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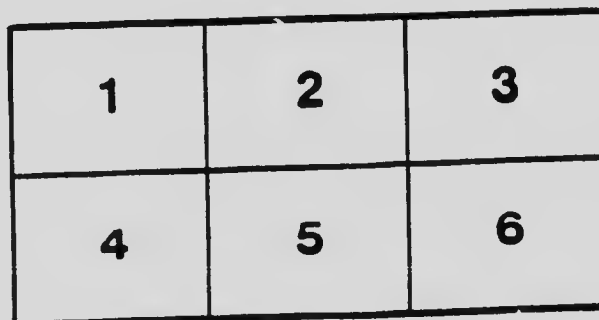
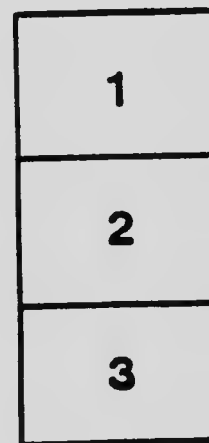
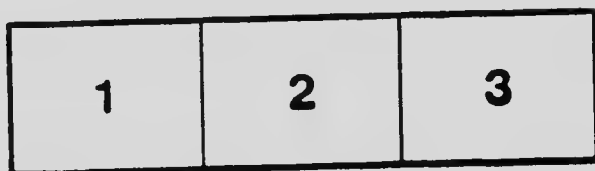
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**PARLIAMENTARY
PROCEDURE AND PRACTICE**

IN THE
DOMINION OF CANADA

BY
SIR JOHN GEORGE BOURINOT, K.C.M.G.
LL.D., D.C.L., F.R.S.C., ETC.
LATE CLERK OF THE HOUSE OF COMMONS OF CANADA

FOURTH EDITION

EDITED BY
THOMAS BARNARD FLINT, M.A., LL.B., D.C.L.
(OF THE NOVA SCOTIA BAR)
CLERK OF THE HOUSE OF COMMONS
ALSO EDITOR OF THE THIRD EDITION

TORONTO
CANADA LAW BOOK COMPANY
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1916

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AUTHOR'S DEDICATION

(1st and 2nd Editions)

TO

TRINITY COLLEGE, TORONTO

MY ALMA MATER

I DEDICATE THIS BOOK
IN EVIDENCE OF MY AFFECTION AND ESTEEM

EDITOR'S DEDICATION

(3rd Edition)

TO THE MEMORY OF

SIR JOHN GEORGE BOURINOT

WHOSE LIFE AND LABOURS
HAVE WORTHILY HONOURED

HIS ALMA MATER

To
The Speakers of the House of Commons
of Canada.

(1901-1915)

HON. LOUIS PHILIPPE BRODEUR. HON. NAPOLEON ANTOINE
BELCOURT.

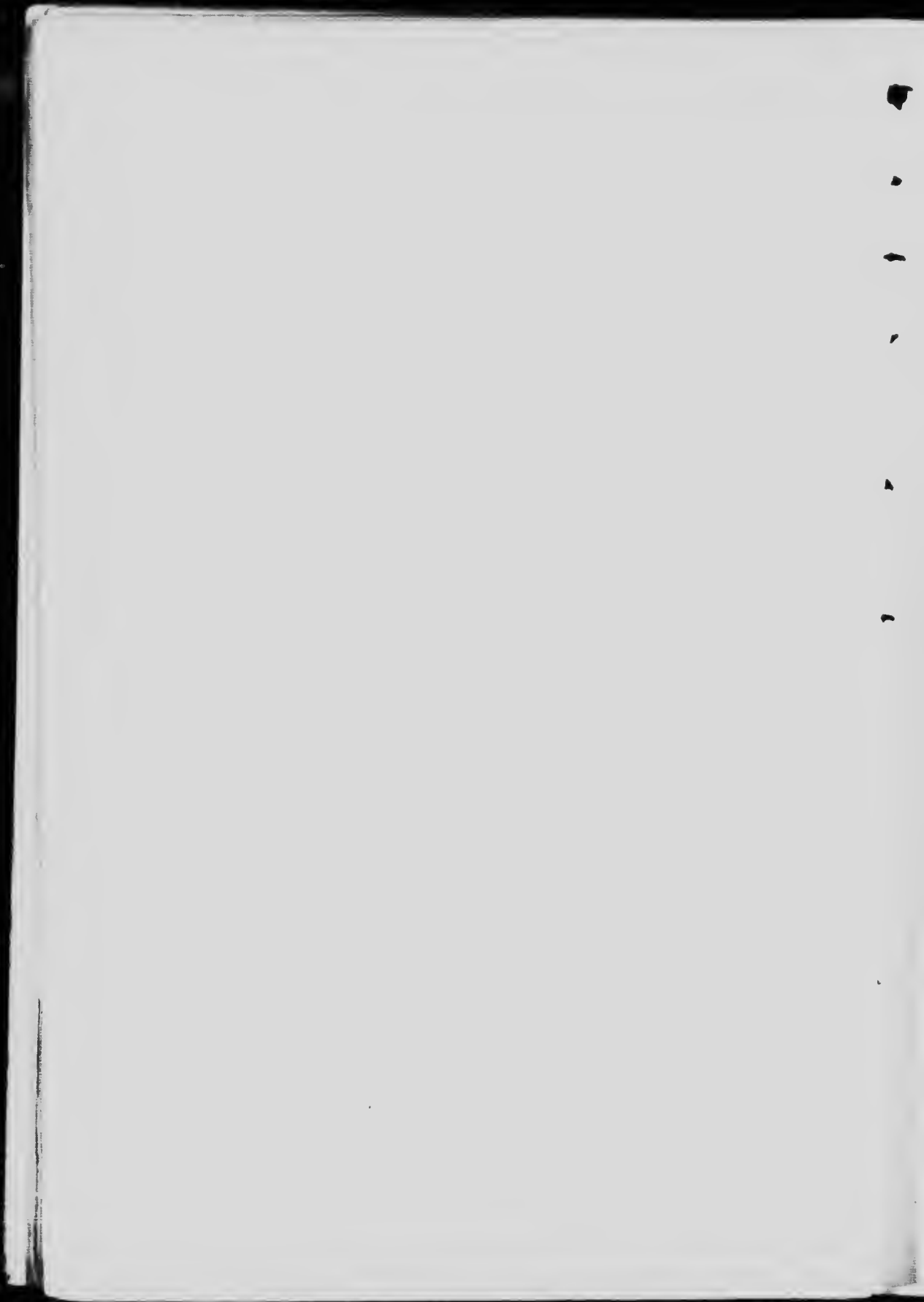
HON. ROBERT FRANCIS
SUTHERLAND.

HON. CHARLES MARCIL.

HON. THOMAS SIMPSON SPROULE, and the
HON. ALBERT SÉVIGNY,

under whom
I have had the happiness of serving
as Clerk of the House of Commons
and
whose administrations have worthily sustained
the best traditions of their high office,
I dedicate
the Fourth Edition of
this work.

THE EDITOR.



PREFACE TO THE FOURTH EDITION.

The third edition of Sir John Bonrinot's Parliamentary Procedure and Practice was published in 1903. That edition having become exhausted the demand for another edition became insistent, the more so as the House of Commons had, to a considerable extent, amended its rules and new precedents on a number of important questions had been established. The text of the author has been preserved as far as practicable, having in view the bringing of the work up to date and the making only of such rearrangements as experience has shown to be desirable. The years which have passed since the date of the last edition have been fruitful of parliamentary decisions upon points of order and procedure although certainly no new principle upon which to base them has been invoked.

In the application of old and well established rules to new and varying circumstances wide scope is afforded for the exercise of sound judgment and wise discretion. The books of rules of the Senate and Commons of Canada form but a small part of the actual rules which guide those bodies in the daily routine of legislation. The rules, usages and forms of proceedings of the Imperial House of Commons in force on the 1st day of July, 1867, are in force in the Canadian Commons except in so far as the latter has adopted some positive order or enactment to the contrary. Consequently, the body of parliamentary literature dealing with usages and procedure is of considerable range, taking the students of such matters far back into English constitutional history to ascertain their origins and the reasons for their continuance.

The general public, as well as members of legislative bodies, have an interest in understanding the methods of parliamentary work and this interest has been generously manifested in the case of the last as well as of the previous editions of this work.

Among the changes in the rules of the Commons which keenly interested parliamentarians was that concerning the closure of debate adopted in 1913. Up to that date there was practically no limit to debate in the Commons and this feature at times gave rise to very wearisome sittings of the House and to discussions of extraordinary length. The debates upon the question of adopting closure rules which terminated in passing of rules 17 (a) (b) and (c) in that year were marked by great force and ability, the whole subject having been most thoroughly examined from every conceivable standpoint.

Although the adoption of the new rules was most severely contested no occasion has so far arisen, since their coming into force, for action upon them. Probably the mere fact of the existence of the powers conferred by these rules will accomplish all that their authors desired.

The valuable historical introduction contained in the previous editions though both instructive and interesting has been greatly condensed and many portions re-written, such parts only being retained as may throw light rather upon Canadian parliamentary usages than upon the general constitutional history of the country.

The references to "May" in this edition are applicable (unless otherwise stated) to the eleventh edition of May's celebrated treatise on parliamentary law and usage. Every effort has been made to render this edition as complete as possible and also to so arrange its matter that it may be useful for ready reference.

THE EDITOR.

PREFACE TO THE THIRD EDITION.

A large portion of the present edition of this work was completed by Sir John Bourinot just previous to his last illness. The remaining part has been edited and annotated along the lines suggested by him. That the eminent scholar, whose latest literary labours were devoted to the preparation of the volume, was not spared in health and vigor to complete his task and to enjoy the satisfaction of seeing his fully-revised work in the hands of the public must be a matter of deep regret to all who knew him and who are aware of his keen desire that the book should be as perfect as possible. His lamented death, however, left the task to be finished by other hands. The loss to parliamentary and historical literature in Canada of such an earnest student and judicious writer as the late Sir John Bourinot is irreparable. But his works survive to testify to his patient industry, to his learning, to his thorough patriotism. The practical experience, research and matured judgment which he brought to bear upon the subjects treated in this book have rendered it an authority. His death, therefore, while necessarily delaying, could not be permitted to prevent its publication. Some changes of arrangement have been made by the editor and the annotations brought up to the latest possible date; but, in the main, the text has been preserved as found in the preceding edition. Wherever practicable, however, without injury to clearness of statement, condensation has been attempted. This was found absolutely essential in order to keep the volume within reasonable limits for convenient use.

T. B. F.

November 2, 1903.

Extracts from the Preface to the 2nd Edition.

In presenting the second edition of this work to his readers, the author may explain that he has not only revised, but considerably enlarged it by bringing all the precedents down to the latest date, and by making it in other ways as useful as possible to all students of the constitutional system of Canada. The original plan and scope of the work have been continued. The first chapter gives an account of the origin and growth of parliamentary institutions, and contains all the material judicial decisions which bear on the respective legislative powers of the parliament of the dominion and of the legislatures of the provinces. The new rules and forms of the Senate in divorce proceedings have been given at length, and the practice of that house in such cases explained as fully as practicable. As this work is intended to show not merely the rules, orders and usages of the two houses, but all the stages of constitutional development in Canada until the present time, there has been added at the end a chapter on the practical operation of parliamentary government. In this chapter it is endeavoured to explain the nature of the conventions and understandings which govern what is generally known as responsible or parliamentary government. As complete a list as possible has been given of all the text books and authorities which the student may wish to consult on the numerous questions which are necessarily, as a rule, very briefly reviewed in this work. * * * The author has had much reason to congratulate himself on the reception which the work, when just presented to the public, met not only in Canada, but in the majority of English-speaking countries, and he ventures now to express the hope that this new edition in its revised and enlarged form, will continue to meet with the same favour among all those interested in the important experiment of federal and parliamentary government which the Canadian people are endeavouring to work out on the continent of America.

Preface to the First Edition.

Extracts from the Preface to the First Edition.

The object which the author has had constantly in view in writing the present work is to give such a summary of the rules and principles which guide the practice and proceedings of the Parliament of Canada as will assist the parliamentarian and all others who may be concerned in the working of our legislative system. The rules and practice of the parliament and the legislatures of Canada are, for the most part, originally derived from the standing orders and usages of the imperial parliament, but, in the course of years, divergencies of practice have arisen, and a great many precedents have been made which seem to call for such a work as this. It has, moreover, been the writer's aim, not only to explain as fully as possible the rules and usages adopted in Canada, but also to give such copious references to the best authorities, and particularly to the works of Hatsell and May, as will enable the reader to compare Canadian with British procedure.

It seemed proper, in order to a clearer comprehension of the subject of the work, to preface it with an introductory chapter upon the origin and gradual development of parliamentary institutions in the Dominion. In so brief a compass a summary of the salient features only of the various constitutional changes which have resulted in the present very liberal parliamentary system of Canada could be given. * * *



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The Parliament of Canada is the creation of the British North America Act, 1867. By section 17 of that statute it is directed that, "There shall be one parliament for Canada, consisting of the Queen, an Upper House styled the Senate and the House of Commons."

Parliamentary institutions in Canada however were not then created nor were they new or untried at the coming into force of the Union Act. The three original provinces of the new Dominion, viz., old Canada, Nova Scotia and New Brunswick, were then each in possession of complete parliamentary systems working under the well understood principles of the British Constitution and under rules, usages and practices, substantially the same as are now in force, in the Canadian Parliament. The same may be said of the Legislative Assemblies of British Columbia and Prince Edward Island, which subsequently entered into the Confederation. Under the French regime parliamentary assemblies were unknown; but legislative institutions were the rule in the English Colonies in America.

[CHAP. I.]

I. Canada under the French Regime.—When the French king reorganized the government of Canada in 1663 he established a Supreme Council at Quebec. This body consisted of the Governor, the Bishop, the Intendant and councillors varying in number. This Council exercised legislative, executive and judicial powers but its forms of proceeding had no counter part in the British parliamentary system. The people outside of the small governing class, had no part whatever in the government of the state. The very name of parliament had, to the French colonist, none of that significance which it had to the Englishman. The word in French was applied only to a body whose ordinary functions were of a judicial rather than of a parliamentary character as now understood; consequently parliamentary rules and usages, as even at that date practiced in Great Britain, were unknown in Canada.

II. Government from 1760 to 1774.—Canada became a part of the British Empire in consequence of the capitulation signed in 1760 and for three years after the conquest the government was military in its character. In 1763 an imperial proclamation established four new governments, of which Quebec was one. The others were East Florida, West Florida and Granada. Labrador, Anticosti and the Magdalene Islands were placed under the jurisdiction of Newfoundland and the Island of St. John (afterwards called Prince Edward Island) was added to the government of Nova Scotia.

Power was given to the Governors in the letters patent by which these governments were constituted to summon General Assemblies with the advice and consent of His Majesty's Council "in such manner and form as was usual in those Colonies and Provinces which were under the King's immediate Government."

Authority was also given to the governor, with the consent of the Councils and the representatives of the people, to make laws, statutes and ordinances for the peace, welfare and good government of the colonies in question. The governors were also empowered to establish, with the

consent of the Councils, courts for the deciding of civil and criminal cases, as near as may be agreeable to the laws of England with the right of appeal in civil cases to the Privy Council in England.

General Murray who was appointed Governor of Quebec in November 1763 was directed to execute his office according to his commission and accompanying instructions or such other instructions as he should receive and according to laws made with the advice and consent of the Council and Assembly. An assembly was to be summoned as soon as the situation and circumstances of the province should admit. The persons elected were required before taking their seats in the proposed assemblies to take the oath of allegiance and supremacy and the declaration against transubstantiation just as, at that time, were members of the British Commons. All laws passed by the new councils and assemblies were to be transmitted to the King for disapproval or allowance and the governor had the power of veto and the power of adjourning, proroguing and dissolving the assemblies.

The Province of Quebec remained for eleven years however without any representative assemblies, the government being carried on by the governor-general with the assistance of an executive council composed of certain high officials and leading residents of the colony.

III. The Quebec Act of 1774.—In 1774 parliament intervened for the first time in Canadian affairs. The previous constitution had been created by letters patent under the great seal of Great Britain in the exercise of the undisputed prerogative of the Crown. The colonial institutions of the former possessions of Great Britain, now known as the United States of America, had their origin the same way. The constitution known as the Quebec Act (14 Geo. III c. 83) was granted to Canada by the express authority of parliament. The boundaries of the province as defined in the proclamation of 1763 were greatly enlarged, on the one side extending to the frontiers of New England, Pennsylvania, New York, the Ohio River

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and the left bank of the Mississippi and on the other to the Hudson Bay. Labrador and the islands annexed to Newfoundland in 1763 were again made part of Quebec. The passage of the bill through the House of Commons was severely contested as the Act was exceedingly unpopular in England and in the English-speaking colonies, then at the commencement of the Revolution. But the design of the British government and parliament in passing the Act was to quiet the minds of the Canadians and it had that effect.

The Act came into force in October 1774. Among its provisions was one to the effect that the Roman Catholics were no longer to be obliged to take the test oaths, but only the oath of allegiance. The government was entrusted to a governor and a legislative council appointed by the Crown. The council was to consist of not more than 23 members and had the power with the assent of the governor to make laws but had no authority to lay on any taxes or duties except such as the inhabitants of any town or district might be authorized to assess within its precincts for roads and ordinary local services.

The revenue for defraying the civil expenses of the government and the administration of justice was provided by a supplementary Act of Parliament also passed in 1774 (14 Geo. III c 88). Any deficiency in the expenses was supplied from the imperial treasury.

All ordinances passed by the council had to be transmitted to His Majesty for approval or disallowance within six months after their enactment. Both the civil and criminal law might be modified and amended by ordinances of the governor and council.

The new constitution was inaugurated by Major-General Carleton, afterwards Lord Dorchester, who nominated a council of twenty-three members. This body sat as a rule with closed doors; both languages were employed in the debates and ordinances were drawn up in both French and English. Councillors were required to take an oath to "keep secret all such matters as shall be treated,

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debated and resolved in council without disclosing or publishing the same or any part thereof." In 1776 the governor-general appointed a privy council of five members in accordance with the royal instructions accompanying his commission. This was an advisory not a legislative body.

IV. Constitutional Act, 1791.—In December 1791 a new constitution was granted to Canada when two provinces known as Upper and Lower Canada were established. The question of representative government had been agitated and petitions and memorials embodying the conflicting views of the political parties into which the people were divided were presented to the home government. Lord Dorchester had been instructed to make a full inquiry into the state of affairs in the colony and report. After receiving Lord Dorchester's report the British government decided to deal with the question. In the session of 1791 the king sent a recommendation to the House of Commons that it would be to the advantage of the people of the province if two distinct governments were established therein, one to be called Lower Canada and one Upper Canada. At this time the population of Canada was estimated at 135,000. Nova Scotia and Cape Breton together had about 32,000. As late as 1796 Prince Edward Island had about 4,500 and New Brunswick about 30,000. This constitutional Act which divided Canada into two provinces was designed to promote harmony by removing the competition and political rivalry which tended to exist between the Roman Catholic and the Protestant population. It established in each province a legislative council and assembly with power to make laws. The legislative council was to be appointed by the king for life, in Upper Canada to consist of no less than seven and, in Lower Canada not less than fifteen members. Members of the council and assemblies must be of the age of twenty-one and either natural born or naturalized subjects or subjects of the Crown in consequence of the conquest and cession of Canada. The speaker of the council was to be appointed by the governor-

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general. The whole number of members in the assembly of Upper Canada was to be not less than sixteen and in Lower Canada not less than fifty, to be chosen by a majority of votes in either case. The limits of districts returning representatives, and the number of representatives to each, were fixed by the governor-general. The county members were elected by owners of land in freehold fief or roture, to the value of forty shillings sterling every year over and above all rents and charges payable out of the same. Members for the town and townships were elected by persons having a dwelling-house and lot of ground therein of the yearly value of £5 sterling or upwards, or who, having resided in the town for twelve months previous to the issue of the election writ, should have *bona fide* paid one year's rent for the dwelling-house in which he shall have resided, at the rate of £10 sterling or upwards. No legislative councillor or clergyman could be elected to the assembly in either province. The governor was authorized to fix the time and place of holding the meeting of the legislature and to prorogue or dissolve it whenever he deemed expedient but it was also provided that the legislature was to be called together once at least every year, and that each assembly should continue for four years, unless it should be sooner dissolved by the governor. It was in the power of the governor to withhold as well as to give the royal assent to bills and to reserve such as he should think fit for the signification of the pleasure of the Crown. The governor and executive council were to remain a court of appeal until the legislatures of the provinces might make other provisions. In May 1792 Lower Canada was divided into fifty electoral districts returning fifty members. The legislature of that province met for the first time at Quebec on the 17th of December 1792. The first meeting of the legislature of Upper Canada with seven members in the legislative council and sixteen in the assembly was held at Newark (the old name of Niagara) on the 17th day of September 1792 and was formally opened by Lieutenant-Governor Simcoe. Both legislatures, even in those early

times of the provinces, assembled with the formalities that were observed at the opening of the imperial parliament and the rules and orders adopted for the conduct of business were based, as far as practicable on the practices and usages of the British parliament. Lieutenant-Governor Simcoe in closing the first session of the legislature of Upper Canada said that it was the desire of the imperial government to make the new constitutional system "an image and transcript of the British constitution."

The Province of Nova Scotia, colonized by the French in 1598, was taken by the English in 1629, restored to France in 1632 and again ceded to Great Britain by the Treaty of Utrecht in 1714. Cape Breton, now a part of Nova Scotia, was not finally taken over by the English until 1758 and formed a separate colony until 1820. Representative institutions were granted to Nova Scotia in 1758. A part of New Brunswick was ceded to Great Britain in 1713 but the province did not wholly become British until after the fall of Quebec in 1759. At one time a part of Nova Scotia, it became a separate province in 1784. Prince Edward Island was annexed to Nova Scotia in 1713 but became a separate colony in 1769. It was provided with a constitution similar to those of the other maritime provinces. Nova Scotia, during the first half century of British rule, had only a lieutenant-governor and council, but in 1758 a constitution was granted to it and a legislative assembly of 22 members provided for. This form of government lasted until 1838 when a separation was effected between the legislative and executive authorities. Thirty-eight members constituted the assembly. New Brunswick, after her separation from Nova Scotia in 1784, was governed by a lieutenant-governor and a council of 12 members possessing legislative as well as executive jurisdiction. In 1832 the powers were separated as in Nova Scotia at a later date.

The Constitutional Act of 1791 was formed with the object, of assimilating the constitution of Canada with that of Great Britain as nearly as the differences, arising from the manners of the people and the situation of the

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province would admit. Later in the history of the provinces harmonious operation of the constitution was disturbed by the opposing claims of the governors and representatives as well as by controversies between the upper and lower houses of the legislature. The assemblies were struggling for greater independence and the exclusive control of the supplies and the civil list. The control of the "casual and territorial revenues" was a subject which evoked constant dispute between the Crown officials and the assemblies of all the provinces. These revenues had not been administered or appropriated by the legislatures but by the governors and their officers. The controversies were bitter and prolonged and the disputes eventually rendered it almost impossible to pass any useful legislation. Unfortunately the two races found themselves arrayed against each other in strong antagonism. Appeals to the home government were frequent but no satisfactory results were attained as long as the Constitution of 1791 remained in force. In Nova Scotia and New Brunswick disputes between the executive and legislative bodies were constant and acrimonious but eventually the responsibility of the government to the assemblies was conceded. In Prince Edward Island the political difficulties arose largely from land monopoly and these continued until the province became a part of the confederation.

The disturbances and contentions in the upper provinces caused another change in the constitution of the Canadas. The home government sent out royal commissioners to inquire fully into the political condition of Lower Canada where the ruling party in the assembly had formulated their grievances in the shape of ninety-two resolutions, in which, among other things, they demanded an elective legislative council. In 1837 Lord John Russell carried in the House of Commons by a large majority a series of resolutions concerning the government of Canada in which the demand for an elective legislative council and other radical changes was refused. In February 1838 a bill was passed suspending the constitution and making temporary

provision for the government of Lower Canada. In accordance with the provisions of this Act a special council was continued in office until the arrival of Lord Durham as governor-general. He was also given large powers as High Commissioner for the adjustment of certain important matters affecting the two provinces. Immediately on his arrival Lord Durham dissolved the special council above mentioned and appointed a new executive council.

V. The Union Act, 1840.—The immediate result of Lord Durham's mission was an elaborate report in which he reviewed the political history of the provinces and recommended certain remedies for existing evils and for the strengthening of the British connection.

This report forms one of the landmarks of constitutional history in Canada. To Lord Durham this country on that account owes a great debt. In consequence of his wise efforts his name becomes for all future time inseparably connected with the history of enlightened constitutional government. His fame as a statesman is enhanced by his far-seeing policy in connection with the constitution and government of this country. "The problem," he reported in 1839, "was to bring the influence of a vigorous public opinion to bear in every detail of public affairs and secure harmony instead of collision between the various powers of the state." He closes a powerful description of the true principles of responsible government in these words: "We are not now to consider the policy of establishing representative government in the North American colonies. That has been irrevocably done and the experiment of depriving the people of their present constitutional power is not to be thought of. To conduct their government harmoniously with their established principles is now the business of its rulers; and I know not how it is possible to secure that harmony in any other way than by administering government on those principles which have been perfectly efficacious in Great Britain. I would not impair a single prerogative of the Crown; on the contrary, I believe that the interests of the people of these provinces require the

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protection of prerogatives which have not hitherto been exercised. But the Crown must, on the other hand, submit to the necessary consequences of representative institutions; and if it has to carry on the government in unison with a representative body it must consent to carry it on by means of those in whom that representative body has confidence." Bradshaw, in his life of Lord Durham adds: "In these simple words Durham laid the foundation of the new colonial policy of Great Britain." The policy in force in the mother country, although recommended for the colony of Canada by Lord Durham in 1839, was not completely carried out until Lord Elgin's time in 1847—just twenty years before the well known phrase "Similar in principle to that of the United Kingdom" was inserted in the British North America Act.

Of the most important recommendations in the report, one was to the effect that no time should be lost in restoring the union of the Canadas under one legislature and reconstructing them as one province. On no point did he dwell more strongly than on the necessity that existed for entrusting the government to the hands of those in whom the representative bodies had confidence. He also urged that the Crown should place its revenues at the disposal of parliament; that the independence of the judges be secured and that municipal institutions should be established.

The immediate result of these suggestions was the introduction of a bill in the Imperial Parliament in May 1839 to reunite the two provinces. This bill however was not proceeded with until the following session. Mr. Poulett Thompson, a member of the House of Commons (afterwards known as Lord Sydenham) was appointed governor-general. He arrived in Canada in November 1839 and immediately undertook the task of obtaining the consent of the legislature of Upper Canada and of the special council of Lower Canada to the proposed legislation. The consent having been obtained, Lord John Russell, in the session of 1840, again brought forward his bill, "An Act to reunite the provinces of Upper and Lower Canada

and for the government of Canada." The bill was passed without opposition in the Commons, and after some severe criticism in the Lords, in July 1840, and came into force by its terms on the 10th of February 1841. This Act provided for a legislative council of not less than twenty members and a legislative assembly in which each section of the united provinces should be represented by forty-two members, or eighty-four in all. The speaker of the council was appointed by the Crown and ten members including the speaker constituted a quorum. In the assembly the quorum was fixed at twenty including the speaker. No person could be elected a member of the assembly unless he possessed a freehold of land and tenements of the value of five hundred pounds over and above all debts and mortgages. The English language alone was to be used in the legislative records. A session of the legislature should be held once at least every year and each legislative assembly was to have a duration of four years, unless sooner dissolved. Provision was made for a consolidated revenue fund, on which the first charges were the expenses of collection, management and receipt of revenues, interest of public debt, payment of the clergy and civil list. The fund, once these payments were made, could be appropriated from the public service as the legislature might think proper. All votes, resolutions or bills involving the expenditure of public money were to be first recommended by the governor-general.

The first parliament of the united Canadas was held at Kingston 14th of June 1841. In 1844, it was, on address, removed to Montreal. The legislature remained at Montreal until 1849 when a system was adopted under which it met alternately at Quebec and Toronto. An address to the Queen to select a permanent capital was agreed to in 1857 which led to Ottawa being chosen. The Canadian parliament assembled for the first time in Ottawa on the 8th of June 1866 in the new parliament buildings. The city of Ottawa was made the capital of the Dominion by the British North America Act, 1867.

The practical results of the Union Act of 1840 were of the most beneficial character. While it did not exactly establish responsible government it introduced principles which very early became fully recognized. In Earl Grey's "History of the Colonial Policy of Great Britain" it is stated that when Lord Elgin departed to take up the governor-generalship of Canada in 1847 he received careful instructions as to the line of conduct he should pursue and the means he should adopt "to bring into full and beneficial operation in British North America the novel machinery of constitutional government."

The same great minister in instructing Sir John Harvey, Governor of Nova Scotia, as to his policy in 1849 said: "Act strictly on the principle of not identifying yourself with any one party but instead of this, make yourself a mediator and moderator between the influential of all parties. It cannot be too distinctly acknowledged that it is neither possible nor desirable to carry on the government of any of the British provinces in North America in opposition to the opinions of the inhabitants."

The passage of the Union Act of 1840 was the commencement of a new era in the provinces of British North America. The most valuable result was the admission of the principle (hitherto ignored in practice) that the ministry advising the governor should possess the confidence of the representatives of the people in parliament. Nevertheless, during the six years that elapsed after the passage of the formal resolution in the first legislature of the united provinces in support of the principle of responsible government, the practice of it did not obtain in the proper sense of the term. Misunderstandings and dissensions arose between the governors and the assemblies as to the manner in which it should be worked out, especially during the administration of Lord Metcalf (1843-45) who insisted that he could make appointments to office without taking the advice of his council. In 1847, Lord Elgin was appointed governor-general, and received positive instructions "to act generally upon the advice of his executive council and to receive as

members of that body those persons who might be pointed out to him as entitled to do so by their possessing the confidence of the assembly." No Act of parliament was necessary to effect this important change; the insertion and alteration of a few paragraphs was sufficient. By 1848 the provinces of Canada, Nova Scotia and New Brunswick were in the full enjoyment of the system of responsible self-government which had been so long advocated by their ablest public men and the results have proved eminently favourable to the political as well as material development of the country.

From 1841 to 1867, during which period the new constitution remained in force, many measures of a very important character were passed by the legislature. The independence of parliament was effectually secured, and judges and officials were prevented from sitting in either house. Municipal institutions were perfected and the principle of local self-government given extended application. These measures had the most beneficial effect in educating the mass of the people in the principles of good government besides relieving the legislature of a large amount of business which could be more satisfactorily disposed of in municipal organizations. In fact, the municipal systems of Canada lie at the basis of its parliamentary institutions. Among the important items of legislations between 1841 and 1867 were the abolition of the seigniorial tenure in Lower Canada and the closing of the vexatious questions connected with the lands reserved for the clergy known as the clergy reserves. In 1853 the Imperial authorities recognized the right of the Canadian legislature to dispose of the clergy reserves on condition that all vested rights be preserved. In 1854 a measure was passed making the existing claims a first charge on the funds and dividing the balance among the municipalities of the provinces according to the population. This event marked the last attempt to join the church and state in Canada.

Seigniorial tenure had existed in Lower Canada for over two centuries and had had a marked effect on the social

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and political life of the French Canadian people. But in the lapse of time this relic of the feudal system became so demonstrably unsuited to the condition of the country that it was abolished in the session of 1854.

Previous to the full recognition of the principle of responsible government among the provinces of British North America the legislatures had practically no control over the public officials. Many of the men were appointed from the home government and the rest by the governors. This created a bureaucracy which, while exercising a large political influence was at the same time independent of the people and of their representatives. The home government, however, steadily urged upon the various provincial authorities the advisability of giving permanency and stability to the public service and a measure looking in this direction was adopted in 1857. This has been followed by other legislation having in view the improvement of the tenure and the greater efficiency of the civil service.

In no respect is more forcible evidence afforded of the change in the colonial policy of Great Britain than in the amendments from time to time made in the Union Act of 1840. All those measures of reform for which the majority of the people of Canada had been struggling for nearly half a century had been granted. The last tariff formed by the imperial parliament for the British possessions in North America was passed in 1842 and not long after that time the various provinces found themselves completely free from imperial interference in all matters affecting trade and commerce.

No part of the constitution of 1840 gave greater offence to the French Canadian population than the portion restricting the use of the French language in the legislature. The repeal of the clause in 1848 was one evidence of the better feeling of the two sections of the population. In 1854 the imperial parliament passed an Act to empower the legislature to alter the constitution of the legislative council and in 1856 the Canadian legislature passed an Act providing for an elective upper house. For this pur-

pose the province was divided into 48 electoral divisions, 24 for each section. Twelve members were to be elected every two years. Each councillor was to possess real estate to the value of \$8,000 within his electoral district. The members were to be elected for eight years but were eligible for re-election. Existing members were allowed to hold their seats during life. The speaker was appointed by the Crown from the council until 1862, after which date he was to be elected by the members from among their own number. The first election of councillors under the new Act took place in the summer of 1856.

VI. Federal Union of the Provinces.—Previous to 1861 many suggestions for the union of the North American provinces had been put forward, its expediency having been a part of the programme of the Macdonald-Cartier government in 1858, but the first legislative action looking to this end was taken by the House of Assembly of Nova Scotia in that year under the leadership of the Honourable Charles Tupper, then a member of that body and provincial secretary. In 1864 delegates from the provinces of Nova Scotia, New Brunswick and Prince Edward Island assembled in Charlottetown, P.E.I., authorized by their respective governments to confer in reference to a union of those provinces. Nothing however on this line was at that time accomplished except that as a result of certain conferences, another convention was called by the governor-general to meet at Quebec on the 10th of October, 1864. In this convention Upper and Lower Canada and the Maritime provinces were all represented. In the old province of Canada a coalition government had been formed on the basis of a federal union of all the British American provinces or, if that scheme should fail, a federal union of Upper and Lower Canada. Seventy-two resolutions, afterwards formulated as the British North America Act, 1867, were subsequently presented to the respective legislatures for concurrence. The Canadian parliament in March of the following year after an elaborate debate which began on the 3rd of February, adopted the resolutions by large majorities

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but in the maritime provinces much opposition was shown to the scheme. In 1866, however, the province of New Brunswick, after a general election, also concurred in the resolutions. The bill for the union was presented for the first time in the imperial parliament in February, 1867, and passed the two houses on the 29th day of March in the same year. The Act, officially cited as "The British North America Act, 1867", came into force, according to its terms, by proclamation on the first day of July in that year. The date has since, in each succeeding year, been celebrated throughout Canada as a statutory holiday styled, "Dominion Day".

The Royal Proclamation, giving effect to the Federation Act, was issued on the 22nd of May, 1867. This proclamation contained the names of the first senators. Lord Monck became the first governor-general of the Dominion and the first parliament met at Ottawa on the 7th day of November, 1867, the Honourable James Cockburn, M.P., being elected the first speaker of the House of Commons and the Honourable Joseph E. Cauchon appointed the first speaker of the Senate.

The confederation thus inaugurated, consisted only of the four provinces of Ontario, Quebec, Nova Scotia and New Brunswick. Provision was made in the Act for the admission of other colonies as well as Rupert's Land and the North West Territory. During the first session of parliament an address was adopted praying for the uniting of Rupert's Land and the North West Territory to the Dominion. In 1868 an Imperial Act was passed to this effect. An agreement was arrived at for the payment of £300,000 sterling as a condition of the surrender of Rupert's Land to the Dominion, certain land and privileges being however reserved to the Hudson Bay Company. The terms were approved of by the Canadian parliament and in 1869 an Act was passed providing for the government of the territory. An insurrection among the French half-breeds caused some delay in the establishment of the territorial government but in 1870 these troubles had been

overcome. The province of Manitoba was established in that year and the new provincial government was fully organized in 1871. The members for Manitoba in the House of Commons took their seats in the session of that year and the new senators in the following session.

British Columbia was formally admitted into the union on the 20th July, 1871, by virtue of an imperial order in council. The terms of union provided for representation in the Senate and the House of Commons and responsible government in the province as well as for the construction of a transcontinental railway. The members for the province took their seats in the Senate and House of Commons during the session of 1872.

It was not until 1873 that the parliament of Canada and the legislature of Prince Edward Island passed addresses for the admission of that province into the union. The members and senators for the province took their seats in the Canadian parliament for the first time during the second session of 1873.

In order to remove doubts and to place beyond question the right of Canada to all of British North America except Newfoundland and in response to an address from the parliament of Canada in the session of 1878, an Imperial order in council was passed on the 31st July, 1880, declaring that from and after the first day of September, 1880, all British territories and possessions in North America not already included in the Dominion of Canada, and all islands adjacent to any such territories and possessions shall (with the exception of the colony of Newfoundland and its dependencies) become and be annexed to and form part of the Dominion of Canada.

After the admission of Manitoba, British Columbia and Prince Edward Island into the confederation there still remained the vast districts of the Yukon, Mackenzie, Athabaska, Alberta, Saskatchewan, Assiniboia, Keewatin and Ungava not organized into provinces and for which government was to be provided. The great provinces of Saskatchewan and Alberta were formed in 1905 out of

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portions of the former districts of Athabaska, Alberta, Saskatchewan and Assiniboia. These provinces extended from the United States boundary on the south to the 60th degree of north latitude on the north, a distance of some 750 miles, Saskatchewan occupying an area of 250,650 square miles and Alberta an area of 253,540 square miles. The latter province lies between Saskatchewan on the east and British Columbia on the west, the boundary between it and Saskatchewan being the 4th meridian of longitude, and across its northern boundary lies the immense district of Mackenzie. To the east of Saskatchewan lies the province of Manitoba the boundaries of which were greatly enlarged in the session of 1911-12. During the same session the boundaries of Ontario were extended to the shores of the Hudson Bay and James Bay and the province of Quebec was enlarged by the addition of the large district of Ungava extending from her former northern boundary to Hudson Straits. Quebec, since this extension of territory has been added to her domain, covers an area of 706,834 square miles. Ontario with her additions of territory has an area of 407,262 square miles. There yet remain under territorial administration the district of the Yukon (207,000 square miles) and the North West Territory (1,242,224 square miles) out of which no doubt in due time other provinces will be carved.

The Acts of 1905 providing for the creation and admission of the provinces of Alberta and Saskatchewan assigned to each province four senators, which number might be increased to six after the next decennial census should parliament so decide. The representation of the electoral districts comprised in the new provinces in the House of Commons, was to remain as provided for in the same districts, by the representation Act of 1903 until the completion of the following quinquennial census when the representation was to be readjusted by the parliament of Canada in accordance with the principles of the British North America Act. This readjustment, made in the session of 1907, assigned to Saskatchewan ten members

and to Alberta seven members, each representing one electoral district as defined in the Act. This representation was not to come into effect until the dissolution of that parliament, which took place in 1911. The legislature of each province was made to consist of a lieutenant-governor and one house to be styled the legislative assembly. In the first instance the assembly was to consist of twenty-five members but the legislature after its organization had power to increase or diminish this number as it might deem advisable.

VII. Canada and the Federal System.—The constitution of Canada, under the federal system, includes not only the frame work of the federal arrangement but the political principles of its practical operation. It implies independent co-ordinate powers, each sovereign in its own sphere. The nine provincial governments above described are not subordinate to the federal government but each in its own sphere is perfectly independent. In Canada the practice of constitutional parliamentary government was thoroughly established as fundamental law long before the date of the political union of the provinces and so the same continued in both the provincial and federal spheres after the union was effected. The same principles were embedded in the charters of the newly created provinces. The federal union of the nine provinces controls all the rest of the territory of Canada, governing it either through local commissions and councils created by parliament or, directly through the governor-general in council. Each of the provinces has its own governor, executive council (or cabinet) and legislature as established by the British North America Act, or by virtue of powers contained therein or granted by subsequent imperial acts.

The Yukon Territory, though not a province, is an electoral district and returns one member to the House of Commons. It is governed by a commissioner appointed by the government of Canada and a territorial council with limited powers of legislation.

VIII. The British North America Act and the Constitution.—The Dominion of Canada, being a federal union of provinces, one of the most important studies in connection with its constitution is that of ascertaining as clearly as possible how the various powers of legislative and executive action are distributed between the provincial and federal authorities. The British North America Act, while carefully defining the powers of the Dominion and of the provinces respectively and distributing those powers directly between the various authorities, leaves their practical working out to the general principles of British constitutional law. The preamble to the imperial act referred to declares that the provinces were to be united under a constitution "similar in principle to that of the United Kingdom." This phrase imports into the Act the whole code of written and unwritten law of the constitution of the United Kingdom as virtually in practice in all of the provinces of Canada at the time of the union. The Union Act consequently contains but a portion of the constitution of the country. The Act, as has been said, is merely a "skeleton", the flesh, blood, nerves, muscles and spirit being supplied from other sources. The executive authority is vested in the sovereign who is represented in the Dominion by the governor-general appointed by letters patent under the great seal. His powers are defined by the terms of his commission, by the royal instructions accompanying the same and by the constitutional rules and usages connected with his high office. He holds office during the pleasure of the Crown but he may exercise his functions for at least six years. He communicates directly with the imperial government through the secretary of state for the colonies. He is authorized to exercise all powers lawfully belonging to the sovereign with respect to the summoning, prorogation or dissolving of parliament, to administer oaths of allegiance and office and generally to act as representative of the Crown in administering the executive authority of government, acting upon the advice of his ministry and

through the regularly appointed lawful channels of the transmission of power. The Act provides for a council to aid and advise the governor-general in Canada. This body is styled "The Privy Council" and its members are appointed and may be removed at any time by the governor-general. That portion of the council known as the cabinet is always supposed to represent the views and policy of the majority of the peoples' representative in parliament and can hold office only as long as its members retain the confidence of a majority in the House of Commons. The principles that prevail in the formation of a cabinet in England obtain in the case of an administration in Canada. Its members must have seats in one or the other of the houses of parliament but the majority of them, as a rule, sit in the House of Commons. The whole privy council practically never meets for business as an organized body but only those select members of it who constitute the cabinet. The cabinet consists, generally speaking, of those members of the privy council who are at the head of the various departments of state but there are frequently added members of one or other of the houses who hold no portfolio.

In the old provinces the cabinet was generally known as the executive council and this term is still applied to the provincial cabinets throughout Canada. All military and naval forces of Canada are under the command in chief of the sovereign who acts in Canada through his representative, the governor-general, who in turn is advised by his cabinet in carrying into effect the laws relating to military and naval service.

At the outset of confederation, or early in its history, the privy council was composed of thirteen heads of departments but the number has been slightly enlarged from time to time and departments have been added under the supervision of particular ministers without increasing the number of the members of the ministry. The cabinet is at present (1915) composed of fifteen ministers, each of whom is the head of a department. Under some of them

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are more than one department or special branch of the public service. Each department or branch has a permanent deputy minister or chief officer or controller, as the case may be, under the minister. There are three members of the cabinet without portfolio. The ministers are as follows in the order of precedence of the year 1915:

1. The Prime Minister, President of the Privy Council and Secretary of State for the Department of External Affairs. The Royal North West Mounted Police are also under the direct supervision of the Prime Minister.

2. The Minister of Trade and Commerce.

3. The Minister of Public Works.

4. The Minister of Railways and Canals.

5. The Minister of Finance, under whom and in connection with the Department of Finance are the Department of Insurance and the office of the Auditor General.

6. The Minister of Marine and Fisheries, under whom is also the Department of the Naval Service.

7. The Minister of Justice, under whom is the Solicitor General who is a member of parliament but not necessarily a member of the cabinet.

8. The Minister of Militia and Defence.

9. The Minister of the Interior. Under this Minister are the Department of Indian Affairs and the supervision of the Territories.

10. The Minister of Labour.

11. The Minister of Customs.

12. The Minister of Agriculture.

13. The Secretary of State, under whom in addition to the Department of State are the Public Archives and the departments of Mines and of Public Printing and Stationery.

14. The Postmaster General.

15. The Minister of Inland Revenue.

There are certain and very important and valuable standing commissions charged with responsibility of the highest character, such as the Railway Commission, the Civil Service Commission, the Conservation Commission

and the International Waterways Commission (Canadian section). There are also the High Commissioners for Canada in London and Paris who discharge duties of the first importance as representatives of the country in those great capitals.

IX. The Constitution of Parliament—The Legislative Power.—The Legislative power of Canada is declared to be vested in one parliament. The parliament consists of the King, the Senate and the House of Commons. The sovereign is represented by the governor-general. The parliament must be called together at least once a year, so that twelve months shall not intervene between two sessions. The Senate at the beginning of the union consisted of 72 members. At present (1915) it consists of 87 members. The House of Commons at the time of confederation consisted of 181 members but at the general election after the conclusion of the twelfth parliament it will be composed of 234 members.

In the constitution of the Senate provincial and local interests were conserved by dividing the Dominion into three sections, Ontario, Quebec and the Maritime provinces of Nova Scotia and New Brunswick. To each of these sections were allotted 74 senators as follows: Ontario 24, Quebec 24, Maritime Provinces 24, viz.: Nova Scotia 10, New Brunswick 10, Prince Edward Island 4.

In 1915 sections 21 and 22 of the British North America Act were, upon an address to the king from the parliament of Canada during that session, amended by the imperial parliament in May of that year so as to provide that the number of senators be increased to 96 and that the division of Canada in relation to the constitution of the Senate be increased from three to four; the fourth division to comprise the western provinces of Manitoba, British Columbia, Saskatchewan and Alberta. This division was also to be represented by twenty-four senators of whom six were to be appointed from each of the said provinces. This arrangement was not to take effect until after the dissolution of the twelfth parliament. In the meantime senatorial

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representation of the western provinces was restricted to fifteen as follows: Manitoba 4, British Columbia 3, Saskatchewan 4 and Alberta 4.

The thirteenth parliament of Canada would then consist of the following representation in the Senate and House of Commons, respectively:—

Ontario.....	24	senators and	82	members.
Quebec.....	24	" "	65	"
Nova Scotia.....	10	" "	16	"
New Brunswick.....	10	" "	11	"
Prince Edward Island.....	4	" "	3	"
Manitoba.....	6	" "	15	"
British Columbia.....	6	" "	13	"
Saskatchewan.....	6	" "	16	"
Alberta.....	6	" "	12	"
Yukon Territory.....	—		1	"
Totals.....	96		234	

The total number of senators in 1914 was 87 and of members of the House of Commons 221.

Another important amendment of the British North America Act, enacted by the imperial parliament at the same time as the above amendment relating to senators was one which provided that "a province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such province." This change was brought about on account of the representation of Prince Edward Island having been reduced to three members by the readjustment of 1914, while at the same time the province was represented by four members in the Senate.

The question of the duration of parliament was settled by giving it a constitutional existence of five years from the day of the return of the writs of the election, subject to be sooner dissolved by the governor-general acting upon the advice of the privy council.

The provisions of the British North America Act respecting the election of speaker, deputy speaker, quorum,

election and kindred matters affecting the powers of the parliament will be discussed later in the chapters particularly devoted to those subjects.

X. The Constitution of the Provinces.—The executive and legislative powers of the various provinces are dealt with by sections 58 and 59 of the British North America Act. In each province there is a lieutenant-governor appointed by the government of Canada who shall not be removable from office within five years from the date of his appointment except for cause assigned. His salary is fixed from time to time by parliament. The executive powers and authority of this official in relation to the provincial legislature are subject to the general rules and principles of responsible government as understood throughout the British dominions subject always to the special laws of the province. In case of the absence, illness or other inability of the lieutenant-governor to act the governor in council may appoint an administrator of the office under the same limitations as would apply to a lieutenant-governor.

The legislative powers of the four original provinces are by the British North America Act extended to any other provinces or colonies which may be admitted into the union. Power is vested in the parliament of Canada to establish new provinces and provide for their constitution and administration and for their representation in parliament. Parliament is also empowered to alter the boundaries of any province with the consent of the legislature of the province. It can also legislate generally for the territories. The provinces originally forming the union were Quebec, Ontario, Nova Scotia and New Brunswick. Ontario was provided with a legislature consisting of a lieutenant-governor and one house, styled the legislative assembly, composed in the first instance of 82 members elected by the 82 electoral districts set forth in the first schedule of the Act. From time to time the legislature of the province has enlarged the representation. The number of members in 1915 is one hundred and eleven.

The legislature of Quebec consists of a lieutenant-governor and two houses, a legislative council and a legislative assembly. The qualifications for membership in the council, for the speakership, for quorum, voting and other particulars of organization of the same are also settled by the Act. The number of members of the legislative assembly was at confederation fixed at 65. At present (1915) the number of members is 81 and of the legislative council 24. The legislatures of the other provinces, at present (1915), are composed of the following members: Nova Scotia, legislative council 21, legislative assembly 38; New Brunswick legislative assembly 48; Manitoba 49; British Columbia 42; Prince Edward Island 30; Alberta 56; Saskatchewan 54. By the Union Act the legislative assemblies of Ontario and Quebec were to continue for four (*a*) years after each general election unless sooner dissolved. The province of Quebec however by virtue of the provisions of the Act allowing the legislature of each province to change its constitution made in 1881 the legislative term one of five years (*b*). The constitutions of the legislatures of Nova Scotia and New Brunswick were to continue as they existed at the time of the union until altered by those legislatures themselves. The duration of the other provincial legislatures has been settled as follows: Nova Scotia (*c*) for five years; New Brunswick five years (*d*); Prince Edward Island (*e*) four years; Manitoba five years; (*f*) British Columbia five years; (*g*) Alberta (*h*) and Saskatchewan five years(*i*). The same rules as to the requirements of a yearly session, as settled for the dominion parliament, were established for the local legis-

(*a*) R.S. 1914 ch. 11. s. 4.

(*b*) R.S. 1909 Art. 115.

(*c*) R.S. 1900 ch. 2 s. 9.

(*d*) Stat. 1906 ch. 21.

(*e*) Stat. 1913 ch. 2 s. 4.

(*f*) R.S. 1913 c. 112 s. 4.

(*g*) 1913 ch. 11 s. 2.

(*h*) R.S. 1909 ch. 2 s. 3.

(*i*) R.S. 1909 c. 2 s. 4.

latures as were also the rules as to the election of the speaker, as to quorum and voting.

The constitutional provisions as to the preliminaries necessary to the passing of money votes, the disallowance of acts and the assent to bills reserved were made applicable to the provincial legislatures by section 90 in the same manner as to the dominion parliament. In these cases the lieutenant-governor stands in the same relation to the provinces as does the king to the dominion.

XI. The North West Territories.—At the time of the establishment of the new province of Manitoba in 1870 out of the immense unorganized territory known as Rupert's Land and the North West Territories provision was also made for the government of those extensive regions. The lieutenant-governor of Manitoba was made governor of the North West Territories to act under a provision of law adopted in 1869 for the temporary government of Rupert's Land and the North West Territories. In subsequent sessions of the dominion parliament other acts were passed in relation to this territory. These acts were consolidated in 1886 and have been amended and consolidated since. Provision was made for the creation of electoral districts and election of members of council. A council partly elected and partly nominated was in existence until 1888. The lieutenant-governor presided over the council and had a vote. In 1888 an amendment of the law was passed which provided for an elective legislative assembly of twenty-two members. The governor appointed an advisory council from among the members of the assembly. In many respects the usual features of a responsible government were practically though not formally in existence. In 1876 the territory known as "Keewatin" (since absorbed in the North West Territories) was created out of the eastern portion of the North West Territories and in 1898 the Yukon Territory was established and government provided. It was also in 1902 created an electoral district returning one member to the house of commons. The

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Yukon acts have been, since that date, extensively amended and consolidated. The territory is governed by a commissioner and a council of ten members elected from as many electoral districts. The council continues for three years unless sooner dissolved by the commissioner. The council must sit at least once in each year. The constitutional rules of procedure as to money votes are applicable to the council. The extensions of the provinces of Ontario and Manitoba and the creation of the provinces of Alberta and Saskatchewan still leave a vast region under the North West Territorial government. Doubts were raised in the session of 1896 as to the power of the parliament of Canada to pass the Manitoba Act, especially those provisions respecting representation in the House of Commons. To remove these doubts and others arising from the apparently restricted legislation on the subject in the British North America Act, 1867, the imperial parliament by an act passed in 1871 gave Canada the power to establish new provinces and provide for their constitution and representation in parliament. Authority was also given the parliament of Canada to alter the boundaries of any province with the consent of its legislature. In 1886 the imperial parliament, on address of the parliament of Canada, passed an Act to provide for the representation in the Senate and House of Commons of any territories which may form part of the Dominion but not included in any province: (a). This act was rendered necessary on account of the Canadian Act of 1886 giving representation to the North West Territories.

The British North America Act, 1867, expressly provides that a local legislature may amend the constitution of the province, except as regards the office of lieutenant-governor. British Columbia, New Brunswick and Mani-

- (a) British North America Act 1867.
 " " " " 1871.
 " " " " 1886.
 " " " " 1907. (subsides).
 " " " " 1915.

toba abolished their legislative councils. The principles in the act respecting the office of speaker, quorum, mode of voting, money votes, assent to bills, the disallowance of acts and the signification of pleasure on reserved bills, extend to the provincial legislatures. In accordances with these provisions a bill passed by a legislature of a province may be disallowed by the dominion government within one year after its passage. The lieutenant-governor may also reserve any bill for the signification of the pleasure of the governor-general and in that event it cannot go into operation unless official intimation of its having been approved is received within one year.

XII. Disallowance of Provincial Acts.—The same powers that belonged to the imperial government previous to the union with respect to acts passed by colonial legislatures have been conferred by the Act of 1867 on the government of the dominion with respect to the provinces. The power of confirming or disallowing provincial acts is vested by law exclusively in the governor-general in council.

In the early years after confederation the principles upon which disallowance should be exercised were settled. The minister of justice, Sir John A. Macdonald, in 1868, laid down certain principles of procedure which have since been followed. On the receipt of the acts passed in any province they are immediately referred to the minister of justice. He thereupon reports those acts which he considers free from objection and if his report is approved by the governor in council, such approval is forthwith communicated to the provincial government. He also makes separate reports as to those acts which he may consider as being, (1) altogether unconstitutional, (2) as unconstitutional in part, (3) as in ~~the~~ concurrent jurisdiction, clashing with the legislation of the federal parliament or, (4), as effecting the interests of the dominion generally. It has however ~~been~~ the practice in the case of measures only partially defective not to disallow the act in the first instance but to

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give the local administration an opportunity of considering objections and of remedying any defects. So far however this power of disallowance has been exercised in relatively few cases out of the large number of acts passed by local legislatures since confederation. The distribution of legislative powers has been during the years so carefully defined by means of discussion and through judicial decisions that the likelihood of danger of the passage of unconstitutional legislation has been reduced to small proportions. The tendency has been in case of doubt to leave the question to the courts rather than to act upon the power of disallowance. Among the leading cases on points of jurisdiction may be mentioned that of *McLaren vs Caldwell* (See Sup. Ct. Repts. Vol. VIII) having reference to the Ontario statute of 1881 respecting "the public interest in rivers and streams." In 1884 the privy council reversed the judgment of the supreme court of Canada and restored that of the court of appeal of Ontario. The history of this question as set forth in the decisions of the court of appeal and of the supreme court and the privy council as well as in the elaborate state papers of the governments of Ontario and the Dominion are instructive and replete with able and ingenious argument. An act of the Manitoba legislature incorporating the Winnipeg South-Eastern Railway Company was disallowed by the federal government because it conflicted with the settled policy of the dominion as evidenced by a clause in the contract with the Canadian Pacific Railway Company to the effect that "for twenty years from the date hereof no line of railway shall be authorized by the dominion parliament to be constructed south of the Canadian Pacific Railway from certain points," mentioned in the contract. On this ground the dominion government disallowed other acts of the provincial legislature. In 1883 the acts passed by the legislature of British Columbia "to incorporate the Fraser River Railway Company" and "The New Westminster Southern Railway Company" were disallowed for the same reasons. The cases show the large power assumed by the dominion

government under the laws giving it the right of disallowing provincial enactments. The best authorities, however, concur in the policy of not interfering with provincial legislation except in cases where there is a clear invasion of dominion jurisdiction or where the vital interests of the country as a whole imperatively call for such interference.

XIII. Distribution of Legislative Powers.—The title of the sixth division of the British North America Act is "Distribution of Legislative Powers". This distribution is essential to a federal system and has necessarily given rise to many of the most difficult questions that have followed, both as to the disallowance of provincial acts and as to the exercise of the authority of the federal parliament. They have been settled by judicial decisions of the greatest practical importance. The well known sections (91 and 92) cover a very large part of this extensive battle ground.

The powers of the federal parliament include jurisdiction over all matters not assigned exclusively to the provincial legislatures. In this respect the Canadian federal system differs from that of the United States and also from that of the Commonwealth of Australia wherein the powers of the respective states, generally speaking, cover all matters not especially or exclusively assigned to the union or federal authority.

The exclusive legislative authority of the parliament of Canada extends to all matters respecting the public debt, banks and banking, regulation of trade and commerce, postal service, navigation and shipping, census and statistics and all other matters of dominion import and significance (a). On the other hand the local legislatures may exclusively make laws in relation to municipal institutions, management and sale of public lands belonging to the province, incorporation of companies with provincial objects, property and civil rights in the province

(a) B.N.A. Act, 1867 S. 91.

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and "generally all matters of a merely local or private nature in the province" (b).

The provincial legislatures have also exclusive powers of legislation in educational matters subject only to the right of the dominion parliament to make remedial laws under certain circumstances. The matter of education treated of in section 93 of the Act has been the subject of many long and ably conducted controversies in parliament and in the courts. The purpose of the various sub-sections of section 93 was to preserve to a religious minority in any province the same privileges and rights in regard to education which it had at the date of confederation. But the provincial legislatures were not debarred from legislating on the subject of separate schools provided they did not thereby prejudicially affect privileges enjoyed by such schools previous to the union.

As to the legal and other discussions and decisions affecting these questions the reader may consult with advantage Hansard 1890-1897, Wheeler's Privy Council Cases pp. 370-388, the Supreme Court of Canada Reports, vol. 19, and other authorities there referred to or of a like character. The subject of agriculture and immigration may be legislated upon both by the parliament and the legislatures but any provincial law on these matters shall remain in effect in the province only so far as the same is not repugnant to any act of the parliament of Canada.

XIV. The Judiciary.—Sections 96 to 100 of the British North America Act deal with the appointment, salaries and pensions of the judiciary. The judges (except of courts of probate), are to be appointed by the federal government from the respective bars of the provinces and to hold office during good behavior, but may be removed only on an address of the Senate and House of Commons. Parliament also fixes their salaries.

An act establishing a supreme court of Canada was passed in 1875. This act also conferred upon the judges

(b) B.N.A. Act, 1867 S. 92.

of the court the powers of an exchequer court which was then set up. In 1877 however, these courts were separated and the exchequer court of Canada with one judge, a registrar and other proper officers was established. In 1912 a second judge was added to this court under the title of assistant judge. The supreme court has appellate jurisdiction from all the courts of the provinces and also in cases of dominion controverted elections. The governor-general may refer questions of a constitutional nature to this court. The court has also jurisdiction in cases of controversies between the federal and provincial authorities and between the provinces themselves on condition that the provincial legislature shall pass an act agreeing to such legislation. The judgment of the supreme court is final in all criminal cases. There is an appeal from the judgment of the supreme court in civil cases, under certain limitations, to the privy council in England though there also exists in such province the right of an appeal to the same imperial court.

The decisions of the supreme court of Canada and of the judicial committee of the privy council of England in Canadian cases form a mass of most valuable and important declarations of law and constitutional principles as to the various powers of the federal and provincial legislatures in Canada. Among these decisions might be mentioned as of great public importance those respecting controverted elections, fire insurance, incorporation of companies, traffic in spirituous liquors, the Canada Temperance Act, fisheries and fishery leases in the provinces, escheats, Indian lands, boundaries of provinces and others which may be studied in the various law reports. The inquirer into these and cognate questions is referred to the reports of the supreme court of Canada; Cartwright's Cases under the B.N.A. Act, law reports (appeal cases, privy council) legal news, Lefroy's "Legislative power in Canada", Wheeler's "Confederation Law of Canada" and kindred publications, for fuller information as to the arguments and decisions on the numerous points in controversy.

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The Imperial Act, 1867, among its miscellaneous provisions, established the following rules: the oath of allegiance is to be taken by every member of the House of Commons and Senate and by every member of a legislative council or legislative assembly of a province. Members of the senate and legislative council of Quebec are also required to take and subscribe the oath of qualification for office as set forth in a schedule to the act. The parliament and government of Canada have all the powers necessary, as a part of the British Empire for performing the obligations of Canada or of any province towards foreign countries arising under treaties between the Empire and foreign countries. A department of state called the department of External Affairs has recently (1912) been established, the prime minister being the minister in charge of the department.

On the subject of language the act of union declares that either the English or the French language may be used by any person in the debates of the houses of parliament and of the houses of the legislature of Quebec and that both these languages shall be used in the records and journals of those houses. It also provides that either of those languages may be used by any person or in any pleading or process in any court of Canada established under the act and in all the courts of Canada. All acts of the parliament of Canada and of the legislature of Quebec are to be printed in both French and English.

In a federal system like that of Canada which is in itself but a part of a world-wide empire each government must act, and each legislature must undertake to pass laws, only upon subjects assigned to them respectively under the constitution. To that extent the provinces will always carefully scrutinize federal legislation in order to see that their legal domain is not invaded. The dominion authorities will take care that the provinces do not enter the federal sphere. And the mother country, at the seat of empire, is also bound in justice to Canada and to the interests of the empire as a whole to see that the dominion

does not cross the lines of imperial responsibility. In interpreting the constitution and prescribing the limits of the respective legislative authorities, every care is taken by the courts to determine the true nature and character of the legislation in the particular case under review in order to ascertain the class of subjects to which it belongs. And so, as to individual members of the Canadian community and corporate bodies transacting all kinds of business, these have a powerful stake in the observance of the same principle. They must be careful to observe the boundaries of jurisdiction and these are not always easy to ascertain. The language of statute makers is not invariably a perfect medium of expression, consequently the task of settling questions arising out of apparent conflicts of laws is one of delicacy as well as of immense difficulty. Here the duties of the judiciary are of the greatest importance, the exercise of the powers assigned to the judges demanding high intelligence, great learning and thorough impartiality. The independence of the judiciary is consequently of the most essential character. It has always been recognized in Canada as one of the fundamental principles necessary to the conservation of public liberty. The judges are not dependent on the mere will of the executive power, nor on the caprice of the people of the province. Their tenure is assured and their salaries are charged permanently by law on the civil list. The judges of the superior courts hold office during good behaviour and can only be removed by the governor-general on address of the senate and house of commons. The courts, as one able writer has declared, "are the custodians of the constitution". They may decide as to whether a statute is valid or void and their considered decisions thus become a part of the constitution. As long as the courts of Canada continue to be respected as impartial judicial interpreters of the law and her statesmen are influenced by a desire to accord to each legislative authority its legitimate share in legislation, complications can hardly arise to prevent the harmonious operation of the constitutional system, the foundation of which is the giving of

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due strength to the central authority and at the same time every necessary freedom to the different provinces.

A review of the history of Canada from the period when the autocratic government of New France controlled its domain to the day of the union of the provinces in one dominion under the British North America Act shows the progress and development of the national character. The constitution itself in its entirety has not been, as we have seen, a sudden growth but it has developed slowly, has been tested by time and experience under many diverse circumstances and has proved itself not only strong but adaptable, well worthy of public confidence as a solid basis of security for the state in all its varied interests. With a people who respect the law and who understand and rely upon the proper working of parliamentary institutions the Dominion of Canada need not fear comparison with any other country in all those matters which make a country truly happy and prosperous.

CHAPTER II.

PRIVILEGES AND IMMUNITIES OF PARLIAMENT.

- I. Legislation on the Subject of Parliamentary Privilege in Canada.—II. Extent and Nature of Privileges.—III. Personal Privileges of Members.—IV. Freedom of Speech.—V. Claim of Privilege.—VI. Libellous Reflections on Members.—VII. Proceedings of Select Committees.—VIII. The Assaulting, Challenging or Threatening of Members.—IX. Disobedience to Orders of House.—X. Attempt to Bribe Members. XI. Privileged Persons not members.—XII. Punishment of a Contempt of the Privileges of Parliament.—XIII. Power of Commitment.—XIV. Procedure on a Breach of Privilege.—XV. Expulsion and Suspension of Members.—XVI. Power to Summon and Examine witnesses: Procedure.—XVII. Privileges of Provincial Legislatures.—XVIII. Colonial and Provincial Legislatures as Courts of Record.

I. Legislation on the Subject of Parliamentary Privilege in Canada.—In any constitutionally governed country the privileges, immunities and powers of its legislature as a body and the rights and immunities of the members of such bodies are matters of primary importance. It is obvious that no legislative assembly would be able to discharge its duties with efficiency or to assure its independence and dignity unless it had adequate powers to protect itself and its members and officials in the exercise of their functions.

The privileges of parliament include such rights as are necessary for free action within its jurisdiction and the necessary authority to enforce these rights if challenged. These privileges and powers have been assumed as fundamental and have been insisted upon by custom and usage

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as well as confirmed and extended by legal enactments. Their extent and nature have frequently been subjects of controversy but in the main they are decided by the legislature itself and its decisions, speaking generally, cannot be called into question by any court or other authority, but this does not prevent the courts from inquiring as to whether the legislature has in fact acted within its authority. (a).

In calling a new parliament into existence, as in the case of the Dominion of Canada, the first clause of the constitutional act, after that creating the parliament, dealt with the subject of its privileges and immunities. This was section 18, since repealed. The present authority on the subject, as regards the dominion parliament, is the new section 18 passed by the imperial parliament in 1875. (b).

The preamble of this act is as follows: "Whereas doubts have arisen with regard to the power of defining by act of the parliament of Canada in pursuance of the said section (18) the said privileges, powers and immunities and it is expedient to remove such doubts—it is enacted as follows: section 18 of the British North America Act is hereby repealed without prejudice to anything done under that section and the following section shall be substituted for the section so repealed."

"18. The privileges, immunities and powers to be held, enjoyed and exercised by the Senate and House of Commons and by the members thereof respectively, shall be such as are from time to time defined by act of the parliament of Canada, but so that any act of the parliament of Canada defining such privileges, immunities and powers shall not confer any privileges, immunities or powers exceeding those at the *passing of such act*, held, enjoyed

(a) Cobbett's case Court of Common Pleas 18th Nov. 1845. Also re Dime's 17th Jan. 1850. 14 Jurist 198, May 69-70. See also *Burdett vs Abbott*, 14 East 1. Sheriff of Middlesex 95 E.C.J. 25, 1840. 51 Eng. Hans. Ds. 3 p. 550. Line's case 106 E.C.J. 147 *et seq* 9 *ib.* 356; 14 *ib.* 565.

(b) Imp. Stat. 38-39 Vict. ch. 38; Dom. Stats. 1876.

and exercised by the Commons House of parliament of the United Kingdom of Great Britain and Ireland and by the members thereof."

In the first parliament of Canada, 1867-68, an act was passed "to define the privileges, immunities and powers of the Senate and House of Commons and to give summary protection to persons employed in the publication of parliamentary papers." Under this act the two Houses respectively and their members shall exercise like privileges as at the time of the passing of the British North America Act were enjoyed by the Commons of Great Britain and Ireland. These privileges are deemed part of the general and public law of the country and it is not necessary to plead the same but they shall be judicially noticed by the courts. Any copy of the journals printed by order of the houses shall be admitted as sufficient evidence in any inquiry as to the privileges of parliament. Provision was also made for the protection of persons publishing parliamentary papers and reports. (c).

Though the British North America Act has been amended as above stated the Canadian parliament has not passed further legislation dealing with its privileges.

All the provinces of the dominion have statutes with respect to the privileges and immunities. In fact, all the British colonies, having legislatures, have, by statute, defined the powers, privileges and immunities of their legislators and legislative assemblies.

These enactments have been adopted with the sanction of the Crown but the imperial authority and courts have always carefully scrutinized the laws on this subject in order to check the assumption of undue or unnecessary authority. The "Oaths Act", passed by the parliament of Canada in 1873, was disallowed by the Crown as being ultra vires and contrary to the express terms of the British North America Act. This led, after some controversy, to the passing of the Imperial Act of 1875, above referred

(c) Dom. Stat. 31 Vict. c. 23; Rev. Stats. Canada, ch. 10.

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to, which amended the section 18 so as to validate the Oaths Act.

In 1876 the Oaths Bill was re-enacted by the dominion parliament. The supreme court of Canada has held that any legislative body in Canada is competent, with the consent of the Crown, to pass laws defining its own powers and privileges but these must be subject to the rule that such powers and privileges do not exceed those possessed by the imperial House of Commons at the time of the passing of such laws. The judicial committee of the privy council has given a decision which shows how extensive the powers of the provincial legislatures are for the protection of the members and for the untrammelled exercise of their constitutional functions as deliberative and legislative bodies. (*d*).

II. Extent and Nature of Privileges.—Both houses of parliament will declare what cases, by the law and custom of parliament, are breaches of privileges and will exercise inquisitorial powers to protect themselves from imposition and vindicate their proceedings from being obstructed or their orders treated with contempt (*e*). They will assume authority and provide methods to punish offenders, to impose disciplinary regulations upon their members, to enforce obedience to their commands, and prevent interference with their deliberations. Whatever parliament has constantly declared to be a privilege is the sole evidence of its being a part of the law of parliament. The two houses will punish by censure or commitment in the same manner as courts of justice deal with offenders against their authority. Each house, however, exercises and vindicates its own privileges independently of the

(*d*) See Todd's Parl. Gov't in Br. Colonies (2nd Ed.) pp. 179, 180, 687-693; also, for an interesting discussion of legislation on this subject in Canada see Keith's Responsible Government in the Dominions 1912, Vol. 1 pp. 446-457 Vol. II 696.

(*e*) See Story on the Constitution (Cooley's 4th Ed.) p 588. May 62. Coke 4 Inst. 15. 1 Blackstone 163. Dacey's Law and the Constitution (3rd Ed.) 351.

other. At the same time it has been established by the highest authorities that although either house may expound the law of parliament and vindicate its own privileges, it is agreed that no new privilege can be created. (*f*). Each house declares for itself what cases are breaches of privilege but the grounds for their action are based upon the same principles and precedents. They declare offenders to be in contempt and punish them by censure or commitment in the same manner as the courts punish for contempt. (*g*).

A breach of privilege committed in one parliament may be considered and dealt with in another parliament. (*h*). So either house may punish in one session offences that have been committed in another. (*i*).

Parliamentary privileges, resting on statutory as well as customary law, it follows that they can be inquired into and determined by the courts like other rights. In the words of an authority: "It seems now to be clearly settled that the courts will not be deterred from upholding private rights by the fact that parliamentary privilege is involved in their maintenance and that, except as regards the internal regulation of its proceedings by the house, courts of law will not hesitate to enquire into alleged privilege, as they would into local custom, and determine its extent and application." (*j*). But a definite rule as to the jurisdiction of the courts in question of parliamentary privilege is nowhere laid down. Precedents and opinions are contradictory and judicial opinions have differed. The

(*f*) May 63. 14 E.C.J. 555-560. Todd Parl. Gov. in England 1,408.

(*g*) 8 Grey's D. 232. May 63.

(*h*) 37 Parl. Hist. 198. 1 Hatsell 184; 1 E.C.J. 925, 2 *ib.* 63, 13 *ib.* 735; May 91.

(*i*) Res. 3rd April 1624; 15 E.C.J. 376, 386; 21 L.J. 1895; 15 E.C.J. 376, 386; 20 *ib.* 549; 22 *ib.* 210; 26 *ib.* 303; 249 E. Hansard 989; Can. C.J. (1880) 1st session 24, 58.

(*j*) Anson Law and Custom of the Constitution 1. 182. Bradlaugh vs Gossett 12 Q.B.D. 281. Burdett vs Abbott 14 East, 1. Gossett vs Howard (Philip's Rep. 605).

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courts have, however, always acknowledged the right of parliament to define its privileges and to punish parties for the breach of the same. Yet the courts are bound to administer the laws and to decide as to the cases in which the laws have been violated and consequently they are not divested of the power of inquiring into the action of parliament where a claim is made that the houses have acted beyond their authority. The power of the House of Lords to commit for contempt was questioned in 1675 and in 1779, but was admitted by the court of King's Bench without hesitation in the cases of the Earl of Shaftsbury and of Mr. Flower. (*k*). The houses naturally resented the interference of the courts while the courts have frequently contested the right of a house of parliament to over-ride the laws which were passed by parliament itself. Authorities may be quoted in favour of the exclusive jurisdiction of parliament to decide absolutely as to its privileges. Yet there is a large body of opinion more in accordance with modern views on this subject which supports the contention of the right and duty of the courts to investigate and decide as to the proper action of parliament in particular cases. (*l*). Though the question of privilege as between the courts and parliament is acknowledged to be somewhat indefinite and in that respect unsatisfactory, yet in this country very few practical inconveniences have resulted from the situation.

III. Personal Privileges of Members.—It is a general principle of British parliamentary law that at the moment of the execution of the return of a member the official existence of the member, as such, commences to all intents and purposes. (*m*). According to Coke every man is obliged at his peril to take notice who are members of either house returned of record. (*n*). This privilege

(*k*) May 63. 6 Howell, St. Trials 1269. 8 Durnf. East, 314. May 132 *et seq*—and authorities quoted.

(*l*) May 138.

(*m*) Hatsell 166. 2 *ib* 75.

(*n*) 4th Inst. 24; see also *Fortnam vs. Lord Rokeby*. Taunt. Rep. IV. 608.

continues in full force whether a member is absent with or without leave of the house and only ceases when the member resigns, accepts office or otherwise ceases to be a member. (o). The personal privileges of members are to enable them to freely attend in their places in parliament, to guarantee them against restraint or intimidation in the discharge of their duties and to protect them in their freedom of speech in the debates in parliament. The privilege has been always held to protect members from arrest and imprisonment under civil process, whether at the suit of an individual or of the public; (p) but it is not claimable for treason, felony, breach of the peace or "any indictable offence". (q). In 1815 Lord Cochrane, a member of the house, was convicted of a conspiracy and was committed by the court of king's bench to prison. He escaped and was re-arrested whilst sitting in the House of Commons although no members were present and the house not in session. The case was referred to the committee of privileges, which reported that the privileges of parliament did not appear to have been violated. (r).

In the Canadian parliament during the session of 1885 a member of the Commons was arrested and fined by the police magistrate of Ottawa for an assault committed in the lobby of the House on a person who had written offensive matter to the press. Mr. Justice Stephen in a famous case remarked: "I know of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice." (s). But in all cases in which members are arrested on criminal charges whilst the house is sitting the house

(o) Cushing p. 222.

(p) Wellesley's Case, Russell & Myles R. ii. 673. Westmeath vs. Westmeath L. J. VIII (Chancery) 177. Hale on p. 16-30. May 103-109. 62 E.C.J. 654; 74 *ib.* 44; 75 *ib.* 286.

(q) May, 115-116. 4 Rol. Parl. 357; 5 *ib.* 339; L.J. 369; 562; See also declaration of E. Com. 17 Aug. 1641; 2 E.C.J. 261; 11 *ib.* 784.

(r) Sess. Papers 1814-15 (239) 30 E. Hansard (1.s.) 309, 366-7.

(s) Bradlaugh vs Gossett, Feb. 9th 1884. Q.B.D.

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shall be informed of the cause for which they are detained.

(*t*). A member of parliament may be committed for contempt of a court of justice and the house will not interfere.

In 1831 a Mr. Wellesley, member of the English commons was committed for contempt of the court of chancery. The Chancellor having acquainted the speaker of this commitment and the member having appealed through the speaker to the house claimed privilege. The committee of privileges having considered the case reported, "that this claim to be discharged from imprisonment by reason of privilege of parliament ought not to be admitted." (*u*).

The houses however reserve the right to interfere when members are committed by the courts for contempt by inquiring into the nature of the offence and protecting their members in proper cases.

The privilege of freedom of arrest in civil process has always been allowed in England for forty days before and after the meeting of parliament. It continues during the session and is enjoyed after a dissolution or prorogation for a reasonable time for returning home. (*v*).

What this time may be must depend upon the circumstances of each case. The effect of being an elected member upon a person at the time under arrest has also been a subject of consideration. In the celebrated Thorpe's case the judges excepted from privilege the case of "a condemnation had before the parliament," but this opinion has not been sustained by the judgment of parliament itself. (*w*). It was held in a Canadian case that a member of the provincial parliament was privileged from arrest in civil cases and that

(*t*) May, 117, 118.

(*u*) 86 E.C.J. 701; *cf. ib. 3 et seq.* 1 Parl. Rep. 1837 No. 45; See also Rep. of C. 1874 (77); case of Whalley. 218 E. Hansard, 3 s. 52. 108. May, 120-123.

(*v*) May, 110, 111, 123. 2 Stephen's Blackstone, 11th Ed. 353. Barnardo vs. Mordant, Lord Ken. 125. 1 Dwaris 101. Pitts case, 1 Strange 985. K.B. cases temp. Hardwicke, 28. See case of Fortesque vs. Harrison, 1880. Times, 16th April 1880. May, 123.

(*w*) 9 E.C.J. 411; May, 112. 10 E.C.J. 401; 62 *ib.* 642, 653, 654; 2 Haxell 37; 74 E.C.J. 44; 75 *ib.* 230, 286.

the period for which the privilege lasted was the same as in England. The judge, in delivering the opinion of the court, said: "I see nothing in the decisions in the cases of *Beaumont vs. Barrett* or in *Kelly vs. Carson*, at variance with the assertion and enjoyment of this privilege by our own legislature. I am confirmed in my opinion of its existence by our general adoption of the law of England, by the provision for suits against privileged parties contained in our statutes and in the uniform decisions of our courts". (x). The various provinces of the dominion have made statutory provisions on the subject. In Ontario and Quebec the privilege of members from arrest is made statutory for twenty days; in Nova Scotia fifteen days. In New Brunswick the same extent of privilege is extended as held by the members of the House of Commons of Canada; Prince Edward Island twenty days; Alberta twenty days. In the provinces of Manitoba and Saskatchewan, the privilege extends only during the session. (y).

A member may be committed for contempt of court where the contempt is of a *quasi* criminal nature but the courts would not sanction any more than parliament itself would sanction a commitment as part of a civil process, for the recovery of a debt. It may be laid down as a principle that the House of Commons in England "has not waived its rights to interfere when members are committed for contempt, but each case is open to consideration as it arises; and although protection has not been extended to flagrant contempts, privilege might still be allowed against commitment under any civil process or, if the circumstances of the case appeared otherwise, to justify it (z). This question has not come up in the Canadian house.

The privilege of exemption of members from serving as jurors or attending as witnesses during a session of parlia-

(x) *Queen vs Gamble & Boulton* (9 U.C.Q.B. 546 Stats. of Canada 12 Vict. Ch. 23, ss. 22, 23. 13 & 14 Vict. Ch. 55 sec. 96.

(y) Ont. Rev. Stats. 1914 Ch. 11 Sec. 47 (1) Quebec R.S. 1909 Art 134. N.S. Rev. Stats. (1900) Ch. 2 s. 20. P.E.I. Stats. 1913 Ch. 1 s. 5. Man. R.S. 1911 Ch. 137, s. 6. Sask. R.S. 1909 Ch. 2. sec. 32.

(z) May, 122 *et seq* and cases there cited.

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ment is well established and precedents are found of the British Commons having punished persons for serving subpoenas upon members. Through members cannot be compelled to attend as jurors, yet the Commons generally gives leave of absence to members to attend elsewhere as witnesses when it is shown that public interests would not suffer by their absence.

In 1826 Mr. Halford complained that he had been fined for non-attendance as a jurymen by the court of exchequer. Mr. Ellice and another member stated that they had also been fined for the same cause. A committee of privileges having considered the matter reported, "That it is amongst the most ancient and undoubted privileges of parliament that no member shall be withdrawn from attendance on his duty in parliament to attend any other court. In the case of Viscount Enfield (6th Feb., 1861) Chief Justice Earl stated: "His Lordship ought not to have been summoned as a juror, as members were not bound to serve in any other courts than that in which they had been returned to serve, viz., the High Court of Parliament." (a). The exemption has been held good in the case of an adjournment. (b). In many of the provinces members, officers and employees of the legislature are exempt from serving as jurors by statute. (c).

In all cases where members are arrested on a criminal charge or are committed for a contempt of court the house if in session, should be informed by the proper authorities

(a) 1 Hatsell 112, 118, 171, 173; D'Ewes 637; 1 Dwaris 103, 105; Can. Hansard (1877), 1540-1; 3 Lords J. 630; 9 E.C.J. 339; 1 Hatsell 96, 169, 175; 14 E. Hans. (N.S.) 569, 642; 78 E.C.J. 132; 81 *ib.* 82, 87. 1 West, Inq. 28. 14 E. Hans. (20s) 568, 569, 642. 21 *ib.* 2 s. 2770, case of Tracey 1598, D'Ewes 560; 1 Hatsell 112, I.E.C.J. 898-Cushing, 241.

(b) 21 E. Hans. (N.S.) 1770; May, 115.

(c) Ont. R.S. 1914, ch. s. 48; c. 64, s. 4 Que. R.S. 1909, Art. 135; Art. 3408. Nova Scotia R.S. 1900, c. 2, s. 21; c. 162, s. 5. N.B. R.S. 1903, c. 126, s. 2. B. Col. R.S. 1911, c. 121, s. 11. P.E.I. R.S. 1861, c. 10, s.3. Sask. R.S. 1909, c. 2, s. 33; c. 59, s. 4.; Alberta 1909, c. 2, s. 43.; Man. R.S. 1913, c. 108, s. 3; c. 112, s. 39.

of the causes of such action. (*d*). The committal of a member of parliament for high treason or any criminal offence is brought before the house of which he is a member by a letter addressed to the speaker by the committing judge or magistrate. But the failure of the judge or magistrate to inform the speaker is not a matter of privilege. (*e*).

A mere question of order in the house or in the committee cannot be treated as a matter of privilege and as the privilege of freedom from arrest is limited to civil causes the circumstances attending such arrest or imprisonment cannot be brought before the house as a matter of privilege, nor can a letter addressed by a member of the house to the speaker regarding his arrest be considered as a matter of privilege. (*f*).

IV. Freedom of Speech.—Among the most important privileges of the members of a legislature is the enjoyment of freedom of speech in debate, a privilege long recognized as essential to proper discussion and confirmed as part of the law of the land in Great Britain and all her dependencies. This freedom of speech, of debate and proceeding may not be impeached or questioned in any court or place out of parliament. (*g*). This privilege secures to every member an immunity from prosecution for anything said or done by him in the exercise of his functions as representative whether it be in the house itself or in one of its committees. (*h*). But if a member circulates or publishes outside of the house statements made within it he must assume full

(*d*) May, 117. 2 Hatsell, 259. *ib.* 256, 258. 1 Blackston 167.

(*e*) May, 273; 116 Parl. Deb. 4s. 14.

(*f*) Debates, 13 Feb. 1888, 322 E. Hans. 3s. 262-267. 92 Parl. Deb. 4s. 1062. 101 *ib.* 61. 109 *ib.* 477. 123 *ib.* 309.

(*g*) Elsyng 177. 3 R. of Parl. 434. Bill of Rights 9th. Art. May, Ch. IV. 2 E.C.J. 203, 9 *ib.* 25; 12 Lords J. 166; *ib.* 223; 1 Hallam Const. Hist. 371; 2 *ib.* 10.

(*h*) Cushing 243.

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responsibility and be liable for action if such statements be defamatory. (i).

The making by one member of an unfounded charge which has been inquired into by the house does not constitute a breach of privilege; for "one of the first and greatest of its privileges is free speech and one of the advantages of legislative bodies is the right of exposing and denouncing abuses by means of free speech".(j). This freedom of speech was originally intended as a protection against the power of the Crown but naturally was extended to protect members against all attacks from whatsoever source.(k). The limits of this privilege were frequent subjects of violent controversy and were with difficulty adjusted. The last occasion in which this privilege was directly questioned was in the case of Sir John Elliott and others in 1641. A judgment had been obtained in the king's bench against these members for their conduct in parliament. The House of Commons declared all the proceedings in this case in the king's bench to be against the law and privilege of parliament. The lords, at a conference, agreed to the resolutions of the Commons and upon a writ of error the judgment of the court of king's bench was reversed by the House of Lords. (l). The famous Bill of Rights, 9th article, declares one of the fundamental liberties of the people to be "That freedom of speech and debates and proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament. (m). Yet while a member may not be subject to penalty out of parliament, he is liable to censure and punishment by the house itself if he transgress the rules

(i) Anson's Law and Custom of the Constitution 1. 159. May, 100-1. See case of Lord Abington. 1 Esp. N.P.C. 228; of Mr. Creevy 1 M. & S. 278.

(j) Richards C. J. in *Landers vs Woodworth* Ca. S.C.R. 11. 203; Also Ritchie *ib.* 203. See also Sir John Thompson's remarks as minister of justice, Can. Hansard 1892, April 6th pp. 1040 *et seq.*

(k) Cushing, 242.

(l) May, 98 *et seq.* 3 State trials 235, 335.

(m) 1, Wm. & Mary, Sess. 2 Ch. 2. 3 Rol. of Parl. 456, 611.

of the house. The cases are numerous in support of this power. (*n*). If a member should publish his speech his printed statement becomes a separate publication unconnected with any proceedings of parliament and he becomes liable for any infraction of the law in such publication. In the case of Wason and Walton, Lord Chief Justice Ellenborough laid it down that, "If a member publishes his own speech reflecting upon the character of another person and omits to publish the rest of the debate, the publication would not be fair and so, would not be privileged, but that a fair and faithful report of the whole debate would not be actionable". (*o*). The same privilege which protects debates extends also to reports and other proceedings in parliament. (*p*). The freedom of parliamentary papers has been provided for as above mentioned by dominion statute. (*q*).

V. Claim of Privilege.—At the commencement of each parliament the speaker of the House of Commons immediately after his election, in presenting himself before the governor-general in the Senate chamber, proceeds to claim on behalf of the Commons, "All their undoubted rights and privileges, especially that they may have freedom of speech in their debates, access to his Excellency's person at all reasonable times and that their proceedings may receive from his Excellency the most honourable interpretation." The formula has varied but little since 1792. (*r*).

If a speaker should be elected during a parliament it is not necessary that he should renew his claim as the

(*n*) May, 100; 4 L.J. 475; 5 *ib.* 77.

(*o*) May, 101, 1 Esp. N.P.C. c. 228, Creevy's case 1 M. & S. 278; 68 E.C.J. 704. 26 E. Hans. 1 s. 898. L.R. 4Q. B. 80 (1867).

(*p*) May, 101, Rex vs Wright 8 Term Reports 293.

(*q*) Dom. Stat. 31 Vict. c. 23, Rev. Stats. Can. Ch. 10 (Senate and House of Commons Act) Secs. 4-9.

(*r*) See Can. C. J. 1867-8; also 1873, 1874, 1883, 1891, 1896, 1901, 1905, 1909, Lord's C. J. 1792, U.C.J. 5 Leg. Ass. J. 1841.

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privileges having been duly demanded and granted at the beginning of a parliament continue in force during its legal existence. (s).

The claim of privilege of access to the person of his Excellency at all reasonable times is not the privilege of individual members but of the house as a body accompanying its speaker with an address. (t). It does not appear that the Senate requires to make this claim as its privileges, powers and immunities are settled by statute and by the law and custom of parliament. The Senate, however, on the first day of each session by a formal resolution appoints all its members a committee to consider the orders and customs of the Senate and privileges of parliament. Indeed, the claim made by the Commons and always promptly granted is probably a more or less empty ceremonial function following out ancient forms and customs. But whatever may have been the origin and cause of this custom and however great the concession of the Crown may appear the privileges of the Commons are nevertheless independent of the Crown and are enjoyed irrespectively of their petition. Some have been confirmed by statute and are therefore beyond the control either of the crown or any other power but parliament, while others, having been limited or even abolished by statute, cannot be granted or allowed by the Crown.

The rules of the Senate provide that questions as to the privileges of the Senate or any committee or member thereof shall have precedence over all other questions but that, except so far as is expressly provided, the rules on that subject shall in no way restrict the mode in which the Senate may exercise and uphold its powers, privileges, and immunities. (u).

(s) 2 Hatsell 227; May, 157; 71 L.J. 308; 11 E.C.J. 272; 94 *ib.* 274; 127 *ib.* 23; 139 *ib.* 74; 150 *ib.* 149; 160 *ib.* 249.

(t) May, 60-2, Rolls of Par. 191.

(u) Senate Rule 2, 41, 42.

VI. Libellous Reflections on Members.—Any scandalous and libellous reflection on the proceedings of the house is a breach of the privileges of parliament, but the libel must be based on matters arising in the usual transaction of the business of the house (*v*). So, libels or reflections upon members individually have also been considered as breaches of privilege which may be censured or punished by the house; but it is distinctly laid down by all the authorities: "To constitute a breach of privilege such libels must concern the character or conduct of members in that capacity. Aspersions upon the conduct of members as magistrates, or officers in the army or navy, or as counsel, or employers of labour, or in private life, are within the cognizance of the courts and are not fit for complaints to the House of Commons (*w*).

(*v*) May, 26 *et seq.* 81, 274. Sec res. 21st May, 1790. 45 E.C.J. 508. 29 L.J. 16; 15 Parl. Hist. 779; 60 E.C.J. 113; 65 *ib.* 252; case of Mr. O'Connell, 95 E.C.J. 307, 312, 316; 41 E. Hans. (3), 99-207; Mirror of Parl. 1838, Vol. 3, pp. 2157, 2219, 2263.

Special statutes have been enacted by the provinces to meet cases infringing upon the powers and privileges of the assembly or individual members thereof:—

Ontario.....	R.S. 1914, c. 11, ss. 43-61;
Quebec.....	R.S. 1909, Arts, 129-140;
Nova Scotia.....	R.S. 1900, c.2, ss. 18-28;
Prince Edward Island.....	1913, c. 1, ss. 1-8;
Manitoba.....	R.S. 1913, c. 112, ss. 34-51;
British Columbia.....	R.S. 1911, c. 137, ss. 1-9;
Saskatchewan.....	R.S. 1909, c. 2, ss. 27-40;
Alberta.....	1909, c. 2, ss. 37-50.

In New Brunswick, in all matters and cases not specially provided for by any statute of the province, the assembly, committees and members respectively have the like privileges, immunities and powers as are for the time being enjoyed by the House of Commons of Canada, committees or members.

N.B. Consol. Stats. 1903, c. 5, s. 1.

(*w*) May, 81; Cushing, 251-2. For recent English cases of libels on members individually and collectively, see Carlyle Examiner, reflecting on chairman of a committee, 113 E.C.J. 189, 192, 193, 196, 201, 202, 203. 150 E. Hans. (3), 1022, 1066, 1198, 1313, 1318, 1404; Pall Mall Gazette, reflecting on Irish members, 215 E. Hans. 530-542;

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The cases are very numerous in which parties have been punished for making unproved libellous charges against members. In 1844 a member having made charges at a public meeting against two members of the house, was ordered by the house to attend in his place and after he had been heard the house resolved that his imputations were wholly unfounded and calumnious and did not affect the honour or character of the members concerned (*x*). The house has also directed prosecutions against persons who have libelled members in the same manner as if the publications had affected the house collectively (*y*).

Scandalous imputations against members of committees of the house are equivalent to libellous charges against the house itself. A letter complaining that a member who had been nominated upon a select committee would be unable to act impartially upon it has been adjudged a breach of privilege (*z*). Many cases will be found in the older legislative records of Canada where the legislature or one of the members has taken action with respect to attacks upon them (*a*), but there are not many instances since 1867, of formal proceedings being taken by the House of Commons, or its members, on matters of this nature, although occasionally, members in speaking from time to

Mr. Lopes, member for Frome, reflecting on Irish members; 222 E. Hans. (3), 313-335; Mr. Evelyn Ashley, member for Poole, attacking Dr. Kenealy. Mr. Disraeli and others pointed out that the words complained of were not spoken in the house, and that Dr. K. was not at the time a member, and consequently could not raise a question of privilege. 222 E. Hans. (3) 1185-1204.

(*x*) May, 82, Mr. Terrond's case E.J.C. 235, 239. See also case of Plimsoll, 135, E.C.J. 46, 54. 250 E. Hans. (5), 797, 1108.

(*y*) 13 E.C.J. 230; 14 *ib.* 37.

(*z*) 155 E.C.J. 179; 87 *ib.* 278, 294; 72 *ib.* 232; 93 *ib.* 436; 113 *ib.* 189. 150 E. Hans. 3s. 1022, 1063, 1198.

(*a*) See cases of Isaac Todd and E. Edwards, Lower Can. J. (1805), 60, 64, 98, 118, 120, 156; Mr. Cary of Quebec Mercury, *ib.* 82, 88, 94; Ariel Bowman and E. V. Sparhawk, *ib.* (1823) 54, 89; R. Taylor (1832-3), 500, 501, 524, 528; W. Lyon McKenzie, Upp. Can. J. (1832), 33, 34, 35.

time upon matters of privilege, have taken occasion to strongly repudiate charges or insinuations against them.

In 1873 Mr. Elie Tassé, one of the translators in the service of the house, was brought to the bar and examined as to his connection with an article in the *Courrier d'Ouatouais*, reflecting on certain members. He admitted he was the writer and subsequently the speaker informed the house that Mr. Tassé was dismissed (*d*). In the same session the house resolved that an article in the *St. John Freeman*, of which Mr. Anglin, a member, was editor, was a libel on the house and certain members thereof; but no ulterior proceedings were taken as in the O'Connell case of 1838 (*c*). In 1894 the house resolved that an article in the *Ottawa Free Press* was a "scandalous, false and malicious libel upon the honour, character and integrity of the speaker, and a contempt of the privileges and of the constitutional authority of this house" (*d*). During the session of 1906, the member for North Toronto complained of a certain article that appeared in *La Presse* newspaper, published at Montreal. At the request of the hon. member the article was read by the clerk at the table (This article was a violent attack on the hon. member), whereupon, on the motion of the hon. Mr. Foster it was resolved that Mr. J. E. E. Cinq-mars, journalist, and member of the press gallery, be summoned to appear at the bar of the house on Thursday the 7th of June at the hour of 3.30 p.m., to be examined

(b) *Can. Com. J.* (1873), 133-4. *Parl. Deb.* 66-67.

(c) *Can. Com. J.* (1873), 167-169; *Parl. Deb.* 80-84. An amendment was proposed that it was not advisable to interfere with the freedom of the press, but it was negatived. In the session of 1878, a Mr. Preston, one of the sessional clerks, was suspended for writing a letter in a newspaper reflecting on Mr. White of E. Hastings; the attention of the speaker was privately directed to the matter and he acted immediately after making the necessary inquiry through the clerk of the house. *Can. Hans.* (1878), 2369. In 1894 Dr. Wickstead, in the law branch, was dismissed by Mr. Speaker White for serious reflections on members of the Commons which he refused to retract when the opportunity was given him.

(d) *Can. Com. J.* (1894), 108-9. *Can. Hans. Apr.* 25th. 1894.

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touching the article complained of. On Thursday the special order for the attendance at the bar of the house having been read, the sergeant-at-arms reported that Mr. Cinq-mars was in attendance. The Clerk read in English a translation of the article complained of. Some questions by leave of the house being put to Mr. Cinq-mars, he requested time to consult counsel and prepare a defence. He was ordered to attend again on Thursday of the following week at 3.30 p.m. On that date Mr. Cinq-mars again appeared at the bar. The article was read in English and a series of questions was put to Mr. Cinq-mars bearing upon the subject matter. He admitted that he wrote the article complained of and defended it upon the general ground of the privilege of the press and declared that he wrote without personal animosity and merely in what he deemed public interest. His defence was quite lengthy and replete with quotations from Hansard and other publications. After considerable debate it was ordered, on the motion of Sir Wilfrid Laurier, "That the passages in La Presse newspaper complained of, pass the bounds of reasonable criticism and constitute a breach of the privileges of the house; that Mr. Cinq-mars, the writer of the article had incurred the censure of the house; that he be recalled to the bar and Mr. Speaker do communicate this resolution to him. This having been done Mr. Cinq-mars was discharged. (e). While these references prove the undoubted rights of parliament in such cases and its power to discipline and punish offenders it must be confessed that the forms of procedure necessary to vindicate such rights are unsatisfactory, being both clumsy and unpractical. That a more summary and direct method of dealing with persons violating the privileges of parliament and its members could be devised, can scarcely be doubted.

VII. Proceedings of Select Committees.—It is an old order of parliament that, "the evidence taken by any

(e) Can. Com. J. vol. 41 (1906), 342, 372, 377; Can. Hans. (1906), vol. III pp. 4030, 4707, 4791, 5266 to 5310.

select standing committee of the house, and the documents presented to such committee, and which have not been reported to the house, ought not to be published by any member of the committee or by any other person" (*f*). As committees are generally open to the press and the public the house is very rarely disposed to insist upon the rule (*g*). It is always within the power of a committee to conduct its proceedings with closed doors and thus prevent the hasty publication of its proceedings until they are formally reported (*h*). Even members of parliament who are not members of a select committee ought to retire when the committee is about to deliberate (*i*). A committee upon a matter of privilege may be appointed without formal notice, such a committee having been held not to be governed by the orders applicable to the appointment of other select committees (*j*).

VIII. The Assaulting, Threatening or Challenging of Members.—The assaulting, menacing or insulting of any member in his coming to or going from the house, or on account of his behaviour in parliament, is a high infringement of the privileges of the house—in the words of the English resolution "a most outrageous and dangerous violation of the rights of parliament and a high crime and misdemeanor" (*k*).

(*f*) 21st April, 1837, 92 E.C.J. 282.

(*g*) 223 E. Hans. (3) 787, 790, 793 to 795, 810, 1114, 1130, 1224.

(*h*) In the Eng. Order adopted 1882, for the appointment of two standing committees it is provided that, "Strangers shall be admitted except when the committee orders them to withdraw." S.O. 22.

(*i*) May. 408, 409; see note.

(*j*) 112 E.C.J. 232. 146 E. Hans. 3s. 97, 113 E.C.J. 68. 48 E. Hans. 3s. 1855-1867. 143 E.C.J. 484. May, 245, 403. Can. Com. Rule 47; Senate Rule 41.

(*k*) May. 79, Res. Apr. 12th, 1733; 22 E. Com. J. 115; 38 *ib.* 535, 537; 79 *ib.* 483; see Leg. Ass. J. (Can.), 1850, pp. 160, 164. Can. Com. j. 423, 436. Can. Hans. (1879), 1980-2, 2044; *ib.* (1880), 44, 182; Can. Com. J. 24, 58. (1880). 15 E. Com. J. 405; 16 *ib.* 562. 79 *ib.* 483; 82 *ib.* 395, 399.

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It has also been resolved that, "to endeavour to compel members by force to declare themselves in favour of or against any proposition then depending or expected to be brought before the house," is a breach of privilege which should be severely punished (*l*).

The terms of these resolutions are intended to prevent any outside interference whatever with members in the discharge of their duties. They include challenges to members (*m*).

The criminal code of Canada enacts that "everyone is guilty of an indictable offence (liable to fourteen years imprisonment) who confederates, combines or conspires with any person to do any act of violence in order to intimidate, or to put any force in constraint upon any legislative council, legislative assembly or house of assembly" (*n*).

IX. Disobedience to Orders of House.—It has been frequently decided that the following matters fall within the category of breaches of privileges:—

1. Disobedience to, or evasion of, any of the orders or rules which are made for the convenience or efficiency of the proceedings of the house (*o*).

2. Indignities offered to the proceedings of parliament (*p*).

3. Tampering with a witness in regard to the evidence to be given by him before the house, or any committee of the house (*q*).

(*l*) Res. June 1st, 1780; 37 E.C.J. 902.

(*m*) May, 79, 64 E.C.J. 210, 213; 74 E. Hans. (3), 286; Can. Leg. Ass. (1854), 351, 352, 353.

(*n*) 55-56 Vict. C. 29 s. 70 R.S.C. (1906) vol. III, ch. 146, sect. 79

(*o*) 4 Lords J. 247; 87 E.C.J. 360; 88 *ib.* 218; 90 *ib.* 504; 91 *ib.* 338; 92 *ib.* 282; 134 E. Hans. (3), 452; 249 *ib.* 989. See May, 131.

(*p*) May, 72-76, 78.

(*q*) May, 75, 86, 125, Sess. Orders, 12 E. Hans. (1) 461; 146 *ib.* (3), 97, 21 E.C.J. 842; 64 *ib.* 54; 82 *ib.* 473; 88 *ib.* 212, 218; 90 *ib.* 478, 500, 501, 504, 514, 601; 29 E. Hans. 3s. 1279; 90 E.C.J. 564, 571, 575, 577; 103 *ib.* 252; 112 *ib.* 354, 377; 147 E. Hans. 3s. 565, 1085; 121 E.C.J. 239; 122 *ib.* 129, 157, 166; 152 *ib.* 361, 365.

4. Assault or interference with officers of the house while in the execution of their duty (r).

5. Attempts to influence the decision of a committee on a bill or other matter before it for consideration. (s).

To commence proceedings in a court of law against any person for his conduct in obedience to the orders of parliament or in conformity with its practice is a breach of privilege. The courts of law have refused to entertain actions against members of parliament or officers of the house for acts done in the transaction of parliamentary business.

X. Attempt to Bribe Members.—The following are the orders of the House of Commons on this subject:—
"The offer of any money or other advantage to any member of this house, for the promoting of any business, or any matter depending or to be transacted in parliament is a high crime and misdemeanor and tends to the subversion of the constitution." The same rule has ever been the law of parliament in England. In 1677 Mr. Ashburnham was expelled for receiving money from the French merchants for business done in the house. In 1694 Sir John Trevor was declared guilty of a high crime and misdemeanor in having, while speaker of the house, received a gift of one thousand guineas for aiding in the passage of a certain bill. In 1695 a Mr. Guy, for taking a bribe of two hundred guineas, was committed to the tower, and Mr. Hungerford was expelled for receiving money for his services as chairman of a committee on a bill. The acceptance of fees by members for professional services connected with any proceedings or measures in parliament, is also forbidden under the spirit of the rule—nor is it consistent with parliamentary or

(r) 19 E.C.J. 366, 370; 20 *ib.* t85. L.C.J. (1823-4), tt3-4, May, 85, 86, 87.

(s) See 135 E.C.J. 70-77. E. Hans. vo.s. 247, 248, 249. (1879).

(t) *Chaffers vs Goldsmid*, Westminster County Court, 13 Aug. 1891, and cases cit-d, May, p. 86.

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professional usage for a member to advise as paid counsel upon any private bill before parliament. (*u*).

XI. Privileged Persons not Members.—Parliament will always extend its protection and privileges to all persons who are in attendance in obedience to the orders of the house, or are engaged in business before the house or some of its committees (*v*). In many cases the house has given orders that such persons having been arrested by process from the courts of law, should be delivered out of custody (*w*). Precedents are found for the granting of this protection to persons attending, to prefer or prosecute a private bill, or other business in parliament (*x*); or to the solicitor of a party (*y*); or to prosecute a petition (*z*); or to claim a seat as a member (*a*); or attending as a witness before the house or a committee (*b*); witnesses, as well as counsel, have been protected from actions at law for what they may have stated before committees (*c*).

It is also provided in the statute defining the privileges of the houses of the Canadian parliament that, in case a person is prosecuted for publishing any parliamentary report or paper, either by himself or by his servant, proceedings may be stayed by his laying before the court a certificate from the speaker or clerk of either house, as the

(*u*) Rule 81, Can. H. C. Eng. Res. 2nd May, 1695, 9 E.C.J. 24; 11 *ib.* 274, 275; 17 *ib.* 493-4; 5 Parl. Hist. 886; *ib.* 910; May, 84, 85; 83 E.C.J. 107. Can. Com. J. (1873), 2 sess., 134-9.

(*v*) 1 Lex. p. 380. 1 Hatsell, 9, 11, 172; 1 E.C.J. 505; 2 *ib.* 107; 9 *ib.* 62; 13 *ib.* 521; 18 *ib.* 371; 21, *ib.* 247; 74 *ib.* 223; 78 *ib.* 389. Eng. Hans. 2s. 970.

(*w*) 48 E.C.J. 426.

(*x*) 1 E.C.J. 702, 863, 921, 924; 26 *ib.* 797; 27 *ib.* 447, 537; 88 L.J. 189; 92 *ib.* 75, 76.

(*y*) 9 E.C.J. 472. 24 *ib.* 170.

(*z*) 2 E.C.J. 72.

(*a*) 39 *ib.* 83; 48 *ib.* 170.

(*b*) 1 E. C. J. 702., 863; 8 *ib.* 525; 9 *ib.* 20, 366, 472; 12 *ib.* 364, 610.

(*c*) 11 E.C.J. 591, 613, 699; 100 *ib.* 672, 680, 687; 81 E. Hans. (3), 1436. 82 *ib.* (3) 431, 495, May 127, 128.

case may be, stating that such report or paper was published under the authority of parliament (*d*).

XII. Punishment of a Contempt of the Privileges of Parliament.—A contempt of the privileges of the house will be punished according to its nature. In some cases the house will not deem it necessary to proceed beyond an admonition or reprimand, but occasions may arise hereafter, as in the past, when it will be found necessary to resort to the extreme measures of imprisonment. The House of Lords have claimed to be a court of record and as such have power not only to imprison but to impose fines. They also imprison for a fixed time and order security to be given for good conduct and their customary form of commitment is by attachment. The Commons, on the other hand, commit for no specific period and they do not impose fines (*e*).

The modern practice of the Commons in England is to commit persons in contempt to the custody of the serjeant-at-arms, or to Newgate, or to the tower, where they are kept until they are duly discharged (*f*). In Canada the offender for contempt against the Commons, if committed is imprisoned in the Carleton County jail, in the city of Ottawa (*g*). Generally no period of imprisonment is named and the prisoner, if not previously discharged by order of the house, is released at prorogation. If they are held longer in custody they would be discharged by the courts upon writ of habeas corpus (*h*).

(*d*) 31 Vict. c. xxiii, (1868).

(*e*) The last case of a fine imposed by the Commons was in 1866, when a fine of £1,000 was imposed upon one Thomas White who had absconded after he had been ordered into custody of the serjeant-at-arms.

(*f*) 249 E. Hans. (3), 980; 97 E.C.J. 180, 209; 106 *ib.* 151; 112 *ib.* 196; 134 *ib.* 381; 150 E. Hans. 3s. 1198

(*g*) See case of R. C. Miller, sess. 1912-13. Can. Com. J. pp. 254, 266-274, 277, 279.

(*h*) Lord Penman's judgment in *Stockman vs Hansard* (1839), but this rule does not extend to an adjournment, 10 E.C.J. 537, but a person not sufficiently punished in one session may be again committed in the next until the house is satisfied. 249 E. Hans. (3), 989.

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XIII. Power of Commitment.—Sir Erskine May has laid down the principles upon which the power of commitment is based. "The power of commitment with all the authority which can be given by law, being established, it becomes the keystone of parliamentary privilege and contempt; and if the warrant recite that the person to be arrested has been guilty of a breach of privilege, the courts of law cannot inquire into the grounds of the judgment, but must leave him to suffer the punishment awarded by the Commons house of parliament by which he stands committed" (i).

Very many cases are recorded in the journals of the legislatures of Canada previous to 1867, of the exercise by those legislatures of the extreme power of commitment for breaches of privilege (j). Though doubts have always been entertained as to the powers of those legislatures in this particular, they never failed when the occasion arose, to assert what they believed to be privileges incident to a legislative assembly, and the provincial legislatures since 1867 have invested themselves by statute with power to punish for contempt. The privileges, however, of the dominion houses are expressly provided for in the act of union, and it is always possible for them to vindicate their rights in the most ample manner.

(i) May, 69. It has even been decided that a person so committed cannot be admitted to bail. 1 Wil. 200, Wright, J., in Murray's case.

(j) *Low. Can. J.* (1817), 462, 476, 486, 502; Mr. Monk for contempt. *Ib.* (1833), 528; Mr. Taylor, member committed for attack on Speaker Papineau, in *Quebec Mercury*. *Ib.* (1835), 24, 29, 30, 56; Mr. Jessop, collector of customs for not presenting certain returns on order of the house, *Leg. Ass. J.* (1846) 119, 150, 156-7, W. Horton and T. D. Warren, for not returning a commission issued by the house. *Ib.* (1849), 148, 282, 292, John Milla, returning officer, for evading summons of house. See index to journals of 1854-5, under head of *Leg. Ass.*, for cases of returning officers committed to goal for misconduct at certain elections. Also *Leg. Ass. J.* (1858), 439, 440, 444-6, 488, 505, 940-5; returning officers guilty of frauds. *Leg. Ass. J.* (1866), pp. 257, 263; Mr. Lajoie assulting Mr. Dorion. See also Miller case *Can. Parliamentary proceedings*, 20th Feb. 1913, sess. 1912-13.

It is established that the power of commitment for contempt is incident to every court of justice, and more especially belongs to the houses of parliament as essential to the maintenance of their undoubted rights and privileges (*k*); that it is incompetent for other courts to question the privileges of the houses of parliament on a commitment for an offence which they have adjudged to be a contempt of those privileges; that they cannot inquire into the form of the commitment, even supposing it to be open to objection on the ground of informality (*l*); that when the houses adjudge anything to be a contempt or a breach of privilege, "their adjudication is a conviction, and their conviction in consequence, an execution". Although by means of the habeas corpus act all persons who have prisoners in custody must produce them before the judges and it is competent in this way for the judge to look at the warrant of commitment. Yet the parties committed by parliament cannot be admitted to bail nor the causes of commitment inquired into by the courts of law. It has been so adjudged in numerous cases and has been confirmed by resolution of the House of Commons and decisions of the courts (*m*); but there is a qualification to be added to the above general statement. When it appears upon the face of the warrant of commitment that the causes of the commitment were beyond the jurisdiction of the house it is probable that the sufficiency of the warrant would be inquired into. "It is presumed with respect to such writs that, they are duly issued and in cases where they have jurisdiction unless the contrary appears in the face of them." But it is not necessary that any cause of commitment should appear upon the warrant nor that

(*k*) *Ellenborough, C. J., Burdett vs Abbott*, 14 East I. Can. Sup. Court R. vol. ii, 177.

(*l*) *Lord C. J. Abbott vs Hobhouse*, 2 Chit. R. 207.

(*m*) *De Grey, C. J. in Brass Crosby's case*, 19 Howell St. Tr. 1137; 3 Wils. 188, 203; 2 E.C.J. 960; 5 *ib.* 221; 9 *ib.* 356, 357; 5 Howell St. Tr., 365, 948, 1269. *Styles*, 415; 12 E.C.J. 174; 14 *ib.* 565, 559; *May*, 69, 70 and cases there cited.

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the prisoner should have been adjudged guilty of contempt. (*n*).

XIV. Procedure on a Breach of Privilege.—The house will not proceed summarily against a person charged with an offence against its authority or privileges, but will give him an opportunity of defending himself (*o*). Whenever a complaint is made against a person who is not a member, the usual course is to make a motion that the offending party or parties do attend at the bar of the house at a fixed time (*p*). If, when the order of the day has been read at the appointed time, the sergeant-at-arms informs the house that the person summoned is not in attendance, or cannot be found, the house will instruct the speaker to issue a warrant for his arrest (*q*). If the person summoned obeys the order of the house, or is brought to the bar under arrest, he will be examined as to the offence of which he is accused, and the house will consider whether he has excused himself or whether he is guilty of the offence. If the House come to the latter conclusion, he will be declared guilty of a breach of the privileges of the house, and ordered into custody (*r*). Or if his explanations are satisfactory he will be discharged from further attendance.

(*n*) 14 East I. Judge exchequer court, *Gossett vs Howard*, Phillip's Rep. 605.

(*o*) A person must be first examined to see whether he has been guilty of contempt before ordering him into custody. 146 E. Hans. (3). 101-2; 247 *Ib.* 1875.

(*p*) 64 E. Com. J. 213; 82 *Ib.* 395, 399; 113 *Ib.* 189; 129 *Ib.* 181. 213 E. Hans. (3), 1543; 248 *Ib.* 971, 1100; May, 86. Can. Com. J. (1873), 133; *Ib.* (1879), 423; *Ib.* (1887), 121; *Ib.* (1894), 242. Or in very aggravated cases he has been immediately ordered into the custody of the sergeant at-arms. Can. Com. J. (1873, 2nd sess.), 135, 139. But it is more regular to examine him and find whether he is guilty of an offence before taking him into custody. 146 E. Hans. (3), 103-4.

(*q*) 4 Can. Com. J. (1873), 133; *Ib.* (1894), 288, 298, 300.

(*r*) 113 E. Com. J. 192. 150 E. Hans. (3), 1066-1069.

The accused may be heard by counsel if the House think fit to grant his prayer (*s*). An offender may be discharged at any time upon causing a petition, expressing proper contrition for his offence, to be presented (*t*). Sometimes the house may deem it expedient to refer a complaint to a committee, and to stop all proceedings until it make a report (*u*). It is, however, no longer the practice in England to refer breaches of privilege to a committee of privileges. Indeed the English committee of privileges is now only appointed *pro forma*, and it is the present practice, when a complaint is made, to deal with the matter with the usual formalities in the house itself, and to punish or acquit the offender according to his explanations. The references to a committee appear to be in cases where there is need of particular inquiry in order to reconcile conflicting statements, and then the house suspends judgment until a report is made (*v*). If the examination of a person before the house cannot be terminated at one sitting, he will be ordered to attend at a future time, or he will be continued in the custody of the serjeant-at-arms.

When the offence is contained in a newspaper, the latter must be brought up and read at the table unless the extracts are of an inordinate length, and then the member must conclude with a motion founded on the allegation that he has brought forward. It is irregular to make such a complaint unless the member intends to conclude with a motion. But such motion has been confined to declaring the article or the letter to be a breach of privilege without

(*s*) Leg. Ass. J. (1852-3.), 216, 313, 315. *Ib.* (1854-5), 631, 639. No record of counsel's remarks appears in the journals. Leg. Ass. J. (1854-5), 677, &c.; Can. Com. J. (1877), 187; *ib.* (1906) 346 *ib.* (1913), 266.

(*t*) Leg. Ass. J. (1858), 488, 945; 113 E. Com. J. 202-3; 248 E. Hans. (3), 1536, 1632.

(*u*) 112 E. Com. J. 232. 146 E. Hans. (3) 97.

(*v*) May, 88, 247 E. Hans. (3), 1878, 1886

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further action (*w*). When a member has reason to complain of a speech made by another member outside the house he must bring up the paper, but it is customary, as a matter of courtesy, to give notice of his intention to the member complained of and ask him formally whether the report is correct, before proceeding further in the matter (*x*).

A member complaining of the report of his speech in a newspaper has been stopped by the speaker, when it appeared that he had no copy of the newspaper on which to found his complaint. By rule 47 of the House of Commons and Senate rules 25 and 41, questions of privilege take precedence over all other matters and are taken into consideration immediately.

XV. Expulsion and Suspension of Members.—The right of a legislative body to suspend or expel a member for what is sufficient cause in its own judgment is undoubted. Such a power is absolutely necessary to the conservation of the dignity and usefulness of a body. Yet expulsion, though it vacates the seat of a member, does not create any disability to serve again in parliament (*y*). "The power to expel a member is not, in the British House of Commons", says an eminent American commentator, Story, "confined to offences committed by the party as a member, or during a session of parliament, but extends to all cases where the offence is such as, in the judgment of the house, unfits him for parliamentary duties." In the United States Congress it requires the concurrence of two-thirds of the members to expel an offending member (*z*).

(*w*) 59 E. Hans. (3) 507. 82 Parl. Deb. 4 s 1070; 99 E.C.J. 235, 239, 109 *ib.* 318. 136 *ib.* 272. 148 *ib.* 66. 156 *ib.* 355. 113 E.C.J. 189; 150 E. Hans. (3s) 1022, 1063 May, 89. 185 E. Hans. (3) 1667; 219 *ib.* 394-6. Can. Com. J. (1894), 108.

(*x*) 74 E. Hans. (3) 139; 222 *ib.* 1185; 236 *ib.* 342; 229 E. Hans. (3) 532-536; 135 E.C.J. 57. 239 E. Hans. (3 ds.) 532, 536.

(*y*) 32 E.C.J. 229. See speech of Mr. Wedderburn I Cavendish Deb. 352. May Const. Hist. (7th Ed.) 2-26. 38 E.C.J. 977; 137 *ib.* 62.

(*z*) Story Com. 837, 838.

Expulsion from parliament, though a frequently exercised power, has been reserved for flagrant cases of misconduct, such as would render the person so disciplined unfit to sit in parliament or whose continued membership would be a discredit to the house. Members have been expelled for having been guilty of rebellion, forgery, perjury, breaches of trust, corruption or of conduct unbecoming the character of an officer and a gentleman, or of contempt, libels and other offences against the house itself (*a*).

Where members have been legally convicted of any offence, it is customary to lay the record of conviction before the house. In other cases the proceedings have been founded upon reports of commissioners or committees of the house or other sufficient evidence and it is customary to order the member, if absent, to attend in his place before an order is made for his expulsion (*b*). This power has been repeatedly exercised by colonial parliaments and instances of expulsion from the English parliament are numerous (*c*). A memorable case is that of Mr. Bradlaugh in 1882, when the house resolved that, "having disobeyed the orders of the house, and having in contempt of its authority, irregularly and contumaciously pretended to take and subscribe the oath required by law, he be expelled from this house" (*d*).

The House of Commons of England has also always upheld its dignity and declared unfit to serve in parliament such persons as have been convicted of felony. Among the latest cases are those of Mr. O'Donovan Rossa, Mr. Mitchell and Mr. Davitt, already mentioned.

On this occasion, Sir Roundell Palmer (now Lord Selborne) said that it was "impossible that a man convicted of treason or felony and suffering punishment for that

(*a*) May, 56, 57, and cases there cited. Cushing, 250.

(*b*) 39 E.C.J. 770; 67 *ib.* 176; 69 *ib.* 433. 11 *ib.* 283; 20 *ib.* 141, 391; 22 *ib.* 661; 75 *ib.* 399; 67 *ib.* 870; 51 *ib.* 661; 65 *ib.* 399; 67 *ib.* 176; 111 *ib.* 367.

(*c*) May, 56, 57; 18 E. Com. J. 336, 467; 20 *ib.* 702; 65 *ib.* 433-5 Parl. Hist. 910; 144 E. Hans. (3) 702-10.

(*d*) 137 E.C.J. 59, 61.2.

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offence, could be a fit person to sit in parliament, on account of the infamy attaching to that crime. A sentence of transportation for life, or of penal servitude for life—which, indeed, makes it necessarily impossible for a man to be present for a single moment in this house—disqualifies the person subject to it from being a member of parliament" (e).

The following are examples of expulsion found in the records of Canadian parliamentary history:—

In 1800, C. B. Bouc, member for Effingham, Lower Canada, was expelled on evidence being given that he had been convicted at the assizes of a conspiracy with sundry other persons, unjustly and fraudulently to obtain of one E. Dorion large sums of money. He was re-elected more than once, but finally disqualified by statute (f).

In 1829, Mr. Christie, member for Gaspé, was expelled on the report of a select committee of the Lower Canada assembly, on various allegations of misconduct, but ostensibly for having, as an extreme partisan of the government, badly advised the governor and procured the dismissal of certain magistrates from the commission of the peace, on account of their political opinions and votes in the assembly. He was re-elected and expelled several times (g).

In 1831, the legislative assembly of Upper Canada declared Mr. William Lyon Mackenzie "guilty of gross, scandalous, and malicious libels, intended and calculated

(e) 199 E. Hans. (3), 122-152.

(f) *Low. Can. J.* (1800), 54, 76, 96; *ib.* (1801), Jan. 24; *ib.* (1802), 324. Christie's Lower Canada, i. 210, 221. 42 Geo. III., c. 7, Lower Can. Stat.

(g) *Lower C. J.* (1829), 447, 465, 479, 493; *ib.* (1830), Jan. 1st; *ib.* (1831), November; *ib.* (1832), 12; *ib.* (1833), 25. Christie's Hist., iii. 240. This case illustrates the extreme lengths to which party spirit carried parliamentary majorities in the early times of Canada. He was not even allowed to confront his accusers before the committee. The question was referred to the British government, which disapproved of the action of the legislative assembly, but at the same time admitted that the resolution of the assembly was irreversible except by itself. Despatch of Viscount Goderich; *Low. Can. J.* (1832-3), 50, 57, 129, 136, 137, 138.

to bring this house and the government of this province into contempt, etc." He was expelled, and having been subsequently re-elected was declared incapable of holding a seat in the house during that parliament. On again presenting himself, he was forcibly expelled by the sergeant-at-arms. As in the case of Mr. Wilkes, in England, to which we refer further on, the assembly acted arbitrarily and illegally. In a subsequent parliament, all the proceedings in Mr. Mackenzie's case were expunged from the journals (*h*).

In 1858 Mr. John O'Farrell was expelled for fraud and violence at the election for Lotbiniere (*i*).

In 1874, on motion of Mr. (now Sir Mackenzie) Bowell, Louis Riel, who was accused of the murder of Thomas Scott during the Northwest troubles, was expelled as a fugitive from justice, the necessary evidence having been previously laid before the house (*j*). Riel was again returned to parliament during the recess, and soon after the house met, in 1875, the premier (Mr. Mackenzie) laid on the table the exemplification of the judgment roll of outlawry, and then moved "that it appears by the said record that Louis Riel, a member of this house, has been adjudged an outlaw for felony." This motion having been agreed to, Mr. Mackenzie moved for the issue of the new writ for Provencher "in the room of Louis Riel, adjudged an outlaw," which also passed by a large majority (*k*).

(*h*) Upp. Can. J. (1832-3), 9-10: 41, 132; *ib.* (1833-4), 10, 15, 23-25, 46, 54, 55, 104; *ib.* (1835), 17, 24, 25, 26, 59, 141, 142, 408; Mackenzie's Life, by C. Lindsay, chaps. 13, 14, 15, and 17. See also case of Mr. Durand, member for Wentworth, expelled for committing a libel, and a high contempt of the privileges of the house: Upp. Can. J., 4 March, 1817.

(*i*) Leg. Ass. J. (1858), 454.

(*j*) Can. Com. J. (1874), 8, 10, 13, 14, 17, 18, 32, 37, 38, 67, 71, 74. See case of Mr. James Sadlier in 1857, charged with divers frauds, and a fugitive from justice, 144 E. Hans. (3), 702. Riel actually took the oath in the clerk's office, but not his seat in the chamber.

(*k*) Can. Com. J. (1875), 42, 67, 111, 118, 122, 124, 125. Can. Hans. 139, 144, 307-322. See Votes and Pro. 1875 and Can. Hans. same date.

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In the session of 1891, after the adoption of a report of the committee of privileges and elections highly condemnatory of the acts of Thomas McGreevy, a member of the House of Commons, in connection with certain contracts for public works it was resolved, *nem. con.*, that the said member "having been guilty of a contempt of the authority of the house by failing to obey its order to attend in his place therein, and having been adjudged guilty by the house of certain of the offences charged against him on the eleventh day of May last, be expelled from the house." A warrant for a new writ of election was at once ordered, as the law leaves the matter in the hands of the house in such cases (*l*).

The cases of Mr. Christie and Mr. Mackenzie, given in the foregoing list of precedents, find a parallel in the famous case of Mr. Wilkes, who was expelled in 1764 from the British House of Commons for having uttered a seditious libel. A contest then arose between the majority in the house and the electors of the county of Middlesex. The house in 1769 declared him ineligible to sit in that parliament, when he had been again elected for Middlesex. Though Mr. Wilkes was re-elected by a large majority of the electors, the House ordered the return to be amended, and his opponent (who had petitioned the house) to be returned as duly elected. The efforts of the electors of Middlesex were unavailing for the time being to defeat the illegal action of a violent partisan majority. Many years later, in 1782, when calmer counsels prevailed, the resolution of 1769 was expunged from the journals "as subversive of the rights of the whole body of electors of the kingdom"—which is the identical language subsequently used in expunging the various proceedings relative to Mr. Mackenzie

(*l*) For history of this inquiry into the acts of the member in question, and the management of the departments of public works in connection with the lettering of public contracts, see *Can. Hans. and Jour.*, 1891, May 11, and Sept. 16, 21, 22, 23, and 24, and *App. to Jour.*, where proceedings and evidence are given in full.

(*m*). No principle is more clearly laid down by all eminent authorities on the law of parliament than this:—"That parliament cannot create a disability unknown to the law, and that expulsion, though vacating the seat of a member, does not create a disability to serve again in parliament"

(*n*). Both houses of parliament "must act within the limits of their jurisdiction, and in strict conformity with the laws. An abuse of privilege is even more dangerous than an abuse of prerogative. In the one case, the wrong is done by an irresponsible body; in the other, the ministers who advised it are open to censure and punishment. The judgment of offences especially should be guided by the severest principles of law" (*o*).

The house may proceed in various ways to inquire into the propriety of allowing a member to associate with other members of the house, when he is accused of a grave offence. Committees and commissioners have at times been appointed to inquire into the allegations (*p*). It is the proper course to lay the record of conviction before the house, when a member has been convicted in a court of justice (*q*). The house, however, is not necessarily bound to the necessity of a conviction, for it may, apart from mere legal technicalities, acting upon its moral conviction, but at the same time most cautiously, proceed to the expulsion of a member. By reference to the precedents given above, the proper procedure in all cases will be more clearly understood (*r*).

The suspension of members from the service of the house is another form of punishment sometimes resorted

(*m*) 32 E. Com. J., 229; 1 Cavendish D., 352; 38 E. Com. J., 977; 2 May's Const. Hist., 2-26. See also for other examples of excess of jurisdiction 2 E. Com. J., 158; 2 *ib.* 301; 2 *ib.* 473; 8 *ib.* 60; 17 *ib.* 128.

(*n*) May, 55 *et seq.*

(*o*) May's Const. Hist., vol. ii. 26-7, 9th ed.

(*p*) 11 E.C.J. 283; 20 *ib.* 391; 21 *ib.* 870; 65 *ib.* 433; Can. Com. J. (1876), March 16th and 28th; also Hans. of those dates.

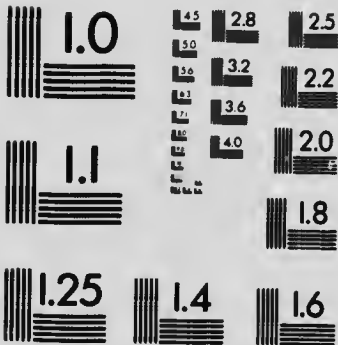
(*q*) 67 E.C.J. 176; 69 *ib.* 433; 222 E. Hans. (3) 415.

(*r*) See Anson's Law and Custom of the Constitution, Part 1, 169.



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to in cases of minor gravity. Reprimand of a member by the speaker by order of the house is also reserved for some offences. In the case of a reprimand the remarks of the speaker are entered on the Votes and Journals after motion duly made (s). "There is no doubt", says an authority, "that under the common law of parliament any member, wilfully and vexatiously obstructing public business would be held guilty of a contempt of the house, and would be liable to suspension from his duties as a member." On the 27th April, 1641, Mr. Hollis, a member was suspended during the session (t).

On the 25th July 1877, it was laid down from the chair, "that any member guilty of contempt would be liable to such punishment, whether by censure, by suspension from the service of the house, or by commitment as the house may adjudge" (u). No necessity has ever arisen in the Canadian parliament for exercising this extreme power, which clearly ought to be used only in a grave emergency. It has, however, been found necessary to adopt a new standing order on the subject in the English House of Commons, on account of the conduct of certain members who have wilfully and persistently obstructed public business (v).

XVI. Power to Summon and Examine Witnesses.—
Procedure.—The Senate and House of Commons have the right, inherent in them as legislative bodies, to summon and compel the attendance of all persons, within the limits of their jurisdiction, as witnesses, and to order them to bring with them such papers and records as may be required for the purpose of an inquiry.

When the evidence of any person is shown to be material in a matter under consideration of the house, or a com-

(s) Case of Mr. O'Connell 1838, *Mirror of Parl.* vol. iii, pp. 2231, 2263, E.C.J. 1838, Feb. 28th.

(t) 3 E.C.J. 302; 6 *ib.* 123; 8 *ib.* 289; 9 *ib.* 120, 156; 10 *ib.* 846.

(u) 132 E.C.J. 375.

(v) Standing Order 28th Feb., 1880; amended 1882 and 1902.

mittee of the whole, a member will move that an order be made for his attendance at the bar on a certain day. In the Senate, as in the Lords, the order should be signed by the clerk of the parliaments (*w*). In the Commons the order is signed by the clerk of the house and served by the serjeant or his deputy when the witness is within or near the city of Ottawa; if not, he will be informed by post or telegraph, or in special cases by a messenger. The attendance of a witness before a select committee is secured by an order of the committee, signed by the chairman, and if he fail to appear when duly summoned, his conduct is reported to the house and an order is made that he appear at the bar of the house (*x*).

When the order of the day for the attendance of a witness has been read in due form, he will be called to the bar and examined in accordance with prescribed forms (*y*).

When the witness appears at the bar (*z*) of the house, each question will be written out and handed to the speaker; who, strictly speaking, should read it to the witness; but on certain occasions a considerable degree of latitude is allowed for the convenience of the house, and questions put directly by members have been supposed to be put through the speaker (*a*). As a matter of correct practice, when a member asks a question it should be put to the house; and it being agreed to, the witness must answer it

(*w*) May, 424. The speaker signs in divorce cases. Senate Rule 148.

(*x*) Same practice in the English House of Commons. May, 425.

(*y*) Parl. debates in Mail and Times, 1873, p. 38, show the procedure on such occasions. For the latest case of examination see Can. Com. J. (1887), 187-93; Hans. 618 *et seq.*; Can. Com. J. (1874), 8, 10, 13, 14, 17, 18, 32, 37, 38.

(*z*) Members are examined in their places (Leg. Ass. J. 1847, p. 4); the speaker in the chair; *ib.* p. 6. May, 426. The bar is down during the examination of a witness not a member. May, 432-433, 2 Hatsell, 140.

(*a*) 146 E. Hans. (3), 97. See Sen. Hans. (1882), 127.

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distinctly and audibly, as soon as he has read it (*b*). In case a member objects to a question on any ground, he must state his objections, and the speaker will decide (*c*). If the evidence of a witness cannot be completed in one day, his further attendance will be postponed till a future time, and he will be ordered to attend accordingly (*d*).

All the evidence given by a witness at the bar is printed in the journals of the house with the names of the members asking the questions (*e*).

If a witness should be in custody of any officer of the law, the speaker will be ordered to issue his warrant, which will direct the said officer to bring the witness before the house at the time required (*f*).

A witness who neglects or refuses to obey the order of the house will be sent for in custody of the serjeant-at-arms (*g*). Any person refusing to obey this or any other order, or aiding any witness to keep out of the way, may be declared guilty of a contempt of the house and brought before it in custody that he may be dealt with according to its will and pleasure (*h*). Witnesses who refuse to answer proper questions will be admonished and ordered to answer them (*i*). If they refuse, they may be committed until they express their willingness to answer (*j*).

(*b*) Can. Hans. (1887), 627, 631, &c. Formerly it was the custom for one of the clerk's assistants to take down the answer and read it to the house; but now that the house has an official staff of shorthand writers, any answer can be obtained from the reporter in attendance and read when required, to the house. Can. Hans. (1887), 633; Can. Com. J. (1894), 299.

(*c*) Can. Com. J. (1874), 10-13; 33-39. *ib.* (1887), 190.

(*d*) *Ib.* (1874), 13.

(*e*) *Ib.* 10-13; *ib.* (1887), 190-193.

(*f*) 93 E. Com. J. 210, 353; 96 *ib.* 193; 97 *ib.* 227; 99 *ib.* 89.

(*g*) 35 E.C.J. 323; 95 *ib.* 59; Mirror of P. (1840) vol. 15, p. 721; Can. Com. J. (1894), 288; May, 425 *et seq.*

(*h*) 106 E. Com. J. 48; 90 *ib.* 330, 343, 344.

(*i*) 88 *ib.* 218; 12 E. Hans. (1), 450, 831.

(*j*) 90 *ib.* 501, 504. Cushing, pp. 379-394.

A witness is always considered under the protection of the house, and no insulting questions ought to be addressed to him (*k*). On the other hand, it is the duty of a witness, to answer every question in a respectful manner, and should he not do so the usual course is for the speaker to reprimand him immediately and to caution him to be more careful in the future (*l*). If the offence is clearly manifest, the speaker can proceed at once to reprimand or caution the offender; if not, the witness may be directed to withdraw, and the sense and direction of the house may then be taken upon the subject (*m*). Members of the house are always examined in their places (*n*).

In all matters touching its privileges the house may demand definite answers to its questions; but in case of inquiries touching a breach of privileges, as well as what may amount to crime at common law, the house, "out of indulgence and compassionate consideration for the parties accused," has been in the habit of telling them that they are under no obligation to reply to any questions so as to criminate themselves (*o*).

In case it is necessary to change the time of attendance of a witness, the order will be discharged or postponed, and a new order made for his future appearance (*p*).

When the evidence of a witness is concluded for the time being, he will be ordered to withdraw and remain in further attendance if required (*q*). If his testimony be not required the order will be read and discharged (*r*). Persons desiring that witnesses may be heard in their behalf must petition the house to that effect, and the house may,

(*k*) 11 Parl. Reg. 232, 233, 234; 13 *ib.* 232, 233.

(*l*) 11 E. Hans. (1), 662.

(*m*) 9 E. Hans. (2), 75.

(*n*) May, 433.

(*o*) 146, *ib.* (3), 101-2.

(*p*) 95 E. Com. J. 253; Can. Com. J. (1874), 17, 18, *ib.* (1891)

June 8.

(*q*) Can. Com. J. (1874), 39.

(*r*) *Ib.* 18; *ib.* (1887), 193.

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or may not, as it thinks proper, grant the prayer (*s*). A witness has been allowed the assistance of counsel when his evidence may tend to criminate himself (*t*).

No witness before either house of parliament, or a committee of either house, can excuse himself from answering any proper question that may be put to him (*u*). While the law of parliament demands the disclosure of the evidence it recognizes to the fullest extent the principle upon which the witness is excused from making such disclosure in the ordinary courts of justice and protects him against the consequences which might otherwise result from his testimony—the rule of parliament being that no evidence given in either house can be used against the witness in any other place without the permission of the house. On the 26th May, 1818, it was resolved by the English House of Commons "that all witnesses examined before the house or any committee thereof are entitled to the protection of this house in respect of anything that may be said by them in their evidence." The same resolution directs "that no clerk or officer of the house, or shorthand writer employed to take minutes of evidence before the house or any committee thereof, shall give evidence elsewhere in respect of any proceedings or examination had at the bar or before any committee of this house, without the special leave of the same" (*v*).

In view of certain prosecutions and suits, criminal and civil, instituted by the Department of Justice subsequent to enquiries before the committee of privileges, and in

(*s*) Leg. Ass. J. (1855), 656.

(*t*) Mr. Bell, Parl. Deb. 1873, p. 38; Jour., 70. Also case of Mr. Dunn, Can. Com. J. (1887), 188, 189.

(*u*) 18 E. Hans. (N.S.) 968-974; May, 75. Cushing (p. 397).

(*v*) 73 E. Com. J. 389; 28 E. Hans. (1), 919, 956; Cushing, pp. 397, 398; May, 125, 431. With respect to members, Mr. Speaker Manners Sutton, one of the ablest men who ever filled the English chair, said "that hardly any doubt can exist in the mind of any honourable member that he is not at liberty to give evidence elsewhere of what passes here, without the direct, or at least, the implied permission of the house." See Cushing, p. 398, and 18 E. Hans. (N.S.), 968-974.

committee of public accounts in 1891, the house ordered in 1892 that all clerks and stenographers who were in the employment of the house, and in attendance on the said committees, "should attend, when required, before the courts and give evidence as to the statements made upon oath, and produce all books and papers used before the said committees;" and it was distinctly laid down in the same resolution that the house, "while waiving its privileges in these particular cases with the view of eliciting all the facts and obtaining substantial justice in the premises, does not in any sense give up its well established and undoubted rights, whenever it may deem it in the public interest hereafter at any time to protect all witnesses examined before this house or any committee thereof in respect of anything that may be said by them in their evidence, and to refuse permission to any clerk or officer of the house or shorthand writer employed to take minutes of evidence elsewhere in respect to any proceedings or any examination had at the bar or before any committee of the House" (y).

The experience of parliament has shown that in the majority of cases, select committees are the best tribunals for examining witnesses and accordingly it will be found on reference to parliamentary records, evidence is taken, whenever practicable, before select committees. The procedure in such cases is explained in the chapter devoted to the functions of select committees.

Pursuant to a resolution of the imperial house as early as 1688, it was decided that, "if a member of the house should refuse, upon being sent for, to come and give evidence or information as a witness to a committee, the committee ought to acquaint the house therewith and not summon such member to attend the committee. There has been no instance of a member persisting in a refusal

(y) Can. Com. J. (1892), 234, 235; for debate consult Can. Com. Hans. 1283-1311, especially speeches of Sir J. Thompson, Minister of Justice, and Hon. D. Mills, who afterwards filled the same office.

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to give evidence but members have been ordered by the house to attend select committees (z).

XVII. Privileges of Provincial Legislatures.—The question of the extent of the privileges of the legislative assemblies of the provinces has also come before the courts of the dominion and the privy council. Immediately after confederation the legislatures of Ontario and Quebec passed acts to give the respective houses such privileges and powers as are held by the Senate and House of Commons of Canada. When the statutes were disallowed as *ultra vires* by the governor-general in council (a), the legislatures passed other acts more clearly defining their respective privileges (b). These acts were left to go into effect, and the court of Queen's bench in Quebec decided that the statute of that province was *ultra vires* (c). In 1874 a Manitoba act was disallowed, but a subsequent statute was permitted to come into operation (d).

The action of the provincial legislatures in passing statutes respecting their privileges and powers was subsequently justified by a decision of the supreme court of Canada with respect to a difficulty that arose in the House of Assembly of Nova Scotia. It appears that Mr. Woodworth, a member of that house, on the 16th of April, 1874, charged the provincial secretary of the day—without being called to order for doing so—with having falsified a record. The charge was subsequently investigated by a committee of the house, who reported that it was un-

(z) E. Com. J. 10, 51; 19 *ib.* 403; May, 426.

(a) Ont. Stat. 39 Vict. ch. 9. Que. Stat. 33 Vict. ch. 5 Rev. Stat. art. 128 and by 61, Vict. ch. 12. Can. Sess. Pap. (1877), No. 89, pp. 202-212-221; Todd's Parl. Govt. in B.C., 2nd ed., 522 *et seq.*

(b) Ont. Stat. 39 Vict., ch. 9. Quebec Stat. 33 Vict. c. 5. See Rev. Stat. art. 128 and by 61 Vict., c. 12.

(c) Dansereau, *ex parte*; 19 L.C.J. 210. Cart. ii. 165. Consult also Can. Sess. P. 1877, No. 89, pp. 108-14, 201, for opinions of dominion authorities.

(d) Man. Stat. (1873), c. 2; *ib.* (1876), c. 12; Can. Sess. P. 1877, No. 89, pp. 44, 47, 106-9.

founded. Two days later the house resolved that in preferring the charge without sufficient evidence to sustain it, Mr. Woodworth was guilty of a breach of privilege. On the 30th of April, Mr. Woodworth was ordered to make an apology dictated by the house, and, having refused to do so, was declared, by another resolution, guilty of a contempt of the house, and requested forthwith to withdraw until such apology should be made. Mr. Woodworth declined to withdraw, whereupon another resolution was passed ordering his removal from the house by the sergeant-at-arms, who, with his assistant, enforced the order, and removed Mr. Woodworth, who soon afterwards brought an action of trespass for assault against the speaker and certain members of the House, and obtained a verdict of \$500 damages. The supreme court held, on appeal, affirming the judgment of the supreme court of Nova Scotia, that the legislative assembly of Nova Scotia had no power to punish for any offence not an immediate obstruction to the due course of its proceedings, and the proper exercise of its functions, such power not being an essential attribute, nor essentially necessary for the exercise of the functions of a local legislature, and not belonging to it as a necessary or legal incident; and that, without prescription or statute, local legislatures have not the privileges which belong to the House of Commons of Great Britain by the *lex et consuetudo Parliamenti*. The allegations and circumstances shown in the case in question afforded, in its opinion, no justification for the plaintiff's removal; he was not then guilty of disorderly conduct in the house, or interfering with or in any way obstructing the deliberations or business, or preventing the proper actions of the house, or doing any act rendering it necessary, for self-preservation or maintenance of good order, that he should be removed (e).

(e) Can. Sup. C. Rep. ii., 158, 215. *Kielly vs. Carson* (4 Moore P.C.C. 63) and *Doyle vs. Falconer* (L.R. 1 P.C., App. 328) were commented upon by the court and followed. The learned chief justice cited these and other cases bearing on the question, viz., *Beaumont* and

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An act passed by the Nova Scotia legislature in 1876, while the foregoing action of *Landers vs. Woodworth* was pending, also came under review of the judicial committee of the privy council in 1896. By the Nova Scotia Act it was declared that no member shall be liable to any civil action by reason of anything brought by petition, bill, etc., before the house. The following acts are prohibited, amongst others: Insults to or assaults upon members during the session; each house to be a court of record, with power to adjudicate upon and punish offences under the statute; offenders to be liable to imprisonment. The plaintiff intentionally disobeyed the order of the house to attend before the house and was arrested by the sergeant-at-arms and imprisoned under order of the house. Being released under a writ of *habeas corpus*, he brought an action against certain members for assault and imprisonment. Judgment went for the plaintiff. On appeal to the supreme court of Nova Scotia the court was equally divided, and the judgment affirmed. This appeal was then taken to the privy council and the judgment was reversed, on the ground that the provincial act was *intra vires*. Their lordships held: That local legislatures existing at the time had authority prior to confederation to make laws respecting their constitution, powers and procedure, and to punish for contempt and disobedience of their orders. That, even if that power did not then exist, the British North America Act, 1867, by section 92, conferred power on the local legislature to pass acts for defining their powers and privileges, and that consequently the protection of members from insult as set forth in the Nova Scotia statute was clearly part of the constitutional law of the province. That the legislature has none the less a right to prevent and punish obstruction to the business of legislation because the interference or obstruction is of a

Barrett (1 Moore P.C.C., p. 59); Fenton and Hampton (11 Moore, 347); Cuvillier *vs.* Munro (4 L.C.R., 146); Lavoie's case (5 L.C.R., p. 99); Dill *vs.* Murphy (1 Moore P.C., C.N.S., 487); *ex parte* Dansereau, Low. Can. Jurist, vol. xix. 210-248.

character which involves the commission of a criminal offence, or brings the offender within the reach of the criminal law. Finally, that the prohibition in the statute against bringing a civil action against any member was a complete bar to the action (*f*). The legislatures have also passed statutes respecting their powers and privileges (*g*).

XVIII. Colonial and Provincial Legislatures as Courts of Record.—In England the House of Lords, when acting in its judicial capacity, is a court of record, but according to English authorities it is difficult to determine whether the House of Commons is, in law, a court of record: "for this claim, once firmly maintained, has latterly been virtually abandoned" (*h*). As respects the houses of the Canadian parliament, it must be noted that the Senate can exercise only the privileges, powers and immunities of the English House of Commons, and has in no sense that judicial capacity of the House of Lords which would enable it to act as a court of record. But that colonial and provincial legislatures may in a limited sense become courts of record may be concluded from the decision of the judicial committee of the privy council in the case of *Fielding vs. Thomas* (App. Cas. 600, 1896), which involved the privileges of the House of Assembly of Nova Scotia. The legislature of that province had enacted that each house was a court of record for the protection of certain privileges and rights set forth in the act (*i*), and subse-

(*f*) L.N. (1896), 228-235. App. Cas. 600; consult Lefroy, 742-750. Keith, *Resp. Govt. in Canada*, vol. 2. p. 696-7. Todd, *Parl. Govt. in E. colonies* (2nd ed.), pp. 523, 687, 689-94.

(*g*) N.B. Stat. 53 Vict., c. 6; P.E.I. Stat. 53 Vict., c. 4., s. 110; Rev. Stat. of B.C. (1897), c. 118.

(*h*) May, 92; *Jones v. Randall*, 1 Cowp. 17.

(*i*) "The council and each house shall each be a court of record, and shall each have all the rights and privileges of a court of record for the purpose of summarily inquiring into and punishing the acts, matters and things herein declared to be violations of this chapter," i.e., insults to, or libel upon members, refusal to obey orders, intimidation of members, and such like violations of privilege, now well under-

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quently punished a contempt of those privileges by imprisonment. The judicial committee sustained the right of the house in this particular; but as it is well stated by Anson (1,175), the powers taken to itself by the assembly were construed to be "the powers of a court of record for the purpose of dealing with breaches of privilege and contempt by way of committal," but not "to try or punish criminal offences otherwise as incident to the protection of members in their proceedings."

It may accordingly be laid down that the right of legislative bodies to imprison or fine for contempt is so much evidence that they are courts of record in a limited sense. In fact, the right of every legislative assembly to commit or otherwise punish a clear violation of an undoubted privilege must rest on the paramount necessity of maintaining its dignity and usefulness rather than on any assertion of a claim to be a court of record (*j*).

stood in parliamentary law. See N.S. Rev. Stat (1900), c.2. ss. 18-28. Ontario and Manitoba legislatures have vested themselves with similar powers as courts of record: Ont. Rev. Stat. (1897), c. 12. s. 57 (1); Man. Rev. Stat. (1891), c. 84, s. 47. The other provinces simply assert, general powers and privileges.

(*j*) See on this point opinion of Lord Ellenborough in the case of *Burdett vs. Abbott*, 14 East. 128, cited by Anson i., 175. See also Lefroy, 537-755 *Comments on Fielding vs. Thomas and Ret. to address H. of C. Canada*, 24th April, 1895 *re* "The Act respecting the Speaker of the Senate." See also Todd's *Parl. Govt. in colonies*, pp 687-694.

CHAPTER III.

SUMMONING, MEETING, PROROGATION AND DISSOLUTION OF PARLIAMENT.

I. Summoning of Parliament.—II. Proceedings in the Senate.—III. Proceedings in the Commons.—Election of Speaker, etc.—IV. Consideration of the Speech from the Throne.—V. Prorogation.—VI. Dissolution of Parliament.

I. Summoning of Parliament.—Parliament can only be legally summoned by authority of the Crown (*a*). The British North America Act of 1867 provides, with respect to the dominion of Canada that, "there shall be a session once at least in every year, so that twelve months shall not intervene between the last sitting of the parliament in one session, and its first sitting in the next session" (*b*). A subsequent section also provides that, "every House of Commons shall continue for five years from the day of the return of the writs for choosing the house—(subject to be sooner dissolved by the governor-general)—and no longer" (*c*). Apart, indeed, from statutory enactments the practice of granting supplies annually renders a meeting of parliament every year absolutely necessary (*d*). Parliament is summoned by royal proclamation, by and with the advice of the privy council. The proclamation is issued by command of the governor-general or administrator of the government through the office of the clerk of the Crown in chancery (*e*). It is the practice to pro-

(*a*) Hatsell, 296; May, 39, 41, 43.

(*b*) B.N.A. Act, 1867, sec 20.

(*c*) *Ib.* sec. 50.

(*d*) May, 39.

(*e*) Can. Com. J. 1867-8, i-x, and Journals for each session of parliament since 1867.

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rogue parliament for intervals of forty days, and when it is the intention to assemble the two houses, *de facto*, the proclamation will require senators and members of the House of Commons to appear personally, "For the despatch of business, to treat, do, and act, and conclude upon those things which in our said parliament of Canada, by the common council of our said Dominion, may by the favour of God be ordained" (f).

The parliament of Canada meets as a rule in the winter months. The first session was held in November, 1867, and adjourned to March, 1868. In 1869, 1872, and in 1891 (after a general election), the house assembled in April; in 1873 and 1874, in March; in 1873 there was a special session in October on account of ministerial difficulties. In 1880, the houses assembled in February, and again in December, to consider the Canadian Pacific Railway contract.

In 1888, a proclamation calling parliament together for the "despatch of business" was formally superseded by another fixing a later date, and a similar procedure was followed in the summer of 1896, when a new government was formed after a general election and required time for preparation before meeting the houses.

In 1896 the seventh parliament was suddenly dissolved after a long and exciting session, when the Manitoba school question was under discussion. A new government having come into office, the first session of the eighth parliament was assembled in the month of August and sat until the 5th of October, chiefly for the purpose of voting the supplies for the current year, as only a small sum had been appropriated for certain public services by the previous parliament, which had been suddenly prorogued.

In 1901, 1902 and 1915, the session began in February. In 1903, 1904 and 1906 it began in March. The sessions of 1905, 1909 and 1914 began in January. The sessions

(f) See different proclamations published in the Journals of the Senate and House of Commons at the opening of each session of parliament. For British Practice see May, 41.

of 1906-7, 1907-8, 1909-10, 1910-11, 1911-12, 1912-13 began in November. The session known as the "war session" began in August 18th, 1914, and lasted for five days only. The above statements show that time of the meeting of parliament each year varies according to circumstances (g).

II. Proceedings in the Senate.—At the opening of a new parliament, the senators assemble in their chamber at the hour appointed; and after prayers, if there is then a speaker, it will be his duty to present to the house the usual communication from the governor-general, informing the senators of the hour when he will proceed to open the session. New members will, on this occasion, be admitted and introduced. The house will then adjourn during pleasure, and resume as soon as his Excellency or the deputy-governor presents himself in the chamber (h).

In case there is a new speaker, as soon as the Senate has met, the clerk will read the commission appointing him, and then he will be conducted to the chair at the foot of the throne by two prominent members—one of them generally the leader of the government in the house—the gentleman usher preceding (i).

(g) Can. C. J. (1888), viii, ix; *ib.* 1896, Aug. sess., vii, viii. See also Journals of each session since 1867. The parliament of 1910-11 was prorogued by proclamation on the 29th day of July, 1911, in the midst of the session, the Senate not being in session, having adjourned on the 19th of May to 9th of August. The house adjourned on Friday the 28th day of July to the Monday following, July 31st. The proclamation of dissolution followed that of prorogation on the same date. Senate Journals, 1911. Can. Gazette Extra, July 29th, 1911.

(h) Senate J. (1878) 15-17. *Ib.* (1883) 1-23; *Ib.* (1890) 1-13. The proceedings at the opening, when there is a speaker, are the same as in the old legislative council of Canada, when the speaker was also nominated by the Crown. Leg. Coun. J. (1852) 25-27. The proceedings in 1878 in the Senate were similar to those at opening of a new parliament, as the Commons had to elect a speaker.

(i) Sen. Jour. (1879) 16; *Ib.* (1880) 12; *Ib.* (1891) April 29; *Ib.* (1896) Aug. 10; *Ib.* (1900) 11, 12. *Ib.* (1905) 12, 13, *Ib.* (1909) 12, 13. *Ib.* (1911-12) 13.

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The mace which before lay under the table, will now be placed thereon (*j*), and prayers will be read by the chaplain. It is usual then to present certificates of the appointment of new members, who will then be formally introduced. The house will next be informed of the hour when his Excellency or the deputy-governor will come down; and the house will then adjourn during pleasure or until that time. As soon as his Excellency of the deputy-governor is seated in the chair on the throne, the speaker will command the gentleman usher of the black rod to proceed to the House of Commons and ask their attendance in the Senate chamber (*k*).

When the speaker is a new member, the clerk must first present the usual return from the clerk of the Crown in chancery, and the former will then take the prescribed oath with other new members who may be present. His appointment as speaker will next be formally notified in the manner just stated (*l*).

In case of the appointment of a new clerk, it is the duty of the speaker to announce it to the Senate. The commission will be read forthwith, and the clerk sworn at the

(*j*) *Ib.* (1896) Aug. 10. The late Mr. Femings Taylor for many years deputy clerk, informed the writer that the mace used in the Senate belonged to the old legislative council of Canada. On the night of the 25th of April, 1849, when the parliament buildings at Montreal were burned by rioters, it was saved by Edward Bottrell, at that time a messenger, and subsequently a doorkeeper of the legislative council and senate. It was placed by him for security in a neighbouring warehouse, and was found, when required, quite uninjured. In the fire which partially destroyed the parliament buildings on Feb. 3rd and 4th 1916, the mace was consumed; but portions were recovered and are incorporated in the new mace presented to parliament by the Mayor and Sheriff of London, England.

(*k*) Sen. J. (1874) 11-17; *Ib.* (1879) 15-19; *Ib.* (1880) 12-14; *Ib.* (1887) 3-8; *Ib.* (1891) April 29; *Ib.* (1896 Aug.) 11-15; *Ib.* (1901) 12-18.

(*l*) Sen. J., 1867-8, Mr. Cauchon; *Ib.*, 1873, Mr. Chauveau, *Ib.*, 1887, Mr. Plumb.

table. The appointment of other Crown officers may also be announced at the same time (*m*). Whenever a new speaker and a new clerk have been appointed, as in 1867, the commission of the former will be first read, and he will take his seat in due form. The speaker will then announce the appointment of the clerk so that his commission may go on the journals (*n*). While the Senate awaits the arrival of the governor-general or the deputy-governor, the speaker may present to the Senate any formal reports which he may have in hand for the Senate—such as the report of the joint librarians, etc. Soon after the arrival of the governor-general or the deputy-governor, the Commons, headed by their speaker, accompanied by the chief officials of the House of Commons, present themselves at the bar of the Senate when the speech from the throne is duly delivered in both the English and French languages to the Senate and Commons; his Excellency then retires and the Commons return to their chamber. The speaker of the Senate, after the retirement of his Excellency and the Commons and the introduction of a bill *pro forma*, reports the speech which is ordered to be taken into consideration immediately, or on a future day; the day following, should it be a sitting, being frequently chosen. All the members present will then be appointed a committee "to consider the orders and customs of the Senate and privileges of parliament" (*o*). When the order of

(*m*) *Ib.* (1883) 1-20, appointment of a clerk and master in chancery; *Ib.* (1900) 9-10, of Mr. S. E. St. Onge Chapleau as clerk in place of Mr. Langevin, retired. In this session the senate passed a resolution ordering that Mr. Langevin be continued an honorary officer, and allowed the *entrée* of the senate and a seat at the table on occasions of ceremony in recognition "of his faithful services," page 52.

(*n*) *Ib.* (1867-8) 55.

(*o*) Rule 1; Senat J. (1879) 22-23; *Ib.* (1896 Aug.) 19,20; *Ib.* (1901) 21-24. To this committee are referred matters affecting the house and its members particularly those cases wherein the Clerk of the Senate has reported a senator as having been absent for two consecutive sessions of parliament, thereby forfeiting his seat. In 1880, a senator made a charge against the official reporters and it was referred

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the day for the consideration of his Excellency's speech has been reached, two members will formally propose and second the address in the answer to the same. Generally two new members whose political sympathies are in accord with the policy of the government of the day, are chosen for this purpose. The practice in the two houses with respect to the address in reply to the governor-general's speech was similar up to 1870 when it was somewhat simplified in the Senate. In 1896, during the first session of the eighth parliament the procedure in the Senate was even more curtailed, following the later practice of the houses of the imperial parliament. The form of the address formerly used to be an answer, paragraph by paragraph, to the speech; but since 1896 in the Senate, and since 1903 in the Commons, the answer to the speech from the throne has been moved in the form of a resolution, in one paragraph, thanking his Excellency "for his gracious speech which he had been pleased to address to both houses of parliament" (*p*). When the address had been agreed to, it is ordered that it be engrossed and presented to his Excellency by members of the privy council, who have seats in the Senate or in the Commons, as the case may be (*q*).

III. Proceedings in the Commons—Election of Speaker, &c.—When a new parliament meets for the despatch of business on the day appointed by proclamation, the members of the Commons assemble in their chamber at an hour of which they have been previously notified by the clerk, for the purpose of taking the oath and signing the roll containing the names of the members. The clerk of the Crown in chancery

to the committee, on motion not made by him but by two other members. This was a new precedent, but nothing came of the reference as the senator in question had not asked for it and had consequently nothing to submit. S.J. (1880) 139, 158. Hans. 243-45, 267, 280.

(*p*) Senate J. (1870) Feb. 17. *Ib.* (1896) 26th Aug. Can. Com. J. (1903) page 25.

(*q*) Senate J. (1896) (Aug.) 22, 23, 38. *Ib.* (1901) 25, 30.

is required to be in attendance at the table of the house and to deliver to the clerk a roll containing a list of names of such members as have been returned to serve in the parliament then about to meet for the transaction of business (*r*). The following oath will then be administered at the table by certain commissioners (generally the clerk, the clerk-assistant, serjeant-at-arms and the law clerk) appointed by *dedimus potestatem*, as provided by the British North America Act, 1867:—

“I,....., do swear that I will be faithful and bear true allegiance to His Majesty King George V” (*s*). All the members who are present are sworn and sign the roll. The test roll was formerly an actual parchment roll, but since 1903 it has been replaced by a handsomely bound volume, officially styled “The Roll”, following the custom of the English House of Commons. They then repair to their seats and await a message from the governor-general. It is customary, however, to swear in the members at a convenient time in the morning, and then the members re-assemble a few minutes previous to the hour at which his Excellency is to come down to open parliament. The members being all in their seats, and the clerk, with the clerk-assistant being in their places at the table, the usher of the black rod presents himself at the door of the Commons and strikes it three times with his rod. He is at once admitted by the serjeant-at-arms, and advances up the middle of the house, where he makes three obeisances and says in English and French:—

“Gentlemen, (or Mr. Speaker, in subsequent sessions) his Excellency the governor-general (or the deputy-governor) desires the immediate attendance of this honourable house in the Senate chamber” (*t*). The gentleman usher

(*r*) Can. Ct. n. J., 1867-8, 1873, 1874, 1879, 1883, 1887, 1891, 1896, (Aug.) 1901, p. 1., 1905, 1909, 1911.

(*s*) B.N.A. Act 1867, sec. 128 and 5th schedule. For English practice see May, 167-172, 232.

(*t*) C.C.J. 1867-8, 1873, '74, '79, '83, '87, '91, '96, '01, '05, '09, '11. The governor-general's secretary advises by letter the clerk of the house

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then retires without turning his back upon the house, and still making the customary obeisances. The house will then at once proceed to the Senate chamber (*u*), where the members of the Commons will be informed by the speaker of the Senate:—

"His Excellency the governor-general does not see fit to declare the causes of his summoning the present parliament of Canada until a speaker of the House of Commons shall have been chosen according to law, but to-morrow at the hour of.....his Excellency will declare the causes of his calling this parliament" (*v*).

that the deputy-governor will proceed to the Senate chamber to open parliament. It appears from Hatsell, vol. 2, p. 374, that it is "the established custom when the black rod knocks at the door, that he is immediately let in, and without any notice given by the sergeant to the house." In the imperial house the usher of the black rod, when the king opens parliament in person, is commanded to let the Commons know that it is His Majesty's pleasure they attend him immediately in this house," but that functionary translates this direction as follows to the Commons: "Mr. Speaker, the king *commands* this honourable house to attend His Majesty immediately in the house of peers," May, (172), But in the Canadian house, when the speaker is in the chair, the sergeant-at-arms first announces the messenger and the speaker orders his admittance.

(*u*) The mace is not taken to the upper chamber in this occasion, as the Commons are not yet a formally organized house by the election of the speaker. Previous to the session of 1880, members generally preceded Mr. Speaker and officers, but at the commencement of that session arrangements were made to give precedence to Mr. Speaker and prevent if possible, confusion and difficulty in entering the Senate chamber. Precedence of members in the English House in going up to the Lords, may be determined by ballot. E.C.J. 1851, pp. 439, 443, 445. May, 172, also 118 Eng. Hans. (3) 1940-2, 1946. Mirror of Parl. 1828, vol. i, page 13. These references will show how difficult it has been found in England to arrange an orderly procedure on such occasions.

(*v*) Senate J. (1896 Aug.); *ib.* (1901) 18; Can. Com. J. (1896 Aug.) 2; *ib.* (1901) 11. Until the cause of summons has been formally declared by the king or his representative, neither house can proceed upon any business whatever. The speaker's election is the only business which can be done, and that is no exception to the rule, since the Commons receives express authority for performing this act, without

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The commons having returned to their chamber, will proceed at once to the choice of a speaker. The clerk presides at these preliminary proceedings and will stand up and point to a member when he rises to speak. A member, generally the leader of the government in the Commons, will propose the name of some other member, then present, in these words: "That.....do take the chair of this house as speaker." This motion is duly seconded and put by the clerk, and in case there is no opposition it will be resolved *nemine contradicente*, "That.....do take the chair of this house as speaker." The clerk having declared the member in question duly elected, his proposer and seconder will accompany him from his seat to the chair, where standing on the upper step he will "return his humble acknowledgments to the house for the great honour they had been pleased to confer on him by unanimously choosing him to be their speaker (*w*).

In case there is opposition, and two or more candidates are proposed, the clerk will continue to point to each member as he rises, and then sit down; and when the debate is closed, he will put the question first proposed; and if the majority decide in favour of the motion, the speaker-elect will be immediately conducted to the chair; but if it be otherwise the second motion will be submitted to the house; and if it be resolved in the affirmative, the member so chosen will be conducted to the chair in

which the House of Commons is not completely organized. 2 Hatsell, 307, 327. 1 Todd, Parl. Govt., 405. The speaker of the Senate, however, is sworn and takes his seat, and new senators are admitted as soon as the Senate meets. Senate Journals (1879) 15-19. *Ib.* (1891) April 29; *ib.* (1901) 11-21, &c.

(*w*) Can. Com. J. (1867-8); *Ib.* (1873); *Ib.* (1883). *Ib.* (1887); *Ib.* (1891) 2; *Ib.* (1896, Aug.) 2; *Ib.* (1901) 11, 12 &c. The person proposed should always be present, and should be properly a member upon whose seat there is no probability of a question. 2 Hatsell, 217. For remarks on such occasions, see 218 E. Hansard 10. Can. Parl. Deb. (1874) 1. Can. Hans. (1878) 12; *Ib.* (1883) 2; *Ib.* (1901) 3. The English practice is a little different, no question is put by the clerk. 129 E. Com. J. 5. May, 154.

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the customary way (*x*). It is very unusual to divide the house when only one member has been proposed, as was the case in 1878, but still some instances can be found in the parliamentary history of England and Canada (*y*). It has never been the practice in the Canadian or English parliaments for a member proposed as speaker to vote for his own election (*z*). In England the usage is, in case of the proposal of two or more candidates, for each of them to vote in favour of his rival (*zz*).

In the Canadian House of Commons, the leader of the government generally proposes the first candidate for speaker, and another member of the cabinet seconds the motion (*a*). In the English house, a private member is now always chosen to make the motion, so that it may not appear that the speaker is the "friend of the minister rather than the choice of the house" (*b*).

(*x*) May, 154. 90 E. Com. J. 5: 94 *Ib.* 274. There are no cases since 1867 of more than one candidate being proposed for the chair, but many instances can be found in the journals of the old legislative assembly. Leg. Ass. J. (1848), 1, 2; *Ib.* (1854-5), three candidates, Messrs. Cartier, Sicotte and J. S. Macdonald.

(*y*) Mr. Speaker Wallbridge, 1863, 2nd session, Leg. Ass. See also Jour. of 1852 and 1858. Hatsell, vol. ii, 218n., gives some old cases from English parliamentary records.

(*z*) See for illustrations of Canadian practice: Low, Can. J., 1797, 1809, 1825, 1835. Can. Leg. Ass. J., 1844-5, 1848, 1852, 1854-5, 1858, 1862, 1863 (2 sess.). Can. Com. J. 1878. (Mr. Anglin did not vote on the division). In 1854 a candidate voted, but only after the house had refused to accept him, and on a division for another member proposed as speaker. Mr. Turcotte voted himself into the chair of the Quebec assembly in 1878.

(*zz*) May, 155; cases of election of Mr. Abercromby, 19th Feb., 1835, and of Mr. Shaw Lefere, 1839.

(*a*) Ca. Com. J., 1867-8, 1873, 1874, 1878, 1883, 1887, 1891. See Can. Hans. (1878) 2. *Ib.* (1883) 1; *Ib.* (1887) 1-2; *Ib.* (1891) 2-3; *Ib.* (1901) 2, 3.

(*b*) May, 154, 155, opinion of Mr. Hatsell. See 129 E. Com. J. 5; 218 E. Hans. (3) 6-14, 1874; when Mr. Brand was a chosen speaker on motion of Mr. Chaplin and Lord H. Cavendish. Also remarks of Sir J. A. Macdonald as to the advantages of adopting the same practice in Canada. Can. Hans. (1878), 2.

It is usual for leading members on both sides of the house, in England as in Canada, to congratulate the speaker-elect in appropriate terms (*c*). Mention is always made of this fact in the English, but not in the Canadian journals (*d*).

When the speaker has made his acknowledgments to the house, the mace will be laid on the table, where it always remains during the sitting of the house, while the speaker is in the chair. When the house adjourns until the following day, or to such time as the governor-general will formally open parliament, he puts the question for adjournment and when the house adjourns leaves the house with the mace before him. When the mace lies *upon* the table it is a house; when *under*, it is a committee. When it is *out* of the house, no business can be done; when taken from the table and upon the sergent's shoulder, the speaker alone manages. Before the election of speaker, it should be under the table, and the house cannot proceed to the election of a new speaker without the mace (*e*). The mace remains in the speaker's chambers during the prorogation or adjournments of the house and accompanies him on all state occasions when parliament is in session, and he has authority to be present on behalf of the house (*f*). At the hour fixed on adjournment for the

(*c*) 218 E. Hans. (3) 10, &c. Can. Parl. Deb. (1874) 1; Can. Hans. (1896), Aug. 3; *Ib.* (1901) 3.

(*d*) 129 E. Com., J. 5.

(*e*) Hatsell, 218.

(*f*) The mace in use at the time of the fire in 1916 belonged to the old legislative assembly of Canada, and was carried away by the rioters on the 25th of April, 1849, when the parliament house was burned down at Montreal, after the assent of the governor-general, Lord Elgin, to the Rebellion Losses Bill. It was subsequently recovered, however, and was lying on the floor of the hall when the assembly met on the 26th in Bonsecours market. Two of the gilt beavers were missing, having been wrenched off by the rioters. The legislatures of Nova Scotia, New Brunswick and Prince Edward Island have never used a mace. See Canadian Monthly for August, 1881, article by Mr. Speaker Clark on the mace. History of the English mace, May, 155 note. *Ib.* 156, 228, 192, 380, 387.

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purpose of appearing before the governor-general for the formal opening of parliament, the speaker will take the chair and read prayers before the doors are opened, after which he will await the arrival of the "black rod", who presents himself in the manner previously described. When that functionary has delivered his message desiring the attendance of the Commons, the speaker-elect, preceded by the sergeant-at-arms with the mace, accompanied by the clerk and clerk assistant and followed by the members of the house, will proceed to the Senate chamber, where he will acquaint his Excellency that the house had "elected him to be their speaker, and will humbly claim all their undoubted rights and privileges." On behalf of his Excellency, the speaker of the Senate will reply that "he freely confides in the duty and attachment of the House of Commons to His Majesty's person and government, and upon all occasions will recognize and allow their constitutional privileges, etc." Then the governor-general will formally open the session with a speech which will be duly reported to each house and entered in its journals (*g*).

The choice of speaker by the Canadian Commons, it will be seen by the foregoing form, is not "confirmed" and "approved" as in the British House (*h*). In the old legislatures of Canada, previous to 1841, the speakers always presented themselves for, and received the approval of the governors (*i*); but a difficulty arose in 1827 in the legislature of Lower Canada in consequence of the refusal of Lord Dalhousie, then governor-general, to accept Mr. Papineau as speaker. The assembly passed resolutions declaring that the course followed by the governor-general was unconstitutional, inasmuch as the act of parliament under which the legislature was constituted "did not re-

(*g*) Senate and Commons J. 1867-8, 1873, 1874, 1879, 1883, 1891, 1896, (Aug.), 1901, 1905, 1909, 1911. For the formula when a speaker is elected during a parliament and no reference to privileges is made, see journals of 1878, 1899.

(*h*) 129 E. Com. J., 5; May, 156.

(*i*) Low. Can. Ass. J. (1792) 20; Upp. Can. Ass. J. (1792) 5.

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quire the approval of the person chosen as speaker by the person administering the government of the province in the name of His Majesty." The assembly also expunged the proceedings from their journals, as had been done by the English Commons in 1678 in the famous case of Sir E. Seymour (*j*). No compromise being possible under the circumstances, the governor-general prorogued parliament. In a subsequent session, the choice of Mr. Papineau as speaker was "approved" by Sir James Kempt, who had succeeded Lord Dalhousie as governor-general (*k*). The form of approval continued to be observed in the legislatures of Upper and Lower Canada until the union of the two provinces in 1841, when it was discontinued in the first session of the parliament of Canada as the act of union was silent on the point (*l*). The speaker, on these occasions, generally said: "It has pleased the house of assembly to elect me as their speaker. In their name I therefore pray that your Excellency may approve of their choice." To which the speaker of the legislative council replied: "I am commanded by H. E. the governor-in-chief to inform you that he allows and confirms the choice that the assembly have made of you as their speaker" (*m*). In the legislatures of Nova Scotia, New Brunswick and Prince Edward Island, the lieutenant-governors continue as formerly to ratify the choice of the assembly (*n*);

(*j*) 4 Parl. Hist. 1092; May, 154.

(*k*) Christie III. 142, 218. It appears that Mr. Papineau had reflected very strongly in his address and manifesto upon the governor-general *Ib.* 140.

(*l*) 3 and 4 Vict. c. 35, s. 33. Leg. Ass. J. (1841) 2. 3.

(*m*) Low. Can. Ass. J. (1835) 21. It is interesting to note, however, that this formal mode of confirming and approving the choice of speaker was not followed in the first session of the first parliament of Lower Canada. On this occasion the representative of the Crown simply stated that he had "no doubt that the house had made a good choice." Low. Can. Ass. J. (1792) 20.

(*n*) N.S. Ass. J. (1883) 5, 6. N.B. Ass. J. (1879) 11, 12. P.E.I. Ass. J. (1877) 5. As far back as 1806, Sir John Wentworth, governor of Nova Scotia, refused to ratify the choice of W. Cottnam Tonge as speaker by the assembly, which body, while expressing regret at the

but in the legislatures of Ontario, Quebec, British Columbia, Manitoba, Alberta and Saskatchewan no "approval" is given, the same form being used in those bodies as in the parliament of the dominion (*o*). The speaker continues in that office during the whole parliament unless in the meantime he resigns, ceases to be a member of the house or is removed by death.

IV. Consideration of the Speech from the Throne.—On returning from the Senate chamber the speaker will resume the chair and, the members of the Commons being all assembled, in their respective places, will inform the house that the usual privileges had be engranted to the house by the governor-general (*p*).

One of the first proceedings will be the presentation by the speaker of reports of judges and returns of the clerk of the Crown in chancery respecting elections. It is then the invariable practice in the Commons, as in the Senate, before the speaker reports the speech to the house, to introduce a bill *pro forma* and move that it be read a first time. This practice is observed in assertion of the right of parliament to consider immediately other business before proceeding to the consideration of the matters expressed in the speech (*q*).

It is then the practice for the speaker, standing on the upper step of the chair, to report that "when the house did

use of a prerogative long disused in Great Britain, acquiesced and elected Mr. Wilkins. See "Lower Canada Watchman," which gives a list of precedents of refusal of the Crown to accept speakers in England and her dependencies. Also Murdoch's History, iii. 255.

(*o*) Ont. Ass. J. (1880) 4; Quebec Ass. J. (1882) 3; B.C. Ass. J. (1872) 2; Man. Ass. J. (1880) 6. Alberta and Sask. J.

(*p*) Can. Com. J. 1867-8, 1873, 1874, 1879, 1887, 1891, p. 3.

(*q*) Low. Can. J., vol. 9, p. 30. Can. Com. J. (1867-8) 3, and all subsequent sessions. 129 E. Com. J. 12. . n. S.O. 1; Sen. J. (1867-8) 50, &c. May, 174. 2 Hatsell, 82. The English resolution of the 22nd March, 1603, orders this procedure, "That the first day of every sitting, in every parliament, some one bill, and no more, receiveth a first reading for form's sake." Also 15 Parl. Hist, 1354.

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attend his Excellency, the governor-general, this day his Excellency was pleased to make a speech to both houses of parliament, of which he had, to prevent mistakes, obtained a copy." The house rarely calls upon the speaker to read the speech, as printed copies are always distributed immediately among the members; but it is entered on the journals as read (*r*). The premier or other member of government in his absence, will move that the speech be taken into consideration on a future day, generally on the following day, if the house should meet at that time (*s*). On some occasions, to suit the convenience of the house, when important matters are to come up for debate, and time is required for the consideration of certain papers, the speech is not taken up for several days (*t*). It may, however, be immediately considered—and this is in accordance with the English practice—after it has been reported to the house (*u*).

When the speech has been ordered to be taken into consideration on a future day, it is the practice to move the formal resolution providing for the appointment of the select standing committees of the house, and to lay before the house the report of the librarian, or other papers (*v*). It is not usual in the Canadian Houses to discuss any important matter of public policy before considering the speech. In 1901, an address was passed to H. M. King Edward, expressive of the national grief on the demise of Queen Victoria, and of the continued attachment of

(*r*) Can. Com. J. (1877) 10; *Ib.* (1883) 15. If the speech is read, it is not necessary that members stand uncovered, as it is only a copy, not an address under the sign manual. Speaker Peel, 29 Oct., 1884.

(*s*) Can. Com. J. (1897) 10; *Ib.* (1883) 14.

(*t*) Can. Com. J. 1873, October sess., 119; matters relative to the Canadian Pacific Railway were then considered, and Sir J. A. Macdonald, premier, resigned.

(*u*) 129 E. Com. 13; 237 E. Hans. (3) 7, 59. In 1822 an attempt was made to defer the consideration of the speech for two days, but without success. Todd, ii, 362. 6 E. Hans. (N.S.) 27, 47; 72 *Ib.* 60.

(*v*) Can. Com. J. (1867-8) 5; *Ib.* (1873) Oct. sess. 119; *Ib.* (1878) 14; *Ib.* (1890) 6.

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the dominion to his Majesty's person and government, before the address in answer to the speech was taken up (*w*). In 1878, Mr. Barthe introduced a bill in reference to insolvency, but withdrew it in deference to the wishes of the house until the address was adopted (*x*). While bills are formally introduced and advanced a stage, the house generally consents to postpone notices of motion until after the disposal of the address (*y*). Of course, the public interests may at some time demand that the house should act otherwise, and—as it is undoubtedly its constitutional right—take up immediately a question of public importance, and deal with it (*z*). It is usual in the British Commons to ask questions, move addresses or orders for papers, present petitions and introduce as well as discuss public bills before the address has been adopted (*a*). In the session of 1884 "debate on the address was adjourned from day to day while a motion of censure on the government regarding 'events in the Soudan' was under consideration" (*b*).

The old and cumbrous practice (*c*) with respect to the answer to the speech has been changed since 1893 (*d*), when it was decided to present the same forthwith and

(*w*) *Ib.* (1901) 16.

(*x*) *Can. Hans.* (1878) 18-19.

(*y*) *Can. Com. J.* (1897) 39; *Ib.* (1899) 13; *Ib.* (1901) 18. In 1896 a ministerial crisis occurred at the beginning of the session, and a great number of bills were presented before the consideration of the address, and the settlement of the ministerial difficulty.

(*z*) 2 *Hatsell*, 308.

(*a*) *May*, 175; 266 *E. Hans.* (3) 326, 342; 140 *E. Com. J.* 6-17. In 1889 Mr. Abott introduced in the Senate three government bills, mentioned in the speech, before the address in answer thereto was considered. Objection was taken to this departure from the ordinary course of procedure. The bills were placed on the order paper for consideration subsequent to the address. *Sen. Deb.* (1889) 4-6, 28-37. In the following session the usual procedure was resumed.

(*b*) *May*, 175; 139 *E. Com. J.* 46-59.

(*c*) *Can. Hans.* (1878) 29, 39, Sir John Macdonald's and Mr. Masson's remarks. *Can. Com. J.* (1867-8) 9-15; *Ib.* (1892) 90-93.

(*d*) *Ib.* (1893) 33, 35.

agree to it without the formalities of having it first introduced as a resolution which, when adopted, would be referred to a select committee to report an address. Accordingly, when the clerk has read the order of the day for taking into consideration the speech—or as soon as it has been reported by the speaker, in case it is immediately considered—an address in answer will be immediately moved and seconded by two members on the government side, generally chosen from those last elected to the house. In the British Commons these members appear in uniform or full dress, but in Canada this formality is not observed.

This address may be debated and amended like any resolution, under the old practice (*e*). A general debate may take place on the address, but when an amendment is proposed the discussion should be strictly confined to the subject-matter of the amendment (*f*).

Members who have spoken on one paragraph may speak again on the question being proposed on a subsequent paragraph, which is obviously a distinct question (*g*). As soon as the address has been agreed to, it is ordered to be engrossed and presented to his Excellency by such members of the house as are of the King's privy council (*h*). Of late years there has been a disposition in the Canadian parliament to limit the debate upon the address inasmuch as the same is couched in general terms in one brief paragraph of thanks for the gracious speech from the throne. But the house may be called upon to express its opinion

(*e*) Can. Com. J. (1867-8) 11; *Ib.* (1875) 6; *Ib.* (1896) Aug. sess.) 8.

(*f*) Mr. Speaker Peel, 308 E. Hans. 413, 414, 626, 1242; Peel's Decisions, p. 4, Mr. Speaker Edgar, Can. Hans. (1899) 1565; Deputy Speaker Brodeur, *Ib.* 1574. See May, 289.

(*g*) As the address in reply to the speech from the throne now consists of but one paragraph, the above rules on this subject become historical rather than practical. Parl. Deb. 1867-8. Remarks of Sir. J. A. Macdonald as to the right of Mr. Howe to address the house a second time. In the English house a general debate may take place on every amendment moved to a particular paragraph. 102 E. Hans. (3), 74-219.

(*h*) Can. Com. J. (1901) 19, 20.

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upon some subject of policy and to support an amendment which gravely affects the administration of the day and which may give rise to prolonged debate (*i*). The debate is, as a rule, confined to a general review of the policy of the government and the state of the country as to its financial and industrial progress, except where a proposed amendment deals with some special phase of governmental action or policy (*j*). It is felt desirable, however, unless important public issues appear to demand discussion, to allow the address to pass without a division and "be in point of fact the unanimous and respectful expression of the deference with which the houses receive the first communication of the session" from the sovereign or his representative (*k*). Somewhat later in the session the governor-general sends a message to each house acknowledging with pleasure the receipt of the address and expressing his thanks for the same. The next proceeding will be to move immediately that the house resolve itself at some future day into committees of Supply and of Ways and

(*i*) Between 1878 and 1899 only two amendments were moved to the address, viz.: in 1893 and 1899. In 1878 a lengthy debate took place on the address although no amendment was moved. The tariff was one of the principal topics of discussion, and the inconvenience of discussing it at that stage was evident from the fact that the same subject came up again on the budget. From 1879 to 1890 the debate commenced and ended on the same day, generally before six o'clock p.m. In 1891 the debate on the address was continued from Friday to Monday when it ended before six p.m. In 1897 the debate lasted for a week in the Commons and for two days longer in the Senate, though no amendment was proposed. In 1899 it was prolonged from the 20th of March to the 18th of April in consequence of an amendment having been proposed with respect to the administration of affairs in the Yukon. Between 1900 and 1906 no amendment was moved. Amendments were moved, however, in the session of 1907-8, 1910-11 and in the session of 1914.

(*j*) Can. Hans. 1875. Sir John A. Macdonald 12; *Ib.* 1878, remarks of the premier, Mr. Mackenzie 36; *Ib.* (1879) 16; 232 E. Hans. (3) 73. Mirror of Parliament 1831-2, pp. 27-29; 113 E. Hans. (3) 13, 30.

(*k*) 144 E. Hans. (3) 22-44, Lord Derby and Earl of Clarendon.

Means (*l*). It is also usual to move at this stage of the proceedings the appointment of a chairman of committees when such appointment has to be made at the beginning of a new parliament or in case of a vacancy in such office (*m*).

In sessions subsequent to the first session of a parliament, the two houses assemble at the time appointed, with the speaker in the chair of each. Prayers will be read in each house, and new members may be introduced in the Senate in the manner described in another chapter. The Senate will then adjourn during pleasure, and, on resuming, the Commons will be summoned with the usual formalities as soon as his Excellency the governor-general has taken his seat on the throne. The Commons being present at the bar, the governor-general will open parliament with the usual speech, and the Commons will then return to their house (*n*). Before the speaker has announced the speech, it will be his duty to inform the house of any notifications of vacancies in representation, and to lay before it any returns, reports or papers relative to the election of members—all of which must be entered on the journals (*o*). The speech will then be taken up as in the manner previously described.

V. Prorogation.—The proceedings at the prorogation of parliament are as follows: As soon as the business of the two houses is concluded, or so nearly completed that there can be no doubt as to the time of prorogation, it is customary for the governor-general, through his secretary, to inform the speaker of each house that he will proceed to the Senate chamber at a certain hour to close the session (*p*). On

(*l*) Can. Com. J. (1901) 19, 20.

(*m*) *Ib.* (1896) Aug. sess. 15, *Ib.* (1901) 20.

(*n*) Senate J. (1877) 13-18. Can. Com. J. 1871, '77, '78, '90, etc.

(*o*) Can. Com. J. (1875) 1-52; *Ib.* (1877) 1-9, &c.

(*p*) Sen. J. (1878) 291; *Ib.* 1883, 282; (Com. J. (1870) 352; *Ib.* (1883) 435, &c. In 1886 the houses were prorogued at half-past eight o'clock in the evening of June 2nd, in order to meet the convenience of the

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the day and at the hour appointed the two houses assemble, and as soon as his Excellency has taken this place on the throne, the speaker of the Senate will command the gentleman usher of the black rod to proceed to the House of Commons and acquaint that house: "It is his Excellency's pleasure that they attend him immediately in this house." The serjeant-at-arms will announce the message in the usual words: "A message from his Excellency the governor-general," and the speaker will reply: "Admit the messenger." The black rod presents himself, in the way already described, and informs the house in English and in French: "I am commanded by his Excellency the governor-general to acquaint this honourable house that it is the pleasure of his Excellency that the members thereof do forthwith attend him in the Senate chamber." When the messenger from the Senate has retired, the speaker will proceed with the Commons to the Senate chamber, and take his proper place at the bar. The clerk of the Crown in chancery will then proceed to read the titles of the bills, and when these have been assented to, or reserved in the manner hereafter described (*q*), the speaker will make the following speech in presenting the supply bill: "May it please your Excellency: The Commons of Canada have voted the supplies required to enable the government to defray expenses of the public service. In the name of the Commons I present to your Excellency the bill entitled: "An Act for granting to His Majesty certain sums of money for the public service of the financial year, &c., to which bill I humbly request your Excellency's assent." Then after the clerk of the Crown in chancery has read the title of the bill in both languages, the royal assent is pronounced by the clerk of the Senate, in both the English and French languages, in the following terms:—"In His Majesty's name, his Excellency the governor-general thanks his loyal subjects, accepts their benevolence, and governor-general. The hour is generally between three and four in the afternoon.

(*q*) See Chapter on Public Bills.

assents to this bill." (r). Then his Excellency the governor-general will proceed to deliver the speech customary at the close of the session. When his Excellency has concluded reading the speech in the two languages, the speaker of the Senate will say: "It is his Excellency the governor-general's will and pleasure that this parliament be prorogued until——, to be then here holden; and this parliament is accordingly prorogued until——." The Commons then retire and the session is at an end. Sometimes however, as in the 3rd session of the 11th parliament (1911), the Houses were prorogued and the Commons dissolved when the house was in session, but the Senate had been adjourned. In this case the ceremonies above referred to, could not take place and the Commons' proceedings at once ceased. Prorogation is effected by royal proclamation in the Canada Gazette and the dissolution of the Commons and the summoning of a new parliament immediately follow in other proclamations likewise published in the Gazette (s).

At the end of a session, as we have just seen, the speaker of the Senate announces his Excellency's will and pleasure that parliament be prorogued, but subsequently this is done in the "Canada Gazette," through the clerk of the Crown in chancery (t). The governor-general may, however, with the advice of his council, summon parliament for the transaction of business at any time after the issue of the proclamation of prorogation (u). When parliament has been dissolved and summoned for a certain day, it meets on that day for the despatch of business, if not previously

(r) See Chapter on Supply and Ways and Means.

(s) Senate J. (1883) 292-98. Can. Com. J. (1883) 438-41; Can. Gazette Extra, July 29th, 1911; Can. V. & P. 1911; Sen. J. (1910-11) 458; In the case of the Ontario legislature, it is not necessary for the lieutenant-governor to name any day to which the same is prorogued, nor to issue a general proclamation, except when it has to be called together for the despatch of business. Ont. Rev. Stat., c. 11, s.5.

(t) See proclamations at commencement of journals. Also, "Canada Gazette" 1867-1915.

(u) Journals (1879) ix-x.

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prorogued, without any proclamation for that purpose, the notice of such meeting being comprised in the proclamation of dissolution and the writs then issued (*v*). The governor-general will be always guided by British constitutional practice with respect to the prorogation and dissolution of parliament, and when he declines the advice of his responsible ministers in such matters he intimates that he has no longer confidence in them and virtually dismisses them from his counsels (*w*). Parliament may be prorogued at any time during a session, the effect of which is, of course, to suspend all business until parliament shall be again summoned. Adjournment is solely in the power of each house, respectively.

In old times of English parliamentary history, it was not unusual for the Crown to signify its pleasure that parliament should be adjourned till a certain day; but even then it appears that the house did not think itself bound to obey the sovereign's commands (*x*). But no case of this kind has occurred in England since 1814 (*y*); and none can now ever arise under the constitutional system which makes the ministry responsible for the acts of the Crown. In Canada, such cases have never occurred. When it is sometimes found necessary, as in 1873, to have a long adjournment, ministers must assume the responsibility, and convince the house of the necessity of such a course. A prorogation necessarily puts an end, for the time being, to the functions of the legislative body, as an adjournment is a continuation from day to day of the functions of each of its branches (*z*). The legal effect of a prorogation is to conclude a session; by which all bills and other proceedings of a legislative

(*v*) May, 45, 46.

(*w*) See reply by Lord Dufferin in 1873 to a deputation of members of parliament who called on him to prorogue the houses contrary to the advice of his privy council. Com. J. (1873), 2nd session, 31-32.

(*x*) 2 Hatsell, 317-321. May, 45.

(*y*) 49 Lords' J. 747; 69 E. Com. J. 132. Despatch of Lord Dufferin; Com. Jour. 1873, 2nd sess. 16.

(*z*) Cushing, see 519. May, 44, 46.

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character depending in either branch, in whatever state they are at the time, are entirely terminated, and must be commenced anew, in the next session, precisely as if they had never been begun (1). In like manner a prorogation has the effect of dissolving all committees, whether standing or special (2). In the case of private bills only, relief has been frequently granted to the parties concerned in promoting or opposing such measures, when a session of parliament has been brought to a premature close. This has been done by the adoption of resolutions, permitting such bills to be re-introduced in the following session, and by means of *pro forma* and unopposed motions advanced to the stages at which they severally stood when the prorogation took place (3). But such procedure is only justifiable under circumstances of urgency, and in view of an abrupt and premature termination of the session (4). The House of Commons in England has never agreed to proposals that have been sometimes made to give the statutory power to either house of suspending a public bill, and resuming it in the ensuing session at the precise stage where it had been dropped (5).

VI. Dissolution of Parliament.—The governor-general, acting upon the advice of his privy council, may close the existence of a parliament by dissolution. Parliament is dissolved by proclamation under the great seal after having been prorogued to a certain day. Formerly parliament was

(1) Hatsell, 335. May, 44 I Blackstone, 186.

(2) 5 Grey, 374; 9 *Ib.* 350. Can. Com. J. (1873, 2nd sess.) 16.

(3) Todd's Parl. Govt. in England, i, 388. 86 E. Com. J. (1831) part 2, p. 525. Mirror of P. (1841) 2303, 2346; 144 E. Hans. (3) 2209; 153 *Ib.* 1528, 1607. Leg. Ass. J. August sess. of 1863, pp. 91, 93, 282, 288; 1865, Jan. sess. 226, 246. Todd's Private Bills, 62, 63.

(4) 180 E. Hans. (3) 692, 851. The orders made in 1859, 1880, 1886, 1892 and 1895 for this purpose, were peculiarly simple and effectual, and will be probably followed on similar occasions to the exclusion of earlier precedents; May, 690 (10th ed.); May, 837 (11th ed.). See 124 Lord's J. (1892) 351, 406; 147 E. Com. J. (1892) 379, 380.

(5) Todd's Parl. Govt. in England, i, 388-401. May, 308.

ipso facto dissolved on the death of the sovereign, both in the provinces of Canada and in Great Britain. In the mother country, however, by statute (*f*), a parliament was determined six months after the demise of the Crown, but by the Reform Act of 1867 it was provided that the parliament in being at any future demise of the Crown should not be determined by such demise, but should continue as long as it would otherwise have continued unless dissolved by the Crown (*g*). The legislature of Canada in 1843 (*h*) passed an act to the same effect, and this act was re-enacted in the first session of the Dominion parliament (*i*). Similar legislation, however, had been passed in the various provinces before confederation and now exists in all the provinces of Canada. It is the rule in Canada, as in Great Britain, that, when parliament is to be dissolved, to issue the proclamation for dissolution immediately or very soon after that of prorogation (*j*). The form of a proclamation is brief and simple, merely naming the day to which the parliament is prorogued; that of dissolution states that, "we do hereby dissolve the said parliament and the senators and the members of the House of Commons are discharged from their attendance and meeting on the ——day of ——" (the date to which the parliament was prorogued). Simultaneously with the issue of the proclamation dissolving a parliament a proclamation appears calling another parliament and informing "all to whom these presents shall come" that writs have been issued in due form for that purpose returnable on a certain date therein named. This is followed, generally on the same day, by a further proclamation summoning the House of Commons to meet a few days after

(*f*) 7 & 8 Wm. & M. c. 15. 6 Anne. c. 7.

(*g*) 30 & 31 Vict. c. 102, s. 51. Taswell—Langmead, 770.

(*h*) 7 Vict. c. 3, s. 1. Con. Statutes of Canada, c. 3.

(*i*) 31 Vict. c. 22. 5, 1, Rev. Stat. Canada, c. 10, ss. 1 & 2.

(*j*) See Journals for 1873, '74, '79, '83, '87, '91, '96, 1901, &c. In 1896 parliament was prorogued only a day before its dissolution. In 1911 it was dissolved on the day of prorogation. Can. Gazette Extra, 29th July, 1911.

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the return of the writs of election. This parliament may again be prorogued until the administration of the day desires it to actually assemble "for the despatch of business." The privileges of members as to freedom from arrest continues, as we have seen above (chap. ii), after a dissolution for a reasonable time as fixed by custom or for a definite time, where it is settled by statute. It has been decided that the period of privilege of freedom from arrest in civil cases in Canada, except when otherwise provided by statute, is the same as in England (*k*). The precise time has not been determined but the general claim of exemption from arrest extends as well to dissolutions as to prorogations. Notwithstanding a dissolution of parliament the speaker of the House of Commons at the time continues for the administration of the internal economy of the house as speaker until a speaker is regularly chosen by the new parliament (*l*).

(*k*) *Green vs Gamble & Boulton* (9 U.C.Q.B. 546.) See also ch. ii. May, 111.

(*l*) House of Commons Act R.S.C., chap. ii, "Internal Economy."

CHAPTER IV.

THE SENATE AND HOUSE OF COMMONS.

I. The Senate.—II. Senators.—III. Introduction of Senators.—IV. The House of Commons.—V. The election of Members to the House of Commons.—VI. The Trial of Controverted Elections.—VII. The Prevention of Corrupt Practices at Elections.—VIII. Special Returns: Double Returns.—IX. Dual Representation.—X. Preservation of the Independence of Parliament.—XI. Issue of Writs of Election.—XII. Introduction of Members.—XIII. Attendance of Members: Indemnity etc.: Places in House.—XIV. Resignation of Members: Vacancy by Death, etc.—XV. Questions Affecting Members referred to Select Committees.

I. The Senate.—The Senate of Canada is the creation of the British North America Act, 1867. That statute declares, "There shall be one parliament of Canada consisting of an upper house styled the Senate, and the House of Commons" (a).

The Senate consisted at first of seventy-two members, viz., 24 from Ontario, 24 from Quebec, and 24 from Nova Scotia and New Brunswick, those two provinces being considered one division. Although the act (b) provided that the number of senators should at no time exceed seventy-eight, this provision has been modified by the provisions of section 147 as to Prince Edward Island, and, as new provisions came into the federation requiring representatives in the Senate, the number of senators has been from time to time increased. In relation to the Senate, Canada was

(a) Section 17, British North America Act, 1867.

(b) Sec. 28 *Ib.* Sec. 147. *Ib.*

at confederation deemed to consist of three divisions, viz., Ontario, Quebec and the Maritime Provinces (Nova Scotia and New Brunswick). Each division was entitled to be represented by twenty-four senators (*c*). As to Quebec, each senator from that province was to be appointed for one of the electoral divisions specified in the schedule to the act. Manitoba entered the union in 1871 and was given two members in the Senate with a further provision for an increase in the number to four as the population increase: (*d*).

British Columbia entered into the union in 1871, the terms of the union providing for a representation of three members in the Senate, the representation to be increased under the provisions of the British North America Act (*e*). Prince Edward Island was admitted as a province of Canada in 1873 by Imperial Order in Council based upon addresses from the legislature of the Island and the parliament of Canada. Section 147 of the act provided that after the admission of Prince Edward Island "the representation of Nova Scotia and New Brunswick shall, as vacancies occur, be reduced from twelve to ten members respectively and the representation of those provinces shall not be increased at any time beyond ten, except under provision of the act and for the appointment of three or six additional senators under the direction of the Queen. Under this section, Prince Edward Island was comprised in one of the three divisions referred to in section 22, and though it has four senators this has not increased the number of senators in the aggregate. By the British North America Act, 1886, the parliament of Canada was empowered to

(*c*) Sec. 22 *Ib*.

(*d*) The Manitoba Act, 33 Vict. c. 3, (1870), sec. 3. Under this act Manitoba was to have two senators until it should have a population of 50,000, and then it should have three; and four when the population should have reached 75,000. The population in 1891 was 152,000, and consequently the province received another senator. Rev. Stat. of Canada (1896), c. 12.

(*e*) Imperial order in council, 16th May, 1871.

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make provision for the representation in the Senate and House of Commons of the territories of Canada not included in any province (*f*). Pursuant to this enactment the parliament of Canada allotted two senators to the North West Territories (*g*).

On the admission of the new provinces of Alberta and Saskatchewan in 1905, each was accorded representation in the Senate of four members (*h*). The Senate of Canada during the twelfth parliament consisted of eighty-seven members, but during the session of 1915 addresses to the king from the Senate and House of Commons were adopted praying for such amendments to the British North America Act of 1867 as would permit of the increase of the number of members in the Senate to ninety-six and that the divisions of Canada in relation to the constitution of the Senate be increased from three to four, the fourth division to comprise the western provinces of Manitoba, British Columbia, Saskatchewan and Alberta, each of which was to have six senators; the four divisions to be each represented by twenty-four members. In May, 1915, the imperial parliament passed the act asked for, the provisions of which on the above mentioned subjects were to take effect only after the dissolution of the twelfth parliament. The number of senators which may be added under certain conditions, provided for in section 26 of the Union Act, 1867, is increased from three or six to four or eight, as the case may require, but so that the total number of senators shall not exceed one hundred and four. Provision for senators is also made for Newfoundland, should that colony at any time hereafter enter the confederation as a province of Canada (*i*). The

(*f*) 49-50 Vict. ch. 35.

(*g*) Can. Stat. (1888), 50-51 Vict. c. 3.

(*h*) The Alberta Act 4-5 Edw. 7, sec. 4. The Saskatchewan Act *Ib.* sec. 4.

(*i*) Can. Com. Jour. 1915. Imperial Acts 1915 (B.N.A. Act 1915) B.N.A. Act, ss. 26, 27. See Sen. Deb. (1877) 87-94; Com. Deb. (1877) 371, for discussion on a case in which the queen refused to appoint additional senators, under section 26. Also Todd's Parl. Govt. on

thirteenth parliament of Canada would then consist of the following representation in the Senate: 1st division, Ontario 24; 2nd division, Québec 24; 3rd division, Nova Scotia 10; New Brunswick 10; Prince Edward Island 4; (24).

II. Senators.—The senators are nominated and summoned by the Crown and hold their positions as such for life, except under certain conditions. A senator may resign by writing under his hand addressed to the governor-general. The place of a senator shall become vacant if he is absent for two consecutive sessions, if he becomes a bankrupt or insolvent or becomes a public defaulter; if he becomes a citizen or subject of any foreign power; if he is attainted of treason or convicted of any infamous crime; if he ceases to be qualified in respect of property or of residence; provided that he shall not be disqualified in respect to residence on account of his residing at the seat of government while holding an office under the government requiring his residence there (*j*). A person to be eligible for appointment to the Senate must be of the full age of thirty years, either a natural born subject of the king or duly naturalized, resident in the province for which he is appointed and must have real and personal property worth \$4,000 over and above all debts and liabilities. In the case of Quebec he must have his real property qualification in the electoral division for which

Br. colonies, 164. The Earl of Kimberley in his despatch on the subject stated that her Majesty should not be advised to take the responsibility of interfering with the constitution of the Senate, except upon occasion when it had been made apparent that a difference had arisen between the two houses of so serious and permanent a character that the government could not be shown that the limited creation of senators allowed by the act would apply an adequate remedy." The Senate, on receipt of this despatch, passed resolutions approving of the course pursued by her Majesty's government. Journal 130, 134.

(*j*) B.N.A. Act, 1867, secs. 29, 30, 31. In Great Britain a peer who has been adjudged a bankrupt cannot sit in the House of Lords. 34-35 Vict. c. 50 (Imperial Stat.) May, 38; 164 Lord's Jour. 138, 206, 321, 322, 342, 429.

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he is appointed or be a resident therein (*k*). Each senator must take the oath of allegiance and make a declaration of his property qualification before taking his seat (*l*). In 1880 it was deemed expedient to adopt a resolution which was to the effect that "within the first twenty days of the first session of each parliament every member shall make and file with the clerk a renewed declaration of his property qualification, in the form described in the fifth schedule annexed to the B.N.A. Act, 1867." The clerk shall "immediately after the expiration of each period of twenty days, lay upon the table of the house a list of the members who have complied with the rule" (*m*). In case members arrive too late to make the declaration within the stated period, then it is usual for a minister to move formally that the clerk be authorized to receive the declarations in due form (*n*). Senators who have been unable from sufficient cause to attend during the session and make the necessary declaration before the clerk, have been permitted to sign it before a justice of the peace—such declaration being deemed sufficient on formal motion (*o*). In 1883, the Senate was satisfied with a declaration signed and transmitted to the clerk by a senator suffering from paralysis (*p*). When a vacancy happens in the Senate, by resignation, death, or otherwise, the governor-general shall, by summons to a fit and proper person, fill the vacancy. If any question should at any time arise respecting the qualification of a senator or a vacancy in the Senate,

(*k*) B.N.A. Act, 1867, sec 23.

(*l*) Sec. 128 B.N.A. Act.

(*m*) Sen. Hans. (1880) 273; Jour. 152. The list was laid for the first time on the table in the session of 1880-81. Jour. (1880-81) 56-58; *Ib.* (1883), 54-55, 68; *Ib.* (1887), 42. *Ib.*, 1896, vol. xxi. 44, 45, 46, 58. Sen. Rule 105.

(*n*) Jour. (1880-81) 58, 60; Hans. 56. Jour. (1883) 105, 110. *Ib.* (1887) 44, 71, 86. A declaration has also been received in a subsequent session. Jour. (1882) 25, 40.

(*o*) Jour. (1883) 73, 86.

(*p*) *Ib.* (1883) 55; Hans. 54. The clerk made a special report on the subject.

the same must be heard and determined by that house. The 104th rule of the Senate provides:—

“If for two consecutive sessions of parliament any senator has failed to give his attendance to the Senate, it shall be the duty of the Clerk to report the same to the Senate, and the question of the vacancy arising therefrom shall, with all convenient speed, be heard and determined by the Senate” (*q*).

In accordance with the foregoing rule the clerk first reported in 1876, for the information of the Senate, that Sir Edward Kenny, Nova Scotia, had been absent from his seat for two consecutive sessions. The committee of privileges, to whom the matter was immediately referred, reported that Sir Edward Kenny had vacated his seat, and that the house should so determine and declare in pursuance of the thirty-second section of the British North America Act, 1867. The report of the committee having been formally adopted, the Senate agreed to an address to the governor-general setting forth the facts in the case (*r*), and also conveyed to Sir Edward Kenny an expression of regret at the severance of the ties which had hitherto connected them. In another case, in 1884, the report of the committee of privileges, declaring the seat vacant, was before its adoption communicated to the absent member, in case he had any representation to make in the matter. No reply was received and the seat was declared vacant in due form (*s*).

III. The Introduction of Senators.—The forms attending the introduction of newly appointed senators are in-

(*q*) B.N.A. Act, sec. 33. See Sen. Hans. (1884) 118. Sen. Hans. (1900) 1881.

(*r*) Sen. Jour. (1876) 188, 189, 205, 206; Deb., 299, 314, 324. See also case of Senator Sutherland in 1899, Jour. 29, 34, 51, 52; Deb., 88, 100, 102, and case of Senator Masson, 1903.

(*s*) Case of Mr. Dickson, Sen. J. (1884) 37, 39, 53, 70, 71; Hans., 67, 114. Case of Mr. Alexander, 1891. Attendance on a committee is equivalent to attendance in the house. See remarks of Sir A. Campbell, minister of justice, Hans. (1884) 117.

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variable. The speaker first reports to the Senate that the clerk has received a certificate from the secretary of state showing that a certain gentleman whose name is given has been summoned to the Senate. It is then ordered that the same be placed upon the journals. The entry is as follows: "This is to certify that his Excellency the governor-general has been pleased to summon to the Senate by letters patent under the great seal bearing date the.....day of.....19...of.....in the province of..... Esquire, &c., &c. The speaker then informs the Senate that there is a new member without, ready to be introduced. The new member is then introduced between two senators, and presents at the table his Majesty's writ of summons, which is read by the clerk, and put upon the journals. He will then subscribe the oath before the clerk (one of the commissioners appointed for that purpose) (*t*), by repeating the words after an officer. That having been done, the new member signs the roll, and then makes obeisance to the speaker, who, shaking hands with him, indicates the seat he is to occupy, and to which he is conducted by the members who introduced him. The speaker will finally acquaint the house that the new senator had also formally subscribed the declaration of qualification required by the British North America Act (*u*).

IV. The House of Commons.—In providing the legislative power of Canada the British North America Act, 1867, established the House of Commons, provided for its being called together not later than six months of the

(*t*) Sec. 178, B.N.A. Act, 1867.

(*u*) Sen. J. (1867-8) 165, 177, 178, *Ib.* (1877) 14, 26 &c., *Ib.* (1883) 20, 23, &c.; *Ib.* (1890) 3-7; *Ib.* (1900) 15, 16, &c. On the demise of Queen Victoria and of King Edward VII, the oath to the King was taken by each senator in the clerk's office when subscribing to the new declaration of qualification under rule 105 of the Senate. No entry appears in the journals relative to the oath. The declaration is made in the clerk's office, but the oath is taken in the Senate.

union, and arranged its constitution (*a*). The House at first consisted of 181 members distributed as follows: Ontario, 82; Quebec, 65; Nova Scotia 19; New Brunswick, 15. Additional representation as well as re-adjustment of the same was also provided as the population of the country increased or changed relatively among the provinces. A general census of the population of Canada was required by the act to be taken in the year 1871, and every tenth year thereafter. In this decennial census the respective populations of the various provinces were to be distinguished (*b*).

The principle upon which representation shall be adjusted is as follows: Quebec shall have a fixed number of 65 members (*c*). Each of the other provinces shall be assigned such a number of members as will bear the same proportion to the number of its population (ascertained at each decennial census) as the number 65 bears to the number of the population of Quebec (*d*). Only a fractional part exceeding one-half of the whole number requisite to entitle the province to a member shall be regarded in computing the members for a province—such fractional part being considered equivalent to the whole number (*e*). In case of re-adjustment after a decennial census the number of members for a province shall not be reduced, "unless the proportion which the number of the aggregate population of the province bore to the aggregate population of Canada at the then last preceding re-adjustment of the number of members for the province is ascertained at the then latest census to be diminished by one-twentieth part or upwards" (*f*). Such re-adjustment, however, could not take effect "until the termination of the then existing

(*a*) B.N.A. Act, 1867, sec. 17, 19, 37-57.

(*b*) *Ib.* sec. 8.

(*c*) *Ib.* sec. 51 (1).

(*d*) *Ib.* sec. 51 (2).

(*e*) *Ib.* sec. 51 (3).

(*f*) *Ib.* sec. 51 (4).

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parliament" (g). It is also provided that the number of members may be from time to time increased, provided that the proportionate representation prescribed in the act is not thereby disturbed (h). The parliament in accordance with section 51 re-arranged the representation in 1872 basing it upon the census of 1871. Ontario received six additional members; Nova Scotia, 2; New Brunswick, 1; Quebec remained the same (i). On their admission into the Union, Manitoba received 4 members (j); British Columbia, 6 (k); and Prince Edward Island, 6 (l). Until 1882 the number of members in the House of Commons was 206. In the session of 1882 the representation was again re-adjusted (m); the province of Ontario received 4 additional members, and the province of Manitoba, one. In 1886 provision was made for the representation of the Northwest Territories in the House of Commons (n). Under these statutes the total representation until 1891 was 215 members, distributed as follows: Ontario, 92; Quebec, 65; Nova Scotia, 21; New Brunswick, 16; Manitoba, 5; British Columbia, 6; Prince Edward Island, 6; Northwest Territories, 4 (o). As a result of the census of 1891, the representation was re-adjusted as follows: Ontario, 92; Quebec, 65; Nova Scotia, 20; New Brunswick, 14; Prince Edward Island, 5; Manitoba, 7; British Columbia, 6; Northwest Territories, 4; in all 213 members.

(g) *Ib.* sec. 51 (5).

(h) *Ib.* sec. 52.

(i) 35 Vict. c. 3, sec. 4, Dom. Stats.

(j) *Ib.* sec. 1; 33 Vict. c. 3, sec. 4, Dom. Stats.

(k) Can. Com. J. (1871) 195. Can. Stats. (1872) orders in council cii, lxxxviii.

(l) Can. Com. J. (1873) 402. See also orders in council, Dom. Stats. (1873) xxiii.

(m) The re-adjustment of the Ontario constituencies was vigorously attacked by the opposition in the Commons. See Hans. (1882) 1356 *et seq.* Many amendments were proposed. Can. Com. J. (1882) 410-412.

(n) 149 Vict., c. 24 R.S.C. c. 7.

(o) Dom. Stats. 50-56, Vict. c. 4.

A member was given to the Yukon Territory in 1902 (*p*). By the re-adjustment bill, 1903, owing to the result of the census of 1901, the House of Commons consisted of 214 members, of whom Ontario had 86; Quebec, 65; Nova Scotia, 18; New Brunswick, 13; Manitoba, 10; Yukon Territory, 1 (*q*). During the first session of 1905 the new provinces of Saskatchewan and Alberta were admitted to the Union and a special provision was made for taking the census of population in those provinces and in Manitoba in the middle of the year in each decade, commencing with 1906. The results of the first quinquennial census made necessary a re-adjustment of the representation of those provinces and provided that the number of the members of the house should be 221, distributed as follows (*r*): Ontario, 86; Quebec, 65; Nova Scotia, 18; New Brunswick, 13; Manitoba, 10; British Columbia, 7; Yukon Territory, 1.

The representation based upon the census of 1911 was fixed by statute passed in the session of 1914 (*s*). By this act, which was not to come into operation until after the dissolution of the twelfth parliament, the House of Commons is to consist of 234 members. They are distributed as follows: Ontario, 82; Quebec, 65; Nova Scotia, 16; New Brunswick, 11; Manitoba, 15; British Columbia, 13; Prince Edward Island, 3; Saskatchewan, 16; Alberta, 12; Yukon Territory, 1. The fact that the representation of Prince Edward Island in the House of Commons was less than in the Senate was severely commented upon by the representatives of that province and the principle was conceded that a province should have a

(*p*) Dom. Stats. 55-56, Vict. c. 2; do 2 Edw. VII., c. 37.

(*q*) By the census of 1901 Ontario and the Eastern Maritime Provinces had to lose representation. The re-adjustment raised constitutional objection to the changes proposed. The objections were argued on a specially stated case before the Supreme Court of Canada. See S.C. Can. reports, vol. 33 (1903).

(*r*) Dom. Stats. (1906) 6-7 Edw. VII., c. 41.

(*s*) 4-5 Geo. V. (1914).

representation in the house not less in number than in the Senate. Consequently, upon an address from the Senate and House of Commons to the king, adopted in the session of 1915; the imperial parliament amended the British North America Act to that effect (*t*).

V. The Election of Members to the House of Commons.

—It is provided by the 41st section of the British North America Act, 1867, that:—"Until the parliament of Canada otherwise provides, all laws in force in the several provinces at the time of the union, 'relative to the elections and proceedings connected therewith' shall respectively apply to elections of members to serve in the House of Commons for the same several provinces."

In 1871 and subsequent years, parliament passed several acts of a temporary character, and it was not until the session of 1874 that more complete provision was made for the election of members of the House of Commons (*u*). This law dispensed with public nominations (*v*) and provided for simultaneous polling at a general election—a provision which had existed for years in the province of Nova Scotia. No qualification in real estate was by the act or is now required of any candidate for a seat in the House of Commons, but the candidate must be a British subject (*w*). Certain individuals are, however, disqualified from being candidates, such as persons convicted for corrupt practices by any competent court, or any candidate or other person found by the report of a trial judge on the

(*t*) Imperial Acts, 1915. Senate and Commons Journals (t9t5).

(*u*) 34 Vict., c. 20; 35 Vict., cc. t4, t6, t7; 36 Vict., cc. 27; 37 Vict., c. 9. See Rev. Stats. of Can., c. 8.

(*v*) The open nomination of candidates was abolished in England by 35 and 36 Vict. (1872) c. 33.

(*w*) The property qualification has been previously abolished in England in 1858 by 21 and 22 Vict., c. 26. Dom. Elec. Act R.S.C., c. 6, sec. 69. The provincial laws generally provide that a candidate shall be a male person, but the federal statute is silent upon this point and only inferentially can it be made to appear that a candidate must be a male.

trial of an election petition to have been guilty of certain corrupt practices, government contractors, members of a provincial legislature, certain provincial public officials and persons in the employ of the government of Canada and receiving emolument therefor, except ministers of the Crown (x). All persons qualified to vote for members of the legislative assemblies of the several provinces comprising the dominion, could, until 1885, vote for members of the House of Commons for the several electoral districts comprised within such provinces respectively, and the lists of voters used in the election of representatives to the legislative assemblies were used at the election of members of the House of Commons. Provision was also made in the act of 1874 for voting by ballot. On several occasions since 1874 parliament has amended the law with the object of ensuring the greatest possible accuracy and secrecy in the use of the ballot—the latest form being adopted in 1901 (y).

In the session of 1885, parliament after a prolonged debate in the House of Commons, passed an act providing a uniform franchise for the dominion, exclusive of the Northwest Territories, which were not then represented (z). This act was however repealed by the Dominion Franchise Act of 1898 (a).

(x) By sub-s. 26 of s. 91 of B.N.A. Act, 1867, naturalization and aliens are among matters falling under the exclusive legislative authority of the parliament of Canada. The provisions of the act of 1874, that a candidate should be either a natural born subject of the king, or a subject naturalized, etc., have been dropped in subsequent election acts.

(y) The secret ballot was established in England in 1872 (except in case of university elections) by 35 and 36 Vict., c. 33. See Rev. Stat. Can., c. 8. See 63-64 Vict., c. 12, and 1 Edw. VII. c. 16 R.S.C. (1906) c. 6.

(z) Rev. Stat. Can. (1886) c. 5. On several occasions previous to 1885, drafts of acts were submitted to the House of Commons but none of the measures were pressed. See Mr. Blake's speech on the bill of 1885, April 17th, page 1177. Can. Com. Hans., for various proposals to deal with this vexed question.

(a) 61 Vict., c. 14.

The following persons are, at present (1915), disqualified to vote at elections for the House of Commons:—the judges of every court whose appointment rests with the governor-general; persons disqualified for corrupt practices or disfranchised under the Disfranchising Act; persons serving sentences for criminal offences or patients in a lunatic asylum; inmates of poor asylums receiving aid from government, or persons offending against provisions of the Election Act by paying for the conveyance of voters to the polls (*b*).

Returning officers and election clerks, and attorneys and clerks of candidates who may be paid for their services, are disqualified from voting in the district in which they have been so engaged, but not elsewhere. But deputy returning officers, poll clerks and constables may vote. A returning officer may vote in case of an equality of votes between candidates.

The Federal Franchise Act of 1885 was repealed by 61 Vict. c. 14 (1898) and since that act came into force the qualifications necessary to entitle a person to vote in dominion elections are those established by the laws of the province as being necessary to entitle such person to vote in the same part of the province at a provincial election. Provincial polling divisions and voters' lists are adopted for the purpose of all federal elections. The provisions on these subjects in force at present (1915) may be briefly summarized as follows: Part I of the act in force does not apply to the provinces of Saskatchewan, Alberta and the Yukon Territory. These are settled by Part II of the act and need not be summarized here, although in many points they are similar to those in part one, changes being necessary on account of the vast distances to be covered by those engaged in carrying on the election. In cases where, in the provinces the regular voters' lists shall be prepared and the federal government may confer all necessary powers upon officials to have this work performed, but in so doing the provincial laws shall as far

(*b*) Dom. Elec. Act, of 1900, 63-64 Vict., c. 12, ss. 7, 8, and amendments thereto, 1 Edw. VII, c. 16.

as possible be observed and followed, so that voters' lists should not be more than one year old. Special provisions are made for voters' lists in unorganized territory in Ontario, the work being practically handed over to the judges. In the province of Manitoba certain judges are appointed a board to define and establish polling divisions and to distribute among them the votes on the provincial voting lists, inasmuch as the provincial and federal constituencies differ very materially in their boundaries and population. Provincial disqualification does not apply to federal elections in certain cases specially mentioned in the act (*c*). All lists of voters properly certified are to be transmitted to the clerk of the Crown in chancery. It becomes the duty of that official to have the same printed by the king's printer, who is required to send twenty copies to the sitting member for the electoral district to which the list belongs and the same number to the defeated candidate at the last dominion election in that district. Copies of such lists are also provided to all applicants on payment. Each such printed copy is to be deemed authentic and evidence of the original list may be given by a copy of such printed list (*d*). There are numerous details in connection with these matters that could only be ascertained by a careful perusal of the act itself and need not be here recited. During the session of 1915, owing to the participation of Canada on a large scale in the great war, it was decided that Canadian soldiers on active military service should have the privilege of exercising their electoral franchise. To this end the act of 5 George V was placed upon the statute book. This law provided that every soldier of Canada "in the present war" of the age of 21 years or upwards, and being a male British subject who had been a resident in Canada for not less than thirty days, shall be entitled to vote in the electoral district in which he was last resident notwithstanding his absence from such electoral district or from Canada. Very careful and elaborate arrangements

(*c*) Dominion Elections Act, ch. 6, sec. 11.

(*d*) Sec. 18 Dominion Elections Act.

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are provided for the distribution of ballot papers, the appointment of scrutineers and the marking and collection of the ballots, the counting and recording of the votes and the return of the papers to the clerk of the Crown in chancery in Canada. The soldier's vote could be marked for a particular candidate or for the government or for the opposition. In case of doubt as to whom a ballot for the government should be allotted the prime minister shall decide and if for the opposition in such case the decision would be left for the leader of the opposition. Soldiers or volunteers in Canada were also allowed to vote at military camps or bases in Canada under certain carefully formed restrictions. The act remains in force only during the war (e).

The province of Prince Edward Island is exempted somewhat from the operation of the act owing to the fact that the franchise laws of the province differ greatly from those in force in the other provinces. Special provisions are made to meet these cases (f). Every writ for the election of a member shall be dated and be returnable on such days as the governor-general in council shall determine. The writ is addressed and forwarded by the clerk of the Crown in chancery to the returning officer appointed by the government (g). Certain persons, such as members of the government, the Senate or the House of Commons, clergymen, judges, etc., may not be appointed returning officers or election officials (h). At a general election the same day is fixed for the nomination of candidates, for all the electoral districts of Canada except in the Yukon Territory and in the electoral districts of Chicoutimi and Saguenay, and Gaspé, in the province of Quebec, and of Skeena, West Kootenay and Cariboo, in British Columbia. In the above districts the returning officers shall fix the day

(e) Statutes of Canada (1915) ch. ii.

(f) Dominion Elections Act, ch. 6, ss. 81, 107, (4), 143 (2), 147, 149, 154, 155, 174 (3), 176, 254.

(g) *Ib.* sec. 75.

(h) *Ib.* sec. 77. See also secs. 78, 79.

for the nomination of candidates and the places for holding the polls (*i*). In case the person to whom a writ is addressed refuses or is disqualified, or is unable to act, another person may be appointed. If a candidate dies after being nominated and before the closing of the poll, the returning officer, except in the Yukon Territory, may fix another day for the nomination of candidates. In such a case there must be a special report made with the return to the clerk of the Crown in chancery (*j*).

Any twenty-five electors, except in the provinces of Saskatchewan, Alberta and the Yukon Territory (*k*) may nominate a candidate by signing a nomination paper in the prescribed form, the candidate's consent in writing being appended thereto, unless the candidate is absent from the province at the time. A deposit of two hundred dollars must also be made with the returning officer which is returned to the candidate provided he is elected or in case he obtains a number of votes at the least equal to half the number of votes polled in favour of the candidate elected, otherwise the sum is forfeited to the Crown. In the case of the death of the candidate before the closing of the polls the deposit is returned to his personal representatives. After the election has been held the returning officer, at the place and time named in his election proclamation, opens the ballot boxes, counts the ballots and declares elected the person who has received the majority of votes. The returning officer shall, immediately after the sixth day after the final addition of votes of the respective candidates, unless before that time he receives notice that he is required to attend before a judge for the purpose of a recount, transmit his return to the clerk of the Crown in

(*i*) Dominion Elections Act, secs. 89, 90.

(*j*) Such a case occurred in the general election of 1891 in the electoral district of Huntingdon. See Dom. Elections Act as amended by 5 George V, (1915), s. 2.

(*k*) In the provinces of Saskatchewan and Alberta any four or more electors may nominate, and in the Yukon Territory fifteen nominators only are requisite. Dom. Elections Act, sec. 40.

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chancery, that the candidate having the largest number of votes has been duly elected, and shall forward to each candidate a duplicate of the return. The clerk of the Crown in chancery must, on receiving the return of any member, enter into a book in the order in which such return is received by him (*l*), and immediately give notice in the next ordinary issue of the Canada Gazette of the name of the candidate so elected. The same procedure is followed in case of a recount before a judge. The custody of all election papers and returns remains with the clerk of the Crown in chancery (*m*).

As communication by water between the Magdalen Islands and the mainland of the electoral district of Gaspé, and by water or land between the polling divisions to the east of Bersimis in the electoral district of Chicoutimi and Saguenay may be interrupted during an election by the severity of the season, it is provided that the governor in council may direct that all necessary information relative to the elections may be transmitted by telegraph by the returning officer to his deputies and by them to him, so that he may be kept informed of all the matters relating to the election, and he may be enabled to return the candidate having the majority of votes or to make such other return as the case might require (*n*).

VI. The Trial of Controverted Elections.—The Canadian statutes regulating the trial of controverted elections and providing for the prevention of corrupt practices at parliamentary elections, have, to a certain extent, followed the English statutes on the same subject. For some years in

(*l*) This proceeding was considered necessary from the fact that it had previously been left to the clerk of the Crown in chancery to enter the returns and publish them in the Gazette at his mere convenience. It was contended in debate in the Commons that this course placed certain members at a disadvantage so far as the contestation of an election went.

(*m*) For procedure at all dominion elections see Revised Statutes Canada, ch. 6, and amendments thereto since 1906.

(*n*) *Ib.* sec. 313.

Upper and Lower Canada, and in the other provinces, the house itself was the tribunal for the trial and determination of election petitions—commissioners or committees being appointed, when necessary, to examine witnesses. Eventually the principle of the Grenville Act of 1770 (*o*) was adopted in Upper Canada, and the trial of controverted elections entrusted to sworn committees of nine members, and two nominees, one appointed by the sitting member and the other by the petitioner. After the union of 1840, election petitions were tried by committees or by the whole house, according to the old laws of each province (*p*). It was soon found expedient to adopt the principles of Sir Robert Peel's act of 1839 (*q*). The legislature in 1851 passed an act transferring the whole of its authority to a newly established tribunal called "the general committee of elections," which was composed of six members appointed by the speaker by warrant under his hand, but subject to the approbation and sanction of the house. This committee proceeded under special rules to secure a trial committee of five members who proceeded to hear witnesses and counsel. The decision of the committee was final and conclusive. This system continued in operation for several years after 1867 (*r*) consuming necessarily a great deal of time of the speaker and members, until it was thought expedient to follow again the example of the British parliament (*s*). Some of the judges in the

(*o*) 10 Geo. III., c. 16, Imp. Stat; May, 651.

(*p*) 4 Geo. IV., c. 4, Upper C. Stat.

(*q*) Imp. Stat 2 and 3 Vict., c. 38; am. by 11 and 12 Vict., c. 98; 10 E. Hans. (3) 694.

(*r*) Can. Com. J. (1867-8) 26, 37, 42, 108, 158, etc.

(*s*) In 1868 Mr. Disraeli, then chancellor of the exchequer, brought a bill transferring the trial of election petitions to judges (31 and 32 E. Hans. (3) 125). In giving his reasons for changing the existing system, Mr. Disraeli said, "charges were being constantly made against the inefficiency and unsatisfactory character of the tribunal. The decisions of the committees have been uncertain and therefore unsatisfactory, and have offered no obstacle whatever to the growing practice of corrupt compromise by which, in the process of withdrawing petitions

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provinces of New Brunswick and Quebec questioned the constitutional power of the dominion parliament to constitute election courts in the way proposed. The matter was referred to the supreme court of Canada and eventually to the judicial committee of the privy council, both of which tribunals decided that the act was constitutional. The act of 1886 on this subject was amended from time to time and with the amendments became chapter 7 of the Revised Statutes of Canada (1906). This act with the amendments added in 1915, together with the act respecting inquiries as to corrupt practices at elections (chap. 8), and that (chap. 9) to disfranchise voters who have taken bribes, constitute the legislation on those important subjects. The amendments to the controverted elections Act of 1915 were designed mainly to facilitate the more speedy trial of election cases and to minimize inconvenience, expense and delays frequently attending the administration of the law in election cases. The statute as amended provides that the following courts or any judge thereof shall have jurisdiction under the act and that two judges of the said courts shall be "trial judges": in the province of Ontario, the high court division of the supreme court; in Quebec, the superior court; in Nova Scotia, New Brunswick and British Columbia, the supreme court; in Manitoba, the court of appeal; in Prince Edward Island, Saskatchewan and Alberta, the supreme courts of the province, and in the Yukon Territory, the territorial court (*t*). The order in which trials under the act and duties are assigned to judges are to be arranged by the judges of the courts above named. A cause in court is begun by petition which must be presented either by a candidate at the election

a veil is often thrown over more flagrant transactions than any which are submitted to scrutiny and investigation." The legislature has practically recurred to the method adopted more than 450 years previously in the election statute of 11 Henry IV. Taswell-Langmead, Const. Hist. 356.

(*t*) Controverted Elections Act. R.S.C. 1906, ch. 7. Dom. Stats. 1915, ch. 13.

complained of or by a person who had a right to vote at such election and the nature of the proofs of the right to be a petitioner are laid down. The petition may complain of the conduct of a returning officer and two or more candidates may be made respondents in the same petition and their cases may be tried at the same time. The petition must be presented not later than thirty days after nomination day, if the candidate complained of was declared elected on that day, or, in other cases, within forty days after the closing of the poll, except under special circumstances set forth in the act. The presentation of the petition is made by delivering it to the clerk of the court during office hours or otherwise as may be directed by rules of court. The petitioner must furnish security for costs to the amount of one thousand dollars, to be deposited in gold or dominion notes or bills of some chartered bank. The person petitioned against may file a cross-petition against the candidate who was not returned. The particulars of the complaint and charges shall be set out in the petition and cross-petition, and, under certain conditions, a judge may order the filing of additional particulars. The clerk of the court shall send a copy of the petition to the returning officer of the electoral district in question and a copy shall be served upon the respondent within five days after the petition has been presented. The respondent must file his answer to the petition within fifteen days after service of the petition, and after that date the cause is to be deemed at issue. The case must be promptly set down for trial. The trial judges are to proceed with the trial until all the evidence relevant to the particulars stated has been heard, notwithstanding any admission on the part of the respondent of practices sufficient to void the election, and notwithstanding the opinion of the court that enough evidence has been heard to void the election. Appeal on preliminary objections, a fruitful source of delay and expense, has been abolished. When more petitions than one relating to the same election or return are presented all the petitions shall be bracketed

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together and dealt with as one petition. The cases are tried without a jury and the trial, generally speaking, shall take place in the electoral district for which the return is in question. Ample provision is made for compelling the attendance of witnesses and it is provided that a witness is not to be excused from answering relevant questions on the ground of any privilege, or that the answer may tend to criminate him, but such witness may be protected against criminal proceedings by the trial judges if they deem such protection necessary. At the conclusion of the trial the judges render their decision and within twelve days thereafter, except in cases of appeal, certify in writing to the speaker of the House of Commons (*u*) their determination in the case and with the certificate shall send to him a copy of the evidence. The decision thus certified shall be final. Should the trial judges differ they shall certify the difference and the member shall be declared duly elected. If the judges decide that such member was not duly elected or returned but differ as to other matters, they shall certify that difference. If they differ as to the subject of a report they shall certify that difference and make no report upon the subject upon which they so differ. They may, however, make a special report to the speaker as to any matters arising in the course of the trial, an account of which, ought, in their judgment, to be submitted to the House of Commons. Provision is also made for the statement and hearing of a special case if such should be found convenient. Appeals are provided for to the supreme court of Canada and, an appeal being decided by such court, the registrar of the court certifies the decision to the speaker and this decision is final. The speaker after receiving the certificates and reports takes

(*u*) For the purposes of this act (Rev. Stat. of Can., 1906, ch. 7, sec. 2.) When the speaker is absent or unable to act, the clerk of the house, or any other officer for the time being performing his duties, is entitled to act, and the judge should make report to him accordingly. Can. Com. J., 1879, Feb. 14, East Hastings and Kamouraska. Can. Com. J. 1883, Feb. 9, Kings, N.B., Joliette, etc.

all proceedings necessary for confirming or altering the return or for the issuing of a writ for a new election. For this purpose he issues his warrant addressed to the clerk of the Crown in chancery. The speaker shall also, without delay, lay the reports and certificates before the house with a report of his own proceedings therein. If the trial judges, or the supreme court, make a special report on the matter, the House of Commons may take such action in respect thereof as it deems proper (*v*). If the judges report that corrupt practices have, or that there is reason to believe that such practices have, extensively prevailed (*w*) at the election under consideration, or they are of opinion that an inquiry into the election has been incomplete and that further inquiry is desirable, no new writ for election in such district shall be issued except by order of the House of Commons (*x*). No election petition may be withdrawn except by leave of the court or a judge and due notice of application for such leave must be given (*y*). Provision is made for the abatement of an election petition in case of the death of a respondent or of other circumstances rendering such abatement desirable and a new respondent may be substituted if a case is made out therefor (*z*). The judges are empowered to make rules for the effectual execution of the act and for the regulation of the practice, procedure and costs in respect to election petitions, and the trial and reporting of the same (*a*).

VII. The Prevention of Corrupt Practices at Elections.—

Statutes for the prevention of corrupt and improper practices at elections have frequently been adopted and from time to time amended with a view to completely stamping out the abuses which have tended to prevent

(*v*) Sec. 71 Controverted Elections Act.

(*w*) *Ib.* s. 72.

(*x*) *Ib.* sec. 72.

(*y*) *Ib.* sec. 78.

(*z*) *Ib.* sec. 81.

(*a*) *Ib.* ss. 85, 86.

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an honest and fair expression of electoral opinion at the polls. The law strives to protect the sanctity of the voters' lists by careful provisions as to making necessary alterations in the same, and inflicts severe penalties for wrong doing in that connection (*b*), by making it an indictable offence by any election officer to act as agent for a candidate in the conduct of the election, for the illegal refusing of a ballot to an elector or any improper varying of an oath of qualification to a voter. It declares that everyone who forges, counterfeits, fraudulently alters or destroys a ballot paper, who illegally supplies a ballot paper, who fraudulently puts an illegal ballot paper into or removes a ballot paper from a ballot box or polling station, who destroys or interferes with a ballot box or ballot papers, or forges or counterfeits any stamp required by law for stamping ballot papers, or fraudulently initials or, with fraudulent intent, prints a false ballot paper or more ballots than the law prescribes, or attempts to commit any offence mentioned in the section (*c*), is guilty of an indictable offence and subject to severe penalties. Returning officers, and persons acting under them, are required to be prompt and scrupulously careful for the matter of returning the ballot boxes, ascertaining the number of votes and making due return of the candidate elected (*d*). Full and complete regulations are set forth for preserving the secrecy of the ballot, for preserving the peace on nomination and election day and for prevention of the supplying or carrying of party flags, banners and standards, or the supplying ribbons and labels for the purpose of using them at the election to distinguish the bearer as a supporter of a particular candidate or party (*e*). The selling of spirituous liquors on polling day is forbidden as are any payments of money or loans or advances by a candidate or other person on account of the election otherwise than through

(*b*) R.S.C. (1906) ch. 6, ss. 247-257.

(*c*) *Ib.* sec. 255. (*d*) *Ib.* secs. 256, 257.

(*e*) *Ib.* secs. 258-60.

the official agent of the candidate (*f*). Giving or promising money or any valuable consideration to any person to procure votes, or to induce voters to refrain from voting or any form of bribing or intimidation to that end, before or after the election, or directly or indirectly promising or agreeing so to do are fully set forth as criminal and illegal acts subjecting the offender to fines and imprisonment (*g*). A candidate who, by himself or by or with any other person before or during an election, directly or indirectly pays wholly, or in part, for any drink or refreshment to or for any person for the purpose of inducing such person or any other person to vote or refrain from voting, is liable to criminal and civil action (*h*). In short, the acts seem to have endeavoured to prohibit under severe penalties every conceivable form of bribery, undue influence and trickery of any nature calculated to impair the fairness of the vote and the honesty of the result (*i*). Corrupt actions by a candidate, or committed with his knowledge and consent, subject him to disqualification from sitting in parliament and from voting or holding any dominion public office for the period of seven years after his being convicted of the offence. Persons other than a candidate found guilty of any corrupt practice shall be disqualified in the same way for the period of eight years from the time of conviction.

A statute (*j*) specially provides for the issue of a commission of inquiry on address from the House of Commons, whenever a judge reports that corrupt practices have extensively prevailed at an election, or that he is of opinion that the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt practices have extensively prevailed is desirable. Such commission may issue when a petition

(*f*) *Ib.* secs. 261-264.

(*g*) *Ib.* secs. 265-266. (*h*) *Ib.* secs. 266, 267, 268.

(*i*) *Ib.* secs. 269-276; also secs. 270-282. (*j*) Ch. 8 R.S.C. (1906).

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has been presented to the house, signed by twenty-five or more electors of the district, stating that no petition had been presented under the Controverted Elections Act, and asking for inquiry into corrupt practices which, there is reason to believe, extensively prevailed at the election. Only one case has so far occurred under this statute: the petition of certain electors of South Grenville, which was referred to the standing committee on privileges in 1879, but no report was ever made on the subject (*k*). The law requires security to be given to meet the expenses of the inquiry in certain cases. One thousand dollars must be deposited with the accountant of the house before the petition under the act can be received. The certificate of the accountant that the money has been deposited must be attached to the petition on its presentation.

In the session of 1887 the subject of the powers and duties of returning officers, and the jurisdiction still possessed by the house in controverted elections was discussed. It appears that the returning officer for the county of Queens, New Brunswick, instead of declaring Mr. King (later, Senator King), who had the majority of votes at the general election of 1887, duly elected to represent that electoral district, decided that his nomination paper was invalid on the ground that the deposit was not legally made. He returned Mr. Baird as the representative to parliament. It was proposed in the house to amend the return, by erasing Mr. Baird's name and inserting Mr. King's in its place, but after a long debate the matter was referred to the committee of privileges and elections. In the course of the debate the Minister of Justice (the late Sir John Thompson) strenuously supported the principle of non-interference with the jurisdiction of the courts

(*k*) Can. Com. J., (1870) 70. In the Kent case, referred to a committee of privileges and elections in 1888, the committee reported that while giving due weight to the report of the learned judge, that he had reason to believe corrupt practices extensively prevailed in the electoral district in question, they were of opinion that no further inquiry or other proceedings is necessary. See Jour., 129.

over matters of controverted elections, "but he thought it quite competent for the house to refer the case to the committee for the express purpose 'not of trying the case, but of finding' whether the court is already exercising jurisdiction therein, and of enquiring into precedents governing such matters."

The committee, after a full investigation of authorities, reported as their opinion that the house "ought not to declare that the said George F. Baird is not entitled to sit in the said house, but should leave the case disposed of under the provisions of the Controverted Elections Act. When the report came before the house it was strongly opposed and a motion was made to declare Mr. King duly elected. The house, however, adopted the report on a division. The committee considered that the conduct of the returning officer required explanation and he was summoned to the bar of the house to answer for his conduct in returning as elected a candidate who did not receive a majority of the votes cast at the election." No steps were taken in his case after his examination, which in no wise improved his case. The general sense of the house was undoubtedly in disapproval of his course, and the result must be to make officers in the same position hereafter very cautious in exercising discretionary powers, and to induce them to follow the express terms of the law, the intent of which is certainly that the candidate having an undoubted majority should be returned as elected, and that all questions of law, arising after the nomination papers have been duly filed, and a poll ordered, should be left to the proper courts to decide. In this case it appears that no election petition was filed in the courts, although there would have been time to have done so three days after the presentation of the committee's report in favour of leaving the matter to the jurisdiction of the courts. Subsequently, in accordance with a statement made

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during the debate, Mr. Baird resigned his seat, and was re-elected by the same constituency (*l*).

The Controverted Elections Act (sec. 91) provides that all elections shall be subject to the provisions of the act, and shall not be questioned otherwise than in accordance therewith. The courts have full jurisdiction over petitions complaining of an undue return, of undue election of a member, of no return, of a double return or of any unlawful act by any candidate not returned, by which he is alleged to become disqualified to sit in the house. Petitions calling in question the right of a member to his seat have been presented to parliament, but not allowed to proceed further. In the first case in 1874 the petition was presented within the time when it could have been taken under the law. It asked that the return for Gaspé be amended by substituting the name of the petitioner for that of the sitting member. The petition was ruled out of order by the speaker on the ground that it dealt with a matter which should properly come under the cognizance of the courts (*m*).

In 1880-81 a petition was presented by Hon. (now Sir) Wilfrid Laurier, alleging that an election trial had not been a genuine investigation on account of a corrupt agreement—of which the judge was ignorant—entered into between the petitioner and respondent to abandon the petition. The speaker, to whom the question was referred as one of order, in accordance with the precedent of 1874, gave an elaborately argued opinion against the reception of the petition (*n*). The Nipissing election case (1901), of which

(*l*) Can. Com. J. (1887), 7-10, 41, 42-51, 70, 95, 120, 193, 196, 205, 207, 208; Can. Hans., 154-189; 671-706. Also Can. Com. J., (1888) 44. See a speech of Mr. Edward Blake, 20th March, 1875, as to the power of the house over returning officers for improper conduct. Can. Hans. (1875) 807-808. See also debates in the London Election case, 1892, Hans. Journals 104, 105.

(*m*) Can. Com. J. (1874) 82; see also remarks of Mr. Blake, and Sir J. A. Macdonald; Hans. 1875, pp. 817-819.

(*n*) Can. Com. J. (1880-81) pp. 199, 200. Hans. 823, 830.

very full account will be found in the Hansard of that year, was the cause of considerable controversy as to the jurisdiction of the courts and of the House of Commons in election cases. The Solicitor-General (Mr. Fitzpatrick, later Sir Charles Fitzpatrick, Chief Justice of Canada) did not deny the power of the house to deal with its own officers as to matters affecting the position of members under certain circumstances, but both he and the Prime Minister (Sir Wilfrid Laurier) took the ground that it was useless to refer to the committee a case of which all the facts had been already before the courts. This view prevailed (*o*).

Since 1868 when the "Election Petition Act" became law in Great Britain, the British parliament has considered the question of jurisdiction over its members in matters of election, on many occasions and much light has been thrown on the parliamentary and constitutional questions involved (*p*). Among the conclusions reached from a review of the cases cited in these controversies one may be stated, viz., that the strong sense of parliamentary and public opinion is opposed to any return to the old system of parliament interfering in the trial of election questions (*q*), although it continues to retain all the powers not expressly, or by fair inference, entrusted to the courts. The provisions of the statutes on controverted elections and kindred matters does not supersede the jurisdiction of the house in questions affecting the seats of its own members not arising out of controverted elections. The house is, in fact, bound to take notice of any legal disability affect-

(*o*) See Hansard, April 24th, 1901.

(*p*) For further light on questions arising under British statutes see 124 Eng. Com. J. pp. 12, 43, 82, 88. May, pp. 631-666, and cases cited; also 13 Eng. Com. J. 49, 52, 239, 222 Eng. Hans. 493.

(*q*) See speeches of Sir John Thompson, Com. Hans. (1887) 160; *Ib.* (1892) 1044; also remarks of Mr. Disraeli cited in Amos' British Constitution 445; also Can. Com. Hans. (1880-81) 825. May, 656. The Ont. Court Q.B. in the Centre Wellington Election case has held that "the House of Commons retains all powers that it has not expressly given up."

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ing its members (*r*) and to issue writs for election to fill the places of members adjudged to be incapable of sitting, without waiting for the return to be questioned by persons outside of parliament; that the house has always the power to inquire into the conduct of its own returning officers and to prevent them for wrong doing. Of course it will proceed cautiously in any case that might be more satisfactorily settled in the courts, though it is always regular to receive petitions setting forth grievances and praying for a remedy, provided they do not question the return of a member within the meaning of the Controverted Elections Act (*s*). The House of Commons itself, both in Great Britain and in this country, has agreed to resolutions in condemnation of bribery and corrupt practices in elections, an old rule providing that if it should appear "that any person hath been elected and returned a member of this house, or endeavoured so to be, by bribery or any other corrupt practice, this house will proceed with the utmost severity against all such persons as shall have been wilfully concerned in such bribery or other corrupt practices" (*t*). Even efforts to improperly influence the election of members were condemned by special resolution of the British Commons in 1779 when it was declared to be "highly criminal in any minister or ministers or other servants of the Crown, directly or indirectly to use the powers of office in the election of representatives to serve in parliament" (*u*). The Controverted Elections Act (*v*), the Corrupt Practices Inquiries Act (*w*), the Disfranchising Act (*x*), and the provisions of the Dominion Elections Act (*y*) have, however,

(*r*) May, 657; Anson 1, 166, 167.

(*s*) So stated by Mr. Speaker Denison (194 E. Hans. (3) 185) in the case of a petition complaining that certain electors, at an election, had qualifications of an illusory character.

(*t*) Can. Com. Rule 80—May, 654.

(*u*) *Ib.* 645.

(*v*) R.S.C. (1906) ch. 7 (as amended 1915).

(*w*) *Ib.* ch. 8.

(*x*) *Ib.* ch. 9.

(*y*) *Ib.* ch. 6.

provided so fully and elaborately for the trial and punishment of offences of this nature that parliament itself will probably have little occasion henceforth to directly intervene in such cases.

VIII. Special Returns: Double Returns.—A writ of election, being returnable on a day named in it, must be returned accordingly, whether an election has taken place or not. Hence, returning officers sometimes make a special return, stating all the facts where no election has been made; or a "double return" (as it is called), where they are unable to determine which of two, or of two sets of candidates, has been elected. In case of a "double return" each of the members-elect is entitled to be sworn; but neither should sit or vote until the matter has been finally determined. The rule (69) of the house requires that "all members returned upon double returns are to withdraw until their returns are determined." The Dominion Elections Act (Rev. Stat., c. 6.) endeavours, as far as possible, to prevent a double return, since the returning officer, in case of an equality of votes, shall give a casting vote—the English law in a similar contingency being only permissive. In the absence of statutory enactments the common political law governs in England and her dependencies. For instance insane persons are incapable of exercising the trust of members; but the English Commons have always inquired into the nature of the affliction, and granted or refused a new writ, according as the incapacity has been shown to be temporary or permanent.

On several occasions special returns have been made to the House of Commons by returning officers. In the Muskoka case of 1873, no return was made on the ground that, though Mr. Cockburn received the majority of votes, a statement from one polling place was missing, and other irregularities occurred in connection with the election. After debate, the house ordered the clerk of the Crown in chancery to amend the return by inserting therein the

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name of Mr. Cockburn (z). In the West Durham case of 1900, the circumstances were briefly as follows: The returning officer accepted the deposit of \$200 from one of the two candidates in the shape of an accepted cheque. This candidate received a majority of the votes, but the solicitor of his opponent thereupon raised the objection that the deposit was invalid inasmuch as it was not in legal tender notes or bank bills as required by the act. The returning officer decided chiefly on this ground not to return either candidate as elected, but to make a "special return" of all the circumstances of the case to parliament. The court, to which the matter was referred, never gave a decision on the legality of the deposit, as it became immaterial in view of the fact that the election was voided on the ground of a corrupt practice by one of Mr. Thornton's agents, and parliament, while the matter was before the courts, amended the statute so as to prevent a similar difficulty in the future by declaring legal any cheque for \$200 "drawn upon and accepted" by a "chartered bank doing business in Canada" (a).

In the session of 1874 a question arose as to the eligibility of Mr. Perry, one of the members for Prince Edward Island, on account of an irregularity in his resignation as a member of the legislative assembly of that province. It appears that Mr. Perry, who was speaker of the local house, resigned his seat by a letter addressed to the lieutenant-governor of the Island, and the point at issue was

(z) Com. J. (1873) 10, 11. In March 1871, both candidates (Mr. Lynch and Mr. McKay) were returned for the electoral district of Marquette. They having polled the same number of votes, were declared duly elected by resolution of the house, 25th April, 1872. Both took the oath and their seats, but withdrew while the case was being determined. Before a decision was arrived at, however, parliament was dissolved and writs for a new election were issued. At this election a Mr. Cunningham was elected for Marquette.

(a) 1 Edw. VII. (1901) c. 16, sec. 2. Can. Com. J. (1901). It appears that at this very time two members of the house held seats therein although their deposits had been made in exactly the same way as Mr. Thornton's.

whether there was any legal resignation of his seat in the legislature when he became a candidate of the House of Commons. The matter was referred to the committee on privileges and elections, which reported that he had taken every step in his power to divest himself of his position as a member of the legislative assembly, and that according to the spirit and intent of the Dominion Act of 1873 (36 Vict., c. 2), he was not disqualified to be a candidate at the election, or to sit and vote in the House of Commons; but under all the circumstances the committee recommended that an act of indemnity be passed to remove all doubts as to his right to sit and vote in parliament. An act was accordingly passed in the same session (*b*).

In 1888 a case came before the supreme court of Canada, again affecting the seat of Mr. Perry, whose election had also been objected to in 1874. His return as member elect for the electoral district of Prince County, P.E.I., was contested on the ground that he, being a member of the provincial house, was not eligible to be a candidate for the House of Commons. At the trial it was admitted that he had been elected to the provincial assembly in June, 1886, and that there had been no meeting of that body at the date of the election for the Commons. Prior to his nomination he gave to two members of the assembly a written resignation of his seat, and at the time of the election for the Commons, he had acquired for value and was holding a share in a ferry contract with the local government to the value of \$95 a year. The supreme court held, affirming the judgment of the court below, that by the agreement with the individual who had assigned to him a share in the ferry contract, Mr. Perry became a person holding and enjoying within the meaning of section 4 of 39 Vict. c. 3, of the statutes of P.E.I., a contract or agreement with her Majesty, which disqualified him and rendered him ineligible for election to the assembly of the province, or to sit or vote in

(*b*) Can. Com. J. (1874) 50, 51, 55; 37 Vict. ch. 11. Parl. Deb. 16; Mr. Perry did not take his seat until the question was settled by the house as above.

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the same, and by section 8 of the same act,—to be read with section 4,—his seat in the assembly became vacated; and he was therefore eligible for election as a member of the House of Commons (*c*).

When two persons are returned for one seat there is a double return and there are two certificates endorsed on the writ and both names are entered on the return books. Both members may therefore claim to be sworn and to take their seats, but after the election of the speaker neither of them can vote until the right of the seat has been determined because there is only one vote for the constituency and neither of them has a better claim than the other (*d*), and they are required to withdraw from the house while the question is under debate.

In the session of 1883, immediately after a general election, the clerk of the Crown in chancery reported a "double return" for the district of Kings, Prince Edward Island (*e*). Both members were sworn but neither of them took his seat or attempted to vote. From the return it appears that the electoral district of Kings was entitled to two members, that Mr. McIntyre received a legal majority of votes and of his election there was no question. Mr. James Edward Robertson received the next highest number of votes, but it having been represented by certain electors to the returning officer at the summing up of the votes that Mr. Robertson at the time of his nomination as a candidate, and at the time of the holding of the election was a member of the house of assembly of the Island, he was consequently, in the opinion of the returning officer, "disqualified to be elected as a member of the House of Commons." Accordingly he certified that "Mr. Augustine Colir MacDonald, a candidate at such election duly qualified, had the next highest number of votes lawfully given at such election," and he made "this return respecting the said J. E. Robertson and A. C. MacDonald for the informa-

(*c*) Can. Sup. Ct. reports, vol. xiv, 265-287. L.N. vol. xi, 38.

(*d*) May, 652. Rule 69, House of Commons.

(*e*) Can. Com. J. (1883) xix.

tion of all whom it may concern." The whole matter was referred to the committee on privileges and elections. Both in the house and before the committee it was contended that, by the Dominion Elections Act of 1874, "after a candidate has been accepted as duly nominated by the returning officer and declared by him to the electors as such candidate, the returning officer has *no power or right* to reject such candidate, or if he has a majority of votes upon their summing up to refuse to return him as elected." A majority of the committee, however, came to the conclusion that Mr. Robertson had never legally resigned his seat, and that he was at the time of his election a member of the house of assembly of Prince Edward Island; that an act of that province (39 Vict. c. 3), made it illegal for a member of the House of Commons to be elected to sit or vote in the house of assembly; that according to the express terms of the second section (f) of the Dominion Act of 1872 (35 Vict. c. 15), the majority of the votes given for Mr. Robertson were thrown away; that it was the duty of the returning officer to return Mr. MacDonald as the candidate, he being otherwise eligible and having the next highest number of votes; that the return to the writ of election should be amended accordingly. When the report came before the house for final adoption, very conflicting opinions were again given on the points at issue. The report was, however, concurred

(f) This section reads: "If any member of a provincial legislature shall, notwithstanding his disqualification as in the preceding section mentioned, receive a majority of votes at any such election, such majority of votes shall be thrown away, and the returning officer shall return the person having the next greatest number of votes, provided he be otherwise eligible." See Rev. Stat. of Canada, (1886) c. 13, s. 2. This section has been changed in the Revised Statutes of 1906. It now reads: "No person who, on the day of nomination at any election to the House of Commons, is a member of any legislative council or of any legislative assembly of any province shall be eligible as a member of the House of Commons or shall be capable of being nominated or voted for at such election, or of being elected to or of sitting or voting in the House of Commons. If any one so declared ineligible is elected and returned as a member of the House of Commons, his election shall be null and void."

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in, and the clerk of the Crown ordered to amend the return so as to declare Mr. MacDonald elected, "as having had the next highest number of votes lawfully given at such election"; and this having been done, Mr. MacDonald took his seat and voted during the remainder of the session (g).

IX. Dual Representation.—The eligibility of members of the House of Commons to sit in provincial legislatures and of members of provincial legislatures to sit in the dominion parliament, became a subject of legislation upon the very outset of confederation. For more than one session of the first parliament, members were entitled to sit in the Commons while being members of the legislative assemblies of Ontario and Quebec. The legislatures of Nova Scotia and New Brunswick had passed acts just previous to confederation by which no person being a member of the Senate or House of Commons should be capable of sitting as a member in either branch of the legislature. Subsequent to 1872 several acts were passed to prevent dual representation. The law now renders members of the legislative councils and assemblies ineligible for sitting or voting in the House of Commons, and a member of the Commons who accepts a seat in a provincial legislature must vacate his seat in the former body. Statutes of the provincial legislature now provide that no senator or member of the House of Commons shall sit in the legislative councils or assemblies of the provinces. A senator may, however, sit in the legislative council of Quebec (h).

X. Preservation of the Independence of Parliament.—In the old legislatures of Canada, judges and other public officers were allowed to sit in both houses, until at last the

(g) Can. Com. J. and Hans. 1883, Feb. 19th, Mch. 1st & 9th and Apl. 25th. Also Journal Appendix No. 2.

(h) Senator Ferrier represented Victoria division in the Quebec legislative council from 1887 until his death in 1888. Senator de Boucherville (later Sir Charles de Boucherville, K.C.M.G., a member of the legislative council of Quebec in 1867, was called to the Senate in 1879 and remained a member of both bodies until his death (1915).

imperial government yielded to the strong remonstrances of the great majority of the representatives in the assemblies, and expressed their readiness to assent to such legislation as might be necessary to render the legislatures independent of official influence (*i*). Several statutes were passed in the course of time by the legislatures of Upper and Lower Canada, prohibiting judges from sitting in the legislative assemblies (*j*); but all attempts to prevent them from sitting in the legislative council were rendered nugatory by the opposition given in that house to all measures in that direction (*k*). Legislation in the two provinces also provided for a member vacating his seat, in case of his acceptance of certain offices, but such appointment was not to bar his re-election to the house. Here we see the first step taken to require members of the executive council to vacate their seats, and seek re-election at the hands of the people (*l*).

After the union between Upper and Lower Canada, the legislature of the united provinces took up the question of the independence of parliament, and endeavoured, as far as possible, to follow the example of the parent state

(*i*) Garneau, vol. ii. 236, refers to the large number of placemen in the old Lower Canada assembly: "The elections of 1800 returned as members of the assembly ten government placemen (or one-fifth of the entire number), namely, four executive councillors, three judges, and three other state officials."

(*j*) 7 Wm. IV., c. 114, Upp. Can. 51 Geo. III., c.4, Lower Can. Stat.

(*k*) The strong opinion of the imperial authorities as to the independence of the bench and the legislature may be understood by reference to a despatch of Viscount Goderich, 8th Feb., 1831, in which he recommends the application of the English system under which judges are independent of the Crown. He thought, however, the chief justice might well remain a member of the legislative council, in order that they might have the benefit of his legal knowledge, but "His Majesty recommends even to that high officer a careful abstinence from all proceedings by which he might be involved in any contention of a party nature." Lower C. J. (1831) 53.

(*l*) 7 Wm. IV., c. 114. Upp. Can. Stats. 4 Wm. IV., c. 32, Low. C. Stats.

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in this matter. "An act for better securing the independence of the legislative assembly of this province," which became law in 1884, has formed the basis of all subsequent legislation on the subject in this country. Judges and other public officers, as well as contractors with the government, were specially disqualified from sitting and voting in the assembly, and were liable to a heavy penalty should they violate the law. Seats of members accepting offices of profit from the Crown had to be vacated, and writs for new elections issued forthwith; but all persons, not disqualified under the act, could be again returned to the assembly—a provision intended to apply to members of the executive council. In 1857, an act was passed amending the foregoing statute in important particulars. Under this act (*m*), no person, accepting or holding any office, commission or employment, permanent or temporary, at the nomination of the Crown in the province, to which an annual salary, or any fee, allowance, or emolument or profit of any kind or amount whatever from the Crown, is attached, shall be eligible as a member of the legislative council, or of the legislative assembly (*n*). During the first session of the first parliament of the dominion, the act of 1857 was re-enacted (*o*), with several amendments that were necessary under the new state of things, but the great principle involved in such legislation—of preserving the independence of parliament—was steadily kept in view. It was provided, however, that one of the commissioners of the Intercolonial railway, or any officer of her Majesty's army or navy, or any officer in the militia, or militiaman (except officers on the staff of the militia receiving permanent salaries), might sit in the house (*p*).

In the session of 1877, attention was called in the House of Commons to the fact that a number of members appeared

(*m*) 20 Vict., c. 22, Can. Stat.

(*n*) Consol. Stat. of Canada, chap. iii. Amended in respect to recovery of penalties by 29 Vict., c. 1.

(*o*) 31 Vict., c. 25, am. in 1871 by 34 Vict., c. 19.

(*p*) 31 Vict., c. 25, s. 1, sub-s. 3.

to have inadvertently infringed the following section of the act:—"No person, whosoever, holding or enjoying, undertaking or executing, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, any contract or agreement with her Majesty, or with any public officer or department, with respect to the public service of Canada, or under which any public money of Canada is to be paid for any service or work, shall be eligible as a member of the House of Commons, nor shall he sit or vote in the same."

Some doubts arose as to the meaning of the word "contract" under the foregoing section, and all the cases in which members were supposed to have brought themselves within the intent of the statute were referred to the committee on privileges. A large number of members were involved in the controversy. Mr. Currier, a member of a firm which had supplied lumber to the department of public works and Mr. Norris, one of the owners of a line of steamers which had carried rails for the government, believing that they had unwittingly infringed the law, resigned their seats during the session. In only one case, that of Mr. Anglin, speaker of the house, who was the proprietor of a newspaper which had received public money for printing and stationery furnished "per agreement" to the post office department, was the committee able to report, owing to the lateness of the session. In this case, which caused much discussion, the committee came to the conclusion that the election was void, inasmuch as Mr. Anglin became a party to a contract with the postmaster-general, but that "it appeared, from Mr. Anglin's evidence, that his action was taken under the bona fide belief, founded on the precedent and practice hereinafter stated, that he was not thereby holding, enjoying, or undertaking any contract or agreement within the section." In the Russell case of 1864, an election committee of the legislative assembly of Canada found that the publication, by the member for Russell, of advertisements for the public service, paid for with the public

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moneys, did not create a contract within the meaning of the act. On the other hand, the committee of 1877 came to the conclusion that the decision of 1864 was erroneous. It appeared from the evidence taken by the committee, and from the public accounts of the dominion, that "between 1867 and 1873, numerous orders, given by public officers, for the insertion of advertisements connected with the public service were fulfilled, and various sums of public money were paid therefor to members of parliament." It was never alleged at the time that these members were disqualified, but the committee were of opinion, nevertheless, that "according to the true construction of the act for securing the independence of parliament, the transactions in question did constitute disqualifying contracts" (q). The result of this report was the resignation, during the recess, of Mr. Anglin, Mr. Moffat and other members who had entered into such contracts (r). In 1878 the government of the day introduced a bill "to further secure the independence of parliament." (s). This became law in that year. This act became a part of the Senate and House of Commons Act in the Revised Statutes of Canada of 1886 and 1906. As the law now stands "no person accepting or holding any office, commission or employment,

(q) Can. Com. Jour. (1877) and Appendix No. 8.

(r) Messrs. Jones and Vail also resigned their seats, being stockholders in a company which had performed printing and advertising for the government. Hans. (1878), 126. Mr. Mitchell also resigned, p. 13. See Hans. (1877), 1709, 1809, 1810. In 1894 Mr. Corby resigned his seat on learning for the first time in the course of a discussion in committee of supply that his firm had had a small business transaction with the department of inland revenue, and that he had consequently inadvertently infringed the law. Hans., 4811; Jour., 339. See cases of Messrs. Schell and Loy, 1903.

(s) 41 Vict., c. 5; Rev. Stat. of Can., c. 11, ss. 9-19; Sen. Deb. (1878), 825, 870, 979; Can. Hans. (1878), 369, 1226, 1327, 2008, 2038, 2546, 2551. Among the clauses in the original bill was one declaring ineligible any person "entitled to any superannuation or retiring allowance from the government of Canada"; but this provision, which evoked much opposition, was rejected by the Senate. Can. Hans. (1878), 1229, Mr. Mason; 1235, 2008, 2038 (Sir John Macdonald).

permanent or temporary, in the service of the government of Canada, at the nomination of the Crown, or at the nomination of any of the officers of the government of Canada, to which any salary, fee, wages, allowances or emolument, or profit of any kind is attached" is eligible as a member of the House of Commons. But nothing in the section just quoted "shall render ineligible any person holding any office, commission, or employment of the nature or description" mentioned above, "as a member of the House of Commons, or shall disqualify him from sitting or voting therein, if, by his commission or other instrument of appointment, it is declared or provided that he shall hold such office, commission or employment, without any salary, fees, wages, allowances, emolument or other profit of any kind attached thereto" (1). The offices of sheriff, registrar of deeds, clerk of the peace, or country crown attorney in any of the provinces of Canada are expressly disqualified. The provisions with respect to contracts are quite stringent. Among other things it is provided that "in every contract, agreement, or commission to be made, entered into or accepted by any person with the government of Canada, or any of the departments or officers of the government of Canada, there shall be inserted an express condition that no member of the House of Commons shall be admitted to any share or part of such contract, agreement or commission, or to any benefit to arise therefrom." Any person disqualified under the act shall forfeit the sum of two hundred dollars

(1) This sub-section was added in 1884 (47 Vict., c. 14) in connection with the case of Sir Charles Tupper, who, while a member of the House of Commons and minister of railways, accepted the position of High Commissioner of Canada, resident in London, but received no salary under his commission for that office. The committee on privileges were of opinion that the seat was not vacated, but to quiet doubts raised in and out of the house on the point, the foregoing act was passed indemnifying Sir Charles Tupper from all liability to any penalty or responsibility, and adding the qualifying provisions cited above to the law. See Can. Com. J. (1884) 325; Hans. 624, 844; 861-78; 1446-1499.

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for every day on which he sits and votes. Any person admitting a person to a share in a contract shall forfeit and pay the sum of two thousand dollars for every such offence. Provision is also made that no senator can become a government contractor, or be indirectly concerned in a contract, and in case of a contravention of the statute he shall forfeit two hundred dollars for every day during which he continues a party to such contracts. Proceedings for the recovery of a penalty must be taken within twelve months after it has been incurred. In addition to the clause providing for the re-election of members accepting office in the privy council, it is provided, as in the act of 1867, that a minister need not vacate his seat if he resigns his office and accepts another in the same ministry within one month after his resignation "unless"—and this was added in 1878—"the administration of which he was a member has resigned and a new administration has been formed, and has occupied the said offices" (u).

The law also provides that nothing in the statute shall render ineligible persons holding the several cabinet offices, "or any office which may be hereafter created, to be held by a member of the queen's privy council for Canada, and

(u) This provision is intended to guard against a repetition of what actually occurred in the history of Canada during the administration of Sir Edmund Head. *Can. Hans.* (1878), 1227. The facts of this episode in the constitutional history of Canada may be briefly stated as follows: In the session of 1858, the Macdonald-Cartier ministry resigned and were succeeded by the Brown-Dorion administration. The latter, however, resigned almost immediately on account of the refusal of the governor-general to dissolve the parliament just elected, and for other reasons which he gave at length. The Cartier-Macdonald ministry which followed comprised all the members of the Macdonald-Cartier cabinet with two exceptions. The former ministers resumed their seats without re-election—availing themselves of the provision of the act which allowed a minister to resign his office and accept another before the expiration of a month. This action provoked much adverse criticism but it was sustained by a majority of the assembly and by the courts. See *Todd's Parl. Govt. in British Colonies*. Dent's *Canada since the Union*, vol. ii, 369 *et seq.* *Leg. Ass. J.* 1858, 973-1001, 17 *U.C.Q.B.* 310. *U.C.C.P.* 479.

entitling him to be a minister of the Crown, or shall disqualify him to sit and vote in the House of Commons, provided he is elected while holding such office and is not otherwise disqualified."

The statute does not apply to a member of either house who is a shareholder in any incorporated company, having a contract or agreement with the dominion government, unless it be a company which undertakes a contract for the construction of any public work. Nor does it disqualify any contractor for the loan of money or of securities for the payment of money to the dominion government under the authority of parliament, after public competition, or respecting the purchase or payment of the public stock or debentures of Canada, on terms common to all persons. The provisions in the act of 1867-8 respecting the militia is continued.

By the 41st section of the British North America Act, 1867, the Independence of Parliament Act of old Canada was continued in force until changed by the dominion parliament. Consequently it was urged that these members of the House of Commons who were members of the privy council of Canada, or of the executive councils of Ontario and Quebec, held offices, at the time of their election which, "by reason of the expectation that salaries or emoluments would be attached to them", might be considered as offices of profit under the Crown. The first point, as to the eligibility of members of the provincial executive councils, was referred to the committee on privileges and elections who decided, after due consideration, that those gentlemen "have a legal right to sit and vote in the House of Commons, and are not disqualified from so doing by holding the offices above mentioned." The other point as to the eligibility of the members of the privy council was not referred to the committee—a motion to that effect having, after debate thereon, been withdrawn. The issue of the controversy was the introduction and pass-

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age of the act, 31 Vict., ch. 26, the preamble of which set forth very fully the reasons for the legislation (*v*).

XI. Issue of Writs of Election.—In the session of 1877 a question arose as to the power of the house to order the issue of writs when seats are vacated by the decision of a court. It was doubted whether such an order was necessary under the Canadian Elections Act. Subsequently, Mr. Speaker Anglin took occasion to inform the house that on looking into the question he had found that the English Controverted Elections Act (*w*) left the power in the house to order the immediate issue of a writ on being informed of a vacancy through the decision of an election court. The Canadian statute (*x*), on the other hand, made it the express duty of the speaker to order the issue of the writ. It is now the practice for the speaker to inform the house immediately when he has given his orders for the issue of a writ in case of a vacancy caused by an election report (*y*) by death (*z*), resignation (*a*), or acceptance of office (*b*). In cases when the judges expressly report the prevalence of corrupt practices, the house reserves to itself the right to order the issue of a writ (*c*). In all cases not specified by statute, the house retains its control over the issue of writs, and may order the speaker to issue his warrant. In England, the usual motion for a new writ is made by a member when the house is in session (*d*). In cases where the speaker is in doubt as to his action, his course is to lay the facts before the house and ask its instruction (*e*).

(*v*) See Dom. Stats. 1868. Can. Com. J. 1867-8, 45.

(*w*) 31 and 32 Vict., c. 125, s. 13, Imp. Stat.; Can. Hans., 1877, remarks of Mr. Speaker Anglin.

(*x*) 37 Vict., c. 10, s. 36. See Rev. Stat. of Canada, c. 9, s. 46.

(*y*) Can. Hans., Mar. 1st and 5th, 1877; Jour. (1877) 85, 86; *Ib.* (1887), 90; *Ib.* (1890), 281.

(*z*) *Ib.* (1889), 32.

(*a*) *Ib.* (1894), 339. (*b*) *Ib.* (1877), 5.

(*c*) See remarks of Mr. Speaker White, C. Hans. (1894), 6046-6047.

(*d*) 131 E. Com. J., 50, 55; 140 *Ib.* 214, etc. May, 272, 631, 635.

(*e*) See case of Mr. Guité (1898), Hans. 3, Jour. 9.

Although the law provides for the immediate issue of warrants by the speaker of the house for writs of election, the writ itself may not be actually issued for some time after the issue of the warrant. The writ cannot issue until a returning officer has been duly appointed by the government and there may be good causes for delay for other reasons (*f*).

XII. Introduction of Members.—When a member is returned after a general election, the clerk of the Crown sends to the clerk of the Commons his certificate of the return of the writ in the Crown office. This certificate is laid before the house by the speaker (*g*). At the beginning of a parliament the return book, received from the clerk of the Crown is evidence of the return of a member (*h*) and the oath may then be administered. The newly elected members are, before the hour of the meeting of the house, sworn at the table by the commissioners appointed for that purpose (usually the clerk, the clerk-assistant, sergeant-at-arms and the law clerk) and there sign the roll. Members so sworn are not introduced to the house but take their seats without any ceremony. After the first day of a new parliament new members are not sworn at the table, but generally in the clerk's office where the test-roll or book is kept. For some years members were permitted, on motion, to take the oaths and their seats on the production of the certificate of the returning officer in advance of the production of the certificate of the clerk of the Crown in chancery, but since 1888 this practice has been discontinued owing to the risk of the numerous legal difficulties that might ensue (*i*). Members who come in upon new writs issued after a general election are formally introduced to the house

(*f*) Can. Com. J. (1888), 266, 267. Can. Hans., May 2nd, where data with subject will be found.

(*g*) Can. Com. J. (1877) 5, 6, etc.

(*h*) Can. Com. J., 1874, 1879, 1891, '01, &c., &c., May, 169.

(*i*) Can. Hans. (1879) 42, 44. Jour. (1880-81) 15 & 21 Dec. *Ib.* 1888, 23 March and May 14th.

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following the English rule and custom (*j*). The newly elected member is generally introduced by two of the leading members of his political party, who with him proceed to the centre of the house facing the speaker. His introducer says: "Mr. Speaker, I have the honour to present to you member for the electoral district of who has taken the oath and signed the roll and now claims the right to take his seat." The speaker thereupon replies: "Let the honourable member take his seat." The member then advances to the chair, shakes hands with the speaker and takes his seat.

Until 1876, it was not the practice to introduce members whose seats had been vacated under the Controverted Elections Acts and who had been subsequently elected. These members and newly elected ministers simply took the oath in the clerk's office and their seats in the house without the formality of an introduction (*k*). But in the session of 1875, the premier called attention to the fact that Mr. Orton, member of the electoral district of Centre Wellington, had sat and voted in the house during the session without having taken and subscribed the oath prescribed by law (*l*). The matter was referred to the committee of privileges, which subsequently reported:

"That the B.N.A. Act of 1867 provides no direct forfeiture or penalty in case of a member omitting to take and subscribe the oath provided by the 128th section;

"That the Act for the independence of members of parliament (31 Vict., c. 25) makes no provision for such a case;

"That consequently the seat was not affected by his having sat and voted before he took the oath;

(*j*) 2 Hatsell 85. May, 171. Can. Com. J. (1870) 139. *Ib.* (1883) 63. *Ib.* (1892) 110. Members have been introduced while a member is speaking in the course of a debate and a committee of the whole has reported for that purpose. Mch. 4th, 1890, in the case of Mr. Montague.

(*k*) Can. Com. J. (1875), 52, 54, 58, 62, 65, etc.

(*l*) Can. Hans. (1875) 200, 322, 324.

"That the votes of the member, before he took the prescribed oath, should be struck out of the division list and journals, as he had no right to sit and vote until he had taken that oath" (*m*).

The difficulty in Mr. Orton's case showed very clearly the necessity that existed for adhering to the old usage of parliament. On the first day of the session of 1876 the speaker expressed his opinion to the house that "it would be better to revert to the old usage and have everybody introduced" (*n*), and the house accordingly consented to the suggestion, and the practice was carried out uniformly during 1875 and 1877-90, but in the commencement of the session of 1878 a number of members elected during the recess took their seats as soon as the house met, the speaker having resigned during the interval. Some of these members had sat in the house during the previous session; others were elected for the first time. Among the members who had vacated their seats and been re-elected was Mr. Speaker Anglin; and it became consequently necessary to elect a new speaker. The question then arose as to the proper course to pursue with respect to the members elect, as there was no speaker to lay before the house the certificates of their election and return. The clerk, however, on the return of the Commons from the Senate chamber, and previous to the election of speaker, stood up and announced the fact that vacancies had occurred during the recess in the representation, and laid before the house the usual certificates of the election of the members in question.

(*m*) Can. Com. J. (1875), 129, 176. But in Great Britain a member elect not sworn, may be appointed to committees, or be manager of a conference, 2 Hatsell, 88, n. 113 E. Com. J., 187 (Baron Rothschild); Mr. Bright (May, 169) voted with Parl. Oaths Committee in 1880, before making an affirmation. But a member may not present a petition until he has been sworn, as that is a proceeding within the house itself. 137 E. Com. J., 295.

(*n*) Can. Hans. (1876), 1.

(*o*) Can. Hans. (1876), 1, 3; *Ib.* (1877), 2, 24, etc.

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Objection was taken to this procedure at the time (*p*). The house, however, being in possession of evidence of the return of members elected during the recess, proceeded to the election of a new speaker. Mr. Anglin was nominated for speaker. Sir John Macdonald opposed the motion on the ground that there was no house regularly constituted, and consequently they had no power to suspend the rule requiring the introduction of a new member. On the other hand it was contended that the practice of introduction had been variable in the house, and that it was inadvisable to press any rule which would render members who had performed all the obligations required by law incapable of sitting in the house and assisting in the election of speaker. A division was taken on the question for the election, and Mr. Anglin was chosen (*q*). Several members elected during the recess were introduced formally on the day following the election of speaker (*r*). Since 1879 all new members, including ministers after re-election, have been introduced (*s*). But it is not the practice to introduce ministers of the Crown who have been re-elected on a change

(*p*) Can. Hans. (1878), 1, 2. See proceedings of legislative council in 1862 (then elective) before election of Sir Allan McNab, Leg. Coun. J., 17-19; also, proceedings in Leg. Ass. of Quebec, in 1876, when a new speaker was appointed in the place of Mr. Fortin. In these cases returns were laid before the house before election of speaker. Also see the journals of the Low. Can. Assembly for 1823 for a case of the clerk laying before the house the returns of the election of new members under somewhat similar circumstances. Mr. Papineau had declared his intention in writing not to be present as speaker, and consequently it was necessary to elect a new presiding officer.

(*q*) Can. Hans. (1878), 1-11; Jour., 1.

(*r*) Can. Hans. (1878), 11, 12, 13. This difficulty could not have occurred in English practice. Members must be sworn with the speaker in the chair. Parl. Rep. on office of Speaker, 1852-3, vol. 34, p. 66.

(*s*) Jour. (1880-1), 9; Can. Hans., 9th December; *Ib.* 1882, 9th Feb.; Jour. (1896), 2nd sess., 24. Mr. Gladstone was formally introduced after his re-election as minister of the Crown, in 1880. "London Graphic," July 3rd, 1880; H. W. Lucy, Diary of Two Parliaments, ii, 9, 10.

of government after a general election before the meeting of parliament (*t*).

XIII. Attendance of Members; Indemnity, &c.; Places in the House.—Members of the Senate and House of Commons are expected to attend regularly in their places and perform their duties under the constitution (*u*). In case of unavoidable absence it was formerly customary to have the reasons explained to the house, and leave given to the member to absent himself from his duties (*v*). The names of senators present at a sitting are entered every day in the journals in accordance with the practice of the House of Lords (*w*).

The practice in old Canada, as in England, was to have a call of the house and order all the members to attend on a particular day (*x*), but this practice has now become obsolete—no cases having occurred since 1867. The attendance of members in both houses is always large, compared with that of the imperial parliament, and in cases of emergency the party whips are expected to take proper measures to have members in their places at a particular time.

The sessional indemnity is based on the principle of a deduction from a member's sessional allowance of fifteen dollars per day for every day beyond fifteen on which a member does not attend a sitting of the house of which he is a member; but if such non-attendance is caused by illness, under certain circumstances, the deduction is not made. Days of absence caused by the member's military duties are not a cause of deduction.

(*t*) See beginning of C. Jour. for 1874 (Mackenzie Government) and for 1896, 2nd session (Laurier Government). In the case of Messrs. Blair and Paterson, elected while parliament was sitting in 1896, they were introduced. Can. Com. J. (1896, 2nd sess.), 24.

(*u*) 2 Hatsell, 99-101. A member of the English Commons has been expelled for refusing to attend the service of the house: Mr. Pryse, in 1715.

(*v*) Can. Com. J. (1867-8), 34, 38.

(*w*) Sen. Journals, 1867-1915.

(*x*) May, 178-182; 80 E. Com. J., 150, 153, 157. Can. Leg. Ass. J. (1854), 177, 246, 284, 596, 622.

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The members' indemnity and travelling allowances have varied at different periods since 1867. The act of 1867 gave each member six dollars for each day's attendance, if the session did not extend beyond thirty days; but if it should be longer, he would receive a sessional allowance of six hundred dollars. In 1873 the act was amended so as to increase these amounts to ten dollars and to one thousand dollars, whilst the salary of each speaker was raised from three thousand and two hundred to four thousand dollars annually. The act of 1873 (c. 11 R.S.C.) on the subject of the indemnity was repealed in 1901 (1 Edw. VII. c. 14), and a sessional allowance of one thousand five hundred dollars was allowed to each member of the Senate and House of Commons. A deduction of eight dollars per day was made from the allowance for each day of non-attendance beyond fifteen. No deduction was made for days of adjournment when the house was not sitting, or in case of illness when the member had been in attendance at Ottawa. Members were paid ten dollars for each day as the session advanced, as well as mileage at the rate of ten cents a mile, going and coming. At the close of the session the sum due a member was paid him by the accountant of the house, on his making and signing before the same, or a justice of the peace, a solemn declaration of the actual number of days he attended and of the number of miles travelled. The senators' and members' sessional allowances were increased in 1906 and a new basis of indemnity arranged. The act of that year, now included in the Revised Statutes, forms a part of the Senate and House of Commons Act. It provides as follows: "The speakers of the Senate and of the House of Commons receive four thousand dollars each per session in addition to the indemnity as members of the two houses. For every session of parliament which extends beyond thirty days, each member of the Senate and house attending at the session shall receive two thousand five hundred dollars. A member attending a session of less than thirty-one days is allowed twenty dollars for each day's attendance. The ordinary sessional al-

allowance is payable at the rate of ten dollars for each day's attendance and may be paid on the last day of each month, upon the member furnishing a sworn statement of such attendance, and the balance of the sessional indemnity is payable to him on the last day of the session.

A deduction of fifteen dollars per day is made for each day beyond fifteen on which the member does not attend a sitting of the house; but in the case of a member elected or appointed after the beginning of a session, no day of the session previous to such election or appointment shall be counted as one of the fifteen days. Days on which the house is not sitting, or days of illness of the member, he being at the capital or within ten miles thereof and unable to attend, are reckoned as days of attendance. Days of absence of a member, being a military man, spent by such member on military duty with his corps, are not counted as days of absence. Special provision is made where a person is a member for only thirty days or less, and for members becoming such during a session. To the member occupying the recognized position as leader of the opposition in the House of Commons, is payable a sessional allowance in addition to his indemnity of seven thousand dollars.

Travelling expenses are allowed to each senator and member of his actual moving, transportation and living expenses between his place of residence and Ottawa, going and coming once each way, but none for travelling outside of Canada, except from one point in Canada to another by direct route. A member residing over four hundred miles from Ottawa may, however, commute such expenses for the sum of fifteen dollars per day for each day necessarily occupied in the journey between his place of residence and Ottawa, once each way. The member draws this allowance upon filing a sworn statement with the proper officer (y). By statute, members of both houses

(y) R.S.C. (1906), ch. 10, ss. 31-41. In 1890, a member who was living in London, England, was paid travelling expenses between that city and Ottawa, on his declaration that his "place of residence" was in London. See Can. Com. J., 449; Hans. 8th of May, but under the

are entitled to free transportation at all times upon all railways under the jurisdiction of the parliament of Canada (2). For convenience of travel each member is provided with a certificate from the clerk of the house of which he is a member, upon the production of which his identity as such is recognized promptly by railway officials.

Formerly when members had been obliged through illness to absent themselves for a considerable part of the session, or had been unable to present themselves in good season at the seat of government through unavoidable circumstances arising out of their election and return, it was usual to draw the attention of the house to the facts, and to move that the members in question receive the sum to which they would be entitled had not such circumstances prevented their attendance. The house eventually recognized the fact that this practice was a violation of the statute fixing the conditions of the member's indemnity; and now in all cases, when it is deemed expedient to vote money under the circumstances just stated or to give full indemnity to families of deceased members of either house, the government brings down the requisite vote in the estimates.

The members of the two houses are provided with seats and desks, to which is affixed a card with the name of the member to whom it has been allotted. The members of the privy council and the members supporting the administration of the day occupy places to the right of the speaker, as far as they can be accommodated, and the members of the opposition to the left. The older members are generally given preference in the choice of seats. The location of seats in the House of Commons generally is arranged by members placing themselves in communication with the sergeant-at-arms whose duties are referred to in another place.

present law this could not occur. The Act, ch. 12, 1899, permits of 15 days of non-attendance without deduction of indemnity—and also for the case of a member being a militiaman for absence on duty.

(2) *Ib.* ch. 37, s. 343.

XVI. Resignations of Members—Vacancies by Death, Etc.—It was formerly a principle of parliamentary law that a member, after he is duly chosen cannot relinquish his seat. In order to evade this restriction a member of the British Parliament who wishes to retire accepts an office (usually the Chiltern Hundreds) under the Crown, an act which legally vacates his seat (*a*). This office, or a like one of no practical importance, is usually granted upon application. Provision, however, is made in the Canadian law for the resignation of members during a session or a prorogation of parliament (*b*). A member may resign his seat by giving notice formally in his place in the house of his intention to do so—which notice must be entered by the clerk on the journals—or by addressing and delivering to the speaker a declaration of his intention, made under his hand and seal before two witnesses, either during the session or in the interval between two sessions, which declaration must also be duly entered on the journals (*c*). When these preliminaries have been complied with the speaker shall forthwith issue his warrant for the issue of a writ for a new election (*d*). But no member can so resign his seat while his election is lawfully contested; nor until after the expiration of the time during which it may be contested on other grounds than corruption and bribery (*e*). If a

(*a*) May, 642. (*b*) R.S.C. (1906), c. 11, ss. 5-8.

(*c*) Can. Com. J. (1877), 269-70 (Mr. Currier); 282 (Mr. Norris), *Ib.* (1894), Mr. Corby.

(*d*) Can. Com. J. (1877), 275, 284. In 1898 Mr. Bruneau sent in his resignation to the speaker, but changed his mind and obtained the return of his communication before the speaker had time to open it and become conversant with its contents. A debate took place in the House as to the right of the member to withdraw his resignation after he had formally tendered it within the meaning—as contended—of the law. A motion to refer the legal questions involved to the committee on privileges was negatived. Can. Com. J., 100, 101; Deb. 21st March. (1896).

(*e*) Mr. Thomas McGreevy, in the session of 1891, formally resigned his seat in the House of Commons, and the speaker at once issued his warrant for a writ of election. On announcing the fact to the house, a member arose and stated that he knew of his own knowledge

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member wishes to resign his seat during the prorogation of parliament, and there is no speaker, or the member himself is the speaker, he may address a declaration of his intention to two members who will thereupon order the issue of a writ for a new election. In case of a vacancy by death (*f*), or acceptance of office (*g*), two members may inform the speaker of the fact by notice in writing, under their hands and seals—or a member may do so in his place; and the speaker shall thereupon address his warrant to the clerk of the Crown in chancery for a writ of election. If, when such vacancy occurs there be no speaker, or he be absent from Canada, or if the member whose seat is vacated be himself the speaker; then, any two members may address their warrant to the clerk of the Crown in chancery for a

that Mr. McGreevy's seat was contested and that he could not legally tender his resignation. Neither the speaker nor the house had had any official information of the contestation, as the law makes no provision on the subject. Under all the circumstances it was thought expedient to refer the question as a matter of fact and of law to the committee of privileges and elections. They reported that the seat was contested at the time of resignation, and recommended the withdrawal of the warrant for the issue of a writ of election. They also expressed the opinion that under the present state of the law, the speaker, when not aware of the contestation of the election, may properly issue his warrant, and that it was necessary to amend the statute by providing that in future an officer of the Election Court shall notify the speaker of the filing of a petition against the seat. No further steps, however, have been taken to amend the law, which remains (1915) still as in 1891. The speaker issued a writ of *supersedeas* withdrawing his warrant.

(*f*) Can. Com. J. (1877), 5. It was not an unusual practice in the Commons on the decease of a member to move that Mr. Speaker do issue his warrant, etc., Jour. (1880), 163; *Ib.* (1880-1), 247. But the express language of the statute does not require such a motion, and the speaker now always issues his warrant on receiving a written notification from two members (Carleton, N.B., 1880-81; S. Grenville, 1885; Ottawa city 1890; Brockville, 1899) or on simply being informed by a member in his place of the decease of a member (Cariboo, B.C., 1880-81; Kent, N.B., 1890; Winnipeg, 1899).

(*g*) *Ib.* (1877), 5. (*h*) *Ib.* (1878), 2. Mr. Laurier accepted office after resignation of Mr. Speaker Anglin. *Ib.* (1898), 16, speaker absent from Canada.

writ of election (*h*). Provision is also made for the issue of a new writ for the election of a member to fill up any vacancy arising subsequently to a general election and before the first meeting of the new parliament, by reason of the death or acceptance of office of any member—which writ may issue at any time after such vacancy occurs (*i*). In the absence of a definite provision in the statute for a member resigning his seat after a general election and before the meeting of parliament, it has been the invariable practice to create a vacancy by appointing a member to an office of emolument under the Crown (*j*).

In case a member is returned for two constituencies he must make his election for which of the places he will serve by formally resigning his seat when the house is in session. This election may be made by a member from his place in the house (*k*) or in the usual legal communication to the speaker. Under the old Controverted Elections Act, he would have to wait until the expiration of the

(*i*) In September, 1878, the general election resulted in the defeat of the Mackenzie administration. Mr. Mackenzie soon afterwards resigned and Sir John Macdonald took his place. Consequently the new ministers had to be re-elected. See Journals (1879), xxv-ix. Sir John Macdonald had been defeated in Kingston, but returned by acclamation for Marquette, in Manitoba, where the elections were held at that time later than in Ontario. On accepting office in October, his seat became vacated, and he decided to sit for the district of Victoria, British Columbia, where the election was held on the 21st October. See Annual Register (1878), 211.

(*j*) See Can. Hans. (1878), 1358-9. See cases of Messrs. Horton and Macdougall, temporarily accepting unimportant offices to provide seats for Messrs. Cartwright and Langevin, Can. Com. J. (1879), xxv., xxix.; Annual Register (1878), 210, 212. After the general election of 1896, Mr. Forbes, of Queen's, N.S., and Mr. King, of Sunbury and Queen's, N.B., accepted offices of emolument under the Crown, before the meeting of parliament, to give seats to Mr. Fielding and Mr. Blair, who were appointed to prominent positions in the new ministry after the general election. Com. J. (1896, 2nd sess.), x., xi., xv., 23. Mr. Bechar was also summoned to the Senate and Mr. Tarte elected for the constituency as a minister. *Ib.* xvi.

(*k*) 121 E. Com. J. 104; 142 *Ib.* 4. Can. Com. J. (1896, 2nd sess.), 10.

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fourteen days required by law for the presentation of petition in the house against his return (*l*). The English House of Commons has a sessional order requiring that "all members returned for two or more places do make their election within one week after it shall appear that there is no question upon the return for that place" (*m*). In Canada the House of Commons Rule No. 79 is supposed to effect the same object—but no penalty is prescribed for its violation, and in more than one instance it has been completely ignored (*n*). If there is a petition against the return of a member, he cannot elect to serve for either until the matter is finally decided in the courts (*o*). In 1882, Sir John A. Macdonald was returned for the electoral districts of Carlton and Lennox, and a petition having been regularly entered in the courts against his return for Lennox he was unable to make his election for either during the session of 1883 in accordance with the rule governing such cases. For a member "cannot abandon the seat petitioned against, which may be proved to belong of right to another, and thus render void an election which may turn out to have been good in favour of some other candidate; neither can he abandon the other seat, because if it should be proved that he is only entitled to sit for one he has no election to make" (*p*). But the member may accept an office of emolu-

(*l*) Mr. Blake returned for West Durham and South Bruce; he elected to serve for S. Bruce; Jour. (1873), 49.

(*m*) May, 652. This order is renewed every session.

(*n*) The rule is as follows: "All members who are returned for two or more electoral districts shall make their election for which of the districts they will serve within twenty days after it shall appear that there is no question upon the return for either district." Sir Rodolphe Forget and Sir Wilfrid Laurier continued to represent two electoral districts throughout the twelfth parliament.

(*o*) May, 652. Mr. Gathorne Hardy, 21st Feb., 1866.

(*p*) May, 652. See case of Mr. O'Connell in 1841, 96 E. Com. J., 564; 59 E. Hans. (3), 503. In 1842, the election committee having reported, he made his election; 97 E. Com. J., 302. In 1887, both Sir J. Macdonald and Mr. Blake were returned for two constituencies, but they did not elect for which seat they would sit until after the session

ment under the Crown, and consequently vacate his seat under the law providing for the independence of parliament, all rights of any persons to contest being saved (*q*).

XV. Questions Affecting Members Referred to Select Committees.—In the Canadian as in the English House of Commons, "whenever any question is raised affecting the seat of a member, and involving matters of doubt, either in law or fact, it is customary to refer it to the consideration of a committee" (*r*). For example: In the case of Mr. Perry, referred to in a previous page; of Mr. J. S. Macdonald and Mr. C. Duncan, whose seats were questioned on account of their holding offices in the executive councils of Ontario and Quebec (*s*); of Mr. R. B. Cutler, who had been paymaster of a government railway at the time of his re-election (*t*); of Mr. DeLorme, who was charged with complicity in the Red River rebellion (*u*); of Mr. Anglin and others in 1877, alleged to have violated the Indepen-

of that year, as their seats were contested in the courts. *Can. Com. J.* (1888), 38, 39. Case of Mr. Prefontaine elected for Terrebonne and Maisonneuve in 1900.

(*q*) *Rev. Stat. of Can.*, c. 13, s. 8. In 1883 Mr. de Beaujeu was elected for Soulanges, on the decease of Mr. Lantier, and his seat being contested the Superior Court for Quebec declared the election null and void. He appealed to the Supreme Court of Canada. But before it was there decided he accepted an office, which he immediately resigned, and then contested the county again, but he was defeated by his former opponent. The judgment of the Supreme Court, confirming the judgment of the Quebec Superior Court, was not given until several weeks after the second election. *Can. Com. J.* (1883), 13; *Ib.* (1884), 12, 210. In 1896 Sir W. Laurier became Prime Minister after a general election, and the two constituencies for which he had been elected became vacated by his acceptance of office. He was returned immediately by Quebec East but the other constituency was not represented until after the opening of the session. *Can. Hans.*, 1896 (2nd sess.), 162; *Com. J.* xi., xii., xiii., 14.

(*r*) *May*, 245, 270, *et seq.* 94 *E. Com. J.*, 29, 58; 110 *Ib.* 325; *Ib.* 134, 86.

(*s*) *Can. Com. J.* (1867-8), 39.

(*t*) *Ib.* (1873), 285, 321, 328.

(*u*) *Ib.* (1871), 249.

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dence of Parliament Act. In the case of Mr. Daoust, 1877, the matter was referred to the committee on privileges and elections, which reported in his favour (v); but in 1880 the house refused to refer a petition making certain charges against Mr. Hooper to the same committee (w). In 1890 the conduct of Mr. Rykert, in connection with certain timber limits, was referred to the committee on privileges (x). In other cases where there is evidence of crime, or of the person accused being a fugitive from justice, it has been considered sufficient to lay the papers formally before the house (y); but whenever the seat or character of a member is affected the house will invariably proceed with deliberation. A reference to a committee is no doubt the proper procedure in all cases in which there are reasonable doubts as to the facts or the course that should be pursued, especially when it is necessary to examine precedents or witnesses (z).

(v) *Ib.* (1876), 145, 159, 160, 208.

(w) *Ib.* (1880), 60, 62, 87, 88.

(x) *Ib.* (1890), 197, 198.

(y) Case of Louis Riel 1874.

(z) Mr. Gladstone, 190 Eng. Hans., 123. See also cases of Mr. Schell (1903), *Can. Com. J.*, 324-5. Mr. Loy, *Ib.* 438. Mr. Hyman's resignation, *Ib.* (1907), 297. Case of Mr. Lanctot, *Ib.* (1911), 224-5. See cases of alleged personation at election in Hochelaga (1912), *Ib.* (1913), 344, 345.

CHAPTER V.

SPEAKERS AND OFFICERS OF THE TWO HOUSES.

I. Speaker and Officers of the Senate.—II. The Speaker of the House of Commons.—III. The Officers of the House of Commons; Their Appointment, Duties, &c. (1) Journals Branch. (2) Committees Branch. (3) The Office of the Clerk of the Crown in Chancery. (4) The Translation Branch in Three Divisions. (5) Reporting Branch. (6) The Accountant's, Stationery and Blue Book Branch. (7) The Law Branch. (8) The Sergeant-at-Arms' Branch. IV. Filling vacancies; Oaths of Allegiance, etc. V. Admission of Strangers. VI. Library and Reading Rooms. VII. Internal Economy; Board of Commissions; Senate Committee on Contingent Accounts.

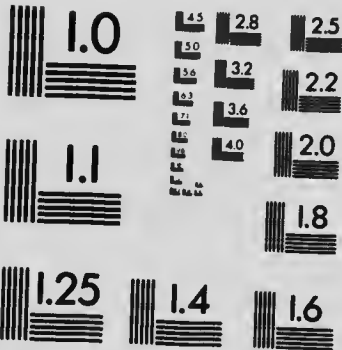
Title and office of Speaker.—The title and office of Speaker in legislative bodies are of great antiquity. The Lords and Commons in England in early times consulted together but it appears from the rolls of parliament in the early part of the reign of Edward III that after the cause of the summons had been declared by the king to the three estates collectively, the prelates with the clergy consulted by themselves and the commons by themselves and that they all delivered their joint answers to the king. Each of these bodies consulting separately must have had a presiding officer. The first Speaker of the Commons to whom that title was expressly given was Sir T. Hungerford, in the 51st Edward III. (1376) (a).

(a) May, 20. 73 Howell St. Tr. 1130. 4 Inst. 2, Elsynge 155. 2 Rol. Parl. 310, 374. In 1377 Sir Peter de la Mare was chosen speaker, 1 Parl. Hist., 339, 349. 2 Hatsell, 212.



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I. Speaker and Officers of the Senate.—The Speaker of the Senate is appointed by a commission under the great seal, and may be removed at any time by the governor-general (*b*). The proceedings consequent on the appointment of a new speaker will be found fully explained in another part of this work. In case of the unavoidable absence of the speaker during the session, it was necessary from 1867-1894 to appoint a new speaker for the time being. When the former returned his re-appointment was made known to the house with the usual formalities (*c*).

In 1894 (*d*) a statute was passed to provide for a deputy speaker in the Senate in the case of the unavoidable ab-

(*b*) Sec. 34 B.N.A. Act, 1867. The following are the names of the speakers of the Senate since 1867:—Hon. J. E. Cauchon, 1867-1873; Hon. P. J. O. Chauveau, 1873-1874; Hon. D. Christie, 1874-1878; Hon. D. R. Wilmot, 1878-1880; Hon. A. E. Botsford, 16th Feb. until 19th April, 1880; Sir David L. Macpherson, 1880-1883; Hon. W. Miller, 1883-1887; Hon. J. B. Plumb, 1887-1888; Hon. G. W. Allan, 1888-1891; Hon. Mr. Lacoste, 1891; Hon. J. J. Ross, 1891-1896; Hon. (Sir) C. A. P. Pelletier, 1896-1901; Hon. L. G. Power, 1901-1904; Hon. Raoul Dandurand, 1905-1908; Hon. J. K. Kerr, 1909-1911; Hon. P. Landry, 1911.

(*c*) Hon. Mr. Ross, from 17th to 28th May, 1869, in place of Mr. Cauchon. In the session of 1880, Mr. Macpherson fell ill, and it became consequently necessary to appoint Mr. Botsford speaker. Journals, Feb. 16, and Hansard of that date. Mr. Macpherson was subsequently re-appointed. Sen. J. 177. In 1872 Mr. Speaker Cauchon was accidentally detained, and information was given of the fact by the clerk when the Senate met. Mr. Hamilton took the chair, and by consent declared the house continued till 9.30 that evening. Sen. J. (1872), 79. In 1888 Mr. Speaker Plumb died suddenly during the session, and the fact was announced to the house by the clerk, and Senator Ryan having been temporarily called to the chair, the house adjourned for several days. On its re-assembling, the appointment of Hon. George W. Allan as speaker was formally announced. Sen. J. (1888), 30, 31. Deb. 13th and 19th March.

(*d*) 57-58 Vict. c. 11. Sen. Deb., March 16, 17, 20, 1893, and Com. Hans. March 30, 1893. Senator Gowan in the Senate and Hon. Mr. Mills in the Commons took the lead in doubting the constitutionality of the legislation. Sess. P., 1895, in which the opinions of the English law officers are given on a statement of the case, presented by the author of this work, at the request of Sir John S. D. Thompson, minister of justice and prime minister.

sence of the speaker. Doubts were raised as to the power of the Senate under the British North America Act to allow another senator to perform the duties of an officer appointed by the Crown, and the question was referred to the law officers of the British government. Their report led to the passage of an imperial Act (*e*) "for removing doubts as to the validity" of the act in question. As in the House of Commons, every act done by a senator, called to the chair under the provisions of the statute, "shall have the same effect and validity as if the act was done by the speaker himself."

In accordance with this statute, the clerk now informs the Senate, whenever necessary, of "the unavoidable absence of Mr. Speaker," and a motion is at once made "That the Honourable Mr. . . . do take the chair." When it is so ordered by the house, the member proposed is duly escorted to the chair by the leaders of the government and opposition, and the mace is laid upon the table (*f*).

The speaker presides over all the deliberations of the Senate, except when the house goes into committee of the whole, and then he must call another member to the chair. He also may leave the chair during the sitting and may call upon any senator to take the chair during his temporary absence (*g*). He has in all cases a vote, which is the first recorded on the side on which it is given, and he decides questions of order when called upon for his decision (*h*). If he wishes to address the house he leaves the chair—like the lord chancellor in the House of Lords—and speaks from the floor like other members, but this is a privilege which is rarely exercised (*i*). He stands uncovered when

(*e*) Imp. Stat. 59 Vict., c. 3, at beginning of Can. Stat. for 1896.

(*f*) Sen. Rule 11.

(*g*) Senate Rule No. 10.

(*h*) Sec. 36, B.N.A. Act, 1867. Sen. Deb. ("Times"), 1867-8, pp. 176, 184.

(*i*) Mr. Speaker Christie, Sen. Deb. (1877), 131; Mr. Speaker Wilmot, 2nd May, 1879; Lords' S.O. 19; May 191, 311. Mr. Speaker Macpherson spoke at some length in committee on Canadian Pacific

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speaking to the Senate, and if called upon to explain a point of order or practice, he is to state the rule applicable to the case, and also to decide the question when required, subject to an appeal to the Senate (*j*). Like the speaker in the Commons he presents to the house all papers, returns, and addresses which he has received and which ought to be laid before that body (*k*). Like the speaker of the Commons he is the head of a department under the Civil Service Act (1908), and performs important duties in the administration of that Act with respect to the officials of the Senate.

The principal officers of the Senate are the clerk, clerk-assistant, law clerk, second clerk-assistant, the gentleman usher of the black rod and the sergeant-at-arms. The clerk, clerk assistant and the formerly styled law clerk, parliamentary counsel, are also appointed masters in chancery, by virtue of special commissions under the great seal. The clerk of the Crown in chancery is recognized as an officer of the Senate for certain purposes and when required he takes a seat on the floor of the house (*l*). The clerk of the Senate who is also the clerk of the parliaments is appointed by the Crown under the great seal, performs duties similar to those of the clerk of the Commons, and also acts as accountant of the Senate in pursuance of the orders of that body (*m*). Under the Civil Service Act (1908) he has the rank of "deputy head" and is vested with certain duties as such with regard to appointments to clerkships in the Senate. He reads the

Railway bill, Feb. 14th, 1880-81. He came down from the chair in the session of 1882, and made a few remarks when a senator directly referred to a speech he had made some years previously. Hans. 749.

(*j*) Sen. R. 16.

(*k*) Sen. J. (1867-8), 206, 210, 230-231, 269, &c., *Ib.* (1880), 17, 30, 47, &c.

(*l*) Sen. J. (1867-8), 61, 62; *Ib.* (1883), 15; *Ib.* (1884), 3. Anson Law &c. of the constitution, vol. 2, part 1, p. 134.

(*m*) Report of contingent committee on subject, Sen. J. (1867-8), 131; *Ib.* (1870), 165. An assistant appointed in 1875, Jour. 34; *Ib.* (1877), 115.

commission for the appointment of a new speaker (*n*), and takes minutes of all the proceedings of the Senate (*o*). He administers the oaths required by law to new members as one of the commissioners appointed for that purpose (*p*). At the prorogation of parliament he pronounces the royal assent to bills, or signifies that certain bills have been reserved (*q*). He also replies, by his Excellency's command, accepting the benevolence of the Commons, when their speaker makes the usual speech in presenting the Supply Bill (*r*). Whenever a new clerk is appointed, the speaker will inform the house of the fact, and the commission will be read and put on the journals. He will then take the oath of office before the speaker (*s*) as clerk of the parliaments, and has the custody of all the original Acts of Parliament (*t*). He has a seal of office which he affixes to certain copies of all acts intended for the governor-general or the registrar-general of Canada, or required to be produced before courts of justice. The same act contains also provisions relative to certified copies of acts which may be furnished on application to the clerk of parliaments for a small fee of ten cents for every hundred words, which goes into the contingent fund of the Senate (*u*).

(*n*) *Ib.* 1873, 1874, 1879, 1891.

(*o*) Decision of speaker (Sen. Hans., 1898, pp. 840 *et seq.*) that it is not the duty of the clerk to enter decisions on points of order arising during debate, but only decisions on a bill or motion duly entered, when put from the chair, and subsequently ruled out on an appeal to the speaker. This decision was based on precedents of the English and Canadian Commons, and was repeated in a subsequent session under similar conditions. (Sen. Hans., 1909, pp. 730-732).

(*p*) *Ib.* (1874), 14, &c.; *Ib.* (1883), 18. See 128, B.N.A. Act, 1867.

(*q*) Sen. J. (1874), 262, &c.; *Ib.* (1883), 297.

(*r*) *Ib.* (1874), 262-3, &c.; *Ib.* (1883), 297.

(*s*) *Ib.* (1867-8), 55; *Ib.* (1871), 15-16; *Ib.* (1883), 13, 14; *Ib.* (1900), 10, 11. For practice in Lords, which is similar, see 223 E. Hans. (3), 1684.

(*t*) Rev. Stat. of Can., c. 2, ss. 5, 6, 7. This act does not contain a power of deputation for this purpose.

(*u*) The clerk of the Commons in England—but not in Canada—is the "under clerk of the Parliaments to attend upon the Commons." 2 Hatsell, 255; London Gazette, 3rd Feb., 1871.

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The clerk-assistant, who is also generally the deputy clerk, sits at the table to the right of the chief clerk. (*v*) His duties consist in reading petitions and other documents, in taking minutes of proceedings in committee of the whole, and in otherwise assisting the clerk in the business of the house. Official reporters have also seats on the floor by the indulgence of the house.

The gentleman usher of the black rod, who is appointed by the Crown (*w*) is always sent to desire the attendance of the Commons at the opening or prorogation of parliament. He is responsible for the arrangements for the invitations, accommodation and seating of the guests of the Senate at the ceremonies on the opening and closing of parliamentary sessions; and he also executes all orders for the arrest or commitment of parties guilty of breaches of privilege and contempt (*x*). The speaker should, following British precedent, report any new appointment to the house, as in the case of all other officers under royal commission (*y*).

The Senate has also a sergeant-at-arms, who carries the mace, and executes the orders of the house for the attachment of delinquents, when they are in the country (*a*). The usher of the black rod performed the duties of this office until 1869, when an officer was appointed to fill the position (*b*).

(*v*) He acts as deputy by virtue of authority from the clerk. In the Lords he is appointed by the lord chancellor, and the house is always informed of the fact, and asked to approve, 223 E. Hans. (3), 1685. The contingent accounts committee formerly practically appointed the officer and gave the title. Sen. J. (1867-8), 176; *Ib.* (1882), 300.

(*w*) *Ib.* (1867-8), 56.

(*x*) 4 May, 198, 425, 665.

(*y*) Sen. J. (1867-8), 56. But this was not done in 1876 when a new officer was appointed. He occupies, like the sergeant-at-arms of the Commons, apartments in the parliament buildings. *Ib.* (1876), 29.

(*a*) May, 198.

(*b*) Sen. J. (1867-8), 90; *Ib.* (1869), 83. He is appointed under the great seal, *Ib.* (1884), 76, 77.

Until 1901 prayers were read in the Senate by a chaplain appointed by commission under the privy seal (*c*), but in that year the Senate adopted the form of prayers in use in the Commons, and had them read by the speaker. Whenever it is necessary to appoint any officer, clerk or messenger, the subject is referred to the committee of internal economy and contingent accounts. It reports as to the necessity for such office, and the grade or salary that ought to be given (*d*). Previous to the passage of the amended Civil Service Act of 1908 all appointments and salaries (except the appointment of Crown officers) as well as promotions, and recommendations for superannuation, or a leave of absence, were practically regulated by this committee (*e*); but that act now controls in the matter of the appointment, promotion, salary and grading of the permanent officers of the Senate, the clerk excepted. This committee supervises all the ordinary expenses of the Senate, apart from the members' indemnity and other expenditures authorized by statute (*f*). Its members have always strenuously resisted attempts to interfere with the control of matters which it is the practice to refer to them (*g*). All petitions and papers referring to salaries and expenses of the house are invariably submitted to the consideration of this committee before any definite conclusion is arrived at on the subject (*h*). At the commencement of every session the clerk is to lay before the Senate, on the day after the appointment of the committee on contingent accounts, and so often as he may be required to do so, a detailed statement of his receipts and disbursements, since the last audit, with vouchers in support

(*c*) *Ib.* (1869), 33-4. *Ib.* (1884).

(*d*) *Ib.* (1869), 83; *Ib.* (1875), 132; *Ib.* (1876), 86.

(*e*) *Ib.* (1867-8), 90; *Ib.* (1880), 252; *Ib.* (1882), 65, 300; *Ib.* (1883), 45, 91; *Ib.* (1890), 47, 48, 279; *Ib.* (1900), 83 (leave of absence), 100, 239, 286, &c.

(*f*) *Sen. J.* (1877), 44, 66, 114; *Ib.* (1880-81), 103-4; *Ib.* (1884), 270; *Ib.* (1900), 238.

(*g*) *Sen. Deb.* (1875), 25, 37, 66, 69.

(*h*) *Sen. J.* (1867-8), 200, 273; *Ib.* (1876), 61; *Ib.* (1880), 87, 95.

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thereof (*i*). The committee in question will always report on the correctness of these accounts (*j*). In 1880 the Senate agreed that "the accounts of expenditure for salaries and contingencies of the Senate, and for their members' indemnity, etc., should be audited by the auditor-general" (*k*). All reports of the committee of contingent accounts, making recommendation, must be considered and adopted by the Senate before they can be valid (*l*).

The daily printed records of proceedings which is prepared by the officers of the house in the two languages and sent to every member is called "Minutes and Proceedings," a copy of which, certified by the clerk, must be transmitted daily to the governor-general (*m*). The journals, which are almost identical with the minutes, are bound in annual volumes as soon as possible after each session, with a full index, and are the authoritative record of the Senate (*n*).

Strangers are admitted to the galleries and members of the Commons to that part of the house which lies without the bar (*o*). The house may, however, be cleared at any moment, in conformity with a standing order, like that of the House of Commons, to which reference is made in a subsequent page of this chapter.

II. The Speaker of the House of Commons.—The position and duties of the Speaker of the House of Commons are of great importance. He not only presides over the deliberations of the house in session and enforces the rules of procedure and practice, but he is also an administrative officer of great responsibility in carrying on the business

(*i*) Sen. R. 103 Jour. (1879), 51; *Ib.* (1883), 46; *Ib.* (1890), 18; *Ib.* (1900) 43.

(*j*) Sen. J. (1878), 243; *Ib.* (1879), 246; *Ib.* (1880), 186; *Ib.* (1900), 285.

(*k*) Sen. J. (1880), 97.

(*l*) *Ib.* (1900), 250, 297.

(*m*) Sen. R. 98.

(*n*) Sen. R. 99.

(*o*) Sen. R. 97.

and financial matters appertaining to the operations of the house and its committees. The speakership is referred to in four sections of the British North America Act, 1867, wherein the organisation of the House of Commons was provided for. Section 44 directs the house on its first assembling after a general election, to proceed with all practicable speed to elect one of its members to be speaker. This section is substantially section 33 of the Union Act of 1840. In the first session, under that act, the governor-general did not come down on the first day, but the house proceeded immediately to elect a speaker. Exception was taken to this procedure at the time (*p*). The next day the governor-general opened parliament (*q*). In subsequent sessions, the present usage was followed in conformity with British practice, which requires that the sovereign give authority to the house to proceed to the election of a speaker (*r*). In Canada the approval of the choice of the Commons for speaker by the governor-general is required. The 45th section of the act directs the house to proceed, in case of a vacancy in the office of speaker, to elect another with all practicable speed. The 46th section merely provides that the speaker shall preside at all meetings of the house and the following sections direct that, until parliament otherwise provides, in case of the absence of the speaker from the chair for two days, the house may elect another member to act as speaker and during the period of the so acting he shall have all the powers, duties and privileges of speaker.

Only one case of the election of a speaker during a session has occurred since 1867 in the dominion parliament, and that was on the occasion of the death of Sir James D. Edgar, who had been in the chair since August, 1895. In this case on the day following the announcement of the decease (August 1st, 1899), the serjeant-at-arms brought the mace and laid it under the table. Then the

(*p*) Quebec Mercury, June 19th, 1841.

(*q*) Leg. Ass. Jour. (1841), 2, 3.

(*r*) 2 Hatsell 218, 219. May, 150. See also ch. iii. on this subject.

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premier, Sir Wilfrid Laurier, addressing himself to the clerk, as at the opening of a new parliament, informed the house that his Excellency the governor-general had been informed of the death of Sir James Edgar, and gave leave to the house forthwith to proceed to the choice of a new speaker. The house immediately elected Mr. Bain, and the mace was laid on the table. The house then went up immediately to the Senate chamber, where his Excellency the governor-general received the new speaker with the usual formalities (s).

In case the speaker dies or resigns during a prorogation, it will be necessary for the House of Commons to go up to the Senate chamber at the opening of parliament and receive the authority of the governor-general to proceed to the election of a new speaker in accordance with law. This was done in conformity with British precedents, on the occasion of the re-election of Mr. Speaker Anglin in 1878, who had resigned his seat during the recess; and also in the case of the election of Mr. Speaker Belcourt in March, 1904, who was elected to the chair in place of Hon. L. P. Brodeur, speaker, who during the recess had been appointed

(s) Can. Com. J. and Hans. (1899). Similar procedure is followed in the case of the retirement of a speaker during a session. 127 E. Com. J. (Mr. Speaker Denison), 9, 22, 23; 209 E. Hans. (3), 181. 139 E. Com. J. (Mr. Speaker Brand), 68; May, 157. For the earliest instance of proceedings on the death of an English speaker, see 94 E. Com. J. 116; 1 Parl. Hist. 811. No case of the death or resignation of a speaker occurred from 1841 until 1866 in the old parliament of Canada; but after confederation we have in 1871 the resignation of Mr. Speaker Scott in the Ontario assembly. Leg. Ass. J. (1871), 36. See case of the election of a new speaker in the legislative assembly of Low. Canada in 1823, when Mr. Papineau was absent in England. On the assembling of the house, the clerk read a letter from Mr. Papineau informing them that he would not be able to attend to his duties that session. On the members of the assembly presenting themselves in the chamber of the legislative council, the speaker of that body informed them that his Excellency had been made aware of the absence of Mr. Papineau, and requested them to elect a new speaker in his place. Christie. iii. 5, 6 Ass. Jour. (1823), 9-11.

a minister of the Crown (*t*). On these occasions the governor-general was represented by a deputy-governor, the chief justice of Canada, on the first day of the session. On the following day the governor-general took his seat on the throne and delivered the speech. Since then a deputy-governor, has on other occasions, represented his Excellency on the first day of a new parliament, previous to the election of speaker (*u*).

Parliament found it advisable to provide for a temporary speakership in case of the illness of the speaker. On one occasion, in the old Canada assembly, the house had to adjourn for some days, when the clerk had communicated to the house the fact of the speaker's indisposition (*v*).

The House of Commons had no deputy speaker before the session of 1885; but, in pursuance of a statute, whenever the speaker from illness, or other cause, was obliged to leave the chair, he called upon a member to take his place for the time being, and every order made and thing done

(*t*) Can. Com. J. (1878), 1, 9; *Ib.* (1904), 10, 11. The English precedents go very far back, 1 E. Com. J. 73, 116; 4 Parl. Hist. 1111-2 and 13 Lords J. 460; Elsynge, 154, 155, 245, 246, 247. The same procedure took place at election of a speaker in Quebec legislative assembly in 1876, on resignation of Mr. Fortin. Jour. 1-7; also, in the Ontario legislature, on the resignation of Mr. Currie in 1874.

(*u*) This was the third occasion since 1841 that a deputy-governor had represented the governor-general in parliament; the first occasion was in 1841, when Major General Clitherow had to prorogue the legislature on account of the illness of Lord Sydenham. Leg. Ass. J., 18th Sept., 1841. Since 1878 several deputy-governors have been appointed—generally the chief justice of the supreme court of Canada—when his services are available. Chief Justice Richards acted as deputy-governor in the summer of 1876 when Lord Dufferin was absent in British Columbia. Ann. Reg. 1878, p. 36. C. J. Ritchie in 1881 and 1882, when Lord Lorne was absent in the Northwest and British Columbia. See Sen. J. (1883), 23; *Ib.* (1891, new Parliament). Also, sec. 14, B.N.A. Act, 1867.

(*v*) Leg. Ass. J. (1858), 161. No business could be done, and the clerk put the motion for adjournment. See Hatsell, 222.

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under these circumstances was declared valid and effectual (*w*).

In 1885 the English practice was adopted as far as possible with respect to the appointment of a deputy speaker. The chairman of committees, appointed at the beginning of every session as hereinafter set forth, acts as deputy speaker in conformity with the following provisions of a statute (*x*) passed to give validity to all proceedings while the officer in question is in the chair:

1. Whenever the speaker of the House of Commons, from illness or other cause, finds it necessary to leave the chair during any part of the sittings of the said house, on any day, he may call upon the chairman of committees, or, in his absence upon any member of the house, to take the chair and act as deputy speaker during the remainder of such day, unless the speaker shall himself resume the chair before the close of the sittings for that day.

2. Whenever the house shall be informed by the clerk at the table of the unavoidable absence of Mr. Speaker, the chairman of committees, if present, shall take the chair and shall perform the duties and exercise the authority of speaker in relation to all the proceedings of the house, as deputy speaker, until the meeting of the house on the next sitting day, and so on from day to day, on like information being given the house, until the house shall otherwise order; provided that if the house shall adjourn for more than twenty-four hours the deputy speaker shall continue to perform the duties and exercise the authority

(*w*) 31 Vict., c. 2. Since 1870 no record of the fact has been made in the journals, but the reverse was the case previously. *Can. Com. J.* (1867-8), 167, etc.

(*x*) 48-49 Vict., c. 1 (R.S.C., c. 13). This statute is based on the imp. stat., 18-19 Vict., c. 84. The assent of the Crown was given to the Canadian bill in accordance with British precedent. See preamble of 28-49 Vict., c. 1, and remarks of Mr. Edward Blake, *Can. Hans.* (1885), 175, showing that the office of speaker involves some ancient prerogatives of the Crown, and that its assent must constitutionally be given to any measure affecting that office.

of speaker for twenty-four hours only after such adjournment.

If at any time during a session of parliament the speaker shall be temporarily absent from the house and a deputy speaker shall thereupon perform the duties and exercise the authority of speaker as hereinbefore provided, or pursuant to the standing orders or resolution of the house every act done and proceeding taken in or by the house in the exercise of its powers and authority, shall be as valid and effectual as if the speaker himself were in the chair; and every act done, and warrant, order, or other document issued, signed or published by such deputy speaker in relation to any proceedings of the House of Commons, or which under any statute would be done, issued, signed or published by the speaker if then able to act, shall have the same effect and validity as if the same had been done, issued, signed or published by the speaker for the time being.

For the first time (on the first of May, 1885), in accordance with the law, the clerk informed the house of the unavoidable absence of Mr. Speaker Kirkpatrick, on account of serious illness in his family, and Mr. Daly, chairman of committees, took the chair and adjourned the house. The speaker was obliged to be absent for two more sittings, and the clerk every day informed the house of the fact as soon as it met, and the deputy speaker took the chair and read prayers (y). The same procedure has always been followed since (z).

(y) Can. Com. J. (1885), 357, 358, 359. This is the English practice, 108 E. Com. J., 758, 766; 110 *Ib.* 210, 395; 121 *Ib.*, 146, 156, 163; 131 *Ib.*, 353. The mace is always on the table on such occasions, May, 196. note. For report on the office of deputy speaker, and proceedings in relation thereto, see E. Com. Sess. P., 1852-3, vol. 34; *Ib.*, 1885, vol. 7; also May, 197 *et seq.* Also report on public business, 1878, p. 160 (Mr. Raikes) vol. 18. As to necessity of speaker or deputy speaker being in the chair in order to adjourn the house, see debates, 1903, Can. Hans (3) p. 6630.

(z) Illness of Sir J. D. Edgar, Can. Com. J. (1898), 77, 160, &c.

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When the speaker enters or leaves the house, the serjeant-at-arms precedes him with the mace, which will lie on the table whilst he is in the chair, and the house is consequently in session (*a*). The house cannot proceed to the election of speaker without the mace (*b*).

During a session of parliament, or an adjournment, the speaker can be accompanied by the mace on any state or solemn occasion, in pursuance of the express resolution of the house, or in accordance with parliamentary usage (*c*). Even when parliament is sitting, and the speaker may have a doubt as to the propriety of his using the mace on some occasion, he asks the opinion of the house, and is governed accordingly (*d*).

But during a prorogation the speaker has no authority under correct British parliamentary usage to use the mace on any public occasion, since it is an emblem of the authority of the house and its speaker to be used only while parliament is sitting (*e*).

(*a*) May, 155.

(*b*) 2 Hatsell, 218.

(*c*) Mr. Speaker Onslow cited by Hatsell, vol. 2, 249n. Also Cushing, sec. 290. For cases of attendance of the speaker accompanied by the mace, and dressed in his robes: State funeral to Rt. Hon. W. Pitt, Eng. Com. J., 1806, 27th Jan.; State funeral of Duke of Wellington in 1852, 108 E. Com. J., 29; Coronation in 1838, 93 E. Com. J., 621, May, 192; Thanksgiving for recovery of Prince of Wales in 1852, 127 E. Com. J. 51, 61; General Thanksgiving St. Margaret's, Westminster, 4th May, 1856, 111 Eng. Com. J. 175; Thanksgiving in celebration of the 50th year of her Majesty Queen Victoria's reign, 21st June, 1887, 142 E. Com. J. 293; State funeral of the Rt. Hon. Sir John A. Macdonald, prime minister of Canada, Can. Com. J., 8th June, 1891.

(*d*) Eng. Com. J., 1668, May 7th.

(*e*) During prorogation the English speaker has no longer even the custody of the mace, but it is kept in the jewel chamber until parliament resumes, 2 Hatsell, 249n; Sir R. Palgrave's "House of Commons," p. 80. In Canada two cases have occurred of the speaker attending with the mace on two important occasions during a prorogation; addresses to the Prince of Wales in 1860; funeral of Sir George E. Cartier in 1873 (Can. Com. J. 23rd May). In the first case the house authorized the speaker to attend with the mace, but this resolution was at entire variance with English practice, which allows the mace only to be used when parlia-

In the records of the parliamentary history of Canada but one example can be found of a house having attempted to remove a speaker for any cause. This occurred in the assembly of Nova Scotia in 1875, when a resolution was adopted by a vote of 20 to 12 requesting Mr. Speaker Dickie to resign. Nothing was alleged against Mr. Dickie's moral character, but his conduct of the office showed that he had not the requisite qualifications to satisfactorily discharge its duties. Upon the passage of the resolution the speaker resigned and another was elected (*f*). In only two instances has the English house been called on to express its opinion as to the continuance of a speaker in the chair. Objections were made to the conduct of Sir E. Seymour, in 1673, but a motion for his removal was rejected (*g*). In the memorable case of Sir John Trevor, in 1694, a committee showed that he had received a bribe to promote the passage of a certain bill, and the house resolved that he had been guilty of a high crime and misdemeanour. Thereupon he resigned, and the King immediately gave leave to the house to proceed to the election of a new speaker. Sir John Trevor was then formally expelled (*h*).

Speaking generally, the duties of the speaker of the House of Commons, in addition to his presiding over the house in session and enforcing the rules of order (*i*), are (1) to put all motions and questions and declare the result, (2) to announce the business of the house in the order in which it is to be taken up, (3) to announce and lay before the house all communications, papers, returns and documents prescribed by statute or by order of the house, or by the practice and usage of parliament, such as messages ment is fully invested with its constitutional powers. In the case of the state funeral of Sir John S. D. Thompson, prime minister, at Halifax, N.S., in December, 1894, the British usage was followed by the speakers of the two houses.

- (*f*) Jour. H. of Assembly, N.S., April, 1875.
- (*g*) 2 Hatsell 214, 215. 2 Grey's Debates, 186.
- (*h*) Parl. Hist. 1694, vol. v., pp. 900-910.
- (*i*) Rule 5.

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received from the Senate or the governor-general, (4) to communicate its resolutions to others, to convey its thanks and to express its censures or admonitions (*j*), (5) to authenticate by his signature when necessary all the acts, orders and proceedings of the house, and (6) to be alert to guard the rights and privileges of the house and its members. The speaker issues warrants to execute the commands of the house for the commitment of offenders, for the issues of writs of election, for the attendance of witnesses in custody or for the bringing up of prisoners in custody. He is the representative of the house itself, of its powers and dignity, and its mouthpiece or speaker on all occasions when an address is to be presented formally by the whole house to the king or his representative in Canada, or to the heir apparent to the Crown. The speaker however, decides questions of order only when they actually arise and not in anticipation. He is bound to call attention immediately to any irregularity in debate or procedure and not to wait for the interposition of a member. (*k*).

"For the Speaker is not placed in the chair merely to read every bit of paper, which any member puts into his hand in the form of a question; but it is his duty to make himself perfectly acquainted with the orders of the house, and its ancient practice, and to endeavour to carry those orders and that practice into execution. . . . Therefore, though a member may, Mr. Speaker ought to interrupt any members who speak beside the question or otherwise break the rules" (*l*).

His decisions are subject to an appeal to the house and in explaining a point of order or practice he is to state the rule or authority applicable to the case. When he rises, any member having the floor must take his seat, and he is to be heard in silence. When the speaker's decision or

^j 113 E. Com. J., 192. Can. Com. J. 1873, 2nd Sess. 135 May, 191

^k In the Lords, the speaker takes no notice of irregularities until his attention is specially directed to the same by a member.

^l 2 Hatsell, 235.

utterances are called forth by the proceedings then before the house, his words are entered either with or without the order of the house upon the votes and proceedings and upon the journal (*m*). If a member wishes to challenge the action or conduct of the speaker he must proceed by giving notice of a motion on the subject and by bringing the matter up as a separate question, except, of course, it be a question of privilege, when it may be taken up as such (*n*). He must even put a question when it affects himself personally. He may not take part in any debate before the house, nor express opinions upon matters which are for the determination of the house itself (*o*); and in case of an equality of votes, he gives a casting vote. Any reasons stated by him are entered in the journal (*p*). In accordance with his duty he declines to submit to the house motions which obviously infringe the rules of the house or privileges of parliament, such as a motion which would create or increase a charge upon the people and is not recommended by the Crown or a motion of which proper notice has not been given and in such case he shall apprise the house immediately as to the rule or authority applicable to the case (*q*). At the opening of a sitting the speaker will call the house to order (*r*) and read the prescribed form of prayer. When the doors have been opened by his order, he will lay before the house any papers or returns that it is his duty to communicate. When the speaker is made aware that a member proposes to bring forward a motion

m Rule 5; May, 191, *note*. 148 E. Com. J., 477.

n) 276 E. Hans. 3, 1908, 277 *ib* 310-312; May, 192, 350.

o 32 E. Com. J. 708; 10 E. Hans. 1, 1170; Can. Com. J. 1377, 234, 235; 264 E. Hans. 260, 852; *ib* 1530-31.

p Rule 6.

q) Rule 46; May 192, 440, 559.

r It is the present custom for the speaker, at the opening of a sitting to proceed from his chambers to the chair of the house in a somewhat formal manner, preceded by the serjeant-at-arms, or his deputy, with the mace, and followed by the clerk and clerk-assistant and other officials, who take their places in the house as the speaker is seated.

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or to engage in proceedings which would infringe the rules and usages of the house, he, if he deems it desirable, deals with the matter by conveying to the member an intimation regarding the irregularity (*s*), or in case notice of a question on, or proposed for the order paper, and called to his attention as being irregular or improper, he may direct it to be held over until the member proposing the question can be communicated with and the question be corrected in accordance with rule and usage. The speaker has also decided that questions and motions which were put forward as a matter of privilege did not come within that category (*t*). He will not give a decision upon a constitutional question, nor decide a question of law, though the same be raised on a point of order or privilege (*u*). Nor has he jurisdiction to order that a question on the order paper should be answered, the remedy of a member who may complain of delay or refusal to answer questions being by another form of procedure (*v*). The speaker does not present petitions to the house (*w*), nor can the opinion of the speaker be sought regarding an occurrence in a committee, although a committee has reported progress for that purpose, nor may an inquiry be addressed to him in the form of a question on the order paper regarding the practice or privileges of the house (*x*). Reflections made in debate, or outside of the house, on the conduct of the speaker, or letters addressed to him criticising the course he has taken in the proceedings of the house, may be censured by the house and the author punished by suspension or otherwise, and if necessity should arise the speaker informs the house that such letters have been addressed to him. Nor can the decision of the house regarding the conduct of the speaker

(*s*) May, 192. Senate Rule 26.

(*t*) May 192, 274. Can. Com. J. (1914), p. 301.

(*u*) Can. Com. J. (1903), p. 577-8. Leg. Ass. J., 1864. Can. Com. J. (1868), 161. 150 E. Hans. (3), 2104.

(*v*) Can. Com. J. (1907), p. 30.

(*w*) May, 195.

(*x*) May, 193, 247, 385, note 4, 397, note (3).

be obtained upon an amendment, but must be sought for by a substantive motion (y). When the speaker has communicated an official document to the house it is entered on the votes and proceedings of the house and on the journals without motion.

The speaker has large responsibilities and exacting duties in the administration of the financial business of the house, in the appointment, arrangement of duties and salaries of the sessional and temporary employees, and generally over the discipline of the officials. Under the provisions of the Civil Service Act (1908) and amending acts, the speaker is charged with certain duties and powers with reference to the appointment, promotion and salaries of the permanent officials who are placed, for certain purposes, under the jurisdiction of those enactments.

When the house is in committee of the whole, the speaker has an opportunity, should he think proper to avail himself of it, of taking part in the debates. This is a privilege, however, which, according to the authorities, he will exercise on rare occasions and under exceptional circumstances (a). For instance, he will always explain when necessary, matters connected with the internal economy of the house (b), and may sometimes refer to matters of interest to his constituents when the estimates are under consideration (d). But in the Canadian, as in the English, House of Commons, the speaker carefully abstains from taking part in any matter of party controversy or debate, and if at times he feels compelled to express a strong dissent from any public measure, he will confine himself to the expression of his opinion, and will not enter into any argument with others

(y) May, 193, 293.

(a) Mr. Raikes, committee on public business, E. Com. P., 1878, p. 136. May, 368.

(b) Can. Hans. (1878), 1819, 2247.

(d) *Ib.* (1878), 1197.

(e) Mr. Justice Anglin, on Temperance Act, May 3rd, 1878.

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who may differ from him (*e*). He generally abstains from voting on divisions in committee (*f*).

III. The Officers of the House of Commons: Their Appointment, Duties, &c.—The chief officials of the House of Commons are the Clerk of the House, the Sergeant-at-Arms, the Clerk-Assistant, the Deputy Sergeant-at-Arms and the Parliamentary Counsel. The latter office was established in 1913. In 1914 it took over all the duties formerly assigned to the law clerk and the incumbent was further designated "draughtsman of government bills." He was also accorded the rank of deputy minister (*g*).

The Clerk of the house is its recording officer, appointed by the Crown under the great seal of Canada and holds office during pleasure (*h*), virtually until his health or age no longer permits him to perform his duties. He has also, by the terms of the Civil Service Act, the rank of deputy

(*f*) May, 368. In England the same speaker is re-elected, whenever practicable, for several parliaments. Mr. Shaw Lefevre was speaker about 18 years; Mr. E. Denison, 15 years. It is also usual to elevate them to the peerage, and confer a pension on them when they retire from office. For instance, Mr. Lefevre became Viscount Eversley, and Mr. Denison, Viscount Ossington, 144 E. Hans. (3), 2054, &c.; 209 *Ib.* 150-3. Mr. Brand (Viscount Hampden) was speaker for 12 years. Mr. Peel (Viscount Peel), 11 years; Mr. Gully (Viscount Selby), 10 years. The present (1915) speaker, Mr. Lowther, has been in office since 1905. In the old assemblies of Lower Canada, Mr. Panet and Mr. Papineau were re-elected several times. Mr. Cockburn was elected both in 1867 and 1873. See speech of Sir J. A. Macdonald in proposing Mr. Cockburn a second time. *Parl. Deb.*, 1873, p. 1. The speakers since Mr. Cockburn have been: Mr. Anglin, 1874-1878; Mr. Blanchet, 1879-1882; Mr. (later Sir George) Kirkpatrick, 1883-1886; Mr. Ouimet, 1887-1890; Mr. Peter White, 1891-1896; Sir J. D. Edgar, 1896-1899; Mr. T. Bain, 1899-1900; Mr. Brodeur, 1901-1904; Mr. Belcourt, 1904; Mr. Sutherland, 1905-1908; Mr. Marcil, 1909-1911; Mr. Sproule, 1911. Speakers of the Canadian parliament, after their term of office expires, are generally appointed members of the privy council.

(*g*) *Can. Com. J.* (1913), *Ib.* (1914).

(*h*) The commission reads: "For and during our royal pleasure and the continued residence of you the said..... within our dominion of Canada."

minister, and in the operation of that act is charged with special duties and functions with respect to clerkships of the staff of the house (*i*). He takes notes of the proceedings of the Commons without any reference to the debate. He is "to make entries, remembrances, and journals of the things done and passed in the House of Commons; but it is without warrant that he should make minutes of particular men's speeches" (*j*). His minutes, technically styled "the scroll," are made up every day in a brief and convenient shape, known as the "votes and proceedings," which comprise a record of all the proceedings, but omit many of the parliamentary forms which are given in full in the journals, when these are extended after the close of a session. He signs the orders of the house, endorses addresses and bills sent or returned to the Senate and reads whatever is required to be read in the house. He is addressed by members and puts such questions as are necessary on an election of a speaker (*k*).

The votes are prepared on the responsibility of the clerk by an officer, especially selected for his knowledge and experience, and it is ordered that "they be printed, being first perused by Mr. Speaker" (*l*). In recording the minutes, the clerk must always wait for the directions of the speaker (*m*). Consequently the clerk cannot record any motion until it is formally proposed from the chair (*n*).

(*i*) Civil Service Act (1908), 7-8, Edw. vii, c. 15.

(*j*) 2 Hatsell, 267. May, 200, 201.

(*k*) May, 200.

(*l*) Can. Com. J. (1877), 12; 131 E. Com. J. 5. The speaker's name is also appended. The clerk also signs a copy forwarded daily to the governor-general.

(*m*) Hatsell says: "The rule is to wait for the directions of the speaker, and not to look upon the call of one member, or any number of members, as the directions of the house, unless they are conveyed to the clerk through the usual and only channel by which he can receive them," vol. ii. 271.

(*n*) In August, 1873 Mr. Mackenzie rose and read a motion, but before it was proposed from the chair, the gentleman usher of the black rod came down with a message from the governor-general. The

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In case of any mistake or omission in the votes, it should be immediately noticed by a member in the house; and it may be corrected either by an order of the house, or by the clerk himself in the shape of an erratum at the end of the votes (*o*); but if the mistake is not discovered until after some time, it ought properly to be corrected by an order of the house (*p*); and sometimes under exceptional circumstances only on the report of a committee appointed to investigate the subject (*q*).

The duty of the clerk to read whatever requires to be read in the house is generally performed by the clerk-assistant at the table. The clerk authenticates, by his signature, all the orders of the house, for the attendance of persons, for the production and transmission of papers and records, for the appointment and meeting of committees (*r*), and certifies all the bills which pass the house (*s*). He has the custody of all the journals, papers and files, and it is "at his peril" if he suffers any of them to be taken from the table, or out of his custody, without the leave of the house; but members have the right to peruse all papers in the possession of the clerk and to obtain copies of them through him (*t*). He also certifies all special accounts of the house before payments and audits all accounts of the house. It is the duty of the clerk and clerk-assistant "to complete and finish the work remaining at the close of the session" (*u*). He has the "direction and control of all the officers and clerks employed in the offices, subject to such orders as he may from time to time receive from Mr. Speaker or the house. The clerk may also employ during the session, with

speaker immediately left the chair and went up to the Senate chamber, where the houses were prorogued. No record consequently appears in the journals of the motion in question. Parl. Deb. 210-211.

(*o*) Can. Com. J. (1871), 173; Votes and P. (1883), 402.

(*p*) Can. Hans. (1875), 260 (remarks of Sir John A. Macdonald).

(*q*) 2 Hatsell, 266.

(*r*) *Ib.* 268.

(*s*) Rule 53.

(*t*) 2 Hatsell 265.

(*u*) Rule 59.

the approval of the speaker, such extra writers as may be necessary (*v*). He assists the speaker and members whenever questions arise with respect to rules, usages and proceedings of parliament. He is to place on the speaker's table "every morning previous to the meeting of the house, the order of the proceedings for the day" (*w*). It is his duty to deliver to each member, at the commencement of every session, a list of all periodical statements which are required by law or by resolution of the house to be laid before it (*x*). He is to take care that "a copy of the journal, certified by himself, be delivered each day to his Excellency the governor-general" (*y*). He lays on the table returns relative to or in possession of his department, and prepares annually the estimates of the sums required for the payment of all the expenses of the house for the ensuing fiscal year (*z*). In the matter of private bills, all of which are now introduced on petition, the clerk, after such petitions have been favourably reported upon by the examiner of petitions for private bills, or by the committee on standing orders lays them upon the table. This is equivalent to a first reading and the bills are then deemed to have been ordered for a second reading without a special motion (*a*). The clerk-assistant takes minutes of the proceedings in committee of the whole, calls off the names of members on a division of the house, and translates motions into the language with which he is best acquainted and, as his title implies, assists the clerk as he may be desired (*b*). He also acts as deputy of the clerk in case of his unavoidable absence.

Until 1880 there was a second clerk-assistant, but that office was abolished. The two clerk's assistants in England

(*v*) Rule 60, Rule 63. But except in cases of special urgency the number of sessional clerks is limited according to rules laid down by the commission of internal economy.

(*w*) Rule 61. (*x*) Rule 62. (*y*) Rule 72. (*z*) Can. Com. J. (1883), 354; *Ib.* (1885), 255; 134 E. Com. J., 39, 390. House of Commons Act R.S.C. (1906), ch. 11.

(*a*) Rule 99.

(*b*) 2 Hatsell 273.

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are appointed by the Crown on the recommendation of the speaker. The clerk-assistant is appointed under the provisions of the Civil Service Act. The business of the house also requires the employment of a large number of permanent and temporary officials in addition to the officers who sit at the table or have seats on the floor of the house. The organization of the house, established in 1913 divided these employees and assigned them to the following branches of the house service:

1. *Journals' Branch:* (a) English Section, (b) French Section.—The staff of this branch consists of eleven officials the most important of whom are the Chief Clerk of Journals, Votes, Proceedings and Orders (English Section), Chief Clerk of the same (French Section), Clerk of English Journals, Clerk of French Journals, Clerk of Orders and Records, Clerk of Sessional Papers and of the Joint Committee on Printing, and the Clerk of Petitions. The "Votes and Proceedings" is printed daily, and distributed in English and French to members and others. The Journals are prepared under the direction of the clerk, by an officer of experience, called the clerk of journals. These journals are made up from the original minutes of the clerk, and whenever they differ from the votes and proceedings they alone are held to be correct. A member may move that an entry in the journals be expunged, and in this way a resolution of a former session has been ordered to be struck out; but a motion to expunge an entry in the journals must come up by due notice and cannot be treated as a question of privilege. When a motion or entry has been ordered to be expunged, no mention of it will appear of it in the votes. When a person requires the journals of the Commons as evidence in a court of law, or for any legal purpose, he may either obtain from the journal office a copy of the entries required without the signature of any officer, and swear himself that it is a true copy, or, with the permission of the house or, during the prorogation, of the speaker, he may secure the attendance of an officer to produce the printed journal, or extracts which he cer-

tifies to be true copies; or, if necessary, the original manuscript journal book. It is provided by the 3rd section of 31 Vict., chap. 23 (Rev. Stat. of Can. (1906), chap. 10, s. 6), that "upon any enquiry touching the privileges, immunities, and powers of the Senate and House of Commons, or of any member thereof respectively, any copy of the journals of the Senate or House of Commons, printed or purporting to be printed, by order of the Senate or House of Commons shall be admitted as evidence of such journals by all courts, justices, and others, without any proof being given that such copies were so printed." It is also ordered by the 86th rule of the Commons "that this house doth consent that its journal may be searched by the Senate, in like manner as this house may, according to parliamentary usage, search the journal of the Senate." The daily publication of the journals of the two houses, has, however, rendered this rule now almost nugatory. In former times this proceeding was not unfrequently resorted to. The Senate has a similar rule, No. 96.

In case certain documents or records belong to either house are required in an action before the courts, the house concerned will give permission to the proper officer to attend with the necessary papers, on a petition having been first presented setting forth the facts. During the prorogation, as previously stated, it is usual to obtain the permission of the speaker.

It has been decided in English courts that copies of the journals are evidence; but an entry in a printed copy of the journals of the E. House of Commons is not receivable unless it has been compared with some original at the house; but an examined copy of an entry in the minute book kept by the clerk at the table of the house is receivable. By Can. Stat. of 1893 it is provided that in every case in which the original record would be received in evidence a copy of any official or public document of Canada, or of any province, purporting to be certified under the hand of the proper officer or person in whose custody such document is placed shall be receivable in evidence, without

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proof of the signature or of the official character of the person appearing to have signed the same, in all criminal proceedings and all civil cases respecting which the parliament of Canada has jurisdiction. It is also enacted in the same statute that whenever any book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody a copy or extract therefrom shall be admissible in evidence in the courts, provided it be proved that it is an examined copy or extract or that it purports to be signed and certified as a true copy or extract by the officer in whose custody the original has been entrusted.

2. *The Committees Branch:* consisting of six officials. Among these are the Examiner and Registrar of Private Bills, the Examiner of Petitions for Private Bills, who is also a committee clerk, and clerks of all the standing committees of the house. These clerks are also from time to time as required, detailed to act as clerks of special committees.

3. *The Office of the Clerk of the Crown in Chancery,* consisting of three permanent officers and such temporary clerks as may be required from time to time. The clerk of the Crown in chancery is always present at the table of the House of Commons, at the commencement of a new parliament, and hands to the clerk the roll, or return book, which contains the list of members elected to serve in the parliament. In conformity with law he issues writs for elections, makes certificates to the house, in due form, of the return of members, and performs other functions relating to elections. He attends the house with election returns, and amends the same, when so ordered. The various proclamations, summoning, proroguing, and dissolving parliament, are issued by command out of chancery. He is also required to attend in the Senate chamber at the close of a session, or whenever his Excellency the governor-general gives the royal assent to bills, the titles of which it is the duty of this officer to read. From the foregoing summary of this officer's duties it will be seen that, while

he is appointed by the Crown to perform certain duties by its command in connection with elections, and also to attend in the upper house on the occasion of the exercise of certain royal prerogatives, he is also an officer of the House of Commons. He must obey its orders to lay on the table election returns in his possession and even alter them at its directions. The office was formerly specially attached to the privy council but is now directly under the jurisdiction of the House of Commons.

4. *The Translation Branch in Three Divisions:* (a) Hansard Division; 14 translators; (b) Law Translators, 3 translators; (c) Blue Book Division, 19 translators.

5. *Reporting Branch:* (a) Hansard Section; (b) Committee Section.—in all 15 reporters. These require an equal number of temporary assistants as amanuenses. The House of Commons has the advantage of the services of an efficient staff of official reporters, both for the debates and the proceedings of committees. Previous to 1874 all attempts in this direction were fruitless, though it had not been unusual to make special arrangements for the reporting of very important debates in the house and its committees. In 1874 a select committee was appointed to report on the best means of obtaining a Canadian Hansard; and the result was the adoption of a scheme which was carried out in 1875. Since then the debates have been reported by an official staff of reporters, and published in a form similar to that of the English Hansard. The chief of the staff is styled "Editor of Debates" and he is assisted by a reporter who is styled "associate Editor of Debates." The reports are, as a rule, very correct, and a decided improvement upon the partial, imperfect reports in the newspapers to which the members were previously obliged to refer. Anyone who has to gather the materials for a political work, or to find precedents of parliamentary usages and procedure in this country, must see the value of such a correct record as is afforded by the several series known in England as Hansard's Debates, and in Canada

as the "official report of the debates" but popularly referred to as Canadian Hansard.

The Senate has also an official record similar to that of the House of Commons. In both houses one of the first proceedings at the opening of the session is to appoint a select standing committee with reference to the publication of the official reports of debates. The reporters, both French and English, and both of Hansard and of committees in the Commons, are now permanent members of the Civil Service, appointed under the provisions of the Civil Service Acts. The daily reports are promptly translated by the able translation staff, also members of the Civil Service, as above mentioned.

6. *The Accountants', Stationery and Blue Book Branch*, including the Post Office and Reading Room divisions, 11 permanent and a number of sessional employees.

7. *The Law Branch*.—This consists of the Parliamentary Counsel (previously referred to) and three or four legal officers to assist him. The chief of the branch was formerly styled Law Clerk, but the work of the branch has been greatly increased in importance and responsibility since government bills are there drafted, in addition to the former exacting duties connected with public and private bills. In every stage of such bills this branch is responsible for their correctness, should they be amended. The law clerk (parliamentary counsel) has "to revise, print and put marginal notes upon all bills, to revise before the third reading all amendments made by committees and to report to the chairman of the committees (when desired so to do) any provisions which are at variance with general acts on the subjects to which such bills relate or with the usual provisions of private acts on similar subjects" (c). The law branch also supervises the printing.

(c) Rule 64. In 1880 it was proposed to amalgamate the law and translation departments of the two houses, but after full inquiry a committee reported against the proposition. The duties of the law officers and translators are very fully set forth in memorandums attached

arrangement and extending of the statutes year by year as they are issued at the close of each parliamentary session.

8. *The Sergeant-at-Arms' Branch.*—The Sergeant-at-Arms is the chief executive officer of the Commons, to whom the warrant of the speaker is directed and by whom it is served. He is appointed by the Crown and remains in office during pleasure or until he is superannuated. Formerly he had the right to appoint a deputy with the approval of the speaker, who reported such appointment and approval to the house (*d*), but since the passage of the Civil Service Act of 1908 this official, like the other permanent officers of the house is appointed under the provisions of that and amending acts. The sergeant-at-arms during sittings of parliament sits at a desk near the bar; attends the speaker with the mace on entering or leaving the house during the daily opening and adjournment thereof, or going to the Senate on the assembling or prorogation of parliament (*e*); serves the processes and executes the orders of the house; arrests persons who are ordered into custody; confines in his custody, or elsewhere, all those who are committed by order of the house. Preserves order in the galleries, corridors and other precincts of the house. He is responsible for the safe keeping of the mace, furniture and fittings thereof, and for the conduct of the messengers and servants of the Commons (*f*). He prepares for the approval of the speaker, estimates of the expenses of his branch, to be submitted to the government. He has some eighteen (18) permanent employees under his authority, and during the sittings of the house this

to the report. Sen. J. (1880), 225-234; Com. J. App. No. 4; Sen. Hansard, 468; also Sen. J. (1882), 65, 75, report of contingent account committee as to duties of a new officer appointed.

(*d*) Can. Com. J. (1872), 15.

(*e*) May, 204.

(*f*) May, 204. Can. Com. J. (1873), 12, 70; *Ib.* 153. May, 343, 425. 15 Mirror of Parl. (1840), 722, 725, 795. 113 E. Com. J., 192. Leg. Ass. J. (1866), 265.

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number is largely augmented by the temporary employment of sessional messengers, pages and servants. He is entitled to certain fees from persons committed to his custody (*g*), and has in addition the supervision of the officials of his branch; a general charge of all the rooms and offices of the Commons as respects their care and furnishings.

IV. Filling Vacancies; Oaths of Allegiance, &c., &c.—

Rule 58 provides that before filling any vacancy in the service of the house by the speaker, inquiry shall be made touching the necessity for the continuance of such office, and the amount of salary to be attached to the same shall be fixed by the speaker, subject to the approval of the house. This rule is, however, considerably modified as regards salary and grade by the provisions of the Civil Service Act. Rule 66 empowers the speaker to fix the hours of attendance of the various officials.

No allowance is made to any person in the employ of the house, who may not reside at the seat of government, for travelling expenses, in coming to attend his duties (*h*).

In case of any changes in the personnel of the officers, who have seats on the floor, it was usual for the speaker for some years before and after 1867 to communicate the names to the house when the doors were opened, and to make a record of the facts in the journals; but this practice has gradually fallen into disuse except as to the office of clerk (*i*). On the retirement of the clerk from office

(*g*) Rule 65 (2).

(*h*) Rule 67.

(*i*) *Leg. Ass. J.* (1841), 53; *Ib.* (1852-3), 170, 211, 1034; *Ib.* (1862), 210, 216. *Can. Com. J.* (1872), 15; *Ib.* (1879), 8. The appointment of Mr. Patrick as chief clerk, does not appear in the journals of 1873. It seems that under English practice it is not necessary to make a formal announcement of Crown officers like the clerk and clerk's assistant. The appointment of Mr. Patrick's successor in 1880-1 was incidentally announced, as it was thought necessary by the speaker to explain the appointment of a clerk assistant, *Jour.* 1. The appointment of the clerk, who succeeded Sir John Bourinot, was, however, formally announced to the house by the speaker at the opening of the session of 1903.

during a session it is usual for the house to express its sense of his value to the service of the house (*j*).

Under the act providing for the internal economy of the house the speaker may, after inquiry, suspend or remove any clerk, officer, or messenger, who has not been appointed by the Crown; but in the case of an officer, so appointed, he may suspend him and report the fact to the governor-general (*k*).

Officers, clerks, and messengers, are to take the oath of allegiance on their appointment, before the clerk, who shall keep a register for the purpose (*l*). The clerk takes the oath of allegiance before the speaker, and the oath of office before the clerk of the privy council. The superannuation act applies to the permanent officers and servants of both houses, "who for the purposes of this act, shall be held to be in the civil service of Canada, saving always all legal rights and privileges of either house as respects the appointment or removal of these officers and servants or any of them" (*m*).

(*j*) 2 Hatsell, 254; Leg. Ass. J. (1862), 216. In the English Commons, it is usual for the house to express its sense of the exemplary manner in which the clerk has discharged his duties, when the time has come for his retirement. 2 Hatsell, 254n.; 126 E. Com. J., 27; 204 E. Hans. (3), 232. In 1862 the Legislative Assembly of Canada adjourned out of respect to the memory of the late clerk, after passing resolution on the subject. Jour. (1862), 210. See also proceedings in the Senate on retirement of Mr. Lemoine, who was allowed certain honorary privileges. Sen. J. (1883), 278. Hans. 627.

(*k*) In 1896 several sessional clerks were dismissed for active, offensive partisanship in the general election of that year. Com. Hans. for Sept. 11, 1896, for debate on the subject, and for rules laid down for such cases by the speaker and others. No objection, however, was taken to officials exercising their right to vote.

(*l*) Temporary messengers or employees are not considered as coming within the meaning of the clause.

(*m*) In 1901 on the death of Queen Victoria the clerk took the oath of allegiance to the King before the clerk of the privy council by virtue of s.3, c.19, Rev. Stat. of Canada, as there was no speaker until parliament met and was organized after the general election of 1900. He then administered the oath to all officers, clerks and messengers in the service of the house. A similar procedure was adopted in 1910 (after the death of King Edward VII) on the accession of King George V.

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V. Admission of Strangers.—The serjeant-at-arms maintains order in the galleries and lobbies of the house. The orders and arrangements of the house with reference to the admission of strangers are carried out by him. The senators have a gallery devoted exclusively to themselves; the speaker also gives admission to a gallery of his own. The public in general is admitted to other galleries by tickets distributed to members by the serjeant-at-arms. Strangers are not obliged to withdraw from the galleries when a division takes place. In the session of 1876 the Commons—and the Senate, also—adopted as a standing order (*n*) the following resolution which was first proposed by Mr. Disraeli in 1875 in the English House of Commons:

“If, at the sitting of the Senate (or house), any member shall take notice that strangers are present, the speaker or the chairman (as the case may be) shall forthwith put the question, ‘That strangers be ordered to withdraw,’ without permitting any debate or amendment; provided that the speaker, or the chairman, may, whenever he thinks proper, order the withdrawal of strangers.”

Rule 70 also orders:

“Any stranger admitted into any part of the house or gallery, who shall misconduct himself, or shall not withdraw when strangers are directed to withdraw, while the house or any committee of the whole house, is sitting, shall be taken into custody by the serjeant-at-arms; and no person so taken into custody is to be discharged without the special order of the house.”

VI. Library and Reading Rooms.—The Parliament of Canada supports a valuable library for the use of members of the two houses. By an act (*o*) passed in the session of 1871, it is provided that the direction and control of the library shall be vested in the two speakers, assisted

(*n*) Senate Rule 18. H.C. Rules, 70, 71. 130 E. Com. J. 243
224 E. Hans. (3) 1185; 131 E. Com. J. 79; 227 E. Hans. (3), 1420.

(*o*) 34 Vict., c. 21; Rev. Stat. of Can., c. 15.

by a joint committee of the two houses appointed at the commencement of each session. This committee has power, from time to time, to make orders and regulations for the government of the library, and for the proper expenditure of moneys to be voted by parliament for the purchase of books, subject, however, to the approval of the two houses. The officers and servants consist of a general librarian, and a parliamentary librarian (*p*) appointed by the Crown, and clerks and messengers, who are now appointed and hold office under the provisions of the Civil Service Acts. Under the rules (*q*) the librarians must keep a proper catalogue of the works in the library and report its condition to both houses at the commencement of each session (*r*). No person is entitled to resort to the library during the session except the governor-general, the members of the privy council, and of the two houses, and the officers of the same, and such other persons as may receive a written order of admission from the speaker of either house. Members may personally introduce strangers to the library during the daytime, but not after the hour of seven o'clock in the evening. The speakers issue cards to members allowing the use of books during the recess to persons outside—two works at a time for three weeks. During the session no books can be taken out except upon the authority of the speaker, or upon receipts given by a member of either house. During the recess access is given to all those who have tickets or cards admitting them to the privileges of the library, or have received permission from the librarians. No member of either

(*p*) Previous to 1885 there were one chief and one assistant librarian, but in that year the two officers named above were appointed under 45-49 Vict., c. 45, and have commissions under the great seal. The late chief librarian, Dr. Alpheus Todd, C.M.G., was a well known authority on parliamentary government. The library now comprises a large and valuable collection of books (some 400,000 volumes) in every department of literature. See librarians' report at beginning of each session of parliament.

(*q*) Rules of Commons, Nos. 121-128.

(*r*) Can. Com. J. (1890), Sess. P., No. 8.

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house who is not resident at the seat of government is at liberty to borrow at any one time more than three works, or to retain the same longer than a month. No books of reference or of special cost or value may be removed from the seat of government under any circumstances. At the first meeting of the joint committee the librarians will report any infraction of the rules.

It was formerly the practice for the committee on the library to act as a "Board for the encouragement of literary undertakings" in Canada, and to recommend from time to time that the patronage of the legislature should be extended to various native authors. In 1867-8 the committee reported that thereafter the executive government should themselves assume the responsibility of recommending to parliament grants of money in aid of useful and valuable publications (*s*). The committee continue however, to recommend that aid be given to works relating to constitutional questions and parliamentary practice (*t*).

Each of the houses has also attached to it a reading-room, where are filed the leading newspapers of the two continents. By the 129th rule:

"The clerk is authorized to subscribe for the newspapers published in the dominion, and for such other papers, British and foreign, as may be from time to time directed by the speaker."

Access to these reading-rooms during the session is permitted to persons accompanied and introduced by a member, or having special authority from the speaker or clerk of the House.

VII. Internal Economy,—Board of Commissioners,—Senate Committee on Contingent Accounts.—The internal economy of the Senate is looked after by one of its standing committees called the Committee on Internal Economy and Contingent Accounts, provided for by Senate rule 78.

(*s*) Can. Com. J. (1867-8), 251.

(*t*) *Ib.* (1879), 345, 414; *Ib.* (1883), 178; Sen. J. 122, 127. Com. J. (1883), 483; *Ib.* (1890), 394.

The clerk of the Senate (Rule 103) is required at the beginning of every session, and as often thereafter as may be required, to lay before the committee a statement of the accounts of the Senate, with vouchers. This committee also considers and reports upon all matters which may be submitted to it connected with the officials and business arrangements generally of the Senate.

The commissioners of internal economy of the House of Commons is a statutory body having definite powers and responsibilities with reference to the expenditures of that body. Formerly, certain expenses of the legislative assembly of Canada were regulated by a committee of contingencies, appointed at the opening of each session. On its report the salaries and other contingent expenses were provided for. The Committee was re-appointed in 1867-8, and made several reports, which were acted upon (*u*), but during the same session, the premier (Sir John Macdonald) brought in a bill respecting the internal economy of the House of Commons, which was unanimously passed (*v*). By this act, now part of ch. 11, Revised Statutes of Canada (1906), the speaker of the house, and four members of the privy council, who are also members of the house, are, by the governor-in-council appointed commissioners to carry out the objects of the statute. The names of the four commissioners must be communicated by message from the governor to the House of Commons in the first week of each session of parliament (*w*). For the purposes of this act, the person who shall fill the office of speaker at the time of any dissolution of parliament shall be deemed to be a speaker to carry out the provisions of the act until a speaker shall be chosen by the new parliament; and in

(*u*) Leg. Ass. J. (1861), 9, 66, 138, 259, 260. Can. Com. J. (1867-8), 5, 22, 143, 188, 195, 208.

(*v*) Can. Com. J. (1867-8), 305, 430; Imp. Stat. 52 George III., c. 11; 9 and 10 Vict., c. 77; 12 and 13 Vict., c. 72; 1 Todd 663. The Canadian Act is based on these imperial statutes.

(*w*) Can. Com. J. (1869), 20 *Ib.* (1871), 17. *Ib.* (1874), 8, &c. See also journals for each session since.

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the event of the death, disability, or absence from Canada of the speaker, during any dissolution or prorogation of parliament, any three of the commissioners—three being always a quorum—may execute any of the purposes of this act. The speaker is to appoint an accountant, who must give proper security. The accountant has the disbursement of all the moneys required to pay members' indemnity, salaries of clerks, officers and messengers, and other contingent expenses of the house. All sums of money voted by parliament shall be subject to the order of the commissioners, or any three of them, of whom the speaker shall be one. Credits are issued in favour of the accountant or his assistant, or of two such officers as the commissioners may designate from time to time. Cheques are signed by the accountant and his assistant. The clerk and sergeant-at-arms shall make estimates of the sums required for the service of the house. These estimates shall be submitted to the speaker for his approval, who will prepare and sign an estimate for the necessary expenditures, and transmit the same to the minister of finance for his approval and submission to council. The commissioners regulate with the speaker all salaries not fixed by statute and all expenses of the house—in fact assist the speaker as an advisory council with respect to the staff of the house.

By an act passed in 1878 (x) provision was made for the auditing of the accounts of the public departments, and for the reporting thereon to the House of Commons by an auditor-general, but as this act did not appear to include the two Houses of Parliament (y), the committee of public accounts recommended the adoption by the house of certain resolutions declaring it advisable to have the accounts of the two houses, as well as the library, audited in due form (z). The houses subsequently agreed to have all their accounts audited—the printing and library accounts

(x) Rev. Stats. Can. (1906), ch. 24.

(y) Aud. Ge... Report, 1880. Sess. P. No. 5, pp. xv. xvi.

(z) Com. J. (1880), 119.

being included in the resolutions on the subject (*a*). All fees received by the two houses for private bill legislation must be deposited as soon as paid, to the credit of the consolidated fund, from which refunds are subsequently made on the order of the house. All such accounts are also submitted to the auditor-general, whose annual report gives the fullest information with respect to the expenditure of the two houses.

(*a*) Sen. J. (1880), 96-7; Com. J. 125-6. Auditor General's Rep. for 1881 and subsequent years. All accounts are now submitted every month to the auditor general, certified by the proper officers.

CHAPTER VI.

RULES OF THE HOUSE, SESSIONAL ORDERS AND ORDER OF BUSINESS.

- I. Origin of Rules, Orders, and Usages of the Canadian Parliament.—II. Procedure in Revising Rules and Orders.—III. Necessity for a Strict Adherence to the Rules. IV. Sessional Orders and Resolutions.—V. The Use of the French Language.—VI. Days and Hours of Meeting.—VII. Adjournment over Holidays, etc.—VIII. Two Sittings in One Day: Protracted Sittings.—IX. Proceedings at six o'clock, and at eight p.m.: Prayers.—X. Quorum.—XI. Order of Business.—XII. Calling of Questions and Orders.—XIII. Arrangement of Orders.—XIV. Incidental Interruption to Proceedings.

I. Origin of the Rules, Orders, and Usages of the Canadian Parliament.—The Senate and House of Commons regulate proceedings under certain rules, orders and usages, which are derived, for the most part, from the practice of the British parliament. Canadian legislatures have adopted, since 1792, the principle of referring in all cases of doubt to the procedure of the imperial parliament. But whilst Canadian parliamentary practice is generally based on that of England, certain diversities have grown up and in many particulars the present practice of the two houses is better adapted to the circumstances of the country, and better calculated to promote the rapid progress of public business. The principles that lie at the basis of English parliamentary law have, however, been always kept steadily in view by the Canadian parliament; these are: To protect a minority and restrain the improvidence or tyranny of a majority; to secure the transaction of public business in an orderly manner; to enable every member to express his opinions

within limits necessary to preserve decorum and prevent an unnecessary waste of time; to give abundant opportunity for the consideration of every measure, and to prevent any legislative action being taken upon sudden impulse.

The history of the rules and orders, which now form the basis of Canadian parliamentary practice, must be gathered from the journals of the two houses, since the days when legislatures were first convened in this country. In the legislative councils of Upper and Lower Canada, the rules were, from the first, based on the practice of the House of Lords, as far as the constitution of the house and the circumstances of a new country permitted; and the same course was pursued in 1841 by the legislative council of United Canada, and in 1867-8 by the Senate, whose standing orders now provide:

"1. In all cases not provided for hereinafter, or by sessional or other orders, the standing orders, rules, usages and forms of proceeding of the Lords House of the imperial parliament, in force for the time being, shall be followed, so far as they can be applied to the proceedings of the Senate or any committee thereof." The first action taken in the legislative assembly of Lower Canada was in 1792, when the lieutenant-governor sent a message recommending "the framing of such rules and standing orders as might be most conducive to the regular despatch of business." The house immediately adopted a code of rules based for the most part on those of the imperial parliament. The legislative assembly of Upper Canada, which met for the first time at Niagara, followed a similar course. The legislature of the united Canadas also adopted a code in conformity with that of the imperial parliament.

Again, when the parliament of the dominion met for the first time, after the passage of the Union Act of 1867, one of the first proceedings of the House of Commons was necessarily to appoint a committee to frame rules for the government of procedure in that house. The committee subsequently reported the rules and standing orders which are substantially those of the legislative assembly of Canada.

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The present Rule No. 1 is the outgrowth of the rule then adopted. It directs that "in all cases not provided for hereinafter or by sessional or other orders, the rules, usages and forms of procedure of the House of Commons of the United Kingdom of Great Britain and Ireland in force on the first day of July, 1867, shall be followed" (a).

II. Procedure in Revising Rules and Orders.—The House of Commons generally revises its rules by means of a special committee appointed for that purpose. It is customary to place it under the direction of Mr. Speaker, the motion being: "That a special committee of _____ members be appointed to assist Mr. Speaker in revising the rules of the house, etc."

When this committee has reported, its proceedings will be ordered to be printed with the amendments in brackets, generally in the votes and proceedings, and after some time has been given to members for the consideration of the proposed changes, the house will resolve itself into a committee of the whole on the report. When the rules or amendments to the rules are reported from the committee, they must be formally concurred in like any other resolutions; and when that has been done they regulate the procedure of the house. All the rules and standing orders are printed from time to time in a small volume, for the convenience of reference, and distributed among members and others applying for the same (b).

(a) The words "in force on the first day of July 1867," were inserted when the rules were amended in 1906. It has been decided by the highest English court that "a standing order of a legislative assembly, adopted as far as applicable to its proceedings, the rules, forms and usages in force in the British House of Commons must be construed to relate, only to such rules, forms and usages as were in existence at the date of the order." *Barton vs Taylor*, L.R. 11 App. Cas. 197. (See Taving's Law relating to Colonies," 2nd ed., p. 142). Under any circumstances the house has never been governed in doubtful cases by standing orders, but rather by the usage or practice of the English Commons.

(b) The rules of the House of Commons were amended in 1876, in 1906 and in 1910. *Com. Journals 1867-8*, 16, 133, *Ib.* (1876), pp. 58,

In the Senate it is also the practice to refer the question of revising the rules to a select committee (*c*). In 1875 Mr. Speaker Christie was authorized by that house to examine during the recess the rules and forms of proceedings and suggest to the house at the next session such amendments as he might deem advisable (*d*). The speaker's report with a draft of the proposed amended rules, was submitted and referred to a select committee in the early part of the session of 1876. This committee reported certain amendments to the speaker's draft, which were considered on a future day and adopted with some modifications. In the sessions of 1893, 1894 and 1906, the rules were again considered by select committees and amended in several important particulars (*e*).

III. Necessity for a Strict Adherence to Rules.—Each house is bound by every consideration of self-interest and justice to observe strictly its rules and standing orders, and to rebuke every attempt to evade or infringe them. Consequently the Senate and House of Commons never permit their rules and standing orders to be suspended, unless by *unanimous consent*; but they may be formally amended or repealed on giving the notice required in the case of all motions (*f*). The Senate (*g*), like the House of Lords, has standing orders on the subject:—

108, 110, 216; *Ib.* (1906), pp. 51, 491, 513, 579, 580; *Ib.* (1910), 130, 449, 501, 535, 537. The "Closure" amendment of the 23rd April, 1913, was adopted by the house without reference to a committee.

(*c*) Sen. J. (1867-8), 60.

(*d*) Sen. J. (1875), 256.

(*e*) *Ib.* (1894), 34.

(*f*) 80 E. Hans. (3), 158; 182 *Ib.* (3), 591; 224 *Ib.* 48,164. Can. Com. J. (1867-8), 144. Remarks of Sir J. A. Macdonald, Can. Hans. (1878), 3-4. Can. Com. J. (1877), 111, 258; 227 (R.1 and 19 suspended); *Ib.* (1883), 128, decision of Mr. Speaker Kirkpatrick; Mr. Speaker Quimet, 15th June 1887, Hans. 1001; Mr. Speaker Edgar, June 1, 1898, Jour. and Hans.

(*g*) Sen. Hans. (1882), 705-6. Min. of Pro. (1883), 350, 363. Jour. 276, Sen. Hans. (1882), 163. Min. of P. (1867-8), 111; *ib.* (1869), 107; Jour. 69 Deb. (1878), 292.

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"29. No motion for making a standing rule or order can be adopted unless two days' notice in writing has been given thereof, and the senators in attendance on the session have been summoned to consider the same.

"30. No motion to suspend any rule or standing order, or any part of a rule or order, may be made, except on one day's notice, specifying the rule or order or part thereof proposed to be suspended, and the purpose of such suspension.

Any rule or order, or part thereof, may be suspended without notice by the unanimous consent of the Senate, the rule or order, or part thereof, proposed to be suspended being distinctly stated."

The proceedings of the houses are regulated by statute, by rules and orders adopted by themselves, and by those usages which have grown up in the course of time and consequently become a part of their own practice, or are derived from the common law of parliament by which they have consented to be guided in all matters of doubt. A statute regulation supersedes any order of the house to which it applies (*h*). For instance, on one occasion Mr. Speaker Cockburn pointed out the fact:—

"The constitutional rule contained in the 54th section of the Imperial Act is one that, being absolutely binding, should be neither extended nor restrained by implication, but should, at all times, be most carefully observed by the house. Consequently unless the governor-general first recommends any vote or motion for the appropriation of public money, it cannot be received by the house (*i*)."

(*h*) Cushing, 790.

(*i*) The rule referred to is that, "it shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue, or any tax or import, to any purpose that has not been first recommended to that house by message of the governor-general, &c., &c. Cushing, p. 311; 4 Hatsell, 491, note; 229 E. Hans. (3), 1625, (Mr. S. Brand); 4 Inst. 15; 1 Black. Com. 163. Coke on Litt, 186 a, note; Sedgewick, 255. Petitions of the house which pray for any appropriation of public money are, on this ground, always refused reception.

An express rule or order of the house, whether standing or occasional, supersedes every mere usage or precedent. But in the absence of an express rule or order, what can, or ought to, be done by either house of parliament is best known by the custom and proceedings of parliament in former times. In the interpretation of the rules the house is generally guided, not so much by the literal construction of the orders themselves as by the consideration of what has been the practice of the house with respect to them (*j*).

IV. Sessional Orders and Resolutions.—The house passes, in the course of every session, certain orders or resolutions, which are intended to have only a temporary effect on its proceedings, or to regulate the business of the session. These orders generally relate to the times of adjournment, the arrangement of business, or the internal economy of the house, or to the presentation of certain papers in subsequent sessions (*k*). Up to the session of 1876, certain resolutions relative to the offer of money were formally proposed and agreed to at the commencement of every session, but when the rules were revised these resolutions were placed among the permanent rules of the house (*l*). Though many resolutions expire with the session in which they are adopted, there are certain resolutions and orders, concerning matters of order and practice, which have been observed as binding without being renewed in future sessions (*m*).

V. The Use of the French Language.—The use of the French language in the proceedings of the Canadian legislature has from the earliest days of the history of Upper and Lower Canada, received the sanction of custom and law. By the 133rd section of the British North America Act, 1867, it is expressly provided:—

(*j*) *Mirror of Parl.* (1840), vol. 16, p. 1108-9. May, 545, 559.

(*k*) *Can. Com. J.* (1867-8), 59, 80, &c.; *Ib.* (1877), 111, 227, 258; *Ib.* (1882), 55; *Ib.* (1883), 51, etc.

(*l*) *New Rules*, 80, 81. (*m*) *Can. Com. J.* (1874), 14.

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"Either the English or the French language may be used by any person in the debates of the houses of the parliament of Canada and of the houses of the legislature of Quebec; and both these languages shall be used in the respective records and journals of those houses. . . .

The acts of the parliament of Canada and of the legislature of Quebec shall be printed and published in both these languages."

And by rule 42 of the House of Commons, it is ordered:

"When a motion is seconded, it shall be read in English and French by the speaker, if he be familiar with both languages; if not, the speaker shall read the motion in one language, and direct the clerk to read it in the other before debate."

And rule 73 provides:

"All bills shall be printed before the second reading in the French and English languages."

These rules are always strictly observed in the House of Commons. It is the duty of one of the clerks at the table in both houses—for though the Senate (*n*) has no standing orders on the subject, yet it is governed by custom and law—to translate all motions and documents whenever it may be necessary. The votes and journals of both houses, all blue books or government reports, and all bills and other sessional papers, as well as the official reports of the debates, are invariably printed in the two languages (*o*). Having in view the use of the two official languages in the proceedings of the house, rule 13 provides that the member elected to act as deputy speaker and chairman of committees shall be required to possess a good knowledge of the language which is not that of the speaker.

(*n*) See Report of Select Committee, Sen. J. (1877), 114, 136, 208, 256; Deb. (1884), 66, 67.

(*o*) For this purpose the translation branch of the staff of the house of Commons has become one of the largest divisions of the officials of that body—consisting in all of some thirty-six specially qualified translators, who have every facility for the work.

Provision is also made by the law for the use of the French language in Quebec (*p*) and in the North-West Territory (*q*). The act providing for the government of Manitoba also enacted that either French or English "may be used in the debates" of the legislature; that both those languages "shall be used in the respective records and journals;" and that either "may be used in any pleading or process" in the courts (*r*). In 1890 the legislature passed an act providing that English shall be the official language of the province," any statute or law to the contrary notwithstanding (*s*). At the first session of the legislative assembly of Lower Canada, it was resolved that no motion should be debated or put to the house, unless it was first read in English and French. As the speaker of that day, (Mr. Panet), was not well conversant with English, it was subsequently resolved that in all cases when the speaker could not speak both English and French, "he should read in either of the two languages most familiar to him, while the reading in the other language should be by the clerk or his deputy at the table." It was also decided to have the journals and bills printed in English and French. Every member had a right to introduce a bill in his own language, but it was then the duty of the clerk to have it translated (*t*). The rules then adopted, it will be seen,

(*p*) B.N.A. Act, 1867, s. 33. Quebec Leg. Ass. Rules, 33, 93.

(*q*) 43 Vict., c. 25, s. 94; Rev. Stat. of Can. c. 50, s. 110. In the session of 1890 a long debate took place on a proposition to repeal this section and provide for the use of English only in the legislature and courts, but the house rejected a motion to that effect, and passed one in favour of allowing the assembly of the Territories to regulate its own proceedings. Can. Hans. (1890), 38, 532, 877, 1018.

(*r*) Dom. Stat. 33 Vict., c. 3, s. 23; Man. Rev. Stat. (1891).

(*s*) Man. Stat., 53 Vict., c. 14; Rev. Stat. of 1902, c. 126. In the report of the minister of justice allowing this act to go into operation it is pointed out that the most satisfactory method of testing its efficiency is to bring the question of its validity before an authoritative legal tribunal. See *Toronto Empire*, April 7, 1891, for summary of report.

(*t*) Christie's Lower Canada, i., 132-4; Low. Can. J. (1792), 92, 100, 148, &c. The journals were printed with corresponding pages in the two languages.

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are substantially those which now regulate the procedure of the parliament of Canada.

When the two provinces of Canada were united under one parliament, it was provided by the 41st section of the Act of Union (*u*), that the journals and the legislative records, of what nature soever, shall be in the English language only, and though translations might be made, no copy of them could be kept among the records or be deemed in any case to have the force of an original record. This law naturally created great dissatisfaction among the French-Canadians, and it was finally repealed by the Imperial parliament after an address to the Queen had been passed by both houses (*v*).

VI. Days and Hours of Meeting.—The Senate meets for the transaction of business at 3 o'clock p.m. of each sitting day; unless otherwise previously ordered, and when the Senate adjourns on Friday, unless otherwise ordered it stands adjourned until the Monday following (*w*). If at six o'clock in the afternoon the business of the Senate be not concluded, the speaker, or the chairman of the committee of the whole, leaves the chair until 7.30 p.m. (*x*). The House of Commons meets at 3 o'clock p.m. of each sitting day except Wednesday, when the time of meeting is at two o'clock p.m., and when the house adjourns on Friday it stands adjourned, unless otherwise ordered, until the following Monday (*y*). If at the hour of six o'clock p.m., except on Wednesday, the business of the house be not concluded, the speaker leaves the chair until eight o'clock. On Wednesdays, however, at six o'clock the speaker adjourns the house without question put. The house then stands adjourned until Thursday (*z*).

(*u*) 3 and 4 Vict., ch. 35.

(*v*) 11 and 12 Vict., ch. 56, s. 1. (Imp. Stat.) Leg. Ass. J. (1845), 289-90., 300, 305, 317.

(*w*) Sen. Rule 7 and 14.

(*x*) *Ib.* Rule 13.

(*y*) H. C. Rule 2.

(*z*) *Ib.* Rule 3.

The House of Commons generally towards the end of the session sits on Wednesday evenings upon special motion made for that purpose after notice.

The houses also frequently meet on Saturdays, or at an earlier hour, towards the close of the session, when the work of the committees is nearly concluded, and there is a general desire to facilitate the progress of public business. The leader of the ministry in either house always gives notice of his intention to ask the house to sit on Saturdays or Wednesday evenings, and the motion in the Commons should also state the order of precedence of business.

VII. Adjournment over Holidays, &c.—The houses generally adjourn over certain statutory holidays and festivals, or holy days observed by religious bodies. The following are the holidays as defined by law in the dominion (*a*): Sunday, Christmas (*b*), New Year's Day, Ash Wednesday, the Epiphany, Ascension Day, Good Friday, Easter Monday, All Saint's Day, Conception Day, King's (or Queen's) Birthday, Victoria Day, Labour Day (*c*), Dominion Day, and any day appointed by proclamation for a general fast or thanksgiving. Accordingly the houses have, as a rule, adjourned over those days when parliament is in session. It is the practice to make the following motion in case of a proposed adjournment, "That when this house adjourns this day, it do stand

(*a*) Interpretation Act, ch. 1 R.S.C. (1906). In 1891 the Commons sat on Dominion Day to expedite business, but it usually adjourns on that day. In 1883 the Senate met on the Queen's birthday on account of the urgent state of public business. The house adjourned during pleasure on the previous day and met on the Queen's birthday by general consent. See Hansard 657, 658. No entry consequently is made of the meeting on that day. Jour. 288. The house sat on Easter Monday in 1877 and 1878 in order to clear business expeditiously.

(*b*) Labour Day, the first Monday in September. See 57-58 Vict., c. 55. It was observed by parliament in the 2nd session of 1896.

(*c*) 1 Edw. VII., c. 12. This act, introduced by the late Dr. Horsey, M.P., became law 23rd May, 1902, and made the 24th May a legal holiday in honour of the memory of the late Queen. When the 24th May falls on Sunday the 25th day will be observed.

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adjourned until.....next." In 1872 the houses adjourned over the day appointed to give thanks for the recovery of the Prince of Wales (*d*). Occasionally there have been very lengthy adjournments. During the first session of the parliament of the dominion, the houses adjourned from the 21st of December to the 12th of March, in order to give full opportunity to the government to consider and complete all the measures necessary to the inauguration of a new constitutional system. In such a case it is usual for the governor-general or the deputy-governor to come down, on or before the day of adjournment, for the purpose of assenting to all the bills that have passed the two houses.

In 1873 the houses adjourned from the 12th of May to the 13th of August, in order to receive the report of a committee appointed by the Commons to inquire into certain matters connected with the construction of the Canadian Pacific Railway. In 1911 the house adjourned from the 18th of May to the 18th of July, on account of the coronation of King George V. (*e*). There was a second session of parliament during the autumn of the same year. Again in December, 1880, the houses met for the purpose of considering the contract for the construction of the Canadian Pacific Railway, and adjourned from the 24th of the month to the 4th of January, 1881.

It was the practice in the Senate up to a very recent date to adjourn out of respect to a deceased senator; but this is done now only in exceptional cases (*f*). The Senate

(*d*) In case it is decided not to sit in the evening, it is usual to make a formal motion to the effect that "when Mr. Speaker leaves the chair at six o'clock, the house stand adjourned until to-morrow (or another day) at 3 o'clock." The Speaker then at 6 o'clock leaves the chair without putting any question.

(*e*) Can. Com. J. 1867, Dec. 21. *Ib.* (1873), 423, 436. *Ib.* (1911), p. 537.

(*f*) Sen. Deb. (1871), 6, 8; *Ib.* (1872), 14. *Ib.* (1873), 233-235, &c. Jour. (1872), 29 &c. In the case of Senator Bourinot, one of the original members of the Senate, who died during the session of 1884, the house adjourned. Hans. 33-34. Death of Senator Sandford by drowning, 1899.

adjourned, for instance, on the death of Mr. Christie, formerly speaker, and two senators were named to attend the funeral (*g*). The Senate has also adjourned to show respect to the memory of a distinguished member of the House of Commons (*h*). But though the Senate does not now adjourn under ordinary circumstances, a member may refer in appropriate terms to a deceased senator (*i*).

It was formerly also the usage of the House of Commons to adjourn when it was informed of the decease of a member (*j*). In 1868, the house adjourned on the news of the assassination of Mr. McGee, whilst on his way home from the Commons (*k*). The house has also adjourned to give an opportunity to members to attend the funeral of some distinguished person, who was not at the time a member (*l*). The practice has been followed only in exceptional cases since 1871 (*m*)—that of Mr. Holton, a prominent and respected member, in 1880; that of Mr. White, minister of the interior, in 1888; that of Mr. Plumb, Speaker of the Senate, and an old member of the Commons, in 1888; that of Mr. Pope, minister of railways, in 1899 (*n*); in June, 1891, on the occasion of the death of Sir John A. Macdonald the house adjourned for several days; in 1892 the house on resuming after Easter, adjourned from Tuesday until the following Thursday, out of respect to the Hon.

(*g*) Sen. Hans. (1880-81), 44-45; Jour. 39, 40. Upon this occasion Mr. Scott referred to the practice of the Senate. When Speaker Plumb died suddenly in the session of 1888, the Senate had adjourned for a fortnight; upon its re-assembling on the 13th of March, the house was formally adjourned out of respect to his memory.

(*h*) D'Arcy McGee 1867-8. Sen. J. 213; Sir George E. Cartier, 1873, Deb. 284; Jour. 306.

(*i*) Sen. Hans. (1880), 211 (death of Sen. Seymour).

(*j*) Can. Com. (1870), 114, 175; Parl. Deb., 718.

(*k*) Can. Com. J. (1867-8), 186.

(*l*) *Ib.* (1869), 100; H. J. Friel, Mayor of Ottawa.

(*m*) Parl. Deb. 1872, p. 181; remarks of Sir J. A. Macdonald on the occasion of the death of J. Sandfield Macdonald, who had himself urged a change of practice in this particular.

(*n*) Sen. Jour. (1880), 137; Hans., 649 (1888), 208; Hans., 962. *Ib.* (1888), 94. Hans., 124. Journals (1889), 219, Hans., 943, 1317.

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Alexander Mackenzie, formerly prime minister, who had died on the previous Sunday at Toronto, and to give an opportunity to members to attend his funeral (*o*). In 1899 the house adjourned in the evening of July 31 on the announcement of the death of the speaker, Sir James Edgar, only until three o'clock on the following day, when a new speaker was elected, as the desire was to bring business to a close (*p*). In 1899 Mr. Geoffrion, who was formerly minister of the Crown, died during the session, but the house did not adjourn on account of pressure of public business (*q*). The expediency of adhering to the practice of the English parliament except under exceptional circumstances has been more than once strongly urged by leading members on both sides of the house (*r*). It is now usual in the Commons, when orders are called or at some other convenient time of the day, to make some remarks on the decease of a member (*s*).

VIII. Two Sitzings in one Day: Protracted Sitzings.—

If it is intended to meet earlier next day, a formal motion should be made previous to the adjournment of the house,

(*o*) Can. Com. Hans. and Jour., 1892, April 19.

(*p*) *Ib.*, July 31, and Aug. 1, 1899.

(*q*) See remarks of Sir Wilfrid Laurier, and Sir C. Tupper in Com. Hans., July 17 and 18, 1899.

(*r*) Can. Hans. (1880-81), 223-4. See May, 182, 183. Both English houses adjourned after the assassination of Lord Cavendish and Mr. Burke; 269 E. Hans. (3), 315, 315. Also in case of death of Mr. Wykeham Martin in the library of the house in 1878.

(*s*) Col. Williams, 6th July, 1885; Mr. Thompson of Haldimand, 19th April, 1886; Mr. Moffat, 26th April, 1887; Mr. Perley of Ottawa, 1st April, 1890. On the 22nd March, 1903, the house adjourned in honour of Sir Oliver Mowat, lieutenant-governor of Ontario, then recently deceased. On May 3rd, 1905, it adjourned on account of the death of Hon. James Sutherland, M.P., minister of public works, and on the 10th March, 1913, to mark its sense of loss occasioned by the death of Hon. John Haggart, M.P., one of the oldest members of the house and a former minister of the Crown. In February, 1907, the house adjourned out of sympathy with Earl Grey, the governor-general, whose eldest daughter, Lady Victoria Grenfell, had just passed away at government house, Ottawa.

as in the case of holidays or church festivals (*t*). Sometimes the house has two (*u*) or three (*v*) distinct sittings on the same day. In such cases each sitting is considered a full parliamentary day, and bills of supply can be advanced stages without objection. Latterly it is customary to have one prolonged session, commencing at an early hour and lasting until the hour of adjournment with two intermissions, at one and six o'clock (*w*). The house also sits very frequently after midnight, and when it does so the fact must be recorded in the journals (*x*). It has been attempted several times to limit the sitting of the house to a certain hour every night, but the motion has been withdrawn when leading members on both sides have shown that it is practically impossible to carry it out on all occasions (*y*). In 1877, it was attempted to have an understanding that the house should adjourn at or near midnight, whenever it could be done without unduly interfering with the progress of business; but even this understanding could never be strictly carried out, although it has been largely followed (*z*). The Senate and Commons

(*t*) Can. Com. J. (1870), 226; *Ib.* (1871), 221, 256, 278, 298; *Ib.* (1878), 220; *Ib.* (1885), 675, 677.

(*u*) *Ib.* (1867-8), 59, 80, 315; *Ib.* (1878), 292; *Ib.* (1894), 468, (including Saturday); *Ib.* (1895), 300. The same course has been followed in the Senate Jour. (1880), 234.

(*v*) Leg. Ass. J. (1866), 355.

(*w*) Can. Com. J. (1899), 400; *Ib.* (1901), 257. *Ib.*, 1903.

(*x*) Can. Com. J. (1877), 98. *Ib.* (1878), 283, etc

(*y*) Can. Hans. (1877), 99-103; *Ib.* (1878), 393-5.

(*z*) *Ib.* (1901), 257. The Canadian House of Commons had some quite lengthy sittings, among them that from Friday, April 12th, at 3 p.m. to Saturday, April 13th, at midnight in 1878, owing to a debate on the dismissal of the de Boucherville government in Quebec. In 1885 the house sat from 3 o'clock on Monday, April 27th, until 10 p.m. on Wednesday, and from 3 o'clock Thursday, April 30th, until midnight of the following Saturday, with the usual intermission at 6 o'clock each day. In 1896, during the discussion of the Manitoba school question, the house sat on one occasion from 3 p.m. on Wednesday to 6 p.m. Friday, and again from 3 o'clock on Monday, April 6th until midnight on Saturday, April 11th, and then from Monday, April 13th until Friday morning, April 16th, at 12.10. In all these cases there

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also sometimes suspend a sitting during pleasure, or with an understanding that they resume at a certain hour. This is done frequently at the close of a session whilst one house is waiting for messages from the other. As the house is technically in session—the mace being on the table as at six o'clock—no entry is made of the fact in the Commons journal; but it is always recorded in the Senate minutes (*a*). But every formal motion for adjournment—even for half an hour—must be entered as well as the time at which the House of Commons adjourns every sitting after midnight.

IX. Proceedings at 6 o'clock and 8 p.m. : Prayers.—

As soon as six o'clock arrives during a sitting, and it is intended to continue business in the evening, the speaker leaves the chair, and resumes it at 7.30 p.m. in the Senate, and at 8 p.m. in the house (*b*). No record is made of the fact in the journals—except as stated below—for the mace is left on the table, and the house is considered still in session. But if the house is in committee of the whole and there is an hour for private bills after eight, the speaker takes the chair at six and makes the usual announcement: "it being six o'clock, I leave the chair." The speaker will take the chair at 8 o'clock and the fact is so recorded in the journals, and call on the chairman to resume. In case private bills are fixed for the first hour after eight (R.25) they must be first disposed of, and then the committee resumes. But in case there are no private bills, and the house is in committee, the chairman may leave the chair and resume at the usual hour—no entry being necessary in the journal as under the conditions just set forth.

was the usual intermission at 6 p.m. on each day. Another very lengthy sitting took place in 1913, during the debate (in committee) of the Naval Aid Bill, from Monday, 10th March, at 3 p.m. till Saturday, March 15th at 11.32 p.m. This lengthy debate was followed on the 9th of April, by the adoption of the amendment to H.C. Rule 17, termed the "Closure Rules."

(*a*) Sen. J. (1867-8), 100. *Ib.* (1877), 309.

(*b*) Senate Rule 13. H. 6. Rule 3.

Prayers are said at the opening of each session in both houses. Like the old legislative councils of Canada, the Senate have always opened their proceedings with prayers, and the chaplain was, until 1901, appointed by the governor-general for that purpose (*c*). He read prayers as soon as the house met, before the arrival of the governor-general or the deputy-governor (*d*). In 1901 the governor decided not to appoint a chaplain on the decease of the Dean of Ottawa, who had the office for many years, and the speaker now reads the prayers as soon as the senators are in their seats at the hour appointed. In case there is no speaker, the clerk acts as under the old practice when the chaplain was absent. The old legislative assembly of Canada never commenced its proceedings with prayer, but the legislative assembly of Upper Canada had a chaplain who read prayers daily (*e*); and it was not until the session of 1877 that steps were taken in the Canadian House of Commons to follow the example of the British house in this particular. In that year a committee was appointed to consider the subject, and it reported a form of prayer which is read by the speaker every day before the opening of the doors. The report, which was adopted *nem. con.*, recommends that "the aforesaid form of prayer be read by Mr. Speaker in the language most familiar to him" (*f*). Mr. Speaker Blanchet read the prayers in English and French on alternate days, and the

(*c*) Can. Com. J. (1874), 113; *Ib.* (1878), 118, 121; *Ib.* (1883), 153, 223; *Ib.* (1886), 131, 133; *Ib.* (1901), 169-170.

(*d*) Sen. J. (1874), 13; *Ib.* (1878), 15; *Ib.* (1879), 16; (1883), 13; *Ib.* (1900), 9. The clerk assistant has read the prayers in the absence of the chaplain.

(*e*) Upp. Can. J. (1792), 8. The P.E. Island, New Brunswick, and Nova Scotia legislatures have also had a chaplain for many years. But in 1881 the speaker was authorized in the Nova Scotia assembly to discharge the duties of chaplain and a form of prayer was adopted, N.S. Jour. (1881), 5. In the New Brunswick assembly prayers are read by the speaker in the absence of the chaplain, R. 38. In the province of Ontario and British Columbia the sessions are opened with prayer, but not in Quebec, Manitoba, Saskatchewan or Alberta.

(*f*) Can. Com. J. (1877), 26, 42. Hans. (1877), 95.

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same practice has been followed by speakers conversant with the two languages.

In accordance with English practice, at the opening of parliament, when a speaker has to be chosen he reads prayers on the day following his election, and before the causes of summons are announced (*g*). In other sessions when there is a speaker the prayers are said as soon as the Commons meet in their chamber before the causes of summons are communicated to them in the Senate chamber by the representative of the Crown (*h*). In case of an election of a speaker in the British Commons during the session the prayers are read on the day following the election before the house proceeds to the Lords' to inform the Crown of their choice (*i*). In the only case that, so far, has occurred in Canada the prayers were read on the return from the Senate—the election and *quasi* approval of the Crown being given on the same day (*j*). When there are two sittings on the same day, prayers must be read at the opening of each session (*k*).

X. Quorum.—By the 35th and 48th sections of the British North America Act, 1867, it is provided that the presence of at least 15 senators and 20 members of the House of Commons, including the speaker, shall be necessary to constitute a meeting of either house, for the exercise of its powers. Both houses have rules on this subject. Under those of the Senate, it is provided:—

(*g*) May, 157, 159, 171; 121 E. Com. J. 9; 129 *Ib.* 5. Can. Com. J. (1879), 2; *Ib.* (1883), 2. Mr. Anglin read prayers after his return from the Senate chamber in 1878, when he was re-elected speaker, a departure from the practice. *Jours.* pp. 10, 11.

(*h*) May, 159. 137 E. Com. J., 1; Can. Com. J. (1882), 1; *Ib.* (1900), 1. In 1880-1 it was necessary to follow the precedent of 1878, on account of a message from the Senate announcing the presence of the governor-general in the Senate.

(*i*) 127 E. Com. J., 23, 24; election of Mr. Speaker Brand.

(*j*) Can. Com. J. (1899), 489.

(*k*) *Ib.* (1894), 476, 498; *Ib.*, 305, 306.

"8. If thirty minutes after the time of meeting, fifteen senators, including the speaker, are not present, the speaker takes the chair, and adjourns the house till the next sitting day; the names of the senators present being taken down by the clerk" (*l*). "9. When it appears on notice being taken, during the sitting of the Senate, that fifteen senators, including the speaker, are not present, the senators who may be in the adjoining rooms being previously summoned, the speaker adjourns the Senate as above, without a question first put."

The rules of the House of Commons on this subject are as follows:

"4 (1). The time for the ordinary meeting of the house is at three o'clock in the afternoon of each sitting day, except Wednesday, when the time of meeting shall be two o'clock, and if at the time of meeting there be not a quorum, Mr. Speaker may take the chair and adjourn." The presence of at least twenty members, including the speaker, shall be necessary to constitute a meeting of the house for the exercise of its powers.

"(2). Whenever the speaker adjourns the house for want of a quorum, the time of the adjournment and the names of the members then present, shall be inserted in the journal."

Accordingly when the attention of the speaker has been called to the fact that there is no quorum present, he will proceed at once to count the house, and if there are not twenty members present, including himself, the clerk will take down the names, and the speaker will then adjourn the house without a question first put until the usual hour on the next sitting day (*m*). If it should appear, after

(*l*) In the House of Lords, only three lords may constitute a quorum for business, but in case of a division on a stage of a bill, the question cannot be decided unless there are thirty present, and the debate thereon is adjourned to the next sitting. May, 210.

(*m*) *Can. Com. J.* (1869), 243. A member may direct attention to the fact while a member is speaking: *Can. Hans.* (1885), 1535; 164 *E. Hans.* (3), 682.

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division, that a quorum is not present, the house should be adjourned immediately (*n*); but when it is found in committee of the whole that twenty members are not in the house, the committee must rise, and the chairman report the fact to the speaker, who will again count the house and when there is not a quorum he must adjourn the house forthwith. While the house is being counted the doors remain open and members can come in during the whole time occupied by the counting (*o*). A "count out" will always supersede any question that is before the house; and if an order of the day for supply, or for the reading or committal of a bill, be under consideration at the time, and there is no quorum present, the house must be asked at a subsequent sitting to revive the question that may have lapsed in this way (*p*). A "count out" is of frequent occurrence in the English House of Commons (*q*); but only one case has happened in the Canadian Commons since 1867 (*r*).

XI. Order of Business.—The order of daily business after prayer in the Senate is as follows, under rules 19 and 20:—

"19. 1. Presentation of Petitions: 2. Reading of Petitions: 3. Reports of Committees: 4. Notices of Inquiries and of Motions: 5. Inquiries: 6. Motions: 7. Orders of the Day.

20. Unless the Senate direct otherwise; Orders of the Day take precedence according to priority as follows:

1. Orders of the Day for the third reading of Bills.
2. An Order of the Day which at the time of adjournment was under consideration.

(*n*) 23 E. Com. J. 700; *Ib.* 845; 135, *Ib.* 385.

(*o*) May, 230. Can. Com. J. (1899), 239.

(*p*) 131 E. Com. J. 301, 329. 235 E. Hans (3), 203; 151 E. Com. J. 282-3, 137 *Ib.* 297, 306, 483.

(*q*) On Thursdays and Fridays (session of 1873), 14 times Parl. Pap. (1873), vol. 53. 1. In 1882, 20 times, Jour. vol. 137.

(*r*) In 1869, Jour, 243.

3. Orders of the Day which at the time of adjournment had not been reached.

4. Remaining Orders of the Day."

The orders are taken in their regular order, though government orders, by consent, are generally allowed precedence. Motions and orders are generally allowed to stand in the Senate when not taken up after being called. They are rarely dropped in the absence, or without the consent, of the senator who has them in charge.

In the House of Commons, as soon as the speaker takes the chair, he calls the house to order, and then standing up, proceeds to read the authorized form of prayer. all the members rising and remaining with their heads uncovered until the prayers are concluded. Then the speaker orders that the doors be opened, unless it is proposed to discuss some matter of privilege or of internal economy with closed doors. The routine is next taken up in the order prescribed by rule 25: "Presenting reports by standing and special committees: Motions (s): Introduction of bills (t): First readings of Senate bills."

The order of business for the consideration of the house, day by day, after the daily routine, is as follows:—

MONDAY.

Private bills.

Senate amendments to public bills.

Questions.

Notices of motion.

Public bills and orders.

Government notices of motions.

Government orders.

(s) This includes only motions relating to the business of the house.

(t) This does not include private bills which are introduced on petition under rule 99. Previous to 1906 petitions were presented as the first order under routine proceedings, but under the rules adopted that year, petitions have since been presented under rule 75, which permits a member to present a petition at any time during a sitting by filing it with the clerk of the house.

ORDER OF BUSINESS.

TUESDAY.

Government notices of motions.
Government orders.
Public bills and orders.
Questions.
Notices of motions.
(*From eight o'clock p.m.*)
Private bills for the first hour.

WEDNESDAY.

Questions.
Notices of motions.
Public bills and orders.
Government notices of motions.
Government orders.

THURSDAY.

(*First four weeks of session.*)
Questions.
Public bills and orders.
Notices of motions.
Government notices of motions.
Government orders.

(*After expiration of four weeks.*)
Questions.
Government notices of motions.
Government orders.
Public bills and orders.
Notices of motions.

FRIDAY.

Government notices of motions.
Government orders.
Public bills and orders.
Questions.
Notices of motions.
(*From eight o'clock p.m.*)
Private bills for the first hour.

Each member of the Senate and House of Commons is provided daily during sessions with a printed sheet, in which the business of the day is arranged in accordance with the rules and orders. In the Commons an order paper is printed for every sitting day; in the Senate the business of the day is set forth at the end of the minutes of proceedings. The house, however, on the motion of the leader of the government, as the session proceeds, makes such alterations in the order of business as it deems advisable, with a view to the expediting of government business.

XII. Calling of Questions and Orders.—Questions and notices of motion were formerly allowed to stand in case members were absent or were not prepared at the moment to proceed with them; but such inconvenience and loss of time resulted from this procedure that the following rule was adopted:—

“32. (1) Questions put by members and notices of motions, not taken up when called, may, (upon the request of the government), be allowed to stand and retain their precedence; otherwise they will disappear from the order paper. They may, however, be renewed.

(2) Orders not proceeded with when called, upon the like request, may be allowed to stand retaining their precedence; otherwise they shall be dropped and be placed on the order paper for the next sitting after those of the same class at a similar stage.

(3) All orders not disposed of at the adjournment of the house shall be postponed until the next sitting day, without a motion to that effect.”

The government being largely interested in the progress of the business of the house is responsible for allowing a question or motion to stand if the member is absent or does not proceed when it is called. If a question or motion disappears from the order paper it can only be reinstated after a new notice. But if the house is adjourned, before an order of the day under consideration, is disposed of, or a motion has been made for the adjournment of the

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debate thereon, it is not treated as a dropped order, but being superseded must be revived before it again takes its place with orders (*u*). In the Senate, if a bill on the order paper is called and no one moves in relation thereto, it is dropped, but the member in charge has the right to move to restore it to the paper without notice, but on that motion he cannot discuss the subject-matter of the measure.

XIII. Arrangement of Orders.—The orders of the day are divided into "government orders" and "public bills and orders." All government measures appear in the former; all motions and bills in the hands of private members appear in the latter. The 31st rule of the Commons regulates the order in which such questions are to be taken up, as follows:—

"(1) All items standing on the orders of the day (except government orders) shall be taken up according to the precedence assigned to each on the order paper.

(2) Whenever government business has precedence government orders may be called in such sequence as the government may think fit."

The following are the rules of the Commons with respect to the arrangement of bills on the order paper:—

"26. Orders of the day for the third reading of bills shall take precedence of all other orders for the same day, except orders to which the house has previously given priority.

27. Reports received from committee of the whole house shall be placed on the orders of the day next after third readings; and bills reported from committee of the whole house with amendment shall be placed on the orders of the day next after reports from committee of the whole house.

28. Bills reported after second reading from any standing or special committee, shall be placed on the orders of

(*u*) May, 264, 265; 110 E. Com. J. 131, 256. 120 *Ib.* 225, 252; 121 *Ib.* 78; 122 *Ib.* 377, 404.

the day following the reception of the report, for reference to a committee of the whole house, in their proper order next after bills reported from committees of the whole house. And bills ordered by the house for reference to a committee of the whole house shall be placed, for such reference, on the orders of the day following the order of reference in their proper order, next after bills reported from any standing or special committee.

28a. Bills originating in the Senate and sent to this house for concurrence shall be placed for first reading on the order paper under the heading "Routine Proceedings," immediately after "Introduction of Bills."

29. Public bills returned to the house from the Senate with amendments shall be placed on the order paper for the consideration of such amendments on Monday immediately after private bills.

30. Amendments made by the Senate to bills other than public bills originating in this house shall be placed on the orders of the day next after bills ordered by the house for reference to a committee of the whole house."

If a bill on the order paper is taken up and the debate thereon adjourned, it does not go to the foot of the list of the next day, but keeps the proper place on public bills and orders to which it is entitled under the rules just cited, with respect to the precedence of bills at different stages (*v*). In this respect bills occupy a more favourable position than motions, which, if the debate is adjourned on Wednes-

(*v*) Orders of the day, Mr. Charlton's Bill (No. 13), respecting adultery, etc., 20th and 21st March, 1883. The debate was adjourned on the question for the consideration of the bill as amended; and it was kept at the head of the list, two bills for the third reading alone having precedence under the 20th rule: Hans. 287. See also Representation of Territories Bill, Orders of the Day, 11th and 12th March, 1885. See Orders of the Day, Mr. Shakespear's motion on Chinese question, March 29 and 30, 1883; Mr. Landerkin's on Central R.R., Feb. 11 and 12, 1885. Also Orders of the Day, Feb. 12 and 13, 1885; Feb. 13 and 14, 1889; March 16 and 17, 1898. See also Orders of the Day, March 23 and 24, 1898, as to adjournment of debate not carried before six o'clock.

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day at six o'clock, go to the foot of the orders. Consequently it is more favourable to the progress of a motion on the notice paper that the debate should not be adjourned on Wednesday at six o'clock. The rule as to motions, not disposed of, is as follows:—

“33. If at the hour of six o'clock, p.m., on a Wednesday, or at the time of the adjournment of the house, a motion on the notice paper be under consideration, that question shall stand first on the order paper of the following day, next after orders to which a special precedence has been assigned by rule or order of the house.”

Frequently towards the close of the session, bills reported from select or standing committees are placed immediately (by unanimous consent only) on the order paper for consideration in committee of the whole, but this ought to be done on the recommendation of the committee to which the bill was referred.

The houses frequently agree to give precedence to an important question, and in that case a special order will be made. For instance, the debate on the speech from the throne is always made a special order and that on the tariff proposed by the government, has been made the first order until concluded (*w*). An order for the second reading of an insolvency bill on a particular day has been discharged, and made the first order on a subsequent day (*x*). Sometimes the house will give precedence to several orders at the same time, when they refer to the one question (*y*). Or it may consent to suspend a rule in order to take up a question (*z*). Motions in the hands of private members are sometimes taken out of their regular places and placed on the govern-

(*w*) Can. Com. J. (1893), 14th Feb., Manitoba school question, March 7th, 1893. Yukon R.R. Bill, 1898. The cases in which a special order has been assigned to important government measures are too numerous to cite specifically.

(*x*) *Ib.* (1877), 30; *Ib.* 233; *Ib.* (1880-1), 164-5. Also Sen. J. (1867-8), 170, 283. *Ib.* (1880), 85, 86.

(*y*) Com. J. (1874), 26, (*re* Louis Riel).

(*z*) *Ib.* (1867-8), 247.

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ment orders for immediate consideration (*a*). In 1879, a notice of motion was given precedence on the order paper (*b*). Public bills and orders are also sometimes given precedence over notices (*c*). It may sometimes happen that a public bill will be considered of sufficient importance to cause it to be placed on the government orders, in the name of a minister. This has been done frequently (*d*). Motions to this effect, however, can only be made with the unanimous assent of the house (*e*).

As a rule, the public bills and orders must be moved in their proper order, though the house may sometimes consent towards the close of the session, when there is little prospect of going through all the private business, to take a bill out of its order and advance it a stage, but this is only done when there is no intention to debate the bill (*f*). If it is wished to transfer a bill from the public bills and orders, the regular course is to give two days' notice of a motion to that effect (*g*). On the same principle, if it is generally desired to postpone notices of motions on a day when such notices have precedence, it can be done only after notice or by unanimous consent on a motion to that effect having been duly proposed (*h*), or if a motion has priority continuously until concluded it can only be post-

(*a*) *Ib.* (1873), 370. *Ib.* (1886), 341. *Ib.* (1899), 474.

(*b*) *Can. Com. J.* (1879), 337. *Ib.* (1884), 114, 250. *Ib.* (1885), 156.

(*c*) *Ib.* (1879), 311-12, 337.

(*d*) *Ib.* (1878), 148, 198, 232. *Ib.* (1879), 271.

(*e*) 226 *E. Hans.* (3), 94, 127.

(*f*) *Building Societies Bill*, Apr. 24, 1878.

(*g*) *Railway Passenger Tickets Bill*. *Votes and P.* (1882), 374; *Jour.* 334. In this case the government took charge of the bill after notice. In an ordinary case the motion goes on the list of private business, and towards the end of a session a member may never reach it. In this case it was attempted to transfer the bill without notice, but objection having been taken to this proceeding, the motion was withdrawn and notice given in due form; *Hans.* 851.

(*h*) This was done to give precedence to debate on the answer to the speech at the opening of a session. *Can. Com. J.* (1891), 15; *Ib.* (1892), 90; *Ib.* (1894), 15, etc.

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poned and other business taken up by the adoption of another motion to that effect (*i*).

The rule which requires a strict adherence to the order paper is absolutely necessary to prevent surprise. So rigorously is it enforced in the imperial parliament that even when it has been admitted that a day has been named by mistake, and no one has objected to the appointment of an earlier day, the change has not been permitted (*j*). It is quite irregular, even if a member proposes to conclude with a motion, to introduce and attempt to debate a subject which stands on the orders for another day (*k*).

If a select committee report adversely on a public bill, it will nevertheless appear in its proper place on the orders of the following day, under the rules, as it is only a private bill that disappears from the paper when the preamble is reported to be "not proven" (*l*).

If an order for the second reading of a bill be read, and it is not found expedient to proceed with the bill that day, the motion for the second reading must be withdrawn, and the bill ordered for a second reading on a future day (*m*).

If a motion is at the head of public bills and orders on a Wednesday or Thursday, it remains in the same position until finally disposed of, subject, of course, to have prece-

(*i*) Can. Com. J. (1893), 76, 95. Such an order is merely of an *interim* character, and the previous order comes again into force on its expiration.

(*j*) May, 262. 118 E. Com. J. 237. 172 E. Hans. (3), 246. Can. Com. J. (1875), 177.

(*k*) 219 E. Hans. (3), 1302, 1053-4; 225 *Ib.* 1824.

(*l*) Carriers by Land Bill, March 18 and 19, V. & P., 1885, and Orders of the Day; Railway Commissioners Bill, V. & P., April 3, and Orders of the Day; April 5, 1883; Toronto Harbour Bill, April 24 and 25, 1883, V. & P., and Orders of the Day; Railway Bill, April 8, 1890, Orders of the Day. In this case the bill should have been on the orders of the Day, but was inadvertently omitted. See also Alien Bill, April 17, 1890, Orders of the Day V. & P., April 15; Interest Bill, V. & P. & J., Feb. 27, and Orders (Public) of the Day, Feb. 28, 1896.

(*m*) 123 E. Com. J. 146; Officers of the Crown Bill, 9th June, 1885; Maritime Court Bill, 16th March, 1886.

dence given to another question by a rule or a special order of the house (*n*).

If a member rises to propose a motion of which he has given notice, and the speaker leaves the chair at six o'clock before he has concluded his speech, and proposed his motion, it will remain in the same place on the order paper (*o*). But it is more usual when the member cannot conclude his speech in time, to hand it to the speaker at once, so that it may be formally proposed and entered on the public bills and orders.

If a private bill is under consideration on Tuesdays and Fridays, after eight o'clock, and the debate is not concluded thereon at nine, a member may call the attention of the speaker to the fact that the hour allotted to such subjects under the rules has expired, and the question will thereupon go over until another day, when it will be taken up at the same stage where its progress was interrupted (*p*).

The hour for private bills is not interfered with when precedence is given to a particular order, but sometimes they are not called in order to meet the general convenience of the house, and its desire to conclude a debate. In such cases, this is a matter of arrangement with the members in charge of private bills (*q*).

(*n*) Franchise debate, Order of the Day, Feb. 6th and 12th, 1890. In this case precedence was given to another question, the N.W.T. Bill (Mr. McCarthy), and the franchise debate took a second place. Also prohibitory liquor motion (Mr. Jamieson's). Orders of the Day, May 20, 21 and 22; June 24, 1891.

(*o*) Reciprocity Treaty; Debates, March 10; Orders of the Day, March 15, 1875. On May 13, 1871, Mr. Bowell rose to move a motion respecting dismissals from office, but before he had concluded and handed his motion to the speaker, six o'clock was announced. The motion remained in the same place. Parl. Deb. 97, 105. Mr. McCallum's motion, March 18 and 23, 1885; Mr. Jackson's, April 14 and 19, 1886; Hansard and Orders of the Day.

(*p*) Can. Com. J. (1896, 2nd sess.), 105, 112 (Hull Electric R.R.); *Ib.* (1899), 106, 118, 119 (Ontario and Rainy River R.R.); *Ib.* 1898.

(*q*) Remarks of Sir Hector Langevin, 21st Feb., 1890; Hans. 998. "When the select standing committees have been appointed before the address in reply to the speech from the throne is adopted, the hour

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In case the house continues sitting from 3 o'clock on one day until after 3 o'clock on another, and notice of motion or question is given during such prolonged sitting, the said motion or question appears in the votes and proceedings of this sitting and after an interval of 24 hours—in accordance with the usual rule—in the orders of a later day (*r*).

Towards the close of the session, with a view of advancing public business, the government usually appropriate to themselves one or more of the days devoted to notices of motions, public bills and orders, and other matters in the hands of private members. They must, however, give formal notice, and obtain the consent of the house to a motion, the effect of which is to suspend the twenty-fifth rule, governing the order of business each day (*s*). If one day's order of proceedings is made the order for another day, then all the rules governing the day first mentioned, apply to the day substituted, unless specially excepted.

XIV. Incidental Interruption to Proceedings.—Besides such interruptions of business as are prescribed by the rules of the house, such as private bills at 8 o'clock on Tuesdays and Fridays, or by a member, after due notice, rising to move a closure of debate, or by some special order, the time for a consideration of which has been reached, the proceedings of the house may be interrupted by a question of privilege or of order which calls for the immediate interposition of the house, by occasions of sudden

allotted to private bills is not interfered with unless specially mentioned in the order giving special precedence to the address. Private bills were considered while the debates on the address was in progress in the sessions of 1899, 1907, 1909, 1910, 1912-13, 1914, 1916.

(*r*) Mr. McInnes's question respecting R. Gray, notice given in V. & P., July 10 and 11, 1899 (a long sitting, and appearing in Orders, July 13).

(*s*) Can. Com. J. (1879), 156, 252, 380, 413; *Ib.* (1890), 117, 209, 375; *Ib.* (1901) 80, 107, 151, 281, 226. Sen. J. (1882), 318, for an instance of "urgency" being given to government measures in the Senate.

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disorder in the house and proceedings occasioned thereby, or by a message from the governor-general requiring the attendance of the house in the Senate. When the cause of the interruption has ceased or the proceedings thereon have been disposed of, the debate or business in hand is resumed at the point where the interruption had occurred (*l*).

(*l*) 158 E. Com. J. 412, pp. 557, 567. May, 269.

CHAPTER VII.

PETITIONS, ORDERS, RETURNS AND ADDRESSES.

- I. Presentation and Reception of Petitions.—II. Form of Petitions; Irregularities; Who May Petition.—III. Petitions for Pecuniary Aid—Taxes or Duties.—IV. Reading Petitions—Urgency—Printing of Petitions.—V. Petitions to Imperial Authorities.—VI. Presentation of Papers.—VII. Distinction between Addresses and Orders.—VIII. Returns in Answer.—IX. Motions for Papers Refused.—X. Printing of Papers—Joint Committee on Printing.—XI. Addresses; When Founded on Resolutions; Joint Addresses; Presentation, &c.—XII. Addresses and Messages of Condolence and Congratulation and on Retirement of Governor-General, etc.—XIII. Presentation of Addresses.

I. Presentation and Reception of Petitions.—The routine business of the Senate commences with the presentation of petitions (*a*) but, in the House of Commons, while a member may, if he desires, present a petition in his place in the house during routine proceedings and before the introduction of bills, the general practice is to present petitions by filing the same with the Clerk of the House. Petitions so presented before 4 p.m. on any day are entered on the votes and proceedings of that day, but if filed with the Clerk after 4 p.m. they are entered on the votes of the next day (*b*). The subjects embraced in these petitions are of a most varied nature. When the public mind is greatly interested in some question large numbers of petitions are presented in both houses both for and against proposals which are being agitated in parliament

(*a*) Sen. R. 19.

(*b*) Com. R. 75.

and in the press. This privilege is properly highly appreciated and in many instances assists parliament in forming its opinion and in taking appropriate action (*c*). Petitions respecting private bills are presented in the same way as other petitions. The rules of the two houses as to the form and contents of petitions are virtually the same but where there is a difference it will be pointed out in the course of the observations upon procedure in the commons. The rules on this subject are precise and to the following effect. Petitions should not be presented on the first day of the session when the speech from the throne is formally delivered (*d*). The speaker of the commons may not present a petition but must avail himself of the services of a member on the floor, but it is quite competent for the speaker of the senate to do so, since he may take part in the debates.

Mr. Speaker Addington in the imperial parliament pointed out that if the speaker of the house were permitted to present petitions he would be expected to make motions in regard thereto and to take such part in the proceedings as would not be proper for him in other cases (*e*). On the presentation of a petition no debate on, or in relation to, the same is in order and members presenting them are answerable that they do not contain impertinent and improper matter (*f*). The language therein should be respectful and temperate and free from offensive references to the sovereign, imputations upon the character or conduct of parliament or its committees, courts of justice or other constitutional authority or offensive reflections upon the social position of individuals. If it should be found on inquiry that the house has inadvertently received a petition

(*c*) Sen. and Com. Jour. 1874, 1876. In 1874, petitions bearing a total of 500,000 names were presented in favour of a prohibitory liquor law. Sen. & Com. J. 1875, 1891, etc.

(*d*) May 174, 530.

(*e*) 32 Parl. Reg. 2. Cushing, 462. Can. Hans. (1879) 1453. Can. Sen. Jour., (1880-81) 95.

(*f*) H. C. Rule 75.

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which contains unbecoming and unparliamentary language, the order for its reception will be read and discharged. In the Lords when a petition has been presented and afterwards found out of order, on account of a reflection on the debates of the house, or one of its members, the Lords on being informed of the fact, have "vacated" the proceeding and the member has been given leave to withdraw the petition. It has also been ruled in the English House of Commons that it is competent for a member to move, without notice, that the order for a petition to lie on the table be discharged, if an irregularity has been committed with respect to such petition. If a petition contain a prayer which may be construed into a reflection on the action of the house, a member will be justified in declining to present it (*g*). Every member presenting a petition should endorse his name thereon. Petitions may be either printed or written but where there are three or more petitioners the signatures of at least three petitioners shall be subscribed on the sheet containing the prayer of the petition (*h*). If there be more than three petitioners, the additional signatures may be affixed to the sheets attached to the petitions (*i*). A petition from a corporation must be authenticated by the seal of the corporation and petitions signed by persons purporting to represent public meetings can only be received as the petition of the persons whose names are affixed thereto (*j*). Petitions are to be presented by a member of the house to which they are addressed but a member cannot be compelled to present a petition (*k*). It is the duty of a member proposing to present a petition to make himself acquainted with its terms and see that it is in expression and form consistent

(*g*) May, 526. 122 E. Hans. (3) P. 863. 82. E. C. J. 589. 84, *ib.* 275, 75, *ib.* 105. 78 *ib.* 431. 91 *ib.* 698. 129 E. C. J. 276. 130 E. C. J. 134, 145. 220 E. Hans. (3) 600, 228 *ib.* 1305-1400; Blackmore (1882), 155-6. 262 E. Hans. 859-60.

(*h*) H. of C. R. 75, V. & P. Commons (1907) 318, *ib.* 389.

(*i*) Sen. R. 58.

(*j*) Sen. R. 59, 60.

(*k*) May, 86, 529.

with the rules of the house (*l*). And in case of any irregularity he should refrain from offering it to the house (*m*). A senator, in presenting a petition may briefly explain its purport but other members may not discuss its contents (*n*). In the House of Lords, a peer presenting a petition may comment upon it and upon the general matters to which it refers and a debate may ensue; but a lord who intends to speak upon a petition generally gives notice. But greater restrictions are placed upon members of the Commons. A member may read the prayer of the petition but he may make only a general reference as to the source and nature of the petition and the speaker will allow no debate thereon (*o*). In the Canadian Commons the rule is the same. All petitions whether presented in the house or by the filing of the same with the Clerk are deposited in the Journals office in the charge of a special clerk styled the "Clerk of Petitions" whose duty it is to see that it is properly endorsed and generally complies with the rules of the house. On the day following the presentation the Clerk of the house lays upon the table the report of the Clerk of petitions and such report is published in the votes and proceedings of that day. All petitions so reported upon, not containing matter in breach of privilege of the house, and which can then be received—shall be deemed to be permitted to be read and received (*p*). No debate is permissible on the report but a petition referred to therein may be read by the Clerk of the house at the table, if required; or if it complain of some present personal grievance requiring an immediate remedy, the matter contained therein may be brought into immediate discussion (*q*). In case any irregularity is reported in any

(*l*) Can. Com. J. (1877) 27. *Ib.* (1879) 21, 32, etc.

(*m*) May, 531.

(*n*) Sen. Deb. (1876) 93, 96. *ib.* (1880) 293.

(*o*) May, 581-2. H.C.R. 75 (8).

(*p*) H.C.R. 75 (8).

(*q*) H.C.R. 75 (9).

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of the petitions the speaker will state it to the house and rule that the petition cannot be received (*r*).

In case of opposition to the reception of a petition, the time for action is when the report is laid upon the table and before the petition is declared to be received (*s*). Petitions which have been duly read and received frequently form the basis for a reference to a committee (*t*).

In such cases notice is given of a motion on the question and the matter is taken up when the motion is reached in due order (*u*).

On a motion for an adjournment of the house a member cannot debate a petition which he would be restrained from discussing by rules of the house (*v*). If a member wishes to petition the house he must give it to another member to present (*w*).

II. Form of Petitions; Irregularities: Who May Petition.—Every petition to the two houses should commence with the superscription:

“To the Honourable the (Senate or House of Commons) in Parliament assembled:”

Then should follow the formula: “The Petition of the undersigned humbly sheweth.” The petitioner or petitioners will next proceed to state the subject-matter of the petition, in the third person throughout, and commencing each paragraph with the word “That”. The conclusion should be the “Prayer”—without which no petition is in order. This prayer should tersely and clearly express the particular object which the petitioner has in view in coming before

(*r*) Can. C. J. (1877) 21, *Ib.* 1879, 21. During almost every session petitions are refused reception owing to informalities or irregularities—see “Petitions” in index to Journals.

(*s*) Can. C. J. (1880–81) 89.

(*t*) V. & P. (1882) 216, 442. Jour. 354-5.

(*u*) *Ib.* (1875) 177.

(*v*) 160 E. Hans. (3) 233. May, 533.

(*w*) E. Hans. (3) 476. Cushing, P. 462.

parliament. And the petition should then close with the formal words; "And your petitioners as in duty bound will ever pray." Here follow the signatures of the petitioners which must be in writing and at least three signatures, if there are so many, must be on the same sheet with the prayer of the petition. Petitions for private bills are also addressed to the governor-general. Without a prayer the document will not be taken as a petition and a paper assuming the style of a declaration, an address of thanks or a remonstrance will not be received.

Remonstrances respectfully worded and concluding with a proper form of prayer may be received, but a document distinctly headed as a remonstrance, though concluding with a prayer has been refused. A memorial properly worded and concluding with a prayer has been received (x). Petitions containing lengthy extracts from other documents or publications or having such extracts printed in separate forms and annexed to petitions are irregular. Many petitions are not received every session on grounds of irregularity. Petitions from one person are frequently received and are quite in order. Petitions may be written or type-written or printed and may be in French or English (y) but they must be free from erasures or interlineations (z) and the signatures must be written (a), not printed, pasted on or otherwise transferred (b). It must not have appendices attached thereto, whether in the shape of letters, affidavits, certificates, statistical statements or documents of any character (c). A member may, however, receive permission from the house to withdraw the appendix, when it is desirable that the petition, especially

(x) May, 525. 240 E. Hans. (3) 1681-2. Blackmore (1882) 158.

(y) In the Eng. Com. the petition must not be printed, lithographed or typewritten but must be written upon parchment. May, 525.

(z) 82 E. C. J. 282. 86 *Ib.* 748. Can. C. J. Mar. 6. 1885.

(a) Petitions March 1st, 1877. March 16th, 1885.

(b) 164 E. C. J. 283. 105 *ib.* 19. Can. C. J. Apr. 19th, 1886.

(c) Can. Com. J. (1876) 212. *Ib.* (1877) 113. *Ib.* (1885) 173. Sen. Hans. (1880) 293, 294. *Ib.* (1887) 325, 326.

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if it be one for a private bill, should be received with as little delay as possible (*d*). But in case the appendix is objected to, the member has no alternative except to present a new petition (*e*).

A petition forwarded by telegraph cannot be received inasmuch as "it has no real signatures attached to it" (*f*). When a petition has contained a number of signatures in the same handwriting these signatures have not been counted (*g*). Petitions of corporations aggregate must be under their common seal; and if the chairman of a public meeting sign a petition in behalf of those so assembled, it is only received "as the petition of the individual, and is so entered in the minutes, because the signatures of one party for others cannot be recognized" (*h*). Aliens, not resident in this country, have strictly no right to petition parliament (*i*). In the case of applications for private bills, however, this rule is not enforced. It was agreed in 1878, at the suggestion of Mr. Speaker Anglin, to receive a petition from the Hartford directors of the Connecticut Mutual Life Insurance Company on the ground that it was a mutual company, partly composed of Canadians, and that it was the subject of parliamentary legislation, the company being required to make a certain deposit before doing business in the country (*j*). In 1883 a petition from certain persons in the city of Portland in the State of Maine, asking for an act of incorporation, was received on the ground that the subject-matter came within the jurisdiction of the house, as in the case already cited (*k*). The reception of such petitions may be considered an act of grace; and since 1883 no objection has been raised to their being brought up in the Canadian house.

(*d*) Can. C. J. (1879) 18.

(*e*) *Ib.* (1876) 212, 239.

(*f*) Can. Com. J. (1872) 80.

(*g*) Can. Hans. (1885) 2027.

(*h*) Sen. R. 60 May, 526.

(*i*) Can. Com. J. (1877) 41. *Ib.* (1880) 165.

(*j*) Can. Hans. (1878) 950. Can. Hans. Feb. 18, 1878.

(*k*) Can. Hans. (1883) 138.

Any forgery or fraud in the preparation of petitions or in the signatures thereto will be considered as a breach of privilege and dealt with as such. (*l*).

III. Petitions for Pecuniary Aid, Taxes or Duties.—

In the first session of the parliament of Canada the House of Commons initiated the practice of refusing to receive any petition for a grant of money out of the public revenues unless it has been first recommended by the Crown (*m*). The practice is in strict conformity with the standing orders and practice of the English Commons. (*n*).

Accordingly a large number of petitions have been rejected every session, when they have asked for remuneration for services performed (*o*); for arrears of salaries and pensions (*p*); for aid to construct or repair public works (*q*); for subsidies to keep them in an efficient condition (*r*); for any remission of moneys due to the Dominion (*s*); for compensation for losses incurred from public works (*t*); for subsidies to steamers owned by private individuals or companies (*u*); for grants of public lands to aid certain works (*v*); for compensation on account of losses sustained through the operation of an act of parliament (*w*).

But whilst petitions that *directly* ask for any public aid or for any measures directly involving an appropriation of public money, are now never received, the house does not

(*l*) May, 526.

(*m*) Can. Com. J. (1867) 297, 245 E. Hans. (3) 1724.

(*n*) S. O. 66-7. May, 563, 615, 90 E. Com. J. 42, 487. III *Ib.* 247, 104 *Ib.* 223.

(*o*) Can. Com. J. (1871) 63, 229, *Ib.* (1883) 57.

(*p*) *Ib.* (1870) 67, 110. *Ib.* (1871) 18. *Ib.* 1878) 70.

(*q*) *Ib.* (1870) 40, 56, 191, 223. *Ib.* (1871) 44, 135. *Ib.* 1877. 79, 92, etc.

(*r*) Can. Com. J. (1870) 167.

(*s*) *Ib.* (1871) 159.

(*t*) *Ib.* (1873) 66.

(*u*) *Ib.* (1878) 56.

(*v*) *Ib.* (1882), 75.

(*w*) *Ib.* (1883), 47; Can. Temperance Act.

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reject those which ask simply for legislation, or for "such measures as the house may think it expedient to take" with respect to public works. In the session of 1869, Mr. Speaker Cockburn decided that petitions of such a character ought to be received, as they did not come within the express language of the English rule just quoted. On this occasion the speaker suggested that "if it were the pleasure of the house to exclude petitions of that class in future, the proper way would be to adopt a rule which would clearly shut out such petitions" (x). But no such rule has ever been adopted and it is now the invariable practice to receive petitions which are expressed in general terms and do not directly ask for pecuniary aid for public works (y). Such petitions are received on the same principle which allows the moving of resolutions expressive of the abstract opinions of the house on matters of expenditure.

No petition asking directly for an appropriation from the public treasury can be properly received in the Senate. There is no rule or usage of the Lords or Senate, however, to prevent the presentation or discussion or reference to a committee, of a petition for the expenditure of public money or for pecuniary aid or redress, provided it be framed in general terms (z). Up to the middle of the session of 1876, it was not the practice to receive petitions praying for the imposition of duties, on the principle which prevents private members from initiating and carrying out measures for taxation (a). On more mature consideration, however, it was seen that this practice tended to prevent an unequivocal expression of public opinion on questions of taxation,

(x) Can. C. J. (1869), 22-3. These remarks referred to a petition "humbly praying the house to take such measures as will cause the obstructions to the navigation of the Ottawa river to be removed," etc.

(y) Can. Com. J. (1877) 109. *Ib.* (1877) 27, 147.

(z) Hatsell (111) 241. Sen. J. (1874) 93-4. Sen. Deb. (1874) 134-8. Todd Parl. Gov. i., 696-7. 173 E. Hans. (3) 1622. 174 *ib.* 972. Sen. J. (1867-8), 171. *Ib.* (1879), 108. *Ib.* (1883), 63. *Ib.* (1884), 140.

(a) Can. Com. J. (1873), 146. *Ib.* (1875), 205, 241, 260, etc. *Ib.* (1876), 58, 76, 86, etc.

especially as there was no express rule against the reception of such petitions. Consequently it has been, since 1876, the practice to receive petitions asking for the imposition of customs and excise duties (*b*). It has also been decided that when a number of persons ask for a bounty to a particular industry on public grounds, it is regular to receive their petition. The objection to the reception of petitions for a bounty properly applies only to cases where an individual or individuals, personally interested, ask for such a bounty as will be profitable and confined to themselves (*c*). It is also usual to receive petitions from individuals for an exemption from a tax or duty on public grounds (*d*); but petitions from parties immediately interested in a remission of duties or other charges payable by any company or person, will be ruled out (*e*); neither will the house receive a petition praying for the compounding or releasing any debt due to the Crown (*f*); but petitions may be considered when they pray for provision for compensation for losses contingent on proposed legislation (*g*). Petitions against measures for the imposition of any tax or duty for the current service of the year, are always in order (*h*).

IV. Reading of Petitions—Urgency—Printing of Petitions.—Petitions are not read at length in the house unless by special consent. Whilst a member has clearly a right to ask that the petition be read (*i*), it is a privilege like many others, subject to the approval of the house itself. In case of opposition, the speaker will put a motion formally to the house. Petitions may be at once read and received

(*b*) Mr. Speaker Anglin, 1876. Can. Com. J. (1876) 107, 130, etc. *Ib.* (1877) 37, 54, 58, etc. *Ib.* (1878) 150. *Ib.* (1879) 57, 66, 140 etc.

(*c*) Can. Com. J. (1877) 27, 37.

(*d*) *Ib.* (1876) 70. *Ib.* (1879) 300.

(*e*) *Ib.* (1875) 260. 92 E. Com. J. 372. 223 E. Hans. (3) 879.

(*f*) E.S.O. 58; 81 E. Com. J. 66. 83 *Ib.* 212.

(*g*) May, 563.

(*h*) E.S.O. 82; 97 E.C.J. 191.

(*i*) C. Hans. (1885), 1893; 164 E. Hans. (3) 977-8; 221 *Ib.* 302 (Blackmore, 236); May 503.

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by common consent, chiefly in order to refer them to a committee; if a member objects, it cannot be done (*j*). In case of urgency, however, a petition may be immediately considered (*k*), but the grievance must be such as to require speedy and urgent remedy (*l*). Petitions affecting the house will at once be taken into consideration in accordance with parliamentary usage in all cases of privilege (*m*). Petitions are sometimes ordered to be printed for the information of members by the committee on printing (*n*) and there have been instances of their being printed in the votes and proceedings—a motion to that effect being duly made and agreed to (*o*). Petitions of a previous session have also been so printed (*p*).

V. Petitions to Imperial Authorities.—As a general rule the imperial parliament receives petitions from British subjects in all parts of the world (*q*). Previous to the introduction of responsible government in Canada, the right of petitioning the House of Commons was very frequently exercised by the people of the several provinces in order to obtain redress for certain grievances; but there are now very few occasions when it is necessary to make such appeals. It may sometimes be thought expedient to petition the sovereign, and in such a case the constitutional procedure is to forward the petition through the governor-general. The rules of the colonial service require that persons in a colony, whether public functionaries, or private individuals, who have any representations of a public or private nature

(*j*) Can. C. J. (1875) 152, Hans. 450 I. Can. C. J. (1876), 171, 204. In one case the petition was received and printed forthwith, because it referred to the bill respecting marriage with a sister of a deceased wife, then under discussion; *Ib.* (1880), 130.

(*k*) H. C. Rule 75.

(*l*) 139 E. Hans. (3) 453-5. Any previous notice will preclude its being at once considered; 75 E. Hans. (3), 894, 1264.

(*m*) 164 E. Hans. (3), 1178; 114 E. Com. J. 357.

(*n*) Can. Com. J. (1867-8), 400; *Ib.* (1880), 130; *Ib.* (1882), 192, 261.

(*o*) V. and P., March 19, 1875; Can. Com. Jour. (1877), 25.

(*p*) *Ib.* (1877), 25; 112 E. Com. J. 155.

(*q*) Mr. Speaker Brand, Apl. 7, 1876. Blackmore (1882) 158.

to make to the British government "should address them to the governor, whose duty it is to receive and act upon such representations as public expediency or justice to the individual may appear to require, with the assistance in certain cases of his executive council; and if he doubts what steps to take thereupon, or if public advantage may appear to require it, to consult or report to the secretary of state." Every individual has, however, the right to address the secretary of state, if he thinks proper. But in this case "he must transmit such communication, unsealed and in triplicate, to the governor or administrator, applying to him to forward it in due course to the secretary of state." Every letter, memorial or other document, "which may be received by the secretary of state from a colony otherwise than through the governor, will, unless a very pressing urgency justifies a departure from the rule, be referred back to the governor for his report." This rule "is based on the strongest grounds of the public convenience, in order that all communications may be duly verified, as well as reported upon, before they reach the secretary of state." Petitions addressed to the king, or the king in council, memorials to public officers or boards in his majesty's government, "must in like manner be sent to the governor-general for transmission home" (r). In 1878 a large body of Roman Catholics in Ontario, petitioned the queen with respect to a provincial act giving special privileges to the Orange society in the Province of New Brunswick. This petition was forwarded through Mr. Isaac Butt, M.P., to the secretary of state for the colonies, who replied that, in accordance with the rules just cited, all such communications should be transmitted to the colonial office through the governor of the colony whence they proceed. Accordingly the petition was duly sent back to the governor-general of Canada, for the information of the dominion and provincial authorities (s).

(r) Col. Off. Reg., 217, 218, 219, 220, 221, 222, 223. See C.O. List for 1901, p. 366.

(s) E. Com. P. (1878) No. 389. Todd P. G. in Col. 356-7.

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VI. Presentation of Papers.—By reference to the index of the journals of the Senate and House of Commons, it will be seen that there are pages devoted to entries under the general head of "accounts and papers" or "returns." Here will be found an alphabetical list of the accounts, papers, returns and documents relating to the public service that may be ordered or laid before the houses in the course of a session. By rule 25 notices of motions are taken up when reached on the order paper. These include motions for such papers and returns as members require for their information on public matters. Notices of motions for papers which the members intend to move for without discussion are marked with an asterisk and are by rule 38 placed together. These are at once disposed of but, if on such motion being made a debate is desired, the motion is transferred to the list of "Notices of Motion."

The documents laid before parliament are presented either by message or by command of his Excellency the governor-general, or in answer to an address or order of the house, or in pursuance of an act of parliament (*t*). By rule 62 "it is the duty of the clerk to cause to be printed and delivered to every member, at the commencement of every session of parliament, a list of the reports or other periodical statements which it is the duty of any officer or department of the government, or any bank or other corporate body to make to the House," and the departments of the government lay regularly on the table all reports made to them by railways and other incorporated companies which are required to send in statements. These reports and returns are laid by ministers of the Crown upon the table during routine proceedings, or by leave of the house, at other convenient times, and are duly entered in the Votes and Proceedings and Journals.

The nature of these papers and returns covers all matters of governmental activity upon which information is required. The returns laid on the tables of the houses every

(*t*) Can. Com. J. (1901), 56, 132, 326; Can. Com. J. (1910) 204.

session by command of his Excellency, include the reports of the ministers of the several departments of the government, public works, militia, post-office, marine and fisheries, etc., which are printed in the two languages in the shape of "blue books." Amongst the papers required by law are: lists of stockholders of banks, reports of judges relative to the trial of controverted elections, and various other matters regulated by statute. The reports of the several departments of the government are laid annually before parliament in accordance with statute organizing such departments.

Certain papers are also periodically laid before parliament by a message from the governor-general. The estimates of the sums required for the service of the dominion must be brought down in this way, in accordance with constitutional usage. Despatches from the secretary of state for the colonies are sent down by the governor-general when deemed necessary or upon an address, and so are all papers relative to royal commissions and other matters affecting imperial interests or the royal prerogative. No documents can be regularly laid before the house unless in pursuance of some parliamentary authority. In the session of 1879, the speaker called the attention of the house to the fact that he had received a communication from the Reciprocity and Free Trade Association of England, with respect to the Canadian tariff, then the subject of discussion in parliament. He decided that individuals outside of the house could only approach it properly by petition, and that the document in question was a mere declaration, and could not be presented by a member. He took this occasion of stating that no document can be regularly laid before parliament unless by message from the governor-general, or in answer to an order or an address, or in pursuance of a statute requiring their production (*u*). Every session papers are received by the speaker from municipal councils, foreign associations, and individuals, with

(*u*) Can. Hans. (1879) 1453. See also ruling of Mr. Speaker Marcell, Com. J. (1910), p. 204.; Can. Hans. (1892) 2268.

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respect to public matters but their receipt is simply acknowledged by officers of the house, since there is no authority to lay them before parliament (v).

When a minister of the Crown desires to lay on the table a return which is not the subject of an order, but is necessary for the proper decision of some question the rule is for him to move for its production, and then on the order being made to bring it down immediately (w). In case the paper would, under ordinary conditions be the subject of an address or message he will bring it down "by command of his Excellency," and then, if necessary, move that it do lie on the table (x). Questions put by members are sometimes made equivalent to a motion for papers under rule 37. If, in the opinion of the Speaker, a question on the order paper, put to a minister of the Crown, is of such a nature as to require a lengthy reply he may, upon the

(v) In 1879, a communication from the senate of the state of Michigan on the subject of proposed legislation was laid on the table of the senate on the ground that it was only courteous to receive such a document from a cognate legislative body. Deb. 37t; Jour. 176. This was an unusual proceeding. In Feb. 1885, Mr. Speaker Kirkpatrick received by telegraph a resolution from the legislature of British Columbia, respecting the disallowance of an Act (Chinese immigration). As he had no precedent permitting him to lay such a document before the Commons, he telegraphed to the speaker of the assembly to have an address sent to the governor-general—the proper constitutional course. In the Session of 1903 a resolution of the Legislature of Ontario was sent to the Speaker of the House of Commons by the Clerk of the Ontario Assembly, with the request to lay the same before parliament. Speaker Brodeur informed the Clerk of the Ontario Legislature that the Speaker of the House had no power or authority to lay such a resolution before the House of Commons.

(v) A resolution was received from the city council of Ottawa, May 6th, 1887, on the subject of Home Rule in Ireland, and in accordance with the usual practice an acknowledgment of its receipt was sent to the proper municipal authority. See Mr. Sp. Brand on resolutions from chairmen of public meetings, 280 E. Hans. (3), 1145.

(w) Mr. Speaker White, C. Com. Hans. (1892), 2268; 266 E. Hans. (3) 1710, C. Com. J. (1899), 170; *Ib.* (1910), 210-11.

(x) Alaska Boundary, Can. Com. J. (1899), 227. See remarks of Mr. Speaker Edgar, Can. Com. Hans. (1899), 4259; May, 54t.

request of the Government direct the same to stand as a notice of motion. The same is transferred to its proper place as a notice, the Clerk of the house amending it in matters of form accordingly. It is further provided in the same rule that if any question is of such a nature that in the opinion of the Minister who is to furnish the reply such reply should be in the form of a return, and the Minister states that he has no objection to laying such return upon the table of the house, his statement shall, unless he is contradicted by the house, be deemed an Order of the house, and the same shall be entered in the Journal and Proceedings of the house. Papers are frequently referred to in debate which the rules of debate require should not be upon the table, which a minister of the Crown or other member of the house desires should be laid upon the table for general information. Such papers form no part of the business of the house but are retained in the custody of the Clerk of the house for the purposes indicated and returned to the proper authorities afterwards.

Returns and papers are moved for in the form, either of an address to the governor-general or of an Order of the house. The Notice of Motion is headed—"Address" or "Order of the house" as the case may be, but the motion itself is as follows:—

"Mr. moves that a humble address be presented to his Excellency, the governor-general, praying that his Excellency will cause to be laid before this house, etc."

In the case of an order of the house, it is simply necessary to make this motion:

"Mr. moves that a order of the house do issue for," etc.

VII. Distinction between Addresses and Orders.—

Previous to the session of 1876, it was customary to move for all papers by address to the governor-general, but since that time the regular practice of the English houses has been followed. It is now the usage to move for addresses only with respect to matters affecting imperial

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interests, the royal prerogative, or the governor-in-council. On the other hand, it is the constitutional right of either house to ask for such information as it can directly obtain by its own order from any department or officer of the government. It is sometimes difficult to make a correct application of this general principle (*y*); but the following illustrations of practice will show the distinction that should be drawn between addresses and orders:

Addresses are moved for papers and despatches from the imperial government (*z*); for orders in council (*a*); for correspondence between the dominion, British and foreign governments (*b*), or between the dominion and provincial governments (*c*), or between the dominion government and any companies, corporations, or individuals (*d*); for information respecting a royal commission (*e*); for instructions to the governor-general (*f*). Memorials and other papers relating to the government of the North-West Territories, are brought down also by address (*g*).

On the other hand, papers may be directly ordered when they relate to canals and railways, post-office, customs, militia, fisheries, dismissal of public officers, harbours and public works, and other matters under the immediate control and direction of the different departments of the government. Correspondence with persons in the employ of the government, and in the possession of a department are ordered (*h*). Petitions and memorials not in the possession of the house, but addressed to the governor-in-

(*y*) See discussion on this subject in May, pp. 536-7.

(*z*) Can. Com. J. (1877), 151; *Ib.* (1878), 124.

(*a*) *Ib.* (1877), 46, 56; *Ib.* (1878), 63-4.

(*b*) Can. Com. J. (1877), 21, 22, 35, 109; *Ib.* (1878), 44.

(*c*) *Ib.* (1877), 204; *Ib.* (1878) 65; *Ib.* (1882), 166 (for a copy of a resolution passed by a provincial legislature, and transmitted to his Excellency.

(*d*) *Ib.* (1877), 21, 22, 45, 191. But this is not done invariably

(*e*) *Ib.* (1878), 65.

(*f*) *Ib.* (1882), 326.

(*g*) *Ib.* (1886), 145; *Ib.* (1890), 55.

(*h*) Can. Com. J. (1878), 124, 125.

council, and including memorials for public aid, must be asked for by address (*i*); but petitions addressed to a particular department are directly ordered (*j*). Returns of petitions of right and cases before supreme and exchequer courts are brought down on an address (*k*). Returns relative to the trial of election cases before judges (*l*), and the expenses of returning officers and candidates at elections (*m*) are by address, but the clerk of the Crown in chancery will lay on the table, in obedience to an order, returns showing number of votes polled in electoral districts and other facts as to a general or other election (*n*). Returns relative to the administration of justice (*o*) and the judicial conduct of a judge (*p*) are properly asked for by address. Papers in the possession of harbour commissioners—a body not directly under the control of the government—are also moved for by address (*q*). Returns respecting confidential printing are by address, when such printing is done by order in council (*r*). Papers relative to the exercise of the prerogative of pardon must be sought in the same mode (*s*). Memorials to heads of departments or bodies immediately under the control of a department are ordered by the house (*t*). The house directly orders returns (and the clerk may lay them on the table) relative to business of the house; for instance,

(*i*) *Ib.* (1877), 93; *Ib.* (1878), 124; *Ib.* (1879), 59. On the same principle memorials to the secretary of state for the home department in England have been asked for by address; 129 E. Com. J. 95.

(*j*) Can. Com. J. (1882), 357.

(*k*) *Ib.* (1878), 125; *Ib.* (1880), 80.

(*l*) 129 E. Com. J. 157, 158.

(*m*) 129 E. Com. J. 50, 64, 147; 137 *Ib.* 258; Can. Com. J. (1879), 30. But the house has sometimes ordered them, though the strict English practice appears to be as above: Can. Com. J. (1883), 168.

(*n*) Can. Com. J. (1883), April 9.

(*o*) 129 E. Com. J. 79, 98, 203; 132 *Ib.* 392.

(*p*) Can. Com. J. (1882), 25.

(*q*) *Ib.* (1878), 90.

(*r*) *Ib.* (1882), 25.

(*s*) *Ib.* (1882) 157.

(*t*) 129 E. Com. J. 72, 80, 241, 365.

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return of number of divisions, or public and private bills, of select committees, etc. (*u*). The Senate does not observe the distinction drawn in the Commons between orders and addresses (*v*).

VIII. Returns in Answer.—As soon as these addresses and orders have been passed by the house, they are engrossed and forwarded immediately by the clerk of the house to the secretary of state, who will send them to the proper department or officer for the necessary answer. When the department or person, whose duty it is to furnish the information, has prepared it, he will return it to the secretary of state, who will take the earliest opportunity of laying it before parliament through the medium of a minister of the Crown. It is the practice for each minister in the House of Commons to present the returns relative to his own department (*w*).

These returns are furnished by the departments of the government with as much speed as is practicable, but it often happens that a large number cannot be prepared in time to be laid before the house during the same session in which they are ordered. In such a case, returns are often presented during the following session, and papers have even been brought down several years after having been ordered (*x*). A prorogation formerly nullified the effect of an order, and the practice was to make a motion in the next session or read the order of the previous session, and order the return immediately. But a rule of the house (No. 34) now directs the return to be brought down without a renewal of the order.

All papers laid on the table are officially in the custody of the clerk of the house, and may be consulted at any time on application to him, or at the office in which the papers are kept. All the important papers are generally ordered

(*u*) *Ib.* 336, 369. *Can. Com. J.* (1878), 40, 54, 199, 208.

(*v*) *Sen. J.* (1880-1), 188, 199, 285. *Ib.* (1882), 126; *Ib.* (1883) 257.

(*w*) *Can. Com. J.* (1877), 12, 50, 354-356. *Ib.* (1882), 328.

(*x*) *Ib.* (1877), 284.

to be printed. When returns have once been presented to the house, it is in order to refer them to a standing or select committee (y).

Motions for returns should be carefully prepared and they should state clearly and definitely the exact information required. Returns are frequently laid on the table informally by a minister when an important debate is in progress and there is no time to make a formal motion on the subject. Every care should be taken by the department or officer, whose duty it is to furnish the return, to have it strictly in accordance with the terms of the address or order. If a person neglects to furnish a return or frames it so as knowingly to mislead the house, it will be considered a breach of privilege, and he will be liable to reprimand or punishment (z).

IX. Motions for Papers Refused.—Occasions may arise when the government will feel constrained to refuse certain papers on the ground that their production would be inconvenient or injurious to the public interests. A high authority writes on this point: "Considerations of public policy, and a due regard to the interests of the state, occasionally demand that information sought for by members of the legislature should be withheld, at the discretion and upon the general responsibility of ministers. This principle is systematically recognized in all parliamentary transactions; were it otherwise, it would be impossible to carry on the government with safety and honour" (a). Consequently, there are frequent cases in which the ministers refuse information, especially at some stage of an investigation or negotiation; and in such instances the house will

(y) Can. Com. J. (1874), 103, 220. *Ib.* (1876), 98; *ib.* (1877), 59, 153, 211; *ib.* (1890) 54.

(z) Can. Com. J. (1874), 76. 90 E. Com. J. 575. 96 *Ib.* 363. *Mirror of P.* 1841, vol. 23, pp. 2014-5. 81 *Lords' J.* 134. 82 *Ib.* 89. *May*, 538, 539. *Can. Com. Hans.* (1895), 1839.

(a) 172 *E. Hans.* (3) 1054. *Mirror of P.* (1837-8) p. 658. *Can. Hans.* (1878) 1653. 1 *Todd* 440.

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always acquiesce when sufficient reasons are given for the refusal. On this account, members will sometimes consent to withdraw their motions; or in case only a part of the information sought for can be brought down, they will agree to such alterations as the minister may show to be advisable in the public interests. Sometimes the government may be obliged to withhold all information at the time, or they may be able to put the house in possession of only a part of the correspondence (*b*). If the government objects to the production of documents on the ground that they are of a confidential nature, it is not usual to insist on their being furnished, except under peculiar or imperative circumstances, on the ground that it would be wholly without precedent to produce them. Petitions asking for pardons for convicted persons, and estimates and reports of the engineers of public works, before contracts are awarded, are considered confidential (*c*). As a rule the opinions of the law officers of the crown are held to be "private communications," when given for the guidance of ministers, and may be properly refused by the government (*d*). The same rule applies to communications between law officers of the crown respecting particular trials or the judge's notes, taken at a trial (*e*), or to coroner's notes which, as they partake of a

(*b*) Sen. Hans. (1880), 77, 469. (Sir A. Campbell): Mirror of P., 1841, p. 1032; 157 E. Hans. (3), 1177. Can. Hans. (1877), 58-9.

(*c*) May, 539. Mirror of P., 1834, p. 2774. 1835, p. 1634. Todd, 440. Mirror of P., 1831, p. 524. 211 E. Hans. (3), 1725. Can. Hans. (1913), p. 919, remarks of Hon. C. J. Doherty, minister of justice. Can. Com. Hans. (1878), 510, Lachine Canal. *Ib.* (1879), 45, Carillon works. Also 1080, 1083, remarks of Sir C. Tupper, minister of public works, on the subject of presenting a report of the engineer on tenders submitted for the construction of the Canada Pacific R.R. — this report being to a certain extent confidential. Can. Hans. (1885), p. 122. *Ib.* (1890), 518.

(*d*) Mir. of Parl., 1830, pp. 387, 1877-1879; 1840, p. 2120; 74 E. Hans. (3), 568. See reply of Lord Gosford to an address of the assembly, Lower Canada, Dec. 11, 1835: Jour., 1835-6, p. 263. May, 539.

(*e*) Mir. of Parl., 1880, pp. 527, 1667-1668. Todd, I., 576; Can. Hans. 1885, 89.

judicial character, can be produced only with the consent of the officer himself (*f*).

The practice of asking for reports from officers, addressed to particular departments of the executive government, is considered to be open to serious objection (*g*). As to "confidential documents" passing between officers of a department, Mr. Speaker Peel observes: "They are not necessarily laid on the table of the house, especially if the minister declares that they are of a confidential character." He adds: "that if a minister stated in his place that a document was of that class, the house should take his word, and he was not bound to lay it on the table (*h*). But if a minister cite any such document in the house, it becomes a public paper and should be produced, if asked for at the time (*i*).

Certain papers have also been refused in the Canadian Commons on the ground that the "governor-general, acting as an executive officer of the imperial government, reserves to himself the right of withholding from parliament any documents, the publication of which might, in his judgment, be prejudicial to the public service. That with respect to communications from the secretary of state, marked 'private and confidential,' it is not competent for the governor-general to give copies of such correspondence without the express sanction of the secretary of state. That this rule equally applies to letters written by the governor-general to third parties, communicating confidentially to them, or referring to the contents of private and confidential letters from the secretary of state, and to an-

(*f*) *Mir. of Parl.*, 1841, p. 2207.

(*g*) 177 *E. Hans.* 961, 1402, 1455; 178 *Ib.* 154; 1 *Todd* 442.

(*h*) Mr. Justice Gibson's charge, *E. Hans.*, Feb. 14, 1893. See also Disraeli: 193 *E. Hans.* (3), 1273; 177 *Ib.* 1402, 1455; Blackmore's *Dec.*, p. 81.

(*i*) 187 *E. Hans.* (3), 219, etc.; 149 *Ib.* 178. *H. of C. Jour. (Can.)* vol. 14, p. 201; *Ib.* vol. 34, pp. 238, 239. *Can. Com. J.* (vol. 34), (1899), 238, 239. *Desjardins (Speakers' decisions)*, p. 111.

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swers received by the governor-general to such letters" (*j*). Where responsible government exists the governor is generally at liberty to communicate to his advisers all despatches not "confidential." By a circular of 10th of July, 1871, despatches are reclassified: 1. *Numbered*, which a governor may publish unless directed not to do so. 2. *Secret*, which he may, if he thinks fit, communicate, under the obligation of secrecy, to his executive council, and may make public if he deems it necessary. 3. *Confidential*, which are addressed to a governor personally, and which he is forbidden to make known without the express authority of the secretary of state (*k*). "Numbered" despatches are always laid before parliament on the responsibility of ministers (*l*). But it is "a general and reasonable rule that despatches and other documents forwarded to the imperial government should not be published until they shall have been received and acknowledged by the secretary of state, and that no confidential memorandums passing between ministers and the governor should be laid before the colonial parliament except on the advice of the ministers concerned" (*m*).

In the session of 1879, Mr. Williams moved for a copy of all papers and correspondence that might have passed between Lord Dufferin (governor-general) and the members of the late Mackenzie administration on certain dismissals from office. The premier (Sir John Macdonald) informed "the hon. member that the official correspondence between the governor-general and his advisers for the time being

(*j*) Can. Com. I. (1867-8), 275. See remarks Hon. D. Mills (Can. Com. Hans. 1892, pp. 604-610), on the expediency of ministers making statements in the absence of the documents on which they are based.

(*k*) Col. Reg. 165-188; C. O. List, 1901, pp. 363-365.

(*l*) New Zealand H. of R. Jour., 1871, app. vol. I., p. 14; Parl. Deb. viii, 140.

(*m*) See Todd's Parl. Govt. in B. C. (126-132), where this question is fully reviewed. Also Can. Com. Hans. (1878), 389-92. Can. Com. Hans. (1878), 510-25. 210 E. Hans. (3), 251-318.

could not be brought to the house. If there was any such official correspondence on record, and his Excellency would allow its production, and the public interests would not be injured thereby, there could be no objection to laying it before the house, but not otherwise" (*n*).

A document, of which it is proposed to order a copy, must be official in its character and not a mere private letter or paper (*o*), and must relate to matter within the jurisdiction of parliament (*p*). Neither is it a proper ground for the production of papers that they will either prove or disprove an assertion made by a member on some former occasion (*q*); or that they will enable the mover to proceed individually upon a charge against a party whom he desires to bring before some other body or tribunal (*r*).

A sound rule, generally observed by the house, is that proceedings before a court of justice are not given, except for public purposes, and still more is this the rule when a case is pending. It has, however, been laid down by eminent authorities that the inquisitorial jurisdiction of parliament could not be limited to such "public institutions" only as were the recipients of public money; but "that when an institution is established to assist in promoting the cultivating of arts, or other strictly public object, it could not be denied that the house had a right to inquire into its affairs, even though it did not receive public aid" (*s*). And on a later occasion it was declared by Sir Robert Peel that "where parliament has given peculiar privileges to any body of men (as for example, banks or railway companies), it has a right to ask that body for information upon points which it deems necessary for the public advan-

(*n*) Can. Com. Hans. (1879), 492.

(*o*) 11 E. Hans. (1) 271. Cushing, pp. 364-5. 11 Parl. Reg. 128. 74 E. Hans. (3) 865. May, 539.

(*p*) 15 E. Hans. (N.S.), 194-202. May, 539.

(*q*) 22 E. Hans. (1) 1209.

(*r*) 16 *Ib.* (3), 194-5.

(*s*) Mr. Blake, Can. Com. Hans. (1885), 704. Sir Robert Peel and Lord John Russell, in case of Royal Academy, Mirror of Parl. 1839, pp. 4238, 4503; Todd, I. 452-453.

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tage to have generally understood." The point to be aimed at in such inquiries, he considered to be "that while you extract all the information the public require to have, you should, at the same time, avoid all vexatious interference in the details of the business of the respective undertakings" (*t*).

All the departments of the public service are kept laboriously employed every session in furnishing information required by the two houses.

The expense of furnishing these returns is necessarily large but the right of the members to obtain all proper information is undoubted. But, however ample the power of each house to enforce the production of papers, a sufficient cause must be shown for the exercise of that power; and if considerations of public policy can be fairly urged against a motion for papers, it is either withdrawn or otherwise dealt with according to the judgment of the house (*u*).

Returns may be refused on account of their voluminous character and the length of time it would take to prepare them, but in order to obviate such an objection, members are frequently invited to communicate with the department direct (*v*).

X. Printing of Papers: Joint Committee on Printing.

The papers and returns laid on the tables of the houses during a session furnish a vast amount of valuable information on subjects of public interest. It is consequently usual to have all documents of an important nature printed as soon as possible. Senate rule 100 and House of Commons rule 74, deal with this subject. The Senate rule provides that "all papers laid on the table stand referred to the joint committee on printing, who decide and report whether they are to be printed." The house rule is that, "on motion for printing any paper being offered, the same shall be first

(*t*) *Mirror of Parl.* 1840, p. 4840; also *Ib.* 1828, p. 825.

(*u*) *May*, 539. *Lord Melbourne, Mir. of Parl.* (1838), p. 5387
11 *Parl. Reg.* 132, 133. 2 *Can. Deb.* 237. *Can. Hans.* (1879), 1255-7

(*v*) *Mir. of Parl.* 1836, p. 887. *Ib.* 1837, p. 601. 1 *Todd*, 443

submitted to the joint committee on printing for report, before the question is put thereon."

As a rule the printing of all documents is left to the special supervision of the printing committee, which regulates the number of documents and the mode of printing for both houses. But frequently when documents of great interest, and upon which immediate action is to be taken in parliament, are laid on the table the rule is, on motion, suspended and the documents are ordered to be printed forthwith, without reference to the committee. Departmental reports are printed in due course as rapidly as completed, and the reports of committees of the house appear in the votes and proceedings and journals.

Until 1887 it was usual to delay the public issue of the departmental reports until they were formally laid on the tables of the houses, and to remedy such an inconvenient system, which kept back useful and important information frequently for months, it was ordered in the session of that year that all such blue books for each fiscal and calendar year "should be in future made public as soon as practicable after the same are prepared" (*w*).

The joint committee on printing is composed of members of both houses and is appointed at the commencement of each session like the other standing committees. In the old legislature of Canada the expenses of the public printing became so enormous under an exceedingly loose system, that it was at last found necessary to take measures to introduce greater economy into this service. In the session of 1858 an inquiry was instituted with this object in view, and a report was presented by a committee of the legislative council reviewing the whole subject, and very clearly showing the economical advantages that would result from certain proposed improvements. The report specially recommended that, at the commencement of each session, a joint committee should be appointed,

(*w*) *Sen. J.* (1875), 175. *Ib.* (1878), 99, 129. *Can. Com. J.* (1887), 92, *Hansard*, 5th May.

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composed equally of members of both houses, whose duty it should be to determine what matter should be printed, as well as the manner of printing (x). The result was, from the economic point of view, satisfactory. For some years the printing service was performed by tender and contract, under the directions of the committee, which reported its recommendations to the houses, which might or might not concur in the committee's conclusions (y). This contract system lasted for many years, but all the public printing is now done at a government printing office. The first change took place in connection with the *Canada Gazette* and the departmental printing. In 1869, an act (32-33 Vict., c. 7) was passed for the appointment of a queen's printer for Canada, under whose superintendence the *Canada Gazette*, the statutes and departmental printing had to be performed (z). In 1888 a department of public printing and stationery was established under the direction of the secretary of state, or of such other member of the privy council as the governor-in-council should direct. This department is managed by a king's printer and controller of stationery—who is a deputy head, appointed by commission under the great seal—a superintendent of printing, a superintendent of stationery, an accountant, and other officials. A government establishment was organized at Ottawa, under the management of the superintendent of printing, for the purpose of executing all stereotyping, lithographing, binding and other work of like nature required for the service of the parliament and government of Canada. The stationery office purchases

(x) Leg. Coun. J. (1858), 215-222. Leg. Ass. J. (1861), 146.

(y) Can. Com. J. (1869), 199, 224, 247, 265. In this case the committee reported in favour of certain tenders; but the house did not concur in the report, and referred it back with instructions that the committee should accept the lowest tender. The committee then simply reported the lowest tender, and left the house to decide.

(z) For many years in old Canada the public printing was a monopoly, but by the death of Mr. Stuart Derbshire, in 1863, the queen's printership, which was held by him under a royal patent became vacant. See chap. 80, P. S. C. (1906).

all printing papers, stationery, books and supplies of all kinds of that character required for the use of the parliament and the government, and has charge of the sale of all official publications. All purchases of books and stationery required for the public service are made by the new department upon requisitions duly furnished by the clerks of the two houses and the proper officers of the departments. The *Canada Gazette*, the statutes and all departmental and other official reports are printed by this bureau.

Provision is also made in the law for the thorough audit of all accounts for any of the services under the control of the department. The joint committee on printing sits frequently during the session and its clerk lays before it all the returns as these are placed on the table of the house, and then it decides what documents ought to be printed, and reports the result of its deliberations, so that members may know what has been done with the papers in which they are interested. But the committee cannot recommend any new appropriation of money. Formerly the committee nominated and fixed the salary of its employees subject to the approval of the houses, but the passage of the Civil Service Act (1908) has naturally changed the situation in this regard.

All the important papers and returns are printed in the sessional papers—the reports of committees always in the appendix to the journals (*a*). A certain number of copies of printed papers are distributed to each member. The committee arranges the number of documents that are to be annually given to members of parliament and others and has for that purpose allotted to it an office called the "Distribution Office", which is, during the session of parliament, under its control (*b*). It is usual to let

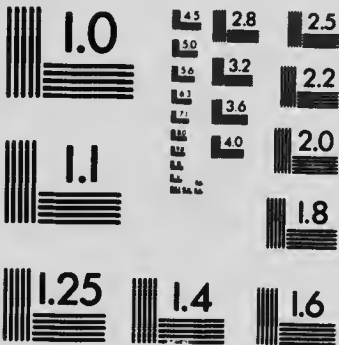
(*a*) Can. Com. J. (1876), 135 &c.

(*b*) Can. Com. J. (1867-8), App. No. 2 (3rd and 13th Reports); *Ib.* (1869) App. No. 2; *Ib.* (1874), 271; *Ib.* (1875), 118. The distribution of documents was rearranged in 1878, pp. 220, 254, App. No. 3; Sen. J. pp. 218-230, 265. Number of votes and bills was increased in 1879, Com. J. 56, 78. See also *Ib.* (1890), 290, 313.



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reports lie on the table for a day or two, and then to move for their adoption when "motions" are called during the progress routine business. The motion for concurrence is allowed to be proposed without notice when the report refers only to the printing of documents, but objections may be taken on that ground at any time; and it is the practice to allow the motions to stand as a notice in all cases which are likely to provoke controversy and debate (*c*).

In practice it is now found convenient for the chairman of a committee to give notice that he will on a future day, when motions are called, ask for the adoption or consideration of a report which may provoke debate. In fact, this is the expedient course under all circumstances (*d*).

When a member wishes to direct the special attention of the printing committee to a paper, he may give notice of a motion that it be printed; and this motion must go to the committee under the following rule:—

"74. On a motion for printing any paper being offered, the same shall be first submitted to the joint committee on printing for report, before the question is put thereon."

This rule was not strictly enforced for some sessions after 1867. Motions for the immediate printing of documents have been proposed and adopted, without reference to the committee, or the suspension of the standing order (*e*). Sometimes the rule has been suspended, and the order given immediately for printing—a regular proceeding in case of urgency (*f*). But if objection be taken, the motion cannot be put (*g*). Members have also moved to "refer" certain papers to the committee, or to instruct it to consider the propriety of printing certain documents;

(*c*) Com. J. (1880), 364. Also chapter of select committees.

(*d*) Mr. Speaker Edgar, Can. Com. Hans. (1896, 2nd sess.), 1368, 1369.

(*e*) Can. Com. J. (1867-8), 43; *Ib.* (1873), 20, 49. A paper of a previous session has been referred to the committee on motion. *Ib.* (1890), 221.

(*f*) *Ib.* (1871), 20; *Ib.* (1880), 160. Can. Com. Hans. (1877), 686.

(*g*) *Ib.* (1890), 2911-2914.

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and such motions have been put from the chair (*h*). Motions, however, for the printing of papers are not formally put from the chair, but are simply entered on the journals as referred in accordance with rule 74 (*i*). unless they ask for the suspension of the rule, which, in the absence of notice, requires the unanimous leave of the house. If a member is not satisfied with the report of the committee at any time, he can move to amend it on the motion for concurrence (*j*). Sometimes reports are only agreed to in part (*k*). The committee has frequently reconsidered previous decisions without a motion formally proposed in the house to refer the matter back for further deliberation (*l*). At other times, the report has been amended by the committee itself when referred back for consideration (*m*).

XI. Addresses; when Founded on Resolutions; Joint Addresses; Presentation, &c.—The subjects on which the two houses may address the sovereign, or his representative in this country, are too numerous to be detailed at length. They may relate to every matter of public interest, to the administration of justice, to commercial relations, or to the political state of the country; in short, to all subjects connected with the government and the welfare of the dominion. They may also contain expressions of congratulation or regret in reference to matters affecting the royal family or the governor-general. But no address may be presented in relation to a bill or matter under the consideration of the house. By reference to the journals it will be seen that addresses have frequently

(*h*) Can. Com. J. (1876), 71; *Ib.* (1867-8), 157; *Ib.* (1882), 192.

(*i*) *Ib.* (1877), 47, 124, 132, &c.; *Ib.* (1879), 353; *Ib.* (1883), 391.
Mr. Sp. Anglin questioned the propriety of any debate on such a motion. Can. Com. Hans. 1877, Feb. 19; also, *Ib.* p. 686.

(*j*) Can. Com. J. (1874), 304; *Ib.* (1901), 287, 288.

(*k*) *Ib.* (1867-8), 224; *Ib.* (1879), 326.

(*l*) *Ib.* (1873), 415.

(*m*) 12 Lords' J. 72, 81, 88; 8 E. Com. J. 670; 1 Grey 5.

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originated in committee of the whole (*n*), on report from a select committee (*o*), or on simple motion direct without such a previous formality (*p*). The principle that has guided the house with reference to addresses of a general character appears to be this: Whenever the question is one involving legislation, or affecting commerce, and requires considerable discussion of details, it is advisable, and certainly convenient, to ask the house to go into committee of the whole to consider a resolution on which to base an address (*q*). But in the case of all addresses which are passed *nemine contradicente*, such as those to the sovereign or governor-general (*r*), modern usage has now simplified the procedure, and it is sufficient to move them directly.

It is, of course, optional for a member to choose the method of procedure in such cases. The address to the queen embodying the Quebec resolutions of 1864 with respect to confederation was not initiated in committee. In the session of 1882 the House of Commons agreed to a joint address to her Majesty on the subject of the difficulties in Ireland, as an amendment to its motion for the house to go into joint committee of supply (*s*). In the Senate an amendment was moved to this address—an unusual proceeding. In 1901 the same procedure was followed with reference to an address to the king on the subject of the declaration regarding transubstantiation in the bill of rights and act of settlements; but the inconvenience that may at times arise by moving a debatable question in this way was quite apparent on this occasion,

(*n*) Can. Com. J. (1877), 237-9. Leg. Ass. (1859), 509.

(*o*) Can. Com. J. (1867-8), 376, 377.

(*p*) *Ib.* (1875), 197, 203.

(*q*) *Ib.* (1873), 187. *Ib.* (1878), 255. *Ib.* (1889), pp. 383-85. *Ib.* (1915), March 25th.

(*r*) Can. Com. J. (1872), 292-3. Retirement of Lord Lisgar from the governor-generalship.

(*s*) Can. Com. J. (1882), 307, 334. Sen. J. 245-6, 270, 271. 109 E. Com. J. (1854), 169, address on war with Russia, agreed to without reference to committee.

since it was ultimately found necessary to withdraw the original motion and bring it in immediately in an amended form to meet objections that were raised as to the phraseology (*t*).

When it is agreed in the Commons to transmit an address of the two houses to the sovereign, a message will be sent to the Senate requesting their honours to unite with the house in the same. This message will be proposed as soon as the address has been passed by the house and ordered to be engrossed. When the Senate has received the message the address will be read by the clerk and ordered to be taken into consideration, sometimes immediately, but more frequently on a future day. The address from the Commons always contains a blank: "We, your Majesty's most dutiful and loyal subjects, the Commons of Canada." This blank will be filled up by the Senate with the words "Senate and," so that the address will read "the Senate and Commons of Canada in Parliament assembled," etc. It will then be ordered that the speaker do sign the address on the part of the Senate.

The next step will be for the Senate to order an address to the governor-general, requesting him to transmit the same to the sovereign. Then this address will be agreed to, signed by the speaker, and ordered to be communicated to the Commons by one of the masters in chancery for their concurrence. In this address there is also a blank to be filled up by the house, with the words "and Commons," and a message will be sent to the Senate informing them that the Commons have agreed to the said address. When the message has been received by the Senate, they will order that "the joint address to his Majesty, and also the joint address to his Excellency, the governor-general, be presented to his Excellency by such members of this house as are members of the privy council" (*u*).

(*t*) Can. Com. J. (1901), 71-74.

(*u*) Can. Com. J. (1867-8), 225, 236; *Ib.* 66, 67, 68, 98, 108, 367; *Ib.* (1869), 152, 153, 156, 168, 169; *Ib.* (1871), 292, 293, 300. Can. Com.

In case the address originates in the Senate, it will be read at length at the table as soon as it is taken into consideration by the Commons. The blank after the words "the Senate....." in the address will then be filled up with the words "and Commons;" and the address concurred in. An address will next be passed to the governor-general requesting him to transmit the joint address to the King. The Senate will then proceed to fill up the blank in this address in the usual way, and communicate the fact to the Commons. The address will be presented to his Excellency by such members of the Senate as are members of the privy council (*v*).

XII. Addresses and Messages of Condolence and Congratulation—and on Retirement of Governor-General, Etc.—Addresses of congratulation or condolence to the sovereign are always passed *nemine contradicente*. Such addresses are moved immediately in the imperial houses without reference to a committee, and the same usage obtains in the Canadian parliament (*w*).

In 1880 the houses passed an address congratulating the Marquis of Lorne, then governor-general, and the

J. (1877), 237-239, 240; Sen. J. 214, 215, 216, 221, 229, 230; Can. Com. J. 268; Sen. J. 239, 240. Can. Com. J. (1886), 181, 182, 215; Sen. J. 107, 137, 147; Can. Com. J. (1890), 286, 313; Sen. J. 221-223; Can. Com. J. (1901), 16, 17; Sen. J. 26, 29. Can. Com. J. (1915). Representation in the Senate.

(*v*) Senate J. (1872), 28, 29; Com. J. 16, 24; Sen. J. 36; Com. J. 29; Com. J., 1879, Feb. 21; Com. J. (1880), 78, 79, 82, 101; *Ib.* (1882), 330, 490; Sen. J. (1887), 104, 156; Com. J. 208, 209, 229; Sen. J. (1897), 118, 125, 126; Com. J. 203, 205; Sen. J., 1815, March 25th.

(*w*) Can. Com. J. (1867-8), 225, attempted assassination of Duke of Edinburgh, Can. Com. J. (1872), 16, 24, 29, restoration to health of Prince of Wales, Can. Com. J. 1879, Feb. 21, death of Princess Alice (joint address). Joint address to her Majesty on her escape from assassination, Can. Com. J. (1882), 105; Sen. J. 73, 78, 79; death of Prince Leopold, Sen. J. (1884), 229, 342; Can. Com. J. 328, 335, 350; death of the Duke of Clarence, Sen. J. (1892), 23, 24, 122; Com. J. 102, 103, 288; birth of son to T.R.H. the Duke and Duchess of York, Sen. J. (1894), 277, 278; Com. J. 467, 523, 524.

Princess Louise, on their escape from what might have been a serious accident (x).

It is usual to present addresses of congratulation to the governor-general when he is the recipient of royal honours (y).

In 1882 the houses forwarded through the governor-general, by telegraphic cable, messages of congratulation to Queen Victoria on the occasion of her escape from an attempt on her life. A similar procedure has been followed in other cases of urgency (z).

In the session of 1898 a resolution of condolence on the death of the Rt. Hon. W. E. Gladstone was reported from a select committee to whom the matter had been referred, and after its passage the speaker of the Commons was instructed to communicate it to Mrs. Gladstone. In the next session the speaker read her answer to the house (a).

In 1899 the prime minister moved a series of resolutions expressing the sympathy of the House of Commons with her Majesty's government in seeking to obtain equal rights for her Majesty's subjects in the Transvaal Republic; and when they had been unanimously passed, the speaker was instructed to communicate them to the secretary of state for the colonies (b). Numerous other instances of similar action, which have since occurred, could be quoted.

If the houses wish to congratulate any members of the royal family on their marriage; or on the birth of a son, or to condole with them on some sad bereavement, it is proper to do so in the form of a message. For instance, in the case of the death of the Duke of Clarence in 1892, an address of condolence was first passed to the queen, then a message to the same effect to the Prince and Princess of Wales. An address will be passed to the governor-general asking him to transmit the message of condolence or con-

(x) Sen. J. (1880), 53, 54; Com. J. 78, 79, 82.

(y) Sir John Young created Baron Lisgar; Sen. J. (1871), 25.

(z) Can. Com. J. (1882), 105; Sen. J., 79.

(a) Can. Com. J. (1898), 249, 263, 264; *Ib.* (1899), 9.

(b) Can. Com. J. (1899), 485, 486.

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gratulation (c). It is also the practice to pass a joint address at the proper time, expressing regret at the termination of the governor-general's official connection with Canada. His Excellency will take the most convenient opportunity that offers of acknowledging such an address in suitable terms. In the case of Lord Lisgar, in 1872, he did not send down a special message in answer, but deferred his reply until he delivered the speech at the prorogation of parliament. In the next case, that of the farewell address to Lord Dufferin, in 1878, it was ordered in each house to be presented by such members as were of the privy council. A member of the privy council subsequently informed the Senate that Lord Dufferin had appointed two o'clock of the afternoon of a later day, in the Senate chamber. The Commons were duly informed of the fact by message, and were accordingly able to be present at the reading of the address and answer. On a subsequent day, a member of the privy council presented, in each house, a copy of Lord Dufferin's reply, in order to give it a place in the journals (d).

In 1883, the two houses passed a similar address previous to the departure of the Marquis of Lorne. On this occasion also, the address was ordered to be presented by members of the privy council. On the last day of the session, a few minutes before the formal prorogation, the speaker of the Commons informed the members present that he had just received an intimation from his Excellency that the address would be presented in the Senate chamber. Accordingly, the houses having adjourned during pleasure, the members of both assembled on the occasion of the reading of the address by the premier, Sir John Macdonald. His Excellency read his reply, which was duly reported to both houses, and entered on the journals. It was also

(c) Sen. J. (1882), 23, 24; Com. J. 102, 103. Also marriage of Prince of Wales, Can. Leg. Ass. J. 1863; birth of an heir to Prince and Princess of Wales, *Ib.* 1864; birth of a son to Duke and Duchess of York, Sen. and Com. J. 1894; death of Prince Battenberg, *Ib.*, 1896.

(d) Can. Com. J. (1872), 292, 293, 319, 335; Sen. J. 201-2. Can. Com. J. (1878), 164, 165, 166, 171, 182; Sen. J. 183-85, '

ordered in the Senate to be printed in both languages for the use of members (*e*). In 1888 the two houses passed an address to Lord Lansdowne on his retirement from the governor-generalship of Canada to preside over the government of India, and it was presented in the Senate chambers by the two speakers—one reading it in English and the other in French. The answer was duly reported by the speakers in each house, and entered on the journals (*f*). In 1898 a joint address was presented to the Earl of Aberdeen on the occasion of the approaching termination of his official connection with Canada, in the Senate chamber as soon as parliament had been formally prorogued. Similar addresses were presented to the Earl of Minto and Earl Grey on their retirement. An address was presented to the Duke of Connaught, on 12th of June, 1914, on his proposed retirement from the governor-generalship of the dominion. His Royal Highness, however, on the outbreak of the war in July and August of that year, was desired to remain in Canada, and he did so until the close of hostilities (*g*).

XIII. Presentation of Addresses.—It was formerly the practice of the Canadian houses, separately or jointly, to wait upon the governor-general with the addresses in answer to the speech (*h*). When the address had been agreed to and ordered to be engrossed, it was resolved that it be presented to his Excellency by the whole house, and that such members as were of the executive council do wait upon him to know his pleasure. A great deal of formality attended the presentation of the address and the occasion was made much of as an official and state function.

On December 26, 1792, we find this entry in the journals of Lower Canada: "The house is unanimous that the speaker

(*e*) Can. Com. J. (1883), 429, 430, 431, 436; Com. Hans. 1396 Sen. J. 288-290, 292-293.

(*f*) Sen. J. (1888), 249, 260, 272, 274; Can. Com. J. 307, 316, 337.

(*g*) Can. Com. J. (1898), 339, 381, 432; Sen. J. 306, 334. Sen. Deb. June 13. Can. Com. J. (1914), 720; Sen. J. (*do.*), 494.

(*h*) Upp. Can. Ass. J. (1792), 6, 7; Low. Can. Ass. J. (1792), 58; Can. Ass. J. (1841), 67; *Ib.* (1859), 61, &c.

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set out at noon, preceded by the serjeant-at-arms bearing the mace, that the members follow to the chateau St. Louis, where Mr. Speaker will read the address, after which a member will read the same in English; that the clerk do follow the house at some distance in case of need, and that the house do return in the same order" (*i*).

The governor-general replied only in English to the addresses of the old assembly of Lower Canada, and of the old Canada legislature. It was usual for the speaker of the legislative council to read the speech to the two houses in French, after its delivery by his Excellency. It was not till the repeal of section 41 of the Union act of 1840 that the speeches were delivered in French as well as English. Lord Elgin was the first to commence the practice which has been continued to the present time.

Since 1867, the more convenient course has been adopted of presenting such addresses by members of the privy council. It had, however, for many years previous been the practice to present addresses on general subjects, through executive councillors, or the speakers of the two houses, or by committees of the same. Addresses for papers and returns were formerly taken up by a committee, one of whom would sometimes report the reply. It was soon, however, found more convenient to present such addresses by members of the executive council, and the answers would be brought down by one of the same (*j*); or be sent down by message (*k*). This practice is still continued, but the answers are now brought down by a member of the government, to whom they are transmitted by the secretary of state. The answer to the speech at the opening of the session is always brought down by the premier, or other member of the cabinet in his absence (*l*); and the same practice ob-

(*i*) 1 Low. Can. J. 58, 60; 1 Upp. Can. Ass. J. 6, 7; 1 Can. Ass. J. 67. Quebec Mercury (Par. Deb.) Feb. 28, 1863. Low. Can. J. (1792) 60. Can. Leg. Ass. (1841), 69.

(*j*) Leg. Ass. J. (1841), 172. *Ib.* 191, 202.

(*k*) *Ib.* (1841), 173, 207; *Ib.* (1842), 48, 111.

(*l*) Can. Com. J. (1872), 18; *Ib.* (1877), 44; Sen. J. (1877), 50.

tains in respect to messages generally (*m*). Messages are received by the members standing and uncovered, when they are signed by his excellency's own hand (*n*). In the Senate such messages are generally read by the clerk at the table (*o*); in the Commons by the speaker (*p*). In case they are again read by the clerk in the House of Commons, it is the usage for members to remain standing and uncovered while the speaker or clerk reads the message in French or English, the document being always presented in the two languages. Messages for the attendance of the house in the Senate chamber are brought by the usher of the black rod, and such messages should be received by the house in silence, and uncovered, but the members do not stand on such occasions—that ceremony being reserved for written messages immediately from the representative of the Crown.

In accordance with constitutional usage the governor-general meets the two houses in person only on those occasions when he opens or prorogues parliament or when he assents to bills in the course of the session. Other communications which take place during the session, from the head of the executive to the legislative branches, or either of them, are made by message. These are either *written* or *verbal*.

Written messages are confined to important public matters which require the special attention of parliament. The estimates for the public service, recommendations of special aid in cases of great public disaster or emergency (*q*), reports of royal commissions (*r*), and all despatches

(*m*) Can. Com. J. (1872), 16; *Ib.* (1877), 39, 44, 324, 333.

(*n*) *Ib.* (1877), 44.

(*o*) Sen. J. (1867-8), 211; *Ib.* (1877, 39, 50; *Ib.* (1890), 36. Can. Com. J. (1877), 39.

(*p*) 2 Hatsell, 365n.

(*q*) Can. Com. J. (1878), 37; *Ib.* (1880), 30, 35, 40, 57, 78, 375. Sen. J. 47, 48.

(*r*) *Ib.* (1873, 2nd sess.), 120 (Can. Pac. R.R.); *Ib.* (1885), 124 (Chinese immigration).

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from the imperial government acknowledging the receipt of addresses to his majesty and relating to other subjects (*s*) are brought down by message under the hand of his excellency.

In the session of 1878, a ministerial crisis occurred in the province Quebec, the deBoucherville ministry having been called upon to resign by the lieutenant-governor, notwithstanding the fact that they were sustained by a majority in the legislature. The two branches of the legislature passed addresses to the governor-general and the two houses of parliament, condemnatory of the course pursued by the lieutenant-governor. These addresses were brought down by a message and read at the tables of the two houses. The answer of the lieutenant-governor was also brought down by message (*t*).

A written message is not requisite in cases where it is necessary to signify the recommendation or consent of the Crown to a motion involving the expenditure of public money, or affecting the property of the dominion government. A verbal message will be given in such cases by a minister, as soon as he has made the motion in his place. The cases where such recommendation or consent is necessary are explained in the chapter on supply.

Verbal messages may also be made in the same way when a member of either house is arrested for any crime at the suit of the Crown, "as the privileges of parliament require that the house should be informed of the cause for which

(*s*) Sen. J. (1879), 159. See despatches in reply to addresses; on the attempted assassination of the Duke of Edinburgh, Can. Com. J. (1869), 20; on the imperial Extradition Act, *Ib.* (1878), 45; on an attempt on her Majesty's life, *Ib.* (1882), 321. Such messages are brought down by a privy councillor in either house. In 1891, a reply to a loyal address of the Commons to the queen, passed and forwarded in 1890, was sent by the governor-general to the premier to be communicated by him to the house; Can. Com. J. (1890), 37, 39; *Ib.* (1891), May 18.

(*t*) Can. Com. J. (1878), 100, 106, 150. The message was printed only in the V. and P.; both message and address appeared in full in the Senate minutes of the 22nd March, 1878.

their member is arrested and detained from his service in parliament" (u). In all cases in which the arrest of a member for a criminal offence is communicated from the Crown, an address of thanks is voted in answer (v). If a member has been imprisoned for a contempt of court, it is the duty of the presiding judge to communicate the fact to the house, if in session, and it is usual to refer the letter to a select committee for the purpose of considering and reporting whether any of the matters therein mentioned demand the further attention of the house (w).

When the governor-general sends a message to the Senate, with reference to a matter requiring pecuniary aid, it is usual for that house to present an address, declaring its willingness to concur in the measures which may be adopted by the other house (x). It is the rule in fact, in both houses, to answer by addresses all special messages which refer to important public events (y); or to matters connected with the interests, property, or prerogatives of the Crown (z), or which call for special legislative action (a). But in regard to messages relating exclusively to pecuniary aid of any kind, or communicating a minute of council with a

(u) May, 118; 37 E. Com. J. 903; 103 *Ib.*, 888.

(v) May, 457; 37 E. Com. J. 903; 70 *Ib.*, 70.

(w) Case of Mr. Whalley, 1874 (129 E. Com. J., 11, 28, 71). In this case the parliament, of which Mr. Whalley was a member, was dissolved, and a new parliament met, when the chief justice made his report. He had doubts, however, as to the necessity of making a report in this case; but he preferred to "run the risk of appearing to do that which may be necessary to the possibility of appearing to be wanting in deference to the house." The select committee reported that the chief justice had fulfilled his duty in reporting the matter to the house, and that there was no necessity for giving it further attention. Also case of Mr. Gray in 1882; 137 E. Com. J., 487, 490, 491, 504, 509. See May, 210.

(x) Sen. J. (1867-8), 212, 214; 114 Lords' J., 78.

(y) 82 E. Com. J., 114; 239 E. Hans. (3) 274, 290, 870, 1038. Leg. Ass. J. (1861), 72, 84, &c. Can. Com. J. (1867-8), 224.

(z) 85 E. Com. J., 466; 89 *Ib.* 578.

(a) 85 E. Com. J., 214; Can. Com. J. (1867-8), 189, 201; *Ib.* (1880), 40 (Irish relief).

270 VOTES OF THANKS TO DISTINGUISHED PERSONS.

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recommendation, it is only necessary for the House of Commons to consider them in committee of the whole.

Letters from distinguished individuals, in return for thanks of parliament communicated to them by order of either house, are always laid before the same by the speaker, and being read are ordered to be regularly entered in the journals. Such thanks are frequently voted to distinguished officers of the army and navy who have performed signal services which demand some official recognition from parliament. Such motions should be made by members of the government concurrently in the two houses. Several cases occurred in Canada during the war of 1812-15, and the rebellion of 1837-38. In 1885 the thanks of the two houses were unanimously given to Major-General Middleton, C.B., and to the officers and men of the militia forces of Canada for their services in suppressing the rebellion in the Northwest Territories (c).

(b) May, 451, 588. 86 E. Com. J., 488, 491; 105 *Ib.* 539, 544; 129 *Ib.* 83, 96, (Sir Garnet Wolseley); 137 *Ib.*, 112, 116, 120. (Marriage of Prince Leopold); Can. Com. J. (1867-8), 347; *Ib.* (1869), 22, 29; *Ib.* (1877), 39, 44, 324, 333. Low. Can. J. (1792), 108; *Ib.* (1799) 140, 150. Can. Com. J. (1882), 414, 509.

(c) Can. Com. J. (1885), 666; Sen. J. 411. General Middleton's reply was communicated to the House of Commons by the speaker. Can. Com. J. (1886), 134. In England, motions for votes of thanks to members or others, have a particular procedure, and members of the house who have received its thanks for public service, have some slight special privileges. May, 178, 256.

CHAPTER VIII.

RELATIONS BETWEEN THE TWO HOUSES.

I. Messages.—II. Conferences.—III. Joint Committees.—
IV. Interchange of Documents.—V. Relations Between
the Two Houses.—VI. Tacks to Bills of Supply.—VII.
Initiation of Measures in the Senate.

I. Messages.—Parliament consists of the King, Senate and the House of Commons. The two houses have nearly co-ordinate powers but each has its own rules and methods of procedure and has frequent occasions to communicate with the representative of the Crown and with each other. The subject of communications from and to the governor-general by the houses, or one of them, has been already discussed. The houses have almost constantly, during sessions, to send and receive messages in regard to bills which require the assent of each house. Other modes of communication are also sometimes necessary, such as, a conference, a joint committee or select committee of both houses, communicating with each other. (a). A message is the most frequent mode of communication. It was formerly the practice to communicate all messages to the upper chamber through a member of the commons, whilst the legislative council transmitted the same through a master in chancery (b). It was soon, however, found more convenient to send all bills to the upper house by a clerk at the table (c). Addresses continued to be carried to the upper house by

(a) May, 423.

(b) L. Can. J. (1792), 42, 174; Leg. Ass. (1841) 168, r. 24; *Ib.* (1852-3) 995; Leg. Coun. J. (1841), 48, 59. The clerk and the clerk's assistant of the senate are appointed masters in chancery; Sen. J. (1867-8) 61; *Ib.* (1884), 3. Also the law clerk; *Ib.* (1883), 15.

(c) Leg. Ass. J. (1857), 411, 412; *Ib.* (1860), 403, 430; &c.

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one or more members of the house up to a recent period (*d*); but it has been the practice since 1870 to transmit all messages through the clerks of the two houses (*e*). The following are the rules of the Senate on this subject (*f*).

"92. One of the clerks of either house may be the bearer of messages from one house to another."

"93. Messages so sent are received at the bar by one of the clerks of the house to which they are sent, at any time whilst the house is sitting, or in committee, without interrupting the business then proceeding."

The Commons have the following rules:

"83. A master in chancery attending the Senate shall be received as their messenger at the clerk's table, where he shall deliver the message wherewith he is charged."

"84. A clerk of this house may be a bearer of messages from this house to the Senate, and messages from the Senate may be received at the bar by a clerk of this house, as soon as announced by the sergeant-at-arms, at any time whilst the house is sitting, or in committee, without interrupting the business then proceeding."

In this way, all bills, resolutions, and addresses are sent and received—whether the mace is on or under the table—without disturbing the business of either house. The clerk at the table is informed of the presence of the messengers from the other house, and receives the message at the bar. If any business is proceeding at the time, the speaker will not interrupt its progress, but will announce the message (which is handed him by the clerk) as soon as a convenient opportunity presents itself (*g*). A message from the governor-general or the deputy governor will, however, interrupt any proceeding, which will again be taken up at the point where it was broken off, (*h*)—except, of course,

(*d*) Can. Com. J. (1867-8), 109, 225.

(*e*) *Ib.* (1871), 294, 301.

(*f*) Sen. Rule 92, 93.

(*g*) 131 E. Com. J. 290; Can. Com. J. (1877), 244.

(*h*) 129 E. Com. J. 66; Can. Com. Jour. 1891, July 31.

in the case of a prorogation, when the message will interrupt all proceedings for that session (*i*).

Whenever either house desires the attendance of a senator or a member before a select committee, a message must be sent to that effect (*j*). Leave must be given by the house to which the member belongs, and it is optional for him to attend (*k*). In case of the attendance of one of the officers or servants of either house is required the same course will be pursued; but it is not optional for them to refuse to attend (*l*).

In 1870, a message was sent to the senate requesting that they would give leave to their clerk to attend the committee of public accounts, and lay before that committee an account of the sums paid to each member of the senate as indemnity and mileage (*m*). The senate did not comply with the request, but simply communicated to the commons a statement on the subject (*n*). In a subsequent session the senate agreed to a resolution, instructing the clerk to lay before that house at the commencement of every session, a statement of indemnity and mileage, and to deliver to the chairman of the committee of public accounts a copy of such statement, whenever an application may be made for the same (*o*). In answer to a message from the house in 1880, the senate gave leave to their clerk to furnish details of certain expenditures of their own for the use of the same committee, adding at the same time an expression of opinion that "the critical examination of the details of such disbursements was,

(*i*) 131 E. Com. J. 424. Can. Parl. Deb. (1873), 210-11;

(*j*) 131 E. Com. J. 87, 100, 168; Sen. R. 94. Can. Com. J. (1877), 142, 178, 234; *Ib.* (1899) 152. See Chapter on select committees.

(*k*) 131 E. Com. J. 93, 100, 191; Sen. R. 91; Sen. J. (1877), 129, 203; Can. Com. J. (1877), 150, 182, 237; Sen. J. (1882), 159.

(*l*) 113 E. Com. J. 255; Sen. R. 94 (see chap. on select committees); Can. Com. J. (1870), 210; *Ib.* (1890), 104.

(*m*) Can. Com. J. (1870), 210; Sen. J. (1870), 130.

(*n*) Can. Com. Jour. (1870), 265; Sen. Jour. (1870), 149; Parl. Deb. 1184, 1214.

(*o*) Sen. Jour. (1872), 96; Deb. 92.

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in the interest of the harmonious relations of the two houses, best left to the house by whose order payment is made" (*p*). In the session of 1890, the House of Commons requested the attendance of one of the officers of the senate before the committee of public accounts to give information respecting the distribution of stationery and the expenditure for contingencies in that house. The senate replied that the matter was under consideration of their own contingent committee and that as soon as a report was submitted by that committee it would be transmitted to the Commons. Subsequently the report was laid before the House of Commons (*q*).

II. Conferences.—A conference, whereby both houses are brought into direct intercourse with each other by deputations of their own members, is a formal method of communicating matters from one house to the other; and while the managers are at the conference the deliberations of both the houses are suspended.

Either house may demand a conference upon subjects which, by the usage of parliament are allowed to be proper for such a proceeding. Among the matters for which a conference may be desired there might be mentioned as examples; (1) to communicate resolutions or addresses to which the concurrence of the other house is desired; (2) concerning the privileges of parliament; (3) in relation to the course of proceedings in parliament (4) to require or to communicate statements of facts on which bills have been passed by either house; (5) to offer reasons for disagreeing to, or insisting on, amendments. But as the objects of such conferences is to maintain a good understanding between the houses, it is not proper to use them for interfering with or anticipating the proceedings of one another before the fitting time. While a bill or other

(*p*) Can. Com. J. (1880), 130, 158-9, 242; Sen. J. 112.

(*q*) Can. Com. J. (1890), 104, 136, 502; Sen. Deb. 130, 149. The report never came from the Senate until the last day of the session, when the committee on public accounts had finally reported.

matter is pending it is irregular to demand a conference upon it (*r*). In demanding a conference, the purpose for which it is desired should be explained lest it should be on a subject not proper for a conference (*s*). Conferences were formerly demanded in order to offer reasons for disagreeing to amendments to bills but by the commons rule (85) messages between the two houses were substituted for conferences—unless a conference should be demanded by the Senate. If there should be a disagreement on an amendment to a bill it goes back to the other house for a reconsideration of the points of difference. If the disagreement continues the originating house may appoint a committee to draw up reasons for its disagreement. Formerly there was a conference but this practice has been discontinued except in very urgent cases. If an agreement cannot be reached the bill drops. The House of Commons' rule on this subject is as follows:

"85. (1) In cases in which the Senate disagree to any amendments made by the House of Commons, or to which the House of Commons has disagreed, the House of Commons is willing to receive the reasons of the Senate for their disagreeing or insisting (as the case may be) by message, without a conference, unless at any time the Senate should desire to communicate the same at a conference.

(2) Any conference between the two houses may be a free conference.

(3) When the house requests a conference with the Senate, the reasons to be given by this house at the same shall be prepared and agreed to by the house before a message be sent therewith." Conferences have not been frequent but occasionally it has been found useful to resort to this method of maintaining a good understanding between the two houses and facilitating the passage of

(*r*) May, 437; In the days of conflict between the two houses in Lower Canada, it was often the practice to nominate a committee to keep up a good correspondence between the two houses. Ass. J. (1819), 9, 10.

(*s*) May, 433.

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important measures. In the session of 1903 the bill to amend and consolidate the railway law formed the subject of a conference. The bill was sent to the Senate which body also passed the same with certain amendments.

The bill, so amended, was, on the 20th of October, returned to the House of Commons where certain of the amendments were agreed to and others were disagreed to, one other amendment being amended by the house. The Senate accepted this amendment but insisted upon others. A select committee was thereupon appointed by the house to draw up reasons, to be offered at a proposed conference with the Senate, for disagreeing with the senate amendments, so insisted upon. The committee reported, on the 22nd of October, its reasons for such disagreement and the same were agreed to by the house. A motion was then made and adopted that a conference be desired with the Senate for the purpose of communicating to them the reasons for its nonconcurrence. A message was sent to the Senate accordingly. Upon receipt of this message the Senate sent a message to the House of Commons agreeing to a conference. The Senate in the message named six senators as managers on the part of the Senate and the Commons thereupon adopted a motion appointing twelve managers on the part of the house to meet the managers appointed by the Senate, at the time and place fixed for the holding of the conference, it being the privilege of the Senate to name the time and place of meeting as in the Lords' in England. The house was notified by message from the Senate of the time and place of the meeting of the conference. The Senate was notified that the managers from the house of Commons were ready in a certain place, and the names of the managers for the Senate were then called over—and the Senate was adjourned during pleasure

(t) May, 438. I E. Com. J. 154. 9 *ib.* 348. It is an old rule that the number of the commons named for a conference is always double that of the Lords. I E. Com. J. 154.; Can. Leg. J. (1861), 114, 117. The number on the part of the lords was generally eight, of the commons sixteen. See Ilbert on Legislative Methods and forms (1901) p. 104.

while the managers attended the conference. In the Commons, the speaker duly announced that the time for the conference had arrived, and the clerk called over the names of the managers on the part of the house and they withdrew. The Speaker declared the sitting of the house suspended during the conference.

On the return of the managers to the House of Commons, Mr. (later Sir Charles) Fitzpatrick, of the managers on the part of the Commons, reported that they had attended the conference and delivered to the managers on the part of the Senate, a copy of the reasons of the house for its disagreement.

In the Senate the Hon. Sir Mackenzie Bowell presented a report from the conference which was then read by the clerk. On motion, the Senate insisted on its amendments and a conference was demanded with the Commons for the purpose of furnishing that house with the reasons for such insistence—and a message was thereupon sent to the Commons to that effect. The managers on the part of the Senate and the place of meeting were the same as at the first conference. The House of Commons, having agreed to the second conference with the same managers on its part as before, a message to that effect was sent to the Senate. The second conference was held and the reasons of the Senate were delivered to the managers of the Commons and were duly reported to the Commons. The Commons then adopted a message to the Senate requesting a free conference. The Senate having agreed to a free conference a message to that effect was sent to the Commons. The free conference was held forthwith; the managers on the part of the both houses being the same as before, and similar proceedings as before, in regard thereto, took place. On the following day (23rd of October), the managers on the part of the Commons reported an agreement and the house, on motion, concurred in their report and sent a message to the Senate to that effect. The Senate on its part having agreed to the report of the free conference made to it, and a message having been sent

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to the house accordingly, the bill as so amended was finally passed and became law (*u*).

It is not "customary nor consistent with the principles of a conference to appoint any members as managers unless their opinions coincide with the objects for which the conference is held" (*v*). It is also an ancient rule that the conference can be asked only by that house which is at the time in the possession of a bill (*w*) or other matter (*x*).

It is not necessary, however, in requesting a conference to state at length the purpose for which it is to be held; it is sufficient to specify it in general terms, so as to show the necessity for having it held (*y*). When the time has come for holding the conference, the clerk will call over the names of the managers, who will proceed forthwith to the place of meeting (*z*). The duty of the managers on the part of the house proposing the conference is confined to the delivery to the managers of the other the communication, whatever it may be, and the duty of the managers of the other house is merely to receive such communication. They are not at liberty to speak, either on the one side to enforce, or, on the other, to make objections to the communication. One of the managers for the house proposing the conference (the member first named, unless otherwise agreed upon), first states the occasion of it in his own words, and then reads the communication, and delivers it to one of the managers for the other house. When the conference is over the managers return to the respective houses and report. Such reports should always be made

(*u*) Can. Com. J. (1903) pp. 705, 706 *et seq.*; Sen. J. (1903) 502-7 *et seq.* See also following instances of conferences in Canadian practice since 1840: Leg. Ass. J. vol. 19, pp. 105, 114, 117, 138, 376; *Ib.* vol. 20, p. 169; *Ib.* vol. 22, pp. 285, 286, 287. The last occasion of a conference in Canada before that of 1903 was in 1863.

(*v*) May, 439; I. E. Com. J. 350; 122 *Ib.* 438.

(*w*) I. E. Com. J. 114; 13th March, 1575.

(*x*) 2 *Ib.* 581; 9 *Ib.* 555.

(*y*) 4 Hatsell, 50, 51; 88 E. Com. J. 488; 89 *Ib.* 232; Leg. Ass. (1861), 105.

(*z*) 113 E. Com. J. 182; 150 E. Hans. (3), 1859.

in accordance with correct parliamentary practice (a). The Senate has the following rule:—

95. "None are to speak at a conference with the House of Commons but those that are of the committee; and when anything from such conference is reported, the senators of the committee are to stand up."

The report of the managers for the house at whose request the conference has taken place is, in substance, that they have met the managers for the other house, and have delivered to them the communication with which they were charged (b).

The report of the managers for the other house is substantially that they have met the managers for the former, and that the purpose of the conference was to make a certain communication which they have received, and which they then proceed to lay before the house (c). The report of the managers is then to be considered, and disposed of by the house to which it is sent, which may take place immediately or be postponed to a future time (d). The result will be communicated to the other house by a message (e). Sometimes a second conference will be necessary when the first has not lead to an arrangement between the houses (f). A free conference may be held when the two conferences have been fruitless (g). Here the managers are at liberty to urge arguments, to offer and combat objections, and, in short, to attempt by personal persuasion and argument to effect an agreement between the two houses

(a) May, 439. 113 E.Com. J. 182; Can. Leg. Ass. J. (1863, Aug. sess.), 287. Sometimes the managers appear from the Canadian journals to have made no report.

(b) 113 E. Com. J. 182.

(c) Sen. Jour. (1903), 502.

(d) Leg. Coun. Jour. (1861), 92, 93, 97, 98, 104; 90 Lords' Jour. 171.

(e) 113 E. Com. J. 308.

(f) 91 Eng. Com. J. 681. On one occasion the Eng. Houses held no less than four ordinary conferences; 92 *ib.* 466, 512, 589, 646.

(g) Can. Com. Jour. (1903) 705.

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(h). When a free conference is held business is suspended in both houses.

The lengthy and cumbersome forms of procedure, illustrated by the proceedings of the conference of 1903, led to the amendment of the rules of the house and section 2 of rule 85 was the result. "(2) Any conference between the two houses shall be a free conference." This change, adopted in the session of 1906, has probably rung the death knell of the old system of conferences with its numerous messages and its formal meetings (i). A free conference, as its name implies, permits the managers to discuss fully the differences between the two houses and thus enables them to reach an agreement. If a free conference should prove unavailing the chances of an agreement are probably hopeless (j).

III. Joint Committees.—The practice of appointing joint committees of the Senate and Commons on various subjects, on which united action is desirable, has been found to work most advantageously (k). Such committees are now appointed every session with respect to the library and printing

(h) Eng. Com. Jour. 771, 763, 787. For full details of proceedings of conferences, see 4 Hatsell, 26; May, chap. XVII; Cushing, s. 820 *et seq.*

(i) Can. C. Hans (1906) July 10, page 7603. Sir Wilfred Laurier's explanation of this amendment is as follows "Heretofore there has been a lot of red tape about these conferences. According to the existing law we have to pass motions here and give written instructions from the house to the managers of the conference, representing this house and therefore we are now providing for a free conference without any instructions. All the instructions are contained in the reasons for the disagreement." The old conferences in England were conducted with a great deal of formality and gravity as befitted such an important function. May, 440 and Notes.

(j) May, 440.

(k) 3 Hatsell, 38; 131 Eng. Com. J. 282, 289, 292, 294; 136 *ib.* 281, 315, 318, 320; 138 *ib.* 116, 143. See Railway Transfer and Amalgamating bills, 1873; 128 E. Com. J. 62, 72, 178, 189, 193, 304, 318; Lords' J. 62, 277, 284, 304, 311, 587, 602. Consult also Can. Com. (1870), 56, 57, 60, 68; *ib.* (1880), 147, 152, 177.

of parliament. In 1885, a joint committee was appointed to examine and report upon the consolidation of the statutes. In 1892 the whole criminal law was considered and codified in the same way (*l*).

Sometimes it may be found convenient to put committees of both houses in communication with each other. This proceeding is especially useful in cases affecting the business of houses; for instance, when it is necessary to revise such rules on private bills as are common to both. But no committee can regularly, of its own motion, confer formally with a committee of the other, but must obtain all the necessary authority from the house itself. The proceedings in each house will be communicated to the other by message (*m*).

No positive rule exists as to the exact number to be appointed from each house, but it is now generally equal. In the British parliament the two houses appoint an equal number.

The House of Commons will not consent to unite their committee with that of the Senate when the matter is one affecting the revenue or public expenditures. (*n*).

In case it is necessary to amend the report of a joint committee, the proper and convenient course is to refer the matter back to the committee (*o*).

IV. Interchange of Documents.—In case the senate or Commons require a copy of a report of a select committee or other official documents that may be in possession of

(*l*) Chapter on select committees. Sen. J. (1885), 161, 211, Com. J. 223, 250.

(*m*) Can. Com. J. (1889), 34, 77, 107; 75. (1901), 33, 37; Sen. Deb. (1897), 407, 408, Can. Com. J. (1914), p. 377.

(*n*) Can. Com. J. (1874), 63, 111; Parl. Deb. (1874), ap. 24. In this case the question to be considered was the passage of a prohibitory liquor law; committees were formed in each house, but the commons after discussion thought it unadvisable to unite their committee with that of the senate, as the result might effect the revenue, over which they claim exclusive control.

(*o*) Sen. Hans. (1880), 480; Sen. J. 238, 255; Com. J. 349.

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one house or the other, a message will be sent to that effect (*p*). When the message has been reported to the house, it may be immediately taken into consideration, and a copy of the document ordered to be communicated to the other house (*q*). It is also usual to ask that it be returned to the house to which it belongs; and this will be done by message in due time (*r*). If one house desires any return relating to the business or proceedings of the other, neither courtesy nor custom allows such a return to be ordered, but an arrangement is generally made by which the return is moved for in the other house, and after it has been presented, a message is sent that it may be communicated (*s*) or a message requesting that a return on certain matters may be communicated; and such return is prepared and communicated accordingly (*t*).

V. Relations Between the Houses.—The respective rights and privileges of the two houses of Parliament are now so well understood that the work of legislation is never seriously impeded by conflicts with regard to their respective powers. Before the period of concession of responsible government, the legislative council and legislative assembly, especially in Lower Canada, were frequently at a deadlock.

Questions of Expenditures and Taxation.—In a few instances only has the upper chamber attempted to interfere with the fiscal and financial measures which necessarily emanate from the popular branch.

In 1841 an act providing for the payment of salaries of officers of the legislature, and for the indemnification of members, was amended in the legislative council by

(*p*) 131 E. Com. J. 232, 339, 389. Can. Com. J. (1876), 132; *ib.* (1877), 274; *ib.* (1878), 126; Sen. J. (1878), 133, 139.

(*q*) 131 E. Com. J. 339. *Ib.* 298; Sen. J. (1880-1), 97, 105; Com. J. 124.

(*r*) Can. Com. J. (1878), 147, 294; Sen. J. 140.

(*s*) May 538. III E. Com. J. 120.

(*t*) May 538, 123 E. Com. J. 212. 127 *Ib.* 141.

striking out the clause paying the members out of the general revenues. The action of the council in amending a money bill was resented by the assembly. The amended document was seized by a member and kicked out of the house. The same bill, with a change of title, was then sent back to the council, who receded from their former position and agreed to the measure (v).

In the session of 1851, the Supply Bill contained the following condition attached to the grant for defraying the expenses of the clerk of the legislative council: "Provided that no additional income shall be paid to the said clerk in the form of fees, perquisites, or contingencies." The committee of the whole, in the legislative council, made a special report on the subject, and the council thereupon instructed them to agree to the condition, inasmuch as great inconvenience would result from the stoppage of supplies. At the same time the following declaration was entered on the journals of the council:

"That, to prevent any ill consequences in future from such a precedent as that of this house passing, without amendment, a bill containing such a condition, this house has thought fit to declare solemnly and to enter upon its journals for a record in all time coming, that this house will not hereafter admit upon any occasion whatsoever, of a proceeding so contrary to its privileges, its dignity and its independence of the other house of the provincial parliament" (w).

In the session of 1856, the supply bill contained a provision for erecting public buildings at Quebec, as the seat of government. The majority in the legislative

(v) Leg. Ass. J. (1841), 632-3, Parl. Deb., Montreal Gazette, Sept. 21st, also June 20th, 1856 (Mr. Sandfield Macdonald). For summary process of kicking out a bill, see I E. Com. J. 560, 17 Parl. Hist. 512-515, Palgrave, The House of Commons, 24.

(w) Leg. Council J. (1851), 215. The speaker himself directed the attention of the council to the subject, but he and others did not claim the right of amendment, but only of entire rejection—an extreme course which they did not think it expedient to take for the reasons given in the declaration. Montreal Gazette, Aug. 28, 1851.

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council were opposed to the policy of the assembly on this question, and took strong ground against the passage of the bill, whilst it contained this obnoxious item. The majority carried a resolution defeating the bill on the ground that the house had not been "consulted on the subject of fixing any place for the permanent seat of government of the province." A strong protest was, however, entered on the journals by the minority after the defeat of the bill. The question was very temperately discussed in the assembly, and it was finally decided to introduce a new supply bill without the vote for the public buildings; and to this bill the council agreed (x).

In 1859 the Legislative Council refused to vote the supplies on the ground that the Council could not consider them until the government had made known its intention with respect to the seat of government, but subsequently the supplies were voted (y).

In the third session of the dominion parliament strong objections were taken to the bill imposing new customs and excise duties, and an amendment was proposed to postpone the second reading for six months. After a long debate, in which members of the ministry took strong ground against a motion interfering with the privileges of the Commons in matters of taxation, the amendment was negatived by a small majority (z). In the Province of Quebec the Legislative Council in 1879 refused to pass the supply bill on the ground that it believed it "to be its duty to delay the bill until the Lieutenant-Governor should select new constitutional advisors." A deadlock ensued and lasted until the ministry was forced to retire, the governor refusing them a dissolution. A new administration was formed and the bill was passed. The right of the council to refuse to pass the supply bill was not

(x) Leg. Ass. J. (1856), 738, 746. Leg. Coun. J. 414, 418. Parl. Deb. 249, 260, 462.

(y) Leg. Council J. and Parl. Deb. 25th. Apl., 1859.

(z) Parl. Deb. (1870), 1437, 1487.

contested, (a) and the power of the governor to refuse a dissolution was taken for granted.

Since 1870, no attempt has been made in the Senate to throw out a tax or money bill. The principle appears to be acknowledged on all sides, that the upper chamber has no right to make any material amendment in such a bill, but should confine itself to mere verbal or literal corrections (b). Without abandoning their abstract claim to reject a money or tax bill when they feel they are warranted by the public necessities in resorting to so extreme a measure, the Senate is now practically guided by the same principle which obtains with the House of Lords and acquiesces in all those measures of taxation and supply which the majority in the House of Commons have sent up for their assent as a co-ordinate branch of the legislature. The Commons, on the other hand, acknowledge the constitutional right of the Senate to be consulted on all matters of public policy (c).

The Senate doubtless aims to keep closely within its constitutional functions. That house has declined to appoint a committee to examine and report on the public accounts, on the ground that while the Senate could properly appoint a committee for a specific purpose—that is, to inquire into particular items of expenditure—they could not nominate a committee, like that of the Commons, to deal with the general accounts and expenditures of the dominion—a subject peculiarly within the jurisdiction of the Lower House (d). It is legitimate, however, for the Senate to institute inquiries, by their own committees, into certain matters or questions which involve the expenditure of public money (e). But the committee

(a) Todd, Parl. Govt. in Br. Colonies. Quebec Leg. Council, 3, (1879), 186-90, 220-1.

(b) 3 Hatsell, 147-155; Todd, Parl. Govt. in England, i. 808.

(c) See remarks of Lord Palmerston on paper duties repeal bill, 159 E. Hans. (3), 1389. Also Mr. Collier, 1413; Lord Fermoy, 1453.

(d) Sen. Deb. (1879), 816-818.

(e) Todd, i. 697; 129 E. Hans. (3), 1097; 164 *Ib.* 394, 401; Sen. J. (1878), 59, 62.

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should not report recommending the payment of a specific sum of money, but should confine themselves to a general expression of opinion on the subject referred to them (*f*).

The English authorities lay it down distinctly: "The Lords express their opinion upon the public expenditure, the method of taxation and of financial administration, both in debate and by resolution, and they investigate these matters by their select committees. Nor do the Commons attempt to exclude the Lords from inquiries in such matters by not transmitting to them reports and papers relating to taxation, or by declining to permit the attendance of members to give evidence on these subjects before a select committee of the Lords" (*g*).

Bills Rejected by the Senate.—The number of bills of public importance rejected by the Senate since confederation is small compared with the large number coming under their review every session. In the latter part of the session of 1868 they refused to consider certain measures assimilating and revising the laws relating to criminal justice, on the ground that it was impossible at that late period of the session to give such measures that careful deliberation and examination which their importance demanded (*h*).

(*f*) The Gatineau booms and piers committee in 1875 recommended a payment of \$1,000 to one Palen; the report was amended so as to recommend the matter simply to the favourable consideration of the government; Sen. J. (1875), 218, 273; Deb. 718-722. See also Beveridge & Tibbitts' claim; Hans. (1880-81), 688. The committee here simply and properly stated the conclusion at which they had arrived after investigation of the facts.

(*g*) May, 573. Todd, i, 696. In 1898 the Senate appointed a committee to inquire into the expenditure of subsidies granted to the Drummond Co. R.R. Co. In this case the Commons had also a select committee investigating matters relating to the same subject. The Senate justified its action on the ground that it had rejected a bill on the subject during the previous session and it was expedient to shew that the Senate had reason for its action on that occasion. Sen. Deb. (1898). See also May, 575-577 etc.

(*h*) Parl. Deb. Ottawa Times (1867) p. 285.

Since that period the Senate has rejected or greatly amended many important government measures. In some instances the amendments have been accepted by the government majority in the House of Commons rather than delay the enactment of the measure. In other cases the government has allowed bills to drop rather than accept the Senate amendments. In 1874 the Senate threw out a bill altering the electoral divisions of a country. In 1875 bills respecting the Esquimalt & Nanaimo railway and county court judges in Nova Scotia. In 1877 a bill respecting the auditing of public accounts. In 1878 a bill creating the office of attorney-general. In 1879 a bill respecting two additional judges in British Columbia. In all the cases the Senate differed from the majority in the Commons on grounds of public policy or public necessity.

In the session of 1878 the Commons sent up a bill to amend the Canadian Pacific Railway Act of 1874. The Senate amended the bill so as to require the assent of the two houses to an "contract or agreement made by the government for the use of the Pembina branch." When the amendments were considered in the Commons the premier Mr Mackenzie asked the house to disagree with them on the ground that "it is contrary to the uniform practice of parliament that contracts into which the executive is authorized to enter should be made subject to the approval of the upper chamber, etc." The Senate submitted in their answer several precedents justifying, in their opinion, their action, and at the same time urged that "without the amendment the bill would provide for the disposal of public property for a term of years without obtaining the sanction of both houses to the terms of the transfer." It was also urged that the practice referred to in the Commons message "never extended beyond contracts for the completion of public works, for which money voted by the Commons is in the course of being expended, other contracts having been constantly submitted for the approval

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of both houses." The result was that the government refused to proceed with the measure. (*i*).

In 1879, a somewhat similar bill was passed through parliament with a clause providing that "no such contract for leasing the said branch railway shall be binding until it shall have been laid before both houses of parliament for one month without being disapproved, unless sooner approved by a resolution of each house" (*j*). In 1889, Senate postponed for six months the second reading of a government bill to provide for the building and working of a railway from Harvey to Salisbury or Moncton, in New Brunswick (*k*).

In 1897, the Senate rejected a government bill "to confirm certain agreements entered into by her majesty with the Grand Trunk Railway company and the Drummond County Railway company for the purpose of securing the extension of the Intercolonial Railway (*l*). In 1899, however, the same house agreed to bills having the same object in view on the ground that the conditions of the arrangement were more favourable to the dominion (*m*). In 1898, the Senate refused "to confirm and ratify an agreement between her majesty and William Mackenzie and Donald D. Mann, and to incorporate the Canadian Yukon Railway Company (*n*). In 1899, the upper house negatived a bill respecting representation in the House of Commons, on the ground that it was inexpedient to proceed with the bill until after the taking of the next decen-

(*i*) Can. Com. J. (1878), 263, 284; Sen. J. 275-6; Can. Com. Hans. 2454, 2459, 2548, 2553-58; In the Commons, Sir John A. Macdonald and others supported the Senate's action.

(*j*) 42 Vict., c. 13, s. 1. This provision is in accordance with English practice; 25 and 26 Vict., c. 78, s. 2., Imp. Stat.; Todd, i. 493. One example is given in the same work of a contract being laid before both houses of the imperial parliament; 28 and 29 Vict., c. 51 (Dockyards at Portsmouth and Chatham).

(*k*) Sen. Deb. (1889), 690-715. This bill had passed the Commons

(*l*) Sen. J. (1897), 217, 218; Deb. June 23rd.

(*m*) Sen. Deb. (1899),

(*n*) *Ib.* March 22-30, 1898.

nial census in 1901, when the representation of the provinces in the House of Commons would be readjusted in accordance (o) with section 51 of the B.N.A. Act of 1867. The same course was followed in 1900 when the same bill was again sent up from the House of Commons (p). In 1900, government bills respecting judges of provincial courts (q) and postage on newspapers passing from one province into another also failed to pass in the Senate (r). In 1912 a bill from the Commons entitled "An Act to encourage and assist the Improvement of Highways" was amended in the Senate and returned for concurrence. The Commons disagreed with two of the Senate amendments but the Senate insisted upon them, giving a number of reasons therefor. The bill was thereupon dropped (s). Substantially the same measure was passed in 1913 by the Commons and sent to the Senate for concurrence. The Senate again amended the bill as before but the Commons disagreed thereto and, the Senate again insisting upon them, the bill again dropped (t). In 1913, the Senate rejected an important government bill from the Commons, intitled "An Act to authorize measures for increasing the effective Naval Force of the Empire" by adopting an amendment that, "this house is not justified in giving its assent to this bill until it is submitted to the judgment of the country".

In the session of 1914, the House of Commons adopted an address to the king praying for certain amendments to the British North America Act respecting representation in the Senate and a message was sent to the Senate requesting their honours to concur therein. The Senate by message informed the Commons that they had agreed to the address with an amendment to the effect that the

o *Id.* 1899, 734, 807, 833, 897.

p *Id.* 1900, March 21-24.

q *Sen. J.* 1900, 361, 369.

r *Sen. Deb.* 1099-1113.

s *Sen. J.* 1911-12, pp. 346, 375, 382, 384.

t *Sen. J.* 1912-13, pp. 474-9. *Com. J.* 1912-13, pp. 789-90.

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proposed act should not come into force until the termination of the existing parliament. The house, refusing to concur in this amendment to the address and the Senate insisting upon it, the address was dropped. In the following session (1915), an address of a similar nature was sent by the house for the concurrence of the Senate. The latter body concurred therein with an amendment precisely the same as that of the session of 1914. The house, however, agreed to the amendment and the address, as so amended, was finally adopted by both houses (*u*).

VI. Tacks to Bills of Supply.—In the old days of conflict between the Lords and Commons, and between the legislative councils and assemblies of Canada, it was not an uncommon practice to tack on to bills of supply and other bills, matters entirely foreign to their object and scope. Such a system was at variance with correct parliamentary usage. The journals of the Lords abound in examples of the condemnation of so dangerous a system; and from the first establishment of colonial assemblies it appears to have been a standing instruction to the governors to enforce the observance of the strict usage by refusing their assent to any bill in which it might be infringed.

The Senate has the following rule upon this subject, 71. "To annex any clause to a bill of aid or supply, the matter of which is foreign to and different from the matter of the bill, is unparliamentary."

No modern example can be found in the English or Canadian journals of a practice now admitted to be unconstitutional in principle and mischievous in its results. The House of Lords' standing order No. 59 declares that such a practice is not only unparliamentary but "tends to the destruction of the Constitution of the government" (*v*).

(*u*) Sen. Deb. 29 May, 1913, Sen. J. (1913) pp. 516-7. Can. Com. J. (1914) pp. 722-728. Sen. J. (1914) pp. 496-503. Can. Con. J. (1915, March 25th-Apr. 10th) Sen. J. (1915, March 25th-Apr. 10th).

(*v*) May, 585-6., Christie III, 455., L. C. Jour., 26 Nov. 1832., 16 Lords' J. 369. 17 *Ib.* 185. 139. Can. Com. J. 320., 159 E. Hans. (3), 1550., 46 L. J. 342., 62 E. C. J. 12.

VII. Initiation of Measures in the Senate.—From the necessity of introducing all financial and fiscal measures in the lower house, directly responsible to the people, the great bulk of legislation is first considered and passed in the Commons, and the Senate, frequently for weeks after the opening of Parliament, have had very few bills of an important character before them. The consequence is that many measures have been in past years brought from the Commons at a very late period, when it was clearly impossible to give them that full and patient consideration to which legislation should be submitted before adoption. As we have already seen, the Senate refused to consider the criminal laws, in the first session of the dominion parliament, on account of the late period at which they were brought up. The question of initiating more important legislation in the upper chamber has been frequently discussed in that body, and committees have even been formed to consider the subject and provide a means of meeting the difficulty (*x*). An effort has, however, been made in recent years to increase the amount of legislation initiated in the Senate, notably in the sessions of 1880-81 and 1882 *x*, and it seems to be generally agreed that, both in the interests of applicants for private bills and of good legislation upon other matters, it would be desirable to initiate a larger proportion of bills in that body. Divorce bills are, by usage, always first introduced in the Senate and that house, through its Standing Committee on Divorce, gives careful attention to such bills.

x Sen. J. 1887-8, 194, 200; *J*. 1874, 109, 113; Deb. 1874, 196. The committee of 1867-8, of which Hon. Sir Alex. Campbell was chairman, called on the government to originate as many measures in the Senate "as the law and usage of parliament will permit" in order that that house should "adequately fill its place in the Constitution." S. J. 261.

x Sen. Hans. 1880-81, 762-3; *J*. 1882, 16, 29.

CHAPTER IX.

MOTIONS AND QUESTIONS: AMENDMENTS.

- I. Motions and Notices of Motions.—II. Motions Relating to the Business of the House.—III. Questions of Privilege.—IV. Want of Confidence Motions.—V. Motions for Adjournment under Rule 39.—VI. Questions put by Members.—VII. Amendments.—VIII. Dilatory Motions.—IX. Renewal of a Question During a Session.

I. Motions and Notices of Motion.—The determination or opinion of a legislative body is expressed by the adoption of a motion or resolution, proposed by some member in accordance with the rules of procedure.

The Speaker, as presiding officer, puts the motion and it is decided by the votes of the members. When a member proposes to bring any matter before either house with a view of obtaining an expression of opinion thereon he must make a motion. When the time arrives at which the motion may be made he may speak in its favour before he actually proposes or "moves" it, but a speech is only allowed upon the understanding that he speaks to the question, of which he has given due notice, and that he concludes by proposing the motion formally. Notice of the motion is required, except upon questions of privilege or of urgent public importance, or on matters, by special rule, exempted from notice.

The Senate rules on the subject of Notices of Inquiries and of Motions are quite explicit and very full. They include rules 21, 22, 23, 24, 25, 25A, 25B, and 26. These rules may be summarized as follows:—The notice must be in writing, signed by the senator, who may read it during a sitting and hand it to the Clerk. Certain exceptions to

this rule are allowed. A senator may give notice for another senator. Two days' notice must be given for a new rule or standing order or for amending any rule or standing order; for an address to the governor-general, not merely formal in its nature; for an order for papers not relating to a bill or other matters on the notice or order paper; for the appointment of a special committee or the adoption of a special committee's report; for the second reading of a bill; or of any inquiry, not relating to a bill or other matter in the orders or notice paper.

One day's notice must be given of a motion to suspend a rule or part thereof; for the third reading of a bill, for any substantive amendment of a private bill; for the same in regard to a public bill by a committee of the whole; for the Senate to go into committee of the whole; for the appointment of a standing committee or an instruction to a committee; for the adoption of a report (not merely formal) of a standing committee; for an adjournment of the Senate (other than the ordinary daily or Friday adjournment or one moved under rule 25 for bringing up a matter of urgency; or for adjournment when a motion is under debate, under rule 44. A like notice is required of an inquiry relating to a bill or other matter on the notice or order paper. One senator may give notice for another senator by putting the name of the absent senator on the notice with his own.

No notice is required for any motions mentioned in rule 25, such as, of an amendment to a question; for the committal of a question, for the postponement to a certain day, for the previous question for reading the order of the day, for the adjournment of a debate; for the purpose of bringing up a matter of urgent public importance; for the consideration of Commons' amendments to public bills; for the appointment of a committee to prepare reasons for a disagreement with a Commons' amendment; raising a question of privilege; the first reading of a bill for the discharge, removal or postponement of an order of the day and other motions of a merely formal and unconstitutional nature (1).

1. Senate Rule 25.

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When a question has been once sufficiently considered the Senate will not agree to its renewal. In 1880, a senator rose and gave the usual notice of proposed resolutions, but objection was at once taken on the ground that the matter had been already disposed of otherwise. The Senate finally resolved that "the notice should not be received by the clerk," inasmuch as the subject-matter thereof "had already been considered during the present session and referred to the committee on contingent accounts" (*b*).

In 1915, the Senate established a rule (25A) on this subject, "No question or amendment shall be proposed which is the same in substance as any question or amendment which, during the same session, has been resolved in the affirmative or negative, unless the order, resolution or vote on such question or amendment has been rescinded." Such rescinding cannot be had without five days' notice, and at least two thirds of the senators present vote in favour of recession. Mere irregularities or mistakes may, however, be corrected on one day's notice (*c*). It is not an unusual practice in the Senate—to allow a member, in giving notice, to make remarks of an explanatory character as to the nature of the motion, as to the reason for proposing it, as to the course the member intends to pursue, but no remarks of a controversial or argumentative character should be made, nor will any debate be permitted at such a stage, when the house has had no opportunity of considering the subject-matter of the motion (*d*).

(*b*) Sen. J. (1880), 201-2; Hans. 370-5. See somewhat analogous English case (cited by Mr. Dickey in debate), 7th June, 1858, when Lord Kingston gave notice of certain questions. The lords resolved that the questions had been sufficiently answered, and would not permit the renewal of the subject. May, 300; Can. Com. J. (1869), vol. 2, pp. 217, 218, 219. In this case Mr. Speaker Cockburn ruled a motion, made by Hon. E. B. Wood, seconded by Hon. T. Anglin, out of order on the ground that the house, by rejecting a previous motion of Mr. Blake's, had already decided upon the question. Mr. Blake's motion had been to the same effect as the subsequent one by Mr. Wood. Can. Com. J. s. 4. (1872), 264, 265.

(*c*) Sen. rule, 25B.

(*d*) Can. Parl. Deb. (1870), 766. 164 E. Hans, (3), 175.

The Senate, like the Commons, now requires a motion to be seconded but formerly there was no rule on this subject (e). The Senate has many special rules on the subject of motions, such as, that no motion should have a preamble; that a motion may be withdrawn or modified by leave of the Senate; that a motion for a new rule cannot be adopted unless two days' notice are given and the senators have been specially summoned to consider the same; that one day's notice should be given to suspend a rule or order unless with the unanimous consent of the house (f).

In the House of Commons, when a member has prepared his notice of motion in writing, he hands it to the clerk or clerk assistant, whose duty it is to see that it is in order and to cause it to be inserted in its proper place in the Votes and Proceedings. The Clerk may amend a notice if it is irregular. If any important change is desirable to comply with the rules he will consult with the member or with the speaker of the house who will communicate with the member (g).

Rule 40 of the Commons provides that "Two days' notice shall be given of a motion for leave to present a bill, resolution or address, for the appointment of any committee, or for the putting of a question; but this rule shall not apply to bills after their introduction or to private bills or to the times of meeting or adjournment of the house. Such notice shall be laid on the table before five o'clock, p.m., and be printed in the Votes and Proceedings of that day." A notice sent in on any sitting day will appear in its order of receipt on the Votes and Proceedings on the

(e) Sen. J. (1878) 190-3. *Ib.* (1883), 217, Sen. R., 31.

(f) Sen. Rules 27-30.

(g) A notice of motion may be handed in on the first day of a new parliament as soon as the Speaker is elected. May 243, 247., "A notice, wholly out of order, as for instance containing a reflection on a vote of the house, may be withheld from the notice paper or if the irregularity be not extreme the notice may be printed and reserved for future consideration though in such cases it is the duty of the Clerks at the table to consult the speaker and take his directions," May 243. Senate rule 26 deals with this subject.

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following day and on the order paper on the second day after its receipt at the table. If Saturday is a sitting day the notices handed in on that day will appear on the order paper on Monday.

A motion may be made without previous notice by the unanimous consent of the house (*h*). The following special rule (38) provides for notices of motion for the production of papers. "Notices of motion for the production of papers which the member asking for the same intends to move without discussion, shall be marked by him with an asterisk and shall be placed by the Clerk on the order paper above "Notices of Motions," under the heading "Notices of Motions for the Production of Papers." All such notices when called shall be forthwith disposed of; but if, on any such motion a debate is desired, it will be transferred by the Clerk to the Order of Notices of Motions. A notice of motion may be withdrawn at any time by the member upon merely notifying the Clerk of the house of his desire so to do, but, once a motion has been made, it may be withdrawn only by leave of the house (*i*). "All motions shall be in writing and seconded, before being debated or put from the chair. When a motion is seconded, it shall be read in English and in French by the Speaker, if he be familiar with both languages: if not, the Speaker shall read the motion in one language and direct the Clerk at the table to read it in the other, before debate." (*j*). The motions, being already printed in the notices, it is the practice of members to obtain their motions from the Clerk Assistant, who has them prepared for the purpose of being brought forward. The Speaker proposes the question in the words of the mover and no motion is regularly before the house

(*h*) H. C. Rule 41.

(*i*) H. C. Rule 43.

(*j*) H. C. Rule 42. This rule is held not to apply to merely formal motions, such as an adjournment of the house, of a debate, for the committal of a bill, etc. Motions in committee do not require to be seconded.

until it has been read from the chair. (*k*). When the house has thus become formally seized of the question it may be debated, amended (*l*), superseded (*m*), resolved in the affirmative (*n*), or negative (*o*), or be withdrawn as the house may decide. If a motion be out of order, the speaker will call attention to the irregularity, and refuse to put it to the house under the forty-sixth rule. "Whenever the speaker is of opinion that a motion offered to the house is contrary to the rules and privileges of parliament, he shall apprise the house thereof immediately, before putting the question thereon, and quote the rule or authority applicable to the case."

Consequently, if, on reading the motion, he detects an irregularity, he will at once apprise the house of the fact without waiting to have a point of order raised (*p*).

It seems from the English authorities to be the duty of the speaker to take it for granted that whoever addresses the house will do it in order, and he may well presume therefore, that a member proceeding to speak, when there is no question before the chair, will conclude with a motion and bring himself in order. He sometimes inquires of the member if he proposes to conclude with a motion. But it is manifestly convenient to require that a member should first read his motion, since it might be found, after he had spoken, that his motion was irregular and not properly debatable (*q*). The motion when proposed from the chair must appear in the journals, and if withdrawn, as withdrawn by leave of the house. If a motion is not seconded no entry appears in the Votes and Proceedings as the house is not in possession of it (*r*). If an amendment has been

(*k*) May, 277.

(*l*) Can. Com. J. (1876) 69.

(*m*) *Ib.* (1870), 237; Sen. J. (1876), 132; 121 E. Com. J. 78.

(*n*) Can. Com. J. (1877), 60, 84; 129 E. Com. J. 114.

(*o*) Can. Com. J. (1877), 132; 129 E. Com. J. 112.

(*p*) 76 E. Hans. (3), 1021; 112 E. Com. J. 137; *Ib.* 494.

(*q*) Par. Reg. (62), 290; 224 E. Hans. (3) 1236; Can. Hans. (1879), 1983-5;

(*r*) May, 277.

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proposed to a motion, it must first be withdrawn before leave can be given to withdraw the main motions (*s*). When a member asks leave to withdraw his motion, the Speaker will ask: "Is it the pleasure of the house that the honourable member have leave to withdraw his motion?" If there be no objection the motion is withdrawn and so entered in the journals, but if a member dissents the Speaker will put the question (*t*).

As respects what are known as "complicated questions," they may always be divided into distinct parts, with the consent of the house. No individual member, however, can ask, as a matter of right, that such a question be divided, since the house alone can properly decide whether it is complicated or not and into how many propositions it may be divided. The fact is, the necessity of dividing a complicated question is now obviated by the facilities offered for moving amendments. But, in any case, it is always open to a member to move formally that a question be divided (*u*).

A motion which contains two or more distinct propositions may be divided so that the sense of the house may be taken on each separately (*v*). In the case of motions respecting select committees especially, it is the practice of the Canadian house to combine several propositions in one—that is to say, the object of the committee, names of members, number of quorum, power to send for persons and papers, etc. But in the session of 1883, Sir John Macdonald followed the English practice of separating the different parts of a notice of motion respecting a com-

(*s*) Can. Com. J. (1876), 227; 129 E. Com. J. 215; 223 E. Hans. (3), 1149; 227 *Ib.* 787; 230 *Ib.* 1026; 250 *Ib.* 1540-41; Sen. Deb. (1889), 631. Or if a motion for adjournment be made, it must be first withdrawn; Can. Com. J. (1886), 78.

(*t*) 186 E. Hans. (3), 887; May, 280. No member may amend his own motion, but with leave of the house he may withdraw it and substitute another. Mr. Sp. Brand, 212 E. Hans. (3), 192-218; 235 *Ib.* 1625; Can. Hans. (1887), 137.

(*u*) 2 Hatsell, 118-120.

(*v*) 253 E. Hans. (3), 1763-4.

mittee on the subject of licenses for the sale of intoxicating liquors, a more logical and convenient form of procedure, since it gives the house an opportunity of deciding on each distinct proposition (*w*).

A motion on the order paper must be in accordance with the notice in the votes; and, should a member desire to substitute another, or alter its terms, he must first obtain the leave of the house (*x*).

In the British Parliament, notices of resolutions proposed for a committee of the whole are not required to be printed in full but merely the purport of the proposal. In the Canadian Commons, however, the resolution must appear in full in the Votes of the day before (*y*).

If a member neglects or declines to proceed with a motion, the house cannot force him to do so, but he has a right to drop it or it may be dropped under rule 32 (*z*). A member who has given notice of a series of resolutions may withdraw some of them and go on with the others (*a*). A member may not propose a motion in the absence of another who has placed it on the notice paper, except with the general consent of the house (*b*). Merely formal motions for the adoption of reports or for certain papers to which there is no objection, are frequently permitted to be made (*c*), but all motions involving discussion must be

(*w*) Can. Com. J. (1883), 125-8, and Votes, 142. For example of Canadian practice respecting committees, see Jour. 1879, pp. 248-9. For English practice, 137 E. Com. J. 65-6.

(*x*) Can. Com. J. (1873), 326; 78 E. Hans. (3), 717; 212 *Ib.* 218, 219; 235 *Ib.* 904; Can. Hans. (1876), 535; *Ib.* (1879), 1215.

(*y*) Res. respecting Inland Revenue, adulteration, gas and gas meters, Votes and Proceedings Feb'y 15, 23 and Mch. 20, 1877. Can. Hans. (1877), 248, 853.

(*z*) 32 Parl. Reg., 43.

(*a*) Mr. Gladstone's motion, 234 E. Hans. (3), 385.

(*b*) 231 E. Hans. (3), 662, where we find the speaker would not allow a member to move a clause in a bill of which notice had been given by another member.

(*c*) For instance, March 4th, 1878; Sir J. A. Macdonald, in absence of Dr. Tupper; Mr. Taschereau, of Mr. Frechette. Can. Hans., 721, 738. Very commonly done in 1879.

300 ONE MEMBER MAY MOVE FOR ANOTHER.

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proposed by the member in whose name they appear on the paper. In the session of 1877, Mr. Speaker interrupted a member who was proceeding to move a resolution with reference to a prohibitory liquor law, in the absence of Mr. Schultz, in whose name it appeared on the notice paper (*d*). Members sometimes send in notices in the names of absent members who have requested them to do so (*e*). Ministers also have the privilege of proposing the motions of their absent colleagues. One member may take charge of a public bill in the absence and with the permission of another member (*h*). If a member should be unseated in the course of a session, another member will not be permitted to propose a motion which appears on the paper in the name of the former, though of course he may renew it on his own behalf (*i*). No member may move the discharge of a bill without notice, in the absence of the member who has it in charge and who has not given any such permission (*j*). Neither can any motion be withdrawn in the absence of the member who proposed it; but it may be negatived or agreed to in such a case on the question being put formally from the chair (*k*).

Certain matters cannot be debated save upon a substantive motion which can be dealt with by amendment or by distinct vote of the house, such as, the conduct of

(*d*) Northern R. R. Can. Hans. (1877), 196.

(*e*) 2. E. Hans. (1), 439.

(*h*) Can. Sp. D. 109. The Insolvency Bill, 1876, introduced by Mr. Bourassa, disappeared from the order paper (the House refusing to read it then a second time), but it was revived by Mr. Caron; Journ., 184, 245. It is usual to allow a member to bring in a bill for another when there is no opposition, but not when opposition is expected; Mr. Sp. Brand, 209 E. Hans. (3) 330.

(*i*) Mr. Langevin's motions, March 5, 1877.

(*j*) 187 E. Hans. (3), 208; 216 *Ib.* 268, 276-7; 240 *Ib.* 1675; 247 *Ib.* 1403.

(*k*) 159 E. Hans. (3), 1310. In 1880 Mr. Schultz moved that the house go into committee of the whole on the Northwest Colonization Land Bill, but the debate was adjourned, and when the question was again taken up Mr. Schultz was absent. The motion for committee was then negatived and the bill withdrawn. Can. Com. J. 249, 266.

the governor-general, the speaker or deputy-speaker, members of either house of parliament or judges *l*. These questions cannot therefore be questioned by way of an amendment, nor upon a motion for adjournment under rule 39 *m*. For the same reason, no charges of a personal character can be raised save upon a distinct and substantive motion to that effect *n*. A matter which is under adjudication by a court of law cannot be brought before the house by motion or otherwise. Nor can a motion or amendment be brought forward which is the same in substance as a question which, during the current session, has been decided *o*. A motion must not anticipate a matter already appointed for consideration by the house *p*, such as the subject-matter of a bill on the order paper *q*. Nor is it regular to move as an amendment to a question a motion of which notice has been given and which appears in its place on the notice paper *r*.

II. Motion: Relating to the Business of the House.—

Motions applying to the business or arrangements of the house are called, in the ordinary daily routine, after the presentation of committee reports and before the introduction of bills *s*. As a rule these motions require notice, but some are of such a purely formal nature that by general consent notice is not insisted upon. Mr. Speaker Brand, in the British House, decided that a motion to the effect that for the remainder of the session certain days should be at the disposal of the government, could only be put with the general consent. He said: "If it is the pleasure

l May, 278.

m May, 253.

n 335 E. Hans. 3, 902, 1254, 1287, 337 *l*5, 499, 72 *l*5, 85, 98.

o May, 278, 300; Can. Com. J. 1907, 341.

p May, 278 and notes.

q 207 E. Hans. 3s., 500 May 279.

r Can. Com. J. 1889, 214; Can. Com. Hans. 1905, pp. 1623-1632; Can. Com. J. 1906-7, 335.

s H. C. rule 25.

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of the house that the motion should be put at once, I shall do so, but if there be a single dissentient voice the question may not be put." (*t*).

Under rule 41 the unanimous consent of the house permits of any motion being put. In 1879 a similar motion was made in the Canadian House of Commons and Mr. Speaker Blanchet decided similarly (*u*). On government days all government notices appear and are first taken up on the order paper. These motions refer to the adjournment of the house over a holiday or a religious festival; to leave of absence for members; to the addition of members to committees; to the taking of days for government business; to the sitting of the house on Wednesday evenings, on Saturdays or in the forenoon and to other matters connected with the business of the house (*v*). But, as already shown, if any member object to such motions being made without notice, they cannot be pressed (*w*). Notice of these motions is given in the name of the Prime Minister or leader of the house; but, in the absence of the leader may be moved by some other minister of the Crown. It is the general practice in the English Commons to give precedence to a motion respecting the adjournment of the house (of which notice has been given) over other business (*x*).

III. Questions of Privilege.—Questions of privilege may always be considered in either house (*y*) without the notice necessary in the case of motions generally. By the 47th rule of the Commons it is provided:—

"Whenever any matter of privilege arises, it shall be taken into consideration immediately." Rule 41 of the Senate is substantially to the same effect.

(*t*) 226 E. Hans. (3), 94, 127.

(*u*) Can. Hans. (1879), 650.

(*v*) Can. Com. J. (1867-8), 247, 422, etc.; *Ib.* (1873), 370.

(*w*) May, 244; 220 E. Hans. (3), 674; Can. Hans. (1878) 529; Can. Com. J. (1884), 244; Sen. Debates (1889), 37, 38.

(*x*) 240 E. Hans. (3), 1076; 252 *Ib.* 422; 201 *Ib.* 1335.

(*y*) Debates (1876), 325.

It is the practice in the House of Commons to bring up a question of privilege after prayers, and before the house has taken up the orders of the day. Only in very aggravated cases, requiring the immediate interposition of the house, will any business be suddenly interrupted. If a member be insulted or attacked, or some disorder suddenly arises, a debate may be interrupted; for as it has been early expressed by an ancient authority, "Whether any question is or is not before the house; and even in the midst of another discussion, if a member should rise to complain of a breach of privileges of the house, they have always instantly heard him" (z).

In the Canadian House, questions of privilege take a wide range, but it may be stated in general terms that they refer to all matters affecting the rights and immunities of the house collectively, or to the position and conduct of members in their representative character. In this category may be placed: motions touching the seat or election of members (a); reflections or libels in books and newspapers on the house or members thereof (b), or any of its committees (c); forgery of signatures to petitions (d); motions for new writs (e); questions affecting the internal

(z) 65 E. Com. J. 134. 79 *Ib.* 483. Mr. William Wynn, July 11th, 1836. *Mirror of P.*, Vol. 31, p. 97; May, 245, 270, 271, 289.

(a) Election returns of Muskoka, West Peterborough (1873), 5, 6, 10., 37; Louis Riel, 15th April, 1874; members alleged to be public contractors, April 9th and 14th, 1877; May, 273; 98 E. Hans. (3), 931; 97 E. Com. J. 263; 245 E. Hans. (3), 518; case of Sir C. Tupper, Can. Hans. (1884), 542. In 1887 the Queen's Co. (N.B.) election case was taken up as a question of privilege on two successive days, May 31st and June 1st.

(b) Mr. Plimsoil, E. Com. J. 20th Feb., 1873. *Morning Freeman and Courier d'Outaouais*, Can. Com. J. (1873), 133, 167; Mr. Piché (clerk asst.), Feb. 19th, 1878, Can. Hans. See *supra*, chapter on privileges. (c) Mr. R. S. France, 129 E. Com. J. 182.

(d) E. Com. J. 1865, May 8.; 178 E. Hans. (3), 1604; 238 *Ib.* 1737-41.

(e) Mr. Norris, Can. Com. J. (1877), 264; 146 E. Hans, 770; 218 *Ib.* 1262, 1843-4. A report of a select committee on the issue on the writ has been treated as a question of privilege as affecting the seat of a member; 245 E. Hans. (3), 576-8.

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economy or proceedings of the house (*f*); applications for the discharge of persons in the custody of the serjeant-at-arms (*g*); interference of officials in elections (*h*). *Prima facie*, any question affecting a member is considered a case of privilege, but in order to entitle a member to bring it up on that ground he must show that it affects him since he became a member of the house and consequently in his character of a member (*i*). Members sometimes correct reports of their speeches, or inaccurate statements in the press on the ground of privilege; but these are personal explanations, not matters of privilege, and are allowed only by the indulgence of the house. Sometimes a member raises as a question of privilege what is, at most, merely a question of order. If a member has a serious complaint to make of a newspaper, he should formally move to have it read at the table, and then make a motion in relation thereto, if he desires to have the matter dealt with by the house. If a member rise to make a personal explanation in the English Commons and proceed in the course of his remarks to complain of attacks in a newspaper, he is not allowed to proceed unless he is prepared to take the proper parliamentary course. And if a member brings forward a matter of privilege of this character, the motion with which he concludes should be relevant thereto (*j*).

Questions of privilege have precedence over other matters when they appear among the notices of motion. For instance, a notice for the expulsion of Louis Riel, which was low down among the notices, was given priority

(*f*) Translation of official debates; Can. Hans. (1876), 288. Can. Hansard committee, February 11th, 1878, p. 16.

(*g*) Washington Wilks, 150 E. Hans. (3), 1314, 1404.

(*h*) Welland and Chicoutimi elections, Can. Com. J. (1873), 190, 269.

(*i*) 164 E. Hans. (3), 1286.

(*j*) May, 273. Can. Hans. (1878), p. 1867; 150 E. Hans. (3), 1022, 1025, etc.; 219 *Ib.* (3), 394-6; 239 *Ib.* 536; 261 *Ib.* 1667-70; Can. Com. J. (1874), Apl. 15th, 16th.

on the 15th of April, 1874. The question was immediately taken up after half-past seven, when the speaker resumed the chair, though an hour was set apart by standing order for the consideration of private bills. On the following day the same question had the precedence, though it was a government day (*k*). In 1877 a motion for a new writ for Lincoln, in place of Mr. Norris, who had entered into a public contract, was placed among the notices; but it was taken up on motion of Sir John A. Macdonald, without any objection being made, on a day when notices of motion were not likely to be reached (*l*). Sir Erskine May has this observation on the subject: "It has been said that a question of privilege is properly one not admitting of notice; but where the circumstances have been such as to enable the member to give notice, and the matter was, nevertheless, *bona fide* a question of privilege, precedence has still been given to it" (*m*).

The Canadian House of Commons, in its desire to deal promptly with all questions affecting its members, has generally waived the strict rules which govern matters of privilege, properly speaking, and given every possible facility for inquiry thereon. When a member proposes to make a motion touching another member, it is frequently found convenient that he should state his intentions in his place, and then give notice that he will move it when motions are called in due order on a subsequent day (*n*).

(*k*) Can. Com. J. and Notes (1874) Apl. 15th, 16th.

(*l*) Can. Com. J. (1877), 264. On another occasion the speaker decided that a motion for the adoption of the report of a committee on printing and reporting partook of the character of privilege, and might therefore take precedence over the other notices; Can. Hans. (1876), 343-4. It was, however, rather a question of procedure.

(*m*) May, 271. Expulsion of James Sadleir, 143 E. Hans. (3), 1386; 144 *Ib.* 702. Case of Mr. Bradlaugh, 261 *Ib.* 218, 282, 431. See also cases of Mr. Bowell and Mr. White, April 5, 1886, given precedence over motions on paper by general consent. Also of Mr. Cameron, of Victoria, 28th May, 1886.

(*n*) Queen's Co. (N.B.) election case, April 26-28, 1887; V. & P., 98, 110. In Mr. Rykert's case, 1890, rules respecting notice were not pressed, but every facility was given for inquiry and explanations.

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When a debate on a question of privilege has been adjourned until a future day, priority will still be given to it. This was done in the case of Louis Riel, mentioned in a previous page, and there are numerous precedents in the English and Canadian journals illustrating the same point (*o*). In the session of 1883 a motion was made without notice respecting a double return for King's County, Prince Edward Island. The debate thereon was adjourned without fixing a day or giving the motion a place on the orders; but it was taken for granted that it would have precedence whenever the house was ready to resume the subject. This precedence was accordingly given the question on a later day, and on every occasion when it came before the house (*p*). But the house will refuse any priority over other motions when the question is not *bona fide* one of privilege, or it is not of an urgent character (*q*). The speakers of the English Commons have decided that "in order to entitle a question of privilege to precedence over the orders of the day, it should be some subject which has recently arisen, and which clearly involves the privileges of the house and calls for its immediate interposition" (*r*). The right of complaint is not restricted to the member affected by the breach of privilege. Motions

(*o*) 92 E. Com. J. 450; 38 E. Hans. (3), 1429; 95 E. Com. J. 13, 15, 19, 23, 70; 51 E. Hans. (3), 196, 251, 358, 422; 52 *Ib.* 7; 238 *Ib.* 1741; 120 E. Com. J. 252.

(*p*) Can. Com. J. (1883), 68, 101, 107, 257. See remarks of Mr. Speaker Kirkpatrick as to precedence of such a question, Hans. 102. In case it is proposed to take the debate up on a particular day, it should be so fixed in adjourning the debate. See Mr. Plimsoll's case, 17th Feb., 1880, 135 E. Com. J. Also Queen's Co., N.B., case, 1887.

(*q*) 146 E. Hans. (3), 769, 159 *Ib.* 2035.

(*r*) 159 *Ib.* 2035; 174 *Ib.* 190. Motions calling attention to imputations on members have sometimes been treated as questions of privilege in the English House of Commons, and have consequently had precedence given to them, but more frequently have been treated as ordinary motions; but whenever they have been treated as privilege, urgency has been of the essence of the motion. Mr. Speaker Brand, 253 E. Hans. (3), 432-3; Blackmore's Sp. Dec. (1882), 165-6; 261 E. Hans. (3) 692-94.

founded on a breach of privilege are entertained upon the consideration of a report from a committee calling the attention of the house to the matter (*s*). A question of order in the house, or in a committee thereof, cannot be treated as a matter of privilege (*t*). In the session of 1887, in the British Commons, a motion was brought forward based on charges in a newspaper against certain members of the house; the motion was ruled not to be a motion of privilege, because it was not a matter requiring immediate consideration, and because the charges did not touch the conduct of members in the house (*u*). Nor does a motion embodying a matter of privilege lose its right of privilege because it may have been deferred some days to suit the convenience of the house (*v*).

IV. Want of Confidence Motions.—No special precedence is given a motion of want of confidence in the government except by unanimous consent of the house. But it is customary to do so and to alter the order of business accordingly. In the session of 1876, Sir John Macdonald, then leader of the opposition, moved an amendment in favour of protection to Canadian industries, on the motion for going into committee of supply. Previous to the adjournment of the debate, Mr. Mackenzie, the premier, pointed out that the motion was equivalent to one of want of confidence in the government, and contended that on that account the debate should take precedence of all other matters until it was concluded. He pressed its continuance on the following Monday (the debate

(*s*) May, 128, 272.

(*t*) If a member proposes to challenge the Speaker's action with respect to a proceeding of the house, he must do so by motion as the matter is one of order and not of privilege. 258 E. Hans. (3), 7, 14; 259 *Ib.* 657-8; 263 *Ib.* 45-9. In the Senate a member has not been allowed to make charges against the Government as a question of privilege. Sen. Deb. (1889), 580, 597, 598.

(*u*) May, 81, 272.

(*v*) 261 E. Hans, (3s), 282-285.

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having commenced on Friday), which under rule, is devoted to notices of motion and other private business. It was pointed out, with obvious truth, that it was entirely irregular to interfere with the appointed order of business, unless the house agreed unanimously to suspend the standing order, or there was an urgent question of privilege under consideration. The speaker sustained this contention at the time and subsequently showed the house by reference to the English debates that motions of want of confidence could proceed only, on days devoted to private business, with the consent of all members interested (*w*). In a subsequent session, the same question arose, and the speaker, after careful deliberation, came to the same conclusion as on the previous occasion (*x*).

No control is conceded to ministers over orders in the hands of private members which are governed by the ordinary rules of procedure (*y*).

V. Motions for Adjournment under Rule 39.—Rule 39 is adopted from the practice of the Imperial House of Commons, under the well known order No. 10. It is as follows:—

“39. (1) A motion to adjourn (except when made for the purpose of discussing a definite matter of urgent public importance), shall always be in order, but no second motion to the same effect shall be made until after some intermediate proceeding has been had.

(2) Leave to make a motion for the adjournment of the house (when made for the purpose of discussing a definite matter of urgent public importance) must be asked after the ordinary daily routine of business (Rule 25) has been concluded and before notices of motions or orders of the day are entered upon.

(*w*) Can. Hans. (1876), March 10th and 13th.

(*x*) *Ib.* (1878), 946, 948, 153, E. Hans. 405. Can. Hans. (1878), 947.

(*y*) Todd, ii, 399.

(3) The Member desiring to make such a motion rises in his place, asks leave to move the adjournment of the house for the purpose of discussing a definite matter of urgent public importance, and states the matter.

(4) He then hands a written statement of the matter proposed to be discussed to the speaker, who, if he thinks it in order, reads it out and asks whether the member has the leave of the house. If objection is taken, the speaker requests those members who support the motion to rise in their places and, if more than twenty members rise accordingly, the speaker calls upon the member who has asked for leave.

(5) If less than twenty, but not less than five, members rise in their places, the question whether the member has leave to move the adjournment of the house shall be put forthwith, without debate, and determined, if necessary, by a division.

(6) Except with the requisite leave or support, the motion cannot be made.

(7) The right to move the adjournment of the house for the above purposes is subject to the following restrictions:

(a) Not more than one such motion can be made at the same sitting;

(b) Not more than one matter can be discussed on the same motion;

(c) The motion must not revive discussion on a matter which has been discussed in the same session;

(d) The motion must not anticipate a matter which has been previously appointed for consideration by the house, or with reference to which a notice of motion has been previously given and not withdrawn.

(e) The motion must not raise a question of privilege;

(f) The discussion under the motion must not raise any question which, according to the rules of the house, can only be debated on a distinct motion under notice."

A motion under this rule must be restricted to a single specific matter of recent occurrence and, if the matter

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submitted to the house in pursuance of the rule fails to obtain the required support, it cannot during the session be again brought forward in the same manner. Though the responsibility of proposing the matter, as one of urgency, rests with the member, still there must be some colour of urgency in the motion and the speaker will decline to submit the motion if, in his opinion, it is not a "definite matter of urgent public importance." All the rules of debate apply, of course, to discussions upon such a motion. Discussion cannot be raised on such a motion on any matter already appointed for consideration or of which notice has been given. Nor can exemption from this rule be obtained by a withdrawal of such matter from the notice paper at the commencement of the sitting at which the motion is sought to be made.

In accordance therefore with this principle, when in the British House of Commons it was proposed to call attention under this motion to the conduct of the government in deferring a statement of their intentions regarding the course of business, the speaker declined to put the motion because it would anticipate an announcement of which notice had been given (z). The time at which leave to make such a motion may be asked is specifically stated in the rule.

VI. Questions put by Members.—The practice which has long prevailed in parliament of putting questions to the ministers of the Crown concerning public matters and of receiving information across the floor of the house, has for many years been regulated in the Commons by precise rules. Greater latitude is allowed in the Senate than in the House of Commons but even there a debate is not in order, though explanatory remarks may be made by the senator making the inquiry and by the minister or other senator answering the same. Observations upon such answer are not allowed. When however it is intended to raise a

(z) May, 255.

discussion on asking a question, the senator, having such intention, indicates it in his written notice of inquiry required by rule 21.

In the first session of the Canadian Parliament an effort was made in the Upper House to curtail debate upon questions. As late as 1890 a member addressed the Senate for several days on a mere inquiry, the debate having gone over from day to day. Such a proceeding is without precedent in the history of the Lords, and is peculiar to the Senate. The debate was actually adjourned on each day, but no entry appears in the journals, as there was no motion strictly before the house. (See Sen. Deb. and Journals of February 10th, 13th and 24th.) On an inquiry, however, on one occasion a member has not been allowed a reply. (*Ib.* (1884), 649.) An inquiry is not a substantive motion. Mr. Miller, formerly speaker, in 1888 expressed himself strongly as to permitting debate on a mere inquiry.

Rule 40 of the Senate would appear to permit of a wide latitude of debate on an inquiry upon proper notice being given. In this matter the Senate has followed the practice of the House of Lords (*a*). In the Senate the discussion is sometimes permitted to run over several days on an inquiry, which is not customary in the Lords, since a debate on a mere question cannot be adjourned. Neither is any mention made in the Lords' journals, as in those of the Senate, of a debate on such an inquiry since it is not in the nature of a motion (*b*). In the House of Commons, not only is notice of a question necessary under rule 40 but they must be governed in their terms by rule 37 and

(a) 191 E. Hans. (3) 690-4, 209 *Ib.* 639; Sen. Deb. (1877), 313, 375; *Ib.* (1879), 171-186; Sen. Hans. (1883), 240, 315; See also Parl. Deb. on this subject between 1870 and 1884.

(b) Compare 210 E. Hans. and 290 *Ib.* 606 with the same dates in the Lords' Journals. For Senate practice, Jour. (1877), 231; *Ib.* (1878), 93-193; *Ib.* (1883) 78, 137, 286; *Ib.* (1890), 100, etc. The practice is, in the Lords, to ask a question and at the same to move formally for papers, and then the motion appears in the journals. 268 E. Hans. (3), 1386, 1802; 114 Lords' J. 113, 128; 269 E. Hans. (3), 547; 114 Lords' J. 550.

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the practice of parliament. The latter rule, of which sections 2, 3, and 4 are new, is as follows:—

“37 (1) Questions may be put to ministers of the Crown relating to public affairs; and to others members, relating to any bill, motion, or other public matter connected with the business of the house, in which such members may be concerned; but in putting any such question or in replying to the same no argument or opinion is to be offered, nor any facts stated, except so far as may be necessary to explain the same. And in answering any such question the matter to which the same refers shall not be debated.

(2) (a) Any member who requires an oral answer to his question may distinguish it by an asterisk.

(b) If a member does not distinguish his question by an asterisk, the minister to whom the question is addressed hands the answer to the Clerk of the house who causes it to be printed in the Official Reports and the Debates.

(3) If in the opinion of Mr. Speaker a question on the order paper put to a minister of the Crown is of such a nature as to require a lengthy reply, he may, upon the request of the government, direct the same to stand as a notice of motion and to be transferred to its proper place as such upon the order paper, the Clerk of the house being authorized to amend the same as to matters of form.

(4) If a question is of such a nature that in the opinion of the minister who is to furnish the reply, such reply should be in the form of a return, and the minister states that he has no objection to laying such return upon the Table of the House, his statement shall, unless otherwise ordered by the house, be deemed an Order of the House to that effect and the same shall be entered in the Votes and Proceedings as such.”

These practical and convenient rules have tended greatly to expedite the work of the house. The questions are first handed in to the Clerk or Assistant Clerk of the house and are then printed among the proceedings and appear in due time on the order paper under rule 25.

The Canadian practice is identical with that of the English Commons, as stated by Mr. Speaker Brand: "No argumentative matter shall be introduced, and if such matter appears, it is always struck out by the clerks at the table, by the order of the speaker." (*c*). It is the duty of the clerk to point out any irregularity to the speaker as in the case of notices of motion and if the latter is of the same opinion he will order the clerk to communicate with the member, so that he may have an opportunity of amending his notice (*d*). It is always within the right of a member to call attention to the matter as one of privilege, and to challenge the action of the speaker (*e*). If an irregularity should escape the attention of the clerks at the table, the speaker will point it out before the question is called, and the member is then generally permitted to put the question when he has struck out any objectionable words (*f*).

A question has been refused a reply because it referred to a matter of opinion (*g*). It should "be simply and severely accurate in its allegations." If it is hypothetical it is "objectionable," and as a rule should not be answered (*h*). It should not be ironical or convey an imputation (*i*). It has, however, been decided in numerous instances in the English Commons that a member may make any explanation which is necessary for a clear understanding of his question, but he may not enter upon any general

(*c*) 217 E. Hans. (3), 37, 803; 225 *Ib.* 1141; 240 *Ib.* 646; 255 *Ib.* 321-2, May, 247.

(*d*) 240 E. Hans. (3), 646. If it is not possible to communicate with the member, then it is for the officers of the house to make the question conform as nearly as possible to the rules of the house. 206 E. Hans. (3), 468. For instance, a question in any way casting reflections upon the members is out of order, and would be revised; 262 E. Hans. (3), 18.

(*e*) 240 E. Hans. (3), 643.

(*f*) Can. Hans. (1878), 569.; *Ib.* (1882), 73; *Ib.* (1883), 107.

(*g*) 208 E. Hans. (3), 786.

(*h*) Todd. ii., 424.

(*i*) May, 249.

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discussion (*j*). A question has not been allowed to go on the paper because it impugned the accuracy of certain information conveyed to the house by the ministry (*k*). Questions of excessive length with numerous or lengthy quotations have been ruled out (*l*). As regards questions addressed to the speaker no notice of such questions is permissible. While explanations of the intentions of the government or of a minister may be asked, their opinion on a matter of policy or of law is not a proper subject of inquiry. An answer to a question cannot be insisted upon, if the answer be refused by a minister on the ground of the public interest, nor can the question be replaced upon the notice paper, nor the refusal of the minister to answer be raised as a question of privilege (*m*). The answer to a question should be brief and distinct, and limited to such explanations as are absolutely necessary to make the reply intelligible, but some latitude is allowed to ministers whenever they find it necessary to extend their remarks with the view of clearly explaining the matter in question (*n*). When the answer to a question has been given, it is irregular to comment upon it, or upon the subject thereby introduced to the house; the necessary consequence of which would be to engage the house in a debate when there was no motion before it (*o*). No member may put a question to another member unless it refers to some bill or motion before the house (*p*). Nor are questions usually put on matters which are at the time the subject of proceedings in the courts (*q*), or which involve

(*j*) 224 E. Hans. (3), 473, 1467, 1715; 240 *Ib.* 1617.

(*k*) 240 E. Hans. (3), 646.

(*l*) May, 247.

(*m*) *Ib.* 248; Can. Com. J. (1907-8), 30.

(*n*) 141 E. Hans. (3), 497; 215 *Ib.* 644.

(*o*) 39 *Ib.* (1), 69. A second question arising out of or bearing on an answer to a question is allowed in the English House, but not a debate. 261 E. Hans. (3), 410, 1204-5.

(*p*) 192 *Ib.* (3), 717; 235 *Ib.* 684; Can. Com. R. 37; Can. Hans. (1886), 1379, 1380; May, 249.

(*q*) 246 E. Hans. (3), 686; 257 *Ib.* 448-9.

a question of law (*r*). Nor is it proper to put a question on the paper, affecting the character or conduct of a member. The proper course, when the conduct of a member is challenged, is to propose a direct motion, in order that full opportunity may be given for statements on both sides (*s*). A member is guilty of an irregularity who puts a question which he has been informed by the proper authority is irregular (*t*). A series of questions has not been answered because it embodied matters which should be formally moved for by order or address (*u*). Questions are frequently put by members without notice before the orders of the day are called, but these are merely permitted by courtesy in connection with the business of the house or with very urgent and important matters of public concern. They are always brief, no debate being permitted, and the replies are as concise as possible. The Minister interrogated may reply at once or may direct that the usual notice be given.

As the questions under rule 37 are printed and numbered on the order paper the Speaker calls them by number, mentioning the name of the member who indicates his desire for an answer by rising, the question not being read. The minister then answers the question orally or hands the written answer to the Clerk at the table. The Clerk sends the answer to the official debates office where it is inserted in the Hansard of the day. Frequently the minister hands in the reply in duplicate, in which case one copy is sent to the desk of the member putting the question. If the minister is not ready with his reply the question is allowed to stand until again duly reached on the order paper.

(*r*) Can. Hans. (1885), 1306. *Ib.* (1888), 494, 495. Questions asking a minister for an expression of opinion are not permissible: 243 E. Hans. (3), 198; 274 *Ib.* 430.

(*s*) 210 *Ib.* 35-9; Blackmore's Sp. D. (1882), 129-30.

(*t*) *Ib.* (1883), 44; 257 E. Hans. (3), 448-9; 265 *Ib.* 879-80.

(*u*) 211 E. Hans. (3), 605, 606; 209 *Ib.* 462-6; Can. Hans. (1885), 568. See remarks of Lord J. Russell, 133 E. Hans. (3), 869. The amended rule 37 of the Can. Com. above referred to effectively meets this class of cases.

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VII. Amendments.—When a motion has been made by a member and proposed to the house by the speaker, it is the right of any other member to move to amend it, in accordance with certain rules. Members may not be willing to adopt the question as proposed to them and may consequently desire to modify it in various respects. They may wish to defer it to another occasion when the house will be better able to deal with it, or they may be disposed to go further than the motion, and give fuller expression to the sentiments they entertain on the question. In order to meet these different exigencies, certain forms have been established and every member is in a position to place his views on record, and obtain an expression of the sense or will of the house on any important question which can be properly brought before it. The object of an amendment is to effect some alteration in a question and this may be moved without notice as soon as convenient after the main motion is stated by the speaker (*v*). A member who has given notice of an amendment is not entitled to any precedence on that account nor to be heard before a member who obtains the floor to address the house (*w*). An amendment may propose:—

(1) To leave out certain words; (2) To leave out certain words, in order to insert or add others; (3) To insert or add certain words.

These several forms of amendment are subject to certain general rules, which are equally applicable to them all.

All motions should properly commence with the word "That." In this way, if a motion meets the approbation of the house, it may at once become the resolution, vote, or order which it purports to be (*x*). By the 27th rule of the Senate it is provided that "no motion prefaced by a pre-

(*v*) May, 289; Cushing, 517. This does not apply to amendments to private bills in Committee of the Whole or on 3rd readings. H. C. Rule 112; Sen. Rule 130.

(*w*) May, 290; 84 E. Hans. (3), 641; 163 *Ib.* 1424, 1486; 246 *Ib.* 265. 282 *Ib.* 1869.

(*x*) Cushing, 509.

amble is received by the Senate" and this rule is always strictly observed in that house (y).

Instances may be found in the Commons' journals where questions are prefaced by a preamble (z), but that form is obviously inconvenient, and not in conformity with the correct usage of either the Canadian or the English parliament.

When it is proposed to leave out all the words of the main motion and to substitute others, the amendment should commence—"That all the words after "that" to the end of the question be left out, in order to insert the following instead thereof," etc. (a). All amendments to insert or add words should commence: Mr.—moves in amendment, seconded by Mr.—. "That," etc. (b).

When it is proposed to amend a motion, the question is put to the house in this way: The speaker will first state the original motion, "Mr. A. moves, seconded by Mr. B.—'That, etc.'" Then he will proceed to give the amendment: "To this Mr. C. moves in amendment, seconded by Mr. D.—That, etc." Under Canadian practice the speaker will put the amendment directly in the first place to the house: "Is it the pleasure of the house to adopt the amendment?" If the amendment be negatived, the speaker will again propose the main question, and a debate may ensue thereon, or another amendment may then be submitted (c). On

(y) Sen. J. (1867-8), 280. Deb. (1878), 675.

(z) Can. Com. J. (1877), 214.

(a) Can. Com. J. (1867-8), 248.; *Ib.* (1877), 103-5; *Ib.* (1878), 71.

(b) *Ib.* (1867-8), 107; *Ib.* (1876), 69.; *Ib.* (1877), 103, 105; Sen. J. (1878), 197, etc. In the British house the practice of putting amendments is quite different from that in the Canadian parliament and from that in practice generally in Colonial and foreign parliaments. The British practice can be defended on logical grounds but it has some inconveniences. That usage, however, has not been adopted in Canada; the student of this subject is referred to May, pp. 290-292, and to Mr. Palgrave's "Chairman's Handbook" for information on this subject. See also Bourinot (3rd. Ed.) pp. 437-38, note.

(c) Can. Com. J. (1875), 217, 218; *Ib.* (1877), 225; Can. Hans. (1879), 1376 (debate on main motion).

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the other hand, if the house adopt the amendment, then the speaker will again propose the question in these words: "Is it the pleasure of the house to adopt the main motion (or question) so amended?" It is then competent for a member to propose another amendment:—"That the main motion (or question), as amended, be further amended, etc." Any number of amendments may be proposed successively in this way, as it will be seen by reference to the precedents given below (*d*).

But an amendment once negatived by the house, cannot be proposed a second time. It is laid down in the highest English authority that "when the house has agreed that certain words shall stand part of the question, it is irregular to propose any amendment to those words, as the decision of the house has already been pronounced in their favour, but this rule would not exclude an addition to the word if proposed at the proper time. In the same manner when the house has agreed to add or insert words in a question, its decision may not be disturbed by any amendment of these words; but here again other words may be added" (*e*).

When an amendment has been proposed, it is competent for any member to move an amendment to the same (*f*). In this case the original question is laid aside practically for the time being, and the first amendment becomes, as it were, a substantive question (*g*). The speaker will then submit the three motions in the order in which they are made, and first take the sense of the house on the last: "Is it the pleasure of the house to adopt the amendment to the amendment?" If the amendment is rejected, it is regular to move another (*h*) (provided, of course, it is different in purport from that already negatived) as soon

(*d*) Can. Com. J. (1876), 69. See H. C. Votes and Proceedings, March 28th, 1916, Ruling of Mr. Speaker Sevigny.

(*e*) May, 278, 293.

(*f*) Can. Com. J. (1877), 105, 111; *Ib.* (1878), 50.; Sen. J. (1876) 132.

(*g*) May, 296, 297.

(*h*) Can. Com. J. (1871), 74, 75.

as the speaker has again proposed the question: "Is it the pleasure of the house to adopt the amendment to the main motion (or original question)?"

If the amendment be resolved in the affirmative, it will not be competent to move that it be struck out, in whole or in part. A precedent on this point was given during the session of 1871. The house having considered in committee of the whole a bill to amend the acts relating to duties of customs, Sir Francis Hincks moved that the bill be read a third time to-morrow. Mr. Holton moved in amendment that the bill be now re-committed to a committee of the whole house, for the purpose of so amending the same as to repeal the duties on coal, coke, wheat and flour. Mr. Blanchet then moved in amendment to the said amendment that the words "and also salt, peas, and beans, barley, rye, oats, Indian corn, buckwheat and all other grain, Indian meal, oatmeal and flour, or meal of any other grain," be added at the end thereof. This amendment was resolved in the affirmative whereupon Mr. Colby moved, in further amendment to Mr. Holton's amendment as amended to substitute for the same a resolution declaring it "inexpedient during the present session of parliament to make any alteration in the existing duties on coal, coke, wheat, flour, salt, peas, beans, barley, rye, oats, Indian corn, buckwheat." Mr. Holton at once objected to this amendment on the ground that it proposed to strike out certain words which the house has already decided should form part of the question. Mr. Speaker Cockburn decided that the point of order was well taken. "It seems conclusively so by English authority," he said, "and there is good reason for it. The house has pronounced its decision upon the proposition that salt and other articles shall form part of the question to be submitted to the house, and now the house is asked to say that they shall be struck out of the question. This would be a contradiction, and is clearly out of order" (i).

(i) Can. Com. J. (1871), 131-3. A similar decision was given by Mr. Speaker Anglin. *Ib.* (1875), 200.

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Amendments may, however, be proposed to add words to the main motion, or amendment, as amended (*j*).

In the case of a second reading or other stage of bills, and on the motion for going into committee of supply, in the English House of Commons it is laid down authoritatively:—

“No addition can be made to the question, after the house has decided that words proposed to be left out should stand part of the question. Every stage of a bill, being founded upon a previous order of the house, is passed by means of a recognized formula, and may be postponed or arrested by acknowledged forms of amendment; but when any such amendment has been negatived, no other amendment by way of addition to the question can be proposed, which is not, in some degree, inconsistent with the previous determination of the house; and it has, therefore, never been permitted” (*k*).

Only two amendments can be proposed at the same time to a question. Some limit is necessary, and the usage has grown into law, that an amendment to an amendment is allowable, but that no motion to amend further can be entertained until one of the two amendments is disposed of. There is no limit, however, to the number of amendments to a question provided they come within these and other rules stated above (*l*). No decision appears in the Canadian journals on this point, but the usage is uniform. An amendment cannot anticipate a notice of motion on the order paper (*m*). It has also been frequently ruled that an amendment which was merely an expanded negative or otherwise irregular in form cannot be proposed from the Chair (*n*).

(*j*) Can. Com. J. (1871), 133; *Ib.* (1873) 393.

(*k*) May, 292; 183 E. Hans. (3), 1285, 1918; 240 *Ib.* 1602.

(*l*) May, 293, 294.

(*m*) Can. Com. J. (1889), 214; Hans. (1905), pp. 1625-1632; May, 279, 293; Can. Com. J. (1906-7), 335.

(*n*) May, 293.

When a proposition or question before the house consists of several sections, paragraphs, or resolutions, the order of considering and amending it is to begin at the commencement, and to proceed through it in course by paragraphs; and when a latter part has been amended, it is not in order to recur back, and make any amendment or alteration of a former part (*o*). This rule is observed especially in the case of bills in a committee of the whole, where each section is considered a distinct proposition, to be amended line by line, if desired; and consequently if the committee have amended the latter part of the clause or paragraph they cannot amend the first part of the same (*p*). When a second paragraph has been considered and agreed to, it is not regular, according to the rule in question, to go back to the first. It is an imperative rule that every amendment must be relevant to the question on which the amendment has been proposed, and this rule has been invariably insisted upon by Canadian Speakers (*q*).

This doctrine was not formerly followed in the British Houses but in recent years it has been ruled otherwise. Sir Erskine May in his edition of 1879 stated the former usage but experience has shewn its impracticability.

If such a practice were tolerated, all the benefits of giving due notice of a motion, and allowing the house a full opportunity of considering a question, would be practically lost. A member would then be in a position to surprise the house at any moment with a motion of importance, and the necessity of giving notice would be superseded to all intents and purposes. It is not, therefore, surprising that the latest English decisions are in accord with those of the Canadian speakers. Sir Erskine May, in later editions, however, lays it down as "an imperative rule that every amendment must be relevant to the question on which the amendment is proposed." The law on the

(*o*) 2 Hatsell 123; 102 E. Hans. (3). 117.

(*p*) 46 E. Com. J. 175.

(*q*) May, 293, Can. Com. J. (1872), 122, 124, 166; Can. Hans. (1889) 268.

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relevancy of amendments is that if they are on the same subject-matter with the original motion, they are admissible, but not when foreign thereto (*r*). The exceptions to this rule are amendments on the question of going into supply or ways and means (*s*). Amendments to bills also, like amendments to the orders of the day, "must strictly relate to the bill which the house, by its order, has resolved upon considering" (*t*).

VIII. Dilatory Motions.—There is a class of motions, common to all parliamentary assemblies, intended to have the effect of superseding or delaying the consideration of a question. For instance, motions for the adjournment of the house or debate, for reading the orders of the day, and for the previous question, are all in this direction.

The term "dilatory," is used by most writers on parliamentary law as a convenient means of grouping together such motions as postpone a question for the time being.

Motions of Adjournment.—When any question is under the consideration of either house, a motion to adjourn will always be in order. The 39th rule provides:—

"A motion to adjourn (except when made for the purpose of discussing a definite matter of urgent public importance) shall be always in order, but no second motion to the same effect shall be made until after some intermediate proceeding shall have been had." The term "intermediate proceeding" means a proceeding that can properly be entered on the journals. The true test is that if any parliamentary proceeding takes place, the second motion is regular, and

(*r*) May (Ed. 1879), p. 303. To show the wide range of amendments, see decision of Mr. Speaker Brand, who ruled that it was regular to move an amendment in relation to the Oaths Act on a question reaffirming a resolution restraining Mr. Bradlaugh from taking the oath, 267 E. Hans. (3), 219. Such an amendment was, however, germane to the question.

(*s*) See chapter on supply. But on report from such committees, amendments must be relevant to the question under consideration: Can. Com. J. (1890), 367; May, 383.

(*t*) 143 E. Hans. (3), 643.

the clerk ought to enter the proceedings to show that the motion in question is regular. It is usual to alternate motions for adjournment of house and debate when a question is under consideration. In case there is a substantive motion of adjournment before the house, and it is negatived, some proceeding must be had in order to render a second motion to the same effect regular. A message from the governor-general followed by other proceedings would be sufficient to render a second motion of adjournment valid. The rule applies literally to the adjournment of the house, and not of the debate, but it is usual and convenient to make an entry in the journal between two motions of the latter character (*u*).

A motion of this kind, when made to supersede a question, should be simply, "that the house do now adjourn"; and it is not allowable to move an adjournment to a future day, or to propose an amendment to the question of adjournment (*v*). If the motion for the adjournment be carried the house must at once adjourn until the regular hour of meeting on the next sitting day, and the question under consideration will be superseded (*w*), so that if it was on the orders of the day, it must at once disappear from the order paper where it can only be again placed by a motion formally made in the house for its revival (*x*). But if the question is not regularly before the house—that is to say, if it has not been proposed to the house by the speaker—it will not even appear in the votes; but if it has been so proposed, it will be duly recorded. But in case a notice of motion is under consideration on Wednes-

(*u*) Cushing, p. 546 (note); Can. Com. J. (1880), 107. See proceedings of May 21st, and June 22nd, 1891, also July 1, 2, 1891.

(*v*) 2 Hatshell 113. In the Lords a future day may be specified, May, 281.

(*w*) For cases in point, 110 E. Com. J. 367; 115 *Ib.* 393; 119 *Ib.* 131, 256; 121 *Ib.* 79; Sen. J. (1876), 132, 133, 139 (Pacific R.R.). It cannot be made while a member is speaking. May, 281.

(*x*) Sen. J. (1876), 133, 139; Sen. Deb. (1878), 832, 834, (Pacific R.R. Act Amendment Bill); Can. Com. J. (1870), 237, 287 (Interest Bill).

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day it will not be superseded, inasmuch as rule 33 makes special provision for such cases, and places the motions on the orders for a future day (y). Consequently, if a question, not provided for by rule 33, is under consideration, and it is the wish of the house to adjourn, it is necessary to move an adjournment of the debate in the first place (z), unless indeed it is desired to supersede it. But the adjournment of the debate obviously cannot be moved to the adjournment of the house, when it is a substantive question (a).

It has been decided that a motion for the adjournment of the debate should be pure and simple, like the motion for the adjournment of the house, and should not contain a recital of reasons (b).

If the house should be suddenly adjourned in consequence of the absence of a quorum, a question then under the consideration of the house will disappear from the order paper for the time being (c). This motion for the adjournment of the house or of the debate cannot be made while a member is speaking but only by a member who is in possession of the floor; nor can a motion for the adjournment of the house be made while a motion for the adjournment of the debate is under discussion (d).

Motion for Reading Orders of the Day.—A motion to proceed to the orders of the day is another mode of evading a question for the time being. The 35th rule orders:—

“A motion for reading the orders of the day shall have preference over any motion before the house.”

If a question on the motion paper is under consideration, any member may move, “That the orders of the day be now read,” or “That the house do now proceed to the

(y) Can. Com. J. (1876), 64.

(z) Can. Com. J. (1876), 129.

(a) 144 E. Hans. (3), 1906; May, 281.

(b) Can. Com. J. (1880-1) 86. Also Can. Leg. Ass. J. 7th March, 1865; Can. Sp. D. No. 129.

(c) 129 E. Com. J. 371.

(d) May, 281.

orders of the day," or "to the public bills and orders." If this question is resolved in the affirmative, the original motion is superseded, and the house must proceed at once to the orders of the day (*e*). When the orders of the day are reached in due course it is not necessary to make a motion as they are taken up in accordance with rule 25. The notice under rule 35 above quoted is one of a special nature made when a notice of motion or other question not on the orders of the day is under discussion. No amendment can be made to the motion for proceeding to the orders of the day (*f*), it being considered equivalent to a motion for the previous question (*g*).

If the house is considering an order of the day, a motion to proceed to another order of the day will have the same effect of superseding a question as the motion we have just mentioned (*h*). It is equally in order to move to proceed to the government orders, while a question among "public bills and orders" is under consideration (*i*).

Previous Question.—Another method of evading or superseding a question in both houses is the moving of what is known as "the previous question." The Senate rule on the subject is as follows:—

(*e*) 111 E. Com. J. 167; Can. Com. J. (1873), 300; *Ib.* (1885) 297; a motion has also been made to proceed to a particular order of the day; Can. Com. J. (1886), 54, 58. But such a motion is not in the nature of the former question, which appears from English practice to be confined to the question "to proceed to the orders of the day" generally. The motion "that the orders of the day be read" is now obsolete in England, though it survives in the form of an amendment, "that this house do pass to the orders of the day," moved upon a motion interposed before the ordinary business of the day, such as a privilege motion. May, 280, note; 133 E. Com. J. 196; 142 *Ib.* 358.

(*f*) Can. Com. J. (1873), 300, Speaker Cockburn.

(*g*) May, 280. A motion for the adjournment of the house will, however, be in order under rule 39.

(*h*) 93 E. Com. J. 418; 107 *Ib.* 203. Can. Com. J. (1870) 312. An amendment can be moved to such a motion. Can. Com. J. (1886), 279.

(*i*) Can. Com. J. (1880-1), 81; Can. Hans. 13th. Jan. (1880-1), 107. E. Com. J. 223.

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"44. When a question is under debate, no motion is received unless to amend it; to commit it; to postpone it to a certain day; for the previous question; for reading the orders of the day; or for the adjournment of the Senate."

Rule 36 of the Commons is as follows:—

"When a question is under debate no motion is received unless to amend it; to postpone it to a certain day; for the previous question; for reading the orders of the day; for proceeding to another order; to adjourn the debate; or for the adjournment of the house".

Rule 44 defines the previous question and its consequences.

"The previous question, until it is decided, shall preclude all amendment of the main question, and shall be in the following words, "That this question be now put." If the previous question be resolved in the affirmative, the original question is to be put forthwith without any amendment or debate."

The previous question is said to have been introduced originally in England in 1604 by Sir Henry Vane for the purpose of suppressing subjects of a delicate character relating to high personages or which might call forth observations of a dangerous tendency. The previous question may be debated but it cannot be amended. If the motion be carried the Speaker will immediately put the question, without further debate (*j*). But if the previous question be resolved in the negative then the Speaker cannot put the main motion which is consequently superseded (*k*).

The main motion may, however, be revived on a future day as the negative of the previous question merely binds the Speaker not to put the main question at that time (*l*).

(*j*) 2 Hatsell, 80; 237 E. Hans. (3), 527; 278 *Ib.* 296; Lords' J. 1878, Jan. 28th; Cushing, 549; Can. Com. J. (1913), 453, 507.

(*k*) May, 283, 284; Can. Com. J. (1869), 163-4; *Ib.* (1870), 234; 71 Lords' J. 581; 113 E. Com. J. 100.

(*l*) May, 283.

The form of the previous question in the House of Lords is the same as in the Canadian Commons, but the general form in the English Commons is that the question "be not now put," although by the rules of 1902 the form of a question for the closure of debate is the same as in the Canadian Commons. In the Congress of the United States, the form is similar to that in Canada though, not being debatable, the effect under their rules is different, being used to suppress all discussion of the main question and to come to a vote upon it immediately (*m*). The previous question has been moved upon the various stages of a bill but it cannot be moved upon an amendment, though, after an amendment has been agreed to, the previous question can be put on the main question as amended (*n*). One object of moving the previous question is to prevent an amendment to the main question and thus force a direct vote on the main question (*o*). The members proposing and seconding the previous question generally vote in its favour but there is no rule to prevent them voting against their own motion (*p*). As no amendment can be proposed to the previous question neither can the previous question be proposed when there is an amendment under consideration. If the previous question has been proposed it must be withdrawn before any amendment can be submitted to the house (*q*). If an amendment has been first proposed, it must be disposed of before a member can move the previous question (*r*).

The motion for the previous question may be superseded by a motion to adjourn or for reading the orders of the day.

(*m*) Cushing, pp. 554-5.

(*n*) May, 283; 99 E. Com. J. 504; 113 *Ib.* 220; 119 *Ib.* 160, 234; 135 *Ib.* 261; 137 *Ib.* 378; 114 Lords' J. 173. Cushing, pp. 509 and 549 to 561.

(*o*) Can. Ass. J. (1865), 180, 191, 192; *Ib.* (1856), 142.

(*p*) Can. Hans. (1879), 408, Can. Com. J. (1896), March 11th and 28th.

(*q*) May, 283, 284.

(*r*) 117 E. Com. J. 129; 118 *Ib.* 269; 174 E. Hans. (3), 1376; Can. Com. J. (1870) 254.

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But such a motion cannot be made if the house resolves that the question shall now be put under rule 44 (*s*). It is also in order to move the adjournment of the debate on the previous question but not if the house decide that the question be put (*t*). When a motion has been made for reading the orders of the day, in order to supersede a question, the house will not afterwards entertain a motion for the previous question, as the former motion was in itself in the nature of a previous question. A motion for the previous question is not admitted in a committee of the whole house (*u*). According to May, the previous question cannot be moved upon a motion relating to the transaction of public business but no authority is cited except a speaker's private ruling of the 30th May, 1892. The question as to what would constitute public business under such ruling would be for the speaker to decide (*v*).

IX. Renewal of a Question during a Session.—When a motion has been stated by the speaker to the house, and proposed as a question for its determination, it is then in the possession of the house, to be decided or otherwise disposed of according to the established forms of proceeding. It may then be resolved in the affirmative or passed in the negative; or superseded by an amendment, or withdrawn with the unanimous consent of the house. It is, however, an ancient rule of parliament that “no question or motion can regularly be offered if it is substantially the same with one on which the judgment of the house has already been expressed during the current session” (*w*). The old rule of parliament reads: “That a question being once made, and carried in the affirmative or negative, cannot be questioned

(*s*) 250 E. Hans. (3), 1157-8.

(*t*) Can. Hans. (1879), 407; 250 E. Hans. (3) 1158, May 284.

(*u*) May, 420, note; Jefferson's Manual—, 87. See general discussion on previous question. 2 Hatsell, 88 Jefferson's Manual, p. 119. U 1 Cmt. Can. Com. J. (1913) p. 560.

(*v*) May, 283, note; Can. Com. J. (1913) p. 453.

(*w*) May, 300; 1 E. Com. J. 306, 434.

again, but must stand as a judgment of the house" (x). Unless such a rule were in existence, the time of the house might be used in the discussion of motions of the same nature and contradictory decisions would be sometimes arrived at in the course of the same session.

Consequently, if a question or bill is rejected in the Senate or Commons it cannot be regularly revived in the same house during the current session. Circumstances, however, may arise to render it necessary that the house should reconsider its previous judgment on a question, and in that case there are means afforded by the practice of parliament of again considering the matter. Orders of the house are frequently discharged (y) and resolutions rescinded (z). The latter part of the nineteenth rule of the House of Commons provides: "No member may reflect upon any vote of the house, except for the purpose of moving that such vote be rescinded." But when a question has once been negatived, it is not allowable to propose it again, even if the form and words of the motion are different from those of the previous motion (a). Sir Erskine May says on this point, which is one involved in some difficulty: "The only means by which a negative vote can be revoked is by proposing another question, similar in its general purport to that which had been rejected, but with sufficient variance to constitute a new question; and the house would determine whether it were substantially the same question or not."

The English journals are full of examples of the evasion of the rule which the house has permitted (b). In all such cases, the character of the motion has been changed suffi-

(x) Res. April 2, 1604, E. Com. J. (y) Can. Com. J. (1877), 26.

(z) *Ib.* (1867-8), 184; Leg. Ass. J. (1856), 722; 253 E. Hans. (3), 643. Sen. Rule 25A.

(a) 95 E. Com. J. 495; 115 *Ib.* 249; 245 E. Hans. (3), 1502; Can. Com. J (1884), 462.

(b) The most memorable instances of numerous motions on a cognate question occurred in the session of 1845, in reference to the opening of letters at the post-office, under warrants from the secretary of state; 100 E. Com. J. 42, 54, 185, 199, 214. May, 300, 2.

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ently to enable the member interested to bring it before the house. Such motions, however, must be very carefully considered, in order to guard against a palpable violation of a wholesome rule.

If a motion has been negatived, it cannot be afterwards proposed in the shape of an amendment (*c*). In case a motion has been withdrawn it may be again proposed, as the house has not previously determined the question, and it is only in the latter event that the same question may not be revived (*d*). If an amendment has been negatived, a similar amendment cannot be proposed on a future day (*e*). It has been decided however, in the Canadian Commons, that an amendment is in order when it comprises only a part and not the whole of a resolution previously voted on by the house (*f*).

As it is in reference to bills, and the proceedings upon and in relation to them, that this rule received its most important application, it is proposed to deal with the subject again in the chapter devoted exclusively to public bills. Technically speaking, the rescinding of a vote is the matter of a new question—the form being to read the resolution of the house and then to move that it be rescinded (*g*) and thus the same question which had been resolved as the affirmative is not again offered, although its effect is annulled, or another resolution expressing a different opinion may be agreed to (*h*).

Notice is required of a motion to rescind a resolution or to expunge an entry in the Votes and Proceedings except in the case of a question of privilege (*i*).

(*c*) 76 E. Hans. (3), 1021. (*d*) 80 E. Hans. (3), 432, 798.

(*e*) 214 E. Hans. (3), 287. For other illustrations of the rule, see May, chap. xi. (*f*) Can. Sp. Dec. 186; Can. Com. J. (1871), 145, 146. Also Mr. Speaker Kirkpatrick, March 12, 1883; Hans. 175, 176.

(*g*) May, 300 *et seq*; Can. Com. J. (1867-8) 184; *Ib.* (1855), 53.

(*h*) 130 E. Com. J. 345, 367; 235 E. Hans. 1690.

(*i*) May, 301; E. Com. J. 26th. Feb., 1885.; 294 *Ib.* 1423. Five days notice to rescind an order, resolution or other note are required in the Senate unless notice is dispensed with by unanimous consent. See Senate Rules Nos. 25 and 25B.

CHAPTER X.

RULES OF DEBATE.

- I. Department of Members.—II. Precedence in Debate.—III. Written Speeches not Permissible: Extracts from Papers.—IV. References to Sovereign or Governor-General.—V. Relevancy of Speeches.—VI. Length of Speeches.—VII. Debatable and Non-Debatable Questions and Motions.—VIII. Other Limitations of Debate: Closure.—IX. Motions for Adjournment of House: of Debate.—X. Personal Explanations: Calling in Question a Member's Words: Interruption of Members.—XI. Interruption of Members or of Business in the House.—XII. Speaking on Calling of Orders.—XIII. Manner of Addressing another Member: References to the other House: To Previous Debates: To Judges and other Persons.—XIV. Rules for the Preservation of Order: Parliamentary and Unparliamentary Expressions in Debate.—XV. Naming a Member.—XVI. Words Taken Down.—XVII. Misbehaviour in Committees or Lobbies.—XVIII. Proceedings to Prevent Hostile Meetings: Punishment for Misconduct.—XIX. Withdrawal of Members.

I. Department of Members.—Debate being one of the principal duties and privileges of members of a legislative body, its rules and the order of proceeding therein are of great importance and interest. Debate arises when a question has been proposed by the Speaker and before it has been fully put. The rules governing debate chiefly relate to the nature of matters that may be discussed, the time when and the circumstances under which a member may address the house, and as to what he may or may not say when he has the right to speak. But before entering upon

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a consideration of these points, a few remarks may with propriety be made upon the subject of the general rules and usages relating to the department of members while present in the house during the session.

Senators and members of the Commons may sit in their places, in their respective houses, with their heads covered, but when they desire to speak they must rise and remove their hats (*a*). Exception, however, will be made in cases of sickness, or bodily infirmity, when the indulgence of a seat is permitted, at the suggestion of a member and with the general acquiescence of the house (*b*). A member suffering from indisposition will also be permitted to hand his motion to another member to read (*c*).

In the Commons, a member must address himself to Mr. Speaker (*d*). In the Senate the members must address themselves "to the rest of the senators, and not refer to any other senator by name" (*e*). In the Commons, if a member addresses the house and not the chair, he will be called to order immediately (*f*).

Senators and members, when they enter or leave the house, or cross the floor, must make obeisance to the chair (*g*). The rule of the Senate provides:

17. "Senators may not pass between the chair and the table. When entering, leaving, or crossing the Senate chamber they bow to the chair. If they have occasion to

(*a*) Sen. R. 32; H. C. R. 16.

(*b*) 2 Hatsell, 107; Romilly, 269, 270. When Mr. Pitt made his celebrated speech in 1793 against the peace, he was permitted to speak sitting. Cases of Lord Wynford, 64 Lords' J. 167; Mr. Wynn, 9th March, 1843; 67 E. Hans. (3) 658. It is usual to move that leave be accorded the afflicted member. On one occasion the late John Charlton, M.P. was accorded this privilege in the Canadian Commons.

(*c*) On the 12th March 1878, Mr. Schultz, late Governor of Manitoba, was suffering from a bronchial affection and a member sitting near read his questions for him. On a previous day Mr. Mason had read two letters for the honourable member.

(*d*) Com. Rule, 16.

(*e*) Sen. Rule, 32.

(*f*) 222 E. Hans. (3), 1002, 1438.

(*g*) 8 E. Com. J. 264.

speak together, when the Senate is sitting, they go below the bar, otherwise the speaker stops the business under discussion."

Rule 23 of the House of Commons also provides for decorum in the following terms:

(1) "When the speaker is putting a question, no member shall walk out of, or across the house, or make any noise or disturbance; and when a member is speaking, no member shall interrupt him, except to order, nor pass between him and the chair; and no member may pass between the chair and the table, nor between the chair and the mace, when the mace has been taken off the table by the sergeant-at-arms."

(2) "When the House adjourns, the members keep their seats until the Speaker has left the chair."

The Senate has the same rule (No. 15).

Whenever a message is received from the governor-general, "signed by his own hand," the speaker will read it to the House of Commons, while the members stand uncovered (*h*). But when the clerk proceeds to read papers transmitted with the message, the members may resume their seats.

As the members have seats allotted to them, they generally address the house from their places, though no objection

(*h*) In the English Lords and Commons the members sit uncovered when messages are received direct from the crown under the sign manual (E. Hans. Oct. 27, 1884); but Hatsell (ii 366) states that in 1620-1 one English House of Commons carried their respect still further and every one stood uncovered. The message under the royal sign manual in Great Britain is brought to the house by a member of the house, being a minister of the Crown or one of the royal household. In the house of Lords, the peer who is charged with the message acquaints the house from his place that he has a message which his Majesty has commanded him to deliver. The Lord Chancellor then reads the message, all the Lords being uncovered. In the house the member who brings the message appears at the bar where he informs the speaker of the message. On the request of the speaker he brings it up to the chair. The message is read by the speaker to the house, all the members being uncovered. May, 446.

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is raised if a member addresses the houses from the seat of another member—but when divisions are being taken a member is expected to vote from his own seat in the house.

II. Precedence in Debate.—The speaker of the Commons will always give precedence in debate to that member who, rising in his place, first catches his eye. Rule 17 provides also for cases where several members rise at the same time:

“When two or more members rise to speak, Mr. Speaker calls upon the member who first rose in his place; but a motion may be made that any member who has risen ‘be now heard,’ or ‘do now speak,’ which motion shall be forthwith put without debate.” (i).

It is usual, however, to allow priority to members of the administration who wish to speak and to new members who have not before spoken; and in all important debates it is customary for the speaker to endeavour to give the preference, alternately, to the known supporters and opponents of a measure or question (j). It is irregular to interfere with the speaker’s call in favour of any other member.

In the House of Lords when two rise at the same time the chancellor or chairman of committees has no absolute right to determine the question as to which should be heard. Unless one immediately gives way the house will call upon one of them to speak, and in case of variance of opinion the decision must rest with the house, which may forthwith

(i) May, 312. When debate was allowed on a similar motion in the British Parliament, an amusing example is given where two members rose at the same time and a motion made that one be now heard, the other took immediate advantage of it and spoke to the question. Memorials of Fox, I, 295. A recent instance of such a motion is found in the Can. Com. J. (1913), p. 452.

(j) 67 E. Hans. (3), 898; 77 *Ib.* 866; 153 *Ib.* 839. The debate of 12th March, 1878, on the tariff (see Canadian Hansard of that date) illustrates how members on different sides follow each other alternately; the convenience is obvious. May, 313.

proceed to vote who shall be heard (*k*). Rule 33 of the Senate is similar to Rule 17 of the Commons on this subject.

III. Written Speeches not Permissible.—Extracts from Papers.—It is a rule in both houses of parliament that a member must address the house orally, and not read from a written, previously prepared speech; for the reason, that "if the practice of reading written speeches should prevail, members might read speeches that were written by other people, and the time of the house be taken up in considering the arguments of persons who were not deserving of their attention" (*l*). It is the invariable practice to discountenance all such written speeches, and it is the duty of the speaker to interfere when his attention is directed to the fact (*m*). Members may, however, make use of notes in delivering a speech (*n*). It is not permissible for a member to hand in to Hansard any writings or statements which have not been orally addressed to the house in his speech (*o*). Although occasionally by the courtesy of the house the Finance Minister has been allowed to do so in making his budget speech wherein important financial statements and abstracts have been referred to.

But a member may read extracts from documents, books or other printed publications as part of his speech, provided in so doing he does not infringe any point of order (*p*).

But there are certain limitations to this right, for it is not allowable to read any petition referring to debates

(*k*) May, 311. 18 E. Hans. (1), 719; 34 Lords' J. 306; 21 E. Hans. (N.S.) 187-8.

(*l*) Parl. Deb. (1806), vol. 7. pp. 188, 207-8. Rule 164 of the British House of Commons (11th. ed., 1896), provides, "A member is not to read his speech but may refresh his memory by reference to notes."

(*m*) E. Hans. (3), 178.

(*n*) Parl. Deb. (1806), p. 208; May, 310.

(*o*) Speakers have invariably ruled strongly against any attempt (except as above stated) to violate this rule.

(*p*) May, 310; E. Hans. (N.S.), 884, (1832); Mirror of P. 1840, vol. 16, p. 1634; *Ib.* 1841, vol. 77., 2250.

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in the house (*q*), and where the language of a document is such as would be unparliamentary, if spoken in debate, it cannot be read. No language can be orderly in a quotation which would be disorderly if spoken (*r*). Nor can any portion of a speech, made in the same session, be read from a private book or paper. It is also irregular to read extracts from newspapers or documents referring to debates in the house in the same session (*s*). In making extracts a member must be careful to confine himself to those which are pertinent to the question; it is not regular to quote a whole essay or pamphlet of a general character (*t*). Neither is it regular for a member to read a paper which he is asking the house to order to be produced (*u*). Nor is it in order to read articles in newspapers, letters or other communications, whether printed or written, emanating from persons outside the house, and referring to, or commenting on, or denying anything said by a member, or expressing any opinion reflecting on proceedings within the house (*v*). During a debate on the tariff in the session of 1877, Mr. Mills referred to the opinions of Sir Alexander Galt, formerly a member and minister of finance. Subsequently one of the Canadian papers published a letter from Sir Alexander in answer to some of Mr. Mills' remarks; and the latter rose and proposed reading from the paper in question; but the speaker interrupted him and questioned the propriety of this course—a decision entirely

(*q*) *Mirror of P.* vol. 20 (1840), p. 4820.

(*r*) 16 *E. Hans.* (3), 217; *Can. Hans.* (1885), 2210; *Ib.* 2392.

(*s*) *May*, 326.

(*t*) 139 *E. Hans.* (3), 638; *Can. Hans.* (1885), 1461. Nor may a member read to himself in a low tone; he must address himself to the chair; 221 *E. Hans.* (3), 1002-3. See resolution of 19th April, 1886 (*Mr. Charlton*), with respect to the reading of voluminous and irrelevant extracts.

(*u*) 12 *Ib.* (1), 1043; 10 *Ib.* (1), 700; 161 *Ib.* (3), 432.

(*v*) 61 *E. Hans.* (3), 141, 661, 662; 64 *Ib.* 26; 230 *Ib.*, 1339; 241 *Ib.*, 831; 245 *Ib.*, 1673. "Allusion to debates in the other house are out of order," says *May*, (p. 326), "and there are few orders more important than this for the conduct of debate and for observing courtesy between houses."

in accordance with the English rules of debate (*w*). It is in order, however, for a member to quote from a printed paper, on which he proposes to found a motion (*x*).

It is a parliamentary rule that when a minister of the Crown quotes a public document in the house, and founds upon it an argument or assertion, that document, if called for, ought to be produced (*y*). But it is allowable to repeat to the house information which is contained in a private communication (*z*). When such private papers are quoted in the house there is no rule requiring them to be laid on the table (*a*). The rule respecting the production of public papers, quoted by a minister of the Crown, is necessary to give the house the same information he possesses, and enable it to come to a correct conclusion on a question. It does not appear that the English Commons have ever applied this rule to the case of private members citing public documents not in the possession of the house.

But it is established that when the quotation or reference is made the demand for its production should be made at the time, and the Minister is not bound to produce it on a demand made some days afterwards. On June 6th, 1899, while the schedule of a bill relating to the Grand Trunk Railway Company was under consideration in a committee of the whole, Sir Chas. H. Tupper quoted from a speech of the minister of railways, made a few days

(*w*) Can. Hans. (1877) 1190. When a member proposed to read a letter in the "Times" from General Hay, Mr. Speaker Denison interposed and said that "the hon. member had exercised a wise discretion in not doing so." The house, however, is generally indulgent in allowing this rule to be suspended, in special cases when the conduct of a member is in question, or when it requires more information on a matter of importance. 178 E. Hans. (3), 373; 183 *Ib.* 826.

(*x*) 240 E. Hans. (3), 1007.

(*y*) May, 338-339. Lord Palmerston, 166 E. Hans. (3), 2129; Mr. Canning's case, 63 E. Com. J., 4th March, 1868; 176 E. Hans.(3), 962; 156 *Ib.*, 1587; 235 *Ib.* 935. But he may refuse in case he believes that the public interests would be jeopardized, 243 E. Hans. (3), 940-41. See Com. J. (Can.) vol. xiv. (1880), p. 201.

(*z*) Lord Palmerston, 146 E. Hans. (3), 1759; 156 *Ib.* 1587.

(*a*) 179 *Ib.* 490. May, 338.

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previously, where he referred to information given to him by one of the officers of his department and asked the ruling of the chair upon the obligation of the minister to lay on the table the document containing this information. The chairman ruled that the point of order should have been taken when the reference was made to the document, if it existed, and it was too late now to declare that the minister should produce it. Sir C. H. Tupper thereupon appealed from the decision of the chairman. The speaker resumed the chair and the question being put that the decision of the chairman be confirmed, the house divided, yeas 65, nays 20. So it was resolved in the affirmative (*b*).

A minister who summarizes a correspondence but does not actually quote from it is not bound to lay it on the table (*d*); nor are confidential documents or documents of a private nature passing between officers of a department and the department, cited in debate necessarily laid on the table of the house, especially if the minister declares that they are of a confidential nature. "Indeed", says May, "it is obvious that the house deals only with public documents in its proceedings and it could not thus incidentally require the production of papers which, if moved for separately, would be refused as beyond its jurisdiction" (*e*).

IV. References to the Sovereign or Governor-General.

—By rule 19 of the House of Commons it is expressly forbidden to speak disrespectfully of the sovereign or his representative in this country, or of any member of the royal family (*f*). The use of the name of the sovereign

(*b*) Can. Com. J. (1899), vol. 34, pp. 238, 239; Desjardin's Speakers' Decisions, p. 111. (*d*) May, 338, note. (*e*) *Ib.* 339.

(*f*) Mr. Speaker Lefevre, 69 E. Hans. (3), 24, 574; 228 *Ib.*, 133-6; 235 *Ib.*, 1596. In 1783, Dec. 17, the House of Commons resolved that it was "a high crime and misdemeanour, derogatory to the honour of the crown, a breach of the fundamental privileges of parliament, and subversive of the constitution of the country, to report any opinion or pretended opinion of his majesty upon any bill or other proceeding depending in either house." Also see the remonstrance of the Lords and Commons to Charles I. on the 16 December, 1641.

or his representative in debate, so as to interfere with the freedom of discussion, or for the purpose of influencing the determination of the house or the votes of members with respect to any matter pending in parliament is out of order, being unconstitutional and an interference with the independence of parliament. Cases, however, may arise where it is permissible to introduce the name of the sovereign or of the governor-general in debate. A member of the government may, with the authority of the sovereign or governor-general, make a statement of facts, provided it is not intended to influence the judgment or decision of the house (g). A case in point occurred in 1876, when Mr. Disraeli was permitted to give an emphatic denial, on the part of her Majesty, to some remarks made by Mr. Lowe as to certain alleged unconstitutional influences brought to bear upon ministers and members in favour of the Royal Titles Bill. On that occasion Mr. Speaker Grand said:—

"If the statement of the right hon. gentleman relates to matters of fact, and is not made to influence the judgment of the house, I am not prepared to say that, with the indulgence of the house, he may not introduce her Majesty's name into that statement". Mr Disraeli then proceeded to state, on the part of her Majesty, "that there was not the slightest foundation for the statement made by Mr. Lowe" (h).

It is not unusual in the Canadian house for the leader of the government to make statements with reference to the relations between the cabinet and his Excellency the governor-general, or in answer to false reports in the public press. In the session of 1879 Sir John Macdonald, then premier, read a statement from the Marquis of Lorne

(g) Sir Robert Peel, 9th May, 1843; 69 E. Hans. (3), 24, 574; May, 328-9.

(h) 22^a E Hans. (3), 2037. In a subsequent speech a member was allowed to quote from a diary published with the sanction of her majesty, when the passage cited did not affect measure before the house; 244 *Ib.*, 492-3.

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giving him authority to deny certain inaccurate statements that had appeared in a newspaper with reference to the dismissal of Lieutenant-Governor Letellier de St. Just (*i*).

When despatches are brought down from his Majesty or the governor-general, it is of course perfectly legitimate to discuss the subject-matter at the proper time (*j*), but it is irregular to say that they have been brought down for a purpose (*k*).

The rule, however, must not be construed so as to exclude a statement of facts by a minister, in which the sovereign's or the governor-general's name may be concerned (*l*).

V. Relevancy of Speeches.—The freedom of debate requires that every member should have full liberty to state, for the information of the house, whatever he honestly thinks may aid it in forming a judgment upon any question under its consideration. But it is nevertheless the duty of the speaker of the house (or chairman of committee), to interfere when he finds that the member's remarks are not relevant to the question before the house. On such occasions, he may very properly suppose "that the member will bring his observations to bear upon the motion before the house" (*m*); or "that he will conclude with something that will bring him within order" (*n*). And he may find it necessary to caution a member that "he is approaching the limits of propriety which confine hon. members in speaking to that which is relevant to the subject in hand", and to express the hope "that he will be careful to confine himself to that which is rele-

(*i*) Can. Hans. (1879), 1100.

(*j*) Can. Hans. 1st. March, 1877, (appointment of senators).

(*k*) Mr. Speaker Cockburn, 3rd November, (second session), 1873, Com. Jour. (*l*) May, 329, 330.

(*m*) 18 E. Hans. (3), 89. Mr. Speaker Sutton.

(*n*) Mr. Speaker Abbott; Cushing, 635, 637.

vant" (*o*). In other words, he must direct his speech to the question before the house or committee, or to the motion or amendment he intends to move, or to the point of order raised. If the Speaker or chairman believes that his remarks are not relevant to the question the member so transgressing will be called to order (*p*). The precise relevancy of an argument is not always perceptible, but the Speaker must be satisfied that it is relevant, otherwise he reminds the member that he must speak to the question. It follows therefore that the debate must not stray from the question before the house to matters which have been decided during the current session, nor anticipate a matter already appointed for the consideration of the house.

In the British Commons the authority of the Speaker in cases where members have persisted in irrelevant remarks, has been recently enlarged, so that a member who persists in irrelevance may be 'named', as disregarding the authority of the Chair (*q*).

The Canadian Commons rules 13, (5), 18 and 19 specifically insist upon the relevancy of speeches in debate both in the house and in committees and upon points of order. A remark which has been ruled to be out of order cannot be subjected to debate (*r*).

VI. Length of Speeches.—Members are not limited to time when they address the house, except under special circumstances provided for by a rule, adopted in 1913. This rule (17B) is one of a series established with a view of limiting debate at a certain period and also closing debate altogether, after previous notice. The notice to bring this rule into effect must be given by a minister of the Crown. He must have given notice of his intention at a previous sitting and the motion when made is to be decided without

(*o*) 222 *Ib.* 1199; May, 314, 315.

(*p*) 227 *E. Hans.* (3), 783, 896; 229 *Ib.* 1751; 59 *E. Hans.* (3), 507; 112 *E. Parl. Deb.* (4s). 404.

(*q*) 234 *E. Hans.* (3), 374, 385, 388, 393, 396; S.O. 18 *et seq.* 1902.

(*r*) May, 315; 308 *E. Hans.* (3), 738.

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debate or amendment. If the motion is carried no member can speak more than once, even in committee, and no longer than twenty minutes and the debate must automatically close at two o'clock a. m. if the debate continues to that hour. Apart from speeches made under this rule, members may address the house at any length. Suggestions have frequently been made in favour of regulations limiting the time of speaking but they have been found unpractical and inadvisable with the above exception which is applicable only under peculiar circumstances. The rule referred to will be quoted in full in another reference to debate later on in this chapter. While no limit has been placed on the length of speeches in the Imperial Commons, a debate may be closed by the adoption of the previous question, which is put without debate or amendment. But this motion which is, "That the question be now put" is to a certain extent under the control of the Speaker, or Chairman, who may decline to put it if he thinks the motion an abuse of the rules of the house, or an infringement on the rights of the minority, or if when a vote is taken it appears that at least one hundred members have voted in the majority. Other features of limitations to closure in the British House of Commons which are not at all applicable in the Canadian Commons are discussed in May, pp. 217-226. In the United States House of Representatives there are rules limiting the time of speaking.

VII. Debatable and Non-Debatable Questions and Motions.—Both houses have imposed upon themselves strict rules with the view of preventing unnecessary use of time regarding questions that may present themselves. The limitation of debate was considerably increased by the rules adopted in 1913 by the House of Commons. The Senate rules regulating the subjects or motions, which may or may not be debated will be first considered. Rule 18 provides that if, at any sitting of the Senate or in Com-

(5) Digest and Manual of the Rules and Practice of the House of Representatives. Wilson's Digest of Parliamentary Law, 404.

mittee of the whole, any senator may notice that strangers are present, the Speaker or the Chairman shall forthwith put the question, "That strangers be ordered to withdraw", without permitting any debate or amendment. But the Speaker or Chairman may order such withdrawal if he think fit without putting the question. Rule 34 provides that, "A senator may speak to any question before the Senate, or upon a question or an amendment to be proposed by himself; or upon a question of order arising out of debate; but not otherwise, without the consent of a majority of the senate, which shall be determined without debate." Rule 39 of the Senate directs that no debate is in order on a mere inquiry, but explanatory remarks may be made both by members proposing the inquiry and the minister in answering. No further observations are allowed. Rule 45 provides that any senator called to order shall sit down and shall not proceed pending the decision of the question of order.

In the House of Commons, previous to the adoption of the new rules 17A, 17B, and 17C, there were several non-debatable motions and questions such as: the motion that a certain member "be now heard" or "do now speak" under rule 17; an appeal from a decision of a speaker on a point of order under rule 18; on matters of inquiry under rule 37; notices of motions for the production of papers, marked with an asterisk, under rule 38; a motion that a member have leave to move the adjournment of the house under rule 39; the putting of the main question where the "previous question" has been resolved in the affirmative under rule 44; the first reading of bills under rule 91; on the presentation of petitions, rule 75. But non-debatable matter has been more clearly defined by the new rule referred to. This rule (17A) defines debatable motions as: every motion heretofore debatable made upon routine proceedings, except adjournment motions and every motion standing on the order of proceedings for the day, or for the concurrence in a report of a standing or a special committee, or for the previous question, or for

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the third reading of a bill, or for the adjournment of the house when made for the purpose of discussing a definite matter of urgent public importance, or for the adoption, in committee of the whole, or of supply, or of ways and means of the resolution, clause, section, preamble or title under consideration shall be debatable; but all other motions shall be decided without debate or amendment. Formerly all motions were debatable unless some rule or settled parliamentary usage could be quoted to the contrary. But at present the rule is reversed. All motions are to be decided without debate or amendment except those specifically recognized as debatable under the above rule.

VIII. Other Limitations of Debate.—Closure.—The Senate rule 35 provides that "no senator may speak twice to a question before the Senate, except in explanation of a material part of his speech, in which he may have been misconceived, and then he is not to introduce new matter." And by the following rule (36), "a reply is allowed to a senator who has moved the second reading of a bill or made a substantive motion, but not to one who has moved an amendment, the previous question, an adjournment during debate, a motion on the consideration of Commons' amendments, or an instruction to a committee." In all cases the reply of the mover of the original question closes the debate. But it is the duty of the speaker to see that every senator wishing to speak has the opportunity to do so before the final reply (*t*). The rules of the House of Commons are similar on these points. They may be summarized as follows: (1) No member may speak twice to a question; he may however explain a material part of his speech which may have been misquoted or misunderstood but he is not to introduce new matter. (2) No debate is allowable upon such explanation. (3) A reply is allowed to a member who has moved a substantive motion or the second reading of a bill. (4) But no reply is allowed to a member who

(*t*) Sen. Rule 37.

has moved an order of the day (not being the second reading of a bill), an amendment, the previous question, and adjournment during a debate, or an instruction to a committee. (5) A reply is allowed to a mover of a substantive motion, although the debate thereon, by being adjourned, becomes an order of the day. (6) In all cases the reply of the mover of the original motion closes the debate. (7) But it is the duty of the speaker to see that every member who wishes to speak has the opportunity to do so before the final reply (*u*).

It is the practice in the Canadian house, as in the British parliament, for the member who makes a motion to give the name of his seconder, who may, if necessary, lift his hat as evidence that he has intimated his consent and under such circumstances he is allowed to speak at a subsequent stage of the debate on the question (*v*). The same practice prevails in the Senate (*w*). But if a member who moves an order of the day or seconds a motion, should rise and say only a word or two—that he moves the order or seconds the motion—he is precluded from again addressing the house according to a strict interpretation of the rules (*x*). In moving an amendment a member is obliged to rise, and though he may only propose his amendment he is considered to have exhausted his right to speak on the question before the house (*y*). On the same principle when a member rises and simply reads a substantive motion to the house, he is considered to have spoken to the question, but he may claim the right of reply at a later stage.

A member who has already spoken to a question has no right to rise again and propose an amendment or the adjournment of the house, or of the debate, though he may speak again to those new questions, when they are

(*u*) H. C. Rule 21.

(*v*) May, 321, 322. 210 E. Hans. (3) 304.

(*w*) S. R. 38.

(*x*) 194 E. Hans. (3) 1470; 4 E. Hans. (N.S.) 1013.

(*y*) 118 E. Hans. (3) 1147, 1163. May, 322, 323.

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moved by other members (z). For the same reason a member who has moved the adjournment of the debate which has been negatived cannot speak to the original question. A member who has moved or seconded the adjournment of a debate cannot afterwards rise to move the adjournment of the house. And, as a member who moves an amendment cannot speak again, so a member who speaks in seconding an amendment is equally unable to speak again on the original question, after the amendment has been withdrawn, or otherwise disposed of. In both cases the members have already spoken while the question was before the house and before the amendment had been proposed from the chair (a). But if a member moves an amendment and does not speak, he will be allowed to address himself to the main question by withdrawing the amendment (b).

It is usual for a member who wishes to have the floor on a future day to move the adjournment of debate, and to give him the priority when it is resumed. The house also frequently agrees to adjourn the debate in order to allow an opportunity to a member to continue his speech on a future occasion (c). But a member must rise in his place when the house resumes the debate, otherwise he will forfeit his privilege (d). If a member should move the adjournment of debate, and the house should negative that motion, he will have exhausted his right of speaking on the main question. When a debate is adjourned until a future day, a member who has previously spoken on the subject has no right to speak again, unless a new question has been proposed in the shape of an amendment (e). In

(z) May, 323, 222 E. Hans. (3) 1120, 237 *Ib.* 408, 1532. Cushing, pp. 618, 619. Can. Com. J. (1907) 230.

(a) May, 322.

(b) 217 E. Hans. (3) 1405.

(c) Can. Hans. Apr. 7th 1877 (Mr. Costigan) 1266-7. 13 E. Hans. (1) 114. 194 *Ib.* (3) 1470. 196 *Ib.* 1265.

(d) 126 E. Hans. (3) 1246.

(e) 194 E. Hans. (3) 1470. 196 *Ib.* 1265. 222 *Ib.* 1341. Can. Hans. (1878), 1976. May, 322.

Committee of the whole house the restriction upon speaking more than once is removed. When a member speaks to order he must simply direct attention to the point raised and submit it to the decision of the speaker (*f*).

Previously to the coming into force of the new rules of 1913, already alluded to, a debate upon the motion for the speaker to leave the chair in order that the house resolve itself into committee of supply or of ways and means, was always in order and is still in order whenever a motion to that effect is necessary. But it is now provided by rule 17C that on Thursdays and Fridays, when the order of the day is called to go into either of those committees, the speaker leaves the chair without putting any question. But it is provided that the estimates for each department shall first be taken up on a day other than Thursday or Friday. This provision however, may be waived by the consent of the house.

Closure of debate in the House of Commons is effected under the provision of rule 17B. This rule was adopted on the 23rd of April, 1913, after a debate of considerable length and unusual warmth but marked by great ability and parliamentary learning on the part of the members taking part in the discussion (*g*).

The rule is as follows: "Immediately before the order of the day for resuming an adjourned debate is called, or if the house be in committee of the whole, or supply, or of ways and means, any minister of the Crown, who standing in his place, shall have given notice at a previous sitting of his intention so to do, may move that the debate shall not be further adjourned, or that the further consideration of any resolution or resolutions, clause or clauses, section or sections, preamble or preambles, title or titles, shall be the first business of the committee, and shall not further be postponed; and in either case such question shall be decided without debate or amendment; and if the same shall

(*f*) May, 323.

(*g*) Can. Hans. (Apr. 1913) pp. 7388-8456. Can. Com. J. (1913). 451-453.

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be resolved in the affirmative, no member shall thereafter speak more than once, or longer than twenty minutes in any such adjourned debate; or if in committee, on any such resolution, clause, section, preamble or title; and if such adjourned debate or postponed consideration shall not have been resumed or concluded before two o'clock in the morning, no member shall rise to speak after that hour, but all such questions as must be decided in order to conclude such adjourned debate or postponed consideration, shall be decided forthwith.

The rule is so clear that little comment is necessary. It will be noted that the notice of the motion for closing a debate must be given by a minister of the Crown, thus making the government of the day responsible for the proposed action and that the motion must be postponed until the following sitting of the house. (*h*).

(*h*) The first occasion on which debate was closed under the above rule was on May 9th, 1913. The Prime Minister (Rt. Hon. R. B. Borden) having given the required notice at the close of the sitting on May 8th in the committee of the whole on the Naval Aid Bill.

When the committee resumed on May 9th, the Premier moved that the further consideration of the 2nd, 3rd, 4th, and 5th sections and proposed sixth section of the bill, shall be the first business of the committee and shall not be further postponed. The motion was carried in committee by a vote of 71 to 44, and thereafter until the bill was reported with an amendment, speeches of twenty minutes in length only, were in order. Can. Hans. (1913) Vol. V. pp. 9444-5.

Some procedure of "Closure Debate" is in force in most of the legislative bodies of the world; notably Great Britain, Italy, France, Germany, Netherlands, Portugal, Austria, Belgium, Denmark, Spain, Switzerland, and the United States (House of Representatives). There is no method of closure of debate in the U.S. Senate or in the Japanese Diet, in the Hungarian Parliament or in Sweden or Norway. The methods vary widely. In England any member may move that "the question be now put." This question must be put forthwith without amendment or debate unless the speaker or chairman rules that the motion is an abuse of the rules or an infringement upon the rights of the minority. The motion is not carried unless, in cases of a division, at least one hundred members vote in the majority for the motion. It thus appears that the closure motion must be sanctioned by the chair. In France the president of the chamber puts the question

IX. Motions for adjournment of House; of Debate.—

A motion to adjourn is not debatable, except in the case of a special motion to adjourn (under rule 39) made for the purpose of discussing a definite matter of urgent public importance. An ordinary motion to adjourn is always in order but no second motion to adjourn may be made until after some intermediate proceeding has been had. An intermediate proceeding is one that may properly be entered on the votes.

The special motion to adjourn under the above mentioned rule is preceded by the member's asking leave to make the motion. This rule has already been fully quoted in chapter IX and it is unnecessary to repeat here.

The speaker first decides as to whether the motion is in order; and the house decides as to whether it desires that the subject be discussed. In Great Britain, where a similar rule is in force, it has been held that the motion must be restricted to a single specific matter of recent occurrence (i) and if the matter, submitted to the house in pursuance of the rule, fails to obtain the requisite support, it cannot, during the same session, be again brought forward in the same manner (j). This being a substantive motion the mover has the right of reply under rule 21. Formerly a motion to adjourn the house might be made while a subject was under discussion for the purpose of giving an opportunity to members who had already spoken to speak again or to make certain explanations which otherwise they might not be able to make, as well as with a view of bringing up some matter in which a member was specifically interested.

of closure without a motion in case there is a general call for "La Closure." Only one member can speak against the proposal and none in its favour. The question is then put by the president, "Shall the debate be closed?" and if it is resolved in the affirmative the debate is closed and the main motion is at once put. In the House of Representatives at Washington the closure is effected by the moving of the previous question.

(i) May, 253.

(j) May, 254.

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Sometimes in this way a debate has been initiated which extended to great length. Such a course is now effectively prevented. (*k*).

A motion for the adjournment of debate is not debatable nor can it be amended. It may not be moved in a committee of the whole house, the analagous motion in committee being, "That the chairman do now report progress and ask leave to sit again," or, "That the chairman do now leave the chair." (*l*).

X. Personal Explanations; Calling in question a Member's Words: Interruption of Members.—There are certain cases where the house will permit a member who has already spoken to a question to make some further remarks by way of explanation before the debate finally closes. For instance, when a member conceives himself to have been misunderstood in some material part of his speech, he is invariably allowed, through the indulgence of the house to explain with respect to the part so misunderstood (*m*), and this privilege of explanation is permitted without leave being actually asked from the house (*n*). But such explanations must be confined to a statement of the words actually used, when a member's language is misquoted or misconceived, or to a statement of the meaning of his language, when it has been misunderstood by the house (*o*); for the speaker will call him to order the moment he goes beyond the explanation and replies to the remarks of the members in the debate (*p*); or attempts to censure others

(*k*) See Bourinot (3rd ed.) pp. 466-67. Can. Hans. (1883) 949; *Ib.* (1885) 2030 (Mr. Blake) 188 E. Hans. (3) 1523-6. Can. Hans. (1878) 2057, 2227. *Ib.* (1891) June 22nd.

(*l*) May, 389, 390.

(*m*) H.C.R. 21; Sen. R. 35; May, 319. 12 E. Hans. (3) 923; 223 *Ib.* 367. Sen. Deb. (1874), 84.

(*n*) May, 319.

(*o*) 167 E. Hans. (3) 1215; Can. Hans. (1875) 861-4.

(*p*) 66 E. Hans. (3) 884, 163, 1032; 223 *Ib.* 367; 224 *Ib.* 1924; Can. Hans. 3 April, 1878 Mr. Goudge.

(*q*); or proceeds to state what he was going to say, but did not (*r*); or to give the motives which operated in his mind to induce him to form the opinion which he had expressed (*s*); or to explain the language of other members (*t*); or to explain the conduct of another person (*u*); or to go into a new reasoning or argument or to advert to a past debate on any other matter (*v*). The house in all cases of personal explanation will frequently "Waive a rigid adherence to established usage" especially when the public conduct of a member is involved. But a member cannot for the purpose of an explanation interrupt another member who has the floor (*w*).

The indulgence of the house will also be given to a member who has already exhausted his right of speaking, when he states that certain facts have come to his knowledge with respect to a matter in which the house is interested, and on which it is necessary that the house should come to a correct decision, or to ministers of the Crown when it is necessary to place the house in full possession of all the facts and arguments necessary to give a full understanding of a question or to explanations in refutation of statements injuriously affecting the conduct of important public functionaries. But while great latitude is allowed in personal explanation, no reference should be made to another member in connection with the subject except in his presence. A member's words, in explanation or relating to the meaning of his speech or in a statement of fact as to his own position or intention, are to be taken as true and not afterwards in debate to be called in question. The words

(*q*) Can. Hans. (1886) 1198. Remarks of Mr. Sp. Fitzpatrick.

(*r*) E. Hans. (1) 814-15.

(*s*) 22 E. Hans. (1), 409.

(*t*) 26 *Ib.* (1) 515. 41 *Ib.* 167.

(*u*) 38 Eng. Hans. (3) 13.

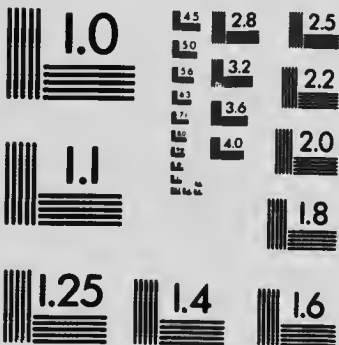
(*v*) 161 *Ib.* 355, 487.

(*w*) 168 E. Hans. (3) p. 61. (1862); 183 *Ib.* 800 (1868); Sen. Deb. (1873), 1012. See also Denison & Brand, Decisions (1857-84) pp. 223-31.



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which he states himself to have used, are to be considered as the words actually spoken; and the sense in which he says they were uttered, as the sense in which they are to be taken in debate. If a member disavows the use of words attributed to him, and objected to, the matter must end (x).

It has frequently been formally ruled by speakers in the Canadian Commons that a statement by an honourable member respecting himself and peculiarly within his own knowledge must be accepted but it is not unparliamentary to temperately criticise statements made by a member as being contrary to the facts; but no imputation of intentional falsehood is permissible (y). A direct contradiction is out of order, or the word "false" applied to statements made by an honourable member or assertions of a similar nature such as "mendacious," "unfounded assertions," and "disgraceful" as applicable to the statements of a member (z). May observes, "The use of temperate and decorous language is never more desirable than when a member is canvassing the opinions and conduct of his opponents in debate. The imputation of unworthy motives, or motives different from those acknowledged, misrepresenting the language of another, or accusing him of misrepresentation, charging him with falsehood or deceit or contemptuous or insulting language—of any kind—all these are unparliamentary and call for prompt interference" (a).

XI. Interruption of Members or of Business in the House.—It is a well recognized rule that when a member is in possession of the house he cannot be deprived of it without his own consent, unless some question of order, or privilege should arise; in which case he must sit down

(x) 21 E. Hans. (2) 393. Can. Hans. 12th Feb. (1878); 2 E. Hans. (1) 315; 61 *Ib.* (3) 53; 200 *Ib.* 218; 233 *Ib.* 1566-9; 245 *Ib.* 1474; 268 *Ib.* 999, 1009; 269 *Ib.* 143; 278 *Ib.* 1511.

(y) 263 E. Hans. (3) 1449 (1881); 282 *Ib.* 1113 (1883).

(z) 202 E. Hans. (3) 442; 147 *Ib.* 884; 171 *Ib.* 961; 183 *Ib.* 800-2; 282 *Ib.* 17-18. 264 *Ib.* 1991; 268 *Ib.* 1652; 266 *Ib.* 232; 282 *Ib.* 2105.

(a) May, 333-4 and notes.

until such question has been disposed of. A member who interrupts another on a point of order should state it clearly, and must not proceed to wander beyond it, and touch upon the question under debate (*b*). A message from the governor-general, or deputy governor, brought by the usher of the black rod, will also interrupt a member or any proceeding, but the debate or business will continue when the house resumes (*c*). In the August session of 1873, Mr. Mackenzie was addressing the house, when the gentleman usher knocked at the door and was ordered to be admitted by the speaker, who proceeded forthwith to the senate chamber where the houses were formally prorogued (*d*). No member who rises to a question of order or privilege will be permitted to move an adjournment of the house or of the debate under the cover of such question. In such a case the speaker will prevent him proceeding further, and call upon the member who had first possession of the house to proceed (*e*). Whilst a member is addressing the house, no one has a right to interrupt him by putting a question to him, or by making or demanding an explanation (*f*). A member will, at times allow such interruptions, through a sense of courtesy to another, but it is entirely at the option of the member in possession of the floor to give way or not to an immediate explanation (*g*). But any member under rule 20 may require the question under discussion to be read at any time of debate, but not so as to interrupt a member whilst speaking.

(*b*) 7 E. Hans., (i) 194, 208; 195 *Ib.* (3) 2007-8.

(*c*) Can. Com. J. (1884), 189; Can. Hans. (1888) 1196, 1197; *Ib.* (1889) 745.

(*d*) Parl. Debs. 13th Aug. 1873; 2 Hatsell, 374-7.

(*e*) 45, E. Hans. (3), 956. A member has been introduced whilst a member was speaking; Mr. White 11th March and Mr. Orton 12th March, 1879; Mr. Stanley, Can. Hans. (1885) 3103. See case of return for election and the introduction of the member himself during a debate: *Ib.* 1192 (Mr. Guillet). 93 E. Can. J. 276, 308.

(*f*) 192 E. Hans. (3) 749.

(*g*) 231 E. Hans. (3) 301; 226 *Ib.* 356; Can. Hans. (1884) 361.

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When, in the English Commons, a member has frequently interjected remarks, while another member has been speaking, he has been warned by Mr. Speaker that if he continues such disorderly interruptions, he will be "named" as disregarding the authority of the chair under the rigid rules lately adopted for the seemly conduct of debate (*h*).

XII. Speaking on Calling of Orders.—It is a practice, sanctioned by usage but not by any positive rule, for members in both houses of the Canadian Parliament to make personal explanations or ask questions of the government when the orders of the day are called. They make them in reference to an inaccurate report of their speeches in the official record, or in the newspapers; or in denial of certain charges made against them in the public prints (*i*); or in reference to certain remarks which had been misunderstood on a previous occasion, and which they had not before had an opportunity of explaining; or in respect to delay in obtaining returns or to the incompleteness or inaccuracy of certain returns brought down under the order of the house. But these remarks are not allowable on the ground of privilege, unless the conduct of a member as such is attacked, and in that case a motion should be formally proposed (*j*). Questions have been asked, when the orders are called relative to the state of public business, or other matters of public interest (*k*). But no discussion should be allowed when a minister has replied to a question, nor after a member has made his personal explanation (*l*). In asking a question, a member must not attack the conduct of the government (*m*). If a member wishes to make personal

(*h*) 261 E. Hans. (3), 1250, 1257; Blackmore (1883) 22; See also May, 344-47.

(*i*) The parliamentary debates abound in instances of this nature.

(*j*) Mr. Holton's remarks, 21st March, 1878; also 11th April, 1878; 87 E. Hans (3) 480; Can. Hans. (1878) 532, 593.

(*k*) Can. Hans. (1878) 593, 708.

(*l*) *Ib.* 595. (*m*) *Ib.* 1269.

explanations in reference to remarks which have fallen from another member, the latter ought to be in his place (*n*); and he will take steps, as a matter of courtesy, to inform the member of his intention to address the house on the subject at a particular time (*o*). But no question can be put, nor remarks made, after the clerk has read the first item on the order paper; for then all questions or remarks must strictly relate to the business under consideration (*p*).

Remarks with respect to a return not brought down in answer to an order or address, or an a matter of urgency, or of public business, or of personal explanation, may be allowed by the indulgence of the house, but not as a matter absolute right. All questions and answers thereto—when answers are necessary—should be brief, and involve no matter of controversy or debate. A minister will sometimes request the member to put his question on the notice paper when he is not prepared to give a prompt and brief answer (*q*). If a member wishes to bring up a question of urgent public importance he should proceed under the provisions of rule 39.

In case of ministerial changes, explanations are generally allowed to be made in both houses when orders of the day are called by the speaker (*r*). When the premier or member leading the government in the house has made such explanations, it is usual to permit the leader of the opposition to make some remarks on points arising out of the former speech. In fact, considerable latitude is allowed by the courtesy of the house on such occasions in the Canadian Commons. In the English Commons, it is irregular to permit any debate after the ministerial statement has been

(*n*) 218 E. Hans. (3) 1783.

(*o*) 174 *Ib.* 192.

(*p*) Can. Hans. (1889) 384.

(*q*) Can Hans. (1885) 2890; *Ib.* (1888) 1093; *Ib.* ((1889) 385; *Ib.* (1890), 506, 1516, 3198. In 1891 Mr. Speaker White urged the house to assist him in restraining the custom to questions of urgency and necessity. Can. Hans Jan. 4th, p. 18 etc.

(*r*) 214 E. Hans. (3), 1945; Sen. Deb. (1873) 31-36; Can. Hans. (1877) 32.

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made, unless some question is formally proposed to the house (s); and the same practice obtains in the Lords—a motion for the adjournment being made when a debate is expected (t).

XIII. Manner of Addressing another Member; Reference to the other House; to Previous Debates; to Judges and Other Persons.—It is a rule of parliament that a member addressing the house should not mention another member by name (u). The Senate has a rule on this point, No. 32, as follows:

“Every senator desiring to speak is to rise in his place uncovered, and address himself to the rest of the senators, and not refer to any other senator by name.” It is usual in that house to speak of another senator as, “the hon. member for Granville” (or other division he may represent) (v); or simply, “the hon. member” (w); or “the hon. post-master general” (or other office he may hold in the government) (x); or his “hon. friend and colleague from Nova Scotia” (or other province) (y). In the Commons, members are referred to as “the hon. member for——”; “the hon. minister of inland revenue”; “the hon. premier,” or “first minister,” or “the hon. gentleman who leads the government”; “the hon. and learned member”; “my hon. friend the member for——”; “the right hon. gentleman”; or in such other terms as designate a member’s position, rank or profession (z). But it is not irregular to refer to members of a previous parliament by name, or even to refer to a member by name, when there are two gentlemen of

(s) 174 E. Hans. (3), 1215, 1216; 191 *Ib.* 1694-1717; 1787-1819. See on this point, Todd ii., 491.

(t) 153 E. Hans. (3), 1266.

(u) May, 333.

(v) May, 333; Parl. Deb. (1870) 1440.

(w) *Ib.* 1442.

(x) *Ib.* 1446, 1450.

(y) *Ib.* 1480.

(z) Can. Hans. (1877) 17, 33, 212, 241; 231 E. Hans. (3) 301; also Sen. Debates (1879) 124, 390 and those for ensuing sessions.

the same name sitting for a constituency, and it is necessary to distinguish between them.

It is also a part of the unwritten law of parliament that no allusion should be made in one house to the debates in the other chamber, a rule always enforced by the speaker with the utmost strictness (*a*). Members sometimes attempt to evade this rule by resorting to ambiguous terms of expression—by referring, for instance, to what happened “in another place”; but all such evasions of a wholesome practice should be stopped by the speaker, when it is evident to whom the allusions are made (*b*). It is perfectly regular however, to refer to the official printed records of the other branch of the legislature, even though the document may not have been formally asked for and communicated to the house (*c*).

Neither can a member, in speaking, refer to anything said or done in a previous debate during the same session—a rule necessary to economize the time of the house, and a restraint upon members to prevent them from reviving a debate already concluded (*d*). Neither is it regular to refer to arguments used in committee of the whole (*e*); nor to any amendment proposed in the same (*f*). Neither may a member read from a printed newspaper or book comments on any speech made in parliament during the session (*g*). It is also a contravention of the rules of the house to discuss messages which are not regularly before it (*h*). But a

(*a*) May, 326, 327; 198 E. Hans. (3) 368; 208 *Ib.* 1682; 228 *Ib.* 1771; 267 *Ib.* 44; Sen. Deb. (1871), 284 *Ib.* 167.

(*b*) 159 *Ib.* (3), 1487; 168, 1197, 1198.

(*c*) 99 *Ib.* (3) 631; 159 *Ib.* 856; also 4 *Ib.* (N.S.), 213.

(*d*) May, 324; 13 E. Hans. (N.S.) 129; 229 *Ib.* (3) 124; Can. Hans. (1879) 1824.

(*e*) 154 E. Hans. (3) 983; 221 *Ib.* 1043-4; Blackmore's Sp. Decs. (1882) 50.

(*f*) 221 E. Hans. (3) 1044.

(*g*) 263 *Ib.* 1613; 221 *Ib.* 303; Neither can a member ask another if he is correctly reported to have made certain statements during that session. 238 *Ib.* 1403.

(*h*) 235 *Ib.* 323; 236 *Ib.* 15;

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reference to, though not a quotation from, a previous debate, by way of illustration, is in order (*i*). But a member may always quote from a speech made in a previous session (*j*). The rule, however, does not apply to debate on the different stages on a bill (*k*), "The rule," says May, "however, is not always strictly enforced; peculiar circumstances may seem to justify a member in alluding to a past debate" (of the same session) "and the house and speaker will judge in each case how far the rule may fairly be relaxed. The Speaker of the British Commons in 1861 observed, "The rule applied in all cases; but where a member had a personal complaint to make, it was usual to grant him the indulgence of making it." Again in 1850 the Speaker made a similar observation (*l*). But although a former debate might be alluded to by way of personal explanation, the instant a member proposed to introduce new matter he will be stopped by the speaker. This rule has frequently been enforced both in the English and Canadian Parliaments. After the passing of an act, allusions have been allowed to debates during its progress, while discussing a proclamation issued under the act, and, upon a motion for practically rescinding a resolution of the house, reference has been permitted to the debate upon that resolution. (*m*). All references to judges and courts of justice and to personages of high official station, of the nature of personal attacks and censure have always been considered unparliamentary and the speakers of the British and Canadian houses have always treated them as breaches of order. They have always insisted that, "Such expressions should be withdrawn" and that "When it is proposed to call in question the conduct of a judge, the member desiring to do so should pursue the constitutional course of moving an

(*i*) 234 *Ib.* 1916.

(*j*) 162 *Ib.* 393.

(*k*) 229 *Ib.* (3) 374; 239 *Ib.* 974, May, 325.

(*l*) May, 324-5.

(*m*) May, 325.

address to the Crown" (*n*). Members have even been interrupted in committee of the whole by the chairman when they have cast an imputation upon a judicial proceeding (*o*). As another illustration of the strictness with which the speaker may restrain members within the limits of decorum, we may refer to the fact that when a member has applied the word "tyrant" to the Emperor of Russia, the Speaker has at once interrupted him and pointed out that the language was not respectful to a sovereign who is an ally and friendly to England (*p*). The proper, and most convenient course for persons who feel called upon to attack the character or action of a judge is, to proceed by way of a petition in which all the allegations are specifically stated so that the person accused may have full opportunity to answer the charges presented against him.

The member presenting the petition, or formulating the charges on his own responsibility, should proceed by asking for a select committee to whom all the papers can be referred for a thorough investigation. Upon their report the house may take further action as may be deemed proper (*q*). Rule 19 of the house is explicit upon the points referred to; "19. No member shall speak disrespectfully of his majesty, or of any of the royal family; or the governor-general or person administering the government of Canada; nor use offensive words against either house, or against any member thereof; nor speak beside the question in debate. No member may reflect upon any vote

(*n*) 212 E. Hans. 1089; 234 *Ib.* 1463; 238 *Ib.* 1953; Can. Hans. (1887) 373.

(*o*) 240 E. Hans. 990, 992; The house has refused to receive petitions reflecting on the courts of law. 216 E. Hans. (3) 960; May 332, 333.

(*p*) 237 E. Hans. 1639; 238 *Ib.* 799; 252 E. Hans. (3) 1902-7. In the Canadian Commons a member has been called to order for reflecting on the proceedings of a provincial legislature. Can. Hans. (1878) 47.

(*q*) Can. Com. J. (1867-8), 297, 344, 398; *Ib.* (1869) 135, 247; *Ib.* (1877) 20, 25, 36, 132, 141, 258; *Ib.* (1867-8) 400. *Ib.* (1882), 192. Todd Parl. Gov. in E. ii, 870, 871, 876. Can. Com. J. (1877), 36. Sen. Deb. (1885) 108.

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of the house except for the purpose of moving that such vote be rescinded."

XIV. Rules for the Preservation of Order.—Parliamentary and Unparliamentary Expressions in Debate:— Strict rules have been laid down for the preservation of decorum and order in their debates and proceedings. The Senate has the following rules on this subject; "46. All personal, sharp or taxing speeches are forbidden." "47. Any senator conceiving himself offended, or injured in the Senate, in a committee room or any of the rooms belonging to the senate, is to appeal to the senate for redress." "48. If a senator be called to order, for words spoken in debate, upon the demand of the senator so called to order, or of any other senator, the exceptionable words shall be taken down in writing by the clerk at the table. And any senator who has used exceptionable words, and does not explain or retract the same, or offer apologies therefor to the satisfaction of the senate, will be censured or otherwise dealt with as the senate may think fit." "49. The senate may interfere to prevent the prosecution of any quarrel between senators arising out of a debate or proceeding of the senate, or any committee thereof" (*r*). In case of a difference between senators the matter will be discussed with closed doors (*s*). In such matters, however, the speaker of the senate has no more authority than any other senator, and, in that respect, occupies a position very different from that of the speaker of the commons, whose duty it is to stop a member the moment he is guilty of a breach of order, and to enforce the rules and usage of the house with promptitude and decision (*t*).

In the House of Commons a member will not be permitted by the speaker to indulge in any reflections on the house itself as a political institution, or as a branch of the

(*r*) Sen. Deb. (1885) 60. *Ib.* 167.

(*s*) Sen. Deb. (1871) 83; Sen. Deb. (1880) 300; 31 Lords' J. 448.

(*t*) May, 334, 335; See debates in Senate, June 21st, 1887.

government or upon the other house (*u*); or to impute to any member or member unworthy motives for their actions in a particular case (*v*); or to use any profane or indecent language, such as is unfit for the house to hear or for any member to utter (*w*); or to question the acknowledged and undoubted powers of the house in a matter of privilege (*x*); or to reflect upon, argue against or in any manner call in question, the past acts and proceedings of the house (*y*); or to speak of committees as if they were the special nomination of any person or "packed majority"; or to speak in abusive and disrespectful terms of an act of parliament; or to speak ironically or in terms of disrespect of the members of the other house of parliament. Personal attacks upon members will always be promptly rebuked by the speaker. "There is no rule better established," said Mr. Speaker Addington on one occasion, "than, that whatever wanders from the subject in debate and is converted into a personal attack, is contrary to order" (*z*). The large number of rulings on the subject of parliamentary language, as applied to a member in debate, clearly indicate that any expression derogatory to his character as an honourable gentleman in private life or to his honour and personal character as a representative of the people is out of order. Among examples of such unparliamentary phrases are the following: No member will be permitted to say of another that he could expect no candour from him (*a*); that he only affected to deplore the distresses of the country (*b*); that his remarks are "insulting to the house and to the

(*u*) E. Com. J. 580; 15 E. Hans, (1) 338-9; 236 *Ib.* (3) 397.

(*v*) 6 *Ib.* (N.S.) 69, 70; 255 *Ib.* (3) 1587.

(*w*) 16 *Ib.* (3) 217; 218 *Ib.* 1331.

(*x*) 4 E. Hans. (N.S.) 116, 118.

(*y*) 2 Hatsell 234; 2 E. Hans. (1) 695.

(*z*) 4 *Ib.* (1) 738; Can. Hans. (1878) 630; May, 332; 35 E. Hans. (1) 369; 264 *Ib.* (3) 1590; 3 Hatsell 74; Cushing, pp. 659,660; 38 Parl. Reg. 367; 6 E. Hans. (N.S.) 69, 70, 518; 13 *Ib.* 470; See House of Commons Rule 19.

(*a*) 33 E. Hans (1) 505;

(*b*) 4 *Ib.* (2), 243.

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country" (*c*); that he "is in the habit of uttering libels in the house" (*d*); that he is "guilty of gross misrepresentations" (*e*); that he has "acted basely" or from "base motives" (*f*); that he is observed in indulging in a smile unworthy of a man (*g*); that the house has a right to know whether a member meant what he said or knew what he meant (*h*); no member can be allowed to apply the term "impertinence" to another member (*i*); or to attribute unworthy motives (*j*) or any intention to insult others (*k*); or to question the honour of one (*l*); or, to tell a member that "he went about the country telling palpable lies" (*m*); or that certain members would "shrink from nothing, however illegal or unconstitutional" (*n*); or that "members came to the house to benefit themselves" (*o*); or that "a member has acted as a traitor to the sovereign" (*p*); or that "liberty and regard to private right are lost to the house," and that a minister had "transferred himself from a constitutional minister into a tyrant" (*q*); or that a member has "stated what he knew not to be correct" (*r*); or that "he does not believe a statement he himself has made" (*s*); or that "he had inspired another member in a certain disorderly course which had brought down the censure of the house" (*t*);

(*c*) 3 *Ib.* (3), t152, tt53.

(*d*) 3 *Ib.* (3) tt94.

(*e*) 8 *Ib.* (2), 4t0.

(*f*) 27 *Ib.* (3), t20.

(*g*) 4 *Ib.* (3) 561.

(*h*) 4 *Ib.* (2) 240.

(*i*) 230 *Ib.* (3), 863; Com. J. Vol. 34, p. 290;

(*j*) 35 *Ib.* (t) 723; 6 *Ib.* (2) 69; 23t *Ib.* (3) 437.

(*k*) 228 *Ib.* 2029, 2030.

(*l*) 222 *Ib.* 329.

(*m*) 223 *Ib.* 1015.

(*n*) 2t9 *Ib.* 589.

(*o*) 6 *Ib.* (2), 69.

(*p*) 257 *Ib.* 1294.

(*q*) 264 E. Hans. 390; Blackmore (t883), 26.

(*r*) 26t *Ib.* 1028.

(*s*) 26t *Ib.* 996.

(*t*) 261 *Ib.* 4t9.

or that "he shelters himself behind his temporary privilege to evade a criminal action" (*u*); nor may he refer derisively to another member "as the member who sits" for a constituency (*v*) or say that "he sits for his constituency by the grace of the leader of the government;" that he is a "servile follower" of a government (*w*). On one occasion in the English House of Commons a member said "at last he had taken a long time to extract it—not from any intention of the right hon. gentleman (Mr. Goschen), to mislead the house, but from the tendency of official habits." The Speaker said, on Mr. Goschen rising to remonstrate, that "he thought that the honourable member was about to qualify his statement, and he trusted that the hon. member would now withdraw it" (*x*). On another occasion a member having spoken of "a course which he held to be unworthy of a minister of Victoria, unworthy to be listened to by any man of honour in this house," the Speaker interposed immediately and said that "the hon. member was exceeding the rules of debate" (*y*). An immense number of instances might be cited of inadmissible expressions applied to a member or to the house and a few more only will be quoted as illustrations of the general principle running through them all. It is out of order to characterize an hon. member as "shabby" (*z*) or that his action in the house has been dictated by "spite," *a*) or "disloyalty" (*b*) or to omit the word "honourable" in referring to him (*c*), or to impute want of "straightforwardness" or "courage" to him particularly if he is a military or naval officer (*d*), or to accuse him of being "hypo-

(*u*) Can. Hans. (1883), 519.

(*v*) Can. Hans. (1883) 520.

(*w*) *Ib.* (1898) 2191; *Ib.* (1884) 448.

(*x*) 218 E. Hans. (3) 1875.

(*y*) 220 *Ib.* 583.

(*z*) 212 E. Hans. (3) 221-2, (1872)

(*a*) 215 *Ib.* 653 1873).

(*b*) 222 *Ib.* 978; 238 *Ib.* 179-80.

(*c*) 231 *Ib.* 301.

(*d*) 235 *Ib.* 1687.

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critical" (*e*) or to say of members that they are on the side of "irreligion" or "immorality" (*f*). It is not in order to impute to an hon. member that he has stated what "he knew not to be correct" and such statement must be withdrawn (*g*). It is not parliamentary to characterize an answer from the government as "shuffling" (*h*), or to charge a member with being "unscrupulous" or "insolent" or with "slandering" or with "duplicity" or "scurrility," or "malice," or with any attitude or conduct unworthy of a gentleman of honour and of independence of character (*i*).

Threatening language is also unparliamentary. An honourable member, being interrupted, said, "perhaps before he concluded, those who interrupted him would be the worse for their interruption." This was held to be unparliamentary (*j*). Again, when a member has intimated that he would move the adjournment, unless certain explanations were given, the speaker has interposed and called him to order for using language menacing to the house (*k*). Words which are plain and intelligible, and convey a direct meaning are sometimes used hypothetically or conditionally upon the idea, that, in that form, they are not disorderly. But this is a mistake. If, notwithstanding their being put hypothetically or conditionally, they are plainly intended to convey a direct imputation, the rule is not to be evaded by the form in which they are expressed. Thus, where a member, being called to order for personal remarks, justifies himself by saying that he was wholly misunderstood, he had put the case hypothetically, the speaker, Mr. Manners Sutton, said, "the hon. member must be aware that putting a hypo-

(*e*) 238 *Ib.* 1639; 248 *Ib.* 665 (1879); 305 *Ib.* 1583 (1886).

(*f*) 252 *Ib.* 369, 411.

(*g*) 261 *Ib.* 1628; 243 *Ib.* 1259 *Can. Com. J.* (1915) p. 57.

(*h*) 258 *Ib.* 270; Peel's decisions p. 64.

(*i*) See Peel's Dec. (1884-95) pp. 66-68; D. & B. Decs. (1857-84) p. 158; 10 *E. Hans.* (March 29th, 1893) p. 1469.

(*j*) 297 *E. Hans.* (3) p. 1005 (Apr. 28, 1885).

(*k*) 261 *Ib.* p. 1032.

thetical case was not the way to evade what would be in itself disorderly" (*l*). In the absence of an hon. member the speaker feels more strongly bound to interpose and check language which seems unparliamentary with regard to an absent member (*m*). It is the duty of the speaker to interrupt a member who makes use of any language which is clearly out of order (*n*). On one occasion Mr. Speaker Sutton said:

"That he always felt it a painful duty to interrupt members, but it was his first duty to preserve order in the house. The orders of the house were made not for the advantage of one party or the other, but for public purposes, and to preserve the general freedom of debate. His sole wish on such occasions, was to preserve the dignity of the house, and the regularity of debate" (*o*).

He added "that in matters of doubt or of trifling importance he would naturally hesitate to call a member to order. He may feel it most convenient to leave such subjects to be regulated by the general sense of the house, taking from them the hint, and declining himself to interfere, unless under circumstances likely to obstruct the public business" (*p*).

Generally speaking the rulings of speakers in the Canadian houses have been even more strict than those in the British Parliament. In the latter, such expressions as the following have been held permissible. A member may say that the statement of another member is untrue or not correct, or, that a particular suggestion is "scandalous"; but should such an expression be used in reference to the chair the offence would be of a very grave nature. The terms "blocking" or "obstruction" have been ruled not out of order. The word "disorderly" if used relatively or the word "manœuvring," if not imputing any unfair

(*l*) 8 *Ib.* 722, 723; 28 *Ib.* 15.

(*m*) 252 *Ib.* 350 (May 1880).

(*n*) 810 *Ib.* 410; 228 *Ib.* (3) 2029; 231 *Ib.* 437.

(*o*) 6 *Ib.* 69, 70, 944.

(*p*) 13 *English Hansard* 121, 130.

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motive, has been permitted. But on all occasions it is the right of a member to rise and call another member to order. He must state the point of order clearly and succinctly, and it will be for the Speaker to decide whether the point is well taken. A member is not at liberty in rising to order, to review the general tenor of a speech, but must object to some definite expression at the moment when it is spoken (*q*). It is legitimate on such occasions for members to debate the point of order, but they must confine themselves strictly to it. When the speaker has pronounced his opinion, it is almost invariably acquiesced in; but while no member can be permitted to argue against it, he can take the sense of the house thereon. Rules 5 and 18 provide as follows:—

“5. The speaker shall preserve order and decorum, and shall decide questions of order, subject to an appeal to the house; in explaining a point of order or practice, he shall state the rule or authority applicable to the case.

18. (1) A member addressing the house shall, if called to order by the speaker or by any other member, sit down while the point of order is being stated, after which he may explain. The speaker may permit debate of the point of order before rendering his decision, but such debate must be strictly relevant to the point of order taken. The speaker shall decide the point of order, which decision shall be subject to appeal to the house, but without debate. If there be no appeal, the decision of the chair shall be final.

(2) Mr. Speaker, or the Chairman, after having called the attention of the house, or of the committee, to the conduct of a member who persists in irrelevance, or tedious repetition, either of his own arguments or of the arguments used by other members in debate, may direct him to discontinue his speech.”

Instances have occurred in both the English and the Canadian houses of the speaker's decisions on points of

(*q*) 195 English Hansard (3), 2007.

procedure or order having been overruled (*r*). In all matters of doubt, the speaker will consider attentively the opinions of members of experience, or sometimes, instead of expressing his opinion on either side, may ask instructions from the house or reserve his decision on the point in dispute; or suggest that the house may, if it think proper, dispense with the rule in a particular case (*s*). Also in many doubtful cases the speaker will be largely guided by the circumstances connected therewith (*t*)."

XV. Naming a Member.—When a member has been called to order by the speaker, it is his duty to bow at once to the decision of the chair, and to make an apology by explaining that he did not intend to infringe any rule of the house or by immediately withdrawing the unparliamentary language he may have used (*u*). In case, however, a member persists in unparliamentary conduct, the speaker will be compelled to name him, and submit his conduct to the judgment of the house, in accordance with a very old rule:

"That no member do presume to make any noise or disturbance whilst any member shall be orderly debating or whilst any bill, order, or other matter shall be in reading or opening; and in case of any such noise or disturbance that Mr. Speaker do call upon the member by name, making such disturbance; and that every such person shall incur the displeasure and censure of the house (*v*)."

In such case the member whose conduct is in question should explain and withdraw, and it will be for the house to consider what course to pursue in reference to him. If the house consider the explanation sufficient, it will

(*r*) Can. Com. J. (1873), 59. The house may also discuss as a point of order, any apparent irregularity in the procedure. For instance, if a member thinks a question has not been put distinctly and regularly from the chair; 174 E. Hans. (3) 1960-4.

(*s*) 15 E. Hans. (1) 154; 16 *Ib.* (1) 739.

(*t*) 1 *Ib.* 800-1. Mirror of Parliament (1840), 16, p. 1634.

(*u*) 230 E. Hans. (3) 863. 231 *Ib.* 437. 107 E. Com. J. 277.

(*v*) Res. of Jan. 22nd, 1693.

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be proper for a member to make a motion to that effect, which will be adopted and duly recorded (*w*). Or when a member has withdrawn after having been named, some one may move that he be called in and reprimanded by Mr. Speaker in his place. Even then, the offender may take this opportunity of apologizing to the house, through another member, for having transgressed the rules of the house; and in such case the house may consent to the withdrawal of the motion for censure, and allow the member to return to his place in the house without a reprimand (*x*). But when the house has agreed that a member should be reprimanded, he will be directed to attend in his place at a particular time; and when he is there, the Speaker will request him to stand up, and proceed to reprimand him; and when he has finished, the reprimand will, on motion, be placed on the journals (*y*). The house in all cases, should give every proper opportunity to an offending member to make such a defence as may satisfy the house and avoid a reprimand. In the case of Mr. Plimsoll, in the session of 1875, it was shown that he had made use of most offensive expressions "while extremely ill, and labouring under excessive mental excitement the result of an overstrain acting upon a very sensitive temperament." Under these circumstances it was considered most advisable that Mr. Plimsoll should not be required to attend in his place till some days later. It was accordingly agreed to adjourn the debate until a future day, when Mr. Plimsoll appeared and apologized to the house; and then the order of the day for the adjourned debate having been read, Mr. Disraeli moved that it be discharged, which was agreed to unanimously.

On the 8th June, 1852, complaint was made by a member in his place that another member had been guilty of misbehavior to him. The Speaker informed the offend-

(*w*) Can. Leg. Ass. J. (1852-3), 126; *Ib.* (1865) 279.

(*x*) 30 Parl. Hist. 114.

(*y*) 3 Mirror of Parliament, (1838) 2231-3, 2263-7.

ing member that it would be necessary to call the attention of the house to his conduct. Upon which the member complained of (Mr. F. O'Connor) addressed the house without expressing regret for what had occurred. Whereupon the Speaker called upon him *by name* and Mr. O'Connor then apologized to the house for his misconduct (z).

XVI. Words Taken Down.—When a member uses disorderly or unparliamentary language in debate it is the right and duty of the Speaker to promptly call him to order or any member may call the attention of the Speaker to the breach of order and if the member desires that the words be taken down he must repeat the words to which he objects and state them to the house exactly as he conceives the words to have been spoken. Then the Speaker (or Chairman), if in his opinion the words are disorderly, may ascertain the sense of the house or committee. If the sense of the house is that the words should be taken down, the Speaker will direct the clerk to take down the words to which objection has been taken (*uu*). Hatsell says on this point:—

“The Speaker may direct the Clerk to take the words down; but, if he sees the objection to be a trivial one, and thinks there is no foundation for their being deemed disorderly, he will prudently delay giving such direction, in order not unnecessarily to interrupt the proceedings of the house. If, however, the call to take down the words should be pretty general, the clerk will be certainly ordered by the Speaker to take them down in the form and manner of expression as they are stated by the member who makes the objection to them” (*vv*). And further, “that when any member had spoken between, no words which had passed before could be taken notice of, so as to be written

(z) 225 E. Hans. (3) 1824. 226 *Ib.* 178. May, 346, 347.

uu) May, 337. 272 E. Hans. (3) 1563, 1565. 195 *Ib.* 2003-8, 261 *Ib.* 1846-7. 1852.

(*vv*) 2 Hatsell 273, N.

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down in order to a censure" (*ww*). Consequently "any exception taken to words spoken in debate must be taken on the spot at once, and no words spoken can be noticed afterwards in the house, if such exception has not been taken to them; and if the words themselves have not been taken down by the clerk at the table" (*xx*).

The objection must therefore be taken immediately that the words are spoken (*yy*). It will also be too late to interrupt the member and ask that his words be taken down if he is allowed to continue his speech for some time after he has given utterance to the objectionable language (*zz*): and he may then deny that those were the words he spoke (*a*) and, if he does so, the house may proceed to consider his explanation and decide by a question whether he had or had not used the words (*b*). If he does not deny that he spoke those words (*c*), or when the house has itself determined what the words were, then the member may either justify them or explain the sense in which he had used them with the view of removing the objection taken to them (*d*). If his explanation or apology be deemed sufficient by the house, no further proceeding is necessary (*e*). Or the house may feel compelled to resolve that the words are most disorderly, and proceed to censure him (*f*). Or the house may resolve that the words are not disorderly by negating the motion to censure the member (*g*). Or

(*ww*) May, 337. 2 Hatsell 268 n. 93 E. C. J. 307, 312, 313.

(*xx*) 168 E. Hans. (3) 616, 626.

(*yy*) 9 E. Hans. (1) 326.

(*zz*) May, 337. See also 48 E. Hans. (3) 321, which shows that in the Lords, also, the words must be taken down "*instanter*". 2 Hatsell 273, n.; 235 E. Hans. (3), 1809-1833; 272 *Ib.* 1571.

(*a*) 32 E. Com. J. 708.

(*b*) 2 Hatsell 273, n.; 18 E. Com. J. 653.

(*c*) 126 E. Hans. (3), 1194.

(*d*) 2 Hatsell 273, n.; 32 E. Com. J. 708; 66 *Ib.* 391; 126 E. Hans (3), 1207.

(*e*) 66 E. Com. J. 391; 137 *Ib.* 395, Sen. Deb. (1880), 300.

(*f*) 18 E. Com. J. 653.

(*g*) 32 *Ib.* 708.

the house may go still further and order the offending member to be committed to the custody of the sergeant-at-arms (*h*).

The Senate has the following rule upon this subject. "48. If a senator be called to order, for words spoken in debate, upon the demand of a senator so called to order, or of any other senator, the exceptionable words shall be taken down in writing by the clerk at the table. And any senator who has used exceptionable words, and does not explain or retract the same, or offer apologies therefor to the satisfaction of the Senate, will be censured or otherwise dealt with as the Senate, may think fit."

No motion is necessary in the Senate in order to have offensive words taken down. There have been contradictory rulings on this point in the British Commons; but the best opinions appear to be that while the motion is permissible it is not absolutely requisite, the direction of the Speaker or Chairman to take down the words being based upon his own discretion and the apparent general sense of the house or committee (*i*).

If a motion is made to take down the words it should include the exact words objected to (*j*). But it is not a debatable motion under the present rules of the Commons. If the speaker rules that the expression complained of is not unparliamentary, the motion will be declared out of order (*k*). If the member withdraws his expression and apologizes the motion should be withdrawn (*l*).

When the words have been taken down at the table the member should explain and withdraw, and then the house will proceed to consider what course to take with reference to him. Sometimes the house may be disposed to allow every indulgence to a member who, in the heat of

(*h*) 18 *Ib.* 653.

(*i*) 257 E. Hans. (3) 879-80 (1881) "that a motion is necessary." 270 *Ib.* (1882). 365-6. 272 *Ib.* 1551-65, that a motion "is not in order."

(*j*) *Mirror of Parliament* (1838) 2233. 186 E. Hans. (3) 882.

(*k*) 115 E. Hans. 41. 276.

(*l*) 219 *Ib.* 589.

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debate, has allowed expressions to escape him which are calculated to offend the house or some member thereof. In such a case the house will not deal immediately with the matter, but will order that it be taken into consideration at a future time, and that the member do attend in his place at the same time. When the orders of the day, for the consideration of the words objected to and for the attendance of the member, have been read, the speaker will ask if he is in his place, and will proceed to explain the state of the matter, and give him a further opportunity for an apology (*m*). Of late years, no occasion has arisen to require the application of the rules as to taking down words and much of the learning on the subject is practically obsolete. The speaker (or Chairman) deals promptly with unparliamentary expressions without the interference of the house or committee under the somewhat cumbersome and elaborate procedure above indicated. Even the speaker's own words have been taken down and recorded by the clerk, who may read them to the house, which can then proceed to deal with the matter (*n*).

XVII. Misbehaviour in Committees or Lobbies.—When a member misbehaves himself in a committee of the whole, his conduct must be reported to the house, which alone can censure and punish any act of disorder (*o*). If objection be taken to any words that a member may use in committee, the chairman will put the question whether they should be taken down, and if the sense of the committee is in favour of doing so, he will proceed to report them to the house, which will follow the procedure usual in all cases when a member has committed an offence (*p*). But when words have been taken down in committee, it is always open to the offending member to withdraw the objectionable

(*m*) 121 E. Hans. (3), 1207, 1218, 1234. 235 *Ib.* 1809-26.

(*n*) 16 Feby. 1770. 1 Can. Deb. 463. 22 E. Com. J. 707-8.

(*o*) H. C. Rule 14. 233 E. Hans. (3), 951-956.

(*p*) 108 E. Com. J. 461, 466. 126 E. Hans. (3) 1193-1207, 233 *Ib.* 1809, 1833.

expression, and to apologize to the house for having used them. In case his apology is accepted, the fact of his having made it will be duly entered on the journals (*q*).

It is also for the house to consider what course it ought to take with reference to any disorderly conduct of members (*r*) in the lobbies. The attention of the house may be called to the matter when the speaker is in the chair. The jurisdiction of the house to deal with the member so offending is undisputed.

XVIII. Proceedings to Prevent Hostile Meetings:—
Punishment for Misconduct.—From the foregoing and other illustrations of the procedure in the case of the use of unparliamentary language, it will be seen that it is the duty of the speaker to call upon the offending member to make an apology or retract the words which are objected to. If a member should send a hostile message to another on account of the words used in parliament it will be the duty of any member, on being informed of the fact, to call the attention of the house to the matter, "as a breach of one of its most important privileges, that there shall be perfect freedom of speech in its debates." The speaker on being informed of so distinct a breach of its privileges, will at once call on the offending member, if he be present, "to express his regret for the breach of privilege he has committed, and to give an assurance to the house that the matter will proceed no further." The member should then immediately proceed "to acquit himself of any disrespect to the house or its privileges and give the required assurance." If the members are not present, they will be sent for immediately, and the necessary assurances asked from each (*s*).

(*q*) 137 E. Com. J. 253.

(*r*) 233 E. Hans. (3) 951, 956. 122 E. Com. J. 221. 122 E. Hans. (3) 274.

(*s*) 183 E. Hans. (3) 801-2. 165 E. Hans. (3) 616, 626. Can. Leg. Assm. J. (1849) 88. 89 E. Com. J. 11. 91 *Ib.* 484-5, 92 *Ib.* 270. 100 *Ib.* 589.

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If the member who has committed a breach of order either in the house, or in a committee of the whole, or in a select committee, refuse to apologize or withdraw the expression complained of, and there is a prospect of a quarrel arising between him and another member on account of such words, a member may move in the house that he be taken into the custody of the sergeant-at-arms. If the member should subsequently apologize and explain that the matter will not proceed further, the motion for his arrest will be withdrawn (*t*).

These rules are relics of a former day when the *duello* was in fashion, but, with the advance in civilization and more reasonable methods of conduct among gentlemen, they have fallen into disuse and are of historical rather than of practical interest.

Either house of parliament has full authority to punish those members who are guilty of contempt towards it, by disorderly behaviour, by obstruction of the public business (*u*) or by wilful disobedience of its orders. Any member so offending is liable to censure or suspension from the service of the house, or committee, as the house may adjudge. Suspension is the mode of punishment freely used in the English House of Commons (*v*) under the orders of 1902. If a member refuses to withdraw, when suspended, the speaker will order him to be removed by the sergeant-at-arms.

It is usual, when a charge of misconduct is made against a member, to hear any explanation which he may have to offer; but "if the house should be of opinion that the offence which the hon. member has committed is flagrant and culpable, and admits of no apology, it will be competent first, without directing him to attend in his place, to order

(*t*) 8 E. Hans. (2) 1091-1102; Can. Leg. Ass. J. (1849), 88; 106 E. Com. J. 313 (committee of whole). For procedure in case of altercations in a select committee, see 91 E. Com. 464, 468 and 34 E. Hans. (3), 410, 486.

(*u*) Mr. Speaker Brand, 132 E. Com. J. 375.

(*v*) 136 E. Com. J. 55, 56.

him to be committed to the custody of the serjeant-at-arms." This was done in the English Commons, in the case of Mr. Feargus O'Connor in 1852. (*w*). Subsequently a petition stating that he was of unsound mind, was received and referred to a select committee, which reported that the allegations thereon were correct, and it was accordingly ordered that he be discharged from custody.

XIX. Withdrawal of Members.—From the foregoing illustrations of the practice of the House of Commons in cases of disorderly language or behaviour, it will be seen that whenever the conduct of a member is under consideration it is his duty to withdraw from the house; but he should be first allowed an opportunity to explain and to know the nature of the charge against him (*x*). For instance, when a member is named by Mr. Speaker for disorderly conduct or language, he will explain and withdraw (*y*). In case he persists in remaining, he will be ordered to withdraw, as soon as a motion in reference to his conduct has been proposed (*z*). When the charge is contained in the report of a committee, or in certain papers which are read at the table, the member accused knows to what point he is to direct his explanation, and may, therefore, be heard to those points before any question is moved or stated against him; and in such a case he is to be heard and to withdraw before any question is moved (*a*).

(*w*) 122 E. Hansard. (3) 367-73; 107 E. Com. J. 278, 292, 301.

(*x*) 122 E. Hans. (3), 611, 816. May, 350-51-52.

(*y*) 2 Hatsell, 170; Cushing, 692; May, 352; 150 E. Hans. (3), 2102; 233 *Ib.* 951; Can. Leg. Ass. J. (1861), 27c; 126 E. Hans. (3) 1207.

(*z*) 235 E. Hans. (3), 1826.

(*a*) 2 Hatsell, 170, 171, n.; Mirror of P. (1838) vol. 3, pp. 2159, 2164; 101 E. Com. J. 582; 113 *Ib.* 68, 116 *Ib.* 377, 381. Case of Mr. Daoust, Can. Com. J., 16th March, 1876. He will also be required to withdraw should he present himself in the house before they have finally determined the matter affecting him; 85 E. Hans. (3), 1198. Queen's Co. (N.B.) election case, June 1, 1887; in this case, when Mr. Baird's seat was attacked, he made his explanations and then retired from the house until the matter was disposed of; Hans, 671, 675.

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But where the question itself is the charge, for any breach of the orders of the house, or for any matter that has arisen in debate, then the charge must be stated, that is, the question must be moved. The member must then be heard, in his explanation or exculpation; and then he is to withdraw (*b*). The principle is thus stated by Hatsell: "The member complained of should have notice of the charge, but not of the arguments." For instance, if a motion be made for a select committee to inquire into the conduct of a member, he will be heard in his place and withdraw (*c*).

The statement of a member made in his place in reply to certain charges which appear on the journals, is also frequently given in full on the record, especially in the Canadian Commons (*d*). This, however, is only properly done under more recent practice, when the charges are contained in papers laid before the house, and the reply is read from a written paper. In Mr. O'Connell's case, in 1838, the speech complained of appears in full, and then the journals simply record: "Mr. O'Connell having avowed making use of these expressions withdrew (*e*)."

Withdrawal of a member is also required in certain cases under the Commons rule 69.

"If anything shall come in question touching the return or election of any member, he is to withdraw during the time the matter is in debate; and all members returned upon double returns are to withdraw until their returns are determined."

(*b*) 235 E. Hans. (3) 1811-12.

(*c*) 91 E. Com. J. 314.

(*d*) 103 E. Com. J. 588. Can. Com. J. 16th March, 1876. Can. Hans. 25th June, 1903.

(*e*) 93 E. Can. J. 307. 63 *Ib.* 149. 132 *Ib.* 144, 375.

CHAPTER XI.

DIVISIONS ON QUESTIONS.

- I. Putting the Question.—II. Proceedings after a Division.—III. Questions "carried on division."—IV. Equality of votes on a Division.—V. Protest of Senators.—VI. Member interested in a Question.—VII. Recording of Names.

I. Putting the Question.—When the debate on a question is closed, and the house is ready to decide thereon, the speaker proceeds to put the question. The proceedings in taking the sense of the house on a question are similar in the Senate and Commons. Members for and against a question are distinguished in the Senate as "contents" and "non-contents"; in the Commons as "yeas" and "nays".

The house generally expresses its desire for a decision on a question by demanding the question, or that the members be called in. In most cases, however, the question is put without calling in the members. The speaker rises in his place and asks—"Is the house ready for the question?" If it is evident that no member claims the right of speaking, the speaker proceeds to put the question by reading the main motion, and then the amendment or amendments in their order as the case may be. Having read the question on which the decision of the house is to be first given, he takes the sense of members by saying—"Those who are in favour of the question (or amendment) will say content (or yea); those who are of the contrary opinion will say non-content (or nay)." When the supporters and opponents of the question have given their voices for and against the same, the speaker will say—"I think the contents (or yeas) have it"; or "I think the

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non-contents (or nays) have it"; or "I cannot decide." If the house does not acquiesce in his decision, the yeas and nays (or contents and non-contents) may be called for. But a division cannot be taken except in accordance with the following rule of the Senate:—

52 "If two senators require it the "contents" and "non-contents" are entered upon the minutes (*a*), provided the Senate shall not have taken up other business; and each senator shall vote on the question openly and without debate, unless for special reasons he be excused by the Senate."

In the Commons the yeas and nays can be taken only in conformity with the following rule:—

8. "Upon a division, the yeas and nays shall not be entered on the minutes, unless demanded by five members" (*b*).

In the case of important questions, the members are called in when it is proposed to close the debate, and decide the matter under consideration. The moment the speaker orders that the members be called in, no further debate will be permitted. The Senate rule provides:—

55. "A senator will not be permitted to vote on any question, unless he is within the bar when the question is put; and, no senator may speak to a question after the order has been given to call in the members to vote thereon, unless with the unanimous consent of the Senate; and, with the like consent, a senator may, for special reasons assigned by him, withdraw or change his vote, immediately after the announcement of the division."

Rule 7 of the Commons provides:

"When members have been called in, preparatory to a division, no further debate is to be permitted."

(*a*) Sen. J. (1882), 199; *Ib.* (1890), 194.

(*b*) Can. Hans. (1878), 2459. See V. & P. (H.C.) 26 Apl., 1904. Can. Com. J. (1880-1), 187.

The speaker gives the order—"Call in the members," and the serjeant-at-arms immediately sees that all the bells are rung, and that other steps are taken to bring in all the members from the lobbies and adjacent rooms (c). Several minutes elapse (no stated time is fixed) and then the serjeant-at-arms returns and announces the performance of his duty by an obeisance to the speaker. The latter will then rise and put the question as previously explained. If any member declares he has not distinctly heard it, he has the right of asking the speaker to read it once more, and even after the voices have been given. In the Senate the speaker says—"The contents will now rise." Then the clerk or clerk-assistant, standing at the table, proceeds to call the names—first looking at Mr. Speaker, who remains seated, and indicates by an indication of his head his desire to vote, or his intention not to vote by the absence of any movement on his part. In all cases the speaker's voice should be first recorded on the side on which he wishes to vote. After the contents have been taken down the speaker again says—"The non-contents will now rise." The names having been taken down, and the numbers declared, the speaker states the result of the question in the usual parliamentary terms.

In the House of Commons the speaker says—"Those who are in favour of the motion (or amendment) will please rise." The clerk has before him a list of all the names printed alphabetically, and places a mark against each name as it is called. The assistant clerk calls out the name of each member as he stands up. It is customary for members to be taken in rows; when one row is completed the next rise and sit down according as they hear their names called distinctly by the clerk. When the members in favour of the motion have all voted, the speaker says again—"Those who are opposed to the motion (or amendment) will please rise;" and then the names will be taken down in the manner just described. Any member who does not rise cannot

(c) At this stage the whips of the respective political parties are active in seeing that the members are in their places to vote.

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have his name recorded by the clerk at the time, as the speaker has instructed members to rise in their places. Each member is designated Hon. Mr.——in the Senate, and simply Mr.——in the Commons, except in the case of a title conferred by the king, when the clerk will designate him as Sir——, but it is usual for the clerk in the Commons, as a matter of courtesy, to give precedence on a division to the name of the leader of the government should he rise with the rest (*d*). A similar courtesy is paid to the recognized leader of the opposition in cases of party divisions.

When all the names have been duly taken down, the clerk will count up the votes on each side, and declare them, in both languages—yeas,——; and nays,——. The speaker will then say—"The motion is resolved in the affirmative;" or "passed in the negative," as the case may be (*e*). If the motion on which the house has decided is a motion in amendment, then the speaker proceeds to put the next question, on which a division may also take place (*f*).

II. Proceedings after a Division.—When the clerk has declared the numbers, any member has a right to ask that the names be read in alphabetical order, in order to give an opportunity of detecting any errors or irregularities (*g*). The vote of a member may be challenged in the English Commons before the numbers are declared, or after

(*d*) Strangers are now permitted to remain in the galleries, and also in the seats to the right and left of the speaker's chair, whilst a division is in progress; unless, of course, the house orders the withdrawal of strangers in accordance with rule 10 of the Senate and rule 6 of the Commons.

(*e*) Sen. J. (1878), 197-8; Com. J. (1878), 10, 79.

(*f*) Can. Com. J. (1877), 173-5; *Ib.* (1878), 278-9. Sen. J. (1878), 197. Members should not leave their seats before the question is finally declared. In 1880-1, a member's vote was hastily struck off on account of his leaving his place before the question was so declared (Can. Hans. 724); but Mr. Speaker Blanchet misinterpreted a rule (17) which has no application whatever to such cases, and his decision was properly revised in 1889; Can. Hans., 249.

(*g*) May 6, 1878.

the division is over; but this is generally done in the Canadian house when the clerk has given the result (*h*). If a member was not present in the house when the question was put by the speaker, he cannot have his vote recorded. Rule 55 of the Senate distinctly provides that "he must be within the Bar when the question is put." "Putting the question" means reading the whole question either in one or the other language from the beginning to the end. A member "who has indistinctly heard the motion read may ask it to be read again, but the rule is that he should be in his place all the time the question is being put in either French or English and he can only require it to be read again in case he did not hear it clearly on the first occasion in either language."

If a question is raised after a division as to the right of a member to vote under the condition stated, the speaker will inquire if the hon. member was present in the house and heard the question put (*i*). If he replied in the negative, his name will be struck off the list, and the clerk will again declare the numbers (*j*). If a member of the Commons who has heard the question put does not vote, and the attention of the speaker is directed to the fact, the latter will call upon him to declare on which side he votes; and his name will be recorded accordingly (*k*). By rule 54 of the Senate

(*h*) 110 E. Com. J., 352; 139 E. Hans. (3), 488.

(*i*) Mr. Sp. White, Can. Hans. (1891) 4455-4462.

(*j*) 2 Hatsell, 187. 139 E. Hans. 486; 111 E. Com. J., 47. Can. Com. Hans. (1890) 460 (Mr. Welsh): the name appeared incorrectly in the Hansard division list (see Jour. 79). Mr. Ethier's name struck off, Can. Com. Hans. (1896, 2nd sess.), 852.

(*k*) 114 E. Com. J., 102; 129 *Ib.* 234. Mr. McInnes, 17th April, 1878, Canadian Commons. Can. Com. Hans. (1879) 1979 (Sir J. A. Macdonald's remarks as to compelling members to vote). In the English Commons, 3rd February, 1881, Mr. Speaker informed the house that several members who had given their voices with the noes when the question was put, had refused to quit their places, and consequently he had submitted their conduct to the consideration of the house. A number of members were then suspended for refusing to withdraw during the division after having been warned of the consequences by the speaker. 136 E. Com. J., 55-56.

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it is ordered that a senator declining to vote shall assign reasons therefor, and the speaker shall submit to the Senate the question, "shall the senator, for the reasons assigned by him, be excused from voting?" Though "pairs," which are arranged by the whips of the respective parties in the house, are not any more authoritatively recognized in the Senate or Commons than in the houses of the English parliament, yet it is customary not to press the vote of a member when he states that he has "paired" with another member (?). If a member who has heard the question put in the Commons should vote inadvertently, contrary to his intention, he cannot be allowed to correct the mistake, but his vote must remain as first recorded (*m*). On the other hand, in the Senate, rule 55 provides that "with the unanimous consent of the house, a senator may, for special reasons assigned by him, withdraw or change his vote, immediately after the announcement of the division." If a member's name is entered incorrectly or is inadvertently left off the list, he can have it rectified should the clerk read out the names, or on the following day when he notices

(*l*) May, 371. Can. Com. Hans. (1876), 685; *Ib.* (1879), 1979; *Ib.* (1891), June 1 and 5; Sen. Deb. (1870), 281; *Ib.* (1877) 230, 240; *Ib.* (1880-81), 579, 590. "An hon. member who has bound himself not to vote is bound in honour to respect that pledge;" (Mr. Speaker Christie). See also Sen. Deb. (1883), 458. *Ib.* (1889), 715. But pairs are recognized by rules of the house of representatives at Washington. Smith's Digest, p. 239. Rule viii. (2). In the Canadian Commons the clerk at the table has been on more than one occasion allowed to strike off the name of a member who is recorded and then admits having paired; but there is no rule or order authorizing this proceeding. The official Hansard, each session, publishes a list of pairs on each question, obtained from the whips of the two political parties. It is usual at the close of a division to call upon a member known to have paired, to explain how he would have voted. Can. Com. Hans. (1890), 399; *Ib.* (1896, 2nd sess.), 852, 853. On one occasion a member inadvertently voted, though he had paired, in the opinion of another member who had voted, and on the following day he wished to have his name struck off, but it was not considered expedient to make such a precedent and alter the journals; *Ib.* (1887), 360. See case of Mr. Taylor, Can. Com. Hans. (1894), 6355.

(*m*) 176 E. Hans. (3), 31; 164 *Ib.* 210; 242 *Ib.* 1814; May, 371.

the error in the printed votes (*n*). It may be added here, that when the house, by division, has decided a matter a discussion thereon cannot be renewed or reference made to circumstances connected with the division (*o*).

III. Questions Carried on Division.—Members who are opposed to the unanimous adoption of a motion, and nevertheless do not wish to divide the house, may ask that it be entered on the journals as "carried on a division," and the speaker will order it accordingly. The entry on the journal is simply: "The question being put, the house divided, and it was resolved in the affirmative;" (*p*) or "passed in the negative" (*q*). Questions may also be entered as "resolved in the affirmative;" or "passed in the negative," as "in the last preceding division" (*r*). Frequently in the case of numerous motions on a question, all the divisions are ordered by general consent to be recorded as in the first case (*s*).

IV. Equality of Votes in a Division.—When the voices are equal in the Senate the decision is deemed to be in the negative (*t*). In the case of an equality of voices in the Commons, the speaker (or chairman of committee of the whole) is called upon to give his casting vote, in accordance with section 49 of the B.N.A. Act, 1867:—

"Questions arising in the House of Commons shall be decided by a majority of voices other than that of the speaker and when the voices are equal, but not otherwise, the speaker shall have a vote."

(*n*) Can. Com. J. (1871), 174; V. & P. (1879), 356; *Ib.* (1887), 113; Sen. Deb. (1880), 455-6; *Ib.* (1880-81), 591.

(*o*) 232 E. Hans. (3), 1636; Blackmore's Dec. (1882), 91.

(*p*) Can. Com. J. (1877), 191, 192, 200, 226; *Ib.* (1878), 50.

(*q*) *Ib.* (1877), 200, 231; *Ib.* (1878), 56; 129 E. Com. J., 144, 289.

(*r*) Can. Com. J. (1877), 193, 249.

(*s*) Can. Com. Hans. (1882), 1479. (Representation Bill). On July 3rd, 1885, the majority of the divisions on the Franchise bill were so ordered, and accordingly recorded.

(*t*) B.N.A. Act, 1867, s. 36. 14 Lords J. 167-168.

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And it is provided by rule of the house:

6. "In case of an equality of voices, Mr. Speaker gives a casting vote, and any reasons stated by him are entered in the journal."

Few cases are recorded in the Canadian journals of the speaker having been called upon to vote. On the first occasion the question was on a motion for deferring the second reading of an interest bill for three months—and the speaker voted with the yeas, but no reasons are entered in the journals (*u*). In 1889 the speaker voted in favour of giving the house another opportunity of considering a bill to prevent cruelty to animals (*v*).

By consulting the various authorities on this point, it will be found that the general principle which guides a speaker or chairman of committee of the whole (*w*) on such occasions is to vote, when practicable, in such a manner as not to make the decision of the house final (*x*). But it may sometimes happen that the speaker's vote must be influenced by circumstances connected with the progress of a bill, especially when there appears to be much diversity of opinion as to the merits of a measure. In such a case the speaker may "refuse to take the responsibility of the change upon himself, and may leave to the future and deliberate judgment of the house to decide what change in the law should be made" (*y*). It was evidently on this ground that the speaker gave his casting vote against further progress during the session of 1870 with the Interest Bill.

(*u*) Can. Com. J. (1870), 311. Reasons are not always given in the English journals; 98 E. Com. J. 163; 102 *Ib.*, 872.

(*v*) Can. Com. J. (1889), 114.

(*w*) 131 E. Com. J. 398; May, 364.

(*x*) 83 E. Com. J. 292; *Ib.*, 496; Can. Com. J. (1889), 114.

(*y*) Church Rates Abolition Bill (3rd reading) 163 E. Hans. 3, 1322. Some cases are recorded in the journals of the legislative assembly of Canada of reasons being given by the speaker under such circumstances; 1863, August sess., p. 33.

The Commons rule 105 provides that:—

"All questions before committees on private bills are decided by a majority of voices including the voice of the chairman; and whenever the voices are equal, the chairman has a second or casting vote."

V. Protest of Senators.—Whenever one or more senators wish to record their opinions against the action of the majority on any question, they may enter what is called a "protest," which will be duly recorded in the journals *a*, in conformity with the following rule:—

56. "Any senator entering his protest or dissent to any votes of the Senate, with or without his reasons, must enter and sign the same in the clerk's book, on the next sitting day, before the rising of the Senate" *a*.

57. "Every protest is subject to the control of the Senate and may neither be altered nor withdrawn without the consent of the Senate; nor can a senator, absent when the question is put, be admitted to protest" *b*.

A senator who signs a protest may assent to it as a whole or in part; and in the latter case he will state his particular reasons in a footnote *c*. Any protests, or reasons, or parts thereof, if considered by the house to be unbecoming or otherwise irregular, may be ordered to be expunged *d*. Protests or reasons expunged by order of the house have also been followed by a second protest against the expunging of the first protest or reasons, by which the object of the house has been defeated *e*.

VI. Members' Interest in a Question.—The House of Commons of England in 1858 resolved:

"That it is contrary to the usage and derogatory to the dignity of this house that any of its members should bring

a Sen. J. 1875, 149; *Ib.* 1877, 261; *Ib.* 1882, 154-9.

b Lords' S.O. 52; May, 372.

c The same practice obtains in the Lords 37 E. Hans. 3 1137, 35 Lords' J. 492, Sen. Deb. (1879), 432-3.

d Sen. J. 1877, 261; *Ib.* 1879, 188; *Ib.* 1882, 159.

e 40 Lords' J. 49; 43 *Ib.* 82; May, 372, 373.

e 43 Lords' J., 82.

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forward, promote or advocate in this house any proceeding or measure in which he may have acted or been concerned, for or in consideration of any pecuniary fee or reward" (*f*).

Mr. Speaker Peel has given his opinion that this resolution is "strictly confined to cases in which a member, in his public capacity as a member of parliament, advocates any particular person's cause or promotes any case, and receives a pecuniary reward for so doing." It does not "extend to the forbidding of a member to engage in the house on a subsequent occasion in a debate relating to a case in which he has been engaged after it has been decided."

The Canadian Commons have among their rules the following (*g*):—

22. "No member is entitled to vote upon any question in which he has a direct pecuniary interest, and the vote of any member so interested will be disallowed." Senate rule 53 is to the same effect.

The interest must be of a direct character, as it was well explained, on one occasion, in a decision of Mr. Speaker Wallbridge, in the legislative assembly of Canada. A division having taken place upon a bill respecting permanent building societies in Upper Canada (which had been introduced by Mr. Street), Mr. Scatcherd raised the point of order, that, under the rule of the house, the former had a direct pecuniary interest in the bill, and could not consequently vote for the same. The speaker said—"The interest which disqualifies must be a direct pecuniary interest, separately belonging to the person whose vote is questioned, and not in common with the rest of Her Majesty's subjects, and that, in his opinion, as the bill relates to building societies in general, the member for Welland is not precluded from voting" (*h*). This decision is strictly in accordance

(*f*) Res. of 22nd June, 1858.

(*g*) E. Hans., Feb. 10, 1893; Blackmore's Dec. 92. Mr. Sp. Abbot, 20 E. Hans. (1), 1011; See Mr. Speaker Kirkpatrick's decision that a bill cannot be promoted in the house by any member who has advised thereon in his professional capacity; Can. Com. P. ns. (1884), 857. (*h*) Can. Speaker's D., No. 135; Leg. Ass. J. (1865), 228.

with the principle laid down in all the English authorities (*i*), and is, in fact, a repetition of one given by Mr. Speaker Abbot on a motion for disallowing the votes of the bank directors upon the Gold Coin Bill, which was negatived without a division (*j*). Consequently, the votes of members on questions of public policy are allowed to pass unchallenged (*k*). Public bills are frequently passed relative to railways (*l*), building societies, insurance companies (*m*), and salaries to ministers (*n*), in which members have an indirect interest; but their votes when questioned have been allowed (*o*). An objection to a vote on the ground of personal interest cannot be raised except upon a substantive motion that the vote given be disallowed and cannot be brought forward as a point of order (*p*). The member whose vote is in question having been heard in his place should withdraw before the question has been proposed.

The votes of ministers on a bill to amend an act respecting the civil list and salaries were questioned on one occasion. It was replied that they looked upon the bill as a general measure, appropriating a salary for the office, and not for the individual, and, on a division, the house decided that they had a right to vote. Cushing says: "The case of members voting on questions concerning their own pay is an exception from which no principle can properly be derived. It has invariably been decided in Congress, that this was not such an interest as would disqualify; either because it was a state of necessity, or because

(*i*) 2 Hatsell, 169, n.

(*j*) May, 373; 20 E. Hans. (1), 1011.

(*k*) 2 Hatsell, 169, n. 76 E. Hans. (3), 16.

(*l*) 99 E. Com. J. 491.

(*m*) 79 E. Com. J. 455.

(*n*) Leg. Ass. J. (1854-5), 1147.

(*o*) Leg. Ass. J. (1856), 622, 679. *Ib.* (1854-5), 1147.

(*p*) May, 377; 80 E. Com. J. 110; 91 *Ib.* 271; 20 E. Hans. (1), 1001-12. Leg. Ass. J. (1857), 312. See Mr. Speaker Bain's ruling on this point in accordance with English authority as stated in the text. Can. Hans. (1900), July 10.

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all the members were equally concerned in interest." It has been ruled in the English Commons that on a motion for the reduction of a salary, for the purpose of considering the official conduct of the holder thereof, his vote against the motion was in order (*q*). Votes have been allowed when members have stated that they have parted with their subscriptions in a government loan, or that they had determined not to derive any advantage personally from the same (*r*); or that they had taken the necessary legal steps to retire from a company about to receive government aid (*s*); or that their interests are only in common with those of her Majesty's subjects in Canada (*t*). Members have been excused from voting on a question on the ground that they had been employed as counsel on behalf of the person whose conduct was arraigned before parliament (*u*). A member has also been excused from voting on a question because he was personally interested in the decision of an election committee (*v*). An objection on the ground of personal interest raised in a committee of the whole must be determined by the committee (*w*).

While members may properly vote on any question in which they have no direct pecuniary interest, they will

(*q*) 334 E. Hans. (3), 732.

(*r*) 52 E. Com. J. 632.

(*s*) Leg. Ass. J. (1857), 313-4. Cases of Mr. Galt and Mr. Holton, partners in the firm of C. S. Gzowski & Co., contractors with the Grand Trunk R.R.

(*t*) *Ib.* (1857), 311-4.

(*u*) Leg. Ass. J. (1858), 686. In this case, Sheriff Mercer, whose conduct was arraigned in the house, was declared to have acted upon the advice and opinion of his counsel, Dr. O'Connor, a member at the time. On the question being put as to the conduct of the sheriff, Dr. O'Connor was excused from voting.

(*v*) Leg. Ass. J. (1859), 533. One of the members for Quebec on this occasion asked to be excused and the house agreed to his request. But the other sitting members voted, and the speaker ruled that they had a right to do so. On the 11th of February, 1890, Mr. Corby did not vote because, as owner of a distillery, he had an interest in the question of a rebate of duty on corn; Hans, 459.

(*w*) 334 E. Hans. (3), 732; May, 375, n.

not be allowed to vote for any bill of a private nature, if it be shown that they are immediately interested in its passage (*x*). Decisions, however, have been given in the English Commons that it is not sufficient to disqualify a member from voting against a bill that he has a direct pecuniary interest in a rival undertaking (*y*); or that a member was a landowner on the line of a railway company, and that his property would be injured by its construction (*z*).

Committees on opposed private bills are also constituted in the English Commons so as to exclude members locally or personally interested; and in committees on unopposed bills such members are not entitled to vote (*a*). A member of a committee on an opposed private bill will be discharged from any further attendance if it be discovered after his appointment that he has a direct pecuniary interest in the bill (*b*). A member interested in a bill may take part in a debate thereon, or propose a motion or an amendment in relation thereto (*c*).

It was not until 1894, when the rules were revised, that the Senate adopted the Canadian and English resolution governing such matters, but previously the practice was the same in both houses. When the bill is of a public nature, a member of the Senate may properly vote if he wishes to do so (*d*). The Lords have never formally

(*x*) May, 375; 80 E. Com. J. 443; 91 *Ib.* 271; 13 E. Hans. (N.S.), 796. Sen. Deb. (1876), 258.

(*y*) 80 E. Com. J. 110; 101 *Ib.* 873.

(*z*) 100 *Ib.* 436. 212 E. Hans. (3), 1134-7.

(*a*) May, 378; S.O. 108-110.

(*b*) 101 E. Com. J. 904; 115 *Ib.* 218.

(*c*) 155 E. Hans. (3), 459; *Ib.* May, 29, 1894; Blackmore's Peel's Dec., 95.

(*d*) In 1875 Senator Ryan asked if he could vote on a public bill respecting marine electric telegraphs, as he was a shareholder in a company affected by that bill. The speaker said that there was no rule to prevent him voting on a public bill in which he had only an indirect personal or pecuniary interest, and he voted accordingly. Sen. J. (1875), 137-8; Hans. 410 (remarks of Sir A. Campbell); *Ib.* (1876) 258.

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adopted a resolution on the subject, because it is presumed that "the personal honour of a peer will prevent him from forwarding his pecuniary interest in parliament" (e); but they are exempted by standing order from serving on any committee on a private bill in which they are interested (f).

If it should be decided that a member has no right to sit or vote in the house, the votes he may have given during the period of his disqualification shall be struck off the journals (g).

VII. Recording of Names.—The names of members who vote in a division always appear in the Votes and Proceedings and journals of both houses—this practice having been followed in all the Canadian assemblies since 1792. The names were not recorded, however, in the legislative council of Canada until 1857, when it was made elective. The practice of enabling the people to know how their representatives vote on public questions was adopted in 1836 in the English House of Commons. The Lords have published their division lists regularly since 1857. Votes in committee of the whole are not recorded.

(e) May, 373.

(f) S. O. 98.

(g) Case of Mr. Townsend, a bankrupt, 113 E. Com. J. 229; 150 E. Hans. (3), 2099-2104. Of Dr. Orton, Can. Com. J. (1875) 176.

CHAPTER XII.

COMMITTEES OF THE WHOLE.

- I. **Three Classes of Committees:** (1) Committees of the Whole; (2) Select Committees; (3) Joint Committees.
—II. Rules of the Senate respecting Committees of the Whole;—III. Procedure in the Commons.—IV. Reports from Committees of the Whole.—

I. Three Classes of Committees.—A committee of the whole house is, in fact, the house itself, presided over by a chairman, instead of the speaker or deputy-speaker. The deputy-speaker is, however, the chairman of Committees.

In order to facilitate the progress of legislation and ensure the patient and thorough consideration of questions, the houses have established three kinds of committees, to which a great number of subjects are referred in the course of a session, viz:—

1. Committees of the whole, composed of all the members who sit in the house itself.

2. Special or select committees (sessional or standing) consisting of members varying in number who sit apart from the house (though in rooms belonging to the house), whilst the house is not sitting.

3. Joint committees, composed of members of each house sitting and acting together.

Committees of the whole owe their origin to the "grand committees," as they were called, which played so important a part in parliamentary proceedings, during the reigns of James I and Charles I, and which were, in fact, standing committees of the whole house. These committees were established, not to facilitate the passing of

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bills in the ordinary course of legislation, but to afford means for bringing forward and discussing the great constitutional questions which were agitated in the parliaments of the Stuarts. Though regularly appointed, they existed only in name from the time of the Restoration, and were wholly laid aside in 1832, at the beginning of the first session of the reformed parliament.

Committees of the whole house, being composed of all members, possess none of the advantages which result from the employment of a small number of persons, selected with express reference to the particular purpose in view. At the present day, the principal advantage which appears to result from the consideration of a subject, involving many details, in a committee of the whole house, rather than in the house itself, consists in the liberty which every member enjoys in such committee of speaking more than once to the same question.

II. Senate Rules respecting Committees of the Whole.

—When the Senate has been "put into committee," it is recorded in the journals as "adjourned during pleasure," and when the committee rises, it is stated that "the house was resumed" (*a*). The procedure with respect to committees of the whole is substantially the same in the two houses. The senate has the following special rules on the subject:

"72. When the senate is put into committee, every senator is to sit in his place.

"73. The rules of the senate are observed in a committee of the whole, except the rules limiting the number of times of speaking; and no motion for the previous question or for an adjournment can be received; but a senator may, at any time, move that the chairman leave the chair, or report progress, and ask leave to sit again.

"74. No arguments are admitted against the principle of a bill in a committee of the whole.

(*a*) Sen. J. (1883), 86; *Ib.* (1890), 198; *Ib.* (1901) 223, 236. The same practice prevails in the Lords, though it is not now usual to make the entry "adjourn during pleasure." 119 Lords J. 293, etc.

"75. When the Senate is put into a committee of the whole, the sitting of the Senate is not resumed without the unanimous consent of the committee, unless upon a question put by the senator who shall be in the chair of such committee.

"76. The proceedings of the committee are entered in the journals of the Senate." There is no chairman of committees in the Senate, regularly appointed at the commencement of every session, as in the House of Lords (*b*); but the speaker will call a member to the chair. In committee a senator may address himself to the rest of the senators.

III. Procedure in the Commons.—When the House of Commons proposes to go into a committee of the whole on a bill or other question, it must first agree to resolution duly moved and seconded—"That this house will immediately (or on a future day named in the motion) resolve itself into a committee of the whole." By reference to the chapters on public bills and committee of supply, it will be seen that all matters affecting trade, taxation or the public revenue must be first considered in committee of the whole, before any resolutions or bills can be passed by the House of Commons.

When the house agrees to resolve itself immediately into a committee of a whole, the speaker, in the absence of the chairman of committees of the house, may appoint any member chairman of the committee under rule 13, which provides for the appointment of a chairman of committees of the house. This rule, which was adopted in 1885 as a Standing Order, followed the British practice of electing a permanent chairman of committees who should also be deputy speaker (*c*). Mr. Daly (later Sir Malachy Daly) was the first chairman appointed under this rule. No notice is required of the election of a chairman, as it

(*b*) 109 Lords J. 11. 237 E. Hans (3) 58.

(*c*) Jour. and Hans. 10 Feb., 1885.

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proceeds, like the formation of committees of ways and means, by virtue of a standing order. As soon as these committees are formed, after the adoption of the address in answer to the speech at the opening of the house, the motion can be at once regularly made for the election of this officer (*d*).

Rule 13 is as follows:—

“(1). A chairman of committees of this house shall be elected at the commencement of every parliament, as soon as an address has been agreed to in answer of his Excellency’s speech; and the member so elected, shall, if in his place in the house, take the chair of all committees of the whole, including the committees of supply and ways and means, in accordance with the rules and usages which regulate the duties of a similar officer, generally designated the chairman of the committee of ways and means, in the House of Commons of England.

(2). The member elected to serve as deputy speaker and chairman of committees shall be required to possess the full and practical knowledge of the language which is not that of the speaker for the time being.

(3). The member so elected chairman of committees shall continue to act in that capacity until the end of the parliament for which he is elected, and in case of a vacancy by death, resignation or otherwise, the house shall proceed forthwith to elect a successor.

(4). In the absence of the chairman of committees of the house, the speaker may in forming a committee of the whole house before leaving the chair, appoint any member as chairman of the committee.” When the

(*d*) Can. Com. J. 1896, 2nd Sess., 15; *Ib.* (1901) 20. The following is a list of the names of deputy speakers since the inception of rule:— M. B. Daly, 1885-6; C. C. Colby, (1887-9); John F. Wood, (1890-1); J. G. H. Bergeron, (1891-96); L. P. Brodeur. (1896-1900); Peter Macdonald, (1901-04); Chas. Marcil, (1905-08); G. McIntyre (1909-1911); P. E. Blondin, (1911-1914); Albert Sevigny, (1914-1916); E. N. Rhodes, 1916. Of these Messrs. Brodeur, Marcil and Sevigny became speakers of the house.

house has ordered the committee for a future day, the clerk will read the order when it has been reached, and the speaker will, except in certain cases under rule 17C as to committees of supply and ways and means, then put the formal question—"The motion is that I do now leave the chair." If the house agree to this motion, Mr. Speaker will at once leave the chair and the chairman of committees will preside over the committee, but any amendment may be made to this question; and if it be carried in the affirmative it will supersede the question for the time being, and the house will not go into committee. But when it is intended to move only an instruction, and not to prevent the house going into committee on a question, the instruction should be moved as soon as the order has been read at the table.

Instruction to committees of the whole in the Commons are permissive (*e*) but in the Senate and Lords they may be imperative (*f*)

When the speaker leaves the chair, the serjeant-at-arms places the mace under the table where it remains during the sitting of the committee. The chairman (who occupies the clerk's chair) will propose and put every question in the same manner as the speaker is accustomed to do in the house itself. The members stand uncovered when they address the chairman. If a question of order arise, the chairman will decide it himself, unless it be deemed more advisable to refer the matter to the speaker in the house itself. Rule 14 provides: "The chairman of the committee of the whole house shall maintain order in the committee, deciding all questions of order, subject to an appeal to the house (*g*); but disorder in a committee can

(*e*) 189, E. Hans (3), 1870; May, 477.

(*f*) 68 Lords J. 151. 71 *Ib*, 532 May, 478.

(*g*) The first appeal to the house under this rule occurred in the session of 1885, and there have been several since that date, but it has inconveniences, since the house is called upon suddenly and without debate to decide a question of order which many of its members may not have heard discussed in committee, and the result is, in many

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only be censured by the house on receiving a report thereof."

In case of an appeal to the house it is the duty of the chairman of the committee to report in writing the point of order which he has decided. The speaker must then submit the matter to the determination of the house in the language reported to him, and put the question, "That the decision of the chairman be confirmed." No discussion is allowed on the appeal (*h*).

If the committee wish assistance or confirmation on a point of procedure on which they are in doubt, or on which the chairman has not expressed or does not wish to express an opinion, they may ask the advice of the speaker, but as a rule of practice, the chairman alone is responsible for the business and procedure of the committee, and no appeal can be made from his decision on a point of procedure except to the house as provided by the rule just cited. In the former case, where the committee refers to the speaker for advice, progress is reported on motion duly made, and when the speaker has given his advice, the committee resumes in accordance with regular practice (*i*).

In case of an appeal to the house, there is no such motion made but the chairman leaves the chair immediately, and reports the point in dispute to the speaker, so that the house may decide thereon. If the speaker is absent, and the deputy speaker himself has to take the chair in case of such an appeal, it is in accordance with correct practice of the Canadian as well as English Commons, for a member to take the chair of the committee for the instant, and make the report of appeal to the deputy speaker, who

cases, a political, rather than a judicial vote, which might not stand the test if strict parliamentary rules were applied.

(*h*) Can. Com. J. (1885), 354, 355, Hans. 1513. *Ib.* (1899) June 6th.

(*i*) Can. Com. H. (1896 1st sess.) 5736; *Ib.* (1899) 4553-4; 170 E. Hans. (3) 19; 181 *Ib.* 1320; 345 *Ib.* 1506. Can. Com. J. (1875) April 1st. Sen. J. (1875), 137-8; May, 385.

will at once submit the question to the house for its decision (*j*). Of course a committee of the whole has no power whatever to refer any matter before it to any other committee, but it may report to the house the opinion of the committee on the matter.

In case of disorderly proceedings in committee, the chairman will endeavour to preserve order, and will rebuke those guilty of breaches of parliamentary decorum (*k*), but he cannot put a question censuring a member; that can be done by the house alone (*l*). In urgent cases of disorder, the speaker may take the chair immediately, without waiting for the report of the chairman, so also may he resume the chair if a case of public business arises in which the house is concerned, as if the Usher of the Black Rod should summon the house to attend in the Senate (*m*). When improper language is used by a member towards another, the words may be taken down in committee, and reported to the house, which will deal with the matter in accordance with its rules and usages (*n*).

If a member wishes at any time to call in question the conduct of the chairman in the execution of his duties, the proper course is to give notice of a motion to that effect in due course (*o*).

If the committee has risen, reported progress and obtained leave to sit again on a future day, the speaker will not put any question, but will immediately call the chairman of committees, or a member, to the chair when the order has been read; but this practice does not apply to committees of supply and ways and means. The old standing order of the English Commons is followed in

(*j*) So ruled by Mr. Deputy Speaker (afterwards Speaker) Brodeur, Can. Com. Hans. (1899), 4553-4.

(*k*) 239 E. Hans. (3) 1790.

(*l*) *Supra*, R. 14; 126 E. Hans. (3), 1193; 235 *Ib.* 1810; 108 E. Com. J. 461.

(*m*) Case of J. Fuller, 65 E. Com. J. 134-136. May, 388.

(*n*) 235 E. Hans. (3) 1809-1833. See chapter X on debates.

(*o*) Mr. Sp. Peel, July 12th, 1893 (Blackmore, p. 55).

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Canada—there being no written rule in the Canadian house on this point.

“When a bill or other matter (except supply of ways and means) has been partly considered in committee, and the chairman has been directed to report progress, and ask leave to sit again, and the house shall have ordered that the committee shall sit again on a particular day, the speaker shall, when the order for the committee has been read, forthwith leave the chair, without putting any question, and the house shall thereupon resolve itself into such committee” (*p*).

According to English practice no motion or amendment in committee need be seconded, and the same is the rule (13) in the Canadian Commons (*q*). When a resolution is proposed in committee, any amendment may be moved thereto as in the house itself. Amendments are moved to the “proposed resolution” (*r*).

In case of a division being called for, the members rise and the assistant clerk counts and declares the number on each side, and the chairman decides the question in the affirmative or negative, just as the speaker does in the house itself. No names are recorded in committee. Consequently but few divisions take place in committees of the whole (*s*). In giving the casting vote, in case of an equality of voices, the chairman is governed by the same rules as the speaker under a similar condition. The committee can only consider those matters duly referred to them. If it is deemed expedient to extend their powers, the house must give them an instruction to that effect (*t*).

The clerk-assistant keeps a record of the proceedings of committee of the whole in a book, to which members can always have access. The chairman of the committee signs his initials at the side of every clause of a bill or

(*p*) S. O., 25th June, 1852.

(*q*) May, 383.

(*r*) 108 E. Com. J., 188.

(*s*) Sen. J. (1878), 215; *Ib.* (1879), 272. May, 367.

(*t*) May, 383.

resolution, and his name in full at the end. The proceedings of the committees of supply and of ways and means are recorded in the journals (*u*); and the same is done in the case of all resolutions which provide for the expenditure of public money or for the imposition of taxes, and have to be received on a future day (*v*). The proceedings in committees on bills are not given in the Canadian journals (*w*), though it is the practice in the English Commons to do so (*x*). In case of amendments being moved or divisions taking place on a question, they are sometimes recorded in the Canadian Commons journals, but this practice is exceptional (*y*). In the Senate, the proceedings of all committees are recorded in the journals, in accordance with an express order (*z*).

It is not regular to move an adjournment of the debate on a question or an adjournment of the sittings of the committee to a future time (*a*); but certain motions may be made with the same effect. If it is proposed to defer the discussion of a bill or resolution, the motion may be made—"That the chairman do report progress and ask leave to sit again" (*b*); and if this motion (which is equivalent to a motion for the adjournment of the debate) (*c*) be agreed to the committee rises at once, and the chairman reports accordingly. The speaker will then say—"When shall the committee have leave to sit again?" A time will then be appointed for the future sitting of the committee (*d*). But if a member wishes to supersede a ques-

(*u*) Can. Com. J. (1901), 40, 51, etc.; 129 E. Com. J. 100, 133, 258.

(*v*) May, 389.

(*w*) Can. Com. J. (1876), 74; *Ib.* (1877), 155, 156, 160.

(*x*) 129 E. Com. J. 191, 198, 205.

(*y*) Can. Com. J. (1867-8), 32; *Ib.* (1870), 230-1.

(*z*) Sen. R., 76; Sen. J. (1878), 215.

(*a*) Sen. R. 73; May, 389.

(*b*) 132 E. Com. J., 395.

(*c*) Evidence of Mr. Raikes, chairman of committees, before committee on public business, 1878, p. 89. The discussion on this motion may be on a bill or question generally; 239 E. Hans. (3), 633.

(*d*) Can. Com. J. (1877), 76.

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tion entirely, he will move—"That the chairman do now leave the chair" (*e*). Rule 15 of the House of Commons provides: "A motion that the chairman leave the chair shall always be in order, and shall take precedence of any other motion." If this motion (which is equivalent in its effect to a motion for the adjournment of the house) (*f*) be resolved in the affirmative, the chairman will at once leave the chair, and no report being made to the house, the bill or question disappears from the order paper (*g*). Two motions to report progress cannot immediately follow each other on the same question; but some intermediate proceeding must be had (*h*). Consequently if a motion to report progress be negatived, a member may move that "the chairman do leave the chair" (*i*). If the latter motion is carried in the affirmative, then the business of the committee is superseded, and the chairman can make no report to the house. In this case, however, the original order of reference still remains, though the superseded question may not appear on the order paper; and it is competent for the house to resolve itself again, whenever it may think proper, into committee on the same subject (*j*).

By reference to the Senate rule 73 it will be seen that the motion for the previous question is expressly forbidden in committee. The practice in the Canadian Commons is the same as that of the English house, which does not admit of the previous question in a committee of the whole (*k*). If it be shown, by a division or otherwise, that there is not a quorum present in the committee, the chairman will count

(*e*) 132 E. Com. J., 395.

(*f*) Evidence of Mr. Raikes, C. on P.B. 1878, p. 89.

(*g*) 117 E. Com. J. 177; Can. Com. J. (1869), 106, 288, 303; *Ib.* (1874), 326.

(*h*) May, 390. The same principle applies to these motions that applies to those for the adjournment of the house and debate.

(*i*) 132 E. Com. J. 394-6; 239 E. Hans. (3), 1802, 1811-15.

(*j*) See chapter on public bills.

(*k*) May, 294, 385; 111 E. Com. J. 134; 141 E. Hans. (3), 780, 799-800.

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the members and leave the chair, when the speaker will again count the house. If there is not a quorum present, he will adjourn the house; but if there are twenty members in their places the committee will be resumed (*l*). If the house is adjourned for want of a quorum the committee may again be revived (*m*). In the same way, if a question is superseded by the motion for the chairman to leave the chair, it may be subsequently revived, for the committee has no power to extinguish a question; that power the house retains to itself (*n*). By a special rule of the Commons 13 (5), "speeches in committee of the whole must be strictly relevant to the item or clause under consideration."

During the sitting of the committee, the speaker generally remains in the house, or within immediate call, so that he may be able to resume the chair the moment it is necessary. In case the chairman of committees has to take the chair, in the absence of the speaker, he may call upon any member on the government side to make the report (*o*). A message from the governor-general, summoning the house to attend him in the Senate chamber, will require the speaker to resume the chair immediately. But messages brought by a clerk of the Senate will not interrupt the proceedings of the committee. Such messages are only reported to the house by the speaker as soon

(*l*) 100 E. Com. J. 70t; 121 *Ib.* 272; 137 *Ib.* 197; Leg. Ass. J. (1852-3), 1038, 11t6; Can. Com. J. (1899), 239.

(*m*) 110 E. Com. J. 449; t37 *Ib.* 197.

(*n*) t76 E. Hans. (3), 99; 115 E. Com. J. 402, 427. Evidence of Mr. Raikes, Com. on P. B., p. t878, 89. Also chapter on public bills.

(*o*) Sir Reginald Palgrave, clerk of the English House of Commons, states in these words the English practice: "When during the speaker's absence, the chairman of ways and means leaves the chair of the committee, to take *the chair*—a committee sitting being over—he asks a member at hand, usually off the government bench, to make a report from the committee, as any member of a committee can make a committee report to the house, and so the absurdity of the chairman's report from himself to himself is avoided." See Can. Com. Hans. (1899), 4554.

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as the committee has risen and reported, and before another question or order has been taken up by the house (*p*).

When six o'clock comes the speaker will resume the chair immediately, without waiting for any report from the chairman, and will say—"It being six o'clock, I now leave the chair." In case, however, the committee cannot sit after recess, the chairman must make the usual formal motion for leave to sit again. In case, however, the committee can continue, the chairman will resume the chair after eight o'clock, when the speaker has taken his seat and called on him to discharge that duty (*q*). If it be one of those days when an hour is devoted to the consideration of private bills, he will only resume when they have been duly disposed of (*r*).

IV. Reports of the Committees of the Whole.—By rule 56 of the House of Commons all amendments made to bills in committee of the whole "shall be reported to the house, which shall receive the same forthwith" (*s*). Resolutions providing for the grant of public money, or for the imposition of a public tax, can only be regularly received on a future day (*t*). Resolutions relating to trade or other matters may be received immediately, and bills introduced thereupon (*u*). All resolutions, when reported, are read twice and agreed to by the house. The first reading is a purely formal proceeding, but the questions for reading the resolutions a second time is put by the speaker, and may be subject of debate and amendment (*v*).

(*p*) Can. Com. J. (1877), 282. Here the message was received whilst the committee of supply was sitting.

(*q*) Can. Com. J. (1876), 264-5.

(*r*) *Ib.* (1878), 85. Here no private bills were on the paper, but a message from the Senate with a private bill was taken up, and progress made therewith. Messages with bills from the Senate are sometimes taken up by general consent at this stage; *Ib.* (1885), 235.

(*s*) Chapter on public bills.

(*t*) May, 391, 561. See chapter on supply.

(*u*) Can. Com. J. (1873), 127, 149, 155, 157; *Ib.* (1878), 108, 116; 129 E. Com. J. 31; 137 *Ib.* 48 (Banking Laws); May, 391.

(*v*) Can. Com. J. (1880-1), 94 (Canadian Pacific R.); *Ib.* (1885), 516; *Ib.* (1894), 502, 503.

Resolutions may be withdrawn, postponed, referred back for amendment, or otherwise disposed of (*w*). On the motion for reading them a second time, the discussion and amendment may relate to the resolutions generally, but when they have been read a second time any debate or amendment must be confined to each resolution and be strictly relevant thereto (*x*).

In the Commons the principal proceedings in committees of the whole house are in reference to bills and the voting of supply and ways and means (*y*). These matters will be dealt with in separate chapters.

(*w*) 77 E. Com. J. 324; 95 *Ib.* 169; 112 *Ib.* 227, 119 *Ib.* (1869), 100, 107; 132 *Ib.* 354; Can. Com. J. (1867-8), 59, 160; *Ib.* (1869), 181, 183; *Ib.* (1871), 88; *Ib.* (1894), 350.

(*x*) 174 E. Hans. (3), 1551; Can. Com. J. (1883), 401.

(*y*) See also May, pp. 483, 603.

CHAPTER XIII.

COMMITTEES OF SUPPLY AND WAYS AND MEANS

- I. Grants of Public Money.—II. Governor-General's Recommendation.—III. Consent of the Crown Explained.—IV. Committees of Supply and Ways and Means.—V. Procedure on going into Supply.—VI. In Committee of Supply.—VII. The Budget.—VIII. Imposition of Taxes and Ways and Means.—IX. Reports of Committees of Supply and Ways and Means.—X. Tax Bills.—XI. Bills founded on Ways and Means Resolutions.—XII. The Appropriation or Supply Bill.—XIII. Supply Bill in the Senate.—XIV. Royal Assent to the Bill. XV. Address to the Crown for a Certain Expenditure, &c.—XVI. Votes of Credit and on Account.—XVII. Audit of Appropriation Accounts.

I. Grants of Public Money.—The most important of the committees of the whole house, in the Commons, are those of supply and ways and means. These committees are constituted at the commencement of each session, under rule 76, after the address in reply to the speech from the throne is agreed, to, ordered to be engrossed and to be presented to the governor-general.

The rules of the house with respect to the expenditure of public money and the impositions of burthens upon the people are in conformity with the practice of its English prototype. All the checks and guards which the wisdom of English parliamentarians has imposed in the course of centuries upon public expenditures now exist in their full force in the parliament of the dominion. The cardinal principle, which underlies all parliamentary rules and constitutional provisions with respect to money grants and public taxes is this—when burthens are to be imposed on the

people, every opportunity must be given for free and frequent discussion, so that parliament may not, by sudden and hasty votes, incur any expenses, or be induced to approve of measures, which may entail heavy and lasting burthens upon the country. Hence it is ordered that the Crown must first come down with a recommendation whenever the government finds it necessary to incur a public expenditure, and that there should be full consideration of the matter in committee and in the house, so that no member may be forced to come to a hasty decision, but that every one may have abundant opportunities afforded him of stating his reasons for supporting or opposing the proposed grant (*a*). The desire of the Crown for grants of aid and supply for the service of each financial year is announced in the governor-general's speech at the opening of parliament when the Commons are made acquainted with the fact that estimates will be laid before them for the amounts required. The form in which the Commons vote the supplies is consequently a resolution that each sum "be granted to his Majesty" for the purposes set forth in the resolution. Other demands for supply may also be made by the governor-general during the progress of the session, by message.

In the old legislatures of Canada, previous to 1840, all applications for supplies were addressed directly to the House of Assembly, and every governor, especially Lord Sydenham, has given his testimony as to the injurious effects of the system. The Union Act of 1840 placed the initiation of money votes in the Crown, and this practice was strictly followed, up to 1867, when the new constitution came into force. "One of the greatest advantages of the union will be that it will be possible to introduce a new system of legislation, and, above all, a restriction upon the initiation of money votes," observed Lord Sydenham in his celebrated report (*b*)

a Hatsell, 176, 182

b Scrope's Life of Lord Sydenham, 172; Lord Durham's rep. 109.

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By section 54 of the British North America Act, 1867—which is copied from the clause in the act of 1840—it is expressly declared:

"It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended by a message of the governor-general in the session in which such vote, resolution, address or bill is proposed" (c).

The standing orders of the English Commons go still further than the foregoing provision, for they also exclude the reception of petitions for "any sum relating to public service" (d). This is also the invariable practice under numerous decisions of speakers of the Canadian Commons.

The constitutional provision which regulates the procedure of the Canadian Commons in this respect applies not only to motions directly proposing a grant of public money, but also to those which involve a grant, such as loans and guarantees (dd). A member who has not received the permission of the Crown has not been allowed to move the house into committee on a resolution providing for the purchase and exportation by the government of certain depreciated silver coinage (e). In 1871 it was proposed to go into committee on an address to the queen for a change in the Union Act, so as to assign the debt of old Canada to the dominion entirely, and to compensate Nova Scotia and New Brunswick in connection therewith. The speaker expressed an opinion adverse to the proposal on the ground that it was intended as preliminary to legislation imposing a public burthen, and was,

(c) Can. Com. Hans. (1878), 2157 (Mr. Speaker Anglin).

(d) S. O. 20 March, 1866. Mirror of Parl. 1857, June 16, p. 1888. 182 E. Hans. (3), 591-603. May, App. p. 929, S. D. No. 66.

(dd) May, 562, Can. Com. J. (1869), 214. *Ib.* (1883), 31. *Ib.* (1897), 398. *Ib.* (1902) 243. *Ib.* (1914), Aug. 19. *Ib.* (1915), Feb. 9. *Ib.* (1916), March 15.

(e) Mr. Speaker Cockburn, 26 May, 1869. Can. Speakers' D., No. 159.

consequently, not a mere abstract resolution which did not necessarily involve a future grant (*f*).

No cases can be found of any private member in the Canadian Commons receiving the authority of the Crown, through a minister, to propose a motion involving the expenditure of public money. No principle is better understood than the constitutional obligation that rests upon the executive government, of alone initiating measures imposing charges upon the public exchequer. On one occasion, in the English Commons the consent of the Crown was given to certain formal resolutions proposed by a private member with reference to charges in courts of law to be defrayed out of the consolidated fund. It was thought, however, that any resolution placing a charge on the consolidated fund should be moved by a minister of the Crown, and the more regular procedure was thereupon carried out. It was distinctly affirmed, however, that the member who proposed the motion involving the charge was within his right when he had the sanction of the Crown, but it was generally admitted at the same time that it was better, as a matter of policy, that the proposition should emanate from a responsible adviser of the sovereign (*g*).

Another check is imposed on the expenditure of public money by rule 77 of the Commons, which is as follows:

"If any motion be made in the house for any public aid or charge upon the people, the consideration and debate thereof may not be presently entered upon, but shall be adjourned until such further day as the house shall think fit to appoint; and then it shall be referred to a committee of the whole house, before any resolution or vote of the house do pass thereon" (*h*).

(*f*) *Ib.* No. 181. Can. Com. J. (1871), 50, 62, 72.

(*g*) 187 E. Hans. (3), 1667. See remarks of Mr. Gladstone in 1886 with respect to the old Canadian system of private members initiating grants of public money. 182 *Ib.*, 578.

(*h*) Can. Com. J. and Hansard, 1878, April 34 (Mr. Speaker Anglin) This rule was adopted in the Lower Canada Ass., 19th of April, 1793; Jour. 546. See Manitoba Res., Can. Com. J. (1882), 251, 424.

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This is substantially the standing order of the English Commons—the only difference being that the latter is somewhat more definite since it adds the words, “or charge upon the public revenue, whether payable out of the consolidated fund or out of moneys to be provided by parliament.”

The foregoing rule of the Canadian Commons is strictly observed (*i*); but it was said with obvious force by Mr. Speaker Cockburn that “this rule, being self-imposed, may be enforced or relaxed, as the house shall determine. But the constitutional provision contained in the 54th section of the Imperial Act of Union, is one that, being absolutely binding, should be neither extended nor restrained by implication, but should at all times be most carefully considered by the house.” (*j*).

As an illustration of the strictness with which the house observes the practice of requiring much deliberation with respect to any matter affecting the public exchequer, it may be stated that on the 15th of April, 1878, it went into committee of the whole on a resolution providing for the subscription of 15,000 pounds sterling of first mortgage bonds of the Northern Railway of Canada at the rate of 90 per cent in satisfaction of the sum of 13,500 pounds, being the balance remaining due to Canada (*k*).

Orders in council respecting subsidies to railways, contracts and agreements between the government and companies or individuals for certain public services are frequently laid on the table for ratification in due form by the house (*l*). When such orders and agreements are only made in pursuance of authority given to the government by parliament, and are already provided for by appropriations sanctioned by parliament, it is not necessary

(*i*) Can. Com. J. (1886), 181, 206. *Ib.* (1876), 67, 83, etc. *Ib.* (1878), 271.

(*j*) Can. Com. J. (1871), 72.

(*k*) *Ib.* (1878), 170, 178. *Ib.* (1885), 183. *Ib.* (1886), 194-5, 219-23.

(*l*) *Ib.* (1875), 219. *Ib.* (1878), 237-9. *Ib.* 202, 273.

to go into committee on any resolution on the subject (*m*). In case of an agreement which must be confirmed by legislation, it is necessary to go into committee of the whole on the same after recommendation of the form has been formally given, and subsequently insert it in the bill (*n*).

On the 21st March, 1879, contracts for the construction of portions of the Canadian Pacific Railway, then a government work, were laid on the table. No special motion was made with respect to these contracts. The statute under which they were brought down (37 Vict. ch. 14, sec. 11) simply required that they should lie on the table for thirty days; if they were not moved against at the end of that time they were considered to have received the approval of the house (*o*). In the case of the proposed Canadian Yukon Railway—a government measure which failed in the Senate—the order in council and the contract made by the Crown for the construction of the work were first laid on the table, the bill was then introduced. The house went subsequently into committee on a resolution for a grant of land recommended by the governor-general, and when it has passed it was referred to committee on the bill (*p*).

In 1873, the government was authorized to enter into negotiations during the recess with some reliable company for the transfer to the same of some of the dominion railways in Nova Scotia on certain conditions subject to the approval of parliament at the next session. This resolution was adopted without previous reference to a committee of the whole (*q*); but it is to be noted that the subject

m) Can. Com. Hans. (1880), 782, 165 E. Hans. (3), 1819-26. Can. Com. J. (1883), 178.

n) *Ib.* (1897), 262, 276, 305.

o) Can. Com. Hans. (1879), 825. See *supra*, Chapter VIII, as to laying contracts and agreements before the Senate. The practice of submitting contracts for the ratification of parliament is now regulated by standing orders in England. Todd's Parl. Govt. in England, i. 490-493; 194 E. Hans. 1287-89.

p) Can. Com. J. (1898), 25, 38, etc.

q) *Ib.* (1873), 430.

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had been previously considered in the same session on a motion for the house to go into committee on a similar resolution (*r*). In the session of 1874, the house went into committee and adopted certain resolutions in accordance with the resolution of 1873; and a bill was subsequently introduced and passed (*s*). Following the precedent of 1873, Mr. Mackenzie, when premier, proposed in the session of 1878, that the house should adopt a resolution authorizing the government to enter into an arrangement with the Grand Trunk Railway during the recess for acquiring control of the River du Loup branch of that road—any such arrangement to be subject to ratification by parliament at the next session. The propriety of the procedure was called in question. It was said in reply that as the resolution was merely "tentative," it was not necessary to go into committee of the whole. But Sir John Macdonald, Mr. Holton, and Mr. Blake pointed out the necessity of considering with the fullest deliberation all propositions which may involve an appropriation of the public moneys. The speaker took a similar view, though he was not called upon to give any decision (*t*).

A practice has grown up in the house of allowing the introduction of resolutions by private members, when they do not directly involve the expenditure of public money, but simply express an abstract opinion on a matter which may necessitate a future grant (*u*). As this is a question not always understood, it may be explained that such resolutions, being framed in general terms, do not bind the house to future legislation on the subject, and are merely intended to point out to the government the importance and necessity of such expenditure.

(*r*) *Ib.* (1873), 224.

(*s*) *Can. Com. J.* (1874), 273, 299, 300.

(*t*) *Can. Com. Hans.* (1878), 2002-2005.

(*u*) *Can. Com. J.* (1869), 236; *Ib.* (1874), 214; *Can. Hans.* (1877), 396; *Can. Con. J.* (1885), 128 (compensation to brewers, &c.); *Ib.* 256 (payment of full indemnity to members engaged in the Northwest on military service); *Ib.* (1886), 54 (indemnity to members); *Ib.* (1888), 241 (claims of volunteers in N.W.T.).

Referring to this right of members to move such abstract resolutions all authorities agree that it is one "which the house exercises, and should always exercise with great reserve, and only under peculiar and exceptional circumstances." Such resolutions are considered virtually "an evasion of the rules of the house, and are on that account objectionable, and should be discouraged as much as possible" (v). Nevertheless neither the English nor Canadian House of Commons has ever agreed to the adoption of a rule to fetter their discretion in regard to the entertaining of such propositions (w).

It may sometimes happen that the government is willing to allow the reference of a matter which may subsequently involve a public expenditure to a select committee of the House of Commons for the purpose of eliciting all the facts in the case. A motion, framed in general terms, may be proposed, without directly asserting that any grant of money is required—in other words, an abstract motion to which reference has just been made (x). Two precedents in point may be given:

"In 1876, the papers relative to a claim of Mr. Ambrose Shea, in connection with the Intercolonial Railway, were laid on the table, and subsequently, with the consent of the premier, sent to a committee which decided that he had a just claim for compensation (y). In 1875, a petition

(v) May, 571; Todd's Parl. Govt. in England, i. 411, 700; 170 E. Hans. 3, 677. It has been ruled in the Canadian house that it is not regular to move to go into committee of the whole on an abstract resolution. Mr. Frechette having proposed to take this course in 1878, in the case of a motion on the winter navigation of the St. Lawrence, was allowed to amend it. V. & P., Feb. 26th and March 20th, 1878; Can. Hans. 1290.

(w) The following are Canadian examples of this class of resolutions Can. Com. J. (1892), 133 (deepening of canals); *Ib.* (1896), 24 (creameries in the North-West); *Ib.* (1897), 59 (bonus to creamery butter); *Ib.* (1899), 85 (seed grain).

(x) See Todd, i. 703, *et seq.* for cases in point; 124 E. Hans. (3), 841; 174 *Ib.* 1460.

(y) Can. Com. J. (1876), 72, 73, 98, 122.

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from Alexander Yuill, with respect to certain losses alleged to have been sustained by him in connection with a decision of the dominion arbitrators, was referred, with the consent of the government, to a select committee, which reported all the facts, and expressed the hope that redress would be granted to the petitioner" (z).

II. Governor-General's Recommendation.—The recommendation of the Crown to any resolution involving a payment out of the dominion treasury must be formally given by a privy councillor in his place at the very initiation of a proceeding, in accordance with the express terms of the 54th section of the British North America Act, 1867, and in conformity with the practice of the English House of Commons (a). The statement should be made as soon as the motion has been proposed for the house to go into committee on the resolution. The following is the entry made in the journals on such an occasion:

"Sir John A. Macdonald, a member of the queen's privy council, then acquainted the house that his Excellency, the governor-general, having been informed of the subject-matter of this motion, recommends it to the consideration of the house" (b).

The recommendation may be given by any minister of the Crown. The practice is, however, to give the neces-

(z) Can. Com. J. (1875), 127, 226, 303. See 3 Hatsell, 243, on such cases. Also speaker's decision (No. 189) that a claim for damages might be referred to a select committee; Jour. (1871), 254. Also a claim of James King; *Ib.* (1888), 187.

(a) See Can. Com. Hans., 24th April, 1878, when Mr. Speaker Anglin fully explained the meaning of the 54th section of the Union Act. The recommendation has been given in cases of a bounty on pig-iron, Can. Com. J. (1886), 341; of land subsidies; *Ib.* (1889), 319, 374; of commutation of debt due to Crown; *Ib.* 320.

(b) Can. Com. J. (1873), 205; *Ib.* (1877), 93, 94, 164, &c.; *Ib.* (1879), 51, 158, 252, 365, 366, 415. In the journals of 1873 the governor-general's recommendation is signified to a resolution relative to customs duties in the North-West, through a misapprehension of the meaning of the section which refers only to the "appropriation of a tax or impost," and not to the "imposition" of the same.

sary recommendation through the minister directing the department in charge of the particular matter before the house (c).

Though the recommendation of the governor-general cannot be formally given in the Senate to a motion involving money,—since such matters must originate in the Commons—yet that house has a standing order which forbids the passage of any bill which, from information received, has not received the constitutional recommendation.

70. "The Senate will not proceed upon a bill appropriating public money, that shall not, within the knowledge of the Senate, have been recommended by the queen's representative."

III. Consent of the Crown Explained.—A misapprehension has sometimes arisen as to the time when the "consent" of the Crown should be given to a bill. The procedure with respect to signifying the consent is different from that in giving the recommendation of the Crown. The recommendation precedes every grant of money; the consent may be given at any stage before final passage, and is always necessary in matters involving the rights of the Crown, its patronage, its property, or its prerogatives (d). This consent of the Crown may be given either by a special message, or by a verbal statement from a minister—the last being the usual procedure in such cases. The intimation of the consent does not mean that the Crown "gives its approbation to the substance of the measure, but merely that the sovereign consents to remove an obstacle to the progress of the bill, so that it may be considered by both houses, and ultimately submitted for the royal assent." (e). In any case where a private mem-

(c) 129 E. Com. J. 14, 29, 30, 32, &c. May, 558, 559.

(d) May, 448; Todd, ii. 366; 243 E. Hans., 211. See also an elaborate decision on this subject of Mr. Speaker Brodeur in connection with the third reading of National Transcontinental Railway bill, 1903. Can. Journals, Sept. 30, 1903. See Ruling, Speaker Sevigny, H. C., V. & P., March 29th, 1916.

(e) 191 E. Hans. 1445; 192 *Ib.* 732.

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ber wishes to obtain the consent of the Crown, he may ask the house to agree to an address for leave to proceed thereon, before the introduction of the bill (*f*). The consent should be properly given before the committal of the bill (*g*), but, according to the practice of the English house, it is not generally given before the third reading (*h*). A bill may be permitted to proceed to the very last stage without receiving the royal consent, but when it is not given before the motion for the final passage, it must be dropped (*i*). If the introducer of a bill finds, from statements of a minister, that the royal assent will be withheld, he has no other alternative open to him except to withdraw the measure (*j*). If the royal assent is not given at the last stage, the speaker will refuse to put the question (*k*). If a bill, requiring the royal assent, should be permitted to pass all its stages through some inadvertence, attention will be called immediately to the "fact in the house, and the proceedings declared null and void" (*l*).

The consent of the governor-general, as a representative of the Crown, is generally signified in the Canadian Commons on the motion for the second reading, though cases will be found of its having been given at other stages. The cases of most frequent occurrence in the Canadian house have been in connection with railways on which the government has had a lien (*m*). In 1871, a committee

(*f*) Mr. Gladstone, 191 E. Hans. (3), 1898-9.

(*g*) Church Reform (Ireland) bill; Mirror of Parl., (1883), 1627, 1733.

(*h*) Mr. Speaker Denison; (Peerage of Ireland bill) 191 E. Hans. (3), 1564.

(*i*) Mr. Gathorne Hardy; 191 E. Hans. (3), 1564.

(*j*) 76 E. Hans. (3), 591; 191 *Ib.*, 1564 (Peerage of Ireland bill).

(*k*) 121 E. Com. J. 423.

(*l*) Rhyl improvement bill; Medina River navigation bill, 107 E. Com. J., 157. The procedure in such cases is to read the entry in the votes, and to move that the proceedings be null and void. May, 449.

(*m*) 31 Vict., c. 19.—"An act to amend Grand Trunk R.R. arrangements act (1862), and for other purposes"—a measure involving postponement of a debt due to the Crown. Objection was taken on the third reading of the bill, and the consent then formally given; Jour.

made a special report on a bill to authorize the Northern Railway to make arrangements to lease, use and work the lines of other companies, that "as the government held a lien for a large amount upon the railway, their consent should be obtained to the consideration of this bill, before any other proceedings should be held thereon"; and the necessary assent having been subsequently obtained, the measure became law in due form (*n*). In the session of 1879 a bill was introduced "to provide for the payment of the defendant's costs in certain actions at the suit of the Crown." The first section provided that the several courts and judges of the different provinces, having concurrent jurisdiction with the dominion exchequer court, "shall have power to award and tax costs in favour of and against the Crown as well as against the subject," in certain cases specified by statute. The premier having stated that he was not prepared to give the consent of the Crown to the bill, the mover was compelled to withdraw it (*o*).

IV. Committee of Supply and Ways and Means.—

One of the principal purposes of the House of Commons is the consideration and criticism of the estimates and the taxes required to meet the public expenditures (*p*); and the committees of supply and ways and means are the parliamentary machinery through which the house chiefly exercises these political and constitutional functions.

(1867-8), 61. Also Great Western R.R. Co. bill, 1870, p. 137, 33 Vict., c. 50. Grand Trunk R.R. arrangements bill, 9th April, 1873; 36 Vict., c. 18. April 17, 1874. 37 Vict., c. 65. Northern R. R. bill, April 11th, 1877; 40 Vict., c. 57. In 1888 the consent was given on third reading of a bill respecting the discharge of securities to the Crown; Can. Com. J. 197. In 1885 the consent of the Crown was formally given to a resolution providing for the appointment of a deputy speaker, in accordance with English precedent in such cases; Can. Com. J. 55. Also given to Senate amendments affecting interests of the Crown; *Ib.* (1886), 323. See 101 E. Com. J. 892; 103 *Ib.* 729; 126 *Ib.* 355.

(*n*) Can. Com. J. (1871), 135, 160; 34 Vict., c. 45.

(*o*) Can. Com. Hans. (1879), 1578-1581.

(*p*) 237 E. Hans. (3), 380.

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In accordance with law and usage, the governor-general, acting under the advice of his responsible advisers, sends down every session one or more messages to the Commons with the estimates of the sums required for the public service (*q*). These estimates are considered in committee of supply, and include all the grants that have been annually voted by parliament. The main estimates appear in a blue book, and comprise, as far as possible, the proposed expenditures for the public service for the next fiscal year, which now commences on the 1st of April and ends on the 31st of March following (*r*). But, in addition to these, there is generally a supplementary estimate of sums still required to meet certain expenditures which properly fall within the current year ending on the 31st of March. It is also always necessary to bring down, before the close of the session, one or more supplementary estimates for the coming year in order to provide for services which had been forgotten in the main estimates, or on which a decision had not been reached when the latter were made up. All these estimates are divided into votes or resolutions, which appropriate specified sums for services specially defined. They are arranged under separate heads of expenditure, so as to give the full information upon all matters contained therein. The blue book is made up in several columns; one showing the amount, if any, voted during the previous year; another, the amount to be voted for the next year; another, (where necessary), the increase or decrease of expenditure for the same service. Each resolution specifies, when necessary, every item on which there is to be a particular expenditure. For instance, under the head of a vote for harbours for a province there will be a number of distinct items, one for each harbour for which money is required.

(*q*) Can. Com. J. (1879), 77; *Ib.* (1883), 146, 299; *Ib.* (1890), 43, 225; *Ib.* (1901), 20, 40, 164, 271, 281, 314.

(*r*) Up to the year 1906 the fiscal year began with first of July and ended on the 30th of June in each year. Can. Com. J. March, 1906.

When the resolutions are under consideration in committee, it is the duty of the minister (whose estimates are under consideration), to explain each item that appertains to his department, and in this way the house is able to come to a conclusion as to its necessity.

Besides the grants voted in the estimates there are certain payments which have not been provided for annually, but are defrayed out of the consolidated fund (*s*) in conformity with various statutes (*t*). These payments comprise: costs and charges incident to the collection and management of the revenue; interest of the public debt; salaries of governor-general, lieutenant-governors, judges, etc.; loans; grants to provinces under the Union Act; and all other permanent payments. Whenever it is necessary to make any changes with respect to these permanent grants, they must be introduced in the shape of resolutions in committee of the whole, and bills founded thereon (*u*). The votes in committee of supply are for the service of the fiscal year, and grants intended to continue for a series of years must be passed in the way just stated. For instance, the estimates of 1879 included a vote (No. 120) for subsidy towards the construction and maintenance of certain telegraph lines; but, as this was shown to be a permanent grant and not one for the service of the year, it was struck out of the estimates and submitted subsequently in a bill (*v*).

The committee of ways and means regulates the mode in which the expenditures authorized by the committee

(*s*) The public revenues from taxes, imposts, loans, or other sources are placed to the account of the consolidated fund, out of which all payments are made by authority of law, either in the shape of permanent grants regulated by statute, or annual grants voted in supply. Todd, i. 737, 738.

(*t*) B.N.A. Act, 1867, s. 102, &c. Can. Stat. 31 Vict., cc. 4, 31, 32, and 33, and other acts passed in subsequent sessions.

(*u*) Can. Com. J. (1873), 205, 345, 396, 398; *Ib.* (1901) 201, 235, etc.

(*v*) Can. Stat. 42 Vict., c. 5. Can. Com. Hans. (1879), 1668 (Mr. Mackenzie) Jour. 367.

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of supply, are to be met. In other words, it provides the revenue or income necessary to pay the expenses of the public service. It is also in this committee that all propositions relating to the tariff and the taxation of the country must be considered (*w*).

V. Procedure on Going into Supply.—As soon as the speaker has communicated to the house the speech from the throne, the leader of the government will make the formal motion that "the speech of his Excellency the governor-general to both houses of the parliament of the Dominion of Canada be taken into consideration," immediately, or on a future day (*x*). When the speech has been duly considered and the address in answer formally agreed to, the minister of finance will make the usual motions for the formation of the committees of supply and ways and means (*y*).

1. "That this house will on next resolve itself into a committee to consider of the supply to be granted to his Majesty" (*z*).

2. "That this house will on next resolve itself into a committee to consider ways and means for raising the supply to be granted to his Majesty."

The time for the meeting of these committees is always proposed by a minister of the Crown (*a*), but a member may move to substitute another day as an amendment (*b*). A member may not move an instruction to the committee

(*w*) May, 586; Todd, i. 791.

(*x*) Can. Com. J. (1878), 14; 131 E. Com. J. 9.

(*y*) Can. Com. J. (1873) 24, 56, 63, 102. Can. Com. J. (1874), March 31; Rule 76; Formerly a resolution was moved that the house would appoint the above committees at the commencement of each session but this is now a fixed rule of the house.

(*a*) *Ib.* (1876), 55; *Ib.* (1878) 24; *Ib.* (1901), 20; 131 Eng. Com. J. 11.

(*a*) 240 E. Hans. (3), 1663.

(*b*) 240 *Ib.* 1669.

of supply, as they can only consider the estimates permitted by the Crown (*c*).

Before the house goes actually into committee of supply, the finance minister will bring down the estimates by message from the governor-general, and when the message has been read in English and French by Mr. Speaker, or by the clerk at the table, the minister will move "that the said message, together with the estimates accompanying the same, be referred to the committee of supply." The order of the day for the house to go into committee of supply having been read, the speaker will put the question—"That I do now leave the chair" (*d*). The same question is always put whenever the house is to go into committee of supply, in order to afford an opportunity to members to propose amendments. On this point it is observed by an eminent authority that the ancient constitutional doctrine that the redress of grievances is to be considered before the granting of supplies, is now represented by the practice of permitting every description of amendment to be moved on the question for the speaker leaving the chair, before going into committee of supply or ways and means. Upon other orders of the day, such amendments must be relevant, but here they are permitted to relate to every question upon which a member may desire to offer a motion (*e*). The same practice is now followed very extensively in the Canadian

(*c*) *Mirror of Parl.*, 1828, page 1972; Todd 1. 753; May, 607.

(*d*) *Can. Com. J.* (1876), 68; *Ib.* (1878), 47; 131 *E. Com. J.* 39, 47, 51. By the new rules (1913) the house goes into committee of supply or ways and means on Thursdays and Fridays without any motion put, except under circumstances referred to later; Rule 17c.

(*e*) May, (10th ed., p. 571); see also 11th ed., pp. 608-9. *Mirror of P.*, 1838, vol. 7, p. 5874; 110 *E. Hans.* (3), 861; 243 *Ib.* 1549; *Can. Com. Hans.* (1878), 1808 (Sir J. A. Macdonald). The right to consider grievances at this stage is one of the first principles of the British constitution, 237 *E. Hans.* (3), 380. But the practice has been much abused in England, and the Commons have more than once considered what means can be devised for limiting discussion. See report of Com., July 8, 1878, pp. 4, 6, 46, 105, &c.

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Commons (*f*); but there are certain limitations to this right. Only one amendment can be moved to the question, "that Mr. Speaker do now leave the chair" (*g*). If that amendment is negatived, a discussion on other questions may be raised but no other motion can be proposed (*h*). If the amendment is withdrawn, however, another amendment can be at once submitted to the house (*i*). The ordinary rules of debate are applicable on this occasion; for instance, a matter already decided by the house, or of which notice has been given, or which stands upon the orders of the day, cannot be discussed; nor can any subject or matter of detail which should be discussed in committee, be debated on these occasions; nor can debate or amendment be permitted relating to grants already agreed to, or to resolutions which will be proposed in the committee, or in the committee of ways and means, or to items in the estimates (*j*). It is not the practice in the Canadian Commons to give notice of any amendments to be proposed at this stage, though it is sometimes done. In the British Commons, notice is always given of amendments to be proposed to the motion for going into committee of supply (*k*). Members may, however, discuss various

(*f*) Can. Com. J. (1876), 88, 114, 129, 191, 213, 233, 237, 291.

(*g*) 206 E. Hans. (3), 1445. Can. Com. Hans. (1878), 1808-11. This limitation is peculiar to the Canadian Commons. See Bourinot (3rd ed.); p. 584 n. 129 E. Com. J. 337; 132 *Ib.* 118; 138 *Ib.* 167, 168 121 E. Hans. (3), 761. 198 *Ib.* (3) 633; 245 *Ib.* 908.

(*h*) Speaker Smith, Speaker's Dec. pp. 27, 45, 79. Mr. Cockburn, 2nd of May, 1873; Mr. Anglin, Feb. 29th, 1876. 170 E. Hans. (3), 690. 222 *Ib.* 1727; 225 *Ib.* 1943; 239 *Ib.* 16, 22-23.

(*i*) 131 E. Com. J. 103; 180 E. Hans. 369-427.

(*j*) May, 609. Can. Com. Hans. (1878), Feb. 22nd. In the session of 1890 Mr. Laurier, on going into committee of supply, proposed a motion similar to one already on the notice paper in Mr. Kirkpatrick's name. The latter waived raising a point of order, on account of the premier having previously arranged to give Mr. Laurier an opportunity of making and speaking to the motion. See Can. Com. Hans. 391. The speaker intimated privately to the author that had the question been raised he would have been obliged to decide against Mr. Laurier in accordance with precedent.

(*k*) May, 610.

questions on the motion for the speaker to leave the chair, without moving any amendment thereto—a great latitude being allowed on such occasions (*l*). The adjournment of the house is in order at this stage (*m*), and it is also allowable to move an address to the sovereign or to the governor-general (*n*).

When an amendment has been moved to the question for the speaker to leave the chair, discussion should be properly confined to its subject-matter (*o*). When an amendment is negatived, a debate may be raised when the speaker again puts the question, on the general policy of the government, or on some other subject, not embraced within the exceptions just mentioned (*p*). This question arose in the session of 1876. An amendment having been negatived, it was urged by a member that no further debate could take place on the original question; but Mr. Speaker Glin observed—"The house has not yet resolved that I leave the chair, and that question is consequently still before the house; and gentlemen who have not yet spoken are in order, and are permitted to speak on almost every question" (*q*). If an amendment has been carried in the

(*l*) Mr. Langevin, Apl. 29, 1878. Mr. McCarthy, Feb. 26, 1878. 240 E. Hans. (3), 759.

(*m*) 240 E. Hans. (3), 1669. But a motion for the adjournment of the house is not debatable.

(*n*) Can. Com. J. (1869), 93, 101.

(*o*) May, 610. 235 E. Hans. (3), 602, 623; 1330-1358; this reference illustrates the practice. See 240 *Ib.* 759 for the speaker's ruling, in which he clearly defines the distinction between a debate on an amendment and one on the motion for the speaker to leave the chair. Also Can. Com. Hans. (1878), 892; *Ib.* (1885), 747-756, where the house discussed the tariff generally and then proceeded to debate a distinct motion on a specific question moved by Mr. Blake. Also *Ib.* (1899), 7872; *Ib.* (1901) 1472; 230 E. Hans. (3), 456; 232 *Ib.* 834. 54 Parl Deb. (40), 1290; 142 *Ib.* 462.

(*p*) 239 *Ib.* 16, 22-3. Blackmore's Speaker's D. (1882), 11, 200; 215 E. Hans. (3), 994, 1739.

(*q*) Can. Com. Hans. (1876), 367; see 225 E. Hans. (3), 1940-1955, for an illustration of the extent to which a debate may proceed at this stage. Also 222 E. Hans. (3), 1727; 223 *Ib.* 1932; 224 *Ib.* 652; 240 *Ib.* 759; Can. Com. Hans. (1890), 1938-1954.

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affirmative, then it is the practice not to allow the committee of supply to drop—for that is not the intention in moving amendments at this stage—but to propose a second time the question for the speaker leaving the chair. It will then be moved—"That the house do on next, resolve itself into committee of supply" (*r*). Or, when it is necessary to proceed at once with the estimates it will be resolved "That this house do immediately resolve itself into committee of supply" (*s*). Mr. Speaker will then again propose the question for his leaving the chair, which is generally agreed to (*t*), although it is quite legitimate to propose amendments and debate various matters (*u*).

If it is found inconvenient to go into committee of supply or ways and means after the motion that the speaker do leave the chair has been put and discussed, the motion may be withdrawn with the consent of the house, and the committee will then be formally fixed for another day (*v*).

If the order of the house to go into committee of supply should become "a lapsed order" in consequence of "a count out," it will be necessary to revive it by giving notice of a motion for that purpose. In 1877, the committee in the English Commons lapsed in this way, and the leader of the government subsequently gave notice of a motion to set it up in the usual words—"That this house will on resolve itself," etc. (*w*). On another occasion the house adjourned whilst a motion for the speaker to leave the chair was under consideration, and it became necessary on the next sitting day to move "That

(*r*) 131 E. Com. J. (193-4); Can. Com. J. (1882), 254; *Ib.* 1891, Aug. 4.

(*s*) Can. Com. J. (1873), 272-3; *Ib.* (1890), 182; *Ib.* (1901), 154, 127 E. Com. J., 96; 129 *Ib.* 337.

(*t*) 122 E. Com. J. 106.

(*u*) Can. Com. J. (1901), 154; 174 E. Hans. (3), 1960; 235 *Ib.* 1350-58.

(*v*) Can. Com. J. (1894), 241; *Ib.* (1899), 121 (ways and means); *Ib.* (1901), 179, 193, (supply). 123 E. Com. J. 163.

(*w*) 129 E. Com. J. 294, 299; 184 E. Hans. (3), 535; 131 E. Com. J. 282-3; 235 E. Hans. (3), 203; 132 E. Com. J. 202, 206.

the house do immediately resolve itself, etc."'; or, if the committee rises for a temporary purpose, with the design of resuming as soon as the temporary object is carried out—it "asks leave to sit again this day." The motion is at the proper time made for the committee to resume, which is usually adopted *nem. con.* (x).

On going into committee of supply (or ways and means), it is the practice for members to ask questions of the government, but when a minister has replied it is not regular for him to speak again until a new question is proposed from the chair, and consequently it is the practice in the English Commons for a minister who has not spoken to give an answer to another question, when necessary (y).

The house is not necessarily called upon to go into committee of ways and means with any frequency, as its action is only imperative to vote duties of customs and excise or order payments out of consolidated funds to meet votes of supply; but whenever the motion is made for the speaker to leave the chair to go into ways and means, members may address the house on any subject of public importance or move amendments under the same rules as govern on going into committee of supply (z).

(x) 240 E. Hans. (3), 1086. Also 132 E. Com. J. 119, 120. In 1890 in the Canadian Commons the committee rose and reported, and then it was moved (by general consent) to go immediately into committee again that day in order to give Mr. Laurier an opportunity of proposing an amendment, in accordance with an arrangement made between him and the premier; Can. Com. Hans. 390, 391. 132 E. Com. J. 119, 120.

(y) 212 E. Hans. (3), 1083-1129; Blackmore (1882), 182.

(z) Can. Com. J. (1893), 76; *Ib.* (1895), 58; *Ib.* (1899), 132; *Ib.* (1901), 110, 154. In 1894 a motion was made to go into ways and means to give an opportunity to Mr. Davies to propose an amendment on the Ellis case, as there was already an amendment (Mr. Foster's) precluding him from moving or going into supply. When Mr. Davies' amendment had been lost it was necessary to negative the motion for the committee of ways and means, as the minister of finance was not present to withdraw it, and then resolve to go into committee at next sitting. Can. Com. J. (1894), 228-237; Can. Com. Hans. 3866.

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An amendment moved to the motion to go into committee of supply (or ways and means) does not necessarily involve want of confidence in the administration. When such an amendment simply affirms a general principle, or sets forth a public grievance, and does not directly or impliedly challenge the conduct or policy of the government, it is not, in a parliamentary sense, a motion of want of confidence (a), and consequently cases often occur of the government agreeing to the passage of such motions (b). Any motion that would seriously challenge a proposed expenditure, or any public act, for which the government have assumed the responsibility would of course be resisted by them. The usage of parliament for centuries has settled this as the proper stage for a complete statement of grievances and enunciation of important principles (c). Consequently, motions of this nature, when not objected to by the government, do not stop supply or ways and means.

By rule 17c: "On Thursdays and Fridays when the order of the day is called for the house to go into committee of supply, or ways and means, Mr. Speaker shall leave the chair without putting any question, provided that, except by the consent of the house, the estimates of each department shall be first taken up on a day other than Thursday or Friday."

The object of the proviso is to permit of debate before first entering upon the estimates of any department, but in practice, the consent of the house is generally given to taking up a department's estimates without preliminary debate, under a general understanding that such debate

(a) See remarks of Mr. Laurier (afterwards prime minister) to this effect. Can. Com. Hans. (1895), 4262.

(b) For cases of amendments current at this stage, see Can. Com. J. (1882), 238 (Ontario boundary question); *Ib.* (1891), 382-4 (fiscal policy of the government); *Ib.* (1899), 194, 195 (responsibility of ministers); *Ib.* (1900), 101, 102 (preferential advantages to Great Britain in Canadian tariff); *Ib.* (1901), 154 (Canadian Pacific Railway contract).

(c) See remarks of Mr. Gladstone, cited by Todd, ii., 502.

will be entered upon at some more convenient time. The British parliament has a somewhat similar rule. In that case the adjournment of debate on an amendment to the question for the speaker's leaving the chair may create occasionally an exceptional result, owing to the fact that such adjourned debate may appear on the order paper on a day when the speaker should leave the chair without putting the question or motion.

If such adjourned debate is standing on the orders when supply (or ways and means) is to be taken up on Thursday or Friday, the order of the day for resuming the adjourned debate is removed and the procedure on the amendment lapses in order that the speaker, in obedience to the rule of the house, may leave the chair without question put. In other words, the special order must give way to the general rule of the house (*d*).

VI. In Committee of Supply.—When the house goes into committee of supply, the speaker will call on the chairman of committees, or in his absence, on an experienced member, to take the chair of the committee. The rules that obtain in other committees prevail also in this. Each resolution will be formally proposed from the chair, and amendments may be made thereto. Each member is provided with a printed copy of the estimates, and the chairman reads the vote at length from a written set of resolutions, each of which he signs when it has been adopted by the committee. As in other committees, each resolution must be proposed and discussed as a distinct question, and when it has been formally carried, no reference can be made again thereto. Neither is it regular to discuss any resolution before it has been formally proposed from the chair. Each vote or resolution is necessarily a question in itself to be proposed, amended and put as any motion or bill in the house. Sometimes there are a number of items in a vote or resolution, and then these may be gene-

(*d*) May, 610-11: and note.

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rally discussed as forming part of a single question. Each item may then, if the committee think proper, be taken up as a distinct question, and so discussed and amended. The debate in such a case must be strictly relevant to the item, and when it has been disposed of, no reference can be again made to it when the subsequent items are under consideration (*e*). When it has been proposed to omit or reduce items in a vote, the question shall be afterwards put upon the original vote, or upon the reduced vote, as the case may be, without amendment. And after a question has been proposed from the chair for a reduction of the whole vote, no motion shall be made for omitting or reducing any item (*f*).

It is irregular to discuss any matters in committee which are not relevant to the resolution under consideration (*g*). It is also out of order to move for the adoption of a general resolution with respect to any particular vote, or for the reference of a particular vote to a select committee (*h*). Sometimes, when it is not convenient to discuss a resolution, it is not proposed from the chair but allowed to stand over with general consent until another occasion (*i*); but if it has been regularly proposed from the chair and discussed, no motion for its postponement is regular, because there is no period to which it can be postponed (*f*). But the mover of a resolution may, with the consent of the committee, withdraw and submit it again on another day, with or without alteration, and either as a distinct vote, or in separate items (*k*). The

(*e*) May, 623. See Can. Com. Hans., 1891, July, 2. 175 E. Hans. (3), 1673.

(*f*) Res. of Eng. Com., 9th Feb., 1858, and April 28, 1868; 113 E. Com. J. 42; 123 *Ib.* 145; 239 E. Hans. (3), 1763-1775.

(*g*) 157 E. Hans. (3), 1851. H. C. Rule 13 (5).

(*h*) Mirror of Parl., 1831, p. 1826; *Ib.* 1831-2, p. 3472. But a select committee may be moved in the house subsequently to inquire into matters connected with a particular vote; 172 E. Hans. (3), 131.

(*i*) Pacific R. R. votes, 1877, &c.

(*j*) 159 E. Hans. (3), 549; 175 *Ib.* 77.

(*k*) Mirror of P., 1830, p. 1498; *Ib.* 1840, p. 2867.

committee having only partly considered a resolution may, however, rise and report that they had made progress in the matter, and ask leave to sit again (*l*). Or they may report certain resolutions which they have agreed to, and progress on certain others (*m*). Sometimes the house will go into committee and immediately rise and report progress without adopting a vote (*n*); but in no case must the committee be allowed to drop by neglecting to move for leave to sit again. The speaker will always put the question, after report by the chairman, "When shall the committee have leave to sit again?" It is for the minister of finance, when present, or other member of the government, in his absence, to propose the time when the committee is to resume (*o*). The answer generally given to the speaker in reply to this question is usually "At the next sitting of the house." In case of a message from the governor-general or deputy-governor while the committee is sitting, the speaker must resume the chair, and the house proceeds to the Senate. On the return of the speaker, the committee may resume (*p*).

The committee of supply cannot increase a grant which has been recommended by a message from the governor-general (*q*). It is also irregular to increase any item in a resolution (*r*). But any motion to reduce a grant, or to strike it out of the estimates altogether, will be always in order (*s*). The advisability of increasing a grant may, as a matter of course, be discussed so as to inform the government as to the sense of the house on a

(*l*) 128 E. Com. J., 74, &c.

(*m*) 129 E. Com. J., 91, 134; Can. Com. J. (1876), 238, 239.

(*n*) 129 E. Com. J., 261, 331; Can. Com. J. (1877), 324; *Ib.* (1886), 182; *Ib.* (1890), 282.

(*o*) Can. Com. J. 1874, March 31.

(*p*) Can. Com. J. (1888), 235-237; *Ib.* (1890), 222, 223; *Ib.* (1892), 302, 303. Can. Hans. (March 20, 1911) p. 5732.

(*q*) 148 E. Hans. (3), 392. May, 615.

(*r*) 173 *Ib.* 1282. May, 617.

(*s*) 131 E. Com. J. (1870), 51, 65, 249.

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question (*t*). The ministry alone can move in the matter, and another message may be brought down to increase the grant (*u*). Neither is it allowable under English practice to attach a condition or an expression of opinion to a vote, or to change the destination of a grant (*v*). When all the supplies for the service of the year have been granted the sittings of the committee of supply are discontinued, though the order for the committee stands on the order paper. When the committee of supply has closed, votes in the committee of ways and means are necessary, and upon the final resolution of that committee, the appropriation bill is introduced (*w*).

VII. The Budget.—It is now competent for the finance minister to move the house into a committee of ways and means, to consider resolutions respecting the tariff, without taking a preliminary vote in supply, as both these committees are now formed at the commencement of the session, and there is no necessity whatever, under modern practice, to pass a vote first in supply in order to lay a foundation, as it were, for the committee of ways and means (*x*). It is usual to make the speech on the "budget" on the motion for the house to go into committee of ways and means since it is there that taxes are increased, repealed, or otherwise amended; but finance ministers have, at times, found it convenient to make it on a motion for committee of supply. In the session of 1867-8 Sir John Rose made a financial statement on the motion for the house to go into

(*t*) Todd, *Parl. Govt. in England*, i., 702, note (Annuity to the Duke of Wellington); 27 *E. Hans.* (3), 831.

(*u*) *Mirror of F.*, 1838, vol. vii, p. 5875.

(*v*) May, 616; 71 *E. Hans.* (3), 294; 122 *E. Com. J.*, 266, 270; 130 *Ib.* 324.

(*w*) May, 623-4; 591-4.

(*x*) It was the practice in the Canadian Commons until the session of 1883 (*Jour.* 1880-81, pp. 212-13) to take a preliminary vote in committee of supply and to concur in the same, before moving the house into committee of ways and means. This inconvenient proceeding was tacitly dropped.

committee of supply; and on a subsequent day he proposed to amend the tariff in committee of ways and means (*y*). In 1869 he made a financial statement on the motion for the house to go into committee of ways and means (*z*).

In 1870 Sir Francis Hincks made his financial statement and developed the fiscal policy of the government in committee of ways and means (*a*). In 1874, Sir Richard Cartwright took the same course when he proposed to amend the tariff (*b*). In 1877 he made his financial statement when the order of the day for ways and means had been read (*c*). In 1878 no change in the tariff being proposed he made his statement on the motion for the house to go into committee of supply. In 1879 Sir Leonard Tilley proposed a new tariff in the committee of ways and means, but in subsequent years, since 1880, the statement has been generally made by the finance minister on the motion to go into committee, with the speaker in the chair. It is usual for a discussion to follow the budget speech; and a wide latitude is permitted.

Previous to 1888, it was the custom to delay the consideration of the estimates until the budget was ready and consequently in some years supply was greatly delayed; but in that year the practice was adopted, and has been followed ever since, of going into committee of supply as soon as possible after the commencement of the session, and making considerable progress therein before the annual statement of the finance minister is made. In 1902 the house went into committee of supply on the seventh day after the opening and passed a large number of votes before the delivery of the budget speech.

(*y*) Parl. Deb. (1867-8), 76, 97.

(*z*) *Ib.* (1869), 33. It is the rule of the government to take possession of the telegraph lines as soon as the budget speech commences, and a change in the public taxation is proposed. Parl. Deb. (1874), 24; Can Com. Hans. (1885), 3226, (Mr. Bowell, minister of customs).

(*a*) Parl. Deb. (1870), 916; Jour. 168.

(*b*) Parl. Deb. (1874), 248; Jour. 56.

(*c*) Can. Com. Hans. (1877), 123.

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VIII. The Imposition of Taxes, and Ways and Means.

It is now a fixed principle of constitutional government that all propositions for the imposition of taxes should emanate from the ministry (d). The duty of the committee of ways and means is to consider how best to raise those portions of the public revenue necessary to meet the expenditure authorized by the grants of the committee of supply. The finance minister lays before the house, or the committee, his statement of the public revenue and requirements and explains his plans of meeting them, in the budget speech, and calls upon the committee of ways and means to report resolutions framed for the purpose of carrying his ideas into effect (e). In the session of 1871 Mr. Speaker Cockburn (f) recommended to the house the adoption of the British practice in this particular, and the Commons have ever since acquiesced in its wisdom. As a consequence no private member is now permitted to propose a dominion tax upon the people; it must proceed from a minister of the Crown, or be in some other form declared to be necessary for the public service. A motion or a bill of such a character should properly be introduced by a minister of the Crown. The following precedents will show the strictness with which the house now adheres to this practice:

In 1872 a member was not allowed to move the house into committee of the whole to consider certain resolutions imposing a duty on barley, oats, Indian corn and coal (g). A report from a select committee was not received in 1874 because it recommended the adoption of a new tariff for British Columbia. A motion on a later day to concur in a report was not allowed, on the ground that it asked for the enactment of a special tariff, which could only be done

(d) 182 E. Hans. (3), 592; May, 564; Todd, i., 709, 713.

(e) May, 624.

(f) Can. Com. J. (1871), 112, 113.

(g) Speak. D., No. 194, 20th May, 1872. See also No. 162, 14th June, 1869, for a similar ruling.

by the government and in a committee of the whole house (*h*).

If the government approve of any plan of taxation suggested by a private member, it is the constitutional course for them to propose it themselves in the committee of ways and means. This was done in the English house in the case of a resolution to extend the probate duty upon property above the value of one million (*i*). If the government object, that a motion imposing a tax is not required by the exigencies of the public service, the member offering it should at once withdraw it (*j*).

All the authorities go to show that, when the government have formally submitted to the house the question for the revision of customs and excise duties, it is competent for a member "to propose in committee to substitute another tax of equivalent amount for that proposed by ministers, the necessity of new taxation to a given extent being declared on behalf of the crown" (*k*). It is also competent for any member to propose another scheme of taxation for the same purpose, as a substitute for the government plan (*l*). But it is not regular to propose a new and distinct tax, which is not a mere increase (*m*) or diminution of a duty upon an article already recommended by government for taxation (*n*), though it is the function of this committee to impose rather than to repeal taxes. A proposition for

(*h*) Can. Com. J. (1874), 141, 216.

(*i*) 155 E. Hans. (3), 991; 114 E. Com. J. 348; Todd, i., 711.

(*j*) 73 E. Hans. (3), 1052-56. In this case it was proposed to go into committee of the whole, which was manifestly irregular, as was pointed out at the time.

(*k*) May, 625; 108 E. Com. J. 187; 123 E. Hans. (3), 1248; also Todd, i. 711.

(*l*) Mirror of P. (1836), 1963-4; *Ib.* (1840), 3042, vol. 18; 75 E. Hans. (3), 920. May, 125.

(*m*) 63 E. Hans. (3), 629, 708, 750, 753, 1364.

(*n*) For instance, a member could not move to extend licenses to other manufacturers besides brewers, who alone were to take them out according to the government plan; May, 125. 77 E. Hans. (3), 637, 751; 75 *Ib.* (3), 1015.

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the repeal of a duty is in order, and cases will be found where a proposed duty has been struck out in committee (o).

Though there is no rule to prevent private members moving abstract resolutions proposing changes in the scheme or distribution of taxation, or the imposition of new duties, "yet they have been uniformly resisted by the government in the English House of Commons as inexpedient and impolitic" (p). All proposals for the imposition of taxes belong peculiarly to the Crown, and custom, as well as sound policy, has long ago devolved upon ministers the duty of submitting such questions to the consideration of parliament (q). But nevertheless numerous instances will be found in Canadian, as well as English, practice, of committees having been appointed to consider questions of taxation, notwithstanding the opposition of the government (r). The whole question came up in 1877 in the Canadian house, and Mr. Speaker Anglin decided, in accordance with English precedents, that it is open to a committee to whom a question of taxation is referred, "to express an abstract opinion as to the expediency or in expediency of imposing a duty" (s).

The proceedings in ways and means are the same as in committee of supply or other committees of the whole. Changes in the tariff are proposed in the form of resolutions, each of which must be formally adopted by the committee, and reported to the house (t). Any motion or resolution,

(o) 128 E. Hans. (3), 1129; 166 *Ib.* 1574, &c.

(p) Todd, i. 713, 714; 88 E. Com. J. 336; 94 *Ib.* 510; 102 *Ib.* 580; 103 *Ib.* 886; 229 E. Hans. (3), 778. Mr. Sp. Edgar, Can. Com. Hans. (1898), 3206.

(q) Sir R. Peel, *Mirror of P.* (1830) vol. 7, p. 1032; also March 26th, (1833) August 7th, 1848; May 10th, 1849; May 10th, 1864. Also 73 E. Hans. (3), 1052-56. May, 563, 625.

(r) Todd, i. 714-721, for numerous cases in point.

(s) Committees on a petition to impose a coal duty; Can. Com. Hans. (1877), 380-398; Jour. 91, 111. Also British Columbia tariff, Can. Com. Hans. (1877), 532; Journals, March 7th; Petroleum duty, Can. Com. J. (1876), 233; *Ib.* (1877), 25; *Ib.* (1878), 215 (coal duty).

(t) 239 E. Hans. (3), 556, 605. Can. Com. J. (1883), 207, 216, 228-234.

moved in committee, must be relevant to the subject-matter referred to it (*u*). An amendment, of which notice has been given, on going into committee of supply, cannot be moved on the question for going into ways and means (*v*).

It is not the present practice in Great Britain to allow amendments in committee of ways and means to a resolution proposed by the government in the shape of an abstract resolution condemning financial propositions or the imposition of taxation in argumentative terms (*w*).

IX. Reports of Committees of Supply and Ways and Means.—The English Commons observe a rule which requires that "the resolutions of the committees of supply and ways and means shall be reported on a day appointed by the house, but not on the same day as that on which they are agreed to by the committee" (*x*). This practice is in accordance with the principle of giving every opportunity to the house to consider deliberately all measures relating to the expenditure and the taxation of the country. So strictly is this practice observed in England that when a resolution of this character has been received on the same day on which it was considered in committee, without any "urgency" having been shown, the house has ordered that this irregular proceeding (as well as all the proceedings consequent thereon) be declared null and void, and the resolution in question reported on a future day (*y*). In

(*u*) 156 E. Hans. (3), 1473-4. (*v*) 262 *Ib.* 474-6.

(*w*) May, 625 n.; 108 E. Com. J. 431; 126 E. Hans. (2), 453. This English rule has not been pressed so far in the Canadian Commons. See motion of this character proposed by Sir C. Tupper. Can. Com. Hans. (1897), 2864-5.

(*x*) May, 626; 129 E. Com. J. 107; 137 E. Hans. (2), 1639; Can. Com. J. (1877), 51, 95; *Ib.* (1883), 220, 228.

(*y*) 158 E. Hans. (3), 1167, 1208. Here Lord Palmerton showed the wisdom of the rule. Only in cases of great urgency will this rule be departed from. Since the revolution, only one instance has occurred in England, and that was in 1797, on the occasion of the mutiny at the Nore (52 E. Com. J. 552, 605). In the latter case an order made to report a resolution from ways and means forthwith to facilitate business was annulled, and the resolution placed on the orders of a future day 158 E. Hans. (3), 1161, 1167; 115 E. Com. J. 234, 240. May, 626.

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the Canadian house, however, especially towards the close of the session, this rule is frequently relaxed(z).

The resolutions from committee of supply and ways and means are read a first and second time, and agreed to, after the order of the day for reporting the same has been read at the table. The practice of the Canadian Commons with reference to amendment and debate, at this stage, was variable up to the session of 1877, when it was decided to adopt the English practice. The procedure on the report of such resolutions is now as follows: The order of the day having been called and read, the speaker proposes the question—"That these resolutions be read a first time." This is a purely formal motion and is never discussed or amended. The speaker then proposes the next question—that these resolutions be read a second time (a). "When the question is put," said Mr. Speaker Denison, "it is open to any hon. member to make any general observations he may think necessary" (b), "but they should be relevant to the subject-matter" (c). With respect to amendment, Mr. Speaker Brand said on a subsequent occasion: "The established rule of debate is that the observations of hon. members should be relevant to the question put from the chair. There is one exception to that rule, and that is, when a motion is made that the house resolve itself into committee of supply; upon that occasion irrelevance of debate—that is, debate not relevant to the subject-matter proposed to be discussed in committee—is allowed, but I am not aware of irrelevant matter, generally speaking, being allowed upon any other occasion. No doubt considerable latitude of discussion has been allowed occasion-

(z) Can. Com. J. (1882), 500-505.

(a) Can. Com. J. (1878), 249, &c., (supply); *Ib.* (1879), 193, (ways and means); *Ib.* (1890), 261, 366; *Ib.* (1891, June 16th). In 1877 the question for the second reading was not regularly put, and an entry was made in the journals to guard against such irregularities in the future. Can Com. Hans. 1171, 1172; Jour. 97, 172, 224, 336

(b) 174 E. Hans. (3), 1550-52.

(c) 162 *Ib.* (3), 662; 206 *Ib.*, 1367-8.

ally on the report of supply; but I know of no instance where an irrelevant amendment has been allowed on the motion that resolutions adopted in committee of supply be read a second time" (*d*). If the house agree to read the resolutions a second time the clerk in the Canadian house will proceed to read separately. The speaker puts the question for concurrence in each resolution, and both amendments and debate must be relevant to the same (*e*). For instance, on the question for agreeing to a resolution providing a sum of money for printing, in connection with the Queen's Colleges (Ireland), Mr. Parnell was proceeding to discuss the general subject, when he was interrupted by Mr. Speaker Brand and reminded that "on the question of a vote for stationery it was not competent for him to enter into a general discussion on the subject of those colleges" (*f*).

In the Canadian Commons, on report of resolutions on the tariff from ways and means, the rule of relevancy is understood to apply to any amendment—even to an abstract resolution—relating to the tariff, or to the fiscal policy of the country, or laying down a new principle of commercial policy in opposition to that of the government of the day (*g*).

Resolutions reported from committees of supply or ways and means are frequently postponed after they have been read a second time (*h*). Or, on the reading of the

(*d*) 243 *Ib.* 1549. May, 391. (*e*) 174 *Ib.* 1551. May, 627.

(*f*) 240 E. Hans. (3), 348. Also 231 *Ib.*, 749. For precedents of amendments and debate on reports of resolutions in English Commons, see 129 E. Com. J., 263 (supply); 115 E. Hans. (3), 1135, (ways and means); *Mirror of P.*, vol. xiv., p. 4722. (supply); 144 E. Hans. (3), 2151 (supply).

(*g*) Can. Com. Hans. (1877), 1172. Sir Richard Cartwright's amendment in 1890 on the second reading of resolutions of tariff. Can. Com. J. 261. Also amendments proposed on June 26, and July 9, 1891, *Jour. and Hans.*

(*h*) Can. Com. J. (1874), 170; *Ib.* (1877), 297; *Ib.* (1886), 110; *Ib.* (1900), 287, 404; 119 E. Com. J. 324; 129 *Ib.* 197; 131 *Ib.* 60; 132 *Ib.* 360.

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order for the reception of the report, it may be referred back to committee for the purpose of making certain amendments (*i*). Or, the resolutions, as in 1879—when the whole tariff was revised—may be all sent back to committee after the second reading (*j*). Any resolution may be withdrawn on the second reading (*k*).

The amount voted in any resolution from supply may be reduced after report, without going back into committee (*l*), though it is sometimes convenient to do so for that purpose (*m*). When resolutions are reported, members are restricted to one speech on each question (*n*).

It is not allowable at this stage—more than at any other—to increase or alter the destination of a grant of money, recommended by the governor-general (*o*). But it is always in order to propose an amendment stating the conditions under which the house makes a grant of money (*p*).

It is also quite regular at this stage to move an amendment to an amendment to a resolution (*q*).

In case it is proposed to increase a grant, it can only be done with the recommendation of the Crown, and in

(*i*) Can. Com. J. (1874), 144. 113 E. Com. J. 211.

(*j*) Can. Com. J. (1879), 201; or before second reading, *Ib.* (1890), 280.

(*k*) *Ib.* (1867-8), 94. *Ib.* (1879), 411; In the English house it is usual "to disagree" with a resolution not to be proceeded with; 129 E. Com. J. 100.

(*l*) 129 E. Com. J. 164; Can. Com. J. (1873), 374; *Ib.* (1878), 241; *Ib.* (1885) 619, 620; *Ib.* (1900), 494.

(*m*) Can. Com. J. (1873), 356, 371; *Ib.* (1878), 249.

(*n*) Unless as is sometimes done, it is agreed to allow the same latitude as in committee, for the convenience of the house. Can. Hans. 1878, May 2nd.

(*o*) Mennonite grant; Can. Com. J. (1875), 140. Can. Sp. D., No. 160, 10th of June, 1869; No. 176, 6th of May, 1870. 148 E. Hans. (3), 392; 170 *Ib.* 1884. This rule applies to all money resolutions reported from committee of the whole; Can. Com. J. (1867-8), 390.

(*p*) Mennonite loan, 1875; Can. Pacific R.R., 1876; 78 E. Com. J. 443.

(*q*) Can. Com. J. (1875), 141; *Ib.* (1877), 105.

committee of supply (*r*). The resolution is recommitted and the committee will report that a further sum has been voted in addition to that previously granted. But unless the government signify the recommendation of the governor-general, the committee cannot increase a grant (*s*). In the session of 1883, when a report of the committee of supply was under consideration, it was pointed out that a resolution of \$8,000 for the purchase of certain property required for government purposes did not represent the actual expense that would be incurred, but that the vote should be for \$11,000. It was suggested that the premier give the recommendation of the Crown and increase the vote for the adoption of this particular item of the report. On consideration, however, it was seen that such a proceeding at that stage was irregular, and the leader of the government stated that he would bring down a supplementary vote for \$3,000 (*t*).

On the same principle any increase in the imposts should be made in committee of ways and means (*u*). But it is regular to propose an amendment on the report from a committee, either for the repeal or reduction of property duties, even when those duties are actually reduced below what they had been previously (*v*). Neither is it necessary to go back into committee to strike off certain articles from the free list, provided the duty is left as payable under the existing law (*w*).

(*r*) 3 Hatsell, 179.

(*s*) Can. Sp. Dec., No. 199; 11th June, 1872.

(*t*) Can. Hans. (1883), 1316-17 (Rideau Canal Basin). 113 Com. J. 211, 314, 320; 150 E. Hans. (3), 1502, 1585.

(*u*) 155 E. Hans. (3), 991; 3 Hatsell, 167; 124 E. Com. J. 203; Can. Com. J. (1885), 587, 595; *Ib.* (1890), 437.

(*v*) May, 627-628. 101 E. Com. J. 323, 335, 349. In 1880 the house went back into committee (Jour., p. 212) to add certain goods to the free list—an altogether superfluous proceeding, arising from a misconception of the functions and meaning of a committee of the whole.

(*w*) Can. Com. J. (1882), 469, 470; item 3, books, charts, &c. See May, 587-8.

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But every new duty must be voted in committee. So strictly is the rule enforced which requires every new duty to be voted in committee, that even where the object of a bill is to reduce duties, and the aggregate amount of duties, will, in fact, be reduced, yet if any new duty, however small, be imposed or any existing duty be increased in the proposed scale of duties, such new or increased duty must be voted in committee either before or after the introduction of the bill (x).

It is the practice in the Canadian house to propose to go back into committee when an amendment is moved, after report, for the reduction or repeal of duties (y). In fact, it is considered the more convenient course to consider all changes in the tariff in committee of ways and means (z).

When there are a large number of items in a resolution reported from committee of ways and means—as was the case in the tariff of 1879—it is most convenient to take up each item separately and discuss it as a distinct question, to be agreed to (a). When the debate on a resolution cannot be terminated at a sitting, it is necessary to postpone the consideration of the remaining items before the adjournment of the house is moved (b).

It is the practice of the government to give operation immediately to the resolutions embodying customs and excise changes, by agreeing to a resolution to that effect in committee of the whole, which is afterwards embodied in the act of parliament based on the resolutions (c). Ac-

(x) May, 589, 624; 109 E. Com. J. 330; Can. Com. Hans. (1890), 4480.

(y) Can. Com. J. (1867-8), 92; *Ib.* (1874), 241, &c. May, 628

(z) *Ib.* (1874), 144.

(a) *Ib.* (1879), 260-7; 271-6. &c. *Ib.* (1886), 159, 160; *Ib.* 1891, July 31. *Ib.* 1894, June 8.

(b) *Ib.* (1879), 276.

(c) Can. Com. J. (1874), 59, 146; *Ib.* (1879), 108; *Ib.* (1885), 162. *Ib.* (1890), 243; *Ib.* (1898), 362; Can. Com. Hans. (1897), 1135, 1171, 1226, (debate on the differential tariff in favour of England which was brought into force as soon as finance minister announced policy of the

ordingly the new taxes are to be collected from the date mentioned in the resolution; but in case the tariff is changed or fails to become law, then the duties "levied by anticipation" must be repaid to the parties from whom they had been collected (*d*). In such cases the government assumes full responsibility and expects to be indemnified by parliament.

X. Tax Bills.—Bills Founded on Ways and Means Resolutions.—When the resolutions amending the tariff, or imposing any changes upon the people, have been agreed to, they are embodied in one or more bills which should pass through the same stages as other bills (*e*). Resolutions against the principle of such bills may be proposed at the different stages(*f*). It is also regular to move amendments in the committee on the bill for the repeal or reduction or modification of any charge or duty upon the people (*g*).

When such amendments are necessary, after the bill has come up from committee, it is always proposed to go back into committee to make the contemplated changes, but debate and amendment on the stages of such a bill are governed by the ordinary rules of relevancy (*h*). But any new duty or increase of duty must be previously voted in committee of ways and means, and then referred with instructions to the committee on the bill. Amendments to the bill which are not covered by resolutions of the

government. Sometimes certain alterations are deferred until a later date, and, if so, the resolution must expressly state it: *Ib.* (1883), 234. In the imperial house the executive government, on their own responsibility, give immediate effect to the resolutions as soon as they are reported and agreed to by the house. Todd, i. 793.

(*d*) Todd, i. 793; 99 E. Hans. (3), 1316; 156 *Ib.* 1274; 160 *Ib.* 1827. May, 559 n.

(*e*) Can. Com. J. (1867-8), 93, 94, 266; *Ib.* (1877), 226, &c.

(*f*) *Ib.* (1870), 298, 299.

(*g*) May, 629; 108 E. Com. J. 640 (committee on customs acts).

(*h*) Can. Com. J. (1867-8), 403, 415; *Ib.* (1874), 241.

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committee of ways and means are out of order (*i*). As the resolutions on which the bill is based are always discussed at length, the members opposed to its policy are seldom disposed to raise further debate during its passage, though they may think proper at times to express dissent and even divide the house on the question (*j*).

The committee of the whole has been sometimes dispensed with in the case of customs or tariff bills when they have been exhaustively discussed on the resolutions (*k*), and it is not necessary to make any alteration in the bills themselves. In 1882 and 1883 the bill was committed, as it was necessary to make some immaterial amendments (*l*). It is now the practice to commit such bills.

XI. The Appropriation or Supply Bill.—When all the estimates have passed through committee of supply (*m*) the finance minister will move to go into committee of ways and means for the purpose of considering the usual formal resolutions for granting certain sums out of the consolidated revenue fund of Canada “toward making good the supply granted to his Majesty” (*n*). These resolutions must be reported and agreed to formally by the house before the bill founded thereon can be introduced.

When the resolutions have been agreed to, the finance minister is able to present the appropriation or supply bill,

(*i*) 155 E. Hans. 991; 132 E. Com. J. 112; 137 *Ib.* 365-6, &c. Can. Com. J. (1885), 609, 659; *Ib.* (1890), 437; *Ib.* (1891), July 31, May, 629.

(*j*) Can. Com. J. (1874), 241. Can. Com. Hans. (1879), 1806.

(*k*) Can. Com. J. (1880-1), 367.

(*l*) *Ib.* (1882), 492; *Ib.* (1883), 408.

(*m*) But the practice is never to allow the committees of supply and ways and means to lapse, but to keep them alive to the very last moment of the session. Can. Com. J. (1877), 341, 352; *Ib.* (1879), 384, 431. May, 623.

(*n*) Can. Com. J. (1879), 431. By some inadvertency, the supply resolutions were in 1877 (p. 352) referred to the committee of ways and means. As the house goes into that committee to provide the means to meet the sums, already declared necessary for the public service, the reference was wholly unnecessary and without precedent.

which gives in detail all the grants made by parliament. The preamble differs from that of other bills, inasmuch as it is the form of an address to the sovereign—a subject which is more conveniently treated in the chapter on bills.

It is enacted in the supply bill that a detailed account of the sums expended under the authority of the act shall be laid before the House of Commons during the first fifteen days of the following session of parliament.

The Canadian Commons frequently allows the supply bill to pass two or three more stages on the same day. In 1867-8 it was passed with intervals of one or more days between each stage, and was amended in committee of the whole. In 1869 and 1870 it passed several stages on the same day, and was never committed. In 1871, it passed its second and third readings on different days, but was never considered in committee of the whole. In 1877 and 1882, the resolutions from ways and means were at once agreed to, and the bill passed through all its stages at one sitting (*o*). In subsequent years it passed all its stages as a rule on the same day (*p*). This practice is at variance with the principle which requires the resolutions to be reported, and the different stages of the bill to be taken on different days (*q*). No instance can be found in the English journals of two stages of a money bill being taken at the same sitting (*r*). Only two instances have occurred since 1867 in the Canadian house of an objection having been formally taken to immediate concurrence in the resolutions on which the supply bill is founded. One happened in 1877, and both speaker and house acquiesced in the force of the objection, as the motion

(*o*) Can. Com. J. (1877), 352, 353; *Ib.* (1882), 505.

(*p*) In 1886 the supply resolutions and the appropriation bill were passed with remarkable despatch, and the house prorogued on the same day. It was done to suit the convenience of the governor-general who had made his arrangements for leaving the city for Quebec on the evening of the same day. Can. Com. J. (1866), 361-401.

(*q*) 131 E. Com. J. 62, 65, 67, 74, 76, 79, &c.; 239 E. Hans. (3), 1419. May, 626.

(*r*) Mr. Speaker Brand, 239 E. Hans. (3), 1419.

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for receiving the report of the committee was not pressed. Subsequently, however, during the same sitting, the member who had interposed withdrew his objection, and it was agreed *nem. con.* to allow the resolutions to be reported and the bill to be introduced and passed forthwith (s).

It is now unusual in the Commons to raise a debate or propose amendments at different stages of a supply bill, though it is perfectly regular to take that course. It has been ruled in the English Commons that debate and amendments on the different stages of the appropriation bill are governed by the same rule as is applicable to other bills. For instance, when a member was attempting to speak of the constitution of the country, he was at once interrupted by the speaker (t).

An amendment must be applicable to the bill or some part of it, and discussion thereon should not be allowed the same latitude as on the motion for going into committees of supply and ways and means (u). This rule, however, does not "preclude a member from bringing a question of foreign or domestic policy before the house upon any stage on the bill, if it be a question that arises out of any of the votes thereby appropriated" (v). Much latitude, however, has always been allowed in the Canadian parliament. In the sessions of 1868 and 1869, members of the opposition reviewed the events of the session at considerable length, and a debate followed on the motion for the third reading of the bill. In 1870 Mr. Mackenzie, then leading the opposition, refrained from making any remarks during the passage of the bill on account of the illness of the prime minister (w). Since then, the former practice of raising

(s) No mention of the fact is made in the Hansard of that date. See also Can. Com. Hans. (1879), 2001-3 Mr. Holton, 6th May, 1879, Hansard p. 1799. (t) 231 E. Hans. (3), 1162.

(u) 211 E. Hans. (3), 1555; 231 *Ib.* 1118, 1158-62; 265 *Ib.* 735-6 Can. Sp. D., No. 77.

(v) Todd, i., 819-821; 143 E. Hans. (3), 643; 176 *Ib.* 1859; 256 *Ib.* 967, 1232. May, 627.

(w) Can. Parl. Deb., May 11, 1870. Amendments were proposed at different stages, pp. 1568-9.

discussion on the bill has only been followed at rare intervals. In 1879, a discussion of several hours took place on the Letellier affair (x). In 1898, Mr. Føster discussed briefly the financial policy of the government, the finance minister replied (y).

In the previous part of this work, reference has been made to a practice of tacking to a bill of supply certain enactments to which the members of the upper house might have strong objection, but which they would feel compelled to pass rather than take upon themselves the responsibility of rejecting a money bill, and causing thereby grave inconvenience, if not positive injury, to the public service (z). No attempt has been made since the establishment of responsible government in Canada, to renew a practice which was more than once attempted during the conflict between the old assemblies and legislative councils. When it was proposed to move in the English Commons to instruct the committee on the appropriation bill to add to that bill a provision altogether foreign to its subject-matter, Mr. Speaker Brand said:

"If such an instruction were moved, I should not consider it my duty to decline to put it from the chair; but I am bound to say that such a motion would be in the nature of a tack to a money bill. I can say positively that no such proceeding has taken place in this house for a period of one hundred and fifty years. The House of Lords has always respected the rights and privileges of this house, and has abstained from amending money bills; so in like manner, has this house abstained from sending up money bills containing anything in the nature of a tack to a money bill."

XII. Supply Bill in the Senate.—The supply bill is sent up immediately after its passage in the Commons to the Senate where it receives its first reading at once. The bill is generally passed through its several stages

(x) *Can. Com. Hans.* (1879), 2011-2035.

(y) *Ib.* (1898), 7858. (z) 1 ch. viii (part 6).

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on the same day, and is never considered in committee of the whole (*a*). It is usual, however, to discuss the various questions arising out of the bill at some length (*b*).

The House of Commons alone has the constitutional right to initiate measures for the imposition of taxes and the expenditure of public money. The fifty-third section of the British North America Act, 1867, enacts that "bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons" (*c*).

In the speech with which the governor-general opens and closes every session of parliament, he recognizes the constitutional privileges of the House of Commons with respect to the estimates and supply; for he addresses its members only with respect to those matters (*d*).

The supply bill can only be presented for the assent of the sovereign by the speaker of the House of Commons, and it will be seen by reference to another page that the formal address which he makes on such an occasion, like the preamble of the English appropriation act, is an emphatic assertion of the sole right of the Commons to vote the money, and that the governor-general, in the Sovereign's name, gives, in the form of his answer, a recognition of this claim.

The Canadian Commons have resolved, and placed the resolution among their standing orders (now rule 78), that "all aids and supplies granted to his Majesty by the parliament of Canada are the sole gift of the House of Commons and all bills for granting such aids and supplies ought to begin with the house as it is the undoubted right

(*a*) Sen. J. (1878), 293; *Ib.* (1879), 293; *Ib.* (1883), 292 (all at stages on same day). In the Lords more time is given for consideration of the bill, and the question is always put whether the bill shall be committed, and resolved in the negative. Lord's J. (1877), 401, 405.

(*b*) Sen. Deb. (1874), 359; *Ib.* (1875), 750; *Ib.* (1877), 487; *Ib.* (1878), 983; *Ib.* (1900), 1215; *Ib.* (1901), 533.

(*c*) A similar provision is found in the Union Act. 1840, s. 57.

(*d*) Sen. J. (1879), 298. *Ib.* (1901), 23, 294; 132 E. Com. J., 411

of the house to direct, limit and appoint in all such bills the ends, purposes, considerations, conditions, limitations and qualifications of such grants which are not alterable by the Senate"—a resolution taken from that passed by their English prototype more than two centuries ago.

The constitutional privileges of the Commons in this particular are now acknowledged and the Senate never attempts to amend the supply bill. If any alteration is now made in a money or taxation bill in the House of Lords, it is only of a verbal and unimportant character; but such an alteration is of very unusual occurrence, and so jealous are the Commons of even an appearance of an infringement of their privileges, that they will make a special entry of their reasons for accepting such amendments (*e*). The supply bill when it comes back from the Senate bears the endorsement common to other bills, "Passed by the Senate without amendment" (*f*); and the propriety of such an endorsation has even been questioned in the Commons; but it is always considered a matter of form and is not noticed in the Commons journals.

Though the upper house may not amend a supply bill, yet all the authorities go to show that theoretically it has the constitutional right to reject it in its entirety; but such a right is not likely to be exercised by a legislative body not responsible to the people, except under circumstances of grave public necessity (*g*). Either the direct or indirect concurrence of the upper house in every grant of money is constitutionally requisite (*h*). When the Crown sends down a special message to the Commons, asking that provision be made for some matter not included in the estimates, it is usual to forward a similar message to the

(*e*) 112 E. Com. J. 393; 122 *Ib.* 426. See chapter on public bills.

(*f*) Sen. J. (1879), 293; *Ib.* (1901), 290.

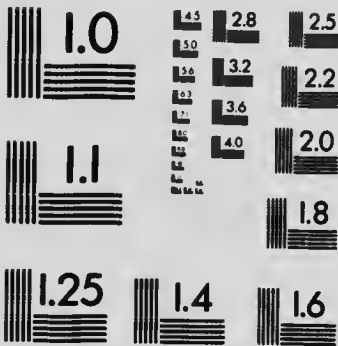
(*g*) Blackstone's Com. 169. DeLolme, book 1, c. 4. Cox on British Institutions, 188-9; Todd, i., 808

(*h*) See despatch of Earl of Bathurst, Aug. 31, 1817; Low. Can. Ass. Jour. Garneau, ii. 334.



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Senate (i). It is a well-understood principle that the consent of the Lords is indispensable to every legislative measure, whether of supply or otherwise, and it is desirable that they should have a full opportunity given them of considering the policy of all public expenditure and taxation, after it has been initiated and passed in the Commons (j).

XIII. Royal Assent to the Bill.—The supply bill is always returned to the House of Commons (k), and is taken up to the Senate chamber by the speaker, when his Excellency the Governor-General has summoned the Commons for the purpose of proroguing parliament. When all the bills passed by both houses have been formally assented to, or reserved for the signification of the Sovereign's pleasure thereon, Mr. Speaker will present the supply bill with the usual speech.

"May it please your Excellency: The Commons of Canada have voted the supplies required to enable the government to defray the expense of the public service. In the name of the Commons, I present to your Excellency a bill intituled," etc. (h).

(i) Sen. J. (1867-8), 212, 214; Can. Com. J. 187, 201; relief to the family of T. D'Arcy McGee, assassinated during the session of parliament. Grant to Sir Garnet Wolseley, 1874, 218 E. Hans. (3), 622, 709.

(j) Todd, i, 806 *et seq.* In 1879 resolutions setting forth the policy of the dominion government with respect to the Canadian Pacific R.R. were introduced and passed in both houses. Se. J. (1879), 276; Com. J. 417.

(k) It is privately returned to the clerk, who hands it to the speaker. See 3 Hatsell, 161-2. May, 596. In England the Supply Bill is assented to before all other bills. May, 511, 513. Todd, *loc. cit.* Govt. in England, Vol. I, p. 822.

(h) In accordance with an old usage of the English parliament (3 Hatsell, 163), the speakers of the legislative assemblies of Canada were accustomed, before presenting the supply bill, to deliver an address directing the attention of the governor-general to the most important measures that had been passed during the session. Leg. Ass. J. (1865), 257; *Ib.* (1866), 386. On the 22nd June, 1854, when the legislature was suddenly prorogued by Lord Elgin, after only a week's session the speaker took occasion, before the delivery of his Excellency's speech,

The clerk of the Senate will then proceed to the bar, and receive from the speaker the supply bill, with which he will return to the table; and the clerk of the crown in chancery will then read the title of the bill in the two languages. This done, the clerk of the Senate, signifies in both languages the royal assent in the following words:

"In his Majesty's name, his Excellency the Governor-General thanks his loyal subjects, accepts their benevolence, and assents to this bill" (*i*). A similar procedure is followed in the case of any supply bill passed and assented to during a session.

XIV. Address to the Crown for a certain Expenditure, &c.—It has happened in the English House of Commons when the estimates had all gone through the committee of supply, and when in consequence of the lateness of the session or for some other reason, it is not convenient to make a grant therein, or it is not possible to state the exact amount of money required, the House of Commons has agreed to an address to the sovereign for a certain expenditure of public money, with an assurance that "this house will make good the same." This practice has been followed only on one occasion in the Canadian parliament and that was at the close of the session of 1873, when the death of Sir George Etienne Cartier was announced. Sir John Macdonald, then premier, moved an address to the governor-general praying that "he would be graciously pleased to give directions that the remains of the deceased statesman be interred at the public expense," and assuring his Excellency that "this house will make good the expenses attending the same" (*j*). The course

to refer to the fact that no act had been passed or judgment of parliament obtained on any question since the house had been summoned a few days before: *Ib.* (1854), 31; Dent's Canada, ii., 294. The last occasion on which the speaker availed himself of this old privilege was in 1869, and then he made only a brief reference to the importance of the measure of the session; *Can. Com. J.* (1869), 312.

(*i*) *Sen. J.* (1890), 286; *Com. J.* 505. *Can. Com. J.* 1891, 9th July. (*j*) *Can. Com. J.* (1873, first session,) 430.

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pursued on that occasion was in accordance with the precedents in the cases of Lord Chatham in 1778, and of Mr. Pitt in 1806, to whom monuments were voted by parliament (*k*). But since that time the Imperial Commons has adopted a standing order requiring that all such addresses should originate in committee (*l*); and as the Canadian rule is, in all unprovided cases, to follow English usage, the address for a public funeral to Sir George Cartier should obviously have been in conformity with the later English practice, and should have originated in committee of the whole (*m*).

The right of a private member in the English Commons to move an address to the Crown for a grant of public money to be provided by parliament—such address as we have just seen, to originate in committee—appears to be admitted by all the English authorities. The form of the motion, "that this house will make good the same," makes the royal recommendation unnecessary (*n*). When the English Commons amended their standing orders, the chancellor of the exchequer recognized the right of any member to move an address—"the ancient and truly constitutional method of expressing the desire of the house, that some public expenditure should be incurred." Such a motion merely throws on the Crown the responsibility

(*k*) 36 E. Com. J. (1778), 972; 61 *Ib.* (1806), 15. Also Lord Nelson; 61 E. Com. J. 16.

(*l*) May, 571. Sir R. Peel, 1850; 105 E. Com. J. 512. Lord Palmerston, 1866; 121 E. Com. J. 100; Earl of Beaconsfield, 1881, 136 *Ib.* 230. But even this S.O. has been ingeniously evaded.

(*m*) So particular is the English House in adhering to this practice that when an irregularity has been discovered, the order for an address has been discharged and proceedings commenced *de novo* in a regular manner. 125 E. Com. J. 355, 362, 368. Also 98 E. Com. J. 321; 106 *Ib.* 189.

(*n*) Todd, i., 700, 701, 766. Also 221 E. Hans. (3), 766, where a member moved, on motion for going into supply, that the house go into committee of the whole on a future day to consider the granting of a pension, and to assure Her Majesty that the house would make good the same.

of accepting or declining that address (*o*). The express language of the 54th section of the B.N.A. Act, 1867, forbids any member in the Canadian Commons from moving for an address for a grant of public money, without a recommendation of the Crown. It is still necessary, however, to insert the words, "that the house will make good the same," because the grant so authorized upon an address, must afterwards be included in a bill of appropriation.

In 1891, on the occasion of the death of Sir John A. Macdonald, the procedure of 1873 was avoided by the senior member of the cabinet, Sir Hector Langevin, simply moving an abstract resolution that the remains of the deceased statesman should be publicly interred and the house would "concur in giving to the ceremony a fitting degree of solemnity and importance (*p*)."

XV. Votes of Credit and on Account.—Occasions may arise when parliament will be called upon to give the government a vote of credit to meet a national emergency, and it is impossible to determine the exact amount that may be required for the public service. In 1885 parliament voted the sum of \$1,700,000, "required for defraying certain expenses in connection with the troubles in the Northwest Territories." Such "votes" are brought down like all matters of supply with a message from the governor-general, passed in committees of supply and ways and means and included in an appropriation bill, which is presented by the speaker of the Commons, and receives the formal assent of the governor-general like other supply bills (*q*). A similar procedure was followed in the case of the Queen's

(*o*) 182 E. Hans. (3), 598. But this right should only be exercised under peculiar and exceptional circumstances; *Ib.* 593, Mr. Gladstone.

(*p*) See Can. Com. J. and Hans., 8th June.

(*q*) Can. Com. J. (1885), 304, 305, 411, 445, 449, 680. See Todd *i.*, 757, 758; May, 548; 82 E. Com. J. 542; 115 *Ib.* 142. The preamble of such bills is the same as in the general appropriation act.

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jubilee expenses in 1897 (*r*). In the August war session of 1914 the sum of fifty million dollars was so voted and in the following session (February, 1915) an additional sum of one hundred millions was voted.

The nature of the service and the amount probably required should be specified in the Act. The amount should be limited, as nearly as possible under the circumstances, to the necessities of the case, and should be fully accounted for and audited at the earliest practicable moment (*s*).

Votes "on account of" particular services, now quite common in England, have been necessary on several occasions in the practice of the Canadian Commons. "It is an established rule," says a high authority, "that a vote on account should involve no new principle, but should merely provide for the continuation of services which had been sanctioned in the previous year; and it is the practice not to take more than two or three months' supply, except in certain particular cases of public emergency, so that the committee in agreeing to vote on account are not pledged to the estimates for the year in anticipation of the opportunity to be afterwards afforded of voting them in detail" (*t*). In the Canadian House on a number of occasions it became necessary owing to pressure of time to obtain supplies for a short period before the estimates could be passed in due course and, consequently, by an agreement between the parties, a certain proportion of the estimates (one-fifth, one-sixth or one-third) were passed without discussion and included with all the resolutions previously passed in an appropriation bill which promptly received the royal assent. Later the balance of the estimates were fully discussed and voted in due course (*u*).

(*r*) Can. Com. J. (1897), 175, 176, 180.

(*s*) Todd, i., 758-763, 823.

(*t*) May, 548, 549, 606, 622. Todd, i., 760. 181 E. Hans. (3), 1780; 195 *Ib.* 523; 197 *Ib.* 1440; 200 *Ib.* 1583; 205 *Ib.* 1034; 211 *Ib.* 1049.

(*u*) Appropriations of this nature were adopted in 1891, 1896, 1899 and on several subsequent occasions.

XVI. Audit of Appropriation Accounts.—For the examination of the public accounts and the reporting thereon to the house there is an officer, appointed under the great seal, called the auditor-general, who holds office during good behaviour, but is removable by the governor-general, on address of the Senate and House of Commons. When any sums have been voted by parliament for specified public purposes, the governor, from time to time, issues his warrant, authorizing the minister of finance to issue such sums as may be required to defray those expenses. The minister of finance on the application of the auditor-general, causes credits to be opened in favour of the several departments or services charged with the expenditure of the moneys so authorized. These credits are issued on certain banks, authorized to receive public funds, and the law provides a thorough system of checks over all payments for public services. No credit can issue in favour of any department or service in excess of a vote sanctioned in the supply bill or act of parliament. It is the duty of the auditor-general to see that no cheque goes out unless there is a parliamentary appropriation for the same. He certifies and reports upon the issues made from the consolidated revenue fund in the financial year ending the 31st of March preceding, for the interest and management of the public debt, and all other expenditures for services under control of the minister of finance. He certifies as to the authority under which these issues are made, and his report thereon is laid before the House of Commons by the minister of finance on or before the 31st day of October in each year, if parliament is then in session, but if not then sitting, within one week after parliament is assembled (*v*).

The accounts of the appropriation of the several grants comprised in the appropriation, or any other act for the year ending the 31st of March preceding, are prepared by the several departments and transmitted for examination

(*v*) Can. Revenue and Audit Acts, chap. 21, R.S.C.

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to the auditor-general, and to the deputy of the minister of finance, and when certified and reported upon, they are laid before the House of Commons. These accounts are carefully examined by the auditor, who, in his report to the house, calls attention to every case in which cheques have been issued without his certificate, or in which it appears to him that a grant has been exceeded, or that money received by a department from other sources than the grants for the year to which the accounts relate has not been applied or accounted for according to the directions of parliament, or that a sum charged against a grant is not supported by proof of payment, or that a payment so charged did not occur within the period of the account, or was for any other reason not properly chargeable against the grant. The Act provides that if the minister of finance does not, within the time prescribed in the statute, present to the house the report of the auditor on these or other accounts, the latter shall immediately transmit it himself to the Commons. All balances of appropriations which remain unexpended at the end of the financial year lapse and are written off, but the time for closing these accounts may be continued for three months from the 31st of March, provided there is sufficient cause shown for doing so in an application to the governor in council. In case the money cannot be expended before the 1st of May, and it lapses accordingly under the law, a memorial may be addressed to the governor in council, setting forth the facts, and if it is found expedient to authorize the payment of the money, a warrant is issued in due form. Special warrants may issue, when parliament is not in session and any expenditure not foreseen or provided for by parliament is urgently and immediately required for the public good. A statement of all such warrants is laid before the house, not later than the third day of the next session (*w*). As a rule, all grants not expended within the financial year, and still required for the public service, are re-voted, in

(*w*) Can. Com. J. (1883), 47; Can. Com. Hans. Aug. 27, 1891, an. Sept. 3 and 4, 1896, 2nd session.

whole or in part in the estimates when they are brought down in the following year—the printed copies of the estimates having a column, when necessary, to indicate the amounts of this re-vote.

A detailed statement of all unforeseen expenditures, made under order of council, is also laid before parliament during the first fifteen days of each session (x).

In the session of 1880, the committee on public accounts, to whom the report of the auditor-general is always referred, considered several matters therein mentioned, and made recommendations, which were formally adopted by the house in regard to the form in which the estimates should be prepared for submission to parliament (y).

The committee also recommended the auditing by the auditor-general of the accounts of the two houses for salaries and contingencies, members' indemnity, printing and library. These recommendations were adopted in the Senate and Commons and since that time the Senate and Commons' accounts have been audited and reported upon in the same manner as those of departments and of other public services (z).

(x) Can. Com. J. (1890), 17. 52 Vict. ch. 1.

(y) See Bourinot 3rd Ed., pp. 621, 622. Can. Com. J. (1880) 183.

(z) Senate J. (1880) 96-7. Com. J. 119, 125-6.

CHAPTER XIV.

STANDING AND SPECIAL OR SELECT COMMITTEES.

- I. Standing Committees of the Senate.—II. Standing Committees of the Commons.—III. Select Special Committees.—IV. Quorum of Committees in the Commons.—V. Organization and Procedure of Committees.—VI. Reports of Committees.—VII. Presentation of Reports.—VIII. Concurrence in Reports.—IX. Witnesses before Select Committees.—X. Payment of Witnesses.—XI. Examination of Witnesses under Oath.

I. Standing Committees of the Senate.—Select standing and special committees now form a most important part of the legislative machinery. They possess the obvious advantages, which a small number of persons must naturally have, of being able to discuss the details of the questions referred to them with that patient deliberation, which is practically impossible, as a rule, in the whole house. The tendency of modern practice is to refer to committees all matters requiring the taking of evidence and laborious investigation. In this way, the houses are able to simplify their proceedings and make greater progress with the public business.

The value of committees for these purposes has always been recognized by the Canadian legislatures, and of late years their usefulness has received extension by the reference of many public bills of an important character to committees. In England also the Commons has begun to attach greater importance to such deliberative bodies, and has recently appointed two standing committees of not more than eighty members each for the consideration of all bills relating to law, courts of justice and legal procedure, and to trade, agriculture, fishing, shipping and manufactures.

During the course of every session a number of special committees are appointed in each house to inquire into and report on a variety of matters referred to them for consideration.

Standing Committees are those sessional committees which are appointed beforehand for the consideration of all subjects of a particular class arising in the course of a session such as Private Bill, Railways and Canals, etc.

In the Senate at the commencement of each session, after the communication of the speech from the throne, a committee of selection of nine members (Rule 77) is appointed to nominate the senators to serve on the following standing committees :

1. The Joint Committee of the Library of Parliament, whereto there shall be appointed seventeen senators.
2. The Joint Committee of the Printing of Parliament, whereto there shall be appointed twenty-one senators.
3. The Committee on Standing Orders, composed of nine senators.
4. The Committee of Banking and Commerce, composed of thirty-two senators.
5. The Committee of Railways, Telegraphs and Harbours, composed of fifty senators.
6. The Committee of Miscellaneous Private Bills, composed of twenty-five senators.
7. The Committee of Internal Economy and Contingent Accounts, composed of twenty-five senators.
8. The Committee on Debates and Reporting, composed of nine senators.
9. The Committee of Divorce, composed of nine senators.
10. The Committee on the Restaurant, composed of the speaker and six other senators.
11. The Committee on Agriculture and Forestry.
12. The Committee on Immigration and Labour.
13. The Committee on Commerce and Trade Relations of Canada.
14. The Committee on Civil Service Administration.

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15. The Committee on Public Health and Inspection of Foods.

16. The Committee on Public Building and Grounds.

Said last six committees to be composed of not less than five nor more than nine memb. . .

Two days' notice is always given (Rule 23) for the appointment of a special committee or for the adoption of the report of any such committee and one day's notice (Rule 24) for the appointment of a standing committee.

The motion for the appointment of these committees must be put and concurred in by the house (*a*). The standing committees of the senate report from time to time without receiving special authority to that effect in the order appointing them.

Messages will be sent to the Commons informing them of the appointment of committees on the library and printing (*b*). The committees of the Senate meet, if practicable on the next sitting day after their appointment, and choose their chairman, and the majority of senators appointed on such committees constitute a quorum, unless it be otherwise ordered. But it is the practice for these committees (except that on the library) to report, recommending the reduction of their quorum to a stated number (*b*).

The rules that govern the proceedings of the committees of the Senate are, for the most part, the same as those of the Commons; and whenever there is any difference in practice, it will be shown in the course of this chapter.

II. Standing Committees of the Commons.—When the speech has been reported by the speaker at the commencement of a session, the premier, or other member of the ministry in the House of Commons, will formally move

(*a*) Minutes of S. (1878) 26-27. *Ib.* (1882) 18-20. *Ib.* (1883) 35-36. Deb. (1889) 37 Sen. J. (1878) 36. *Ib.* (1882) 30. *Ib.* (1890) 13.

(*b*) Sen. J. (1878) 44, 52, 54, *Ib.* (1879) 54, 55. *Ib.* (1882), 32, 33. *Ib.* (1896) 1, 16.

that a special committee be appointed to prepare and report with all convenient speed lists of members to compose the select standing committees of this house under rule 10. This committee is composed of leading men of the ministry and opposition and the chief whips of the two parties are generally included. To this end that portion of rule 10, limiting the number of members of a committee is suspended. This committee reports the standing committees without delay. The report is generally adopted immediately after its presentation. These committees are as follows: On Privileges and Elections, number of members, 36; On Railways, Canals and Telegraph Lines, number of members, 119, quorum 25; On Miscellaneous Private Bills, number of members, 64, quorum 10; On Standing Orders, number of members, 31, quorum 7; On Printing, number of members, 25; On Public Accounts, number of members, 63, quorum 21; On Banking and Commerce, number of members, 96, quorum 21; On Agriculture and Colonization, number of members, 95, quorum 12; On Marine and Fisheries, number of members 36, quorum 10; On Mines and Minerals, number of members, 33, quorum 10; On Forests, Waterways and Waterpowers, number of members, 31, quorum 10; Official Reports of Debates, number of members, 14, quorum 5; On the Library, number of members, 14.

It is the practice to make special motions with reference to joint committees on the printing and on the library of parliament. Messages are sent to inform the Senate that the Commons have appointed certain members of the house to form a part of such committee and, when similar messages have been received from the Senate, these joint committees are able to organize and take up the business before them. Though the committee on the library is not ordered—as is the case with that on printing—in the resolution providing for the formation of standing committees, yet it falls practically within the same category, and is generally appointed at the same time.

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The titles of the several standing committees of the Commons sufficiently indicate their respective functions. Some of these committees are very large, the number of members on railways, canals and telegraph lines having been 182 in 1903; on banking and commerce, 130; on agriculture and colonization, 119, on miscellaneous private bills, 80. The number on the other committees vary from 30 to 42. Before 1883, the committee on public accounts was composed of 97 members; but in that year the number was reduced to 45 as an experiment. (c) In 1890 it consisted of 57 members, it now consists of 63 members.

III. Select Special Committees.—In addition to the standing committees, there are certain select special committees appointed in the two houses in the course of a session. The term select special committee is properly applied to a committee appointed to specially consider a particular subject.

When a committee is appointed in the Senate it is usual to ask in the motion for power to send for persons, papers and records, to examine witnesses under oath, engage counsel, to report from time to time or ask for other powers that may be deemed necessary (d).

If it is necessary to refer to minutes or evidence taken before a committee of the previous session the motion should be to that effect (e).

Notice should properly be given of all motions for select committees (f). It is not the invariable practice to include in the motion the names of the members which may be given by the consent of the house when the motion

(c) See remarks of Sir John McDonald and Mr. Blake; Hans. (1883) 36, 37. In the English House the committee on public accounts, established by S.O. (No. LXXVII) since 3rd of April, 1862 (amended 28th of March 1870) consists of only 11 members, of whom 5 are a quorum.

(d) Sen. J. (1878) 59-63. *Ib.* (1901) 66, 70, 73.

(e) *Ib.* (1878) 59 (C.P.R. Can. Terminus at Fort William.

(f) Min. of Parliament (1878) 42, 138.

has been duly proposed (*g*). But, no doubt it is the more convenient and regular course to include the names in the notice of motion (*h*). It is usual for the mover of a special committee to be one of its members. Rule 83 provides for this and also that, if three senators so demand, the members of such committee may be appointed by vote, each senator voting, and those senators securing the largest number of votes shall constitute the committee.

A Special Committee of the Commons, unlike a Standing Committee of the same body is limited to a certain number unless the house should find it advisable to make additions. Rules 11 and 12 provide as follows: "No special committee may, without leave of the house consist of more than fifteen members, and the mover may submit the names to form the committee, unless objected to by five members; if objected to, the house may name the committee in the following manner; each member to name one, and those who have most voices, with the mover, shall form the same; but it should be always understood that no member who declares or decides against the principle or substance of the bill, resolution or matter to be committed, can be nominated of such committee."

"Of the number of members appointed to compose a committee, a majority of the same shall be a quorum, unless the house has otherwise ordered."

By rule 40, it is ordered that two days' notice shall be given of a motion for the appointment of a committee; but none is necessary in the case of matters affecting the privileges of the house (*i*). It is the regular course to give the names of the committee in the notice of motion, unless it is intended to have it appointed directly by the house (*j*). The motion should also state whether it is

(*g*) Min. of Parliament (1878) 44, Jour. 62.

(*h*) Min. of parliament (1878) 138 Jour. (1901) 73.

(*i*) 113 E. Com. J. 68; 146 E. Hans (3) 97; 148 *Ib.* 1876, 1855-1867.

(*j*) V. and P. (1877) 48, 127; Can. Com. J. (1876), 173-4. The English S.O. directs that one day's notice be given in the votes before the nomination of a select committee.

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necessary that the committee should report from time to time (*k*). If the committee should report once without having received the power in question, it will be defunct until revived (*l*). In cases where it has been forgotten to ask this power from the house, it is usual for the chairman, or other member, to obtain such power on a special motion (*m*). The same remarks apply to sending for persons, papers and records (*n*). If a committee has no power to send for papers the necessary documents may be handed in by the chairman (*o*). Sometimes committees may find it necessary to ask for power to report evidence from time to time (*p*).

If it be proposed to appoint a larger committee than one of fifteen members the mover will ask for leave to suspend the rule (*q*), of which motion a notice should properly be given (*r*). Members are frequently added or substituted in place of others without a notice being given (*s*). But objection may be taken to this course as the regular proceeding is to give notice (*t*). Committees are sometimes appointed directly by the house of Commons in accordance with rule 11; and in such case the procedure is fully set forth in the rule.

In the session of 1877 the house agreed to appoint a committee of nine members to inquire into the affairs of the Northern Railway Company, but adjourned without

(*k*) Can. Com. J. (1877) 36.

(*l*) *Ib.* (1870) 23, 36, 58. Can. Com. Hans (1900) 7647.

(*m*) Can. Com. J. (1877), 23. Here it will be seen the motion having been agreed to, the committee on the official reporting of the house immediately brought in their first report.

(*n*) *Ib.* 1873, 61; *Ib.* (1882) 122 (*o*) May 407 (*p*) E. Com. J. 187. *Ib.* (1875) 139, 172.

(*q*) Can. Com. J. (1869) 56. *Ib.* (1870) 117. *Ib.* (1875) 139. *Ib.* (1883) 128. *Ib.* (1890) 205.

(*r*) 112 E. Com. J. 187. 137 *Ib.* 21.

(*s*) Sen. J. 1867-8 115 &c. Can. Com. J. (1878) 48, 57 &c.

(*t*) Can. Sp. dec. 43. Sen. Min. of Parl. (1878) 82. 174 E. Hans 50, 1569; 227 *Ib.* 1496. But it has been ruled that no notice is necessary to substitute one member for another on a committee under rule 40

nominating the members of the committee. It was then considered necessary to give two days' notice that the premier (Mr. Mackenzie) would move on a particular day that the house name the committee in question; and it was named accordingly (*u*). In a previous case it was proposed to refer some matters connected with an election in Charlevoix to the committee on privileges; but the house adopted an amendment that it should itself appoint the committee, and it was nominated forthwith (*v*).

It is a standing order of the English House of Commons that every member intending to move for the appointment of a special committee shall endeavour to ascertain previously whether each member proposed to be named by him on such committee will give his attendance. It will be seen that the Canadian rule 11, already cited, goes much further and provides that no member who declares against the principle or substance of the bill, resolution or matter to be committed, can be nominated to such committee.

Members exempt from Serving.—The question arose in 1877 as to the precise meaning of this rule when the appointment of a committee on the coal trade was under discussion. The speaker decided that no member who had expressed himself as opposed to the consideration of that question ought to be chosen (*w*). It appears that the rule was always in force in the legislative assemblies of Canada (*x*) and is derived from ancient English usage (9). But a member must be totally opposed, and not take simply exceptions to certain particulars of a bill or motion, in order to be excluded from a committee. It has also been decided in the Canadian house that a member who opposes merely

(*u*) (1877) 127, 103, 118.

(*v*) Can. Com. J. (1876) 173-4.

(*w*) Com. on coal and intercolonial trade: Han. (1877) March 1 and 2. See case of Mr. Casey. Can. Com. Hans. (1899) 2934 Can. Com. J. 1883, 128. Hansard 253-4.

(*x*) Low. Can. J. (1792) 124. Leg. Ass. J. (1841) 14, 46. (9) 2 E. Com. J. 14. Leg. Parl. 329, 331. (2) Can. Com. Han. (1880) 102.

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the appointment of a committee, cannot be considered as coming within the meaning of the rule (2).

If a member is desirous on account of illness or advanced age to be excused from attendance on a committee he should ask leave from the house through another member (a). Every member of a legislative body is bound to serve on a committee to which he has been duly appointed, unless he can show the house that there are conclusive reasons for his non-attendance (b). If a member is not excused and nevertheless persists in refusing to obey the order of the house, he can be adjudged guilty of contempt (c).

IV. Quorum of Committees in the Commons.—Under rule 12 of the Commons a majority of the members of a committee compose a quorum but it is now usual in the appointment of the standing committees to fix it at a certain number, with certain exceptions (d). Sometimes the chairman or other member of a committee will move that the house order a reduction in the number of the quorum, in case it is found difficult to obtain a large attendance of the

(a) Can. Com. J. (1873) 60.

(b) It was said by Mr. Speaker Sutton on a proposition to discharge a member from a Committee, on the ground that he could not attend, for the purpose of substituting another, "that he could not find any trace of such having been the practice; he did not perceive any member had been left out, except it was by absolute parliamentary disqualification or physical impossibility of attendance; as to any other disqualification of attendance, there was, so far as his knowledge extended, no account of any case having arisen." 37 E. Hans. (1) 200-4. Also 43 *Ib.* 1230, 1234; 81 *Ib.* (3) 1104, 1190 (Lords). A member has been substituted for another in the Canadian Commons on account of the member originally appointed having acted as counsel for the parties interested in the matter before the committee; Can. Com. J. (1884), 239, 240; Hans. 843. Or on account of a member of his family being directly affected by the issue; Can. Com. J. 173; Hans. 569.

(c) Case of Smith O'Brien, 101 E. Com. J. 566, 582, 603, Can. Com. J. (1890) 168, 169, 91 E. Com. J. 42, 113 *Ib.* 68.

(d) See Sec. vi (ch. xiv) *Commons Standing Committees*. Can. Com. J. (1877) 24 and Journal for subsequent year.

members, or this may be done on the recommendation of the committee itself (*e*).

In the Senate by rule 79 the majority of senators appointed as a committee constitutes a quorum unless it be otherwise ordered. The quorum of the joint committee on the printing of parliament is only reduced on the report of the committee itself as it is composed of members of both houses and can be regularly organized only when the Senate and Commons are informed of the names of the members of each house on the committee (*f*).

Sometimes the quorum of a select committee will be increased in case of an addition to its members (*g*).

V. Organization and Procedure of Committees.—Rule 90 of the Senate and rule 10 of the House of Commons provide:

“The clerk shall cause to be affixed in some conspicuous part of the Senate (or house) a list of the several standing or select committees.”

It is usual for the leader of the Government in either house to give the clerk of the house instructions as to the time and place of meeting for the organization of the several standing committees (*h*).

In the case of standing committees of the commons, there are certain clerks whose duties are connected with them especially. For instance, the clerks of standing orders, private bills, public accounts, railways, canals and telegraph lines, and printing. It is usual for the member, on whose motion a select committee has been nominated, to take the initiative in calling it together, and having it organized; and this he will do by placing himself immediately in communication with the clerk of the house (*i*).

(*e*) *Ib.* (1901) 31.

(*f*) *Can. Com. J.* (1877) 55, 59 *Ib.* (1878) 46. *Ib.* (1890) 64. *Sen. J.* (1890) 9, 27. (*g.*) *Can. Com. J.* (1874) 85.

(*h*) *Sen. Deb.* (1883) 49.

(*i*) *Rep. of Commons on petition of G. T. Denison, App. No. 7* *Can. Com. J.* 1867-8.

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The committee having met, and a quorum being present, the members will proceed to elect a chairman (*j*). If there is no quorum present, this proceeding must be deferred until the requisite number are in attendance; or the organization of the committee may be delayed until another day (*k*). Committees are regarded as portions of the house and are limited in their inquiries by the extent of the authority given to them, but governed for the most part in their proceedings by the same rules which prevail in the house (*l*).

Every question is determined in a committee in the same manner as in the house to which it belongs (*m*).

In case a difference of opinion arises as to the choice of a chairman the procedure of the house with respect to the election of a speaker should be followed, that is to say, according to correct practice, the clerk puts the question and directs the division in the same way as is done on that occasion by the clerk of the house. The name of the member first proposed will be first submitted to the committee, and if the question is first decided in the affirmative, then he takes the chair accordingly; but if he is in a minority in the division, then the clerk puts the question on the other motion (*s*). When there is not a quorum the attention of the chairman should be called to the fact at once by the clerk, and business must be suspended or adjourned (*t*). The names of the members present each day must be entered in the minutes by the clerk, and may be reported to the house on the report of

(*j*) Can. Com. J. (1873) 276. *Ib.* (1883) App. No. 2.

(*k*) May, 405-6.

(*l*) 11 Eng. Han. (2) 912, 914. 32 *Ib.* (3) 501, 504.

(*m*) May, 411.

(*s*) May, 411. See Mr. Palgrave's *Chairman's Handbook*, for some interesting information on committee procedure, based on the practice of the English House of Commons, and useful to parliamentarians.

(*t*) English S.O., 25th June, 1852; May, 406.

the committee (*u*); but it is usual to do so only when the question is of particular importance, and all the proceedings are reported (*v*). When there is no evidence taken, it is usual to make only a general report, giving the opinion or observations of the committee (*w*). The minutes, however, must be kept in a proper book by the clerks of the different committees in the two houses for reference (*x*). The name of a member asking a question of a witness should be entered (*y*).

The rules that govern the conduct of members in the house should govern them when in committee. It is a rule of the Senate (80) that "senators speak uncovered, but may remain seated." When members of the Commons attend the sittings of a committee, they assume the privilege similar to that exercised in the house, and sit or stand without being uncovered (*z*).

It is also the practice in the Canadian Commons to follow the English rule with respect to divisions in a select committee:—

"That in the event of any division taking place in any select committee, the question proposed, the name of the proposer, and the respective votes thereupon of each member present, be entered on the minutes of evidence, or on the minutes of proceedings of the committee (as the case may be), and reported to the house on the report of such committee" (*a*).

(*u*) This is the S.O. of the Lords and Commons: Lords J. 25th June, 1852; Com. S.O. lxxii. See proceedings in Kings Co. election case, Can. Com. J. 1883, App. No. 2.

(*v*) Printing R. App. No. 2, 1869; Public Accounts R. App. No. 2, 1873 Canadian Pacific R.R. Com. Jour. (1873), 275.

(*w*) Printing R. App. No. 1, 1876.

(*x*) Sen. Deb. (1883), 474-5 (Mr. Vidal).

(*y*) Can. Com. J. 1883, App. No. 3.

(*z*) May, 411.

(*a*) Can. Com. J. 1869, printing R. App., No. 2, pp. 10-12; *Ib.* 1870, public accounts.

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The standing order of the Lords is the same as that of the House of Commons (*b*). In the Senate, however, it has not been the invariable practice to record the names in the divisions of committees and report them to the house—the case of the printing committee not being in point, as it is a committee not of one, but of two houses.

This question came up in the Senate during the session of 1878, and there appeared to be considerable difference of opinion whether the rule of the Lords ought not to apply thereafter to the proceedings of their committees (*c*). From an entry made in the journals subsequent to this discussion, it will be seen that the names are recorded on a division in a select committee, and ordered to be reported to the Senate (*d*). The journals, however, show a record of divisions only in those select committees to which special matters of inquiry have been referred, and which report their minutes of evidence or proceedings to the house (*e*). The sessional committees on bills do not report their proceedings, but only the conclusions to which they have come.

Formerly, in cases where there was much evidence to be taken, it was usual to ask authority from the house to employ a shorthand writer, but since 1906 official committee reporters have been appointed.

Committees should be regularly adjourned from day to day, though in the case of select committees particularly the chairman is frequently allowed to arrange the day and hour of sitting, but this can be done only with the general consent of the committee. Committees are not permitted to sit and transact business during the sittings of the Canadian Commons, without obtaining special leave

(*b*) Resolution of 7th Dec., 1852.

(*c*) Sen. Deb. (1878), 413.

(*d*) Com. on Can. Pac. Ry., 1st May, 1878; Jour. 254. Sen. Hans. 1883, 470. Jour. P. 221.

(*e*) App. I. to Sen. J. 1901, P. xv.

therefor, upon a report asking for such leave (*f*). The same rule applies to the Senate.

In the Canadian Commons, committees frequently sit on Saturday (*g*). Committees of the Senate sometimes sit on the same day, and it was formerly the practice to move for leave to do so (*h*). The point was at last properly raised whether such a motion for leave is not unnecessary, since the Lords have a rule which permits select committees "to sit, notwithstanding any adjournment of the house, without special leave" (*i*). As the Senate draws its precedents from the Lords, in unprovided cases, the speaker has decided that a motion for special leave to sit on Saturday is unnecessary (*j*).

Sometimes a committee is authorized by the house to adjourn from place to place as may be found expedient (*k*), or meet at a particular place (*l*), but no committee can sit after a prorogation. A memorable case in point occurred in the session of 1873 in the Canadian Commons. It was moved that a select committee be appointed to inquire into certain matters relating to the Canadian Pacific Railway, and that it had power, if need be, to sit after the prorogation. The resolution was agreed to, but members had serious doubts whether such a committee could sit as proposed. It having been admitted, by all parties after further consideration, that the house could give no such power to a committee, it was arranged that the house

(*f*) Senate Rule 86. 129 E. Com. J. 122, &c. Can. Com. J. (1891), 320, 464, 479; *Ib.* (1901), 275, 316. See also journals of each session since 1901.

(*g*) In the English Commons committees cannot meet on Saturday unless the house is sitting on that day. Leave must be given by the house. May, 412; Parl. Reg. (63), 613.

(*h*) Sen. J. (1887), 190.

(*i*) May, 413.

(*j*) Sen. Deb. (1878), 120; *Ib.* (1882), 128 (Senators Dickey and Miller).

(*k*) 107 E. Com. J. 279; 111 *Ib.* (318; Romilly, 304, n. May, 412. Senate rule 85.

(*l*) Can. Com. J. (1873), 294 (Pacific R.R. Com.)

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should adjourn to such a day beyond the 2nd of July, as would enable the committee to complete the investigation and to frame a report (*m*).

It is the rule of the Lords that in their committees the chairman votes like any other peer; and if the members be equal on a division, the question is negatived (*n*). It is the rule of the English Commons that the chairman of a select committee "can only vote when there is an equality of voices" (*o*). The practice of the English houses prevails in the Senate and Commons of Canada. The same rules, in fact, obtain with respect to divisions in committees as in the house itself (*p*). On one occasion since 1867, the Commons ordered that all questions should be decided by a majority of the voices, including the voice of the chairman, who was not, in that case to have a second or casting vote (*q*). In the committees of both houses on private bills, however, the chairman can always vote, and has a second or casting vote when the voices are equal (*r*).

In the Senate committees no person except senators are allowed to be present. Their rules are as follows:—

81. "Senators, though not of the committee, are not excluded from coming in and speaking; but they must not vote; they sit behind those that are of the committee."

82. "No other persons, unless commanded to attend, are to enter at any meeting of a committee of the Senate, or at any conference."

Strangers are permitted to be present during the sitting of a committee of the Commons, but they may be excluded

(*m*) See statement of Lord Dufferin on this question in the Can. Com. J. 1873 (2nd Sess.), 15 *et seq.* Also Can. Com. J. (1873, 1st sess.) 137, 275, 287, 294, 368.

(*n*) May, 403, 411, Cushing, p. 118.

(*o*) 91 E. Com. J. 214.

(*p*) Sen. J. (1875), 221; *Ib.* (1878), 254. Can. Com. J. (1870), public accounts, App. No. 2; *Ib.* (1873), 278; here there was a tie, and the chairman voted.

(*q*) Canadian Pacific Railway Com. (1873), 430.

(*r*) Senate R. 123. Com. R. 105.

at any time; and are to withdraw when the committee is discussing a particular point of order, or deliberating on its report (*s*). Members of the Commons may be present during the proceedings of their committees, and a committee has no power of itself to exclude any member at any stage of its proceedings, but may obtain special power from the house for that purpose (*t*). Such applications have not been favourably entertained by the house (*u*). Consequently the house will at times appoint secret committees which will conduct their proceedings with closed doors (*v*). Such committees are often chosen by ballot in the English parliament (*w*). It has been decided that "a member who is not a member of the committee has no right whatever to attend for the purpose of addressing the committee, or of putting questions to witnesses, or interfering in any way in the proceedings" (*x*).

When counsel are required in cases involving the interests, conduct or character of individuals petitions asking permission to employ such counsel have been referred, and counsel ordered (*y*).

It is a clear principle of parliamentary law that a committee is bound by, and is not at liberty to depart from, the order of reference (*z*). This principle is essential

(*s*) Can. Com. J. (1869), App. 8, p. 4; 247 E. Hans. (3), 1957-8.

(*t*) May, 408.

(*u*) May 409, 410. 1. E. Com. J. 849; 38 *Ib.* 870; 66 *Ib.* 6; 67 *Ib.* 17; 247 E. Hans. (3), 1958.

(*v*) 53 Lords' J. 115; 92 E. Com. J. 26; 99 *Ib.* 461; 112 *Ib.* 94; 96 E. Hans. (3), 1958.

(*w*) 67 E. Com. J. 492; 74 *Ib.* 64; 51 Lords' J. 438; 37 E. Hans. (1) 155; Cushing p. 733. In the session of 1873, Canadian Commons, the Committee appointed to inquire into certain charges brought by Mr. Huntingdon, relative to the Pacific R.R., reported a resolution that the proceedings should be secret (Jour. P. 275). But the chairman did not press the resolution out of deference to the wishes of the government P. Deb. 146), and it was subsequently rescinded by the committee itself (Jour. 294).

(*x*) 73 E. Hans. (3), 725-6; Cushing, p. 745.

(*y*) May, 414; 77 E. Com. J. 405.

(*z*) May, 383, 400. Parl. Reg. (22), 258; 190 E. Hans. (3), 1869.

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to the regular despatch of business; for, if it were admitted that what the house entertained, in one instance, and referred to a committee, was so far controllable by that committee, that it was at liberty to disobey the order of reference, all business would be at an end; and, as often as circumstances would afford a pretence, the proceedings of the house would be involved in confusion (*a*). Consequently, if a bill be referred to a select committee it will not be competent for that committee to go beyond the subject-matter of its provisions (*b*). If it be found necessary to extend the inquiry, authority must be obtained from the house in the shape of a special instruction. Such an instruction may extend or limit an inquiry, as the house may deem expedient (*c*). Instructions may be mandatory or permissive in the case of special committees (*d*). When given to joint or standing committees they should be in the form used with respect to committees of the whole. "That they have power" to deal with the matter referred to them (*e*). No such restrictions applies to committees on private bills, nor to committees of the whole house in the Lords. Mandatory or imperative instructions can be given to such committees. An amendment to an instruction must be relevant thereto—so that if accepted, the question as amended would retain the form and effect of an instruction (*f*).

Sometimes when a committee requires special information it will report to the house a request for the necessary papers, which will be referred to it forthwith (*g*). The committee can obtain directly from the officers of a de-

(*a*) Cushing, p. 741. 12 Parl. Reg. 382.

(*b*) 190 E. Hans. (3), 1869.

(*c*) 101 E. Com. J. 636; 105, *Ib.* 497; 121 *Ib.* 107; 190 E. Hans. (3), 1870. Can. Com. J. (1867-8), 33, 157; *Ib.* (1870), 116; *Ib.* (1871), 34; *Ib.* (1873), 186; '5. (1888), 88.

(*d*) May, 401; 2. E. Hans. (3), 1262; 119 E. Com. J. 147.

(*e*) May, 383, 478.

(*f*) May, 479, 71 Lords' J. 532; May, 480.

(*g*) Can. Com. J. (1875), 176 (public accounts). See remarks of Sir A. MacNab. Leg. Ass., June 7th, 1856 (Globe report).

partment such papers as the house itself may order; but in case the papers can be brought down only by address, it is necessary to make a motion on the subject in the house through the chairman. When the papers have been received by the house, they will be at once referred to the committee. Orders in council are asked for in this way (*h*). It is, at times, found necessary to discharge the order for a committee and appoint another with a different order of reference (*i*). In case a committee requires its evidence to be printed for its own use in the course of an enquiry, its chairman should apply to the joint committee on printing or to the house, who will duly order it (*j*). Sometimes a committee may have to obtain leave from the house to make a special report, when its order of reference is limited in its scope (*k*).

VI. Reports of Committees.—When a committee has gone through the business referred to it, the duty of preparing a report is devolved upon one of the members, usually the chairman, by whom it is prepared and submitted to the committee for its consideration. The report of a committee, both in its form and as to its substance, ought to correspond with the authority of the committee (*l*). As a rule, draft reports should be submitted like resolutions in the house itself, and amendments proposed thereto in the ordinary mode (*m*). If the business of a committee involves an inquiry of fact, it should report the facts, or the evidence; if the opinion of the committee is required it

(*h*) Can. Com. J. (1883), 90-92, 95. Previous to this year the correct practice was not generally followed. See *Ib.* (1885), 97 (Mr. Rykert), 183.

(*i*) Conventual establishments, 18th May, 1854. This case presents examples of every conceivable obstacle that can be opposed to the nomination of a committee after its appointment. Also conventual and monastic institutions, 1870.

(*j*) Sen. J. (1884), 129; Can. Com. J. (1884), 202.

(*k*) *Ib.* (1890), 205, 305.

(*l*) 60 Parl. Reg. 391, 395, 396.

(*m*) May, 417.

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should be expressed in the form of resolutions (*n*). Very frequently when a number of questions are before a committee, resolutions relative to each are proposed separately, and amendments submitted, and when a decision has been arrived at, the report is adopted and ordered to be reported to the house, with the minutes of evidence and proceedings (*o*). Sometimes the minutes of evidence and proceedings are simply reported to the house, without any observations or opinions on the part of the committee (*p*). It must, however, be remembered that the report submitted to the house is that of the majority of the committee.

No signatures should be affixed to a report for the purpose of showing any division of opinion in the committee; nor can it be accompanied by any counter-statement or protest from the minority (*q*), as such a report is as unknown to Canadian as to English practice. When the chairman signs a report, it is only by way of authentication. In 1879, a report of a dissenting member was brought in and appeared in the votes, but attention having been called to the irregularity of the proceeding, this minority report was ordered not to be entered on the journals (*r*). The rule with respect to such matters, however, has been more than once practically evaded by permitting a minority report to appear in the appendix to the report of the committee; but such a paper of course can only be added in this way with the consent of the Commons house as a part of their proceedings (*s*). In 1898 a minority report

(*n*) 12 E. Com. J. 678.

(*o*) Can. Com. J. 1870, public accounts, App. No. 2, pp. 12-32; *Ib.* 1874 App. No. 9, p. 144; *Ib.* 1878, App. No. 1, p. 51.

(*p*) *Ib.* 1870, 4th R. of public accounts; *Ib.* 1878, 3rd R. App. No. 1.

(*q*) See Palgrave, Chairman's Handbook, 91. Also a decision of Mr. Speaker Wurtele in Quebec Assembly, 1st of April, 1885.

(*r*) River Trent Navigation and Canal Works, Votes, 511-12. By some error of a clerk this minority report nevertheless appears in the journals.

(*s*) Can. Com. J. 1874, public accounts, App. No. 9, p. 144. See debate in the legislative assembly, June 7th, 1856 (*Globe*).

was regularly moved as an amendment to the draft report which was adopted and appears in the minutes of proceedings—the proper course under such circumstances (*t*)

It has also been customary to report the proceedings of sub-committees to the house. The practice of referring matters to a sub-committee who report thereon to the committee has largely obtained for years in the Canadian Parliament, and has frequently been found very convenient in cases demanding special inquiry and investigation which could not be as well done by the larger body. The sub-committee, however, cannot report directly to the house but only to the committee from which it obtains its authority, and it is for the latter to order as it may think proper with respect to the report of this sub-committee (*u*). Such a report has sometimes been submitted to the house by the committee as its own report (*v*).

It is now a common practice of the larger committees such as the Committee on Railways, Canals and Telegraph Lines, to refer certain bills to a few members who have special qualifications for this duty and are better able to study and perfect the various details of the measure. In this way there is a practical approach to the small select committees to which, in the English Commons, the different classes of private bills are referred (*w*). If there is a division of opinion as to the report first submitted for consideration another report may be proposed by way of amendment and the sense of the committee taken thereon (*x*). The report of a committee is, of course, supposed to be prepared and drawn up by the Committee or some of its members and not by any other person, but whether it be so or not

(*t*) Can. Com. J. (1898) App. 1, p. 33.

(*u*) Can. Com. J. 1880, App. No. 2, R. on printing; Sen. J. App. No. 1.

(*v*) Can. Com. J. (1875) pub. accts, 4 Rep. App. No. 2; *Ib.* (1878) Printing 7 Report, App. No. 3; *Ib.* 1882, pub. accts., 2 Rep. App. No. 1.

(*w*) Can. Com. Hans. (1883) 37. Sir John A. Macdonald.

(*x*) Sen. J. (1875) 220; Can. Com. J. (1877), pub. accts., App. No. 2; *Ib.* (1878), pub. accts., 1st Rep. App. No. 1.

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is immaterial, provided the report receives the sanction of the committee and is presented by its order. The committee is alone held responsible for the report (*y*). Every report must be regularly signed by the chairman (*z*).

Until a committee report, it is irregular to refer to its proceedings in debate in the house. For instance, in the session of 1873, Mr. Huntington was proceeding to refer to certain papers and letters relative to an important matter under the consideration of a select committee; but the speaker decided in accordance with English precedents that they could not be read in the house (*a*). Neither can a committee report the evidence taken before a similar committee in a previous session, except as a paper in the appendix, unless it receives authority from the house to consider it (*b*). To place a committee in possession of all information necessary for inquiry, the house will order that reports and papers of a previous session be referred to the committee (*c*). It is, strictly speaking, a breach of privilege to publish the proceedings of a committee before they are formally reported to the house (*d*). But as a matter of fact such publication is constantly made in the press without objection. If the evidence taken by a committee has not been reported to the house, it may be ordered to be laid before it (*e*). As soon as the evidence is before the house it may be debated at length, but members will not be permitted to discuss the conduct or language of

(*y*) 22 E. Hans. (3), 712.

(*z*) Can. Com. J. (1878), App. 1 & 5; Sen. J. (1878), 271, App.; No. 4.

(*a*) Can. Com. J. (1873), 349 (Pacific railway inquiry). See 159 E. Hans (3), 814; 189 *Ib.* 604; 193 *Ib.* 1124, 1125; 223 *Ib.* 789, 793 1134.

(*b*) Can. Com. J. (1874), 282 (Agricultural Com.). Here the committee embodied in its report the substance of the information obtained in a previous session.

(*c*) 107 E. Com. J. 177; 129 *Ib.* 129, 237. Sen. J. (1878) 59.

(*d*) Can. Hans. (1875), 864; Sen. Deb. (1873) 61.

(*e*) 105 E. Com. J. 637, &c.

members on the committee, except so far as it appears on the record (*f*).

It is not unusual for a select committee to report to the house certain papers which are necessary for the information of members on public questions. A member who wishes to obtain such information will take steps to have a motion proposed in the committee to lay the papers before the house.

Whenever evidence is taken before a committee, it should be reported in the shape of an appendix to the report (*g*). All reports of committees of the house appear in the appendices to the journals; but if it is wished to print them for distribution, the matter must be decided by the committee on printing (*h*), which may recommend the printing of the report alone, or of the report and part of the evidence (*i*).

Though it is the practice, whenever necessary, to report the minutes of proceedings of the select committees of the House of Commons, it seems that the same usage does not obtain in the case of the standing or sessional committees of the Senate. In the case of a bill respecting the Grand Trunk Railway reported in 1883 from the committee on railways, canals and harbours, some of the members of the committee requested the chairman to submit the minutes of proceedings to the house. No such course, however, was taken, as there was no special motion made in the committee, and the chairman on inquiry, found that it had been the practice of the sessional

(*f*) Can. Hans. (1878), 2267, 2268, debate on contracts; Cushing, p. 668.

(*g*) Report on salt interests and depression in trade. App. Nos. 2 and 3 (1876); public accounts, App. No. 1. 1878.

(*h*) Can. Com. J. (1876), report on salt interests, 282, 296.

(*i*) Agricultural Com. (1876), 296. The report of the Committee relative to Judge Loranger was omitted in the appendix of 1877 through a misapprehension of the report of the printing committee, Jour. 141. In the session of 1869 a report relative to Judge Lafontaine was omitted on report of the committee; 1869, P. 272, and App. No. 5.

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committees on private bills to report, not their minutes of proceedings in full, but only the general results arrived at, though it was admitted a different practice prevailed with respect to divorce bills, and certain matters referred to select or special committees (*j*).

The difficulty, in the case in question, appears to have been the absence of a motion regularly proposed and put in the committee. If it was considered desirable on any occasion to depart from the general practice, it could be done in two ways: First, by instruction to the committee from the Senate: and secondly by the action of the committee itself (*k*). The rules of the House of Lords provide for the report of minutes of proceedings. In the case of special Senate committees however minutes are printed and reported (*l*).

VII. Presentation of Reports.—When a report of a select committee is ready to be submitted to the Senate, the chairman presents it from his place, and in case of bills being amended in committee "he is to explain to the Senate the effect of each amendment" (*m*). It was formerly the practice for other members of the committee to stand up when the chairman presented his report, but when the rules were revised in 1876 the practice was discontinued. It is usual for the chairman to move, after he has presented his report, that it be taken into consideration on a future day, (*n*) on the orders of which it will accordingly appear. (*o*) When the order is reached the report is considered, and the report may be taken up paragraph by paragraph, if it

(*j*) Sen. J. (1875) 219 (Palen contract); *Ib.* (1878), 249 (Pacific R.R.)

(*k*) Sen. Hans. (1883), 474-82 (remarks of Senators Milner and Vidal).

(*l*) Cook App. 1. Journal (1901).

(*m*) No. 89, Sen. Deb. (1874), 140-1.

(*n*) Feb. 23rd, Sen. J. (1867-8) 131; *Ib.* (1878), 211, *Ib.* (1882), 45; Mir. of P. (1882).

(*o*) Mir. of P. (1867-8), 161.

contains several recommendations, and each separately concurred in, negatived, or amended, or as it now is generally done the report may be considered and adopted as a whole (*q*). In 1901 a report was referred to a committee of the whole who reported that the subject might more properly be considered by the house itself (*r*).

Rule 57 of the House of Commons provides:—

“Reports from standing and select committees may be made by members standing in their places, without proceeding to the bar of the house.”

When the speaker has called for reports of committees, during the progress of routine business (R. 25) the chairman, or, in his absence, a member of the committee, will rise in his place, and, having stated the nature of the report, will send it to the table, where it is read by one of the assistant clerks. If it is long, the house generally dispenses with the reading, as all reports are printed in the Votes and Proceedings, for the information of members, as soon as they are laid before the house (*s*). The reports should be in English and French like all other proceedings of the two houses (*t*). A member will not be permitted in presenting a report, to make any remarks on the subject-matter; he can only properly do so on a motion in reference to the report (*u*).

VIII. Concurrence in Reports.—It is the practice to move concurrence in the reports of committees in certain cases. For instance, the reports on printing are invariably agreed to, as they contain recommendations for the printing and distribution of documents, which must be

(*p*) Sen. J. (1867-8), 93.

(*q*) *Ib.* (1901) 194. Deb. 312, 320.

(*r*) *Ib.* (1901) 188.

(*s*) V. & P. 1877 and 1878. Reports on immigration and colonization.

(*t*) This question was raised in the Senate in 1867-8, and the speaker decided that the reports should be in the two languages; Sen. J. 224.

(*u*) Can. Com. Hans. 1878, April 26, Public Accounts Rep.

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duly authorized by the house (*v*). Also reports containing certain opinions or resolutions are frequently concurred in on motion (*w*). But when the report does not contain any resolution, recommendation or other propositions for consideration of the house, it does not appear that any further proceedings with reference to it as a report are necessary. It remains in the possession and on the journals of the house as a basis or ground for such further proceedings as may be proper or necessary. Every session, select committees make reports of this description, containing a statement of the facts, or of the evidence on the subject of inquiry; but as they do not contain any proposition which can be agreed to by the house, they are simply printed for the information of members (*x*). In order to bring a report into discussion a member can move that it be taken into consideration and when that motion is agreed to, motions may be proposed in relation to the subject-matter (*y*).

Many motions for concurrence in reports of select committees are brought up without notice and allowed to pass by unanimous consent (*z*). But in all cases objection may be taken, and it is the regular course to give notice (*a*). This is consequently always done when there is an objection taken by one or more members to the adoption of a report, and a debate is likely to arise on its subject-matter (*b*). The reports of the committees relative

(*v*) Printing R. 1878, Jour. pp. 88, 226, 255, &c.

(*w*) Can. Com. J. (1869), 264; *Ib.* 1877; Public Acc., Secret service fund, 256, 264; *Ib.* 1891. Aug. 19.

(*x*) Report of Com. on salt interests and financial depression in 1876; public accounts, coal trade, civil service, in 1877. Report of Committees on Agriculture and colonization, 1888, 1889, 1890.

(*y*) Can. Com. J. (1894) 95, 109.

(*z*) *Ib.* (1877) 59, 100. *Ib.* (1878) 88, 226.

(*a*) *Ib.* (1880) 364. *Ib.* (1886) 1239. Printing Com. V & P (1892) 192, 224.

(*b*) V. & P. 1869: 6 Rep. of printing com. recommending acceptance of certain tenders. Mr. Mackenzie gave notice of motion for its adoption on same day it was presented (162). Huron and Ontario

to private bills are not concurred in, as they are regulated by special standing orders. Sometimes, however, when one of these committees has made a special recommendation requiring the authority of the house to give it effect, the concurrence of the house will be formally asked and given (*c*). It is allowable to move an amendment, to add words as a condition to a motion for concurrence in a report. (*d*). A report has been sometimes adopted only in part (*e*).

A report may be referred back to a committee for further consideration (*f*), or with instructions giving them power to amend the same in any respect (*g*). In this way a committee may regularly reconsider and even reverse a decision it has previously arrived at. As the rules of the house govern the procedure of committees generally, a committee cannot strictly speaking renew a question on which its judgment has been already expressed (*h*). For instance, we recognize the operation of this rule in the fact that in committee on a bill a new clause or amendment will not be allowed, in contravention of a previous decision (*h*). By the general consent of the

ship canal (pp. 227-231; railways, canals and telegraphs, 3 R. (161, 162), 1876. Printing C. 4 R., respecting form of Votes and P. 164, 219), 1876.

(*c*) Can. Com. J. (1869) Railways, canals, and telegraph lines, 4 Rep. 174. This report recommended a payment of money out of the contingent expenses of the house.

(*d*) Can. Com. j. 1880, 372.

(*e*) *Ib.* 1884, 285, 421.

(*f*) Sen. J. (1879-8) 222; Can. Com. J. (1883) 116, 236; *Ib.* 1884) 298.

(*g*) Sen. J. (1875), 170; Can. Com. J. (1894) 285. In 1867-8 the printing Committee to whom the request of reporting the debates of the house had been referred, reported that they had decided, on a division, to defer the matter till a future meeting. It was then moved and agreed that the question be referred back, with instructions to present a plan of reporting to the house. Com. J. 60, and App. No. 2, fourth report.

(*h*) E. Hans (3). 137. In 1607, June 4th (I. E. Com. J. 379), it was decided; "Every question by voice in committee bindeth, and cannot be altered by themselves, but by the house it may."

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committee, a clause which has been considered and even adopted may be returned to and reconsidered before the committee has ordered a report, particularly if it is found necessary to make it correspond to some later clause which has been adopted. It has been ruled in the English house that when a select committee has resolved that the preamble in a private bill has not been proved, and ordered the chairman to report, it is not competent for the committee to reconsider and reverse its decision, but that the bill should be recommitted for the purpose (*i*). Consequently the correct procedure in all analagous cases is for the house to give the committee instructions which will enable it to consider the whole question again.

IX. Witnesses before Select Committee.—Witnesses are examined in the course of every session before committees of the Senate and House of Commons. It is usual in both houses to give committees special authority to send for witnesses or documentary evidence (*j*).

Witnesses are summoned in the commons by an order, signed by the chairman, and they are bound to bring all the papers which the committee may require; but the committee cannot order the production of documents or the summoning of witnesses unless it has the necessary authority from the house, "to send for persons, papers and records." In the Senate witnesses generally attend on a notice from the clerk of the committee. In case a witness will not attend, application must be made to the house for the necessary power to compel his attendance (*k*).

Whenever the evidence of a senator is required before a committee of the Commons, it is usual for the chairman to move in the house that a message be sent to the Senate re-

(*i*) May, 818.

(*j*) Sen. J. (1878) 37, 59. 62-3; Com. J. (1878). 14.

(*k*) The Lords do not give select committees any special authority to send for witnesses or documentary evidence, but witnesses generally attend on a notice from a clerk of the committee. May, 825 Sen J & Deb., Aug., 7. and 14, 1891.

requesting their honours to give leave to *l*, one of their members, to attend and give evidence before the select committee, etc. The Senate will consider the message and give the required leave to the senator, "if he thinks fit" (*l*). If the attendance of a member of the commons is required before a committee of the Senate, the same procedure will be followed *m*. In the case the attendance of an officer of either house is required a message will be sent; but in the message in reply the words, "if he thinks fit" are omitted (*n*). The Senate has the following rule on this subject:—

"94. When the attendance of a senator, or any of the officers, clerks or servants of the Senate is desired, to be examined by the Commons, or to appear before any committee thereof, a message is sent by the Commons, to request that the Senate will give leave to such senator, officer, clerk, or servant to attend; and if the Senate grant leave to such senator, he may go, if he think fit; but it is not optional for such officer, clerk or servant to refuse. Without such leave, no senator, officer, clerk or servant of the Senate shall, on any account, under penalty of being committed to the Black Rod or to prison during the pleasure of the Senate, go down to the House of Commons, or send his answer in writing, or appear by counsel to answer any accusation there" (*o*).

In case the evidence of a member of the Commons is required before a committee of the house, it is customary for the chairman to request him to come, and not to address or summon him in the ordinary form *p*.

l Com. J. 1877, 142, 178, 234. *l*b. 1890, 217. *l*b. 1891, July 17. Sen. J. 1877, 129, 263. 1 132 E. Com. J. 99, 261 &c.

m 103 E. com. J. 6, 113 *l*b. 255.

n Sen. Hans. 1883, 158. Attention was called on this occasion to the rule by Senator Miller.

o May, 426-7.

p 10, E. Com. J. 51. For the cases of the British House ordering the attendance of its members before a committee, see 19 E. Com. J. 403, 97 *l*b. 438, 453, 458. May says there has been no instances of a member persisting in a refusal to give evidence; but a member has been

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If a witness should refuse to appear on receiving the order of the chairman, his conduct will be reported to the house, and an order immediately made for his attendance at the bar, or before the Committee (*q*). If he would still refuse to obey, "he may be ordered to be sent for in custody of the serjeant-at-arms, and the speaker be ordered to issue his warrant accordingly, or he may be declared guilty of a breach of privilege, and ordered to be taken into the custody of the serjeant" (*r*). Similar proceedings are taken when a witness refuses to answer questions (*s*).

In the session of 1891 the committee of privileges and elections to whom was referred a very important inquiry, reported that one of the witnesses refused to place under the immediate control of the committee certain documents, which he had produced. His conduct was reported to the house, and he was ordered to deliver all accounts and papers to the clerk of the house. He complied at once with the order, and the committee had consequently full control of the documents in question (*t*).

In 1894 two witnesses, summoned to attend a committee by telegraph, did not appear. Their conduct was duly reported to the house, who ordered them to attend at the bar on a future day. When they did not attend accordingly a warrant was ordered to be issued for their arrest. When they were brought to the bar of the house and examined,

committed to the custody of the serjeant that he might be brought before a committee. 21 *Ib.* 851, 852. 97 *Ib.* 438, 453, 458. Rep. of Precedents Parl. P. No. 392, Sess. 10, 1842.

(*q*) 91 E. Com. J. 352; 112 *Ib.* 263; 121 *Ib.* 365; 131 *Ib.* 95.

(*r*) May, 95; E. Com. J. 59; 106 *Ib.* 48, 150; Mirror of Parl. (1840), 720.

(*s*) 88 E. Com. J. 212, 218; Cushing p. 385. See case of Mr. McGreevy, a member, ordered into custody, Can. Com. J. Aug. 12, 13, and 20, 1891.

(*t*) Can. Com. J. and Hans. June 5th, 16th and 17th. The proceedings of this Committee (to whom was referred an investigation into matters relating to the Quebec Harbour Works) give numerous examples of powers and duties of Committees of Parliament. Can. Com. J. 1912-13. pp. 254, 266, 267, 274, 279 (Miller).

the house accepted their explanation and released them on their giving a promise to appear before the committee (u).

The practice of the Senate and House of Commons (v) with respect to entering the name of the member asking questions of a witness is in accordance with the following order of the English house, though the practice is not strictly followed in the upper house (w).

"That to every question asked a witness under examination in the proceedings of any select committee there be affixed in the minutes of evidence the name of the member (or lord) asking such question" (x).

When the evidence has been taken down it must be read by the witness, but he is then permitted to make verbal alterations only. Should he wish to make any material corrections he must be re-examined before the committee. The alterations must be in his own hand writing, or in case of disability or infirmity, made by another person at his own dictation (y). The committee clerk has charge of all the evidence and papers before the committee. If it is found desirable to print the evidence before a committee, the chairman may make a motion on the subject in the house. The signing of evidence though desirable, has not been considered absolutely essential in cases when the evidence has been taken by shorthand writers of the committee (z).

X. Payment of Witnesses.—By rule 91 of the Senate and rule 82 of the Commons, the Clerk of the house is instructed to pay every witness summoned to appear before a committee a reasonable sum for his attendance (to be

(u) Can. Com. Jour. (1894), 242, 288, 299, 300.

(v) Com. on financial depression, 1876, App. No. 42, Can. Com. J.

(w) Divorce trial, 1876, App. No. 1; Can. Pac. Ry. App. No. 4, 1878; Fort Francis Lock Com., App. No. 5, 1878. In the Cook case the correct practice was followed, App. I to Sen. J. of 1901.

(x) Lords J., 25th June, 1852; E. Com. S.O. LXXI.

(y) May, 415; 12 E. Han. (1), (515); Cushing, pp. 391-2.

(z) Can. Com. J. (1877), 132, 141; Can. Com. Hans. 1877, 685, 686; Can. Com. J. (1891), 413.

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determined in the Commons by the Speaker), and also for travelling expenses, upon the certificate of the chairman and clerk of the committee in the Commons, and of the Chairman only, in the Senate; but no witness shall be so summoned and paid unless a certificate shall have been first filed with the chairman of the committee by a member thereof (or of the Senate), stating that the evidence of such witness is, in his opinion, material and important; and no witness residing at the seat of government shall be paid for his attendance.

Witnesses are then paid their travelling and hotel expenses but nothing is necessarily allowed for loss of time, even in the case of professional men, though when they appear as expert or professional witnesses their claims for special remuneration are considered and frequently allowed (a).

Printed forms are provided and certified by the clerk of the house before payment is made by the accountant.

No witness, who comes as a witness at the solicitation of parties interested in a private bill, is paid by the house. The rule only applies to those persons who are present in cases of public inquiry.

XI. Examination of Witnesses under oath.—It is only within a recent period that the House of Commons of Canada has enjoyed the right of administering oath to witnesses. Indeed, it was not until 1871 that an Act was passed.

In England, no witness residing in or near London is allowed any expenses, except under some special circumstances of service to the committee. Professional men are there allowed a fixed remuneration for every day or part of a day that they are necessarily kept from home; May, 434(n)

The imperial parliament (b) gives the same power to the British Commons that had been for a long time exercised by the Lords (c). Prior to the confederation of the British

(b) Imp. Stat. 34 & 35 Vict. c. 83. (c) May, 430.

North American provinces, the committees of either branch of the legislature had no power to examine witness on oath, several attempts to pass such a law having failed (*d*); but in the sessions of 1867-8 an Act was passed empowering the committee on any private bill, in either house of parliament, to examine witnesses upon oath, to be administered by the chairman or any member of the committee. The same Act gave the power to the Senate of administering oath to witnesses at the bar (*e*).

In 1873 a committee was appointed to inquire into certain matters connected with the contemplated construction of the Canadian Pacific Railway; and it was felt desirable that all the witnesses should be examined before that committee. The Committee made a report representing that "in their opinion, it was advisable to introduce a bill into the house," giving the necessary authority; and this course was subsequently followed (*f*). In the meantime the Commons instructed the committee to examine witnesses on oath, in view of the passage of the bill (*g*). Doubts were expressed in both houses as to the competency of the Canadian parliament to pass such a bill (*h*) and these doubts were verified by subsequent events.

The law officers of the Crown in England, to whom the Act of 1873 was referred, reported that it was "*ultra vires* of the colonial legislature" as being contrary to the express terms of section 18 of the British North America Act.

(*d*) Todd's private bill practice, 68-9.

(*e*) 31 Vict. c. 24, Dom. Stat.

(*f*) Can. Com. J. (1873) 166; Dom. Stat. 36 Vict. c. 1. Another bill on the same subject had been previously introduced by Mr. Fournier (Subsequently minister of justice), but it was not proceeded with.

(*g*) Can. Com. J. (1873), 267. No witnesses were examined for the reason given further on in the text.

(*h*) Com. Deb. (1873), 88; Sen. Deb. 142. See Lord Dufferin's despatch to the Colonial Secretary, Can. Com. J. 1873, Oct. sess., 5 *et seq.* In this document the whole matter is explained with great clearness.

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1867, defining the powers and privileges of the Dominion parliament and that such parliament could not vest in themselves the power to administer oaths, that being a power which the House of Commons of England did not possess in 1867 (*i*). The Act of 1873 was accordingly disallowed (*j*). In the same despatch, it was declared that the first section of the Act of 1868 (ch. 24), which gave power to the Senate to examine witnesses on oath at their bar, was also beyond the competence of the parliament of Canada at the time it passed; and that though that act had not been disallowed, it was inoperative as being repugnant to the provisions of the British North America Act.

As regards, however, the powers given by the Act of 1868 to select committees upon private bills, they appeared to the law officers to be unobjectionable, as like powers had, before the passing of the B.N.A. Act, been given to the English House of Commons by 21 and 22 Vict. ch. 78.

In accordance with the request of the Government of Canada, made in 1875 (*k*), the British ministry took steps to obtain the passage through parliament of "An act to remove certain doubts with respect of the powers of the parliament of Canada under section 18 of the British North America Act, 1867." This act provides "that any act of the Canadian parliament defining the privileges, immunities and powers of the Senate and House of Commons shall not confer any powers exceeding those at the passing of such act held and enjoyed by the Commons of England." The second section also provides that the act passed in 1868 (chapter 24), "shall be deemed to be valid, and to have been valid as from the date at which the royal assent was given thereto by the governor-general of the dominion of Canada" (*l*).

(*i*) Can. Com. J. 1873, Oct. sess. p. 10. See s. 18 of B.N.A. Act, 1867.

(*j*) Despatch of Lord Kimberley, *Ib.* 11.

(*k*) Can. Com. J. (1876). ; Sess. P. No. 45.

(*l*) "The parliament of Canada Act, 1875;" 38-39 Vict. c. 38.

In the session of 1876 an act (*m*) was passed by the parliament of Canada giving the necessary powers to the two houses. This act provided, not only that witness might be examined upon oath or affirmation at the bar of the Senate, and by the committees of private bills of either house, but that the two houses could also at any time, by a resolution, give a similar power to any select or standing committee. From 1876 until 1894 a large number of witnesses were examined under the oath in accordance with resolution of the two houses (*n*). In 1894 it was deemed in the interests of orderly and minute investigation by committees to enlarge their privileges by an act (*o*), which is virtually a transcript of the English act of 1871.

This statute enlarged the powers of several committees since it gives each of them the authority to administer an oath or affirmation in its discretion, while it invests the houses themselves with the right to order witnesses to be examined by committee. In the English Commons, where the same law exists, it is not usual for select committees to examine witnesses except upon inquiries of a judicial or other special character; and only in exceptional or grave cases will the house itself interfere with the discretion allowed by law to committees to give any instruction to them (*p*). In a case where the Senate ordered a select committee to examine witnesses in accordance with the law, the inquiry was of an exceptional character and could be justified by English precedent (*q*).

(*m*) Dom. Stat. 39 Vict. c. 7; Can. Rev. Stat. c. 10, ss. 23-30.

This act was a transcript of the act of 1873, which had been disallowed. See Can. Com. J. (1873, Oct. sess.), p. 10, for copy of.

(*n*) Sen. J. (1877), 207, 216; *Ib.* (1878), 59, 63; *Ib.* (1880), 79; Can. Com. J. (1877), 118, 120, 265, 314, 355; *Ib.* (1890), 169.

(*o*) 57-58 Vict. c. 16.

(*p*) May, 431. See cases cited in note 1.

(*q*) See London Corporation (Malversation) Com. 142. E. Com. J. 97; Cook Inquiry Com. Sen. J. (1901), 59-62.

CHAPTER XV.

PUBLIC BILLS.

- I. Explanatory.—II. Appropriation and Taxation Bills.—
- III. Introduction of Bills.—IV. Bills relating to Trade.—
- V. Bills involving Public Aid and Charges.—VI. Second Reading.—VII. Order for Committee of the Whole.—
- VIII. Instructions.—IX. Reference to Select Committees.—
- X. Notice of Amendments in Committee.—XI. Bills reported from Select Committees.—XII. Proceedings in Committee of the Whole.—XIII. Reports from Committee of the Whole.—XIV. Bills not referred to Committee of the Whole.—XV. Third Reading.—XVI. Motion that the Bill do pass.—XVII. Proceedings after passage; Amendments; Reasons for disagreeing to Amendments.—XVIII. Revival of Bill temporarily superseded.—XIX. Bill introduced by mistake.—XX. Expedition in passage of Bills.—XXI. Bills once introduced not altered, except by authority of the House.—
- XXII. Mode of correcting mistakes during progress of a Bill.—XXIII. Loss of a Bill by accident during a Session.—
- XXIV. Bill, once rejected not to be again offered in the same Session; Exceptions to Rule.—XXV. Royal assent to Bills.—XXVI. Assent in the Provincial Legislatures.—XXVII. Amendment or Repeal of an Act in the same Session.—XXVIII. Commencement of an Act.—XXIX. The Statutes and their Distribution.

I. Explanatory.—The procedure in Parliament in the matter of passing public bills has like other parts of the parliamentary system been a subject of change. In early days statutes came into being in a different way. The Commons adopted a petition to the king. These were entered on the rolls of parliament with the King's answer

annexed. At the end of each parliament the judges drew up these records into the form of statutes.

This practice being found incompatible with the proper concurrence of parliament and matters being frequently found in the Statutes which the legislators had not asked for, remonstrances against this system resulted in the important change according to which bills were introduced in the form of complete statutes and received the assent of the king in the form in which they had been agreed to by the houses of parliament. The constitutional form of legislating by bill and statute, agreed to in parliament undoubtedly had its origin and its sanction in the reign of Henry VI (*a*).

Bills are of three kinds, public bills, private bills and bills of a mixed character, styled "hybrid bills" which, though of a public nature, affect private rights and are dealt with in some respects as private bills. Private bills are treated of in a separate chapter, as the procedure in connection with them differs in material respects from that of public bills. Public bills may be introduced by members of the ministry as government measures when they are for purposes of procedure placed on the government orders after their first reading. Other public bills are those introduced by members of parliament, not in the administration, and these, for purposes of procedure, are after a first reading placed in the order paper on what is styled "public bills and orders."

According to parliamentary practice a bill is an incomplete act of parliament. It is only when it receives the assent of all the branches of the legislative power that it becomes the law (*b*). A bill is, generally speaking, divided into several distinct parts: 1, the title; 2, the preamble and statement of the enacting authority; 3, the body of the act, consisting of one or more propositions, known as clauses; 4, the provisos, and 5, the schedules. The provisos

(*a*) May, 458-9.

(*b*) Stephen's Comm. 11, 397 *et seq.*

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and schedules may not be necessary in every act, while public statutes generally omit any preamble, or recital of the reasons of the enactment.

The Interpretation Act provides:—"The enacting clause of a statute may be in the following form:—

5. "His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

6. The enacting clause shall follow the preamble, if any, and the various clauses within the purview or body of the statute shall follow in concise enunciative form" (c).

The only exception to this form of enactment is the preamble of the supply bill, which is in the form of an address to the sovereign:

"Most Gracious Sovereign: whereas it appears by messages from his Excellency the Governor-General, and the estimates accompanying the same, that the sums hereinafter mentioned are required to defray certain expenses of the public service of the dominion, not otherwise provided for, for the financial year, etc.

"*May it therefore please your Majesty that it may be enacted;* and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Senate and House of Commons of Canada."

This preamble appears in all bills of appropriation since the union of Canada in 1840 (d), and differs from the English form in similar bills since it does not assert in express terms the sole right of the Commons to grant supply.

It will be seen that the form of the enacting authority is substantially the same in each, and differs from that of bills in general since it contains a prayer to the sovereign, that it may be enacted. This form appears to be derived from the ancient practice of the English Commons when bills were presented in the shape of petitions to the king. While the language of a petition is still retained as above

(c) Rev. Stat. (1906) ch. 1.

(d) Cushing, p. 796, 819, Stephen's Com. (ii) 399.

in certain bills, the declaration of the advice and consent of the two houses of parliament has been added in the course of time in accordance with the modern form of statutes.³

Public bills comprise all bills dealing with matters of a public nature, and may be introduced for the most part directly in motion. Private bills comprise such bills as relate to the affairs of corporations or of individuals, and can be presented only on the petition of the parties interested, and in conformity with certain rules which are strictly enforced. It is proposed in the present chapter to deal exclusively with public bills.

II. Appropriation and Taxation Bills.—As a general rule public bills may originate in either house, but whenever they grant supplies of any kind, or involve directly or indirectly the levying or appropriation of any tax upon the people, they must be initiated in the popular branch, in accordance with law and English constitutional practice.⁴ Section 53 of the British North America Act, 1867, expressly provides:

"Bills for appropriating any part of the public revenue, or for imposing any tax or impost shall originate in the House of Commons."

And a rule of the House of Commons declares explicitly:

"78. All aids and supplies granted to his Majesty by the parliament of Canada are the sole gift of the House of Commons, and all bills for granting such aids and supplies ought to begin with the house, as it is the undoubted right of the house to direct, limit, and appoint in all such bills, the ends, purposes, considerations, conditions, limitations and qualifications of such grants which are not alterable by the Senate."⁵

³ 3 Harsell, 126, 154, 155, &c. Bramwell, 1, 150.

⁴ This standing order is literally taken from the English resolution of 3rd of July, 1873 (9 E. Com. J. 235, 509). It was amended by the English commons in 1860 when the Lords rejected the Paper Duties Repeal Bill, so as to assert more emphatically the constitutional right of the commons in this particular (159 E. Hans. 3, 1353; May, 553; Todd, Parl. Govt. in England, 1, 310).

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If any bills are sent down from the Senate with clauses involving public expenditures or public taxation, the Commons cannot accept them. Such bills may be ordered to be laid aside (*g*). The same practice is also strictly carried out in the case of amendments made by the Senate to Commons bills. Latterly, however, it is not usual to lay such bills immediately aside, but to send them back to the Senate with reasons for disagreeing to such amendments, so that the upper house may have an opportunity of withdrawing them (*h*). As an illustration of the strictness with which the commons adhere to their constitutional privileges in this respect, it may be mentioned that on the 23rd of May, 1874, a bill was returned from the Senate, with an amendment providing for an increase in the quantity of land granted to settlers in the northwest. The premier and other members doubted the right of the Senate to increase a grant of land—the public lands being, in the opinion of the house, in the same position as the public revenues. The amendment was only adopted with an entry in the journals that the Commons did not think it "necessary, at that late period of the session, to insist on its privileges in respect thereto but that the waiver of the privileges was not to be drawn into a precedent (*i*)."

Many other entries will be found of the house accepting Senate amendments rather than delay the passage of a bill at an advanced period of the session (*j*). It is quite regular, however, to agree to amendments which "affect

(*g*) Railway Audit Bill (1850), 105 E. Com. J. 458; Parochial schoolmasters (Scotland Bill), 1857; 112 *Ib.* 404. May, 583.

(*h*) Can. Com. J. (1873), 429-30, Quebec Harbour Bill. The Senate did not insist, 431, 13 E. Com. J. 318; 105 *Ib.* 518.

(*i*) Can. Com. J. (1874) 336.

(*j*) Can. Com. J. (1867-8), 418, 420. *Ib.* (1873) 319. In cases where the amendments do not infringe materially on the Commons' privileges, it is also usual in the English Commons to agree to them with special entries. 80 E. Com. J. 579, 631; 122 *Ib.* 426, 456.

charges upon the people incidentally only, and have not been made with that object" (*k*).

In order, however, to expedite the business of the house, the Commons have adopted the following rule:

"87. The house will not insist on the privilege claimed and exercised by them of laying aside bills sent from the Senate because they impose pecuniary penalties; nor of laying aside amendments made by the Senate because they introduce into or alter pecuniary penalties in bills sent to them by this house, provided that all such penalties thereby imposed are only to punish or prevent crimes and offences, and do not tend to lay a burden on the subject, either as aid or supply to her Majesty, or for any general or special purposes by rates, tolls, assessments, or otherwise."

It is frequently found convenient to introduce bills involving public expenditure in the Senate, and in such a case, the money clauses are embodied in the bill as presented, in order to make it more intelligible. When the Senate goes into Committee on the bill, these clauses are ordered to be left out. They are printed in red ink or italics in the engrossed bill sent to up the Commons, and are technically supposed to be blanks. These clauses are always considered in a previous committee by the Commons, and then regularly referred to the committee of the whole on the bill (*l*). In the same way, resolutions imposing a tax or duty must be alone considered by the Commons, and referred to the committee on a Senate bill (*m*).

(*k*) 3 Hatsell, 155; 104 E. Com. J. 3) 23. See debates in Senate on marine electric telegraph bill, 1875, pp. 422, 423. See Dom. Stats. 38 Vict. c. 26.

(*l*) Census and statistics bill, 1879. Sen. Min. of P., 144, 148; clauses 22, 23, 24, 37; Com. J. 160. County court judges bill, 1882; Sen. Min. of P., 108, clauses 10 and 11; Com. J., 370-71. See also the journals of 1883 for civil service act, superannuation act and penitentiaries act. For a somewhat similar procedure in the English parliament, see British North America Act, 1867, introduced first in Lords; and Probates Act, 1858.

(*m*) Copyright bill (1872), 285. In this case the duty was imposed for the benefit of owners of British copyright works.

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III. Introduction of Bills.—In the Senate, as in the Lords in Great Britain, it is not necessary to give notice or ask leave to bring in a bill. Their rules provide:

"61. It is the right of every Senator to bring in a bill."

"62. Immediately after a bill is presented, it is read a first time and ordered to be printed." The practice is similar in the House of Lords (*n*). On the other hand in the House of Commons it is ordered:

"48. Every bill is introduced upon motion for leave specifying the title of the bill; or upon motion to appoint a committee to prepare and bring it in."

In accordance with this rule, every member who wishes to introduce a public bill, must give two days' written notice of its title (*o*), which appears in the votes and since 1880, on the orders of the day. If the notice is not given, it is open to any member to object to the introduction of a bill, and the speaker will sustain the objection. When the two days' notice has been given, the member in charge of a public bill rises as soon as motions for the introduction of bills are called, in the course of routine proceedings, and moves formally for "leave to introduce a bill, intituled, etc." He sends to the speaker the motion in writing with a copy of the bill. The speaker will then propose the question. "Is it the pleasure of the house that the honourable member have leave to introduce his bill?" But if the speaker finds that the bill is "in blank or in an imperfect shape" he will decline to put the question and will return the bill to the member who must take another opportunity of bringing it up in conformity with the rules (*p*). It is usual on the introduction of a bill—on the motion for leave—to explain, if called upon, clearly and succinctly its main provisions (*q*); but it is not the practice to debate it at length at that stage. Sometimes, however, a short

(*n*) 3 E. Hans. (3) 24. 13 *Ib.* 1188. Sen. J. (1878), 88. May, 461.

(*o*) Rule 40.

(*p*) Rule 49.

(*q*) 159 E. Hans (3), 360, 762; 218 *Ib.* 1699, 1706; 144 *Ib.* 329, 422; Can. Hans. (1878), 1582-1584; Sen. Deb. (1878), 160.

discussion may arise on some features of the bill on the motion for its introduction, as there is no rule to prevent a debate (*r*). At this stage, it is within the right of any member to submit an amendment to the motion for leave, and even to alter the title of the proposed bill (*s*), though such a course has not been followed. As in England, it is now a very rare thing for the house to refuse leave, though, of course, it rests entirely in the discretion of the majority to do so (*t*). When leave has been formally given the speaker will at once propose the next question in accordance with rule 51:

"When any bill shall be presented by a member, in pursuance of an order of the house, or shall be brought from the Senate, the question, 'That this bill be now read a first time,' shall be decided without amendment or debate."

Rule 78 provides that Senate bills are placed for a first reading on the order paper under "Routine Proceedings," immediately after "Introduction of bills."

One of the clerks will read the title of the bill in English and French, in accordance with the modern practice which does not require a reading *in extenso* (*u*).

(*r*) 219 E. Hans. (3), 379; 144 *Ib.* 422-450; Sen. Deb. (1874), 112-119.

(*s*) 107 E. Com. J. 68, 131. On the 20th of Feb., 1852, the title of the militia bill was amended in this way, and the ministry, of which Lord John Russell was premier, resigned. In 1884, in the Canadian Commons, an amendment was made to add words to the motion for leave, with the view of condemning the proposed legislation; Independence of parliament amendment act, 4th March; Can. Com. Hans., vol. i., p. 624.

(*t*) Evidence of Sir T. E. May before Com. on public business, 22nd of March, 1878, pp. 13, 15. 70 E. Com. J. 62; 71 *Ib.* 430.

(*u*) The ancient usage of the English Parliament was to read bills at length, but according as printing was freely used in the proceedings of the houses, the practice became obsolete; and it is now read a bill in short, that is by the title. 178 E. Hans. (3), 181; 192 *Ib.* 322. For the first time for many years, a bill was read at length in 1878 in the Canadian Commons, on the occasion of its introduction; but the speaker subsequently pointed out that the practice was not now allowable. In this case, members were not satisfied with the explanations given

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Though no amendment or debate is permissible on the question for reading the bill a first time, it is quite regular to divide the house thereon. The general debate on the bill takes place on the second reading, the bill then being printed and in the hands of all the members.

IV. Bills relating to Trade.—But here it is convenient to direct attention to the important fact that all public bills cannot be introduced directly on motion in the way just described. Bills relating to trade, or involving expenditure and taxation, must be initiated in committee of the whole before the house will give leave for their introduction. Rule 50 of the House of Commons provides:

"No bill relating to trade or to the alteration of the laws concerning trade, is to be brought into the house, until the proposition shall have been first considered in a committee of the whole house and agreed unto by the house."(v)

It is quite allowable, however, to introduce bills relating to trade in the Senate, without previously considering the subject in a committee of the whole (w).

The rule, as generally understood in the Canadian House—and English practice bears it out—simply requires the house to go into committee to consider a general proposition, setting forth the expediency of bringing in a measure on a particular question affecting trade (x). The object of the rule is to give another stage for consideration of a measure involving commercial interests. Both in the English and Canadian Commons the rule, just cited, has been held to apply to trade *generally*, as well as to any particular trade, if directly affected by a bill.

on the motion for leave, and wished to have more information with respect to the bill; Can Hans. 1878, April 2nd, election bill (Mr. Macdougall). It is always competent, however, for a member to move formally that a bill be read at length; 192 E. Hans. (3), 323.

(v) 107 E. Com. J. 174. Can. Com. J. (1877) 143-4, 169.

(w) Sen. J. (1867-8) 102. 68 Lords J. 836. 89 *Ib.* 192.

(x) Can. Speak. D., 24th of March, 1882; 120 E. Hans. (3), 784; Bourke's Precedents, p. 349; Can. Com. J. (1874), 135 &c., 129 E. Com. J. 31, 109.

It has also been decided that to bring a bill under the rule it should properly propose to regulate trade as a subject-matter (y). Some diversity of practice has, however, arisen at different times on account of a variance of opinion as to the proper application of the rule. The following precedents will show how it has been worked out in the Canadian Commons:—

Mr. Speaker Cockburn held that the term *trade* "does not, in its general and popular sense, apply to insurance. Trade means *buying, selling, importing and exporting goods to market.*" Banking, railways, navigation and telegraphs, in his opinion, all assist trade and are its auxiliaries, but are not branches of trade in the popular sense (z). However, bills respecting insurance have been indifferently introduced on motion, or on resolutions adopted in committee (a). Bills respecting interest have been introduced, as a rule on motion in the English as well as Canadian Commons (b). In 1874 Mr. Anglin decided that general banking bills ought to be based on resolutions (c)—a decision in accordance with the practice of the English parliament which is however variable with respect to joint stock banks (d). Bills respecting insolvency have been invariably introduced on motion for leave (e). Bills to regulate the traffic on railways and to protect the interests of the public in connection therewith, have been almost

(y) Can. Speak. D 193; Jour. (1872), 120.

(z) Can. Speak. Decisions No. 177. Jour. (1870) 313-14, 348.

(a) Can. Com. J. (1874), 131; *Ib.* (1877), 64. But legal authorities call insurance business a "trade" and insurance companies "trader." Doutre, Const. of Canada, 274-6, citing the opinion of several judges. See also 38 Vict., c. 16, s. 1, applying to "traders" and trading companies, except insurance companies. The correct practice, no doubt, is to commence in committee. A judgment of the Canadian supreme court considers that insurance falls under the constitutional provision affecting trade and commerce.

(b) Can. Com. J. (1878), 31. *Ib.* (1879), 67.

(c) Can. Com. J. (1874), 142.

(d) 111 E. Com. J. 13, 37, 119.

(e) Speak. D. 193; Can. Com. J. (1873), 287; *Ib.* (1876), 164; *Ib.* (1877), 21, 71, 94; *Ib.* (1878), 47; *Ib.* (1879), 19 &c.

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invariably brought in on motion (*f*); but in the session of 1877 a bill providing for the more effectual observance by railway companies of the law requiring the equality of treatment in the management of the traffic and the imposition of rates and tolls was founded on resolutions (*g*). Bills relating to joint stock and loan companies have been presented directly on motion (*h*); but in England bills relating to joint stock banks, companies, and partnership have frequently originated in committee (*i*). Bills respecting the inspection of staple articles of Canadian produce have generally been founded on resolutions (*j*); but a bill to amend the same has been allowed on motion (*k*). Bills to regulate weights and measures have generally been founded on resolutions (*l*); but in England, as well as in Canada, it has been decided that as such bills deal with questions of public policy, affecting the whole community, and not merely the interests of trade, they may be directly presented on motion for leave (*m*). Bills regulating harbour (*n*), pilotage (*o*), and shipping (*p*), and providing for the preservation of good order on board, and for the inspection and measurement of steamers (*q*), have always

(*f*) *Ib.* (1873), 60, 118; *Ib.* (1876), 70; *Ib.* (1877), 159; *Ib.* (1879), 301.

(*g*) *Ib.* (1877), 272. But in England such bills have been always introduced without a previous committee. 126 E. Com. J. 14 (1848) *Ib.* 27. See 8 and 9 Vict., c. 20, and Jour. of 1845 (railways).

(*h*) Can. Com. J. (1877), 28, 107, 258.

(*i*) 111 E. Com. J. 13.

(*j*) Can. Com. J. (1873), 127; *Ib.* (1874), 184.

(*k*) *Ib.* (1876), 76.

(*l*) *Ib.* (1873), 83; *Ib.* (1877), 291; *Ib.* (1879), 287

(*m*) 114 E. Com. J. 235; 115 *Ib.* 370; Can. Com. J. (1877), 145

(*n*) 117 E. Com. J. 271; Can. Com. J. (1873), 123, 55, 146 (1877), 136. A bill was withdrawn in 1879, because it was not founded on resolution. Hans. 649.

(*o*) Can. Com. J. (1873), 127; *Ib.* (1877), 157, 222; *Ib.* (1879), 290-1.

(*p*) 129 E. Com. J. 31; Can. Com. J. (1873), 24, 145 (1875), 185; *Ib.* (1878), 108, 109, 116.

(*q*) Can. Com. J. (1873) 23. *Ib.* (1877) 117-18, 222.

been based on resolutions passed in committees. Bills respecting the culling and measurement of timber should originate in committee of the whole (*r*). Bills respecting patents (*s*) and copyright (*t*) have been presented without committee. Bills respecting bills of exchange and promissory notes need not originate in committee of the whole unless they impose stamp duties (*u*).

A bill to regulate the sale and disposal of bottles used in the manufacture of mineral waters and other drinks has not been allowed to pass a second reading because it was not commenced in committee (*v*). A bill to prevent fraud in the sale of fertilizers has originated in committee (*w*). Bills to regulate generally the sale of, or to prohibit the traffic in intoxicating liquors should originate in committee (*x*). In 1883 the liquor license bill was formed in a select committee and reported to the house; but it was thought expedient not to comply with the express terms of the rule and first pass a resolution in committee of the whole before formally bringing in the bill (*y*). Bills which prevent liquor traffic on Sundays have been regarded as measures of public concern and order which do not come under this rule (*z*). On the other hand, bills to regulate fairs and markets and to prevent trading on Sunday, have been allowed to be introduced without a previous committee on the ground that they were matters of police regulation and public decency (*a*). Bills regulating the

(*r*) Can. Com. J. (1877) 207.

(*s*) *Ib.* (1873) 166. In 1872 a bill to amend and consolidate the patent laws was based on a resolution. But this was an irregularity as the bill merely imposed fees. 107 E. Com. J. 313.

(*t*) Mir. of Parl. (1840) 1110. 129 E. Com. J. 287.

(*u*) Can. Com. J. (1870) 33, 53. *Ib.* (1872) 125 *Ib.* (1873) 41, 175. Can. Hans. Apr. 24, 1878.

(*v*) Can. Com. J. (1878) 146. (*w*) *Ib.* (1884) 65.

(*x*) 125 E. Com. J. 62. 129 *Ib.* 31, 49, 109, 158. Can. Com. J. (1883) 377.

(*y*) Hansard 234, (1883) Mr. Casgrain.

(*z*) E. Com. J. (1855), (1863), (1868), (1878) &c., &c.

(*a*) Sunday trading bills, 1833, 1863, 1868, &c. Fairs and markets (Ireland) bill, 1854, 1855, 1857 and 1858.

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importation of cattle, with the view of preventing the spread of contagious diseases, are always initiated in committee of the whole (*b*). Bills to amend or consolidate the customs act are always founded on resolutions (*c*). Bills reducing duties of customs originate invariably in committee on the ground evidently that all such measures affect trade (*d*). Bills to grant certificates to peddlers (*e*), and to regulate the sale of poisons (*f*) have not required committees. A bill to regulate the dimensions of apple barrels has originated in committee (*g*); also one to regulate the sale of fertilizers (*h*); also to regulate the sale and manufacture of oleomargarine and butterine (*i*). Also to stamp packages of butter and cheese (*j*). A bill for regulating the employment of children in factories is not such a bill relating to trade as to require it to originate in committee (*k*). Bills to prevent adulteration of food, etc., have been brought in on motion (*l*).

This rule does not apply to bills that originate in the Senate, for the reason as stated by Mr. Speaker Denison: "The object of the rule that bills relating to trade should

(*b*) 103 E. Com. J. 857; 121 *Ib.* 55; 125 *Ib.* 267; In 1879, a bill respecting the contagious disease of animals was brought in on simple motion by the minister of agriculture; but the irregularity having been discovered in time, he withdrew the bill and brought in another, based on resolutions. Jour. 114, 136. This act prohibited importation; 42 Vict., c. 23. In the English Commons the sheep and diseases bill of 1848, being merely sanitary, was brought in without a committee; 103 E. Com. J. 863.

(*c*) Can. Com. J. (1877), 129.

(*d*) For instance, bills to repeal customs in Isle of Man, 125 E. Com. J. 96; to repeal duties on soap, 108 *Ib.* 590; shipping dues exemption act, 125, *Ib.* 303.

(*e*) 125 E. Com. J. 309.

(*f*) 125 *Ib.* 187.

(*g*) Can. Com. J. (1876), 248-9.

(*h*) *Ib.* (1880), 154-5; *Ib.* 1885, 277.

(*i*) *Ib.* (1886), 125.

(*j*) *Ib.* (1895), 27.

(*k*) 72 E. Hans. (3) 286.

(*l*) Can. Com. J. (1884), 177, 188. When the bill imposes license dues, it originates in committee; *Ib.* (1877), 155.

be founded on a resolution of a preliminary committee is in order to give opportunity for a fuller discussion and a wider notice to the persons interested. These objects have been already secured by the proceedings in the other house" (*m*).

Nor is a previous committee necessary for a consolidation of existing laws, but in case of changes it would be necessary (*n*).

When resolutions relating simply to trade have been reported from committee of the whole, they may be at once agreed to, and the bill introduced in accordance therewith (*o*). The rule requiring the adoption of resolutions on another day only applies to money or tax resolutions (*p*).

V. Bills involving Public Aid or Charges.—It is the rule that all measures involving a charge upon the people, or any class thereof should be just considered in a committee of the whole house. Rule 77 orders "If any motion be made in the house for any public aid or charge upon the people, the consideration and debate thereof may not be presently entered upon, but shall be adjourned to such further day as the house thinks fit to appoint; and then it shall be referred to a committee of the whole house, before any resolution or vote of the house do pass thereupon" (*q*).

(*m*) 172 E. Hans. (3) 1221. Can. Com. J. (1885) 422.

(*n*) 57 E. Hans. (3) 587.

(*o*) 129 E. Com. J. 31 &c.

(*p*) May, 391, 561.

(*q*) Res. of 1667; 3 Hatsell, 176; 150 E. Hans. (3) 911, 912. Such a motion cannot be discussed on the same day it is first presented; 164 *Ib.* (3), 996. Can. Pacific Res., Dec. 13, 1880-81; 1st Feb. 1884. It is of course competent for a member to propose an amendment substituting a later date for that proposed by the mover of a resolution for the committees of the whole, and to give reasons for the delay without going into details or discussion of the subject-matter of the resolution. See debate on Can. Pacific R.R. resolution, Can. Com. Hans. (1880-81), 48, 49.

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Under this rule, all bills providing for the payment of salaries or for any expenditure whatever out of the public funds of the dominion must be first considered as resolutions in committee of the whole (*r*). And all such resolutions necessary to the introduction of a bill, must first obtain the recommendation of the governor-general(*s*).

It often happens that bills are introduced with certain clauses providing for salaries or other charges on the public revenue, and in that case the bill may be introduced directly on motion, while the clauses in question (which should be distinguished by italics or brackets, are considered in the shape of resolutions in committee, and when agreed to, referred to the committee on the bill (*t*). "Such clauses," said Mr. Speaker Brand on one occasion, "form no part of a bill as originally brought in, but are considered as blanks." Before any sanction is given to them, the recommendation of the Crown must be signified and a committee of the whole house consider on a future day, the resolution authorizing the charge. Unless these proceedings are taken the chairman, under the rules, will pass over the money clauses without any question. Without such preliminary proceedings, the bill, so far as the public money is concerned, is entirely imperative (*u*). But it must be carefully borne in mind that this can be regularly done when the money clauses are merely a part, and necessary to the operation of the bill. Whenever the main object of a bill is the payment of public money, it must directly originate in committee of the whole; or else the proceedings will be null and void, the moment objection is taken (*v*). In the session of 1874, one of the ministers

(*r*) Can. Com. J. (1873), 399; *Ib.* (1876), 84; *Ib.* 1877, 200; *Ib.* (1879), 313.

(*s*) See chapter xv., ss. 2 and 3.

(*t*) May, 465, Can. Com. J. (1872), 170; *Ib.* (1873), 269, 400; *Ib.* (1877), 128; *Ib.* (1883), 228.

(*u*) 209 E. Hans. (3) 1880-3.

(*v*) Can. Com. J. (1877) 200, *Ib.* (1879) 313. See also procedure House of Commons, Canada on Railway Bill—Salaries of commissioners Aug. 1903.

introduced, on motion, a bill to appropriate certain lands in Manitoba, but objection was taken on the ground that all bills granting any part of the public domain should originate in the shape of resolutions, like all measures for the expenditure of public moneys. Accordingly he withdrew the bill and introduced a series of resolutions on which he founded a bill (*w*). All bills conveying grants of land now originate in committee and receive the previous assent of the crown (*x*). A bill transferring a government railway to a company has always been proceeded with in the same way (*y*).

The rule also applies to releasing or compounding any sum of money due to the crown (*z*).

The rule just cited¹ also applies to the imposition of any state tax or charge upon the people or any class thereof (*a*). But it is not held to apply to pecuniary penalties necessary to the operation of a bill (*b*). In the Canadian House it is the practice to consider all fees and charges which go into the treasury in a committee of the whole (*c*);

(*w*) Can. Com. J. (1874) 112. See Can. Com. J. 7th March, 1878.

(*x*) Can. Com. J. (1885) 604, *Ib.* (1886) 295, *Ib.* (1890) 465. *Ib.* (1885) 1, 26-7.

(*y*) Truro and Pictou R.R., Can. Com. J. (1877) 94, 134.

(*z*) English S.O. 20th of March, 1707. Release of town of Coburg from a certain debt. See Can. Com. J. (1889) 319. Tankland Mortgage, *Ib.* (1895), 106, 142.

(*a*) 174 E. Hans. (3) 1700-1. Can. Com. J. (1870), 283. In 1886 a bill, in effect increasing the indemnity to members, was not allowed to proceed; Can. Com. Hans, 38. The same occurred in case of another bill that proposed to give power to assess officials of the Dominion Government. *Ib.* (1889), 367. See also Superannuation Bill. Can. Com. J. (1895), 147; Chinese Tax, *Ib.* (1885), 433, 523; *Ib.* (1900), 369.

(*b*) Post office act, 1867-8, s 81, &c.; wharves and docks Bill, 1875; gaming houses bill, 1877. In England same practice obtains; petroleum bill, 1871, act granting certificates to peddlers, 1870; small penalties in Ireland bill, 1873, &c.

(*c*) Can. Com. J. (1870), 242, 314; *Ib.* (1872), 254. *Ib.* (1874), 195, election law; *Ib.* (1876), 83; *Ib.* (1879) 253-55. 346-7. 368.

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but such bills are received from the Senate in conformity with the English practice which allows the house to accept any clauses from the Lords which refer to tolls and charges for services performed and which are not in the nature of a tax (*d*).

The correct practice, as in the English Commons, is not to require a previous committee when the bill exacts fees for services performed, and when they are not payable into the treasury or in aid of the public revenue. For instance, the "act to regulate expense and control charges of returning officers at parliamentary elections" (38 and 39 Vict., c. 84 Imp. Stat.) contains a schedule of charges and expenses, which was not previously considered in committee (*e*). But when any payment is made out of the consolidated revenue fund, or out of moneys to be provided by parliament, the clauses providing for such payment must be first considered in committee. Under the act just cited, the candidates pay expenses; but in another act providing for the trial of controverted elections by judges, the clauses paying judges and expenses were first considered in committee, as such payments are made out of the public funds (*f*). The following precedents illustrate the correct practice in cases of fees;

(*d*) Patent Bill, 1869; trade mark and designs bill, 1876. For Imperial acts, see patent law amendment act, 1852; also, 16 and 17, Vict., c. 78, commissioners under act relative to appointment of persons to administer oaths in chancery, &c.: also 35 Vict., c. 1, s. 5, Dom. Stat.; also English railway bills imposing rates of tolls, 8 and 9 Vict., c. 10 s. 90; 21 and 22 Vict., c. 75.

(*e*) See also "Act granting certificates to peddlers" in which fees are paid to police authorities; 125 E. Com. J. 309; also 29 and 30 Vict., c. 36, assessing railways by commissioners for special purposes; also sec. 11 of 9 and 10 Vict., c. 105; 11 and 12 Vict., c. 48; 12 and 13 Vict., c. 77; also joint stock companies act, 40 Vict. c. 43, s. 74, Dom. Stat.: also railway act of 1868 and 1879 requiring a payment of \$10 for each mile for a fund for the purposes of the acts; also Dominion Lands Act, 1886, allowing fees for services performed; also 151 E. Hans. (3), 1601; corrupt practices prevention bill, 1858.

(*f*) 123 E. Com. J. 109, 312.

In 1883, the Liquor License Act contained a clause providing for the payment of certain fees by persons receiving licenses under the act. These fees, together with fines and penalties, form a license fund, applied under regulations of the governor in council, for the payment of the salaries and the expenses incurred under the law, and any residue was to be handed over to the municipalities except in certain cases where it should be paid to the Receiver General. As these fees were only necessary to the execution of the act and were not in aid of the public revenue, no previous committee was required (*g*).

In 1885 a bill provided a salary for a harbour master to be paid out of the fees received by him. It was based on a resolution which passed in committee of the whole and previously received the recommendation of the governor-general, since it used the public funds. All the fees in question being made payable under the existing law into the public treasury (*h*).

Clauses in a bill, granting costs against the Crown or revenue officers will not be entertained unless authorized by a preliminary committee (*i*).

A bill to enable the Government to take ground for public purposes, but not providing the funds for the same, need not originate in committee of the whole. The funds should be voted afterwards in committee (*j*).

The recommendation of the Crown and a committee of the whole are necessary in the case of a bill granting a drawback on imports (*k*). In 1900 the same proceedings were followed in the case of a bill extending contracts providing cold storage on steamships beyond the provision

(*g*) 46, Vict. Ch. 30, s. 56 etc. 53 *Ib.* Ch. 26. Schedules.

(*h*) Can. Com. J. (1885), 443, 441. See *Ib.* (1872), 170, 188; also *Ib.* (1888), 271; fees in this case under the Territories' real property act made payable into the treasury.

(*i*) 166 E. Hans. (3), 1593.

(*j*) Public offices (site and approaches) bill, 177 *Ib.* 1301-1308.

(*k*) Can. Com. J. (), 342, 382, 393, Can. Com. Hans. (1896 1st sess.) 4682, 4685.

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made in previous legislation (*l*). A bill merely declaratory in its nature, and involving no new charge, need not originate in committee of the whole (*m*). Neither is a committee necessary in the case of bills authorizing the levy or application of rates for local purposes by local authorities acting in behalf of the ratepayers (*n*). Nor does the rule apply to bills imposing charges upon any particular class of persons for their own use and benefit (*o*). Nor to bills indemnifying members for penalties they may have incurred for the violation of an act (*p*). Nor to bills having for their object the diminution or repeal of any public tax (*q*), provided such bills do not affect trade; and then they come under the special rule on that subject. As an illustration of the strictness with which the Canadian Commons observe the rules respecting trade, it may be mentioned that in the session of 1871, the house went into committee on resolutions to exempt paraffine wax, lubricating oil, and other articles from excise duty, and to reduce that duty on certain articles in the province of Manitoba. When the house had agreed to these resolutions, a bill was brought in; but before it had gone through committee, it was considered advisable by the government to reduce the duty on certain spirits manufactured from molasses in bond; and accordingly resolutions were passed in committee, and when adopted by the house, referred

(*l*) Can. Com. J. (1900), 204.

(*m*) Bill to remove doubts as to the liability to stamp duties of premium notes, taken or held by Mutual Fire Insurance companies. Can. Speak. D. 183. See also promissory notes bill, Can. Com Hans., April 24, 1878.

(*n*) 84 E. Com. J. 233. 94 *Ib.* 363, 141 E. Hans (3) 1579. 174 *Ib.* 1701; Dec. Mr. Speaker White—Can. Hans. (1896) 1st sess, pp. 4510, 4517.

(*o*) 103 E. Com. J. 57; 105 *Ib.* 54; May, 536.

(*p*) 175 E. Hans. (3) 83. See Dom. Stat. 34 Vict. c. 2 (indemnity act).

(*q*) E. Com. J. 1860; Paper duties bill; *Ib.* 1858, bill to reduce duties on passports. Can. Com. J. (1882), 87; bill to repeal duties on promissory notes.

to the committee on the foregoing bill (*r*). No previous vote in committee is necessary in the case of bills authorizing payments out of moneys already applicable to such objects (*s*), nor in the case of bills appropriating the proceeds of an existing charge (*t*).

Bills consolidating and amending statutes are frequently brought into the house with clauses containing charges on the public revenue, but it is only when these clauses impose new burthens that it is necessary to consider them first in a committee of the whole. For instance, in the session of 1883, the house passed "an act consolidating and amending the several acts relating to the militia and defence of the Dominion." The bill, as introduced, contained two classes of clauses affecting the public revenue: 1, clauses taken from the existing statutes. 2, clauses entirely new. As to the second class, there was no doubt that they imposed a new burthen, and consequently resolutions were at once introduced with the recommendation of the governor-general, considered in committee of the whole, and when agreed to by the house, referred to the committee on the bill. With respect to the first class of clauses, they re-enacted simply the existing law and did not create any new charge on the treasury; and accordingly no previous committee was necessary.

The object aimed at in such bills of consolidation is to give the old law in a new and more convenient form of reference; and certain charges were merely continued, in the bill in question, in accordance with law at that time in force. The last clause of the act, in fact, expressly declares: "This act shall not be construed as a new law, but as a consolidation of so much of the said act as is hereby re-enacted" (*u*).

(*r*) Can. Com. J. (1871), 119, 120, 234.

(*s*) Public Works (I) act, 9 Vict. c. 1; May, 566.

(*t*) Thames embankment bill, 1862; 165 Hans. (3), 1826.

(*u*) 46 Vict., c. 11. ss. 28-45; Can. Com. J. (1883), 226.

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VI. Second Reading. The different readings and stages through which a bill must pass before a bill becomes law will now be referred to.

When the house has agreed to the first reading of a bill the speaker at once proceeds to propose the next motion. He asks "When shall the bill be read a second time?" The answer is generally "At the next sitting of the house"; and the bill is thereupon placed upon the order paper in its proper place for a second reading at a future time.

This motion passes almost invariably *nemine contradicente*, as it is a purely formal motion, proposed with the object of placing the bill on the orders for a second reading, when all discussion can most regularly and conveniently take place; but though it is unusual to raise a debate on the merits of the bill on such a motion, yet it is perfectly in order to divide the house on the question as at any other stage of the measure (*v*).

When the bill comes up for a second reading in its proper course, one of the clerks at the table will read the order aloud, and the member in charge of the measure will then move its second reading—a motion which in England does not require a seconder; but in the Canadian Commons a seconder is required (*w*). The member should take care to inform himself whether the bill is printed in the two languages, as that is absolutely necessary at this stage (*x*). The letters E.F. on the order paper will show whether that has been done. If any objection be made on that ground, it will prevent the bill being taken up for its second reading on that day (*y*). But if the motion has been made and the debate allowed to proceed thereon, it will be too late then to raise an objection as to the printing in French (*z*).

(*v*) Can. Com. J. (1876), 245; *Ib.* (1877), 160 Can. Hans. (1879), 1375-8, 1385; supreme court repealing bill.

(*w*) Orders of the day require no seconder; May, 277. Such motions, however, are generally seconded in the Canadian Commons.

(*x*) R. 73. (*y*) Can. Sp. D. Nos. 94, 118, Can. Hans. (1897) 552.

(*z*) Mr. Speaker Blanchet. Insolvency bill. Can. Hans. (1879), 1620.

The second reading of a bill is that stage when it is proper to enter into a discussion and propose a motion relative to the principle of the measure (*a*). The Senate has a rule on the subject:

"64. The principle of a bill is usually debated at its second reading."

The Commons have no rule on the subject, but the practice of the house is always to discuss the principle of a bill at this stage (*b*). Any member may propose as an amendment a resolution declaratory of some principle adverse to, or differing from, the principles, policy or provisions of the bill, or expressing opinions as to any circumstances connected with its introduction or prosecution or otherwise opposed to its progress, or seeking further information in relation to the bill by committees, commissioners, the production of papers or other evidence, or the opinion of judges (*c*). On setting forth reasons why the bill could not be discussed satisfactorily at a late period of the session (*d*), or proposing a delay in the consideration of the bill until other measures promised by the government had been disposed of (*e*).

All amendments "must strictly relate to the bill which the house by its order has resolved upon considering." (*f*)

If a resolution adverse to the bill be resolved in the affirmative (*g*), or the motion, "that the bill be now read a second time" be simply negatived on a division, the measure will disappear from the orders but it may be

(*a*) Mirror of Parl. 1840, Vol. 17, p. 2629; 190 E. Hans. (3), 1869; Can. Hans. (1878), 599. Common assaults bill; Sen. J. (1867-8), 248, 283, 296, &c., 216 E. Hans. 3 (1686); Can. Com. J. (1879), 327.

(*b*) May, 471; 131 E. Com. J. 196; Can. Com. J. (1867-8), 425; Can. Com. Hans. (1885), 1360, 1385, *Ib.* (1897) 723.

(*c*) May, 471. Can. Com. (1882), 410, 412, *Ib.* (1885), 94, 308, 311; *Ib.* (1890), 86, 102.

(*d*) Can. Com. J. (1835), 308. Thames Embankment bill, 22nd July, 1872. (*e*) Can. Com. Hans (1897) 756.

(*f*) 143 E. Hans. (3) 643. 179 *Ib.* 342. 250 *Ib.* 1070-71. 252 *Ib.* 955-70. 135 E. Com. J. 177. 213 E. Hans. (3) 644-6 Sen. Deb. (1886) 742. (*g*) 244 E. Hans. (3) 1384.

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revived at a subsequent time, as the house has merely decided that it should not *then* be read a second time and the order previously made for the second reading remains good. When a bill so disappears from the order paper it is competent for a member to move without notice.

"That the said bill be read a second time on——next."

On this motion being agreed to, the bill takes its place on the orders. The same practice obtains with respect to the bill, at any previous or succeeding stage (*h*).

It is customary for those who are opposed to a bill to move

"That the word 'now' be struck out, and the words 'this day three (or 'four,' or 'six,') months' added at the end of the question" (*i*).

If this motion is carried, the bill disappears from the order paper; but it may happen that the session is prolonged beyond all expectations and that the bill will again take its place on the paper in conformity with the order of the house (*j*). In 1880, a bill respecting marriage with a sister of a deceased wife was postponed in the Senate by the passage of a resolution declaring it inexpedient to pass the measure that session (*k*).

When the order for the second reading has been read, a member may move, if he should not wish to proceed with the bill, that the order be discharged and the bill with-

(*h*) Interest bill (1870). Insolvency bill (1876). Interest bill (1883) N. W. Territories bill, May 12, 1892. Can. Com. Han. Vol. 1, P. 2486.

(*i*) Can. Com. J. (1867-8) 40, 227. *Ib.* (1877) 71. *Ib.* (1879) 174, 192. Sen. J. (1876) 105. *Ib.* (1878) 201. *Ib.* (1882) 177.

(*j*) Cases have occurred in the old Canadian Assembly as well as in the English parliament. In 1882 a bill was ordered to be read "this day month," and it came up accordingly, and was placed on the orders of the day after bills to which the house had, during the interval, given precedence. Fraud in contracts bill, Jour. p. 96; orders of the day, 3rd of April. See also Can. Leg. Ass. J. (1856), 435-444, 625 (separate school bill).

(*k*) Sen. J. (1880), 209.

drawn (*l*). Or, if the motion has been actually made for the second reading, it must first, with leave of the house, be withdrawn (*m*). It is irregular to go into the merits of a bill on a motion that the order for a second reading be postponed or discharged (*n*). A member who has moved the second reading of a bill can speak again at the close of the debate under rule 21 (part 2). It is irregular to propose on the second reading, or other stage of a bill, any amendment by way of addition to the question, when it has been decided by the house that the bill shall be read a second time (*o*). On the motion for the second reading it is out of order to discuss the clauses *seriatim* (*p*). Nor is it regular, when a bill is before the house to anticipate discussion by a motion on the same subject (*q*).

VII. Order for Committee of the Whole.—When a bill has been read a second time by the clerk, the next question will be proposed.

“That the house go into committee on the bill (now, or on———next.)”

The house generally goes into committee on the bill at once—but when desired, the committee stage is post-

(*l*) 129 E. Com. J. 307; Can. Com. J. (1879), 136; Sen. J. (1867-8), 297, 306. The order is simply discharged in the Senate as in the Lords (Lords' J., 1877, p. 297), when the bill is from the Commons. The practice in the Lords is, however, to withdraw the bill, when it has originated in their own house; in fact, the practice is the same as that of the commons. Lord's J. (1877), 194, 243, 271.

(*m*) Can. Com. J. (1867-8, 40; *Ib.* (1877), 90; *Ib.* (1878), 146; *Ib.* (1882), 129; *Ib.* (1886), 128; 129 E. Com. J. 309 &c.; Lords' J. (1877), 235, 271. An order may be discharged and made the first for a subsequent day. Can. Com. J. (1877), 39; *Ib.* (1890, 1st sess.) 100; or a motion for the second reading having been withdrawn, a new order for a future day can be passed. Can. Com. J. (1899), 188.

(*n*) 216 E. Hans. (3), 1648; 240 *Ib.* 858-9. The same rule applies to the order for committee of the whole, 226 *Ib.* 859-60.

(*o*) 183 E. Hans. (3), 1918; 186 *Ib.* 1285.

(*p*) 224 E. Hans. (3), 1297; 225 *Ib.* 684; 238 *Ib.* 1593; 248 *Ib.* 590.

(*q*) 219 E. Hans. (3), 1053, 1054, 1302.

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poned to another sitting of the house. The motion generally passes, *nem. con.* (*r*), like all such formal motions; though it is quite regular to move an amendment as to the time of committal (*s*).

When the order of the day for committee has been reached and called in due form the speaker will put the question,

"That I do now leave the chair."

Now is the time to move any amendment to this question. Members opposed to the bill may move that the house resolve itself into committee on the bill that day three or six months; or may propose motions adverse to the principle or policy of the measure (*t*).

It has been frequently decided in the English house that, on the motion for the speaker to leave the chair, a member "is at liberty to discuss the main provisions, but not to, proceed *in detail* through the clauses, nor to discuss amendments to the same, until the bill is regularly in committee" (*u*).

VIII. Instructions.—An "instruction," empowering a committee to make those changes in a bill which otherwise it could not make, should be moved as soon as the order for the committee has been read by the clerk, and before the question is put, that the speaker do leave the chair (*v*). An instruction, properly speaking, is not of the nature of an amendment, but of a substantive motion which ought to have precedence of the question that the speaker do leave

(*r*) Can. Com. J. (1870), 300; *Ib.* (1877), 128.

(*s*) 129 E. Com. J. 140. But it is not regular to move that the house do adjourn, according to an English decision, 221 E. Hans. (3), 744.

(*t*) Supreme court bill, 25th March, 1875. But it is not competent to move any amendment by way of addition to the question, "That Mr. Speaker do now leave the chair;" May, 477.

(*u*) 223 E. Hans. (3), 35; 224 *Ib.* 1297; 232 *Ib.* 1195-6; Can. Hans. (1885), 1383, 1384.

(*v*) 163 E. Hans. (3) 597-8; 212 *Ib.* 1075.

the chair (*w*). If an instruction is moved when the latter motion is proposed, then it becomes an amendment, which, if agreed to, supersedes the motion for the committee, and the bill consequently cannot be proceeded with for the time being (*x*).

Considerable misapprehension appears to exist as to the meaning of an instruction. An instruction is given to a committee to confer on it that power which, without such instruction, it would not have. If the subject-matter of an instruction is relevant to the subject-matter and within the scope and title of a bill, then such instruction is irregular since the committee had the power to make the required amendment (*y*). The following precedents will illustrate the correct practice with respect to this class of motions.

In 1854 the English commons had before them a "bill to abolish in England and Wales the compulsory removal of the poor on the ground of settlement," and a member proposed to introduce clauses into the bill to prevent the removal of Irish paupers in the different unions of the country. It was pointed out that the contemplated changes would entirely alter the character of the bill, and could only be made by an instruction; the speaker being appealed to said, "that the rule had been clearly stated, and if the noble lord intended to propose the additions of the new provisions alluded to, it would be necessary to move them as an instruction to the committee" (*z*).

In 1865, the order for committee on the Union Chargeability Bill having been read, Mr. Bentinck moved that "it be an instruction to the committee, with a view to render the working of the system of union chargeability more just than equal; that they have power to facilitate, in certain cases, the alteration of the limits of existing unions." An objection was at once taken, that under the

(*w*) 179 *Ib.* 116-7; 183 *Ib.* 920-1; *Sen. J.* (1882), 195.

(*x*) 163 *E. Hans.* 597-8; 179 *Ib.* 116-7; *Can. Com. J.* (1875), 284.

(*y*) 74 *E. Hans.* (3), 107; 195 *Ib.* 847; 207 *Ib.* 401-2.

(*z*) 131 *Ib.* 274. See *May*, 478-483.

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Poor Law Board Act there was power to alter the boundary of unions, and therefore an instruction was not necessary. The speaker (Mr. Denison) decided: "The question is not as to whether the Poor Law Board has the power, but whether the committee would have it without the instruction; and, in my opinion, the committee would not have that power, because the subject-matter would not be relevant to the subject-matter of the bill. Therefore the motion is in order and should have precedence, because an instruction is not of the nature of an amendment, but of a substantive motion" (a).

In 1878, the order for committee on the Factories and Workshops bill having been read, Mr. Fawcett rose to move an instruction extending the operation of the bill to children employed in agriculture. Mr. Speaker Brand stated in reply to an objection to the proceeding: "The motion of the hon. member is in the form of an instruction to the committee. The committee would not have power to deal with the question unless an instruction of this kind was passed" (b).

In 1881, the order for the committee of the whole on a bill respecting the sale of intoxicating liquors on Sunday, in Wales, having been read, it was moved as an instruction that "they have power to extend the same to Monmouthshire" (c).

In 1868, the speaker ruled that a select committee to which had been referred the Sale of Liquors on Sunday bill would be confined to its subject-matter, and could not consider the question of the general licensing system without a special instruction from the house (d).

In 1870, the order of the day having been read for committee on a bill respecting elections of members of the

(a) 179 E. Hans. (3), 116.

(b) 238 *Ib.* 63-4.

(c) 136 E. Com. J. 302.

(d) 190 E. Hans. (3), 1869. In the Senate it has been decided that it is irregular and unnecessary to move to instruct a select standing committee to do that which it has already the power to do under its order of reference; *Sen. Deb.* (1886), 436-445.

Commons, it was moved that the committee be instructed to provide that the qualifications of voters should continue to be regulated by the laws of the legislatures of the provinces. Mr. Speaker Cockburn decided that the committee had the power to do what was proposed, and that consequently the motion was irregular (*e*). In 1872, when the question for committee on the bill to repeal the insolvency laws was under consideration in the Canadian House of Commons, Mr. Harrison moved that it be an instruction to the committee to except the province of Ontario from the operation of the bill. Mr. Blake having made objection to the motion, Mr. Speaker Cockburn ruled: "As the bill affected the whole dominion the committee have already the power asked for in the motion, and consequently it is out of order" (*f*).

Decisions of English speakers have also laid down the following rules with respect to instruction:

"That it requires an instruction to divide a bill into two parts or to consolidate two bills into one (*g*).

"That notice should be given of an instruction when a member has proposed such as a substantive motion, and not as an amendment to the question, that the speaker do leave the chair (*h*).

"That when a bill is simply a continuance bill of an act now in force, it is not competent for the committee to introduce a clause of a different nature to the simple scope of such bill, but it may be an instruction to the committee to introduce such a clause (*i*).

"That it is not regular to instruct a committee to entertain a question which is outside of the bill before them.

(*e*) Can. Com. J. (1870), 120-21.

(*f*) *Ib.* (1872), 78-9. See Sen. Deb. (1885), 853, 854. *Ib.* (1890), 399.

(*g*) 86 E. Hans. (3), 154; also 136 E. Com. J. 285, 137 *Ib.* 121.

See Can. Com. J. 1891, June 18, when five bills were referred to a select committee.

(*h*) 175 E. Hans. (3) 1939-40; 158 *Ib.* 1951.

(*i*) 159 *Ib.* 1912, 1924.

(*j*) 158 E. Hans (3), 1954-5.

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For instance, on the Representation of the People Bill, in 1860, a member moved an instruction that no borough should be deprived of one member until it had been ascertained by an actual census of the population of the borough, whether or not the number of its population fell below the limit of 7,000 inhabitants. Mr. Speaker ruled, as above, because it was not competent to the committee to inquire with regard to the census (*j*)."

"That any number of instructions may be moved successively to the committee on the same bill, as each question for an instruction is separate and independent of every other (*k*).

"That it is regular to move amendments to a question for an instruction" (*l*).

If a motion for an instruction contains a proposition that ought to be considered in a preliminary committee, it cannot be entertained (*m*).

On the same principle, an instruction cannot be moved to make any provision which imposes a tax or charge upon the people; but the matter ought to be first considered in a committee of the whole (*n*). It is the practice in the English Commons to give, according as it is necessary, instructions to the committee on customs and revenue bills to make provisions therein pursuant to resolutions passed in committee of ways and means (*n*). In 1882, the house considered the Arrears of Rent (Ireland) Bill, as amended in committee of the whole, and it was ordered that the bill be recommitted, and that it be an instruction to the committee that they had power to make provision

(*k*) In 1860 nine instructions were moved on the order for committee on the representation of people bill; the proceedings and rulings, on this occasion, illustrate the correct practice with respect to instructions. 158 E. Hans. (3), 1951-88. See Blackmore's decisions (1881), 116-17, where a summary is given of the decisions of Mr. Speaker Denison, on points that were raised.

(*l*) 101 E. Com. J. 113.

(*m*) 167 E. Hans. (3), 696-700.

(*n*) 136 E. Com. J. 240, 304; 137 *Ib.* 366, 404, Can. Com. J. (1885), 659.

in accordance with a resolution, reported from a previous committee, authorizing the payment out of moneys to be provided by parliament of the salaries of any officers appointed under the act, and also the payment of the consolidated fund of the United Kingdom of any moneys required for the purpose of assisting emigration from Ireland (*o*).

According to the modern practice of parliament an instruction to a committee is not "mandatory," and it is therefore customary to state explicitly in the motion, as shown above, that the committee "have power" to make the provision required in the bill (*p*). "For," as stated by Mr. Speaker Denison, "the intention of an instruction is to give a committee power to do a certain thing if they think proper, not to command them to do it" (*q*). It has been pointed out by an English authority in such matters that even the committee cannot act upon the instruction without a question put upon the thing to be done, which of itself implies that the instruction is not conclusive upon the committee (*r*).

All instructions must be moved on the first occasion when the order for the committee on a bill has been read. If the bill had been partly considered in committee, it is not competent to propose an instruction when the order is read for the house "again in committee," as the rules require that the speaker leave the chair as soon as that order has been taken up.

(*o*) 137 E. Com. J. 383.

(*p*) 137 *Ib.* 366, &c. Such mandatory instructions in the case of bills can be found in the English journals, but not for many years past. 21 *Ib.* 836; 66 *Ib.* 299; *Ib.* 90, 451; May, 479, 481.

(*q*) 158 E. Com. J. 1954-5.

(*r*) Mr. Addington, cited by Lord Colchester (Mr. Speaker Abbot) in his diary, 431. May, 481. See a case in the Canadian House where the committee did not amend a bill in accordance with an instruction, but adopted one proposed by Mr. Blake in amendment to that referred to them by the house. Jour. (1882). 248-49 (Presbyterian bill).

(*s*) 129 E. Com. J. 103, 110, 265; Lords' J. (1861) 263; *Ib.* (1873), 364; Can. Com. J. (1876) 120. criminal procedure bill. *Ib.* (1875), 139,

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IX. Reference to Select Committees.—It is becoming a frequent practice in England, as well as in Canada, to send important bills, requiring very careful and deliberate inquiry to a special or a select standing committee, before referring them to a committee of the whole. The practice of revising bills in committee of the whole only dates from 1700, and the most eminent English authorities have frequently advised, and the House of Commons has already attempted a modified return to the old method of considering certain public bills in select committees (*t*). Particularly in the case where several bills on the same subject are before the house has it been found convenient to refer them all to one committee (*u*). Sometimes a committee will combine two bills in one (*v*). In 1879, a number of bills relating to insolvency were presented and in view of the great variance of opinion on a very perplexing question, it was decided to refer the whole matter to a select committee to report by bill or otherwise. In this case, as it was not intended to report back any of the bills before the house the order for the second reading of each was read and discharged and each was then formally referred to the committee, with the consent, of course, of the introducer

insolvency bill; *Ib.* (1877), 161 larceny bill; *Ib.* (1877), 75. insurance bill; *Ib.* (1878) 56. evidence in common assaults bill. Several bills may be consolidated into one bill in this way; *Leg. Ass. J.* (1863) 296, 313, 320.

(*t*) House of Commons, Palgrave, note A, at end of work. Bagehot, in his work on the English constitution, shows how difficult it is for a committee of the whole to give that patient, orderly examination which all bills should receive. The same question was discussed before a committee on public business in 1854 (Report, 31) and in 1878 Report (21-22), and the opinion was expressed by Sir Erskine May and others that bills are exposed to too many opportunities of discussion, and that if a bill is referred to a competent committee, the report of that committee ought to be accepted in the same way as a report of a committee of the whole.

(*u*) *Can. Com. J.*, railway bills, 1870 and 1871, &c. Insolvency bill, 1870, criminal law bills, 1876; banking bills, 1871; 129 *E. Com. J.* 286; *Can. Com. J.* (1889), 234.

(*v*) *Can. Com. J.* (1882), 285.

in every case (*w*). If it is intended to consolidate two or more bills, or otherwise incorporate the provisions of one with the provisions of another, an instruction is necessary (*x*).

Any bill may be referred to a select committee in amendment to the motion for the house to go into committee of the whole, or on the reading of the order for committee (*y*). No notice is required in the case of a reference (*z*). The merits of a bill cannot be discussed at this juncture (*a*).

It is also perfectly regular to refer a number of bills at the same time to one committee of the whole, as is the case with private bills, which may consider all on the one day without the chairman leaving the chair on each separate bill (*b*).

In 1892 the criminal laws were referred to a joint committee of both houses, which reported a number of clauses from time to time for convenience sake. These clauses were duly referred to a committee of the whole until the whole subject was fully considered in this way, and a code reported to the Commons and sent to the Senate for concurrence (*c*).

(*w*) *Ib.* (1879), 81. The insolvency laws have always been the result of the deliberation of select committees. See journals of 1867-8, 1869, 1870, 1871, 1875, 1885.

(*x*) See Can. Com. J. 1891, June 18th.

(*y*) Marine electric telegraph bills; Can. Com. Hans. (1879), 1572. (Mr. Speaker Blanchet). May, 499.

(*z*) Rule 40 H. of C.

(*a*) 278 E. Hans. (3), 330, 335, 336.

(*b*) 114 E. Com. J. 253. In the legislative assembly of Canada this practice was followed on several occasions. Leg. Ass. J. (1860), 445; *Ib.* (1861), 319; *Ib.* (1866), 195. In 1861 some nineteen bills were referred at one time. But it does not appear to be the practice of the Senate; Deb. (1880), 305. In the Canadian Commons, 7th May, 1888, a bill respecting railway employees was referred—order for committee being first discharged—to a committee of the whole on the general railway act.

(*c*) Can Com. J. (1892), 310, 318, 319, 349, 400.

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X. Notice of Amendments in Committee.—When a member intends to move an important amendment in committee of the whole to a public bill, he is not required, according to Canadian practice, to give notice of such amendment (*d*). It has been found expedient, however, in some cases to give notice where the member desires to call special attention to his proposal. In the English house the rules provide that on the consideration of the bill as amended in committee, no new clause can be proposed unless the house has received a regular notice containing the words of the proposed amendment (*e*).

XI. Bills reported from Select Committees.—When bills are reported from select committees after their second reading in the house, they go upon the orders of the day for consideration in committee of the whole, in pursuance of the following rule:

28. "Bills reported after second reading from any standing or special committee shall be placed on the orders of the day following the reception of the report, for reference to a committee of the whole house, in their proper order, next after bills reported from committees of the whole house. And bills ordered by the house for reference to a committee of the whole house shall be placed, for such reference, on the orders of the day following the order of reference, in their proper order, next after bills reported from any standing or special committee" (*f*).

Every committee on a public bill is bound to report thereon. The house alone has power to prevent its passage

(*d*) Com. R. 40; Sen. Deb. (1884), 520, 521; Jour. 253. V. & P. (1877), 175, 200, 214, 225, 226, 233, 257. Railway act (1879), 250. Militia Act, 462. Temp. Act. V. & P. (1885), Apl. 9 p. 418. Franchise Act (1885). Notice is required in case of amendment to private bills.

(*e*) May, 495. Palgrave, Rules and Orders, No. 254. S. O. 38.

(*f*) 129 E. Con. J. 269, 314; Can. Com. J. (1877), 140, 207. Insurance bill. If, however, a special committee report adversely on a public bill it will still appear on the orders, as it is only a private bill that disappears from the orders when the preamble is reported "not proven." See chap. vi, (xiii).

or to order its withdrawal (g). When a bill has been referred to a select committee and the committee wish to make a special report and submit minutes of evidence it is necessary to obtain permission from the house to that effect in case no such power is given in the original order of reference (h).

XII. Proceedings in Committee of the Whole.—When either house agrees to go into committee of the whole on a bill, the speaker calls the chairman of committees, or, in his absence, a member to the chair, and the mace is put under the table. The practice in both houses is, for the most part, identical (i); but there is an express order of the Senate which forbids "any arguments being admitted against the principle of a bill in a committee of the whole." (j)

Rule 55 of the Commons provides:

"In proceedings in committee of the whole house upon bills, the preamble shall be first postponed, and then every clause considered by the committee in its proper order; the preamble and title to be last considered."

In the Senate the title is regularly postponed (k); but in the Commons it is never considered, except when it is necessary to amend the same in accordance with amendments made in committee, and in ordinary cases the practice is to amend the title after the third reading. The preamble is also postponed in both houses until after the consideration of the clauses (l). The bill is then considered clause by

(g) Sen. Deb. (1886), 176.

(h) Alien Labour Bill, Can. Com. J. (1890), 305; 120 E. Com. J. 386; May, 471. The select standing committees of the Canadian Commons have general power to report opinions and observations. R.R. Commissioners Bill; Can. Com. J. (1883), 98, 169.

(i) Sen. J. (1867-8), 121.

(j) R. 74.

(k) Sen. J. (1880), 166.

(l) *Ib.* (1880), 166. The English House has now a S.O. to postpone the preamble until after the consideration of the clauses, without question put, No. xxxv., 27th Nov., 1882.

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clause. The chairman usually calls out the number of each clause, and reads the marginal note, but he should give the clause at length when it is demanded by the committee. He will then put the question, "shall the clause be adopted," or "stand part of the bill." Each clause is a distinct question, and must be separately discussed. When a clause has been agreed to, it is irregular to discuss it again on the consideration of another clause (*m*). Amendments must be made in the order of the lines of a clause. If the latter part of a clause is amended, it is not competent for a member to move to amend an earlier or antecedent part of the same clause. But if an amendment to the latter part of a clause is withdrawn, then it is competent to propose one to an earlier part (*n*). When the committee have agreed to a clause, or to "a clause as amended," the chairman will sign his initials on the margin, and his name in full at the end of the bill, when it has been fully considered by the committee. It is irregular to propose to leave out all the words from "That" to the end of a clause in order to substitute other words, as such an amendment is in the nature of a new clause, which should be considered at a later stage in committee (*o*).

According to strict English practice, which is generally followed in the Senate, new clauses should be brought up and discussed after the consideration of the original clauses of the bill; but in the Canadian Commons, the practice is not rigorously followed, and the committee is generally guided by what is most convenient in each particular case. The schedules are the parts of the bill last considered.

(*m*) 241 E. Hans. (3), 2112; May, 484; Can. Hans. (1885), 1482, 1483. If a member moves to omit a clause the chairman will simply put the usual question, "Shall the clause stand part of the bill?" 164 E. Hans. (3), 1466.

(*n*) 46 E. Com. J. 175; 181 E. Hans. (3), 539. The proceedings in committee on the Franchise Bill of 1885, illustrate the practice with respect to amendments and the order on which they should be moved; Can. Hans. 1470, 1471.

(*o*) 116 E. Hans. (3), 666; 200 *Ib.* 1057.

Clauses are frequently postponed, in order to give an opportunity until another meeting of the committee of considering the advisability of amending them, or taking any other course that may be found necessary with respect to them. As a rule, in the Canadian house, any change in the title is made the subject of a special motion after the third reading (*p*). In the case of a senate bill it is usual to amend it in committee, and report the fact to the house (*q*). But in the Senate the title may be amended at this as at any other stage of the bill (*r*).

A committee of the whole have now power to make amendments not within the scope and title of the bill. The rules of the English Commons (*s*) provides that any amendment may be made to a clause, provided the same be relevant to the subject-matter of the bill, or pursuant to any instructions, and be otherwise in conformity with the rules and orders of the house; but if any amendment be not within the title of the bill, the committee are to amend the title accordingly (*t*), and report the same specially to the house (*u*).

In the session of 1875, the house went into committee on a bill "to amend the general acts respecting railways," and a question arose whether it was competent to add a clause requiring the government to purchase goods for the use of dominion railways upon public tender and contract only; and the committee having arisen for the purpose of receiving instructions from the house upon the point at issue, Mr. Speaker Anglin decided that such an amend-

(*p*) 127 E. Com. J. 352, (parish constables abolition bill). Can. Com. J. (1882), 426, harbour and river police bill. Can. Com. J. (1876), 217; *Ib.* (1877), 212.

(*q*) *Ib.* (1882), 426.

(*r*) Sen. J. (1880), 166, 168.

(*s*) S.O. 19th July, 1854.

(*t*) Sen. J. (1877), 253.

(*u*) S.O. 34. This order has always been held in the English house to apply to select committees. May, 500-502. 118 E. Com. J. 248; 127 *Ib.* 169, 342.

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ment would be regular (*v*) without an instruction. A similar decision was given in committee of the whole on a bill to repeal the insolvency laws now in force in Canada. It was proposed to make some amendments which would have the effect of adding certain provisions with respect to preferential assignments and priority of judgments, and in that way avert certain dangers likely to result, in the opinion of many persons, from the total repeal of the act as provided for in the bill. The amendments were decided to be in order (*w*). On the other hand, it has been decided that it is not within the scope of a committee to which a continuance bill has been referred, to amend the provisions of the acts which it is thereby proposed to continue, or to abridge the duration of the provisions contained in those acts (*x*).

It is irregular to propose an amendment which is irrelevant to the subject-matter of a clause, but it should be submitted to the committee at the end of the bill, as a separate clause (*y*).

The committee cannot agree to any clauses involving payments out of the public funds (*z*), or imposing any dominion tax or charge upon the people (*a*) unless such clauses have been previously considered in committee of the whole—a subject fully explained in the previous part of this chapter. The committee on the bill cannot increase duties without a previous resolution of the committee; but it may reduce them in accordance with the settled principle that gives every facility to the removal of public burthens (*b*). It has also been ruled in the English house

(*v*) Can. Com. J. (1875), 327.

(*w*) Can. Hans. (1879), 1775.

(*x*) 129 E. Com. J. 353.

(*y*) 147 E. Hans. (3), 1190, 1198. In this case the amendment proposed to be made was relevant to the bill, but as it embodied a principle contrary to the clause, it could not be added.

(*z*) May, 560; Can. Com. J. (1876), 84; *Ib.* (1877), 94, 128.

(*a*) Can. Com. J. (1870), 242, registration of timber marks; *Ib.* 285, copyright. (b) May, 565.

that amendments varying the incidence of a rate or tax come within the rule, requiring considerations in a previous committee, and the bill must be recommitted, with respect to the clauses affected, in case there has been no previous committee on the subject (*c*). Such clauses, having been read a second time and agreed to, and referred to the committee on the bill, are not considered as amendments made in committee. Accordingly, if no alteration be made therein in committee on the bill, the latter may be reported up without amendment (*d*).

When such clauses, however, are added to a Senate bill, they must be considered as amendments and reported up as such, in order to send them to the Upper House for concurrence (*e*). Amendments are irregular when irrelevant to a bill or any of its provisions; governed by amendments already negatived; inconsistent with or contradictory to the bill as agreed to by the committee; or tendered in a spirit of mockery. The chairman will decline to put such questions from the chair (*f*). Though a committee has full power to amend, even to the extent of nullifying the provisions of a bill, they cannot insert a clause, reversing the principle affirmed by the second reading (*g*).

A committee may, in conformity with instructions, consolidate two bills into one or divide one bill into two or more, or examine witnesses and hear counsel. When two bills are to be consolidated, the preambles of the two bills are severally postponed, and the clauses of each are successively proceeded with. When a bill is to be divided into one or more bills, it is usual to postpone those clauses

(*c*) 217 E. Hans. (3), 402, 413.

(*d*) Penitentiary act, 1876.

(*e*) Post-office bill, 1867-8; Sen. J. 155-8; Com. J. 128-9; census bill, 1879.

(*f*) May, 485; 167 E. Hans. (3), 112; 179 *Ib.* 522; 187 *Ib.* 1942; 188 *Ib.* 84; 211 *Ib.* 137, 2026; 258 *Ib.* 1239, 1333, 1451, 1455; 275 *Ib.* 862; 296 *Ib.* 800; 305 *Ib.* 83; 111 E. Com. J. 213.

(*g*) 251 E. Hans. (3), 1134; May, 458.

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which are to form a separate bill, and when they are afterwards considered, to annex to them a preamble enacting words and title. The separate bills are then separately reported (*h*).

After a bill has been considered clause by clause, and the preamble agreed to, the committee have sometimes found it expedient to reconsider the bill, either in whole or in part, and in order to do this, a motion for the reconsideration has been made and agreed to (*i*). The Senate have a rule which appears to provide for such cases:

"65. A senator may, at any time before a bill has passed, move for the reconsideration of any clause thereof already passed."

The same practice sometimes obtains in Commons committees, but it is not one to be encouraged, since it is obviously at variance with the sound principle which prevents either the house or committee passing on the same question twice. The proper time for the reconsideration of an amended bill is after report from committee, when, under English practice—which might advantageously be followed in the Canadian Commons—it is competent to make amendments, and reconsider the bill; or in any case, it may be sent back, and the committee regularly authorized to reconsider it in any particular.

In case private bills intervene, under Rule 25, before a measure is fully considered in committee of the whole, proceedings are resumed as soon as the time for the consideration of the former bills has expired (*j*).

XIII. Reports from Committee of the Whole.—When the committee have only partly considered a bill and it is found advisable to postpone further proceedings until a future day, the chairman is instructed to report progress, and ask

(*h*) May, 489; 73 Lords' J. 163; 127 E. Com. J. 230. Also 126 *Ib.* 121; 205 E. Hans. (3), 977.

(*i*) Sen. J. 1882, March 6th and 13th, county judges bill.

(*j*) Can. Com. J. (1886) 131, 133.

leave to sit again (*k*). On receiving the report, the speaker will ask the house to appoint a future day for the further consideration of the bill. But when it is wished in committee to make no further progress with a bill, it is moved "That the chairman do now leave the chair."

In this case no report is made to the house and the bill will disappear from the order book (*l*). The same will happen if it is found that there is not a quorum present in the committee, but the committee "have no power to adjourn," all their power being retained by the house. If the committee in equity the bill may be subsequently revived by a motion, without notice, to fix another day for the committee, and the proceedings are resumed at the point where they were previously interrupted (*o*).

In case a committee of the whole has reported progress a motion may be made immediately before fixing the committee for a future day, that the bill be referred to a select standing or other committee (*p*).

When the committee have fully considered the bill, the chairman reports, "The committee have considered the bill and made certain amendments thereto"; or, "the committee have considered the bill and directed me to report the same without amendment" (*q*). Rule 56 of the Commons provides:

"All amendments made in committee are reported by the chairman to the house, which shall receive the same forthwith. After report, the bill is open to debate and amendment before it is ordered for a third reading.

(*k*) Can. Com. J. (1877), 1. Sometimes the committee may receive leave to sit again that same day. *Ib.* (1878), 147.

(*l*) *Ib.* (1869), 106, 288; *Ib.* (1874), 326; *Ib.* (1882), 229; *Ib.* (1886), 126; Can. Hans. (1882), 615; Sen. J. (1880), 166.

(*m*) 115 E. Com. J. 449; 137 *Ib.* 197, 210.

(*n*) 176 E. Hans. (3), 99.

(*o*) Can. Com. J. (1883), 159 (Mr. Speaker Kirkpatrick's ruling with respect to Criminal Law Amendment Bill). Law of Evidence Amendment Bill, Sen. Deb. (1886), 565, 568.

(*p*) Revised Association Bill, May 6, 1901; Com. J., 250.

(*q*) Can. Com. J. (1877), 232.

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But when a bill is reported without amendment, it is forthwith ordered to be read a third time, at such time as may be appointed by the house."

Accordingly, when a bill is reported without amendment, the speaker puts the question, "When shall the bill be read a third time?"

The bill is either read immediately, or on a future day, as the house may decide. But when a bill is reported with amendments the speaker will propose the usual question, "When shall the bill, as amended in committee, be taken into consideration?" On this question the only regular amendment is as to the time when the consideration should be taken, and the discussion must be relevant thereto (*r*). Except in cases where the amendments are of an important character, and the house requires time to consider them (*s*), the bill is immediately considered (*t*). When the bill, as amended is taken into consideration, the amendments are twice read and agreed to (*u*). Up to very recently the amendments only were considered (*v*); but now the whole bill is open to consideration, which is in conformity with the Canadian rule, and with the practice of the English Commons, from which it is taken (*w*).

In the Senate it is usual to follow the English practice and amend the bill, when necessary, on consideration of the bill as amended in committee of the whole (*x*). As a fact the Canadian commons never amend the bill at this stage in accordance with the English practice. It is quite usual, however, for a member to move that the order for consider-

(*r*) 217 E. Hans. (3), 345-58. It is not regular to discuss a particular clause, 256 *Ib.* 3. Can. Hans. 28th March, 1898. Also Can. Com. J. (1901) p. 199.

(*s*) Maritime jurisdiction bill, 1877. Can. Com. J. (1878) 99.

(*t*) Can. Com. J. (1877), 224; *Ib.* (1878), 200; Sen. J. (1867-8), 225.

(*u*) Can. Com. J. (1877), 241.

(*v*) *Ib.* (1869), 253.

(*w*) See for English procedure, 136 E. Com. J. 116-118; for Canadian practice. Can. Com. J. (1885), 527, 529-554.

(*x*) Sen. J. (1867-8), 222; *Ib.* (1877), 143-4; *Ib.* (1878), 180, 259, &c.

ation be discharged and the bill committed for the purpose of amending the bill in any particular (y). The bill may be ordered to be reprinted as amended, or recommitted to a committee of the whole, or to a select committee, immediately after reception of the report (z) or, on the order of the day having been read for the consideration of the bill, as amended, it may be re-committed to a select special committee and all petitions on the subject may be so referred. Counsel may be heard before the committee. Bills may be re-committed a number of times to the committee of the whole or to a special committee (a). Bills may be re-committed with or without limitation; in the latter case the whole bill is open to reconsideration (b), but in the former case the committee can only consider the clauses or amendments or instructions referred to them (c).

It is open to a committee to accept or reject amendments sent to them, whether as instructions or not (d).

XIV. Bills not referred to Committee of the Whole.—

It has not been uncommon in the Canadian houses to pass bills without reference to a committee of the whole. This

(y) Can. Com. J. (1869), 249-252; *Ib.* (1877), 208; 83 E. Com. J. 533; 128 *Ib.* 375.

(z) 129 E. Com. J. 228, 244; Can. Com. J. (1875) 160; *Ib.* (1880), 124; *Ib.* (1882), 158; *Ib.* (1884), 108 (reprinting); *Ib.* (1877), 149 (select com.); *Ib.* (1878), 172 (com. of whole). *Ib.* (1885), 527 (com. of whole). Sometimes the amendments, when they are short, are printed in the votes for the convenience of the house when the bill has been amended by a special committee.

(a) Can. Com. J. (1875) Sup. Court bill. *Ib.* (1877). Pickering Har. Bill: 69 E. Com. J. 420, 444, 460; 128 *Ib.* 360; 129 E. Com. J. 345.

(b) 129 E. Com. J. 284, 308; Can. Com. J. (1878) 170; *Ib.* (1880) 82 *Ib.* 1885, 527, franchise bill. Also 129 E. Com. J. 364; 179 E. Han. (3), 826; Can. Hans. (1875), 908.

(c) Can. Com. J. (1877) 115, Criminal Procedure Bill *Ib.* (1878). Insurance Bill 128. *Ib.* (1888).

(d) In the case of the Temperance bill, April 13, 1885, the committee altered some amendments referred to them and negatived another. See Hans. 1045 *et seq.*

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has been almost invariably done in the case of the Appropriation or Supply Bill, and not unfrequently in the case of other bills, also founded on resolutions passed in the committee of the whole (*e*). Instances are also found in the Canadian journals of Commons bills, not based on resolutions, as well as of Senate bills, having been passed without reference to a committee of the whole (*f*)—being read at length in such cases instead of being sent to a committee of the whole (*g*). Supply and customs bills, on the other hand, have been considered only at times in committee, whenever it has been found necessary to amend them (*h*). This proceeding is at variance with the general practice of the Canadian commons, and is not sustained by the modern usage of the English house, where bills generally (except those reported from standing committees) are considered in committee of the whole (*i*). The correct usage of considering all bills in committee of the whole is now invariably followed.

In the Senate, public bills are also sometimes considered without reference to a committee of the whole (*j*), and invariably so in the case of the supply bill (*k*).

XV. Third Reading.—When the order of the day for the third reading has been read, it is competent to move that it be discharged and the bill withdrawn (*l*), or that it be re-committed (*m*). Formerly it was not unusual when

(*e*) Can. Com. J. (1867-8), 114; *Ib.* (1871), 117; (1877), 336, *Ib.* (1879) 374, &c.; Sen. J. (1878), 205, 282.

(*f*) Can. Com. J. (1867-8) 37 (speaker's act); 226 (interpretation of Statutes); *Ib.* (1873), insolvency bill, 314; *Ib.* (1873), 179, 216 (senate bills).

(*g*) This is an obsolete practice of no utility, and may be traced to the old practice of reading bills at length.

(*h*) Can. Com. J. (1867-8), 421; *Ib.* (1874), 207.

(*i*) 241 E. Hans. (3), 1238-9; 253 *Ib.* 316-7.

(*j*) Sen. J. (1867-8), 309.

(*k*) Lord's J. (1877), 393, 405, &c.

(*l*) Can. Com. J. (1874), 298; 112 E. Com. J. 380, &c.

(*m*) Can. Com. J. (1873), 311; 113 E. Com. J. 318, &c.

the motion for the third reading had been agreed to, to add clauses, or make other amendments (*n*); but of late years the house has followed the modern practice of the English commons, which is stated in a standing order: "No amendments, not being merely verbal, shall be made to any bill on the third reading" (*o*). Whenever it is proposed to make important amendments, it is usual to move to discharge the order for the third reading, and to go back into committee for the purpose (*p*). Or the house may be asked, at this as at any other stage of a bill, to divide on a resolution relative to the principle of the whole measure (*q*).

In the Senate, bills are constantly amended on the third reading without going back to committee (*r*). Previous to 1880-81 it was customary not to require a formal motion for the third reading—a practice which sometimes gave rise to misunderstandings when members wished to move amendments. Since then, the third reading is moved regularly as in the commons (*s*). The practice in moving amendments is still very variable. Amendments are now moved after the reading of the order, (*t*) or on the motion for the third reading—the proper time when there is a diversity of opinion as to the bill and amendments (*u*).

(*n*) Can. Com. J. (1867-8), 112, 180, 402.

(*o*) 21st July, 1856. Rules and orders (Palgrave) No. 261; 256 E. Hans. (3), 19, 20.

(*p*) Can. Com. J. (1877), 228. (*q*) 131, E. Com. J. 229.

(*r*) Sen. J. (1867-8) 124, 278; *Ib.* (1876), 115, 183, 212; *Ib.* (1878), 186; *Ib.* (1880), 247; *Ib.* (1882), 334; *Ib.* (1884), 225, 257; Same practice in Lords; 151 E. Hans. (3), 1967, 2077; 209, *Ib.* 764; 20th Feb. 1862: Lords J. (1877), 260.

(*s*) Sen. Hans. (1880-1), 401 (Mr. Speaker Macpherson's remarks).

(*t*) Sen. J. (1882), 136, 147, 187, 227, 257-9. This is generally the case with private bills and amendments to which there are no objections.

(*u*) Sen. J. (1880-81), 203-6; *Ib.* (1880), 247; *Ib.* (1882), 199, 327. *Ib.* (1890) 266, 267. See a case where a motion for the third reading of a bill in the Senate was actually superseded by an amendment, and it was necessary to move that it be replaced at once on the order paper. Northwest Territories bill, 1st May 1890; Sen. Deb. 679, 680.

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Or they are moved after the third reading has been agreed to (*v*). Sometimes it is found convenient to go back to committee (*w*).

XVI. Motion, that the Bill do Pass.—The next question put by the speaker is:

“That this bill do pass, and that the title be, etc.”

This motion generally passes *nem. con.* immediately after the third reading (*x*), though it is quite regular to defer the final passage until a future day, (*y*) or to move that the further consideration of the bill be postponed; or to propose other amendments against the principle of the measure with the view of preventing its passage (*z*). On the 5th of April, 1877, in the Canadian commons, a member proposed to send a bill respecting insolvency back to committee, but the speaker ruled that such an amendment was inadmissible at that stage—the third reading having been agreed to (*a*). Any amendment to the title may now be made (*b*).

XVII. Proceedings after Passage.—Amendments; Reasons for disagreeing to Amendments.—When a bill has passed all its stages in one house, it is reprinted in proper form and communicated to the other house by one of the clerks at the table, who takes it up and presents it at the bar to a clerk (*c*). Every bill has engrossed

(*v*) Sen. Hans. (1880), 281-2; Jour. 157, 160, 187; *Ib.* (1880-81), 188; *Ib.* (1882), 66. Sen. Deb. (1890), 675.

(*w*) Sen. J. (1869), 151; *Ib.* (1876), 165-6; *Ib.* (1890), 212, 247.

(*x*) Can. Com. J. (1877), 223, &c. In the English commons the putting of the question, after the third reading, “that the bill do now pass,” has of late years fallen into desuetude and is practically obsolete, Mr. Speaker Peel, 289 E. Hans. (3), 1583.

(*y*) May, 502. In the Senate, 1879, the motion for the passage of a bill was negatived, the speaker coming down from his chair to speak and vote against the measure. Hans. 439.

(*z*) 86 E. Com. J. 860; 106 *Ib.* 335; 117 *Ib.* 383.

(*a*) Can. Com. J. (1877), 220.

(*b*) 129 E. Com. J. 60, 64, 115, 153, &c.; Can. Com. J. (1874), 324; *Ib.* (1876), 217; *Ib.* (1879), 373. (*c*) Sen. R. 92, Com. R. 84.

on its back the order of the house, in two languages: "That the clerk do carry the bill to the senate (or commons) and desire their concurrence" (*d*). If the bill is passed by the Senate, without any amendment, a written message is returned to that effect (*e*). If the bill is amended, a message is sent desiring the concurrence of the other house to the amendments, which are always attached to the copy of the bill (*f*). If the bill fail in either house, no message is sent back on the subject and the fate of the measure can only be decided by reference to the records of the house, to which it was sent for concurrence (*g*).

Rule 30 of the commons provides: "Amendments made by the Senate to bills other than public bills originating in this house shall be placed on the orders of the day next after bills ordered by the house for reference to a committee of the whole house." Public bills, returned to the house from the Senate with amendments, are considered on Mondays after private bills under rules 25 and 29.

The practice in both houses with respect to amendments is the same.

When the amendments are of an unimportant character, or there is no objection to their passage, they are generally read twice and agreed to forthwith (*g*); but if they are important their consideration is deferred until a future day (*h*). The speaker of the English commons lays down the English practice as follows: "In cases where expedition is necessary, it has been a practice of the house occasionally—especially late in the session—to order that these amendments shall be considered forthwith. But on such occasions the member in charge of the bill is bound to satisfy the house that expedition is necessary." (*i*).

(*d*) Sen. J. (1878), 87; Can. Com. J. (1878), 202, 265, &c.

(*e*) Sen. J. (1878), 216. Com. J. 224.

(*f*) Sen. J. (1878), 277; Com. J. (1877), 131, 322.

(*g*) Sen. J. (1878) 277-9.

(*h*) Sen. J. (1869), 170; Com. J. (1877) 183; *Ib.* (1878), 261, 291.

(*i*) 225 E. Hans. (3), 650. See also 110 E. Com. J. 458, 464; 135 E. Hans. (3), 1411. Mr. Sp. Kirkpatrick, Can. Hans. (1886), 1327.

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If amendments from the upper chamber are under consideration, and a count-out occurs, they can be taken up on a subsequent day at a point where the proceedings were for the moment interrupted (*j*).

If one house agree to the amendments made in a bill by the other house, a message is returned to that effect, and the bill is consequently ready to be submitted to the governor-general (*k*). In case the amendments are objected to, a member may propose: That the amendments be considered that day "three" or "six" months, (*l*) and, when such a motion is agreed to, the bill is practically defeated for that session. But under ordinary circumstances, when there is a desire to pass the bill if possible, a member will move that the amendments be "disagreed to" for certain "reasons," which are communicated by message to the other house where the amendments were made. These reasons are moved after the second reading of the amendments.

If the Senate or Commons do not adhere to their amendments, on the reason being communicated to them, they return a message that they "do not insist" &c., (*m*) and no further action need be taken on the subject. But if they "Insist on their amendment," (*n*) then the other house will be called upon to consider whether it will continue to disagree or waive its objection in order to save the bill. In the latter case, the house which takes strong ground against an amendment, will agree to a motion that it "does not insist on its disagreement, but concurs in the amendments made by the other house; and consequently the measure is saved (*o*). In 1878, the Senate having insisted on

(*j*) 91 E. Com. J. 382, 388.

(*k*) Can. Com. J. (1876), 212; *Ib.* (1878), 260; Sen. J. (1878), 177.

(*l*) Sen. J. (1876), 190; Can. Com. J. (1877); 350, Albert R R bill. 113 E. Com. J. 349.

(*m*) Sen. J. (1878) 232, 289, 290, *Ib.* (1880) 277, *Ib.* (1890) 257 Can. Com. J. (1877) 328 *Ib.* (1882) 512-3. *Ib.* (1890) 469.

(*n*) Sen. J. (1878), 289. In such a case the reasons are also given *Ib.* 275-6.

(*o*) Sen. J. (1878), 295; *Ib.* (1882), 335, 341, 342; Can. Com. J. (1887), 328, *Ib.* (1878), 297-8; *Ib.* (1882), 515; 113 E. Com. J. 332

their amendments to two commons bills respecting the supreme and exchequer court and the Pembina branch of the Pacific Railway, the government allowed them to drop; and the same was done in 1883 in the case of a bill further to amend the Fisheries Act (*p*). The practice of resorting to a conference, in order to bring about an agreement between the two houses, had become almost obsolete, but was revived during the session of 1903 in connection with the Railway Bill of that year (*q*).

When amendments made by one house to a bill from the other house are received back, and are under consideration, it is not regular to discuss the bill itself, or its principle, or the policy of the government thereon; but the debate must be confined to the amendments (*r*). Nor on a motion for disagreeing to an amendment of this kind, is it regular to enter into a general discussion of the principle of the bill, but all debate should be confined to the amendment and the reason for the same (*s*).

Neither house can regularly, at this stage, insert any new provision, or amend, or omit any part of a bill it has itself passed and sent up to the other house for concurrence. (*t*). But it is perfectly in order to propose any amendment made by the one house to a bill of the other house, provided it is "consequential" in its nature, that is to say, consequent upon, or relevant to the amendment under consideration (*u*).

(*p*) Sen. J. (1878), 277, 294; Com. J. 284, 298; Com. Hans. 2550, 2553; Sen. J. (1883), 288; Com. J. 436.

(*q*) C. R. 85, Sen. R. 95. Previous to this there had been no conference between the two houses since confederation.

(*r*) 231 E. Hans. (3), 1220; 241 *Ib.* 846, 1059; Can. hans. (1880), 1985.

(*s*) Can. Hans. (1877), 1879, Albert R.R. bill; *Ib.* (1878), 2457, Canada Pacific R. R. bill.

(*t*) 9 E. Com. J. 547; 91 *Ib.* 592; 114 *Ib.* 375; 121 *Ib.* 472; 135 E. Hans. (3) 828; Can. Com. J. 1875, March 23, marine electric telegraphs bill, *Ib.* 1878, Apr. 5, Canada Southern R.R. bill.

(*u*) May, 506; 193 E. Hans. (3) 1920; 129 E. Com. J. 299; 115 *Ib.* 494; 120 *Ib.* 197 (an amendment in body of bill, consequently upon a Lord's amendment); 136 *Ib.* 445. Sen. J. (1877), 228; *Ib.* (1882),

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In 1879, a bill respecting petroleum was sent up to the Senate for concurrence. It had been amended in the Senate and sent back to the Commons, when it was discovered that a very important matter had been left out of the bill. As it was impossible to alter the bill at that stage, since the requisite amendment was not consequent on the Senate amendment, it was necessary to introduce a short bill embodying the provision in question (*v*).

The house, whose amendments are disagreed to, though not at liberty to propose new amendments to a part of the bill to which both houses have agreed, as above mentioned — may nevertheless, propose amendments to a part of it to which the amending house has not agreed, and is consequently still under its consideration (*w*).

Sometimes bills are returned from the Senate with amendments which appear to infringe on the privileges of the Commons. In such cases the bills are sent back with reasons for disagreeing to the amendments; (*x*) or if the amendments are of an unimportant character and the house is anxious to avoid all delay, they are at once agreed to with a special entry in the journals of the house, so that the agreement may not be drawn into a precedent (*y*). If an amendment made by the Senate alters a contract made with the government or otherwise affects the interests of

328; Can. Com. J. (1869), 281; *Ib.* (1877), 201, 269; *Ib.* (1879), 415, *Ib.* (1882), 508, 509, 513, 514, 515; *Ib.* (1883), 323; *Ib.* (1885), 458, *Ib.* (1886), 327; *Ib.* (1889), 263; *Ib.* (1890), 432.

(*v*) Can. Com. J. (1879) 422. The error was pointed out in the Senate, when the original bill had passed its final stage, but it was too late then to rectify it. Sen. Deb. (1879), 609. See Pirates Head Money Bill, 1850; 105 E. Com. J., 471; May, 508; Teeswater and Kincardine Bill, Can. Com. J. (1887), 926.

(*w*) 48 Lords' J. 907; 67 E. Com. J. 468, 479; Cushing, p. 871 May, 508. 113 Lord J. 419-420. 125 E. Com. J. 346. 136 *Ib.* 445, 446. Can. Com. J. (1885), Canada Temperance Act p. 458.

(*x*) Can. Com. J. (1873), 430; Sen. J. 330, timber duties at Quebec.

(*y*) Can. Com. J. (1874), 336.

the Crown, the formal assent should be given to it before it finally passes the commons (z).

Bills originating in one house are brought down to the other house with a message, "That the Senate (or Commons) have passed a bill intituled, etc., to which they desire the concurrence of the house"(a). It is usual for the member who has charge of the bill to move immediately that it be read a first time, and placed for its second reading on the orders (b). The motion for the first reading will be decided without amendment or debate, in accordance with rule 51 of the Commons. The moment a bill comes into possession of either house it is subject to all its rules with respect to bills.

XVIII. Revival of a Bill Temporarily Superseded.—Rule 40 of the house which requires two days' notice of a motion says distinctly that an exception shall be made of bills "after their introduction." A notice for leave to introduce a bill does not go on the order paper among the ordinary notices, but is placed after "motions" on the daily routine of business (c) for the information of the house. During the progress of routine business—the members propose their motion for leave to introduce bills as they are called from the chair. The practice in the Canadian house in reference to a bill temporarily superseded, has been to move that it be read a second and third time, or committed, (as the case may be), on a future day, as soon as motions have been called in their due order (d). Such a motion prevents

(z) Northern & Pacific Junction R.R. Bill, Can. Hans. (1886) 1605.

(a) Sen. J. (1878), 231; Can. Com. J. (1878) 171; 129 E. Con. J. 281.

(b) 132, E. Com. J. 110.

(c) This practice was commenced in the session of 1880, notices of bills having previously appeared only in the votes. New H. C. Rule 25.

(d) Can. Speak. D. 132. Interest bill, 1870; Insolvency bill, April 3, 1876; Bill for relief of Robert Campbell, April 24, and 26, 1877, Can. Hans., 1837. Albert railway company bill, April 27, 1877.

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surprise and is equivalent to a notice. The same subject has also been considered in the English house, and the same conclusion arrived at in reference to a bill which had disappeared from the order paper, on account of a committee having risen without reporting.

On another occasion it was decided that, if a member wishes to alter a bill, his course is to ask leave of the house to withdraw the bill and present another instead thereof. Under such circumstances no notice on the part of the member in charge is necessary in order to raise the question whether he should, or should not, be permitted to present another bill (*e*).

Again, when the motion for the second reading of a bill has been negatived, it has been immediately followed by another for reading it that day three or six months (*f*). If a bill becomes a dropped order by the counting out of the house it is competent for a member to revive it on a subsequent day without notice (*g*).

In the Senate on one occasion, a private bill was referred to the supreme court for an opinion as to whether it came within the jurisdiction of the parliament of Canada, and as this was done by an amendment to the motion for the third reading, the bill disappeared from the order paper. Consequently when the judges had reported favourably, it became necessary to restore the bill to the paper, which was done without notice (*h*).

Criminal law amendment bill, 30th March, 1883 (Mr. Speaker Kirkpatrick's decision). Criminal Law Evidence Bill, *Can. Com. J.* (1884), 196, 203, 230; Fraud in Contracts Bill, *Ib.* 230, 232. Ash Divorce Bill, *Ib.* (1877), 330, 338; Cruelty to Animals Bill, *Ib.* (1889), 109, 113.

(*e*) 215 *E. Hans.* (3) 303. Also 214 *Ib.* 194.

(*f*) 107 *E. Com. J.* 267; 110 *Ib.* 199. The same course may be followed in case it is attempted to restore a bill lost in committee of the whole; *Sen. Deb.* (1886), 568. This is done to prevent a revival of the bill during the same session.

(*g*) 262 *E. Hans.* (3), 1716; Blackmore's *Sp. D.* (1882), 34.

(*h*) Canada Provident Association bill, *Sen. J.* (1882) 273-4, 316, *Deb.* 698. In the case of the Northwest Territories Bill, 1890, it was necessary to move immediately that the bill be restored to the orders—

XIX. Bill Introduced by Mistake.—If a bill should be introduced by mistake, and the order made for the second reading, it will be necessary to move for the discharge of the order and the withdrawal of the bill. In the session of 1878, the minister of marine had two resolutions respecting merchants' shipping on the paper; the house agreed to one, and then he introduced a bill, which was ordered to be read a second time on a future day. It transpired, however, on the following day that he had inadvertently introduced a bill respecting deck-loads which was intended to be based on the second resolution, not then adopted by the house. He was thereupon allowed to withdraw the bill and introduce the one properly consequent upon the passage of the first resolution (*i*).

XX. Expedition in Passage of Bills.—It is the usual and correct practice to allow a day or two to intervene between the different stages of bills; but during the latter part of the session, when the house is anxious to dispose of the business before it, many bills are permitted to pass with unusual speed. The rules of the Senate provide:

63. "No bill shall be read twice on the same day. No committee of the whole house shall proceed on any bill the same day the bill is read a second time; and no bill shall be read the third time the same day that the bill is reported from the committee (*j*). And the practice in the Senate is that whenever it is desired to read a bill more

a motion for the third reading having been suspended by an amendment to the same, and it being the general desire to proceed at once with the measure. Jour. 231-232; Deb., 1st May. See Mr. Speaker Allan's decision on the point of order.

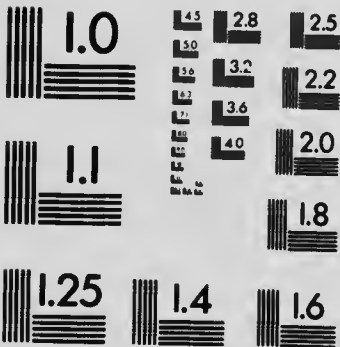
(*i*) March 26 and 27, 1878. Can. Hansard (1878), 80t. Can. Com. J. (1880), 59-63.

(*j*) In the session of 1882, a motion was passed in the Senate to the effect that government bills should be deemed "urgent" in accordance with the 42nd rule. Sen. Hans. 698-700, 705; Jour. 3t8. Notice was given of this motion, M. of P., 504; 261 E. Hans (3) 670.



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than once in the same day, to move a suspension of the rule (*k*).

The Senate generally orders a bill for committee of the whole on a future day (*l*). Frequently towards the close of a session it has gone at once into committee thereon when no objection is made (*m*).

Rule 52 of the Commons provides: "Every bill shall receive three several readings on different days, previously to being passed. On urgent or extraordinary occasions, a bill may be read twice or thrice, or advanced two or more stages in one day."

When the question has been raised in the Commons it has been generally decided that it is for the house to declare whether there is such urgency as to require the rapid passage of measure (*n*); and whenever the sense of the house is to take more than one stage on the same day, the speaker has permitted it to be done. If a bill is amended in committee, it will not be considered immediately and read a third time on the same day except under exceptional circumstances. Towards the close of a session, however, bills which have not been amended in committee are frequently allowed to be read a third time forthwith (*o*).

(*k*) Sen. J. (1867-8), 293, 294, 299, 309, 312, &c.; *Ib.* 1878, (285-6), *Ib.* (1880), 274, 275; *Ib.* (1882), 56; *Ib.* (1890), 283. Sen. Deb. (1889), 721. Amendments made in a select committee to a bill may also be concurred in forthwith; Sen. Deb. (1884), 325.

(*l*) Sen. J. (1889), 226, 229; *Ib.* (1890), 229, 245.

(*m*) *Ib.* (1869), 226, 230; *Ib.* (1878) 286; *Ib.* (1890), 262, 264, 281 etc. In the Lords S.O. of the 25-28 June, 1715; 20 May, 1801; 3 July, 1848, No. 39.

(*n*) Can. Speak. D. Nos. 40, 139, 140; also Can. Hans. (1878), 2006-7, 2157; also 256 E. Hans. (3), 768. Speaker Brand said in 1880: "It is occasionally the custom to pass bills through their different stages at one and the same sitting. That course, however, is never taken except in cases of extreme urgency, and with the general assent of the house." 254 E. Hans. (3) 609-10, 646.

(*o*) R. 47 leaves it within the authority of the house to order the 3rd R. immediately in such a case. "When a bill is reported without amendment, it is forthwith ordered to be read at such a time as may be appointed by the house." Can. Hans. 1879, 1575, marine electric telegraphs bill.

"It was at the option of any hon. member," said Mr. Speaker Denison on one occasion, "if he thought it inconvenient or improper, to interfere; but if the body of the house was satisfied that there was no objection, then it had not been unfrequent that a bill, if it has passed through committee without amendment or objection, should be read a third time and passed on the same day (*p*). In fact, in England, as in this country, when urgency can be shown, the house will allow a bill to pass through several stages (*q*) except money bills) on one day; but such occasions seldom arise, and the wise practice is to give full consideration to every measure.

XXI. Bills, once introduced, not altered except by authority of the House.—While a bill is in progress in the Commons, no alteration whatever can be made in its provisions except by the authority of the house. If it should be found that a bill has been materially altered since its introduction it would have to be withdrawn (*s*). A clerical alteration, however, is admissible (*t*). If it be necessary to make any changes in a bill before a second reading, the member in charge of it will ask leave to "withdraw the bill and present another instead thereof" (*u*). In the Canadian house in 1874, the order for the second reading of a bill relative to usury was discharged, and the bill withdrawn. On the following day, the member interested in the bill was given leave to bring in another on the

(*p*) E. Hans. (3) 2107. See also Mr. Speaker Macpherson's decision; Sen. Deb. (1880), 216.

(*q*) May says, "there are no orders to be found in the journals which forbid the passing of bills in this manner," p. 517. Also 244 E. Hans. (3) 1491-2. Can. Hans. (1886), 1714, a case in which urgency was pressed.

(*r*) No instance of this course being taken in England with regard to money bills, 239 E. Hans. (3) 1419.

(*s*) 215 E. Hans. (3) 300.

(*t*) 118 *Ib.* 969; 237 *Ib.* 362-3.

(*u*) 111 E. Com. J. 211, 213; 1117 *Ib.* 202; 132 *Ib.* 84, 243.

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same subject, but with an amended title (*v*). In the session of 1882, the attention of the speaker was directed to the fact that the representation bill had been materially altered since its introduction, and that it was not, in consequence of such alterations, the same bill that had been presented a few days before to the house. Mr. Speaker Blanchet at once decided that the bill could not be allowed to proceed, and that it was necessary "to follow strictly thereafter the practice of the English parliament and not permit any changes except mere clerical alterations, in a bill when once regularly before the house." The bill was accordingly withdrawn and another immediately presented (*w*). No notice need be given in such cases, as the original order of leave for the introduction is still operative (*x*).

XXII. Mode of correcting mistakes during progress of a Bill.—Sometimes mistakes are discovered in bills after they have been sent up to the other house. For instance, bills may be sent without having passed all their stages, or without certain amendments that have been made therein. When a bill has been sent up by mistake to the Lords without certain amendments, a message has been transmitted to that house asking them to make the necessary amendments, either by adding the requisite provisions, or by expunging certain clauses or parts of clauses (*y*). When a bill has been sent up without having been read a third time, a message has been received for its return; and in such a case, if the house agree to the request, the bill will be discharged from the orders (*z*). On another occasion, when several amendments made by the Commons were not in the bill sent to the Lords, the former have

(*v*) Can. Com. J. (1874), 123, 126.

(*w*) *Ib.* (1882), 406.

(*x*) 215 E. Hans. (3), 307.

(*y*) 78 E. Com. J. 317; 91 *Ib.* 639; 92 *Ib.* 609, 646; 100 *Ib.* 804.

(*z*) 75 E. Com. J. 447; 80 *Ib.* 512; 92 *Ib.* 572.

transmitted a correct copy of the bill (*a*). In the session of 1875, a bill "to incorporate the Royal Mutual Life Assurance Company of Canada" was amended in the Senate and sent back to the Commons, where the amendments were concurred in. Subsequently the House of Commons was informed by message that an amendment to the title had been inadvertently left out in the copy sent back to the Commons, and requesting that leave be given to the proper officer of the Senate to supply the omission.

It was accordingly resolved by the house to give the necessary leave, and a message was returned to that effect. Then the omitted amendment was considered and regularly agreed to (*b*). This is the ordinary practice now in the case of an amendment being omitted in any bill (*c*). But when a bill has been sent to the other house without having passed through all the necessary stages, a message must be sent for the return of the bill; and when it has been brought back, it will be taken up at its proper stage and passed in due form—the standing orders being suspended when necessary (*d*). When a bill has passed all its stages, and it is discovered that it should have previously received royal consent, it will be necessary to strike out the entry,

(*a*) 101 *Ib.* 1277. In the old Canadian legislature the practice was generally to ask for a return of a bill, when it had been sent up without amendments or was otherwise inaccurate. *Leg. Ass. J.* (1866), 268, 274; 379; 380. When a bill has been sent down by mistake, a message is sent for its return, and a new one then brought down. *Leg. Ass. J.* (1854-5), 1014. In another session, amendments were agreed to in error, and the bill had to be brought back; *Ib.* (1865, 2nd sess.) 266, 269.

(*b*) *Can. Com. J.* (1875), 353-4; *Sen. J.* 258, 267.

(*c*) 103 *E. Com. J.* 736; 112 *Ib.* 420.

(*d*) 119 *Ib.* 370, 374 (Lords bill). In 1877, when an amendment had been made by a select committee of the Commons, but not agreed to by the house—not having been reported by the committee—the persons interested in the bill took steps to have the amendment made in the Senate forthwith; this plan saved time. Kincardine harbour bill. Otherwise it would have been necessary to ask for the return of the bill and commence proceedings *de novo*.

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and give an opportunity to the member in charge of the bill to obtain the necessary assent (*e*).

XXIII. Accidental Loss of a Bill during a Session.—

If a bill presented to the house should be accidentally lost during its progress, the house, on being informed by a member that it is missing, will permit another bill to be presented; but the proceedings must begin *de novo* (*f*). In the session of 1849 a large number of bills were destroyed by the burning of the parliament house at Montreal; and a committee was appointed to consider what was to be done under the circumstances. The committee reported: "Your committee consider that the substantial point to be ascertained with a view to the public interest is the actual stage in which each bill was under the consideration of the house at the time it was lost. When that is once ascertained to the satisfaction of the house, your committee can see no necessity upon any general principle to treat them as in any other stage of parliamentary progress towards completion than that in which the calamity by which they were overtaken found them" (*g*).

By reference to the proceedings of the legislature it will be seen that in most cases a new bill was presented and passed immediately through all its stages. For instance, a bill in reference to marriages had been passed and returned by the legislative council with amendments previous to the destruction of the bill by fire. A message was afterwards sent to the council informing them that the bill had been destroyed; a new bill was then sent up and passed by both houses without delay (*h*).

(*e*) 107 E. Com. J. 157.

(*f*) 2 Hatsell, 267; Bramwell, 28; 63 E. Com. J. Jesuits' Bark bill.

(*g*) Leg. Ass. J. (1849). App. s.s.s.s. (Mr. Baldwin was chairman.)

(*h*) Leg. Ass. J. (1849), 287, 298. Also Montreal Merchants' Exchange and Reading-room bill, 285, 301; Quebec St. George's Society, 223, 302; here the bill had finally passed both houses, and a new bill was ordered and rules suspended; Roman Catholic Archbishop of Quebec bill, 243, 287, 309, 313.

XXIV. A bill, once rejected, not to be again offered in the same session.—Exceptions to rule.—It has been shown that it is a well established rule of parliamentary practice that no question or motion can regularly be offered upon which the judgment of the house has been expressed during the current session. But while this rule is recognized as a general one, it is limited in its application as respects bills. In reference to amendments to bills, Hatsell lays down the uniform practice which still obtains in the Canadian and English Parliaments: "That in every stage of a bill, every part of the bill is open to amendment, either for insertion or omission, whether the same amendment has been, in a former stage, accepted or rejected" (*i*). But if an amendment has been rejected in a committee of the whole on a bill, it cannot be proposed again during the pendency of the bill in the committee (*j*). The following illustrations of the practice with reference to bills are given by the English authorities, and are sufficient to show how far the application of the general rule is carried in such cases:

Where the house has merely come to a vote, refusing leave for the introduction of a bill, and a motion is afterwards made, which is objected to on the ground of its identity with the former, the question must be determined by comparing together the two propositions as they stand. Thus, where a motion was made for leave to bring in a bill "to relieve from the payment of church rates that portion of Her Majesty's subjects who conscientiously dissent from the established church," which was decided in the negative, a motion subsequently made "to relieve dissenters from the established church from payment of church rates," was considered to be within the rule, and consequently inadmissible, on the ground that the two propositions, though different in form and words, were substantially the same (*k*).

(*i*) 2 Hatsell, 135 n.

(*j*) May, 306; 211 E. Hans. (3), 137.

(*k*) 1 Hans. (3) 553.

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If the second or third reading of a bill sent from one house to the other, be deferred for three or six months, or if it be rejected, it cannot be regularly revived in the same session (*l*). Again when a bill has finally passed, it cannot be introduced again in the house where it was presented (*m*). But there are ways of evading this rule, when the necessity arises. For instance, if a bill begun in one house be rejected in the other, "a new bill of the same matter may be drawn and commenced again in that house whereunto it was sent." Or, if a bill "being begun in either of the houses, and committed, it be thought by the committee that the matter may better proceed by a new bill, it is likewise holden agreeable to order, in such case, to draw a new bill, and to bring it unto the house." (*n*) Or, if a bill be altered in any material point, both in the body and title, it may be received a second time (*o*). Or, when a bill has been rejected in the Lords on account of its multifarious provisions, the House of Commons has given leave for another bill to be brought in during the same session for some of the matters contained in the former bill, others being omitted; but the house has in such cases directed an entry to be made in the journals of the reasons which induced the house to pursue this course (*p*). And when part of a bill has been omitted by the Lords, and the Commons have agreed to such amendment, the part so

(*l*) May, 300; Bramwell, 27; Hakewell, s. 5; June 22, 1821, forgery punishment; Jan. 9, 1807, *Ibid*.

(*m*) May, 306. The Senate have a special rule on this point, No. 65: "When a bill, originating in the Senate, has passed through its final stage therein, no new bill for the same object can be afterwards originated in the Senate during the same session." This rule came up for discussion in the Senate in 1883, when a bill in amendment of a Senate bill passed that session was introduced. It was considered advisable to suspend the rule; but the correct course would have been to have presented the bill in the Commons. Sen. Deb. 612-13.

(*n*) Lords J. 17th of May, 1606; 2 Hatsell, 125; Bramwell, 27; 151 E. Hans. (3), 699.

(*o*) Bramwell, 27; Hakewell, sec. 5.

(*p*) Bramwell, 27; E. Com. J., 9th of Jan., 1807.

omitted, has been renewed, in the same session, in the form of a separate bill (*q*). Again when the Lords have inserted clauses in a Commons bill, which appear to infringe upon the privileges of the latter, the bill has been dropped; and in such a case, the Commons have allowed the introduction of another bill, containing the amendments to which they have been willing to agree; and the bill has been ultimately agreed to by both houses (*r*). In case the bill is brought up with amendments to which the Commons cannot agree consistently with a regard to their own privileges, they may lay the bill aside and bring in another (*s*).

But if a bill has been rejected during the session, and another bill is still before the house containing provisions similar to those in the former bill, it will be necessary for the house to strike out those provisions which have been already negatived (*t*).

The foregoing examples illustrate cases where there is a public necessity for passing a bill; and it will be seen that the houses, in the means they took, did not practically violate the general rule, the wisdom of which is obvious. The rule has always been strictly enforced in the Canadian Commons; notably in the case of two interest bills in the session of 1870 (*u*).

In the session of 1877, Mr. Barthe introduced a bill to repeal the insolvency bill, which was ordered for a second reading on a future day. Some days later Mr. Palmer introduced a bill with the same title, and to the same purport. The question was raised, could the latter bill be regularly presented, since there was already one on the

(*q*) May, 306, drainage (Ireland) bill; drainage and improvement of land (Ireland) bill, 1863.

(*r*) May, 306-7.

(*s*) 91 E. Com. J. 777, 810; revenue charges bill, 1854.

(*t*) 203 E. Hans. (3), 563.

(*u*) Can. Com. J. (1870), 314; one bill was postponed for three months, and the speaker refused to allow the introduction of another. Also Can. Sp. D. Nos. 51, 111; 123 E. Com. J. 132, 145.

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same subject before the house? By reference to the English authorities it was found that a similar question came up in the House of Lords during 1854, and Lord Lyndhurst stated the rule as follows: "Whilst a bill is still pending, and until it is completely disposed of, there is nothing whatever to prevent another bill for the same object being introduced." Lord Lyndhurst also quoted a memorandum from an eminent officer of the House of Commons (Sir T. E. May) to this effect—"No objection can be raised to the introduction of a bill into the House of Commons on the ground of there being a similar bill already before the house."

"It is the rejection and not the pendency of a bill that creates a difficulty as to the ulterior proceedings. The rule applies to both houses" (*v*). In the case of the insolvency bills just referred to, Mr. Barthe's was postponed for three months, and when the order for the second reading of the other came up, Mr. Palmer moved that it be discharged. Many cases of bills to the same effect having been introduced in the same session, will be found in the Canadian journals (*w*).

It is always regular for a member to introduce a second bill upon the same subject, with the intention of moving the discharge of the order on the first bill, when leave has been given for the introduction of the second (*x*).

XXV. Royal Assent to Bills.—The bills passed by both houses remain in the possession of the clerk of the Parliaments or Clerk of the Senate as he is commonly called (with the exception of the supply bill which is always returned to the Commons), until his Excellency the Governor-General comes down to give the royal assent. When

(*v*) 151 E. Hans. (3), 699; 204 *Ib.* 2046. Mr. Speaker Kirkpatrick on supreme court bill, Can. Hans. (1885), 270; Cushing, sec. 2321.

(*w*) Leg. Ass. J., March 29, 1849; increase of representation bill, *Colonist* debates; interest bill, 1870.

(*x*) 261 E. Hans. (3), 670.

his Excellency has taken his seat upon the throne and the Commons are present at the bar, the clerk of the Crown in Chancery reads *seriatim* the titles of the bills which are to receive assent. Then the clerk of the parliaments having made his obeisance to the governor-general gives the royal assent in the prescribed formula (y).

As a rule all the bills receive the royal assent at the end of the session, when the governor-general comes down to prorogue parliament. In 1867-8, however, it was found necessary to adjourn from December to March, and his Excellency consequently came down on the day of adjournment and assented to all the bills passed up to that time (z). Sometimes in a great public emergency it is necessary to give immediate effect to an act. This was done in the session of 1870—the year of the Fenian difficulties—when a bill “to authorise the apprehension and detention of persons suspected of committing acts of hostility or conspiring against her Majesty’s person and government” was passed through all its stages and received the royal assent on the same day (a). In 1873, 1878, 1880, 1880-1, 1882, 1884, 1885, 1888, 1890, and 1891, a number of bills were assented to in the course of the session. On such occasions, when the House of Commons returns from the Senate chamber, the speaker (who has received a list from the clerk of the Senate) will report the acts of the house, so that the titles may appear on the journals (b).

It is an old constitutional rule that the royal assent is due and should be given to all bills which have passed all their stages in the two houses, and are ready for that assent, when the queen or her representative comes down for that express purpose. For some unexplained cause, this rule was not observed in the session of 1890, when the

(y) Sen. J. (1878), 296-7; Com. J. 299-310, &c.

(z) Can. Com. J. (1867-8), 134.

(a) *Ib.* (1870), 186, 188.

(b) *Ib.* (1878), 177; 131 E. Com. J. 103, &c.

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assent was given to a number of bills in the course of the session (*c*).

When any bills have been reserved, the titles have also been read by the clerk of the crown in chancery, and the clerk of the Parliament, has announced the fact in these words in the two languages:

"His Excellency the Governor-General, doth reserve these bills for the signification of her Majesty's pleasure thereon."

Sections 55, 56 and 57 in the British North America Act, 1867, refer to the royal assent and to reserved bills.

The same sections are also found in the Union Act of 1840, and the Constitutional Act, 1791 (*d*). The governor-general's instructions, previous to 1878, directed him not to assent in her Majesty's name to any bill within certain specified classes, eight in number (*e*).

In accordance with these instructions, the governor-general, between 1867 and 1878 inclusive, reserved twenty-one bills of the parliament of Canada (*f*). Of these, eleven related to divorce, and received the assent of the Queen in council with little or no delay (*g*).

Among the other bills was one to reduce the salary of the governor-general, to which her Majesty's advisers refused to give their approval. In 1869, the dominion parliament passed a bill, re-enacting the clause in the imperial statute of 1867, fixing the salary at £10,000 sterling; and this act subsequently became law though it too was

(*c*) See remarks of Mr. Blake, Can. Hans. (1890), 2594, 2595; May, 592; 2 Hatsell, 339. No action was taken on seventeen bills.

(*d*) 3 & 4 Vict., c. 35, ss. 37, 38, 39; 31 Geo. III., c. 31, ss. 30, 31, 32. See also 14 Geo. III., c. 83, s. 14, as to his Majesty's approval of ordinances passed by the legislative council of those days.

(*e*) Sen. J. (1873), 74; Sess. P. 1867-8, No. 22.

(*f*) See Sen. and Com. J. of 1867-8, 1869, 1872, 1873, 1874, 1875, 1877 and 1878.

(*g*) See the case of Harris divorce bill disallowed in 1845, because the parties were not at the time domiciled in Canada—Mr Harris being an officer in the army—and the courts of law would not on that account consider such an act as a valid divorce. Can. Leg. Ass. J. (1846), 29.

reserved, in accordance with the royal instructions (*h*). In 1872, a bill respecting copyrights was reserved and never received the approval of the imperial government, because it conflicted with imperial legislation (*i*). Since 1878, however, the royal instructions have been materially amended. These changes were the results of the action of the Canadian Government in 1876 and 1877 when the Minister of Justice (W. Blake) made various suggestions which were practically adopted by the imperial ministry. In his memorandum on the subject he directed attention to the fact that "it would be better and more conformable to the spirit of the constitution of Canada, as actually framed, that the legislation should be completed on the advice and responsibility of Her Majesty's privy council for Canada; and that as a protection to imperial interests, the reserved power of disallowance of such completed legislation is sufficient for all purposes." The colonial secretary of state mentioned that the clause in the former royal instructions, requiring that certain classes of bills should be reserved for her Majesty's approval, "was omitted from the revised instructions, because her Majesty's government thought it undesirable that they should contain anything which could be interpreted as limiting or defining the legislative powers conferred in 1867 on the Dominion Parliament" (*j*).

It is now understood that the reserved power of disallowance which her Majesty in council possesses under the law, is sufficient for all possible purposes (*k*). This power of disallowance can be exercised, not merely in cases where imperial interests are effected, but even in matters of a purely local character, when it is shown that the Act is beyond the jurisdiction of the dominion parliament.

(*h*) 32-33 Vict., c. 74; Can. Sess. P. 1869, No. 73. See proclamation in the *Canada Gazette*, Oct. 16, 1869, and Can. Stat. 1870.

(*i*) Can. Sess. Papers. (1875) No. 28.

(*j*) *Ib.* (1877) No. 13 *Ib.* (1880) No. 51. (Not printed).

(*k*) Colonial regulations No. 49 (Col. Off. List. 1890.) 33 Vict. ch. 14 s. 3.

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Acts are sometimes passed with suspending clauses; that is, although assented to by the governor-general, they do not come into operation or take effect in the dominion until they shall have been specially confirmed by her Majesty in council. In this way, bills are practically reserved, since it is only by order in council that they become law. When approved and confirmed by the Crown, a proclamation will appear in due form in the *Gazette*, to bring the act into force (*k*). Hatsell quotes Sir Edward Coke as saying in 1621: "When bills have passed both houses, the king's royal assent is not to be given, but either by commission or in person, in the *presence of both houses*." In his comments on this point, Hatsell shows that "the law of this realm is, and always hath been" to this effect (*l*). The British North America Act like the previous Imperial statutes providing constitution for Canada, is silent on the question; but it has always been the practice to follow the ancient usage of the parent state in this respect, and to give the assent of the sovereign in the upper chamber in the presence of both houses. In 1879, a dead-lock occurred between the two house in the province of Quebec, and the assembly adjourned for two months, but the council remained in session for some time later. The lieutenant-governor came down to the council chamber a few days after the adjournment of the assembly, and gave the royal assent to the bills passed up to that time. The speaker, and officers of the house, including the sergeant-at-arms with the mace, were present outside the bar. Subsequently, when the assembly met, it was proposed to pass a bill to remove doubts as to the legality of the assent, but the session came to a premature close on account of the defeat of the ministry, before any measure could become law. When the lieutenant-governor prorogued the legislature, he gave the assent again to all the bills in the pres-

(l) 2 Hatsell, 338.

ence of the two houses—his previous proceedings being deemed insufficient (*m*).

Should a bill receive the royal assent without having passed through all its stages in the two houses, then a serious question as to the validity of the statute may arise. Cases of this nature have occurred in the parliamentary practice of England and Canada. In 1829, the Lords amended a Commons bill relating to the employment of children in factories, but did not send it back that the Commons might consider it as amended. After it had received the royal assent, the speaker of the Commons drew attention to the mistake. The amendment was agreed to by the house, after a conference on the subject, and a bill was passed to render valid and effectual the Act in question. In 1843, Mr. Speaker Lefevre called attention to the fact that the Schoolmasters' Widows' Fund (Scotland) Bill had been returned by the Lords to the Commons with amendments, but before these were agreed to, it was taken up by mistake to the other chamber, and though it had not the usual endorsement, *a ces amendmens les communes sont assentus*, the mistake was not noticed, but the bill received the royal assent in due form. In this case also, a new Act was considered necessary to give validity to the measure (*n*). In 1877, the lieutenant-governor of Quebec assented to a bill intituled "an Act to provide for the formation of joint-stock companies for the maintenance of roads and the destruction of noxious weeds, though it had only been read twice in the assembly. Apparently in the hurry of the last hours of the session, the clerk, by mistake, had certified it as passed without amendment. The error was immediately discovered by the attorney-general, who made a report to the authorities at Ottawa, and suggested that the act be disallowed. The Minister of Justice (Mr. Blake) declined to take this course because the bill was not an act,

(*m*) Quebec Legislature, J. (1879) 208, 221.

Assembly J. 350, 352. Montreal Gazette and Herald, Oct. 28, Nov. 1, 1879. Am. Reg. (1879) 172-9.

(*n*) 69 E. Hans. (3) 427; May, 510-13.

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but only so much blank paper. He pointed out that, according to precedent, an act might be passed in the legislature to declare the act to be invalid, and that, meanwhile, it was in the power of the Lieutenant-governor in council to refrain from putting it into operation. The Quebec government concurred in this opinion, and directed that the Act should not be printed among the statutes of the session (*o*).

XXVI. The Assent in the Provincial Legislatures.—

While the governor-general, and the lieutenant-governors of Ontario, Quebec, Manitoba and British Columbia assent to bills in her Majesty's name, a different practice prevails, now as before confederation, in the Maritime provinces of the dominion. In Nova Scotia, New Brunswick, and P.E. Island, the lieutenant-governors give the assent in their own names; the reasons for this difference of practice have never been authoritatively explained.

By section 90 of the B.N.A. Act, 1867, it is provided that the provisions of sections 55, 56, and 57 are "made applicable in terms to the respective provinces and the legislatures thereof, with the substitution of the 'lieutenant-governor' of the provinces for the 'governor-general;' of the 'governor-general' for the 'queen' and for a 'secretary of State;' of 'one year' for 'two years,' and of the 'province' for 'Canada.' Consequently it is now within the discretion of a lieutenant-governor in any province, when any bill is presented to him for the necessary assent to reserve the same "for the signification of the pleasure of his excellency the governor-general thereon." Such a bill cannot go into operation unless, within one year from the date of its having been reserved, the governor-general shall issue his proclamation intimating that it has received the assent of the governor in council (*p*). The governor-general in council

(*o*) Can. Com. Sess. papers. (1879) No. 19. p. 20 and No. 26.

(*p*) These proclamations appear in the Canada Gazette and Canada Statutes.

also possesses the same power with respect to provincial acts that his Majesty in council can exercise in the case of dominion acts, and may at any time within a year from the passing of a provincial act, disallow it for good and sufficient reasons (*q*).

The lieutenant-governors of the provinces have sometimes reserved bills for the consideration of the governor-general in council. In Nova Scotia, New Brunswick, and P. E. Island—but not in the other provinces—they have also, on several occasions, withheld their assent from bills passed by the legislature. The power is, however, expressly given to them by sections 55 and 90 of the British North America Act. The governor-general has, however, never vetoed an act of the parliament of Canada. No instructions have been given the governors of provinces on the subject of vetoing or reserving bills (*r*).

XXVII. Amendment or Repeal of an Act in the same Session.—Section five of the Interpretation Act of 1867-8, provides that "any Act of the Parliament of Canada may be amended, altered or repealed by an act passed in the same session thereof."(*s*).

By an Act passed in 1883, the foregoing section was amended by adding the following as a sub-section; "The

(*q*) Canada Gazette, Dec. 4th, 1869, p. 386.

(*r*) See Todd, Parl. Govt., in the colonies, 396, where he endeavours to explain the position of one lieutenant-governor from whom he had a private memorandum on the subject. "It cannot be imagined that a law should have received the consent of both houses of parliament, in which the responsible ministers of the Crown are sitting, debating, acting, and voting, unless those who advise the Crown have agreed to that law, and are therefore prepared to counsel the sovereign to assent to it. If a law were passed by the two houses against the will and opinion of the ministers of the day those ministers must naturally resign their offices, and be replaced by men in whose wisdom parliament reposed more confidence, and who agreed with the majorities in the two houses." Lord Palmerston, 159 E. Hans. (3), 1386.

(*s*) 31 Vict., c. 1 Rev. Stat. of Can., c. 1; s. 6. See Can. Com. J. 1879, petroleum acts; 1882. Ontario Bank; 1883, booms and works in navigable waters bill.

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repeal of any Act, or part of an Act, shall not revive any Act or provision of law repealed by such Act, or part of an Act, or prevent the effect of any saving clause therein."(*t*).

XXVIII. Commencement of an Act.—It is also provided by law that the clerk of the Senate shall endorse on every Act of parliament, immediately after the title, the day, month, and year when it received the assent of his Majesty, or was reserved for the signification of his pleasure thereon. In the latter case, the clerk shall also endorse thereon the date when the governor-general has signified either by speech or message to the two houses, or by a proclamation, that the bill has been laid before the queen in council, and she has been pleased to assent to the same. This endorsement is considered a part of the act; and the date of the assent or signification of the royal pleasure shall be the date of the commencement of the act, if no later commencement be therein provided (*u*).

XXIX. Distribution of the Statutes.—Certain acts passed since 1867 provide for the printing and distribution of the statutes of Canada by a King's printer. These statutes are printed in two languages, in two separate parts or volumes, the first of which contains the general public acts of Canada, and such orders in council, proclamations, treaties, and acts of the Parliament of Great Britain, as the governor in council may deem to be of public interest in the Dominion. The second volume contains the local and private acts. These two volumes are generally bound in one and distributed to members of the two houses, administrative bodies, public departments and officials, in accordance with a list arranged in Council.

(*t*) 46 Vict., c. 1. See Rev. Stat. of Can. c. 1. Additional amendments were made to this act in 1890, 53 Vict. c. 7.

(*u*) Rev. Stat. of Can., c. 1 s. 5. For instance, the Liquor Licence Act of 1883. (46 Vict., c. 30. s. 147) was only to come into force on the 1st of January, 1884, and the licences thereunder on the 1st of May, in the same year.

The mode of distribution is annually reported to parliament. Acts may be published in the *Canada Gazette* previous to their publication in the printed volumes. All the original acts of the parliament of Canada, of the legislatures of Canada and of the late provinces of Upper Canada and Lower Canada, as well as all disallowed and reserved bills, remain in the custody of the Clerk of the parliaments, who can furnish certified copies to those persons who may require them (v).

(v) See Rev. Stat. of Canada, c 2.

CHAPTER XVI.

Private Bills.

PART I.

- I. Definition of Private Bills.—II. Questions of Legislative Jurisdiction.—III. Supreme Court Reports on Private Bills.—IV. Questions of Jurisdiction Referred to Senate Committee.—V. Classification of Private Bills; Hybrid Bills, etc.—VI. General Public Acts Affecting Corporate Bodies.—VII. All Acts Deemed Public, unless otherwise Declared.

PART II.

- I. English Compared with Canadian Procedure.—II. Promotion of Private Bills in Parliament.—III. Private Bill days in the Commons.—IV. Petitions for Private Bills.—V. Committee on Standing Orders.—VI. First and Second Readings in the Commons under Rule 99.—VII. Fees and charges.—VIII. Committees on Private Bills.—IX. Reports of Committees.—X. Committee of the Whole.—XI. Third Reading.—XII. Private Bills in the Senate Imposing Rates and Tolls.—XIII. Bills not Based on Petitions.—XIV. Amendments made by Either House.

I. Definition of Private Bills.—Private bills are distinguished from public bills in that they directly relate to the affairs of private persons or of corporate bodies, and not to matters of general public policy or to the community at large. They pass largely through the same stages as public bills, but, at the same time must originate by

petitions () and be subject to certain special rules in both houses of parliament. Judicial as well as legislative functions are entrusted to committees to which all petitions and bills of a private nature are referred with the view of carefully protecting all the interests involved in the proposed legislation. The parties whose private interests are to be promoted appear as suitors before a select committee, to whom the bill has been referred, whilst those who apprehend any injury, and are opposed to the legislation sought for, are admitted as adverse parties. The analogy which the proceedings bear to those of courts is sustained by the fact that certain fees must be paid by the promoters of a private bill before the house will permit its passage. All those whose interests are affected by the measure must have due notice of its nature, so that they may have every opportunity to present themselves before the house, and dispute, if necessary, its passage (*b*).

II. Questions of Legislative Jurisdiction.—Sections 91 and 92 of the British North America Act enumerate the various matters assigned to the jurisdiction of the parliament and legislatures of the Dominion. Among the matters within the exclusive jurisdiction of the general legislature we find the following, which embrace the various subjects which properly fall within the category of private bill legislation:

"13. Ferries between a province, and any British or foreign country, or between two provinces.

(*a*) Both public and private bills had their rise in the ancient petitions to the Crown for the redress of public or private grievances. All trace of this origin has disappeared from public bills, except, perhaps, in the case of the preamble to appropriation bills; but promoters, and even the opponents of private bills, as a rule, must proceed by petition, and consequently this class of legislation retains evidence of an ancient form which has survived for well nigh six hundred years. See Clifford's History of Private Bill Legislation, i. 270.

(*b*) Courts of equity also look upon the solicitation of a bill in parliament in the light of an ordinary suit, and will in a proper case restrain the promoters by injunction from proceeding with a bill. May, 688.

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15. Banking, incorporation of banks, and the issue of paper money.

16. Savings Banks.

22. Patents of invention and discovery.

25. Naturalization and aliens.

26. Marriage and divorce.

29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this act assigned exclusively to the legislatures of the provinces; and any matter coming within any of the classes of subjects enumerated in this section (91) shall not be deemed to come within the class or matters of a local or private nature comprised in the enumeration of the classes of subjects by this act assigned exclusively to the legislatures of the provinces."

By Section 92 the provincial legislatures may exclusively make laws in relation to the following subjects:

"10. Local works and undertakings other than such as are of the following classes:

(a) Lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province.

(b) Lines of steamships between the province and any British or foreign country.

(c) Such works as, although situate within the province, are, before or after their execution, declared by the parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the provinces.

11. The incorporation of companies with provincial objects.

16. Generally all matters of a merely local or private nature in the province."

Though the constitutional provisions just cited have been framed with the avowed object of clearly defining the respective limits of dominion and provincial legislation, yet twenty-four years' experience has proved incontestably that there is still some uncertainty as to the rules and

principles that ought to govern the question of jurisdiction. In every session of parliament, the issue has come up for discussion, and from the difference of opinion that prevails in some cases it is easy to see that the question of jurisdiction is of a perplexing character, even yet, after years' experience of federal legislation, to those who have assisted in framing the constitution itself. This work, however, is confined simply to a review of the legislation that has been at different times the subject of debate, and in this way shows the tendency or direction of the legislation of the dominion parliament.

During the first session of parliament doubts arose as to the jurisdiction of the general legislature with respect to certain bills of incorporation of companies. Railways, canals, telegraphs, and other works or undertakings, connecting a province with one or more of the provinces, or extending beyond the limits of a province, are expressly reserved for the jurisdiction of the general legislature. But in the case of railway companies within a single province, like the St. Lawrence and Ottawa railway, which runs from Ottawa to Prescott on the St. Lawrence, or the Northern railway, which runs from Toronto to the north of Ontario (*c*), it has been found necessary to declare them to be "for the general advantage of Canada" or "for the advantage of two or more provinces," in conformity with subsection 10 of section 92 cited above. Since 1867, a large number of charters have been granted to railways, expressly declared to be for the general advantage, or benefit, or interest of Canada. Some of these roads have been incorporated in the first instance by the provincial legislatures, but they have found it expedient to come under the provisions of the act, in order to obtain extended powers. The policy of parliament has been for years in the direction of practically controlling the entire railway system of the Dominion, and during the session of 1883 the government

(*c*) 31 Vict. ch. 20 and 86.

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brought in a bill (*d*), which became law, with the object of giving effect to that policy. It is expressly declared to be "for the better and more uniform government of railways" that the Grand Trunk, Great Western, Intercolonial, North Shore, Northern, Hamilton & North Western, Canadian Southern, Credit Valley, Ontario & Quebec and Canadian Pacific railways, as well as all branch lines now or hereafter connecting with or crossing these railways or any of them, "are works for the general advantage of Canada within the meaning of the British North America Act." The provisions of any act of the legislature of any province, passed prior to May 25, 1883, and in force at that date, remain in force, so far as they are consistent with any act of the parliament of Canada passed subsequently.

The question was raised during the passage of the bill whether the effect of so wide a provision was not practically to destroy the efficiency of the provincial jurisdiction.

It was not denied that the Dominion parliament has full power to declare a work to be for the general advantage of Canada and when it has been so declared it may be assumed to be under Dominion control. As a question of convenience there can be no doubt that the policy of the Dominion parliament has decided advantages; and the only question is how far it can be carried without infringing on provincial legislation (*e*).

Since 1867, the houses have frequently found a difficulty in many cases in determining what class of bills come within the meaning of the section assigning to the local

(*d*) 46 Vict., c. 24. "An act further to amend the Consolidated Railway act of 1879, and to declare certain lines of railway to be worked for the general advantage of Canada." See Rev. Stat. of Can., c. 109, s. 121.

(*e*) Can. Com. Hans., (1883) pp. 1293-1304. Mr. Blake argued before the Supreme Court of Canada in 1888, on the Manitoba Railway Crossings Case, very explicitly pointing out the large legislative authority of the parliament of Canada in this regard. For the other side of the question, see Mr. Mill's remarks, July 6th, 1891, on the Bay des Chaleurs Railway Company's Bill.

legislatures the jurisdiction over "the incorporation of companies with provincial objects."

In the first session, a bill to incorporate the Stratford Board of Trade was presented and referred to the committee on banking and commerce, where the question of jurisdiction was raised. The committee came to the conclusion that, though the board to be created was a local body, yet the fact that trade and commerce were under the control of the dominion parliament by section 91 of the British North America Act would justify them in reporting it favourably to the house. In examining the details of the bill, however, it was found to contain provisions for the establishment of a court of arbitration in commercial matters; and "as the constitution, maintenance, and organization of provincial courts, both of civil and criminal jurisdiction," are, by section 92 of the said act, assigned exclusively to the provincial legislatures, the committee expunged from the bill so much as related to that court, and it was then passed in the amended form (*f*). In subsequent sessions several boards of trade were incorporated; and in the session of 1874 a general act was passed for the incorporation of such bodies throughout the dominion (*g*).

In the same session the committee on standing orders reported with respect to the applications of the Gore District Mutual Fire Insurance Company, and of the Sorghum Growers Association of the County of Essex, that these companies came more properly within the jurisdiction of the local legislature (*h*). The Committee on standing orders also reported favourably on the petition for an "Act to grant certain power with Civil Service Building and Savings Society," but subsequently the committee to which the bill was referred presented a report to the

(*f*) Can. Com. J. (1867-8) 357-379.

(*g*) 37 Vict., c. 51; Rev. Stat. of Can. c. 130.

(*h*) Can. Com. J. (1867-8) 52-177.

The standing order Committee had no authority to report on the question of jurisdiction that being a matter for the Committee on the bill or for the house itself.

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house representing that "doubts had arisen whether the objects sought to be obtained by the promoters were not provincial in their character and such as the local legislature is exclusively empowered to deal with," and at the same time soliciting instructions from the house as to the course to be pursued with reference to the bill. The result was that no further progress was made with the bill during that session (i). Doubts were also expressed by the banking committee as to the jurisdiction of parliament in the case of the Canada Live Stock Insurance Company Bill, which was not proceeded with (j).

The whole question of the jurisdiction of the dominion parliament over the subject of insurance came up for discussion on a motion for the second reading of a public bill respecting insurance companies. It was moved in amendment that the "regulation of insurance companies is a subject properly within the jurisdiction of the provincial legislature;" but the house decided by a large majority against the amendment (k). Since then, the courts have given authoritative decisions to the effect that while the dominion parliament and the provincial legislature have an undoubted right to incorporate insurance companies in the one case for the whole dominion, and in the other for the limits of a province only, yet the form of the contract and the rights of the parties thereunder must be regulated by the province in which the business is done (l).

Since 1867, parliament has passed a large number of bills for the incorporation of building societies, insurance

(i) Can. Com. J. (1867-8), 60. (j) *Ib.* 357.

(k) The division showed, yeas, 5; nays 44; Can. Com. J. (1867-8) 426.

(l) In 1886, a bill relating to interest on mortgages secured by real estate was withdrawn as *ultra vires* the minister of justice having drawn attention to the fact that among other objectionable features, one of the clauses contained a provision not relating to interest, but rather to contracts for the securing of money—clearly a matter of provincial jurisdiction. Can. Han. (1886) p. 440. Can. Com. J. (1886) 137.

companies, joint-stock, loan, and investment companies. As all such corporations have been desirous to do business in more than one of the provinces, and to establish agencies throughout the dominion, they have found it not only convenient, but absolutely necessary in many cases, to obtain legislation from that parliament which can give them the widest powers. Parliament has always been disposed to extend every possible facility to companies that claim to carry on business for the advantage of Canada, though on more than one occasion, it has been questioned whether it has not trespassed on provincial jurisdiction. We have already seen that parliament has been very liberal in its construction of the laws enabling it to declare a railway a work for the general advantage of Canada, but in the session of 1881 it went a step further in making a similar declaration with respect to two electric light companies; the "Edison Electric Light Co." and the "Thomson & Houston Electric Light Co." A debate took place on the first named bill, and it was urged that the corporation was practically local in its character, since it was formed for the purpose of carrying on business within a certain locality. As the company asked for powers to take land for the purpose of its business, and must be subject to municipal regulations, it should therefore receive its powers from local legislatures. If the subject-matter was essentially local in its character, the house could not alter that fact by a declaration like that in the preamble. In the private bills committee it was considered that the introduction of the electric light system was a work to the general advantage of Canada; that, inasmuch as the company would have to carry on their operations in every province, the best system was the granting of the necessary power to one central establishment from which operations could be carried on between two or more of the provinces. When it was considered that the act gave the company power to manufacture and carry on business all over the dominion, the committee thought that this was a case when it might be properly declared that the work was for the benefit of

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Canada. The premier (Sir John Macdonald) took issue with those who argued against the right of the house to make the declaration in question in the case of such companies. It would be exceedingly unfortunate, in his opinion, if the promoters of any great undertaking or invention which they desire to introduce into the dominion were obliged to go to every legislature, and in this way obtain separate corporations with different conditions and restrictions. The object of the imperial parliament, in passing the law in question, was to prevent the expense and obstruction to material progress that would arise if the promoters for the work for the general advantage of Canada had to apply to the several provincial legislatures. They might obtain certain powers in one and be refused the same in another province; they might get large or restricted powers according to the policy of a legislature; they might be compelled to submit to conditions, varying and inconsistent in their nature (*m*).

Whilst parliament is disposed to give every legitimate facility to companies whose objects are of a dominion character, it has on several occasions refused legislation which appeared to be provincial in its character, or trespassed upon matters clearly within provincial jurisdiction. The House of Commons refused in 1879 to permit the passage of a bill which contained some unusual provisions. This was a bill to permit one Nehemiah K. Clements, of Yarmouth, Nova Scotia, and such other persons as might thereafter be associated with him, to be incorporated for the purpose of building dykes across the Chebogue and Little Rivers. The premier and others took strong objections to the bill on the ground that it was a matter properly within the jurisdiction of the legislature of Nova Scotia. It was simply a bill to enable a single person to dyke two rivers in Nova Scotia, and was so completely of a provincial

(*m*) Can. Hans. (1882) 430-6. Mr. Blake, however, dissented from the view that the words in the British North America Act respecting an "undertaking" for the general advantage of Canada could be applied under any circumstances to a mere trading company, p. 434.

character that the last clause provided that the consent of the marsh owners in writing should be deposited in the office of the provincial secretary of Nova Scotia. "It would be a novelty in dominion legislation," added the prime minister, "if any single person could apply for a charter as a corporation to be formed of any parties whom he might subsequently induce to join him." All matters relating to the granting of lands reclaimed from the waters clearly fell under the head of property and civil rights which should be dealt with exclusively by the local legislatures. On the other hand, more than one speaker, including the minister of justice, thought there was some ground for the application to the general legislature since it had granted powers in other cases for the construction of works on navigable waters; but the difficulty appeared to be the fact that the main object of the proposed legislation was the obtaining of the possession of a large tract of land, which would be reclaimed, but which parliament had no authority to convey (*n*). The proper course, no doubt, was, as suggested in debate, to obtain an act of incorporation in the first instance from the local legislature, and then apply to the dominion parliament for any additional powers that it could constitutionally grant. In 1885 objection was taken to a bill to incorporate the "Dominion Drainage Company" on the grounds that it was a bill which provided for the drainage of lands, a subject essentially of a provincial character. The object of the company, however, was shown to be to drain lands in the North West Territories as well as in Manitoba and Ontario, and the preamble was subsequently amended to make the bill applicable to the whole dominion (*o*).

In the case of the Colonial Building and Investment Company, incorporated in 1874 (*p*), the issue was taken in the courts of Quebec, and before the privy council that,

(*n*) Can. Hans. 1879, 921, 24; Yarmouth Dyking Co. bill.

(*o*) Can. Hans. (1885), 1007, 1008; Can. Com. J. 282. see 48-95 Vict. c. 95.

(*p*) 37. Vict., c. 103.

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inasmuch as the association had confined its operations to that province, and its business had been of a local and private nature, it followed that its objects were local and provincial, and its incorporation consequently belonged to the provincial legislature exclusively. But in deciding that the act was not *ultra vires* of the dominion parliament, the privy council stated that "the fact that the association had thought fit to confine the exercise of its powers to one province could not affect its status or capacity as a corporation, if the act incorporating the same was originally within the legislative power of the dominion parliament." The company was incorporated "with powers to carry on its business consisting of various kinds, throughout the Dominion." The parliament of Canada could "alone constitute a corporation with those powers; and the fact that the exercise of them has not been co-extensive with the grant cannot operate to repeal the act of incorporation, nor warrant the judgment prayed for, viz.; that the company be declared to be illegally constituted." (q).

In the session of 1889, objection was taken to a bill to amend the act respecting Queen's College at Kingston, on the ground that the institution, though incorporated by royal charter originally, had its domicile exclusively in Ontario, and was within the control of the legislature of that province which had complete jurisdiction over the subject of education. The bill, however, passed after a division by a very large majority, who appeared mainly influenced by the arguments that the corporation was only asking for the removal of restraints, which were imposed by an act of the parliament of Canada in 1882, when the question of jurisdiction was never raised that it had property in the two provinces of Ontario and Quebec, which it was necessary to administer under the authority of a new

(q) 7 L. N. 10-15. The appeal was from the judgment of the court of queen's bench, Quebec, reversing a judgment of the superior court of the province, dismissing the petition of the Attorney General, praying that the Act incorporating the Company, be declared *ultra vires*. 5 *Ib.* 116.

statute; that the legislation asked for did not deal with the subject-matter of education, but with a body established for the purpose of carrying on operations in two provinces(*r*).

Corporations, established by acts of the provinces or of foreign countries, frequently apply for, and obtain, additional powers by statutes of the dominion parliament. Joint legislative action, in fact, is necessary in many cases. A company may be obliged to receive certain rights and privileges from a foreign government which Canada cannot grant, and at the same time to resort to the dominion legislature for powers which the former government could not concede to it (*s*).

Several bills have been passed by parliament to permit the construction and maintenance of bridges over various navigable rivers of the dominion—navigation and shipping being under the exclusive control of the general legislature(*t*). Whenever companies, incorporated under provincial acts, have required certain privileges upon navigable streams, they have always sought and obtained them from the general legislature.

In the session of 1883, a very instructive discussion took place on the question how far the general legislature may go in legislating in the case of companies already incorporated under provincial acts. Among the bills before the

(*r*) Can. Hans. (1889) 602, 606. Dom. Stat. 52 Vict. c. 103.

(*s*) *Ib.* (1882) 429-30.

(*t*) B.N.A. Act., s. 91. Sub. s. 10; Doutré 141. see Dom. Stat. 38. Vict., c. 97. bridge across river L'Assomption; Can. Hans. (1875) 893. 896. The committee on this bill were of opinion that the parliament of Canada had the power to deal with such matters, 895. Also Vict. 40. c. 65 Rivière du Loup bridge; this river is only navigable at certain seasons in the neighbourhood of the bridge; Can. Hans. (1877) 1041-2. Also 37 Vict., c. 113. (River L'Assomption Toll-bridge); 45. Vict. c. 91 (Richelieu Bridge Co.). the case of *Wood v. Esson*, the supreme court of Canada (reversing a judgment of the supreme court of Nova Scotia) virtually decided that the Crown could not, without legislative sanction, grant to any person the right to place in Halifax harbour below low-water mark any obstruction or impediment so as to prevent the free and full enjoyment of the right of navigation. Can. sup. Court R. Vol. IX., pp. 239-256.

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house was one to grant certain powers to the Acadia Powder Company, already incorporated by special acts of the province of Nova Scotia. The bill asked for power to extend the business of the company throughout the dominion; and, from the debate on the measure, it is evident that, had its promoters been content with asking parliament to grant this general power, there would have been little objection to its passage, except from those who had doubts as to the right of the dominion legislature to interfere in any way with local legislation (*u*). But the bill went still further, since it contained provisions with respect to the capital stock and directors, which were a clear infringement of the powers of the provincial legislature which created the company.

In view of opinions expressed by eminent constitutional authorities, the bill was amended in committee by striking out the clauses with respect to capital and directors, and giving the company simply power to do business throughout the dominion (*v*).

III. Supreme Court Reports on Private Bills.—By section 61 of the Supreme Court Act it is provided that the supreme court or any two of its judges shall examine and report upon any private bill or petition for a private bill, presented to the Senate or House of Commons, and referred to the court under any of the rules of either house of parliament. The Senate at first adopted a standing order which provided for the reference to the court before the second reading of a bill, but now such a bill may be referred at any time before final passage (*w*). The opinion of the judges is placed on the journals as soon as it has been laid before the Senate by the speaker (*x*).

(*u*) A summary of the views of the principal speakers in parliament on these questions will be found on pages 722-24, 3rd Edition of this work.

(*v*) 46 Vict., ch. 94. Can. Hans. (1883) 262, 422, 499, 500.

(*w*) S. K. 116.

(*x*) Sen. J. (1876) 155, 206.

IV. Questions of Jurisdiction referred to Senate Committee.—In 1879 the Senate decided to make the experiment of giving authority to the committee on standing orders and private bills to consider the question of jurisdiction in the case of bills submitted to them. Rule 60 was rescinded and the following substituted:

"115 Any private bill shall, if it be demanded by two Senators, when read the first time, be referred to the committee on standing orders, to ascertain and report whether or not the said bill comes within the classes of subjects assigned exclusively to the legislatures of the provinces."

V. Classification of Private Bills.—Hybrid Bills—Sometimes doubts may arise whether a bill should be classed as public or private. Many cases of this nature occurred in the practice of the old Canadian legislature, but the houses generally allowed themselves to be guided by the decision of the committee to whom a bill might be referred. A committee has, under such circumstances, made some amendments to a bill in order to obviate a difficulty and bring it under the category of either a public or a private bill (z). All bills respecting religious corporations are treated as private bills. A bill relating to a city is usually held to be a private bill. Bills from the corporations of towns and municipal bodies generally, are always treated as private bills when they desire special legislation affecting their property or interests (x). Though this class of measures now falls, as a rule, within the jurisdiction of the local legislatures, yet several cases will be found in the commons journals of applications from corporations of cities and towns for bills touching their interests; but on reference to the details of

(y) Sen. J. (1879), 155, 170, 190, 206; Deb. 309, 340, 415; Jour. (1880), 79, 83, 85, 91, &c.

(z) Todds' private bill practice, 8-10. Bill in reference to townships in Victoria County. Ass. J. (1858), 568, 684.

(a) A bill to incorporate the City of Kingston was declared in 1847 to be a private bill and subject to the payment of fees. Jour. 1850.

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the measures it will be seen that they affect certain matters which properly come within the purview of the dominion parliament; and as they have affected trade, navigation and shipping, matters within the jurisdiction of the dominion parliament, they have been properly presented in the general legislature (b).

In the session of 1880-81, the Government of Canada having decided to complete the Pacific railway by means of a company, brought in a public bill to incorporate certain persons under the name of the Canadian Pacific Railway Company (c). In the same session a minister presented a public bill, intituled "an act to provide for the incorporation of a company to establish a marine telegraph between the Pacific coasts of Canada and Asia." This bill applied the provisions of the Joint Stock Companies Act, and of the Marine Electric Telegraphs Act to the company in question (e).

In the English House of Commons there is a class of *quasi* private bills, distinguished as "hybrid bills." They are brought in, by order, as public bills, but as they affect private rights "their further progress is subject to the proof of compliance with the standing orders before the examiner, and to the payment of fees." They are generally "bills for carrying out national works, or relating to Crown property, or other public works in which the government is concerned," or they sometimes deal with matters affecting the metropolis (e). They are committed to a select committee, when the committee on standing orders has reported favourably and the committee may be and generally is empowered to hear promoters, their agents and counsel for the bill and parties who are against the bill. The bill when reported from the select or special committee, is sent to a committee of the whole house and is subsequently treated as a public bill (f).

(b) 33 Vict., ch. 45, c. 46; Can. Com. J. (1870), 60, 81.

(c) 44 Vict., ch. 1.

(d) *Ib.* ch. 33; Hans. (1880-1), 1173-1177.

(e) May, 673. (f) May, 468-9.

The rules of the Canadian houses do not make any special provision for this class of bills. In other cases, where bills have affected both public and private interests, a different course has been followed. In the session of 1875, the premier (Mr. Mackenzie) moved for leave to introduce a public bill to re-arrange the "capital of the Northern Railway of Canada, to enable the said company to change the gauge of its railway, and to provide for the release of the government lien on the road on certain conditions." Objection having been taken that some of the provisions affected private interests and altered the powers of the Company in very material points, the speaker decided that the bill ought to be withdrawn. Separate bills were subsequently passed by the house—one, relating to the government lien, was treated as a public bill, and the other, relating to the gauge and capital, as a private bill (*g*).

In 1879 and in 1880 bills of a hybrid character were introduced. The former was a bill to confer on the government of Quebec "the powers granted to the Montreal, Ottawa and Western Railway, by several acts of the parliament of Canada in so far as related to the construction of a bridge over the Ottawa River and also power to acquire all real estate in Ontario necessary for the purpose of the said railway."

The bill was passed after several important amendments had been made (*h*). The other bill referred to was introduced for the purpose of removing a difficulty that had arisen as to the title of the Quebec, Montreal, Ottawa and Occidental Railway Company. This company had already been the subject of dominion legislation and the bill was objected to, on the second reading, on the ground, that it affected private interests and the bill was withdrawn (*i*).

(*g*) Can. Com. J. (1875), 213, 217. Hans. 662.

(*h*) Can. Com. J. (1879), 65, 89, &c. 42 Vic., Ch. 56. See Montreal Gazette Mch. 29th for summary of points raised in the discussion.

(*i*) Can. Hans. (1880), p. 1998.

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It is unusual to repeal or amend a public act by a private bill (*j*). The policy of this mode of legislation has been sometimes questioned, and while the practice is allowable, such bills should be closely scrutinized.

Many cases can be found in Canadian, as in English legislation, of companies or corporations being excepted in express terms from the provisions of certain public statutes. A new rule was adopted in the Canadian Commons in 1883, with a view of indicating in every bill any departure in its details from general acts (*k*).

But a bill proposing to amend a public act in the interests of certain persons will not be allowed to proceed as a public bill (*l*).

It has been decided in the English House of Commons that a bill, commenced as a private bill, cannot be taken up and proceeded with as a public measure. Nor can a strictly private bill be turned into a "hybrid." (*m*).

If it be found that a private bill affects the public revenue, it will be necessary to obtain the consent of the government to the clauses in question and have them first considered in committee of the whole, and then referred to the committee on the bill (*n*). A private bill has not been allowed to proceed on the ground that it affected the public revenue, but in the majority of cases where the property or interests of the Crown are concerned, the consent of the

(*j*) 176 E. Hans. (3), 16-19.

(*k*) Res. 20th Ap. 1883. Com. J. (1883), 237.

(*l*) Can. Hans. (1883), 1034.

(*m*) 180 E. Hans. (3), 45.

(*n*) Canada Vine Growers' Association bill, 1866 and 1867-8. "In the case of a petition affecting stamp duties or other branches of the revenue," says Sir Erskine May, "the petition is presented, and the Queen's recommendation having been signified, the house resolves to go into committee on a future day to consider the matter. It is considered in committee on that day; and when the resolution is reported and agreed to an instruction is given to the committee on the bill to make provision accordingly. If any such provision be included in the original bill, it must be printed in *italics*; and before the sitting of the committee, similar proceedings will be taken in the house." pp 497, 835.

sovereign will be obtained at some stage before the final passage. If this consent be not obtained, all proceedings will be stayed (*o*).

VI. General Public Acts affecting Corporate Bodies.—

In order to give greater facilities to the incorporation of companies for various purposes, and to obviate the necessity of so many applications for special legislation, parliament and local legislatures have passed general statutes which provide all the necessary machinery by which a number of persons can form themselves into a body corporate. These are styled joint stock companies acts. Under an act respecting companies, the governor in council may, by letters patent under the great seal, grant a charter to any number of persons, not less than five, who may be constituted a corporation for any purpose to which the legislative authority of the Canadian parliament extends, except the construction and working of railways, or telegraph or telephone lines, the business of banking, insurance and loan companies or the issue of paper money (*p*). In addition to the act previously mentioned, providing for the incorporation of boards of trade throughout the dominion, a general statute authorizes the governor in council to grant a charter, under the great seal, to any company of persons who may be formed under any general or special act of any of the provinces of Canada or of the United Kingdom or any foreign country for any of the purposes or objects for which letters patent may be issued.

The provisions of the railway act apply to every railway already constructed or to be constructed under the authority of any act of the parliament of Canada and must be incorporated with the special act respecting these works unless they are expressly included or named by the terms of such act (*q*). In the same way the provisions of the companies

(*o*) Bill to extend the time for paying debt of the county of Perth. Leg. Ass. J. (1866), 298-9.

(*p*) The Companies Act, c. 79, R.S.C. (1906).

(*q*) See Consol. S. C., c. 5, s. 6, sub-s. 27.

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act apply to every joint stock company with the exception of railways, banking, issue of paper money, and insurance, unless it is otherwise expressly provided in its special act of incorporation. Very stringent provisions have also been made for the careful working of monetary institutions, and for the security of the people of Canada who have assured their lives or property in insurance companies. General statutes have also been passed for the winding up of insolvent banks and trading companies.

But notwithstanding the facilities afforded by the dominion parliament as well as the local legislatures for the incorporation of certain classes of companies by the governor or lieutenant-governor in council, the work of these various legislative bodies does not appear to diminish. On the contrary, the number of special acts passed by the legislatures of the dominion for the incorporation of companies for various objects has never been so great as within the recent years. The necessity of obtaining powers not included in the general acts, continually forces companies to seek special legislation. Indeed, on a review of the statute book, it will be seen that, in not a few cases, companies have found it necessary to obtain special exemption from provisions of the general acts.

VII. All Acts deemed Public unless otherwise Declared.

— Every local and private act, passed in Canada previous to and for some years after 1840, contained a clause declaring that it "shall be deemed a public act and shall be judicially taken notice of as such by all judges, justices of the peace and other persons whomsoever without being specially pleaded." From 1850 to 1868, the clause was shortened, and it was simply enacted that "it shall be deemed a public act" (*q*). In the first session of the dominion parliament it was enacted that "every act shall, unless by express provision it is declared a private act, be deemed a public act, and shall be judicially noticed," and consequently the public clause has been ever since omitted from private

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acts. It is also provided in the same statute (r) that "all copies of acts, public or private, printed by the King's printer, shall be evidence of such acts and of their contents, and every copy purporting to be printed by the King's printer, shall be deemed to be so printed, unless the contrary be shown." (s)

(r) 31 Vict., c. 1, s. 7, sub-s. 38. See R. S. C. (1906), c. 145, s. 19.
7. This provision is in accordance with Lord Brougham's act of 1850, for shortening the language of acts of parliament.

(s) See Imp. Stat. 8 & 9 Vict., c. 113, s. 3.

CHAPTER XVI.

Private Bills.

PART II.

- I. English Compared with Canadian Procedure.—II. Promotion of Private Legislation in Parliament.—III. Private Bill Days in the Commons.—IV. Petitions for Private Bills.—V. Committee on Standing Orders.—VI. First and Second Readings in the Commons Under Rule 99.—VII. Fees and Charges.—VIII. Committees on Private Bills.—IX. Reports of Committees.—X. Committee of the Whole.—XI. Third Reading.—XII. Private Bills in the Senate Imposing Rates and Tolls.—XIII. Bills not Based on Petitions.—XIV. Amendments made by Either House.

I. English compared with Canadian Procedure.—The procedure in the Canadian parliament with regard to private bill legislation is more simple than that of the British houses. In Canada there are only a few rules or orders for the regulation of the passage of private bills while in the imperial parliament there are over two hundred and fifty relating to this class of legislation. In Canada, however, in all unprovided cases reference is had to the practice of the imperial houses for guidance and instruction and English authorities are frequently relied upon.

The important work of private bill legislation in Great Britain is more evenly distributed between the two houses than in Canada. It is the duty of the Chairman of the Committee of Ways and Means at the commencement of each session to seek a conference with the chairman of committees of the House of Lords, for the purpose of determining in which house the respective private bills shall be first considered. Consequently a fair proportion

of private bill legislation is now initiated in the Lords, and the work of the Commons is to this extent lessened. In Canada, the promoters of private bills are free to introduce their bills in either house. By far the larger proportion is introduced in the Commons.

The imperial house refers private bills to certain small committees, which may be compared to the sub-committees to which the large committees of the Canadian Commons find it occasionally convenient to refer some private bills. The committee on standing orders consists of only eleven members nominated at the commencement of each session of whom five are a quorum. There is also a "Committee of Selection," consisting of a chairman and ten other members, of whom three form a quorum, and a "General Committee on Railway and Canal Bills," nominated by the Committee of Selection. The General Committee appoints from among themselves the chairman of each special committee on a railway or canal bill (a). The committee on every opposed railway, tramway, and canal bill or group of such bills, consists of four members and a referee, or four members not locally or otherwise interested in the bill or bills in progress. Committees on other opposed private bills consist of a chairman, three members and a referee, or a chairman and three members, not locally or otherwise interested, appointed by the committee of selection (b). Other committees of this character are equally small in numbers in both the Lords and the Commons.

The system in the Canadian houses is to refer the different classes of private bills after the second reading to large standing committees. In 1915 the Committees were:

(a) S. O. Eng. Com. 1902, R. 87, 91, 98 *et seq.*

(b) May, 745, 748.

In the Senate.

Committee on Standing Orders.....	9
Committee on Railways, Telegraphs and Harbours....	50
Committee on Banking and Commerce.....	32
Committee on Miscellaneous Private Bills.....	25
Committee on Divorce.....	9

In the Commons.

Committee on Privileges and Elections.....	36
Committee on Standing Orders.....	31
Committee on Railways, Canals and Telegraph Lines	119
Committee on Miscellaneous Private Bills.....	64
Committee on Banking and Commerce.....	96

The committees of the houses are nominated at the commencement of each session by a committee of selection, composed of leading men representing the political divisions in each house.

The question of facilitating the business of the Canadian parliament, by the introduction in the Senate, during each session, of a larger number of private bills than has hitherto been the case, has been considered more than once in the latter chamber (*c*). Some improvement, however,

(*c*) See Sen. Deb. (1885), 429-450; 705-711. In the session of 1890, Mr. Blake directed the attention of the government in the Commons to the same subject, but no special action has yet been taken in that desirable direction. Can. Hans. 2312. One of the plans suggested in England from time to time, avowedly, or the purpose of facilitating public business, has been the substitution of a single inquiry, for the existing double inquiry into contested bills. It has been proposed that such bills be referred to a joint committee of the two houses, but the sentiment of parliament has so far been in favour of each house acting as a court of appeal on the decisions of the other. See Clifford, *Private Bill Legislation*, ii., 900-913; Todd, i., 402, 403. In 1873, however, bills for railway amalgamation of great magnitude, it was agreed, should be referred to a joint committee, but this arrangement did not at all involve the principle of referring ordinary railway or other bills to a joint committee. 214 E. Hans. (1886)

in this regard has been made in recent years, and it is doubtful if any compulsory action would be desirable.

II. Promotion of Private Legislation in Parliament.—It is the practice of the Canadian Commons for members to take charge of private bills and to promote their progress through the house and its committees, but it is "contrary to the law and usage" of parliament that any member of the house "should be permitted to engage, either by himself or any partner in the management of private bills before this or the other house of parliament for pecuniary reward." So strictly is this principle carried out in England, that it is even provided in the standing orders that committees on opposed bills shall be composed "of four members not locally or otherwise interested in the bill or bills referred to them." Every member of a committee on such a bill must, before he is entitled to attend and vote on such committee, sign a declaration that his constituents have no "local interest" and that he himself has no "personal interest" in the proposed legislation. Nor can a member, locally or otherwise interested in an unopposed private bill, vote in a committee on any question that may arise, though he may attend and take part in the proceedings (*d*).

It is a recognized principle in the Canadian, as in the English parliament, that ministers of the Crown should not initiate or promote private bill legislation. But ministers sit on private bill committees in the Canadian Commons, and carefully scrutinize all private and local legislation with a view to guarding the public interest (*e*).

(*d*) Eng. S. O. 116-119, 139; Can. Hans. (1883), 36-37. While some members have been inclined to adopt the English standing orders in these particulars, others have argued that in a very large committee like that on railways in the Canadian House, it is to the public advantage and convenience that all the railway interests should be represented and heard; of course, in small committees like those in the English Commons, it is expedient to have such checks as are imposed by their rules. See remarks of Sir J. A. Macdonald; Can. Hans. (1883), 37.

(*e*) In England, the occupants of the Treasury bench are exempt from serving on private bill committees; 175 E. Hans. (3), 1545. See

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Rules 118 and 119 of the Commons lay down certain regulations for the guidance of agents, to whom parties interested in private legislation may entrust their bills. Every agent is personally responsible to the house and to the speaker for the observance of the rules, orders and practice of parliament, and also for the payment of all fees and charges. He cannot act until he shall have received the express sanction and authority of the speaker. If he shall act in violation of the rules of parliament or of those prescribed by the speaker, or shall wilfully misconduct himself in prosecuting any proceedings before parliament, "he shall be liable to an absolute or temporary prohibition to practice as a parliamentary agent, at the pleasure of the speaker; provided that, upon the application of such agent, the speaker shall state in writing the ground of such prohibition."

No officer of the house is allowed to transact private business for his emolument or advantage, either directly or indirectly (f).

III. Private Bill Days in the Commons.—By rule 25 private bills come up for consideration in the House of Commons on Monday, Tuesday, and Friday in each week. No limit is fixed to the discussion on such bills when they are reached on Monday, but on the other days they are not to occupy more than one hour, when the house resumes at eight o'clock in the evening. By general consent the hour may be extended (g), but if objection be taken, the house must go on with the other business on the order

as to duties of ministers; *Mirror of P.* 1830, p. 2009 (Sir R. Peel); *Ib.* 1840, p. 4657 (Mr. Baring, chancellor of the exchequer); 80 *E. Hans.* (3), 177 (Sir R. Peel). See also *Sen. Deb.* (1879), 186; *Ib.* (1883), 52.

(f) *Parl. Rep.* No. 648, of 1833, p. 9; No. 606, of 1835, pp. 17-19. *May*, 709-12.

(g) Canada Southern railway bill, March 22; and April 10, 1878; when two hours and a half were devoted to private bills.

paper (*h*). The rule is frequently suspended towards the close of the session by orders giving precedence to government or other business of importance. In case it is not proposed to supersede private bills, the motion to give priority to other matters should be, strictly speaking, so worded (*i*), though, as a matter of practice, the hour for private bills is not interfered with.

IV. Petitions for Private Bills.—Every private bill, presented in either house, should be first based upon a petition which states, succinctly, the object which the promoters have in view (*j*). The rules that govern petitions generally, apply to those for private bills; and it is therefore important that every applicant for private legislation should carefully observe these rules, as an informality may jeopardize the measure he is applying for. As the subject of petitions is treated fully elsewhere, it is here necessary only to state that the signature must appear on the sheet containing the whole or part of the prayer; that the signature or signatures must be in the hand-writing of the party interested; that an agent cannot sign for another except in case of illness; that the petition of a corporation must be under the corporate seal (*k*), that no member can present a petition from himself, but must do so through another member (*l*). A member will present the petition according to rule 75, and a clear day must elapse between the days of presentation and reception. On the day following the presentation of a petition the Clerk

(*h*) Campbell relief bill, Hans. (1879), 1883; Can. Com. J. (1886), 323; *Ib.* (1888), 197; *Ib.* (1890), 134.

(*i*) Can. Com. J. (1882), 231.

(*j*) Sen. R. 113. Com. R. 88.

(*k*) In the Glasgow gas bill, 1843, an objection was taken that the seal attached to a petition was not the corporate seal of a company; and when this was proved to be the case, all the evidence in support of the petition was ordered to be expunged; The Senate have a special rule (59) on the subject.

(*l*) Bank of Manitoba, Can. Com. J. 1875, p. 235; Metropolitan Bank, *Ib.* 1876, p. 141.

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of the house lays on the table the report of the Clerk of Petitions: Rule 75 (8), and it is then sent, as a matter of course, to the Examiner of Petitions or to the Committee on Standing Orders, and it is only after a favourable report from the Examiner of Petitions or of the Committee on Standing Orders that the bill can be presented.

Rule 99 of the Commons is as follows:

"All private bills are introduced on petition, and after such petition has been favourably reported upon by the examiner of petitions or by the Committee on Standing Orders, such bills shall be laid upon the table of the House by the Clerk, and shall be deemed to have been read a first time, and to have been ordered for a second reading when so laid upon the table, and recorded in the Votes and Proceedings as having been so read."

It will be seen that the practice in regard to the introduction of private bills differs considerably from that in the case of public bills. The committee on Standing Orders does not, as a rule, consider petitions which the Examiner has found to comply with the law and rules in all particulars. But in case the examiner finds any irregularity in the petition or in the notices required, the committee takes the matter into consideration and may recommend to the house a waiver or suspension of a rule if deemed advisable.

Senate rule 10 and Commons rule 88, deal with the matter of petitions for private bills. In the Senate, no petition will be received after the first three weeks of the session, petitions for divorce bills excepted. In the Commons, petitions will only be received if presented within the first six weeks of the session.

Nor may any private bill be presented to the Senate after the first four weeks of each session. Nor may any report of any standing or special Committee upon a private bill be received after the first six weeks of the session.

Rule 88 further provides that "every private bill shall be presented to the house within two weeks after the petition therefor has been favourably reported upon by the Examiner of Petitions or by the Committee on standing orders;

and no motion for the suspension of this rule shall be entertained unless a report has been first made by the committee on standing orders recommending such suspension and giving their reasons therefor."

Rule 89 provides that

"(1) Any person desiring to obtain any Private Bill, shall deposit with the Clerk of the house, at least eight days before the meeting of the house, a copy of such bill in the English or French language, with a sum sufficient to pay for translating and printing the same; the translation to be done by the officers of the house, and the printing by the Department of Public Printing, and if such bill is not deposited by the time above specified the applicant shall, in addition to the charges for printing and translation, pay the sum of five dollars for each and every day which intervenes between the said eighth day before the meeting of the house and the date of the filing of the bill; but such additional charge shall not exceed in the aggregate in any one case the sum of two hundred dollars.

(2) After the second reading of a bill, and before its consideration by the Committee to which it is referred, the applicant shall in every case pay the cost of printing the act in the statutes, and a fee of two hundred dollars."

A scale of fees as additional charges is provided for to meet varying circumstances but it is not necessary to burden this chapter with the details. They will be found in sections 3 to 8 of rule 89 in the "Rules of the house."

Any person seeking to obtain the passage of a private bill is required to deposit with the clerk a copy of the bill eight days before the meeting of the house, together with a sum sufficient to pay for the printing and translation. The object of this rule is to bring the bulk of petitions and bills within the first part of the session, but, though there is a decided improvement as compared with former practice, promoters are still frequently obliged to appeal for special consideration and for an extension of time. When it becomes necessary to extend the time for receiving petitions, the regular course is for the committee on standing

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orders to make a report recommending such an extension. The rule provides:

"No motion for the suspension of the rules upon any petition for a private bill is entertained, unless the same has been reported upon by the committee on standing orders" (Sen. R. 112). The Commons rule 98 is similar but adds—"the committee in its report shall state the grounds for recommending such suspension."

Rule 115 of the Commons also provides that any motion in relation to the suspension of the rules, must be referred to the committees:

"Except in cases of urgent and pressing necessity, no motion for the suspension or modification of any rule applying to private bills or petitions for private bills shall be entertained by the house until after reference is made to the committee on standing orders or to one of the committees charged with the consideration of private bills and a report made thereon by one of such committees" (*m*).

When the committee on standing orders, or other committee charged with private bills, has reported in favour of extending the time, it is the duty of the chairman to make a formal motion in the house in accordance with the recommendation. This motion may also extend the time for presenting private bills, or receiving reports from committees—the latter recommendation being only necessary in rare cases (*n*). In the session of 1879, the time expired before the committee on standing orders in the Commons was organized. A motion was then made in the house by the premier to extend the time, as a number of petitions would be brought up before the committee could report regularly in favour of an extension (*o*). Subsequently the committee

(*m*) In order to suspend a rule in the Senate one day's notice should be given under rule 24. Sen. Deb. (1877) 500. For cases of pressing necessity see Can. Com. J. (1887), 269, 295; *Ib.* (1890), 429, 464, 499.

(*n*) Can. Com. J. (1876), 102, 107, 108; *Ib.* (1877), 38, 42, 44; *Ib.* (1878), 36, 93, 137; *Ib.* (1883), 104, 214, 235; Sen. J. (1879), 71, 84; *Ib.* (1883), 58, 76.

(*o*) Can. Com. J. (1879), 31; rule 55 (now rule 88) was suspended by general consent.

on standing orders reported in favour of extending the time for presenting bills, and the house agreed to the recommendation (*p*).

When the usual time for receiving petitions has expired, and the house is not disposed to extend it, occasions may arise when parties will be obliged to ask for legislation. Under such circumstances, the regular course is for the parties interested to present a petition praying to be permitted to lay before the house a petition for the passing of the necessary act, notwithstanding the expiration of the time for bringing up petitions for private bills. It is usual to allow (by general assent) such a petition to be read and received forthwith, and to refer it to the committee on standing orders. If that committee, after considering all the circumstances of the case, report favourably, the petition for the bill will be at once presented, and leave given to read and receive it forthwith (*q*). When the committee find that the reasons for delay in coming to the house for legislation are not sufficient to justify a suspension of the rules, they will report accordingly, and no further progress can be made in the matter (*r*). In one case, since 1867, a petition was immediately received, and the bill at once presented and referred. But such instances of departure from correct practice can only be justified "in cases of urgent and pressing necessity" (*s*). In another case, stated to be of urgent necessity, the house consented to receive forthwith a petition praying

(*p*) See also Senate journals (1879), 51, 52, 102; Com. J. (1879), 39.

(*q*) Can. Com. J. (1877), 263, 267, 268; *Ib.* (1879), 357, 363; *Ib.* (1880-1), 208; *Ib.* (1883), 111, 214, 244, 254; *Ib.* (1884), 298, 331; *Ib.* (1890), 121. Sometimes the committee recommend suspension of other rules; *Ib.* (1886), 183, 186. In the Senate a preliminary petition has not been referred to the committee on standing orders, but has been received forthwith; Jour. (1879), 175, 254. Then the petition for the act has been brought in and referred in due form to the standing orders committee; *Ib.* 208, 219. Can. Com. J. (1875), 246.

(*r*) Can. Com. J. (1873), 280.

(*s*) R. 115.

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that the rule requiring previous notice of an application for a bill be suspended. The committee on standing orders considered the application, and when they had reported favourably the member in charge of the bill moved for the suspension of the 51st rule, and presented the bill (*t*).

Petitions in favour of, or in opposition to, private bills may be received at any time while the bill is under the consideration of the house and its committees, and are referred to the committee on the bill, without a motion in the house, in accordance with rule 101 of the Commons, (Sen. R. 117) (*u*). There is no rule laid down in the Canadian houses as respects the time when such petitions should be presented (*v*); they are frequently brought up and received after the bill had been referred to a select committee (*w*).

V. Committee on Standing Orders.—This committee is appointed in both houses at the commencement of the session, and proceeds to work without delay. Under rule 111 of the Senate and 96 Commons: "petitions for private bills, when received by the house, are to be taken into consideration (without special reference) by the committee on standing orders, or the Examiner of petitions who will report in each case whether the rule with regard to notice has been complied with; and in every case where the notice shall prove to have been insufficient, either as regards the petition as a whole or as to any matter therein which ought to have been specially referred to in the notice, the committee is to recommend to the house the course to be taken in consequence of such insufficiency of notice."

In the session of 1903 (Oct. 10th) the following rules as to notices of applications for private bills were adopted

(*t*) Can. Com. J. (1877), 79, 89, 90.

(*u*) Can. Com. J. (1873), 39; *Ib.* (1876), 170; Southern Railway petitions, Feb. 21, 1878.

(*v*) The time is limited for receiving petitions against bills in the English house. May, 757.

(*w*) Can. Com. J. (1876), 139, 143, 171, 196.

upon a report of a joint committee (special) of the two houses. The new rules replace rule 52 of the Commons and 49 of the Senate.

"All applications to parliament for private bills, of any nature whatsoever, shall be advertised by a notice published in the *Canada Gazette*; such notice shall clearly and distinctly state the nature and object of the application, signed by or on behalf of the applicants, with the addresses of the party signing the same; and when the application is for an Act of incorporation, the name of the proposed company shall be stated in the notice." But if the works of any company are to be declared for the general advantage of Canada, such intent shall be specifically mentioned in the notice, and the clerks of municipalities interested, and the security of the province where the works are located shall be notified.

In addition to the notice in the *Canada Gazette* aforesaid, a similar notice shall also be published in some leading newspaper, as follows:—

"A. When the application is for an act to incorporate:

1. *A Railway or Canal Company*:—In the principal city, town or village in each county through which the proposed railway or canal is to be constructed.

2. *A Telegraph or Telephone Company*:—In the principal city or town in each Province or Territory in which the company proposes to operate.

3. A company for the *construction of any works* which in their construction or operation might specially affect a particular locality; or for obtaining any *exclusive rights or privileges*; or for doing any matter or things which in its operation would affect the rights or property of others:—In the particular locality or localities which may be affected by the proposed act.

4. A Banking Company; an Insurance Company; a Trust Company; a Loan Company; or an Industrial Company without any exclusive powers:—In the *Canada Gazette* only.

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(B.) When the application is for the purpose of amending an existing Act:

1. For an extension of any line of railway, or of any canal, or for the construction of branches thereto:—In the principal city, town or village in each county or district through which such extension or branch is to be constructed.

2. For the continuation of a charter or an extension of the time for the construction or completion of any line of railway, or of any canal, or of any telegraph or telephone line, or of any other works already authorized; or for an extension of the powers of a company (when not involving the granting of any exclusive rights); or for the increase or reduction of the capital stock of any company; or for increasing or altering its bonding or other borrowing powers; or for any amendment which would in any way affect the rights or interests of the shareholders or bondholders or creditors of the company:—In the place where the head office of the company is situated or authorized to be.

(C.) When the application is for the purpose of obtaining for any person or existing corporation any exclusive rights or privileges or the power to do any matter or thing which in its operation would affect the rights or property of others.—In the particular locality or localities which may be affected by the proposed Act.

All such notices, whether inserted in the *Canada Gazette* or in a newspaper, shall be published at least once a week for a period of five consecutive weeks; and when published in the Provinces of Quebec and Manitoba, shall be in both the English and French languages; and if there be no newspaper in a locality where a notice is required to be given such notice shall be given in the next nearest locality wherein a newspaper is published; and proof of the due publication of notice shall be established in each case by statutory declaration; and all such declarations shall be sent to the Clerk of the house endorsed, "Private Bill Notice."

(D.) Every such notice by registered letter shall be mailed in time to reach the Secretary of the Province

and the Clerk of such County Council and Municipal Corporation not less than two weeks before the consideration of the petition by the Examiner or the Committee on Standing Orders, and a statutory declaration establishing the fact of such mailing shall be sent to the Clerk of the house.

(E.) All private bills for Acts of incorporation shall be so framed as to incorporate by reference the *clauses* of the *General Acts* relating to the details to be provided for by such bills;—special grounds shall be established for any proposed departure from this principle, or for the introduction of other provisions as to such details, and a note shall be appended to the bill indicating the provisions thereof in which the *General Act* is proposed to be departed from:—Bills which are not framed in accordance with this *Rule*, shall be recast by the promoters, and reprinted at their expense, before any committee passes upon the *clauses*."

By rule 95 of the Commons (51 of the Senate), before any petition praying for leave to bring in a private bill for the erection of a toll-bridge, is presented to the house, the person or persons intending to petition for such bill shall, upon giving the notice prescribed by the standing orders, at the same time and in the same manner, give notice also of the rates which they intend to ask, the extent of the privilege, the height of the arches, the interval between the abutments or piers, for the passage of rafts or vessels, and shall also state whether they intend to erect a draw-bridge or not, and the dimensions of the same.

With a view to give full information of the orders on this subject, it is provided by the rules of both houses that the clerks shall during each recess of parliament publish weekly in the official *Canada Gazette* the rules respecting notices of intended applications for private bills and the substance thereof in the official *Gazette* of each of the provinces; and that they shall also announce by notice affixed in the committee rooms and lobbies of the house, by

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the first day of every session, the time limited for receiving petitions for private bills and reports thereon.

The committee on standing orders have no authority to inquire into the merits of a petition; that is properly the duty of the committee to whom the bill, founded on the petition, is subsequently referred; but they must compare the petition with the notice, in order to see that the latter is not at variance with the former. If there be any informality in the notice or if the parties have neglected to give proper notice, the committee will report it to the house, and either recommend an enforcement or a relaxation of the rule, according to the circumstances of the case. It is the duty of the clerk of the committee, who is also generally the examiner of petitions, to examine into all the facts with regard to the notice given on each petition, so that the committee will have before them such information as that officer can give. In case of insufficiency in the notice, or other irregularity connected therewith, the promoters of the bill, or their authorized agents, will appear before the committee and make such explanations as are necessary to enable them to come to a conclusion.

From an examination of precedents it will be seen that there are numerous instances where the committee have felt justified in dispensing with a notice altogether. The petition of a board of trade for amendments to its act of incorporation, and to legalize the appointment of an official assignee, made previous to incorporation, was not considered one requiring the publication of notice. In the case of the Niagara Falls Gas Company in the state of New York, for authority to supply the town of Clifton with gas, no notice was given, but the committee recommended a suspension of the rule in view of the fact that there was before the house a petition from the town of Clifton, representing that it would be of great advantage to the town, and that no private rights would be interfered with (y). The Vine Growers' Association petitioned the

(x) Can. Com. J. (1867-8) 39. (y) *Ib.* 177.

house for the repeal of section 171 of the act respecting the inland revenue (relating exclusively to the said association) and for certain amendments to the act incorporating that body. No notice had been given, but the committee recommended a suspension of the rule, as no other interests were likely to be affected, and as the act referred to was passed that same session, without the knowledge of the company, whose interests were thereby most prejudicially affected (z).

The committee have also dispensed with a notice altogether under circumstances where such notice would be manifestly absolutely unnecessary for the protection of any interests likely to be affected by the measure (a).

The precedents cited illustrate clearly the principles that guide the committee in coming to a conclusion with respect to the absence or insufficiency of notice. They show that such irregularities are overlooked only when the committee are made fully aware that all parties interested have had sufficient notice or that no interests are affected except those of the petitioners. In the case of banks or other incorporated companies, the consent of the shareholders is provided for by the insertion of a clause in the bill. When the committee have believed that the notice

(z) *Ib.* 207.

(a) See the following precedents: *Ib.* (1867-8), 210; *Ib.* (1869), 85, 162, 185; *Ib.* (1870), 82, 113; *Can. Com. J.* (1870), 44. In this case the company first applied to the Quebec legislature and gave the requisite notices, and then they determined to ask legislation from the dominion parliament. *Ib.* (1871), 78, 102; *Ib.* (1872), 52, 80; *Ib.* (1873), 123, 162; *Ib.* (1874), 166, 218, 255; *Ib.* (1875), 303; *Can. Com. J.* (1875), 216; *Ib.* (1876), 102; *Ib.* (1876), 170; *Ib.* (1879), 83, 136; *Sen. J.* 83 (Geographical Society); *Sen. J.* (1883), 188, 232; *Sen. J.* (1883), 76, 94, 116, 202, 232; *Ib.* (1889), 99, 100, 119; *Ib.* (1890), 116, 185, 203. See also Woodstock Literary Institute, 1857. Montreal Natural History Society, 1862. Society of Canadian artists, *Can. Com. J.* (1870), 83; *Sen. J.* 145. Canadian Academy of Arts, *Can. Com. J.* (1882), 83; *Sen. J.* 72-3. Sisters of Charity in N.W.T., 7th March, 1882, *Can. Com. J.* Royal Society of Canada, *Can. Com. J.* (1883), 67; *Sen. J.* 76. Royal Victoria College, *Can. Com. J.* (1888), 214. Presbyterian church bills 2nd March, 1882.

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was really insufficient (*b*), or that the consent of the shareholders had not been given (*c*), or certain rights or interests are injuriously affected (*d*) or the petitioners show no good reasons for exemption from the rule (*e*), they have always reported adversely. If the notice should be too general in its terms, or if no mention be made of certain matters included in the petition which require a specific notice, the facts should be specially reported, and the promoters restricted in the provisions of the bill within the terms of the notice or if the matters so omitted are allowed to be inserted in the bill provision should be made for the protection of parties whose rights might be affected by the absence of specific notice.

When the notice has been given only in one county or district the operations of the Act have been confined to that locality (*f*).

The report of the committee is almost invariably accepted by the house as conclusive, and there are no instances since 1867-8 where the house has directly overruled their decision, though they have themselves reversed their report on a further consideration of the question. In the case of a bill from the Senate in 1877 the committee reported adversely, and the house subsequently negatived a motion to suspend the standing orders, and in this way overrule the report of the committee (*g*).

The same respect is paid in the imperial parliament to the conclusions of the committee, and very few cases are reported of their decision having been reversed (*h*).

(*b*) Can. Com. J. (1869) 162. *Ib.* (1874) 148. *Ib.* (1883) 100.

(*c*) *Ib.* (1876) 170. (*d*) *Ib.* (1888) 138. *Ib.* 185, 194.

(*e*) *Ib.* (1890) 133. (*f*) Todd's Private Bills Practice, 49, 50.

(*g*) Can. Com. J. (1877), 313, 335.

(*h*) "In some few cases the decision of the standing orders committee has been excepted to and overruled by the house, either upon the consideration of petitions from the promoters, or by a direct motion in the house, not founded upon any petition. But as the house has been generally disposed to support the committee, attempts to reverse or disturb its decisions have rarely been successful." See 80 E. Hans. (3), 158, 175.

There are instances in the journals of the old Canada assembly of the house referring petitions back to the committee after an unfavourable report, for the purpose of considering and reporting as to the expediency of suspending the rule. In one case only was their report favourable and though in this instance the rule was suspended and the bill presented, it was subsequently abandoned (*i*). When a petition had been reported by mistake, the committee have asked that it be referred back to them for further consideration (*j*). They have also reconsidered and amended a report, when further evidence has been adduced to satisfy them (*k*).

When the committee report recommending the suspension of any standing order relative to a private bill, it is proper to make a motion in accordance with that recommendation, as the committee have no power of themselves to suspend a rule of the house (*l*). The practice, however, has not been uniform in this respect, and cases will be found in the journals of bills having been immediately introduced after the presentation of the report without any formal motion for the suspension of the rule (*m*). The correct practice, however, is to move formal concurrence in the report, before the introduction of the bills founded on the petitions referred to the committee (*n*).

(*i*) Elora Incorporation, 1856. (*j*) Can. Com. J. (1876), 136.

(*k*) St. Bonaventure municipality, 1866; Galt and Guelph R.R. amendment, 1858; British Farmer's Insurance Co., 1859. Can. Com. J. (1887), 210, 211, 228; *Ib.* (1888), 181, 194. In 1885, a petition was referred back to the committee for further consideration, as the notice for a bill was insufficient and they had neglected to set forth the fact and recommend a suspension of the rule in the usual form. On the following day the Committee reported unfavourably on the petition. Can. Com. J. (1885), 165, 168.

(*l*) Sen. Jour. (1879), 71, 83, 99, &c.; *Ib.* (1883), 188; Com. Jour. (1873), 261; *Ib.* (1877), 89, 90; *Ib.* (1878), 84, 85; *Ib.* (1879), 38, 324-5, 326, 373.

(*m*) Can. Com. J. (1875), 146, 147.

(*n*) In the English Commons the committee's report is in the shape of various resolutions, which are formally read a second time and agreed to; 129 E. Com. J. 63, &c.

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In the session of 1880-1, the time for the reception of reports on private bills in the Commons lapsed accidentally, and it was not competent for the standing orders committee to recommend an extension of time. It was then considered necessary to give formal notice of a motion to revive the committee. The standing orders committee then met and made a report to extend the time for petitions as soon as the house had agreed to the above motion (*o*).

In accordance with English practice, all inquiries as to compliance with the standing orders affecting private bills properly fall within the sphere of the functions of this committee, or of the examiner of petitions, and not of the committee on a particular bill (*p*).

VI. First and Second Readings in the Commons under Rule 99.—All private bills are introduced on petition and after such petition has been favourably reported upon by the examiner of petitions or by the committee on standing orders, such bills shall be laid upon the table of the house by the Clerk, and shall be deemed to have been read a first time, and to have been ordered for a second reading when so laid upon the table, and recorded in the Votes and Proceedings as having been so read. Formerly, private bills were introduced upon notice by the member in charge of the bill in the same manner as public bills but the present rule has superseded that practice.

If the committee on standing orders or the examiner of petitions report adversely or do not report, the bill cannot be introduced without a suspension of the rule. The bills having been ordered for a second reading under the above rule they will appear upon the orders in due time in their proper place. When such orders are reached in the order of proceedings the second reading is moved and seconded as in the case of public bills and they are referred upon motion (pursuant to rule 101) to the proper standing com-

(*o*) Can. Com. J. (1880-1), 60, 68; *Ib.* (1883), 100, etc.

(*p*) V. & P. 196; Jour. 150, 156.

mittee for consideration. In the Senate a private bill is introduced in the same manner as a public bill.

It is necessary to have all proposed rates, tolls, fees, or fines printed in italics—technically considered as blanks to be filled up by the committee (*q*). The bill "must also have attached to it a copy of any letters-patent or agreement" when its object is to confirm such (*r*). When the rule has not been complied with, a private bill committee has reported adversely; but in such a case the omission may be rectified in committee of the whole on the bill (*s*).

In the session of 1887 (*t*), the House of Commons adopted rules with respect to the incorporation of railway companies, which have decidedly facilitated the work of legislation. It is now provided that all bills of this character shall be drafted in accordance with a Model Bill under the following rules:

"92. All private bills for acts of incorporation of, or in amendment of acts incorporating railway companies, shall be drawn in accordance with the Model Bill adopted by the house on 23rd June, 1887, copies of which may be obtained from the clerk of the house.

(*a*). The provisions contained in any bill which are not in accord with the Model Bill, shall be inserted between brackets, and when revised by the proper officer shall be so printed, and bills which are not in accordance with this rule shall be returned to the promoters to be recast before being revised and printed;

(*b*). Any sections of existing acts which are proposed to be amended shall be reprinted in full with the amendments inserted in their proper places and between brackets;

(*c*). Any exceptional provisions that it may be proposed to insert in any bill shall be clearly specified in the notice of application for the same.

(*q*) Hans. (1886) 782. Todd's Private Bill Practice 55.

(*r*) H. C. R. 100. (*s*) Bessemer's patent, 1857.

(*t*) Can. Com. J. (1887), 195, 203, 313, 320, 412; Hans. 1115, 1270. The provisions of the new rules were copied in certain particulars from similar rules in the Ontario Legislature.

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94. No bill for the incorporation of a railway company, or for changing the route of the railway of any company already incorporated, shall be considered by the railway committee until there has been filed with the committee at least one week before the consideration of the bill:

(a). A map or plan drawn upon a scale of not less than half an inch to the mile, showing the location upon which it is intended to construct the proposed work, and showing also the lines of existing or authorized works of a similar character within, or in any way affecting the district, or any part thereof, which the proposed work is intended to serve, and such map or plan shall be signed by the engineer or other person making the same;

(b). An exhibit showing the total amount of capital proposed to be raised for the purposes of the undertaking, and the manner in which it is proposed to raise the same, whether by ordinary shares, bonds, debentures, or other securities, and the amount of each, respectively.

102. Before any private bill is considered by the committee to which it may be referred, a report shall first be submitted to the committee by the examiner, stating that he has examined the same and has noted, opposite each section, any variations from the provisions contained in the Model Bill; and to insure uniformity the examiner shall revise and certify every private bill passed by the committees, and the reports thereon, before they are presented to the house."

The rules of the two houses are now practically the same as to private bills, after the second reading, and as to the general procedure in relation thereto. When amendments to private bills rules are made in one house it is usual to make similar changes in the other, so that there may be uniformity of practice.

When the order of the day has been read for the second reading of a private bill, the member will make the usual motion. The opponents of a bill may now discuss the measure but they usually find it more convenient to explain

their objections before the committee to which the bill may be referred. It is only on rare occasions that the second reading of a private bill is opposed, the practice being to allow all discussion as to its expediency to take place first in the committee (*u*). Sometimes, however, if it is thought that the bill is properly one that ought to be dealt with by the local legislature of a province (*v*), or if there are other reasons of a public nature against the passage of a bill, objection may be taken at this or at any other stage of the measure (*w*). The principles which should guide the house on the second reading are laid down by eminent authority as follows:—

“The second reading corresponds with the same stage in other bills, and in agreeing to it, the house affirms the general principle, or expediency of the measure. There is, however, a distinction between the second reading of a public, and of a private bill, which should not be overlooked. A public bill being founded on reasons of state policy, the house, in agreeing to its second reading, accepts and affirms those reasons; but the expediency of a private bill, being mainly founded upon allegations of fact, which have not yet been proved, the house, in agreeing to its second reading, affirms the principle of the bill, conditionally, and subject to the proof of such allegations before the committee. Where, irrespective of such facts, the principle is objectionable, the house will not consent to the second reading; but otherwise the expediency of the measure is usually left for the consideration of the com-

(*u*) This practice has been found particularly convenient in the case of railway bills, involving necessarily many diverse interests of a complicated character in not a few instances. “If it was understood with regard to banking, insurance, canal and railway bills, that they were to have a long discussion in the house, on the principle involved, these committees would lose their chief practical value” —Sir J. A. Macdonald. See *Can. Hans.* (1879), 107-9; 1391-7. *Ib.* (1880), 588 (Mr. Holton).

(*v*) Bridge over the river L'Assomption, 1775; *Hans.* 893-4.

(*w*) Street R. R. Co. bill in E. Commons. 6th April, 1861; 162 *E. Hans.* (3), 641.

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mittee. This is the first occasion on which the bill is brought before the house otherwise than *pro forma*, or in connection with the standing orders; and if the bill be opposed upon its principle it is the proper time for attempting its defeat" (x).

The Senate has a rule (116) providing that "at any time before the final reading of any private bill the same may be referred to the Supreme Court of Canada for examination and report as to any point or matter in connection with such bill as expressed in the order of reference."

When the bill has been read a second time, the member interested will move that it be referred, in accordance with the rules of the two houses:

Senate Rule 117.

"Every private bill, after its second reading, is referred to one of the standing committees on private bills and all petitions before the Senate for or against such bill are considered as referred to such committee."

Commons rule 101 provides that:—

"Every private bill, when read a second time, is referred to one of the Standing Committees as follows: Bills relating to banks, insurance, trade and commerce, to the Committee on Banking and Commerce; bills relating to railways, canals, telegraphs, canal and railway bridges, to the Committee on Railways, Canals and Telegraph Lines; the bills not coming under these classes, to the Committee on Miscellaneous Private Bills, and all petitions for or against the bills are considered as referred to such committee." (y)

(x) May, 729. See remarks of Sir J. Macdonald (1889) 170.

(y) For instance, bills respecting bridges, not railway bridges, are referred to the committee on private bills. Can. Com. J. (1880), 100. But bills for incorporation of navigation and steamship companies [*Ib.* (1867-8, 216; *Ib.* (1873), 281; *Ib.* (1875), 153; *Ib.* (1880-1), Acadia S.S. Co.; *Ib.* (1882), 71, 146; *Ib.* (1885), 129], have been generally sent to banking and commerce committee. In 1889, a steamship bill was referred to railways and canals because it was connected with the Canadian Pacific Railway Company. Jour., 109.

All the proceedings in the progress of a private bill are provided for in the standing orders, with the view of informing all the parties interested. Under the rules of the two houses private bill registers are kept. Rule 116 of the Commons and rule 120 of the Senate provide for registers of printed bills, and define the duties of the registrar. A clerk enters regularly in this book "the name, description, and place of residence of the parties applying for the bill, or of their agent, and all proceedings thereon, from the petition to the passing of the bill—such entry to specify briefly each proceeding in the house or in any committee to which the bill or the petition may be referred, and the day on which the committee is appointed to sit." This book is open to public inspection.

Sometimes, when the house discovers that a bill has been referred to the wrong committee, or that it can be more conveniently considered by another committee, a motion will be made to discharge the previous order of reference, and send it to the proper committee (*z*). Sometimes the committee will themselves report that it should be so referred and a motion will be made accordingly (*a*). Instructions are sometimes given to committees with reference to particular bills. In 1863, the committee on banking having under consideration a bill to repeal the acts incorporating the Colonial and certain other banks, that had forfeited their charters, made a report that they be

(*z*) Can. Com. J. (1877), 127; *Ib.* (1880), 77; *Ib.* (1882), 290. In 1884 a bill respecting pilots, first referred to the committee on banking and commerce, was subsequently sent to private bills, as it was simply a bill regulating the affairs of pilots among themselves. See Hans. 131. In 1891 two bills respecting a benevolent society were sent first to private bills, and subsequently to banking and commerce, because they contained provisions affecting insurance. Jour. June 5. In case of a new reference after the bill has been posted for a week, the terms of rule 60 providing for such posting are considered sufficiently complied with. If the full week's notice has not been given when a new reference is made, then it will be necessary only to post it for the time required to make up a full week. Votes and P., 1875, p. 235; *Ib.* 1882, p. 370.

(*a*) Niagara District Bank, 1863.

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empowered to extend their inquiries to any other banks that might be similarly situated; and the house immediately gave the necessary instructions (*b*). If it should be necessary to withdraw a bill after it has been referred, a motion should be made first to discharge the order and then to withdraw the bill (*c*).

VII. Fees and Charges.—The Senate rule (114) directs that:—

“Any person seeking to obtain a Private Bill shall deposit with the Clerk of the Senate, eight days before the meeting of parliament, if it is intended that the Bill shall originate in the Senate, a copy of such Bill in the English or French language, with a sum sufficient to pay for the translation of the same by the officers of the Senate, and the printing of 600 copies in English and 200 in French. The applicant shall also pay the Clerk of the Senate, immediately after the second reading and before the consideration of the Bill by the Committee to which it is referred, a sum of \$200, with the cost of printing the Act in the Statutes, and lodge the receipt for the same with the Clerk of such Committee.

The fee payable on the second reading of any Private Bill is paid only in the house in which it is introduced.”

The Commons rule 89 is very similar. It is as follows:

“Any person desiring to obtain any Private Bill, shall deposit with the Clerk of the house, at least eight days before the meeting of the house, a copy of such Bill in the English or French language, with a sum sufficient to pay for translating and printing the same; the translation to be done by the officers of the house, and the printing by the Department of Public Printing, and if such bill is not deposited by the time above specified the applicant shall, in addition to the charges for printing and translation pay the sum of five dollars for each and every day which intervenes between the said eighth day before the meeting of

(*b*) Ass. Jour. (1863, August session), 102. See also *Ib.* (1852-3), 290, 340; *Ib.* (1854-5), 177, 197, 229.

(*c*) Can. Com. J. (1878) 60.

the house and the date of the filing of the Bill; but such additional charge shall not exceed in the aggregate in any one case the sum of two hundred dollars.

(2.) After the second reading of a Bill, and before its consideration by the Committee to which it is referred, the applicant shall in every case pay the cost of printing the Act in the Statutes, and a fee of two hundred dollars" (d).

A large number of additional charges are provided for by sections 3, 4, 5 and 6 of the rule above quoted. It is unnecessary to recapitulate these in a work of this kind as copies of the rule can always be obtained by inquiries, and they are too numerous and detailed to be of service here.

If any increase of capital is made at any stage of a bill the bill is not further advanced until the increased charges are provided for.

In case the bill is withdrawn or otherwise fails to become law, the fee of \$200 is refunded, generally and properly on the recommendation of the committee on the bill (e). Sometimes the committee will recommend that it be refunded on other grounds:

"Because a bill has been rendered necessary by the action of the general legislature (f). Because the necessity for its passage arose from no fault of the promoter, but from circumstances beyond his control (g). Because the committee have materially diminished the powers asked for (h). Because it is not liable to the fee and charges levied on private bills (i). Because it is a mere amendment

(d) The fees and charges collected on private bills amount to a considerable sum. In 1890 they amounted to \$17,135.00, the average for five years being \$14,000. The amount received in the Commons in 1903 was \$30,921. In 1915 the amount was \$16,440.00.

(e) Can. Com. J. (1876) 212. *Ib.* (1880-1) 355. *Ib.* (1880) 299. *Ib.* (1882) 425. *Ib.* (1879) 224, 344. *Ib.* (1880) 99. Sen. J. (1882) 171. (f) Can. Com. J. (1870) 175. (g) *Ib.* (1873) 212.

(h) *Ib.* (1874) 167.

(i) Geographical Society, 1879. Baptist Union, 1880. Sisters of Charity in the N.W.T., 1882. Royal Society, 1883. Society of Civil Engineers, 1887.

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to the general act respecting banks and banking (*j*). Because a project is of a great public benefit to a locality, because the promoters of the bill have agreed to accept the provisions of a general act passed that session: because it has to a great extent been superseded by the provisions of a public bill (*k*). Because a bill has been consolidated with another, on which fees are paid, or because it is a mere amendment to a previous act" (*l*).

Private bills of a purely humanitarian, charitable, philanthropic, or religious character when no commercial interests are affected and no profit accrues to the Corporation are generally released from fees and charges.

Sometimes the committee will make no report at all on a bill, and then the member interested may move that the fees be refunded "inasmuch as the committee have not reported on the same," or "it is impossible to obtain a quorum" (*m*). When a Commons bill is lost or not proceeded with in the Senate, leave will be given in the Commons to refund the fees which are always payable in the house where the bill originates (*n*). When a bill is lost in the house itself by an adverse motion, the fees are also generally refunded. The fees paid on a bill that had not become law have been refunded in a subsequent session (*o*). When it is not intended to go on with a bill, the regular course is to move at the same time for leave to withdraw it and to refund the fees (*p*). It is also usual, though not necessary, to add, "less the cost of printing and translation"—the fee to be refunded being the \$200 paid after the second reading. In 1882, at the end of the session, a bill was deferred for three months on motion of the member in

(*j*) C.L.N. Com. J. (1877) 93.

(*k*) *Ib.* (1878) 148. Hans. Apl. 5, 1878.

(*l*) *Ib.* (1883) 192.

(*m*) Can. Com. J. (1875) 343. *Ib.* (1880) 289.

(*n*) *Ib.* (1874) 340. *Ib.* (1880) 334. *Ib.* (1882) 400. The same course is followed in the Senate when a bill is lost by the action of the house.

(*o*) *Ib.* (1873) 170. *Ib.* (1882) 207.

(*p*) *Ib.* (1887) 245.

charge, who was unwilling to agree to amendments made by the Senate, and the fees were thereupon ordered to be refunded (*q*).

VIII. Committees on Private Bills.—Lists of the committees to which private bills are referred under the rules are posted in conspicuous parts of the houses for the information of members and all interested parties. It is also ordered:

"No committee on any private bill originating in this house (in the Senate) of which notice is required to be given, is to consider the same until after one week's notice of the sitting of such committee has been first affixed in the lobby; nor in the case of any such bill originating in the Senate (House of Commons) until after twenty-four hours' like notice." (Com. R. 103, Sen. R. 119).

This rule is often suspended on the recommendation of one or more of the committees charged with the consideration of private bills (*r*). In a case of urgency, it is suspended on motion, especially in the case of Senate bills; but only when the Session is drawing to a close and there is no opposition to the bill (*s*).

Rule 103 of the Commons also provides:

"On the day of the posting of any bill the clerk of the house shall cause a notice of such posting to be appended to the printed votes and proceedings of the day" (*t*).

And under a rule common to both houses:

"The clerk of the house shall cause lists of all private bills and petitions for such bills upon which any committee is appointed to sit, to be prepared daily by the clerk of the committee to which such bills are referred, specifying the time of the meeting and the room where the committee

(*q*) *Ib.* (1882) 511. Hans. 1571-2.

(*r*) Can. Com. J. (1874), 201, 203; *Ib.* (1880-1), 254 (S. O. Com.) *Ib.* (1883), 221; Sen. J. (1880), 220; Deb. 456-7.

(*s*) Can. Com. J. (1876) 231. Northern R.R. (1877) 267. *Ib.* 284. Senate bills (1878) 160.

(*t*) See V. & P. (1878), 101, 114, &c.

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shall sit, and shall cause the same to be hung up in the lobby." (Sen. R. 121, Com. R. 117).

The rules that govern all committees have been fully explained in a previous chapter of this work (*u*). Since the session of 1867-8 the committees on private bills have had the power to examine witnesses upon oath, to be administered by the chairman, or any member of such committee (*v*).

The rules of the two houses order:—

"All questions before committees on private bills are decided by a majority of voices, including the voice of the chairman, and whenever the voices are equal the chairman has a second or casting vote." (Sen. R. 123, Com. R. 105).

When a committee has been regularly organized the clerk will lay before it the different matters referred to it, in the order of their consideration. Sometimes bills will be deferred, or a day fixed for their consideration by an arrangement between the parties interested. The committee may in such a case make the bill the first order of the day, just as is done in the house itself in similar matters.

All petitions for or against a bill are laid before the committee, and the petitioners, either by themselves or by their agents, will be present to promote their respective interests. Petitioners may pray to be heard against the preamble or clauses of the bill; some against certain clauses only, others may ask the insertion of protective clauses, or for compensation for damages which will arise under the bill. Unless petitioners pray to be heard against the preamble they will not be entitled to be heard, nor to cross-examine any of the witnesses of the promoters upon the general case, nor otherwise to appear in the proceedings of the committee until the preamble has been disposed of. Nor will a general prayer against the preamble entitle a petitioner to be heard against it, if his interest be merely affected by certain clauses of the bill (*w*). If the petition

(*u*) Chapter xiv.

(*v*) 31 Vict., c. 24.

(*w*) May, 758 *et seq.*

against the bill is not sufficiently explicit the committee may direct a more specific statement to be given in writing, but limited to the grounds of objection which had been inaccurately specified (x). If cases arise where an informal petition has been referred through inadvertency, the committee will take cognizance of the matter, and petitioners will not have the right to be heard on such a petition. It is not regular to add anything to a petition, in case a material part has been omitted, a mistake (y). Sometimes petitions relative to a bill under the consideration of a committee will be received as soon as presented in the house, so that they may go immediately before the committee (z).

It is ordered by rule of the Senate and Commons:

"All persons whose interest or property may be affected by any private bill shall, when required so to do, appear before the standing committee touching their consent, or may send such consent in writing, proof of which may be demanded by such committee. And in every case, the committee upon any bill for incorporating a company, may require proof that the persons whose names appear in the bill, as composing the company, are of full age and in a position to effect the objects contemplated, and have consented to become incorporated." (Sen. R. 122, Com. R. 104).

On the day appointed for the consideration of a private bill the parties interested will appear before the committee, and the chairman will first read the preamble, which should be always first considered in select committee. In a committee of the whole the preamble is postponed, that and the title being the last considered. (H.C. Rule 55.). As the preamble of a private bill sets forth the facts upon which it is founded, it is necessary that they should be fully and

(x) May, 761; E. Com. S. O. 128; Todd's Private Bill Practice, 73.

(y) 83 E. Hans. (3), 487.

(z) Can. Com. J. (1876), *Mail Print. Co.*, 171. *Ib.* (1879), Ottawa Agricultural Insurance Co., 28 March.

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truly stated and substantially proved or admitted (a). The preamble may sometimes be postponed for special reasons, until after the consideration of certain details of a bill, but this course is inexpedient and is very rarely followed (b). Any petitions against the bill are then read, and an understanding arrived at with respect to the course of procedure. The promoters or their agents will first address the committee on the preamble; and then (if required) proceed to call witnesses, and examine them. At the conclusion of the evidence, when the counsel or agent for any petitioner rises to cross-examine a witness or to address any observations to the committee, this is the proper time for taking objections to the *locus standi* of such petitioner. Petitioners are said to have no *locus standi* before a committee, when their property or interests are not directly and specially affected by the bill, or when, for other reasons, they are not entitled to oppose it (c). Of this the Committee is to be the judge.

The English authorities give very full detail of the various proceedings before committees on opposed private bills. The reports of the committees of the Canadian legislatures, on the other hand, have always been very meagre, and it is impossible to make up any satisfactory summary of their procedure from the records of the two houses. May's exhaustive treatment of this subject may be read with advantage as illustrating the care with which such subjects are considered in the imperial parliament (d).

When any amendments are made in a bill, or clauses added, they must be signed on the margin with the initials of the chairman's name in accordance with the following rule:

(a) The reasons upon which a public statute is passed are not generally of such a nature that they can be defined with perfect precision, or enumerated in full, hence there may be reasons for the passing of a public act, which are not given in the preamble. Cushing, s. 2100.

(b) Todd, *Private Bill Practice*, 76.

(c) May, 758 *et seq.* (d) See May, 761-783 *et seq.*

"The chairman of the committee shall sign with his name at length, a printed copy of the bill, on which the amendments are fairly written and shall also sign with the initials of his name, the several amendments made and clauses added in committee; and another copy of the bill, with the amendments written thereon, shall be prepared by the clerk of the committee, and filed in the private bill office or attached to the report." (Sen. R. 127, Com. R. 111).

If the committee decide that the preamble has not been proven, no further proceedings will be had in the committee on the bill, but the fact must be reported to the house in conformity with the following rule:

"When the committee on any private bill report to the house that the preamble of such bill has not been proved to their satisfaction, they must also state the grounds upon which they arrived at such a decision (*e*), and no bill so reported upon shall be placed on the orders of the day, unless by special order of the house." (Sen. R. 126, Com. R. 110).

The committees on private bills have reported against bills on various grounds, as follows:

Because no sufficient evidence was offered in favour of the preamble: insufficient information or antagonistic evidence: no proof of the consent of the parties interested; that the petitioners against the measure are as numerous as those in its favour or more numerous: that there is a great difference of opinion in the locality affected, as to the expediency of the measure: that legislative interference is not desirable or necessary; that it would interfere with law suits pending, or with existing rights: that the powers sought for would not advance the interests of the locality: that the bill asked for an extension of the powers of a certain company to purposes entirely foreign to its original charter: that it contained most unusual provisions: that it was in

(*e*) Can. Hans. (1880), 1685, (Mr. Blake); Sen. J. (1880-81), 211; Hans. 621. Can. Com. J. (1885), 244, 258.

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the power of the executive government to carry into effect the objects contemplated by the bill, or in the power of the court of chancery to do so: that the information was insufficient as to the possible effect upon the navigation of a navigable stream and upon private rights: because it was necessary to give certain bondholders abundant opportunity of considering the effect on their securities of the provisions of a bill: because the provisions of a general act afforded sufficient facilities to the promoters to obtain the powers asked for, and consequently a special act of incorporation was unnecessary without special reason: because a bill was inconsistent with the provisions of an act respecting the Canadian Pacific Railway and the contract thereby made and ratified(*f*): because a bill embodied the objectionable principle known as assessment endowment assurance, and also sought to avoid inspection by the insurance department.

A committee will sometimes make changes in the preamble, and in such a case they must also report the fact to the house in conformity with the rules as follows:

"The committee to which a private bill is referred, shall report the same to the house in every case, and when any material alteration has been made in the preamble of the bill, such alteration, and the reasons for the same, are to be stated in the report". (Sen. R. 125, Com. R. 107.)

The committee may sometimes propose such alterations in a bill that the promoters will abandon it rather than accept the new provisions. For instance, in the case of the Canadian Mutual Life Insurance, in 1868, the committee were unwilling to recommend its passage unless the promoters were prepared to provide a guarantee capital with not less than \$50,000 paid up—a provision which was not accepted by the parties interested (*g*).

(*f*) Can. Com. J. Canada Southern R. R. Co. (1876), 231. Can. Com. J. (1880-1) 215. *Ib.* (1885) 258, 317. Order of Canadian Home Circle, July 6th, 1891.

(*g*) Can. Com. J. (1867-8) 345.

By a rule of the two houses,

"It is the duty of the committee to which any private bill may be referred by the house to call the attention of the house specially to any provision inserted in any such bill that does not appear to have been contemplated in the notice for the same (*h*), as reported upon by the committee on standing orders." (Sen. R. 124, Com. R. 106.)

In case the committee do not so report, and a member is of opinion that certain provisions of a bill are not contemplated in the notice for the same, he may raise a point of order, and it will be for the speaker to decide. In such a case it is the more regular course to discharge the order for consideration in committee of the whole, and then refer the bill to the committee on standing orders (*i*).

The committee on a bill have no authority to make any amendments therein which may involve an infraction of the standing orders, or which may affect the interests of the parties interested, without due notice having been given to the same. The committee have sometimes, with the consent of the parties, made very material alterations in a bill, and in all such cases they will report the fact to the house (*j*).

In cases when the committee have considered an amendment of the general law preferable to the passage of certain private bills, they have occasionally made a special report to that effect, and postponed the consideration of the bills to which it had reference to enable the house to take action in the matter (*k*); or they have expunged certain provisions, and recommended an amendment of the general law in these respects (*l*).

The amendments made to a private bill by a committee ought not to be so extensive as to constitute a different

(*h*) *Ib.* (1887) 245.

(*i*) *Ib.* (1870) 116, 119.

(*j*) Can. Com. J. (1867-8) 212.

(*k*) Mining companies bills, 1854-5; Joliette incorporation, 1863.

(*l*) De Lery gold mining company, 1865; Quebec corporation, 1865.

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bill from that which has been read a second time. When a bill comes from a committee with extensive amendments affecting private rights and interests, it is the practice now in the English house to refer the bill as amended to the examiner to inquire whether the amendments involve any infraction of the standing orders. If he reports there is no infraction, the bill proceeds without interruption, but if he reports that there has been an infraction, then his report together with the bill goes to the standing orders committee (*m*). It will be seen from Canadian precedents that an analogous practice has obtained in the house, and in the absence of an examiner a bill has been referred at once to the standing orders committee.

In the session of 1883, some important amendments made by the Senate to the Credit Valley Railway bill were referred on its return, to the committee on railways, who made a report, calling attention to the fact that "no mention of the new provisions was contained in the notice, or in the petition for the said bill." The house, however, agreed to the amendments, though a motion was proposed to disagree to them for the reasons, among others, that no notice had been given of any intention to apply to parliament for the legislation contained in the amendments, and that in the absence of petition and notice, it was not expedient to sanction such legislation (*n*). Such important amendments should have been submitted to the scrutiny of the examiner and standing orders committee, and only allowed to pass on their favourable report.

In case it is deemed inexpedient to proceed with a bill, a motion may be made to that effect on the question for adopting the preamble, and if it should be so decided, the committee will report accordingly (*o*). Sometimes a committee, in cases of doubt, have asked instructions from the house as to the course they should take with reference to

(*m*) May, 831; 105 E. Com. J. 446, 481, 485; 108 *Ib.* 557; 230 E. Hans. (3), 1679-80.

(*n*) Can. Com. J. (1883), 317, 325; Sen. J. 187.

(*o*) Detroit River Bridge and Tunnel Co., 1869, App. No. 4.

the bill before them (*p*). When the committee have found it advisable to alter the title of the bill they will report the fact to the house (*q*), and it will be amended on the motion for the final passage. It will frequently be necessary for the committee to order that the bill be reprinted, as amended, and this is done at the expense of the promoters (*r*). Private bills may, after being reported and before consideration by a committee of the whole, be reprinted as the clerk may direct at the cost of the promoters. (H. C. Rule 113). If a committee find that a bill should more properly, or would more conveniently be considered by another committee, they will make a recommendation to that effect, and it will be so referred (*s*). If the committee are of opinion that the bill falls under that class which requires the consent of the governor-general before its passage, they will report the fact to the house; and the consent will be signified by a privy councillor at a future stage of the proceedings (*t*).

The Commons' rule 91 further provides:

"All private bills for acts of incorporation shall be so framed as to incorporate by reference the *clauses* of the *general acts* relating to the details to be provided for by such bills:—special grounds shall be established for any proposed departure from this principle, or for the introduction of other provisions as to such details, and a note shall be appended to the bill indicating the provisions thereof, in which the general act is proposed to be departed from;—bills which are not framed in accordance with this rule, shall be re-cast by the promoters, and reprinted at their expense, before any committee passes upon the clauses."

(*p*) Civil Service Building Society, (1867-8), 60.

(*q*) Can. Com. J. (1874), 240, 262; *Ib.* (1883), 172, 214; *Ib.* (1885), 244.

(*r*) Can. Com. J. (1877), 136. The bills are invariably reprinted in the Imperial Parliament before consideration by the House.

(*s*) Can. Com. J. (1875) 246-7.

(*t*) Northern R. R. (1871), 135, 160.

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The proceedings of the committees on private bills should be entered regularly by the clerk in a book kept for that purpose. As a rule, the evidence and proceedings are not reported in full to the house; but the committee confine themselves to the giving of the result of their deliberations. In important cases, however, they have reported their proceedings *in extenso*, and then it is the regular course for the committee to agree to a formal motion that they be so reported (*u*).

A select committee may consolidate two bills into one or divide a bill into two, but only on receiving instructions to that effect from the house.

IX. Reports of Committees.—By rule 107 the committee to which a bill may have been referred, "shall report the same to the house in every case; and when any material alteration has been made in the preamble, such alteration and the reasons for the same shall be stated in the report"; and when parties have decided not to go on with their bill, the fact is reported and an order is made in the house for its withdrawal (*v*). In case the committee do not report with reference to a bill, the house should take cognizance of the matter. "It is the duty of every committee to report to the house the bill that has been committed to them," says the best English authority (*w*), "and not by long adjournments, or by an informal discontinuance of their sittings to withhold from the house the result of their proceedings. If any attempt of this nature be made to defeat a bill, the house will interfere to prevent it." Sometimes, under such circumstances, a committee will be "ordered to meet" on a certain day, "to proceed with the bill" (*x*).

(*u*) First report of Ry. Committee (1867-8) App. No. 3. Banking and Commerce (1869) App. No. 8. Railways (1869) App. No. 4.

(*v*) Can. Com. J. (1877), 169, &c.; *Ib.* (1883), 205, 215. *Ib.* (1890), 199, 208, 269. Sen. J. (1889), 134, 135. Lords J. (1887), 103, 109. 104 E. Com. J. 501; 131 *Ib.* 372.

(*w*) May, 828.

(*x*) 80 E. Com. J. 474; 91 *Ib.* 195.

When a committee cannot meet for want of a quorum, the attention of the house may be called to the fact, and its interposition invoked. In such a case, the house will order: That the committee be revived and that leave be given to sit and proceed on a certain day (*y*). Or the house may order: That the committee have leave to sit and proceed with two or more members, in case there is no likelihood of a quorum (*z*). In the session of the House of Commons of 1877, a bill respecting the Albert Railway Company came up from the Senate with amendments and was referred to the committee on railways in accordance with the rules of such cases. As it was then near the end of the session, there was a difficulty in obtaining a quorum of the committee, and the bill was not reported. The member in charge of the bill moved that the order of reference be discharged, and that the amendments made by the Senate to the bill be considered. The speaker decided that no notice was required of such a motion; and the bill was then taken up, and its further consideration deferred for three months—several members having strong objections to its passage (*a*). Bills have also been referred back for reconsideration (*b*).

Towards the end of the session, or in case of the proceedings of the house being interrupted by adjournments over holidays, the time for receiving reports on private bills is frequently extended on motion; but the more regular course is for a committee to make a formal recommendation in the first place (*c*). The house will give every opportunity to their committees to consider fully the details of bills submitted to them.

X. Committee of the Whole.—In the Senate, private bills are not considered in committee of the whole—their

(*y*) 105 *Ib.* 201.

(*z*) 128 *Ib.* 133.

(*a*) Can. Com. J. (1877) 343, 350; Can. Hans. Apl. 27th, 1877.

(*b*) Can. Com. J. (1880) 252, 265; *Ib.* (1887) 156. *Ib.* (1888) 209-10.

(*c*) *Ib.* (1877), 38, 42, 44, 198, 237; Sen. J. (1882), 144.

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practice in this respect being similar to that of the English houses—but when a select committee reports a bill with amendments, these are considered as if they came from committee of the whole, and when they have been agreed to the bill is appointed for a third reading (*d*). On consideration of a bill as amended, it may be further amended as in case of a bill reported from committee of the whole (*e*). When a bill is reported without amendment, it is usually read a third time and passed forthwith (*f*).

When a bill is reported to the Commons, with or without amendments, it is ordered by rule 108 to be “placed upon the orders of the day following the reception of the report, for consideration in committee of the whole, in its proper order, next after bills referred to a committee of the whole” (*g*). Towards the end of the session, it is not unusual to place bills reported from select committees immediately on the orders of the same day, but this can be done only on motion and by general assent (*h*).

Whenever a committee reports unfavourably on the preamble of a bill, it has no place on the order paper in either house. It is always open to the house to refer a bill back to a committee for further consideration, especially if the reasons given for not proceeding with it appear insufficient (*i*). Or the house may give instructions

(*d*) Sen. J. (1878), 213-14; *Ib.* (1883), 210, 222, &c. When the report of the committee has been received, it is moved and agreed that the amendments be taken into consideration, generally on another day.

(*e*) *Ib.* (1876), 190, 193, 197; *Ib.* (1877), 141.

(*f*) *Ib.* (1883), 140, 145, 179, &c.

(*g*) Can. Com. J. (1877), 188; *Ib.* (1879), 344.

(*h*) *Ib.* (1887), 289.

(*i*) 91 E. Com. J. (S. W. Durham R. R.), 396; 116 *Ib.* (Midland & Denbigh Junction R. R.), 285; 129 *Ib.* (Midland & N. E. R. R.), 217, 225; Peterborough & Port Hope R. R., 1862, Can. Leg. Ass.; Can. Com. J. (1885), 244, 258. In this case the committee gave no reasons in their first report, but subsequently on reconsideration they stated why the preamble was not proven to their satisfaction. Attention was called to the error of the committee on moving reconsideration. Hans., 713.

to the committee to strike out certain provisions and report the same as amended (*f*).

It has been decided in the English Commons:

"When a committee have resolved that the preamble of a private bill has not been proved, and ordered the chairman to report, it is not competent for them to reconsider and reverse their decision, but that the bill should be re-committed for that purpose" (*k*).

In the Commons by rule 109 all private bills reported to the house by committees may, on motion, be referred together to the committee of the whole and such committee may consider and report one or more of such bills at the same sitting.

In the event of the expiry of the hour for private bills the chairman will on rising report to the house such bills as have been disposed of by the committee and the bill under discussion at the expiry of the hour shall retain its place on the order paper for the next sitting of the committee.

It is very rarely that the committee of the whole on a private bill will interfere with the bill as it comes from a select committee (*l*). The bill, as amended in a select committee, is not reported from committee of the whole "with amendments;" that is done only when it is actually amended in committee of the whole (*m*), or when the bill has come from the Senate, as, in the latter case, it is necessary to send the amendments for concurrence to the upper chamber (*n*). Amendments made in committee of the whole must be read a second time and concurred in, as in the case of public bills. But the right of a committee of the whole to make any important amendment is limited by the following rule:

(*j*) *Richelieu Co.*, 1862; 129 E. Com. J. (*Bolton Le Sands, &c.*), 174.

(*k*) May, 818 *Shrewsbury & Welchpool R. R. bill*, 1858.

(*l*) *Todd's Private Bill Practice*, 101—3.

(*m*) *Can. Com. J.* (1877), p. 122.

(*n*) *Ib.* (1878) 160.

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"No important amendment may be proposed to any private bill, in a committee of the whole house, or at the third reading of the bill, unless one day's notice of the same shall have been given." (Sen. R. 130; Com. R. 112).

It is the correct course, in all cases where it is necessary to make material amendments, to refer the bill back to the select committee, to which it had been previously sent, instead of considering the proposed changes in committees of the whole (*o*).

Rule 114 of the Commons provides that:

"When any private bill is returned from the Senate with amendments, the same, not being merely verbal or unimportant, such amendments are, previous to the second reading, referred to the standing committee to which such bill was originally referred."

In the chapter on public bills, the rules in committees of the whole and on the third reading are fully explained, and as these apply to private bills—except where there is a standing order on any particular point,—it is not necessary to recapitulate them here. But there is one point to which reference may be made, and that is, in case it is necessary to make certain provisions in a private bill affecting the public revenues or expenditures, those provisions must be first introduced in the shape of resolutions with the consent of the government, and when these have been passed in committee of the whole and agreed to by the house, they must be referred to the committee of the whole on the bill (*p*).

XI. Third Reading.—On the third reading in the Commons no amendment may be made except of a verbal nature; and, if it is wished to make any material change, the bill must be referred back to committee of the whole.

(*o*) *Ib.* (1877) 149, 178.

(*p*) *Leg. Ass. J.* 1866; *Com. J.* 1867-8; Canada Vine Growers' Association. In this case parliament extended the period mentioned in an Act of the old legislature of Canada, exempting the association from excise and other duties.

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Under the rule previously cited, a day's notice must be given of any important amendments at this stage. A bill may, however, be amended in the Senate on the third reading after notice (*q*). In accordance with English practice, the consent of the governor-general may now be signified in the case of a bill affecting the interests of the crown; but in the Canadian Commons this consent is given most frequently at the second reading. The member in charge of the bill will move: "That the bill be now read a third time;" and when that motion has been agreed to, the final motion will be made. "That the bill do pass, and that the title be, etc.;" and now is the usual time to amend the title (*r*). Sometimes on the motion for the third reading a bill will be again referred to a select committee or back to the committee of the whole for the purpose of further considering it (*s*). The bill may be re-committed and an instruction given to the committee if necessary (*t*).

It sometimes happens at the very end of the session that there may be urgent necessity to pass a private bill through all its stages, without reference to the usual committees, and in such a case the first motion must be to suspend the rules—the house being only ready to acquiesce when the circumstances are such as to justify such a procedure, and there is no time for consideration in the proper standing committee (*u*).

XII. Private Bills in the Senate Imposing Rates and Tolls.—Private bills, which impose rates and tolls, may be introduced in the Senate and accepted by the House of

(*q*) Sen. J. (1882), 277; *Ib.* (1883), 205.

(*r*) Can. Com. J. (1876), 217.

(*s*) Springhill & Parrsborough Co.; Can. Hans. (1877), 813-4. The ground was taken that the allegation made in this bill, that the work was for the general advantage of Canada, was not strictly true.

(*t*) May, 498.

(*u*) P. E. Island Bank, Com. Jour. (1882), 66; Hans. 72. Ontario Bank, 1882, Votes and Proceedings, 573. Sen. J. (1883), 270 Railway Trust and Construction bill; Sen. Deb., 595. Also Can. Com. J. (1887), 269; *Ib.* (1888), 294.

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Commons, in conformity with the standing order of the English House to the effect that it "will not insist on its privileges with respect to any clauses in private bills sent down from the House of Lords which refer to tolls and charges for services performed, and which are not in the nature of a tax, or which refer to rates assessed and levied by local authorities for local purposes"(v). For instance a bill respecting the Kincardine harbour was sent up from the Commons in 1877, but it transpired that the schedule of tolls had not been added in the private bill committee of the lower house. The schedule was thereupon quite regularly added in the Senate and agreed to by the Commons (w).

XIII. Bills not Based on Petitions.—When a private bill is brought from the Commons to the Senate it is at once read a first time without amendment and debate, and ordered for a second reading on a future day (x). If the member in charge of the bill is absent, and no motion is consequently made for the second reading, he must take the first opportunity he has for placing it on the orders. If no petition has been presented to the Senate and reported upon by the committee on standing orders, it must go before the second reading to that committee in accordance with the following rule, common to both houses:

118. "Any private bill from the House of Commons for which no petition has been received by the Senate shall be taken into consideration and reported on by the committee on standing orders in like manner as a petition after the first reading of such bill, and before its consideration by any other standing committee." (Com. R. 96. (3).

In case notices or petitions have been irregular or insufficient, the proper practice is, first to move the suspension of the rule in accordance with the report, and when that is agreed to, to move the second reading of the

(v) S. O. No. 226, May, 547.

(w) Sen. Deb. (1877), 300.

(x) Sen. J. (1880-1), 195, etc.

bill so that it may go on the orders. But it is not at all regular to order the second reading before the committee reported whether or not the rule with respect to notice should be suspended and the bill proceeded with. The procedure in the Commons under the same rule, is to move the second reading after the report, if favourable, of the standing orders committee.

In the case of a bill in 1883 to authorize the Grand Trunk Railway Company to alter its arrangements with the North Shore Railway Company, the committee on standing orders in the Senate acted adversely without giving any reason except that notice had been published in the *Canada Gazette*, or in any other newspaper. Thereupon, notice was given of a motion to suspend the rules so far as they related to the bill, and the motion having been agreed to, the bill was placed on the order for a second reading on a following day. This case shows that the motion for the second reading should properly follow the report of the committee (z).

In the case of the "act to incorporate the board of management of the church and manse building fund of the Presbyterian Church in Canada, for Manitoba and the Northwest," no petition was presented in 1883 in the Senate, but no difficulty arose because the regular notices required by the rules had been given (a). The committee's report to this effect was adopted, and the bill was ordered at once, by motion, for a second reading on a future day.

In 1884, the Hamilton and Northwestern Railway Company's bill came up from the Commons, and as there was no petition presented in the upper chamber, it was

(y) It will also be seen that in the Senate in 1883—but not in previous cases—a motion for the reference to the standing orders committee was made after the first reading. The rule seems to provide for a reference, as a matter of course, without a motion; and it is understood as *imperative* in the Commons. But it is immaterial whether the motion is made or not; the bill must go to committee.

(z) Sen. J. (1883), 208, 210, 221, etc.; Min. of P., p. 350. Notice to suspend the rules in pursuance of rule 17, *supra*, 307.

(a) Sen. J. (1883), 145.

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referred to the committee on standing orders who reported favourably, but it was objected that they had not specially reported a suspension of the fifty-seventh rule which sets forth that "all private bills are introduced on petition." The report was referred back for reconsideration, with the result that the committee recommended a suspension of the rule in this particular case. During the discussion in the Senate on the subject, stress was laid on the regularity and convenience of having petitions presented in each house in every case of private legislation (*b*).

As a rule, however, petitions for private bills are simultaneously presented and reported upon in both houses; and in this way the progress of a bill is facilitated. It is only in exceptional cases that a petition is presented in one house and not in the other. Bills originating in the Senate and sent to the house for concurrence are placed for a first reading on the order paper under "Routine Proceeds," immediately after "Introduction of bills" (*c*).

When the order is called, the member interested will move, "That it be now read a first time," and this motion must be put without amendment or debate, as in the case of any public bill (*d*). The bill must then be referred to the Examiner of petitions or to the committee on standing orders, if they have not previously reported on a petition relative thereto, in accordance with rule 88 which is exactly the same as the rule of the Senate on that subject. If the report is favourable, a motion would immediately be made for the second reading on a future day, as the rules of the Commons do not contain any provision for placing a bill on the orders after such report (*e*). If the report is unfavourable the member may move (after notice) to suspend the

(*b*) Sen. Deb. (1884), 405, 406, 472, 502; Jour. 215, 228, 242, 246.

(*c*) H. C. rule 28 (A).

(*d*) Can. Com. J. (1883), t41.

(*e*) *Ib.* (t878), 98, t09; *Ib.* t89t, July 7, 8 and 9. For cases in legislative assembly, see Toronto Boys' Home, t861; Huron College, t863.

rule relative thereto, and to have the bill read a second time; but in the only case of the kind that has occurred since 1867, the house refused to interfere with the decision of the committee (*f*). If there is a petition favourably reported on by the Examiner or the committee on standing orders of the Commons, the bill can be immediately ordered for a second reading after the first reading (*g*).

XIV. Amendments made by Either House.—When a bill is returned from one house to the other with amendments, they are generally considered forthwith if they are merely verbal and not important (*h*). The course with respect to amendments that are material is variable in the Senate; but ordinarily they are ordered to be taken into consideration on a future day; or immediately at the close of the session. Rule 114 of the Commons and rule 131 of the Senate, however, provide a different course in the case of material amendments to a private bill:

“When any private bill is returned from the Senate (or House of Commons) with amendments the same not being merely verbal or unimportant, such amendments are, previous to their second reading, referred to the standing committee to which such bill was originally referred (*i*), [or, by the Senate rule, to a committee of the whole, or to the standing committee to which the bill was originally referred.”]

If the committee report favourably, the amendments will be immediately read a second time and agreed to, and returned with the usual message. If the committee report that the amendments should be disagreed to for certain reasons, the house will consider the amendments forthwith, and having read them a second time will disagree to those on which the committee have reported unfavourably

(*f*) *Ib.* (1877), 313, 335.

(*g*) *Ib.* (1877), 54, 62, 131-2 (*Globe Printing Co. bill*), etc.

(*h*) *Sen. J.* (1877), 152. *Com. J.* (1878), 120.

(*i*) *Ib.* (1883), 308; *Ib.* (1886), 176.

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for the reasons set forth in their report (*j*). The house will then either "insist" or "not insist" on their amendments when the message is received that the other house disagrees to them (*k*). Or the committee may recommend that certain amendments be made to the Senate amendments (*l*).

The necessity of referring amendments, made by one house to a bill passed by the other, was shown in 1884, in the case of a Commons bill respecting the Grand Trunk Railway. This bill came back to the Commons with apparently unimportant amendments which were hastily agreed to, but it afterwards transpired that, though verbal, they involved important consequences, and it was decided to adhere strictly thereafter to the rules of the house which require that all such amendments shall be placed on the order paper for another day, so that full opportunity may be given to all those interested in the measure to consider the character of the changes (*m*). This rule has consequently been observed since that time, and only deviated from in rare cases of urgency at the end of the session when no objection is taken to the amendments.

Sometimes in the Senate, as in the Commons, it may be necessary to suspend all the rules guarding the passage of private bills, but urgency will have to be shown before so grave a departure from correct procedure can be permitted, and the rules can only be suspended with the unanimous consent of the house (*n*).

(*j*) London & Ontario Investment Co. (1877), 246, 262; Wesleyan Missionary Society (1883), 317, 326.

(*k*) Can. Com. J. (1877), 289, 298, 299; Sen. J. 269, 282 (Union Life & Accident Assurance Co.).

(*l*) Can. Com. J. (1886), 255, 270 (Guelph Junction Railway Co.). See also c. xvi.

(*m*) See Can. Hans. (1884), 1511, 1514.

(*n*) Wood Mountain & Qu'Appelle Railway; Sen. Deb. (1890), 865-868. In the case of the Winnipeg & Hudson's Bay R. R. Co. Bill, objection was taken to the suspension of the rules; *Ib.* 868-872. In the case of both these bills, the rules were suspended in the Commons. Can. Com. J. (1890), 464, 469.

CHAPTER XVII.

DIVORCE BILLS.

I. Divorce Bills in the Senate.—II. Rules and Practice of the Senate—Committee on Divorce—Notices of Application—Meetings of Committee—Form and Contents of Petitions, Service of Petitions and Notices—Fees—Hearing of Evidence—Witnesses—Committees' First Report—Introduction of Bill—Second Reading of Bill—Proceedings after Second Reading—Final Report of the Committee—Third Reading of Bill. III. Divorce Bill in the House of Commons.

I. Divorce Bills in the Senate.—The old provinces of Canada from 1839 to 1867, exercised the power of legislating upon applications for divorces (*a*), but all bills were reserved for Her Majesty's approval, in conformity with the instructions issued to the several governors-general (*b*). The jurisdiction of the Canadian parliament in reference to this subject is declared by section 91 (sub-sec. 26) of the British North America Act, 1867. That body has, in the exercise of its authority, passed many bills nullifying marriage. The law courts of some of the provinces continue to exercise the power they possessed previous to confederation, of affording relief in matters of marriage and divorce. These provinces are Nova Scotia (*c*), New

(*a*) The first case in Canada was that of John Stuart, 1839. Only four other applications were granted from 1840 to 1867. Harris, 1845; Beresford, 1853; McLean, 1859; Benning, 1864.

(*b*) For the history of these cases, see Treatise on Divorce by the late J. A. Gemmill, Esq., barrister, of Ottawa, and also R. V. Sinclair's excellent and more recent work on the same subject.

(*c*) See B.N.A. Act, 1867, ss. 129, 146. Appendix A to the Rev. Stat. of N.S., 5th ser., c. 126, as amended by c. 13, 1866, and c. 22, 1870.

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Brunswick (*d*), and Prince Edward Island (*e*), while in the case of British Columbia, the Supreme Court of that province has held that it possesses jurisdiction and has continued to exercise it. Accordingly as the law now stands, the parliament of Canada exercises its power to dissolve marriage in the provinces of Quebec and Ontario, Manitoba, Saskatchewan, Alberta and the Yukon Territory. The provincial courts of law and equity of Ontario, however, have jurisdiction to deal with the validity of a marriage contract on the ground of its being a civil contract, and in cases of fraud, mistake, duress and lunacy, and possibly, want of age, it may be declared void (*f*). The courts of Manitoba, and of the other western provinces appear to have the same powers in similar cases (*g*). In Quebec, while the civil code declares marriage indissoluble, the courts may order a separation of husband and wife—*separation de corps*—but such separation can be allowed only for adultery or ill-usage, or for other specific causes, and not by the mutual consent of the parties themselves. The courts have also jurisdiction to annul a marriage where there is no consent, or the parties are within certain prohibited degrees, and in other cases very limited, in a country where the Roman Catholic Church declares marriage a sacrament, and the law merely gives civil effect to a religious ceremony validly celebrated by regularly ordained ministers authorized to keep marriage registers (*h*).

From 1867 to the present time the parliament of Canada has exercised the powers assigned to it, in the matter of divorce, in numerous cases. In the exercise of its powers as one branch of the federal legislature, the Senate has

(*d*) Cons. Stat. of N.B., c. 50.

(*e*) 5 Wm. IV. (1836), c. 10; 29 Vict. (P.E.I.) (1866), c. 11.

(*f*) Gemmill, 39.

(*g*) *Ib.* 42, 43.

(*h*) See Code Civil (de Bellefeuille's Ed.), arts. 115-127; 186 *seq.*; 1311 *et seq.* (Séparation de biens).

generally (i) acted on certain well defined principles. Applications for divorce must be based upon a specific charge, and the facts necessary to support that charge established by satisfactory evidence. Divorce has been substantially recognized as a matter involving the happiness and morality of society, and consequently to be treated in the spirit of the moralist as well as of the jurist. If errors have occurred in the discharge of such delicate functions, they are those inseparable from a legislative body not always sufficiently controlled by strict legal rules and judicial responsibility. As a principle, divorce has been recognized as a moral and legal consequence of adultery and other adequate causes, which, by the general sanction of law, nullify marriage. The Senate has never admitted that it should accept the decree of an American court as effectually dissolving a marriage and binding the Canadian parliament in its action upon a particular case before it. On the contrary, it has been laid down by eminent authorities in that body, and parliament by its action has admitted the doctrine (j), that as the parliament of Canada has not yet recognized the power of any court to deal with the subject of divorce, there is nothing binding in the argument which claims, by the comity between nations, for a judgment by a foreign court that kind of consideration and recognition by the Senate which that judgment would have before an ordinary tribunal upon a question, the subject-matter of which was common to both (k). The Senate has endeavoured, to a considerable degree, to shape its action on that of the House of Lords, but, at the same time, it has never bound itself to accept

(i) In the Walker case, 1890, there was a departure from the general principle as a rule adhered to by the Senate. Here there was a marriage between minors, without the consent of the parents, but the parties never co-habited. See debate on this peculiar case, Sen. Deb. 403-18. The House of Commons negatived the bill.

(j) In the Ash case, 1887.

(k) Mr. Abbott (leader of the Senate) in the Ash case; Deb. (1887), 224. See also Mr. Scott's and Mr. Gowan's remarks, 172, 174, 211, 213.

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the decisions of that body as authoritative and conclusive. On the contrary, the Senate has exercised its own judgment according to the circumstances of each case. For instance, it has acknowledged the right of the wife to equal relief with her husband, and has in this respect laid down a principle only very recently recognized in the imperial legislature.

The fact that the subject of divorce is now in England relegated to the courts, except in Indian and Irish cases, no doubt assists the Senate in the exercise of what is a quasi-judicial as well as a legislative power. But as a general principle, while paying every respect to English precedents the Senate is largely governed by its own discretion, and will always afford relief according to the circumstance of each case (*l*).

Rules and Practice in the Senate.

The rules and practice of the Senate have followed, as closely as the circumstances of the country would permit, the procedure of the House of Lords in England. In all unprovided cases, the rules and usages of that body have guided the Senate. Until 1888, however, the Canadian system of procedure was exceedingly defective. In that year at the instance of a learned senator who had had large experience as a judge (*m*), the Senate adopted

(*l*) "In shaping action or legislation on a bill of divorce in which facts in evidence before us, we naturally look to the House of Lords, but we have never bound ourselves to accept their decisions as conclusive. We follow precedents, where they commend themselves to our judgment, and we decline to follow them where they do not seem to us rightly so, for the decisions of the House of Lords on bills of divorce have not the weight that attaches to the regular legal tribunals. The majority determines, and in a minority on a vote may be found men of learning, wisdom and experience, expressing opinions adverse to the determination, more in accordance with the eternal principles of truth and justice." Senator Gowan, Sen. Deb. (1888), 600.

(*m*) Senator Gowan, who was judge in the large district of Simcoe from 1843 until 1885.

a code of procedure, which gave a more judicial character to investigations of this class and provided greater safeguards against indiscreet legislation in a matter so deeply involving the happiness of society at large. The special feature of the new rules was the formation, at the beginning of each session, of a committee of nine members, to whom must be referred all petitions, bills, and all other matters affecting cases of divorce with a view of relieving the Senate itself of functions which the former practice showed it could not satisfactorily discharge (*n*). These rules were completely revised in 1906 and a much more complete code of procedure established (*o*). The new rules are as follow:

Committee on Divorce.

"All petitions for divorce and all matters arising out of petitions for, or bills of divorce, shall be referred to the Standing Committee on Divorce, and no reference to any

(*n*) See Sen. Deb. (1888), 55, 68-75, 112, 293-299, 300-306, 306-309; Sen. Rules, as revised in 1896, 79, 101-123. The advisability of placing divorce jurisdiction exclusively in the courts has been several times discussed in parliament, but the proposal has never received any considerable support. See remarks of Mr. Britton on the subject, Can. Com. Hans., 13th March, 1901. Mr. Charlton, 1903. Mr. Northrup, 14th Feby., 1916.

(*o*) The committee was originally composed on the principle not only of choosing men believed to be especially qualified for such inquiries into law and fact, but also of giving every province a representation thereon. But already it has been shown that it is not always practicable to adhere to this novel idea of provincial representation in proceedings of a quasi-judicial character. Case of Mr. Kaulback of Nova Scotia, appointed in 1889, in place of Mr. Haythorne of Prince Edward Island, who declined, and consequently left his province unrepresented. Sen. Deb., 41-43. In 1895 several members of the Committee resigned on the ground that there was always a certain objection to divorce among Roman Catholic Senators, and an inadequate appreciation of their efforts to do justice in every case submitted to them. Afterwards the Senators in question reconsidered their position in view of the parliamentary principle that no one could resign from a committee unless excused by the house. In the debate, Senator Miller explained freely the attitude of the Roman Catholic Senators on this subject. Sen. Deb. (1895), 220, 230, 269, 301, 354, 359.

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Committee other than that Committee shall be necessary with respect to such petitions, bills and matters." (R.133)

Notices of Meeting of Committee.

"Notice of the day, hour and place of every sitting of the Committee shall be given by posting up the same in the lobby of the Senate not later than the afternoon of the day before the time appointed for such sitting." (R. 133) (p).

Official Reporters to take Evidence.

"The Official Reporters of the Senate, or one of them, when notified by the Chairman, shall be in attendance at each sitting of the Committee, and, having first been duly sworn to discharge faithfully such duty, shall take down in shorthand and afterwards extend the evidence of witnesses examined before the Committee, which evidence shall be printed under the supervision of the Clerk of the English Journals." (R. 134).

Evidence to be Printed.

"Evidence taken before the Committee shall be printed apart from the Minutes of Proceedings of the Senate, and only in sufficient numbers for the use of Senators and Members of the House of Commons, that is to say, one copy for distribution to each Senator or Member, ten copies for the parties and their counsel, and twenty-five copies to be kept by the Clerk of the Senate for purposes of record and reference." (R. 135).

(p) Senators, although not of the Committee, are not excluded from attending meetings of the committee and speaking, though they do not vote. They sit behind the members of the committee. No other persons, unless ordered to attend are to be present, but this does not apply to members of the House of Commons. Sinclair on Divorce, p. 7

Notice of Application—How Given.

"Every applicant for a Bill of Divorce shall give notice of his or her intended application, and shall specify therein from whom and for what cause such divorce is sought, and shall cause such notice to be published during at least three months before the consideration by the Committee on Divorce of his or her petition for the said Bill, in the *Canada Gazette* and in two newspapers published in the district in Quebec, Manitoba, Saskatchewan, Alberta, British Columbia or the Northwest Territories, or in the county or union of counties in other provinces, wherein such applicant usually resided at the time of the separation of the parties; but if the requisite number of papers cannot be found therein, then in an adjoining district or county or union of counties.

Notices given in the Provinces of Quebec and Manitoba are to be published in one English and one French newspaper, if there be such newspapers published in the district, but otherwise shall be published in one newspaper in both languages. The notice may be in the subjoined form "A." If a notice given for any session of Parliament is not completed in time to allow the petition to be dealt with during that session, the petition may be presented and dealt with during the next ensuing session, without any further publication of such notice." (q) (R. 136).

Service of Notice and Petition on Respondent.

"A copy of the said notice and a copy of the petition to be presented shall, at the instance of the applicant, and not less than two months before the consideration

(q) The first step, when an application for divorce is intended, is to prepare the advertisement which should follow form "A" (in the Appendix), although by R. 150 the form may be waived to suit circumstances.

For the grounds on which application may be made see Sinclair on Divorce, pp. 10, 11, *et seq.*

The rules of the House of Commons in regard to notices in private bill cases apply to divorce bills and these differ in some respects from those of the land.

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by the Committee of the petition, be served personally when that can be done, on the person from whom the divorce is sought, who is hereinafter called "the respondent."

If the residence of the respondent is not known or personal service cannot be effected, then, if it be shown to the satisfaction of the Committee that all reasonable efforts have been made to effect personal service, and, if unsuccessful, to bring such notice and petition to the knowledge of the respondent, what has been done may be deemed and taken by the Committee as sufficient service." (R. 137). When affidavits are made in a foreign country they are accepted if made in conformity with the laws of the country where made.

Time Limit to Reception of Petition.

"No petition for a Bill of Divorce shall be presented to the Senate after the first sixty days of the Session" (R. 138). But the time is extended if good reasons can be shown for the delay.

*Form and Contents of Petition—Allegations how Verified
Endorsation of Copy Served, &c.*

"The petition of an applicant for a bill for divorce must be fairly written and must be signed by the petitioner, and should briefly set forth the marriage, the names in full of the parties thereto, their ages and occupations, when, where and by whom the ceremony was performed, the domicile and residence of each of the parties at the time of the marriage, their matrimonial domicile, residence, and any change thereof, the material facts upon which the petitioner relies as the grounds on which relief is asked, and the nature of the relief prayed for.

The petition should also negative connivance at, or condonation of the wrong complained of and collusion in the application for divorce.

2. The allegations of the petition must be verified by declaration of the petitioner under the Canada Evidence Act.

3. The copy of the petition served upon the respondent shall have endorsed thereon, or appended thereto, the following information:—

(1) The petitioner's residence at the time of service.

(2) A Post Office address in Canada at which letters and notices for the petitioner may be delivered.

(3) The name and address of the solicitor, if any, acting for the petitioner.

(4) If such solicitor's address is not at Ottawa, the name and address of some agent for him at Ottawa, upon whom all notices and papers may be served.

(5) That if the respondent desires to oppose the granting of the divorce and to be heard by the Senate Committee on Divorce, the respondent must send a notice to that effect to the Clerk of the Senate at the Parliament Buildings, Ottawa, within two months from the date of service upon the respondent, and must in the notice to the Clerk of the Senate give:—

(a) The respondent's residence at the time of sending such notice.

(b) A Post Office address in Canada at which letters and notices for the respondent may be delivered.

(c) The name and address of the solicitor, if any, acting for the respondent.

(d) If such solicitor's address is not at Ottawa, the name and address of some agent for him at Ottawa upon whom all notices and papers may be served.

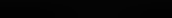
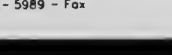
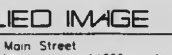
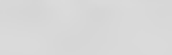
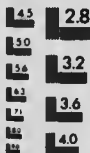
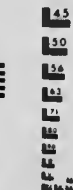
(6) That, if the respondent does not so notify the Clerk of the Senate, the petition may be considered, and a Bill of divorce founded thereon may be passed, without any further notice to the respondent.

(7) When the petition is one by a husband for a divorce from his wife, that, if the wife shows to the satisfaction of the Senate Committee on Divorce that she has, and is prepared to establish upon oath, a good defence to the



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charges made by the petition, and that she has not sufficient money to defend herself, the Committee may make an order that her husband shall provide her with the necessary means to sustain her defence, including the cost of retaining Counsel and the travelling and living expenses of herself and of witnesses summoned to Ottawa on her behalf." (r). (R. 139).

Deposit of Fees.

"No petition for a bill of divorce shall be considered by the Committee unless the applicant has paid into the hand of the Clerk of the Senate the sum of two hundred dollars towards expenses which may be incurred during the proceedings upon the petition and the bill, and also the sum of ten dollars to pay for translating and printing 600 copies of the bill in English and 200 copies in French. The translation shall be made by the translators of the Senate, and the said sums shall be subject to the order

(r) Applications to Parliament for Private Bills are instituted by three petitions addressed respectively to the Governor-General in Council, The Senate, and The House of Commons. The petitions must be signed by the petitioner, not by Counsel or Solicitor. If the petitioner cannot write he should make his mark in presence of a witness who should attest the due execution and testify the same under oath.

The petition to the House of Commons should be presented by a member of the House.

The petition to the governor general should be sent to the Secretary of State. When the petitioner does not reside at Ottawa he must appoint an agent at Ottawa, whose name and address must be stated on the endorsement of the petition. If the respondent intends to oppose the petition he must notify the Clerk of the Senate within two months after the service of the petition on him. In his notice he must state his residence, post office address in Canada, where notices may be served on him or delivered, the name and address of his solicitor, if any, or some agent in Ottawa upon whom papers must be served. When a wife's means are insufficient to enable her to bear the expense of defence, the committee will order the husband to furnish sufficient money to enable her to present her case properly. Sinclair on D. p. 21.

of the Senate." (R. 140). If it is shown to the committee that a petitioner is too poor to pay the fees, on a petition being presented in his behalf before the petition for divorce is presented, the committee will allow the petition to be presented *in forma pauperis*, without fees. The fees are payable in the house in which the bill is introduced.

Petition Referred—Copies to be Furnished to Committee.

"The petition when presented to the Senate shall be accompanied by the evidence of the publication of the notice as required by rule 136, and by declaration in evidence of the service of a copy of the notice and of a copy of the petition as provided by rule 137. The petition, notice, and evidence and publication and service, all papers connected therewith, shall thereupon stand as referred without special order to that effect, to the standing committee on divorce.

A copy of every petition for a bill of divorce, and of every document and paper accompanying such petition or produced in evidence before the committee, shall be furnished to the committee by the person on whose behalf the petition, document or paper is presented or produced." (R. 141). A duplicate of the copy of the petition and of the declarations and of all documents to be used as evidence before the committee, must be filed with the Clerk of the Committee.

*Committee to Examine Papers—When Rules Complied with,
Committee to Hear Evidence.*

"The Committee shall examine the notice of application to Parliament, the petition, the information endorsed upon or appended to the petition, the evidence of publication of the notice, the evidence of the service of a copy of the notice and of a copy of the petition, all other papers referred with the petition, and also the notice, if any, given by the respondent to the Clerk of the Senate.

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2. If any proof is found by the Committee to be defective, it may be supplemented by statutory declaration to be laid before the Committee.

3. If the circumstances of the case seem so to require, the Committee, before proceeding to hearing and inquiry as hereinafter required, may make such order as to the Committee seems requisite and just for effecting substitutional service by advertisement, registered letter, or otherwise, upon both or either of the parties.

4. If the requirements of these rules, or of any order made thereunder by the Committee, have not been complied with in any material respect, the Committee shall report thereon to the Senate, and shall not, without further order from the Senate, proceed to hear and inquire into the matters set forth in the petition.

5. If the requirements of these rules or of any order made thereunder by the Committee, have been complied with in all material respects, the Committee shall, after reasonable notice to the parties, proceed with all reasonable despatch to hear and to inquire into the matters set forth in the petition and shall take evidence upon oath touching the right of the petitioner to the relief prayed for." (R. 142). (s).

Report of Committee—Evidence Reported—Draft Bill Reported—Minority Report.

"After such hearing and inquiry the Committee shall report to the Senate, stating whether the requirements of these rules have been complied with in all material respects; and, if it shall have been then found that any such requirement has not been so complied with, stating

(s) In the case of private bills, other than divorce bills, the proof of publication is submitted to the Standing Orders Committee, but in the case of divorce bills the sufficiency of the proof of publication is determined by the committee on divorce. In the Commons, the examiner of petitions for private bills first decides on the sufficiency or otherwise of publication.

in what respect there has been default, and also stating the conclusions arrived at and the action recommended by the Committee."

The Committee considers the evidence behind closed doors. If it is decided to grant relief the Bill is prepared by the Law Clerk. If the Committee should report against a bill the petitioner is entitled to a return of his deposit less any portion not required for expenses.

"2. The report shall be accompanied by the testimony of the witnesses examined, and by all documents, papers and instruments referred to the Committee by the Senate or received in evidence by the Committee.

3. If the report recommends the granting of relief to the petitioner it shall also be accompanied by a draft, approved by the Committee, of a bill to effect such relief."

4. The minority may bring in a report stating the grounds upon which they dissent from the report of the Committee. (R. 143). (t).

Introduction of Bill.

"Upon the adoption of the report of the Committee, the bill may be presented and read a first time; and thereafter no further reference of the bill to the Committee shall be necessary, unless so ordered by the Senate." (R. 144.) (u).

Connivance, Condonation or Collusion, a Ground for Rejection—In such cases the Minister of Justice may Intervene.

"If adultery be proved, the party from whom the divorce is sought may nevertheless be admitted to prove

(t) The bill generally enacts that the petitioner may marry again such person as he or she might lawfully marry if the dissolved marriage had never taken place. The bill sometimes grants such other relief as the circumstances warrant, such as the custody of children, the debarring of one of the divorced parties from any interest in the estate of the other. See cases cited in Sinclair on D., pp. 58, 39.

(u) The bill is introduced by the Senator presenting the petition and after a first reading the bill is placed on the orders for a second reading at a future day and is read a second time on motion when the order is reached in due course.

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connivance at, or condonation of the adultery, collusion in the proceedings for divorce, or adultery on the part of the petitioner.

Connivance at, or condonation of the adultery, or collusion in the proceedings for divorce, is always a sufficient ground for rejecting a Bill of Divorce, and shall be inquired into by the Committee, And should the Committee have reason to suspect connivance or collusion, and in their opinion it is desirable that fuller inquiry should be made, such opinion and the reasons therefor shall be communicated to the Minister of Justice, that he may intervene and oppose the bill should the interest of public justice in his opinion call for such intervention." (R. 145). (v).

*Parties may be Heard—Evidence taken under Oath—
Declarations allowed.*

"The petitioner, the respondent and, if the Committee sees fit, any other person affected by the proceedings had, may be heard before the Committee in person or by counsel learned in the law of the bar of any province in Canada." (R. 146). Counsel appear before the Committee in their robes as in a court of judication. It is not customary to have more than two counsels for each party (w).

"The petitioner and, if the respondent appears, the respondent, and all witnesses produced before the Committee shall be examined upon oath, or upon affirmation in cases where witnesses are allowed by the law of Canada to affirm; and the law of evidence shall, subject to the provisions in these rules, apply to proceedings before the Committee, and shall be observed in all questions of fact.

(v) The adultery charged must have been committed by one of the consorts since the marriage. Proof is a matter for the committee to decide from the weight of evidence and they have held that when the evidence of the petitioner is not corroborated by other testimony or strong circumstantial evidence relief will not be granted. For interesting comments on the nature and effects of evidence in such cases see Sinclair on D. pp. 34-36. As to proof of marriage *Ib.* pp. 36, 40. As to domicile *Ib.* pp. 42-52. (w). See Gemmill on D. (Sinclair pp. 62-3).

2. Declarations allowed or required in proof, may be made under the *Canada Evidence Act.*" (R. 147). The chairman of the Committee generally administers oaths to witnesses before the Committee. Other persons authorized to administer oath are named in the Canada Divorce Act and in the "Senate and House of Commons Act."

Witnesses, how Summoned—Service of Summonses—Taxation of Fees.

"Summonses for the attendance of witnesses and for the production of papers and documents before the Senate or the Standing Committee on Divorce shall be under the hand and seal of the Speaker of the Senate, and may be issued by the Clerk of the Committee, at any time after the date of the hearing has been appointed, to the party applying therefor.

Such summonses may be served by any literate person, or, if so ordered by the Senate or by the Committee on Divorce, shall be served by the Gentleman Usher of the Black Rod or by any one authorized by him to make such service.

The reasonable expenses of making such service and the reasonable expenses of every witness for attending in obedience to such summons shall be taxed by the Chairman of the Committee." (R. 148). (x).

Witness Disobeying Summons.

"In case any witness upon whom such summons has been served refuses to obey the same, such witness may by order of the Senate be taken into custody of the Gentleman

(x) Summonses are obtained from the Clerk of the Committee (the Law Clerk of the Senate). Personal service is required accompanied by payment for travelling expenses. No tariff or fees has been fixed by the committee but the chairman of the committee has power to settle the amount payable to witnesses for their time, travel and expenses.

[CHAP. XVII.]

Usher of the Black Rod, and shall not be liberated from such custody except by order of the Senate and after payment of the expenses incurred." (R. 149) (y.)

Certain forms to be Used.

Certain forms, varied to suit the circumstances of the case, or forms to the like effect, may be used in proceedings for divorce. (R. 150.) These forms will be found in the appendix to this volume.

Unprovided Cases Guided by the Rules and Practice of the Imperial Parliament.

"In cases not provided for by these rules the general principles upon which the Imperial Parliament proceeds in dissolving marriage and the rules, usages and forms of the House of Lords in respect of divorce proceedings may, so far as they are applicable, be applied to divorce proceedings before the Senate and before the Standing Committee on Divorce." (R. 152). (z).

Final Report of the Committee—Third Reading of Bill.

The committee having come to a conclusion, their next step is to report it to the Senate (a). The report is that

(y) When a witness refuses to attend after being duly served and tendered proper fees for travel and expenses—the committee makes a special report of the circumstances to the Senate. When an order will be made to attend, disobedience to which is treated as a contempt, and punished accordingly.

(z) This rule is permissive merely, not imperative, and though the Senate in divorce legislation looks to the House of Lords for the purpose of ascertaining the course followed there, it has never felt itself bound to accept the decision of the House of Lords as binding and conclusive. The Senate follows precedents when they commend themselves to the judgment of the Senate, and not otherwise, the decision of the House of Lords on Bills of Divorce not having the weight which attaches to the decisions of the ordinary legal tribunals.

(a) Sen. J. (1889) 86, 98, 113, 114, 134. *Ib.* (1890) 73, 79, 180. *Ib.* (1900) 88, 220.

of the majority, as in all cases of committees, but for divorce cases the rules depart from the practice that governs generally in English parliamentary law (*b*), and provides for a minority report.

When the report has been received by the Senate, it is ordered as a rule to be taken into consideration on a future day—it being in accordance with correct usage in all such cases that every proceeding should be cautiously and deliberately taken (*c*). When the order is reached, the report is considered and adopted or rejected according to the pleasure of the house, after a discussion of the facts and circumstances of the case whenever necessary (*d*). The report being adopted, the bill is not committed to a committee of the whole, but is ordered at once for a third reading, and that being agreed to it is sent to the Commons for their concurrence (*e*). In case a report is negatived, it may be restored to the orders by a motion of which due notice has been given (*f*). In all cases, whether the report sets forth that the preamble is not proven, or that the bill is not proceeded with, the report must be formally adopted (*g*). In case a bill is not proceeded with, the committee recommend that leave be granted for its withdrawal for the return of all exhibits.

(*b*) As in Dillon case, 1894. A senator may always place his "protest" on record under rule 56.

(*c*) Sen. J. (1889) 114. *Ib.* (1890) 180. *Ib.* (1900) 220.

(*d*) *Ib.* (1889), 105, 135, 140; *Ib.* (1890), 107, 112; *Ib.* (1900), 244. In 1890 the report was negatived in the case of Clapp's application, as the evidence involved certain contradictions which decided a majority to give the respondent the benefit of the doubt. Deb. 498-513.

(*e*) Sen. J. (1889), 106, 132, 140; *Ib.* (1890), 107, 112, 194; *Ib.* (1900), 244.

(*f*) As in the Dillon case (Sen. J., 1894, pp. 168, 186, 213), which evoked much difference of opinion, and should be read to show views of Senators on divorce, and the proper reasons for granting relief to applicants.

(*g*) Sen. J. (1883), 173; *Ib.* (1889), 135. As no further proceedings were necessary in this case—the bill not being proceeded with by the applicant—the report was adopted at once.

[CHAP. XVII.]

All rules of the Senate which "by reasonable intention" are applicable to proceedings in divorce, shall, except in so far as they are altered or modified by the new rules or are inconsistent with the same, continue to be applicable to these proceedings (*h*).

As we have seen the rules provide that "the general principles upon which the imperial parliament proceeds in dissolving marriage and the general principles of the rules, usages and forms of the House of Lords in respect of bills for divorce may be applied to divorce bills before the Senate and the select committee on divorce."

III. Divorce Bills in the House of Commons.—The proceedings in the Commons relative to such bills are substantially the same as in the case of all other private bills. When a petition is read and received, it is referred, like all other applications for private legislation, to the examiner of petitions, or to the committee on standing orders (*i*); but when no petition has been presented and reported on by the examiner or the committee on standing orders, the bill, when it comes up from the Senate, should be referred, in conformity with rule 96 to that committee (*j*).

Divorce bills follow the practice usual in the case of all other private bills in the Commons, and are referred after second reading to a standing committee (*k*).

Until the session of 1877 it was the practice to refer these bills to a special committee in accordance with English practice (*l*), but it is now usual to refer them to the standing committee on miscellaneous private bills (*m*). All the papers

(*h*) Rule 151. (*i*) Can. Com. J. (1875), 82, 83; *Ib.* (1877), 54, 62; *Ib.* (1878), 27, 35.

(*j*) Can. Com. J. (1891), 313, 320; *Ib.* (1900), 145, 162. In the Campbell case (1877), the committee reported the notice insufficient. Jour. 313.

(*k*) Walter Scott and M. J. Bates relief bills, 1877; March 16, 19 21, Can. Hansard; Com. Journals, 148, 159, 171, 144, 153, 160, 172.

(*l*) Eng. Com. S. O. 189, 190, 1^c1, 192.

(*m*) Can. Com. J. (1877), 171, 179; *Ib.* (1878), 119, 120; *Ib.* (1890), 323, 324; *Ib.* (1900), 167, 334).

and evidence are referred with the bill to the committee (*n*). It has not been usual for the committee to take additional testimony in the case, but the practice has been to base its report on the facts submitted to them by the Senate. In case, however, the house is not satisfied with the evidence on which the Senate has passed the bill, it is always competent for the committee on private bills to go into such further examination of the facts as may be deemed desirable in the interests of justice and society (*o*).

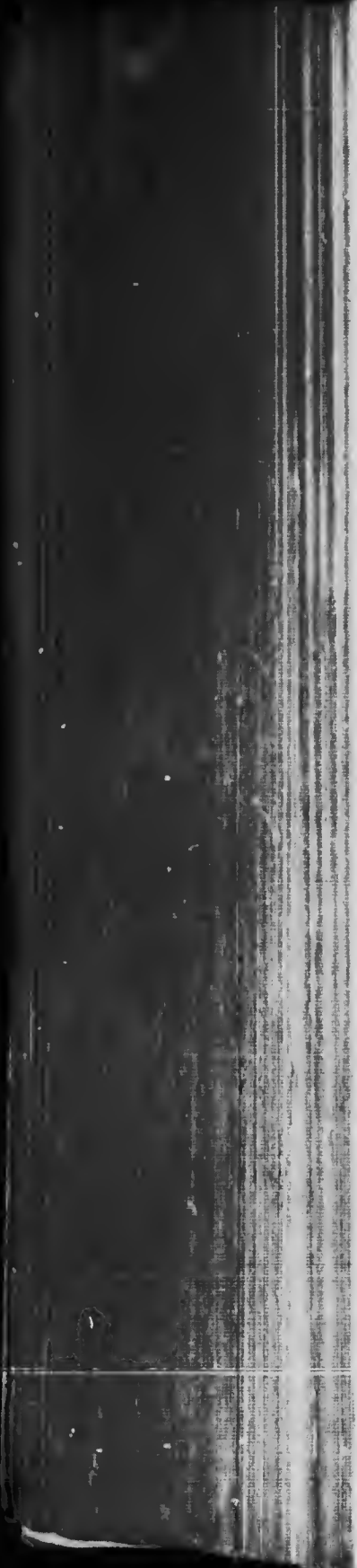
When the bill comes back from committee, it is referred to the committee of the whole, and proceeded with like other private bills. It was the practice until 1879 for the governor-general to reserve such bills for the signification of her Majesty's pleasure thereon, but this need not now be done since the change in the royal instructions with reference to bills.

There is no rule of the Commons requiring service of notice or of petition in divorce proceedings on the respondent, but the private bills committee are careful to see that such has been done, relying largely on the report of the proceedings of the Senate in the matter as proof of such service. When a divorce bill has passed the Senate it is sent to the Commons with a message and a copy of the evidence. It then passes through all the stages of a private bill. Each member of the Commons is furnished with a printed copy of the evidence taken before the Senate Committee on Divorce.

If the bill passes through all its stages in the Commons a message is sent to the Senate returning the copy of the evidence to that body. The royal assent is given to these bills as to other bills.

(*n*) Can. Com. J. (1878), 120; *Ib.* (1890), 323, 324; *Ib.* (1900), 167, 334.

(*o*) In the Lowry case, 1889, the Commons Committee re-examined the witnesses, but without eliciting new facts. See Hans. 1160, 1264, 1265; Jour. 253. In 1894 the Dillon bill was referred back to the Private Bills Committee for further inquiry, but the committee took no additional evidence, Jour. 445, 448; Hans., 6048.



APPENDIX.

- A. Proclamation for summoning Parliament for despatch of business.....
- B. Forms of Motions and Amendments.....
- C. Forms of Petitions for private bills.....
- D. Notification of Vacancies, Forms of Resignation of Members, etc.....
- E. Forms for Petitions and other proceedings for Divorce.

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A.

PROCLAMATION FOR ASSEMBLING PARLIAMENT
FOR THE DESPATCH OF BUSINESS.

MINTO.

[L.S.]

CANADA.

EDWARD the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the seas, King, Defender of the Faith, Emperor of India.

To Our Beloved and Faithful the Senators of the Dominion of Canada, and the Members elected to serve in the House of Commons of Our said Dominion, and to each and every of you—GREETING:

A PROCLAMATION.

Whereas the Meeting of Our Parliament of Canada stands Prorogued to the Second day of the month of March next, Nevertheless, for certain causes and considerations, We have thought fit further to prorogue the same to Thursday the Twelfth day of the month of March next, so that neither you nor any of you on the said Seventeenth day of December next at Our City of Ottawa to appear are beheld and constrained: for we do will that you and each of you, be as to Us, in this matter, entirely exonerated; commanding, and by the tenor of these presents, enjoining you, and each of you, and all others in this behalf interested, that on Thursday, the Twelfth day of the month of March next, at Our City of Ottawa aforesaid, personally be and appear, for the DESPATCH OF BUSINESS, to treat, do, act, and conclude upon those things which in Our said Parliament of

Canada, by the Common Council of Our said Dominion, may, by the favour of God, be ordained.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed. WITNESS, Our Right Trusty and Right Well-beloved Cousin and Councillor the Right Honourable Sir GILBERT JOHN ELLIOT, Earl of Minto and Viscount Melgund of Melgund, County of Forfar, in the Peerage of the United Kingdom, Baron Minto of Minto, County of Roxburgh, in the Peerage of Great Britain, Baronet of Nova Scotia, Knight Grand Cross of Our Most Distinguished Order of St. Michael and St. George, etc., etc., Governor-General of Canada.

At Our Government House, in Our City of OTTAWA, this THIRD day of FEBRUARY, in the year of our Lord one thousand nine hundred and three and in the third year of our Reign.

By command,

H. G. LAMOTHE,
Clerk of the Crown in Chancery,
Canada.

B.

MODE OF PROPOSING MOTIONS AND
AMENDMENTS.

Mr. Blake moves, seconded by Mr. Mills,

"That a humble address be presented to Her Most Gracious Majesty, praying that she will be pleased to cause a measure to be submitted to the Imperial Parliament providing that the Parliament of Canada shall not have power to disturb the Financial relations, established by the British North America Act (1867) between Canada and the several Provinces, as altered by the Act respecting Nova Scotia."

Mr. Archibald moves in amendment, seconded by Mr. Macdonald (E. Huron).

That all the words after "That" to the end of the question be left out, and the following words inserted instead thereof:—

"This house adheres to the decision of the Parliament of Canada at its last session, as embodied in the Act intituled:—'An Act respecting the Territories.'"

Sir John Macdonald moves in amendment to the amendment, seconded by Sir George E. Cartier,

That all the words after "thereof" in the said amendment be left out, and the following words inserted instead thereof:—

"It is the undoubted privilege of Parliament to fix and determine the amount of all expenditure chargeable on the public funds of the Dominion."

And the question having been put on the amendment to the said proposed amendment, it was resolved in the affirmative.

And the question on the amendment to the original question, so amended, being again proposed,

Mr. Oliver moves, in amendment thereto, seconded by Mr. Magill:—

That the following words be added at the end thereof:

"But this house is of opinion that no further grant or provision, beyond those made by the Union Act and the Act respecting Nova Scotia, should in future be made out of the Revenues of Canada, for the support of the Government or Legislature of any of the Provinces."

And the question being put, that those words be there added the house divided, and it was so resolved in the affirmative.

And the question on the amendment to the original question, so amended, being again proposed;

Mr. Wood moved in amendment thereto, seconded by Mr. Brown:

That the following words be added at the end thereof:

"And that such steps should be taken, as to render impossible any such grant or provisions."

And the question being put that those words be there added, it passed in the negative.

And the question being put on the amendment to the original question, as amended, it was resolved in the affirmative.

Then the main question, as amended, being put:

"That it is the undoubted privilege of Parliament to fix and determine the amount of all expenditure chargeable on the public funds of the Dominion; but this house is of opinion that no further grant or provision beyond those made by the Union Act and the Act respecting Nova Scotia, should in the future be made out of the revenues of Canada for the support of the Government or Legislature of any of the Provinces."

The house divided; and it was resolved in the affirmative.

AMENDMENTS TO SUPPLY AND WAYS AND MEANS

The order of the day being read for the house again in the Committee of Supply,

And the question being proposed, that Mr. Speaker do now leave the chair,

Mr. Laurier moves, in amendment, seconded by Mr. Blake:

"That all the words after 'That' to the end of the question be left out, and the following words added instead thereof: 'In the opinion of this house, the public interests would be promoted by the repeal of the duties imposed on coal, coke and breadstuffs, free under the former tariff,' etc."

On Second Reading.

Certain resolutions having been reported from Committee of Supply,

And a motion being made, and the question being proposed, That the said resolutions be now read a second time.

Mr. Borden (Halifax), moves, in amendment, seconded by Mr. Sproule:

"That all the words after 'That' to the end of the question, be left out in order to add the following words instead thereof, etc."

On Concurrence.

A resolution having been read a second time, and the question being proposed, That the house do concur with the committee in the said resolution;

Mr. Douglas moves in amendment, seconded by Mr. Scott,

"That all the words after 'That' to the end of the question be left out, etc."

MOTIONS RESPECTING PUBLIC BILLS.

On Introduction.

Mr. Richey moves, seconded by Mr. Daly, for leave to bring in a bill to amend the Acts respecting Cruelty to Animals.

At Other Stages.

Mr. Richey moves, seconded by Mr. Daly, that the bill to amend the Acts respecting Cruelty to Animals, be now read a second time (or committed to a committee of the house), or read a third time.

On Reference to a Select Committee.

Mr. Weldon moves, seconded by Mr. McCarthy:

"That the bill to amend the Act passed in the forty-fifth year of the reign of Her present Majesty, intituled: An Act to repeal the duty on promissory notes and bills of exchange, &c., be referred to a select committee com-

posed of Messrs. Weldon, McCarthy, Girouard (Jacques-Cartier), Jamieson and Wells."

Instruction.

The order of the day being read, for the Committee on the County Courts Bill;

Mr. Fitzpatrick moves, seconded by Mr. Carroll,

"That it be an instruction to the committee, that they have power to make provision for the extension of the Equity jurisdiction of the Courts."

On Second Reading.

The order of the day being read for the second reading of the Thames River bill;

And a motion being made, and the question being proposed, That the bill be now read a second time:

Mr. Arthur moves, in amendment, seconded by Mr. Flint:

"That all the words after 'That' to the end of the question be left out, and that the following words be added instead thereof: 'The character and objects of this bill are such as to constitute it a measure of public policy which ought not to be dealt with by any private bill.'" (See 136 E. Com. J. 162; Can. Com. J. [1882] 410.)

On Order for Committee of the Whole.

The order of the day being read for the House in Committee on the bill to establish a Supreme Court and a Court of Exchequer for the Dominion of Canada;

And the question being proposed, That Mr. Speaker do now leave the chair;

Mr. Baby moves, in amendment, seconded by Mr. Mousseau:

"That all the words after 'That' to the end of the question be left out and the following words added instead

thereof: 'In the resolutions adopted at the conference held at Quebec, etc.' " (Can. Com. J. [1875] 284-285.)

To defer Consideration of a Bill.

The order of the day being read, for the second reading of the bill to amend "An act to enlarge and extend the powers of the Credit Foncier, Franco-Canadien."

And the question being proposed, That the bill be now read a second time;

Mr. Bernier moves in amendment, seconded by Mr. Fiset:

"That the word 'now' be left out, and the words 'this day six months' added at the end of the question."

In Case of a Bill temporarily Superseded.

That the bill to amend the Insolvent Act of 1875 be read a second time on Thursday next. (Com. J., 1876, p. 245.)

That this house will, on Monday next, resolve itself into a committee to consider further of the bill (Com. J., 1883, p. 159).

MOTIONS RESPECTING PRIVATE BILLS.

In case the Committee on Standing Orders recommend a suspension of the 51st rule respecting notice, the following proceeding is necessary:

Mr. Killam moves, seconded by Mr. Brown,

"That the fifty-first rule of this house be suspended, in so far as it affects the petition of the Exchange Bank of Yarmouth, Nova Scotia, in accordance with the recommendation of the Select Standing Committee on Standing Orders."

This motion having been agreed, Mr. Killam moves, seconded by Mr. Brown, for leave to introduce the bill as above.

Title amended on Motion for Passage.

Mr. Gault moves, seconded by Mr. Coursol,
"That the bill do pass and that the title be 'An Act to amend the Act of incorporation of 'The Accident Insurance Company of Canada,' and to authorize the change of the name of the said Company to 'The Accident Insurance Company of North America.' "

Disagreement to a Senate Amendment.

The amendments made by the Senate to the bill intituled "An Act to incorporate the Missionary Society of the Wesleyan Methodist Church in Canada" were read a second time.

The first amendment having been agreed to, Mr. McCarthy moves, seconded by Mr. Cameron, of Victoria, to disagree to the second amendment for the following reason:

(Here state reason in full as on page 326, journals of 1883.)

Refunding of Fees on a Private Bill.

Mr. Williams moves, seconded by Mr. White, of East Hastings,

"That the fees and charges paid on the bill to incorporate the University of Saskatchewan and to authorize the establishment of colleges within the limits of the diocese of Saskatchewan be refunded less the cost of printing and translation, in accordance with the recommendation of the Select Standing Committee on Miscellaneous Private bills."

C.

FORM OF PETITION TO THE THREE BRANCHES
OF PARLIAMENT FOR A PRIVATE BILL.

To His Excellency the Right Honourable Sir Gilbert John Elliot, Earl of Minto, Governor-General of Canada, etc., etc., etc., in Council.

The Petition of the undersigned _____ of the _____ of _____
humbly sheweth:

That (*here state the object desired by the petitioner in soliciting an Act*).

Wherefore your petitioner humbly prays that Your Excellency may be pleased to sanction the passing of an Act (*for the purpose above mentioned*).

And as in duty bound your petitioner will ever pray.

(Signature) { Seal, in the case of an existing
Corporation.

(Date.)

(*To either House.*)

To the Honourable the {Senate
House of Commons

of Canada, in Parliament assembled:

The Petition of the undersigned _____ of the _____ of _____
humbly sheweth:

That (*here state the object desired by the petitioner in soliciting an Act*).

Wherefore your petitioner humbly prays that your Honourable House may be pleased to pass an Act (*for the purposes above mentioned*).

And as in duty bound your petitioner will ever pray.

(Signature)

Seal, as above.

(Date.)

D.

NOTIFICATION OF VACANCIES IN THE HOUSE
OF COMMONS AND OF SPEAKER'S WAR-
RANTS FOR NEW WRITS.

1. *Notification by two members in case of a vacancy by death or the acceptance of office.*

Dominion of Canada.

{ HOUSE OF COMMONS.

To wit:

To the Honourable the Speaker of the House of Commons:

We, the undersigned, hereby give notice that a vacancy hath occurred in the representation in the House of Commons, for the Electoral District of (*here state Electoral District, cause of vacancy and name of member vacating seat.*)

Given under Our Hands and Seals, at _____, this
day of _____, 19 ____.

*Member for the Electoral District
of*

(Seal)

*Member for the Electoral District
of*

(Seal)

2. *Notification by two members in case of absence of Speaker.*

Dominion of Canada.

{ HOUSE OF COMMONS.

To wit:

To the Clerk of the Crown in Chancery.

The Speaker of the House of Commons being absent from Canada, these are to require you, under and in virtue of the 49th Vict., ch. 13, sec. 8, sub-section 2, (Revised Statutes of Canada) to make out a new writ for the election of a Member to serve in the present Parliament for the

Electoral District of _____ in the Province of _____
in the room and place of _____ who, since his election
for the said Electoral District hath,

Given under Our hands and Seals, at _____, this
day of _____ in the year of Our Lord one thousand
nine hundred and _____

Member for the Electoral District
of _____
(Seal)

Member for the Electoral District
of _____
(Seal)

3. Resignation of a Member.

Dominion of Canada. } HOUSE OF COMMONS.
To wit: }

To the Honourable Speaker of the House of Commons:
I, _____ member of the House of Commons of
Canada, for the Electoral District of _____, do hereby
resign my seat in the said House of Commons, for the
constituency aforesaid.

Given under my hand and seal at the _____ this
day of _____, 19 _____.

.....(Seal)

Witness,

Witness,
(2 Witnesses required.)

SPEAKER'S WARRANTS FOR NEW WRITS OF ELECTION.

1. *In case of death, resignation or acceptance of office.*

Dominion of Canada. } HOUSE OF COMMONS.
 To wit:
 To the Clerk of the Crown in Chancery.

These are to require you to make out a new writ for the election of a Member to serve in this present Parliament for the Electoral District of _____ in the room of _____ who, since the election for the said Electoral District hath (*here state reason for issue of warrant; acceptance of office, resignation or decease.*)

Given under my hand and seal at _____ this _____ day of _____ in the year of Our Lord one thousand nine hundred and _____

Speaker.
 (Seal)

2. *In case of voiding of seat by decision of Election Court.*

Dominion of Canada. } HOUSE OF COMMONS.
 To wit:

To the Clerk of the Crown in Chancery.

These are to require you to make out a new writ for the election of a Member to serve in this present Parliament for the Electoral District of _____ in the room of _____ whose election for the said Electoral District has been declared void.

Given under my hand and seal at _____ this _____ day of _____ in the year of Our Lord one thousand nine hundred and _____

Speaker.
 (Seal)

E.

FORMS IN PROCEEDINGS FOR DIVORCE.

RULE 150 OF SENATE.

"A."

DIVORCE FORMS.

NOTICE OF APPLICATION FOR DIVORCE.

Notice is hereby given that (*name of applicant in full*) of the _____ of _____, in the county (*or district*) of _____, in the Province of _____ (*or in the Northwest Territories or as the case may be*), (*here state the addition or occupation, if any, of applicant, and the residence of the applicant if it is not in the same place as the domicile of the applicant*), will apply to the Parliament of Canada, at the next session thereof, for a Bill of Divorce from his wife (*or her husband*), (*here state names in full, residence and addition or occupation, if any, of the person from whom the divorce is sought*), on the ground of (*adultery, adultery and desertion, or as the case may be*).

Dated at _____ : }
 Province of _____ : } *Signature of applicant or of solicitor*
 day of _____, 19 _____ : } *for applicant.*

(*When any particular relief is to be applied for, the nature thereof should be briefly indicated in the notice.*)

"B."

DECLARATION AS TO SERVICE OF NOTICE, PETITION AND INFORMATION TO RESPONDENT, WHEN MADE PERSONALLY.

Province of _____ County _____ } I, A. B., of the _____ of _____, in the county
 (*or district*) of _____ } (*or district*) of _____, in the Province
 To Wit: _____, of _____,

(*occupation*) do solemnly declare:—

1. That on the _____ day of _____, A.D. 19 _____, I served C. D. (*name of person served*) personally with a true copy

of the notice hereto attached and marked "A," by giving the said copy to, and leaving it with the said C. D. at (state place of service, with particularity as to street, number of house, or other detail).

2. That at the said time and place and in the said manner I also served the said C. D. with a true copy of the petition hereto attached and marked "B," appended to which copy there was then a true copy of the information to the respondent which is hereto also attached and marked "C."

3. That I know the said C. D., and that I believe him (or her) to be the person described in the said notice as the husband (or wife) of E. F., therein named.

(Add any statements made by the person served to the person serving the service, showing identity.)

And make this solemn declaration conscientiously believing the same to be true, and by virtue of the *Canada Evidence Act*.

Declared before me at the of in the }
county of , in the Province of } Signature of
this day of , A.D. 19 . } Declarant.

NOTE.—Exhibits attached to the declaration should be verified under the hand of the public functionary before whom the declaration is made.

—
"C."

GENERAL FORM OF PETITION.

To the Honourable the Senate of Canada in Parliament assembled:

The petition of A. B., of the of , in the county of , in the Province of , and at present residing at , the lawful husband (or wife) of C. D., of, &c. (state names in full, domicile, actual residence and occupation).
Humbly sheweth:

1. That on or about the day of A.D. 19 your petitioner, (*if the wife is the petitioner state with particularity her maiden name and residence: if she had been married before the marriage which she seeks to dissolve, state with particularity the circumstances and her name*) was lawfully married to the said C. D. at

2. That the said marriage was by license duly obtained (*or as the case may be*) and was celebrated by

3. That at the time of the said marriage your petitioner and the said C. D. were domiciled in Canada, and have ever since continued to be and are now domiciled in Canada.

(*All facts as to the residence and domicile of the parties at the time of their marriage and as to any change of residence or domicile since their marriage should be stated with particularity.*)

4. That after said marriage your petitioner lived and cohabited with said at , and that there are now living issue of the said marriage, children, viz.: Mary D., born the day of A.D. 19 , and Elizabeth D., born the day of , A.D. 19 . (*or as the case may be.*)

5. That on or about the day of , A.D. 19 , at the in the , the said C. D. committed adultery with one G. H. of , and since then on divers occasions has committed adultery with said G. H.

6. That your petitioner ever since discovered that the said had committed the said adultery has lived separate and apart from and the said C. D. has not since cohabited with your petitioner.

7. That your petitioner has not in any way connived at, or condoned the adultery committed by the said C. D.; and that no collusion exists between your petitioner and the said C. D. to obtain a dissolution of their said marriage.

Your petitioner therefore humbly prays:

That your Honourable House will be pleased to pass an Act dissolving the said marriage between your petitioner and the said C. D. and enabling your petitioner to marry again, and granting your petitioner such further and other

relief in the premises as to your Honourable House may seem meet.

And as in duty bound your petitioner will every pray.

Signature of Petitioner.

"D."

DECLARATION VERIFYING PETITION.

Province of County } I, A. B., of the of , in the
(or district) of , } county of , in the province of ,
To Wit: } (occupation if any.) *In the case*
of the wife being the applicant, say "wife of C. D.", and give
names, residence and occupation or addition of the husband),
the petitioner in the foregoing petition named, do solemnly
declare:—

1. That, to the best of my knowledge and belief, the allegations contained in the paragraphs of the foregoing petition, numbered respectively , are, and each of them is true.

2. (If any matter is alleged, of which the petitioner has not personal knowledge, add, "That, with respect to the matters alleged in the paragraphs of the foregoing petition, numbered respectively , I am credibly informed and believed them, and each of them, to be true.")

And I make this solemn declaration conscientiously believing it to be true, knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.

Declared before me at the of in the }
county of , in the Province of , this } *Signature of*
day of , A.D. 19 . } *declarant.*

"E."

INFORMATION TO BE ENDORSED ON, OR APPENDED TO THE
COPY OF THE PETITION SERVED UPON THE RESPONDENT.

To (*Respondent's name*)

In accordance with Rule 139 of the "Standing Orders and Rules of the Senate" you are hereby informed that:

1. (*Petitioner's name*), the Petitioner, is now residing at No. Street, in the City of , in the Province of (or in the State of , U.S.A., or as the case may be.).

2. Letters and notices for (*Petitioner's name*) may be delivered by sending them to the following address:
(*Post Office Address in Canada to be given.*)

3. The name and address of the solicitor acting for (*Petitioner's name*) are as follows:—
(*Give full particulars.*)

4. All notices and papers to be served upon (*Petitioner's name*) in this matter may be so served by serving them upon (*give full particulars of the name and address of some agent in the City of Ottawa.*)

5. If you desire to oppose the granting of the Divorce prayed for by the petition of which the within written (or hereto annexed) document is a true copy, you must within two months from the date when this copy is served upon you send a notice to that effect to the Clerk of the Senate of Canada, Parliament Buildings, Ottawa, Canada, and in that notice you must give the following particulars:—

(a) Your actual residence at the time of sending the notice.

(b) A post office address in Canada at which letters and notices for you may be delivered.

(c) The name and address of your solicitor, if any is acting for you.

(d) If you have a solicitor, but his address is not at Ottawa, Canada, you must give the name and address of

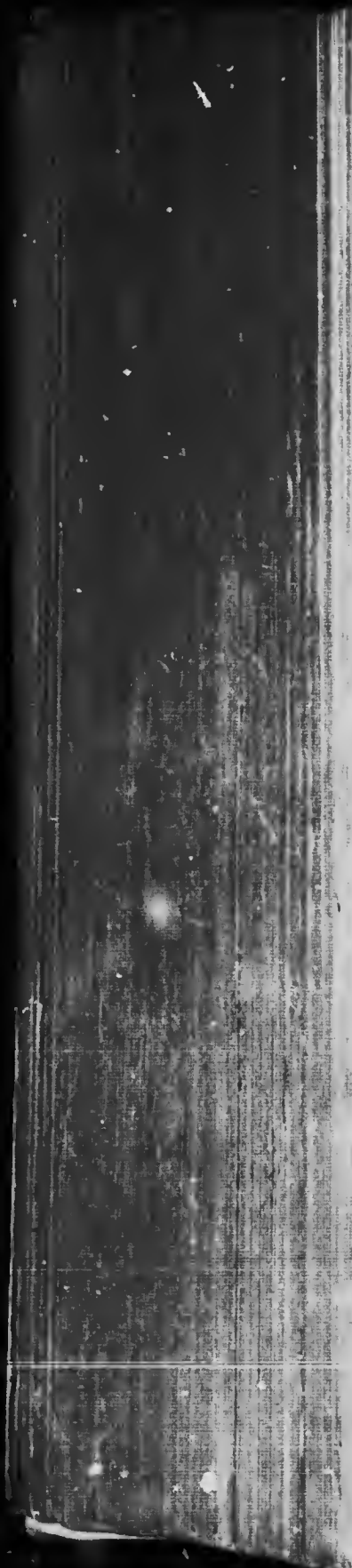
an agent at Ottawa, Canada, upon whom all notices and papers may be served.

6. If you do not send such notice to the Clerk of the Senate of Canada and with the above particulars, the Petition now served upon you may be considered by the Senate of Canada and a Bill of Divorce founded thereon may be passed without any further notice to you.

(When the petition is one by a husband for a divorce from his wife, add the following):

7. If you show, to the satisfaction of the Senate Committee on Divorce, that you have, and that you are prepared to establish upon oath, a good defence to the charges made by the petition of which the within written (or hereto annexed) document is a true copy, and that you have not sufficient money to defend yourself, that Committee may make an order that your husband shall provide you with the necessary means to sustain your defence, including the cost of retaining counsel, and the travelling and living expenses of yourself and of witnesses summoned to Ottawa on your behalf.

(Signature of Petitioner or of his Solicitor.)



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