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

EDITED BY
OWEN CLOUGH, C.M.G.

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

VOL. IX

FOR 1940

LONDON:
BUTTERWORTH & CO. (PUBLISHERS), LTD.
BELL YARD, TEMPLE BAR

SYDNEY: MELBOURNE:	BUTTERWORTH & CO. (AUSTRALIA), LTD
CALCUTTA: MADRAS: BOMBAY:	BUTTERWORTH & CO. (INDIA), LTD.
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WELLINGTON (N.Z.):	BUTTERWORTH & CO. (AUSTRALIA), LTD.
DURBAN:	BUTTERWORTH & CO. (AFRICA), LTD

1941
[Registered at Stationers' Hall]

Parliament.	Jan.	Feb.	Mar.	April.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
United Kingdom		*	*	*	*	*	*				*	*
Canadian Dominion	*	*	*	*	*							
Canadian Provinces: Ontario		*	*									
Canadian Provinces: Quebec	*	*	*									*
Canadian Provinces: Nova Scotia			*	*								
Canadian Provinces: New Brunswick		*	*	*								
Canadian Provinces: Manitoba		*	*	*								
Canadian Provinces: British Columbia										*	*	*
Canadian Provinces: Prince Edward Island			*	*								
Canadian Provinces: Saskatchewan	*	*	*									*
Canadian Provinces: Alberta		*	*	*								
Australian Commonwealth			*	*	*		*		*	*	*	*
Australian States: New South Wales					*	*	*	*	*	*	*	*
Australian States: Queensland					*	*	*	*	*	*	*	*
Australian States: South Australia							*	*	*	*	*	*
Australian States: Tasmania							*	*	*	*	*	*
Australian States: Victoria							*	*	*	*	*	*
Australian States: Western Australia							*	*	*	*	*	*
New Zealand						*	*	*	*	*		
Union of South Africa	*	*	*	*	*	*	*					
Union Provinces: Cape of Good Hope		*			*				*			
Union Provinces: Natal			*	*	*	*						
Union Provinces: Transvaal			*	*	*							
Union Provinces: Orange Free State			*				*					
South-West Africa			*	*	*							
Ireland (Eire)	*	*	*	*	*	*	*			*	*	*
Southern Rhodesia			*	*	*					*		
Indian Central	*	*	*	*				*	*	*		
Governor's Provinces: Madras	*	*	*					*				
Governor's Provinces: Bombay		*	*			*			*	*		
Governor's Provinces: Bengal			*	*				*	*			
Governor's Provinces: United Provinces	*	*	*	*					*	*	*	*
Governor's Provinces: The Punjab		*	*				*		*		*	
Governor's Provinces: Bihar	*	*	*					*	*			
Governor's Provinces: Central Provinces and Berar	*	*	*					*				
Governor's Provinces: Assam		*	*	*					*	*		
Governor's Provinces: North-West Frontier			*							*	*	
Governor's Provinces: Orissa		*	*					*	*			
Governor's Provinces: Sind		*	*					*	*			
Indian States: Hyderabad												
Indian States: Mysore	*					*				*		
Indian States: Jammu and Kashmir			*	*					*	*		
Indian States: Gwalior												
Indian States: Baroda	*Four quarterly Sessions: specific months not fixed*											
Burma		*	*					*	*			
Bermuda												
Ceylon	*	*	*		*	*	*	*	*	*	*	*
British Guiana				*	*	*				*	*	*
Jamaica												
Straits Settlements	*			*		*		*		*	*	*

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Journal
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VOL. IX. FOR 1940

ENEMY BOMBING OF MOTHER OF PARLIAMENTS

UPON news reaching us of the particularly disastrous bombing of the Houses of Parliament and Westminster Hall on Saturday, May 10, 1941, resulting practically in the destruction of the Commons Chamber by enemy action, the following cable was addressed to the Speaker of the House of Commons on May 13 by the Honorary Secretary of our Society, on behalf of its members in various parts of the Empire:

> Speaker, House of Commons,
> London.
>
> Members Society of Clerks-at-the-Table in Empire Parliaments ask you convey House of Commons deepest sympathies in dastardly bombing Mother of Parliaments. Love for free Parliamentary institutions, however, will thereby only be more deeply established and continue when totalitarianism mere blot on history.—CLOUGH.

To which the Speaker of the House of Commons graciously replied:

> Clough,
> Society of Clerks-at-the-Table,
> Cape Town.
>
> Your telegram of sympathy on bombing of House of Commons is much appreciated. Please accept my grateful thanks.
> A. A. FITZ ROY, *Speaker.*

Our Society desires to express its deepest sympathies with the widows and families of those officials of Parliament who lost their lives in the execution of their duty.

I. EDITORIAL

Introduction to Volume IX.—A.D. 1940, the year under review in this issue, marks a further phase of the War in its particular relation to Parliament and its Members, such as the use of the Secret Session, the discouragement of general elections, the effect of the War upon the duties of Ministers and M.P.s, the Active Service franchise, the desire for war *Hansards*, and, in the United Kingdom, what is known as " the Ramsay Case". The Report from the Select Committee of the House of Commons on the conduct of a Member,[1] which, although dealing with Privilege, is in another category, will be dealt with in Volume X, its publication occurring early in 1941. Since the appearance of that Report there have been various references in that House to the subject.

Owing to war delays in inter-Empire communications, although the JOURNAL has gone to press earlier this year, its publication has been considerably delayed. These delays have also involved the postponement of the Article on Rulings of the Speaker of the House of Commons in 1940, which will appear, as one article, with the Speaker's Rulings of the previous year, in Volume X. War economies and the necessity for space for those subjects of more direct interest to our readers have caused the omission of the usual list of new books for Libraries of Parliament, but that of the Library of the " Clerk of the House " has been retained. The Rules, or Constitution of the Society, have also been left out and will be available in leaflet form to new members.

The main body of this issue, in addition to " the Ramsay Case ", contains Articles on the Reports from the Select Committee of the House of Commons on National Expenditure, which reveal a more active spirit on the part of the Private Member in regard to economy in administration and war expenditure. Another series of Reports from a Select Committee of that House, dealing with Parliamentary Publications and Debates, affords a further example of the interest of the Private Member in the desire for the utmost economy in public expenditure. In fact, the striking feature of Parliamentary government at Westminster during the year under review is the growing activity of the Private Member as well as the more ready ear of the Executive to his suggestions and criticisms. This may be the result of the practical disappearance of an Opposition in the combination of all Parties in their great effort to win the War. Another old practice has been assailed in the appointment, since

[1] H.C. Paper 172 of 1940 and 5 of 1941.

September 3, 1939 and during " the present war period " of M.P.s to " Offices of Profit " and of Ministers of the Crown to official appointments abroad as well as within the British Empire without being disqualified from membership of the House of Commons. This has been validated by the House of Commons Disqualification (Temporary Provisions) Act,[1] which, however, does not apply to a scheduled office under the Re-election of Ministers Act, 1919,[2] or a judicial office. The Prime Minister has already certified[3] appointments under the Act in respect of a Governorship in the B.B.C., and the U.K. High Commission in Canada.

In Canada, during the year under review, one of the most absorbing questions, almost next to the prosecution of the War itself, has been the publication of the Report from the Royal Commission on Dominion-Provincial Relations and the subsequent Provincial reaction to it, which is also the subject of an Article in this issue.

Further Constitutional reforms have also taken place in the Indian States.

An Article on Law-making in the Burma Legislature, under its new Constitution, shows how Parliamentary institutions are being established in His Majesty's Far Eastern possessions. Other subjects dealt with under " Editorial " are the inherited constitutional right of *Habeas Corpus*, which has arisen in Eire, the delay in the operation of Federation in India, etc. Further information is also given as to the Amalgamation of the Rhodesias and Nyasaland, some of which is supplementary to what was reported in our last issue,[4] and the subject of the control of expenditure has been noticed in the Parliament of the Union.

We are also pleased to be able to include references to amendments to Standing Orders in various Parliaments.

Acknowledgments to Contributors.—We have pleasure in acknowledging Articles for this volume: by Mr. R. A. Broinowski, the Clerk of the Commonwealth Senate, Mr. Ralph Kilpin, the new Clerk of the Union House of Assembly, and by U. Ba Dun, the Secretary of the Burma House of Representatives. We are also indebted to the Rt. Hon. Sir Akbar Hydari, the Prime Minister to H.E.H. the Nizam of Hyderabad, for much valuable and interesting information upon Constitutional Reforms in India's premier state, and to Mr. S. A. Kamtekar, Secretary to the Dhara Sabha of Baroda State, for his contributing paragraphs

[1] 4 and 5 Geo. VI, c. 8. [2] 9 and 10 Geo. V, c. 2.

[3] The form of certificate being—that the appointment of . . . to . . . is required in the public interest for the purposes connected with the prosecution of the present war.

[4] *See* JOURNAL. Vol. VIII, 54-60.

to the " Editorial " upon constitutional reforms in that State. Indeed, contributing paragraphs to our " Editorial " in form ready for publication by other members of the Society are always welcome, not only because they lighten the duty of the Editor, but on account of their contribution being from " the man on the spot ".

It would, however, be invidious to make mention of particular members of the Society in regard to the matter which has been sent in.

Questionnaire for Volume IX.—The *Questionnaire* for this Volume contained IX items, most of which were perennials dealing with automatic information. In regard to item VII thereof, " Parliamentary Secretaries ", and to item XV of the *Questionnaire* for Volume VII on " Dissolutions ", these have had to be postponed for our next issue, when it is hoped also to catch up some of the other outstanding subjects for treatment in the JOURNAL which have had to make way for more current matter.

E. W. Kannangara, O.B.E., B.A.—Mr. Kannangara, the Clerk of the State Council of Ceylon and Secretary to the Board of Ministers, retired from office on September 25, 1940, upon his transfer and promotion in the Ceylon Civil Service to the position of Commissioner of Local Government. During the debate in the Committee stage of the Budget on September 13, 1940, Mr. R. M. A. Ratnayaki (Dumbara) referred to the transfer of their very efficient Clerk of the State Council, and on September 25 of that year Mr. Speaker (Hon. Sir W. Duraiswamy), on behalf of the Council, testified to the zeal and ability with which Mr. Kannangara had discharged his duties during the past 7 years, and to his invariable courtesy and intimate knowledge of Parliamentary procedure, which had greatly contributed to the smooth conduct of the business of the Council. Mr. Speaker cordially wished Mr. Kannangara every success and happiness in his new sphere of work. The Leader of the State Council (Hon. Sir D. B. Jayatilaka) then associated the House with Mr. Speaker in his appreciation.

In a note which Mr. Kannangara had placed before Mr. Speaker, the retiring Clerk thanked the Leader of the House and Members for the kind references made to him.

On the same day, at a farewell luncheon given by the Members of the State Council, the Leader of the House said it would be difficult to imagine the State Council without Mr. Kannangara in his chair at the Table, where he had discharged the duties of his office most loyally and to the entire satisfaction of the Members of the Council, as their guide, philosopher and friend. While

they regretted his departure they all congratulated him upon his new appointment, and also the Ministry of Local Administration upon securing Mr. Kannangara's services. It would be difficult for them, for some time, to accustom themselves to carrying on the work of the Council without his presence. The Leader of the House then formally conveyed to Mr. Kannangara, on behalf of Members, their expression of regret at his departure from their midst, and their congratulations on his new appointment, together with their best wishes for a very successful career in the Service.

In support of the Leader, Mr. E. C. de Villiers (*Nom.*) said he could not think of anybody else showing more tact and impartiality in the discharge of his duties than Mr. Kannangara.

The toast to the retiring Clerk of the State Council was then drunk in the usual manner.

In commenting upon Mr. Kannangara's retirement, the *Times of Ceylon*, in their issue of September 12, said that Parliamentary traditions were created by personality, and that the State Council had been fortunate in having as its Clerk, in the formation of its Parliamentary traditions, a man of real personality who had proved himself no mere official in his responsible office, to which he had brought a degree of tact, dignity and good humour which had sped the work of the Council. Mr. Kannangara was an official with a firm grasp of essentials combined with a fine appreciation of what was due to the Council as well as the public.

The Press also gave Mr. Kannangara a farewell dinner.

We wish also to testify as to Mr. Kannangara's zeal and usefulness as a member of this Society. He always kept us well and fully informed as to matters of constitutional and Parliamentary interest which have taken place in the Island from year to year. We wish him every success in his new appointment, good health, and every happiness.

In the 1941 New Year's Honours List, Mr. Kannangara was appointed an Officer of the Most Excellent Order of the British Empire.

Nair, Diwan Bahadur C. Govindan, C.I.E., B.A., LL.B.—Diwan Bahadur Nair, the Secretary of the Legislative Assembly of the Orissa Province of India, retired from office and from the service of the Crown in 1939. He joined the Government service as District Munsiff, Madras, in 1910, and subsequently served as Sub-Judge, Assistant Sessions, District and Sessions and Special Sessions Judge, Pudukkotai Durbar; after which he became Assistant Secretary, Law Department, Under Secretary, Law Drafting Department, and Joint Secretary of the Law and Education Department in Madras, from which he was appointed

Deputy Secretary to the Government of India Legislative Department. Diwan Bahadur Nair also acted as Secretary to the Government of India Drugs Enquiry Committee and Joint Secretary to the Government of Bihar and Orissa Reforms Department. He was a Member of the Madras Legislative Council and the Legislative Assembly (Central), and of the Council of State at different times, of which Council he was for some time Secretary. Since April, 1936, he has served the new Government of Orissa as Secretary, Law and Commerce Department, and Legal Remembrancer to the Government, and was Ex-officio Secretary to the Advisory Council, after which he was appointed Secretary to the Legislative Assembly. The Diwan, who is a Barrister-at-Law (England), where he passed First Class in all preliminary examinations and headed the First Class List in the Bar Final, is the author of a Commentary on the Malabar Tenancy Act and an elected member of the Madras University, representing the Registered Graduates Constituency. He also served as Examiner for the M.L. Degree Examination in that University from 1924 to 1936.

For his services in Madras he was invested with the title of Diwan Bahadur in 1936, and in 1939 for his services in Orissa a Companionship of the Most Eminent Order of the Indian Empire was conferred upon him.

The Diwan Bahadur became a member of this Society in 1937, being the first appointment to the Secretaryship of the Orissa Legislative Assembly, when the new Constitution for India came into force in that year. He was a most ardent member of our Society, lending his full co-operation throughout his membership.

We wish Diwan Bahadur Nair good health and every happiness in his retirement, where he will not be inactive, for he has accepted the Commissionership of Hindu Religious Endowments of Orissa and that organization is to be congratulated upon obtaining the services of such a competent and distinguished official.

D. H. Visser, J.P.—Mr. Visser, one of the foundation members of this Society, retired from the Clerkship of the Union House of Assembly towards the end of 1940, after an official service, first in the Public and later in the Parliamentary Service, of 46 years. Most of his former service was in the Magisterial Department of the Law Department under the Colonial Government of the Cape of Good Hope, which he joined in 1894 (obtaining in 1899 the Cape Civil Service Law Certificate), and served at various places until 1902, when he became A.R.M., Hopetown, and acted as C.C. and R.M. in 1903, and A.R.M., Worcester, in 1905, in which year he became Revenue Clerk at the Cape. In 1907 he joined the staff of the Cape House of

Assembly as Clerk-Assistant, which position he continued to hold after Union in 1910, until 1920, when he succeeded to the Clerk's Chair at the Table of the Union House of Assembly upon the promotion of the Clerk to the Administratorship of South-West Africa.

On May 14, 1940, the Prime Minister of the Union (General the Rt. Hon. J. C. Smuts), in moving the following Motion in the Union House of Assembly:

> That in view of his pending retirement this House desires to place on record its appreciation of the distinguished services which Mr. Daniel Hendrik Visser has rendered as an officer of Parliament since 1907,

said that it was right for the House to express its appreciation of the long and excellent services which Mr. Visser had rendered to the House of Assembly. They appreciated the courtesy, the willingness to assist and to give help, as well as the efficiency with which Mr. Visser had always performed his duty. Impartial in every respect, he was a help and adviser to all hon. Members of the House. Mr. Visser had strengthened an old tradition and built up a tradition which would be of great value in the years to come.

The hon. Member for Winburg (Dr. N. J. van der Merwe), on behalf of the Opposition, in seconding the Motion, remarked upon the extraordinary loyalty to duty with which Mr. Visser ha always carried out his work. The hon. Member wished fror his side of the House to express their deep appreciation of th impartiality and competency of their retiring Clerk and the tact and courtesy with which he had always treated them.

The Minister of Labour (The Hon. W. B. Madeley), who had been associated as a Member of the House with Mr. Visser for over 30 years, also paid tribute to the tremendous value of the services Mr. Visser had rendered to their Parliamentary institutions. Mr. Visser not only carried with him their respect but their positive affection, and their hope that his life would be a long and happy one.

The Motion was then put and unanimously agreed to.

Mr. Speaker (Dr. the Hon. E. G. Jansen) then said:

> Mr. Visser asks me to convey to hon. Members his sincere thanks and appreciation of the resolution and of the spirit in which it has been passed. He values it very highly. I should like to make use of this opportunity to express my appreciation also of the services rendered to this House by Mr. Visser. During the twelve years in which I have occupied the Speaker's Chair, I have always found that he performed his duty as Clerk of the House with devoted thoroughness. My co-operation with him has always been of the closest and most pleasant nature. From the beginning of my Speakership,

> he has been a true helper, adviser and friend to me, and his kindly assistance and advice will be greatly missed. I wish to add my good wishes for him and Mrs. Visser to those of hon. Members, and to express the hope that he may be spared many years in which to enjoy the rest which he so thoroughly deserves.

On May 14, the last day of the Session, at a private meeting in the conference room at the House of Assembly, at which the Prime Minister and other M.P.s were present, Mr. Visser had the opportunity of thanking the Members directly, and at the same time of taking personal leave of them. Mr. Speaker, on behalf of the Members of the House of Assembly, presented Mr. Visser with a stinkwood display cabinet as a token of their gratitude and goodwill, and said that all Members appreciated the ability with which he had conducted the high office he had held for a long period, and also thanked him personally for the help he had rendered himself as Speaker.

At a later date Mr. Visser was the recipient of a handsome marble table lamp, presented, in the absence of Mr. Speaker, by Major G. B. van Zyl, M.P., Chairman of Committees in the House of Assembly, from the Clerk's Staff and the Joint Parliamentary establishment.

The Messengers of the House presented the retiring Clerk with a silver-mounted walking-stick, with inscription, and the House of Assembly Cleaner Staff with a pipe.

The writer of this appreciation had the pleasure of being Mr. Visser's " opposite number " in the Union Parliament for nearly 10 years, and can testify to his many personal qualities. He was also a keen upholder of Parliamentary tradition and a good colleague. We wish him long life and good health in his well-earned retirement.

Honours.—On behalf of their fellow-members, we wish to congratulate the undermentioned members and retired members of our Society whose names were included in the 1941 New Year's Honours List:

C.I.E.—The Hon. W. Shavex, A. Lal, M.A., LL.B· *Secretary of the India Council of State.*

C.B.E.—E. L. Petrocochino, *formerly Clerk of the Senate and of the Legislative Assembly, Malta.*

O.B.E.—E. W. Kannangara, B.A., C.C.S., *formerly Clerk of the State Council of Ceylon*; and

O.B.E.—K. N. Majumdar, M.A., *formerly Secretary of the Bengal Legislative Council.*

United Kingdom (Regency Act).[1]—With reference to the Article in a previous issue[2] on this subject, on May 5, 1939, His

[1] 1 Edw. VIII and 1 Geo. VI, c. 16. [2] *See* JOURNAL, Vol. VI, 89-96.

Majesty the King directed the issue of Letters Patent and the Great Seal of the Realm, appointing 5 Counsellors of State and delegating to them a number of functions during his absence abroad. Although Her Majesty the Queen would be away with the King in Canada, she was named, in accordance with the provisions of the Act, as one of such Counsellors, the others being T.R.H. the Dukes of Gloucester and Kent, T.R.H. the Princess Royal and the Princess Arthur of Connaught.[1]

United Kingdom (Prolongation of Parliament).—An Act[2] was passed towards the end of 1940, amending Section 7 of the Parliament Act, 1911,[3] in its application to the present Parliament, by substituting 6 years for 5 years, thereby extending the life of the present (XXXVII) Parliament to November 25, 1941. The then existing electoral register remains in force.

United Kingdom (Ministers to sleep at Offices).—On July 18, 1940,[4] a Question was asked in the House of Commons what arrangement the Prime Minister (Rt. Hon. Winston Churchill) had made to ensure facilities of immediate consultation between himself and the Secretary of State for Foreign Affairs, to which he replied that he had asked Ministers whose duties were intimately connected with the conduct of the War to arrange as soon as possible to sleep in their offices at the centre of Government They certainly should not be obliged to incur expense. Full regard would be paid to economy in all the arrangements made, and the details would be subject to examination by the Public Accounts Committee.

A Supplementary was then asked as to whether the Prime Minister did not think it advisable for the Secretary of State for Foreign Affairs to be established at No. 11 (Downing Street), to which the Prime Minister replied that any suggestion falling from the hon. Member would receive attention.

United Kingdom (No E.P. Tax on Ministers' Salaries).—On June 11, 1940,[5] a Question was asked the Chancellor of the Exchequer (Rt. Hon. Sir Kingsley Wood), whether the imposition of the 100 p.c. Excess Profits Tax would be applied to M.P.s whose income was increased on appointment to Government and other posts, to which Sir Kingsley Wood replied in the negative. When asked by Supplementary if the Chancellor would tell the House why, Sir Kingsley Wood said—because being an M.P. was not a trade or business within the meaning of the Act.

[1] *The Times*, May 6, 1939.
[2] 3 and 4 Geo. VI, c. 53; 365 H.C. Deb. 5 s. 1059-1094. *See also* 6 and 7 Geo. V. c. 44 and 8 and 9 Geo. V. c. 22.
[3] 1 and 2 Geo. V, c. 13.
[4] 363 H.C. Deb. 5, s. 393.
[5] *The Times*, June 12, 1940.

House of Lords (New Lord Chancellor).—On September 6, 1939,[1] the Lord Chancellor (Viscount Caldecote of Bristol, formerly Sir T. Inskip) took his seat on the Woolsack[2] at 3 o'clock, whereupon the Lord President of the Council (Rt. Hon. Earl Stanhope) informed the House that His Majesty had been pleased to create the Lord Chancellor a Peer of the realm by the title of Viscount Caldecote. Viscount Caldecote then left the Chamber and returned in his robes of the peerage for the ceremony of his introduction. The noble viscount was sponsored by Viscounts Trenchard and Astor. There being no occupant of the Woolsack, the noble viscount, bearing the Purse of State before him, advanced to the steps of the King's Throne, knelt and placed his writ of summons upon the seat of the Throne, afterwards handing it to the Reading Clerk. At the conclusion of the ceremony, the Lord Chancellor proceeded with his sponsors to the front bench to the left of the Woolsack and bowed thrice to the Throne, while his sponsors remained standing at his side.

Lord Snell, on behalf of the Opposition, then paid tribute to Lord Maugham, the former Chancellor, in appreciation of his sincerity and courtesy. In the same speech Lord Snell welcomed the new Lord Chancellor and congratulated him upon his assumption of office, assuring him of all co-operation and assistance, wishing him great happiness in his new responsibilities.

The Marquess of Crewe said he would not attempt to enumerate all the noble and learned Lords who had sat on the Woolsack since he had the honour of a seat in their Lordships' House. He had never ceased to admire the dignity and the eloquence with which they had filled that important office. Lord Crewe joined Lord Snell in assuring their Lordships of the respect they had all felt for Lord Maugham during his term of office. He wished Lord Caldecote every prosperity in his office.

The Archbishop of Canterbury, representing the Spiritual Peers, then associated himself with what had been said by the other speakers, and said it was a very special pleasure to him to have on the Woolsack, not only a distinguished lawyer but a much-valued personal friend.

The Lord Chancellor said that words would be inadequate to express his gratitude to the noble Lord, the noble Marquess and most reverend Primate, and to their Lordships on this occasion. He thanked them for their most gracious words. Encouraged by them, he hoped he might have wisdom to discharge his duties, and although he knew that he would often need the forbearance and indulgence of their Lordships, he submitted himself to the service of their Lordships' House.

[1] *The Times*, Sept. 7, 1939.

[2] *See* JOURNAL, Vol. VII, 27-29.

Lord Maugham said he was deeply grateful for and touched by the remarks which had fallen from the noble Lord, the noble Marquess and the most reverend Primate. With regard to them, he was merely conscious of having done his duty so far as it was in his power. Nevertheless, he would long remember with gratitude the observations to which he had referred, and he would never forget the uniform courtesy and kindness with which their Lordships had treated him during his time on the Woolsack and also the fact that his shortcomings had always been treated with a blind eye.

House of Lords (Speakers of the House).—On May 13, 1940,[1] in the House of Lords, the Lord Chancellor (Rt. Hon. Viscount Simon) acquainted the House that His Majesty had (by Commission) revoked certain Letters Patent and had appointed the Chairman of Committees for the time being, the Earl of Donoughmore (formerly Chairman of Committees), the Earl of Onslow (now Chairman of Committees), any person who shall have been Chairman of Committees (such person taking precedence by reference to the date of his appointment to that office), the Lord Denman, the Earl of Granard, the Lord Stanmore, the Earl of Clarendon, the Earl of Plymouth, the Viscount Hailsham, the Earl of Lucan, the Viscount Mersey, the Viscount Maugham, the Viscount Caldecote, the Lord Strabolgi, the Lord Tempelmore, and the Lord Atkin, Speakers of the House in the absence of the Lord Chancellor.

House of Lords (Supplementary Questions).—The Select Committee on the House of Lords offices in its Fifth Report,[2] in its consideration of starred Questions, approved an insertion in the Companion to the Standing Orders as follows:

> If a Peer is not satisfied with the answer given, a Supplementary Question can be asked, provided such Supplementary Question is confined to the subject of the original Question. Debates should not take place on a starred Question; it is, however, open to any Peer dissatisfied with the answer given to the starred Question to put on the paper for a subsequent day a Motion dealing with the subject at issue. Notice of any starred Question should appear on the order paper not later than the day before that on which an answer is desired.

House of Lords (Secret Sessions, 1940[3]).—The question of Secret Sessions was discussed in that House on December 6, 1939,[4] and on February 15, 1940.[5]

A Secret Session took place on June 20, 1940,[6] upon the following Motion:

[1] 116 H.L. Deb. 5, s. 370.
[2] (72)—1940.
[3] *See also* JOURNAL Vol. VIII, 13-17 and 99 *n.*
[4] 115 H.L. Deb. 5, s. 133-104.
[5] *Ib.* 543-554.
[6] 116 *Ib.* 653-654.

> Moved to resolve, That the sitting of the House this day on the Statement on Home Defence and the debate thereon, be secret.

Upon the Question being agreed to, the official Reporter withdrew and the House was in Secret Session, the *Hansard* report being that a statement was made by the Joint Parliamentary Under-Secretary of State for War (Lord Croft), at the close of which, His Lordship moved:—That the House do now resolve itself into a Committee to consider the said statement, which was agreed to, and the House was in Committee accordingly. After debate the House resumed.

On July 24,[1] the House was again in Secret Session, the form of Motion by the Secretary of State for Dominion Affairs (Lord Caldecote) on this occasion being:

> Moved to resolve, That the sitting of the House this day on the motion of Lord Addison be secret.

It was moved, That an Humble Address be presented to His Majesty for Papers relating to the foreign policy of His Majesty's Government, which, after debate, was by leave of the House, withdrawn.

House of Commons (Secret Sessions, 1940[2]).—The procedure in connection with Secret Sessions has been dealt with in a special Article and under "Editorial" in Vol. VIII. During 1940, Secret Sessions were held on the following dates and where Mr. Speaker reported, the subject of debate is given in brackets: June 25[3] (*Home Defence and Other Matters*); June 27;[4] July 4;[5] July 9;[6] July 30[7] (*Foreign Affairs*): On this occasion the sense of the House as to whether "the remainder of this day's sitting be a Secret Session," was taken (Ayes 200; Noes 109); September 17[8] (*The House decided to meet at regular intervals, the dates and times*

[1] 116. H.L. Deb. 5. s. 1081.
[2] *See also* JOURNAL, Vol. VIII, 13-17; 19-23 and 98-102.
[3] 362 H.C. Deb. 5, s. 269-270. [4] *Ib.* 642. [5] *Ib.* 1052.
[6] *Ib.* 1136. [7] 363 *Ib.* 1193-1206; *also* 365 *Ib.* 1204-1205.
[8] 365 *Ib.* 138-140.

Legal Proceedings.—On September 17, the Attorney-General moved:

> "That Mr. Louis Arnold Abraham, a senior clerk in the JOURNAL office, have leave to attend and give evidence before the Magistrate at Bow Street and afterwards at the Central Criminal Court, and thence to produce the JOURNAL of the House for the 30th day of July last, on the hearing and trial of a charge of the contravention of Regulation 3 (2) of the Defence (General) Regulations 1939 about to be preferred against one Roy Townsend Leonard Day."

The offence was reporting the proceedings of a Secret Session. According to the law and practice of Parliament evidence of this kind can only be given by one of the Clerks of the House after leave thereof given.*

* 365 *Ib.* 135.

not to be specified); October 24[1] (*Air Defence*); November 6;[2] November 12;[3] and November 13.[4]

During the reply to a Question in the House of Commons on May 7, 1940,[5] the Prime Minister (Rt. Hon. Winston Churchill) said that the matter of holding a Secret Session was one for consideration through the usual channels. The purpose of a Secret Session was to discuss in private things which could not be discussed in public without the danger of giving to the enemy information which ought to be withheld from him. . . . It was not for one Private Member to decide whether there should or should not be a Secret Session.

In reply to a Question on October 8, 1940,[6] the Prime Minister said he could not adopt the suggestion that an Official Report be published of certain private debates at a Secret Session, after due editing and excising any statements made, likely to be of assistance to the enemy.

House of Commons (Secret Sessions: How Arranged).—On May 7, 1940,[7] in reply to a Question, the Prime Minister (Rt. Hon. Winston Churchill) said that the holding of a Secret Session was a matter for consideration through the usual channels. Hon. Members were entitled to make suggestions. The purpose of a Secret Session was to discuss in private things which could not be discussed in public without the danger of giving to the enemy information which ought to be withheld from him. The occasions for Secret Sessions were generally arranged through the usual channels, and if the hon. Member had any particular points that he thought should be discussed in Secret Session he knew where to make application. It was not for one Private Member to decide whether there should or should not be a Secret Session. We (the Government) have to try to obtain the general feeling of the House on the matter through the usual channels.

House of Commons (Secret Session: Sense of House taken).—On July 30, 1940,[8] a debate took place in the House of Commons as to whether or no a discussion on foreign affairs should be in Secret Session, and in order to test the two attitudes among Members a Motion was moved by the Prime Minister (Rt. Hon. Winston Churchill):

> That the remainder of this day's Sitting be a Secret Session and that strangers be ordered to withdraw,

the Prime Minister stating that the Government would not attempt to influence the opinion of the House on the issue,

[1] 365 H.C. Deb. 5. s. 1171-1172. [2] *Ib.* 1406. [3] *Ib.* 1676.
[4] *Ib.* 1714. [5] (360-1036 to 1037). *See also* (364-416).
[6] 365 *Ib.* 251-252. [7] 360 *Ib.*1036-1037. [8] 363 *Ib.* 1193-1206.

and that, unless provoked, they would take no part in the discussion and that Ministers would take no part in the division, which would be left to the free vote of the House.

Rt. Hon. Earl Winterton (Horsham and Worthing) in the course of his speech recalled that in the whole of the last War only 7 Secret Sessions were held, whereas in this Parliament there had already been 5.[1] The hon. Member held the view that Secret Sessions were a drag on the formation of public opinion. It was unfair to the Press and to the public to hold Secret Sessions, save in exceptional circumstances.

Rt. Hon. J. C. Wedgwood (Newcastle-under-Lyme) remarked that the first objection to a Secret Session was that it gave the public the erroneous impression that something tremendously secret had been divulged, when everybody who had been at any Secret Session knew that every one of them might just as well have been in open Session.

Sir William Davison (Kensington S.) then said: In order that we may have a division on this matter without further irrelevancy, I beg to say that " I spy strangers."

Whereupon Mr. Speaker, pursuant to S.O. 89, put the Question:

> That strangers be ordered to withdraw,

upon which the House divided: Ayes, 200; Noes, 109.

Mr. Speaker: " Strangers must withdraw."

Strangers withdrew accordingly.

The following record of the subsequent proceedings is taken from the Votes and Proceedings:

Question again proposed:

> That the remainder of this day's Sitting be a Secret Session and that strangers be ordered to withdraw.

Motion by leave withdrawn.

Resolved: " That the remainder of this day's Sitting be a Secret Session" (the Prime Minister).

House of Commons (Secret Session: Ministerial Notes).—On June 27, 1940,[2] an hon. Member inquired whether Ministers were asked to take note of important suggestions or criticisms made in the course of a Secret Session, and whether he was aware that without some such system many helpful suggestions and criticisms were likely to be without effect; to which the Lord Privy Seal replied that any suggestion or criticism of importance was noted by the Minister concerned and received careful consideration.

[1] *See also* JOURNAL, Vol. VIII, 98-102. [2] 362 H.C. Deb. 5, s. 598.

The questioner then asked whether arrangements would be made when the Minister responsible was absent for some other Minister to take notes; to which the Lord Privy Seal replied that the Minister always arranged that there was someone who would be listening who would be able to inform the Minister of what had happened.

House of Commons (Secret Session: Names of speakers not given).—On June 25, 1940,[1] during remarks arising out of a Ministerial Statement about the business of the House, an hon. Member asked Mr. Speaker whether in future sittings of the House in Secret Session it would be possible to indicate to hon. Members outside the Chamber the name of the Member speaking in the House.

Mr. Speaker replied:

> I have considered the Question which the hon. Member sent to me, and have come to the conclusion that it would be a mistake to do as he suggests and that it would be quite contrary to the principle of secrecy on which such sittings are conducted.

House of Commons (Secret Sessions: Presence of Ministers).—On July 25, 1940,[2] in connection with a statement by the Lord Privy Seal (Rt. Hon. C. R. Atlee) as to the business of the House, an hon. Member asked the Minister whether he would endeavour to ensure that Ministers in charge of Departments under discussion at Secret Session would be present throughout the debate and, as far as possible, 1 or 2 Cabinet Ministers, as, since there was no report, without the presence of Ministers to whom Members were addressing their observations a Secret Session became largely valueless. The Minister replied that every effort would be made to see that there was a Minister of the Department on the bench. The rt. hon. gentleman would realize that on foreign affairs there was only one Minister in the House, but otherwise other Ministers would attend, and, as far as possible, Cabinet Ministers would be present. If a Cabinet Minister was not there for a few minutes, he would take upon himself to inform himself from other Ministers on the bench of what had transpired in his absence. It was necessarily not possible to ask every Member of the House what his view was. The usual method was adopted of asking representatives of groups of Members for their views.

House of Commons (Minister not M.P.).—On June 18, 1940,[3] at the end of Questions, an hon. Member (in regard to a Private Notice Question to which Mr. Speaker said he had

[1] 362 H.C. Deb. 5, s. 301.
[2] 363 H.C. Deb. 5, s. 948-986.
[3] 362 H.C. Deb. 5, s. 23, 24.

sent a reply which would satisfy him, but which the hon. Member said he had not received) raised a matter of procedure appertaining to a secret meeting of the House on June 20, and asked whether it was possible for Mr. Ernest Bevin, Minister of Labour, to be summoned to the House on that date to give a report? The hon. Member asked for the guidance of Mr. Speaker, in regard to the procedure so that they might have the Minister's presence and such a report on that day.

Mr. Speaker said:

> The contents of my letter were to the effect that it would be quite contrary to the practice of this House for anyone, other than a Member of Parliament, to speak in this House. If the hon. Member gives it his further reflection, he will agree that it would be very unwise to depart from that Rule.

House of Commons (Former Minister's Articles). — On February 21, 1940,[1] the Prime Minister (Rt. Hon. Neville Chamberlain) was asked why it was decided to censor an article written by the late Secretary of State for War upon the issue of giving help to Finland; and whether the decision to censor was taken upon matters of fact or expressions of opinion contained in the article?

The Prime Minister replied:

> Censorship of Press articles in this country is on a voluntary and not a compulsory basis. In the present instance certain passages in the article written by the late Secretary of State for War were considered unsuitable for publication over his name, not because they were themselves objectionable but because he was so recently a member of the War Cabinet that in dealing with this critical subject his views might well be regarded abroad as having special authority. Accordingly my rt. hon. friend the Foreign Secretary called the attention of my rt. hon. friend to the passages in question and asked that they might be altered, at the same time offering an alternative draft. This draft, however, did not appear to my rt. hon. friend to convey the views he had in mind and he preferred to omit altogether the passages to which the Foreign Secretary had taken exception.

House of Commons (Salary of Leader of Opposition).— On May 21, 1940,[2] a Question was asked the Prime Minister (Rt. Hon. Winston Churchill) whether, in the absence of any substantial opposition, he would introduce legislation for the temporary suspension of the salary of the Leader of the Opposition,[3] to which Mr. Churchill replied that, in view of the formation of a Government embracing the 3 main political

[1] 357 H.C. Deb. 5, s. 1342.
[2] *The Times*, May 22, 1940.
[3] *See also* JOURNAL, Vol. VI, 15, 16.

parties, H.M. Government was of opinion that the provision of the Minister of the Crown Act, 1937,[1] relating to the payment of a salary to the Leader of the Opposition was in abeyance for the time being. As at present advised he did not think that amending legislation was necessary.

House of Commons (M.P.s and Military Passes). — On July 18, 1940,[2] the Secretary of State for War (Rt. Hon. A. Eden) made a statement in the House in reply to a Question in regard to the arrangements to be made for the issue of passes to hon. Members to facilitate the performance of their Parliamentary duties in the event of the interruption of normal travelling facilities. Members would be able to obtain from the Serjeant-at-Arms a military identification card, which the holder would be asked to complete and to which should be attached the holder's photograph. The card would then be stamped and signed by the Serjeant-at-Arms. The cards would facilitate passage through road blocks and entry, so far as military requirements permit, into defence areas. They would also ensure free passage in grave emergency, so far as war conditions permitted, to and from the Houses of Parliament. They would not give access to roads reserved for military use nor to guarded places where special duty passes are necessary.

House of Commons (M.P.s in Uniform).—On March 11, 1940,[3] the Prime Minister (Rt. Hon. Neville Chamberlain) was asked whether, as Leader of the House, he would take steps to ascertain the opinion of the House in general as to the wearing of Army, Navy, or Air Force uniforms by Members when engaged in the exercise of their Parliamentary duties in the House of Commons. Mr. Chamberlain replied, "No, Sir. In my opinion the House would prefer that the present practice should be continued—namely, to leave this question to the discretion of hon. Members."

House of Commons (Soldiers and M.P.s).—On December 10, 1940,[4] a Question was asked as to whether the provisions of King's Regulations which prohibited serving soldiers from taking complaints on Service matters to M.P.s were still essential to the welfare and discipline of the Army at the present time; to which the Secretary of State for War (Rt. Hon. A. Eden) replied that long delay in the consideration of soldiers' grievances was generally inevitable if they failed to observe the procedure laid down in King's Regulations, paragraph 530,

[1] 1 Edw. VIII. & 1 Geo. VI, c. 38.
[2] 363 H.C. Deb. 5, s. 403.
[3] 358 H.C. Deb. 5, s. 826-827.
[4] *The Times*, Dec. 11, 1940.

for obtaining redress of grievances. M.P.s who received complaints from soldiers could only write to the War Department, which registered and acknowledged the letter and forwarded the complaint for investigation. The letter then went down through the chain of command to the unit concerned and was returned, after investigation, through the same channels. Such delay and extra work could be saved with real advantage to the soldier himself by his making his complaint to his commanding officer. It would also be realized that it was placing the commanding officer in an unsatisfactory position if the first intimation of a complaint from one of his men came from a higher authority. The procedure for the redress of complaints was stated in King's Regulation 530, and in ss. 42 and 43 of the Army Act.

The Minister stated that he was anxious that such paragraph 530 and the quoted sections of the Army Act should be generally known and respected, because it was of vital importance in war that soldiers should have confidence in their commanders, and also that there should be no sense of unfairness between one soldier and another. All complaints were treated impartially, and no soldier could obtain preferential treatment over another soldier because he had political or social influence. On the political side, M.P.s could do much for the welfare of the Army by encouraging action in accordance with s. 43 of the Army Act, which they themselves had approved, when complaints were addressed to them. The Minister concluded by saying that he would be grateful for information regarding any case in which the section had not been scrupulously observed by the officers responsible for hearing complaints and he would have it investigated.

House of Commons (Information in M.P.s' Questions).— It was reported in the press[1] that the Prime Minister and Mr. Attlee had jointly signed a letter sent to all M.P.s in which they were asked to exercise special care at the present time about Questions put to Ministers in the House.

The letter pointed out the need of avoiding the unintentional disclosure in Questions of information which might be of use to the enemy, and how equally important it was that Questions asked by M.P.s should not be capable of any construction which might cause misunderstanding or uneasiness at home. The warning applied both to Questions of which written notice was given and to Supplementary Questions.

The Speaker reinforced this in the House the day before

[1] *The Times*, June 7, 1940.

by expressing the confident hope that Members would fully respond to the appeal made by Mr. Churchill and Mr. Attlee. The House had been obviously disturbed by some of the Questions and Supplementary Questions on defence matters which had been put by Members recently, and the action now taken was generally welcomed.

In the House of Commons on June 6, 1940,[1] the Speaker drew the special attention of Members to a letter which had been issued to them in the names of the Prime Minister and the Leader of the House, about the wording of questions on the Order Paper and the framing of Supplementary Questions. He felt sure that Members would respond to the appeal to exercise special care at the present time.

He also reminded Members that they were responsible for the persons to whom they gave tickets for the gallery of the House. It was important for them to realize that fact and to realize their personal responsibility in the matter. Hitherto Members of the public waiting at the St. Stephen's entrance had been admitted to the gallery after 4.15 when room permitted; but in future members of the public who desired a place in the gallery would be admitted only on the production of a ticket signed by a Member of Parliament.

House of Commons (Broadcast Speeches by M.P.s).—On February 21, 1940,[2] the Prime Minister (Rt. Hon. Neville Chamberlain) was asked whether he had consulted with the Leaders of the Opposition as to the advisability of all Ministers and M.P.s, when broadcasting during the War, refraining from raising political issues which were calculated to divide the nation or which were repellent to the inhabitants of the British Colonial Empire, and, if not, whether he would consider the possibility of arriving at an honourable understanding on the subject.

Mr. Chamberlain replied that conversations had been held with Leaders of the Opposition Parties regarding the arrangements for broadcasts by Ministers and Members of the Opposition, but the content of a broadcast was a matter for which each individual speaker must accept personal responsibility.

House of Commons (Proposed Extension of Question Time).—On November 22, 1939,[3] the Prime Minister (Rt. Hon. Neville Chamberlain) was asked (*by Private Notice*) whether he had considered the proposal to extend Question Time by ½ hour as long as the sittings were limited to 3 days a week.

[1] *The Times*, June 7, 1940.
[2] 357 H.C. Deb. 5, s. 1342.
[3] 355 H.C. Deb. 5, s. 1225-1226.

The Prime Minister replied that he had already considered the rt. hon. gentleman's proposal, but had come to the conclusion that it might result in increasing the difficulties which hon. Members were experiencing in regard to Questions. Mr. Chamberlain thought it might well be the case, if Question hour were extended, that more oral Questions would be tabled, even more Supplementary Questions asked, and a demand made for further extension of time. He was supported in this view by the experience in the last War, when the difficulties were, he thought, greater than now. In 1916 the House sat as a rule 3 days a week. For a brief period from October 26 to December 22 the Government extended the Question time by ¼ hour. On the very first day Mr. Speaker Lowther had to remind the House that Question time had been extended not to allow Members to put more Supplementary Questions, but to put through more Questions on the Paper. He found that from the beginning of the Session to the Summer Adjournment in August, 1916, the daily number of Questions on the Paper was of moderate dimensions, increasing to figures between 142 and 173 only on 6 occasions; but when the Question time was extended the figures rose and, during the much shorter period of 25 sitting days, on 11 occasions the number of Questions fluctuated between 162 and 267, rising to 320 on one day. The experiment was not repeated. At the beginning of the following Session, Mr. Bonar Law stated that it was his view and the view of the Government that the extended time placed too great a strain upon Departments and that it would not be desirable to adopt it again.

Mr. Chamberlain then said that he had circulated the day before a table showing the result of the working of the new order of Questions, the number of Supplementary Questions asked, and a note as to what the effect would be if hon. Members were limited to 2 instead of 3 Questions daily. There had been some improvement and he hoped to see still better results. The average number of oral Questions not reached was now about 35 to 37. He noticed that in 1916 complaint was made that on 3 successive days 80 to 100 Questions were not reached.

He suggested that the House should give the new order of Questions a further trial. They were working under unusual conditions and he had previously reminded the House of the heavy burden which Parliamentary Questions placed upon Departments. He ventured to hope that Members in all parts of the House would co-operate in working the present system

in the general interest and that they would carefully consider putting Questions down for written answer and also reducing as far as possible the number of Supplementary Questions.

House of Commons (Parliamentary Printing).—On October 8, 1940,[1] Mr. Speaker announced in the House of Commons that as long as night air raiding continued the night printing of Parliamentary papers would be impossible, and therefore certain changes would have to be introduced in respect of Members' Questions, Motions and Amendments. Only the Blue Papers would be printed daily and the ordinary White Order Papers would be discontinued. A minimum interval of a day would elapse between the handing in of a question and its appearance on the Order Paper. Motions and Amendments had frequently appeared on the Order Paper on the day following that on which they were handed in, particularly those of importance relating to Government business and the presentation of Bills. Such Motions and Amendments were insignificant in bulk compared with Members' Questions, and the question had been raised whether they might not be included in the next day's Order Paper. But this could not be guaranteed, and it was not thought desirable to have different arrangements for different classes of business. It must be recognized, therefore, that even Government Motions handed in on a particular day would not necessarily appear on the Order Paper till two days afterwards.

United Kingdom: Northern Ireland (Prolongation of Parliament).—This Parliament also passed an Act during 1940, prolonging its life for one year after November 25, 1940, but particulars in regard to the subject are not available here.

Canada (*Hansard* War Extracts).—We have received from Dr. Arthur Beauchesne, the Clerk of the House of Commons at Ottawa, a pamphlet, entitled *Canada Carries On* (*No.* 2), being reviews by Cabinet Ministers upon the working of their respective Departments in regard to the War, delivered by them to their House of Commons during November-December, 1940. The pamphlet opens with a speech by the Prime Minister (Rt. Hon. W. L. Mackenzie King) delivered to that House, November 12, and closes with another by him on December 2 of that year. The other speeches are by the Minister of Agriculture and National Service (Hon. James G. Gardiner) on "Agriculture," November 14; by the Minister of National Defence (Hon. J. L. Ralston) on "The Army", the following day; by the Minister of National Defence for Air (Hon. C. G. Power) on "The Air Force",

[1] *The Times*, Oct. 9, 1940.

November 18; by the Minister of National Defence for Naval Services (Hon. Angus L. Macdonald) on " The Navy ", November 19; by the Minister of Munitions and Supply (Hon. C. D. Howe) on " Munitions and Supply ", November 20; and by the Minister of Finance (Hon. J. L. Ilsley) on " Finance ", November 21. In view of what was given in evidence before the Imperial House of Commons Select Committee[1] in connection with the proposal for a more popular form of *Hansard*, this Canadian pamphlet gives a practical example.

Australia (Senate Standing Orders).—Certain amendments were made to the Public Business[2] Standing Orders of the Commonwealth Senate upon recommendation of its Standing Orders Committee. Although these amendments were made in 1937, like many other matters received from other Parliaments, opportunity to publish them in the JOURNAL has not hitherto occurred. The more material of these amendments which have not already been given in the JOURNAL are as follow:

Adjournment (Urgency) Motions.—Under the Standing[3] Orders this Motion takes the form:

> That the Senate at its rising adjourn to any day or hour other than that fixed for the next ordinary meeting of the Senate, for the purpose of debating some matter of urgency

and must be made after Petitions and Notices and before the Business of the Day is proceeded with. Such Motion can also be moved notwithstanding a Motion on the Paper for adjournment to a time other than the next ordinary meeting. A statement of the matter of urgency, in writing, must be handed to Mr. President by the Senator moving the Motion, and have the support of 4 Senators rising in their places as indication of their approval. Not more than one Motion may be made during a sitting of the Senate. Originally, this Standing Order provided that " only the matter in respect of which such Motion is made can be debated ". These words are now deleted, but S.O. 61 (2) requires every Senator to confine himself to the one subject in respect to which the Motion is made.

Para. 2 of this Standing Order also limits the Mover and the Minister first speaking to 30 minutes each, and other Senators and the Mover in reply, to 15 minutes, and the whole discussion may not exceed 3 hours.

First Reading of Bills.—S.O. 194 has been amended to allow of debate upon the First Reading of a Bill which the Senate

[1] *See* Article IV hereof.

[2] There are no S.O.s in the Commonwealth Parliament dealing with Private Bills.—[ED.]

[3] S.O. 64 (1).

may not under the Constitution amend,[1] being both relevant and irrelevant to the subject-matter of the Bill. S.O. 252 provides that " requests " may be made at this stage.

Certification of Bills.—S.O. 246 has been amended as only to require the signature of the Clerk of the Senate in certification of a Senate Bill which has passed both Houses.

Call of the House.—A Call of the Senate can now also be made by telegram (S.O. 284).

Clerk of the Parliaments.—The title " Clerk of the Senate " has been substituted for that of " Clerk of the Parliaments " both in S.O.s 382 and on p. 59, " Disagreements between the Houses ".

The debate in the Senate upon this subject took place on September 1, 1937.[2]

Australia: New South Wales (Leader of the Opposition).—In Volume VII, at p. 57, lines 7 and 8, the increase from £176 to £250 p.a. refers not to M.L.C.s, who receive no pay, but to the allowance made to the Leader of the Opposition in the Legislative Assembly.

Australia: New South Wales (War Pairs).—There has been no War legislation in the Parliament of this State affecting Members as such. Those who have joined up have been granted " Pairs " for the period of their service, and in this connection the use of a " Pairs Book " has been restored.

Australia: New South Wales (Upper House Public Business Standing Orders).—We have received from the Clerk of the Parliaments a new edition (March, 1940) of the Standing Orders of the Legislative Council. The book, which is published by the Government Printer, Sydney, and is compiled in the Legislative Council office, contains 91 pages, of which 38 constitute an excellent index. Eliminating those provisions which are general to the Standing Orders of Houses of Parliament under " responsible government " Constitutions, the outstanding features of these Standing Orders are as follow:

Unprovided Cases.—The Rules, Forms and Usages of the Imperial Parliament as laid down in May (13th ed.) are followed, so far as applicable (S.O. 1).

Prayer.—The Prayer (S.O. 10A) reads:

> Almighty God, we humbly beseech Thee to vouchsafe Thy blessing upon this Parliament. Direct and prosper our deliberations to the advancement of Thy glory, and the true welfare of the people of our State and Australia. Amen.[3]

[1] *See* JOURNAL, Vol. VIII, 184-186.
[2] 154 Comwlth. Parlty. Deb., cc. 347-350.
[3] *See also* " Parliament at Prayer," *Nineteenth Century*, April, 1937, and JOURNAL, Vol. VI, 78-80.

Adjournment (*Urgency*).—Only one adjournment (urgency) Motion may be considered on the same day, and the speeches of the mover and Minister first speaking are limited to 30 minutes each, those of the mover in reply and of any other Member to 15 minutes each (S.O. 13).

Papers.—The production of Papers concerning the Royal Prerogative or of Despatches, etc., addressed to or emanating from the Governor, or referring to the administration of justice, may be asked for only by Address to the Governor (S.O. 19). The Clerk is required to transmit to the Clerk of the Legislative Assembly for the Members of that House a sufficient number of copies of all Papers printed by Order of the Legislative Council (S.O. 22).

Hansard Reporters.—The Parliamentary Reporting Staff are not deemed to be " Strangers " unless Mr. President or the Chairman so directs (S.O. 24).

Leave.—Leave of absence can only be granted to Members of the Council by Motion upon Notice, stating the cause and period, for any time not exceeding the remainder of the current Session, and the Constitution provides[1] that if any M.L.C. fails for 2 successive Sessions to attend, unless excused by permission of His Majesty or the Governor and signified to the Council by the latter, the seat of such Member becomes vacant (S.O. 27).

Questions.—Neither Questions without Notice, nor Replies thereto, are recorded in the Minutes of Proceedings (S.O. 32), and Notices of Questions may not be read out in the House, but must be handed to the Clerk at the Table during the sitting of the House, duly signed, specifying thereon the date on which replies are desired. Such answers need not be read, but are Tabled and appear in the Minutes (S.O. 32A).

Motions.—Notices of Motion may not be set down for a day later than 4 weeks from notice day (S.O. 52). Precedence of all other business is given by courtesy to Motions of thanks or condolence, which may be moved without notice (S.O. 59).

Debate.—A Member may advance to the Table for the purpose of continuing his speech (S.O. 68). Mr. President, when desiring to take part in debate, can do so only on the floor of the House (S.O. 72).

Closure.—Whenever it is decided that any question shall be " closured ", the mover of the matter under consideration by the House, or Committee, is (when any reply is allowed) permitted to speak in reply for 30 minutes before his Motion is put (S.O. 102).

[1] Act No. 32 of 1902, s. 19.

Previous Question.—The form of Previous Question is the same as the Closure (S.O. 108).

Rescission.—No Resolution or Vote may be rescinded during the same Session except after 7 days' notice (S.O. 114).

Divisions.—Divisions are taken in the Chamber, the " Ayes " going to the right and the " Noes " to the left of the Chair; in case of the Tellers not agreeing, Mr. President may appoint other Tellers, until the Tellers are agreed [S.O. 129 (*a*)]. Every Member present in the House when the Question is put is required to remain and vote [S.O. 129 (*b*)].

Conferences.—Provision is made both for ordinary and free conferences, between managers appointed by each House (S.O.s 145-153 and 199), and it is provided in the Constitution[1] that in event of repeated disagreement between the two Houses upon certain Assembly Bills a free conference must be held before a Joint Sitting can be convened.

Joint and Conferring Committees.—The Standing Orders made special provision for Joint Committees of the two Houses (S.O.s 154-157) and for Select Committees of either House orally (unless the House otherwise orders) conferring with Select Committees of the other House, upon an Order of the House communicated by Message, each Committee reporting to its own House (S.O.s 158-161).

Public Bills.—Mr. President leaves the Chair for Committee of the Whole House, after Second Reading of a Bill not referred to a Select Committee, by Motion without debate or amendment except as to the appointment of a future day (S.O. 171). No clause, schedule, or amendment in substance may be proposed or made in any Bill, except in Committee of the Whole House (S.O. 176), and a clause may be postponed whether it has been amended or not (S.O. 178). Messages transmitting Bills are signed by Mr. President (S.O. 191) and Assembly amendments must be considered in Committee of the Whole House (S.O. 195). Lapsed Council Public Bills may be reintroduced in the subsequent Session (with such alterations as made in the Council) at the stage reached in a previous Session, but should the Bill have been sent to the Assembly it may only be proceeded with in the Council by Message to the Assembly again forwarding the Bill for concurrence. Should such Motion be negatived, the Bill is proceeded with in the usual way (S.O. 200). In the case of Lapsed Assembly Public or Private Bills, upon Message from the Assembly in a subsequent session for concurrence or relating to any such Bill in either House, the Council may, upon Motion,

[1] Act No. 32 of 1902, s. 5B.

with or without notice, determine that the stage such Bill lapsed at the close of the previous Session be an Order for a future day, after which the Bill is proceeded with as if no prorogation had taken place, but should such Motion be negatived a Message is sent to the Assembly accordingly (S.O. 201). Council amendments are scheduled (S.O.s 204, 208, 209). All Public Acts, whether assented to by the Crown, or reserved, must be numbered by the Clerk immediately before the title, in the order of such assent or reservation, giving the date thereof in each case, added next after the title, a new series of numbers being commenced " with each year of our Lord " (S.O. 213).

Ministerial Representation in Upper House.—Section 38A of the Constitution provides that any Executive Councillor who is an M.L.A. may at any time, with the consent of the Legislative Council, sit therein only for the purpose of explaining the provisions of any Bill relating to or connected with any department administered by him, and take part in any debate in such Council on such Bill, but he may not vote therein. S.O. 214 lays down that such consent can only be by Motion, with or without notice, debate, or amendment, made by an M.L.A. Minister, after First Reading of the Bill, provided that the Minister may make a statement, not exceeding 10 minutes, of the reasons why such consent should be given. Such M.L.A. Minister may, however, speak only on the Second Reading and in Committee following the Second Reading, and only one may be present in the Council at the same time.

Select Committees.—These Committees consist of not less than 5 nor more than 10 members (S.O. 232), and it is not obligatory upon the President or Chairman of Committees to serve thereon (S.O. 233). Whenever the House so requires, the members of a Select Committee are chosen by ballot, each Member handing to the Clerk a list of the Members, not exceeding the number in the Motion, whom he intends shall serve on the Committee and the Members reported by the Clerk as having the greatest number of votes are declared by Mr. President elected; in case of equality of votes, the decision rests with Mr. President. After completing their papers, the Members balloting hand their ballot papers to the Clerk, giving him time to note one paper before another is presented, whereupon the Clerk initials against the name of each Member on the printed list of Members of the House (S.O. 236). Before the House proceeds to a ballot, the bells are rung as for a division (S.O. 237). Every Committee is empowered to sit during any adjournment of the House not exceeding one week; in case of longer adjournments, leave of the House is

required (S.O. 247). Corrections of evidence by witnesses are confined to verbal inaccuracies or explanation of answers; corrections in substance can be effected only by re-examination (S.O. 249). During the examination of witnesses, " strangers " may be excluded at the request of any Member, or at the discretion of the Chairman (S.O. 250). Any Member of the House may be present during the examination of a witness but must, if so required, withdraw when the Committee is deliberating (S.O. 251).

Contempt.—A Member adjudged by the House in respect of disorderly conduct or a breach of the Rules may be suspended by the House for such time as it may by Resolution declare (S.O. 260). Should a Member be called to order 3 times in any one sitting for a breach of the Rules and Orders, Mr. President or the Chairman of Committees may order him to be removed from the Chamber by Black Rod, until the termination of the sitting (S.O. 261). Such suspension includes exclusion from rooms set apart for Members (S.O. 262).

Strangers.—Any " stranger " interrupting the orderly conduct of the Business of the House, obstructing the approaches thereto, or making a disturbance within its precincts may be removed by Black Rod, or his assistants, by order of Mr. President and excluded from the House for such period as he may direct (S.O. 263).

Sessional Committees.—These consist of those on Standing Orders, Library, Printing, and House; all except that on Printing having leave to sit during any adjournment, with authority to confer upon subjects of mutual concernment with any similar Committee of the Other House, and, in the case of the Library Committee, in accordance with the Resolution of August 7, 1862 (S.O.s 280, 281).

Australia: New South Wales (Private Bill Standing Orders).—S.O.s 265-279 of the Legislative Council deal with the procedure in regard to Private Bills, which Standing Orders embody notice of intention to apply (within 3 months of the presentation of the Petition) for publication in the *Gazette* and local newspapers, of payment of deposit fees, expenses in connection with the proceedings upon the Bill, preamble, petitions in opposition, evidence, etc. Reference to Select Committee, however, is after First Reading and, unless the House otherwise orders, Private Bills originating in the Assembly, if accompanied by printed copies of the Select Committee Reports, etc., are proceeded with in the Upper House, in the same manner as Public Bills, unless such House otherwise orders. In the case of an Upper House Private Bill lapsing in such House at the close of the Session, such House may be petitioned during any succeeding Session for leave to proceed with the Bill, whereupon,

the Petition being received, the Bill may be introduced again (but with such alterations as may have been made in the Upper House) and read the first time without amendment or debate, and also, upon Motion made, in like manner, pass through all the stages through which the Bill passed in a previous Session. Should, however, such Motion be negatived, then the Bill must proceed in the ordinary way. In the event of the lapsed Bill not having been reported from the Select Committee before the close of the Session, it shall, after reception of the Petition and order thereupon, upon Motion without notice, be read the first time and referred to Select Committee, together with the previous minutes of evidence, etc.; and upon report of the Bill by such Committee, it is proceeded with as other Private Bills, compliance with Standing Orders in a previous Session holding good. Similar provisions are made by Legislative Assembly S.O.s 396-411, except that in the Assembly Motion for leave is put as a formal Motion, no objection being allowed (S.O. 131); Private Acts are not numbered (S.O. 408); the Select Committee on a resumed lapsed Private Bill must comprise, as nearly as possible, the personnel appointed in the previous Session (S.O. 410); and that a Private Bill must be brought in within 30 days of the receipt of the Petition (S.O. 399).

Australia: Victoria (War Legislation affecting Parliament itself, its Members).[1]—The Parliament of this State passed a National Security (Emergency Powers) Act, 1939[2] (which conferred upon the Government power to carry out by Regulation those duties and functions which in ordinary circumstances would be exercised by a Government only as and when empowered by Statute. The duration of the Act was limited to 12 months, which has since been extended to 2 years.

The Act provides[3] that the Governor-in-Council may make Regulations for all purposes necessary for securing public safety and order and for regulating food supply, transport, prices of commodities, etc.

Section 2 (2) enacts that if not less than 20 M.L.A.s " or not less than 30 Members of Parliament (*i.e.*, of either House) object to any Regulation made under the Act and published while Parliament is not sitting and such Members address to the Speaker or President a petition objecting to such Regulation and requesting that Parliament be summoned, then Parliament shall be summoned to meet as soon as practicable thereafter; and Parliament having met [*vide* s. 2 (2)], the Regulation objected to

[1] This paragraph is as contributed by the Clerk of the Victoria Legislative Assembly.—[ED.] [2] No. 4645. [3] S. 3.

can be dealt with under s. 5 (*f*), which provides that any Regulation made under the Act may be revoked by a Resolution of both Houses of Parliament.

Australia: Victoria (Private Bills in Upper House).—S.O. 311 of the Legislative Council provides that until such House adopts Standing Orders for the initiation of Private Bills (which has not been done) it may not consider any but those received from the Assembly. On September 24, 1940, however, an inquiry was received as to how this Standing Order could be overcome, so that a certain Private Bill could be initiated in the Upper House, which was done by the suspension of the Standing Order in question by that House.[1]

Australia: South Australia (Active Service Vote).—The Constitution Act Amendment Act, 1940,[2] amending the Constitution Act, 1934-1939 (" the Principal Act "), provides that all members of the Second A.I.F., R.A.N. and R.A.A.F. or of any other Naval or Military Forces raised in the Commonwealth by the Minister of Defence and serving outside Australia shall be entitled to vote for the Legislative Council and the House of Assembly; provided they have not been discharged or did not cease to be on service on account of their own default or misconduct and provided they have lived in a Council district or Assembly subdivision for at least one month immediately preceding their claim for enrolment, and they otherwise subscribe to the law as regards Parliamentary franchise qualification.

Australia: South Australia (Suspension of Standing Committee's Authority for War Works).[3]—The Public Works Standing Committee Act Amendment Act, 1940, enacts that s. 25 sub-s. (1) of the principal Act (which provides that any public work, the cost of which exceeds £30,000, shall be referred to the Public Works Standing Committee for report before being proceeded with) shall not apply during time of War if the Bill is endorsed by the responsible Minister that the works are urgently required in connection with the War.

New Zealand (Secret Sessions).—On June 5 and 6, 1940, the House of Representatives, for the first time in history, went into Secret Session[4] to discuss matters in connection with the War effort, and on July 9 and 10, 1940, that House sat again in Secret

[1] Vict. Parlty. Deb., Sept. 24, 1940, 702-704.
[2] No. 31 of 1940 (The Constitution Act, 1934-40).
[3] This paragraph is as contributed by the Clerk of the South Australian House of Assembly.—[ED.]
[4] It is the practice to give in *Hansard* the names of those taking part in the debate together with an outline of the subject discussed. Special arrangements were made by Order in Council for M.L.C.s to enter and leave the Lower House so that they might sit in their Special Gallery to hear the debate.—[ED.

Session, when a Resolution was adopted emphasizing the intention of New Zealand to make every effort to assist the Motherland and reaffirming the determination of the Dominion to continue the struggle with unalterable determination.

New Zealand (Active Service Vote).—The Parliament of this Dominion also passed an Act during 1940, providing for the voting by soldiers, sailors, and airmen, on active service.[1]

Union of South Africa (Distribution of Legislative Power).—Section 85 of the Constitution[2] provides that, subject to the provisions thereof and the assent of the Governor-General-in-Council as thereinafter provided, Provincial Councils may make Ordinances in relation to:

> (V) The establishment, maintenance and management of hospitals and charitable institutions:

and during 1940 a Finance Act[3] was passed, s. 16 of which provides that control of charitable institutions and poor relief under such paragraph (v) may be transferred from a Province to the Central Government with the concurrence of the Executive Committee of the Province concerned. The number of the consequent Governor-General's Proclamation issued under such section was No. 119 of June 14, 1940.

Under s. 14 of the Sea Fisheries Act,[4] paragraph (x) of the said s. 85—"Fish and Game Preservation"—was repealed in respect of fish, except in the case of the Natal Coast.

Union of South Africa (Parliamentary Safeguards).[5]—During 1940 the War Measures (Amendment) Act[6] was passed by the Union Parliament, which, amongst other things, provided [s. 1(*bis*) (3) (*b*)] that no Regulation may be made whereby any law relating to the qualification, nomination, election or tenure of office of Members of the Senate or the House of Assembly or a Provincial Council, or to the holding of Sessions of Parliament or of a Provincial Council, or to the powers, privileges or immunities of Parliament or a Provincial Council or of the Members or committees thereof, is altered or suspended.

Union of South Africa (House and Executive Government Control over Expenditure).[5]—Under the practice of the House of Assembly prior to 1913, expenditure or the release of money due to the Crown could not be recommended by a Select Committee without an instruction and the recommendation of the Governor-General.

[1] Details of the Act, however, were not available until after the MS. for this Volume had been sent to the printers.—[ED.]
[2] S.A. Act, 1909 (9 Edw. VII, c. 9). [3] No. 27 of 1940. [4] No. 10 of 1940.
[5] This paragraph is as contributed by the Clerk of the Union House of Assembly.—[ED.] [6] No. 13 of 1940.

The present practice is that Select Committees may make recommendations involving expenditure, the release of money due to the Crown or the granting of Crown land, but the House cannot adopt them without the Governor-General's recommendation or consent. Owing to a ruling given in 1912, however, exceptions are made in respect of reports from the Select Committees on Pensions and on Crown Lands.

In the case of the Select Committee on Pensions the exception gives rise to two anomalies. The first is that the Select Committee is given more latitude than the House itself, for while the adoption of the Committee's proposals is exempted from the Governor-General's recommendation they cannot be increased by the House without the recommendation required under S.O. 99 and s. 62 of the Constitution.[1] The second anomaly is that reports of other Select Committees recommending pensions, grants or gratuities, such as the Select Committee especially appointed to consider the petition of Mr. Corderoy in 1921, cannot be adopted by the House without the Governor-General's recommendation.[2]

In the case of the Select Committee on Crown Lands there is a further anomaly—namely, that, although its recommendations for grants of Crown Land may be considered by a Committee of the Whole House and by the House itself without the Governor-General's consent, its recommendations as to expenditure and the release of money due to the Crown (" write-offs ") cannot be adopted until the recommendation of the Governor-General has been announced.

In order to remove these anomalies it is submitted that the exceptions created by the Speaker's ruling of 1912 should be waived and that in future the Governor-General's recommendations should be announced before the recommendations of the Select Committees on Pensions and Crown Lands are considered.

In making this suggestion it is realized that it would give the Government the opportunity of withholding the Governor-General's recommendation from recommendations of the Select Committee on Pensions on cases to which it is opposed, but it would not prevent a Member of Committee of the Whole House or in the House from moving that the case be referred to the Government for consideration or referred back to the Select Committee on Pensions for further consideration. This is what actually happened in the Corderoy[3] case and is usually what

[1] 9 Edw. VII, c. 9.
[2] *See S.R.* 1921, UNION VOTES, 820.
[3] 1921, UNION VOTES, 820.

happens at present when the Government opposes a case recommended by the Select Committee on Pensions.

Union of South Africa (Parliamentary Control of Taxation).[1]—Section 9 of the Currency and Exchanges Act[2] empowers the Governor-General to make regulations of a far-reaching character relating to currency, banking, or exchanges. On September 16, 1939, the Government took power under such regulations to appropriate the proceeds from the sale of gold over the price of 150*s.* per fine oz. On Mr. Speaker's attention being officially drawn to the large amount of revenue which would thus be derived without consideration in Committee of Ways and Means or the direct approval of Parliament, it was suggested that in order to safeguard Parliamentary control over taxation the Act should be amended by the insertion of a paragraph in s. 9 providing—

> (1) that copies of regulations issued under the section should be laid upon the Tables of both Houses of Parliament,
>
> (2) that if any such regulation is calculated to raise revenue it must be accompanied by an estimate of the revenue to be derived, and
>
> (3) that every such regulation shall cease to have the force of law from a date one month after it has been tabled unless before that date it has been approved by both Houses of Parliament.

Subsequently the Government abandoned the proposal to appropriate the proceeds from the sale of gold and decided to introduce a tax on the profits of gold mines under the ordinary procedure of the House; but, attention having been drawn to the possibilities of raising revenue in the manner referred to, Mr. Speaker's suggestion was adopted by the Treasury and effect was given to it in s. 6 of the Finance Act.[3]

Union of South Africa (Members of Parliament and Military Service).—During 1940 the Constitution (Prevention of Disabilities) Act[4] was passed by the Union Parliament, amending ss. 53, 54 and 56 of the Constitution[5] by providing that persons serving with the Union Forces in War-time shall neither be disqualified from being Members of either House by reason of their holding an office of profit under the Crown, nor shall the seats of such Members (or of Provincial Councillors)[6] be vacated owing to absence without special leave, and further that such Members shall be exempt from deductions from their Parliamentary allowances while serving with such Forces.

[1] This paragraph is as contributed by the Clerk of the Union House of Assembly.—[ED.]
[2] No. 9 of 1933.
[3] No. 27 of 1940.
[4] No. 19 of 1940.
[5] S.A. Act, 1909 (9 Edw. VII, c. 9).
[6] *Vide* 9 Edw. VII, c. 9, s. 72.

Union of South Africa (Electoral).—During 1940 the Electoral Laws Amendment Act[1] was passed which amended the Constitution[2] in regard to electoral matters. This amending Act is the outcome of certain recommendations of a Select Committee of the House of Assembly appointed in 1939 " to inquire into and report upon the operation of the Electoral Law ",[3] the Report of which was tabled on May 2, 1940.[4] There was also a Select Committee on the subject in 1935.[5]

Compulsory Registration.—The registration of European[6] adult voters, who are " Union Nationals ", is made compulsory in all 4 Provinces of the Union (s. 2).

The quinquennial Judicial Delimitation Commission appointed under the Constitution may now take notice not merely of the voters' rolls in force at the commencement of its deliberations but of provisional rolls (non-objection lists) then in existence and framed under the Act (s. 22). One witness in place of 2 is to be allowed for claim orders (s. 6).[7] Residential qualification in an electoral division at a biennial registration is reduced from 3 to 1 month (or retention of home there for that period) during the 5 months immediately preceding the latest date for lodging claims (s. 3). Members of the Union Defence Forces must not be registered in any division other than that in which they last resided, or had a house before such service began or the Union became engaged in War, whichever last occurred (s. 3).

Polling Booth.—One messenger is to be allowed each candidate in the polling booth (s. 14). The voter is required to show the presiding officer the back of the ballot paper so that the number and official mark, but not the cross, is visible (s. 16). Blind voters may take a companion to the voting compartment to vote for them, instead of the presiding officer, if preferred (s. 17). During the counting of the votes, the returning officer, after counting the ballot papers to verify the ballot paper account and scrutinizing the official mark on the ballot papers, is to see that the ballot papers are kept with their faces upwards and prevent anyone other than a counting officer from seeing the numbers printed on the backs of the ballot papers (s. 19). The election officials, the candidate or his agent, sub-agent, polling agent, or

[1] No. 20 of 1940. [2] 9 Edw. VII, c. 9.
[3] S.C. 3-39. [4] 1939 VOTES (II), 759.
[5] Ss. 10-35 (on Population and Compulsory Registration and Voting).
[6] It was stated in debate on the Bill that in the Cape Province, where there is a Coloured franchise, there are 350,000 Coloured Males, of whom 153,000 are over 21 years and 26,000 registered as voters. Those in Natal Province numbered 284 (38 Union Assem. Deb. 4986).
[7] The average number of claims disallowed per electoral division is 700 (S.C. Report, § 5).

messenger entitled to attend the count, must all take an oath of secrecy (s. 20). If the number of votes in a polling district exceeds 2,000, one more polling agent is allowed a candidate, in addition to the 2 original polling agents, for every 2,000 in excess of such 2,000 (s. 21).

Quotas.[1]—One of the bases of electoral delimitation is the quota. That of the Union is based upon the European adult population and is obtained by dividing the total number of European adult "Union Nationals" as ascertained at the last census[2] by 150, the total number of Members of the Union House of Assembly, excluding the 3 additional M.P.s representing the 3 separate Native constituencies in the Cape Province. The number of M.P.s to be elected in each Province, as provided for in s. 33 of the Constitution, is at present (1941): Cape 59; Natal 16; Transvaal 60; and Orange Free State 15.

For the purpose of dividing each Province into electoral divisions, the quota of each Province is obtained by dividing the total number of voters in the Province, *vide* the last registration of voters, by the number of Members of the House of Assembly to be elected therein. The Parliamentary franchise has already been dealt with.[3]

Commission.—Section 41 of the Constitution is amended by s. 23 of the electoral amending Act by providing that the Commission, in carrying out the re-division and allocation, shall have the powers and proceed upon the principles as set forth in ss. 34, 38, 39 and 40 of the Constitution.

Absent Voters.—Sections 26 to 39 of the Amending Act deal with postal votes by absent voters.[4] The absent voters' ballot box may be opened by the returning officer immediately after the close of the poll provided previous notice thereof has been given to each candidate or his agent, or, if not, then at the commencement of the counting of the votes.

Diamond Diggers' Votes.—Special provision is made entitling *every person* (other than a Native, *vide* the Representation of Natives Act, 1936) who has for 6 months immediately preceding registration held a diamond diggers' licence and has been for that period *bona fide* engaged in alluvial diamond digging, to be registered as a Voter, subject to the Cape Franchise and Ballot Act of 1892, provided he is registered in the division in which his claim is situated.

[1] *See also* JOURNAL, Vol. VI, 58.
[2] After 1951 the census is to be decennial (Constitution, s. 34 [ii]).
[3] *See* JOURNAL, Vol. V, 35-39.
[4] The S.C. Report states that at the last General Election (1938) there had been 36,508 applications for postal votes out of a total Union electorate of 980,711 (§ 9 [a]).

The remaining sections of the amending Act deal mostly with improvement of the election machinery.

Union of South Africa (House of Assembly: The "Guillotine").[1]—The "guillotine" (or "Closure by compartments") is not, as is often supposed, effected in the House of Commons under a Standing Order.[2] It is effected by means of a motion, after notice, allotting periods of time to the various stages of Parliamentary measures. The present form was invented and first applied in 1887 owing to a temporary breakdown in the ordinary rules of procedure caused by the Irish Nationalists led by Parnell, the prince of obstructionists.[3]

It was, and still is, generally admitted that the guillotine is a desperate expedient for carrying out the will of the majority; that it encroaches on freedom of speech; and that at times it results in large portions of contentious measures being passed without any discussion at all.[4] It is, moreover, open to the serious objection that even if applied successfully to certain measures it would, in the event of determined obstruction, have to be applied to an extent which would go far to destroy the fundamental idea of government by discussion.

For these reasons the guillotine has of late years seldom been used in the House of Commons, and the practice has developed of arranging for the time to be occupied on any particular measure by agreement "behind the Speaker's Chair" or "through the usual channels" (*i.e.*, by the Whips on behalf of the Party leaders).[5]

Proposal at Joint Sitting, 1936.—A proposal to introduce the guillotine in the Union Parliament was first made during the Joint Sitting of both Houses of Parliament in 1936 on the Representation of Natives Bill.[6] On that occasion the motion was passed, but the order was discharged before being put into operation owing to agreement being reached by the Whips as to the time which should be occupied on the various stages.[7]

[1] This paragraph is as contributed by the Clerk of the Union House of Assembly.—[ED.]

[2] In 1902 the principle was, however, made applicable to the Committee of Supply under S.O. 15. (*See* May, 11th ed., 605.)

[3] *See Redlich*, I, 180; III, 55.

[4] *See Anson's Law and Custom of the Constitution*, 4th ed., Vol. II, 9.

[5] In 1935 the need for a guillotine motion on the Government of India Bill was avoided by setting up a committee representing all parties which arrived at an agreement as to the allocation of time under a time-table. (*See* JOURNAL, Vol. V, 13.) A certain amount of latitude was allowed and the committee remained in existence to make any modifications that might be considered desirable. The Bill, which was the longest ever placed before Parliament and was hotly contested, was passed not only without the use of the guillotine but without the closure or the suspension of the 12 o'clock rule. (*See* Jennings' *Parliament*, 240-241; also 133-146; and *Cabinet Government*, 385.)

[6] 1936 Joint Session Minutes, 46.

[7] *Ib.*, 50.

Adoption and Application in 1940.—During the 1940 Session the motion for leave to introduce the War Measures Bill occupied 6½ hours and the Second Reading 39 hours, including an all-night sitting which lasted from 2.15 p.m. on Monday, February 12, until 6.58 p.m. on Tuesday, February 13. After the Bill had been read a Second Time notice was given of several hundred amendments. As the time occupied in dividing on these amendments would alone have been very considerable, the Prime Minister moved a " guillotine " motion allotting days for the remaining stages of the Bill.[1] The motion was based on the form used in the House of Commons,[2] and the motion referred to above which was adopted at the Union Joint Sittings in 1936. In addition it contained provisions under which amendments (other than amendments by a Minister) which had been moved but not disposed of would drop, instead of being put, at the end of the allotted time. The motion was agreed to on a division after a full day's discussion and was the first to be put into operation in the history of Parliamentary government in South Africa.

Adoption and Application in 1940-41 *Session.*—This Session took place earlier than usual in order to obtain Parliamentary approval for additional expenditure for the prosecution of the War and the passage of a Bill to give the Government additional executive powers. In order to expedite the business of the House efforts were made before the meeting of Parliament to secure an agreement with the Opposition as to the time to be occupied.[3] As these efforts met with no success the Government decided to introduce " guillotine " motions regulating the time to be occupied on the necessary financial measures (namely, the Additional Appropriation Bill and the Additional Taxation Bill, together with the preceding financial resolutions)[4] and the War Measures (Amendment) Bill.[5]

In addition, with a view to avoiding lengthy discussion on the guillotine motions, notice was given of an " emergency order " allotting a period of 3 hours to any guillotine motion proposed " for the expedition of public business during the present period of national emergency ".[6] This motion was agreed to after a discussion lasting under 2 hours, and both of the guillotine motions were passed in less than the time allotted for them.

Owing to the liberal amount of time allotted for the taxation proposals the guillotine was not applied to them at any stage,

[1] 1940 VOTES, 337.
[2] 84 H.C. Deb. 5, s. 53-63.
[3] 40 Union Assem. Deb. 35, 461.
[4] 1940-41 VOTES, 61-63.
[5] *Ib.*, 69-70.
[6] 1940-41 VOTES, 25.

nor was it applied on the Committee or Report stage of the War Measures Act (Amendment) Bill,[1] but it was applied on every stage of the Additional Expenditure proposals.

Elaborate time-tables were kept at the Table of the House showing the time occupied and the time remaining on each stage of the various measures, but Members seldom, if ever, knew how much of the allotted time had been occupied and it is difficult to imagine what the effect would be if the guillotine were applied to a large number of measures in the same Session.

Union of South Africa (Payment of Senators and M.P.s).—Section 24 of the Electoral Laws Amendment Act, 1940, amends s. 56 of the Constitution, as amended, by providing that, in the case of a Senator, his Parliamentary salary shall be reckoned from the date of his nomination or election, as the case may be, and in the case of an M.P., if opposed, from polling day, or if returned unopposed from the date he was declared elected.

Union of South Africa (Non-M.P.C.s on Provincial Executive Committees).—Section 78 of the South Africa Act, 1909,[2] provides that the Executive Committees of the Provinces shall consist of the Administrator (appointed by the Governor-General in Council for 5 years), who is Chairman thereof, with both deliberative and casting votes,[3] and 4 persons elected from among the members of the popularly elected Provincial Councils, *or otherwise*, by P.R. with the single transferable vote[4] at its first meeting after a Provincial general election, which 4 members hold office until the election of their successors in the same manner. Provincial Councils are now elected for a fixed period of 5 years.[5]

Casual vacancies occurring in Executive Committees are filled in the same manner as above, if in Session, or, if the Provincial Council is not in Session, then by a person appointed by the Executive Committee to hold office temporarily, pending an election by the Council, of which there have been several instances. Since Union (1910) the only instances where casual vacancies on the Executive Committee of a Province have been filled, whether by election by the Provincial Council or by appointment by the Executive Committee concerned, by persons who were *not* Members of the Provincial Council, are as follow:

[1] As the motion for leave to introduce the Bill was included in the guillotine motion, copies of the Bill as printed in the *Government Gazette* were distributed among Members before the guillotine was moved.

[2] 9 Edw. VII, c. 9. [3] *Ib.*, s. 82. [4] *Ib.*, s. 134.

[5] Union Act No. 43 of 1935, s. 2.

Province.	*Year.*	*Period.*	*Authority.*	*Name.*
Cape of Good Hope	—	*Nil Return.*		
Natal	1933	Aug. 30, 1933 to Nov. 3, 1936	Elected by Provincial Council	W. V. Dyer
Transvaal	—	*Information not Supplied.*[1]		
Orange Free State	1936	Oct 7, 1936 (and still so serving)	Elected by Provincial Council	J. C. Buys

Although a non-M.L.A. Member of the Executive Committee may not vote,[2] claim a division, be appointed to a Select Committee of the Provincial Council, or be counted in a quorum, he may sit and speak therein, and move motions, etc.

Union of South Africa (Use of Legislative Chambers, etc.).—In Article XI of Volume VIII, at p. 210, under "Natal", lines 1 and 2, the words "when the Legislative Chamber of the old Natal Parliament", and in lines 9 and 10 the words "Legislative" and "and of the old Natal Parliament" should in all three cases be deleted. The present Natal Provincial Council Chamber was, before Union in 1910, the Legislative Assembly Chamber of the old Natal (Colonial) Parliament.

South-West Africa (Non-M.L.A.s on Executive Committee).—The Constitution[3] provides that the Executive Committee of the Territory shall consist of the Administrator of the Territory as Chairman with also a casting vote (whose appointment is the same as that of Union Provincial Administrators) and 4 members elected by the Legislative Assembly from among its own Members, *or otherwise*, by P.R. with the single transferable vote,[4] at its first meeting after a general election for such Assembly, the fixed life of which is now 5 years,[5] as is the case with the Executive Committee.

Casual vacancies occurring in the Executive Committee are filled in the same manner as above, if in Session, or, if not, then by a person appointed by the Administrator from among the Members of the Assembly, pending election by the Assembly, of which there have been instances.

Since 1925 there has been only one instance of a non-M.L.A. being elected to the Executive Committee—namely, Lt.-Col. J. L. Hamman, on March 26, 1940, who was, however, a Member of the Advisory Council.[6]

[1] It is thought, however, that there have been 2 instances: C. T. Z. van Veyeren about 1917 and S. P. Bekker about 1927-32.—[ED.]
[2] S.A. Act, 1909, s. 79.
[3] S.W.A. Act (Union Act No. 42 of 1925).
[4] *Ib.*, ss. 2 and 42.
[5] Union Act No. 38 of 1931, ss. 2, 3 and 4.
[6] *See* JOURNAL, Vol. IV, 23, and ss. 7-12 of the Constitution.

A Non-M.L.A. Member of Executive may sit in the Assembly and like the Administrator speak and introduce Motions, etc.; but he may not vote,[1] or be a member of a Select Committee,[2] or be counted in a quorum. The Administrator, however, is empowered by the Constitution[3] to exercise a casting vote when presiding over the Assembly for the purpose of the election of Chairman (Presiding Member of that body).

While Lt.-Col. Hamman is thus deprived of certain privileges, he enjoys, in other respects, all the privileges of a member of the Executive Committee who is at the same time an M.L.A.

There have also been instances of vacancies in the Executive Committee not filled, but affecting the Advisory Council, which consists of the Administrator, as Chairman, the 4 other members of the Executive, and 3 other persons appointed by the Administrator (subject to the approval of the Governor-General of the Union) one of whom shall be an official, "selected mainly on the ground of his thorough acquaintance, by reason of his official experience or otherwise, with the reasonable wants and wishes of the non-European races in the territory". Neither need Members of this Council appointed by the Administrator be M.L.A.s, but, if not, he must subscribe to the oath or affirmation of allegiance, as in the case of M.L.A.s. Casual vacancies among the nominated members of this Council are filled in the same manner as their original appointment.[4]

Ireland (Eire) (Constitutional: Habeas Corpus).[5]— Certain interesting constitutional movements took place in Eire during 1940. These movements were centred in 2 Acts and their amending Bills concerning emergency powers and offences against the State. Space does not admit of the subject being dealt with in any detail here, but the account which is made of them will indicate the nature of the subjects involved and the footnotes will serve for those readers desiring to go more deeply into the subject. The controversy arose in connection with the Emergency Powers Act and the Offences against the State Act and the powers of Parliament under the Constitution in regard to the liberty of the subject.[6]

Emergency Powers Act.—An Act[7] was passed by the Eire Parliament in the 1939 Session—"to make provision for securing the public safety and the preservation of the State in time of War, in particular to make provision for the maintenance of public order and for the provision and control of supplies and

[1] S.O. 55 (2).
[2] S.O. 144.
[3] S. 22 (2).
[4] Constitution, ss. 7-10.
[5] *See also* JOURNAL, Vol. VIII, 53.
[6] *See* Constitution, 1937, Art. 40.
[7] Act No. 28 of 1939.

services essential to the life of the community, and to provide for divers other matters, etc." The powers given the Government under the Act were very much on the lines of those of the Imperial Act. Among other provisions of the Eire Act are the following paragraphs of s. 2 (2), which empower a Minister (with or without Portfolio) to:

> (*k*) authorize and provide for the detention of persons (other than natural-born Irish citizens) where such detention is, in the opinion of the Minister, necessary or expedient in the interests of the public safety or the preservation of the State.
>
> (*l*) authorize the arrest without warrant of persons (other than natural-born Irish citizens) whose detention has been ordered or directed by a Minister.

A provision of the Act of particular interest to Parliaments is that contained in s. 10, which requires all emergency orders issued under the Act to be laid before both Houses of Parliament, either House of which may, by Resolution, annul such an order " within the next subsequent 21 days on which such House has sat after such order is laid before it".

This Act was by Act No. 18 of 1940 further extended until September 2, 1941, unless the Government by Order declare that the Act shall expire on an earlier specified date (s. 2).

Offences against the State Act.—During the 1939 Session an Act[1] was passed by the Eire Parliament " to make provision in relation to actions and conduct calculated to undermine public order and the authority of the State, and for that purpose to provide for the punishment of persons guilty of offences against the State, to regulate and control in the public interest the formation of associations, to establish special criminal courts in accordance with Article 38[2] of the Constitution and to provide for the constitution, powers, jurisdiction and procedure of such Courts, to repeal certain enactments and to make provision generally in relation to matters connected with the matters aforesaid."

Appeal.—On November 28, 1939,[3] an application was taken to the High Court under Art. 40[4] of the Constitution (1937) for a constitutional order of *habeas corpus* and pleading also that the law under which the man, the subject of the application, was interned was *ultra vires* the Constitution. A Judge of the High Court held in favour of these pleas and the case was appealed to the Supreme Court, which decided, by a majority, that an appeal under *habeas corpus* did not lie, but leaving the issue, as to the validity of the law under which he was interned, open. In such circumstances the Government decided to amend the

[1] Act No. 13 of 1939.
[2] " Trial of Offences."
[3] I.R. (1939), 136.
[4] (Personal right of the citizen.)

Emergency Powers Act above mentioned, to give the Government the right to intern, without having the Constitution cited against the law.

Emergency Powers (Amendment) Bill.—This amending Bill[1] was introduced in the Chamber of Deputies on January 3, 1940,[2] and taken through all its stages. Its purpose was to remove from the Emergency Powers Act, 1939, the words and brackets " (other than natural-born Irish citizens) " from paras. (*k*) and (*l*) of s. 2 (2) of the Principal Act (No. 28 of 1939); the amending Act to continue in force as long as the Principal Act.

The words proposed to be deleted were not in the Bill for the Principal Act when it was introduced into the Irish Parliament as it was thought that the Government already had the power under the Offences against the State Act to enable the Government to deal with natural-born citizens.

At the " Second Stage " of the Bill an amendment was proposed to delete all the words after the first word " That " in the question for the Second Reading of the Bill and to substitute the words:

> Dáil Eireann being of opinion that the objects aimed at in this Bill can only be effectively secured by an amendment of Article 28 of the Constitution adjourns the consideration of the Bill until the Government have introduced a Bill to amend the Constitution by extending the scope of Article 28, section 3, to meet the existence of a domestic emergency.

The amendment, however, was defeated by 65 votes to 33, the Second Reading carried by 92 votes to 10, and the Bill passed both Houses.

Act No. 28 of 1939 was also amended by the Emergency Powers (Amendment) (No. 2) Act[3] which gave the Government power to set up military courts for the trial of certain offences.

This Bill was unamended by the Senate.

Offences against the State (Amendment) Bill.—This Bill[4] was introduced in the Dáil Eireann on the same day as the Emergency Powers (Amendment) Bill, the two Bills running, as it were, in double harness. Under the Offences against the State (Amendment) Bill, Part VI of Act No. 13 of 1939, dealing with powers of internment, was repealed and re-enacted in the amending Bill subject to alteration in certain clauses, in order to overcome certain legal difficulties which had been raised in the Courts, in regard to functions of the Minister, a Judge of the High Court having decided Part VI of Act No. 13 of 1939 was unconstitutional

[1] Act No. 1 of 1940.
[2] D.E. Parlty. Deb., Vol. 78, No. 4, cc. 1309-1524.
[3] Act No. 16 of 1940.
[4] Dáil Bill No. 2*b* of 1940; and D.E. Parlty. Deb., Vol. 78, No. 4, 1527-16.46

and invalid. A new form of warrant is provided (Schedule) in the amending Bill, and there are certain new provisions in regard to the release of persons detained under the Act and as to the composition of the Commission for inquiring into detentions (s. 8).

Certain amendments were made to the Bill both in Committee and on Report.

This Bill contains a similar provision in regard to returns being laid before each House of Parliament as that already referred to in the Emergency Powers Act, 1939 (s. 9).

This Bill also passed the Senate without amendment.

On January 8, 1940, the President of Eire, after consultation with the Council of State,[1] referred the Offences against the State (Amendment) Bill to the Supreme Court for a decision as towhether it was repugnant to the Constitution or to any provision thereof.

On January 16 the Supreme Court assigned counsel to argue the matter against counsel for the Attorney-General and the hearing took place between January 24 and 30, 1940, the Court reserving judgment. On February 9 the Court pronounced its decision, by a majority of the judges, that it was within the power of Parliament, consistently with the Constitution, to enact legislation of the character contained in the Bill, and the Chief Justice announced further that the Court would advise the President accordingly.

In the arguments addressed to the Court for the Bill, counsel representing the Attorney-General appeared and the Court assigned as counsel against the Bill several prominent King's Counsel, according to the Constitution.

On February 9, the President under his hand and seal forwarded Messages to the Chairmen of both Houses informing them of the Court's decision; and stating that he had on that day accordingly signed such Bill, which was promulgated as a Law also on that date.

Southern Rhodesia (Secret Session).—On May 27, 1940, the Legislative Assembly sat in Secret Session, the procedure being that, the Prime Minister having duly taken notice that "strangers" were present,[2] Mr. Speaker (without permitting amendment or debate) put the question "That strangers be ordered to withdraw" (instead of "ordering" their withdrawal—an alternative under the S.O.). Mr. Speaker then directed the Serjeant-at-Arms to clear the Galleries, and, the Serjeant reporting that such had been done, the Prime Minister moved:

> That the remainder of this day's sitting be a Secret Session and further that the proceedings of the House be suspended at 6 o'clock p.m. and resumed at 8 o'clock p.m.;

[1] 1937 Constitution Act, 26 (1); *see also* JOURNAL, Vol. V, 133.
[2] S.O. 228 (1939 Ed.).

which, after discussion, was put and agreed to. The Prime Minister then moved:

> That during this Sitting Members shall not speak for longer than 15 minutes at a time, nor address the House for more than one such period of time consecutively, except in the case of Ministers, who shall not be so restricted;

which, after discussion, was put and agreed to.

The Prime Minister then moved—"That the House do now adjourn", and discussion ensued, business being suspended from 4 to 4.15 and from 6 to 8 o'clock, the Adjournment taking place at 10.45 p.m.

Southern Rhodesia (Parliamentary Secretary to Prime Minister: War only).—The Constitution[1] was further amended during 1940 in order to make provision for the appointment of an additional Minister and a Parliamentary Secretary. Section 37 (1) of the Constitution provides that the number of Ministers appointed shall not exceed 6. The National Emergency Constitution Amendment Act[2] provides for 7 Ministers as well as for the appointment of a Parliamentary Secretary to the Prime Minister. The Act, however, expires 6 months after the termination of the present War.

Southern Rhodesia (Parliamentary Procedure)[3]—*Unauthorized Expenditure Bill.*—The Report of the Select Committee on Public Accounts, dated May 31, 1938, included a recommendation to the effect that when the expenditure debited to a Vote exceeds the total amount appropriated by Parliament for the services of that Vote in any year, the amount of such excess should be reported specifically by the Auditor-General under each Vote, as unauthorized expenditure, which should be sanctioned by special appropriation in an Unauthorized Expenditure Bill. It was formerly the practice to disallow excess expenditure and to carry it forward to the corresponding Vote for the next financial year. Thus excess expenditure in one year might easily result in an apparent excess the following year when, in fact, expenditure had been within the limits imposed. The new procedure draws direct attention to expenditure undertaken without Parliamentary sanction, and results in a careful scrutiny of all such expenditure by the Select Committee on Public Accounts.

Debate on Private Member's Motion.—It has become clear for some time that an impression existed that in a debate on a Private

[1] Letters Patent 1923, Sept. 1. [2] No. 15 of 1940.

[3] This paragraph is as contributed by the Clerk of the Southern Rhodesia Legislative Assembly.—[Ed.]

Member's Motion it was improper or undesirable for Private Members (other than the Mover) to continue the debate after the responsible Minister had replied on behalf of the Government.

Mr. Speaker was therefore advised to state the position clearly for the guidance of the House, and in doing so he said:

> There is no unwritten rule, once a Minister has replied on behalf of the Government to a Member's Motion, that Members should not speak after the Minister's reply. Ministers are treated as Members on Members' Motions or Orders of the Day, and any Member may follow a Minister in debate. The right of reply is reserved for the Member introducing the subject.[1]

Ways and Means : Relevancy of Debate on Taxation Measures.—To remove doubts on the subject, Mr. Speaker laid down the following rules:

> (i) On the Motion to go into Committee of Ways and Means Members may discuss taxation generally.
>
> (ii) In Committee of Ways and Means and on the Report stage discussion must be confined to the items in the Motion.
>
> (iii) On Second Reading of Bills to give effect to taxation proposals debate must be confined to the terms of the Bill and any reduction or modification of existing taxation.[2]

Amendment of the Law Resolution.—Since the restrictions which debarred the House from imposing, reducing or repealing taxation were removed,[3] and the relative S.O. 115[4] adopted by

[1] S. Rhod. 1939 VOTES, 98. [2] 1939 VOTES, 98.

[3] For the original s. 54 (1) of the Constitution *see* JOURNAL, Vol. V, 49, and for the subsection substituted by Act No. 22 of 1937, s. 4, *see ibid.*, p. 50.

[4] S.O. 115 reads:

> *115. (1) All proposals to raise funds by way of taxation shall originate in Committee of Ways and Means, on previous notice given by a Minister.
>
> (2) Unless the proposal for taxation has been first made by a Minister, no proposal to raise funds may be made by a Member, and then only to the extent intimated in such Minister's proposal.
>
> (3) Where taxation proposals submitted by a Minister are only incidentally involved in a Bill, they may, if recommended by the Governor, be proceeded with without reference to Committee of Ways and Means.
>
> (4) When a Member, not being a Minister, desires to submit any question similar in effect to such proposal by a Minister, he shall give notice to move in Committee of the Whole House on a future day for leave to submit his proposal for the consideration of Committee of Ways and Means. Where, however, taxation proposals are only incidentally involved in a Bill introduced by such Member, he shall move after notice that the House go into committee on the Motion for an address to the Governor for leave to consider such proposals, and these shall not be put to the Committee of the Whole House on the Bill until the Governor's recommendation has been conveyed to the House.
>
> (5) The Governor's recommendation shall in all cases be conveyed in the manner prescribed in Standing Orders Nos. 101 and 102.

* Amended March 30, 1936, with effect from April 3, 1936, and on June 7, 1938. (*See* 1936 VOTES, 65, and *ibid.*, 1938, 170.)

the House on April 3, 1936, amended, the following resolution is moved by the Minister of Finance immediately after the Committee of Ways and Means has agreed to the taxation proposals submitted to it: " That it is expedient to amend the law relating to inland revenue and customs duties."

This resolution, known in the House of Commons as the " Amendment of the Law Resolution ", enables the Members appointed to bring up Bills to give effect to the Ways and Means resolutions to include reductions and amendments to the machinery of existing taxation measures which were not discussed in Committee of Ways and Means and also enables Members to move similar amendments to these Bills without an instruction.[1]

Southern Rhodesia (Facilities for M.P.s).[2]—Members receive a Parliamentary allowance of £400 *p.a.*, plus a subsistence allowance of £50 *p.a.* if resident outside a radius of 25 miles from the seat of Parliament. A deduction of £1 *per diem* is made from the subsistence allowance for every day's absence in excess of three. A Member is granted a free pass over the Rhodesia Railways and a *free passage by air* over the Southern Rhodesia Air Services' routes *within the Colony when travelling on political business only*. An M.P. is also granted, during Session, free postal and telegraph facilities as well as free trunk and non-trunk telephone calls.

Amalgamation of the Rhodesias and Nyasaland.[3]—During the debate on the Budget in the Southern Rhodesia Legislative Assembly, on May 12, 1939,[4] Captain H. Bertin (Avondale) said that the appointment of the " Bledisloe " Commission[5] was the culmination of their efforts during the last 10 years. The most important of the recommendations was, first, to advise the Imperial Government to accept the principle of amalgamation, and secondly the immediate amalgamation of Northern Rhodesia and Nyasaland. Two separate administrations were not justified to-day. Also, the debt of Nyasaland should be adjusted to an amount the present resources of that country could pay. Southern Rhodesia could not afford to take over that very large debt together with the development which would have to take place in both Northern Rhodesia and Nyasaland. There was also the question of the Tati Concession and the fact that that part of the Southern Rhodesian Railways not subject to the Union's

[1] May, 11th ed., 629-630.
[2] This paragraph is as contributed by the Clerk of the Southern Rhodesia Legislative Assembly.—[ED.]
[3] *See also* JOURNAL, Vols. IV, 30-32; V, 50-51; VI, 66-67; and VIII, 54-60.
[4] 19 S.R. Deb., 246-252. [5] Cmd. 5949.

option to purchase ran down to the border between Northern and Southern Bechuanaland. Finally, the Commission recognized the importance of the creation of an interterritorial council.[1]

The hon. Member suggested that non-official legislators from Nyasaland and Northern Rhodesia should go with their Governors to these Councils as well as 3 ordinary Members with the Southern Rhodesia Prime Minister. Southern Rhodesia was also dependent upon Northern Rhodesia and Nyasaland for recruitment of Native labour. Although Nyasaland was unable to reciprocate because of the Congo Basin Treaty,[2] Southern Rhodesia allowed her tea entry without duty. It was a matter of regret that immediate amalgamation had not been recommended by the Commission. Then there was the question of a uniform currency.

At a later stage[3] in this debate, the Prime Minister (Hon. G. Huggins) stated that[4] he found the Report of the Commission an extremely disappointing one, both from an Imperial as well as from a British Central African point of view. The note by the Chairman and Mr. Ashley Cooper was the one compensating feature of the Commission's Report. The Prime Minister did not consider the objections by the Commission to amalgamation would be final, or that the difference in Native policy in Southern Rhodesia and the 2 northern territories was so tremendous as the Commission would have them believe. If any amalgamation were to take place with the 2 northern territories, the debt question would have first to be settled. There were about 7 major recommendations in the Commission's Report, but the most important was that the Imperial Government should accept the principle of amalgamation. The paramount importance of the white man to the development of the Native has not been stressed by the Commission. He supported the lines recommended by the Commission for the setting up of the intercolonial council, but considered they could be improved.

It was reported in the press[5] that at a meeting of the European Protection League at Lusaka, Northern Rhodesia, on August 11, 1939, the following Resolution was passed:

> That while welcoming the arguments in the Royal Commission's report in favour of the complete amalgamation of Northern and Southern Rhodesia and Nyasaland and its Recommendations that the principle of amalgamation be accepted by the British Government at an early date, this meeting deplores the Commission's finding that owing to certain alleged obstacles immediate amalgamation should not take place.

[1] *See* JOURNAL, Vol. VIII, 57.
[2] *See African Affairs Report*, Vol. III, App. XIII and Map.
[3] May 16. [4] 19 S.R. Deb., 330–335. [5] *Cape Times*, Aug. 14, 1939.

The meeting sees no objection to the inclusion of Nyasaland provided that its union with Northern Rhodesia be effected simultaneously with the union of the Rhodesias.

The meeting resolves that His Majesty's Government in the United Kingdom be urged, in the interest of both races, to put into effect the complete amalgamation of Southern Rhodesia and Nyasaland at the earliest possible date, and that it be brought about within a maximum period of three years.

The resolution will be sent to members of the House of Commons.

It was also reported in the press[1] that the Nominated Unofficial Member to represent Native Interests in the Northern Rhodesia Legislative Council (Lt.-Col. S. Gore-Browne) asked the Chief Secretary in that Council on December 16, 1940, what steps had been taken to bring a closer union of the Union of South Africa, Southern Rhodesia and Northern Rhodesia nearer to realization; to which the Chief Secretary replied that before any decision could be taken on the question of amalgamation it would be necessary to ascertain whether the present Native policies of Southern and Northern Rhodesia could be reconciled. At the outbreak of war discussions on the report of the Royal Commission which investigated possible amalgamation were suspended. They would be resumed as soon as circumstance permitted.

British India (Constitutional).[2]—During 1940 the India and Burma (Miscellaneous Amendments) Act[3] was passed by the Imperial Parliament. The provisions which apply only to India deal with: taxation (ss. 1 and 2); modifications in the Federal, Provincial and Concurrent Legislative Lists of the Seventh Schedule to the Government of India Act, 1935[4] (ss. 3, 4 and 7); administration of justice (ss. 5 and 6); " Indian State " is defined to mean any territory not part of British India, recognized by His Majesty as being such a State, whether State, Estate, Jagir, or otherwise; and staff and pensions (ss. 10, 11 and 12).

Part I of the Schedule of the Act amends Schedule I of the Government of India Act, 1935, as to the State of Khaniadhana and the Table of Seats; Schedule V as to qualification for Membership of Provincial Legislative Assemblies; and Schedule VI as to the franchise.

British India (Federation).—On September 11, 1939,[5] His Excellency the Viceroy having arrived in the Legislative Assembly at Simla (its last Session there)[6] in procession with the Presidents

[1] *Cape Argus*, Dec. 17, 1940.
[2] *See also* JOURNAL, Vols. IV, 76-99; VI, 67-68; VII, 80-81; and VIII, 61-67.
[3] 3 and 4 Geo. VI, c. 5. [4] 26 Geo. V, c. 2.
[5] India Leg. Assem. Deb., Vol. V, No. 7, 431.
[6] Aug. 30 to Sept. 22, 1939.

of the Council of State and the Legislative Assembly, took his seat on the dais at 11.30 o'clock and delivered a speech to both Houses of the Central Legislature. After announcing a " Gracious Message to India from His Imperial Majesty the King-Emperor " in regard to the assistance of the Princes and people of India in the great world struggle for liberty, His Excellency stated that Federation remained, as before, the objective of His Majesty's Government, but that, in view of the present international situation, they had no choice but to hold in suspense the work of preparation for Federation.

On October 17, 1939, His Excellency made a statement[1] in New Delhi concerning discussions he had had with 52 prominent people in regard to the constitutional issue, and on the following day the Secretary of State for India (Rt. Hon. the Marquess of Zetland)[2] made a statement in the House of Lords in reply to a Question by Lord Snell, upon which debate ensued, reviewing the constitutional situation in India.

On October 26, 1939, a debate in regard to the White Paper took place in the House of Commons, on the motion for the adjournment.[3]

The Secretary of State for India (Rt. Hon. the Marquess of Zetland) made a statement on the subject in the House of Lords on November 7, 1939.[4]

There was also a debate on the subject in the House of Lords on April 18, 1940,[5] when the Secretary of State for India (The Marquess of Zetland) moved a series of Motions to continue in force proclamations issued under the Government of India Act, 1935, in Madras, Bombay, the United Provinces, the Central Provinces and Berar, Bihar, the N.W.F. Province and Orissa.

On May 23, 1940,[6] the Secretary of State for India (Rt. Hon. L. S. Amery) in reply to a Question, explained the attitude of the Government to the " present regrettable political deadlock in India ".

On August 8, 1940,[6] the Secretary of State for India (Rt. Hon. L. S. Amery) stated in the House of Commons that His Excellency the Viceroy had that morning issued a statement in India stating that H.M. Government was deeply concerned that that unity of national purpose in India which would enable her to make a greater contribution still in the world struggle against tyranny and aggression should be achieved as early as possible.

[1] Cmd. 6121.
[2] 114 H.L. Deb. 5. s. 1444-1474.
[3] 352 H.C. Deb. 5. s. 1622-1714.
[4] 114 H.L. Deb. 5. s. 1695-1700.
[5] 116 H.L. Deb. 5. s. 169-190.
[6] 364 H.C. Deb. 5. s. 402-406.

Last October H.M. Government made it clear that Dominion status was their objective for India and they were ready to expand the Governor-General's Council to include a certain number of representatives of the political parties and the establishment of a consultative committee. In order to facilitate harmonious co-operation, it was obvious that some measure of agreement in the Provinces between the major parties was a desirable prerequisite to their joint collaboration at the centre. Such agreement was unfortunately not reached. His Excellency then referred to conversations he had had with prominent political personages in British India and the Chancellor of the Chamber of Princes and to the resolutions of the Congress Working Committee, the Moslem League and the Hindu Maha-Sabha which had also been reported to H.M. Government, under whose authority he had invited a certain number of representative Indians to join his Executive Council and to establish a War Advisory Council containing representatives of the Indian States and other interests in the national life of India as a whole. There was, however, still doubt as to whether minorities, whether political or religious, were sufficiently safeguarded, in relation to any future constitutional change, by assurances already given, and H.M. Government considered that full weight should be given to views of minorities. Such Government could not contemplate transfer of their present responsibilities to any system of government in India whose Authority was denied by large and powerful elements in India's national life, nor could they be parties to the coercion of those elements. H.M. Government was in sympathy with the strong insistence that the framing of the new Constitution within the British Commonwealth of Nations should be primarily the responsibility of Indians themselves. The present moment, however, was not one in which fundamental constitutional issues could be decisively resolved, but H.M. Government readily assented, after the conclusion of the War, to the setting up of a representative body of the principal elements in India's national life to devise the framework of the new Constitution. In the meantime, H.M. Government would welcome steps taken by the Indians themselves to reach a basis of friendly agreement, first upon the form the post-war representative body should take, and secondly upon the principles and outlines of the Constitution itself. Moreover, it was hoped that the way would be paved to the attainment by India of that free and equal partnership in the British Commonwealth, the goal of the Imperial Crown and the British Parliament.

Debate on the subject of the India Constitution also took place

on August 14, 1940,[1] upon a Motion for the adjournment in the House of Commons (and also in the House of Lords).

On November 20, 1940, a statement[2] was made by H.E. the Viceroy on the constitutional issue, to both Houses of the Central Legislature at New Delhi,[3] in which His Excellency reaffirmed his statement of August 8 and said that outside India these proposals, both in their immediate and ultimate objects, had been welcomed as liberal in conception and as representing the best practical solution of existing differences. In India, too, they had met with the support of a large body of opinion. In their more immediate aspect, however (namely, the expansion of the Executive Council), His Excellency had not secured the response that was hoped for from political leaders in India. H.M. Government noted this with regret. The proposals in question would place real power and real responsibility in Indian hands. Their acceptance would afford the most hopeful contribution which Indian political leaders could make at this critical time towards the preservation of Indian unity and towards an agreed constitutional settlement for the future. H.M. Government did not propose to withdraw them, and was still prepared to give effect to them as soon as it was convinced that a sufficient degree of representative support was forthcoming. But as that degree of support had evidently not yet manifested itself, H.M. Government had decided that His Excellency would not be justified in proceeding with the expansion of his Executive Council, or the establishment of the War Advisory Council, at the present time.

British India (Delayed Creation of the Federal Legislative Assembly).—Under s. 317 of the Government of India Act, 1935,[4] the operation of certain provisions of former Government of India Acts[5]—as set forth in the Ninth Schedule to the Act of 1935—was continued, and under s. 63D of such continued provisions the Governor-General has power to extend the life of the old Legislative Assembly, by notification, of which an instance is given below:

LEGISLATIVE ASSEMBLY,
Dated the 3rd November, 1937.

NOTIFICATION

No. F.43-IV/37-A.—The following Notification by His Excellency the Viceroy and Governor-General is published for general information:

In exercise of the power conferred by section 63D of the Government of India Act, as set out in the Ninth Schedule to the Government of

[1] 364 H.C. Deb. 5. s. 870-924.
[2] Cmd. 6235.
[3] 1940 India Leg. Assem. Deb. (847-848).
[4] 26 Geo. V, c. 2.
[5] 5-6 Geo. V, c. 61; 6 and 7 Geo. V, c. 37; and 9 and 10 Geo. V, c. 101.

India Act, 1935, I, Victor Alexander John, Marquess of Linlithgow, hereby extend the period of the continuance of the Legislative Assembly up to the 1st October, 1938.

LINLITHGOW.
(*Viceroy and Governor-General of India.*)

The 30th October, 1937.

These extensions have been rendered necessary owing to its not having been yet possible to create the new Federal Central Legislature.

The first extension—to October 1, 1938—was announced by His Excellency by a *Press Communiqué* and subsequently referred to in his speech to the Central Legislature on September 13, 1937.[1] The second—to October 1, 1939—was communicated to the Legislative Assembly through a Message from His Excellency by the President on April 7, 1938;[2] and the fourth and last extension—to October 1, 1941—was also published in a *Press Communiqué*. (The last Session at Simla was held from August 30 to September 22, 1939.)

Therefore, although elections took place for the Legislatures of the Provinces created under the Government of India Act, 1935, no steps have yet been taken in connection with the constitution of the new central Federal Legislature under such Act.

British India (Rejection of Finance Bill: Power of Governor-General in Council).[3]—On November 5, 1940, the Honble. the Finance Member made a statement on the financial position and introduced the Indian Finance (No. 2) Bill.[4] On November 11 he moved that the Bill be taken into consideration,[5] but after prolonged discussion this Motion was negatived on November 19, the voting being: Ayes, 53; Noes, 55. On the day following a Message from His Excellency the Governor-General was read in the Legislative Assembly by Mr. President, immediately after which the Honble. the Finance Member moved for leave to introduce the Indian Finance (No. 2) Bill in the form recommended by the Governor-General, but leave was refused, the voting being as above.[6]

The Bill was then presented to the Council of State on November 21, together with a Message from His Excellency, and was eventually taken into consideration and passed in the form recommended on November 28, 1940.[7]

[1] 1937 Leg. Assem. Deb., Sept. 13. [2] *Ib.*, April 7, 1938.
[3] *See also* JOURNAL, Vol. VII, 80. This paragraph is as contributed by the Secretary of the Federal Legislative Assembly.—[ED.]
[4] India Leg. Assem. Deb. 93-103. [5] *Ib.* 298-299.
[6] *Ib.* 883-886. [7] India Co. of S. Deb. 179-225, 271-319.

British India (Central Legislature: "Strangers").—Footnote 1, JOURNAL, Vol. III, p. 77, should read: "January 20, 1930".

British India: Bengal (Legislative Council Triennial Report).—Provincial Autonomy under the new Constitution[1] for India came into being on April 1, 1937. Under that Constitution[2] the Legislative Council, or Upper House, of those Provincial Legislatures which are bicameral is not subject to dissolution at the end of a fixed period, like their Provincial Legislative Assemblies, but is a continuing body, one-third of its members retiring every 3 years in defined rotation. As stated in the President's Preface to the Report, "From the next Monsoon Session, therefore, the Second Chamber in this Province enters on a new phase of its career."

Bicameralism.—The President (Mr. Satyendra Chandra Mitra) opens his Report[3] with an illuminating retrospect upon the bicameral system, with quotations from well-known authorities in support of the system. In reporting upon the Second Chamber in Bengal, Mr. President observes that the Provincial Second Chambers in India stand upon a different footing from the House of Lords, nor are they fully nominated like the Upper Houses in most of the Dominions, but they are constituted primarily on an elective basis and, as such, must be deemed to derive their power from the people. Bengal has always stood out for the bicameral system "as likely to prevent antagonism arising between the Governor and the Legislature as a result of frequent resort to the veto",[4] and, continues the Report, there seem to be very cogent reasons why responsible authorities in Bengal should have pressed for a Second Chamber in their Legislature, for, according to Dr. Finer, "wherever there are interests which desire defence from the grasp of the majority, a bicameral system will be claimed". Judged by this criterion, states the Report, the case for a Second Chamber in Bengal would appear to be overwhelming indeed, what with the existence of 2 major communities with sharply defined interests and ideologies struggling for power and position, and also the presence of influential vested interests represented by the landed aristocracy and the mercantile communities clamouring for special protection as minorities.[5] As the Legislative Council under the former Constitution was unicameral, the present one, as a Second Chamber, had to break new ground at every step and build up its own traditions and conventions.

[1] 26 Geo. V, c. 2. [2] *Ib.*, s. 61.
[3] Bengal Government Press, Alipore, 1940.
[4] *Statutory Commission Report*, Part II, ch. 4, pp. 97-98. [5] *Rep.* 7.

Questions.—During the period under review there have been 160 sittings of the Upper House, at which 4,428 Questions and Supplementaries were asked, and in connection with Questions the practice was adopted, as soon as they are admitted by Mr. President, of printing and sending them to the Departments concerned, as well as to M.L.C.s, stating the dates on which replies are due. If, on such indicated dates, replies are not ready, the Minister concerned is required to give an *interim* reply on the floor of the Council, indicating the approximate date of the fuller reply. Administrative Departments are therefore now making every endeavour to have their replies ready by the fifteenth day from the date of receipt of such printed lists. A convention has also been established by which Questions which, for some reason or other, cannot be got ready in one Session, stand over until the first day of the next Session, without the formality of renewed notice.

Privilege.—In connection with a certain Privilege Motion, 2 newspapers were found to have cast aspersions on the dignity and impartiality of the Chair with references to certain decisions by it, and, the editors of the offending papers not having tendered apology, their Press Gallery tickets were forfeited.

During discussion on Privilege Motions, the want of a Powers and Privileges Act had been felt and a Bill[1] to define the Parliamentary privileges of Members was introduced but is pending; should the Bill become law, it will be noticed in the JOURNAL. At present, however, it applies only to the Legislative Assembly. There have been 45 Addresses to the Government under Rule 112, 469 non-official resolutions, 146 Bills, of which only 43 were Government measures, and several Bills have been initiated in the Upper House.

Assembly Bills.—A suggestion was made on behalf of the Government to expedite their passage through the Council, by eliminating the intermediate stages of circulation and reference to Select Committee, thus proceeding to discuss the clauses straight away as soon as the Motions to consider the Bills were carried.[2] This suggestion, however, was not countenanced by the President, who was of opinion that such a procedure would encroach upon the rights of the Upper House, and a Rule was inserted in the Council Rules of Procedure in support of that attitude.

Some Private Members' Bills initiated in the Upper House also became law, and in Assembly Government Bills the Upper House duly fulfilled its rôle as a revising Chamber by making

[1] Introduced July 12, 1939. [2] *See also* JOURNAL, Vol. IV, 61-76.

amendments, both of a substantive and drafting nature, most of which were accepted by the Assembly. On no occasion was a Joint Sitting of the two Houses rendered necessary by disagreement between them in regard to Bills.

Leader of the House.—Although the Ministers were empowered, under s. 64 of the Constitution, to participate in the proceedings of the Upper House, but not to vote,[1] yet, according to a Ruling by the President, they were deemed not to enjoy all the privileges of Council Members, with the result that the Upper House has now a Minister from among its elected Members as a connecting link between that House and the Government.

Rules.—New Procedure Rules were drafted under s. 84 (1) of the Constitution and passed in July, 1939.

Staff.—It was found necessary to separate the Council Department from the Legislative Department.

House.—The present Legislative Building contains only one Legislative Chamber where both Houses hold their sittings at different times, the Council sitting from 2.15 to 4.15 p.m. and the Assembly from 4.45 to 8 o'clock p.m. Thus neither House gets 5 hours for its daily sitting, which has hampered the proceedings of the Legislature generally. This common Chamber, intended to accommodate 300 Assembly members, is too large for a Council of only 63 Members. There is therefore agitation for a separate Chamber for the Upper House as in the other bicameral Provinces. This common Chamber for the two Houses has also protracted the Session and considerably added to the Legislative expenditure. It is proposed that the new Legislative Council Chamber shall be provided with a " Prayer Room ". The cost of a new Legislative Council Chamber has been estimated at *Rs.* 3 lakhs.

Library.—The Council resolved:

> That the Secretary to the Bengal Legislative Council do convey to the authorities concerned that the control and management of the Library of the Legislature should rest in both Houses of the Legislature and shall be administered by a Joint Committee of the two Houses consisting of 5 Members of each House and the President and the Speaker, pending the framing and adoption of the Rules of Procedure of the House.[2]

Statistics.—Attached to the Report are Appendices in regard to Questions, " Resolutions ", Adjournment (urgency) Motions, Addresses to the Governor, Motions, Bills, both Government and Non-Official, all covering the triennial period in question.

[1] *See also* p. 41 *supra* (Union Provincial Councils).
[2] *See also* JOURNAL, Vol. VIII, 216.

Indian States: Mysore (Constitutional).—With reference to the information given in our last issue[1] as to constitutional changes in the State of Mysore, the old Representative Assembly met for the last time on October 9, 1940, and at the last Session of the old Mysore Legislative Council early in 1941, the First Member of Council, presiding, referred to the wide range of legislative and other work which had been accomplished during the period of nearly 17 years of its existence. These two bodies had been in existence since 1924. When the new Legislative Council meets in June, 1941, the Dewan will cease to be President, although he may address either body separately or both jointly. The Members of the Executive Council will, as Ministers, then take their seats, not on the dais, but on the Treasury Bench along with their colleagues appointed by H.H. the Maharaja from among the elected Members of the Legislature. The official *bloc* will be relatively small and the number of Members elected on a broad franchise will have largely increased.[2]

The position of the Ruler in an Indian State was rather well expressed[3] by Professor R. K. Mookerji, M.A., P.R.S., Ph.D., himself an M.L.C., in an *In Memoriam* to the late Maharaja of Mysore:

> Here the Head of the State represents the people directly and primarily in his person, standing to them in an intimate and vital relationship. This relationship is personal, natural and profound, one of sentiment and affection, and sometimes even sweetened by a touch of romance. . . . This organic relationship between a Ruler and his People is possible only in the Hindu view and scheme of Polity which counts *Dharma* as the true sovereign of the State and the ruler as the *Danda* or the Executive, the wielder of the sceptre of sovereignty and of the sword of justice, to uphold and enforce the decrees of *Dharma* as the spiritual sovereign symbolizing the Rule of Law. It is this idealism which alone can make a success of hereditary royalty.

Indian States: Baroda (Constitutional).[4]—The State of Baroda has a population of nearly 3 millions and an area of 8,164 sq. miles.

Government of Baroda Act.—An Act promulgated in February, 1940, entitled " The Government of Baroda Act ", regulates the exercise of the legislative, executive and judicial functions in the State.

Executive.—The executive authority of the State is vested in an Executive Council, consisting of the Dewan and three Naib

[1] *See* JOURNAL, Vol. VIII, 70-74.
[2] *Mysore Information Bulletin*, Nov. 1940, p. 332, and Feb. 1941, p. 33.
[3] *Ib.*, March, 1941.
[4] This paragraph is as contributed by the Secretary of the Dhara Sabha.

Dewans. The Maharaja has reserved certain powers to himself, delegating the rest to the Council. The Dewan and the Naib Dewans are appointed by the Maharaja. One of the Naib Dewans is selected from the non-official Members of the Dhara Sabha, the Legislative Assembly. They are all responsible to the Maharaja.

Legislative Assembly.—A legislative body called the Dhara Sabha has been in existence from 1907. Its functions have been enlarged under the recent Act. The Dhara Sabha now consists of 60 Members, of whom 37 are elected by constituencies on a wide franchise, 6 officials appointed by Government and 17 Non-Official gentlemen nominated to represent minorities, etc. The Dewan is President. There is also a Deputy President who for the first 3 years will be nominated by the Maharaja and thereafter elected by the Dhara Sabha. Provision is made for the appointment of parliamentary secretaries.

Legislative Power.—Measures affecting the Army, the Civil List, treaties or relations with other States or the paramount power, the credit of the State, or the provisions of the Government of Baroda Act are excluded from the cognizance of the Dhara Sabha. Certain other matters require the previous sanction of the Maharaja before any measure relating to them can be introduced in the Dhara Sabha.

A Bill passed by the Dhara Sabha becomes law when it receives the assent of the Maharaja. The Dewan has the power of certification. He may certify that a measure before the Dhara Sabha affects the tranquillity of the State, and then it has to be dropped, or he may certify that a Bill or amendment rejected by the Dhara Sabha is an emergency measure and submit it to the Maharaja to enact it as law.

The Budget.—The Budget is placed before the Dhara Sabha in the shape of an annual financial statement. Expenditure is of two kinds—viz.:

(*a*) that charged upon the revenues of the State, and
(*b*) other expenditure.

The former kind of expenditure is not submitted to the vote of the House, the latter is submitted in the form of demands for grants.

Privilege.—The Members of the Dhara Sabha enjoy the usual privileges of the House—*e.g.*, freedom of speech, etc.

Franchise.—Every person who is a khatedar of land assessed at not less than *Rs.* 30, who pays income tax, who owns immovable property worth not less than *Rs.* 1,000, or who has passed the

matriculation examination or an equivalent or a higher examination is entitled to vote at the elections and to stand as a candidate. Certain special interests—industry and commerce, the co-operative movement, Labour, etc.—are also represented.

The Judicature.—The judicial system of the State is defined in the Act. The High Court and the Huzur Nyaya Sabha (Privy Council) are placed on a statutory basis. The Judges of the High Court are appointed by the Maharaja and hold office till they are 56. Extensions beyond this may be given by the Maharaja. A Judge may be removed from office for misbehaviour or incompetence. The Lower Courts, criminal and civil, are all subordinate to the High Court.

The Huzur Nyaya Sabha is composed of three members selected from: (1) the High Court Judges, (2) the Legal Remembrancer, (3) a panel determined by the Maharaja.

It advises the Maharaja in the disposal of civil or criminal appeals from the decisions of the High Court. Such appeals are permitted only in cases in which appeals are permitted to the Privy Council from High Courts in British India.

Burma (Constitutional).[1]—During 1940 the India and Burma (Miscellaneous Amendments) Act[2] was passed by the Imperial Parliament. The provisions which apply only to Burma deal with: the eligibility of persons for office under the Crown of those who are not British subjects[3] (s. 13); pensions (s. 14); amendment of s. 134, Government of Burma Act,[4] which relates to the financial settlement between India and Burma (s. 15); application of the Naval Discipline Act to Burma Naval Forces (s. 16); and supplemental (s. 17).

Part II of the Schedule to the Act amends Schedule III of the Government of Burma Act as to taxation and Schedule IV as to the franchise in general constituencies.

Burma (War Legislation).—Since the Declaration of War, the following Acts and Ordinances in connection with it have been passed by the House or promulgated by the Governor.

Acts.—Defence of Burma, Registration of Foreigners, Burma Auxiliary Force Amendment, Volunteer Forces (Protection in Civil Employment), Burma Legislature (Removal of Disqualification), Burma R.N.R. Discipline, National Service (European British Subjects), and Registration (European British Subjects).

Ordinances.—Registration of Foreigners (1 of 1940), Burma Auxiliary Force (Amendment) (8 of 1939), Burma Legislature (Removal of Disqualification) (5 of 1940).

[1] *See* JOURNAL, Vol. IV, 100-103.
[2] 3 and 4 Geo. VI, c. 5.
[3] 26 Geo. V and 1 Edw. VIII, c. 3.
[4] 26 Geo. V, c. 3.

British Guiana (Prolongation of Legislature).—Article 69 of the Constitution[1] provides that the Governor shall dissolve the Legislative Council at the expiration of 5 years from the date of publication in the *Official Gazette* of the return of the first Member elected at the preceding general election, if it has not been sooner dissolved. By the British Guiana (Legislative Council—Extension of Duration) Order-in-Council, 1940,[2] the life of the Legislative Council is, subject to Articles 8 to 15 and 23, 39 and 50 of the Constitution above mentioned, to continue until the Governor, acting in the exercise of his powers under Art. 68 thereof, thinks fit to dissolve the Legislative Council. The operation of Art. 69 of such Constitution is accordingly suspended until the Governor next exercises his power of dissolution under Art. 68.

Ceylon (Prolongation of State Council).—It is provided by Art. 19 of the Ceylon (State Council) Order-in-Council, 1931, as amended by the Ceylon (State Council) Amendment Order-in-Council, 1935, that the Governor shall dissolve the State Council on a date not later than the expiration of 5 years from the completion of the last preceding general election. The Ceylon (State Council—Extension of Duration) Order-in-Council of July 24, 1940, alters this period from 5 to 7 years, and this Order remains in force until the State Council last elected and appointed before the date of the Order, has been dissolved and a fresh Council has been elected and appointed.

West India Closer Union.[3]—The Imperial Government decided not to publish now the full text of the Report of the West India Royal Commission submitted to His Majesty, December 21, 1939, but a statement of the Commission's Recommendations has been published[4] until such time as circumstances permit the publication of the full Report. In response, therefore, to the request of the then Secretary of State for the Colonies, this Commission submitted such statement on February 16, 1940.

The Commission, with Lord Moyne as chairman, was appointed by Royal Warrant, dated August 5, 1938, with the following terms of reference:

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

The Commission heard formal evidence in 26 centres from 370 witnesses, or groups of witnesses, and received 789 memoranda of evidence.

The Recommendations submitted deal with such subjects as:

[1] British Guiana (Constitution) Order-in-Council, 1928.
[2] Nov. 8, 1940.
[3] *See also* JOURNAL, Vol. III, 27-28.
[4] Cmd. 6174.

West Indian Welfare Fund; Social Services, such as Education, Public Health, Housing, Labour and Trade Unions, etc.; Economic Problems; Agriculture; Land Settlement and Communications and local unification of Services, etc. It is, however, the constitutional aspects of the Recommendations with which we are more specially concerned. These are contained in Section 7—Constitutional and Closer Union. In this section the Commission does not support either of the extreme proposals put before it for the grant of immediate and complete self-government based on universal suffrage, or for a wide increase of the authority of governors which would convert the existing system into a virtual autocracy; the one because it would render impossible the financial control necessary if, as the Commission considers inevitable, substantial assistance is to be given by the Imperial Government through the W.I. Welfare Fund and otherwise; the other because it would be a retrograde step. At the present stage the Commission attaches more importance to the truly representative character of Legislative Councils than to any drastic change in their functions. Political federation is not of itself considered an appropriate means of meeting the pressing needs of the West Indies, but it is the end to which policy should be directed. The Commission therefore recommend (*a*) adequate representation of all important sections and interests in the Executive Council; (*b*) consideration of the adoption of the committee system on an advisory basis to give elected representatives an insight into practical details of government; (*c*) official representation in Legislative Councils to be confined to the Colonial Secretary, Treasurer and Attorney-General and the resulting vacancies filled by nominations [*vide* (*a*)]; (*d*) introduction of universal adult suffrage, local committees to consider franchise extension for local and central governments, with the desirability of substantial equality between the sexes; (*e*) substantial reduction in all W.I. Colonies, of the margin between the qualifications for registration as a voter and for membership of the Legislative Council; (*f*) practical test of federation by combining the Leeward and Windward Islands in one federation on the lines of that existing in the former group; and (*g*) that more Parliamentary time be devoted to colonial affairs and provision made for the association of delegates from the Colonies concerned with any standing Parliamentary Committee to be appointed. It is also suggested[1] that consideration be given to the suggestion that the Jamaica dependency of the Turks and Caicos Islands be amalgamated with, or at least administered from, the Bahamas.

[1] § 38.

O. C.

May 24, 1941.

II. "THE RAMSAY CASE"

BY THE EDITOR

THIS case is an outcome of the War and deals with the arrest and detention in prison of a Member of Parliament for being "concerned in acts prejudicial to the public safety or the defence of the Realm or in the preparation or instigation of such acts, and that by reason thereof it is necessary to exercise control over him". The detention of the Member was duly notified to the Speaker of the House of Commons by the Secretary of State responsible for the administration of the Defence General Regulations, 1939, under 18B whereof such action was taken. The question of Privilege of Parliament was repeatedly raised in the House and Captain Ramsay, the detained Member of that House, appealed by letter to the Speaker, claiming that the preventive arrest constituted "a grave violation of the privileges and vital rights of Members of this honourable House". After further attention had been drawn to the matter by Members of the House, the Prime Minister intimated that the Government was prepared to refer the question of the arrest and detention of the Member to the Committee of Privileges, a Select Committee appointed at the beginning of each Session, "for examination in relation to the Privileges of this House", which after full investigation and he hearing of evidence, including that of the detained Member, eported that this case did not come within the principle of those o which privilege of a Member of Parliament applied. As in a case strictly analogous to that of Captain Ramsay, the House of Commons had never come to a decision on the question of privilege involved, and as the case raised many interesting points in connection with the Privilege of Parliament and its Members, as well as their submission to statutory authority in like manner to any other subject of the King, it is proposed to go into the subject somewhat fully in following the course of proceedings on the subject both in the House and before the Select Committee.

Owing to the War, it has not always been found possible to quote each particular *Hansard* authority, but the date of the report in *The Times* has been given, which will be sufficient guide to the official authority.

Questions and Motions.—On May 23, 1940, Mr. Speaker said:[1] I have to inform the House that I have received the following letter from the Home Secretary:

[1] *The Times*, May 24, 1940.

May 23, 1940.

SIR,—I have to inform you that I have found it my duty in the exercise of my powers under Regulation 18B of the Defence (General) Regulations, 1939, to direct that Captain Archibald Henry Maule Ramsay, Member of Parliament, be detained. Captain Ramsay was accordingly taken into custody this morning and is at present lodged in Brixton Prison.

I am, Sir,
Your obedient servant,
JOHN ANDERSON.

An hon. Member then asked if the Home Secretary was prepared to give information as to the reason why the hon. Member had been arrested.

Mr. Speaker: " Not at this stage."

However, when replying to Supplementary Questions the same day, the Home Secretary said that Captain Ramsay had been taken into detention under Regulation 18B in the form in which it stood before last night's amendment, and that Captain Ramsay would have the right to make representations to the Advisory Committee.

Another hon. Member then asked the Speaker if any question affecting the privileges of this House was involved in this matter, to which Mr. Speaker said that if a question of privilege arose it ought to have been raised immediately after the reading of the announcement of the Home Secretary. If anyone wished to raise the question some other time, the Government might afford time for it.

On June 5,[1] Mr. Speaker said he had received the followir letter from Captain Ramsay:

DEAR MR. SPEAKER,—I have now been for nearly a fortnight under preventive arrest with no charge whatever preferred against me. I claim that this preventive arrest constitutes a grave violation of the privileges and vital rights of Members of this Honourable House, and ask you to convey this my appeal to the House of Commons.

Yours sincerely,
ARCHIBALD RAMSAY.

On June 6,[2] a Question was asked whether the hon. and gallant Member for Peebles and Southern (Captain Ramsay) had exercised his right to appeal to the Advisory Committee against his internment, whether his appeal had been heard, and whether a report would be made to the House on the proceedings. To which the Home Secretary replied that the hon. Member had exercised such right to make objections to such Committee under Regulation 18B

[1] *The Times*, June 6, 1940. [2] *Ib.*, June 7, 1940.

and that the Committee would consider the case as soon as possible. The Minister added that as soon as he had received and considered the Committee's Report he would, of course, inform the House of his decision, and at the same time consider very carefully how far he could inform the House of the grounds for his decision without prejudicing the interests of national security.

On June 13,[1] the Home Secretary was asked when he would be in a position to make his report on the result of the appeal by Captain Ramsay to the Advisory Committee, to which the Minister replied that the delay had not been due to any negligence or default on the part of the Committee, but to the fact that there was a vast mass of documentary material that needed to be carefully examined. In reply to a Supplementary, the Minister said that examination was done in the first instance by the security services and the material placed before the Committee. In reply to a further Supplementary as to whether the correct thing would not have been for the security services to examine the evidence before they made arrest, the Minister said that such arrests were made as matters of precaution, and that questions that might be put regarding the propriety of the action would be better asked after the event.

A further Question on the subject was asked the Home Secretary in the House of Commons on July 16.[2]

In reply to a similar Question in the House of Commons on July 23,[3] the Home Secretary said that he had received the Report of the Advisory Committee which recommended the detention of the hon. and gallant Member to continue, and also that he (the Home Secretary) had given very careful consideration to the Report and recommendations, and he had decided to give directions for the detention to continue.

In reply to a Supplementary Question suggesting that such Report be laid before the House, the Minister said " No ".

A further Supplementary Question was then asked as to whether the detained Member was given facilities for legal advice, to which the Minister replied that the hon. Member was treated in exactly the same way as others in the same position. The laying of such Report before the Committee of Privileges was not a matter for him.

An hon. Member then remarked that what the Minister had informed the House amounted to this, that the freedom and safety of all of them was now at the Minister's personal disposal on the recommendation of a Committee sitting in private, whose recommendations they did not know and on evidence they had not heard;

[1] *The Times*, June 14. [2] 363 H.C. Deb. 5. s. 39. [3] *Ib.*

to which the Minister replied that the House would realize he had a public duty to discharge.[1]

An hon. Member then asked how this matter could be brought within the cognizance and control of the House:

Mr. Speaker : This is not a question of privilege and it goes back a considerable time. When it was first raised any Member of the House could have raised the question of privilege and that was not done. When I read a letter from the hon. and gallant Member concerned, again the question of privilege could have been raised. Now that is passed and gone and hon. Members cannot raise it any more. The House loses the opportunity.[2]

In reply to a further question:

Mr. Speaker: The Report is not before the House. If a Motion is put down the House can consider it (*by notice of Motion*).[3]

On July 30,[4] an hon. Member (*by Private Notice*) asked the Prime Minister whether he had considered the Motion standing on the Order Paper (*see below*) relating to the detention of the hon. and gallant Member for Peebles and Southern (Captain Ramsay), and whether the Government would refer the matter to the Committee of Privileges.

[*That this House is of opinion that the circumstances of the detention of the hon. and gallant Member for Peebles and Southern should be referred to the Committee of Privileges for their examination and Report.*][5]

To which the Prime Minister replied: " Yes, Sir, the Government is prepared to move to refer the question of the arrest and detention of the hon. and gallant Member for Peebles and Southern to the Committee of Privileges, for examination in relation to the Privileges of this House."

The Prime Minister was then asked, by Supplementary Question, if he would give the House an assurance that apart from any breach of the privileges of this House, the hon. and gallant Member would not be treated in relation to the law any differently

[1] 363 H.C. Deb. 5. s. 611, 612. [2] *Ib.* 612. [3] *Ib.* 613. [4] *Ib.* 1165.

[5] The following Notice of Motion had also been tabled by the hon. Member for Colchester:

Arrest of Member.—That in the opinion of this House there should be set up a special Committee of Members of this House, no one of whom should be the holder of any office of profit under the Crown; that Mr. Speaker should be Chairman of the Committee, and that powers should be given to the Committee to examine the reasons for which any Member of Parliament has been detained without trial and, having examined the reasons, to order the release of the Member if they think fit. (*The Times*, July 25, 1940.)

from any other citizen, to which he replied that the Committee of Privileges would deal only with the question of Privilege.

Several other Supplementaries were then asked as to the Committee of Privileges.

It was then:

Ordered.—That the Committee of Privileges do consider and report whether the detention of Captain Ramsay under Regulation 18B of the Defence Regulations, 1939, constitutes a breach of the Privileges of this House. (*Mr. Attlee.*)

On August 8,[1] the Lord Privy Seal (Rt. Hon. C. R. Atlee), in reply to several Questions about the " Swinton Committee " (the Advisory Committee under the Defence General Regulations), said that Lord Swinton, who presided over the Committee, was responsible to the Prime Minister. The remuneration of the staff and the expenses of administration were borne by the Treasury Vote. Certain members of the staff drew no salary. Other officers connected with the Executive drew their pay as officers of the Fighting Services or as Civil Servants. Salaries were paid by the Treasury or by the various services or Departments, to which attached officers belonged. In the view of H.M. Government, it would not be in the public interest to discuss the work of the Security Committee. The Prime Minister, to whom the Committee reported, took full responsibility for its functions and work.

Upon his amendment to substitute " Monday " in the Motion—' That the House, at its rising to-day, should adjourn until next Tuesday"—the hon. Member for Mossley remarked that there had recently been set up a new organ which might be of great benefit to the public weal but which might be used by unscrupulous men to the grave detriment of the country. Unless the House could be kept closely in touch with the activities of that body, there might arise a position of the gravest danger. There was risk of the Executive usurping such power and infringing the privileges of the House to such an extent that violence and civil war would be the only way by which they would be regained.[2]

The hon. Member for Glasgow (Bridgeton) shared the doubts about what the Swinton Committee was doing. If its purpose was to nose around among Members of Parliament and report their opinions to the authorities, the House should be very much on the alert about such interference with the freedom of Members.

The Lord Privy Seal said that the Government had repeatedly

[1] 364 H.C. Deb. 5. s. 414-416. [2] *Ib.* 424.

stated their desire that the House should have the fullest opportunity of discussing subjects that Members wanted to discuss.

The Member for Mossley then withdrew his amendment, " on the chance that he might be able to communicate with the Government ", and the Motion was agreed to.

On the same day, in reply to a Question, the Home Secretary said that the Advisory Committee which investigated the case of Captain Ramsay, consisted of Mr. Norman Birkett (Chairman), Sir George Clerk, Sir Arthur Hazelrigg and Miss Violet Markham.[1]

On August 14,[2] the Lord Privy Seal moved:

> That the Governor of His Majesty's Prison at Brixton, or other officer in whose custody Captain Archibald Henry Maule Ramsay may be, do bring the said Captain Archibald Henry Maule Ramsay on Tuesday next at 11 o'clock, to the Committee of Privileges, if the said Captain Archibald Henry Maule Ramsay shall desire to attend before the said Committee, and so from time to time, as often as his attendance shall be thought necessary, and that Mr. Speaker do issue his warrant accordingly.

The purpose of the Motion, observed the Minister, was to enable the hon. and gallant Member to appear before the Committee of Privileges if he so desired. Question was then put and agreed to.

An hon. Member: " May I put a Question, as to whether the Committee of Privileges will be open to the public?"

Mr. Speaker : " The Motion has been passed."

On August 15,[3] in replying to Questions about the work and composition of the " Swinton Committee ", the Prime Minister (Rt. Hon. Winston Churchill) said that it would be very wrong for a Government to plead the public interest as a reason for avoiding public and Parliamentary criticism and debates. It would have been possible for the Government, under the powers now accorded, to prevent these Questions from appearing on the Paper and to prevent all references to the subject in the newspapers. Matters and Committees of this kind were not fitted for public discussion, least of all in time of war. The House had recognized this principle for many years and always refused to allow any discussion of Secret Service funds, or to receive any return of how the money was expended, and similarly he was sure the House would wish the rule to be respected in the case of a Committee which dealt with Fifth Column activities. No other country when it was at war gave information of this kind, and once the principle was admitted that a stream of Questions could be asked about them, and that the Government would be bound to answer those Questions factually, very serious injury would be done to their safety.

[1] 364 H.C. Deb. 5. s. 419. [2] *Ib.* 789. [3] *Ib.* 958.

The hon. Member for Mossley then referred to the Prime Minister's statement that the Government had power to prevent Questions being put on the Order Paper—" surely not ". To which the Prime Minister remarked that Questions in the form which give away to the enemy matters which are essentially secret and against the public interest are not accepted by the Clerks at the Table, and he thought that the views of Ministers would be considered by the Speaker in that concern.

After further remarks Mr. Speaker said:

The hon. Member will remember that the statement made by the Prime Minister was in answer to a Question. There cannot be any debate.

Committee of Privileges.—The Committee of Privileges appointed at the beginning of each Session, to which the detention of Captain Ramsay was referred under the Order of Reference already given, held 6 meetings and examined 4 witnesses, including Captain Ramsay.

At its first meeting, August 6, application was made by Captain Ramsay's solicitors to represent him before the Committee of Privileges. It was *Ordered*, however, that the solicitors be informed that it is not the practice of the House, in cases where its privileges are concerned, to hear counsel or solicitors, and that if the Committee found it necessary to hear Captain Ramsay it would take steps to secure his attendance.

At its second meeting, August 13, after it had been *Ordered* that " strangers " be not admitted, the Assistant Private Secretary to the Home Secretary was examined (QQ. 1-4) and produced the order[1] made by his Minister against Captain Ramsay, which read:

Defence (General) Regulations, 1939.

Detention Order.

Whereas, I have reasonable cause to believe Captain Archibald Henry Maule Ramsay, Member of Parliament, to be a person who has been recently concerned in acts prejudicial to the public safety or the defence of the realm or in the preparation or instigation of such acts, and that by reason thereof it is necessary to exercise control over him:

Now, therefore, I in pursuance of the power conferred on me by Regulation 18B of the Defence (General) Regulations, 1939, hereby make the following order:

I direct that the above-mentioned Captain Archibald Henry Maule Ramsay, Member of Parliament, be detained.

JOHN ANDERSON,
One of His Majesty's Principal Secretaries of State.

HOME OFFICE,
WHITEHALL,
22*nd May*, 1940.

[1] Apdx. 1.

It was stated (Q. 4) that the above document was in the same form as that served in similar circumstances on any other of His Majesty's subjects.

The Clerk of the House of Commons (Sir Gilbert Campion) was then examined, and supplied the Committee with a memorandum dealing with the scope of the privileges of freedom from arrest; cases of preventive detention by order of an executive authority (as outlined under (1) Regulation 14B of the Defence of the Realm Regulations, 1914; (2) Restoration of Order in Ireland Regulations, 1920; (3) Regulation 23B under the Civil Authorities (Special Powers) Act (Northern Ireland), 1922; and (4) Protection of Person and Property (Ireland) Act, 1881); summary of precedents in cases of preventive detention; cases analogous to preventive detention (as outlined under)—(1) the so-called suspension of Habeas Corpus Acts and (2) refusal to give surety of the peace or security for good behaviour; progressive definition of privilege; and general conclusions showing (1) that in a case strictly analogous to that of Captain Ramsay the House of Commons had never come to a decision on the question of privilege involved; (2) that 2 other classes of detention had been examined which had a bearing on Captain Ramsay's case, in so far as the purpose of the detention was preventive and not punitive; and (3) that:

> A review of the development of the privilege reveals a tendency to confine it more narrowly to cases of a civil character and to exclude, not only every kind of criminal case, but also cases which, while not strictly criminal, partake more of a criminal than of a civil character. This development is in conformity with the principle laid down by the Commons in a conference with the Lords in 1641 and quoted in the Committee's Report.

In reply to Q. 30 the witness said that nowadays the Speaker guarded himself (in the raising of questions of privilege) by saying, " The question raises a *prima facie* matter of privilege ". He does no more than determine that point. In this case the Speaker said, " The question before the House is one of privilege." " I do not think you can press it in any way ", continued the witness; " it is no more than an indication of his view."

To the Question (82), " But you told Mr. Lambert just now, I think, that a Member became a Member the moment he was elected. Does that mean that a Member, the moment he is elected and before he has taken the oath on his seat, is entitled to the full privilege of Parliament ?" The witness, " Yes."

The Chairman directed the following Question to the witness:

92. Sir Gilbert. . . . Under the Protection of Person and Property (Ireland) Act, would the fact that in that Act there was a provision that, if a Member was arrested, the fact should be immediately communicated to the House of which he was a Member in like manner as if he were arrested on a criminal charge, tend to have made the House consider that this definitely fell into the category of an arrest on a criminal charge rather than on a civil charge?—Yes, I think it implies that, in the view of Parliament, arrest under this Act was not privileged. I do not think it purported to take away a privilege already existing, but to declare that there was no privilege or rather to assume that there was no privilege.

It was then:

Ordered.—That the Chairman do move the House, that the Governor of His Majesty's Prison at Brixton be ordered to bring Captain Ramsay in custody to the Committee, if he so desire.

At its third meeting, August 20, upon the Committee being informed that the Governor of His Majesty's Prison at Brixton was in attendance with Captain Ramsay, it was *Ordered*, That Captain Ramsay be brought in, which was done accordingly by the Serjeant-at-Arms attending the House. Captain Ramsay was requested by the Committee to state whether he was desirous of communicating on the subject of his arrest and detention. After he had made a statement (QQ. 118-151), he was directed to withdraw while the Committee deliberated, after which it was *Ordered*, That he be again brought in, the same procedure being followed as before, and he again withdrew, in the custody of the Serjeant-at-Arms, after giving further evidence (QQ. 152-162).

Captain Ramsay in his evidence[1] said that he had appeared before the Advisory Committee after having been 8 weeks in prison. During the course of his evidence Captain Ramsay said:

" . . . I shall not be able to put this case very well, I am afraid but I would like your indulgence. If you had been locked up for 20 hours a day in a cell between a murderer and a leper[2] for weeks and had been locked up during air raids, you would not feel at your best, so, if I am halting and not clear, I hope you will allow me to carry on."

Captain Ramsay[3] said that without access to any books or to the many authorities quoted in the Clerk's memorandum and *Hansard*, it was difficult for him to make more than a general statement. He therefore begged for time, so that someone on his behalf, or himself, might look up further authorities.

It was then *Ordered*, That the Governor of H.M. Prison at Brixton do attend the Committee with Captain Ramsay upon

[1] Q. 130. [2] Altered later by witness (Q. 164) to " suspected leper."—[Ed.]
[3] Q. 145.

Thursday, September 5, at 10 o'clock, the long adjournment being in order to give Captain Ramsay the opportunity of looking up authorities at the House of Commons to assist him in his defence.

At the fourth meeting of the Committee, September 5, Captain Ramsay was again in attendance, the same procedure being followed as on the former occasion. Captain Ramsay then made a further statement quoting numerous cases of privilege, and claimed that Parliament had laid it down from earliest times that its Members shall not be in a position to be imprisoned by an Executive officer, on suspicion or on a charge which had not been proved. He also stated that the operations of the Star Chamber bore a close analogy to the Swinton Committee and the Advisory Committee except that one could have legal aid before the Star Chamber. It was, however, pointed out to Captain Ramsay that what had been done in his case had been done under power of an Act of Parliament and applied to all citizens, which made his Star Chamber authority irrelevant.

At the fifth meeting of the Committee, September 17, further evidence was taken from the Clerk of the House of Commons, who gave 5[1] cases where the question of privilege was raised and a Member was retained in detention.

In reply to Q. 179, Sir Gilbert said he was not aware of any case where a Member had been released because his question of privilege had been raised in the Commons; in fact all the precedents were against it—the witness adding that it would reduce the matter to a farce if a Member had to be released the moment somebody raised his case in the House. In Q. 180, the witness was asked if he had any point to raise on Captain Ramsay's evidence, to which he replied that he thought Captain Ramsay somewhere raised the question of the lack of definiteness in the charge made against him. Sir Gilbert then put in a number of different classes of cases of arrest and information communicated to the Speaker of the House. In every case the description was in very general terms.

The Home Secretary was then examined and in reply to the Question[2] stated he had not acted in the case of Captain Ramsay from anything which he had said from his place in Parliament, and also[3] that Captain Ramsay had been treated in the same way as any other citizen, except that he had been given exceptional treatment in being brought up to the House to study documents, as a result of the action by the Select Committee.[4]

[1] C.J. (1830-31), 701; *ib.* (1837) 57; *ib.* (1902) 360.
[2] Q. 187.
[3] QQ. 188, 189.
[4] QQ. 192-195.

At the sixth and last meeting of the Committee, October 9, the Chairman brought up its Report, the paragraphs of which were considered, paragraphs 2, 3, 5, 6, 9, 10 and 18 to 26 amended and all paragraphs agreed to, the Resolution to adopt Report as amended agreed to, and an Order made to report the evidence with an Appendix to the House.

Report.—The Committee in its Report[1] stated that in order to remove all misconception with regard to the scope of the inquiry, it directed a copy of its terms of reference to be sent to Captain Ramsay, in the following letter by the Clerk of the Committee:

HOUSE OF COMMONS,
August 13, 1940.

Committee of Privileges.

SIR,—I am directed by the Committee of Privileges to inform you that, while they are precluded by the usage of the House from acceding to your request that your solicitors should be heard on your behalf, they are prepared to hear you in person next Tuesday, August 20, at 11 o'clock, if you so desire. This date will, they trust, afford you sufficient time in which to prepare your case.

In order to remove all possible misconception with regard to the scope of their inquiry, I am to state that their terms of reference are " to consider and report whether the detention of Captain Ramsay under Regulation 18B of the Defence (General) Regulations, 1939, constitutes a breach of the privileges of this House ". Their terms of reference do not, in their view, authorize them to carry out an investigation into the sufficiency of the grounds upon which the decision of the Secretary of State for the Home Department that you should be detained was based. They are strictly limited to the question whether your detention constitutes a breach of the immunity from arrest enjoyed by Members of Parliament in certain cases, or of any other privilege enjoyed by them in their capacity as such Members.

In order to assist you in preparing your submissions, I am directed to forward to you copy of a memorandum which has been submitted to the Committee by the Clerk of the House.

I am, Sir,
Your obedient servant,
L. R. ABRAHAM.
(*Clerk of the Committee.*)

CAPTAIN A. H. M. RAMSAY, M.P.,
c/o The Governor, H.M. Prison,
Brixton.

The Regulation 18B issued under s. 1 (2) (*a*) of the Emergency Powers (Defence) Act, 1939, provides that defence regulations may be made:

> for the detention of persons whose detention appears to the Secretary of State to be expedient in the interests of the public safety or the defence of the realm.

[1] H.C. Paper No. 164 of 1940.

The Regulation also provides that:

> if the Secretary of State has reasonable cause to believe any person to be of hostile origin or associations or to have been recently concerned in acts prejudical to the public safety or the defence of the realm or in the preparation or investigation of such acts and that by reason thereof it is necessary to exercise control over him, he may make an order against that person directing that he be detained.

The Regulations also provide for the appointment of advisory committees to whom any person aggrieved by the making of such an order against him may make objections. These committees consist of persons appointed by the Secretary of State, and para. (4) of the Regulation requires the Chairman of any such Committee to secure that any person against whom such an order is made is afforded " the earliest practicable opportunity of making to the Secretary of State representations in writing with report thereto, and that he should be informed of his right, whether or not such representations are made, to make his objections to such an advisory committee ".

The Regulations (5) lay down that at a meeting of the advisory committee to consider such objection it is the duty of the Chairman thereof to inform the objector of the grounds on which the order has been made against him, and to furnish him with such particulars as are in the opinion of the Chairman sufficient to enable him to present his case.

The Committee was satisfied that the arrest and detention of Captain Ramsay was within the power of and in accordance with the provisions of the Regulation.

The Committee, in its Report, examined the history of the privileges of freedom from arrest, which showed that such had been allowed only in respect of civil proceedings and not in respect of a criminal charge.

It was laid down by the House of Commons in 1641[1] that:

> Privilege of Parliament is granted in regard to the service of the Commonwealth and is not to be used to the danger of the Commonwealth.

It is granted to Members of Parliament in order that they may be able to perform their duties in Parliament without let or hindrance. Freedom of speech protects a Member speaking from his place in the House, such being necessary to the performance of his functions and duties as a Member, but does not protect him from civil or criminal consequences of speeches made outside the House. It was clear, stated the Committee, that in the

[1] 2 C.J. 261, cited H.C. Paper No. 177 of 1831, p. 7.

present case Parliament gave and intended to give the Home Secretary extensive power of arresting and imprisoning citizens without trial in a court of law.

There was, of course, states the Report, a substantial difference between arrest and subsequent imprisonment on a criminal charge and detention without trial by Executive order under the Regulation or under analogous provisions in the past. " They have, however, this in common: the purpose of both is the protection of the community as a whole." Arrest in the course of civil proceedings was, in principle, wholly different. It was a method of coercion to enforce a private right. It was now only in cases of arrest in civil proceedings that the privilege of freedom from arrest could be held to be clearly established.

The Committee considered that some weight should be given to an argument based on the form of the provision dealing with Members of Parliament in the Protection of Person and Property (Ireland) Act, 1881, which gave the Irish Executive power to arrest and detain persons suspected of high treason, treason felony, or treasonable practices, or of acts tending to interfere with or disturb the maintenance of law and order in Ireland. Section 3 (3) of the Act provided that:

> If any Member of either House of Parliament be arrested under this Act the fact shall be immediately communicated to the House of which he is a Member if Parliament is sitting at the time, or if Parliament be not sitting, then immediately after Parliament re-assembles in like manner as if he had been arrested on a criminal charge;

which words assume that arrest of a Member would be lawful and not a breach of privilege.

Captain Ramsay put forward two submissions. He contended that it was:

> quite clear that Parliament had laid it down from the earliest times that its liberties and privileges upon which its ability to function essentially rests are that its Members shall not be in a position to be imprisoned by an Executive either on suspicion or on a charge which they have not approved;[1]

and that:

> from the earliest days of the British Constitution the arrest of a Member of Parliament without the consent of the House or on suspicion has been a breach and been held to be a breach of Parliamentary privilege and that it so remains to-day.[2]

In the opinion of the Committee there is no foundation in the law and practice of Parliament for that view. Blackstone says:

[1] Evidence, p. 24.

[2] *Idem*, p. 28.

> The chief, if not the only, privilege of Parliament in such cases seems to be the right of receiving immediate information of the imprisonment or the detention of any Member with the reasons for which he is detained.[1]

Captain Ramsay also submitted that, once a question of privilege was raised with regard to a Member's detention, he should forthwith be released pending consideration and decision on the issue of privilege. In the opinion of the Committee there was no basis in law for such proposition.

It had already been pointed out that a power of arrest such as that in question could be exercised by the Executive only if Parliament had itself conferred the power; the Executive was subject to Parliamentary control. The case " in *re* Lees " was quoted as showing the legal safeguard against such a suggested danger.

The Committee in its Report to the House came to the conclusion that precedents lent no support to the view that Members of Parliament were exempted by Privilege of Parliament from detention under the Regulation 18B. Preventive arrest under statutory authority by Executive order is not within the principle of the cases to which privilege from arrest applies. To claim such a privilege, stated the Committee, would be the assertion of a new Parliamentary privilege. No question of any infringement of the privilege of freedom of speech arose. Therefore the Committee were of opinion that the detention of Captain Ramsay did not constitute a breach of the privileges of the House, and Captain Ramsay remains in Brixton Prison.

Subsequent Debate in House.—On December 3,[2] in reply to a Question, the Lord Privy Seal (Rt. Hon. C. R. Atlee) said that the Government intended at some convenient date to invite the House to approve the Report from the Committee of Privileges on the case of Captain Ramsay, Member of Parliament.

On December 11,[3] the Lord Privy Seal, in moving:

> That the House do agree with the Report from the Committee of Privileges about the case of Captain Ramsay, Member of Parliament—

said that the Committee was solely concerned with privilege, and the only question for its consideration had been whether the arrest and detention of Captain Ramsay under Regulation 18B constituted a breach of privilege. Its duty was to ascertain that the action taken by the Home Secretary, under the Regulation, was in order, and that the action of the Government was not due

[1] 1 *Commentaries*, 167. [2] *The Times*, Dec. 4, 1940. [3] *Ib.*, Dec. 12, 1940.

to anything done by Captain Ramsay acting as a Member of Parliament. It was not for the Committee to consider whether the Home Secretary's action was right or wrong from the point of view of the substance of the charges against Captain Ramsay. Captain Ramsay had been given the widest opportunity of making his representations. He was detained because the Home Secretary in the exercise of his duty had decided that it was necessary to exercise control over him. The true doctrine of the privilege of Members of Parliament in regard to freedom from arrest was very well stated by the Commons in its Resolution in 1641. It had never been claimed that the privilege should allow Members to commit felony and other offences and escape by privilege of Parliament, or that Members of Parliament should have a right to do something which was wrong in others, and in the light of the precedents and the general principle adopted by Parliament the Committee decided that the detention of Captain Ramsay was not a breach of privilege.

The hon. Member for Bridgeton (Mr. J. Maxton), in dissenting from the decision of the Committee of Privileges, said that it had not done the House a good service in the Report it had presented. It said there was no protection for a rank-and-file Member of Parliament against the Executive of the day—not for criminal or civil offences, but for political activities which never got the length of being stigmatized as a crime nor of being formulated and tried in court, but which were only surveyed by a Committee with no responsibility to anyone and which sat *in camera*. If the House decided on that, Parliamentary privilege might as well be wiped out altogether.

The hon. Member for Leeds Central (The Hon. R. D. Denman) asked what would have happened had the finding been that there had been a breach of privilege. *Ex hypothesi* here was a man detained on grounds of public safety. Would anybody in the House have said: " Well, this man must be released in order to take part in our secret sessions with all the risk of his being able to report what he hears, in channels hostile to us " ? The practice of the House declining to allow the arrest of Members by detention in circumstances similar to this, without the consent of the House, had been dropped about 1815, since when there had never been provision for giving Members of Parliament special rights to freedom from detention in such circumstances, which seemed to indicate that the privilege had for a very long time been practically dead, and that if the House wished to restore to itself that right it could effectively do so only by deliberate statutory methods.

The Attorney-General (Sir D. Somervell) said that Members

must guard their ancient liberties and privileges, but they equally owed a duty to the House and to themselves not to seek to extend privilege into an area in which it had not been claimed and established in the past.

The Motion was then agreed to.

It was reported in the press[1] that a further Motion arising out of the detention of Captain Ramsay under Defence Regulation 18B had been tabled in the House of Commons by 7 Private Members as follows:

DEFENCE (GENERAL) REGULATIONS, 1939 (PRIVILEGE)

That this House do consider necessary an amendment to Regulation 18B of Defence (General) Regulations, 1939, and that for the future, if any Member be arrested and detained under this Regulation, the Minister of Home Security do furnish to a Committee of Privilege set up by this House evidence, if necessary in secret, that the said Member has been guilty of acts which debar him from the protection of privilege.

From records available here, however, it does not appear that the Motion has yet come up for consideration.

It was also reported[2] that a Committee appointed in Captain Ramsay's constituency has framed a petition to Parliament asking that the seat should be declared vacant, and a new Member elected, because of the continued detention of Captain Ramsay under Defence Regulation 18B. The petition, which was addressed to the Prime Minister, recalls that Captain Ramsay, who is a Unionist Member for the division, has been detained since May 23, 1940, and continues:

> Your petitioners and the constituency have been thereby deprived of direct representation in Parliament. This is a matter of grave concern to your petitioners, who feel strongly that their interests as electors have been severely prejudiced and that the constituency has suffered materially, and will suffer the more the longer this state of affairs is allowed to continue. Your petitioners therefore humbly pray that owing to Captain Ramsay's detention and his consequent inability to discharge his duties as a member of Parliament his seat in Parliament be declared vacant and that legislation be enacted to enable your petitioners to elect a new representative.

References to this case occurring in 1941 will be dealt with in our next issue.

[1] *The Times*, Feb. 13, 1941. [2] *Ib.*, March 18 and 26, 1941.

III. HOUSE OF COMMONS: NATIONAL EXPENDITURE

By the Editor

National expenditure *per se* is not a subject coming within the orbit of this Society's investigations. Therefore the contents of the 15 Reports from the 1939-40 Select Committee of the House of Commons on national expenditure, highly valuable and important as they undoubtedly are, from both a national and economic point of view, may not be considered here. What, however, does concern us is the principle of supervision of departmental expenditure connected with the War, by a Parliamentary Select Committee, the machinery set up by such Committee, and its suggestions as to what organization and co-ordination can best be employed to ensure efficiency and swiftness of executive action in connection with the economies it seeks to effect consistent with the execution of the policy laid down by the Government. Similar Select Committees were set up in 1917-18, 1918, 1919 and 1920.[1]

The present inquiry shows the operations of a Select Committee thoroughly representative of the rank and file of the House of Commons in a more direct rôle in regard to public administration and expenditure, and it is now proposed to give some indication of the powers of such Committee in fulfilment of its duty to the House in connection with the inquiry it was entrusted to perform under the extraordinary conditions created by a state of war, and to refer to the attention the subject received at the hands of the House of Commons.

Questions.

On January 31, 1939,[2] the Chancellor of the Exchequer was asked in the House of Commons whether he now had any statement to make as to proposals for limiting the growth of national expenditure, to which he replied that the growth of national expenditure in recent years was due in overwhelming proportion to the policies, which Parliament had approved, in relation to defence, assistance to industry, and the social services; that he trusted he might have the co-operation of the House in dealing with any demands for yet further expansion of their expenditure; and that in administrative costs the Government was endeavouring to secure the utmost economy.

[1] 358 H.C. Deb. 5. s. 837; *see also* Leaders in *The Times*, December 12, 1939; January 2, 1940; and "Legislature and Executive in Wartime" by Lindsay Rogers in *Foreign Affairs*, July, 1941.

[2] 343 *ib.* 26, 27.

On May 9, 1939,[1] another Question was asked the Chancellor of the Exchequer on the subject.

On September 28, 1939,[2] the Chancellor was asked whether, in view of the necessity for husbanding the financial resources of the country so as to make them available to the utmost for the prosecution of the War, he would consider not only examining departmental expenditure but also forming a flying financial squad periodically to examine the working of the many new departments in order to ensure the utmost economy. The Chancellor said that he would be replying to the debate on the subject that night, when he said[3] that he was hoping to call in the help of qualified and experienced men of business, acting in conjunction with officials of the Treasury, and that investigations of that sort had already been set on foot in regard to the Ministry of Information.

On October 24, 1939,[4] in the House of Commons, the Chancellor was asked whether in the public interest he would not consider the formation of an economy committee of suitable business men to inquire into the wasteful expenditure of many Government Departments. A further Question was then asked by another Member as to whether the Chancellor would now consider the appointment of a full-time economy committee consisting mainly of accountants and business men, with powers to scrutinize all Departmental accounts and to report upon their organization and staffing.

To these two Questions the Financial Secretary to the Treasury replied that the Government was anxious to obtain the help of suitably qualified business men in examining expenditure, particularly of new or largely expanded Departments, but that he thought he could make more effective use of their services by inviting them to undertake specific investigations than by the method suggested.

On October 31, 1939,[5] the Chancellor was asked in the House of Commons whether he would consider, in the public interest, immediately appointing the suggested economy committee instead of the present policy of appointing an individual to each Department; to which the Chancellor replied that he doubted whether the means suggested could be substituted for the method now employed.

On November 7,[6] an hon. Member (*by Private Notice*) asked the Chancellor of the Exchequer whether he could now make a statement on the appointment of a Committee on National

[1] 347 H.C. Deb. 5. s. 313.
[2] 351 *Ib.* 1487, 1488.
[3] *Ib.* 1601.
[4] 352 *Ib.* 1196, 1197.
[5] *Ib.* 1743.
[6] 353 *Ib.* 35, 36.

Expenditure on the lines suggested in the Motion on the Order Paper in his (Rt. Hon. Sir A. Sinclair's) name and the names of hon. friends, namely:

> [*That a Select Committee be set up, similar to that appointed by Parliament in July, 1917, to examine the current expenditure defrayed out of moneys provided by Parliament for the Defence Services, including Civil Defence, and to report what, if any, economies, consistent with the execution of the policy decided by the Government, may be effected therein.*]

To which the Chancellor replied that there were 2 Motions on the Order Paper on the subject and recalled what he had already said thereon. The Chancellor informed the House that the procedure already indicated would be further developed, but he appreciated the House desiring to make its own contribution to an end they all had at heart. The Government considered that the object would be best attained by setting up such a Select Committee, as in the last War, to deal with expenditure connected with the War, whether civil or military, and further that the exact terms of reference would be considered in consultation with the various sections of the House.

Select Committee.

After further reference to the subject during the debate on the Address-in-Reply on November 28,[1] and another Question on December 7,[2] the Select Committee was appointed on December 12[3] with the following Order of Reference:

> That a Select Committee be appointed to examine the current expenditure defrayed out of moneys provided by Parliament for the Defence Services, for Civil Defence, and for other services directly connected with the War, and to report what, if any, economies consistent with the execution of the policy decided by the Government may be effected therein.

The Committee to consist of 28 (later increased to 32) Members, 7 to be the quorum, with power to send for persons, papers, and records, to sit notwithstanding any adjournment of the House, and to adjourn from place to place. The Committee was further empowered to report from time to time, to appoint Sub-Committees and to refer to such Sub-Committees any of the matters referred to the Committee, the quorum of a Sub-Committee to be 2. Any Sub-Committee was also empowered by the House to send for persons, papers, and records, to sit notwithstanding any adjournment of the House, and to adjourn from place to place, as well as to report to the Committee any evidence taken.

[1] 355 H.C. Deb. 5. s. 24, 34. [2] *Ib.* 840. [3] *Ib.* 1136-1138.

Reports.

First Report.—The First Report[1] from this Committtee was tabled and ordered to be printed on January 16, 1940.[2] The Committee, in reporting that it had made progress, observed that the Order of Reference, in that it restricted the inquiry to expenditure " directly connected with the War ", was more narrowly drawn than those to the Committees on National Expenditure of 1917 and 1920, which did not contain those words.[3]

The Committee further reported[4] that it had appointed 6 Sub-Committees to examine the expenditure of specified Departments, had nominated the Chairman of the Committee an *ex officio* member of the Sub-Committees, and ordered that any 2 or more of them might meet in joint session.

Further, for the purposes:

> (*a*) of co-ordinating the work of the various Sub-Committees,
> (*b*) of securing a general review of such subjects as give rise to similar questions in several Departments,
> (*c*) of dealing directly with the Treasury and certain other Departments such as the Department of Scientific and Industrial Research,

the Committee appointed a (seventh) Co-ordinating Sub-Committee.

The Committee also reported[5] that it had appointed the following Sub-Committees to examine current expenditure of the Departments specified, defrayed out of moneys provided by Parliament for services directly connected with the War:

Sub-Committee on—	*No. of Members.*	*Departments.*
(1) Army Services	7	War Office
(2) Navy Services	6	Admiralty
(3) Air Services	5	Air Ministry
(4) Supply Services	5	Supply and Office of Works
(5) Home Defence Services	6	Home Office, Home Security, Scottish Home Department (except Fisheries), Labour and National Services, Information, Health, Health (Scotland), Education and Scottish Education.

[1] H.C. Paper 13 of 1940. [2] 356 H.C. Deb. 5. s. 22.
[3] The Reports, etc., of this Committee in Sessions 1917-18, 1918, 1919 and 1920 were referred to the Committee by Order of the House, March 11, 1940.
[4] § 2. [5] § 3.

Sub-Committee on—	*No. of Members.*	*Departments.*
(6) Trade, Agriculture and Economic Warfare[1]	5	Board of Trade, Economic Warfare, Overseas Trade, Export Credits Guarantee, Mines, Agriculture and Fisheries, Agriculture (Scotland), Scottish Home Department (Fisheries), Food, Transport and Shipping.

The Co-ordinating Sub-Committee consisted of the Chairman of the Select Committee and those of the 6 Sub-Committees.[2]

The further terms of reference and instructions to each Sub-Committee, in addition to those already given, were that the Sub-Committees:

> shall report to the Full Committee what economies, if any, consistent with the execution of the policy decided by the Government may be effected in the expenditure of the Departments concerned;
> shall sit in private and shall make interim reports to the Full Committee whenever it considers it advisable to do so;
> shall make their examination of officials as brief as possible, compilation of new statistical returns to be required only when essentially necessary;

and that any 2 or more Sub-Committees may, by mutual agreement, sit together and take evidence on any matter of joint interest.[3] The full Committee and the Sub-Committee held a number of meetings.

In its concluding paragraph the full Committee made public appeal for avoidance of waste, not only in Government Departments and throughout the Fighting Services and Civil Defence personnel, etc., but also on the part of the public and the Committees, other Members of the House to make suggestions as to useful lines of inquiry.[4]

Second Report.—This Report was tabled and ordered to be printed on April 18, 1940.[5] Up to the Easter Adjournment the Committee and its Sub-Committees had held a total of 127 meetings and examined 233 witnesses, in addition to visiting various types of establishment under both Government and private control, of which detailed statements are given in paras. 5 to 15 of the Report.

The Committee observed[6] that unlike its predecessor in 1917, which did not begin its work until the War had been in progress

[1] Some of the departments dealt with by this Sub-Committee were later allotted to other Sub-Committees and an additional one appointed for Transport Services.—[Ed.] [2] *Rep.* § 4. [3] *Rep.* § 6. [4] *Rep.* § 9.
[5] H.C. Paper 113 of 1940; 359 H.C. Deb. 5. s. 1131. [6] *Rep.* § 2.

some years, the Committee of 1940 had the advantage of examining potential War expenditure at an early stage.

Co-ordination of Contract Procedure.—Under existing machinery any Departmental proposal to deviate in a particular instance from the contract principles laid down by the Treasury must go before the Treasury Inter-Service Committee[1] before sanction. Questions of principle not already settled by higher authority are submitted to the Contracts Co-ordinating Committee.[2] The former gives decisions but the latter has only advisory powers, and decisions on particular cases by the former in so far as they involve matters of principle are communicated to the latter. The Contracts Co-ordinating Committee consists of the Directors of Contracts of the Service Departments, with representatives from the Treasury, Office of Works,[3] the Post Office, and such other Departments as may be called in. The Chair is taken by such Directors of Contract, in rotation, and its terms of reference are:

> to secure economy in purchases, the elimination of competition between the 3 services where the market is restricted and the adoption of a uniform contract procedure as far as possible.[4]

Instead of the rotary Chairmanship, as above mentioned, the Committee suggested the appointment of an officer of high standing and experience, with sufficient authority behind him, to consider both the principles and practice of contract procedure in their war-time setting, and to secure that the Committee looked constantly ahead, saw minor and major difficulties, and pursued them with energy to a rapid and effective decision. This official to be the permanent Chairman of the Contracts Co-ordinating Committee and keep fully in touch with the various departmental Directors of Contracts, ensuring that no question is neglected or shelved for lack of anyone to attend to it. With the necessary staff, this official should keep himself informed of difficulties experienced by contracting firms and make sure that no major outstanding question in contract policy or practice is left in the air, but expeditiously resolved.

Other Subjects.—The Committee also suggested the creation of a pool of qualified accountants and auditors to deal with contract costings.

Paragraphs 23 to 29 deal with design, specification, and supply of stores and suggest the closest liaison between designer and producer from an early stage, and the maximum standardization of articles in common use by Departments.

In paras. 30 to 40 such subjects as Building Programme,

[1] *See* Cmd. 5114 of 1936.
[2] Dates from 1920.
[3] P.W.D.
[4] §§ 17-22.

Selection of Sites, and Competitive Bidding for Engineering Personnel are dealt with.

Among the conclusions come to by the Committee is also the appointment, in each Department concerned, of senior officers independent of indenting and contracts, constantly reviewing specifications, thus eliminating rigidity, multiplication of types, etc., and maintaining closer liaison between designer and producer.[1] A fact-finding survey to consider preventable waste and salvage throughout the country is strongly urged.[2]

Third Report.—This Report, which was tabled and ordered to be printed on May 7, 1940,[3] dealt with the Report from the Army Services Sub-Committee on camp construction, labour, requisitioning, and contracts.

Fourth Report.—This Report,[4] which was tabled on the same day, deals with establishments and food, reported from the Sub-Committee (6).

Fifth Report.—This Report, which was tabled and ordered to be printed on May 28, 1940,[5] deals with the Sub-Committee on Air Services.

Special Report.—On the same day, the Select Committee submitted a Special Report,[6] pointing out that in some cases their investigations had led to immediate action by the Departments, thus rendering formal recommendations unnecessary, and in other cases the Committee was precluded from stating certain facts and figures out of consideration for public interest. The Committee, therefore, was faced with the difficulty of fulfilling its duty of reporting criticisms of Departmental action or disagreements with Departmental views, when the publication of its findings might endanger national security. The Committee also found itself in the dilemma that while considerations of national safety may preclude it from publishing certain recommendations and the arguments on which they were based, the normal practice of the House prevented the Committee from communicating its report to the Members of the War Cabinet, who alone could take executive action to compel the Departments to adopt the Committee's recommendations. The Committee, therefore, felt bound to inform the House that, in order to carry out the task imposed upon the Committee, the Chairman of the Committee and the Chairmen of the Sub-Committees, with the authority of the Committee or Sub-Committee in question, had considered it

[1] §§ 23-29. [2] §§ 41, 42.
[3] H.C. Paper 120 of 1940; 360 H.C. Deb. 5. s. 1051.
[4] H.C. Paper 121 of 1940. [5] H.C. Paper 131 of 1940.
[6] H.C. Paper 130 of 1940; ; 362 H.C. Deb. 5. s. 235.

essential to approach Ministers for direct discussions on matters arising from their inquiries and on the advisability of publicly stating certain facts and figures.

The Committee, however, expressed itself as mindful that its duty was to the House, but that, in war, the supreme consideration was to secure efficiency and swiftness in executive action, while preventing the disclosure of vital facts.

The Committee, therefore, recommended:[1]

> that when, in their opinion, a report should not be presented, their Co-ordinating Sub-Committee (which consists of the Chairman of the Committee and the Chairmen of the Sub-Committees) should be empowered to address a memorandum to the Prime Minister for the consideration of the War Cabinet, with a request for a considered reply thereto; and that Your Committee do Report to the House on every occasion when this power shall have been exercised. They ask the House to give them this power.

Sixth Report.—This Report, which was also tabled and ordered to be printed on May 28, 1939,[2] dealt with Stores, Labour Problems, Salvage, Timber Control, Area Organization, Machine Tools, and Allegations of Improper Commissions in connection with Contracts for Beds for Evacuees, and made recommendations.

Seventh Report.—This Report,[3] which was tabled and ordered to be printed on June 25, 1940, dealt with the Contracts Department, Repair and conversion of ships, Sunday work on ship repairs, and made recommendations.

Eighth Report.—This Report,[4] which was tabled and ordered to be printed on June 25, 1940, was concerned with—(*a*) the Central Register originated as part of the National Service Campaign, to advise on the method and scope of compilation of offers of service in the several branches of expert knowledge, etc.; (*b*) Central Register of Aliens; (*c*) Supplementary Register; (*d*) the emergency medical service, the inter-hospital ambulance service, and made recommendations.[5]

Ninth Report.—This Report,[6] which was tabled and ordered to be printed on July 18, 1940, dealt with the supply of coal and electricity, and made recommendations.

Tenth Report.—This Report[7] dealt with the Priority Organiza-

[1] *Fifth Rep.*, § 5. *See also* 362 H.C. Deb. 5. s. 1002, 1347.
[2] H.C. Paper 132 of 1940.
[3] H.C. Paper 139 of 1940; 362 H.C. Deb. 5. s. 307. [4] *Ib.* 140.
[5] On July 11, in reply to a Question in the House upon its business, a Minister said that an opportunity for discussion of this Committee's Reports could not be found on a Supply Day because the last such Day was only next week, but that an opportunity would be found (362 H.C. Deb. 5. s. 1347).
[6] *Ib.* 149; 363 H.C. Deb. 5. s. 403; 364 *Ib.* 800. [7] *Ib.* 155; 364 *Ib.* 428.

tion and the "Progressive" Organization, and made recommendations.

Eleventh Report.—This Report[1] dealt with the replies from Departments to the Committee's recommendations, in respect of the previous Reports.

Twelfth Report.—This Report[2] dealt with the Auxiliary Territorial Service (A.T.S.), Feeding of the Army, Army Agricultural Committee, and made recommendations.

Thirteenth Report.—This Report[3] dealt with the whole ambit of the utilization of the film for War purposes and made recommendations.

Fourteenth Report.—This Report[4] dealt with Camouflage and the Departments concerned with its various phases, its research organization, liaison between Camouflage Departments, the siting and planning of buildings from the point of view of camouflage, etc., and made recommendations.

[1] *Ib.* 156; 364 H.C. Deb. 5. s. 428.
[2] H. C. Paper 158 of 1940; 364 H.C. Deb. 5. s. 1314.
[3] *Ib.* 159; 364 H.C. Deb. 5. s. 1314.
[4] *Ib.* 167; 365 H.C. Deb. 5. s. 604, 1833.

IV. HOUSE OF COMMONS PUBLICATIONS AND DEBATES REPORTS, 1939-40[1]

By the Editor

The Select Committee on this subject is specially charged with the duty of assisting Mr. Speaker in the arrangements for the Report of Debates and to inquire into the expenditure on stationery and printing for the House and the public services generally.

Whether the Clerk of the House himself or one of his staff is the Accounting Officer for the House Vote, the Clerk, as the Permanent Head of his Department, has to keep a watchful eye on House expenditure, drawing the attention of the House Committee on the subject, when necessary, to any direction in which there is waste, with recommendations as to the best manner in which economy can be effected.

The Reports and evidence given before this Committee are therefore of interest to the Clerks of the Houses of other Empire Parliaments, especially in these times of War and consequent rising costs.

It is also one of the rôles of Parliament in its internal administrative capacity to set an example in financial control not only to Government Departments but to the public generally.

The Reports, evidence, etc., of the above-mentioned Committee will therefore be analysed with the object of usefulness to those responsible for the operation of the Parliamentary machine from a business and administrative point of view, in the other parts of the Empire.

This Committee was appointed by Order of the House of December 12, 1939,[2] with the usual Order of Reference.[3]

The First Report of the Select Committee in question deals principally with the cost of production and distribution of the Official Reports of the Debates of the House of Commons, commonly known as *Hansard* (after its pioneer). The Second Report deals with suggested economies in regard to Division Lists, free issue of the bound volumes of *Hansard*, circulation of printed matter to M.P.s and others, Votes and Proceedings, and economies in House stationery and printing.

Hansard.

First Report.—In consequence of a Question in the House of Commons by Commander S. King-Hall, R.N. (Ormskirk), on

[1] *See also* JOURNAL, Vols. I, 45; V, 26-27; VI, 157-190; and VII, 36-38.
[2] 355 H.C. Deb. 5. s. 1138, 1139. [3] *See* JOURNAL, Vol. VI, 36.

December 5, 1939,[1] during the debate on the Address-in-Reply, the First Report[2] from the Select Committee on Publications and Debates Reports, 1939-40, deals principally with the sale of *Hansard* and the issue of weekly editions thereof. This Report was tabled and ordered to be printed on February 20, 1940,[3] which procedure was followed on February 26 in regard to the evidence in connection with this Report.[4]

The Memorandum put in by Commander King-Hall which forms the Appendix to this Report deals with *Hansard* publicity in the 4 following areas:

(1) United Kingdom,
(2) The Dominions,
(3) The U.S.A., and
(4) Neutral Countries,

in regard to the British War effort, and urges the medium of *Hansard* for such purpose. The other main points of the Memorandum are: That the sales figures of *Hansard* do not show that it reaches the public to any extent; that the problem seems to centre around the questions of the production of a suitable edition and its distribution; and that a weekly *verbatim* edition of about 48 pages be issued, of a selected day's debate, or, occasionally, 2 weeks' Questions and replies in lieu thereof, such edition to be controlled by an all-party sub-committee of 3 M.P.s to make the selection and approve the introduction thereto, in such a manner as, over a period of 3 months, to ensure that all departments and subjects debated have a showing. Distribution in the United Kingdom area is suggested, to Trade Union leaders, Mayors, secretaries of various Associations, etc., as well as to Commanding Officers of H.M. Ships, Army units and R.A.F. squadrons, with sale to the public at 2*d.* per copy. Leading booksellers are to be invited to display the weekly edition on a sale-or-return basis, either at a very low commission, or free —as their war effort; and a national advertising campaign is to be launched. Suggestions are also made as to the method of distribution in the other 3 areas. The whole aim of Commander King-Hall's proposal is "to make the proceedings of Parliament more of a reality to the man-in-the-street", and to avoid the danger of Parliamentary institutions falling into contempt. An estimate is attached to the Memorandum showing the cost of running off the weekly edition from the type already set up for the daily *Hansard*, advertising and commission, of £360, and the receipts, based on a sale of 60,000 copies (excluding U.S. sales) at 2*d.*, as £500, thus showing a profit of £140 per week.

[1] 355 H.C. Deb. 5. s. 448.
[2] H.C. Paper 68 of 1940.
[3] 357 H.C. Deb. 5. s. 1167.
[4] *Ib.* 1734.

The Committee, which held 2 sittings, reported that they had taken evidence from Commander King-Hall; Mr. I. S. Macadam, Assistant Director, Ministry of Information; and Sir William Codling, Controller, H.M.S.O.

The Report stated that the evidence showed the present sales of *Hansard* at 6*d.* per copy to be limited to 1,300 " business " subscribers, whereas the public at large were unaware that it could be bought or even, in many cases, that it existed at all.

The Committee, however, decided that the value of *Hansard* for foreign propaganda was a question upon which it must be largely guided by the Ministry of Information, their witness stating that extracts from some of the principal speeches in the House were already reprinted and circulated in various parts of the world in fairly large quantities, but the proposal to make use of complete issues of *Hansard* was not supported by the Ministry.

Upon the question of the present home circulation of *Hansard*, the Committee reported that the total cost to H.M.S.O. Vote for *Hansard* was about £30,000 *p.a.*, while the return from sales at 6*d.* a copy was between £5,000 and £6,000 *p.a.*, but that only 128 public libraries availed themselves of this facility. In its conclusions, the Committee—

> (*a*) was not convinced that an abridged edition of *Hansard* would be suitable for sale in any discriminatory form;
>
> (*b*) considered that steps should be taken to increase the circulation of *Hansard* in its present form, first, because increase of sales would decrease cost of production, and, secondly, because wider knowledge of the activities of Parliament, as illustrated in *Hansard*, would be of permanent value to the democratic system.
>
> (*c*) was of opinion therefore:
>
> (i) that attention be given to increased circulation of *Hansard* in its present form at standard rates; and
>
> (ii) that through the B.B.C. and by circularizing libraries, clubs, societies and educative institutions, demand for *Hansard* might be stimulated.

The Committee further reported two minor changes in *Hansard* made by its editor, following the proposals of the Committee—namely:

> (*a*) Questions of special importance listed on the outside cover thereof are now followed by reference to the column in which they appear; and
>
> (*b*) the constituency of each speaker is now inserted after the name at the head of each speech.

Evidence.—It is now proposed to quote from the evidence taken by the Select Committee, upon subjects of both general and special interest. 163 Questions were asked.

Commander King-Hall, the first witness, whose Memorandum has already been referred to, stated that of the *Hansard* circulation of approximately 3,000 copies, about 1,500 were given away and 1,300 normally sold, and that, so far as he was able to ascertain, no money had ever been spent in advertising *Hansard*.[1] The witness suggested that the profits of the weekly home edition be used to subsidize the proposed foreign one,[2] and in reply to a further Question[3] said that he based the suggested 48 pages for the new edition on 20 different *Hansards* where no debate was found, excluding Questions, that ran into more than 48 pages. There must be no selection; the debate (of the day) must be printed *verbatim*.[4]

The second witness, Mr. Macadam, in reply to a Question,[5] gave 8,000 to 9,000 as the number of copies printed by his Department of extracts from principal speeches.

The last witness, Sir William Codling, stated that the proposed new edition of *Hansard*, on the basis of 70,000 copies and including the proposed U.S. edition, would probably take about 5 tons of paper,[6] that the actual cost of printing that number of copies would be about £270, and that he did not think a bookseller would be found to sell a 2*d.* pamphlet at 10 per cent. commission. The witness thought a great number could be got who would sell at ½*d.*, which is the ordinary bookseller's commission of 25 per cent. Therefore he had raised the 10 per cent. commission of £50 quoted in the Memorandum to £125 and the printing cost from £210 to £270, which would leave a profit of £5 if all 60,000 copies were sold. As to libraries, they could buy *Hansard* at half-price.[7] Each borough in London has a central library and there are 100 outside.[8] The half-price arrangement applies to all Government publications sold by H.M.S.O. to public libraries.[9] In reply to Q. 218 and 219, the witness said that his experience of the public in regard to a Government publication was that if they wanted it they would take it, whatever its cost, within reason.

In answer to another Question,[10] the witness replied:

> You can place things on the market at too cheap a price. If this thing is going to be sold through the bookselling trade, you have to make it worth the bookseller's while to handle it. A rather striking example of that was the difference between the Documents leading up to the War published in 1914, and those Documents leading up to the War published in 1939. In 1914 the Government insisted on putting them on sale at 1*d.* and I remember we printed

[1] Q. 106. [2] Q. 111. [3] Q. 122. [4] Q. 134. [5] Q. 184.
[6] Q. 159. [7] Q. 204. [8] Q. 207. [9] Q. 209. [10] Q. 238.

1,000,000 copies and they were an absolute drug; we could not get rid of them; the trade would not handle them, they could not. You could not handle a thick book for ½*d.* a copy. In 1939 we put the book on sale at 1*s.* and we sold well over half a million copies.

The following Question was then asked the witness:

Q. 241.—If you could sell an additional 5,000 copies of the daily *Hansard* by giving a bookseller or distributor 3*d.* a copy as profit, do you think they would be able to get rid of an extra 5,000?—I doubt whether you would then; he already gets 1½d. a copy.

In the course of a reply to Q. 244, the witness stated that the net return from *Hansard* sales was between £5,000 and £6,000 a year.

Question was then asked the witness, that if the experiment (Commander King-Hall's proposal) justified itself, would the expenditure be justified; to which the witness replied that of course it was understood that the type, when it was set up (for *Hansard*), was subjected to a time-table, until the bound volumes were printed off and delivered, and the "copy" for the proposed weekly edition would have to be forthcoming at the right time, because they (H.M.S.O.) could not hold up the type and upset the arrangements of the House in regard to bound volumes.[1] Sheets of the bound volumes had to be forthcoming within one month of the last daily part of the bound volume.[2]

In regard to the ordinary daily edition of *Hansard* the witnes said: "I am speaking without my book, but I think there is a actual loss on every copy sold at 6*d.*"[3]

Other Proposals for Economy.

Second Report.—On June 4, 1940, the Second Report[4] was tabled and ordered to be printed, which procedure was likewise followed in regard to the evidence.

This Report deals with the various directions in which stringent measures of economy can be exercised in the House's and other services, such as: the reduction in size and type of the Division Lists;[5] the discontinuance of the second supply of Papers to M.P.s; reduction in the quality of note and printing paper; the use of economy labels on envelopes; reduction in size and type of the Votes and Proceedings[6] to 10 pt. (*Hansard*) size and imperial 8vo; the discontinuance of the free supply of the bound copies of *Hansard* to M.P.s; and other economies in stationery and printing.

The Committee held 2 meetings in connection with this Report

[1] Q. 257. [2] Q. 258. [3] Q. 261. [4] H.C. Paper 133 of 1940.
[5] *See* JOURNAL, Vol. I, 45, 46. [6] Not JOURNAL.

and examined 4 witnesses—Sir William Codling (Controller, H.M.S.O.); Mr. F. W. Metcalfe (Clerk-Assistant of the House of Commons); Mr. R. A. W. Dent (Senior Clerk, Public Bill Office); and Captain J. G. Mounsey (Assistant Clerk, Vote Office), the 2 last named being members of the Clerk's staff, 257 Questions were put in evidence.

In answer to a Question[1] Sir W. Codling observed that the general lowering of the standard of printing paper supplied to the public service would effect a saving of about 10,000 tons of raw material which would otherwise have to be imported. The witness further stated that previously 2 kinds of writing paper were in common use in the Service, an 87-gramme (per sq. metre) paper supplied to Heads of Departments and to the House and a 77-gramme paper for more common use. They proposed to bring it down to a uniform 62-gramme writing paper,[2] which he would like to supply as the standard writing paper of the House, as it would have a great effect in the public service generally and outside if it were known that the House of Commons itself had effected that economy.

In answer to another Question the witness suggested as another method of economy in paper for all letters to be typed single-spacing on both sides of the paper and covering as much of the sheet area as possible, using octavo sheets for all correspondence,[3] which is more economical than one side of a quarto sheet.[4]

Mr. Dent was then called, and in reply to Q. 361 (quoting from the Memorandum he put in) said that Division Lists were at present published as a supplement to the Votes—known as the Official List—and also in *Hansard*. Publication of the Official List began February 22, 1836, resulting from a Resolution of the House of the 22nd of that month, the relevant portion of which Resolution read:

> That the lists of the Divisions be then brought up to the Table by the Tellers, and deposited there for insertion in alphabetical order in the Votes.

Division Lists were first published in *Hansard* when it was started on its present lines in 1909. The compilation and accuracy of the Division List was the responsibility of the Public Bill Office of the House. After a division the marked sheet is sent to the printer in a supplement to the Votes, and a carbon copy is sent for printing in *Hansard*. Under the direction of Mr. Speaker, the printing and accuracy of the Votes is the responsibility of the Clerk of the House, while *Hansard* is that

[1] Q. 272. [2] Q. 276. [3] Q. 292. [4] Q. 299.

of the editor and his staff. All divisions up to about 11.30 *p.m.* appear in *Hansard* the following morning; any after that time appear a day later. This Select Committee in 1932[1] recommended that Division Lists be no longer published with the Votes, though the recommendation was not acted upon.

Captain Mounsey was then called, and in the course of his evidence said that his office sent out 593 copies of the daily edition of *Hansard*, and in addition about 200 to 300 were issued on demand at his office.[2] A form was sent out to Members at the beginning of each Parliament which contained spaces for the addresses to which—

(1) Votes and Proceedings,
(2) Parliamentary Papers (including demand paper),
(3) Daily Reports of Parliamentary Debates, and
(4) Bound volumes of Parliamentary Debates,

have to be sent, with a note—"Please write 'Not required' against any of the papers you do not wish to receive."[3]

Sir W. Codling was again called in connection with the suggested change in the format and types of the Votes,[4] in 10, 9 and 8 point, and said that if the imperial 8vo size, with 10-point type (as in *Hansard*), were adopted, 14 tons of paper per annum would be saved; if set in the same size in 9 pt., 15 tons; and if in 8 pt., 17 tons.[5] The witness considered 8 and 9 pt. rather small for the purpose. The Votes took about 35 tons of paper a year.[6]

Penguin Hansard.

Third Report.—On September 5, 1940, the Third Report[7] with evidence was tabled and ordered to be printed. With reference to an application by Penguin Books Ltd. for permission to publish certain extracts from *Hansard* under the title of "The Penguin Hansard", while the Committee adhered to the view expressed in its First Report that it was not convinced that an abridged edition of *Hansard* would be suitable for sale in any form which tended to discriminate between the proceedings of one day and another, it saw no objection to a private publication of extracts from *Hansards* already published, provided consent of H.M.S.O. had been previously obtained and the publishers of such extracts accepted full legal responsibility for the reprint.

The Report also recommended the following further proposals

[1] *See* JOURNAL, Vol. I, 45, 46.
[2] Q. 382.
[3] Q. 407.
[4] *See* reply to Q. .
[5] QQ. 437, 439.
[6] Q. 454.
[7] H.C. 160 of 1940.

for economy in printing: (*a*) long title of Bills and Acts in 12 instead of 14 pt.; (*b*) their Clauses 11 instead of 12 pt.; and (*c*) Schedule in 10 in place of 11 pt.

The Controller, H.M.S.O., and Mr. F. W. Metcalfe, C.B., Clerk-Assistant of the House of Commons, were examined. The evidence dealt chiefly with economy in the supply, etc., of stationery to Government Departments.

V. CANADA: DOMINION-PROVINCIAL RELATIONS

By the Editor

The relationship between the Dominion and Provincial Governments in Canada has been referred to in earlier issues of this JOURNAL.[1] It is now over 3 years[2] since the present and most recent inquiry into the subject was instituted, full particulars regarding the appointment of which have already been given.[3] The Report of the Royal Commission on Dominion-Provincial Relations, which is dated May 3, 1940, and was published in the same year, now forms the subject of this Article. Its Report, together with the Appendices, etc., is contained in 22 volumes. Like other official investigations in Canada, it has been both painstaking and thorough. Moreover, as remarked by Dr. W. Ivor Jennings,[4] in fixing the personnel of the Commission no attempt was made to its publicity value by appointing eminent, but for practical purposes useless, persons, nor was it thought necessary to secure the representation of " interests ".

It is not proposed to deal with every aspect in the wide field of the Commission's investigations during its tour through Canada, at the Dominion and Provincial capitals of which its hearings were held. Indeed, such an attempt would be quite impossible within the ordinary compass of this volume, and, in any case, readers of this JOURNAL are more concerned with those features of the Commission's investigations which come withir the range of Constitutional law in its relation to Parliament, the procedure observed by the Commission in pursuit of its inquiry and the machinery employed in the fact-finding side of its activities. The economic, social and political aspects of the Commission's inquiry, therefore, come within our scope only so far as they are necessary to elucidate such Constitutional issues.

In the Preface to one of the " Studies ", prepared, at the instance of the Commission, by one of its many research assistants, and entitled " Legislative Expedients and Devices adopted by the Dominion and the Provinces ", a good bird's-eye view of the field of, and reasons for, the inquiry is given[5]—namely:

> The scope of government is constantly changing. Seventy years ago no one who had to do with Confederation anticipated social legislation and marketing schemes any more than they anticipated aviation or radio. The enlargement of the field of government

[1] *See* JOURNAL, Vols. IV, 14-18; V, 90-99; VI, 43-48, 191-200; VII, 48-56; and VIII, 39. [2] Aug. 14, 1937. [3] *See* JOURNAL, Vol. VI, 194-200.
[4] *The Times*, Nov. 30, 1940. [5] Apdx. VIII, p. 5.

action has naturally been accompanied by an increase in the cost of government, leading in turn to increased demands for revenue. On the one hand the Dominion could not find in the specified powers (to which in effect it became limited by judicial decision) the legislative authority to deal with many matters considered national in scope; while the Provinces could not find in the limited resources open to them the power to raise the revenue they needed to meet increased demands for social and debt services. It became more and more difficult to work the ship of state while still retaining " the watertight compartments which are an essential part of her original structure "[1] or to deal with the problems of an increasingly collectivist state in the age of the automobile and the aeroplane with a Constitution which could only expressly envisage the rugged individualism of the horse-and-buggy days. Consequently, both Dominion and Provinces were led to resort to various expedients and devices for the purposes of enabling them to do indirectly what they were precluded from doing directly.

But as was said by Lord Maugham in a judgment delivered before the Judicial Committee of the Privy Council:

> It is not competent either for the Dominion or a Province under the guise, or the pretence, or in the form of an exercise of its own powers, to carry out an object which is beyond its powers and a trespass on the exclusive powers of the other.[2]

Commission's Survey and Terms of Reference.

These have already appeared in a previous issue of the JOURNAL.[3] In the Report of the Commission, however, the following words in such terms of reference were italicized by the Commission:

> (*a*) *to examine the Constitutional allocation of revenue sources and governmental burdens to the Dominion and Provincial Governments. . . .*
> (*b*) *to investigate the character and amount of taxes collected from the people of Canada. . . .*
> (*c*) *to examine public expenditure and public debts in general. . . .*
> (*e*)[4] *to express what in their opinion . . . will best effect the balance relationship between the financial powers and the obligations and functions of each governing body, and conduce to a more efficient, independent and economical discharge of governmental responsibilities in Canada.*[5]

The Commission in its Report stated that it was intended to be both a fact-finding body and a body to make recommendations.[6]

[1] The words are quoted from Lord Atkins' widely criticized observations in *A-G Ontario* v. *A-G Canada* (1937), A.C. 326, at p. 354.
[2] Apdx. VIII, p. 5, *A-G Alta.* v. *A-G Canada* (1939), A.C. 117, p. 130, also quoted in the *O'Connor Report*, Apdx. IV, 218.
[3] Vol. VI, 194-197.
[4] Para. (*d*) was not italicized.—[ED.]
[5] Bk. I, 13-14.
[6] *Ib.* 14.

Personnel of Inquiry.

The Commission itself consisted,[1] in the first place, of a Provincial Chief Justice as Chairman, a Judge of the Supreme Court of Canada, " a former newspaper editor whom any Dean would welcome into his faculty ", a Professor of Government at Dalhousie University, N.S., and a Professor of Economics at the University of British Columbia. In the early part of 1938, however, the Chairman resigned owing to continued ill-health and was replaced by Dr. Jos. Sirois, LL.D., Professor of Constitutional and Administrative Law at Laval University, Quebec, who had previously taken the place of the Hon. Mr. Justice T. Rinfret. The vacant seat in the Commission was not filled.

The Secretary and Chief of the Research Department of the Commission was Mr. Alex. Skelton, Chief of the Research Department of the Bank of Canada, who, with his staff of assistants and other experts, was responsible for all the arrangements in connection with the Commission's investigations. The French Secretary was Monsieur Adjutor Savard.

The Commission was assisted in its work by a number of research assistants, experts upon their particular subjects, appointed by the Commission,[2] who conducted a comprehensive research programme, some of which is represented in the following " Studies " contributed by them. The unnumbered and mimeographed " Studies ", however, which do not constitute " Appendices ", are " Studies " for which the Commission does not accept responsibility.

The subject-matter of both these classes of " Studies ", with their respective authors, are as follows:

" Studies ".

A. In Printed Form.

Appendices.	*Author(s).*
1. Summary of Dominion and Provincial Finance Statistics.	—
2. British North America Act at Confederation (economic, social and financial).	Professor D. G. Creighton (*Department of History, Toronto University*).
3. The Economic Background of Dominion-Provincial Relations.	Professor W. A. Mackintosh (*Head of the Department of Political and Economic Science, Queen's University, Ont.*).

[1] *See* JOURNAL, Vol. VI, 96.

[2] O. in C., P.C. 2281, Sept. 15, 1937.

Appendices.	*Author(s).*
4. National Income.	Professor D. C. Macgregor (*Department of Political Economy, Toronto University, Ont.*); J. B. Rutherford (*Dominion Bureau of Statistics*); Dr. G. E. Britnell (*Professor of Political Science, Saskatchewan University*); and J. J. Deutsch (*Assistant Director of Research to the Commission; Research Department, Bank of Canada*).
5. Labour Legislation and Social Services in the Province of Quebec.	Professor Esdras Minville (*Directeur de l'Ecole des Hautes Etudes Commerciales, Université de Montréal, Que.*).
6. Public Assistance and Social Insurance.	Dr. A. E. Grauer (*Director, Department of Social Service, Toronto University, Ont.*).
7. Difficulties of Divided Jurisdiction.	Professor J. A. Corry (*Department of Political and Economic Science, Queen's University, Ont.*).
8. Legislative Expedients and Devices adopted by the Dominion and the Provinces.	Dr. L. McGouin, K.C. (*Professor of Faculty of Commerce, Montreal University, Que.*); and Brooke Claxton.

B. In Mimeographed Form.

(*a*) The Growth of Government Activities since Federation.	Professor J. A. Corry (*see above*).
(*b*) Labour Legislation. (*c*) Public Health. (*d*) Housing.	Dr. A. E. Grauer (*see above*).
(*e*) Financial History of Canadian Governments.	Stewart Bates (*Ex-Secretary, Economic Council of Nova Scotia, and Professor of Commerce, Dalhousie University, N.S.*).
(*f*) Municipal Finance in Canada.	H. C. Goldenberg (*formerly Lecturer in Economics, McGill University, Que., and Economist for Canadian Federation of Mayors and Municipalities*).
(*g*) Dominion Monetary Policy.	Professor F. A. Knox (*Department of Political and Economic Science, Queen's University, Ont.*).
(*h*) Prairie Population Possibilities.	Professor W. J. Waines (*Department of Political Economy, Manitoba University*).
(*i*) The Economic History of the Maritime Provinces.	Dr. S. A. Saunders.

Appendices.	*Author(s).*
(*j*) Dominion Provincial Subsidies and Grants.	Dr. C. T. Kraft, Ph.D., and W. Eggleston.
(*k*) Railway Freights in Canada.	R. A. C. Henry[1] (*ex-Deputy Minister of Railways and Associates*).

The most interesting of these " Studies " to readers of this JOURNAL, however, are Appendices 2, 7 and 8.

Hearings.

Public hearings by the Commission were opened in Winnipeg, Man., on November 29, 1937, and carried on in all other Provincial capitals as well as at Ottawa, during that and the following year, the corresponding numbers and evidence pages being:

Place.	*Dates.*	*Exhibit No.*	*Evidence pp.*
Ottawa, Ont.	Jan. 17-31, 1938	87-139	2306-3851
	Feb. 15-16, 1938	163-171	4635-4829
	April 21, 1938	(Dr. I. Jennings)	6629A-6716D
	May 25-June 2, 1938	380A-412	9108-9154, 9505-9926
	Aug. 8, 1938	Prof. L. F. Giblin	—
	Nov. 24-Dec. 1, 1938	413-427	10078-10702
Toronto, Ont.	April 25-May 9, 1938	267-340	6628-8117
Quebec, Que.	May 12-16, 1938	341A-356	8118-8492
Halifax, N.S.	Feb. 3-8, 1938	140-159	3852-4320
Fredericton, N.B.	May 18-23, 1938	357-359	8493-9106
Winnipeg, Man.	Nov. 29-Dec. 8, 1937	1-33	1-1181
Victoria, B.C.	Mar. 16-25, 1938	172-234	4830-5944
Charlottetown, P.E.I.	Feb. 10-12, 1938	160-162	4321-4634
Regina, Sask.	Dec. 9-17, 1937	34-86	1182-2305
Edmonton, Alta.	Mar. 28-April 2, 1938	235-266	5945-6627

The exhibits are classified as *briefs*, listed by the name of the Government, public body, or private association presenting them, and *memos.* indicate documents prepared by officials or departments at the request of the Commission on the question of overlapping services. Other material is listed by its title. Many letters supporting or criticizing *briefs* or making suggestions to the Commission were received from private individuals, but in view of the Commission's ruling only Governments or formally organized associations were heard.

Evidence.—Altogether, 398 witnesses were examined by the Royal Commission, its evidence covering 10,702 pages. To show

[1] Permanent Head of the Department.

the wide range of the Commission's investigations evidence was taken on behalf of:

Banks
Boards of Trade
B.E.S.L.[1]
Chambers of Commerce
Chartered Banks
Cities
Civil Servants
C.C.F.[2]
Coal producers
Communists
Economic societies
Electric stations
English-speaking Canadians
Experimental farms
Farmers
French-speaking Canadians
French-speaking Canadians of the Maritime Provinces[3]
Labour
Libraries
Loan companies
Manufacturers
Medical practitioners
Mining industry
Municipalities
Nurses
Orange Lodges
Property owners
Protestant teachers
Provinces[4]
Religious bodies
Retail merchants
Roman Catholic schools
School trustees
Single-tax associations
Teachers
Trust companies
Universities
Women

Evidence was also heard on such subjects as:

C.N.R. investments[5]
Canals
Citizens' research
Crop failures
Customs duties
Dominion subsidies
Double tax
Education
Financial relations with Dominion Government
Fisheries
French language
Freight rates
Health
Insurance
Land settlements
Lumber
Maritime claims
Marketing
Medical research
Mining taxation
Mortgage and investments
Monetary policy of Canada
Municipal taxation
Natural resources
Old-age pensions
Pensions
Production
Provincial taxation
Public relief
Real estate
Reconveyance of land
Rehabilitation
Savings certificates and bonds
Social credit[6]
Social welfare
Statistics
Succession duty
Tax evasion
Taxpayers' protection

[1] British Empire Service League. [2] The Co-operative Commonwealth Federation (Canada's Labour Party). [3] P.E.I., N.S. and N.B.
[4] The 9 Provinces in abbreviated form being: Ont., Que., N.S., N.B., Man., B.C., P.E.I., Sask., and Alta. [5] Canadian National Railways.
[6] Major C. H. Douglas's plan for permanent prosperity through monetary reform in order to overcome the insufficient supply of money and its control of the banks.—[ED.]

Transportation
Travel
Water rights
Wheat productions
Wheat yields
Women
Youth and recreation

Among the witnesses heard before the Royal Commission were: Premiers, Ministers or representatives or counsel for the various Provinces (excepting Alberta). Statements were made on behalf of the Manitoba Government as to the Union of the Prairie Provinces;[1] the Saskatchewan Government on the Canadian Constitution and its amendments;[2] the Government of British Columbia upon her claim for readjustment of the terms of Union;[3] and a summary of British Columbia's claims for better terms.[4]

Evidence was also given by many Government Departments, including those of Trade, Commerce and Agriculture. To show the open range of the Commission's activities, the following were also among the witnesses before the Royal Commission: D. W. Bell, Acting Director of the U.S. Budget Bureau;[5] Dr. Heinrich Bruning, ex-Chancellor of Germany; Professor L. F. Giblin, Professor of Economics, Melbourne University, formerly of Australian Grants Commission (Australia); Dr. W. Ivor Jennings, Reader of Law, London University (U.K.); Dr. R. Magill, Undersecretary of the Treasury[5] (U.S.); Dr. G. Myrdall, Professor of Political Economy, Stockholm University (Sweden); B. M. Stewart Director of Research, Industrial Relations Counselors Inc., New York City (U.S.);[5] Graham Towers, Governor of the Bank of Canada; A. B. Purvis,[5] formerly Chairman, National Employment Commission; and Colonel S. T. Wood, R.C.M.P.[5]

Of the Provincial Governments, those of Alberta and Quebec, however, did not participate in the working of the Commission: Alberta, owing to its Legislature having decided against presenting a brief to the Commission on grounds already outlined to the Federal Government, the Commission being informed by the Alberta Premier that it was the intention of the Province to present a comprehensive brief directly to the Federal Government, a copy of which would be sent to each Premier. The Commission, however, held public hearings in the Province, as already indicated.[6]

The brief submitted to the Commission by Saskatchewan has already appeared in the JOURNAL.[7] Similar briefs were also submitted by all the other Provinces[8] except those of Ontario and

[1] Saskatchewan, Manitoba and Alberta, Bk. I, 32.
[2] Bk. I, 86; *see also* JOURNAL, Vol. VI, 43-48.
[3] Bk. I, 173, 179; Bk. I, 32.
[4] *Ib.* 238.
[5] *By Private Hearing.*
[6] Bk. I, 16.
[7] *See* Vol. VI, 43-48.
[8] *Manitoba's Case* (King's Printer, Winnipeg, Man.); Speech from Throne (Man.), VOTES, Nov. 18, 1940, p. 2, §3, which states that the Report shows how

Alberta. Ontario did not submit a brief. Alberta, however, did submit "The Case for Alberta to the Sovereign People of Canada and their Governments." The Chamber of Commerce at Edmonton, however, submitted a brief of their own to the Commission.

The Province of Quebec was represented at the opening session of the Quebec hearings by counsel, who welcomed the Commission and presented a memorandum setting forth the Province's reasons for not participating, such memorandum declaring in part:

> We beg to state that we are not appearing before your Commission either as an applicant, or as a defendant, and that we shall not feel bound in any way whatsoever, by the opinions contained in your report. The Government of this Province is appearing before you because, in the first place, it did not wish to be lacking in courtesy towards this Commission, and also because its silence might have been construed as an acquiescence in the principle laid down by the Federal Government, in appointing, of its own accord, and without consulting the Provinces, a Commission whose report might form the basis of possible amendments to the Constitution.[1]

Although the Commission did not have the benefit of representation from the Dominion Government it received full co-operation from its officials.[2]

During the hearings in Provincial Capitals the Provinces had been informed that opportunity would be given them to make supplementary representations replying to the contentions of other Provinces and of reviewing the research studies. Arrangements were therefore made for final hearings in Ottawa after the Provinces had had time to consider each other's evidence and the research material supplied by the Commission.[3]

The B.N.A. Act.

The Constitution of Canada consists of the following 8 Acts of the Imperial Parliament—namely, the British North America Acts of 1867,[4] 1871,[5] 1875,[6] 1886,[7] 1907,[8] 1915,[9] 1916,[10] and 1930.[11]

The B.N.A. Act of 1867 federally united the original Provinces of Canada (namely, Upper and Lower Canada, now respectively the Provinces of Ontario and Quebec), Nova Scotia and New

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great is the need for readjustment of Dominion-Provincial relations. "Many of these recommendations are acceptable to My Government and will be recommended for adoption."

[1] Bk. I, 16, Ev., pp. 8130, 8131 (translation). [2] Bk. I, 18. [3] *Ib.* 17.
[4] 30 Vict., c. 3. [5] 34-35 Vict., c. 28. [6] 38-39 Vict., c. 38.
[7] 49-50 Vict., c. 35. [8] 7 Edw. VII, c. 11. [9] 5 and 6 Geo. V, c. 45.
[10] 6-7 Geo. V, c. 19. [11] 20-21 Geo. V, c. 26.

Brunswick, into one Dominion under the Crown of Great Britain and Ireland, " with a Constitution similar in principle to that of the United Kingdom." Under the Act the Parliament of the Dominion, consisting of the Crown, a life-nominated Senate and an elected House of Commons, was established as well as Legislatures in the original Provinces above mentioned, and the legislative powers of each defined.

The B.N.A. Act, which was based upon the London Resolutions of 1866-67, is unique among federal constitutions in not providing within itself a procedure of amendment. Amendment is achieved, however, by Address to the Crown from both Houses of Parliament at Ottawa asking therefor. This subject will, however, be dealt with later under the Report itself.

The first amendment of the B.N.A. Act of 1867 was by the Act of 1871, which removed certain doubts as to the powers of Parliament in regard to establishment of new Provinces, and, with the consent of the Provincial Legislature concerned, provided for the alteration of Provincial boundaries and the administration of Territories not included in any Province.

The amending Act of 1875 dealt with the privileges, immunities and powers of Parliament, and that of 1886 provided for representation in Parliament of Territories above mentioned.

The Act of 1907 provided for the grants to be paid by Canada to the several Provinces for their local purposes and the support of their Governments and Legislatures, fixed on a specified population basis.

The Act of 1915 provided for increased representation in the Senate and House of Commons respectively, and the Act of 1916 extended the life of the Twelfth Parliament until October 7, 1917.

The Act of 1930 confirmed agreements for the return of their natural resources to the 4 Western Provinces, dated Manitoba and Alberta, December 12, 1929; British Columbia, February 20, 1930; Saskatchewan, March 20, 1930; and that between Canada, Ontario and Manitoba, November 11, 1930. Some features of the agreements were the retention and in some cases an increase in the subsidies formerly paid to the Provinces, the retention of the National Parks and the continuation of the administration of Indian Reserves by the Dominion.[1]

Statute of Westminster.

The Statute of Westminster of 1931[2] makes special reference in s. 7 thereof[3] to the safeguarding of the B.N.A. Acts, 1867-1930,

[1] *Canada Year Book*, 1931, 1110.
[2] 22 Geo. V, c. 4.
[3] For full text of s. 7 *see* JOURNAL, Vol. V, 99.

or any order, rule or regulation thereunder. S. 2 of the Statute of Westminster was also extended to the laws made by the Provinces and the powers of their Legislatures, and the powers conferred by the Statute of Westminster upon the Dominion Parliament or upon the Legislatures of the Provinces are restricted to the enactment of laws in relation to matters within the competence of the Dominion Parliament or a Provincial Legislature.[1]

Provincial Constitutions.

Although the Constitution of the Dominion of Canada is not a federal one as that of the Commonwealth of Australia, still less like that of the United States, yet it is of a federal nature, the Provinces having, in some instances, constitutions of their own, but subject in all cases to the B.N.A. Act. The Constitutions of Ontario and Quebec had to be set up in the B.N.A. Act, which is why about one-third of the Act consists of enactments specially relating to those 2 Provinces. On the other hand, Nova Scotia and New Brunswick, being separate colonies, each kept its own Constitution with a few modifications granted under Royal Prerogative. New Brunswick, which was carved out of Nova Scotia, also entered Confederation with its existing Constitution and powers intact, subject to the B.N.A. Act.

The first of the 5 post-1867 Provinces to enter the Confederation was Manitoba, the Constitution of which is laid down in the Statutes of Canada (1870, c. 3), confirmed by the B.N.A. Act of 1871, which provided that except as laid down in s. 3 (dealing with the boundaries of the new Province) it was not competent for the Dominion Parliament to alter the Manitoba Constitution. British Columbia was the next post-1867 Province to join the Confederation, which it did in 1871 under its own Constitution, subject to the B.N.A. Act. This addition was followed in 1873 by the entry of Prince Edward Island, originally part of the Colony of Nova Scotia, which had had its own Constitution since 1773. All these 3 post-1867 Provinces were admitted into the Confederation by Imperial Order-in-Council, in the case of Manitoba and Prince Edward Island upon Addresses from the Parliament of Canada and the Legislature of the Province, British Columbia at that time not enjoying responsible government.

In regard to the fourth and fifth post-1867 Provinces to enter Confederation, however (namely, those of Alberta and Saskatchewan),[2] their Constitutions were authorized by their own

[1] *See also* JOURNAL, Vol. VIII, 34-39, and Bk. I (5) hereof.
[2] Also Sask., Ch. 2 of 1938.

Acts in 1905 under the authority of s. 3 of the B.N.A. Act of 1871, which Provincial Constitution Acts contained the customary provisions of the Imperial Order-in-Council and cannot be altered by the Dominion Parliament.[1]

All the Provincial Legislatures are now unicameral except in Quebec. Since the abolition of the bicameral system in 1891 in Prince Edward Island, however, the Legislative Assembly has consisted of 30 Members, 15 styled Assemblymen, being elected by the general franchise, and 15 styled Councillors, elected by property owners. Both have the same status in the Legislature.

The Report.

We now come to the actual Report of the Commission. It is regrettable that Mr. O'Connor's Report to the Speaker of the Senate, in response to its Resolution,[2] was not available to the Commission at the time its Report was made, as Mr. O'Connor was dealing chiefly with the Constitutional side of the subject, whereas the economic aspect was a prominent feature of the Report of the Commission.

Whether dealing with the question that the B.N.A. Act is not exhaustive and that the grant of legislative power to the Dominion is exhaustive, or giving his opinion on the effect upon both the Dominion and the Provinces of judicial deviations from the text of the B.N.A. Act, or dealing with the residuary clause of its s. 91, the regulation of trade and commerce [s. 91 (2)], property and civil rights in the Province [s. 92 (13)], etc., Mr. O'Connor has been thorough, with his facts well supported by authorities. Therefore the Constitutional student who proposes to roam out on to the great prairies of the Commission's gigantic inquiry will do well to read the O'Connor Report first, for then he will reap a full harvest from the result of the Commission's labours.

The Report of the Royal Commission and the "Studies" prepared therefor will now be dealt with in the light of our particular investigations. These documents will be freely quoted from, the reference being shown in the respective footnotes for those who desire further to investigate any particular subject. In the case of both the "Studies" included in the Appendices and those mimeographed, the particular page thereof will be given.

The actual Report of the Commission is contained in 3 Books—namely, I, II and III. The Appendices and Studies have already been noted.

[1] *O'Connor Rpt.*, Anx. I, 5-11. [2] *See* JOURNAL, Vol. VIII, 30-39.

BOOK I. "CANADA, 1867-1939."

Book I—"Canada, 1867-1939"—represents a "pooling" of the research work of the Commission's expert staff into the economic and social developments of the past 70 years and their bearing on the Federal system. Book I is divided into the following chapters: I, Confederation; II, The First 30 years; III, Wheat Boom, 1896-1913; IV, War Period, 1914-21; V, Post-War Prosperity, 1921-30; VI, The Depression; VII, The Economy To-day; VIII, Canadian Public Finance To-day; and IX, The Constitution To-day.

The Relations between the Provinces.—In the summary to Chapter II, the Commission in relation to the attitude of the Provinces observes that Provincial loyalties showed an unsuspected strength and Privy Council decisions confirmed the Provinces in possession of a large sphere of action beyond the reach of the Dominion.[1]

The author of Appendix II in the "Study" upon the subject of the Relations between the Provinces states that, on the eve of Confederation, the interrelations of British North America were not Provincial but regional. Canada was an economic unit; the ties which bound the Maritime Provinces together were strong and close; but the relations between Canada and the west on the one hand and Canada and the Atlantic Provinces on the other were undeniably tenuous where they existed at all. These regions did not know and were shut off from one another. There was not even a telegraph line between Canada and the Pacific. The gold of British Columbia, the furs of the prairies and the cereals and lumber of Canada proper contrasted with the fisheries, coal and timber of the Maritimes; and the different economies which resulted had been nourished for generations by the Governments of distinct political units.[2]

The Economy of To-day.—In its conclusion to Chapter VII, under this heading, the Commission observes that there are wide disparities in *per capita* regional incomes, which in times of depression raise grave problems of Provincial and municipal finances, which militate against equality of capacity as between Provincial Governments to withstand economic crises and against equality of standards in Provincial services. There are clearly some elements making for national integration and interdependence and some of division of interest and friction. With the passing of the period of expansion, so greatly influenced by traditional national policies, it may be necessary, both for the preservation of national unity and for national welfare, that new

[1] Bk. I, 65. [2] Apdx. II, 36.

policies should be inaugurated and developed to stimulate new national expansion. The task of the Commission was not to say what policy should be followed, but, within its terms of reference, to recommend adjustments in the federal financial system which would make it possible to follow some policy. " Canada's present and prospective economic condition makes it clear that we can neither continue to afford the friction and waste of conflicting policies, nor the greater loss due to paralysis of policy arising from a possibly obsolete division of governmental responsibilities and powers."[1]

Canadian Public Finance To-day.—Dealing with this subject in Chapter VIII of Book I, the Commission gives a contrast between " Confederation and To-day " by showing—

(*a*) That since 1867 the population of the Dominion has grown from under 3½ to 11 millions.

(*b*) That between 1874 and 1937 the total *per capita* government expenditures have increased eleven times.

(*c*) That portion of the national income spent by Governments has risen from one-tenth to more than a quarter of the total.[2]

(*d*) That the amounts expended to promote economic development, added to debt charges arising out of war and deficits, have risen from $14 million to $384 million and the cost of education and public welfare from $4 to $360 million, which increases have created difficult problems for public finance, but under the federal system such difficulties were greatly enhanced.

In fact the growth in public government expenditure and functions has not fitted the simple pattern set up in 1867. Government responsibilities formerly of local significance have become national in character. The Provinces have assumed heavy commitments for economic development. The invention of the motor vehicle has added heavy burdens to Provincial expenditures on transportation. A number of essential or important public welfare services which have remained as primary obligations of local governments can now be provided efficiently only on a national basis. The Provinces by 1937 had assumed debt charges absorbing over one-fifth of their current revenues, and public welfare, the outlay upon which was negligible in 1874, took more than one-third of the Provincial revenues in 1937.

[1] Bk. I, 200, 201.

[2] In his Budget Speech on April 29, 1941, the Minister of Finance (Hon. J. C. Ilsely) said he was asking the Provinces to vacate the corporation and personal income tax fields, in exchange for which the Dominion will pay the revenues which the Provinces and its municipalities obtained from such sources during the first year ending nearest December 30, 1940, or the cost of the net debt service paid by the Provinces during that period (not including contribution to sinking funds) less the revenue from succession duties during that time. Such payments are to be appropriated by fiscal need subsidies where shown necessary and annual special grants will be discontinued (LXXIX. Can. Com. Deb. No. 60, 2552).

Thus expenditures, virtually non-existent at Confederation, in 1937 absorbed nearly 60 *p.c.* of total Provincial receipts on current account, and the development of these expenditures by the Provinces has greatly altered the relative importance of the different layers of government in the Canadian Federal system. The share of the total costs of government borne by the Dominion, which formed the broadest base of taxation, has fallen from two-thirds to less than one-half. Furthermore, an important part of the Dominion's present outlay for relief and old-age pensions is actually expended by the Provinces.[1]

Interpretation of Provincial Taxing Powers.—In the treatment of this subject under Chapter IX—"The Constitution To-day"—in Book I, the Commission considers that if its recommendations[2] for the transfer of taxes are implemented the scope of the power to raise revenue by licence fees should be clearly defined, and some interesting instances are then given of anomalies in connection with the imposition of both direct and indirect taxation.[3]

Amendment of B.N.A. Act.—In Book I of its Report, the Commission, in reference to this subject, observes:

> that during the '20's the method of amending the Constitution for the first time became an issue between the Dominion and the Provinces. The method of amending a federal Constitution is always difficult to work out, but the problem had been finessed in 1867 by omitting from the B.N.A. Act all reference to amendment and thus leaving amendment to the enacting authority—the Imperial Parliament. The change of status of the Dominion during and after the Great War gave rise to a widespread demand in the '20's for the transfer of the power of amendment to Canada. This inevitably raised the question of method and at the very time that the prestige of the Provinces was in the ascendancy. The B.N.A. Act had been amended 7 times, but on one occasion only—that of 1907, which concerned provincial subsidies—had the Provinces been consulted. At the Dominion-Provincial Conference, 1927,[4] the Dominion Government raised the question and recommended that Canada should have power to amend her own Constitution, that the Provinces should in all cases be consulted, and that for the amendment of a number of specified matters deemed fundamental the consent of all the Provinces should be required, but that in other matters the consent of the majority would be sufficient. Despite the consideration given to Provincial sentiment, the proposal failed to carry, because of disagreement as to method and because certain Provinces were opposed to any change of procedure.[5]

A significant contribution was later made to the literature of Constitutional theory (and hence to the controversy over methods of amendment) by the Government of Ontario when the Statute of Westminster, which was to formalize certain of the findings of

[1] Bk. I, 244-245. [2] *See infra.* [3] Bk. I, 252.
[4] *Can. Sessional Paper* (No. 69 of 1928). [5] Bk. I, 136.

the Imperial Conferences of 1926 and 1929, was under discussion. Ontario opposed adoption of the Statute by the Dominion without consultation with and approval by the Provinces on the ground that the Statute was in effect an amendment of the B.N.A. Act, and that this Act was a compact between the Provinces and as such could not be amended without their consent. Following the election of 1930 the new Government called a conference of the Provinces and secured their approval of the Statute, thereby seeming to admit the validity of Ontario's argument.[1]

Distribution of the Legislative Power.—We now come to the question of the distribution of the legislative power between the Dominion Parliament and the Legislatures of the Provinces, the main lines of which division are laid down in ss. 91-95 of the B.N.A. Act of 1867, and described by the Commission as:

> The vital core of a federal constitution.

B.N.A. Act, s. 91 (*Powers of the Parliament*) *and s.* 92 (*Exclusive Powers of Provincial Legislatures*).—In dealing with these 2 sections, the Commission observes that the opening paragraph of 91 gives the Dominion power " to make Laws for the Peace, Order and good Government of Canada, in relation to all matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces ", which means that " the residue of powers not expressly given to the Provinces was reserved to the Dominion ". The section then enumerates 29 classes of subjects, " illustrating but not restricting the scope of the general words used earlier in the section ". This section (91) also gives the Dominion unlimited powers of taxation and provides against the enumerated topics coming within the enumerated subjects assigned to the Provinces by s. 92.[2]

In its interpretation of the B.N.A. Act in the last 40 years, the Privy Council has accorded Dominion legislation under the enumerated heads of s. 91 primacy over the Provincial powers set out in s. 92, but denied this primacy to the general clause of s. 91, which gave the Dominion power to make laws for the " peace, order and good government of Canada ". This rule of construction, coupled with a broad interpretation of the general expression " property and civil rights in the Province ", contained in s. 92, has given a narrow application to the so-called Residuary clause, s. 91. Accordingly, with rare exceptions, if a proposed piece of Dominion legislation does not fall within the specific enumerations of s. 91, it is beyond the enacting power of the Dominion and within the powers of the separate Provinces.[3]

[1] Bk. I, 136. [2] Bk. I, 30, 31. [3] Bk. I, 247.

The authors of Appendix VIII, in the Study "Dominion Expedients", remark that gradually the expression "peace, order and good government" power of the Dominion has become by judicial interpretation emptied of practically all meaning and reduced by such interpretation until practically useless except in times of national emergency or war. This has led the Dominion Parliament to base its claims to jurisdiction on the enumerated heads of s. 91. Further, the Dominion Parliament's authority over "The Regulation of Trade and Commerce" conferred by the second head of s. 91 has come to be equally almost useless as a source of legislative authority. Consequently the Dominion was forced to try to find in one of the other enumerated heads of s. 91 the power to deal with any subjects considered to be of national scope or importance, which type of legislation is described as "colourable".[1]

In s. 92 "(Exclusive Powers of Provincial Legislatures") 16 classes of subjects were enumerated and the Provinces were given exclusive power to make laws in relation to matters coming within those subjects.[2] This section also limited the Provinces to direct taxation within the Province.

Sections 93-95, *B.N.A. Act.*—Section 93 gives the Provinces control over education, subject to certain safeguards in protection of the rights of Roman Catholic and Protestant religious minorities.[3] Section 94 deals with "Uniformity of Laws in Ontario, Nova Scotia and New Brunswick", and s. 95 confers concurrent powers, both upon the Dominion Parliament and the Legislatures of the Provinces, over agriculture and immigration, Federal legislation to prevail in case of conflict.

Appeals to Privy Council.—No limitation has ever been placed on appeals to the Privy Council from Canada by any Imperial Act. Such appeals, however, are allowed only from the highest courts in the Provinces and from the Supreme and Exchequer Courts of the Dominion. Special leave of the Judicial Committee is necessary for any appeal from the Supreme Court of Canada. In 1935, however, the power of Canada under the Statute of Westminster, 1931, ss. 2 and 3, to abolish criminal causes, appeal to the Privy Council was questioned in *British Coal Corporation* v. *The King*.[4]

Since 1867 the Judicial Committee of the Privy Council in London has had the last word in the interpretation of the B.N.A. Act, and has laid down rules of construction for determining when s. 91 was to have primacy.

The expressions "peace, order and good government",

[1] Apdx. VIII, 7. [2] Bk. I, 31. [3] Bk. I, 31.
[4] *The Governments of the British Empire*, A. B. Keith, 57; 51 T.L.R.

"regulation of trade and commerce" and "property and civil Rights in the Province" lacked a clear legal meaning. By a process of textual criticism the Privy Council has given some concreteness to the general phrases just mentioned. In this way it has elucidated the legal meaning of the Constitution and imparted greater certainty to the division of powers than could have existed when the Act first came into operation. This legal meaning is binding alike on the Dominion and Provincial Legislatures.[1] The Privy Council, however, was not free to consider historical evidence about intentions, but was bound to restrict itself to a consideration of what may be called, by contrast, legal evidence—the intention actually expressed by words used in the Act.[2] The enactment of the B.N.A. Act did not of itself assure that balance between national loyalties and interests and provincial loyalties and interests which an effective federal system requires. The Act merely provided a framework within which such a balance might be established.[3]

It would be difficult to say how far Privy Council decisions influenced the concessions made by the Dominion Government. These decisions during the period 1867-96 confirmed the Provinces in possession of a large sphere of action beyond the reach of the Dominion.[5]

The interpretations of the Privy Council have marked out the limits of the legislative power of the Dominion and the Provinces. Among other things it has determined the scope of Provincial taxing powers. In these ways the decisions of the Privy Council have fixed both the responsibility for carrying out new functions which it is considered desirable for Governments to undertake and the limits of the revenue sources available to the Province for financing its activities.[6] With some reference to earlier Privy Council decisions on particular points, a discussion of the 1937 decisions illustrates the division of legislative power between the Provinces and the Dominion.[7]

In regard to the Privy Council decisions in 1937 on the Provincial Acts scheduled as B, C and D in the JOURNAL for that year,[8]

[1] Bk. I, 31. [2] *Ib.* 32 and *n.* [3] *Ib.* 47.
[4] *Ib.* 56. [5] *Ib.* 65. [6] *Ib.* 247. [7] *Ib.* 248.

[8] *See* JOURNAL, Vol. V, 95-99. Only 7 cases were quoted in Vol. V. The eighth case was only mentioned in a footnote as record of it was not at the time available. This eighth case was in regard to certain provisions of a Dominion Act—the Dominion Trade and Industry Commission Act, 1935 (25-26 Geo. V, c. 59). The Supreme Court of Canada (1936, S.C.R. 379) declared as *ultra vires* ss. 14, 18 and 19; as not *ultra vires* ss. 21 and 22; and as *intra vires* ss. 16, 17 and 20 of the Parliament of Canada. Appeal and a cross-appeal was made to the Privy Council (*A-G for Ont.* v. *A-G for Can.* and others [Ontario and New Brunswick], 1937, 45), which held that all the above-mentioned provisions were *intra vires*.

the Commission observes that such decisions[1] established two general propositions of great significance. First it interpreted s. 132 of the B.N.A. Act, which empowers the Dominion Parliament to implement "The Obligations of Canada or any Province thereof, as Part of the British Empire, toward Foreign Countries arising under Treaties between the Empire and such Foreign Countries". It held that the power of the Dominion under s. 132 applies only to "British Empire Treaties" negotiated by the Imperial Executive where the treaty obligations involved are assumed by Canada as part of the British Empire. In international treaties which the Dominion negotiates in its own right as an independent political unit, the power of the Dominion to implement the treaty by legislation depends entirely on whether the subject-matter of the treaty falls within s. 91 or 92 of the B.N.A. Act. In view of the broad interpretation given to s. 92, there are a number of matters on which the Dominion cannot give effect to treaties which it alone has power to negotiate.[2] However, temporary evils of great magnitude may be grappled with by Dominion legislation in cases of overwhelming emergency such as war, pestilence or famine, under the general clause of s. 91, but an enduring and deep-rooted social malaise, which requires the mobilizing of efforts on a nation-wide scale to deal with it, is beyond the power of the Dominion unless it is comprised in the enumerated heads of s. 91. Generally, therefore, the power to deal with these pressing social questions rests with the Provinces. But it makes it very difficult to secure the uniformity of standards desirable in many kinds of social legislation.[3]

Difficulties of Divided Jurisdiction.—At two points in particular, the division of legislative powers has led to attempts at close co-operation between the Dominion and the Provinces. First, where the financial resources of the Provincial Governments are not commensurate with their legislative powers and consequent responsibilities for maintaining desired social services, the Dominion has made money grants to the Provinces to assist in the maintenance of such services. Second, in the field of economic regulation, where legislative power is divided, the Dominion and the Provinces have made some attempts at co-operation, particularly in establishing nation-wide regulation for the grading of agricultural products. These co-operative ventures are opening a new chapter in Dominion-Provincial relations.[4]

The subject of "Difficulties of Divided Jurisdiction" is also dealt with by the author of Appendix VII. In his editorial fore-

[1] *A-G. for Can.* v. *A-G. for Ont.*, etc. (1937), A.C. 326.
[2] Bk. I, 248-249. [3] *Ib.* 249. [4] *Ib.* 254.

word, he states that most important fields of divided jurisdiction, based on interpretation of the B.N.A. Act by courts, are marketing, regulation of insurance companies, fisheries and the settlement of labour disputes, and that friction, waste and inefficiency, in most cases, were caused by the Dominion and Province sharing the administration of some single function of government; but, he adds, Canadians may prefer, for the sake of local autonomy, to pay these costs, rather than set up unitary control where that is the only practicable alternative. The author, however, does not consider functions in which the Dominion and the Provinces have concurrent powers—*e.g.*, assistance to agriculture—to be examples of divided jurisdiction.

A second group of functions in which both Dominion and Provincial Governments participate is made up of activities which are unquestionably within Provincial jurisdiction but which the Dominion assists financially on certain conditions.

It should be noted, however, that concurrent jurisdiction is not a real instance of divided jurisdiction. In a concurrent field, the power to establish single control of any branch of administration clearly exists. The device of concurrent powers has the prime advantage of flexibility, and it can avoid the awkwardness of divided jurisdiction.[1]

Conditional Grants.—In dealing with this subject in his " Study " upon the " Difficulties of Divided Jurisdiction ", the author observes[2] that conditional grants are given to the Provinces on condition that they spend equivalent or specified funds, maintain certain standards and aim at specified objectives. The Provinces undertake the actual administration of the activity, and the Federal Government installs inspection and audit controls in an attempt to satisfy itself of proper application of the funds. This involves the establishment of fixed administrative relationships between the Provinces and the Dominion and creates a problem of Dominion-Provincial Co-operation.

In dealing with the subject of " Conditional Grants ", the Commission remarks that, thus far, activities jointly administered by the Dominion and a Province have not been of any significant magnitude or duration in Canada, but the present division of legislative power and the present trend towards greater governmental regulation are heading in that direction. Although direct Canadian experience of joint administration is not available for assessing its probable efficiency, an appeal can be made to 20 years' experience in the administration of conditional grants in Canada. In such grants made by the Dominion to the Provinces

[1] Apdx. VII, 5. [2] *Ib.* VII, 8.

to assist specific services, the Dominion attempts, by supervision and inspection of the Provincial administration, to ensure that the grant has been properly applied to the purposes for which it was given. This involves a form of co-operation approaching joint administration and raises most of the problems involved in it.[1]

In further consideration of the subject of "Conditional Grants", the Commission expresses itself as being satisfied that, for permanent purposes, the conditional grant, as it works under Canadian conditions, is an inherently unsatisfactory device. In most activities the Commission believed it to be more costly than if the service in question were financed by the Government. It leads to delay and to periodic friction between Dominion and Provincial Governments.

The experience with conditional grants led the Commission to doubt whether joint administration of activities by the Dominion and a Province was ever a satisfactory way of surmounting Constitutional difficulties. Where legislative power over a particular subject is divided, it is ordinarily desirable that those powers should be pooled under the control of a single Government in order to secure united efforts in administration.[2]

Disallowance of Provincial Legislation.—Although the scope of this power given by the B.N.A. Act is legally unlimited, except as to time, it has been recognized from the beginning that it should be used with circumspection and in accordance with some guiding principles. The Dominion made very extensive use of the power of disallowance between 1867 and 1896, and Provincial legislation was disallowed not only on the grounds that it was *ultra vires* or in conflict with Imperial or Dominion interests or policies. Provincial legislation might also be struck down on a ground which had great potential scope—namely, that it was inequitable and unjust. From 1896 to 1911, the Dominion Government consistently disavowed this last ground as a sufficient reason for exercise of the power. After 1911 there was a tendency to reaffirm the propriety of disallowing Provincial legislation which the Dominion Government thought to be inequitable and unjust, but this ground was actually relied upon in 2 cases only, arising in 1918 and 1922.[3]

The power of disallowance was in complete abeyance from 1924 until 1937, when it was used against a number of Alberta statutes.[4] Again in 1938 and 1939, Alberta legislation was disallowed. Most of the Alberta statutes disallowed since 1937 were invasions of the Federal field of legislation, conflicting with the interests and

[1] Bk. I, 256. [2] *Ib.* 259. [3] *Ib.* 253. [4] *See* JOURNAL, Vol. VII, 49-56.

policies of the Dominion.[1] The Minister of Justice (Rt. Hon. E. Lapointe) stated in the House of Commons on February 4, 1938,[2] that from 1867 to 1938 100 Provincial statutes had been disallowed—72 between 1867 and 1910 and 28 between 1900 and 1938. Thousands of them were submitted after presentation of a petition for their disallowance; but the Governor in Council refused to disallow them and a number had been amended after representation by such Minister to the Provincial Government concerned. The principle of legislative sovereignty, the Commission remarks, is more fully accepted now than it was in 1867. The decisions of the Privy Council that the Provincial Legislatures are sovereign in their own sphere have operated to secure for them also the benefit of this acceptance.[3]

Legislative Expedients and Devices adopted by the Dominion and the Provinces.—This heading forms the subject of Appendix VIII, which gives a description of the many devices which have been used to combat the difficulties encountered in connection with the division of the legislative power between the Federal and Provincial Governments, as laid down in the B.N.A. Act.

This Appendix is divided into 2 Parts, dealing respectively with Dominion and Provincial expedients. Part 1 treats such subjects as the effect of such expedients and devices in regard, to (ii) Colourable legislation, (iii) Grants-in-Aid, (iv) Declaration for General Advantage of Canada, (v) Power of Expropriation, and (vi) Further Possibilities. In their conclusions to Part 1 the authors observe that a consideration of the Constitutional conflict, illustrated by the 160 cases which have been brought to the Privy Council, shows both the Dominion and the Provinces insisting upon their rights, stretched to the ultimate limits allowed by the Courts, and the failure of the Dominion and Provinces to co-operate to deal with such matters as insurance and company legislation, having little or no political implication, shows how unlikely it would be for the Dominion and Provinces to co-operate to deal with any important and controversial question.

Moreover, the cases on marketing legislation show that even where there is a desire of the Dominion and Provinces to co-operate it is exceedingly difficult to " piece " together the powers of the Dominion and Provinces so as to enable them to deal effectively with a matter such as company legislation, combines in restraint of trade, industrial disputes for marketing which in some aspects fall under the Dominion power and from others fall under the Provincial power.

[1] Bk. I, 253. [2] CCXIV, Can. Com. Deb. 177. [3] Bk. I, 254.

In order to clarify the jurisdiction of the Dominion and Provinces and to avoid the continual recourse to expedients and devices to escape from the limits of the Constitution, it is essential that the provisions of the B.N.A. Act should either be freshly interpreted so as to get back to the undoubted intention of the Fathers of Confederation, or amended, so as to show clearly the limits of legislative and taxing authority and to make it clear that the Provinces may collect, without device or expedient, the taxes which it is determined that they should have.[1]

Part II of Appendix VIII deals with: (i) Taxing Devices of the Provinces, (ii) Trespass upon Dominion Powers, and (iii) Denial of Right. In their conclusions to Part II the authors observe that the difficulty inherent in any effort to examine the statutes of 9 different Provinces upon numerous points has been vastly increased by the absence of uniformity in the form and content of most of the statutes, by the frequency with which legislation of general application has been hastily drawn to meet some special case, by the absence of anything in the nature of a legislative policy or programme and by the innumerable amendments to the public statutes each year. Our difficulty, remark the authors, has been multiplied tenfold when so much substantive legislation is to be found, not in the statutes, but in orders, regulations and departmental rulings, some of which are not even available in the *Official Gazettes*. The hardship upon the citizen easily becomes translated into a contempt for the law and government itself. The Constitution and Confederation depend upon respect for law, and the law cannot be respected unless it is certain and ascertainable.[2]

Examples are given in the Chapters to this Part of the Study of the use of devices which the authors consider have contributed to the present situation.

BOOK II—Recommendations.

Book II, which contains an index, is based upon the evidence submitted in public hearings, upon the facts disclosed in Books I and III, and upon the special research " Studies ". Book II is divided[3] into 7 sections: A, Allocation of jurisdiction; B, Public finance; C, Administrative economics; D, Dominion-Provincial aspects of transportation; E, Miscellaneous submissions to the Commission; F, Special claims of certain Provinces; and G, Abstract of Commission's Leading Recommendations. The

[1] Apdx. VIII, 8-9. [2] *Ib.* 32, 33. [3] Bk. II, 3-6.

subjects dealt with under these sections are given below with their corresponding section letter:

Administrative economics ..	C	Provinces, special claims for certain	F
Canadian economy and public finance	B	Provincial debts	B
Civil Service and reallocation of functions	A	Public Finance	B
Dominion debts	B	Railways and Highway Competition	D
Dominion-Provincial co-operation	A	Recommendations of Commission[1]	G
Economic activities	A	Social services	A
Education	A	Tax transfer	B
Freight rate structure ..	D	Taxation, equity and efficiency	B
Grants, national	B	Transportation:	
Jurisdiction, allocation of ..	B	Basis for Dominion-Provincial Co-operation ..	D
Labour legislation	A	British and U.S. experience	D
Miscellaneous submissions to Commission	E	Dominion - Provincial aspects of	D
Municipal finance	B		
Overlapping and duplication avoidance	C		

Facilities for Dominion-Provincial Co-operation.

(*a*) *By Conference.*—In a Chapter dealing with this subject[2] the Commission observes that despite the undoubted advantages of a federal system of government it is liable to have certain inherent defects. Two of these are rigidity and elasticity in the division of powers between the central and provincial (or state) authorities, and lack of means of co-operation between autonomous governments in matters of common interest. The Commission suggests two methods, which, if implemented, would largely overcome these defects in the Canadian federal system, without in any way impairing the autonomy of the Provinces—namely, by Dominion-Provincial Conferences and a Delegation of Powers.[3]

In dealing with the subject of Dominion-Provincial Conferences reference is made to the resort to this expedient in 1887, 1902, 1910, 1913, 1926 by means of Inter-Provincial Conferences, and in 1906, 1910, 1918, 1927, 1931, 1933, 1934 and 1935 by means of Conferences between the Provinces and the Dominion. The Commission is of opinion that Dominion-Provincial conferences at regular intervals with a permanent secretariat would conduce to the more efficient working of the federal system. The Commission therefore adopted the proposal submitted by the Government of Nova Scotia for such conferences to be held annually, the Commission remarking that, in its judgment, such would

[1] *See infra* for summary of.—[ED.] [2] Bk. II, ch. V, 68. [3] *Ib.*

supply a serious lack in the Canadian federal system.[1] A Department of State for the Provinces at Ottawa was suggested by New Brunswick; in fact, immediately after Confederation a member of the Dominion Cabinet held the portfolio of Secretary of State for the Provinces, but in 1873 the office was abolished on account of insufficient work.[2]

(*b*) *By Delegation of Powers.*—The delegation of power by a Province to the Dominion and *vice versa*, the Committee considers, would be a useful device for overcoming, in practice, the difficulties which arise from the division between the Provinces and the Dominion of legislative power over many complex economic activities. Unified control and administration in the hands of a single government is sometimes desirable, but it is very doubtful whether, as the Constitution stands at present, the delegation of legislative power is constitutionally possible. Such a power of delegation would give the Constitution a flexibility which might be very desirable. With the present degree of economic integration on a national scale, it is extremely difficult for either the Dominion or a Province to frame legislation which will deal separately and effectively with the local or with the interprovincial aspects of business activity, as the case may be.[3]

In dealing with the question of delegation of powers, the Commission also observes that one of the difficulties inherent in any federal system is the rigidity which marks the division of jurisdiction between the central and local governments. For obvious reasons constitutional amendments in a federal state are made more difficult than is usual in unitary states.[4] The Commission expressed its opinion that the introduction of a measure of flexibility in the Canadian federal system should be considered. In several submissions to the Commission, it was suggested that a Province be allowed to delegate power over a subject to the Dominion provided the Dominion was willing to accept it, and conversely such a delegation by the Dominion to a Province. Such a power, effected by amendment of the B.N.A. Act, should apply to the whole field of legislative power for both the Province and the Dominion, either in perpetuity or for a definite time limit.[5] The power of delegation would also permit of minor changes in the allocation of functions between the Dominion and certain Provinces to suit the peculiar conditions of those Provinces. In short, continues the Commission, " a general power of delegation for both the Dominion and the Provinces should provide a measure of flexibility which is much needed in our federal system."[6]

[1] Bk. II, ch. V, 71. [2] Bk. II, 71. [3] Bk. I, 251.
[4] Bk. II, 72. [5] *Ib.* [6] *Ib.* 72-73.

BOOK III.—Documentation.

Book III is divided into 2 parts. Part A gives comparative statistics of all governments in regard to public finance, and Part B gives a detailed list of the exhibits and hearings, list of returns, the text of the Statute of Westminster (22 Geo. V, c. 4) and the British North America Acts of 1867, 1871, 1875 (the Parliament of Canada Act), 1886, 1907, 1915 and 1916, as well as the Statute of Westminster, 1931.

Commission's Conclusions.

In a letter transmitting the Commission's Report to the Prime Minister (Rt. Hon. W. L. Mackenzie King) the then Chairman (Dr. Jos. Sirois) remarked that the decisions underlying the Commission's recommendations were reached before the outbreak of War, but that, upon subsequent review, it believed its recommendations appropriate to meet the new strains and emergencies of War conditions.[1]

The conclusions to which the Commission came were not the result of compromise but reflected a sincere unanimity of judgment on the great issues which confront the nation.[2] The gist of its findings are given below. The Commission is of opinion:

(1) That the maintenance of unemployed who are able and willing to work should become a federal function.[3]

(2) That, in the event of a widespread disaster with which the Province is unable to cope without assistance from the Dominion, or in the event that the Dominion by such means as an exclusive marketing organization has already established effective control of the industry concerned, the Dominion should assume direct administration and financial responsibility rather than render indirect assistance by way of advances to the Provinces affected.[4]

(3) That if non-contributory old-age pensions were to be superseded or supplemented by a contributory system, the latter should for various reasons be under the control of the Dominion.[5]

(4) That the Dominion assume all Provincial debts (both direct and guaranteed by the Provinces) and that each Province pay to the Dominion an annual sum equal to the interest it now receives from its investments, but that in view of the Provincial debt of Quebec being low in comparison with the *per capita* debt of other Provinces and a low fraction of the combined municipal and Provincial debt, the Dominion should take over 40 p.c. of the combined and municipal debt service in Quebec.[6]

(5) That if the Provinces are relieved, as in (4), of the deadweight burden of their debt, they should surrender to the Dominion the subsidies they now receive.[7]

[1] Bk. I (Back of Title-page). [2] Bk. II, 269. [3] *Ib.* 270.
[4] *Ib.* [5] *Ib.* [6] *Ib.* 4. [7] *Ib.* 270.

(6) That the following Provincial taxes be renounced:

(*a*) personal income, which should be uniform throughout Canada;[1]

(*b*) corporations, and a multitude of taxes to raise revenue from particular classes of corporations which a Province cannot conveniently subject to a tax on net income, the Dominion to pay over to the Province concerned 10 p.c. of the corporate income derived from the exploitation of the mineral wealth of the Province;[2]

(*c*) various forms of succession duty.[3]

(7) That subsidies[4] by way of annual National Adjustment Grants be paid by the Dominion to the Provinces; so that a Province is put in the position to finance itself on normal Canadian standard of services with no more than normal Canadian taxation, and a small permanent Finance Commission be established to advise upon all requests for new or increased grants, such Commission also to re-appraise the system every 5 years.[5]

(8) The Dominion, when taking over a Provincial function, to continue the employment of those previously employed by the Provincial Government concerned in the administration of a service or collection of a tax.[6]

(9) Taxes now levied by one government but replaced by a tax levied by another to be adjusted to the circumstances of the people on whom it is imposed.[7]

(10) Taxation scales to be arranged so as to tax an estate more lightly when it is divided among many children.[7]

(11) If additional legislative powers are conferred on the Dominion in addition to those it now enjoys, such powers to be strictly defined, so as to avoid any possible interference with the civil code of Quebec, or with corresponding interests in the Provinces.[7]

The Commission here observes that its financial proposals are, in terms of the economic life of 1939, very similar to what the provisions of the B.N.A. Act were in terms of the economic life of 1867.

The Commission states that other matters had come under its consideration, which it did not consider came within its terms of reference—*e.g.*, the power of the Dominion to implement its treaty obligations (otherwise than under s. 132 of the B.N.A. Act) should such implementation require legislation falling within the exclusive jurisdiction of the Provinces. The Commission did therefore recommend:

[1] Bk. II, 271; but not all Provinces impose this tax. [2] Bk. II, 271. [3] *Ib.* 272.
[4] In his Budget speech to the Saskatchewan Legislative Assembly on Feb. 26, 1940, the Premier and Provincial Treasurer (Hon. W. J. Patterson) said their hope was that the Commission would report in favour of a plan somewhat similar to that in Australia, where Federal subsidies to State Governments are determined by a Commission which takes all circumstances into consideration. They hoped also that the Commission would advise the establishment of a Loan Council making possible the equalization of interest rates paid by the various Provinces.—[ED.]
[5] Bk. II, 272. [6] *Ib.* 273. [7] *Ib.*

(12) That the Dominion have power to implement conventions of the International Labour Organization.

The Commission also recommended:

(13) That the Dominion and the Provinces should have concurrent legislative powers to deal with the marketing of a named list of natural products to which additions may be made from time to time by common consent.[1]

(14) That the Dominion should be able to delegate any of its legislative powers to a Province and that a Province should be able to delegate any of its legislative powers to the Dominion.[2]

(15) That great advantage might be derived from a Transport Planning Commission which would be concerned both with planning transportation developments in a broad way, and with facilitating the co-operation between the Dominion and the Provinces in transportation matters which is necessary for the taxpayer.[2]

(16) That in order to facilitate co-operation between the Dominions and the Provinces, Dominion-Provincial Conferences which have hitherto met at infrequent intervals should now be regularized, and provision made for frequent meetings, say every year; also that the Conference should be provided with an adequate and permanent secretariat for the purpose of serving the Conference directly and of facilitating co-operation between the Dominion and the Provinces in general.[2]

In concluding the "Abstract of the Leading Recommendations"[3] the Commission observes that:

> It has been the aim of the Commission to frame proposals which will, if implemented, place jurisdiction over the social services in the hands of the governments most likely to design and administer them, not merely with the greatest economy and the greatest technical efficiency, but with the regard for the social, cultural and religious outlook of the various regions of Canada which is essential to genuine human welfare.
>
> The financial proposals have been designed to enable every Province of Canada to rely on having sufficient revenue at its command in war-time as in peace-time, in years of adversity as in years of prosperity, to carry out the important functions entrusted to it.[4]
>
> The Commission does not consider that its proposals are either centralizing or decentralizing in their combined effect, but believes that they will conduce to the sane balance between the two tendencies which is the essence of a genuine federal system and, therefore, the basis on which Canadian national unity can most securely rest.[4]

[1] Bk. II, 274. [2] *Ib.* 275. [3] *Ib.* s. G. [4] *Ib.* 276.

Subsequent Action.

A.—IN THE CANADIAN PARLIAMENT.

The Rowell-Sirois Commission delivered the MSS. of its Report, etc., to the Dominion Government, May 10, 1940, which was tabled in Parliament 6 days later.[1]

On June 25, 1940,[2] the Prime Minister tabled in the House of Commons correspondence with the Premiers of Quebec, New Brunswick and Alberta, which gave the Dominion Parliament the necessary authority to enact legislation amending the B.N.A. Acts and on the same day the following Motion was moved by the Minister of Justice (Rt. Hon. E. Lapointe):

> Whereas the Employment and Social Insurance Act, 1935, a Statute of the Parliament of Canada which, in substance, provided for a system of compulsory unemployment insurance throughout Canada, has been held by the Judicial Committee of the Privy Council to be *ultra vires* of the Parliament of Canada;
>
> And whereas, if a uniform and effective system of compulsory unemployment insurance is to be adopted throughout Canada, it will be necessary to amend the British North America Act, 1867, to enable the Parliament of Canada to enact the necessary legislation;
>
> A humble Address be presented to His Majesty the King, etc.

The Address to His Majesty was in the usual form, and prayed that a Measure be laid before the Imperial Parliament to amend the B.N.A. Act by adding to s. 91 the following item after item 2 in such section:

> *2a.* 2A. Unemployment Insurance,

as a subject of exclusive authority of the Parliament of Canada. The Resolution was duly transmitted to the Senate for concurrence, concurred in[3] and the necessary Bill was introduced into the Imperial Parliament, of which the proceedings are given later.

B.—IN THE UNITED KINGDOM PARLIAMENT.

Consequent upon the Address to the King from the two Houses of Parliament at Ottawa, a British North America Bill was initiated in the House of Lords, the Second Reading being moved by the Lord Chief Justice on July 4, 1940,[4] the Bill was read the Second Time, and, S.O. 39 being suspended, was taken through its remaining stages, after which it was transmitted by Message to the House of Commons, where the Second Reading took place on the 10*th idem*.[5] In moving the Second Reading the Solicitor-

[1] 1940 Sen. Deb. 5; CCXXII Com. Deb. 7-8.
[2] CCXXIII Com. Deb. 1105-1126.
[3] 1940, Sen. Deb. 220-227, 238-244.
[4] 116 H.L. Deb. Pamphlet 68, c. 800.
[5] 362 H.C. Deb. Pamphlet 88, cc. 1177-1181.

General (Sir W. Jowitt) said that in 1935 the Parliament of the Dominion of Canada passed a comprehensive Act to deal with unemployment insurance throughout the whole Dominion, but the validity of that Act was challenged in the Canadian Courts[1] on the ground that it was outside the powers of the Dominion Parliament. The Canadian Courts, affirmed in this decision by the Privy Council, came to the decision that the invalidity was well founded. The Bill now before them, therefore, became necessary. The Statute of Westminster gave legal recognition of Canada's full sovereignty and expressly preserved the powers of the B.N.A. Act. It was therefore still necessary as a piece of legal machinery, until some better method was evolved, for the amendment of the B.N.A. Act, for the extension of Canadian powers to be passed by the Imperial Parliament, which was only carrying out the wishes of such Dominion.

In replying to the Debate the Solicitor-General said that Canada was completely sovereign in her own house, but equally, when the Statute of Westminster, 1931, was passed, a clause 7 (1) was inserted, at the request of Canada, stating:

> Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Act;

the reason being that, the B.N.A. Act having been working well, the Canadian Government desired to leave that piece of machinery. The Bill was then read the Second Time and committed to a Committee of the Whole House, where a slight draftsman's correction was made at the instance of the Canadian Government to bring the phraseology into conformity with Canadian custom. The Bill was then reported with an amendment, read the Third Time and passed with an amendment, and the Bill returned to the Lords for concurrence in the Commons amendment, the Royal Assent being announced[2] in the House of Lords by Royal Commission on the same day. The Bill duly became 3 and 4 Geo. VI, c. 36.

C.—THE 1941 *DOMINION-PROVINCIAL RELATIONS CONFERENCE.*

From such information as can be gleaned from press reports, the Prime Minister of Canada (Rt. Hon. W. L. Mackenzie King), towards the end of November, 1940, announced that the Conference between representatives of the Dominion and the Provinces to discuss the implementation of the recommendations of the

[1] *See also* JOURNAL, Vol. V, 95-99, Case E.
[2] 116 H.L. Deb. Pamphlet 70, c. 884.

Rowell-Sirois Commission would open in Ottawa, January 14, 1941.

To quote from the press:[1]

> In his (Mr. Mackenzie King's) view the War makes reform more imperative than ever. It casts additional burdens upon Governments and individuals alike and thus aggravates the inequalities arising out of the present distribution of financial responsibilities and powers of taxation. Only by adopting the Commission's report, he urges, can the country be put into a position to achieve its maximum effort and to prepare for post-war reconstruction.

On the appointed day, the Conference opened at Ottawa, but from reports both in the British[2] and Canadian press, after a 4-hours session the Conference ended on the following day. In the whole-back-page of a Canadian newspaper[3] there is published by the authority of the Provincial Government of Ontario extracts from speeches of some of the representatives at the Conference, taken from the official reports of the Dominion-Provincial Conference on the Rowell-Sirois Report as published by the Dominion Government, from which extracts it may be of interest to quote, the name of the speaker and the reference as so published being given in each instance.

The Hon. Mitchell F. Hepburn, *Prime Minister and Provincial Treasurer of Ontario* (*Vol. I., pp.* 14-20 *of Report*):

> I was hopeful that a discussion of this problem could be delayed until after the War, so that there could be no possibility of any controversial issue arising which might impair national unity and the effective prosecution of the War.
>
> * * * * *
>
> We were not informed nor consulted with regard to the terms of reference contained in the Order-in-Council passed by the Dominion Cabinet which gave life to the Commission itself.
>
> * * * * *
>
> Ontario is prepared to co-operate to the limit at the right time. That is a domestic problem to which we can devote time and effort as a post-War problem, and much better be it so too, because the financial problems of to-day may have very little relationship with those of a year hence.
>
> * * * * *
>
> This new issue being developed presents a challenge to those of us who believe in national unity. To blind ourselves to the obvious is not fair to Canada, not fair to our neighbouring Province of Quebec, especially when by this deal, according to the best constitutional advice I can get, Quebec and the rest of us will have to agree to a surrender to a central authority of rights and privileges granted by the British North America Act. I say that so long as

[1] *The Times*, Nov. 25, 1940. [2] *Ib.*, Jan. 17, 1941.
[3] *The Financial Post* (Toronto), Feb. 1, 1941.

my colleagues and I have any say in directing public policy for Ontario and so long as there is a British North America Act, in its present form, which cannot be amended at will by a mushroom Government that may in future take office in Ottawa, we shall, as a sister Province, stand solidly beside Quebec if at any time her minority rights are threatened. On this sound foundation of national unity we stand as firm and resolute as the Rock of Gibraltar itself.

The Hon. A. S. MacMillan, *Prime Minister of Nova Scotia* (*Vol. I, p. 22 of Report*):

If we were asked to give a categorical answer favouring or opposing the Report as a whole, that answer, representing Nova Scotia as we do, would have to be " No ".

The Hon. J. B. McNair, K.C., *Prime Minister of New Brunswick* (*Vol. I, p. 23 of Report*):

We do not concur in the findings of the Commission as set out in Chapters V and VI of Section F of Volume II, where certain special claims advanced by the Government of New Brunswick are discussed.

The Hon. T. D. Pattullo, *Prime Minister of British Columbia* (*Vol. I, pp. 44-45 of Report*):

I am sorry that the winning of the War has been used as an argument to fasten permanently upon the Provinces and the Dominion of Canada a change in Dominion-Provincial relations, which I firmly believe will work to the injury and not to the benefit of the Dominion and the Provinces of which it is composed.

* * * * *

It would therefore seem the part of wisdom to get on with the War and postpone so far-reaching and contentious a problem until after the War.

The Hon. William Aberhart, *Prime Minister of Alberta* (*Vol. I, p. 63 of Report*):

I maintain it will be most unfortunate if the idea gains popular credence that there is a concerted and deliberate attempt being made by the money powers to increase centralized control of our national life while our attention is fully occupied with the prosecution of our War effort, and that thereby there is developing an endeavour to obtain an unfair advantage over the people by means of imposing upon them a crushing debt structure under which they will be further enslaved.

The Hon. T. B. McQueston, K.C., *Minister of Highways and Municipal Affairs, Ontario* (*Vol. II, pp. 83-87 of Report*):

If the Sirois plan were adopted and made effective for the present fiscal year which ends on March 31 next, the Province of Ontario would be faced with a certain net loss in revenues of the sum of $17 million.

The Hon. Adelard Godbout, K.C., *Prime Minister of Quebec* (*Vol. II, p. 117 of Report*):

> Should the continuation of this conference constitute a menace to Canadian unity, I would suggest, Mr. Prime Minister, that it be dissolved.

The Rt. Hon. W. L. Mackenzie King, *Prime Minister of Canada* (*Vol. II, p. 112 of Report*):

> When my colleagues and I considered the calling of this Conference there was between us a great diversity of view as to the wisdom of having such a gathering at this time. In saying that, I do not think I am betraying any Cabinet secret which I am sworn to respect. I for one took the view that it was very doubtful whether it would be wise to have a Conference in War time.

In *The Times* of January 17, 1941, Mr. Mackenzie King is reported as saying in his final speech that:

> the only satisfactory feature of the discussions was the demonstration that the Provinces were all wholeheartedly behind the Dominion in the War effort, and he predicted that the time might soon come when every Province would be ready and eager to confer with the Federal Government about the Report. Both he and Mr. Lapointe, the Minister of Justice, reinforced Mr. Ilsley's[1] warning that Federal invasion of the field of Provincial taxation for War purposes was imminent, and Mr. Lapointe closed with the remark—"The Report may be discarded to-day. It will not be killed, for you cannot kill ideas."

[1] Dominion Minister of Finance.

VI. COMMONWEALTH OF AUSTRALIA: PROLONGATION OF THE FIFTEENTH PARLIAMENT[1]

By R. A. Broinowski, J.P.
Clerk of the Commonwealth Senate

The life of each " Parliament " is limited to a period of 3 years dating from the first meeting of the House of Representatives after any general election for that House. The Senate, by virtue of its " continuous existence ", does not affect the position, except perhaps by being dissolved simultaneously with the House of Representatives following a disagreement with that House on legislation under the supervision of s. 57 of the Constitution.

Therefore, unless there has been a dissolution of the Senate as above a " new Parliament " refers, so far as the composition of its Members is concerned, only to a new House of Representatives after a general election therefor. The " continuous existence " of the Senate is secured by constitutional provision that all Senators shall be directly chosen for a period of 6 years with such State as one constituency, and that s. 28 of the Constitution[2] provides that the life of the House of Representatives is limited to 3 years from the date of its first meeting after such an election.

The Fifteenth Commonwealth Parliament, which met November 30, 1937, for the first time after its general election for the House of Representatives, would, by the effluxion of time, have expired on November 30, 1940.

The first proposal in the Commonwealth Parliament for an extension of the life of the Fifteenth Parliament was made on May 23, 1940, in the House of Representatives by the Hon. V. C. Thompson (New England), who contended that the work of Parliament and of the Government would be hindered by a general election at that time; that the majority of the people did not want a change of Government, but a non-party Government and a more vigorous prosecution of the War; and that a national Government was impossible unless the life of the present Parliament was prolonged, as it would be impracticable to form such a Government if Members were heading for elections. The hon. Member also remarked that the great strength of the British Government was that there would be no general election during the War. He therefore suggested

[1] 163 Com. Parlty. Deb. 1209, 1229, 1231 and 164; *ib.* 135, 159, 160, 162, 164 and 535.
[2] 63 and 64 Vict., c. 12.

that the life of the present Parliament be extended for at least 12 months.

The only other Member to take part in that debate was Mr. E. J. Ward (East Sydney, N.S.W.), who observed that the present Government, which did not assume office until April 26, 1939, had not yet faced a general election, and consequently that the people had not yet been given an opportunity to pronounce judgment on its administration.

The subject was not discussed at all in the Senate. On June 21, 1940, Mr. H. L. Anthony (Richmond) asked the Prime Minister (Rt. Hon. R. G. Menzies) whether, in view of the portentous character of events which seemed imminent, the Government had considered holding a general election in 1940, or was it proposed to ask for an extension of the life of the present Parliament? The Prime Minister replied that the question of seeking an extension of the life of "Parliament" was a matter "which would be greatly affected by the particular circumstances of any given time", and that, consequently, the Government had not thought it necessary to consider the question. Also that, in his opinion, such an extension would, in certain circumstances, require an authorizing Act passed by the Imperial Parliament.

Whereupon Mr. Anthony urged upon the Government the need for prompt action to obtain the suggested Act of the Imperial Parliament, owing to the possibility of a speedy deterioration of the War situation in England, and so have the necessary constitutional authority available. He did not see how the Commonwealth Executive could concentrate on the urgent business of the War if it had at the same time to concentrate on the running of an election.

Otherwise no opposition was expressed by Members of Parliament to the suggestion to prolong Parliament.

On August 21, 1940, Mr. G. W. Martens (Hobart) remarked that, outside Parliament, Members of the Government had frequently expressed themselves as against a general election.

The holding of a "token" election was not discussed in Parliament, but the Hon. V. C. Thompson (New England) suggested that during the recess which was to take place after June 21, 1940, the Government should evolve a means of testing the feeling of both Houses, and submit their wishes to the Imperial Parliament for ratification.

The question of an amendment of the Constitution by the normal process of the referendum[1] was not discussed in

[1] The normal cost of a Referendum in the Commonwealth is about £95,000.

Parliament. In any case, those who favoured an extension of the life of Parliament stressed the dislocating effect of an appeal to the people, and this to some extent would also have resulted if it had been decided to seek an alteration of the Constitution. Moreover, if the proposal had been rejected by the people, a further appeal to them at a general election would have been necessary. If it had been decided to hold a general election and, at the same time, seek a Constitutional alteration on the lines referred to, then the matter would, presumably, have had to be made a non-party one, otherwise the election would have hinged largely on the question of a prolongation of the life of Parliament. Had such proposal been rejected, it might have meant the defeat of the Party making the suggestion.

The amendment of the Constitution by the Imperial Parliament upon Petition from the Commonwealth Parliament seems to be the course which would have been adopted had it been decided to seek such an extension. But, as the Member for New England (Hon. V. C. Thompson) remarked, the Opposition would necessarily have had to be consulted, and doubts were expressed as to whether any action at all in the direction of requesting the British Parliament to pass appropriate legislation could have been taken in the absence of an overwhelming majority in both Houses in favour of a prolongation of the life of the Commonwealth Parliament.

On August 20, 1940, the Prime Minister, without referring to the suggestions made in the House of Representatives, advocating a prolongation of the life of Parliament, announced that he proposed to recommend to His Excellency the Governor-General the dissolution of the House of Representatives with a view to a general election on September 21, 1940, and polling took place on that date.

VII. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY

By Ralph Kilpin
Clerk of the House of Assembly

The following unusual points of procedure occurred in 1940:

A.—FOURTH SESSION, EIGHTH PARLIAMENT (January 19 to May 14, 1940).

Oath taken during Proceedings.[1]—The practice of the House, based on S.O. 84 of the House of Commons, is that Members may take and subscribe the oath at any time during the sitting of the House, but " no debate or business shall be interrupted for that purpose ". On January 26, the election of Mr. Egeland as the Member for Zululand was announced at the commencement of the sitting. Mr. Egeland was not present, and shortly afterwards the House resumed debate on an important Motion. The debate continued until the following afternoon, and when the Leader of the Opposition had replied Mr. Speaker stated that he had been informed Mr. Egeland had arrived shortly after the announcement of his election, and that he was now present and desired to take the oath. Mr. Speaker said that although it would be contrary to the usual practice, he was of opinion that he would be interpreting the wishes of the House if that practice were departed from in this instance in order to give Mr. Egeland an opportunity of registering his vote on the question about to be put. Mr. Egeland thereupon made and subscribed the oath, took his seat and voted in the two ensuing divisions.[2]

Discussion on Conduct of Governor-General.—The refusal of the Governor-General to grant a general election on the defeat of the Prime Minister (Gen. Hertzog) in September, 1939,[3] led to criticism in debate of the conduct of the Governor-General on that occasion. The position was somewhat confused owing to a decision which had been given by Mr. Speaker Tennant[4] in which he had disallowed part of a substantive Motion criticizing the conduct of the Governor, Sir Bartle Frere. In order to clarify the position Mr. Speaker pointed out that, although the Standing Orders made no specific provision on the subject, it

[1] *See* May XI, 160.
[2] 1940 UNION VOTES, 74.
[3] *See* JOURNAL, Vol. VIII, 126.
[4] 1878 CAPE ASSEMBLY VOTES, 61.

was clear from May[1] that, unless discussion is based upon a substantive Motion drawn in proper terms, reflections must not be cast in debate upon the conduct of the Governor-General as the Government is responsible for his actions and can be criticized in the usual way.[2]

Speaker resumes Chair in Order to give Ruling.—On April 17, the Committee of the Whole House on the Electoral Laws Amendment Bill reported progress in order to obtain Mr. Speaker's ruling on a point raised in connection with a proposed new clause. Mr. Speaker, after hearing argument, suggested that the proposed new clause should stand over until he could give a considered Ruling. The suggestion was adopted and later in the day the Chairman, on being informed that Mr. Speaker was prepared to give a considered ruling, left the Chair. Mr. Speaker then gave his ruling and the Committee of the Whole House resumed its proceedings.[3]

Error in putting Question.—The point referred to in the preceding paragraph on which Mr. Speaker's ruling was asked for was complicated by the fact that an error had been made in putting an amendment. The amendment had been moved, without notice, to insert certain words after other words, but the latter occurred twice in the same line and the words were put in the wrong place. The question arose as to whether the VOTES should be reprinted on the Chairman's and Mr. Speaker's authority, but as the amendment had actually been voted upon in the form recorded it was decided to leave the VOTES in that form.[4]

Postponement of Report Stage of Bill.—The usual method of postponing an Order for a stage of a Bill is for the Member in charge (or Member authorized by him) to move before the Order is reached that it be discharged and set down for a future day; or if the Order has been read, for the Member in charge to move, in the case of an Order for a Second Reading of the Bill, " That the Bill be read a Second Time tomorrow ", or some other day, instead of the usual motion " That the Bill be now read a Second Time ". The same procedure would be open to a Member in charge on the Report stage. On April 26, 1940, however, after the Order of the Day for the Report stage of the Electoral Laws Amendment Bill had been read and the Minister in charge had moved " That the amendments be now considered ", a Member of the Opposition moved to omit " now " and to add at the end " on Tuesday ". Under S.O. 161 such an amendment would

[1] XI, 227, 228, 332.
[2] 1940 UNION VOTES, 270.
[3] *Ib.* 602.
[4] *Ib.* 601, 602.

have been clearly out of order on motions for the Second or Third Reading of a Bill, and under S.O. 40 of the House of Commons[1] a Motion for the postponement of the Report stage can be moved only by the Member in charge. It seems, therefore, that at the Report stage as well as on the Second and Third Readings the proper course for a Member who is not in charge is in the circumstances either to move an amendment to omit " now " and to add at the end " this day six months " or to move the adjournment of the debate.[2]

Bills Augmenting, Amending or Repealing Acts Passed during same Session.—During the 1931-32 Session,[3] Mr. Speaker stated that while the rules of the House were designed to preclude a question from being offered which was the same in substance as a question decided during the current session, there was nothing to prevent the consideration of a Bill dealing with the same subject as a Bill passed during the current session whether for the purpose of augmenting, amending or repealing it. On this principle an amendment was allowed in the Electoral Laws Amendment Bill repealing s. 5 of the War Measures Act which had previously been passed and inserting provisions in Clause 3 of the Electoral Laws Amendment Bill dealing with the same subject (namely, the removal of disabilities as regards electoral qualifications) in a different form.[4]

Functions of Committee of Whole House on Pensions.—In Committee of the Whole House on the First and Second Reports of the Select Committee on Pensions, Grants and Gratuities the Chairman put a recommendation of the Select Committee and a Member moved a Motion in the form of a " reasoned negative ". The Chairman, however, declined to put the Motion on the ground that the sole function of the Committee of the Whole House was to make recommendations to the House based on the Reports of the Select Committee on Pensions which had been referred to it.[5]

Order for Leave to Introduce a Bill.—On May 6, 1940, the Minister of Finance gave notice of a Motion for leave to introduce the usual Finance Bill. Shortly before the Bill was introduced it was decided that certain moratorium provisions could be more appropriately incorporated in the Defence Special Pensions Bill, which it was proposed to introduce on the following day. The provisions were accordingly omitted from the Bill and the long title, but it was not considered necessary to alter the Motion for leave to introduce it, as the rule that a Bill must not contain

[1] *See* May XI, 494. [2] 1940 VOTES, 677.
[3] 1931-32 VOTES, 668. [4] 1940 VOTES, 687, 690. [5] *Ib.* 725.

provisions which are not authorized by the Order of leave[1] had been complied with. On the introduction of the Defence Special Pensions Bill a breach of the rule that the same question cannot be twice offered was avoided by completely altering the terms of the Motion for leave to introduce the Bill.[2]

Presentation of Supplementary Estimates in MSS.—While the House was in Committee of Supply at the conclusion of the Session it was found necessary to vote an additional £100,000 for assistance to Holland and Belgium. As it was too late to have the Estimates printed the Committee reported progress in order that they might be laid upon the Table in MS. and referred to the Committee. They were, however, printed in the VOTES.[3]

Explanatory Memoranda to Bills.—Advantage has not yet been taken of S.O. 160 (*a*) under which a brief explanatory memorandum may be prefixed to Bills; but the precedent established in 1938 of laying a printed memorandum upon the Table briefly explaining the clauses of the Finance Bill was again adopted. Similar memoranda were also laid upon the Table in connection with the Electoral Laws Amendment Bill, the Apprenticeship Bill and the Unemployment Benefit Amendment Bill.[4]

Long Suspension of Business with Power to Accelerate Meeting.—On the last day of the Session the House of Assembly, having completed its work but being unable to estimate when the Senate would complete its business, resorted to the precedent established in 1938 (Second Session), and in suspending business for an hour and a half gave Mr. Speaker the power to accelerate the meeting by causing the division bells to be rung. Necessary modifications had to be made to the Resolution owing to the fact that the day on which it was agreed to was a day on which the House automatically rose from 6 p.m. to 8 p.m.[5]

B.—FIFTH SESSION, EIGHTH PARLIAMENT (August 24, 1940, to May 6, 1941).

Rule that same Question may not be Twice Offered.—Under S.O. 46 " no Motion or amendment shall be moved which is the same in substance as any Motion or amendment which during the current Session has been resolved in the affirmative or negative ", but in 1931-32 attention had been drawn to the fact that Motions which vary in form and matter will not be disallowed even if they are the same in purpose and give rise to debates embracing the same matters.[6] No fewer than 6 Motions and

[1] May XI, 465. [2] 1940 VOTES, 768, 777. [3] *Ib.* 812.
[4] *Ib.* 767, 379, 635, 653. [5] *Ib.* 820. [6] May XI, 302, 303.

amendments were made upon the subject of the gold standard in the 1931-32 Session, and in the current Session 3 instances of the application of the rule call for special reference:

(i) On Saturday, August 31, 1940, the House negatived a Motion for the conclusion of a separate peace with Germany and Italy. On the following Monday the Leader of the Opposition proposed to move that a petition praying " that the House may take the necessary steps to safeguard the conscientious objections of persons opposed to participation in the present War and to conclude an immediate and separate peace " be read by the Clerk at the Table. Objection was taken to this Motion on the ground that it was similar in substance to the Motion which had been negatived. Mr. Speaker, however, pointed out that the two propositions were entirely separate and distinct. The question which had been decided was the conclusion of a separate peace and the question now proposed was for the reading of a petition. The fact that the petition dealt with a question already decided did not affect the matter. Mr. Speaker added that S.O. 46, which precluded the same question from being twice offered, also provided that a vote of the House could be rescinded, and that alone would justify a Motion for the reading of the petition.[1]

(ii) On September 7, the House negatived an instruction to the Committee of the Whole House on the War Measures (Amendment) Bill, enabling the Committee to provide that during long adjournments of the House Mr. Speaker be empowered to accelerate the date of meeting after consultation with the Prime Minister and the Leader of the Opposition. Subsequently the Prime Minister moved that the House at its rising on September 14, 1940, adjourn until January 27, 1941, and that Mr. Speaker be empowered to accelerate or postpone the date of meeting after consultation with the Prime Minister. To this Motion an amendment was moved to insert " and the Leader of the Opposition " after the words " Prime Minister " and objection was taken to the amendment on the ground that the House had already decided that the Leader of the Opposition should not be consulted by Mr. Speaker. In allowing the amendment, Mr. Speaker stated that the instruction referred to was to enable the Committee of the Whole House on the War Measures (Amendment) Bill to make statutory provision in regard to long adjournments. The fact that the instruction had been negatived did not preclude the House from making similar provision in connection with the existing Session by means of a Motion.[2]

(iii) On September 6, 1940, an amendment to the Motion for the House to go into Committee on the Estimates of Additional Expenditure dropped owing to the application of a " guillotine " Resolution. The next Motion was for the House to go into Committee of Ways and Means and the same amendment was allowed, as, in the language of S.O. 46, it had not been " resolved in the affirmative or negative ".[3]

Petition read by Clerk-at-the-Table.—Under S.O. 270 it has been necessary since it was amended in 1917 for Members to

[1] 1940-41 VOTES, 61. [2] *Ib.* 132. [3] *Ib.* 85, 86.

give notice of Motion that a petition be read by the Clerk-at-the-Table. In accordance with this Standing Order a petition from women of South Africa praying the House to safeguard the conscientious objections of persons opposed to the War and for the conclusion of a separate peace was read by the Clerk-at-the-Table on the Motion of the Leader of the Opposition.[1] The last occasion on which such a Motion was agreed to was during the Joint Sitting held in 1926.

Scope of Debate on Estimates of Additional Expenditure.—The well-established rule that debate on Estimates of Additional Expenditure and Supplementary Estimates must be confined to the reason for the increase was relaxed by the Chairman of Committees with the tacit approval of the Committee of the Whole House on the consideration of the Additional Votes for War Expenditure. The grounds for doing so were the large amounts involved (namely, £8,500,000 and £23,500,000); the many important events (including the declaration of War against Italy) which had taken place since the original Votes were passed; and the fact that a limited period had been allotted for the consideration of the Estimates.[2]

Long Suspension of Business with Power to accelerate Meeting. On the last day of the first part of the Session the procedure referred to in para. (ii) above was again adopted.[3]

Long Adjournment of House with Power given to Mr. Speaker to accelerate or postpone.—The precedent established in 1933,[4] when the House authorized Mr. Speaker to accelerate the date of meeting during a long adjournment, was resorted to with a view to obviating a formal opening of Parliament in 1941. In this instance, however, Mr. Speaker was given the power of postponing in addition to the power of accelerating the date of meeting, which is similar to the powers which are given to the President of the Senate under its S.O. 16 (*a*), and to the powers which were given to Mr. Speaker in connection with adjournments during Joint Sittings in 1936.[5] In the course of discussions on this proposal it was urged that the Leader of the Opposition as well as the Prime Minister should be consulted by Mr. Speaker before altering the time of meeting, but it was pointed out that the rule and practice was for Mr. Speaker to be guided by the Minister of the Crown since the Governor-General under s. 20 of the South Africa Act had the power of proroguing Parliament until any date, and Mr. Speaker might be considerably embarrassed if there should be a difference of opinion between the Leader of the Opposition and the Prime Minister.[6]

[1] 1940-41 VOTES, 61. [2] *Ib.* 105. [3] *Ib.* 133. [4] 1933 *Ib.* 139.
[5] 1936 *Ib.* 181. [6] 1940-41 *Ib.* 90, 132; *see also* § (1) (i) above.

VIII. INDIAN STATES: HYDERABAD CONSTITUTIONAL REFORMS

By the Editor

So little is known in the rest of the British Empire about even British India that the information we have been receiving in recent years as to constitutional movements in that part of the Indian Empire represented by the Indian States[1] is doubly welcome in the pages of this JOURNAL. Such information has already appeared in respect of Mysore,[2] Jammu and Kashmir,[3] Gwalior[4] and Baroda.[5] Therefore we much appreciate the kind response to our inquiries by His Exalted Highness the Nizam in respect of Hyderabad, the first of India's Premier States, through his Prime Minister, the Rt. Hon. Sir Akbar Hydari, so well known not only in connection with the Chamber of Princes but with the new Constitution for India itself.[6]

The same mail also brought the necessary official documents in regard to the Hyderabad constitutional reforms, together with an explanatory letter from the Nawab Ali Yavar Jung, head of the Constitutional Affairs Secretariat in H.E.H. the Nizam's Government. It is upon these particulars that this Article has been written. In view, however, of the wealth of important and interesting constitutional facts these documents disclose, considerable condensation has had to be made to enable even a digest to be presented to our readers. For a full study of the subject the actual papers themselves, as well as other facts in connection with rule in the Indian States, must be consulted.

Representation of Indian States in Federation.

Considerable communications have been going on between the Rulers of Indian States and H.E. the Viceroy in regard to the draft Instrument of Accession,[7] to which references have already been made in our previous issues. However, it is not appropriate here to go into this or other problems relating to the Indian Princes and Federation. In this Article we are concerned only with constitutional reforms in the State of Hyderabad.

[1] *See also* JOURNAL, Vols. IV, 76-99; V, 53; VI, 70-71; VII, 90; and VIII, 67-70

[2] *See* JOURNAL, Vols. VII, 91-94; VIII, 70-74.

[3] *Ib.* VIII, 74-81.

[4] *Ib.* 81-83.

[5] *See* pp. 59-61. *supra.*

[6] 26 Geo. V, c. 2.

[7] *See* JOURNAL, Vols. IV, 78; V, 53; VI, 70-71; VII, 90; and VIII, 67-70.

The provisions of the Indian Constitution for setting up the Central Legislature of the Federation of the Indian States in the two Houses under the Act of 1935 are as follows:

State.	*Council of State.*	*Federal Assembly.*
Hyderabad	5	16
Mysore	3	7
Jammu and Kashmir	3	4
Gwalior	3	4
Baroda	3	3
Travancore	2	5
Cochin	2	1
Bikaner	2	1
Indore	2	2
Bhopal	2	1

(*Other States are represented in groups of States.*)

The total number of Members of the two Federal Houses is:

(*a*) British India	156	250
(*b*) Indian States[1] (not more than)	104 (not more than)	125
	260	375

State of Hyderabad.—In order that the reader may have some sort of background for the constitutional information to follow, first let a few general facts be given in regard to the Indian States. In the first place, such States, both large and small, number 585, of which 149 are major and 436 non-salute States, each under its own Ruler with his particular style and title, styled Maharaja or, in some cases, Nawab, Khan, Jam, Raja, Thakor Saheb, but in that of Hyderabad the Nizam. The Indian States, in all, cover an area of over 700,000 sq. miles with a total population of over 78,000,000, quite apart from the 1,000,000 sq. miles and 276,000,000 people of British India.

The 5 Premier States, together with the 15-gun-salute States of Bhutan and Sikkim, are in immediate political relations with the Government of India. The other States are in grouped Agencies, each with an Agent to the Governor-General.

Constitutional changes in Indian States are not only matters of to-day, they have been going on in the larger States for many years. Those States already having Legislatures in which there are elected representatives are the 21-gun-salute States of Mysore and Gwalior, the 19-gun-salute States of Travancore, Indore and Bhopal and the 17-gun-salute States of Cochin and Bikaner.

The State of Hyderabad, which, including its Dominion of Berar, also under the sovereignty of H.E.H. the Nizam,

[1] Their representation is laid down in Schedule I of the Constitution for India.—[ED.]

which is attached to the Central Provinces of British India for purposes of administration,[1] covers an area of 100,459 sq. miles and contains a population of 17,888,980. The State of Hyderabad itself has an area of 82,698 sq. miles (about the size of Britain) with a population (1931) of 14,436,148, composed as follows: 9,699,615 Hindus, 1,534,666 Muslims, 151,382 Christians, 21,543 Jains, 5,178 Sikhs, 1,784 Zoroastrians, 3,700 Arya Samajists, 182 Brahmo Samajists, and 2,473,230 Adi-Hindus.[2] Its approximate annual revenue is *Rs.* 873,90 lakhs. Although its people are predominantly Hindu, its Ruler is Muslim.

The Muslims in the State live largely around and in the cities, while the people are all Hindu of the Dravidian or semi-Dravidian origin—namely, Telequ, Mahratta and Canarese. In fact, as the northern Muslims from across the Indus came to Lucknow and Delhi, so have Arab migrants been attracted to Hyderabad.

Hyderabad is the only powerful Muslim Crown left in India, and since the abolition of the Ottoman Caliphate those of the Muslim faith are inclined to transfer their traditional allegiance, spiritual and cultural, to the Ruler of Hyderabad.[3]

In most of the Indian States, says General MacMunn in his interesting book,[4] will be found some or other measure of the modernity or experiment often absent from British India. "That is one of the possible advantages of autocracy and no rigid budget."

The Ruler.

The Ruler of the State is His Exalted Highness the Nizam, seventh monarch of his line and the lineal descendant of Chin Khallij Khan, Nizam-ul-Mulk, "Regent of the Land", but better known in history by his Persian title Asaf Jah, who was Viceroy of the Deccan under the Emperor Aurangzeb, last of the Moghuls to reign in Delhi, and the King-Maker of the Moghul Empire.

H.E.H. the Nizam of Hyderabad and Berar is often described as the "Faithful Ally of the British Empire".[5] The integrity of his State is guaranteed by treaty with the British Government.

The position of the Ruler in the State is described in para. 4 of the translation of the Executive Council's Arzdasht[6] of July 15, 1939, *Hyderabad Gazette Extraordinary*, the fundamental differ-

[1] *See* JOURNAL, Vol. VI, 73-74.
[2] *Report of the Reforms Committee*, 1938, Apdx. I. [3] *Ib.* 224.
[4] *The Indian States and Princes*, Lt.-Col. Sir G. MacMunn (Jarrolds), 1936, p. 199.
[5] *India of the Princes*, Rosita Forbes (John Gifford), 1939, p. 224.
[6] The Note containing the opinion of the President-in-Council submitted to the Ruler.—[ED.]

ence between the British and Indian States Constitutions being that in the former there is a two-party system sustained by the spirit of compromise and the conception of the sovereignty of the people which has struck deep roots in the soil, whereas the peculiarity of the Indian States is as presented by the Reforms Committee for the Constitution of the State as follows:

> "The Head of the State represents the people directly in his own person, and his connection with them, therefore, is more natural and abiding than that of any passing elected representatives. He is both the supreme Head of the State and the embodiment of his 'people's sovereignty'. Hence it is that, in such a polity, the Head of the State not merely retains the power to confirm or veto any piece of legislation, but also enjoys a special prerogative to make and unmake his executive or change the machinery of government through which he meets the growing needs of his people. Such a sovereignty forms the basis on which our Constitution rests, and has to be preserved."
>
> The Committee has further observed: "For the greater internal and external security of the State, the different interests therein must be allowed to associate themselves with its administration," and "such association will produce good results only when it is inspired by the traditions and the basic principles of the Constitution of the country."[1]

The Report.[2]

Terms of Reference.—The subject of this Article is centred in the Report of the Special Committee on Reforms set up in pursuance of H.E.H. the Nizam's Message of the 16 Rajab, 1356 A.H. (September 22, 1937),[3] under orders from H.E.H. the Nizam, which constitute its terms of reference—namely:

> Keeping in view the conditions in and the requirements and circumstances of the State, to investigate and report on all suitable alternatives for the more effective association of the different interests in the State with the Government whereby the latter may be placed in continuous possession of their needs and desires.[4]

"*Lay out*".—This "Yellow Book" also contains many illuminating tables and schedules. Its Appendix No. I[5] deals

[1] *See also* "Early Form of Government."—[ED.]

[2] *Report of the Reforms Committee*, 1938 (translation), Government Central Press, Hyderabad, Deccan.

[3] A.H., literally "After year", denoting the Hijri Calendar which begins from the Exodus (Hijrat) from Mecca of the Prophet of Islam with his followers. Hereafter A.D. dates will be given.—[ED.]

[4] *Rep.*, p. vii.

[5] Vols. II (Proceedings) and III of the Appendix, dealing with the Aiyangar Committee and the representations received from different individuals or organizations respectively, were not published, the report itself being the outcome of one and the other being summarized at the end of the Report.

with statistics, and there is also a *Communiqué* on Local Government issued by authority of the Nizam's Government. These documents, together with H.E.H. the Nizam's Firman[1] of July 17, 1939, as published in a *Hyderabad Gazette Extraordinary*, constitute the particular documents on the subject. The first 2 are published in English and the last in Urdu with a translation in English. This most excellently executed Report is interspersed with 12 charts elucidating in handy form some of the main subjects of the inquiry, many of them comparative tables for those larger Indian States already referred to. Altogether, the Report and its attendant documents afford opportunity for the student desiring to know something of the government of an important Indian State, its independent relationship to British India, the paternal and benevolent interest taken in his subjects by the Ruler, and the system adopted by him in order to associate his subjects with the affairs of the State, giving them a close interest in the various branches of its administration.

Personnel.—The Reforms Committee consisted of: Dewan Bahadur S. A. Aiyangar, M.B.E., B.A., B.L. (Chairman), Mr. G. M. Qureishi, H.C.S., Professor Q. Husain Khan,[2] M.A., Mr. K. R. Vaidya, M.A., LL.B., and Mr. M. A. Ali Khan,[2] B.A., LL.B. (Hons. Lond.), with Mr. S. Yousuf Ali, H.C.S., who was specially detailed to act as Secretary.

The Committee, which included 2 officials and 3 non-officials, held 80 meetings and spent 235¼ hours in discussion of the various matters coming within its purview. All its members rendered their services *gratis*.

Procedure upon Submission of Report.—The Report was submitted, in the absence of the Chairman, by letter from the Secretary to Nawab A. Y. Jung Bahadur, the Secretary to the Nizam's Government (Constitutional Affairs Department), on August 31, 1938, and within the 6 months stipulated in the Speech of H.E. the President of the Nizam's Executive Council to the Legislative Council, after which it was examined by the Executive Council on the basis of the opinions received from the different departments. The Executive Council then made its own recommendations to H.E.H. the Nizam. Both the recommendations of the Executive Council and the Nizam's Orders are contained in the *Gazette Extraordinary* above referred to.

It is now proposed to deal with the recommendations of the Reforms Committee, the opinions of the Executive Council and the Firman (July 17, 1939) of H.E.H. the Nizam under the respective subjects of constitutional reform.

[1] *I.e.*, an Order by the Ruler.—[ED.]

[2] *Barrister-at-law.*

Committee's Recommendations.—The Report of the Reforms Committee is divided into 2 Parts, Part I dealing with "The Conditions in and the Requirements and Circumstances of the State" and Part II with the "Effective Association of the Different Interests in the State with the Government". Our Society, however, is confined only to those recommendations, etc., relating to constitutional matters in their relation to the Legislature, its Members and Procedure. Therefore, interesting as are references to other subjects[1] in the Report, references will be made to them only where necessary to any constitutional point.

Early Forms of Government.—The early form of the government of the State of Hyderabad was a pure autocracy, and was carried on through a Dewan. In 1893 a Council of State was appointed to relieve the Dewan of this great burden, which was again replaced by an advisory committee, known as the Cabinet Council, any differences of opinion being submitted to the Ruler for decision. Along with this body, the then reigning Nizam constituted a Legislative Council consisting of: the Chief Justice and a Puisne Judge of the High Court, Inspector-General of Revenue, Director of Public Instruction, Inspector-General of Police and Financial Secretary.

Consequent upon the resignation of the then Sadr-i-Azam (Prime Minister) the Nawab Salar Jung II, the administration was conducted personally by H.E.H. the Nizam for over a year, the two bodies above referred to continuing to function. The Regulations framed for their guidance, however, made it clear that "His Highness reserved the power to modify or reject the decisions of the Councils as he pleased", and "that nothing in the said Regulations should in any manner prejudice the royal prerogatives, also that such prerogatives would be used by His Highness at any time and in any manner as he pleased". On the assumption of sovereignty by the present Nizam, His Exalted Highness found it necessary to perform the duties of Prime Minister himself for nearly 5 years, and had occasion to discover various defects and weaknesses which prevailed in the system of administration.[2]

Executive Council.—H.E.H. the Nizam in his Firman of July 17, 1939, states that the expansion of the present Legislative Council to the proportions of the proposed Legislative Assembly will be of help to him, whenever he may require it in a particular case,

[1] *E.g.* municipal and other local government, finance, transport, public services, liberty of association, speech and writing, etc.—[ED.]

[2] *Rep.* 5, 6.

in going outside the usual circle of Noblemen and Officials for selecting Members of his Executive Council, as he will then have before him the names of such M.L.A.s as may by their character, loyalty and judgment of public affairs have merited his confidence and proved their ability to discharge the onerous duties attached to membership of His Exalted Highness' Executive Council.[1]

Judiciary.—The Reforms Committee, in dealing with this subject, refer to the issue of the Firman-e-Mubarak of May 8, 1921, by which H.E.H. the Nizam has separated the judicial and executive functions in the administration of his Dominions, thereby relieving his executive officers of all purely judicial duties, save and except such as are provided by the Revenue Laws or may in some instances relate, under the Criminal Laws, to emergency measures affecting public tranquillity.

In this connection s. 17 of the Royal Charter of A.D. 1925-26 reads:

> The judgment of the High Court shall be final; but with a view to the enforcing of our royal prerogatives, the regulations of the Judicial Committee which have been sanctioned by us shall have to be duly observed.[2]

Legislature.—Chapter II upon this subject first recites the growth of the Legislature in British India, beginning with the Charter of the East India Company, including the change in 1765, the Acts of 1833, 1853, 1857, 1861, and the reforms of 1892, 1909 and 1919.

Section II of this Chapter is accompanied by a comprehensive chart showing the structural peculiarities of the Legislatures in some of the leading Indian States, the proportions of official, nominated, elected, religious and functional or vocational representation, and whether the Legislatures are uni- or bi-cameral, together with the areas, populations, revenue and percentage of literacy among both males and females.

The Report then goes on to deal with the evolution of legislation in the State of Hyderabad, reciting the events of 1868-69, 1874-75, 1880-81, 1890-91, 1893, 1894, 1899-1900, 1905-6, 1911-12, 1912-13, 1919, 1921-22, 1923-24, 1926-27 and 1931-32. The previous proposals in regard to the strength and composition of the Legislative Council are shown in the chart facing p. 37 of the Committee's Report.

Under Section III of Chapter II the *pros* and *cons* in regard to bi-cameralism are discussed,[3] followed by the question of communal or territorial representation in the Legislature as against

[1] Firman, § (1). [2] *Rep.* 6 and 7. [3] *Ib.* 37-40.

that of functional or vocational interests,[1] with the inclusion of a nominated element.

The Legislative Council (or Legislative Assembly as the Chamber is to be called), as proposed by the Reforms Committee, exclusive of the President and Members of the Executive Council, was a Legislature of 70 Members, 33 elected to represent functional interests in certain stated proportions. Upon the subject of representation on the basis of interests, however, the Executive Council observed that: First, political constitutionalism if based on territorial representation did not give the economic interests in a State as true a representation as that based on such interests themselves; secondly, a shifting of emphasis to the economic *motif* would be likely to import a greater degree of realism into legislation, even into politics as such; and, thirdly, that, in a State comprising different linguistic and religious divisions, economic interests alone would, sooner or later, transcend those barriers of race, language and religion on which such disproportionate emphasis tended to be laid.[2]

The Executive Council also recommended that the ratio of 50/50 be accepted for purposes of all the representative bodies proposed in the Arzdasht, so that among both the elected and nominated members there would be equality of numbers between Hindus and Muslims; such reservation of Hindu and Muslim seats eliminating rivalry between candidates on communal line which might otherwise lead to communal friction within th interests themselves and defeat the very purpose for which the basi of interests has been presented.[3] The requirement that a candidate should obtain 40 per cent. of the votes cast in each interest, it was suggested, safeguarded the interest of the community in question, while joint electorates provided for the assertion of the voice of the other communities in the election of the candidate. In regard to nominated interests, the Council recommended that where a large number from any one interest is to be nominated—for example, the 5 Members from the Harijans[4]—certain elective processes might be set in motion by which the Government might select the 5 out of a panel elected by a Harijan association or organization recognized for the purpose.[5]

Therefore, in regard to the Legislative Assembly, the Council recommended that a greater advance should be made[6] so that there might be an elected majority, as against the nominated Members. Not including the Members of the Executive Council

[1] *Rep.* 39-64. [2] *Gazette Extraordinary*, pp. 6 and 7. [3] *Ib.* 8.
[4] *I.e.*, "Untouchables" or "Depressed Classes" among the Hindus.—[ED.]
[5] *Gazette Extraordinary*, p. 8. [6] *Ib.*, pp. 11-13.

(at present 7) who will be *ex-officio* Members of the Assembly and 3 representatives of the Sarf-i-Khas Mubarak appointed by His Exalted Highness, the Council recommended that the Assembly should be composed of:

(*a*) 42 elected representatives of the main interests as follows:

Samasthans and Jagirs ..	4	Banking	2
Maashdars	2	Legal Profession ..	2
Agriculturists:		Medical Profession ..	2
Pattadars 8 / Tenants 8	16	Graduates	2
		District Boards	2
Labour Interests ..	2	District and Town Municipalities	2
Industries	2	Hyderabad Municipal Corporation	2
Commerce	2		

and (*b*) 33 Members nominated by the Government:

Officials	14	The Peshkari Estate ..	1
Non-officials	14	The Salar Jung Estate ..	1
The Three Paigahs ..	3		

In regard to composition of the Legislative Assembly suggested by the Executive Council, H.E.H. the Nizam concurred, except in regard to the last 3 items, the Firman stating that such 5 Members be nominated by the Illaqas.[1]

The Executive Council also recommended that, as regards the elected representatives, one out of the 4 representatives of Samasthans[2] and Jagirs[3] be the holder of a Samasthan. Further, in order that the various interests might be truly represented, only those engaged in them should be entitled to vote or stand, and a person voting or standing for one interest should not be entitled so to act in respect of any other interest in any given election.

The Committee had recommended a nominated element of 37: officials (18), non-officials (19). The non-officials to be composed of Illaqas (8)—namely, Sarf-i-Khas[4] (2), Paigahs[5] (3) and Peshkari[6], Salar Jung and Samasthan 1 each. The 11 other nominated Members to represent classes and others.

In regard to the nominated element, the Executive Council was of opinion that it should be possible, so far as the official Members were concerned, for officials concerned with any particular matter under discussion to be nominated as Members within the numbers allotted. It was also recommended by the Executive Council that one member of the Senate of the University, not necessarily an official, should be nominated to repre-

[1] The 5 largest estates of the Premier noblemen of the State.—[ED.]
[2] Old Hindu estates.—[ED.]
[3] Grants of land.—[ED.]
[4] "Crown lands."—[ED.]
[5] The 3 premier Illaqas.—[ED.]
[6] A particular Illaqas.—[ED.]

sent that institution. Also that 5 of the Hindu Members should be Harijans and 1 Lingayat[1], and that the Government should nominate at least 2 Christians (1 Anglo-Indian and 1 Indian Christian) and 1 Zoroastrian. The above should also provide for the nomination of at least 2 women, and that persons belonging to other unrepresented interests—*e.g.*, journalists and contractors —and special interests, within the 2 communities, may likewise be accommodated by nomination.

The Executive suggested that each of the interests specified for the purpose of election must send an equal number of Hindu and of Muslim representatives, while similar equality must exist between the two communities among the 33 nominated Members.[2]

Functions and Powers of Legislature.—Opposite p. 66 of the Committee's Report are 3 charts, reciting respectively the powers and functions of the Legislature in some of the Indian States, as well as such powers, etc., in regard to Interpellations, Resolutions, etc., and to the Budget.

The recommendations of the Reforms Committee in regard to legislation[3] are contained in 4 lists. The first (and unnumbered list) deals with 13 matters expressly excluded from the purview of the Legislature. Then follow 3 Legislative Lists.

List I deals with matters on which legislation could be introduced only by Government.

List II deals with matters on which Bills can be introduced without previous permission of the Government.

List III deals with matters in regard to which previous permission of the Government is necessary for introducing legislation.

The Executive Council, however, considered the 4 lists suggested by the Reforms Committee likely to prove cumbrous and complicated,[4] and the Annexure[5] to the Executive Council's Arzdasht sets out a draft clause of the proposed Qanooncha[6] governing the functions and powers of the Assembly, which covers 52 items, in place of the Reforms Committee's 44, with the result that the new list of matters expressly excluded does not contain matters ordinarily requiring legislation for which recourse to the Assembly should be necessary. The Annexure to the Executive Council's Arzdasht sets out a draft clause of the proposed Qanooncha governing the functions and powers of the Assembly which reads as follows:

> (1) There shall not be introduced into or moved in the Assembly any Bill or Motion or Resolution or Interpellation or other proceeding with respect to the following:

[1] A Hindu sect.—[ED.]
[2] *Gazette Extraordinary*, p. 13.
[3] *Rep.*, pp. 68-76.
[4] *Gazette Extraordinary*, p. 13.
[5] *Ib.*, pp. 30-33.
[6] A Constitutional Act or Ordinance.—[ED.]

Then follow 17 items, including such matters reserved to H.E.H. the Nizam as:

(*a*) His Exalted Highness, his House and Family.
(*b*) The relations of His Exalted Highness with the Crown of the United Kingdom or with any other Government, State or Ruler, including any treaty, agreement, engagement or other Instrument between His Exalted Highness and the Crown or any other Government, State or Ruler.
(*c*) The Executive Council.
(*d*) The military and other armed forces, including the Police force; the Criminal Investigation Department, including the Special Branch.
(*e*) The exercise by His Exalted Highness of any of his prerogatives, including the prerogative of mercy.
(*f*) Appointments or expenditure relating to any of the 17 enumerated matters including expenditure under any law for the time being in force or expenditure classified by the Government as " Political charges "; salaries and allowances; pensions and gratuities; the Sinking Fund and the Public Debt; State charities or donations or religious endowments; and
(*g*) Any other matter that may be specified by His Exalted Highness.

Subparagraphs (2) and (3) of this Annexure read:

(2) Subject to the provisions of this Qanooncha and to the rules made thereunder, any member of the Assembly shall have the power to introduce into or move in the Assembly any Bill or Motion or Resolution or Interpellation or other proceedings with respect to any of the matters specified in the Schedule hereto; provided that no Bill shall be moved, without the previous permission of the Government in writing and subject to such conditions as the Government may prescribe in that behalf, which may in any manner affect the religious beliefs or practice of any community or sect inhabiting the Dominions.

(3) No member of the Assembly shall have the power, without the previous permission of the Government in writing and subject to such conditions as the Government may prescribe in that behalf, to introduce into or move in the Assembly any Bill or Motion or Resolution or Interpellation or other proceedings with respect to any matter not specified in the said Schedule; provided that with respect to the following class of matters no Bill shall be introduced except by the Government or any Member thereof:

Then follow 14 items, including transport, arms and ammunition, public order, emigration, etc., the courts, Attiyats, minerals, insurance, banking and monopolies, public services, Local Government, currency, revenue and taxation, census and " any other class of matter that may be specified by His Exalted Highness."

Subparagraph (4) of this Annexure reads:

(4) Notwithstanding the provisions of sub-section (2) of this Section, so much of any matter specified in the said Schedule hereto or not specified therein or in any of the preceding sub-sections of this Section as may be included in any of the matters or class of

matters specified in sub-sections (1) and (3) of this Section respectively, shall be construed as being related to the matters with respect to which the provisions of sub-sections (1) and (3), as the case may be, shall apply; provided that the Government shall have the power to decide whether any part of a matter is or is not related to any of the matters or class of matters with respect to which sub-sections (1), (2) or (3) of this Section shall apply.

Then follow 53 items including such subjects as agriculture, labour, water, education, public health, copyright, compulsory acquisition of land, contracts, arbitration, professions, stamp duties, research, and "(53) Any other matter that may be specified by His Exalted Highness."

It is stated by H.E.H. the Nizam in his Firman of July 17, 1939, that:

> Although, as unanimously recommended by the Reforms Committee, the Legislature will be of a recommendatory character, nevertheless the duty will rest on the Executive no less than on the non-official members of the different bodies of importing into the working of the constitution that spirit of accommodation and response which must be its keynote. Motions and resolutions of the Assembly should, after consideration by the Department concerned, be reported on to my Council for such action as may be deemed necessary. My Council itself should not ordinarily move for the exercise of the power of certification or veto with respect to any legislation without referring it back to the Assembly for further consideration. A similar spirit should govern the grant of permission to ask questions, move resolutions or motions or to introduce Bills with respect to any matter not expressly included within the purview of the Assembly.[1]

Duration of Legislature.—It was recommended that the life of the Legislature should be 5 years, with the right reserved to the Government of either dissolution or the prolongation of such life, whenever deemed necessary.[2]

Language.—The proceedings of the Legislature are to be conducted in Urdu, the official language, with power to the President to allow any Member to speak in Telugu, Marathi, Canarese or English should the President be satisfied that the Member is not sufficiently acquainted with Urdu.

Procedure of Legislature.—Then follow recommendations in regard to the treatment of Questions, Motions, Petitions, the Budget, Bills and the Oaths to be taken by Members of the Legislature, which space does not permit of being dealt with in this Article, although treatment of them has been prepared.[3]

Central Advisory Bodies.[4]—An important feature of the new constitutional reforms is the suggested establishment of Central

[1] *Gazette Extraordinary*, p. 3. [2] *Rep.*, p. 82. [3] *Ib.* pp. 77-84.
[4] *Ib.*, pp. 85-91; *Gazette Extraordinary*, pp. 15-17.

Advisory Bodies, consisting of experts and representatives of interests concerned, quite apart and distinct from the Legislature, but upon a statutory basis; their proceedings to be confidential. It was not considered by the Committee that representation in the Legislature alone would secure effective association of the people with the Administration. It was therefore suggested that these popular and non-bureaucratic bodies co-operate with the Administration, and that such bodies need not necessarily be composed of Members of the Legislature. The Executive Council, on the other hand, considering the direct association of these bodies with important departments and the advantage both to the Assembly and the Government of M.L.A.s gaining acquaintance with such matters, proposed that members of such bodies should ordinarily be Members of the Legislative Assembly.

The Committee suggested the establishment of these Boards or Committees to deal with the following subjects:

1. Public Health and Sanitation,
2. Agricultural Development,
3. Industrial Development,
4. Education,

to which the Executive Council recommended[1] the following be added as statutory bodies:[2]

5. Finance,
6. Hindu Religious Endowments,
7. Muslim Religious Endowments, and
8. Religious Affairs.

Such Committees are to consist of a member of the Executive as President, officials and non-officials, more or less in equal numbers. Members of the Legislature may be appointed to these Committees. H.E.H. the Nizam in his Firman, § (6), of July 17, 1939, states that such Members of his Government as will be assisted by such Committees must have due regard to their advice and must refer cases where they may disagree with such advice to H.E.H.'s President of the Council, and it should be open to him to refer any case of disagreement back to a Committee for further consideration.

Ecclesiastical Department.—It[3] was also recommended by the Reforms Committee that Committees composed of the representatives of the 2 great communities should be formed to assist this department with advice—one for the Muslim endowment,

[1] *Gazette Extraordinary*, p. 15.

[2] These had been suggested by the Reforms Committee as non-statutory bodies.

[3] *Rep.*, p. 90.

composed of Muslim members, and the other for the Hindu endowments, composed of Hindu members.

In regard to this recommendation[1] the Executive Council suggested that the Commission be a standing body, to be provided for in the Constitution itself, to which the Government could refer issues in regard to the examination of rules and circulars relating to religious observances. The Executive Council therefore suggested that, in addition to the Statutory Advisory Committee already referred to, a similar Committee be set up to advise on memorials or petitions of any Community or sect which may purport to bring to the notice of the Government disabilities or restrictions in the performance of worship or religious rites. The Religious Affairs Committee, it is suggested by the Executive Council, should have equality of representation, both among the officials and non-officials, between its Hindu and Muslim members.

As is done elsewhere in India, ecclesiastical matters are excluded from the purview of the Legislature.

District Conferences.[2]—The Committee did not recommend the establishment of a Representative Assembly independent of the Legislature, as in Mysore, but that a system of District Conferences, presided over by the Subedar of the district, be held at a certain season of the year, to enable the inhabitants of any district to submit recommendations in regard to their local requirements, the Subedar[3] at the close of each Conference to submit a copy of its proceedings, together with his report thereon, to the Government for consideration and necessary action and in his opening speech at the next Conference to explain to the people the action which the Government was pleased to take in respect of matters to which its attention had been invited in his report.

The occasion of such Conferences may be made use of, to hold exhibitions and demonstrations and for the expression of appreciation of humanitarian and other services rendered by individuals. It is also suggested that persons attending these Conferences be entertained and looked after at Government expense and that suitable arrangements be made to render their stay comfortable. By such a system of district Conferences, observed the Reforms Committee, the " Government in its turn will come to know of the work and the weaknesses of the local agencies of administration, and the Legislature also will have at its disposal the necessary material on which it may base its legislation ".

[1] *Gazette Extraordinary*, pp. 15, 16.
[2] *Rep.*, pp. 91-93.
[3] Revenue Commissioner.—[Ed.]

Chapter IV of the Report deals with Municipal and other Local Self-Government; Panchayats[1] and Village Courts, District and Taluq[2] Boards are subjects outside the investigations of this Society.

H.E.H. the Nizam.—The Firman of H.E.H. the Nizam closes with the following paragraphs:

> I pray that this constitution may have the blessing of Providence. I commend it to all classes of my subjects; to my Nobles, who are the pillars of my State; to the holders of Samasthans and to my jagirdars and maashdars, who all enjoy grants from me; to the agriculturists, who are the foundation of my State's economy and who for the first time will be taken into such association with my Government; to all those engaged in industries, trade, commerce or banking or in the liberal professions; to women, with whom rests in such large measure the task of moulding a nation; and to all others of my beloved subjects.
>
> Since the time when Asaf Jah I founded this Muslim State, the Premier State of India, rights of citizenship have been enjoyed equally by all subjects of the State, of whatever caste, creed or community, and I trust that in now exercising those widening rights each will continue the tradition of mutual respect for the sentiments and interests of the others and that all who live under its benign rule and protection will work together for this State as the valued and indivisible asset of all. I am confident that, if worked in the spirit in which it has been conceived, this constitution will provide both a large measure of present advance and a wide scope for future expansion as, in course of time, both my Government and my people acquire sufficient experience. I trust that both will share the spirit and the desire which have actuated me throughout. In the exercise of my Sovereignty, under the guidance of Providence, I am deeply conscious of my responsibility for the good government of my State, and I am confident that in its due discharge I shall continue to command the best endeavours of all concerned in the same manner as I and my House have always possessed their loyalty and affection.

Legislative and other Action.—The position, at the time of going to press, in regard to legislative action upon the Report, etc., is that 6 enactments in regard to the Municipal and other Local Government recommendations of the Reforms Committee Report are now ready. Rules for public meetings are being revised. The Act governing the proposed Legislative Assembly and the Statutory Advisory Committees is nearing completion. The rules regarding District Conferences are ready and the Advisory Committees will be brought into being without waiting for the actual promulgation of the Constitution Act. The Franchise Committee is continuing its sittings upon that subject and upon the Electoral Laws, and the Rules for the organization

[1] Village Boards.—[Ed.] [2] Subdivision of a District.—[Ed.]

and association of interests are in course of preparation. It is anticipated that the District Municipalities and Town Committees will be functioning about the middle of 1942, while the District Board and Panchayats will probably come into being about the beginning of 1943. Three months afterwards, it will be possible for the Central Assembly to function. In the meantime electoral rolls are being prepared and in due course the subjects of H.E.H. the Nizam in the State of Hyderabad will reap the good harvest which should follow such a thorough preparation of the ground for constitutional reform.

IX. LAW-MAKING IN BURMA (LEGISLATURE)

By U Ba Dun

Barrister-at-Law, Secretary of the Burma House of Representatives

I PROPOSE to approach the subject with a short survey of the constitution and growth of legislative machinery in Burma from the year 1897 from the legislator's point of view. Next, I shall deal briefly with the constituent parts of the Legislature under the Government of Burma Act, 1935, with a synopsis of the status of members in general, followed by a talk on "Legislation". Then I shall proceed with the process and procedure of actual law-making in more detail. I may say here that throughout this Article wherever the term "Act" is used unqualified it is to mean the Government of Burma Act, 1935.

Constitution and Growth of Legislative Machinery in Burma.—The Central Indian Legislature was at one time the sole legislative authority for the whole of India, including Burma. It may be recalled that up to 1897 Burma was administered by a Chief Commissioner, and the laws relating to the territories under him were made by the Legislative Council of the Governor-General of India. With the constitution of Burma as a Lieutenant-Governor's Province in April of 1897, the first Legislative Council came into being on May 1, 1897. There were then only 9 members of the Council, all being nominated by the Lieutenant-Governor, who was also the President of the Council. The Members had no right of interpellation, and the Financial Statement of the Government was not presented to it as it is done now. Its powers were also limited to making laws "for the peace and good government of the country", but these powers were subject to various conditions.

The Council Act of 1909, known popularly as the "Minto-Morley Reforms", introduced new changes in the Constitution: the size and the powers of the Council were enlarged; non-official majority was introduced while indirect representation was still retained; Members were both elected and nominated—*i.e.*, the elective principle was adopted with restrictions; discussion of the Annual Financial Statement was permitted without power of voting on it. Matters of general public interest could be discussed. Very little use, however, of such powers was actually made. The Council consisted of the Lieutenant-Governor as President and of a maximum of 15 other members, one of whom was to be elected by the Burma Chamber of Com-

merce and the remaining 14 to be nominated by the Lieutenant-Governor with the sanction of the Governor-General. The Lieutenant-Governor was also given power to nominate two expert members (official or non-official) having special knowledge of subjects connected with the pending or proposed legislation. The term of office for non-officials was 3 years; for official and expert members 3 years or such shorter period as the Lieutenant-Governor might determine at the time of the nomination. There were on the Council 6 European officials, 9 non-officials, of whom 3 were Burmans, 2 Indians, 2 Europeans, 1 Chinese and 1 Shan Chief. In October, 1915, the number of nominated Members was raised from 14 to 15 and the number of elected members from 1 to 2, the additional elected member being intended for the Rangoon Trades Association. By the Government of India Act, 1915, the maximum number of members for the Burma Legislative Council was raised to 30, but advantage was not taken of this provision until 1920, when, at the instance of Sir Reginald Craddock, the number of members was increased from 19 to 29. The number of elected members remained the same as before—namely, 2,—while there were 26 nominated members and 2 seats were reserved for expert members. Of the 26 nominated members not more than 12 were to be officials. This increase in size was soon followed by increased vitality in the work of the Council, and the number of meetings held also largely increased.

On January 2, 1923, Burma witnessed another step forward in her constitutional development when she was constituted a Governor's Province, and the Legislative Council was reformed in accordance with the provisions of the Government of India Act. This Council consisted of 103 members, of whom 80 were elected, 8 nominated non-officials, 13 nominated officials and 2 members of the Executive Council *ex officio*. Of the 80 elected members, 22 were allotted as follows:

Indian (for urban areas only)	8
Karen	5
European	1
Anglo-Indian	1
Burma Chamber of Commerce	2
Burmese Chamber of Commerce	1
Indian Chamber of Commerce	1
Chinese Chamber of Commerce	1
Rangoon Trades Association	1
The University of Rangoon	1

The remaining 58 members were elected by general constituencies. Communities for whom special reservation of seats was provided

—namely, the Karens, Europeans and Anglo-Indians, and, in urban areas, Indians—were not included in the general constituencies. Members of any community could, however, stand for election by general constituencies. The power to nominate 2 additional expert members was retained. The Governor, though not a member of the Legislative Council, had the right of addressing it, and was empowered to call a meeting for that purpose. He could summon, prorogue, and, in certain circumstances, dissolve the Council or extend its life. Under the Government of India Act every Governor's Legislative Council was to continue for 3 years from its first meeting. The Council was presided over by a President who for the first 4 years after the inauguration of the new Council was first appointed by the Governor, but afterwards a person elected by the Council from amongst its members. There was also a Deputy President, who was elected by the Council from amongst its members and whose duty it was to take the Chair during the absence of the President.

The legislative authority of the Legislative Council extended over the territories constituting the province of Burma and administered by the local Government, with the exception of backward tracts such as the Federated Shan States, the Kachin Hills, Chin Hills, etc., which were under the direct control of the Governor of Burma. The Legislative Council had power, subject to certain restrictions, to make laws for the peace and good government of the province, and could repeal or alter any law made by the local legislature or its predecessor or by any other authority in British India, including the Indian Legislature, but it had no power to make any law affecting any Act of Parliament. A law repugnant to any provision of the Government of India Act or any other Act of Parliament was void to the extent of that repugnancy but not otherwise, and a law was not to be deemed invalid solely for the reason that it affects the prerogative of the Crown. The Legislative Council could not repeal or alter any rules made under the Government of India Act by the Governor-General in Council and it could not make laws relating to the " Backward Tracts ", such as the Federated Shan States.

With the inauguration of the Government of Burma Act, 1935, Burma was separated from India on April 1, 1937, and she made an important step towards her constitutional goal. Under the Government of Burma (Commencement and Transitory Provisions) Order, 1936, the provisions of the Government of Burma Act, 1935, relating to the Legislature came into force on July 3, 1936, for the purpose, *inter alia*, of enabling laws and other business to be transacted in the Legislature under the Act at any

time from January 1, 1937, and the first Session of the House of Representatives and of the Senate commenced on February 10, 1937. The Legislature consists of His Majesty (represented by the Governor), the Senate and the House of Representatives, collectively. The law-making authority has the same features as the Parliament of the United Kingdom, which consists of His Majesty the King, the House of Lords and the House of Commons, acting together.

The Governor.—Under the Act the Governor is required to exercise his functions either in his discretion or in his individual judgment. When he acts in his discretion he is not required to consult his Ministers, but when he exercises his individual judgment he is ordinarily expected to consult them, though he is not bound to accept their advice. He is, however, under the general control of, and has to comply with, such particular directions, if any, as may from time to time be given to him by the Secretary of State, but the validity of anything done by the Governor cannot be called in question on the ground that it was done otherwise than in accordance with such directions. The Governor, as a constituent part of the Legislature, participates in the functions of the Chambers in several ways: his assent is necessary before a Bill which has been passed by both Chambers becomes an Act of the Legislature; the Governor may, in his discretion, address either Chamber or both Chambers assembled together, and for that purpose he may require the attendance of Members; the Governor may, in his discretion, send messages to either Chamber, whether with respect to a Bill then pending or otherwise, and the Chamber to whom any message is so sent is bound to take action, with all convenient despatch, to consider any matter which it is required by the message to take into consideration; the Governor may issue a summons to the Chambers to meet and hold a Session, specifying the time and place of the meeting; he may, in his discretion, prorogue the Chambers or dissolve either Chamber or both Chambers simultaneously. Each Chamber of the Legislature has the power to make rules for regulating, subject to the provisions of the Act, its procedure and the conduct of its business. The Governor also can, in his discretion, after consultation with the President of the Senate or the Speaker of the House of Representatives, as the case may be, make rules, among others, for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment. However, if and in so far as any rule

made by the Governor is inconsistent with any rule made by a Chamber, the rule made by the Governor prevails. Previous sanction or recommendation of the Governor is necessary for certain forms of legislation. This point will be dealt with *in extenso* in its appropriate place later.

The Senate.—The Senate, popularly known as "the Upper House", consists of 36 Members: 18 are elected by the Members of the House of Representatives in accordance with the system of proportional representation by means of the single transferable vote and 18 persons are chosen by the Governor in his discretion. The eligibility for candidature is a very high property qualification or the fact of having held high offices under Government or of being the holder of certain recognized titles or distinctions. There is no distinction as regards rights and privileges of Members, whether they are elected by the House of Representatives or nominated by the Governor.

The Senate continues to exist for 7 years from the date appointed for its first meeting. The first meeting was held on February 10, 1937; so, unless the Governor dissolves it earlier, it will be dissolved on February 10, 1944. The Senate has chosen two of its members to be the President and the Deputy President respectively.

The House of Representatives.—The House of Representatives, or in popular parlance the "Lower House", consists of 132 Members, who are all elected by the various constituencies into which Burma is divided.

		House of Representatives.	*Burma Legislative Council.*
General	Burman—Urban	14 } 91	14 } 58
	Burman—Rural	77 }	44 }
	Karen—Rural	12	5
	Indian—Urban	8	8
	Anglo-Burman	2	1
	European	3	—
Special	Rangoon University	1	1
	Burmese Chamber of Commerce	1	1
	Burma Indian Chamber of Commerce	2	1
	Burma Chamber of Commerce (European)	5	2
	Chinese Chamber of Commerce	1	1
	Rangoon Trades Association	1	1
	Chettiars' Association	1	1
	Indian Labour	2	—
	Non-Indian Labour	2	—
		132	80

The table on p. 158 gives a comparison of the elected members in detail in the House of Representatives with those of the Burma Legislative Council.

The qualifications are much lower than those for the Senate. It would be sufficient for me to refer to the Third and Fourth, Schedules to the Government of Burma Act and the Government of Burma House of Representatives (Election) Order, 1936, for the qualifications in question. The House of Representatives continues to exist for 5 years from the date appointed for its first meeting. As February 10, 1937, was the date of the first meeting, the House of Representatives, unless dissolved earlier by the Governor, will be dissolved on February 10, 1942. The House has chosen two of its Members to be the Speaker and the Deputy Speaker respectively.

Members—General.—Members who are qualified as such and who have taken the oath or affirmation required by law are entitled to sit, take part in debate or vote on any matter before the Chamber. A Minister who is not a Member of a particular Chamber and the Counsellor or the Advocate-General has the right to speak in, and otherwise take part in the proceedings of, either Chamber, any joint sitting or committee of which he may be named a Member, but he is not entitled to vote. If a Member is chosen as a Member of both Chambers he must give up his seat in one Chamber or the other, according to the rules made by the Governor. Resignation by a Member of the Legislature from his seat can be made in writing and addressed to the Governor and transmitted through the Secretary to Government in the Judicial Department. A Member becomes disqualified (among other things) if he holds an office of profit under the Crown in Burma other than that of a Minister or an office declared by an Act of the Legislature not to disqualify its holder. If he becomes a Member of the Buddhist Monastic Order he is disqualified from being a Member of the House of Representatives. Subject to the provisions of the Act and the rules in force there is freedom of speech in the Legislature and no Member (including the Minister who is not a member of a Chamber, the Counsellor and the Advocate-General) can 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. He is entitled to exemption from liability to serve as a juror or assessor and from arrest or detention in prison under civil process during 14 days before and after the Session of the Chamber or of any Committee, etc., of which he is a Member. A Member is also entitled to a salary of *Rs.* 250 *per mensem* and a daily allowance of *Rs.* 15 for

each day of actual residence at the place of session or meeting while it is in progress, and for the days of arrival at and departure from the place of session or meeting. He is also entitled to $1\frac{3}{8}$ of the ordinary single first-class fare exclusive of diet for the first journey therefrom. Halting allowances at the rate of *Rs.* 15 *per diem* in certain circumstances are also drawn by a Member whose notified place of residence is outside Rangoon.

Legislation.—The Burma Legislature is the law-making authority in Burma. " An Act of the Legislature " means a Bill passed by both Houses of Legislature and assented to by the Governor or, in the case of a Bill reserved for His Majesty's pleasure, when His Majesty has assented to it, and includes a Governor's Act and an Ordinance promulgated by him. Subject to the provisions of the Act, the Legislature of Burma may make laws for British Burma or any part thereof having effect upon all persons therein. The Areas known as the " Backward Tracts " mentioned in the Second Schedule to the Act are, however, excluded from the direct operation of the laws of the land. Acts of the Legislature may also be made to have extra-territorial jurisdiction—*i.e.*, outside British Burma, and in any place as respects British subjects domiciled in Burma, as respects ships or aircraft registered in Burma or persons attached to, employed with or following any naval, military or air force raised in Burma, in the case of a law for the regulation or discipline of that force. The laws in force in Burma on April 1, 1937, except Acts of Parliament,[1] are handed over to the Burma Legislature to repeal or amend or to add, subject to the provisions of the Act. The Adaptation of Laws Order in Council, passed under s. 149 of the Act, does the preliminary work of adapting Acts to the new circumstances, making amendments consequent on separation. It is left to the Burma Legislature to complete the work by a Repealing and Amending Act, removing obsolete provisions. This purpose is now being achieved by the Burma Laws (Adaptation) Bill, 1940, which was introduced in the House of Representatives during the Budget Session, 1940, and has now been passed by both Houses of Legislature. Parliament retains authority to legislate for Burma. The general power given by the Act to the Legislature is subject to certain restrictions and conditions: there are certain matters for which legislation is prohibited by the Act, and there are others for which legislation is not permitted unless the Governor in his discretion or in the exercise of his individual judgment accords his previous sanction or gives his recommendation.

[1] Imperial.

The Burma Legislature has no power to make any law—

1. Affecting the Sovereign, or the Royal Family, or the succession to the Crown or the Sovereignty, dominion or suzerainty of the Crown in any part of Burma or the law of British nationality, or the (Imperial or Indian) Army Act, the Air Force Act, the Naval Discipline Act, or the Law of Prize or Prize Courts, or, except in so far as the Act applies, amending any of the provisions of the Act or any Order-in-Council or any rules made under the Act by the Secretary of State, or by the Governor in his discretion or in the exercise of his individual judgment (s. 34).

2. Specifically for any area specified in the Second Schedule to the Act, such as the Federated Shan States, the Arakan Hill Tracts, the Chin Hills District, the Kachin Hill Tracts of the Myitkyina, Bhamo and Katha Districts, etc. The Governor may, however, by notification direct that an Act shall apply to such area (s. 40).

3. Affecting any matter imposing restrictions, discriminations, conditions and disabilities as set out in ss. 44 (1), (2) and (3) to 48, 52, 53, 138, read with Immigration Order, 1937, and 144 (1). And

4. Authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined (*vide* s. 145 [2]).

Further, a Bill or amendment making provision for imposing or increasing any tax or for regulating the borrowing of money or the giving of any guarantee by the Government, or for amending the law with respect to any obligation undertaken or to be undertaken by the Government, or for declaring any expenditure to be expenditure charged on the revenues of Burma, or for increasing the amount of any such expenditure cannot be introduced in the Senate (*vide* s. 63 [1]). Previous sanction of the Governor is required to introduce a Bill or amendment—

1. For certain legislative proposals set out in s. 36;

2. For prescribing professional and technical qualifications in general as set out in s. 51;

3. For varying or extending an Order of His Majesty in Council prescribing or making rules regarding duties to be performed or powers to be exercised by the Auditor-General in relation to accounts of Government of Burma (*vide* proviso to s. 66 [3]);

4. For supplementing or amending the Sixth Schedule to the Act, regarding the composition of the Railway Board (*vide* s. 70);

5. For investing the High Court with original jurisdiction in revenue matters (*vide* s. 86);

6. For providing additional functions to be exercised by the Public Service Commission (*vide* s. 121);

7. For abolishing or restricting the protection afforded to public servants against prosecutions and suits in Burma (*vide* s. 125); and

8. For providing transfer of land to public ownership or extinguishing or modifying rights therein (*vide* s. 145 [3]).

Recommendation of the Governor is required for a Bill or amendment—

1. Providing special provisions as to financial matters set out in s. 63; and
2. Regulating rates and fares charged on a railway (*vide* s. 80).

Subject to the provisions of the Act, the Rules of Procedure made by each Chamber in accordance with s. 29 of the Act regulate the procedure and the conduct of business therein. The Presiding Officer of each Chamber interprets such Rules and generally, if any question of procedure arises for which specific provision is not made by the Rules, he decides the question in such manner as in his opinion will best assist the House to perform its function in accordance with the Act.

Procedure as to Bills.—There are two kinds of Acts—namely:

1. Acts of the Governor; and
2. Acts of the Legislature.

Acts of the Governor are more or less measures to meet emergencies and are enacted by the Governor under s. 43 for the purpose of enabling him to satisfactorily discharge his special functions under the Act. The Burma Frontier Force Act, 1937, the Defence of Burma Act, 1940, the National Service (European British Subjects) Act, 1940, the Currency Act, 1940, and the Registration (European British Subjects) Act, 1940, are examples. The Governor may, in addition, make regulations for the peace and good government of the areas specified in the Second Schedule to the Act. He may, under ss. 41 and 42 of the Act, promulgate ordinances which have the same force and effect as Acts of the Legislature but which can continue in operation for a limited period of time only. A few of them are the Foreigners Ordinance, 1939, the Defence of Burma Ordinance, 1939, the Registration of Foreigners Ordinance, 1940, the Bribery and Corruption Enquiry Committee Ordinance, 1940, and the Tenancy Ordinance, 1940.

Acts of the Legislature proper are those Bills which have been passed by both Chambers of the Legislature and assented to by the Governor under s. 38 of the Act.

A "Bill" may be defined as the draft of a proposed law or Act. Bills may be introduced in either Chamber, but, as I have said before, Financial Bills falling under the purview of s. 63(1) of the Act cannot be introduced in the Senate. Bills may be divided into Government Bills and Private Members' Bills. The former are introduced and carried through the Legislature by a Minister or Counsellor, and the latter by a Private Member. Government

Bills are published in the *Burma Gazette* before their introduction by the Government Department concerned under the orders of the Governor, but Private Members' Bills are very seldom published before introduction, as such a course is the prerogative of the Governor. Private Members' Bills for introduction have to be balloted for place and are put down in the Agenda so far always on the first Non-Official day (*i.e.*, Wednesday) of every session before Resolutions (or other business) and thereafter on alternate Wednesdays. When a Private Member's Bill has been introduced by a Member, the subsequent motions regarding it can be moved only by that Member, or, if it has been passed by the originating Chamber and transmitted to the other Chamber for consideration, by the Member of that other Chamber who has given a certain days' notice of his intention to proceed with the Bill. A Government Bill, on the other hand, can be sponsored at any stage by any Minister acting on behalf of Government. Subject to these, the procedure for dealing with Private Members' Bills is the same as that for Government Bills. A Member desiring to move for leave to introduce a Bill has to give notice of his intention and submit together with it copies in triplicate of the Bill and the Statement of Objects and Reasons. The President or the Speaker decides whether it requires the Governor's previous sanction or recommendation. It is not for him, however, to decide, on receipt of a Bill, whether it is *ultra vires* the Chamber or not. It is for the House to raise an objection when the Member-in-charge attempts to move for leave to introduce it. When the President or Speaker is of opinion that a Bill or amendment thereto requires the previous sanction or recommendation of the Governor, Governor's orders thereon are sought for. If communication of the Governor's decision, refusing sanction, is received well before the Agenda is settled, the Bill is omitted from it, but if it is received just before the Member moves the motion he is not allowed to proceed with it.

The Member-in-charge of a Bill may at any stage withdraw the Bill, stating that he does not move the motion standing in his name, and in such case the Bill is dead.

A convention has since been set up that a Bill should not be opposed in its introductory stage, as the grant of leave to introduce a Bill does not amount to acceptance of the principles of the Bill. If, however, it is opposed the decision of the House is taken. There has so far been no instance in the House of Representatives of leave for introduction of a Bill being refused. After a Bill (Private Member's) is introduced, it is numbered (with the year of introduction, as " Bill No. 2 of 1940 ") and published in

the *Gazette* by the Office of the Chamber. Three days after its publication, the Member-in-charge may, if he desires to proceed with the Bill, move that—

(*a*) it be taken into consideration, or
(*b*) it be referred to a Select Committee, or
(*c*) it be circulated for eliciting opinion thereon.

Any Member may move as an amendment a "dilatory" motion—*i.e.*, if the motion is that the Bill be taken into consideration, he may move that the Bill be referred to a Select Committee or that it be circulated for the purpose of eliciting opinion thereon; or if the motion is that the Bill be referred to a Select Committee, he may move that the Bill be circulated for the purpose of eliciting opinion thereon.

If the motion that the Bill be taken into consideration is carried, amendments to clause or clauses of the Bill may be moved, but notice of any amendment proposed has to be given 2 clear days before the day on which the Bill is to be taken into consideration, and if copies have not been made available to the Members of the Chamber any Member may object to the moving of the amendment and such objection shall prevail, unless the President or the Speaker, in exercise of the power to suspend this requirement, allows the amendment to be moved. If the motion that the Bill be referred to a Select Committee is carried, the mover submits to the House a list of Members whom he proposes to be he members of the Select Committee. This is done with their :onsent and the list is submitted on the same day or on a subsequent day. The Minister concerned and the Member who introduced the Bill (and the Advocate-General in the House of Representatives) automatically become members of the Committee, while not less than 12 or not more than 15 other Members are included in the list and approved by the House. The Deputy Speaker, the senior Panel Chairman, or, failing either of them, the nominee of the President or the Speaker, acts as Chairman of the Committee. The Secretary is the *ex-officio* Secretary of all Committees appointed by the House. Unless the House has prescribed a different number, the quorum is one-half of the members of the Committee. Acceptance of a motion that the Bill be referred to a Select Committee amounts to acceptance by the House of the principles of the Bill. A Select Committee may hear expert evidence and the representatives of any special interest affected by the measure before it. The Select Committee usually sits during the recess (*i.e.*, after the prorogation of a session and before the commencement of the next). The Select Committee

may recommend that the Bill may be kept in abeyance till a certain other Bill becomes law or for some other reason, or it may recommend that the Bill may not be proceeded with. If a Report cannot be produced during the time granted by the House, it may then ask for extension of time to submit its report to the House. The Chairman of the Select Committee (and not the Member-in-charge) presents the Report, either Preliminary or Final, of the Select Committee to the House.

After presentation, the Final Report of the Select Committee is published in the *Burma Gazette* with the Bill as amended by the Select Committee unless the Select Committee specifically directs that it need not be so published.

Further motions after presentation are moved by the Member-in-charge. If the Select Committee decides that the Bill may not be proceeded with the Member-in-charge moves that the Report of the Select Committee be taken into consideration and adopted, and if the House agrees the matter ends there. Otherwise, the Member-in-charge moves that the Bill, as reported by the Select Committee, be taken into consideration. If this motion is carried, amendments are moved and the Bill is proceeded with. If the Bill is directed to be circulated for opinion, Government collects opinions on the Bill and copies are sent in time to the office of the Chamber, which arranges to have them distributed to Members. It may be pointed out that the House is not deemed to have accepted the principles of the Bill by it agreeing to a circulation motion. The next motion automatically is that the Bill be referred to a Select Committee unless the Presiding Officer allows as a special case to move a motion that the Bill be taken into consideration.

All Bills have to come to the stage where the motion that the Bill be taken into consideration has to be moved. If this motion is carried amendments are moved and the next motion is that the Bill be passed. If any amendment is carried, after consideration stage, the passage of the Bill may not be moved on the same day but postponed to the next or some other day, as the Member-in-charge may choose.

As soon as a Bill is passed by one Chamber it is transmitted to the other Chamber, with an endorsement by the Presiding Officer of the Chamber, for consideration by the other Chamber. The other Chamber considers the Bill on the motion moved by one of its members. If the motion is rejected, the originating Chamber may, by motion by any Member, report the fact of disagreement between two Houses on the Bill to the Governor. The motion may also be modified—*i.e.*, it may be referred to a

Select Committee of the other Chamber or be circulated for opinion again under its direction. That Chamber may ultimately make amendments and send a message to the originating Chamber that the amendments made by it be agreed to. The originating Chamber then considers the said amendments. If it agrees with the amendments or to some of the amendments only or makes further amendments, it sends a message to the other Chamber accordingly.

If the Chamber which first makes the amendments agrees to the message of the originating Chamber, the matter ends there and the Senate Office arranges to submit the Bill as finally agreed to by both Chambers to the Governor for his assent. When the Governor has declared his assent to the Bill, it is published as an Act of the Legislature in the *Burma Gazette*. If, however, the other Chamber is not agreeable to the amendments made by the originating Chamber it sends a message to the latter intimating that it insists on its amendments. If the originating Chamber is still unwilling to agree to the amendments, any Member can, after giving 3 days' notice, move that the concurrence of the disagreeing Chamber be sought to the setting up of a Joint Committee consisting of 7 members each of the Chambers to consider the Bill or its amendments. When such a motion is adopted in the originating Chamber a message is sent to the other Chamber for its concurrence. When the other Chamber has notified its concurrence, the originating Chamber will have to elect 7 members to act on the Committee, the Member-in-charge and the Minister concerned being invariably members of the Committee. The Joint Committee, consisting of 7 members each of both Chambers, will have to submit its Report to both Chambers, and the Bill will be taken into consideration by the originating Chamber at the first convenient sitting. The stage of a Joint Committee is a rare incident in the process of law-making and, so far, it has not been the lot of the Members of Legislature to witness such settlement of dispute.

The various stages that a Bill has to undergo from the time it is introduced in one Chamber till it emerges out of the Legislature as an Act have been shown. There are circumstances under which a Bill may lapse: If a Member dies or resigns his membership all Bills, whatever stage they may have reached, lapse. A Member who has resigned cannot revive his Bill even if he is returned at a by-election. When the House is prorogued all pending notices lapse and, therefore, if a Bill of which notice is given is not reached in a session—*i.e.*, if it is not introduced—it lapses and a fresh notice will be necessary for introduction at the

next session. Only Bills which have been introduced are carried over to the next session. If, however, a Member-in-charge makes no motion in regard to a Bill during two complete sessions it lapses, unless the House on a motion by that Member in the next session makes a special order for continuance of the said Bill. A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers thereof, and a Bill pending in one Chamber which has not been passed by the other Chamber will not lapse on a dissolution of that other Chamber, but all other Bills lapse on a dissolution of either Chamber.

I wish to acknowledge the very valuable assistance which I have received from my office staff in preparing this article.

X. APPLICATIONS OF PRIVILEGE

COMPILED BY THE EDITOR

Westminster.
House of Commons.
Detention of a Member.—*See* Article II hereof.
British India.
Bengal.
Reflection upon the Chair.—*See* under "Editorial."

XI. REVIEW

BY THE EDITOR

Concerning English Administrative Law.—This publication[1] *ex* Columbia University Press, N.Y., reproduces the six Carpentier Fund Lectures delivered before that University in the Fall of 1940 by Sir Cecil Thomas Carr, the Editor of the *Revised Statutes and the Statutory Rules and Orders* to the Imperial Government in London. Sir Cecil is well known as a writer upon legal subjects and, especially to readers of this JOURNAL, as the author of that pioneer work, *Delegated Legislation*[2] as well as in connection with his valuable and important evidence before the Lord Chancellor's

[1] *Concerning English Administrative Law.*—Sir C. T. Carr (Columbia University Press, 1941, $2).
[2] *Delegated Legislation.*—Sir C. T. Carr (Cambridge University Press, 1921).

Committee on Ministers' Powers in 1932;[1] many of Sir Cecil's suggestions were adopted for the improvement of the Rules Publication Act, 1893.

One's first impression after reading this book is that its restricted title scarcely indicates the valuable matter these Lectures contain also in regard to constitutional and Parliamentary subjects.

Lecture 1 deals with the various aspects of public administration in the United Kingdom, and many other subjects of interest to the constitutional student. For instance, how many of us know that such is the freedom of amendment of the British Constitution, that two-thirds of the *Magna Charta* has already been repealed? "nor," states the Lecturer, ". . . would British Courts give any the less protection to liberty if its repeal did take place."

In Lecture 2, "Delegated Legislation," the Report of the "Donoughmore Committee" receives much attention, and the Appendix to the Lectures gives other instances in which some of this Committee's recommendations have been acted upon.

"Crisis Legislation" is the title of Lecture 3, a subject of importance in these strenuous times. As an instance of the speed at which the "Mother of Parliaments" can legislate when the need demands, some 40 Statutes, mostly of a sweeping kind, were passed during the first few days following the Declaration of War in 1939.

Lecture 4 describes the increasing practice of setting up Administrative Tribunals in Great Britain, and many interesting points are cited in regard to this form of delegated legislation.

In prophetically referring to the return to normal conditions after this Second World War, Sir Cecil observes:

> Free peoples, when they temporarily surrender freedom, will expect to see their inheritance restored to them when the storm is over. There will be two anxious questions—How large must that surrender be? and How soon will the restoration come? Intensive regimentation and restrictions, impatient suppression of heterodox views, internment of dissentients, and other phenomena likely to be visible in times of great stress are steps towards dictatorship, even when taken along a lawful and constitutional road. The most successful dictator is he who gains his power without forsaking that road.

Lecture 5 is devoted to the form and publicity of written laws in general, a subject of close concern to the legal draftsman.

The Final Lecture "contains some fugitive observations upon bureaucracy". In connection with this subject, Sir Cecil in

[1] Cmd. 4060. *See also* JOURNAL, Vols. I, 12; IV, 12; VII, 30-31; and VIII, 25-26.

his Preface draws attention to what Woodrow Wilson said when citing the famous sentence in the Massachusetts Bill of Rights, namely:

> That governments were always governments of men: and no part of any government is better than the men to whom that part is entrusted.

Throughout the Lectures many interesting and important facts are cited of constitutional provisions and practices in the United States.[1]

We congratulate the Lecturer, a soldier in the last World War, upon the safe arrival back in Britain of himself and Lady Carr, but not without vicissitudes. First, the Lecturer's original notes were lost as a result of an incendiary bomb which fell on his home in London; secondly, his inability to get at important materials in his office on account of damage by an H.E. bomb; thirdly, the handicap of black-outs in re-writing his notes; fourthly the ship by which the Lecturer was returning from Lisbon to Britain was torpedoed and his first set of galleys lost when abandoning ship and taking to the boats. However, with the aid of the U.S.A. air-clipper service, supported by the intrepid resolution of the Lecturer, this valuable and most interesting publication is now available to the reader. The Lecturer now adds an hon. LL.D. of Columbia University to his own substantive one, obtained some years ago at his own university of Cambridge.

The first of the Carpentier Fund Lectures—"Law in its Relations to History"—was delivered by Viscount Bryce in 1904 and 1905, who was followed by other distinguished scholars, such as Sir Frederick Pollock, Sir Courtenay Ilbert, etc., but only a few of these Lectures have been printed by the Columbia University Press.

No Clerk-at-the-Table, legal draftsman, constitutional student, Parliamentary Library, Law Library or University having a Faculty of Law, should be without a copy of Sir Cecil Carr's admirable Lectures.

[1] *See also* the Report of the U.S.A. Attorney-General's Committee on *Administrative Procedure.*

XII. 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] VII[9] and VIII[10] gave lists of works published during the respective years. Below is given a list of books for such a Library, published in 1940:

Keith, A. B.—The Constitution of England from Queen Victoria to George VI (2 Vols.). 1940. (London, Macmillan. 30*s.*)

Brooks. R. C.—(Ed.) Bryce's American Commonwealth. (Fiftieth Anniversary.) 1939. (New York, The Macmillan Co. Am. $2.50.)

McIlwain, C. H.—Constitutionalism, Ancient and Modern. 1940. (Ithaca, N.Y., Cornell University Press. $2.50.)

Bose, Professor S. M.—The Working Constitution in India: A Commentary on the Government of India Act, 1935. 1939. (London, Oxford University Press. 30*s.*)

Muir, R.—The British Empire: How it Grew and How it Works. 1940. (London, Jonathan Cape. 6*d.*)

O'Sullivan, D.—The Irish Free State and its Senate. 1940. (London, Faber. 25*s.*)

[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.* [10] 224-225 (starred items).

XIII. LIST OF MEMBERS

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Honorary Secretary-Treasurer and Editor : Owen Clough.

* Barrister-at-law or Advocate.

XIV. MEMBERS' RECORDS OF SERVICE

Note. — *b.*=born; *ed.*=educated; *m.*=married; *s.*=son(s); *d.*=daughter(s); *c.*=children.

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat these records in subsequent issues of the JOURNAL, *except upon promotion, transfer or retirement, when it is requested that an amended record be sent in.*

Ally, F. N. G., B.A., LL.B.—Secretary, Sind Legislative Assembly since 1940; *b.* August 8, 1909; *ed.* St. Patrick's High School, Karachi, D. G. College, Hyderabad (Sind), and Muslim University, Aligarh (United Provinces); B.A. 1932; LL.B. 1934; Sub-Judge in 1937; Sub-Judge, Sehwan (Sind), Additional City Magistrate and Sub-Judge, Hyderabad (Sind), and Additional City Magistrate, Karachi, on deputation, before being appointed to the present post.

Ba Dun, U.—Secretary of the Burma House of Representatives since 1937; *b.* June 21, 1884; *ed.* Government High School, Rangoon, and Rangoon College (now University College), Rangoon; called to the Bar from Lincoln's Inn, 1910, and practised in the High Court of Judicature till 1926; *m.* Ma Ma, daughter of U Ba Bwa, A.T.M., 1915; five sons; elected member of the Rangoon Corporation, 1915 to 1926; elected Chairman of Roads and Buildings Committee, Water and Sewage Committee, and Rangoon Education Board, Corporation of Rangoon, 1920 to 1926; Hon. Secretary of the Y.M.B.A., Old Rangoon Collegians' Association, and General Council of Burmese Associations, 1911 to 1916; elected Member of the Legislative Council, 1922, representing West Rangoon Constituency; Chairman Burma Arts, Crafts and Industrial Exhibition Committee since 1933, and Deputy Government Advocate and Secretary, Burma Legislative Council, 1926-37.

Du Toit, Steph. F., LL.B.—Clerk of the Senate, Union of South Africa, 1941; *b.* 1897; *ed.* Victoria College, Stellenbosch, and University of Cape Town; an Advocate of the Supreme Court of S.A.; Translator of the Union Senate, 1920; Gentleman

Usher of the Black Rod, 1926; Clerk-Assistant, 1930; Translator, Speaker's Conference on Future Constitution of the Senate, 1921; Hon. Secretary of the Huguenot Commemoration of South Africa and Editor of a Genealogy of the French Huguenots in South Africa; a member of the South African Rugby Football Board and of the Western Province Rugby Football Union.

Gunawardana, D. C. R., B.A.(Lond.), Clerk of the State Council of Ceylon and Secretary to the Board of Ministers since September 26, 1940; *b.* January 10, 1901; called to the Bar (Lincoln's Inn); Cadet, 1924; appointed Ceylon by the Secretary of State, attached to the Matara Kachcheri, 1925; to the Jaffna Kachcheri, 1926; passed First Examination (Regulations), 1924.

Class IV.—1926; Officer of Class IV, 1927; Police Magistrate, Dandagamuwa, 1928; Office Assistant to Government Agent, Eastern Province, 1930; Assistant Government Agent, Ratnapura, and Additional Assistant Government Agent, Kegalla, 1930; Acting District Judge, Avisawella, 1930; Assistant Government Agent, Ratnapura, and Additional Assistant Government Agent, Kegalla, 1931; Additional Assistant Government Agent, Colombo, 1931; Assistant Government Agent, Batticaloa, Office Assistant, Kanday Kachcheri, 1931.

Class II.—Officer of Class II under the revised Civil Service Minute dated 1932; 1933; passed Second Examination (Regulations), 1932; Assistant Government Agent, Kandy, 1934; also Acting Municipal Magistrate, Kandy, 1934-35; Assistant Government Agent, Mannar, 1935; Additional Secretary to the Minister for Labour, Industry and Commerce, 1937.

Hugo, J. M., B.A., LL.B.—Second Clerk-Assistant, House of Assembly, Union of South Africa, 1940; *b.* June, 1898; *ed.* Boys' High School, Worcester, University of Cape Town; advocate of the Supreme Court; appointed in Cape Provincial Administration, 1922; Translators' Office, House of Assembly, 1926; Chief Translator, 1937.

Kilpin, R.—Clerk of the House of Assembly, Union of South Africa, 1940; *b.* 1887, at Rondebosch, Cape; *s.* of the late Sir Ernest Kilpin, K.C.M.G.; *ed.* at Diocesan College; *m.* in 1914 Hilda, *d.* of G. M. Robinson; Clerk of Papers, Cape House of Assembly, 1905, and of Union House of Assembly, 1910; Second Clerk-Assistant, 1917; Clerk-Assistant, 1920; Sworn Translator (English-Dutch), Supreme Court of South Africa, 1912; active service 7th S.A. Infantry, East Africa, 1916-17; drafted rules

for Legislative Assembly, South-West Africa, adopted, 1926; from 1911 to 1938 Assessor appointed by Administrator and Speaker, respectively, at Cape Provincial Executive Committee elections and at elections of Senators for the Cape Province under system of proportional representation; author of *The Old Cape House*, *The Romance of a Colonial Parliament* and *Private Bill Procedure*.

Knoll, J. F.—Clerk-Assistant, House of Assembly, Union of South Africa, 1940; *b.* December, 1889; *ed.* Pretoria; appointed as temporary Junior Clerk, Transvaal Public Service, February, 1906; permanent establishment in office of Commissioner of Police, February, 1908; Department of Justice, October, 1912; junior Committee Clerk, Union House of Assembly, September, 1916; Chief Committee Clerk, October, 1930; Second Clerk-Assistant, October, 1934; Secretary and shorthand-writer to various Government Commissions; Assessor at elections of Senators for the Cape Province.

Smuts, Marius, B.A.—Clerk-Assistant of the Union Senate, 1941; *b.* 1908; *s.o.l.* Rev. M. Smuts; *ed.* Malmesbury High School and graduate of University of Cape Town; Gentleman Usher of the Black Rod, 1934.

XV. STATEMENT OF ACCOUNT AND AUDITOR'S REPORT, 1940-1941

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 VIII.

The Statement of Account covers a period from 1st September, 1940, to 31st August, 1941. 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 in postages and other expenses of a small nature. Amounts received and paid for Volume IX, 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 VIII	89	18	10
Due to the Treasurer for postage	4	4	6
	94	3	4

Against this there is due and in hand:

	£	s.	d.
For subscriptions	47	0	0
In hand		12	9
	47	12	9

CECIL KILPIN,
Chartered Accountant (S.A.).

SUN BUILDING,
CAPE TOWN,
September 15, 1941.

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

STATEMENT OF ACCOUNT FOR THE PERIOD FROM 1ST SEPTEMBER, 1940, TO 31ST AUGUST, 1941.

REVENUE.	£	s.	d.	£	s.	d.
Balance as at August 31, 1941, being excess of income over expenditure at that date					15	11
Parliamentary Grants:						
Canada, Vols. VII and VIII	20	0	0			
Province of Novia 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	5	0	0			
Southern Rhodesia	10	0	0			
*Baroda State	5	0	0			
*Travancore State	5	0	0			
				105	0	0
Subscriptions:						
Volumes I to VIII, inclusive				70	4	9
Sales:						
Volumes I to VIII, inclusive				30	10	5
				206	11	1

EXPENDITURE.	£	s.	d.	£	s.	d.
Volume VIII for 1939:						
Postages and Telephone	8	8	9			
Bank Charges		19	1			
Cables and Telegraphic Address	6	1	1			
Publications and Newspapers		18	2			
Typing and Clerical Assistance and Roneoing	40	14	8			
Printing and Publishing Volume VII balance	89	11	11			
Printing and Publishing Volume VIII, on account	43	15	10			
Stationery	3	17	10			
Travelling Expenses and Carriage		6	0			
Office Cleaners		12	0			
Gratuities to Messengers	4	0	0			
Audit Fee	3	3	0			
Insurance	3	10	0			
				205	18	4
Cash Balance, being Excess of Receipts over Expenditure					12	9
				£206	11	1

OWEN CLOUGH
Honorary Secretary-Treasurer and Editor.

Countersigned:
S. F. DU TOIT,
Clerk of the Senate.
RALPH KILPIN,
Clerk of 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.
September 4, 1941.

* The Indian State of Hyderabad has granted £5 in respect of Volume IX.

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] *See also* Vol. V. 111-118.

[3] For names of, *see* Table facing Contents, p. ii.

[1] *See* "India," Constitution (1935) for provisions not dealt with here.
[2] *See also* "Canadian Provinces."

[1] For names of, *see* Table facing Contents, p. ii.

[1] For names of, *see* Table facing Contents, p. ii.

[2] These, both large and small, number 585, of which 149 are major and 436 non-salute States.

[3] *See also* "Irish Free State."

[1] *See also* "Ireland."

[1] For Provinces of, *see* Table facing Contents, p. ii.

Printed in Great Britain by
Billing and Sons Ltd., Guildford and Esher