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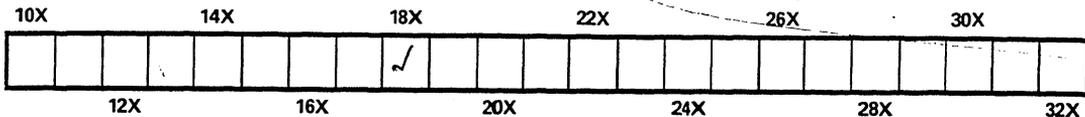
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*Amey Sherrard*

THE  
PRACTICE AND PRIVILEGES  
OF THE  
**Two Houses**  
OF  
PARLIAMENT:

WITH AN  
APPENDIX OF FORMS.

---

“The Law of Parliament, as determined by regular custom, is incorporated into our Constitution; but not so as to warrant an indefinite uncontrolable assumption of power in any case, least of all in Judicial Procedure, where the form and essence of Justice are inseparable from each other.”

*Hallam's Middle Ages, v. 3, p. 162.*

By ALPHEUS TODD,

DEPUTY-LIBRARIAN TO THE PROVINCIAL LEGISLATURE OF UPPER CANADA, AND  
COMPILER OF “AN INDEX TO THE BRITISH STATUTES”  
FOR THE USE OF THE SAME.

Printed by Order of the House of Assembly.

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1840.

WINTER  
WINTER  
WINTER

*Henry Scudder*  
1840

TO THE HONORABLE

**Sir Allan Napier MacDab, Bart.**

SPEAKER OF THE COMMONS HOUSE OF ASSEMBLY OF UPPER  
CANADA,

&c. &c. &c.

THE FOLLOWING WORK,

“ON THE PRACTICE AND PRIVILEGES OF THE TWO  
HOUSES OF PARLIAMENT,”

IS,

With his Express Permission,

RESPECTFULLY INSCRIBED,

BY HIS OBLIGED

AND OBEDIENT HUMBLE SERVANT,

*Stephen Todd.*



## P R E F A C E.

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The original intention of the present undertaking was merely to compile a second edition of a little volume called "The Manual of Parliamentary Practice," by the late H. C. Thomson, Esq., but, on closer examination of that treatise, it was found so imperfect in its execution—and, from the limited resources at the disposal of the Compiler, so defective, that I was induced to attempt the present work, on a more extensive, and it is hoped, more useful scale.

From the peculiar, and *non scripta* nature of Parliamentary Law, it necessarily follows that almost every day brings to light some new feature therein, or more clearly develops by practice the usage which formerly existed—to note, therefore, these developments has been my especial care, as may be seen by the numerous references—used not only for the collation of authorities, but for the illustration of points of practice—particularly to the Journals of both Houses, which are the fountain head of all Parliamentary Law. Research into the subject of the Privilege of Parliament has led me to concur in the opinion of Mr. Hatsell and others, eminent in the Legislative and Judicial Annals of our Country—that although the Privileges of the High Court of Parliament are of such magnitude as to be justly considered undefinable—yet, that the privileges of each branch, however great, cannot be so considered. This opinion having,

in the present day, been much opposed, and by men whose names are entitled to the highest respect, I have been induced to bestow the greatest pains in the investigation of this subject, that an opinion upon such an important topic may not be lightly advanced, or be found destitute of the strongest proof in its support. The subject of Parliamentary law, however, undoubtedly has not, like the other branches of our jurisprudence, received that thorough investigation and illustration which its importance demands, but, as it has been truly observed by Lord Holt, if the *lex Parliamenti* be to any "*a multis ignorata*, it "is only because they will not apply themselves to understand it."

The Chapter on Private Bills is arranged according to a revised edition of the Standing Orders, published in 1837 by the House of Commons, by which that intricate subject is divested of many of its extraneous branches, and materially simplified and improved.

This work having been professedly written for the use of a Colonial Legislature, I have not included within its limits the practice of the House of Lords as a High Court of Judicature for the trial of Causes on Appeals, but in every other respect, though intended for Colonial use, the Practice and Privileges of the Imperial Parliament have been endeavored to be elucidated.

Having availed myself liberally of the large resources within my reach, in addition to much personal experience upon the subject, I sincerely trust that the present work may be found of that practical utility which it has been my study and endeavor to make it.

ALPHEUS TODD.

Toronto, May 1840.

# T A B L E

OF THE BOOKS REFERRED TO IN THIS WORK, AND OF THE  
ABBREVIATIONS USED FOR REFERENCE.

Barnwell & Alderson's Reports of Cases in K. B. from 58 Geo. III. to 3 Geo. IV. ....
Blackstone's Commentaries by Hovenden, 4 vols. ....
Reports of Cases from 1746 to 1779. ....
Bramwell on Bills in the House of Commons .....
Camden's Britannia. ....
Chandler's Debates. ....
Clarendon's History of the Rebellion .....
Crompton's, R. Authority & Jurisdiction of Courts, 1594. ....
Coke's, Sir Edw. Institutes of the Civil Law, 4 parts .....
D'Ewes', Sir Symonds, Journalls of all the Parliaments in the reign of Elizabeth .....
Dodridge on the Nobility. ....
Douglas' Election Law. ....
Dyer's, Sir J., Reports of Cases from Hen. VIII. to Eliz. ....
Ellis on Private Bills .....
Elsynge's H. Parliaments .....
Espinalle, J. Reports of Cases in K. B. & C. P. from 33 Geo. III. to 47 Geo. III. ....
Finch, Sir Henenge, Reports, by Nelson. ....
Fortescue, Lord, Reports of Cases in Westminster Hall .....
Grey's Debates .....
Hakewill's Modus tenendi Parliamentum .....
Hale's, Sir M., Power & Jurisdiction of Parliaments. ....
Hatsell's Precedents of the House of Commons, Ed. 1818 (though that of 1796 is sometimes referred to). ....
Hawkins', Wm., Pleas of the Crown .....
Heywood's County Election Law. ....
Holt's, F. L., Reports, 1813 .....
Journals of the House of Lords. ....
of the House of Commons .....
of the House of Assembly, U. C. ....
Key to both Houses of Parliament, 1832 .....
Lex Parliamentaria. ....
Latch's, J., Reports of Cases in K. B. (Charles I.) .....
Levins, Sir C., Reports of Cases in K. B. from 12 Chas. II. to 8 Wm. III. ....
Maule & Selwyn's Reports in K. B. from 53 to 57 Geo. III. ....
Moor's, Sir Francis, Reports .....
Mountmorres', Lord, History of the Irish Parliament, from 1634 to 1636, 2 vols. ....
Nelson's, Dr., Historical Collections .....
Noy, Sir W., Reports of Cases from Q. Elizabeth to Charles I. ....
Parliamentary History of England .....
Peckwell's Law of Elections, 2 vols. ....
Raymond's, Lord Robert, Reports of Cases from Wm. III. to Geo. II. ....
Reports (Select) from the Restoration to the 28 Geo. II. by T. Leach. ....
Rogers' Election Law .....
Rotuli Parliamentorum, Rolls of Parliament from Edw. I. to Hen. VII. ....
Rushworth's Historical Collections .....
Scobell's, Henry, Memorials of Proceedings on Bills, 1670 .....
Selden's, John, Judicature of Parliaments .....
Smyth's, Sir Thomas, Commonwealth of England. ....
Standing Orders of the House of Lords .....
of the House of Commons. ....

## ABBREVIATIONS.

Barne. & Ald.
Bl. Com.
Black. Rep.
Bra.
Cam. Brit.
Chand.
Clar. Reb.
Crompt.
Inst.
D'Ewes.
Dodr.
Dougl.
Dyer.
Ellis.
Elsy.
Esp. C. P.
Finch.
Fort.
Grey.
Hakew.
Hale.
Hats.
Hawk. P. C.
Heywood.
Holt.
L. J.
C. J.
J. H. of A. U. C.
Key.
Lex Parl.
Latch.
Lev.
Maule & Selw.
Moor.
Ld. Mountn.
Nelson.
Noy.
Parl. Hist.
Peckw.
Raym.
Rep.
Rogers.
Rot. Parl.
Rushw.
Scob.
Sel. Jud.
Smyth.
S. O. II. of L.
S. O. II. of C.

Stokes on the Colonies .....	ABBREVIATIONS.
Strange's, Sir John, Reports of Cases during the reigns of Geo. I. & II.	Stokes.
Townshend's Historical Collections of the four last Parliaments of Eliz.	Stra.
Willes', Lord Chief Justice, Reports of Cases in C. P. & c. from 1737-58..	TOWN: Col.
Whitlock's Memorials .....	Willes.
Wood's, T., Institutes of the Laws of England .....	Whitlock.
	Wood.

Other works occasionally referred to, are particularly mentioned.

The manner of reference to the volume and page of a work, is by a figure going *before* to express the volume, and *after* to express the page, as—4 Inst. 39, for 4th *volume* Coke's Institutes, *page* 39, & c.

The references to the Journals of the Houses of Parliament, though generally giving the day on which the occurrence took place (as C. J. 16 Aug. 1836), sometimes refers to the volume and page of the Journal Book (as C. J. v. 63, p. 310).

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## INTRODUCTORY CHAPTER.

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### On the Use and Power of Parliaments.

THE power and jurisdiction of Parliament, says Sir Edward Coke (*a*), is so transcendant and absolute, that it cannot be confined, either for causes or persons, within any bounds. It hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime, or criminal; this being the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the Constitution of these Kingdoms; all mischiefs and grievances, operations and remedies, that transcend the ordinary course of the laws, are within the reach of this extraordinary tribunal. It can regulate or re-model the succession to the Crown; as was done in the reign of Henry VIII. and William III. It can alter the established religion of the land; as was done in a variety of instances in the reigns of Henry VIII. and his three children. It can change and create afresh even the Constitution of the Kingdom and of Parliaments themselves; as was done by the Acts of Union, and the several statutes for triennial and septennial elections (*b*). It can, in short, do everything

The power and jurisdiction of Parliament.

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(*a*) 4 Inst. 36.

(*b*) 6 Wm. & Mary, ch. 2; and 1 Geo. 1, stat. 2, c. 38.

that is not naturally impossible; and therefore some have not scrupled to call its power, by a figure rather too bold, "the omnipotence of Parliament"—an expression, however, which signifies nothing more than the supreme sovereign power of the State, or a power of action uncontrolled by any earthly superior. True it is, that what the Parliament doth, no authority upon earth can undo; so that it is a matter most essential to the liberties of this Kingdom, that such Members be delegated to this important trust as are most eminent for their probity, their fortitude, and their knowledge; for it was a known apophthegm of the great Lord Treasurer Burleigh, "That England could never be ruined but by a Parliament," and as Sir Matthew Hale observes (*a*), "this being the highest and greatest court, "over which none other can have jurisdiction in the Kingdom, if by any means a misgovernment should in any way fall upon it, the subjects of this Kingdom are left without all manner of remedy of Parliament." To the same purpose, the President Montesquieu (*b*) (though it is earnestly to be hoped, too hastily) presages, that as Rome, Sparta and Carthage have lost their liberty and perished, so the constitution of England will, in time, lose its liberty and perish; whenever the legislative power shall become more corrupt than the executive. (*c*) So long, however, as the British constitution lasts, we may venture to affirm, that the power of Parliament is absolute and without control.

Not applicable  
to a single  
branch only.

But these great and extensive powers are not applicable in their fulness to each or either branch of the legislature, but only to the three estates\* of King, Lords and Commons, united.

(*a*) Hale, Parls. 49.

(*b*) Spirit of the Laws, b. 11, ch. 6.

(*c*) 1 Bl. Com. p. 160.

\* This opinion, that the Three Estates are formed by the King, Lords and Commons, although the popular one, and one which appears to be correct,—is

Neither can these powers be claimed by a Colonial Legislature, which is, of necessity, dependant on the Parliament of the Empire, and is liable at any time to have its constitution re-modelled, or taken away, by the general superintending power of the mother country (a); and in granting local Governments to her Colonies, Great Britain has reserved to herself the right of legislating for their general, and even *internal* affairs (b): and therefore the holding of such extensive powers by a Colonial Legislature would not only be incompatible with its dependant state, but would tend to weaken the connection of a Colony with the mother country, by bringing the authority of the local and Imperial Parliaments into frequent collision.

Nor to a Colonial Legislature.

There is an opinion of the English Crown Lawyers on this subject, of very recent date, which says—

“ Temple, 3d December, 1838.

“ We think it impossible to contend that the Crown  
“ can, by constituting or calling together a general Assem-  
“ bly in a Colony with power to assist in making laws for  
“ the Colony, not repugnant to the laws of the Mother  
“ Country, thereby give impliedly to that body the unde-  
“ fined and extensive privileges possessed by the House  
“ of Commons as a branch of the High Court of Parlia-  
“ ment.”

Opinion of the  
Crown Lawyers  
on the subject.

(signed)

J. CAMPBELL, *Attorney-General*.

R. M. ROLFE, *Solicitor-General*.

---

far from being generally allowed. Sir Matthew Hale, Stillingfleet, Warburton, and others, have strenuously opposed it, and with many weighty arguments, holding that the Lords Spiritual and Temporal, with the Commons, constitute the three estates, the King being the head. But such an opinion would seem as inconsistent with the present Constitution of this Kingdom, as for the Knights of Shires to hold themselves a separate estate from the Burgesses, in the House of Commons—for a Bill would undoubtedly be valid if it passed, although all the Bishops voted against it, (i) which would not be the case, were they, in reality, a separate estate, instead of being *parces*, or equals with the Lords Temporal.

† The Act of Uniformity, 1 Eliz. ch. 2, was so passed.

(a) 1 Bl. Com. 107, and see Stokes on the Colonies, 4, 28, 29.

(b) 6 Geo. III. ch. 12.

But it is not the object of the present work to define, in any way, the limits of a Colonial Legislature in its jurisdiction or authority, but rather to endeavour to mark out the practice and privileges of the Houses of Lords and Commons, as far as possible leaving to those whose duty it may be, the important and difficult task of drawing the line of demarcation between the privileges of a local Parliament and those of the Imperial, from whence it received its Constitution.

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## C H A P. I I.

**Of the Privilege of Parliament.**

Privilege is some special freedom or benefit granted to certain persons, contrary to the common course of law.

Definition of Privilege.

The privileges of Parliament are very large and indefinite; and therefore, when, in 31 Henry VI. the House of Lords propounded a question to the Judges concerning them, the Chief Justice, Sir John Fortescue, in the name of his brethren, declared "that they ought not to make answer to that question, for it hath not been used aforetime that the Judges should in any way determine the privilege of the High Court of Parliament; for it is so high and mighty in its nature that it may make law; and that which is law, it may make no law; and the determination and knowledge of that privilege belongs to the lords of Parliament, and not to the Justices (a)." This dictum of Fortescue's evidently refers only to those cases in which the privilege of Parliament comes in debate in the *House of Lords*, where the judges have no deliberative voice. It admits no doubt, the unquestioned right, in either House of Parliament, of exclusively determining upon any violation of their *acknowledged* privileges. In this sense, the two Houses, respectively, are properly said to be the Judges of their own privileges; that is, whether they are infringed in the particular instance—as they are also the persons to judge of their own peculiar forms and manner of proceeding—*suis propriis legibus et consuetudinibus subsistit*. The judges will only take cognizance of the privileges of Parliament, when questions concerning those privileges are brought incidentally or collaterally before them, for judgment in the way of action, when the court

How far the Judges should take cognizance of Privilege.

(a) C. Justice Fortescue in Thorpe's case, 31 Henry VI.

is obliged to determine the question to prevent a failure of justice. They will not decide the point when it comes before them *directly*, because cognizance of such matters belongs *ad aliud examen*; but only when, as Sir Thomas Jones said in Lord Shaftesbury's case, it is an incident in the cause before them.\* This subject will be resumed when treating of the privileges of the House of Commons, those of the Lords first claiming attention.

## PRIVILEGES PECULIAR TO THE LORDS,

(PERSONAL AND PARLIAMENTARY.†)

Privileges of the  
Lords.

Counsellors of  
the Crown.

The Upper  
House of Parlia-  
ment.

Of Proxies.

I. Peers of the Realm are the hereditary Counsellors of the Crown, and may, whenever they consider it necessary, demand admittance to the King's presence, to advise with him on affairs of moment (*a*).

II. They form the Upper House of the Imperial Parliament, and their honours and immunities, are hereditary and unalienable (*b*).

III. A Peer may vote by Proxy on any question before the House of Lords, though he should happen to be residing in a foreign country (*c*). A proxy vote, however, cannot be given in any of the following cases—when the House is sitting in judgment (*d*)—nor in Committees (*e*)—nor in signing Protests (*f*)—nor on questions relating to matters of Petitions touching the return of the sixteen representative Peers for Scotland (*g*)—nor on a motion to adjourn a debate (*h*)—nor in any judicial cause, though the proceedings be by way of bill (*i*).

\* 2 St. Trials, 66, 209.

† In the following Digest of the Privileges of the Lords, I have included, not only those which belong to them as Members of the Upper House of Parliament, but also those peculiar rights and exemptions of the Peerage, which are still in their possession, whether remaining to them as a remnant of the feudal powers of their ancestors, or secured to them by statutable enactments.

(*a*) 4 Inst. 65. (*b*) 4 L. J. 150. (*c*) Elsy. ch. v, OF PROXIES.

(*d*) S. O. H. of L., 11 June, 1689. (*e*) 1 Bl. Com. 167.

(*f*) 2 Ld. Mountm. 191. (*g*) 39 L. J. 33. (*h*) 48 L. J. 29.

(*i*) S. O. H. of Lords, 15 Mar. 1697.

The proxy of a Lord cannot be entered on the same day on which he has been personally present in the house; neither can any that have been entered after three o'clock be made use of, that day, in any question. (*j*)

The proxies are entered in Latin, *ex licentia Regis*; and such license being requisite, a doubt was started in 1788, at the time of the King's illness, whether the proxies were valid. The Peer holding the proxy is called a *procurator*; and anciently they could be given to Commons to act for a Peer; but now, (*k*), all proxies from a Spiritual Lord must be made to a Spiritual Lord, and from a Temporal Lord to a Temporal Lord; and by Order of the House (*l*), no Lord shall be capable of receiving more than two proxies, nor shall more be numbered in any cause voted. It is said (*m*), that a proxy cannot be made to a Lord that is absent himself. A Peer by his coming and sitting in the House himself, revokes his proxy, and cannot make a new one without fresh leave, (*n*). Two or more Peers may be proxies for one absent Peer, but *Coke* is of opinion that they cannot vote unless they all concur (*o*). And in case *anno* 1 Eliz. where three proxies having been appointed, two of them differed from the other, it was held in Parliament to be no vote: but Lord Manchester, president of the Council, is said to have decided, in a case where the proxies differed (in 1626), in favour of him who was first named in the delegation (*p*).

IV. All bills in any way affecting the rights of the peerage (*q*) must originate in the House of Lords, and can undergo no alteration or amendment by the Commons;

Bills that must originate in the Lords.

(*j*) S. O. H. of L. 16 Jan. 1702; 19 May, 1813.

(*k*) 25 Feb. 1625.

(*l*) 25 Feb. 1625.—Rushw. 273.

(*n*) S. O. H. of L. 25 April. 1626.

(*p*) *Elsy*. 132.

(*m*) *Elsy*. cites anno 33 & 34 Henry VIII.

(*o*) 4 Inst. 12—1 Wood. 41.

(*q*) 1 El. Com. 168.

and also all Bills relative to Restitution in Blood, &c. (r) See farther Chap. VII. on Public Bills—"What Bills must originate in the Lords."

Protests.

V. Each Peer has a right, when a vote passes the House, contrary to his sentiments, to enter his dissent or protest on the Journals of the House, with his reasons at length for dissenting. The protest must be entered in the Clerk's book at the next sitting day of the House, before three o'clock, otherwise it cannot be made; and it must be signed before the rising of the House on that day (s). But, however, many instances are recorded in the Journals of further time being allowed, under peculiar circumstances.

Lord Clarendon says (t), the first instance of protests with reasons was in 1641, before which time, names only were set down as dissentient to a vote.

Sign papers with their title only.

VI. Peers may make their signature to all letters or deeds by the name of their title; their family and Christian names being absorbed in the higher one of their nobility.

Declaring upon his honour instead of oath.

VII. A Peer sitting in judgment gives not his verdict upon *Oath*, but upon his *honour* (v); the law supposing him of such integrity, that he will, for justice, do that which others are compelled to do upon their oaths. He also answers all Bills in Chancery upon his honour;—and if he is plaintiff in an action of debt upon acco<sup>mt</sup>, it is sufficient to examine *his attorney* upon oath (w). But if summoned as a witness, in criminal cases (x), or in making an affidavit (y), he must be sworn.

Trial by his Peers.

VIII. When arraigned for any capital offence, except in the case of murder or felony (z), it must be before his

(r) S. O. H. of L. 2 Mar. 1664.

(s) lb. 27 Feb. 1721.

(t) 2 Clar. Reb. 407.

(v) 2 Inst. 49; L. J. 31 Dec. 1640. S. O. H. of L. lxx.

(w) 3 Inst. 29.

(x) E. of Shaftesbury v. Ld. Digby, 3 Keble's Rep. 631.

(y) W. Jones, 152.

(z) 17 Jan. 1689.

Peers (*a*), in full Parliament (*b*); who deliver their opinions upon his guilt or innocence upon their honour (*c*). This privilege cannot be waved (*d*). It does not extend to Bishops, "as they are not ennobled in blood" (*e*). Although by 20 Henry VI. ch. 9, it is declared to extend to all peeresses, either in their own right, or by marriage.

But in case of misdemeanor, as riot, libel, conspiracy and perjury, a Peer is tried like a commoner by a jury. Except. No Peer sitting in judgment on another, can be challenged, the law presuming that they, being all Peers of the realm, and judging upon their honour, cannot be guilty of falsehood, favour, or malice (*f*). But, however, previous to the commencement of the trial, the Lord High Steward, in a short exhortation, requests those who bear the prisoner any ill-will to withdraw. Peers are tried in Courts erected specifically for the purpose, in the centre of Westminster Hall, at the expense of the Crown, which Courts are pulled down as soon as the investigation terminates.

As to the form and manner of the trial, see Lord Somers's Tracts, v. 13, p. 385, 6.

The cases in which a Peer of Scotland is to be tried by his Peers, are determined by 6 Geo. IV. ch. 66.

IX. By the law of *Scandalum Magnatum* (*g*), any person convicted of spreading scandalous reports respect- Scandalum Magnatum.

(*a*) Magna Charta. ch. 29.—L. J. 14 Jan. 1689.

(*b*) S. O. II. of L. lii. But it would seem, from an examination of the authorities, that this privilege of being tried in full Parliament, extends only to trials for treason,—as there are many instances, subsequent to these Orders, of a limited number of Peers, only, being summoned in trials for felony, &c. but the 7 Will. III. ch. 3, sec. 11. effectually secures to the Lords the privilege of a full summons in cases of treason. See Amos' Disquisition on the Court of the Lord High Steward, appended to 2d vol. of Phillips' State Trials, p. 359.

(*c*) S. O. II. of L. 14 Jan. 1689.

(*d*) Cases of *Ld. Berkeley*, 4 Edw. III. and of the *D. of Suffolk*, 28 Henry VI. Kennedy on Juries, p. 50.

(*e*) 2 Hawk. P. C. ch. 44. sec. 12—and see the cases of *Archbishop Cranmer*, and *Bishop Fisher*.

(*f*) Moor, fol. 622.

(*g*) 1 Westm. ch. 33.—2 Rich. II. ch. 5.—12 Rich. II. ch. 11.

ing a Peer, or Bishop; no matter whether true or false, is subject to fine and imprisonment; and every Nobleman so scandalized may prosecute the offender and recover damages.

Freedom from  
Arrest.

Except.

X. The person of Peers is for ever sacred and inviolable from arrest and imprisonment for debts, trespases, &c. (*h*), and they cannot be outlawed in any civil action, nor any attachment lie against their persons. But this freedom from arrest does not extend to breaches of the peace, (particularly when they refuse to give security to keep the same\*) treason—felony (*i*), or indeed any indictable offence whatever—cases of contempt (*k*), a *capias pro fine* and *exigent* (*l*), (the fine being imposed by statute, in which no person is exempted), or a writ of *withernam* (*m*)—or for execution on a statute staple merchant, on the statute of *Acton Burnel*, or of 23, Henry VIII. the body of a Baron is not exempt (*n*)—or if he take an orphan out of the custody of a guardian, he is not privileged, and in a *homine replegiando*† where he detains the body, he shall be committed (*o*). This privilege formerly extended to their families, servants and followers, and to Solicitors and Attorneys employed by them (*p*), as well as to all persons necessarily about their estates, or persons during the session of Parliament, and twenty days before and after—until it was modified by 10 Geo. III., ch. 50, (“for preventing delays of justice by reason of privilege of Parliament”). But Peers are not exempt from being sued, or from having their property sold or sequestered (*q*).—

(*h*) *Elsy*, 223.

(*i*) S. O. II. of L. xlix.

(*k*) *Moor*, 767.—*Crompt*, 14.

(*l*) *Ld. Stafford v. Thynne*, in *Dyer*, 314. *Cro. Eliz.* 170.

(*m*) *Crompt*, 20.

(*n*) 2 *Leonard's Rep.* 173.

(*o*) *Lev.* 162, 163.

(*p*) S. O. II. of L. lxvi.

(*q*) 10 G. III. ch. 50.

\* A Peer or Peeress cannot be bound over in any other place than the Courts of King's Bench or Chancery.—1 *Bl. Com.* 253.

† This writ of *homine replegiando* is now seldom used, it being superseded by the writ of *habeas corpus*.

Being a privilege of *Peerage* (*r*) it extends to all Peers of the realm, though not having seats in the House, and to all peeresses, English, Scotch or Irish.

XI. Of Franking Letters through the Post-office to all parts of Great Britain and Ireland, from forty days before a summons, until forty days after the prorogation of Parliament (*s*). This privilege, being exclusively parliamentary, does not extend to those Peers who have not a seat in the House of Lords (*t*). Of Franking.

XII. To assault a Peer or his menial servant, is a high contempt, and may be punished with great severity by the House (*v*), and there were also penalties annexed to it in the courts of law, by the statutes 5 Henry IV., ch. 6, and 11 Henry VI. ch. 11—but these acts were repealed by 9 G. IV., ch. 31—so that such an offence is not now, by the Statute law, distinguishable from a common assault. Assaulting a Peer, or his servant.

XIII. Peers are exempt from attendance or serving in Courts-lect, Sheriff-tourns (*w*), the militia,\* or the *posse comitatus* in cases of riot (*x*). Exemption from Courts Lect, Militia, &c.

XIV. The Houses of Peers may not be entered by Officers of Justice without a warrant under the King's own hand, and those of six Privy Councillors, (four of whom must be Peers of the realm,) if the search be for convenicles, prohibited books, &c. (*y*) or for other reasons without the King's sign manual, and certain other forms prescribed by law, varying according to the particular case (*z*). Peers' Houses not to be entered by Officers of Justice. Except.

(*r*) 2 Stra. 985.

(*s*) See the General Franking Act, 1 Vict. ch. 35.—21 Geo. III. ch. 37, sec. 7.

(*t*) Bacon's Abridgement, v. 6, p. 547.

(*v*) See L. J. *passim*.

(*w*) Britton, ch. 29, p. 73.

(*x*) Dodridge on the Nobility.

(*y*) 13 & 14 Car. II. ch. 33.

(*z*) *Ib.*—16 Car. II. ch. 4.

\* Legislative Councillors and Members of the House of Assembly, with the Officers connected with the Canadian Legislature, are exempted from serving on the Militia, except in times of actual service, by the Provincial Act 48 Geo. III. ch. 1, sec. 26.

Qualifying  
Chaplains.

XV. Peers can qualify a certain number of Chaplains, viz:—a Duke *six*; a Marquis or Earl, *five*; and a Baron *three*. An Archbishop, *six*, and a Bishop, *four* (a).

Sitting covered  
in Courts, and  
upon the Bench.

Not to lose his  
Nobility.

Except.

No day of grace  
when Peers are  
Defendants.

XVI. They have the privilege of sitting covered in Courts of Justice,\* and are further entitled by their rank to a seat with the Judge upon the Bench.

XVII. A Peer cannot lose his nobility but by death, or attainder for high treason. It has been *said*, that if a Baron or Peer waste his Estate, so that he is not able to support his dignity, the King may degrade him; but it has been expressly held, by authority of the Parliament itself, that a Peer cannot be degraded but by Act of Parliament. There is but one instance upon record of the degradation of a Peer for this cause; it occurred in the reign of Edward the IV. in the case of George Neville Duke of Bedford (b).

XVIII. No *Essoin* or day of grace is granted to plaintiffs in suit or actions wherein Noblemen or Lords of Parliament are defendants (c); except the plaintiff is also a Peer, when the Judge, upon motion or prayer may relax the rule for a day or more (d).

The reason for this privilege, is, that a Peer should have expedition of Justice, “in respect he has to attend “the sacred person of the King, and the service of the “commonwealth.”

(a) 21 Henry VIII. ch. 13.

(b) Rot. Parl. Edw. IV. 16 June. See also Moor. 678. 12 Rep. 56, 107.

(c) Cam. Brit. 169 (Eng. Edit. 1610);

(d) Dodr. 144 (Edit. 1658).

\* No Peer can be covered in the Royal presence without express permission for that purpose, except Lord Kingsale. The Barons of Kingsale have, since the time of King John, enjoyed exclusively the hereditary privilege of being covered in the royal presence, after having first made the usual obeisance. This arose from their ancestor, Sir John de Courcy (afterwards Earl of Ulster), who was a remarkably powerful man, having engaged to fight in single combat, and having routed the Champion of France, on occasion of a dispute regarding the proprietorship of the Duchy of Normandy, between John and the French King, Philip Augustus. The descendants of this redoubted Knight have on all occasions claimed, and been allowed their peculiar privilege.

XIX. Lords of Parliament are exempted from taking the Oath of Allegiance in courts leet; or any place out of Parliament (*e*); and from taking the Oath of Supremacy at all (*f*): except when it may be expressly required of them on accepting any office, as by the 13 and 14 Car. II. ch. 3. sec. 18—which require them to take these Oaths before they are appointed Lieutenants or Deputy Lieutenants of counties.

Exempt from Oath except in Parliament.

XX. Lords of Parliament are not to contribute to the expenses of the Knights of the Shire that come to Parliament (*g*).

Not to contribute to expenses of Knights of the Shire.

XXI. Being defendants in Chancery, they are not to be summoned by Subpœna, but by a letter from the Lord Chancellor, or Lord Keeper (*h*); and although they do not appear, no attachment can be taken out against them (*i*).

To be summoned in Chancery by letters-mis-sive, &c.

XXII. They have the privilege of appointing deputies to all offices and places of trust held by them, the law presuming the necessity for their attendance in Parliament. (*k*).

May appoint Deputies to Offices.

XXIII. If Peers or Lords of Parliament are appointed Justices of the Peace, they need not be resident in the Shires in which they are Justices (*l*).

If Justices of the Peace, need not be resident.

XXIV. Formerly (by 14 car. II. ch. 24), Noblemen or Lords of Parliament could not be considered as Merchants, and therefore could not be made Bankrupt, but this act was repealed by 6 Geo. IV. ch. 16—which declares a commission of bankruptcy may issue against a trader having privilege of Parliament, although he may not be arrested, except in cases of Felony.

As to being Bankrupts.

XXV. If for any crimes they are sentenced to be hanged, it is altered to beheading. But this, though an

To be beheaded instead of hanged.

(e) Stat. of Marlebridge, 52 Henry III. ch. 10.

(f) 5 Eliz. ch. 1.

(g) Crompt. 17.

(h) Ib. 33.

(i) Dyer, 315.

(k) Perkins, sec. 99, 100.

(l) 2 Henry V. stat. 2, ch. 1.

ancient use. is still but a favour from the King, and may be refused, and many cases of refusal are to be found in History (*m*).

May wear swords  
in London, &c.

XXVI. By proclamation of Edward III. they may wear Swords within the limits of London and Westminster.

Creation-money  
unalienable.

XXVII. If any annuity or rent is given by the King to a Nobleman on his creation to the Peerage, for the support of his dignity, it cannot in any way be alienated or given from the same (*n*).

To have a knight  
on the jury in  
causes in which  
they are parties.

XXVIII. Formerly, when any cause was tried before a Jury in which a Lord was a party, at least one Knight must have been on the pannel (*o*). But this privilege was taken away by 24 Geo. II. ch. 18. sec. 4, and 6 Geo. IV. ch. 50, sec. 28.

The reason given by writers for this, was, that the interest of private individuals required this especial choice, because, say they, "*a Knight was presumed to be a man of courage, and not afraid to look a Peer in the face*" (*p*).

Of killing the  
King's deer.

XXIX. Every Lord Spiritual or Temporal, summoned to Parliament, and passing through the King's forests, may, both in going and returning, kill one or two of the King's deer, without warrant,—in view of the forester, if he be present, or on blowing a horn, if he be absent, that he may not seem to take the King's venison by stealth (*q*).

This is a very ancient privilege, declared by the Charter of the Forests, ch. 10, and confirmed in Parliament, 9 Henry III.

Their carts and  
carriages exempt  
from King's  
service.

XXX. No carriage (*r*) belonging to a Lord of Parliament, or cart (*s*) employed on his grounds, can be taken for the King's service.

(*m*) See Lord Somers' Tracts, vol. 13, page 378, 379.

(*n*) Dyer, 2. 2 Inst. 9.

(*o*) Dyer, 107, 208.

(*p*) Cottu's Crim. Jurisp. 76.

(*q*) 1 Bl. Com. ch. 2.

(*r*) Jenkins' Reports, 107.

(*s*) 2 Inst. 35.

XXXI. No Peer of the realm can be compelled to attend the House of Commons, to give evidence, &c. without his personal consent—whether he be a Lord of Parliament or not (*t*). Except he has waved his privilege of Peerage by becoming a member of the House of Commons.

Not compelled to attend House of Commons.

XXXII. There was another very important privilege formerly possessed by the Peerage, but recently abolished by act of Parliament. It was equivalent to the benefit of Clergy, formerly possessed by the ecclesiastical body in England, and was granted by 1 Edw. VI. ch. 12. By this act, Peers, *even although they were not able to read* (*v*), were allowed privilege for all offences clergyable at that period, also for the crimes of housebreaking, highway robbery, &c., and as no subsequent law had, till very lately, repealed this clause in the statute of Edward, a Peer might commit those crimes, capital in a commoner, with impunity, for by pleading it to be *his first offence*, in these several felonies, he was liable to no personal punishment whatever (*w*). This extraordinary enactment was, however, repealed by the 7 and 8 G. IV. ch. 27.

Of benefit of Clergy.

Now repealed.

XXXIII. Peers of the realm are also exempt from attendance on Juries (*x*) and are not capable of being approvers, or, as it is commonly called “King’s evidence” (*y*). Neither can they be admitted as bail, from the difficulty of proceeding against them (*z*).

Exempt from Juries, &c.

XXXIV. And lastly. They have a right to be attended, and constantly are, by the Judges of the Courts of King’s Bench and Common Pleas, and such of the Barons of the Exchequer as are of the degree of the Coif.

To be attended the Judges, &c.

(*t*) L. J. 19 July, 1806.

(*v*) 1 Lev. 130.

(*w*) See the case of the Duch. of Kingston, who, being condemned for bigamy, on pleading her privileges, was released.—11 How. St. Trials, 264.—15 April, 1776.

(*x*) 6 Geo. IV. ch. 50, s. 2.

(*y*) 3 Inst. 129.

(*z*) 2 Marshall’s Rep. 232. 4 Taunton’s Rep. 249.

or have been made Serjeants-at-law (*a*); as likewise by the King's learned Counsel, being Serjeants, and by the Masters-in-Chancery—for their advice in points of law, and for the greater dignity of their proceedings (*b*). The Secretaries of State, with the Attorney and Solicitor-General, were also used to attend the House of Peers, and have to this day (together with the Judges, &c.) their regular writs of summons issued out, at the beginning of every Parliament (*c*), *ad tractandum et consilium impendendum*, though not *ad consentiendum*; but whenever of late years they have been Members of the House of Commons (*d*), their attendance here hath fallen into disuse. On account of this attendance, there are several Resolutions before the Restoration, declaring the Attorney-General incapable of sitting in the House of Commons. Sir Heneage Finch, Member for the University of Oxford, (afterwards Lord Nottingham and chancellor) was the first Attorney-General who enjoyed that privilege (*e*).

As to Attorney-General sitting in House of Commons.

Freedom of Speech.

Peers have likewise the same privilege as the Commons of freedom of speech in their own House, but the *publication* of a speech containing a libel on an individual is not protected; as, in 1794, Lord Abingdon was convicted and punished by fine and imprisonment for a libel upon an individual contained in his speech in the House of Lords, and published by him in the newspapers (*f*).

Their lives, works, &c. not to be published. Except.

It is also a breach of privilege for any one to publish the lives, works, or wills of Peers, after their death, without the consent of their heirs or executors (*g*).

Where they have no privilege.

But Peers have no privilege of Parliament as Trustees (*h*),—or against the proving of wills (*i*), or to prevent a

(*a*) S. O. II. of L. iv.

(*b*) *Ibid.* v.

(*c*) See 31 Henry VIII. ch. 10. Moor. 551. 4 Inst. 4. Hale Parlt. 140.

(*d*) See C. J. 11 April, 1614; 8 Feb. 1620; 10 Feb. 1625. 4 Inst. 48.

(*e*) 1 Bl. Com. 168.

(*f*) *Rex v. Ld. Abingdon*, 1 Esp. N. P. C. 226.

(*g*) S. O. II. of L., 31 Jan. 1721.

(*h*) *Ibid.*, 12 Nov. 1685.

(*i*) *Ibid.*, 29 April, 1699.

Bill filed against them in cases where witnesses are to be examined (*k*), or the filing a bill in equity without process (*l*), nor against writs of habeas corpus (*m*), nor against prosecutions or proceedings for keeping gaming houses (*n*), nor against trials by courts martial, if holding a commission (*o*), nor in any suit for tythes (*p*), nor against information for striking in the king's palace or presence,\* whereby blood is drawn (*q*),—neither is privilege of Parliament to be allowed to Minors, Noblewomen, or Widows of Peers (*r*).

The Lords may expel any of their Members for crimes, on proof thereof being given (*s*). The complaint of a breach of privilege, in the Lords, must be upon oath, and if it be not allowed, the Lords are to pay the expenses (*t*). Expelling the Members.

Privilege of Parliament cannot be waved (*v*), but a Lord may wave his personal privileges by declaring openly in the House that he does so, or signing a *waviver* with his own hand (*w*); having done which, with reference to any particular subject, he cannot resume them (*x*). A Member of the House of Commons is not allowed to do this, as they are not his, but are held by him for his representatives. Waving privilege.

(*k*) S. O. H. of L. 3 July, 1678.

(*l*) Ib. 14 Dec. 1696.

(*m*) Ib. 8 June, 1757.

(*n*) L. J. 29 April, 1715. 18 Geo. II. ch. 34, s. 7.

(*o*) 13 Oct. 1690.

(*p*) L. J. 15 Dec. 1691.

(*q*) Rex v. E. of Devonshire, Combermach's Rep. 49.

(*r*) S. O. H. of L. 21 Feb. 1692.

(*s*) L. J. 3 May, 1620; 13 May, 1624; 20 May, 1725.

(*t*) S. O. H. of L. 11 Jan. 1699.

(*v*) Dwar. 103.

(*w*) S. O. H. of L. 17 Mar. 1730.

(*x*) L. J. 11 July, 1715; 7 June, 1717.

\* This offence was punishable by perpetual imprisonment, and fine and ransom at the King's pleasure; and by the offender losing his right hand, in the manner prescribed by the Stat. 33 Henry VIII. ch. 12—but the statute 9 Geo. IV. ch. 31. repeals so much of this act "as relates to the punishment of manslaughter, and of malicious striking, by reason whereof blood shall be shed," and does not distinguish it from a common assault. By the *common law*, however, the offence of striking in the royal presence still subjects the offender to the loss of hand. (1 Hawk. P. C. ch. 21, s. 3; 2 Inst. 549.)

Judicature of the  
House of Lords.

The House of Lords is a distinct Court from the Commons for several purposes; they try criminal causes on Impeachments by the Commons; and have an original jurisdiction for the trial of Peers, upon Indictments found by a Grand Jury: they also try causes upon Appeals from the Courts of Chancery, or upon Writs of Error to reverse Judgments in B. R. &c. And all their decrees are as judgments, and judgments given in Parliament may be executed by the Lord Chancellor (*y*), or, in Scotland, by the Court of Session (*z*). But in order to prevent Writs of Error being brought up without just cause, and merely for delay of judgment, the Lords ordered (anno June 1641,) that persons so doing should pay such costs as the House should think fit to impose.

For the manner of bringing in, and proceeding on a Writ of Error in the House of Lords, see Nalson's Collections, vol. 1—and Dow's, Clark and Finnelly's, &c. Reports.

But no Appeal to the Lords from the Colonies is sustainable; such an Appeal must be made to the King in Council (*a*); and be determined by the Judicial Committee of the Privy Council.

Summary of the  
privileges of the  
Lords.

The claims of the Lords, at different periods of their history, have extended to an original and appellate jurisdiction generally, in civil and criminal matters, and to an unlimited power of punishment in all cases of contempt and breach of privilege, including under these wide-reaching terms, all personal injuries and insults, libels and obstructions, whether inflicted on the House collectively, or on a Peer in his individual capacity. We find, however, that these claims have been to a great extent reduced by the course of time and precedent; by the declaration of the Judges, and by the opposition of the lower House;

(*y*) 4 Inst. 21. Finch. 233, 483. 1 Lev. 165.

(*z*) Bell's Dict. Law of Scotland, 703. (*a*) Chitty's Prac. of the Law. 594.

so that at present they may be said to stand nearly as follows. The Lords have an exclusive criminal jurisdiction, but only in cases of Impeachment by the Commons, or the arraignment of any Peer of the realm; an exclusive civil jurisdiction, but only in cases of Appeals from the Courts below, a power in breaches of privilege, extending to fine and imprisonment for a term certain, but not, if long disuse have any weight, to corporal or infamous punishment. A Judicature in controverted Elections for the Sixteen Representative Peers of Scotland: and the power to imprison, expel, reject or disqualify their own Members for crimes.

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### PRIVILEGES PECULIAR TO THE HOUSE OF COMMONS.

Although the privileges of the House of Commons have been held by Blackstone, and many other learned and venerable writers, to be undefinable, yet there are other names (as Chatham,\* Holt, Hatsell, &c.) equally entitled to respect, who dispute this doctrine, and declare that its acknowledgment would circumscribe not only the liberty of the subject, but the well-being of the State. But, as says Dwaris (himself a learned and accurate expounder of Parliamentary law), this *repudiation* of the doctrine is not sufficient. The circumstance of opinions of a doubtful nature coming recommended by names such as these, renders it more than ordinarily incumbent upon succeeding writers to subject them to close examination, and if found objectionable, to oppose their introduction and point out their fallacy (a).

Privileges of the  
House of Com-  
mons.

Not undefinable.

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(a) Dwar. 71.

\* See his speech upon the Address, 9th January, 1770.—Ld. Chatham's Speeches, v. 2, p. 154.

Of them.

The privileges of the House of Commons which will first claim attention, are those that are most certain and notorious. The most valuable and least subject to dispute is—

Privilege as to Supply.

I. Their emphatic claim to “the sole right of beginning the grants of Aids and Supplies, and of directing and limiting the ends, purposes, considerations, and qualifications of such grants, without the Lords having the power to alter or change them.” (*b*)

With regard to this, it is the ancient indisputable privilege and right of the House of Commons, that all grants of subsidies or parliamentary aids, do begin in their House, and are first bestowed by them (*c*); although their grants are not effectual to all intents and purposes, until they have the assent of the other two branches of the Legislature. The true reason of this, arising from the spirit of our constitution, seems to be—that the Lords being a permanent hereditary body, created at pleasure by the King, are supposed to be more liable to be influenced by the Crown—and when once influenced to continue so, than the Commons, who are a temporary elective body, freely nominated by the people. It would be, therefore, extremely dangerous to give the Lords any power of framing new taxes for the subject; it is sufficient that they can reject, if they think the Commons too lavish or improvident in their grants (*d*). And, indeed, this important privilege may be said to be the life and soul of the House of Commons, for at the dissolution of Parliament (at all times in the power of the Crown, the Commons completely vanish, whereas the Lords, being an hereditary body, still exist. Aware, therefore, of the advantages they derive from the power of granting the supplies to the Crown, the Commons have, at all times, watched over this privilege

(*b*) C. J. 3 July, 1678.

(*c*) 4 Inst. 29.

(*d*) 1 Bl. Com. 168, 169.

with the most fostering and anxious solicitude. Hence the warmth, and even resentment, which they have so often evinced in rejecting amendments proposed by the Lords to their Money Bills.\*—See further Chapter IX. “*On Money Bills.*”

II. It is their sole right to enquire into the Election of Members of their own House. Relative to this, see Chapter V. “*On Election Petitions.*”

And as to the Election of their Members.

III. Another valuable privilege possessed by the House of Commons, is the power of Impêaching public delinquents, even the highest Lord, Spiritual or Temporal, in the realm. See Chapter XVIII. “*On Impêachment.*”

As to Impêachment.

IV. The House of Commons, although its Members do not, like the Lords, possess the power of protesting, *individually*, against any measure, may enter their dissent or remonstrances against the King and Lords, upon their Journals (*e*).

Remonstrances

V. They also possess, in common with the Lords, the privilege of franking a certain number of letters daily through the Post Office, whether the House be sitting or not.†

Of Franking.

\* The last time the Lords contended with the Commons respecting their right to amend a Money Bill, was in 1671, during the reign of Charles II. ; when the altercation between the two houses ran so high, that the King was compelled to prorogue the Parliament, notwithstanding he thereby lost the intended supplies. In 1772 they rejected the amendments made by the Lords to the Corn and Grain bills, on the ground that “the Lords had no right to alter a bill by which money “was to be levied on the subject.” Ever since, this momentous privilege of the Commons has remained undisputed.

(*e*) Key, 84, note—C. J. 14 Dec. 1641.

† Members of the Legislative Council and Assembly of this Province do not possess the privilege of Franking; an Act passed the Colonial Legislature in 1837 conferring it upon them, but although it received the assent of the Governor it was subsequently disallowed by the Crown.

The postage for Letters and Packets on the public service is defrayed out of the Contingencies of the Legislature, by a Sessional Resolution of the House, which, though it does not regulate the number of Letters and Packets that may be sent and received by Members daily, generally limits the weight of them to 1oz. each, all over which must be defrayed by the Members.

Its origin, &c.

This privilege was claimed by the Members of the House of Commons on the first legal settlement of the present Post-Office establishment, in 1661—when a proviso was introduced into the Post-Office bill for that purpose, but it was disallowed by the Lords (*f*). The claim, however, was only dropped upon a private assurance from the Crown that this privilege should be allowed the Members, and a warrant was accordingly issued for that purpose (*g*). It was at last expressly confirmed by 4 Geo. III. ch. 24; and by subsequent statutes (*h*), many abuses which had crept in have been restrained. The Commons are privileged to frank immediately on their election, but no Member can send more than ten, nor receive more than fifteen, free from postage, in one day.

Present state.

Of expelling their Members.

VI. The House of Commons has, also, with the Lords, the power of expelling its Members for offences either against the House, or the State (*i*), but they have relinquished the power formerly exercised of disabling them from being re-elected (*k*). See further Chapter IV. "*On Members (of the House of Commons).*"

Freedom from arrest.

VII. The privilege of freedom from arrest is one of the most important and necessary privileges belonging to the Houses of Parliament. No Member of either House can be arrested, except in the cases hereinafter-mentioned, without a breach of the privileges of Parliament; but by the 10 Geo. III. c. 50, a Member may be *sued* and his goods sequestrated.

Its duration.

The *duration* of this privilege is no where precisely determined. It certainly, however, is the received opinion that it extends to forty days after every prorogation and forty days before the next appointed meeting—and after

(*f*) L. J. 22 Dec. 1660.

(*g*) Dwar. 107.

(*h*) 24 Geo. III. ch. 37. s. 7. 35 Geo. III. ch. 53. 42 Geo. III. ch. 63. See now the General Franking Act, 1 Vict. ch. 35.

(*i*) C. J. *passim*.

(*k*) C. J. 3d May, 1783.

(*l*) Dwar. 101.

a dissolution, to a *reasonable* time\* to return home (*l*); And extent. which is now, in effect, as long as the Parliament exists, it being seldom prorogued for more than fourscore days at a time (*m*).

This privilege from arrest, privileges of course against all process, the disobedience to which is punishable by an attachment of the person; as a subpœna *ad respondendum* or *testificandum*, or a summons on a jury,—and with reason, because a Member has important duties to perform elsewhere.

Privilege from arrest takes place by virtue of the election, and before a return is made,—for a Member elected is to all intents a Member except that he must not vote until he be sworn (*n*).

Each House of Parliament may release any one entitled to privilege (*a*), and inflict punishment by censure, on the arresters. The manner of delivery has been, ever since the reign of Queen Elizabeth, by virtue of a Writ of Privilege, or by a Writ of Habeas Corpus issued in obedience to the Speaker's Warrant, made by order of the House (*b*). In any case now to arise, the same prudent course of scrupulously using some form and process of law, would probably be persisted in. The House of Commons has not abandoned their claim to the power of releasing their own Members arrested under civil process, by their own officers, *et propria rigore*, though for a length of time, they may have refrained from exercising it (*c*). But how, it is material to learn, is

How privileged party to be delivered out of custody.

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\* The old words are "*Eundo, Morando, et propria Redundo*,"—but there can be very little doubt that it extends to the term of forty days before and after the sitting of Parliament, from the fact that the privilege of Franking has the same limit of forty days assigned to it by statute, thereby implying, that that is considered the natural term of Parliamentary privilege.

(*l*) Dwar. 101.

(*m*) 2 Lev. 72.

(*n*) 2 Hats. 22; 62. D'Ewes. 642, 643.

(*a*) 1 Jac. I. ch. 13.

(*b*) 1 Hats. 165.

(*c*) Dwar. 96.

During Recess  
or Dissolution.

a party to be delivered out of custody when arrested in a civil suit, supposing the Parliament not to be sitting, or to be dissolved? in what manner can Courts of Justice take cognizance of privilege of Parliament? For in a case (*o*) where a letter was written by the Speaker to the Judges to stay proceedings against a privileged person, they rejected it, as contrary to their oath of office. These objects may be effected in two ways: 1st. the discharge of such privileged person may be procured by writ of privilege (*p*), in nature of a supersedeas. 2dly. Such arrest being irregular, *ab initio* (*q*), the party may be discharged upon motion (*r*); he may move the Court from which the process issued, that he may be discharged upon filing common bail (*s*).

Where freedom  
from arrest is not  
allowed.

This privilege from arrest does not extend to cases of Treason (*t*), Felony (*u*), Breach of the Peace, or refusing to give security for the same (*v*), disobeying Writ of Habeas Corpus (*w*), Contempt of Civil (*x*) though not of Ecclesiastical (*y*) Courts, Seditious Libels (*z*), or indeed any indictable offence (*a*), Trials by Courts Martial, whether Naval (*b*), or Military (*c*), or to prosecutions or proceedings for keeping Gaming-houses (*d*). The only privilege of Parliament in such cases seems to be the right of receiving immediate information of the imprisonment or detention of the Member, with the reason for which he is

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(*o*) *Hodges v. Moore*, as reported by Latch, 15, 48, 150. Noy, 83. Previous to this case, no objection was made by the Judges to the Speaker's letter, but the party was immediately delivered thereupon.

(*p*) Latch, 150. Dyer, 60. (q) Fort, 342.

(*r*) Colonel Pitt's case, 2 Stra. 985.

(*s*) Dwar. 100.

(*t*) 1 Hats. 18, 20.

(*u*) 1 Hats. 18, 20.

(*v*) C. J. 14 April, 1697.

(*w*) 1 Hats. 206.—7 Feb. & 8 June, 1757.

(*x*) Mr. Long Wellesley's case, C. J. 26 July, 1831. Mr. E. L. Charlton, C. J. 16 Feb. 1837.

(*y*) 2 & 3 Wm. IV. ch. 93, s. 1.

(*z*) C. J. and L. J. 29 Nov. 1763.

(*a*) C. J. v. 86, p. 701.

(*b*) C. J. v. 62, p. 145.

(*c*) C. J. v. 58, p. 597.

(*d*) 18 Geo. II. ch. 34, s. 7.

detained; a practice which is recognized by the several temporary statutes for suspending the Habeas Corpus Act,\* whereby it is provided that no Member of either House shall be detained until the matter of which he stands suspected be first communicated to the House of which he is a Member, and the consent of the said House obtained for his commitment or detention. But yet the usage has uniformly been (*e*), ever since the Revolution, that the communication has been made subsequent to the arrest.

Further, as to the privileges claimed from the King at the commencement of a new Parliament, by the Speaker—of Freedom from Arrest—Freedom of Speech in their own House—Free access to the King—and that all their proceedings may receive a favourable construction—see Chap III.—*On Speaker (of the House of Commons.)*

It is also, by a standing order (*f*), a breach of the privileges of both Houses, to publish the speeches or votes of their members, and although this has fallen into abeyance, yet it may be enforced by the House when ever it is called for. This is generally done by a member when his votes or speeches have been erroneously reported, whether wilfully or otherwise, and on a representation to the House, the offender is proceeded against under this standing order (*g*).

Speeches and Proceedings not to be published.

Each House of Parliament, in common with every other Court, has the right to commit any person for contempt of its authority, and they are the sole judges of such contempts. When either House adjudges any thing to be a contempt, their adjudication is a conviction, and their committal, in consequence, an execution. And whenever the question as to the power of the House of Commons to commit for a contempt has been raised, it has always been

Its power in cases of contempt.

\* Particularly 17 Geo. II. ch. 6.

(*e*) 1 Bl. Com. 167.

(*f*) S. O. H. of L. 27 Feb. 1698, and II. of C. 28 Mar. 1642.

(*g*) See C. J. 13, 20 & 27 Mar. 1771.

Persons so committed discharged at end of Session.

ruled that a person so committed cannot be discharged by a Court of Common Law (*h*), nor be bailed (*i*), but he may be discharged by Court of King's Bench after a dissolution or prorogation, which determines all orders of Parliament.

Whether Habeas Corpus can be allowed them.

It is a much disputed question whether a person so committed for contempt or breach of privilege, can be allowed Habeas Corpus; there were frequent conferences on this subject between the Lords and Commons in 1704, but they led to no satisfactory result (*k*),—and the question was argued by the Judges of the Court of Queen's Bench in that year, but opinions were divided\* (*l*). A case occurred in the Island of Jamaica in 1764, of the Governor of the Island, as Chancellor, granting a Writ of Habeas Corpus to a person imprisoned by order of the House of Assembly, on the ground that his detention was illegal. The House voted this proceeding a breach of privilege, and the Governor then dissolved the Parliament (*m*).

Libels on House by Members.

Relative to libels, the House have exercised the right to expel their members for libels upon the House (*n*), and they have declared (as in Wilkes' case) that *sedition* libels cannot be protected by privilege of Parliament, and that the reasons upon which that case was founded extend equally to every indictable offence. Since the Revolution it has not been unusual for the House of Com-

And others.

(*h*) See 3 Willes, 188; Black. Rep. 754; and Hobhouse's case, 3 Barn. & Ald. 420.

(*i*) Leach's Hawk. P. C. v. 2, ch. 15, sec. 73.

(*k*) See C. J. 24 Feb. &c. 1704.

(*l*) See Ashby v. White, 8 vol. State Trials (39th Edit.) 1753.

(*m*) See the Case in 8 vol. Annual Register, p. 179.

(*n*) Arthur Hall in C. J. 1530. Wilkes' case, 1769.

\* See an able account of this controversy in Hargrave's Preface to Hale's Jurisdiction of the H. of Lords, p. 199-206. Although the right of a prisoner so committed to the writ of Habeas Corpus seems now to be generally allowed, yet it has been held † that no Court can *deliver* upon it in such a case, which would make the mere obtaining the writ of no effect.

† 2 Salkeld's Reports, 404, 503: 8 Term Rep. K. B. 314.

mons, in cases of libel, and some other offences which may be thought to deserve a punishment different from that which the House has power to inflict—to order the Attorney General to prosecute the offender, or to address the King praying that he will give directions for that purpose (o).

Attorney-General ordered to prosecute.

The privilege claimed of not attending on Juries (p), and exemption from attendance before the ordinary Courts of Justice as Witnesses (q), is undoubted, although it seems to have been suffered in many cases to fall into neglect.

Need not be Jurors or Witnesses.

The House of Commons has no power to administer an oath, except in those peculiar instances where it is allowed by express Act of Parliament.

House of Commons cannot administer an oath.

If an offence be committed by a member of which the House has cognizance, it is an infringement of their rights for any person or Court to take notice of it, until the House has punished the offender or referred him over to such Court (r).

No Court to notice offences cognizable by the House—until

On complaint of breach of privilege the party may either be summoned, or sent for in the custody of the Sergeant (s).

Complaint of breach of privilege.

The privilege of a member is the privilege of the House. If a member wave it without leave, it is a ground for punishing him, but cannot in effect wave the privileges of the House (t).

Privilege cannot be waved.

The King cannot notice any thing said to be done in the House of Commons, but by report of the House (v). Thus the King's taking notice of the bill pending for suppressing Soldiers, his proposing a provisional clause for a Bill before it was presented to him by the two

Breach of privilege for the King to notice proceedings in Parliament.

(o) C. J. v. 58, p. 425, *et passim*.

(p) C. J. 6 May, 1607. 6 co. IV. ch. 50, s. 64.

(q) C. J. 31 Mar. 1607. Dwar. 103, 104.

(r) Lex Parl. 63.

(s) 1 Grey, 88, 95.

(t) 3 Grey, 140, 222.

(v) 4 Inst. 15.

Houses; his expressing displeasure against some persons for matters moved in Parliament during the debate and preparation of a bill—were breaches of privilege (*w*); and on 17 Dec. 1783, it was declared a breach of fundamental privileges to report any opinion or pretended opinion of the King on any Bill or proceeding, depending in either House of Parliament, with a view to influence the votes of members (*x*).

Or for a Member to repeat the King's opinion to influence votes.

Proceedings on breach of privilege by the King.

The proceeding to be adopted in any matter where the privileges of Parliament are infringed upon, or violated by the Crown, is to pass a remonstrance or Declaration, in the same manner and form as an Address, stating the infringement, and declaring the privileges of the House in that respect. This document is then sent to the King by a committee appointed for that purpose (*y*).

Extent of the privilege of the House of Commons.

There has occurred, within the last few months, a case which has caused the question as to the *extent* of the privilege of the House of Commons to be argued at great length; and which has brought forth on all sides, such a display of research into that difficult subject, from many of the ablest Statesmen and Judges in Great Britain, as had the effect of throwing great light upon it, and making that which before was enveloped in obscurity, so clear that it cannot be mistaken by any impartial eye. The case alluded to is that of *Stockdale v. Hansard*, and the facts are briefly these. The Inspector of Prisons appointed by the Home Secretary under the 5 and 6 Will IV. ch. 38, had presented a Report to the Crown, stating amongst other matters, that they had discovered in Newgate, in the possession of the prisoners, a book published by Stockdale in 1827, "which," they say, "is of a most disgusting nature, and the plates are obscene and disgusting in the extreme." The House of Commons ordered this Report

Case of Stockdale & Hansard.

(*w*) C. J. 14 & 16 Dec. 1641.

(*x*) 2 Hats. 251, 6.

(*y*) See C. J. 16 Dec. 1641.

(*compiled neither for, nor by themselves*) to be printed for general sale and circulation, and thereupon Mr. Stockdale brought an action against Messrs. Hansard, the printers of the House of Commons, for the above (as he alleged) libellous description of his work. The cause was tried before Lord Denman, and the Messrs. Hansard pleaded 1st, in justification—the order of the House of Commons, and, 2dly, that the alleged libel was true; but the Judge in his charge to the Jury, said, that “he was not aware of the existence in this country of any body whatever, that could privilege any servant of theirs to publish libels on any individual.” Accordingly, the Jury brought in a verdict for the plaintiff on the *first* issue, (i. e. against the privilege) and for the defendants on the *second*, evidence being given that the book was, in fact, of the character set forth.

Shortly after the trial, a Committee of the House of Commons was appointed to enquire into and report to the House on the subject of the publication and circulation of printed papers by order of the House. This committee reported (z) in favour of the claim of the House to privilege such publications, and declared it a high breach of privilege for any suit to be instituted for the purpose of bringing into discussion their right to do so,—or for any Court to presume to decide upon matters of privilege; on the ground that the House had exclusive right to determine the existence and extent of their privileges. This report was adopted by the House, though not without opposition—and soon after Mr. Stockdale commenced fresh proceedings against the Messrs. Hansard, and Mr. Nichol (another printer for the House of Commons,) received notice of an action for libel contained in a Petition printed and sold by order of the House—and on application by those individuals to the

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(z) See C. J. 8 May, 1837.

House for protection, the House instead of following up their Resolutions with the commitment of the Judges and all concerned, merely directed the Attorney General to defend the Printers. That the House were exceeding the limits of their authority in these Resolutions must be apparent to every one who attentively examines the case,—and that they were aware they were doing so is likewise evident, from the manner of their proceeding as above-mentioned.

Use and purpose  
of the House of  
Commons.

The supporters of these Resolutions plead the high and mighty nature of Parliament; but what is obviously true of the whole, becomes monstrous when applied to a part—for the House of Commons is only a part of the Legislature, constituted and assembled for particular purposes, and although its privileges are undoubtedly very great, it ought not to lay claim to the omnipotence of the entire Parliament.

No power to  
protect libellous  
publications,  
except for its  
own use.

The House of Commons, as the Grand Inquest of the nation, has unquestioned authority to enquire into all matters for the good of the state, and to order any information it may require, to be printed for the use of its members, to enable them properly to discharge their high functions, but it certainly has not authority, when that information is of a libellous nature, to cause it to be printed for general circulation, as that would be putting the people in possession of information which should only be given to members in their legislative capacity, for in that capacity nothing can be withheld from them, as in legislating for the well being of the State, all private interests should give place. That both Houses of Parliament are aware of, and have hitherto acted upon this principle, is evident from the fact, that although members are protected in the House in freedom of speech, yet both Houses have held (a)

(a) *Rex v. Lord Abingdon*, 2 Esp. N. P. C. 226: and see *Rex v. Salisbury*, 1 Raym. 341. *Rex v. Creery*, 1 Maule & Selw. 272.

that that protection does not extend to the *publication* of their speeches, as it would then be in the power of any member to pronounce, in his place, notorious libels upon individuals, under pretence of its being necessary for the information of the House. The cases referred to in the note, were cases in which the members published their speeches themselves, in order to remove an erroneous and garbled account of them, which had gone abroad—and neither House interfered, but quietly acquiesced in the justice of the decision. An action could not be made against a member for his speech in the House, but, if it contains a libel, an action would lie against the Editor or person publishing it. It is on this account that the standing order was made which prohibits the publication of the debates, the House being aware that topics will sometimes arise, which, if in the possession of the public would be made an improper use of. Therefore, although many efforts have been made for the repeal of this order, by persons who are not aware of its real object, it still remains; and although it is unquestionably necessary, in a great measure, that the debates should be made public, and they are so—yet still it is in the power of any member to move for the standing order to be enforced, and the persons transgressing it to be punished, the House exercising its own discretion upon each particular case, whether the offence is of sufficient magnitude to call for an exercise of its authority. The connection that exists between these two questions, must be obvious to all, and therefore the extent of the privilege of the House in this respect may be said to be as follows:

The House of Commons has authority to throw the protecting shield of privilege over any of its *own* proceedings (such as its votes, resolutions, reports made by its Committees, and Petitions, subject to the restrictions laid upon them,) but not to reports made by, or to, other Bodies.

No Member may publish his Speech.

As to Standing Order prohibiting publication of debates.

All the real proceedings of the House protected.

Any Resolutions of their own, however false, are unimpeachable, but they cannot protect other Resolutions without adopting them. They have also authority to order any thing that may be needed for the information of the House to be printed for the use of its members, but (as has been held (*b*) by Lord Ellenborough) only such a number will be privileged as there are members in the House, that they, with a full knowledge of the facts may make righteous decision; but if the information be libellous (of which he is necessarily the judge, on his own responsibility,) he must not communicate it, even to his constituents, as it is sufficient to state the general fact to them without descending to particulars, for by his writ of summons he is called to legislate for the nation, and not for the particular place from whence he is sent; and as the eloquent Burke tersely expresses it, "a member of the British House of Commons is not a *delegate*."\*

But only a certain number of printed copies.

An action might possibly be made against a member for the undue use of his copy (as says Lord Ellenborough in the case just cited) but it could not, if the limitation as to number were adhered to, be made against the officer who printed it, for that would be an undoubted breach of privilege and would render all concerned in it liable for the same.

The Officer printing is privileged—provided.

The ground of all actions for libel is *malice*, which the law invariably refuses to infer when the alleged slander is spoken, or written, for a legitimate purpose, and not circulated more widely than such purpose imperatively demands. Thus A. being surety for B. to C. it was held

(*b*) *Rex v. Creevy*, Maule & Selw. Rep. 272.

\* Sir-Edward Coke, on this subject, has the following: "On the first instituting a House of Commons, the representatives of knights, citizens and burgesses, were only looked upon as trustees, to manage the affairs of their principals; and therefore, in former days, it was held reasonable that they should be recompensed for the expense and trouble they were at in managing the trust reposed in them. Hence the fee of every knight of the shire was four shillings *per diem*, and that of a citizen or burgess, two shillings."—(4 Inst. 46.)

that A. was justified in informing C. that B. had been guilty of a fraud. Had the defendant (added Lord Ellenborough) gone to any other man and uttered these words of the plaintiff, they certainly would have been actionable.

Again, in the case of *Lake and King (c)* it was decided that the printing a certain number of copies of a *petition* containing scandalous matter might be justified, provided that the delivery was limited to members of the Committee authorized to decide upon it.

As to printing Petitions.

Thus from the above cases is clearly shown the *extent* of privilege in that respect. But it is argued in favour of the Resolutions, that the decision of cases in which the privilege of Parliament is concerned, does not belong to the Judges, but to the House itself, and the cases brought forward in support of that doctrine are, first, a case in the 27 Henry VI. of a controversy between two Earls, as to precedence. The King, by the advice of the Lords, referred it to the Judges to examine and report upon, not finally to determine, but as Assistants to the Lords. But the Judges made answer "That it was a matter of Parliament, and belonged to the King and Lords, but not to the Judges."

How far the Judges should take cognizance of privilege of Parliament.

The other case was that of Thorpe, the Speaker of the House of Commons, who had been committed to prison during the Recess. The Lords enquired of the Judges (who, be it remembered, were, in both cases, in the Lords' House, attending upon them, as regulated by law,) whether Thorpe could be delivered by privilege of Parliament, the answer was, that it was not for them to decide the privilege of Parliament, but for the House itself (*d*), and they were right, in as much as they were attending the Lords at those times—but these cases do not

Thorpe's case.

(c) Saunders' Reports, 131.

(d) Rot. Parl. 31 & 32 Henry VI.

affect their right of deciding a question brought before them at Westminster Hall, as is proved by the cases above cited, and many others (*e*). Thus we see it is unavoidable that the privileges of Parliament should be considered in Courts of Law, for the Lords or Commons might claim a privilege which did not belong to them, and there would be no redress; for although each House has exclusive jurisdiction in a *direct* case, where their undoubted privileges are violated, yet that right does not extend to cases that are not sanctioned by law; and although they may misjudge and improperly decide in their own favour (as in the case of Stockdale and Hansard,) yet it will not be conclusive in Courts of Law, but *like other mistaken decisions*, be pronounced *no privilege*. For the House by voting a claim to be a privilege do not make it such, unless it is found to be so upon examination of the proper authorities (*f*). And as to the clause in the Bill of Rights (*g*) on this subject, it does not uphold a claim of this kind, but by its guarded expression, and limitation to proceedings in Parliament, defeats it (*h*).

Privilege must sometimes be considered in a Court of Law.

Because.

How to decide whether a case be a breach of privilege.

The proper ground to decide upon the question as to whether a case that arises of a doubtful nature, be a breach of privilege, is to discover a precedent of a similar case having occurred in both Houses—but no Resolution of one House can make a legal privilege. The law of Parliament may be expounded from time to time, but cannot be altered or extended but by the authority of the whole Legislation (*i*).

Privilege how to be determined and declared.

The determination and knowledge of privilege of Parliament belongs to the members of the two Houses res-

(*e*) Sir O. Bridgman's Judgment in *Benyon & Evelyn*.—T. 14 Car. II. Rol. 2558; and Lord Ellenborough in *Burdett v. Abbot*, 14 East. 140.

(*f*) See *Clar. Reb. v. 2*, p. 398. (*g*) 1 Wm. & Mary, sess. 2, ch. 2, s. 1.

(*h*) See also the cases of *Shirley & Fagg* (1675); *King v. Knollys* (1697); and *Willes' Rep.* 597.

(*i*) 2 State Trials, 615.

pectively, but in declaring this law they must act judicially, and are under a solemn obligation *jus dicere* and not *jus dare* (k).

It is said by *Selden* (l) that a breach of privilege committed in, or against one Parliament, may be punished in another succeeding one.

Breach of privilege in one, may be punished in another Parliament.

In thus endeavouring to define the limits and extent of Parliamentary privilege, there is also another manner by which the privilege of one branch of the Legislature may be invaded by the other, and that is, by either branch taking upon themselves to suspend the Execution of the Law in a certain case,—or attempting to give their own Resolutions the power and authority of a decision sanctioned by the three Estates.

Resolutions of one branch of no power in law.

At different periods of English History attempts of this kind have been made and strenuously insisted upon by the invading parties, but they have always been met with such determined opposition by the other Branches, as have prevented their recurrence, and generally crushed them in the bud.

By a statute of Edward the III, a declaration is made that every legislative measure not sanctioned by the consent of the King, Lords and Commons, shall be void; and by the 13 Car. II. ch. 1. it is enacted, that if any person shall maliciously or unadvisedly affirm that both or either of the Houses of Parliament have any legislative authority without the King, such person shall incur the penalties of a *præmunire*.

Every measure must be sanctioned by the three Estates.

The justice of these enactments, has, with a few exceptions, been universally acknowledged. And these exceptions have principally arisen in the Lords and Commons, who have each, in their day, attempted to enforce their claims in this respect.

(k) Dwar. 70.

(l) C. J. 17 Feb. 1625.

Kings of England  
careful of this  
right.

Kings of England have—long before the passage of the clause in the Bill of Rights expressly guaranteeing it,—abstained from imposing taxes without the consent of Parliament,—even at times when every inducement was operating in their minds to resort to such a course, had it been lawful: they have solicited assistance from the bounty of individuals and of Parliament, without any salvo of their right: moneys which the Crown has obtained without the common consent, have been recovered by suits at law. And Kings have acknowledged in Parliament, the impropriety of infringing upon this undoubted privilege of the subject.

And it is obvious that the liberties of a country, however cautiously provided for by existing institutions, would remain in an insecure position, if it were in the power of the Sovereign to change the laws, or to suspend or dispense with them at pleasure.

The House of  
Lords have  
attempted to give  
their Resolutions  
the force of law.

The House of Lords has often, as the annals of our Judicial History will show, attempted to assume to themselves powers with which the Constitution has not invested them, but in every case they have met with a resolute and successful resistance.\*

And also the  
Commons.

The House of Commons, also, has made several similar attempts. During the reign of Charles II. they promulgated their opinion that a particular branch of the law should not be put in execution; and Burnet observes upon this proceeding that it was thought to be “a great invasion of the rights of the Legislature, and to be acting like “Dictators in the State.”

How a Court of  
Law should treat  
such an assumption.

The manner in which a Court of Law should treat every assumption of the kind, by one branch of the Legislature, of those powers which belong only to the whole when

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\* See the case of Skinner and the East India Company; the case of the Banbury Peerage; the case of Bridgman & Holt; and see Hargrave's Preface to Hale's Jurisdiction of the House of Lords.

united, was properly expressed by Lord Mansfield, in the Debate upon the Address, A. D. 1770. He said, that  
 “Declarations of law, made by either House, were always  
 “attended with bad effects, that he constantly opposed  
 “them when he had an opportunity, *and never, in his*  
 “*judicial capacity, thought himself bound to honour them*  
 “*with the slightest regard.*”\*

Proceedings of this kind will often occur in bodies pos- Conclusion.  
 sessed of such extensive powers as the individual parts of  
 the Legislature; when, losing sight of the limits that are  
 placed upon the proceedings of each, and arrogating to  
 themselves the power of the whole, they endeavour to  
 usurp that which the transient excitement of popular feel-  
 ing has taught them to believe their own. Forgetting the  
 observation of Sir Edward Coke, that it is the first duty  
 of Parliament to set an example of justice to inferior  
 Courts (*m*).

It is not by either House assuming to itself the power of  
 the whole,—nor by their resisting the power of the Judges  
 as an important and independent branch of the State, that  
 the purposes and ends of justice will be accomplished, or  
 the dignity of Parliament upheld; but it is by each House  
 maintaining unimpaired its own privileges, and resisting  
 encroachments upon them by others; and by the Bench  
 standing in its place in the gap, to stop the progress of  
 either House in an attempt to enlarge that privilege to an  
 unlimited and dangerous extent: it is by this, and this  
 only, that the liberties of the people of England can be  
 handed down by us to posterity, as we have received them  
 from our forefathers,—and Britain be still preserved in  
 the enjoyment of those blessings secured to her by her  
 CONSTITUTION.

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\* See also Debates in Lords and Commons, on the power of the Commons to  
 suspend the execution of the Law, A. D. 1784.

(*m*) Lex Constitution. 161.

## CHAP. III.

## Of the Speaker.

## OF THE SPEAKER OF THE HOUSE OF LORDS.

Speaker of the  
Lords.

His appointment

The Speaker of the House of Lords, whose office it is to preside there, and manage the formality of business, is the Lord Chancellor, or Keeper of the King's Great Seal, *ex officio*, or any other appointed by the King's Commission (*a*), and if none be so appointed, the House of Lords may elect one (*b*): the exercise of this privilege has never been called forth in the British House of Lords, but an instance of the kind is mentioned as having occurred in the Irish Parliament (*c*); although a Speaker *pro tempore* is often chosen during the absence, for a time, of the Lord Chancellor, &c. (*d*)

The usage of the House of Peers with respect to their Speaker, differs but slightly from that of the Commons—the principal points of difference are as follows :

His voting.

The Speaker of the House of Lords need not\* be a Member (*e*); and if he be a Member, votes in common

(*a*) Standing Order H. of L. iii.; and in Canada, see 31 Geo. III. ch. 31, s. 12.

(*b*) S. O. H. of L. iii.; and see L. J. 6 June, 1660.

(*c*) Ld. Mountmorres, Hist. of the Irish Parl. v. 2, p. 108.

(*d*) L. J. v. 36, p. 145; v. 37, p. 449, &c.

(*e*) L. J. v. 52, pp. 7, 100, &c.

\* When he receives his appointment by virtue of the King's Commission, he not only need not be a member of the House of Lords, but his being a Member of the House of Commons has appeared to be no hindrance. For in 1835, Sir C. Pepys, Master of the Rolls, and a Member of the H. of Commons, sat as Speaker during the temporary absence of the Lord Chancellor.

with the rest (*f*); he has no casting vote, for, according <sup>And speaking.</sup> to the constitution of the House of Peers, in the case of an equality on any subject, the nays have it (*g*).

If he be not a Peer, he may neither speak to the question, nor vote on it; but being a Peer, if he is desirous of giving his opinion, he must leave the woolsack, and go to his place among that rank of Nobility to which he belongs (*h*).

The person appointed to this office by the King, in the event of the absence of the Lord Chancellor or Lord Keeper, is always a legal functionary of high rank, which, from the judicial powers of the House of Lords, is of course necessary.

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#### OF THE SPEAKER OF THE HOUSE OF COMMONS.

In order to enforce the forms and rules of the House, and to act as the organ and mouthpiece in all matters, a <sup>Speaker of the Commons.</sup> Speaker is chosen by the Commons, at the commencement of every new Parliament, or when a vacancy occurs by death or otherwise. The Member chosen for this high and honorable office, is styled "The Speaker," because it is his business to speak to, or address the King in the name <sup>Why called "Speaker."</sup> of the House, when occasion requires; and during his absence, no business can be transacted by the House, nor any question moved but that of adjournment.

##### I. *As to his Election and Presentation.*

The Parliament having assembled, before the cause of summons is declared, the Commons are commanded, in the <sup>His election.</sup> name of the King, to choose a Speaker, and present him to His Majesty on a certain day—and the Commons

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(*f*) 1 Bl. Com. 181.

(*g*) L. J. 25 June, 1661.—23 June, 1816. Lee's Patent.

(*h*) S. O. H. of L. ii.

being assembled in their own House, a member reminds them of the charge given them, and moves the appointment of one. The forms of the election require that the person proposed should be present in the House when he is nominated (*i*); and it is to be desired in order to avoid future inconvenience and trouble, that he be a member upon whose seat there is no probability of a question arising.

When but one person is proposed, and no objection made to him, it has not been usual (*k*) to put any question to the House, but members proposing, conduct him at once to the chair. But if any objection be made, and any other person proposed, the sense of the House must be taken by a question thereon, which is put by the Clerk. On a division upon the question for Speaker, the House divides, as in committee, to the right and left, and tellers are appointed by the Clerk. As soon as the Speaker is chosen, and in the Chair, the Mace should be laid upon the table; for the House cannot proceed to the election of Speaker without the Mace (*l*).

His speech when elected.

It has been usual for persons, when proposed to be Speaker, to decline the office "from a sense of their own insufficiency," and "even on the steps of the Chair to beg the House to excuse them" (*m*); at the same time it was the practice to request permission to plead his excuses and inability to discharge the office "in another place," and this the Speaker was wont to do upon being presented to the King.

House may adjourn before Speaker chosen.

If the House do not come to a decision upon the appointment of Speaker the same day, the Clerk puts the question of adjournment (*n*). The House has debated and exchanged messages with the King for a week, without a

(*i*) 2 Hats. 207.

(*l*) Dwar. 58. 2 Hats. 208.

(*n*) 6 Grey, 406.

(*k*) 2 Hats. 207.

(*m*) See C. J. 3 Nov. 1761.

Speaker, till they were prorogued (*o*). They have also done it *de die in diem* for fourteen days (*p*).

When a Speaker has, from continued illness, been unable to discharge the duties of his office, the House have discharged him, and elected another—as in the case of Sir John Cheney, 1 Henry IV., and Sir John Tyrrell, Jan. 27, 1656. Also, a Speaker, for having offended the House by an indiscreet speech, has been discharged (Stourton, 1 Henry V.) But Speakers so elected on vacancies should be presented to the King for his approval (*q*), but confine themselves to making their own excuses, and not re-demand the privileges, for that being *a demand of right* (*r*) should be made but once—at the beginning of a Parliament (*s*).

If the Speaker should be taken temporarily ill, or be necessarily engaged upon some important duty which renders his presence in the House impossible, it has been the practice to elect a Speaker *pro tempore*, to serve during his absence (*t*). Upon attentive examination of the usage in this respect, the correct mode of proceeding in such a case seems to be this. The gentleman proposed as Speaker *pro tem.*, should be elected with all the formality of the other Speaker, and in like manner be conducted to the Chair, and there plead his insufficiency (*v*). He should receive all the honor and profit of the situation (*w*). If the absent Speaker return to his duties during the Session, the other should resign his seat to him without any formality, or notice thereof on the Journals (*x*). And, if the real Speaker should die without retaking his seat, it would be necessary, provided the House desires to retain the other in his office, to re-elect him (*y*), he having been chosen merely *pro tem.*

(*o*) 6 Grey, 406.

(*q*) Elsy, 254, &c.

(*s*) Dwar, 72.

(*o*) C. J. 27 Jan. 1656.

(*u*) As appears from the absence of any such notice.

(*y*) C. J. 9 Mar. 1658. 15 April, 1659. Mr. Bampffield.

(*p*) 1 Chand. 331, 335.

(*r*) C. J. 14 March, 1694.

(*t*) C. J. 13 Jan. 1659.

(*w*) C. J. 27 Jan. 1656.

Speakers elected in the middle of a Parliament.

Speakers *pro tempore*.

Presentation to  
the King.

Being chosen, the Speaker is presented to the King in the House of Lords, and for form's sake, used to excuse or as it is more quaintly expressed "to disable himself" (z), and he still expresses a diffidence of his capacity to exercise so great a trust. To the Speaker's excuse the Chancellor was accustomed to reply in an answer of compliment and encouragement, but he now shortly informs the Commons that His Majesty approves their choice. But instances have occurred of the King exercising his prerogative in refusing to approve of the Speaker, or in accepting his excuses—as in the case of Sir John Popham, who pleaded his age, and was disallowed (a),—and the cases of Sir Edward Seymour (in 1678) and of M. Papi-neau, in Lower Canada, who were not accepted (b).

For acceptance  
or refusal.

Claims privi-  
leges.

The Speaker then claims from the King the ancient privileges of the Commons; "such petition, or prayer," says Hatsell, "was considered as a public claim and notification "to the King and to the people of the privileges of the "House of Commons, solemnly made in order that no man "might plead ignorance." (c) The privileges claimed are :

1. Freedom from arrest and disturbances.

Freedom from  
Arrest.

The first Speaker who made this claim, was Sir Thomas Gargrave, anno 1 Elizabeth, although the privilege did always belong to the Houses of Parliament (d).—and also to servants of the members, until taken away by 10 Geo. III. ch. 50.

For an account of this privilege see *ante* page 22, as to *Peers*—and page 34, as to *Members of the House of Commons*.

2. Freedom of Speech in their own House.

Freedom of  
Speech.

Thomas Moyle, Esq. is said to be the first Speaker who made this claim—(33 Henry VIII). But, though not

(z) C. J. 6 Nov. 1761.

(a) Elsy. 255, 256.

(b) J. II. of C. 1678: and Journals Lower Canada, 20 Nov. 1827.

(c) 2 Hats. 216.

(d) Elsy. 184.

finally claimed, says Elsynge, neither was it ever denied them.

This privilege, so essential to the very existence of a free Council, was frequently cavilled at by the Courtiers in the reigns of Queens Mary and Elizabeth, as intrenching upon the royal prerogative, and the House in general acquiesced too easily in these doctrines.

Growth of this Privilege.

The Parliament of James I. justly anxious that a privilege so important should not be lost sight of, or suffered to be wrested from them by the hand of arbitrary power, made a solemn protestation to the King on the 18 Dec. 1621 (c), setting forth "That the liberties, franchises, privileges and jurisdictions of Parliament are the ancient and undoubted birth-right and inheritance of the subjects of England. \* \* \* and that in the handling and proceedings upon the affairs of the realm, every member of the House hath, and of right ought to have, freedom of speech to propound, treat, reason and bring to conclusion the same." The King, unwilling to acknowledge the existence of a principle, which, though one of the dearest constitutional rights of Britons, was totally inconsistent with his lofty ideas of monarchical supremacy, sent for the Journal book of the Commons, and with his own hand, tore the obnoxious document from its pages. This weak act was, however, futile, and while the principles contained in that document are now part of the acknowledged constitution of the realm—the tyrannical act of that monarch is remembered, but to be condemned.

This indispensable privilege was expressly guaranteed at the Revolution by the Bill of Rights. The instances of its serious invasion principally occur, where they were chiefly to be apprehended, from the power of the Crown. Interference on the part of the executive would naturally be regarded with greater jealousy, than any stupid con-

Cases of its invasion by the Crown.

By others.

tempt, or perverse obstruction from other quarters. Still there can be no reasonable doubt, that any attack or reflection from any other quarter, either upon the House collectively, or upon the Members who compose it, as individuals, for any motion, debate, question, resolution, statement made, or decision come to, *in the regular course of parliamentary proceeding (f)*, would be equally visited with censure and punishment, as involving an undoubted breach of useful privilege (*g*). Accordingly, see the case of the committal of one *Darryel* for threatening a Member of the House of Commons for a speech made by him in the House (*h*).

Free access to the King.

### 3. Free access to His Majesty.

It appears that the Commons ever enjoyed this privilege (*i*), but Richard Rich, Esq., anno 28 Henry VIII., is the first Speaker who is recorded as having made the petition.

Favorable construction on proceedings.

### 4. That all their proceedings might receive a favorable construction (*k*).

The Speaker who first made this petition is not recorded, although it appears that Sir John Cheney, anno 1 Henry IV., made a general request, that the Commons might enjoy all their ancient privileges and liberties, not naming any in particular; and he is noted to be the first on record to have made such a request (*l*).

Others formerly asked.

In addition to the usual claims, Sir Arnold Savage (5 Henry IV.) further asked of the King, in the name of the Commons, that they might freely make complaint of anything amiss in the Government; and that the King, by the sinister information of any one (*m*), would not take offensively that which they should complain of,—which

That their complaints might be graciously received.

(*f*) 1 Rushw. 663.(*g*) Dwar. 80, 81.(*h*) Commons Journals, 18 James I., 12 Febr.; and see the case of *Flower*, 1559, and *Bland*, 1584.(*i*) Elsy. 175.(*k*) 1 Rushw. 484.(*l*) Hakew. 213.(*m*) Hakew. 203.

was granted by the King (*n*), and acted upon two years after (*o*).

And Sir John Tiptoft also, anno 7 Henry IV., asked further, that if any writing were delivered by the Commons during the Parliament, and they should desire to have it again to amend anything therein, it might be restored to them, which was granted (*p*); of which Hake-will says (*q*), that “never any Speaker did the like before or since.”

Leave to amend their acts.

But it is sometimes the practice for the Speaker to make petition to the King in general terms, for *all their ancient privileges* (*r*).

Though the asking for their privileges by the Commons from the King, be now but a matter of form, yet the people, in addressing their Sovereign, should ever approach him with the reverence due to his station, and not demand of him their privileges as a right, or withhold asking for them because they deem them in their possession. Such a course was pursued by the Assembly of the Island of Jamaica, and the Governor very properly dissolved the Parliament (*s*).

This asking, though a form, should be observed.

On the return of the Commons to their Chamber, it is the duty of the Speaker to report his approval by the King, and that he had claimed and been allowed their ancient privileges. He then reminds the House that they must proceed to take the Oaths, if it be the beginning of a Parliament, taking them first himself (*t*).

Speaker reports approval, and takes Oath.

## II. *His Rank, Salary, &c.*

Since the Parliamentary declaration of the rank of the Speaker contained in the 1 Wm. and Mary ch. 21 “That

His Rank.

(*n*) Elsy. 181.

(*o*) Dwar. 72.

(*p*) Rot. Parl. 7 Hen. IV.

(*q*) Hakew. 204.

(*r*) Elsy. 170.

(*s*) See Annual Register for 1765, p. 183.

(*t*) C. J. v. 56, p. 7, &c.

“ Lords Commissioners for the office of Lord Chancellor  
 “ or Keeper of the Great Seal, shall have precedence next  
 “ after the Peers of the realm, and the Speaker of the House  
 “ of Commons,” the Speaker has constantly taken place  
 next to the Peers, both in Parliament and during the  
 recess (*v*).

Power.

He is the great functionary of the Commons House ;  
 indeed, this branch of the Legislature is in most respects  
 entirely regulated by him.

Emoluments.

His emoluments formerly did not amount to more than  
 £3,000 per annum ; in consequence of which, some  
 Speakers held, at the same time, Offices under the Crown ;  
 so sensible, however, did the House at length become of  
 the inadequacy of the salary ; and so justly jealous of the  
 dependence of their Speaker upon the Executive part of  
 the Government, that the sum was doubled (*w*), making  
 his Salary together with his fees, amount to about £8,000  
 a year ; but by the Statute 4 & 5 Wm. IV. ch. 70, his  
*salary* is reduced to £5,000.

Perquisites.

In addition to this, the Speaker receives £1,000 of  
 equipment money, and 2,000 ounces of plate,\* immediately  
 on his election ; two hogsheads of claret wine, and £100  
 for stationary annually ; besides a house, with extensive  
 offices (*x*). During the Session he holds Parliamentary  
 levees, which are attended by the Members, dressed in  
 full court costume, with bag-wigs and swords,—and gives  
 dinners in a princely style, for which he has a separate  
 allowance ; to which all the Members are, in turn, invited.

As to his authority in the appointment of the Officers of  
 the House, see Chapter XVII. *Officers, &c. of both Houses.*

(*v*) 2 Hats. 236.

(*w*) By 2 & 3 Wm. IV. ch. 105.

(*x*) Key to both Houses, 846.

\* By a recent arrangement, the service of plate is to be considered his property  
 only whilst he fills the situation, and on his retirement it is to be handed over to  
 his successor.—Mirror of Parl. 1835, p. 198.

III. *His Duties generally.*

## DUTIES.

1. To take the Chair, which he cannot do until there is a quorum; and to adjourn the House if there be not a quorum, without a question first put. Also, to resume the Chair in the midst of a Committee for the same reason.

Taking the  
Chair.

2. To maintain order; to *name* a disorderly Member, who then receives the censure of the House (*y*). [In what manner, &c. see Chap. IV. *On Members (of the House of Commons).*] Also, to thank and reprimand Members and other persons (*z*).

Maintaining  
Order, &c.

3. To make a plain and short narrative of the effect and objects of every Bill before the House, from a Breviate to be given him for that purpose, but not to dissuade or persuade.

To explain all  
Bills.

4. To put the House in mind of the sitting of Committees (*a*), and other things necessary for their information, and to state to the House whether any alterations that may be made by the Lords to a Money bill, come within the allowable limit (*b*).

Remind the  
House.

5. To report to the House the King's speech; and to address the King on delivering the Bills of Supply on the last day of the Session, or any bill for the particular service of the Crown during the Session (*c*). This speech may either be immediately arising out of the subject matter of the bill itself, or it may recapitulate the principal objects which have employed the attention of the Commons during their sitting (*d*). This speech is not entered upon the Journals unless by order of the House (*e*), neither are his speeches on reprimanding or thanking persons (*f*).

Speech on pre-  
sented Supply  
Bill.

(*y*) See instances in C. J. 5 May, 1641; 22 Jan. 1693; and 27 Feb. 1810.

(*z*) See last vol. Index to C. Journals (Speaker).

(*a*) Hakew. 146.

(*b*) C. J. 22 June 1831. *Ibid.*, 13 Sept. 1831.

(*c*) 3 Hats. 145.

(*d*) Dwar. 244, 245.

(*e*) Index, C. J. (Speaker).

(*f*) 2 Hats. 235.

To present  
Addresses:

6. To present Addresses to the King, passed by the House. See Chapter XIII. *On Addresses*.

To issue War-  
rants during  
Recess for new  
Elections.

7. To issue his warrant\* during the recess, upon due notice being given him by a certificate signed by two members†, for the election of a new Member in the place of one who may vacate his seat by death, or the acceptance of a peerage; but this is not to extend to any case where there is a petition depending for such vacant seat; or where the writ for the late member had not been returned fifteen days before the end of the last sitting of Parliament; or when the new writ cannot issue before the next meeting of the House for despatch of business (g). And by a later act (h), he may cause a writ to be issued for a new election in the place of a Member who has been declared a Bankrupt, and has not superseded the *fiat* of bankruptcy within twelve months after it is issued. These are the only cases provided for by statute; so, for any other species of vacancy, no writ can issue during a recess. And to prevent any impediment in the execution of these acts by the absence of the Speaker from the Kingdom, or by the vacancy of his seat, he must appoint, at the beginning of every Parliament, any number of Members, from three to seven, who shall have the same authority for this purpose, in his absence, as the Speaker himself (i).

And appoint a  
Commission to  
do so.

Casting vote.

The Speaker cannot give his opinion, or argue any question in the House, unless the numbers upon a division are equal, when he has a casting vote; and it is usual, in giving this vote, for the Speaker to state at the same time the reasons which influence his opinion. But if he is in the possession of any facts necessary for the information of the House, he may, with leave of the House, state

\* For the form of the Speaker's Warrant for issuing Writ for New Election on a Vacancy, see *Appendix I*.

† For the form of this Certificate, see *Appendix II*.

(g) 24 Geo. III. sess. 2, ch. 26, s. 2. (h) 52 Geo. III. ch. 114, s. 2.

(i) 24 Geo. III. ch. 26.

them (*k*). And when he rises up to speak, the Member <sup>Speaking.</sup> standing up should sit down that he may be first heard (*l*).

In committee of the whole House he is not obliged to be present (*m*); and when he is, is considered as a private member, and has a voice accordingly.

The Speaker is the servant of the House, who is to obey <sup>Summary of his Duties.</sup> implicitly the orders of the House (*n*), without attending to any other commands. In matters of doubt, he is to explain (*o*), but not to sway. In matters of difficulty, or if he be referred to, to inform the House on a point of order or practice—it is his duty to state everything he knows from the Journals or the History of Parliament, but not to draw conclusions. In short, he has no voice,\* but to declare the sentiments of the House when he has ascertained them; to collect faithfully the genuine sense of a numerous assembly, and “to represent their conclusions “with life, with lustre, and with full advantage” (*p*).

(*k*) 3 Grey, 38.

(*l*) Town. Col. 205; Hale's Parl. 133; and see Mirror of Parliament, 1837-8, p. 455.

(*m*) 2 Hats. 231.

(*n*) 2 Hats. 175, 6; 3 Grey, 319; 5 Grey, 133.

(*o*) 2 Hats. 232.

(*p*) Serjeant Glanville's Address when Speaker, Lords Journ. 1640.

\* And the Speaker is said to be not only the mouth, but also the eyes and ears of the House. Hence the Speaker (Lenthall) replied to King Charles I. when commanded to disclose certain transactions in the House, “That he had neither “eyes to see, ears to hear, nor mouth to speak, but as the House should direct “him.”

## CHAP. IV.

ON

**Members of the Two Houses of Parliament.**

## THE HOUSE OF LORDS.\*

THE LORDS.

Is composed of two branches, the Lords Spiritual and the Lords Temporal.

The Lords Spiritual.

*The Lords Spiritual* at present consist of two Archbishops and twenty-four Bishops† (exclusive of the Bishop of Sodor and Man,‡ who is not a Lord of Parliament) with four spiritual Lords from Ireland.

Number.

Their right to a seat in the House.

The right by which the English Bishops sit in the House arises from their holding certain Baronies under

\* The appellation or title of *Lord* is due, and is given to all that are temporal or spiritual barons of the realm. Camden, in his *Britannia* (p. 169), says, that in the Saxon Glossary of Alfricus, among the terms of honour, the word *dominus* is translated *Hlaford*, which we have contracted into Lord. The title of Lord is given *by courtesy* to all the sons of dukes and marquises, and to the eldest sons of earls and to none under,—but they are not so styled in legal proceedings or courts of justice.

† Some changes have recently taken place in the English Bishoprics, pursuant to a Report of the Commission appointed to consider the state of the Established Church, its several Dioceses in England and Wales—made on the 17th March, 1835. By this arrangement two new sees were erected, viz. Manchester and Ripon; but no increase is made in the total number of Episcopal sees, that of Bangor being united with St. Asaph, and that of Gloucester with Bristol. This Report was confirmed, and provision made for carrying it into effect by the 6 & 7 Wm. IV. ch. 77.

‡ There is a seat for the Bishop of Man, detached from the other Bishops, and within the Bar of the House of Lords, but he has no vote, because he does not hold "*per integram baroniam*," his bishoprick being the gift of the Duke of Athol, whose presentations are confirmed by the King. Were the Island, however, (as for treason) to become forfeit to the Crown, the Bishop, as holding his barony from the King, would then have a vote as well as a seat.

the Crown, annexed, or supposed to be annexed, to their episcopal lands, and for which they do homage on their consecration. And it is in right of these Baronies, which are inalienable from their respective dignities, that the Bishops and Abbots in the time of William the Conqueror, and ever since, have sat in the House of Lords (*a*).

Prior to the conquest it was otherwise, for they were not then called by virtue of their Baronial Tenures (for in those days all their Tenures were Franc Almonage,) but, as Hakewill tells us, "that those chief and principal persons of the Clergy might be called, who, by their gravity, learning and wisdom might best advise what was the law of God, his acceptable will and pleasure,—that they might form their human laws answerable, or at least not repugnant thereto."

Prior to the Conquest.

When, shortly after the conquest, William altered the tenure of the Bishopricks to the feudal baronial tenure, the clergy expressed great complaint and grief thereat, for, from thence forward, they were obliged to send persons to the Wars; their Estates were subjected to civil charges and assessments; and, which was then looked upon as a great grievance and burthen, they were obliged to attend in Parliament (*b*).

Reason of their tenure being made Baronial.

The learned Camden (in his *Britannia* p. 107. Edit. 1670) tells us, "That unto the Bishops by right and custom it appertaineth, as to Peers of the realm, to be with the Peers personally present at all Parliaments whatsoever, to consult, to handle, to ordain, decree and determine, in regard of the baronies which they hold of the King—and, ever since the Conquest, they have enjoyed *all* the immunities of the temporal Barons, except

Their privileges.

(*a*) Hakew. 84; Dyer, 60; see Bp. Warburton's *Alliance between Church and State*, 4th Edit. p. 149.

(*b*) See Matthew Paris, A. D. 1070.

“ that they are not to be judged by their Peers,”\* and the same opinion is declared by Selden (in his *Baronage of England*) and by Dr. Gibson in his *Codex Juris Ecclesiastica Anglicani* (c). Formerly there were twenty-six Mitred Abbots,† and two Priors in the House of Lords; but they were removed from their seats at the dissolution of the Monasteries by Henry VIII.

Abbots and Priors.

Irish Prelates.

By the Articles of Union between Great Britain and Ireland, the Irish Prelates are represented by *four*, who sit in the House of Lords by rotation of session (d).

The Bishops are not, strictly speaking, Peers of the realm, but only Lords of Parliament (e). But notwithstanding the ancient distinction still continues, the Lords, Spiritual and Temporal, are one Estate; they mingle in their votes, and a Bill would undoubtedly be valid which should pass the House, though every Bishop were to vote against it (f).

Bishops do not vote in cases of life and death.

Upon any question of Attainder, or of impeachment the Lords Spiritual withdrawn before judgment is pronounced, for by the Decrees of the Church,‡ they may not be judges

(c) See S. O. II. of L. xliv.

(d) 39 & 40 Geo. III. ch. 67.

(e) S. O. H. of L. xliv.

(f) For instance the Act of Uniformity, 1 Eliz. ch. 2.

\* For a Summary of the arguments and precedents for and against the right of Bishops to be tried by their Peers, see Professor Amos' Treatise on the Court of the Lord High Steward, appended to Phillips' State Trials, v. 2, pp. 376 to 379. This learned and elaborate writer, after a careful examination of the subject, seems to incline in favour of the possession of such privileges by the Bishops.

† The Mitred Abbots were not only exempt from the spiritual authority of the Bishop of their diocese, but were, themselves, so far possessed of the character of Bishops as to be vested with Episcopal jurisdiction. The Abbots and Priors, who, when Lords of Parliament, were usually styled MITRED, were all, perhaps, incidentally, though not necessarily, entitled to wear the Mitre. They also sat in Parliament, not on account of their Episcopal jurisdiction, but by a prescription arising from the importance of their secular baronies.—(Brydson's View of Heraldry, 270, 271.)

‡ By a Canon established at the Council of Toledo. This Canon is said to have been introduced into England by Lanfranc (the first Norman Archbishop), confirmed in a synod held at London, and made a standing rule of the English Church.—See Burn's Eccle. Law, v. 1, pp. 219, 220; and Barrington's Observ. on the Statutes, pp. 32, 178.

of life and death (*g*), nevertheless, they generally enter a protest, saving their right to sit and vote, if the Canons were out of the question (*h*). But by the eleventh Constitution of Clarendon, they are required to be present until judgment is about to be given.

By the statute 31 Henry VIII. ch. 10, it was determined that Bishops should rank immediately after Viscounts, and have precedence of all Barons. Among themselves, the Bishops of London, Durham and Winchester, take the precedence, the rest taking place according to their priority of consecration. But if any of them be a Privy Councillor, he takes place next after the Bishop of Durham (*i*).

Their places in the House.

The precedence of the Bishop of London arises, not only from his Diocese containing the metropolitan city of London, but by his office of Provincial Dean of Canterbury.

The Bishop of Winchester's precedence, likewise, is owing to his office under the Archbishop, being Sub-Dean of the Province of Canterbury; and it being his duty, in case the see of London be vacant, to execute the Archbishop's mandates for convocation, &c.

The Bishop of Durham's precedence arose, formerly, on a very different account. For until very lately, besides his prelatial jurisdiction, he was Count Palatine of Durham, being the only Palatinate remaining in the hands of a subject. But by the 6 and 7 Wm. IV. ch. 19, this jurisdiction was separated from the Bishoprick and vested in the Crown. The Bishop of Durham, however, still enjoys the precedence given him by the 31 Henry VIII.

Their dress.

The parliamentary Costume of the Archbishops and Bishops is the *rochet* or surplice, with lawn sleeves, and a square Black cap. At coronations the Archbishop of Canterbury wears, in addition, a superb cope, which reaches from his shoulders to his feet. The mitre, crosier,

(*g*) Hakew. 21.

(*h*) L. J. vol. 13, pp. 193, 200; vol. 15, p. 209.

(*i*) 1 Inst. 24.

&c. have been laid aside since the Reformation, and are now merely emblazoned on their coats of arms.

Lords Temporal. *The Lords Temporal* consist of all the Peers of the realm, by whatever title distinguished, from Dukes to Barons. Some of these sit by descent, as do all the ancient Peers; some by creation, as do all new made ones; others, since the Unions with Scotland and Ireland, by election—which is the case with the sixteen Peers who represent the Scottish nobility (*j*), and are only chosen for one Parliament; and the twenty-eight Temporal Lords elected\* for life by the Peers of Ireland (*k*)†.

Sit as Barons. Dukes, Marquises, Earls, and all other of the nobility, sit together in Parliament as Barons, and in right only of their Baronies. And, therefore, by the general name of Barons

(*j*) See Scotch Act, 1707, ch. 8, and 6 Anne, ch. 23, which regulates the mode of their election; also 19 Geo. II. ch. 38, s. 26; and 10 Geo. IV. ch. 7, s. 5, 7, 8.

(*k*) 39 & 40 Geo. III. ch. 67, 4th Article.

\* Any claim that may be made to vote for the Representative Peers of Ireland, must be by Petition, stating the right on which the Petitioner founds his claim, and praying that it may be admitted. If the claim be admitted, the Resolution of the House allowing it must be transmitted to the Clerk of the Crown in Ireland.—S. O. H. of L. clx, clxi.

† There is no vacancy made in the representation by a Representative Peer of either Scotland or Ireland becoming a Peer of Great Britain. This rule, however, as respects the Scottish Peers, has been the subject of much contrary adjudication. The House of Lords having often annulled the election of Scottish Peers accepting British Peerages (*a*), and refused to allow them to vote at such elections (*b*). But on the 23d May and 6th June, 1793, the House resolved, that the votes of the Duke of Queensbury and the Earl of Abercorn (both of them Scottish Peers, created since the Union) which had been tendered and rejected by the Clerks in obedience to a former resolution of the House—ought to have been received; since which the practice has ever been, to receive, without objection, the votes of Scottish peers holding British peerages; so that now they can vote at elections and also sit in the House of Lords. Neither does a representative peer lose his *elective*, by accepting an *inlective* seat (*c*).—Bell's Dict. Law of Scotland.

(*a*) L. J. 18 Dec. 1711—the case of the D. of Queensbury and E. of Abercorn. L. J. 14 Feb. 1787.

(*b*) L. J. 21 Jan. 1708-9; 18 May, 1787; 21 May, 1782.

(*c*) L. J. 14 June, 1793.

of this realm, we do understand the whole body of the nobility (*l*).

The number of Lords Temporal of England is indefinite,\* and may be increased at will by the power of the Crown; and once, in the reign of Queen Anne, no less than twelve were created at one time, in contemplation of which a Bill was introduced, in the reign of George I. for limiting the number of the Peerage. But, though passed in the Lords, it was rejected in the Commons, whose leading members were desirous of keeping the avenues to the other House as open and as easy of access as possible. It has been tried once or twice since then, but has always failed (*m*).

Their number.

In England not limited.

With Scotch Peers it is different. By the 22 article of Union (in 5 Anne, ch. 8, sec. 12) the electors of the sixteen representative Peers of Scotland are required to have been Peers of Scotland at the Union. In consequence of which, it is understood, the King cannot create a Scotch peerage, with the elective right.

Scotch peers limited.

The restrictions under which the King can create Peers of Ireland, are as follows, viz:—whenever *three* Irish peerages become extinct *one* new one only may be created, until the number of Irish peers is reduced to one hundred; but the distinct peerage of Ireland is to be kept up to that number, over and above such Irish Peers as are Peers of the United Kingdom (*n*).

And also Irish.

None of the Royal Family are, as such, Lords of Parliament, except the King's eldest son, who is by birth Duke of Cornwall (*o*). As soon as the other Princes of the blood attain the age of twenty-one, they are usually called to a seat in the House of Peers. They then no longer retain the title of Prince, prefixed to their names, but assume the par-

Royal Family not Lords of Parliament.

(*l*) 2 Inst. 61; Cam. Brit. 169 (Engl. Edit. 1610).

\* The House of Peers consists at present of about 430 Members.

(*m*) 1 Bl. Com. 157.

(*n*) 39 & 40 Geo. III. ch. 67. art. 4.

(*o*) Rot. Parl. v. 5, p. 293.

ticular title by which they are empowered to sit in Parliament. Their peerages in Great Britain are usually Dukedoms: in Ireland, Earldoms: yet if they were only Baronies, the Princes of the Blood Royal would still precede all the other Peers and Lords of Parliament.

British subjects  
cannot receive  
foreign titles.

The law of England prohibits any subject of the realm from receiving titles of honour or dignity from a foreign Prince, without the knowledge, consent and approbation of his own Sovereign; for it is the right of majesty, and among the ensigns of sovereign authority, to be the fountain of honour to all his subjects.\*

Peers' privileges.

The Peers of the realm are, by their birth, the hereditary Counsellors of the Crown, and it is on this account, according to some of our law writers, that the law gives them certain great and high privileges, such as freedom from arrest &c., even when no Parliament is sitting (*p*), because it conceives that they are always assisting the King with their counsel for the commonwealth, or keeping the realm in safety by their prowess and valour (*q*). Their parliamentary privileges commence from the *teste* of their summons to Parliament (*r*).

Besides the grand and general Council of Peers which our ancient Kings were accustomed to convoke in cases of emergency, it is looked upon as the right of each particular Peer to demand an audience of the King, and to lay before him, with decency and respect, such matters as he shall deem of importance to the Commonwealth. See Chap. II. *Privileges of the House of Lords*.

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\* On a question touching the title of honour conferred by Rudolph II. Emperor of Germany, on Sir Thomas Arundel of Wardour, Queen Elizabeth is said to have made the following judgment: "Between princes and their subjects there is a most straight tie of affections. As chaste women ought not to cast their eyes upon any other prince than him whom God hath given them, I would not have my sheep branded with another man's mark; I would not that they should follow the whistle of a strange shepherd."—(Camden's Eliz.)

(*p*) 12 Rep. 96.

(*q*) 9 Rep. 49.

(*r*) Bacon's Abridgment, v. 6, p. 547.

Peers are now created by writ, or by letters patent (*s*),\* and no alien or denizen can be made a Peer, even though he be naturalized† (*t*). And no Lord is permitted to sit till he arrives at the age of twenty-one (*u*).

How Peers are created.

By a standing order of the House of Lords, May 1677, the Heralds are directed to take exact accounts, and preserve regular entries of all Peers and Peeresses of England, and their respective descendents, and it is required that an exact pedigree of each Peer and his family, shall, on the day of his admission, be delivered to the House by Garter, the principal King at Arms.

Roll of Peers to be kept by Heralds.

Peers by descent may take their seat in the House without introduction, payment of fees, or any other ceremony (*v*), but Peers claiming by limitation must be introduced (*w*).

How they take their seats.

Though a Peer may be vested with several Peerages (Dukedoms, Earldoms and Baronies) this does not, in Parliament, like the German principalities in the Diet, entitle the possessor to a vote for each, nor does it imply any essential privilege which is not conferred by a single Peerage.

Several Peerages do not confer increased Privileges.

Peers are also obliged to take the oaths‡ at the commencement of a new Parliament, before they can sit in the

Must take the Oaths.

(*s*) 1 Bl. Com. 399.

(*t*) 12 & 13 Wm. III. ch. 2.

(*u*) S. O. H. of L. xciii.

(*v*) S. O. H. of L. lxxxviii.

(*w*) Ibid, lxxxix.

\* With the exception of the feudal Earldom of Arundel. In 11 Henry VI. the possession of the Castle of Arundel was adjudged to confer an Earldom upon its possessor (Seld. Titles of Honor, b. 2, ch. 9. s. 5). But now the Castle of Arundel, with the Estates and Dignities attached, is inalienably vested in the family of the Duke of Norfolk. See *Private Acts*, 3 Car. I. ch. 4; 37 Geo. III. ch. 40; 41 G. III. (U. K.) ch. xv.

† But see Chap. VIII. On Private Bills (*Naturalization Bills*). In the Canadas, the Legislative Councillors, if aliens, must be naturalized by Act of the Imperial Parliament, 31 Geo. III. ch. 31, s. 4; or by Provincial Act, which, however, must be reserved by the Governor for the signification of the Royal pleasure thereon. 7 Geo. IV. ch. 68.

‡ The only oath required to be taken by Legislative Councillors is that of Allegiance, as prescribed by the Constitutional Act. For the form of it, see *Appendix V*.

House, or debate on any subject whatever (*x*). Any Peer voting without having taken them, is liable to the forfeiture of all his property, and two instances of such a heavy infliction are said to be recorded on the Journals. By *statute*, (13 Wm. III., ch. 6, sec. 10, 11—and 1 Geo. I. ch. 13, sec. 16, 17,) he is liable to a fine of £500, and is rendered incapable of sitting or voting in the House, with other heavy penalties. But, in modern times, an act of Indemnity is passed for him, originating in the House of Lords (*y*.)

Precedence.

And places in the House.

The Lords take their seats in the House in regular order, according to their rank and precedence, which is regulated by the statute 31, Henry VIII., ch. 10,—and this order must be observed when the House is in Committee of the whole, the same as when the Speaker is in the Chair (*z*).

Scotch Peers take precedence of British Peers of the same rank, created since the Union with Scotland, and Irish Peers created before the Union with Ireland; in like manner take place of British Peers created since.

Irish Peers of later creation than the Union, rank, according to the date of their Patent, among the Peers of the United Kingdom.

The Lord Chancellor, or Keeper of the Great Seal, as Speaker of the House of Lords, when the King is present stands behind the Cloth of state on the right hand; but when the King is not present, he sits on the first woolsack in front of the Throne, the Great Seal and Mace being placed before him. The Speaker of the House of Lords, *ex officio*, and the Deputy Speakers appointed by the King's commission, have precedence of all other Peers.

Of the Assistants.

The Assistants and Attendants sit on the outside of the woolsacks, and are never covered (*a*). The Judges sit,

(*x*) S. O. H. of L. 19 Mar. 1678.

(*y*) Marquis of Lansdowne, 1797.

(*z*) S. O. H. of L. xxix.

(*a*) Elsy. 98, 112.

but are not covered till the Lord Chancellor signifies the Lords' pleasure thereon. As to the Judges, &c.—see chap. II. *As to Lords' privilege to be attended by the Judges.*

The Lords have ever appeared in their Robes on the first day of Parliament, and whenever the King is present (if they have notice thereof,) and when they give judgment, and also, whenever the Royal Assent is given to any bill by Letters Patent, or a Commission is sent to prorogue or dissolve the Parliament (*b*); on all other occasions, their dress is that of an English gentleman. The Robes of a temporal Peer differ according to his rank.

Dress of the Lords.

The prevention of disorder, and the internal regulation of the House of Lords whenever His Majesty is present, is regulated by the standing orders of the 19 December, 1720, and 22 Feb. 1733.

Order when the King is present.

If a Lord of Parliament dies *sedente curia*, or during a prorogation, and his heir is summoned, he does not appear in his Robes, for that was done by his father on the first day of Parliament, he only delivers his writ to the Clerk, who enters it, the day of his appearance. If a Lord be newly created during Parliament, he is introduced by any two Lords of the same rank, in their robes, Garter going before,—and his Lordship presents his Writ to the Lord Chancellor.

New Peers.

On the third day of the sitting of Parliament, the House is called by the Clerk, beginning with the lowest Baron, and so ascending to the highest Peer, and the proxies\* or other excuses (if any) of the absent Lords are registered, and notice taken of such Lords as either

House called over on third day, and proxies entered.

(*b*) Elsy. title, *Appearance*.

\* As to Proxies, see *ante*, p. 18. The proxy of a temporal Lord recites that he has obtained license from the King to make his proxy, but that of a spiritual makes no mention of it. A Lord may be summoned with a clause that he do not make a proxy.—Selden, v. 3, p. 1476.

have not sent their proxies or are excused by His Majesty for some time (*c*).\*

Manner of calling  
the House.

According to the usage of Parliament, when the House appoints a Select Committee, the Lords appointed to serve upon it are named in the order of their rank, beginning with the highest; and so when the House sends a Committee to a conference with the Commons, the Lord highest in rank is called first, and the rest go forth in like order. But when the House is called over, for any purpose within the House, or for the purpose of proceeding forth to Westminster Hall, or upon any public solemnity, the call invariably begins with the lowest Baron.

Punishment for  
non-attendance.

If a Lord of Parliament do not attend in his place at a call of the House, he is liable (like a Member of the House of Commons) to be fined and imprisoned at the discretion of the House (*d*).

Prayers.

Each day, before the commencement of business, prayers are read by the youngest Bishop. Every Peer entering the House after the commencement, must give and receive salutations from the rest, and before sitting down, make his obeisance to the Cloth of Estate (*e*).

Obeisances.

Speaking.

In speaking, the Lords address themselves to the House generally (as "My Lords") and not to the Speaker (*f*). And if any difference arises between them within the walls of the House, when it is sitting, they must appeal to the Lords for reparation, and not occasion or entertain quarrels, under pain of censure (*g*); and if the House be not sitting, the Speaker's command is to have the authority of an order of the House (*h*). But from the full confidence

Quarrels.

(*c*) Elsy. 91. S. O. H. of L. xxvii.

(*d*) See Precedents of the Punishment of the Lords for this offence in L. J. 25 July, 1820.

(*e*) S. O. H. of L. xi.

(*f*) S. O. H. of L. xiv.

(*g*) Ibid. xvi.

(*h*) L. J. vol. 9, pp. 110, 116.

\* The King cannot by any Writ, or Charter of Exemption, absolve a Peer from his attendance altogether, for he is bound by his Writ of Summons to appear.—4 Inst. 49.

reposed in their Lordships' high sense of dignity and propriety, no apprehension is entertained of any heat or indecorum being allowed to enter into any of their expressions. The Peers of the realm are supposed incapable of exercising their exalted privileges in any manner calculated to give personal offence.

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MEMBERS OF THE HOUSE OF COMMONS.

The House of Commons is the democratic part of our Constitution, consisting of representatives freely nominated by the people.

The number of Members has varied considerably since the Commons first were admitted into Parliament as a separate Estate. In Fortescue's time, who wrote during the reign of Henry VI., the House consisted of upwards of 300 Members; in Sir Edward Coke's time, their number amounted to 493. At the time of the Union with Scotland in 1707, there were 513 Members for England and Wales, to which 45 for Scotland were added, making the number of representatives amount to 558. In consequence of the Union with Ireland, in 1801, 100 Members were added for that country, and the whole House of Commons now consists of 658 Members. The Reform Bill, though it made material changes in the distribution of the elective franchise throughout the Kingdom, made no alteration in the number of Members. The proportions in which Members are returned, under the Reform Acts, are as follows, viz. 158 for counties in England and Wales; 64 for counties in Ireland; and 30 for counties in Scotland: 338 for English; 39 for Irish; and 23 for Scotch burghs: with 4 for the English Universities, and 2 for the University of Dublin.

The Universities were not, originally, empowered to send burgesses to Parliament, though once, in 28 Edw. I.

HOUSE OF COM-  
MONS.

Past and present  
number of.

Universities.

when a Parliament was summoned to consider of the King's right to Scotland, there were issued writs, which required the university of Oxford to send up four or five, and that of Cambridge two or three of their most discreet and learned Lawyers for that purpose (*i*). But it was King James I. who indulged them with the permanent privilege of sending constantly two of their own body, to serve for those students who, though useful members of the community, were neither concerned in the landed nor the trading interest: and to protect in the legislature the rights of the republic of letters (*k*).

The right of voting for the election of a Member to represent the University of Dublin is regulated by 2 & 3 Wm. IV. ch. 88, s. 60, 61.

**ELECTION OF  
MEMBERS.**

The regulations of, and restrictions upon the election of Members to serve in the House of Commons, first claim attention.

Who are disqualified to vote at.

**I. As to who are disqualified from voting at Elections (*l*).**

Property required.

**1.** All who do not possess the necessary property qualification (*m*). And see the property qualifications required in Canada by the 31 Geo. III. ch. 31, s. 20.

Minors.

**2.** Minors, or persons under twenty-one years of age, by 7 & 8 Wm. III. ch. 25, s. 8.

For Perjury or Bribery.

**3.** All persons convicted of perjury or subornation of perjury, by 2 Geo. II. ch. 24, s. 6—or bribery, by 2 Geo. II. ch. 24, s. 7; 16 Geo. II. ch. 11; 49 Geo. III. ch. 18.

Refusing to take the oaths.

**4.** All persons refusing to take the Oaths of Supremacy, Allegiance, or Abjuration at Elections, or Affirmations being Quakers (or Moravians, by 22 Geo. III. ch. 30)—6 Anne, ch. 23: but these oaths are abolished by 5 & 6

(*i*) Prynne, Parl. Writs, v. 1, p. 345.

(*k*) 1 Bl. Com. 174.

(*l*) Principally by 7 & 8 Wm. III. ch. 25; 10 Anne, ch. 23; 2 Geo. II. ch. 21; 12 Geo. II. ch. 18; 31 Geo. II. ch. 14; and 3 Geo. III. ch. 24.

(*m*) See the Reform Acts, 2 & 3 Wm. IV. ch. 45, 65 & 88.

Wm. IV. ch. 36, s. 6.—For the Oaths required to be taken at an election in Upper Canada, see *Appendix III.*

5. No one shall vote on any fraudulent grant.—10 Anne ch. 23, s. 1; 13 Geo. II. ch. 20; 2 Wm. IV. ch. 45, s. 5. Fraudulent grant.

6. Every voter shall have been in actual possession or enjoyment for twelve calendar months previous, except it came to him by descent, marriage, will or promotion. Must have held possession 12 months.  
Except.

7. No one shall vote on any annuity or rent charge, unless registered twelve months.—3 Geo. III. ch. 24 (n). Annuitants.

8. Only one person shall vote for any one house, to prevent the splitting of freeholds—7 & 8 Wm. III. ch. 25, s. 7 (o); except in any English city or borough (p). Householders.

9. In mortgaged or trust Estates, the person in possession shall have the vote.—7 & 8 Wm. III. ch. 25, s. 7. Mortgages.

10. No estate shall qualify a voter unless assessed for twelve months previously to the Land tax 30 Geo. III. ch. 35, the necessity for this is done away with by 2 Wm. IV. ch. 45, sec. 22. Land Tax Assessment.

11. Where the Land tax has been redeemed, the freeholder shall be entitled to vote upon proof of such redemption, without any registering of a memorial or certificate thereof, 42 Geo. III. ch. 116, sec. 200—51 G. III. ch. 99. Land Tax Redemption.

12. By 31 Geo. II., ch. 14, no tenant by copy of Court roll was permitted to vote as a freeholder; but by the Reform acts the right of voting is extended to copyholders, lease holders and householders, with certain provisions as to the yearly value of the interests which shall give such right of voting. Property Qualification.

13. All persons employed in managing or collecting the duties of Excise, Customs, Stamps, Windows, Houses, and the Post Office Revenue, are disqualified to vote (q), Placemen.

(n) Heywood, 145.

(o) This extends only to the prevention of fraud. See Heywood's *Elec. Law*, p. 99.

(p) 2 Wm. IV. ch. 45, s. 29.

(q) 22 Geo. III. ch. 41.

and are prohibited by several acts from interfering at elections (*r*), but this does not extend to freehold offices granted by Letters Patent, or Commisioners, &c. of the Land tax.

Captains, &c.  
of Mail Packets.

14. All Captains, Masters, or Mates, of ships or packets employed by the Postmaster in conveying the mails are disqualified, by the 22 Geo. III. ch. 41.

Persons farming  
&c. Post-horse  
Duties.

15. By 27 Geo. III. ch. 26, sec. 15, all persons farming or collecting Post horse duties.

Corn & Coal  
Meters.

16. By 51 Geo. III. ch. 84, certain coal and corn meters.

Women.

17. Women (*s*).

Peers, &c.

18. Peers\* (except Irish Peers when members of the House of Commons),—Ministers of state, Lord Lieut-

(*r*) See in Finnely's Elec. Law, 48.      (*s*) 4 Inst. 5.

\* That Peers have no right to vote at the election of Members of the House of Commons, is an undisputed axiom; but as it is not laid down by any express statute, but merely rests upon the authority of a Sessional Resolution of that House, it is material to know, 1st, Whether Peers have ever claimed or exercised a right to vote at such elections; and 2dly, whether the House of Commons has sufficient authority to make and enforce a Resolution prohibiting them from voting.

1. Whether the Lords have ever claimed or been allowed the elective franchise. This question is one of a very difficult nature, because, supposing that no such right was ever claimed, there would, in all probability, be no mention of it, sufficient to be satisfactory evidence that such was the case; and, on the contrary, it is very possible, that it may have been exercised without record of it being handed down. But in the absence of any direct light upon the subject, we must be satisfied with that which may be gleaned from other sources.

The Lords and Barons of the realm, being summoned to Parliament in their own persons, it seems very evident that they have no right to appear with the Commons who attend as the Representatives of the people, which they would do were they to possess a vote,—the maxim being, that he who elects appears in Parliament in the person of his Representative.

The distinction between the Lords and Commons (or the people) was, in former days, much greater and more apparent than it is now; from which we may infer that the haughty Barons of those times, would not degrade themselves by mingling with the more humble electors, though in too many cases, they were not above using corrupt influence by means of their Attorneys.

In referring to one of the earliest Statutes by which the elective franchise is regulated (1 Henry V. ch. 1), we find these words—"and that the Knights and Esquires, and others which shall be choosers of those Knights of the Shire;" where, if the Barons had been "choosers," they would have been inserted before the Knights; for it has been laid down as a general rule (1), that no Statute

(1) See Dwaris, 757, 758, and cases there cited.

enants and Governors of counties, *by a sessional Resolution of the House of Commons.*

which treats of things or persons of an inferior rank can be construed to extend to those of a superior.

Again it has been seen (2), that Peers were not liable to pay the wages of Knights of the Shire; from which there certainly arises a presumption that they were not constituents of such Knights.

History tells us, that the lower House was originally summoned by the Crown for the better and more regular raising the supplies by taxation, and that the Members used to advise with their electors as to what amount should be levied or granted; and that in progress of time, partly from an increasing sense of their importance, and their right to participate in the affairs of State, on the part of the Commons,—and partly by the assistance of the Crown, desirous to form an equipoise to the growing power of the Barons, they attained to a legitimate and acknowledged share in the government of the country. But we are also informed (3), that, for a length of time, the Lords taxed themselves apart, and often in different proportions,—until, the Commons having arrived at an equal share in legislation, they surrendered to them the exclusive power over all matters of supply.

The election of a peer as a representative, has always been considered as a void election. Even a peer's eldest son could not sit in the House of Commons, until a decision was made in favour of Sir F. Russel (4).

From the above facts it would appear to admit of very little doubt, that the Lords never at any time possessed the right of voting for Members of the House of Commons. If, however, the right did anciently exist, whether by sufferance or by usurpation, it has in later times been taken away *by law*, as will be seen in the consideration of

2dly, Whether the House of Commons have sufficient authority to make and enforce a Resolution of this kind.

Before the middle of the seventeenth century (5), the exclusive jurisdiction over controverted Elections had been ceded to the House of Commons by the other branches of the Legislature. From that period to the present, it has always remained in that House, and has been successively ratified by 10 Geo. III. ch. 36, and all the numerous Statutes that have been enacted on the subject. Therefore the House of Commons, by their Sessional Resolution declaring that Peers shall not vote at the election of their Members, do not merely promulgate a doctrine or a determination which, coming from one branch alone, might be said to be of no force or effect, but, having the full and exclusive power of deciding upon all matters of this kind, without appeal, conferred upon them by statute,—their Resolution upon the right of voting in any individual or body, is clothed with the force of law. In the same manner as a Judge in a Court of Equity or Common Law may be constantly said to be making laws, when he is adjudicating upon any matter under the authority of an Act of Parliament, his decision being merely an elucidation, or carrying out of the Statute, which has made provision for the general question, though not for the particular case.

(2) See *ante*, p. 25.

(3) Oldfield's Hist. of the H. of Commons, 195.

(4) C. J. 21 January, 1549.

(5) Glanv. Rep. p. vi.; and see the Commons' Journals of the reigns of Queen Elizabeth and King James I.

Legislative  
Councillors in  
Canada.

The same principle applies to restrain Legislative Councillors from voting at the election of Members of the House of Assembly in this Province: accordingly, an Election Committee appointed in 1829, to examine into the return of members for the town of York, reported the following Resolution, (*t*). “*Resolved*, That in the opinion of this “Committee, the Members of the Legislative Council have “not a legal or constitutional right to vote at, or interfere “with, elections.”

Alms-men.

19. Persons receiving alms, or parochial relief, with certain distinctions. See Rogers' Elec. Law. 95, 102,—and 2 Wm. IV., ch. 45, s. 33, 36.

Deaf & Dumb.

20. Persons who are deaf, dumb and blind, (*doubtful*). See Rogers' Elec. Law, 82, 83.

Lunatics.

21. Lunatics, (*v*) Outlaws, Felons, (*w*) Persons excommunicated, (*very doubtful*). See 53 Geo. III., ch. 127, s. 2,—and Rogers' Elec. Law, 92.

Aliens.

22. Aliens born, by resolution of the House in 1698:—unless made denizens by letters patent, or naturalized by Act of Parliament.

Justices, &c. of  
London police.

23. Justices, receivers, and all other persons belonging to the London police are excluded from the franchise in the counties of Middlesex, Surrey, Hertford, Essex and Kent, and from Westminster, Southwark, and the new boroughs in the Metropolitan districts—by 10 Geo. IV. ch. 44, s. 18,—and London Police Magistrates, Constables, &c. by 3 Geo. IV., ch. 55.

Attorneys, &c.  
at Election.

24. All persons employed as Attorney, Counsel, Agent, Poll Clerk, &c. at any election, during the election by 7 and 8 Geo. IV., ch. 37,—and revising Barristers, under 2 Wm. IV., ch. 45, sec. 41, 49.

Right of Election  
in Cities and Bo-  
roughs.

The right of election in Boroughs is various, depending entirely on their charters, constitution &c. though now by

(*t*) Journals II. of Assembly, 27 February, 1829.

(*v*) Heywood's Co. Elec. Law, 259, 262.

(*w*) Peckw. 508.

2 Geo. II. ch. 24 (amended by 28 Geo. III. ch. 52) the right of voting shall be allowed in each particular place according to the last determination of the House of Commons concerning it, subject to the right of petitioning as detailed in Chap. V. *On Election Petitions*.—As respects Boroughs, it has been the object of the Reform act to introduce as far as possible, consistently with existing rights, a uniform right of voting in all cities and boroughs, in order to the establishment of a uniform system of voting throughout the Kingdom. And, since that statute, it has become necessary in all cases to show, that the voter has resided six calendar months within the city, borough, &c. or within seven statute miles thereof; and where he votes as a freeman, &c. of a place sharing in the election of any city or borough, then he must show a residence within that place, or within seven statute miles of the points stated in schedule (E. 2.) of the Reform act.

Whenever an election for members of Parliament, or Scottish Peers is to be holden, the Secretary at war shall cause all troops to be removed from the place of election at least one day previous, to the distance of two miles or more, until one day after the close of the Poll, under penalty of forfeiture of his situation, &c. (x).

Soldiers to be removed from place of election.

It is a high breach of privilege for any Peer, Lord of Parliament, or Lord Lieutenant of a county to concern himself in elections (y)—or for any Minister of state or servant of the crown, to use the powers of his office, directly or indirectly in the election members (z).

Lords, &c. not to interfere.

Formerly, the Lords' Wardens of the Cinque Ports\* claimed the right of nominating one member for each of the Cinque Ports, but the 2 Wm. and Mary, sess. 1 ch. 7,

Or Wardens of the Cinque Ports.

(x) 8 Geo. II. ch. 30; and see C. J. 17 Nov. 1645; 22 Dec. 1741.

(y) See C. J. 10 Dec. 1641; 27 April, 1802.

(z) C. J. 10 Dec. 1790.

\* The Cinque Ports are Dover, Sandwich, Romney, Hastings and Hythe. The branch towns are Rye, Winchelsea and Scaford. They each send two Members to Parliament.

declares all such nominations to be contrary to the law and constitution of the realm, and void to all intents and purposes.

WHO CANNOT BE  
MEMBERS.

II. *Who are disqualified from being members of the House of Commons.*

Need not be re-  
sident.

The ancient law, which required that the member elected should come from the body of the represented, being resident amongst them; was repealed by the 14 Geo. III. ch. 58.

Property Quali-  
fication required.

1. All persons who do not possess the necessary Property Qualifications required by the 9 Anne, ch. 5 (and see 33 Geo. II. ch. 20, and 41 Geo. III. ch. 101, sec. 23) —these acts are repealed by 1 & 2 Victoria, ch. 48, and the property qualification required for a county member is fixed at an unincumbered estate (freehold, copyhold or leasehold) of not less than £600 per annum, or personal estate or effects to the like amount. And for a member representing a city or borough not less than £300. Except the eldest son of Peers or Lords of Parliament, or persons eligible to be Knights of the Shire, and Members for either of the English Universities, or that of Trinity College, Dublin, from whom no property qualification is required.—Neither does this act extend to Scotland where no Property qualification is requisite. The required property qualification in Upper Canada is an unincumbered freehold in lands or tenements in the province, of the assessed value of £80 per annum. And the candidate is required to make oath thereto, by the act 4 Geo. IV. ch. 3, sec. 6. For form of oath, see *Appendix IV.*

In Canada.

Minors.

2. Minors, 7 and 8 Wm. III. ch. 25, sec. 8.

Aliens.

3. Aliens, even though they be naturalized, 12 & 13 Wm. III., ch. 2, and 1 Geo. I. stat. 2, ch. 4; but see *post* Ch. X. *On Private Bills*, "*Naturalization Bills.*"—Aliens naturalized by act of the Imperial Parliament are eligible to be members of the Legislature in Canada, 31 Geo. III. ch. 31, sec. 22; and by 7 Geo. IV. ch. 68, the

Provincial Legislature may pass Naturalization bills, but the Governor is required to reserve them for the signification of the Royal pleasure thereon. But the Provincial act 4 Geo. IV. ch. 3, sec. 2, requires that persons having resided in a foreign country, or taken the oath of Allegiance to a foreign state, shall not be eligible to be members of the House of Assembly until after a residence of seven years in the Province; and they must, if required, take the oath prescribed by this act, at the Poll. For form of oath, see *Appendix IV.*

4. Traitors, Felons,\* Women, Outlaws in criminal prosecutions, but not in civil suits (a) Idiots, Lunatics (b), or avowed Infidels. Traitors, Outlaws, &c.

5. Peers, as they are bound to serve the state in another capacity. But an Irish Peer, not one of the twenty-eight representatives may sit; but whilst he is a member of the House of Commons he is not entitled to the privileges of Peerage, nor capable of being elected one of the twenty-eight Lords, or of voting at such election; and is liable to be sued and indicted as a commoner. Until recently, the eldest son of a Scotch Peer was incapable of being elected in Scotland, though not in England, but the Scotch Reform Act (2 & 3 Wm. IV. ch. 65, s. 73) removed the disability. Peers.

6. The twelve Judges, and the Barons of the Exchequer that have judicial places (c), because they attend in the House of Lords. The Judges and Barons of the Exchequer in Scotland are ineligible, by 7 Geo. II. ch. 16, s. 4. And the Judges, Masters in Chancery, &c. in Ireland, by 1 & 2 Geo. IV. ch. 44. Formerly the Attorney-General Judges.

(a) C. J. 28 May, 1631. But as the outlawry, after inquisition found, would vest the outlaws' estates in the Crown, until reversal, it would appear that the person could not be a Member, not having the requisite property qualification.

(b) 4 Inst. 47, 48; 1 Bl. Com. 175.

(c) C. J. 9 Nov. 1605.

\* There have been instances where the House has deemed persons unworthy to sit in Parliament, by reason of offences amounting in law only to misdemeanours. (See the case of Mr. Walsh, C. J. 5 March, 1812.)

(*d*) was also excluded, as being an assistant in the House of Lords, while the Solicitor-General was admitted. At present, however, none of the assistants or attendants on the Lords are excluded from being Members of the House of Commons, except the Judges. The Master of the Rolls is not considered a Judge; the Attorney-General, the Solicitor-General, King's Serjeants, and Masters in Chancery, and even the Clerk of the Parliaments (*e*), are frequently Members.

Other judicial persons eligible.

Persons who have judicial places in the other courts (ecclesiastical or civil) are also eligible (*f*). Unless excluded by Act of Parliament, as is the case with the Vice-Chancellor, and the Judges and Commissioners of the Bankrupt Court.

Clergy.

### 7. Clergy\* of the Churches of England and Scotland

(*d*) See *ante*, p. 22.

(*e*) Dwar. 255.

(*f*) 4 Inst. 47.

\* In former times, the Clergy were not permitted to be Members of the House of Commons, by reason of their having a voice in the Convocation House, and being permitted to tax themselves apart (1). But in 1664 (2), the Clergy ceased to tax themselves, and were taxed in Parliament, not by any express law, but, as Bishop Burnet tells us (3), by a verbal agreement between Archbishop Sheldon and Lord Chancellor Clarendon. Ever since which, the Clergy have assumed and been allowed the right to vote at elections (4), by virtue of their glebe; and it would seem, might also sit in Parliament, being unrepresented elsewhere, the Convocation having fallen into disuse. Accordingly, we find, in 1785, the case of Rushworth, a clerk in holy orders, who was returned for Newport, being declared duly elected upon a petition against his return (5). But in 1801, Mr. John Horne Tooke was returned a Member for Old Sarum, having, it appears, taken priests' orders early in life, but had long ceased to officiate, or even to appear as a clergyman. No petition was presented against his return, but a motion was made for the appointment of a committee to search for precedents respecting the eligibility of clergymen to sit in the House. The result of their report was, not the expulsion of Mr. Tooke, but the enactment of the provisions contained in the 41 Geo. III. ch. 63, by which (after that Parliament) all Clergymen were ineligible to be Members of the House of Commons.

If, therefore, the Clergy could be said to possess the right to sit in the House after having surrendered the power of taxing themselves, and no longer meeting in Convocation, that right is now taken away by law.

(1) C. J. 13 Oct. 1553; 8 Feb. 1620; 17 Jan. 1661.

(2) See C. J. 31 Jan. 1664.—Supply Bill.

(3) Burnet's Own Times, v. 1, p. 197.

(4) 2 Hats. 16; Gilbert's Hist. of the Exchequer, ch. 4.

(5) C. J. 28 Jan. & 21 Feb. 1785.

(even if they renounce their profession), as having taken priests' orders; 41 Geo. III. (U. K.) ch. 63. Roman Catholic Priests; 10 Geo. IV. ch. 7, s. 9.

Ministers of all professions are ineligible in Canada, by 31 Geo. III. ch. 31, s. 21. In Canada.

### 8. Infamous persons.

Infamous Persons.

9. Persons guilty of bribery or treating (for that Parliament) by 7 & 8 Wm. III. ch. 4; and 49 Geo. III. ch. 118.

10. Returning Officers, Sheriffs of Counties, and Mayors and Bailiffs of Boroughs, within their respective jurisdictions, as being Returning Officers (*g*). But Sheriffs of one County are eligible to be Members for another (*h*), and, also for any City or Borough not in the County for which they are Sheriffs, or, though being in the County, are separate Counties of themselves (*i*). Sheriffs or Stewards Depute in Scotland are ineligible by 21 Geo. II. ch. 19, s. 11. Returning Officers and Sheriffs.

It is a breach of privilege (*k*) for the King to appoint any Member to be Sheriff of a County, but where Sheriffs are chosen by the people (as in London and Middlesex) it is very common for Members to be elected. Breach of Privilege for the King to make a Member Sheriff.

A Member, by being appointed a Returning Officer, does not vacate his seat (*l*), though by 2 Wm. IV. ch. 45, s. 11, no person qualified to be elected a Member of Parliament is compellable to serve as a Returning Officer.

11. No person concerned in the management of any duties or taxes created since 1692 (except the Commissioners of the Treasury and Land Tax (*m*), ) nor any of the Officers following (*n*), viz : Persons holding the e Offices disqualified.

(*g*) C. J. 25 June, 1604; 14 April, 1614; 22 Mar. 1620; 2, 4 & 15 June, and 17 Nov. 1625.

(*h*) 4 Inst. 48; Whitelock of Parl. 99-101.

(*i*) 4 Dougl. 87.

(*k*) C. J. 7 Jan. 1689.

(*l*) C. J. v. 1, p. 920.

(*m*) 5 & 6 Wm. & Mary, ch. 7.

(*n*) By the 11 & 12 Wm. III. ch. 2; 12 & 13 Wm. III. ch. 10; 6 Anne, ch. 7; 15 Geo. II. ch. 22.

Commissioners of Prizes, Transports, Sick and Wounded, Wine Licences, Navy and Victualling, Secretaries or Receivers of Prizes, Comptrollers of the Army Accompts, Agents for Regiments, Governors and Deputy-Governors of Plantations, Officers of Minorca or Gibraltar, Officers of the Excise and Customs, Clerks or Deputies in the several offices of the Treasury, Exchequer, Navy, Victualling, Admiralty, Pay of the Army or Navy, Secretaries of State, Salt, Stamp, Appeals, Wine Licences, Hackney Coaches, Hawkers and Pedlars, nor any persons that hold any *new office* under the Crown, created since 1705 (*o*), are capable of being elected or of sitting as members.

In Ireland.

And see 41 Geo III., ch. 52, which incapacitates persons nominated to office by the Lord Lieutenant of Ireland. See also 57 Geo. III. ch. 62, s. 10, and Irish Act, 33 Geo. III. ch. 41.

Exceptions by Statute or Resolution.

The following persons are specially excepted from being disqualified, by the above and other acts, viz:—

Members of the Corporation of the Bank of England by 15 Geo. II., ch. 13, sec. 8. Treasurer or Comptroller of the Navy, Secretaries of the Treasury, Secretary to the Chancellor of the Exchequer, or of the Admiralty. Under Secretary to any Secretary of State, Deputy Paymaster of the Army, by 15 Geo. II., ch. 22, sec. 3, Master or Worker of the Mint, by 39 Geo. III., ch. 94, sec. 5. Governor of the Bahama Islands (C. J. v. 53. p. 63.) Lieutenant Governor of Upper Canada (ib. v. 47, p. 46.) Viceroy of Corsica (ib. v. 50, p. 590.) Ordnance land Commissioners by 42 Geo. III. ch. 89., sec. 12. Vice President of the Board of Trade by 57 Geo. III., ch. 66, or persons accepting Commissions in the Militia Regiments of Great Britain and Ireland, by the Militia Acts.

If any member accept an office of profit, except an office in the Army or Navy, accepting a new Commission (and the above exceptions by statute), his seat is void, but such member is capable of being re-elected (*p*). But a member who does not hold a Commission accepting one in the army or navy becomes disqualified (*q*) even if he previously held a Commission, which he had resigned or sold. (*r*.)

Accepting New Offices or Places, vacates the seat.

Besides the above, by the statute 22 Geo. III., ch. 82, certain other recited offices, which have been abolished by statute, are declared to be *new*, and under the meaning of the statute of Anne in the event of their being revived, and by the Irish act 33 Geo. III. ch. 41., a similar provision is made.

Also certain abolished offices, if revived.

And the House of Commons, also, are continually by their Resolutions, declaring certain offices to fall within the operation of the 6 Anne, ch. 7, disqualifying their holders from sitting in Parliament. For a list of these, too numerous for insertion here, see Rogers' Election law. p. 55.

Other Offices held by construction, to disqualify.

By more recent statutes the possessors of the following situations, are also declared incapable of sitting in Parliament.

Others by subsequent Statutes.

By 25 Geo. III. ch. 52, sec. 25, and 45 Geo. III. ch. 91, sec. 7, the Commissioners for examining and auditing the Public accounts are disqualified.

By 42 Geo. III. ch. 76, the justices at the seven London Police offices, and by 51 Geo. III., ch. 119, sec. 14, 15, the Justices of the Peace, and other persons employed under the Police act, are ineligible.

By 46 Geo. III., ch. 30, sec. 18, the paid Commissioners for examining the public accounts in the West Indies are disqualified.

By 46 Geo. III. ch. 141, sec. 22, the Commissioners

(*p*) 6 Anne, ch. 7, s. 26, 28.

(*q*) C. J. 21 May, 1783; 3 Dec. 1759.

(*r*) 2 Huts. 51, n.

under that act for examining the public accounts are ineligible.

By 57 Geo. III., ch. 63, sec. 5, every Officer, &c. in the office of the Clerks of the Signet and Privy Seal, and by 57 Geo. III. ch. 84, all appointments in the offices of Auditors and Tellers of the Exchequer, and Clerks of the Pells, are disqualified.

By 3 Geo. IV., ch. 55, all Metropolitan Police Magistrates appointed under this act, and by 3 Wm. 4, ch. 19, sec. 9, Police Magistrates and Receivers under the Police, are disqualified.

By 7 & 8 Geo. IV., ch. 53, new Commissioners of Excise are ineligible.

By 10 Geo. IV., ch. 22, Governors of Presidencies in India are disqualified. And by 10 Geo., 4 ch. 50, sec. 21, only one of the Commissioners for Woods and Forests can sit at a time.

Actual possession of office, only, disqualifies.

In order for the holding an office to disqualify, the actual enjoyment must be shown, the mere title, if never acted upon, will not disqualify.\*

Pensioners.

12. No Pensioner of the Crown during pleasure, or for any term of years is eligible (s).

Contractors.

13. All persons holding contracts for the public service are declared incapable of sitting or being elected, and any

(s) 6 Anne, ch. 7; 1 Geo. I. stat. 2, ch. 56.

\* By the Provincial Act, 39 Geo. III. ch. 4, a Member of the House of Assembly of Upper Canada, accepting the office of Registrar of any County or Riding, must vacate his seat, but may be re-elected.

And by Provincial Act, 7 Wm. IV. ch. 114, Members accepting any of the following offices, must vacate their seats, viz.: Judge of the Court of King's Bench, Judge of the District Court, or of any Court of Record hereafter to be established; Receiver-General; Surveyor-General; Inspector-General; Member of the Executive Council; Collector of Customs; Attorney or Solicitor-General; or Sheriff. But they may (except a Judge of the Court of K. B.) be re-elected.

And any Member permanently removing from the Province vacates his seat; but cognizance of such can only be taken by said Member stating the fact to the House, by a communication to the Speaker,—or on petition from the Freeholders of the County, &c. praying that a new Writ may issue; which petition will be referred to a Committee of Privilege to report thereon.

member accepting a contract, shall vacate his seat. But contracts devolving by descent, limitation or marriage, shall not incapacitate within twelve months from the time of devolution (*t*). And it has been held not to extend to an army Clothier contracting for the clothing of a regiment (*r*).

14. A member being declared a Bankrupt is free from arrest for twelve months from the issue of the fiat, but his seat in Parliament is suspended. If, at the expiration of that time, twenty shillings in the pound be not paid to the Creditors, his privilege ceases. He is at the same time excluded from sitting and voting in Parliament; unless within the twelve months the Commission be superseded, and the Creditors paid in full (*w*). Any member (*x*) may be served with legal process for any just debt to the amount of £100; and unless he make satisfaction for the same within two months, the commission of Bankruptcy may be issued against him, in like manner as against a common Trader. See also, 6 Geo. IV., ch. 16, sec. 9-11, which obviates many previously existing difficulties in proceeding against members as Bankrupts.

15. A person elected and returned as member cannot by law be eligible for any other place, except he first vacate his seat. There is a distinction, however, between writs issued for a general election, and writs issued during a session of Parliament. When a person is elected during a session the writ is made returnable immediately, and therefore, he cannot be eligible for any other place; but at a general election, the writs being all made returnable at the same time, and the law not taking notice of the return of any person so as to destroy his eligibility for any other place, a member can be returned for two or more places at once, and make his selection which of the places he will

(*t*) 22 Geo. III. ch. 45.

(*v*) Thomson v. Pearse, 3 Moore, C. P. Reports, 260.

(*w*) 52 Geo. III. ch. 144.

(*x*) 4 Geo. III. ch. 32.

represent, but if he do not make his selection in a convenient time, which the House will appoint, the House will do it for him.

All others eligible.

With these exceptions, conditions and restrictions, all persons are eligible of common right. Even an Ambassador or Envoy at a foreign court, is not disqualified (*y*). Although a person appointed *Consul General* must vacate his seat (*z*). Besides these, other persons abroad, and elected before their return, outlaws in civil suits, prisoners for debt in *mesne* process (*a*), or persons charged in execution, petitioners against a return (*b*), and all other subjects of the realm, are capable of being elected and serving in the House of Commons (*c*.)

Relative to undue Returns and Contested Elections, see chap. V. *On Election Petitions*.

Vacancies.

If a vacancy should occur, by death or otherwise, during the sitting of Parliament, a new writ is issued on the motion of a member; the course to be pursued if a vacancy should happen during the recess has been already pointed out (*see ante p. 60*). In the event of any mistake in issuing the writ &c. or if the place has incurred the displeasure of the House by its corruption (as in the Hindon and Shaftesbury cases (*d*),) or any other adequate cause, or where the Returning Officer should die, and there be not time to appoint another, the House may supersede its writ, or suspend its execution (*e*), or even withhold their order for its issue (*f*), or supersede it altogether (*g*).

If Returning Officer refuse to receive a vote.

If, at an election, the Returning Officer *wilfully or maliciously* refuse to take the vote of a freeholder, or person entitled to vote, an action can be entered against him, and the plaintiff can recover damages in a court of law (*h*), in

(*y*) C. J. v. 18, p. 215; 2 Hats. 24.

(*a*) C. J. v. 62, pp. 642, 644, 654.

(*c*) 18 Eliz. 1575. Rushw.

(*e*) The case of East Retford.

(*g*) C. J. v. 14, pp. 63, 88.

(*z*) C. J. v. 64, p. 29; v. 72, p. 3.

(*b*) C. J. 16 April, 1727.

(*d*) See 4 Dougl. 271, 350.

(*f*) C. J. v. 35, pp. 418, 771.

(*h*) See Rogers, 246, 247.

any other case, the proper mode of proceeding would be, to bring the case before the House of Commons in a Petition, as a matter in which their privileges are concerned (*i*).

A member, though chosen for a particular district, when returned serves for the whole Realm, the end of his coming not being particular, but general, not merely to advantage his constituents, but the commonwealth. And therefore he is not bound, like a Deputy of the United Provinces, to take his constituents advice where it may differ from his own opinion, or to consult with them on any particular point, unless he thinks proper (*k*).

Members to serve for the whole Realm.

A member of the House of Commons, if duly elected, is compelled to serve, even though he himself, so far from desiring the election, had expressed his wishes at the Poll not to be chosen (*l*). So, although members may labour under age or infirmity, unfitting them for the duties of their station, yet if chosen, they must attend (*m*), and cannot be discharged but by the allowance of the House. Nor is a member discharged though he be "a captive" (*n*).

Members, if elected, must serve.

There is, however, one way by which, in modern times at least, a member can avoid the taking of his seat, and that is, by refusing the oaths, or neglecting to serve in a qualification pursuant to the statute 33 Geo. II., ch. 20.—Neither when once taken can the seat of a member be resigned, and every member is compelled to serve unless he can show such cause as the House, in its discretion, shall think sufficient excuse for his non-attendance.

Unless he refuse to take the oaths, &c.

The only mode by which a member, desirous of retiring from Parliament, can do so, is to accept an office under the Crown; and in case he cannot obtain any thing better, it is now usual to grant the office of *Steward of the Chiltern*

And cannot vacate but by accepting office.

(*i*) C. J. v. 11, p. 201.

(*k*) 1 Bl. Com. 159.

(*l*) C. J. 2 Mar. 1623; 9 April, 1624; Glanville, 101.

(*m*) C. J. 23 Mar. 1715.

(*n*) Dwar. 266.

*Hundreds, &c.* to any person wishing to vacate his seat in a *formal* manner, whether for the purpose of being re-elected, of giving place to another person, or of retiring altogether.

The Chiltern  
Hundreds.

The *Chiltern Hundreds* (of Stoke, Desborough, and Bonenham,) in the county of Buckinghamshire, and the *Manor of East Hendred* in Berkshire, are districts belonging to the Crown, which, from time immemorial, have had officers attached to them, with the title of Stewards or Bailiffs. The office of Steward of the Chiltern Hundreds is supposed to have been instituted by King Alfred, for the purpose of protecting the inhabitants of that part of Buckinghamshire from banditti. The duties of the situation have long since ceased, but the office is nominally retained, the appointment being vested in the Chancellor of the Exchequer, in order to enable members to vacate their seats by becoming } disqualified under the statute of Anne. These Stewards derive neither honour nor profit from their situation, except a salary of £1 a year, their office being in fact merely nominal, though by general consent they serve the purposes for which they are bestowed.\*

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\* This ancient domain, which now affords the means to any Member desirous of vacating his seat in Parliament, was, in the Fourteenth Century, not unfrequently employed as a sanctuary in which the Knights of the Shire took refuge, in order to avoid being dragged to Parliament against their will, which in those days was not uncommon, the electors, as well as the elected, in many cases, feeling the exercise of this franchise, not as a highly-prized constitutional right, but as a burden which they would willingly be rid of. Accordingly, we find in history (1), many cases where the Boroughs petitioned to be absolved from the necessity of returning a Representative, on account of the *wages* they were required to pay him!

The Chiltern Hundreds, being a distinct jurisdiction, over which the Sheriff had no control, the Member seeking refuge there could not be followed up and compelled to attend, but he was enabled to remain in safety, either until the close of the Session (which in those times seldom lasted a month) or until a new Member was elected to supply his place.

The following is a copy of a special return made by the Sheriff in a case of

(1) See 1 Bl. Com. 174.

The practice of granting these Stewardships began about 1750, and instances have repeatedly occurred of their being denied to such members, as, for any offences, are liable to expulsion, and would thus wish to avoid the disgrace.

It has been seen (o), that on the first institution of a House of Commons, the members received wages from their constituents. The amount of these wages as established in the 16 Edw. II. was, with few exceptions, four shillings a day for a Knight of the shire, and two shillings for a citizen or burgess. They were levied upon electors by the Sheriff, in pursuance of the writ *de expensis militum, civium, et burgensium*, which was framed to enforce their payment.

Wages formerly received by Members.

As the Lords, who sat in Parliament in their own right, were not benefited by this representation, it was not reasonable that they should contribute any thing to the expenses of the knights of the shire; but by the 12 Rich. II. ch. 12, it was enacted, that lords and spiritual persons who purchased lands which were contributory to the expenses of the knight, should contribute in respect of such lands (p).

The celebrated Andrew Marvel, who represented Hull in the Parliament after the Restoration, is said to have been the last person in England who received wages from his constituents.

When last received in England.

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the above description,—translated by Sir Francis Palgrave from the official copy among the Records in the Tower :

“ Sir Richard de Pogeys, Knight, duly elected by the Shire, refused to find bail for his appearance in Parliament at the day and place within-mentioned, and having grievously assaulted my Bailiffs, in contempt of the King, his crown and dignity and absconded to the Chiltern Hundreds, into which Liberty, not being shire-land or guildable, I cannot enter—I am unable to make any other execution of the Writ, as far as he is concerned.” (2)

(2) See also a similar case in Palgrave's *Parl. Writs*, vol. 2, Div. 2, p. 273, of “ Johannes de la Pole, de *Sidcunham*.”

(o) See *ante* p. 44.

(p) 1 Bl. Com, 171.

In Canada, wages are allowed by statute.

Regulations respecting them.

In the Canadian Legislature it is different. For, in a youthful colony, a sufficient number of Members who could afford to lose the time they must necessarily be engaged in their Parliamentary duties, could not be found. By the Provincial Act, 43 Geo. III. ch. 11, it is provided that every County Member, having attended, shall be entitled to receive from the Speaker a warrant for ten shillings a day, to be levied by assessment within the County or Riding he represents. And by the 5 Wm. IV. ch. 6, this is extended to Town Members. But the Provincial Statute 1 Vict. ch. 17, materially alters the law on this head. It declares, that every Member not absenting himself twenty days during a Session without leave of the House; or unless prevented by sickness or other reasonable excuse to the satisfaction of the Speaker, from attending,—shall be entitled to receive a warrant for his attendance, for £50, and his travelling expenses, at the rate of ten shillings per twenty miles, going and returning. But if the session do not continue upwards of thirty days, the Member shall not receive more than £25, and his travelling expenses.

And if a Member absent himself for half the Session, unless from sickness or other reasonable cause, he is to receive nothing. And if a Member absent himself, in like manner, for twenty successive days, during the Session, he shall only be entitled to half the allowance.

These wages are to be paid by the District Treasurer, and be raised by assessment.

### III. *As to their Duties generally.*

On the day appointed for the meeting of Parliament, the Member proceeds to the House, and at the Clerk's table, takes the Oaths\* of Allegiance and Supremacy, and

DUTIES  
GENERALLY.

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\* The Oath of Allegiance, under the Constitutional Act, is the only one required to be taken by Members of the Canadian Legislature. For the prescribed form of it, see *Appendix V.*

takes and subscribes the Oath of Abjuration, as altered by 6 Geo. III. ch. 53. He then delivers in a Statement of his qualification, at the Clerk's table, and makes and subscribes the declaration relative thereto required by the 1 & 2 Vict. ch. 48, before he takes his seat.

When a Member appears to take the Oaths within the limited time, all other business is to cease, until the ceremony is gone through.

A Member taking his seat before being sworn, is liable to a fine of £500, and other heavy penalties, *by statute (g)*, Penalty of taking seat before being sworn. and is expelled the House *(r)*; in every other respect, however, he is considered a Member; as such he is allowed his privilege, and may even be appointed on a Committee *(s)*. But it is the modern practice to pass an Act of Indemnity, to remove the penalties attached to such neglect when it happens to occur *(t)*.

It is not necessary, in order to their validity, that the oaths be administered to Members separately; sometimes as many as twenty are sworn at once.

New Members, elected on a vacancy,\* must be introduced into the House between two others, making their obeisances as they go up *(v)*. Vacancies.

In the British House of Commons, there is often some little trouble between the Members as to the possession of seats in the House; no Member being allowed to claim as a right, the possession of any seat: the tenure by which Places in the House.

*(g)* 13 Wm. III. ch. 6, s. 10, 11; 1 Geo. I. ch. 13, s. 16, 17.

*(r)* C. J. 10 Feb. 1620, & 13 Wm. III. ch. 16, s. 10.

*(s)* C. J. 13 April, 1715.

*(t)* C. J. v. 67, p. 286; v. 69, p. 144.

*(v)* C. J. 23 Feb. 1688.

\* Formerly, all Members elected upon vacancies, were required to pay certain fees to the fee-fund of the House of Commons before they took their seats. The total amount payable by a knight of the shire, was £2 16s. 8d.; by a burgess, £2 11s. 8d. But by a Resolution of the House, on 9th March, 1837, their future payment was ordered to be discontinued.

they are held being priority of occupation, except in certain cases allowed as a matter of courtesy.\*

But this chiefly arises from the Members in that House having no desks for their papers or books,—nothing indeed but the bare seat; whereas in the Canadian Assembly, desks being provided for each member, which are chosen and retained by them during the session, that difficulty never occurs.

**Dress.** The members of the House of Commons never wear any robes except the Speaker and the Clerks, who always, in the House, wear gowns, as professors of the law in term time; also the four members for the city of London, who, on the first day of every new Parliament, wear scarlet gowns, and sit altogether on the right hand of the Speaker's chair. And also the mover and seconder of the Address in answer to the Speech from the Throne, who must appear on that occasion, in full court dress.

**Obeisances.** Each member as he enters the House, makes his obeisance to the Speaker by raising his hat, which he immediately replaces, however, as he goes to his seat, but he must not move from one place to another without taking off his hat (*w*).

**Privileges.** The privileges of members of the House of Commons commence on their election (*x*); relative to them see chap. II. *On the Privileges of the House of Commons.*

**Speaking twice.** It is essential to the dispatch of business, and to the observance of proper order in debate, that the rule that no member be permitted to speak twice to the same question, even though he may have changed his opinion (*y*), be duly enforced. And it is the duty of the Speaker to

(*w*) Scob. 6.

(*x*) See Bacon's Abridgement, v. 6, p. 547.

(*y*) Smyth's Comw. b. 2, ch. 3. See C. J. 23 June, 1604; 21 April, 1610.

\* As it was found that Members caused their names to be ticketed on seats before the meeting of the House, it was declared by a recent Standing Order, that no Member's name shall be affixed to a seat before the hour of prayers.—C. J. 6 April, 1835.

maintain the observance of this rule without waiting for the interposition of the House (*z*).

Notwithstanding all the care possible it will sometimes happen that, under pretence of "informing the House of a fact" (*a*), or of "making an explanation" (*b*), which is of itself allowable, a member will break the order and speak twice, which, if permitted, would entitle others to the same indulgence. Therefore, in order to allow more frequent and ample discussion than the forms of the House will admit, Committees of the whole are appointed, where every member may speak as often as he thinks fit. If a new motion is made pending the former motion, as to "adjourn," &c. or by way of amendment, or for the previous question, or if the Bill be read more than once the same day, this entitles a member to speak again to that question. And also members who make a motion, are allowed the privilege of a reply.

The strict observance of the Rule must, therefore, materially depend upon the good sense and delicacy of feeling in the Members themselves.

When a Member rises, in order to speak, no question is to be put, but he is to be heard, unless the House overrule him (*c*).

The Speaker names the member who first rises to speak to a question, and where two or more members rise together, the Speaker names him who first catches his eye, and it is customary and advisable for the sake of order, to submit to his decision, nevertheless if the House think the Speaker abuses his trust and is partial in his decision, they need not submit to it, but they have the remedy in their own hands, by putting the question of "which Member rose first" (*d*).

(*z*) Hakew. 37.

(*a*) 3 Grey, 357, 416.

(*b*) 2 Hats. 99.

(*c*) 4 Grey, 390.

(*d*) 2 Hats. 76; D'Ewes, 434, col. 1, 2.

When a Member speaks, he is to stand up in his place, uncovered, and addressing himself to the Chair; but instances have occurred, in both Houses, of Members suffering under indisposition, being allowed to speak sitting (*e*). When a Member speaks impertinently or beside the question, superfluously or tediously, it is the duty of the Speaker to interrupt him, and the House ought, for their own sake, to support him in his interposition (*f*).

A Member has sometimes risen to address the House before the Speaker has put the question (*g*), but the Speaker, not seeing him, has proceeded to put it both in the affirmative and in the negative; and sometimes a Member offers to speak after the question is put. The order of the House appears to be, that any Member may speak after the question is put, and voice given in the affirmative, but not after the voice given in the negative (*h*).

Not to speak till question put.

Disorderly speaking.

And by the rule of the House (*i*), it is the duty of the Speaker to repress all personal and disorderly expressions, and if any Member behave in a disorderly manner, by interrupting the order or gravity of the House, the Speaker is to *name* him.

Naming a Member.

When, in obedience to this order, the Speaker calls upon a Member "by name," the Member is immediately directed to withdraw. He is first heard if he wishes it, and then withdraws. The Speaker will then state to the House the offence committed; and the House will consider what punishment they ought to inflict upon the offender (*k*).

Out of order to reflect on pre-termination of the House.

In addition to speaking more than once in the same debate—beside the question—or against particular Members, it is considered disorderly to reflect upon the prior proceedings of the House, and it was the ancient practice

(*e*) 1 Grey, 195; Scobell, 52.

(*f*) Scob. 31-33; Hale of Parl. 133.

(*g*) C. J. 17 May, 1606; 27 Jan. 1789.

(*h*) C. J. 13 June, 1604; 2 Hats. 102-3. (*i*) C. J. 19 April, 1604.

(*k*) See instances in C. J. 5 May, 1641; 22 Jan. 1693; and 22 Feb. 1810.

that no man had a right to speak against the determination of the House, unless he meant to conclude with a motion for rescinding such determination (*l*). But while a proposition is still under consideration—is still *in fieri*—though it has even been reported by a Committee, reflections upon it are no reflections on the House (*m*).

It is highly disorderly to repeat any opinion, or pretended opinion of the King, on any proceeding depending in either House, with a view to influence the House thereby (*n*)—or to speak of the King irreverently or seditiously (*o*).

Or to report opinion of the King on matters pending.

No Member should be called upon by another to state whether a Report in a newspaper of certain expressions made use of by him, be correct or not (*p*).

Newspaper reports.

Walking up and down the House, standing on the floor (*q*), in the passages, or in the gallery, taking books or papers from the table, or writing there, to the interruption of the Clerks, are instances of disregard of rules. Crossing between the Chair and a Member that is speaking, or between the Chair and the table, or between the Chair and the mace when the mace is taken off the table by the Serjeant, are disorderly proceedings.

Disregard of Rules.

No person, in speaking, is to mention a Member then present by his name, but to describe him by his seat in the House, the place he represents, or “who spoke last,” &c. (*r*)—nor to digress from the matter to fall upon the person (*s*), by speaking reviling, nipping, or unmannerly words against any particular Member (*t*). The consequences of a measure may be reprobated in strong terms, but to arraign the motives of those who propose or advo-

Motives not to be imputed in Debate.

(*l*) Rushw. p. 3, fol. 42.

(*m*) 9 Grey, 508.

(*n*) 8 Grey, 22; C. J. 17 Dec. 1783. 2 Hats. 251, 6.

(*o*) 2 Hats. 170; Smyth's Comw. b. 2, ch. 3.

(*p*) C. J. 17 April, 1837.

(*q*) Scob. 6; 3 Gray, 403.

(*r*) Smyth's Comw. b. 2, ch. 3.

(*s*) Hale of Parl. 133; Scob. 31.

(*t*) Smyth's Comw. b. 2, ch. 3.

cate it, is against order, and should be suppressed by the Speaker (*v*).

**Order in Debate.** No one is to disturb another in his speech by hissing, coughing, or spitting (*w*), speaking or whispering to another (*x*), or any other interruption (*y*).

Nevertheless, if a Member find that it is not the inclination of the House to hear him, and that by conversation, or other disturbances, they endeavour to drown his voice, it is his most prudent course to submit to the pleasure of the House, and sit down; for it scarcely ever happens that they are guilty of this piece of ill manners without sufficient reason; or inattentive to a Member who says anything worthy their attention (*z*).

**Excepting against certain words of a Member.**

If, in the debate, words are let fall which give offence, the person excepting against them must do so immediately (*a*) on the conclusion of the speech, but not before (*b*), by repeating them aloud, and the Speaker must desire the Clerk to take them down. If there be any doubt as to the precise words, the sense of the House is to be taken upon them; and in case the Member using them desire it, or the House command it, he is to explain himself, which, if he refuse to do, or the House be not satisfied with his explanation, then he is to withdraw (*c*). The Speaker then states the offence committed, and the sense of the House is taken upon the subject (*d*).

**Punishment of such words.**

**Words of heat.**

When words of heat or contumely escape any Member, the Speaker should not permit them to pass unnoticed; and, on his observing them, the Member offending must make an apology, in as general terms as possible, so that it may include the person of whom the words were used. When Members have deviated into warm and personal

(*v*) S. O. H. of C. 19 April, 1604.

(*x*) Scob. 6; D'Ewes, 487, col. 1.

(*z*) 2 Hats. 77, 78.

(*b*) 5 Grey, 356; 6 Grey, 60.

(*d*) 4 Grey, 170; 6 Grey, 59.

(*w*) 6 Grey, 332; D'Ewes, 640, col. 1.

(*y*) Town. Col. 205.

(*a*) C. J. v. 68, p. 322.

(*c*) Scob. 81.

altercation, the House frequently requires from them assurances that they will not proceed further in the business (*e*); or orders them to attend the Speaker, who is to accommodate their differences, and report to the House thereon (*f*), and they are put under restraint if they refuse, or until they do (*g*).

It has been observed, that nothing tends more to throw power into the hands of the majority than a neglect or departure from the rules of the House. The forms of proceeding have been, in many instances, a shelter and protection for the minority. Evil of departure from rules.

The House having considered the offence committed by a Member to be worthy of reprimand, after the debate is over he is called to the Bar, where, commonly on his knees, he receives a reprimand from the Speaker (*h*); and if the offence be great, he is expelled the House, or sent to the Tower (*i*), and sometimes both. Reprimanding a Member.

If a Member be imprisoned by order of the House for a term *uncertain*, a motion is generally made by one of his friends, at the expiration of a few days, that he be discharged upon payment of the required fees to the Sergeant-at-arms; but if no such motion be made, or if it be rejected, he remains confined until the prorogation of parliament, beyond which the power of the Commons to imprison does not extend. Imprisonment and Release of Members.

The House has, besides this, always exercised the power of expelling its members, for libel upon themselves, or upon complaint or proof of any crime in him (*k*); and Blackstone lays it down as a rule (*l*), that a person can be incapacitated *for that parliament* by a vote of the House Expelling Members.

(*e*) 5 Grey, 289; C. J. 13 April, 1813. (*f*) 3 Grey, 419.

(*g*) 9 Grey, 235, 312. (*h*) C. J. v. 65, p. 136.

(*i*) C. J. 4<sup>th</sup> Dec. 1717.

(*k*) Whitelock, 102. See instances in L. J. 3 May, 1620; 13 May, 1624; 26 May, 1725; and in C. J. 14 Feb. 1580; 21 June, 1628; 9 Nov. & 21 Jan. 1640; 6 Mar. 1676; 6 Mar. 1711; 17 Feb. 1769.

(*l*) 1 Bl. Com. 176.

of Commons, and *for ever* by an act of the Legislature (*m*). But, with respect to the former part of this, it would seem that he over-rates the power of the House of Commons, for, some years after the case of the expulsion of Wilkes (when it was declared that having been expelled, he was no longer eligible for that parliament (*n*), ) it was ordered that all the Resolutions, orders, &c. with respect to him should be expunged from the Journals, as being subversive of the rights of the whole body of electors of England (*o*). Thereby implying, that although a member may, for any crime or other offence, be expelled the House, yet he may be re-elected by his constituents, if they, with a full knowledge thereof, think proper to do so.

Proceedings if privilege of one house be violated by a Member of the other.

Thus each House may be said to exercise unlimited power over its own members, but in the event of a breach of their privileges by a member of the other House, the mode of proceeding is, to examine into the fact, and then lay a statement of the evidence thereon before that House of which the person complained of is a member, that they may, in their discretion, determine upon his offence. For neither House can take upon themselves to redress any injury, or punish any breach of privilege offered to them by any member of the other House. The leading principle which appears to pervade all the proceedings between the two Houses of Parliament is, that there shall subsist a perfect equality with respect to each other, and that they shall be, in every respect, totally independent one of the other. Where the cause of complaint is words spoken by a member of either House, reflecting upon the other House, or upon any of its members, it appears from the several instances to be extremely difficult to obtain redress, not only from the difficulty of ascertaining the exact expression, and the meaning which it is intended

Of proceedings between the two Houses.

Disorderly to reflect upon other House, &c. during debate.

(*m*) As 7 Geo. I. ch. 28.

(*n*) C. J. 17 Feb. 1769.

(*o*) C. J. 3 May, 1783.

they shall convey, but because it is the practice of the House of Commons, that if exception be not taken against the expressions at the time, they cannot afterwards be called in question, even by the House itself. And therefore, it is the more incumbent upon the Speaker to interfere immediately, and not permit such expressions to pass unnoticed.

Where offending persons are in custody by order of either House, it is not consistent with the independent equality which subsists between the two Houses for the other to interfere, but if they have occasion for the presence of the person so committed, leave is usually asked of the House that he may be brought before them for examination (*p*).

Offenders in the Custody of the other House.

No member may be present in the House when a Bill, or any other business concerning himself is *debating* (*q*); while the Bill is but reading or opening, he may. And if he appear to be "somewhat" concerned in a question he must not vote upon it (*r*).

Member to withdraw if concerned in debate.

If a charge against any member be clear and definite, as being contained in a Report, or made by a witness during an examination in the House (*s*), or founded on any previous proceeding (*t*), the member accused, knowing from that to what points he is to direct his exculpation, is to be heard in his place and to withdraw before any question is moved thereon, as in Mr. Walpole's case (*v*); a decision which has been uniformly supported since (*w*). But where the question itself is the charge, as for any breach of the orders of the House, or for any matter that has arisen in the debate, the charge must be stated, that is, the question moved, before he withdraws. The Member is

When to withdraw.

(*p*) Dwar. 306.

(*q*) C. J. 12 June, 1604.

(*r*) C. J. 4 Feb. 1664; 6 Grey, 368.

(*s*) C. J. 21 Oct. 1667.

(*t*) 2 Hats. 167, 168.

(*v*) C. J. 17 Jan. 1711.

(*w*) See Mirror of Parliament, 1837-8, v. 3, p. 2159.—O'Connell's case.

not to withdraw until he knows the substance of the charge against him, and has been heard on the subject; then, and not till then, he is to withdraw; as in the case of Sir W. Wyndham (x).

How far Mem-  
bers have a right  
to require official  
papers to be read  
in the House.

When papers are laid before the House, or referred to a Committee, every member has a right to have them once read at the table, before he can be compelled to vote thereon. But it is a great, though common error, to suppose that he has a right, *toties quoties*, to have acts, journals, accounts or papers on the table read, independently of the will of the House. The delay and interruption which this might be made to produce, evince the impossibility of the existence of such a right. But the propriety of permitting every member to have as much information as possible on every question on which he is to vote, is so manifest—that when he desires the reading, if it be seen that it is really for information, and not for delay, the Speaker directs it to be read without putting the question, if no objection be made. But if objected to, a question must be put (y).

Or to lay a paper,  
&c. containing  
an alleged breach  
of privilege, be-  
fore the House.

It is equally an error to suppose that any member has a right, without a question put, to lay a book or paper on the Table and have it read, on suggesting that it contains matter infringing upon the privileges of the House (z).

Or to read papers  
in his place.

For the same reason a member has not a right to read a paper in his place, if it be objected to, without leave of the House. But this rigour is never exercised but where there is an intentional or gross abuse of the time and patience of the House. A member has not even a right to read his own speech, committed to writing, without leave. This is only to prevent an abuse of time, and therefore is not enforced but where that is intended (a).

Formerly, when papers were referred to a committee,

(x) C. J. 5 April, 1715.

(z) 2 Hats. 118.

(b) 2 Hats. 117.

(y) 2 Hats. 117, 118.

(a) 2 Grey, 277.

they used to be first read in the House ; but of late, only the titles of them ; unless a member insists upon their being read, and then no one can oppose it (*b*).

Any member may call for the execution of a subsisting order of the House, and in doing so he does not properly make a motion, but *takes notice* that the order is disobeyed ; and if a member in his place take notice of there being strangers in the House, it is the Speaker's duty to order the Sergeant to clear the House immediately of all but the members, without permitting any question or debate thereon. Enforcement of Standing Orders.

Both Houses can enforce the attendance of their members, and this is done by ordering a call of the House upon a particular day, and punishing by fine or imprisonment such members as continue absent (*c*), see chap. VI. Call of the House.  
*On the Proceedings in the House.*

No member shall depart until the end of the session without having obtained leave of the House to do so, which must be entered on the Journals, for by such a proceeding he renders himself liable to be brought back by the Sergeant-at-arms, if on a call of the House, his absence becomes apparent. No Member to depart until end of Session without leave.

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(*c*) See Report of Precedents on this subject in L. J. 25 July, 1890.

## C H A P. V.

On the  
**Presentation and Trial of Election Petitions.**

**ELECTION  
PETITIONS.**

The form and manner of proceeding upon Election Petitions was regulated by the 10 Geo. III. ch. 16. commonly called the Grenville act, which has been amended by many subsequent statutes,\* the provisions of which are now consolidated into one, with considerable amendments, viz: 9 Geo. IV. ch. 22. †

The Colonial Practice in this respect is regulated by the statutes 4 Geo. IV. ch. 4. and 8 Geo. IV. ch. 5— which were made perpetual by 2 Vict. ch. S. . These statutes were founded upon the British Acts, but having been passed prior to the 9 Geo. IV. ch. 22— the many improvements introduced into the system by that enactment are not included in Canadian Election Law. This chapter, therefore, will treat of the Imperial usage, upon which the Provincial is founded, marking the difference which

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\* The following Special Acts have been passed, regulating the trial of Contested Elections, viz.: 10 Geo. III. ch. 16; 11 Geo. III. ch. 42; 14 Geo. III. ch. 15; 25 Geo. III. ch. 84; 28 Geo. III. ch. 52; 32 Geo. III. ch. 1; 36 Geo. III. ch. 53; 42 Geo. III. ch. 84; 47 Geo. III. sess. 1, ch. 1; 53 Geo. III. ch. 71; and 9 Geo. IV. ch. 22, which repeals all the foregoing, with the exception of 25 Geo. III. ch. 84, and the 31st clause of 28 Geo. III. ch. 52.

† By a recent Imperial Statute, 2 & 3 Vict. ch. 38, an entirely new mode of trying Election Petitions is provided, and the operation of the Act 9 Geo. IV. ch. 22, suspended for a limited time, in order that the new system may have a fair trial. But as there is a probability that it may not ultimately go into operation, at least without some alterations which may be found necessary by practice, and as it completely differs from the present Provincial usage, I have not included its provisions in this Chapter. An abstract of its contents, however, will be found in *Appendix VI.*

*I have moved to bring in a petition against the return of the said J. B. on the 15<sup>th</sup> day, after the house met*

exists between the two systems in *Italics*, which will be used to designate the latter.

The members first returned to Parliament are by Law, the sitting members, until the House, upon Petition, shall determine otherwise. Members returned, sitting Members,—until.

The judicature by which petitions upon election matters are tried, is a Committee chosen by Ballot from among the members, who are required to report their decision to the House.

The Petition must set forth the specific grounds of The Petition. objection, and its allegations must be supported by proof.

Any person claiming to have had a right to vote at the Election; or to have been returned; or alleging himself to have been a candidate, may present a petition complaining of an undue election; but one subscriber to the Petition must, within fourteen days, enter into a Recognizance, himself in £1000, with two sureties in £500, or four in £250—to pay the costs of witnesses, clerks, officers of the House, &c. which costs are to be taxed under the direction of the Speaker in the manner hereinafter set forth. By whom to be made.

*By the Provincial Statute no Recognizance for the payment of costs is required, but they are ascertained and allowed as hereinafter described.*

And by a sessional Resolution\* of the House, the Petition must be presented within fourteen days from the date of the Resolution, or within fourteen days after a new Return shall be brought in (a). The practice of Parliament with respect to the limitation of fourteen days is very strict. When a petition was delivered to the Clerk of the House on the evening of the day on which the fortnight When Petition to be presented.

(a) C. J. 23 Nov. 1802.

\* The Act 9 Geo. IV. ch. 22, says, on this head, that Petitions "shall be presented within such a time as the House shall from time to time appoint." But the same limitation to fourteen days prevails in the Assembly of this Province, by the authority of a Standing Order, see M.S.S. Journals, 1829, p. 746.

*intending the day of meeting on the first day - It was decided to be too late.*

expired, but after the House was up, although there were very particular circumstances in the case, the House refused to relax the Rule (b). But when the House has not sat on the fourteenth day, the Rule has received an equitable construction, and petitions have been received on the next day of its sitting (c). When the fourteen days expire during an adjournment, application is made to the House to extend the time, and receive the petitions. Petitions in such a case must be presented on the first day of the meeting of the House after the adjournment.

Renewed Petitions; must be made in Canada.

*If a Petition be not taken into consideration during the session in which it is presented, it must be renewed in the next, and in every subsequent session, until it shall be tried (d). The renewed petitions must be the same in substance as the original petition, and must not contain any new allegations, or, it is supposed, receive any new signatures; but signatures may be withdrawn (e). If the Petitioners do not present a renewed Petition, as aforesaid, they forfeit the Recognizances they are required to enter into for the prosecution of the contest.*

Not required in Imperial Parliament.

In the Consolidated Act, 9 Geo. IV. ch. 22, nothing is said about renewed petitions, but it is provided in clause 56, that if the Parliament shall be prorogued after any Petition complaining of an undue election, &c. shall have been presented, but before it has been taken into consideration, the House shall, within two days after the next meeting of Parliament, appoint a day and hour for taking it into consideration. The law, therefore, which relates to renewed petitions, may be considered as no longer in force in Great Britain, since such petitions are not required by the new Act, but the House, of its own accord, must enter into the consideration of those that have been before presented (f).

(b) 1 Dougl. 84, Introd.

(c) Northampton Case, 1 Dougl. 82,

(d) Prov. Act. 4 Geo. IV. ch. 4, s. 29.

(e) 2 Peckw. 146, n.

(f) Finnely's Elec. Law, 89.

By a Resolution of the House of Commons (*g*), whenever a Petition complaining of an undue election or return shall be offered to be presented to the House, within the time limited for receiving them, such petition shall be delivered in at the table and be read, without a question being put thereon. Petitions to be received without a question put.

There is also a Resolution of the 25 May, 1784, embodying the substance of several former Orders, that whenever several Election Petitions shall, at the same time, be offered to be presented to the House, the Speaker shall direct such petitions to be all of them delivered in at the table, where they shall be classed and read in the following order, viz.—such petitions as complain of double returns (or of no returns (*h*), ) in the first class; such as complain of the Election or Return of Members returned for two or more places, in the second class; such as complain of Returns only, in the third class; and the residue of the said Petitions in the fourth class. And the names of the places to which the petitions contained in the first class (if more than one) shall relate, shall, in the first place, be written on several pieces of paper of an equal size, which shall be then rolled up, and put by the Clerk into a box or glass, and then publicly drawn by him; and then the like method shall be observed with respect to the several petitions contained in the second, third and fourth classes respectively. Classifying Petitions.

Petitions may be withdrawn upon matters which may have arisen since their presentation, upon the same being stated upon oath to the satisfaction of the House (*i*). Petitions withdrawn.

Upon the Petition being duly presented, the House must appoint some day and hour for its consideration, and the Speaker shall forthwith give a written notice to the Petitioners and the sitting Members, &c. to attend at the When to be considered.

(*g*) 6 Dec. 1774.

(*h*) By a Sessional Resolution of the House.

(*i*) 9 Geo. IV. ch. 22, s. 9.

bar of the House on that day by themselves, their counsel or agents; this day, however, may be altered, but notice must be given of the new day appointed.

(By Sec. 3 of the Provincial Act, no Petition is to be considered within fourteen days of its reading by the Clerk.)

If the Petitioners do not attend, the Petition shall not be proceeded with.

No Return.

The Statute 25 Geo. III. ch. 84, provides for the case of Petitions complaining of *no* return having been made, or of its not being made in due time, &c.

Form of Petition.

In framing the Petition, there is no technical form prescribed or settled by usage. It may be drawn up in general terms; so, however, as the matter charged be distinctly stated in the form of a complaint (*k*).

Petition to be allowed to defend the seat.

There are four cases in which a voter may petition to be admitted a party in the room of the sitting Member, to defend the seat,\* viz.:—1st. If the sitting Member vacate his seat, or decline defending; 2dly, If he be made a Peer; 3d. If the House shall have resolved that his seat is become vacant; and 4th, If the Member shall declare to the House, by a notice in writing, that it is not his intention to defend his seat. In either of these cases the House may adjourn the consideration of the Petition for thirty days, in order to give time for the voter to make his arrangements for the defence. All Petitioners must enter into good Recognizances before the Speaker, to be examined and allowed by him, within fourteen days after the presentation of the Petition, or a further time to be limited by the House, for the payment of Costs, &c. and for complying with other conditions mentioned in the Act 9 Geo. IV. ch. 22. And by an Order of the House (*l*), Examiners of Sureties must meet

Recognizances.

(k) Dwar. 176.

(l) C. J. 11 Feb. 1789, & 16 Feb. 1829.

\* For the form of such a petition, see *Appendix VII.*

in a Committee-room to examine into their sufficiency, at such time as they may appoint, within the time limited by the Act 9 Geo. IV. ch. 22 (*i. e.* seven clear days). And the Examiners are required to give three clear days' notice in writing, to be affixed in the lobby of the House of Commons, of the time and place of such examination.\*

If Recognizances be not given, the Speaker reports it to the House, when the order for taking the petition into consideration will be discharged, unless the House see special cause to enlarge the time. For form of Recognizance see *Appendix VIII.*

Speaker's report that they have not been made, discharges the Petition.

*By Provincial Statute Recognizances for the above purposes, are not required, but they must in like manner be entered into, to bind the parties to appear and prosecute the petition. For form of this Recognizance see Appendix IX.*

Recognizances in Canada.

The time for entering into Recognizances cannot be enlarged more than once, or for any number of days exceeding thirty (*Prov. act, twenty*), nor the name of a

Time for entering into, enlarged.

\* TABLE OF FEES that may be demanded and taken by the Examiners and other persons, for their attendance and trouble respecting such Recognizance, in pursuance of a Resolution of the House, of the 16 February, 1829:

£. s. d.

To each of the said Examiners, for his pains and trouble respecting the examination of the sufficiency of the surety or sureties in any Recognizance, or respecting the taxation of any Bill of Costs, Expenses or Fees, upon which an Order of Reference shall have been made by Mr. Speaker to such Examiners,—for the first day of attendance, the sum of .....	3	3	0
For every subsequent attendance, the sum of .....	2	2	0
To the Speaker's Secretary, for his pains and trouble respecting any such recognizance, and all matters relating thereto, the sum of .....	1	0	0
To the Clerk who shall be appointed to attend the said Examiners, for his pains and trouble, on every attendance, the sum of .....	2	2	0

Memorandum: That if Orders of Reference are made upon two or more Bills of Costs, Fees or Expenses, arising on the same Petition, each day of meeting shall be considered as one attendance.

surety be changed more than once (*m*). *This is not provided by the Provincial act.*

Persons living more than forty miles from town may enter into recognizances before a Justice of the Peace, and the Examiner of sureties may decide upon their sufficiency by Affidavits sworn before a Master in Chancery, or a Justice of the Peace (*n*). *There is no such provision in the Provincial statute.*

How forfeited.

*If the Recognizance become forfeited, the Speaker of the House of Assembly shall certify the same into the Court of King's Bench, and cause his certificate and the Recognizance to be delivered to the Chief Justice of that Court by the Clerk of the House (o), and it will thereby become estreated.*

Petitions considered.

On the day appointed for the consideration of the Petition, if one hundred (*thirty*) members do not attend, the House shall adjourn from day to day (except Sundays, Christmas Day and Good Friday) till there shall be one hundred (*thirty*) members present, and on such a day the House shall not proceed to any other business previously to reading the order of the day for considering the petition,\*

(*m*) 9 Geo. IV. ch. 22, s. 5. (*n*) 9 Geo. IV. ch. 22, s. 8. (*o*) Prov. Stat. s. 29.

\* By the Provincial Act 8 Geo. IV. ch. 5, it is enacted, that at the time appointed for trying any controverted Election, both parties shall deliver in to the Clerk of the House, a list of the Witnesses required by them for their support, with the places of their residence, which is to be read by the Clerk in his place.

In Canada, List of Witnesses to be delivered in.

And where it appears that the expence of the attendance of such witnesses would be considerable; or if the parties desire it, the House will appoint three Commissioners (one of whom, with the Chairman, shall be a quorum) to examine such witnesses when and where the House shall direct.

Commissioners to examine them may be appointed.

These Commissioners must be sworn by the Chairman, he himself having first taken the oath in their presence (*For the Form of Oath. see Appendix X*). They must meet every day (Sundays and holidays excepted) and shall not adjourn for more than twenty four hours, except in cases of death, sickness, unavoidable absence of one of them, or removal to another place of meeting.

Powers, Regulations, &c. of Commissioners.

They may appoint a Clerk to take down their proceedings, with the evidence, &c. adduced before them, who must be sworn by them, or any one of them, with the Oath contained in *Appendix XI*. And the Clerk is authorized, at the request of either of the parties, to furnish them with copies of the proceedings and evidence, for which he may charge them sixpence per folio.

The Commissioners may demand fifteen shillings a day for themselves, and ten

except swearing in members (*this is the only exception by Provincial Act, sec. 7*;) receiving reports from select committees, amending a Return, attending His Majesty, or a Commission in the House of Lords, receiving a message from the Lords, or proceeding upon the order of the day for the call of the House, and making other orders for enforcing the attendance of members.

Before the order of the day for the consideration of the Petition is read, the Serjeant at Arms must go with the mace to the places adjacent and require the attendance of Members. After his return, the House must be counted. If on summoning and counting the House, 100 (*or by*

Members summoned.

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shillings a day for their Clerk, while employed in their duty. This expense is to be borne equally, in the first instance, by the parties, and eventually by the person who shall by law be subject to the costs of such election:

The Commissioners have likewise power to summon the Witnesses on the above-mentioned list, and examine them upon oath, a reasonable sum being paid them for attending, if required.

And if any person refuse to appear, or is guilty of contempt to the Commissioners in the execution of their duty, they may be fined a sum not exceeding £20, to be recovered in a summary manner before the Commissioners, and in case of non-payment, by distress of goods—or, if there should be no effects, committal to the Gaol of the District for a term not exceeding six months. Such fines to be paid to the Receiver-General, for the public uses of the Province.

After the Evidence is closed, the Commissioners must transmit a certified copy of their proceedings, with the evidence, to the Speaker of the House of Assembly, to be by him delivered to the Chairman of the Election Committee—who are to make the same use of it, as if it had been delivered *viva voce* before them.

Its Proceedings and Evidence to be sent to the House.

And if the Commissioners' Return shall not have been made on the day appointed for the meeting of the Select Committee, they may adjourn from day to day until it is received, or until the House shall dissolve them for want of such return. But no such dissolution being made is to extend to prevent another Committee being appointed for the trial of such contested Election.

If not sent.

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It is also required by a Standing Order of the House of Assembly of Upper Canada (*vide M.S.S. Journals, 1825, p. 48*), That in all cases of Controverted Elections in the Province, the Petitioners do, by themselves or their Agents, within a convenient time to be appointed by the House, deliver to the Sitting Members or their Agents, a list of the persons intended by the Petitioners to be objected to, who voted for the Sitting Members—giving, in the said lists, the several heads of objection, and distinguishing the same against the names of the voters excepted to; and that the Sitting Members do by themselves or their Agents, within the same time, deliver similar lists on their part to the Petitioners or their Agents.

Lists of intended objected votes to be exchanged between the parties.

*Provincial act, 4 Geo. IV. ch. 4. Sec. 4, thirty*) Members are present;\* the parties, their counsel or agents, attend at the Bar, and the door is locked, and the Order of the Day then read.

Ballot for Com-  
mittee.

The names of all the Members are then put into six (*three*) ballot boxes or glasses, in equal numbers, (*and then shaken together,*)—such names having been previously written, (*or printed,*) on slips of paper (*or parchment*) by the Clerk, as near as may be of equal size. and put into a box by him in presence of the Speaker, and the Speaker having sealed the box, and affixed his written attestation thereto,—and the Clerk shall draw a name from each of the glasses in rotation, which shall be read by the Speaker aloud, till the names of thirty-three (*twenty-three*) Members present are drawn. Members who have voted at the election in question, or who are petitioners or petitioned against, or whose return shall not have been brought in fourteen days, must be set aside, for they cannot serve, and persons who are sixty years of age, or upwards, or who have served before that session, are excused, if they require it (*by Provincial act, Members who have served before are not excused if the House resolves that the number is insufficient without them*); and others who can show any material reason may also be excused by Resolution of the House. But such reason must be verified on oath, and taken down by the Committee clerk, that it may be afterwards entered on the Journals. In the place of members so set aside or excused, the names of other members shall be drawn, till thirty-three

Who excused  
from serving.

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\* But if more Committees than one are to be appointed the same day, on different petitions, the numbers required to be present at the counting of the House are—

To form a list for more than one Committee, 120.

————— for more than two Committees, 180.

————— for more than three Committees, 240 are requisite (9 Geo. IV. ch.

22, s. 20.

There is no similar provision in the Provincial Act.

(*twenty-three*), are selected. If the number of thirty-three (*twenty-three*) not set aside or excused, cannot be completed, the House shall then adjourn from day to day in like manner as if the requisite number of one hundred (*thirty*) members were not in attendance.

By Provincial act, after the number is completed, each of the parties is allowed to name one additional member to serve on the Committee, from among those present whose names shall not have been drawn. But such nominees may be set aside or excused in the same manner as the members balloted for, and other members nominated in their place.

Nominees appointed by parties.

After thirty-three (*twenty-three*) names are drawn, lists of them shall be given to the respective parties, who shall withdraw, together with the Clerk of the committee. And the doors shall then be opened, and the House may proceed upon any other business.

Parties must withdraw to reduce List.

The Provincial act provides that immediately after the parties have withdrawn, any member may require that the names left undrawn at the Ballot, be read by the Clerk.

The parties having withdrawn, shall then alternately strike off one from the list,—the petitioners beginning—till the number is reduced to eleven (*nine*).

List reduced.

The Provincial act does not allow the nominees to be struck off. And the Committee clerk, within half an hour (*one hour*) at farthest, from the time the parties withdrew, must deliver into the House the names of the eleven (*nine*) members remaining, who shall constitute the Select Committee.

If there are three parties, they shall alternately strike off one, the order in which they shall do it, to be determined by lot. (If there are more than two parties, neither of them are allowed by the Provincial act to nominate a member.)

Where there are three parties concerned.

After the list of nine members shall be returned to the

Reduced list to  
choose two mem-  
bers.

*House, such nine members shall immediately withdraw, and themselves choose two members as aforesaid, and report them to the House within one hour; such members to be liable, like the others, to be set aside or excused. When they are selected, their names shall be added to the list of the Committee, and the eleven sworn together by the Clerk at the Table.*

Nominees.

*The Provincial Act further provides that if any member shall be drawn at the Ballot whom either party intended to be their nominee, he shall if he consent, be set aside, and unless objected to, shall serve as such nominee. And if either of the parties decline to nominate a member, his place shall be supplied by a member chosen by Ballot.*

Proceedings on  
no Return.

The proceedings are the same if the Petition should complain of no Return having been made within the time required by Law. The House can then order the returning Officer to appear by himself, his counsel, or agents, and if he attend—and more Petitions than one are presented, on distinct interests or different grounds,—the House shall determine, from the nature of the case, whether he is entitled to reduce the list with the petitioners; or, if he do not attend, the House may authorise some one to appear for him, and join in the reduction.

Committee ap-  
pointed and  
sworn.

The members of the Committee, being appointed and sworn\*, shall then be ordered by the House to meet within twenty-four hours (unless a Good Friday, Sunday or Christmas Day intervene); and they cannot adjourn for more than twenty-four hours (except as aforesaid) without special motion, and leave of the House, stating the cause. And no member of the Committee shall absent himself without such leave, or an excuse allowed by the House at its next sitting, on special cause shown and verified upon oath,—under penalty of being reported to the House by the Chairman, and dealt with accordingly.

\* For the form of Oath, see *Appendix XII.*

The Chairman of the Committee is elected by them-<sup>Chairman.</sup> selves, and on an equality of voices, the member whose name was first drawn in the House shall have the casting vote, so also, in the election of a new Chairman (p).

The Committee must not sit until all its members to<sup>Sitting and</sup> whom leave has not been granted, are present, and if all do<sup>Adjournment</sup> not meet within one hour of the time appointed, a further<sup>of Committee.</sup> adjournment shall be made, and the cause reported to the House. If more than two Members are absent on any account, the Committee are to adjourn (q). If the Committee be reduced by death or otherwise to less than nine, for three sitting days, it is dissolved, and another must be appointed; unless they have sat fourteen days, in which case they may proceed with eight members. (*This exception is not allowed by Prov. Act.*)

All the Members take a solemn oath in the House, that<sup>Its Members</sup> they will give a true judgment according to the evidence;<sup>Sworn.</sup> and every question is determined by the majority, and cannot be put unless the requisite number of Members is present; neither can any Member vote on such determination who has not been present during every sitting.

The Committee having met, the Clerk reads the Petition, as also the last determination upon the right of election, if there be any, and the Standing Order of the House prohibiting the offer of evidence upon the legality of votes contrary to such determination (r). *There is no Provincial Standing Order to this effect.* <sup>Proceedings before the Committee.</sup>

The Committee may send for persons and papers,\* and examine witnesses upon oath, a power which the House of Commons does not possess; and if they report that the petition or defence is frivolous or vexatious, the party

(p) 9 Geo. IV. ch. 22, s. 37.

(q) 2 Peckw. 294, 339. Rogers, 88.

(r) S. O. H. of C. 16 Jan. 1735-6.

\* For the form of Speaker's Warrant for the production of papers, or attendance of Witnesses, before the Committee, see *Appendix XIII.*

aggrieved shall recover costs. They have likewise power to punish witnesses for prevarication, non-attendance, &c. (s), by warrant to the Serjeant-at-arms for their committal for twenty-four hours,—and to direct the Chairman to report such misbehaviour to the House, for the interposition of their authority. (*By the Prov. Statute, the Committee have only power to report such conduct to the House.*)

Counsel.

Two Counsel only, on each side, are allowed to be heard before a Committee (t). The statement in writing, of the right of election, or of choosing Returning Officers, is usually delivered before the Petitioner opens his case. It must not be different from the allegations in the Petition.

The Counsel for the Petitioners then proceeds to open his case, in the largest and most general way, in order to let in as much evidence as possible. Where there are several questions, the cases are sometimes separated, and considered distinctly; and this is not done by any certain or general rule, but as justice and convenience require in each particular case.

Witnesses.

The oath to witnesses is administered by the Clerk of the Committee, as under the Grenville Act. By the practice of committees (v), a witness produced for a particular purpose is not to be subjected to a general cross-examination; in other respects the rules of evidence in the Courts of Law are observed. The minutes taken by the shorthand writer are copied for the agents on both sides, and delivered out daily to them by the Clerk. While the case proceeds, they are in the power of the Committee, and may be amended by consent.

Evidence.

According to this evidence of sworn witnesses, the Members of the Committee, agreeably to the solemn oath taken by them in the House, give a true judgment.

(s) 9 Geo. IV. ch. 22, s. 39.

(t) Shepherd, 104.

(v) 2 Starkie's Reports, 472.

At the termination of the enquiry the Committee report their determination to the House, who order the returns to the Writ to be amended accordingly, if necessary; or a new Writ to be issued, and the determination carried into execution, — and thus the election is definitively decided.

Committee report determination.

The Committee may also when the Chairman reports their final determination, report Resolutions upon other matters; and the House may confirm or disagree with such Resolutions, and make such orders thereon as to them shall seem proper.

And other Resolutions.

If Parliament be prorogued while the Committee is sitting, it is not thereby dissolved, but only adjourned to the next day after the meeting of Parliament, when it is to continue its proceedings. (*There is no such provision in the Provincial Act*).

Committee not dissolved by prorogation.

When the Committees' decision has turned on the right of election in any place, any person within six months after the Report, may petition to be admitted to oppose the right declared valid, and within twenty-one days after the expiration of the six months, a day and hour shall be appointed by the House for considering the same, and notice thereof inserted in the Gazette and given to all the parties; but if no such petition be presented within such time, the judgment of the Committee shall be final and conclusive (*w*).

Petition against Committee's decision.

At the time appointed for considering the Petition the House shall appoint a Committee in the same manner as the Committee on the original petition, and the determination of this Committee of Appeal shall be entered on the Journals, and be final. All the regulations, powers, &c. of Election Committees, are applicable to Committees of Appeal, excepting that no member of the original Committee whose determination is called in question by the

Committee of Appeal.

petition of Appeal shall serve upon this Committee (x). *There is no provision made for Committees of Appeal by the Provincial Statute.*

Petition against  
the Register of  
Voters.

By the Reform Act (y), upon any petition complaining of an undue election or return being presented, any petitioner, &c. defending such Election may impeach the correctness of the register of voters, by proving fraud, &c. in the insertion, or that the name of any person tendering his vote was improperly omitted,—and the select Committee on the Petition shall alter the Poll taken, according to the truth of the case, and report their decision to the House, which shall be carried into effect, and such order made thereon as the House shall deem fit. *There is no similar provision to the above provided by any Provincial Statute.*

Costs.

The Act 9 Geo. IV. ch. 22, it has been before stated, requires a Recognizance to be entered into for the payment of costs, but the Provincial Act does not. The provisions for their recovery, however, are similar in both statutes.

How recovered.

When the Committee on a Petition report it to be frivolous or vexatious, costs, if not paid on demand,—shall be recovered by the opposing party by action of debt *in Her Majesty's Court of Queen's Bench in this Province*, or in any of Her Majesty's courts of record at Westminster. And where the Committee report in favour of the Petitioners, the costs and expenses can in like manner be recovered by them from the opposing party. And when no party appears in opposition to any Petitioner, the costs and expenses can be recovered from the sitting members (unless they have given notice that they shall not defend), or any persons whom the House have admitted or directed to oppose the same.

(x) 9 Geo. IV. ch. 22, s. 54, 55.

(y) 2 Wm. IV. ch. 45, s. 70.

The amount of these costs, &c. is to be ascertained by the taxation of two persons appointed by the Speaker out of certain persons specified in the Act (*or in Canada, by the Clerk of the House, and the Clerk of the Crown in Chancery*), and under his direction. And the Speaker will certify the amount of costs to be recovered according to their report, which certificate (*together with certified proceedings of the House on the Petition*) will have the effect of a warrant of Attorney to confess the judgment. And ascertained.

Also, the Recognizance entered into by the Petitioners for the payment of costs, &c. may, on non-payment, be certified by the Speaker's warrant, into the Court of Exchequer, as if it were estreated. (*The Prov. Act does not require this Recognizance.*) How Recognizance estreated.

When the Costs have been recovered against either of the parties, he or they may recover a proportion of them against others who may be liable. Share of Costs recoverable from parties.

By the Imperial Act, the persons appointed to tax the Costs, &c. are entitled to such fees for the same as may be fixed by a Resolution of the House;\* and in all cases

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\* By a Resolution of the House of Commons, on the 16 Feb. 1829, the following Fees may be demanded and taken by the Examiners and other persons, for their attendance and trouble respecting the Taxation of all Costs and Expenses of Election Petitions, under the authority of the 6 Geo. IV. ch. 123—"To establish a Taxation of Costs on Private Bills in the House of Commons," viz.:

£. s. d.

To each of the said Examiners, for his pains and trouble respecting the Taxation of any Bill of Costs and Expenses, upon which an Order of Reference shall have been made by Mr. Speaker to such Examiners, for the first day of his attendance, the sum of .....	3 3 0
For every subsequent attendance, the sum of .....	2 2 0
To the Speaker's Secretary, for his pains and trouble respecting the Taxation of every such Bill, the sum of,	1 6 8
To the Clerk who shall be appointed to attend the said Examiners, for his pains and trouble on every attendance, the sum of .....	2 2 0

All the other Fees payable upon the Trial of Controverted Elections (under the Table of Fees of the 22nd February, 1731, and the 4th of April, 1803), except

they are to allow such reasonable costs as between Attorney and Client.

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the above and those payable to Examiners of Recognizances, were abolished by Resolution of the House on the 2d Feb. 1838.

And on the same day, it was Resolved,—That the charge for Office Copies of Papers and Documents relating to Controverted Election Petitions, directed to be lodged in the office of the Clerk of the House of Commons, or which may be produced before Controverted Election Committees—and also of Minutes of Evidence taken before such Committees, furnished to parties upon their application for the same—be at the rate of fourpence per sheet of seventy-two words in each sheet.

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## C H A P. VI.

## Rules of Proceeding in the Two Houses of Parliament.

The authority for summoning Parliament is vested in the Sovereign alone,\* who has also power to direct the place of its assembly (*a*):—during his absence from the Realm, however, it may be done by the **CUSTOS REGNI** for the time being;—or during his minority, or mental

Parliament summoned by the King.

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(*a*) See C. J. vol. 56, page 2.

\* Nor is it an exception to this rule, that by some modern statutes, on the demise of a king or queen, if there be no Parliament in being, the last Parliament revives, and is to sit again for six months, unless sooner dissolved by the successor:—for this revived Parliament must have been originally summoned by the Crown. By statute 16 Car. I. ch. 1, it was enacted, that if the King neglected to call a Parliament for three years, the Peers might assemble and issue writs for choosing one; and in case of neglect by the Peers, the people might meet and elect one themselves. This act, however, being deemed injurious to the Royal Prerogative, was repealed by the 16 Car. II. ch. 1. There are, indeed, two capital exceptions to this rule, but which were justifiable on the principle of necessity, which supersedes all law. The Convention Parliament, that restored Charles II., met more than a month before his return; the Lords by their own authority, and the Commons in pursuance of writs issued in the name of the Keepers of the Liberty of England by the authority of Parliament; and this Parliament sat seven months after the Restoration, and enacted many laws still in force. But the first act, after the King's return, was the passing of a Bill declaring this to be a good Parliament, notwithstanding the defects of the King's Writs. And it was thought farther necessary to confirm its Acts in the next parliament, by the 13 Car. II. ch. 7 & 14. The other exception occurred at the time of the Revolution of 1688, when the Lords and Commons, by their own authority, and upon the summons of the Prince of Orange (afterwards William III.) met in a Convention, and disposed of the Crown and Kingdom. The Throne at this time was vacant, by the abdication of James II., and there existed no other authority by which the summons could be made; but it was considered necessary to declare by the 1 Wm. & Mary, sess. 1, ch. 1, that this Convention was really the Two Houses of Parliament, notwithstanding the want of writs, and other defects of form.

incapacity (if such should unfortunately occur), the RE-  
GENT, or *Protector Regni*, is similarly empowered. The  
mode of summons is as follows:—

Writs of Sum-  
mons.

At least forty days\* before the time intended for the  
meeting of Parliament, the King issues his Writs by the  
advice of his Council; the warrant being “*Per ipsum*  
“*Regem et Consilium.*” These Writs,† which are in the  
form of short letters or epistles, are addressed and sent to  
each‡ of the Lords Spiritual and Temporal; the former  
being commanded “*in Fide et Dilectione*” (in their fidelity  
and attachment), and the latter “*per Fidem et Allegi-*  
“*antiam,*” (by their Fidelity and Allegiance) to appear at  
a stated time and place, to give their advice in certain  
important questions which concern the welfare of Church  
and State. Other Writs are sent to the Sheriffs of each  
County (*b*) commanding them to summon the people to  
elect the Knights, Citizens, and Burgesses to represent  
them in Parliament according to Charter, Statute, or  
Ancient Custom.

To Lords.

For election of  
Commons.

King opens  
Parliament.

On the day appointed in the Writ of Summons (unless  
the Parliament has been further prorogued) the King pro-  
ceeds to the House of Lords, and having taken his seat  
on the Throne, and returned the obeisance of the Prelates  
and Peers who stand at their respective places, in their  
Robes of State and Office, he sends for the Commons by  
the Gentleman Usher of the Black Rod.

That Officer immediately proceeds to the Lower House,  
and when arrived at the Bar, makes a bow to the mem-

(*b*) See 7 & 8 Wm. III. ch. 25, and 59 Geo. III. ch. 89.

\* Writs for the election of Members in Canada must be made returnable with-  
in 50 days at farthest, from their dates.—31 Geo. III. ch. 31, s. 18.

† For the form of the Writ of Summons to Peers, see *Appendix XIV.* and of  
the Writ for the Election of Members of the House of Commons, see *Appendix XV.*

‡ In ancient days some of the Peers only were summoned, for it would have  
been difficult and inconvenient to have summoned them all, being so numerous  
as to amount at one time to about 3000 (1); but on the establishment of a Par-  
liamentary Peerage, or House of Lords, by Edward I., every Peer of full age by  
right had a writ of summons, *ex debito justitia.*—1 Inst. 1.

(1) Seld. Tit. Hon. 692.

bers, then advancing a few paces farther, he repeats his obeisance a second and third time, saying "Gentlemen of the House of Commons, the King commands this Honourable House to attend him immediately in the House of Peers." He then withdraws, retiring backwards and bowing.

The Commons forthwith attend His Majesty by proceeding in a body to the Bar of the House of Lords; and having made their obeisance are then, in the King's name, commanded by the Lord Chancellor, or Lord Keeper, to choose a Speaker. Whereupon the Commons returning to their House make a choice of one of their members for that office, in the manner detailed in Chap. III. *On Speaker (of the House of Commons)*.

On the day appointed for the Speaker's presentation to the King the Usher of the Black Rod is again sent to the House of Commons, which he enters with the same ceremonies as before; but he now alters his style and addresses himself to the Speaker. The Commons then proceed to the Bar of the House of Lords with the Speaker at their head, and go through the ceremony of presentation as detailed in the Chapter above referred to.

Speaker presented for the Royal approval.

If the Parliament be opened by Commission instead of by the Sovereign in person, the Commissioners are to sit in front of the Throne (c).

If opened by Commission.

On the departure of the King and return of the Commons to their own House at the beginning of every session of Parliament, before proceeding to the consideration of the Speech from the Throne, it has been the usual (d), though not the invariable (e) practice, in both Houses, to have a Bill, which has been prepared by the Clerk, read

Bill read *pro forma*.

(c) Elsy. 206.

(d) C. J. 22 Mar. 1603; 7 April, 1614.

(e) *Contra*, 20 Mar. 1663; 9 April, 1713.

*pro forma*.\* This is done in the House of Lords by the authority of a standing Order (*f*), and in the Commons by an established custom. The ground of this proceeding appears to be—that from the reading of a Bill only, does the session commence, and those privileges be secured which were considered to belong only to a Parliament that had *met* and *sat*. But another reason, scarcely ever disputed, and which is constitutionally sound is, that the Parliament thereby asserts the claim of not being obliged to give precedence to the subjects contained in the Royal Speech (*g*). It takes precedence of even questions of privilege (*h*), but if the House think fit, they can suspend it until after the consideration of other matters (*i*).

This practice is generally adhered to in Colonial Legislatures, but a motion made to introduce it in the House of Assembly of this Province was lost (*j*).

Speech from the  
Throne reported  
by the Speaker.

After a Bill is read *pro forma*, the Speech from the Throne is reported to the House, from a copy prayed by the Speaker. A vote of thanks for the Speech is then moved, and when carried, a day, commonly the next, is fixed for taking it into consideration in Committee of the whole. The Address of thanks is in the mean time, prepared and presented to the King in the manner detailed in Chap. XIII. *On Addresses*.

Address of  
Thanks.

The Sessional orders are then made, and the usual Committees appointed, see Chap. XII. *On Committees, (Standing and Sessional.)*

Parliament not  
to sit on Sunday.

Parliament should be held in a fit and proper place, to be appointed by the Sovereign; and it should not sit on

(*f*) S. O. H. of L. viii.

(*g*) 2 Hats. 292.

(*h*) C. J. 15 Nov. 1763.

(*i*) 2 Hats 78.

(*j*) J. H. of A. 1831, p. 5.

\* In the House of Commons, the same bill (for the prevention of clandestine Outlawries) has been read the first time at the commencement of the session for the last two hundred years.

Sunday (*k*), All Saints, or All Souls Days, except upon urgent occasions.

The deliberations of Parliament are preceded each day, immediately on the Speaker's taking the Chair, whether <sup>Prayers.</sup> there be a Quorum or not, with a form of prayer, an entry of which solemn rite is regularly made in the Journals (*l*). This has been the established practice from the beginning of the reign of James I. The only difference being, that prayers were formerly read by one of the Clerks, and are now said by the Speaker's Chaplain (*m*). In the House of Lords they are said by the junior Bishop.\*

The Chair is not taken, except to receive Black Rod, until a quorum of the members for business is assembled. <sup>Quorum.</sup> The number requisite to form a quorum is forty members† in the House of Commons, and two Peers and a Prelate (including the Speaker, if he be a Peer) in the House of Lords. The same rule extends also to Committees of the Whole. But if, after due waiting, such a quorum be despaired of, the Chair may be taken and the House adjourned until the next sitting day. And whenever during business, it is observed that a quorum is not present, any member may call for the House to be counted, and being found deficient, the House must be adjourned (*n*). The quorum in the Legislative Council of this Pro-

(*k*) For precedents of its having sat on Sunday, see 8 Mar. 1701; 1 Mar. 1714; 26 Oct. 1760.

(*l*) C. J. 30 May, 1604.

(*m*) Comyn's Dig. Parl. E. 2,

(*n*) 2 Hats. 125, 6; C. J. 5 Jan. 1640.

\* The Chaplains to the Legislature of this Province appear to be appointed by the Lieut. Governor; but the House of Assembly has dispensed with the services of a Chaplain. The last time prayers were read in that House was on the 21st November, 1831.

† It is alleged by several writers, that the cause for fixing upon this number was, that previously to the Parliamentary annexation of the twelve Welsh counties to those of England—which took place in 1535, by the 27 Henry VIII. ch. 26—the forty Members, so present, were presumed to be one from each County.

vince is six, and of the House of Assembly twenty-three (o).

Commencement  
of business.

It is a Rule in both Houses of the Canadian Legislature that immediately after the Speaker has taken the Chair (and Prayers have been read) the minutes of the preceding day shall be read by the Clerk, to the end that any mistake therein may be corrected by the House.

After which every member who has a petition to present must bring it up, see chap. XI. *On Petitions.*

After the Petitions are read (which cannot be until they have lain on the table two days) all notices of any intended motions must be made, and the House can then proceed to the consideration of the various items on the Order of the Day.

Adjournment of  
the House.

At the termination of each day's proceedings the House is adjourned. An adjournment is no more than the continuance of the Session from one day to another, as the word itself signifies (being derived from the French "*jour*," a day); indeed the whole Session is considered in law but as one day, and has relation to the first day thereof (p).

Motion for, al-  
ways in order.

Any member may move the question of adjournment at any time, even in the midst of a debate (q); it being always in order, except during a division when the House is actually engaged in voting. It is also in the power of the member to divide the House upon the question whether it shall adjourn or not; and directly the division is over, he can, if carried against him, move it again and compel a division as often as he pleases, thus completely putting a stop to the transaction of business.\*

(o) See J. H. of A. 1825-6, p. 116,—a precedent of the number requisite to form a quorum being altered, when from the unavoidable absence of the Members it was found needful.

(p) Bro. Abr. Parl. 86.

(q) L. J. 13 Jan. 1692; C. J. 22 April, 1712.

\* The celebrated Mr. Sheridan, on one occasion, moved the adjournment of the House nineteen successive times, and had as many divisions on the subject, the one following the other as fast as they could be taken. The House, seeing it was only wasting time to resist the adjournment any longer, at last reluctantly yielded.

A motion simply "to adjourn" (if it be made to supersede a question before the House,) cannot be amended, as by adding "to a particular day," but must be put "that this House do now adjourn," which if carried in the affirmative, adjourns it to the next sitting day; unless the House has previously come to a Resolution "that at its rising it will adjourn to a particular day," and then the House is adjourned to that day.\* But, says Hatsell (*r*), if it be an ordinary motion it will, like every other question, admit of an amendment by adding to a particular day.

Motions to adjourn.

Sometimes the House adjourns itself during pleasure or for a quarter of an hour (*s*). When an adjournment takes place, no member should leave his seat until the Speaker has passed on.

As to a motion to adjourn considered as a Privileged Question for superseding or avoiding a debate—see *post* page 132, "Privileged Questions."

When any special business is before the House, or when many of the members are absent without leave, it is usual to order a day to be appointed for the House to be called over. And sometimes the Speaker is directed to write circular letters to the Sheriff of each county to summon the members to attend, copies of which are always entered on the Journals (*t*). The first instance that is found on the Journals of the House of Commons of a Call of the House, was on the 5 Nov. 1549, and then only four days notice was given. The first notice of a call of the Lords that appears on the Journals, was on the 10 Feb. 1620. At the time of ordering the call there is always a Resolution made "that such members as do not attend,

Call of the House.

Members not attending, ordered into Custody.

(*r*) 2 Hats. 106, citing C. J. 17 Mar. 1704.

(*s*) See L. J. & C. J. *passim*.

(*t*) See C. J. v. 35, pp. 48, 477, and *passim*.

\* For want of such a Resolution, on Friday, the 3d February, 1764, the House was obliged to sit on Saturday, though no business required it; attempts were made to amend the question "to adjourn," by adding "till Monday," but on consideration, this was decided to be irregular.—2 Hats. 108.

“ shall be taken into custody,” and although any reasonable excuse for non-attendance is admitted, and it has seldom been found necessary to enforce the call of the House, by ordering members who do not attend into the custody of the Serjeant, yet some instances have occurred of late years, of the House acting upon the above resolution (*u*).

Names called over.

When the calling takes place the names of such members as are present are marked, and the defaulters being called over again the same day, or the day following, and not appearing, are then summoned or sent for by the Serjeant-at-Arms as stated above (*v*).

Orders for calls on different days may subsist at the same time (*w*).

A member of the House of Lords may attend by proxy, but a member of the House of Commons must attend in his own person, he being himself but a proxy for others.

Roll from which Peers are called.

In the House of Lords, the Garter King-at-Arms delivers in on the first day of a new Parliament, and also of every new Session of Parliament (except in a few instances where no alterations have taken place), a Roll of the Lords Spiritual and Temporal; and by this Roll, when occasion requires the Lords are regularly called.

Voting in the Lords.

In a division upon any question in the House of Lords, upon an equal number of votes appearing on both sides, the *nays* have it (*x*), the rule being *semper præsumitur pro negante*. And in voting, the lowest Baron, after the question is put begins first, and every Lord rising in his turn, uncovered, says “content” or “not content” (*y*),—and if there be a division the *Contents* go below the Bar, and the *Not Contents* stay within the Bar (*z*). After the House

(*u*) C. J. 15 Feb. 1781; 17 Mar. 1831.

(*v*) S. O. H. of C. xcii.

(*w*) 2 Hats. 72.

(*x*) L. J. 25 June, 1661; 28 June, 1816; Lee's Patent.

(*y*) S. O. H. of L. xx.

(*z*) S. O. H. of L. xxii.

hath divided upon a Question, no Lord is to depart out of his place, until the House hath entered upon some other question (*a*).

In the House of Commons the act of the majority, openly declared, binds the whole. Any member upon a question has a right to demand a division, and in that case it is the Speaker's duty (*b*) to proceed at once to take the sense of the House. This is done in the House of Commons as follows. The Speaker appoints Tellers, two of each party indifferently, who are to report to him the state of the votes.

In the House of Commons.

But before the House proceeds to a division, either in the House or in a Committee of the whole, indeed before the question is put upon which a division is likely to take place, the Speaker or Chairman should take care that all strangers are withdrawn (*c*),\* that Members may not be influenced in voting by their presence.

House must be cleared before division.

Formerly, the votes were taken by one side going forth, and the other remaining in the Chamber, but this practice having been found to be attended with many inconveniences, Members now (*d*) divide into two separate lobbies provided for the purpose, at the entrance of each of which two of the Tellers are to station themselves, each accompanied by two Clerks. Then, by the Speaker's (or Chairman's) order, the lobby-doors are simultaneously opened, and the names of the Members taken down by the Clerks on ruled paper, with numbered lines (or marked off upon a printed List), as they re-enter the House by the opposite door, the Tellers counting. The votes being

Manner of taking a Division.

(*a*) S. O. H. of L. 13 Mar. 1670.

(*b*) C. J. 24 Mar. 1603.

(*c*) C. J. 10 Dec. 1640.

(*d*) C. J. 18 Feb. 1836.

\* There is no Standing Order of the House of Assembly in this Province requiring the House to be cleared preparatory to a division, but by a Rule of the House it is provided "That any Member may, at any time, desire the House to be cleared of strangers, and the Speaker shall immediately give directions to the Sergeant-at-arms to do so, without debate."

taken, the two Tellers who have the majority take the *right* hand (or, if the votes be even they go up promiscuously), and all four placing themselves within the Bar, advance towards the table, making their obeisances as they go up, where they deliver the lists (for insertion in alphabetical order in the votes), saying "The Ayes are so many, the Noes are so many," or *vice versa*. This the Speaker repeats, declaring the majority.\*

In Canada.

[In Canada, the votes are taken by the Clerk at the table, who marks off the names of the Members as they are called out to him by the Chamber messenger, the "Yeas" on the question rising first at the command of the Speaker, and remaining standing till all their names have been taken down, when the "Nays" at a similar command also rise. But in Committees of the whole, the votes are taken by Members dividing to the right and left, Tellers being appointed by the Chairman, who report the majority.]

Rules for voting  
in the Commons.

While the House is telling, no Member may speak, or move out of his place, except as he is required in taking the division.

A mistake in the report of Tellers may be rectified after the report is made (e). In the House of Commons, every Member must give his vote on one side or the other (f), as no one is permitted to withdraw who is in the House when the question is put, nor may any one be told in the division who was not in when the question was put (g). This rule extends to all cases where the vote is by *yeas* and *nays*, where the negative as well as the affirmative of the question is stated by the Speaker at the same time, and the vote of both sides begins and proceeds *pari passu*.

(e) 2 Hats. 145 n.

(f) Scob. 24.

(g) 2 Hats. 140.

\* By a Resolution of the House of Commons on the 1 Feb. 1837, the present mode of publishing Division Lists in the Votes shall be extended to Divisions when the House is in Committee, in all cases where five Members shall require it.

If any difficulty arise in a point of order during the division, the Speaker must decide peremptorily, subject to the future censure of the House, if irregular. He sometimes permits experienced Members to assist him with their advice, which they do, sitting in their places, covered, to avoid the appearance of debate; but this can only be with the Speaker's leave, else the division might be protracted an unlimited time (*h*).

Point of order during a division

When on counting the House on a division, there appears to be no quorum, the matter remains in the same state in which it was before the division, and must be resumed at that point at a future day (*i*).

If no Quorum.

May 1, 1606, on a question whether a Member, having said *yea*, may afterwards sit and change his opinion? a precedent was remembered by the Speaker, of Mr. Morris, in the 39 Eliz., who in a like case changed his opinion (*k*).

In the arrangement of business, there was formerly no precise rule by which any Bill or matter could be taken up, the Speaker being generally left to his own discretion—unless the House on a question decided to take up a particular subject (*l*). But, however, a settled order of business is necessary to the proper management of it; and to prevent any partiality in the arrangement, it is now provided that business shall be conducted as much as possible in a regular and methodical manner, and that that business shall first claim attention which is first before the House, with exceptions as to certain cases, as matters of privilege, which it will be shown, take pre-eminence of all other questions.

Order of business in the House.

A Member intending to make a motion, should regularly give notice thereof on a previous day. In the House of Commons, no notice can be given of an intended motion

Notices and Motions.

(*h*) 2 Hats. 143.

(*i*) 2 Hats. 126.

(*k*) Hakew. 27.

(*l*) Hakew. 136.

for a period of *more* than fourteen days. By a rule of the House of Assembly in this Province, at least one day's notice must be given.

The Motion should be made in writing, and sent to the Speaker, that he may read it to the House as often as requested by any Member (*m*). It cannot, however, be put to the question, or debated, until it is seconded (*n*). which done, it is in the possession of the House, and cannot be withdrawn but by leave of the House (*o*), and with the consent of the gentleman who seconded it.

All motions should be made by the Member *in his place*, except when the practice of the House has established, for convenience, a different course. For the facility and despatch of business, however, questions of course, as appointing persons to bring in Bills, &c. are put, without being formally moved.

Motions for new Writs, or on Privilege.

And a motion for a new writ, or on matters of privilege, the House is at all times ready to receive, and no previous notice or leave is requisite.

Privileged Questions, viz. :—

It is a general rule, that the question first moved and seconded shall be first put (*p*). But this rule gives place to what may be termed Privileged Questions; and the Privileged Questions are of different degrees among themselves, as follows:

To adjourn.

*A Motion to Adjourn* takes place of all others, and can be moved at any time; otherwise the House might be kept sitting against its will and indefinitely (*q*). But this motion cannot be received after another question is actually put and while the House is engaged in voting.

If a motion to adjourn the House be carried without the motion before the House at the time being first disposed of, it supersedes that question and prevents it from being

(*m*) 2 Hats. 82.

(*n*) Scob. 31.

(*o*) C. J. 10 April, 1571.

(*p*) 2 Hats. 81.

(*q*) C. J. 10 Mar. 1757.

again proposed during the session (*r*). If therefore, a member wishes to move for an adjournment of the House without superseding the pending question, he should first move for an adjournment of the *debate*, and if that be carried, then for an adjournment of the House. This, however, only relates to motions; for if the question interrupted by a vote of adjournment be one of which the House has been previously in possession (as any part of the progress of a Bill), although that question will not stand before the House at its next sitting, yet it may be brought before them again, in the usual manner.

It has been shown (*see ante p.* 127) that a motion to adjourn, when used as a Privileged question, cannot be amended, as by adding, to a particular day.

*Orders of the Day* take place of all other questions except that of adjournment (*s*). That is to say, the question which is the subject of an order is made a privileged one, *pro hac vice*. When, therefore, during the debate on any question before the House, a member moves for the orders of the day to be read, and it is carried, no further debate is permitted on the question before the House; else the debate might, by continuing, defeat the order.

The first instance of this proceeding being adopted for the purpose of avoiding a question, was on the 1 April, 1747. But this motion to entitle it to precedence, must be for the orders generally, and as they stand,—and not for any particular one, and if it be carried, the orders must be read and proceeded with, in their regular course (*t*); for priority of order gives priority of right, which cannot be taken away but by another special order of the House. But the question cannot be put, if the House be actually proceeding upon the orders of the day. And a motion to

And for the Orders of the day.

When, and how, to be made.

(*r*) C. J. v. 68, pp. 345, 667; v. 70, p. 183; 22 April, 1712.

(*s*) C. J. v. 60, p. 113.

(*t*) 2 Hats, 83.

adjourn will even supersede this motion. Besides these there are other Privileged questions which will require considerable explanation.

Different forms  
of Questions.

It is absolutely necessary that all Parliamentary Assemblies should have certain forms of question so adapted as to enable them fitly to dispose of every proposition that may be brought before them. Such are 1. The Previous Question. 2. To postpone indefinitely. 3. To adjourn a question to a definite day. 4. To order it to lie on the Table. 6. To Commit, and 6th. To amend. Each of these questions will require a separate consideration, that their objects and consequences may be seen, and the proper occasion for their use in every matter before the House, be fully understood.

Previous Question.

1. *The Previous Question.*

When a proposition is moved which it is useless or inexpedient to discuss at the time, the Previous Question has been introduced for suppressing, temporally, the motion and its discussion (*v.*)

It may be done by any member, who moves "That this question (or, the main question) be *now* put. If it pass in the affirmative, then the main question must be put immediately, without any person being allowed to speak any thing further to it whatever (*w*); but if the previous question be negatived, the main question cannot be put that day.

The first instance of the use of this kind of question was on the 25 May, 1604, though its origin has been erroneously attributed to Sir Henry Vane (*x*). Formerly when the question was put in this form, "Shall the main question be "put," a determination in the negative suppressed the main question during the Session; but since the words "*now* put" are used, they exclude it for the present only.

(*v*) C. J. v. 75, p. 245.

(*w*) Hakew. 28; 4 Grey, 27; 2 Hats. 122 n.

(*x*) 2 Grey, 113.

Thus we see that whether the Previous question be carried or lost, its object is fulfilled; for if it be carried the Main question must be put immediately, and all discussion upon it ceases; and if it be lost, the Main question cannot be put on that day at least. But, in order that this question may answer the purpose for which it is intended, it is the duty of the Speaker, after the Previous question has been proposed from the Chair, to confine rigidly, all discussion that may arise, *to the Previous question itself*, that being the motion then before the House.

The proper occasion for the previous question is, when a subject is brought forward of a delicate nature, as to high personages, &c. or the discussion of which may call forth observations which might be of injurious consequences. Then the Previous question is proposed, and the discussion of the Main question suspended, and the debate confined to the Previous question. The use of it has been abusively extended to other cases; but in these it is an embarrassing procedure, and the intention would be answered fully as well by more simple Parliamentary forms, and therefore it should not be used, but restricted within as narrow limits as possible.

It seems to be the prevailing opinion (and one which Mr. Hatsell assents to, although doubts have existed upon the subject)—that, after the Previous question has been proposed from the Chair, amendments cannot be made to the Main question, but that it is necessary the Previous question be withdrawn, before any amendments to the first question can be proposed (*y*). But if, before the Previous question is proposed from the Chair (though it be even moved and seconded) any member were to offer an amendment to the Main question, it would then be received, and the Speaker would give priority to the motion for amending (*z*).

Proper occasions  
for its use.

Whether main  
question can be  
amended after  
previous question  
is put.

(*y*) See an instance of this being done, in C. J. 16 Mar. 1778.

(*z*) See further, 2 Hats. 114, &c.

Previous question cannot be used in Committee.

It is a Rule that the Previous question cannot be made use of when the House is in Committee, the only course to avoid a question, in such case, appears to be, to move that the Chairman do leave the Chair, which is a Privileged question, and has the effect of a motion to adjourn, although it is frequently attended with great inconvenience which the Previous question, if permitted, would not produce.

To postpone indefinitely.

2. *To postpone the subject indefinitely.*

But as the Previous question avoids the subject merely for that day, and it may be repeated the next,—if it is wished to suppress it for the whole of the Session it is postponed indefinitely.

To adjourn the debate.

3. *To adjourn the debate to a certain day.*

When a motion is made upon which it is proper to act, but on which information is needed, or something more pressing claims attention, the question or debate is adjourned to such a day within the Session as will answer the views of the House. And, by the strict rule (a), those who have spoken before may not address the House again when the Debate is resumed.

Sometimes this question has been abusively used by adjourning the debate to a day beyond the Session, to get rid of it altogether, as would be done by an indefinite postponement.

For the effect of a motion to adjourn the House being carried in the midst of a debate, see *ante* p. 132, 133.

To lie on the Table.

4. *To lie on the Table.*

When some other business of a more pressing nature claims the immediate attention of the House, but it is not desired to let the subject before them drop; it is ordered to lie on the table. It may be then called up at any time.

To commit.

5. *To refer to a Committee.*

If the proposition will require more amendment and

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(a) C. J. 23 June, 1604; 21 April, 1610.

digestion than the formality or convenience of the House will admit of, it is referred to a Committee.

6. *To amend.*

To amend.

But if the subject need but few and simple amendments, and especially if these be of great importance, the House then proceeds to consider and amend themselves.

The rules and forms to be observed with respect to amendments, here claim consideration. Rules as to amendments.

On an amendment being moved, a Member who has spoken to the main question may speak again to the amendment (*b*).

The Speaker cannot refuse to propose an amendment, though it be *inconsistent* with one already agreed to, if it be not against order.

Amendments are sometimes used to get rid of a proposition, by making it bear a totally different meaning from that intended by the movers, so as to cause them to vote against themselves (*c*); in this mode of avoiding a question the amendments are not printed on the Journals, separately from the question, but only the final vote. A new Bill may be engrafted by way of amendment, on the enacting clause (*d*).

If it be proposed to amend by leaving out certain words, it may be moved as an amendment to this amendment, By leaving out words. that part of the words of the amendment be omitted, which is equivalent to leaving them in the Bill. The Parliamentary question being always, "whether the words shall stand part of the Bill."

When it is proposed to amend by inserting a paragraph By inserting. or part of one, the friends of the paragraph may make it as perfect as they can by amendments, before the question for inserting it is put. If it be received, it cannot be

(*b*) Scob. 23.

(*c*) See C. J. 10 April, 1744, as to Duke d'Arcenberg; 29 Jan. 1765, as to General Warrants; and 9 Feb. 1785.

(*d*) 1 Grey, 190, 2.

amended afterwards in the same stage; because the House, by vote, have agreed to it in that form. In like manner, if it be proposed to amend by striking out a paragraph, the friends of the paragraph are first to make it as perfect as they can by amendments, before the question for striking it out is put. If, on the question, it be retained, it cannot be amended afterwards, because a vote against striking out is equivalent to a vote agreeing to it in that form.

By altering.

When it is moved to amend by striking out certain words and inserting others, the manner of stating the question is, first to read the whole passage intended to be amended as it at present stands, then the words proposed to be struck out, next those to be inserted, and lastly, the whole passage as it will be when amended. And, if it be desired, the question must then be divided, and put first on striking out, and, if that be carried, next on inserting the words proposed. If this be lost, it may be moved to insert other words.

To what extent  
Amendments are  
admissible.

A Motion is made to amend by striking out certain words, and inserting others in their place [A], which is negatived. Then it is moved to strike out the same words, and to insert others of a tenor entirely different [B] from the first proposed; and this is also negatived. It is then moved to strike out the same words, and insert nothing, which is agreed to. All this is admissible they being all different propositions. For the rejection of one proposition does not preclude the offering a different one. Nor would it alter the case, were the first motion [A] decided, by putting the question first on striking out, and that be negatived; for as putting the whole motion to the question at once, would not have precluded, the putting half could not do it.

But if it had been carried affirmatively to strike out the words and insert A. it could not afterwards be permitted

to strike out A. to insert B. The mover of B. should have notified the House while the insertion of A. was under debate, that he would move to insert B.—in which case those who preferred it would join in rejecting A.

After A. is inserted, however, it may be moved to strike out a portion of the original paragraph, comprehending A. provided the coherence intended to be struck out be so substantial as to make this effectively a different proposition. For that would be merely striking out a paragraph after amending it. Nor does any thing forbid a new insertion in the place of A. and its coherence.

When the matter contained in two Bills might be better put in one, the course to pursue is, to reject the one, and incorporate its matter into the other Bill. And when the matter contained in one Bill would be better distributed into two, any part may be struck out by way of amendment, and put into a new Bill.

Making two Bills one, by amendments.

Or one Bill two.

If a clause is to be transposed, one question must be put on striking it out where it stands, and another for inserting it in the place desired.

Altering the place of a clause by amendment.

If a Bill be passed by one House with blanks, they may be filled up by the other by way of amendments, and returned to the first House as such.

Filling up blanks.

As to the rules to be observed in filling up blanks see chap. IX. *on Money Bills*.

The number prefixed to the section of a Bill, being merely a marginal indication, and no part of the text of the Bill, the Clerk regulates that, the House or Committee have only to amend the text.

The subject of amendments having been considered, the former subject of which it forms a part, viz:—the manner of disposing with any proposition made to the House must be resumed.\*

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\* For the following analysis of the *Precedence of Questions, &c.*, I am indebted to the *Manual of Parliamentary Practice*, by H. C. Thomson, Esq. referred to in the Preface.

Precedence of  
Questions gene-  
rally.

It may be asked whether these propositions have any privileges or precedence among themselves, or whether they are so equal that the common principle of "first moved, first put," regulates them? This will need explanation; their competitions may be as follows, viz:—

1st. Previous Question and Postpone	}	In the 1st, 2d and 3d Classes, and the first member of the 4th class, the rule "first moved, first put," takes place.
Commit		
Amend		
2d. Postpone and Previous Question	}	
Commit		
Amend		
3d. Commit and Previous Question	}	
Postpone		
Amend		
4th. Amend and Previous Question	}	
Postpone		
Commit		

First class.

In the *first class*, where the Previous question is first moved, the effect is peculiar. For it not only prevents the after motion to postpone, or commit, from being put before it, but from being put after it. For if the previous question be carried, viz:—that the main question shall *now* be put, it would of course, be against the decision to postpone or commit. And if it be lost, viz:—that the main question be *not* put, the House is out of possession of the main question, and consequently there is nothing before them to postpone or commit. So that neither voting for or against the previous question, will enable the advocates for postponement or committal to attain their object, which can only be done by the previous question being *withdrawn*, for it cannot be amended, as will be seen hereafter.

Second class.

*Second Class.* If the motion for postponement be decided affirmatively, the proposition is removed from before the House, and consequently there is no ground for the previous question, committal, or amendment. But if decided negatively, that it shall not be postponed, the main question may then either be suppressed by the previous question, committed or amended.

Third class.

*The Third Class* is subject to the same observations as the second.

*The Fourth Class.* Amendment of the main question being first moved, and afterwards the previous question—the question of amendment shall be first put.

Precedence of questions generally.

Fourth Class.

*Amendment and Postponement* competing, postponement is first put, because the question for amendment is not suppressed by postponing or adjourning the main question, but remains before the House whenever the main question is resumed; because, possibly, the occasion for other business might be so immediate, that it would be lost by length of debate on the amendment, were not the House enabled to postpone the whole subject.

Amendment and Postponement.

*Amendment and Committal.* The question for committal though last moved shall be first put, because in reality it befriends and facilitates the motion to amend (e).

Amendment and Committal.

We have hitherto considered the case of two or more privileged questions contending for precedence amongst themselves, when both were moved on the original or main question, but let us now suppose one of them to be moved, not on the original primary question, but on the secondary one, *ex gr.*—

Suppose a motion to postpone, commit or amend the main question, and that it be moved to suppress that motion by putting a previous question on it.

Previous question cannot be put on secondary questions.

This would not be permitted; because it would embarrass questions too much to render them so complicate, when the same result could be obtained by deciding against the motion to postpone, &c.

Suppose a motion for the previous question, or the committal or amendment of the main question—and that it be then moved to postpone such a motion. This would not be allowed, for three reasons. 1st. Because it would be absurd to postpone the previous question, commitment or amendment, alone, and thus separate the appendage from the principal; yet it must be postponed separately from

Previous question, commitment, or amendment, cannot be postponed.

Precedence of questions generally.

the original motion if at all; therefore the motion to postpone the secondary motion for the previous question, or for committing or amending, cannot be received. 2nd. Because this would be piling questions one upon the other, which, to avoid embarrassment, should not be allowed. 3rd. Because the same result can be obtained by simply voting against such previous question, committal, &c.

A motion for the previous question, or to postpone, or to amend, cannot be committed.

Suppose a commitment of a motion for the previous question, or to postpone or amend—to be moved. The first, second, and third reasons above stated, all hold good to prevent this.

Previous question cannot be amended.

Suppose an amendment moved to a motion for the previous question. Answer—the previous question cannot be amended; Parliamentary usage has fixed its form to be “shall the main question be *now* put?” and as the present instant is but one, it can admit of no modification. To change it to the next day, or any other time, is alike without example and utility.

A motion to amend a question for postponement.

But suppose a motion to amend a motion for postponement; as to one day instead of another, or to a special instead of an indefinite time. The useful character of amendment gives it a privilege of attaching itself to a secondary and privileged motion (with the above exceptions): that is, a postponement of a main question may be amended; so a committal of a main question may be amended, as for example, by adding “with instructions to enquire,” &c. In like manner, if an amendment be moved to an amendment, it is admitted. But it would not be admitted in another degree, viz.—to amend an amendment to an amendment of a main question, as this would lead to too much embarrassment. The line must be drawn somewhere, and Parliamentary usage has drawn it after the amendment to the amendment. The desired result must be sought by deciding against the amendment to the amendment, and then moving it again as it was

When amendments to amendments are admissible.

desired to be amended. In this form, it becomes only an amendment to an amendment.

Precedence of questions generally.

According to the rule of Parliament in filling up blanks, the smallest sum and the longest time are privileged (*f*), and must be moved before a greater sum and shorter time, even though not proposed until afterwards.\* But such motions are not considered in the form of amendments, but as alternative or successive originals. In all cases of time or number, it must be considered whether the greater comprehends the lesser, as in the question to what day a postponement of any matter shall be, the number of a Committee, amount of a fine, term of an imprisonment, &c. or the *terminus in quem* in any other case; then the question must begin *a maximo*. But where the lesser concludes the greater, as in questions on the limitation of the rate of interest, on what day the Session shall be closed by adjournment, on what day the next shall commence, when an act shall commence, or the *terminus in quo* in any other case—the question must begin *a minimo*. The object being not to begin at the extreme, which (and more) is within every one's wish, and which, if carried in the affirmative, would preclude every question for more—but at that extreme which would unite but few, and then to advance or recede until you arrive at a number which will command a majority (*g*). “The fair question in this case “being, not that to which and more, all will agree, but “whether there shall be an addition to the question” (*h*).

As to filling up blanks.

Another exception to the rule of priority is, when a motion has been made to strike out, or agree to a paragraph. Motions made to amend it, as to be put to the question before a vote is taken to a paragraph. Motions made to amend it, are to be put to the question before a

Motions to amend have priority of those to agree or strike out.

(*f*) 5 Grey, 179; 2 Hats. 81, 83; 3 Hats. 132, 133.

(*g*) 3 Grey, 384, 385.

(*h*) 1 Grey, 365.

\* As to the mode of filling up Blanks in all matters of supply, see Ch. IX. On Money Bills.

Precedence of questions generally.

Incidental questions, viz :

Of Order or Privilege.

vote is taken on striking out, or agreeing to the whole paragraph.

But there are several questions, which being incidental to all, in the course of debate, will take precedence of every other, privileged or not, viz.—a question of order, arising out of any other question, must be decided before that question (*i*). A matter of privilege arising out of any other question, or from a quarrel between two Members, or any other cause, supersedes the consideration of the original question, and must be first disposed of (*k*). Also, a motion for reading papers relating to the question before the House, must be put before the principal one (*l*).

Reading papers.

Rules to be observed on common questions.

The following are the rules to be observed on any question not of a particular or privileged description.

A motion having been made and seconded, is in the possession of the House, and cannot be withdrawn without leave of the House.

The question is to be first put on the affirmative, and then on the negative side.

After the Speaker has put the affirmative part of the question, any Member who has not spoken before, may rise and speak before the negative is put ; because it is no full question until it has been put in both parts (*m*). But in small matters, and which are of course, such as receiving petitions and reports, withdrawing motions, reading papers, &c. the Speaker generally supposes the consent of the House, if no objection be expressed, and does not put the question formally (*n*).

Dividing a complicated question

If a question contain more parts than one, it may be divided into two or more questions, by the order, or with the consent of the House (*o*). If the House do not order

(i) 2 Hats. 88.

(k) 2 Hats. 88.

(l) 2 Hats. 88.

(m) Scob. 23.

(n) 5 Grey, 129 ; 9 Grey, 301.

(o) C. J. 2 Dec. 1640 ; 19 Feb. 1770 ; 2 Jan. 1795 ; 25 Jan. 1771 ; 9 April, 1772 ; 21 May, 1773.

a complicated question to be divided, the only mode of separating it is by moving amendments thereto (*p*), which must be decided by the House (*q*). So, wherever there are several names in a question, they may be divided and put one by one (*r*).

Precedence of questions generally.

When there is a question before the House, no other motion can be brought forward until that is decided, except it be of the class of privileged questions (as for the previous question, &c.) or unless it has special reference to the question itself—as a motion to amend, to withdraw, to read papers, or a question of order or privilege—which suspends the consideration of the main question until they are determined. With these exceptions, the rule is, that when a motion has been made and seconded, no other can be received.

Co-existing questions.

If a question for rejecting a Bill be lost, it passes of course to its next reading. And a motion for a first (or any other) reading being lost, is a final rejection.

Where questions are perfectly equivalent, so that the negative of the one amounts to the affirmative of the other, and leaves no other alternative,—the decision of the one necessarily concludes the other (*s*). Thus the negative of striking out amounts to the affirmative of agreeing; and therefore to put a question for agreeing after the question for striking out is lost, would be to put the same question in effect twice over. But this rule does not extend to cases of amendments between the two Houses, for a motion made to recede from amendments previously made by one House, but to which the other refuses its concurrence, being negatived—does not amount to a positive vote to insist, because there is another alternative, viz. to adhere.

Equivalent questions.

Amendments between the Two Houses considered.

For example—a Bill originating in one House is passed

(*p*) C. J. 17 April, 1729.

(*q*) 2 Hats. 85, 6.

(*r*) 2 Grey, 444.

(*s*) 4 Grey, 157.

Precedence of questions generally.

by the other with an amendment; a motion in the originating House to agree to this amendment, is lost. Does there result from this a vote of disagreement, or must the question of disagreement be expressly voted? The questions respecting amendments from the other House are—1st. To agree; 2d. To disagree; 3d. To recede; 4th. To insist; 5th. To adhere.

Rules regulating them.

1st. *To agree*, and 2d. *To disagree*. Either of these necessarily concludes the other, for the positive of either is equivalent to the negative of the other; and no other alternative remains. On either motion, however, amendments to the amendments may be proposed, as, if it be moved to disagree, those who are in favour of the amendments may propose amendments, and make the question as perfect as possible before the question for disagreeing is put.

3d. *To recede*. You then either insist or recede.

4th. *To insist*. You may then either recede or adhere,—the term of insisting may be repeated as often as the House chooses to keep the question open.

5th. *To adhere*. You may then either recede or insist.

Consequently the negative of these is not equivalent to a positive vote of agreement. It does not raise an implication so necessary as to authorise the Clerk, by inference, to enter another vote: for two alternatives still remain, either of which may be adopted by the House.

Adherence.

The first adherence by either House renders it necessary for the other to recede or adhere also; if the last, the matter is usually suffered to fall. (t). Latterly, however, instances have occurred of their having gone to a second adherence. But there must be an absolute conclusion of the subject somewhere, or otherwise transactions between the Houses would become endless (v).

Insisting.

The term of insisting, we are told by Sir John Trevor,

was then (1679) newly introduced into Parliamentary usage by the Lords (*w*). It was certainly a happy innovation, as it multiplies the opportunities of trying modifications which may bring the Houses to a concurrence. Either House, however, may pass over the term of insisting, and adhere in the first instance (*x*). But such a procedure is not respectful to the other House; for, in the ordinary usage of Parliament, there are at least two free Conferences before an adherence (*y*).

Precedence of questions generally.

Either House may recede from its amendments and agree to the Bill; or recede from their disagreement and agree to the same, absolutely, or with an amendment; for here the disagreement and receding destroy one another, and the subject stands as before the disagreement (*z*).

Receding.

But the House cannot recede from, or insist on its own amendment, with an amendment; for the same reason that they cannot send to the other House an amendment to an Act after having passed the act. They may modify an amendment from the other House by engrafting an amendment upon it—because they have never assented to it; but they cannot amend their own amendment, because they have before agreed to it in that form (*a*). Neither, where one House has adhered to its amendment, and the other agrees to it, can the first House depart from the form which they have fixed by their adherence.

It is unparliamentary to strike out at a conference anything in a bill, &c. which has been agreed to, and passed by both Houses (*b*). A motion to amend an amendment from the other House, takes precedence of a motion to agree or disagree.

Precedence of questions of this kind.

A Bill originating in one House is passed by the other with an amendment. The originating House agrees to the

How far amendments between the two Houses may be carried.

(*w*) 7 Grey, 94.

(*x*) 10 Grey, 146.

(*y*) 10 Grey, 147.

(*z*) Elsy, 23, 27; 9 Grey, 476.

(*a*) 9 Grey, 353; 10 Grey, 240.

(*b*) 6 Grey, 274; 1 Chand. 312.

amendment, with an amendment. The other House may agree to *that* amendment with an amendment; that being only in the second, and not the third degree. For as to the amending House, the first amendment with which they passed the Bill is a part of its text; it is only the text they have agreed to. The amendment to that text by the originating House, therefore, is only in the first degree; and the amendment to that again, by the amending House, is only in the second degree, or an amendment to an amendment, which is admissable.

And also, when a Bill from the originating House is amended by the other at its second reading; on the third reading, this amendment having become the text of the bill, and an amendment to it is moved, an amendment to that amendment is admissable, it being only in the second degree.

No question, if rejected, to be offered again that Session.

Having considered the various kinds of questions which may be offered to the House, and the forms by which they are regulated, we come now to the important rule which says, That no question which has been proposed to the House and rejected, may be offered again in the course of the same Session. The motives upon which this rule is founded, seem to be in order to avoid surprise, and that unfair proceeding which otherwise might be made use of (*c*), therefore it should be adhered to by the House, on all occasions, as strictly as possible.

How this rule should be construed.

But, says Hatsell (*d*), this rule is not to be so strictly and verbally enforced as to stop the proceedings of the House. It is rather to be kept in substance than in words, and the good sense of the House must decide upon every question, how far it comes within the meaning of the rule. It clearly does not extend to prevent the putting the same question in the different stages of a Bill (as, for instance, an amendment at the third reading, which had been

rejected at the second (e); ) nor to prevent the discharging orders which have been made, even on the greatest deliberation; as appears from the instance of the 14 and 17 January 1766, on discharging the order made for printing the American papers.

But it clearly extends to prevent contradictory matters from being enacted in the same session\* as for instance offering a motion upon any subject which the House had previously refused to entertain. The only course to be pursued in such a case is a prorogation of the session for two or three days, but all matters pending before the House will then be quashed. The House of Commons has on several occasions been thus prorogued rather than suffer a rule of so much importance to be violated; see Chap. VIII. On Public Bills (*Bill if lost not to be renewed that session*).

A debate may be adjourned by the House either to a late hour of the same day, or to another day, which may either be next, or any particular day specified. If during a debate a motion be made to adjourn, and it is lost, the member who was interrupted in his speech by the motion, may resume speaking (f).

Any facts, principles, opinions or purposes of the House are expressed in the form of Resolutions, but when the House commands it is by an "order."

Orders of the House are generally rules for the internal regulation of its business: and the only case in which a member has a right to insist upon any thing of himself is

(e) See C. J. 16 & 18 Decem. 1706; 9 Mar. 1748.

(f) C. J. 26 Feb. 1836.

\* But in cases of very great importance, there are precedents of this rule having been virtually dispensed with. Thus when the Address on the preliminaries of Peace, in 1782, had been lost by a majority of one, on account of the importance of the question, and smallness of the majority, the same question, in substance, though with some words not in the first, and which might change the opinion of some Members, was brought on again and carried, the motives for it being thought to outweigh the objection of form.

when he calls for the execution of any subsisting order of the House. Here, there having already been a resolution, any member has a right to insist that the Speaker, or any other whose duty it may be, shall carry it into execution, and no debate or delay can be had upon it. Thus any member has a right to require the House or Gallery to be cleared of strangers, an order existing for that purpose; or to have the House counted when there is not a quorum present.

Orders of the Day.

But where an order is made that any particular matter be taken up on a particular day, there a question is to be put, whether the House will proceed to the consideration of that matter. When orders of the day are on important or interesting subjects, they should not be proceeded on, until an hour at which the House is usually full. An order of the day may be discharged at any time, and a new one appointed for a different day (*g*).

Order that no new Bills be considered after a certain time, except.

When a session is drawing to a close, and the important measures have been all brought forward, the House, in order to prevent interruption in their consideration, sometimes resolve that no new Bills shall be entertained except they be sent from the other House (*h*).

When Orders determine.

All orders of the House determine with the session (except they are made standing orders); and any one committed by such an order, may, after the close of the session, be released on a Habeas Corpus.

Order in which the House should attend public solemnities.

For the forms and order to be observed by the House on attending any public solemnity, see *Appendix XVI*.

Evidence cannot be taken upon oath by House of Commons.

In all matters upon which evidence is taken by the House of Commons (except in Election Committees) it cannot be taken upon oath, the House of Lords alone possessing that privilege (*i*).

Thus the rules of proceeding in Parliament have been

(*g*) 3 Grey, 48, 313.

(*h*) 3 Grey, 156.

(*i*) Hargrave's Juris. II. of Lords.

pointed out and considered; and it is by the strict observance of them alone that the propriety which should always characterize such a dignified and important Assembly can be preserved, and the weaker party protected from those irregularities and abuses which the possession of power is too apt to engender, in large and successful majorities, and which these forms are intended to check. And whether they are in all cases the most rational or not, is not of so much importance. They have been adopted from time to time as they have been found necessary—they have grown out of the various situations in which the House has been placed by time and circumstance—and they have been devised by the wisdom of our ancestors for the proper governance and regulation of their proceedings. It is much more material that there should be a rule of action, than what the rule may be, for by this alone can a uniformity of proceeding be preserved which is not subject either to the caprice of the Speaker, or the captiousness of the members, and that regularity and consistency be preserved, which is requisite to secure respect to the proceedings of a deliberative Assembly.

Forms should be strictly observed.

The only subject that remains for consideration in this chapter is, the manner in which the sessions of Parliament may be adjourned, prorogued or dissolved.

How the Session may be closed.

### 1. *As to Adjournment.*

An adjournment is no more than a continuance of the session from one day to another. It is made by the authority of each separately every day, and sometimes for a fortnight or a month together, as at Christmas or Easter, or upon other particular occasions. But the adjournment of one House is no adjournment of the other (*k*).

By adjournment.

The true parliamentary doctrine seems to be, that the King has no authority to adjourn the Parliament, but can only signify his desire; and it is left to the wisdom or pru-

(k) 4 Inst. 28.

dence of either House to comply with his request or not, as they see fitting. It appears too, from the cases (*l*), that the House, even after the signification of the King's pleasure, have proceeded to do business, and then have adjourned "upon question," and sometimes not without a division. It hath, however, been usual, when His Majesty hath signified his pleasure that both or either House should adjourn themselves to a certain day, to obey the King's pleasure, and adjourn accordingly (*m*). Otherwise, besides the indecorum of a refusal, a prorogation would assuredly follow, which would be very convenient both to public and private business: for prorogation puts an end to the session, and all things if taken up again must be begun anew. But after an adjournment, be the term ever so distant, all things continue in the same state as at the time of making the adjournment (*n*), and may be proceeded on without any fresh commencement.

A right to prevent the House of Commons from adjourning themselves, has never been claimed in England; it is claimed, however, with regard to the Houses of Assembly in the British Colonies (*o*).

Previously to 1799 *three weeks* notice of the re-assembly of Parliament after a recess by adjournment, was required by law; but in that year, on the ground that three weeks was an inconveniently long period, a fortnights notice was substituted (*p*).

Committees during such recess.

Committees may be appointed to sit during a recess by adjournment, but not by prorogation (*q*). Neither House can continue any portion of itself in any parliamentary

(*l*) L. J. 5 June, 1628; C. J. 5 April, 1626; 12 August, 1668; 15 April, 1678.

(*m*) C. J. *passim*; ex gr. 11 June, 1572; 5 April, 1604; 4 June, 14 Nov. and 18 Dec. 1621; 11 July, 1625; 13 Sept. 1660; 25 July, 1667; 4 Aug. 1685; 24 Feb. 1691; 21 June, 1712; 16 April, 1717; 3 Feb. 1741; 10 Dec. 1745; 21 May, 1768.

(*n*) Lex Parl. ch. 2; 1 Bl. Com. 186.

(*o*) Stokes on the Colonies, 242.

(*p*) By 39 & 40 Geo. III. ch. 14.

(*q*) 5 Grey, 374; 9 Grey, 350; 1 Chand. 50.

function, beyond the end of the session, without the consent of the other two branches. When this is given, it is by a Bill constituting them Commissioners for the particular purpose.

2. *As to Prorogation.*

Prorogations.

A Prorogation is the continuance of a Parliament from one session to another, as an adjournment is a continuation of the session from day to day. The Parliament is prorogued by the Royal Authority, expressed either by the Lord Chancellor in His Majesty's presence, or by a Commission from the Crown, or frequently by Proclamation; and both Houses are necessarily prorogued at the same time, it being a prorogation of the whole Parliament, and not of the individual House. The session is never understood to be at an end until a prorogation; though unless some act be passed, or some judgment given in Parliament, it is in truth no Session at all (*r*).

The proroguing by Commissioners specially appointed for the purpose, is the usual form when the Parliament meets from time to time during the recess. Of such prorogations notice is given by Proclamation, or by Order in Council, published in the Gazette; and when it is intended that the Parliament shall actually sit for the despatch of business, notice of that purpose is given in the Proclamation; which generally bears date at least forty days before the appointed time of meeting. But such notice, though customary, and not likely to be departed from without a real necessity, is not positively required by law (*s*). In the time of actual rebellion, imminent danger from invasion, or other exigencies of the State, during a recess, the King is empowered to call them together by Proclamation with but fourteen days notice (*t*).

(*r*) 1 Bl. Com. 186; 4 Inst. 28.

(*s*) See instances in 1689, 1707, and 1727.

(*t*) 37 Geo. III. ch. 127.

There is a precedent in the reign of Charles I. of the King proroguing Parliament at the House of Lords, without sending for the Commons, or for any Act passed during the Session (*v*).

Dissolution.

3. *As to the Dissolution of Parliament.*

By the King's  
Order.

A Dissolution is the civil death of Parliament; and this may be effected three ways: 1st. By the King's will expressed either in person, or by representation, for as the King only has the right of convening Parliament, so he has the sole power of dissolving it. The present form of dissolving Parliament, which has been followed ever since the Revolution, is, that Parliament is prorogued to a certain day, and then a Proclamation is issued, discharging the Members from their attendance upon that day, and dissolving the Parliament. If both Houses, or either of them, be under an adjournment at the time, there seems no reason to doubt that the Proclamation would have the same effect of putting an immediate end to Parliament. The practice of proroguing Parliament before its dissolution, which has now been uniform for above a century, has probably arisen from the motives referred to by Charles I. in 1628, "That it should be a general maxim with Kings themselves, only to execute pleasing things" (*w*).

By the demise of  
the Crown.

2dly. A Parliament may be dissolved by the demise of the Crown.\* This dissolution formerly happened immediately upon the death of the reigning Sovereign: for he being considered in law as the head of the Parliament (*caput, principium, et finis*); that failing, the whole body was held to be extinct. But the calling a new Parliament immediately on the accession of the Successor, being found inconvenient, and dangers being apprehended from having no Parliament in being in case of a disputed succession, it

(*v*) L. J. 10 Mar. 1629.

(*w*) Dwar. 315.

\* By the Prov. Act 7 Wm. IV. ch. 17, the Parliament of Upper Canada is not to be dissolved, or in any other way affected, by the demise of the Crown.

was enacted by the Statutes 7 & 8 Wm. III. ch. 15, and 6 Anne, ch. 7, that the Parliament in being shall continue for six months after the death of any Monarch, unless sooner prorogued or dissolved by the successor; that if the Parliament be, at the time of the King's death, separated by adjournment or prorogation, it shall, notwithstanding, assemble immediately; and that if no Parliament is then in being, the Members of the last Parliament shall assemble and be again a Parliament (x).

When it is the King's pleasure to prorogue or dissolve the Parliament, His Majesty generally comes in person to the House of Lords; when he sends the Usher of the Black Rod for the House of Commons to come to the Bar of the Lords' House: the Chancellor then, by special command of the King, pronounces the Parliament to be prorogued or dissolved.

3d. & lastly. A Parliament may be dissolved, or expire, by efflux of time.\* The utmost extent of time that the same Parliament was allowed to sit, by the Statute 6 Wm. & Mary, ch. 2, was *three* years. But, by the Statute 1 Geo. I. stat. 2. ch. 38 (in order, professedly, to prevent the great and continued expenses of frequent elections, and the violent heats and animosities consequent thereupon, and for the peace and security of the Government, then just recovering from the Rebellion) this term was prolonged to *seven* years: and, what alone is an instance of the vast authority of Parliament, the very same House that was chosen for three years, enacted its own continuance for seven. So that, as our Constitution now stands, the Parliament must expire, or die a natural death, at the end of every seventh year, if not sooner dissolved by the Royal authority; as it generally is, in the course of every five or six years.

By expiration of the term of service.

(x) Amended by the 37 Geo. III. ch. 127.

\* The Parliaments of Canada are limited to four years duration by the Constitutional Act.

The Septennial Act has been deemed an unconstitutional exertion of the authority of Parliament; and the reason alleged is, that those who had a power delegated to them for three years only, could have no right to extend that term to seven years. But on this it has been observed, that it is not true in fact, as the argument is usually put, that a Parliament chosen for three years continued themselves for seven, since it was only one part of the Parliament, the House of Commons, which was chosen for any limited time; and the Septennial Act was the act of the whole legislature.

What proceedings not affected by a dissolution, or prorogation.

By a dissolution or prorogation of Parliament, Impeachments by the Commons, Appeals, or Writs pending in Parliament, do not abate, but the next Parliament can take them up, and proceed upon them in the state in which they were left at such dissolution or prorogation.

In ancient days, Parliaments were required by law to meet every year, "and oftener, if need be" (*y*), and during the dynasty of the Plantagenets, they were almost invariably summoned anew, and did not continue, as afterwards, through several Sessions (*z*). But during the reigns of the monarchs of the Tudor and Stuart lines, more particularly in that of Charles I., intervals of many years were suffered to elapse without "the King's Great Council of Parliament" being ever convened. In contemplation of which, a Statute was passed in the reign of Charles II. (16 Car. II. ch. 1.), prohibiting the intermission of Parliament for more than three years at any one time, the provisions of which were re-enacted by the 6 Wm. & Mary, ch. 2. But these Statutes are now virtually obsolete, Parliaments being obliged to assemble annually, else the whole machinery of Government would become useless and inefficient. For the Commons, with a vigilant

Parliament must be summoned annually.

(*y*) 4 Edw. III. ch. 14; 36 Edw. III. ch. 10.

(*z*) Taylor's Book of Rights, 67.

eye to the interests of the people, at the time of the Revolution in 1688, caused the following to be established by the Bill of Rights as one of the principles of the British Constitution: "that it is unlawful to keep any forces in "time of peace without the consent of Parliament," which consent is given only year by year,—the Mutiny Bill, by which the Army is held together, and kept in discipline and subjection, being invariably an annual act.

Added to this the supplies are granted by the Commons annually; and it is now, therefore, rendered impossible that a Parliament can be prorogued for a longer period than twelve months without its own consent and authority for the same.\*

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\* The same annual meeting of Parliament is required in Canada by the Constitutional Act (31 Geo. III. ch. 31).

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## C H A P. VII.

## On Public Bills.\*

What a Bill is.

A BILL is a rough draft or skeleton of an Act of Parliament, drawn out upon paper, with blanks or void spaces in which are afterwards inserted, dates, penalties, and any other alterations or amendments which may be found requisite during its progress through the Legislature.

How made anciently.

Formerly, all Bills were drawn up in the form of *Petitions*, which were entered upon the Rolls of Parliament with the King's answer or assent subjoined—not in any settled form of words, but as circumstances required, and at the end of each Parliament the Judges drew them out in the form of statutes, which were entered upon the statute Rolls, and Proclamation made of them at the County Courts, that all men might take heed thereto and govern themselves accordingly. This imperfect mode of legislation left the laws greatly at the mercy of the Crown; accordingly it was discovered that they were sometimes altered, and that others were added of which the Lords and Commons knew nothing until they were promulgated at the county Courts. This was made the subject of a solemn remonstrance to the King, in the reign of Henry V.† when, to prevent further mistakes and abuses of this nature, the statutes were ordered to be drawn up by the Judges before the close of Parliament; and in the reign of Henry

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\* In the compilation of this Chapter, I have been much indebted to the very valuable work of Mr. Bramwell, on the manner of proceeding on Bills in the House of Commons.

† By a singular coincidence, this document, so important in completing and securing the legislative rights of the House of Commons, is further remarkable as being the first act of that Assembly composed and recorded in the English tongue (A. D. 1415).—Mackintosh's *Hist. of England*, v, 1, p. 292.

VI., Bills, in the form of Acts, according to the modern custom, were first introduced.

It was not till the reign of Henry VII. (*a*), that the Statutes were all drawn up in the English language: prior to that time, they were either in Latin or Norman French, generally the latter.

Those are deemed Public Bills, which have a public and general operation—as Bills which concern the whole community, though only in a particular matter; or the King, who is the head of the commonwealth; or the King's revenue, except where it is to be diminished to the advantage of particular persons; or where a penalty or forfeiture is given to the King; and Bills which concern the Queen, or the Heir Apparent to the Crown; or either House of Parliament; or trade in general, or all Officers in general, or the whole Spirituality (*b*).

In doubtful cases, where the qualities are of such a mixed nature as to render it difficult to distinguish whether they are Public or Private Bills, they should be determined by the particular circumstances of each case, or by the usage of the House in cases of a similar nature.

There is an obvious inconvenience in combining objects of a public and private nature in the same bill; and in some cases where they have been so united, and were capable of separation, the House has ordered them to be divided into separate Bills (*c*).

But where the interests are so combined, &c. that a separation is impossible (*d*), such bills have generally originated on petition, but have subsequently been treated as Public Bills.

Before entering on the subject of the forms to be observed in the passage of bills, it will be necessary briefly to examine what bills are required to originate in either of

(*a*) Dwar. 627.

(*b*) Bra. 11.

(*c*) C. J. 4 & 6 Feb. 23 & 24 Mar. 1795; Brigstock Inclosure.

(*d*) C. J. 13 May, 1811, Sullyard's Estate; 28 June, 1815, for Meux & Co.

the Houses, and to which House application ought properly and primarily to be made.

The subject naturally divides itself into four heads, viz. :

1. *What Bills must originate in the House of Lords.*

What Bills must  
begin in the  
Lords.

The Lords claim the exclusive right of originating Bills for restitution of blood or honours (*e*); and all Bills that may in their consequences affect the peerage (*f*). Bills for the reversal of Outlawries\* (*g*); Bills of Attainder (*h*); Bills of Pains and Penalties (*i*); and other Bills of a judicial nature, generally begin in the House of Lords, in consequence of the judicial powers exclusively possessed by that body. From considerations of convenience, bills concerning either House of Parliament usually begin in that House whose proceedings are intended to be affected thereby (*k*).

But if the claim of the Lords to the commencement of Bills for restitution in blood, was ever intended to apply to all bills for removing the disabilities and incapacities resulting from Attainders, such pretension seems now universally understood to have been tacitly abandoned. The cases of Lord Bolinbroke (*l*), Earl Marischall (*m*), and several other instances on the Commons' Journals (particularly in the years 1732 and 1733) decidedly establish that bills for purposes of this nature are not comprehended in the resolution of the Lords of the 6 & 7 May, 1702 (*n*).

(*e*) L. J. 6 May, 1702; C. J. v. 74, p. 622.

(*f*) S. O. H. of L. 2 Mar. 1664.

(*g*) L. J. v. 17, p. 119, Lord Bophin; and see L. J. v. 18, pp. 474, 480, Sir H. Bond's.

(*h*) L. J. 10 May, 1530.

(*i*) L. J. 3 July, 1820.

(*k*) Bra. 3.

(*l*) 1725.

(*m*) 1760.

(*n*) And see Ogilvy's case, 4 Feb. 1783.

\* Bills for reversing Attainders or Outlawries, are presented to the House with the King's allowance written in the margin, without any previous petition for that purpose. Vide Lord Russell's and Algernon Sidney's bills in 14 L. J. 142; ib. 189.

2. *What Bills must originate in the House of Commons.* What Bills must begin in the Commons.

Bills of Supply, and all other bills directly, or by construction, imposing any pecuniary charge or burthen upon the people, must have their commencement in the House of Commons. See Chap IX. *On Bills of Supply.*

This rule, extends to all bills and provisions in bills affecting the public revenues; or any of the estates (*o*) or debts (*p*) of the Crown; likewise to all that impose any rate, toll or duty, pecuniary penalty, fine or fee (*q*); also to all bills whose consequences necessarily increase or diminish any previously existing rate, toll or duty, pecuniary penalty, &c. such as provisions in Inclosure Bills for making public highways at the expense of the parties interested in the inclosure; provisions for altering the boundaries of parishes; for providing land for the employment of the poor, or affecting the settlements of the poor (*r*).

But this rule does not extend to bills for imposing or removing personal disabilities or incapacities. This distinction between pecuniary and personal penalties, is exemplified by the proceedings on Bills for relieving Peers from disabilities and penalties consequent on having sat and voted without having taken and subscribed the oaths prescribed by law. When such bills have begun in the Lords, they have been confined to "disabilities," and when brought down to the Commons, the words "and penalties" have been added by way of amendment, to the provisions and titles of the bills (*s*).

3. *Which may commence in either House indifferently.* Which may begin in either House.

All other Bills, of what kind soever, whether relating to the Parliament itself, or to either House separately, or to individuals, as Naturalization Bills, Name Bills, &c.

(*o*) 3 Hats. 138.

(*p*) 3 Hats. 134, 150.

(*q*) C. J. 8 & 9 Mar. 1692; 30 May, 1792.

(*r*) C. J. 12 Oct. 1831.

(*s*) C. J. 6 Mar. 1797.

may have their commencement indifferently in either House.

Which should have the preference in either House.

4. *Which, though not particularly enjoined to begin in either House, yet by usage, &c. acquire a preference in practice.*

In the Lords.

It seems very reasonable that bills which have for their object the regulation of such matters as fall more immediately under the cognizance of either House, should begin in that House which must, from its greater experience, be most competent to frame the provisions of the Bill, so as best to answer the intended purpose. The bill for settling the peerage of Great Britain, in 1719, began in the House of Lords. The several laws which have been passed for regulating Elections, and for the exclusion of certain persons from sitting in the House, have begun in the House of Commons. Divorce bills, bills for dissolving marriages and allowing separate maintenances, invariably begin in the House of Lords. So Estate bills, bills for enlarging the powers of a tenant for life, or a tenant in tail; for enabling bodies corporate, or ecclesiastical persons, to alienate or exchange; for selling settled estates and purchasing others in lieu; should commence in the Upper House, unless they require provisions which will render it necessary that they should commence in the Commons

In the Commons.

(*t*). On the other hand, bills for confirming or prolonging the term of letters patent (probably because the public may be affected, beneficially or otherwise, by the result) usually begin in the House of Commons. But it will, of course, sometimes happen that the time limited for receiving private Petitions in the House of Commons, has elapsed, perhaps before the necessity for applying to Parliament is discovered, in such cases bills of the above

(*t*) See C. J. v. 26, p. 753, where Lord Ashburnam's Estate Bill—and C. J. v. 29, p. 274—the Duke of Bedford's Estate Bill, sent down from the Lords, were laid aside, and new bills ordered; and see Hatsell's remarks on the contents of these bills, 3 vol. pp. 126, 127.

description, that may begin as well in one House as the other—originate in the Lords.

A Bill of Grace comes under none of the above heads, Bills of Grace. but begins with the Crown—see chap. X. *On Bills of Grace and Pardon.*

Public bills are brought in upon the motion of any member for leave to do so, of which he should give notice on a previous day.\* How Bills are brought in. When a member desires to bring in a bill on any subject, he moves the House for that purpose By Members. “with some short speech setting forth the needfulness “of a law in that behalf” (*v*), and concludes by moving for leave to bring in a bill entitled, &c.

Leave being given, the member brings it in himself, or sometimes a Committee is appointed to prepare it. By Committee. This Committee is generally one of the whole House (*w*); but sometimes, where evidence is to be taken, or much detail is required, it is a select Committee (*x*).

The instructions given upon such occasions, whether to members or to Committees, are either enabling or mandatory. Instructions. The mover and seconder are always appointed on this Committee, with others in addition (*y*).

The Bill must be presented fairly written, without any erasure or interlineation, or the Speaker may refuse it (*z*). Bill to be fairly written.

Public Bills are sometimes ordered in without any previous proceeding (*a*). Other manners of ordering in Bills. Sometimes on reading accòmpts and papers (*b*), or acts, (*c*), or a clause of an act (*d*), or acts, and entries in the Journals (*e*), or a previous bill of that session (*f*), or a message from the Crown (*g*), or a

(*v*) Hakew. 132.

(*x*) C. J. 22 April, 1828; Anatomy.

(*z*) I Grey. 82, 84.

(*b*) C. J. v. 64, p. 295.

(*d*) C. J. v. 75, p. 97.

(*f*) C. J. v. 74, p. 619.

(*w*) C. J. 16 May, 1820; Customs Reg.

(*y*) Hakew. 132.

(*a*) C. J. 7 July, 1820.

(*c*) C. J. 19 & 20 June, 1828.

(*e*) C. J. v. 67, p. 190.

(*g*) C. J. 75, p. 165.

\* For forms of the various motions necessary to be made by Members during the passing of a Bill, from the Notice to the final reading, see *Appendix XVII.*

report from a Committee (*h*). If the motion be for amending an act, a previous motion is made that the act be read (*i*).

Applications for Public Money must be recommended by the Crown.

No motion for public money will be received, unless recommended from the Crown, and if no such recommendation be signified, the Speaker must decline to put the question (*k*). The standing order of the 11 June, 1713, requiring this, in terms, extends only to petitions; but in its spirit and practice, it applies to all applications for public money, or for alienating any estates or revenues of the Crown (*l*).

This Rule does not apply to cases requiring Her Majesty's consent to a bill affecting the interest of the Crown. (*m*).

What Bills must originate in Committee.

But where the bill is respecting Religion (*n*), or Trade (*o*). Applications for public money, or for imposing a Tax (*p*), it must originate in a Committee of the whole (*q*); but where it appears doubtful whether it belongs to either of these classes, a select Committee should be appointed to examine precedents on the subject (*r*).

Bills brought in on Resolutions.

A Bill is brought in upon Resolutions, when resolutions have been passed expressing specific propositions, which then become the directions for preparing the bill. In this case the order is "that a bill be brought in upon the Resolutions."

Bill brought in by Members.

If a Bill has been directed to be brought in by certain members, it is presented by them to the House in a competent time drawn out on paper, with a multitude of blanks where any thing occurs that is dubious, or necessary to be settled by the House—(such as the date of times,

(*h*) C. J. v. 74, p. 108.

(*i*) C. J. v. 64, p. 86.

(*k*) C. J. 12 June, 1804; 13 April, 1808.

(*l*) C. J. 19 Mar. 1812; Parkhouse Forest.

(*m*) 3 Hats. 168 n.

(*n*) C. J. 30 April, 1772.

(*o*) C. J. 9 April, 1772.

(*p*) See Chap. IX. *On Money Bills.*

(*q*) S. O. H. of C. i. ii. iii C. J. 18 Feb. 1667.

(*r*) C. J. 14 & 19 Mar. 1833.

the nature and quantity of the penalties, or of any sum of money to be raised (s,) being indeed only the skeleton of the bill.

The preparation of a bill is a most important branch of legislation, upon which the success or failure therein mainly depends; for if the form of a bill be defective at first, it can rarely be made perfect by amendment\*.

Preparation of the Bill.

As a bill may be opposed at every stage, so may its introduction be resisted by any member. But if certain parts of the bill only, are objected to, the opposition should be reserved to the second or third reading.

Principle, only, opposed at first reading.

If the bill should not have been prepared conformably to the rules and orders of the House, or if any particular informality be discovered therein, upon notice being taken of the same in the House, the order for the second reading will be discharged, the bill withdrawn, and leave given to present a proper one in lieu thereof. For examples of reasons that have been assigned for this proceeding, see General Index to Commons Journals, 1820, p. 240, 697.

Bill withdrawn, and new one ordered.

A bill is sometimes presented on the day on which it is ordered (t).

Presentation of the Bill.

Every member presenting any bill to the House, must prepare a breviat of the same, and go from his place down to the Bar of the House, and bring up the bill and breviat to the Table thereof.

(s) 1 Bl. Com. 182.

(t) C. J. v. 75, p. 15.

\* By the Provincial Statute 7 Wm. IV. ch. 11, many of the common forms and repetitions in Legislative Enactments are not now required to be inserted in Canadian Bills, they being supplied by that General Act.

† In the various proceedings in Parliament on Bills and other matters, the places for introducing the question to the House by the member are governed by the nature of the question itself. The principles by which it may be ascertained in what places the different proceedings should be taken, are thus stated by Mr. SHERWOOD (in his very useful TREATISE ON PRIVATE BILLS, p. 4).

At what places the different proceedings should be taken by Members.

All propositions emanating from the Member's mere motion and pleasure, and of which the House is not at that time in possession, are offered by the Member in his place; as, for instance, in the case of presenting a Petition, making a motion, &c.

Motions, &c.

When the House has ordered a member to do a certain act out of the House, &c.

Bills, Reports, &c.

A copy of the bill written upon parchment is required to be laid on the table at the first reading.

First reading.

The Clerk then reads the title of the bill, and on the motion for its first reading, he reads a few lines of it *pro forma*, and hands it to the Speaker, who rising, states to the House the title and opens the substance of it by reading the breviate. He then declares "that these are the contents of the bill, and this the first time of its being read," and returns it to the Clerk.

A motion is then made for its second reading, *generally* specifying the day. After the second reading has been ordered, the motion for printing it is usually made. But if it be intended to move for the appointment of a day for its second reading or any further order relating to the Bill, this latter order should be first made; for the order for printing the bill is supposed to take it from the table, and consequently removes it from the House (*v*).

Consent of the Crown when to be signified.

If the Bill requires the consent of the Crown, it should be signified immediately after its presentation, and before the first reading (*v*).

A Bill cannot be amended at the first reading (*x*). And nothing ought to be debated but the principle of the bill. When a debate does arise then, which seldom happens, it is with a view to its rejection.

Not to be read twice same day.

Between the first and second reading of bills no particular interval is required; but they ought not to be read

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the Member presents the result *at the Bar*; as in the cases of presenting the Report from the Committee on a Petition, of presenting a Bill, and of presenting the Report from the Committee on the Bill.

Second & third readings of Bills, consideration of Lords' amendments, &c.

When the House is in possession of the matter, and the Member moves any ulterior proceeding in reference to such matter, the motion may be made *at the table*; as in the cases of the second and third reading of Bills, of the further consideration of reports from Committees on Private Bills of the second class (*viz*: Railways, Canals, &c. which are required by the Standing Orders to be twice considered by the House, at an interval of seven days); and of the agreeing to the Lords' Amendments.

(*v*) Bra. 85.

(*w*) C. J. 25 Feb. 1812; Woolmer Forest.

(*x*) 6 Grey, 286.

twice the same day\* (*y*) in common cases, and on no account in cases of money bills. If no time be appointed, the second reading must be called up on motion.

If there be no House on the day appointed for the second reading, it may come on the next day without any fresh notice.

The bill is laid on the table of the House on the day Second Reading. appointed for its second reading.

The member then moves that it be read a second time. It is then handed by the Clerk to the Speaker who, rising uncovered, reads the title as before, and puts the question for the second reading. The Clerk then reads a few lines of the bill *pro forma*, after which the Speaker, as on the first reading, opens the substance of the bill from his brief, and declares that "these are the contents of the bill, and this "is the second time of its being read." Before which declaration, no member should offer to speak to it, "then," says Hakewell (*z*) "it is the fit time to speak." But if When is the time to speak thereon. the bill has been sent from the other House, as it always comes ingrossed, the Speaker states that the question is whether it shall be read a third time, and before he has so reported the state of the bill, no one can speak to it (*a*).

Nothing can intervene between any of the readings and the opening of the bill by the Speaker, unless upon the second and third readings, when it is the proper time to hear the parties against the bill, by themselves or Counsel. Counsel heard against the Bill.

(*y*) Hakew. 143.

(*z*) Hakew. 143.

(*a*) Hakew. 146.

\* No Bill can be read twice on the same day in this Legislature, by a Rule of each House. By a Standing Order of the House of Lords, not only must not Bills be read twice the same day; but no Committee of the Whole may proceed on a Bill the same day it is committed; and no Report can be received from any such Committee on the same day that they have sat (if any amendments have been made to the Bill by the Committee); and no Bill may be read a third time the same day it is reported from the Committee (*L. J.* 23 June, 1715). And by another Standing Order of the 20 May, 1801, the Speaker may not, in any case, put a question contrary to a Standing Order of the House.

Objections to the provisions of the bill are more properly urged in Committee.

Bill open to the sense of the House at all stages.

If the opposition succeed, the bill must be dropt for that session. If any amendments are made and lost or carried, opportunities will recur in a subsequent stage, of again taking the sense of the House upon them; or any clause that has been inserted in one stage of a bill may be omitted in another, for every stage submits the whole, and every part of the bill, to the judgment of the House. It has, however, been made a matter of doubt, (but not very consistently) whether a clause that has been left out in one stage, or any thing that had been before refused to be admitted, could be again offered to the House in any subsequent stage of the bill. The rule obviously should be the same, whether the amendments first offered were carried or lost; and the true doctrine appears to be—that, in every stage of the bill, every part of it is open to amendments of all kinds, whether the same amendment has been, in a former stage, accepted or rejected. But there is an obvious difference between a rejected amendment and a rejected bill, the one may be reconsidered, though the other cannot be reproduced, in the same session, see post. *As to rejected Bill not to be renewed in the same Session.*

And to Amendments, whether previously rejected or not.

Commitment.

Immediately after the second reading, the bill is by motion, referred to Committee. Sometimes the commitment is upon the first reading, and sometimes there is no commitment at all. In matters of small importance it is to a select Committee appointed by the House; upon a bill of consequence, or upon matters of supply, the House resolves itself into a Committee of the whole.

To Select Committees.

In the appointment of a select committee, any member may name a person, and the Clerk is to write him down as one of the Committee, if no objection be taken against him. But the House has a controlling power over the names and number, if a question be moved against any one—and

may, in any case, put in and put out whom they please. Those who take exceptions to some particulars of the bill are to be of the Committee; but none who speak directly against it. For he that would totally destroy, will not amend it (*b*), or, as is said (*c*), the child is not to be put to the nurse that cares not for it. It is therefore a constant rule "that no man is to be employed in any matter who "has declared himself against it." And when any member against the bill hears himself named of its Committee, he ought to ask to be excused. Thus March 7, 1606. Mr. Hadley was, on the question put, excused from being of the Committee, declaring himself to be against the matter itself (*d*).

Commitment.  
Who are not to  
be of the Select  
Committee.

The Clerk may deliver the bill to any member of the Committee (*e*). But is usual to deliver it to him who is first named.

In some cases the House has ordered the Committee to withdraw immediately into the Committee room, and act on, and bring back the bill during the sitting of the House (*f*).

When and where  
Committee may  
meet.

A Committee meets when and where they please if the House has not determined the place for them. But they can only act when together, and not by separate consultation and consent, nothing being the report of the Committee but what has been agreed to in Committee actually assembled.

If no quorum be appointed for the Committee by the House, a majority of the members is required to constitute one (*g*).

Quorum.

Any member of the House may be present at any select Committee, but cannot vote; and he must give place to all of the Committee, and sit below them (*h*).

None but its  
Members to vote.

(*b*) D'Ewes, 634, col. 2; Scob. 47.

(*c*) 6 Grey, 373.

(*d*) Scob. 46.

(*e*) Town. Col. 138.

(*f*) Scob. 48.

(*g*) Elsy. 11.

(*h*) Elsy. 12; Scob. 49.

**Commitment.**

Rules of proceeding in Committees, whether select or of the whole House.

The Committee have full power over the bill, or other papers committed to them, except that they cannot change the title or subject (*i*).

The paper before the Committee, whether select, or of the whole House, may be a bill, resolutions, draught of an address, &c. or it may either originate with them, or be referred to them. In every case, the whole paper is read first by the Clerk, and then by the Chairman, by paragraph (*k*), pausing at the end of each paragraph, and putting amendments, if proposed. In the case of Resolutions on distinct subjects, originating in the Committee, a question is put on each separately, as amended or unamended, and not a final question on the whole (*l*). Except they relate to the same subject, when a question may be put on the whole. If it be a bill, draught of an address, or other paper originating with them, they proceed by paragraphs, putting questions for amending, if proposed; but no question for agreeing to the paragraphs separately.<sup>23</sup> This is reserved to the close, when a question is put on the whole, for agreeing to it as amended, or unamended. But if it be a paper referred to them, they proceed to put questions of amendment if proposed, but no final question on the whole: because all parts of the paper having been adopted by the House, stand of course, unless altered or struck out by a vote. Even if the Committee are opposed to the whole paper, and think it cannot be made good by amendments, they cannot reject it, but must report it back to the House as it stands, and there make their opposition.

The natural order in considering and amending any paper, is to begin at the beginning, and proceed through it by paragraphs: filling up the blanks, and making amendments in the order in which they occur (*m*); and this order is so strictly adhered to in Parliament, that when a

They cannot reject a Bill.

Order and manner of making Amendments.

(*i*) 8 Grey, 228.

(*l*) 3 Hats. 276.

(*k*) Scob. 49.

(*m*) Bra. 105.

latter part has been amended, you cannot revert back, and make any alterations in a former part (*n*). Commitment.

But in making amendments, the Committee may not erase, interline, or blot the bill itself, but set them down on a paper by themselves, as—"in such a folio, and such a line, between such and such words, or after such a word, insert or omit *these words*." Every additional clause intended to be proposed should be written on a separate sheet of paper, properly endorsed and ticketed (*o*).

To this natural order of beginning at the beginning, there is a single exception found in parliamentary usage, and that is,—when a bill is taken up in Committee, or on its second reading, the *preamble* should be postponed, till the other parts of the bill have been gone through. The reason is, that such amendments may be made to the body of the bill, as may also require the alteration of the preamble (*p*).

In the progress of amending the bill, any of the clauses, before they have been amended (but not afterwards) may be postponed. Postponing  
Clauses.

When the bill has been gone through, the new clauses are next to be offered, after which the postponed clauses, if any, should be resumed in the order in which they stand in the bill. New Clauses.

Committees can admit no provisions which do not come within the scope of the title of the Bill or other matter. If any such provisions are intended to be added, instructions for that purpose must be obtained from the House. For examples of such instructions, see General Index to Commons Journals, 1820, p. 597. Instructions to  
Committees.

A Select Committee may adjourn to another day, but the House has power, if they think proper, to order that the Committee meet on a previous day. This is done Select Committee  
may adjourn.

(*n*) 2 Hats. 90.

(*o*) Lex Parl. 333. Bra. 113.

(*p*) Scob. 50 ; 7 Grey, 431.

Commitment.

when it is thought that the Committee had adjourned for such a time as would prevent its reporting during the Session (*q*).

## Committee of the Whole must report progress.

A Committee of the Whole cannot adjourn, but if the matter under their consideration cannot be finished at one sitting, they may, upon question, rise and report to the House that they have made some progress in the bill, &c. and ask leave to sit again, on some specified day.

## Report of Select Committee, referred to Committee of the Whole.

If the preamble of a Public Bill require, from its nature, to be proved, it is usual to refer it previously to a Select Committee, to examine witnesses upon the subject, and their report is referred to the Committee of the whole (*r*).

## The Committee's vote cannot be altered by themselves.

When a vote has once passed in a Committee, it cannot be altered but by the House, their votes being binding on themselves (*s*).

## Report.

When the matter referred to them has been gone through, a Member moves that the Committee rise and report the papers (or bill) to the House, with or without amendments, as the case may be (*t*).

This being agreed to, the Chairman of the Committee (or one of its Members) informs the House, that the Committee to whom was referred such a Bill, have, according to order, considered the same, and have directed him to report it, with or without amendments (as the case may be), which he is ready to do when the House pleases to receive it. And he, or any other Member, may move that it be now received. But the cry of "Now, now," from the House, or even its silence, generally dispenses with the formality of this motion. Though the House may, and frequently does, order it to be received on some future specified day.

The Chairman or other member reporting them, reads the amendments with the coherence in the bill, and opens

(*q*) C. J. v. 60, p. 305.

(*r*) 7, 27 & 28 April, 1812. Parkhouse Forest.

(*s*) C. J. 4 June, 1697.

(*t*) Scob. 53

the alterations, and the reasons of the Committee for making them. He then delivers it at the Clerk's table, where the amendments are again read by the Clerk, without the coherence; and the papers lie on the table till the House, at its convenience, shall take up the report (*w*). Commitment.

The report being made, the Committee is dissolved, and can act no more without a new power. But it may be revived by a vote, and the same matter be re-committed to it (*x*). See further as to Committees, Chap. XII. *On Committees.* Committee is then dissolved but may be revived.

The House may agree or disagree with the amendments; and sometimes when the Committee's amendments have been gone through, the House adds new ones. But the House will not inflict or increase a penalty, or enlarge times or dates, appointed by the bill, (though it will occasionally shorten the dates, and lessen the penalties), or make any material alterations without *re-committing* the bill. Proceedings on Report.

The proper course to pursue, in case of any considerable deviation from the original plan having become necessary, is, to have the bill reported; and on the member who makes the report (*y*) informing the House that it will be necessary to make some further alterations, the bill will be re-committed, with powers for that purpose. So if the House be not perfectly satisfied with the report, or is desirous of receiving fuller information, the bill or part of it, will be re-committed, that the nature and expediency of the measure may be more attentively considered. Re-commitment, when allowable.

The re-commitment is usually (*z*) to the same committee, but not invariably.

A Bill should not be re-committed except for some good and sufficient reason for the same, as, that the amendments to be moved on the report are very numerous, or of such a nature as require them to originate in Committee.

(*w*) Hakew. 148.

(*x*) 4 Grey, 361.

(*y*) Ellis, 61.

(*z*) Marshalsea Case, 23 April 1606, and C. J. passim.

**Re-commitment.** If a Report be re-committed before it has been agreed to by the House, what has passed in the first Committee is of no validity, the whole question being again before the House, and a new resolution must be again moved as if nothing had passed (*a*).

**Effect of Re-commitment.** A particular clause of a bill may be re-committed without the whole bill; or so much of a paper to one, and so much to another Committee; or the committal may be limited to the proposed amendments (*b*).

**A Clause may be re-committed.** A Bill may be again and again committed. The Clergy Residence Bill was re-committed seven times (*c*).

**No limit to re-committal.** Some particular kinds of bills, such as those which affect the estates (*d*) or revenues of the Crown (*e*), and are of a local and personal as well as public nature, and require evidence to be produced (*f*), or a detailed examination (*g*), are first committed to a select Committee, and subsequently the bill and report are re-committed to a Committee of the Whole. And others from a Committee of the Whole to a Select Committee. Also, bills have been transmitted from a Committee of the Whole to a Select Committee without any report having been made from the first Committee (*h*).

**As to re-commitment of certain kinds of bills.** The question of re-committal cannot be put till after the report has been made and brought up; and it is generally, though not invariably, moved before any of the amendments are agreed to. A bill cannot be re-committed after it has been ordered to be ingrossed, but a new clause proposed to be added, may be referred to a Committee of the Whole.

(*a*) 3 Hats. 131.

(*b*) C. J. 25 June, 1804; Slave Trade.

(*c*) C. J. v. 69, pp. 420, 444, 460, see also the Stage Coaches' Bill, re-committed six times. C. J. v. 65, pp. 384, 396, 420.

(*d*) C. J. v. 66, p. 379, Sulliard's Estate. (*e*) C. J. v. 70, p. 347; Post-Office.

(*f*) C. J. v. 58, p. 599; Windsor Forest. (*g*) C. J. v. 66, p. 344; Highways.

(*h*) C. J. v. 56, p. 395, Needwood Forest. C. J. v. 57, p. 168, Plymouth Em-  
bankment.

When the report of a Committee is taken up by the House, they proceed exactly as in Committee. Here, as in Committee where the paragraphs have, on distinct questions, been agreed to *seriatim* (i), no question need be put on the whole report (k). Proceedings on Report.

On taking up a bill reported with amendments, the amendments only are read by the Clerk. The Speaker then reads the first, and puts it to the question, and so on till the whole are adopted or rejected before any other amendment can be admitted, except it be an amendment to an amendment. Having gone through the Committee's amendments, the Speaker pauses, and gives time for others to be proposed in the House, to the body of the bill: as he does also if it be reported without amendment, putting no questions but on amendments proposed. When gone through the whole he puts the question, Whether the bill shall be ingrossed (that is, written in black letter), and read a third time? If with amendments.  
Question for Third Reading.

But if, after the bill has had its second reading, no motion be made for its committal, the Speaker reads it by paragraphs, pausing between each, but putting no question but on amendments proposed; and when gone through the whole, he puts the question for the third reading, if it came from the other House—or, if originally with themselves, Whether it shall be ingrossed and read a third time? The Speaker reads sitting, but rises uncovered, to put questions. The Clerk stands while he reads. Question for Third Reading, if the bill has not been committed.

The Bill being now as perfect as its friends can make it, this is the proper stage for those opposed to it to make their first attack. This is the proper stage to oppose the bill.

All earlier attempts are with disjointed efforts, because many who do not expect to be in favour of the bill ultimately, are willing to let it proceed to its perfect state,

(i) 5 Grey, 366; 8 Grey, 47, 104, 369.

(k) 5 Grey, 381.

that they may take time to examine it, and hear the arguments in its favour, knowing that, after all, there will be sufficient opportunities for giving it their veto. Its two last stages, viz: on the question for its third reading, and for its passing, are reserved for this. The first is usually the most interesting contest, because the whole subject is then more new and engaging, and the minds of Members not having yet been fully declared upon it, the issue is more doubtful. In this stage, therefore, is the main trial of strength between its friends and its opponents. And if it be not decisively acted upon then, accident or mismanagement may, and sometimes do, prevent a successful rallying on the next and last question, whether it shall pass?

Ingrossing.

When the Bill is ingrossed preparatory to its third reading, the title must be endorsed upon the back, and not within the bill (*l*); and the ingrossing must be upon parchment, otherwise the bill will not be received (*m*).

Not to be read twice in one day.

A bill reported and passed to the third reading, cannot on the same day be read a third time and passed; because this would be two readings in one day.

Third Reading.

After the motion for the third reading of the bill, the clerk, standing up, reads the title of the House bill, and then delivers the bill to the Speaker, who, rising, again reads the title, and puts the question "That this bill be now read the third time." The Clerk then reads a few lines of the ingrossed bill *pro forma*. The Speaker again opens to the House the substance of the bill from his breviatè, and states, that these are its contents, and this the third time of its being read.

Not to be committed on third reading—except.

A bill should not regularly be committed on the third reading. It is, however, sometimes permitted, to receive some particular clause or proviso. Thus in the 27 Eliz.

(*l*) Hakew. 250.

(*m*) C. J. 26 May, 1621.

1584, a bill was committed on the third reading; having been previously committed on the second; but it was declared unusual (*n*).

When an essential provision has been omitted, rather <sup>Ryder</sup> than erase the bill, and render it suspicious, a clause is added on a separate piece of parchment, ingrossed and called a ryder, which is read and put to the question three times (*o*). Every one is at liberty to offer a ryder without having given previous notice, or asking leave to do so (*p*). But they should be offered before any amendments are made to the bill. When to be offered.

The manner of offering them is as follows: Each clause <sup>Manner of adding them to the bill.</sup> must be separately ingrossed on parchment, with such blanks as it would have had if it had been originally part of the bill presented to the House. But each clause must be offered as a distinct ryder, and should be made as simple and concise as possible, there being no limit to the number of ryders that may be offered (*q*), and if they contain multifarious matter, they are more liable to be rejected.

The Member then opens, in his place, the substance of the clause, and then moves "That this clause be brought up;"—"That this clause be read the first time;"—"That this clause be read the second time." After the clause has been twice read by the clerk, it is then opened by the Speaker; and then, if necessary, amendments are made by the ingrossing clerk at the table. The questions are then put "That this clause be read the third time;" "That this clause be added to the bill by way of ryder" (*r*).

If the ryder impose or increase any toll or duties, or contain any other matter, which by the rules of the House should be in blank, it must be offered with the same in blank, and, after the second reading, be referred to a com- When the ryder must be committed.

(*n*) D'Ewes, 414, col. 2; and see Hakew. 156.

(*o*) Elsy, 59; 6 Grey, 335.

(*p*) 10 Grey, 52.

(*q*) C. J. v. 57, pp. 532, 533; Militia Bill.

(*r*) C. J. 7 Dec. 1795; Grand Junction Canal.

mittee of the whole, to fill up the same (*s*). In any other case it should not, regularly, be committed (*t*).

But, in the case of a bill from the other House, the clause is agreed to by the House *to be made part of the bill*, and not to be added thereto (*v*).

Amendments to  
the third reading  
of the bill.

Then any amendments which are intended to be offered should be proposed (*w*). If these amendments are of such a nature as to require the consent of the parties, as to name a Commissioner in an Inclosure Bill, or a Trustee in an Estate Bill, the Member moving informs the House that some persons are at the door, who can prove the consent of the parties interested, they are then called in and examined, after which the clauses are added, or the amendments made (*x*).

Seldom allowed.

It is, however, with great, and almost invincible reluctance, that amendments are admitted at this reading which occasion erasures or interlineations of the bill. Sometimes a proviso has been cut off from a bill, sometimes erased (*y*). But in all amendments it is laid down as a general rule that they should have as many readings as the bill, whether originating in the one House, or sent down from the other (*z*): thus at the second reading, amendments are twice read, and at the third, three times.

Must be read as  
many times as  
the bill.

Sometimes the further proceedings upon the third reading are adjourned till a future day, to give opportunity of preparing further amendments (*a*), or for the general convenience of the House (*b*).

Proceedings on  
Third Reading  
adjourned.

If upon the third reading, an order has been made for

(*s*) C. J. 17 May, 1809; Gateshead Incl. 12 May, 1814; Hilderstone Incl. 17 July, 1780; Tobacco duties.

(*t*) Scob. 9.

(*v*) C. J. 14 & 19 June, 1811; Loveden's Divorce.

(*w*) C. J. 7 Dec. 1795; Grand Junction Canal.

(*x*) C. J. v. 54, p. 515.

(*y*) 9 Grey, 513.

(*z*) Town. Col. 23-28.

(*a*) C. J. 4 May, 1801; West. Incl. 20 June, 1814; Omb. Ch.

(*b*) C. J. v. 73, p. 129.

allowing Petitioners against a bill to be heard by themselves or counsel, the course of proceedings is as follows:—

Immediately after the order for the third reading the Counsel against the bill are called in. And, after a few lines of the ingrossed bill have been read by the Clerk *pro forma*, and the petition praying to be heard against it, the petitioners are heard, and then they withdraw (*c*).

43 Eliz. 1601.—There were divers disputes about a bill, in the course of which one member took the bill to look at a word in it, after he had done and laid it on the board, another said, “Mr. Speaker, after a bill is ingrossed, you ought to hold it in your hand, and let no man “look at it;” which was confessed by all, and so the Speaker took it (*d*).

This is the proper stage for filling up blanks, for if filled up before, and now altered by erasure, it would be peculiarly unsafe. For the rules to be observed in filling up blanks of a pecuniary nature, see Chap. IX. *On Money Bills*.

On the third reading, both the principle and provisions of the bill may be debated, the former, on the question for the third reading, and the latter, on a motion for an amendment; though the most proper place for discussing amendments is in committee.

It has been before shown (see *ante p.* 168) that in every stage of the bill, after the second reading, each part is open to amendments of all kinds, whether they have in a former stage, been accepted or rejected (*e*). If, however, from the number or nature of the proposed amendments, the House will not admit of them in this stage, it has sometimes been permitted to withdraw the bill, and present a new one, upon which the proceedings are commenced afresh (*f*).

(*c*) C. J. 27 June, 1805; Smuggling.

(*d*) Town. Col. 209.

(*e*) 2 Hats. 135.

(*f*) C. J. 22 June, 1814; Omb. Ch.

Passage.

When the debate on the third reading is finished, the Speaker, still holding the bill in his hand, puts the question, "That this bill do pass."

To prevent bills from being passed by surprise, the House by a standing order directs that they shall not be put on their passage before a fixed hour, naming one at which the House is usually full (*g*).

Precedent of Amendment after passing.

After a bill has passed there can be no further alteration of it in any point (*h*). But Hakewill notices (*i*) a rare precedent, in which, "some apparent mistakings, either by "false writing or otherwise," having been discovered, a bill was amended the following day, the amendment being read three times and the bill again put to the question.

Title.

After the bill has passed, and not before, the title may be amended, and is to be fixed by a question, and the bill is then endorsed, and sent to the other House.

Bill endorsed and sent to the other House.

If the bill has originated in the House of Commons, it is then thus endorsed by the Clerk. "*Soit baille aux Seigneurs.*" (Let it be sent to the Lords). But if it be a bill that has been sent from the other House, these words are then written on it, "*Les Communes ont assentez.*" (The Commons have assented). If it be in the Lords, the endorsement runs, "*Soit baille aux Communes.*" (Let it be sent to the Commons.)

Bills sent to the other House.

When a member has been appointed to carry up the bill, and he discover that the Lords are not sitting, he should return the bill to the Clerk, and on the next day again proceed up with the bill. But if the Member be unavoidably absent on that day, the House may appoint some other Member for that purpose (*k*).

Order in presenting bills.

In sending bills from the Commons, by message, such as have come down from the Lords, are presented before any bills which have originated in the Commons, next to

(*g*) Hakew. 153.

(*i*) Hakew. 159.

(*h*) Hakew. 159.

(*k*) C. J. 6 Mar. 1797. Prom. Note Bill.

those the public, and lastly the private bills of that House (*l*). See farther in Chap. XIV., *On Messages (between the two Houses.)*

The precise duration of every new *temporary* law is to be expressed in the title of the bill, and also in a distinct clause at the end of the bill and no where else (*m*). But that part of the order as to the title is not strictly observed.

Duration of temporary law, where to be put.

The rules and orders of the House, as to bills, are established for the sake of method, order and regularity whilst they are under deliberation. Although they serve as regulations to the House, in the course of their own proceedings, yet they are liable to be waved and dispensed with; and the instant the House has resolved that the bill shall pass, all the rules and orders are virtually waved and dispensed with. If in the course of the proceedings on the bill, any of the rules or orders of either House have been violated, the validity of the act is not affected thereby, provided the record be right (*n*).

Rules may be dispensed with, without affecting the validity of the Act.

In Parliament a question once carried, or a bill passed, cannot be questioned again the same session, but must stand as the judgment of the House (*o*). It is also an undoubted rule that no new bill can be brought in of the same matter and argument as one that has been previously rejected in that session (*p*). It was upon this just principle of Parliamentary law, which has never been questioned, that it was thought necessary to make the short prorogations in 1689 (*q*), 1707 (*r*), and 1721 (*s*), that important bills, which peculiar circumstances had caused to be

A Bill cannot be repealed the same Session.

Neither can a Bill be again brought in that has once been rejected.

(*l*) C. J. 18 April 1694.

(*m*) S. O. H. of C. 17 Nov. 1797.

(*n*) Booth's M.S.S. Opinion, in Bra. 29.

(*o*) Town. Col. 67.

(*p*) Hakew. 152; 6 Grey, 392.

(*q*) Prorogued from 21 to 23 Oct. 1689, to admit of the bill for declaring the Rights of the Subject, &c. thrown out from disagreement as to an amendment—being renewed.

(*r*) Prorogued from 8 to 14 April, 1707, that the Bill for Importation of foreign commodities into Scotland, thrown out in the Lords, might be revived.

(*s*) Prorogued from 29th to 31st July, 1721, to enable the Commons to pass resolutions contrary to some clauses in the South Sea Company's Act.

rejected during the session, might be passed without violating so important a rule.\*

But these rules, which should be observed with the greatest strictness, do not extend to the following cases. They have been held not to prevent the passing bills for extending (*t*) the time for executing the provisions of former acts of the same session, neither does it extend to prevent putting the same question in different stages of the bill (*u*); or, to prevent an act being repealed which contains a clause "that this act may be altered, varied, or repealed by any act "or acts passed in this present session of Parliament" (*v*). And if a bill be passed in one House and lost in the other, a new bill may be brought in by the refusing House (*w*); and if, instead of rejecting the bill, they read it once, and lay it aside, amend it, or put it off for a time, they may order in another to the same effect (*x*), and if a bill be committed in either House, the Committee may, if they think fit, bring in a new bill for the same purpose (*y*). And in the Lords' Journals, 25 May, 1689, it is said to be the common course of Parliament, to pass explanatory acts if anything has been omitted or ill expressed in any other act passed in the same session.

And where a bill has been lost by any accident in either House, a second bill is brought in, upon which the same proceedings must be had as upon the original bill, excepting that the routine is hurried through until it arrives at the point at which the lost bill terminated (*z*).

And where a bill has been thrown out by the Lords, a second one is sometimes passed by the Commons in the

(*t*) C. J. 21 June, 1757.

(*u*) C. J. 29 March, 1765.

(*v*) As 5 Will. IV. ch. 8, which was afterwards repealed by ch. 62.

(*w*) 3 Hats. 161.

(*y*) C. J. 23 July, 1836. Dwar. 146, 147.

(*x*) Hakw. 97, 98.

(*z*) C. J. 25 May 1786.

\* Vide reasons entered in 33 vol. C. J. p. 726, for permitting a bill to be brought in the same session, concerning matters for which they had before passed a bill which was rejected by the Lords. See also a protest entered on the Lords' Journals v. 15, p. 90, against the passing of this second bill.

To what cases  
these rules do  
not extend.

same session, and sent up to the Lords, but so modified as to remove their objections; and for that purpose a Committee is appointed to inspect the Lords' Journals for the fate of the bill, upon the report of this Committee leave is given to bring in another for the same purpose (*a*).

In the year 1813, and in several other instances since that time, Committees have been appointed to search for the fate of bills, and upon the report of their having been put off for the session, leave has been given to bring in other bills to the same effect.

Or a Committee on one bill may be instructed to receive a clause to rectify mistakes in another (*b*). Or a part of the subject may be taken up by another bill, or in a different way.

Further than this the rules cannot be construed to admit of such a proceeding, but should on all occasions be observed, for the honour of the House, with the greatest strictness, and if circumstances should require that important bills that have been previously lost, be revived, the session should be prorogued for one or two days. But by this proceeding, all matters pending before the House, are terminated.

When a bill has been passed by the Lords without amendment, a message should be sent to the Commons to acquaint them therewith; but this being merely a matter of ceremony, the bill is not invalidated by its omission (*c*).

When bills passed in one House and sent to the other, are grounded on special facts requiring proofs, it is usual, either by message, or at a conference, to ask the grounds and the evidence on which they have passed it, which is immediately communicated, unless it be a bill of supply, when it will be *refused* as touching their privileges (*d*).

If the Lords make amendments to a bill, they are com-

(*a*) C. J. 30 May 1815.

(*b*) C. J. 24 June 1655.

(*c*) Bra. 147.

(*d*) C. J. v. 60. pp. 471, 497.

In all other cases they should be strictly observed.

Message sent by Lords to acquaint Commons of the passage of a bill

Evidence asked by one House upon which the other has passed a bill.

Amendments made by the Lords to Bills from the Commons.

municated to the Commons for their concurrence, and such concurrence, if given, is in the same manner communicated to the Lords. But if the Commons disagree to the amendments, a conference is asked upon the subject; relative to which, see Chap. XII, *On Committees (of Conference)*.

If disagreed to, Conference should be requested.

But when from inattention to the forms established upon this occasion between both Houses, either House has sent a message that they disagree to amendments and has not requested a conference to assign their reasons for such disagreement, the Bill has been re-delivered, "to the end," say the Lords (e), "that the due course of Parliament in "the transmitting things of this nature may be observed."

Consideration of Lords' amendments.

When a bill is sent down amended, the amendments only can be considered, as the body of the bill has been previously agreed to; although, for convenience sake, the bill is sent down with the amendments, it is properly in the possession of the amending House.

Cases of bills being hurried through.

Although no bill may, in either House, be read twice the same day (f), and although all the forms stated in this chapter should be observed, yet in cases of great importance, where there is a necessity for speedy legislative interference, Bills have been hurried through all their stages in one House (g), and even through both Houses (h), in a day.

Bills to remain with the Lords for Royal Assent—except.

All bills, except bills of supply, when they have passed both Houses, remain with the Lords, to be presented for the Royal assent; and it is a high breach of the constitution of Parliament, for that House to omit to present such bills (i). With respect to bills of supply, see Chap. IX. *On Money Bills*.

(e) L. J. 10 May, 1662, but see 20th December, 1680, when the Lords were themselves guilty of the same irregularity.

(f) S. O. H. of L. 28 June, 1715.

(g) C. J. 16 May, 1794, to grant increased pay, &c., for the Navy, 1797.

(h) See a case that occurred in 31 Henry VIII. mentioned in Hakewill, p. 195.

(i) 8 Grey 302.

The Royal assent\* to a bill may be given two ways, Royal Assent.  
either in person, or by commission.

1st. *In person*; in which case the King comes in state In person.  
to the House of Lords, and sending for the Commons to the bar, the titles of all the bills that have passed both Houses are read by the Clerk of the Crown or his deputy, and the King's answer declared to them by the Clerk of the Parliament, in Norman French. Of this Blackstone observes (j) "that it is a badge of conquest, and which one "could wish to see fall into total oblivion; unless it be "preserved as a solemn memento to remind us that our "liberties are mortal, having once been destroyed by a "foreign force." In declaring the Royal assent to a public bill, the clerk says, "*Le Roy le veult*," (the King wills it How given. so to be). If the King refuses his consent, it is in the following mild terms, "*le Roy s'avisera*," (the King will advise upon it). The last recorded instance of the exercise of this Prerogative of the Crown, appears to have been Last instance of its being refused. on the 11th March, 1707, when Queen Anne refused her assent to the bill for regulating the militia in Scotland.

2nd. *By Commission*. By the statute of 33 Henry By Commission.  
VIII. ch. 21, the Sovereign is empowered to give his assent to bills, through commissioners appointed for that

(j) 1 Bl. Com. 184.

\* By the 31 Geo. III. ch. 31, s. 42, it is provided, that if any act be passed in the Canadian Legislature to amend or repeal the act of the 14 Geo. III. or the Royal Instructions, or the Constitutional Act, or any of their provisions respecting the Clergy Reserves; or any act erecting or endowing Rectories in Canada, or respecting the regulation of the presentation of incumbents to the same,—or any act that will at all effect the free enjoyment of Religious Worship,—or the payment or enjoyment of any of the accustomed dues or rights of the Religious Sects, or impose any others,—or at all affect the Church of England's establishment or discipline, or the Royal Prerogative in granting the Waste Lands of the Crown, such act must be reserved by the Governor for the Royal assent, which cannot be given until it shall have lain on the table of each House of the Imperial Parliament thirty days, and if either House, within that time, address Her Majesty to withhold her assent from it, it shall not be given. And no such act shall be valid unless the Colonial Legislature pass an Address to the Governor, specifying that the act contains such provisions, and praying him to transmit it to England without delay. Canadian Bills which the Lieut. Governor is required to reserve for the Royal consideration.  
  
Address to the Governor to transmit such Act.

purpose, by letters patent, under the great seal, signed by his own hand.

A commission cannot be legally granted to give the Royal assent to any acts not consented to by both Houses at the date of such commission\*. For the commission recites, that the King hath seen and perfectly understood an act agreed upon by both Houses, and indorsed by themselves as accustomed (*k*).

Bill indorsed.

The bill is then indorsed by the clerk of the Parliament, immediately under the title, with the date on which the Royal assent was given; and from that date it must take its commencement, if some other time is not stated in the bill (*l*).

In Colonies,  
Governor's as-  
sent not final.

But with respect to Colonies and Plantations the practice is somewhat different. Although the Governor as the representative of Majesty, has the power of giving the Royal assent to bills, it is not in reality conclusive, the King, as a fourth estate, having a *second* veto. (*m*).

Although the  
Acts become of  
force if not dis-  
allowed.

Acts, however, passed in a colony, without a clause suspending their operation until Her Majesty's pleasure be known,—immediately that they are assented to by the Governor, become and continue in force, till notice is given of their being disallowed. The rule upon this subject is thus illustrated by the Commission of legal inquiry for the Colonies.

Manner of pro-  
ceeding in the  
Colonial Depart-  
ment on Bills  
passed in a  
Colony.

“On the arrival at the Colonial Department, of acts passed by a Colonial Legislature, on which the Governor's assent has been given, the course pursued is as follows: the acts of the session are referred by the

(*k*) Dwar. 246.

(*l*) 33 Geo. III. ch. 13.

(*m*) See 31 Geo. III. ch. 31, s. 31.

\* Lord Clarendon says, “That when it was proposed, on Charles I. going into Scotland in 1641, that he should leave a commission with some persons to pass such acts as should be prepared and agreed to by both Houses, in his absence, it was found that no such commission could be legally granted, to give the Royal assent to any acts that were not assented to by both Houses at the date of the commission.”

“ Secretary of State to the counsel for the Colonial De- Colonial Acts—  
manner of pro-  
ceeding in the  
Colonial Depart-  
ment.  
 “ partment, who is required to report his opinion upon  
 “ them in point of law. By this old and established form  
 “ of expression, is understood to be meant, that the coun-  
 “ sel is to report whether the acts, respectively, are such  
 “ as, consistently with his commission and instructions, the  
 “ Governor was authorised to pass; whether, with the lan-  
 “ guage of the statute 7 & 8 Wm. III. ch. 22, s. 9, it is  
 “ repugnant to any law made in this kingdom, so far as  
 “ such law may mention or refer to the Plantations; and  
 “ whether the act is so framed as to give full and entire  
 “ effect to the purposes with which the Colonial Legisla-  
 “ ture may have passed it?

“ A report then is made by the counsel, in pursuance of  
 “ this reference, to the Secretary of State. The acts, ac-  
 “ companied by this report, are then transmitted to the  
 “ President of the Council, with a letter from the Secreta-  
 “ ry of State, desiring his lordship to lay the acts, and the  
 “ report before the Queen in Council, for Her Majesty’s  
 “ consideration.

“ At the first Board of Council held after receiving this  
 “ communication, the acts are referred to the Lords of the  
 “ Committee of the Council, for the affairs of Trade and  
 “ Plantations, who are directed to report to the Queen in  
 “ Council their opinion, what proceedings it may be pro-  
 “ per to take in relation to them. It is understood that  
 “ the Committee for Trade proceed to select from the acts,  
 “ thus referred to them, *all* such as present any point of pe-  
 “ culiar novelty or importance, or as give rise to any ques-  
 “ tion of legal difficulty. The acts thus selected, together  
 “ with all private acts, are referred by their Lordships to  
 “ Her Majesty’s Attorney and Solicitor Generals, for their  
 “ opinion. When the report of the Law Officers of the  
 “ Crown is obtained, the Lords of the Committee for  
 “ Trade enter into the consideration of all acts of the ses-

Colonial Acts—  
manner of pro-  
ceeding on, in  
the Colonial  
Department.

“sion: and it is understood to be a settled rule, that in  
“their deliberations upon this subject, they are assisted by  
“the Secretary of State for the Colonies in his capacity of  
“a member of the committee.

“A report from the Committee of Trade is then ad-  
“dressed to the Queen in Council, and in this report all acts  
“of the session of the Colonial Assembly are classed under  
“three heads. 1st. If it be thought proper to disallow  
“any act, the report contains a full statement of the  
“grounds of objection which may exist to it. 2nd. If any  
“of the acts relate to measures of general and peculiar im-  
“portance and interest, it is recommended that a special  
“Order in Council should pass for their confirmation. 3rd.  
“The great majority of the acts of each year being usually  
“little more than business of routine and continued recur-  
“rence, their Lordships are in the habit of advising—that  
“such acts ‘should be left to their operation’.

“If this report be adopted by the Queen in Council,  
“orders are drawn up for such of the acts as are compris-  
“ed in the two first mentioned classes. No colonial act  
“can be disallowed, except by a regular order of the  
“Queen in Council. The Clerk of the Council then ad-  
“dresses a letter to the Secretary of State for the Colonies,  
“announcing to him the decision which has been adopted  
“respecting all the acts of the session, and transmitting to  
“him all the original Orders in Council for disallowing  
“any particular acts (*n*).”

From the preceding statement it appears, that compar-  
atively few of the statutes passed in the colonies receive  
either the direct confirmation or disallowance of the Crown.  
It is clearly understood, that so long as this prerogative is  
not exercised, the act continues in force, under the quali-  
fied assent which is given by the Governor in the Colony  
itself, on behalf of the Crown. It is also received as a

(*n*) First Report West India Legal Commissioners, p. 8, in Dwar. 999.

maxim, that the King may at any time, however remote, exercise his prerogative of disallowing any colonial act which he has not once confirmed by an Order in Council. This, however, may be numbered among the constitutional powers of the Crown, which have been dormant for a long series of years, and which would not be called into action except on some extreme or urgent occasion. It is believed that no instance has occurred, in modern times, of the disallowance of any colonial statute, after the notification to the Governor, that it "would be left to its operation"; although it has not received the formal sanction of the Queen in Council (*o*).

The manner of proceeding on Colonial Acts after they have received the Governor's assent having been shown Act of Parliament. it will be now necessary to revert to the former subject. After a bill has received the Royal assent, it is then, and not before, a statute or act of Parliament. It is then transcribed (*p*) into a Roll by the Clerk of the Parliaments, with the Queen's assent subscribed; and endorsed by him, immediately under the title, with the day, month and year of its receiving\* the Royal Assent, from which date it is to take its commencement, if no other be provided by the act† (*q*). In this Roll there are no separate paragraphs, because it was anciently found that the King authorised interpolations which destroyed the original meaning of the act. Neither are there any stops (*r*), so that any argument drawn from the influence the stops have on the sense, or any alteration in the meaning of the act occasioned by dividing clauses, falls to the ground, and is to be imputed to the invention or mistake of the printer. After

(*o*) Dwar. 1002.

(*p*) D'Ewes, 36.

(*q*) 33 Geo. III. ch. 13.

(*r*) 1 Willems, 316.

\* By the 48 Geo. III. ch. 106, it is provided that where bills for continuing expiring acts, shall not pass before the acts expire, such acts shall be continued from their expiration, except as to penalties.

† Similar provisions are provided by the Provincial act, 41 Geo. III. ch. 11, except that acts are endorsed by the Secretary of the Province.

enrolment they are delivered into Chancery, and this is the original Record (s).

How passed.

Acts of Parliament, ever since the 55 Geo. III. (A. D. 1814) have been divided into the following classes, viz:—

1st. Public General Acts.

2d. Local and Personal Acts declared public, to be judicially noticed.

3d. Private Acts printed by the Queen's printer, whereof printed copies may be given in evidence; and Private Acts not so printed.

Promulgation of Statutes.

Anciently, after every session of Parliament, the King was accustomed to command the Sheriffs to proclaim the several acts passed during that session, in their respective Counties,—and to cause them to be duly observed: since the art of printing has been common, however, that custom has been discontinued. Formal promulgation of an act is not necessary to give it the force of law, because every man is supposed to have been present by his representatives, when it was determined. But copies of it, notwithstanding, are always printed at the Queen's press, and transmitted to the Chief Magistrates, Sheriffs, and Clerks of the Peace, throughout the kingdom, for their particular information and guidance\*.

For the purpose of private information regarding any act, the king's printer is permitted to sell copies of it to individuals (for his own emolument) for three pence per printed sheet.

The promulgation of the Provincial statutes is regulated by the 44 Geo. III. ch. 5, s. 3, which provides that the clerk of the House of Assembly shall, as soon as possible after receiving the printed statutes, for the current year,

(s) Dwar. 247.

‡ Of Public Statutes 5,500 are thus printed and distributed; of Private Acts, the number is limited to 306. (C. J. 3 & 9, June, 1801.)

send four copies of them to each member of the Legislative and Executive Council, to each of the Judges of the Queen's Bench, and the like number to the Attorney General, and also twenty copies to each member of the House of Assembly, to be by them distributed in such manner as will best tend to promulgate a general knowledge of the laws. Promulgation of Provincial Statutes.

A law once made cannot be amended, or dispensed with, but by going through the same forms, and by the same authority, by which it was enacted. The King himself cannot dispense with any penal statute, without the consent of Parliament. Authority of an Act of Parliament. An Act of Parliament, therefore, having the power to bind every person in the realm (even the King himself, if he be named therein) is the highest authority which this kingdom acknowledges.

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## C H A P. VIII.

**On Private Bills.**

- I. ON PRIVATE BILLS IN GENERAL.  
 II. ON SPECIAL PRIVATE BILLS, viz: ESTATE, DIVORCE,  
 NATURALIZATION, & NAME BILLS.  
 III. ON THE PRIVATE BILL OFFICE.

## PART I.—ON PRIVATE BILLS IN GENERAL.\*

## Private Bills.

Private Bills are the ancient petitions of private persons, in a new shape, the last remnant of the old petitions to the King, in his Great Council of Parliament, for that redress and assistance which the ordinary courts had failed to administer, or were not empowered to grant. The ancient petitions have, by gradual and imperceptible changes from the time of Henry IV. grown up into the modern shape of Private Bills†. These were followed by the introduction of powers into the settlements of Real Estates, which grew out of the Statute of Uses (27 Henry VIII. ch. 10), and were the invention of Conveyancers, to countervail the necessity for frequent applications to Parliament. With-

\* The practice of the House of Lords with respect to private bills, formerly differed in many points from that of the House of Commons; but on the 16 August, 1838, with the view of approximating as much as possible the practice of the two Houses, the Standing Orders of the Lords were materially revised. But not having been able to obtain a copy of this amended edition, I have merely noticed the most distinguished features in the practice of that House.

† Report on Public Petitions, 1832. Appendix 3, "Evidence of Sir Francis Palgrave," p. 22. The distinction between Public and Private Acts of Parliament has been often, though erroneously, attributed to Richard III., but many instances of the passage of such acts are to be met with in the Rolls of Parliament, at a much earlier date.

out the aid of the modern power of sale and exchange, partition, leasing, jointuring, &c., the applications for Private Bills would be innumerable.

Private Bills, within the meaning of the Standing Order of the 15 February, 1700, may be classed as follows:—

What are Private Bills.

1st. Bills for effecting any *local* purpose, as inclosure, drainage, road, bridge bills, &c., or for building churches, prisons, &c., or for making docks and harbours, or for improving cities, towns, and fisheries, in particular places.

2nd. Bills which have only a *personal* operation, as naturalization, divorce, name, or estate bills; and all bills affecting any institution, company, or corporation.

3rd. Bills which, though not strictly of a local or personal nature, have only a *special operation*, as bills for regulating the trade of pawnbrokers, the leases of bishops, or the office of coroners.

But in any case where, from the mixed nature of the bill, it is impossible to class it either as public or private, it must be determined and regulated by the particular circumstances of the case, and the usage of the House in similar instances. Sometimes when they would admit of separation, the House has ordered them to be divided into separate bills (*a*). But in some cases they cannot be divided, and bills of this epicene nature generally originate on petitions, but in their subsequent proceedings are treated as public bills (*b*).

Bills of a mixed nature.

By a Standing Order of the House of Commons (*c*) all Private Bills requiring notices of the intention to apply for the same are classed as follow:—(and compliance with all the Standing Orders regulating such notices must be proved before the Committee on Petitions for Private Bills.)

Notice to be given of intended application for, in certain cases.

(a) C. J. 4 and 6 February, 23 and 24 March, 1795. Brigstock inclosure, and lands to the Earl of Ossory.

(b) C. J. 13 May, 1811, Sullyard's estate. 28 June, 1815, Meux & Co.

(c) S. O. II. of H. of C. 1837.

Bills requiring  
Notices.

1st Class.—Bills for inclosing, draining or improving lands:

Making or altering a Burial Ground :

Building, enlarging, repairing or maintaining a  
Church or Chapel :

Paving, lighting, watching, cleaning, or improving  
Cities, or Towns :

Erecting, improving, repairing, maintaining, or regu-  
lating Town Halls, Market Places, or Markets :

Constituting any Local Court, (as Courts of Requests,  
&c.):

The payment of any Stipendiary Magistrate or other  
Public Officer :

Bills relating to Poor Rates, or the maintenance or  
employment of the Poor :

2nd. Class\*.—Bills for making, varying, extending, or en-  
larging any Public Works, such as Bridges, Turn-  
pike Roads, Cuts, Canals, Reservoirs, Aque-  
ducts, Waterworks, Navigations, Tunnels, Arch-  
ways, Railways, Piers, Ports, Harbours, Ferries,  
and Docks :

3rd. Class.—Bills regulating County Rates, Gaols, or  
Houses of Correction, or for confirming or prolong-  
ing the term of Letters Patent ; or Bills to continue  
or amend any former act, passed for any of the  
purposes included in this or the two preceding  
classes, where no extension of time, or power to  
take Land is required :

No notice is required to be given of the intention to

Other Private  
Bills require no  
Notice.

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\* By the Standing Orders of the House of Commons, the greatest attention is given to the passage of bills of this class,—that measures calculated to be so important in their effects may not pass the House without having received the most serious consideration ; for, besides the strict regulations that are required in notices of the intended applications for such bills (contained in the following page) it will be seen that there are further orders the compliance with which must be proved before the committee on the bill ; and that on such bills being reported from the committee, the report is ordered to lie on the table, until the expiration of seven days, when an order will be made for taking it into further consideration ; after which the bill will be ordered to be ingrossed, as in other cases.

apply for Private Bills of merely a *personal* nature, as Estate, Divorce, Naturalization, or Name Bills. As to them, see Part II, of this Chapter. Neither is any previous notice required where the bill is of the class mentioned above, as being "though not of a local nature, yet with only a *special operation*, as bills for regulating "the trade of Pawnbrokers, the leases of Bishops," &c.

Notices for the above bills must be inserted three successive weeks in October and November, or either of them (and in the case of Railway bills, twice in the months of February and March), immediately preceding the session of Parliament, when application is to be made, in the Gazette of the kingdom, and in one other newspaper of the county in which the town is situated, or if no such paper be printed therein, then in the newspaper of some county adjoining or near thereto (*d*).

And if it be the intention of the parties to apply for the levying or the altering of Tolls, Rates or Duties, such intention must be expressly noticed. And if any lands or houses will be affected by such bill, applications must be made to the owners and occupiers for their assent or dissent on the subject, on or before the 31st December, in the year preceding the intended application, and that separate lists be made of the names of such owners and occupiers, distinguishing which of them have assented, dissented, or remained neuter in respect thereto.

Further notice must be given of intended applications for bills of the *first class*, by notices affixed on the church doors of the parish affected, for three Sundays in October or November.

And as to bills of the *second class*, the following special orders have been made. That such notices shall contain the names of all the parishes and townships concerned, and shall state the time and place of deposit of the plans, sections and books of reference.

The following to be proved before Committee on Petitions.

Such Notices to be given by insertion in Gazette, and one other newspaper, &c.

Particular Rules for them.

Further notice required of Bills of the 1st Class.

Rules to be observed in notices for Bills of the 2d Class.

To contain the names of Parishes, &c.

The following to be proved before the Committee on Petitions.

Plans, Sections, &c. to be deposited.

That duplicate plans, of a scale of not less than four inches to the mile, according to the figure annexed to the Journals\*, must be deposited in the office of the Clerk of the Peace†, for public inspection, on or before the 30th November (and in the case of Railway bills, on or before the 1st March) immediately preceding the session. Together with a book of reference, containing the names of the owners, occupiers, or lessees of such lands.

Scale of Sections.

That each section shall be drawn to the same horizontal scale as the plan, and to the vertical scale of not less than one inch to a hundred feet, according to figure 2 of the plan above mentioned.

Deviations from line.

That where any lateral deviation is intended, it must be likewise drawn out, with any buildings, court yards or gardens, on such line, on an extended scale of not less than a quarter of an inch per hundred feet. (See Fig. 3.)

Plans, &c. to be indorsed and open to inspection.

That such plans, sections, and books of reference be indorsed with the date of entry by the clerk of the peace where they are entered; and that they be always open to personal inspection, upon payment of one shilling per hour, provided that one copy of such plans; &c. be retained for the use of the Parliament till called for.

Copies of Plans, &c. where to be deposited.

That on or before the 31st December, in each year (or the 1st of April, in the case of Railway bills, where the various deposits are required to be made with the clerks of the peace, &c. on the 1st of March) a copy of so much of the said plan as relates to any particular parish affected (as see Fig. 5), with a book of reference, shall be deposited with the parish clerk in *England*, the schoolmaster of such parish in *Scotland* (or in the royal burghs with the

\* See the form of required plans, &c. in the Commons Journals, 13 July 1837, annexed to the Standing Orders.

† See the act 7 Wm. IV. & 1 Vict. ch. 83. "To compel clerks of the peace, parish clerks, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

town clerk) and the postmaster of the town in or nearest such parish in *Ireland*, for inspection, upon payment of one shilling.

The following to be proved before the Committee on Petitions.

That on or before the 31st December in each year (except as aforesaid with Railway bills), a copy of the said plans, &c. be deposited in the Private Bill Office.

And in Private Bill Office.

That a signed Estimate of the expense to be made, and that a subscription be entered into under contract to three-fourths the amount—though where the Public Work is to be made from Funds in the hands of a Company or Commissioners, a Declaration to that effect, with the Company's Seal affixed, or under the hand of an authorised Officer of such Company, &c. may be substituted in lieu.

Estimate of Expense and Subscription Contract required.

That all Subscription Contracts shall contain the names in full, description and place of abode of every subscriber, his signature to the amount of his subscription, with the name of the party witnessing, and the date of the same; and that it be proved before the Committee on Petitions that one-tenth part of the subscription has been paid up and deposited in the Bank, or invested in some Government security, in the names of the Clerk of the House of Commons, and of two persons named as Promoters of the bill, until the House has decided upon the bill, when it shall be repaid to parties to be named by the persons at the time of investment.

Form of Subscription Contracts.

That no Subscription Contract shall be valid unless entered into subsequent to the close of the previous session; and unless the parties subscribing bind themselves, their Executors, &c. for its payment.

When to be entered into.

That previous to the presentation of the Petition the Subscription Contract be printed at the expense of the promoters of the bill, and delivered at the Vote Office for the use of the members of the House.

To be printed and distributed.

That when the bill is to abridge the extent of any Public Work, application be made to owners, &c. of Lands affected thereby.

Application to parties concerned.

The above to be proved before Committee on Petitions.

All the above notices and standing orders must be proved to have been complied with before the Committee on Petitions for Private Bills, but not on oath nor by affidavits, except in Inclosure Bills, which may be proved by affidavits as prescribed by the General Inclosure Act (41 Geo. III. ch. 109)—and in the case of Petitions relating to SCOTLAND when an affidavit sworn and certified before a Sheriff-Depute or his Substitute therein, may be admitted—and any Petition relating to IRELAND, when proof may be admitted on the production of affidavits sworn and certified before any assistant Barristers therein: but in all these cases the Committee may if they please, require further evidence (*e*). Care must be taken that the standing orders in the above respects, are carefully complied with, as the Committee on Petitions must examine and report this to the House. And it must be remembered that the future bill cannot embrace any object not mentioned in the notice. But a notice of the intended application for the *enlarging* a particular act, has been held by the Committee to warrant an application for *repealing* the act in question, and granting other powers.

Bill can contain nothing not mentioned in notice.

The Petition.

THE PETITION presented for the Private Bill must truly state the case, at the peril of the parties preferring the same (*f*). It must be entitled, "The Humble Petition," except those of Peers, which are entitled "The Petition."

For the manner of preparing it, and the causes of informality, &c. which will prevent it from being received, see chap. XIII. *On Petitions*.

When presented.

In the House of Commons, Petitions for Private Bills must be presented by the member in his place, and within fourteen days after the first Friday in the session (*g*).

(*e*) S. O. II. of C. 1837. xxi-xxii.

(*f*) C. J. 26 May, 1685—S. O. II. of C. 15 Feb. 1700—18 Jan. 1708.

(*g*) S. O. H. of C. 1837, i.

This does not extend to petitions for making additional provisions in Private Bills (*h*). In the Upper House a sessional order is made, fixing the time for their presentation.

But if through unavoidable circumstances this time be expired without the petition having been presented, a petition must be preferred stating the facts, and assigning the reason, and setting out the substance of the intended petition, and asking leave to present it. This petition is referred to the Committee on Petitions, who receive evidence on the truth of its allegations and report on these facts only. If the report be favourable, the second petition is presented, which is likewise referred to this Committee, when the proceedings are subsequently conducted as if the petition had been presented in due time.

An application for extending the term of letters patent cannot be made, unless the term will expire within two years from the commencement of the then session (*i*).

Before the presentation of the Petition, all Plans, Sections, &c. required by the standing orders of the House, must be lodged in the Private Bill Office, and a receipt thereof indorsed upon the Petition and documents by one of its Clerks (*k*).

The Petition must be signed by the parties applying for the bill, in the Commons (*l*); and by all concerned, in the Lords (*m*). Persons intended to be called as witnesses should not sign, as it will prevent their evidence from being received (*n*).

Every Petition for granting money, or concerning any estate or interest of the Crown, or for compounding debts due to the Crown, must be referred to a Committee of the Whole (*o*).

All Petitions for Private Bills must be referred to the

(*h*) Bra. 35.

(*k*) S. O. H. of C. 1837.

(*m*) S. O. H. of L. xcvi.

(*o*) S. O. H. of C. 29 Nov. 1710.

(*i*) S. O. H. of L. 28 Mar. 1808.

(*l*) S. O. H. of C. 1837.

(*n*) Dwar. 130.

Committee on  
Petitions for  
Private Bills.

Select Committee on Petitions for Private Bills, to enquire into the compliance with the standing orders. This Committee is a sessional one, and consists of forty-two members (not to be members of the Select Committee on Standing Orders) of whom five shall be a quorum. This Committee is to consider solely whether the standing orders (for notices, &c.) have been complied with, by taking *prima facie* evidence thereof, and report to the House.

Proceedings  
before this Com-  
mittee.

The powers of the Committee are limited to the execution of this duty, nor can they entertain any question or matter, which is not immediately connected with the same.

This Committee  
may divide itself  
into Sub-Com-  
mittees, with the  
same power.

But for the better dispatch of business, the Committee on Petitions for Private Bills has authority to divide itself into Sub-Committees, of not less than seven members each, which Sub-Committees have all the powers and authority of the Committee, and may report to the House.

Time required  
between presen-  
tation of petition  
and meeting of  
Committee.

There must be *ten* days between the presentation of the Petition and the first meeting of the Sub-Committee for its examination; and if the bill relates to Scotland or Ireland *fifteen* days must intervene.

The Committee having met, the Clerk reads the Petition referred to them, that it may be ascertained what standing orders are applicable to the case. The Committee then receive proof of the observance of those standing orders which require to be observed before the presentation of the Petition,—a statement of which proofs is laid before the Committee by the Agent for the bill.

Additional proofs  
required in the  
case of Bills of  
the following  
description.

Besides the proof that is required of the performance of the various matters directed by the standing orders as to notices, consents, &c. already pointed out (see *ante*, p. 195) the following *special* standing orders as to bills of the undermentioned descriptions, must be proved before the Committee.

Canal, Water,  
&c. Bills.

BILLS for making, varying, extending or enlarging

**NAVIGABLE CANALS, AND RIVERS supplying towns with WATER, AND RESERVOIRS.**

1. When it is intended to direct water from an *existing* cut, canal, reservoirs, aqueduct or navigation, into an *intended* Cut, &c. the name of the existing Cut, &c. must be mentioned in the notice.

Further orders to be proved before the Committee on Petitions for Private Bills. \_\_\_\_\_

2. The plan accompanying must describe the brooks and streams to be directed into such intended Cut, &c. and the section shall specify the levels of both banks of such Cut, &c. and describe the same by feet and inches.

**BILLS FOR MAKING RAILWAYS.**

Railway bills.

1. That the line of the Railway marked upon the section shall correspond with the upper surface of the Rails. (*See\* Line S. S. Fig. 2.*)

2. That a vertical measure from the datum line to the line of the Railway shall be marked in feet and inches at each change of the gradient or inclination (*See E. F. Fig. 2.*), and that the proportion or rate of inclination between each such change shall also be marked. (*See G. G. in Fig. 2.*)

3. The height of the Railway over or under the surface of the ground, &c. to be marked at every crossing of a Road, River, Canal or Railway (*See I. I. I. Fig. 2.*): and if there shall be no crossing in every half mile then the height over or under the level surface shall be marked once in that space (*See O. O. O. Fig. 2.*): and if any alteration in the present level or rate of inclination of any Turnpike or Carriage Road, or Railway, be intended, the same shall be stated on the said section (*See P. Fig. 2.*).

4. All Tunnelling and Archway to be marked on the plan and section (*See Q. R. Fig. 1 and 2.*).

5. The parties desiring to make any alteration in the line of Railway, after the plans are deposited and notice

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\* These references are made to the Plan contained in the Journals of the House of Commons (v. 92. p. 644) of the forms required in such Plans generally.

Further orders to be proved before the Committee on Petitions for Private Bills.

given, may do so upon making certain other notices and applications—fully detailed in the standing order (*See C. J. v. 92. p. 641*).

6. Notices, applications, &c. that must be made by parties desiring to make an application for a Bill to make any alterations in any existing line of Railway (*See standing orders in C. J. v. 92. p. 641*).

7. Provisions that must be complied with when any renewed application is made for a Railway Bill, at the next session of Parliament (*See ibid.*).

Bills for confirming, &c. Letters Patent.

BILLS for confirming or prolonging the Term of LETTERS PATENT. (*Further order to be proved before the Committee on Petitions.*)

That each Notice shall have prefixed to it, in capital letters, the name by which the Invention is usually distinguished, and shall contain a description of the invention for which such Letters Patent have been obtained, and also an account of the term of their duration.

Consents, in the House of Commons.

The *consent* of all parties concerned in the measure, must be personally given before this Committee, either by themselves or other parties, but not on oath, nor by affidavit, except in the case of Local Turnpike Bills (*p*), and bills relating to Scotland or Ireland, consents to which may be proved by affidavits taken therein, in the manner already detailed in *p. 198*, as to affidavits allowed in such cases for proof of Notices having been given.

In the House of Lords.

In the House of Lords consents must also be personal, or in cases of the inability of the parties to attend, by affidavits made by two persons (*q*); and except in the case of Local Turnpike Bills (*r*) when an affidavit only is required; in Irish Bills, when a certificate of consent made before a Judge there will be sufficient (*s*): and in

(*p*) General Turnpike Act 3 Geo. IV. ch. 128. (*q*) S. O. II of L. 20 April, 1806.  
 (*r*) 3 Geo. IV. ch. 128. (*s*) S. O. II. of L. 1 Mar. 1806.

Scotch Bills when an affidavit sworn and certified before a Sheriff, Sheriff-Depute or Substitute will be received (*t*).

The Committee having examined the petition and failed to discover any infringement of the regulations required by the standing orders, report thereon to the House; and leave will then be given to bring in the bill. Report.

But if the Committee report that the standing orders have not been complied with, they must state therein the facts upon which their decision is founded, and any special circumstances connected with the case (*v*). If unfavorable.

Their report will then be referred to the *Committee on Standing Orders*, to examine whether it is expedient to allow the Petitioners to proceed as their case stands, or to permit them to do so upon repairing their error or omission. This Committee consists of fifteen members, of whom five is a quorum, and it is their duty to determine finally upon every report referred to them from the Committee on Petitions, and report to the House. If their report be unfavourable the measure is *generally*\* dropped for that session; but if favourable, leave is given to present the bill. Will be referred to the Committee on Standing Orders. This Committee's Report.

The House will not receive any petition referring solely to the compliance or non-compliance with the standing orders as to a particular bill, after the second reading of such bill; unless in the case of those standing orders which must necessarily be taken into consideration by the Committee on the bill (*w*). Petitions of this nature will be referred to the Committee on Petitions for the parties to be heard thereon, provided the matter be clearly stated, and the petition presented three days before the meeting of such Sub-Committee (*x*). Petition to dis-  
pense, &c. with  
Standing Orders.

(*t*) S. O. II. of L. 17 June 1814.

(*v*) S. O. II. of C. 1837. v. 5.

(*w*) S. II. of C. 1837, iii.

(*x*) *ib.* v. 4. 1

\* The House however has sometimes deemed it advisable to permit the introduction of the bill, notwithstanding the unfavourable report of this Committee, as in the cases of the Liverpool Dock bill, 25 Feb. 1828—the London Bridge Approaches bill, 14 March, 1834.

Petition to dis-  
pense with Ses-  
sional Orders.

And all Petitions applying for leave to dispense with any of the *sessional* orders of the House relating to Private Bills, must be referred to this Committee on Petitions, who are to report to the House whether such orders ought or ought not to be dispensed with (*y*).

In the Lords,  
petition referred  
to a Committee.

Supposing that in the HOUSE OF LORDS all the requisites for the petition have been complied with, it is then referred to a Select Committee, upon whose report, if favourable, leave is given to bring in the bill. In the case of an Estate Bill, however, (whether it originates in the Lords, or has been sent up from the Commons) it is different—for, the petition (or bill) upon its presentation, is referred to two of the Judges, to examine and report on the legality of the measure.—See part II. of this Chapter. *On Estate Bills.*

Petition for leave  
to add certain  
provisions to the  
Bill.

If it becomes desirable, before the bill has been presented, to make certain provisions therein, newly discovered to be necessary—or to improve the bill in any manner not originally contemplated, a petition must be presented to the House, noticing the former one, and stating the required additions, and praying that they may be made. This petition will be referred to the Committee on Petitions for Private Bills to examine into the compliance with any standing orders that may be affected by the same, and their report, if favourable, will be referred to the Committee on the bill, with power to make the required provisions. And if the standing orders have not been complied with, the report will be referred to the Committee on standing orders.

Petition with-  
drawn.

But if the first petition be very defective, or the required alterations numerous, leave should be asked to withdraw the petition and present another.

Report made  
and Bill ordered.

In the House of Commons, on motion of the member taking charge of the bill, the report from the Committee

on Petitions (or standing orders) is read, which done, he moves for leave to bring in a bill for the required purposes,—which if allowed, two or more members, (whom the Chairman is usually requested to nominate) are appointed to prepare and bring in the same.

In certain cases (as, when a Petition has been presented praying that leave may be given by the House, for the introduction of certain matters in the bill—not prayed for in the former petition) Instructions are given to the members appointed to bring in bills “that they do make provision,” for such and such matter (z).

Instructions to Members ordered to bring it in.

The draft of a Private Bill is generally prepared by the Agents of the parties concerned, but approved precedents for their formation have recently been determined, which will be found at the end of this Part.

All Private Bills (except Naturalization and Name Bills) (a) must be printed before their first reading, with the name of the member in charge of the same upon the back (b). And printed copies of them must be distributed to members; in which copies the proposed amount of all Tolls, Rates, &c. and other matters required to be left blank in the House Bill, are to be inserted in *Italics*. Printed copies must also be lodged in the Private Bill Office, interleaved with blank paper, for the use of the Committee and Report.

Bill Printed.

And distributed.

If a Private Bill should inadvertently be read the first time before printed copies have been distributed, the House, upon notice being taken, will discharge the order for the second reading, but on being informed that they had since been delivered, will permit the bill to be again read the first time (c).

If printed copies have not been distributed.

The bill may be presented the same day that leave has been given to bring it in, but it is the usual and more

Bill presented.

(z) C. J. 27 Jan. 1777; Enfield Chase Incl.

(a) S. H. of C. 1937.

(b) C. J. r. 93, p. 402.

(c) C. J. 15 March, 1811; Clyn. Incl.

correct way to defer its presentation to a later period, which, however, must be within the time limited, by a sessional Resolution, for receiving Private Bills. The member presenting attends at the Bar, until his name is called by the Speaker from his private business paper, when he at the command of the Speaker brings the bill up to the Table, where it is read a first time.

Accompanying the printed copy of the bill, there should be a manuscript copy (on parchment) called the House bill, within which is placed the Breviate for the Speaker's use.

If informal.

If the bill should have been prepared informally, or not conformable with the regulations of the House, upon notice being taken, the order for the second reading will be discharged and leave be given to bring in a proper one. (For instances of such withdrawal, see General Index to Commons' Journal, 1820, pp. 240, 697.) This generally occurs between the first and second reading of a bill, but if the irregularity should not be noticed till after the second reading, the bill will, upon its discovery, be ordered to be withdrawn (*d*).

May be withdrawn and new one presented.

Second reading ordered.

On the first reading of the bill, an order is made for its second reading, but generally without specifying the day, unless the second reading is intended to be opposed. If a day be not named in the order, it is understood that the second reading may be moved for whenever the parties are ready, upon their giving the required notice at the Private Bill Office, where the bill must be deposited between the readings.

Examined in Private Bill Office.

For the proceedings had upon the bill in the Private Bill Office, between the readings, see Part III. of this Chapter.

If upon the bill being examined by the Clerks in the

Private Bill Office, they report unfavourably, the member in charge of the bill must point out the informalities, and move that the order for its second reading be discharged, and the bill withdrawn. He may then move for leave to bring in another bill.

If found informal must be withdrawn and leave obtained to present another.

Upon the first reading nothing should be debated but the principle of the bill, for to dispute upon the *provisions* is implying that the *principle* is good, which cannot fairly be ascertained at such an early stage of the proceedings. When a debate does arise upon the first reading, which seldom happens, it is with the view to the rejection of the bill.

Principle only debated on first reading.

If between the first and second readings, a petition be presented praying to be heard by Counsel against the *principle*\* of the bill, an order is usually made that the petition do lie on the table till the second reading; and that the petitioners be then heard against it:—and that Counsel against the petition, and in favour of the bill, be also admitted. And a day is then, or subsequently, appointed for the second reading (*e*).

Petition praying to be heard against the bill.

When the House copy of the bill has been duly examined and certified by the Clerks of the Private Bill Office, and three clear days have elapsed since its first reading, the bill may be laid on the table for its second reading. But no Private Bill may be read a second time until the expiration of two calendar months from the day the last notice was given in the Newspapers (*f*); nor until six days after a printed Breviate† thereof shall have been laid on the table of the House (*g*).

When a bill may be laid on the table for a second reading.

(*e*) C. J. 3 March 1796; Cartmel Incl. (*f*) S. O. H. of C. 1837. vii. viii.

(*g*) C. J. 23 Jan. 1838.

\* All Petitions presented against Bills before the second reading, should object to the *principle* of the Bill. Petitions against *specific provisions* should be presented after the second reading, when they will be referred to the Committee on the Bill.

† During the last two or three years, the attention of the House of Commons has been much directed to the subject of Breviates of Private Bills. The practice

Fees must be first paid.

And no bill or clause for the particular interest or benefit of any person or persons, county, corporation or body of people is allowed to be read a second time unless the fees required by the standing orders have been paid thereon (*h*). As to the Fees, see Part III. of this Chapter.

The second reading.

If a day has been fixed for the second reading, no motion is required to bring it before the House, but it is taken up as an order of the day. But by inserting in the Speaker's private business paper the name of the Member proposing to move the order of the day for the second reading, such order may be taken up with the private business, and before the reading of the general orders of the day. If left to take its course amongst the general orders of the day it is called in its turn by the Clerk at the table (*i*).

(*h*) Bra. 83.

(*i*) Sherwood on Private Bills, 31.

of presenting a Breviate with every Bill brought before the House, appears (from a reference to D'Ewes and other old writers), to have been coeval with the establishment, in that House, of any regular system of business—but these Breviates were then very defectively drawn out, and badly arranged, being nothing more than an abstract of the marginal notes of the Bill, without any information as to the effects of the measure upon the general law of the land. In consequence of which, many bills of an injurious and monopolizing tendency, much affecting the public interest, were passed though the Commons without the attention of that House having been sufficiently directed thereto—so much so as to call for Parliamentary interference in the matter—few members being disposed personally to examine every Bill presented to the House, clothed as they frequently are in the technicalities and obscurities of legal language.

To prevent a recurrence of circumstances of this nature, a remedy was at length provided, by the adoption by the House, on the 23d January, 1838, of the following Resolutions, viz:—

“That no Private Bill be read a second time until six days after a Breviate thereof shall have been laid on the table of the House, and have been printed.

“That such Breviate shall contain a statement of the object of the Bill, with a summary of the proposed enactments, and shall state any variation from the general law which will be effected by this Bill.”

The necessary authority in carrying the above Resolution into effect, was at the same time intrusted to the Speaker—who accordingly appointed to the office of Preparer of Breviates of Private Bills, with a salary of £1000 a year—Mr. Booth, a gentleman of great legal attainments and ability.

This system, so far as experience has yet tried its utility, seems to have given very general satisfaction—(see *Mirror of Parliament*, 1837-8, v. 7. p. 5322, 5323.)

But if no day has been fixed for the same, the second reading must be moved by the Member in charge of the bill, or any other one.

If the second reading be opposed, a Member generally moves as an amendment to the question, "that this bill be *now* read a second time," to leave out the word "*nōw*," and to insert at the end of the motion "upon this day six months." Upon the motion for this amendment, the principle of the bill is generally debated.

How to throw out the bill at this stage.

The first question to be put, is, that the word "*now*" stand part of the question. If it be resolved in the negative the second question then follows, to add the words "upon this day six months." And if the first question be resolved in the affirmative, then the main question "That this bill be *now* read a second time," is put. If an order has been made allowing counsel to be heard on the bill, the Speaker then directs the Sergeant to enquire "whether any counsel are attending." No more than two counsel will be heard on one side.

Counsel heard upon the bill.

Upon the Sergeant's stating that counsel are attending, a motion is made "that the counsel be called in." Without this motion the counsel, though in attendance by order of the House, cannot be heard (*k*); and it may be, and frequently is (*l*) opposed and negatived. Sometimes the House is informed by a Member that it was not the desire of the parties to be heard against the bill at that stage of it (*m*).

The counsel, on being admitted, are placed on each side of the Bar; and the Speaker enquires of each for whom he appears.

The bill is then read by the Clerk *pro forma*. The petition against the bill, and the order for hearing counsel, are also read.

Then the counsel for the Petitioners is first heard, to open his case and examine witnesses in support of it.

And witnesses examined.

(*k*) C. J. 4 March, 1795—Norwood and Pad. Canal.

(*l*) C. J. 2 March, 1796. Perteuhall Incl. (*m*) C. J. 7 Msr. 1796; Cartmel Incl.

The witnesses are then cross-examined by the counsel for the bill; and afterwards examined by such of the Members present as choose to put questions.

The counsel for the petitioners then sum up the evidence.

The counsel for the bill next opens his case, and calls witnesses in support of it, and against the petition. These are examined and cross-examined in like manner as the other witnesses.

The counsel against the bill is then heard in reply.

Counsel withdraw and Speaker declares the second reading of the bill.

After which, the counsel on both sides are ordered to withdraw (*n*).

The Speaker then opens the substance of the bill from his breviate, and declares that it is a second reading, and the motion is made for its commitment.

Counsel not usually heard by the House, but in the Committee.

It has lately become unusual, however, for the House to hear counsel on the second reading of any private bill (except for a Divorce), on account of the interruption it occasions to public business (*o*). But opposed bills are frequently debated by the Members in the House, and when the bill is committed, the petitions against it are generally referred to the Committee, with liberty to hear the petitioners by counsel. But the order never extends to the hearing of counsel, unless that is particularly prayed for in the petition, and it is the duty of the Member presenting the same to see that it contains the required provision (*p*). For the manner of hearing counsel before the Committee, see *post*, as to the *Committee on the Bill*.

No Petition to be referred to the Committee to hear Counsel unless the objections are distinctly specified.

By a standing order (*q*), no petition against a Private Bill is to be referred to the Committee on such bill which does not distinctly specify the grounds of objection to the same: and the petitioners are only to be heard upon such grounds: and if it shall appear to the Committee that such grounds are not stated with sufficient accuracy, they may direct a more specific statement to be given in to them, in

(*n*) Bra. 93.

(*o*) C. J. 4 Feb. 1795. Eau. Brink.

(*p*) Sherwood on Private Bills, 35.

(*q*) S. O. H. of C. 1837, xi.

writing, limited, however, to the grounds of objection originally specified.

A Private Bill is generally referred to a Select Committee, but for particular reasons, it is sometimes committed to a Committee of the whole (*r*).

Bill generally referred to a Select Committee.

The power of sending for persons and papers is not given *of course* to Committees on *bills*, as it is upon *petitions*, but only for some special reason. The most frequent reason for doing it is, when a petition relative to the bill has been referred to the same Committee (*s*); though it is not always done even in this case.

Power to send for persons and papers.

If it be proposed to insert in the bill any new or additional matter, or to leave out any subject matter expressed in the title of the bill—the Committee must receive special instructions from the House for that purpose; but no instructions should be moved unless it clearly appears that the Committee cannot do the required matter without them (*t*).

Instructions given to the Committee.

These instructions are usually given in words which *empower* (viz. “that the Committee have power to make,” &c.)—and consequently leave it to their discretion, either to make the addition or not. Sometimes, however, they are directory or imperative, and may be so even with respect to matters which would otherwise have been within the ordinary powers of the Committee.

In order to obtain these instructions, a petition, stating the facts and praying that the proposed provisions may be made in the bill, must be presented to the House, and referred to the Committee on Petitions in the same manner as a petition, with the same prayer, alluded to in a former stage of the bill, (see *ante*. p. 204.)—and upon the report of this Committee (or that on standing orders if it has been

Petition praying that they may be given.

(*r*) C. J. v. 70. p. 454; to remit duty on Malt.

(*s*) C. J. 17 May 1795; Hyde Park road.

(*t*) Mirror of Parliament, 27 May, 1834; Poor Law Amendment.

Committee on  
the Bill.

referred to the same) the instructions will be given to the Committee. Seven clear days must intervene between the second reading of a Private Bill, and the meeting of the Committee thereon, for any other purpose than to choose a Chairman (*v*).

Time between  
Second Reading  
& Commitment.

Notice to be  
given of Com-  
mittee's meeting.

Notice in writing of the day and hour appointed for the meeting of the Committee must be given by the Agent soliciting the bill, to the Clerks in the Private Bill Office and by them entered in the Private Bill Register, three clear days before hand; and all proceedings of the Committee without such notice are void (*w*).

A copy of bill  
lodged in Private  
Bill Office, and  
parties all to  
have copies.

A filled up bill, signed by the Agent, as proposed to be submitted to the Committee, is to be deposited in the Private Bill Office at the time of giving the above notice; and all parties shall be entitled to a copy thereof, on payment of the charges for making out amendments of such bills (*x*).

Lists of Private  
Bill Committee  
to be hung up in  
the Lobby.

The Clerks of the Private Bill Office must prepare daily list of all Private Bills, and petitions for Private Bills, upon which any Committee is appointed to sit, specifying the time and place of meeting; which lists must be hung up in the lobby of the House (*y*).

Postponement of  
Committees  
meeting.

No postponement of the first meeting of any Committee must take place without one clear day's notice being given at the Private Bill Office of the time fixed for such meeting. And no adjournment without a notice in writing of the time to which it is adjourned being given by the Committee Clerk to the Clerks in the Private Bill Office (*z*).

Quorum.

The number required to form a quorum of the Committee on the bill is five. The names of the members attending each day are to be entered on the minutes of the Committee by the Clerk; and if any division take place, the names of the members voting, with the side on which they

(*v*) S. O. H. of C. x.

(*w*) S. O. H. of C. 1837; Pri. Bill Office.

(*x*) S. O. H. of C. xii.

(*y*) S. O. H. of C. xv.

(*z*) S. O. H. of C. xiii—xiv.

voted, must be also taken, and given in to the House with the report. Committee on the Bill.

Having met, the Committee appoint their Chairman, by whom or any other member they may name, their conclusions are to be reported to the House. Chairman.

[In the House of Lords, the Chairman of Committees (an officer appointed at the commencement of every session) sits on all unopposed bills; but every opposed Private Bill (not being an Estate Bill) is referred to a Select Committee of five, who may choose their own Chairman.] (In the Lords.)

The order of commitment is then read, with any instructions which may have been given to the Committee; also the petitions against the bill, if any have been referred to it. Proceedings before the Committee.

The Committee on Petitions having proved the compliance with the standing orders, this Committee on the bill must not examine into them unless specially directed; except, of course, those standing orders which are specially required to be proved before this Committee.

The question for the first reading is then put by the Chairman, and the bill is accordingly read by the Clerk *pro forma*. The question is then put for its second reading, paragraph by paragraph, which is done, and the allegations contained in the preamble are proved by evidence successively as they are read. Preamble proved

If a petition against the bill has been referred to the Committee, with power to hear counsel thereon, the manner of proceeding is as follows:— Counsel heard before the Committee.

The counsel having been called in, the counsel for the bill opens his case, and produces witnesses to prove the compliance with the standing orders, and the allegations in the preamble of the bill. And witnesses examined.

Each witness is first examined by the counsel for the bill, then cross-examined by the counsel against the same, and re-examined by the counsel for the bill to explain his former evidence, but not to state new matter: the witness

Committee on  
the Bill.

is then out of the counsel's hands, but may be further examined by the Committee.

The Counsel for the bill is then heard upon the evidence.

The Counsel against the bill then opens his case, and examines his witnesses, who are cross-examined in like manner as the witnesses for the bill, and after the Counsel against the bill has summed up his evidence, the Counsel for the bill is again heard in reply.

The Committee decides upon the Preamble.

The Committee then resolve, whether the standing orders required to be proved before them have been complied with, and whether the allegations in the preamble have been proved; if in the affirmative, they then proceed to amend the bill, in the progress of which Counsel may be heard for or against any of the provisions or amendments proposed (a).

Clauses required to be inserted in certain Bills.

The Standing Orders require that all bills for carrying on any work by a Company, Commissioners or Trustees, shall contain a clause compelling persons who have subscribed to pay their subscriptions; and one obliging the Company to take security from their Treasurer or Collector for the faithful execution of his office.

That subscriptions be paid up &c.

Level of Road.

And that when the level of any road is to be altered by any Public Work, the ascent of any Turnpike road shall not be more than one foot in thirty, and of any public carriage road not more than one foot in twenty; and that a good fence, at least fourteen feet high, be erected on each side of every bridge to be erected.

Bridges fenced.

Proof to be given before this Committee of compliance with the following orders.

In addition to the compliance with the allegations in the preamble and the standing orders above mentioned, the following special standing orders are required to be proved before the Committee on bills of the following descriptions :

#### INCLOSURE BILLS.

IN INCLOSURE  
BILLS.

1. That the Committee to whom any Inclosure Bill, or

(a) Bra. 110, 111.

petition for the same, be referred, may admit proof of the notices required by the standing orders, and of the allegations in the preamble of the bill, by *affidavit* under and according to the schedule in the General Inclosure Act (41 Geo. III. ch. 109.); unless such Committee shall otherwise order.

To be proved before Committee on the Bill.

Notices and Allegations.

2. That all such bills contain provision for leaving a sufficient open space for exercise and recreation, and if such be not made, satisfactory reasons must be adduced to the Committee, who are to report them specially to the House.

Clause for leaving open space.

3. That all such bills contain the names of the Commissioners proposed to be appointed; and the compensations intended to be given for manorial rights, tythes, and enfranchisements. And that all copies of such bills for the parties concerned contain the same.

Names of Commissioners, and amount of compensation to sufferers.

4. That no person shall be named as a Commissioner, Umpire, Surveyor or Valuer, under such bills, who shall be interested in such Inclosure, or be Agent for any party interested.

Disqualifications of Commissioners, &c.

5. That all such bills shall contain a clause settling the pay of the Commissioners, and regulating the passing of their accompts.

Their pay and accompts.

BILLS FOR MAKING TURNPIKE ROADS—(*in Ireland only*).

ROAD BILLS, (in Ireland).

That in all Bills for making a Turnpike Road, or for continuing or amending an act for that purpose, or for the alteration of any of the existing tolls on such roads, or for widening or diverting such road—a clause be inserted preventing any commissioners from acting, unless qualified by estate to the extent required by such bills; and that such qualification be extended to the heirs apparent of persons possessed of an estate in land to a certain value to be specified.

Clause for the Qualification of Commissioners.

#### BILLS FOR MAKING RAILWAYS.

(*The Committee on the Bill are directed to report specially on these proofs.*)

RAILWAY BILLS.

To be proved  
before Committee  
on the Bill.

Restrictions as  
to Mortgage.

Railways not to  
cross Highways  
on same level.

Capital.

Present means of  
conveyance.

Passengers and  
Freight ex-  
pected.

Income ex-  
pected.

Whether Rail-  
way be a com-  
plete line, or not.

1. That no Railway Company be authorised to raise by loan or mortgage, more than one-third of their capital: and that, until fifty per cent. of the whole capital be paid up, they be not allowed to raise any more by loan or mortgage.

2. That no Railway be permitted to cross any highway on the same level, unless the Committee on the bill report it as their opinion otherwise, with the reasons and facts therefore.

3. Proof as to proposed capital of company, and amount of loans which they may be empowered to raise by the bill; the amount of shares subscribed for, and the deposits paid thereon; the names and residence of Directors and Provisional Committee, with amount of shares taken by each, the number of shareholders who have a local interest in the line, and amount of their subscriptions; the number of other parties, and of capital taken by them; a statement of the number of the shareholders subscribing for £2,000 and upwards, with their names, residences and amounts subscribed for.

4. The sufficiency or insufficiency of the present means of conveyance for all purposes, and of communication, stating the present amount of traffic by land or water, the average charges for passengers and goods, and the time occupied.

5. The number of passengers, and the weight and description of goods expected on the Railway.

6. The income expected to arise therefrom, from passengers and freight, and in what proportions; stating generally the description of goods from which the largest revenue is anticipated.

7. Whether the Railway be a complete line, or part of a more extended plan hereafter to be submitted to Parliament; and how far the calculations of remuneration depend on such contemplated extension.

8. Whether any, and what, competing lines of Railway are in existence or contemplation; the present state and comparison between them; but that no line of Railway shall be deemed a competing line, unless its plan, &c. shall have been deposited with the Clerks of the Peace, and the Private Bill Office, as required by the standing orders. To be proved before Committee on the Bill.  
Competing line.
9. To state what planes on the Railway are proposed to be worked, either by assistant engines, stationary or locomotive, with the respective lengths and inclinations of such planes. Planes.
10. To advert to any peculiar engineering difficulties in the line, and how they are intended to be overcome. Engineering difficulties.
11. To state the length, breadth, height, and means of ventilation of any proposed tunnels, and if they are to pass through favourable strata or not. Ventilation of Tunnels.
12. To state whether in the lines proposed; the gradient and curves are generally favourable or not; and the steepest gradient exclusive of the inclined plane above referred to; and the smallest radius of a curve. Gradients and Curves.
13. To state the length of line, of Railway and branches respectfully. Length of line.
14. To state the fitness, in an engineering point of view, of the line. And its fitness.
15. If it be intended that the Railway should pass on a level, any highway or road, to call particular attention to that fact. Level highways.
16. To state amount of all estimated expenses of making Railway, and whether they appear to be adequate, and supported by proof. Estimates.
17. To state the estimated annual expense of Railway when completed, and how far that is proved. Annual expenses.
18. Whether it has been satisfactorily proved that the revenue will be likely to pay all expenses, and still allow profit. Revenue in reference to expenses.
19. The number of assents, dissents and neuters on the Assents, &c.

To be proved before Committee on the Bill.

line, the length and amount of traversed property of each class, distinguishing owners from occupiers; and in any bill to vary the original line, stating these particulars with reference to such parties only as may be affected by the proposed deviation.

Engineers examined.

20. To state the names of Engineers examined in support of and opposition to the bill.

Petition in opposition.

21. To state the main allegations of any petition referred to the Committee in opposition to the bill, and whether its allegations have been considered by the Committee, and if not, the cause of their not being so.

And any other circumstances.

22. To state in addition, any circumstances which, in the opinion of the Committee, it is desirable the House should be informed of.

Specific replies required to the above questions.

Upon the above, the House has ordered, that it will not proceed upon the further consideration of the report on any such bill, until specific replies have been given by the Committee, to each of the questions contained in the foregoing resolutions; and that in order to afford time for the proper discussion of reports on Railway Bills, the House will, upon every Tuesday, at five o'clock, proceed to the consideration of such reports.

Special clauses required in Railway bills.

In all such bills, there must be inserted clauses to the following effect:\*

And Plans.

1. That the Railway shall not be proceeded with, till certain Plans; &c. be deposited.

2. Limiting deviations from the datum line described on the section, &c. without certain authority.

3. Limiting alteration of Curves.

POOR RELIEF BILL.

BILLS for maintaining, lodging or employing the Poor.

That the general law for the Settlement of the Poor is not departed from, &c.

That the Chairman of the Committee upon every such bill, upon the report thereof, do acquaint the House that the bill contains no clause whereby the general law of Settlement of the Poor shall be departed from, or any power

\* See the clauses at length, in Commons Journals, v. 92, p. 642, 643.

of corporal punishment given to any person employed in the management of the Poor. Committee on the Bill.

BILLS for confirming or prolonging the term of LETTERS PATENT. BILLS for confirming, &c. LETTERS PATENT.

That when any bill shall be brought into the House, for confirming Letters Patent, there be a true copy of such Letters Patent annexed to the bill.

As soon as the allegations in the preamble of the bill have been proved before the Committee, the consents of the parties interested must be proved, either by personal attendance, or, if the Committee do not require further evidence, by producing a copy of the bill signed by the consenting parties before one or more witnesses\*.

But if counsel is to be heard upon the bill, the Committee proceed to hear them, in the manner already detailed (see page 213). Counsel.

After the Committee have passed the preamble and the proofs, each enacting clause is read by the Chairman in its order, the blanks are then filled up, and other amendments made in the order in which they occur, each amendment being made the subject of a separate motion, and being twice read (b). Clauses—Blanks filled up and amendments made.

The opponents to the bill are at liberty to offer objections to each clause as it comes before the Committee. But it is not generally usual, or even necessary, to call upon the promoters to support each clause, for the clauses of the bill are generally considered to be proper unless proved otherwise by the opposition; it is therefore customary for the Committee to require the opponents to state the par- How the clauses of an opposed Bill are discussed in Committee.

(b) C. J. 28 May, 1621.

\* The Committee upon any Petition or Bill relating to *Scotland*, may admit proof of compliance with the Standing Orders, and of the consents of parties concerned, upon affidavit, sworn and certified before any Sheriff, Sheriff-Depute or Substitute; and in *Ireland*, upon Affidavits sworn and certified before any Assistant Barrister there; unless the Committee require further evidence.

Committee on the particular provisions to which they object, and to proceed to discuss these provisions, adopting the unopposed clauses as a matter of course (if they themselves approve them) without permitting any interference by the petitioners against the bill.

Clauses postponed.

The consideration of the *preamble* of a Private Bill, should not, like that of a Public Bill, be postponed, as it contains the allegations upon which the bill is founded, but any of the clauses, before they have been amended (though not afterwards), may be postponed (c).

New clauses offered.

After the bill has been gone through, the new clauses are next to be offered, after which the Committee returns to the postponed clauses (if any) in the order in which they stand in the bill.

Committees on Private as well as Public Bills, can admit no provisions which do not come within the scope of the title, without instructions for that purpose from the House.

Chairman must sign the Bill and new clauses.

The Chairman of the Committee must sign with his name at length, a *printed* copy of the bill (to be called the Committee Bill), on which the amendments are to be fairly *written*: and also sign, with the initials of his name, the several clauses added in Committee (d).

And all Plans &c. with alterations made therein.

The Chairman must also sign with his name at length, every plan and book of reference produced before the Committee, and mark with his initials every alteration in such plan or books of reference which may be agreed upon by the Committee; and every such plan, &c. must be thereafter deposited in the Private Bill Office (e).

Which must be lodged in Private Bill Office.

Every plan and book of reference which shall be certified by the Speaker of the House of Commons, in pursuance of any act of Parliament, shall previously be ascertained and verified in such manner as the Speaker shall

(c) Bra. 106.

(d) S. O. H. of C. 1837.

(e) S. O. H. of C. 1837.

direct, to be exactly conformable in all respects to the plan and book of reference signed by the Chairman of the Committee.

Certified copies of them.

The House of Commons have, ever since the year 1806, passed a resolution at the commencement of the session, limiting the time for receiving reports to a certain period of the session. If the Committee find that they cannot be ready within this limited time, a motion must be made to the House that the time be enlarged in favour of the particular bill.

Committee must report within a certain time.

When the Committee have ordered the bill to be reported, the Committee Clerk prepares the report, with the amendments, both of which are written on paper, separate from the bill and from each other: the amendments in the order in which they occur, though they were not so made by the Committee.

Clerk prepares the Report.

Notice in writing of the day on which the bill is to be reported, must be given by the agent soliciting the bill to the Clerks in the Private Bill Office, at least one clear day before the report is made (*f*).

Notice of Report.

The Chairman of the Committee, upon the report of every Private Bill, is to acquaint the House that the allegations of the bill have been examined; and whether the parties concerned have given their consent (when it is required by the standing orders) to the satisfaction of the Committee (*g*). This statement is made in the body of the report (*h*).

Report made.

But if the Committee report that the preamble has not been satisfactorily proved, the report is ordered to lie on the table, and the bill is dropped; but the resolution of the Committee may be controlled by the House, and must be reconsidered if the bill is re-committed (*i*).

If unfavorable.

(*f*) S. O. H. of C. 1837.

(*g*) S. O. H. of C. 1837.

(*h*) Bra. 116.

(*i*) C. J. v. 75. pp. 336, 343, Exeter Market Bill.

Report of Bills of  
*Second Class* not  
to be considered  
for seven days.

The report is generally taken into consideration immediately upon its being brought up, but with respect to bills of the *second class*, it is ordered (*k*), that there be seven clear days between the report and the time when it is considered: and every such bill as amended by the Committee, must be printed at the expense of the parties applying for the same, and delivered to the door-keepers for the use of members, three clear days before the report is to be considered. And notice in writing is required to be given to the Clerks in the Private Bill Office of the time appointed for its consideration, at least one clear day before such time appointed.

Report considered.

If the bill be reported without amendment it is taken to the table without any question for bringing it up, and the reporter moves, after it has been read, that it be ingrossed or, (if it has been sent from the Lords) that it be read a third time. But if it be reported with amendments, leave must be given to bring up the same, and each amendment must be put to the question separately, to be agreed to, disagreed to, or amended by the House (*l*).

How amendments to the Report are made by the House.

If it be intended, upon the report, to leave out a clause, or part of the bill in which any amendment of the Committee occurs, such amendment should be previously disagreed to by the House, as a preparatory step to the clause being rejected; for, otherwise, the House would be precluded, in that stage, from leaving out the amendment, and consequently the clause of which it forms a part (*m*).

Committee's clauses considered.

After the Committee's amendments are disposed of, the clauses added by the Committee are read twice, and agreed to, or otherwise, by the House. Any member may then offer a new clause, to be added to the Bill, which being read thrice and adopted, is also open to amendments. Then also, any original amendments may

New clauses offered, and amendments made.

(*k*) S. O. H. of C. 1837.

(*l*) C. J. v. 61. p. 353.

(*m*) Bra. 120.

be moved to the body of the Bill which do not alter or affect any amendments previously agreed to by the House.

All amendments which may be made upon the report of a Private Bill, must be entered by one of the Clerks in the Private Bill Office, upon the printed copy of the bill as amended by the Committee, and such Clerk must sign the copy so amended, in order to its being deposited and preserved in that office (*n*).

And entered by the clerk in the Private Bill Office.

Besides the bills of the *second class*, which, it has been observed, must be printed at the expense of the parties before the report is considered, some other Private Bills of general interest are occasionally ordered to be printed, with the Committee's amendments, by the parties applying. The proper time to move for such an order is, after the report has been received, and before it has been ordered to lie on the table (*o*).

When to move that Bill as amended by the Committee be printed.

At the commencement of the session, a time is limited for receiving reports from Committees on Private Bills. If, therefore, the Committee's proceedings are protracted to so late a period that the report cannot be made within the time prescribed, the Chairman of the Committee states in the House, that, "notwithstanding all due diligence, the report cannot be made within the time limited by the House for receiving reports from Committees on Private Bills:" and then moves that the Committee have leave to make the report on or before a certain specified day.

If the Report cannot be got ready within the time limited for receiving Reports.

If notices be taken of an irregularity in the report of a Private Bill, or if it be found necessary to make numerous amendments to the bill, or if any thing else should occur that would render such a proceeding necessary, the bill will be re-committed to the same Committee (*p*).

In what case a Bill should be re-committed.

Similar notice is required to be given at the Private Bill Office, of the sitting of Committees on re-committed Pri-

Of which similar notice must be given.

(*n*) S. O. II. of C. 1837.

(*o*) Bra. 126.

(*p*) C. J. 23 March, 1797; Dover road.

vate Bills, as upon the sitting of the first Committee. But, to prevent delay, the House, upon a re-commitment, frequently orders, "That the Committee do sit and proceed "forthwith," in which case no such notice is necessary (*q*).

Re-commitment.

This Committee is formed and proceeds in the same manner as the first Committee, except that their proceedings are usually, though not invariably (*r*), confined to amending the bill.

If parties interested are dissatisfied with Report, may petition the House thereon.

If the re-commitment be general, all amendments of the former Committee are rendered void, and must be made anew:—but if it be *as amended*, then none of the amendments are affected thereby (*s*). And if the re-commitment be of a particular clause, then no part of the bill but that clause comes before the Committee (*t*).

By the standing orders of the House of Commons (*v*), any party interested in a Private Bill, or who shall have appeared in support of the petition, by himself, counsel or agent,—or the promoters of the bill if they are dissatisfied with the vote of the Committee thereon—may petition the House upon the matter, which petition will be referred to a Committee of Appeal, to examine and report finally on the matter.

For this purpose a Sessional Committee is to be appointed, to be called "The Committee of Appeals upon Private Bills," to consist of all the Knights of the Shires, all the Members for Cities, and such other Members as may be named thereon, so that the whole number appointed may be at least two hundred.

To consider which, the Committee of Appeals is appointed.

To a sub-committee of which, the petition will be referred.

Whenever any petition of the above description is presented to the House, it shall, if the House think fit, be referred (together with the report of the Committee on the bill, with the minutes and evidence taken before the same) to a Select Committee, to be chosen by ballot from this

(*q*) C. J. v. 73, p. 91.

(*r*) C. J. 25 & 30 Mar. 1814; Bray Incl.

(*s*) C. J. 25 June, 1799; London Post. (*t*) C. J. 16 Mar. 1812; Thames navigation.

(*v*) S. O. II. of C. 1837. xxiv.—xxix.

Committee of Appeals. For which purpose, whenever any such petition shall have been so referred, the House shall fix a day for the choosing of the Select Committee.

Committee of Appeal.

On the day appointed, at half past four o'clock (or as near thereto as the question before the House will permit) the Speaker shall order the doors of the House to be locked; and the ballot to proceed in the manner following:—

The names of the members composing the Committee of Appeals having been written upon separate pieces of paper, and put into the glass, the Clerk shall draw therefrom, until the names of seven members of such Committee who shall be then present, and who shall not have voted at the Committee on the bill to which the petition refers, or who shall not be excused by the House—shall have answered to their names; which seven members shall constitute the Select Committee to which such petition shall be referred; and shall meet for business the following day at eleven o'clock, and continue to sit *dedie in diem*, until they have reported upon the same.

Sub-committee balloted for.

Who may not serve thereon.

Meeting of Committee.

This Committee shall hear the arguments of the parties complaining of, and also of the parties supporting, such vote or votes; but only one counsel or agent shall be heard in support of any one party.

Its Duties.

No member of this Committee shall be allowed to absent himself therefrom, without leave of the House, or an excuse allowed by the House at its next sitting, upon special cause shown. And this Committee shall never sit until all its members to whom leave has not been given, or excuse allowed, are met; and if they do not all meet within one hour after the time to which the Committee was adjourned, a further adjournment (till the next day) shall be made, and reported, with the cause thereof, to the House.

And Regulations.

But before any petition praying for a Committee of Appeal shall be presented to the House, the petitioners, or

Before such Petition is presented Petitioners to enter into Bond for payment of costs,

Committee of  
Appeal.

any one of them, shall enter into a bond to the agent, or person nominated by the agent, of the opposing parties, for the payment of all costs and expenses of the party or parties who shall appear before the House in opposition to such petition (such costs and expenses to be found and assessed by the Clerk, or one of the Clerks Assistant of the House) in case the Select Committee shall report to the House that such Petition appeared to them to be frivolous or vexatious.

To be assessed  
by the Clerk,  
&c.

Who must see to  
sufficiency of  
sureties, &c.

The sufficiency of the sureties, and the form of the bond, must be examined into and determined, by the Clerk, or one of the Clerks Assistant; and that the names, together with the additions, and usual places of residence, of the persons proposed as sureties, be delivered in writing by the agent for the petitioners to the agent for the opposite party, one clear day before such Bond is entered into.

Names, &c. of  
sureties to be given  
to the other  
party.

Bills ingrossed.

All Private Bills are directed to be ingrossed, examined, and brought to the Table of the House, according to the priority in which they have been respectively ordered to be ingrossed, and to ensure the accuracy of the ingrossments of Private Bills, the Clerk of the House is directed to provide a sufficient number of Clerks to be called "Examiners of Ingrossments."

And examined.

And no Private Bill is to be read a third time until a certificate has been indorsed upon the House copy, signed by one or more of the said Examiners, declaring that the ingrossment thereof has been examined, and that it agrees with the Bill as amended by the Committee, and on the the Report (*w*).

Third reading.

The Bill may be read a third time on the next, or any subsequent day, after it has been reported, but notice of

the day proposed must be given at the Private Bill Office, by the Agent, one clear day beforehand.

On the day appointed, the ingrossed bill being laid on the table (tied up with the House copy) by the Clerk in the Private Bill Office, a member moves, "that the ingrossed bill for &c. be now read the third time." If the third reading be opposed, it is usually done by moving an amendment to this motion by leaving out the word "now," and adding "upon this day six months." Third reading.

If the question for the third reading be negatived without any such amendment a motion should afterwards be made that the bill be read a third time "upon this day six months" (*x*).

If any amendments are intended to be made to the bill in this stage, the new clauses (or ryders) should be first offered. Each clause must be separately ingrossed on parchment, and with such blanks as it would have had if the same had originally been part of the bill presented to the House, and must be read three times upon question, and, (upon question also) added to the bill by way of ryder (*y*) (See further as to the mode of annexing ryders to bills, *ante p.* 177.) Ryders.

No amendment for imposing or increasing any tolls or duties can be made in the House (*z*), but amendments for disagreeing to or lessening tolls or duties may be made in the House, either on the report, or the third reading (*a*). Amendments.

The amendments, if any, which are made upon the third reading, are always to be entered by one of the Clerks in the Private Bill Office, upon the printed copy of the Bill, as amended by the Committee, and deposited in that Office (*b*).

(*x*) C. J. 24 March, 1766; Trent and Mersey Canal.

(*y*) C. J. 7 Dec. 1795; Grand Junc. Canal.

(*z*) C. J. 18 Feb. 1667; 20 Jan. 1703.

(*a*) C. J. 27 April, 1809; Wear Navigation.

(*b*) S. O. H. of C. 1837.

Bill passed.

The question is then put "that this Bill do pass". This question is sometimes opposed, and if negatived, the bill is lost, and cannot be renewed again that session. See *ante p.* 181.\*

Title.

If any alteration be intended in the title, the new one must be written on paper as a motion. If a new title be not moved, the original one remains, except that "An Act" is substituted for "A Bill."

Sent to the Lords.

The Bill is then endorsed by the Clerk, and ordered to be taken to the Lords. The member that has been ordered to carry up the Bill takes it off the table and holds it in his hands, opposite the chair, till the Speaker directs the Members to attend their Messenger. The Bill is then, or at the earliest opportunity afterwards, taken to the Lords by the Member, accompanied by at least seven others (c). See further Chap. XIV. *On Messages.*

Consent of the Crown given when required.

When any of the estates or interests of the Crown are affected by a private bill, Her Majesty's consent is usually signified immediately before the Report or the third reading, by the Chancellor of the Exchequer, or some other of the Privy Council (d).†

Bill considered in the Lords.

In the House of Lords, the Bill is generally read a first time on the same day that it is sent from the Commons; and having passed the different stages in that House with the same forms as in the other, except ingrossing (which is done already) the Lords send a message to the Commons that they have agreed to the same; the bill remaining with the Lords to be presented for the Royal Assent.

If passed with amendments.

But if amendments are made by the Lords to the Bill, they are transmitted to the Commons, and the same pro-

(c) Bra. 139.

(d) C. J. 18 May, 1804; Bridghram Incl.

\* See Appendix XVIII. for an example of the Forms required, in a Private Bill, in the Notice, Petition, and Allegations that must be proved before the Committee.

† See Appendix XX.—Form of Memorial to the Treasury for the consent of the Crown to such a Bill.

ceedings take place upon them as on amendments to a public Bill. (See *ante*, p. 183.) See also Chap. IX. *On Money Bills*, if the amendments are of a nature that affect the privileges of the Commons.

For the manner of giving the Royal Assent to it, see also, the Chapter on Public Bills. After the assent is given, Public Acts are enrolled and delivered into Chancery, but Private Acts are not enrolled\* without the suit of the party, and therefore the original bill, filed among the Bills of Parliament, and stamped with the Great Seal, is the original record of such acts (*e*).

Private Acts do not bind *strangers*, though they do not contain any saving of their rights. A general saving of the rights and interests of all persons whatsoever, except the parties concerned, used to be constantly added to all Private Bills, but it has been held that, even if such a saving clause be omitted, the act will bind none but the parties. It is usual, however, in preparing modern private acts, to insert a special clause, explaining how far the rights of strangers are intended to be affected (*f*).

APPROVED PRECEDENTS FOR THE FORMATION OF PRIVATE BILLS, (With such variations or additions as circumstances may require.)

*Recommended by Committee of the House of Lords, and adopted by the House on the 12th June, 1827.*

Inclosure, with Commutation of Tythes.....	West Ardsley,.....	7 Geo. IV. ch. xiv.
Drainage.....	Metheringham,.....	7 Geo. IV. ch. xxxiv.
Road.....	Temple Normanton,.....	7 & 8 Geo. IV. ch. iv.
Canal.....	Peake Forest,.....	7 Geo. IV. ch. xxx.
Railway.....	{ Heckbridge,.....	7 Geo. IV. ch. xlvi.
Tunnel.....	{ Liverpool,.....	7 Geo. IV. ch. xlix.
Bridge.....	Phames,.....	5 Geo. IV. ch. clvi.
Improvement.....	Virnieu,.....	7 Geo. IV. ch. lxii.
Waterworks.....	Grosvenor Place,.....	7 Geo. IV. ch. lviiii.
Gas.....	Nottingham,.....	7 Geo. IV. ch. cxi.
Church.....	Macclesfield,.....	7 Geo. IV. ch. vii.
Chapel.....	Ripon,.....	7 Geo. IV. ch. l.
Police.....	Brighton,.....	7 Geo. IV. ch. iii.
	Gorbals,.....	1 Geo. IV. ch. lxxi.

(*e*) Dwar. 247.

(*f*) Dwar. 635.

\* The Clerk transcribes every Private Act, and writes at the beginning "in parlamento inchoat, et tent &c. inter al. inactitat, ordinat et stabilit, fuit, sequens hoc statutum ad verbum ut sequitur, viz:—Then follows the Act, at the end he

Other Private Acts, as Estate, Divorce, Naturalization, &c. being solely of a personal nature, are not printed in the Statutes at large.

ON SPECIAL PRIVATE BILLS.

## PART II.—ON SPECIAL PRIVATE BILLS.

There are several other kinds of Private Bills which are not regulated by the same rules that apply to Private Bills generally, and which claim attention, viz :—Bills for compounding debts due to the Crown, Divorce, Estate, Naturalization and Name Bills.

### 1. BILLS FOR COMPOUNDING DEBTS DUE TO THE CROWN.

Bills for compounding debts due to the Crown.

The Petition upon which bills of this description originate must be accompanied by a certificate from the Officer at the head of that department of the Revenue concerned, stating the debt, what prosecutions have been instituted for its recovery; and setting forth how much of it the Petitioner and his security are able to satisfy (*a*).

The Petition will be referred to a Select Committee, to examine the proofs thereon, who will report to the House on the following day. The petition will then be referred to a Committee of the Whole, where alone a bill of this nature can originate (*b*). The day after the report, is the usual time for the House to resolve itself into a Committee on the Petition, and leave is then given to bring in the bill. The bill having been previously printed, is presented and read. After three days have elapsed, the bill, having been examined by the Clerks in the Private Bill Office, and certified by them to be duly prepared, may be read a second time, when it will be committed for the next day seven night, to a Committee of the Whole.

The Bill having passed the Committee, on the follow-

(*a*) S. O. II. of C. 25 March, 1715.

(*b*) Ibid. 29 March, 1707.

“*adds* ego A. B. clericus parliamenti virtute brevis supradict dom. nos. reg. de certiorand, mihi direct. et hiis annex certifico superius hoc scriptum verum esse tenor. act parl. supradict, in es brevi express. In cujus rei testimonium,” &c.—D’Ewes. 36.

ing day their report must be prepared, with all the Committee's amendments. The Chairman of the Committee on Ways and Means (which is a Committee of the Whole, see Chap. XII. *On Committees*), will then report it to the House, and the bill henceforward passes through both Houses as a Public Bill; and will be printed with the Public Acts by the Queen's printer. The Lords receiving it as a Public Bill, do not require any evidence in its support; but it will *there* also, be committed to a Committee of the Whole.

Before the bill is considered in Committee, in the House of Commons, it is the duty of the agent for the bill, or the Solicitor, to provide printed copies of it, for the Chairman and Clerk at the table, with all the blanks filled up. The agent must also supply printed copies of it for the use of the Lords. (c).

## 2. DIVORCE BILLS.

All Bills of this description, from their judicial nature, Divorce Bills. must originate in the House of Lords.

They originate upon a Petition presented to the House, Petition. signed by the party applying for the Divorce\*, or, should he be abroad when the proceedings are instituted, by his attorney. The Petition must be accompanied by an official copy of the proceedings and of a definitive sentence of divorce, *a mensa et thoro*, in the Ecclesiastical Court (a), at the suit of the petitioner; the correctness of which must be certified upon oath at the Bar of the House.

When leave has been given to bring in the bill, it may Bill. be presented, read a first time, and ordered for a second reading on the next day fortnight. And orders may be then made for the required witnesses to attend the House at that time.

The House of Lords have, on several occasions, shown themselves sensitively alive to the great increase of re-

(c) Dwar. 319, 320.

(a) S. O. H. of L. cxli.—28 Mar. 1798.

\* For the form of this Petition, see *Appendix XIX.*

quired legislation in cases of Adultery, but with little success,—bills which have passed that House, amending the law of Parliamentary Divorce, by prohibiting the intermarriage of the guilty parties in such cases, having invariably been rejected by the Lower House\*. With the same motive also, the Lords, by a standing order, (*a*) require that every Divorce bill shall contain a clause to the same effect (prohibiting the intermarriage of offending parties), but as such a clause would, as a matter of course, be rejected by the Commons, it is now merely formally inserted, and is invariably expunged (*b*) by the committee on the bill.

Clause required to be inserted by Standing Order, but afterwards expunged.

Second reading ordered, and orders made for attendance of parties, &c.

When the day for the second reading of the bill is appointed, the usual orders are made. Copies of these, as well as a copy of the Bill, examined with the House Bill, must be served on the party against whom the divorce is sued. The usual orders are, “That notice be affixed on the doors of the House of Lords; that the Lords be summoned that the party applying for the divorce be heard by his counsel, on the second reading, in support of the allegations of the bill; that, together with the examined copy of the bill before mentioned, notice be given of the second reading to the party against whom the divorce is sued; and that he or she may be at liberty to be heard by counsel against the bill.”

If the guilty party be abroad.

When the party upon whom the office copy of the bill, &c. is ordered to be served, lives abroad, or absconds, or secretes himself to avoid such service—application must be made to the House by petition, praying that leaving a copy of the bill and order with the party’s agent, or at his last usual place of abode, may be deemed good service.

Petition to dispense with personal service.

When a petition of this kind is presented, a person who

(*a*) S. O. H. of L. clxxvi. 2 May 1809. (*b*) See Ellis, p. 172.

\* As the Duke of Atholl’s bill, in 1771; the Bishop of Durham’s in 1779; and the Earl of Mulgrave’s, in 1800.

can prove its allegations should attend at the House, that he may be called to the bar and examined thereto, on oath. Upon this evidence being given satisfactorily to the House, they will make an order that such service, with a service of a copy of this latter order, shall be deemed sufficient.

Allegations of  
Petition proved.

And by a Standing Order of the House of Lords (c), the petitioner for the bill is required to attend at the bar on its second reading, that he may be examined as to whether there has been any collusion or consent between the parties, either to the act of adultery, the bill of divorce, or any other matter relating thereto; and as to whether the wife was living apart, or in cohabitation when the adultery took place. But although the form is still observed, such attendance is now uniformly dispensed with.

Party applying  
required to  
attend on Second  
Reading, by a  
Standing Order.

But his attend-  
ance is dispensed  
with.

If the petition has been presented by the attorney of a person abroad, it will be necessary, on the usual orders being made, to present another petition, stating that the party suing for the divorce is resident abroad, and praying that his attendance may be dispensed with. (For form of such petition, see *Appendix XX*).

If the party ap-  
plying be abroad.

Previous to the day appointed for the second reading; a Brief should be prepared for the Counsel, comprising a short abstract of the Bill, and a statement of the evidence intended to be produced in support of its allegations.

Brief for the  
Counsel.

On the day appointed for the second reading; after the service of the orders and office copy of the bill has been proved, the bill will be read a second time, and counsel heard in support of it, and witnesses\* called, to prove the

Second Reading.

(c) S. O. H. of L. cxlii, 28 March, 1798.

\* See the Act 1 Geo. IV. ch. 101—"To enable the examination of Witnesses to be taken in *India*, in support of Bills of Divorce for Adultery committed there," which provides that the Speaker of either House of Parliament may issue his Warrant for the examination of Witnesses in *India*, in such cases, and that he do transmit the same (in duplicate) to the Judges in *India*, who, upon the receipt thereof, must examine the Witnesses, and transmit two certified copies of such

Allegations of  
the bill proved.

state of the family, the act of adultery, and other allegations of the preamble.

The marriage must be proved by the production of a copy of the Register, with satisfactory evidence as to the identity of the parties. If solemnized abroad, it must be shown, by persons acquainted with the law and customs of the place, to have been performed agreeably to the rites, ceremonies and law of the country. The settlement (if any be recited in the bill) must be proved by the subscribing witness. The definitive sentence made by the Ecclesiastical Court, and delivered in at the Bar with the petition, must now be proved and read.

The original record of a judgment given in one of Her Majesty's Courts of Record, with damages, should be produced. This is not required by any Standing Order, but is usually observed as a rule of caution, that it may clearly appear that no collusion between the parties has taken place.

Witnesses.

All witnesses are sworn at the bar before examination.

Bill committed,  
reported and  
passed.

The bill is then committed to a Committee of the whole, reported by the Chairman to the House with the amendments (if any be made) and ordered to be ingrossed. It is then read a third time and transmitted to the House of Commons.

In the House of  
Commons.

Proceedings on  
the Bill.

*In the House of Commons* the ingrossed bill is generally read a first time on the day it is sent from the Lords. When three clear days have elapsed, it will be read a second time, and referred to a Committee of the Whole for the next day seven-night. An order will also be made, "That it be an instruction to the Committee that they do hear

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examination to the Speaker aforesaid, which shall be deemed, good evidence. This Act further allows the Judges to summon such other Witnesses and to ask such further questions as they may deem necessary, and to name Counsel to attend in opposition to the Bill. Where such Warrants have been issued, the proceedings are not to be discontinued by prorogation or dissolution of Parliament.

“counsel and examine witnesses both for and against the “bill.” The same observations and rules as to the service of the order and copy of the bill in the Lords, apply to the service here, which must either be personal, or, in the absence of the party, made on the agent, with leave of the House.

Counsel will be heard before the Committee\* in support of the bill, as in the other House, and the like proofs will be required, except that the parole evidence cannot be given upon oath. It is required by a Standing Order of the House of Commons (*d*), (which was observed not to be the case in the Lords), “That before any Bill of “Divorce for Adultery do pass the House, Evidence “be given before the Committee to whom the Bill shall “be referred, that an action for damages has been brought “in one of Her Majesty’s Courts of Record at Westmin- “ster, or in any one of Her Majesty’s Courts of Record “in Dublin, against the persons supposed to be guilty of “Adultery, and judgment for the plaintiff had thereupon; “or sufficient cause be shown to the said Committee, why “such action was not brought, or such judgment was not “obtained.”

Proof required to be given of damages having been obtained in a Court of Law.

### 3. ESTATE BILLS.†

Bills of this description almost invariably have their commencement in the House of Lords, except they contain provisions which render it necessary for them to originate in the Commons.‡

ESTATE BILLS.

Generally commenced in the Lords.

(*d*) C. J. 13 July, 1837.

\* It would appear that the House of Commons is becoming more sensible of the evils which must attend the public discussion of questions of this nature in Committees of the whole—for by Resolution of the House, on the 12 February, 1840, a Select Committee, consisting of nine Members, was appointed, “for the “preliminary investigation of Divorce bills, in order to supersede the examination “of witnesses at the Bar.”

† For the following summary of the proceedings on Estate Bills, I am principally indebted to the valuable work of Mr. Dwaris on the Formation of Statutes.

‡ See C. J. v. 26, p. 758, where Lord Ashburnam’s Estate Bill—and C. J. v. 29, p. 274, the Duke of Bedford’s Estate Bill—sent down from the Lords, were laid

Originate on petition.

Supposing them, however, to commence, as they generally do, in the Upper House, a petition must be presented praying that leave may be given to bring in a Bill for the purpose, which must be signed by all parties concerned in such Bill (*a*). This petition, it will be seen, is referred to two of the Judges, before whom all parties concerned in the proposed bill must appear.

Contents of petition.

The contents of the petition will necessarily depend on the objects of the measure—but the ground of the application, the intent of the parties, their relative situation, and the state of their claims, must be clearly stated, and the necessity for Parliamentary interference made manifestly to appear.

Notice required to be made after petition is presented, in a certain case.

The only notice required in applications for Estate bills, is, in the case of the estate being mortgaged, when the Standing Orders require (*b*) that as soon as a petition is presented for a private bill, notice shall be given to any person being a mortgagor upon the said estate. Trustees must be made parties to the petition (*c*).

Petition referred to the Judges for their legal opinion on the measure.

If the bill concern Estates in England (*d*) the petition is referred to two of the Judges of that country; if it concern lands or heritable subjects in Scotland, it is referred to two of the Judges of the Court of Session in Scotland; and if it relates to Estates in Ireland, it shall be referred (*e*), if the parties desire it, to two Judges of the Court of Queen's Bench, Common Pleas or Exchequer in that country (*f*). The general instructions to the judges of either part of the Empire, are precisely the same, but the directions as to receiving consents and other particulars, slightly vary.

Proceedings before the Judges.

The judges are forthwith to summon all parties before

(*a*) S. O. II. of L. cxxxiii. clviii.

(*b*) S. O. H. of L. cl; 29 April, 1799.

(*c*) Ib. cxlviii.

(*d*) Ib. xcix.; 16 Feb. 1705.

(*e*) Ib. cxxxi.

(*f*) Ib. clvi.

aside, and new bills ordered. See also Mr. Hatsell's remarks on the contents of these bills, 3 vol. pp. 126-7.

them who may be concerned in the bill; and, after hearing all the parties and perusing the bill, they are to report to the House of Lords the state of the case, and their opinion thereupon, under their hands; and to sign the bill.

The same method is observed with Estate bills sent from the Commons, before their second reading, by sending a copy of the bill signed by the clerk, in every case, to the Judges for their approval, without which the Lords will not entertain the bill.

If the Bill had come from the Commons.

Persons concerned in such bills, residing in Scotland or Ireland, may give their consent (*g*) to their passing—in Scotland, before the two Judges of the Court of Session—and in Ireland, before the two Judges to whom it shall be referred—and the certificates of the said Judges that the persons did, in their presence, give their consents and sign a bill (which bill, together with the certificates, must be produced) shall be held sufficient evidence of their consent.

Consents of parties concerned, how given.

And proved.

And it is a general instruction to such Scotch and Irish Judges, that they take no notice of any consent unless it has been given personally before them, or made manifest to them, by an instrument under the hand of a notary public, that the person cannot attend, and doth consent.

They must be personally made—except.

In England, the witnesses in support of the petition, must be sworn at the Bar of the House of Lords, to give true evidence before the judges (*h*); for which purpose the English Judges send to the House a list of the required witnesses, who are sworn accordingly. A certificate of the administration of this oath, under the hand of the Clerk of the Parliaments, must be produced before the judges. The Irish and Scotch Judges to whom such a petition is referred, are empowered to swear the witnesses themselves (*i*).

Witnesses sworn at the Bar of the House of Lords.

Except in Scotland and Ireland.

(*g*) S. O. H. of L. cxxxii, clvii.

(*h*) S. O. H. of L. ciii.; 28 Dec. 1706.

(*i*) By the Act 41 Geo. III. ch. 105.

If the witnesses  
are refractory,  
&c.

In case of the refusal of any witness to attend, or to produce any required documents before the Judges, recourse must be had to the House itself by petition (*k*). The petitioner will generally be called to the bar to support his allegations upon oath. If satisfied, the House will give the necessary order, and cause it to be enforced.

Allegations of  
the Petition-  
proved before  
the Judges.

The next step is to get a meeting of the Judges, and to attend with all the parties concerned, and the necessary witnesses, to prove before them the allegations of the petition. First, the signature to the petition must be proved in the usual way; then all deeds and documents must be produced and proved by the subscribing witnesses; all baptisms, marriages and deaths be shown by the production of extracts from the Registers; and all other facts established in the regular way by legal evidence. When this has been done, the Judges, if satisfied of the facts, and approving of the bill, will make and sign a report,\* and sign the bill.

Who then  
report.

Judges' Report

The report briefly states, that the Judges have been attended by an agent of the petitioners, and have considered the several allegations and matters contained in the petition, and find the same to be true; that the facts have been proved before them to their satisfaction; that the only parties who appear to them to be beneficially interested in the consequences of the bill have signed the petition; and that they (the judges) have perused and signed the bill annexed to the report, which they conceive to be proper for effectuating the purposes aforesaid.

When the bill  
has begun in the  
Commons, the  
Judges consider  
the bill, and not  
the petition.

When an Estate Bill originates with the Commons, it is read a first time in the Lords the same day it is sent up, and then immediately referred to the Judges for their opinion. The witnesses being sworn at the bar of the House, the Judges receive and consider their evidence, and

(k) L. J. v. 31, p. 590. Ellis, 24.

\* See Appendix XIX. for Judges' Report, and Petition that must be made to receive the same.

report to the House. But in the above case, when the bill itself, and not the petition, is submitted to them, it is usual for them, if they do not approve it, to make a special report of their objections to the House, whether they are to the principle of the bill, or to any of its provisions: When the report is general and favorable, the judges state that they have perused the bill, and conceive it to be proper for the purposes intended, and are of opinion that it may be reasonable that the same should pass into a law, if their Lordships shall so please; but they do not sign the bill.

If they approve, they report favorably, but do not sign the bill.

The next point (*l*) requiring attention is the delivery of a copy of the petition and the judges' report to the Chairman of Committees; without which no bill can be read a first time. The bill and report must then be presented to the House, with a brieve for the Speaker; and upon the Judges' report being read, if it be favorable, leave will be given to bring in the bill, and it will receive a first reading; and, if it be printed, which it usually is, as soon as the Judges approve of it, may be read a second time the day following. But this can only be effected by the bill being sent to the press in sufficient time to enable the agent to deposite the prints with the Clerk of the Parliaments, to be laid on the table of the House for the perusal of the Lords, in sufficient time, on the day proposed for its second reading (*m*).

Report, &c. presented, and Bill ordered.

At the opening of every session, a day is named after which the House will not receive any report from the Judges upon petitions for private bills. Indulgence, however, is often extended, and, on petition presented, with sufficient cause shown, the Judges' report may be received, though the time for receiving such reports has elapsed.

Time for receiving Judges' Reports limited.

The provisions of the bill are, in a great measure, regulated by certain standing orders of the Lords. Thus by

Provisions of the Bill chiefly regulated by Standing Orders.

(*l*) S. O. II. of L. clxxv.

(*m*) S. O. II. of L. xevi.

a Standing Order of that House (*n*), substituted in lieu of a former order, "When a bill is brought in to empower any person to sell or dispose of lands in one place, and to buy or settle lands in another, the Committee are instructed to take care that the values be fully made out; and if the bill shall not be for making a new purchase, but only for settling other lands in lieu of those to be sold, then provision shall be made in the bill, that such other lands be settled accordingly; but if the bill shall be to purchase and settle other lands, then the Committee are to take care that there be a binding agreement produced for such new purchase; or if it shall be made appear that such agreement or such purchase cannot then be made or settled as desired by the bill, provision shall be made in the bill, that so much of the money arising by sale of the lands directed to be sold, as is to be laid out in a new purchase, shall be paid by the purchaser or purchasers into the Bank of England, in the name and with the privity of the Accountant General of the Court of Chancery, to be placed to his account there *ex parte* the purchaser of the estate of the person mentioned in the title of the said bill, &c. without fee or reward, &c. and shall, when so paid in, be laid out in Navy, Victualling, or Exchequer Bills; and the interest, &c. with the money received for the same as they shall be respectively paid off by government, shall be laid out in the name of the said Accountant General, in the purchase of other Navy, or Victualling bills, &c. all which said bills, &c. shall be deposited in the Bank, &c. and shall remain there until a proper purchaser be found and approved, and until the same shall, upon a petition preferred to the Court of Chancery, be ordered to be sold for completing such purchase: and if the money arising from the sale of such bills, &c. shall exceed the amount of the original pur-

Thus, the Committee are ordered to see that the values are fully made out.

Settlement fairly made.

And proper agreement produced for the purchase.

Or, in default, satisfactory settlement of purchase money in the Bank, &c.

Until a proper purchaser can be found for the same, or otherwise.

Provision for increase of money lodged.

(*n*) S. O. H. of L. clix. Emendat. 4 Mar. 1806.

“chase money, the surplus shall be paid to such person or persons respectively, as would have been entitled to receive the rents and profits.”

The reader will have observed that in the beginning of the above order, it was an instruction to the Committee to take care that on all the occasions to which it applied, “the values were fully made out.” With the same object, it is directed by another Standing Order (*o*), “that in any private bill for exchanging an estate in settlement, and substituting another estate in lieu thereof, there shall be annexed a schedule or schedules of such respective estates, showing the annual rent and value thereof, and the value of the timber growing thereupon”; and in all private bills for selling a settled estate and purchasing another to be settled to the same uses, there shall be annexed a schedule or schedules of such estates, specifying the annual rent thereof; and every such schedule shall be signed and proved upon oath, by a surveyor or other competent person, before the committee on the bill.”

It is also required (*p*), when any of the parties interested in any private bill have power by such bill to name a trustee in the room of any trustee dying, or resigning, or refusing to exercise his trust, that provision be made in the bill, that such new trustee shall be appointed by or with the approbation of the Court of Chancery.

And it is ordered (*q*) that the Chairman of the Committee on any such private bill, shall state to the House, on reporting, how far the orders of the House in relation thereto have or have not been complied with.

There are similar Standing Orders respecting the selling and settling lands in Scotland (*r*); and the same of lands in Ireland (*s*). The former directs the moneys to be pla-

That the values may be fully made out, all Bills for exchanging Estates to have schedules of their respective values.

Also, if the Bill be for selling an Estate, and purchasing another in lieu, such schedules to be proved before Committee.

Provision must be made for the appointment of Trustees on vacancies, &c.

Chairman of Committee must state whether these orders have been complied with.

Like provisions required if the Estates are situated in Scotland, &c.

(*o*) S. O. H. of L. cli.—29 April, 1799.

(*q*) Ib. clii.

(*s*) Ib. clviii.

(*p*) Ib. cxlix.

(*r*) Ib. cliii.

ced "in the Bank of Scotland, or the Royal Bank of Scotland, or the Bank of the British Linen Company in Scotland." The latter requires it to be laid out "in the purchase of Irish government debentures, or Irish treasury bills, and that the said bills be deposited in the Bank of Ireland"; for these provisions reference can be made to the orders themselves.

Consent.

After alluding to the consents of persons as taken in Ireland and Scotland (before stated), another Standing Order of the Lords (*t*) directs that it shall be sufficient to have the consent of persons concerned in Estate bills, in certain proportions therein furnished and prescribed.

Must chiefly be proved before Committee.

But the subject of consents, which in bills of this nature is exceedingly material, will come with more propriety under the head of "committee," it being there that this important requisite is watched with the closest attention. On the second reading the bill is committed, usually for that

Bill committed.

Allegations again proved and witnesses re-sworn.

day fortnight. The allegations of the bill must be proved with the greatest exactness before the committee, and it will be necessary for the witnesses who have given evidence thereon before the Judges, to be re-sworn at the Bar of the House of Lords.

Allegations of the petition, and propriety of the measure, to be proved.

The allegations of the Bill having been satisfactorily proved, the next thing to be shown is, that the alteration is for the benefit of the parties concerned; or that they are desirous it should be effected, receiving an equivalent or compensation. And that there are no other parties entitled to, or who can at all prefer a claim for compensation.

And that it is for the interest of the parties concerned.

The most solicitous attention is given by Parliament to the rights and interests of parties concerned, as may be seen by the notice before mentioned, required to be given to mortgagees on the estate in question. But there are certain rights, of which, being remote or defeasible, the

(*t*) S. O. H. of L. cxcvii.—5 May, 1818.

House will not take cognizance, it being a Standing Order of the House of Lords of 1799, that where one petitioner for a private bill is a tenant for life in possession, and another petitioner is tenant in tail for the remainder, and of age, and when the two together can, by deed, fine, and common recovery, bar the rights and interests of all persons in remainder after the estate in tail of the petitioner—the committee shall not, in such case, be required to take the consent of any of the parties in remainder after the estate of such tenant in tail.

Parties whose consent is not required.

But, in general, the object of an estate bill is to leave the title exactly as it stood under the ownership of the testator or settler, liberating it (*v*) from certain uses which he has declared, and paving the way for a new or more convenient settlement, by selling part of the land with a view to the purchase of others more convenient; or to authorize partitions, exchanges or the like.

It is the same Standing Order of the Lords (*w*), which prohibits the committee on the bill sitting until ten days after the second reading, and makes the provisions before mentioned, that consents to private bills in general must be personal, or by affidavit made by two credible persons (not interested in the bill) of the inability of the consenting party to attend, but stating that the absent party signed a printed copy of the bill in their presence, and gave his consent to its passing into a law. This copy of the bill must be annexed to the affidavit, and it will then be merely necessary to prove the hand writing of the Master in Chancery before whom it was sworn—without the above it is a general instruction to all committees (*x*) to take no notice of such consent. So Trustees appointed by a bill must personally appear and accept the Trust. In the order (*y*) requiring the personal attendance of Trustees

Consents must be personal.

Or by affidavits which must be proved.

Trustees must personally appear and accept the trust.

(*r*) Preston on Abstracts, v. 1, p. 164. (*w*) S. O. H. of L. xciv.

(*x*) S. O. H. of L. xciv. L. J. 20 April, 1798.—*Emendat. per ord.* 5 June, 1828.

(*y*) *Ib.* ci.

there is no exception for illness or inability, or indeed any qualification whatever, so that in case of a Trustee being prevented from appearing before the committee, there must be a special report to the House, and a clause added in the House, to enable such Trustee to accept the Trust after the bill has passed\*.

As to consent of parties having only a life interest.

It was before noticed, that the consent of persons entitled to remainders or reversions, subsequent to the estate of a tenant in tail, was not required (z). But in certain cases, very great caution is most properly exercised. Thus, it is provided (a) that when any married or unmarried woman, or any widow, desirous to consent to the sale or exchange of any estate in which she may have an interest, or upon which she may be entitled to a jointure or rent charge of any sort, or if she shall desire to sell, or otherwise dispose of all, or any part of such jointure, rent charge or interest, the committee shall require not only her own consent in person, but that of her trustees.

Or if Children's fortune be secured on the Estate.

So when any estate is proposed to be sold or exchanged, on which the whole or any part of the fortune of any child or children is secured (b), or in which any such child hath an interest, the committee shall take the consent of any such child or children, if under age, by their parents or guardians, and if of age, then by their personal consent, with that also of their trustees.

How far consent of Trustees is required.

And again, the consent of all trustees shall be required in person before the committee, where any money is to pass through their hands, whether for jointure, pin-money, the fortunes of younger children, or any other interest whatsoever (c), but the consent of trustees to preserve contingent remainders only, shall not be necessary.

(z) S. O. H. of L. cxlv. see *ante* p. 243. (a) S. H. O. of L. cxlvi.

(b) *ib.* cxlvii.

(c) *ib.* cxlviii.

\* As in the case of the Archbishop of Canterbury's Estate Bill in 1807; and the Holland Chapel Bill, in 1809.

The Chairman will then report the bill, with any Report. amendments, to the House. The ingrossed bill will afterwards be read a third time, and sent to the House of Com- Bill passed and sent to the Com- mons. mons for their concurrence, where it will be read a first time the day it is received. Printed copies must be deposited with the doorkeepers, previous to the second reading.

There is nothing requiring particular mention in the House of Com mons. manner in which estate bills are passed through the House of Commons. The signatures of all parties interested should be procured to a copy of the bill, and proved before the Committee. The Clerk of the Journals of the House of Lords attends on the day when the Committee sits, with the books of evidence taken in the other House. The Committee satisfy themselves that the allegations in the preamble are proved. The bill is then reported, read a third time, passed, and returned to the Lords.

#### 4. NATURALIZATION BILLS.

NATURALIZATION BILLS.

Naturalization is that power by which an Alien or Denizen\* can, with certain exceptions, be put on a level with those born within the King's Ligeance. It cannot be effected but by the interposition of Parliament, for which purpose a bill is introduced, which may have its commencement in either House.

Being a private bill, it must originate on petition, but Originate on Petition. before the petition is presented the performance of certain duties is required of the petitioner.

If he be of the age of eighteen or upwards, he must

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\* A Denizen is an Alien born; but who has obtained, *ex donatione Regis*, Letters Patent to make him a British subject. He may take Lands by *purchase* or *devise*, but not by *Inheritance*, for his parent, through whom he must claim, being an Alien, had no inheritable blood, and therefore could convey none to his son; and, from a like defect of hereditary blood, the issue of a Denizen, born *before* denization, cannot inherit to him, but his issue born *after* may.

The children of an Alien *Naturalized*, born *before* the Act of Naturalization passed, may inherit his Estates. (Ellis on Private Bills, 200.)

Steps that must be taken by the party before petitioning.

have received Sacrament of the Lord's Supper within *one month (a)* of the presentation of the bill,—by practice he generally receives it on the Sunday previous.

He must also, upon the second reading of the bill, take the oaths of Supremacy and Allegiance in the Parliament House, before the Lord Chancellor, if the bill originate in the Upper House, or the Speaker of the House of Commons, if it commence in the Lower—who during the Session have authority to administer the same.

If under age.

If he be under the age of eighteen his Father or Guardian must present the petition, and appear for him before the Committee. And on proof being given, that the Minor has been educated in the Protestant Religion, he will not be required to take the Oaths of Allegiance or Supremacy, or to receive the Sacrament.

Petition made and bill presented.

The Petition for the Bill must be signed by the party making the application.

The Bill is generally presented the same day as the petition, and is not, like other Private Bills, required to be printed (*b*).

Disabling clauses that must be inserted in the Bill.

By the following Acts of Parliament, all Naturalization bills must contain the disabling clauses there referred to.

Preventing the party from being a Member of Parliament, &c.

By 1 Geo. 1 stat. 2, ch. 4. No person shall be naturalized unless the bill contain a clause declaring that such person shall not be enabled to be of the Privy Council, or a Member of either House of Parliament\*, or enjoy any

(a) Stat. 7 Jac. I. ch. 2.

(b) S. O. II. of C. 1837.

\* By the common law, all born *hors de ligeance* were aliens; and, till the act of settlement (12 & 13 Wm. III. ch. 2) Scotch and Irish were not eligible to be members of Parliament (1). That act declared, that none born out of England, Scotland or Ireland, or the dominions thereto belonging, though naturalized or made a denizen, unless born of *English* parents, should be capable of sitting in the Privy Council, or either House of Parliament (2). It therefore excluded all born *hors de ligeance*, both of whose parents were not *English*. At the dispersion of the French Protestants, a general naturalization act was passed (7 Anne, ch. 5.) by which all persons born *hors de ligeance* taking certain oaths, and re-

(1) Glanville, 122. C. J. v. 1, pp. 793, 821; v. 8, p. 42.

(2) *Fide* also 25 Edw. III. stat. 2; Cro. Car. 601; 1 Bl. Com. 373.

office of trust, or have any grant from the Crown; and no bill of Naturalization shall be received without such clause.

But in the case of a foreigner distinguished for his eminent rank and services, desiring to be naturalized, it is usual to pass an act for the repeal of these statutes in his favour, and then to pass an act of Naturalization without exception (c).

How this may be avoided.

By the 14 Geo. III. ch. 84, there must be inserted a clause disabling the person from obtaining thereby, in any foreign country, any immunity or indulgence in trade, enjoyed by natural born British subjects, unless he shall have resided in Great Britain or its dependencies, for seven years next before the commencement of the Session in which he is naturalized, and shall not have been absent from the same longer than two months at one time, during the said seven years.

And requiring his residence for seven years, before he can share in the rights of trade.

Previous to the presentation of the bill, or immediately after, a memorial should be addressed by the petitioner to the Secretary of State for the Home Department, stating his reasons for desiring naturalization, that he professes the Protestant religion, and intends to reside in England. That he is well affected to Her Majesty's Government,

Memorial sent to Secretary of State, by Petitioner.

(c) See 2 Hats. 3. Irish Act, 36 Geo. III. ch. 48, s. 3.

ceiving the sacrament in some reformed or protestant congregation,—and, by the second section, the children of natural born English subjects born abroad—were constituted natural born subjects *to all intents and purposes*. An attempt was made to introduce a clause in the first section disabling persons thus naturalized from electing or being elected, but it was rejected by 168 to 67 (3). The first section of this act was, however, repealed by the 10 Anne, ch. 5.

To settle the doubts occasioned by this inconsistent legislation, it was declared by the 4 Geo. II. ch. 21—that all children born abroad, whose *fathers* were natural born subjects, were themselves natural born subjects.

The 13 Geo. III. ch. 21, went a step farther, by declaring that children born abroad, whose fathers had been declared natural born subjects by the 4 Geo. II. should also be deemed natural born subjects: so that now the grand child of a natural born subject, by the father's side, is, without reference to his birth place or his maternal parentage, a natural born subject also, for all purposes, (*Rogers' Elec. Law.* 45.)

(3) C. J. v. 17, p. 143.

And Letters of recommendation procured.

and the British Constitution. Letters of recommendation should also be procured from persons of weight and distinction in the country, who are able and willing to corroborate the above and bear testimony to his orderly life and conduct.

Which are sent to the Alien Office, examined and sent to Secretary of State.

These letters are then transmitted to the Alien Office for enquiries as to the correctness of their statements, and the conduct of the petitioner. Upon these being favorably proved, a certificate of the same will be forwarded from that office to the Secretary of State for the Home Department, who will sign, and transmit it to the Parliament Office.

Before second reading, certificate of good conduct required.

By an order of the Lords, of the 2d Jan. 1807, no Naturalization bill shall be read a second time until the petitioner shall produce a certificate of his good conduct from one of the principal Secretaries of State.

On second reading, petitioner and witnesses must be sworn.

On the day fixed for the second reading of the bill, which is generally the day after the above certificate has been obtained, the petitioner (as before stated), must, if more than eighteen, attend at the bar of the House of Lords, supposing the bill to originate there, and be sworn; the witnesses required to prove the administration of the Sacrament, (usually the parish clerk and sexton) being sworn at the same time.

Bill committed.

The bill is then committed, and the committee may sit the next day. The party (or, if he be a minor, his parent or guardian) attends at the committee to signify his desire to be naturalized; and then the witnesses, who were sworn the day previous, must be called in to prove the administration of the Sacrament, and the handwriting of the officiating minister to a certificate to that effect.

Witnesses examined.

When oaths taken in the Commons, not required in the Lords.

If the bill originated with the Commons, the person applying for the bill attends and takes the oaths there, between the first and second readings of the bill. They are administered by the Clerk at the Table, after Prayers, but before the Speaker has taken the chair. In that case they

are not again taken in the Lords, nor if the bill commence in the Lords, are they taken again in the Commons (*d*).

To return to the Lords. The bill is reported and ordered to be engrossed, the same day on which the Commons sits. It is then read a third time, and transmitted to the House of Commons. Bill reported and passed.

IN THE HOUSE OF COMMONS the ingrossed bill is read a first time on the day it is brought from the Lords, and on the fourth day after it has its second reading. It is then committed, when the same witnesses who were before the Lords must attend the Committee, to prove the administration of the Sacrament. The bill is then reported, read a third time, and returned to the House of Lords, to be presented for the Royal Assent. House of Commons.

After the bill has received the Royal Assent, the solicitor to the party applying should obtain from the Clerk of the Parliaments, a certified copy of the Act. After Act has passed, &c. party's solicitor should obtain a certified copy.

#### 5. NAME BILLS.

NAME BILLS.

Are acts "to enable A. B. to take and use the surname of C. D., and to bear the arms of the name and family of C. D., pursuant to the will of the said C. D." &c.

Bills of this description may have their commencement in either House, indifferently. There are no Standing Orders expressly regulating their provisions, or the manner in which they shall be proceeded with; the days for their various readings, &c. are, therefore, the same as those provided for Private bills in general, by the Standing Orders of July, 1837.

A petition must be presented in the ordinary manner, and its allegations should be such as will warrant application for the provisions of the bill.

The bill is not required to be printed.

Any will upon which the petition is founded, must be produced and proved by the subscribing witnesses, (or one

of them), before the committee, and all facts respecting the state of the family, or any other material matters must be regularly proved by parole evidence, as in every other case (a).

PART III.

PART III.—ON THE PRIVATE BILL OFFICE.

*(Including Tables of the Fees payable in both Houses of Parliament, on Private Bills.)*

On the 5th of June 1810—pursuant to a Report of a Select Committee appointed to consider the means for providing more effectually for the accuracy and regularity of proceedings upon the passage of Private Bills,—the House of Commons adopted several Standing Orders for the appointment and management of a Private Bill Office. These orders have subsequently been amended by the Standing Orders of the 15th July 1837, and are now as follows:—

Private Bill Office  
and Register.

That a Book to be called "THE PRIVATE BILL REGISTER" be kept in a room to be called "THE PRIVATE BILL OFFICE," in which Book shall be entered, by the clerks to be appointed for the business of that office, the name, description and place of residence of the Parliamentary agent in town, and of the agent in the country (if any) soliciting the Bill; and all the proceedings from the petition to the passing of the Bill, such entry to specify briefly, each day's proceeding in the House, or in any Committee to which the bill or petition may be referred; the day and hour on which the Committee is appointed to sit; the day and hour to which such Committee may be adjourned; and the name of the Committee Clerk. Such book to be open to public inspection daily, in the said office, between the hours of eleven and six.

That all Plans, Sections, Books of Reference, Lists of

Owners and occupiers, Estimates, and copies of the subscription Contracts, required by the Standing Orders of the House, be lodged in the Private Bill Office, and that the receipt thereof be acknowledged accordingly by one of the Clerks in the said office, upon the said Documents, and upon the Petition, before it is presented.

Plans, &c. to be lodged.

And receipt indorsed on them and the Petition.

That all notices required to be given in the Private Bill Office, be delivered in the said Office before six o'clock in the evening.

Time for delivering Notices.

That every Private Bill, after it has been read the first time, its Title copied and examined for the votes, be in the custody of the clerks of the Private Bill Office, until laid upon the table for the second reading, and when committed, be taken by the proper Committee clerk into his charge, until reported.

Custody of the Bill.

That after each Private Bill has been read the first time, its name (or short title), shall be copied by the Clerks of the Private Bill Office, from the Clerk's Minute Book of the day, into a separate book, to be called the EXAMINATION BOOK, wherein shall be noted the number of such bill according to the priority of its being read, and the date of such first reading.

Examination Book.

That between the first and second readings, every such bill shall, according to its priority, be examined, with all practicable dispatch, by the clerks of the Private Bill Office, as to its conformity with the Rules and Standing Orders of the House, and the breviate thereof be compared with such bill; and the Examining Clerk shall, at the foot of such breviate, state, "that the bill is [*or, is not*] prepared in due form;"—and if *not* in due form, he shall specify the folio in which any irregularity occurs; and shall, moreover, in all cases, sign and date the breviate of such bill, with the date of such Examination, and shall also enter the like date, together with his own name, in the Examination Book.

Examination of Bill and Breviate.

Duties of Exam-  
ining Clerk with  
the Bill.

That the points to which the duty of the Examination Clerk shall extend, be the following, *viz*:—That the title and provisions of the bill are comprehended within the allegations of the petition, and within the order of leave; and that bills for confirming Letters Patent, have a copy of the Letters Patent annexed.

With the Brevi-  
ate.

That the Examining Clerk do, moreover, compare the breviate with the bill, and see that the subject matter of each clause or set of clauses is sufficiently pointed out. The form of the breviate to be such as the Speaker shall from time to time direct.

Notice of meet-  
ing.

That ten clear days' notice be given to the clerks in the Private Bill Office of the meeting of any sub-committee on a petition for a Private Bill.

Notice of second  
reading.

That notice in writing of the day proposed for the second reading of every Private Bill be given, by the agent soliciting the bill, to the clerks in the Private Bill Office, three clear days before the day for such second reading.

Committees on  
the Bill.

That notice of the day and hour on which the committee on the bill is appointed to sit, be given in writing three clear days beforehand, by the agent soliciting the bill to the clerks in the Private Bill Office, and that all committees' proceedings of which such notice shall not have been given, be void.

Filled up bill to  
be deposited in  
Private Bill Of-  
fice.

That a filled up bill, signed by the agent for the bill, as proposed to be submitted to the committee, be deposited in the Private Bill Office, at the time of giving notice of the meeting of the committee on the bill; and that all parties shall be entitled to a copy thereof, upon payment of the charges for making out amendments of such bill.

Postponement of  
first meeting of  
Committee on  
the Bill.

That no postponement of the first meeting of any committee on a Private Bill, or petition for a Private Bill, shall take place, unless notice be given in the Private Bill Office one clear day before the time fixed for such meeting.

That a note in writing of the day and hour to which each Committee is adjourned, be given by the Committee Clerk to the Clerks in the Private Bill Office.

Note of adjournment.

That the Clerks in the Private Bill Office do prepare daily, lists of all Private Bills, and Petitions for Private Bills, upon which any Committee is appointed to sit, specifying the hour of meeting, and the room where the Committee shall sit; and that the same be hung up in the Lobby of the House.

List of Committees sitting.

That the Committee Clerk, after the Report is made out, do deliver into the Private Bill Office, a printed copy of the bill, with the written amendments made in the Committee, in which bill all the clauses added by the Committee shall be regularly marked in those parts of the Bill wherein they are to be inserted.

Bill, as amended in Committee, to be delivered in.

That notice in writing of the day on which the Bill is to be reported be given by the Agent soliciting the Bill to the Clerks in the Private Bill Office, at least one clear day before the day of the report: And in all cases where reports on Bills are ordered to lie on the table, notice in writing of the day on which such report is intended to be taken into consideration be given to the Clerks in the Private Bill Office, at least one clear day beforehand.

Notice of Report and of consideration.

That the amendments (if any) which are made upon the report, and upon the third reading, be entered by one of the Clerks in the Private Bill Office upon the printed copy of the Bill as amended by the Committee, which Clerk shall sign the said copy so amended, in order to its being deposited and preserved in the said Office.

Amendments on Report and Third Reading.

That to insure the accuracy of the Ingrossments of all Private Bills, the Clerk of the House be required to provide a sufficient number of Clerks, to be called Examiners of Ingrossments.

Examination of Ingrossments.

That notice in writing of the day proposed for the third reading of every Private Bill, be given by the Agent soli-

Notice of Third Reading.

citing the bill, to the Clerks in the Private Bill Office, one clear day before such third reading.

Certificate of  
Examiners.

That no bill be read a third time, until a certificate is indorsed upon the paper bill and signed by one or more of the said Examiners of Ingrossments, declaring that the Ingrossment thereof has been examined, and agrees with the bill as amended by the Committee, and on the report.

### FEEES.

It has been before mentioned, that no private Bill will be read a second time in either House, until the fees payable upon the same have been liquidated. The fees upon a Private Bill, in the House of Lords, although the rate of fees in some respects is higher, are much less in their total amount than those payable upon the same bill in the House of Commons\*. The fees in the House of Lords, were first established by a table in the year 1725, which was revised and amended in the year 1824, and is now as follows:

#### *On a Petition for leave to bring in a Private Bill.*

For every Order made previous or subsequent to such leave being given:—

	£	s	d		£	s	d
To the Clerk of the Parliaments, .....	0	10	0	To the Gentleman Usher for every person so sworn .....	0	12	6
To the Clerk Assistant, .....	0	4	6	To the Clerk Assistant for swearing a Witness, .....	0	1	0
To the Clerk of the Journals, ...	0	6	6	The like to the Yeoman Usher, .....	0	1	0
If on Petition, .....	0	4	6	To the Clerk Assistant for a Certificate of Witnesses, being sworn, .....	0	6	8
To the reading Clerk on every Petition, .....	0	2	0	To the Clerk of the Journals, ...	0	3	10
To the Clerk Assistant for swearing every person in order to be naturalized .....	0	13	4				

#### *On a Private Bill.*

	£	s	d		£	s	d
To the Lord Chancellor, or Speaker of the House, .....	10	0	0	To the Clerk of the Journals for docquetting the maps required by the Standing Orders, .....	0	10	6
To the Clerk of the Parliaments	5	0	0	To the Clerk at the Table for laying prints on the Table, .....	0	10	6
To the Gentleman Usher of the Black Rod, .....	5	0	0	To the Doorkeepers 5s. each, .....	2	0	0
To the Clerk Assistant, .....	2	0	0				
To the Yeoman Usher, .....	1	0	0				
To the Reading Clerk, .....	2	0	0				

\* See a valuable report of a Select Committee of the Lords, on the subject of Fees, on the 12th July, 1827.

Every Bill for the particular interest or benefit of any persons, whether the same be brought in upon Petition, Motion, Report, or from a Committee, or from the Commons, ought to pay fees as a Private Bill.

Every such Bill which concerns a County or Counties, Corporation or Corporations, or Body or Bodies of People, ought to pay fees as a DOUBLE BILL.

Every enacting clause for a particular Interest or Benefit, shall be deemed a PRIVATE ENACTING CLAUSE, and shall pay fees as for a Private Bill, whether the Bill in which such clause is inserted be Public or Private.

Every such Enacting Clause which concerns a County or Counties, Corporation or Corporations, or Body or Bodies of People, shall pay fees as a DOUBLE BILL.

Fees shall be paid for EVERY DISTINCT PROVISION, made in any Bill, for the particular interest of any Person or Persons, County or Counties, Corporation or Corporations, or Body or Bodies of People, or relating to a distinct interest, Estate or Matters, PROVIDED that in Bills containing distinct provisions for more than three bodies of people, no more than a single fee shall be paid for each body.

	£	s	d		£	s	d	
To the Clerk Assistant for entering the names of the Lords' Committee, and giving a copy thereof, if desired.	}	0	10	0	To the Copying Clerk,.....	0	11	0
					To the Clerk attending the Committee.....	2	0	0

*To the Assistant Clerk to the Clerk of Committees:*

For making out amendments to an Estate bill,.....	}	2	2	0	On opposition, by Petition, to Bill,.....	}	1	1	0
To any other kind of bill,....					1				
On maps and proofs required by the Standing Orders, and produced before the Committee.....	}	0	10	6	Papers copied for select committees and charged to the Treasury, and copies of papers relating to Private Committees for private parties, per folio,.....	}	0	0	6
For making out Special Report on Private Bill,.....					1				

To the Yeoman Usher,.....	1	0	0
To the Doorkeepers,.....	2	0	0

*For the Ingrossing a Private Bill (between the Clerk of the Parliaments and the Clerk Assistant):*

For the first skin,.....	0	13	4
For every other skin,.....	0	10	0

(Every skin to contain at least forty lines.)

*To the Clerk of the Parliaments for certifying a Private Bill upon a Writ of Certiorari out of the Chancery, or any other matter of Record, concerning a private person, into that Court:*

For the first skin,.....	1	6	8
For every other skin,.....	0	13	4

*For the like—to the Clerk Assistant:*

For the first skin,.....	0	13	4
For every other skin,.....	0	6	8

To the Clerk of the Parliaments, for examining the transcript with the Record on a Writ of Error, and reading the same in the House,.....	}	1	6	8
To the Doorkeepers,.....				

Besides the above there are fees paid in the House of Lords for Appeals, Writs of Error, and other matters of Judicature, for which see Standing Orders.

The Fees in the *House of Commons* upon Private Bills and other matters are regulated by two tables—one adop-

ted in the year 1700, and the other in the year 1830.— And by a standing order of the House (a) it is directed that printed tables of these Fees, having been first perused by Mr. Speaker, be hung up in his chambers, in the lobby, and in the Clerk's Office; and renewed by the Clerk from time to time, as occasion may require, that they may always be preserved fair and legible.

It is also declared, that the House will punish with the utmost severity any officer or servant who shall presume to take or demand any greater fee than is allowed by the following tables.

## FEES ON PRIVATE BILLS GENERALLY.

	£ s d		£ s d
For every <i>Private Bill</i> :		For preparing and transcribing the	
To Mr. Speaker, .....	5 0 0	<i>Report</i> of such Committees:	
To the Speaker's Secretary, ..	0 10 0	To the Chief Clerk, .....	0 10 0
To the Chief Clerk:		For every <i>Order</i> of such Committees:	
For the several readings, .....	3 13 4	To the Clerk Assistant, .....	0 5 0
For breviating, amending, inter- lutory orders, and other proceed- ings, .....	1 5 0	For every <i>Hearing at the Bar</i> , from each side:	
For the order of commitment, .....	0 6 8	To the Chief Clerk, .....	1 13 4
	5 5 0	To the Clerk Assistant, .....	0 6 8
To the Clerk Assistant, .....	1 0 0	To the Housekeeper, .....	0 10 0
To the Chief Clerk, without doors, who receives the fees and pays them to the officers of the House, for so doing, .....	0 10 0	To the two Doorkeepers, ..	0 7 6
To the Serjeant and the offi- cers under him, .....	1 5 0	For <i>Reading</i> at the Table, and entering in the Journal, a <i>Report</i> in private matters:	
To the Housekeeper, .....	0 5 0	To the Chief Clerk { if long, 0 10 0 if short 0 6 8	
To the two Doorkeepers, .....	0 5 0	For reading every <i>Petition</i> in private matters:	
For every <i>Private Enacting Clause</i> , the same fees are to be paid to the above persons as for a Bill.		To the Clerk Assistant ....	0 2 0
If the Bill concerns a county or coun- ties, or corporation or corporations, or in the case of such like Bills, when called <i>Double Bills</i> , double the above fees are to be paid.		For <i>delivering Papers</i> at the door:	
For attending <i>Committees</i> of the Whole House, or Grand Committees in <i>Private Concerns</i> :		To the two Doorkeepers, .....	0 5 0
To the Chief Clerk, .....	0 13 4	For serving any <i>Summons</i> of the House in private matters:	
To the Clerk Assistant, .....	0 6 8	To the four Messengers ....	0 6 8
		For <i>serving the Orders</i> of Committees in private matters:	
		To the Four Messengers, .....	0 2 6
		For every <i>Private Committee</i> :	
		To the Housekeeper .....	0 5 0
		For <i>keeping the door</i> , at a private Committee:	
		To the Four Messengers, .....	0 2 6

FEES TO BE PAID INTO THE COMMITTEE CLERK'S OFFICE.

*On a Petition for a Private Bill.*

	£ s d		£ s d
For taking charge of a Petition for a Private Bill, when referred to a Committee, and adjourning the Committee to the time when it is to sit for dispatch of business . . . . .	0 6 8	tee, with name of Chairman, and delivering the same to Private Bill Office . . . . .	0 6 8
For attending the sitting of the Committee, each day . . . . .	1 0 0	In all cases in which more than one <i>Double Fee</i> is charged upon a Bill by the Clerk of the Fees, the following Fees are to be added for each additional Fee :	
For drawing and transcribing Report . . . . .	1 0 0	For every sitting . . . . .	0 6 8
For attending to adjourn a Committee when no business is done . . . . .	0 6 8	For every Report . . . . .	0 6 8
For drawing short minute of proceedings of the Committee, with name of Chairman, and delivering the same to the Private Bill Office . . . . .	0 6 8	For every adjournment when no business is done . . . . .	0 3 4
		Note: The above fees are to be paid by the petitioner or his agent.	

*On a Private Bill.*

For taking charge of Bill, when committed, and adjourning the Committee to the time when it is to sit for dispatch of business . . . . .	1 0 0	For a printed Bill, corrected from the Committee Bill, to accompany the Report . . . . .	1 1 0
For attending sitting of the Committee, each day . . . . .	2 0 0	For drawing short minute of each day's proceedings before the Committee, with name of chairman, and delivering the same to the Private Bill Office . . . . .	0 6 8
For attending to adjourn a Committee when no business is done . . . . .	0 6 8	In all cases in which more than one <i>Double Fee</i> is charged by the Clerk of the Fees, the following Fees are to be added for each additional Fee :	
For drawing and transcribing Report in respect of Standing Orders, in any case in which a Committee on a Bill is directed to report thereon . . . . .	1 0 0	For every sitting . . . . .	0 13 4
For drawing and transcribing Report on Bill, and arranging documents to be sent into the House . . . . .	2 0 0	For every Report . . . . .	0 6 8
For a fair copy of the amendments to the House Bill, per sheet of 72 words . . . . .	0 1 0	For every adjournment when no business is done . . . . .	0 3 4
		Note: The above Fees are to be paid by the petitioner for the Bill, or his agent.	

*On a Petition against a Private Bill.*

For taking charge of the petition when referred to a Committee on a Bill . . . . .	0 6 8	person is considered by the Committee . . . . .	0 13 4
For reading order of reference and petition . . . . .	0 6 8	If such petition is signed by two or more petitioners . . . . .	1 6 8
For each day upon which a petitioner is heard, or a petition signed by only one		For drawing and transcribing the Report . . . . .	0 6 8
		Note: The above Fees to be paid by the petitioner or his agent.	

*On a Petition, that any Order of the House may be dispensed with, or complaining of the decision of any Committee in respect of the Standing Orders, or upon any Report from a Committee, referred to the Standing Order Committee, or to any other Committee.*

For taking charge of such petition or Report . . . . .	0 6 0	For drawing short minute of the proceedings of the Committee, and delivering the same to the Private Bill Office . . . . .	0 6 8
For attending a sitting of a Committee on any such petition or Report . . . . .	2 0 0	Note: The above fees are to be paid by the party at whose instance the reference shall be made.	
For drawing and transcribing the Report . . . . .	1 0 0		
For attending to adjourn a Committee when no business is done . . . . .	0 13 4		

*On any Petition for a grant of money, or for any other matter of a Private nature, referred to a private Committee.*

£ s d	£ s d
For taking charge of a petition,.....	0 6 8
For attending a sitting of the Committee,.....	2 0 0
For attending to adjourn a Committee when no business is done,.....	0 13 4
	For drawing and transcribing the Report,.....
	1 0 0

Note: The above fees to be paid by each party appearing before the Committee.

*General Fees.*

For a general inspection of any lists, papers, minutes of evidence, or other documents.	0 6 8	For every copy of the names of the members of a Committee, .....	0 6 8
For every copy of a printed Bill, corrected from the committee Bill,.....	1 0 0	For every copy of an order of reference,.....	0 6 8
For every summons of a witness, .....	0 2 6	For copies of all papers and documents, per sheet of seventy-two words,.....	0 1 0
For every witness examined, or cross-examined .....	0 2 6	But if for members,.....	0 0 6
For every exhibit,.....	0 2 6	For copies of plans, made by the parties,.....	1 1 0
N. B. The name of each person in a list of consents, dissents, and neuters, to be reckoned as a <i>separate exhibit</i> .		For the inspection of a plan,	0 6 8
For every counsel attending in support of the interest of any party, for each day,....	0 10 0	For taking the consent (of a party beneficially interested) to the passing of a Bill.	0 5 0

**FEEES TO BE PAID INTO THE PRIVATE BILL OFFICE.**

For entering a Private Bill, together with the names and address of the Parliamentary Agent and Solicitor, and the name of the Committee Clerk,.....	0 10 0	For entering proceedings of the House on the report of the petition .....	0 6 8
For receiving and taking charge of books, plans, estimates, and other documents; and indorsing petition, with a certificate that the same hath been deposited,	0 6 8	For entering proceedings of the House on the Report of the Standing Order Committee,.....	0 6 8
For entering proceedings of the House on the presentation of a petition for a Private Bill, or upon a motion for a Private Bill, or upon a message from the Lords with a Private Bill .....	0 6 8	For entering proceedings of the House upon the presentation of any petition praying that any Order of the House may be dispensed with, or upon a motion for such purpose.....	0 6 8
For receiving and entering notice of the day and hour on which it may be proposed that the Committee on the petition should sit; for each day on which a notice may be given .....	0 3 4	For entering the proceedings of the House upon the report of any such petition...	0 6 8
For entering a short minute of the proceedings of the Committee, together with the name of the chairman, to be furnished by the Committee clerk .....	0 6 8	For entering proceedings of the House on presenting the Bill, First Reading, and orders thereupon .....	0 6 8
If the Committee cannot be formed for want of members, or if parties are not ready to proceed for entering the adjournment.....	0 3 4	For entering petition against a bill, and orders thereupon.	0 3 4
		For entering petition in favor of a bill, and orders thereupon,.....	0 3 4
		On receiving and entering notice of second reading, for each day on which such notice may be given,.....	0 3 4
		For examining the Bill, to see whether it be prepared according to the Orders of the House, and whether it corresponds with the printed Bill:	
		If it does not exceed ten folios of House bill (each folio containing no more than two hundred words),.....	0 3 4

	£	s	d		£	s	d
If above 10 & not exceeding 30 folios .....	0	6	8	For examining the ingrossed Bill with the Committee Bill:			
" 30 " " 50.	0	10	0	If the Bill does not exceed 20 presses.....	0	6	8
" 50 " " 70.	0	13	4	If above 20 & not exceeding 40.	0	10	0
" 70 " " 90.	0	16	8	" 40 " " " 60.	0	13	4
" 90 " " 110.	1	0	0	" 60 " " " 80.	0	16	8
And so on in proportion for any greater number of folios.				" 80 " " " 100.	1	0	0
For entering certificate, and indorsing breviate that the Bill is properly prepared ..	0	6	8	" 100 " " " 120.	1	3	4
For entering proceedings in the House on the Second Reading of the Bill, for each day .....	0	6	8	" 120 " " " 140.	1	6	8
For receiving and entering notice of the day and hour on which it is proposed that the Committee should meet, on each day on which such notice may be given.....	0	3	4	" 140 " " " 160.	1	10	0
For receiving from the agent the filled-up printed bill, with the amendments proposed to be submitted to the Committee, and entering the receipt thereof.....	0	3	4	" 160 " " " 180.	1	13	4
For entering a short minute of the proceeding of the Committee, with name of the Chairman, and the day and hour to which it may have adjourned, in case the Committee do not get through the Bill: for each day ....	0	6	8	" 180 " " " 200.	2	0	0
If the Committee cannot be formed for want of Members, or if the Committee be adjourned without doing business by desire of the parties; for entering the adjournment for each day .	0	3	4	And so on in proportion for any greater number of presses.			
For receiving and entering notice of the day on which it may be proposed to report the Bill; on each day on which such notice may be given.....	0	3	4	For entering certificate on back of the Bill, that it is properly ingrossed .....	0	6	8
For entering proceedings of the House on the report of the Bill, each day .....	0	6	8	For entering and receiving notice of the Third Reading, for each day on which such notice may be given..	0	3	4
For entering proceedings on further consideration of Report, each day.....	0	6	8	For entering proceedings of the House on the Third Reading, each day .....	0	6	8
				For entering proceedings of the House upon any new clause added, or proposed to be added on the Report, further consideration of the Report or Third Reading .	0	3	4
				For entering the agreement of the House of Lords, with or without amendments ..	0	6	8
				For entering proceedings of the House, upon consideration of the Lords' Amendments .....	0	6	8
				For entering Royal Assent ..	0	6	8
				For each Bill, or Breviate, or Ingrossment, certified to be irregular, and admitted so to be by the party, or declared so to be by the Speaker....	0	10	0
				Note: The fees above-mentioned are to be paid to the principal clerk in the Private Bill Office, by the party promoting the Bill; and the produce of the fund shall be applied to the maintenance of three clerks, or more if necessary, for the business of the said office: to be apportioned between them in such manner as the Clerk of the House shall from time to time direct.—(C. J. 21 June, 1811.)			

Besides the payment of the above Fees required by the Standing Orders of the two Houses of Parliament, there is another description of charge to the payment of which, Private Bills are subject, and which frequently is of a very expensive nature, viz: the charges of the Parliamentary Agents employed in conducting and superintending the bills in their progress through Parliament.

Charges of Parliamentary Agents.

These agents are of two kinds: 1st. In the Lords, in-door agents so called, who are Clerks of the House; of these, there are two in that House. And, in the House of Commons, there were formerly several Clerks who so employed themselves, until, by a recent order of that House (*b*), the practice was forbidden. And 2dly, out-door agents, most of whom employ themselves exclusively in this business, but who are frequently, though not necessarily, attached to some branch of the legal profession—these are rather more numerous, their number not being restricted.

Taxation of costs of Private Bills in the House of Commons.

The charges of these agents, not being regulated by any uniform standard, was frequently of a very exorbitant nature, to obviate which, the statute 6 Geo. IV. ch. 123, was passed “To establish a taxation of costs on Private Bills, in the House of Commons,” by which act, on complaint of the persons overcharged, the Speaker will direct certain persons to tax the costs and expenses so incurred—for which duty, fees are allowed to be exacted. The amount of these fees was fixed by an order of the House on the 16 Feb. 1829, and is as follows:

FEEs ON TAXATION OF COSTS ON PRIVATE BILLS.

To each of the Examiners, for his pains and trouble respecting the taxation of any Bill of Costs and expenses upon which an order of reference shall have been made by Mr. Speaker:	To the Speaker's Secretary, for his pains and trouble respecting the taxation of every such bill,.....	1 6 8
For the first day of attendance, 3 3 0	To the Clerk who shall be appointed to attend the said Examiners, for his pains and trouble, on every attendance.....	2 2 0
For every subsequent attendance.....		2 2 0

Though not in the House of Lords.

This system though recommended by a Select Committee of the House of Lords in 1827, has not been adopted by that House.

Agents must collect Fees.

It is the duty of these Agents to collect and pay to the Clerk of the Fees, all Fees payable upon any Private Bill which may be intrusted to their care; and it has recently been found necessary, in consequence of the great arrear-

(*b*) C. J. 16 Aug. 1836.

ages in the payment of the same, to order (c), that no agent be permitted to proceed upon any new bill or petition, until the Fees incurred upon any one he may have previously conducted, have been paid.

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(c) C. J. 16 Aug. 1836.

## C H A P. IX.

## On Money Bills.

Money Bill, what it is.

By a Bill of Supply or Money Bill is meant, any Public or Private Bill under which money is directed to be raised upon the subject, for any purpose or in any shape whatsoever: whether it be for the exigencies of the state; for private benefit; or for any particular district or parish, either as taxes, customs, tolls, dues or rates, of any kind.

It has been already shown (*a*), that the House of Commons, from an early period of its History, has claimed, and been allowed, as an exclusive right, "The grant of all "aids and taxes to the Crown, for the public service" (*b*).

Origin and growth of Supplies being given by Parliament.

This privilege had its origin in remote times of English History; it is first traced, says Hume (*c*), in the times of the Saxon Heptarchy; and it was recognized and confirmed by the Conqueror in his Coronation Oath\* (*d*). Having been, like many other principles of English liberty, often violated in the stormy times which immediately ensued, it was at length expressly acknowledged and declared by one of the articles of Magna Charta†. This im-

(*a*) See *ante* p. 32.

(*b*) 3 Hats. 136.

(*c*) Hist. of Richard III.

(*d*) See Saxon Chronicle, A. D. 1066.

\* And see also the CARTA REGIS *de quibusdam statutis per totam Angliam firmiter observandis*, of WILLIAM I. in Rymer's *Fœdera*, v. 1 p. 1.

† "No Scutage or Aid shall be imposed in our Kingdom unless by the Common Council of our Kingdom, except to redeem our person, and to make our eldest son a Knight, and once to marry our eldest daughter; and for these there shall only be paid a reasonable aid." MAGNA CHARTA, Article 14. The "reasonable aid" was fixed by the Statute of Westminster I. (3 Edw. I. ch. 36.) at twenty shillings for every knight's fee, and as much for every twenty pounds value of land held by Soccage. The aid "to make his son a knight," might be raised when he entered on his fifteenth year; and that "to marry his daughter," when she reached the age of seven.

portant privilege of the subject has since that time been often confirmed\* and often broken (e), until it was finally declared by the bill of Rights, that "the levying money for, or to the use of the Crown, by pretence of prerogative, without grant of Parliament, is illegal."

In the famous indemnity of the Lords and Commons, 9 Henry IV. now about 400 years ago, it is conceded "That the grant should be the grant of the Commons, assented to by the Lords, and communicated in manner and form as hath been hitherto accustomed, that is to say—by the mouth of the Speaker of the House of Commons for the time being" (f).

Thus we see that the right of the subject to originate, in Parliament, all matters of supply, has been continually acknowledged by the several monarchs who have swayed the destinies of the Empire, from the earliest growth of our Constitution. We see also, that, ever since this right has been firmly established, the originating power of taxation has been conceded to the Commons, as being the representatives of that people upon whom the "aids and scutages"† were to be levied.

(e) Dwar 233.

(f) And see C. J. 12 March 1580.

\* See also the Statute *De tallagio non concedendo*, of the 34 Edw. I. [1306], by which that monarch was compelled to confirm in Parliament that law which had been so often wantonly infringed; it enacts, "That no talliage or aid shall be taken or levied by us, or our heirs in our Realm, without the goodwill and assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses and other freemen of the land."

† *Aids*, or assistance in money, were due from any vassal for the ransom of the lord, for the knighting of his eldest son, and for the marriage of his eldest daughter, but they were often exacted when no such reason could be urged,—but such an extension was expressly declared to be illegal by Article 18, of Magna Charta.

*Escuage* or *Scutage* was a pecuniary compensation for military service, but as the approach of war was an easy pretext, it was liable to become almost arbitrary. It is supposed to have been first introduced by Henry II.—to raise funds for the employment of a large body of mercenary troops, to assist him in his wars with the French King. *Mackintosh's Hist. of England*, v. 1, p. 126.

*Tallage* was an impost assessed upon cities and towns, and upon that class of freemen who owed no military service, according to an estimate of their income. It was, from its nature, very arbitrary.

The Barons, when they submitted to John, in "the Parliament of Runnymede,"

In 1628 (*g*), the Commons first began to omit the name of the Lords in the preamble of Bills of Supply, that it

(*g*) The first Parliament of Charles I. See C. J 7 & 9 June 1628.

as it is called in a writ of the 28 Henry III. (1), articles for the redress of their grievances, did not, whilst providing for their own security against oppression, show an indifference to the rights of those beneath them—for in these articles there was a provision\* expressly declaring, that the same consent should be required for the imposition of tallages as for that of aids,—but in the Charter itself, from motives unknown to us, tallage was omitted. And it continued to be levied, at the discretion of the King, upon those who were subject to its payment, until the passage of the Statute *De tallagio non concedendo* (34 Edw. 1.) by which all such imposts without the consent of Parliament, were declared illegal.

From this Statute and that of the Charter of Confirmation (25 Edw. 1) may be dated the rise of the representative system which is now the broad foundation of the House of Commons. The rude outline of a Parliamentary Assembly may indeed be discerned in much earlier times, but it was, (unless we except the Folk-mote and Witana-gemote of the Anglo Saxons,) an exclusively aristocratical legislature, in which the lower classes of society had no share or participation.

The consent of the higher orders of the state to taxation had long been conceded, as requisite to its legality—accordingly, we find the Charter of John directing the lords and prelates of the land, with those tenants who held of the Crown *in capite*, to be summoned personally for that purpose. Thus was the constitutional principle established of the consent of the community being necessary in all just taxation, and although we have seen that the attempt which was then made to extend to the lower orders that right which they justly claimed, was, at the time, successfully resisted, yet, with the Barons on their side, it was not long before the silent Revolution was effected, and the consent of *all classes* required in Parliament to the imposition of the burthens laid upon them.

But the above Statutes, all-important as they were in their effects, did not prescribe the particular manner by which these taxes were to be levied, further than by directing that “the burgesses and other freemen of the land,” should be summoned to Parliament with the peers and prelates. Personal attendance was impossible where so large a body of people were concerned—the principle of representation, therefore, naturally presented itself, and the people elected delegates to appear for them in Parliament and treat with the King the nature and amount of the required supply. From this small beginning the burgesses, together with the knights of the shire—whose origin, though from a different cause, may be similarly traced—became, in process of time, an integral and essential part of the constitution of Parliament. And, while the rise of the House of Commons, as it is at present constituted, based upon the representative system, was the *natural result* of the situation in which the country was placed by the just concessions of the Crown—its gradual, but progressive increase of power until it attained an equal and legitimate share in legislation was the natural result of its establishment, and of those principles of true liberty which from the days of Edward the Confessor, have ever been the distinguished characteristic of Englishmen.

(1) Taylor's Book of Rights, 7.

\* “Simili modo fiat de tallagiis de civitate London, et de aliis civitatibus.” *Art. Cartæ Regis Johannis*, sec 32—in Mackintosh's History of England, v. 1, p. 185.

might more strongly be manifest as their "sole grant." This, though once remonstrated against by the Upper House (*h*) has continued ever since to be the practice.

Origin and progress of the exclusive control over supplies being vested in the House of Commons.

At a later period (*i*), the House of Commons, finding that the originating power in matters of supply was insufficient to secure to them the possession of this important privilege—the Lords frequently, by amending their Bills, altering the burthen intended to be imposed—found themselves compelled to declare "that in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords" (*k*).

After the revolution of 1688, the Commons laid claim to a still farther extension of their privilege, by refusing to receive from the Lords any bill imposing a pecuniary penalty upon offenders, or to permit them to alter the application of such as they had imposed;—and by extending this privilege to local and limited assessments for private benefits.

These proceedings were, at the time, much protested against by the Upper House, but ineffectually—for the Commons refused to abate their claims in the slightest degree. So that of late years, although the Lords have never avowedly acknowledged any further privilege than that of originating Bills of Supply, they have carefully avoided every opportunity of collision on the subject; and, while the proceedings of each House have been marked by a mutual forbearance, and desire to avoid a renewal of the controversy on this ground—the privileges claimed by the Commons may now be regarded as permanently and indubitably established.

The principles laid down by Hatsell (*l*), as the right of the Commons with respect to Money Bills, is as follows.

Principles laid down as the right of the Commons in matters of Supply.

(*h*) See C. J. 17 June, 1628.

(*i*) C. J. 17 & 19 May, 1662; 17 March, 1670.

(*k*) C. J. 13 April, 1671.

(*l*) 3 Hats. 137,

lows:—1st. That in Bills of Supply the Lords can make no alteration, but to correct *verbal* mistakes: and even these the House of Commons direct to be specially entered on the Journals, that their nature may appear (*m*). 2nd. That in bills not absolutely of supply, yet imposing burthens, as turnpike acts, &c. the Lords cannot alter the quantum of toll, or the persons, commissioners or collectors appointed to manage it\* (*n*) &c. but in the other clauses they may make amendments (*o*). 3rd. That where a change may be indirectly thrown upon the people by a bill, the Commons object to the Lords making amendments. 4th. That the Lords cannot insert pecuniary penalties in

(*m*) C. J. v. 93, p. 659; East India Postage Bill.

(*n*) See C. J. v. 8, p. 112, as to the exclusive right of the Commons to name Commissioners in bills that charge the people.

(*o*) See in C. J. v. 37, p. 820, report of the precedents of amendments made by the Lords to Bills of Inclosure, collected by a Committee.

\* In the reign of Henry III. 1225, we find (1) that monarch appointing Commissioners for the assessment and collection of the subsidies, granted at the time of his confirmation of the Charter. But in the year 1224, we find (2) the Commons proposing that the supply granted should be placed in one of the King's castles under the custody of four persons, to be appointed by the Parliament—who were to see that it was properly expended. These attempts may be considered as the earliest efforts made use of by the Commons for the establishment of a Parliamentary control over matters of supply.

The earliest instance mentioned in History of persons to whom the examination and custody of the supplies was intrusted, being appointed by Parliament, and called before the House of Commons to account for the same, is that of John Charnels and William de la Pole, in the 14 Edw. III. 1340 (3).

Since the Revolution of 1688, the exclusive right of appropriating the supplies, as well as of granting them, has remained unquestioned in the Commons, who have accordingly the privilege of nominating the Commissioners in all bills to examine or audit the same, without their being altered or amended by the Lords.

And it has been declared by a Resolution of the House of Commons—on the 6th of April 1780—which is the summing up of several resolutions of a much earlier date—“That it is competent to this House to examine into and to correct abuses in the expenditure of the Civil List Revenues, as well as in every other branch of the public revenue, whenever it shall appear expedient to the wisdom of this House to do so.”

And in pursuance of the act 42 Geo. III. ch. 70, Accounts of the Revenue, Expenditure, Debt &c. of Great Britain are required to be annually made up, and laid before both Houses of Parliament, within fourteen days of their meeting.

(1) See the Commission in Rymer's *Fœdera* v. 1, p. 177.

(2) Mack. Hist. England, v. 1, p. 196.

(3) Parl. Hist. v. 1. p. 236.

a bill, or alter those inserted by the Commons. Further than this, Mr. Hatsell deprecates an extension of their claims; for those privileges which are undeniably theirs are sufficiently secured to them by the observance of the above rules, and would only be weakened by their asserting others which may be made the subject of doubt and discussion.

But the House of Commons seem to have meditated a relaxation of their privileges in this respect, for, by a recent Standing Order (*p*), it is provided, that in any case where a pecuniary penalty or forfeiture is imposed, varied, or taken away by the Lords—the Speaker shall report to the House before the second reading of the bill or amendments, whether such be intended to impose, vary, or take away, any pecuniary charge or burthen upon the people, or whether it relates only to the punishment or prevention of offences—and upon such report (which must be noted in the Journals) the House shall determine whether they shall insist upon their privileges in this particular case (*q*).

Relaxation of them—as concerns pecuniary penalties.

With respect to Petitions for Public Money, the House has provided, by a standing order (*r*) that they will not receive any application for Public Money that does not come recommended by the Crown,\* and that they will not proceed upon any motion, petition or bill for granting any money, or for compounding or releasing any sum of money owing to the Crown, but in a Committee of the Whole House; see further, chap. XII. *On Committees.*—(Committees of Supply and of Ways and Means).

Application for Public money.

And the House will not receive any petition for compounding money due to the Crown without a Certificate

Compounding debts due to the Crown.

(*p*) C. J. 22 June, 1831.

(*q*) A case in C. J. 13 Sept. 1831; Game Bill.

(*r*) S. O. H. of C. Public Matters, iii.

\* See Appendix XXII. Form of Memorial to Treasury, for the consent of the Crown.

from the proper officers, stating the amount of the debt, what prosecutions have been made for its recovery, and how much of it the petitioner and his surety are able to satisfy—see *ante* p. 230 as to bills for this purpose.

No petition *against* a Money Bill then pending, or which has been passed that session, will be received—see chap. XI. *On Petitions*.

Supply votes  
must originate in  
Committee of  
the Whole.

Every proposition for taxing the subject, whether the sole object of the bill, or that of a particular clause only, must be first examined by a Committee of the Whole (*s*); and it is ordered by a resolution of the House (*t*) that the consideration and debate thereof be not then entered upon, “but adjourned to a day appointed, and then referred to a “Committee”—to the end, “that when money is to be “raised upon the subject, the proposition should have the “fullest and most frequent discussion.” For the same purpose, also, it has been seen (*v*) that all Private Bills of the second class (relating to Public Works) receive from the House the most attentive consideration, as from their nature, they generally impose tolls or duties.

Preamble of  
Supply Bills.

The preamble of Bills of Supply should run as follows :  
“Most Gracious Sovereign, We, Your Majesty’s most  
“faithful Commons, have given and granted to Your  
“Majesty, &c.

Rules respecting  
them.

The forms observed by the House in the passage of Bills of Supply do not differ from those by which Public Bills in general are regulated, except that printed copies of Money Bills are required, in all cases, to be delivered to the members before their second reading (*w*)—and that they should not be permitted, on any account, to have two readings on the same day.

Rules in filling  
up Blanks.

When the House is in Committee of the Whole to con-

(*s*) C. J. 18 Feb. 1667; 29 March, 1707. (*t*) C. J. 18 Feb. 1667.

(*v*) See *ante* p. 194 note.

(*w*) C. J. v. 62. p. 576.

sider Bills of Supply, or to fill up blanks of a pecuniary nature in any other bill, it is an ancient order of the House (declared in 1675.) "That when there comes a question " between the greater or lesser sum, or the longer or shorter time, the *least* sum, and *longest* time, ought first to " be put to the question." And the usage of the House accordingly is, that if two sums are proposed to be granted to the Crown, or for the public service, as for the Army or Navy, if the number of men proposed to be moved be different, or if a larger and smaller tax are proposed together, the Chairman, without considering the smaller sum as an amendment, immediately puts the question with that lesser sum, the fewest number of men, or the smallest tax; and if it be lost, he again puts the question with the next smaller sum proposed. But if the proceeding be in the House on a report, though the alteration proposed is for the lesser sum, it must be proposed as an amendment (x).

Which privilege  
the *smallest* sum.

The other part of the rule, which gives precedence to "the longest time" for the liquidation of a sum voted, is thus carried out on a question as to the time of commencement of a tax: The *later* time at which such tax is proposed to have its beginning, should be put to the question before the *earlier*, though the earlier was first proposed.

And the *longest*  
time.

When a new clause of a pecuniary nature has been found necessary, or when it is desired to increase the amount of any pecuniary matter in the Bill, or in any particular clause thereof, the bill or clause must always be re-committed for that purpose—as no burthen, however small it may be, can, consistently with the above Standing Order, originate but in Committee. But whenever the question has been to *lessen* the sum proposed, and thereby lighten the burthens of the people, the House has always

If amendments  
are offered in  
the House of a  
pecuniary na-  
ture, Bill must be  
recommitted,  
—except.

(x) C. J. 13 Dec. 1742; 12 Mar. 1749; 20 April, 1765.

thought itself competent to do so without the intervention of a Committee.

It appears (*y*) however, that the appropriation clause may be added to a Bill of Supply in the House, without a re-committal. And on the report by a Committee of Supply of a sum granted to make good deficiencies in the supplies of the last session, it has been amended in the House by appropriating part of that sum to a particular purpose (*z*).

As to amendments made by Lords to a Money Bill.

Bill abandoned and new one brought in by the Commons.

When the Lords have made amendments to Money Bills to which the Commons consistently with their privilege, cannot agree—and yet it is not desired that the bill should be lost, the further consideration of the Bill, or of the Lords' amendments, is put off for the session; or a new Bill is brought in on motion, founded on the report of the Committee on the original petition, but modified in such a manner as to be satisfactory to both Houses. This Bill passes through the different stages in the same manner as the former one, excepting that the House will sometimes (towards the close of the session) shorten the time required to intervene between the various stages.

A case occurred of the Lords proposing amendments to a Money Bill, become by delay confessedly necessary. The Commons, however, refused to allow them, as infringing upon their privileges, but offered themselves to add to the bill a proviso to the same effect, which had no coherence with the Lords' amendments, and urged that it was an expedient warranted by precedents, and not unparliamentary in a case become impracticable and irremediable in any other way (*a*). But the Lords refused, and the bill was lost (*b*).

Conference.

A conference is sometimes asked by the Lords on a Money Bill, and allowed by the other House (*c*).

(*y*) C. J. 3 April, 1707.

(*z*) C. J. 16 May, 1717.

(*a*) 3 Hats. 256, 266, 270.

(*b*) 1 Chand. 258; a like case, 1 Chand. 311.

(*c*) 4 Parl. Hist. 391, 392; J. H. of A. U. C. 4th Sess. 11 Parl.

It has been a very common custom with the Commons, particularly towards the close of a session, to vote money by an address to the Crown for the required advance, giving assurances that it shall be repaid at the next session of Parliament. This practice, however, is contrary to the words and spirit of the standing order (*d*) above alluded to, which not only provides that the consideration of all matters of supply shall originate in Committee of the Whole, but also that such shall not be appointed to meet once, but at a future day, that mature deliberation may be given to a subject so important as that of laying a charge or burthen upon the people. This practice has indeed been principally confined to small sums, and to cases which occur at the end of the session, when the Committee of Supply has closed, and the sum has not been thought of sufficient magnitude to call for its re-opening (*e*)—but it is a practice which the Speaker and those members who are desirous to preserve the credit and authority of the House of Commons ought to discourage, and not permit to be wantonly adopted, or without apparent necessity (*f*).

Practice of voting money by address to the Crown.

An irregular one

The measure sometimes formerly resorted to, of tacking to Bills of Supply a clause or clauses containing unconnected matter, with an intention of thereby compelling the Crown or the Lords to give their assent to a bill which they would otherwise disapprove of, or reject, is highly irregular—and a direct breach of the privileges of the Lords (*g*), and of parliamentary forms in the passing of bills. It takes away the negative voice of the King, debars the Lords from their privilege of freely debating and judging what is good for the Kingdom, and tends to confound the separate rights which belong to each House of Parliament respectively.

Tacking Bills, or Clauses, to Bills of Supply.

Highly irregular, and a breach of Lords privileges.

When a Bill of Supply has received the concurrence of

(*d*) C. J. 18 Feb. 1667.

(*e*) C. J. 8 April, 1741.

(*f*) 3 Hats. 159.

(*g*) S. O. H. of L. xxv. See L. J. 9 Jan. 1807; Malt Duties Bill.

Manner of returning Supply Bills to the Commons, to be presented for the Royal Assent.

the Lords it is returned to the Commons, that it may be presented by the Speaker to the Throne. The practice in this respect has long been, not to send such bills by the Masters in Chancery, but for the Clerk of the House of Lords to deliver them privately (*h*) to one of the Clerks of the House of Commons; and if there be any doubt which are, or are not, bills proper for the Speaker to present, the Clerk of the House of Lords, in delivering a list of the bills ready for the Royal Assent, desires that the Speaker would mark in that list which of them appear to him to be Bills of Supply, and those bills are immediately sent down to the House of Commons.

Speaker's speech on presenting.

When the King is personally present, it has been customary on the Speaker's presenting the Bills of Supply on the last day of the session, for him to make a speech at the Bar of the House of Lords, either immediately arising out of the subject matter of the bill itself, or recapitulating the principal objects which have engaged the attention of the Commons during their sitting (*i*), in which he should endeavor to express, as far as possible, not his own individual sentiments, but what he conceives to be the opinions of the majority of the House. This speech is not entered upon the Journals of the House of Commons, without a special order of the House (*k*), though formerly the practice was different. For, being made at the close of the session, when the business of that House has finished, they can have no place on its Journals; but the substance of them is entered in the Journals of the House of Lords.

Royal Assent.

The manner of giving the Royal Assent to a Bill of Supply differs from the manner of assenting to Bills of a

(*h*) See C. J. 23 July, 1610.

(*i*) For one of the earliest instances of this latter kind, see Parl. Hist. vol. 4, p. 397. See also precedents of such Speeches in L. J. 24 July, 1540; 1 May & 22 June, 1689; 22 April, 1671; 18 April, 1719; 11 June, 1720; and C. J. 6 Oct. 1715, and 7 May, 1777.

(*k*) As in C. J. 21 Oct. 1745.

common description ; because, being the gift of the subject, the King's approval is implied in his thankful acceptance of it. The form of words is as follows, "*Le Roy remercie ses bons sujets, accepte leur benevolence, et ainsi le veult ;*" — "the King thanks his good subjects, accepts their benevolence, and wills it so to be."

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## C H A P. X.

**On Bills of Grace and Pardon.**

Bills of Grace.

Bills of Grace and Pardon (a) originate with the Crown, and are first signed by the King and then transmitted to Parliament. They are passed on their first reading, without amendment, "because," says Hakewell, "the subject must take it as the King will give it, without any alteration."

At the reading of the bill the Speaker does not open it (*i. e.* declare its contents), but merely reads the title, the members sitting uncovered.

The Royal Assent is not given to it, because it is originally the King's free gift; no other circumstance is required than that its thankful acceptance be expressed by Parliament, which is done in these words. "*Les Prelats, Seigneurs et Communes en le present Parliament assemblez, au nom de tous voz autres sujets, remercient tres humblement votre Majestie, et prient à Dieu qu'il vous donne, et sante, bonne vie et longue.*" "The Prelates, Lords and Commons, in this present Parliament assembled, in the name of all your other subjects, most humbly thank your Majesty and pray to God to grant you in health and wealth long to live."

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(a) D'Ewes, 29, 73. C. J. 17 June, 1717.

## C H A P. XI.

## On Petitions.

It is truly observed by Blackstone (a), that it is the inherent right of every Englishman to petition\* Parliament for the redress of all grievances, beyond the power of a court of law to relieve (b); but it is also the undoubted right and privilege of both Houses of Parliament, to adjudge and determine touching the nature and matter of such petitions, how far they are fit or unfit to be received (c). Accordingly the rules to be observed, and the forms to be made use of by the subject, in the exercise of this right, will form the subject for consideration in the present chapter.

Right of Petition.

During the times immediately preceding the rebellion of 1640, the freedom of Parliament was frequently menaced by riotous and tumultuous petitioning, led on by the fiery agitators of those times as an end for the furtherance of their evil designs. Accordingly, when the nation had in some measure recovered from the shock of that rebellion, which the unrestrained exercise of this right had materially assisted to produce, the statute of Charles was

Tumultuous petitioning.

(a) 1 Bl. Com. 142.

(b) L. J. 9 Sept. 1644.

(c) See 1 Grey, 269.

\* Petitions may be transmitted by the post to Members of Parliament for presentation, free of postage. This privilege was confirmed by a Treasury Minute of the 26 Dec. 1829, under the authority of the "Penny Postage Act."

By a Standing Order of the House of Assembly in this Province (*vide* M.S.S. Journals, 1835, p. 97), the postage of packets containing Petitions to the House, and documents relating thereto, shall be charged in the account for Contingent Expenses of the Legislature, upon production of such packet to the Clerk of the House, without any limitation as to weight.

enacted, to prevent as far as possible, by legislative interference, the abuse of a privilege which, when exercised with discretion and forbearance, is one of the greatest bulwarks of British liberty.

Act for its prevention.

By this act (13 Car. II. stat. 1. ch. 5.) it was provided that no petition to the King, or either House of Parliament, for the alteration of matters established by law, shall be signed by more than twenty persons, unless the matter thereof be approved by three Justices of the Peace, or the major part of the Grand Jury at Assizes or Quarter Sessions, in the country—and in London, by the Lord Mayor, Aldermen and Common Council; nor shall any petition be presented by more than *ten* persons at a time—under penalty, in either case, of a sum not exceeding £100, and three months imprisonment. But, under these regulations, it is declared by the Bill of Rights (*d*) that the subject hath a right to petition, and that all commitments and prosecutions for such petitioning are illegal.

Not observed by practice.

Both Houses of Parliament, however, are now in the constant habit of receiving petitions, signed by hundreds of persons, for alterations in the established law, though they be not prepared according to the statute of Charles, but this is a practice of very modern introduction,\* and we have a judicial decision (*e*) on the subject which declares, that this act is not in any degree affected by the Bill of Rights, and that, though not in present operation, it can be called forth when any emergency may require it.†

But can be called into action if required.

If a Petition on its presentation appear to contain any informality or irregularity it must be withdrawn, or it will be rejected.

(*d*) 1 Wm. & Mary, stat. 2, ch. 2.

(*e*) Lord Mansfield, in Lord George Gordon's case, A. D. 1780.—Doug. Reports, 571.

\* See a valuable historical note on this subject, in Hallam's Constitutional Hist. of England, v. 3, p. 362-364.

† See the 57 Geo. III. ch. 19, s. 23, regulating the place of public meetings in Westminster, for preparing Petitions to Parliament, and other purposes.

The following have been deemed causes for withdrawing petitions:—

Cases in which  
Petitions should  
be withdrawn.

That there were several interlineations and erasures (*f*) or alterations (*g*), in the Petition: That it was not signed (*h*): That it had no signatures on the same paper (*i*): That the petitions of Commissioners were signed only by their Chairman (*k*): That the signatures were all in the same handwriting (*l*): That the petition was against a tax bill then pending (*m*): That it was not in the English language (*n*): That it was informal (*o*), or not worded in a respectful manner (*p*): That it used disrespectful language towards the other House (*q*). Sometimes petitions have been withdrawn without any reason being entered on the Journals (*r*).

The following have been deemed causes for rejecting Petitions:—That the petition takes notice of what passed in a debate in the House (*s*): That it reflects on the conduct of the Judges (*t*): That it is printed (*v*): That it indicates a disposition to resist the law by force (*w*): or that it contains matter offensive to the House (*x*).\*

Cases where they  
have been re-  
jected.

The causes cited above apply equally to both Houses of Parliament.

No member should knowingly present an informal petition, but if he do so, and no other member take notice of the irregularity, it is the duty of the Clerk who reads it to state the fact, and the petition will be rejected; but if the Peti-

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| ( <i>f</i> ) C. J. v. 64, p. 184; Of H. White.                 | ( <i>g</i> ) C. J. v. 74, p. 226; J. Couch. |
| ( <i>h</i> ) C. J. 15 Feb. 1750.                               | ( <i>i</i> ) C. J. v. 72, p. 155.           |
| ( <i>k</i> ) C. J. 27 Mar. 1789.                               | ( <i>l</i> ) C. J. v. 64, p. 374.           |
| ( <i>m</i> ) C. J. 20 June, 1816.                              | ( <i>n</i> ) C. J. 16 Mar. 1821.            |
| ( <i>o</i> ) C. J. v. 70, p. 259.                              | ( <i>p</i> ) L. J. v. 52, p. 635.           |
| ( <i>q</i> ) C. J. v. 93, p. 236.                              |   |
| ( <i>r</i> ) C. J. v. 71, p. 494. General Index, 1820, p. 706. |   |
| ( <i>s</i> ) C. J. 7 Mar. 1821.                                | ( <i>t</i> ) C. J. v. 71, p. 379.           |
| ( <i>v</i> ) C. J. 23 Sept. 1656. G. I. 1820, p. 766.          |   |
| ( <i>w</i> ) C. J. 2 Aug. 1832.                                | ( <i>x</i> ) C. J. 2 Aug. 1832.             |

\* For a variety of other reasons assigned for rejecting Petitions, see the General Index to the Lords' and Commons' Journals (*Petitions*).

tion has once been received, no informality can afterwards be noticed (*y*) except it be of a nature which would affect its correctness or legality. This appears to be the practice of the House because they may sometimes feel disposed to relax the rule in favour of some important measure, — as, during the last session of the Imperial Parliament, many *printed* petitions were received by the House of Commons in favour of the “Penny Postage” scheme, no notice being taken at the time of their informality. But where the informality is of such a nature as to affect or call in question the correctness of the Petition—as, that it has not been signed by the Petitioner (*z*), or not signed at all (*a*), in that case, notice being afterwards taken of the same, the Petition must be withdrawn.

Form of Petitions.

It is irregular to enter too minutely into the provisions prayed for, or to prescribe to the House the mode of relief (*b*). A Petition praying relief should not, in point of form, either prescribe the quantum, or mention the fund out of which it is to be granted.

Not to be received against Tax Bills of that session—except.

Neither House of Parliament will receive any Petition against a bill pending for imposing a tax or duty (*c*), or against a tax imposed in the same session (*d*). But this does not extend to prevent receiving petitions praying for the repeal or alteration of taxes or duties imposed in any former session; nor to Petitions against the *Trade Regulations* in tax bills (*e*), if it be seen that they are so clearly and explicitly worded as not to infringe upon the rule;—nor to petitions from the Corporation of the city of London, in Common Council assembled, as the forms permitted by the indulgence of the House in receiving their Petitions,

(*y*) See Sherwood on Private Bills, p. 35, *note*.

(*z*) C. J. 24 Feb. 1797.

(*a*) L. J. v. 51, p. 510.

(*b*) 3 Hats, 226.

(*c*) See L. J. 3 May, 1736; 18 June, 1783; and C. J. 5 Apr. 1712; 28 Jan. 1760.

(*d*) C. J. 17 May, 1816; 13 April, 1802.

(*e*) C. J. v. 17, p. 142; 24, 27 & 29 June, 1785.

preclude the House from knowing their contents till they have been received and read.

The petition must be written, and not printed (*f*) on parchment or paper (*g*). It must be in the English language (*h*). A Petition in a foreign language will not be received unless accompanied by an English translation, which must be certified to be a correct one by the member presenting it (*i*). The Petition must be signed by the parties preferring it, with their own hands (*k*), except in case of their inability from sickness (*l*), or being unable to sign, when it may be averred by a member (*m*). There must be some signatures on the same sheet as the Petition itself (*n*). How to be drawn up.  
And signed.

Petitions from bodies corporate must be under their common seal (*o*). A Petition signed by an individual as Chairman of any meeting will not be received (*p*) except as the petition of the person signing (*q*). As to Petitions from public bodies, &c.

It is a breach of privilege for any person to set the name of another to any petition to be presented to the House (*r*). But some false signatures have been held not to vitiate those that were good, and the petition was received (*s*). The House sometimes appoints a Select Committee to enquire into the signatures of any suspected petition, to which petitions complaining of their forgery, and counter petitions declaring them genuine, are referred, to report thereon (*t*). False signatures

In the House of Commons, on the 20th March, 1833, an order was made that all Petitions presented should be Must be signed by Member presenting it.

(*f*) C. J. 3 Mar. 1817.

(*g*) C. J. 6 May, 1793; 30 June & 7 July, 1813.

(*h*) C. J. 16 Mar. 1821.

(*i*) C. J. 21 Mar. 1821.

(*k*) C. J. 26 May, 1685; 14 Nov. 1689; 27 Mar. 1789.

(*l*) C. J. 8 Nov. 1675; 2 Hats. 189.

(*m*) 3 Grey, 418.

(*n*) C. J. 29 Jan. & 12 Mar. 1817.

(*o*) C. J. v. 53, p. 539.

(*p*) C. J. 27 Mar. 1789.

(*q*) C. J. 11 Mar. 1817.

(*r*) C. J. 2 June, 1774.

(*s*) C. J. 7 Mar. 1817.

(*t*) C. J. 6, 11, & 13 Mar. 1834.

signed at the top by the member presenting them; and although this order, being a sessional one, has never been renewed, yet in practice it has been acted upon ever since.

Ballot for precedence of presentation.

In the House of Commons, where the number of petitions presented every morning is necessarily very great, a Ballot takes place half an hour (*v*) before the time appointed for the Speaker to take the chair, for entering the names of all members having public petitions to present, on the Speaker's list, to be called up by him in the order in which they are balloted.

Form of presenting.

Every Petition must be presented by a member, and must be opened by him, holding it in his hand (*w*), except (in the House of Commons) petitions from the Corporation of London, which are presented by the City Sheriffs;\* and from the Mayor and Corporation of the City of Dublin, which may be presented by the Lord Mayor of Dublin at the Bar of the House (*x*). With Petitions from the Corporation of London, both the Sheriffs must attend; but on an emergency one Sheriff has been allowed to present the Petition, the House having been informed by a member that the other Sheriff was confined by illness (*y*), or was absent on indispensable business† (*z*).

Petitions from Corporations of London and Dublin.

If there are two or more Petitions from the Corporation of London to be presented at once, the Sheriffs should withdraw after having presented the first, and re-enter to present the second, with the same formality (*a*).

(*v*) C. J. 23 June, 1835.

(*w*) 10 Grey, 57.

(*x*) C. J. v. 68, p. 209.

(*y*) C. J. 25 Nov. 1814.

(*z*) C. J. 15 May, 1820.

(*a*) See C. J. 7 Mar. 1836.

\* That this long established usage is a matter of indulgence only, and not of right, appears from the Journals of the 17th April, 1690, when the Sheriffs of London were, upon a question and division, refused to be admitted.—(See the debate in Grey's Debates, vol. 10, p. 54.)

† And if either of the Sheriffs be a Member of the House of Commons, he may not attend to present the Petition. In a case on the 1st Feb. 1724, one of the Sheriffs being a Member of the House, and the other being ill, the Petition was allowed to be presented by two Aldermen and four Common Councilmen. See also the 5th March & 8th May, 1770.

In the *House of Lords*, on the first day of every new Parliament, after the Commons have retired to choose their Speaker, Tryers and Receivers of Petitions are appointed. The Receivers are four Justices and two Attendants (Masters in Chancery) for Great Britain; and three Justices with two Attendants for Normandy, Anjou, &c.

Tryers and  
Receivers of  
Petitions, in  
Lords.

Petitions are to be delivered to them within six days. Then are appointed six Peers and two Bishops to be Tryers of Petitions for Great Britain, and the same number for Normandy and other places beyond the seas.— They, or any four of them, sit in the Treasury Chamber, assisted by the King's Council, *to try out* whether the Petitions are reasonable, and fit to be offered to the Lords. This tribunal had its origin in the time of Edward I. who ordered that all petitions for redress of any kind, beyond the power of any Court of Law to grant, should be presented to him in his Great Council of Parliament. But although the form of appointment is still observed, their duty and service have gradually fallen into disuse.

The member who presents a petition ought to have first read it, and be prepared to say that in his judgment it contains nothing intentionally offensive to the House (*b*).

Form of re-  
ceiving.

Regularly, a motion should be made, and question put for receiving it (except it be an Election petition), but a cry from the House of "received" or even its silence, dispenses with such a formality. But in the Imperial Parliament the regular form is gone through.

No petition for any sum of money relating to the Public Service—or that relates to any Crown Lands—will be received, unless recommended from the Crown (*c*). This recommendation is signified by the Chancellor of the Exchequer, or some other of the King's Servants, as soon as the member has opened the petition, and before the question

King's consent.

(b) 2 Hats. 189; 3 Hats. 240, *note*.

(c) S. O. H. of C. xxxix.; 11 June, 1713; 29 Dec. 1819.

for bringing it up (*d*). Neither will the House receive any petition for compounding debts due to the Crown upon any branch of the Revenue, without a Certificate from the proper officer annexed to it, stating the debt, what prosecutions have been made for its recovery, and how much thereof the Petitioner and his surety are able to satisfy (*e*).

The consent of the Crown having been given to the presentation of a petition for remuneration, &c.—it is unnecessary for a motion to be made for the appointment of a Committee to take it into consideration, but the member having charge of it should, at the usual time, move that it be referred to the Committee of Supply.

When the King is, in any respect, a party interested, it is usual for the Chancellor of the Exchequer, or of the Duchy of Lancaster, to acquaint the House, either on presenting the petition, or in the course of the bill's progress, of the consent of His Majesty to the same, so far as His interest is concerned (*f*). There are instances of this consent having been given in every stage of such bills; but if the King's interest be important (as in the case of any proceeding affecting the hereditary revenue) the consent should be signified in the earliest stage (*g*).

Member's speech  
on presenting  
Petitions.

On the 27th July, 1836, it was stated by the Speaker, "That it was the rule of the House, that if a Petition was presented referring to a subject before the House, the member presenting it should confine himself to a statement of the substance and prayer of such Petition. But in regard to Petitions complaining of individual grievances, and not relating to any public general matter before the House, members presenting the same should be allowed to enter into a statement of the facts and arguments connected with them."

(*d*) C. J. 2 May, 1798.

(*e*) S. O. H. of C. xxxix.

(*f*) 2 Hats. 356.

(*g*) See for instances, General Index to Commons' Journals, 1820, p. 218.

As to the mode of proceeding upon a Petition for a private bill, see Chap. VIII. *On Private Bills*,—and on Petitions complaining of undue returns, see Chap. V. *On Election Petitions*.

The mode of proceeding upon Public Petitions, which are by far the most numerous class, is very different. Great inconveniences were formerly sustained, in the House of Commons, not only from the number of Petitions of this nature, but from the frequent introduction of debates thereon, which trespassed very materially upon the other and more important duties of the House. A plan was at length adopted on the 20th February, 1833, whereby this inconvenience was in a great measure removed. It was ordered that in future the House instead of assembling at 4 o'clock (the usual time of meeting) should meet every day except Saturday and such days as might be set apart for the consideration of Election Petitions—at 12 A. M. for the presentation of Petitions, and the transaction of private business; and continue sitting till 3 o'clock, P. M. unless the business was sooner disposed of.

At these morning sittings all the Petitions presented for Private Bills are referred to the usual Committees,—those complaining of undue elections or returns are dealt with as usual—and all remaining Petitions are referred at once to a Sessional Committee of eleven members (five of whom are a quorum) called “the Select Committee on Public Petitions,” whose duty it is to examine, classify, and prepare abstracts of the same, in such form and manner as shall appear to them best suited to convey to the House all requisite information respecting their contents, and to report the same from time to time to the House. These reports must, in all cases, set forth the number of signatures to each Petition. This Committee has also power to direct the printing *in extenso* of such Petitions, or such parts of Petitions as shall appear to require it; and to report observations upon their contents.

Public Petitions.

Morning sitting to receive and refer Petitions.

Public Petitions referred to a Committee to classify and prepare abstracts of them.

Quorum of the House at its morning sittings.

It was further ordered, that the Speaker shall take the chair at all these morning sittings when *twenty* members are assembled—instead of forty (the usual quorum)—and they may proceed to business with that number; but it is still in the power of any member, at his discretion, to call for the House to be counted, and *forty* members not being present it must be adjourned. By this check a proper attendance of members can be secured when any Petition of importance is about to be presented.

To be adjourned at 3 o'clock.

The Speaker is also directed to adjourn the House at three o'clock precisely (without a question first put) until five—and all business interrupted by such adjournment, must be resumed at the next morning sitting as an adjourned debate, in preference to any other business. And if the private business be disposed of *before* three o'clock, the Speaker may adjourn the House, without putting a question, until five.

This plan has no reference whatever to the evening sittings, which are to commence at five o'clock, if forty members are assembled, and proceed to take into consideration the orders of the day.

Petitions against Bills when to be presented.

Any Petition against the principle of a Bill should be presented after its first reading, when an order is usually made that it do lie on the table until the second reading; and that the Petitioners be then heard against the bill\*. But if the Petition be against certain provisions of the bill, it should be presented after the second reading, with the grounds of objection distinctly specified—(see *ante* p. 210)—it will then be referred to the Committee on the bill; and, if it contain a provision praying to be heard by counsel upon those grounds, powers will be given to the Committee for that purpose†.

\* For the manner of hearing Counsel upon such a Petition, at the second reading of the Bill, See *ante* p. 209.

† For the manner of hearing Counsel upon such a Petition, before the Committee on the Bill, see *ante* p. 213.

## C H A P. XII.

## On Committees.

COMMITTEES.

A Committee is a number of the members of the House (select, or otherwise) appointed to consider and digest matters referred to them, and, upon documentary evidence or oral testimony, to make such a report as will enable the House to proceed upon the subject under consideration, in a manner that will best conduce to the welfare of the state, or the interest of the parties concerned.

They are of various kinds, viz : Standing and Sessional Committees, Committees of the Whole House, of Supply, and Ways and Means, Select and Joint Committees, and Committees of Conference.

## I. STANDING COMMITTEES.

STANDING COMMITTEES.

There have usually been *five* Standing Committees appointed at the commencement of a Parliament (*a*), and remaining during all its sessions, viz : for Privileges\* (and formerly Elections); Religion; Grievances; Courts of Justice (*b*); and Trade.

The Committee for Privileges always had precedence of all other Committees whatsoever (*c*). Its power was formerly to examine and consider all questions "which shall grow and arise in that Parliament, about Elections,† Returns, and other Privileges" (*d*), and report their proceedings and opinions thereon to the House, from time to time—but

(*a*) 4 Inst. 11; Scobell, 9; Lex Parl. 341.

(*b*) C. J. 13 Nov. 1761.

(*c*) Scobell, 10.

(*d*) So entered, C. J. 6 Nov. 1640.

\* This is now a Sessional Committee.

† Controverted Elections were formerly decided by the House upon a report from the Committee of Privileges. This practice had prevailed ever since the Commons first exercised a jurisdiction in this matter, and it was not discontinued until the year 1770, when the present admirable system of Election Committees was first introduced, by the Grenville Act.

since a separate tribunal has been erected for the trial of Contested Elections, its duty has been confined to incidental questions of Privilege referred to them, or which are needful to be so considered.

**For Trade, &c.** The Committee for Trade hath sometimes been a Select Committee, particularly named; sometimes a Grand Committee of the Whole House. The Committees for (e) Religion, Grievances, and Courts of Justice, are always Grand Committees of the Whole House. The Committee for Justice, it is said, may summon any of the Judges and examine them in person, upon complaint of misdemeanor in their office (f). These, when not Committees of the Whole, are first called in the Speaker's Chamber, and then adjourned into the House, because they are usually very numerous, every member having a vote therein though not named of the Committee. There must be at least eight members present to empower the Committee to act. The person first named is usually the Chairman; but this is a matter of courtesy, every Committee having a right to elect their own (g).

**Quorum.** At these Committees the members are to speak standing, and not sitting, though there is reason to conjecture that it was formerly otherwise (h).

Their proceedings are not to be published, as they are of no force till confirmed by the House (i). Nor can they receive a petition but through the House (k).

Standing Committees may be said to have fallen into disuse, their duties being now performed, in many cases, by Sessional Committees appointed for the purpose.

**SESSIONAL COMMITTEES.**

**SESSIONAL COMMITTEES**

Are now, in the Lords, two, viz:—for Privileges and for the Journals. In the Commons there are seven, viz:—of Privileges; of Expiring Laws; of Supply, and of

(e) C. J. 21 James I.

(g) 4 Inst. 11, 12.

(i) 3 Grey, 401; Scob. 39.

(f) 1 Sid. 338; Comyn's Dig. Parl. E. 13.

(h) D'Ewes, 630, col. 1, 4; 2 Mats. 77.

(k) 9 Grey, 412.

Ways and Means (as to them, see *post* Committees of Supply, &c.); of Petitions for Private Bills, and of Standing Orders (see *ante* Chap. VIII. *on Private Bills*); and of Public Petitions (see *ante* Chap. XI. *On Petitions*.)

## COMMITTEES OF THE WHOLE HOUSE:

COMMITTEES OF THE WHOLE.

Or, as they are sometimes more sonorously called, Grand Committees.

The Speech, Message, and other matters of great concernment, are usually referred to a Committee of the Whole House (*l*), where general principles are digested in the form of Resolutions, which are debated and amended till they have arrived at a state satisfactory to the majority. These being reported, and confirmed by the House, are then either referred to one or more Select Committees, (accordingly as the subject divides itself,) to draft bills thereon—or considered and acted upon by the House.

The object of going into Committee is, professedly, that the bill may be maturely considered in all its parts and bearings. It is with the detail that the Committee has to deal, the principle must be considered to have been already examined and pronounced upon. It remains only for the Committee to discuss the best mode of carrying it into execution. This is the fit stage for offering suggestions for the improvement of the measure, in order to give it greater efficacy—for proposing any alterations or amendments to guard the interests of those affected by it; in short, of attentively considering the adaptation of means to their end, of parts to the whole, of the machinery to the invention (*m*).

Their object.

The sense of the whole is better taken in a Committee, because the members have, therein, liberty to speak as often as they may think fit, to one question (*n*).

Propositions for any charge on the people, it has been seen (*o*), must emanate from Committees of the Whole.

(*l*) G Grey, 311.(*m*) Dwar. 154.(*n*) Scob. 49.(*o*) See *ante* p. 268.

Rules of proceeding therein.

The form of going into Committee is, for the Speaker, on motion, to put the question "that the House do now resolve itself into a Committee to take into a consideration" such and such a matter. If agreed to, he calls upon any member present to take the Chair of Committee, which is at the clerk's table, and leaving his chair he takes a seat elsewhere and may then speak and vote as any other member.

Chairman.

They generally acquiesce in the Chairman appointed by the Speaker, but, like all other Committees, they have a right to appoint a Chairman themselves, by election (*p*).

Quorum.

The Chairman takes his seat with his hat on, and the Committee proceed to business. On public bills the preamble is postponed, to be discussed last; in private bills the preamble is to be considered before any other part. The quorum is the same as that of the House (*i. e.* forty members), and if a defect occur, the Chairman, on motion and question, rises, and the Speaker resumes the chair to receive the report, which can be no other, in that case, than to inform the House of the cause of their dissolution; but on a question of "order" arising, the Speaker may take the chair without motion (*q*), for the Committee can not punish a breach of order, but must rise and report it to the House (*r*).

Order.

Message.

If a message be announced during Committee, the Speaker takes the chair to receive it, because the Committee cannot (*s*).

Motions.

It is often said, that in a Committee of the Whole, there is no necessity for a motion to be seconded. Hatsell says, that he does not know on what authority the assertion is made, nor that it is justified by practice.

Divisions.

On a division, the Committee divide to the right and left within the House, the Chairman directing the yeas to one

(*p*) Scob. 36.

(*r*) 9 Grey, 113.

(*q*) 3 Grey, 122.

(*s*) 2 Hats. 125, 126.

side, and the noes to the other; and appointing one of each to count and report the numbers, which is done in the same order as in the House (See *ante* p. 130) except that the Teller's obeisance is only made twice in a Committee, whereas in the House it is three times.

In a Committee of the Whole no member may alter a bill, even to correct a mistake, without the order or knowledge of the Committee (*t*). Altering a Bill.

If the Committee be broken up in disorder it is considered as thereby dissolved, and the subject must be brought anew before the House (*x*). Disorder.

No previous question can be put in this (or any) Committee; and, if they cannot perfect their business at one sitting, they may not adjourn, as other Committees, but a question must be made for reporting to the House, and for leave to be asked to sit again thereon. But if the matter has received a full debate, and it is judged fit to be considered in the House, the Speaker is called to the chair to receive the same. The Chairman must make the report, standing in his usual place, from whence he should go down to the bar and from thence bring up his report to the table. But if the House have not leisure to receive it at that time, there is a cry from the members of "to-morrow," or "on Monday," &c. or a motion is made to that effect, and a question put that it be then received (*w*). Adjournment.  
Report.

If the Committee, on considering the question before them, deem it inexpedient or objectionable, and not worthy to be brought before the House, a motion should be made that the Chairman do leave the chair; he then reports that the Committee have *risen*. The subject is then dropped for the session (*x*); unless subsequently revived by an order of the House, which may be done, the House not having actually negatived the question. Committee may rise, without reporting.

(t) 1 Chand. 77.

(v) 3 Grey, 130.

(w) Scob. 38.

(z) C. J. 29 July, 1835; County Coroner's Bill.

Grand Committees.

Grand Committees are merely Committees of the Whole under a more dignified name; they are used on subjects of great importance, or when a bill for imposing a public tax is to be committed; they have powers and instructions given them, in some cases, by the House, as "to send for witnesses," "to hear or assign counsel," &c. In other respects the rules of proceeding are the same as in the House.

See further incidentally, as to Committees of the Whole in Chapters VII. and VIII. *On Public and Private Bills.*

#### COMMITTEES OF SUPPLY, AND OF WAYS AND MEANS.

COMMITTEE OF SUPPLY.

Two Committees of the Whole, which are appointed by the House of Commons at the commencement of every session,—the one for considering the quantum of the Supply granted to the Crown for the purposes of the state, —the other to find out Ways and Means for raising that Supply.

Its duties.

The *Committee of Supply* is appointed, in compliance with a Standing Order of the 18th Feb. 1667 (*y*), to consider of the Supply granted to His Majesty, in general terms, by a former vote of the House. And as this Committee takes origin from the aids demanded by the Crown, it cannot properly have cognizance of any other matters except such as are laid before the House by the direction or recommendation of the Crown, (*z*) for the public service, and therefore if at any time it be desirable to vote a sum of money in this Committee which is not intended for the common aid so demanded, the House must, to entitle the Committee to take this matter into their consideration, enable them to do so by particular instruction. The House have (it has been before shown (*a*),) likewise ordered "That they will receive no Petition for any sum  
" of money relating to the public service, but what is re-

Applications for public money to be recommended by the Crown.

(*y*) See Commons' Journals.

(*z*) 3 Hats. 172.

(*a*) See *ante*, p. 251.

“ commended from the Crown”\* (b). And the uniform practice of the House has applied this order to all motions whatever for grants of money (c), whether the grounds of such application have been public or private, that they may not be troubled with Petitions or requests of a frivolous and vexatious nature. Upon this principle, before the House can give the Committee power to consider the providing for the pay and clothing of the Militia (which is done by an annual Act), some member of the House of Commons, authorised by the Crown, must acquaint the House that the King recommends the same to their consideration.

This Committee is appointed as follows:—at the commencement of every session the Chancellor of the Exchequer, to whom the task of managing all matters of Supply in the House is generally, though not necessarily, intrusted—moves, that the House, on such a day, do resolve itself into a Committee of the Whole to take into consideration that part of the Speech from the Throne which relates to Supply. In the Committee, that part of the Royal Speech relating to the estimates is read, with the former motion agreed to by the House, and the quantum of Supply is then moved and considered. When the Resolutions of Supply are reported to the House, and agreed to, they are then referred to the Committee of Ways and Means to consider the proper modes of raising the intended grant.

When a Committee drops, from neglect of the Chairman in not asking leave to sit again, or from an adjournment, or from want of a quorum, or from the order of the day for the Committee being omitted to be read and disposed of (d)—it may be revived by a Special order (e). But when the Committee of Supply has closed, without direc-

(b) C. J. 11 June, 1713.

(c) 3 Hats. 171.

(d) C. J. 22 Jan. 1717.

(e) C. J. 14 March, 1713.

\* See Appendix XXII. Form of Memorial to the Treasury for the consent of the Crown.

Revised.

tion to the Chairman to ask leave to sit again, and it is afterwards found necessary to vote a further sum of money, the same forms and proceedings must be observed as at the commencement of a session (*f*).

*Committee of Ways and Means.*

COMMITTEE OF  
WAYS & MEANS.

The object of this Committee is to find out modes of raising the supplies granted to the Crown, reported and agreed to by the House from the Committee of Supply, and the first consideration to be observed is, that the money proposed to be raised by loan, taxes, &c. upon the subject, should not exceed the sum granted in the Committee of Supply. It is therefore incumbent on the Chancellor of the Exchequer, or whatever member proposes the Ways and Means, to explain and show to the House, by detail, that the amount of those sums will be a sufficient justification, in point of quantity, to the Committee of Ways and Means to adopt such measures, and impose such taxes, as shall be then recommended to them. And this proceeding should be strictly adhered to, that the people may see that the burthens imposed upon them are not greater than the public exigencies require.

Not to consider  
other matters—  
except.

The Committee of Ways and Means being specially appointed by the House to consider such propositions as may raise the supply for the current year, cannot properly take any other matter into consideration, without special instructions for that purpose. And, therefore, when it is found necessary to impose taxes, or levy duties, which are not to be applied to the service of the current year, this, if done in this Committee at all (for it may be done with greater propriety in any other Committee of the Whole, appointed for the purpose (*g*),) must be by special authority from the House (*h*).

(*f*) C. J. 22 Jan. 1706; 20 July, 1715.

(*g*) 3 Hats. 196.

(*h*) Dwar. 167, 168.

When the Committees of Supply and of Ways and Means have closed, the House of Commons pass a bill, in which the several grants that have been made in the latter Committee, by land tax, malt tax, loan, &c. are recapitulated and directed to be applied to those several services for which they have been voted, and appropriating the money that shall be paid into the Exchequer for their discharge, and directing that the said supplies shall not be applied to any other purposes than those mentioned in the Act. See further Chap. IX., *On Money Bills*.

Appropriation Bill.

There has usually been a debt contracted by each Service in consequence of extraordinary expenses not provided for in the Supply bill, which was formerly brought before Parliament in a subsequent session, as extraordinaries incurred and not provided for, but in consequence of a protest of the Lords (*i*) against this proceeding, a Vote of Credit is now passed, every session, which, though it gives the ministers credit for the manner of disposing of the money so voted, yet confines that credit to a precise sum. The most regular mode of proceeding in this case appears to be, to vote this Supply of Credit in the Committee of Supply, and to come to a resolution in the Committee of Ways and Means that a sum to that amount be raised by loans or Exchequer bills, to be charged on the next aids granted by Parliament. See further Chap. IX. *On Money Bills*.

Extraordinary Expenses.

Vote of Credit.

## SELECT COMMITTEES.\*

SELECT COMMITTEES.

A Select Committee of the House of Lords has a right to be attended by any of the judges or learned counsel that may be appointed, who must stand uncovered, except through infirmity they have leave given them to sit. At Lords' Committees any member may come in and speak, but none may vote except they have been named thereon (*k*).

Of the Lords.

(*i*) L. J. 11 April, 1734.(*k*) S. O. II. of L. xxxii, xxxiii.\* For forms of motions for the appointment of Select Committees, see *Appendix XXIII*.

*Of the Commons.* In the House of Commons, those subjects which are not of paramount importance, or which require much detailed examination, are referred to a Select Committee, appointed by motion of any member, if approved of by the House.

*Number of Members.*

No Select Committee can be appointed in the House of Commons to consist of more than fifteen members\* originally, without previous leave from the House, of intended application for which, notice must be given. And leave must be obtained from the House for the appointment of any member subsequently. Of such a motion previous notice must be given, embracing the name of the member to be added or substituted (*l*).

*Enquiry should be first made if they are willing to be nominated.*

In order that Committees appointed by the House may receive the attention and co-operation of each of their members, it has been specially ordered (*m*) that every member about to move for the appointment of a Select Committee, first make enquiry of those he purposes to name thereon, whether they be willing to serve.

*Appointment of Select Committees.*

If the Select Committee be on any public work, as a railway or a canal, the usual course followed in the appointment is, to select the members of that county in which the railway, &c. commences, and then to supply the remainder from members representing the counties through which it passes (*n*).

After a Select Committee is appointed†, the House

(*l*) C. J. 12 Feb. 1836.

(*m*) Ibid.

(*n*) Mirror of Parl. 10 Mar. 1831; Great Western Railway.

^ By a rule of the House of Assembly of this Province, when a Select Committee is to be appointed on any subject, to consist of more than *five* Members, the manner of appointment is to be as follows: The number of which it shall consist must first be determined, then each Member shall write on a slip of paper the names of as many Members as are to form such Committee, and deliver the same to the Clerk, who shall examine the said lists, and report to the Speaker, for the information of the House, who have most voices in their favour; and if any difficulty arise by two or more Members having an equal number of voices, the sense of the House shall be taken as to the preference.

† Lists of all Select Committees are required to be affixed in the Lobby of the House of Commons, and in the office of the Clerk of Committees.

may either give it special instructions, or leave it to its own direction. The instructions when given are either enabling or mandatory. (See *ante* p. 211.)

Having met, the Committee appoint one of their number to be Chairman, who regulates their proceedings, and gives his casting vote in cases of an equality (*o*), and by whom, or any other of the Committee they may order, their conclusions are reported to the House.

If the Committee be on a bill, it is debated clause by clause, amendments are made, the blanks filled up, and sometimes the bill entirely remodelled. See as to Committees on bills,—Chapters VII. & VIII. *On Public and Private Bills*.

A Committee may adjourn from time to time but cannot continue sitting after the House has assembled; and notice is directed to be sent to them by the serjeant at arms, before prayers are read.\*

This rule is a very proper one, inasmuch as the first and paramount duty of a member is to attend in his place in the *House*, to which attendance in Committees is but subordinate and ancillary; otherwise questions of great importance might be considered in the House while many of its most practical and useful members were unavoidably absent. It is no uncommon thing, however, for a certain Committee, or all Committees, to have leave to continue sitting after the House has met, by a special resolution.

The quorum of a Committee is generally settled by the order appointing it, but five is the usual number.

(*o*) C. J. 26 March, 1836.

\* The House of Commons having found it necessary to have Morning Sittings, from 12 till 3, for the presentation of Petitions, and the transaction of Private business (see *ante*, p. 283), and not desiring to prevent Committees from meeting at those hours, ordered (on the 20th Feb. 1833) "That the Serjeant-at-Arms do, from time to time, when the House is going to prayers (which is done before the morning sitting commences) give notice thereof to all Committees; and also at 5 o'clock (when the evening sitting for public business begins) after the Speaker has taken the Chair; and that all proceedings of Committees after such second notice, be declared null and void."

Powers.

It was formerly the practice to allow all members who chose to attend during the sitting of a Committee to have voices, but now none can vote or speak thereon, except they be specially appointed. And it has been held (*p*) that the Committee have not only authority to exclude strangers from the room, but every member of the House, not of the Committee.

New matter.

A matter referred to one Committee may afterwards be transferred to another (*q*). And, on motion, new matter may be referred to their consideration.

Witnesses.

The examination of witnesses by Committees of the House of Commons, must not be upon oath, as in the Lords (*r*). See Chap. XVII. *On Witnesses*.

Report.

Having examined into the merits of the subject referred to them, it is the duty of the Chairman to sign their report, which is then delivered to the House. Accompanying the report there must be the daily minutes of their proceedings, which must include the names of the members attending the Committee at each of its sittings,—the votes on all divisions, with the question and the name of its proposer,—and, if witnesses have been examined, the name of every member examining a witness must be prefixed to the evidence (*s*).

See further, incidentally, as to Select Committees, in Chaps. VII. & VIII. *On Public and Private Bills*.

There are two kinds of Select Committees which require a separate notice; they are:

Committee to  
search Lords'  
Journals.

*1st. Select Committee to search Lords' Journals.* It has been the uniform practice with the House of Commons, if they have occasion to know formally what the Lords have done with respect to any bill or other measure pending, to appoint a Committee to search the Lords' Journals on the matter, and report the proceedings to the House; to entitle

(*p*) *Mirror of Parl.* 20 Aug. 1835.

(*q*) C. J. 11 Jan. 1699.

(*r*) 4 Hats. 243.

(*s*) C. J. 12 Feb. 1836.

the Commons to this right it is not held necessary that the subject matter of the search should have originated in the House of Commons (*t*) or that the matter of enquiry should have originated or taken place that session (*r*). It does not appear that the Lords have ever adopted a similar course of proceeding with respect to the Journals of the House of Commons; indeed, the practice that has so long prevailed of printing the votes of that House may have rendered it unnecessary, the Lords having always held them to be good evidence in any matter of enquiry (*w*).

2*d*. *Select Committees to attend upon certain Lords to receive information.* The practice of appointing Committees of this kind, to obtain information upon particular subjects under enquiry, seems to have been adopted in lieu of desiring the personal attendance of such Lords for examination. But this plan has been found very defective in answering the purposes required, and therefore, in later instances, the Commons have departed therefrom, and requested the personal attendance of the Lords, to receive their *viva voce* evidence (*x*).

Committees to  
examine certain  
Lords.

#### JOINT COMMITTEES OF BOTH HOUSES.

JOINT COMMITTEES.

These Committees, from a feeling of jealousy on the part of the Lords, are now disused, and may almost be considered as obsolete.

They differ from Conferences materially, their object being, that a Committee of this kind, in receiving information will communicate it to both Houses at the same time, and in the examination of witnesses the same questions and answers will form the substance of the report made to each House; another advantage attending them is, that by this means evidence receives the sanction and authority of

(*t*) C. J. v. 60, p. 449; v. 66, p. 371, &c. (*v*) C. J. v. 65, p. 26.

(*w*) See L. J. 31 Dec. 1691.

(*x*) As the examination of Lords Sandwich and March, in 1769, on Wilkes's case; and Earl Cornwallis, in 1779, relative to America.

Where Lords refuse to appoint them.

an oath, the witnesses being sworn at the bar of the House of Lords prior to giving their testimony (*y*). But with respect to this latter reason, the Lords would now refuse to accede to the appointment of a Joint Committee expressly on that ground, as was shown in a case in which the Commons desired a Joint Committee that the public accounts might be examined upon oath (*z*). Another great objection made by the Lords to Committees of this kind is, that, according to the practice on such occasions, the number of Commons is always double that of the Lords, consequently, if a division should take place on any subject, the Commons would be able to carry the question, even though all the Lords were in opposition. The mode adopted in 1794, (on the question of the King's health) of each House appointing a separate Committee, and giving power to these Committees to communicate with each other from time to time, obviated this objection, and yet preserved all the advantages of a Joint Committee.

Double the number of Commons.

Seldom used.

#### COMMITTEES OF CONFERENCE.

COMMITTEES OF CONFERENCE.

A Conference between the two Houses is used to prevent a bill being lost from some difference as to the amendments; or in cases of difficulty or dispute between the two Houses, in order to enable them to come to a good understanding, or in default thereof, to preserve a record to posterity of the opinions or wishes of either House. The request for a Conference must always come from the House possessed of the papers (*a*).

Who to request.

Cause to be expressed.

When a conference is asked, the subject must be clearly expressed, or it will not be acceded to (*b*); this rule is not only required to be observed that the other House may be enabled to estimate the importance of the subject, but that they may see whether it will be consistent with their

(*y*) L. J. 24 & 25 April, 1695.

(*z*) C. J. 28 Nov. 1666.

(*a*) 4 Hats, 31; 1 Grey, 425.

(*b*) 1 Grey, 425; 7 Grey, 31; C. J. 22 Mar. 1678; 29 Oct. 1795.

privileges to confer. They are sometimes asked concerning an offence or default of a member of the other House (*c*): or the neglect of the other House to present a bill for the Royal Assent (*d*): or on information received, and relating to the safety of the nation (*e*): or when the usage of Parliament is thought to have been departed from by the other, or their privilege to have been broken (*f*): so when an unparliamentary Message has been sent, instead of answering it, they request a conference (*g*). A conference has been asked after the first reading of a bill (*h*). But this is a singular instance.

Upon a conference being determined, managers are appointed by the respective Houses, and before they go (unless it is a free conference) the House requesting the conference appoint a Committee to draw up the reasons which they have to offer in support of their opinions. These reasons being reported from the Committee, and agreed to by the House, are then delivered to the managers, to communicate them to the managers of the Conference on the part of the other House. Manner of holding.

These reasons are then taken up to the place of meeting, read and delivered without debate, to the managers of the other House, and are by them reported to their House; but are not answered at that time. The other House, if satisfied, then vote the reasons satisfactory, or say nothing; if not satisfied, they resolve them unsatisfactory, and ask a conference "on the subject-matter of the last Conference," where they read and deliver, in like manner, written answers to those reasons. Thus Conferences are, in fact, nothing more than a formal method of communicating to one House the reasons of the other; in order that, after considering those reasons, the House may be induced, either not to insist upon their adherence or disagreement,

(*c*) 6 Grey, 181; 1 Chand. 304.

(*e*) 10 Grey, 171.

(*g*) 3 Grey, 153.

(*d*) 8 Grey, 302.

(*f*) 10 Grey, 148; C. J. 3 Jan. 1666.

(*h*) 1 Grey, 194.

or may in their turn assign such arguments for the same as may induce the other House to coincide.

It is irregular for any member to speak at a Conference except before it commences, by way of introduction to the delivery of the reasons (*i*).

Cases where Conferences should not be asked.

A Conference cannot be had for the purpose of demanding the reason of the other House for bringing in, amending, or throwing out any bill—as that is irregular (*j*). And it will be refused by the Lords in any case where it is supposed to involve the question of their Jurisdiction or Judicature (*k*). When, from inattention to established forms, either House have sent a message that they disagree to the amendments to a bill, without asking a Conference to assign their reasons for such disagreement, the bill has been re-delivered (*l*).

Lords to name time and place.

The Lords send their usual messengers, (Masters in Chancery), and the Commons, one of their own members—to demand a Conference. It is the sole and undisputed privilege of the Lords to name the *time and place* where it shall be held. If the Lords appoint an inconvenient place the Commons may remonstrate (*m*), or decline to hold the Conference, stating their reasons, when the Lords will, if they think proper alter it.

The Lords should enter the Conference Chamber in a body (not scattering one before the other) that their proper dignity may be upheld, and that they may be enabled to take their places in regular order. They are to be seated, with their hats on,\* during the Conference, whilst

(i) 4 Hats. 47; C. J. 4 Feb. 1640.

(j) Lord Stourton's Case in C. J. 12 & 13 March, 1575; and see 1 Feb. 1661.

(k) See L. J. 4 Feb. 1666; 28 May, 1675; 25 Feb. 1702.

(l) L. J. 10 May, 1662; but see C. J. 20 Dec. 1680.

(m) 28 April, 1604.

\* The rule is as follows:—The Lords keep their hats on till they come within the bar of the place of conference; they then take them off, and walk uncovered to their seats, after which they put on their hats and sit down; when the conference is over they rise up, take off their hats, and walk out uncovered.

Commons must remain standing and bare-headed, unless it be some infirm person, and that by connivance,\* and “in a corner out of sight, to sit, but not to be covered (n).”

But with respect to Managers, it is the privilege of the Commons to appoint double the number of the Lords (o). Double the number of Commons.

If the Houses cannot come to an agreement at one Conference, the form is, to desire another, where reasons for adhering, &c. are in like manner exchanged, without debate; and if no agreement can be obtained then, they ought to demand a *Free Conference*, at which the subject may be fully discussed and debated. If this measure prove ineffectual (p), and if, after several Free Conferences, both Houses remain inflexible, nothing farther can be done, and the bill must be lost. Second conference.  
Free conference.

At Free Conferences the managers discuss *vivâ voce*, and freely interchange propositions for such modifications as may be made in a parliamentary way, and may conduce to an agreement between the two Houses. Each party then reports in writing to their respective Houses, the substance of what has been urged on both sides, and it is entered on their Journals (q). Where the question may be freely debated.

A Conference may be asked before the House requesting it has come to any resolution of disagreement, insisting or adhering (r). In which case the papers are not to be left with the other Conferrees, but are brought back to be the foundation of the intended vote. This is the most reasonable and respectful proceeding; for, to deliver the resolution of either House at a Conference, instead of At what stages of a measure Conference may be asked.

(n) S. O. H. of L. xxxvii.

(o) See C. J. 26 March, 1604, where this is stated to be an ancient rule of the House.

(p) 4 Hats. 49, 50.

(q) 3 Hats. 280.

(r) 3 Hats. 269, 341.

\* See a precedent in the Lords' Journals, 29th July, 1689, where two managers of a conference, on the part of the Commons, were permitted to sit, “being aged, and lame.”

reasons, is contrary to the usage of Parliament (*s*). But there are instances of Conferences, or of Free Conferences, being asked after the determination of disagreeing (*t*), of insisting (*v*), of adhering (*w*), and even of a second and final adherence (*x*). In all cases of Conferences asked after a vote of disagreement, &c. the Conferees of the House asking it should leave the papers with the Conferees of the other House; and in one case, where they refused to receive them, they were left on the table of the Conference Chamber (*y*).

Rules as to  
Conferences.

Should be confined strictly to the question at issue.

A Conference should always be confined strictly to the question at issue, for it is contrary to the rules of Parliament for a Conference to amend or strike out any thing in a bill, or other matter, which has been agreed to by both Houses (*z*).

A simple conference cannot be held after a free conference.

After a Free Conference no other than a Free Conference can be held, touching the same subjects; except a question of order or privilege arise, when a Conference may be demanded on that particular matter.

After a Simple Conference is denied, a Free Conference may be asked (*a*).

See farther as to the extent to which the various terms of agreeing, insisting, adhering, &c. may be carried by either House, in Chap VI, pp. 145-147.

House not to sit during Conference.

During a Conference the House can do no business, but when the managers are gone, the Speaker leaves the chair, without a question, until their return.

(*s*) C. J. 22 Feb. 1702.

(*v*) C. J. 17 April, 1740.

(*x*) 3 Hats. 270.

(*z*) 6 Grey, 274; 1 Chand. 312.

(*t*) C. J. 26 Jan. 1670.

(*w*) C. J. 3 Feb. 1670.

(*y*) 10 Grey, 146.

(*a*) 1 Grey, 45.

## C H A P. XIII.

**On Addresses.**

At the opening of Parliament, after the consideration of ADDRESSES. the Speech from the Throne, some member (in each Of Thanks. House), moves an Address of Thanks, in answer to, and approval of the Royal Speech. Such motions are invariably carried, although an amendment is generally offered by a member of the opposition. The practice with respect to these addresses differs from that of addresses on other subjects, which will be presently considered. For, on the motion for an Address of Thanks being carried, certain members are appointed by the House to draft and report the same. This being done, it is read once in the House, and ordered to be presented.

The practice with respect to all other Addresses, is as Other Addresses. follows :

On motion of any member, a resolution is passed ordering an Address to be presented to His Majesty on the subject required. Upon this motion, the debate as to its propriety or otherwise, takes place, and if it be carried in the affirmative, an order is made for its presentation, either by the Whole House, by certain Members, or by those appointed to draft it, as the case may be. The address, therefore, is not reported to the House, but drawn up by the members appointed for that purpose, as nearly as possible in the words of the resolution.

Addresses are presented to the King by the Whole How presented. House, or, if not (from illness of the King, or other acci-

dental cause), then by such particular members as are of the Privy Council (*a*), or by the Speaker only (*b*). But addresses on unimportant topics are frequently presented by their drafters, who are generally the mover and second (*c*). If it be presented by the Whole House, the Speaker goes before, carrying the address, and preceded by the Mace,—the members following him in regular order\* (*d*).

In the House of Lords, Addresses are presented by the Lords with White Staves.

Joint Addresses.

A Joint Address of both Houses is read by the Speaker of the House of Lords (*e*). In cases of Joint Addresses, they are left with the Lords, as soon as agreed to, until that House have learnt at what time His Majesty will be pleased to receive the same, when they inform the House of Commons, by message, of the King's answer (*f*). The Houses then meet at the time and place appointed, and the Address is presented. It has sometimes happened, from the state of the King's health (*g*), or other causes, that it has been convenient, instead of the two Houses going up in a body (as is usual), for the Address to be presented by a Committee from each House; in this case the Commons appoint double the number of the Lords (*h*), or the Address is presented by the two Speakers only (*i*).

For forms of Addresses, see Appendix XXIV.

As to Addresses to the King for advance of Public Money, &c. *ante* p. 271.

(*a*) C. J. 11 March, 1789.

(*c*) C. J. v. 67, p. 391.

(*e*) C. J. 14 May, 1661.

(*g*) C. J. 27 Mar. 1673.

(*i*) C. J. 27 July, 1708.

(*b*) 9 Grey, 473; 1 Chand. 298, 301.

(*d*) C. J. 13 Feb. 1688.

(*f*) C. J. 26 & 27 April, 1751.

(*h*) C. J. 31 Mar. 1750.

\* See Appendix XIV. Forms observed by the House of Commons in attending Her Majesty's Coronation.

## C H A P. XIV.

**On Messages.**

## I. MESSAGES FROM THE KING.

MESSAGES.

From the King.

A Message from the King to either House of Parliament is sent by one of his Ministers, and from a Governor, in most cases, by his Secretary. When the subject of a Message is of a nature that can properly be communicated to both Houses, it is expected that this communication be made to each on the same day. But where the Message is accompanied by an original document, signed by the party to whom the Message refers, its being sent to one House has not been objected to by the other, because the document, being original, could not possibly be sent to both at the same time (*a*). But the King, on transmitting original letters to one House, sometimes desires that they may be returned, that he may communicate them to the other (*b*).

Messages on unimportant subjects are sometimes verbal, When written. but where the object is to desire from the Commons any proceeding on their part, (as an augmentation of the army or navy, the payment of the civil list debts, &c.) it is usual for the King to send a written Message, signed with his own hand; and as soon as the Speaker has read the signature, the House has always paid that respect to the King's Message as to be uncovered while it is reading.

Members uncover during their reading.

But when the King (or Governor) desires the attendance of the Commons in the House of Peers, to receive his commands, the Gentleman Usher of the Black Rod

Message by Black Rod.

(*a*) 2 Hats. 260-262; C. J. 12 May, 1794.

(*b*) 1 Chand. 303.

comes with the Message, and as soon as he knocks at the door, all other business, of what kind soever, must immediately cease (*c*), and on the delivery of the Message, the Speaker, accompanied by the members, should proceed without delay or debate, to attend His Majesty in the House of Lords.

Verbal Message stating arrest of Member.

Whenever a member of the House is put under arrest, on account of the public service, a verbal Message from the King is delivered by a Secretary of State, Secretary at War, or Commissioner of the Admiralty, according to the department in which the proceeding arises (*d*).

## II. MESSAGES BETWEEN THE TWO HOUSES.

MESSAGES BETWEEN THE TWO HOUSES.

The ancient and accustomed form of sending a Message from the Commons to the Lords, is by one member, who is, upon motion made and question put, named by the Speaker as the bearer of the Message. He must, however, be accompanied by others: since the rule and practice of the Lords is, to receive no Message from the Commons, unless eight members attend it (*e*). For this purpose, when the Messenger takes his Message from the table, the Speaker always calls aloud to the House, "gentlemen, attend your Messenger." There is scarcely ever a difference of opinion on the question of who shall be the Messenger; as he is usually chosen by the Speaker, either for having been the promoter of the bill, or for his known approbation of the subject of the Message. In bills that have passed the Commons with a general concurrence, and in other Messages where they desire an opportunity of shewing their approbation of the measure, it is customary for a great number of members to follow their Messenger to the Lords.

Lords' privileges as to.

Message delivered.

Having arrived at the House of Lords, the Gentleman Usher of the Black Rod attending that House, announces

(*c*) C. J. 23 April, 1666; 16 March, 1741. See L. J. 21 June, 1701.

(*d*) C. J. 3 Dec. 1756.

(*e*) Haskew. 176.

at the bar their arrival. The question "that the Messengers be called in," is then put, and the Black Rod is ordered to call them in. The Lord Chancellor leaves his place on the woolsack, with the Great Seal, and attends at the bar to receive the Messengers, who, accompanied by the Black Rod, advance, making three obeisances, to the bar, the principal Messenger being foremost. This member, holding the bill in his hand says, "The Commons have passed a bill for, &c. (reading short the title) to which they desire the concurrence of your Lordships." Or, if it be a returned bill, "The Commons have agreed to the bill passed by your Lordships, for, &c. without amendment," or "with amendments, to which they desire the concurrence of your Lordships," as the case may be. The member then delivers the bill to the Chancellor and the messengers, making three obeisances, withdraw (*f*).

If several bills are brought from the Commons at the same time, each bill is delivered in like manner, with a separate Message (*g*).

Such bills as have come down from the Lords, when returned, are to be presented before any bills which originated in the Commons—next to them the public—and lastly, the private bills of that House (*h*).

Order in presenting Bills.

The House will also, in like manner, send answers to Messengers from the Lords by Messengers of their own; accompanied by several other members of the House.

When the Lords send any Messages to the Commons it is always by two Messengers. These, in matters of great moment, are two of the Judges; at other times, the Messengers are the Master of the Rolls, or Masters in Chancery, and sometimes one Master in Chancery and the Clerk of the Parliaments (*i*). If the Message require an answer, the Messengers ought to wait in the lobby to carry

Messages from the Lords.

(*f*) D'Ewes, 19.

(*g*) Bra. 145.

(*h*) C. J. 18 April, 1604.

(*i*) S. O. II. of L, xxxvi.

it back; which answer, as appears from the precedents, if the Commons immediately agree, is delivered to them: but if they differ, or the subject requires consideration, they are called in and informed that the House will reply by Messengers of their own (*k*).

Cannot be received by a Committee.

When a Message is reported from the Lords, the Commons receive it, even if in the midst of a debate; and if in a Committee of the Whole, the House resumes on purpose (*l*); for it is an ancient order (*m*), that no Message be transmitted between the two Houses, except they be both sitting, with their respective Speakers in the chair.

Delivery.

Messengers are not saluted by the members, but, on entering they exchange obeisances with the Speaker, for the House (*n*).

Mistake.

If Messengers commit an error in delivering their Messages, they may be admitted, or called in to correct it (*o*).

Message reported.

As soon as the Messenger who has brought bills from the other House has retired, the Speaker, holding them in his hand, acquaints the House "that the other House have, by their Messenger, sent certain bills," and then reads their titles, and delivers them to the clerk for safe keeping till their reading shall be called up. (*p*).

Rules as to Messages.

It is not the usage for one House to inform the other by what numbers they have passed a bill (*q*). Yet they sometimes recommend a bill, as of great importance, to the consideration of the other House (*r*). Neither is it the practice when they have rejected a bill from the other House, to send notice thereof, but, to prevent unbecoming alterations, they let it pass *sub silentio* (*s*).

A question is never asked by one House of the other by

(*k*) 3 Hats. 29.

(*m*) Parl. Deb. 1620, p. 201.

(*o*) 4 Grey, 41.

(*q*) 10 Grey, 150.

(*s*) 1 Bl. Com. 183.

(*l*) 3 Hats. 22; 4 Grey, 226.

(*n*) 2 Grey, 253, 274.

(*p*) Hakew. 178.

(*r*) 3 Hats. 25.

way of Message, but only at a Conference ; for this is not To remind.  
 a Message, but an interrogatory (*t*).

When a bill, resolution, &c. has been sent by one House to the other, and it is neglected, they may send a Message reminding them of it (*v*), or requesting them to hasten its passing (*w*).

When a bill having passed one House and been transmitted to the other, is grounded upon special evidence, and not upon common notoriety, the House may, either by Message, or at a conference, request of the other the grounds of evidence upon which it was passed ; which is immediately communicated (*x*). But when the Lords To ask evidence.  
 have asked of the Commons the evidence upon which a *Money Bill* was passed, it has been refused, as intrenching upon their privilege with respect to Supply (*y*). When evidence refused.

If the Lords require the attendance of a member of the House of Commons, that House has invariably required To request attendance of Members.  
 that the Lords should, in their Message, express the cause for which the attendance is required, and even then the House proceed no farther than to give leave for the member to attend, and he is still at liberty to attend or not, as he may think fit. The Commons are also as strict with respect to similar Messages from the Lords (*z*). For both Houses have always been extremely jealous of admitting any proceeding which might seem to allow an authority in the other House to command the attendance of their members. Accordingly, the most advised practice has been for the House whose member is requested to attend to send answer immediately (if the member be in his place, and he, standing up, express his willingness to go) that he has leave to attend "if he thinks fit" (*a*). But if the member be not in his place, no answer is sent (except to say Manner of giving leave.

(*t*) 3 Grey, 151, 161.

(*v*) C. J. v. 1, p. 803.

(*y*) C. J. v. 60, p. 471, 497.

(*a*) C. J. 5 & 6 May, 1831.

(*v*) 3 Hats. 25; 5 Grey, 154.

(*z*) C. J. v. 69, p. 318, 378.

(*z*) C. J. v. 60, p. 355.

that they will send an answer by Messengers of their own) until the member named is present in his place, and then, on his hearing the Message read, and consenting to comply with it, the House give him permission to go; but still add, in their answer to the Lords, "if he thinks fit" (b).

When Lords may order a Commoner to attend.

But when the Lords sit on the trial of a Peer, on an indictment, as a Court of Criminal Judicature, members of the House of Commons may then, and then only, be *ordered* to attend to give evidence.

Irregular Messages.

It sometimes happens that through some special causes, the usual manner and form of transmitting Messages between the two Houses is departed from; in such a case the House sending such Message states the reason of their doing so, and the House receiving it acquiesce, but desire that it may not be drawn into a precedent at any future time (c). But if either House depart from the established rule without assigning a just and satisfactory reason, it is a breach of the privileges of the other House. The mode of proceeding in such a case is for the House whose privilege is broken to send a Message to the other stating the fact, and requesting a Committee of Conference on the subject, the decision of which is abided by, and the matter amicably arranged (d).

How to be treated.

And this extends to all other proceedings between the two Houses, by Message or otherwise. For either House may, conceiving their privileges violated, request a Conference thereon, which should be granted, even though the ground of complaint may prove to be no breach of privilege (e); as the matter cannot be determined by the complaint of one, or the decision of the other; until it has been finally adjudged in such a Committee.

(b) C. J. 6 June, 1834.

(c) C. J. 29 Jan. 1817.

(d) 3 Grfy, 155; and see J. H. of A. Upper Canada, for 1824, pp. 55, 58, &c.

(e) C. J. v. 1, p. 46; and see J. H. of A. U. C. for 26 & 27 April, 1839.

## C H A P. XV.

**On Proceedings between the Two Houses.**

The exclusive privileges claimed by each House of Parliament, may now be considered as firmly established and well defined. "They form two of the pillars of our Constitution," says Bramwell (*a*), "the foundations of which are buried deep in past ages, with the records of their Institution." But it will sometimes happen, that popular excitement, or an internal desire for aggrandizement, will for a time obtain the mastery over the feelings and actions of those Assemblies, and from the want of a due attention to the forms to be observed in their intercourse with each other, that the harmony which should at all times subsist between such powerful and closely connected bodies, will be disturbed—and the mutual forbearance and respect which should be the characteristic of their intercourse, be exchanged for perverse jealousy and angry recrimination.

PROCEEDINGS  
BETWEEN THE  
TWO HOUSES.

To avoid the occurrence of such scenes, should be the ardent desire of every member of either House—and to do so, the principles which have been laid down in former times, as the peculiar rights and privileges of each branch should be continually kept in view, that no proceeding may be had which would tend, in the remotest degree, to affect or oppose them.

The leading principle which appears to pervade all proceedings between the two Houses of Parliament is, that there shall subsist a perfect equality between them, and that they shall be, in every respect, totally independent one of the other. Hence it is, that neither House can

There should  
always subsist  
an equality and  
independence  
between them.

claim, much less exercise, any authority over a member of the other (b): but if there be any ground of complaint against an act of the House itself, against any individual member, or against any officers of either House—the complaint ought to be made to the House where the offence is charged to have been committed, and the nature or mode of redress or punishment, if punishment be necessary, must be determined upon or inflicted by that House.

Privilege violated by the other House.

It has been already shown (c), that whenever either House conceive their privileges to have been violated by the other, the aggrieved House should ask a conference upon the subject, that the matter may be therein deliberated, and satisfactorily decided.

As the manner of proceeding in all cases where the two Houses come in contact with each other, has been fully treated upon in other parts of this work, further comment upon the matter here will be rendered unnecessary, by giving references to the Chapters alluded to containing the same, as follows:—

As to Messages between the two Houses, see Chap. XIV. *On Messages.*

As to Members, &c. of either House offending the privileges of the other, see Chap. IV. *On Members.*

As to the manner of requesting the Members of either House to attend and give evidence before the other, see Chap. XVI. *On Witnesses.*

As to proceedings between the two Houses in matters of Supply, see Chap. IX. *On Money Bills.*

As to proceedings to be had in Conferences between the two Houses, see Chap. XII. *On Committees (Committees of Conference).*

(b) See S. O. H. of L. 50.

(c) See *ante*, p. 100.

## C H A P. XVI.

**On Witnesses.**

It is an essential and undisputed privilege of both Houses of Parliament, which they possess in common with every other court, to summon Witnesses before them for examination upon any subject on which they may require information to guide them in their deliberations; but in the House of Commons this evidence may not, as in the Lords, be given upon oath, except before Election Committees, and other cases where it is expressly allowed by act of Parliament.

WITNESSES.

Witnesses are not to be produced but where the House has previously instituted an enquiry (*a*); and all orders for their attendance must necessarily specify the subject upon which they are required to give evidence.

When to be produced.

When a person is examined before a Committee, or at the bar of the House, any member wishing to ask him a question must address it to the Speaker or Chairman, who repeats it to the Witness, or says, "you hear the question, answer it." But if the propriety of the question be objected to, the Speaker directs the Witness, Counsel, and Parties, to withdraw; for no motion can be moved, put, or debated, when they are present (*c*). Sometimes the questions are previously settled in writing, before the Witness enters (*b*). The questions asked must be entered upon the Journals (*d*), but the testimony given in answer before the House is never written down; except before a

Form of Examination.

*(a)* 10 Grey, 165; C. J. 3 March, 1779.*(b)* 2 Hats. 102.*(c)* 2 Hats. 106-7; 8 Grey, 604.*(d)* 3 Grey, 81.

Committee, when it must be reported for the information of the House, who are not present to hear it (*e*).

If Witness is unable to attend.

When the House has need of the evidence of any person who is incapacitated from attending, an order is made empowering certain members to wait upon him to receive his evidence (*f*).

Form of Examination.

A member may, in his place, give information to the House of any thing he knows relative to any matter under hearing at the bar (*g*).

When a Witness is examined before the House or a Committee of the Whole, the bar must be down. If the Witness be already in the custody of the House, or if he be in prison, he should be brought by the serjeant, with the Mace, who must stand by him during the examination, though the practice in this respect has sometimes differed (*h*). But when a common Witness is examined, the Mace should remain on the table. When it is off the table, no member can speak, or even suggest questions to the Chair. When it is left on, the members, though they cannot debate, may suggest to the Speaker such questions as arise out of the examination, and appear to them necessary to be put (*i*).

Speaker only to put questions.

Select Committees to examine Witnesses.

Select Committees are generally empowered by the order appointing them, to send for persons and papers. If a Committee be appointed without this power, they may summon witnesses, but if they refuse to attend, authority must first be obtained from the House, before they can be compelled to come. When such authority has been given, the Chairman may sign an order for the person to appear and give evidence before the Committee. If he then refuse to attend, he may be committed for contempt. This cannot be done by the Committee, but only by the House, after the matter has been reported to them,

Committal for contempt.

(*e*) 7 Grey, 52, 331.

(*g*) C. J. 22 Jan. 1774-5.

(*i*) 2 Hats. 137.

(*f*) C. J. v. 61, p. 435.

(*h*) 2 Hats. 133.

In like manner, a witness guilty of prevarication in giving his evidence, will be punished. Also, any person tampering with a witness, or directly or indirectly attempting to prevent his attendance, will be severely censured by the House, as committing a breach of their collective privileges (*k*). It is not sufficient for any one to plead such an attempt in excuse for non-attendance, or prevarication, for the House will protect every Witness giving an honest evidence (*l*).

Prevarication,  
&c. in a witness.

Witness pro-  
tected by the  
House.

No Witness can be arrested upon any civil suit whilst in attendance for examination, or within a reasonable time necessary for a return to his residence, after his final discharge from attending before the Committee (*m*)\*.

By a recent order of the House of Commons (*n*) it is required, that in all cases where Witnesses are examined before any Select Committee, there be prefixed to the minutes of the evidence of such Committee, to be reported to the House, the name of any member asking a question.

Report of Evi-  
dence.

When either House, or any of its Committees, desire the attendance of a member of the other House, to give evidence, leave must be requested by message; and it is never granted but with this proviso, that the member may attend "if he thinks fit"—(see *ante* p. 309).

Members exa-  
mined by the  
other House.

The mode of admitting Peers into the House of Commons to give evidence, is as follows:—They are received at the door by the Serjeant, bearing the Mace, and on entering they make three obeisances to the House. They

Admitting Peers  
into House of  
Commons for  
Examination.

(*k*) C. J. 29 Nov. 1710.

(*l*) C. J. 25 Mar. 1833.

(*m*) C. J. 7 Aug. 1835.

(*n*) C. J. 12 Feb. 1836.

\* In a recent case—where a Parliamentary Agent, returning from the House of Lords, where he had been attending an appeal, was arrested upon an attachment for the costs of a Chancery suit,—it was held, that he was entitled to his discharge by privilege of Parliament, although he had not returned by the shortest road, and had stopped for refreshment; and that he might apply for that purpose either to the Court, out of which the process had issued, or to that on which he was attending when arrested.—*Att. Gen. v. Skinner's Comp.*; *ex parte Watkins*.—§ Sim. 377; & Cooper. 1.

And Judges.

then sit down, covered, on a chair placed for them within the bar, on the left hand as they enter; but in speaking, they stand up uncovered, the Serjeant standing by them all the time, with the Mace on his shoulder. After giving their evidence, they withdraw, making the same number of obeisances to the House as on entering, the Serjeant with the Mace accompanying them to the door. The difference between the reception of a Peer and of a Judge has been, that the Speaker informs the Peer that there is a chair for his Lordship to repose himself "in," and to the Judge the Speaker says, that there is a chair for him to repose himself "upon," i. e. as explained by usage, for the person to rest with his hand upon the back of it (*o*).

When Peers are sitting as a Court of Criminal Judicature, they may *order* the attendance of members of the House of Commons; unless it be on a case of impeachment, when it must be a *request* (*p*).

Witnesses in custody of the other House.

If either House have occasion for the presence of a person in custody of the other, they ask leave of that House that he may be brought before them (*q*).

How far Commons can compel witnesses to attend.

The extent of the power of the House of Commons, to compel Witnesses to attend, without asking leave of their superior officer, if they are under authority, is a disputed question, but it would appear from the precedents of former proceedings on this subject, that if they desire to examine a private soldier in the regular army, leave must be first obtained from his commanding officer (*r*); this does not seem to extend, however, to officers, whether subaltern or otherwise (*s*).

It is unquestionably desirable and right that the House of Commons, being the grand Inquest of the nation,

(*o*) 2 Hats. 142.

(*p*) 9 Grey, 306, 406.

(*q*) 3 Hats 52.

(*r*) C. J. v. 74, pp. 274, 275.

(*s*) C. J. v. 64, pp. 17, 21.

should possess the power to compel persons to attend, and give evidence before them in all cases where it may be required, but it would seem proper that, when the form of requesting the permission of a member of the Upper House to attend, is observed, the same courtesy should be extended to the immediate Servants and Officers of the King, who is also a branch of the legislature.

But when this individual is merely a civil officer in the Government (*r*), or the head of a department not under the immediate control of the Sovereign (*s*) no such permission is necessary, and the House may, if its order be disobeyed, vindicate its authority by force.

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(*r*) J. H. of A. U. C. 1st Sess. 13th Parlt. ; 7 Feb. 1837.

(*s*) J. H. of A. for 1823, p. 116, &c.

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## C H A P. XVII.

**On Officers & Servants of both Houses.**

## I. OFFICERS, &amp;c. OF THE LORDS.

OFFICERS, &c.  
OF BOTH HOUSES.  
Of the Lords.

Each House of the Imperial Parliament has certain officers and servants for the superintendence and transaction of its business. Those of the *Lords* are as follows:

Chairman of  
Committees.

1. *A Chairman of Committees* upon Private Bills and other matters. This Officer is elected by the House at the commencement of every session; and it is his duty, not only to preside over all Committees on unopposed Private Bills (see *ante* p. 213), but to take the chair at all Committees of the Whole, unless another Chairman be specially appointed. The post is now, and has been for many years, filled by Lord Shaftesbury, a noble Lord of profound and practical experience, as well upon the complicated subject of Private Bills, as upon all other duties connected with the situation.

Clerk of the  
Parliaments.

2. *A Clerk of the Parliaments*, appointed by letters patent from the King\*.—The duties of this Officer are similar to those of the Clerk of the House of Commons, which will be presently considered. His place in the House is upon a bench behind the table, where he must sit “to record all things done in Parliament.” He has two Clerks under him, who kneel behind the bench (a).

Under Clerks.

(a) Elsy. 112.

\* By the 5th Geo. IV. ch. 82, after the expiration of the existing Letters Patent, the Clerk of the Parliaments shall be appointed by His Majesty, and shall execute his office in person; and be removable by His Majesty upon an Address from the House of Lords.

Besides the Clerks Assistant, there is a Reading Clerk, and a Counsel to the Chairman of Committees: Clerks of the Journals, Engrossments, Enrollments, &c., with Clerks under them in their respective Departments.

It is an order of the House of Lords (*b*), "That the Clerks and inferior Officers attending this House shall not, at any time, be suspended or displaced from their offices or employments without leave of the House."

3. *The Clerk of the Crown in Chancery*\* is an Attendant of the House of Lords, and is charged with all Parliamentary Writs, and Royal Pardons. His place is upon the lower bench, next to the Clerk of the Parliaments. As to the Judges, Masters in Chancery, &c. who are also Assistants and Attendants upon the Lords, see *ante* pp. 28, 70.

Clerk of the Crown.

4. *The Gentleman Usher of the Black Rod*.—This officer was anciently appointed by letters patent under the great seal, and he is still Gentleman Usher to the King. He attends the House of Peers during Parliament, sitting without the bar; and holding in his hand a *black rod* (from whence he derives his name), surmounted by a golden lion. This Rod hath the same authority as a Mace. To the custody of this Officer all Peers called in question for any crime, are first committed.

Gentleman Usher of the Black Rod.

He belongs to the Garter; and the dress which he wears on state occasions is that of the Register of the Order, and Garter King-at-Arms; but commonly he is attired in a court dress. Whenever the King sends for the House of Commons to attend him at the bar of the Lords for the meeting, prorogation, &c. of Parliament, it is by this Officer; but when he has deputed a commission for that purpose, the Yeoman Usher (who waits at the door within) is usually, though not invariably, the messenger.

Yeoman Usher.

(*b*) S. O. H. of L. 6 Feb. 1723; 5 Feb. 1825.

\* By the 2 & 3 Wm. IV. ch. 111, this office is to be abolished after the death of the present occupier.

Serjeant-at-Arms.

5. There is also a Serjeant-at-Arms in attendance on the Lord Chancellor, whose duties are similar to those of the like officer in the House of Commons, (see *post* p. 325).

Chaplain.

By the entries on the Journals of the House of Lords, it appears that there was anciently a Chaplain, whose duty it was to read prayers each day, before the commencement of business; but there is no such officer at present, this solemn rite being performed by the junior Bishop.

Crier and Door-keepers.

There is a Crier and several Door-keepers in attendance without; and it is provided by a standing order (c) that the Door-keepers be not allowed to enter within the doors, except upon business.

Of the House of Commons.

OFFICERS, &c. OF THE HOUSE OF COMMONS.\*

Clerk.

1. *The Clerk.*—The office of Clerk of the House of Commons, (or, as he is more properly called, Under Clerk of the Parliaments†,) is granted by the King (d), by letters patent, for life, to be exercised by himself or deputy; with an ancient salary of £10, payable half yearly at the Exchequer.

By virtue of his office, the Clerk has not only the right of appointing a deputy to officiate in his stead, but has the nomination of Clerks assistant, and all other Clerks without doors. His duties are comprised in the words of his oath, “to make true entries, remembrances and journals, of the things done and past in the House of Commons;” but he must confine himself to taking notes of the orders and proceedings in the House. These he and his Clerks do in their minute books at the table, and from these

(c) S. O. II. of L. 14 Feb. 1703.

(d) See 6 Grey, 106.

\* For the amount of compensation paid to certain inferior Officers and Servants of the House of Commons, see *Appendix XXV.*

† The reason given for this is, that when the Two Houses of Parliament first separated, and held their meetings apart,—which is said to have been on the 12th March, 1332,—the Under Clerk of the Parliaments went with the Commons; and he has been accordingly, from that time, styled in his letters-patent, and several public documents, “Under Clerk of the Parliaments, attending upon the Commons.”

minutes the votes (which are ordered to be printed\*,) are made up, under the direction of the Speaker.

The Book of the Clerk of the House of Commons, as the Journals were anciently termed, is a record (e), and as such is evidence in a court of law. As records, they are open to every one, to see and to publish therefrom (f); and a printed vote of either House on any subject is sufficient ground for the other to notice it. Either may appoint a Committee to examine the Journals† of the other, and report their proceedings upon the particular subject of enquiry, (see Chap. XII. *On Committees*, [Committee to inspect Lords' Journals].)

The Journals of the House of Commons commence in 1547, and continue down to the present time; but the course of entering the proceedings has varied from time to time, the entries being much more specific and detailed at some periods than at others. The Journals of the House of Lords commence in 1509, and are much more regular.

On information of a misentry or omission in the Journals, Misentry.

(e) 6 Henry VIII. ch. 16; 4 Inst. 23, 24; C. J. 17 March, 1592.

(f) 6 Grey, 118, 119.

\* The votes and proceedings of the House were first ordered to be printed by a Resolution of the House on the 24th March, 1680-1; for about forty years prior to that time, it had been customary to order the printing of certain specific votes, but there was no general order for that purpose. Since then, however, the above Resolution has been renewed every session (with the exception of the year 1702, when it was for a short time suspended), and a Printer ordered to be appointed for that purpose by the Speaker; an occasional prohibition being added against all other persons printing the same. By the 42 Geo. III. ch. 63, Votes and Proceedings in Parliament may be sent to any part of Great Britain, postage free, by Members of either House, and certain public officers; and with a reduced postage, by all other persons.

† Although the order says "Journals," it is stated by a Committee of the House of Commons, on the Publication of Printed Papers (8 May, 1837), that the Lords have *invariably* adverted to the *Votes* for any information they may have required. It is also stated (by this Committee), that "although the House of Commons do not allow any reference to be made in Petitions to what passes in debate, or may be entered in the Journals, yet, consistently with the rules of the House, matter stated in the printed Votes may be made the subject of petition and discussion."

a Committee may be appointed to examine and certify it, and report to the House (*g*).

The Clerk is to let no Journals, Records, Accounts or Papers be taken from the table or out of his custody (*h*). The rules he should observe in making entries therein, are thus stated:—

Entries in the Journals.

If a question be interrupted by a vote of adjournment, or to proceed to the orders of the day, the original question is never printed in the Journals, it not having been a vote, or introductory to a vote; but when suppressed by the previous question the first question must be stated, in order to introduce and make intelligible the second (*i*).

So also when a question is postponed, adjourned or laid on the table, the original question, though not yet a vote, must be entered on the Journals, because it makes a part of the postponing, &c.

Where amendments are made to a question, those amendments are not entered on the Journals separate from the main question; but only the question as finally agreed to by the House. The rule of entering only what the House has agreed to is founded in great prudence; as there might be many questions proposed which it would be improper to publish to the world in the form in which they are made (*k*).

Other duties of the Clerk.

At the end of the session, it is the Clerk's office to see that the Journal of the session is properly made out, and fairly transcribed from the minute books, the printed votes, and the original papers that have been laid before the House; and that it is printed and distributed according to the established rules for that purpose\*.

(*g*) C. J. 1 March, 1676.

(*i*) 2 Huts. 83.

(*h*) C. J. 10 Dec. 1641.

(*k*) 2 Huts. 85.

\* By a Standing Order of the House of Assembly of this Province (see M. S. S. Journals, 1830, p. 194), the printed Edition of the Journals must be disposed of as follows, viz:—

Three copies to each member.—One copy to each member of the Legislative Council.—Six copies to the Lieutenant Governor.—Three copies to the Library.

It is his duty also, to sign all bills which have passed the House, all addresses to the Crown, and all orders of the House.

It is also his duty to take down the words of any member, to which exception is taken as being irregular—on receiving the direction of the House to that effect, conveyed, in Hatsell's opinion (*l*), through the Speaker, as the mouth-piece of the House. But if any member has spoken between (as where a seconder had spoken two or three sentences (*m*), and then sat down,) no words which have passed before can be taken notice of, so as to be written down by the Clerk, in order to a censure; (see *ante* p. 98.).

In Committees of the Whole, the Clerk Assistant officiates alone. Clerk Assistant.

The salary of the Clerk of the House of Commons is regulated by the 52d Geo. III. ch. 11. which provides— Salary of the Clerk and other Officers.  
That that Officer, together with the Clerks Assistant, Serjeant-at-Arms, &c. shall pay to certain commissioners appointed, to be called "the commissioners for regulating the Offices of the House of Commons," all the salaries, fees, perquisites and emoluments, which they may receive, to be paid into a fund (called the "Fee Fund"), from which the said commissioners shall pay to each their respective salaries, as follows, viz:—

The Clerk of the House of Commons (first five years of service) - - - - -	£3,000
After which - - - - -	3,500
Clerk Assistant (first five years' service) - - - - -	2,000
After which - - - - -	2,500
Second Clerk Assistant (first five years' service) - - - - -	1,500
After which - - - - -	2,000

(*l*) 2 Hats. 257, 258.

(*m*) C. J. v. 68, p. 322.

One copy (each) to the Governors, Legislative Councils and Assemblies of Lower Canada, New Brunswick, Nova Scotia, and Prince Edward's Island.—Three copies to the Library of the Imperial Parliament.—Six copies to the Clerk's Office for the use of this House, and the remainder to such Members of the House of Commons of Great Britain, as the Speaker may direct.

In lieu of Fees.

These salaries\* are to be in lieu of all fees†, except those payable on the examination of sureties of election recognizances; and the taxation of costs of election petitions, which are established by act of Parliament (28th Geo. III. ch. 52.). For these fees, see *ante* pp. 109, 119.

Salaries of Under Clerks.

These commissioners have also the payment of all the Under Clerks, according to the rules regulating the same. And if, after the disbursement of the above salaries, there remains any surplus unexpended, it is to be paid into the Consolidated Fund of Great Britain.

Election Committee Clerk.

There is a special Clerk appointed to attend the Committee of Privileges, who now attends the Select Committees on Elections; and when two or more of these Select Committees are sitting at the same time, the Chief Clerk appoints others to attend the same as deputies.

Out-door Clerks.

There are also four Principal Clerks without doors,

\* By a recent Statute (4 & 5 Wm. IV. ch. 70), these Salaries are reduced to the following amounts, viz.—The Clerk of the House, £2000 per annum; the First Clerk Assistant, £1,500; and the Second Clerk Assistant, £1,000;—without any increase being provided for a long period of service. This arrangement, however, is not to come into operation until the demise of the present occupants.

† The fees that have always been due to the above Officers, are still to be paid them, but, on receipt thereof, they must pay them over to the Commissioners of the Fee Fund.

The fees to which they are entitled upon all Private Bills, have been already shown (see *ante*, p. 256, &c.); the following table therefore will contain the Fees to which they are entitled for other duties.

*To Mr. Speaker's Secretary.*

For every Warrant signed by Mr. Speaker, for a new writ, commitment, discharge, or witness to attend . . . . . 0 10 0

*To the Chief Clerk.*

For every order upon motion or petition, or committee appointed in private or public matters; or for copies of them, taken out by any person . . . . . 0 6 8  
 For every order for the commitment or discharge of any person . . . . . 0 6 8  
 For copies of all petitions, reports, or other matters out of the Journals, if under 10 sheets . . . . . 0 6 8  
     If above 10 sheets, per sheet . . . . . 0 1 0  
 For every search in the Journals . . . . . 0 6 8  
 For copies of Bills, per sheet . . . . . 0 1 0  
     But if for Members . . . . . 0 0 4  
 For ingrossing Bills, per press . . . . . 0 12 6  
 For swearing every person at the table, in order to be naturalized . . . . . 0 13 4

appointed to attend Committees, who take their attendance by rotation; each having a deputy. There is also one Clerk who has the direction of the Ingrossing Office, and has copying Clerks under him; and another who has charge of the Private Bill Office, with Clerks under him. Besides these, there is a Clerk appointed expressly to collect the fees on Private Bills, &c.; and another who has the custody of the Journals and papers, and who has several writing Clerks under him.

There is another Officer of this class, viz: the Speaker's Secretary, whose salary is not provided by the 52d Geo. III.; but by the 4th & 5th Wm. IV. ch. 70, it is placed at £500.

2. *The Clerk of the Crown\** is an Officer of the House of Commons, at which place he must attend, by himself or deputy, to amend returns (a) in the House, whenever he is so ordered. It is his duty to deliver in to the Deputy Clerk of the House, at the commencement of Parliament, a book containing a list of all the members returned. When in the House, his place is upon the steps at the foot of the Speaker's chair.

3. *The Serjeant-at Arms* is also an important Officer of the House. The duty of Serjeants-at-Arms is to attend the person of the King, to arrest persons of condition offending, &c. Two of them, by the special permission of the King, and not by any authority properly belonging to either House, attend on the two Houses of Parliament, or rather upon the Speakers of the respective Houses. In token of which, the Mace is surrendered by the Speaker, at the close of every session, to be deposited in the Royal Treasury, now called the Jewel House, at the Tower.†

(a) C. J. v. 63, pp. 118, 305.

\* See *ante* the note in page 319.

† Upon this, Sir Francis Palgrave truly observes, "It might be as well if our Commons would sometimes bear such historical facts in mind, in order that they might recollect that it is as the King's High Court of Parliament they assemble; and that if they are the representatives of the community, they are also the Council of the Crown."—(Palgrave's *Merchant and the Friar*, p. 264.)

The office of him in the House of Commons is, the keeping of the doors; and the execution of such commands, touching the apprehension, and taking into custody of offenders, as the House may enjoin upon him.

The Mace.

Although the Speaker is properly said (*o*) to have the keeping of the Mace, and is never to appear in public without it, yet it is placed in charge of the Serjeant-at-Arms, to manage according to the rules of the House.

At the election of a Speaker, after he is chosen, and has taken his seat, the Mace is laid upon the table by the Serjeant—before the election it should be under the table; and the House cannot proceed to the election of a Speaker without the Mace (*p*).

Its place sym-  
bolical.

When the Speaker is in the chair, the Mace lies *upon* the table,—during a Committee of the Whole, it is *under*. When the Mace is *out* of the House, no business can be done. When *from* the table, and upon the Serjeant's shoulder at the bar, the Speaker only manages, and no motion can be made. But if a witness be under examination at the bar, and the Mace upon the table, then any member may propose questions to the Speaker to ask the witness (*q*).

Other duties of  
the Serjeant-at-  
Arms.

Whenever the Serjeant-at-Arms makes his appearance in any Committee, bearing the Mace upon his shoulder, it must instantly adjourn (*r*), and its members proceed to the House. It is also a common plan to send the Serjeant, with the Mace, to the buildings and places adjacent, for the purpose of collecting the members, and it must always be done before any election petition is taken into consideration. (See *ante* p. 111.)

Prison-rooms of  
the House.

Whenever the Serjeant-at-Arms takes persons into custody by order of the House, he lodges them in prison rooms connected with the building; where they are com-

(*o*) 2 Hats. 236.

(*p*) C. J. 13 Mar. 1694.

(*q*) Dwar. 285, and see *ante*, p. 313.

(*r*) C. J. 16 May, 1614.

fortably provided for in all respects, except in the articles of food and raiment, which they must obtain at their own cost.

The salary of the Serjeant-at-arms, as regulated by the *His Salary.* 4 & 5 William IV. ch. 70—is £1,500 per annum. This includes the allowance to which he is entitled as House-keeper to the House of Commons (which office was united to that of Serjeant, by the 52 Geo. III. ch. 11, sec. 5) and is in lieu of all fees\* payable to him under the Standing Orders; and which, on receipt thereof, he must pay over to the Commissioners of the Fee-fund. (See *ante p.* 323.)

There is a Deputy Serjeant-at-arms, who has a salary *Deputy Serjeant.* of £800 by the above statute. Besides which there are *Doorkeepers, &c.* Doorkeepers†, and Messengers‡ to the House, who are under the control and authority of the Serjeant-at-arms.

4. *The Chaplain*—Whose duty it is to read Prayers *The Chaplain.* every morning before the commencement of business. This solemn rite commences a few minutes before the *Prayers.* appointed time of meeting, the Speaker taking his place

\* For the amount of Fees payable to the Serjeant-at-Arms (and Housekeeper) on Private Bills, see *ante*, p. 256. The following are those which he is authorized to demand by the Standing Orders of 1700, and of the 19th June, 1746, for other services:

*To the Serjeant-at-Arms.*

For taking a Knight into custody .....	5	0	0
For taking a Gentleman into custody.....	3	6	8
For every day in custody.....	1	0	0
For every person sworn at the table, in order to be naturalized	0	12	6
For every Counsel pleading at the Bar, or before any Committee	0	10	0
For bringing a criminal to the Bar .....	0	6	8
For riding charges—each mile .....	0	0	6

*To the Housekeeper.*

For every prisoner discharged by the House.....	0	5	0
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† Besides the Fees payable to the Doorkeepers upon every Private Bill (see *ante*, p. 250), they are authorized, by the Table of Fees of 1700, to demand the following:

*To the Two Doorkeepers.*

Upon the discharge of every prisoner, to each.....	0	2	6
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‡ Besides the Fees payable to the Messengers upon every Private Bill (see *ante*, p. 256), they are authorized, by the Table of Fees of 1700, to demand the following:—

*To the Four Messengers.*

For attending a prisoner, per day .....	0	2	6
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at the upper part of the Clerk's table, on the right hand, —the Chaplain on the left. At its conclusion, the Speaker, standing before the Chair, counts the House, and, if there be a quorum present, takes his seat. The mace is then laid upon the table by the Serjeant, and the business begun.

Remuneration of  
the Chaplain.

The office of Chaplain is in the gift of the Speaker, and was, until recently, entirely honorary. Formerly, after about three years service, on the average, an Address to His Majesty was voted, praying Him to confer on the Chaplain some living in the gift of the Crown, which was immediately done; but now, in consequence of the greater part of the ecclesiastical patronage of the Crown having been taken away, by act of Parliament, no such livings remain open;—accordingly that officer receives a salary of £200 a year from the House of Commons (*s*).

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(*s*) See Mirror of Parlt. 1836, p. 198.

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## C H A P. XVIII.

**On Impeachment, Bills of Attainder, &c.**

The High Court of Parliament is the supreme Court of IMPEACHMENT. the Kingdom, not only for making, but also for the execution of the laws—by the trial of great offenders, whether Lords or Commons, in the method of Parliamentary Impeachment. This custom of Impeachment, says Blackstone (*a*), has a peculiar propriety in our Constitution; for though, in general, the union of the legislative and judicial powers ought to be most carefully avoided, yet it may happen that a subject, intrusted with the administration of public affairs, may infringe the rights of the people, and be guilty of such crimes as the ordinary magistrates either dares not or cannot punish. Of these, the representatives of the people, or House of Commons, cannot properly *judge*; because their constituents are the parties injured, and can, therefore, only *impeach*. In the trial of such an impeachment, ordinary tribunals would naturally be swayed by the authority of so powerful an accuser. Reason, therefore, will suggest, that this branch of the legislature, which represents the people, must bring its charge before the other branch, which consists of the nobility, who have neither the same interests, nor the same passions, as popular assemblies. It is proper, therefore, that the nobility should adjudge, to ensure justice to the accused, as it is proper that the people should accuse, to ensure justice to the Commonwealth.

Should be sparingly exercised.

At the same time, while it is absolutely necessary, for the preservation of our liberties, and the safety of our Constitution, that the Commons should possess this extraordinary power of bringing great offenders to justice, it may be prudent that it should be sparingly exercised. It should be confined to matters not within the cognizance of ordinary tribunals; to breaches of trust, particularly judicial aberrations; and the counselling pernicious or dishonorable measures.

All the King's subjects are impeachable.

All the King's subjects, even the highest spiritual or temporal lords, are impeachable in Parliament; but a Commoner can now be charged only with high misdemeanors and not with capital offences, cognizable in any other Court (b): a Peer may be impeached for any crime.

Resolutions on which Impeachment is founded.

The accusation of the Commons is in the place of an Indictment. The general course pursued in bringing forward an Impeachment, is, to pass a resolution in the House of Commons, containing a criminal charge against the supposed delinquent, and then to appoint certain members (called managers) to impeach him, by oral accusation, at the bar of the House of Lords, in the name of the Commons in Parliament assembled, and of all the Commons of the United Kingdom. The person deputed to this office further signifies, that the articles against the accused will be exhibited in due time, and desires that he may, in the mean time, be sequestered from his seat in Parliament, or be committed, or that the Peers will take order for his appearance (c).

Impeached at the Bar of the Lords.

Appearance.

If the party do not appear, proclamations are to be issued, giving him a day to appear. On their return they are strictly examined. If any error be found in them, a new proclamation must issue, giving another day. If he then appears not, his goods may be proceeded

(b) Fitzharris' case, L. J. 26 March, 1680; 8 Grey, 325.

(c) L. J. 3 June, 1701; 6 Grey, 321; 2 Wood. 602, 605.

against, and the trial be conducted by a bill of Attainder, or of Pains and Penalties.

The Commons claim to be judges of the proper time Articles. for exhibiting their articles; but when unreasonable delays have taken place, they have been repeatedly reminded by the Lords to advance the prosecution, in justice to the accused.

The articles may be stated by the Commons in general How stated. terms, without technical exactness, and need not pursue the strict form of an indictment; thus, by the usage of Parliament, in Impeachments for writing or speaking, the particular words need not be specified (*d*).

At this stage, a joint Committee of both Houses has frequently been appointed, to adjust other preliminaries of the trial; but such a Committee has been also denied on impeachments for misdemeanors (*e*). Joint Committee.

The Commons then request the Lords to appoint a Trial. place and day on which they may follow up their Impeachment—for it is the sole right of the Lords to name the place of trial.

The trial itself does not essentially differ from criminal prosecutions before inferior courts. The rules of evidence, and the doctrine of crimes and punishments, are the same; for Impeachments are not framed to alter the law, but to carry it into more effectual execution, when it might be obstructed by the influence of too powerful delinquents.

If the charge be for misdemeanors, the Lord Chancellor presides at the trial. In capital cases, it has been usual Lord High Steward. to appoint a Lord High Steward, for the more orderly proceeding of the trial.\* This officer is appointed by the King, and he must (*f*) be a Peer; but it was decided by

(*d*) Sachev. Trial, 325; 2 Wood, 602, 605.

(*e*) C. J. 17 June, 1701.

(*f*) 4 Bl. Com. 261.

\* See Professor Amos' Disquisition on the Court of the Lord High Steward, appended to the 2d vol. of Phillips' State Trials, p. 359.

the Lords in Lord Danby's case, that such an officer is not absolutely necessary (*g*).

Bail.

According to the general rule, that whosoever is judge of the offence may bail the offender, the recognizance of bail is taken upon Impeachments, by order of the House of Peers, at their Lordships' bar; the bail being previously approved by a Committee to whom it is referred to consider of their sufficiency. The condition of the recognizance in such case is, that the criminal shall personally attend before the Lords in Parliament, and appear from day to day, until further order of the House (*h*).

Forms of Proceeding.

On Trials, as well by Indictment as Impeachment, the House directs all parties appearing to address the Lords in general, and not the Lord High Steward in particular.

In these cases of capital accusations, the Lords spiritual have a right to stay till the court proceeds to the vote of guilty or not guilty, and then they have constantly withdrawn (see *ante* pp. 64, 65); yet their right to vote on Bills of Attainder has always been admitted (*i*).

Answer of the accused.

If the accused appear, and the case be capital, he answers in custody; though not if the accusation be general. He is not to be committed but on special accusations. If it be for misdemeanor only, he answers, if a Peer, in his place; if a Commoner, at the bar, and not in custody, unless, on the answer, the Lords find cause to commit him until he find bail for his attendance (*k*). A copy of the articles is given him, and a day fixed for his answer (*l*). On a misdemeanor he may answer either in person, by writing, or by attorney (*m*). The general rule on an accusation for a misdemeanor is, that in such a state of liberty or restraint, as the party was when the

(*g*) 2 Wood. 613; Foster's Crown Law, 144.

(*h*) Sacheverall's case, 13 Jan. 1709; case of Warren Hastings 21 May, 1787.

(*i*) 2 Wood. 603.

(*k*) Sel. Jud. 98, 99.

(*l*) 1 Rushw. 268; 1 Clar. Reb. 379.

(*m*) Sel. Jud. 100.

Commons complained of him, in such he is to answer. If previously committed by the Commons, he answers as a prisoner. But this may be called in some sort *judicium parium suorum* (*n*). In misdemeanors the party has a right to counsel, by the common law; but not in capital cases (*o*).

The answer need not observe great strictness of form. Form of Answer He may plead guilty, as to a part, and defend as to the residue; or, saving all exceptions, deny the whole; or give a particular answer to each article separately (*p*). But he cannot plead a pardon under the great seal as a bar to the Impeachment (*q*).

There may be a replication, rejoinder, &c. by the Commons, which is likewise exempted from a scrupulous adherence to form (*r*). Replication, rejoinder, &c.

The practice is to swear the witnesses summoned, in Witnesses. open House, and then examine them there; but a Committee may be named, who shall examine them, either with interrogations agreed on by the House, or such as the Committee may, in their discretion, demand (*s*).

In the case of Alice Pierce, 1 Rich. II. a jury was Case of Alice Pierce. impannelled for her trial before a Committee. But this was on a complaint, not an Impeachment by the Commons (*t*). It must also have been for a misdemeanor only, as the Lords spiritual sat in judgment, which they do in misdemeanors, but not in capital cases. The judgment was, a forfeiture of all her lands and goods (*v*). This, Selden says, is the only jury he finds recorded in Parliament for misdemeanors; but he makes no doubt, if the delinquent doth put himself on the trial of his country,

(n) Sel. Jud. 101.

(o) Ib. 102, 5.

(p) 1 Rushw. 274; 2 Rushw. 1374; L. J. 13 Nov. 1643; 12 Parl. Hist. 442.

(q) 2 Wood. 615; 2 State Trials, 735.

(r) Sel. Jud. 114; 8 Grey, 233; C. J. 6 Mar. 1640.

(s) Sel. Jud. 120, 123.

(t) Sel. Jud. 123, 163.

(v) Ib. 148, 168.

that a jury ought to be impannelled; and he adds, that it is not so on impeachments by the House of Commons, for they are in *loco proprio*, and then no jury ought to be impannelled. The Lord Berkeley, 6 Edw. III. was arraigned for murder, on an information on the part of the King, and not on Impeachment by the Commons, for then, says Selden, "they had been *patria sua*." He waved his privilege of Peerage, and was tried by a jury of Gloucestershire and Warwickshire (*w*). In 1 Henry VII. the Commons protest that they are not to be considered as parties to any judgment given or hereafter to be given in Parliament (*x*); they have been generally, and more justly considered as the Grand Jury. For the conceit of Selden is certainly not accurate, that they are the *patria sua* of the accused, and that the Lords do only judge, but not try. It is undeniable that they do try. For they examine witnesses as to the fact, and acquit or condemn, according to their own belief of their evidence. And Lord Hale says, "the Peers are Judges of law as well "as of fact" (*y*). Consequently of fact as well as of law.

The Commons are to be present at the examination of witnesses (*z*). Indeed, they are to attend throughout, as a Committee of the Whole.—Except, as is generally the case, they appoint managers to conduct the proofs (*a*). And judgment is not to be given until they demand it (*b*). But they are not to be present when the Lords are considering their answer or the proofs, and determining on their judgment. Their presence, however, is necessary when the answer and judgment is given.

The Lords debate the judgment among themselves. Then the vote is first taken on the question of guilty or not guilty; and if they convict, the question, or particular

Lord Berkeley's case.

Commons have no share in the judgment.

Commons present at examination.

Judgment considered.

(*w*) Sel. Jud. 125.

(*x*) Sel. Jud. 133.

(*y*) 2 Hale, P. C. 275.

(*z*) Sel. Jud. 124.

(*a*) Rushw. Trial of Strafford, 37; C. J. 4 Feb. 1709-10.

(*b*) Sel. Jud. 124.

sentence, is out of that which seemeth to be most generally agreed on (*c*).

Judgments in Parliament for death, have been strictly Judgment given, guided *per legem terræ*; which they cannot alter; and not according to their discretion. They can neither omit any part of the legal sentence, nor add to it; as, if the offence be provided against by statute, the offender must be condemned according to the provisions of that statute. Their judgment must be *secundum, non ultra legem* (*d*), and should be one that is warranted by legal principles or precedents (*e*). The Chancellor gives judgment in misdemeanors, and the Lord High Steward, when one is appointed, in cases of life and death (*f*). In misdemeanors the greatest corporal punishment hath been imprisonment (*g*).

The King's assent is necessary in capital judgments, King's Assent, when necessary. but not in misdemeanors (*h*). Although no pardon under the great seal is pleadable in an Impeachment, yet the Pardon under the Great Seal not pleadable. King may afterwards remit the execution of the sentence, or any part thereof (*i*).

A dissolution or prorogation of Parliament intercepts, Impeachment not extinguished by dissolution, &c. of Parliament. but does not extinguish an Impeachment; the charge may be resumed when the House is again assembled (*k*); although, this question having formerly been doubtful, special acts have been passed to prevent the effects of a prorogation in such a case (*l*).

The last instances of Impeachment by the Commons, were those of Warren Hastings, in 1787, managed by Mr. Burke; and of Viscount Melville, in 1805, managed by Mr. Whitbread\*.

(*c*) Sel. Jud. 167.

(*d*) Ib. 168-171.

(*e*) 6 Sta. Tr. 14; 2 Wood. 611.

(*f*) Sel. Jud. 180.

(*g*) Sel. Jud. 184.

(*h*) Ib. 136; but see *contra*, 2 Wood. 614.

(*i*) 12 & 13 Wm. III. ch. 2, s. 3.

(*k*) C. J. 23 Dec. 1790; L. J. 16 May, 1791; Raym. 383.

(*l*) As 45 Geo. III. cc. 117 & 125.

\* See further as to Impeachments, &c. the 4th vol. of Hatsell's Precedents, "On Impeachments,"—and Fortescue de Laudibus Legum Angliæ, by Aunos,

## BILLS OF ATTAINDER, AND OF PAINS AND PENALTIES.

Bills of Attainder  
and of Pains and  
Penalties.

Bills of Attainder, &c., it has been shown (*m*), must, from their judicial nature, originate in the House of Lords.

They are used when the proceeding by Impeachment would be justifiable, but cannot be enforced in consequence of the accused flying from justice, and refusing to surrender himself; or when he is in actual rebellion, and in direct opposition to all methods of trial, and in defiance of every tribunal of law.

The trial is conducted in such a case by united Committees of Lords and Commons, who examine witnesses and report thereon to their respective Houses. Upon this report the bill of Attainder, or of Pains and Penalties, is brought in, if sufficient facts are adduced to warrant it. When the bill is committed, after its second reading, witnesses are again examined upon its allegations.

Formerly, the consequences of Attainder were corruption and forfeiture of blood, which cannot regularly be taken off but by act of Parliament (*n*), but now, by the 54th Geo. III. ch. 145. this extends only to cases of high treason, petty treason and murder; or abetting, favouring or counselling the same.

By a Bill of Attainder, or of Pains and Penalties, any one may be attainted of treason or felony, and pains and penalties inflicted beyond, or contrary to, the existing law.

But where the remedy by Impeachment is available, such bills will be regarded with jealousy, on account of the dangerous licence which the Houses of Parliament have permitted themselves, from the mixed and indefinite nature of their legislative and judicial capacities, when

(*m*) See *ante*, p. 160.

(*n*) Co. Lit. 391.

p. 118, &c.—and the “Report of the Committee on causes of the duration of Mr. Hastings’ trial,” where many doubtful points in Impeachments are examined and determined—in Burke’s Works (Edit. 1816), vol. 4th, p. 168.

united: and in their being *ex post facto* laws, made for retrospective purposes.

An example of a Bill of Pains and Penalties is to be found in the act against Atterbury, Bishop of Rochester (9 Geo. I. ch. 17.). The last attempt to pass such a bill was in 1820, in the well-known case of Queen Caroline, for alleged adulteries in foreign countries.

THE END.

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APPENDIX.

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## Appendix.

### I.

*The Speaker's Warrant for issuing a New Writ on a Vacancy, during the Session.* Appendix I.

Mercurii, 5o die Junii, 1811.

By virtue of an order of the House of Commons this day made,

These are to require you to make out a new writ for the electing of a burgess, to serve in this present Parliament, for the (borough of King's Lynn,) in the room of (Lord Walpole, who, since his election for the said borough, hath accepted the office of one of the Commissioners for executing the office of Lord High Admiral), for which this shall be your sufficient warrant.

Given under my hand, the 5th day of June, 1811.

CHARLES ABBOT, *Speaker.*

To the Clerk of the Crown }  
in Chancery. }

### II.

*Certificate to be signed by two Members, on a vacancy occurring during a Recess, as given by statute, 24 Geo. III. chap. 26.* Appendix II.

We, whose names are underwritten, being two members of the House of Commons, do hereby certify, that M. N. late a member of the said House, serving as one of the Knights of the Shire for the County of \_\_\_\_\_ (or as the case may be,) died on the \_\_\_\_\_ day of \_\_\_\_\_ (or, is become a Peer of Great Britain, and that a writ of summons hath been issued under the Great Seal of Great Britain, to summon him to Parliament), (or as the case may be); and we give you this notice to the intent that you may issue your warrant to the Clerk of the Crown, to make out a new

Appendix II. writ for the election of a Knight to serve in Parliament for the said County of \_\_\_\_\_ (or as the case may be) in room of the said M. N.

Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_.

(Signatures) } \_\_\_\_\_  
 \_\_\_\_\_

To the Speaker\* of the House }  
 of Commons. }

### III.

Appendix III. *Form of Oaths required to be taken by a Voter at an Election for a Member of the House of Assembly of Upper Canada.*

*By the Constitutional Act.*

I, A. B. do declare and testify, in the presence of Almighty God, that I am, to the best of my knowledge and belief, of the full age of twenty-one years; and that I have not voted before at this election.

*By Prov. Act 4 Wm. IV. ch. 14. §3.*

I, A. B. do swear, that the estate in right of which I vote at this election, is (*here describe the estate, as the case may be*) which I hold by grant from the Crown, descent, devise, marriage or conveyance (*as the case may be*) and (*in case such estate shall have been derived otherwise than by grant from the Crown, descent, marriage or devise,*) that I have been in actual possession, or in the receipt of the rents and profits thereof to my own use, by virtue of such conveyance, above twelve calendar months, or, (*as the case may be*) that the conveyance to me of the same has been registered three calendar months.

### IV.

Appendix IV. *Form of Oaths required to be taken by Candidates at an Election for Members of the House of Assembly of Upper Canada.*

*By Prov. Act 4 Geo. IV. ch. 3, §7, 8.*

I, A. B. do swear, that I truly and bona fide have such a freehold estate (*here describe the estate,*) over and above

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\* In case there shall be no Speaker of the House of Commons, or in his absence from the Realm, such certificate may be addressed to any one of the persons appointed under the direction of this act. (See ante, p. 60.)

all incumbrances that may affect the same ; and am otherwise qualified according to the provisions of law, to be elected and returned to serve as a member in the Commons House of Assembly, according to the tenor and true meaning of the act of Parliament in that behalf ; and that I have not obtained the same fraudulently for the purpose of enabling me to be returned member to the Commons House of Assembly in this Province.—*So help me God.*

Appendix IV.

*If the Candidate has resided in the United States of America, he may be required to take the following Oath in addition, viz:—*

I, A. B. do sincerely and solemnly swear, that, during my residence in the United States of America, I have not taken or subscribed any Oath of Abjuration of Allegiance to the Crown of Great Britain ; and farther, that during my said residence, I have not held the office or appointment of Senator, or Member of the House of Representatives of the said United States, or of either of the said United States respectively, or held or enjoyed any office in any of the executive departments of state in the said United States or State respectively. *So help me God.*

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## V.

*Oath required to be taken by every Member of the Legislative Council or Assembly of this Province, before taking his seat in the House ; under the Constitutional Act.*

Appendix V.

I, A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, as lawful Sovereign of the Kingdom of Great Britain, and of these Provinces, dependent on, and belonging to the said Kingdom ; and that I will defend her to the utmost of my power against all traitorous conspiracies and attempts whatever, which shall be made against her person, crown and dignity ; and that I will do my utmost endeavour to disclose and make known to Her Majesty, her heirs or successors, all treasons and traitorous conspiracies and attempts which I shall know to be against her, or any of them ; and all this I do swear without any equivocation, mental evasion, or secret reserva-

Appendix V. tion, and renouncing all pardons and dispensations from any person or power whatever to the contrary.—*So help me God.*

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## VI.

Appendix VI. *Abstract of the recent Imperial Act, 2 & 3 Victoria ch. 38—to suspend, for a limited time, the Act for the trial of Controverted Elections, and to amend the jurisdiction for the trial of the same.*

Clause 1. Suspending the operation of the Act 9 Geo. IV. ch. 22, for trying Election Petitions, until the end of the 2nd Session of the next Parliament.

2. Declaring what shall be deemed an Election Petition.

3. Recognizances for the payment of costs, &c. to be made before Petition is presented, and the amount and number of sureties required.

4. Instead of Speaker's examining sufficiency of sureties, the sureties are to make allidavit themselves of their sufficiency—and in it so to describe their residence, name &c. as they may be easily identified.

5. The Speaker shall appoint a person to be Examiner of Recognizances, to hold office during pleasure, and to execute the duties under Speaker's directions.

6. Provision made for temporary disability of Examiner.

7. Recognizances to be entered into, and allidavits sworn to, before the Examiner, or a Justice of the Peace. If before a Justice, certificate to be made by him to Examiner.

8. Petitioner to have the option of paying required amount, or any sum not less than £250, into the Bank of England, on trust of himself and Examiner, instead of finding sureties; but he must enter into a personal Recognizances for £1000, and also find surety for so much of the additional £1000 as he has not deposited in the Bank.

9. Provision to be made by Trustees for all costs, &c. of such investment.

10. Provision for change of Trustees.

11. No Election Petition to be received by the House, unless endorsed by Examiner of Recognizances.

12. Names of sureties, if any, to be kept in the Exami-

ners' Office, and if not, the Bank receipt for the money paid in—to be open for inspection of parties concerned.

13. Sureties may be objected to by parties concerned, on certain grounds, to be stated and delivered in writing to the Examiner within ten days after presentation of Petition, (or fourteen if sureties reside in Scotland or Ireland).

14. Notice of objections received, to be put up in Examiner's office, and parties allowed to take copies,—and a day to be appointed for hearing such objections, not less than three, or more than five days from their receipt.

15. At time appointed, Examiner of Recognizances to hear and determine on objections.

16. In case of death of a surety, the money may be paid into the Bank.

17. Examiner to report to the Speaker whether or not sureties are objectionable.

18. How petitions may be withdrawn.

19. If the seat of member objected to becomes vacant, or he declines to defend return, notice to be published of the same, and consideration of the petition discharged.

20. Voters may petition to be admitted parties in the above case. to defend the return, or oppose the petition.

21. Members having given notice of their intention not to defend, shall not be admitted parties.

22. At the beginning of every session, the Speaker to appoint by warrant, a General Committee of Elections, such warrant of appointment to lie on the table of the House three days, and be open to objection.

23. If the House disapprove of first appointment, Speaker to make a new one.

24. Disapproval may be general or special.

25. Special Members not disapproved may be again named in Warrants.

26. Appointment to last the session, unless Committee sooner dissolved.

27. Cases of vacancy to be made known to the House, and proceedings of General Committee suspended till supplied.

28. How to be supplied.

29. Cases in which General Committee to be dissolved.

30. All Election petitions to be referred to General Committee, for the purpose of choosing Select Committees to try them.

## Appendix VI.

31. House to fix time and place of Committees first meeting, and its members to be sworn.
32. Quorum of General Committee to be four.
33. Committee to make regulations for its own proceedings.
34. Clerk to keep minutes of proceedings, to be laid before the House.
35. During any suspension the Speaker may adjourn any business before the General Committee.
36. An alphabetical list of all the Members of the House to be made every session.
37. Members wholly excused from serving on Election Committees.
38. Members temporarily excused.
39. Members temporarily disqualified from serving.
40. A corrected list, distinguishing the excused or disqualified members, to be printed and distributed with the votes.
41. This list may be further corrected during oneweek.
42. List to be referred to General Committee, who are to make a selection of members qualified and willing to serve as Chairmen of Election Committees.
43. List to be then divided into five panels, of equal numbers, by General Committee, from which Election Committees are to be selected.
44. General Committee to correct the panels from time to time.
45. For supplying vacancies, and otherwise increasing Chairmen's panel.
46. Members on Chairmen's panel to make regulations.
47. General Committee to give three weeks notice when any Election Committee will be chosen.
48. Parties to whom notice to be given.
49. Provision for the case of voters afterwards admitted parties.
50. List of voters intended to be objected to, shall be delivered to Clerk of Committee by the parties.
51. Manner of choosing the Select Committees.
52. In case of disagreement, General Committee to adjourn. Committees to be chosen according to the order petitions stand on the list.
53. When Committee chosen, the parties to be called in.
54. General Committee to proceed in order with all the petitions appointed for the day.

55. Parties may object to disqualified members. If General Committee allow the disqualification a new Committee to be chosen. Appendix VI.

56. Notice to be sent to every member chosen.

57. If any member chosen proves his disqualification, another Committee to be selected.

58. Members on Chairmen's Panel to appoint Chairman to Select Committees.

59. Select Committee to be reported to the House.

60. And its members sworn.

61. Members of said Committee not present within one hour after the meeting of the House, to be taken into custody by the Serjeant-at-Arms.

62. If any such member be not present within three hours of the meeting of the House, the proceedings on the Petition to be adjourned.

63. If all the members do not attend after adjournment, that Committee to be discharged.

64. Petitions and Lists to be referred to Select Committee, and time and place of its meeting to be appointed by the House.

65. If new Chairman required, may be elected by Select Committee.

66 to 94. These remaining clauses regulate the Select Committees' proceedings, provide for the payment of costs, &c. with other provisions exactly similar to those contained in the act 9 Geo. IV. ch. 22.

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## VII.

*Form of Petition of persons claiming to have had a right to vote at an Election, to be admitted parties in the room of a Member having given notice of his intention not to defend his seat.* Appendix VII.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled :

The humble petition of A. B., C. D., E. F., J. K.

Sheweth,

That your petitioners are, and at the last election of (Knights, Citizens, or Burgesses,) for the — of —, were (freeholders, burgesses, or freemen, &c.) of the said

Appendix VII.

—, and claim to have had a right to vote at the said election, wherein L. M. Esq. was elected and returned to serve in Parliament as one of the — for the said —.

That your petitioners are informed, that a petition signed by N. O. Esq., therein describing himself as a candidate at the late election, and another petition signed by the Hon. P. Q., R. S. and T U., Esqs. and V. W. and X. Y., gentlemen, therein describing themselves — of the said —, have been presented to this Honourable House, complaining, among other things, of the said election and return of the said L. M.

That your petitioners have observed by a notice inserted in the London Gazette on the — day of — last, by order of the Right Honourable C. M. S. Speaker of this Honourable House, that after the presenting the said petitions, the said L. M. then being one of the sitting members for the said County, did on the — day of — under and by virtue of the provisions of an act of Parliament passed in the twenty-eighth year of the reign of His late Majesty King George the Third, intituled “An Act for the further regulation of the trials of controverted elections or returns of members to serve in Parliament,” inform this Honourable House, by a declaration in writing subscribed by the said L. M. and delivered in at the table of this Honourable House, that it was not his intention to defend the said election or return.

Your petitioners, therefore, humbly pray, that under and by virtue of the provisions of the said act of Parliament, they may be admitted as parties in the room of the said L. M. and be considered as such to all intents and purposes whatsoever.

And your petitioners, &c.

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### VIII.

Appendix VIII.

*Form of Recognizance for payment of Costs, &c. as given by the Imperial Act 53 Geo. III. ch. 71, and consolidated Act 9 Geo IV. ch. 22.*

BE IT REMEMBERED, that on the — day of — in the year of our Lord — before me, A. B. (Speaker of the House of Commons) or (one of Her Majesty's Justices of the Peace for the County of —,) came C. D., E. F. and J. G., (H. K., and L. M.), and severally acknowledged

themselves to owe to our Sovereign Lady the Queen, the following sums; that is to say, the said C. D., the sum of one thousand pounds, and (the said E. F., and the said J. G., the sum of five hundred pounds each;)[or in case there should be four sureties, the said E. F., J. G., H. K. and L. M., the sums of two hundred fifty pounds each,] to be levied on their respective goods and chattels, lands and tenements, to the use of our said Sovereign Lady the Queen, Her heirs and successors, in case the said C. D. shall fail in performing the condition hereunto annexed.

THE CONDITION of this recognizance is, that if the said C. D. shall well and truly pay all costs and expenses, and fees, which shall be due and payable from the said C. D., to any witness who shall be summoned to give evidence in his behalf, or to any clerk or officer of the House of Commons, upon the trial of the petition signed by the said C. D. (complaining of an undue election or return for the [here state the county, city, borough, or district of burghs;] or (complaining that no return has been made for the said — within the time limited by Act of Parliament); or (complaining that the return made for the said — is not a return for a member or members according to the requisition of the writ); and if the said C. D. shall also well and truly pay the costs and expenses of the party who shall appear before the House in opposition to the said petition, in case the said C. D. shall fail to appear before the House at such time or times as shall be fixed by the House for taking such petition into consideration; or in case the said C. D. shall withdraw his said petition by the permission of the House; or in case the Select Committee appointed by the House to try the matter of the said petition, shall report to the House that the said petition appears to them to be frivolous or vexatious, then this recognizance to be void, otherwise to be of full force and effect.

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### IX.

*Form of Recognizance required to be entered into by Petitioners against a return, by Provincial Act, 4 Geo. IV. ch. 4.*

Appendix IX.

BE IT REMEMBERED, That on the — day of — in the year of our Lord —, before me, A. B. (Speaker of the House of Assembly) came C. D., E. F., and J. G., and severally acknowledged themselves to owe to our Sovereign Lady the Queen, the following sums, that is to say:—

## Appendix IX.

The said C. D. the sum of one hundred pounds, and the said E. F. and the said J. G. the sum of fifty pounds each, to be levied on their respective goods and chattels, lands and tenements, to the use of our said Sovereign Lady the Queen, Her heirs and successors, in case the said C. D. shall fail in performing the condition hereunto annexed.

THE CONDITION of this Recognizance is, that if the said C. D. shall duly appear before the House of Assembly at such time or times as shall be fixed by the said House for taking into consideration the petition signed by the said C. D., complaining of an undue election or return of a member to represent the county, city, borough or riding, (*as the case may be*) in the House of Assembly of this Province, or complaining that no return has been made for the said county, city, borough or riding within the time limited by law, or that the return made for the said county, city, borough or riding is not a return of a Member or Members according to the requisition of the writ, and shall appear before any Select Committee which shall be appointed by the House of Assembly for the trial of the same, and shall renew his said petition in every subsequent session of this present Parliament, until a Select Committee shall have been appointed by the said House, for the trial of the same, or until the same shall have been withdrawn by the permission of the said House, then this Recognizance to be void, otherwise to be of full force and effect.

## X.

## Appendix X.

*Form of the Oath required to be taken by the Commissioners for examining Witnesses on Contested Elections, under the Provincial Act, 8 Geo. IV. ch. 5.*

I, A. B. do swear that I will, without favour, affection, or malice, and according to the best of my skill and knowledge, well and truly perform the duty of a Commissioner appointed to hear and examine the evidence which shall be brought before me, by virtue of a reference under the hand and seal of the Speaker of the House of Assembly, upon a petition, (*here mention the names of the Petitioners, or some of them*) according to the rules, regulations and directions, contained in an Act passed in the eighth year of the reign of King George the Fourth, entitled,

“An Act to continue and amend the law now in force for  
“the trial of Controverted Elections.” Appendix X.

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### XI.

*Form of Oath required from the Clerk of the above Com-  
mission.* Appendix XI.

I, A. B. do swear, that I will, without favour, affection, or malice, and according to the best of my skill and knowledge, well and truly perform the duty of Clerk to the Commissioners appointed to hear and examine the evidence which shall be brought before them, by virtue of a reference under the hand and seal of the Speaker of the House of Assembly, upon a petition, (*here mention the names of the Petitioners, or some of them,*) according to the rules, regulations and directions, contained in an Act passed in the eighth year of the reign of King George the Fourth, entitled, “An Act to continue and amend the law now in force for the trial of Controverted Elections.”

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### XII.

*Oath to be administered to Election Committees, under  
9 Geo. IV. ch. 22, sec. 30, and the Provincial Act, 4 Geo.  
IV. ch. 4.* Appendix XII.

You shall well and truly try the matter of the petition referred to you, and true judgment give according to the evidence.—*So help you God.*

*Oath administered to the short hand writer\* by the Chair-*

\* By the Standing Orders of the House of Commons, the following Fees may be demanded by all Short-hand Writers employed by Election Committees:—

In all cases where any Select Committee appointed for the trial of a Controverted Election or Return, or of any other matters relating thereto, shall be attended by a person skilled in the art of writing short-hand, he shall be paid for his attendance, each day .....	2 2 0
For the transcript of the proceedings for the use of the said Committee, per sheet (containing seventy-two words) ..	0 1 0

*Note:* The said expenses to be paid by the parties, to the Clerk appointed to attend the Select Committees on Elections, who is to pay the same to the persons employed.—*C. J. 4th April, 1803.*

When the short-hand writer, or his sufficient deputy, attends when called upon, to take minutes of evidence at the Bar of the House, or in Committee of the whole, he is to be paid per day, and per sheet (if the transcript be required), as in the case of Election Committees.

*Note:* When the Chairman of a Committee to whom a Petition or Private Bill shall be referred, shall require such attendance, the expense must be defrayed by the parties promoting and opposing the same, in such proportions as the Chairman shall direct.—*C. J. 12th May, 1813.*

Appendix XII. *man of the Committee, as prescribed by the 9 Geo. IV. ch. 22, sec. 38.*

You shall faithfully and truly take down in short-hand the evidence adduced before this Committee, and, from day to day, as occasion may require, transcribe, or cause the same to be transcribed, in words at length, for the use of the Committee.—*So help you God.*

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### XIII.

Appendix XIII. *The Speaker's Warrant for the production of Papers, and Attendance of Witnesses.*

Whereas, by an order of the House of Commons, the the matter of the petition of —, complaining of an undue election and return for —, is appointed to be taken into consideration by the House upon — day of — at — of the clock in the afternoon: These are, therefore, to require you, and each and every of you to bring in your custody, (*description of the papers, books, &c. required;*) and with them to be and appear at the bar of the House of Commons upon the said — day of —, at — of the clock in the afternoon, to receive and obey such further order as the said House shall make concerning the said petition, as you will answer to the contrary at your peril.

Given under my hand this — day of —,  
C. M. S., *Speaker.*

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### XIV.

Appendix XIV. *Writ of Summons to a Peer.*

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, to Her most noble Cousin, Hugh, Duke of Northumberland, &c. Greeting.

Inasmuch as, by the advice and consent of our Privy Council, We have ordained our Parliament to be held at our city of Westminster, on the — day of — next ensuing, by reason of some arduous and urgent affairs, concerning us, the state, and defence of our Kingdom of Great Britain and Church of England, to have conference and treaty with you, and the prelates, bishops and peers of our said Kingdom: We firmly enjoin you, upon the faith and allegiance in which you are bound to us, that, taking into consideration the weightiness of the said affairs,

and the imminent dangers, laying aside all excuse, you be personally present, on the said day and place, with us and the prelates, bishops, and peers aforesaid, to treat and give your advice on the said affairs; and this you are in nowise to omit, as you love us, our honour and safety, and the defence of the aforesaid kingdom and church, and the dispatch of the aforesaid affairs. Appendix XIV.

Witness Ourself at Westminster, the — day of — in the — year of our reign.

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XV.

*Writ to a Sheriff on a General Election.*

Appendix XV.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, To the Sheriff of the County of [Oxford], Greeting.

Whereas, by the advice and consent of our Council, for certain arduous and urgent affairs concerning Us, the state and defence of our said United Kingdom, and the Church, we have ordered a certain parliament to be holden at our city of Westminster, on the — day of — next ensuing, and there to treat and have conference with the prelates, great men, and peers of our realm: We command and strictly enjoin you, that (proclamation being made of the day and place aforesaid, in your next county court to be holden after the receipt of this our writ) two knights of the most fit and discreet of the said county, girt with swords, [and of the University of Oxford two burgesses] and of every city of that county two citizens, and of every borough in the same county two burgesses, of the most sufficient and discreet, freely and indifferently by those who at such proclamation shall be present, according to the form of the Statute in that case made and provided, you cause to be elected; and the names of those knights, citizens and burgesses so to be elected (whether they be present or absent,) you cause to be inserted in certain indentures to be thereupon made between you and those who shall be present at such election, and them, at the day and place aforesaid, you cause to come in such manner that the said knights, for themselves and the commonalty of the same county, and the said citizens and burgesses for themselves and the commonalty of the said universities, cities, and boroughs, respectively, may have from them

Appendix XV. full and sufficient power to do and consent to those things which then and there by the common council of our said kingdom (by the blessing of God) shall happen to be ordained upon the aforesaid affairs, so that, for want of such power, or through any improvident election of the said knights, citizens or burgesses, the aforesaid affairs may in no wise remain unfinished; willing, nevertheless, that neither you nor any other sheriff of this our said kingdom be in anywise elected, and that the election in your full county so made, distinctly and openly, under your seal and the seals of those who shall be present at such election, you do certify to us in our Chancery, at the day and place aforesaid, without delay, remitting to us one part of the aforesaid indentures annexed to these presents, together with this writ.\*

Witness Ourselves, at Westminster, the — day of — in the — year of our reign.

1. The day when this writ is received is to be indorsed, and a receipt given to the person delivering it, at the time of delivery, expressing the day and hour of receiving it.

2. When returned, it is to be indorsed thus—"The execution of this writ appears in certain schedules hereunto annexed.—A. B. Sheriff."

3. The writs to the sheriffs are all in the same form, except that in the above for Oxfordshire, and that for Cambridgeshire, there is a clause for the election of Members for the respective Universities.

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\* Every writ of summons formerly contained the following clause, known by the name of the "*Nolumus* clause;"—"Nolumus autem quod tu aut aliquis alius Vicecomes regni nostri, aut apprentius, aut aliquis alius homo ad legem aliquo qualiter sit electus." The history of this clause is given by Lingard (*Hist. of England*, 4th vol. p. 170), from which it appears to have originated in the following manner. Parliament, as the supreme court for the redress of all grievances, as well of the state as of individuals, was then (as now) in the habit of receiving petitions from all persons who complained of any kind of oppression. The number of petitions had increased during the reign of Edw. III. to an enormous amount, when, in the year 1372, a singular species of fraud was discovered. Attorneys and barristers, practising in the courts of law, procured themselves to be returned knights of the shire, and took advantage of the opportunity to introduce the cases of their clients among the petitions which were presented to the king in the name of the lower house. To correct this abuse, it was enacted, that no practising lawyer should for the future be chosen knight of the shire, and that, if any such lawyer had been returned for that parliament, he should forfeit his wages. Accordingly, this new clause was first introduced in the writs of the 47 Edw. III., and was then omitted in those sent to the Cinque Ports; in the 49 Edw. III. it is to be found in all writs, except in that for Bristol; in the 50 Edw. III., in all without exception; omitted again in the writ for Bristol, 1 Rich. II.;

## XVI.

*Form observed by House of Commons in attending the* Appendix XVI.  
*Coronation of Her Majesty Queen Victoria.*

(Commons' Journals, 28 June, 1838.)

## PRAYERS.

The House having met,

And the time being arrived for the House to proceed to be present at the solemnity of Her Majesty's Coronation, Mr. Speaker desired the members to take their places and to remain therein, until the names of their respective counties should be drawn, and then to go forth and proceed towards the Abbey; whereupon the members took their places accordingly:—Then the Clerk drew from a glass the name of one of the counties, and the members serving for that county, and for all the places within the same, rose from their places and went forth. Then the Clerk drew the name of another county, and the members went forth in the same manner; and the names of all the counties having been drawn, and all the members having gone forth, Mr. Speaker adjourned the House till to-morrow, and left the Chair.

And the House accordingly adjourned at half an hour after nine of the clock in the morning.

Mr. Speaker and the House then went in procession to Westminster Abbey, to a gallery directly over the altar, which had been provided for their accommodation, in the following order, viz:—

Some of the Serjeant's Messengers went first,

Then the Under Clerks.

Then the Deputy Serjeant-at-arms.

Then the Members, two and two, according to the counties, as they were drawn.

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after which year it was replaced, and the writs all continued uniform till the 12th year of that reign, when they underwent some alteration, and have continued in the form so altered until modern times, when that part of it which relates to lawyers, having always been a dead letter, was at length omitted; still leaving, however, the prohibition upon the return of *Sheriffs* to Parliament. But see, as to *Sheriffs*, *ante* p. 83.

† Two attempts were made in the reign of Charles I. to exclude lawyers from the House of Commons, under the authority of this clause, but both proved unsuccessful. One was made by the army during the trial of that ill-fated king (see *Parl. Hist.* v. 18, p. 527); and the other by the Long Parliament in 1649 (see *Parl. Hist.* v. 19, p. 226).

## Appendix XVI.

Mr. Speaker's Secretary.

The Chaplain.

The Clerk of the House.

The Serjeant, carrying the Mace, as usual, before Mr. Speaker.

Mr. Speaker alone.

The Clerks Assistant.

Mr Speaker sat in the centre of the gallery, in a chair prepared for him, with the Mace on a cushion before him, the Clerk on his right hand, and the Serjeant-at-arms on his left, and the Clerks Assistant, Deputy Serjeant, Chaplain, and Secretary, in a seat immediately behind his chair.

*Note*:—The Serjeant's Messengers and Doorkeepers of this House were placed at the doors of the gallery in the Abbey, with orders that none but members should be let into the same; and the better to keep off the crowd, a platform and covered way were erected, from the Members' waiting room, across Saint Margaret's street, at the door of the Abbey in Poet's Corner, and several of the police were placed along the passages\*.

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XVII.

PUBLIC BILLS.

Appendix XVII. MOTIONS TO BE MADE DURING THE VARIOUS STAGES OF A BILL.

*Notice.*

Mr. ——— gives notice that he will on [tomorrow] move for leave to bring in a bill to [alter the mode of holding County Elections].

*Motion for leave to bring in a Bill.*

Mr. ——— seconded by Mr. ——— moves for leave to bring in a Bill to (alter the mode of holding County Elections.)

The motions for its first reading, second reading, and committal, being questions of course, are made by the Speaker without a formal motion put, when the time appointed for the same has arrived. But if a member be desirous of bringing up a Bill out of its turn, the following motion is required :

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\* This plan is similar (though with a few alterations) to that adopted by the House on the occasion of the Coronation of Queen Anne, and entered on the Journal book of the 23d April, 1702.

*Motion for calling up a Bill out of its turn.*

Appendix XVII

Mr. — seconded by Mr. — moves, that the Order of the Day for the second reading of the Bill to (alter the mode of holding County Elections) be now read.

On a question for receiving the report of a Bill from Committee, a member may move that it be received "this day six months," or that "it be re-committed."

*Motion for amending a Bill on the question for its third reading.*

Mr. — seconded by Mr. — moves, that the Bill be not now read a third time, but that it be re-committed forthwith (or, on — next,) for the purpose of amending the same (by expunging the — clause,—or, by adding the following: (or otherwise, as the case may be.)

*Motion for throwing out a Bill.*

On the question for the second or third reading, recommitment, or passing.

Mr. — seconded by Mr. — moves in amendment, that the Bill be not read a second, (or third time, or committed,—or do not now pass—as the case may be)—but that it (be read, &c.—as the case may be) this day three months.

## TITLE.

*After the passing of the Bill.*

Mr. — seconded by Mr. — moves, that the bill be entitled "An Act to alter the mode of holding County Elections, and to repeal the laws now in force for that purpose"—(or as the case may be.)

## XVIII.

*Example of the Forms required in a Private Bill, in the* Appendix XVIII.

*Notice, Petition, and Allegations that must be proved before the Committee—(in the case of a Road Bill).*

Notice is hereby given, that application is intended to be made to Parliament in the next session, for an Act for making, and maintaining a turnpike road, to commence at or near to a certain place called — in the parish of —, and to pass from thence over —, in the parish of — aforesaid, through — to — in the parish of —, and

Appendix XVIII. from thence through or near the town or village of — to —, and to terminate at, or near to a certain place called —, in the town of —; all in the County of —.

A. B. Solicitor for the Bill.

*Form of Petition.*

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The humble petition of the several persons whose names are hereunto subscribed, being inhabitants of — in the parish of —, in the county of —.

Sheweth,

That the making and maintaining of a turnpike road, to commence at (*insert from the notice,*) would be of great benefit and advantage to the inhabitants of —, and the adjacent country, and also to the public at large; but the same cannot be carried into execution without the aid and authority of Parliament.

Your petitioners, therefore, humbly pray that leave may be given to bring in a bill for effecting the purpose aforesaid, in such manner, by such ways and means, and under such regulations and restrictions, as to this Honourable House shall seem meet.

And your petitioners shall ever pray.

[*Signatures.*]

*Form of statement of Proofs before Committee on Petition.*

1. Produces newspapers entitled — of — [such a date.]
2. Produces and proves copy of notice, which he affixed to the door of the Sessions House, at —, on the —; at the Michaelmas Quarter Sessions.
3. Proves that he applied to the owners and occupiers of property to be taken, and that the statements set against their names, as entered in the list deposited in the Private Bill Office, is correct.
4. Proves the estimate: he made it.
5. Proves that the list of the names of the subscribers, and of the sums set against their names, is correct.
6. Proves depositing in the Private Bill Office, plan, section, and book of reference, list of owners and occupiers, estimate of expense, and subscription list.
7. Proves allegations of petition.

## XIX.

*Petition for a Divorce Bill.*

To the Right Honorable the Lords Spiritual and Temporal, in Parliament assembled. Appendix XIX.

The humble petition of A. B. of —, Esq.

Sheweth,

That on the — day of —, your Lordships' petitioner was married to C. D. his now wife, (then of —,) spinster.

That your Lordships' petitioner, and the said C. D. lived and cohabited together as man and wife, from the time of their said marriage, until sometime in the month of —, and had issue during that period, — children (viz, — sons and — daughters), all (or —) of whom are now living, (or, "but there has been no lawful issue of the "said marriage.")

That in the month of — in the present year, your Lordships' petitioner discovered that his wife, the said C. D., had entered into, and carried on an unlawful familiarity and criminal intercourse with E. F., Esq., commonly called the Honorable E. F., of —, in the county of —.

That your Lordships' petitioner did, in Easter term, bring an action of trespass in Her Majesty's Court of Queen's Bench, at Westminster, against the said E. F., Esq. &c. in order to recover damages for such criminal conversation with his said wife; and obtained judgment in the said action for £— damages, besides costs.

That on the — day of — your Lordships' petitioner instituted a suit in the Consistory Court of the Right Reverend the Lord Bishop —, against the said C. D. his wife, and obtained against her in the said Court a definitive sentence of divorce from bed and board and mutual cohabitation, for adultery committed with the said E. F.

That the said C. D. hath, by her criminal and adulterous behaviour, as aforesaid, dissolved on her part the bond of marriage; and your Lordships' petitioner is thereby deprived of the comforts of matrimony, and may be liable to have a spurious issue imposed upon him, unless the said marriage be declared void, and annulled by the authority of Parliament.

Your petitioner, therefore, most humbly prays your Lordships, that leave may be given to bring in a bill to

Appendix XIX. — dissolve his marriage with the said C. D. and to enable him to marry again, and that he may have such other relief in the premises as this Right Honorable House shall think proper.

And your petitioner, &c.

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XX.

Appendix XX. — *Petition to dispense with the attendance of a Person suing for a Divorce, and with the service of Order and Bill.*

To the Right Honorable the Lords Spiritual and Temporal, in Parliament assembled.

The humble petition of E. F., of —, the attorney (or agent) of A. B. of —, (in the East Indies or elsewhere,) Esq.

Sheweth,

That on the — day of — instant, your Lordships' petitioner did, on the behalf of the said A. B., present a petition to this Right Honorable House, praying your Lordships that leave might be given to bring in a bill to dissolve the marriage of the said A. B. with C. D.

That the second reading of the said bill is appointed for the — day of —.

That your Lordships by your order of the — day of —, have been pleased to require that the said A. B. should attend this Right Honorable House, on the said — day of —, for the purpose of being examined touching the said bill.

That the said A. B. is at present residing at — in the East Indies, (or elsewhere,) and from the circumstance of his absence from England is unable to attend this Right Honorable House on the matter of the said petition and bill.

[It also may be necessary to petition their Lordships to dispense with a personal service of an order and copy of the bill, *on the party against whom the divorce is sued for.* After reciting the order, proceed:]

That your petitioner hath made every diligent search and enquiry after the said C. D. without effect, and that he is credibly informed and believes, that she is now residing in —, or in some parts beyond the seas, so that personal notice cannot be served upon her, agreeably to the said order of this Right Honourable House.

Your petitioner, therefore, humbly prays, that the service of the said order, and also an attested copy of the said bill, signed by the Clerk of this Right Honourable House, upon G. H. trustee of the said C. D., may be deemed as good, sufficient, and effectual notice to the said C. D. of the order of your Lordships', and of the time of the second reading of the said bill, as if she had been personally served with the said order and bill.

And your petitioner, &c.

Appendix XX.

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XXI.

*Form of Judges' Report on a Private Petition.*

Appendix XXI.

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled :

In pursuance of Your Lordship's order of reference of the — day of — last, hereunto annexed, we have considered the petition of A. B. & C. D. in the said order mentioned, and hereunto also annexed; and we find that under and by virtue of certain indentures, (*quote the petition*).

And we further find (*quote the petition*).

And it was proved before us (*quote the petition*).

And it was also proved before us, that the said petition hath been signed by the said petitioners, the said A. B. & C. D., who we conceive are all the parties beneficially interested in the consequences of the Bill.

And we have perused and signed the Bill hereunto annexed, which we conceive to be proper for effectuating the purposes aforesaid; and that it is reasonable that the same should pass into a law, if your Lordships should so please.

Given under our hands, this — day of —.

*Form of Petition to receive Judges' Report.*

To, &c.

The humble Petition of —

Sheweth,

That on the — day — last, your petitioners presented a petition to this Right Honourable House praying for leave to bring in a bill to effect the purposes therein mentioned, which petition your Lordships were pleased to refer for their consideration, to Mr. Justice —, and Mr. Justice —; and that the said Judges met on the — day of —

Appendix XXI. *for the purpose of considering the said petition; that they signed their report thereon, and also signed a bill for effecting the purposes for which the said petition prays.*

Your petitioner, the said ———, therefore humbly prays, and the said petitioners therefore humbly pray your Lordships, that the report of the said judges may be now received:

And your petitioner shall ever pray.

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## XXII.

Appendix XXII. *Form of Memorial to the Treasury, when the King is interested in any bill pending.*

To the Right Honourable the Lords Commissioners of His Majesty's Treasury.

The humble memorial of A. B., agent for the bill hereinafter named;

Sheweth,

That a bill is depending in the Honorable the House of Commons for (*insert title of bill*), in which it appears His Majesty's interest is concerned.

Your memorialist, therefore, humbly prays your Lordships, that intercession may be made to His Majesty, for His consent to the said bill.

A. B. agent for the bill.

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## XXIII.

Appendix XXIII. FORMS RELATING TO SELECT COMMITTEES.

### *Notice.*

Mr. — gives notice that he will, on (to-morrow) move for the appointment of a (select, *if to consist of less than six members*;) Committee (by ballot, *if to consist of more than five members*) to take into consideration (*here state the subject*)—with power to send for persons and papers and to report thereon (*by bill or otherwise*, as the case may be).

### *Motion for appointment of Select Committee.*

Mr. — seconded by Mr. — moves that a Select Committee (or a Committee of Privilege, *as the case may be*;) be appointed, to take into consideration (*here state the subject*), with power to send for persons and papers, and

to report thereon (by bill or otherwise—as the case may be), and that Messrs. — do compose the said Committee. Appendix XXIII.

*Motion for appointment of a Committee by ballot.*

Mr. — seconded by Mr. — moves, that this House do (on to-morrow) at — of the clock, (A. M. or P. M., as the case may be) proceed to ballot for a Committee of — of its members, to take into consideration, &c.

*Motion for referring a Petition or other document to a Select Committee.*

Mr. — seconded by Mr. — moves, that the petition of — (or other document—as the case may be) be referred to (the committee on —, or to) a Select Committee, consisting of Messrs. —; with power to send for persons and papers, and to report thereon (by bill or otherwise—as the case may be).

*Motion for withdrawing a Petition or other document from one Committee and referring it to another.*

Mr. — seconded by Mr. — moves, that the (Select) Committee to which was referred the petition of — (or other document, as the case may be) be discharged from the further consideration thereof, and that the said petition (or other document) be referred to &c. (as above).

*Form of a Report of a Committee.*

To the Honourable the Commons House of Assembly.

The (Select) Committee appointed to take into consideration, &c. — (or, to which was referred the petition of —, or other document.)

Beg leave to report :

(Here follows the body of the Report.)

All which is respectfully submitted.

A. B. Chairman.

Committee Room, }  
—th — 18—. }

## XXIV.

## FORMS OF ADDRESSES.

*Notice.*

Mr. — gives notice that he will on (to-morrow) move that it be *Resolved*, That an humble Address be presented to Her Majesty (*or*, to His Excellency the Governor General, *or* Lieutenant Governor (*as the case may be*)) praying that (*insert the subject matter of the Address.*)

*Motion for an Address.*

Mr. — seconded by Mr. — moves, that it be *Resolved*, That an humble Address be presented to Her Majesty (*or*, to His Excellency the Governor General, *or* Lieutenant Governor, *or* otherwise, *as the case may be*,) praying (*insert the subject matter of the Address*); and that Messrs. —, and — be a Committee to draft and report the same.

*Address of Thanks.*

To His Excellency (*name of Governor, with his titles,*)  
&c. &c. &c.

May it please Your Excellency,

We, Her Majesty's dutiful and loyal subjects the Commons of Upper Canada, in Provincial Parliament assembled, beg leave to thank Your Excellency for your several Messages of yesterday (*or as the case may be*).

———— Speaker.

Commons House of Assembly, }  
— day of — 18—. }

*Address to the Queen.*

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,

We, Your Majesty's dutiful and loyal subjects, the Commons of Upper Canada, in Provincial Parliament assembled, &c. &c.

*Address to Governor to transmit Address to the Queen.*

To His Excellency (*name of Governor, with his titles,*)  
&c. &c. &c.

May it please Your Excellency,

We, Her Majesty's dutiful and loyal subjects the Commons of Upper Canada, in Provincial Parliament assembled, beg leave to inform Your Excellency that we have agreed to an humble Address to the Queen on the subject

— which we respectfully pray Your Excellency will be pleased to transmit to Her Majesty's principal Secretary of State for the Colonies, in order that the same may be laid at the foot of the Throne. Appendix XXIV.

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## XXV.

### *House of Commons' Officers' Compensation.*

Appendix XXV.

Resolutions of a Select Committee on the Salaries of Officers of the House of Commons and the abolition of Fees and Perquisites; adopted by the House, on the 29th June, 1836.

1. *Resolved*, That this House agree with the recommendations of the Select Committee, "that the annual sum of £911 be allowed to Mr. John Pratt, the Head Doorkeeper, during the time he shall continue to perform the duties of his office, in lieu of all Salary, Fees, Gratuities, and Emoluments whatsoever."

*Resolved*, That the annual sum of £874 be allowed to Mr. Francis Williams, the Under Doorkeeper, during the time he shall continue to perform the duties of his office, in lieu of all Salary, Fees, Gratuities and Emoluments whatsoever.

*Resolved*, That the annual Salary of each of the Doorkeepers, after Mr. Pratt and Mr. Williams shall retire, be £400, in lieu of all Fees, Gratuities and Emoluments whatsoever.

*Resolved*, That the annual sum of £375 be allowed to Mr. William Bellamy, late Lower Doorkeeper, instead of his Salary of £300 a year, as Messenger, in consideration of the amount of Gratuities received by him in his former situation of Lower Doorkeeper.

*Resolved*, That the annual sum of £587 be allowed to each of the Three Messengers, W. Gifford, C. Stein, and W. Cook, during the time they shall each continue to perform the duties of their office, in lieu of all Salary, Fees, Gratuities, and Emoluments whatsoever.

*Resolved*, That W. Bevan, an extra Messenger, be allowed the annual sum of £112 12s. until he come within the recommendation of the Select Committee of 1835— "That after ten years' service, the Salary be increased to "£120 a year."

*Resolved*, That the annual sum of £1,900 be allowed to Mr. Dorington, as Chief Clerk of the Public Bill and

Appendix XXV. *Fee Office*, in consideration of his performing the duties recommended by the Select Committee of 1835; and that this sum be paid to him in lieu of the Salary and *per centage* therein recommended; and in lieu of all Salary, Fees, and Emoluments whatsoever.

That the sum of £488 be allowed to Mr. G. B. Ellicombe, as compensation for relinquishing his situation (as a Clerk) in Mr. Dorington's Office, being the average amount of two years Salary and Emolument received by him during the time he has been in that Office.

*Resolution* approving of new management in Fee and Public Bill Office, and declaring that all Fees to be paid after the commencement of fixed Salaries, shall be paid to the Fee Fund for the public use.

*Resolved*, That the annual sum of £800 be allowed to Mr. T. Dyson, for relinquishing his office of Clerk of Elections in consequence of his long services.

*Resolved*, That all Officers of this House be prohibited, under penalty of immediate dismissal, from receiving any Emolument by Fee, Subscription, or otherwise, for admission into the Gallery of this House; and that the admission of strangers be regulated according to such directions as shall be given by Mr. Speaker, from time to time.

*Resolved*, That this House concur in the recommendation of the Select Committee, that Mr. Eastaff, a retired Clerk from the Vote Office, after twenty-six years service, be allowed £100 a year during his life; and as the payment of that allowance has been suspended during the two last years, the arrears for 1834 and 1835 be also paid.

## XXVI.

### Appendix XXVI. DURATION OF ENGLISH PARLIAMENTS.\*

From the imperfect accounts that have been handed down to us, no authentic record can be found of the precise duration of all the old English Parliaments; but the following table (from Edward I. to Henry VIII.) will show the number of Parliaments that were held by the respective monarchs, with the length of each Reign:

	Number of Parlts.	Length of Reigns: Years.		Number of Parlts.	Length of Reigns: Years.
Edward I. (fr. 1299)	8	8	Henry VI. ....	22	39
Edward II. ....	15	20	Edward IV. ....	5	22
Edward III. ....	37	53	Richard III. ....	1	2
Richard II. ....	26	22	Henry VIII. ....	8	24
Henry IV. ....	10	14			
Henry V. ....	11	9	Total..	143	213

\* The reference to the following Table was omitted, it should have been referred to in the note at page 90.

From which it appears, that in the two hundred and thirteen years preceding the reign of Henry VIII., there were one hundred and forty three Parliaments; thus averaging about one in every year and a half. Appendix XXVI.

TABLE of the DURATION of PARLIAMENTS from the 1st of Henry VIII., when long Parliaments were first introduced, to the end of William IV.\*

REIGN OF HENRY VIII.			REIGN OF WILLIAM III.		
MET.	DISSOLVED.	EXISTED Y. M. D.	MET.	DISSOLVED.	EXISTED Y. M. D.
21 Jan. 1510	23 Feb. 1510	0 1 2	20 Mar. 1629	11 Oct. 1695	6 6 22
4 Feb. 1511	4 Mar. 1513	2 1 0	27 Nov. 1695	7 July 1698	2 7 10
5 Feb. 1514	22 Dec. 1515	1 10 17	24 Aug. 1698	19 Dec. 1700	2 3 26
15 Apr. 1523	13 Aug. 1523	0 3 29	6 Feb. 1701	11 Nov. 1701	0 8 5
3 Nov. 1530	4 April 1536	5 5 1	30 Dec. 1701	2 July 1702	0 6 2
8 June 1536	18 July 1536	0 1 10			
28 Apr. 1539	24 July 1540	1 2 26			
16 Jan. 1541	29 Mar. 1544	3 2 13			
23 Nov. 1545	31 Jan. 1547	1 2 8			
EDWARD VI.			ANNE.		
4 Nov. 1547	15 Ap'l 1552	4 5 11	20 Aug. 1702	5 Ap'l 1705	2 7 16
1 Mar. 1553	31 Mar. 1553	0 1 0	14 June 1705	15 Ap'l 1708	2 10 1
			8 July 1708	21 Sep. 1710	2 2 13
			25 Nov. 1710	8 Aug. 1713	2 8 14
			12 Nov. 1713	15 Jan. 1715	1 2 3
MARY II.			GEORGE I.		
5 Oct. 1553	6 Dec. 1553	0 2 1	17 Mar. 1715	10 Mar. 1721	5 11 24
2 Ap'l. 1554	5 May 1551	0 1 3	10 May 1722	7 Aug. 1727	5 2 28
12 Nov. 1551	16 Jan. 1555	0 2 4			
21 Oct. 1555	9 Dec. 1555	0 1 18			
20 Jan. 1557	17 Nov. 1557	0 9 28			
ELIZABETH.			GEORGE II.		
23 Jan. 1558	8 May 1558	0 3 16	28 Nov. 1727	18 Ap'l. 1734	6 4 21
11 Jan. 1562	2 Jan. 1567	4 11 22	13 June 1734	28 Ap'l. 1741	6 10 15
2 Ap'l. 1571	29 May 1571	0 1 27	25 June 1741	18 June 1747	5 11 24
8 May 1572	18 Mar. 1580	7 10 10	13 Aug. 1747	8 Ap'l. 1754	6 7 26
23 Nov. 1585	14 Sep. 1586	0 9 21	31 May 1754	20 Mar. 1761	6 9 29
29 Oct. 1586	23 Mar. 1587	0 4 23			
4 Feb. 1588	29 Mar. 1588	0 1 25			
19 Nov. 1592	10 Ap'l. 1593	0 4 22			
24 Oct. 1597	9 Feb. 1598	1 8 16			
7 Oct. 1601	29 Dec. 1601	0 2 22			
JAMES I.			GEORGE III.		
19 Mar. 1603	9 Feb. 1611	7 10 21	19 May 1761	11 Mar. 1768	6 9 22
5 Ap'l. 1614	7 June 1614	0 2 2	10 May 1768	30 Sep. 1774	6 4 21
30 Jan. 1629	8 Feb. 1621	1 0 9	29 Nov. 1774	1 Sep. 1780	5 9 4
19 Feb. 1623	24 Mar. 1625	2 1 5	31 Oct. 1780	25 Mar. 1784	3 4 26
			18 May 1784	11 June 1790	6 0 25
			10 Aug. 1790	20 May 1796	5 11 3
			12 July 1796	31 Dec. 1800	
			United Kingdom of Great Britain and Ireland. } 5 11 15		
			22 Jan. 1801	29 Jan. 1802	
			31 Aug. 1802	21 Oct. 1806	4 2 25
			15 Dec. 1806	29 Ap'l. 1807	0 4 15
			22 June 1807	29 Sep. 1812	5 3 7
			24 Nov. 1812	10 June 1818	5 6 16
			4 Aug. 1818	29 Feb. 1820	1 6 25
CHARLES I.			GEORGE IV.		
17 May 1625	12 Aug. 1625	0 2 26	23 Ap'l. 1820	2 June 1826	6 1 9
6 Feb. 1626	15 June 1626	0 4 9	14 Nov. 1826	24 July 1830	4 1 22
17 Mar. 1627	10 Mar. 1628	0 11 23			
13 Ap'l. 1640	3 May 1640	0 0 22			
3 Nov. 1640	20 Ap'l. 1653	12 5 17			
CHARLES II.			WILLIAM IV.		
25 Ap'l. 1660	29 Dec. 1660	0 8 4	26 Oct. 1830	22 Ap'l. 1831	0 5 27
8 May 1661	24 Jan. 1678	16 8 16	14 June 1831	3 Dec. 1832	0 5 20
6 Mar. 1679	12 July 1679	0 4 6	29 Jan. 1833	30 Dec. 1834	1 11 1
17 Oct. 1679	18 Jan. 1681	1 3 1	19 Feb. 1835	17 July 1837	2 5 2
21 Mar. 1681	28 Mar. 1681	0 0 7			
JAMES II.			VICTORIA.		
12 Mar. 1685	29 July 1687	2 4 16	15 Nov. 1837		
22 Jan. 1688	26 Feb. 1689	1 1 4			

\* For the following Table, with some corrections, I am indebted to M'Culloch's Statistics of the British Empire, v. 2, p. 121.

## E R R A T A.

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- In page 39, twenty-one lines from the top, for "custoday"  
read "custody."
- 80, fourth line from bottom, for "Ch. X." read  
"Chap. VIII."
- 122, in Note, fourth line from bottom, for "3,000"  
read "30,000 (*majores et minores barones*)"  
and in the last line of that note, for "Sel.  
"Tit. Hon. 692," read "Spelman's Glos-  
"sary, 67."
- 142, in side note, last line, for "admissable" read  
"admissible."
- 148, lines ten and fifteen from the top, for "admis-  
"sable" read "admissible."
- 169, line fifteen from the top, for "But is usual"  
read "But it is usual."
- 190, in first side note, for "passed" read "classed."
- 192, heading of the chapter, line four, after "viz."  
insert "Compounding Debts due to the  
"Crown."



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Standing Orders on Private Bills, Committee on . . . . .	Verbal Messages from the King . . . . .
Member may call for enforcement of . . . . .	Vote of Credit . . . . .
Statutes, promulgation of . . . . .	
Stockdale v. Hansard, case of . . . . .	
Strangers must withdraw when a Member takes notice of their being present . . . . .	
must withdraw before a division . . . . .	
Striking in the King's palace or presence, punishment of . . . . .	
Spiritual Lords, See <i>Lords Spiritual</i> .	
Summary of Lords' privileges . . . . .	