons and date back to the early eighteenth century. Proposals for increases of this nature are further circumscribed by these Standing Orders by being required to originate in Committee.

Having stated the general proposition it now remains to indicate the important and numerous qualifications which must be made to it.

(1) *Taxation.*—Private Members may propose amendments to a Resolution or a Bill which diminish the amount of a reduction of taxation or postpone the day when the reduction takes place, thus in effect increasing the charge upon the people as compared with the relief proposed by the Government. They may, even on Report stage, restore a tax up to its existing level. The reason for this is that the net result of the transaction is to leave the law as it is. They may, in theory, propose a tax in substitution for any new tax proposed by the Government provided that no more money is raised, the incidence of the tax is the same, and the substituted tax fits in with the Government's financial scheme. But, in practice, this right may be regarded as obsolete, largely because it is almost impossible for a Private Member to know whether, in

fact, the substituted tax would raise more money or not, whether its incidence would be the same.

(2) *Expenditure.*—The exceptions here are so numerous that it is possible to indicate only some of the most important.

(*a*) A Private Member may obtain a grant of public money without the King's Recommendation by moving for the appointment of a Committee under S.O. 68 to consider a Resolution for an Address to the Crown asking for the issue of a sum of money for a certain purpose, concluding with the assurance that the House will make good the same. In practice this procedure is largely confined to occasions when it is desired to erect a public monument to a dead statesman.

(*b*) Private Members may propose increases of expenditure in cases where the charge imposed upon the public revenue is not a *new and distinct charge.* This phrase covers a variety of cases, though not nearly so many as it used to do. If it be ruled that a new and distinct charge is not imposed, the financial procedure laid down in Standing Orders is not applicable. For instance, this principle applies to cases where it is proposed to authorize advances on the security of public works, out of moneys already set apart for such purposes. It has been applied equally to expenses of returning officers under the Representation of the People Acts and in a great many other but diminishing number of cases.

(*c*) When a Bill has been introduced on a financial Resolution or has a subsequent Resolution to authorize certain charges imposed by the Bill, it is open to Private Members to propose amendments which increase expenditure, provided that they are within the terms of the Resolution which received the King's Recommendation. Formerly the setting up Motions for Money Resolutions under S.O. 68 were drafted in wide terms, and to these wide Resolutions the King's Recommendation was given; thus Private Members had considerable scope in proposing amendments to the (usually) more detailed Money Resolution which followed. To the Bill itself they could move amendments within the limits of the Money Resolution as agreed to by the House. When S.O. 69 was passed, the King's Recommendation was given to the actual Money Resolution, and when the House of Commons, which before 1914 had usually desired to cut down expenditure, began to show from 1919 onwards a strong desire to increase it, the Government made use of this Standing Order and had the Money Resolutions drafted in much greater detail. This practice grew until in the Depressed Areas (Development and

Improvement) Bill of 1934 the resolution not only very closely defined the purposes but also the exact areas in which money could be spent, thus leaving Private Members practically no scope at all for amendment, as according to the doctrine which had gradually been built up by a succession of Speakers' and Chairmen's Rulings no alteration, except by way of reduction, could be made in the objects or area of any expenditure if it had received the King's Recommendation. Owing to increasing dissatisfaction on the part of Private Members, the Government agreed to set up a Select Committee in 1937 to inquire into "Procedure relating to Money Resolutions."[1] As a result of this Committee's report the Government promised to ensure that financial resolutions should be so framed as not to restrict the scope within which the Committee on a Bill may consider amendments further than is necessary to enable the Government to discharge their responsibilities in regard to public expenditure, and to leave to the Committee the utmost freedom for discussion and amendment of detail which is compatible with the discharge of their responsibilities. As a general rule, Private Members can now move certain amendments in most Bills which, in fact, increase or alter expenditure in some respects.

(*d*) There are certain statutory funds, for which Parliament has ordained a fixed method of financing, upon which increases of expenditure may be laid by Private Members. For instance, the Widows', Orphans' and Old Age Contributory Pensions Fund receives a contribution from public funds which is fixed in advance by the Statute. Private Members may propose increases in charges on the fund even though the effect of them would be to "bankrupt" the fund and to cause an approach to be made to Parliament for further money. There are a great many statutory funds, but not many of them fall into this category as they are not "genuine funds" in the sense that the contribution to them of "Public Money" is fixed in advance.

(*e*) So long as the main object of the Bill is not the creation of a public charge, a Private Member may introduce a Public Bill which involves a charge subsidiary to its main purpose and may obtain a Second reading for such a Bill. As in all other Bills, the provisions which create the charge are printed in italics, and the Committee on the Bill may not deal with these provisions or any provisions depending on them unless they have previously been authorized by a Money Resolution, which

[1] *See* JOURNAL, Vol. VI, 97-138.

can only be moved by the Government. The Private Member can, therefore, only proceed with those portions of his Bill if he can persuade the Government to put down a Money Resolution and give the King's Recommendation to it. This has happened on occasion.

In conclusion it should be stressed that no increases of expenditure of whatever kind can be proposed on Report Stage of a Bill by any Member, private or otherwise. Likewise it is not possible to increase grants in Committee of Supply. On the other hand, Private Members may freely advocate increases of taxation or expenditure by means of substantive Motions provided that these Motions are framed in general terms. Even if agreed to by the House they are only pious expressions of opinion and do not bind the Government to make any grant or impose any tax. Such motions will be hereinafter referred to as "abstract money motions."

Oversea Parliaments.—Perhaps, before proceeding with the subject of the rights of the Private Member in the various Oversea Parliaments in regard to "Public Money," it will not be inappropriate if some general remarks are made as to the close scrutiny which should be made by any such Parliament before attempting to introduce into its own procedure the practice of another Empire Parliament operating under different conditions and Constitution, together with the Parliamentary practice which has grown up thereunder.

In the first place, it must be borne in mind that, rich as the Imperial Parliament is in precedent, founded upon centuries of practical experience and built up under the elasticity of a Constitution which is, to a great extent, unwritten,[1] whereas even the older Oversea Parliaments are of comparatively recent growth, and moreover are governed under the rigidity of written Constitutions.

On the other hand, since the adoption by the House of Commons of new S.O. 68A, consequent upon the Report of the Select Committee on Money Resolutions in 1937, the door does now definitely stand ajar to the Private Member of that House in regard to discussion and amendment of certain questions dealing with "Public Money" in a way not available to the Private Member of an Oversea Lower House, where the Crown

[1] The present Deputy Leader of the House of Commons (Rt. Hon. C. R. Attlee) said: "The trouble about the British Constitution was that in the strict formal sense it did not exist, but in practice it worked." (Speech at the Ceylon Trade Commissioner's Dinner, London, August 12, 1938.) (*The Times*.)

Recommendation is closely related to the actual provision, whether incidental or otherwise, in respect of which it is given.

Upper House.—In the Oversea Parliaments, the Upper House has mostly the particular Constitution to look to for its rights in regard to " Public Money ". In cases where the Constitution does not contain a section prohibiting the Upper House from amending what may be loosely described as " Money Bills ", such House does have the opening to make certain monetary amendments in Lower House Bills, and the corresponding Lower House *may* exercise its right to waive its " privilege ", as can still be done at Westminster in cases where the Parliament Act of 1911 does not apply. In Oversea Upper Houses, however, where such a prohibitive section does exist—usually directly- or indirectly-elected Chambers—both Houses are bound to the written word.

Under Constitutions, however, providing either for a nominated or an elected Upper House, whether with or without such prohibitive section, a procedure which may be described as " the process of suggestion " has developed by which an Upper House is enabled to " suggest " or " request " an alteration in monetary provisions of a Lower House Bill, which the Upper House is not allowed by the Constitution to amend, and wherever this practice has been adopted it has made for smooth working between the two Houses in regard to " Money Bills."

A directly-elected, or even an indirectly-elected, Upper House is naturally more insistent upon the right of monetary amendment than is a nominated one, neither directly nor indirectly responsible to an electorate. It is therefore the former type of Second Chamber where " the process of suggestion " has found most favour.

Lower House.—In the corresponding Oversea Lower Houses, no matter what the type of Second Chamber, the Constitution invariably vests in such Houses the power of origination of all matters relating to " Public Money ". Where the Constitution imposes no restriction upon the Upper House as to monetary amendment, it naturally gives the Lower House the opportunity of " waiving " its privilege in regard to any particular amendment, thus facilitating the passage of a measure.

The money power, however, still rests with the Lower House under the procedure of " the process of suggestion ", as such House can reject a " request " or " suggestion " simply by not

adopting it; or in some Houses it is provided that a " request " or " suggestion " may be adopted with modification, and, even in Parliaments where the Upper House may " press " a suggestion, the Lower House is not required to accede to such " pressing ".

Borderline cases between amendment and " suggestion " will naturally arise, but such in no way affect the inherent power of the Lower House to control both the inflow and outflow of the Treasury chest.

The opportunity has been taken of making these few general remarks to show in the relative Upper Houses how these several practices and restrictions affect the rights of the Private Member of such Houses in regard to " Public Money ". In Lower Houses such rights are more uniform.

Canada.—In Canada the Senate is nominated for life, and it is provided by section 53 of the Constitution (B.N.A. Act, 1867) that " Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons ". There is no other constitutional provision limiting the powers of the Senate in regard either to finance or general legislation. The Canadian House of Commons has a Standing Order (No. 78) similar to the Resolution passed by the English House of Commons in 1678 (July 3). The preamble of the British North America Act, 1867, sets forth that the provinces of Canada, etc., " have expressed their desire to be federally united into one Dominion . . . with a Constitution similar in principle to that of the United Kingdom."

Section 54 of the Constitution requires the Recommendation of the Crown, conveyed by Message from the Governor-General, to be announced in the House of Commons before the adoption or passing of any Vote, Resolution, Address or Bill for Appropriation of any part of the public revenue, or of any tax or impost, which recommendation must be conveyed to that House by Message of the Governor-General in the same Session in which such Vote, etc., is proposed.

The Senate.[1]—The Canadian Senate has asserted its rights in regard to public moneys by adoption of a Report on May 22, 1918,[2] containing conclusions claiming:

> (i) That the Senate has the power to amend Bills originating in the Commons " appropriating any part of the revenue

[1] *See also* JOURNAL, Vol. II, 80.
[2] For full text *see* Beauchesne's *Manual*, 2d. Ed., para. 584.

or imposing a tax by reducing the amounts therein, but has not the right to increase the same without the consent of the Crown ";

(ii) That such power was an essential part of the Confederation contract;

(iii) That the practice at Westminster in respect of Money Bills was no part of the Canadian Constitution;

(iv) That the Senate had repeatedly amended so-called Money Bills, in some cases without protest from the Commons, while in other cases the Bills were allowed to pass, the Commons protesting or claiming that the Senate could not amend a Money Bill;

(v) That Rule 78 (now 61) of the Canadian Commons claiming for that body powers and privileges in connection with Money Bills identical with those of the Imperial House of Commons is unwarranted under the provisions of the British North America Act, 1867;

(vi) That the Senate as shown in the British North America Act as well as by the discussion in the Canadian Legislature on the Quebec Resolutions[1] in addition to its general powers and duties is specially empowered to safeguard the rights of the Provincial organizations;

(vii) That besides general legislation, there are questions such as Provincial subsidies, public lands in the Western Provinces and the rights of the Provinces in connection with pending railway legislation and the adjustment of the rights of the Provinces thereunder likely to arise at any time, and it is important that the powers of the Senate relating thereto be thoroughly understood.

To quote further from Beauchesne's *Manual*, however, Bourinot (who was the Canadian " Erskine May ") states that " the House of Commons of Canada has never accepted the theory enunciated in the above-quoted Senate Report. On the contrary, it has always contended that the Senate cannot amend Money Bills. Taking as a basic principle that the preamble must never be forgotten in the interpretation of the sections of the B.N.A. Act, the Commons do not admit that their right to deal with financial legislation can be shared with the Upper House ".[2]

In addition to the usual practice of initiating Bills with the incidental monetary provisions differently printed on the understanding that such do not form part of the Bill when sent to the Lower House, and to moving reductions in " public money" in the hope of the Lower House waiving its privilege, it would appear that the actual rights of a Member of the Senate in regard to " Public Money " would be restricted to

[1] *See* reference on p. 31 *supra*.
[2] Beauchesne's *Manual*, 2d. Ed., para. 584.

proposing what may be described as " abstract money motions " —namely, motions of a permissive and not of a mandatory character, beginning with such words as—" That this House requests the Government to consider, etc.," or, " That this House recommends for the consideration of the Government, etc.," or some such provision, so long as the Motion does not convey any order of the House authorizing either the imposition of taxation by the Government or the expenditure of Public Money, and is tantamount to what has been described, at the close of the Imperial House of Commons paragraph hereof, as " only pious expressions of opinion."

House of Commons.—The rights of a Private Member of the Canadian House of Commons in regard to Public Money would appear to be limited to moving:

(*a*) reduction in expenditure;
(*b*) " simple " reduction in taxation proposed by the Government;
(*c*) for an address to the Crown asking for the issue of a sum of Public Money for some particular purpose, concluding with the assurance that the House would make good the same;
(*d*) " abstract money motions "; and
(*e*) for leave to introduce Bills in which public monetary provisions are incidentally involved, in the expectation of Government support by according such provisions the recommendation of the Crown.

Canadian Provinces.—As the Upper House of Prince Edward Island was in 1893 merged into the Lower House, or General Assembly, now consisting of 30 Members, 15 elected as Councillors and 15 as Assemblymen, the only bicameral Provincial Parliament in Canada to-day is that of Quebec. The practice of the Legislative Council and of the Legislative Assembly of Quebec in regard to the rights of Members of the Upper and the Private Members of the Lower House in regard to " Public Money " reflect very much those of the two Houses at Ottawa. Certain Rules[1] are contained in an Annotated Edition thereof which assert the rights of the Legislative Assembly:

(i) to grant aid and supplies to the Crown, and to limit all such grants as to matter, manner, measure and time;
(ii) to initiate all legislation relating to supply and taxation; and
(iii) that in matters of supply and taxation, no Bill shall be altered or amended by the Legislative Council.

[1] 666-669, *vide Règlement Annoté de L'Assemblée Législative de Quebec*, 1915, par Louis-Philippe Geoffrion, K.C. (Clerk of the Legislative Assembly). Dussault and Proulx, Quebec.

The provisions of the B.N.A. Act which govern financial procedure in the Provinces are sections 53 and 90 *and* the provisions thereanent in certain Provincial Constitutions.[1] The rights of a Private Member of such Legislative Assemblies in regard to " Public Money " are those observed by the House of Commons at Ottawa.

An interesting Ruling was given on February 15, 1939, by the Speaker of the Saskatchewan Legislative Assembly on the subject of " certain money motions " put forward by Private Members, in which Mr. Speaker drew attention to the mandatory form in which they were drawn up and said that such Motions emanating from Private Members should be couched in abstract and general terms so that they could not be construed as an " Order " of the Assembly and therefore mandatory upon the Government. In the conclusion of his Ruling, Mr. Speaker said that if the Members in question moving such Motions would consent to their being amended to read— " That this Assembly recommends to the consideration of the Government " and so forth, the Motions could appear on the Order Paper so amended.[2]

Australia.[3]—The relationship of the Senate and House of Representatives of the Commonwealth Parliament in regard to " Public Money " differs from that of any other Oversea Dominion Parliament, as the directly-elected Senate of the Commonwealth enjoys considerable rights in that respect. The sections of the Constitution dealing with this subject are 53-56. Section 56 requires the usual recommendation of the Crown to be given in regard to all Votes, Motions or Bills appropriating revenue or moneys, by message to the House in which the proposal originated. Section 54 prevents " tacking " in regard to Bills appropriating revenue or moneys for the ordinary annual services of the Government, and section 55 makes similar provision in regard to taxation measures. Bills imposing taxation (except Bills imposing duties of customs or of excise) must deal with one subject of taxation only; and Bills imposing customs duties or excise duties must deal with those respective duties only.

The key to the smooth working between the two Houses of the Commonwealth Parliament in regard to matters concerning " Public Money ", however, is to be found in section 53 of the Commonwealth Constitution,[4] which reads:

[1] *See* JOURNAL, Vol. VII, 49, and Canada Year Book, 1938, 109.
[2] 1939 Sask. J. 91-93.
[3] *See also* JOURNAL, Vols. I, 31-36, 81, 82; and II, 80-82.
[4] 63 and 64 Vict., c. 127.

53. Proposed laws appropriating revenue or moneys or imposing taxation shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed laws so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

The Senate.—It will be seen also from section 53 that while centring the power of initiation in the Lower House, Members of the Upper House have considerable latitude in regard to matters affecting " Public Money ". Under such section, a Senator may, provided such does not increase any proposed charge upon the people, move to amend, by reduction, any Bill which appropriates revenue or moneys *not* for the *annual* services of the Government. He may also bring into operation " the process of suggestion "[1] in regard to any provision of a Bill which the Senate may not, as described above, amend, and the Senate may " press "[2] any suggested amendment to such provisions. Senate S.O. 190 permits debate upon the First reading of Bills which the Senate may not amend, and such debates need not be relevant to the subject-matter of the Bill. Therefore the scope of a Commonwealth Senator, in regard to " Public Money ", compared with those of the Members of many other Upper Houses of the Empire Parliaments, is considerable. The carefully collated Rulings of the President of the Senate, over a period of nearly 40 years, on the workings of section 53, and especially in respect of that provision dealing with " the process of suggestion ", afford many interesting and useful precedents for those other Parliaments where this procedure has also been applied. As has been stated by the late Mr. C. B. Boydell, C.M.G., the

[1] *See* JOURNAL, Vols. I, 31-36, 81, 82; and II, 80-82.
[2] Sen. S.O. 256.

Senate's first Clerk,[1] in regard to the operation of the "suggestion":

> The practice therefore has been established that while the Senate cannot *amend* a proposed law so as to increase a proposed charge or burden on the people it may yet *request* the House of Representatives to make amendments having that effect.

House of Representatives.—The rights of a Private Member in regard to "Public Money" would be very much on the lines of that of a Private Member of the Canadian Commons.

New South Wales.[2]

Legislative Council.—The Proviso to section 5 of the Constitution Act of 1902[3] lays down that all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax, or impost, shall originate in the Legislative Assembly, and by section 46 of such Act the Crown Recommendation is required for any such purpose.

By the Constitution Amendment (Legislative Council) Act, 1933,[4] which substitutes an indirectly-elected for a life-nominated Upper House, the said section 5 is amended by the addition—amongst other matters—of provisions requiring that if the Lower House passes any Bill appropriating any revenue or moneys for the ordinary annual services of the Government and the Upper House rejects or fails to pass and return the Bill to the Lower House within one month after its transmission to the Upper House (the Session continuing during such period), or if such House returns the Bill to the Lower House with a message suggesting any amendment to which the Lower House does not agree, such House may direct that the Bill, with or without any amendment suggested by the Upper House, be presented to the Governor for signification of His Majesty's pleasure and become an Act upon the Royal Assent being signified thereto, notwithstanding that the Upper House has not assented to the Bill. Provision is also made against "tacking" in regard to the Annual Appropriation Bill.

It would appear, therefore, that an Upper House Member

[1] *Practice and Procedure on Appropriation, Taxation and other Money Bills* (1901-1910), C. B. Boydell, Government Printer, Victoria, 1911.
[2] *See also* JOURNAL, Vols. I, 31-36, 82, 83; and II, 11-14, 82-84.
[3] Act No. 30 of 1902. [4] No. 2 of 1933.

has the right of " suggesting ", by reduction, an amendment to the Annual Appropriation Bill. In regard to other Bills, the rights of an Upper House Member would appear to be the same as those existing before the passing of the 1933 Act—namely, under a Constitution with no provision prohibiting the Upper House from amending Money Bills.

Legislative Assembly.—The rights of a Private Member in regard to " Public Money " would be similar to those of a Private Member of the Commonwealth House of Representatives.

Victoria.[1]

Legislative Council.—Section 57 of the " Constitution Act " provides that it shall not be lawful for the Legislative Assembly to originate or pass any Vote, Resolution or Bill for the appropriation of any part of the consolidated revenue fund or of any other duty, rate, tax, rent, return or impost for any purpose which shall not have been first recommended by a Message of the Governor to the Legislative Assembly during the Session in which such Vote, Resolution or Bill shall be passed.

Section 56 of the original Constitution[2] provided that no appropriation or tax Bill may be initiated or amended in the Upper House, but section 36 of the amending Constitution Act[3] provides that the Council may suggest amendments in such Bills provided that the effect of such amendment is not so as to increase any proposed charge or burden on the people. Any Member of the Upper House may therefore move for an allowable suggested amendment.

Legislative Assembly.—The rights of a Private Member would therefore appear to be similar to those of a Member of the Commonwealth House of Representatives.

Queensland.—Before the Parliament of this State became unicameral, the life-nominated Upper House, in the absence of any provision in the Constitution prohibiting it from amending " Money Bills ", claimed equal legislative power with the Lower House, and repeatedly amended such Bills. The Lower House, however, never admitted the claim of the Upper House to such amendment, although it did on occasion waive its (monetary) privilege, with a special entry in the Journals.[3] Following a disagreement between the two Houses in 1885-6, owing to the failure of Parliament to pass the Annual Appropriation Bill, an appeal was made to the Judicial

[1] *See also* JOURNAL, Vols. I, 31-36; VI, 51-54.
[2] 18 and 19 Vict., c. 51. [3] No. 3660.

Committee of the Privy Council, which gave the opinion that the Upper House did not enjoy co-ordinate powers in the amendment of all Bills—including " Money Bills "—with the Legislative Assembly. Still, however, the fight went on (the Upper House only acknowledging the " Public Money " rights of the Lower House, to origination) until, in 1908, what was known as " the two-thirds clause " was passed by both Houses, repealing that provision in the Constitution Act of 1867 whereby a two-thirds majority was required in each House for an amendment of the composition of the Upper House. This paved the way for the Referendum Act of 1908, and in 1922 the Legislative Council was abolished.[1] " The process of suggestion " was never adopted in this State.

The rights of a Private Member of the Legislative Assembly would appear to correspond with those of a Private Member of the Commonwealth House of Representatives.

South Australia.[2]—Section 61 of the (Consolidating) Constitution Act, 1934-1939, provides that a Money Bill, or a money clause, shall originate only in the House of Assembly, or Lower House, and such are defined in section 60 thereof as:

> " Money Bill " means a Bill for appropriating revenue or other public money, or for dealing with taxation or for raising or guaranteeing any loan, or for providing for the repayment of any loan.
>
> " Money clause " means a clause of a Bill, which clause appropriates revenue or other public money, or deals with taxation, or provides for raising or guaranteeing any loan or for the repayment of any loan.

Section 60 provides that a Bill, or a clause of a Bill, shall be taken to deal with taxation if it provides for the imposition, repeal, remission, alteration or regulation of taxation.

Section 59 lays down that:

> It shall not be lawful for either House of Parliament to pass any Vote, Resolution, or Bill for the appropriation of any part of the revenue, or of any tax, rate, duty, or impost, for any purpose which has not been first recommended by the Governor to the House of Assembly during the Session in which such Vote, Resolution, or Bill is passed.

It was in this State Parliament that " the process of suggestion " originated, and the procedure has been in operation since 1857. For a long time it was not included in the Constitution, but governed by a series of Resolutions mutually

[1] 12 Geo. V, c. 32.

[2] *See also* JOURNAL, Vols. I, 31-36; II, 84; VI, 54-55; and *Monetary Powers*, E. C. Nowell, 1890, Govt. Printer, Hobart, Tasmania.

agreed upon by the two Houses. In 1913, however, provision was made therefor by section 24 of the Further Amendment Act (4 Geo. V, No. 1148), which was later *embodied* as section 62 in the (Consolidating) Constitution Act of 1934-1939, as follows:

> 24. (1) The Legislative Council may not amend any money clause.
>
> (2) Subject to subsection (3) of this section, the Council may return to the House of Assembly any Bill containing a money clause with a suggestion to omit or amend such clause or to insert additional money clauses, or may send to the Assembly a Bill containing suggested money clauses requesting, by message, that effect be given to the suggestion; and the Assembly may, if it thinks fit, make any omission or amendment, or insertion so suggested, with or without modification.
>
> (3) Subsection (2) of this section applies to a money clause contained in an Appropriation Bill only when such clause contains some provision appropriating revenue or other public money for some purpose other than a previously authorized purpose or dealing with some matter other than the appropriation of revenue or other public money.
>
> (4) When, under subsection (2) of this section, the Council sends to the Assembly a Bill containing suggested money clauses, such clauses shall be printed in erased type, and shall not be deemed to form part of the Bill.

Section 63 of the Act provides that:

> A Bill for appropriating revenue or other public money for any previously authorized purpose shall not contain any provision appropriating revenue or other public money for any purpose other than a previously authorized purpose.

And section 64 lays down that no infringement or non-observance of any provision of the preceding three sections shall be held to affect the validity of any Act assented to by the Governor.

The rights of a Member of the Legislative Council (which is directly elected) and of a Private Member of the House of Assembly therefore correspond with those outlined above in regard to the two Houses at Canberra, except of course as to the right of the Senate at Canberra to reduce appropriations not for the annual services of the Government.

Tasmania.[1]—In 1926, following a Report from a Joint Select Committee, an amending Constitution Act[2] was passed, section 4 of which provides that " a Vote, Resolution or Bill for appropriation of any part of the revenue, or for the imposition of a tax, rate, duty, or impost, shall originate in the Assembly ",

[1] *See also* JOURNAL, Vols. I, 31-36, 85, 86; II, 84, 85; VI, 57; *see also Monetary Powers*, p. 188 *supra*.

[2] 16 Geo. V, c. 90.

and the section following provides for the Crown Recommendation in regard thereto. Section 6 prevents "tacking" in the Annual Appropriation Bill, which it is also provided shall not give authority for more than one year. Likewise income tax rating and land tax rating Acts shall deal only with such matters and for the same period. Section 9 prohibits the Legislative Council from amending any of the 3 classes of Money Bill above mentioned. Otherwise such Council may amend any Vote, Resolution or Bill, provided it does not amend any of them which appropriate moneys or impose or increase any burden on the people.

Section 10 of the Act embodies "the process of suggestion" in regard to any Bills which the Upper House may not amend by "request" for the deletion, amendment or insertion of any item or provision therein, and for the Assembly, if it thinks fit, to make any such deletions, etc., with or without modification. The Standing Orders of the Upper House also provide for such "requests" to be pressed.[1] The Council may also reject any Vote, Resolution or Bill (sec. 11), but except for the restrictions imposed upon the Council, as above, it has in all respects equal powers with the Assembly (sec. 12).

The Constitution Act of 1926 has therefore considerably restricted the extensive monetary powers which the Council had hitherto both claimed and exercised, maintaining, in the absence at that time of any prohibitive section in the Constitution in regard to the amendment of Money Bills, that the Council had equal rights with the Assembly in all matters excepting the origination of taxation and expenditure.

In 1938 a Bill[2] was passed by the House of Assembly but rejected by the directly-elected Legislative Council, to add to section 44 of the Constitution[3] the words "other than a Bill for an Appropriation Act, for an income tax Act, rating Act, or for a land tax rating Act."

In 1939 another Bill[4] was passed by the House of Assembly but rejected by the Legislative Council, the provisions of which were very much on the lines of the Parliament Act of the United Kingdom. If either of these Bills become law, reference will be made to them in the JOURNAL.

The rights of a Member of the Legislative Council in regard to "Public Money", therefore, would appear to be consider-

[1] S.O. 353A-353K.
[2] No. 95.
[3] 25 Geo. V, No. 94; Sec. 44 reads: "The Council may reject any vote, resolution, or bill."
[4] No. 31.

able, quite apart from the opportunities afforded him to move for "suggestions" in respect of those monetary provisions which by the Constitution may not originate in the Upper House.

The rights of a Private Member of the House of Assembly would be those already outlined under the Commonwealth House of Representatives.

Western Australia.[1]—The Constitution Act of 1921[2] repeals and amends monetary provisions in previous Constitution Acts and provides[3] that the Legislative Council may not amend loan, taxation or appropriation Bills, for the ordinary annual services of the Government, nor may it amend any Bill so as to increase any proposed charges or burden on the people.[4] Provision is made in subsection (4) of this section for "the process of suggestion" in regard to any Money Bills other than those named above, provided such suggestions do not increase any proposed charge or burden on the people, and the Legislative Assembly may make such omissions or amendments, with or without modifications. Except as above, it is laid down (sec. 46 [5]) that the Upper shall have equal power with the Lower House in respect of all Bills. No "tacking" is allowed to Appropriation Bills for the ordinary annual services or taxation Bills, and the usual Crown recommendations are provided for.

The rights of a Member of the Legislative Council and of the Legislative Assembly are therefore on the lines of those of the Members of the two Houses at Canberra.

New Zealand.[5]—The Constitution[6] of New Zealand is dated 1852 and its Legislative Council and a House of Representatives constitute what is called the General Assembly. Originally the Upper House was life-nominated, but to-day its Members are nominated for 7 years on the summons of the Governor-General.

The only provision in the Constitution dealing with the powers of Parliament in regard to "Public Money" is section 54, which provides that it shall not be lawful for either House to pass, or the Governor to assent to, any Bill appropriating to the public service any sum of money from or out of His Majesty's revenue within New Zealand unless the Governor, on His Majesty's behalf, shall have first recommended to the

[1] *See also* JOURNAL, Vols. I, 31-36, 86-89; VI, 55, 56; VII, 61.
[2] 12 Geo. V, No. 34. [3] Sec. 46 (2). [4] Sec. 46 (3).
[5] *See also* JOURNAL, Vols. I, 89; III, 8, 9.
[6] 15 and 16 Vict., c. 72 and amendments.

House of Representatives to make provision for the specific public service towards which such money is to be appropriated.

There is no section prohibiting the Legislative Council from amending the provisions of Bills dealing with Public Moneys. The practice of the two Houses in regard to such Bills, therefore, has been voluntarily agreed as based upon that of the two Houses at Westminster before the passing of the Parliament Act of 1911. It is thus open to the House of Representatives to waive its privileges in regard to monetary reduction amendments by the Legislative Council.

An Act was passed by the New Zealand Parliament in 1914,[1] section 5 of which provided for " the process of suggestion ", but the Act has not been proclaimed.

The House of Representatives has asserted its rights in regard to Public Moneys by S.O. 249 and 250, which are respectively adaptations of the Resolutions of the House of Commons of July 3, 1678, and its S.O. 44 of July 24, 1849.[2]

In regard to the origination of incidental monetary provisions in Bills, the Legislative Council supports the usage by Standing Order[3] by printing in antique type any provisions of a Bill originating in the Upper House, in order to facilitate the carrying out of the main objects of a Bill which, in any respect, infringes the privileges (monetary) of the Lower House.

The rights of a Member of the Upper House and a Private Member of the Lower House in regard to " Public Money " would therefore appear to be similar to those of Senators and Private Members of the Lower House at Ottawa.

Union of South Africa.[4]

The Senate.—As the South African National Convention in adapting section 53 of the Commonwealth Constitution for section 60 of that of the Union did not include the fourth paragraph of the Commonwealth section 53, Members of the Senate do not possess the right to move " suggestions " in regard to " Public Money ". Neither was the word " annual " before " services of the Government " in the Australian section 53 taken over in the Union section 60. The Union Senate is therefore prevented from amending *any* Bills " *so far as* " they impose taxation or appropriate revenue or moneys for the services of the Government, whether those services are annual or not. The Commonwealth and Union provisions correspond, as to the imposition of taxation and increasing any proposed

[1] Act 59 of 1914 (5 Geo. V).
[2] *See* pp. 170, 171 *supra.*
[3] *I.e.*, 203, 216.
[4] *See also* JOURNAL, Vols. I, 31-36, 89; II, 85-91.

charge or burden on the people. The rights of a Senator in regard to " Public Money " are therefore limited to " abstract money motions."

The words *so far as* used in section 60 (2) of the South Africa Act, 1909, an amendment proposed to this clause at the Convention by the Rt. Hon. the Chief Justice of the Union (Lord de Villiers), President of the Convention (who had been, as Chief Justice, *ex officio* President of the directly-elected Cape Upper House for over 26 years), permit the Senate to amend any provisions of any Bill right up to the fringe of the prohibitory monetary provisions and in effect define what is meant by the term " Money Bill " used in the marginal note to section 60 of the South Africa Act, 1909.

House of Assembly.—A Private Member cannot initiate proposals for the appropriation of " Public Money " without a Recommendation of the Governor-General announced by a Minister;[1] but Motions couched in sufficiently abstract and general terms (*e.g.*, Motions commencing with the words: That the Government take into consideration the advisability of . . .) are allowed without the Governor-General's Recommendation. A Private Member may of course move to reduce expenditure.

Unless a proposal for taxation has been first made by a Minister, no proposal to raise funds may be made by a Private Member, and then only to the extent intimated in such Minister's proposal.[2] He may of course move to reduce taxation. If a Bill introduced by a Private Member contains provisions incidentally imposing taxation, such provisions cannot be put without the Recommendation of the Governor-General.

Union Provinces: South West Africa.—In the unicameral Legislatures of the 4 Provinces and in South West Africa, the practice is similar to that of the Union House of Assembly, except that the Recommendation is made by the Administrator in place of the Governor-General.

Ireland (Eire).—Money Bills are defined by Article 22 of the Constitution of 1937 as follows:

> 1. 1° A Money Bill means a Bill which contains only provisions dealing with all or any of the following matters—namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes

[1] S.A. Act 1909, sec. 62; 1910-11, VOTES, 131; 1912, *ib.* 1020.
[2] S.O. 114.

of charges on public moneys or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; matters subordinate and incidental to these matters or any of them.

2° In this definition the expressions "taxation," "public money" and "loan" respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes.

The further provisions of such Article are:

2. 1° The Chairman of Dail Eireann shall certify any Bill which, in his opinion, is a Money Bill to be a Money Bill, and his certificate shall, subject to the subsequent provisions of this section, be final and conclusive.

2° Seanad Eireann, by a Resolution, passed at a sitting at which not less than thirty members are present, may request the President to refer the question whether the Bill is or is not a Money Bill to a Committee of Privileges.

3° If the President after consultation with the Council of State decides to accede to the request he shall appoint a Committee of Privileges consisting of an equal number of members of Dail Eireann and of Seanad Eireann and a Chairman who shall be a Judge of the Supreme Court; these appointments shall be made after consultation with the Council of State. In the case of an equality of votes but not otherwise the Chairman shall be entitled to vote.

4° The President shall refer the question to the Committee of Privileges so appointed and the Committee shall report its decision thereon to the President within twenty-one days after the day on which the Bill was sent to Seanad Eireann.

5° The decision of the Committee shall be final and conclusive.

6° If the President after consultation with the Council of State decides not to accede to the request of Seanad Eireann, or if the Committee of Privileges fails to report within the time hereinbefore specified, the certificate of the Chairman of Dail Eireann shall stand confirmed.

Money Bills may only be initiated in the Lower House and are sent to the Upper House for its recommendations.

Seanad Eireann.—With reference to the provisions in regard to such "recommendations"—a practice similar to that of "the process of suggestion"—Article 21 makes the following further provisions in regard to Senate recommendations:

2 1° Every Money Bill sent to Seanad Eireann for its recommendation shall, at the expiration of a period not longer than twenty-one days after it shall have been sent to Seanad Eireann, be returned to Dail Eireann, which may accept or reject all or any of the recommendations of Seanad Eireann.

2° If such Money Bill is not returned by Seanad Eireann to Dail Eireann within such twenty-one days or is returned within such twenty-one days with recommendations which Dail Eireann

does not accept, it shall be deemed to have been passed by both Houses at the expiration of the said twenty-one days.

Therefore the rights of a Member of Seanad Eireann would appear to be similar to those of an Upper House Member under a Constitution providing for a prohibitive money section and "the process of suggestion."

Dail Eireann.—A Deputy of Dail Eireann has not the right to move Motions or amendments imposing charges on State funds unless the purpose of the appropriation has been recommended by the Government, nor can any Motion, or an amendment thereto, be proposed increasing the amount of the appropriation save by a member of the Government.[1]

Southern Rhodesia—*Legislative Assembly.*—The practice is the same as in the Union House of Assembly.

British India.—The position both in the present Central Legislature (in respect of which Federation is not yet in force) and in the Legislatures of the 11 Governor's Provinces under the new Constitution of 1935, as to the rights of Private Members of those bodies in regard to "Public Money," is on an entirely different footing from such rights already outlined in respect of the Parliaments of Dominions and Colonies enjoying what is known as "responsible government." Under both the former and the present Constitution of India, certain subjects are in control of the Crown alone, which is vested with special overriding power. The information given hereunder, therefore, must be read in the light of another and different type of Constitution.

Central Legislature.—Not all the provisions of the Government of India Act, 1935,[2] have been brought into operation. The provisions of the old Government of India Act, as set out, with amendments consequential on the provisions of the new Act, in the Ninth Schedule thereto (being certain of the provisions of the old Government of India Act relating to the Governor-General, the Commander-in-Chief, the Executive Council and the Central Legislature with provisions supplemental to those provisions) continue to have effect during the transitory period—that is to say, the period intervening between the commencement of Part III (Governor's Provinces) and the establishment of Federation.[3] Therefore the information on the subject of the *Questionnaire* for Volume VIII now under consideration in respect of the Central Legislature is based

[1] *See* S.O. 103.
[2] 26 Geo. V, c. 2.
[3] *Manual of Business and Procedure in the Legislative Assembly*, 5 Ed., 1938 (Govt. of India Press. Simla).

upon present conditions, and the constitutional provisions, being transitory, will not be considered in detail, although they are very much on the lines of those to be given later in respect of the Governor's Provinces. The position, however, in regard to the present Council of State and Legislative Assembly is as follows:

Council of State.—Private Members have no right to sponsor Bills which will impose taxation upon the public. They have a right to move amendments to Money Bills sponsored by Government. The moving of amendments by Private Members is subject to the restriction that such of the amendments which impose an increased burden on the subject—that is to say, a burden not only larger than that which is imposed by the Bill under consideration but larger than that which is imposed under the existing law—require previous sanction of the Governor-General. When a Government Bill proposes reduction of taxation it is open to a non-official Member to propose to retain the level of taxation in force at the time of the introduction of the Bill.

Legislative Assembly.—The rights of a Private Member in regard to "Public Money" in the case of the Indian Legislative Assembly are embodied in section 67A, as set out in the Ninth Schedule to the Government of India Act, 1935, and Indian Legislative Rule 48 (2). Briefly speaking, an important feature of the Central Government's Budget is the division of expenditure into "Voted" and "Non-voted" items.[1]

The Governor-General is, however, given discretion under that section to throw open non-votable heads of expenditure to discussion only, by either Chamber, and in actual practice he has allowed the Assembly to discuss them, with the exception of the head specified in item (v) of Section 67A (3). As regards the voted heads of expenditure, it is open to the Legislative Assembly to refuse its assent to any demand or reduce the amount referred to in any demand by a reduction of the whole grant, but it has no power to increase or alter the destination of a grant.[2] The refusal of the Assembly to vote a demand put before it is not necessarily effective, as the Governor-General in Council has the right, which has been exercised in the past on many occasions, of restoring a "cut" made, or an entire demand refused, by the Assembly, if he is satisfied that such a course is essential to the discharge of his responsibilities.[3] In cases of emergency the Governor-

[1] Sec. 67A. (3). [2] Sec. 67A. (6) and Rule 48 (2). [3] Sec. 67A. (7).

General has a reserve power and, without reference to any other body, he can authorize such expenditure as may in his opinion be necessary for the safety or tranquillity of British India.[1]

Governor's Provinces.—The new Constitution of India contains so many provisions in regard to financial procedure which are particular to India that it is necessary to go more fully into the subject to give an idea of the rights of the respective Houses of the Provincial Legislatures and their Members in regard to Public Money.

So far as Provincial autonomy is concerned the Constitution has been put into full operation. Its provisions in regard to financial powers in the 11 Governor's Provinces will therefore be now considered in order to show how those provisions affect the Private Member.

Under such Constitution, in the annual financial statement[2] to be laid before both Chambers of each Provincial Legislature in the case of the Provinces of Madras, Bombay, Bengal, United Provinces, Bihar and Assam and before the Legislative Assembly in the unicameral Provinces of the Punjab, Central Provinces and Berar, North West Frontier, Orissa and Sind, there are two classes of expenditure—namely, (A) charged upon the revenues of the Province, and (B) other expenditure to be met from the revenues of the Province. The type of expenditure coming under (A) is such as the Governor's salary and allowances and other expenditure relating to his office for which provision is required to be made by Order in Council; debt charges for which the Province is liable, including interest, sinking fund and redemption charges and other expenditure relating to the raising of loans and the service and redemption of debt; salaries, etc., of Ministers, Advocate-General and Judges, administration of excluded areas, judicial awards, etc., and any other expenditure by the Constitution or any Provincial Act declared to be so charged. Should any question arise as to whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Province, the decision rests with the Governor,[3] and so much of the estimates of expenditure as comes under (A) is not submitted to the vote of the Lower House, or Legislative Assembly, but may be discussed in either House, except such as relates to the office of Governor.[4]

[1] Sec. 67A. (8). [2] Sec. 78. [3] Sec. 78 (4). [4] Sec. 79 (3), (*a*).

Estimates relating to expenditure coming under (B) are submitted to the Lower House in the form of demands for grants, which House has the power to assent to any demand, with or without reduction. All demands for grants require the Governor's Recommendation.[1]

Should the Lower House, however, not assent to a grant, with or without reduction, the Governor may, should such refusal or reduction, in his opinion, affect the due discharge of any of his special responsibilities under the Constitution, compel the submission of the matter to such House, but such matter is not to be open to discussion or vote in either House.[2]

A Bill or amendment making provision:

(*a*) for imposing or increasing any tax; or
(*b*) for regulating the borrowing of money or for a guarantee by the Province, or for amending the law in regard to financial obligations undertaken by the Province;
(*c*) For declaring or increasing any expenditure chargeable on the Province;

requires the Governor's Recommendation, and no such Bill may be introduced in any Provincial Upper House. The above, however, excludes provisions in a Bill or amendment for the imposition of fines, penalties, fees for licences, etc. Such Recommendation must also be given upon a Bill involving expenditure from the revenues of a Province before it can be passed by either Chamber.[3] The Governor is also vested with the custody of all moneys received on account of the revenues of the Province, subject to such rules as he may lay down.[4] The Governor is also given power to make Rules[5] in regard to the procedure in each House in the conduct of any matter affecting the discharge of those functions under the Constitution in which he is required to act in his discretion; for securing the timely completion of financial business; and for prohibiting, save with his consent:

(i) debate or question on any matter connected with an Indian State;
(ii) debate or question as to relations between His Majesty or the Governor-General and any foreign State or Prince; or
(iii) debate, except upon estimates of expenditure or questions on any matters connected with tribal or excluded areas; or
(iv) debate or question on the personal conduct of the Ruler of any Indian State or member of the ruling family thereof.

Sanction of the Governor is also required for certain legislative proposals detailed in section 108 of the Constitution,

[1] Sec. 79. [2] *Ib.* 80. [3] Sec. 81. [4] *Ib.* 151. [5] *Ib.* 84.

and in regard to which he has special responsibilities under sections 88, 89 and 90. In the bicameral Provinces the Governor may, in case of disagreement between the two Houses in regard to a Financial Bill, summon a Joint Sitting, although the stated intercameral disagreement period of 12 months has not elapsed.[1]

A Schedule authorizing both (A) and (B) types of expenditure must be authenticated by signature of the Governor, and should the Legislative Assembly have refused or reduced a grant he may, if he considers such would affect the discharge of his special responsibilities under the Constitution, include in the Schedule such refused or reduced sum. This Schedule is then laid before such House, but is not open to discussion or vote in either House.

Subject to Part II of the Constitution, with respect to Financial Bills, a Bill may originate in either House of a bicameral Province.[2]

Legislative Councils.—In the 6 bicameral Provinces—namely, Madras, Bombay, Bengal, United Provinces, Bihar and Assam, the Upper Houses of which are debarred by the Constitution from initiating financial matters—the only right of a Private Member in regard to Public Money is the right to discuss the annual financial statement or the statement of estimated receipts and expenditure of the Province, otherwise called " the Budget," and the Finance Bills which have been received from the Legislative Assembly.

Legislative Assemblies.—Subject to the rights of the Governor and restrictions under the Government of India Act, 1935, financial matters can only (under section 82 thereof) be introduced in the Lower House. Under the Rules of such Lower House, a Member thereof may make a Motion to refuse to assent to a demand for a grant or to assent to the demand subject to a reduction of the amount specified therein.

Burma.—As in the case of India, the Constitution of Burma[3] contains many provisions in regard to financial procedure which are particular to Burma, that it is also necessary to go more fully into the subject in order to give an idea of the rights of the Senate and House of Representatives of Burma and their Members in regard to " Public Money," although the Constitution of Burma contains many provisions in this respect which actually, or almost, correspond with those under the Constitution of India.

Under the Burma Constitution, in the annual financial

[1] *Ib.* 80. [2] *Ib.* 73 (1) and *ib.* 74 (2). [3] 26 Geo. V, c. 3.

statement[1] to be laid before both the Senate and the House of Representatives, the two distinct classes of expenditure are—(A) charged upon the revenues of Burma; and (B) other expenditure to be met from the revenues of Burma. The types of expenditure coming under (A) are such as the Governor's salary, debt charges, salaries of Ministers and Judges, and expenditure for discharge by the Governor of his functions with respect to defence, ecclesiastical affairs, monetary policy, currency, coinage, external affairs (so far as he may act in his discretion) and expenditure in relation to those areas in Burma not part of His Majesty's territories and his functions in relation to the administration of those areas specified in Part I of the Second Schedule to the Constitution, consisting of the Shan States, etc., over which areas the Governor is by section 7 thereof vested with control assisted by counsellors appointed by him.

Should any question arise as to whether any proposed expenditure falls under (A) the decision rests with the Governor,[2] and so much of the estimates of expenditure as comes under (A) is not submitted to the vote of the House of Representatives, but may be discussed in either House, except such as relates to the office of Governor.[3]

Estimates relating to expenditure coming under (B) are submitted to the Lower House in the form of demands for grants, and such House has the power to assent to any demand, with or without reduction.[4] All demands for grants require the Governor's Recommendation.

Should the Lower House, however, not assent to a grant, with or without reduction, the Governor may, should such refusal or reduction, in his opinion, affect the due discharge of any of his special responsibilities under the Constitution, compel the submission of the matter to such House, but it shall not be open to discussion or vote in either House.[5]

A Bill or amendment providing for—

(*a*) imposing or increasing any tax; or
(*b*) regulating the borrowing of, or guaranteeing by the Government, etc.; or
(*c*) declaring any expenditure to be charged on the revenues of Burma, etc.;

requires the Governor's Recommendation, and no such Bill may be introduced in the Senate. Such Recommendation must also be given upon a Bill involving expenditure from the

[1] Sec. 59. [2] Sec. 59 (4). [3] *Ib.* 60 (1). [4] *Ib.* 60 (2). [5] *Ib.* 61.

revenues of Burma before it can be passed by either Chamber.[1] The Governor is also vested with the custody of all moneys received on account of the revenues of Burma, subject to such rules as he may lay down.[2]

As in India, the Governor is given power to make Rules[3] in regard to the procedure in each House in the conduct of any matter affecting the discharge of those functions under the Constitution in which he is required to act in his discretion; for securing the timely completion of financial business; and for prohibiting, save with his consent,

(i) debate or question as to relations between His Majesty or the Governor and any foreign State or Prince, or
(ii) debate except upon estimates of expenditure or questions on any matters connected with territories in Burma not vested in His Majesty or concerning areas referred to in Part I of the Second Schedule above mentioned.

Sanction of the Governor is also required for certain legislative purposes described in section 36 of the Constitution, and he has special responsibilities both under sections 41, 42, 43, and under section 8, in regard to certain matters including that of safeguarding the financial stability and credit of the Governor of Burma. The Governor may summon a Joint Sitting in the case of a Financial Bill concerning matters coming within his control.[4]

A Schedule authorizing both (A) and (B) types of expenditure must be authenticated by signature of the Governor, and should the Lower House have refused or reduced a grant he may, if he considers such would affect the discharge of his special responsibilities under the Constitution, include in the Schedule such refused or reduced sum. This Schedule is then laid before such House, but is not open to discussion or vote in either House.[5]

Subject to Part VI of the Constitution, with respect to Financial Bills, a Bill may originate in either House,[6] and it would appear that the rights of a Senator would, under section 63, extend to money amendments of reduction in matters coming under revenue head (B) in the same manner as, of course, a Member of the Lower House.

The financial procedure of the House of Representatives is laid down in Rules 134-143.

The rights of a Member of the Senate would therefore

[1] Sec. 63. [2] *Ib.* 57. [3] *Ib.* 29.
[4] *Ib.* 37 (2). [5] Sec. 61. [6] Sec. 35.

appear to be very much on the lines of those of a Private Member of the Council of State or of a Provincial Upper House under the Government of India Act, 1935. Subject also to the restrictions under the Burma Constitution, the rights of a Member of the Burma House of Representatives would be those of moving reductions in public expenditure and taxation and to " abstract money motions."

Ceylon.—Under the Constitution[1] the responsibility of the preparation of the Annual and Supplementary Estimates rests with the Board of Ministers, whose approval of them is required before they can be tabled in the State Council.[2] Subject to the provisions of section 22 (Governor's powers in matters of paramount importance)[3] of the Constitution,

> no Bill, Motion, Resolution, or Vote for the disposal of, or the imposition of, charges upon any part of the public revenue or other funds of the Island, or for the authorization of any prior disposal of any part of such revenue or funds, or for the imposition or augmentation of any tax, or for the repeal or reduction of any tax for the time being in force, shall be introduced in the Council by any Member except a Minister or an " Officer of State," nor unless such Bill, Motion, Resolution, or Vote shall have received the prior approval of the Board of Ministers.
>
> Every Bill, Motion, Resolution or Vote introduced in the Council for any of the purposes mentioned in the preceding clause of this Article shall be accompanied by a report from the Board of Ministers explaining the financial implications thereof and including the observations of the Financial Secretary thereon. " Tax " does not include any tax raised by local authorities or bodies for local purposes.

Ministers and Officers of State are required to submit to the Board of Ministers through the Financial Secretary the estimates for the ensuing financial year, failing which the Governor is empowered to take the necessary action.[4] Certain powers in regard to finance are also conferred upon the Governor,[5] and section 69 provides that if the Council rejects the whole of any Annual Appropriation Bill the Governor shall dissolve the Council. In such case, he is empowered by section 70 by warrant to authorize the Financial Secretary to make such disbursements from public revenue and other funds sufficient for the public services during such period.

The authority for expenditure which the passage into law of an Annual Appropriation Bill conveys lapses at the end of

[1] Ceylon (State Council) Order in Council, 1931. [2] *Ib.* sec. 56.
[3] *See* JOURNAL, Vol. VI, 86. [4] Sec. 58. [5] Secs. 63, 66, 67.

the financial year to which the Bill relates,[1] and if such Bill has not been passed, with or without amendment, within 3 months after its First reading has been moved the Council is deemed to have rejected the Bill.[2]

Private Members have the right to reduce the amounts proposed to be appropriated by the Annual Appropriation Bill or Supplementary Estimates, but cannot initiate money proposals or increase a vote placed before Council by the Board of Ministers, who alone are responsible for the introduction of financial measures.

[1] Sec. 59 (3). [2] Sec. 68.

X. PRIVILEGES GRANTED RETIRED CLERKS-AT-THE-TABLE

COMPILED BY THE EDITOR

The *Questionnaire* for Volume VIII contained the following item:

XIII. State privileges[1] granted to Clerk-at-the-Table after retirement ?

The replies received are as follows.

United Kingdom.

House of Lords.—Nil.

House of Commons.—No privileges are granted to the Clerk of the House of Commons upon retirement. Apart from his pension he is then in exactly the same position as any other private citizen and even relinquishes the right to dine at the Clerks' Table in the Dining-Room or to enter the Lobby unless accompanied by a Member or Official.

Canada.

Dominion Parliament.—The Clerk continues an honorary officer of the House of which he was the Clerk and is allowed the entrée of his House and a seat at its Table on occasions of ceremony.

Canadian Provinces.—In the Legislatures of most of the Canadian Provinces the Clerk is only a part-time official and his salary a sessional indemnity. In many instances the Clerk is either a barrister or solicitor and allowed private practice during the Parliamentary Recess, though, even during Session, leave is given, in some instances, to appear in Court.

Australia.

Commonwealth Parliament.—A Clerk-at-the-Table retires on superannuation, to which he has contributed during his service under the provisions of the Superannuation Act. The only privileges granted to him are access to Parliament House at any time, the use of the Library, the Bowling Green and the Tennis Courts, and he also retains the right to enter the Refreshment Rooms and be served there.

[1] Unless otherwise stated, all the officers concerned are entitled to pension. —[ED.]

Australian States.

New South Wales.—Nil.

Victoria.—No special privileges are formally granted to the Clerks-at-the-Table after retirement, but certain Clerks, at their own request, have been granted the use of the Refreshment Rooms and Parliamentary Library. It is also usual to extend ex-Clerks invitations to all functions held at Parliament House.

Queensland and South Australia.—Use of the Library of Parliament.

Western Australia.—A Clerk-at-the-Table is entitled to the use of the Parliamentary Dining-Room and Library for life. Should he not be entitled to pension, he enjoys the last-mentioned privileges.

Tasmania.—Nil.

New Zealand.—The Clerk of the House is generally given the right by the Speaker to sit on his left if he visits the House during his retirement. He also, as a rule, is granted privileges in regard to the use of the Parliamentary Library.

Union of South Africa.—The Clerk of each House (who, like all those in Parliamentary employ, belongs to the Parliamentary and not the Public Service) retains the privilege of taking out books from the Parliamentary Library and is entitled to the ordinary concession on the South African Railways accorded to all public service pensioners. He is also on retirement elected an Hon. Life Member of the Union Branch of the Empire Parliamentary Association, which entitles him to admission to the Lobbies, the Parliamentary Dining-Room and Lobby, but he may not introduce non-Member guests.

Union Provinces of South West Africa.—Nil.

Ireland (Eire).—Nil.

Southern Rhodesia.—Nil.

British India.

Central Legislature—Nil.

Governor's Provinces.—Nil.

Burma and Ceylon.—Nil.

British Guiana.—Nil.

XI.—USE OF LEGISLATIVE CHAMBERS, ETC., FOR OTHER PURPOSES

COMPILED BY THE EDITOR

The *Questionnaire* for Volume VIII contained the following item:

XIV. (*a*) Is your Chamber used for any other purpose than Parliament during Session ?

(*b*) Are other rooms or reception rooms used for any official functions or for balls or dances of official character during Recess or Session ?

The information is as follows.

United Kingdom.

House of Lords.—The House of Lords is unique in the British Empire in that it sits, in the same Chamber, both in its legislative capacity as the Upper House of the Imperial Parliament and at certain times, at which practically only the Lords of Appeal in ordinary (Law Lords) are present, in its judicial capacity as the Supreme Court of Appeal of the United Kingdom. The Woolsack is uncovered and the Mace is in the House on both occasions. Appeals in ecclesiastical, maritime, or prize causes, and colonial appeals, both at law and in equity, are determined by the Privy Council.[1]

House of Commons.—The Chamber is never used for any other purpose than a meeting of the House of Commons. Other rooms in the House of Commons may be used during the Session for purposes not directly connected with the business of the House, subject to certain rules. On days on which the House sits Members may engage Committee Rooms through the Serjeant-at-Arms Office for private meetings or conferences in connection with a Parliamentary subject, provided they are not required for official use, but rooms may not be used for Departmental or Inter-Departmental Committees or for Royal Commissions. Such meetings may commence prior to the Sitting of the House (normally not before 11 a.m.) but not after the rising of the House. The Member to whom a Committee Room is allotted is responsible for the use made of the Room and must attend personally and his (or her) name must be indicated on all notices and circulars issued in connection with the meeting. No refreshments may be served. Members may also give private parties in the

[1] May, XIII Ed., 63.

dining rooms of the House on any day on which the House sits. Special leave does not have to be obtained, except for dinner parties on days on which the House rises before the dinner hour—*e.g.*, Friday. On these days the permission of the Lord Great Chamberlain has to be obtained. The Empire Parliamentary Association frequently gives luncheon and dinner parties, and the members of the Press Gallery and the members of the Staff each have an annual dinner. But nobody who is not connected with the Houses of Parliament can entertain in the building. No balls or dances of an official character are ever given. Westminster Hall is part of the Palace of Westminster, but in the ordinary course of events is not used. Various receptions and ceremonies take place here, both during the Session and Recess. The more recent events in the Hall have been the reception to King George V and Queen Mary on the occasion of their Silver Jubilee, 1935, the lying-in-state of King George V in 1936 and the Reception by both Houses of Parliament to the President of the French Republic on the occasion of his state visit to London in 1939. The Empire Parliamentary Association also gave large luncheon parties in the hall to the Empire delegates to the Empire Conference in 1935 and the Coronation in 1937.

Canada: *Dominion Parliament.*—Information not received at time of going to press.

Canadian Provinces.

British Columbia.—The Chamber is not used for any other purpose than sittings of the Legislature.

Saskatchewan.—The Legislative Assembly Chamber is used solely for sittings of the Legislature and meetings of the Empire Parliamentary Association, which consists of Members of the Legislature. Receptions in connection with the opening of the Legislature are held in the Library Reading-Room, and Dinners given by the Government or Mr. Speaker take place in the Parliamentary Dining-Room. When Their Majesties the King and Queen visited Regina in May, 1939, the Reception to them was held in the Legislative Chamber, all tables, desks and chairs being removed for the occasion.

Other Provinces.—Information not received at time of going to press.

Australia.

Commonwealth Parliament.—On several occasions the use of the Senate Chamber has been granted by the President on non-sitting days for conferences of Federal and State Ministers

and Officers. Such use is necessarily restricted. The use of the King's Hall is permitted by Mr. President and Mr. Speaker for the swearing-in of a new Governor-General, and for His Excellency's Levees. The dining-rooms are frequently used for official dinners to distinguished visitors, and also for receptions. Since the Parliament was established in Canberra there have been two Royal visits: His Majesty, then Duke of York, opened the building in 1927, and in 1934 H.R.H. the Duke of Gloucester visited Canberra. On those occasions the whole of the building was opened for official functions, including a banquet, and a ball in the King's Hall.

Australian States.

New South Wales.—The Legislative Assembly Chamber has been used, during an adjournment or Recess, for important Conferences such as those between Premiers of the different States of Australia and representatives of the Commonwealth, or during the visit to this State of delegates from various Empire Parliaments being members of the Empire Parliamentary Association. The Dining-Room has been used for Receptions, State Banquets and Official Luncheons, given by the Government to distinguished visitors from oversea, etc., and for various functions connected with the Empire Parliamentary Association. Receptions have been held in the Legislative Council Chamber, but no balls or dances are ever held on the premises.

Victoria.

Legislative Council.—The Council Chamber has been used for the inauguration of the Governor and (upon special request by the Commonwealth) the Governor-General; Premiers' Conferences, Empire Parliamentary Association Conferences, and Levees (place of assembly for private entry cards); and in connection with State Banquets.

Legislative Assembly.—The Chamber is not used for any other purpose than for sittings of the House, but Levees, Investitures and Government dinners are held at the Houses of Parliament. Committee Rooms have been used by Select Committees from other States, to hear evidence, and by Commonwealth and State Ministers for conferences.

Queensland.—The Chamber is not used for any other purpose during Session, but during Recess the Chamber, Dining-Room and other rooms in the building have been used for official functions such as State Receptions, State Dinners, and on one occasion the Dining-Room was used for dancing.

South Australia.—The House of Assembly Chamber has sometimes been used for official Receptions, in honour of distinguished visitors, the guests passing through the Chamber where the official party would be staged. Addresses under the auspices of the Empire Parliamentary Association have occasionally been given in the Chamber, and the Premiers' Conference sat in the Chamber on one occasion, special provision being made for conference tables, and the House adjourning over the occasion. (This was before the additional rooms included in the new Parliament House building were available.) No balls or dances are held in any of the rooms. The Members' Dining-Room and the Strangers' Dining-Room adjoining are used for receptions and socials and lunches under Empire Parliamentary Association or Government auspices, and for official Government dinners and lunches on any necessary occasion.

Tasmania.—The Legislative Council Chamber has been used by the President for afternoon tea on the occasion of the opening of Parliament.

Western Australia.—Nil return.

New Zealand.—The House of Representatives Chamber is not used for other purposes, but rooms in the building are available for State Receptions and Banquets. Parts of the Houses of Parliament building are used for Departmental purposes.

Union of South Africa.

The Senate.—The Senate Chamber, which was then the Legislative Council Chamber of the old Cape Parliament, was used at the time of Union for the Second Session of the South African National Convention[1] which drew up the Act of Union.

House of Assembly.—The Chamber has not been used for any other purpose than sittings of the House during Session except in 1910, when the Opening Ceremony took place there. The Queen's Hall and the Dining-Room have been used for official receptions and dinners. Both the President and the Speaker have entertained their Members in the Dining-Room and a Parliamentary Reception and Banquet was given in the Houses of Parliament to H.R.H. the Prince of Wales when he

[1] The South African National Convention sat as follows: Session I (Council Chamber, Town Hall, Durban), October 12, 1908—November 5, 1908; Session II (Legislative Council Chamber, Cape Town), November 23, 1908—February 3, 1909; Session III (Legislative Assembly Chamber, Bloemfontein), May 3-11, 1909.

visited South Africa in 1925. A State Banquet was also given to the officers of H.M.A.SS. *Australia* and *Sydney* when they visited the Cape of Good Hope. In 1924 a State Banquet was given to the delegates from the branches of the Empire Parliamentary Association in the other Parliaments of the Empire.

Union Provinces.

Cape of Good Hope.—The Chamber is only used for sittings of the Joint Provincial Committee, and for the election of the 8 Senators, at a periodical election for the Union Senate, which is conducted by P.R. with the single transferable vote, the electorate being the Union M.P.'s and Provincial M.P.C.'s for the Province.

Natal.—The Chamber was used, when the Legislative Assembly Chamber of the old Natal Parliament during the Recess, for Royal banquets on the visit of the Prince of Wales in 1925, the Duke of Kent in 1934, and Prince Arthur of Connaught when Governor-General of the Union, also for lunches and banquets for the Governors-General on different occasions. The Chamber was also used shortly after Union for a luncheon to General Botha on his first visit to Natal as Prime Minister. The Legislative Council Chamber of the old Natal Parliament has on one or two occasions been used for receptions—*e.g.*, the Empire Press Association, the visit of a naval squadron.

The Refectory has frequently been used for smaller banquets and luncheons on visits of some of the Governors-General as well as for visits of distinguished visitors and of the Executive Committee of the other Provinces. On one occasion the Refectory has been used by the Administrator's wife for a dance to welcome returned Rhodes Scholars and for evening receptions to distinguished visitors. None of such functions, however, has ever taken place during Session. In the old Natal Parliament Days, during the Boer War, the whole building was handed over for hospital purposes and was the principal hospital for the Natal Volunteers. It has also been used by the South African Medical Congress and by the Council of the University of South Africa, on both of which occasions every available room was required.

South West Africa.—The Chamber has been used during Recess for meetings of Select Committees—*e.g.*, the Public Accounts Committee. Owing to limited office and general meeting-room accommodation, the Administration by

arrangement makes use of Members' meeting-rooms during the Recess. The Chamber is on very rare occasions, and with the concurrence of Mr. Chairman and the Secretary for South West Africa, used for special assemblies of civil servants—*e.g.*, annual meeting of the Public Servants' Association—and farewell presentations or welcome meetings to Senior Officials.

Ireland (Eire).—The Seanad Chamber is not used for other purposes.

Southern Rhodesia.—The Chamber is used exclusively for Parliamentary business, but during the Session the annual general meeting of the Empire Parliamentary Association is held in the Chamber.

British India.

Council of State.—Afternoon parties are sometimes held in the dining or reception rooms.

Legislative Assembly.—The Chamber is sometimes used for meetings of the Empire Parliamentary Association. Committee Rooms are sometimes allotted for meetings of Departmental and other Committees and for holding functions in which Members of the Assembly generally, are interested. Rooms in the building are not made available for balls or dances.

Governor's Provinces.

Madras.—As a rule the Legislative Assembly Chamber is not used for any purpose other than Assembly sittings. The Lunch and Committee Rooms are occasionally placed at the disposal of various Government Departments, as requested, for Conferences or departmental meetings, between intervals of the Assembly sittings; provided they are not required for the use of Members. None of the rooms is used for balls or dances of any character.

Bombay.—In neither House is the Chamber or are any rooms belonging thereto used for any other than for Parliamentary purposes.

Bengal.—Neither Chamber is used for any purpose other than that of sittings and elections by both Houses. Ordinarily the rooms in the Assembly House may not be used for any other purpose during Sessions, but, subject to the order of Mr. Speaker, such rooms are occasionally allowed to be used for official purposes, such as meetings of Committees appointed by Government during Recess. Mr. Speaker holds his receptions and Ministers and Members give dinner or tea parties in the Dining-Hall or on the lawns.

United Provinces—Neither Chamber is used for any other purpose than a Legislative Chamber, but the Committee Rooms attached to the Council House are used for official functions. No rooms are used for balls or dances.

Bihar.—Neither Chamber is used except for sittings, but since the inauguration of the Government of India Act, 1935, the election of the indirectly elected Members of the Legislative Council has been held in the Assembly Chamber.

Central Provinces and Berar; Assam; and North West Frontier Province.—The answer to both (*a*) and (*b*) is in the negative.

Orissa.—The Legislative Assembly has not yet a Chamber of its own, and for the present sits in the Hall of the Ravenshaw College, which is not used for any but Parliamentary purposes during Session. During Recess this Hall is used by the College and, with their permission, for other purposes. The official Durbar is also held in the same Hall.

Sind.—The Chamber is not used for any purpose during Session other than for Sittings of the Legislative Assembly, neither are the Committee or Refreshment Rooms, Members' Room or Library used for functions such as balls or dances of an official character.

Burma.—The House of Representatives' Chamber is used only for the sittings of the House during the Session. There have been, however, a few instances of Durbars being held in the Chamber during the Recess. Attached to the Chamber are a Refreshment Room for the Members, a Library and a Lounge, but no official functions, balls or dances of official character have been held in these rooms either during Recess or Session.

Ceylon.—The Chamber is used for meetings of Standing Committees " A " and " B ", and Select Committees on Bills. The Reception Hall has been often used by Members for dinners given to distinguished Members of other Parliaments, and for retiring Members of the Council. No dances, balls, etc., have so far taken place in the Council Buildings.

It has also been used for the ceremony of administering the Oath to the Governor on his arrival in the Island and for a welcome to him by the Council and for presentation of addresses by public bodies.

British Guiana.—The Council Chamber is also used for the holding of Executive Council meetings and for meetings of Statutory and other committees and boards, and for Levees.

XII. PARLIAMENTARY LIBRARY ADMINISTRATION

By the Editor

The principal article on this subject was dealt with in a previous issue,[1] and an article appeared in our last issue[2] by Mr. Kenneth Binns, librarian of the Parliament of the Commonwealth of Australia, upon "Standards of Training and Qualifications for Parliamentary Librarians."

As information has now been received in regard to Library administration in Parliaments not included in the principal Article, these will now be given.

Southern Rhodesia.[3]—Library Rule 6 was amended by allowing ex-M.P.'s to have the same privilege as M.P.'s in regard to the removal of books during Recess,[4] subject to the £1 deposit. Library Rule 7[5] was amended so as to include the Heads of Public Libraries and Municipalities among those entitled to use the Library.

Indian Central Legislature.—The Library Rules for both Houses of the Central Legislature at New Delhi, as already given in the JOURNAL,[6] have now been amended as follows:

Rule 1 now includes the Officers of the Council of State and the Legislative Assembly among those entitled to use the Library. New Rules have been inserted, making the Library available to the public for study upon production of special written permission from the Secretary of the Library Committee, provided he is satisfied the required documents or books cannot be had elsewhere. Such permission, however, cannot be given when either Chamber is in Session, or one week before and after.[7] The hours during which the Library is open are 10.30 a.m. to 4.30 p.m. on all working days and during Session from 10 a.m. until the adjournment of the House.[8] Rule 4 amends old Rule 2, by which a form has to be filled in when applying for the loan of books or other publications. No book may be loaned to Members during the Recess.[9] Old Rule 4 has been amended by allowing a loaned book to be kept for 14 instead of 7 days, and the Librarian may extend the 14 days' period if the book is not in

[1] *See* JOURNAL, Vol. V, 166-197.
[2] *Ib.* VII, 170-175.
[3] *See also ib.* V, 193.
[4] S. Rhod., VOTES, 1938, 171.
[5] *See* JOURNAL, Vol. V, 193.
[6] Vol. V, 194.
[7] Library Rule 2.
[8] *Ib.* 3.
[9] *Ib.* 6.

demand. No fresh books are issued to a Member so long as he has four books in his possession. A new Rule (8) provides that the Librarian may recall a loaned book at any time if required for any important or urgent purpose. Old Rule 5 has been amended[1] by the addition of directories, atlases, periodicals, serials, rare books, and those of special cost and value or out of print, to those which may not be removed from the Library under any circumstances. No periodicals or magazines may be removed during the first month after receipt.[2] Old Rule 7 as to the marking of books has been made more stringent.[3] A new Rule has been inserted:

> 13. When returning books to the Librarian the Members should make it a point to take back the signed receipts kept in the Library, as they will be held responsible for the books so long as the above vouchers remain with the Librarian.

Smoking in the Library is to be avoided as far as possible.[4] Old Rule 9 has been amended prohibiting strangers if not accompanied by a Member or Officer of either House.[5]

Another new Rule has been inserted:

> 17. The Librarian shall prepare lists of books from time to time, which lists shall be submitted to the Library Committee, who shall recommend purchases when desirable.

Old Rule 10 has been amended by which the opinions of Members of the Library Committee are only *generally* to be followed in regard to the purchase of new books and newspapers.[6]

The last Rule reads:

> 20. The Librarian shall report to the Secretary of the Library Committee any infringement of the foregoing rules. The Secretary may take such action as he may consider necessary or he may bring it to the notice of the Library Committee.

Indian Provincial Legislatures.

Madras.—The old Library Rules[7] have also been amended. New Rules[8] have been inserted requiring each book to be applied for on the printed form given below:

[1] *Ib.* 9. [2] *Ib.* 10. [3] *Ib.* 12. [4] *Ib.* 15.
[5] *Ib.* 16. [6] *Ib.* 18. [7] *See* JOURNAL, Vol. V, 194, 195.
[8] Library Rules 2 and 4.

THE LIBRARY OF THE MADRAS LEGISLATURE

Application for loan of books (vide rule 2).

Name _____

N.B.—Column (1) need not be filled up by applicant.

Register No. of book. (1)	Author. (2)	Title of book. (3)	Period for which taken. (4)

Date _____ (Signature)

Member, Madras Legislative $\frac{Council}{Assembly}$.

Old Rule 2 has been replaced by Rule 3, which requires that books marked in the catalogue should not be removed from the reading room.

Old Rule 5 has been amended by giving the Secretary discretion in regard to loaned books,[1] and Old Rule 7 by requiring[2] the Secretary to recover also the cost of cabling for a lost book. A new Rule[3] empowers the Secretary to recall any book at 24 hours' notice. New Rule 7 is old Rule 8 adapted to the new bicameral legislature.

Bombay.—The Library of both Houses of the Legislature is for the use of their Members, but, with the permission of the Secretary of the Assembly, books may be issued to gazetted officers of the Government.[4] Books are issued between 11 a.m. and 5 p.m. on all working days except Saturdays, when such hours are 11 a.m. to 1 p.m. The Library remains open until the Council or Assembly adjourns.[5] No book may be isssued except upon a printed form of receipt to the Librarian, which must be returned with the book.[6]

Members must return books within 7 days from issue, if issued during a Session of either House, or within 15 days if issued at other times,[7] but a book may be reissued to the same Member if not required by another Member.[8] No fresh book may be issued to a Member who already has a book in possession for longer than the time mentioned in Rule 4.[9]

Rule 5, *see* Madras Rule 5; and Rule 8, *see* Central Legislative Assembly Rule 5.

[1] *Ib.* 4. [2] *Ib.* 6. [3] *Ib.* 5. [4] *Ib.* Library Rule 1.
[5] *Ib.* 2. [6] *Ib.* 3. [7] *Ib.* 4. [8] *Ib.* 6. [9] *Ib.* 7.

Books of reference may only be issued with the previous permission of the Secretary.[1] Members are responsible for the condition of books loaned them and must replace any books lost or damaged,[2] and they may not mark books.[3] Visitors are not allowed in the Library,[4] and silence must be kept therein.[5] A suggestion book is kept.[6] Rule 15 gives a list of local publications, etc., required to be at hand on the Library table.

Bengal.—There is one common Library for the use of the Members of both Houses. The Rules under which it is governed define "Member" as "a Member for the time being of . . .". Book of Reference is defined as a book which by reason of the nature of its contents ought not, in the opinion of the Secretary of the Legislative Assembly, to be removed from the Library, which is open from 11 a.m. to 4 p.m. (Saturdays 2 p.m.) daily except on Sundays and gazetted and other holidays. On sitting days the Library remains open until the House adjourns. Rule 2 also prescribes the duties of Librarian. Books (other than books of reference) are allowed to be borrowed for any period not exceeding 16 days, but no Member may have more than 3 books out at a time; but the Secretary may require that any book, which is in demand, shall be returned within 7 days of the date of issue. Rule 6 requires a Loan Register to be kept. Members may not lend books to strangers.[7] Rule 8 empowers the Secretary to call upon a Member to refund the cost-price of any book borrowed by him which is not returned to the Library within a reasonable time of its issue. Rule 9 provides that a suggestion book shall be kept. Strangers may not have access to the Library. Rule 11 requires the Librarian to see that writing materials are available for Members. Rule 12 gives a list of the publications, etc., which shall be placed on the table in the Library.

Orissa.—The Library Rules of the Legislative Assembly of the new Province of Orissa, in Rule 2 define "Library," "Assembly," "Secretary," "Speaker," "Minister," "signing the Issue Register" and "Suggestion Book"; the two following definitions are given verbatim:

> (*f*) "book" includes book and document, printed or manuscript, picture, map and any other publication of any description belonging to the Library, and may consist of more than one part or volume;

[1] *Ib.* 9. [2] *Ib.* 10. [3] *Ib.* 11. [4] *Ib.* 12.
[5] *Ib.* 13. [6] *Ib.* 14. [7] Rule 7.

(*g*) " book of reference " means any book which by reason of its value or the nature of its contents ought not, in the opinion of the Secretary, to be removed from the Library premises.

The Rules provide that the Library is intended for the use of Members, gazetted officers of the Assembly, Ministers, and other officers gazetted or not gazetted, on days they are required by the Government to attend the meeting of the Assembly.[1] Other persons may only use the Library by permission of Mr. Speaker on the ground that the book in request cannot be found readily elsewhere.[2] The Library is to be open every day on which the Assembly sits from 10.30 a.m. until the adjournment, and on the day preceding and after the Session from 11 a.m. to 3 p.m., except such days be Sundays or holidays.[3] Books (except those of reference) up to 3 may be loaned for one month (but not running into a Session) to Ministers, Members and gazetted officers of the Assembly on written and signed requisition to the Secretary.[4] A book loaned out more than 15 days before a Session shall not be retained after its opening,[5] and one loaned out on every day between 15 days before the Session and 15 days before its termination may not be retained for longer than 15 days.[6] A book may be recalled at any time by the Secretary.[7] And a book may be returned and loaned out again on the same day, except during Session, but a loan-renewal may not be granted more than twice.[8]

Rules 14 and 15 read:

> 14. Reminders for the return of a book or books will be issued to anyone not returning the same in due time at intervals of 15 days, and if a book is not returned within 10 days of the third reminder it will be taken as lost and a bill for its price will be presented for payment to the person concerned.
>
> 15. No further books shall be lent out to one not returning a book in due time until he has returned the same or paid the price thereof.

The Library Rules are subject to additions and alterations by, and may be relaxed in special cases at the discretion of, Mr. Speaker.[9]

[1] Library Rule 3. [2] *Ib.* 4. [3] *Ib.* 5. [4] *Ib.* 6-9. [5] *Ib.* 10.
[6] *Ib.* 11. [7] *Ib.* 12. [8] *Ib.* 13. [9] *Ib.* 16.

XIII.—APPLICATIONS OF PRIVILEGE, 1939

COMPILED BY THE EDITOR

Australia: Victoria.

Newspaper Allegations of Bribery against Members.—On September 5, 1939, in the Legislative Assembly,[1] the Leader of the Opposition drew the attention of Mr. Speaker to an article which appeared in the newspaper *Truth* on September 2, impugning the honour of Parliament and of every Member of that House. The final paragraph of the article read:

> *Truth* is published by a public company which is not in business for the good of its health. Its assets, as you know, are considerable. But if we find it necessary—and we sincerely hope we won't—we will, without hesitation, expose specific cases and the people who are debasing the name of Parliament by these practices. We will claim no privilege in doing so. If the persons we accuse feel that they are unjustly accused, they may avail themselves of the very considerable opportunities for redress that the law affords them.

The Hon. Member continued that the unfortunate fact was that no individual was accused, and therefore no one of them (the Members) could enter a defence, but that they all must do it. The honour of their House was at stake, and he thought the proper person to deal with the accusations was the Premier, to whom he submitted the article, leaving him to take whatever steps he thought necessary to defend their honour.

The Premier replied that he had read the article, and said that if the newspaper knew of anyone who had been guilty of accepting bribes to prevent the passage of certain legislation he invited the newspaper to disclose his name to the House and to the country. It was not quite fair to cast a reflection of that nature on all Members of Parliament.

On November 14, 1939, a Member of the Legislative Council brought to the notice of Mr. President the article above referred to with the heading—"*Truth* will Talk if Money Talks," and addressed, "To the Members of the State Parliament, Melbourne, C. 1." The article referred to the practice known in the Australian vernacular as "rattling the can" in connection with the Money Lender Bill, for which it was stated there was a defence fund and a Bill to amend the Milk Board Act, in connection with which it was stated a "slush fund" of £1,000 had been created for the purpose of influencing the course of legislation through Parliament. Attention of Mr. President was also drawn to another article in the same newspaper on

[1] 208 Vict., Parl. Deb. 2415, 2416.

September 9, on the same subject, of allegations against certain un-named Members.

The Member then moved:

That a Select Committee be appointed to inquire into and report on the following questions, namely:

(*a*) Whether there is any evidence of the truth of the allegations contained in the articles published in the *Truth* newspaper on the 2nd September, 1939, and 9th September, 1939, and headed " *Truth* will talk if money talks," and, " *Truth* ready to take up challenge in the Assembly," respectively.

(*b*) Whether the publication of the said articles, or either of them, constitutes a breach of the privileges of this House, or is in contempt of Parliament; and

(*c*) Whether there has been any breach of the privileges of this House, or a contempt of Parliament, by any person or persons who have committed any of the acts referred to in the said articles.

The Motion was agreed to.[1]

The Committee on Privilege was empowered to such extent as they thought fit to hear counsel on behalf of persons interested. The Committee were also empowered to avail themselves of the assistance of counsel, and under this authority the counsel assigned to the Committee conducted under the direction of the Chairman the examination of witnesses.[2]

In the course of the inquiry the Editor of *Truth* during the examination, when asked by the Committee, refused to state the names of the persons who supplied the information on which the articles complained of were based, and said that the grounds on which he refused were the grounds that every newspaper claims in similar circumstances, namely, that " it would be impossible to perform this public service without safeguarding the confidence of the people who supply us with information."

The Chairman of the Committee (after conferring with the Members) informed the witness as follows: " It is not to be supposed for one moment that because you object to give the information the Committee is powerless to acquire it, but the Committee will consider your objection and deal with the matter later." The Committee, in fact, took no further action.

The Committee requested the attendance of Members of the other House to give evidence by message[3] as follows:

> The Legislative Council request that the Legislative Assembly will give leave to the Honourable A. A. Dunstan (Premier) and

[1] 208 Vict., Purl. Deb. 1937-1955. [2] 208 Vict. Parl. Deb. 2012, 2102.
[3] 208 Vict., Parl. Deb., 2135-2167.

> the Honourable E. J. Hogan (Minister of Agriculture) to attend before the Select Committee of the Legislative Council on Privilege (Articles in *Truth* newspaper), in order to their being examined in regard to the matters referred to the Committee, and to produce any papers and documents in their possession relating thereto.

But the Legislative Assembly did not accede to the request, and adopted the following Resolution[1] on division (AYES 39; NOES 13):

> That this House, being of the opinion that the purpose for which it is proposed in the message from the Legislative Council to examine the Honourable the Premier and the Honourable the Minister of Agriculture before a Committee of that body, contemplates the exercise of a power to interfere with the functions of the Executive not intended by the Constitution to be conferred upon the Legislative Council, and, further, that compliance with such request would involve a serious breach of the privileges of this House and its Members, must refuse its consent to the Honourable the Premier and the Honourable the Minister of Agriculture becoming witnesses as requested.

The Council received the Assembly's reply to their request, but took no further action beyond the consideration of the Assembly message.[2]

The Committee sat on November 16, 20, 21, 22, 23, 24, 27 and 28, and heard 21 witnesses. Thirty-two exhibits were also placed before them.

On November 24, 1939, and before the Committee had completed the hearing of evidence, it was announced that the Government had appointed a Royal Commission to inquire into practically the same matters as had been referred to the Committee. The Committee thereupon made a Progress Report[3] to the House merely stating the facts as to their appointment and the names of the witnesses examined, referring to the appointment of the Royal Commission without commenting thereon, and stating that they had not completed the inquiry or the examination of witnesses. No further meetings of the Committee were held.

A Commissioner was appointed by His Excellency the Governor of the State on November 24, 1939, by Royal Letters Patent, to inquire into and report upon whether in connection with the Money Lenders Bill in 1938 or the Milk Board Bill in 1939 and whether before or after the introduction into Parliament thereof,

> (*a*) any bribe was accepted or agreed to be accepted by any Member of Parliament, and, if so, by whom ?

[1] *See ib.* (2139). [2] *Ib.* 2129-2132. [3] November 28, 1939.

(*b*) any bribe was offered to any Member of Parliament, and, if so, by whom ?

(*c*) any persons entered into any agreement or formed any combination to bribe or to attempt to bribe any Member of Parliament, and, if so, what persons ?

Leave was given Members of both Houses to attend and give evidence before the Commission.[1]

The Commissioner, whose report is dated January 5, 1940, sat in Melbourne on 16 occasions on and between November 27 and December 21, 1939, and 109 witnesses were examined in relation to the Money Lenders Bill and 70 in relation to the Milk Board Bill. In regard to the Money Lenders Bill, the Commissioner made no report that:

(*a*) any bribe was accepted or agreed to be accepted by any Member of Parliament,

(*b*) any bribe was offered to any Member of Parliament,

(*c*) any persons entered into any agreement or formed any combination to bribe any Member of Parliament.

In regard to the Milk Board Bill the Commissioner reported in the same terms as (*a*) and (*b*) of the Money Lenders Bill and concluded his report of the Milk Board Bill by saying—" I do however, report that R. J. Morris, F. Gilles and J. E. Welsh entered into an agreement to bribe Members of Parliament."

The same witness who refused to answer a question before the Select Committee was examined before the Royal Commission, and when the question put to him by the Select Committee as to the source of his information was put to him by the Royal Commission he again refused and gave the same grounds as justification for his refusal. The Royal Commission reported the refusal to the Law officers of the Crown, who took proceedings in the Supreme Court of Victoria, and the witness was found guilty of an offence and a fine of £15 was imposed (December 19, 1939).

Upon appeal to the High Court of Australia, the decision of the Supreme Court was affirmed (February 29, March 1 and April 3, 1940). The High Court held that " there is no special privilege attaching to the proprietor or Editor of a newspaper when giving evidence at a trial entitling him to withhold the sources of the information contained in his newspaper."

Burma.

Publication of " Privileged " Paper.—On Wednesday, September 6, 1939,[2] in the House of Representatives an Hon. Member raised a question of privilege.

[1] 208 Vict., Parl. Deb. 2345, 2379, 2483.

[2] Burma Legislature: Proceedings Vol. VI, No. 8, pp. 592, 593.

When the Minister for Home Affairs laid a copy of the Report of the Secretariat Incident Enquiry Commission on the Table, he remarked that it was for the use of Members, but not for publication at present, and Mr. Speaker, in notifying to Members that copies of the Report had been distributed to Hon. Members at the same time, warned the House that the report was not for publication and that Members should be careful not to divulge its contents. In spite of such warning, the Hon. Member said the *New Light of Burma* had on the second *idem* published an extract from the Report, and on the fourth *idem* commented in a Leader that they had, by certain means, managed to receive a copy of the Report.

After the Minister of Home Affairs had suggested that suitable action be taken, Mr. Speaker said:

> I am sorry to see that a paper of the standing of the *New Light of Burma* should, knowing full well that this Report is not for publication, publish extracts from it. It is clearly stated in the article that they got this Report somehow or other and deliberately proceeded to publish it. There is no question of a mistake having been made. They knew the House had been warned against divulging the contents of this Report to the Press, but still they managed to get a copy of the Report and published extracts, thereby deliberately flouting the orders of this House. This is a very serious matter: the orders of this House have been deliberately flouted by this Press. In these circumstances, I am afraid the only course for this House to adopt is to cancel the permit that has been given to this Press, the *New Light of Burma*, until such time as they tender an apology to the House, and then grant one only on condition that the House accepts that apology. I think that is the only reasonable course to adopt for such infringement of an order of this House. (Applause.)

Incorrect Report of Proceedings of the House.—On Thursday, March 9, 1939,[1] in the House of Representatives, an Hon. Member drew attention to an incorrect report of the Proceedings of the House in the *Sun* newspaper, in that the Motion of an Honourable Member had been withdrawn by permission of the House, when, as a matter of fact, leave to withdraw had been refused and the Motion negatived.

Mr. Speaker thereupon said:

> I hope the *Sun* newspaper will report the Proceedings correctly, and I should like to warn other newspapers also to do likewise, otherwise the unfortunate procedure that I will have to adopt will be not to allow the reporters of those particular newspapers into this House.

[1] *Ib.* Vol. V, No. 17, p. 858.

XIV. LIBRARY OF PARLIAMENT

By the Editor

Vol. I of the JOURNAL contained[1] a list of books suggested as the nucleus of a Statesmen's Reference Collection in the Library of an Oversea Parliament. Volumes II,[2] III,[3] IV,[4] V,[5] VI[6] and VII[7] 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 1939. 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.[8] 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.

Benesh, Edward.—Democracy To-day and To-morrow. (Macmillan. 8*s.* 6*d.*)

Beveridge, Sir William, and Others.—Prices and Wages in England. Vol. I. (Longmans. 31*s.* 6*d.*)

Brooks, Robert R. R.—Unions of their Own Choosing. (Milford. 14*s.*)

Brown, William.—War and Peace. (Black. 5*s.*)

Carr, Edward Hallett.—The Twenty Years' Crisis, 1919-1939. (Macmillan. 10*s.* 6*d.*)

Churchill, Winston S.—Step by Step, 1936-1939. (Thornton Butterworth. 12*s.* 6*d.*)

[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] 212 *et seq.* [8] *See* JOURNAL, Vol. V, 166-197.

Cole, G. H. D., and Raymond Postgate.—The Common People, 1746-1938. (Methuen. 6*s.*)

Crossman, R. H. S.—Government and the Governed. (Christophers. 7*s.* 6*d.*)

Day, J. P.—An Introduction to World Economic History Since the World War. (Macmillan. 3*s.* 6*d.*)

de Kock, M. H.—Central Banking. (P. S. King. 15*s.*)

**Dicey, A. V. (Editor : Dr. Wade)* (9th Ed.).—Introduction to the Study of the Law of the Constitution. (Macmillan. 15*s.*)

Donald, Percy G.—The Paralysis of Trade. (Allen and Unwin. 7*s.* 6*d.*)

Dulles, John Foster.—War, Peace and Change. (Macmillan. 7*s.* 6*d.*)

Einzig, Paul.—World Finance, 1938-39. (Kegan Paul. 12*s.* 6*d.*)

Frankel, S. Herbert.—Capital Investment in Africa. (Milford. 10*s.* 6*d.*)

Francis, E. V.—Britain's Economic Security. (Cape. 12*s.* 6*d.*)

Frazier, E. Franklin.—The Negro Family in the United States. (Cambridge University Press. 20*s.*)

Guillebaud, C. W.—The Economic Recovery of Germany. (Macmillan. 10*s.* 6*d.*)

Hansen, Alvin Harvey.—Full Recovery or Stagnation. (Black. 15*s.*)

Harris, Herbert.—American Labour. (Milford. 17*s.*)

Heald, Stephen (Ed.).—Documents on International Affairs, 1937. (Milford. 42*s.*)

Heilperin, Michael A.—International Monetary Economics. (Longmans. 15*s.*)

Hitler, Adolf (Trans. by *James Murphy*).—Mein Kampf. (Hurst and Blackett. 8*s.* 6*d.*)

Hodson, H. V. (Ed.).—The British Commonwealth and the Future. (Milford. 8*s.* 6*d.*)

Jenks, Leland Hamilton.—The Migration of British Capital to 1875. (Cape. 15*s.*)

**Jennings, W. Ivor.*—Parliament. (Cambridge University Press. 25*s.*)

Joelson, F. S.—Germany's Claim to the Colonies. (Hurst and Blackett. 8*s.* 6*d.*)

Keeton, George W.—National Sovereignty and International Order. (Peace Book Co. 7*s.* 6*d.*)

**Keith, Arthur Berriedale.*—The British Cabinet System, 1830-1938. (Stevens. 15*s.*)

Keynes, John Maynard.—How to Pay for the War. (Macmillan. 1*s.*)

Lindsay, Jack, and Edgell Rickword (Chosen by).—A Handbook of Freedom. (Lawrence and Wishart. 6*s.*)

Lunn, Arnold.—Communism and Socialism. (Eyre and Spottiswoode. 6*s.*)

Macgregor, D. H.—Public Aspects of Finance. (Milford. 5*s.*)

**Marriott, Sir John A. R.*—The Evolution of the British Empire and Commonwealth. (Nicholson and Watson. 12*s.* 6*d.*)

—English Political Institutions (4th Ed.). (Milford. 5*s.*)

Mayer, J. P., and Others.—Political Thought. (Dent. 18*s.*)
**McIlwain, C. H.*—Constitutionalism and the Changing World. (Collected Papers.) (Cambridge University Press. 15*s.*)
Morgan, A. E.—The Needs of Youth. (Milford. 10*s.*)
Mousley, Edward.—Man or Leviathan? (Allen and Unwin. 15*s.*)
Murry, Middleton J.—The Defence of Democracy. (Cape. 10*s.* 6*d.*)

Nichols, Jeannette P., and Ray F. Nichols.—The Growth of American Democracy: Political. (Appleton-Century. 16*s.*)
Nicolson, Harold.—Diplomacy. (Thornton Butterworth. 5*s.*)

Oakeshott, Michael.—The Social and Political Doctrines of Contemporary Europe. (Cambridge University Press. 10*s.* 6*d.*)

Parkes, James.—The Jewish Problem in the Modern World. (Thornton Butterworth. 2*s.* 6*d.*)
**Phillips, C. Hood.*—The Principles of the English Law and the Constitution. (Sweet and Maxwell. 21*s.*)

Radhakrishnan, S.—Eastern Religion and Western Thought. (Milford. 15*s.*)
Reddaway, W. B.—The Economics of a Declining Population. (Allen and Unwin. 8*s.* 6*d.*)
Robbins, Lionel.—The Economic Causes of War. (Cape. 5*s.*)
Roth, Cecil (Ed.).—Anglo-Jewish Letters, 1158-1917. (Soncino Press. 12*s.* 6*d.*)
Royal Institute of International Affairs.—South-Eastern Europe. (5*s.*)

Salter, Sir Arthur.—Security? Can we Retrieve it? (Macmillan 8*s.* 6*d.*)
Schmidt, Carl T.—The Corporate State in Action. (Gollancz. 4*s.* 6*d.*)
Smellie, K. B.—Reason in Politics. (Duckworth. 12*s.* 6*d.*)
Spearman, Diana.—Modern Dictatorship. (Cape. 10*s.* 6*d.*)
Steer, G. L.—Judgment on German Africa. (Hodder and Stoughton. 12*s.* 6*d.*)
Stewart, W. D.—Dictatorship or Democracy? (P. S. King. 7*s.* 6*d.*)
Study Group of Royal Institute of International Affairs.—Political and Strategic Interests of the United Kingdom. (Milford. 7*s.* 6*d.*)
Sturzo, Luigi.—Politics and Morality. (Burns Oates and Washbourne. 7*s.* 6*d.*)

**Thomas, J. A.*—The House of Commons, 1832-1901. (Milford. 7*s.* 6*d.*)

Utley, Freda.—China at War. (Faber and Faber. 12*s.* 6*d.*)

Varadarajan, M. K.—The Indian States and Federation. (Milford. 12*s.* 6*d.*)
Villiers, Marjorie.—The Grand Whiggery. (John Murray. 16*s.*)

Wells, H. G.—The Fate of *Homo sapiens.* (Secker and Warburg. 7*s.* 6*d.*)
Williams, Basil.—The Whig Supremacy, 1714-1760. (Milford. 12*s.* 6*d.*)

XV. LIBRARY OF "THE CLERK OF THE HOUSE"

By the Editor

The Clerk of either House of Parliament, as the "Permanent Head of his Department" and the technical adviser to successive Presidents, Speakers, Chairmen of Committees and Members of Parliament generally, naturally requires an easy and rapid access to those books and records more closely connected with his work. Some of his works of reference, such as a complete set of the Journals of the Lords and Commons, the Reports of the Debates and the Statutes of the Imperial Parliament, are usually more conveniently situated in a central Library of Parliament. The same applies also to many other works of more historical Parliamentary interest. Volume I of the JOURNAL contained[1] a list of books suggested as the nucleus of the Library of the "Clerk of a House," including books of more particular usefulness to him in the course of his work and which could also be available during Recess, when he usually has leisure to conduct research into such problems in Parliamentary practice as have actually arisen or occurred to him during Session, or which are likely to present themselves for decision in the future.

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] VI[8] and VII[9] gave lists of works published during the respective years. A list of books for such a Library, published in 1939, wili be found "starred" in the previous Article (XIV).

[1] 123-126. [2] 137, 138. [3] 153-154. [4] 223.
[5] 133. [6] 152-154. [7] 222, 223. [8] 243, 244.
[9] 212 *et seq.*

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 article (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[1] 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.

JOINT PRESIDENTS.[2]

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Dr. Arthur Beauchesne, C.M.G., K.C., M.A., LL.D., Litt.D., F.R.S.C.

[1] His official title is "Clerk of the Parliaments." In some of the Oversea Parliaments, however, the style of "Clerk of the Parliaments" has been attached to the Clerk of that House, who is senior in service. In the Letters Patent appointing him, the Clerk of the House of Commons is still called the "Under Clerk of the Parliaments," although he is known as "Clerk of the House of Commons." *See also* JOURNAL, Vols. I, 15-16, and II, 22-29.—[Ed.]

[2] Appointed under Rule 6, hitherto held in abeyance.

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Indian Empire.

British India.

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Mian Muhammad Rafi,* B.A., Secretary of the Legislative Assembly, New Delhi.

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N. K. Chainani, Esq., I.C.S., Secretary of the Legislative Council, Poona, Bombay.

V. N. Sardesai, Esq., I.C.S., Secretary of the Legislative Assembly, Poona, Bombay.

Dr. S. K. D. Gupta, Secretary of the Legislative Council, Calcutta, Bengal.

S. A. E. Hussain, Esq.,* B.A., B.L., Assistant Secretary of the Legislative Council, Calcutta, Bengal.

T. M. Paul, Esq., Second Assistant Secretary and Registrar of the Legislative Council, Calcutta, Bengal.

K. Ali Afzal, Esq.,* Secretary of the Legislative Assembly, Calcutta, Bengal.

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Indian States.

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Honorary Secretary-Treasurer and Editor : E. M. O. Clough.

* Barrister-at-law or Advocate.

XVII. 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.*

Afzal, K. Ali.—Secretary of the Bengal Legislative Assembly; *b.* August 19, 1902; *s.* of the late Khondkar Fazl Rubbee, and descends from one of the most ancient families in Bengal possessing Sanads granted by successive Subedars or Governors of Bengal for the last 300 years. During the Muhammadan Rule and the early days of the East India Company in Bengal, Mr. Afzal's family held high and responsible offices, particularly in the Judicial Branch of the Administration; *ed.* Hastings House School Alipur (Calcutta), St. Xavier's Coll., Calcutta, and University Coll., London; called to the Bar by the Middle Temple, January, 1926, and read in the Chamber of Sir Gilbert Stone; practised for some time at the Bar of the Judicial Committee of the Privy Council; joined the Allahabad High Court, 1930; Assistant-Secretary Bengal Legislative Council, 1933; Secretary of the Bengal Legislative Assembly, 1937, and organized the newly-formed Assembly Department; Returning Officer at the Election of the Members of the Bengal Legislative Council, 1937. Commissioner to administer the Oath of Allegiance to the Members of the Assembly; has travelled extensively in Britain, France, Germany, Italy, India and Ceylon, and has visited Albania, Yugoslavia, Greece, Switzerland, Turkey and Egypt, and lived for 6 months in Arabia; studied social services at Oxford House and St. George's Jewish Settlement, London.

Bhatnagar, Rai Sahab Kailash Chandra, M.A.—Secretary of the Legislative Council of the United Provinces, India, and Assistant Sectetary to the Government of the Province on creation of this office; May 5, 1937, the Secretaryship of such Council being *ex officio*; was previously temporary Superintendent in the United Provinces Secretariat; officiated as

Secretary of the Legislative Assembly, April 28 to December 27, 1939.

Dalziel, W. W., I.C.S., B.A. (Oxon).—Secretary of the Legislative Assembly of the Province of Orissa, India; *b.* October 5, 1900; Barrister-at-Law; Indian Civil Service (Inferior Scale), December 7, 1924; Settlement Officer on training, Dumka, October 14, 1925; in charge of Sub-Division, Dhalbhum (Singbhum), March 21, 1926; Assistant Settlement Officer, Cuttack, November 16, 1927, to February 7, 1929, when appointed Settlement Officer there until April 28, 1932, when appointed Judicial Commissioner, Ranchi; District and Sessional Judge, Manbhum-Sambalpur, Purulia, November 2, 1932; District and Sessional Judge, Monghyr, January 3, 1933; Additional District Magistrate (Temporary), Monghyr, January 31, 1934; District and Sessional Judge, Purulia, April 12 (November 13), 1934; attached Legislative Department, Government of India, Simla, April 23, 1935; District and Sessional Judge, Manbhum-Singbhum, Purulia, October 31, 1935; services placed at disposal of Government of Orissa; District and Sessional Judge, Ganjum-Puri, Berhampur, October 25, 1938; Special Officer, Law, Commerce and Labour Department, Cuttack, November 3, 1938; Secretary to Government Revenue and Development Department (Temporary), April 11, 1939; Special Officer, Law, Commerce and Labour Department, Cuttack, November 15, 1939; and Secretary in such Department and Legislative Assembly Department, January 2, 1940.

Louw, J. W.—Clerk-Assistant of the Legislative Assembly, South-West Africa; *b.* Nieuwoudtville, Cape Province, July 2, 1920; provisionally appointed to the Union Public Service in the office of the Clerk of the Legislative Assembly, Windhoek, July, 1939.

Parker, J. M.—Clerk of the Legislative Assembly of the Province of Saskatchewan, Canada; *b.* August 18, 1882, at Watford, Ontario; *s.* of William Parker, Canadian, and Sarah Taylor, his wife, English; *ed.* Watford, Ontario; came west to Saskatchewan in 1907 and farmed in the Kelliher district; represented the Constituency of Touchwood in the Legislative Assembly of Saskatchewan from 1917 to 1938; Speaker of the Legislature from 1934 to 1938; *m.* December 2, 1903, Mary Elizabeth, daughter of Abraham Saunders, of Watford, Ontario; appointed to present position December 16, 1939; address: 1534, Robinson Street, Regina, Saskatchewan, Canada.

Yusoof, S. Anwar.—Secretary of the Legislature of the Province of Bihar, India; called to the Bar (Middle Temple), 1912, and practised in the High Court at Fort William, Bengal, and the High Court at Patna; Assistant Secretary to the Bihar and Orissa Legislative Council, and Assistant Secretary to the Governments in the Legislative Department, 1924; acted as Secretary to such Council and Deputy Secretary to the Government in the Legislative Department, 1926 and 1928; served on a Deputation to India in the Legislative Department, 1929; Secretary of the Legislative Council of Bihar and Orissa, 1931-1937; also officiated as Deputy Secretary to the Government in the Legislative Department, 1934; and appointed Secretary of the Bihar Legislature (*i.e.*, combined office of Legislative Council and Legislative Assembly), June 1, 1937. (*Revised notice from Volume* II.)

XVIII. STATEMENT OF ACCOUNT AND AUDITOR'S REPORT, 1939-1940

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 VII.

The Statement of Account covers a period from 1st September, 1939, to 31st August, 1940. 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 VIII, 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 VII	89	11	11
Due to the Treasurer for postage	1	3	6
	90	15	5

Against this there is due and in hand: –

	£	s.	d.
For Subscriptions	21	0	0
For Parliamentary Grants	10	0	0
In hand		15	11
	31	15	11

CECIL KILPIN,
Chartered Accountant (S.A.).

SUN BUILDING,
CAPE TOWN,
4th September, 1940.

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

STATEMENT OF ACCOUNT FOR THE PERIOD FROM 1ST SEPTEMBER, 1939, TO 31ST AUGUST, 1940.

REVENUE.	£ s. d.	£ s. d.
Balance as at 31st August, 1939, being excess of Income over Expenditure at that date		0 19 11
Parliamentary Grants:		
Province of Nova Scotia	10 0 0	
Commonwealth of Australia	10 0 0	
State of New South Wales	5 0 0	
State of Western Australia	5 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	5 0 0	
Province of Transvaal (Vols. VI and VII)	10 0 0	
Southern Rhodesia	10 0 0	
		80 0 0
Subscriptions:		
Volumes I to VII, both inclusive		84 5 6
Sales:		
Volumes I to VII, both inclusive		24 6 0
		£189 11 5

EXPENDITURE.	£ s. d.	£ s. d.
Volume VII for 1938:		
Postage and Telephone	13 10 7	
Bank Charges	0 11 9	
Cables and Telegraphic Address	6 3 9	
Publications and Newspapers	16 15 0	
Typing and Clerical Assistance and Roneoing	57 4 2	
Printing and Publishing Volume VII on account	35 14 2	
Printing and Publishing balance Volume VI	25 0 0	
Stationery	10 17 0	
Travelling Expenses and Carriage	9 18 7	
Office cleaners	0 12 0	
Gratuities to Messengers	3 15 0	
Audit Fee	3 3 0	
Insurance	5 10 6	
		188 15 6
Cash Balance, being Excess of Receipts over Expenditure		0 15 11
		£189 11 5

OWEN CLOUGH
Honorary Secretary-Treasurer and Editor.

Countersigned:
MAURICE J. GREEN,
Clerk of the Senate.
RALPH KILPIN,
Acting 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.

4th September, 1940.

INDEX TO SUBJECTS DEALT WITH IN EARLIER VOLUMES

NOTE.—*The Roman numeral gives the Volume and the Arabic numeral the Page.*

S.R. = Speaker's Ruling. Amdts. = Amendments. Sel. Com. = Select Committee.

[1] *See also* "Australian States."

[2] For names of, *see* Table facing Contents, p. ii.

[3] *See also* Vol. V. 111-118.

[1] *See* "India," Constitution (1935) for provisions not dealt with here.
[2] *See also* "Canadian Provinces."
[3] For names of, *see* Table facing Contents, p. ii.

[1] *See also* "Indian Provinces."
[2] For names of, *see* Table facing Contents, p. ii.

[1] These, both large and small, number 585, of which 149 are major and 436 non-salute States.

[2] *See also* "Irish Free State."

[3] *See also* "Ireland."

[1] For Provinces of, *see* Table facing Contents, p. ii.

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