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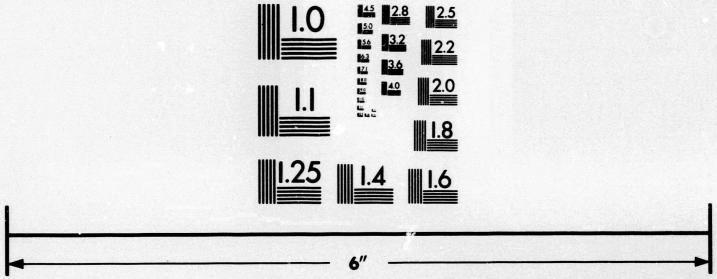


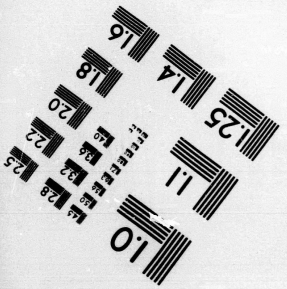


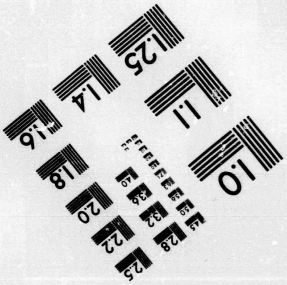


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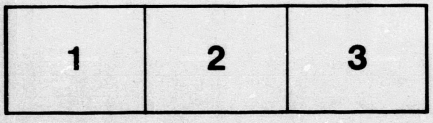


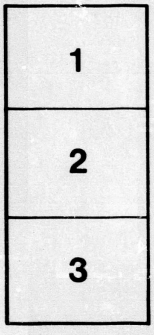


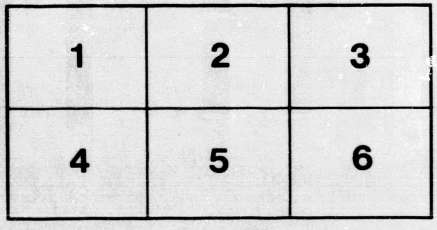


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32X

PARLIAMENTARY

# PROCEDURE AND PRACTICE

WITH AN INTRODUCTORY ACCOUNT OF THE
ORIGIN AND GROWTH OF

## PARLIAMENTARY INSTITUTIONS

IN THE

## DOMINION OF CANADA.

BY

JOHN GEORGE BOURINOT,
CLERK OF THE HOUSE OF COMMONS OF CANADA.

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# PREFACE.

THE object which the author has had constantly in view in compiling the present work is to give such a summary of the rules and principles which guide the practice and proceedings of the Parliament of Canada as will assist the parliamentarian and all others who may be concerned in the working of our legislative system. The rules and practice of the Parliament and the Legislatures of Canada are, for the most part, originally derived from the standing orders and usages of the Imperial Parliament, but, in the course of years, divergencies of practice have arisen, and a great many precedents have been made which seem to call for such a work as this. It has, moreover, been the writer's aim, not only to explain as fully as possible the rules and usages adopted in Canada, but also to give such copious references to the best authorities, and particularly to the works of Hatsell and May, as will enable the reader to compare Canadian with British procedure. A list of the authorities most frequently cited, with an explanation of the abbreviations used in citation, is appended for the convenience of those who may wish to follow out any question more in detail.

It seemed proper, in order to a clearer comprehension of the subject of the work, to preface it with an introductory chapter upon the origin and gradual development of parliamentary institutions in the Dominion.

In so brief a compass a summary of the salient features only of the various constitutional changes which have resulted in the present very liberal parliamentary system of Canada could be given. The author has also added, in the same chapter, a digest of the decisions of the judicial committee of the Privy Council and of the Supreme Court of Canada which bear upon the important question of the relative jurisdictions of the Parliament and the local legislatures. While the work was passing through the press, other decisions were given which rendered a supplementary chapter necessary, and, consequently, the twenty-second chapter will be more conveniently considered immediately after the first, or introductory chapter. These decisions have necessarily been cited without remark, as facts to be taken into account by those who are engaged in the practical work of legislation.

HOUSE OF COMMONS, OTTAWA,
20th February, 1884.

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## ERRATA.

Page 19, note 1, line 7, for 1795, read 1794.
" 270, note 2, insert after *infra*, p. 316.
" 333, note 2, line 4, for 267 E. Hans. (3), 1882, read 267 E. Hans. (3), 219.
" 465, insert 187 E. Hans. (3), 1667, at commencement of first note.
" 483, last line, read " propose the time" for " fix the time."

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# CHAPTER I.

## INTRODUCTION.

### *PARLIAMENTARY INSTITUTIONS IN CANADA.*

I. Canada under the French Régime.—II. Government from 1760 to 1774.—III. Quebec Act, 1774.—IV. Constitutional Act, 1791.—V. Union Act, 1840.—VI. Federal Union of the Provinces—British North America Act, 1867.—VII. Constitution of the General Government and Parliament.—VIII. Constitution of the Provincial Governments and Legislatures—Organization of the North-West Territory.—IX. Disallowance of Provincial Acts.—X. Distribution of Legislative Powers.—XI. Decisions of the Judicial Committee of the Privy Council—and of the Supreme Court of Canada on questions of Legislative Jurisdiction.—XII. Position of the Judiciary—Conclusion of Review.

**I. Canada under the French Régime.**—The history of parliamentary institutions in Canada commences towards the close of the eighteenth century. Whilst the country remained in possession of France, the inhabitants were never represented in legislative assemblies and never exercised any control over their purely local affairs by frequent town meetings. In this respect they occupied a position very different from that of the English colonists in America. The conspicuous features of the New England system of government were the extent of popular power and the almost entire independence of the parent state in matters of provincial interest and importance. All the freemen were accustomed to assemble regularly in township meetings, and take part in the debates and proceedings. The town, in fact, was "the political unit," and was accordingly represented in the

legislature of the colony. Legislative assemblies, indeed, were the rule in all the old colonies of England on this continent—even in proprietary governments like that of Maryland.[1] On the other hand, in the French colony, a legislative system was never enjoyed by the inhabitants. The first government which was established by Samuel Champlain, the founder of Quebec, was invested with large authority.[2] For over half a century, whilst the country was practically under the control of trading corporations, the governor exercised all the powers of civil and military government, necessary for the security and peace of the colony. Though he had the assistance of a council, he was under no obligation whatever to follow its advice, on all occasions. After some years' experience of a system of government which made the early governors almost absolute, Colbert effected an entire change in the administration of colonial affairs. From 1663, the government of Canada was brought more directly under the control of the king, and made more conformable to the requirements of a larger population. But in all essential features the government resembled that of a French province. The governor and intendant were at the head of affairs and reported directly to the king.[3] Of these two high functionaries, the governor was the superior in position; he commanded the troops, made treaties with the Indians, and took precedence on all occasions of state. The

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[1] Lodge's English Colonies in America, pp. 413, 414.

[2] I. Garneau, 87. The "Instructions" in the early commissions ordered: "And according as affairs occur, you shall in person, with the advice of prudent and capable persons, prescribe—subject to our good pleasure—all laws, statutes and ordinances; in so far as they may conform to our own, in regard of such things and concernments as are not provided for by these presents."

[3] The governor was styled in his commission, "Gouverneur et Lieutenant-Général en Canada, Acadie, Isle de Terre Neuve, et autres pays de la France Septentrionale;" and the intendant, "Intendant de la Justice, Police et Finances en Canada," etc. I. Doutre et Lareau, Histoire du Droit Canadien, 130.

intendant came next to him in rank, and by virtue of his large powers exercised great influence in the colony. He presided at the council, and had control of all expenditures of public money. His commission also empowered him to exercise judicial functions, and in certain cases to issue ordinances having the force of law whenever it might be necessary.[1]

When the king re-organized the government of Canada in the month of April, 1663, he decreed the establishment of a supreme council at Quebec.[2] This body, afterwards called the superior council, consisted of the governor, the bishop, the intendant and five councillors, subsequently increased to seven[3] and eventually to twelve.[4] This council exercised legislative, executive and judicial powers. It issued decrees for the civil, commercial, and financial government of the colony, and gave judgment in civil and criminal causes according to the royal ordinances and the *coutume de Paris*, besides exercising the function of registration borrowed from the Parliament of Paris. An attorney general sat in the council, which was also empowered to establish subordinate courts throughout the colony. From the decisions of the intendant or the council there was no appeal except to the king in his council of state. Local governors were appointed at Montreal and Three Rivers, but their authority was very limited; for they were forbidden to fine or imprison any person with-

[1] See Commissions of Intendants in *Edits et Ordonnances*, III.

[2] *Edit de création du conseil Souverain de Quebec*, *Ib.* I. 37.

[3] In 1675, when the king confirmed the decree of 1663 (I. *Ib.* 83,) and revoked the charter of the West India Co., to which exclusive trading privileges had been conceded in 1664. I. Doutre et Lareau, Histoire du Droit Canadien, 118, 184.

[4] In 1703. The councillors were rarely changed and usually held office for life. They were eventually chosen by the king from the inhabitants of the colony on the recommendation of the governor and intendant. The West India Co. made nominations for some years. The first council, after the edict of 1663, was selected by the governor and bishop, but practically by the latter, Monseigneur Laval. Parkman, pp. 135-6.

out obtaining the necessary order from Quebec. Neither the *seigneur* nor the *habitant* had practically any voice whatever in the government; and the royal governor called out the militia whenever he saw fit, and placed over it what officers he pleased. Public meetings for any purpose were jealously restricted, even when it was necessary to make parish or market regulations.[1] No semblance of municipal government was allowed in the town and village communities. Provision had been made in the constitution of 1663 for the election of certain municipal officers called syndics, to note any infraction of public rights in the large communities; but, after a few futile attempts to elect such functionaries, the government threw every obstacle in the way of anything like a municipal system, and the people finally were left without any control whatever over their most trivial local affairs.[2] The very social fabric itself rested on feudal principles modified to suit the condition of things in a new country. The *habitant* held his lands on a tenure which, however favourable to settlement, was based on the acknowledgment of his dependence on the *seigneur*. But at the same time the lord of the manor, and the settler on

[1] Il ne laisse pas d'être de très grande conséquence de ne pas laisser la liberté au peuple de dire son sentiment. (Meules au Ministre, 1685.) Even meetings held by parishioners under the eye of the curé to estimate the cost of a new church seem to have required a special license from the intendant. (Parkman, The Old Régime in Canada, p. 280.) Not merely was the Canadian colonist allowed no voice in the government of his province or the choice of his rulers, but he was not even permitted to associate with his neighbour for the regulation of those municipal affairs which the central authority neglected under the pretext of managing. Lord Durham's R., p. 10.

[2] Doutre et Lareau, Histoire du Droit Canadien, 138. The regulations of 1647 show that such officers existed in Quebec, Montreal and Three Rivers, but they had ceased to be appointed by 1661. The first elections held in 1663 were allowed to miscarry, and from that time forward, says Garneau, "There was no further question of free municipal government in Canada, so long as French dominion endured, although a nominal syndicate existed for a short time after that now under review." I. Garneau, 189-90.

his estate, were on an equal footing to all intents and purposes as respects any real influence in the administration of the public affairs of the colony. The very name of Parliament had to the French colonist none of that significance it had to the Englishman, whether living in the parent state or in its dependencies. The word in France was applied only to a body whose ordinary functions were of a judicial character, and whose very decrees bore the impress continually of royal dictation. In Canada, as in France, absolutism and centralization were the principles on which the government was conducted. The king administered public affairs through the governor and intendant, who reported to him as frequently as it was possible in those times of slow communication between the parent state and the colony.[1] The country prospered or languished, according as the king was able or disposed to take any interest in its affairs; but even under the most favourable circumstances it was impossible that Canada could make any decided political or material progress with a system of government which centralized all real authority several thousand miles distant.[2]

**II. Government from 1760 to 1774.**—Canada became a possession of Great Britain by the terms of capitulation signed on the 8th of September, 1760.[3] By these terms great Britain bound herself to allow the French-Canadians the free exercise of their religion; and certain specified fraternities, and all communities of *religieuses* were guaranteed

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[1] "The whole system of administration centred in the king, who, to borrow the formula of his edicts, 'in the fullness of our power and our certain knowledge,' was supposed to direct the whole machine, from its highest functions to its pettiest intervention, in private affairs." Parkman, Old Régime, pp. 285-6.

[2] For accounts of system of government in Canada till the Conquest, see I. Garneau, book iii., chap. iii. Parkman's Old Régime in Canada, chap. xvi. Reports of Attorney-General Thurlow (1773), and Solicitor-General Wedderburne (1772), cited by Christie, vol. i., chap. ii.

[3] Atty.-Gen. Thurlow; Christie's Hist., vol. i., p. 48. II. Garneau, 70.

the possession of their goods, constitutions and privileges, but a similar favour was denied to the Jesuits, Franciscans or Recollets and Sulpicians until the King should be consulted on the subject. The same reservation was made with respect to the parochial clergy's tithes. These terms were all included in the Treaty of Paris, signed on the 10th of February, 1763, by which France ceded to Great Britain, Canada, and all the Laurentian isles, except St. Pierre and Miquelon, insignificant islands off the southern coast of Newfoundland, which were required for the prosecution of the French fisheries. In this treaty Great Britain bound herself to allow the Canadians the free exercise of their religion, but no reference was made in the document to the laws that were to prevail throughout the conquered country.[1]

For three years after the conquest the government of Canada was entrusted to the military chiefs, stationed at Quebec, Montreal and Three Rivers, the headquarters of the three departments into which General Amherst divided the country.[2] Military councils were established to administer law, though as a rule the people did not resort to such tribunals, but settled their difficulties among themselves. In 1763, the King, George III., issued a proclamation establishing four new governments, of which Quebec was one.[3] Labrador, from St. John's River to Hudson's Bay, Anticosti, and the Magdalen Islands, were placed under the jurisdiction of Newfoundland, and the islands of St. John (or Prince Edward Island, as it was afterwards called), and Cape Breton (Ile Royale), with the smaller islands adjacent thereto, were added to the government of Nova Scotia. Express power was given

[1] Atty.-Gen. Thurlow; Christie, vol. i., p. 48. Miles, History of Canada under French Régime, app. xvi.

[2] These three divisions corresponded to the old ones under the French régime. General Murray was stationed at Quebec; General Gage at Montreal; Colonel Burton at Three Rivers. II. Garneau, 82.

[3] The others were East Florida, West Florida, and Grenada. The boundaries of the several governments are set forth in the proclamation.

to the governors, in the letters-patent by which these governments were constituted, to summon general assemblies, with the advice and consent of his Majesty's Council, "in such manner and form as was usual in those colonies and provinces which were under the king's immediate government." Authority was also given to the governors, with the consent of the councils, and the representatives of the people, to make laws, statutes and ordinances for the peace, welfare and good government of the colonies in question. The governors were also empowered to establish, with the advice of the councils, courts of judicature and public justice, for the hearing of civil and criminal causes, according to law and equity, and, as near as may be, agreeable to the laws of England, with the right of appeal in all civil cases to the privy council.[1] General Murray,[2] who was appointed governor of Quebec on the 21st November, 1763, was commanded to execute his office according to his commission, and accompanying instructions or such other instructions as he should receive under his Majesty's signet and sign manual, or by his Majesty's order in council, and according to laws made with the advice and consent of the council and assembly—the latter to be summoned as soon as the situation and circumstances of the province should admit. The persons duly elected by the majority of the freeholders of the respective parishes and places were required, before taking their seats in the proposed assemblies, to take the oaths of allegiance and supremacy, and

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[1] Proclamation of 7th October, 1763. Atty.-General Thurlow's Report; Christie, vol. i., pp. 49-50. In the debates on the Quebec Bill, the vagueness of this proclamation was sharply criticised, and no one appears to have been willing to assume the responsibility of having framed it for the King. Atty.-Gen. Thurlow acknowledged that "it certainly gave no order whatever with respect to the constitution of Canada; it certainly was not a finished composition," etc. Cavendish's Debates, p. 29.

[2] Sir Jeffery Amherst was in reality the first, and Gen. Murray the second, governor-general of Canada. II. Garneau, 87; *supra* p. 6.

the declaration against transubstantiation.[1] All laws, in conformity with the letters-patent, were to be transmitted in three months to the king, for disallowance or approval. The governor was to have a negative voice, and the power of adjourning, proroguing and dissolving all general assemblies.[2]

No assembly, however, ever met as the French-Canadian population were unwilling to take the test oath,[3] and the government of the province was carried on solely by the governor-general, with the assistance of an executive council, composed in the first instance of the two lieutenant-governors of Montreal and Three Rivers, the chief justice, the surveyor general of customs, and eight others chosen from the leading residents in the colony.[4] From 1763 to 1774 the province remained in a very unsettled state, chiefly on account of the uncertainty that prevailed as to the laws actually in force. The "new subjects," or French-Canadians, contended that justice, so far as they were concerned, should be administered in accordance with their ancient customs and usages, by which for a long series of years their civil rights and property had been regulated, and which they also maintained were secured to them by the terms of the capitulation and the subsequent treaty. On the other hand, "the old," or English subjects, argued from the proclamation of 1763 that it was his Majesty's intention at once to abolish the

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[1] The oaths of allegiance, supremacy, and abjuration were formerly required to be taken by every member in the English Commons under various statutes. By 29 and 30 Vict., c. 19, and 31 and 32 Vict., c. 72, a single oath was prescribed for members of all religious denominations; May, 205. 30 Car. II., st. 2, c. 1, required members of both houses to subscribe a declaration against transubstantiation, the adoration of the Virgin, and the sacrifice of the mass. Taswell-Langmead, Const. Hist., 447, 652.

[2] Atty.-Gen. Thurlow, in Christie, vol. i., pp. 50-1.

[3] It was convoked *pro forma*, but never assembled. II. Garneau, 92, 108.

[4] II. Garneau, 87-8. Only one native French-Canadian was admitted into this council.

old established jurisprudence of the country, and to establish English law in its place, even with respect to the titles of lands, and the modes of descent, alienation and settlement.[1]

**III. Quebec Act, 1774.**—The province of Quebec remained for eleven years under the system of government established by the proclamation of 1763. In 1774 Parliament intervened for the first time in Canadian affairs and made important constitutional changes. The previous constitution had been created by letters-patent under the great seal of Great Britain, in the exercise of an unquestionable and undisputed prerogative of the Crown. The colonial institutions of the old possessions of Great Britain, now known as the United States of America, had their origin in the same way.[2] But in 1774, a system of government was granted to Canada by the express authority of Parliament. This constitution was known as the Quebec Act,[3] and greatly extended the boundaries of the province of Quebec, as defined in the proclamation of 1763. On one side, the province extended to the fron-

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[1] Atty.-Gen. Thurlow, in Christie, vol. i., pp. 51-63; also, Report of Atty.-Gen. Yorke, and Sol.-Gen. DeGrey, 14th April, 1766, quoted by Thurlow, 55. The latter able lawyer expressed himself very forcibly as to the rights of the French-Canadians: "They seem to have been strictly entitled by the *jus gentium* to their property, as they possessed it upon the capitulation and treaty of peace, together with all its qualities and incidents by tenure or otherwise, and also to their personal liberty. . . . . It seems a necessary consequence that all those laws by which that property was created, defined, and secured, must be continued to them. To introduce any other, as Mr. Yorke and Mr. DeGrey emphatically expressed it, tends to confound and subvert rights, instead of supporting them." *Ib.* 59.

[2] Report of Committee of Council, 1st May, 1849, app. A., Vol. ii. Earl Grey's Colonial Policy.

[3] 14 Geo. III., c. 83, "making more effectual provision for the government of the province of Quebec, in North America." The bill, on the motion for its passage, with amendments, in the House of Commons, was carried by 56 yeas to 20 nays. In the House of Lords it had a majority of 19; Contents 26, Non. Con. 7. Cav. Deb. iv., 296.

tiers of New England, Pennsylvania, New York province, the Ohio, and the left bank of the Mississippi; on the other, to the Hudson's Bay Territory. Labrador, and the islands annexed to Newfoundland by the proclamation of 1763, were made part of the province of Quebec.

The bill was introduced in the House of Lords on the 2nd of May, 1774, by the Earl of Dartmouth, then colonial secretary of state, and passed that body without opposition. Much discussion, however, followed the bill in its passage through the House of Commons, and on its return to the Lords the Earl of Chatham opposed it "as a most cruel, oppressive, and odious measure, tearing up justice and every good principle by the roots." The opposition in the province was among the British inhabitants, who sent over a petition for its repeal or amendment. Their principal grievance was that it substituted the laws and usages of Canada for English law.[1] The Act of 1774 was exceedingly unpopular in England and in the English-speaking colonies, then at the commencement of the Revolution.[2] Parliament, however, appears to have been influenced by a desire to adjust the government of the province so as to conciliate the majority of the people[3]. In the royal speech closing the session, the law was characterized as "founded on the plainest principles of justice and humanity, and would have the best effect in quieting the minds and promoting the happiness of our Canadian subjects."[4]

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[1] Cav. Deb., preface, iii.–vi.

[2] The American Congress, in an address to the people of Great Britain, September 5th, 1774, declared the act to be "unjust, unconstitutional, and most dangerous and destructive of American rights." (I. Christie, 8-9.) In 1779, Mr. Masères, formerly attorney-general of Quebec, stated that "it had not only offended the inhabitants of the province, but alarmed all the English provinces in America." Cav. Deb., v.

[3] Garneau, who represents French Canadian views in his history, acknowledges that "the law of 1774 tended to reconcile the Canadians to British rule." II., 125.

[4] Cav. Deb., iv.

The new constitution came into force in October, 1774. The act sets forth among the reasons for legislation that the provisions made by the proclamation of 1763 were "inapplicable to the state and circumstances of the said province, the inhabitants whereof amounted, at the conquest, to above sixty-five thousand persons professing the religion of the Church of Rome, and enjoying an established form of constitution and system of laws, by which their persons and property had been protected, governed, and ordered for a long series of years, from the first establishment of the province." Consequently, it is provided that Roman Catholics should be no longer obliged to take the test oath, but only the oath of allegiance. The government of the province was entrusted to a governor and a legislative council, appointed by the Crown, inasmuch as it was "inexpedient to call an assembly."[1] This council was to comprise not more than twenty-three, and not less than seventeen members, and had the power, with the consent of the governor or commander-in-chief for the time being, to make ordinances for the peace, welfare, and good government of the province. They had no authority, however, to lay on any taxes or duties except such as the inhabitants of any town or district might be authorized to assess or levy within its precincts for roads and ordinary local services.[2] No ordinance could be passed except by a majority of the council, and every one had to be transmitted within six months after its enactment to his Majesty for approval or disallowance. It was also enacted that in all matters of controversy, relative to property and

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[1] Fox contended for a representative assembly, but Lord North expressed his opinion that it was not wise for a Protestant government to delegate its powers to a Catholic assembly. Cav. Deb., 246-8.

[2] A supplementary bill, passed in the session of 1774 (14 Geo. III., c. 88), provided a revenue for defraying expenses of administration of justice and civil government by imposing duties on spirits and molasses, in place of old French colonial custom dues. The deficiency in the expenses was supplied from the imperial treasury. I. Christie, 1-2.

civil rights, recourse should be had to the French civil procedure, whilst the criminal law of England should obtain to the exclusion of every other criminal code which might have prevailed before 1764. Both the civil and the criminal law might be modified and amended by ordinances of the governor and legislative council. Owners of lands, however, might bequeath their property by will to be executed, either according to the laws of Canada or the forms prescribed by the laws of England. The act also expressly gave the French Canadians additional assurance that they would be secured in the rights guaranteed to them by the terms of the capitulation and the subsequent treaty. Roman Catholics were permitted to observe their religion with perfect freedom, and their clergy were to enjoy their "accustomed dues and rights" with respect to such persons as professed that creed. Consequently, the Roman Catholic population of Canada were relieved of their disabilities many years before people of the same belief in Great Britain and Ireland received similar privileges.

The new constitution was inaugurated by Major-General Carleton, afterwards Lord Dorchester,[1] who nominated a legislative council of twenty-three members, of whom eight were Roman Catholics.[2] This body sat, as a rule, with closed doors;[3] both languages were employed in the debates, and the ordinances agreed to were drawn up in French and English. It was not able to sit regularly on account of the government being fully occupied with the defence of the province during the progress of the American war of independence.[4] In 1776, the governor-

[1] He was appointed Governor of Canada in 1772; in 1776 created a Knight of the Bath; in 1786 raised to the peerage with the above title. Caven. Deb., 100, *note*.

[2] Several were public functionaries. II. Garneau, 166.

[3] Councillors were required to take the following oath:—"I swear to keep close and secret all such matters as shall be treated, debated, and resolved in Council, without disclosing or publishing the same or any part thereof."

[4] It did not meet during 1776. II. Garneau, 165.

general called to his assistance a privy council of five members, in accordance with the royal instructions accompanying his commission. This advisory, not legislative, body, was composed of the lieutenant-governor and four members of the legislative council.[1]

**IV. Constitutional Act, 1791.** — The constitution of 1774 remained in force until the 20th of December, 1791, when two provinces were established in Canada, and a more liberal system of government was given to each section. Whilst the American war of independence was in progress, the French Canadian people remained faithful to their allegiance, and resisted all the efforts of the Americans to induce them to revolt against England.[2] One very important result of the war was the immigration into British North America of a large body of people who remained faithful to British connection throughout the struggle in the old colonies, and were destined, with their descendants, to exercise a large influence on the material and political development of Canada. Some forty thousand loyalists, as near as can be ascertained, came into the British American provinces. The majority settled in the maritime colony of Nova Scotia, and founded the province of New Brunswick; but a large number, some ten thousand probably, established themselves in the country known as Upper Canada.[3] By 1790, the total population of Canada had reached probably over one hundred and sixty thousand souls.[4] In 1788, the governor created

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[1] II. Garneau, 169. Exception was taken to the legality of this body by Chief-Justice Livius, who contended that the law of 1774 only gave authority to establish a legislative council.

[2] In 1775, General Washington addressed a proclamation to the French Canadians; Baron D'Estaing, commander of the French fleet, did the same in 1778. All such efforts were ineffectual. Speech of Sir G. E. Cartier, Confed. Deb., 57-60.

[3] Introduction to Census Statistics of 1871, vol. iv., xxxviii.-xlii.

[4] The population of New France in 1760 was estimated at between 60,000 and 70,000, a considerable emigration to France having taken

five judicial districts in Upper and Lower Canada, in order to meet the requirements of the new population.[1] It had by this time become the opinion of English statesmen that it would be advisable to make further constitutional changes in the province, more consonant with the wishes of its large population, of which the British element now formed a very important part. The question of representative government agitated the province from 1783 to 1790, and petitions and memorials, embodying the conflicting views of the political parties into which the people were divided, were presented to the home government, which decided to deal with the question, after receiving a report from Lord Dorchester, who had been authorized to make full inquiry into the state of the colony. In the session of 1791, George III. sent a message to the House of Commons declaring that it would be for the benefit of the people of the province if two distinct governments were established therein under the names of Lower Canada and Upper Canada.[2] The result was the passage through Parliament of the Constitutional Act of 1791,[3] which was introduced in the House of Commons.

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place after the conquest. In 1775, the population of all Canada was estimated at 90,000. In 1790, Nova Scotia had probably 30,000 inhabitants; 1793, Cape Breton, 2,000; St. John or Prince Edward Island, 4,500 in 1796; New Brunswick had 35,000 by 1806.—(Census Statistics of 1871, vol. iv.) Others estimate the population of Canada in 1790 at only 135,000. II. Garneau, 205.

[1] The district in the province of Quebec was called Gaspé; the other four in the upper section were called Lunenburg, Mecklenburg, Nassau and Hesse, after great houses in Germany, allied to the royal family of England. Lunenburg extended from the Ottawa to the Gananoque; Mecklenburg, from the Gananoque to the Trent; Nassau, from the Trent to Long Point, on Lake Erie; and Hesse embraced the rest of Canada to the St. Clair. I. Doutre et Lareau, Histoire du Droit Canadien, 744.

[2] March 4, 1791. I. Christie, 68-9.

[3] 31 Geo. III., c. 31. "In Upper and Lower Canada the three estates of governor, council and assembly were established, not by the Crown (as in the case of the old colonies) but by the express authority of Parliament. This deviation from the general usage was unavoidable, because

by Mr. Pitt. This act created much discussion in Parliament and in Canada, where the principal opposition came from the British inhabitants of Lower Canada.[1] Much jealousy already existed between the two races, who were to be still more divided from each other in the course of the operation of the new constitution. The authors of the new scheme of government, however, were of opinion that the division of Canada into two provinces would have the effect of creating harmony, since the French would be left in a majority in one section, and the British in the other.[2] The Quebec Act, it was generally admitted, had not promoted the prosperity or happiness of the people. Great uncertainty still existed as to the laws actually in force under the act. Although it had been sixteen years in operation, neither the judges nor the bar clearly understood the character of the laws of Canada previous to the conquest. No certainty existed in any matters of litigation except in the case of the possession, transmission, or alienation of landed property, where the custom of Paris was quite clear. The Canadian courts sometimes admitted, and at other times rejected, French law, without explaining the grounds of their determina-

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it was judged right to impart to the Roman Catholic population of the Canadas privileges which, in the year 1791, the Crown could not have legally conferred upon them. There is also reason to believe that the settlement of the Canadian constitution, not by a grant from the Crown merely, but in virtue of a positive statute, was regarded by the American loyalists as an important guarantee for the secure enjoyment of their political franchises." Rep. of Com. of Council, 1st May, 1849; Earl Grey's Colonial Policy, ii. vol., app. A.

[1] Mr. Adam Lymburner, a Quebec merchant, was heard on the 23rd March, 1791, at the bar of the House of Commons against the bill. I. Christie, 74–114.

[2] Mr. Pitt said: "I hope this separation will put an end to the competition between the old French inhabitants and the new settlers from Britain and the English Colonies." Edmund Burke was of opinion that "to attempt to amalgamate two populations composed of races of men diverse in language, laws, and customs, was a complete absurdity." For debates on bill see Eng. Hans., Parl. Hist., 28 vol., p. 1271; 29 vol., pp. 104, 359–459, 655. II. Garneau, 198–203. I. Christie, 66–114.

tion. In not a few cases, the judges were confessedly ignorant of French Canadian jurisprudence.[1]

The Constitutional Act of 1791 established in each province a legislative council and assembly, with power to make laws. The legislative council was to be appointed by the king for life—in Upper Canada to consist of not less than seven, and in Lower Canada of not less than fifteen members. Members of the council and assembly must be of the age of 21, and either natural-born subjects, or naturalized by act of Parliament, or subjects of the Crown by the conquest and cession of Canada. The sovereign might, if he thought proper, annex hereditary titles of honour to the right of being summoned to the legislative council in either province.[2] The speaker of the council was to be appointed by the governor-general. The whole number of members in the assembly of Upper Canada was not to be less than sixteen; in Lower Canada, not less than fifty[3]—to be chosen by a majority of votes in either case. The limits of districts returning representatives, and the number of representatives to each, were fixed by the governor-general. The county members were elected by owners of lands in freehold, or in fief or roture, to the value of forty shillings sterling a

[1] I. Christie, 67. Mr. Lymburner, *Ib.* 77–79; Report on Administration of Justice, 1787. II. Garneau, 189–90.

[2] No titles were ever conferred under the authority of the Act. Colonel Pepperell was the first American colonist who was made a baronet for his services in the capture of Louisbourg, 1745. Such distinctions were very rare in Canada during the years previous to confederation. Chief Justices James Stuart and J. B. Robinson were both made baronets in the early times of Canada. But, since 1867, the Queen has conferred special marks of royal favour on not a few Canadians of merit. (See Todd Parl. Govt. in the Colonies, 232 *et seq.*) The Order of St. Michael and St. George was expressly enlarged with the view of giving an Imperial recognition of the services of distinguished colonists in different parts of the Empire.

[3] Mr. Fox was of opinion that the assembly in Lower Canada should have at least one hundred members; he was also in favour of an elective legislative council.

year, over and above all rents and charges payable out of the same. Members for the towns and townships were elected by persons having a dwelling house and lot of ground therein of the yearly value of £5 sterling or upwards, or who having resided in the town for twelve months, previous to the issue of the election writ, should have *bona fide* paid one year's rent for the dwelling house, in which he shall have resided, at the rate of £10 sterling a year or upwards. No legislative councillor or clergyman could be elected to the assembly in either province. The governor was authorized to fix the time and place of holding the meeting of the legislature, and to prorogue and dissolve it whenever he deemed either course expedient; but it was also provided that the legislature was to be called together once at least every year, and that each assembly should continue for four years, unless it should be sooner dissolved by the governor. It was in the power of the governor to withhold as well as give the royal assent to all bills, and to reserve such as he should think fit for the signification of the pleasure of the Crown. The British Parliament reserved to itself the right of providing regulations imposing, levying and collecting duties, for the regulation of navigation and commerce to be carried on between the two provinces, or between either of them and any other part of the British dominions or any foreign country. Parliament also reserved the power of appointing or directing the payment of duties, but at the same time left the exclusive apportionment of all moneys levied in this way to the legislature, which could apply them to such public uses as it might deem expedient. It was also provided in the new constitution that all public functionaries, including the governor-general, should be appointed by the Crown, and removable at the royal pleasure. The free exercise of the Roman Catholic religion was guaranteed permanently. The king was to have the right to set apart, for the use of the Protestant clergy in the colony, a seventh part of

all uncleared crown-lands. The governors might also be empowered to erect parsonages and endow them, and to present incumbents or ministers of the Church of England, and whilst power was given to the provincial legislatures to amend the provisions respecting allotments for the support of the Protestant clergy, all bills of such a nature could not be assented to until thirty days after they had been laid before both houses of the Imperial Parliament.[1] The governor and executive council were to remain a court of appeals until the legislatures of the provinces might make other provisions.[2] The right of bequeathing property, real and personal, was to be absolute and unrestricted. All lands to be granted in Upper Canada were to be in free and common socage, as well as in Lower Canada, when the grantee desired it. English criminal law was to obtain in both provinces.

A proclamation was issued on the 18th of November, 1791, bringing the act into force on the 26th of December, 1791.[3] On the 7th of May, 1792, Lower Canada was divided into fifty electoral districts, returning altogether fifty members. The legislature of that province was called together by proclamation of the 30th of October, and met for the first time accordingly at Quebec on the 17th of December, 1792. The legislative council was composed of fifteen members.[4] The government of Upper Canada was organized at Kingston in July, 1792, when

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[1] The intent of these provisions was to preserve the rights and interests of the established Church of England in both provinces from invasion by their respective legislatures. I. Christie, 122. See *infra*, p. 32, *et seq.*

[2] An ordinance of the province of Quebec had so constituted the Executive, provision was made subsequently as required by the Act.

[3] By the lieutenant-governor, General Alured Clarke. The governor-general, Lord Dorchester, was absent in England. This proclamation set forth the division line between the provinces as stated in the order of council of the previous August—the Ottawa River being the line as far as Lake Temiscamingue. I. Christie, 124.

[4] Hon. W. Smith, chief justice, was appointed speaker of the legislative council of Lower Canada; J. A. Panet was elected speaker of the legislative assembly. See I. Christie, 126-8., where names of members of both

the members of the executive and legislative councils were sworn and writs issued for the election of the assembly. The first meeting of the legislature of Upper Canada—with seven members in the legislative council and sixteen in the assembly—was held at Newark, (the old name of Niagara) on the 17th of September, 1792, and was formally opened by Lieutenant-Governor Simcoe.[1] Both legislatures even in those early times of the provinces, assembled with all the formalities that are observed at the opening of the Imperial Parliament.[2] The rules and orders adopted in each legislature were based, as far as practicable in so new a country, on the rules and usages of its British prototype.[3]

The Constitutional Act of 1791 was framed with the avowed object of "assimilating the constitution of Canada to that of Great Britain, as nearly as the difference arising from the manners of the people, and from the present situation of the province will admit."[4]

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Houses are given. The legislature met for some years in the building known as the old Bishop's Palace, situated between the Grand Battery and Prescott Gate.

[1] Hon. W. Osgoode, chief justice, speaker of legislative council; W. Macdonnell, speaker of legislative assembly. The first meeting was in a rude frame house, about half a mile from the village—it was not unusual for the members to assemble in the open air. (Scadding's Toronto, p. 29.) The legislature of Upper Canada was removed to York, now Toronto, in 1797—that town having been founded and named by Governor Simcoe in 1795. (Withrow, 292.) The provincial legislature met in a wooden building on what is now known as Parliament street. Scadding's Toronto, pp., 26-7.

[2] The Duke de Rochefoucauld-Liancourt, who was present at an "opening" in 1795, at Newark, gives a brief account of the ceremonial observed even amid the humble surroundings of the first Parliament. See vol. ii., p. 88.

[3] Chap. v., *infra.*

[4] Despatch of Lord Grenville to Lord Dorchester, 20th Oct., 1789, given in App. to Christie, vol. vi., pp. 16-26. Lt.-Governor Simcoe, in closing the first session of the legislature of Upper Canada, said that it was the desire of the imperial government to make the new constitutional system, "an image and transcript of the British constitution." See Journals of U. C., 1792; E. Commons Papers, 1839, vol. 33, p. 166.

For some years after the inauguration of the new constitution, political matters proceeded with more or less harmony, but eventually a conflict arose between the governors and the representatives in the assembly as well as between the latter and the upper house, which kept the people in the different provinces, especially in Lower Canada, in a state of continual agitation. In Upper and Lower Canada the official class was arrayed, more or less, with the legislative council against the majority in the assembly. In Lower Canada the dispute was at last so aggravated as to prevent the harmonious operation of the constitution. The assembly was constantly fighting for the independence of Parliament, and the exclusive control of the supplies and the civil list. The control of "the casual and territorial revenues" was a subject which provoked constant dispute between the crown officials and the assemblies in all the provinces. These revenues were not administered or appropriated by the legislature, but by the governors and their officers. At length, when the assemblies refused supplies, the executive government availed itself of these funds in order to make itself independent of the legislature, and the people through their representatives could not obtain those reforms which they desired, nor exercise that influence over officials which is essential to good government.[1] The governor dissolved the Quebec legislature with a frequency unparalleled in political history, and was personally drawn into the conflict. Public officials were harassed by impeachments. The assembly's bills of a financial, as well as of a general character, were frequently rejected by the legislative council, and the disputes between the two branches of the legislature eventually rendered it impossible to pass any useful legislation. In this contest, the two races were found as a rule, arrayed

[1] Mr. W. Macdougall: Mercer *v.* Attorney-General for Ontario, Canada Sup. Court Rep., vol. v., pp. 545-6.

against each other in the bitterest antagonism.[1] Appeals to the home government were very common, but no satisfactory results were attained as long as the constitution of 1791 remained in force. In Upper Canada the financial disputes, which were of so aggravated a character in the lower province, were more easily arranged; but nevertheless a great deal of irritation existed on account of the patronage and political influence being almost exclusively in the hands of the official class, which practically controlled the executive and legislative councils.[2]

In Nova Scotia, the majority of the house of assembly were continually protesting against the composition of the executive and legislative councils, and the preponderance therein of certain interests which they conceived to be unfavourable to reform.[3] In New Brunswick, for years, the disputes between the executive and legislative powers were characterized by much acrimony, but eventually all the revenues of the province were conceded to the assembly, and the government became more harmonious from the moment it was confided to those who had the confidence of the majority in the house.[4] In Prince Edward Island, the political difficulty arose from the land monopoly,[5] which was not to disappear in its entirety until the colony became a part of the confederation of Canada. But when we come to review the politi-

[1] "I expected to find a contest between a government and a people; I found two nations warring in the bosom of a single state; I found a struggle, not of principles, but of races." Lord Durham's R., p. 7.

[2] Lord Durham's R., pp. 56-58.

[3] Mr. Young to Lord Durham, R., p. 75, and App. At the time of the border difficulties with Maine, the Nova Scotia legislature voted the necessary supplies. "Yet," said Mr. Howe, "those who voted the money, who were responsible to their constituents for its expenditure, and without whose consent (for they formed two-thirds of the Commons) a shilling could not have been drawn, had not a single man in the local cabinet by whom it was to be spent, and by whom, in that trying emergency, the governor would be advised."

[4] Lord Durham's R., p. 74.

[5] *Ibid.* p. 75.

cal condition of all the provinces we find, as a rule, "representative government coupled with an irresponsible executive, the same abuse of the powers of the representative bodies, owing to the anomaly of their position, aided by the want of good municipal institutions; and the same constant interference of the imperial administration in matters which should be left wholly to the provincial governments."[1] In Lower Canada, the descendants of the people who had never been allowed by France a voice in the administration of public affairs, had, after some years' experience of representative institutions, entered fully into their spirit and meaning and could not now be satisfied with the workings of a political system which always ignored the wishes of the majority who really represented the people in the legislature. Consequently, the discontent at last assumed so formidable a character that legislation was completely obstructed. Eventually, this discontent culminated in the rebellion of 1837–8, which inflicted much injury on the province though happily it was confined to a very small part of the people.[2] An attempt at a rebellion was also made in the upper province, but so unsuccessfully that the leaders were obliged to fly almost simultaneously with the rising of their followers;[3] though it was not for many months afterwards that the people ceased to feel the injurious effects of the agitation which the revolutionists and their emissaries endeavoured to keep up in the province. In the lower or maritime colonies, no disturbances occurred,[4]

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[1] Lord Durham's R., p. 74.

[2] For various accounts of this ill-advised rebellion in L. C., see H. Garneau, chaps. ii. and iii., Book 16, pp. 418-96; Christie, vols. iv. and v. Withrow, chap. xxvii.

[3] Life of W. Lyon Mackenzie, C. Lindsey. Withrow, chap. xxviii.

[4] "If in these provinces there is less formidable discontent and less obstruction to the regular course of government, it is because in them there has been recently a considerable departure from the ordinary course of the colonial system, and a nearer approach to sound constitutional practice." Lord Durham's R., p. 74.

and the leaders of the popular party were among the first to assist the authorities in their efforts to preserve the public tranquillity, and to express themselves emphatically in favour of British connection.[1]

The result of these disturbances in the upper provinces was another change in the constitution of the Canadas. The imperial government was called upon to intervene promptly in their affairs. Previous to the outbreak in Canada the government had sent out royal commissioners with instructions to inquire fully into the state of the province of Lower Canada, where the ruling party in the assembly had formulated their grievances in the shape of ninety-two resolutions, in which among other things they demanded an elective legislative council.[2] Lord Gosford came out in 1835 as governor-general and as head of the commission,[3] but the result tended only to intensify the discontent in the province. In 1837, Lord John Russell carried, in the House of Commons, by a large majority a series of resolutions, in which the demand for an elective legislative council and other radical changes was positively refused.[4] In this public emergency, the Queen was called upon on the 10th of February, 1838, to sanction a bill passed by the two houses, suspending the constitution and making temporary provision for the government of Lower Canada. This act[5] was proclaimed in the Quebec Gazette on the 29th of March in the same year, and, in accordance with its provisions, Sir John Colborne appointed a special council,[6] which continued

[1] See remarks of Mr. Joseph Howe at a public meeting held at Halifax, N. S., in 1838. I. Howe's Life and Letters, 171.

[2] II. Garneau, 414-5. Journals, L. C., 1834, p. 310.

[3] Withrow, 365. Sir C. Grey and Sir G. Gipps were associated with Lord Gosford on the Commission.

[4] Eng. Com. J. [92] 305; Mirror of P., 1243-4.

[5] 1 and 2 Vict., c. 9; 2 and 3 Vict., c. 53.

[6] V. Christie, 51. The first ordinance suspended the *Habeas Corpus* and declared that the enactment of the council should take effect from date of passage.

in office until the arrival of Lord Durham, who superseded Lord Gosford as governor-general,[1] and was also entrusted with large powers as high commissioner "for the adjustment of certain important affairs, affecting the provinces of Upper and Lower Canada."[2] Immediately on Lord Durham's arrival he dissolved the special council just mentioned and appointed a new executive council.[3] This distinguished statesman continued at the head of affairs in the province from the last of May, 1838, until the 3d of November in the same year, when he returned to England, where his ordinance of the 28th of June, sentencing certain British subjects in custody, to transportation without a form of trial, and subjecting them, and others not in prison, to death in case of their return to the country without permission of the authorities, had been most severely censured in and out of Parliament as entirely unwarranted by law.[4] So strong was the feeling in the Imperial Parliament on this question, that a bill was passed to indemnify all those who had issued or acted in putting the ordinance in force.[5]

**V. Union Act, 1840.**—The immediate result of Lord Durham's mission was an elaborate report,[6] in which he fully reviewed the political difficulties of the provinces and recommended imperial legislation with the view of remedying existing evils and strengthening British connection.

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[1] V. Christie, 48-9. Sir John Colborne was only administrator at this time.

[2] For instructions, in part, to Lord Durham and his remarks in the House of Lords on accepting the office, see V. Christie, 47-50.

[3] V. Christie, 150-51.

[4] For debates on question, text of ordinance and accompanying proclamation, see *Ibid.* 158-83.

[5] This bill was introduced by Lord Brougham, the severest critic of Lord Durham's course in this matter. (1 and 2 Vict., c. 112.) In admitting the questionable character of the ordinance, Lord Durham's friends deprecated the attacks made against him, and showed that all his measures had been influenced by an anxious desire to pacify the dissensions in the provinces. V. Christie, 183-94.

[6] Officially communicated to Parliament, 11th Feb., 1839.

The most important recommendation in the report was to the effect that "no time should be lost in proposing to Parliament a bill for restoring the union of the Canadas under one legislature, and reconstructing them as one province." On no point did he dwell more strongly than on the absolute necessity that existed for entrusting the government to the hands of those in whom the representative body had confidence.[1] He also proposed that the Crown should give up its revenues, except those derived from land sales, in exchange for an adequate civil list, that the independence of the judges should be secured, and that municipal institutions should be established without delay "as a matter of vital importance." The first immediate result of these suggestions was the presentation to the Imperial Parliament on the 3d of May, 1839, of a royal message,[2] recommending a legislative union of the Canadas. In the month of June in the same year, Lord John Russell introduced a bill to re-unite the two provinces, but it was allowed, after its second reading, to lie over for that session of Parliament in order that the matter might be fully considered in Canada and more information obtained on the subject.[3] Mr. Poulett Thomson[4] was appointed gov-

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[1] "I know not how it is possible to secure harmony in any other way than by administering the government on those principles which have been found perfectly efficacious in Great Britain. I would not impair a single prerogative of the Crown; on the contrary, I believe that the interests of the people of these provinces require the protection of prerogatives which have not hitherto been exercised. But the Crown must, on the other hand, submit to the necessary consequences of representative institutions; and if it has to carry on the government in unison with a representative body, it must consent to carry it on by means of those in whom that representative body has confidence." Page 106 of R.

[2] Mr. Poulett Thomson's remarks to Special Council, 11th Nov., 1839. V. Christie, 316.

[3] V. Christie 289-90. The opinion of the British Parliament was decidedly favourable to the bill.

[4] Mr. Thomson was a member of the Imperial Parliament and of decidedly advanced views in politics. Sir John Colborne was governor in the interval between Lord Durham's retirement and Mr. Thomson's appointment.

ernor-general with the avowed object of carrying out the policy of the imperial government, and immediately after his arrival at Montreal in November, 1839, he called the special council together, and explained to them "the anxious desire felt by Parliament and the British people that a settlement of the questions relating to the Canadas should be speedily arrived at." The council passed an address in favour of a re-union of the provinces under one legislature as a measure of "indispensable and urgent necessity."[1] The governor-general, in the month of December, met the legislature of Upper Canada, and after full consideration of the question, both branches passed addresses in favour of union, setting forth at the same time the terms which would be considered most acceptable to the province.[2]

It will be seen that the imperial government considered it necessary to obtain the consent of the legislature of Upper Canada, and of the special council of Lower Canada, before asking Parliament to re-unite the two provinces. Accordingly, Lord John Russell, in the session of 1840, again brought forward his bill entitled, "An Act to re-unite the provinces of Upper and Lower Canada, and for the government of Canada,"[3] which was assented to on the 23rd of July, but did not come into effect until the 10th of February in the following year, in accordance with a suspending clause to that effect.[4] The act provided for

[1] Special Coun. J., Nov. 11, 12, 13, 14. V. Christie, 316-22.

[2] Leg. Coun. J. (1839-40) 14, &c. Leg. Ass. J. (1839-40), 16, 57, 63, 66, 161, 164. V. Christie, 326-56. Previously, however, in 1838, a committee of the House of Assembly of Upper Canada had declared itself in favour of the proposed union. Upp. Can. Ass. J. (1838), 282.

[3] 3 and 4 Vict., c. 35. The bill passed with hardly any opposition in the Commons, but it was opposed in the Lords by the Duke of Wellington, the Earl of Gosford, and the Earl of Ellenborough, besides others.

[4] Mr. Poulett Thomson, now created Lord Sydenham, issued his proclamation on February 5, 1841, and took the oath on that day as governor-general from Chief Justice Sir James Stuart at Government House in Montreal. Mr. Thomson's title was Baron Sydenham, of Sydenham in the County of Kent, and of Toronto in Canada.

a legislative council of not less than twenty members, and for a legislative assembly in which each section of the united provinces would be represented by an equal number of members—that is to say, forty-two for each or eighty-four in all. The speaker of the council was appointed by the Crown, and ten members, including the speaker, constitute a quorum. A majority of voices was to decide, and in case of an equality of votes the speaker had a casting vote. A legislative councillor would vacate his seat by continuous absence for two consecutive sessions. The number of representatives allotted to each province could not be changed except with the concurrence of two-thirds of the members of each house. The quorum of the assembly was to be twenty, including the speaker. The speaker was elected by the majority, and was to have a casting vote in case of the votes being equal on a question. No person could be elected to the assembly unless he possessed a freehold of lands and tenements to the value of five hundred pounds sterling over and above all debts and mortgages. The English language alone was to be used in the legislative records.[1] A session of the legislature should be held once, at least, every year, and each

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(V. Christie, 357-8.) The first parliament of the united Canadas was held at Kingston, 14th June, 1841. In 1844 it was removed to Montreal (then a city of 40,000 souls), on address. Mr. Speaker Jameson and other Upper Canadian legislative councillors left their seats rather than agree to the vote for the change. The legislature remained at Montreal until the riots of 1849, on the occasion of the Rebellion Losses Bill, led to the adoption of the system, under which the legislature met alternately at Quebec and Toronto—the latter city being first chosen by Lord Elgin. An address to the Queen to select a permanent capital was agreed to in 1857, and Ottawa finally chosen. The Canadian Parliament assembled for the first time on the 8th June, 1866, in the new edifice constructed in that city. The British North America Act, 1867, s. 16, made that city the political capital of the Dominion. Turcotte, 1st part, 71, 144; 2nd part, 119, 315-16.

[1] The address from the Upper Canada Assembly prayed for the equal representation of each province, a permanent civil list, the use of the English language in all judicial and legislative records, as well as in the

legislative assembly was to have a duration of four years, unless sooner dissolved. Provision was made for a consolidated revenue fund, on which the first charges were expenses of collection, management, and receipt of revenues, interest of public debt, payment of the clergy, and civil list. The fund, once these payments were made, could be appropriated for the public service as the legislature might think proper. All votes, resolutions or bills involving the expenditure of public money were to be first recommended by the governor-general.[1]

The passage of the Union Act of 1840 was the commencement of a new era in the constitutional history of Canada as well as of the other provinces. The statesmen of Great Britain had learned that the time had arrived for enlarging the sphere of self-government in the colonies of British North America; and consequently from 1840 we see them year by year making most liberal concessions which would never have been thought of under the old system of restrictive colonial administration. The most valuable result was the admission of the all-important principle that the ministry advising the governor should possess the confidence of the representatives of the people assembled in Parliament. Lord Durham, in his report, had pointed out most forcibly the injurious consequences of the very opposite system which had so long prevailed in the provinces. His views had such influence on the minds of the statesmen then at the head of affairs, that Mr. Poulett Thomson (as he informed the legislature of Upper Canada), "received her Majesty's commands to administer the government of these provinces in accordance with the well-understood wishes and interests of the

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debates after a certain period, and that the public debt of the province be charged on the joint revenues of the united Canadas. These several propositions, except that respecting the French language, were recommended in the governor-general's messages. V. Christie, 334-48.

[1] See chapter on Supply, S. I.

people."[1] Subsequently he communicated to the legislature of the united provinces two despatches from Lord John Russell,[2] in which the governor-general was instructed, in order "to maintain the utmost possible harmony," to call to his counsels and to employ in the public service "those persons who, by their position and character, have obtained the general confidence and esteem of the inhabitants of the province." He wished it to be generally made known by the governor-general that thereafter certain heads of departments would be called upon "to retire from the public service as often as any sufficient motives of public policy might suggest the expediency of that measure."[3] During the first session, subsequent to the message conveying these despatches to the legislature, the assembly agreed to certain resolutions which authoritatively expressed the views of the supporters of responsible government. It was emphatically laid down as the very essence of the principle that "in order to preserve between the different branches of the provincial parliament that harmony which is essential to the peace, welfare, and good government of the province, the chief advisers of the representative of the sovereign, constituting a provincial administration under him,

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[1] In answer to an address from the Assembly, 13th December, 1839, (V. Christie, 353.) The views of the great body of Reformers (in Upper Canada) appear to have been limited, according to their favourite expression, to making the colonial constitution "an exact transcript" of that of Great Britain; and they only desired that the Crown should, in Upper Canada, as at home, entrust the administration of affairs to men possessing the confidence of the assembly. Lord Durham's R. 58.

[2] Lord J. Russell was colonial secretary from 1839 to 1841; the office was afterwards held successively from 1841 to 1852 by Lord Stanley, Mr. Gladstone, and Earl Grey. So that all these eminent statesmen assisted in enlarging the sphere of self-government in the colonies. Todd's Parl. Gov. in the Colonies, 25.

[3] Can. Ass. J. (1841), App. BB. These papers were in response to an address from the Assembly of 5th August, 1841. The instructions to the governor-general repeated substantially the despatches on responsible government. Journals of Ass., 20th August, 1841.

ought to be men possessed of the confidence of the representatives of the people, thus affording a guarantee that the well-understood wishes and interests of the people, which our Gracious Sovereign has declared shall be the rule of the provincial government, will, on all occasions, be faithfully represented and advocated."[1] Nevertheless, during the six years that elapsed after the passage of this formal expression of the views of the large majority in the legislature, "Responsible Government" did not always obtain in the fullest sense of the phrase, and not a few misunderstandings arose between the governors and the supporters of the principle as to the manner in which it should be worked out.[2] In 1847, Lord Elgin was appointed governor-general, and received positive instructions "to act generally upon the advice of his executive council, and to receive as members of that body those persons who might be pointed out to him as entitled to do so by their possessing the confidence of the Assembly."[3] No act of Parliament was necessary to effect this important change; the insertion and alteration of a few paragraphs in the governor's instructions were sufficient.[4] By 1848 the provinces of Canada, Nova Scotia, and New

[1] The resolutions which were agreed to were proposed by Mr. Harrison, then provincial secretary in the Draper-Ogden ministry, in amendment to others of the same purport, proposed by Mr. Baldwin. The resolution quoted in the text was carried by 56 yeas to 7 nays; the others passed without division. Journals of Ass., 1841, pp. 480-82.

[2] Especially during the administration of Lord Metcalfe (1843-45), who believed he could make appointments to office without taking the advice of his Council. Dent's Canada since the Union, vol. i., chap. xvi.

[3] Grey, Colonial Policy, vol. i., pp. 206-34; Adderley, p. 31. See also Colonial Reg., 57. Lord John Russell was premier, and Earl Grey, colonial secretary, when Lord Elgin was appointed. Todd, Parl. Gov. in the Colonies, 54-60.

[4] Mr. Merivale quoted in Creasy's Constitutions of the Britannic Empire, 389. Lord John Russell, in his instructions to Lord Sydenham, expressly stated that it was "impossible to reduce into the form of a positive enactment, a constitutional principle of this nature." Journals of Assembly, 1841, p. 392.

Brunswick[1] were in the full enjoyment of the system of self-government, which had been so long advocated by their ablest public men; and the results have proved eminently favourable to their political as well as material development.

From 1841 to 1867, during which period the new constitution remained in force, many measures of a very important character were passed by the legislature. The independence of parliament was effectually secured, and judges and officials prevented from sitting in either house.[2] An elaborate system of municipal institutions was perfected in the course of a few years for Upper and Lower Canada. It had been proposed to make such a system a part of the constitution of 1840,[3] but the clauses on the subject were struck out of the bill during its passage in the House of Commons on the ground that such a purely local matter should be left to the new legislature.[4] Lord Sydenham, who had very strong opinions on the subject, directed the attention of the legislature in the first session to the necessity of giving a more extended application to the principles of local self-government, which already prevailed in the province of Upper Canada; and the result was the introduction and passage of a measure in that direction.[5] At this time there was already in force an ordinance passed by the special council to establish a municipal system in Lower Canada—a measure which created much dissatisfaction in the province. Eventually

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[1] Earl Grey was colonial secretary in 1848, when the system was fully inaugurated in the maritime provinces. E. Commons Papers, 1847-8, vol. 42, pp. 51-88.

[2] Chap. ii., *infra*.

[3] Lord Durham so proposed it, R. 109. (Scrope's Life of Lord Sydenham, 194.) The address of the Assembly of Upper Canada to the governor-general in 1840 called attention to the necessity of introducing a system into Lower Canada in order to provide for local taxation. V. Christie, 347.

[4] V. Christie, 356.

[5] Introduced by Mr. Harrison; 4 & 5 Vict., c. 10.

the ordinance was revoked, and a system established in both provinces which met with general approval.[1] This measure demands special mention, even in this chapter, inasmuch as it has had a most valuable effect in educating the mass of the people in self-government, besides relieving the legislature of a large amount of business, which can be more satisfactorily disposed of in town or county organizations, as provided for by law. In fact, the municipal system of Canada lies at the very basis of its parliamentary institutions.

Among the distinguishing features of the important legislation of this period was the passage of a measure which may be properly noticed here since it disposed of a vexatious question which had arisen out of the provisions of the Constitutional Act of 1791. It will be seen by reference to the summary given elsewhere of that act that it reserved certain lands for the support of a Protestant clergy. The Church of England always claimed the sole enjoyment of these lands, and, in 1835, Sir John Colborne established a number of rectories which gave much offence to the other Protestant denominations, who had earnestly contended that these lands, under a strict interpretation of the law, belonged equally to all Protestants.[2] The Church of Scotland, however, was the only other religious body that ever received any advantage from these reserves. The Reform party in Upper Canada made this matter one of their principal grievances, and in 1839 the legislature passed an act to dispose of the question, but it failed to receive the approval of the imperial authorities. It was not until 1853 that the British Parliament recognized the right of the Canadian

[1] See Turcotte 1st Part, 97, 180; 2nd Part, 260, 384. Also, Cons. Stat. of Upper Canada, c. 54; of Lower Canada, c. 24.

[2] In fact, in 1840, the highest judicial authorities of England gave it as their opinion that the words "a Protestant clergy" in the Act of 1791 included other clergy than those of the Church of England. Mirror of P., May 4, 1840.

legislature to dispose of the clergy reserves on the condition that all vested rights were respected. In 1854, the Canadian legislature passed a measure making existing claims a first charge on the funds, and dividing the balance among the several municipalities in the province according to population. Consequently, so far as the act of 1791 attempted to establish a connection between Church and State in Canada, it signally failed.[1]

Nor can the writer well leave out a brief reference to the abolition of the seigniorial tenure, after an existence of over two centuries, since the system deeply affected in many ways the social and political life of the French Canadian people. In the days of the French régime, this system had certain advantages in assisting settlement and promoting the comfort of the inhabitants; but, as Lower Canada became filled up by a large population, this relic of feudal times became altogether unsuited to the condition of the country, and it was finally decided to abolish it in the session of 1854.[2]

It was during this period that the Canadian legislature dealt with the civil service, on whose character and ability so much depends in the working of parliamentary institutions. During the time when responsible government had no existence in Canada, the legislature had virtually no control over public officials in the different

[1] See Lord Durham's R., 66, 83; Turcotte, vol. ii., pp. 137, 234; Cons. Stat. of Canada, c. 25. The measure of 1854 (18 Vict., c. 2) was in charge of Attorney General (now Sir John) Macdonald, then a member of the MacNab-Morin administration. Leg. Ass. J. (1854–5) 193 *et seq.*

[2] Mr. Drummond, attorney-general in the MacNab-Morin administration, introduced the bill which became law, 18 Vict., c. 3. A bill in the session of 1853 had been thrown out by the Legislative Council. For historical account of this tenure see Garneau, vol. i, chap. iii.; Parkman's Old Regime, chap. xv.; Turcotte, vol. ii., 161, 203, 234; Cons. Stat. of Lower Canada, chap. xli. The number of fiefs at the time of the passage of the Act of 1854, was ascertained to be 220, possessed by 160 *seigneurs*, and about 72,000 *rentiers*. The entire superficial area of these properties comprised 12,822,503 acres, about one-half of which was found under cultivation. I. Garneau, 185. Report of Seigniorial Commission.

provinces, but their appointment rested with the home government and the governors. In the appointments, Canadians were systematically ignored, or a selection made from particular classes, and the consequence was the creation of a bureaucracy which exercised a large influence in public affairs, and was at the same time independent of the popular branch. When self-government was entrusted to the provinces, the British authorities declared that they had "no wish to make the provinces the resource for patronage at home," but on the contrary were earnestly intent on giving to the talent and character of leading persons in the Colonies advantages similar to those which talent and character employed in the public service obtain in the United Kingdom."[1] But at the same time the British government, speaking through the official medium of the secretary of state for the colonies, always pressed on the Canadian authorities the necessity of giving permanency and stability to the public service, by retaining deserving public officers without reference to a change of administration.[2] The consequence of observing this valuable British principle has been to create a large body of public servants, on whose ability and intelligence depends, in a large measure, the easy working of the machinery of government. According as the sphere of government expanded, and the duties of administration became more complicated, it was found necessary to mature a system better adapted to the public exigencies. The first important measure in this direction was the bill of 1857, which has been followed by other legislation in

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[1] Lord John Russell, 1839. Journals of Ass. U.C., App. B.B.

[2] Lord John Russell, 1839, App. B.B., Jour. of Ass., 1841. Earl Grey to Lieut.-Governor Harvey, of Nova Scotia, 31 March, 1847. E. Com. P. 1847–48, vol. 42, p. 77. In Nova Scotia, the advice of the British government was never practically followed, and public officers have been very frequently changed to meet the necessities of politicians. See despatch of the Duke of Newcastle to Governor Gordon, Feb. 22, 1862, New Brunswick Jour., 1862, p. 192.

the same direction of improving the machinery of administration.[1]

But in no respect have we more forcible evidence of the change in the colonial policy of the imperial government than in the amendments that were eventually made in the Union Act of 1840. All those measures of reform, for which Canadians had been struggling during nearly half a century, were at last granted. The control of the public revenues and the civil list had been a matter of serious dispute for years between the colonies and the parent state; but, six years after the union, the legislature obtained complete authority over the civil list, with the sanction of the imperial government, which gave up every claim to dispose of provincial moneys.[2] About the same time, the imperial government conceded to Canada the full control of the post office, in accordance with the wishes of the people as expressed in the legislature.[3] The last tariff framed by the Imperial Parliament for the British possessions in North America was mentioned in the speech at the opening of the legislature in 1842,[4] and not long after that time, Canada found herself, as well as

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[1] Mr. Spence, when postmaster-general in the Taché-Macdonald administration, introduced the act of 1857, appointing permanent deputy heads and grades in the departments. 20 Vict., chap. 24. Cons. Stat. of Canada, c. 11. Since Confederation, 42 Vict., c. 34. See Reports of Civil Service Commission, presented to Canadian Parliament, 1880–81 and 1882, in which the present condition of the service is fully set forth, Sess. Pap., No. 113, (1880-81) and Sess. P., No. 32, (1882). In 1882, Parliament passed an act to improve the efficiency of the service (45 Vict., c. 4), which has been amended by 46 Vict., c. 7.

[2] Sec. 50 to 57, respecting consolidated revenue fund and charges thereon, and with the schedules therein referred to, were repealed by the Imperial Act 10 and 11 Vict., c. 71, and the Provincial Act 9 Vict., c. 114, brought into force under sec. 9 of said Prov. Act, which provided a permanent Civil List in place of that arranged by the Imperial authorities. See Cons. Stat. of Canada, c. 10.

[3] See Speech of Lord Elgin, sess. of 1847, Jour. of Ass., p. 7; Can. Stat., 13 and 14 Vict. c. 17, s. 2, and Cons. Stat., c. 31, s. 2, under authority of Imperial Act, 12 and 13 Vict., c. 66.

[4] Ass. Jour., 1842, p. 3.

the other provinces, completely free from Imperial interference in all matters affecting trade and commerce. In 1846, the British Colonies in America were authorized by an imperial statute [1] to reduce or repeal by their own legislation duties imposed by imperial acts upon foreign goods imported from foreign countries into the colonies in question. Canada soon availed herself of this privilege, which was granted to her as the logical sequence of the free trade policy of Great Britain, and, from that time to the present, she has been enabled to legislate very freely with regard to her own commercial interests. In 1849, the Imperial Parliament, in response to addresses of the legislature, and memorials from boards of trade and merchants in Canada, repealed the navigation laws, and allowed the River St. Lawrence to be used by vessels of all nations.[2] With the repeal of those old laws, which had been first enacted in the days of the commonwealth to impede the commercial enterprise of the Dutch, Canadian trade and shipping received an additional impulse.

No part of the constitution of 1840 gave greater offence to the French Canadian population than the clause restricting the use of the French language in the legislature. It was considered as a part of the policy, foreshadowed in Lord Durham's report,[3] to denationalize, if possible, the

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[1] Imp. Stat, 9 and 10 Vict., c. 94. Todd Parl. Gov. in the Colonies, 176-80. See speech of Lord Elgin, 1847, Jour., p. 7, in which he refers to the power given to the colonial legislatures to repeal differential duties heretofore imposed by the Colonies in favour of British produce. In response, the legislature passed, 10 and 11 Vict., c. 30, the first measure necessary to meet "the altered state of our colonial relations with the mother country." Speech of Speaker of Assembly in presenting Supply Bill. Jour. p. 218.

[2] Leg. Ass. J. (1849), 43, 48, 57; app. C.; Imp. Acts, 12 and 13 Vict., c. 29, s. 5. The memorandum of the Canadian government sets forth very clearly that since it was no longer the policy of the Empire to give a preference to colonial products in the markets of the United Kingdom, no reason could possibly exist for monopolies and restrictions in favour of British shipping. App. C. as above.

[3] "Without effecting the change so rapidly or so roughly as to shock

French Canadian province. The repeal of the clause in 1848 was one evidence of the harmonious operation of the union, and of the better feeling between the two sections of the population.[1] Still later, provision was made for an elective legislative council, so long and earnestly demanded by the old legislature of Lower Canada. In 1854 the Imperial Parliament passed, in response to an address of the legislative assembly, an act to empower the legislature to alter the constitution of the legislative council.[2] In 1856, the Canadian legislature passed a bill providing for an elective upper house; the province was divided into 48 electoral divisions, 24 for each section; twelve members were to be elected every two years; every councillor was to hold real estate to the value of $8,000 within his electoral district. The members were only to remain in the council for eight years, but could of course be re-elected. Existing members were allowed to retain their seats during their lives.[3] The speaker was appointed by the Crown from the council until 1862, when he was elected by the members from among their own number.[4] The first election of councillors under the new act took place in the summer of 1856.

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the feelings and trample on the welfare of the existing generation, it must henceforth be the first and steady purpose of the British government to establish an English population, with English laws and language, in this province, and to trust its government to have but a decidedly English legislature." P. 110, *et seq.*

[1] See chap. v.

[2] Leg. Ass. J. (1853), 944; Imp. Act, 17 and 18 Vict., c. 118. In the course of the debate the Duke of Newcastle said: "The proper course to pursue was to legislate no more for the colonies than we could possibly help; indeed, he believed that the only legislation now required for the colonies consisted in undoing the bad legislation of former years." 134 E. Hans (3) 159. 22 and 23 Vict., c. 10, Imp. Stat.

[3] 19 and 20 Vict., c. 140; Cons. Stat. of Canada, c. 1. Mr. Cauchon, commissioner of crown lands, in the MacNab-Taché Administration, introduced the bill in the Assembly.

[4] Can. Stat., 23 Vict., c. 3, repealed s. 26 of 19 and 20 Vict., c. 140. The Act made also provision for supplying the place of the speaker in case of

**VI. Federal Union of the Provinces.**—The union between Upper and Lower Canada lasted until 1867, when the provinces of British North America were brought more closely together in a federation and entered on a new era in their constitutional history. For many years previous to 1865, the administration of government in Canada had become surrounded with political difficulties of a very perplexing character. The union had not at first been viewed with favour by the majority of the French Canadians who regarded it as a scheme to anglicize their province in the course of time. One of their grievances[1] was the fact that the act gave each province the same representation in the legislature, though Lower Canada had in 1840 the greater population.[2] But the large immigration that flowed into Upper Canada for many years after the union soon gave the preponderance of population to that province, where in the course of no long time a demand was made for a representation in the legislature according to the population. This demand was always strenuously resisted by the Lower Canadian representatives as unjust in view of the conditions under which they entered the union. The act itself afforded them sufficient protection inasmuch as it embodied the

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his being obliged to leave the chair from illness, &c. The first election took place in 1862, March 20, when Sir Allan MacNab was chosen Speaker.

[1] See address of M. Lafontaine (1 Turcotte, 60) in which he laid before the electors of Terrebonne his opinions as to the injustice of the Union Act: "L'union est un acte d'injustice et de despotisme en ce qu'elle nous est imposeé sans notre consentement; en ce qu'elle prive le Bas Canada du nombre légitime de ses représentants, etc."

[2] In 1839, Lord Durham gave the population of Upper Canada at 400,000, and that of Lower Canada at 600,000, of whom 450,000 were French. The census compiler of 1870 gives the population of Upper Canada in 1840, at 432,159; of Nova Scotia in 1838, 202,575; of New Brunswick, in 1840, 156,162; of Assiniboia 4,704; of Prince Edward Island, 47,042 in 1841. No figures are given for Lower Canada in 1840, but we find the number was 697,084 in 1844. The figures given by Lord Durham were as accurate as they could be made at the time.

proviso[1] that the governor could not assent to any bill of the legislature to alter the representation unless it should have been passed with the concurrence of two-thirds of the members in each house. This clause was, however, suddenly repealed by the Imperial Act of 1854, empowering the legislature to alter the constitution of the legislative council, but no practical result ever followed in respect to the representation.[2]

It is interesting to note that one of the expedients by which it was hoped to arrange the political conflict between the two sections was the principle of a double majority. In the course of the first decade after the union, prominent public men laid it down as necessary to the harmonious operation of the constitution, that no administration ought to continue in power unless it was supported by a majority from each section of the united provinces.[3] As a matter of justice, it was urged, that no measure touching the interests of a particular province should be passed except with the consent of a majority of its representatives.[4] The principle had more or less recognition in the government and legislature after 1848.[5] The very formation of the ministry, in which each pro-

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[1] 3 and 4 Vict., c. 35, s. 26. This clause was added to the bill by the British Ministry to protect the French Canadian representation. II Garneau, 480.

[2] 17 and 18 Vict., c. 118, s. 5. The legislature had never asked an amendment in this direction, and the history of the repeal is a mystery. Garneau (vol. ii., 480) accused Sir Francis Hincks of having been the inspiring cause; but in a pamphlet published in 1877, he denied it most emphatically. In 1854, the total number of representatives in the Assembly was 130—65 from each province. 16 Vict. c. 152.

[3] M. M. Lafontaine and Caron to Mr. Draper, 1845. I. Turcotte, 202-10.

[4] Mr. Baldwin resigned in 1851 on a vote of the Upper Canada representatives adverse to the Court of Chancery, II. Turcotte, 171-3. See remarks of Sir John A. Macdonald, Confederation Debates, 30.

[5] See resolution moved by Mr. (now Sir Hector) Langevin, 19th of May, 1858.

vince was equally represented, was an acknowledgment of the principle. But this acknowledgment, it was contended, was of no substantial value so long as the executive councillors taken from either section of the province did not possess the confidence of the majority of the representatives of that section in the assembly.[1] The principle, however specious in theory, was not at all practicable in legislation, and even its most strenuous supporters too often found that it could not be conveniently carried out in certain political crises. Its observance was always, to a great extent, a matter of political convenience, and it was at last abandoned even by its former advocates who had urged it as the only means of doing justice to each province, and preserving the equality of representation provided in the constitution of 1840.[2]

The demands of the representatives from Upper Canada for additional representation were made so persistently that the time arrived when the administration of public affairs became surrounded with the gravest embarrassment. Parties at last were so equally balanced on account of the antagonism between the two sections, that the vote of one member might decide the fate of an administration, and the course of legislation for a year or series of years. From the 21st of May, 1862, to the end of June, 1864, there were no less than five different ministries in charge of the public business.[3] Legislation, in fact, was at last practically at a dead-lock, and it became an absolute political necessity to arrive at a practical solution of difficulties,

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[1] See amendment moved by Mr. Cauchon to Mr. Thibaudeau's motion. Jour. Ass. [1858] 145,876. Also *Ib.* [1856], 566.

[2] Mr. J. Sandfield Macdonald was always one of its warmest supporters, on the ground that it did away with the necessity of a change in the representation, as advocated by Mr. Brown and his followers from Upper Canada; but he virtually gave it up on the separate school question in 1863, when a majority of the representatives of his own province pronounced against a measure to which he was pledged as the head of the Macdonald-Sicotte Ministry. II. Turcotte, 477-487. See II. Dent, 429.

[3] Sir J. A. Macdonald, Con. Deb., p. 26; Sir E. P. Tache, *ib.* 9.

which appeared to assume more gravity with the progress of events. It was at this critical juncture of affairs that the leaders of the government and opposition, in the session of 1864, came to a mutual understanding, after the most mature consideration of the whole question. A coalition government was formed on the basis of a federal union of all the British American provinces, or of the two Canadas, in case of the failure of the larger scheme.[1] The union of the provinces had been discussed more than once in the legislatures of British North America since the appearance of Lord Durham's report, in which it was urged with great force that "it would enable the provinces to co-operate for all common purposes, and above all, it would form a great and powerful people, possessing the means of securing good and responsible government for itself, and which, under the protection of the British Empire, might, in some measure, counterbalance the preponderant and increasing influence of the United States on the American continent." Lord Durham even went so far as to recommend that the "bill should contain provisions by which any or all of the other North American Colonies may, on the application of the legislature, be, with the consent of the two Canadas or their united legislature, admitted into the union on such terms as may be agreed on between them."[2] The expediency of a union was made a part of the programme of the Cartier-Macdonald government in 1858, and expressly referred to in the governor's speech at the close of the session;[3] but no practical result was ever reached until

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[1] Sir J. A. Macdonald, Conf. Deb., 26-27. "The opposition and government leaders arranged a larger and a smaller scheme; if the larger failed, then they were to fall back upon the minor, which provided for a federation of the two sections of the province." Sir E. P. Tache, *Ib.* 9.

[2] Rep., pp. 116-21. He preferred a legislative union.

[3] Conf. Deb., Sir G. E. Cartier, p. 53; Ass. J. (1858) 1043. See also Mr. Brown's speech (pp. 110-24), in which he claimed that the essence of the federation measure was found in the "joint authority" resolutions of the Reform Convention of 1859.

the political necessities of the provinces forced them to take up the question and bring it to a satisfactory issue. It was a happy coincidence that the legislatures of the lower provinces were about considering a maritime union at the time the leading statesmen of Canada had combined to mature a plan of settling their political difficulties. The Canadian ministry at once availed themselves of this fact to meet the maritime delegates at their convention in Charlottetown, and the result was the decision to consider the question of the larger union at Quebec. Accordingly, on the 10th of October, 1864, delegates from all the British North American provinces assembled in conference, in "the ancient capital," and, after very ample deliberations during eighteen days, agreed to seventy-two resolutions, which form the basis of the Act of Union.[1] These resolutions were formally submitted to the legislature of Canada in January, 1865, and after an elaborate debate which extended from the 3rd of February to the 14th of March, both houses agreed by very large majorities to an address to her Majesty praying her to submit a measure to the Imperial Parliament "for the purpose of uniting the provinces in accordance with the provisions of the Quebec resolutions."[2] Some time, however, had to

[1] For historical accounts of initiation of confederation see Doutre, Constitution of Canada, 15; Gray, Confederation of Canada, vol. i.; II. Turcotte, 518-59; Confederation Debates, 1865, especially speeches of Sir E. P. Tache, Sir J. A. Macdonald, Sir G. E. Cartier, Hon. Geo. Brown, and Sir A. Campbell. Canada was represented by 12 delegates, 6 for each province, New Brunswick by 7, Nova Scotia by 5, P. E. Island by 7, and Newfoundland by 2; each province had a vote, and the convention sat with closed doors. The delegates: Canada, Sir E. P. Tache, Messrs. J. A. Macdonald, Cartier, Brown, Galt, Campbell, Chapais, McGee, Langevin, Mowat, McDougall and Cockburn. Nova Scotia, Messrs. Tupper, Henry, McCully, Archibald and Dickey. New Brunswick, Messrs. Tilley, Mitchell, Fisher, Steeves, Gray, Chandler and Johnson. P. E. Island, Messrs. Gray, Coles, Haviland, Palmer, Macdonald, Whelan and Pope. Newfoundland, Messrs. Shea and Carter.

[2] The address was agreed to in the legislative council by 45 contents to 15 non-contents, Jour. (1865, 1st sess.), p. 130; in the assembly by 91 yeas to 33 nays, Jour., p. 192–3; Confed. Debates, 1865, p. 962. Sir E. P. Taché

elapse before the union could be consummated, in consequence of the strong opposition that very soon exhibited itself in the maritime provinces, more especially to the financial terms of the scheme. In New Brunswick, there were two general elections during 1865 and 1866, the latter of which resulted in the return of a legislature favourable to union, and finally in the adoption of the measure. The question was never submitted to the people at the polls in Nova Scotia, but the legislature eventually, after months of hesitation, agreed to the union, in view of the facts that it was strongly approved by the imperial government as in the interests of the Empire, that both Canada and New Brunswick had given their consent, and that it was proposed to make such changes in the terms as would be more favourable to the interests of the maritime provinces. The result of the action of the two provinces in question was another conference at London in the fall of 1866, when a few changes were made in the direction of maritime interests, chiefly in the financial terms, and without disturbing the important features of the Quebec resolutions, to which Canada had already pledged herself in the session of 1865.[1] The provinces of Canada, Nova Scotia, and New Brunswick, being at last in full accord, through the action of their respective legislatures, the plan of union was submitted on the 12th of February, 1867, to the Imperial Parliament, where it met with the warm support of the statesmen of all parties, and passed without amendment in the course of a few weeks, the royal assent being given on the 29th of March.[2]

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introduced the resolutions in the council; Atty.-Gen. (now Sir. J. A.) Macdonald moved, and Atty.-Gen. (afterwards Sir) G. E. Cartier, seconded them in the assembly. Four members of the government went to England after the session of 1865, in reference to confederation, the cession of the North-West, and other important questions. Jour., 1865, 2nd sess., 7–16.

[1] The Westminister Palace Conference was held in London, in December, 1866, and the result was the Union Act of 1867.

[2] Imp. Act, 30 and 31 Vict., c. 3. "An Act for the Union of Canada, Nova Scotia and New Brunswick, and the government thereof, and for

The new constitution came into force on the first of July, 1867, and the first parliament of the united provinces met on November of the same year[1] — the act requiring it to assemble not later than six months after the union.[2]

The confederation, as inaugurated, in 1867, consisted only of the four provinces of Ontario, Quebec, Nova Scotia and New Brunswick.[3] By the 146th section of the Act of Union, provision was made for the admission of other colonies on addresses from the parliament of Canada, and from the respective legislatures of Newfoundland, Prince Edward Island, and British Columbia. Rupert's Land and the North-West Territory might also at any time be admitted into the union on the address of the Canadian parliament. The acquisition of the North-West Territory had been for years the desire of the people of Canada, and was the subject of consultation with the imperial government in 1865, when Canadian delegates went to England.[4] During the first session of the parliament of Canada, an address was adopted praying her Majesty to unite Rupert's Land and the North-West Territory to the dominion.[5] This address received a favour-

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purposes connected therewith." Lord Carnarvon, then secretary of state for the colonies, had charge of the measure in the Lords. Mr. Adderley, under-secretary in the Commons. 185 E. Hans 3 (Lords), 557, 804, 1011; (Commons) 1164, 1310, 1701.

[1] Her Majesty's proclamation, giving effect to the Union Act, was issued on the 22nd May, 1867, declaring that on and after the 1st July, 1867, the provinces of Canada, Nova Scotia and New Brunswick shall form and be one Dominion, under the name of Canada. The proclamation also contained names of first senators. Jour. House of Commons of Canada, V-VI. B. N. A. Act, 1867, s. 3 and 25. Lord Monck was the first governor-general of the dominion. Com. Jour. (1867-8), VII. Parliament met on the 7th November, and Hon. J. Cockburn was elected first speaker of the Commons. Hon. J. Cauchon was first speaker of the Senate.

[2] Sec. 19.

[3] B. N. A. Act, 1867, s. 5-7.

[4] Can. Com. J., 1865, 2 sess., pp. 12-13. For papers on the subject of the acquisition of the territory see Can. Sess. P., 1867-8, No. 19, and p. 357 of Journals.

[5] Can. Com. J. (1867-8), 67.

able response, but it was found necessary in the first place to obtain from the Imperial Parliament authority to transfer to Canada the territory in question. An act was passed in the month of July, 1868,[1] and in accordance with its provisions, negotiations took place between Canadian delegates and the Hudson's Bay Company for the surrender of the North-West to the dominion. An agreement was finally arrived at for the payment of £300,000 sterling on condition of the surrender of Rupert's Land to the dominion—certain lands and privileges at the same time being reserved to the company. The terms were approved by the Canadian parliament in the session of 1869,[2] and an act at once passed for the temporary government of Rupert's Land and the north-west territories when united with Canada.[3] The act of 1869 provided for the appointment of a lieutenant-governor and council, to make provision for the administration of justice, and establish such laws and ordinances as might be necessary for peace and good government in the North-West Territories. In the autumn of 1869 an order in council was passed appointing the first lieutenant-governor of the territories, but the outbreak of an insurrection among the French half-breeds prevented the former ever exercising his executive functions.[4] It was not until the appearance of an armed force in the country in the fall of 1870 that the remnant of the insurgents fled from the territory; but, during the twelve months that preceded, means had been taken by the Canadian authori-

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[1] Imp. Stat., 31 and 32 Vict., c. 105 (Can. Stat. for 1869), entitled "An Act for enabling her Majesty to accept or surrender upon terms of the lands, privileges and rights of the governor and company of adventurers of England trading into Hudson's Bay, and for admitting the same into the dominion of Canada."

[2] Can. Com. (1869), pp. 149-56, in which the negotiations for the transfer are set forth in the address to her Majesty, accepting the terms of agreement for the surrender of the territory.

[3] Can. Stat., 32 and 33 Vict., c. 3.

[4] Hon. W. McDougall.

ties to arrange terms on which the people of the Red River might enter confederation. In the session of 1870, the Canadian parliament passed an act[1] to establish and provide for the government of Manitoba—a new province formed out of the North-West Territory, to which was given representation in the Senate and House of Commons. Provision was also made for a local or provincial government on the same basis as existed in the older provinces. On the 30th of June, 1870, by an imperial order in council,[2] it was declared that after the 15th of July, 1870, the North-West Territory and Rupert's Land should form part of the dominion of Canada. The legislature of Manitoba was elected in the early part of 1871, and the provincial government regularly and peacefully established.[3] The members for the House of Commons took their seats in the session of the same year,[4]—the new senators in the session of 1872.[5] When we come to consider the provincial constitutions we shall refer to the local government of Manitoba as well as to the provisions made in several statutory enactments for the administration of affairs in the North-West.

In accordance with addresses from the Canadian parliament, and the legislative council of British Columbia, that colony was formally admitted into the confederation by imperial order in council declaring that from and after the 20th of July, 1871, the colony should form part of the dominion. The terms of union provided for representation in the Senate and House of Commons, and responsible government in the province, as well as for the construction

[1] 33 Vict., c. 3. The limits of the province were enlarged in 1881; Can. Stat. 44 Vict., c. 14. See also Man. Stat., 44 Vict., c. 1, 12, 13, 14.

[2] In accordance with s. 146, B. N. A. Act, 1867; Can. Stat., 1872, p. lxiii.

[3] Annual Register, 1878, pp. 18-19.

[4] Com. J. (1871), 154, 221, 226. Only three members were returned; a new election in one constituency being requisite on account of a tie. Jour., p. 152.

[5] 5 Sen. J. (1872), 18.

of a trans-continental railway.[1] The members for the province took their seats in the Senate and House of Commons during the session of 1872.[2]

The province of P. E. Island, had been represented in the Quebec conference of 1864, but owing to the opposition that existed to the union for some years, it was not until the first session of 1873 that both the Parliament of Canada and the legislature of the island passed addresses for the admission of the province into the confederation on certain conditions which included representation in the Senate and House of Commons, and the continuance of the local government on the same basis as in the other provinces.[3] A bill was also passed during the same session,—in anticipation of her Majesty's government taking the necessary steps to admit the island—providing that certain acts should come into force in the province as soon as it was united to Canada.[4] By an imperial order in council, it was declared that from and after the first of July, 1873, the colony should form part of the dominion.[5] The members for the two houses took their seats for the first time during the second session of 1873.[6]

Newfoundland was also represented at the Quebec convention of 1864, but the general elections of 1865 resulted adversely to the union.[7] Subsequently the House of Commons, in the session of 1869, went into committee on certain resolutions providing for the admission of Newfoundland, and an address was passed in accordance therewith. The union was to take effect on such day as

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[1] Can. Com. J. [1871]; 193-99; Parl. Deb., 1871. Can. Stat. for 1872, p. lxxxiv. Also, as to preparatory steps, Can. Sess. Pap., No. 59, 1867-8, pp. 3-7.

[2] Sen. J. [1872] 18; Com. J. [1872] 4. The elections for the Commons were held in accordance with 34 Vict. c. 20.

[3] Can. Com. J. [1873] 403.

[4] 36 Vict. c. 40.

[5] Can. Stat. for 1873, p. ix.

Sen. J. 1873, 2nd session, p. 9. Com. J., *Ib.* pp. 2–4.

[7] II. Turcotte, 562.

"her Majesty by order in council, on an address to that effect, in terms of the 146th section of the British North America Act, 1867, may direct";[1] but the legislature of Newfoundland has so far refused to sanction the necessary address.

In response to an address of the Parliament of Canada, in the session of 1878, an imperial order in council was passed on the 31st of July, 1880, declaring that "from and after the 1st of September, 1880, all British territories and possessions in North America, not already included within the dominion of Canada, and all islands adjacent to any of such territories or possessions shall (with the exception of the colony of Newfoundland and its dependencies) become and be annexed to and form part of the said dominion of Canada; and become and be subject to the laws, for the time being in force in the said dominion, in so far as such laws may be applicable thereto." This order in council was considered necessary to remove doubts that existed regarding the northerly and north-easterly boundaries of the North-West Territories and Rupert's Land, transferred to Canada by order of council of the 23rd of June, 1870, and to place beyond question the right of Canada to all of British North America, with the exception of Newfoundland.[2]

**VII. Constitution of the General Government and Parliament.**—The Dominion[3] of Canada has, therefore been extended since 1867 over all the British possessions between the Atlantic and Pacific oceans to the north of the United States—the territory under the jurisdiction of the Newfoundland government alone excepted. The seven pro-

[1] Can. Com. J. [1869], 221.

[2] Can. Com. J. [1878] 256-7; Can. Stat. 1881, p. ix, Order in Council. Can. Hans. [1878], 2386.

[3] The title of Dominion [s. 3, of B. N. A. Act, 1867], did not appear in the Quebec resolutions. The 71st Res. is to the effect that "her Majesty be solicited to determine the rank and name of the Federated Provinces."

vinces embraced within this vast area of territory are united in a federal union, the terms of which have been arranged on "principles just to the several provinces."

In order "to protect the diversified interests of the several provinces, and secure efficiency, harmony, and permanency in the working of the union," the system of government, as set forth in the Act of 1867, combines in the first place a general government, "charged with matters of common interest to the whole country," and local governments for each of the provinces, "charged with the control of local matters in their respective sections." With a view to the perpetuation of our connection with the mother country, the promotion of the best interests of the people of these provinces," the constitution of the general government has been so framed as "to follow the model of the British constitution, so far as our circumstances will permit." Accordingly, "the executive authority or government" is vested in express terms in the "Sovereign of the United Kingdom of Great Britain and Ireland," and is administered "according to the well understood principles of the British constitution."[1]

The sovereign is represented in the dominion by a governor-general, appointed by letters-patent under the great seal. His jurisdiction and powers are defined by the terms of his commission, and by the royal instructions which accompany the same.[2] He holds office during the

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See remarks of Sir J. A. Macdonald, Confed. Deb., p. 43. The name was arranged at the conference held in London in 1866, when the union bill was finally drafted. This was not the first time the title was applied to Canada; we find in the address of the old Colonies assembled at Philadelphia, 1774, strong objection taken to the Act of 1774, by which "the dominion of Canada is to be so extended, modelled and governed." I. Christie, 9. The old commonwealth of Virginia was known as "the Old Dominion."

[1] These quotations are from the Quebec resolutions, Can. Com. J. [1865] 203. The preamble of the B. N. A. Act, 1867, declares, "with a constitution similar in principle to that of the United Kingdom."—Sec. 9. "The executive government and authority is hereby declared to continue and be vested in the Queen."

[2] See App. at end of this work.

pleasure of the Crown, but he may exercise his functions for at least six years from the time he has entered on his duties.[1] In all his communications with the imperial government, of which he is an officer, he addresses the secretary of state for the colonies, the constitutional avenue through which he must approach the sovereign.[2] His first duty, when he enters on his duties, is to take the necessary oaths of allegiance and office before the chief justice, or any other judge of the supreme court of the dominion, and at the same time to cause his commission to be formally read.[3]

In view of the larger measure of self-government conceded to the dominion of Canada by the imperial legislation of 1867—in itself but the natural sequence of the new colonial policy inaugurated in 1840—the letters-patent and instructions, which accompanied the commission given to the governor-general in 1878, have been modified and altered in certain material features. The measure of power now exercised by the government and parliament of Canada is "relatively greater than that now enjoyed by other colonies of the empire, but absolutely more than had been previously intrusted to Canada itself, during the administration of any former governor-general."[4] Without entering at length into

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[1] Colonial Reg. sec. 7. Col. Office List, 1883, p. 254. Todd, 90. Lord Lorne held the position for only five years. Lord Dufferin was appointed in the spring of 1872, and retired in the fall of 1878.

[2] Todd, 90, Col. Reg. sec. 165, p. 265.

[3] Instructions to governor-general, Can. Sess. P. 1879, No. 14. The Marquis of Lorne was sworn in on the 25th of November, 1878, in the old Province Building, Halifax, by acting Chief Justice Ritchie. Annual Register for 1878, pp. 255-7. The oath of office is given in same account of ceremonies on that occasion.

[4] The modifications in these official instruments were the result of the mission of Mr. Blake, whilst minister of justice, to England in 1876. For full information on this subject, see Todd 76, *et seq.*, and Can. Sess., P. (1877) No. 13; also chapter on bills. For royal commission, letters-patent, and instructions to the Marquis of Lorne, Sess. P. (1879) No. 14; to Lord Monck, Sess. P. (1867-8) No. 22; also to Lord Dufferin, Can. Com. J. (1873) 85.

this question, it is sufficient for present purposes to notice that the governor-general is authorized, among other things, to exercise all powers lawfully belonging to the queen, with respect to the summoning, proroguing or dissolving parliament;[1] to administer the oaths of allegiance and office;[2] to transmit to the imperial government copies of all laws assented to by him or reserved for the signification of the royal assent;[3] to administer the prerogative of pardon;[4] to appoint all ministers of state, judges, and other public officers, and to remove or suspend them for sufficient cause.[5] He may also appoint a deputy or deputies to exercise certain of his powers and functions.[6] He may not leave the dominion upon any pretence whatsoever without having first obtained permission to do so through one of the principal secretaries of state.[7] In case of the death, incapacity, removal [8] or absence from Canada of the governor-general, his powers are vested in a lieutenant-governor or administrator appointed by the queen, under the royal sign-manual; or, if no such appointment has been made, in the senior officer in command of the imperial troops in the dominion. The administrator must also be formally sworn, as in the case of the governor-general.[9]

The senior executive councillor frequently administered the government in the absence of the governor-general

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[1] Letters Patent, 1878, s. 5.

[2] Instructions, 1878, s. 2.

[3] *Ib.* s. 4. See chapter on bills.

[4] *Ib.* s. 5. See Todd, 271.

[5] Letters P. s. 3, 4.

[6] *Ib.* s. 6; also B. N. Act, 1867, s. 14. See Chapter vi., for appointment of deputy-governors since 1840.

[7] Instructions s. 6.

[8] It is always competent for the imperial government to remove the governors of colonies, who are appointed during pleasure. See memorable case of Governor Darling of Victoria. Eng. Com. P. 1866, vol. 50, p. 701; Todd, 99.

[9] Letters-patent, s. 7. *Canada Gazette*, Dec. 30, 1882.

before the union of 1840.[1] But whenever the lieutenant-governor was in the country, during the period in question, it was his duty to administer the government[2]. Since 1840, in the old province of Canada, and in the dominion, the government has been administered in the absence of the governor-general by the senior officer in command of the imperial troops in accordance with the letters-patent issued by the Crown.[3]

The constitution provides for the appointment of a council to aid and advise the representative of the sovereign in the government of Canada. This body is styled the queen's privy council, and its members are chosen and may be removed at any time by the governor.general.[4] In accordance with the principles of the British constitutional system, this council represents the views of the majority of the people's representatives in parliament, and can only hold office as long as its members retain the confidence of the House of Commons. The name chosen for this important body has been borrowed from that ancient institution of England, which so long discharged the functions of advising the supreme executive of the kingdom in the government of the country.[5] Since the revolution of 1688, the privy council of England has had

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[1] In 1805, when Sir R. Shore Milnes, lieutenant-governor, went to England, Mr. Dunn assumed the government as "President and Commander-in-Chief;" he was one of the judges, and an executive councillor. I. Christie, 259. On the death of the Duke of Richmond, in 1819, the government devolved on Mr. Monk, as senior executive councillor. III. Christie, 322.

[2] General Prescott on departure of Lord Dorchester in 1796, 1 Christie, 173; Sir R. Shore Milnes in 1799, *Ib.* 203; Sir F. Burton in 1824, III. *Ib.* 55. No such official now exists in the dominion, the functions of the present lieutenant-governors being confined to the provinces to which they are appointed.

[3] In 1841, Sir R. D. Jackson; 1845, Lord Cathcart; 1853, Lieut.-Gen. Rowan; 1857, Sir W. Eyre; 1860, Lieut.-gen. Williams; 1865, Lieut.-Gen. Michel; 1874, Major-Gen. O'Grady Haly; 1878, 1881-2, and 1882-3, Sir P. L. McDougall. [See *Canada Gazette*, Dec. 30, 1882.]

[4] B. N. A. Act, 1867, s. 11.

[5] I. Blackstone's Com., 229-234.

no longer the direction of public affairs, though it has still an existence as an honorary body, limited in numbers only liable to be convened on special occasions, and only in theory an assembly of state advisers.[1] The system which has grown up in England since 1688, and which has obtained its most perfect realization during the past half century, now entrusts the practical discharge of the functions of government to a cabinet council, which is technically a committee of the privy council.[2] This cabinet is the ruling part of the ministry or administration. The term "ministry" properly includes all the ministers, but of these only a select number—usually about twelve, but liable to variation from time to time even in the same administration—constitute the inner council of the Crown and incur the higher responsibilities whilst they exercise the higher powers of government. The rest of the ministry, although closely connected with their brethren in the cabinet, occupy a secondary and subordinate position.[3] In Canada, however, there is no such distinction; for the term "ministry" or "cabinet" is indifferently applied to those members of the privy council who may be summoned by the governor-general to aid and advise him in the government of the dominion. The principles that prevail in the formation of a cabinet in England obtain in the case of an administration in Canada. Its members must have places in either house of parliament,

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[1] II. Todd, Parl. Gov. in England, 52, 53.

[2] II. Todd, 144. The cabinet council or ministry who hold the principal offices of state, are first sworn in as privy councillors. II. May, 79, Macaulay c. 20.

[3] Taswell-Langmead, Cons. Hist., p. 679. And not only is the existence of the cabinet council unknown to the law, but the very names of the individuals who may comprise the same at any given period are never officially communicated to the public. The *London Gazette* announces that the queen has been pleased to appoint certain privy councillors to fill certain high offices of state, but the fact of their having been called to seats in the cabinet council is not formally promulgated, II. Todd, 144.

but the majority should, and necessarily do, sit in the commons.

In the old province of Canada, the cabinet was always known officially as the executive council.[1] In 1865, this body comprised in all twelve members, six from each province: two attorney-generals, two solicitor-generals, a receiver-general (also minister of militia), minister of finance, commissioner of crown lands, minister of agriculture and statistics, commissioner of public works, president of council, provincial secretary, and postmaster-general.[2] In all the provinces of the dominion, the official body advising the lieutenant-governor is still authoritatively recognized as the executive council.[3]

In 1867, a new ministry of thirteen members was formed under the legal title of the privy council of Canada, in which it was found expedient to consider the claims of the several provinces of the dominion to representation in the first cabinet. Accordingly, Ontario had five representatives in the privy council; Quebec, four, one of them a representative of the English section of the population; Nova Scotia, two; New Brunswick, two. The departments were re-organized, and new ones established, to meet the changed conditions of things. The privy council was composed of the following ministers:[4] minister of justice and attorney-general,[5] minister of militia,[6]

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[1] Can. Cons. Stat., pp. 168, 169.

[2] Confed. Debates, 1865, p. vii. Sir E. P. Tache was then premier of the Taché-Macdonald ministry, and held two offices, receiver-general and minister of militia.

[3] B. N. A. Act, 1867, s. 63, 64; 45 Vict., c. 2, Quebec Stat.; c. 14, Ont. Cons. Stat.; Man. Cons. Stat., c. 6; 33 Vict., c. 3, s. 7, Can. Stat.; British Col. Cons. Stat. c. 4, s. 2, 3; P. E. Island, Dom. Stat., 1873, p. xii.

[4] Annual Register, 1878, pp. 9-10; *Canada Gazette*. Their salaries and designations are given in 31 Vict., c. 33, schedule. Salaries of ministers were subsequently increased by 31 Vict., c. 31, s. 2.

[5] Functions of department set forth in 31 Vict., c. 39.

[6] 31 Vict., c. 40.

minister of customs,[1] minister of finance,[2] minister of public works,[3] minister of inland revenue,[4] minister of marine and fisheries,[5] postmaster-general,[6] minister of agriculture,[7] secretary of state of Canada,[8] receiver-general,[9] secretary of state for the provinces, president of the privy council.[10] In 1873, on a change of government, the number of ministers was increased to fourteen, two of them without portfolios,[11] but by subsequent re-arrangement the number was reduced to thirteen as before, and P. E. Island, now a part of the confederation, was represented by one member in the cabinet.[12] On two occasions since 1878, the speaker of the Senate received a seat in the council, though without portfolio,[13] and the number of members of government was consequently increased again to fourteen. Since 1867, several changes have taken place in the organization of the departments. In 1873, the office of secretary of state for the provinces was abolished, and a department of the interior organized, with the control and management of Indian affairs, dominion lands, geological survey, and some other matters

[1] 31 Vict., c. 43.

[2] 31 Vict., c. 5; 32-33 Vict. c. 4, and other acts relating to expenditures and revenues.

[3] 31 Vict., c. 12. See *infra*, p. 56.

[4] 31 Vict.. c. 49.

[5] 31 Vict., c. 57. In 1877, the management of certain piers, harbours, and breakwaters, was transferred from the department of public works to that of marine and fisheries. 40 Vict., c. 17.

[6] 31 Vict., c. 10; 38 Vict., c. 7.

[7] 31 Vict., c. 53.

[8] 31 Vict., c. 42.

[9] The department of receiver-general was not provided for by special act, but his duties are defined and referred to in various acts. See 31 Vict., c. 5, etc.

[10] Neither of these offices was provided for by special act.

[11] Hon. E. Blake and Hon. R. W. Scott, Annual Register, 1878, p. 30.

[12] *Ib.* 30-31. P. E. Island has at present no representative in the cabinet; nor have Manitoba and British Columbia.

[13] Hon. Mr. Wilmot, in 1878; Hon. Mr. McPherson, in 1880, on appointment of former to lieutenant-governorship of New Brunswick. See *Can. Gaz.*, Nov. 9, 1878; *Ib.*, Feb. 12, 1880.

previously entrusted to the secretary of state for Canada. The latter office was continued, but its functions were confined to state correspondence, supply of stationery, and such other duties as were discharged by the secretary of state for the provinces, and were not expressly transferred to the department of the interior by the act organizing the latter bureau.[1] In 1879, the office of receiver-general was abolished, and the duties assigned to the finance minister. At the same time the department of public works was divided into two separate departments, presided over by two ministers—one designated minister of railways and canals; the other, minister of public works. These and previous departmental changes were rendered necessary at that time: in the first place, by the transfer of the great north-west territory to the dominion, with its immense area of land, and numerous tribes of Indians, and in the second place, by the very large additional amount of responsibility thrown on the department of public works by the construction of the Pacific railway, which had been at that time undertaken by the government.[2]

The constitution of 1867 provides that there shall be "one Parliament for Canada, consisting of the Queen, an Upper House, styled the Senate, and the House of Commons."[3] We have already seen that the sovereign is

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[1] 36 Vict., c. 4, amend. by 46 Vict., c. 6. The department of the interior has now attained great importance on account of the rapid development of the North-West, to which it owes its existence.

[2] 42 Vict., c. 7. "An Act respecting the offices of receiver-general and minister of public works," Can. Hans. (1879) 1241. In the session of 1878, when the Mackenzie administration was at the head of affairs, a bill passed the Commons to abolish the receiver-generalship, and to subdivide the department of justice, so that there would be an attorney-general with a seat in the cabinet, and presiding conjointly with the minister of justice over the dominion law department. Can. Hans. (1878) 1204, 1584, 1811. It was, however, postponed in the Senate, Sen. Deb., (1878) 681-695.

[3] B. N. A. Act, 1867, s. 17.

represented by a governor-general who, in person or by deputy, opens and prorogues parliament.[1] He also assents to all bills in her Majesty's name,[2] and may at any time dissolve parliament,[3] a prerogative of the Crown exercised with great caution under the advice of the privy council. In the times before the concession of responsible government, when contests between the executive and the assemblies were chronic, the governors dulled the edge of this important instrument by its too frequent use.[4] Under the present system of constitutional government, such a condition of things cannot possibly occur. The responsibility of deciding whether in any particular case a dissolution should be granted, must, under our constitution, "rest absolutely with the representative of the sovereign."[5] In coming to a conclusion, he is guided by considerations of public interest, which will enable him always to judge of the value of the advice given him by his constitutional advisers.[6] Occasions, however, can very rarely arise when he should feel himself bound, for power-

[1] See chap. vi.

[2] Chapter on bills.

[3] Governor-general's letters-patent, 1878, s. 5; B. N. A. Act, 1867, s. 50.

[4] From 1808 to 1810, the Quebec assembly was dissolved no less than three times by Sir James Craig. See his remarkable speech on one occasion, in which he soundly rated the assembly before dissolving it. 1 Christie, 283.

[5] Sir T. E. May, New South Wales Leg. Ass. V. and P., 1877–78, vol. i., p. 451; Todd, Parl. Gov. in the Colonies, 561.

[6] "The responsibility, which is a grave one, of deciding whether in any particular case it is right and expedient, having regard to the claims of the respective parties in parliament, and to the general interests of the colony, that a dissolution should be granted, must, under the constitution, rest with the governor. In discharging this responsibility, he will, of course, pay the greatest attention to any representations that may be made to him by those who, at the time, are his constitutional advisers; but, if he should feel himself bound to take the responsibility of not following his ministers' recommendation, there can, I apprehend, be no doubt that both law and practice empower him to do so." Sir Michael Hicks-Beach, Sec. of S. for Colonies; New Zealand Parl. P., 1878; App. A. 2, p. 14; New Zealand *Gazette*, 1878, pp. 911–14.

ful public or constitutional reasons, to refuse the advice of his council; but there can be no doubt that it is the right and duty of the Crown, under any circumstances, to control the exercise of one of the most valued prerogatives of the sovereign. The relations between the representative of the Crown and his advisers are now so thoroughly understood, that a constitutional difficulty can hardly arise which cannot be immediately solved. If the Crown should feel compelled at any time to resort to the extreme exercise of its undoubted prerogative right of refusing the advice of its constitutional advisory council of ministers, they must either submit or immediately resign and give place to others who will be prepared to accept the full responsibility of the sovereign's action, which must be based on the broadest grounds of the public welfare.[1]

Elsewhere the provisions in the Act of Union respecting the constitution of the Senate and the House of Commons are explained at considerable length, and it is only necessary here to refer to some general features of the organization of those bodies.[2] In the constitution of the upper house adequate security has been given to each of the provinces for the protection of its peculiar local interests, "a protection which it was believed might not be found in a house where the representation was based upon numbers only."[3] Consequently, the dominion was divided into three sections, representing distinct interests, —Ontario, Quebec and the maritime provinces of Nova Scotia and New Brunswick—to each of which was given an equal representation of twenty-four members. Provision was also made for keeping the representation for the maritime provinces at the same number, after the

[1] See mem. of Lieut.-Governor Robitaille, Oct. 30, 1879, in a Quebec constitutional crisis, in which he refused a dissolution to M. Joly, who thereupon resigned. Todd, 565. See also Ib. 573.

[2] Chap. ii.

[3] Sir A. Campbell, Confed. Deb, p. 21.

entrance of Prince Edward Island.[1] An exception, however, was made in the case of Newfoundland, "which has sectional claims and interests of its own, and will therefore have a separate representation in the Senate."[2] More than that, in order to prevent that body being swamped at any time for political reasons, the constitution expressly limits the number that can sit therein to seventy-eight.[3] Special regard has also been had to the peculiar situation of the province of Quebec, where the electoral divisions that existed previous to 1867 are maintained, and a senator must consequently have his real property qualification, or be resident, in the district for which he is appointed—a provision that was not considered necessary for the other provinces.[4]

The House of Commons, as first organized under the Act of Union, comprised one hundred and eighty-one members, but the number has, since the census of 1881, been increased to two hundred and eleven, in accordance with the principle of representation laid down in the constitution."[5] In arranging the representation of the House of Commons, the question arose in the Quebec conference as to the best mode of preventing the difficulty in the future of too large a number of members. It was to be expected that in the course of a few decades the population would largely expand, not only in the old provinces which first composed the dominion, but in the new provinces which would be formed sooner or later out of the vast North-

[1] Chap. ii.

[2] Sir J. A. Macdonald, Confed. Deb. 35.

[3] Ib. p. 36, on admission of Newfoundland, 82. Chap. ii.

[4] Hon. G. Brown said in the debate on Confederation (p. 89): "Our Lower Canada friends felt that they had French Canadian interests and British interests to be protected, and they conceived that the existing system of electoral divisions would give protection to those separate interests." The principal object of this provision was to give a representation to the English-speaking population of Lower Canada, in the Eastern Townships especially, which have now two representatives in the Senate.

[5] Chap. ii.

West. Unless some definite principle was adopted to keep the representation within a certain limit the House of Commons might eventually become a too cumbrous, unwieldy body. It was decided "to accept the representation of Lower Canada as a fixed standard—as a pivot on which the whole would turn—since that province was the best suited for the purpose on account of the comparatively permanent character of its population, and from its having neither the largest nor the least number of inhabitants."[1] Hence the danger of an inconvenient increase when the representation is reviewed after each decennial census, has been practically reduced to a minimum.

The question of the duration of parliament also obtained much consideration when the Quebec resolutions were under deliberation; and it was finally decided to follow the example of New Zealand and give the Canadian parliament a constitutional existence of five years[2] "from the day of the return of the writs for choosing the house," subject, of course, to be sooner dissolved by the governor-general, acting under the advice of the privy council. In this connection it is interesting to note that in 1867, the writs for the dominion elections were issued on the 7th of August, and made returnable on the 24th of September, except those for Gaspé, and Chicoutimi, and Saguenay, which were to be returned on the 24th of October.[3] The first parliament actually assembled in the month of November 1867, and lasted until the 8th of July, 1872, when it was formally dissolved, having completed its constitutional limit of five years, less a few weeks, from the return of all the writs. In 1872, the writs were made returnable on the 3rd of September, except those for Gaspé, Chicoutimi and Saguenay, Manitoba and British Columbia, which were to

[1] Sir J. A. Macdonald, Confed. Deb., 1865, p. 38.

[2] Sir J. A. Macdonald, Confed. D., 1865, p. 39.

[3] Jour. [1867-8.] vii-x.

be returned on the 12th of October,[1] but Parliament did not actually assemble until the 5th of March, 1873. The second parliament continued in existence only until the 2nd of January, 1874, when it was dissolved, the writs being generally made returnable on the 21st of February, with the exception of those for the districts and provinces just named, which had to be returned on the 12th of March.[2] The third parliament assembled on the 26th of March, and lasted until the 17th of August, 1878, when it was dissolved,[3] having sat in five sessions of an average duration of nearly ten weeks, and its constitutional existence having been about seven months less than five years from the date of the return of all the writs in 1874. In 1878 the writs generally were returnable on the 21st of November, but Parliament did not actually assemble until the 13th of February, 1879. Only four sessions were held of the fourth parliament which was dissolved in the month of May, 1882, having been less than four years in existence since the dissolution of 1878.

The provisions respecting the election of speaker, quorum, privileges, elections, money votes, royal assent and reserved bills, oaths of allegiance, use of the French language, will be found reviewed at considerable length in subsequent parts of this work, especially devoted to such subjects. Parliament has full control of all dominion revenues and duties, which form one consolidated revenue fund, to be appropriated for the public service in the manner, and subject to the charges provided in the Act of Union.[4] The first charge thereon is the cost incident to the collection and management of the fund itself; the

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[1] Jour. [1873] vi-xi.

[2] Jour. 1874, Proclamations v-ix. A separate proclamation had to be issued for Algoma, writ also returnable on the 12th of March.

[3] Jour. [1879] vii-x.

[4] Sec. 102-126. See 31 Vict. c. 4 and 5, and subsequent acts, respecting the consolidated revenue fund, and collection and management of the revenue.

second charge is the annual interest on the public debts of the several provinces; the third charge is the salary of the governor-general, fixed at ten thousand pounds sterling. A bill was passed in the first session, reducing this salary to six thousand five hundred pounds, but it was reserved, and subsequently disallowed on the ground "that a reduction in the salary of the governor, would place the office, as far as salary is a standard of recognition, in the third class among colonial governments."[1]

**VIII. Constitution of the Provincial Governments and Legislatures —Organization of the North-West Territories.**—Under the Act of 1867, the dominion government assumed that control over the respective provinces which was previously exercised by the imperial government.[2] In each province there is a lieutenant-governor, appointed by the governor-general in council, and holding office for five years, but subject to removal at any time by the governor-general for "cause assigned," which must be "communicated to him in writing within one month after the order of his removal is made, and shall be communicated by message to the Senate and to the House of Commons within one week thereafter, if the Parliament is then sitting, and if not, then within one week after the commencement of the next session of parliament."[3] Every

[1] Dom. Sess. P., 1869, No. 73.

[2] "The general government assumes towards the local governments precisely the same position that the imperial government holds now with respect to each of the colonies." Sir J. A. Macdonald, Conf. Deb., 1865, p. 42. Also Todd, Parl. Govt. in the Colonies, 415.

[3] B. N. A. Act, 1867, s. 58–59. In the memorable case of M. Letellier de St. Just, removed from the lieutenant-governorship of Quebec in 1879, it has been decided that the governor-general acts on the advice of his cabinet in considering the very delicate question of the removal of so important an officer. The colonial secretary, in a despatch of 5th July, 1879, lays it down distinctly: "But it must be remembered that other powers, vested in a similar way by the statute in the governor-general, were clearly intended to be, and are in practice exercised by and with the advice of his ministers, and though the position of a governor-general

lieutenant-governor, on his appointment, takes the same oaths of allegiance and office as are taken by the governor-general.[1] In all the provinces he has the assistance of an executive council to aid and advise him in administering public affairs, and who, like the privy council of Canada, are responsible to the people through their representatives in the legislature. In case of the absence, illness, or other inability of the lieutenant-governor, the governor-general in council may appoint an administrator to execute his office and functions.[2]

In the exercise of his functions, the lieutenant-governor of a province "should, of course, maintain that impartiality towards political parties, which is essential to the proper performance of the duties of his office, and for any action he may take he is, under the fifty-ninth section of the act, directly responsible to the governor-general."[3] The only safe principle that he can adopt for his general guidance is that pointed out to him by the experience of the working of parliamentary institutions: to give his confidence to his constitutional advisers while they enjoy the support of the majority of the legislature.

A question has been raised, how far a lieutenant-gov-

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would entitle his views on such a subject as that now under consideration to peculiar weight, yet her Majesty's government do not find anything in the circumstances which would justify him in departing in this instance from the general rule, and declining to follow the decided and sustained opinion of his ministers, who are responsible for the peace and good government of the whole dominion to the parliament to which the cause must be communicated." Can. Sess. P., 1880, No. 18, p. 8. For full particulars of this much vexed question see Sen. and Com. Hans., 1878 and 1879; Can. Sess. P., 1878, No. 68; *Ib.*, 1879, No. 19; *Ib.*, 1880, No. 18. For communication to parliament in accordance with law, Can. Com. Jour. (1880) 24; Sen. J. (1880) 22-23.

[1] Sec. 61 B. N. A. Act, 1867. See form of oaths in Can. Sess P., 1884, No. 77.

[2] Sec. 63, 65, 66, 67.

[3] Despatch of the colonial secretary, 1879; Can. Sess. P., 1880, No. 18, p. 8.

ernor can now be considered to represent the Crown.[1] It is beyond dispute, however, that he is fully authorized to exercise all the powers lawfully belonging to the sovereign in respect of assembling or proroguing, and of dissolving the legislative assemblies in the provinces.[2] A high judicial authority has expressed the opinion that "whilst it cannot for a moment be contended that the lieutenant-governors under confederation represent the Crown as the lieutenant-governors did before confederation, yet it must be conceded that these high officials, since confederation, do represent the Crown, though doubtless in a modified manner. They represent the queen as lieutenant-governors did before confederation, in the performance of all executive or administrative acts now left to be performed by lieutenant-governors in the name of the queen."[3]

The forty-first resolution of the Quebec conference declared that "the local government and legislature of each province shall be constructed in such manner as the existing legislature of each such province shall provide." Accordingly, in the last session of the old legislature of Canada, an address was passed to the sovereign praying her "to cause a measure to be submitted to the Imperial Parliament to provide for the local government and legislature of Lower and Upper Canada respectively."[4] In accordance with this address the constitutions of Quebec and Ontario were formally incorporated in the British North America Act of 1867. The legislature of Ontario consists of only the lieutenant-governor and one house, named the legislative assembly, composed in the first

[1] "They are officers of the dominion government—they are not her Majesty's representatives." Taschereau, J., in Lenoir *vs.* Ritchie. Can. Sup. Court R., vol. iii., p. 623. See also *Ib.*, vol. v., Mercer *vs.* Att.-Gen. of O.

[2] Todd, pp. 392-93.

[3] Ritchie, C. J., Mercer *vs.* Att.-Gen. of O., Can. Sup. Court R., vol. v., pp. 637, 643.

[4] Leg. Ass. J. (1866) 362.

instance of eighty-two members, elected for the same electoral districts which returned members to the House of Commons.[1] After the census of 1871, there was a rearrangement of constituencies, and the number of representatives was increased to eighty-eight in all.[2]

The legislature of Quebec consists of a lieutenant-governor, a legislative council, and a legislative assembly. The legislative council comprises twenty-four members, appointed for life by the lieutenant-governor in the queen's name, and representing the same electoral districts from which senators are chosen.[3] The qualifications of the legislative councillors of Quebec are the same as those of the senators from the province.[4] The legislative assembly is composed of sixty-five members, elected for the same electoral districts represented by the members of the House of Commons for the province.[5] It is provided in the act that while it is always perfectly competent for the legislature of Quebec to alter these districts, it can only change the limits of certain constituencies, especially mentioned, with the concurrence of the majority of the members representing all those electoral divisions.[6] The legislative assembly in each province is summoned by the

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[1] Leg. Ass. J. (1866) 363, resolution 12. B. N. A. Act, 1867, s. 69, 70, 1st sch.

[2] Chap. 8, Rev. Stat. of Ontario, (38 Vict., c. 2, s. 1,) in which the electoral divisions are set forth.

[3] Leg. Ass. J. (1866) 363; B. N. A. Act, 1867, s. 71, 72 and s. 22, subs. 3. Cons. Stat. of Canada, c. 1, Sch. A.

[4] Sec. 73 and 23.

[5] Sec. 80 and 40: Doutre, p. 85.

[6] These districts are Pontiac, Ottawa, Argenteuil, Huntingdon, Missisquoi, Brome, Shefford, Stanstead, Compton, Wolfe and Richmond, Megantic, town of Sherbrooke. Second Sched. B. N. A. Act, 1867. In these districts there is a large English speaking and Protestant population, and it was considered expedient to insert this proviso securing its rights; but the provision was opposed in the legislature, in 1866, as unnecessary. II. Turcotte, 590.

lieutenant-governor in the queen's name. It has a constitutional existence of four years in Ontario,[1] and of five years in Quebec,[2] subject to being dissolved at any time by the same authority that calls them together. A session must be held once at least in every year, "so that twelve months shall not intervene between the last sitting of the legislature in each province in one session and its first sitting in the next session."[3] The provisions in the act respecting election and duties of speaker, quorum, and mode of voting, in the House of Commons, also apply to the legislative assemblies of the provinces in question.[4] By an act passed in 1882, the speaker of the legislative council of Quebec remains in office during the parliament to which he has been nominated by the lieutenant-governor, and may not be a member of the executive council of the province.[5]

The Act of 1867 provides that the constitution of the executive authority as well as of the legislatures of the

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[1] The Ont. Stat., 42 Vict., (1879) c. 4, s. 3, provides that every legislature of Ontario shall continue for four years from the 55th day after the date of the writs for the election and no longer; that in case a meeting of the legislature is necessary before the election for Algoma has taken place, the member elected for that district at the previous election shall represent the same until the new election therefor has been held and the return made in due form; that in such case the duration of the new assembly shall be for four years from the day for which the assembly shall be summoned to meet for the discharge of business and no longer, subject to being sooner dissolved by the lieutenant-governor. This provision was made to meet a constitutional question that had arisen as to the exact duration of the legislature—whether it could not last for four years from the date of the return for Algoma, which is much later than for the rest of the province. See *Canadian Monthly*, April, 1879, and Parl. Deb. of Ontario, 1879, as to the curious controversy that arose on this constitutional point.

[2] Extended from four to five years, in 1881, by the legislature of Quebec, in accordance with subs. 1, s. 92 of B.N.A. Act; 44–45 Vict., c. 7.

[3] Sec. 86.

[4] Sec. 87.

[5] Quebec Stat. 45 Vict., c. 3

provinces of Nova Scotia and New Brunswick shall continue as it existed at the time of the union until altered under the authority of that act.[1] These two colonies had, for very many years, enjoyed the advantages of representative institutions as liberal in all respects as those of the larger provinces of Canada. Under the French regime, and for some time after their conquest by the English these provinces were comprised in the large, ill-defined territory known as Acadia.[2] From 1713 to 1758 the provincial government consisted of a governor or lieutenant-governor and a council supposed to possess both legislative and executive powers. The constitution of Nova Scotia has always been considered "as derived from the terms of the royal commissions to the governors and lieutenant-governors, and from the instructions accompanying the same, moulded from time to time by despatches from secretaries of state, conveying the will of the sovereign, and by acts of the local legislature, assented to by the Crown : the whole to some extent interpreted by uniform usage and custom in the colony."[3] A legislative assembly met for the first time at Halifax[4] on

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[1] Sec. 64, 88. The power of amendment so conferred, has not been exercised in Nova Scotia—Gov. Archibald. Can. Sess. P., 1883, No. 70, p. 11.

[2] Nova Scotia was formally ceded to England by the Treaty of Utrecht, 11 April, 1713 ; but Cape Breton still remained a possession of France until the conquest of Canada and the subsequent Treaty of Paris, which gave to Great Britain all the French possessions in British North America except the islands of St. Pierre, Miquelon and Langley on the coast of Newfoundland, reserved for carrying on the fisheries. The Island of Cape Breton was under the government of Nova Scotia from 1766 to 1784, when it was given a separate government, consisting of a lieutenant-governor and council. This constitution remained in force until the re-annexation of the island to Nova Scotia in 1820. Can. Sess. P., 1883, No. 70, p. 10.

[3] Governor Archibald in an interesting memorandum on the early constitution of Nova Scotia in answer to an address of Parliament. Can. Sess. P. 1883, No. 70, pp. 7-11.

[4] Annapolis (Port Royal under the French régime) was the seat of

the 2nd of October, 1758, and consisted of twenty-two members. It is interesting to note in this connection that the assembly promptly asserted the privileges of free speech, when a member's remarks had been called into question, by declaring that "what he had said was as a member of the assembly, and that he was only accountable to them for what he had said."[1] In the same session a person was committed to the custody of one of the messengers of the house for having assaulted a member on his way from the assembly.[2]

In 1838 the executive authority was separated from the legislative council, which became a distinct legislative branch only.[3] In 1840, a practical recognition was given for the first time to the principle of responsible government, in the formation of the executive council, but in reality the system was not fully realized until 1848.[4] In 1867, before the Act of Union came into force, the legislature of Nova Scotia passed an act limiting the number of members in the assembly to thirty-eight,[5] and at the same time an address was proposed to limit the number of legislative councillors to eighteen.[6] The number now varies from eighteen to twenty-one.

In 1784, the province of New Brunswick which had received large accessions of loyalists from the United

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government until 1749. when Halifax was founded. II. Murdoch's Hist., c. 11.

[1] II. Murdoch, 353.

[2] *Ib.* 354.

[3] Can. Sess. P. 1883, No. 70, pp. 8, 39.

[4] Howe's Speeches and Letters vol. I. pp. 553, 562-4; Todd, 60; Eng. Com. P. 1847-8, vol. 42, pp. 51-88.

[5] Nova S. Stat., 30 Vict., c. 2; Rev. Stat. (4th series) c. 4. For vacating of seats, Ib. c. 7. Duration of and representation in general assembly, c. 4. Executive and legislative disabilities, c. 3.

[6] Jour. Ass. (1867) 28. Efforts have been made in the Nova Scotia assembly to abolish the legislative council as in Ontario, but so far fruitlessly on account of the opposition in the latter body. An. Reg. (1879) 179-80. See Rev. Stat. (4th ser.) c. 2.

States, was formally created, and a government established, consisting of a council of twelve members, having both executive and legislative functions, and of an assembly of twenty-six members;[1] but in 1832, it was deemed expedient to follow the example of Nova Scotia and have the executive authority quite distinct from the legislative council. In 1848, the principles of responsible government were formally carried out in accordance with the colonial policy adopted by the British government with respect to the British American provinces generally.[2] In the Act of Union it was provided that the house of assembly of the province, elected in 1866, should, "unless sooner dissolved, continue for the period for which it was elected."[3] The legislature now consists of a lieutenant-governor, a legislative council of eighteen members,[4] and an assembly of forty-one members, elected every four years.[5]

The island of Prince Edward, formerly known as St. John,[6] formed part of the province of Nova Scotia until 1769, when it was created a separate province with a lieutenant-governor, a combined executive and legislative council, and eventually a legislative assembly of eighteen members.[7] The government of the province was always largely influenced by the proprietors of the lands of the island, distributed by the lords of trade and

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[1] The first governor was Colonel T. Carleton, brother of Lord Dorchester. The government was frequently administered by presidents of the executive council, and by military chiefs. See copy of the commission of governor, giving him power to appoint a council, create courts and call an assembly, etc. Can. Sess. P. 1883, No. 70, p. 47.

[2] Todd, Parl. Govt. in the Colonies, 60.

[3] Sec. 88.

[4] New B. Cons. Stat. 1877, c. 3, s. 1.

[5] *Ib.* c. 4, s. 79.

[6] It was finally ceded to Great Britain by the Treaty of Paris, 1763. The name was changed in 1798 in honour of Edward, Duke of Kent.

[7] Captain Walter Paterson, one of the original land owners of the colony, was the first lieutenant-governor. See copy of his commission, Can. Sess. P. 1883, No. 70, p. 2.

plantations in the year 1767. Some of the lieutenant-governors were in constant antagonism to the assembly, and during one administration the island was practically without parliamentary government for ten years.[1] Responsible government was not actually carried out until 1850-1, when the assembly obtained complete control, as in the other provinces, of the public revenues.[2] The land monopoly was for many years the question which kept the public mind in a state of constant ferment, and though many attempts were made, with the assistance of the British government, to adjust the conflicting claims of the proprietors and tenants,[3] it was not until the admission of the island into the confederation in 1873 that a practical solution was reached in the agreement of the dominion government to advance the funds necessary to purchase the claims of the proprietors.[4] It was provided, in the act of 1873 admitting the island, that the constitution of the executive authority and of the legislature should continue as at the time of the union unless altered in accordance with the Act of 1867, and that the assembly existing in 1873 should continue for the period for which it was elected.[5] The legislature now consists of a lieutenant-governor, an elective legislative council of thirteen members,[6] and an assembly of thirty members.[7]

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[1] Campbell, 62. Mr. C. Douglas Smith was lieutenant-governor, and did not summon the legislature from 1814-1817. He promptly dissolved three successive legislatures which proved intractable.

[2] Col. Office List, 1883, p. 38.

[3] An imperial commission was appointed in 1860, but the report, though accepted by the assembly, was rejected by the imperial authorities as beyond the authority given the commissioners. Campbell, 162.

[4] Com. Jour. (1873) 401; Dom. Stat. of 1873, p. xi. A compulsory Land Purchase Act passed the provincial legislature in 1875. Todd, 352-4; Eng. Com. P., 1875, vol. liii., pp. 764, 766–768.

[5] Dom. Stat. 1873, p. xii.

[6] P. E. I. Rev. Stat. of 1862, c. 18. Several attempts have been made to abolish the legislative council. P. E. I. Jour. (1880), 278-9; Leg. Council debates (1882), 57-72.

[7] Col. Office List, 1883, p. 38.

The local constitution arranged for the province of Manitoba by the Canadian Parliament in 1870 provided for a lieutenant-governor, an executive council, of not less than five persons in the first instance, a legislative council of seven members, to be increased to twelve after four years, and a legislative assembly of twenty-four members elected to represent electoral districts set apart by the lieutenant-governor.[1] In 1876 Manitoba abolished the legislative council, and the legislature consequently now consists only of the lieutenant-governor and assembly.[2] The same provisions as in the other provinces exist with respect to the duration of the legislature and its meeting once every year. Either the French or English language may be used in the records and debates. The present assembly consists of 31 members.[3]

In 1859 Vancouver Island was constituted a British colony,[4] and about the same time it became necessary to establish a similar government in British Columbia in order to maintain order among the people, attracted by the gold discoveries;[5] but in 1866 both colonies were united[6] and in 1871, as previously shown, they became part of the dominion of Canada.[7] Previous to the union, the province of British Columbia was governed by a lieutenant-governor, and a legislative council composed of heads of depart-

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[1] *Supra* p. 46; 33 Vict., c. 3. See Sess. P. 1871, No. 20, for measures taken to organize the provincial government.

[2] Man. Stat., 39 Vict., c. 28. Parl. Companion, 1878, p. 310; Sess. Pap. 1876, No. 36.

[3] Man. Stat., 44 Vict., c. 12, s. 4.

[4] Sir James Douglas, the local agent of the Hudson's Bay Company, which had trading privileges over the island and mainland until the establishment of Colonies, became the first governor.

[5] The Hudson's Bay Company's trading license was revoked and a colony established in 1858, by 21 and 22 Vict. c. 99. The colony had, when first created, no form of representative government. Col. Office List, 1883, p. 37.

[6] Col. Office L., 1883. p. 37.

[7] *Supra* p. 46.

ments and other public officers;[1] but it was expressly declared in the terms of union that "the government of the dominion will readily consent to the introduction of responsible government when desired by the inhabitants of British Columbia," and that it was the intention of the governor of that province, under the authority of the secretary of state for the colonies, "to amend the existing constitution of the legislature by providing that a majority of its members shall be elective."[2] Since its admission, British Columbia has a local constitution similar to that of some of the other provinces; a lieutenant-governor, an executive council, responsible to the legislature, and one house only, a legislative assembly of twenty-five members.[3]

Since the acquisition of the North-West the Parliament of Canada has provided a simple machinery for the government of that vast territory, preparatory to the formation of new provinces therein. The first act passed in 1869 was only of a temporary character, and, as previously shown, it never practically came into operation:[4] but in the act of the following year, forming the new province of Manitoba, provision was also made for the government of that portion of Ruperts' Land and the North-West Territory, not included within the limits of that province. In subsequent sessions other acts were passed, and in 1880 all the legislation relating to the North-West Territories was consolidated into one statute.[5] The territories are now governed by a lieutenant-governor, or adminis-

[1] A legislative council of 15 persons was first established in 1863, and was enlarged to 23 members on the union with Vancouver Island. In 1870 other constitutional changes took place, by which nine unofficial members were elected by the people. Col. O. List, 1883, p. 37.

[2] Can. Sess. P. 1867-8. No. 59; Stat. for 1872, p. lxxxix. Col. Office List, 1883, p. 37.

[3] B. C. Cons. Stat., c. 42.

[4] *Supra* p. 45; 32 and 33 Vict. c. 3.

[5] Can. Stat. of 1870, c. 3; 1871, c. 16; 1873, c. 5; 1875, c. 49; 1877, c. 7; 1880, c. 25, Consolidating Act. By 45 Vict. c. 28, s. 1, the act of 1880 is declared not to be a new law, but a revision, consolidation and continuation of 38 Vict. c. 49, and 40 Vict. c. 7, subject to the changes contained therein.

trator, appointed by the governor-general in council. The law provides for a council, composed of the stipendiary magistrates in the territory and other persons, appointed in the first instance by the governor-general, with the advice of his ministry. The lieutenant-governor in council may make ordinances for the government of the North-West Territory, within certain limitations set forth in the act, and copies of such ordinances must be mailed to the secretary of state within thirty days after their passing ; the governor in council may disallow such ordinances within one year after their receipt. The ordinances of the council, and all orders of the governor in council disallowing any of them, must always be laid formally before parliament as soon as it can be conveniently done[1]. Provision is also made for the erection of electoral districts and the election of members of council, according as the territory increases in population ; and a legislative assembly may be formed in place of a council, as soon as the elected members of any council amount in all to twenty-one. The assembly must be summoned at least once a year, and shall present all bills to the lieutenant-governor for his assent. The members are to hold their seats in the assembly for two years. Electoral districts have been already formed in the territories and elections for the council held in accordance with the act.

Pending the settlement of the western boundary of Ontario, it was considered expedient in 1876 to create a separate territory out of the eastern part of the North-West.[2] This territory is known as the district of Keewatin,[3] and is under the jurisdiction of the lieutenant-governor of Manitoba, *ex-officio*, who may have the assistance, if necessary, of a council, of not less than five persons and not more than ten, to aid him in the administration of affairs, with such powers as may be conferred upon

[1] Sess. P. 1879, No. 86.

[2] 39 Vict., c. 21.

[3] Sometimes Keewaydin.

them by order of the governor in council.[1] This arrangement of a separate district is altogether of a provisional nature, and will probably come entirely to an end with the rapid developement of the North-West Territories.[2] The district of Keewatin has been materially altered by the extension of the limits of Manitoba, in accordance with acts passed since 1876.[3]

Before passing from this historical review of the establishment of government in the North-West Territories, it is necessary to notice here the fact that it was found expedient to obtain certain legislation in 1871 from the Imperial Parliament in order to remove doubts that were raised in the session of 1869, as to the power of the Canadian legislature to pass the Manitoba Act, especially the provisions giving representation to the province in the Senate and House of Commons. It appears that the address passed in the first session of the Parliament of Canada contained no provisions with respect to the future government of the country, whilst the general purview of the British North America Act, 1867, as respects representation in the Senate and House of Commons, seems to be confined to the three provinces of Canada, Nova Scotia and New Brunswick, originally forming the dominion. Whilst the admission of Newfoundland and Prince Edward Island is provided for, no reference is made to the future representation of Rupert's Land, and the North-West Territory, or British Columbia.

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[1] No such orders appear in the statutes of Canada.

[2] Can. Hans. (1876) 86, remarks of Mr. Mackenzie, then premier, in introducing bill.

[3] 40 Vict., c. 6, defined new boundaries of the province of Manitoba and Keewatin. By 44 Vict. c. 14, the boundaries of the province of Manitoba were extended. For debates as to boundary question, see Sen. Hans. (1880-1) 606 *et seq.*, Com. Hans. (1880-1) 2 vol. p. 1443 *et seq.* In accordance with a resolution passed in the session of 1882 four divisions were marked out in the North-West Territory, for postal and other purposes, viz: Alberta, Athabasca, Assiniboia, and Saskatchewan. Com. J. (1882) 509. *Canada Gazette*, Dec. 1882.

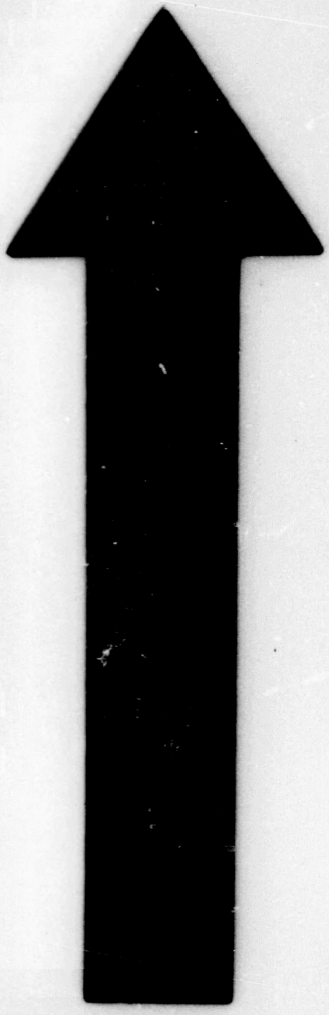
Under these circumstances an act was passed through the Imperial Parliament substantially in accordance with a report submitted by the Canadian minister of justice to the privy council, and transmitted to the secretary of state for the colonies by the governor-general. This act gives the Parliament of Canada power to establish new provinces in any territories of the dominion of Canada, not already included in any province, and to provide for the constitution and administration of such provinces. Authority is also given to the Canadian Parliament to alter the limits of such provinces with the consent of their legislatures. The previous legislation of 1869 and 1870 respecting the province of Manitoba and the North-West, was sanctioned formally in the act.[1]

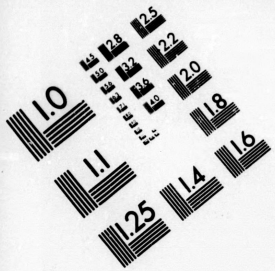
It is expressly provided in the British North America Act that the local legislature may amend from time to time the constitution of a province, except as regards the office of lieutenant-governor[2], and the provinces of British Columbia and Manitoba have already availed themselves of the power thus conferred by abolishing the legislative council.[3] The provisions in the act relating to the speaker, quorum, mode of voting, appropriation and tax bills, money votes, assent to bills, disallowance of acts and signification of pleasure on reserved bills—that is to say, the provisions affecting the parliament of Canada, extend to the legislatures of the several provinces. In accordance with these provisions any bill passed by a legislature of a province may

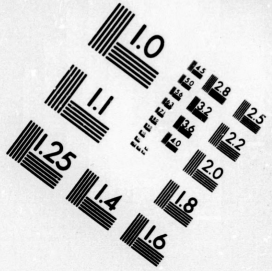
[1] Imp. Stat. 34 and 35 Vict., c. 28; see Can. Stat. for 1872, p. lii. For history of this question, Sess. P. 1871, No. 20; Com. Jour. (1871), 136, 145, 291. The Imp. Act 31 and 32 Vict. c. 92 enabled the legislature of New Zealand to withdraw part of a territory from a province and form it into a county.

[2] Sec. 92, sub-sec. 1., and as respects provinces coming in after 1867, see Can. Stat. 1870, c. 3, s. 2, 10; 1872 p. lxxxviii, s. 10 and 14; 1873, pp. xii-xiii, &c.

[3] See *supra* p. 72, (British Columbia,); p. 71, (Manitoba); also p. 66, *n.* as to duration of Quebec legislature extended to five years.



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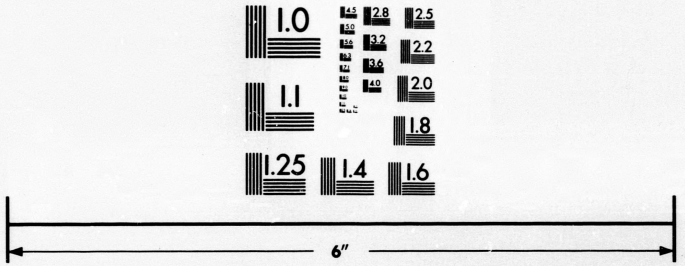


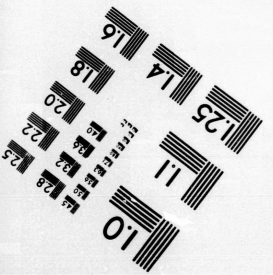


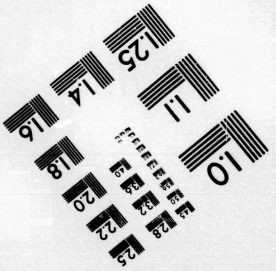


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now be disallowed by the dominion government within one year after its passage.[1] The lieutenant-governor may also reserve any bill for the "signification of the pleasure of his Excellency the Governor-General," and it cannot go into operation unless official intimation is received, within one year, of its having been approved.[2]

**IX. Disallowance of Provincial Acts.**—The same powers of disallowance that belonged to the imperial government previously to 1867, with respect to acts passed by colonial legislatures, have been conferred by the British North America Act on the government of the dominion. It is now admitted beyond dispute that the power of confirming or disallowing provincial acts has been vested by law absolutely and exclusively in the governor-general in council.[3] In the first years of the confederation it became, therefore, necessary to settle the course to be pursued in consequence of the large responsibilities devolved on the general government. As it was considered of importance "that the course of local legislation should be interfered with as little as possible, and the power of disallowance exercised with great caution, and only in cases where the law and general interests of the dominion imperatively demanded it," the minister of justice in 1868 laid down certain principles of procedure, which have been generally followed up to the present time. On the receipt of the acts passed in any province, they are immediately referred to the minister of justice. He thereupon reports those

[1] Sec. 87, 90. Also Manitoba Act, 33 Vict. c. 3, s. 2, 21; British Columbia, 1872, p. lxxxviii, s. 10; P. E. Island p. xxii.

[2] See chapter respecting bills.

[3] Can. Sess. P., 1877, No. 89, pp. 407, 432–34. In the Commons' papers will be found the arguments advanced by Mr. Blake, when minister of justice, to show that the Canadian ministry must be directly and exclusively responsible to the dominion parliament for the action taken by the governor in any and every such case, and that a governor who thinks it necessary that a provincial act should be disallowed, must find ministers who will take the responsibility of advising its disallowance. *Ib.* (1876) No. 116, pp. 79, 83. *Ib.* (1877) No. 89, pp. 449–458.

acts which he considers free from objection of any kind, and if his report is approved by the governor in council, such approval is forthwith communicated to the provincial government. He also makes separate reports on those acts which he may consider:—

1. As being altogether illegal or unconstitutional.
2. As illegal or unconstitutional in part.
3. As, in cases of concurrent jurisdiction, clashing with the legislation of the general parliament.
4. As affecting the interests of the dominion generally.

It has also been the practice, in the case of measures only partially defective, not to disallow the act in the first instance; but, if the general interests permit such a course, to give the local government an opportunity of considering the objections to such legislation and of remedying the defects therein.[1]

Perhaps no power conferred upon the general government is regarded with greater jealousy and restlessness than this power of disallowing provincial enactments. So far, this power has been exercised in very few cases out of the large number of acts passed since confederation by the legislatures of the provinces. Over 6,000 acts have been passed from 1867 to 1882, inclusive, but only 31 altogether have been disallowed.[2] This fact goes to show that the power has been exercised, on the whole, with caution and deliberation. A review, however, of the very voluminous

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[1] Report of Sir J. A. Macdonald, Can. Sess. P., 1870, No. 35, pp. 6–7.

[2] Ontario, 5; Quebec, 2; Nova Scotia, 5, Manitoba, 7; British Columbia, 12. Can. Sess. P., 1882, No. 141, pp. 29–30. The following table shows the total number of acts passed by all the provinces of the dominion during the period named above:—

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| Ontario | 1358 |
| Quebec | 1105 |
| Nova Scotia | 1414 |
| New Brunswick | 1302 |
| P. E. Island (since 1873) | 313 |
| Manitoba ( " 1870) | 477 |
| B. Columbia ( " 1871) | 324 |
| Total number of acts | 6293 |

papers relating to this question proves that, whilst but few acts have been disallowed, the legislation has been considered partially objectionable in many cases by the law officers of the dominion; but, in such cases generally, every opportunity has been given to the local governments to remove the objections pointed out by the minister of justice.[1]

Considerable discussion has arisen, however, in and out of parliament with respect to two cases of disallowance, viz.: "An Act for protecting the public interests in rivers and streams" (Ontario Stat., 1881), and An Act to incorporate the Winnipeg South-Eastern Railway Company," (Manitoba Stat., 1881). It appears that one McLaren, a lumberman, constructed certain works on non-floatable streams, of which he claimed to be seized in fee-simple, for the purpose of carrying his logs to their destination. One Caldwell, carrying on the same business higher up than the former, claimed the right to use these streams under the first section of chapter 115, R. S. O., as follows: "All persons may, during the spring, summer and autumn freshets, float saw-logs, and other lumber, rafts and craft down all streams." McLaren obtained an injunction from the court of chancery, restraining Caldwell from making use of the improvements in question, on the ground that the words "all streams" only referred to those floatable in a state of nature, and that the streams in question were not navigable for saw-logs or other lumber without artificial improvements.[2] Subsequently, in 1881, the legislature of Ontario passed an act re-enacting the section cited above, and at the same time declaring that its provisions

[1] Can. Sess. P., 1882, No. 141, pp. 2–29.

[2] The supreme court of Canada, in November, 1882, affirmed the decree of the court of chancery, and reversed the decision of the court of appeal of Ontario to the effect that the R. S. O., c 115, s. 1, re-enacting C. S. U. C., c. 48, s. 15, made all streams, whether artificially or naturally floatable, public waterways. An appeal has been allowed to the privy council. Can. Law Times, 1882, pp. 90-91. Ib., 1883, p. 346.

shall extend to all streams and all constructions and improvements thereon; and that all persons might make use of such improvements on paying a reasonable toll (to be fixed by the lieutenant-governor in council) to the person who has made these improvements on the streams. An appeal was made to the governor-general in council to disallow the act on the ground that it was unconstitutional, inasmuch as it deprived the petitioner of extensive and important private rights without providing adequate compensation, and as it embodied *ex post facto* legislation, contrary to all sound principles that should govern in such cases. The minister of justice advised, and the privy council concurred in the advice, that the act be disallowed for these reasons principally: "That the act seems to take away the use of the owner's property and give it to another, forcing the owner practically to become a toll-keeper against his will, if he wished to get any compensation for being thus deprived of his rights. That the power of the local legislatures to take away the rights of one man and vest them in another, as is done in the act, is exceedingly doubtful; that, assuming such a right does in strictness exist, it devolves upon the dominion government to see that such power is not exercised in flagrant violation of private rights and natural justice, especially when, as in this case, in addition to interfering with private rights in the way alluded to, the act over-rides a decision of a court of competent jurisdiction by declaring retrospectively that the law always was, and is, different from that laid down by the court." To this decision strong objection was taken by the government of Ontario, in an elaborate state-paper, in which it is emphatically urged that the governor-general in council should not assume to review any of the provisions of an act passed by the provincial legislature on a subject within its competency under the British North America act.[1] The legislature of Ontario subsequently re-enacted

[1] Can. Sess. P., 1882, No. 149a. Hans., pp. 876-926.

the act of 1881, which was again disallowed by the government of the dominion.

The act of the Manitoba legislature, incorporating the Winnipeg South-Eastern Railway Company, was disallowed because it conflicted with "the settled policy of the dominion, as evidenced by a clause in the contract with the Canadian Pacific Railway," which was ratified by Parliament in the session of 1880-81; which clause is to the effect that "for twenty years from the date hereof no line of railway shall be authorized by the dominion parliament to be constructed south of the Canadian Pacific Railway, except such line as shall run south-west or the westward of south-west, nor to within fifteen miles of latitude 49." The government of Manitoba contended at the time that the act was "strictly within the jurisdiction of the legislature of the province."[1]

These two cases are cited at some length as showing the large power assumed by the dominion government under the law giving them the right of disallowing provincial enactments. The best authorities concur in the wisdom of interfering with provincial legislation only in cases where there is a clear invasion of dominion jurisdiction, or where the vital interests of Canada as a whole imperatively call for such interference. The powers and responsibilities of the general government in this matter have been well set forth by a judicial authority: "There is no doubt of the prerogative right of the Crown to veto any provincial act, and to apply it even to a law over which the provincial legislature has complete jurisdiction. But it is precisely on account of its extraordinary and exceptional character that the exercise of this prerog-

[1] Can. Sess. P., 1882, No. 166. The government of Canada has also disallowed the acts of Manitoba to incorporate the Manitoba Tramway Co., to incorporate the Emerson and North-Western RR. Co., and to encourage the building of railways in Manitoba, on the ground also, that they were "in conflict with the settled policy of the dominion government in regard to the direction and limits of railway construction in the territories of the dominion."

ative will always be a delicate matter. It will always be very difficult for the federal government to substitute its opinion instead of that of the legislative assemblies, in regard to matters within their jurisdiction, without exposing itself to be reproached with threatening the independence of the provinces." The injurious consequences that may result in case a province re-enacts a law, are manifest: "probably grave complications would follow." And in any case, "under our system of government, the disallowing of statutes passed by a local legislature after due deliberation, asserting a right to exercise powers which they claim to possess under the British North America Act, will always be considered a harsh exercise of authority, unless in cases of great and manifest necessity, or where the act is so clearly beyond the powers of the local legislature that the propriety of interfering would at once be recognized."[1]

**X. Distribution of Legislative Powers.**—In the distribution of the legislative powers entrusted to the general parliament and the local legislatures respectively, the constitution makes such an enumeration as seems well adapted to secure the unity and stability of the dominion and at the same time give every necessary freedom to the several provinces in the management of their local and municipal affairs. In arranging this part of the constitution, its framers had before them the experience of eighty years' working of the federal system of the United States, and were able to judge in what essential and fundamental respects, that system appeared to be defective.[2] The doctrine of state sovereignty had been pressed to extreme lengths in the United States, and had formed one of the

[1] Can. Sup. Court R., vol. 2, Richards, C. J., p. 96; Fournier, J., p. 131

Sir J. A. Macdonald: Conf. Deb., 1865, p. 32: "I am strongly of opinion that we have in a great measure avoided in this system which we propose for the adoption of the people of Canada, the defects which time and events have shown to exist in the American constitution, &c."

most powerful arguments of the advocates of secession. This doctrine had its origin in the fact that all powers, not expressly conferred upon the general government, are reserved in the constitution to the states.[1] Now in the federal constitution of Canada, the very reverse principle obtains with the avowed object of strengthening the basis of the confederation, and preventing conflict as far as practicable between the provinces that compose the union.[2] This constitution emanates from the sovereign authority of the Imperial Parliament which has acted in accordance with the wishes of the people of the several provinces as expressed through the constitutional medium of their respective legislatures. This imperial charter, the emanation of the combined wisdom of the Imperial Parliament and the subordinate legislatures of the several provinces affected, confers upon the general government the exclusive legislative authority over all matters respecting the public debt, regulation of trade and commerce, postal service, navigation and shipping, Indians, census and statistics, and all other matters of national import and significance.[3] On the other hand the local legislatures may exclusively make laws in relation to municipal institutions, management and sale of public lands belonging to the province, incorporation of companies with provincial objects, property and civil rights in the province, and

[1] The 10th art. of the Am. Cons. reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This art. did not appear in the first Constitution of 1787, but was agreed to with other amendments by the first Congress in 1789, and subsequently ratified by the States. See Smith's Cons., Manual and Digest, 4th ed., published by order of Congress, 1877.

[2] Sir J. A. Macdonald: Conf. Deb., 1865, p. 33: "We have thus avoided that great source of weakness which has been the cause of the disruption of the United States. We have avoided all conflict of jurisdiction and authority," etc.

[3] B. N. A. Act, 1867, s. 91. See appendix to the work.

"generally all matters of a merely local or private nature in the province."[1] The provincial legislatures have also exclusive powers of legislation in educational matters, subject only to the right of the dominion Parliament to make remedial laws under certain circumstances.[2] The object of this provision is to secure, as far as practicable by statute, to a religious minority of a province the same rights, privileges and protection which it may have enjoyed at the time of the union.[3] The local legislatures may, however, legislate as to separate schools, provided that the legislation be not such as prejudicially affects the rights or privileges theretofore possessed by such schools, and they may pass laws interfering with unimportant matters such as the election of trustees, or the every day detail of the working of such schools, as settled by statute prior to confederation.[4] The general parliament and local legislatures have also concurrent powers of legislation respecting agriculture and immigration, provided the provincial law is not repugnant to any act of the Parliament of Canada.[5] The powers of the provincial governments are distinctly specified in the Act of Union, whereas those of the general government cover the whole ground of legislation not so expressly reserved to the provincial authorities.[6] The dominion government

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[1] Sec. 92.

[2] Sec. 93.

[3] See New Brunswick School Law Controversy, Todd, Parl. Gov. in the Colonies, pp. 346-352, Can. Sess. P. 1877, No. 89. A reference to the correspondence on this vexed question clearly shows that both the imperial and dominion authorities concurred in the view that it is not proper for the federal authority to attempt to interfere with the details or accessories of a measure of the local legislature, the principles and objects of which are entirely within its competency.

[4] Board of School Trustees *vs.* Granger *et al.*, 25 Grant, Ch. 570.

[5] Sec. 95.

[6] "The government of the United States is one of enumerated powers, and the governments of the States possess all the general powers of legislation. Here (in Canada) we have the exact opposite. The powers of the provincial governments are enumerated, and the dominion government

is authorized in express terms "to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this act assigned exclusively to the legislatures of the provinces";[1] and in addition to this specific provision it is enacted that "any matter coming within any of the classes of subjects enumerated in this section (that is, the 91st respecting the powers of the general parliament) shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects assigned exclusively to the legislatures of the provinces."

It must necessarily happen that, from time to time, in the operation of a written constitution like that of Canada, doubts will arise as to the jurisdiction of the general government and local legislatures over such matters as are not very clearly defined in the sections enumerating the powers of the respective legislative authorities. No grave difficulty should arise in arriving sooner or later, as a rule, at a satisfactory solution by means of the decisions of the judicial committee of the privy council, and of the higher courts of the dominion. An act establishing a supreme court for Canada was passed in the session of 1875, in accordance with the 101st section of the British North America Act, 1867, which provides "for the constitution, maintenance and organization of a general court of appeal for Canada."[2] This court has an appellate jurisdiction in cases of controverted elections, and may examine and report upon any private bill or petition for the same. The governor in council may refer any matter to this

possesses the general powers of legislation." Ritchie, C. J., Can. Sup. Court R., 13 April, 1880, vol. III., p. 536.

[1] See *infra*, p. 94. Judgment of privy council *re* "Canada Temperance Act," showing the large powers given to the dominion government by this provision of the B. N. A. Act, 1867.

[2] 38 Vict., c. 11. Lord Durham, in his report (p. 123), recommended the establishment of a "Supreme Court of Appeal for all the North American colonies."

court for an opinion. It shall also have jurisdiction in cases of controversies between the dominion and the provinces, and between the provinces themselves, on condition that the legislature of a province shall pass an act agreeing to such jurisdiction.[1]

Many important cases of doubt as to the construction to be placed on the 91st and 92nd sections of the British North America Act, 1867, have already been referred to the privy council and to the supreme court of the dominion. Already in Canada, as in the United States, a large amount of constitutional learning and research is being brought every year to the consideration of the perplexing questions that must unavoidably arise in the interpretation of a written constitution. It will be probably useful to cite some of the more important decisions given by the high tribunals just mentioned, with the view of showing the conclusions they have formed with respect to the legislative powers of the dominion Parliament.

**XI. Decisions of the Privy Council of England and of the Supreme Court of Canada on Questions of Legislative Jurisdiction.**— In 1874, the dominion Parliament passed an act imposing on the judges of the superior courts of the provinces the duty of trying controverted elections of members of the House of Commons.[2] The question was raised in the courts, whether the act contravenes that particular provision of the 92nd section of the B. N. A. Act, which exclusively assigns to the provincial legislatures the power of legislating for the administration of justice in the provinces, including the constitution, maintenance and organization of provincial courts of civil and criminal jurisdiction, and including procedure in civil (not in criminal) matters in those courts. The question came at last before the supreme

[1] Sec. 52, 53, 54. The legislature of Ontario in 1877 passed 40 Vict., c. 5, authorizing such references.

[2] "The Dominion Controverted Elections Act, 1874"; 37 Vict. c. 10.

court of Canada, which, constituted as a full court of four judges, unanimously held:

That whether the act established a dominion court or not, the dominion Parliament had a perfect right to give to the superior courts of the respective provinces, and the judges thereof the power, and impose upon them the duty, of trying controverted elections of members of the House of Commons, and did not, in utilizing existing judicial officers and established courts to discharge the duties assigned to them by that act, in any particular invade the rights of the local legislatures. That upon the abandonment by the House of Commons of the jurisdiction exercised over controverted elections, without express legislation thereon, the power of dealing therewith would fall, *ipso facto*, within the jurisdiction of the superior courts of the provinces by virtue of the inherent original jurisdiction of such courts over civil rights. That the dominion Parliament has the right to interfere with civil rights, when necessary for the purpose of legislating generally and effectually in relation to matters confided to the Parliament of Canada. That the exclusive power of legislation given to provincial legislatures by sub-s. 14 of s. 92 B. N. A. Act over procedure in civil matters, means procedure in civil matters within the powers of the provincial legislatures.[1]

Application was made to the privy council for leave to appeal from the foregoing judgment of the supreme court. Their lordships, in refusing such leave, expressed these opinions:

That there is no doubt about the power of the dominion Parliament to impose new duties upon the existing pro-

[1] Can. Sup. Court R., vol. iii. Valin *vs.* Langlois. This case came before the court on appeal from the judgment of Chief Justice Meredith, of the superior court of Quebec, declaring the act to be within the competency of the dominion Parliament, 5 Q. L. R., No. 1. The Ontario court of common pleas in 1878 unanimously agreed that the act was binding on them. Ont. Com. P. R. vol. xxix., p. 261. But certain judges of Quebec held adverse opinions. Quebec L. R., vol. v., p. 191.

vincial courts, or to give them new powers as to matters which do not come within the classes of subjects assigned exclusively to the legislatures of the provinces. That the result of the whole argument offered to their lordships had been to leave them under the impression that there was here no substantial question requiring to be determined, and that it would be much more likely to unsettle the minds of her Majesty's subjects in the dominion, and to disturb in an inconvenient manner the legislative and other proceedings there, if they were to grant the prayer of the petition and so throw a doubt on the validity of the decision of the court of appeal below, than if they were to advise her Majesty to refuse it.[1]

In 1876, the legislature of Ontario passed an act[2] intituled "An act to secure uniform conditions in policies of fire insurance." This statute was impeached on the ground mainly that the legislature of Ontario had no power to deal with the general law of insurance; that the power to pass such enactments was within the legislative authority of the dominion Parliament, under s. 91, sub.-s. 2, B. N. A. Act, "regulation of trade and commerce." The question having come before the supreme court of Canada, it held that the act in question was within the competency of the Ontario legislature and is applicable to insurance companies, whether foreign or incorporated by the dominion.[3]

The question came finally before the privy council on appeal from the supreme court of Canada, and their lordships decided:

That construing the words "regulation of trade and

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[1] 5 App. Cas., 115.

[2] 39 Vict., c. 24; Ont. Rev. Stat., c. 162.

[3] Can. Sup. Court R., vol. iv., 215-349. The Citizens and the Queen Ins. Cos. *v.* Parsons, Western Insurance Co. *v.* Johnston. This judgment of the Supreme Court affirmed the judgments of the Court of Appeal for Ontario (4 App. Rep., Ont., 96, 103), which had affirmed the judgments of the Queen's Bench; 43 U. C., Q B. 261, 271.

commerce" by the various aids to their interpretation, they would include political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of inter-provincial concern, and it may be that they would include general regulation of trade affecting the whole dominion. Their lordships, however, abstained from any attempt to define the limits of the authority of the dominion Parliament in this direction. It was sufficient for the decision of the case under review to say that, in their view, its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance, in a single province, and therefore that its legislative authority did not in the present case conflict or compete with the power over property and civil rights assigned to the legislature of Ontario by sub-s. 13 of s. 92. That the act in question, so far as relates to insurance on property within the province, may bind all fire insurance companies, whether incorporated by imperial, dominion, provincial, colonial, or foreign authority. That the act of the dominion Parliament,[1] requiring insurance companies to obtain licenses from the minister of finance as a condition to their carrying on business in the dominion, is a general law applicable to foreign and domestic corporations, and in no way interferes with the authority of the Ontario legislature to legislate in relation to the contracts which corporations may enter into in that province.[2]

In pursuance of authority given by the imperial act (16 Vict., c. 21) the province of Canada passed an act (18 Vict, c. 82), in consequence of which, in 1855, an arrangement was made with the government for the creation of a

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[1] 38 Vict., c. 20.

[2] 45 L. T. N. S. 721; Cartwright, 265. The Citizens and Queen Insurance Cos. *v.* Parsons. See chap. on private bills, where dominion legislation on insurance is reviewed at considerable length.

temporalities' fund of the Presbyterian church of Canada in connection with the Church of Scotland ;[1] and an act of incorporation for the management thereof was obtained (22 Vict., c. 66) of the province of Canada. In 1874, it was decided to unite the said church with three other churches. Subsequently in the provinces of Ontario and Quebec, the legislatures passed two acts (38 Vict., c. 75, Ont. Stat., and 38 Vict., c. 62, Quebec Stat.), to give effect to this union. At the same time the Quebec legislature passed an act (38 Vict., c. 64), to amend the act of the late province of Canada (22 Vict., c. 66), with a view to the union of the four churches, and to provide for the administration of the temporalities' fund. The union was subsequently carried out in accordance with the views of the large majority of the church in question ; but a small minority protested against the union, and tested the validity of the Quebec Act, 38 Vict., c. 64. The matter was finally carried up to the privy council, which decided: That the act (22 Vict., c. 66) of the province of Canada, which created a corporation having its corporate existence and rights in the provinces of Ontario and Quebec, afterwards created by the B. N. A. Act, could not, after the coming into force of that Act, be repealed or modified by the legislature of either of these provinces, or by the conjoint operation of both provincial legislatures, but only by the Parliament of the dominion. That the Quebec act of 1875 (38 Vict., c. 64), which assumed to repeal and amend the act of the late province of Canada, was invalid, inasmuch as its professed object and the effect of its provisions was to destroy, in the first place, a corporation which had been created by the legislature of Canada before the union of 1867, and to substitute a new corporation ; and, in the second place, to alter materially the class of persons interested in the corporate funds, and not merely to impose

[1] This church was entitled to share in the proceeds of the clergy reserves funds by virtue of certain imperial statutes. See *supra*, p. 32.

conditions upon the transaction of business by the corporation within the province.[1]

The result of this judgment was the passage of an act by the Parliament of Canada in 1882, to amend the act of the late province of Canada (22 Vict., c. 66,) with respect to the "management of the temporalities' fund of the Presbyterian Church of Canada, in connection with the Church of Scotland," and the acts amending the same.[2]

In 1874, the legislature of Ontario passed an act intituled "an act to amend and consolidate the law for the sale of fermented or spirituous liquors."[3] The provisions of this act required that no person should "sell by wholesale or retail any spirituous, fermented, or other manufactured liquors within the province of Ontario, without having first obtained a license under this act, authorising him to do so." The question was brought before the courts whether the legislature of Ontario had the power to pass the statute, under which certain penalties were to be recovered, or to require brewers to take out any licence whatever for selling fermented or malt liquors by wholesale. The matter came finally, on appeal, before the supreme court of Canada, which decided substantially as follows:

That it is not within the competency of a provincial legislature to require brewers to take out a license for the sale of fermented or malt liquors by wholesale; that the power to tax and regulate the trade of a brewer, being a matter of excise, the raising of money by "taxation," as well as for the restraint and "regulation of trade and commerce," is comprised within the class of subjects reserved by the ninety-first section of the British North America Act, to the exclusive legislative authority of the Parlia-

[1] 7 App. Cas., 136; Cartwright, 351; Dobie *v.* the Temporalities Board. Appeal on special leave from a judgment of the court of Queen's Bench (3 L. N., 244), affirming a judgment of the Superior Court of the district of Montreal (3 L. N., 244); Doutre, 247-265.

[2] 45 Vict., c. 124. Also, c. 123 and 125.

[3] 37 Vict., c. 32; Ont. Rev. Stat., c. 181, s. 39, 40, 41.

ment of the dominion; and that such a license, imposed by a provincial statute, is a restraint and regulation of trade, and not an exercise of municipal or police power. That, under the 92nd section of the imperial act, local legislatures are empowered to deal exclusively with such licenses only as are of a local or municipal description That the taxing power of a provincial legislature is confined to direct taxation,[1] in order to raise a provincial revenue; and to the grant of licenses to shops, saloons, taverns, auctioneers, and "other licenses," for purely municipal and local objects, for the purpose likewise of raising a revenue for provincial, local, or municipal objects. That at the same time this taxing power of the local government must not be exercised so as to encroach upon, or to conflict with, the taxation in aid of dominion revenue, which is authorized to be exclusively imposed by the federal Parliament.[2]

By s. 2 of the Fisheries Act of 1868,[3] the minister of marine and fisheries "may, where the exclusive right of fishing does not already exist by law, issue, or authorize to be issued, fishery leases and licenses for fisheries and fishing wheresoever situated, or carried on, etc." In 1874, the minister executed a lease of fishery of a certain portion of a river in New Brunswick, which was some forty or fifty miles above the ebb and flow of the tide, though the stream for the greater part of that particular portion is navigable for canoes, small boats and timber. Certain persons in New Brunswick, however, claimed the exclusive right of fishing in this part of the river, on the ground that they had received conveyances thereof, and prevented the lessee of the dominion government from enjoying the

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[1] So affirmed by the judicial committee of the privy council, Attorney-General of Quebec *vs.* The Queen Insurance Co., Law Rep., 3 App., Cas. 1090.

[2] Can. Sup. Court R., vol. ii., 70–142, Severn *vs.* The Queen. On appeal from a judgment of the Court of Queen's Bench for Ontario.

[3] 31 Vict., c. 60.

fishery under his lease. The supreme court of Canada was at last called upon to decide whether an exclusive right of fishing existed in the parties who had received the conveyances. In other words, the court was practically asked to decide the question: Can the dominion Parliament authorize the minister of marine and fisheries to issue licenses to parties to fish in rivers such as that described, where the lands are ungranted, or where the provincial government has before or after confederation granted lands that are bounded on, or that extend across such rivers? The court decided: That the license granted by the minister of marine and fisheries was void, because the act in question only authorizes the granting of leases "where the exclusive right of fishing does not already exist by law," and in this case the exclusive right belonged to the owners of the land through which that portion of the river flows. That the legislation in regard to "inland and sea fisheries" contemplated by the B. N. A. Act is not with reference to property and civil rights—that is to say, not as to the ownership of the beds of rivers or of the fisheries, or the rights of individuals therein, but to subjects affecting the fisheries generally, tending to their regulation, protection and preservation, matters of a national and general concern; in other words, all such general laws as enure as well to the benefit of the owners of the fisheries as to the public at large. That the Parliament of the dominion may properly exercise a general power for the protection and regulation of the fisheries, and may authorize the granting of licenses, where the property, and therefore the right of fishing thereupon, belong to the dominion, or where such rights do not already exist by law; but it may not interfere with existing exclusive rights of fishing, whether provincial or private. That consequently any lease granted by a dominion minister to fish in fresh-water non-tidal rivers, which are not the property of the dominion, or in which the soil is not in the dominion, is illegal; that where the exclusive right

to fish has been acquired as incident to a grant of land through which such river flows, the Canadian Parliament has no power to grant a right to fish. That the ungranted lands in a province being in the Crown for the benefit of the people, the exclusive right to fish follows as an incident, and is in the Crown as trustee for the benefit of the people of the province, and therefore a license by the minister of marine and fisheries would be illegal.[1]

In 1878, the Parliament of the dominion passed an act cited as the "Canada Temperance Act, 1878." The preamble sets forth "that it is very desirable to promote temperance in the dominion, and that there should be uniform legislation in all the provinces regarding the traffic in intoxicating liquors." The act is divided into three parts, the first of which relates to "proceedings for bringing the second part of this act into force;" the second to "prohibition of traffic in intoxicating liquors;" and the third to "penalties and prosecutions for offences against the second part." The effect of the act when brought into force in any county or town within the dominion is, describing it generally, to prohibit the sale of intoxicating liquors, except in wholesale quantities, or for certain specified purposes, to regulate the traffic in the excepted cases, and to make sales of liquors, in violation of the prohibitions and regulations contained in the act, criminal offences punishable by fine, and for the third or subsequent offence, by imprisonment. The supreme court of New Brunswick in 1879 decided[2] that the act was *ultra vires*, but the supreme court of Canada subsequently held that it was within the competency of the Parliament of Canada, and *inter alia* that under the second

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[1] Can. Sup. Court R., vol. vi., pp. 52–143. The Queen *vs.* Robertson. On appeal from the exchequer court of Canada (Gwynne, J.) which held *inter alia* that the exclusive right of fishing existed in the persons having the conveyances. The supreme court of New Brunswick had also decided adversely to the exclusive right of the lessee of the dominion government to fish under his lease. 2 Pug. and Bur., 580.

[2] 3 Pug. and Bur., 139.

sub-section of the 91st section of the B. N. A. Act, "regulation of trade and commerce," Parliament alone has the power of regulating the traffic in intoxicating liquors in the dominion or any part of it.[1] The whole matter came finally before the privy council who do not dissent from this opinion, but base their decision on other grounds which render it unnecessary to discuss the question of trade and commerce. Their lordships considered fully the point whether the act falls within any of the three classes of subjects enumerated in section 92 and assigned exclusively to the provincial legislatures, viz:

9. Shop, saloon, tavern, auctioneer, and other licenses in order to the raising of a revenue for provincial, local or municipal purposes.

13. Property and civil rights in the province.

16. Generally, all matters of a merely local or private nature in the province.

Their lordships decided that the act does not fall within any of these classes of subjects, for the following reasons:

The act is not a fiscal law—a law for raising revenue; on the contrary the effect of it may be to destroy or diminish revenue; and consequently could not have been passed by the provincial legislature by virtue of any authority conferred upon it by sub-section 9. And supposing the effect of the act to be prejudicial to the revenue derived by the municipality from licenses, it does not follow that the dominion Parliament might not pass it by virtue of its general authority "to make laws for the peace, order and good government of Canada." The act does not properly belong to the class of subjects, "property and civil rights." It has in its legal aspect an obvious and close similarity to laws which place restrictions on the sale or custody of poisonous drugs, or of dangerously explosive substances. The primary matter dealt with is the public order and safety. Upon the same considerations the act cannot be regarded as legislation in relation to civil rights. In however large a

[1] Can. Sup. Court R., vol. iii. pp. 505-574.

sense these words are used, it could not have been intended to prevent the Parliament of Canada from declaring and enacting certain uses of property and certain acts in relation to property, to be criminal and wrongful. Laws designed for the promotion of public order, safety or morals, and which subject those who contravene them to criminal procedure and punishment, belong to the subject of public wrongs rather than to that of civil rights. They are of a nature which fall within the general authority of Parlialiament, to make laws for the order and good government of Canada, and have direct relation to criminal law, which is one of the enumerated classes of subjects assigned exclusively to the Parliament of Canada. Few, if any, laws could be made by Parliament for the peace, order and good government of Canada which did not in some incidental way affect property and civil rights ; and it would not have been intended, when assuring to the provinces exclusive legislative authority on the subject of property and civil rights, to exclude the Parliament from the exercise of this general power whenever any such incidental interference would result from it. Their lordships cannot concur in the view that the act " which in effect authorizes the inhabitants of each town or parish to regulate the sale of liquor, and to direct for whom, for what purposes and under what conditions spirituous liquors may be sold therein, deals with matters of a merely local nature."[1] On the contrary, the declared object of Parliament in passing the act is that there should be uniform legislation in all the provinces respecting the traffic in intoxicating liquors, with a view to promote temperance in the dominion. The act as soon as it was passed became a law for the whole dominion, and the enactments of the first part relating to the machinery for bringing the second part into force, took effect and might be put into motion at once and everywhere within it. The conditional application of certain parts of the act does not

[1] Allen. C. J., 3 Pug. and Bur., 139.

convert the act itself into legislation affecting a purely local matter. The legislation in question is clearly meant to apply a remedy to an evil which is assumed to exist throughout the dominion, and the local option, as it is called, no more localizes the subject and scope of the act than a provision in an act for the prevention of contagious diseases in cattle that a public officer should proclaim in what districts it should come into effect, would make the statute itself a mere local law for each of these districts. In statutes of this kind the legislation is general, and the provision for the special application of it to particular places does not alter its character.[1]

The immediate effect of this important judgment on the Temperance Act was the passage in the session of 1883 of "an act respecting the sale of intoxicating liquors and the issue of licenses therefor." The preamble of the act sets forth as the grounds for legislation that "it is desirable to regulate the traffic in the sale of intoxicating liquors; that there should be a uniform law regulating the same throughout the dominion; that provision should be made for the better preservation of peace and order." The act provides for the issue of licenses to hotels, saloons, shops, vessels, and wholesale dealers, and exacts only such fees as are necessary to the execution of the act.[2]

The most important questions which have come before the privy council and the supreme court of Canada have arisen upon the provisions of the B. N. A. Act, relating to the distribution of legislative powers between the Parlia-

[1] Judgment of the lords of the judicial committee of the privy council on the appeal of Charles Russell *v.* The Queen, on the information of Woodward, from the supreme court of New Brunswick, delivered 23rd June, 1882. 7 App. Cas. 829.

[2] 46 Vict., c. 30; (see reference to subject in his Excellency's speech, Jour., p. 14.) But strong objections were taken in the House of Commons to the act on the ground (as set forth in a resolution) that "the Parliament of Canada should not assume jurisdiction, as proposed by the said bill, until the question of jurisdiction has been settled by the court of last resort." Can. Com. J., May 22. See Can. Hans., May 16, 21 and 22.

ment of Canada and the legislatures of the provinces, and in the words of the privy council, "owing to the very general language in which some of these powers are described, the question is one of considerable difficulty." A learned judge of the supreme court observes that "in construing the act, no hard and fast canon or rule of construction can be laid down and adopted, by which all acts passed, as well by the Parliament of Canada as by the local legislatures, upon all and every question that may arise, can be effectually tested as to their being or not being *intra vires* of the legislature passing them." The nearest approach to a rule of general application that has been attempted in the courts of Canada, with a view to reconcile the apparently conflicting legislative powers under the Act, is with respect to property and civil rights, over which exclusive legislative authority is given to the local legislatures: that, as there are many matters involving property and civil rights expressly reserved to the dominion Parliament, the power of the local legislatures must, to a certain extent, be subject to the general and special legislative powers of the dominion. But while the legislative rights of the local legislatures are, in this sense, subordinate to the rights of the dominion Parliament, these latter rights must be exercised, so far as may be, consistently with the rights of the local legislatures, and therefore the dominion Parliament would only have the right to interfere with property and civil rights in so far as such interference may be necessary for the purpose of legislating generally and effectually in relation to matters confided to the Parliament of Canada. On this same point the privy council appears to take a similar view: It is therefore to be presumed, indeed, it is a necessary implication, that the imperial statute, in assigning to the dominion

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[1] Ritchie, C. J., in The Queen *v.* Robertson, Can. Sup. Court R., vol. vi. pp. 110–11. Also Valin *v.* Langlois, vol. iii. p. 15; The Citizens Insurance Co. *v.* Parsons, vol. iv., p. 242.

Parliament the subjects of bankruptcy and insolvency, intended to confer on it legislative power to interfere with property, civil rights, and procedure, within the province, so far as a general law relating to those subjects might affect them.[1]

The judicial committee of the privy council have endeavoured to lay down certain principles which should guide those who are called upon to interpret the Union Act. The first step to be taken, with a view to test the validity of an act of a provincial legislature is to consider whether the subject-matter falls within any of the classes of subjects enumerated in section ninety-two, which states the legislative powers of the provincial legislatures. If it does not come within any of such classes, the provincial act is of no validity. If it does, these further questions may arise, viz., whether the subject of the act does not also fall within one of the enumerated classes of subjects in section ninety-one, which states the legislative powers of the dominion Parliament, and whether the power of the provincial legislature is, or is not, thereby overborne.[2]

The same eminent authority has in another judgment expressed the following opinion, with a view of arriving, as far as possible, at a satisfactory interpretation of sections ninety-one and ninety-two of the act :

"That it must have been foreseen that some of the classes of subjects assigned to the provincial legislatures unavoidably ran into, and were embraced by, some of the enumer-

[1] Sir M. E. Smith, in Cushing *v.* Dupuy, 5 App. Cas., 415. In Steadman *v.* Robertson (2 Pug. and Bur., 580) one of the judges of the supreme court of New Brunswick expressed the opinion : "The B. N. A. Act is distributive merely in respect to powers of legislation, exercisable by the dominion Parliament and by the local legislatures respectively, and the dominion Parliament may not intrench upon property and civil rights which are under the guardianship and subject to the power of the local legislatures, except to the extent that may be required to enable Parliament to 'work out' the legislation upon the particular subjects specially delegated to it."

[2] Dobie *v.* The Temporalities Board of the Presbyterian Church in Canada, 7 App. Cas., 136 ; Cartwright, 367.

ated classes of subjects in section ninety-one; hence an endeavour appears to have been made to provide for cases of apparent conflict; and it would seem that with this object it was declared in the second branch of the ninety-first section, 'for greater certainty, but not so as to restrict the generality of the foregoing terms of this section,' that (notwithstanding anything in the act) the exclusive authority of the Parliament of Canada should extend to all matters coming within the classes of subjects enumerated in that section. Notwithstanding this endeavour to give pre-eminence to the dominion Parliament in cases of a conflict of powers, it is obvious that in some cases where this apparent conflict exists, the legislature could not have intended that the powers exclusively assigned to the provincial legislature should be absorbed in those given to the dominion Parliament. Take as one instance the subject 'marriage and divorce,' contained in the enumeration of subjects in section ninety-one. It is evident that solemnization of marriage would come within this general description; yet 'solemnization of marriage in the province' is enumerated among the classes of subjects in section ninety-two, and no one can doubt, notwithstanding the general language of section ninety-one, that this subject is still within the exclusive authority of the legislatures of the provinces. So 'the raising of money by any mode or system of taxation' is enumerated among the classes of subjects in section ninety-one; but, though the description is sufficiently large and general to include 'direct taxation within the province in order to the raising of a revenue for provincial purposes,' assigned to the provincial legislatures by section ninety-two, it obviously could not have been intended that, in this instance also, the general power should over-ride the particular one. With regard to certain classes of subjects, therefore, generally described in section ninety-one, legislative power may reside as to some matters, falling within the general description of these subjects, in the legislatures

of the provinces. In these cases, it is the duty of the courts, however difficult it may be, to ascertain in what degree, and to what extent, authority to deal with matters falling within these classes of subjects exists in each legislature, and to define, in the particular case before them, the limits of their respective powers. It could not have been the intention that a conflict should exist, and, in order to prevent such a result, the language of the two sections must be read together, and that of one interpreted and, where necessary, modified by that of the other. In this way it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the sections, so as to reconcile the respective powers they contain, and give effect to all of them. In performing this difficult duty, it will be a wise course for those on whom it is thrown to decide each case which arises as best they can, without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand."[1]

**XII. Position of the Judiciary.**—Before closing this review of the parliamentary system of Canada, it is necessary to refer briefly to the position of the judiciary, which occupies a peculiarly important position in a country possessing a written constitution which must necessarily require to be interpreted from time to time by accepted authorities.[2]

The independence of the judiciary has been for very many years recognized in Canada as one of the funda-

[1] The Citizens and Queen Insurance Cos. *v.* Parsons. Rep. 45 L. T. N. S., 721; Cartwright, 272-3. See also argument of Mr. Girouard, Q.C., Quebec tax cases, Superior Court, 1883.

[2] The supreme court of the United States is considered in the Federalist, and the history of the American constitution proves the truth of the words, "a bulwark of a limited constitution against legislative encroachments." The meaning of the word "limited" is explained by Alex. Hamilton: "By a limited constitution I understand one which contains certain specified exceptions to legislative authority, such, for instance, as that it shall pass no bill of attainder, no *ex post facto* law, and the like.

mental principles necessary to the conservation of public liberty. The judges are not dependent on the mere will of the executive in any essential respect, nor on the caprice of the people of a province for their nomination and retention in office, as in many of the states of the American republic. Their tenure is as assured in Canada as in England, and their salaries are not voted annually, but are charged permanently on the civil list. In case it is necessary to provide a salary, or an increase of salary, for a judge, the proper course is for the government to proceed by bill.[1] The judges of the superior courts hold office during good behaviour, and can only be removed by the governor-general on address of the Senate and House of Commons.[2] In impeaching a judge for misconduct in office, the House of Commons discharges one of the most delicate functions entrusted to it by law. In such a matter it cannot proceed with too great caution and deliberation. Whenever charges of a serious character have been brought against a judge, and responsible persons have declared themselves prepared to support such charges, it has been the practice to appoint a select committee, to whom all the papers can be referred for a thorough investigation. Since 1867 only two committees of this character have

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Limitations of this kind can be preserved in practice in no other way than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void; without this all the reservations of particular rights or privileges would amount to nothing."—Federalist, lxxviii.

[1] See 31 Vict., c. 33; 36 Vict., c. 31. B.N.A. Act, 1867, s. 100.

[2] B. N. A. Act, 1867, s. 99. This section does not apply to county court judges, whose removal for sufficient cause is provided for by 45 Vict., c. 12. It is, however, always competent for the house to address the governor-general for the removal of such judicial officers, and the procedure in Parliament should be as in the case of the superior court judges. See case of W. McDermott, asst. barrister of Kerry. 150 E. Hans. (3), 1587, 1588; 90 Lords J., 221, 237, 239, 244, 251, 261. Also Mr. Kenrick's case, 13 Parl. Deb., N. S., 1138, 1425, 1433; 14 *Ib.*, 500, 502, 511, 670–678. Also remarks of Sir J. A. Macdonald and Mr. Blake, April 9, 1883, in the Bothwell case, Can. Hans.

been formally appointed, but in neither case did the inquiry result in the removal of the judge whose character was impugned.[1] It is usual to have all the documents in the case printed in the first instance without delay, so that the House and the persons immediately interested may have due cognizance of the nature of the charges against the judge.[2] Witnesses should be examined on oath in all such cases.[3] All the weight of authority in Canada, as in England, goes to show that the House should only entertain charges which, if proved, would justify the removal of the judge from the bench. It will be for the House, and especially for those responsible for the administration of justice, to consider whether the allegations are of such a nature, and supported by such authority, as demand an investigation at their hands.[4] The proper and most convenient course is for the persons who feel called upon to attack the character of a judge to proceed by petition in which all the allegations are specifically stated so that the judge may have full opportunity of answering the indictment thus presented against him.[5] But the action of Parliament may originate in other ways, if the public interests demand it, and there is no objection to a member's formulating charges on his own responsibility

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[1] Case of Judge Lafontaine, Can. Com. J. (1867-8), 297, 344, 398; *Ib.* (1869), 135, 247. Of Judge Loranger, *Ib.* (1877), 20, 25, 36, 132, 141, 258. A committee was asked for in 1882 in the case of Chief Justice Wood, of Manitoba, but never appointed.

[2] Can. Com. J. (1867-8), 400; *Ib.* (1877), 25, 132; *Ib.* (1882), 192. II. Todd, Parl. Govt. in England, 743.

[3] Can. Com. J. (1877), 36. At the time of the previous case select committees had no power to administer oaths to witnesses. See chap. on select committees.

[4] See memorable cases of Baron Abinger and Sir Fitzroy Kelly, cited by Todd, II. vol., pp. 739, 740. In 1883 the Canadian house refused a motion to inquire into the conduct of a judge in the discharge of his duties in connection with a matter *sub judice*. See remarks of Sir J. A. Macdonald in Bothwell election case, April 9, Can. Hans.

[5] Sir J. A. Macdonald, April 9, 1883, Can. Hans., Bothwell case. Cases of Judge Fox and Judge Kenrick, cited in II. Todd, 731, 734.

as a member of the legislature having a grave duty to discharge.[1] The constitutional usage of the parent state also requires that in any address asking for the removal of a judge "the acts of misconduct which have occasioned the adoption thereof ought to be recapitulated, in order to enable the sovereign to exercise a constitutional discretion in acting upon the advice of parliament." In cases where this very proper rule has not been followed, the Crown has refused to give effect to the address, though passed by a colony enjoying responsible government, because "in dismissing a judge, in compliance with addresses from a local legislature and in conformity with law, the queen is not performing a mere ministerial act, but adopting a grave responsibility, which her Majesty cannot be advised to incur without satisfactory evidence that the dismissal is proper."[2]

We have now briefly reviewed the most important phases in the development of the parliamentary system of the dominion of Canada. We have seen how the autocratic, illiberal, political system of New France, so repressive of all individual energy and ambition, gave place, after the conquest, to representative institutions well calculated to stimulate human endeavour and develop national character. Step by step we have followed the progress of those free institutions which are now in thorough unison with the expansion of the provinces in wealth and population. At last we see all the provinces politically united under a federal system, on the whole, carefully conceived and matured; enjoying responsible government in the completest sense, and carrying out at the same time, as far as possible, those British constitutional principles which give the best guarantee for the liberties of a people. With a federal system which combines at once central strength

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[1] Case of Baron McLeland, 74 E. Com. J., 493; 11 Parl. Deb., 850–854.

[2] II. Todd, 763. Corresp. relative to Judge Boothby, Eng. Com. P., 1862, vol. xxxvii., pp. 180–184.

and local freedom of action; with a permanent executive independent of popular caprice and passion; with a judiciary on whose integrity there is no blemish, and in whose learning there is every confidence; with a civil service resting on the firm basis of freedom from politics and of security of tenure; with a people who respect the law and fully understand the workings of parliamentary institutions, the dominion of Canada need not fear comparison with any other country.[1] But it is not merely in the character of its system of government and representative institutions that the Canadian dominion has carefully endeavoured to follow the example of the parent state, as far as consonant with local circumstances. We shall also see in the course of this work how strictly the legislatures of Canada, from their earliest establishment, have copied the more important and valuable rules and usages of that great Parliament which, heretofore, has been the prototype of all legislative bodies in those many countries of the world where the English tongue is spoken and English liberty prevails.

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[1] The words of the Marquis of Lorne, in reply to the farewell address of the Parliament of Canada, 25th May 1883, may be appropriately cited here as the impartial testimony of a governor-general after some years experience of the working of Canadian institutions:—

"A judicature above suspicion; self-governing communities entrusting to a strong central government all national interests; the toleration of all faiths, with favour to none; a franchise recognizing the rights of labour, by the exclusion only of the idler; the maintenance of a government not privileged to exist for any fixed term, but ever susceptible to the change of public opinion, and ever open through a responsible ministry to the scrutiny of the people;—these are the features of your rising power."

# CHAPTER II.

*THE SENATE AND HOUSE OF COMMONS.*

I. Senators. — II. Introduction of Senators. — III. Members of the House of Commons. — IV. Election of Members.—Voters' Qualifications.—V. Controverted Elections.—VI. Issue of Writs.—VII. Dual Representation.—VIII. Independence of Parliament.—IX. Resignation of Members—Double Returns, etc.—X. Introduction of Members.—XI.—Attendance of Members.—XII. Members' Indemnity.—XIII. Expulsion and Disqualification of Members.—XIV. Suspension of Members.—XV. Questions affecting Members referred to Committees. XVI. Places in the House.

**I. The Senate.**—When Parliament met for the first time in 1867, the Senate consisted of 72 members, called senators —24 for Ontario, 24 for Quebec, and 24 for Nova Scotia and New Brunswick, these two maritime provinces being considered one division[1]. Subsequently, the provinces of Manitoba and British Columbia were admitted into the confederation, and the number of senators has been increased to 78 in all—Manitoba having at present three members and British Columbia three.[3] Prince Edward Island has also entered the union since 1867 and has a representation of four members, but as this province is comprised in the maritime division of the Senate

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[1] British N. A. Act, 1867, s. 21 and 22.

[2] Under Dom. Stat. 33 Vict. c. 3, s. 3, Manitoba is to have two members until it shall have a population of 50,000, and then it shall have three; and four, when the population has reached 75,000 souls. The census of 1881 gave Manitoba a population of 65,954 and consequently another member was added to the Senate.

[3] Can. Com. J. (1871) 195. Dom. Stat. for 1872, Order in Council lxxxviii.

its admission has not increased the number of senators in the aggregate[1]. The senators, who are nominated by the Crown, must each be of the full age of 30 years, natural-born or naturalized subjects, resident in the province for which they are appointed, and must have real and personal property worth $4,000 over and above all debts and liabilities. In the case of Quebec a senator must have his real property qualification in the electoral division for which he is appointed, or be resident therein.[2] Every senator must take the oath of allegiance and make a declaration of his property qualification, before taking his seat.[3] In 1880 it was deemed expedient to adopt a resolution which will have the effect of showing that the members of the Senate continue to have the property qualification. This resolution is to the effect that "within the first twenty days of the first session of each Parliament every member shall make and file with the clerk a renewed declaration of his property qualification, in the form prescribed in the fifth schedule annexed to the B. N. A. Act, 1867." The clerk shall, "immediately after the expiration of each period of twenty days, lay upon the table of the house a list of the members who have complied with the rule." In case members arrive too late to make the declaration within the dated period, then it is usual for a minister to

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[1] British N. A. Act, 1867, s. 147. This section provides that after the admission of P. E. Island, "the representation of Nova Scotia and New Brunswick in the Senate shall, as vacancies occur, be reduced from twelve to ten members respectively, and the representation of each of those provinces shall not be increased at any time beyond ten, except under the provisions of this act for the appointment of three or six additional senators under the direction of the queen."

[2] B. N. A. Act, 1867, s. 23. See app. to this work.

[3] *Ib.*, s. 128.

[4] Sen. Hans. (1880) 273; Jour. p. 152. The resolution provided also that the list should be laid for the first time on the table in the session of 1880-81, which was accordingly done. Jour. (1880-81) 56-58. *Ibid.* (1883) 54-55, 68.

move formally that the clerk be authorized to receive their declarations in due form.[1] Senators who have been unable from sufficient cause to attend during the session and make the necessary declaration before the clerk, have been permitted to sign it before a justice of the peace—such declaration being deemed sufficient on formal motion.[2] In 1883, the Senate was satisfied with a declaration signed and transmitted to the clerk, by a senator suffering from paralysis.[3]

The queen may, on the recommendation of the governor-general, direct that three or six members be added to the Senate, representing equally the three divisions of Canada. In case of any such addition being made, the governor-general shall not summon any new member "except on a further like direction by the queen on the like recommendation until each of the three divisions of Canada are represented by 24 members and no more."[4] The number of senators is fixed by the 28th section of the British North America Act, 1867, at 78, but on reference to the 147th section, it will be seen that it is provided that "in case of the admission of Newfoundland the normal number of senators shall be 76, and their

[1] Jour. (1880-81) 58, 60; Hans. p. 56. Jour. (1883) 105, 110. A declaration has also been received in a subsequent session. Jour. (1882) 25, 40.

[2] Jour. (1883) 73, 86.

[3] *Ibid.* (1883) 55; Hans. p. 54. The clerk made a special report on the subject.

[4] B. N. A. Act, s. 26-27. See Sen. Deb. (1877) 87-94; Com. Deb. (1877) 371, for discussion on a case in which the queen refused to appoint additional senators under section 26. Also Todd's Parl. Gov. in the Colonies, p. 164. The Earl of Kimberley, in his despatch on the subject, stated that her Majesty could not be advised to take the responsibility of interfering with the constitution of the Senate, except upon an occasion when it had been made apparent that a difference had arisen between the two houses of so serious and permanent a character that the government could not be carried on without her intervention, and when it could be shown that the limited creation of senators allowed by the act would apply an adequate remedy." The Senate, on the receipt of this despatch, passed resolutions approving of the course pursued by her Majesty's government. Jour. p. 130-4.

maximum number shall be 82." Senators hold their seats for life, subject to the provisions of this act, but they may, at any time, resign by writing under their hand, addressed to the governor-general[1]. The place of senator shall become vacant, if he is absent for two consecutive sessions, if he becomes a bankrupt, or insolvent, or applies for the benefit of any law relating to insolvent debtors or becomes a public defaulter; if he becomes a citizen or subject of any foreign power; if he is attainted of treason or convicted of any infamous crime; if he ceases to be qualified in respect of property or residence; provided that he shall not be considered disqualified in respect to residence on account of his residing at the seat of government, while holding an office in the administration. When a vacancy happens in the Senate, by resignation, death or otherwise, the governor-general shall, by summons to a fit and qualified person, fill the vacancy. If any question should at any time arise respecting the qualification of a senator or a vacancy in the Senate, the same must be heard and determined by that house.[2]

The 10th rule of the Senate provides:

"If for two consecutive sessions of Parliament any senator had failed to give his attendance in the Senate, it shall be the duty of the clerk to report the same to the Senate, and the question of the vacancy arising therefrom shall, with all convenient speed, be heard and determined by the Senate."

In accordance with the foregoing rule, the clerk reported in 1876, for the information of the house, that Sir Edward Kenny, one of the senators for Nova Scotia, had been absent from his seat for two consecutive sessions. The committee of privileges, to whom the matter was immediately referred, reported that Sir Edward Kenny had vacated his seat, and that the house should so declare

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[1] Sec. 29 and 30.

[2] Sec. 31, 32, 33. A Peer who has been adjudged a bankrupt cannot sit and vote in the House of Lords, 34 and 35 Vict., c. 50, Imp. Stat.; 104 Lords' J., 138, 206, 321, 322, 342, 429.

and determine in pursuance of the thirty-third section of the British North America Act, 1867. The report of the committee having been formally adopted, the Senate agreed to an address to the governor-general setting forth the facts in the case.[1]

**II. The Introduction of Senators.**—The practice of introducing new senators is invariable in the upper chamber. The speaker will state to the house whenever the clerk has received a certificate from the clerk of the Crown in Chancery that a new member has been summoned to the Senate. He will then inform the house: "Honourable gentlemen, a new member is without, ready to be introduced." The new member is then introduced between two senators, and presents at the table her Majesty's writ of summons, which is read by the clerk, and put upon the journals. He will then subscribe the oath before the clerk (one of the commissioners appointed for that purpose)[2] by repeating the words after that officer. That having been done, the new member signs the roll, and then makes obeisance to the speaker, who, shaking hands with him, indicates the seat he is to occupy, and to which he is conducted by the members who introduced him. The speaker will finally acquaint the house that the new senator had also formally subscribed the declaration of qualification required by the British North America Act, 1867.[3]

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[1] Sen. J. [1876] 188, 189, 205, 206; Deb. 299, 314, 324. The Senate, at the same time, conveyed to Sir Edward Kenny an expression of regret at the severance of the ties which had hitherto connected them. See a similar proceeding in the old legislative council of Canada, Jour. [1857], 66-7.

[2] By s. 128 of B. N. A. Act, 1867.

[3] Sen. J., [1867-8] 165, 177, 178; *Ib.* [1877] 14, 26, &c., *Ib.* [1883] 20-23, &c. The above form of procedure is as given in the Journals, but practically the speaker is previously informed by the clerk that the new senator has subscribed the declaration of qualification. No communication follows the taking by the senator of his seat. The declaration is made in the clerk's office, but the oath is taken in the Senate.

**III. The House of Commons.**—In 1867 the house consisted of 181 members in all, who were distributed as follows :[1]

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|---|---|---|
| Ontario | 82 | members. |
| Quebec | 65 | " |
| Nova Scotia | 19 | " |
| New Brunswick | 15 | " |

But the British North America Act, 1867, provides[2] for additional representation under certain conditions. Quebec shall have the fixed number of 65 members. Each of the other provinces shall be assigned such a number of members as will bear the same proportion to the number of its population (ascertained at each decennial census) as the number 65 bears to the number of the population of Quebec. Only a fractional part exceeding one-half of the whole number requisite to entitle the province to a member shall be regarded in computing the members for a province—such fractional part being considered equivalent to the whole number. In case of a readjustment after a decennial census the number of members for a province shall not be reduced "unless the proportion which the number of the population of the province bore to the number of the aggregate population of Canada at the time of the then last preceding readjustment of the number of members for the province is ascertained at the then latest census to be diminished by one-twentieth part or upwards." Such readjustment, however, "shall not take effect until the termination of the then existing Parliament." It is also provided that the number of members may be from time to time increased provided that the proportionate representation prescribed in the act is not thereby disturbed.[3]

In accordance with section 51, the representation of the

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[1] B. N. A. Act, 1867, s. 37.

[2] *Ib* s. 51.

[3] *Ib.*, s. 52.

people in the House of Commons was re-arranged in 1872, after the taking of the decennial census of 1871. Ontario received 6 additional members; Nova Scotia, 2; New Brunswick, 1; Quebec remained the same.[1] On the admission of Manitoba, she received 4 members;[2] British Columbia, 6;[3] Prince Edward Island, 6.[4] Consequently until 1882 the total number of members in the House of Commons was 206. In the session of 1882 the representation was again readjusted,[5] and the province of Ontario received 4 additional members, and the province of Manitoba one. The representation is now distributed as follows:

| | | |
|---|---|---|
| Ontario | 92 | members. |
| Quebec | 65 | " |
| Nova Scotia | 21 | " |
| New Brunswick | 16 | " |
| Manitoba | 5 | " |
| British Columbia | 6 | " |
| Prince Edward Island | 6 | " |
| Total number | 211 | members.[6] |

**IV. The Election of Members.**—It is provided by the 41st section of the Union Act of 1867:—

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[1] 35 Vict. c. 13, s. 1, Dom. Stat.

[2] See *Ib.* s. 1; 33 Vict. c. 3, s. 4, Dom. Stat.

[3] Can. Com. J. [1871], 195; Dom. Stat. 1872, Order in Council lxxxviii.

[4] Can. Com. J. [1873], 402; also, Order in Coun. Dom. Stat. 1873, xxiii.

[5] 45 Vict., c. 3. The readjustment of the Ontario constituencies was opposed in the Commons. See Hansard [1882] 1356 *et seq.* A great number of amendments were proposed at various stages, Journals, p.p., 410-512. By this legislation the old boroughs of Niagara and Cornwall were attached to the electoral districts of Lincoln and Stormont respectively, s. 2, sub-ss. 1 and 19.

[6] This is a large representation for a population of 4,324,810 as compared with the 325 members who represent 50,000,000 in Congress. The census of 1881 gave Ontario 1,923,218 souls; Quebec, 1,359,027; Nova Scotia, 440,572; New Brunswick, 321,223; Manitoba, 65,954; British Columbia (including Indians), 49,459, Prince Edward Island, 108,891; N. W. T., 56,446.

"Until the Parliament of Canada otherwise provides, all laws in force in the several provinces at the time of the union relative to the following matters, or any of them, namely, the qualifications and disqualifications of persons to be elected, or to sit as members of the legislative assemblies in the several provinces, the voters at elections of such members, the oaths to be taken by voters, the returning officers, their powers and duties, the proceedings at elections, the periods during which elections may be continued, the trial of controverted elections, and proceedings incident thereto, the vacating of the seats of members, and the execution of new writs in case of seats vacated otherwise than by dissolution—shall respectively apply to elections of members to serve in the House of Commons for the same several provinces."

In 1871 and subsequent years, Parliament passed several acts[1] of a temporary character, and it was not until the session of 1874 that more complete provision was made for the election of members of the House of Commons[2]. The law now dispenses with public nominations[3], and provides for simultaneous polling at a general election—a provision which had existed for years in the province of Nova Scotia. The act of 1874 refers very briefly to the qualifications or disqualifications of persons to be elected[4]. No qualification in real estate is now required of any candidate for a seat in the House of Commons.[5] but he must be

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[1] 34 Vict. c. 20; 35 Vict. cc. 14, 16, 17; (the two last chapters provided merely for election purposes in counties of Victoria and Inverness, N.S.), 36 Vict. c. 27.

[2] 37 Vict. c. 9.

[3] The open nomination of candidates was abolished in England by 35 and 36 Vict. (1872,) c. 33.

[4] In the absence of statutory enactments, the common political law governs in England and her dependencies. For instance, insane persons are incapable of executing the trust of members; but the English Commons have always inquired into the nature of the affliction, and granted or refused a new writ according as the incapacity has been shown to be permanent or temporary. Case of Mr. Alcock, in 1811; 2 Hatsell 35*n*. Also that of Mr. Crooks, Ontario Legislature, Feb. 12 and 14, 1884. See Cushing, p, 26.

[5] The property qualification had been previously abolished in England

either a natural-born subject of the queen, or a subject of the queen naturalized by an act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of one of the provinces of Canada, or of the Parliament of the dominion.[1] All persons qualified to vote for members of the legislative assemblies of the several provinces comprising the dominion can vote for members of the House of Commons for the several electoral districts comprised within such provinces respectively; and the lists of voters used in the election of representatives to the legislative assemblies, are to be used at the election of members of the House of Commons.[2] Provision is also made in the same act for voting by ballot. In the session of 1878 the act was amended with the view of ensuring greater secrecy in the ballot system, the use of envelopes being discarded.[3]

The Parliament of Canada has not yet [1883] established a uniform franchise for the dominion,[4] and it is therefore necessary to refer briefly to the several statutes of the provinces defining the qualifications of electors therein. The following persons have at present the right to vote at dominion and provincial elections :—

*In Ontario*—Owners or occupants of real property, in cities, of not less than $400 value: in towns, $300; in incorporated villages, $200; in townships, $200. Also

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in 1858 by 21 and 22 Vict. c. 26. For debate, see 150 E. Hans. (3) 222, 576, 1421, 1829, 1919, 2086.

[1] Sec. 20. By sub. s. 25 of s. 91, of British N. A. Act, 1867, naturalization and aliens are now among matters falling under the exclusive legislative authority of the Parliament of Canada.

[2] Sec. 40.

[3] 41 Vict., c. 6, Dom. Stat. Can. Hans. [1878] 1844, 2073, 2116, 2160. The secret ballot was established in 1872 in England (except in case of university elections) by 35 and 36 Vict. c. 33. The dominion act of 1878 also provides for a recount of votes by a judge (sec. 14.)

[4] On two occasions since 1867, drafts of proposed acts have been submitted to Parliament—first, in 1870 and secondly in 1882,—but neither measure was pressed. Hans. [1883] 593-96.

persons with an income of not less than $400 annually; farmers' sons, resident on parents' farms, and duly rated on assessment roll. In Algoma, and such districts as have no assessment roll, those persons who are *bonâ fide* owners of real estate, valued at $200 or upwards, or who are, at the time of election, resident householders,—in each case, for six months next preceding the election.[1]

*In Quebec.*—Owners or occupants of real estate estimated at a value of at least $300, in city municipalities; and $200 in real value, or $20 in annual value, in any other municipality. Tenants paying annual rental for real estate of at least $30 in a city, and $20 in any other municipality.[2]

*In Nova Scotia.*—Persons assessed to the value of $150, on real estate; or on personal estate, or on personal and real estate together, to the value of $300.[3]

*In New Brunswick.*—Persons assessed for the year on real estate to the value of $100; or on personal, or on personal and real property together, to the value of $400, or with an annual income of $400.[4]

*In Manitoba.*—Owners of real estate, valued at $100 at least, or tenants of real property, to the value of $200, under an annual rent of $20, who must have been in the electoral division for at least three months.[5]

*In British Columbia.*—Residents in the province for twelve months, and in the electoral district for two months, previous to voting.[6]

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[1] Ont., Rev. Stat. c. 10. ss. 4-7.

[2] Quebec Stat. 38 Vict. [1875] c. 7, ss. 7-11.

[3] N. S. Rev. Stat. 4th ser., App., Election Law of 1863, c. 28, as amended. See c. 3 acts of 1874; c. 4, acts of 1883. Previous to 1863 (See Rev. Stat. of 1859, c. 5, s. 2) manhood suffrage existed in Nova Scotia, but the right was qualified by a provision requiring one year's residence in the electoral district, and five years in the province in the case of persons, British subjects, not born therein. This provision was repealed in 1863 by c. 28.

[4] N. B. Cons. Stat. of 1877, c. 4., s. 1.

[5] Man. Cons. Stat. of 1880, c. 3, ss. 61-65.

[6] B. C. Cons. Stat. of 1877, c. 66, am. by c. 7, Acts of 1878, and by c. 34, Acts of 1883.

*In Prince Edward Island.*—Residents in the polling division for twelve months before the teste of the writ, who have performed or paid for statute labour; also, persons resident in Charlottetown and Summerside who have paid provincial or civic poll-tax for the year; also, owners or occupants of real estate of the clear annual value of six dollars and forty cents, who have paid the taxes on such property for the year preceding the election. Residence is not necessary, and a man may vote on his property qualification, if he possesses it, in every district.[1]

The various acts of the provinces setting forth voters' qualifications provide for the due registration of all electors, who must be British subjects, by birth or naturalization, of the full age of twenty-one years, and free from any legal incapacity. The judges of the various courts, registrars, sheriffs and deputy-sheriffs, stipendiary and police magistrates, recorders, clerks of the crown, clerks of the county courts, county attorneys, clerks of the peace, agents for crown lands, postmasters in cities and towns, officers of the customs and excise, have no votes at parliamentary elections in Ontario, Quebec and other provinces. By the statutes of all the provinces the right to vote is expressly limited to "males," and the Ontario law has a special provision that no woman shall vote at any parliamentary election.[2] In the same province all Indians, or persons with part Indian blood, who have been duly enfranchised, and who do not reside among Indians though they participate in annuities or rents of a tribe, have a right to vote.[3] But in Manitoba, Indians or persons of Indian blood receiving an annuity are denied the privilege, and the same is the

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[1] The election law of 1878 (41 Vict., c. 14), was repealed by an act in 1879 (42 Vict., c. 2) reviving the law of 1861, 24 Vict., c. 34. The act of 1879 also repealed the Registration and Ballot Act of 1877 (40 Vict, c. 20). See also 45 Vict., c. 1, which provides for provincial or civic poll tax qualification in certain districts as above.

[2] Ont. Rev. Stat., c. 10, s. 3.

[3] *Ib.* s. 7.

case in British Columbia with respect to Chinamen and Indians. Previous to 1882, employés of the Intercolonial Railway had been disqualified from voting by an act of the Nova Scotia legislature, but in that year Parliament made provision in the Representation Act removing the disqualification in the case of such persons as respects elections for the House of Commons.[1]

The Representation Act of 1882 also contains a provision that "every writ for the election of a member of the House of Commons shall be dated and be returnable on such days as the governor-general shall determine, and shall be addressed to such person as the governor-general shall appoint; and such person shall be the returning officer at the election to which such writ relates."[2] The act of 1874, so far repealed, provided that writs should be addressed to the sheriff or to the registrar of deeds in the electoral district, but in case there was no such officer in the division, then the governor-general might appoint such other person as he might think proper.[3]

As communication by water between the Island of Anticosti, or the Magdalen Islands, and the mainland, may be interrupted during an election by the severity of the season, it is provided by the act of 1882 that the governor in council may direct that all necessary information relating to the election may be transmitted by telegraph by the returning officer to his deputies, and by them to him, so that he may be informed of the number of votes, and of all other matters relating to the election, and be enabled to return the candidate having the majority, or make such other return as the case may require. The islands in question form part of the electoral divisions of

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[1] N. S. Stat. 1871, c. 3; Dom. Stat., 45 Vict., c. 3, s. 5; Sen. Deb. (1882), 738; Com. Deb., 1563.

[2] 45 Vict., c. 3, s. 6.

[3] 37 Vict., c. 9, s. 1.

Chicoutimi and Saguenay, and Gaspé, and it is difficult to communicate with them at certain seasons.[1]

**V. The Trial of Controverted Elections.**—The Canadian statutes regulating the trial of controverted elections, and providing for the prevention of corrupt practices at parliamentary elections have closely followed the English statutes on the same subject. For some years, in Upper and Lower Canada, the house itself was the tribunal for the trial and determination of election petitions—commissioners or committees being appointed, when necessary, to examine witnesses.[2] Eventually the principle of the Grenville Act of 1770[3] was adopted in Upper Canada, and the trial of controverted elections entrusted to sworn committees of nine members, and two nominees, one appointed by the sitting member and the other by the petitioner. After the union of 1840, election petitions were tried by committees or by the whole house, according to the old laws of each province. It was soon found expedient to adopt the principles of Sir Robert Peel's act of 1839.[5] The legislature in 1851 passed an act transferring the whole of its authority to a newly established tribunal called "the general committee of elections," which was composed of six members appointed by the speaker by warrant under his hand, but subject to the approbation and sanction of the house. This committee was sworn, and then proceeded to select certain members to serve as chairmen of election committees, and also to divide the remaining members on the list submitted to it into three panels, in such

[1] 45 Vict., c. 3, s. 9. See remarks of Dr. Fortin, member for Gaspé, as to necessity for such a provision. Hans. (1882), 1461.

[2] 45 Geo. III., c. 3, Upp. Can. Stat.; 48 Geo. III., c. 21, Lower Can. Stat.; 58 Geo. III., c. 5., of Lower Can., provided for the appointment of commissioners or committees for the examination of witnesses; 8 Geo. IV., c. 5, for commissioners for the same purpose in Upper Canada.

[3] 10 Geo. III, c. 16, Imp. Stat.; May, 715.

[4] 4 Geo. IV., c. 4, Upper C. Stat.

[5] Imp. Stat. 2 and 3 Vict. c. 38; am. by 11 and 12 Vict., c. 98; 190 E. Hans. (3) 694.

manner as should seem most convenient. The committee of elections had the power of selecting a committee of four members from the panel in service, and a fifth member was chosen by the chairmen's panel. The members of the committee thus selected to try the merits of an election petition took their oaths solemnly and publicly at the table of the house, to execute justice and maintain the truth. The witnesses were examined on oath, the petitioner and respondent both appeared before the committee by their counsel, the decisions and precedents of the superior courts were quoted and followed, and the decision of the committee was final and conclusive.[1] This system continued in operation for several years after 1867,[2] consuming necessarily a great deal of the time of the speaker and members, until it was thought expedient to follow again the example of the British Parliament.[3] In Canada, for many years, there was a concurrence of opinion, in and out of Parliament, that it was necessary to transfer the jurisdiction over controverted elections from the house itself to some other tribunal which could deal with them irrespective of all political considerations whatever. Accordingly in 1873 Sir John Macdonald, then premier and minister of justice, introduced a bill "to make better provision respecting

[1] 14 and 15 Vict., c. 1; 19 and 20 Vict., c. 140; Consolidated Stat. of Canada, c. 7.

[2] Can. Com, J. [1867-8] 26, 37, 42, 108, 158, etc.

[3] In 1868 Mr. Disraeli, then chancellor of the exchequer, brought in a bill transferring the trial of election petitions to judges (31 and 32 Vict., c. 125). In giving his reasons for changing the existing system Mr. Disraeli said, "charges were being constantly made against the inefficiency and unsatisfactory character of the tribunal. The decisions of the committees have been uncertain and therefore unsatisfactory, and have offered no obstacle whatever to the growing practice of corrupt compromise by which, in the process of withdrawing petitions, a veil is often thrown over more flagrant transactions than any which are submitted to scrutiny and investigation." The legislature thus practically recurred to the method adopted more than 450 years previously in the election statute of 11 Henry IV. Taswell-Langmead, Const. Hist. 333, 340.

election petitions, and matters relative to controverted elections of members of the House of Commons."[1] This bill which passed into law provided for the trial of election petitions by judges in the several provinces of Canada. Barristers of ten years' standing were to be appointed judges *ad hoc*, in case the lieutenant-governor in council in any province should neglect or refuse to require the judges to perform the duties assigned to them under the act. This act was repealed (except as respects elections previously held) in the session of 1874 by another, introduced by Mr. Fournier, subsequently minister of justice,[2] and making more ample provision for the trial of controverted elections. As it has been stated elsewhere, some of the judges in the provinces of New Brunswick and Quebec questioned the constitutional power of the dominion Parliament to constitute election courts in the way proposed, and the matter was referred to the supreme court of Canada and eventually to the judicial committee of the privy council, both of which tribunals decided that the act was constitutional.[3] The statute[4] provides that the judges of the following courts shall try election petitions: In the province of Ontario, of the courts of error and appeal, queen's bench, common pleas and chancery, and the chancellor and vice-chancellors of the said court. In Quebec, of the superior court. In Nova Scotia, New Brunswick, British Columbia, and Prince Edward Island, of the supreme court. In Manitoba, of the court of queen's bench. By the Ontario Judicature Act of 1881, the several courts of that province, mentioned above, were united and constituted one "supreme court of judicature for Ontario," consisting of two permanent divisions, called respectively,

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[1] 36 Vict., c. 28.

[2] Now one of the judges of the supreme court of Canada.

[3] See *supra* p. 35.

[4] 37 Vict., c. 10.

1st, "the high court of justice for Ontario," and, 2nd, "the court of appeal for Ontario." The courts of queen's bench, chancery, and common pleas became divisions of the high court. After the elections of 1882, petitions were filed in the common pleas and queen's bench divisions of the high court, and Mr. Justice Cameron held that the court had no jurisdiction; that the courts of appeal, queen's bench, common pleas and chancery, named in the Controverted Elections Act of 1874, are still existing courts for the trial of such petitions; that these courts are not the same as the divisions of the high court which are branches of that court, and not distinct courts. The supreme court of Canada, on appeal, held that the act in question makes the high court of justice and its several divisions a continuation of the existing courts, and that the high court of justice (queen's bench and other divisions) has, under a new name, the same jurisdiction in dominion controverted elections as had the courts named in the said act of 1874.[1]

Under the Controverted Elections Act of 1874, the judge must report and certify the result to the speaker, and may also make a special report as to any matters arising in the course of the trial, an account of which ought, in his judgment, to be submitted to the House of Commons. Provision is made for appeal from the decision of the judge in any province, and the manner of certifying the determination and decision to the speaker[2] upon the several questions and matters of fact as well as of law. The speaker must issue his warrant for a new writ at the earliest practicable moment after receiving the certificate and report of a judge or judges, and adopt the proceedings

[1] Can. Law J. [1882], 348, 400; *Ib.* [1883] 240.

[2] For the purposes of this act (s. 5), when the speaker is absent or unable to act, the clerk of the house, or any other officer for the time being performing his duties, is entitled to act, and the judge should make report to him accordingly. Can. Com. J., 1879, Feb. 14, East Hastings and Kamouraska. Can. Com. J., 1883, Feb. 8, Kings, N.B., Joliette, etc.

necessary for confirming or altering the return or for the issue of a new writ for a new election.[1] When the judge makes a special report, the house may make such order in respect to the same as it may deem expedient. In the session of 1875 the foregoing act was amended,[2] so as to provide that whenever it shall appear to the court or judge that the respondent's presence at the trial is necessary, the trial of an election petition shall not be commenced during any session of Parliament. The judge must also make his report, except in case of an appeal, within four days after the expiration of eight days from the day on which he shall have given his decision. In the session of 1875 an act was passed to establish a supreme court and a court of exchequer for Canada.[3] Provision is made therein for an appeal to this court in case any party to an election petition may be dissatisfied with the decision of the judge who has tried the same on any question of law or fact. The registrar of the court shall certify to the speaker the judgment and decision of the court upon the several questions submitted to it.[4]

In the Election Act of 1874, provision is made for the prevention of corrupt practices at elections. In the session of 1876, two acts were passed on the same subject: 39 Vict., c. 9, "to make more effectual provision for the

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[1] Sec. 36. The first case of speaker ordering clerk of the Crown to alter a return was that of Mr. Plumb, of Niagara, Can. Com. J. [1879] 138-40. In England, in similar cases, the clerk of the Crown in Chancery is ordered to attend, to amend the return, and when he obeys the order, the return is amended in accordance with the judge's report. 136 Eng. Com J., 4, 5, 10 (Borough of Evesham, 1881.)

[2] 38 Vict., c. 10.

[3] 38 Vict., c. 11. Amended by 39 Vict., c. 26, and 42 Vict., c. 39.

[4] Mr. Langevin's case, 1877; Mr. Laflamme's case, 1878. Also, Jour. (1880-1), 2, 3, 220, 222. In conformity with 37 Vict., c. 10, s. 36, and 38 Vict., c. 11, s. 48, the speaker in 1883 issued his warrant to the clerk of the Crown directing him to alter the return for Queen's County, P. E. I., as the legal consequence of the decision of the supreme court of Canada on an election appeal. Jour., pp. 61-3.

administration of the law relating to corrupt practices at elections of members of the House of Commons," and 39 Vict., c. 10, "to provide for more effectual inquiry into the existence of corrupt practices at elections of members of the House of Commons." The latter statute provides for more effectual inquiry into corrupt practices by a commissioner or commissioners, on an address to the governor-general representing that a judge in his report on the trial of a petition states that such further inquiry is desirable, or on an address setting forth that a petition has been presented to the house, signed by 25 or more electors of the district, stating that no petition had been presented under the Controverted Elections Act, and asking for inquiry into corrupt practices which, there is reason to believe, extensively prevailed at the election. Only one case has so far occurred under this statute: the petition of certain electors of South Grenville, which was referred to the standing committee on privileges, in 1879, but no report was ever made on the subject.[1] This statute was amended in 1879,[2] so as to require security to be given to meet the expenses of the inquiry in certain cases. One thousand dollars must be deposited with the accountant of the house before the petition under the act can be received. The certificate of the accountant that the money has been deposited must be attached to the petition on its presentation.

Since the House of Commons has divested itself of its original jurisdiction for the trial of all matters touching the election return of its members, petitions calling into question the right of a member to his seat have been ruled out on two occasions—the sense of the house being unmistakably in favour of the principle laid down that it is most inexpedient to re-open an election case after it had been disposed of in the courts in

[1] Can. Com. J., (1879) 70.

[2] 42 Vict., c. 6.

accordance with law.[1] It is admitted, however, that the house is bound to take notice of any legal disabilities affecting its members, and to issue writs in the room of members adjudged to be incapable of sitting.[2] In fact, there is authority to show that the very same question which might have been determined, upon petition, by an election judge, has been adjudged by the house itself.[3] In a recent election case, a court in Ontario unanimously held that "the right to deal with all matters affecting the election and return of its members belongs to the House of Commons, except so far only as the Parliament of Canada has expressly devolved on the courts certain express duties and powers respecting elections. The House of Commons retains all powers that it has not expressly given up."[4]

In any case, it is always regular to receive a petition setting forth a grievance, and praying for a remedy, providing that it does not question the return of a member within the meaning of the Controverted Elections Act of 1874, which enacts (s. 63) that no election or return shall be questioned except in accordance with the provisions of the act.

**IV. Issue of Writs.**—In the session of 1877, some remarks were made as to the power of the house to order the issue of writs when seats have become vacant by a decision of a court. It was doubted whether such an order was neces-

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[1] Can. Com. J., (1874) 82; *Ib.* (1880–81) 199–200; Can. Hans. (1880–81) 823–830. See Amos's British Cons., p. 445.

[2] May, 723–4. See O'Donovan Rossa and other cases, *infra* p. 149.

[3] Sydney Waterlow case, 124 E. Com J., 12, 43, 82, 88. Sir Erskine May (p. 723) appears to take the ground that after the time has expired for receiving election petitions, the house is not only free, but legally bound, to determine all questions affecting the seats of its members.

[4] In *Re* Centre Wellington election, 44 U. C., Q. B., 132.

[5] So ruled by speaker of English Commons in case of a petition from electors of Peebles and Selkirk complaining that certain voters, at the last general election, had qualifications of an illusory character. 194 E. Hans. (3) 1185.

sary under the Canadian Elections Act. Subsequently, Mr. Speaker Anglin took occasion to inform the house that on looking into the question he had found that the English Controverted Elections Act[1] left the power in the house to order the immediate issue of a writ on being informed of a vacancy through the decision of an election court. The Canadian statute,[2] on the other hand, made it the express duty of the speaker to order the issue of the writ. It is now the practice for the speaker to inform the house immediately when he has given his orders for the issue of a writ for a new election.[3] In all cases, however, not specified by statute, the house retains its control over the issue of writs, and may order the speaker to issue his warrant.[4] In England, the usual motion for a new writ is made in all cases by a member when the house is in session.[5]

**VIII. Dual Representation.**—For more than one session of the first Parliament, members were entitled to sit not only in the House of Commons, but in the legislative assemblies of Ontario and Quebec as well. But the legislatures of Nova Scotia and New Brunswick had passed acts previous to entering the confederation, by which no person being a member of the Senate or House of Commons should be capable of sitting or voting in either branch of the legislatures of those provinces.[6] Since 1872, several acts have been passed to prevent dual

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[1] 31 and 32 Vict., c. 125, s. 13, Imp. Stat.

[2] 37 Vict., c. 10, s. 36, Dom. Stat.

[3] Can. Hans., March 1st and 5th, 1877; Jour. (1877), 85, 86.

[4] Cases of Louis Riel, expelled, *infra* p. 151; of O'Donovan Rossa, *infra* p. 149. See Can. Hans. (1875), 320, for opinions of Sir J. Macdonald and Mr. Fournier. The Controverted Elections Act and Independence of Parliament Act give authority to speaker; 39 Vict., c. 10, s. 2. provides for cases where no new writ for a new election (under the 36th s. of the Controverted Elections Act, 1874) shall issue, save by order of the house.

[5] 131 E. Com. J., 50, 55.

[6] 30 Vict., c. 3, Nova S. Stat. of 1867; 30 Vict., c. 20, New B. Stat. of 1867.

representation. The dominion law, as it now stands, renders members of the legislative councils and legislative assemblies of the provinces, now included, or which may hereafter be included, within the dominion, ineligible for sitting or voting in the House of Commons. A member of the House of Commons who accepts a seat in a provincial legislature must vacate his seat in the former body, and any person who violates the act is liable to a penalty of $2,000 for every day he sits and votes illegally.[1] By reference to notes below[2] it will be seen that statutes of the several provincial legislatures now provide that no senator or member of the House of Commons shall sit in the legislative councils or assemblies of the provinces. A senator may, however, sit in the legislative council of Quebec,[3] and could do so in the Manitoba assembly, until the law was changed in that province before the elections of 1883.[4]

In the session of 1874 a question arose as to the eligibility of Mr. Perry, one of the members for Prince Edward Island, on account of an irregularity in his resignation as a mem-

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[1] 35 Vict, c. 15; 36 Vict., c. 2, Dom. Stat.

[2] Cons. Stat. of Ontario, 1877, c. 12, ss. 5 and 6, provides that no privy councillor or senator of the dominion or member of the house of commons shall be eligible as a member of the legislative assembly of Ontario. An act of P. E. Island (39 Vict., c. 3) renders members of the senate and house of commons ineligible as members of the legislative council or house of assembly of the province. No member of the house of commons can sit in British Columbia assembly (B. C. Cons. Stat, 1877, c. 42, ss. 15, 25). No member of the legislature of any province, nor of the house of commons, can sit in the Manitoba assembly (Man. Cons. Stat., c. 5, s. 30. See *note* 4 below.)

[3] Senator Ferrier has represented Victoria division in the Quebec legislative council since 1867. Parl. Comp., 1883, p. 56. See sub-s. 2, s. 2, c. 3, 32 Vict., Quebec Stat. But no senator or member of the commons shall be eligible as a member of the legislative assembly of Quebec; 37 Vict., c. 4, Quebec Stat.

[4] Senator Girard not only sat in the Manitoba assembly, but was a member of the government of the province for years. Parl. Companion, 1883, p. 58. The law was amended in 1881 by 44 Vict., c. 29, Man. Stat.

ber of the legislative assembly of that province. It appears that Mr. Perry, who was speaker of the local house, resigned his seat by a letter addressed to the lieutenant-governor of the Island, and the point at issue was whether there was any legal resignation of his seat in the legislature when he became a candidate for the House of Commons. The matter was referred to the committee on privileges and elections, which reported that he had taken every step in his power to divest himself of his position as a member of the legislative assembly, and that according to the spirit and intent of the dominion act of 1873 (36 Vict. c. 2), he was not disqualified to be a candidate at the election, or to sit and vote in the House of Commons; but under all the circumstances the committee recommended that an act of indemnity be passed to remove all doubt as to his right to sit and vote in Parliament. An act was accordingly passed in the same session.[1]

In the session of 1883, the first after the general elections of 1882, the clerk of the crown in chancery gave in "a double return," (as he called it in his return book)[2] for the electoral district of Kings, Prince Edward Island. Accordingly both members were duly sworn by the clerk, though neither, of course, took his seat or attempted to vote. From the return of the returning officer, it appears that the county of Kings is entitled to send two members to the House of Commons; that Mr. McIntyre received "a legal majority of votes," and of his due election there was no question; that Mr. James Edwin Robertson received the next highest number of votes; but it having been represented to the returning officer at the summing up of the votes by

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

[2] Can. Com. J. (1883), 1. The question was raised in debate whether the return made in this case was not rather in the nature of a special return, and whether a double return can now be made if the provisions of the Elections Act of 1874 are properly carried out. See *infra* p. 141.

certain electors that Mr. Robertson at the time of his nomination as a candidate, and at the time of the holding of the election was a member of the house of assembly of the Island, he was, consequently, in the opinion of the returning officer, "disqualified to be elected as a member of the House of Commons." Accordingly he certified that "Mr. Augustine Colin MacDonald, a candidate at such election duly qualified, had the next highest number of votes lawfully given at such election," and he "made this return respecting the said J. E. Robertson and A. C. MacDonald for the information of all whom it may concern." When this extraordinary case came before the house in due form, it gave rise to a very earnest debate, in which very contradictory opinions were expressed as to the conduct of the returning officer. The whole matter was finally referred to the committee on privileges and elections, though not until an amendment had been moved by Mr. Robertson's friends to the effect that inasmuch as he had the second highest number of votes at the election he ought to have been returned as one of the members, and that he had a right to take his seat, "saving, however, to all candidates and others their rights of contesting the election in accordance with law and justice." Both in the house and before the committee it was contended that, by the dominion Elections Act of 1874, "after a candidate has been accepted as duly nominated by the returning officer and declared by him to the electors as such candidate, the returning officer has *no power or right* to reject such candidate, or f he has a majority of votes upon their summing up to refuse to return him as elected." A majority of the committee, however, came to the conclusion after the hearing of evidence and elaborate arguments on the various points at issue, that Mr. Robertson had never legally resigned his seat, and that he was at the time of his election a member of the house of assembly of Prince Edward Island; that an act of that province (39 Vict. c. 3), made it illegal for any member of the House of Commons to be

elected to sit or vote in the house of assembly; that according to the express terms of the second section[1] of the dominion act of 1872 (35 Vict. c. 15), the majority of votes given for Mr. Robertson were thrown away; that it was the duty of the returning officer to return Mr. MacDonald as the candidate, he being otherwise eligible and having the next highest number of votes; that the return to the writ of election should be amended accordingly. When the report came before the house for final adoption, very conflicting opinions were again given on the points at issue. Amendments were moved to the effect,—1st. That it was the duty of the returning officer to have returned Mr. Robertson as elected; 2nd. That steps should be taken to refer the points in doubt to the supreme court of Canada; 3rd. That the house having declined to decide that Mr. Robertson should have been returned, the election should be declared null and void. The report was finally concurred in, and the clerk of the crown ordered to amend the return so as to declare Mr. MacDonald elected, "as having had the next highest number of votes lawfully given at such election"; and this having been done, Mr. MacDonald took his seat and voted during the remainder of the session.[2]

**VIII. The Independence of Parliament.**—In the old legislatures of Canada, judges and other public officers were allowed to sit for many years in both houses, until at last the imperial government yielded to the strong remons-

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[1] This section reads: "If any member of a provincial legislature shall, notwithstanding his disqualification as in the preceding section mentioned, receive a majority of votes at any such election, such majority of votes shall be thrown away, and it shall be the duty of the returning officer to return the person having the next greatest number of votes, provided he be otherwise eligible."

[2] Can. Com. J. and Hans., 1883, Feb. 19th, March 1st and 9th, and 25th April. App. No. 2. The writer has confined himself to a review of the most material points raised on a question of a very perplexing character. This decision of the house, it is evident, gives very large powers to returning officers.

trances of the great majority of the representatives in the assemblies, and expressed their readiness to assent to such legislation as might be necessary to render the legislatures independent of official influence. Several statutes were passed in the course of time by the legislatures of Upper and Lower Canada, prohibiting judges from sitting in the legislative assemblies;[2] but all attempts to prevent them from sitting in the legislative council were rendered nugatory by the opposition given in that house to all measures in that direction.[3] Legislation in the two provinces also provided for a member vacating his seat, in case of his acceptance of certain offices, but such appointment was not to bar his re-election to the house. Here we see the first step taken to require members of the executive council to vacate their seats, and seek re-election at the hands of the people.[4]

After the union between Upper and Lower Canada, the legislature of the united provinces took up the question of the independence of Parliament, and endeavoured, as far as possible, to follow the example which had long before been given them by the parent state in this matter.

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

[2] 7 Will. IV., c. 114, Upp. Can. Stat. See 51 Geo. III., c. 4., Lower Can. Stat.

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

[4] 7 Will. IV., c. 114, Upp. Can. Stat.; 4 Will. IV., c. 32, Lower Can. Stat.

In 1843, Attorney-General Lafontaine presented a bill entitled "an act for better securing the independence of the legislative assembly of this province." This bill became law[1] in 1844, and has formed the basis of all subsequent legislation in this country. Judges and other public officers, as well as contractors with the government, were specifically disqualified from sitting and voting in the assembly, and were liable to a heavy penalty should they violate the law. Seats of members accepting offices of profit from the crown had to be vacated, and writs for new elections issued forthwith; but all persons, not disqualified under the act, could be again returned to the assembly—a provision intended to apply to members of the executive council. In 1857, Solicitor-General Smith introduced an act amending the foregoing statute in several important particulars, with a view of giving the principle embodied in the law more extensive application. Under the act,[2] no person, accepting or holding any office, commission or employment, permanent or temporary, at the nomination of the Crown in the province, to which an annual salary, or any fee, allowance, or emolument or profit of any kind or amount whatever from the Crown, is attached, shall be eligible as a member of the legislative council, or of the legislative assembly.[3] During the first session of the first Parliament of the dominion, the act of 1857 was re-enacted,[4] with several amendments that were necessary under the new state of things, but the great principle involved in such legislation—of preserving the independence of Parliament—was steadily kept in view. It was provided, however, that one of the commissioners

[1] 7 Vict., c. 65. Assented to by her Majesty in council, 17th April, 1844. Amended by 16 Vict., c 154, and 18 Vict., c. 86, certain doubts having arisen as to sections of the act of 1843.

[2] 20 Vict., c. 22, Can. Stat.

[3] See Consol. Stat. of Canada, chap. iii. Amended in respect to recovery of penalties by 29 Vict., c. 1.

[4] 31 Vict., c. 25, am. in 1871 by 34 Vict., c. 19.

of the intercolonial railway, or any officer of her Majesty's army or navy, or any officer in the militia, or militiaman, (except officers on the staff of the militia receiving permanent salaries) might sit in the house.[1]

In the session of 1877, attention was called in the House of Commons to the fact that a number of members appeared to have inadvertently infringed the third section of the act, which is as follows:

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

Some doubts arose as to the meaning of the word "contract" under the foregoing section, and all the cases in which members were supposed to have brought themselves within the intent of the statute were referred to the committee on privileges. In the several cases so referred, it was alleged: That Mr. Anglin, speaker, who was editor and proprietor of a newspaper, had received public money in payment for printing and stationery furnished "per agreement" to the post-office department.[2] That Mr. Currier was a member of a firm which had supplied some lumber to the department of public works.[3] That Mr. Norris was one of the proprietors of a line of steamers upon the lakes which had carried rails for the government.[4] That Mr. Burpee was a member of a firm which was supplying certain iron goods to government railways.[5] That Mr. Moffatt was interested in, and had been paid for, the transport of rails for the government.[6] That Mr.

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[1] 31 Vict., c. 25, s. 1, sub-s. 3.

[2] Can. Com. J. (1877), 233, 234, 235, 236, 265, 357, and app. No. 8.

[3] *Ib.* 263. [4] *Ib.* 264. [5] *Ib.* 313. [6] *Ib.* 315.

T. Workman was a member of a firm interested in the supply of hardware to the department of public works.[1] That Mr. A. Desjardins was editor and publisher of the "*Nouveau Monde*," which had received public money for government advertisements and printing.[2] Both Mr. Currier and Mr. Norris, believing that they had unwittingly infringed the law, resigned their seats during the session.[3] In only one case, that of Mr. Anglin, were the committee able to report, owing to the lateness of the session. In this case, which caused much discussion, the committee came to the conclusion that the election was void, inasmuch as Mr. Anglin became a party to a contract with the postmaster-general, but that "it appeared, from Mr. Anglin's evidence, that his action was taken under the *bona fide* belief, founded on the precedent and practice hereinafter stated, that he was not thereby holding, enjoying, or undertaking, any contract or agreement within the section."[4] In the Russell case of 1864, the precedent referred to in the report, an election committee of the legislative assembly of Canada found that the publication, by the member for Russell, of advertisements for the public service, paid for with the public moneys, did not create a contract within the meaning of the act. On the other hand, the committee of 1877 came to the conclusion that the decision of 1864 was erroneous. It appeared from the evidence taken by that committee, and from the public accounts of the dominion, that "between 1867 and 1873, numerous orders, given by public officers, for the insertion of advertisements connected with the public service were fulfilled, and various sums of public money were paid therefor to members of parliament." It was never alleged at the time that these members were disqualified, but the

[1] Can. Com. J. (1877), 325.

[2] *Ib.* 326.

[3] Mr. Currier, *Ib.* 270; Hans. 1513; Mr. Norris, Jour. p. 282; Hans., 1568.

[4] Can. Com. J. (1877), 357, app. No. 8. Hans., pp. 1267, 1303.

committee were of opinion, nevertheless, that "according to the true construction of the act for securing the independence of Parliament, the transactions in question did constitute disqualifying contracts." The result of this report was the resignation, during the recess, of Mr. Anglin, Mr. Moffatt, and some other members who had entered into "disqualifying contracts," according to the strict interpretation of the law given by the committee.[1] In concluding their report the committee of 1877 stated their opinion that the act required careful revision and amendment. During the debate on the act there was a general expression of opinion that the penalty ($2,000 a day) was exorbitant. Some actions for the recovery of the penalty having been entered against several members for alleged violations of the act, the government introduced a bill for the purpose, as set forth in the preamble, of relieving from the pecuniary penalty under the statute, such persons as may have unwittingly rendered themselves liable to the same. The act applied, however, only to those persons who may have sat or voted at any time up to the end of that session of Parliament.[2]

In the session of 1878, the minister of justice, Mr. Laflamme, introduced a bill "to further secure the independence of Parliament."[3] Among the clauses in the original bill was one declaring ineligible any person "entitled to any superannuation or retiring allowance from the government of Canada"; but this provision, which evoked much opposition, was rejected by the Senate.[4] As the law

[1] Messrs. Jones and Vail also resigned their seats, being stockholders in a company which had performed printing and advertising for the government. Hans. (1878), 126. Mr. Mitchell also resigned, p. 13. Messrs. Burpee, Workman and Desjardins did not resign, as they had not violated the provisions of the act. See Hans. (1877), 1709, 1809, 1810.

[2] 40 Vict., c. 2. Can. Hans. [1877], 1851-67.

[3] 41 Vict. c. 5. Sen. Deb. [1878], 825, 870, 980. Can. Hans. [1878], 369, 1226, 1327, 2008, 2038, 2546, 2551.

[4] Can. Hans. [1878], 1229, Mr. Masson; 1235 (Sir J. Macdonald), 2008, 2038.

now stands "no person accepting or holding any office, commission or employment, permanent or temporary, in the service of the government of Canada, at the nomination of the Crown, or at the nomination of any of the officers of the government of Canada, to which any salary, fee, wages, allowance, or emolument, or profit of any kind is attached" is eligible as a member of the House of Commons. The offices of sheriff, registrar of deeds, clerk of the peace, or county crown attorney in any of the provinces of Canada are expressly disqualified. The provisions with respect to contracts are made more definite and stringent. Among other things it is provided that "in every contract, agreement, or commission to be made, entered into or accepted by any person with the government of Canada, or any of the departments or officers of the government of Canada, there shall be inserted an express condition that no member of the House of Commons shall be admitted to any share or part of such contract, agreement, or commission, or to any benefit to arise therefrom." No member of the Senate shall directly or indirectly be concerned in any contract under which the public money of Canada is to be paid. Any person disqualified as a contractor or otherwise under the act shall forfeit the sum of two hundred dollars for every day on which he sits and votes. Any person admitting a member to a share in a contract shall forfeit and pay the sum of two thousand dollars for every such offence. Provision is also made that no senator can become a government contractor and in case of a contravention of the statute he shall forfeit two hundred dollars for every day during which he continues a party to such contract. Proceedings for the recovery of a penalty must be taken within twelve months after it has been incurred. In addition to the clause providing for the re-election of members accepting office in the privy council, it is provided, as in the act of 1867, that a minister need not vacate his seat if he resigns his office, and accepts another in the same ministry within one month

after his resignation "unless"—and this was added in 1878—"the administration of which he was a member shall have resigned, and a new administration shall have been formed, and shall have occupied the said offices." [1]

The second section also provides that nothing in the statute shall render ineligible persons holding the several cabinet offices, "or any office which may be hereafter created, to be held by a member of the queen's privy council for Canada, and entitling him to be a minister of the Crown, or shall disqualify him to sit and vote in the House of Commons, provided he be elected while holding such office and be not otherwise disqualified." [2]

The statute does not apply to a member of either house who is a shareholder in any incorporated company, having

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[1] This provision is intended to guard against a repetition of what actually occurred in the history of Canada during the administration of Sir Edmund Head. Com. Hans. [1878], 1227, The facts of this remarkable episode in the constitutional history of Canada may be briefly stated as follows: In the session of 1858, the Macdonald-Cartier ministry resigned on the question of the seat of government, and were succeeded by the Brown-Dorion administration. The latter, however, resigned almost immediately on account of the refusal of the governor-general (Sir Edmund Head) to dissolve a parliament just elected, and for other reasons which he gave at length. The Cartier-Macdonald ministry which followed comprised all the members of the Macdonald-Cartier cabinet with two exceptions. The old ministers resumed their seats without re-election by availing themselves of the seventh section in the Independence of Parliament Act, allowing a minister to resign his office and accept another before the expiration of a month. Then having complied with the letter of the law, they resumed their old offices in the ministry. This action of the members of the old cabinet provoked much discussion in and out of Parliament; but it was sustained by a majority of the legislative assembly, and subsequently by decisions of the courts. Todd's Parl. Gov. in the Colonies, pp. 528-537. Dent's Canada since the union, vol. ii. 369, *et seq.* Leg. Ass. J. [1858], 973-976, 1001. 17 U. C. Q. B., 310; 8 U. C. C. P. 479.

[2] In explaining this amendment to the law, when the bill was before parliament, the minister of justice stated that it was made with the object "of avoiding the re-enactment of the Independence of Parliament Act to apply to new ministerial offices which should be created." Hans. [1878], 1227.

a contract with the dominion government, unless it be a company having a contract for the construction of the Canadian Pacific Railway or other public works. Nor does it disqualify any contractor for the loan of money or of securities for the payment of money to the dominion government under the authority of Parliament, after public competition, or respecting the purchase or payment of the public stock or debentures of Canada, on terms common to all persons. The provision in the act of 1867-8 respecting the militia is continued.

In the first session of the Parliament of the dominion, Mr. Holton and Mr. Blake called the attention of the house to some important questions affecting the right of a number of members to hold their seats in the Commons; and though the matter is now one of those dead issues not likely to occur again, it will not be without interest to explain its origin and ultimate determination. The first question raised was this—Whether those gentlemen who were ministers of the Crown in the provinces of Ontario and Quebec were, or were not, precluded from sitting and voting in the House of Commons under the Independence of Parliament Act? The second question was—Whether the members of the privy council of Canada did not hold offices of profit and emolument which brought them under the operation of the said act, and consequently disqualified them from sitting and voting in the house?[1] By the 41st section of the British North America Act, 1867, the Independence of Parliament Act of old Canada was continued in force until changed by the dominion Parliament. Consequently it was urged that those members who were members of the privy council of Canada, and of the executive councils of Ontario and Quebec, held offices, at the time of their election, which "by reason of the expectation that salaries or emoluments would be attached to them," might be considered as offices of profit under the Crown.

[1] Parl. Deb. [1867-8], 37-38, 46-48.

Much difference of opinion was expressed in the house on the subject, and the first point, as to the eligibility of members of the provincial executive councils, was referred to the committee on privileges and elections who decided, after due consideration, that those gentlemen "have a legal right to sit and vote in the House of Commons, and are not disqualified from so doing by holding the offices above mentioned."[1] The other point as to the eligibility of the members of the privy council was not referred to the committee—a motion to that effect having, after debate thereon, been withdrawn.[2] The issue of the controversy was the introduction and passage of an act to remove all doubts as to the matters in question.[3]

**IX. Resignation of Members.**—In the Independence of Parliament Act[4] ample provision is made for the resignation of members during a session or the prorogation of Parliament. A member may resign his seat by giving notice formally in his place in the house of his intention to do so—which notice must be entered by the clerk on the journals—or by addressing and delivering to the speaker a declaration of his intention, made under his hand and seal before two witnesses, either during the session or in the interval between two sessions—which declaration must also be duly

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[1] Can. Com. J. [1867-8], 45. In this connection see report of select committee of Imperial House of Commons in 1878-9 on Sir B. O'Loghlen's election for the County of Clare. His seat was declared vacant because he had accepted office "under the Crown" in the colony of Victoria, Australia. 245 E. Hans. (3), 258, 437, 516, 1104, 1185. He accepted the office of attorney-general. No. 130, Parl. P., 1878-9, vol. viii.

[2] Can. Com. J., pp. 38, 40.

[3] 31 Vict., c. 26. This act also declared the queen's printer of Nova Scotia capable of sitting and voting in the house, Mr. Macdonald, of Lunenburg, N.S., holding that office at the time. The preamble of the act sets forth very fully the reasons for the legislation, and any one desirous of more information will obtain it by reference to the act and the reports of debates.

[4] 41 Vict., c. 5 Dom. Stat., s. 12-15 inclusive.

entered on the journals.[1] When these preliminaries have been complied with the speaker shall forthwith issue his warrant for the issue of a writ for a new election.[2] But no member can so resign his seat while his election is lawfully contested; nor until after the expiration of the time during which it may be contested on other grounds than corruption and bribery. If a member wishes to resign his seat during the prorogation of Parliament, and there is no speaker, or the member himself is the speaker, he may address a declaration of his intention to two members who shall thereupon order the issue of a writ for a new election.[3] In case of a vacancy by death[4] or acceptance of office,[5] two members may inform the speaker of the fact by notice in writing—or a member may do so in his place; and the speaker will thereupon address his warrant to the clerk of the crown in chancery for a writ of election. If, when such vacancy occurs there be no speaker, or he be absent from Canada, or if the member whose seat is vacated be himself the speaker; then, any two members may address their warrant to the clerk of the crown in chancery for a writ of election.[6] Provision is also made for the issue of

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[1] Can. Com. J. [1877], 269-70 (Mr. Currier); 282 (Mr. Norris). In the former of these cases, which occurred during the session, both an oral statement was made and a written declaration delivered. For cases during recess, see Jour. [1875], 62; *Ib.* [1880], 7; *Ib.* [1882], 4.

[2] *Ib.* [1877], 270, 284.

[3] Can. Com. J. [1878], 2-8. Mr. Speaker Anglin had resigned his seat soon after the prorogation in May, 1877.

[4] Can. Com. J. [1877], 5. It is not an unusual practice in the Commons on the decease of a member to move that Mr. Speaker do issue his warrant, &c. Jour. [1880], 163; *Ib.* [1880-1], 247. But the express language of the statute does not seem to require such a motion, and in the session of 1880-1 the speaker issued his warrant in one case on receiving notification from two members (District of Carleton, N. B.), and in another case on simply being informed by a member in his place of the decease of a member (Cariboo, B.C.)

[5] *Ib.* [1877], 5.

[6] *Ib.* [1878], 2. Mr. Laurier accepted office after resignation of Mr. Speaker Anglin.

a new writ for the election of a member to fill up any vacancy arising subsequently to a general election and before the first meeting of the new Parliament, by reason of the death or acceptance of office of any member—which writ may issue at any time after such vacancy occurs.[1] No provision exists in the statute for a member resigning his seat after a general election and before the meeting of Parliament; his seat becomes vacant, however, by his acceptance of an office of emolument under the Crown, as was done in two cases during 1878—Messrs. Horton and Macdougall temporarily accepting such offices in order to provide seats for Messrs. Cartwright and Langevin.[2]

In case a member is returned for two constituencies he must make his election for which of the places he will serve by formally resigning his seat when the house is in session. Under the old Controverted Elections Act, he would have to wait until the expiration of the fourteen days required by law for the presentation of a petition in the house against his return.[3] The English House of Commons has a sessional order requiring that "all members returned for two or more places do make their election

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[1] In September, 1878, the general election resulted in the defeat of the Mackenzie administration. Mr. Mackenzie soon afterwards resigned, and Sir John Macdonald took his place. Consequently the new ministers had to be re-elected. See Journals [1879], xxv.-ix. Sir J. Macdonald had been defeated in Kingston, but returned by acclamation for Marquette, in Manitoba, where the elections were held later than in Ontario. On accepting office in October, his seat became vacated, and he decided to sit for the district of Victoria, British Columbia, where the election was held on the 21st October. See Annual Register, [1878], 211. Mr. Caley, of Beauharnois, also died before the meeting of the new Parliament, xxix.

[2] Com. J. [1879] xxv., xxix. Annual Register [1878], 210, 212. In the debate on the amendments to the Independence of Parliament Act during 1878, several members referred to the advisability of amending the act to meet such cases, but no amendments were made in this respect; Hans. p. 1358-9.

[3] Mr. Blake returned for West Durham and South Bruce; he elected to serve for S. Bruce; Jour. [1873], 49.

within one week after it shall appear that there is no question upon the return for that place."[1] If there is a petition against the return of a member, he cannot elect to serve for either until the matter is finally decided in the courts.[2] In 1882, Sir John Macdonald was returned for the electoral districts of Carleton and Lennox, and a petition having been regularly entered in the courts against his return for Lennox, he was unable to make his election for either during the session of 1883 in accordance with the rule governing such cases. For a member "cannot abandon the seat petitioned against, which may be proved to belong of right to another, and thus render void an election which may turn out to have been good in favour of some other candidate; neither can he abandon the other seat, because if it should be proved that he is only entitled to sit for one, he has no election to make."[3] As it has been stated elsewhere, the Canadian law provides that no member can resign his seat while his election is or may be contested.[4]

In case of a "double return" each of the members elect is entitled to be sworn; but neither should sit or vote until the matter has been finally determined.[5] The rule of the house requires that "all members returned upon

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[1] May, 716. This order is renewed every session.

[2] May, 717. Mr. Gathorne Hardy, 21st Feb., 1866.

[3] May, 717. See case of Mr. O'Connell in 1841, 96 E. Com. J., 564, 59 E. Hans. (3), 503. In 1842, the election committee having reported, he made his election; 97 E. Com. J., 302.

[4] *Supra* p. 138.

[5] See case of Marquette, 1872. Both members were sworn and took their seats, and then withdrew, whilst the case was before the committee of privileges and elections. For English cases see May, 665, *note*. In 1859 there were double returns for Knaresborough and Aylesbury, which were duly decided by election committees. In 1878 there was a double return for South Northumberland. One of the contestants retired, and the judge so reported. The clerk of the crown in chancery was then ordered to attend and amend the return by rasing out the name of one of the parties. See 133 Com. J., 333. Dom. Stat., 37 Vict., c. 10, s. 59, provides for a similar procedure.

double returns are to withdraw until their returns are determined."[1] The Dominion Elections Act of 1874, (s. 60) endeavours, as far as possible, to prevent a double return, since the returning officer, in case of an equality of votes, "*shall* give a casting vote"—the English law in a similar contingency being only permissive.[2]

**X. Introduction of Members.**—After the first day of a new Parliament, new members are not sworn at the table, but generally in the clerk's room where the roll is kept, and one or more of the commissioners (the clerk being always one) will be in attendance. At the beginning of a Parliament, the return book, received from the clerk of the Crown, is sufficient evidence of the return of a member, and the oath is at once administered.[3] When a member is returned after a general election, the clerk of the Crown sends to the clerk of the Commons his certificate of the return to the writ "deposited of record" in the Crown office, which certificate will be laid before the house by the speaker.[4] But members are not unfrequently admitted to their seats, on taking the oath, before the receipt of the usual certificate of the clerk of the Crown; and in such cases it is always resolved:

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[1] Made a standing order in 1876, Jour. p. 110. The English rule is the same; 136 E. Com. J., 8.

[2] Parl. and Mun. Elections Act of 1872, s. 2. See the King's Co., P.E.I., election case, *supra* p. 126. Also, 37 Vict., c. 10, s. 59. Cushing in his remarkably clear treatise on legislative assemblies (p. 49), gives the following definition of this class of returns:—"A writ of election, being returnable on a day named in it, must be returned accordingly, whether an election has taken place or not. Hence, returning officers sometimes make a special return, stating all the facts where no election has been made; or a 'double return' (as it is called), where they are unable to determine which of two, or of two sets of candidates, has been elected." If an English returning officer does not choose to give a casting vote, [as happened in South Northumberland election, 1878], he will endorse two certificates on the writ.

[3] Can. Com. J. [1874, 1879], p. 1, &c.

[4] Can. Com. J. [1877], 5, &c.

" That in admitting elected to represent the electoral district of to take his seat upon the certificate of the returning officer, the house still recommends a strict adherence to the practice of requiring the production of the usual certificate of the clerk of the crown in chancery of the return to the writ of election." [1]

In such cases, the certificate of the clerk of the crown is reported to the house as soon as it is received.[2]

As a rule, members who come in upon new writs issued after a general election, should be formally introduced to the house, in accordance with the ancient custom of the English Commons which is stated in these words:

" That upon new members coming into the house, they be introduced to the table between two members, making their obeisances as they go up, that they may be the better known to the house." [3]

The new member will be presented in these words: " Mr. Speaker, I have the honour to present to you , member for the electoral district of who has taken the oath, and signed the roll, and now claims the right to take his seat." The

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[1] Mr. Abbott, Feb. 16, 1880; Mr. Angers, Feb. 20, 1880; also, Jour. [1880-81], 15 and 21 Dec. The return by indenture was discontinued by the Election Act of 1874. The resolution, as previously moved, allowed the member to take his seat on the production of the duplicate indenture only. Can. Com. J. [1867-8], 187; *Ib.* [1877], 190. It was proposed in the session of 1879 to admit a member on a telegram sent to the clerk of the Crown by the returning officer, but the house properly refused to make so dangerous a precedent. Can. Hans. [1879], 42-44.

[2] Can. Com. J. [1877], 212.

[3] 2 Hatsell, 85; May, 218; resolution of 23rd Feb., 1688. This practice is not followed in the case of members who come in upon petition after a general election, 2 Hatsell, 85, *n.* This practice of introduction in the English Commons is invariable. If the house considers the introduction unnecessary under peculiar circumstances, the rule must be formally suspended. Case of Dr. Kenealey, 222 E. Hans. [3], 486-7; Can. Hans. [1878], 5. Mr. Perrault, Feb. 27, 1879; here vacancy occurred after general election of 1878 by death of Mr. Tremblay.

speaker will thereupon reply: "Let the honourable member take his seat." The member will then advance to the chair and pay his respects to the speaker.

Up to the session of 1876, it was not the invariable practice to introduce members whose seats had been vacated under the acts for the trial of controverted elections, and who had been subsequently elected. These members and newly elected ministers simply took the oath (in the clerk's office) and their places without the formality of an introduction; and the record of the fact was made in the usual way by the clerk in the journals.[1] But in the session of 1875, the premier called attention to the fact that Mr. Orton, member for the electoral district of Centre Wellington, had sat and voted in the house during the session without having taken and subscribed the oath prescribed by law.[2] The matter was referred to the committee of privileges, which subsequently reported:

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

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

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

"That the votes of the member, before he took the prescribed oath, should be struck out of the division list and journals, as he had no right to sit and vote until he had taken that oath." [3]

The difficulty in Mr. Orton's case showed very clearly the necessity that existed for adhering strictly to the old usage of Parliament. On the first day of the session of 1876 the speaker expressed his opinion to the house, that

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[1] Can. Com. J. [1875], 52, 54, 58, 62, 65, &c.

[2] Can. Hans. [1875], 260, 322, 324.

[3] Can. Com. J. [1875], 129, 176. But a member elect, not sworn, may be appointed to committees, or as a manager of a conference. 2 Hatsell, 88, *n.* 113 E. Com. J., 182 (Baron Rothschild.)

"it would be better to revert to the old practice and have everybody introduced;"[1] and the house tacitly consented to the suggestion, and the practice was carried out uniformly during 1876 and 1877.[2] But in the commencement of the session of 1878 a number of members elected during the recess[3] took their seats as soon as the house met, the speaker having resigned in the interval. Some of these members had sat in the house during the previous session; others were elected for the first time. All the circumstances connected with the opening of this session were novel. Among the members who had vacated their seats and been re-elected was Mr. Speaker Anglin; and it became consequently necessary to elect a new speaker. The question then arose as to the proper course to pursue with respect to the members elect, as there was no speaker to lay before the house the certificates of their election and return. The clerk, however, on the return of the Commons from the Senate chamber, and previous to the election of speaker, stood up and announced the fact that vacancies had occurred during the recess in the representation, and laid before the house the usual certificates of the election of the members in question. Objection was taken to this procedure at the time.[4] The house being in possession of these evidences

[1] Can. Hans. [1876], 1.

[2] Can. Hans. [1876], 1, 2; *Ib.* [1877], 2, 24, &c.

[3] They had resigned on account of a violation of the Independence of Parliament Act. See *supra* p. 133.

[4] Can. Hans. [1878], 1, 2. Probably the better course would have been for the "committee"—for there is hardly a house in a constitutional sense until the speaker is elected (Mr. Raikes before Com. on Public B., 1878, p. 139), to have discussed the question informally on the invitation of the leader of the house, and to have given some instruction to the clerk, who had no precedents of the House of Commons to guide him. See, however, proceedings of legislative council in 1862 (then elective) before election of Sir Allan McNab, Leg. Coun. J., pp. 17-19; also, proceedings in Leg. Ass. of Quebec, in 1876, when a new speaker was appointed in the place of Mr. Fortin. In these cases returns were laid before the house before election of speaker. Also, see the journals of the Lower Canada Assem-

of the return of members elected during the recess, proceeded to the election of a new speaker, and Mr. Mackenzie proposed the re-election of Mr. Anglin, who was one of those members. Sir John Macdonald opposed the motion on the ground that there was no house regularly constituted, and consequently they had no power to suspend the rule requiring the introduction of a new member. On the other hand, it was contended that the practice of introduction had been variable in the house, and that it was inadvisable to press any rule which would render members who had performed all the obligations required by law incapable of sitting in the house and assisting in the election of speaker. A division was taken on the question for the election, and Mr. Anglin was chosen.[1] Several members, elected during the recess, were introduced formally on the day following the election of speaker.[2] Since 1879 all new members, including ministers after re-election, have been introduced.[3]

**XI. Attendance of Members.**—The members of both houses are expected to attend regularly in their places, and perform their duties under the constitution.[4] In case of un-

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bly for 1823 for a case of the clerk laying before the house the returns of the election of new members under somewhat similar circumstances. Mr. Papineau had declared his intention in writing not to be present as speaker, and consequently it was necessary to elect a new presiding officer.

[1] Can. Hans. [1878], 1-11; Jour., p. 1.

[2] Can. Hans. [1878], 11, 12, 13. This difficulty could not have occurred in English practice. Members must be sworn in with the speaker in the chair. Consequently Mr. Anglin could not have been nominated for speaker in the English house during a parliament, as in this case. See May, 202, *note*, where cases of Mr. Charles Dundas (35 Parl. Hist., 951), and of Mr. Manners Sutton are referred to (Lord Colchester's Diary, iii., 260). Also, Parl. P., Rep. on Office of Speaker, 1852-3, vol. 34, p. 66.

[3] Jour. [1880-1], 9; Can. Hans., 9th December; *Ib.*, 1882, 9th Feb. Mr. Gladstone was formally introduced after his re-election as minister of the Crown, in 1880. "London Graphic," July 3rd, 1880; H. W. Lucy on Ways and By-Ways of Parliament.

[4] 2 Hatsell, 99-101. A member of the English Commons has been ex-

avoidable absence it is the proper course to have the reasons explained to the house, and leave will then be given to the member to absent himself from his duties.[1] The names of senators present at a sitting are entered every day in the journals in accordance with the practice of the House of Lords.[2]

The old practice in Canada, as in England, was to have a call of the house and order all the members to attend on a particular day,[3] but this practice has now virtually become obsolete—no cases having occurred since 1867. The attendance of members in both houses is always large, compared with that of the Imperial Parliament, and in cases of emergency the party whips are expected to take proper measures to have members in their places at a particular time. Previous to the meeting of Parliament, the leader of the government will frequently, in view of important business, send circulars to the supporters of the ministry, requesting their prompt attendance. These are, however, matters of political arrangement which have nothing to do with a work of this character, and are only now mentioned as among the reasons why the old usage of calling the members together has been practically given up.

**XII. Members' Indemnity.**—The members of both houses receive a sessional indemnity, besides a travelling allowance, and forfeit a certain sum for every day of absence from their duties in the house.[4]

The act of 1867 relating to the indemnity to members

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pelled for refusing to attend the service of the house; Mr. Pryse, in 1715.

[1] Can. Com. J. [1867-8], 34, 38.

[2] Sen. Journals, 1867-1883.

[3] May, 230; 80 E. Com. J., 150, 153, 157. Can. Leg. Ass. J. [1854], 177, 246, 284, 596, 622.

[4] In old times members of the English Commons were paid by a tax levied on the several constituencies. Hearn. Govt. of England, 499. In 1841 members of the legislature of Canada voted themselves £65 for indemnity. II. Turcotte, 88.

and salary of the speakers[1] gave each member six dollars for each day's attendance, if the session did not extend beyond thirty days; but if it should be longer, he would receive a sessional allowance of six hundred dollars. In 1873 the act was amended so as to increase these amounts to ten dollars and to one thousand dollars, whilst the salary of each speaker was raised from three thousand two hundred to four thousand dollars annually.[2] A deduction of eight dollars per day shall be made from the sessional allowance for every day on which the member does not attend a meeting of the house; but this deduction will not be made for days of adjournment, when the house is not sitting, or in case of illness when the member has been in attendance at the place where Parliament meets.[3] Members are paid seven dollars for each day as the session advances,[4] as well as mileage at the rate of ten cents a mile, going and coming. At the close of the session the sum due a member will be paid him by the accountant of the house, on his making and signing before the same, or a justice of the peace, a solemn declaration of the actual number of days he attended the house, and of the number of miles travelled, as determined and ratified by the speaker of the house.[5]

When members have been obliged through illness to absent themselves for a considerable part of the session, or have been unable to present themselves in good season

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[1] 31 Vict., c. 3, amended by following act.

[2] 36 Vict., c. 31, s. s. 13, 14.

[3] 31 Vict., c. 3, s. 2, amended by 36 Vict., c. 31, s. 13.

[4] 39 Vict., c. 8, in amendment of 31 Vict., c. 3, s. 4.

[5] See a long debate in the Senate showing that it has been the uniform practice there, as in the Commons, to have non-sitting days count for the purpose of making up the thirty-one days necessary for the indemnity. Members who have attended only for one or more days at the commencement of the session have received their sessional allowance less the eight dollars per day deducted for days when they had not attended the sittings of the houses. Sen. Deb. [1880], 294-304; Jour., 253.

at the seat of government through unavoidable circumstances arising out of their election and return, it has been usual to draw the attention of the house to the facts, and to move that the members in question receive the sum to which they would be entitled had not such circumstances prevented their attendance. The reasons have been generally stated in the resolution, or else mention has been made of the fact that there are special circumstances connected with the case. Attention is generally called to such matters before the doors are opened, but the resolutions have been always formally moved and entered on the journals.[1] This practice has been gradually falling into disuse, and is only now resorted to under very exceptional circumstances.[2] In case it is deemed expedient to give full indemnity to families of deceased members of either house, the proper course is for the government to bring down the requisite vote in the estimates.[3]

**XIII. Expulsion and Disqualification of Members.**—The power of Parliament to expel a member is undoubted.[4] This power has been repeatedly exercised by the English and Colonial Parliaments, either when members have been guilty of a positive crime, or have offended against the laws and regulations of the house, or have been guilty of

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[1] Can. Com. J. [1871], 304, Manitoba members; *Ib.* [1874], 322; *Ib.* [1875], 349, P. E. Island members detained by ice and storms; *Ib.* [1876], 304; *Ib.* [1877], 196, 257; *Ib.* [1878], 184, 220, 294; Can. Hans. [1878], 2549. Cases of Messrs. Plumb, Orton, White and Perreault (election and return), 13th May, 1879; precedent of 1874 was followed.

[2] Can. Com. J. [1882], 402. No mere resolution should be allowed to evade the law.

[3] Estimates of 1881. Sess. P., 1880-81, No. 1.

[4] May, 63, 144 E. Hans. [3], 702. The exercise of this right, being entirely discretionary in its nature, ought to be governed by the strictest justice; for if the violence of party should be let loose upon an obnoxious member, and a representative of the people discharged of the trust conferred on him by his constituents without good cause, a power of control would thus be assumed by the representative body over the constituent, wholly inconsistent with the freedom of election. Male, 44; Cushing, 250.

fraudulent or other discreditable acts, which proved that they were unfit to exercise the trust which their constituents had reposed in them, and that they ought not to continue to associate with the other members of the legislature. The instances of expulsion from the English Parliament are very numerous, as it may be seen by reference to the English authorities.[1] The most recent case is that of Mr. Bradlaugh, in 1882, when the house resolved that "having disobeyed the orders of the house, and having in contempt of its authority, irregularly and contumaciously pretended to take and subscribe the oath required by law, he be expelled this house."[2]

The House of Commons of England has also always upheld its dignity and declared unfit to serve in Parliament such persons as have been convicted of felony. The latest cases are the following:—

In 1870 Mr. O'Donovan Rossa, whilst undergoing sentence for treason-felony, was elected member for Tipperary; and the Commons resolved that "having been adjudged guilty of felony, and sentenced to penal servitude for life, and being now imprisoned under such sentence he has become, and continues incapable of being elected and returned as a member of this house." On this occasion, Sir Roundell Palmer (now Lord Selborne) said that it was "impossible that a man convicted of treason or felony and suffering punishment for that offence, could be a fit person, on account of the infamy attaching to that crime. A sentence of transportation for life, or of penal servitude for life—which, indeed, makes it necessarily impossible for a man to be present for a single moment in this house—disqualifies the person subject to it from being a member of Parliament."[3]

Mr. John Mitchel who had been sentenced to fourteen years transportation for treasonable practices, escaped from his place of

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[1] May, 63-65; 18 E. Com. J., 336, 467; 20 *Ib.* 702; 39 *Ib.* 770; 65 *Ib.* 433; 69 *Ib.* 433; 5 Parl. Hist., 910; 144 E. Hans. [3], 702-10, where numerous cases are given.

[2] 137 E. Com. J., 61-62. This case is so notorious that the writer need only refer the reader to May, 210, *et seq.*

[3] 199 E. Hans. [3], 122-152; 125 E. Com. J., 8, 27.

imprisonment, and was subsequently elected, in 1875, member for Tipperary, though he had not received a pardon from her Majesty under the Great Seal. The necessary evidence of the facts having been laid before the house, he was declared incapable of being returned to the Commons. The ground was taken by the attorney-general that having had sentence passed upon him, and having neither received pardon nor suffered the punishment to which he was sentenced, he was disqualified.[1]

In the session of 1882, a similar proceeding was taken in the case of Michael Davitt, who had been convicted of felony, and sentenced to penal servitude for fifteen years.[2]

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

In 1800, C. B. Bouc, member for Effingham, Lower Canada, was expelled on evidence being given that he had been convicted at the assizes of a conspiracy with sundry other persons, unjustly and fraudulently to obtain of one E. Dorion large sums of money. He was re-elected more than once, but finally disqualified by statute.[3]

In 1829, Mr. Christie, member for Gaspé, was expelled on the report of a select committee of the Lower Canada assembly, on various allegations of misconduct, but ostensibly for having, as an extreme partisan of the government, badly advised the governor and procured the dismissal of certain magistrates from the commission of the peace, on account of their political opinions and votes in the assembly. He was re-elected and expelled several times.[4]

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[1] 222 E. Hans. [3], 490, 539; 130 E. Com. J. 52. He was again returned, and as there had been a contest, the matter was determined under the Election Petitions Act. The other candidate, having given due notice of the disqualification, proved his claim to the seat, and the return was amended accordingly. 224 E. Hans., 918, 919; 130 E. Com. J., 235, 236, 239.

[2] 137 E. Com. J., 77.

[3] Lower Can. J. [1800], 54, 76, 96; *Ib.* [1801], Jan. 24; *Ib.* [1802], 324. I. Christie's Lower Canada, 210. 221. 42 Geo. III., c. 7, Low. Can. Stat.

[4] Lower C. J. [1829], 447, 465, 479, 493; *Ib.* [1830], Jan. 1st; *Ib.* [1831], November; *Ib.* [1832], 12; *Ib.* [1833], 25. III. Christie's Hist., 240. This case illustrates the extreme lengths to which party spirit carried parliamentary majorities in the early times of Canada. He was not even

In 1831, the legislative assembly of Upper Canada declared Mr. William Lyon Mackenzie "guilty of gross, scandalous, and malicious libels, intended and calculated to bring this house and the government of this province into contempt, &c." He was expelled, and having been subsequently re-elected was declared incapable of holding a seat in the house during that Parliament. On again presenting himself, he was forcibly expelled by the serjeant-at-arms. As in the case of Mr. Wilkes, in England, to which we refer further on, the assembly acted arbitrarily and illegally. In a subsequent Parliament, all the proceedings in Mr. Mackenzie's case were expunged from the journals.[1]

In 1858 Mr. John O'Farrell was expelled for fraud and violence at the election for Lotbiniere.[2]

In 1874, on motion of Mr. Mackenzie Bowell, Louis Riel, who was accused of the murder of Thomas Scott during the North-West troubles, was expelled as a fugitive from justice, the necessary evidence having been previously laid before the house.[3] Riel was again returned to Parliament during the recess, and soon after the house met, in 1875, the premier (Mr. Mackenzie) laid on the table the exemplification of the judgment roll of outlawry, and then moved "that it appears by the said record that Louis Riel, a member of this house, has been adjudged an outlaw for felony." This motion having been agreed to, Mr. Mackenzie moved for the issue of a new writ for Provencher "in the room

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allowed to confront his accusers before the committee. The question was referred to the British government, which disapproved of the action of the legislative assembly, but at the same time admitted that the resolution of the assembly was irreversible except by itself. Despatch of Viscount Goderich; Low. Can. J. [1832-3], 50, 57, 129, 136, 137, 138.

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

[2] Leg. Ass. J. [1858], 454.

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

of Louis Riel, adjudged an outlaw," which also passed by a large majority.[1]

The cases of Mr. Christie and Mr. Mackenzie, given in the foregoing list of precedents, find a parallel in the famous case of Mr. Wilkes, who was expelled in 1764 from the British House of Commons for having uttered a seditious libel. A contest then arose between the majority in the house and the electors of the county of Middlesex. The house in 1769 declared him ineligible to sit in that Parliament, when he had been again elected for Middlesex. Though Mr. Wilkes was re-elected by a large majority of the electors, the house ordered the return to be amended, and his opponent (who had petitioned the house) to be returned as duly elected. The efforts of the electors of Middlesex were unavailing for the time being to defeat the illegal action of a violent partisan majority. Many years later, in 1782, when calmer counsels prevailed, the resolution of 1769 was expunged from the journals "as subversive of the rights of the whole body of electors of the kingdom"—which is the identical language subsequently used in expunging the various proceedings relative to Mr. Mackenzie.[2] No principle is more clearly laid down by all eminent authorities on the law of Parliament than this—"That Parliament cannot create a disability unknown to the law, and that expulsion, though vacating the seat of a member, does not create a disability to serve again in Parliament."[3] Both houses of Parliament "must act within the limits of their juris-

[1] Can. Com. J. [1875], 43, 67, 111, 118, 122, 124, 125. Can. Hans. [1875], 139, 144, 307, 308, 315. The O'Donovan Rossa precedent was followed by Mr. Mackenzie. Mr. Bowell had previously placed a motion on the paper for the expulsion of Riel, but withdrew it when he found that the government proposed dealing with the matter. Votes, 1875, Feb. 11, and Can. Hans. of same date.

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

[3] May, 63.

diction, and in strict conformity with the laws. An abuse of privilege is even more dangerous than an abuse of prerogative. In the one case, the wrong is done by an irresponsible body; in the other, the ministers who advised it are open to censure and punishment. The judgment of offences especially should be guided by the severest principles of law."[1]

The house may proceed in various ways to inquire into the propriety of allowing a member to associate with other members of the house, when he is accused of a grave offence. Committees and commissioners have at times been appointed to inquire into the allegations.[2] It is the proper course to lay the record of conviction before the house, when a member has been convicted in a court of justice.[3] The house, however, is not necessarily bound to the necessity of a conviction, for it may, apart from mere legal technicalities, acting upon its moral conviction, but at the same time most cautiously, proceed to the expulsion of a member.[4] In all cases, however, it is necessary that the member should have an opportunity of being heard in his place before proceeding to expel him.[5] By reference to the precedents given above, the proper procedure in all cases will be more clearly understood.

**XIV. Suspension of Members.** — Expulsion is an extreme penalty only to be enforced under extraordinary circumstances. In cases of minor gravity, the house may be satisfied with ordering the speaker to admonish or reprimand the offender, and the remarks of the speaker ought

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[1] May's Const. Hist., vol. ii., pp. 26-7, 3rd ed.

[2] 11 E. Com. J., 283; 20 *Ib.*, 391; 21 *Ib.*, 870; 65 *Ib.*, 433. See also Can. Com. J., 1876, March 16 and 28; also Hansard of those dates.

[3] 67 E. Com. J., 176; 69 *Ib.*, 433; 222 E. Hans. [3], 415.

[4] 144 E. Hans. [3], 715.

[5] 69 E. Com. J., 433; 111 *Ib.*, 367; 144 E. Hans. (3), 711. Can. Com. J. [1874], 18.

always to be entered on the journals after motion duly made.[1] The house may also under certain circumstances proceed to the rigorous measure of suspending a member temporarily from his functions. "There is no doubt," says an authority, "that under the common law of Parliament any member, wilfully and vexatiously obstructing public business, would be held to be guilty of a contempt of the house, and would be liable to a suspension from his duties as a member."[2] The rights of electors are no more infringed than if the house had exercised its unquestionable power of imprisonment.[3] No necessity has ever arisen in the Canadian Parliament for exercising this extreme power which ought clearly to be used only in a grave emergency. It has, however, been found necessary to adopt a new standing order on the subject in the English House of Commons, on account of the conduct of certain members who have wilfully and persistently obstructed public business.[4]

**XV. Questions affecting Members referred to Select Committees.**—In the Canadian, as in the English House of Commons, "whenever any question is raised affecting the seat of a member, and involving matters of doubt, either in law or fact, it is customary to refer it to the consideration of a committee."[5] For example: In the case of Mr. Perry,

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[1] Case of Mr. O'Connell, 1838, vol. 3, pp. 2231, 2263, Mirror of P.; E. Com. J., 1838, Feb. 28.

[2] Mr. Raikes (chairman of committees) before Committee on Public Business, 1878, p. 110, 132. For old cases, 2 E. Com. J., 128; 8 *Ib.*, 289; 9 *Ib.*, 105; 10 *Ib.*, 846.

[3] May, 65.

[4] Standing order made 28 Feb., 1880, amended 21 and 22 November, 1882. See *infra* at end of chapter on debate, where it is given in full, and cases of suspension are also cited. How necessary it has been in England to make some changes in the English rules, in order to prevent obstruction and promote the progress of public business, may be understood from a perusal of an article by Mr. Raikes in the November number of the "Nineteenth Century," 1879.

[5] May, 713; 94 E. Com. J., 29, 58; 103 *Ib.*, 388; 110 *Ib.*, 325; 134 *Ib.*, 86.

referred to in a previous page;[1] of Mr. J. S. M'Donald and Mr. C. Dunkin, whose seats were questioned on account of their holding offices in the executive councils of Ontario and Quebec;[2] of Mr. R. B. Cutler, who had been paymaster of a government railway at the time of his re-election;[3] of Mr. DeLorme, who was charged with complicity in the Red River rebellion;[4] of Mr. Anglin, and others, alleged to have violated the Independence of Parliament Act.[5] In the case of Mr. Daoust, 1876, the matter was referred to the committee on privileges and elections, which reported in his favour;[6] but in 1880 the house refused to refer a petition making certain charges against Mr. Hooper to the same committee.[7] In other cases where there is evidence of crime, or of the person accused being a fugitive from justice, it has been considered sufficient to lay the papers formally before the house;[8] but whenever the seat or character of a member is affected the house will invariably proceed with due caution and deliberation. A reference to a committee is no doubt the proper procedure in all cases in which there are reasonable doubts as to the facts or the course that should be pursued, especially when it is necessary to examine precedents.[9]

**XVI. Places in the House.**—The members of the two houses are provided with seats and desks,[10] to which is affixed a

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[1] *Supra* p. 125.

[2] Can. Com. J. [1867-8], 44.

[3] *Ib.* [1873], 285, 321, 328.

[4] *Ib.* [1871], 249. This matter was not referred to the committee, as proposed in the original motion, on the ground that a sufficient case was not made out.

[5] *Supra* p. 131.

[6] Can. Com. J. [1876], 145, 159, 160, 208.

[7] *Ib.* [1880], 60, 62, 87, 88.

[8] Case of Louis Riel, *supra* p. 151.

[9] Mr. Gladstone, 199 E. Hans., 123.

[10] Seats were first provided in Low. Can. Ass., 17 Jan., 1801. See Scrope's Life of Lord Sydenham, 223, *note*.

card with the name of the member to whom it has been allotted. The members of the privy council occupy places to the right of the speaker, and the leading members of the opposition to the left. The older members are generally given the preference in the first rows. The location of seats in the House of Commons is arranged by members, placing themselves in communication with the serjeant-at-arms, whose duties are referred to in another place.[1]

[1] Chap. III.

# CHAPTER III.

*THE SPEAKERS AND OFFICERS OF THE TWO HOUSES, &c.*

I. Speaker and Officers of the Senate—Contingent Accounts Committee. —II. Speaker of the House of Commons.—III. Officers and Clerks, &c., of the House of Commons.—IV. Admission of Strangers.—V. Clerk of the Crown in Chancery.—VI. Votes and Journals.—VII. Official Reports.—VIII. Library and Reading Rooms.—IX. Commissioners of Internal Economy.

**I. The Speaker and Officers of the Senate.**—The speaker of the Senate is appointed by a commission under the great seal, and may be removed at any time by the governor-general.[1] The proceedings consequent on the appointment of a new speaker will be found fully explained in another part of this work.[2] In case of the unavoidable absence of the speaker during the session, it will be necessary to appoint a new speaker for the time being. When the former returns his re-appointment must be made known to the house with all the usual formalities.[3]

The speaker presides over all the deliberations of the

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[1] Sec. 34, B. N. A. Act, 1867. The first speaker of the leg. coun. of Canada, 1841, was the vice-chancellor of the court of chancery, R. S. Jameson. Jour. p. 19.

[2] Chap. VI.

[3] Mr. Cauchon, 1869; Jour. p. 81; Deb. p. 58, May 17. In the session of 1880, Mr. Macpherson fell seriously ill and it became consequently necessary to appoint Mr. Botsford, speaker. Journals, Feb. 16, and Hansard of that date. Mr. Macpherson was subsequently reappointed. Sen. J. p. 177. In 1872 Mr. Speaker Cauchon was accidentally detained, and information was given of the fact by the clerk when the Senate met. Mr. Hamilton took the chair, and by consent declared the house continued till 9.30 that evening. Sen. J. (1872), 79.

Senate, except when the house goes into committee of the whole, and then he must call another member to the chair. He has in all cases a vote,[1] which is the first recorded on the side on which it is taken, and he decides questions of order when called upon for his decision.[2] If he wishes to address the house on any subject, he will come down from the chair—like the lord chancellor in the House of Lords—and speak from the floor like other members, but this is a privilege which he will very rarely exercise.[3] He stands uncovered when speaking to the Senate, and if called upon to explain a point of order or practice, he is to state the rule applicable to the case, and also to decide the question when required, subject to an appeal to the Senate.[4]

The speaker in the Senate, like the speaker in the Commons, presents to the house all papers, returns, and addresses which he has received and which ought to be laid before that body.[5]

The principal officers of the Senate are the clerk, clerk assistant, and gentleman usher of the black rod, who have all seats on the floor of the house. The clerk and clerk assistant have also been hitherto appointed masters in the chancery of Canada, by virtue of special commissions under the great seal.[6] The clerk, who is appointed by the Crown, performs duties similar to those of the clerk of the Commons, and also acts as accountant in pursuance of the

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[1] Sec. 36, B. N. A. Act, 1867. See chapter on divisions.

[2] Sen. Deb. ("Times"), 1867-8, pp. 176, 184.

[3] Mr. Speaker Christie, Sen. Deb. (1877), 131; Mr. Speaker Wilmot, 2d May, 1879; Lords' S. O. 2; May, 246; Mr. Speaker Macpherson spoke at some length in committee on Canadian Pacific Railway bill, Feb. 14th, 1880-81. He came down from the chair in the session of 1882, and made a few remarks when a senator directly referred to a speech he had made some years previously. Hans. p. 749.

[4] Sen. R. 29.

[5] Sen. J. [1867-8], 206, 210, 230-231, 269, &c.; *Ib.* [1880], 17, 30, 47, &c.

[6] Sen. J. [1867-8], 61, 62; *Ib.* [1883], 15. Also, the law clerk.

orders of the house itself.[1] He reads the commission for the appointment of a new speaker,[2] and takes minutes of all the proceedings of the Senate. He administers the oaths required by law to new members as one of the commissioners appointed for that purpose.[3] At the prorogation of Parliament he pronounces the royal assent to bills, or signifies that certain bills have been reserved.[4] He also replies, by his Excellency's command, accepting the benevolence of the Commons, when their speaker makes the usual speech in presenting the Supply Bill.[5] Whenever a new clerk is appointed, the speaker will inform the house of the fact, and the commission will be read and put on the journals. He will then take the oath of office before the speaker.[6] By an act[7] passed in 1872, the clerk of the Senate is also styled the clerk of the Parliaments, and has the custody of all the original acts of Parliament. He has a seal of office which he affixes to certified copies of all acts intended for the governor-general or the registrar-general of Canada, or required to be produced before courts of justice. The same act contains also provisions relative to certified copies of acts which may be furnished on application to the clerk of Parliaments for a small fee, which goes into the contingent fund of the Senate.[8]

The clerk assistant, who is also generally the deputy clerk, sits at the table to the right of the chief clerk. He

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[1] Report of contingent committee on subject, Sen. J. [1867-8], 131 ; *Ib.* [1870], 165. An assistant appointed in 1875, Jour. p. 34; *Ib.* [1877] 115.

[2] *Ib.* 1873, 1874 and 1879.

[3] *Ib.* [1874], 14, &c. ; *Ib.* [1883], 18. Sec. 128, B. N. A. Act, 1867.

[4] *Ib.* [1874], 262, &c. ; *Ib.* [1883],.

[5] Sen. J. [1874], 262-3, &c. ; *Ib.* [1883], 297.

[6] *Ib.* [1867-8], 55 ; *Ib.* [1871], 15-16 ; *Ib.* [1883], 13, 14. For practice in Lords, which is similar, see 223 E. Hans. (3), 1684.

[7] 35 Vict., c. 1, Dom. Stat. This act does not contain a power of deputation.

[8] The clerk of the Commons in England—but not in Canada—is the "under-clerk of the Parliaments to attend upon the Commons." 2 Hatsell, 255 ; London *Gazette*, 3rd Feb., 1871.

is not sworn like the officers of the Commons.[1] His duties consist in reading petitions and other documents, in taking minutes of proceedings in committee of the whole, and in otherwise assisting the clerk in the business of the house. In the session of 1877 another clerk was appointed to sit on the left of the chief clerk, chiefly for the purpose of making at the table translations of the proceedings.[2]

The gentleman usher of the black rod, who is appointed by the Crown,[3] is always sent to desire the attendance of the Commons at the opening or prorogation of Parliament, and executes all orders for the arrest or commitment of parties guilty of breaches of privilege and contempt.[4] The speaker will report any new appointment to the house, as in the case of all other officers under royal commission.[5]

The Senate has also a serjeant-at-arms, who carries the mace, and executes the orders of the house for the attachment of delinquents, when they are in the country.[6] The usher of the black rod performed the duties of this office until 1869, when an officer was appointed to fill the position.[7]

The chaplain of the Senate is appointed by commission under the privy seal.[8] Whenever it is necessary to appoint other officers, the subject is referred to the committee on contingent accounts, who report as to the necessity for

[1] He acts as deputy by virtue of authority from the clerk. In the Lords he is appointed by the lord chancellor, and the house is always informed of the fact, and asked to approve, 223 E. Hans. (3), 1685. In the Senate the contingent accounts' committee appoints the officer and gives the title, as they do in fact in the case of all officers not appointed by the Crown. Sen. J. [1867-8], 176; *Ib.* [1882], 300.

[2] Sen. J. [1877], 114, 275.

[3] *Ib.* [1867-8], 56.

[4] May, 256.

[5] Sen. J. [1867-8], 29. He occupies, like the serjeant-at-arms of the Commons, apartments in the Parliament Buildings. *Ib.* [1876], 29.

[6] May, 256.

[7] Sen. J. [1867-8]. 90; *Ib.* [1869], 83.

[8] *Ib.* [1869], 33-4. The clerk's commission is under the great seal.

such office, and the salary that ought to be given.[1] All appointments and salaries (except the appointment of crown officers) as well as promotions, are regulated by this committee.[2] In fact it supervises all the ordinary expenses of the Senate, apart from the members' indemnity and other expenditures authorized by statute.[3] Its members have always jealously resented all attempts to interfere with the control of matters which it is the practice to refer to them.[4] All petitions and papers referring to salaries and expenses of the house are invariably submitted to the consideration of this committee before any definite conclusion is arrived at on the subject.[5] At the commencement of every session the clerk is to lay before the Senate, on the day after the appointment of the committee on contingent accounts, and as often as he may be required to do so, a detailed statement of his receipts and disbursements, since the last audit, with vouchers in support thereof.[6] The committee in question will always report on the correctness of these accounts.[7] In 1880 the Senate agreed that "the accounts of expenditure for salaries and contingencies of the Senate, and for their members' indemnity, &c., should be audited by the auditor-general in the same manner as those of the House of Commons."[8]

The daily printed record of proceedings which is prepared by the officers of the house in the two languages and sent to every member is called "Minutes of Proceedings," a copy of which, certified by the clerk, must be transmitted daily to the governor-general.[9]

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[1] *Ib.* [1869], 83; *Ib.* [1875], 132; *Ib.* [1876], 86.
[2] *Ib.* [1880], 252; *Ib.* [1882], 65, 300; *Ib.* [1883], 45, 91.
[3] Sen. J. [1877], 44, 66, 114, &c.; *Ib.* [1880-81], 103-4.
[4] Sen. Deb. [1875], 25, 37, 66, 69.
[5] Sen. J. [1867-8], 200, 273; *Ib.* [1876], 61; *Ib.* [1880], 87, 95.
[6] Sen. R. 86; Jour. [1879], 51; *Ib.* [1883], 46.
[7] Sen. J. [1878], 234; *Ib.* [1879], 246; *Ib.* [1886], 186.
[8] Sen. J. [1880], 97.
[9] Sen. R. 105.

The journals which are almost identical with the minutes, are bound in annual volumes as soon as possible after each session, with a full index. Copies of the journals are transmitted to the colonial office, to the Houses of Lords and Commons, and to the legislatures of the British Colonies. The librarian is also furnished with sufficient copies of the journals, and of all reports from heads of public departments, or concerning any public institution for general exchange. The clerk is also to make arrangements for exchanging the laws of Canada for those of the Imperial Parliament and of the colonial legislatures.[1]

Strangers are admitted to the galleries and to that part of the house which lies without the bar. The house may, however, be cleared at any moment, in conformity with a standing order, like that of the House of Commons, to which reference is made in a subsequent page of this chapter.[2]

**II. The Speaker of the House of Commons.**—There are four sections of the British North America Act, 1867, which refer to the election of speaker of the House of Commons. The 44th section provides—

"The House of Commons on its first assembling after a general election, shall proceed with all practicable speed to elect one of its members to be speaker."[3]

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[1] Sen. R. 105-109.

[2] Page 176.

[3] This is substantially section 33 of the Union Act of 1840. In the first session under that act the governor-general did not come down on the first day, but the house proceeded immediately to the election of speaker, after the clerk had read the proclamation and sec. 33 of the act. Exception was taken to this procedure at the time. (Quebec *Mercury*, June 19, 1841). Next day the governor-general came down and opened Parliament. Leg. Ass. J. [1841], 2, 3. In subsequent sessions, the present usage was followed in conformity with British constitutional practice which requires that the sovereign give authority to the house to proceed to election of speaker. 2 Hatsell, 218.

The proceedings in such a case are described more conveniently in a later chapter on the opening of Parliament.[1]

The 45th section provides—

"In case of a vacancy by death, resignation, or otherwise, the House of Commons shall, with all practicable speed, proceed to elect another of its members to be speaker."

No case of the election of a speaker during a session has occurred since 1867, nor indeed since 1840. We have, however, a recent case in the English House of Commons—the resignation of Mr. Denison and the election of Mr. Brand in his place, in 1872. In this case, on the day following the resignation, the serjeant-at-arms brought the mace and laid it under the table. Then the premier addressing himself to the clerk, as at the opening of a new Parliament, informed the house that her Majesty had been informed of the resignation of the Right Hon. J. E. Denison, and gave leave to the house forthwith to proceed to the choice of a new speaker.[2] The house immediately elected Mr. Brand, and the mace was then laid on the table.[3]

In case the speaker dies or resigns during a prorogation, it will be necessary for the House of Commons to go up to the Senate chamber at the opening of Parliament and receive the authority of the governor-general to

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[1] Chap. VI.

[2] This must always be done through a privy councillor in the House of Commons. 2 Hatsell, 218.

[3] 127 E. Com. J. 9, 22, 23; 209 E. Hans. (3), 181; also, 36 *Ib.* (1), 843; 2 Hatsell, 212-217; also, E. Com. J., 22 Jan. 1770, and 8 June, 1789. A similar procedure took place in the Ontario legislature in 1871, on resignation of Mr. Speaker Scott. Leg. Ass. J. [1871], 36. See case of the election of a new speaker in the legislative assembly of Lower Canada in 1823, when Mr. Papineau was absent in England. On the assembling of the house, the clerk read a letter from Mr. Papineau informing them that he would not be able to attend to his duties that session. On the members of the assembly presenting themselves in the chamber of the legislative council, the speaker of that body informed them that his Excellency had been made aware of the absence of Mr. Papineau, and requested them to elect a new speaker in his place. III. Christie, 5, 6; Ass. Jour. [1823], 9-11.

proceed to the election of a new speaker in accordance with law. This was done in conformity with British precedents, on the occasion of the re-election of Mr. Speaker Anglin, who had resigned his seat during the recess.[1] On this occasion the governor-general was represented by a deputy-governor, the chief justice of Canada, on the first day of the session. On the following day the governor-general took his seat on the throne and delivered the speech. Since then a deputy-governor has, on other occasions, represented his Excellency on the first day of a new Parliament, previous to the election of speaker.[2]

The 46th section provides that the speaker "shall preside at all meetings of the House of Commons." The 47th section makes provision for his absence for any reason from the chair for forty-eight consecutive hours. In that case, "the house may elect another of its members to act as speaker, and the member so elected shall, during the continuance of the absence of such speaker, have, and execute all the powers, privileges, and duties of the speaker."

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[1] Can. Com. J. [1878], 1-9. The English precedents go very far back, 1 E. Com. J. 73, 116; 4 Parl. Hist. 1111-2 and 13 Lords' J. 460; Elsynge, 154, 155, 245, 246, 247. Same procedure took place at election of a speaker in Quebec legislative assembly in 1876, on resignation of Mr. Fortin. Jour. pp. 1-7; also, in the Ontario legislature, on the resignation of Mr. Currie in 1874.

[2] This was the third occasion since 1841 that a deputy-governor had represented the governor-general in Parliament; the first occasion was in 1841, when Major-General Clitherow had to prorogue the legislature on account of the illness of Lord Sydenham. Leg. Ass. J., 18th Sept., 1841. The second occasion occurred on the prorogation of the legislature in the memorable year 1849, when the rebellion losses riots occurred and the parliament house in Montreal was burned down by the mob. Major General Rowan then appeared in place of Lord Elgin. Since 1878 several deputy-governors have been appointed—always the chief justice of the supreme court of Canada—when his services are available. Chief Justice Richards acted as deputy-governor in the summer of 1876 when Lord Dufferin was absent in British Columbia. Ann. Reg. 1878, p. 36. C. J. Ritchie in 1881 and 1882, when Lord Lorne was absent in the North-West and British Columbia. See Sen. J. [1883], 23 (new Parliament). Also, sec. 14, B. N. A. Act, 1867. *Supra*, p. 51.

The experience of the old Canada assembly showed the necessity of having such a provision in the act, in case of the illness of the speaker. For instance, on one occasion the house had to adjourn for two days, when the clerk had communicated to the house the fact of the speaker's indisposition.[1]

There is no deputy speaker in the Canadian Commons, as in the English House; but chapter two of the statutes of Canada, 1867-8, enacts—

"Whenever the speaker, from illness or other cause, finds it necessary to leave the chair during any part of the sittings of the house, he may call upon any member to take the chair, and act as speaker during the remainder of the day, unless the speaker himself resume the chair before the close of the sittings from that day, and while the member so called upon shall occupy the chair, every order made and thing done by the said House of Commons, shall be as valid and effectual to all intents and purposes as if done whilst the speaker himself was presiding in the chair."

Consequently, members are constantly called upon to occupy the chair during the absence of the speaker in the course of a sitting. It has not been the practice since 1870 to record the fact in the journals.[3]

When the speaker enters or leaves the house, he will be preceded by the serjeant-at-arms with the mace, which

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[1] Leg. Ass. J. [1858], 161. No business could be done; the clerk put the motion for adjournment. See 2 Hatsell, 222.

[2] This is based on the Imperial Statute 18 & 19 Vict., c. 84, relative to deputy speaker. The chairman of ways and means acts as deputy speaker, and takes the chair whenever necessary (May, 250; 108 E. Com. J. 758, 766; 110 *Ib.* 395). In case the speaker is absent the clerk informs the house of the fact, and the deputy speaker proceeds to the chair, and after prayers counts the house (121 E. Com. J. 146). If the speaker continues unable to attend, the clerk must every day inform the house as soon as it assembles, and the deputy speaker will then take the chair (121 *Ib.* 156, 163; 131 *Ib.* 353). The mace is always on the table on such occasions, May, 251, *note*.

[3] Leg. Ass. J. [1859], 40, 417, &c.; Can. Com. J. [1867-8], 167, &c.

will lie on the table whilst he is in the chair, and the house is consequently in session.[1] During the recess of Parliament the mace is kept in his chambers, and accompanies him on all state occasions.[2] The house cannot proceed to the election of speaker without the mace.[3]

In the records of the parliamentary history of Canada no examples can be found of the house having removed, or attempted to remove a speaker for any cause. In only two instances has the English house been called on to express its opinion as to the continuance of a speaker in the chair. Objections were made to the conduct of Sir E. Seymour, in 1673, but a motion for his removal was rejected.[4] In the memorable case of Sir John Trevor, 1694, a committee showed that he had received a bribe to promote the passage of a certain bill, and the house resolved that he had been guilty of a high crime and misdemeanour. Thereupon he resigned, and the king immediately gave leave to the house to proceed to the election of a new speaker. Sir John Trevor was then formally expelled.[5]

It is the duty of the speaker to preside over all the deliberations of the house, and to enforce its rules and orders of which he is the guardian.[6] He announces the business of the house in the order in which it should be taken up. Immediately on taking the chair he will call the house to order, and read the prescribed form of prayer. When the doors have been opened by his order, he will lay before the house any papers or returns that it is his duty to communicate to the same. He receives, and puts to the house, all motions that may be proposed by members in accordance with the rules and usages of Parlia-

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[1] May, 247. See chapter vi. respecting mace.

[2] Visit of Prince of Wales, 1860. Funeral of Sir G. E. Cartier, 1873, at Montreal.

[3] 2 Hatsell, 218.

[4] 2 Hatsell, 204, 207 ; 2 Grey's Debates, 186.

[5] Parl. Hist. 1694, vol. v., pp. 906-10.

[6] 240 E. Hans. (3), 651.

ment. He must announce to the house the result of any vote on a question. He receives messages from the Senate or the governor-general, and announces them to the house. He enforces the observance of order and decorum among the members.[1] He reprimands or admonishes members,[2] or commits persons to the custody of the serjeant-at-arms when he has received the necessary instructions from the house.[3] He must even put a question when it affects himself personally.[4] He is "to decide questions of order, subject to an appeal to the house, and in explaining a point of order or practice, he shall state the rule or authority applicable to the case."[5] He authenticates by his signature, when necessary, all the acts, orders, and proceedings of the house. He is the "mouth-piece of the house,"[6] on all occasions when an address is to be presented by the whole house to the queen or her representative in Canada, or to the heir apparent to the Crown.[7]

This is only a very brief summary of the important functions of the first commoner[8]—his duties will be more clearly understood by the perusal of other parts of this work. It may not, however, be inappropriate to mention here that all the authorities go to show that the speaker is bound to call attention immediately to any irregularity[9]

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[1] Rule 8.

[2] Mirror of P. [1838], 2263, 2267.

[3] 113 E. Com. J. 192; Can. Com. J. [1873, 2nd sess.], 135.

[4, 5] E. Com. J. 708; 10 E. Hans. (1), 1170.

[5] Rule 8.

[6] 2 Hatsell, 230.

[7] Chap. on addresses.

[8] For a recapitulation of the responsible duties devolving on a speaker, and of the high qualities he should possess, see Sir R. Palmer (Lord Selborne), on election of Mr. Brand, 209 E. Hans. (3), 183; Lord Stowell, on re-election of Mr. Abbott in 1862, Cushing, 127; Lex Parl. 264; 2 Parl. Hist. 585; 2 Hatsell, 242 *n*. Also, Reports as to office of speaker, E. Commons P. 1853 and 1855.

[9] In the Lords, the speaker takes no notice of irregularities until his attention is specially directed to the same by a member, May, 246.

in debate or procedure, and not to wait for the interposition of a member:

"For the speaker is not placed in the chair merely to read every bit of paper, which any member puts into his hand in the form of a question; but it is his duty to make himself perfectly acquainted with the orders of the house, and its ancient practice, and to endeavour to carry those orders and that practice into execution. . . . . Therefore, though any member may, yet Mr. Speaker ought to interrupt any members who speak beside the question or otherwise break the rules."[1]

The speaker, however, cannot be called upon to decide a question of law.[2]

When the house is in committee of the whole, the speaker has an opportunity, should he think proper to avail himself of it, of taking part in the debates. This is a privilege, however, which, according to the authorities, he will only exercise on rare occasions and under exceptional circumstances.[3] For instance, he will always explain, when necessary, matters connected with the internal economy of the house,[4] and may sometimes refer to matters of interest to his constituents when the estimates are under consideration.[5] But in the Canadian, as in the English, House of Commons the speaker carefully abstains from taking part in any matter of party controversy or debate,[6] and if at times he feels compelled to express a strong dissent from any public measure, he will confine himself to the expression of his opinion, and will not enter into any argument with others who may differ from him.[7] He never votes on the divisions in committee.[8]

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[1] 2 Hatsell, 233.

[2] Leg. Ass. J. [1864], 444; Can. Com. J. [1868], 161; 150 E. Hans. (3), 2104.

[3] Mr. Raikes, committee on public business, E. Com. P., 1878, p. 136.

[4] Can. Hans. [1878], 1819, 2247.

[5] *Ib.* [1878], 1107.

[6] May, 415.

[7] Mr. Speaker Anglin, on Temperance Act, May 7, 1878.

[8] Mr. Raikes, Public B. Com., 1878, p. 136. In England, the same

**III. The Officers of the House of Commons, &c.** — The clerk of the House of Commons is its recording officer, and sits at the table with one or two assistants. He is appointed by commission under the great seal of Canada, and holds his office during pleasure,[1]—virtually until his health or age no longer permits him to perform his duties; and then he is entitled to a superannuation allowance like all officers of the civil service.[2] He takes notes of the proceedings, of the *res gestæ*, of the Commons. He is "to make true entries, remembrances, and journals of the things done and passed in the House of Commons; but it is without warrant that he should make minutes of particular men's speeches."[3] His minutes are made up every day in a brief and convenient shape, known as the "votes and proceedings," which comprise a record of all the proceedings, but omit many of the parliamentary forms which are given in full only in the journals, when these are made up after the close of a session. The votes are now prepared on the responsibility of the clerk[4] by an officer,

speaker is re-elected, whenever practicable, for several parliaments. Mr. Shaw Lefevre was speaker about 18 years; Mr. E. Denison, 15 years. It is also usual to elevate them to the peerage, and confer a pension of £4,000 sterling on them, when they retire from office. For instance Mr. Lefevre became Viscount Eversley and Mr. Denison, Viscount Ossington. 144 E. Hans. (3), 2054, &c.; 209 *Ib.* 150-3. In the old assemblies of Lower Canada, Mr. Panet and Mr. Papineau were re-elected speaker several times. Mr. Cockburn was elected both in 1867 and 1873. See speech of Sir J. Macdonald in proposing Mr. Cockburn a second time. Parl. Deb., 1873, p. 1.

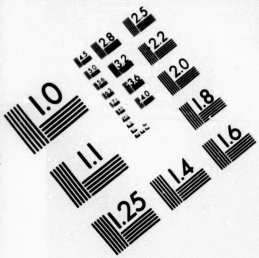
[1] The commission reads: "For and during our royal pleasure and the continued residence of you the said—— within our dominion of Canada." The clerk of the English Commons is appointed for life by letters-patent. May, 256.

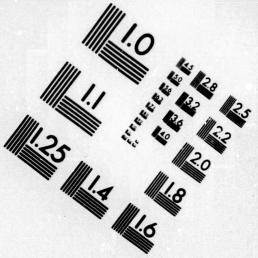
[2] *Infra*, p. 175.

[3] 2 Hatsell, 267. The old English journals contained short reports of debates. See vol. i.

[4] A committee formerly "surveyed the clerk's book," and was intrusted with a certain discretion in revising the entries. The minutes were also read every day before the commencement of the regular business; but



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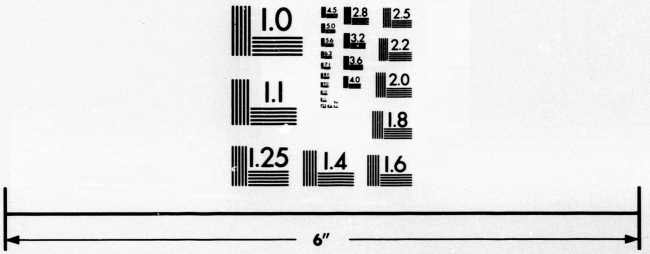


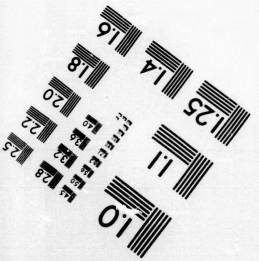


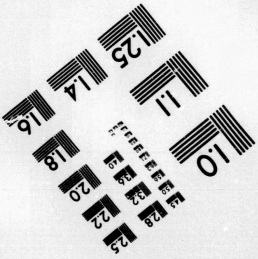


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especially selected for his knowledge and experience, and it is ordered that "they be printed, being first perused by Mr. Speaker."[1] In recording the minutes, the clerk must always wait for the directions of the speaker.[2] Consequently the clerk cannot record any motion until it is formally proposed from the chair.[3] In case of any mistake or omission in the votes it should be immediately noticed by a member in the house; and it may be corrected either by an order of the house, or by the clerk himself in the shape of an erratum at the end of the votes;[4] but if the mistake is not discovered until after some time it ought properly to be corrected by an order of the house;[5] and sometimes under exceptional circumstances only on the report of a committee appointed to investigate the subject.[6]

It is the duty of the clerk to read whatever requires to be read in the house; but this part of his duty is now almost invariably performed by one of the assistant clerks at the table. He authenticates, by his signature, all the orders of the house, for the attendance of persons, for the production of papers and records, for the appointment and

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such usages were soon found inconvenient. 9 E. Com. J. 640; Low. Can. J. [1792], 32.

[1] Can. Com. J. [1877], 12; 131 E. Com. J. 5. The speaker's name is also appended. The clerk also signs the copy forwarded daily to governor-general.

[2] Hatsell says: "The rule is to wait for the directions of the speaker, and not to look upon the call of one member, or any number of members, as the directions of the house, unless they are conveyed to the clerk through the usual and only channel by which he can receive them." ii. vol., p. 271.

[3] In August, 1873, Mr. Mackenzie rose and read a motion, but before it was proposed from the chair, the gentleman usher of the black rod came down with a message from the governor-general. The speaker immediately left the chair, and went up to the senate chamber where the houses were prorogued. No record consequently appears in the journals of the motion in question. Parl. Deb. pp. 210-211

[4] Can. Com. J. [1871], 173; Votes and P. [1873], 402.

[5] Can. Com. J. [1877], 336; Can. Hans. [1875], 260, remarks of Sir J. A. Macdonald.

[6] 2 Hatsell, 266.

meeting of committees,[1] and certifies all the bills which pass the house.[2] He has the custody of all the journals, papers, and files; and it is "at his peril" if he suffers any of them to be taken from the table, or out of his custody, without the leave of the house.[3] It is the duty of the clerk and clerks assistant "to complete and finish the work remaining at the close of the session."[4] He has the "direction and control over all the officers and clerks employed in the offices, subject to such orders as he may from time to time receive from Mr. Speaker or the House."[5] He assists the speaker and members whenever questions arise with respect to the rules and proceedings of the house. He is to place on the speaker's table "every morning previous to the meeting of the house, the order of the proceedings for the day."[6] It is his duty to deliver to each member, at the commencement of every session, a list of all periodical statements which are required by law or by resolution of the house to be laid before it.[7] He is to take care that "a copy of the journal, certified by himself, be delivered each day to his Excellency, the Governor-General."[8]

The clerk assistant and second clerk assistant take minutes of the proceedings in committee of the whole, —the latter only in the absence of the former—and read the titles of all bills in English and French. These officers are not appointed by the Crown as in England,[10] but

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[1] 2 Hatsell, 268.

[2] Rule 44.

[3] 2 Hatsell, 265; rule 104. The members have the right to peruse all papers in the possession of the clerk, and to obtain copies of them through him.

[4] Rule 103.

[5] Rule 104.

[6] Rule 105.

[7] Rule 106 (not invariably followed).

[8] Rule 91.

[9] 2 Hatsell, 273.

[10] They are appointed, however, in England, on the recommendation of

by Mr. Speaker, like all other officers, clerks, and messengers of the house.[1] No second clerk assistant has been appointed since 1880, but provision for such an officer is annually made in the estimates. All the officers at the table should be sufficiently conversant with the two languages, so as to translate, when necessary, into the language with which each of them is best acquainted.[2]

The business of the house also requires the employment of a large number of permanent and temporary clerks, in addition to the officers who sit at the table. One of the most responsible officers in each house is the law clerk who drafts public bills and "revises them after their first reading." In every subsequent stage of such bills he is "responsible for their correctness, should they be amended." He must also "prepare a 'breviat' of every public bill, previous to the second reading thereof."[3] Per-

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the speaker, 19 & 20 Vict., c. 1, Imp. Stat. Treasury Min., Parl. Pap., 1856, vol. 51, p. 1; 140 E. Hans. (3), 258, 447. The clerk is appointed by the Crown, on the recommendation of the prime minister, 114 E. Hans. (3), 142.

[1] In the old assemblies the clerk had originally the right of appointment, with the approbation of the speaker, Leg. Ass. J. [1852], 451, *Ib.* 1860, App. No. 8; which latter report was not concurred in. Gradually all the appointments came to be made by the speaker, though the contingent accounts committee attempted frequently to limit the speaker's prerogatives in this particular but to no purpose, App. No. 2, Jour. 1862; also, No. 6, Jour. 1866. Jour. [1863], App. No. 1 (not concurred in); *Ib.* [1864], 498. Also since 1867, see rule 102. Parl. Deb. [1873], 66-7; *Ib.* [1878], 708-9; *Ib.* [1879], 35, Sir J. A. Macdonald. In England the vacancies, as they occur, are filled up by the speaker, the clerk, and serjeant-at-arms in their respective departments, 1 Todd, 387. Parl. Pap. 1856, vol. 51, p. 1. 52 Geo. III, c. 11. No authority appears for taking the privilege out of the hands of the clerk in Canada. The speaker has exercised the right for years and the house has acquiesced in it as is shown by rule 102.

[2] The legislative assembly of Canada passed a resolution to that effect in 1859 (p. 323, Jour.) No rule exists in the Commons, but Mr. Speaker will always make inquiries on this point, when appointing an officer to the table. Otherwise, much inconvenience might arise, if the French clerk were absent—one of the officers being invariably a French Canadian.

[3] Rule 48. In 1880 it was proposed to amalgamate the law and translation departments of the two houses, but after full inquiry a committee

manent clerks are also appointed to assist the committees of railways, canals, and telegraph lines, of standing orders, of private bills, of privileges, etc. It is also necessary to employ a staff of competent translators whose duties are of a very onerous nature. The clerk may also employ "at the outset of a session, with the approbation of the speaker, such extra writers as may be necessary, engaging others as the public business may require."[1] It is also ordered[2]:

"Before filling any vacancy in the service of the house by the speaker, inquiry shall be made touching the necessity for the continuance of such office; and the amount of salary to be attached to the same shall be fixed by the speaker, subject to the approval of the house."

"No allowance shall be made to any person in the employ of the house, who may not reside at the seat of government for travelling expenses, in coming to attend his duties."[3]

In case of any changes in the personnel of the officers, who have seats on the floor, it is usual for the speaker to communicate the fact to the house when the doors are opened. It is also customary to enter the appointment of a permanent officer in the journals, and in the case of the clerk in the old Canadian Parliament that he had taken the

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reported against the proposition. The duties of the law officers and translators are very fully set forth in memorandums attached to the report. Sen. J. [1880], 225-234; Com. J. App. No. 4; Sen. Hansard, p. 468; also, Sen. J. [1882], 65, 75, report of contingent accounts committee as to duties of a new officer appointed.

[1] Rule 110. Even this privilege of late years has been exercised not by the clerk, but by the speaker. No limit was for years imposed to the number of extra or sessional clerks, which became excessive in some sessions—the number steadily increased from 1872 to 1879, and exceeded 70 in the latter year. The commission of internal economy decided to make such clerks permanent, and to limit the number to 25 sessional clerks and 5 extra translators, besides 5 junior sessional clerks who had been permanent for years. See Estimates for 1882-3, and Can. Hans. [1880], 1026.

[2] Rule 102.

[3] Rule 109.

required oaths; but the practice with respect to the latter is variable.[1] But when an officer is only brought in to fill the place of an assistant clerk temporarily absent from illness or other cause, the speaker will mention it to the house, though the clerk need not enter it in the record of proceedings.[2] In case of the unavoidable absence of the clerk from the house, he will inform the house through the speaker that he has appointed a deputy to perform his duties at the table.[3]

Under the act providing for the internal economy of the house the speaker may, after inquiry, suspend or remove any clerk, officer, or messenger who has not been appointed by the Crown; but in the case of an officer, so appointed, he may suspend him and report the fact to the governor-general.[4] The act, however, makes no provision for the appointment of officers, clerks or messengers after a dissolution, and before the new Parliament has met and elected a speaker. The only officer mentioned in the act is the accountant who may be appointed by the speaker who continues in office for the purposes of the act.[5] Officers,

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[1] Leg. Ass. J. [1841], 53; *Ib.* [1852-3], 170, 211, 381, 1034; *Ib.* [1862], 210, 216. Can. Com. J. [1872], 15; *Ib.* [1879], 8. The appointment of Mr. Patrick, as clerk, does not appear in the journals of 1873. It seems that under English practice it is not necessary to make a formal announcement of crown officers like the clerk and clerks assistant. The appointment of his successor in 1880-1 was incidentally announced, as it was necessary to account for the appointment of a clerk assistant. Jour. p. 1

[2] Mr. Leprohon, in 1877, in absence of clerk assistant, M. Piché.

[3] 2 Hatsell, 254; Leg. Ass. J. [1862], 216. In the English Commons, it is usual for the house to express its sense of the exemplary manner in which the clerk has discharged his duties, when the time has come for his retirement. 2 Hatsell, 254, *n.*; 126 E. Com. J. 27; 204 E. Hans. (3), 232. In 1862, the legislative assembly of Canada adjourned out of respect to the memory of the late clerk, after passing a resolution on the subject. Jour. (1862), 210. See also proceeding in the Senate on retirement of Mr. Le Moine, who was allowed certain honorary privileges. Sen. J. [1883], 278. Hans. p. 627.

[4] 31 Vict., c. 27, sec. 9.

[5] In 1878-9 a difficulty arose with respect to the right of the speaker, after the dissolution of 1878, to make certain appointments. Mr. Anglin.

clerks, and messengers are to take the oath of allegiance on their appointment, before the clerk, who shall keep a register for the purpose.[1] The superannuation act applies to the permanent officers and servants of both houses, "who, for the purposes of this act, shall be held to be in the civil service of Canada, saving always all legal rights and privileges of either house as respects the appointment or removal of these officers and servants or any of them."[2]

The serjeant-at-arms is appointed by the Crown, and remains in office during pleasure, or until he is superannuated. He sits at a desk near the bar; attends the speaker with the mace at the assembling and prorogation of Parliament, at the daily opening and adjournment of the house, and on all state occasions when the house is supposed to be present;[3] serves the processes and executes the orders of the Commons;[4] arrests all persons who are ordered to be taken into custody;[5] confines in his cus-

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who had been speaker from 1874 to 1878, ordered several appointments and after a long controversy, as to his right, which appears in a correspondence between himself and the clerk, they were never actually made. The question came up in the House of Commons, and the report of the debate will show what differences of opinion existed on the point in dispute; but no legislation took place to obviate such difficulties in the future. Can. Hans. [1879], 29-41. Correspondence, Sess. Pap. 1879, No. 17.

[1] 31 Vict., c. 27, s. 10. The clerk in 1841 took the oath before the vice chancellor then speaker of the council, Leg. Coun. J. [1841], 21. The act of 1867 only provided for the clerk taking the oath before the speaker on the passage of that act. In 1880-1 when a new clerk was appointed, no provision existed for his taking the necessary oaths. The new clerk of the privy council had not the power as in the case of his predecessor—his authority being confined to officers under the Civil Service Act (sec. 26, chap. 34, Vict. 31). Consequently the clerk of the house had to apply to Lord Lorne, who administered the oaths of office and allegiance by virtue of his commission as governor-general (Sess. Pap. 1879, No. 14.) Subsequently the governor-general authorized the clerk of the privy council to administer such oaths as formerly.

[2] 46 Vict., c. 8, s. 1, Dom. Stat.

[3] Funeral of Sir G. E. Cartier, 1873.

[4] May, 265; 15 Mirror of P. [1840], 720; Can. Com. J. [1873], 12, 70.

[5] May, 265; 95 E. Com. J. 56-59; Can. Com. J. [1873], 135; 15 Mirror of P., 722, 795.

tody or elsewhere, all those who are committed by order of the house ;[1] gives notice of all messages from the Senate; preserves order in the galleries and other parts of the house.[2] He is responsible for the safe-keeping of the mace, furniture and fittings thereof, and for the conduct of the messengers and inferior servants of the Commons.[3] He is entitled to a fee of four dollars from all persons who shall have been committed to his custody.[4] He has the right to appoint a deputy with the sanction of the speaker who will always report such an appointment to the house.[5] The serjeant-at-arms being the chief executive officer of the Commons, to whom the warrant of the presiding officer is directed, and by whom it is served, it is commonly against him that complaints are instituted, or actions brought for executing the orders of the assembly.[6]

**IV. Admission of Strangers.**—As the serjeant-at-arms maintains order in the galleries and lobbies of the house, some allusion may very appropriately be made here to the orders and arrangements of the house with reference to the admission of strangers. The senators have a gallery devoted exclusively to themselves; the speaker also gives admission to a gallery of his own, and to a few privileged seats in the passages to the right and left of the chair. The public in general is admitted to other galleries by tickets distributed to members by the serjeant-at-arms. Strangers are not obliged to withdraw in the Canadian Commons when a division takes place. In the session of 1876 the Commons—and the Senate, also—adopted as a standing

[1] 113 E. Com. J. 192 ; Leg. Ass. J. [1866], 265.

[2] E. Com. Pap. 1847-8, vol. xvi., p. 45.

[3] Rule 107.

[4] Rule 108.

[5] Can. Com. J. [1872], 15.

[6] Cases of Sir Francis Burdett (1810); Mr. Howard (1842-3) ; Mr. Lines (1852), given by May, 181-89. See also Cushing, 134. See also, action against deputy serjeant of English house, in 1882, by Mr. Bradlaugh, *Times*, 12th Jan., and 21st Feb., 1883; May, 189.

order[1] the following resolution which was first proposed by Mr. Disraeli,[2] in 1875, in the English House of Commons:

"If, at any sitting of the Senate (or House), any member shall take notice that strangers are present, the speaker or the chairman (as the case may be) shall forthwith put the question, 'That strangers be ordered to withdraw,' without permitting any debate or amendment: Provided that the speaker, or the chairman, may, whenever he thinks proper, order the withdrawal of strangers."

The 5th rule also orders:

"Any stranger admitted into any part of the house or gallery, who shall misconduct himself, or shall not withdraw when strangers are directed to withdraw, while the house or any committee of the whole house, is sitting, shall be taken into custody by the serjeant-at-arms; and no person so taken into custody is to be discharged without the special order of the house."

**V. The Clerk of the Crown in Chancery.**—The clerk of the crown in chancery is always present at the table of the House of Commons, at the commencement of a new Parliament, and hands to the clerk the roll, or return book, which contains the list of members elected to serve in the Parliament.[3] In conformity with law, he issues writs for elections,[4] makes certificates to the house, in due form, of the return of members, and performs other functions relating to elections.[5] He attends the house with election returns, and amends the same, when so ordered.[6] The various proclamations, summoning, proroguing, and dissolving Parliament, are issued by command out of

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[1] Sen. S. O. 11; Com. S. O. 6.

[2] 130 E. Com. J. 243; 224 E. Hans. (3), 1185; 131 E. Com. J. 79; 227 E. Hans. (3), 1420.

[3] Can. Com. J. 1867-8, 1879, &c., p. 1.

[4] 37 Vict., c. 10, s. 36; 41 Vict., c. 5, ss. 12-15.

[5] 37 Vict., c. 9, ss. 61, 64, 65, 66, 67, 116, 132, etc.; Can. Com. J. [1882], 3-8, &c.

[6] Can. Com. J. [1873], 5; *Ib.* [1883], 41, 261, 262.

Chancery.[1] He is also required to attend in the Senate chamber at the close of a session, or whenever his Excellency, the Governor-General, gives the royal assent to bills, the titles of which it is the duty of this officer to read in the two languages.[2] He is appointed by the Crown.[3]

**VI. The Votes and Journals.**—The "Votes and Proceedings" are printed daily, and distributed in English and French to members and others. The Journals[4] are prepared under the direction of the clerk, by an officer of experience, called the clerk of journals. These journals are made up from the original minutes of the clerk, and whenever they differ from the votes and proceedings they alone are held to be correct.[5] A member may move that an entry in the journals be expunged,[6] and in this way a resolution of a former session has been ordered to be struck out.[7] When a motion or entry has been ordered to be expunged, no mention of it will appear in the votes.[8] When any person requires the journals of the Commons as evidence in a court of law, or for any legal purpose, he may either obtain from the journal office a copy of the entries required without the signature of any officer, and swear himself that it is a true copy, or, with the permission of the house, or, during the prorogation, of the speaker, he may secure the attendance of an officer to produce the printed journal, or extracts which he certifies to be true copies;

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[1] Can. Com. J. [1883], at commencement of volume.

[2] Sen. J. [1883], 294.

[3] Hatsell points out (II. 245 and 252, *n.*) that "he is also an officer of the House of Commons," though appointed by the Crown and in attendance on the Lords on certain occasions.

[4] The journals were first printed in their present large 8vo. form [1852-3], 85.

[5] Perry & Knapp, 536; Parl. Deb. V., 20.

[6] 5 E. Com. J. 197; 33 *Ib.* 509. Sen. J. [1871], 134; Debates, 278.

[7] May, 263; 38 E. Com. J. 977, resolution respecting Wilkes.

[8] 17 E. Hans. (3), 1324; 137 *Ib.* 202; May, 263.

or, if necessary, the original manuscript journal book.[1] It is provided by the 3rd section of 31 Vict., chap. 22, that "upon any inquiry touching the privileges, immunities, and powers of the Senate and House of Commons, or of any member thereof respectively, any copy of the journals of the Senate or House of Commons, printed or purporting to be printed, by order of the Senate or House of Commons, shall be admitted as evidence of such journals by all courts, justices, and others, without any proof being given that such copies were so printed." It is also ordered by the 92nd rule of the Commons "that this house doth consent that its journal may be searched by the Senate, in like manner as this house may, according to parliamentary usage, search the journal of the Senate." The daily publication of the journals of the two houses has, however, rendered this rule now almost nugatory. In former times this proceeding was not unfrequently resorted to.[2] A similar resolution still remains among the rules of the Senate.[3]

In case certain documents or records belonging to the

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[1] May, 261, 262. By Act 8 & 9 Vict., c. 113, s. 3., Imp. Stat., all copies of the journals of either house, purporting to be printed by the printers to either house, shall be admitted as evidence thereof by all courts, judges, justices and others, without any proof being given that such copies were so printed. It has been decided in English courts that copies of the journals are evidence; Rex *v.* Gordon (Lord George), 2 Doug., 590; See Mortimer *v.* McCallan, 6; Meeson and Welsby, 67. But an entry in a printed copy of the journals of the E. House of Commons is not receivable unless it has been compared with some original at the house; but an examined copy of an entry in the minute book kept by the clerk at the table of the house is receivable. Chubb *v.* Salomans, 3 Carrington and Kirwan; Pollock. C. S. U. C., c. 32, s. 6, re-enacted by R. S. O., c. 62, s. 29, provides that whenever any book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody a copy or extract therefrom shall be admissible in evidence in the courts, provided it be proved that it is an examined copy or extract, so that it purports to be signed and certified as a true copy or extract by the officer to whose custody the original has been entrusted.

[2] Leg. Ass. J. [1856], 747.

[3] R. 110.

Commons are required in an action before the courts, the house will give permission to the proper officer to attend with the necessary papers, on a petition having been first presented to the house, setting forth the facts.[1] During the prorogation, as previously stated, it is usual to obtain the permission of the speaker.

**VII. The Official Reports.**—It is only within a very recent period that the House of Commons has agreed to employ an efficient staff of official reporters. Previous to 1874 all attempts in this direction were fruitless,[2] though it had not been unusual to make special arrangements for the reporting of very important debates in the house and its committees.[3] In 1874 a select committee was appointed to report on the best means of obtaining a Canadian Hansard; and the result was the adoption of a scheme which was carried out in 1875.[4] Since then the debates have been reported by a staff of reporters paid by the house, and published in a form similar to that of the English Hansard. The reports are, as a rule, very correct, and a decided improvement upon the partial, imperfect reports in the newspapers to which the members were previously obliged to refer. Any one who has to gather the materials for a political work, or to find precedents of old parliamentary usages and procedure in this country, must see the value of such a correct record as is afforded by the several series known as Hansard's Debates.[5]

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[1] 136 E. Com. J. 320, 337.

[2] Can. Com. J. [1867-8], 33, 48, 60, 68, 399. See also journals of 1870 and 1871.

[3] *Ib.* [1867-8], 200. The debates on confederation during 1865 were reported in full by the authority of the legislative assembly.

[4] *Ib.* [1875], 55, 58, 90, 99, 180, 205, 327, 342, 343; *Ib.* [1876], 58, 62, 65, 80, 86, 93, 100, 261; *Ib.* [1877], 22, 23, 27, 233, 245. It is always usual at the close of a session to make arrangements for the next. Jour. [1877], 233, 245.

[5] See 224 E. Hans. (3) 48, &c., for a report of an interesting discussion on the publicity now given to debates in English Commons, &c.

The Senate has also an official record similar to that of the House of Commons. In both houses, one of the first proceedings at the opening of the session is to appoint a select committee to supervise the official reports of debates.[1] The reporters, both French and English, are now permanent officers of the Commons.[2]

**VIII. Library and Reading Rooms.**—The Parliament of Canada supports at a large expense a valuable library for the use of the members of the two houses. By an act[3] passed in the session of 1871, it is provided that the direction and control of the library shall be vested in the two speakers, assisted by a joint committee of the two houses. This committee[4] has power, from time to time, to make orders and regulations for the government of the library, and for the proper expenditure of moneys to be voted by Parliament for the purchase of books, subject, however, to the approval of the two houses.[5] The officers and servants consist of a librarian,[6] an assistant librarian, and several clerks and messengers, who are appointed by the Crown, and hold office during pleasure. Under the rules[7] the librarian must keep a proper catalogue of the works in the library and report its condition to the house at the commencement of every session.[8] No person is entitled to resort to the library during the session except the gover-

[1] Sen. J. [1883], 42, 215 ; Com. J. 20.

[2] Com. J. [1880], 268, 281, 349 ; *Ib.* [1883], 176, 188.

[3] 34 Vict., c. 21, Dom. Stat.

[4] Appointed at the commencement of every session.

[5] Can. Com. J. [1873], 307, 365, 384, recommending increase in salaries —which recommendation was adopted by the house. No changes can be made in the salaries save by resolutions of both houses ; sec. 4 of cited statute. Can. Com. J. [1880], 232, 281.

[6] The present librarian, Dr. Alpheus Todd, is a well known authority on Parliamentary Government. The library now comprises a large and valuable collection of books (some 100,000 volumes) in every department of literature. See librarian's reports every session of Parliament.

[7] Rules 111-118 of Commons.

[8] Can. Com. J. [1879], 8, Sess. P., No. 10, &c.

nor-general, the members of the privy council, and of the two houses, and the officers of the same, and such other persons as may receive a written order of admission from the speaker of either house. Members may personally introduce strangers to the library during the daytime, but not after the hour of seven o'clock in the evening. The speakers issue cards to members allowing the use of books during the recess to persons outside—two works at a time for three weeks. During the session no books can be taken out except upon the authority of the speaker, or upon receipts given by a member of either house. During the recess access is given to all those who have tickets or cards admitting them to the privileges of the library, or have received permission from the librarian. No member of either house who is not resident at the seat of government is at liberty to borrow or have in his possession at any one time more than three works, or to retain the same longer than a month. No books of reference or of special cost or value may be removed from the seat of government under any circumstances. At the first meeting of the joint committee the librarian will report any infraction of the rules.

It was formerly the practice for the committee on the library to act as a "Board for the encouragement of literary undertakings" in Canada, and to recommend from time to time that the patronage of the legislature should be extended to various native authors. In 1867-8 the committee reported that thereafter the executive government should themselves assume the responsibility of recommending to Parliament grants of money in aid of useful and valuable publications.[1] The committee continue, however, to recommend that aid be given to works relating to constitutional questions and parliamentary practice.[2]

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[1] Can. Com. J. [1867-8], 251.

[2] *Ib.* [1879], 345, 414; *Ib.* [1883], 178; Sen. J. 122-127. In the two last

Each of the houses has also attached to it a reading room, where are filed the leading newspapers of the two continents. By the 119th rule:

"The clerk is authorized to subscribe for the newspapers published in the dominion, and for such other papers, British and foreign, as may be from time to time directed by the speaker."

Access to these reading rooms during the session is permitted to persons introduced by a member.[1]

**IX. The Commissioners of Internal Economy.**—Certain expenses of the legislative assembly of Canada were always regulated by a committee of contingencies, appointed at the opening of each session. On its report the salaries and other contingent expenses were provided for.[2] The committee was re-appointed in 1867-8, and made several reports which were acted upon;[3] but during the same session, the premier (Sir John Macdonald) brought in a bill respecting the internal economy of the House of Commons, which was unanimously passed.[4] By this act the speaker of the house, and four members of the privy council who are also members of the house, are appointed commissioners to carry out the objects of the statute. The names of the four commissioners must be communicated by message from the governor to the House of Commons in the first week of each session of Parliament,[5]—the said commissioners being appointed by the governor in council. For the purposes of this act, the person who shall

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cases, a vote was put in the estimates, in accordance with the recommendation of the committee. Jour. [1883], 433.

[1] Rules of admission are posted up in the reading room of the Commons under the authority of the speaker.

[2] Leg. Ass. J. [1861], 9, 66, 138, 259, 260.

[3] Can. Com. J. [1867-8], 5, 22, 143, 188, 195, 208.

[4] *Ib.* [1867-8], 305, 430; 36 Vict., c. 27, Dom. Stat. See Imp. Stat. 52 Geo. III., c. 11; 9 & 10 Vict., c. 77; 12 & 13 Vict., c. 72; 1 Todd, 405-6. The Canadian Act is based on these imperial statutes.

[5] Can. Com. J. [1869], 20; *Ib.* [1871], 17; *Ib.* [1874], 8; *Ib.* [1875], 65; *Ib.* [1876], 65; [1877], omitted; *Ib.* [1878], 39; *Ib.* [1879], 17, &c.

fill the office of speaker at the time of any dissolution of Parliament shall be deemed to be the speaker until a speaker shall be chosen by the new Parliament; and in the event of the death, disability, or absence from Canada of the speaker, during any dissolution or prorogation of Parliament, any three of the commissioners—three being always a quorum—may execute any of the purposes of this act. The speaker is to appoint an accountant, who must give proper security. The accountant has the disbursement of all the moneys required to pay members' indemnity, salaries of clerks, officers, and messengers, and other contingent expenses of the house. His account, duly audited, is laid before the house soon after the commencement of the session.[1] The clerk and serjeant-at-arms shall make estimates of the sums required for the service of the house. These estimates shall be submitted to the speaker for his approval, who will prepare and sign an estimate for the necessary expenditures, and transmit the same to the minister of finance for his approval.

The clerk of the printing committee must also prepare, under the sanction of that committee, an annual estimate of the sums which will probably be required to be provided by Parliament for the printing services during the year, commencing on the first of July in each year; and he must transmit the same to the minister of finance for his approval. The commissioners of internal economy now regulate with the speaker all salaries and expenses—in fact, assist the speaker as an advisory or consulting board with respect to the staff of the house. By an act[2] passed in the session of 1878, more stringent provision was made for the auditing of the accounts of the public departments, and for the reporting thereon to the house of Commons by an auditor-general, but as this act did not appear to include the two houses of Parliament,[3] the com-

[1] Can. Com. J. [1877], 18; *Ib.* [1879], 8.
[2] 41 Vict., c. 7. See chapter on supply.
[3] Auditor General's Rep. 1880, Sess. P., No. 5, pp. 15-16.

mittee of public accounts recommended the adoption by the house of certain resolutions declaring it advisable to have the accounts of the two houses, as well as of the library, audited in due form.[1] The houses subsequently agreed to have their accounts fully audited—the printing and library accounts being included in the resolutions on the subject.[2]

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[1] Com. Jour. [1880], 119.

[2] Sen. J. [1880], 96-7; Com. J. 125-6. Auditor General's Rep. for 1881, and subsequent years.

# CHAPTER IV.

*PRIVILEGES AND POWERS OF PARLIAMENT.*

I. Claim of Privileges at commencement of a new Parliament.—II. Statutes on Privileges of the Canadian Parliament.—III. Extent of Privileges.—IV. Personal Privileges of Members.—V. Freedom of Speech.—VI. Libelious Reflections on Members collectively or severally. —VII. Proceedings of Select Committees.—VIII. Assaulting, menacing, or challenging of Members.—IX. Disobedience to Orders of the House, &c.—X. Attempt to bribe Members.—XI. Privileged Persons not Members.—XII. Punishment of a Contempt of Privileges.—XIII. Power of Commitment.—XIV. Duration of Power of Commitment. XV. Procedure in case of a breach of Privilege.—XVI. Suspension and Expulsion of Members.—XVII. Power to Summon and Examine Witnesses—Procedure in such cases.—XVIII. Privileges of Provincial Legislatures.

**I. Claim of Privileges at commencement of a new Parliament.**—At the commencement of every new Parliament the speaker will, immediately after his election by the House of Commons, on presenting himself before the governor-general in the Senate chamber, proceed to claim on behalf of the Commons:

"All their undoubted rights and privileges, especially that they may have freedom of speech in their debates, access to his Excellency's person at all seasonable times, and that their proceedings may receive from his Excellency the most favourable interpretation."[1]

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[1] Can. Com. J. (1867-8), 3; 1873, 1874, 1879 and 1883. This formula has varied a little since 1792 [Low. Can. J. (1792), 16; Upp. Can. J. p. 5; Leg. Ass. J. (1841), 3.] See, however, on this point: "Are Legislatures Parliaments?" By F. Taylor (pp. 65-8), who points out what he considers material differences in the formula. In the English Parliament it is still

If a speaker should be elected during a Parliament, it will not be necessary that he should renew the claim for privileges, as these, having been demanded at the beginning of a Parliament, continue in force during its legal existence.[1]

**II. Statutes on Privileges of the Canadian Parliament.**—The 18th section of the British North America Act, 1867, provides:

"The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate, and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by act of the Parliament of Canada, but so that the same shall never exceed those *at the passing of this act* held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof."

Some years later doubts having arisen as to the powers enjoyed under the foregoing section by the Parliament of Canada,[2] an imperial statute repealed the section and substituted the following:

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

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usual to demand freedom from arrest of their persons and servants; E. Com. J. for 1852, 1869 and 1874. May, p. 69, *note*, explains that the claim for servants was still retained, when the question was considered in 1853, as it was doubtful whether certain privileges might not attach to the servants of members, in attendance at the house. The officers and servants of the house are still privileged within its precincts. 2 Hatsell, 225; 108 E. Com. J. 7.

[1] See chapter VI.

[2] See chapter on select committees (witnesses) where the difficulty, rendering new legislation necessary, is explained at length.

and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof."[1]

On the assembling of the first Parliament of the dominion in 1867-8, an act was passed "to define the privileges, immunities, and powers of the Senate and House of Commons, and to give summary protection to persons employed in the publication of parliamentary papers."[1] Under this act the two houses respectively and their members shall exercise the like privileges as, at the time of the passing of the British North America Act, 1867, were enjoyed by the Commons House of Great Britain, so far as the same are consistent with the said act. These privileges are deemed part of the general and public law of Canada, and it is not necessary to plead the same, but they shall be noticed judicially in the courts. Any copy of the journals, printed by order of the two houses, shall be admitted as sufficient evidence in any inquiry as to the privileges of Parliament. Provision is also made for protection to persons publishing parliamentary papers and reports.[2]

**III. Extent of Privileges.**—It is quite obvious that a legislative assembly would be entirely unable to discharge its functions with efficiency unless it had the power to punish offenders, to impose disciplinary regulations upon its members, to enforce obedience to its commands, and to prevent any interference with its deliberations and proceedings. In the early times of parliamentary government in England, the extent of the privileges of Parliament was vaguely defined, but now all privileges essential to enable each branch of the legislature to perform its appropriate constitutional functions, are at length

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[1] 38-39 Vict. c. 38, Imp. Stat., given in full at end of vol. containing rules and orders, and also in Dominion Statutes for 1876.

[2] 31 Vict. c. 23, Dom. Stat.

as well recognized and established and as accurately defined, partly by usage, partly by law, and partly by the admission of co-ordinate authorities, as are any of the rules and principles of the common law.[1] Both houses now declare what cases, by the law and custom of Parliament, are breaches of privilege, and punish the offenders by censure or commitment, in the same manner as courts of justice punish for contempt.[2] Whatever Parliament has constantly declared to be a privilege is the sole evidence of its being part of the ancient law of Parliament. At the same time it has been clearly laid down by the highest authorities that, although either house may expound the law of Parliament, and vindicate its own privileges, it is agreed that no new privilege can be created.[3] A breach of privilege committed in one Parliament may be considered and dealt with in another Parliament.[4] So either house may punish in one session offences that have been committed in another.[5]

With these general remarks on the privileges of Parliament, we may now proceed to give the following summary of their character and extent, as we gather them from the English authorities, which are our only correct guide on such a subject.

**IV. Personal Privileges of Members.**—Members are protected in their attendance on Parliament, and guaranteed against all restraint and intimidation in the discharge of their duties, and it is a general principle of English parliamentary law that "at the moment of the execution of the indenture

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[1] Cushing, 217.

[2] May, 73; 8 Grey's D. 232.

[3] May, 72. 14 E. Com. J. 555, 560.

[4] 31 Parl. Hist. 198. 1 Hatsell, 184. 1 E. Com. J. 925; 2 *Ib.* 63; 13 *Ib.* 735. May, 109.

[5] May, 110. Resolution of 4th and 14th April, 1707; 15 E. Com. J. 376, 386. 21 Lord's J. 189. 22 E. Com. J. 210. 249 E. Hans. (3), 989. Can. Com. J. (1880, 1st sess.), 24, 58-9. Case of J. A. Macdonell for using offensive expressions in a previous session against Mr. Huntington.

(or return) the existence of the member, as a member of Parliament, commences to all intents and purposes."[1] This privilege continues in full force, whether a member is absent with or without leave of the assembly, and only ceases when the member resigns, accepts an office of emolument, or is expelled.[2] The privilege has been always held to protect members from arrest and imprisonment under civil process, whether the suit be at the action of an individual or of the public;[3] but "it is not claimable for any indictable offence."[4] This privilege of freedom from arrest on civil process has been allowed for forty days before and after the meeting of Parliament. It continues during the whole session and is enjoyed even after a dissolution[5] for a reasonable and convenient time for return-

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[1] 1 Hatsell, 166; 2 *Ib.* 75, *note*. Coke says: "Every man is obliged at his peril to take notice, who are members of either house, returned of record." Fourth Inst. 24. See also Fortnam *v.* Lord Rokeby, Taunt Rep. IV. 668.

[2] Cushing, 226.

[3] Lord Brougham, Welleysley's case, Russell & Mylnes' R. II. 673, Westmeath *v.* Westmeath, Law J. IX. (chancery), 179. Hale on P. 16, 30.

[4] Committee of P., Sess. P. (1831), 114; also 2 E. Com. J. 261; 4 Lord's J. 369; 11 E. Com. J. 784; 29 *Ib.* 689. 15 Parl. Hist. 1362-1378. The most memorable case is that of Lord Cochrane (afterwards Earl of Dundonald) arrested in the house, whilst not in session. It was considered that the circumstances were just the same as if he had been arrested on his way down to the house. 30 E. Hans. (1), 336-7. A member may not be committed for contempt of Court, except it is of a *quasi* criminal nature —not part of a civil process. Case of Fortescue Harrison, 1880; May, 160.

[5] May, 138-43. Barnardo *v.* Mordaunt, 1 Lord Ken, 125; 1 Dwarris, 101. Pitt's case, 1 Strange, 985, K. B. Cases, tempore Hardwicke, 28. In case of Mr. Fortescue Harrison, 1880, Vice-Chancellor Hall held that the privilege extended to 40 days after a prorogation or dissolution. *Times*, 16th April, 1880; May, 160. An act of the Ontario legislature continues it for 20 days before and after, Rev. Stat., chap. 12, s. 45, sub-s. 11. In the case of the Queen *v.* Gamble & Boulton (9 U. C., Q. B. 546), it was held, that a member of the Provincial Parliament was privileged from arrest in civil cases, and that the period for which the privilege lasted was the same as in England. The judge, in delivering the opinion of the court, said: "And while, apart from our own statutes and judicial decisions, I see nothing in the decisions in *Beaumont* v. *Barrett et al*, or the more recent

ing home." Members may, however, be coerced by every legal process except the attachment of their bodies.[1]

The privileges of exemption from serving as jurors, or attending as witnesses, during a session of Parliament, are well established,[2] and precedents are found of the house having punished parties who have served subpoenas upon members.[3] Though members cannot be compelled to attend as jurors,[4] yet the house may give leave of absence to members to attend elsewhere as witnesses, when it is shown that the public interests will not consequently suffer.[5] The exemption has been held good in the case of an adjournment.[6] The English Juries' Act, 1870, exempts peers and members of Parliament from serving as jurors without reference to the sitting of the houses.[7]

**V. Freedom of Speech.**—Among the most important privileges of a legislature is the enjoyment of the most perfect freedom of speech—a privilege long recognized and confirmed as part of the law of the land in Great Britain and

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case of *Kielly* v. *Carson*, at variance with the assertion and enjoyment of this privilege by our own legislature, I am confirmed in my opinion of its existence by our general adoption of the law of England, by the provision for suits against privileged parties contained in our statute of 1822; and in the statutes of Canada, 12 Vict., c. 63, s. s. 22 and 23; 13 & 14 Vict., c. 55, s. 96, and by the uniform decisions of our courts since the former act, and also, as I am informed, before it."

[1] May, 147; 10 Geo. III., c. 50; 45 Geo. III., c. 124; 47 Geo. III., Sess. 2, c. 40, Imp. Stat.

[2] 1 Hatsell, 112, 118, 171, 173; D'Ewes, 637; 1 Dwarris, 103, 105; Can. Hans. (1877), 1540-1.

[3] 3 Lord's J. 630; 9 E. Com. J. 339; 1 Hatsell, 97, 169, 175.

[4] 14 E. Hans. (N.S.), 569, 648; 81 E. Com. J. 82, 87. "No member shall be withdrawn from his attendance on his duty on Parliament to attend on any other court." Rep. of committee of P.

[5] 71 E. Com. J. 110; 82 *Ib.* 306, 371. E. Hans. D., 1st March, 1844, Earl of Devon.

[6] 21 E. Hans. (N.S.), 1770.

[7] May, 151.

all her dependencies.[1] Consequently, this privilege secures to every member an immunity from prosecutions for anything said or done by him, as a representative, in the exercise of the functions of his office, whether it be in the house itself or in one of its committees.[2] But if a member should proceed himself to publish his speech, his printed statement will be regarded as a separate publication unconnected with any proceedings in Parliament; but a fair and faithful report of the whole debate will not be actionable.[3]

**VI. Libellous reflections on members collectively or severally.**—Any scandalous and libellous reflection on the proceedings of the house is a high breach of the privileges of Parliament.[4] So, libels or reflections upon members individually have also been considered as breaches of privilege which may be censured or punished by the house; but it is distinctly laid down by all the authorities:

"To constitute a breach of privilege such libels must concern the character or conduct of members in that capacity. Aspersions upon the conduct of members as magistrates or officers, in the army or navy, or as counsel, or employers of labour, or in private life, are within the cognizance of the courts, and are not fit subjects for complaints to the House of Commons."[5]

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[1] "The freedom of speech and debates and proceedings in Parliament ought not to be impeached or questioned, in any court or place out of Parliament, 9th article, Bill of Rights." See May, chap. iv.; 2 E. Com. J. 203; 9 *Ib.* 25; 12 Lord's J. 166; *Ib.* 223. Cases of Sir John Eliot, Denzil Hollis, and Benjamin Valentine. 5 Charles I., 1 Hallam Const. Hist., 371; 2 *Ib.* 10.

[2] Cushing, 243.

[3] May, 125. The lord chief justice, in case of Wason *v.* Walter, 21st Dec., 1867, laid it down very distinctly that, "if a member publishes his own speech, reflecting upon the character of another person, and omits to publish the rest of the debate, the publication would not be fair, and so would not be privileged." See also 1 Esp. N. P. C. 228; 1 M. and S. 278.

[4] Res. of 21st May, 1790; 45 E. Com. J. 508. See 29 Lord's J. 16, 15 Parl. Hist. 779; 60 E. Com. J. 113; 65 *Ib.* 252. Case of Mr. O'Connell, 93 E. Com. J. 307, 312, 316; 41 E. Hans. (3), 99, 207, or Mirror of P. (1838), vol. 3, pp. 2157, 2219, 2263.

[5] May, 100. Cushing, 252. For recent English cases of libels on mem-

Very few cases can be found in the Canadian journals since 1867[1] of the House of Commons or its members taking formal proceedings with respect to attacks in the newspapers on their parliamentary conduct. The following are the only instances:

In 1873 Mr. Elie Tassé, one of the translators in the service of the house, was brought to the bar, and examined as to his connection with an article in the *Courrier d'Ouatouais*, reflecting on certain members. He admitted he was the writer, and subsequently the speaker informed the house that Mr. Tassé was dismissed.[2] In the same session the house resolved that an article in the St. John Freeman, of which Mr. Anglin, a member, was editor, was a libel on the house and certain members thereof; but no ulterior proceedings were taken as in the O'Connell case of 1838.[3]

**VII. Proceedings of Select Committees.**—It is an old order of Parliament that "the evidence taken by any select committee of this house, and the documents presented to such committee, and which have not been reported to the

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bers individually and collectively, see: *Carlisle Examiner*, reflecting on chairman of a committee, 150 E. Hans. (3), 1022, 1066, 1198, 1313, 1318, 1404. *Pall Mall Gazette*, reflecting on Irish members, 215 E. Hans. 530-542. Mr. Lopes, member for Frome, reflecting on Irish members; (former precedents are here cited,) 222 E. Hans. (3), 313-335. Mr. Evelyn Ashley, member for Poole, attacking Dr. Kenealey. Mr. Disraeli and others pointed out that the words complained of were not spoken in the house, and that Dr. K. was not at the time a member, and consequently could not raise a question of privilege. 222 E. Hans. (3), 1186-1204.

[1] But many cases will be found in the old legislative records of Canada: Isaac Todd and E. Edwards, Lower Can. J. (1805), 60, 64, 98, 118, 120, 156; Mr. Cary, of Quebec *Mercury*, *Ib.* 82, 88, 94; Ariel Bowman and E. V. Sparhawk, *Ib.* (1823), 54, 89; R. Taylor (1832-3), 500, 501, 524, 528; W. Lyon Mackenzie, Upp. Can. J. (1832) 33, 34, 35.

[2] Can. Com. J. (1873), 133-4; Parl. Deb. 66-67.

[3] Can. Com. J. (1873), 167-169; Parl. Deb. 80-84. An amendment was proposed that it was not advisable to interfere with the freedom of the press, but it was negatived. In the session of 1878 a Mr. Preston, one of the sessional clerks, was suspended for writing a letter in a newspaper reflecting on Mr. White, of E. Hastings; the attention of the speaker was privately directed to the matter, and he acted immediately after making the necessary inquiry. Can. Hans. (1878), 2369.

house, ought not to be published by any member of such committee or by any other person." [1]

As committees are generally open to the press and the public, the house is now rarely disposed to press the foregoing rule.[2] It is always within the power of a committee to conduct its proceedings with closed doors, and in that way prevent the hasty publication of its proceedings until they are formally reported to the house.[3]

**VIII. The assaulting, threatening or challenging of Members.**—The assaulting, menacing, or insulting of any member in his coming to or going from the house, or upon account of his behaviour in Parliament, is a high infringement of the privileges of the house—in the words of the English resolution "a most outrageous and dangerous violation of the rights of Parliament and a high crime and misdemeanour." [4]

It has also been resolved that "to endeavour to compel members by force to declare themselves in favour of or

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[1] 21st April, 1837, E. Com. J.

[2] *Times* and *Daily News*, 1877, for publishing proceedings before select committee on foreign loans. Mr. Disraeli and others took the ground that, though a breach of privilege had been committed, yet it was inadvisable to act rigidly in the matter, since the printers appeared to have acted only in the discharge of their duties in printing the proceedings of a committee which were open to the public. The order for the attendance of the printers was subsequently discharged. 223 E. Hans. (3), 787, 790, 793, 794, 795, 810, 1114, 1130, 1224.

[3] In the English order adopted in December, 1882, for the appointment of two standing committees, it is provided that "strangers shall be admitted, except when the committee shall order them to withdraw." S. O. xxii.

[4] Res. of April 12th, 1733; 22 E. Com. J. 115; 38 *Ib.* 535, 537; 79 *Ib.* 483. Mr. Ure, a Canadian reporter, was reprimanded in 1850 by the speaker, for using rude and offensive language to Mr. Christie, pp. 160, 164, Leg. Ass. J. In 1879 Mr. J. A. Macdonell insulted Mr. Huntington, and attention having been called to the facts in the house, he was ordered to attend at the bar, but in consequence of the lateness of the session the order could not be served. Can. Com. J. pp. 423, 436; Hans. pp. 1980-2; 2044. The house, however, in the following session, dealt with the matter. Can. Hans. (1880), pp. 44, 82; Jour. 24, 58-9.

against any proposition then depending or expected to be brought before the house," is a breach of privilege which should be severely punished.[1]

The terms of these resolutions are intended to prevent any outside interference whatever with members in the discharge of their duties.[2] They include challenges to members.[3]

**IX. Disobedience to orders of House.**—The house has also frequently decided that the following matters fall within the category of breaches of privilege :

1. Disobedience to, or evasion of, any of the orders or rules which are made for the convenience or efficiency of the proceedings of the house.[4]

2. Tampering with a witness in regard to the evidence to be given by him before the house or any committee of the house.[5]

3. Assault or interference with officers of the house, while in execution of their duty.[6]

4. All attempts to influence the decision of a committee on a bill or other matter before it for consideration.[7]

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[1] Res. of June 1st, 1780.

[2] 213 E. Hans. (3), 543, 560. In this case a letter was written by a public official calling on a member to remain in the house on the third reading of a particular bill; but it was shown that, though the letter was most objectionable, it did not really refer to members, but to persons outside ; and consequently no further action was taken after a letter in apology had been read from the person whose conduct was arraigned.

[3] 38 E. Com. J. 535, 537 ; 74 E. Hans. (3), 286. Can. Leg. Ass. J. (1854-5), 352-353.

[4] 4 Lords' J. 247. 87 E. Com. J. 360 ; 88 *Ib.* 218 ; 90 *Ib.* 504; 91 *Ib.* 338; 92 *Ib.* 282. 104 E. Hans. (3), 452; 249 *Ib.* 989.

[5] Sess. O.; May, 104. 12 E. Hans. (1), 461. In this case a clergyman was ordered to be immediately taken into custody for tampering with a witness in an inquiry before committee of the whole touching the conduct of the Duke of York. Also, 146 *Ib.* (3) 97.

[6] 19 E. Com. J. 366, 370; 20 *Ib.* 185. Low. Can. J. (1823-4), 113-4.

[7] In 1879 Mr. C. E. Grissell and Mr. J. Sandilands Ward were ordered to attend at the bar for attempting to influence the decision of the committee on the Tower high level bridge (Metropolis) bill in the interest of

**X. Attempts to bribe Members.**—It is one of the standing orders of the House of Commons of Canada as well as of England:

"That the offer of any money or other advantage to any member of this house for the promoting of any matter whatsoever, depending or to be transacted in Parliament, is a high crime and misdemeanour, and tends to the subversion of the constitution."[1]

**XI. Privileged Persons not Members.**—Both houses will always extend their protection and privilege to all persons who are in attendance in obedience to the orders of the house, or are engaged in business before the house or some of its committees.[2] In many cases the house has given orders that such persons having been arrested by process from the courts of law, should be delivered out of custody.[3] Precedents are found for the granting of this protection to persons attending to prefer or prosecute a private bill or other business in Parliament;[4] or to the solicitor of a party;[5] or to prosecute a petition;[6] or to claim a seat as a member;[7] or attending as a witness before the

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certain parties from whom they expected to receive some pecuniary advantages for their services. Mr. Ward was ordered into custody and subsequently released; Mr. Grissell evaded the order, but was afterwards arrested and imprisoned in Newgate. See E. Hans. vols., 247, 248, 249 for 1879.

[1] English Res. of 2nd May, 1695. The English Commons have always severely punished members for receiving bribes; 9 E. Com. J. 24; 11 *Ib.* 274; 5 Parl. Hist. 886-911, cases of Sir John Trevor, speaker, and others. In 1873 a Mr. John Heney was brought to the bar of the Canadian house on a charge of offering Mr. Cunningham, of Marquette, a sum of money for his vote; but no proceedings were taken, as Parliament was suddenly prorogued. Can. Com. J. 1873, 2nd sess.. 135-9.

[2] 1 Lex. P. 380; 1 Hatsell, 9, 11, 172; 1 E. Com. J. 5025; 2 *Ib.* 107; 9 *Ib.* 62; 13 *Ib.* 521; 18 *Ib.* 371; 21 *Ib.* 247; 74 *Ib.* 223. 4 Lords' J. 143-4.

[3] 48 E. Com. J. 424.

[4] 1 E. Com. J. 702, 766, 921, 924; 26 *Ib.* 797; 27 *Ib.* 447, 537. 88 Lords' J. 189; 92 *Ib.* 75, 76.

[5] 9 E. Com. J. 472; 24 *Ib.* 170.

[6] 2 E. Com. J. 72.

[7] 39 *Ib.* 83; 48 *Ib.* 426.

house or a committee ;[1] witnesses as well as counsel have been protected from actions of law for what they may have stated before committees.[2]

It is also provided in the statute defining the privileges of the two houses of the Canadian Parliament that, in case a person is prosecuted for publishing any parliamentary report or paper, either by himself or by his servant, proceedings can be stayed by his laying before the court, a certificate from the speaker or clerk of either house, as the case may be, stating that such report or paper was published under the authority of Parliament. It is also enacted that the defendant may, in a civil or criminal proceeding for printing an extract from a parliamentary paper or report, give in evidence, under the general issue or denial, such report, and show that the extract was published *bonâ fide*, and without malice ; and if such shall be the opinion of the jury, a verdict of not guilty may be entered for the defendant.[3]

**XII. Punishment of a Contempt of the Privileges of Parliament.**—A contempt of the privileges of the house will be punished according to its character. In some cases the house will not deem it necessary to proceed beyond an admonition or a reprimand, but occasions may arise hereafter, as in the past, when it will be found necessary to resort to the extreme measure of imprisonment.[4]

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[1] 1 E. Com. J. 863 ; 8 *Ib.* 525 ; 9 *Ib.* 20, 366 ; 12 *Ib.* 304.

[2] 11 E. Com. J. 591, 613 ; 100 *Ib.* 672, 680, 697 ; 81 E. Hans. (3), 1436 ; 82 *Ib.* (3), 431, 494.

[3] These provisions are substantially those of 3 & 4 Vict., c. 9, Imp. Stat., which were rendered necessary by the famous case of Stockdale *vs.* Hansard, out of which a conflict arose between the courts and Parliament as to the privileges of the latter. This act, says May, " removed one ground for disputing the authority of P., but has left the general question of privilege and jurisdiction in the same uncertain state as before." See chap. 6, May, for full details as to cases of conflict between courts and Parliament in matters of privilege.

[4] For latest case of imprisonment in Newgate, 249 E. Hans (3), 989.

**XIII. Power of Commitment.**—By the decisions of the English courts of law, it is clearly established that the power of commitment for contempt is incident to every court of justice, and more especially it belongs to the high court of Parliament;[1]—that it is incompetent for other courts to question the privileges of the houses of Parliament on a commitment for an offence which they have adjudged to be a contempt of those privileges;—that they cannot inquire into the form of the commitment, even supposing it to be open to objection on the ground of informality;[2]—that when the houses adjudge anything to be a contempt or a breach of privilege, "their adjudication is a conviction, and their conviction, in consequence, an execution."[3]

Sir Erskine May, having cited the various authorities on this point, lays down the following broad principle:

"The power of commitment, with all the authority which can be given by law, being established, it becomes the keystone of parliamentary privilege and contempt; and if the warrant recite that the person to be arrested has been guilty of a breach of privilege, the courts of law cannot inquire into the grounds of the judgment, but must leave him to suffer the punishment awarded by the Commons House of Parliament by which he stands committed."[4]

Very many cases are recorded in the journals of the legislatures of Canada, previous to 1867, of the exercise by those legislatures of the extreme power of commitment for breaches of privilege.[5] Though doubts have always

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[1] Ellenborough, C. J., Burdett *v.* Abbott, 14 East 1. Can. Sup. Court R., vol. ii., p. 177.

[2] Lord C. J. Abbott, *re* Hobhouse, 2 Chit. R. 207.

[3] Grey, C. J., in Brass Crosby's case, 19 Howell, St. Tr. 1137; 3 Wils. 188, 203.

[4] May, 82. It has even been decided that a person so committed cannot be committed to bail. 1 Wils. 200, Wright, J., in Murray's case.

[5] Low. Can. J. (1817), 462, 476, 486, 502, Mr. Monk, for contempt. *Ib.* (1833), 528, Mr. Taylor, member, committed for attack on Speaker Papineau, in Quebec *Mercury*. *Ib.* (1835), 24, 29, 30, 56, Mr. Jessopp, collector of customs, for not presenting certain returns on order of the house. Leg.

been entertained as to the powers of those legislatures in this particular, they never failed, when the occasion arose, to assert what they believed to be privileges incident to a legislative assembly. No cases have occurred since 1867, of commitment by the dominion Parliament for contempt. The privileges, however, of the dominion houses are expressly provided for in the Act of Union, and it is always possible for them to vindicate their rights in the most ample manner.

**XIV. Duration of Power of Commitment.**—All persons who may be in the custody of the serjeant-at-arms, or confined in goal under the orders of the house, must be released as soon as Parliament has been duly prorogued. Though the party should deserve the severest penalties, yet "his offence being committed the day before the prorogation, if the house ordered his imprisonment but for a week, every court would be bound to discharge him by *habeas corpus*." [1]

**XV. Procedure in case of a Breach of Privilege.**—The house will never proceed summarily against a person charged with an offence against its authority or privileges, but will give him an opportunity of defending himself.[2]

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Ass. J. (1846), 119, 150, 156-7, W. Horton and T. D. Warren, for not returning a commission issued by house. *Ib.* (1849) 148, 282, 292, John Miller, returning officer, for evading summons of house. See index of journals of 1854-5, under head of legislative assembly, for cases of returning officers committed to gaol for misconduct at certain elections. Also, Leg. Ass. J. (1858), 439, 440, 441, 444, 446, 488, 505, 940, 945, returning officers guilty of frauds. Leg. Ass. J. (1866), 257-265, Mr. Lajoie assaulting Mr. Dorion. A motion to commit him was voted down.

[1] Lord Denman, in giving judgment in Stockdale *vs.* Hansard, 1839 (283), p. 142, shorthand writers' notes. But a person, not sufficiently punished one session, may be again committed in the next until the house is satisfied. 249 E. Hans. (3), 989.

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

Whenever a complaint is made against a person who is not a member, the usual course is to make a motion that the offending party or parties do attend at the bar of the house at a fixed time.[1] When the order of the day has been read at the appointed time, and the serjeant-at-arms has informed the house that the person summoned is in attendance,[2] he will be called in and examined as to the offence of which he is accused. Then he will be directed to withdraw, and the house will consider whether he has excused himself or whether he is guilty of the offence. If the house come to the latter conclusion, he will be declared guilty of a breach of the privileges of the house, and ordered into custody.[3] Or if it be shown that he is innocent he will be discharged from further attendance.[4] The accused may be heard by counsel if the house think fit to grant his prayer.[5] An offender may be discharged at any time upon causing a petition, expressing proper contrition for his offence, to be presented.[6] Sometimes

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[1] 64 E. Com. J. 213; 82 *Ib.* 395, 399; 113 *Ib.* 189; 129 *Ib.* 181. 213 E. Hans. (3), 1543; 248 *Ib.* 971, 1100; May, 107. Can. Com. J. (1873), 133; *Ib.* (1879), 423. Or in very aggravated cases he has been immediately ordered into the custody of the serjeant-at-arms. Can. Com. J. (1873) 135, 139, 2nd sess. But it is more regular to examine him and find whether he is guilty of an offence before taking him into custody. 146 E. Hans. (3), 103-4.

[2] If the serjeant report that the person cannot be found, the speaker will be instructed to issue his warrant, Can. Com. J. (1873), 133. The serjeant or his deputy will serve the order on the person whose attendance is required, if he be within reach; otherwise, it may be sent by post to the residence of the individual; case of Mr. Macdonell, Can. Jour. (1879) 436. Also, Mirror of P. (1840), 720, case of Mr. Howard. If it be found he is wilfully evading the order of the house, he will be sent for in custody of the serjeant. Mr. Howard, 95 E. Com. J. 30. Mirror of P. (1840), 722, vol. xv. Also, 21 E. Com. J. 705; May, 186. 146 E. Hans. (3), 98. Case of Mr. Grissell in 1879, 248 E. Hans. (3), 1163.

[3] 113 E. Com. J. 192. 150 E. Hans. (3), 1066-1069.

[4] 113 E. Com. J. 193.

[5] Leg. Ass. J. (1852-3), 216, 509, 580. *Ib.* (1854-5), 631, 639. No record of counsel's remarks appears in the journals. Leg. Ass. J. (1855), 677, &c.

[6] Leg. Ass. J. (1858), 945. 113 E. Com. J. 202-3. 248 E. Hans. (3), 1536, 1632.

the house may deem it most expedient to refer a complaint to a select committee, and to stop all proceedings until it make a report.[1] If the examination of a person before the house cannot be terminated at one sitting, he will be ordered to attend at a future time, or he will be continued in the custody of the serjeant-at-arms.[2]

When the offence is contained in a newspaper, the latter must be brought up and read at the table, and then the member complaining must conclude with a motion founded on the allegation that he has brought forward.[3] When a member has reason to complain of a speech made by another member outside the house, he must bring up the paper, but he should previously, as a matter of courtesy, give notice of his intention to the member complained of, and ask him formally whether the report is correct, before proceeding further in the matter.[4]

**XVI. Suspension and Expulsion of Members.**—The right of a legislative body to suspend or expel a member for what it is sufficient cause in its own judgment is undoubted. Such a power is absolutely necessary to the conservation of the dignity and usefulness of a legislative body. In a previous chapter[5] cases have been cited of the exercise of the power of expulsion by the Parliament of the dominion as

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[1] 112 E. Com. J. 232. 146 E. Hans. (3), 99. The reference to a committee appears to be in cases where there is need of more inquiry, in order to reconcile conflicting statements. It is no longer the practice to refer breaches of privilege to committee of privileges, except the house think it necessary, May, 106. In 1879 a question of privilege (Messrs. Ward and Grissell for attempting to interfere with a select committee) was referred on the ground that there were essential facts which it was desirable for the house to know before dealing at once with the matter, but strong objections were even then taken as to the necessity or expediency of such a course. 247 E. Hans. (3), 1878-1886.

[2] Can. Com. J. (1873), 139, 2nd session. But in this case, it would have been sufficient to have ordered him to attend, as no examination had been made into the charge.

[3] 113 E. Com. J. 189. 184 E. Hans. (3), 1667. 219 *Ib.* 394-6.

[4] 74 E. Hans. (3), 139; 222 *Ib.* 1186; 236 *Ib.* 542.

[5] Chap. II., s. 13.

well as by the old legislatures of Canada, and consequently it is only necessary here to make this brief reference to the subject. The minor punishment of suspension is now generally reserved in the English house for aggravated cases of contempt of the authority of the chair and of wilful obstruction of the public business.[1]

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

When the evidence of any person is shown to be material in a matter under consideration of the house, or a committee of the whole, a member will move that an order be made for his attendance at the bar on a certain day. In the Senate, as in the Lords, the order should be signed by the clerk of the parliaments.[2] In the Commons the order is signed by the clerk of the house and served by the serjeant or his deputy when the witness is within or near the city of Ottawa; if not, he will be informed by post or telegraph, or in special cases by a messenger.[3]

When the order of the day for the attendance of a witness has been read in due form, he will be called to the bar and examined in accordance with prescribed forms.[4]

When the witness appears at the bar[5] of the house, each question will be written out and handed to the speaker, who, strictly speaking, should read it to the wit-

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[1] Chapter on debate, s. xxv.

[2] May, 472.

[3] Same practice in the English House of Commons. *Ib.* 472-3.

[4] Can. Com. J. (1874), 8, 10, 13, 14, 17, 18, 32, 37, 38. Parl. Debates in *Mail* and *Times*, 1873, p. 38, show the procedure on such occasions.

[5] Members are examined in their places (Leg. Ass. J. 1847, p. 4); the speaker in the chair; *Ib.* p. 6. The bar is always down during the examination of a witness not a member. 2 E. Com. J. 26; 2 Hatsell, 140.

ness; but practically it is the custom to allow on certain occasions a considerable degree of latitude for the convenience of the house, and questions put directly by members have been supposed to be put through the speaker.[1] When the witness has received the question, he should read it over and answer it succinctly and audibly. One of the clerks assistant, who is provided with a seat at the bar, will take down the answer and read it aloud to the house. In case a member objects to a question on any ground, he must state his objection, and the speaker will decide.[2] If the evidence of a witness cannot be completed in one day, his further attendance will be postponed till a future time, and he will be ordered to attend accordingly.[3]

All the evidence given by a witness at the bar is printed in the journals of the house with the names of the members asking the questions.[4]

If a witness should be in custody of any officer of the law, the speaker will be ordered to issue his warrant, which will direct the said officer to bring the witness before the house at the time required.[5] A witness who neglects or refuses to obey the order of the house will be sent for in custody of the serjeant-at-arms.[6] Any person refusing to obey this or any other order may be declared guilty of a contempt of the house and brought before it in custody that he may be dealt with according to its will and pleasure.[7] Witnesses who refuse to answer proper questions will be admonished and ordered to answer them.[8] If they refuse, they may be committed until they express their willingness to answer.[9]

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[1] 146 E. Hans. (3), 97. See Sen. Hans. [1882], 127.

[2] Can. Com. J. (1874), 10-13; 33-39. In England the short-hand writer of the house attends on such occasions.

[3] *Ib.* 13. [4] *Ib.* 10-13.

[5] 93 E. Com. J. 210, 353; 96 *Ib.* 193; 97 *Ib.* 227; 99 *Ib.* 89.

[6] 95 *Ib.* 59; Mirror of P. (1840), vol. 15, p. 721.

[7] 106 E. Com. J. 148.

[8] 88 *Ib.* 218. [9] 90 *Ib.* 501, 504.

A witness is always considered under the protection of the house, and no insulting questions ought to be addressed to him.[1] On the other hand it is the duty of a witness to answer every question in a respectful manner, and should he not do so the usual course is for the speaker to reprimand him immediately and to caution him to be more careful for the future.[2] If the offence is clearly manifest, the speaker can proceed at once to reprimand or caution the offender; if not, the witness may be directed to withdraw, and the sense and direction of the house may then be taken upon the subject.[3]

In all matters touching its privileges the house may demand definite answers to its questions; but in case of inquiries touching a breach of privileges, as well as what may amount to crime at common law, the house, "out of indulgence and compassionate consideration for the parties accused," has been in the habit of telling them that they are under no obligation to reply to any questions so as to criminate themselves.[4]

In case it is necessary to change the time of attendance of a witness, the order will be discharged or postponed, and a new order made for his future appearance.[5]

When the evidence of a witness is concluded for the time being, he will be ordered to withdraw and remain in further attendance if required.[6] If his testimony be not required the order will be read and discharged[7] Persons desiring that witnesses may be heard in their behalf must petition the house to that effect, and the house may, or may not, as it thinks proper, grant the prayer.[8] A witness

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[1] 11 Parl. Reg. 232, 233, 234; 13 *Ib.* 232, 233.
[2] 11 E. Hans. (1), 662. Also, Cav. Deb. Can. 170, 171.
[3] 9 E. Hans. (2), 75.
[4] 146 *Ib.* (3), 101-2.
[5] 95 E. Com. J. 253; Can. Com. J. (1874), 17, 18.
[6] Can. Com. J. [1874], 39.
[7] *Ib.* 18.
[8] Leg. Ass. J. [1855], 656.

has been allowed the assistance of counsel when his evidence may tend to criminate himself.[1]

The experience of Parliament has shown that in the majority of cases, requiring mature deliberation and inquiry, select committees are the best tribunals for examining witnesses; and accordingly it will be found, on reference to parliamentary records, evidence is always taken, whenever practicable, before committees.[2] The procedure in such cases is explained in the chapter devoted to the functions of select committees.

**XVIII. Privileges of Provincial Legislatures.**—The question of the extent of the privileges of the legislative assemblies of the provinces of Canada is not one within the scope of this work, but those who wish to pursue the subject may consult the authorities given in the notes, and particularly the judgment of the supreme court of Canada in the case of Landers *vs.* Woodworth. Mr. Woodworth, a member of the house of assembly of the province of Nova Scotia, on the 16th of April 1874, charged the provincial secretary of the day—without being called to order for doing so—with having falsified a record. The charge was subsequently investigated by a committee of the house, who reported that it was unfounded. Two days later the house resolved that in preferring the charge without sufficient evidence to sustain it, Mr. Woodworth was guilty of a breach of privilege. On the 30th of April, Mr. Woodworth was ordered to make an apology dictated by the house, and, having refused to do so, was declared, by another resolution, guilty of a contempt of the house, and requested forthwith to withdraw until such apology should be made. Mr. Woodworth declined to withdraw, whereupon another resolution was passed ordering the removal of Mr. Woodworth from the house by the serjeant-at-arms, who, with

[1] Mr. Bell, returning officer, Parl. Deb., 1873, p. 38.

[2] For the practice with respect to divorce bills in the Senate, see last chapter on private bills.

his assistant, enforced the order and removed Mr. Woodworth, who soon afterwards brought an action of trespass for assault against the speaker and certain members of the house, and obtained a verdict of $500 damages. The supreme court held, on appeal, affirming the judgment of the supreme court of Nova Scotia, that the legislative assembly of Nova Scotia, had, in the absence of express grant, no power to remove one of its members for contempt unless he was actually obstructing the business of the house; and Mr. Woodworth having been removed from his seat, not because he was obstructing the business of the house, but because he would not repeat the apology required, the defendants were liable. Chief Justice Richards, in the course of his opinion, stated that under the practice in the English Parliament or in the legislature of Nova Scotia, so far as he was informed, the making, by one member against another, of an unfounded charge which has been inquired into by the house, does not constitute a breach of privilege. If the subject-matter of the inquiry turns out not to be true, there was no authority or precedent shown where a member can be charged with being guilty of a breach of the privileges of the house for so doing. If when the house thinks the inquiry ought not to be made, and refuses to take it up, the member persists in bringing it forward, so as to obstruct the business of the house, it may be that he might then become liable to the censure of the house, and if he persisted in the interruptions unreasonably, he might, to quote the words used in *Doyle v. Falconer*[1] "be removed or excluded for a time, or even expelled." But the house, having thought it a matter which required their attention, took it up and ordered an investigation, and after that, he failed to see how they could properly declare that what the member had done was a breach of their privileges. Judge Ritchie, in delivering his opinion, said

[1] L.R., 1 P.C., App., 328. Can. Sup. Court Rep. II., 184.

that a series of authorities, binding on the court, clearly established that the house of assembly of Nova Scotia had no power to punish for any offence not an immediate obstruction to the due course of its proceedings, and the proper exercise of its functions, such power not being an essential attribute, nor essentially necessary for the exercise of its functions by a local legislature, and not belonging to it as a necessary or legal incident; and that, without prescription or statute, local legislatures have not the privileges which belong to the House of Commons of Great Britain by the *lex et consuetudo Parliamenti.* The allegations and circumstances shown in the case in question afforded, in his opinion, no justification for the plaintiff's removal; he was not then guilty of disorderly conduct in the house, or interfering with or in any way obstructing the deliberations or business, or preventing the proper action of the house, or doing any act rendering it necessary, for self preservation or maintenance of good order, that he should be removed.[1]

The legislatures of Ontario and Quebec, immediately after the confederation of the provinces, passed acts to define their privileges and immunities.[2] These acts gave the respective houses such privileges, immunities, and powers as are held by the Senate and House of Commons. The Ontario act was considered *ultra vires* by the English law officers, and consequently disallowed by the governor-general in council.[3] The same course was taken in the case of the Quebec act.[4] Subsequently other acts were passed

[1] Can. Sup. C. Rep. II., 158–215. Kielly *v.* Carson (4 Moore P. C. C. 63) and Doyle *v.* Falconer (L.R. 1. P.C., App. 328) were commented upon by the court and followed. The learned Chief Justice cited these and other cases bearing on the question, viz., Beaumont and Baretti (1 Moore P.C.C., p. 59); Fenton and Hampton (11 Moore, 347); Cuvillier *v.* Monro (4 L.C.R., p. 146); Lavoie's case (2 L.C.R., p. 99); Dill *v.* Murphy (1 Moore P.C., C.N.S., 487); *ex parte* Dansereau, Low. Can. Jurist, vol. xix., pp. 210–248.

[2] Ont. Stat., 32 Vict., c. 3. Quebec Stat., 32 Vict., c. 4.

[3] Sess. P., 1877, No. 89, pp. 202–12; Todd, 365.

[4] Sess. P., p. 221.

in the two legislatures defining the character and extent of their respective privileges.[1] These statutes embrace privileges claimed and enjoyed by English members of Parliament, such as freedom from arrest on civil process, and other immunities set forth in this chapter. The Ontario statute is more comprehensive than the Quebec act, but both are practically the same with respect to the power to compel the attendance of witnesses, the production of papers, and the protection of persons acting under the authority of the legislature. These acts were left to their operation though their constitutionality in certain respects was questioned by the dominion government.[2] However, the court of queen's bench, Quebec, decided that the Quebec statute was within the competency of the legislature.[3] The supreme court of Canada, in the decision just mentioned, has also affirmed the right of the legislatures to pass statutory enactments conferring upon themselves such powers and privileges as may be necessary for the efficient discharge of their constitutional functions.[4] In 1876, the Nova Scotia legislature passed a statute conferring upon both houses the same privileges as shall for the time being be enjoyed by the Senate and House of Commons of Canada, their committees, and members for the time being.[5] The constitutionality of this act was also questioned by the minister of justice, but it was neither amended nor disallowed.[6] In 1874, a Manitoba statute to the same effect was disallowed,[7] but subsequently another act was passed and left by the dominion government to come into operation.[8] The principle asserted in the judgment of the

[1] Ont. Stat., 39 Vict., c. 9, or chap. 12 Rev. Stat. Quebec Stat., 33 Vict., chap. 5.

[2] Sess. P., 1877, No. 89, pp. 108–14, 201.

[3] L. C. Jurist, vol. 19, p. 210.

[4] Sup. Court Rep., vol. ii., pp. 158–215 ; Landers, *et al. vs.* Woodworth.

[5] N. S. Stat., 1876, chap. 22.

[6] Sess. P., 1877, No. 89, pp. 110–114 ; Todd, 469–470.

[7] Man. Stat., 1873, c. 2. Sess. P., 1877, No. 89, pp. 44–47.

[8] Man. Stat., 1876, c. 12. Sess. P., p. 106-9.

supreme court, just cited, "whilst it does not debar the Crown from interposing a veto upon an act which should attempt to legalize unwarrantable claims, does in fact render it difficult to object to any powers, proposed to be conferred by statute, that they exceeded the lawful powers and constitutional competency of a legislature to grant." In this respect the court "recognizes the possession in the provincial legislatures of a wider discretion than had been heretofore allowed, either by the dominion government or by the crown law officers in England." [1]

[1] Todd, Parl. Gov. in the Colonies, pp. 470–71.

# CHAPTER V.

*RULES, ORDERS, AND USAGES.*

I. Origin of the Rules, Orders, and Usages of the Senate and House of Commons.—II. Procedure in Revising Rules.—III. Necessity for a Strict Adherence to Rules.—IV. Sessional Orders and Resolutions.—V. Use of the French Language in the Proceedings of the Houses.

**I. Origin of the Rules, Orders, and Usages of the Canadian Parliament.**—The Senate and House of Commons regulate their proceedings under certain rules, orders, and usages, which are derived, for the most part, from the practice of the British Parliament. It will also be seen on reading this chapter that Canadian legislatures have adopted since 1792 the wise principle of referring in all cases of doubt and perplexity to the procedure of the Imperial Parliament. But whilst Canadian parliamentary practice is generally based on that of England, certain diversities have grown up in the course of years; and in some particulars the practice of the two houses is not only simpler and better adapted to the circumstances of the country, but also calculated to promote the more rapid progress of the public business.[1] The great principles that lie at the basis of English parliamentary law have, however, been always kept steadily in view by the Canadian legislatures; these are: To protect the minority and restrain the improvidence and tyranny of the majority, to secure

[1] Mr Raikes in an article in the "Nineteenth Century," November, 1879, suggests new arrangements in reference to bills which have been practically in operation for years in Canada.

the transaction of public business in a decent and orderly manner, to enable every member to express his opinions within those limits necessary to preserve decorum and prevent an unnecessary waste of time, to give full opportunity for the consideration of every measure, and to prevent any legislative action being taken heedlessly and upon sudden impulse.[1]

It is true that the English House of Commons has, within a few months, adopted very stringent rules which seem in a considerable degree at variance with the old principles of parliamentary procedure. The *clôture* has been borrowed from the French system, and other measures have been formally taken with a view to prevent organized obstruction. But these new orders which certainly impose restrictions on freedom of speech, and give increased power to the speaker, and to the majority, have been forced on the house by a very exceptional, if not revolutionary state of affairs. No systematic obstruction has prevailed in the Canadian House of Commons, where all parties continue to value those principles of English procedure which seem the best strength of a parliamentary system. Elsewhere the reader will find the new English orders, not because they enter into Canadian practice, but because they should appear, as a matter of course, in a work of this character.[2]

The history of the rules and orders, which now form the basis of Canadian parliamentary practice, must be gathered from the journals of the two houses, since the days when legislatures were first convened in Canada. In the legislative councils of Upper and Lower Canada, the rules were from the first based on the practice of the house of Lords, as far as the constitution of the house and the circumstances of a new country permitted; and the same course was pursued in 1841 by the legislative

[1] Hearn, Gov. of England, 545–7.

[2] See chapter on debate, last section.

council of United Canada,[1] and in 1867-8 by the Senate, whose standing orders now provide:

"112. In all unprovided cases, the rules, usages, and forms of proceedings of the house of Lords are to be followed."

The first action taken in the legislative assembly of Lower Canada was in 1792, when the lieutenant-governor sent a message recommending "the framing of such rules and standing orders as might be most conducive to the regular despatch of business." The house immediately adopted a code of rules based for the most part on those of the Imperial Parliament.[2] The legislative assembly of Upper Canada which met for the first time at Niagara, followed a similar course.[3] The legislature of the united Canadas also adopted a code in conformity with that of the Imperial Parliament.[4]

Again, when the Parliament of the dominion met for the first time, after the passage of the Union Act of 1867, one of the first proceedings of the House of Commons was necessarily to appoint a committee to frame rules for the government of procedure in that house. The committee subsequently reported the rules and standing orders which now regulate the proceedings of the Commons, and which are substantially those of the legislative assembly of Canada.[5] Rule 120 now orders:

"In all unprovided cases, the rules, usages, and forms of the House of Commons of the United Kingdom of Great Britain and Ireland shall be followed."

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[1] Leg. C. J. [1841], 28. App. 2.

[2] I. Christie's Low. Canada, 130–139. In the journals of 1792 (vol. i., p. 48) we find the following entry: "Resolved that as the assembly of Lower Canada is so constituted after the model and usage of the Parliament of Great Britain, it is wise and decent and necessary to the rights of the people, as well as to the interests of the Crown, that this house follow and observe, *as nearly as circumstances will admit*, the rules, orders and usages of the Commons House of Parliament." Also, pp. 26, 36, 124, &c.

[3] Upp. Can. J. [1792], in MS. in the Parliamentary Library.

[4] Leg. Ass. J. [1841], 29, 40, &c.

[5] Can. Com. J. [1867-8], 5, 16, 43, 115, 125, 133.

**II. Procedure in revising rules and orders.** — Whenever it is necessary to appoint a committee in the Commons to revise the rules and standing orders of the house, it is customary to place it under the direction of Mr. Speaker, the motion being:

"That a special committee of—members be appointed to assist Mr. Speaker in revising the rules of the house, &c."[1]

When this committee has reported, its proceedings will be ordered to be printed,[2] generally in the votes and proceedings[3]; and after some time has been given to members for the consideration of the proposed changes, the house will resolve itself into a committee of the whole on the report. When the rules or amendment to the rules are reported from the committee, they must be formally concurred in like any other resolutions; and when that has been done they regulate the procedure of the house,[4] All the rules and standing orders are printed from time to time in a small volume, which in some cases also includes the British North America Act, 1867, and acts in amendment thereof.[5]

In the Senate it is also the practice to refer the question of revising the rules to a select committee.[6] In 1875 Mr. Speaker Christie was authorized by that house to examine during the recess the rules and forms of proceedings and

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[1] Can. Com. J. [1867-8], 16, 133. *Ib.* [1876], 58.

[2] *Ib.* [1867-8], 43.

[3] *Ib.*, 1876, March 6, V. and P. All the rules were printed (with the proposed amendments in brackets) in a convenient form before they were considered in committee of the whole. The rules and standing orders, as amended in committee of the whole and adopted by the house, should be given in the journals; 108 E. Com. J., 756, 770, 791; Can. Com. J. [1867-8], 115. This was neglected in 1876, though several amendments were made in committee of the whole. In the English house, when an order is to be repealed, it is first read and then rescinded; the new standing orders will next be proposed and agreed to; 182 E. Hans. (3) 603.

[4] Can. Com. J. [1867-8], 115, 125. *Ib.* [1876], 216.

[5] Can. Com. J. [1867-8], 133.

[6] Sen. J. [1867-8], 60.

suggest to the house at the next session such amendments as he might deem advisable.[1] The speaker's report with a draft of the proposed amended rules, was submitted and referred to a select committee in the early part of the session of 1876. This committee reported certain amendments to the speaker's draft, which were considered on a future day. The report was adopted with some modifications and amendments. It is not the practice therefore for the Senate to go into committee of the whole on amendments to the rules.[2] By the 111th rule of the that house, the British North America Act, 1867, all acts in amendment thereof, as well as the commission and royal instructions to the governor-general, are printed in a book with the rules for the convenience of the members.

**III. Necessity for a strict adherence to rules.** — Each house is bound by every consideration of self-interest and justice to observe strictly its rules and standing orders, and to rebuke every attempt to evade or infringe them.[3] The political party which controls the house to-day may be in a different position to-morrow, and is equally interested with the minority in preserving the rules of the house in all their integrity. "So far the maxim is certainly true, and founded on good sense," says Hatsell, "that as it is always in the power of the majority by their numbers to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves from similar attempts from those in power, are the forms and rules and proceedings which have been found necessary from time to time, and are become the standing orders of the house; by a strict adherenee to which the weaker party, can alone be

[1] Sen. J. [1875], 256.

[2] *Ib.* [1876], 23, 119, 168. Also [1867-8], 143.

[3] See eulogy on Parliamentary Law in Hearn, Gov. of England, pp. 545–8. Bentham, certainly an impartial critic, "recognizes, in this bye-corner, the original seed-plot of English liberty."

protected from those irregularities and abuses which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities."

Consequently the Senate and House of Commons never permit their rules and standing orders to be suspended, unless by *unanimous consent;* but they may be formally amended or repealed on giving the notice required in the case of all motions.[1] The Senate,[2] like the House of Lords, has standing orders on the subject:

"17. No motion for making any order of the Senate a standing order can be adopted, unless the senators in attendance on the session shall have been previously summoned to consider the same.

"18. No motion to suspend, modify, or amend any rule or part thereof, shall be in order, except on one day's notice in writing, specifying precisely the rule or part of rule proposed to be suspended, modified or amended, and the purpose thereof.[3] But any rule may be suspended without notice by the consent of the Senate;[4] and the rule proposed to be suspended shall be precisely and distinctly stated; and no motion for the suspension of the rules upon any petition for a private bill shall be in order, unless the same shall have been recommended by the committee on standing orders."[5]

The proceedings of the two houses of Parliament are regulated by statute, by rules and orders adopted by themselves, and by those usages which have grown up in the course of time and consequently become a part of their own practice, or are derived from the common law of Parliament by which, as we have just seen, they have con-

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[1] 80 E. Hans. (3), 158; 182 *Ib.* (3), 591; 224 *Ib.* 48, 164. Can. Com. J. (1868), 144. Remarks of Sir J. A. Macdonald, Can. Hans. (1878), 3-4. Can. Com. J. (1877), 111, 258, 227 (1 and 19 R. suspended); *Ib.* (1883), 128, decision of Mr. Speaker Kirkpatrick.

[2] Min. of P. (1867-8), 111; *Ib.* (1869), 107; Jour. 69. Deb. (1878), 292.

[3] Sen. Hans. (1882), 705-6. Min. of P. (1883), 359, 363.

[4] Sen. Hans. (1882), 103.

[5] See Commons standing orders respecting private bills No. 55.

sented to be guided in all matters of doubt. A statute regulation supersedes and cannot be abrogated by any order of the house to which it applies.[1] For instance, on one occasion Mr. Speaker Cockburn pointed out the fact:

"The constitutional rule contained in the 54th section of the Imperial Act is one that, being absolutely binding, should be neither extended nor restrained by implication, but should, at all times, be most carefully observed by the house. Consequently unless the governor-general first recommends any vote or motion for the appropriation of public money, it cannot be received by the house."[2]

An express rule or order of the house, whether standing or occasional, supersedes every mere usage or precedent. But in the absence of an express rule or order, what can or ought to be done by either house of Parliament is best known by the custom and proceedings of Parliament. The unwritten law of Parliament in such a case has as much effect as any standing order.[3] It must also be borne in mind that in the interpretation of the rules of standing orders the house "is generally guided, not so much by the literal construction of the orders themselves as by the consideration of what has been the practice of the house with respect to them."[4]

**IV. Sessional Orders and Resolutions.**—The house passes, in the course of every session, certain orders, which are intended to have only a temporary effect on its proceedings, or to regulate the business of the session. These orders generally relate to the times of adjournment, the arrangement of business, or the internal economy of the

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[1] Cushing, 790.

[2] Can. Com. J. (1871), 50.

[3] Cushing, 790; 4 Hatsell, 491, *note;* 229 E. Hans. (3), 1625 (Mr. S. Brand); 4 Inst. 15; 1 Black. Com. 163. *Optimus Legum interpres consuetudo,* 2 Rep. 81, Coke on Litt. 186*a*, *note*; Sedgewick, 255.

[4] Mirror of P. 1840, vol 16, p. 1108-9.

house, or to the presentation of certain papers in subsequent sessions.[1] Up to the session of 1876, certain resolutions relative to the offer of money to members were formally proposed and agreed to at the commencement of every session, but when the rules were revised that year, these resolutions were placed among the permanent orders.[2] Though resolutions strictly expire with the session in which the are adopted, there are certain resolutions and orders, concerning matters of order and practice, which have been observed as binding without being renewed in future sessions. In such a case it is the practice of the speaker to call attention to the resolution, and to give the house another opportunity of considering whether the resolution should continue to be observed.[3]

**V. The Use of the French Language.**—The use of the French language in the proceedings of the legislature has, from the earliest days of the parliamentary history of Canada, received the sanction of custom and law. At the first session of the legislative assembly of Lower Canada, it was resolved that no motion should be debated or put to the house, unless it was first read in English and French. As the speaker of that day, Mr. Panet, was not well con-

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[1] Can. Com. J. (1867-8), 59, 80, &c. *Ib.* (1877), 111, 227, 258; *Ib.* (1882), 55.

[2] Can. Com. J. [1876] 110 *supra* p. 196. Still renewed every session in England; Jour. for 1877, pp. 3–4. The order relative to votes and proceedings, however, was still to be renewed every session (Can. Com. J., 1877, p. 12; 129 E. Com. J., 8); but this was not done in 1878 and 1879, and now it has a place among the standing orders, though there is nothing on the record to show how it came there.

[3] May, 194, 268; Mr. S. Brand., p. 79 Rep. of Com. on Public B., 1878. Exclusion of strangers, 227 E. Hans. (3), 1420; 240 *Ib.*, 478; 131 E. Com. J., 79, 348. Mr. Speaker Anglin's attention was called in 1878 to the fact that a resolution of 1874 relative to the management of the refreshment rooms of the house was not carried out. He said, after some remarks from several members, that he would at once renew his orders in accordance with the wish of the house as expressed in the resolution. Can. Com. J. [1874], 14. Private MSS., March 5, 1878.

versant with English, it was subsequently resolved that in all cases when the speaker could not speak both English and French, "he should read in either of the two languages most familiar to him, while the reading in the other language should be by the clerk or his deputy at the table." It was also decided to have the journals and bills printed in English and French. Every member had a right to introduce a bill in his own language, but it was then the duty of the clerk to have it translated.[1] The rules then adopted, it will be seen a little further on, are substantially those which now regulate the procedure of the Parliament of Canada.

When the two provinces of Canada were united under one Parliament, it was provided by the 41st section of the Act of Union,[2] that "the language of the legislative records, of what nature soever, shall be in the English language only," and though translations might be made, no copy of them "could be kept among the records or be deemed in any case to have the force of an original record." This law naturally created great dissatisfaction among the French Canadians, and it was finally repealed by the Imperial Parliament after an address to the queen had been passed by both houses.[3]

By the 133d section of the British North America Act, 1867, it is expressly provided:

"Either language may be used by any person in the debates of the houses of the Parliament of Canada; and both these languages shall be used in the respective records and journals of those houses.....

The acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages."

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[1] I. Christie's Lower Canada, 132–4; Low. Can. J. [1792], 92, 100, 148, &c. The journals were printed with corresponding pages in the two languages.

[2] 3 and 4 Vict., c. 35.

[3] 11 and 12 Vict., c. 56, s. 1, Imp. Stat. Leg. Ass. J. [1845], 289, 290, 300, 305, 317.

And by rule 33 of the House of Commons, it is ordered:

"When a motion is seconded, it shall be read in English and French by the speaker, if he be familiar with both languages; if not, the speaker shall read the motion in one language, and direct the clerk to read it in the other before debate."

And rule 93 provides:

All bills shall be printed before the second reading in the French and English languages."

These rules are always strictly observed in the House of Commons. It is the duty of one of the clerks at the table in both houses—for though the Senate[1] has no standing orders on the subject, yet it is governed by custom and law—to translate all motions and documents whenever it may be necessary. The votes and journals of both houses, and all bills and sessional papers, are invariably printed in the two languages.

Provision is also made by law for the use of the French language in Quebec,[2] Manitoba[3] and the North-West Territory.[4]

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[1] See Report of Select Committee, Sen. J. [1877], 113, 136, 208, 256.
[2] B. N. A. Act, 1867, s. 133. Quebec Leg. Ass. Rules, 33, 93.
[3] 33 Vict., c. 3, s. 23.
[4] 43 Vict., c. 25, s. 94.

# CHAPTER VI.

*MEETING, PROROGATION, AND DISSOLUTION OF PARLIAMENT.*

I. Meeting of Parliament.—II. Proceedings in the Senate.—III. Election of Speaker of the Commons.—IV. Consideration of the Speech.—V. Proceedings in Sessions subsequent to the first.—VI. Prorogation.—VII. Effect of Prorogation.—VIII. Dissolution.

**I. Meeting of Parliament.**—The summoning, prorogation, and dissolution of Parliament in Canada are governed by English constitutional usage. Parliament can only be legally summoned by authority of the Crown;[1] but the British North America Act of 1867 provides, with respect to the dominion of Canada, that there shall be a session "once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session, and its last sitting in the next session."[2] A subsequent section also provides that "every House of Commons shall continue for five years from the day of the return of the writs for choosing the house,—(subject to be sooner dissolved by the governor-general),—and no longer."[3] Apart, indeed, from statutory enactments, the practice of granting supplies annually renders a meeting of Parliament every year absolutely necessary.[4] Parliament is summoned by the Queen's proclamation, by

[1] 2 Hatsell, 296.

[2] Sec. 20, B. N. A. Act, 1867.

[3] Sec. 50, *Ib.* See *supra*, p. 60 for statement showing average duration of each Parliament since 1867.

[4] May, 44.

and with the advice of the privy council.[1] It is the practice to prorogue Parliament for intervals of forty days, and when it is the intention to assemble the two houses, *de facto*, the proclamation will require senators and members of the House of Commons to appear personally:

"*For the despatch of business*, to treat, do, and act, and conclude upon those things which in our said Parliament of Canada, by the common council of our said dominion, may by the favour of God be ordained."[2]

The Parliament of Canada meets as a rule in the winter months. The first session was held in November, 1867, and adjourned to March, 1868. In 1869 and 1872 the houses assembled in April; in 1873 and 1874, in March; in 1873 there was a special session in October, on account of ministerial difficulties. In 1880 the houses assembled in February, and again in December, to consider the Canada Pacific Railway contract. The practice in other years has been to assemble in February,[3] but in view of the general sentiment of the house, it is now arranged that Parliament will be summoned hereafter as soon as possible after the commencement of the year.

**II. Proceedings in the Senate.**—At the opening of a new Parliament, the senators will assemble in their chamber, at the hour appointed; and after prayers, if there is then a speaker, it will be his duty to present to the house the usual communication from the governor-general, informing them of the hour when he will proceed to open the session. New members will, on this occasion, be admit-

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[1] Jour. [1879], v-x.

[2] *Infra*, p. 236. See different proclamations which appear at commencement of Journals of Senate and House of Commons. Also, appendix at end of this work for text of proclamation for a meeting for business.

[3] See address moved by Mr. Brown in the legislative assembly of Canada, in 1853, declaring that the month of February was the most convenient period for the assembling of Parliament. Jour. [1852–3], 660, 691, 750.

ted and introduced. The house will then adjourn during pleasure, and resume as soon as his Excellency or the deputy governor presents himself in the chamber.[1]

In case there is a new speaker, as soon as the Senate has met, the clerk will read the commission appointing him; and then he will be conducted to the chair at the foot of the throne by two prominent members—one of them generally the leader of the government in the house—the gentleman usher preceding.[2]

The mace which lay before under the table, will then be placed thereon,[3] and prayers will be read by the chaplain. It is usual then to present certificates of the appointment of new members, and to have them formally introduced. The house will next be informed of the hour when his Excellency or the deputy governor will come down; and the house will then adjourn during pleasure or until that time. As soon as his Excellency or the deputy governor is seated in the chair on the throne, the speaker will command the gentleman usher of the black rod to proceed to the House of Commons and ask their attendance in the Senate chamber.[4] The proceedings when the Commons present themselves at the opening of a new

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

[2] Sen. Jour. [1879] 16; *Ib.* [1880] 12.

[3] The late Mr. Fennings Taylor, for many years deputy clerk, informed the writer that the mace used in the senate belonged to the old legislative council of Canada. On the night of the 25th April, 1849, when the Parliament building at Montreal was burned by the rioters, it was saved by Edward Botterell, at that time a messenger, and subsequently a doorkeeper of the legislative council and senate. It was placed by him for security in a neighbouring warehouse, and was found, when required, quite uninjured.

[4] Sen. J. [1874] 11-17; *Ib.* [1879] 15-19; *Ib.* [1880] 12-14. For proceedngs in the Lords when a new chancellor is appointed before the opening of a new Parliament, see 194 E. Hans. (3) 2-3.

Parliament—or of a subsequent session—will be described in a later page, where explanations are given of the Commons' proceedings.

When the speaker is a new member, the clerk must first present the usual return from the clerk of the crown in chancery, and the former will then take the prescribed oath with other new members who may be present. His appointment as speaker will then be formally notified in the manner just stated.[1]

In case of the appointment of a new clerk, it is the duty of the speaker to announce it to the Senate. The commission will be read forthwith, and the clerk sworn at the table. The appointment of other crown officers may also be announced at the same time.[2] Whenever a new speaker and a new clerk have been appointed, as in 1867, the commission of the former will be first read, and he will take his seat in due form. The speaker will then announce the appointment of the clerk, so that his commission may go on the journals.[3]

We may now take up the proceedings at the stage where the speech has been duly delivered by the governor-general, and the Commons have returned to their chamber. The speaker of the Senate, after the retirement of his Excellency, and the introduction of a bill *pro forma* will report the speech which will be ordered to be taken into consideration immediately, or on a future day, the day following, should it be a sitting day, being generally chosen. All the members present will then be appointed a committee "to consider the orders and customs of the house and privileges of Parliament."[4] When the order of

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[1] Sen. J., 1867-8, Mr. Cauchon; *Ib.*, 1873, Mr. Chauveau.

[2] *Ib.* [1883] 1-20 appointment of clerk and masters in chancery. Also, *Supra*, p.

[3] *Ib.* [1867-8] 55

[4] R. I.; Jour. [1879] 22-23; Lords' J. [1877] 11. To this committee is referred every matter affecting the privileges of the house and its members. In 1880, a senator made a charge against the official reporters,

the day for the consideration of his Excellency's speech has been reached, two members will formally propose and second the address in answer to the same. Generally, two new members, whose political sympathies are in accord with the policy of the government of the day, are chosen for this purpose. The practice in the two houses with respect to the address was similar up to 1870,[1] when it was simplified in the Senate in conformity with the latest practice of the House of Lords. It is now only necessary to move the address directly, without going through the formality of proposing a prior resolution as in the House of Commons. When the address has been agreed to, it is ordered that it be presented to his Excellency by members of the privy council who have seats in the Senate.[2]

**III. Election of Speaker.**—When a new Parliament meets, for the despatch of business, on the day appointed by proclamation, the members of the Commons assemble in their chamber at an hour of which they have been previously notified by the clerk, for the purpose of taking the oath and signing the roll containing the same. The clerk of the crown in chancery is required to be in attendance on this occasion at the table of the house and to deliver to the clerk a roll containing a list of the names of such members as have been returned to serve in the Parliament, then about to meet for the transaction of business.[3] The following oath will then be administered at the table by certain commissioners (generally the clerk, the clerk-

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and it was referred to the committee, on a motion made not by him, but by two other members. This was a new precedent, but nothing came of the reference as the senator in question had not asked for it and had consequently nothing to submit. Sen. J. [1880] 139, 158; Hans. pp. 243-46, 267, 280.

[1] Sen. J. [1867-8] 69-72.

[2] *Ib.* [1877] 24, 34; *Ib.* [1878] 24; *Ib.* [1879] 25-30; *Ib.* [1883] 35-36. Lords' J. [1877] 10, 11.

[3] Can. Com. J. 1867-8, 1873, 1874, 1879, 1883, p. 1.

assistant, serjeant-at-arms and law-clerk) appointed by *dedimus potestatem*, as provided by the British North America Act, 1867:

"I ——— do swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria."[1]

When all the members present have been duly sworn, they will repair to their seats and await a message from the governor-general. It is generally customary, however, to swear in the members at a convenient time in the morning, and then the members re-assemble a few minutes previous to the hour at which his Excellency is to come down to open Parliament. The members being all in their seats, and the clerk, with one or two assistants, being in his place at the head of the table, the usher of the black rod presents himself at the door of the Commons and strikes it three times with his rod. He is at once admitted by the serjeant-at-arms, and advances up the middle of the house, where he makes three obeisances, and says in English and French:

"Gentlemen, (or Mr.Speaker, in subsequent sessions)his Excellency the Governor-General (or the deputy governor) desires the immediate attendance of this honourable house in the Senate chamber." [2]

The gentleman usher then retires, without turning his back upon the house, and still making the customary obeisances. The house will then at once proceed to the Senate chamber,[3] where the members of the Commons will be informed by the speaker of the Senate:

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[1] B. N. A. Act, s. 128 and 5th schedule. In the English Commons, the speaker first takes the oath, and then the members. Consequently the ceremony is attended with the proper solemnity. May, 204. In the Canadian house, the ceremony is attended with some confusion through the eagerness of members to be sworn immediately. Parl. Deb., 1873, p. 1.

[2] Can. Com. J., 1874, 1875, 1878, 1879, 1883, p. 1. Parl. Deb. [1874]. The procedure in such cases is similar to that of the English Parliament.

[3] Previous to the session of 1880 members generally preceded Mr. Speaker and officers, but at the commencement of that session arrange-

"His Excellency the Governor-General (or deputy governor as in 1878 and subsequent sessions) does not see fit to declare the causes of his summoning the present Parliament of the dominion of Canada, until a speaker of the House of Commons shall have been chosen according to law, but to-morrow, at the hour —— his Excellency will declare the causes of his calling this Parliament[1] (or "the causes of calling this Parliament will be declared," in case a deputy governor is present.)

The Commons having returned to their chamber, will proceed at once to the choice of a speaker. The clerk presides at these preliminary proceedings, and will stand up and point to a member when he rises to speak. A member will propose the name of some other member then present in these words: "That do take the chair of this house as speaker." This motion must be duly seconded, and put by the clerk, and in case there is no opposition, it will be resolved *Nemine contradicente* "That do take the chair of this house as speaker." The clerk having declared the member in question duly elected, his proposer and seconder will conduct him from his seat to the chair, where standing on the upper step he will "return his humble acknowledgments to the house

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ments were made to give precedence to Mr. Speaker and prevent, if possible, confusion and difficulty in entering the Senate chamber. Precedence of members in the English house in going up to the Lords is determined by ballot. Eng. J., 1851, p. 439, 443, 445. May, 220. Also, 118. Eng. Hans. (3) 1940-2, 1946. Mirror of P., 1828, vol. i., p. 13. These references will show how difficult it has also been found in England to arrange an orderly procedure on such occasions.

[1] Can. Com. J. [1873] 1, 2; *Ib.* [1878] 1; *Ib.* [1879] 1. Sen. J. [1874] 15; *Ib.* [1878] 17; *Ib.* [1879] 19. Until the cause of summons has been formally declared by the queen or her representative, neither house can proceed upon any business whatever. The speaker's election is the only business which can be done and that is no exception to the rule, since the Commons receive express authority for performing this act, without which the House of Commons is not completely organized. 2 Hatsell, 307, 327. 1 Todds' Parl. Gov., 248. The speaker of the Senate, however, is sworn and takes his seat, and new senators are admitted as soon as the Senate meet. Sen. Jour. [1879]. 15-19.

for the great honour they had been pleased to confer upon him by unanimously choosing him to be their speaker."[1]

In case there is opposition, and two or more candidates are proposed, the clerk will continue to point to each member as he rises, and then sit down; and when the debate is closed he will put the question first proposed; and if the majority decide in favour of that motion, the speaker elect will be immediately conducted to the chair; but if it be otherwise, the second motion will be submitted to the house; and if it be resolved in the affirmative, the member so chosen will be conducted to the chair in the customary way.[2] It is very unusual to divide the house when only one member has been proposed, as was the case in 1878, but still some instances can be found in the parliamentary history of England and Canada.[3] It has never been the practice in the Canadian or English Parliaments for a member proposed as speaker to vote for his own election.[4]

In the Canadian House of Commons, the leader of the

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[1] Can. Com. J. [1867-8]; *Ib.* [1873]; *Ib.* [1874]; *Ib.* [1883] 2. The person proposed should always be present, and should be properly a member upon whose seat there is no probability of a question. 2 Hatsell, 217. For remarks of speaker on such occasions, see 218 E. Hansard 10. Can. Parl. Deb. [1874] 1. Can. Hans. [1878] 12; *Ib.* [1883] 2. The English practice is a little different; no question is put by the clerk. 129 E. Com. J. 5. May, 200.

[2] May, 200. 90 E. Com, J. 5; 94 *Ib.* 274. There are no cases since 1867 of more than one candidate being proposed for the chair, but many instances can be found in the journals of the old legislative assembly. Leg. Ass. J. [1848] 1, 2; *Ib.* [1854], three candidates, Messrs. Cartier, Sicotte and J. S. Macdonald; *Ib.* [1863] 2nd. session.

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

[4] See for illustrations of Canadian practice: Low. Can. J. 1797, 1809, 1825, 1835. Can. Leg. Ass. J. 1844, 1848, 1852, 1854, 1858, 1862, 1863 (2 sess.). Can. Com. J. 1878. In 1854 a candidate voted, but only after the house had refused to accept him, and on a division for another member proposed as speaker. Mr. Turcotte voted himself into the chair of the Quebec Leg. Ass. in 1878.

government generally proposes the first candidate for speaker, and another member of the cabinet seconds the motion.[1] In the English house, a private member is now always chosen to make the motion, so that it may not appear that the speaker is the "friend of the minister rather than the choice of the house."[2]

It is usual for leading members on both sides of the house, in England as in Canada, to congratulate the speaker elect in appropriate terms.[3] Mention is always made of this fact in the English, but not in the Canadian journals.[4]

When the speaker has made his acknowledgments to the house, the mace will be laid on the table, where it always remains during the sitting of the house, while the speaker is in the chair.[5] Then the house adjourns until the following day, or to such time as the governor-general

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[1] Can. Com. J., 1867-8, 1873, 1874, 1878, 1879 and 1883. See Can. Hans. [1878] 2. *Ib.* [1883] 1.

[2] May, 199-200; Opinion of Mr. Hatsell. See 129 E. Com. J. 5; 218 E. Hans. (3) 6-14, 1874; when Mr. Brand was chosen speaker on motion of Chaplin and Lord H. Cavendish. Also, remarks of Sir J. A. Macdonald as to advantages of adopting the same practice in Canada. Can. Hans. [1878], 2.

[3] 218 E. Hans. (3) 10, &c. Can. Parl. Deb. [1874] 1.

[4] 129 E. Com. J. 5.

[5] Hatsell says: When the mace lies *upon* the table it is a house; when *under*, it is a committee. When it is *out* of the house, no business can be done; when from the table and upon the serjeant's shoulder, the speaker alone manages. Before the election of speaker, it should be under the table, and the house cannot proceed to the election of a new speaker without the mace. 2 Hatsell, 218. The mace remains in the custody of the speaker until he resigns his office. It accompanies him on all state occasions, see *supra*, p. 166. The mace now in use belonged to the old legislative assembly of Canada, and was carried away by the rioters on the 25th April, 1849, when the Parliament House was burned down at Montreal, after the assent of the governor-general, Lord Elgin, to the Rebellion Losses Bill. It was subsequently recovered, however, and was lying on the floor of the hall when the assembly met on the 26th in the Bonsecours market. Two of the gilt beavers were missing, having been wrenched off by the rioters. The legislatures of Nova Scotia, New Brunswick, and Prince Edward Island have never used a mace. See Canadian Monthly for August, 1881, article. by Mr. Speaker Clarke on the mace.

will formally open Parliament. At the hour fixed for this purpose the speaker will take the chair, and read prayers before the doors are opened.[1] After which he will await the arrival of the "black rod" who presents himself in the manner previously described. When that functionary has delivered his message desiring the attendance of the Commons, the speaker elect, with the house, will proceed to the Senate chamber, where he will acquaint his Excellency that the house had "elected him to be their speaker, and will humbly claim all their undoubted rights and privileges." On behalf of his Excellency, the speaker of the Senate will reply that "he freely confides in the duty and attachment of the House of Commons to her Majesty's person and government, and upon all occasions will recognize and allow their constitutional privileges, etc."[2]

The choice of speaker by the Canadian Commons, it will be seen by the foregoing form, is not "confirmed" and "approved" as in the English house.[3] In the old legislatures of Canada previous to 1841 the speakers always presented themselves for, and received, the approval of the governors;[4] but a difficulty arose in 1827 in the legislature of Lower Canada in consequence of the refusal of Lord Dalhousie, then governor-general, to accept Mr. Papineau as speaker. The assembly passed resolutions declaring that the course followed by the governor-general was unconstitutional inasmuch as the act of Parliament under which the legislature was constituted "did not require the approval of the person chosen as speaker by the person administering the government of the province in the name of his Majesty." The assembly also expunged the proceedings from their journals, as had been done by the English Commons

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[1] See chapter vii., s. 10.

[2] Sen. and Com. J. 1867-8, 1873, 1874, 1879, 1883. For the formula when a speaker is elected during a Parliament and no reference to privileges is made, see Journals of 1878, and *Supra*, p. 187.

[3] 129 E. Com. J. 5; May, 201.

[4] Low. Can. Ass. J. [1792] 20; Upp. Can. Ass. J. [1792] 5.

in 1678 in the famous case of Sir E. Seymour.[1] No compromise being possible under the circumstances, the governor-general prorogued Parliament. In a subsequent session, the choice of Mr. Papineau, as speaker, was "approved" by Sir James Kempt, who had succeeded Lord Dalhousie as governor-general.[2] The form of approval continued to be observed in the legislatures of Upper and Lower Canada until the union of the two provinces[3] in 1841, when it was discontinued in the first session of the Parliament of Canada as the act of union was silent on the point.[4] In the legislatures of Nova Scotia, New Brunswick and Prince Edward Island the lieutenant-governors continue as formerly to ratify the choice of the assembly;[5] but in the legislatures of Ontario, Quebec, British Columbia and Manitoba, no "approval" is given, the same form being used in those bodies as in the Parliament of the dominion.[6]

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[1] 4 Parl. Hist. 1092; May, 203.

[2] III. Christie, 142, 218. It appears that Mr. Papineau had reflected very strongly in his addresses and manifestoes upon the governor-general. *Ib.* 140.

[3] The speaker, on these occasions, generally said: "It has pleased the house of assembly to elect me as their speaker. In their name I therefore pray that your Excellency may approve of their choice." To which the speaker of the legislative council replied: "I am commanded by H. E. the governor-in-chief to inform you that he allows and confirms the choice that the assembly have made of you as their speaker." Low. Can. Ass. J. [1835] 21. It is interesting to note, however, that this formal mode of confirming and approving the choice of speaker was not followed in the first session of the first parliament of Lower Canada. On this occasion the representative of the Crown simply stated that he had "no doubt that the house had made a good choice." Low. Can. Ass. J. [1792] 20.

[4] 3 and 4 Vict., c. 35, s. 33. Leg. Ass. J. [1841] 2, 3.

[5] N. S. Ass. J. [1883] 5, 6. N. B. Ass. J. [1879] 11, 12. P. E. I. Ass. J [1877] 5. As far back as 1806, Sir John Wentworth, governor of Nova Scotia, refused to ratify the choice of W. Cottnam Tonge as speaker by the assembly, which body, while expressing regret at the use of a prerogative long disused in Great Britain, acquiesced and elected Mr. Wilkins. See "Lower Canada Watchman" which gives a list of precedents of refusal of the Crown to accept speakers in England and her dependencies.

[6] Ont. Ass. J. [1880] 4; Quebec Ass. J. [1882] 3; B. C. Ass. J. [1872] 2; Man. Ass. J. [1880] 6.

**IV. Consideration of the Speech.**—On returning from the Senate chamber the speaker will resume the chair and—the members of the Commons being all assembled in their respective places—will inform the house that the usual privileges had been granted to the house by the governor-general.[1]

One of the first proceedings will be the presentation by the speaker of reports of judges and returns of the clerk of the crown in chancery respecting elections. It is then the invariable practice in the Commons, as in the Senate, before the speaker reports the speech to the house, to introduce a bill, and to move that it be read a first time only *pro forma*. This practice is observed in assertion of the right of Parliament to consider immediately other business before proceeding to the consideration of the matters expressed in the speech.[2]

It is then the practice for the speaker, standing on the upper step of the chair, to report that "when the house did attend his Excellency the Governor-General this day, his Excellency was pleased to make a speech to both houses of Parliament, of which he had, to prevent mistakes, obtained a copy." The house rarely calls upon the speaker to read the speech, as printed copies are always distributed immediately among the members; but it is entered on the journals as read.[3] The premier, or other member of government in his absence, will move that the speech be taken into consideration on a future day, generally on the following day, if the house should meet at that time.[4] On some occasions, to suit the convenience

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[1] Can. Com. J. 1867-8, 1873, 1874, 1879, 1883, p. 3.

[2] Low. Can. J., vol. 9, p. 30. Can. Com. J. (1867-8) 3, and all subsequent sessions. 129 E. Com. J. 12. Sen. S. O. I.; Sen. J. (1867-8) 60, &c. May, 47, 222. 2 Hatsell, 82. The resolution of the 22nd March, 1603, orders this procedure: "That the first day of every sitting, in every Parliament, some one bill, and no more, receiveth a first reading for form's sake."

[3] Can. Com. J. (1877) 10; *Ib.* (1883) 15.

[4] *Ib.* (1877) 10; *Ib.* (1883) 15.

of the house, when important matters are to come up for debate, and time is required for the consideration of certain papers, the speech is not taken up for several days.[1] It may, however, be immediately considered—and this is in accordance with the English practice—after it has been reported to the house.[2]

When the speech has been ordered to be taken into consideration on a future day, it is the practice to move the formal resolution providing for the appointment of the select standing committees of the house, and to lay before the house the report of the librarian, or other papers.[3] It is not deemed courteous to the Crown in the Canadian houses to discuss any matter of public policy before considering the speech. In 1878, Mr. Barthe introduced a bill in reference to insolvency, but withdrew it in deference to the wishes of the house until the address was adopted.[4] Of course circumstances may arise when the house may consider it necessary to act otherwise.[5] It is the usual practice in the English Commons to ask questions, move addresses for papers, and to present petitions while the address is under consideration,[6] and in the session of 1882, when the debate was prolonged, public bills were introduced and discussed on the motion for leave before the address was agreed to.[7]

When the clerk has read the order of the day for taking into consideration the speech of the governor-general—or

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[1] Can. Com. J. 1873. October sess., p. 119; matters relative to the Canada Pacific Railway were then considered, and Sir J. A. Macdonald, premier, resigned.

[2] 129 E. Com. J. 13; 237 E. Hans. (3) 7, 59. The practice in the English Parliament is invariable. In 1822 an attempt was made to defer the consideration of the speech for two days, but without success. II. Todd, 295. 6 E. Hans. N. S. 27, 47; 72 *Ib.* 60.

[3] Can. Com. J. (1867-8) 5; *Ib.* (1873) Oct. sess. 119; *Ib.* (1878) 14.

[4] Can. Hans. (1878) 18-19.

[5] 2 Hatsell, 308.

[6] 137 E. Hans. (3) 156-158; E. Com. J. 1876. 2 Hatsell, 309; May, 48-9.

[7] 266 E. Hans. 326, 342; 137 E. Com. J. 11, 16, &c.

as soon as the speech has been reported by the speaker, in case it is immediately considered—a resolution will be proposed for an address in answer. The government choose two members to move and second the address, generally two of the junior members.[1] In the English Commons these members appear in uniform or full dress; but in the Canadian house this formality is very rarely observed. This resolution is read and agreed to like other resolutions.[2] As a rule the question is put separately upon each paragraph of the resolution.[3] When a paragraph has been again read and the question proposed by the chair, a general debate may take place on such paragraph;[4] or amendments may be proposed thereto.[5] Members who have spoken on one paragraph may speak again on the question being proposed on a subsequent paragraph, which is obviously a distinct question.[6]

When the house has agreed to the resolution, it is referred to a select committee to prepare and report the draft of an address.[7] This is simply a formal proceeding—the address having been previously drafted by the law clerk. When it is reported by the chairman, the members of the committee will rise and stand uncovered, whilst the clerk reads the first paragraph *pro formâ*—the

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[1] Can. Hans. (1878) 39, Mr. Masson's remarks.

[2] Can. Com. J. (1876) 54; *Ib.* (1877) 15; *Ib.* (1883) 18.

[3] *Ib.* (1867-8) 11; *Ib.* (1873) October session, 126; *Ib.* (1875) 56.

[4] *Ib.* (1867-8) 11; *Ib.* (1870) 16; *Ib.* (1878).

[5] *Ib.* (1873) October session, 126, 128. The procedure in the English Commons appears to be different; the resolution is not read twice, but amendments may be proposed to any paragraph in the same form as amendments to other questions, when the speaker has proposed the question for agreement in the resolution. May, 223. 105 E. Com. J. 6; 129 *Ib.* 13.

[6] Parl. Deb. 1867-8. Remarks of Sir J. A. Macdonald as to the right of Mr. Howe to address the house a second time. Also, Can. Hans. (1878) Dr. Tupper, 95, 306. In the English house a general debate may take place on every amendment moved to a particular paragraph. 102 E. Hans. (3) 74-219.

[7] Can. Com. J. (1883) 15.

reading of the whole address being unnecessary. The address is read a second time and agreed to, and amendments may be again proposed to any paragraph, on the second reading of the address; but none may be moved after the question has been put from the chair for agreeing with the committee in the address.[1] But under Canadian practice no amendments are ever proposed at this stage; they are always proposed on the resolution for the address. As soon as the address has been agreed to, it is ordered to be engrossed and presented to his Excellency by such members of the house as are of the queen's privy council.[2] The next proceeding will be to move immediately that the house resolve itself on some future day into a committee to consider of supply and ways and means.[3]

It may not be inappropriate to observe here that of late years there has been a disposition shown in the Canadian as well as in the British Parliament to limit the debate on the address as far as possible. The address is now framed in such terms as may avoid the necessity on the part of the opposition of moving any amendment or opening up a prolonged debate.[4] It is felt that the questions mentioned in the speech can be more conveniently discussed when the house is in full possession of all the information necessary to the consideration of any important subject. Sometimes, however, the house may be called upon to express its opinions at length, and to vote on an amendment to the address, which involves the fate of the government of the day.[5] But under ordinary circumstances

[1] May, 200; 129 E. Com. J. 29. Can. Com. J. (1867-8) 15; *Ib.* (1877) 17.

[2] *Ib.* (1876) 54, 55; *Ib.* (1883) 18, 20. The practice of "engrossing" is no longer followed in the English Parliament nor in the Senate. Sen. J. (1883) 36. 137 E. Com. J. (1882) 46, 47, 54-2.

[3] Can. Com. J. (1877) 18; *Ib.* (1883) 20.

[4] Can. Hans. (1875) Sir J. A. Macdonald, p. 12; Can. Hans. (1878) remarks of the premier, Mr. Mackenzie, p. 36. *Ib.* (1879) 16. 232 E. Hans. (3) 73, Marquess of Hartington.

[5] Can. Com. J. (1873 October session), 126. In 1878 a very lengthy

the desire is to pass the address with as little delay as possible, and to confine the debate to a general review of the policy of the government, without taking up those specific subjects on which the necessary information is not yet before the houses.[1] It is felt desirable to allow the address to pass without a division and "be in point of fact the unanimous and respectful expression of the deference with which the houses receive the first communication of the session" from the sovereign or her representative.[2]

But of course whilst there is a growing disposition on the part of the houses in Canada and England to limit debate on the address, yet it is always open to any number of members to avail themselves of the great latitude that they have at this stage of discussing public matters. In the session of 1882, the address was debated in the English House of Commons for several days, in fact even to an inordinate extent;[3] but the sense of the house is obviously opposed to these prolonged discussions, which are not likely to occur except under such exceptional circumstances as have existed for some time past to complicate the debates of the English Parliament.

**V. Proceedings in Subsequent Sessions.**—In sessions, subsequent to the first, the two houses assemble at the time appointed, with the speaker in the chair of each. Prayers will be read in each house, and new members may be introduced in the Senate in the manner described in chapter two. The Senate will then adjourn during pleasure,

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debate took place on the address. The tariff was one of the principal topics of discussion, and the inconvenience of discussing it at that stage was evident from the fact that the same subject came up again on the budget. In 1879 the address was agreed to in the afternoon of one day. In 1883 the debate did not continue beyond one sitting.

[1] II. Todd 295-7; 232 E. Hans (3) 45, 54, 56, 73.

[2] 144 E. Hans. (3) 22-44. Lord Derby, and Earl of Clarendon.

[3] The debate commenced on the 7th Feb. and did not close until the 18th.

and, on resuming, the Commons will be summoned with the usual formalities as soon as his Excellency, the Governor-General, has taken his seat on the throne. The Commons being present at the bar, the governor-general will open Parliament with the usual speech, and the Commons will then return to their house.[1] Before the speaker has announced the speech, it will be his duty to inform the house immediately of any notifications of vacancies in the representation, and to lay before it any returns, reports, or papers relative to the seats of members—all of which must be entered on the journals.[2] The speech will then be taken up as in the manner previously described.

**VI. Prorogation.**—The proceedings at the prorogation of Parliament may now be briefly described. As soon as the business of the two houses is concluded, or so nearly concluded that there can be no doubt as to the time of prorogation, it is customary for the governor-general, through his secretary, to inform the speaker of each house that he will proceed to the Senate chamber at a certain hour to close the session.[3] On the day, and at the hour appointed, the two houses assemble, and as soon as his Excellency has taken his place on the throne the speaker of the Senate will command the gentleman usher of the black rod to proceed to the House of Commons and acquaint that house:—"It is his Excellency's pleasure they attend him immediately in this house." The serjeant-at-arms in the Commons will announce the message in the usual words: "A message from his Excellency, the Governor-General;" and the speaker will reply: "Admit the messenger." The black rod presents himself in the way already described, and informs the house: "I am commanded by his Excellency the Governor-General, to

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[1] Sen. J. (1877) 13-18; Com. J. 1871, 1877, &c.

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

[3] Sen. J. (1878) 291; *Ib.* (1883) 282. Com. J. (1870) 352; *Ib.* (1883) 435.

acquaint this honourable house that it is the pleasure of his Excellency that the members thereof do forthwith attend him in the Senate chamber." When the messenger from the Senate has retired, the speaker will proceed with the Commons to the Senate chamber, and take his proper place at the bar. The clerk of the crown in chancery will then proceed to read the titles of the bills, and when these have been assented to, or reserved in the manner hereafter described,[1] the speaker will make the usual speech in presenting the supply bill, to which the royal assent will be given in the prescribed words.[2] Then his Excellency the Governor-General, will proceed to deliver the speech customary at the close of the session. When his Excellency has concluded reading the speech in the two languages, the speaker of the Senate will say: "It is his Excellency the Governor-General's, will and pleasure that this Parliament be prorogued until ————, to be then here holden; and this Parliament is accordingly prorogued until ————." The Commons then retire, and the session is at an end according to law.[3]

At the end of a session, as we have just seen, the speaker of the Senate announces his Excellency's will and pleasure that Parliament be prorogued, but subsequently this is done in the "Canada Gazette," through the clerk of the crown in chancery.[4] The governor-general may, however, with the advice of his council, summon Parliament for the transaction of business at any time after the issue of the proclamation of prorogation.[5] When Parliament has been dissolved and summoned for a certain day, it meets on that day for the despatch of business, if not previously prorogued, without any proclamation for that

[1] Chap. on Bills.

[2] *Ib.* on Supply.

[3] Sen. J. (1883) 292-98. Can. Com. J. (1883) 438-41.

[4] See proclamations at commencement of Journals. Also, "Canada Gazette," Aug. 18, 1883.

[5] Journals (1879) ix-x.

purpose, the notice of such meeting being comprised in the proclamation of dissolution and the writs then issued.[1] The governor-general will be always guided by British constitutional practice with respect to the prorogation and dissolution of Parliament, and when he declines the advice of his responsible ministers in such matters he intimates that he has no longer confidence in them and virtually dismisses them from his counsels.[2]

In old times of English parliamentary history, it was not unusual for the Crown to signify its pleasure that Parliament should be adjourned till a certain day; but even then it appears that the house did not think itself bound to obey the sovereign's commands.[3] But no case of this kind has occurred in England since 1814;[4] and none can now ever arise under the constitutional system which makes the ministry responsible for the acts of the Crown. In Canada, such cases have never occurred. When it is sometimes found necessary, as in 1873, to have a long adjournment, ministers must assume the responsibility, and persuade the house as to the necessity of such a course.[5]

**VII. Effect of Prorogation.**—A prorogation necessarily puts an end, for the time being, to the functions of the legislative body, as an adjournment is a continuation from day to day of the functions of each of its branches.[6] The legal effect of a prorogation is to conclude a session; by which all bills and other proceedings of a legislative character depending in either branch, in whatever state they are at

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[1] May, 51.

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

[3] 2 Hatsell, 317-321. May, 51.

[4] 49 Lord's J. 747; 69 E. Com. J. 132.

[5] Despatch of Lord Dufferin; Com. Jour. 1873, 2nd. sess., p. 16.

[6] Cushing, 519.

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

**VIII. Dissolution.**—Parliament was formerly terminated on the demise of the Crown in Canada as in England.[6] The legislature of Canada, in 1843, passed an act providing

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[1] 2 Hatsell, 335. May, 49. 1 Blackst., 186.

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

[3] 1 Todd's Parl. Gov. in England, 247 *n.* 86 E. Com. J. (1831) part 2, p. 525. Mirror of P. (1841) 2303, 2346; 144 E. Hans. (3) 2209; 153 *Ib.* 1528, 1607. Leg. App. J., August sess. of 1863, pp. 91, 93, 282, 288; 1865, Jan. sess., pp. 226, 246. Todd's Private Bills 62, 63.

[4] 180 E. Hans. (3) 692, 851.

[5] 1 Todd's Parl. Gov. in England, 247 *n.* Com. Pap. 1861, vol. xi, p. 439.

[6] The Leg. Ass. of Lower Canada, on 24th April, 1820, on death of Geo. III; on August 30, 1830, on death of Geo. IV. In Queen Anne's reign the rule that Parliament was *ipso facto* dissolved by the death of the sovereign was relaxed, and it was permitted to sit for 6 months afterwards; and this restriction was swept away by the Reform Act of 1867, so that the

that "no Parliament of this province, summoned or called by our Sovereign Lady the Queen, or her heirs and successors, shall determine or be dissolved by the demise of the Crown, but shall continue to meet, notwithstanding such demise."[1] This act was re-enacted in the first session of the Parliament of the dominion of Canada.[2]

Parliament may be dissolved at any time by the Crown, under the advice and consent of the privy council. It is the rule in Canada as in England, when it is intended to dissolve Parliament, first to prorogue it to a certain day; and then, at some intermediate period, to issue a proclamation discharging the members of both houses from their attendance on that day, and formally dissolving Parliament.[3]

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demise of the Crown will in future have no effect whatever on the continuance of the Parliament then in being (30 and 31 Vict., c. 102, s. 51). Taswell-Langmead, 735-6.

[1] 7 Vict., c. 3, s. 1. Cons. Stat. of Canada, c. 3.

[2] 31 Vict., c. 22, s. 1.

[3] See Journals for 1873, 1874, 1879, 1883, at beginning of vols. The reasons of this old English usage, according to Hatsell, (II, 383) are probably those suggested by Charles I in his speech, in 1628:—"That it should be a general maxim with kings, themselves only to execute pleasing things, and to avoid appearing personally in matters that may seem harsh and disagreeable."

# CHAPTER VII.

*ORDER OF BUSINESS.*

I. Days and Hours of Meeting.—II. Adjournment over Holidays and Festivals.—III. Long adjournments.—IV. Decease of Senators and Members.—V. Meeting at an earlier hour—Two sittings in one day.—VI. Protracted Sittings.—VII. Proceedings at six o'clock and half-past seven p.m.—VIII. Adjournment during pleasure.—IX. Quorum in both Houses.—X. Prayers.—XI. Order of Daily Business.—XII. Calling of Questions and Orders.—XIII. Arrangement of Orders.

**I. Days and Hours of Meeting.**—The Senate and House of Commons meet every day at three o'clock in the afternoon, except on Saturdays.[1] The houses sometimes meet on Saturdays, or at an earlier hour, towards the close of the session, when the work of the committees is nearly concluded, and there is a general desire to facilitate the progress of public business. The leader of the ministry in either house should always give notice of his intention to ask the members to sit on Saturdays; and the motion should also state the order of business; that is to say, whether government or private measures are to have precedence.[2]

**II. Adjournment over Holidays.**—The houses generally adjourn over certain statutory holidays and festivals, or holy days observed by religious bodies. These days are: Ash-Wednesday;[3] Ascension Day;[4] Corpus Christi;[5] Annunciation;[6]

[1] Sen. R., 3, and Com., R. 1.
[2] Can. Com. J. (1877), 227; *Ib.* (1878), 186, 220 (earlier hour).
[3] *Ib.* (1870), 31; *Ib.* 1871, 1875, 1876, 1877, 1878, 1879, 1881.
[4] *Ib.* 1869; *Ib.* 1873; *Ib.* 1878; *Ib.* 1883.
[5] *Ib.* (1869), 137.
[6] *Ib.* (1870), 107; *Ib.* 1873; *Ib.* 1878; *Ib.* 1879; *Ib,* 1880.

Good Friday ;[1] Easter Monday ;[2] Queen's Birthday.[3] The House of Commons has sat on Easter Monday, when it has been necessary to close the business of the session expeditiously.[4] It is the practice to make the following formal motion, in case of a proposed adjournment, some time in the course of the day before the speaker leaves the chair: "That when this house adjourns this day, it do stand adjourned till ——— next."[5] In 1872 the houses adjourned over the day appointed to give thanks for the recovery of the Prince of Wales.[6]

**III. Long Adjournments.**—During the first session of the Parliament of the dominion, the houses adjourned from the 21st of December to the 12th of March, in order to give full opportunity to the government to consider and complete all the measures necessary to the inauguration of a new constitutional system. In such a case, it is usual for the governor-general to come down on or before the day of adjournment, for the purpose of assenting to all the bills that have passed the two houses.[7] In 1873 the houses adjourned from the 12th of May to the 13th of August in order to receive the report of a committee appointed by the Commons to inquire into certain matters connected with the construction of the Canadian Pacific Railway.[8]

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[1] Can. Com. J. (1870), 181, invariable every session.

[2] *Ib.* (1870), 196 ; *Ib.* (1883), 147.

[3] *Ib.* (1867-8), 122 ; *Ib.* (1872), 163 ; *Ib.* (1883), 435. The Senate in 1883 met on the Queen's Birthday on account of the urgent state of the public business. The house adjourned during pleasure on the previous day and met on the Queen's Birthday by general consent. Sen. Hans., pp. 657, 658. No entry consequently is made of the meeting on that day. Jour. p. 288.

[4] The house sat on Easter Monday in 1877 and 1878.

[5] Can. Com. J. (1867-8), 122 ; *Ib.* (1877), 25. In case it is decided not to sit in the evening for some special reason, it is usual to make a formal motion to that effect before the speaker leaves the chair at 6 o'clock. Can. Com. J. (1880-1), 92 ; Gov.-Gen's levee, Hans. p. 485.

[6] Sen. J. (1872), 24 ; Com. J., p. 8.

[7] Can. Com. J. 1867, Dec. 21.

[8] *Ib.* (1873), 423, 436, 437.

There was a second session of Parliament during the autumn of the same year. Again in December, 1880, the houses met for the purpose of considering the contract for the construction of the Canadian Pacific Railway, and adjourned from the 24th of the month to the 4th of January, 1881. The houses did not sit on the Epiphany when they resumed business.

**IV. Decease of Members.**– It was the practice in the Senate up to a very recent date to adjourn the house out of respect to a deceased senator;[1] but this is now done only in very exceptional cases. The house adjourned, for instance, on the death of Mr. Christie, formerly speaker, and two senators were named to attend the funeral.[2] The Senate has also more than once adjourned to show respect to the memory of a distinguished member of the House of Commons.[3] But though the Senate does not now adjourn under ordinary circumstances, a member may refer in appropriate terms to a deceased senator.[4]

It was formerly also the usage for the House of Commons to adjourn when it was informed of the decease of a member.[5] In 1868, the house adjourned on the news of the assassination of Mr. McGee, whilst on his way home from the Commons.[6] The house has also adjourned to give an opportunity to members to attend the funeral of some distinguished person, who was not at the time a member.[7] The old practice of adjourning the House of Commons on the death of a member has been discontinued

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[1] Sen. Deb. (1871), 6-8; *Ib.* (1872), 14; *Ib.* (1873), 233-235, &c. Jour. (1872), 29, &c.

[2] Sen. Hans. (1880-81), 44-45; Jour. pp. 39, 40. On this occasion Mr. Scott referred to the practice of the Senate.

[3] D'Arcy McGee, 1867-8. Sen. J. p. 213; Sir George E. Cartier, 1873, Debates, p. 284; Jour., p. 306.

[4] Sen. Hans. (1880), 211 (death of Sen. Seymour.)

[5] Can. Com. J. (1870), 114, 175; Parl. Deb., p. 718.

[6] Can. Com. J. (1867-8), 186.

[7] *Ib.* (1869), 100; H. J. Friel, Mayor of Ottawa.

since 1871,[1] and has been only revived in a very exceptional case—that of Mr. Holton, a very prominent and respected member, who died suddenly during the session of 1880.[2] In a subsequent session the expediency of adhering to the practice of the English Parliament except under extraordinary circumstances was strongly urged by leading members on both sides of the house.[3]

**V. Two Sittings on one Day.**—If it is intended to meet earlier next day, a formal motion should be made previous to the adjournment of the house, as in the case of holidays or church festivals.[4] Sometimes the house adjourns at six until half-past seven o'clock, in order to have two sittings on the same day;[5] in some cases, three distinct sittings have been had on one day.[6] When election committees met before the passage of the act providing for the trial of controverted elections by the judges, the house was frequently adjourned for a few minutes in order to enable those committees to assemble in accordance with law.[7]

**VI. Protracted Sittings.**—The House of Commons sits very frequently after midnight, and when it does so the fact must be recorded in the journals.[8] It has been attempted several times to limit the sitting of the house to a certain hour every night, but the motion has been withdrawn

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[1] Parl. Deb. 1872, p. 181; remarks of Sir J. A. Macdonald, on the occasion of the death of Mr. J. Sandfield Macdonald who had himself urged a change of practice in this particular.

[2] Can. Com. J. (1880), 137; Hans. p. 649.

[3] Can. Hans. (1880-1), 223-4. For recent cases of adjournment of the English house (death of Mr. Wykeham Martin in the library, in 1878, &c.,) see May, 241-2. Both houses adjourned after the assassination of Lord Cavendish and Mr. Burke; 269 E. Hans. (3), 315, 319.

[4] Can. Com. J. (1870), 226; *Ib.* (1871), 221, 256, 275, 298; *Ib.* (1878), 220.

[5] *Ib.* (1867-8) 59, 80, 315; *Ib.* (1878), 292. The same course has been followed in the Senate. Jour. (1880), 234.

[6] Leg. Ass. J. (1866), 355.

[7] Can. Com. J. (1867-8), 207, 218, 301. Cons. Stat. c. 7, s. 79.

[8] Can. Com. J. (1877), 98. *Ib.* (1878), 283, etc.

when leading members on both sides have shown that it is practically impossible to carry it out on all occasions.[1] In 1877, a sort of understanding was arrived at that the house should adjourn at or near midnight, whenever it could be done without interfering with the progress of business before the house; but even this understanding could never be carried out.[2] In the old Canadian legislature the house sat in 1858 from 3 o'clock on the afternoon of May 25 till 6 o'clock in the evening of the following day. On this occasion Mr. Speaker decided that the orders of the 25th of May must be proceeded with after 3 o'clock p.m. on the 26th of May, as there had been no adjournment since the previous day, and no new meeting of the house under the first rule.[3] In the following year, the house sat still longer, for nearly 39 hours, with two intermissions at six o'clock p.m, on each day.[4] The House of Commons also sat from three o'clock on Friday to six p.m. on Saturday evening, on the occasion of an exciting debate with respect to the constitutionality of the action taken by Lieutenant-Governor Letellier de St. Just in the winter of 1878, when he dismissed the de Boucherville ministry in the province of Quebec.[5]

The English Parliament has occasionally met on Sundays, but only in cases of grave necessity.[6] On one

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[1] Can. Hans. (1877), Feb. 19; *Ib.* (1878), 393-5.

[2] *Ib.* (1878), 393.

[3] Speak. D. 28. Journals, pp. 506-515.

[4] Seigniorial Tenure Resolutions, April 14 and 15, 1859.

[5] April 12th and 13th, 1878. On this occasion the house was a scene of great disorder; the opposition being determined to debate the question at length despite the wish of the ministerial supporters to bring it to a close. The sittings of 1858 and 1859 were also characterized by much confusion and irrelevant debate.

[6] On the demise of the Crown, 13 E. Com. J. 782; 18 *Ib.* 13; 28 *Ib.* 929, 933; 75 *Ib.* 82, 89. Commonwealth period, 1641. The plot, 1678. Reform bill, 18th December, 1831. Habeas corpus suspension act (Ireland), Feb. 18th, 1866. The house sat into Sunday, on 3rd July, 1880, and on several occasions since then.

occasion since 1867 the Commons of Canada sat over Saturday until nearly one o'clock on Sunday morning.[1]

**VII. Proceedings at 6 o'clock and half-past 7 p.m.**—As soon as six o'clock arrives during a sitting, and it is intended to continue business in the evening, the speaker leaves the chair, and resumes it at half-past seven o'clock. The rules of the two houses on this point are the same: [2]

"If at the hour of six o'clock p.m., the business of the house be not concluded, the speaker shall leave the chair until half-past seven"

No record is made of the fact in the journals, for the mace is left on the table, and the house is considered still in session. If the house is in committee of the whole, the speaker takes the chair at six and makes the usual announcement: "It being six o'clock, I leave the chair." The speaker will take the chair at half-past seven o'clock, and call on the chairman to resume. In case private bills are fixed for the first hour after half-past seven (R. 19) they must be first disposed of, and then the committee resumes. [3]

**VIII. Adjournment during Pleasure.**—The Senate and Commons also sometimes suspend a sitting during pleasure, or with an understanding that they resume at a certain hour. This is done constantly at the close of a session, whilst one house is waiting for messages from the other.[4] As the house is technically in session—the mace being on the table as at six o'clock—no entry is made of the fact in the Commons' journals;[5] but it is always recorded in the Senate minutes.[6] But every formal motion

[1] Can. Com. J. (1870), 237; interest bill.
[2] Sen. R. 4; Com., 2.
[3] Can. Com. J. (1874), 113; *Ib.* (1878), 118-121; *Ib.* (1883), 153, 223.
[4] Sen. J. (1867-8), 100, &c. See *supra*, 242 *n.* (Queen's Birthday).
[5] May, 241.
[6] Sen. J. (1877), 309.

for adjournment—even for half an hour[1]—must be entered as well as the time at which the House of Commons adjourns every sitting after midnight.[2]

**IX. Quorum.**—By the 35th and 48th sections of the British North America Act, 1867, it is provided that the presence of at least 15 Senators and 20 members of the House of Commons, including the speaker, shall be necessary to constitute a meeting of either house, for the exercise of its powers. Both houses have standing orders on this matter. Under the orders of the Senate, it is provided:

"5. If thirty minutes after the time of meeting, 15 senators, including the speaker, are not present, the speaker takes the chair, and adjourns the house till the next sitting day; the names of the senators present being taken down by the clerk." [3]

"6. When it appears, during the sitting of the Senate on notice being taken that fifteen senators, including the speaker, are not present, the senators who may be in the adjoining rooms being previously summoned, the speaker adjourns the house as above, without a question first put."

The standing orders of the House of Commons are as follows:

"1. The time for the ordinary meeting of the house is at three o'clock in the afternoon of each sitting day; and if at that hour there be not a quorum, Mr. Speaker may take the chair and adjourn."

"4. Whenever the speaker shall adjourn the house for want of a quorum, the time of the adjournment and the names of the members then present, shall be inserted in the journal."

Accordingly when the attention of the speaker has been called to the fact that there is no quorum present, he will proceed at once to count the house, and if there are not

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[1] Can. Com. J. (1870), 13.

[2] *Ib.* (1877), 237; *Ib.* (1878), 224; *Ib.* (1883), 317. 137 E. Com. J. 440.

[3] In the House of Lords, only three lords may constitute a quorum, May, 235.

twenty members present, including himself, the clerk will take down the names, and the speaker will then adjourn the house without a question first put until the usual hour on the next sitting day.[1] If it should appear, after a division, that a quorum is not present, the house should be adjourned immediately;[2] but when it is found in committee of the whole that twenty members are not in the house, the committee must rise, and the chairman report the fact to the speaker, who will again count the house, and when there is not a quorum, he must adjourn the house forthwith; while the house is being counted the doors remain open and members can come in during the whole time occupied by the counting.[3] A "count out" will always supersede any question that is before the house; and if an order of the day for supply, or for the reading or committal of a bill be under consideration at the time, and there is no quorum present, the house must be asked at a subsequent sitting to revive the question that may have lapsed in this way.[4] A "count out" is of constant occurrence in the English House of Commons;[5] but only one case has happened in the Canadian Commons since 1867.[6]

**X. Prayers.**—Like the old legislative councils of Canada, the Senate have always opened their proceedings with prayers, and a chaplain is appointed by the governor-general for that purpose.[7] He reads the prayers as soon

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[1] Can. Com. J. (1869), 243.

[2] 23 E. Com. J. 700; *Ib.* 845.

[3] May, 237.

[4] 131 E. Com. J. 391, 329; forfeiture relief bill, ordered to be considered on a future day. 235 E. Hans. (3), 203; 131 E. Com. J. 282-3, Com. of supply. 137 *Ib.* 18, 297, 306, 483.

[5] On Tuesdays and Fridays, sess. of 1873, 14 times; Parl. P. 1873, vol. 53, p. 1. In 1882, 20 times; Jour. vol. 137.

[6] In 1869, Jour. p. 243. Several cases can be found in the journals of the legislative assembly of Canada (1858), 231; (1861), 342; (1865, Aug. Sess.), 110.

[7] *Supra*, p. 160.

as the speaker takes the chair, and before his Excellency presents himself in the chamber at the opening of Parliament.[1]

The old legislative assembly of Canada never commenced its proceedings with prayer;[2] and it was not until the session of 1877 that steps were taken in the Canadian House of Commons to follow the example of the British house in this particular. On motion of Mr. Macdonald of Toronto a committee was appointed to consider the subject, and it reported a form of prayer which appears in the appendices to this volume and is read by the speaker every day, before the opening of the doors. The report[3] which was adopted *nem. con.* recommends that "the aforesaid form of prayer be read by Mr. Speaker in the language most familiar to him."[4] Mr. Speaker Blanchet read the prayers in English and French on alternate days.

In accordance with English practice, at the commencement of a new Parliament, the speaker reads prayers on the day following his election, and before the causes of summons are announced.[5] In subsequent sessions the prayers are said as soon as the Commons meet in their chamber, before going up to the Senate in obedience

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[1] Sen. J. (1874), 13; *Ib.* (1878), 14; *Ib.* (1879), 16; *Ib.* (1883), 13. The clerk assistant has read the prayers in the absence of the chaplain.

[2] But the legislative assembly of Upper Canada had a chaplain who read prayers daily, Upp. Can. J. (1792), 8. The P. E. Island, New Brunswick, and Nova Scotia legislatures have also had a chaplain for many years. But in 1881 the speaker was authorized in the Nova Scotia assembly to discharge the duties of chaplain and a form of prayer was adopted, N. S. Jour. (1881), 5. In the New Brunswick assembly, prayers are read by the speaker in the absence of the chaplain. R. 38.

[3] Can. Com. J. [1877], 26, 42.

[4] This was added at the instance of the French-speaking members of the house. Hans. [1877], 95.

[5] May, 204, 219; 121 E. Com. J., 9; 129 *Ib.*, 5. Can. Com. J. [1879], 2; *Ib.* [1883], 2. Mr. Anglin read prayers after his return from the Senate Chamber in 1878, when he was re-elected speaker.

to the command of her Majesty's representative.[1] In case of a vacancy in the office of speaker during a session of Parliament, prayers are only read after the election of a new speaker and before the house proceeds to the upper chamber.[2]

**XI. Order of Business.**—It will now be found most convenient to give some explanations of the manner in which the business of the houses is transacted every day. The order of daily business after prayer in the Senate is as follows, under rule 12:

Presentation of petitions.
Reading of petitions.
Presenting reports of committees (not included in rule.)
Notices of motions (this includes questions).
Motions (of which notice has been given).
Orders of the day.

Orders of the day for the third reading (rule 45), take precedence of all others, except orders to which the Senate may have previously given priority. The orders (rule 13) which, at the adjournment, have not been proceeded with, are considered as postponed until the next sitting day, to take precedence of the orders of the day, unless otherwise ordered. The orders are taken in their regular order though government orders, by consent, are generally allowed the precedence.

Motions and orders are generally allowed to stand in the Senate when not taken up after being called. They are rarely dropped in the absence, or without the consent, of the member who has them in charge.

In the House of Commons, as soon as the speaker takes the chair, he calls the house to order, and then standing up, proceeds to read the authorized form of prayer,[3] all

[1] May, 219; 137 E. Com. J., 1; Can. Com. J. [1882], 1. In 1880–1 it was necessary to follow the precedent of 1878, on account of the early arrival of the governor-general.

[2] 127 E. Com. J., 23, 24; election of Mr. Speaker Brand.

[3] See appendix.

the members rising and remaining with their heads uncovered, until the prayers are concluded. Then the speaker orders that the doors be opened, unless it is proposed to discuss some matter of privilege or of internal economy with closed doors. The routine business is next taken up in the order prescribed by rule 19:

Presenting petitions.
Reading and receiving petitions.
Presenting reports by standing and select committees.
Motions.

The same rule also arranges the order of business, after daily routine, on the following days:

MONDAY.

Private bills.
Questions put by members.
Notices of motions.
Public bills and orders.
Government notices of motion.
Government orders.

TUESDAY.

Government notices of motions.
Government orders.
Public bills and orders.
Questions put by members.
Other notices of motions.
Private bills.

WEDNESDAY.

Questions put by members.
Notices of motions.
Public bills and orders.

(*From half-past seven o'clock, p.m.*)

Private bills for the first hour.
Public bills and orders.
Government notices of motions.
Government orders.

THURSDAY.

Questions put by members.
Public bills and orders.
Notices of motions.
Government notices of motions.
Government orders.

FRIDAY.

Government notices of motions.
Government orders.
Public bills and orders.
Questions put by members.
Other notices of motions.

(*From half-past seven o'clock, p.m.*)

Private bills for the first hour.

Each member of the Senate and House of Commons is provided every day with a printed sheet, in which the business of the day is arranged in accordance with the rules and orders. In the Commons a special order paper is provided; in the Senate the business of the day is stated at the end of the minutes of proceedings.

**XII. Calling of questions and orders.**—Up to the session of 1876, when the rules were amended, questions and notices of motion were constantly allowed to stand in case members were absent or were not prepared at the moment to proceed with them; but great inconvenience and loss of time resulted from so irregular a procedure,[1] and the consequence was the adoption of the following rule:

"Questions put by members, notices of motions, and orders (other than government notices of motions and orders), not taken up when called, shall be dropped. Dropped orders shall be set down in the Order Book, after the orders of the day for the next day on which the house shall sit."

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[1] Can. Hans. [1875], 1088.

This rule is now rigidly enforced. If a member is absent when the speaker calls the question or notice of motion which the former has put on the paper, it disappears, and he must again give notice if he wishes to proceed with the matter.[1] In case, however, of an order of the day, it will go down to the foot of the orders of the next sitting day, in accordance with the foregoing rule.

**XIII. Arrangement of Orders.**—The orders of the day are divided into "government orders" and "public bills and orders." All government measures appear in the former; all motions and bills in the hands of private members appear in the latter. The 24th rule regulates the order in which such questions are to be taken up:

"All items standing on the orders of the day, shall be taken up according to the precedence assigned to each on the Order Book; the right being reserved to the administration of placing government orders at the head of the list, in the rotation in which they are to be taken on the days on which government bills have precedence."[2]

Public bills and orders are always taken up in their regular order; but it has generally been the practice to call government orders according to the convenience of ministers. It is, of course, open to any member to object and enforce the above rule.[3]

As soon as an order of the day has been called by the speaker, and read by a clerk at the table, the member having charge of the bill or question, will make the motion he proposes in reference thereto; and no other

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[1] Can. Hans. [1876], 907. *Ib.* [1878], 393. It is usual, however, to permit motions to remain on the paper, when the government desire it. This understanding was arrived at by the committee who revised the rules in 1876. Remarks of Sir J. A. Macdonald on Mr. Dewdney's motion, Hans. [1878], 1878. Mr. Christie's motion in respect to the observance of the Sabbath, February 24, 1879. Also, Can. Hans. [1879], 1762–3.

[2] This is identical with the English S.O., No. xlii.

[3] Can. Hans. [1875], 1088. *Ib.* [1877], 842; Sir J. A. Macdonald.

member has the right to interpose unless with his consent.[1] When an order has been read, however, a petition may be presented in connection with the subject under consideration; but *not after* a motion in relation thereto has been proposed in due form.[2]

The following are the standing orders of the Commons with respect to the arrangement of bills on the order paper:

"20. Orders of the day for the third reading of bills shall take precedence of all other orders for the same day except orders to which the house has previously given priority." [3]

"21. Bills reported from committees of the whole house, with amendments, shall be placed on the orders of the day, for consideration by the house, next after third readings."

"22. Bills reported after second reading from any standing or select committee, shall be placed on the orders of the day following the reception of the report, for reference to a committee of the whole house, in their proper order, next after bills reported from committees of the whole house. And bills ordered by the house, for reference to a committee of the whole house, shall be placed, for such reference, on the orders of the day following the order of reference, in their proper order, next after bills reported from any standing or select committee."

"23. Amendments made by the Senate to bills originating in this house, shall be placed on the orders of the day, next after bills reported on by standing or select committees."

If a bill on the order paper is taken up and the debate thereon adjourned, it does not go to the foot of the list of the next day, but keeps the proper place to which it is entitled under the rules just cited, with respect to the precedence of bills at different stages.[4] In this respect

[1] May, 285. 159 E. Hans. (3), 26.

[2] 185 *Ib.*, 1091-93.

[3] Also, Sen. R., 45.

[4] Orders of the day, Mr. Charlton's Bill (No. 13), respecting adultery, &c., 20th and 21st March, 1883. The debate was adjourned on the question for the consideration of the bill as amended; and it was kept at the head of the list, two bills for the third reading alone having precedence under the 20th rule. Hans., p. 287.

bills occupy a more favourable position than ordinary motions, which, when the debate is adjourned, go to the foot of the order paper.[1]

Sometimes towards the close of the session, bills reported from select or standing committees are placed immediately (by general consent only) on the order paper for consideration in committee of the whole.[2]

The houses frequently agree to give precedence to an important question, and in that case a special order will be made. For instance, the order for the second reading of an insolvency bill on a particular day has been discharged, and made the first order on a subsequent day.[3] Sometimes the house will give precedence to several orders at the same time, when they refer to the one question.[4] Or it may consent to suspend rule 19 in order to take up a question.[5] Motions in the hands of private members are sometimes taken out of their regular place and placed on the government orders for consideration. This was done in 1873, in the case of a motion for the adoption of a report relative to parliamentary printing.[6] In 1879, a notice of motion was given precedence on the order paper.[7] Public bills and orders are also sometimes given precedence over notices.[8] It may sometimes happen that a public bill will be considered of sufficient importance to cause it to be

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[1] Orders of the day, Mr. Casey's motion respecting a claim for gravel, 30th April and 1st May, 1883. Rule 27 regulates motions (*infra* p. 257) and gives precedence to certain stages of bills.

[2] Can. Com. J. [1877], 188.

[3] Can. Com. J. (1877), 39; *Ib.*. 233. In the latter case a day set apart by the rule, and generally devoted in its entirety to notices of motions, was given up to the consideration of an important question. Also, Sen. J. (1867–8), 179, 280. *Ib.* (1880), 85–6. A question respecting an election petition has been given precedence as a matter of privilege. Com. Jour. (1880-1), 164–5.

[4] Can. Com. J. (1874), 26; *re* Louis Riel, expelled.

[5] *Ib.* (1867–8), 247.

[6] *Ib.* (1873), 370.

[7] Mr. Fortin's motion respecting fisheries; Can. Com. J. (1879), 337.

[8] Can. Com. J. (1879), 311–2, 337.

placed on the government orders, in the name of a minister. This was done in the session of 1878, on the recommendation of the committee on banking and commerce, in the case of a bill, introduced by Mr. Blake, to make provision for the winding up of insolvent incorporated fire or marine insurance companies.[1] The same course was taken with reference to two other equally important measures—one to amend the act respecting the adulteration of food and drugs;[2] the other respecting crimes of violence.[3] Such motions, however, can only be made with the general assent of the house.[4] As a rule, the public bills and orders must be moved in their proper order, though the house may sometimes consent towards the close of the session, when there is little prospect of going through all the private business, to take a bill out of its order and advance it a stage, but this is only done when there is no intention to debate the bill.[5] If it is wished to transfer a bill from the public bills and orders, the regular course is to give two days' notice of a motion to that effect.[6] The rule which requires a strict adherence to the order paper is absolutely necessary to prevent surprises. So rigorously is it enforced in the Imperial Parliament that even when it has been admitted that a day has been named by mistake, and no one has objected to the appointment of an earlier day, the change has not been permitted.[7] It is quite irregular, even if a member proposes to conclude

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[1] Can. Com. J. (1878), 148.

[2] *Ib.*, 198.

[3] *Ib.*, 232. Also, Insolvency Bill, 1879. p. 271.

[4] See chapter xi., s, 3.

[5] Building Societies' Bill, April 24, 1878.

[6] Railway Passenger Tickets Bill. Votes and P. (1882), 374; Jour., p. 334. In this case the government took charge of the bill. In an ordinary case the motion goes on the list of private business, and towards the end of a session a member may never reach it.

[7] May, 281-2; 118 E. Com. J., 237; 172 E. Hans. (3), 246; Can. Com. J. (1875), 177.

with a motion, to introduce and attempt to debate a subject which stands on the orders for another day.[1]

Under a rule of the house :

"26. All orders undisposed of at the adjournment of the house shall be postponed until the next sitting day, without a motion to that effect."

But if the house be adjourned before an order of the day under consideration is disposed of, or a motion has been made for the adjournment of the debate thereon, "it is not treated as a dropped order, but being superseded must be revived before it takes its place again on the order book."[2] If a motion is not made for the second reading or other stage of a bill, it does not go on the orders, and it will be consequently necessary for the member in charge to take the first opportunity he has for placing it on the paper. The house will always give its consent to this formal motion which is not unfrequently necessary in the Senate, in the case of Commons' bills coming up in the absence of the member who is to promote its passage.[3]

If a member rises to propose a motion of which he has given notice, and the speaker leaves the chair at six o'clock before he has concluded his speech, and proposed his motion, it will remain in the same place on the order paper.[4] But it is more usual when the member cannot conclude his speech in time, to hand it to the speaker at once, so that it may be formally proposed and entered on the public bills and orders under the 27th rule.

"If at the hour of 6 p.m., on a Wednesday or Thursday, or at

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[1] 219 E. Hans. (3), 1002, 1053-4; 225 *Ib.*, 1824.

[2] May, 284. 119 E. Com. J., 131, 256; 120 *Ib.*, 225, 352; 121 *Ib.*, 78; 122 *Ib.*, 377, 404.

[3] Sen. Hans. (1883), 179, 226; Jour., pp. 134, 146.

[4] Reciprocity Treaty; Order Paper, March 15, 1875. On May 13, 1874, Mr. Bowell rose to move a motion respecting dismissals from office, but before he had concluded and handed his motion to the speaker six o'clock was announced. The motion remained in the same place. Parl. Deb., 97, 105.

the time of the adjournment of the house, a motion on the notice paper be under consideration, that question shall stand first on the order of the following day next after orders to which a special precedence has been assigned by rule or order of the house."[1]

Towards the close of the session, with the view of advancing the most important business, the government usually appropriate to themselves one or more of the days devoted to notices of motions, public bills and orders, and other matters in the hands of private members. They must, however, give formal notice, and obtain the consent of the house to a motion, the effect of which is to suspend the nineteenth rule, cited on a previous page.[2]

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[1] Can. Com. J. (1876); Financial Depression Committee, 65, 66. See Orders of the Day, Chinese question, 29th and 30th March, 1883. Monday (a notice of motion day) is not included in this standing order. When on that day a motion has been under consideration, it has been the practice to move an adjournment of the debate previous to the adjournment of the house. Can. Com. J. (1871), 51; *Ib.* (1872), 135.

[2] Can. Com. J. (1877), 111, 227, 258; *Ib.* (1878), 59, 118, 186, 226, 262; *Ib.* (1879), 156, 252, 380, 413; *Ib.* (1883), 387. See Sen. J. [1882] 318 for an instance of "urgency" being given to government measures in the Senate.

# CHAPTER VIII.

*PETITIONS.*

I. Presentation and reception.—II. Form.—III. Irregularities.—IV. Petitions for pecuniary aid.—V. For taxes or duties.—VI. Urgency in certain cases.—VII. Printing.—VIII. Reflections on House or members.—IX. Petitions to Imperial authorities.

**I. Presentation and Reception.**—The ordinary daily business in the two houses commences with the presentation and reading of petitions,[1] of which a great number on various questions of public policy or individual concern are presented in the course of every session. The subjects embraced in these petitions are of very varied interest. Whenever there is a great question agitating the public mind, the table of the House of Commons especially is immediately covered with petitions on that subject,[2] No doubt the privilege is often abused and unscrupulous or energetic agents labour to deceive Parliament; but notwithstanding such abuses of a highly prized privilege, Parliament affords every opportunity to individuals to bring before it in this way their opinions and grievances, and is often able to obtain from such expressions valuable information which enables it to remedy personal wrongs, or mature useful legislation on some great question of general import.

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[1] *Supra* p. 251. Sen. R., 12; Com. R., 19.

[2] See index to Sen. and Com. J. for 1874, Prohibitory Liquor Law; and Protection to Native Manufactures in 1876. Also, Can. Hans. (1877), 1128, showing number of petitioners from each province in favour of prohibition; a total of 500,000 names in 1874.

The rules in the two houses with respect to petitions are virtually the same, and whenever there is a difference in practice it will be pointed out in the course of the following remarks on the Commons' procedure which is strictly carried out.

Routine business in the Senate and Commons commences with the presentation of petitions.[1] When the speaker has called the house to order, after the doors have been opened, he will proceed to ask for the presentation of petitions. Then the members who have any such to present will rise, and after briefly stating the purport of the document in accordance with the rule, they will send it to the table, where it is taken charge of by one of the clerks. Every member should be careful to endorse his name on the back, as confusion sometimes arises when many petitions are presented at the same sitting. The rules of the House of Commons are as follows:

"84. Petitions to the house shall be presented by a member in his place, who shall be answerable that they do not contain impertinent or improper matter."[2]

"85. Every member offering to present a petition to the house shall endorse his name thereupon, and confine himself to a statement of the parties from whom it comes, the number of signatures attached to it, and the material allegations it contains. Petitions may be either written or printed; provided always that the signatures of at least three petitioners are subscribed on the sheet containing the prayer of the petition."

"86. Every petition not containing matter in breach of the privileges of the house, and which, according to the rules[3] or practice of this house, can be received, is brought to the table by direction of the speaker, who cannot allow any debate, or any member to speak upon, or in relation to, such petition; but it may be read by the clerk, at the table, if required; or if it complain of some present personal grievance, requiring an immediate

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[1] Sen. R., 12; Com., 19.

[2] 228 E. Hans. (3), 1320; 229 *Ib.*, 586.

[3] These are substantially the S. O. adopted in 1842 in the English Commons; May, 618.

remedy, the matter contained therein may be brought into immediate discussion.

A senator, in presenting a petition, may briefly explain its general purport, but other members may not proceed to discuss its contents.[1] The practice of the House of Lords appears different. A member may not only make a long speech on the presentation, but a debate may follow on the subject-matter.[2]

In the House of Commons every petition is deposited in the journal's office, in charge of an officer, whose duty it is to see that it is properly endorsed and in accordance with the rules of the house.[3] It is brought to the table to be read and received two days after the presentation. A list is made up of the petitions that have to be received every day, and given to the speaker, with a memorandum of any infringement of the rules governing the reception of such documents. The clerk assistant reads the brief endorsation and the speaker puts the question—"Is it the pleasure of the house to receive these petitions"—when the reading of the list is completed. In case of any irregularity, he will state it to the house, and rule that the petition cannot be received.[4] It is the duty of every member presenting a petition to make himself, in the first instance, acquainted with its terms, and see that it is, in its language and expressions, consistent with the rules and orders of the house.[5]

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[1] Sen. Deb. (1876), 93, 96. *Ib.* (1880), 293.

[2] 140 E. Hans. (3), 706–15; 808–14. In the English Commons all debate on the presentation of petitions was first forbidden in 1839; May's Const. Hist., II., 69; 94 E. Com. J., 16; 45 E. Hans. (3), 156, 197. The Lords did not, however, change their practice.

[3] In the English Commons all petitions "after they shall have been ordered to lie on the table, are referred to the committee on public petitions, without any question being put." S. O. 79; May, 618, 620; 132 E. Com. J., 41, &c.

[4] Can. Com. J. (1877), 27; *Ib.* (1879), 21, 32, &c. See "petitions" in index to journals.

[5] 228 E. Hans. (3), 1320.

In case of opposition to the reception of a petition, a debate may take place as soon as the speaker has formally proposed the motion that it be received. In such a case it is usual for the member who has charge of the petition to move its reception.[1] This procedure has its inconveniences since members may be ignorant of the nature of the petition, until the motion is made for its reception; and it has, therefore, been found advisable under special circumstances to adjourn the debate on the question until a future day.[2] Petitions which have been duly read and received frequently form the basis for a reference of a question to a committee. In such cases, notice is given of a motion on the question.[3]

If a member has a notice of motion on the paper with respect to a petition he cannot move in the matter until the notice is reached in due order.[4] Nor on a motion for the adjournment of the house can he debate a petition which he would be restrained from discussing by the rules of the house.[5] If he wishes to present a petition signed by himself, he must give it to another member to bring up.[6] The speaker of the Commons cannot present a petition, but must avail himself of the services of a member on the floor.[7] But it is quite competent for the speaker of the Senate to do so, since he may speak in the debates.[8]

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[1] Can. Com. J. (1867–8), 339–40.

[2] *Ib.* (1880–81), 89.

[3] V. and P. (1882), 216, 442; Jour., pp. 354–5.

[4] Can. Com. J. (1875), 177.

[5] 59 E. Hans. (3), 476. Cushing, p. 462. This rule is always enforced, though no decisions appear in the Canadian journals. The clerk communicates with the member and has the error rectified.

[6] 109 E. Hans. (3), 233.

[7] Mr. Speaker Addington pointed out that if this were permitted the speaker would be compelled to make motions and take such part in the proceedings as would not be competent for him in other cases. 32 Parl. Reg. 2; Cushing, p, 462. Mr. Speaker Blanchet, Can. Hans. (1879), 1453-4.

[8] Sen. J. (1880–81), 95.

**II. Form.**—Every petition to the two houses should commence with the superscription:

To the Honourable the (Senate or House of Commons) in Parliament assembled:

Then should follow the formula. "The petition of the undersigned ——— humbly sheweth." The petitioner or petitioners will next proceed to state the subject-matter of the petition, in the third person throughout, and commencing each paragraph with the word "that." The conclusion should be the "prayer"—without which no petition is in order. This prayer should tersely and clearly express the particular object which the petitioner has in view in coming before Parliament. And the petition should then close with the formal words: "And your petitioners as in duty bound will ever pray." The signatures of the parties interested should be written on the sheet containing the prayer.

**III. Irregularities.**—A large number of petitions are not received every session on various grounds of irregularity. The house will refuse to receive a memorial containing no prayer.[1] Every petition should have the signatures of "at least three petitioners on the sheet containing the prayer."[2] But this rule is never interpreted as precluding a single petitioner from approaching the house; it simply

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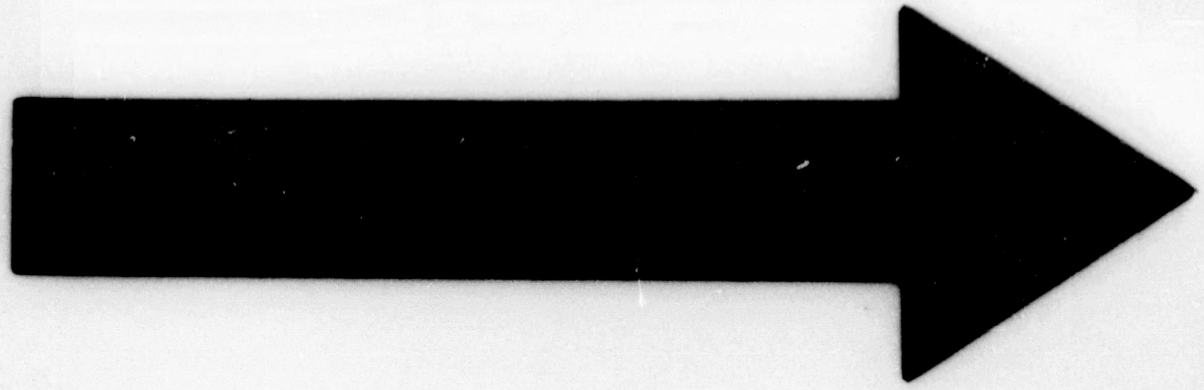
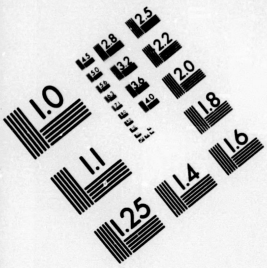
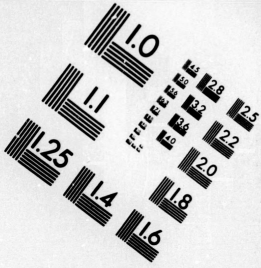
[1] Can. Com. J. (1876), 180. Can. Hans. (1879), 1453–4. But a document, although termed a memorial, if it is substantially a petition properly worded and concludes with a prayer, may be received as a petition according as the house may think proper. 240 E. Hans. (3), 1681–2; Blackmore's Sp. D. (1882), 158.

[2] Can. Com. J. (1873), 131, 243, &c.; *Ib.* (1877), 70, 88, &c. The reason of this rule may be understood by reference to a statement of Lord Clarendon (Hist. of Rebellion, II., 357) that, in 1640, "when a multitude of hands was procured, the petition itself was cut off, and a new one framed suitable to the design in hand, and annexed to the long list of names which were subscribed to the former. By this means many men found their hands subscribed to petitions of which before they had never heard."



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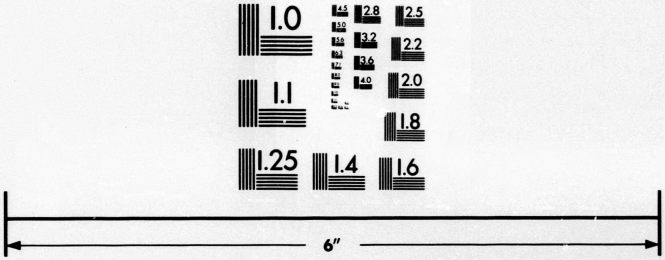


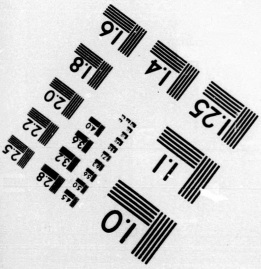


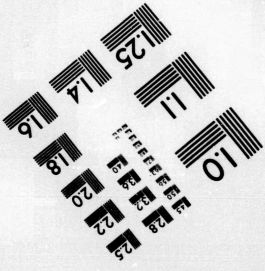


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refers to petitions signed by a number of individuals. Petitions from one person are constantly received in accordance with the English rules which are more definite on this point.[1] The Senate rule is quite explicit:

36. "Every petition is to be fairly written or printed, and signed on the sheet containing the prayer of the petition; and if there be more than three petitioners the additional signatures may be affixed to the sheets attached to the petition."

A petition may be written in French or English.[2] It may be printed,[3] but it must be free from erasures or interlineations,[4] and the signatures must be written,[5] not printed, pasted upon, or otherwise transferred.[6] It must not have appendices attached thereto, whether in the shape of letters, affidavits, certificates, statistical statements, or documents of any character.[7] A member may, however, receive permission from the house to withdraw the appendix, when it is desirable that the petition, especially if it be one for a private bill, should be received with as little delay as possible.[8] But in case the appendix is objected to, the member has no alternative except to present a new petition.[9]

A petition forwarded by telegraph cannot be received inasmuch as "it has no real signatures attached to it."[10] Petitions of corporations aggregate must be under their common seal; and if the chairman of a public meeting

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[1] 100 E. Com. J., 335; 109 *Ib.*, 293; 66 E. Hans. (3), 1032; Can. Com. J. (1876), 294; *Ib.* (1877), 20, 61; May, 618.

[2] Petition from Judge Loranger, and others relative to weights and measures in 1877, &c.

[3] Prohibitory Liquor Law, 1875; Welland Canal, 1877, &c. Sen. R., 36.

[4] 82 E. Com. J., 262; 86 *Ib.*, 748.

[5] Chenal Ecarté Petitions, March 1, 1877, all printed.

[6] 104 E. Com. J., 283; 105 *Ib.*, 79.

[7] Can. Com. J. (1876), 212; *Ib.* (1877), 113. 81 E. Com. J., 41, 82; 111 *Ib.*, 102. 14 Parl. Deb., N.S., 569. Sen. Hans. (1880), 294 (Mr. Penny).

[8] Can. Com. J. (1879), 18.

[9] 27 E. Hans. (1), 395; 38 *Ib.*, 662. Can. Com. J. (1876), 212, 213.

[10] Can. Sp. D., 192. Can. Com. J. (1872), 80.

sign a petition in behalf of those so assembled, it is only received "as the petition of the individual, and is so entered in the minutes, because the signature of one party for others cannot be recognized."[1] Aliens, not resident in this country, have no right to petition Parliament.[2] In the case of applications for private bills, however, this rule is not rigidly enforced. It was agreed in 1878, at the suggestion of Mr. Speaker Anglin, to receive a petition from the Hartford directors of the Connecticut Mutual Insurance Company on the ground that it was a mutual company, partly composed of Canadians, and that it was the subject of parliamentary legislation, the company being required to make a certain deposit before doing business in the country.[3] In 1883 a petition from certain persons in the city of Portland in the state of Maine, asking for an act of incorporation, was received on the ground that the subject-matter came within the jurisdiction of the house, as in the case already cited.[4] The reception of such petitions may be considered an act of grace.[5]

All petitions should be respectfully and temperately worded. The house will refuse to receive them if they contain any reflections on the queen or her representative in Canada,[6] or on the action of parliament,[7] or on any of its committees,[8] or on the courts of justice,[9] or affect "the

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[1] Sen. R., 37–38. May, 610; 10 E. Com. J., 285.

[2] Can. Com. J. (1877), 41; *Ib.* (1880), 165. See English report on Boulogne-sur-mer petition in 1876, Parl. P. 232. But aliens resident in Great Britain and her dependencies have the right to petition. Mr. Sp. Brand, 228 E. Hans. (3), 1411–117; Blackmore's Sp. D. (1882). 158.

[3] Can. Hans. (1878), 950. See also petition from American Association of Breeders of Short Horns, Feb. 18, 1878.

[4] Can. Hans. (1883), 138. The necessity of offering every inducement to capital was referred to in the debate by the premier as a reason for allowing the reception of such petitions.

[5] Mr. Sp. Brand, Friday, April 7, 1876, Eng. Hans.

[6] 122 E. Hans. (3), 863.

[7] 84 E. Com. J., 275.

[8] 129 *Ib.*, 209.

[9] 76 *Ib.*, 105; 129 *Ib.*, 276.

legal and social position of individuals."[1] A document distinctly headed as a "remonstrance," even though it conclude with a prayer, cannot be received.[2] Neither can any paper in the shape of a declaration be presented as a petition.[3] Any forgery or fraud in the preparation of petitions will be considered a serious breach of privilege and severely punished.[4]

**IV. Petitions for pecuniary aid.**—In the first session of the Parliament of Canada the House of Commons initiated the practice of refusing to receive any petition for a grant of money out of the public revenues unless it has been first recommended by the Crown.[5] This practice is in conformity with the following standing order of the English House of Commons:

"That this house will receive no petition for any sum relating to public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the consolidated fund or out of moneys to be provided by Parliament, unless recommended from the crown."[6]

Since then a large number of petitions have been rejected every session, when they have asked for remuneration for services performed;[7] for arrears of salaries and pensions;[8] for aid to construct or repair public works;[9]

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[1] 129 E. Com. J., 276.

[2] May, 609; 70 E. Hans. (3), 745. But when headed as a petition and concluding with a prayer, petitions have been received. 65 E. Hans. 1225.

[3] Can. Hans. (1879), 1453–4; 60 E. Hans. (3), 640.

[4] May, p. 611, gives numerous cases. 106 E. Com. J., 193, 289; 120 *Ib.*, 157, 336; Res. of 2nd June, 1774.

[5] Can. Com. J. [1867–8], 297. 245 E. Hans. (3), 1724.

[6] 20th March, 1866. E. Com. J., 1874, British Museum; 136 *Ib.*, 99. The English rule applies to petitions "distinctly praying for compensation, or indemnity for losses, out of the public revenues." May, 613; 90 E. Com. J., 487; 104 *Ib.*, 223.

[7] Can. Com. J. (1871), 65, 229; *Ib.* (1883), 57.

[8] *Ib.* (1870), 67, 110; *Ib.* (1871), 18; *Ib.* (1878), 70.

[9] *Ib.* (1870), 40, 56, 191, 233; *Ib.* (1871), 44, 135, &c. *Ib.* (1877), 79. 92, &c.

for subsidies to keep them in an efficient condition ;[1] for any remission of moneys due to the Dominion ;[2] for compensation for losses incurred from public works ;[3] for subsidies to steamers owned by private individuals or companies ;[4] for grants of public lands to aid certain works ;[5] for compensation on account of losses alleged to have been sustained through the operation of an act of Parliament.[6]

But whilst petitions that *directly* ask for any public aid or for any measures *directly* involving an appropriation of public money, are now never received, the house does not reject those which ask simply for legislation, or for "such measures as the house may think it expedient to take" with respect to public works. In the session of 1869, Mr. Speaker Cockburn decided that petitions of such a character ought to be received, as they did not come within the express language of the English rule just quoted. On this occasion the speaker suggested that "if it were the pleasure of the house to exclude petitions of that class in future, the proper way would be to adopt a substantive rule which would clearly shut out such petitions."[7] But no such rule has ever been adopted, and it is now the invariable practice to receive petitions which are expressed in general terms and do not directly ask for pecuniary aid for public works.[8] Such petitions are re-

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[1] Can. Com. J. (1870), 167.

[2] *Ib.* (1871), 159.

[3] *Ib.* (1873), 66.

[4] *Ib.* (1878), 56.

[5] *Ib.* (1882), 75.

[6] Can. Com. J. (1883), 47 ; Canada Temperance Act.

[7] Can. Com. J. (1869), 22-3. He made these remarks on a petition "humbly praying the house to take such measures as will cause the obstructions to the navigation of the Ottawa River to be removed, etc."

[8] Can. Com. J. [1877], 100, &c., Welland Canal ; St. Peter's Canal.. *Ib.* [1877], 27, 147, ex-serjeants of Volunteers ; first petition not received ; second received, as it asked the house simply to take the facts into its favourable consideration.

ceived on the same principle which allows the moving of resolutions expressive of the abstract opinions of the house on matters of expenditure.[1]

No petition asking directly for an appropriation from the public treasury can be properly received in the Senate. There is no rule or usage of the Lords or Senate, however, to prevent the presentation and discussion of a petition for pecuniary aid or redress, provided it be framed in general terms and does not ask for a specific sum of money.[2]

**V. Petitions for Taxes or Duties.**—Up to the middle of the session of 1876, it was not the practice to receive petitions praying for the imposition of duties, on the principle which prevents private members from initiating and carrying out measures for taxation.[3] On more mature consideration, however, it was seen that this practice tended to prevent an unequivocal expression of public opinion on questions of taxation, especially as there was no express rule against the reception of such petitions. Consequently it is now the invariable practice to receive petitions asking for the imposition of customs and excise duties.[4] It has also been decided that when a number of persons ask for a bounty to a particular industry on public grounds, it is regular to receive their petition. The objection to the reception of petitions for a bounty pro-

[1] Hatsell [III., 241], says the prayer should be general, and not prescribe the quantum of aid.

[2] See remarks of Mr. Speaker Christie, Jour. [1874], 93–4; Deb. (1874), 134–8; I. Todd's Parl. Gov., 433; 173 E. Hans. (3), 1622; 174 *Ib.*, 962. The petitions should conclude simply with asking the house to take the matter into its favourable consideration, or with some such general prayer. Sen. J. (1879), 108 (York Pioneers); *Ib.* (1883), 63.

[3] Can. Com. J. (1873), 146; *Ib.* (1875), 205, 241, 260, &c.; *Ib.* (1876), 58, 76, 86, &c.

[4] This decision was arrived at in 1876, when the rules were revised, but no record was made on the journals. Mr. Speaker Anglin stated it to the house on the presentation of a petition asking for the levying of certain duties. Can. Com. J. (1876) 107, 130, &c., *Ib.* (1877) 37, 54, 58, &c.; *Ib.* (1878) 150; *Ib.* (1879) 57, 65, 140, &c.

perly applies only to cases where an individual or individuals, personally interested, ask for such a bounty as will be profitable and confined to themselves.[1] It is also usual to receive petitions from individuals for an exemption of a tax or duty on public grounds;[2] but petitions from parties immediately interested in a remission of duties or other charges payable by any company or person, will be ruled out.[3] Neither will the house receive a petition praying for the compounding or releasing any debt due to the Crown;[4] but petitions may be considered when they pray for provision for compensation for losses contingent on proposed legislation.[5] Petitions against measures for the imposition of any tax or duty for the current service of the year, are always in order.[6]

**VI. Urgency.**—A member presenting a petition, has no right himself to read it at length, but he may have it done by a clerk at the table.[7] Petitions may be at once read and received by common consent, chiefly in order to refer them to a committee; if a member objects, it cannot be done,[8] In case of urgency, however, a petition may be immediately considered,[9] but the grievance must be such

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[1] Mr. Speaker Anglin on Coal Bounty, Can. Com. J. (1877) 27, 37. Such a petition, he showed, stood precisely in the same position as one asking for the imposition of taxes for general purposes.

[2] Can Com. J. (1876) 70; *Ib.* (1879) 300, Paper Machine.

[3] Can. Com. J. (1875) 260; 92 E. Com. J. 372; 223 E. Hans. (3) 879.

[4] 81 E. Com. J. 66; 83 *Ib.* 212.

[5] May, 613; 92 E. Com. J. 469.

[6] Eng. S. O. 80; 97 E. Com. J. 191.

[7] Rule 86, *Supra* p. 260. No motion is necessary, and no mention of the fact is made in the journals.

[8] Sp. Dec. 25; Can: Com. J. (1875) 152; Hans. 450-1. *Ib.* (1876) 171, 204. In one case, the petition was received and printed forthwith, because it referred to the bill respecting marriage with a sister of a deceased wife, then under discussion; *Ib.* (1880) 130.

[9] Rule 86. Also Eng. S. O. 78.

as to require a speedy and urgent remedy.[1] Petitions affecting the privileges of the house will at once be taken into consideration in accordance with parliamentary usage in all cases of privilege.[2]

**VII. Printing.**—Petitions are often ordered to be printed for the information of members by the committee on printing.[3] It is frequently found convenient to print them in the votes and proceedings—a motion to that effect being duly made and agreed to.[4] Petitions of a previous session have also been so printed.[5]

**VIII. Reflections on House or Members.**—If it shall be found on inquiry that the house has inadvertently received a petition which contains unbecoming and unparliamentary language, the order for its reception will be read and discharged.[6] In the Lords, when a petition has been presented and afterwards found to be out of order, on account of a reflection on the debates of the house, or on one of its members, the Lords, on being informed of the fact, have "vacated" the proceeding, and the member has been given leave to withdraw the petition.[7] It has also been ruled in the English House of Commons that it is competent for a member to move, without notice, that the order for a petition to lie on the table be discharged, if an irregularity has been committed with respect to such petition.[8] If a petition contain a prayer which may be construed into a reflection on the action of the house, a member will be justified in declining to present it.[9]

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[1] 139 E. Hans. (3) 453-5. Any previous notice will preclude its being a once considered; 75 E. Hans. (3) 894, 1264.

[2] *Infra.* p.; 164 E. Hans. (3) 1178; 114 E. Com. J. 357.

[3] Can. Com. J. (1867-8), 400; *Ib.* (1880) 130; *Ib.* (1882) 192, 261.

[4] V. and P., March 19, 1875; Can. Com. J. (1877), 25.

[5] *Ib.* (1877) 25; 112 E. Com. J. 155.

[6] 131 E. Com. J., 200.

[7] 220 E. Hans. (3), 600.

[8] 228 *Ib.* 1395-1400; Blackmore's Sp. D. [1882], 155-6.

[9] 262 E. Hans. 859-60.

**IX. Petitions to Imperial Authorities.**—As a general rule the Parliament of England receives petitions from British subjects in all parts of the world.[1] In the times previous to the introduction of responsible government into Canada, the right of petitioning the House of Commons was very frequently exercised by the people of the several provinces in order to obtain remedies for certain grievances; but there are now in these days of self-government very few occasions when it is necessary to make such appeals to the Imperial Parliament. It may also sometime be thought expedient to petition the sovereign, and in such a case the constitutional procedure is to forward the petition through the governor-general. The rules of the colonial service require that persons in a colony, whether public functionaries or private individuals, who have any representations of a public or private nature to make to the British government "should address them to the governor whose duty it is to receive and act upon such representations as public expediency or justice to the individual may appear to require, with the assistance in certain cases of his executive council; and if he doubts what steps to take thereupon, or if public advantage may appear to require it, to consult or report to the secretary of state." Every individual has, however, the right to address the secretary of state, if he thinks proper. But in this case "he must transmit such communication, unsealed and in triplicate, to the governor or administrator, applying to him to forward it in due course to the secretary of state." Every letter, memorial or other document, "which may be received by the secretary of state from a colony otherwise than through the governor, will, unless a very pressing urgency justifies a departure from the rule, be referred back to the governor for his report." This rule "is based on the strongest grounds of the public convenience, in order that all communications may be duly verified, as

[1] Mr. Sp. Brand, April 7, 1876. Blackmore's Sp. D. [1882], 158.

well as reported upon, before they reach the secretary of state." Petitions addressed to the queen, or the queen in council, memorials to public officers or boards in her Majesty's government, "must in like manner be sent to the governor-general for transmission home."[1] In 1878, a large body of Roman Catholics in Ontario, petitioned the queen with respect to a provincial act giving special privileges to the Orange society in the province of New Brunswick. This petition was forwarded through Mr. Isaac Butt, M.P., to the secretary of state for the colonies, who replied that, in accordance with the rules just cited, all such communications should be transmitted to the colonial office through the governor of the colony whence they proceed. Accordingly the petition was duly sent back to the governor-general of Canada, for the information of the dominion and provincial authorities.[2]

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[1] Col. Off. Reg., 217, 218, 219, 220, 221, 222, 223. See C. O. List for 1883, p. 268.

[2] E. Com. P., 1878, No. 389; Todd's P. G. in the Colonies, pp. 356-7.

# CHAPTER IX.

*ORDERS AND ADDRESSES FOR ACCOUNTS AND PAPERS.*

I. Presentation of papers.—II. Their character.—III. Form of motions.—IV. Distinction between addresses and orders.—V. Returns in answer.—VI. Carefulness in preparation.—VII. Motions for papers refused.—VIII. Printing of documents.—IX. Joint committee on printing.

**I. Presentation of Papers.**—By reference to the index to the journals of the Canadian as well as English House of Commons, it will be seen that there are several pages exclusively devoted to entries under the general head of "accounts and papers." Here will be found an alphabetical list of all the accounts, papers, and documents relating to the public service that may be ordered or laid before the house in the course of a session. By rule 19, parts of Monday, Wednesday and Thursday are devoted to the consideration of notices of motions, which comprise motions for such papers and returns as members require for their information on public matters. The number of public documents, asked for and ordered every session, vary from three to four hundred—the number having been steadily on the increase since 1867-8.[1]

The documents laid annually before Parliament are presented either by message or by command of his Excellency the Governor-General, or in answer to an address or order

[1] The number asked for in 1877 was 293, and in 1882 it reached 411—a number very considerably in excess of that of previous years. The figures by no means represent the actual number asked for; at the end of the session of 1879 some 40 motions still remained to be proposed, and the same is the case every year.

of the house, or in pursuance of an act of Parliament. By rule 106 "it is the duty of the clerk to cause to be printed and delivered to every member, at the commencement of every session of Parliament, a list of the reports or other periodical statements which it is the duty of any officer or department of the government, or any bank or other corporate body to make to the house, referring to the act or resolution and page of the volume of the laws or journals wherein the same may be ordered, and placing under the name of each officer or corporation a list of reports or returns required of him, or it, to be made, and the time when the report or periodical statement may be expected."

**II. Character of Papers.**—The returns laid on the tables of the houses every session by command of his Excellency, comprise the reports of the ministers of the several departments of the government, public works, militia, post-office, marine and fisheries, etc., which are printed in the two languages in the shape of "blue books." Among the papers required by law are: lists of stockholders of banks, general statements and returns of baptisms, marriages and burials in Quebec, reports of judges relative to the trial of controverted elections, and various other matters regulated by statute.[1] The reports of the several departments of the government are laid annually before Parliament in accordance with the statutes organizing such departments.[2]

Certain papers are also periodically laid before Parliament by message from his Excellency the governor-general. The estimates of the sums required for the service of the dominion must always be brought down in this way, in accordance with constitutional usage.[3] Despatches from

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[1] See index to journals of Commons (accounts and papers), where an entry is made of the authority under which every return is laid before Parliament.

[2] See *supra* pp. 54-6, where different statutes, organizing departments, are cited.

[3] See chap. on Supply.

the secretary of state for the colonies are always sent down by the governor-general,[1] and so are all papers relative to royal commissions and other matters affecting imperial interests or the royal prerogative.[2] No documents can be regularly laid before the house unless in pursuance of some parliamentary authority. In the session of 1879, the speaker called the attention of the house to the fact that he had received a communication from the Reciprocity and Free Trade Association of England, with respect to the Canadian tariff, then the subject of discussion in Parliament. He decided that individuals outside of the house could only approach it properly by petition, and that the document in question was a mere declaration, and could not be presented by a member. He took this occasion of stating that no documents can be regularly laid before Parliament, unless by message from the governor-general, or in answer to an order or address, or in pursuance of a statute requiring their production.[3] Every session papers are received by the speaker from municipal councils, foreign associations, and individuals, with respect to public matters, but their receipt is simply acknowledged by officers of the house, since there is no authority to lay them before Parliament. If it were permitted to lay such documents indiscriminately on the table, much confusion and inconvenience would naturally follow, and the rules and usages that have long properly governed the production of public papers would be evaded.

**III. Form of Motions.**—Returns and papers are moved for in the form either of an address to the governor-general,

[1] N. A. Boundary Com., 1877; Irish Relief Grant, 1880.

[2] Northern R.R. Com., 1877.

[3] Can. Hans. (1879), 1453. In 1879, a communication from the senate of the legislature of the state of Michigan on the subject of proposed legislation was laid on the table of the upper house of the dominion Parliament on the ground that it was only courteous to receive such a document from a cognate legislative body. Deb. 371; Jour. 176. This was a most unusual proceeding.

or of an order of the house. A motion for an address should always commence with the prescribed words:

"Mr. ——— moves that a humble address be presented to his Excellency, the Governor-General, praying that his Excellency will cause to be laid before this house," etc.

In the case of an order of the house, it is simply necessary to make this motion:

"Mr. ——— moves that an order of the house do issue for," etc."

**IV. Distinction between Addresses and Orders.**—Previous to the session of 1876, it was customary to move for all papers by address to the governor-general, but since that time the more regular practice of the English houses has been followed. It is now the usage to move for addresses only with respect to matters affecting imperial interests, the royal prerogative, or the governor in council. On the other hand, it is the constitutional right of either house to ask for such information as it can directly obtain by its own order from any department or officer of the government. It is sometimes difficult to make a correct application of this general principle;[1] but the following illustrations of recent practice will show the distinction that should be drawn between addresses and orders:

Addresses are moved for papers and despatches from the imperial government;[2] for orders in council;[3] for correspondence between the dominion, British, and foreign governments,[4] or between the dominion and provincial governments,[5] or between the dominion government and

[1] May (623) states that the same difficulty exists in the English Commons.

[2] Can. Com. J. (1877), 151; *Ib.* (1878), 124.

[3] *Ib.* (1877), 36, 56; *Ib.* (1878), 63-4.

[4] *Ib.* (1877), 21, 22, 35, 109; *Ib.* (1878), 44.

[5] *Ib.* (1877), 204; *Ib.* (1878), 65; *Ib.* (1882), 166 (for a copy of a resolution passed by a provincial legislature, and transmitted to his Excellency).

any companies, corporations, or individuals ;[1] for information respecting a royal commission ;[2] for instructions to the governor-general.[3]

On the other hand, papers may be directly ordered when they relate to canals and railways, post-office, customs, militia, fisheries, dismissal of public officers, harbours and public works, and other matters under the immediate control and direction of the different departments of the government.[4] Correspondence with persons in the employ of the government, and in the possession of a department are ordered.[5] Petitions and memorials not in the possession of the house, but addressed to the governor in council, and including memorials for public aid, must be asked for by address ;[6] but petitions addressed to a particular department are directly ordered.[7] Returns of petitions of right and cases before supreme and exchequer courts are brought down on an address.[8] Returns relative to the trial of election cases before judges,[9] and the expenses of returning officers and candidates at elections[10] are by address ; but the clerk of the crown in chancery will lay on the table, in obedience to an order, returns showing number of votes polled in electoral districts and other facts as to a general election.[11] Returns relative to

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[1] *Ib.* (1877), 21, 22, 45, 191. But this is not done invariably.

[2] *Ib.* (1878), 65.

[3] *Ib* (1882), 326.

[4] See index to journals for 1883 (" accounts and papers ").

[5] Can. Com. J. (1878), 120 (Serj. Hart) ; 125 (Mr. Perley).

[6] *Ib.* (1877), 93; *Ib.* (1878), 124 ; *Ib.* (1879), 59. On the same principle memorials to the secretary of state for the home department in England have been asked for by address ; 129 E. Com. J. 95.

[7] Can. Com. J. (1882), 357.

[8] *Ib.* (1878), 125 ; *Ib.* (1880), 80.

[9] 129 E. Com, J. 157.

[10] 129 E. Com. J. 50, 64, 147 ; 137 *Ib.* 258 ; Can. Com. J. (1879), 30. But the house has sometimes ordered them, though the strict English practice appears to be as above ; Can. Com. J. (1883), 168.

[11] Can. Com. J. 1883, April 9.

the administration of justice[1] and the judicial conduct of a judge[2] are properly asked for by address. Papers in the possession of harbour commissioners—a body not directly under the control of the government—are also moved for by address.[3] Returns respecting confidential printing are by address, as such printing is done by order in council.[4] Papers relative to the exercise of the prerogative of pardon must be sought in the same mode.[5] Memorials to heads of departments or bodies immediately under the control of a department are ordered by the house.[6] The house directly orders returns (and the clerk may lay them on the table) relative to business of the house; for instance, return of number of divisions, of public and private bills, of select committees, etc.[7] The Senate does not observe the distinction drawn in the Commons between orders and addresses.[8]

**V. Returns in Answer.**—As soon as these addresses and orders have been passed by the house, they are engrossed and forwarded immediately by the clerk of the house to the secretary of state, who will send them to the proper department or officer for the necessary answer. When the department or person, whose duty it is to furnish the information, has prepared it, he will return it to the secretary of state, who will take the earliest opportunity of

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[1] 129 E. Com. J. 79, 98, 203; 132 *Ib.* 392.

[2] Can. Com. J. (1882), 25.

[3] *Ib.* (1878), 90.

[4] *Ib.* (1882), 25; *infra*, p. 288, *n.*

[5] *Ib.* (1882), 157.

[6] 129 E. Com. J. 72, 80, 241, 366.

[7] 129 *Ib.* 336, 369; Can. Com. J. (1878), 40, 54; 199, 208.

[8] Sen. J. (1880-81), 188 (silver coin); 199 (public service); 285 (eel fishery); *Ib.* (1882), 126 (P. E. Island); *Ib.* (1883), 257 (Militia). But the distinction is evidently observed in the Lords. For orders, see 114 Lords' J. 48, 53, 82, 88, 93, 109. For addresses, *Ib.* 61 (Corresp. with gov.-gen. of India); 113 (Corresp. with United States Govt.); 129 (international commission); 158 (judicial proceedings).

laying it before Parliament through the medium of a minister of the Crown. It is the practice for each minister in the House of Commons to present the returns relative to his own department.[1]

These returns are furnished by the departments of the government with as much speed as is practicable, but it often happens that a large number cannot be prepared in time to be laid before the house during the same session in which they are ordered. In such a case, returns are often presented during the following session,[2] and papers have even been brought down several years after having been ordered.[3] A prorogation, however, nullifies the effect of an order, and the strict practice is to make a motion in the next session,[4] or read the order of the previous session, and order the return immediately.[5] But it is now frequently found most convenient to bring down in the following session all papers of general importance without a renewal of the order.[6]

All papers laid on the table are kept in the custody of the officers of the house, and may be consulted at any time in the journals' office. All the important papers are generally ordered to be printed, as it will be presently shown.[7] When returns have once been presented to the house, it is in order to refer them to a standing or select committee.[8]

**VI. Carefulness in Preparation.**—Every motion for a return should be very carefully prepared so that the member may obtain the exact information he requires. In case a motion is vaguely expressed, or asks for more information

[1] Can. Com. J. (1877), 12, 50, 354, 356; *Ib.* (1883), 328.
[2] *Ib.* (1877), 38, 55, 62; *Ib.* (1879), 39.
[3] *Ib.* (1877), 284.
[4] May, 627.
[5] 114 E. Com. J. 371.
[6] Can. Com. J. (1882), 104, 142.
[7] *Infra*, p. 289.
[8] Can. Com. J. (1874), 103; *Ib.* (1876), 98; *Ib.* (1877), 59.

than it is in the power of the government to give, or otherwise requires amendment, the member who makes it will generally be allowed to amend it with the unanimous consent of the house; and in such a case the speaker will always again read the motion so amended. In this way the convenience of members, in exceptional cases, is consulted; but it is necessary, in order to save the time of the house, that each motion should be carefully framed at the outset, as it cannot be changed (except by general consent) when it is once proposed by the chair in accordance with the notice. Returns are frequently laid on the table by a minister without a motion having been formally made for their production. This is generally done in cases where an important debate is at hand, or in progress, and as there is no time to make a formal motion, the government will give every information in their power to the house. This, however, is a matter of courtesy and not obligatory on the part of a minister.[1]

Every care should be taken by the department or officer whose duty it is to furnish the return, to have it strictly in accordance with the terms of the address or order. If a person neglect to furnish a return or frames it so as to mislead the house, it will be considered a breach of privilege, and he will be reprimanded or more severely punished according to the circumstances of the case.[2]

**VII. Motions for Papers Refused.**—Whilst members have every facility afforded them to obtain all the information they require on matters of public concern, occasions may arise when the government will feel constrained to refuse certain papers on the ground that their production would be inconvenient or injurious to the public interests. A

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[1] Can. Com. J. (1874), consolidated fund expenditure, 76.

[2] 90 E. Com. J. 575; 96 *Ib.* 363, Mirror of P. 1841, vol. 23, pp. 2014-5; 81 Lords' J. 89; 82 *Ib.* 89; May, 626.

high authority writes on this point: "Considerations of public policy, and a due regard to the interests of the state, occasionally demand that information sought for by members of the legislature should be withheld, at the discretion and upon the general responsibility of ministers. This principle is systematically recognised in all parliamentary transactions; were it otherwise, it would be impossible to carry on the government with safety and honour."[1] Consequently there are frequent cases in which the ministers refuse information, especially at some delicate stage of an investigation or negotiation;[2] and in such instances the house will always acquiesce when sufficient reasons are given for the refusal. On this account, members will sometimes consent to withdraw their motions; or in case only a part of the information sought for can be brought down they will agree to such alterations as the minister may show to be advisable in the public interests. Sometimes the government may be obliged to withhold all information at the time, or they may be able to put the house in possession of only a part of the correspondence.[3] But it must be remembered that under all circumstances it is for the house to consider whether the reasons given for refusing the information are sufficient. The right of Parliament to obtain every possible information on public questions is undoubted, and the circumstances must be exceptional, and the reasons very cogent, when it cannot be at once laid before the houses.

Papers have been refused on the ground that it would be wholly without precedent to produce them.[4] Estimates and reports of the engineers of the public works, in many

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[1] 1 Todd's Parl. Gov. in England, 278-85; 173 E. Hans. (3), 1055; Mirr. of Parl. 1837-8, p. 658; Can. Hans. (1878), 1653.

[2] Sen. Hans. (1880), 77, 469 (Sir A. Campbell); Mirror of P., 1841, p. 1032; 157 E. Hans. (3), 1177.

[3] Can. Hans. (1877), 58-9.

[4] 211 E. Hans. (3), 1725.

cases, are considered confidential.[1] As a rule, the opinions of the law officers of the crown are held to be "private communications" when given for the guidance of ministers, and may be properly refused by the government.[2] But there are occasions when it may be convenient to lay them before Parliament; and that is a matter within the discretion of the government. If such a document is read in the house, it becomes a public paper, and may be called for.[3] The practice of asking for reports from officers, addressed to particular departments of the executive government, has also been considered most objectionable.[4]

Certain papers have also been refused in the Canadian Commons on the ground that the "governor-general, acting as an executive officer of the imperial government, reserves to himself the right of withholding from Parliament any documents, the publication of which might, in his judgment, be prejudicial to the public service. That with respect to communications from the secretary of

[1] Can. Hans. (1878), 510, Lachine canal. *Ib.* [1879], 45, Carillon works. Also p. 1080. Remarks of Sir C. Tupper, minister of public works, on the subject of presenting a report of the engineers on tenders submitted for the construction of the Canada Pacific R. R.—this report being to a certain extent confidential. It will be seen from the debate on this occasion that leading members like Mr. Holton and Mr. Mackenzie acknowledged that ministers could, in particular cases, with propriety refuse making public certain official papers. Mr. Mackenzie expressed his opinion that everything that referred to the giving out of contracts, of a technical and public nature; everything except the moral and personal reasons why any persons had been passed over, should be laid before the house; p. 1083.

[2] Mirror of P. 1830, pp. 387, 1877-1879; 1840, p. 2120; 74 E. Hans. [3], 568. See reply of Lord Gosford to an address of the assembly, Lower Canada, Dec. 11, 1835; Jour. 1835-6, p. 263. The same rule applies to communications between law officers of the Crown respecting particular trials; or the judge's notes taken at a trial; Mirror of P. 1830, pp. 527, 1667-1688; 1 Todd, 357. Or to coroner's notes, which, as they partake of a judicial character, can be produced only with the consent of the officer himself; Mirror of P., 1841, p. 2207.

[3] 187 E. Hans. (3), 219, &c.; also, 149 *Ib.* 178.

[4] 177 *Ib.* 961, 1402, 1455; 178 *Ib.* 154.

state, marked 'private and confidential,' it is not competent for the governor-general to give copies of such correspondence without the express sanction of the secretary of state. That this rule equally applies to letters written by the governor-general to third parties, communicating confidentially to them, or referring to the contents of private and confidential letters from the secretary of state, and to answers received by the governor-general to such letters." [1]

Before leaving this point, it is useful to note here that the colonial office has laid down certain rules for the guidance of governors in their communications with the imperial authorities. Where responsible government is established the governor is generally at liberty to communicate to his advisers all despatches not "confidential." By a circular of 10th of July, 1871, despatches are reclassified: 1. *Numbered*, which a governor may publish unless directed not to do so. 2. *Secret*, which he may, if he thinks fit, communicate, under the obligation of secrecy, to his executive council, and may make public if he deems it necessary. 3. *Confidential*, which are addressed to a governor personally, and which he is forbidden to make known without the express authority of the secretary of state.[2] "Numbered" despatches are always laid before Parliament on the responsibility of ministers.[3] But it is "a general and reasonable rule that despatches and other documents forwarded to the imperial government should not be published until they shall have been received and acknowledged by the secretary of state, and that no confidential memorandums passing between ministers and the governor should be laid before the colonial parliament except on the advice of the ministers concerned." [4]

In 1878, Mr. Lanthier asked that the house pass an ad-

[1] Can. Com. J. [1867-8], 275.

[2] Col. Reg. 165-188; C. O. List, 1883, pp. 265-6.

[3] New Zealand H. of R. Jour., 1871, app. vol. I., p. 14; Parl. Deb. viii. 140.

[4] See Todd's Parl. Gov. in the colonies [pp. 93-99] where this question is fully reviewed.

dress for certain plans and papers relative to the division line between Upper and Lower Canada. The premier (Mr. Mackenzie) objected to the adoption of the address, on the ground that the documents asked for were not in the possession of the dominion government, and that they were wanted, according to the statement of the mover, for purposes of private litigation. The motion was then withdrawn in view of the strong objection taken by the government to the production of the plans.[1]

In the same session the premier refused to bring down a statement in detail of the expenses of the governor-general during his visit to the Pacific coast, and contended that the house could find all the necessary information in the public accounts, and that it would be disrespectful to his Excellency to demand more than was given in these accounts. Prominent members did not doubt the right of a member to make such a motion, but only regretted that he had thought proper to press it. After considerable debate on the subject, an amendment was accepted to meet the difficulty in which the house was obviously placed.[2]

In the session of 1879, Mr. Williams moved for a copy of all papers and correspondence that might have passed between Lord Dufferin (governor-general) and the members of the late Mackenzie administration on certain dismissals from office. The premier (Sir John Macdonald) informed "the hon. member that the official correspondence between the governor-general and his advisers for the time being could not be brought to the house. If there was any such official correspondence on record, and his Excellency would allow its production, and the public interests would not be injured thereby, there could be no objection to laying it before the house, but not otherwise."[3]

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[1] Can. Hans. [1878], 389-92.

[2] Can. Hans. [1878], 510-25; see Sir Charles Dilkes's motion with respect to the civil list; only two voted for his motion; 276 against; 210 E. Hans. (3), 251-318.

[3] Can. Hans. [1879], 492.

From discussions in the English Parliament it appears that the document, of which it is proposed to order a copy, must be official in its character, and not a mere private letter or paper.[1] The papers asked for must relate to a subject or matter within the legitimate powers and functions of Parliament. Where the production of papers was objected to on the ground that the subject to which they related was one which belonged to the jurisdiction of the ordinary tribunals, and with which Parliament had no authority to interfere, and that the only use which could be made of the documents would be as evidence against the claims of the party called upon to produce them, the motion was refused.[2] Neither is it a proper ground for the production of papers that they will either prove or disprove an assertion made by a member on some former occasion;[3] or that they will enable the mover to proceed individually upon a charge against a party, whom he desires to bring before some other body or tribunal.[4] It has, however, been distinctly laid down by eminent English authorities that the inquisitorial jurisdiction of Parliament could not be limited to such "public institutions" only as were the recipients of public money; but "that when an institution is established to assist in promoting the cultivation of the arts, or other strictly public object, it could not be denied that the house had a right to inquire into its affairs, even though it did not receive public aid."[5] And on a later occasion it was declared by Sir Robert Peel that "where Parliament has given peculiar privileges to any body of men (as for example, banks or railway companies) it has a right to ask that body for information upon points

[1] 11 E. Hans. (1), 271; Cushing, pp. 364-5; 11 Parl. Reg. 128; 74 E. Hans. (3), 865.

[2] 15 E. Hans. (N. S.), 194-202.

[3] 22 *Ib.* (1), 120.

[4] 16 *Ib.* (3), 194-5.

[5] Sir Robert Peel and Lord John Russell, in case of Royal Academy, Mirror of P. 1839, pp. 4238, 4503; 1 Todd, 281-2.

which it deems necessary for the public advantage to have generally understood." The great point to be aimed at in such inquiries he considered to be "that while you extract all the information the public require to have, you should, at the same time, avoid all vexatious interference in the details of the business of the respective undertakings."[1]

All the departments of the public service are kept most laboriously employed every session in furnishing information required by members of the two houses. The expense entailed in this way is necessarily very large. The right of a member to obtain every information from the government within the limits previously described, is so undoubted that it seems almost beyond the power of a minister to keep the practice within narrower bounds and thereby save much public money. It is quite obvious, however, that no member should move for papers except on sufficient grounds. It is clearly laid down by the most eminent of English parliamentarians that it is incumbent upon the mover to state the reasons upon which his motion is founded that the house may judge of the necessity, importance, and expediency of calling for the papers which are the subject of that motion.[2]

**VIII. Printing of Documents.**—All the papers and returns laid on the table of the house in the course of a session give a vast amount of information relative to questions of public interest. It is consequently usual to have all documents of an important nature printed as soon as possible. The practice of the Senate with respect to the printing of public documents is the same as that of the Commons. Rule 84 of that house simply provides :

"All papers laid on the table stand referred to the joint committee on printing, who decide and report whether they are to be printed."

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[1] Mirror of P. 1840, p. 4840 ; also, *Ib.* 1828, p. 825.

[2] Lord Melbourne, Mirror of P. 1838, p. 5387. Also, 11 Parl. Reg. 132, 133 ; 2 Cav. Deb. 237. Can. Hans. (1879), 1265-7.

But it is not unusual in the Senate for the chairman of a committee to move that certain papers be printed without reference to the printing committee, and the house has so ordered accordingly; but this is only done for the immediate information of members.[1] As a rule the printing of all documents is left to the special supervision of the printing committee which regulates the number of documents and the mode of printing for both houses.

**IX. Joint Committee on Printing.**—The joint committee on printing which is composed of members of both houses, is appointed at the commencement of every session like the other standing committees.[2] In the old legislature of Canada the expenses of the public printing became so enormous under an exceedingly loose system, that it was at last found necessary to take measures to introduce greater economy into this service. In the session of 1858, an inquiry was instituted with this object in view, and a report was presented by a committee of the legislative council, reviewing the whole subject, and very clearly showing the economical advantages that would result from certain proposed improvements. The report specially recommended that, at the commencement of each session, a joint committee should be appointed, composed equally of members of both houses, whose duty it should be to determine what matter should be printed, as well as the manner of printing it.[3] This plan was favourably entertained by the legislative assembly, and in the session of 1859 the first joint committee on printing commenced its labours.[4] Under its authority the former practice of printing indiscriminately almost every document was abandoned, and a more economical system of printing only such documents and returns as are necessary for public

[1] Sen. J. (1875), 176, 190; *Ib.* (1878), 99, 129.
[2] See chapter on select committees.
[3] Leg. Com. J. (1858), 215-222.
[4] Leg. Ass. J. (1861), 146.

information was inaugurated. Step by step all the public printing of the country has been brought under perfect parliamentary control;[1] and the result has been certainly satisfactory from an economic point of view. The joint committee has always had the management of the printing service of Parliament, as well as of all the officers and servants connected therewith. The salaries of the employees are fixed by the committee, and any increases or diminutions are recommended to the houses for their sanction.[2] The printing service is performed by tender and contract under the direction of the committee, which reports its recommendations to the houses,[3] which may or may not concur with the committee.[4] The accounts are

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[1] The latest change was in connection with the *Canada Gazette*, and departmental printing. For very many years in old Canada the public printing was a monopoly; but by the death of Mr. Stuart Derbishire in 1863, the queen's printership which was held by him under a royal patent became vacant. Mr. Malcom Cameron was appointed in his place, and carried on the departmental printing and the *Canada Gazette* in conjunction with Mr. Desbarats, the surviving partner of Mr. Derbishire (Parl. Deb. 1863, p. 121; 1865, p. 16). The feeling, however, on both sides was to have a change also with respect to the *Gazette* and departmental printing (Leg. Ass. J. 1862, p. 316); and the dominion government, in 1869, at last took the question up, and the result was the passage of an act respecting the office of queen's printer, and the public printing (chap. 7, 32 and 33 Vict. Dom. Stat.), which established a queen's printer for Canada, under whose superintendence the *Canada Gazette*, the statutes, and departmental printing must now be performed. All printing is done by public contract, except certain confidential printing which the government may by orders in council authorize to be done without tender—such orders and expenditures to be laid before Parliament at the next session.

[2] Leg. Ass. J. (1860), 395, 462; Com. J. (1869), 156; *Ib.* (1870), 243, 288; Can. Hans. (1878), 2253-4; Jour. pp. 131, 226. Sen. J. 142, 153.

[3] Can. Com. J. (1867-8), 36, 38. *Ib.* (1879), 303, 428; Sen. J. 177, 194. The contract is with the queen.

[4] Can. Com. J. (1869), 199, 224, 247, 265. In this case the committee reported in favour of certain tenders from Hunter, Rose & Co.; but the house did not concur in the report, and referred it back with an instruction that the committee should accept the lowest tender, I. B. Taylor's. The committee then simply reported the lowest tender, and left the house to decide finally.

kept separate from those of the other services, and are checked by the clerk of the committee and paid only on his certificate.[1] These accounts, with the report of an auditing sub-committee, and the certificate of the auditor-general, are duly laid every session before the houses.[2] In the session of 1878, objection was taken to a report of the committee, recommending an increase of salary, on the ground that a committee could not make such a recommendation. It was shown, however, to the satisfaction of the house that the committee had always exercised the power to nominate, and fix the salaries of, its employees, subject, of course, to the approval of the houses. The act respecting the internal economy of the house (31 Vic., c. 27) provides that a certain sum shall be yearly voted by Parliament and placed at the disposal of the committee for printing services. The committee simply distributes the moneys set apart by Parliament for this purpose.[3]

The committee sits very frequently during the session, and the clerk lays before it all the returns according as these are placed on the table of the house, and then it decides what documents ought to be printed, and reports the result of its deliberations, so that members may know what has been done with the papers in which they are interested. All the important papers and returns are printed in the sessional papers—the reports of committees always in the appendix to the journals.[4] A certain number of printed copies of papers are distributed to each member. The committee has allotted to it "a joint room for the distribution of printed papers for both houses," and arranges the number of documents that are to be

[1] Leg. Ass. J. (1876), 265.

[2] Can. Com. J. (1878), 131-4 ; *Ib.* (1879), 73, 109 ; *Ib.* (1883), 135-139 ; Sen. J. (1883), 101-104.

[3] Can. Hans. (1878), 2201-2203 ; 2253-2254. Also, for new appointments by committee, see Jour. [1880], 54, 62 ; *Ib.* [1883], 79, 80.

[4] Can. Com. J. [1876], 135, &c.

annually given to members of Parliament and others.[1] It is usual to let the reports lie on the table for a day or two, and then to move for their adoption when "motions" are called during the progress of routine business. The motion for concurrence is generally allowed to be proposed without notice when the report only refers to the printing of documents, but objections may be taken on that ground at any time; and it is the practice to give the necessary notice in all cases which are likely to provoke controversy and debate.[2]

When a member wishes to direct the special attention of the printing committee to a paper, he may give notice of a motion that it be printed; and this motion must go to the committee under the following rule:

"94. On a motion for printing any paper being offered, the same shall be first submitted to the joint committee on printing for report, before the question is put thereon."

This rule was not strictly enforced for some sessions after 1867. Motions for the immediate printing of documents have been proposed and adopted, without reference to the committee, or the suspension of the standing order.[3] Sometimes the rule has been suspended, and the order given immediately for printing—a regular proceeding in case of urgency.[4] Members have also moved "to refer" certain papers to the committee, or to instruct it to consider the propriety of printing certain documents; and such motions have been put from the chair.[5] No motions, however, for the printing of papers are now put from the chair, but are simply entered on the journals as referred

[1] Can. Com. J. [1867-8], App. No. 2 (3rd and 13th Reports); *Ib.* [1869], App. No. 2; *Ib.* [1874], 271; *Ib.* [1875], 118. The distribution of documents was rearranged in 1878, pp. 220, 254, App. No. 3; Sen. J. pp. 218-230, 265. Number of votes and bills was increased in 1879, pp. 56, 78.

[2] See Com. J. [1880], 364. Also, chapter on select committees.

[3] Can. Com. J. [1867-8], 43; *Ib.* [1870], 30; *Ib.* [1873], 20, 49.

[4] Can. Com. J. [1871], 20; *Ib.* [1880], 160. Can. Hans. [1877], 686.

[5] *Ib.* [1876], 71; *Ib.* [1867-8], 157; *Ib.* [1882], 192.

in accordance with the rule.[1] If a member is not satisfied with the report of the committee at any time, he can move against it on the motion for concurrence.[2] Sometimes reports are only agreed to in part.[3] The committee has frequently reconsidered previous decisions without a motion formally proposed in the house to refer the matter back for further deliberation.[4] At other times, the report has been amended on a motion first made in the house for reconsideration,[5] the more regular proceeding, since it gives power to the committee to revise its former judgment on a question.[6]

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[1] *Ib.* [1877], 47, 124, 132, &c.; *Ib.* [1879], 353; *Ib.* [1883], 391. Mr. Sp. Anglin questioned the propriety of any debate on such a motion. Can. Hans. 1877, Feb. 19; also, *Ib.* p. 686.

[2] Can. Com. J. [1874], 304.

[3] *Ib.* [1867-8], 224; *Ib.* [1879], 326.

[4] *Ib.* [1873], 415.

[5] Can. Com. J. [1883], 236.

[6] See chapter on select committees for remarks on this point.

# CHAPTER X.

*ADDRESSES, MESSAGES AND VOTES OF THANKS.*

I. Subject-matter of Addresses.—II. Addresses founded on resolutions.—III. Joint Addresses.—IV. Addresses of Condolence and Congratulation.—V. On retirement of the Governor-General.—VI. Presentation.—VII. Messages from the Governor-General.—VIII. Addresses to Prince of Wales in 1860.—IX. Thanks to distinguished Persons.

**I. Subject-Matter of Addresses.**—The procedure in the case of the address in answer to the speech at the commencement of the session has already been fully explained in a previous chapter of this work,[1] and it is now only necessary to refer to the subject of addresses generally, and to the mode of transmitting them to the sovereign or presenting them to the governor-general.[2]

The subjects on which the two houses may address the sovereign or her representative in this country are too numerous to be detailed at any length. They may relate to every matter of Canadian interest, to the administration of justice, to the commercial relations, or to the political state of the country, and in short to all subjects connected with the government and welfare of the dominion. They may also contain expressions of congratulation or regret in reference to matters affecting the royal family or the governor-general.

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[1] Chap. VI.

[2] But no address may be presented in relation to a bill or matter under the consideration of the house. 12 Lords' J. 72, 81, 88; 8 E. Com. J. 670; 1 Grey, 5; May, 515.

**II. Addresses founded on Resolutions.**—When an address to her Majesty originates in the House of Commons, it is generally the practice to pass a resolution in the first place. This resolution may, or may not, be first considered in committee of the whole, as the circumstances of the case may demand. For instance, in 1877, the Commons passed a resolution in committee of the whole with reference to the extradition from Canada of fugitive criminals.[1] In 1875 the house passed a resolution respecting the New Brunswick School Act, without a committee of the whole, as is done in the case of the answer to the speech at the opening of the session.[2] Again in 1867-8 an address was founded on a report from a select committee.[3] The principle that should guide the house with reference to addresses of a general character appears to be this: Whenever the question is one involving legislation, or affecting commerce, and requires considerable discussion of details, it is advisable, and certainly convenient, to ask the house to go into committee of the whole to consider a resolution on which to base an address.[4] But in the case of all addresses which are passed *nemine contradicente*, it is only necessary to propose a resolution in the house itself, without going into committee.[5] In the Senate, however, it is not the usual practice to go into committee on resolutions for an address on a special subject.[6] The practice of the Senate with respect to addresses generally has more closely followed the practice of the English Parliament, where it has been much simplified of late years. In the Commons the old practice continues to be followed to a large extent.

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[1] Can. Com. J. (1877), 237-9 ; also, Leg. Ass. (1859), 509.

[2] Can. Com. J. (1875), 197-203.

[3] *Ib.* (1867-8), 376, 377.

[4] *Ib.* (1873), 187, naturalization; *Ib.* (1878), 255, Canadian boundaries.

[5] Can. Com. J. (1872), 292-3. Retirement of Lord Lisgar from the governor-generalship.

[6] Sen. J. (1869), 184.

When the resolution for an address has been agreed to by the house, "a select committee will be appointed to draft an address to her Majesty founded on the said resolutions." The committee having reported the address, it will be read twice and agreed to, and ordered to be engrossed. The next step is to pass an address to the governor-general, requesting his Excellency to transmit the same to her Majesty—which address will be engrossed and presented with the address to her Majesty by such members of the house as are of the queen's privy council of Canada.[1]

In the session of 1882 the House of Commons agreed to a joint address to her Majesty on the subject of the difficulties in Ireland as an amendment to the motion for the house to go into committee of supply.[2] The address to her Majesty embodying the Quebec resolutions of confederation were also passed without the formality of a previous committee.[3] In the Senate, in 1882, an amendment was moved to the Irish address—an unusual proceeding.[4]

**III. Joint Addresses.**—When it is agreed in the Commons to transmit an address of the two houses to the queen, a message will be sent to the Senate requesting their Honours to unite with the house in the same. This message will be proposed as soon as the address has been passed by the house and ordered to be engrossed. When the

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[1] Can. Com. J. (1875), 201, 203.

[2] Can. Com. J. (1882), 307, 334; Sen. J. 245-6, 270, 271. See 109 E. Com. J. (1854) 169; address on war with Russia, agreed to without reference to a committee. Also, 132 E. Hans. (3), 307; Burke's Speakers D., p. 3. Dr. A. Todd wrote me on this point: "Modern usage tends more and more to simplify and abbreviate procedure which is an additional reason for dispensing with a committee to draft an address, when it can be reasonably done by the house itself."

[3] Leg. Ass. J. [1865], vol. 24, p. 67. The speaker decided that a committee was not necessary, p. 74.

[4] Sen. J. (1882), 262.

Senate has received the message the address will be read by the clerk, and ordered to be taken into consideration, sometimes immediately, but more frequently on a future day. The address from the Commons always contains a blank: "We, your Majesty's most dutiful and loyal subjects, the ——— Commons of Canada." This blank will be filled up by the Senate with the words "Senate and," so that the address will read "the Senate and Commons of Canada in Parliament assembled," etc. It will then be ordered that the speaker do sign the address on the part of the Senate. The next step will be for the Senate to order an address to the governor-general, requesting him to transmit the same to the sovereign. Then this address will be agreed to, signed by the speaker, and ordered to be communicated to the Commons by one of the masters in chancery for their concurrence. In this address there is also a blank to be filled up by the house, with the words, "and Commons," and a message will be sent to the Senate informing them that the Commons have agreed to the said address. When the message has been received by the Senate, they will order that "the joint address to her Majesty, and also the joint address to his Excellency, the Governor-General, be presented to his Excellency by such members of this house as are members of the privy council."[1]

In case the address originates in the Senate, it will be read at length at the table as soon as it is taken into consideration by the Commons. The blank after the words "the Senate———" in the address, will then be filled up with the words, "and Commons"; and the address concurred in. An address will next be passed to the gover-

[1] Can. Com. J. (1867-8), 225, 236; *Ib.* 66, 67, 68, 98, 108, 367; *Ib.* (1869), 152, 153, 156, 168, 169; *Ib.* (1871), 292, 293, 300. Can. Com. J. (1877), 237-239, 240; Sen. J. 214, 215, 216, 221, 229, 230; Com. J. 268; Sen. J. 239, 240. In Can. Com. J. [1880], 57; Sen. J. 47, 48, will be seen the procedure in the case of the joint address to the governor-general on the subject of granting relief to Ireland.

nor-general requesting him to transmit the joint address to the queen. The Senate will then proceed to fill up the blank in this address in the usual way, and communicate the fact to the Commons. The addresses will be presented to his Excellency by such members of the Senate as are members of the privy council.[1]

**IV. Addresses of Condolence and Congratulation.**—Addresses of congratulation or condolence to the sovereign are always passed *nemine contradicente.* Such addresses are moved immediately in the English houses without reference to a committee, and the same usage now obtains in the Senate, but in the Canadian Commons the old practice, in reference to addresses, still continues.[2] Again, if the houses wish to congratulate any members of the royal family on their marriage, or to condole with them on some sad bereavement, they may do so in the form of a message.[3] In

[1] Sen. J. (1872), 28, 29; Com. J. 16, 24; Sen. J. 36; Com. J. 29; Com. J. 1879, Feb. 21; Com. J. (1880), 78, 79, 82, 101; *Ib.* (1882), 330, 490. In the English houses such addresses are presented either by both houses in a body [74 E. Com. J. 279]; or by two peers and four members of the House of Commons (114 E. Com. J. 373); or by committees [1 *Ib.* 877; 2 *Ib.* 462]; or by the lord chancellor and speaker of the Commons (16 *Ib.* 54); or by the lord chamberlain, or lord steward, and four members of the Commons (130 *Ib.* 190, 326); but the Lords always learn her Majesty's pleasure, and communicate to the Commons by message, the time at which she has appointed to be attended (137 E. Com. J. 94). The same practice obtained in the old legislative council of Canada. Can. Leg. Ass. J. (1859), 145, 539, 587.

[2] 113 E. Com. J. 31, marriage of the Princess Royal; 116 *Ib.* 112, death of Duchess of Kent; 123 *Ib.*, attempted assassination of Duke of Edinburgh, 142; birth of a princess, 309. Death of Princess Alice, Dec. 16 and 17, 1878, Lords' and Com. J.; Leg. Coun. J. [1862], 57, 88, death of Prince Consort (joint address). Leg. Coun. J. [1863], 135; Leg. Ass. J. 167, marriage of Prince of Wales. Can. Com. J. (1867-8), 225, attempted assassination of Duke of Edinburgh. Can. Com. J. (1872), 16, 24, 29, restoration to health of Prince of Wales. Can. Com. J. 1879, Feb. 21, death of Princess Alice (joint address). Joint address to her Majesty on her escape from assassination, Can. Com. J. [1882], 105; Sen. J. 73, 78, 79.

[3] Can. Leg. Ass. J. (1863) 168.

England "certain members are always nominated by the house to attend those illustrious personages with the messages or resolutions; one of whom afterwards acquaints the house, (in the Lords, in his place, or at the table; in the Commons, at the bar), with the answers which were returned."[1] A similar practice obtained before the confederation of the provinces in the Canadian legislature. When the message had been agreed to, it was ordered that certain members do wait upon his Excellency the Governor-General with the message and request him to transmit the same to the proper quarter.[2] Under the present practice, the house would order an address to his Excellency, which would be delivered to him by such members of the house as are members of the privy council.[3] No such message, however, it may be added, has been agreed to since 1867, the necessity for such a motion not having arisen. In 1882, the houses forwarded through his Excellency the Governor-General by the Atlantic cable messages of congratulation to her Majesty on her escape from an attempt on her life.[4]

It is always usual for the two houses to present addresses to the governor-general, congratulating him in case of his elevation to the peerage.[5] In 1880, the houses passed an address congratulating the Marquis of Lorne, then governor-general, and her Royal Highness the Princess Louise, on their escape from serious danger.[6]

**V. Address on Retirement of Governor-General.**—It is also the practice to pass a joint address at the proper time, expressing regret at the termination of the governor-general's

[1] May, 517-8; 53 Lords' J. 369; 95 E. Com. J. 95; 52 E. Hans. (3), 343; 136 E. Com. J. 130, 223.

[2] Can. Ass. J. [1863], 168, 204.

[3] Can. Com. J. [1867-8] 376; *Ib.* [1869], 223.

[4] *Ib.* [1882], 105; Sen. J. 79.

[5] Sen. J. [1871], 25, elevation of Sir John Young to peerage as Baron Lisgar.

[6] Sen. J. [1880], 53-54, 61; Com. J. 78, 79, 82.

official connection with Canada. His Excellency will take the most convenient opportunity that offers of acknowledging such an address in suitable terms. In the case of Lord Lisgar, in 1872, he did not send down a special message in answer, but deferred his reply until he delivered the speech at the prorogation of Parliament.[1] In the next case, of the farewell address to Lord Dufferin, in 1878, it was ordered in each house to be presented by such members as were of the privy council. A member of the privy council subsequently informed the Senate that Lord Dufferin had appointed two o'clock of the afternoon of a later day, in the Senate chamber. The Commons were duly informed of the fact by message, and were accordingly able to be present at the reading of the address and answer. On a subsequent day, a member of the privy council presented, in each house, a copy of Lord Dufferin's reply, in order to give it a place in the journals.[2]

In 1883, the two houses passed a similar address previous to the departure of the Marquis of Lorne. On this occasion also, the address was ordered to be presented by members of the privy council. On the last day of the session, a few minutes before the formal prorogation, the speaker of the Commons informed the members present that he had just received intimation from his Excellency that the address would be presented in the Senate chamber. Accordingly, the houses having adjourned during pleasure, the members of both assembled on the occasion of the reading of the address by the premier, Sir John Macdonald. His Excellency read his reply, which was duly reported to both houses, and entered on the journals. It was also ordered in the Senate to be printed in both languages for the use of members.[3]

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[1] Can. Com. J. [1872], 292, 293, 319, 336 ; Sen. J. 201-2.

[2] Can. Com. J. [1878], 164, 165, 166, 171, 182 ; Sen. J. 183-85, 193.

[3] Can. Com. J. [1883], 429, 430, 431, 436 ; Com. Hans. 1396 ; Sen. J. 288-290, 292-293.

**VI. Presentation of Addresses.**—It was formerly the practice for the Canadian houses, separately, or jointly, to wait upon his Excellency the Governor-General with the addresses in answer to the speech.[1] When the address had been agreed to and ordered to be engrossed, it was resolved that it be presented to his Excellency by the whole house, and that such members as were of the executive council do wait upon him to know his pleasure, when he would be attended with the said address. One of the members of the executive council would then inform the house of the time when his Excellency would be ready to receive them with the address.[2] At the hour appointed the houses adjourned during pleasure, and attended his Excellency, generally in the executive council chamber,[3] but sometimes at government house.[4] The speaker, attended by the serjeant-at-arms with the mace, and by the members of the house, would proceed in carriages to the place of meeting. On being admitted into the presence of his Excellency, the speaker read the address in both languages, the mover and seconder being on his left hand. His Excellency would reply, and then the house retired.[5] In case of

[1] Upp. C. Ass. J. [1792], 6, 7; Low. Can. Ass. J. [1792], 58; Can. Ass. J. [1841], 67; *Ib.* [1859], 61, &c.

[2] In the old assemblies of Upper and Lower Canada a deputation of members was ordered to attend his Excellency to learn the time and place for receiving the address. This deputation would report the answer to the house. On December 26, 1792, we find this entry in the journals of Lower Canada: "The house is unanimous that the speaker set out at noon, preceded by the serjeant-at-arms bearing the mace, that the members follow to the château St. Louis, where Mr. Speaker will read the address, after which a member will read the same in English [Mr. Panet could not read English very accurately], that the clerk do follow the house at some distance in case of need, and that the house do return in the same order." 1 Low. Can. J. 58, 60; I Upp. Can. Ass. J. 6, 7; 1 Can. Ass. J. 67.

[3] Quebec *Mercury*, Parl. Deb. Feb. 26, 1863.

[4] Low. Can. J. [1792], 60; Can. Leg. Ass. J. [1841], 69.

[5] The governor-general replied only in English to the addresses to the old assembly of Lower Canada, and of the old Canada legislature. It was usual for the speaker of the legislative council to read the speech to the

a joint address, the speakers of the two houses would proceed in state to the place of meeting, and would enter side by side into the presence of the governor-general; and the president or speaker of the legislative council would read the address to his Excellency in English and French.[1] On returning to their respective houses, the speakers would always communicate the reply of which they had received a copy on leaving the presence of the governor-general. On such occasions the legislative councillors were in full dress, as is always the case with the senators when his Excellency opens and prorogues Parliament. The members of the assembly, however, presented themselves in their ordinary dress.[2]

The practice of presenting the addresses in answer to the speech by the houses in a body continued up to 1867,[3] when the more convenient course was adopted of presenting such addresses by members of the privy council.[4] It had, however, for many years previous been the practice to present addresses on general subjects, through executive councillors,[5] or the speakers of the two houses,[6] or by committees of the same.[7] Addresses for papers and returns were formerly taken up by a committee, one of whom would sometimes report the reply.[8] It was soon, however, found for the convenience of the house to present such addresses by members of the executive council;[9]

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two houses in French, after its delivery by his Excellency. It was not till the repeal of sec. 41 of the Union act of 1840 that the speeches were delivered in French as well as English. Lord Elgin was the first to commence the practice which has always been continued to the present time.

[1] Leg. Ass. J. (1844-5) 317; Leg. Coun. J. 125.

[2] In conformity with an old parliamentary privilege, 2 Hatsell, 390 *n.*

[3] Leg. Ass. J. [1866], 16, 17.

[4] Can. Com. J. [1867-8], 15.

[5] Leg. Ass. J. [1844-5], 437.

[6] Leg. Ass. J. [1841], 399; Leg. Coun. J., 112.

[7] *Ib.* [1841], 630.

[8] *Ib.* [1841], 99, 212.

[9] *Ib.* [1841], 172.

and the answers would be brought by one of the same;[1] or be sent down by message.[2] This practice is still continued, but the answers are now brought down by a member of the government, to whom they are transmitted by the secretary of state.[3] The answer to the speech at the opening of the session is always brought down by the premier or other member of the cabinet in his absence;[4] and the same practice obtains in respect to messages generally.[5] Messages are always received by the members standing and uncovered, when they are signed by his Excellency's own hand.[6] In the Senate such messages are generally read by the member who presents them;[7] in the Commons by the speaker.[8] In case they are *again* read by the clerk in the Senate or Commons, members need not be uncovered.[9] It is the usage, however, in the Commons for members to remain standing and uncovered whilst the speaker or clerk reads the message in French—the document being always sent in the two languages. Messages for the attendance of the house in the Senate chamber are always brought by the usher of the black rod, and such messages should be received by the house in silence, and uncovered; but members do not stand on such occasions—that ceremony being reserved for written messages immediately from the queen or her representative.

**VII. Messages from Governor-General.**—In accordance with constitutional usage the governor-general meets the two houses in person only on those occasions when he opens or prorogues Parliament or when he assents to bills

[1] *Ib.* [1841], 191, 202.
[2] *Ib.* [1841], 173, 201; *Ib.* [1842], 49, 111.
[3] See *supra* p. 279.
[4] Can. Com. J. [1872], 18; *Ib.* [1877] 44; Sen. J. [1877], 50.
[5] Can. Com. J. [1872], 17; *Ib.* [1877], 39, 44, 324, 333.
[6] *Ib.* [1877], 44.
[7] Sen. J. [1867-8], 211; *Ib.* [1877], 39, 50.
[8] Can. Com. J. [1877], 39.
[9] 2 Hatsell, 365 *n.*

in the course of the session. Other communications which take place during the session, from the head of the executive to the legislative branches, or either of them, are made by message. These messages are either *written* or *verbal.*

Written messages are confined to important public matters which require the special attention of Parliament. The estimates for the public service,[1] and all despatches from the Imperial government[2] are brought down by message, under the hand of his Excellency.

In the session of 1878, a ministerial crisis occurred in the province of Quebec, the deBoucherville ministry having been called upon to resign by the lieutenant-governor, notwithstanding the fact that they were sustained by a large majority in the legislature. The two branches of the legislature passed addresses to the governor-general and the two houses of Parliament, condemnatory of the course pursued by the lieutenant-governor. These addresses were brought down by a message and read at the tables of the two houses. The answer of the lieutenant-governor was also brought down by message.[3]

In the session of 1880, a message was received from his Excellency recommending the granting of $100,000 for the relief of the great distress in Ireland. The message was considered in committee, and a resolution to grant the money adopted. An address was then passed, thanking his Excellency for his message, and informing him of the passage of the resolution. Subsequently a joint address was passed to his Excellency, praying that he would cause the issue of the money out of the consolidated fund. Sometime later a despatch on the subject from the secre-

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[1] Can. Com. J. [1878] 37.

[2] *Ib.*, 45, 253. Sen. J. [1879], 159.

[3] Can. Com. J. [1878], 100, 106, 150. The message was printed only in the V. and P; both message and address appeared in full in the Senate minutes of the 21st March, 1878.

tary of state for the colonies was transmitted to the houses by his Excellency.[1]

A written message is not requisite in cases where it is necessary to signify the recommendation or consent of the Crown to a motion involving the expenditure of public money, or affecting the property of the dominion government. A verbal message will be given in such cases by a minister, as soon as he has made the motion in his place. The cases where such recommendation or consent is necessary are fully explained in the chapter on supply.

Verbal messages may also be made in the same way when a member of either house is arrested for any crime at the suit of the Crown, "as the privileges of Parliament require that the house should be informed of the cause for which their member is arrested, and detained from his service in Parliament."[2] In all cases in which the arrest of a member for a criminal offence is communicated from the Crown an address of thanks is voted in answer.[3] If a member has been imprisoned for a contempt of court, it is the duty of the presiding judge to communicate the fact to the house; and it is usual to refer the letter to a select committee for the purpose of considering and reporting whether any of the matters therein mentioned demand the further attention of the house.[4]

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[1] Com. J. [1880], 30, 35, 40, 57, 78, 375; Sen. J. 47-8. A similar case occurred in 1854, during the Crimean war, when the Canadian Parliament contributed the same amount towards the relief of the wounded and the widows and orphans of the soldiers of England and France. Jour., pp. 309, 345, 346, 353, 354, 595.

[2] May, 512; 37 E. Com. J. 903; 103 *Ib.*, 888.

[3] May, 512; 37 E. Com. J. 903; 70 *Ib.*, 70.

[4] Case of Mr. Whalley, 1874 (129 E. Com. J., 11, 28, 71). In this case the Parliament, of which Mr. Whalley was a member, was dissolved, and a new Parliament met when the chief justice made his report. He had doubts, however, as to the necessity of making a report in this case; but he preferred to "run the risk of appearing to do that which may be unnecessary to the possibility of appearing to be wanting in deference to the house." The select committee reported that the chief-justice had ful-

Whenever the governor-general sends a message to the Senate, with reference to a matter requiring pecuniary aid, it is usual for that house to present an address, declaring its willingness to concur in the measures which may be adopted by the other house.[1] It is the rule, in fact, in both houses to answer by address all special messages which refer to important public events;[2] or to matters connected with the interests, property, or prerogatives of the Crown,[3] or which call for special legislative action.[4] But in regard to measures relating exclusively to pecuniary aid of any kind, it is only necessary for the House of Commons to consider them in committee of the whole, on a future day, when provision is made accordingly.[5] When the message contains a minute of council with a recommendation to Parliament, it is sufficient that the house concur in a resolution on the subject.[6]

**VIII. Addresses to Prince of Wales, 1860.**—The legislature of Canada in 1859 passed an address to the queen praying her Majesty to pay a visit to Canada.[7] At the commencement of the session of 1860 the governor-general trans-

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filled his duty in reporting the matter to the house, and that there was no necessity for giving it further attention. Also case of Mr. Gray in 1882; 137 E. Com. J., 487, 490, 491, 504, 509.

[1] Sen. J. (1867-8), 212, 214; 114 Lords J., 78.

[2] 82 E. Com. J., 114; 239 E. Hans. (3) 274, 290; 870, 1038.

[3] 85 E. Com. J., 466; 89 *Ib.*, 578; Leg. Ass. J. (1861), 72, 84, &c; Can. Com. J. (1867-8), 224.

[4] 85 E. Com. J., 214; Can Com. J. (1867-8), 189, 201; *Ib.* (1880), 40 (Irish relief.)

[5] May, 512; 86 E. Com. J. 488, 491; 105 *Ib.* 539, 544; 129 *Ib.* 83, 96, (Sir Garnet Wolseley); 137 *Ib.*, 112, 116, 120 (Marriage of Prince Leopold); Can. Com. J. [1867-8], 347; *Ib.* [1869], 22, 29; *Ib.* [1877], 39, 44, 324, 333. In the old legislative assemblies it was the practice to send answers to all messages (which were very frequent in early parliamentary times) in the shape of resolutions or addresses; Low. Can. J. [1792], 108; *Ib.* [1799], 140, 150.

[6] Establishment of provisional districts in the N. W. T. Can. Com. J. [1882], 415, 509.

[7] Leg. Ass. J. [1859], 392, 408, 422.

mitted a despatch from the secretary of state for the colonies, in which her Majesty expressed her sincere regret at not being able to comply with "this loyal invitation," and informed the Canadian people that the Prince of Wales proposed visiting this dependency of the empire. The two houses of the legislature then passed addresses congratulating the Prince on his arrival in Canada, which addresses were ordered in each house to be "presented by Mr. Speaker with the mace, attended by such honourable members of this house as may be present on the occasion."[1] The addresses were presented separately in the Parliament House at Quebec, on the 21st of August, 1860. The Prince of Wales, received the two houses in the chamber of the legislative council, which had been appropriately decorated for this memorable ceremony. The address of the legislative council was first presented by the speaker, who was preceded by the gentleman usher of the black rod and the serjeant-at-arms with the mace. A number of members of the council together with the clerk and other officers, were present in full dress. The speaker advanced and read the address, first in English and then in French; and the Prince delivered the reply also in the two languages. The address of the Commons was delivered with the same ceremonies. The two speakers, Mr. N. F. Belleau and Mr. H. Smith, on that occasion received the honour of knighthood at the hands of his Royal Highness. When Parliament assembled in 1861, the speakers laid the reply of the Prince to the addresses before the two houses, and informed them that "after the reception of the address, the hon. members then present were severally presented to his Royal Highness, who received them very graciously.[2] The speaker of the assembly also communicated the fact that he had received the dignity of knighthood which he

[1] Leg. Coun. J. [1860], 270, 285; Leg. Ass. J. 4, 435, 454.

[2] II. Dents' Canada since the union, c. 38.

was "persuaded was conferred for no service or merit of his own, but as a distinguishing mark of royal favour and approbation from our most gracious sovereign to the faithful Commons of Canada, whose representative on that auspicious occasion it was his happiness to be."[1]

**IX. Thanks to Distinguished Persons.**—Letters from distinguished individuals, in return to thanks of Parliament communicated to them by order of the house, are always laid before the same by the speaker, and being read, are ordered to be regularly entered in the journals.[2] Such thanks are voted to distinguished persons, chiefly officers of the army and navy, who have performed signal services which demand some recognition from Parliament. Such motions should be made by members of the government concurrently in the two houses.[3] No cases have occurred in Canada since the war of 1812-15.[4]

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[1] Leg. Coun. J. [1861], 114, 115 ; Leg. Ass. J. 7, 8. No such official statement was made in the legislative council by the speaker.

[2] 151 E. Hans. (3), 2152 ; 152 *Ib.* 211. Low. Can. J. [1814], 114, 186.

[3] 148 E. Hans. (3), 880, governor-general of India, &c. ; generals of Indian army ; 149 E. Hans (3), 252, 253 ; 1 Todd's P. Gov. 368, where this subject is fully treated. The officers thanked by name should be in chief command (Mirror of P. 1841, p. 222), but others may be thanked collectively ; 136 E. Hans. [3], 324. Also, 249 E. Hans. (3), 2 [gov.-gen. and army of India]. Also, 137 E. Com. J. 492 [Egyptian expedition].

[4] Brigadier-General Proctor ; Low. Can. J. for 1813 and 1814.—Colonel de Salaberry for conduct at battle of Chateauguay ; Low. Can. J. 1814, pp. 92, 186.—Colonel Morrison, for defeat of Boyd at Chrystler's farm ; Low. Can. J. 1814, pp. 92, 114.—Also, to Colonels Fitzgibbon, MacNab and others ; Upp. Can. Leg. Coun. J. [1838], 17, 106, 113, &c.—To Colonel Radcliffe and volunteers of Upper Canada ; Leg. Ass. J. [1838], 29, 234-5.

# CHAPTER XI.

## *MOTIONS IN GENERAL.*

I. Notices of motions.—II. Rules and usages relative to motions.—III. Motions relative to public business.—IV. Questions of privilege.—V. Motions of want of confidence, not privileged.—VI. Questions put by members.—VII. Motions in amendment.—VIII. Dilatory motions: adjournment; reading orders of the day; previous question; amendments to such motions.—IX. Renewal of a question during a session.

**I. Notices of Motions.**—When a member proposes to bring any matter before either house with the view of obtaining an expression of opinion thereon, he must make a motion of which he must give due notice for consideration on some future day, unless it be one of those questions of privilege, or urgency which, as it will be shown hereafter, may be immediately considered. Rule 14 of the Senate is as follows :—

"One intermediate day's notice, in writing, must be given of all notices deemed special."

When a senator intends to give notice of a motion, it is usual for him to rise in his place, at the time fixed for routine business, and read the notice which is handed to the clerk, so that it may appear in its proper place in the minutes of proceedings.[1]

When a question has been once and sufficiently considered, the house will not agree to its renewal. In 1880, a senator rose and gave the usual notice of proposed resolutions, but objection was at once taken on the ground that

[1] Sen. Deb. [1871], 23, 27, 61, 88, &c.; *Ib.* [1872], 15; *Ib.* [1874], 8; *Ib.* [1875], 210; remarks of Mr. Speaker Christie as to practice.

the matter had been already disposed of otherwise. The Senate finally resolved that "the notice should not be received by the clerk," inasmuch as the subject-matter thereof "had already been considered during the present session and referred to the committee on contingent accounts."[1]

It is not an unusual practice in the House of Lords—and the same has been sometimes followed in the Senate—to allow a member, in giving notice, to make remarks of an explanatory character as to the nature of the motion, as to the reason for proposing it, as to the course the member intends to pursue,[2] but no remarks of a controversial or argumentative character should be made, nor will any debate be permitted at such a stage, when the house has had no opportunity of considering the subject-matter of the motion.[3] No notice need be given in the Senate of public bills.[4] Neither has that body any special rule, like that of the House of Commons, requiring a seconder; but it is the practice, nevertheless, to have a motion duly seconded.[5]

As soon as a member of the House of Commons has prepared his motion, he will hand it to the clerk, or clerk assistant, whose duty it is to see that it is in order,[6]

[1] Sen. J. [1880], 201-2; Hans., pp. 370-5. See somewhat analogous English case (cited by Mr. Dickey in debate), 7th June, 1858, when Lord Kingston gave notice of certain questions. The lords resolved that the questions had been sufficiently answered, and would not permit the renewal of the subject.

[2] 141 E. Hans. (3), 1383; 145 *Ib.*, 1869; 149 *Ib.*, 1193, 1700; 157 *Ib.*, 930; 210 *Ib.*, 378. Can. Parl. Deb. [1870], 776.

[3] 164 E. Hans. (3), 175. In fact, the necessity of giving notice precludes any debate; such explanations as are made are given with the indulgence of the house.

[4] R. 39; chapter on public bills. Private bills are brought in on petition.

[5] Sen. J. [1878], 190, 191, 193; *Ib.* [1883], 227, &c. In the Lords any lord may submit a motion for the decision of their lordships without a seconder—the only motion requiring a seconder, by usage, being that for the address in answer to the queen's speech. 109 Lords' J., 10, 35, 70, 92, 93; May, 296.

[6] The clerks at the table may amend notices if they are irregular. The proper and convenient course is for the clerk to direct the attention of the

and to insert it in its proper place in the votes and proceedings. Rule 31 orders :—

"Two days' notice shall be given of a motion for leave to present a bill, resolution, or address, for the appointment of any committee, or for the putting of a question; but this rule shall not apply to bills after their introduction, or to private bills, or to the times of meeting or adjournment of the house. Such notice to be laid on the table before 5 o'clock, P.M., and to be printed in the votes and proceedings of that day."

The latter part of this rule is not very strictly carried out—the practice being to accept motions up to six o'clock in the evening. A motion sent in on any sitting day will appear according to the order of its presentation at the end of the votes and proceedings of the following day, and on the order paper among the notices of motion on the second day after its receipt at the table. Notices of motion for the introduction of bills appeared up to 1879 only in the votes and proceedings, and were brought up when motions were called during the progress of routine business, but now they are placed first on the order paper.

**II. Rules Relative to Motions.**—All motions in the Commons must be in writing or print, and seconded before they can be proposed from the chair[1]. It is the common practice for members to obtain their motions from one of the clerks assistant who has them prepared in print from the votes and proceedings. The 33rd rule provides as follows :—

"All motions shall be in writing and seconded, before being debated or put from the chair. When a motion is seconded it shall

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speaker to any special irregularity, who will communicate, if possible, with the member; but in ordinary cases the clerk may confer with the member himself. 188 E. Hans. (3), 1066. See *infra*, p. 323.

[1] 222 E. Hans. (3), 421; 226 *Ib.*, 386 (no seconder, and motion not put.) The speaker in the Canadian Commons even ruled on one occasion that the motion for the adjournment of the house should properly be in writing; but the practice has been invariably not to enforce the rule with respect to such purely formal motions. Author's Notes, April 3, 1878.

be read in English and in French by the speaker, if he be familiar with both languages; if not, the speaker shall read the motion in one language and direct the clerk at the table to read it in the other, before debate."[1]

No motion is regularly before the house until it has been read, or in parliamentary language, proposed from the chair, when it becomes a question.[2] When the house is in this way formally seized of the question, it may be debated, amended,[3] superseded,[4] resolved in the affirmative,[5] or passed in the negative,[6] as the house may decide. If a motion be out of order, the speaker will call attention to the irregularity, and refuse to put it to the house under rule 37:

"Whenever the speaker is of opinion that a motion offered to the house is contrary to the rules and privileges of parliament, he shall apprise the house thereof immediately, before putting the question thereon, and quote the rule or authority applicable to the case."

Consequently if, on reading the motion, he detects an irregularity, he will at once apprise the house of the fact without waiting to have a point of order raised.[7]

It seems from the English authorities to be the duty of the speaker to take it for granted that whoever addresses the house will do it in order, and he may well presume therefore, that a member proceeding to speak, when there is no question before the chair, will conclude with a motion and bring himself in order.[8]

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[1] See *supra*, pp. 217-19 on the use of the French language.

[2] May, 298.

[3] Can. Com. J. [1876], 69.

[4] Can. Com. J. [1870], 237; Sen. J. [1876], 132; 121 E. Com. J., 78.

[5] Can. Com. J. [1877], 60, 80; 129 E. Com. J., 114.

[6] Can. Com. J. [1877], 132; 129 E. Com. J., 112.

[7] 76 E. Hans. (3), 1021; 112 E. Com. J., 157; 115 *Ib.*, 494; May, 298. See *supra*, p. 167, as to the duty of the speaker under such circumstances.

[8] Parl. Reg. [62], 200; 224 E. Hans. (3), 1236; Can. Hans. [1879], 1983-5. But there is manifest convenience in requiring that the member should first read his motion. After he has concluded his speech it may be fonnd

Motions are frequently proposed and then withdrawn, but this can be done, under rule 31 of the Commons, only "by leave of the house, such leave being granted without any negative voice." The 16th rule of the Senate goes further and will not allow a member even "to modify" his motion except with the unanimous consent of the house. The motion, when proposed from the chair, must appear in the journals as withdrawn with the leave of the house.[1] If an amendment has been proposed to the motion, it must be first withdrawn before leave can be given to retire the main question.[2] When a member expresses his wish to withdraw his motion, the speaker will ask: "Is it the pleasure of the house that the hon. member have leave to withdraw his motion?" and if there be no objection the motion will be withdrawn, and so entered on the journals; but if a member dissents the speaker must put the question.[3]

As respects what are known, in parliamentary language, as "complicated questions," they may always be divided into distinct parts with the consent of the house. No individual member, however, can ask, as a matter of right, that such a question be divided, since the house alone can properly decide whether it is complicated or not and into how many propositions it may be divided. The fact is, the necessity of dividing a complicated question may be obviated in a great measure by moving amendments to it. Bnt, in any case, it is always open to a member to move formally that a question be divided.[4]

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that the motion is out of order or otherwise not debatable. The precedent in the Canadian house, just cited, shows that, while the practice is as stated in the text, it is not one to be encouraged. See remarks on the subject in Waples' Handbook of Parliamentary Practice, p. 116.

[1] Can. Com. J, (1877), 36; 129 E. Com. J. 215; 186 E. Hans. [3], 887; Sen. J. (1867-8), 277; *Ib.* (1882), 66.

[2] Can. Com. J. (1876), 227; 129 E. Com. J. 215; 223 E. Hans. (3), 1149; 227 *Ib.* 787; 230 *Ib.* 1026; 250 *Ib.* 1540-41.

[3] 186 E. Hans. (3), 887; May, 299.

[4] 2 Hatsell, 118–120.

A motion which contains two or more distinct propositions may be divided so that the sense of the house may be taken on each separately.[1] In the case of motions respecting select committees especially, it is the practice of the Canadian house to combine several propositions in one —that is to say, the object of the committee, names of members, number of quorum, power to send for persons and papers, etc. But in the session of 1883, Sir John Macdonald followed the more correct English practice of separating the different parts of a notice of motion respecting a committee on the subject of licenses for the sale of intoxicating liquors. This is the more logical and convenient form of procedure, since it gives the house an opportunity of deciding on each distinct proposition.[2]

A motion on the order paper must be in accordance with the notice in the votes; and should a member desire to substitute another, or alter its terms, he must first obtain the leave of the house.[3]

In the English house there is no special rule, as in the Canadian Parliament, as to the interval between the notice and motion, but it is always necessary that "the terms of a motion or question should be printed at length in the votes at least one day" previously to being brought up in the house.[4] But this rule is not applied to resolutions to be proposed in committee of the whole.[5] It is considered sufficient if a member gives notice of the purport of his proposed resolution. The convenience of the house, however, is best consulted in the case of every important question by giving the resolution in full in the votes a day before

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[1] 253 E. Hans. (3), 1763-4.

[2] Can. Com. J. [1883], 125-8, and Votes, p. 142. For examples of Canadian practice respecting committees, see Jour. 1879, pp. 248-9. For English practice, 137 E. Com. J. 65-6.

[3] Can. Com. J. [1873], 326; 78 E. Hans. (3), 717; 212 *Ib.* 218, 219; 235 *Ib.*, 904; Can. Hans. [1876], 535; *Ib.* [1879], 1251.

[4] 148 E. Hans. (3), 865; 205 *Ib.*, 774; 207 *Ib.*, 143; May, 286.

[5] May, 286. Sardinian Loan, E. Com. J., June 12, 1856.

it is to be considered in committee; and this is now invariably done in the Canadian Commons.[1]

If a member refuses to proceed with a motion, the house cannot force him to do so, but he has a right to drop it.[2] A member who has given notice of a series of resolutions may withdraw some of them and go on with the others.[3] A member may not propose a motion in the absence of another who has placed it on the notice paper, except with the general consent of the house.[4] Merely formal motions for the adoption of reports or for certain papers to which there is no objection, are frequently permitted to be made,[5] but all motions involving discussion must be proposed by the member in whose name they appear on the paper. For instance, in the session of 1877 Mr. Speaker interrupted a member who was proceeding to move a resolution with reference to a prohibitory liquor law, in the absence of Mr. Shultz, in whose name it appeared on the notice paper.[6] It is quite customary for members to send in notices in the names of absent members who have requested them to do so.[7] Ministers also have the privilege to propose the motions of their absent colleagues. One member may take charge of a public bill in the absence and with the permission of another member. When a member has dropped a public

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[1] Res. respecting inland revenue, adulteration, gas and gas metres, V. and P. of Feb. 15 (pp. 43) and 23 Feb. (p. 76-7); 20 March, 1877 (pp. 172-3); Can. Hans. [1877], 248, 853-55. Here Mr. Laflamme (minister of inland revenue) only gave, in the first instance, notice of the substance of the proposed resolutions; but subsequently he published them in detail in the votes before he moved them in committee of the whole.

[2] 32 Parl. Reg., 43.

[3] Mr. Gladstone's motion, 234 E. Hans. (3), 385.

[4] May, 257-8. 231 E. Hans. (3), 662. where we find the speaker would not allow a member to move a clause in a bill of which notice had been given by another member.

[5] For instance, March 4th, 1878; Sir J. A. Macdonald, in absence of Dr. Tupper; Mr. Taschereau, of Mr. Frechette. Can. Hansard, pp. 721, 738. Very commonly done in 1879 and subsequent years.

[6] Author's Notes. Also, Northern R.R., Can. Hans. [1877], 196.

[7] 2 E. Hans. (1), 439.

bill, or it has disappeared from the order paper it may be moved by another member.[1] If a member should be unseated in the course of a session, another member will not be permitted to propose a motion which appears on the paper in the name of the former, though of course he may renew it on his own behalf.[2] No member may move the discharge of a bill without notice, in the absence of the member who has it in charge and who has not given any such permission.[3] Neither can any motion be withdrawn in the absence of the member who proposed it; but it may be negatived or agreed to in such a case on the question being put formally from the chair.[4]

**III. Motions relative to Business.**—It has been decided in the English Commons that a motion, even in reference to the business of the house, can only be taken up out of its appointed order by "universal assent." For instance, when it was proposed in the English Commons to take up immediately, out of its regular place, a motion to the effect that for the remainder of the session certain days should be at the disposal of the government, Mr. Speaker Brand decided that this could only be done with the general consent. "With the permission of the house," he said, "a motion relating to the business can be made without notice. If it is the pleasure of the house that the motion

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[1] Can. Sp. D 109. The Insolvency Bill, 1876, introduced by Mr. Bourassa, disappeared from the order paper (the house refusing to read it *then* a second time), but it was revived by Mr. Caron; Journ., pp. 113, 245. It is usual to allow a member to bring in a bill for another when there is no opposition, but *not* when opposition is expected; Mr. Sp. Brand, 209 E. Hans. (3), 330.

[2] Mr. Langevin's motions, March 5, 1877.

[3] 187 E. Hans. (3), 208; 216 *Ib.*, 268, 276-7; 240 *Ib.*, 1675; 247 *Ib.*, 1403.

[4] 159 E. Hans. (3), 1310. In 1880 Mr. Schultz moved that the house go into committee of the whole on a North-West Colonization Land Bill, but the debate was adjourned, and when the question was again taken up, Mr. Schultz was absent. The motion for committee was then negatived and the bill withdrawn. Can. Com. J., pp. 249, 266.

should be put at once I shall do so, but this must be by general assent. If there had been a single dissentient voice I would have submitted to the house that such a question could not be put."[1] In 1879, a similar case arose in the Canadian House of Commons, and Mr. Speaker Blanchet decided that the motion could be made only in its regular order. At the close of the day's proceeding, it was made with the general assent of the house.[2] The 24th rule provides for all items on the order paper being taken up in their regular order.[3]

Many motions known as "unopposed"[4] are frequently made without notice, in accordance with the 32nd rule of the Commons, which provides:

"A motion may be made by unanimous consent of the house without previous notice."

These motions refer to the adjournment of the house over a holiday or a religious festival,[5] to leave of absence for members, to the addition of members to committees, and to other matters connected with the business of the house.[6] But, as already shown, if any member object to such motions being made without notice they cannot be pressed.[7] It may be properly added here that it is the general practice in the English Commons to give precedence to a motion respecting the adjournment of the house (of which notice has been given) over other business.[8]

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[1] 226 E. Hans. [3], 94, 127.

[2] Can. Hans. [1879], 650. On government days, all government notices appear and are first taken up on the order paper.

[3] *Supra*, p. 253. Can. Hans. [1880-1], 140-1-2. In this case it was attempted to take a notice of motion out of its place, and give it priority, which, of course, could not be allowed.

[4] Any business may be considered "unopposed" when no notice of opposition is given.—Mr. Sp. Brand.

[5] *Supra*, p. 241.

[6] Can. Com. J. [1867-8], 247, 422, &c.; *Ib.* [1873], 370.

[7] May, 288; 220 E. Hans. [3], 674; Can. Hans. [1878], 529.

[8] 240 E. Hans. [3], 1076; 252 *Ib.* 422; 261 *Ib.* 1335.

**IV. Questions of Privilege.**—Questions of privilege may always be considered in either house[1] without the notice necessary in the case of motions generally. By the 38th rule of the Commons it is provided:

"Whenever any matter of privilege arises, it shall be taken into consideration immediately."

It is usually the practice in the House of Commons to bring up a question of privilege after prayers, and before the house has taken up the orders of the day. Only in very aggravated cases, requiring the immediate interposition of the house, will any business be suddenly interrupted. If a member is insulted or attacked, or some disorder suddenly arises a debate may be interrupted;[2] for, as it has been clearly expressed by an ancient authority, "whether any question is or is not before the house; and even in the midst of another discussion, if a member should rise to complain of a breach of the privileges of the house, they have always instantly heard him."[3]

Questions of privilege are very varied in their character, but it may be stated in general terms that they refer to all matters affecting the rights and immunities of the house collectively, or of members in their representative character. In this category may be placed: motions touching the seat or election of members;[4] reflections or libels in books and newspapers on the house or members thereof,[5] or any of its committees;[6] forgery of signatures

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[1] Sen. Deb. [1876], 325.

[2] 65 E. Com. J. 134; 79 *Ib.* 483.

[3] Mr. Williams Wynn, Feb. 11, 1836; Mirror of P. vol. 31, p. 97.

[4] Election returns of Muskoka, West Peterborough [1873], 5, 6, 10, 37; Louis Riel, 15th April, 1874; members alleged to be public contractors, April 9th and 14th, 1877; *supra*, pp. 131–3. Carlow election, 91 E. Com. J. 24; Stamford election, E. Com. J. 1848, May 10; 98 E. Hans. [3], 931; 97 E. Com. J. 263; 245 E. Hans. [3] 518.

[5] Mr. Plimsoll, E. Com. J. 20th Feb. 1873. *Morning Freeman* and *Courrier d'Outaouais*, Can. Com. J. [1873], 133, 167 [*supra* p. 193]; Mr. Piché [clerk asst.], Feb. 19th, 1878, Can. Hans. See *supra*, p. 192, chapter on privileges.

[6] Mr. R. S. France, 129 E. Com. J. 182.

to petitions ;[1] motions for new writs ;[2] questions affecting the internal economy or proceedings of the house ;[3] applications for the discharge of persons in the custody of the serjeant-at-arms ;[4] interference of officials in elections.[5] *Prima facie*, any question affecting a member is considered a case of privilege, but in order to entitle a member to bring it up on that ground he must show that it affects him since he became a member of this house, and consequently in his character of a member.[6] In the Canadian Commons members are constantly in the habit of correcting reports of their speeches, or inaccurate statements in the press on the ground of privilege ;[7] and such personal explanations are always patiently heard by the house. But it is very clearly laid down by the English authorities that if a member has a complaint to make of a newspaper, he should formally move to have it read at the table, and then make a motion in relation thereto, if he desires to have the matter discussed and dealt with by the house.[8] If a member rise to make a personal explanation in the English Commons and proceed in the course of his remarks to complain of attacks in a newspaper, he is not allowed to proceed unless he is prepared to take the proper parliamentary course under such circumstances.[9]

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[1] E. Com. J. 1865, May 8, Azeem Jah. ; 178 E. Hans. (3), 1604 ; 238 *Ib.* 1737-41.

[2] Mr. Norris, Can. Com. J. [1877], 264 ; 146 E. Hans. 770 ; 218 *Ib.* 1262, 1843-4. A report of a select committee on the issue of a writ has been treated as a question of privilege as affecting the seat of a member ; 24 5 E. Hans. (3), 576-8.

[3] Translation of official debates. Can. Hans. [1876], 92 ; Can. Hansard committee, April 11th, 1878, p. 16.

[4] Washington Wilks, 150 E. Hans. (3), 1314, 1404.

[5] Welland and Chicoutimi elections, Can. Com. J. [1873], 190, 269.

164 E. Hans. (3), 1286. *Supra*, p. 192.

[7] Can. Hans. 1878, Feb. 18th.

[8] 150 E. Hans. (3) 1022, 1066, &c. 219 *Ib.* (3), 394-6 ; 239 *Ib.* 536 ; 261 *Ib.* 1667-70 ; 184 *Ib.* (3), 1667. See chapter on privileges (p. 192, *n.*), where a number of cases in point are given in full.

[9] Mr. Bailie Cochran, 184 E. Hans. [3] 1667.

And if a member brings forward a matter of privilege of this character the motion with which he concludes should be relevant thereto.[1]

It is the practice to give questions of privilege the precedence over other matters when they appear among the notices of motions. For instance, a notice for the expulsion of Louis Riel, which was low down among the notices, was given the priority on the 15th of April, 1874. The question was immediately taken up after half-past seven, when the speaker resumed the chair, though an hour was set apart by standing order 19 for the consideration of private bills. On the following day the same question had the precedence, though it was a government day.[2] In 1877 a motion for a new writ for Lincoln, in place of Mr. Norris, who had entered into a public contract, was placed among the notices; but it was taken up on motion of Sir John A. Macdonald, without any objection being made, on a day when notices of motion were not likely to be reached.[3] Sir Erskine May has this observation on the subject: "It has been said that a question of privilege is properly one not admitting of notice; but where the circumstances have been such as to enable the member to give notice, and the matter was, nevertheless, *bonâ fide* a question of privilege, precedence has still been given to it."[4]

When a debate on a question of privilege has been adjourned until a future day, priority will still be given to it. We have seen that this was done in the case of Louis Riel, mentioned in a previous page, and there are

[1] 219 E. Hans. [3], 396. Blackmore's Sp. Dec. [1882], 168.

[2] Can. Com. J. and Votes, 1874, April 15 and 16.

[3] Can. Com. J. [1877], 264. On another occasion the speaker decided that a motion for the adoption of the report of a committee on printing and reporting partook of the character of privilege, and might therefore take precedence over the other notices, when they were reached; Can. Hans. [1876], 343-4.

[4] May, 291. Expulsion of James Sadleir, 143 E. Hans. (3), 1386; 144 *Ib.*, 702. Case of Mr. Bradlaugh, 261 *Ib.* 218, 282, 431.

numerous precedents in the English journals illustrating the same point.[1] In the session of 1883 a motion was made without notice in the Canadian house respecting a double return for King's County, in Prince Edward Island. The debate thereon was adjourned without fixing a day or giving the motion a place on the orders; but it was taken for granted that it would have precedence whenever the house was ready to resume the subject. This precedence was accordingly given the question on a later day, and on every occasion when it came before the house.[2] But the house will refuse any priority over other motions when the question is not *bonâ fide* one of privilege, or it is not of an urgent character.[3] The speakers of the English Commons have decided that "in order to entitle a question of privilege to precedence over the orders of the day, it should be some subject which has recently arisen, and which clearly involves the privileges of the house and calls for its immediate interposition."[4]

**V. Motions of Want of Confidence.**—When a motion of want of confidence in the government of the day is under con-

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[1] 92 E. Com. J. 450; 38 E. Hans. [3], 1429; 95 E. Com. J. 13, 15, 19, 23, 70; 51 E. Hans. [3], 196, 251, 358, 422; 52 *Ib.* 7; 238 *Ib.* 1741; 120 E. Com. J. 252.

[2] Can. Com. J. [1883], 68, 101, 107, 257. See remarks of Mr. Speaker Kirkpatrick as to precedence of such a question, Hans. p. 102. In case it is proposed to take the debate up on a particular day, it should be so fixed in adjourning the debate. See Mr. Plimsoll's case, 17th Feb., 1880, 135 E. Com. J.

[3] 146 E. Hans. [3], 769; 159 *Ib.* 2035.

[4] 159 *Ib.* 2035; 174 *Ib.* 190. Motions calling attention to imputations on members have sometimes been treated as questions of privilege in the English House of Commons and have consequently had precedence given to them, but more frequently have been treated as ordinary motions; but whenever they have been treated as privilege, urgency has been of the essence of the motion. Mr. Speaker Brand, 253 E. Hans. [3], 432-3; Blackmore's Sp. Dec. [1882], 165-6. See a case where it was decided that a motion with respect to the arrest of a member who had been sometime in prison could not be treated as a matter of privilege since urgency could not apply; 261 E. Hans. [3], 692-94.

sideration, it is customary to give it precedence over all other matters, and to continue the debate from day to day until it is concluded. But it is only with the unanimous consent of the house that the order of business, as arranged under the nineteenth rule, can be disturbed. In the session of 1876, Sir John Macdonald, then leader of the opposition, moved an amendment in favour of protection to Canadian manufactures and industries, on the motion for going into committee of supply. Previous to the adjournment of the debate, Mr. Mackenzie, the premier, pointed out that the motion was equivalent to one of want of confidence in the government, and contended that on that account the debate should take precedence of all other matters until it was concluded. He pressed its continuance on the following Monday (the debate having commenced on Friday), which, under rule nineteen, is devoted to notices of motions and other private business. It was pointed out, on the other hand, and with obvious truth, that it was entirely irregular to interfere with the appointed order of business, unless the house agreed unanimously to suspend the standing order, or there was an urgent question of privilege under consideration. The speaker sustained this contention at the time, and subsequently showed the house by reference to the English debates that motions of want of confidence could only proceed on days devoted to private business, with the consent of all members interested.[1] In a subsequent session the same question arose, and the speaker, after careful deliberation, came to the same conclusion as on the previous occasion.[2] A case in point occurred in Eng-

[1] Can. Hans. 1876, March 10th and 13th.

[2] Can. Hans. [1878], 946-948. On a previous day the speaker had reversed his decision of 1876, having been misled by a careless report of some of Mr. Gladstone's remarks, which appeared to convey the idea that a motion of want of confidence should have precedence; p. 946. But on further consideration of the point Mr. Speaker Anglin found that he had been led into an error.

land during the session of 1859. Lord John Russell moved an amendment against the second reading of the Reform Bill of that year, involving the fate of Lord Derby's administration. At the close of the first day's debate Mr. Disraeli, then chancellor of the exchequer, said he thought it would be convenient that the debate should proceed continuously, and, therefore, he would suggest that it be adjourned until the next day. Of course, he added, he was in the hands of honourable members who had notices of motions for that day, but he trusted they would accede to the course proposed. The house agreed to go on with the debate and give it precedence over the private business.[1]

**VI. Questions put by Members.**—It is an established rule of parliamentary practice, and one that should always be strictly observed, that no member is to address the house, unless it be to speak to a motion already under debate, or to propose one himself for discussion. A practice, however, has long prevailed in Parliament, and is now established in the Senate and House of Commons, of putting questions to ministers of the Crown, concerning any measure pending in Parliament, or other public matter, and of receiving the answers or explanations of the persons so interrogated. This deviation from the general rule respecting motions has arisen from the necessity that experience has shown of obtaining for the house material information, which may throw light upon the business before it, and serve to guide the judgment in its future proceedings. The procedure in the Senate on such occasions is quite different from that of the Commons. Much more latitude is allowed in the upper house,[2] and a debate often takes

[1] 153 E. Hans. 405 ; Can. Hans. [1878], 947. No control is conceded to ministers over orders in the hands of private members which are governed by the ordinary rules of Parliament. II. Todd Parl. Gov. in England, 323.

[2] Sen. Deb. [1870], 883, 912, 1090 ; *Ib.* [1871], 51-66 ; *Ib.* [1872], 38, 45, 62, 188 ; *Ib.* [1874], 95-99 ; *Ib.* [1875], 112-116 ; *Ib.* [1879], 51-52 ; *Ib.* [1880] 106-112 ; *Ib.* 350-352 ; *Ib.* [1882], 50, 295 ; *Ib.* [1883], 200-4.

place on a mere question or inquiry, of which, however, notice must always be given when it is of a *special* character.[1] Many attempts have been made to prevent debate on such questions, but the Senate, as it may be seen from the precedents set forth in the notes below, have never practically given up the usage of permitting speeches on these occasions—a usage[2] which is essentially the same as in the Lords' house.[3] The observations made on such occasions, however, should be confined to the persons making and answering the inquiry, and if others are allowed to offer remarks these should be rather in the way of explanation, or with the view of eliciting further information on a question of public interest.[4] The more regular, and now the more common practice, is for a member, in cases requiring some discussion, to give notice that he will call attention on a future day to a public matter and make an inquiry of the government on the subject. Then it is perfectly legitimate to discuss the whole question at length, as the terms of the notice show the intention of the person who puts it on the paper.[5] This practice of the House of Lords has been followed in the Canadian Senate since 1877.[6]

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[1] R. 14.

[2] In the first session an effort was made to confine the Senate to the practice of the Commons, but to no avail. Deb. [1867-8], 34, 40-41. See remarks when changes were made in S. O., Deb. [1876], 299-300.

[3] 191 E. Hans. (3), 690-4; 209 *Ib.* 639; 243 *Ib.* 1502-1507; 244 *Ib.* 511-516; 886-892; 246 *Ib.* 1-8; 247 *Ib.* 1404-7, 1704-8; 266 *Ib.* 1083; 276 *Ib.* 282.

[4] Sen. Hans. [1883], 240-1, 315.

[5] 209 E. Hans. (3), 606; 210 *Ib.* 235-242. Sen. Deb. [1879], 644-5; *Ib.* [1880], 80-82; *Ib.* 158-168; *Ib.* 322-340; *Ib.* [1882], 149–167.

[6] Senator Macpherson (subsequently speaker) commenced the practice. Sen. Deb. [1877], 313, 375; *Ib.* [1879], 76, 171. In the Senate the discussion is sometimes permitted to run over several days on such an inquiry, which is not customary in the Lords, since a debate on a mere question cannot be adjourned. Neither is any mention made in the Lords' journals of a debate on such an inquiry as it is not in the nature of a motion. Compare 210 E. Hans. and 209 *Ib.* 606, with same dates in Lords' J. Also, March 31st, 1882 (Irish Jury Laws). For Sen. practice, Jour. [1877], 231;

In the House of Commons, not only is a notice necessary in the case of all questions under rule 31,[1] but they must be limited in their terms according to rule 29.

"Questions may be put to ministers of the Crown relating to public affairs, and to other members relating to any bill, motion, or other public matter connected with the business of the house, in which such members may be concerned; but in putting any such question, no argument or opinion is to be offered, nor any facts stated, except so far as may be necessary to explain the same. And in answering any such question, a member is not to debate the matter to which the same refers."

Such questions are printed among the notices and appear on the order paper in the place allotted to them under rule 19. The Canadian practice is identical with that of the English Commons, as stated by Mr. Speaker Brand: "No argumentative matter shall be introduced, and if such matter appears, it is always struck out by the clerks at the table, by the orders of the speaker."[2] It is the duty of the clerk to point out any irregularity to the speaker, and if the latter is of the same opinion he will order the clerk to communicate with the member, so that he may have an opportunity of amending his notice.[3] It is always within the right of a member to call attention to the matter as one of privilege, and to challenge the action of the speaker.[4] If an irregularity should escape the attention of the clerks at the table, the speaker will point it out before the member

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*Ib.* [1878], 93, 95, 99, 103; *Ib.* [1883], 79, 137, 256. The practice is, in the Lords, to ask a question and at the same time to move formally for papers, and then the motion appears in the journals. 268 E. Hans. (3), 1386, 1802; 114 Lords' J. 113, 128; 269 E. Hans. (3), 547; 114 Lords' J. 550.

[1] *Supra*, p. 309.

[2] 217 E. Hans. (3), 37, 803; 225 *Ib.* 1141; 240 *Ib.* 646; 255 *Ib.* 321-2. Committee on public business, July 8th, 1878, pp. 9-10.

[3] 240 E. Hans. (3), 646. If it is not possible to communicate with the member, then it is for the officers of the house to make the question conform as nearly as possible to the rules of the house. 206 E. Hans. (3), 468.

[4] 240 E. Hans. (3), 653.

stands up; and he is then generally permitted to put the question when he has struck out the objectionable words.[1] A question has been refused a reply because it referred to a matter of opinion.[2] It should "be simply and severely accurate in its allegations." If it is hypothetical it is "objectionable," and as a rule should not be answered.[3] It has, however, been decided in numerous instances in the English Commons that a member may make any explanation which is necessary for the clear understanding of his question, but he may not enter upon any general discussion.[4] A question has not been allowed to go on the paper on the ground that it impugned the accuracy of certain information conveyed to the house by the ministry.[5] The answer to a question should be brief and distinct, and limited to such explanations as are absolutely necessary to make the reply intelligible, but some latitude is allowed to ministers of the Crown, whenever they may find it necessary to extend their remarks with the view of clearly explaining the matter in question.[6] When the answer to a question has been given, it is irregular to comment upon it, or upon the subject thereby introduced to the house; the necessary consequence of which would be to engage the house in a debate when there was no motion before it at all.[7] No member may put a question to another member unless it refers to some bill or motion before the house.[8] Nor are questions usually put on matters which are at the

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[1] Can. Hans. [1878], 569, Miramichi valley R. R., Mr. Mitchell, Feb. 27th. Mr. Mills, Dec. 22nd, 1880, orders of day, "without cause" struck out. Can. Hans. [1882], 73; *Ib.* [1883], 107, 125.

[2] 208 E. Hans. (3), 786.

[3] 2 Todd Parl. Gov. 342.

[4] 224 E. Hans. (3), 473, 1467, 1715.

[5] 240 E. Hans. (3), 646.

[6] 161 E. Hans. (3), 497; 215 *Ib.* 641.

[7] 39 *Ib.* (1), 69. A second question, arising out of or bearing on an answer to a question is allowed in the English house, but not a debate. 261 E. Hans. (3), 410, 1204-5.

[8] 197 *Ib.* (3), 717; 235 *Ib.* 684. Can. Com. R. 29.

time the subject of proceedings in the courts.[1] Nor is it proper to put a question on the paper, affecting the character or conduct of a member. The proper course, when the conduct of a member is challenged, is to propose a direct motion, in order that full opportunity may be given for statements on both sides.[2] A member is guilty of an irregularity who puts a question which he has been informed by the proper authority is irregular.[3]

**VII. Motions in Amendment.**—When a motion has been regularly made by a member and proposed to the house by the speaker, it is the right of any other member to move to amend it, in accordance with the forms sanctioned by parliamentary usage. Certain members may not be willing to adopt the question as proposed to them, and may consequently desire to modify it in various respects. Or they may wish to defer it to another occasion when the house will probably be better able to deal with it. Or they may be disposed to go further than the motion, and give fuller expression to the sentiments they entertain on the question. In order to meet these different exigencies, certain forms have been established in the course of time ; and now every member is in a position to place his views on record, and obtain an expression of the sense or will of the house on any important question which can be properly brought before it.

Every member has the right of moving an amendment without giving notice thereof.[4] This amendment may propose :

1. To leave out certain words ;

2. To leave out certain words, in order to insert or add others ;

3. To insert or add certain words.

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[1] 246 E. Hans. (3), 686 ; 257 *Ib.* 448-9.

[2] 210 *Ib.* 35-9 ; Blackmore's Sp. D. [1882], 129-30.

[3] *Ib.* [1883], 44 ; 257 E. Hans. (3), 448-9 ; 265 *Ib.* 879-80.

[4] May, 317 ; Cushing, p. 517.

These several forms of amendment are subject to certain general rules, which are equally applicable to them all.

All motions should properly commence with the word "That." In this way, if a motion meets the approbation of the house, it may at once become the resolution, vote, or order which it purports to be.[1] By the 15th rule of the Senate it is distinctly provided that "no motion prefaced by a preamble is received by the Senate; and this rule is always strictly observed in that house.[2] A similar rule was adopted by the legislative assembly of Canada;[3] but for some reason it was not continued, when the rules of the House of Commons were considered and adopted in 1867. One or two instances may be found in the journals where questions are prefaced by a preamble,[4] but that form is obviously inconvenient, and not in conformity with the correct usage of either the Canadian or English Parliament.

When it is proposed to leave out all the words of the main motion and to substitute others, the amendment should commence,—"That all the words after 'that' to the end of the question be left out, in order to insert the following instead thereof," etc.[5] All amendments to insert or add words should commence: Mr.— seconded by Mr.— moves in amendment, That, etc.[6]

Several illustrations of amendments will be found at the end of this volume.[7]

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[1] Cushing, p. 509.

[2] Sen. J. [1867-8], 280; Deb. [1878], 440.

[3] No. 44.

[4] Can. Com. J. [1877], 214.

[5] *Ib.* [1867-8], 248; *Ib.* [1877], 103–5; *Ib.* [1878], 71.

[6] *Ib.* [1867-8], 107; *Ib.* [1876], 69; *Ib.* [1877], 103, 105. Sen. J. [1878], 197, &c.

[7] In the English houses the practice of putting amendments is quite different from that of the Canadian Parliament. When it is proposed in the amendment to leave out certain words, the speaker, after reading both motions to the house, will put the question:—That the words proposed to be left out stand part of the question. If this question be resolved in the affirmative, then the speaker will put the main motion. If this question be negatived, the speaker will put the main motion as amended. When

When it is proposed to amend a motion, the question is put to the house in this way: The speaker will first state the original motion, "Mr. A. moves, seconded by Mr. B.—"That, etc." Then he will proceed to give the amendment: "To this Mr. C. moves in amendment, seconded by Mr. D.—That, etc." Under Canadian practice the speaker will put the amendment directly in the first place to the house:—"Is it the pleasure of the house to adopt the amendment?" If the amendment be negatived, the speaker will again propose the main question, and a debate may ensue thereon, or another amendment may then be

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the proposed amendment is to leave out certain words, in order to insert or add others, the proceeding commences in the same manner as the last. If the house resolve: "That the words proposed to be left out stand part of the question," the original question is put; but if they resolve that such words shall not stand part of the question, by negativing that proposition when put; the next question proposed is, that the words proposed to be substituted, be inserted or added instead thereof. This latter question being resolved in the affirmative, the main question so amended, is put. May, 317-8 (chap. 9). In an extremely useful little work, "The Chairman's Handbook," by Mr. Palgrave, the clerk assistant of the English House of Commons, we find the following clear exposition of the principle which lies at the basis of the English method of procedure: "When two propositions are submitted for deliberation, first a motion, and then an amendment offered as an alternative to that motion, to obtain a fair and straightforward debate, the following conditions must be observed: If two propositions are submitted for discussion, it is, in the first place, essential that their consideration should be conducted, as far as possible, on equal terms; and, secondly, it is essential that discussion should be limited to the question proposed from the chair. But how far are these conditions observed, if precedence be given to an amendment over the motion on which it is moved? One of two results must ensue; if the debate be kept with strict precision to the proposition so put forward, namely, the amendment, the supporters of the motion should not be heard, until the amendment is disposed of. If, however, argument in favour of the motion be permitted, then debate strays away from the subject immediately in hand. Even under the fairest conditions of debate the popular method withholds from the advocates of a motion their due position. They were foremost in the field of discussion, but they come last; nay, their proposition may never be submitted to any decision at all; for as the amendment is the first to be considered, it commands the chief attention and the primary vote of the debaters. These consequences must arise under a usage which places a motion and an amendment in direct antagonism. This conflict

submitted.[1] On the other hand, if the house adopt the amendment, then the speaker will again propose the question in these words: "Is it the pleasure of the house to adopt the main motion (or question) so amended?" It is then competent for a member to propose another amendment.—"That the main motion (or question), as amended, be further amended, etc." Any number of amendments may be proposed in this way, as it will be seen by reference to the precedents given below.[2] But an amendment once negatived by the house, cannot be proposed a second time.[3] And it is distinctly laid down in the highest English authority that "when the house have agreed that certain words shall stand part of a question, it is irregular to propose any amendment to those words, as the decision of the house has already been pronounced in their favour, but this rule would not exclude an addition to the words, if proposed at the proper time. In the same manner, when the house have agreed to add or insert words in a question, their decision may not be disturbed by any amendment of these words; but here again other words may be added."[4]

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is averted by parliamentary practice. The formula used by the speaker—"that the words proposed to be left out stand part of the question"—is framed for that express object; it offers an alternative choice between both motion and amendment, and withholds them from the vote until the house has resolved which subject it will in the first instance consider. Parliament in its procedure obeys that common-sense instinct, which dictates that it is esssential, when two propositions are offered for discussion, to know first of all which proposition shall be discussed. Nor is it till that point is settled, that the house proceeds to bring the matter to a final conclusion." It is noteworthy, however, that this method of putting amendments is peculiar to the English Parliament. What Mr. Palgrave confesses to be "the popular treatment of an amendment" is generally followed by popular assemblies everywhere, by Colonial Legislatures, by the United States' Congress, and by European Parliaments, as far as the writer can gather from the books at hand.

[1] Can. Com. J., [1875] 217, 218; *Ib.* 1877], 225; Can. Hans. [1879], 1376, [debate on main motion].

[2] Can. Com. J., [1876], 69.

[3] May, 330.

[4] May, 320-1.

When an amendment has been proposed, it is competent for any member to move an amendment to the same.[1] In this case the original question is laid aside practically for the time being, and the first amendment becomes, as it were, a substantive question.[2] The speaker will then submit the three motions in the order in which they are made, and first take the sense of the house on the last: "Is it the pleasure of the house to adopt the amendment to the amendment?" If the amendment is rejected, it is regular to move another[3] (provided, of course, it is different in purport from that already negatived) as soon as the speaker has again proposed the question: "Is it the pleasure of the house to adopt the amendment to the main motion (or original question)?"

If the amendment be resolved in the affirmative, it will not be competent to move that it be struck out, in whole or in part. A precedent on this point was given during the session of 1871. The house having considered in committee of the whole a bill to amend the acts relating to duties of customs, Sir Francis Hincks moved that the bill be read a third time to-morrow. Mr. Holton moved in amendment that the bill be now re-committed to a committee of the whole house, for the purpose of so amending the same as to repeal the duties on coal, coke, wheat and flour. Mr. Blanchet then moved in amendment to the said amendment, that the words, "and also salt, peas and beans, barley, rye, oats, indian corn, buckwheat, and all other grain, indian meal, oatmeal and flour, or meal of any other grain," be added at the end thereof. This amendment was resolved in the affirmative, whereupon Mr. Colby moved, in further amendment to Mr. Holton's amendment as amended, to substitute for the same a resolution declaring it "inexpedient during the

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[1] Can. Com. J., [1878], 50; *Ib.* [1877], 105, 111; Sen. J. [1876], 132.

[2] May, 322.

[3] Can. Com. J. [1871], 74.

present session of Parliament to make any alteration in the existing duties on coal, coke, wheat, flour, salt, peas, beans, barley, rye, oats, indian corn, buckwheat." Mr. Holton at once objected to this amendment on the ground that it proposed to strike out certain words which the house had already decided should form part of the question. Mr. Speaker Cockburn, decided that the point of order was well taken. "It seems conclusively so by English authority," he said, "and there is good reason for it. The house has pronounced its decision upon the proposition that salt and other articles shall form part of the question to be submitted to the house, and now the house is asked to say that they shall be struck out of the question. This would be a contradiction, and clearly out of order."[1]

Amendments may, however, be proposed to add words to the main motion, or amendment, as amended.[2]

In the case of a second reading or other stage of bills, and on the motion for going into committee of supply, in the English House of Commons it is laid down authoritatively:

"No addition can be made to the question, after the house has decided that words proposed to be left out should stand part of the question. Every stage of a bill, being founded upon a previous order of the house, is passed by means of a recognized formula, and may be postponed or arrested by acknowledged forms of amendment; but when any such amendment has been negatived, no other amendment by way of addition to the question can be proposed, which is not, in some degree, inconsistent with the previous determination of the house; and it has, therefore, never been permitted."[3]

Only two amendments can be be proposed at the same time to a question. Some limit is necessary, and the usage has grown into law, that an amendment to an amendment

[1] Can. Com. J. [1871], 131-3. A similar decision was given by Mr. Speaker Anglin, *Ib.* [1875], 200. See *supra*, p. 328.

[2] *Ib.* [1871], 133; *Ib.* [1873], 393. See *supra*, p. 328.

[3] May, 321; 183 E. Hans. (3), 1918; 186 *Ib.* 1285; 240 *Ib.* 1602.

is allowable, but that no motion to amend further can be entertained until one of the two amendments is disposed of. There is no limit, however, to the number of amendments to a question provided they come within these and other rules stated above. No decision appears on the Canadian journals on this point, but the usage is uniform.

When a proposition or question before the house consists of several sections, paragraphs, or resolutions, the order of considering and amending it is to begin at the commencement, and to proceed through it in course by paragraphs; and when a latter part has been amended, it is not in order to recur back, and make any amendment or alteration of a former part.[1] This rule is observed especially in the case of bills in committee of the whole, where each section is considered a distinct proposition, to be amended line by line, if necessary; and consequently if the committee have amended the latter part of the clause, they cannot amend the first part of the same.[2] It is for this reason, the resolution for the address at the beginning of the session is always taken up paragraph by paragraph. When the second paragraph has been considered and agreed to, it is not regular according to the rule in question to go back to the first; and so on to the end of the resolution.[3]

Canadian speakers have frequently decided that amendments must be relevant to a motion or question.[4] The English parliamentary authorities have up to very recently laid down the rule that a proposition may be amended, in parliamentary phraseology, not only by an alteration which carries out the purpose of the mover, but also by one which entirely destroys that purpose, or which even makes the proposition express a sense the very reverse of that intended

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[1] 2 Hatsell, 123; 102 E. Hans. (3), 117.

[2] 46 E. Com. J., 175. See chapter on public bills.

[3] *Supra* pp. 233–4.

[4] Can. Com. J. [1870], 122, 124; *Ib.* [1872], 166. Also, 7th July, 1858, Leg. Ass. J.; 14th April, 1859, Parl. Deb. Colonist; Sp. Dec. Nos. 33, 53, 168, 197.

by the mover; and, in like manner, a motion which proposes one kind of proceeding, may be turned into another of a wholly different kind, by means of an amendment. For instance, where the motion pending was for the house to go into a committee of the whole, on the four per cent. annuities acts, and a motion was made to amend, so as in effect to substitute therefor a motion for certain papers connected with the passing of a decree by the government of Portugal materially affecting the commercial relations of that country with Great Britain; and the amendment was objected to, on the ground, that it had no relation whatever to the subject of the motion, the speaker said, that, according to the forms of the house, and the law of Parliament, there was no necessity that the amendments should be akin to the question.[1] Sir Erskine May thus stated the usage in his edition of 1879: "There is no rule which requires an amendment to be relevant to the question to which it is proposed to be made, except in the case of an order of the day."[2] Such a usage as allowing amendments irrelevant to a question, certainly seems opposed to those principles of sound reason which govern English parliamentary law generally. If such a practice were generally tolerated, all the benefits of giving due notice of a motion, and allowing the house a full opportunity of considering a question, would be practically lost. A member would then be in a position to surprise the house at any moment with a motion of importance, and the necessity of giving notice would be superseded to all intents and purposes. It is not therefore surprising that the latest English decisions are in accord with those of the Canadian speakers. Sir Erskine May, in the edition of 1883, admits that "an amendment should be relevant to the question to which it is proposed to be made, and gives a decision of the speaker as late as the 28th of February, 1882.

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[1] 23 E. Hans. (3), 785; 38 *Ib.* 174, 190.

[2] Page 303.

A motion having been made to declare Michael Davitt incapable of being elected or returned as a member, it was proposed to amend the same by substituting an address to the Crown for a free pardon; but the speaker promptly interposed and pointed out that such an amendment was inadmissible, as it had no relation to the question before the house, but should form the subject of a distinct motion, after notice given in the usual manner.[1] The law on the relevancy of amendments seems now to be that if they are on the same subject-matter with the original motion they are admissible, but not when foreign thereto.[2] The exceptions to this rule are amendments on the question of going into supply or ways and means.[3] Amendments to bills also, like amendments to the orders of the day, "must strictly relate to the bill which the house, by its order, has resolved upon considering."[4]

**VIII. Dilatory Motions.**—There is a class of motions, common to all parliamentary assemblies, intended to have the effect of superseding or delaying the consideration of a question. For instance, motions for the adjournment of the house or debate, for reading the orders of the day, and for the previous question, are all in this direction. The term "dilatory,"[5] is used here as a convenient means of grouping together such motions as postpone a question for the time being:

*Motions of Adjournment.*—When any question is under

[1] May, 325. 266 E. Hans. (3) 1816.

[2] To show wide range of amendments, see decision of Mr. Speaker Brand, who ruled that it was regular to move an amendment in favour of the Oaths' Act on a question re-affirming a resolution restraining Mr. Bradlaugh from taking the oath; 267 E. Hans. (3), 1882. Such an amendment was, however, germane to the question.

[3] See chapter on supply.

[4] 143 E. Hans. (3) 643.

[5] American writers on parliamentary law use it frequently. It is also found in Rule 16 (8) of the House of Representatives; Smith's Digest, p. 176. See also Mr. Sp. Brand; 136 E. Com. J. 50.

the consideration of either house, a motion to adjourn will always be in order. The 30th rule of the Commons provides:

"A motion to adjourn shall be always in order, but no second motion to the same effect shall be made until after some intermediate proceeding shall have been had."[1]

A motion of this kind, when made to supersede a question, should be simply, "that the house do now adjourn"; and it is not allowable to move the adjournment to a future day, or to propose an amendment to the question of adjournment.[2] If the motion for the adjournment be carried in the affirmative, the house must at once adjourn until the hour of three o'clock p.m., or whatever may be the regular hour of meeting on the next sitting day, and the question under consideration will be superseded,[3] so that if it was on the orders of the day, it must at once disappear from the order paper where it can only be again placed by a motion formally made in the house for its revival.[4] But if the question is not regularly before the house—that is to say, if it has not been proposed to the house by the speaker—it will not even appear in the votes; but if it has been so proposed, it will be duly recorded. But in case a notice of motion is under consideration, it will not be superseded, inasmuch as rule 27 makes special provision for such cases, and places the motions on the orders for a future day.[5]

Consequently if a question, not provided for by rule 27, is under consideration, and it is the wish of the house to adjourn, it is necessary to move an adjournment of the debate in the first place,[6] unless indeed it is desired to supersede it.

[1] Can. Com. J. [1880-1], 107 illustrates practice.

[2] 2 Hatsell, 113. In the Lords a future day may be specified, May, 300.

[3] For cases in point, 110 E. Com. J., 367; 115 *Ib.* 393; 119 *Ib.* 131, 256; 120 *Ib.* 282, 332; 121 *Ib.* 78. Sen. J. [1876], 132, 133, 139 (Pacific R. R. bill).

[4] Sen. J. [1876], 133, 139; Sen. Deb. [1878], 832, 834 (Pacific RR. Act Amendment Bill); Can. Com. J. [1870], 237, 287 (Interest Bill).

[5] *Supra* p. 257 Can. Com. J. [1876], 66.

[6] Can. Com. J. [1876], 129.

It has been decided in the Canadian Commons that a motion for the adjournment of the debate should be pure and simple—like the motion for the adjournment of the house—and should not contain a recital of reasons.[1]

If the house should be suddenly adjourned in consequence of the absence of a quorum, a question then under the consideration of the house will disappear from the order paper for the time being.[2]

*Motion for Reading Orders of the Day.*—A motion to proceed to the orders of the day is another mode of evading a question for the time being. The 28th rule orders :

"A motion for reading the orders of the day shall have preference over any motion before the house."[3]

If a question on the motion paper is under consideration, any member may move, "That the orders of the day be now read," or "That the house do now proceed to the orders of the day." If this question is resolved in the affirmative, the original motion is superseded, and the house must proceed at once to the orders of the day.[4] It has been ruled in the Canadian as well as in the English house that no amendment can be made to the motion for proceeding to the orders of the day,[5] it being considered equivalent to a motion for the previous question.[6]

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[1] Can. Com. J. [1880-1], 86. Also, Can. Leg. Ass. J., 7th March, 1865. Can. Sp. D., No. 129.

[2] 129 E. Com. J., 371.

[3] When orders of the day are reached in due course it is not necessary to make a motion, as they are at once taken up in accordance with rule 19. See *supra* p. 251. The motion discussed above is one of a peculiar and special character, made when a notice of motion or other question not on the orders of the day is under discussion.

[4] May, 302; 111 E. Com. J., 167; Can. Com. J. [1873], 300.

[5] Can. Com. J. [1873], 300, Mr. Sp. Cockburn. But a case occurred in 1880 Jour., p. 194. The weight of authority appears to rest with the previous precedent, since it is obvious that the motion is in the nature of the previous question.

[6] May, 302. A motion for the adjournment of the house, however, will always be in order; *infra* p. 338.

If the house is considering an order of the day, a motion to proceed to the next order of the day will have the same effect as the motion we have just mentioned.[1] It is equally in order to move to proceed to the government orders, while a question among "public bills and orders" is under consideration.[2]

*Previous Question.*—Another method of evading or superseding a question in both houses is the moving of what is known as "the previous question." The Senate rule on the subject is as follows:

"24. When a question is under debate, no motion is received unless to amend it; to commit it; to postpone it to a certain day; for the previous question; for reading the orders of the day; or for the adjournment of the Senate."[3]

The 35th rule of the Commons provides:

"The previous question, until it is decided, shall preclude all amendment of the main question, and shall be in the following words, 'That this question be now put.' If the previous question be resolved in the affirmative, the original question is to be put forthwith, without any amendment or debate."

The rule just quoted permits neither amendment nor debate in case the house decide in the affirmative, for the speaker will immediately put the question.[4] But if the previous question be resolved in the negative, then the speaker cannot put any question on the main motion, which is consequently superseded,[5] "though it may be

[1] 93 E. Com. J., 418; 107 *Ib.*, 205. Can. Com. J. [1870], 312. Can. Sp. D., No. 120. Leg. Ass. J. [1864], 194.

[2] Can. Com. J. [1880-1], 81; Can. Hans., 13th January, 1880-1; 109 E. Com. J., 342.

[3] 237 E. Hans. (3), 527; 238 *Ib.*, 296; Lords' J., 1878, January 28. The previous question is said to have been introduced in England for the purpose of suppressing subjects of a delicate character, relating to high personages, or which might call forth observations of a dangerous tendency. Cushing, p. 549.

[4] 2 Hatsell, 122, *n.* Can. Com. J. [1879], 84-5.

[5] Can. Com. J. [1869], 163-4. Also, *Ib.* [1870], 254; 71 Lords' J. 581; 113 E. Com. J. 100.

revived on a future day, as the negation of the previous question merely binds the speaker not to put the main question at that time."[1]

In the English Parliament, the previous question appears to be only proposed with the object of preventing a decision upon a question; and consequently the members who propose and second it generally vote against their own motion.[2] In the old Canadian Legislature and in the dominion Parliament, however, the motion has invariably been used to effect a double object, viz:

1. To prevent, as in England, a decision on the question under consideration; in which case the members who propose and second it vote against the motion.[3]

2. To prevent simply any amendment and force a direct vote on the question; in which case the members who propose and second it vote for the motion.[4]

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[1] May, 303. In the congress of the United States a more logical form of putting the previous question, viz.: "That the question be *not* now put" was adopted in 1778 (Cushing, 555), but the form is now fixed as it prevails in Parliament, though the effect is different—being used to suppress immediately all further discussion of the main question, and to come to a vote upon it immediately (*Ib.* 554; also, Smith's Digest, 322). It has been suggested that the English houses might advantageously return to the old practice of 250 years ago, and adopt the more logical form as above (E. Com. J., May 25th, 1605; Jan. 22nd, 1628). This form shows clearly the object of the motion; those who move it vote "aye," and those who oppose it vote "no." R. T. Palgrave, Chairman's Handbook, p. 76.

[2] May, 303-4. The member who proposes the motion is generally appointed one of the tellers for the "noes," March 25th, 1858; 149 E. Hans. (3), 722, Journals, p. 100 (Mr. Miller).

[3] Leg. Ass. J. [1864], 191; Can. Com. J. [1869], 163-4.

[4] In 1865 Atty.-Gen. (now Sir J. A.) Macdonald moved, and Atty.-Gen. Cartier seconded, a motion for an address in relation to the union of the provinces. Subsequently they proposed the previous question, and the speaker decided, when a point of order was raised, that that question was not an amendment in the real sense of the term, and that consequently the movers of the original proposition could regularly make such a motion. In this case both gentlemen voted for the previous question. Ass. J. [1865], 180, 191, 192. Also, *Ib.* [1856], 142. In 1870 Mr. Holton (mover of previous question), voted for it, Jour., p. 254; in a previous session, when the object was to prevent the putting of the question, he

*Amendments to Previous Question or to Motion for Proceeding to Orders of the Day.*—No amendment may be proposed to the motion for the previous question.[1] Neither can it be proposed when there is an amendment under consideration.[2] If the previous question has actually been proposed it must be withdrawn before any amendment can be submitted to the house.[3] If an amendment has been first proposed, it must be disposed of before a member can move the previous question.[4]

The motion, "That the house do now adjourn," can be made to the motions for the previous question and for reading the orders of the day. But such a motion cannot be made if the house resolves that the question shall now be put under rule 35.[5] It is also perfectly in order to move the adjournment of the debate on the previous question.[6] When a motion has been made for reading the orders of the day, in order to supersede a question, the house will not afterwards entertain a motion for the previous question, as the former motion was in itself in the nature of a previous question.[7] It is allowable to move the previous question on the different stages of bills.[8]

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voted in the negative, Jour. [1869], 163-4. In 1879 Mr. Ouimet, who moved the previous question, voted in the affirmative, his object being simply to prevent amendment, and Mr. Speaker Blanchet decided he was in order on the principle stated above; Can. Hans. [1879], 408. From the foregoing precedents it will be seen there has been a uniformity of practice under the rule which has come to the Commons from the old Canadian Legislature. It may be added that no rule or decision can be found in the English authorities preventing a member voting as he pleases on such a question.

[1] May, 304. Commons rule, *supra*, p. 336.

[2] 2 Hatsell, 116; 212 E. Hans. (3), 926.

[3] 149 E. Hans., 712.

[4] 117 E. Com. J., 129; 118 *Ib.*, 269. 174 E. Hans. (3), 1376. Can. Com. J. [1870], 254.

[5] 250 E. Hans. (3), 1157-8.

[6] Can. Hans. [1879], 407. But not if the house decide that the question be put; 250 E. Hans. (3), 1158.

[7] May, 305.

[8] 99 E. Com. J., 504; 113 *Ib.*, 220; 119 *Ib.*, 160, 234; 135 *Ib.*, 261; 137 *Ib.*, 378. 114 Lords' J., 173.

**IX. Renewal of a Question during a Session.**—When a motion has been stated by the speaker to the house, and proposed as a question for its determination, it is then in the possession of the house, to be decided or otherwise disposed of according to the established forms of proceeding. It may then be resolved in the affirmative or passed in the negative; or superseded by an amendment, or withdrawn with the unanimous consent of the house. It is, however, an ancient rule of Parliament that "no question or motion can regularly be offered if it is substantially the same with one on which the judgment of the house has already been expressed during the current session."[1] The old rule of Parliament reads: "That a question being once made, and carried in the affirmative or negative, cannot be questioned again, but must stand as a judgment of the house."[2] Unless such a rule were in existence, the time of the house would be constantly frittered away in the discussion of motions of the same nature, and the most contradictory decisions would be sometimes arrived at in the course of the same session. Consequently, if a question or bill is rejected in the Senate or Commons it cannot be regularly revived in the same house during the current session. Circumstances, however, may arise to render it necessary that the house should reconsider its previous judgment on a question, and in that case there are means afforded by the practice of Parliament of again considering the matter. Orders of the house are frequently discharged[3] and resolutions rescinded.[4] The latter part of the 13th rule of the House of Commons provides: "No member may reflect upon any vote of the house, except for the purpose of moving that such vote be rescinded." In such a case, the motion will first be made to read the entry in

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[1] May, 328; 1 E. Com. J., 306, 434.

[2] Res. April 2, 1604, E. Com. J.

[3] Can. Com. J. [1877], 26.

[4] *Ib.* [1868], 184; Leg. Ass. J. [1856]. 722; 253 E. Hans. (3) 643.

the journals of the resolution; and when that has been done by the clerk, the next motion will be that the said resolution be rescinded,[1] or another resolution expressing a different opinion may be agreed to.[2] But when a question has once been *negatived*, it is not allowable to propose it again, even if the form and words of the motion are different from those of the previous motion.[3] Sir Erskine May says on this point, which is one involved in much difficulty: "The only means by which a negative vote can be revoked is by proposing another question, similar in its general purport to that which had been rejected, but with sufficient variance to constitute a new question; and the house would determine whether it were substantially the same question or not." The English journals are full of examples of the successful evasion of the rule which the house permitted.[4] In all such cases, the character of the motion has been changed sufficiently to enable the member interested to bring it before the house. All such motions, however, must be very carefully considered, in order to guard against a palpable violation of a wise and wholesome rule.

If a motion has been negatived, it cannot be afterwards proposed in the shape of an amendment.[5] In case a motion has been withdrawn, it may be again proposed as the house has not previously determined the question, and it is only in the latter event that the same question may not be revived.[6] If an amendment has been negatived, a similar amendment cannot be proposed on a

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[1] May, 328; Can. Com. J. [1867-8], 184.

[2] 132 E. Com. J. 345, 367; 235 E. Hans, 1690; Controller of H. M. Stationery Office.

[3] 95 E. Com. J., 495; 115 *Ib.* 249; 245 E. Hans (3) 1502.

[4] The most memorable instances of numerous motions on a cognate question occurred in the session of 1845, in reference to the opening of letters at the post-office, under warrants from the secretary of state; 100 E. Com. J. 42, 54, 185, 199, 214.

[5] 76 E. Hans. (3) 1021.

[6] 80 E. Hans. (3) 432, 798.

future day.[1] It has been decided, however, in the Canadian Commons that an amendment is in order when it comprises only a part and not the whole of a resolution previously voted on by the house.[2]

As it is in reference to bills, and the proceedings upon and in relation to them, that this rule receives its most important application, it is proposed to deal with it at length in the chapter devoted exclusively to public bills.

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[1] 214 E. Hans. (3) 287. For other illustrations of the rule, see May, chap. 10.

[2] Can. Sp. Dec., 186; Can. Com. J. [1871] 145, 146. Also, Mr. Speaker Kirkpatrick, March 12, 1883.

# CHAPTER XII.

*RULES OF DEBATE.*

I. Deportment of members on the floor.—II. Precedence in debate.—III. Written speeches not permissible.—IV. Extracts from papers.—V. References to the Queen or Governor-General.—VI. Relevancy of speeches.—VII. Their length.—VIII. Motions for adjournment.—IX. Rules limiting debate.—X. Personal explanations.—XI. Calling in question a member's words.—XII. Interruption of members.—XIII. Speaking when orders are called.—XIV. Manner of addressing another member.—XV. References to the other house.—XVI. Or to previous debates.—XVII. Rules for the preservation of order.—XVIII. Naming a member.—XIX. Words taken down.—XX. Misbehaviour in committees or lobbies.—XXI. Prevention of hostile meetings.—XXII. Punishment of misconduct.—XXIII. Withdrawal of a member when his conduct is under discussion.—XXIV. References to judges and other persons not members.—XXV. New standing orders of English Commons on the following subjects: Putting the question; Motions of adjournment; Suspension for obstruction of public business.

**I. Deportment of Members in Speaking.**—When a motion has been duly moved, seconded and proposed as a question by the speaker, it may be fully discussed in accordance with the rules and usages of the house. The rules of order governing debate, chiefly relate to the time when, and the circumstances under which, a member may speak, or to what may, or may not, be said by a member having the right to address the house. These rules will be explained in the course of this chapter, but it is necessary and convenient to refer, in the first place, to the personal deportment of a member while on the floor.

Senators and members of the Commons may sit in their places, in their respective houses, with their heads covered,

but when they desire to speak they must remove their hats.[1] Exception, however, will be made in cases of sickness, or bodily infirmity, when the indulgence of a seat is frequently permitted, at the suggestion of a member and with the general acquiescence of the house.[2] A member suffering from indisposition will also be permitted to hand his motion to another member to read.[3]

In the Commons, a member must address himself to Mr. Speaker.[4] In the Senate the members must address themselves "to the rest of the senators, and not refer to any other senator by name."[5] In the Commons, if a member addresses the house and not the chair, he will be called to order immediately.[6]

Senators and members, when they enter or leave the house, or cross the floor, must make obeisance to the chair.[7] The rule of the Senate provides:

9. "Senators may not pass between the chair and the table. When entering or crossing the Senate chamber they bow to the chair; and if they have occasion to speak together, when the Senate is sitting, they go below the bar, or else the speaker stops the business under discussion."

Rule 17 of the House of Commons also provides for decorum in the following terms:

"When the speaker is putting a question, no member shall walk out of, or across the house, or make any noise or disturb-

[1] Sen. R. 20; Com. R. 10.

[2] 2 Hatsell, 107; Romilly, 269, 270. When Mr. Pitt made his celebrated speech in 1793 against the peace he was permitted to speak sitting. Also, cases of Lord Wynford, 61 Lords' J. 167; Mr. Wynn, 9th March, 1843; 67 E. Hans. (3) 658. It is usual to move that leave be accorded the afflicted member.

[3] On the 13th March, 1878, Mr. Schultz was suffering from a bronchial affection and a member sitting alongside read two questions for him. On a previous day Mr. Masson had read two letters for the same gentleman.

[4] Com. R. 10.

[5] Sen. R. 20. Same as the Lords' S. O. No. 14.

[6] 223 E. Hans. (3), 1002, 1458.

[7] 8 E. Com. J. 264.

ance; and when a member is speaking, no member shall interrupt him, except to order, nor pass between him and the chair; and no member may pass between the chair and the table, nor between the chair and the mace, when the mace has been taken off the table by the serjeant."

It is very irregular for members to leave their seats abruptly when the speaker is retiring from the house at six o'clock, or at the hour of adjournment. The two houses have the same rules on the subject:

"When the house adjourns, the members shall keep their seats until the speaker has left the chair."[1]

Whenever a message is received from the governor-general, "signed by his own hand," the speaker will read it to the House of Commons, "while the members stand uncovered."[2] But when the clerk proceeds to read papers transmitted with the message, the members may resume their seats.

**II. Precedence in Debate.**—The speaker of the Commons will always give precedence in debate to that member who first catches his eye. Rule 11 provides also for cases where several members rise at the same time:

"When two or more members rise to speak, Mr. Speaker calls upon the member who first rose in his place; but a motion may be made that any member who has risen 'be now heard,' or 'do now speak.'"[3]

It is usual, however, to allow priority to members of the administration, who wish to speak; and in all important debates it is customary for the speaker to endeavour to give the preference, alternately, to the known support-

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[1] Sen. R. 8; Com. R. 3.

[2] 2 Hatsell, 365; 129 E. Com. J. 83, 316; *supra*, p. 301.

[3] See May (pp. 344-5), who gives an example where two members rose at the same time and a motion being made that one be now heard, the other took immediate advantage of it and spoke to the question. I. Memorials of Fox, 295.

ers and opponents of a measure or question; and it is irregular to interfere with the speaker's call in favour of any other member. But in disputed cases an appeal may be made to the house in accordance with the rule just cited.[1]

There is no rule in the Senate like that of the Commons. If two members rise at the same time in the House of Lords, it is proper for the chancellor to point out who, in his opinion, first rose; but the chancellor or chairman of committees has no absolute right to determine the question; and in all cases of variance of opinion the decision must rest with the house,[2] which may forthwith proceed to vote who shall be heard.[3] The lord chancellor is given, by courtesy, precedence over other peers, should he rise to speak at the same time with other members.[4]

**III. Written Speeches not Permissible.**—It is a rule in both houses of Parliament that a member must address the house orally, and not read from a written, previously prepared speech; for the reason, as stated by Mr. Fox in 1806, that "if the practice of reading written speeches should prevail, members might read speeches that were written by other people, and the time of the house be taken up in considering the arguments of persons who were not deserving of their attention."[5] It is the invariable practice to discountenance all such written speeches, and it is the duty of the speaker to interfere when his attention is directed to the fact.[6] Members may, however, make use of notes in delivering a speech.[7]

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[1] 1 Todd, 324; 67 E. Hans. (3), 898; 77 *Ib.* 866; 153 *Ib.* 839. The debate of 12th March, 1878, on the tariff (see Canadian Hansard of that date), illustrates how members on different sides follow each other alternately; the convenience is obvious.

[2] 18 E. Hans. (1), 719, *n.*; 4th Jan., 1811.

[3] 34 Lords' J. 306; May, 343.

[4] 21 E. Hans. (N. S.), 187-8; May, 343.

[5] Parl Deb. 1806, vol. 7, pp. 207-8.

[6] 223 E. Hans. (3) 178.

[7] Parl. Deb., 1806, p. 208.

**IV. Extracts from Papers.**—It is now in order for a member to make extracts from newspapers or other publications as part of his speech,[1] provided in doing so he does not infringe on any point of order. But there are certain limitations to this right; for it is not allowable to read any petition referring to debates in the house.[2] Neither is it regular for a member to read a paper which he is asking the house to order to be produced.[3] Nor is it in order to read articles in newspapers, letters or other communications, whether printed or written, emanating from persons out of the house, and referring to, or commenting on, or denying anything said by a member or expressing any opinion as to proceedings within the house.[4] During a debate on the tariff in the session of 1877, Mr. Mills referred to the opinions of Sir Alexander Galt, formerly a member and minister of finance. Subsequently one of the Canadian papers published a letter from Sir Alexander, in answer to some of Mr. Mills's remarks; and the latter rose and proposed reading from the paper in question; but the speaker interrupted him and questioned the propriety of this course—a decision entirely in accordance with the English rules of debate.[5] It is quite in order, however, for a member to quote from a printed paper, on which he proposes to found a motion.[6]

[1] But it was not in order to do so up to 1840. 4 E. Hans. N. S., 922-3. But gradually the practice became as it now is, 13 E. Hans. (3) 884 [1832]; Mirror of P., 1840, vol. 16, p. 1634; *Ib.* 1841, vol. 17, p. 2256. The practice is often carried to excess in the Canadian houses.

[2] Mirror of P., 1840, vol. 20, p. 4820.

[3] 12 E. Hans. (1) 1043; 10 *Ib.* (1) 700.

[4] 61 E. Hans. (3) 141, 661, 662; 64 *Ib.* 26; 230 *Ib.* 1339; 241 *Ib.* 831; 245 *Ib.* 1673.

[5] 183 E. Hans. (3) 826. When a member proposed to read a letter in the "Times" from General Hay, Mr. Speaker Denison interposed and said that "the hon. member had exercised a wise discretion in not doing so." The house, however, is generally very indulgent in allowing this rule to be suspended, in special cases when the conduct of a member is in question, or when it requires more information on a matter of controversy. Chief Justice Young's letter, Can. Hans. 12th Feb, 1878.

[6] 240 E. Hans. (3), 1069.

It has been laid down by the highest authorities that "when a minister of the Crown quotes a public document in the house, and founds upon it an argument or assertion, that document, if called for, ought to be produced." [1] But it is allowable to repeat to the house information which is contained in a private communication.[2] When such private papers are quoted in the house, there is no rule requiring them to be laid on the table.[3] The rule respecting the production of public papers, quoted by a minister of the Crown, is necessary to give the house the same information he possesses, and enable it to come to a correct conclusion on a question. It does not appear that the English Commons have ever applied this rule to the case of private members, citing public documents not in the possession of the house.[4]

**V. References to the Queen or Governor-General.**—It is expressly forbidden to speak disrespectfully of her Majesty or her representative in this country, or of any member of the royal family.[5] Neither is it permitted to introduce the name of the sovereign or her representative in debate, so as to interfere with the freedom of discussion, or for the purpose of influencing the determination of the house, or the votes of members with respect to any matter pending in Parlia-

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[1] Lord Palmerston, 166 E. Hans. (3), 2129; Mr. Canning's case, 63 E. Com. J., 4th March, 1808; 176 E. Hans. (3), 962; 156 *Ib.*, 1587; 235 *Ib.*, 935. But he may refuse in case he believes that the public interests would be jeopardized, 243 E. Hans. (3), 940-41.

[2] Lord Palmerston, 146 E. Hans. (3), 1759; 156 *Ib.*, 1587.

[3] 179 *Ib.*, 490; Can. Hans., 9th March, 1877 (Mr. Vail's letter.)

[4] It does not appear that the English authorities support a decision of the speaker in 1880 (Can. Com. J., p. 200) to the effect that a private member who quoted from public documents ought to lay them on the table. See May, 379. Also, the debate in the case of Sir C. Napier (137 E. Hans. (3), 261), during which a private member read long extracts from public papers, in possession of the government, but not before the house. The propriety of his course was questioned, but it was not claimed he should lay them on the table.

[5] Com. R., 13.

ment.[1] Cases, however, may arise where it is permissible to introduce the name of the sovereign or of the governor-general in debate. A member of the government may, with the authority of the sovereign or governor-general, make a statement of facts, provided it is not intended to influence the judgment or decision of the house.[2] A case in point occurred in 1876 when Mr. Disraeli was permitted to give an emphatic denial, on the part of her Majesty, to some remarks made by Mr. Lowe as to certain alleged unconstitutional influences brought to bear upon ministers and members in favour of the Royal Titles Bill. On that occasion Mr. Speaker Brand said:

"If the statement of the right hon. gentleman relates to matters of fact, and is not made to influence the judgment of the house, I am not prepared to say that, with the indulgence of the house, he may not introduce her Majesty's name into that statement." Mr. Disraeli then proceeded to state, on the part of her Majesty, "that there was not the slightest foundation for the statement made by Mr. Lowe."[3]

It is not unusual in the Canadian house for the leader of the government to make statements with reference to the relations between the cabinet and his Excellency, the Governor-General, or in answer to false reports in the public press. In the session of 1879 Sir John Macdonald, then premier, read a statement from the Marquis of Lorne

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[1] Mr. Speaker Lefevre, 69 E. Hans. (3), 24, 574; 228 *Ib.*, 133-6; 235 *Ib.*, 1596. In 1783, Dec. 17, the House of Commons resolved that it was "a high crime and misdemeanour, derogatory to the honour of the Crown, a breach of the fundamental privileges of parliament, and subversive of the constitution of the country, to report any opinion or pretended opinion of his Majesty upon any bill or other proceeding." Also, see the remonstrance of the Lords and Commons to Charles I. on the 16th December, 1641.

[2] Sir Robert Peel, 9th May, 1843. 69 E. Hans. (3), 24, 574.

[3] 228 E. Hans. (3), 2037. In a subsequent speech a member was allowed to quote from a diary published with the sanction of her Majesty, when the passage cited did not affect any measure before the house; 244 *Ib.*, 492-3.

giving him authority to deny certain inaccurate statements that had appeared in the Toronto "Globe" with respect to the reference to England of the question of the dismissal of Lieutenant-Governor Letellier de St. Just.[1]

When despatches are brought down from her Majesty or the governor-general, it is of course perfectly legitimate to discuss the subject-matter,[2] but it is irregular to say that they have been brought down for a purpose.[3]

**VI. Relevancy of Speeches.**—A just regard to the privileges and dignity of Parliament demands that its time should not be wasted in idle and fruitless discussions; and consequently every member, who addresses the house, should endeavour to confine himself as closely as possible to the question under consideration. If the speaker or the house believes that his remarks are not relevant to the question, he will be promptly called to order by the former.[4] It is not, however, always possible to judge as to the relevancy of a member's remarks, until he has made some progress with his argument. The freedom of debate requires that every member should have full liberty to state, for the information of the house, whatever he honestly thinks may aid it in forming a judgment upon any question under its consideration.[5] It is, therefore, always a delicate matter for the speaker to interfere unless he is positive that the member's remarks are not relevant to the subject before the house. On such occasions he may very properly suppose "that the member will bring his observations to bear upon the motion before the house;"[6] or "that he will conclude with something that will bring

[1] Can. Hans. [1879], 1100.

[2] Can. Hans., 1st March, 1877 (appointment of senators).

[3] Mr. Speaker Cockburn, 3rd November, second session, 1873, Com. Jour.

[4] 227 E. Hans. (3), 783, 896; 229 *Ib.*, 1751; 230 *Ib.*, 1099; 231 *Ib.*, 1222; 238 *Ib.*, 214, 1976; 242 *Ib.*, 1696, 1700, &c.

[5] Cushing, p. 635.

[6] 18 E. Hans. (3), 89; Mr. Speaker Sutton.

him within order."[1] But the moment there is no doubt as to the irrelevancy of a member's observations, the speaker will call his attention to the fact.[2] And he may find it necessary to caution a member that "he is approaching the limits of propriety which confine hon. members in speaking to that which is relevant to the subject on hand," and to express the hope "that he will be careful to confine himself to that which is relevant."[3]

In the English Commons the authority of the speaker, in cases where members persist in making irrelevant remarks on a question, has very recently been enlarged. A member who repeatedly wanders from his subject is at once reminded by the chair that he must keep to the question, and if he continues in his irregular course he is "named" as disregarding the authority of the speaker.[4]

**VII. Length of Speeches.**—Members are not limited to time when they address the house. Attempts have been made in vain in the English Commons to pass resolutions confining speeches to a certain fixed limit of time. For instance, in the session of 1849, whilst the standing orders were under consideration, Mr. Milner Gibson proposed that members should be confined to speeches of an hour's duration, excepting only the introducers of original motions, and ministers of the Crown; but the house negatived the proposed amendment by a large majority.[5] Similar motions have sometimes passed in the old Parliament of Canada; but a short experience proved that it was not practicable, nor conducive to the public interests (which are necessarily involved in free discussion) to limit the time.[6]

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[1] Mr. Speaker Abbott; Cushing, p. 637.

[2] 242 E. Hans., 1696; Mr. Speaker Brand.

[3] 222 *Ib.*, 1199.

[4] 264 E. Hans. (3), 374, 385, 388, 389, 393, 396; See S. O., 27th Nov., 1882.

[5] 102 E. Hans. (3), 258.

[6] Leg. Ass. J. [1851], 163, half an hour; [1854-5], 162; three-quarters of an hour. In the House of Representatives at Washington there are rules limiting the time of speaking. Wilson's Digest of Parl. Law, 404.

But while no limit has been placed to the length of a member's speech in the English Commons, a debate may now be closed when the speaker or the chairman of the committee of the whole is of opinion that a subject has been adequately discussed, and the house resolves that the question should be put forthwith. The *clôture* has not yet been adopted in the Canadian Parliament.[1]

**VIII. Motions for Adjournment.**—The rule requiring that speeches should be relevant to the question under consideration has never been applied in the Canadian houses—nor until recently in the English Parliament—to motions for the adjournment of the house[2] or of the debate.[3] New rules have been very recently adopted in the English Commons to confine debate to the motion for adjournment, when it is made during the discussion of any matter.[4] But so far the Canadian house has not shown any disposition to waive what may be a valuable privilege on certain occasions, when much latitude of debate is necessary. A motion for the adjournment of the house may be made while a matter is under discussion, or in the interval of proceedings. In the first case such a motion is in the nature of an amendment, and in the other it is a substantive motion, to which a reply is permitted to the member who makes it.[5]

Motions for the adjournment of the house or the debate are generally made in the Canadian houses in the course of a discussion, in order to give an opportunity to members who have already spoken to speak again[6] or to make

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[1] See *infra*, p. 380 for the English S.O. on this subject.

[2] May, 350; 99 E. Hans. (3), 1196; 161 *Ib.*, 344.

[3] 85 *Ib.*, 1405; 182 *Ib.*, 2172-5.

[4] See new S.O. on this subject at the end of this chapter.

[5] Rule 15 of Com., *infra* p. 354; rule 22 of Sen., *infra* p. 353; 186 E. Hans. (3), 1505.

[6] See Can. Hans., March 8. 1877 (Graving Dock at Levis); *Ib.*, March 13, 1878. Also, 261 E. Hans. (3), 999.

certain explanations which, otherwise, they might not be able to make.[1]

Substantive motions for the adjournment of the house ought to be reserved for occasions when it is necessary to discuss questions of gravity.[2] They are not unfrequently proposed in the Canadian Commons with the view of bringing before it some question in which a member is immediately interested, and which he believes should be explained by himself with as little delay as possible. Consequently we find they have been sometimes made for the purpose of giving a positive denial to certain charges made against members.[3] In 1878, a member brought to the notice of the house, on such a motion, that certain dominion officials were taking part in the provincial elections of Quebec.[4]

But even this practice, which is liable to abuse, has its limitations. No member will be permitted, on such a motion, to discuss an order of the day,[5] or a notice of motion on the paper,[6] or a motion which was dropped owing to a count-out.[7] On the 19th of July, 1875, Mr. Whalley was proceeding to discuss a resolution of which he had given notice, but for which he could not find a seconder; Mr. Speaker Brand called him to order on the ground that he was attempting under cover of a motion of adjournment to discuss a matter which was not regularly before the house.[8] It has also been decided that a motion of adjournment is out of order on a motion that

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[1] Can. Hans. [1883], 949.

[2] 188 E. Hans. (3) 1523-6.

[3] Can. Hans. [1878] 2057.

[4] *Ib.* [1878] 2227.

[5] 140 E. Hans. 2037; 225 *Ib.* 1824; 231 *Ib.* 424, 426. Not even if the motion deals with a kindred subject, 260 *Ib.* 1985, 2008, 2011; Blackmore (1883) 23.

[6] 185 *Ib.* (3) 886; 187 *Ib.* 775. Can. Hans. 10th April, 1876; 269 E. Hans. (3) 1246 (Lords).

[7] 224 *Ib.* 593; Blackmore [1882] 76.

[8] 225 E. Hans. (3) 1664; Can. Hans. [1880] 1916.

the house go into committee on a bill on a future day.[1] When there is a question before the house, and a member moves the adjournment, he must confine himself to the question.[2] Nor, on a motion for the adjournment of the debate, can a member refer to a vote just previously given, nor review what has taken place in the house;[3] nor debate the subject-matter of a bill.[4] It has also been ruled that a member moving the adjournment of the house for the purpose of asking if another member had a certain conversation with the speaker was committing a gross abuse of the privileges of the motion.[5]

**IX. Rules limiting Debate.**—Both houses have imposed upon themselves very strict rules with the view of preventing members from occupying unnecessarily their time on any question under consideration. The following are the rules of the Senate, regulating the limits of debate:

21. "A senator may speak to any question before the Senate, or upon a question or an amendment to be proposed by himself; or upon a question of order arising out of the debate; but not otherwise, without leave of the Senate, which shall be determined without debate.

22. "No senator may speak twice to a question before the Senate, except in explanation or reply, when he has made a substantive motion.

23. "Any senator may require the question under discussion to be read at any time during the debate, but not so as to interrupt any senator whilst speaking.

24. "When a question is under debate no motion is received unless to amend it, to commit it, to postpone it to a certain day, for the previous question, for reading the orders of the day, or for the adjournment of the house.

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[1] 221 E. Hans. (3) 744.
[2] 232 *Ib.* 1733, 1734.
[3] 257 *Ib.* 1351-2.
[4] 259 *Ib.* 179-80, 530.
[5] 263 *Ib.* 50-51; Blackmore [1883] 22.

25. "Any senator called to order shall sit down and shall not proceed without leave of the Senate."

The foregoing rules are substantially the same as those of the House of Commons, to whose practice we shall now proceed to refer. It is ordered by the rules of that house:

15. "No member may speak twice to a question, except in explanation of a material part of his speech, in which he may have been misconceived, but then he is not allowed to introduce new matter. A reply is allowed to a member who has made a substantive motion to the house, but not to any member who has moved an order of the day, an amendment, the "previous question,"[1] or an instruction to a committee."[2]

It is the practice in the Canadian house for the member who makes a motion to give the name of his seconder, who may, if necessary, lift his hat as evidence that he has intimated his consent, and under such circumstances he is allowed to speak at a subsequent stage of the debate on the question.[3] But if a member who moves an order of the day or seconds a motion, should rise and say only a word or two,—that he moves the order or seconds the motion—he is precluded from again addressing the house according to a strict interpretation of the rules.[4] In moving an amendment, a member is obliged to rise, and though he may only propose his amendment, he is considered to have exhausted his right to speak on the question before the house.[5] On the same principle when a member rises and simply reads a substantive motion to the house, he is considered to have spoken to the question, but he may claim the right of reply at a later stage.[6]

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[1] May, 360.

[2] Nor, under English decisions, to the mover of a motion for referring a bill to a committee specially constituted and enlarging its terms of reference; May, 360.

[3] This is the English practice; May, 361; 210 E. Hans. (3) 304.

[4] 194 E. Hans. (3) 1470. But it is unusual to enforce the rule so strictly as in the case cited. Also, 4 Hans. N. S., 1013.

[5] 118 E. Hans. (3) 1147, 1163. Mr. B. Osborne's am.; May, 361.

[6] Can. Hans. 14th April, 1877; secret service (Mr. Young).

A member who has already spoken to a question has no right to rise again and propose an amendment or the adjournment of the house, or of the debate, though he may speak again to those new questions, when they are moved by other members.[1] For the same reason a member who has moved the adjournment of the debate which has been negatived cannot speak to the original question.[2] A member who has moved or seconded the adjournment of a debate cannot afterwards rise to move the adjournment of the house.[3] And "as a member who moves an amendment cannot speak again, so a member who speaks in seconding an amendment, is equally unable to speak again upon the original question, after the amendment has been withdrawn, or otherwise disposed of. In both cases the members have already spoken while the question was before the house, and before the amendment had been proposed from the chair."[4]

It is usual for a member who wishes to have the floor on a future day to move the adjournment of the debate, and to give him the priority when it is resumed. The house also frequently agrees to adjourn the debate in order to allow an opportunity to a member to continue his speech on a future occasion.[5] But a member must rise in his place when the house resumes the debate, otherwise he will forfeit his privilege.[6] If a member should move the adjournment of the debate, and the house should

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[1] May, 362 ; 222 E. Hans. (3), 1120 ; 237 *Ib.* 408. 1532. Mr. Holton, 25th Feb., 1878 (gov.-gen.'s expenses).

[2] 227 E. Hans. (3), 1098 ; 254 *Ib.* 1793 ; 257 *Ib.* 1351-2.

[3] May, 362 ; 202 E. Hans. (3), 448-450 ; 240 *Ib.* 123.

[4] May, 361 ; 241 E. Hans. 1311. It appears, however, from a later decision that if a member moves an amendment, and does not speak, he will be allowed to address himself to the main question by withdrawing the amendment ; 217 E. Hans. (3), 1405.

[5] See Can. Hans. 7th April, 1877 (Mr. Costigan), and *Ib.* pp. 1266-7. Also, 13 E. Hans. (1), 114 ; 194 *Ib.* (3), 1470 ; 196 *Ib.* 1365.

[6] 126 E. Hans. (3), 1246. This rule has been always observed in the Canadian house.

negative that motion, he will have exhausted his right of speaking on the main question[1] When a debate is adjourned until a future day, a member who has previously spoken on the subject will have no right to speak again, unless a new question has been proposed in the shape of an amendment.[2]

**X. Personal Explanations**—But there are certain cases where the house will permit a member who has already spoken to a question to make some further remarks by the way of explanation before the debate finally closes. For instance, when a member conceives himself to have been misunderstood in some material part of his speech, he is invariably allowed, through the indulgence of the house, to explain with respect to the part so misunderstood,[3] and this privilege of explanation is permitted without leave being actually asked from the house.[4] But such explanations must be confined to a statement of the words actually used, when a member's language is misquoted or misconceived, or to a statement of the meaning of his language, when it has been misunderstood by the house;[5] for the speaker will call him to order the moment he goes beyond that explanation, and replies to the remarks of members in the debate;[6] or attempts to censure others;[7] or proceeds to state what he was going to say, but did not;[8] or to give the motives which operated in his mind to induce him to form the opinion which he had ex-

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[1] 194 E. Hans. (3), 1470; 196 *Ib.* 1365; 232 *Ib.* 1341; Can. Hans. 13th April, 1878 (Mr. McDougall).

[2] 1 E. Com. J. 245; May, 362.

[3] 12 E. Hans. (3), 923; 223 *Ib.* (3), 1187; *Ib.* 367; Sen. Deb. [1874], 84.

[4] May, 359.

[5] 167 E. Hans. (3), 1215.

[6] 66 E. Hans. (3), 884; 165 *Ib.* 1032; 223 *Ib.* 367; 224 *Ib.* 1924; 232 *Ib.* 358; Mr. Goudge, Can. Hans. 3rd April, 1878.

[7] 175 E. Hans. (3), 462-6; 252 *Ib.* 225.

[8] 1 *Ib.* (1), 814, 815; Can. Hans. [1875], 861-4.

pressed;[1] or to explain the language of other members;[2] or to explain the conduct of another person;[3] or to go into any new reasoning or argument. It is necessary, however, to observe here that in all cases of personal explanation the house is generally disposed to be indulgent and will frequently "waive a rigid adherence to established usage," especially when the public conduct of a member is involved.[4] The indulgence of the house will also be given to a member who has already exhausted his right of speaking, when he states that certain facts have come to his knowledge with respect to a matter in which the house is interested, and on which it is necessary that the house should come to a correct decision.[5] The same indulgence is almost invariably shown to ministers of the Crown, when it is necessary to place the house in full possession of all the facts and arguments necessary to give a full understanding of a question.[6] The house will also always be disposed to listen indulgently to explanations in refutation of statements injuriously affecting the conduct of important public functionaries or officers of the army or navy.[7] But while great latitude is allowed in personal explanation, no reference should be made to another member in connection with the subject except in his presence.[8]

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[1] 29 E. Hans. (1), 409.

[2] 26 *Ib.* (1), 315; 41 *Ib.* 167.

[3] 38 E. Hans. (3), 13.

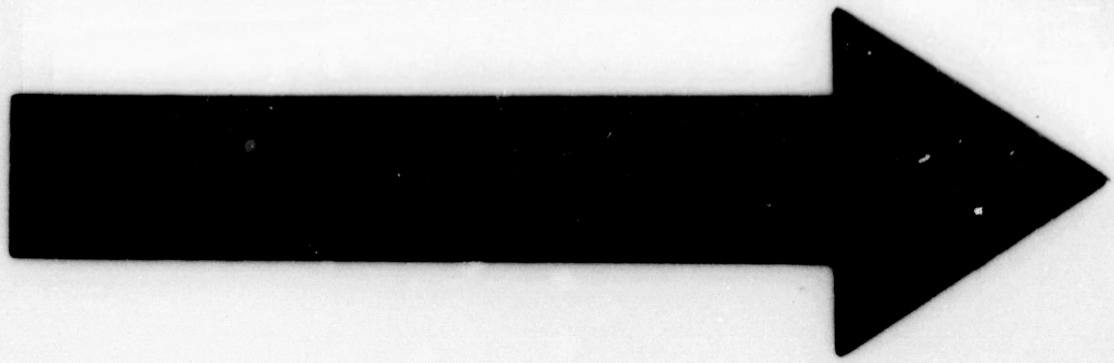
[4] 87 E. Hans. (3), 537; 222 *Ib.* 1187; Sen. Deb. [1873], 10-12. See Can. Hans. 1878, 12th Feb., when Messrs. Jones and Tupper were allowed to speak twice in personal explanation.

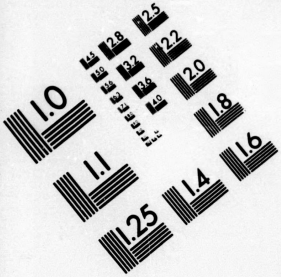
[5] 2 Hatsell, 105; 111 Grey, 357, 416; 18 E. Hans. (3), 510, 555; Cushing, p. 623.

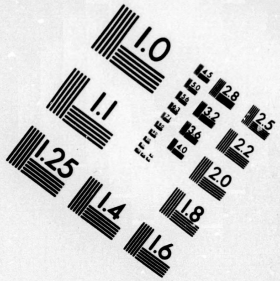
[6] 119 E. Hans. (3), 88, 153.

[7] 148 E. Hans. (3), 672, 1364, 1458. Can. Hans. [1878], 803. Sir John Macdonald, when orders were called, read memorandums from Chief Justice Young and Judge Desbarres in answer to remarks of Mr. Alfred Jones in the house on 12th Feb. See also 210 E. Hans. (3), 406, Mr. Reid, admiralty organisation.

[8] 216 *Ib.* 1783, Blackmore's Sp. D. [1882], 151-2.



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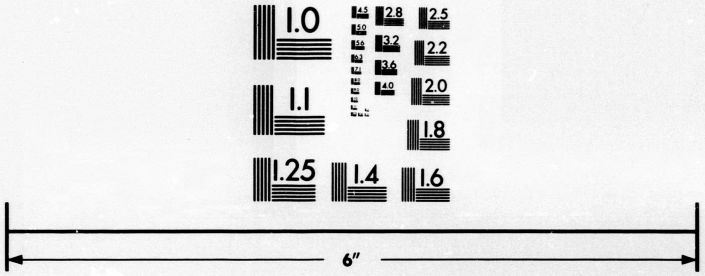


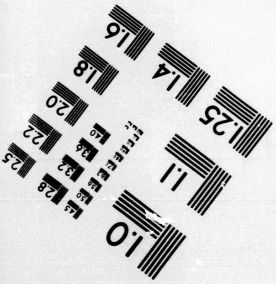


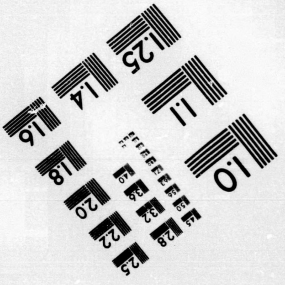


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**XI. Calling in Question a Member's Words.**—Whatever a member says in explanation—whether relating to the words or the meaning of his speech—is to be taken as true and not afterwards called into question. The words, which he states himself to have used, are to be considered as the words actually spoken; and the sense in which he says they were uttered, as the sense in which they are to be taken in the debate.[1]

**XII. Interruption of Members.**—It is a well recognized rule that when a member is in possession of the house he cannot be deprived of it without his own consent, unless some question of order, or of privilege should arise; in which case he must sit down until such question has been disposed of.[2] A member who interrupts another on a point of order should state it clearly, and must not proceed to wander beyond it, and touch upon the question under debate.[3] A message from the governor-general, brought by the usher of the black rod, will also interrupt a member and bring the debate immediately to a close. In the August meeting of 1873, Mr. Mackenzie was addressing the house, when the gentleman usher knocked at the door and was ordered to be admitted by the speaker, who proceeded forthwith to the Senate chamber where the houses were formally prorogued.[4] No member who rises to a question of order or privilege will be permitted to move an adjournment of the house or of the debate under the cover of such question. In such a case the speaker will prevent him proceeding further, and call upon the member who had first possession of the house to proceed.[5] Whilst a member is addressing the house,

[1] 21 E. Hans. (2), 393; Can. Hans. 1878, 15th Feb. (Mr. Dymond). Also, 2 E. Hans. (1), 315; 61 *Ib.* (3), 53; 200 *Ib.* 918; 245 *Ib.* 1474.

[2] R. 17, *supra*, p. 343.

[3] 7 E. Hans. (1), 194, 208; 195 *Ib.* (3), 2007-8.

[4] Parl. Deb., 13th August, 1873. Also, 2 H[illegible]l, 374-7.

[5] 45 E. Hans. (3) 956. A member has been [illegible]oduced whilst a member was speaking; Mr. White, 11th March, and Mr. Orton, 12th March, 1879.

no one has a right to interrupt him by putting a question to him, or by making or demanding an explanation.[1] A member will, at times, allow such interruptions through a sense of courtesy to another, but it is entirely at the option of the member in possession of the house to give way or not to an immediate explanation; and it is quite manifest that all such interruptions are very inconvenient and should be deferred until the end of a speech.[2] But any member, under rule 14, may require the question under discussion to be read at any time of the debate, but not so as to interrupt a member while speaking."

When, in the English Commons, a member has frequently interjected remarks while another member has been speaking, he has been warned by Mr. Speaker that if he continues such disorderly interruptions, he will be "named" as disregarding the authority of the chair under the rigid rules lately adopted for the seemly conduct of debate.[3]

**XIII. Speaking on Calling of Orders.**—It is a common practice for members in both houses to make personal explanations or ask questions of the government before the orders of the day are taken up. They may make these explanations in reference to an inaccurate report of their speeches in the official record[4] or in the newspapers;[5] or in denial of certain charges made against them in the public prints;[6] or in explanation of certain remarks which had been mis-

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[1] 192 E. Hans. (3), 749.

[2] 231 E. Hans. (3) 301; 226 *Ib.* 357.

[3] 261 *Ib.* 1250, 1257; Blackmore (1883) 22.

[4] Mr. Pouliot, Hans., 1878, p. 531. Senator Miller, Sen. Hans. [1880] 243.

[5] Parl. Deb. [1870] 522.

[6] Can. Hans. [1875] 861-2; *Ib.* [1878] 1311. It has been often questioned whether it is allowable to make such explanations on the ground of privilege, unless the conduct of a member as a member is attacked, and unless in that case he concludes with a motion. Mr. Holton's remarks, 21st March, 1878; also 11th April, 1878. See on this point *supra* p. 317 and 222 E. Hans. (3) 1186-1203.

understood on a previous occasion, and which they had not before had an opportunity of explaining;[1] or in respect to the incompleteness or inaccuracy of certain returns brought down under the order of the house.[2] Questions may be asked, when the orders are called, relative to the state of public business, or other matters of public interest.[3] But no discussion should be allowed, when a minister has replied to a question, nor after a member has made his personal explanation.[4] In asking a question, a member must not attack the conduct of the government.[5] If a member wishes to make personal explanations in reference to remarks which have fallen from another member, the latter ought to be in his place;[6] and he will take steps, as a matter of courtesy, to inform the member of his intention to address the house on the subject at a particular time.[7] But no question can be put, nor remarks made, after the clerk has read the first item on the order paper; for then all questions or remarks most clearly relate to the business under consideration.[8]

In case of ministerial changes, explanations are generally allowed to be made in both houses when orders of the day are called by the speaker.[9] When the premier or member leading the government in the house has made such explanations, it is usual to permit the leader of the opposition to make some remarks on points arising out of the former speech. In fact, considerable latitude is allowed on such occasions in the Canadian house. In the English Commons, it is irregular to permit any debate, after the ministerial statement has been made, unless some ques-

[1] 87 E. Hans. (3) 480.
[2] Can. Hans. [1878] 532, 593.
[3] *Ib.* [1878] 593, 708.
[4] *Ib.* [1878] 595.
[5] *Ib.* [1878] 1269.
[6] 216 E. Hans. (3) 1783.
[7] 174 *Ib.* (3) 192.
[8] May, 284.
[9] 214 E. Hans. (3) 1945; Sen. Deb. [1873] 31-36; Can. Hans. [1877] 32.

tion is formally proposed to the house; and the same practice obtains in the Lords—a motion for the adjournment being made when a debate is expected.[1]

**XIV. Manner of addressing another Member.**—A member addressing the house must not mention another member by name, but must refer to him in certain terms which the experience of Parliament has proved to be best calculated to preserve the decorum of debate. The Senate have an express rule on this point ;[2] and it is usual in that house to speak of another senator as "the hon. member for Grandville" (or other division he may represent) ;[3] or simply the hon. member ;[4] or "the hon. postmaster-general" (or other office he may hold in the government) ;[5] or his hon. friend and colleague from Nova Scotia (or other province).[6] In the Commons, members are referred to as "hon. member for ————;" the hon. minister of inland revenue ; the hon. premier, or first minister, or the hon. gentleman who leads the government ; the hon, and learned member ; the right hon. gentleman ; or in such other terms as designate a member's position, rank or profession.[7] But it is not irregular to refer to members of a previous parliament by name,[8] nor even to refer to a member by name, when there are two gentlemen of the same name sitting for a constituency, and it is necessary to distinguish between them.[9]

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[1] 153 E. Hans. (3) 1266.

[2] R. 20. "Every senator desiring to speak is to rise in his place uncovered, and address himself to the rest of the senators, and not refer to any other senator by name.

[3] Parl. Deb. [1870] 1440, 1442.

[4] *Ib.* 1442.

[5] *Ib.* 1446, 1450.

[6] *Ib.* 1480.

[7] Can. Hans. [1877] 11, 17, 33, 212, 241 ; 231 E. Hans. (3) 301, &c. Also, Sen. Deb. [1879] 124, 390.

[8] 252 E. Hans. (3) 1364-5.

[9] 261 *Ib.* 23.

**XV. References to the other House.**—It is a part of the unwritten law of Parliament that no allusion should be made in one house to the debates of the other chamber, a rule always enforced by the speaker with the utmost strictness.[1] Members frequently attempt to evade this rule by resorting to ambiguous terms of expression—by referring, for instance, to what happened "in another place;"[2] but all such evasions of a wholesome practice will be stopped by the speaker, when it is very evident to whom the allusions are made. It is perfectly regular, however, to refer to the official printed records of the other branch of the legislature, even though the document may not have been formally asked for and communicated to the house.[3]

**XVI. References to previous Debates.**—No member, in speaking, can refer to anything said or done in a previous debate during the same session—a rule necessary to economise the time of the house.[4] Neither is it regular to refer to arguments used in committee of the whole;[5] nor to an amendment proposed in the same.[6] Neither may a member read, from a printed newspaper or book, comments on any speech made in Parliament during the current session.[7]

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[1] 228 E. Hans. (3) 1771; Sen. Deb. [1871] 284. "There is no S. O. on the subject, but the unwritten law of Parliament is of equal, if not of greater force than any S. O. of this house." (Mr. Speaker Brand, June 9, 1876; Blackmore's Sp. D. [1882] 117-8.) In the old times of conflict between the legislative council and assembly of Lower Canada this wise rule was constantly broken; a very memorable case is mentioned in II. Christie, 370-6.

[2] 159 E. Hans. (3) 1451.

[3] 99 E. Hans. (3) 651; 159 *Ib.* 857. Also, 4 E. Hans. (N.S.) 213.

[4] 13 E. Hans. (N.S.) 129; 229 *Ib.* (3) 124. Can. Hans. [1879] 1824. The rule, however, does not apply to the different stages of a bill; 229 E. Hans. (3) 374; 239 *Ib.* 974.

[5] 154 E. Hans. (3) 985; 221 *Ib.* 1043-4, Blackmore's Sp. Dec. [1882] 50.

[6] 221 E. Hans. (3), 1044.

[7] 203 *Ib.*, 1613; 221 *Ib.*, 309. Nor even ask a member if he is correctly reported to have made certain statements that session; 238 *Ib.* 1403.

It is also in contravention of the rules of the house to discuss measures which are not regularly before it.[1] But a reference to a previous debate, by way of illustration, is in order.[2]

**XVII. Rules for the Preservation of Order.**—Very strict rules have been laid down, from time to time, by the two houses for the preservation of decorum and order in their debates and proceedings. The Senate has also adopted the following rules to prevent the use of personal and unparliamentary language in the course of debate :

26. " All personal, sharp, or taxing speeches are forbidden, and any senator conceiving himself offended, or injured in the Senate, in a committee room, or in any of the rooms belonging to the Senate, is to appeal to the Senate for redress.

27. " If a senator be called to order, for words spoken in debate, upon the demand of the senator so called to order, or of any other senator, the exceptionable words shall be taken down in writing. And any senator who has used exceptionable words, and does not explain or retract the same, or offer apologies therefor, to the satisfaction of the senator, will be censured or otherwise dealt with as the Senate may think fit."

Similar orders have been, for centuries, the rules of the House of Lords.[3] In case of a difference between senators the matter will be discussed with closed doors.[4] The Senate will also " interfere to prevent the prosecution of any quarrel between senators, arising out of debates or proceedings of the Senate, or any committee thereof."[5] The Lords have even extended this rule to prevent quarrels which have happened outside from proceeding any further.[6] In such matters, however, the speaker has no more au-

[1] 235 E. Hans. 323 ; 236 *Ib.* 15.

[2] 234 *Ib.* 1916.

[3] S. O. 16 and 19 ; June 13th, 1626 ; Mirror of P. 1833, vol. 22, p. 2855.

[4] Sen. Deb. [1871], 83. For a case of taking down words, and a subsequent retraction, see Sen. Deb. [1880], 300.

[5] Sen. R. 28 ; 31 Lords' J. 448.

[6] May, 375 ; 36 Lords' J. 191.

thority than any other peer,[1] and in that respect occupies a position very different from that of the speaker of the Commons, whose duty it is to stop a member the moment he is guilty of a breach of order, and to enforce the rules and usage of the house with promptitude and decision.

In the House of Commons a member will not be permitted by the speaker to indulge in any reflections on the house itself, as a political institution, or as a branch of the government;[2] or to impute to any number of members unworthy motives for their action in a particular case;[3] or to use any profane or indecent language, such as is unfit for the house to hear or for any member to utter;[4] or to question the acknowledged and undoubted powers of the house in a matter of privilege;[5] or to reflect upon, argue against, or in any manner call in question, the past acts and proceedings of the house;[6] or to speak of committees as if they were the special nomination of any person or "packed by the majority";[7] or to speak in abusive and disrespectful terms of an act of parliament;[8] or to speak in terms of disrespect of the members of the other house of parliament.[9] Personal attacks upon members will always be promptly rebuked by the speaker. "There is no rule better established," said Mr. Speaker Addington on one occasion, "than that *qui digreditur à materiâ ad personam* is disorderly, that whatever wanders from the subject in debate and is converted into a personal attack is contrary to order."[10] No member will be permitted to say

[1] May, 390.

[2] 13 S. O.; 11 E. Com. J. 580; 15 E. Hans. (1), 338-9; 236 *Ib.* (3), 397.

[3] 6 E. Hans. (N. S.), 69, 70. Not to members of the government, for instance, 245 E. Hans. (3), 1587.

[4] 16 *Ib.* (3) 217; 218 *Ib.* 1331.

[5] 4 E. Hans. (N. S.), 1168.

[6] 2 Hatsell, 234; 2 E. Hans. (1), 695.

[7] 4 *Ib.* (1), 738; Can. Hans. [1878], 630.

[8] 35 E. Hans. (1), 369.

[9] 264 *Ib.* (3), 1590.

[10] 38 Parl. Reg. 367; also, 6 E. Hans. (N. S.), 69, 70, 518; 16 *Ib.* 470.

of another that he could expect no candour from him ;[1] that he only affected to deplore the distresses of the country ;[2] that his remarks are insulting to the house and to the country ;[3] that he is in the habit of uttering libels in the house ;[4] that he is guilty of gross misrepresentations ;[5] that he has acted basely or from base motives ;[6] that he is observed indulging in a smile unworthy of a man ;[7] that the house has a right to know whether a member meant what he said or knew what he meant.[8] No member can be allowed to apply the expression "impertinence" to another member ;[9] or to attribute motives[10] or any intention to insult others ;[11] or to question the honour of any one ;[12] or to tell a member that he went about the country telling palpable lies ;[13] or that certain members would shrink from nothing, however illegal or unconstitutional ;[14] or that "members came to the house to benefit themselves ;"[15] or that "a member has acted as a traitor to the sovereign ;"[16] or "that liberty and regard of private right are lost to the house," and that a "minister had transferred himself from a constitutional minister into a tyrant ;"[17] or that a member has stated what he knew not to be correct ;[18] or that he does not believe a statement he himself has made ;[19] or that he had inspired another member in a certain disorderly course which had brought down the censure of the house ;[20] or that he shelters himself behind his temporary privilege to evade a criminal action ;[21] nor

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[1] 33 E. Hans. [1], 505.
[2] 4 *Ib.* [2], 243.
[3] 3 *Ib.* [3], 1152, 1153.
[4] 3 *Ib.* [3], 1194.
[5] 8 *Ib.* [2], 410.
[6] 27 *Ib.* [3], 120.
[7] 4 *Ib.* [3], 561.
[8] 4 *Ib.* [2], 240.
[9] 230 *Ib.* [3], 863.
[10] 35 *Ib.* [1], 723 ; 6 *Ib.* [2], 69 ; 231 *Ib.* [3], 437.
[11] 228 *Ib.* 2029, 2030.
[12] 222 *Ib.* 329.
[13] 223 *Ib.* 1015.
[14] 219 *Ib.* 589.
[15] 6 *Ib.* [2], 69.
[16] 257 *Ib.* 1294.
[17] 264 *Ib.* 390 ; Blackmore (1883), 26.
[18] 261 *Ib.* 1028.
[19] 261 *Ib.* 996.
[20] 261 *Ib.* 419.
[21] Can. Hans. (1883), 519.

may he refer to another member "as the member who sits" for a constituency ;[1] or say that he is a "servile follower" of a government.[2] On one occasion in the English House of Commons a member said that "at last he had got at the truth ; but it had taken a long time to extract it—not from any intention of the right hon. gentleman (Mr. Goschen), to mislead the house, but from the tendency of official habits." The speaker said, on Mr. Goschen rising to remonstrate, that "he thought the hon. member was about to qualify his statement, and he trusted that the hon. member would now withdraw it."[3] On another occasion a member having spoken of "a course which he held to be unworthy of a minister of Victoria, unworthy to be listened to by any man of honour in this house," the speaker interposed immediately and said that "the hon. member was exceeding the rules of debate."[4] Again, when a member has intimated that he would move the adjournment, unless certain explanations were given, the speaker has interposed and called him to order for using language menacing to the house.[5] Words which are plain and intelligible, and convey a direct meaning, are sometimes used *hypothetically* or *conditionally*, upon the idea, that, in that form, they are not disorderly. But this is a mistake. If, notwithstanding their being put hypothetically or conditionally, they are plainly intended to convey a direct imputation, the rule is not to be evaded by the form in which they are expressed. Thus, where a member, being called to order for personal remarks, justified himself by saying that he was wholly misunderstood, he had put the case hypothetically, the speaker, Mr. Manners Sutton, said "the hon. member must be aware that putting a hypothetical case was not the way to evade what would be in itself disorderly."[6]

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[1] Can. Hans. [1883] 520.
[2] *Ib.* (1878), 2191.
[3] 218 E. Hans. [3], 1875.
[4] 220 *Ib.* 583.
[5] 261 *Ib.* 1082.
[6] 7 *Ib.* 722, 723 ; 28 *Ib.* 15.

It is the duty of the speaker to interrupt a member who makes use of any language which is clearly out of order. On one occasion Mr. Speaker Sutton said :

"That he always felt it a painful duty to interrupt members, but it was his first duty to preserve order in the house. The orders of the house were made not for the advantage of one party or the other, but for public purposes, and to preserve the general freedom of debate. His sole wish, on such occasions, was to preserve the dignity of the house, and the regularity of debate."[1]

In matters of doubt[2] or of trifling importance,[3] he will naturally hesitate to call a member to order. Very often, to quote Mr. Speaker Sutton again,

"He may feel it most convenient to leave such subjects to be regulated by the general sense of the house, taking from them the hint, and declining himself to interfere, unless under circumstances likely to obstruct the public business."[4]

But on all occasions it is the right of a member to rise and call another member to order. He must state the point of order clearly and succinctly, and it will be for the speaker to decide whether the point is well taken. A member is not at liberty, in rising to order, to review the general tenor of a speech, but must object to some definite expression at the moment when it is spoken.[5] It is legitimate on such occasions for members to debate the point of order, but they must confine themselves strictly to it.[6] When the speaker has pronounced his opinion it is almost invariably acquiesced in ; but while no member can be permitted to argue against it, he can take the sense of the house thereon. Rule 12 provides :

"A member called to order shall sit down, but may afterwards

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[1] 6 E. Hans. (2) 69, 70 and 944 : 8 *Ib.* 410 ; 228 *Ib.* (3) 2029 ; 231 *Ib.* 437.
[2] 13 E. Hans. (2) 129, 130.
[3] 2 *Ib.* (2) 944.
[4] 13 *Ib.* (2) 130.
[5] 195 E. Hans. (3) 2007.
[6] 1 *Ib.* (1) 800, 801 ; 7 *Ib.* 194, 208 ; 195 *Ib.* (3) 2007.

explain. The house, if appealed to, shall decide on the question, but without debate. If there be no appeal the decision of the chair shall be final."

But there are few instances, even in the early records of the English Commons, of the speaker being overruled on such points of parliamentary order.[1] No such instances have occurred in the Canadian houses, though there are examples of his decisions on disputed points of procedure having been over-ruled.[2] In all matters of doubt, the speaker will always listen attentively to the opinions of members of experience, or sometimes, instead of expressing his opinion on either side, may ask instructions from the house on the point in dispute ;[3] or refer the question to the discretion or feeling of the house ;[4] or suggest that the house may, if it think proper, dispense with the rule in a particular case.[5] Also, in many doubtful cases, the speaker will be entirely guided by the circumstances connected therewith,[6] and will endeavour to meet the wishes of the house, when he has heard them expressed.[7]

**XVIII. Naming a Member.**—When a member has been called to order by the speaker, for a breach of parliamentary decorum, it is his duty to bow at once to the decision of the chair, and to make an apology by explaining that he did not intend to infringe any rule of debate, or by immediately withdrawing the offensive and unparliamentary language he may have used.[8] In case, however, a member

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[1] Cushing, p. 677.

[2] Can. Com J., [1873] 59. The house may also discuss as a point of order any apparent irregularity in the procedure. For instance, if a member thinks a question has not been put distinctly and regularly from the chair ; 174 E. Hans. (3) 1960-4.

[3] 7 E. Hans. (1) 188, 207, 208.

[4] 6 *Ib.* (1) 847 ; 4 *Ib.* (2) 518, 519.

[5] 15 *Ib.* (1) 154 ; 16 *Ib.* (1) 739.

[6] 1 E. Hans. (1) 800, 801.

[7] Mirror of P., 1840, vol. 16, p. 1634.

[8] 230 Eng. Hans. (3) 863; 231 *Ib.* 437 ; 107 E. Com. J. 277.

persists in his unparliamentary conduct, the speaker will be compelled to *name* him, and submit his conduct to the judgment of the house, in accordance with a very old rule:

"That no member do presume to make any noise or disturbance whilst any member shall be orderly debating, or whilst any bill, order, or other matter shall be in reading or opening; and in case of any such noise or disturbance that Mr. Speaker do call upon the member by name, making such disturbance; and that every such person shall incur the displeasure and censure of the house."[1]

In such a case the member whose conduct is in question should explain and withdraw, and it will be for the house to consider what course to pursue in reference to him. If the house consider the explanation sufficient, it will be proper for a member to make a motion to that effect, which will be adopted and duly recorded.[2] Or when a member has withdrawn after having been named, some one may move that he be called in and reprimanded by Mr. Speaker in his place. Even then the offender may take this opportunity of apologising to the house, through another member, for having transgressed the rules of the house; and in such a case the house may consent to the withdrawal of the motion for censure, and allow the member to return to his place in the house without a reprimand.[3] But when the house has agreed that a member should be reprimanded, he will be ordered to attend in his place at a particular time; and when he is there, in obedience to the order, the speaker will request him to stand up, and immediately proceed to reprimand him; and when he has finished, the reprimand will, on motion, be placed on the journals.[4] The house, in all cases, should give every proper opportunity to an offending member to make such a defence as may satisfy the house and avoid

[1] Res. of Jan. 22d, 1693.
[2] Can. Leg. Ass. J. [1852-3], 126; *Ib.* [1861], 270.
[3] 30 Parl. Hist. 114.
[4] 3 Mirror of P. [1838], 2231, 2233, 2263, 2267.

a reprimand. In the case of Mr. Plimsoll, in the session of 1875, it was shown that he had made use of most offensive expressions "whilst extremely ill, and labouring under excessive mental excitement—the result of an overstrain acting upon a very sensitive temperament." Under these circumstances it was considered most advisable that Mr. Plimsoll should not be required to attend in his place till some days later. It was accordingly agreed to adjourn the debate until a future day, when Mr. Plimsoll appeared and apologised to the house; and then the order of the day for the adjourned debate having been read, Mr. Disraeli moved that it be discharged, which was agreed to unanimously.[1]

**XIX. Words taken down.**—When a member makes use of any disorderly and unparliamentary language, it is the right of another member to move that it be taken down.[2] Still the speaker will not immediately order the words to be taken down, but will be guided by the sense of the house on the subject.[3] Hatsell says on this point:

"The speaker may direct the clerk to take the words down; but if he sees the objection to be a trivial one, and thinks there is no foundation for their being deemed disorderly, he will prudently delay giving any such direction, in order not unnecessarily to interrupt the proceedings of the house. If, however, the call to take down the words should be pretty general, the clerk will be certainly ordered by the speaker to take them down in the form and manner of expression as they are stated by the member who makes the objection to them [4]

The motion to take down the words should include the exact words (as far as possible) that may be objected to.[5] When the motion has been made, it is allowable to dis-

[1] 225 E. Hans. (3), 1824; 226 *Ib.* 178.
[2] See Sen. R. 27, *supra*, p. 363.
[3] 272 E. Hans. (3), 1563, 1565.
[4] 2 Hatsell, 273, *n.*
[5] 3 Mirror of P. [1838], 2233; 186 E. Hans. (3), 882.

cuss it before the speaker puts the question thereon to the house—the object being to give every opportunity to the offending member to withdraw the offensive expression, and apologize to the house.[1] When he apologizes, the motion will be almost invariably withdrawn with the general consent of the house.[2] If the speaker rules that the expression complained of is not unparliamentary, a member will not be permitted to move that the words be taken down.[3] It is also the rule:

"That, if any other person speaks between, or any other matter intervenes, before notice is taken of the words which give offence, the words are not to be written down or the party censured."[4]

Consequently the objection must be taken immediately that the words are spoken.[5] It will also be too late to interrupt the member and ask that his words be taken down if he is allowed to continue his speech for some time after he has given utterance to the objectionable language.[6]

When the speaker finds that the majority are in favour of taking down the words, he will order them to be taken down in the form and manner of expression as they are stated by the member who has first moved in the matter. They are then entered on the clerk's minutes, and the

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[1] 186 E. Hans. (4), 882-887.

[2] 219 *Ib.* 589.

[3] 115 *Ib.* 276.

[4] 2 Hatsell, 269 *n.*; 93 E. Com. J. 307, 312, 313. Consequently "any exception taken to words spoken in debate must be taken on the spot at once, and no words spoken can be noticed afterwards in the house, if such exception has not been taken to them; and if the words themselves have not been taken down by the clerk at the table;" 165 E. Hans. (3), 616-626. In this case there was a prospect of an encounter between two members, and the house could only proceed to prevent such a meeting; the words originating the difficulty could not be discussed.

[5] 9 E. Hans. (1), 326.

[6] May, 378. See also 48 E. Hans. (3), 321, which shows that in the Lords also, the words must be taken down *instanter*.

member who spoke the words has the right to read them or have them read to him by the speaker;[1] and he may then deny that those were the words he spoke;[2] and if he does so the house may proceed to consider his explanation and decide by a question whether he had or had not used the words.[3] If he does not deny that he spoke those words,[4] or when the house has itself determined what the words were, then the member may either justify them or explain the sense in which he had used them with the view of removing the objection taken to them.[5] If his explanation or apology be deemed sufficient by the house no further proceeding is necessary.[6] Or the house may feel compelled to resolve that the words are most disorderly, and proceed to censure him.[7] Or the house may resolve that the words are not disorderly by negativing the motion to censure the member.[8] Or the house may go still further and order the offending member to be committed to the custody of the serjeant-at-arms and imprisoned.[9] When the words have been taken down at the table the member should explain and withdraw, and then the house will proceed to consider what course to take with reference to him.[10] Sometimes the house may be disposed to allow every indulgence to a member who, in the heat of debate, has allowed expressions to escape him which are calculated to offend the house or some member thereof. In such a case the house will not deal immediately with the matter, but will order that it be

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[1] 2 Hatsell, 273, *n.*; 235 E. Hans. (3), 1809-1833; 272 *Ib.* 1571.

[2] 32 E. Com. J. 708.

[3] 2 Hatsell, 273, *n*; 18 E. Com. J. 653.

[4] 126 E. Hans. (3), 1194.

[5] 2 Hatsell, 273, *n*; 32 E. Com. J. 708; 66 *Ib.* 391; 126 E. Hans. (3), 1207.

[6] 66 E. Com. J. 391; 137 *Ib.* 395. Sen. Deb. [1880], 300.

[7] 18 E. Com. J. 653.

[8] 32 *Ib.* 708.

[9] 18 *Ib.* 653.

[10] 126 E. Hans. (3), 1208; 235 *Ib.* 1809-26.

taken into consideration at a future time, and that the member do attend in his place at the same time. When the orders of the day, for the consideration of the words objected to and for the attendance of the member, have been read, the speaker will ask if he is in his place, and will proceed to explain the state of the matter, and give him a further opportunity for an apology.[1]

The words of the speaker may also be taken down and recorded by the clerk, who may read them to the house, which can then proceed to deal with the matter as in the case of any member on the floor.[2]

**XX. Misbehaviour in Committees or Lobbies.**—When a member misbehaves himself in a committee of the whole, his conduct must be reported to the house, which alone can censure and punish any act of disorder.[3] If objection be taken to any words that a member may use in committee, the chairman will put the question whether they should be taken down, and if the sense of the committee is in favour of doing so, he will proceed to report them to the house which will follow the procedure usual in all cases when a member has committed an offence.[4] But when words have been taken down in committee, it is always open to the offending member to withdraw the objectionable expressions, and to apologise to the house for having used them. In case his apology is accepted, the fact of his having made it will be duly entered on the journals.[5]

If a member insult another in any of the lobbies or rooms belonging to the place, the attention of the speaker may be directed to the fact when he is in the chair. It is

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[1] 126 E. Hans. (3), 1207, 1218, 1234.

[2] 32 E. Com. J. 707-8.

[3] Com. R. 76; 233 E. Hans. (3). 951-956.

[4] 108 E. Com. J. 461, 466; 126 E. Hans. (3), 1193-1207; 235 *Ib.* 1809-1833.

[5] 137 E. Com. J. 253.

then for the house to consider what course it ought to take with reference to the conduct of the offending member.[1]

**XXI. Proceedings to prevent hostile Meetings.**—From the foregoing and other illustrations of the procedure in the case of the use of unparliamentary language, it will be seen that it is the duty of the speaker to call upon the offending member to make an apology or retract the words which are objected to.[2] Unless this were done, unpleasant consequences might at times result. If a member should send a hostile message to another on account of words used in Parliament, it will be the duty of any member, on being informed of the fact, to call the attention of the house to the matter, "as a breach of one of its most important privileges, that there shall be perfect freedom of speech in its debates." The speaker, on being informed of so distinct a breach of its privileges, will at once call on the offending member, if he be present, "to express his regret for the breach of privilege he has committed, and to give an assurance to the house that the matter will proceed no further." The member should then immediately proceed "to acquit himself of any disrespect to the house or its privileges and give the required assurance."[3] If the members are not present, they will be sent for immediately, and the necessary assurances asked from each.[4]

If the member who has committed a breach of order either in the house, or in a committee of the whole, or

[1] Case of Dr. Kenealy who insulted Mr. Sullivan, 233 E. Hans. (3) 951-956. See also for previous precedents, 122 E. Com. J. 221; 122 E. Hans. (3), 274.

[2] 183 E. Hans. (3), 801-2.

[3] Case of Sir R. Peel and the O'Donoghue, 1862; 165 E. Hans. (3), 616-626.

[4] Case of Mr. Praed and Mr. E. Lytton Bulwer, 1838; 93 E. Com. J. 657; 6 Mirror of P. 1838, pp. 5132, 5137, 5138, 5147. A similar case occurred in the legislative assembly of Canada, sess. of 1849, when angry words passed between two prominent members during the exciting debates on the rebellion losses bill; Can. Leg. Ass. J. [1849], 88. For other cases, see 89 E. Com. J. 11; 91 *Ib.* 484-5; 92 *Ib.* 270; 100 *Ib.* 589.

in a select committee, refuse to apologise or retract the expression complained of, and there is a prospect of a quarrel arising between him and another member on account of such words, it will be the duty of some member to move immediately in the house that he be taken into the custody of the serjeant-at-arms. If the member should subsequently apologize and explain that the matter will not proceed further, the motion for his arrest will be withdrawn.[1]

**XXII. Punishment of Misconduct.**—Either house of Parliament has full authority to punish those members who are guilty of contempt towards it, by disorderly or contumacious behaviour, by obstruction of the public business,[2] or by any wilful disobedience of its orders. Any member, so offending, is liable to punishment, whether by censure, by suspension from the service of the house, or by commitment, as the house may adjudge. Suspension is now the mode of punishment freely used in the English House of Commons,[3] under the new orders which will be found at the end of this chapter. If a member refuse to withdraw when suspended, the speaker will order him to be removed by the serjeant.

It is usual when a charge of misconduct is made against a member to hear any explanation which he may have to offer; but "if the house should be of opinion that the offence which the hon. member has committed is flagrant and culpable, and admits of no apology, it will be competent first, without directing him to attend in his place, to order him to be committed to the custody of the serjeant-at-arms." This was done in the English Commons, in the case of Mr. Feargus O'Connor in 1852.[4] Subsequently a

[1] 8 E. Hans. (2), 1091-1102; Can. Leg. Ass. J. [1849], 88; 106 E. Com. J. 313 (committee of whole). For procedure in case of altercations in a select committee, see 91 E. Com. J. 464, 468 and 34 E. Hans. (3), 410, 486.

[2] Mr. Speaker Brand, 132 E. Com. J. 375.

[3] 136 E. Com. J. 55, 56.

[4] 122 E. Hans. (3), 367-73; 107 E. Com. J. 278, 292, 301.

petition, stating that he was of unsound mind, was received and referred to a select committee, which reported that the allegations therein were correct, and it was accordingly ordered that he be discharged from custody.[1]

**XXIII. Withdrawal of Members.**—From the foregoing illustrations of the practice of the House of Commons in cases of disorderly language or behaviour, it will be seen that whenever the conduct of a member is under consideration it is his duty to withdraw from the house; but he should be first allowed an opportunity to explain and to know the nature of the charge against him.[2] For instance, when a member is named by Mr. Speaker for disorderly conduct or language, he will explain and withdraw.[3] In case he persists in remaining, he will be ordered to withdraw, as soon as a motion in reference to his conduct has been proposed.[4] When the charge is contained in the report of a committee, or in certain papers which are read at the table, the member accused knows to what points he is to direct his explanation, and may, therefore, be heard to those points before any question is moved or stated against him; and in such a case he is to be heard and to withdraw before any question is moved.[5] But where the question itself is the charge, for any breach of the orders of the house, or for any matter that has arisen in debate, then the charge must be stated—that is, the question must be moved. The member must then be heard, in his explanation or exculpation; and then he is to withdraw.[6] The

[1] 122 E. Hans. (3), 611, 816.

[2] 2 Hatsell, 170; Cushing, p. 692; May, 392; 150 E. Hans. (3), 2102; 233 *Ib.* 951.

[3] Can. Leg. Ass. J. [1861], 270; 126 E. Hans. (3), 1207.

[4] 235 E. Hans. (3), 1826; *supra*, p. 372.

[5] 2 Hatsell, 170, 171, *n.*; Mirror of P. 1838, vol. 3, pp. 2159, 2164; 101 E. Com. J. 582; 113 *Ib.* 68; 116 *Ib.* 377, 381. Case of Mr. Daoust, Can. Com. J., 16th March, 1876. He will also be required to withdraw should he present himself in the house before they have finally determined the matter affecting him; 85 E. Hans. (3), 1198.

[6] 235 E. Hans. (3), 1811-12.

principle is thus stated by Hatsell: "the member complained of should have notice of the charge, but not of all the arguments." For instance, if a motion be made for a select committee to inquire into the conduct of a member, he will be heard in his place and withdraw.[1]

The statement of a member made in his place in reply to certain charges which appear on the journals, is also frequently given in full on the record, especially in the Canadian Commons.[2] This, however, is only properly done under more recent practice, when the charges are contained in papers laid before the house, and the reply is read from a written paper. In Mr. O'Connell's case, in 1838, the speech complained of appears in full, and then the journals simply record: "Mr. O'Connell having avowed making use of these expressions withdrew."[3] In similar cases, when the charge is contained in a motion, or when words have been taken down, or a complaint has been made of a member's conduct, the journals will simply record the fact that he "explained," or that "he was heard in his place," or that "he made an explanation in the course of which he acknowledged or denied the truth of the allegation."[4]

**XXIV. References to Judges and other Persons.**—The rules of the two houses are only intended to protect their own members, and consequently any reflections on the conduct of persons outside cannot be strictly considered as breaches of order.[5] But the speakers of the English Commons now always interfere to prevent as far as they can all personal

[1] 91 E. Com. J. 314.

[2] 100 E. Com. J. 588; Can. Com. J. 16th March, 1876.

[3] 93 E. Com. J. 307.

[4] 63 E. Com. J. 149; 132 *Ib.* 144, 375.

[5] 223 E. Hans. (3), 1577. In a case where a member proceeded to attack the private character of a deceased nobleman (Lord Leitrim, assassinated in Ireland in 1878) in a most scandalous manner, the speaker could not interfere; the only way the member could be stopped was by having the galleries cleared; 239 E. Hans. (3), 1262.

attacks on the judges and courts of justice. They have always felt themselves compelled to say that "such expressions should be withdrawn," and that "when it is proposed to call in question the conduct of a judge, the member desiring to do so should pursue the constitutional course of moving an address to the Crown."[1] Members have even been interrupted in committee of the whole by the chairman when they have cast an imputation upon a judicial proceeding.[2] As another illustration of the strictness with which the speaker may restrain members within the limits of decorum, we may refer to the fact that when a member has applied the word "tyrant" to the Emperor of Russia, the speaker has at once interrupted him and pointed out that the language was not respectful to a sovereign who is an ally and friendly to England.[3] The speaker has also stopped a member who was using unparliamentary language towards an officer of the house engaged at the time in the discharge of his duty.[4]

**XXV. New Standing Orders of English Commons.**—Several references have been made in previous parts of this chapter to the standing orders which have been lately adopted by the House of Commons in England, with a view of preventing systematic obstruction to public business, and bringing the debates on a question within a reasonable compass. When it became evident that there was a settled policy of obstruction in the house, and that the

[1] 212 E. Hans. (3), 1809; 234 *Ib.* 1463, 1558; 238 *Ib.* 1953.

[2] 240 *Ib.* 990-992. The house has also refused to receive petitions reflecting on courts of law, *supra*, p. 265. Neither is it regular to discuss proceedings that are *sub judice*, 216 E. Hans. (3), 960-1; *supra* p. 102 *n.*

[3] 237 E. Hans. (3), 1639. Also, 238 *Ib.* 799. A member in the Canadian Commons, on one occasion, was called to order for reflecting on the proceedings of the Quebec legislature; Hans. [1878], 47. See also remarks of speaker as to the course a member should pursue when he has charges to make against the representative of a foreign power; 252 E. Hans. (3), 1902-7.

[4] 248 E. Hans. (3), 53.

old rules were ineffective, the speaker felt constrained to depart from the line of conduct hitherto observed by the chair, and to interpose on one occasion when a sitting had been continued for a period of forty-one hours, and the house had been frequently occupied with heated discussions upon repeated dilatory motions for adjournment, supported only by small minorities in opposition to the general sense of the house. He felt compelled to say, after some preliminary observations:

"The dignity, the credit, and the authority of this house are seriously threatened, and it is necessary that they should be vindicated. Under the operation of the accustomed rules and methods of procedure, the legislative powers of the house are paralysed. A new and exceptional course is imperatively demanded, and I am satisfied that I shall best carry out the will of the house, and may rely upon its support, if I decline to call upon any more members to speak, and proceed at once to put the question from the chair. I feel assured that the house will be prepared to exercise all its powers in giving effect to these proceedings. Future measures for ensuring orderly debate, I must leave to the judgment of the house; but I may add that it will be necessary either for the house itself to assume more effectual control over its debates, or to entrust greater authority to the chair."[1]

The best method of meeting what was clearly a crisis in the proceedings of the house was the subject of earnest deliberation for months on the part of the speaker, ministers, and prominent members on both sides. The house agreed, for the time being, to various orders and resolutions of a tentative character. The speaker's authority was strengthened, and a debate could be immediately brought to a close under the new rules he submitted for the regulation of public business in cases of urgency.[2] The result of all these proceedings has been the adoption

[1] Mr. Speaker Brand, on the 2d Feb., 1881. See 136 E. Com. J. 50; 257 E. Hans. (3), 2032-3.

[2] 136 E. Com. J. 57, 58, 78, 83, 123.

of standing orders which impose restraint on protracted discussions, limit debate on motions for adjournment, and provide more summary means for punishing those members who may wilfully and persistently obstruct the public business.

*Putting the Question.*—A standing order of the 27th of November, 1882, provides as follows for the prompt closing of a debate, when it is the sense of the house that a question has been sufficiently debated:

"That when it shall appear to Mr. Speaker or to the chairman of ways and means in a committee of the whole house, during any debate, that the subject has been adequately discussed, and that it is the evident sense of the house, or of the committee, that the question be now put, he may so inform the house or the committee; and, if a motion be made 'That the question be now put,' Mr. Speaker, or the chairman, shall forthwith put such question; and, if the same be decided in the affirmative, the question under discussion shall be put forthwith: provided that the question, 'That the question be now put,' shall not be decided in the affirmative, if a division be taken, unless it shall appear to have been supported by more than two hundred members, or unless it shall appear to have been opposed by less than forty members, and supported by more than one hundred members."[1]

*Debate on Motions of Adjournment.*—The following are the standing orders which were finally adopted on the 27th of November, 1882, in order to prevent the abuse of motions for adjournment:

"That when a motion is made for the adjournment of a debate or of the house during any debate, or that the chairman of a committee do report progress, or do leave the chair, the debate thereon shall be confined to the matter of such motion; and no member, having moved or seconded any such motion, shall be entitled to move or second any similar motion during the same debate."

"That if Mr. Speaker, or the chairman of a committee of the whole house, shall be of opinion that a motion for the adjourn-

[1] S. O. xiv. 137 E. Com. J. 55, 491, 493, 499, 501.

ment of a debate or of the house during any debate, or that the chairman do report progress, or do leave the chair, is an abuse of the rules of the house he may forthwith put the question thereupon from the chair."[1]

Another standing order was also adopted at the same time to restrain a practice which had grown up of late years, of moving the adjournment of the house in putting questions in order to enable a member to discuss a matter at length, and in that way evade the rule which permits no argument or debate on making an inquiry. The speaker was always accustomed on these occasions to point out the obvious inconveniences of such a course, though he could not deny the right of a member to follow it when he thought proper.[2] Under such circumstances, in revising the rules, it was found expedient to adopt the following standing order on the 27th of November, 1882:

"That no motion for the adjournment of the house shall be made until all the questions on the notice paper have been disposed of, and no such motion shall be made before the orders of the day, or notices of motions have been entered upon, except by leave of the house, unless a member, rising in his place, shall propose to move the adjournment for the purpose of discussing a definite matter of urgent public importance, and not less than forty members shall thereupon rise in their places to support the motion; or unless, if fewer than forty members and not less than ten shall thereupon rise in their places, the house shall, on a division upon question put forthwith, determine whether such motion shall be made."[3]

When a member has obtained the leave of the house to move the adjournment, in order to discuss a question of public importance, he must confine himself in his speech to that particular question, and not indulge in irrelevant remarks on the motion.[4]

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[1] S. O. x. and xi.

[2] 232 E. Hans (3), 978; 244 *Ib.* 909, 911.

[3] S. O. ix. For procedure under this rule, see 279 E. Hans. (3), 52, 238, 239, and 137 E. Com. J. 518, 519.

[4] 279 E. Hans. (3), 72, 74.

*Suspension for Obstruction of Public Business.*—The power of suspension is inherent in every legislative body, and may be properly exercised in cases of grave misconduct. It is a power which has been very rarely exercised by the House of Commons of England, until the grave crisis through which it has been passing for some time past, forced it to resort to the measure as the most available method of punishing members guilty of wilful obstruction. After full consideration of the subject the house finally placed on its journals the following order providing for the suspension of a member for definite periods of time:

"That whenever any member shall have been named by the speaker, or by the chairman of a committee of the whole house, immediately after the commission of the offence of disregarding the authority of the chair, or of abusing the rules of the house by persistently and wilfully obstructing the business of the house, or otherwise, then, if the offence has been committed by such member in the house, the speaker shall forthwith put the question on a motion being made, no amendment, adjournment or debate being allowed, 'That such member be suspended from the service of the house;' and if the offence has been committed in a committee of the whole house, the chairman shall, on a motion being made, put the same question in a similar way, and if the motion is carried, shall forthwith suspend the proceedings of the committee and report the circumstance to the house; and the speaker shall thereupon put the same question, without amendment, adjournment or debate, as if the offence had been committed in the house itself. If any member be suspended under this order, his suspension on the first occasion shall continue for one week, on the second occasion for a fortnight, and on the third or any subsequent occasion, for a month. Provided always, that suspension from the service of the house shall not exempt the member so suspended from serving on any committee for the consideration of a private bill to which he may have been appointed before his suspension. Provided also, that not more than one member shall be named at the same time, unless several members, present together, have jointly disregarded the authority of the chair. Provided always, that nothing in this resolu-

tion shall be taken to deprive the house of the power of proceeding against any member according to ancient usages."[1]

These new orders show the extent to which the English house has felt itself compelled to go in the hope of preventing such obstruction as has recently seriously impeded the progress of public business in that body. Happily there have been no events in the recent history of Canadian legislatures, to show the necessity of adopting the same extraordinary measures for preserving order, and ensuring the despatch of necessary legislation.

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[1] S. O. xii. made 28th Feb., 1880, and amended 21st and 22nd November, 1882. For procedure under the order which, as compared with that of 1880, extended the periods of suspension, see 268 E. Hans. (3), 1015-17 ; 271 *Ib.* 1203-5 (committee). 137 E. Com. J. 149 ; 322, 323 (committee).

# CHAPTER XIII.

*DIVISIONS ON QUESTIONS.*

I. Putting the question and division thereon.—II. Proceedings after a division; challenging of votes; pairs.—III. Questions "carried on division."—IV. Equality of votes on a division; casting vote of speaker. V. Protest of Senators.—VI. No member interested directly in a question can vote thereon.—VII. Recording of names in the journals.

**I. Putting the Question.**—When the debate on a question is closed, and the house is ready to decide thereon, the speaker proceeds to "put" the question. The proceedings in taking the sense of the house on a question are similar in the Senate and Commons. Members for and against a question are distinguished in the Senate as "contents" and "non-contents;" in the Commons as "yeas" and "nays."

The house generally expresses its desire for a decision on a question by demanding at the close of the debate that the members be called in; and in that case, the speaker does not read the question until the serjeant-at-arms has reported that the members have been called in. In many cases, however, the question is put without calling in the members. The speaker rises in his place and asks—"Is the house ready for the question?" If it is evident that no member claims the right of speaking, the speaker proceeds to put the question by reading the main motion, and then the amendment or amendments in their order as the case may be.[1] Having read the question on which the decision of the house is to

[1] See *supra*, p. 327.

be first given, he takes the sense of members by saying—"Those who are in favour of the question (or amendment) will say content (or yea); those who are of the contrary opinion will say non-content (or nay)." When the supporters and opponents of the question have given their voices for and against the same, the speaker will say—"I think the contents (or yeas) have it;" or "I think the non-contents (or nays) have it;" or "I cannot decide." If the house does not acquiesce in his decision, the yeas and nays (or contents and non-contents) may be called for. But a division cannot be taken except in accordance with the following rule of the Senate:

31. "If two senators require it the contents and non-contents are entered upon the minutes,[1] provided the Senate shall not have taken up other business; and each senator shall vote on the question openly and without debate, unless for special reasons he be excused by the Senate."

In the Commons the yeas and nays can be taken only in conformity with the following rule:

83. "Upon a division, the yeas and nays shall not be entered on the minutes, unless demanded by five members."[2]

In the case of important questions, the members are called in when it is proposed to close the debate, and decide the matter under consideration. The moment the

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[1] Sen. J. [1882], 199.

[2] It has been often suggested that it is advisable to adopt the English practice, by which a member who calls out with the noes and forces a division should vote with the noes on the obvious principle that "it is for the minority alone to appeal from the speakers' decision to the ultimate test of a division." May, 312; 183 E. Hans. (3), 1919. But such a practice has never obtained in the Canadian house, and whilst attention has been frequently directed to its propriety, no speaker has ever attempted to enforce it. Can. Hans. [1878], 2459. In consequence of the absence of such a rule in Canada, one member may practically divide the house, since those demanding a division are not bound to vote with him. Can. Com. J. [1880-1], 157. If two tellers cannot be found for one of the parties, no division is allowed to take place in England. May, 406.

speaker orders that the members be called in, no further debate will be permitted. The Senate rule is as follows:

33. "No senator may speak to a question after the order has been given to call in the members to vote thereon, unless with the unanimous consent of the house."

Rule 82 of the Commons is equally emphatic:

"When members have been called in, preparatory to a division, no further debate is to be permitted."

The speaker gives the order—"Call in the members," and the serjeant-at-arms immediately sees that all the bells are rung, and that other steps are taken to bring in all the members from the lobbies and adjacent rooms.[1] Several minutes elapse—no stated time is fixed as in the English Commons, where a sand-glass for two minutes is provided[2]—and then the serjeant-at-arms returns and announces the performance of his duty by an obeisance to the speaker. The latter will then rise and put the question as previously explained. If any member declares he has not distinctly heard it, he has the right of asking the speaker to read it once more, even after the voices have been given.[3]

In the Senate the speaker says—"The contents will now rise." Then the clerk or clerk-assistant, standing at the table, proceeds to call the names—first looking at Mr. Speaker, who remains seated, and indicates by an indication of the head his desire to vote, or his intention not to vote by the absence of any movement on his part. In all

[1] The whips of the respective political parties in the house always, on such occasions, take measures to bring in the members.

[2] A very loose system prevails in the Canadian Commons; fifteen or twenty minutes—even more sometimes—pass before members take their places in answer to the call. In the English house, as soon as the voices have been taken, the clerk turns a two-minute sand-glass, and the doors are to be closed as soon after the lapse of two minutes as the speaker or chairman shall direct. Two minutes enable members to reach their places. May, 399. S. O. xlvi., xlvii.

[3] 80 E. Com. J. 307; 114 *Ib.* 112.

cases the speaker's vote should be first recorded on the side on which he wishes to vote. After the contents have been taken down the speaker again says—"The non-contents will now rise."[1] The names having been taken down, and the numbers declared, the speaker states the fate of the question in the usual parliamentary terms.

In the House of Commons the speaker says—"Those who are in favour of the motion (or amendment) will please to rise." The clerk has before him a list of all the names printed alphabetically, and places a mark against each name as it is called. The assistant clerk calls out the name of each member as he stands up. It is customary for members to be taken in rows; when one row is completed, the members in the next rise and sit down according as they hear their names called distinctly by the clerk.[2] When the members in favour of the motion have all voted, the speaker again says—"Those who are opposed to the motion (or amendment) will please to rise:" and then the names will be taken down in the manner just described. Any member who does not rise cannot have his name recorded by the clerk at the time, as the speaker has instructed members to rise in their places. Each member is designated Hon. Mr. ——— in the Senate, and simply Mr. ———, in the Commons, except in the case of a title conferred by the Queen, when the clerk will designate him as Sir ———, but it is usual for the clerk in the Commons, as a matter of courtesy, to give precedence in a division to the name of the leader of the gov-

[1] Senate R. 30. "In voting the contents first rise in their places, and then the non-contents." See Sen. J. [1878], 67.

[2] The system of taking votes in the Canadian house has its inconveniences. It is not workable as a rule for two or three weeks at the commencement of a new Parliament, since it is impossible for a clerk to know all the new members by name. Or, if the clerk who takes the division should be ill, a difficulty must always arise. The system seems peculiar to the Canadian Commons. The more convenient practice—in vogue in legislative bodies in the United States, Europe, and the colonies—is to call the roll, when each member will respond "aye" or "no."

ernment should he rise with the rest.[1] A similar courtesy is paid to the recognised leader of the opposition in cases of party divisions.

When all the names have been duly taken down, the clerk will count up the votes on each side, and declare them—yeas, —; nays, —. The speaker will then say—"The motion is resolved in the affirmative;" or "passed in the negative," as the case may be.[2] If the motion on which the house has decided is a motion in amendment, then the speaker proceeds to put the next question, on which a division may also take place.[3]

**II. Proceedings after a Division.**—When the clerk has declared the numbers, any member has a right to ask that the names be read in alphabetical order, in order to give an opportunity of detecting any errors or irregularities.[4] The vote of a member may be challenged in the English Commons before the numbers are declared, or after the division is over; but this is generally done in the Canadian house when the clerk has given the result.[5] If a member was not present in the house when the question was put by the speaker, he cannot have his vote recorded. Rule 33 of the Senate distinctly provides that "he must be within the bar when the question is put." The speaker will inquire—"Was the hon. member present in the house when the question was put from the chair?" If he replies in the negative, his name will be struck off the

[1] Strangers are now permitted to remain in the galleries, and also on the seats to the right and left of the speaker's chair, whilst a division is in progress; unless, of course, the house orders the withdrawal of strangers in accordance with rule 11 of the Senate and rule 6 of the Commons.

[2] Sen. J. [1878] 197-8; Com. J. [1878] 10, 79.

[3] Can. Com. J. [1877] 173-5; *Ib.* [1878] 278-9. Sen. J. [1878] 197. Members should not leave their seats before the question is finally declared. In 1880-1 a member's vote was struck off on account of his leaving his place before the question was so declared; Can. Hans. p. 724.

[4] May 6, 1878, MSS.

[5] 110 E. Com. J., 352; 139 E. Hans. 488; Can. Parl. Deb. [1870] 163.

list, and the clerk will again declare the numbers.[1] If a member of the Commons who has heard the question put does not vote, and the attention of the speaker is directed to the fact, the latter will call upon him to declare on which side he votes; and his name will be recorded accordingly.[2] By rule 32 of the Senate it is ordered that a senator declining to vote, shall assign reasons therefor, and the speaker shall submit to the Senate the question, "shall the senator, for the reasons assigned by him, be excused from voting?" Though "pairs," which are arranged by the whips of the respective parties in the house, are not any more authoritatively recognised in the Senate or Commons than in the houses of the English Parliament, yet it is customary not to press the vote of a member when he states that he has "paired" with another member.[3] If a member who has heard the question put in the Commons should vote inadvertently, contrary to his intention, he cannot be allowed to correct the mistake, but his vote must remain as first recorded.[4] On the other hand, in the Senate, rule 33 provides that "with the unanimous consent of the house, a senator may, for special reasons assigned by him, withdraw or change his

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[1] 139 E. Hans. 486; 111 E. Com. J. 47.

[2] 114 E. Com. J. 102; 129 *Ib.* 234. Mr. McInnes, 16th April, 1878, Canadian Commons. Can. Hans. [1879] 1979 (Sir J. A. Macdonald's remarks as to compelling members to vote). In the English Commons, 3rd February, 1881, Mr. Speaker informed the house that several members who had given their voices with the noes when the question was put, had refused to quit their places, and consequently he had submitted their conduct to the consideration of the house. A number of members were then suspended for refusing to withdraw during the division after having been warned of the consequences by the speaker. 136 E. Com. J. 55-56.

[3] May, 418. Can. Hans. [1876] 685; *Ib.* [1879] 1979. Sen. Deb. [1876] 281; *Ib.* [1877] 230, 240; *Ib.* [1880-81] 579, 590. "An hon. member who has bound himself not to vote is bound in honour to respect that pledge;" (Mr. Speaker Christie.) See also Sen. Hans. [1883] 458. But pairs are recognised by the rules of the house of representatives at Washington. Smith's Digest, p. 167; Rule viii. (2).

[4] 176 E. Hans. (3) 31; 164 *Ib.* 210; 242 *Ib.* 1814 May; 409.

vote, immediately after the announcement of the division." If a member's name is entered incorrectly in the list, he can have it rectified should the clerk read out the names, or on the following day when he notices the error in the printed votes.[1] It may be added here that when the house, by division, has decided a matter, a discussion thereon cannot be renewed nor reference made to circumstances connected with the division.[2]

**III. Questions carried on Division.**—Members who are oppose to the unanimous adoption of a motion and nevertheless do not wish to divide the house, may ask that it be entered on the journals as "carried on a division," and the speaker will order it accordingly. The entry on the journals is simply: "The question being put, the house divided, and it was resolved in the affirmative;"[3] or "passed in the negative."[4] Questions may also be entered as "Resolved in the affirmative," or "passed in the negative," as "in the last preceding division."[5] Frequently in the case of numerous motions on a question, all the divisions are recorded as in the first.[6]

**IV. Equality of Votes in a Division.**—When the voices are equal in the Senate the decision is deemed to be in the negative.[7] In case of an equality of voices in the Commons the speaker (or chairman of committee of the whole) is called upon to give his casting vote, in accordance with section 49 of the B. N. A. Act, 1867:

"Questions arising in the House of Commons shall be decided

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[1] Can. Com. J. [1871], 174; V. & P. [1879] 356; Sen. Deb. [1880] 455-6; *Ib.* [1880-81], 591.

[2] 232 E. Hans. (3) 1636; Blackmore's Dec. [1882] 91.

[3] Can. Com. J. [1877] 191, 192, 200, 226; *Ib.* [1878] 50.

[4] *Ib.* [1877] 200, 231; *Ib.* [1878] 56; 129 E. Com. J. 144, 289.

[5] Can. Com. J. [1877] 193, 249.

[6] Can. Hans. [1882] 1479. Representation bill.

[7] B. N. A. Act 1867, s. 36. *Semper præsumitur pro negante* is the old form of entry in the Lords J.; 14 Lords J. 167-168.

by a majority of voices other than that of the speaker, and when the voices are equal, but not otherwise, the speaker shall have a vote."

And it is provided by the rule of the house:

9. "In case of an equality of votes, Mr. Speaker gives a casting voice, and any reasons stated by him are entered in the journal."

Only one case is recorded in the Canadian journals since 1867, of the speaker having been called upon to vote. The question was on a motion for deferring the second reading of an Interest Bill for three months—on which there was great diversity of opinion—and the speaker voted with the yeas, but no reasons are entered in the journals.[1]

By consulting the various authorities on this point, it will be found that the general principle which guides a speaker or chairman of committee of the whole[2] on such occasions is to vote, when practicable, in such a manner as not to make the decision of the house final.[3] But it may sometimes happen that the speaker's vote must be influenced by circumstances connected with the progress of a bill, especially when there appears to be much diversity of opinion as to the merits of a measure. In such a case the speaker may "refuse to take the responsibility of the change upon himself, and may leave to the future and deliberate judgment of the house to decide what change in the law should be made."[4] It was evidently on this ground that the speaker gave his casting vote against further progress during the session of 1870 with the Interest Bill.

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[1] Can. Com. J. [1870] 311. Reasons are not always given in the English journals; 102 E. Com. J. 872; 98 *Ib.* 163.

[2] 131 E. Com. J. 398.

[3] 83 E. Com. J. 292; 92 *Ib.* 496.

[4] Church Rates Abolition bill (3rd. reading) 163 E. Hans. (3) 1322. Some cases are recorded in the journals of the Legislative Assembly of Canada of reasons being given by the speaker under such circumstances; 1863, August sess., p. 33.

**V. Protest of Senators.**—Whenever one or more senators wish to record their opinions against the action of the majority on any question, they may enter what is called a "protest," which will be duly recorded in the journals,[1] in conformity with the following rule:

34. "Any senator entering his protest or dissent to any votes of the Senate, with or without his reasons, must enter and sign the same in the clerk's book, on the next sitting day, before the rising of the Senate.[2]

35. "Every protest is subject to the control of the Senate, and may be neither altered nor withdrawn without the consent of the Senate; nor can a senator, absent when the question is put, be admitted to protest."[3]

A senator, who signs a protest, may assent to it as a whole, or in part; and in the latter case he will state his particular reasons in a foot-note.[4] Any protests, or reasons, or parts thereof, if considered by the house to be unbecoming or otherwise irregular, may be ordered to be expunged.[5] Protests or reasons expunged by order of the house, have also been followed by a second protest against the expunging of the first protest or reasons, by which the object of the house has been defeated.[6]

**VI. Members' Interest in a Question.**—Rule 16 of the Commons embodies an old order of Parliament:[7]

"No member is entitled to vote upon any question in which he has a direct pecuniary interest, and the vote of any member so interested will be disallowed."

This interest must be of a direct character, as it was

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[1] Sen. J. [1875] 149; *Ib.* [1877] 261; *Ib.* [1882] 188-9.

[2] Lords S. O. 32; May, 418.

[3] The same practice obtains in the Lords; 87 E. Hans. (3) 1137; 55 Lords J. 492. Sen. Deb. [1879] 432-3.

[4] Sen J. [1877] 261; *Ib.* [1879] 187; *Ib.* [1882] 189.

[5] 40 Lords J. 49; 43 *Ib.* 82; May, 419.

[6] 43 Lords J. 82.

[7] Mr. Sp. Abbot, 20 E. Hans. (1) 1011.

well explained, on one occasion, in a decision of Mr. Speaker Wallbridge, in the legislative assembly of Canada. A division having taken place upon a bill respecting permanent building societies in Upper Canada (which had been introduced by Mr. Street), Mr. Scatcherd raised the point of order that, under the rule of the house, the former had a direct pecuniary interest in the bill, and could not consequently vote for the same. The speaker said—"That the interest which disqualifies must be a direct pecuniary interest, separately belonging to the person whose vote is questioned, and not in common with the rest of her Majesty's subjects, and that, in his opinion, as the bill relates to building societies in general, the member for Welland is not precluded from voting."[1] This decision is strictly in accordance with the principle laid down in all the English authorities,[2] and is in fact a repetition of one given by Mr. Speaker Abbot on a motion for disallowing the votes of the bank directors upon the Gold Coin Bill, which was negatived without a division.[3] Consequently the votes of members on questions of public policy are allowed to pass unchallenged.[4] Public bills are frequently passed relative to railways,[5] building societies, insurance companies,[6] and salaries to ministers,[7] in which members have an indirect interest;

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[1] Can. Speakers' D., No. 135; Leg. Ass. J. [1865] 228.

[2] 2 Hatsell, 169 *n.*

[3] May, 420; 20 E. Hans. (1) 1011.

[4] 2 Hatsell, 169 *n.*

[5] 76 Hans. (3) 682; 99 E. Com. J. 491. [6] 79 E. Com. J. 455.

[7] Leg. Ass. J. [1855] 1147. The votes of ministers on a bill to amend an act respecting the civil list and salaries was questioned on this occasion. It was replied that they looked upon the bill as a general measure, appropriating a salary for the office, and not for the individual, &c.; and on a division, the house decided that they had a right to vote. Cushing (p. 713) says: "The case of members voting on questions concerning their own pay is an exception from which no principle can properly be derived. It has invariably been decided in Congress, of course, that this was not such an interest as would disqualify; either because it was a state of necessity, or because all the members were equally concerned in interest."

but their votes when questioned have been always allowed.[1] When a doubt exists as to the right of a member to vote, he should be heard in explanation and then withdraw before the usual motion is made—"That the vote of ——— be disallowed."[2] Votes have been allowed when members have stated that they have parted with their subscriptions in a government loan, or that they had determined not to derive any advantage personally from the same;[3] or that they had taken the necessary legal steps to retire from a company about to receive government aid;[4] or that their interests are only in common with those of her Majesty's subjects in Canada.[5] Members have been excused from voting on a question on the ground that they had been employed as counsel on behalf of the person whose conduct was arraigned before Parliament.[6] A member has also been excused from voting on a question because he was personally interested in the decision of an election committee.[7]

While members may properly vote on any question in which they have no direct pecuniary interest, they will not be allowed to vote for any bill of a private nature, if it be shown that they are immediately interested in its

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[1] Bill to grant aid to the Grand Trunk Railway; Leg. Ass. J. [1856], 662, 679, 680.

[2] 80 E. Com. J. 110; 91 *Ib.* 271; 20 Hans. (1), 1001-12. Leg. Ass. J. [1857], 312.

[3] 52 E. Com. J. 632.

[4] Leg. Ass. J. [1857], 313-4. Cases of Mr. Galt and Mr. Holton, partners in the firm of C. S. Gzowski & Co., contractors with the Grand Trunk R. R.

[5] *Ib.* [1857], 312-14.

[6] Leg. Ass. J. [1858], 686. In this case, Sheriff Mercer, whose conduct was arraigned in the house, was declared to have acted upon the advice and opinion of his counsel, Dr. O'Connor, a member at the time. On the question being put as to the conduct of the sheriff, Dr. O'Connor was excused from voting.

[7] Leg. Ass. J. [1859], 553. One of the members for Quebec on this occasion asked to be excused and the house agreed to his request. But the two other sitting members voted, and the speaker ruled that they had a right to do so.

passage.[1] Decisions, however, have been given in the English Commons that it is not sufficient to disqualify a member from voting against a bill, that he has a direct pecuniary interest in a rival undertaking;[2] or that a member was a landowner on the line of a railway company, and that his property would be injured by its construction.[3] Committees on opposed private bills are also constituted in the English Commons, so as to exclude members locally or personally interested; and in committees on unopposed bills, such members are not entitled to vote.[4] A member of a committee on an opposed private bill, will be discharged from any further attendance, if it be discovered after his appointment that he has a direct pecuniary interest in the bill.[5] A member interested in a bill may take part in a debate thereon, or propose a motion or an amendment in relation thereto.[6]

Though the Senate has no rule like that of the Commons in relation to this subject, senators observe the same practice. When the bill is of a public nature, a member of the Senate may properly vote if he wishes to do so.[7] The Lords have never formally adopted a resolution on the subject, because it is presumed that "the personal honour of a peer will prevent him from forwarding his pecuniary interest in Parliament;"[8] but they are ex-

[1] May, 421-2; 80 E. Com. J. 443; 91 *Ib.* 271; 13 E. Hans. (N. S.), 796. Sen. Deb. [1876], 258.

[2] 80 E. Com. J. 110; 101 *Ib.* 873.

[3] 100 *Ib.* 436. See also 212 E. Hans. (3), 1134-7.

[4] May, 424, S. O. 108-110.

[5] 101 E. Com. J. 904; 115 *Ib.* 218.

[6] 155 E. Hans. (3), 459.

[7] In 1875 Senator Ryan asked if he could vote on a public bill respecting marine electric telegraphs, as he was a shareholder in a company affected by that bill. The speaker said that there was no rule to prevent him voting for a bill in which he had only an indirect interest, and he voted accordingly. Sen. J. [1875] 137-8; Hans., p. 410 (remarks of Sir A. Campbell); *Ib.* [1876] 258.

[8] May, 420.

empted by standing order from serving on any committee on a private bill in which they are interested.[1]

If it should be decided that a member has no right to sit or vote in the house, the votes he may have given during the period of his disqualification will be struck off the journals.[2]

**VII. Recording of Names.**—The names of members who vote in a division always appear in the journals of both houses—this practice having been generally followed in all the Canadian assemblies since 1792. The names were not recorded, however, in the legislative council of Canada until 1857, when it was made elective.[3] The wise practice of enabling the people to know how their representatives vote on public questions was adopted in 1836 in the English House of Commons. The Lords have published their division lists regularly since 1857.[4]

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[1] S. O. 178.

[2] Case of Mr. Townsend, a bankrupt, 150 E. Hans. (3) 2099-2104. Of Dr. Orton, Can. Com. J. [1875] 176; *supra* p. 143.

[3] Leg. Coun. J. [1857] 31-57.

[4] II. May's Const. Hist., 57.

# CHAPTER XIV.

## *RELATIONS BETWEEN THE TWO HOUSES.*

I. Messages.—II. Conferences.—III. Reasons of disagreement communicated.—IV. Joint Committees.—V. Interchange of documents.—VI. Relations between the Houses:—Questions of expenditure and taxation.—Bills rejected by the Senate.—"Tacks" to Bills of Supply.—Initiation of measures in the upper chamber.

**I. Messages.**—It was formerly the practice to communicate all messages to the upper chamber through a member of the house, whilst the legislative council transmitted the same through a master in chancery.[1] It was soon, however, found more convenient to send all bills to the upper house by a clerk at the table.[2] Addresses continued to be carried to the legislative council and to the Senate by one or more members of the house up to a very recent period[3]; but it has been the practice since 1870 to transmit all messages through the clerks of the two houses.[4] The following rules[5] are common to both chambers:

"One of the clerks of either house may be the bearer of messages from one house to the other."

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[1] Low. Can. J. [1792] 42, 174; Leg. Ass. [1841] 168, R. 24; *Ib.* [1853] 995; Leg. Coun. J. [1841] 48, 59. The clerk and clerk-assistant of the Senate are appointed masters in chancery; Sen. J. [1867-8] 65. Also, the law clerk; *Ib.* [1883], 15. In 1855 the office of master in ordinary was abolished in the Lords; May, 255 *n.*, 489; 15 and 16 Vict. c. 80.

[2] Leg. Ass. J. [1857], 411, 412; *Ib.* [1860], 403, 430, &c.

[3] Can. Com. J. [1867-8], 109, 225.

[4] *Ib.* [1871], 294, 301.

[5] Sen. R. 100, 101; Com. 97.

"Messages so sent may be received at the bar by one of the clerks of the house to which they are sent, at any time whilst the house is sitting, or in committee, without interrupting the business then proceeding."

In addition to the foregoing rules the Commons have the following:

95. "A master in chancery attending the Senate shall be received as their messenger at the clerk's table, where he shall deliver the message wherewith he is charged."

96. "Messages from this house to the Senate may be sent by a member of this house, to be appointed by the speaker.[1]

98. "Messages from the Senate shall be received by the house as soon as announced by the serjeant-at-arms."

In this way all bills, resolutions, and addresses are sent and received—whether the mace is on or under the table—without disturbing the business of either house. The clerk at the table is informed of the presence of the messenger from the other house, and receives the message at the bar. If any business is proceeding at the time, the speaker will not interrupt its progress, but will announce the message (which is handed him by the clerk) as soon as it is concluded, and there is no motion before the house.[2] A message from the governor-general will, however, interrupt any proceeding, which will be again taken up at the point where it was broken off,[3]—except, of course, in the case of a prorogation, when the message will interrupt all proceedings for that session.[4]

Whenever either house desires the attendance of a senator or member before a select committee, a message must be sent to that effect.[5] Leave must be given by the

[1] This is the old rule, but it is practically obsolete.

[2] 131 E. Com. J. 290; Can. Com. J. [1877], 244.

[3] 129 E. Com. J. 66.

[4] 131 E. Com. J. 424. Can. Parl. Deb. [1873], 210-11; *supra*, p. 358.

[5] 131 E. Com. J. 87, 100, 168; Sen. R. 102; Can. Com. J. [1877], 142, 178, 234. See chapter on select committees.

house to which the member belongs, and it is optional for him to attend.[1] In case the attendance of one of the officers or servants of either house is required, the same course will be pursued; but it is not optional for them to refuse to attend.[2] In 1870 a message was sent to the Senate requesting that they would give leave to their clerk to attend the committee of public accounts, and lay before that committee an account of the sums paid to each member of the Senate as indemnity and mileage.[3] The Senate did not comply with the request, but simply communicated to the Commons a statement on the subject.[4] In a subsequent session the Senate agreed to a resolution instructing the clerk to lay before that house at the commencement of every session, a statement of indemnity and mileage, and to deliver to the chairman of the committee of public accounts a copy of such statement, whenever an application may be made for the same.[5] In answer to a message from the house in 1880, the Senate gave leave to their clerk to furnish details of certain expenditures of their own for the use of the same committee, adding at the same time an expression of opinion that "the critical examination of the details of such disbursements was, in the interest of the harmonious relations of the two houses, best left to the house by whose order payment is made."[6]

**II. Conferences.**—In former times, before the mode of communication between the two houses was simplified as it is at present, it was usual to hold a conference in all cases of difficulty and disagreement between the council and

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[1] 131 E. Com. J. 93, 100, 191; Sen. R. 102; Sen. J. [1877], 129, 203; Can. Com. J. [1877], 150, 182, 237; Sen. J. [1882], 159.

[2] 113 E. Com. J. 255; Sen. R. 102 (chapter on select committees); Can. Com. J. [1870], 210.

[3] Can. Com. J. [1870], 210; Sen. J. [1870], 130.

[4] Can. Com. J. [1870], 265; Sen. J. [1870], 149; Parl. Deb. 1184, 1214.

[5] Sen. J. [1872], 96; Deb. 92.

[6] Can. Com. J. [1880], 130, 158-9, 242; Sen. J. 112.

assembly.[1] Though conferences have not been held of recent years, still the Senate and Commons have continued their rules on the subject, for cases might arise when it would be found convenient to resort to this ancient method of maintaining a good understanding between these two branches of the legislature.[2] Under these circumstances, it is necessary to refer to the principal rules which regulate a conference.

Conferences are conducted by members appointed by both houses for that purpose, and are held in a room separate from either of the two houses.[3] It is the privilege of the Senate to name both the time and place of meeting, whether they or the Commons first request such conference.[4] It is an old rule that "the number of the Commons named for a conference are always double those of the Lords."[5]; but it is not the modern practice to specify the number of managers for either house. Neither is it "customary nor consistent with the principles of a conference to appoint any members as managers unless their opinions coincide with the objects for which the conference is held."[6] It is also an ancient rule that the conference can be asked only by that house which is at the time in the possession of a bill[7] or other matter.[8] Rule 99 of the Canadian house also provides:

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[1] In the old days of conflict between the two houses in Lower Canada, it was often the practice to nominate committees to keep up a good correspondence between the two houses. Ass. Jour. [1819], 9, 10.

[2] See following instances of conferences in Canadian practice since 1840; Leg. Ass. J. vol. 19, pp. 105, 114, 117, 138, 376; *Ib.* vol. 20, p. 169; *Ib.* vol. 22 pp. 285, 286, 287. The last occasion of a conference in Canada was in 1863.

[3] The "painted chamber" in the English Parliament. Lords' S. O. 50.

[4] As in the Lords, May 493; 1 E. Com. J. 154; 9 *Ib.* 348.

[5] 1 E. Com. J. 154; Can. Leg. Ass. J. [1861], 114, 117.

[6] May, 493; 1 E. Com. J. 350; 122 *Ib.* 438. The number on the part of the Lords was generally eight; of the Commons, sixteen. The numbers were the same in the Canadian houses.

[7] 1 E. Com. J. 114; 13th March, 1575.

[8] 2 *Ib.* 581; 9 *Ib.* 555.

"When the House shall request a conference with the Senate, the reasons to be given by this house at the same shall be prepared and agreed to by the house, before a message shall be sent therewith."[1]

It is not necessary, however, in requesting a conference to state at length the purpose for which it is to be held; it is sufficient to specify it in general terms, so as to show the necessity for having it held.[2] When the time has come for holding the conference the clerk will call over the names of the managers who will proceed forthwith to the place of meeting.[3] The duty of the managers, on the part of the house proposing the conference, is confined to the delivery to the managers for the other, of the communication, whatever it may be, and the duty of the managers of the other house is merely to receive such communication. They are not at liberty to speak, either on the one side to enforce, or, on the other, to make objections to the communication. One of the managers for the house proposing the conference (the member first named, unless otherwise agreed upon)[4] first states the occasion of it in his own words,[5] and then reads the communication, and delivers it to one of the managers for the other house, by whom it is received. When the conference is over the managers return to their respective houses, and report. Such reports should always be made, in accordance with correct parliamentary practice.[6] The Senate has the following rule:

103. "None are to speak at a conference with the House of Commons but those that are of the committee; and when any-

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[1] Leg. Ass. J. [1860], 376; 122 E. Com. J. 438, 440.

[2] 4 Hatsell, 423; 88 E. Com. J. 488; 89 *Ib.* 232; Leg. Ass. J. [1861], 105.

[3] 113 E. Com. J. 182; 150 E. Hans. [3], 1859.

[4] Parl. Reg. [53], 108.

[5] Speaker Onslow, 4 Hatsell, 28, *n.*

[6] May, 494. 113 E. Com. J. 182; Can. Leg. Ass. J. [1863, Aug. sess.] 287. Sometimes the managers appear from the Canadian journals to have made no report.

thing from such conference is reported, the senators of the committee are to stand up."

The report of the managers for the house at whose request the conference has taken place is in substance that they have met the managers for the other house, and have delivered to them the communication, with which they were charged.[1] The report of the managers for the other house is substantially that they have met the managers for the former, and that the purpose of the conference was to make a certain communication which they have received, and which they then proceed to lay before the house. The report of the managers is then to be considered, and disposed of by the house to which it is sent, which may take place immediately, or be postponed to a future time.[2] The result will be communicated to the other house by a message.[3] Sometimes a second conference will be necessary, when the first has not led to an arrangement between the houses.[4] Or a free conference may be held, when two conferences have been fruitless. Here the managers are at liberty to urge arguments, to offer and combat objections, and in short to attempt by personal persuasion and argument to effect an agreement between the two houses.[5] When a free conference is held business is suspended in both houses. The Commons stand the whole time, uncovered, within the bar at the table. The Lords walk uncovered to their seats, where they remain sitting and covered during the whole conference.[6]

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[1] 113 E. Com. J. 182.

[2] Leg. Coun. J. [1861], 92, 93, 97, 98, 104; 90 Lords' J. 171.

[3] 113 E. Com. J. 308.

[4] 91 E. Com. J. 681. On one occasion the English houses held no less than four ordinary conferences; 92 *Ib.* 466, 512, 589, 646.

[5] 91 E. Com. J. 771, 783, 787.

[6] For full details of proceedings of conferences, see 4 Hatsell, 26; May, chap. xvi; Cushing, p. 820 *et seq.*

**III. Reasons of Disagreement communicated.**—It is now the practice of the Senate and House of Commons to follow the resolution of the English houses adopted in 1851 with respect to amendments made to bills :

"Where one house disagrees to any amendments made by the other, or insists upon any amendments to which the other house has disagreed, it will receive reasons for their disagreeing or insisting, as the case may be, by *message* without a conference unless at any time the other house should desire to communicate the same at a conference.[1]

These reasons are moved immediately after the second reading of the amendment.[2]

**IV. Joint Committees.**—The practice of appointing joint committees of the Senate and Commons on various subjects on which united action is desirable, has been found to work most advantageously.[3] Such committees are now appointed every session with respect to the library and printing of Parliament.

Sometimes it may be found convenient to put committees of both houses in communication with each other. This proceeding is especially useful in cases affecting the business of the houses ; for instance, when it is necessary to revise such rules on private bills as are common to both. But no committee can regularly of its own motion confer formally with a committee of the other, but must obtain all the necessary authority from the house itself. The proceedings in each house will be communicated to the other by message.[5]

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[1] May, 492 ; 106 E. Com. J. 210, 217, 223.

[2] Can. Com. J. [1877] 262 ; see chapter on public bills. The English procedure is somewhat different from that of the Canadian house ; a committee is appointed to draw up the reasons. 131 E. Com. J. 310.

[3] 3 Hatsell, 38 ; 131 E. Com. J. 282, 289, 292, 294. Can. Com. J. [1870], 56, 57, 60, 68 ; *Ib.* [1880], 147, 152, 177.

[4] See chapter on select committees.

[5] 66 E. Com. J. 287, 291 ; 116 *Ib.* 77 ; 93 Lords' J. 13 ; May, 498.

The House of Commons will not, however, consent to unite their committee with that of the Senate when the matter is one affecting the revenue or public expenditures.[1]

In case it is necessary to amend the report of a joint committee, the proper course is to refer the matter back to the committee.[2]

**V. Interchange of Documents.**—In case the Senate or Commons require a copy of a report of a select committee or other official document that may be in possession of one house or the other, a message will be sent to that effect.[3] When the message has been reported to the house, it may be immediately taken into consideration, and a copy of the document ordered to be communicated to the other house.[4] It is also usual to ask that it be returned to the house to whom it belongs; and this will be done by message in due time.[5]

**VI. Relations between the Houses.**—The respective rights and privileges of the two houses of Parliament are now so well understood that the work of legislation is never seriously impeded by embarrassing conflicts with regard to their respective powers. In the old times, before the concession of responsible government, the legislative council and legislative assembly, especially in Lower Canada,

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[1] Can. Com. J. [1874], 63, 111; Parl. Deb. April 24th. In this case the question to be considered was the passage of a prohibitory liquor law; committees were formed in each house, but the Commons after discussion thought it unadvisable to unite their committee with that of the Senate, as the result might affect the revenue, over which they claim exclusive control. This illustrates the jealousy with which the Commons regard even a possible infringement of their privileges.

[2] Sen. Hans. [1880], 480; Sen. J. 238, 255; Com. J. 349. See *supra*, p. 291.

[3] 131 E. Com. J. 232, 339, 389. Can. Com. J. [1876], 132; *Ib.* [1877], 274; *Ib.* [1878], 126; Sen. J. [1877], 36, 92.

[4] 131 E. Com. J. 339. Also, *Ib.* 298; Sen. J. [1880-1], 97, 705; Com. J. 124.

[5] Can. Com. J. (1878), 147, 294; Sen. J. 140.

were frequently at a deadlock. The majority, controlling the upper chamber, repeatedly rejected the fiscal and financial measures passed by the popular branch, and the machinery of legislation for many years was practically clogged. But since 1841 the two chambers have, on rare occasions only, failed to work harmoniously.

*Questions of Expenditure and Taxation.*—In a few instances only has the upper chamber attempted to interfere with the fiscal and financial measures which necessarily emanate from the popular branch. The following are the only cases on record since 1841 :

In 1841 an act providing for the payment of salaries of officers of the legislature, and for the indemnification of members, was amended in the legislative council by striking out the clause paying the members out of the general revenues. The action of the council in amending a money bill was resented by the assembly; the amended document was seized by a member and kicked out of the house. The same bill, with a change of title, was then sent back to the council, who receded from their former position, and agreed to the measure.[1]

In the session of 1851, the Supply Bill contained the following condition attached to the grant for defraying the expenses of the clerk of the legislative council : "Provided that no additional income shall be paid to the said clerk in the form of fees, perquisites, or contingencies." The committee of the whole, in the legislative council, made a special report on the subject, and the council thereupon instructed them to agree to the condition, inasmuch as very great inconvenience would result from the stoppage of supplies. At the same time the following declaration was entered on the journals of the council :

"That to prevent any ill consequences in future from such a precedent as that of this house passing, without amendment, a bill containing such a condition, this house has thought fit to declare solemnly, and to enter upon its journals for a record in

[1] Leg. Ass. J. (1841), 632-3 ; Parl. Deb., Montreal *Gazette*, Sept 21st ; also, June 20th, 1856 (Mr. Sandfield Macdonald). For summary process of kicking out a bill, see 1 E. Com. J. 560 ; 17 Parl. Hist. 512-515 ; Palgrave, The House of Commons, 24.

all time coming, that this house will not hereafter admit, upon any occasion whatsoever, of a proceeding so contrary to its privileges, its dignity and its independence of the other house of the provincial parliament." [1]

In the session of 1856, the Supply Bill contained a provision for erecting public buildings at Quebec, as the seat of government. The majority in the legislative council were opposed to the policy of the assembly on this question, and took strong ground against the passage of the bill, whilst it contained this obnoxious item. The majority carried a resolution defeating the bill on the ground that the house had not been "consulted on the subject of fixing any place for the permanent seat of government of the province." A strong protest was, however, entered on the journals by the minority after the defeat of the bill. The question was very temperately discussed in the assembly, and it was finally decided to introduce a new Supply Bill without the vote for the public buildings; and to this bill the council agreed. The ground was taken by several prominent men in the assembly that the council had only vindicated their right to be consulted on an important question of public policy.[2]

In 1859, the legislative council again refused to vote the supplies, an amendment being carried on the second reading of the bill, to the effect that the council could not consider the budget until the government had made known its intention with respect to the seat of government. Subsequently, however, the bill was revived and supply voted—other councillors who had been absent on the first division having arrived in time to save the bill. In this case the council took an extreme course, under the belief that the government contemplated incurring expense for the removal of the seat of government without first submitting the question to the upper house.[3]

In the third session of the Parliament of the dominion, strong objections were taken to the bill imposing new customs and excise

[1] Leg. Coun. J. (1851), 215. The speaker himself directed the attention of the council to the subject, but he and others did not claim the right of amendment, but only of entire rejection—an extreme course which they did not think it expedient to take for the reasons given in the declaration. Montreal *Gazette*, Aug. 28, 1851.

[2] Leg. Ass. J. (1856), 738, 746; Leg. Coun. J. 414, 416; Parl. Deb. 249, 260, 262. See also, *infra*, p. 408.

[3] Leg. Coun. J. and Parl. Deb. 29th April, 1859.

duties, and an amendment was proposed to postpone the second reading for six months. After a long debate, in which members of the ministry took strong ground against a motion interfering with the privileges of the Commons in matters of taxation, the amendment was negatived by a small majority."[1]

Though it is not within the object of this work to give a review of the legislative procedure of the provinces since confederation, yet it is impossible, whilst on this subject, to pass by the action of the legislative council of Quebec in 1879, during a ministerial crisis in the legislature of that province. The ministry, of which Mr. Joly was premier, was in a minority in the council which at last refused by a vote of 7 to 15 to pass the Supply Bill, and at the same time adopted an address to the lieutenant-governor, setting forth its reasons for resorting to so extreme a proceeding. The council believed "it to be its duty to delay the passage of the bill until the governor should be pleased to select new constitutional advisers, whose conduct could justify the council in entrusting to them the management of the public moneys." A deadlock ensued and lasted until the ministry was forced to retire, when the lieutenant-governor felt it his duty to refuse them a dissolution when they found themselves in a minority in the assembly. The bill was passed on the formation of a new administration, in which the council had confidence. The lieutenant-governor on this occasion said that he saw no necessity for appealing to the people upon the constitutional question raised by the action of the council. "The absolute right of the council—at least such is the impression of the lieutenant-governor—is contested by no one, so that there only remains to be discussed the question of opportuneness."[2]

Since 1870 no attempt has been made in the Senate to throw out a tax or money bill. The principle appears to be well understood, and acknowledged on all sides, that the upper chamber has no right to make any material amendment in such a bill, but should confine itself to mere verbal or literal corrections.[3] Without abandoning

[1] Parl. Deb. (1870), 1437-1487.

[2] Todd, Parl. Govt. in the colonies, 565-70; Quebec Leg. Coun. J. (1879), 186-90, 220-1.

[3] 3 Hatsell, 147, 153; 1 Todd, Parl. Govt in England, 458.

their abstract claim to reject a money or tax bill when they feel they are warranted by the public necessities in resorting to so extreme and hazardous a measure, the Senate are now practically guided by the same principle which obtains with the House of Lords, and acquiesce in all those measures of taxation and supply, which the majority in the House of Commons have sent down to them for their assent as a co-ordinate branch of the legislature. The Commons, on the other hand, acknowledge the constitutional right of the Senate to be consulted on all matters of public policy.[1]

As an illustration of the desire of the Senate to keep closely within their constitutional functions, we may refer to the fact that that house has declined to appoint a committee to examine and report on the public accounts, on the ground that while the Senate could properly appoint a committee for a specific purpose—that is, to inquire into particular items of expenditure—they could not nominate a committee like that of the Commons to deal with the general accounts and expenditures of the dominion—a subject within the jurisdiction of the lower house, where all expenditures are initiated.[2] It is legitimate, however, for the Senate to institute inquiries, by their own committees, into certain matters or questions which involve the expenditure of public money.[3] But the committee should not report recommending the payment of a specific sum of money, but should confine themselves to a general expression of opinion on the subject referred to them.[4]

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[1] See remarks of Lord Palmerston on paper duties repeal bill, 159 E. Hans. (3), 1389. Also, Mr. Collier, p. 1413 ; Lord Fermoy, p. 1453.

[2] Sen. Deb. (1870), 816-818.

[3] 1 Todd, 433; 129 E. Hans. (3), 1097 ; 164 *Ib.* 394, 401 ; Sen. J. (1878), 59, 62.

[4] The Gatineau bcoms and piers committee in 1875 recommended a payment of $1,000 to one Palen ; the report was amended, so as to recommend the matter simply to the favourable consideration of the government; Sen. J. (1875), 218, 273 ; Deb. pp. 718-722. See also Beveridge &

*Bills rejected by the Senate.*—The number of bills of public importance rejected by the Senate since confederation is very small compared with the large number coming under their review every session. In the latter part of the session of 1868, they refused to consider certain measures assimilating and revising the laws relating to criminal justice, on the ground that it was impossible at that late period of the session to give such measures that careful deliberation and examination which their importance demanded.[1] In 1874 the Senate threw out a bill respecting Tuckersmith, altering the electoral divisions of a county; in 1875, bills respecting the Esquimalt and Nanaimo railway, and county court judges in Nova Scotia; in 1877 a bill respecting the auditing of public accounts; in 1878, a bill creating the office of attorney-general; in 1879, a bill respecting two additional judges in British Columbia. In all these cases the Senate differed from the majority in the Commons on grounds of public policy or public necessity.

In the session of 1878, the Commons sent up a bill to amend the Canadian Pacific Railway Act of 1874. The Senate amended the bill so as to require the assent of the two houses to any contract or agreement made by the government for the lease of the Pembina branch. When the amendments were considered in the Commons, the premier (Mr. Mackenzie) asked the house to disagree with them on the ground that "it is contrary to the uniform practice of Parliament that contracts into which the executive is authorised to enter, should be made subject to the approval of the upper chamber, etc." The Senate submitted in their answer several precedents justifying, in their opinion, their action, and at the same time urged that "without the amendment the bill would provide for

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Tibbitts' claim; Hans. (1880-81) 688. The committee here simply and properly stated the conclusion at which they had arrived after investigation of the facts.

[1] Parl. Deb. Ottawa *Times* (1867), p. 255.

the disposal of public property for a term of years without obtaining the sanction of both houses to the terms of the transfer." It was also urged that the practice referred to in the Commons' message "never extended beyond contracts for the completion of public works, for which money voted by the Commons is in the course of being expended, other contracts having been constantly submitted for the approval of both houses." The result was that the government refused to proceed with the measure when they found that the Senate would not recede from the position they had taken on the grounds of public policy and constitutional right.[1] In 1879, another ministry being in power, a somewhat similar bill was passed through Parliament with a clause providing that "no such contract for leasing the said branch railway shall be binding until it shall have been laid before both houses of Parliament for one month without being disapproved, unless sooner approved by a resolution of each house."[2]

*Tacks to Bills of Supply.*—In the old days of conflict between the Lords and Commons, and between the legislative councils and assemblies of Canada, it was not an uncommon practice to tack on to bills of supply and other bills, matters entirely foreign to their object and scope. Such a system was entirely at variance with correct parliamentary usage. The journals of the Lords abound in examples of the condemnation of so dangerous a system; and from the first establishment of colonial assemblies, it appears to have been a standing instruction to the

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[1] Can. Com. J. [1878], 263, 284; Sen. J. pp. 275-6; Com. Hans. pp. 2454-2459, 2553-2558. The minority in the Commons asserted the right of the Senate to make the amendment in question. See remarks of Dr. Tupper, Sir J. A. Macdonald and others.

[2] 42 Vict. c. 13, s. 1. This provision is in accordance with English practice; 25 and 26 Vict. c. 78, s. 2, Imp. Stat.; 1 Todd, 495. One example is given in the same work of a contract being laid before both houses of the Imperial Parliament; 28 and 29 Vict. c. 51 (Dockyards at Portsmouth and Chatham).

governors to enforce the observance of the strict usage by refusing their assent to any bill in which it might be infringed.[1]

No modern examples can be found in the English or Canadian journals of a practice, now admitted to be unconstitutional in principle and mischievous in its results. The Senate, however, still retain among their standing orders the following rule which is almost identical with that of the Lords: [2]

"48. To annex any clause or clauses to a bill of aid or supply, the matter of which is foreign to and different from the matter of the bill, is unparliamentary."

*Initiation of Measures in the Upper Chamber.*—From the necessity of introducing all financial and fiscal measures in the lower house, directly responsible to the people, the great bulk of legislation is first considered and passed in the Commons, and the Senate frequently for weeks after the opening of Parliament have had very few bills of an important character before them. The consequence is that very important measures are constantly brought from the Commons at a very late period, when it is clearly impossible to give them that full and patient consideration to which legislation should be submitted in both branches. As we have already seen, the Senate refused to consider the criminal laws in the first session of the dominion Parliament on account of the late period at which they were brought up.[3] The question of initiating more important legislation in the upper chamber has been con-

[1] See remarks of Visc. Goderich, April 10th, 1832, giving reasons for disallowing a bill passed by the Lower Canada legislature respecting the independence of the judges, which also contained a clause asserting the right of the legislature to appropriate, according to its discretion, the whole of his Majesty's casual and territorial revenues. 3 Christie, 455; L. C. Jour. 26th Nov., 1832. See also on this point 3 Hatsell, 218-255; 16 Lords' J. 369; 17 *Ib.* 185; 13 E. Com. J. 320; 159 E. Hans. (3), 1550.

[2] 17 Lords' J. 185. See chapter on Supply, Appropriation Bill.

[3] *Supra*, p. 409.

stantly discussed in that body,[1] and committees have even been formed to consider the subject and provide a means of meeting the difficulty.[2] An effort has, however, been made of late years to increase the amount of legislation initiated in the Senate. This was notably the case in the sessions of 1880-81 and 1882—an unusually large number of important government measures having been introduced in the upper house in the course of the latter session.[3] The same remarks apply to the session of 1883, when measures were initiated in the Senate respecting the civil service, superannuation of officials, judiciary, naturalization, booms and other public works, and penitentiaries.[4]

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[1] Sen. Deb. (1872), 53 ; *Ib.* (1873), 74 ; *Ib.* (1877), 479.

[2] Sen. J. (1867-8), 194, 260 ; *Ib.* (1874), 109, 118 ; Deb. (1874), 196. The committee of 1867-8, of which Hon., now Sir, A. Campbell was chairman, called on the government to originate in the Senate as many measures "as the law and usage of Parliament will permit in order that that house may adequately fill its place in the constitution." Jour. p. 261.

[3] Sen. Hans. (1880-81), 702-3 ; *Ib.* [1882], 16, 29 (Sir A. Campbell).

[4] 46 Vict. chapters 7, 8, 10, 31, 37, 43.

# CHAPTER XV.

*COMMITTEES OF THE WHOLE.*

I. Three classes of committees in use in Parliament; committees of the whole; select committees; joint committees.—II. Rules of the Senate respecting committees of the whole.—III. Procedure in the House of Commons.—IV. Reports from committees of the whole.—V. New rules of the English Commons.

**I. Three Classes of Committees.**—In order to facilitate the progress of legislation and ensure the patient and thorough consideration of questions, the houses have established three kinds of committees, to which a great number of subjects are referred in the course of a session, viz:

1. Committees of the whole, composed of all the members, who sit in the house itself.

2. Select committees (sessional or standing) consisting of a small or large number of members only, who sit apart from the house, though in rooms belonging to the house, whilst the house is not sitting.

3. Joint committees, composed of members of each house sitting and acting together.

Committees of the whole owe their origin to the "grand committees," as they were called, which played so important a part in parliamentary proceedings, during the reigns of James I, and Charles I, and which were in fact standing committees of the whole house. By recurring to the history of the period when they were first introduced, it will be found that they were established, not to facilitate the passing of bills, in the ordinary course of legislation, but to afford means for bringing forward and

discussing the great constitutional questions which were agitated in the parliaments of the Stuarts. These committees, though regularly appointed, existed only in name from the time of the Restoration, and were wholly laid aside in 1832, at the beginning of the first session of the reformed Parliament.[1]

Similar committees were appointed from an early date in the assemblies of the Lower Canada legislature. In accordance with the practice of the Imperial Parliament, these committees were appointed at the commencement of each session, and were directed by the house to sit on certain days in each week. From the character of the subjects, which they were appointed to investigate, they were denominated the grand committees for grievances, courts of justice, agriculture and commerce.[2] It was also a practice in those times for the assembly to form itself into committee of the whole on the state of the province, and it was in this way the famous ninety-two resolutions of the legislature of Lower Canada originated.[3] Such committees were not uncommon in 1778 in the English Parliament.[4]

These grand committees on constitutional questions have not existed by name since the union of the Canadas in 1840. The legislatures of the provinces, however, continue to discharge a large and important part of their functions through committees of the whole, and certain standing committees composed in some cases of a large number of members.[5]

Committees of the whole house, being composed of all the members, possess none of the advantages which

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[1] For a very full account of the composition and functions of these committees, see Cushing, app. xv.; I. Dwarris, 160-1.

[2] Low. Can. Ass. J. (1807), 48; *Ib.* (1808), 26; *Ib.* (1819), 9.

[3] *Ib.* (1834), 11, 65, 310; *supra*, p. 23.

[4] See remarks of Lord Chancellor Loughborough, as to the great latitude taken in these committees; 59 Parl. Reg. 512; Cushing, § 2041.

[5] Can. Hans. (1883), 37 (Sir John Macdonald).

result from the employment of a small number of persons, selected with express reference to the particular purpose in view; and at the present day, the principal advantage, which appears to result from the consideration of a subject in a committee of the whole house, rather than in the house itself, consists in the liberty which every member enjoys in such committee of speaking more than once to the same question. The appointment of select and joint committees forms the subject of a subsequent chapter, and consequently the following pages will be exclusively devoted to a consideration of the powers and duties of committees of the whole. More details on the same subject will be given when we come to review the proceedings in committees of the whole on bills and supply. It is only necessary at present to give a summary of the rules and practice governing such committees generally.

**II. Senate Rules.**—When the Senate has been "put into committee," it is recorded in the journals as "adjourned during pleasure," and when the committee rises, it is stated that "the house was resumed." [1] The procedure with respect to committees of the whole is substantially the same in the two houses. The Senate has the following special rules on the subject:

"87. When the Senate is put into committee, every senator is to sit in his place.

"88. The rules of the Senate are observed in a committee of the whole, except the rules limiting the time of the speaking; and no motion for the previous question, or for an adjournment can be received; but a senator may, at any time, move that the chairman leave the chair, or report progress, or ask leave to sit again.

"89. No arguments are admitted against the principle of a bill in a committee of the whole.

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[1] Sen. J. (1883), 86. The same practice prevails in the Lords, though it is not now usual to make the entry "adjourned during pleasure." 109 Lords' J. 297, &c.

"90. When the Senate is put into a committee of the whole, the sitting is not resumed without the unanimous consent of the committee unless upon a question put by the senator who shall be in the chair of such committee.

"91. The proceedings of the committee are entered in the journals of the Senate."

There is no chairman of committees in the Senate, regularly appointed at the commencement of every session, as in the house of Lords ;[1] but the speaker will call a member to the chair. In committee a senator may address himself to the rest of the senators.[2]

**III. Procedure in the Commons.**—When the House of Commons proposes to go into a committee of the whole on a bill or other question, it must first agree to a resolution duly moved and seconded—"That this house will immediately (or on a future day named in the motion) resolve itself into a committee of the whole."[3] By reference to the chapters on public bills and committee of supply, it will be seen that all matters affecting trade, taxation or the public revenue must be first considered in committee of the whole, before any resolutions or bills can be passed by the House of Commons. Addresses to the queen or her representative in Canada are also frequently founded on resolutions considered first in committee of the whole.[4]

When the house agrees to resolve itself immediately into a committee of the whole, the speaker will call a member to the chair in accordance with rule 75:

"In forming a committee of the whole house, the speaker, before leaving the chair, shall appoint a chairman to preside, who shall maintain order in the committee; the rules of the house

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[1] Lords' S. O. 8 and 44 ; 109 Lords' J. 11 ; 237 E. Hans. (3), 58.

[2] R. 20 ; *supra*, p. 361 *n.*

[3] Can. Com. J. (1875), 188 ; *Ib.* (1877), 117 ; *Ib.* (1878), 147.

[4] Can. Com. J. (1875), 351, 355 ; *Ib.* (1878), 255; *supra*, p. 293.

shall be observed in committee of the whole house, so far as may be applicable, except the rule limiting the number of times of speaking."

When the house has ordered the committee for a future day, the clerk will read the order when it has been reached, and the speaker will then put the formal question—"The motion is, that I do now leave the chair." If the house agree to this motion, Mr. Speaker will at once call a member to the chair; but any amendment may be made to this question ; and if it be carried in the affirmative it will supersede the question for the time being, and the house will not go into committee. But when it is intended to move only an instruction, and not to prevent the house going into committee on a question, the instruction should be moved as soon as the order has been read at the table.[1]

When the speaker leaves the chair, the serjeant-at-arms places the mace under the table where it remains during the sitting of the committee. The chairman (who occupies the clerk's chair) will propose and put every question in the same manner as the speaker is accustomed to do in the house itself. The members should address themselves to the chairman.[2] If a question of order arise he will decide it himself, unless it be deemed more advisable to refer the matter to the speaker in the house itself. Rule 76 provides :

"Questions of order arising in committee of the whole house shall be decided by the chairman, subject to an appeal to the house ; but disorder in a committee can only be censured by the house, on receiving a report thereof."

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[1] Can. Com. J. (1870), 120. Chapter on public bills. May, 431.

[2] In the English house the chairman of a committee is frequently addressed by name. If the chairman, through fatigue or for other reasons, finds it necessary to vacate the chair temporarily, he may call another member to fill his place ; and mention of the fact will be made in the record of the proceedings of the committee. 132 E. Com. J. 395, South Africa Bill.

If it be found expedient in either house to refer the point of order to the speaker, a member will move that the chairman report progress and ask leave to sit again that day. When the speaker has resumed, the chairman will report that the committee wishes to be instructed as to the point in question. The house will then proceed to take the matter into consideration, and the speaker having been requested to give his opinion will decide the matter in dispute; then unless there is an appeal to the house against the speaker's decision, the committee will resume its proceedings.[1] In case of disorderly proceedings in committee, such as unseemly noises and interruptions, the chairman will endeavour to preserve order, and will rebuke those guilty of such breaches of parliamentary decorum;[2] but he cannot put a question censuring a member; that can be done by the house alone.[3] In a very urgent case of disorder, the speaker may take the chair immediately, without waiting for the report of the chairman.[4] When improper language is used by a member towards another, the words may be taken down in committee, and reported to the house which will deal with the matter in accordance with its rules and usages.[5]

If the committee has risen, reported progress and obtained leave to sit again on a future day, the speaker will not put any question, but will immediately call a member to the chair when the order has been read; but this practice does not apply to committees of supply and ways and means. The standing order of the English Commons is as follows—there being no written rule in the Canadian house on this point:

"When a bill or other matter (except supply or ways and

[1] Can. Com. J. 1875, April 1st; general acts respecting railways. 91 E. Com. J. 104; 126 E. Hans. (3), 1240; also, Sen. J. (1875), 137-8.

[2] 239 E. Hans. (3), 1790.

[3] R. 76, p. 417. 126 E. Hans. (3), 1193; 235 *Ib.* 1810; 108 E. Com. J. 461.

[4] Case of J. Fuller, 65 E. Com. J. 134-136.

[5] 235 E. Hans. (3), 1809-1833. See chapter on debate, s. xx.

means) has been partly considered in committee, and the chairman has been directed to report progress, and ask leave to sit again, and the house shall have ordered that the committee shall sit again on a particular day, the speaker shall, when the order for the committee has been read, forthwith leave the chair, without putting any question, and the house shall thereupon resolve itself into such committee."[1]

No motion or amendment in committee need be seconded.[2] In case of a division being called for, the members rise and the assistant clerk counts and declares the number on each side, and the chairman decides the question in the affirmative or negative, just as the speaker does in the house itself. No names are recorded in committee. Consequently but few divisions take place in committees of the whole.[3]

One of the clerks-assistant keeps a record of the proceedings of committees of the whole in a book, to which members can always have access. The chairman of the committee signs his initials at the side of every section of a bill or resolution, and his name in full at the end. The proceedings of the committees of supply and of ways and means are always recorded in the journals;[4] and the same is done in the case of all resolutions which provide for the expenditure of public money or for the imposition of taxes, and have to be received on a future day.[5] The proceedings in committees on bills are not given in the Canadian journals,[6] though it is the invariable practice in the English Commons to do so when amendments are proposed or made.[7] In case of amendments being moved or divisions taking place on a question, they are sometimes

[1] S. O. 25th June, 1852; no. lii.

[2] May, 433.

[3] Sen. J. (1878), 215; *Ib.* (1879), 272. In the Lords the names are given —Lords' J. (109), 173-5.

[4] Can. Com. J. (1877), 44, 53, 74; 129 E. Com. J. 100, 133, 258.

[5] Can. Com. J. (1876), 74; *Ib.* (1877), 155, 156.

[6] *Ib.* (1877), 161.

[7] 129 E. Com. J. 191, 198, 205.

recorded in the Canadian Commons' journals, but this practice is exceptional.[1] In the Senate the proceedings of all committees are recorded in the journals in accordance with an express order.[2]

It is not regular to move an adjournment of the debate on a question or an adjournment of the sittings of the committee to a future time;[3] but certain motions may be made with the same effect. If it is proposed to defer the discussion of a bill or resolution, the motion may be made—"That the chairman do report progress and ask leave to sit again;"[4] and if this motion (which is equivalent to a motion for the adjournment of the debate)[5] be agreed to, the committee rises at once, and the chairman reports accordingly. The speaker will then say—"When shall the committee have leave to sit again?" A time will then be appointed for the future sitting of the committee.[6] But if a member wishes to supersede a question entirely, he will move—"That the chairman do now leave the chair."[7] Rule 77 of the House of Commons provides: "A motion that the chairman leave the chair shall always be in order, and shall take precedence of any other motion." If this motion (which is equivalent in its effect to a motion for the adjournment of the house)[8] be resolved in the affirmative, the chairman will at once leave the chair, and no report being made to the house, the bill or question disappears from the order paper.[9] Two motions to report

[1] Can. Com. J. (1867-8), 32; *Ib.* (1870), 230-1.

[2] Sen. R. 91, *supra*, p. 416; Sen. J. (1878), 215.

[3] Sen. R. 88, *supra*, p. 415, May, 439.

[4] 132 E. Com. J. 395.

[5] Evidence of Mr. Raikes, chairman of C., before committee on public business, 1878, p. 89. The discussion on this motion may be on a bill or question generally; 239 E. Hans. (3), 633.

[6] Can. Com. J. (1877), 76.

[7] 132 E. Com. J. 395.

[8] Evidence of Mr. Raikes, C. on P. B. 1878, p. 89.

[9] 117 E. Com. J. 177; Can. Com. J. (1874), 326; *Ib.* (1869), 106, 288, 303.

progress cannot immediately follow each other on the same question; but some intermediate proceeding must be had.[1] Consequently if a motion to report progress be negatived, a member may move that "the chairman do leave the chair."[2] If the latter motion is carried in the affirmative, then the business of the committee is superseded, and the chairman can make no report to the house. In this case, however, the original order of reference still remains, though the superseded question may not appear on the order paper; and it is competent for the house to resolve itself again, whenever it may think proper, into committee on the same subject.[3]

By reference to the Senate rules[4] it will be seen that the motion for the previous question is expressly forbidden. No such rule appears among the orders of the Canadian Commons; but the practice is the same as that of the English house, which does not admit of the motion. "The principle of this rule," says Sir Erskine May on this point, "is not perhaps very clear, but such a question is less applicable to the proceedings of a committee. A subject is forced upon the attention of the house, at the will of an individual member; but in committee the subject has already been appointed for consideration by the house, and no question can be proposed unless it be within the order of reference. Motions, however, having the same practical effect as the previous question, have sometimes been allowed in committees on bills; and a motion that the chairman do now leave the chair, offered before any resolution has been agreed upon, and with a view to anticipate and avert such resolution, has precisely the same effect as the previous question."[5]

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[1] May, 440. The same principle applies to these motions that applies to those for the adjournment of the house and debate, *supra*, p. 334.

[2] 132 E. Com. J. 394-6; 239 E. Hans. (3), 1802, 1811-15.

[3] See chapter on public bills.

[4] *Supra*, p. 415.

[5] May, 433. Education, 111 E. Com. J. 134; 141 E. Hans. (3), 780, 799-80.

If it be shown by a division or otherwise that there is not a quorum present in the committee, the chairman will count the members and leave the chair, when the speaker will again count the house. If there is not a quorum present, he will adjourn the house; but if there are twenty members in their places, the committee will be resumed.[1] If the house is adjourned for want of a quorum the committee may again be revived.[2] In the same way, if a question is superseded by the motion for the chairman to leave the chair, it may be subsequently revived, for the committee has no power to extinguish a question; that power the house retains to itself.[3]

During the sittings of the committee, the speaker generally remains in the house, or within immediate call, so that he may be able to resume the chair the moment it is necessary. A message from the governor-general, summoning the house to attend him in the Senate chamber, will call upon the speaker to resume the chair immediately. But messages brought by a clerk of the Senate will not interrupt the proceedings of a committee. Such messages are only reported to the house by the speaker as soon as the committee has risen and reported, and before another question has been taken up by the house.[4]

When six o'clock comes the speaker will resume the chair immediately, without waiting for any report from the chairman, and will say—"It being six o'clock, I now leave the chair." In case, however, the committee cannot sit after recess, the chairman must make the usual formal motion for leave to sit again. In case, however, the committee can continue, the chairman will resume the chair

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[1] 100 E. Com. J. 701; 121 *Ib.* 272; 137 *Ib.* 197; Leg. Ass. (1852-3), 1038, 1116.

[2] 110 E. Com. J. 449; 137 *Ib.* 197.

[3] 176 E. Hans. [3], 99; 115 E. Com. J. 402, 427. Evidence of Mr. Raikes, Com. on P. B., 1878, p. 89. Also, chapter on public bills.

[4] Can. Com. J. (1877), 282. Here the message was received whilst the committee of supply was sitting.

after half-past seven o'clock, when the speaker has taken his seat and called on him to discharge that duty.[1] If it be one of those days when an hour is devoted to the consideration of private bills, he will only resume when they have been duly disposed of.[2]

**IV. Report from Committees of the Whole.**—By rule 47 of the House of Commons all amendments made to bills in committee of the whole "shall be reported to the house, which shall receive the same forthwith."[3] Resolutions providing for a grant of public money, or for the imposition of a public tax, can only be regularly received on a future day.[4] Resolutions relating to trade or other matters may be received immediately, and bills introduced thereupon.[5] All resolutions, when reported, are read twice and agreed to by the house. The first reading is a purely formal proceeding, but the question for reading the resolutions a second time is put by the speaker, and may be the subject of debate and amendment.[6] Resolutions may be withdrawn, postponed, or otherwise disposed of.[7] On the motion for reading them a second time the discussion and amendment may relate to the resolutions generally, but when they have been read a second time any debate or amendment must be confined to each resolution.[8]

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[1] Can. Com. J. (1876), 264-5.

[2] *Ib.* (1878), 85. Here no private bills were on the paper, but a message from the Senate with a private bill was taken up, and progress made therewith.

[3] Chapter on public bills, s. xi.

[4] Chapter on supply, s. ix.

[5] Can. Com. J. (1873), 127, 149, 155, 157; *Ib.* (1878), 108, 116; 129 E. Com. J. 31; 137 *Ib.* 48 (Banking Laws).

[6] Can. Com. J. (1880-1), 94 (Canadian Pacific R.).

[7] 77 E. Com. J. 314; 95 *Ib.* 169; 112 *Ib.* 227; 119 *Ib.* 333; 129 *Ib.* 100, 107; 132 *Ib.* 354. Can. Com. J. (1867-8), 59, 160; *Ib.* (1869), 181, 183; *Ib.* (1871), 88.

[8] 174 E. Hans. [3], 1551; Can. Com. J. [1883] 401.

**V. New Rules of the English Commons.**—The rules which govern committees of the whole give exceptional opportunities for making motions and indulging in prolonged discussions. When we consider that every clause in a bill may of itself be the subject of numerous motions, on each of which a member may speak as often as he pleases, it is quite evident that a minority, great or small, has it always in its power, when so inclined, to obstruct public business. It is, therefore, easy to understand that there have been of late years, during the crisis through which the Imperial House of Commons has been passing, such serious interruptions to the proceedings of committees of the whole that it has been thought necessary to revise the rules of procedure as the only means of meeting a great difficulty. It will be seen from the summary given elsewhere[1] of the new standing orders of the English house. that when the chairman of a committee of the whole is of opinion that it is the sense of the committee that a subject has been adequately discussed, he may so inform the members, and then a debate may be summarily brought to a close by the committee deciding that the question be now put. Or, if he is of opinion that a motion that the chairman do report progress or do leave the chair is an abuse of the rules, he may immediately put the question. He may also call attention to irrelevant remarks, and direct the offending member to discontinue them. Any member who wilfully disregards the authority of the chair, or obstructs business, may be named by the chairman, and if the committee decide that he should be suspended, the circumstance will be reported forthwith, and the speaker shall put the question for suspension without delay. Debate must now be confined to the matter of a motion for the chairman reporting progress or leaving the chair; and no member who has moved or seconded any such motion shall have the right to propose a similar motion

[1] Chapter on debate, s. xxv.

during the same debate. It is also ordered that when the chairman has been authorised by the committee to make a report to the house, he shall leave the chair without putting the question, and consequently no debate can take place at that stage of proceedings. These are the material changes in the procedure of committees of the whole in the English Commons, and it will be seen that they are virtually an entire reversal of the old practice which allowed exceptional latitude of discussion in committees. It must be added, however, that they are not intended, and are not likely ever to be used, to prevent legitimate discussion or the proposal of such motions as are necessary to the proper consideration of a question.

# CHAPTER XVI.

*SELECT, STANDING AND SESSIONAL COMMITTEES.*

I. Sessional committees of the Senate.—II. Standing Committees of the Commons.—III. Appointment of select committees.—IV. Quorum.—V. Organization and procedure of committees.—VI. Reports of committees.—VII. Their presentation to the house.—VIII. Concurrence.—IX. Examination of witnesses.—X. Their payment.—XI. Their examination under oath.

**I. Sessional Committees in the Senate.**—Select committees now form a most important part of the legislative machinery. They possess the obvious advantages, which a small number of persons must naturally have, of being able to discuss the details of the questions referred to them with that patient deliberation which is practically impossible, as a rule, in the whole house. The tendency of modern practice is to refer to committees all matters requiring the taking of evidence and laborious investigation. In this way, the houses are able to simplify their proceedings and make greater progress with the public business.

The value of select committees for these purposes has always been recognized by the Canadian legislatures, and of late years their usefulness has received extension by the reference of many public bills of an important character either to standing or special committees. In England also, the House of Commons has begun to attach greater importance to such deliberative bodies, and has recently appointed two standing committees for the consideration of all bills relating to law and courts of justice, and to trade, shipping and manufactures; in fact, establishing a

class of committees, which have been practically in operation for years in the legislatures of Canada.[1]

In the course of every session, a number of standing or sessional committees are appointed in each house of the Parliament of the dominion to inquire into and report on those matters referred to them for consideration. By standing committees are meant those committees which are appointed beforehand for the consideration of all subjects of a particular class, arising in the course of a session. In the Senate, these committees are also called "sessional."

After the speech from the throne has been considered and answered in the upper house, it is the practice to appoint sessional committees on the following subjects: on banking and commerce; on railways and telegraphs and harbours;[2] on the contingent accounts of the Senate; on standing orders and private bills.[3] Committees are also appointed to act with committees of the Commons on the library and printing of Parliament. As the Senate has, for years past, had its debates reported officially, it is usual at the beginning of a session to appoint a committee on reporting.[4] Notice is always given in the minutes of the members of the different sessional committees.[5] The motion for the appointment of a sessional committee must be put and concurred in by the house.[6] The sessional committees on banking and commerce, railways, and contingent accounts, report from time to time, without receiving special authority to that effect in the

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[1] See remarks of Sir John Macdonald, 16th of Feb., 1883, Can. Hans. Also, S. O. of 1st of Dec., 1882 (Nos. xxii. and xxiii.), with respect to the English committees.

[2] Previous to the session of 1879, these subjects were all referred to one committee on banking, commerce and railways. Sen. Hans. (1879), 38. A committee is also sometimes appointed to manage the refreshment rooms, Sen. J. (1880), 33.

[3] Sen. J. (1883), 41.

[4] Sen. J. [1878], 36-37; *Ib.* [1879], 44-5; *Ib.* [1882], 29-30.

[5] Min. of P. [1878], 26-27; *Ib.* [1882], 18-20; *Ib.* [1883], 35-36.

[6] Sen. J. [1878], 36.

order appointing them.[1] The committee on standing orders, however, always receives such power, as well as authority to send for persons, papers, and records.[2] Messages will be sent to the Commons informing them of the appointment of committees on the library and printing.[3] The committees of the Senate meet on the next sitting day, after their appointment, and choose their chairman, and the majority of senators appointed on such committees constitute a quorum unless it be otherwise ordered.[4] But it is the practice for these committees (except that on the library) to report, recommending the reduction of their quorum to a stated number.[5]

The rules that govern the proceedings of the committees of the Senate are, for the most part, the same as those of the Commons;[6] and whenever there is any difference in practice, it will be shown in the course of this chapter.

**II. Commons' Standing Committees.**—When the speech has been reported by the speaker at the commencement of a session, the premier or other member of the ministry in the House of Commons will formally move.

"That select standing committees be appointed for the following purposes:—1. On privileges and elections; 2. On expiring laws; 3. On railways, canals, and telegraph lines; 4. On miscellaneous private bills; 5. On standing orders; 6. On printing; 7. On public accounts; 8. On banking and commerce; 9. On immigration and colonization. Which said committees shall severally be empowered to examine and inquire into all such matters and things as may be referred to them by the house; and to report from time to time their observations and opinions thereon, with power to send for persons, papers and records."[7]

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[1] Sen. J. [1878], 37; *Ib.* [1882], 30.

[2] *Ib.* [1882], 30.

[3] *Ib.* [1882], 29-30.

[4] R. 92.

[5] Sen. J. [1878], 44, 52, 54; *Ib.* [1879], 54, 55; *Ib.* [1882], 32-33.

[6] In the House of Lords there are very few special rules in regard to the appointment and constitution of select committees; May, 447.

[7] Can. Com. J. [1867-8], 5; [1878], 14.

Notice is then given of a motion for the appointment of a special committee composed of leading men of the ministry and opposition to prepare and report lists of members to compose the select standing committees ordered by the house.[1] This committee is appointed in due form[2] and reports the standing committees without delay.[3] The report is generally allowed to be upon the table for one or two days, so that members may have an opportunity of examining the lists in the votes, and of suggesting any changes or corrections that may appear necessary. But it is necessary frequently to move concurrence immediately in the report "so far as it relates to the select standing committee on standing orders,"[4] in order that no time may be lost in the consideration of petitions for private bills, which can be received only within a limited period after the commencement of the session.[5] When the house has had an opportunity of considering the lists, the report will be formally adopted;[6] but it is not usual to appoint these committees until the address in answer to the speech has been agreed to. It is the practice to make special motions with reference to the joint committees on the printing and the library of Parliament. Messages are sent to inform the Senate that the Commons have appointed certain members of the house to form a part of such committees. When similar messages have been received from the Senate, these joint committees are able to organize and take up the business before them.[7] Though the committee on the library is not ordered—as is the case with that on printing—in the resolution providing for the formation of standing committees, yet it

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[1] V. and P. [1877], 6; *Ib.* [1878], 14.
[2] Can. Com. J. [1878], 24.
[3] Can. Com. J. [1877], 23; *Ib.* [1878], 28.
[4] *Ib.* [1877], 25; *Ib.* [1878], 28; *Ib.* [1879] 23.
[5] Chapter on private bills.
[6] Can. Com. J. [1878], 36.
[7] *Ib.* [1878], 41.

falls practically within the same category and is always appointed at the same time.[1]

The titles of the several standing committees of the house sufficiently indicate their respective functions. Some of these committees are very large, the number of members on railways, canals, and telegraph lines having been 131 in 1883; on banking and commerce, 94; on immigration and colonization, 78; on miscellaneous private bills, 69. The number on the other committees, vary from 30 to 42. Before 1883, the committee on public accounts was composed of 97 members; but in that year the number was reduced to 45 as an experiment. It has been suggested that public business might be largely forwarded by the extension of the same principle with reference to other committees.[2]

**III. Select or Special Committees.**—In addition to the standing committees, there are certain select or special committees appointed in the two houses in the course of a session. The term, select committee, is properly applied to a committee appointed to consider a particular subject. For instance, in the session of 1883, select committees were appointed in the Commons on interprovincial trade, on the question of communication between the main-land and Prince-Edward Island, and on the criminal law. In the same session several bills of a special character were referred by the Senate to select committees.[3]

In the Senate there is no rule, as in the Commons, limiting the number of senators who may sit on a select committee. When a committee is appointed in the Senate it is usual to ask in the motion for power to send for per-

[1] Can. Com. J. [1877], 25, 28; *Ib.* [1878], 29, 36; *Ib.* [1879], 23.

[2] See remarks of Sir John Macdonald and Mr. Blake; Hans. [1883], 36-7. In the English house the committee on public accounts, established by S. O. (No. xxxvi.) since 3rd of April, 1862 (amended 28th of March, 1870,) consists of only 11 members, of whom 5 are a quorum.

[3] Sen. J. [1883], 157, 176. See Sen. and Com. J., under head of committees.

sons, papers, and records, to examine witnesses on oath, to report from time to time, or other powers that may be necessary.' If it is necessary to refer minutes or evidence taken before a committee of the previous session, the motion should be to that effect.[2] Notice should properly be given of all motions for select committees ; [3] but it is not the invariable practice in the Senate to include in the motion the names of the committee, which may be given by consent of the house when the motion is duly proposed.[4] But no doubt it is the more convenient and regular course to include the names in the notice of motion.[5] It is usual for the mover of a select committee to be one of its members. Rule 96 provides :

" Every senator, on whose motion any bill, petition, or question shall have been referred to a select committee shall, if he so desire, be one of the committee."

A select committee of the Commons, unlike the standing committees of the same body, is limited to a certain number, except the house should find it advisable to make additions. Rules 78 and 79 provide as follows :

"No select committee may, without leave of the house, consist of more than fifteen members, and the mover may submit the names to form the committee, unless objected to by five members; if objected to, the house may name the committee in the following manner : each member to name one, and those who have most voices, with the mover, shall form the same; but it shall be always understood that no member who declares or decides against the principle or substance of a bill, resolution, or matter to be committed, can be nominated of such committee."

" Of the number of members appointed to compose a committee, a majority of the same shall be a quorum, unless the house has otherwise ordered."

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[1] Sen. J. [1878], 59, 63.
[2] *Ib.* [1878], 59 (Canadian Pacific R. R., terminus at Fort William).
[3] Min. of P. [1878], 42, 138.
[4] Min. of P. 1878, p. 44 ; Journ. p. 62.
[5] Min. of P. [1878], 138.

By rule 31 it is ordered that two days' notice shall be given of a motion for the appointment of a committee; but none is necessary in the case of matters affecting the privileges of the house.[1] It is the regular course to give the names of the committee in the notice of motion, unless it is intended to have it appointed directly by the house.[2] The motion should also state whether it is necessary that the committee should report from time to time.[3] If the committee should report once without having received the power in question, it will be defunct until revived.[4] In cases where it has been forgotten to ask this power from the house, it is usual for the chairman, or other member, to obtain such power on a special motion.[5] The same remarks apply to sending for persons, papers, and records.[6] Sometimes committees may find it necessary to ask for power "to report evidence from time to time,"[7] and "with all convenient speed."[8] If it be proposed to appoint a larger committee than one of fifteen members, the mover will ask for leave to suspend the rule [9]—of which motion a notice should properly be given.[10] Members are frequently added or substituted in place of others, without a notice being given;[11] but objection may properly be taken to this course, and the regular procedure in both houses is to give previous notice in the votes and minutes

[1] 113 E. Com. J. 68; 146 E. Hans. (3), 97; 148 *Ib.* 1855-1867.

[2] V. and P. [1877], 48, 127; Can. Com. J. [1876], 173-4. The English S. O. No. xxix. directs that one day's notice be given in the votes before the nomination of a select committee.

[3] Can. Com. J. [1877], 36.

[4] *Ib.* [1870], 23, 36, 58.

[5] Can. Com. J. [1877], 23. Here it will be seen the motion having been agreed to, the committee on the official reporting of the house immediately brought in their first report. Also, *Ib.* [1882], 122.

[6] *Ib.* [1873], 61.

[7] *Ib.* [1873], 137.

[8] *Ib.* [1875], 139, 212.

[9] *Ib.* [1869], 56; *Ib.* [1870], 117; *Ib.* [1875], 139.; *Ib.* [1883], 128.

[10] 112 E. Com. J. 157; 137 *Ib.* 21; May, 450.

[11] Sen. J. [1867-8], 115, &c.; Can. Com. J. [1878], 48, 57, &c.

of proceedings.[1] The English standing order is much more explicit than the Canadian rule, as respects the appointment of committees; it is as follows:

"No select committee shall, without leave obtained of the house, consist of more than fifteen members; such leave shall not be moved for without notice; and in the case of members proposed to be added or substituted after the first appointment of the committee, the notice shall include the names of the members proposed to be added or substituted."[2]

Committees are sometimes appointed directly by the House of Commons, in accordance with rule 79; and in such a case the procedure is as follows: The assistant clerk will call out in regular alphabetical order the names of all the members from a printed division list, and each member will immediately reply with the name of the member he votes for. The clerk checks off the votes, and those who receive the highest number will compose the committee. The notice of motion should properly state whether it is proposed to have the committee appointed in this way; and then, as soon as the house has agreed to the committee, it will proceed at once to name the same.[3] In the session of 1877 the house agreed to appoint a committee of nine members to inquire into the affairs of the Northern Railway Company, but adjourned without nominating the members of the committee. It was then considered necessary to give two days' notice that the premier (Mr. Mackenzie) would move on a particular day that the house name the committee in question; and it was named accordingly.[4] In a previous case it was proposed to refer some matters connected with an election in Charlevoix to the committee on privileges; but the

[1] Can. Speak. D. 43; Sen. Min. of P. [1878], 82; 174 E. Hans. (3), 501, 1569; 227 *Ib.* 1496; 239 *Ib.* 1192.

[2] S. O. xxvii.; 25th June, 1852, E. Com. J.

[3] Can. Com. J. [1873], 137 (Pacific Railway charges).

[4] Votes [1877] 127; Jour. 103, 118.

house adopted an amendment that it should itself appoint the committee, and it was nominated forthwith.[1]

By reference to the rule of the Canadian Commons it will be seen that five members can always object to the mover submitting the names to form a committee. This provision is to be found in the rules of the legislative assembly of Canada, though for many years it required the objection of only one or two members.[2] The practice was for the members to take objection under the rule as soon as the question was proposed on the motion for the committee, and the house would at once proceed to name the committee.[3] In 1883 five members rose to object to a committee being named by the premier on the subject of a bill "respecting the sale of intoxicating liquors and the issue of licenses therefor;" but the speaker called attention to the fact that the motion before the house provided for the suspension of the rule as to the selection of members, and consequently decided that the mover had a right to submit the names as in the resolution.[4] It is a standing order of the English House of Commons:

"That every member intending to move for the appointment of a select committee do endeavour to ascertain previously whether each member proposed to be named by him on such committee will give his attendance thereupon."[5]

It will be seen that the Canadian rule (78), already cited, goes much further:

"It shall always be understood that no member who declares against the principle or substance of a bill, resolution or matter to be committed can be nominated of such committee."

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[1] Can. Com. J. [1876] 173-4. The mover was not on the committee.

[2] The rule for some years after 1841 contained the words, "if not objected to by the house," and the speaker decided on one occasion that the objection of one member was sufficient to prevent the motion being received; Leg. Ass. J. [1852] 127.

[3] Leg. Ass. J. [1854] 173.

[4] Can. Com. J. [1883] 128.

[5] S. O. xxviii.

A question arose in the session of 1877 as to the precise meaning of this rule, when the appointment of a committee on the coal trade was under discussion. The speaker decided that no member who had expressed himself opposed to the consideration of a question ought to be chosen.[1] On one occasion, in the session of 1883, the house agreed to suspend the rule, and the consequence was that certain members who had, immediately before the question was put on the motion for the suspension, declared themselves opposed to any consideration of the matter to be referred, were not considered exempt from their obligation to serve on the committee.[2]

It appears that the rule in question was always in force in the legislative assemblies of Canada,[3] and is derived from an ancient English usage, stated in these words: "Those who speak against the body or substance of a bill or committee or anything proposed in the house ought not by order of the house to be of the committee for that business."[4] But a member must be totally opposed, and not take simply exceptions to certain particulars of a bill or motion, in order to be excluded from a committee.[5] It has also been decided in the Canadian house that a member who opposes merely the appointment of a committee, cannot be considered as coming within the meaning of the rule.[6]

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[1] Com. on coal and intercolonial trade, Hans., 1877, March 1 and 2.

[2] Can. Com. J. [1883] 128; Hans. 253-4. The objecting members never took part in the deliberations of the committee which was appointed on the subject of the issue of licenses for the sale of intoxicating liquors—a subject referred to, *supra* p. 96.

[3] Low. Can. J. [1792] 124: Leg. Ass. J. [1841] 14, 46. The rule was enforced more than once; Can. Speak. Dec., 44, 93.

[4] 2 E. Com. 14; Lex. Parl., 329, 331.

[5] Lex. Parl. 315; 6 Grey, 373. It is still an English rule that no members can be appointed to a committee of conference "unless their opinions coincide with the objects for which the conference is held." 122 E. Com. J. 438; also 1 *Ib.* 350; *supra*, p. 400.

[6] Can. Hans. [1880] 102.

If a member is desirous on account of illness or advanced age to be excused from attendance on a committee he should ask leave from the house through another member.[1] Every member of a legislative body is bound to serve on a committee to which he has been duly appointed, unless he can show the house there are conclusive reasons for his non-attendance.[2] If a member is not excused and nevertheless persists in refusing to obey the order of the house, he can be adjudged guilty of contempt and committed to the custody of the serjeant.[3]

**IV. Quorum of Committees in the Commons.**—Under rule 79 of the Commons a majority of the members of a committee compose a quorum; but it is now usual, on the appointment of the standing committees, to fix it at a certain number immediately.[4] An exception, however, is made in the case of the committees on "privileges and elections," and on "railways, canals and telegraph lines," the latter of which is composed of a very large number compared with others. Consequently, there must always be a majority of the members of these committees present before either can proceed to business. Sometimes the chairman or other member of a select committee will move that the house order a reduction in the number of

[1] Can. Com. J. [1873] 60.

[2] It was said by Mr. Speaker Sutton on a proposition to discharge a member from a committee, on the ground that he could not attend, for the purpose of substituting another, "that he could not find any trace of such having been the practice; he did not perceive any member had been left out, except it was by absolute parliamentary disqualification or physical impossibility of attendance; as to any other disqualification of attendance, there was, so far as his knowledge extended, no account of any case having arisen." 37 E. Hans. (1) 200-4. Also, 43 *Ib.* 1230, 1234; 81 *Ib.* (3) 1104, 1190 (Lords).

[3] Case of Smith O'Brien, 101 E. Com. J. 566, 582, 603. Also, that of Mr. Hennessy, 115 *Ib.* 106; 156 E. Hans. (3) 2047.

[4] Can. Com. J. [1877] 24; *Ib.* [1878] 28. This is English practice; 129 E. Com. J. 30, 32, 64. The old practice was for each committee to recommend, in its first report, a reduction. Can. Com. J. [1867-8] 28, 29, &c.

the quorum, in case it is found difficult to obtain a large attendance of the members; or this may be done on the recommendation of the committee itself.[1] The quorum of the committee on printing is only reduced on the report of the committee itself, as it is composed of members of both houses, and can be regularly organized only when the Senate and Commons are informed of the respective members on the part of the two branches of the legislature.[2] Sometimes the quorum of a select committee will be increased in case of an addition to its numbers.[3] The committee on privileges and elections has sometimes recommended a reduction of its quorum.[4]

**V. Organization and Procedure of Committees.**—We may now proceed to describe the mode in which the committees are organized. Rule 98 of the Senate and rule 74 of the House of Commons provide:

"The clerk shall cause to be affixed in some conspicuous part of the Senate (or House) a list of the several standing or select committees."

It is usual for the leader of the government in either house to give the clerk instructions as to the time and place of meeting for the organization of the several standing committees.

In the case of the standing committees of the Commons there are certain clerks whose duties are connected with them especially. For instance, the clerks of standing orders, private bills, public accounts, railways, canals, and telegraph lines, and printing. There is also a chief clerk of committees, whose duty it is especially to have a select committee called together as soon as it is named, at the direction of the clerk of the house. It is usual for the

[1] Can. Com. J. [1867-8] 45, 180, &c. *Ib.* [1874] 126, &c. *Ib.* [1882] 122.
[2] *Ib.* [1877] 55. 59; *Ib.* [1878] 46; this report was not concurred in—an inadvertence on the part of the chairman. Sen. J. [1878] 54.
[3] *Ib.* [1874] 85.
[4] *Ib.* [1873] 82.

member, on whose motion a select committee has been nominated, to take the initiative in calling it together, and having it regularly organized;[1] and this he will do by placing himself immediately in communication with the clerk of the house.[2]

The committee having met, and a quorum being present, the members will proceed to elect a chairman.[3] If there is no quorum present this proceeding must be deferred until the requisite number are in attendance; or the organization of the committee may be delayed until another day.[4] It is the duty of the chairman to preserve order and enforce the rules. Committees are regarded as portions of the house, limited in their inquiries by the extent of the authority given them; but governed for the most part in their proceedings by the same rules which prevail in the house, and which continue in full operation in every select committee.[5] Every question is determined in a select committee in the same manner as in the house to which it belongs.[6] In case a difference of opinion arises as to the choice of a chairman, the procedure of the house with respect to the election of a speaker should be followed. That is to say, according to correct pr... the clerk puts the question and directs the divisi... the same way as is done on that occasion by the clerk the house. The name of the member first proposed w... be first submitted to the committee, and if the question is decided in the affirmative, then he takes the chair accordingly; but if he is in a minority in the division, then the clerk puts the question on the other motion. In English practice, when no difference of opinion occurs in the ap-

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[1] Sen. Hans. [1883], 49.

[2] Rep. of Com. on the cultivation of the vine, App. No. 7, 1867-8; Can. Com. J.

[3] Can. Com. J. [1873], 276; *Ib.* 1883, App. No. 2, King's election case.

[4] May, 454.

[5] 11 E. Hans. (2), 912, 914; 32 *Ib.* (3), 501-2-3-4.

[6] May, 461.

pointment of a chairman, the member proposed as chairman is called to the chair without any question being put.[1] Whenever no quorum is present the attention of the chairman should be called to the fact at once by the clerk, and business must be suspended or adjourned.[2] The names of the members present each day must be entered in the minutes by the clerk, and may be reported to the house on the report of the committee;[3] but it is usual to do so only when the question is of particular importance, and all the proceedings are reported.[4] When there is no evidence taken, it is usual to make only a general report, giving the opinion or observations of the committee.[5] The minutes, however, must be kept in a proper book by the clerks of the different committees in the two houses for reference.[6] The name of a member asking a question of a witness should be entered.[7]

The rules that govern the conduct of members in the house should govern them when in committee. It is a rule of the Senate (93), that "senators speak uncovered, but may remain seated." When members of the Commons attend the sittings of a committee, they assume a privilege similar to that exercised in the house, and sit or stand without being uncovered.[8] Members of the committee, however, should observe the rules of the house itself, when they address the chair.

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[1] May, 461. See a summary of a useful little treatise, by the late Mr. Eales, principal clerk of committees in the English Commons, given in Mr. Palgrave's Handbook, pp. 83-88.

[2] English S. O., 25th June, 1852, No. xxxiv.

[3] This is the S. O. of the Lords and Commons; Lords' J. 25th June, 1852; Com. S. O. xxxii. See proceedings in King's Co. election case, Can. Com. J. 1883, App. No. 2.

[4] Printing R., App. No. 2, 1869, p. 11; Public Accounts R., App. No. 2, 1873; Canada Pacific R. R. Com. Jour. [1873], 275.

[5] Printing R., App. No. 1, 1876.

[6] Sen. Hans. [1883], 474-5 (Mr. Vidal).

[7] *Infra*, p. 457, Can. Com. J. 1883, App. No. 3.

[8] May, 461.

It is also the practice in the Canadian Commons to follow the English rule with respect to divisions in a select committee:

"That in the event of any division taking place in any select committee, the question proposed, the name of the proposer, and the respective votes thereupon of each member present, be entered on the minutes of evidence, or on the minutes of proceedings of the committee, (as the case may be) and reported to the house on the report of such committee."[1]

The standing order of the Lords is *verbatim et literatim* the same as that of the House of Commons.[2] In the Senate, however, it has not been the invariable practice to record the names in the divisions of committees and report them to the house—the case of the printing committee not being in point, as it is a committee, not of one, but of two houses.

This question came up in the Senate during the session of 1878, and there appeared to be considerable difference of opinion whether the rule of the Lords ought not to apply thereafter to the proceedings of their committees.[3] From an entry made in the journals subsequent to this discussion it will be seen that the names are recorded on a division in a select committee, and ordered to be reported to the Senate.[4] The journals, however, show a record of divisions only in those select committees to which special matters of inquiry have been referred, and which report their minutes of evidence or proceedings to the house. As it is shown towards the end of this chapter, the sessional committees on bills do not report their proceedings, but only the conclusions to which they have come.

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[1] S. O. xxxiii. Can. Com. J. 1869, printing R.. App. No. 2, pp. 10-12; *Ib.* 1870, public accounts.

[2] Resolution of 7th Dec., 1852.

[3] Sen. Deb. [1878], 413.

[4] Com. on Can. Pacific R. R., 1st May, 1878; Jour. p. 254. See also remarks of Mr. Miller, Sen. Hans. (1883), 476. The names were recorded and reported in the case of the committee on the Palen contract in 1875; Jour. p. 221.

In cases where there is much evidence to be taken by a committee, it is usual to ask authority from the house to employ a short-hand writer,[1] whose remuneration is fixed in the Commons at the rate of $5 for each sitting of the committee, and 30 cents per folio of 100 words.[2]

Committees should be regularly adjourned from day to day, though in the case of select committees particularly, the chairman is frequently allowed to arrange the day and hour of sitting, but this can only be done with the consent of all the members of the committee.[3] Committees are not permitted to sit and transact business during the session of the house. It is a rule of the English House of Commons:

"That the serjeant-at-arms attending the house do, from time to time, when the house is going to prayers, give notice thereof to all committees; and that all proceedings of committees, after such notice, be declared to be null and void, unless such committees be otherwise empowered to sit after prayers."[4]

If it is necessary that a committee meet while the house is sitting in the afternoon or evening, leave must be obtained for it to sit until such hour as may be agreed upon.[5]

In the Canadian House of Commons, committees fre-

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[1] Can. Com. J. (1877), 117; *Ib.* (1878), 109. Sen. J. (1883), 85.

[2] *Ib.* (1874), 201.

[3] May, 464; 205 E. Hans. (3) 685.

[4] June 25, 1852; 19 E. Hans. (3) 381. In 1879 Mr. Speaker Brand quoted the following passage from a manuscript book prepared by Mr. Speaker Abbot in 1805: "On the appearance of the mace at a committee, the committee is dissolved. But it is usual and convenient first to inform the committee that the speaker intends or threatens to send the mace if they do not come; and for the messenger, when the mace is coming, to inform the committee of it that they may adjourn and not be dissolved." Mr. Brand added that whilst he had, on the previous day, followed a course founded on the practice set forth in the foregoing paragraph, yet he had no authority to compel the attendance of members who are serving on committees; 245 E. Hans. (3) 1499-51.

[5] 129 E. Com. J. 122, &c. May, 463.

quently sit on Saturday.[1] Committees of the Senate sometimes sit on the same day, and it was formerly the practice to move for leave to do so.[2] The point was at last properly raised whether such motion for leave is not unnecessary, since the Lords have a rule which permits select committees "to sit notwithstanding any adjournment of the house, without special leave."[3] As the Senate draws its precedents from the Lords in unprovided cases, the speaker has decided that a motion for special leave to sit on Saturday is unnecessary.[4]

Sometimes a committee is authorized by the house to adjourn from "place to place as may be found expedient,"[5] or to meet at a particular place,[6] but no committee can sit after a prorogation. A memorable case in point occurred in the session of 1873 in the Canadian Commons. It was moved that a select committee be appointed to inquire into certain matters relating to the Canadian Pacific Railway, and that it have power, "if need be, to sit after the prorogation." The resolution was agreed to, but members had serious doubts whether a committee could sit as proposed. It having been admitted by all parties after further consideration that the house could give no such power to a committee, it was arranged that the house should adjourn to such a day beyond the 2nd of July, as would enable the committee to complete the investigation, and to frame a report." The date eventually determined upon was the 13th of August, when Parliament was prorogued, but circumstances arose to prevent the committee making a report to the house.[7]

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[1] In the English Commons, committees cannot meet on Saturday, unless the house is sitting on that day. Leave must be given by the house. May, 464; Parl. Reg. (63), 613.

[2] Sen. J. (1877), 190.

[3] May, 448.

[4] Sen. Deb. (1878), 120; *Ib.* (1882), 128 (Senators Dickey and Miller).

[5] 107 E. Com. J. 279; 111 *Ib.* 318; Romilly, 304, *n.*

[6] Can. Com. J. (1873), 294 (Pacific R. R. Com.)

[7] See statement of Lord Dufferin on this question in the Can. Com. J.

It is the rule of the Lords that in their committees the chairman votes like any other peer; and if the members be equal on a division, the question is negatived (*semper præsumitur pro negante*)[1] It is the rule of the English Commons that the chairman of a select committee "can only vote when there is an equality of voices."[2] The practice of the English houses prevails in the Senate and Commons. The same rules, in fact, obtain with respect to divisions in committees as in the house itself.[3] On one occasion since 1867, the Commons ordered that all questions should be decided by a majority of the voices, including the voice of the chairman, who was not, in that case, to have a second or casting vote.[4] In the committees of both houses on private bills, however, the chairman can always vote, and has a second or casting vote when the voices are equal.[5]

In the Senate committees, no persons except senators are allowed to be present. Their rules are as follows:

94. "Senators, though not of the committee, are not excluded from coming in and speaking; but they must not vote; they sit behind those that are of the committee."[6]

95. "No other persons, unless commanded to attend, are to enter at any meeting of a committee, or at any conference."[7]

Strangers are permitted to be present during the sittings of a committee of the Commons, but they may be excluded at any time; and it is the invariable practice for them to withdraw when the committee is discussing a particular

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1873 (2d sess.), pp. 15 *et seq.* Also, Can. Com. J. (1873), 137, 275, 287, 294, 368. *Supra*, p. 238 as to effect of prorogation on committees and proceedings generally.

[1] May, 461.

[2] 91 E. Com. J. 214.

[3] Sen. J. [1875], 221; *Ib.* [1878], 254. Can. Com. J. (1870), public accounts, App. No. 2; here the chairman did not vote; *Ib.* (1873), 278; here there was a tie, and the chairman voted.

[4] Can. Pacific R. R. Com. (1873), 430.

[5] Sen. R. 65; Com. R. 62. See chapter on private bills.

[6] Lords, S. O. No. 46.

[7] Same practice in Lords, S. O. 44.

point of order, or deliberating on its report.[1] Members of the Commons may be present during the proceedings of their committees, and a committee has no power of itself to exclude any member at any stage of its proceedings. Sir Erskine May, after citing a number of precedents on this point, comes to this conclusion: "These precedents leave no doubt that members cannot be excluded from a committee-room by the authority of the committee; and that if there should be a desire on the part of the committee that members should not be present at their proceedings, where there is reason to apprehend opposition, they should apply to the house for orders similar to those already noticed. At the same time, it cannot fail to be observed that such applications have not been very favourably entertained by the house."[2] Consequently the house will at times appoint secret committees which will conduct their proceedings with closed doors.[3] Such committees are often chosen by ballot in the English Parliament.[4] It has been decided that "a member who is not a member of the committee, has no right whatever to attend for the purpose of addressing the committee, or of putting questions to witnesses, or interfering in any way in the proceedings."[5]

It is a clear and undisputable principle of parliamentary law that a committee is bound by, and is not at liberty

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[1] Can. Com. J. (1869), App. 8, p. 4; 247 E. Hans. (3), 1957-8.

[2] Page, 460. 1 E. Com. J. 849; 38 *Ib.* 870; 66 *Ib.* 6; 67 *Ib.* 17; 247 E. Hans. (3), 1958.

[3] 53 Lords' J. 115; 92 E. Com. J. 26; 99 *Ib.* 461; 112 *Ib.* 94; 96 E. Hans. (3), 987, 1056.

[4] 67 E. Com. J. 492; 74 *Ib.* 64. 51 Lords' J. 438; 37 E. Hans. (1), 155; Cushing, p. 733. In the session of 1873, Canadian Commons, the committee appointed to inquire into certain charges brought by Mr. Huntington, relative to the Pacific R. R., reported a resolution that the proceedings should be secret (Jour. p. 275). But the chairman did not press the resolution out of deference to the wishes of the government (P. Deb. p. 146), and it was subsequently rescinded by the committee itself (Jour. p. 294).

[5] 73 E. Hans. (3), 725-6; Cushing, p. 745.

to depart from, the order of reference.[1] This principle is essential to the regular despatch of business; for, if it were admitted, that what the house entertained, in one instance, and referred to a committee, was so far controllable by that committee, that it was at liberty to disobey the order of reference, all business would be at an end; and, as often as circumstances would afford a pretence, the proceedings of the house would be involved in endless confusion and contests with itself.[2] Consequently if a bill be referred to a select committee it will not be competent for that committee to go beyond the subject-matter of its provisions.[3] If it be found necessary to extend the inquiry, authority must be obtained from the house in the shape of a special instruction. Such an instruction may extend or limit an inquiry, as the house may deem expedient.[4] Sometimes when a committee requires special information it will report to the house a request for the necessary papers which will be referred to it forthwith.[5] The committee can obtain directly from the officers of a department such papers as the house itself may order; but in case the papers can be brought down only by address, it is necessary to make a motion on the subject in the house through the chairman. When the papers have been received by the house, they will be at once referred to the committee. Orders in council are asked for in this way.[6] It is frequently found necessary to discharge the order for a committee and appoint another with a different order of reference.[7]

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[1] May, 446. Parl. Reg. (22), 258; 190 E. Hans. (3), 1869.

[2] Cushing, p. 741. 12 Parl. Reg. 382.

[3] 190 E. Hans. (3), 1869.

[4] 191 E. Com. J. 636; 105 *Ib.* 497; 121 *Ib.* 107; 190 E. Hans. (3), 1870. Can. Com. J. (1867-8), 33, 157; *Ib.* (1870), 116; *Ib.* (1871), 34; *Ib.* (1873), 186.

[5] Can. Com. J. (1875), 176 (public accounts). See remarks of Sir A. MacNab, Leg. Ass., June 7th, 1856 (*Globe* report).

[6] Can. Com. J. (1883), 90-92, 95. Previous to this year the correct practice was not generally followed.

[7] Conventual establishments, 18th May, 1854. This case "presents

**VI. Reports of Committees.**—When a committee has gone through the business referred to it, the duty of preparing a report is devolved upon one of the members, usually the chairman, by whom it is prepared accordingly, and submitted to the committee for its consideration. The report of a committee, both in its form and as to its substance, ought to correspond with the authority of the committee.[1] As a rule, draft reports should be submitted like resolutions in the house itself, and amendments proposed thereto in the ordinary mode.[2] If the business of a committee involves an inquiry of fact, it should report the facts, or the evidence; if the opinion of the committee is required it should be expressed in the form of resolutions.[3] Very frequently when a number of questions are before a committee, resolutions relative to each are proposed separately, and amendments submitted, and when a decision has been arrived at, the report is adopted and ordered to be reported to the house with the minutes of evidence and proceedings.[4] Sometimes the minutes of evidence and proceedings are simply reported to the house, without any observations or opinions on the part of the committee.[5] It must, however, always be remembered that the report submitted to the house is that of the majority of the committee. No signatures should be affixed to a report for the purpose of showing any division of opinion in the committee; nor can it be accompanied by any counter-statement or protest from the minority,[6] as such a report is as unknown to Canadian as to English practice. When the

examples of every conceivable obstacle that can be opposed to the nomination of a committee after its appointment;" May, 456. Also, conventual and monastic institutions, 1870.

[1] 60 Parl. Reg. 391, 395, 396.

[2] May, 467.

[3] 12 E. Com. J. 687.

[4] Can. Com. J. 1870, public accounts, App. No. 2, pp. 12-32; *Ib.* 1874, App. No. 9, p. 144; *Ib.* 1878, App. No. 1, p. 50.

[5] *Ib.* 1870, 4th R. of public accounts; *Ib.* 1878, 3rd R., App. No. 1.

[6] Palgrave, Chairman's Handbook, 83.

chairman signs a report it is only by way of authentication. In 1879, a report of a dissenting member was brought in and appeared in the votes, but attention having been called to the irregularity of the proceeding, this minority report was ordered not to be entered on the journals.[1] The rule with respect to such matters, however, has been more than once practically evaded by permitting a minority report to appear in the appendix to the report of the committee.[2]

It has also been customary to report the proceedings of sub-committees to the house. The practice of referring matters to a sub-committee who report thereon to the committee has largely obtained for years in the Canadian Parliament, and has frequently been found very convenient in cases demanding special inquiry and investigation, which could not be as well done by the larger body. The sub-committee, however, cannot report directly to the house, but only to the committee from which it obtains its authority, and it is for the latter to order as it may think proper with respect to the report of this sub-committee.[3] Such a report has sometimes been submitted to the house by the committee as its own report.[4] These sub-committees have undoubtedly been found exceedingly useful in the consideration of private bills. It is now a common practice of the large committees—the committee on railways, canals and telegraph lines for instance,—to refer certain bills to a few members who have special qualifications for this duty, and are better able to study and perfect the various details of the measures. In this way there is a practical approach to the small select

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[1] River Trent Navigation and Canal Works, Votes, pp. 511-12. By some error of a clerk this minority report nevertheless appears in the journals.

[2] Can. Com. J. 1874, public accounts, App. No. 9, p. 144. See debate in the legislative assembly, June 7th, 1856 (*Globe*).

[3] Can. Com. J. 1880, App. No. 2, R. on printing; Sen. J. App. No. 1.

[4] Can. Com. J. 1875, public accounts 4th R., App. No. 2, p. 27; *Ib.* 1878, printing, 7th R., App. No. 3; *Ib.* 1882, public accounts, 2nd R., App. No. 1.

committees, to which, in the English House of Commons, the different classes of private bills are always referred.[1]

If there is a division of opinion as to the report first submitted for consideration, another report may be proposed by way of amendment, and the sense of the committee taken thereon.[2] If a committee, being equally divided in opinion, finds itself unable to determine the matter referred to it, it may send the matter back for the determination of the house.[3] The report of a committee is, of course, supposed to be prepared and drawn up by the committee or some of its members, and not by any other person; but whether it is so or not is entirely immaterial, provided the report receives the sanction of the committee, and is presented by its order, and it is alone held responsible for it by the house.[4] Every report must be regularly signed by the chairman.[5] In regard to clerical form — a matter by no means unimportant— a report should be clearly and legibly written with ink and not in pencil, and without any material erasures or interlineations. If presented in a foul state, the house will order it to be re-committed or withdrawn, in order that it may be written out in a proper manner.[6]

Until a committee report, it is irregular to refer to its proceedings in debate in the house. For instance, in the session of 1873, Mr. Huntington was proceeding to refer to certain papers and letters relative to an important matter under the consideration of a select committee; but the speaker decided in accordance with English precedents

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[1] Can. Hans. (1883), 37 (Sir John Macdonald).

[2] Sen. J. (1875), 220; Can. Com. J. 1877, public accounts, App. No. 2, pp. 6-30; *Ib.* 1878, public accounts, App. No. 1, pp. 48-50.

[3] 4 Hatsell, 192, *n.*

[4] 22 E. Hans. (3), 712.

[5] Can. Com. J. (1878), App. 1 to 5. Sen. J. (1878), 271; App. No. 4, &c.

[6] 17 E. Hans. (1), 1-10. Such a difficulty has never arisen in the Canadian houses, as the clerk of the committee writes out the report legibly.

that they could not be read in the house.[1] Neither can a committee report the evidence taken before a similar committee in a previous session, except as a paper in the appendix, unless it receives authority from the house to consider it.[2] To place a committee in possession of all information necessary for inquiry, the house will order that reports and papers of a previous session be referred to the committee.[3] It is a breach of privilege to publish the proceedings of a committee before they are formally reported to the house.[4] If the evidence taken by a committee has not been reported to the house, it may be ordered to be laid before it.[5] As soon as the evidence is before the house it may be debated at length, but members will not be permitted to discuss the conduct or language of members on the committee, except so far as it appears on the record.[6]

It is not unusual for a select committee to report to the house certain papers which are necessary for the information of members on public questions. A member who wishes to obtain such information will take steps to have a motion proposed in the committee to lay the papers before the house.[7] Whenever evidence is taken before a committee it should be reported in the shape of an appendix to the report.[8] All reports of committees of the house appear in the appendices to the journals; but if it is

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[1] Can. Com. J. (1873), 349 (Pacific railway inquiry). See 159 E. Hans. (3), 814; 223 *Ib.* 789, 793, 1134; 189 *Ib.* 604.

[2] Can. Com. J. (1874), 282 (Agricultural Com.) Here the committee embodied in its report the substance of the information obtained in a previous session.

[3] 107 E. Com. J. 177; 129 *Ib.* 129, 237. Sen. J. (1878) 59.

[4] Can. Hans. (1875), 864; Sen. Deb. (1873), 61; *supra*, p. 193.

[5] 105 E. Com. J. 637, &c.

[6] Can. Hans. 1878, April 29th, debate on contracts.

[7] Can. Com. J. 1877, first and second Rep. of Public Accounts Com., App. No. 2.

[8] Reports on salt interests and depression in trade, App. Nos. 2 and 3, 1876; public accounts, App. No. 1, 1878.

wished to print them for distribution, the matter must be brought before the committee on printing, and on its report it will be so ordered.[1] Sometimes the printing committee will recommend the printing of the report alone, or of the report and part of the evidence.[2]

Though it is the practice, whenever necessary, to report the minutes of proceedings of the select committees of the House of Commons, it seems that the same usage does not obtain in the Senate. In the case of a bill respecting the Grand Trunk Railway, reported in 1883 from the committee on railways, canals and harbours, some of the members of the committee requested the chairman to submit the minutes of proceedings to the house. No such course, however, was taken, as there was no special motion made in the committee, and the chairman, on inquiry, found that it had been the practice of the sessional committees on private bills to report not their minutes of proceedings in full, but only the general results arrived at, though it was admitted a different practice prevailed with respect to divorce bills, and certain matters referred to select or special committees,[3] in which cases evidence was taken and facts brought out that it was advisable to lay before the house. The difficulty in the case in question appears to have been the absence of a motion regularly proposed and put in the committee. As clearly stated by one of the members at the time of the discussion in the Senate, if it was considered desirable on any occasion to depart from the general practice of the house, it could be done in two ways: First, by instruction to the committee from the Senate; and secondly by the action of the committee

[1] Can. Com. J. (1876), Com. on salt interests, 282, 296.

[2] Agricultural Com. (1876), 296. The report of the committee relative to Judge Loranger was omitted in the appendix of 1877 through a misapprehension of the report of the printing committee, Jour. p. 141. In the session of 1869 a report relative to Judge Lafontaine was omitted on the report of the committee; 1869, p. 272 and App. No. 5.

[3] Sen. J. (1875), 219 (Palen contract); *Ib.* (1878), 254 (Pacific R. R.)

itself.[1] The rules of the House of Lords provide for the report of minutes of proceedings.[2]

**VII. Presentation of Reports.**—When a report of a select committee is ready to be submitted to the Senate, the chairman presents it from his place, and in case of bills being amended in committee "he is to explain to the Senate the effect of each amendment."[3] It was formerly the practice for other members of the committee to stand up when the chairman presented his report;[4] but when the rules were revised in 1876 the practice was discontinued. It is usual for the chairman to move, after he has presented his report, that it be taken into consideration on a future day,[5] on the orders of which it will accordingly appear.[6] When the order is reached the report is considered, and the report may be taken up paragraph by paragraph, if it contains several recommendations, and each separately concurred in, negatived, or amended.[7]

Rule 80 of the House of Commons provides:

"Reports from standing and select committees may be made by members standing in their places, without proceeding to the bar of the house."

When the speaker has called for reports of committees, during the progress of routine business (R. 19), the chairman, or, in his absence, a member of the committee, will rise in his place and having briefly stated the nature of the report will send it to the table, where it is read by one of the assistant clerks. If it is long, the house generally dispenses with the reading, as all reports are printed

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[1] Sen. Hans. (1883), 474-82 (remarks of Senators Miller and Vidal).

[2] *Supra*, p. 440.

[3] R. 97.

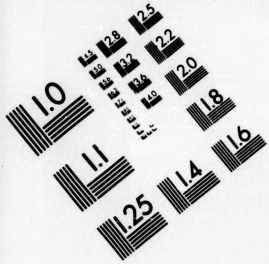
[4] No. 94 in rules of 1867-8; Deb. (1874), 140-1.

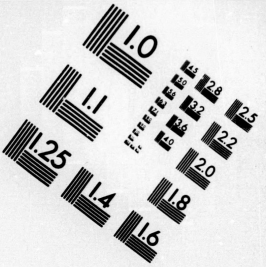
[5] Sen. J. (1867-8), 131; *Ib.* (1878), 211; *Ib.* (1882), 45; Min. of P. (1882) Feb. 23rd.

[6] Min. of P. (1867-8), 161.

[7] Sen. J. (1867-8), 93.



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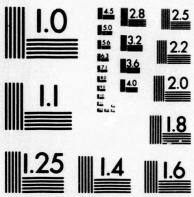


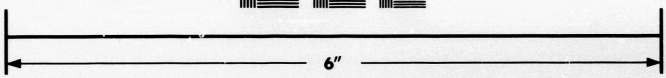


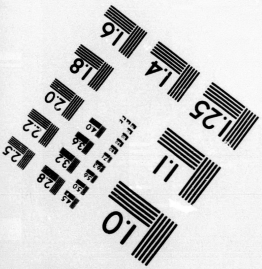


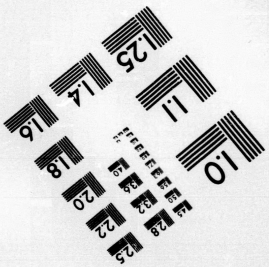


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in the votes and proceedings, or in other convenient form, for the information of members, as soon as they are laid before the house.[1] The reports should be in English and French, like all other proceedings of the two houses.[2] A member will not be permitted, in presenting a report, to make any remarks on the subject-matter; he can only properly do so on a motion in reference to the report.[3]

**VIII. Concurrence in Reports.**—It is the practice to move concurrence in the reports of committees in certain cases. For instance the reports on printing are invariably agreed to, as they contain recommendations for the printing and distribution of documents, which must be duly authorized by the house.[4] Also, reports containing certain opinions or resolutions are frequently concurred in on motion.[5] But when the report does not contain any resolution or other propositions, for the consideration of the house, it does not appear that any further proceedings with reference to it, as a report, are necessary. It remains in the possession and on the journals of the house as a basis or ground for such further proceedings, as may be proper or necessary. Every session, select committees make reports of this description, containing a statement of the facts, or of the evidence on the subject of inquiry; but as they do not contain any proposition which can be agreed to by the house, they are simply printed for the information of members.[6]

Many motions for concurrence in reports of select committees are brought up without notice and allowed to pass

[1] V. & P. 1877 and 1878. Reports on immigration and colonization.

[2] This question was raised in the Senate in 1867-8, and the speaker decided that the reports should be in the two languages; Sen. J. p. 224.

[3] Can. Hans. 1878, April 26, Public Accounts Rep.

[4] Printing R., 1878 pp. Jour. 88, 222, 255, &c.

[5] Can. Com. J. [1869], 264; *Ib.* 1877; public acc., secret service fund, pp. 256, 264.

[6] Rep. of Com. on salt interests and financial depression in 1876; public accounts, coal trade, civil service in 1877.

by unanimous consent.[1] But in all cases objection may be taken, and it is the regular course to give notice.[2] This is always consequently done when there is an objection taken by one or more members to the adoption of a report, and a debate is likely to arise on its subject-matter.[3] The reports of the committees relative to private bills are not concurred in as they are regulated by special standing orders. Sometimes, however, when one of these committees has made a special recommendation requiring the authority of the house to give it effect, the concurrence of the house will be formally asked and given.[4] It is allowable to move an amendment, to add words as a condition to a motion for concurrence in a report.[5]

A report may be referred back to a committee for further consideration,[6] or with instructions to amend the same in any respect.[7] In this way a committee may regularly reconsider and even reverse a decision it had previously arrived at. As the rules of the house govern the procedure of committees generally, a committee cannot renew a question on which its judgment has been already expressed.[8] For instance, we recognise the operation of this rule in the

[1] Can. Com. J. [1877] 59, 100, &c. *Ib.* [1878] 88, 226, &c.

[2] Can. Jour. [1880], 364.

[3] V. & P. 1869; 6 Rep. of printing com., recommending acceptance of certain tenders. Mr. Mackenzie gave notice of motion for its adoption on same day it was presented [p. 162]. Huron and Ontario ship canal [pp. 227-231]; railways, canals and telegraphs, 3 R. [161, 162], 1876. Printing C. 4 R., respecting form of Votes and P. [164, 219.]

[4] Can. Com. J. [1869]. Railways, canals, and telegraph lines, 4 Rep. 174. This report recommended a payment of money out of the contingent expenses of the house.

[5] Can. Com. J. [1880], 372.

[6] Sen. J. [1867-8], 222; Can. Com. J. [1883], 116, 236.

[7] Sen. J. [1879] 170. In 1867-8 the printing committee to whom the question of reporting the debates of the house had been referred, reported that they had decided, on a division, to defer the matter till a future meeting. It was then moved and agreed that the question be referred back with instructions to present a plan of reporting to the house. Com. J., p. 60 and App. No. 2.

[8] *Supra* p. 339.

fact that in committee on a bill a new clause or amendment will not be allowed, in contravention of a previous decision.[1] It has been ruled in the English house that when a select committee has resolved that the preamble of a private bill has not been proved, andordered the chairman to report, it is not competent for the committee to reconsider and reverse its decision, but that the bill should be re-committed for that purpose.[2] Consequently the correct procedure in all analogous cases is for the house to give the committee instructions which will enable it to consider the whole question again.

**IX. Witnesses before Select Committees.**—Many witnesses are examined in the course of every session before committees of the Senate and House of Commons. It has already been stated in the first part of this chapter that it is usual in both houses to give committees special auth rity to send for witnesses or documentary evidence.[3]

Witnesses are summoned in the Commons by an order, signed by the chairman, and they are bound to bring all the papers which the committee may require; but the committee cannot order the production of documents or the summoning of witnesses unless it has the necessary authority from the house "to send for persons, papers and records." In the Senate, as in the Lords, witnesses generally attend on a notice from the clerk of the committee. In case a witness will not attend, application must be made to the house for the necessary power to compel his attendance.[4]

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[1] 211 E. Hans. [3], 137. In 1607, June 4 [1 E. Com. J. 379], it was decided: "Every question by voice in committee bindeth, and cannot be altered by themselves, but by the house it may."

[2] May, 862-3.

[3] Sen. J. (1878), 37, 59, 62-3; Com. J. (1878), 14.

[4] The Lords do not give select committees any special authority to send for witnesses or documentary evidence, but witnesses generally attend on a notice from the clerk of the committee. In case a witness will not attend, application must be made to the house for the necessary power; May, 448.

Whenever the evidence of a senator is required before a committee of the Commons, it is usual for the chairman to move in the house that "a message be sent to the Senate requesting their Honours to give leave to ———, one of their members to attend and give evidence before the select committee," etc. The Senate will consider the message and give the required leave to the senator "if he thinks fit,"[1] If the attendance of a member of the Commons is required before a committee of the Senate, the same procedure will be followed.[2] In case the attendance of an officer of either house is required, a message will be sent; but in the message in reply the words, "if he thinks fit" are omitted.[3] The Senate has the following rule on this subject:

102. "When the attendance of a senator, or of any of the officers, clerks, or servants of the Senate is desired, to be examined by the Commons, or to appear before any committee thereof, a message is sent by the Commons to request that the Senate will give leave to such senator, officer, clerk, or servant to attend; and if the Senate doth grant leave to such senator, he may go if he think fit; but it is not optional for such officer, clerk, or servant to refuse. And without such leave, no senator, officer, clerk, or servant of the Senate shall, on any account, either go down to the House of Commons, or send his answer in writing, or appear by counsel to answer any accusation there, upon penalty of being committed to the Black Rod, or to prison, during the pleasure of the Senate."[4]

In case the evidence of a member of the Commons is required before a committee of that house, it is customary for the chairman to request him to come, and not to address or summon him in the ordinary form. Two reso-

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[1] Com. J. (1877). 142, 178, 234; Sen. J. (1877), 129, 163.

[2] 132 E. Com. J. 99, 261, &c.

[3] 103 E. Com. J. 658; 113 *Ib.* 255.

[4] Sen. Hans. (1883), 158. Attention was called on this occasion to the rule by Senator Miller.

lutions of the English house lay down the following rules on this point:

"That if any member of the house refuse, upon being sent to, to come to give evidence or information as a witness to a committee, the committee ought to acquaint the house therewith, and not summon such member to attend the committee.

"That if any information come before any committee that chargeth any member of the house, the committee ought only to direct that the house be acquainted with the matter of such information without proceeding further thereupon." [1]

If a witness should refuse to appear on receiving the order of the chairman, his conduct will be reported to the house, and an order immediately made for his attendance at the bar, or before the committee.[2] If he should still refuse to obey, "he may be ordered to be sent for in custody of the serjeant-at-arms, and the speaker be ordered to issue his warrant accordingly, or he may be declared guilty of a breach of privilege, and ordered to be taken into the custody of the serjeant."[3]

Towards the close of the session of 1878, in the Canadian House of Commons, a Mr. Sutherland, residing in Manitoba, disobeyed the order of the chairman of the committee of public accounts for his attendance. The committee thereupon unanimously reported the circumstances to the house, with the view that it should at the next session deal with the matter, if it should so deem advisable; but no further steps were ever taken in this case.[4]

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[1] 16th March, 1688; May, 474. For cases of the house ordering the attendance of its members before a committee, see 19 E. Com. J. 403; 97 *Ib.* 438, 453, 458. May says there has been no instance of a member persisting in a refusal to give evidence; but a member has been committed to the custody of the serjeant that he might be brought before a committee. 21 *Ib.* 851, 852.

[2] 91 E. Com. J. 352; 112 *Ib.* 263; 121 *Ib.* 335; 131 *Ib.* 95.

[3] May, chap. 15. 95 E. Com. J. 59; 106 *Ib.* 48, 150. Mirror of P. (1840), 720.

[4] Public accounts, 2 R., p. 218; App. No. 1, p. 100.

The practice of the Senate and House of Commons[1] with respect to entering the name of the member asking questions of a witness is in accordance with the following order of the English house, though the practice is not strictly followed in the upper house:[2]

"That to every question asked of a witness under examination in the proceedings of any select committee there be affixed in the minutes of evidence the name of the lord (or member) asking such question."[3]

When the evidence has been taken down in long or short hand, it must be read by the witness, but he is then permitted to make verbal alterations only. Should he wish to make any material corrections he must be re-examined before the committee. The alterations must be in his own handwriting, or made by another person at his own dictation.[4] The committee clerk has charge of all the evidence and papers before the committee. If it is found desirable to print the evidence before a committee, the chairman may make a motion on the subject in the house, which motion must go under rule 94 to the committee on printing.[5]

**X. Payment of Witnesses.**—By a rule common to the Senate and Commons,[6] the clerk of either house is instructed to pay every witness summoned to appear before a committee a reasonable sum for his attendance (to be determined in the Commons by the speaker), and also for travelling expenses, upon the certificate or order of the chairman of the committee; but no witness shall be so

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[1] Com. on financial depression, 1876, App. No. 3, Can. Com. J.; Com. on immigration, 1878, App. No. 2, Can. Com. J.

[2] Divorce trial, 1876, App. No. 1; Canadian Pacific R. R., App. No. 4; Fort Francis Lock Com., App. No. 5, 1878.

[3] Lords' J., 25th June, 1852; Com. S. O. xxxi.

[4] May, 465. 12 E. Hans. (1), 515; Cushing, pp. 391-2.

[5] Can. Com. J. (1877), 132, 141; Can. Hans. (1877) 685. *Supra*, p. 290

[6] Sen. R. 99; Com. R. 81.

summoned and paid unless a certificate shall have been first filed with the chairman of the committee by a member thereof (or of the Senate), stating that the evidence of such witness is, in his opinion, material and important; and no witness residing at the seat of government shall be paid for his attendance.[1] Under this rule it is the practice to pay witnesses their travelling and hotel expenses, but nothing is necessarily allowed for loss of time, even in the case of professional men. Printed forms are provided under the rule and certified by the clerk before payment is made by the accountant. No witness who comes as a witness at the solicitation of parties interested in a private bill is paid by the house. The rule only applies to those persons who are present in cases of public inquiry.

**XI. Examination of Witnesses under Oath.**—It is only within a very recent period that the House of Commons has enjoyed the right of administering oaths to witnesses. Indeed it was not until 1871 that an act was passed in the English Parliament[2] giving the same power to the Commons that had been exercised by the Lords for centuries. Prior to the confederation of the British North American provinces, the committees of neither branch of the Legislature had the power to examine witnesses on oath, several attempts to pass such a law having failed; but in the session of 1867-8 an act was passed empowering the committee on any private bill, in either house of Parliament, to examine witnesses upon oath, to be administered by the chairman or any member of the committee.[3] The same act gave the power to the Senate of administering oaths to witnesses at the bar.

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[1] The expenses of select committees, in some years, have been very large. By a return laid on the table in 1878 (Sess. P. 34), it appears the total expenses were in 1874—$6,757; and in 1877—$6,425.

[2] Imp. Stat. 34 & 35 Vict. c. 83.

[3] May, 481.

[4] Todd's private bill practice, 68-9.

[5] 31 Vict. c. 24, Dom. Stat.

In 1873 a very important committee was appointed to inquire into certain matters connected with the contemplated construction of the Canada Pacific Railway; and it was felt very desirable that all the witnesses should be examined on oath before that committee. The committee made a report representing that "in their opinion, it was advisable to introduce a bill into the house," giving the necessary authority; and this course was subsequently followed.[1] In the meantime the Commons instructed the committee to examine witnesses on oath, in view of the passage of the bill.[2] Doubts were expressed in both houses as to the competency of the Canadian Parliament to pass such a bill at that time,[3] and these doubts were verified by subsequent events.

The law officers of the Crown in England, to whom the act of 1873 was referred, reported that it was *ultra vires* of the colonial legislature "as being contrary to the express terms of section 18 of the British North America Act, 1867, and that the Canadian Parliament could not vest in themselves the power to administer oaths, that being a power which the House of Commons did not possess in 1867, when the Imperial Act was passed."[4] The act of 1873 was accordingly disallowed, and the doubts expressed by eminent Canadian authorities were fully verified.[5] In the same despatch, it was declared that the first section of the act of 1868, (chap. 24) which gave power to the Senate to examine witnesses on oath at their bar, was also beyond the

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[1] Can. Com. J. [1873], 166. Dom. Stat. 36 Vict. c. 1. Another bill on the same subject had been previously introduced by Mr. Fournier, (subsequently minister of justice,) but it was not proceeded with.

[2] Can. Com. J. [1873] 267. No witnesses were examined for the reasons given farther on in the text.

[3] Com. Deb. [1873], 88; Sen. Deb. p. 142. See Lord Dufferin's despatch to the Colonial Secretary, Can. Com. J. 1873, Oct. sess., p. 5. In this document the whole matter is explained with great clearness.

[4] Can. Com. J. 1873, Oct. sess., p. 10. See *supra*, p. 187, for s. 18 of B. N. A. Act, 1867.

[5] Despatch of Lord Kimberley, *Ib.* p. 11.

competence of the Parliament of Canada at the time it passed; "and that though that act had not been disallowed, it was void and inoperative as being repugnant to the provisions of the British North America Act, and could not be legally proceeded upon."

As regards, however, the powers given by the act of 1868 to select committees upon private bills, they appeared to the law officers to be unobjectionable, as like powers had, before the passing of the B. N. A. Act, been given to the House of Commons by 21 and 22 Vict., c. 78.

In accordance with the request of the government of Canada, made sometime[1] in 1875, the British ministry took steps to obtain the passage through Parliament of "An act to remove certain doubts with respect to the powers of the Parliament of Canada under section 18 of the British North America Act, 1867." This act provides that any act of the Canadian Parliament defining the privileges, immunities and powers of the Senate, and House of Commons, shall not confer any powers exceeding those at the passing of such act held and enjoyed by the Commons of England. The second section also provides that the act passed in 1868, (chapter 24), "shall be deemed to be valid, and to have been valid as from the date at which the royal assent was given thereto by the governor-general of the dominion of Canada."[2]

In the session of 1876 a bill was passed through the Parliament of Canada giving the necessary powers to the two houses. The first section provides:

"Whenever any witness or witnesses is or are to be examined by any committee of the Senate or House of Commons, and the Senate or House of Commons shall have resolved that it is desirable that such witness or witnesses shall be examined on oath, such witness or witnesses shall be examined upon oath, or affirmation where affirmation is allowed by law."[3]

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[1] Can. Com. J. [1876], 120; Sess. P. No. 45.

[2] "The Parliament of Canada Act, 1875"; 38-39 Vict. c. 38. See App. to this work.

[3] Dom. Stat. 39 Vict. c. 7.

The oath or affirmation is administered by the chairman or any member of the committee. Any witness giving false evidence is subject to all the pains and penalties of perjury, as fixed by the criminal law.

Since 1876, a large number of witnesses have been examined under this statute. The chairman of the committee or other member will generally move in the House of Commons or in the Senate for the requisite authority in these words: "That it is desirable (the language of the statute) that any witness to be examined by the committee should be examined on oath or affirmation, where affirmation is allowed by law."[1] In the Senate it is also the practice to ask the necessary power from the house in the order appointing the committee.[2] A joint committee also obtained the same power in 1880; and each house on that occasion passed a resolution in accordance with the report recommending an examination under oath.[3]

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[1] Can. Com. J. [1877], 118, 235, 314, 335; *Ib.* [1878], 153; Sen. J. [1880,] 79.

[2] Sen. J. (1877), 207, 216; *Ib.* (1878), 59, 63; *Ib.* (1879) 108.

[3] Sen. J. (1880), 79; Com. J. 111, 120.

# CHAPTER XVII.

*COMMITTEES OF SUPPLY AND WAYS AND MEANS.*

I. Grants of public money.—II. Mode of signifying the recommendation of the Crown.—III. Consent of the Crown explained.—IV. Committees of supply, and ways and means.—V. Procedure before going into supply. —VI. House in committee of supply.—VII. The budget speech. —VIII. Ways and means; imposition of taxes.—IX. Reports of committees of supply, and ways and means.—X. Tax bills.—XI. Appropriation or supply bill.—XII. The bill in the Senate.—XIII. The royal assent.—XIV. Address for a grant of money.—XV. Audit of appropriation accounts.

**I. Grants of Public Money.**—The practice of the House of Commons of Canada with respect to the expenditure of public money and the imposition of burthens upon the people is strictly in conformity with the practice of its English prototype. All the checks and guards which the wisdom of English parliamentarians has imposed in the course of centuries upon public expenditures now exist in their full force in the Parliament of the dominion. The cardinal principle which underlies all parliamentary rules and constitutional provisions with respect to money grants and public taxes is this—whenever burthens are imposed on the people, to give every opportunity for free and frequent discussion, so that Parliament may not, by sudden and hasty votes, incur any expenses, or be induced to approve of measures, which may entail heavy and lasting burthens upon the country. Hence it is wisely ordered that "the Crown must first come down with a recommendation whenever the government finds it necessary to incur a public expenditure, and that there

should be full consideration of the matter in committee and in the house, so that no member may be forced to come to a hasty decision, but that every one may have abundant opportunities afforded him of stating his reasons for supporting or opposing the proposed grant." [1]

In the old legislatures of Canada, previous to 1840, all applications for pecuniary assistance were addressed directly to the house of assembly, and every governor, especially Lord Sydenham,[2] has given his testimony as to the injurious effects of the system. The Union Act of 1840 placed the initiation of money votes in the Crown, and this wise practice was always strictly followed, up to 1867, when the new constitution came into force. By the 54th section of the British North America Act, 1867—which is copied from the clause in the act of 1840[3]—it is expressly declared:

"It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended by a message of the governor-general in the session in which such vote, resolution, address, or bill is proposed." [4]

The standing orders of the English Commons go still further than the foregoing provision, for they also exclude the reception of petitions for "any sum relating to public service." [5]

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[1] 3 Hatsell, 176, 182.

[2] "One of the greatest advantages of the union will be that it will be possible to introduce a new system of legislation, and, above all, a restriction upon the initiation of money votes." Scrope's Life of Lord Sydenham, p. 165. Also, remarks of Mr. Gladstone, *infra*, p. 465 *n*. Lord Durham's R., 109.

[3] See *supra*, p. 28.

[4] Can. Hans. (1878), 2157; in this case the meaning of the section was clearly explained by Mr. Speaker Anglin.

[5] S. O. 20th March, 1866; *supra*, p. 266. See also Mirror of P., 1857, June 15, p. 1888; 182 E. Hans. (3), 591–603, where present S. O. of English house are fully discussed.

The constitutional provision which regulates the procedure of the Canadian House of Commons in this respect applies not only to motions directly proposing a grant of public money, but also to those which involve such a grant. The Canadian Commons indeed observe the rule respecting such motions with very great strictness. A member who has not received the permission of the Crown has not been allowed to move the house into Committee on a resolution providing for the purchase and exportation by the government of certain depreciated silver coinage then in circulation.[1] In 1871 it was proposed to go into committee on an address to the queen for a change in the Union Act so as to assign the debt of old Canada to the Dominion entirely, and to compensate Nova Scotia and New Brunswick in connection therewith; the speaker decided that it was just as necessary to interpose the check of a message before adopting an address which may be followed by legislation imposing public burthens, as in the case of a bill or motion within the direct control of the Canadian Parliament.[2]

No cases can be found of any private member in the Canadian Commons receiving the authority of the Crown, through a minister, to propose a motion involving the expenditure of public money. No principle is better understood than the constitutional obligation that rests upon the executive government, of alone initiating measures imposing charges upon the public exchequer. On one occasion, in the English Commons, the consent of the Crown was given to certain formal resolutions proposed by a private member with reference to charges in courts of law to be defrayed out of the consolidated fund. It was thought, however, that any resolution placing a charge on the consolidated fund should be moved by a minister of the Crown, and should not proceed from the

[1] Mr. Speaker Cockburn, 26th of May, 1869. Can. Speakers' D. No. 159

[2] *Ibid.* No. 181, Can. Com. J. [1871], 50. See also *Ib.* pp. 62 and 72.

opposition; and the more regular procedure was thereupon carried out. It was distinctly affirmed, however, that the member who proposed the motion involving the charge was within his right when he had the sanction of the Crown, but it was generally admitted at the same time that it was better, as a matter of policy, that the proposition should emanate from a responsible adviser of the sovereign.[1]

Another check is imposed on the expenditure of public money by rule 88 of the Commons, which is as follows:

"If any motion be made in the house for any public aid or charge upon the people, the consideration and debate thereof may not be presently entered upon, but shall be adjourned until such further day as the house shall think fit to appoint; and then it shall be referred to a committee of the whole house, before any resolution or vote of the house do pass thereon."[2]

This is substantially the standing order of the English Commons—the only difference being that the latter is somewhat more definite since it adds the words, "or charge upon the public revenue, whether payable out of the consolidated fund or out of moneys to be provided by Parliament."[3] Another rule of the English Commons (which dates back as far as 1707) provides that "the house will not proceed upon any petition, motion, or bill for granting any money, or for releasing, or compounding any sum of money owing to the Crown, but in a committee of the whole house."[4]

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[1] Mr. Gladstone said on the occasion of the adoption of the present English S. O. in 1866: "In Canada before the present constitution was established, the proposals by private members to make grants of public money became so numerous and glaring that a remedy was necessary. The remedy was to adopt this provision—that is to say, the previous recommendation of the Crown." 182 E. Hans. (3), 578.

[2] Can. Com. J. and Hansard, 1878, April 24 (Mr. Speaker Anglin.) This rule was adopted in the Lower Canada Ass., 19th of April, 1793; Jour. p. 546. See Manitoba Res., Can. Com. J. (1882), 251, 424.

[3] S. O. 20th March, 1866; No. lxxii.

[4] S. O. 29th March, 1707; No. lxxi.

The foregoing rule of the Canadian Commons is strictly observed;[1] but it was said with obvious force on one occasion by Mr. Speaker Cockburn that "this rule, being self-imposed, may be enforced or relaxed, as the house shall determine. But the constitutional provision, contained in the 54th section of the Imperial Act of Union, is one that, being absolutely binding, should be neither extended or restrained by implication, but should at all times be most carefully considered by the house."[2]

As an illustration of the strictness with which the house observes the practice of requiring much deliberation with respect to any matter affecting the public exchequer, it may be stated that on the 15th of April, 1878, it went into committee of the whole on a resolution providing for the subscription of £15,000 sterling of first mortgage bonds of the Northern Railway of Canada at the rate of 90 per cent. in satisfaction of the sum of £13,500, being the balance remaining due to Canada.[3]

Orders in council respecting subsidies to railways, contracts and agreements between the government and companies or individuals for certain public services are frequently laid on the table for ratification in due form by the House of Commons.[4] When such orders and agreements are only made in pursuance of authority given to the government by Parliament, and are already provided for by appropriations sanctioned by Parliament, it is not necessary to go into committee on any resolution on the subject.[5] On the 21st of March, 1879, numerous contracts for the construction of portions of the Canada Pacific Railway, then a government work, were laid on the table. No special motion was made with respect to these con-

[1] Can. Com. J. (1876), 67, 83, &c. *Ib.* (1878), 271.

[2] Can. Com. J. (1871), 62, 72.

[3] *Ib.* (1878), 170, 178.

[4] *Ib.* (1875), 219, Canada Central R.R.; *Ib.* 350, Canada Pacific R.R.; *Ib.* (1878), 257-9, Moncton Gas Co.; *Ib.* 202, 273, Canada Central R.R.

[5] Can. Hans. (1880), 782. 165 E. Hans. (3), 1819-26.

tracts. The statute under which they were brought down (37 Vict., c. 14, s. 11) simply required that they should lie on the table for thirty days; if they were not moved against at the end of that time, they were considered to have received the approval of the house.[1]

In 1873, the government was authorised to enter into negotiations during the recess with some reliable company for the transfer to the same of some of the dominion railways in Nova Scotia on certain conditions subject to the approval of Parliament at the next session. This resolution was adopted without previous reference to a committee of the whole;[2] but it is to be noted that the subject had been previously considered in the same session on a motion for the house to go into committee on a similar resolution.[3] In the session of 1874, the house went into committee and adopted certain resolutions in accordance with the resolution of 1873; and a bill was subsequently introduced and passed.[4] Following the precedent of 1873, Mr. Mackenzie, when premier, proposed in the session of 1878, that the house should adopt a resolution authorising the government to enter into an arrangement with the Grand Trunk Railway during the recess for acquiring control of the River du Loup branch of that road—any such arrangement to be subject to ratification by Parliament at the next session. The propriety of the procedure was called in question. It was said in reply that as the resolution was merely "tentative," it was not necessary to go into committee of the whole. But Sir

[1] Can. Hans. (1879), 825. See *supra*, pp. 409-10, as to laying contracts and agreements before the Senate. The practice of submitting contracts for the ratification of Parliament is new in this country, and in England, where it is now regulated by standing orders. I. Todd's Parl. Govt. in England, 296, 493; 194 E. Hans. 1287-89.

[2] Can. Com. J. (1873), 430.

[3] *Ib.* (1873), 224; Parl. Deb., 28th of April. The first motion in 1873 had not been proceeded with when it was understood that the government would take the question up.

[4] Can. Com. J. [1874] 273, 299, 300.

John Macdonald, Mr. Holton, and Mr. Blake pointed out the necessity of considering with the fullest deliberation all propositions which may involve an appropriation of the public moneys. The speaker took a similar view, though he was not called upon to give any decision, as Mr. Mackenzie did not press the matter in the face of the sentiment that prevailed in the house.[1] No doubt whatever exists that it is the most convenient and correct practice to consider all such propositions in a committee of the whole, so that the house may not be surprised into a hasty decision on the subject.

A practice has grown up in the house of allowing the introduction of resolutions by private members, when they do not directly involve the expenditure of public money, but simply express an abstract opinion on a matter which may necessitate a future grant.[2] As this is a question not always understood, it may be explained that such resolutions, being framed in general terms, do not bind the house to future legislation on the subject, and are merely intended to point out to the government the importance and necessity of such expenditure.[3]

By way of illustrating the form of such resolutions, the following precedents are taken from the journals of the English Commons:

1. "That it is expedient her Majesty's Government, or Parliament, should take steps to inquire how best adequate open spaces in the vicinity of our increasing populous towns, as public works, and places of exercise and recreation, may be provided and secured, and to encourage and direct efforts by private subscriptions, voluntary rates, or public grants, to carry out such objects."

2. "That in the opinion of this house the Board of Trade, or department of the government, having the control and management of the moneys belonging to the mercantile, marine, and

[1] Can. Hans. [1878] 2002-2005.

[2] Can. Com. J., (1869), 236; *Ib.* (1874), 214; *Ib.*, (1876), 69; Can. Hans. (1877), 396.

[3] 115 E. Com. J., 246.

seamen's funds, should be empowered by Parliament to give to these sailors' homes (not in the neighbourhood of the dockyard) such pecuniary assistance as, in its judgment, and at its discretion, it may be deemed advisable."[1]

3. "That having regard to the Admiralty Act of last session, by virtue of which an entirely new jurisdiction has been conferred upon certain county courts, and to the Bankruptcy Bill, under which the district county courts will take the place and perform the functions of the district bankruptcy courts, and with a view to secure efficiency in the office of county court judge, in the opinion of this house it is expedient that the judges upon whom the new duties and responsibilities may be imposed, should receive an additional remunerationof £3,000 a year."[2]

The last of the foregoing motions shows to what extent such abstract propositions may go; but it was perfectly in accordance with parliamentary rules, since the fact of its adoption by the house would not have authorized an expenditure of public money, though it might have been considered a sufficient reason by the government for bringing down a resolution on the subject with the consent of the sovereign, and obtaining a vote of money in accordance with the prescribed forms. Referring to this right of members to move such abstract resolutions, all authorities agree that it is one "which the house exercises, and should always exercise with very great reserve, and only under peculiar and exceptional circumstances." Such resolutions are considered virtually "an evasion of the rules of the house, and are on that account objectionable, and should be discouraged as much as possible."[3] Nevertheless the English House of Commons has never agreed

[1] 118 E. Com. J., 181.

[2] 124 *Ib.*, 289.

[3] May, 655; 1 Todd's Parl. Govt. in England, 435; 170 E. Hans. (3), 677. It has been ruled in the Canadian house that it is not regular to move to go into committee of the whole on an abstract resolution. Mr. Frechette having proposed to take this course in 1878, in the case of a motion on the winter navigation of the St. Lawrence, was allowed to amend it. V. & P. Feb. 26th and March 20th, 1878; Can. Hans. p. 1290.

to the adoption of a rule to fetter its discretion in regard to the entertaining of such propositions.

It may sometimes happen that the government is willing to allow the reference of a matter which may subsequently involve a public expenditure to a select committee of the House of Commons for the purpose of eliciting all the facts in the case. A motion, framed in general terms, may be proposed, without directly asserting that any grant of money is required—in other words, one of those abstract motions to which reference has just been made.[1] Two precedents in point may be given:

"In 1876, the papers relative to a claim of Mr. Ambrose Shea, in connection with the Intercolonial Railway, were laid on the table, and subsequently, with the consent of the premier, sent to a committee which decided that he had a just claim for compensation.[2] In 1875, a petition from Alexander Yuill, with respect to certain losses alleged to have been sustained by him in connection with a decision of the dominion arbitrators, was referred, with the consent of the government, to a select committee, which reported all the facts, and expressed the hope that redress would be granted to the petitioner."[3]

In the foregoing, as in other cases, the government consented to the appointment of the committee. Just as an abstract resolution may be regularly proposed, so the report of a select committee which does not directly recommend or involve a public expenditure may be received by the house.[4]

**II. Governor-General's Recommendation.**—The recommendation of the Crown to any resolution involving a payment out of the dominion treasury must be formally given by

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[1] See 1 Todd, 437 for cases in point; 124 E. Hans. (3), 841; 174 *Ib.* 1460.

[2] Can. Com. J. (1876), 72, 73, 98, 122.

[3] Can. Com. J. (1875), 127, 226, 303. See 3 Hatsell, 243, on such cases. Also, speaker's decision (No. 189) that a claim for damages might be referred to a select committee; Jour. (1871), 254.

[4] 1 Todd, 430, *n.*; 166 E. Hans. (3), 710; Can. Hans. (1877), 396.

a privy councillor in his place at the very initiation of a proceeding, in accordance with the express terms of the 54th section of the British North America Act, 1867, and in conformity with the invariable practice of the English House of Commons.[1] The statement should be made as soon as the motion has been proposed for the house to go into committee on the resolution. The following is the entry made in the journals on such an occasion.

"Sir John A. Macdonald, a member of the queen's privy council, then acquainted the house, that his Excellency the Governor General, having been informed of the subject-matter of this motion, recommends it to the consideration of the house."[2]

The recommendation may be given by any minister of the Crown, according to English usage; but in Canada it is usually done by the premier or leader of the government in the house. The English practice, and necessarily the most convenient one, is to give the necessary recommendation through the minister directing the department in charge of the particular matter before the house.[3]

Though the recommendation of the governor-general cannot be formally given in the Senate to a motion involving money,—since such matters must originate in the Commons—yet that house has a standing order which forbids the passage of any bill which, from information received, has not received the constitutional recommendation.

47. "The Senate will not proceed upon a bill appropriating

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[1] See Can. Hans., 24th of April, 1878, when Mr. Speaker Anglin fully explained the meaning of the 54th section of the union act.

[2] Can. Com. J. (1873), 205; *Ib.* (1877), 93, 94, 164, &c; *Ib.* (1879), 51, 158, 252, 365, 366, 415. In the journals of 1873 the governor-general's recommendation is signified to a resolution relative to customs duties in the North-West, through a misapprehension of the meaning of the section which refers only to the "appropriation of a tax or impost," and not to the "imposition" of the same. See a debate in the house (Can. Hans. [1878], 2155), when a learned lawyer, now a judge of a high court in the dominion, gravely argued that the recommendation should be given under the law to the imposition of taxes.

[3] 129 E. Com. J. 14, 29, 30, 32, &c.

public money, that shall not, within the knowledge of the Senate, have been recommended by the queen's representative."

**III. Consent of the Crown explained.** — A misapprehension has sometimes arisen as to the time when the "consent" of the Crown should be given to a bill. The procedure with respect to signifying the consent is different from that in giving the recommendation of the Crown. The recommendation precedes every grant of money; the consent may be given at any stage before final passage, and is always necessary in matters involving the rights of the Crown, its patronage, its property, or its prerogatives.[1] This consent of the Crown may be given either by a special message, or by a verbal intimation from a minister—the last being the usual procedure in such cases. The intimation of the consent does not mean that the Crown "gives its approbation to the substance of the measure, but merely that the sovereign consents to remove an obstacle to the progress of the bill, so that it may be considered by both houses, and ultimately submitted for the royal assent."[2] In any case where a private member wishes to obtain the consent of the Crown, he may ask the house to agree to an address for leave to proceed thereon, before the introduction of the bill.[3] The consent should be properly given before the committal of the bill,[4] but, according to the practice of the English house, it is not generally given before the third reading.[5] A bill may be permitted to proceed to the very last stage without receiving the royal assent, but when it is not given before the motion for the final passage, it must be dropped.[6] If the introducer of a bill finds from statements of a minister that the royal assent will be withheld, he has no other alterna-

[1] May, 508; 2 Todd, 298; 243 E. Hans. (3), 211.
[2] 191 E. Hans. 1445; 192 *Ib.* 732; Established Church (Ireland) bill.
[3] Mr. Gladstone, 191 E. Hans. (3), 1898-9.
[4] Church Reform (Ireland) bill; Mirror of P., (1833), pp. 1627, 1733.
[5] Mr. Speaker Denison; Peerage of Ireland bill, 191 E. Hans. (3) 1564.
[6] Mr. Gaythorne Hardy; 191 E. Hans. (3), 1564; May, 508.

tive open to him except to withdraw the measure.[1] If the royal assent is not given at the last stage, the speaker will refuse to put the question.[2] If a bill, requiring the royal consent, should be permitted to pass all its stages through some inadvertence, attention will be called immediately to the "fact in the house, and the proceedings declared null and void."[3]

The consent of the governor-general, as representative of the Crown, is generally signified in the Canadian Commons on the motion for the second reading, though cases will be found of its having been given at other stages. The cases of most frequent occurrence in the Canadian house have been in connection with railways, on which the government has had a lien.[4] In 1871 a committee made a special report on a bill to authorize the Northern Railway to make arrangements to lease, use and work the lines of other companies, that "as the government held a lien for a large amount upon the railway, their consent should be obtained to the consideration of this bill, before any further proceedings should be held thereon;" and the necessary assent having been subsequently obtained, the measure became law in due form.[5] In the session of 1879 a bill was introduced "to provide for the payment of the defendant's costs in certain actions at the suit of the Crown." The first section provided that the several courts and judges of the different provinces, having concurrent jurisdiction

[1] 76 E. Hans. (3), 591; 191 *Ib.*, 1564, (Peerage of Ireland bill).

[2] 121 E. Com. J. 423.

[3] Rhyl improvement bill; Medina River navigation bill, 107 E. Com. J., 157. The procedure in such cases is to read the entry in the votes, and to move that the proceedings be null and void.

[4] 31 Vict., c. 19.—"An act to amend Grand Trunk R. R. arrangements act (1862), and for other purposes"—a measure involving postponement of a debt due to the Crown. Objection was taken on the third reading of the bill, and the consent then formally given; Jour. [1867-8], 61. Also, Great Western R.R. Co. bill, 1870, p. 137, 33 Vict., c. 50. Grand Trunk RR. Arrangements bill, 10th of April, 1873; 36 Vict., c. 18. April 17, 1874; 37 Vict. c. 65. Northern R.R. bill, April 11, 1877; 40 Vict. c. 57.

[5] Can. Com. J. [1871] 135, 160; 34 Vict., c. 45.

with the dominion exchequer court, "shall have power to award and tax costs in favour of and against the Crown as well as against the subject," in certain cases specified by statute. The premier having stated that he was not prepared to give the consent of the Crown to the bill, the mover was compelled to withdraw it.[1]

**IV. Committees of Supply and Ways and Means.**—With these general observations on the rules and usages which control the house in the case of grants of public money, we may now proceed to consider the practice with respect to the committees of supply and ways and means. The principal purpose of the House of Commons, in fact, is the consideration and criticism of the estimates and the taxes required to meet the public expenditures;[2] and the committees in question are the parliamentary machinery by means of which the house chiefly exercises its political and constitutional functions.

In accordance with law and usage, the governor-general, acting under the advice of his responsible advisers, sends down every session one or more messages to the Commons with the estimates of the sums required for the public service.[3] These estimates are considered in committee of supply, and include all the grants that have to be annually voted by parliament. The main estimates appear in a blue book and comprise, as far as possible, the proposed expenditures for the public service for the next fiscal year which commences on the 1st July and ends on the 30th of June following. But, in addition to these, there is generally a supplementary estimate of sums still required to meet certain expenditures which properly fall within the current year ending on the 30th of June. It is also always necessary to bring down, before the close of the session, one or more supplementary estimates for the

[1] Can. Hans. (1879), 1578-1581.
[2] 237 E. Hans. (3), 380.
[3] Can. Com. J. (1879), 77; *Ib.* (1883), 146, 299, etc.

coming year in order to provide for services which had been forgotten in the main estimates, or on which a decision had not been reached when the latter were made up.[1] All these estimates are divided into several hundred votes or resolutions, which appropriate specified sums for services specially defined. They are most carefully arranged under separate heads of expenditure, so as to give the fullest information possible upon all matters contained therein. The blue book is made up in several columns; one showing the amount, if any, voted during the previous year; another, the amount to be voted for the next year, another (where necessary), the increase or decrease of expenditure for the same service. Each resolution specifies, when necessary, every item on which there is to be a particular expenditure. For instance, under the head of a vote for harbours for a province there will be a number of distinct items for each harbour for which money is required.[2] When the resolutions are under consideration in committee, it is the duty of each minister to explain every vote that appertains to his own department, and in this way the house is able to come to a correct conclusion as to its necessity.

Besides the grants voted in the estimates there are certain payments which have not to be provided for annually, but are defrayed out of the consolidated fund[3] in conformity with various statutes.[4] These payments comprise: costs and charges incident to the collection and management of the revenue; interest of the public debt; salaries of governor-general, lieutenant-governors, judges,

[1] See Sess. P. for 1882, No. 2, for estimates for 1883 and supplementary estimates for 1881-82, &c.

[2] See *Ibid*, p. 51 of estimates.

[3] The public revenues from taxes, imposts, loans, or other sources are placed to the account of the consolidated fund, out of which all payments are made by authority of law, either in the shape of permanent grants regulated by statute or annual grants voted in supply. I. Todd, 471.

[4] B. N. A. Act, 1867, s. 102, &c. Can. Stat. 31 Vict. cc. 4, 31, 32 and 33, and other acts passed in subsequent sessions.

etc.; loans; grants to provinces under the Union Act; and all other permanent payments. Whenever it is necessary to make any changes with respect to these permanent grants, they must be introduced in the shape of resolutions in committee of the whole, and bills founded thereon.[1] The votes in committee of supply are for the service of the fiscal year, and grants intended to continue for a series of years must be passed in the way just stated. For instance, the estimates of 1879 included a vote (No. 120) for an annual subsidy towards the construction and maintenance of certain telegraph lines; and, as this was a permanent grant and not one for the service of the year, it was struck out of the estimates and submitted subsequently in a bill.[2]

The committee of ways and means regulates the mode in which the expenditures authorized by the committee of supply, are to be met. In other words, it provides the revenue or income necessary to pay the expenses of the public service. It is also in this committee that all propositions relating to the tariff and the taxation of the country must be considered.[3]

**V. Procedure on going into Supply.**—As soon as the speaker has communicated to the house the speech from the throne, the leader of the government will make the formal motion that "the speech of his Excellency the Governor-General to both houses of the Parliament of the dominion of Canada be taken into consideration," immediately, or on a future day.[4] When the speech has been duly considered and the address in answer formally agreed to, the minister of finance will make the usual motions with respect to

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[1] Bill for the readjustment of salaries and allowance of the ministers of the Crown, &c. Can. Com. J. 1873, pp. 205, 345, 396, 398.

[2] Can. Stat. 42 Vict. c. 5. Can. Hans. [1879], 1668 (Mr. Mackenzie) Jour. p. 367.

[3] May, 665; 1 Todd, 428.

[4] Can. Com. J. (1878), 14; 131 E. Com.J. 9. *Supra*, pp. 231, 234.

the committees of supply and ways and means. Previous to 1874, a number of perplexing preliminary motions were requisite;[1] but at the commencement of the session of that year a more simple procedure was adopted in accordance with that previously ordered by the English house. The answer to the speech having been agreed to, a minister of the Crown,—always the minister of finance when he is present—will propose the two following resolutions in accordance with the order of 1874,[2] "that the house will, in future, appoint the committees of supply, and of ways and means at the commencement of every session:"

1. "That this house will on —— next resolve itself into a committee to consider of the supply to be granted to her Majesty.

2. "That this house will on —— next resolve itself into a committee to consider of the ways and means for raising the supply to be granted to her Majesty."[3]

Before the house goes actually into committee of supply, the finance minister will bring down the estimates by message from the governor-general, and when the message has been read in English and French by Mr. Speaker, or by a clerk at the table, the minister will move "that the said message together with the estimates accompanying the same be referred to the committee of supply." The order of the day for the house to go into committee of supply having been read, the speaker will put the question—"That I do now leave the chair."[4] The same question is always put whenever the house is to go into committee of

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[1] Can. Com. J. (1873), 24, 56, 63, 102.

[2] *Ib.* 1874, March 31.

[3] *Ib.* (1876), 55; *Ib.* (1878), 24; 131 E. Com. J. (1876), 11.

[4] Can. Com. J. [1876], 68; *Ib.* [1878], 47; 131 E. Com. J. 39, 47, 51. The committee of supply can only be fixed by a minister of the Crown; 240 E. Hans. (3). 1663. But a member may move to substitute another day, 240 *Ib.* 1669. A member may not move an instruction to the committee, as they can only consider the estimates submitted by the Crown. Mirror of P. 1828, p. 1972. 1 Todd, 483 *n.*

supply, in order to afford an opportunity to members to propose amendments. On this point it is observed by an eminent English authority: "The ancient constitutional doctrine that the redress of grievances is to be considered before the granting of supplies, is now represented by the practice of permitting every description of amendment to be moved on the question for the speaker leaving the chair, before going into the committee of supply or ways and means. Upon other orders of the day, such amendments must be relevant; but here they are permitted to relate to every question upon which any member may desire to offer a motion."[1] The same practice is now followed very extensively in the Canadian Commons;[2] but there are certain limitations to this right. Only one amendment can be moved to the question, "that Mr. Speaker do now leave the chair."[3] If that amendment is negatived, a discussion on other questions may be raised but no other motion can be proposed.[4] If the amendment is withdrawn, however, another amendment can be at once submitted to the house.[5] When an amendment is

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[1] May, 660-61. Mirror of P., 1838, vol. 7, p. 5874; 110 E. Hans. (3) 861; 243 *Ib.* 1549; Can. Hans. [1878], 1808 (Sir J. A. Macdonald). The right to consider grievances at this stage is one of the first principles of the British constitution, 237 E. Hans. (3) 380. But the practice has been much abused in England, and the Commons have more than once considered what means can be devised for limiting discussion. The speaker and other high authorities, when examined before the committee of public business in 1878, said they would absolutely preclude the discussion of any abstract motions, and only allow motions calling into question the conduct of the administration or of some department of the government. Report of Com. July 8, 1878; pp. 4, 6, 46, 105, &c. See also an article by Mr. Raikes, "Nineteenth Century," Nov. 1879. On certain days, however, under the present practice, restraints are imposed upon amendments; May, 661.

[2] Can. Com. J. [1876], 88, 114, 129, 191, 213, 233, 237, 291.

[3] 206 E. Hans. (3), 1445. Can. Hans. [1878], 1808-11.

[4] Speaker Smith, Speaker's D., pp. 27, 45, 79; Mr. Cockburn, 2nd of May, 1873; Mr. Anglin, Feb. 29th, 1876. 170 E. Hans. (3), 690; 222 *Ib.*, 1727; 225 *Ib.* 1943.

[5] 131 E. Com. J., 103; 180 E. Hans. 369–427.

agreed to, it is perfectly regular to move to add words in addition to the same,[1] or to move any other amendment to strike it out in whole or part.[2] It is the practice in the English Commons to give notice of all motions and amendments proposed to be made at this stage; but this is not the practice in the Canadian house,[3] though notice is now often given of contemplated amendments. No doubt the uniform adoption of the English practice would enable the Commons to approach a subject with more deliberation and information than is possible when a question is suddenly sprung upon the house.

Members may discuss various questions on the motion for the speaker to leave the chair, without moving any amendments thereto—a great latitude being always allowed on such occasions;[4] but they may not refer specifically to any vote which has passed, or is about to be discussed in committee.;[5] nor to any resolution of the committee of ways and means;[6] nor to any bill or order of the day.[7] Neither will a member be permitted to debate a motion of which he has given notice. On the 10th April, 1876, Mr. Burpee was proceeding to address the house respecting the Bay Verte Canal, but he was stopped by

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[1] 129 E. Com. J., 337.

[2] 132 E. Com. J., 118.

[3] Dr. Tupper's remarks, Can. Hans. [1878], 2279. Priority is always given in the English Commons to those who have amendments on the paper. See decision of Mr. Speaker Lefevre, 110 E. Hans. (3) 861. The adjournment of the house may be moved on a motion to go into committee of supply; 240 E. Hans. (3) 1669.

[4] May, 662-3. Mr. Langevin, April, 29, 1878; Mr. McCarthy, Feb. 26, 1878; 240 E. Hans. (3) 759; Can. Hans. 1878, Feb. 22, &c.

[5] 164 E. Hans. (3) 1500; 173 *Ib.* 903; 189 *Ib.* 857; 209 *Ib.* 1327; 218 *Ib.* 1869; 222 *Ib.* 971; 253 *Ib.* 924.

[6] 174 *Ib.* 1439; here a resolution respecting fire insurances was framed so as to avoid the rule. May, 663.

[7] 142 *Ib.* 1026; 221 *Ib.* 720, 795; Can. Hans. [1882], 1435. A member may not move at this stage to discharge an order of the day; 231 E. Hans. (1), 301. It is allowable to move for an address to the queen or her representative in this country; Can. Com. J. [1869], 93, 101. *Supra*, p. 294.

Mr. Speaker, whose attention was directed to the fact that he had given notice of a motion on the same subject. This ruling is in strict accordance with the practice of the English Commons.[1] When an amendment has been moved to the question for the speaker to leave the chair, discussion should be properly confined to its subject-matter.[2] When an amendment is negatived a debate may be raised when the speaker again puts the question, on the general policy of the government, or on some other subject not embraced within the exceptions just mentioned.[3] This question arose in the session of 1876. An amendment having been negatived, it was urged by a member that no further debate could take place on the original question; but Mr. Speaker Anglin observed — "The house has not yet resolved that I leave the chair, and that question is consequently still before the house; and gentlemen who have not yet spoken are in order, and are permitted to speak on almost every question."[4] If an amendment has been carried in the affirmative, then it is the practice not to allow the committee of supply to drop—for that is not the intention in moving amendments at this stage—but to propose the question for the speaker leaving the chair a second time. It will be moved—"That the house do on ——— next, resolve itself into committee of supply."[5] Or, when it is necessary to proceed at once with the estimates, it will be resolved, "That this house do imme-

[1] 146 E. Hans. (3), 1699-1702.

[2] 235 E. Hans. (3) 602-623; 1330-1358; this reference illustrates the practice. See 240 *Ib.* 759 for the speaker's ruling, in which he clearly defines the distinction between a debate on an amendment and one on the motion for the speaker to leave the chair. Also Can. Hans. [1878], 892; 230 E. Hans. (3), 456; 232 *Ib.* 834.

[3] 239 *Ib.* 16, 22-3. Blackmore's Speaker's D., [1882], 11, 200; 215 E. Hans. (3) 994, 1739.

[4] Can. Hans. (1876), 367; See 225 E. Hans. (3), 1940-1955, for an illustration of the extent to which a debate may proceed at this stage. Also 222 E. Hans. (3) 1727; 223 *Ib.* 1932; 224 *Ib.* 652; 240 *Ib.* 759.

[5] 131 E. Com. J., 193-4; Can. Com. J. (1882), 254.

diately resolve itself into committee of supply."[1] Mr. Speaker will then again propose the question for his leaving the chair, which is generally agreed to,[2] although it is quite legitimate to propose amendments and debate various matters.[3]

In case it is found inconvenient at any time to go into committee after the motion that the speaker do leave the chair has been put and discussed, the motion may be withdrawn with the consent of the house, and the committee will then be formally fixed for another day.[4]

If the order for the house to go into committee of supply should become "a lapsed order" in consequence of "a count-out," it will be necessary to revive it by giving notice of a motion for that purpose. In 1877 the committee in the English Commons lapsed in this way, and the leader of the government subsequently gave notice of a motion to set it up in the usual words—"That this house will on ———resolve itself, etc."[5] On another occasion the house adjourned whilst a motion for the speaker to leave the chair was under consideration, and it became necessary on the next sitting day to move "That the house do immediately resolve itself, etc."[6]

**VI. In Committee of Supply.**—When the house agrees to go into committee of supply, the speaker will call a member to the chair, as is usual in the case of other committees of the whole, for there is no regularly appointed chairman of these committees in the Canadian, as in the English, House of Commons.[7] It is always usual, however,

[1] Can. Com. J. [1873], 272-3; 127 E. Com. J. 96; 129 *Ib.* 337.

[2] 122 E. Com. J. 106.

[3] 174 E. Hans. (3), 1960; 235 *Ib.* 1350-58.

[4] 123 E. Com. J. 163.

[5] 129 E. Com. J. 294, 299; 184 E. Hans. (3) 535; 131 E. Com. J. 282-3; 235 E. Hans. (3), 203; 132 E. Com. J., 202, 206.

[6] 240 E. Hans. (3), 1086. Also, 132 E. Com. J. 119, 120.

[7] The following gentlemen have acted as chairmen of late years:—Mr. Stewart Campbell, Mr. Scatcherd, (now dead), Mr. Oliver, (also dead). Mr.

to call to the chair a member who has had large experience in the house. The rules that obtain in other committees prevail also in this. Each resolution will be formally proposed from the chair, and amendments may be made thereto. Each member is provided with a printed copy of the estimates, and the chairman reads the vote at length from a written set of resolutions, each of which he signs when it has been duly adopted by the committee. As in other committees each resolution must be proposed and discussed, as a distinct question, and when it has been formally carried, no reference can again be made thereto.[1] Neither is it regular to discuss any resolution before it has been formally proposed from the chair.[2] Each vote or resolution is necessarily a question in itself to be proposed, amended and put as any motion or bill in the house. Sometimes there are a number of items in a vote or resolution, and then these may be generally discussed as forming part of a single question. Each item may then, if the committee think proper, be taken up as a distinct question, and so discussed and amended. The debate in such a case must be confined to the item, and when it has been disposed of no reference can again be made to it when the subsequent items are under consideration. When it has been proposed to omit or reduce items in a vote, the question shall be afterwards put upon the original vote, or upon the reduced vote, as the case may be, without amendment. And after a question has been proposed from the chair for a reduction of the whole vote no motion shall be made for omitting or reducing any item.[3]

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James Young, Mr. Kirkpatrick, Mr. Rykert, Mr. Colby. The mode of electing the chairman of ways and means in the English Commons was explained by Mr. Raikes before the committee on public business, 1878, p. 139. See for the latest case of the election of a chairman, who is also deputy-speaker, 276 E. Hans. (3), 1321 (Sir Arthur Otway).

[1] 175 E. Hans. (3), 1673.

[2] May, 677.

[3] Res. of Eng. Com. 9th Feb., 1858, and April 28, 1868; 113 E. Com. J. 42; 123 *Ib.* 145; 239 E. Hans. (3), 1763–1775.

It is irregular to discuss any matters in committee which are not relevant to the resolution under consideration.[1] It is also out of order to move for the adoption of a general resolution with respect to any particular vote, or for the reference of a particular vote to a select committee.[2] Sometimes, when it is not convenient to discuss a resolution it is not proposed from the chair but passed over with general consent until another occasion;[3] but if it has been regularly proposed from the chair and discussed, no motion for its postponement is regular, because there is no period to which it can be postponed.[4] But the mover of a resolution may, with the consent of the committee, withdraw and submit it again on another day, with or without alteration, and either as a distinct vote, or in separate items.[5] The committee having only partly considered a resolution may, however, rise and report that they had made progress in the matter to them referred, and ask leave to sit again.[6] Or they may report certain resolutions which they have agreed to, and progress on certain others.[7] Sometimes the house will go into committee and immediately rise and report progress without adopting a vote;[8] but in no case must the committee be allowed to drop by neglecting to move for leave to sit again. The speaker will always put the question, after report of the chairman, "When shall the committee have leave to sit again?" It is for the minister of finance, when present, or other member of the government, in his absence, to fix the time.[9]

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[1] 157 E. Hans. (3), 1851.

[2] Mirror of P., 1831, p. 1826; *Ib.* 1831-2, p. 3472. But a select committee may be moved in the house subsequently to inquire into matters connected with a particular vote; 172 E. Hans. (3), 131.

[3] Pacific R.R. votes, 1877, &c.

[4] 159 E. Hans. (3), 549; 175, *Ib.* 77.

[5] Mirror of P. 1830, p. 1498; *Ib.* 1840, p. 2867.

[6] 128 E. Com. J., 74 &c.

[7] 129 E. Com. J., 91, 133; Can. Com. J., (1876), 238, 239.

[8] 129 E. Com. J., 261, 331; Can. Com. J. (1877), 324.

[9] See *supra* p. 477 *n.*

The committee of supply cannot increase a grant which has been recommended by a message from the governor-general.[1] It is also irregular to increase any item in a resolution.[2] But any motion to reduce a grant, or to strike it out of the estimates altogether, will be always in order.[3] The advisability of increasing a grant may, as a matter of course, be discussed so as to inform the government as to the sense of the house on a question.[4] The ministry alone can move in the matter, and another message will be brought down to increase the grant.[5]

**VII. The Budget.**—It is now competent for the finance minister to move the house into a committee of ways and means, to consider resolutions respecting the tariff, without taking a preliminary vote in supply, as both these committees are now formed at the commencement of the session, and there is no necessity whatever, under modern practice, to pass a vote first in supply in order to lay a foundation, as it were, for the committee of ways and means.[6]

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[1] 148 E. Hans. (3), 392.

[2] 173 *Ib.* 1282.

[3] 131 E. Com. J. (1870), 51, 65, 249.

[4] 1 Todd Parl. Govt. in England, 437, (Annuity to the Duke of Wellington); 27 E. Hans. (3), 831.

[5] Mirror of P., 1838, vol. vii., p. 5875.

[6] It was the practice in the Canadian Commons until the session of 1883 (Jour. 1880-81, pp. 212-13) to take a preliminary vote in committee of supply and to concur in the same, before moving the house into committee of ways and means. This was a relic of the old practice that was followed previous to 1874. It is quite obvious that it was a meaningless form with reference to the tariff. Under the old practice it was necessary to pass a vote in supply in the first place (compare May, ed. of 1883, p. 657, with ed. of 1868, p. 554); but in 1874 it was agreed to go into the two committees in question without the preparatory motions so long peculiar to the English house. Consequently, there was nothing to prevent the committee of ways and means taking up the tariff at any moment it was convenient to the house. The old practice, in reality, applied only to the passage of resolutions in ways and means, authorizing payment of supply out of consolidated revenue. In England it is the practice to go from day to day into ways and means, to vote sums of money to the extent of the

It is proper to make the speech on "the budget" on the motion for the house to go into committee of ways and means since it is there that taxes are increased, repealed, or otherwise amended; but finance ministers have, at times, found it more convenient to depart from this practice. In the session of 1867-8 Sir John Rose made a financial statement on the motion for the house to go into committee of supply; and on a subsequent day he proposed to amend the tariff in committee of ways and means.[1] In 1869 he made a financial statement on the motion for the house to go into committee of ways and means.[2]

In 1870 Sir Francis Hincks made his financial statement and developed the fiscal policy of the government in committee of ways and means.[3] In 1874, Sir Richard Cartwright took the same course when he proposed to amend the tariff.[4] In 1877 he made his financial statement when

supplies granted for particular purposes, (May, 658). A similar course is followed in the Canadian house at the close of the session when supply is closed, [*infra* p. 496]. But resolutions amending the tariff have no immediate connection with resolutions of supply. Much inconvenience arose from this practice of passing a preliminary vote, and the house was even obliged more than once to take the very irregular course of adopting the report of the committee of supply on the same day the committee sat (*infra.* p. 489), in its haste to get into ways and means, and have the budget before it. It is difficult to explain why it was considered necessary to pass a vote for a small amount—almost always the estimate for the governor-general's secretary's office—before the house was moved into ways and means. It was the rule to pass a vote first in supply previous to 1874; but, when the house did go afterwards into ways and means, it did not proceed to arrange a tariff, perhaps involving millions of dollars of duties, but simply passed a resolution for a payment equal to the amount voted in supply; (Jour. 1873, p. 111). Under these circumstances the practice in question was tacitly abandoned, in part in 1882, and entirely in 1883.

[1] Parl. Deb., [1867-8], 76, 97.

[2] *Ib.* [1869], 33. It is the rule of the government to take possession of the telegraph lines as soon as the budget speech commences, and a change in the public taxation is proposed. Parl. Deb. (1874), 24.

[3] Parl. Deb. (1870), 916; Jour. p. 168.

[4] Parl. Deb. (1874), 24-8; Jour. p. 56.

the order of the day for ways and means had been read.[1] In 1878 no change in the tariff being proposed he made his statement on the motion for the house to go into committee of supply.[2] In 1879 Sir Leonard Tilley proposed a new tariff in ways and means, but in subsequent years, from 1880 to 1883, inclusive, he made his statement on the motion to go into that committee. It will be understood from these precedents that whenever changes are proposed in the tariff, the finance minister will make his statement in committee of ways and means, or, as is now more generally done, on the motion that the house go into that committee; but that when no alterations are proposed in the fiscal policy of the government, as in 1875, 1876 and 1878, the statement may be conveniently made on the motion for the house to go into committee of supply.[3] It is always usual for a discussion to follow the budget speech; and much latitude is permitted.[4]

**VIII. The Imposition of Taxes, and Ways and Means.**—It is now a fixed principle of constitutional government that all propositions for the imposition of taxes should emanate from the ministry or should at least receive its indirect sanction.[5] In the session of 1871 Mr. Speaker Cockburn[6] recommended to the house the adoption of the British practice in this particular, and the Commons have ever since acquiesced in its wisdom. As a consequence, no

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[1] Can. Hans. (1877), 123.

[2] *Ib.* (1878), 427.

[3] The practice in the English house with respect to the budget is also variable, May, 667. In 1875, 1876, 1877 and 1878 the chancellor of the exchequer made his speech in committee of ways and means—changes in duties being proposed in all these cases—and this appears to be the more convenient practice, as it gives more latitude for discussion.

[4] In 1878 Sir R. Cartwright (finance minister) spoke again after Sir C. Tupper, though strictly he had not the right, as he had moved only an order of the day. Can. Hans, Feb. 22, 1878.

[5] 182 E. Hans. (3), 592; May, 674; 1 Todd, 444.

[6] Can. Com. J. [1871], 112-113.

private member is now permitted to propose a dominion tax upon the people; it must proceed from a minister of the Crown, or be in some other form declared to be necessary for the public service. A motion or a bill of such a character should properly be introduced by a minister of the Crown. The following precedents will show the strictness with which the house now adheres to this practice:

"In 1872 a member was not allowed to move the house into committee of the whole to consider certain resolutions imposing a duty on barley, oats, Indian corn and coal.[1] A report from a select committee was not received in 1874 because it recommended the adoption of a new tariff for British Columbia; it was withdrawn and subsequently brought up in another form. A motion on a later day to concur in the report was not allowed on the ground that it asked for the enactment of a special tariff, which could only be done by the government and in a committee of the whole house."[2]

If the government approve of any plan of taxation suggested by a private member it is the constitutional course for them to propose it themselves in the committee of ways and means. This was done in the English house some years ago in the case of a resolution to extend the probate duty upon property above the value of one million.[3] If the government object that a motion imposing a tax is not required by the exigencies of the public service, the member offering it should at once withdraw it.[4]

But all the authorities go to show that, when the government have formally submitted to the house the question for the revision of customs and excise duties, it is competent for a member "to propose in committee to substitute

[1] Speak. D., No. 192, 3rd of May, 1872. See also, No. 162, 14th of June, 1869, for a similar ruling.

[2] Can. Com. J. [1874], 141, 216.

[3] 155 E. Hans. (3), 991; 114 E. Com. J. 348; 1 Todd, 452.

[4] 73 E. Hans. (3), 1052-56. In this case, it was proposed to go into committee of the whole, which was manifestly irregular, as was pointed out at the time.

another tax of equivalent amount for that proposed by ministers, the necessity of new taxation to a given extent being declared on behalf of the Crown."[1] It is also competent for any member to propose another scheme of taxation for the same purpose as a substitute for the government plan.[2] But it is not regular to propose a new and distinct tax, which is not a mere increase[3] or diminution of a duty upon an article already recommended by government for taxation.[4] But any proposition for the repeal of a duty is always in order, and many cases will be found where a proposed duty has been struck out in committee.[5]

Though there is no rule to prevent private members moving abstract resolutions proposing changes in the scheme or distribution of taxation, or the imposition of new duties or the reduction of duties, "yet they have been uniformly resisted by the government in the English House of Commons as inexpedient and impolitic."[6] All proposals for the imposition of taxes belong peculiarly to the Crown, and custom, as well as sound policy, has long ago devolved upon ministers the duty of submitting such questions to the consideration of Parliament.[7] But nevertheless numerous instances will be found in Canadian, as well as English, practice, of committees having been appointed to consider questions of taxation, notwith-

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[1] May, 675 ; 108 E. Com. J. 187 ; 123 E. Hans. (3), 1248 ; also, 1 Todd, 451.

[2] Mirror of P. [1836], 1963-4 ; *Ib.* [1840], 3042, vol. 18 ; 75 E. Hans. (3), 920.

[3] 63 E. Hans. (3), 629, 708, 750, 753, 1364.

[4] For instance, a member could not extend licenses to other manufacturers besides brewers who alone were to take them out according to the government plan ; May, 675. Also, 77 E. Hans. (3), 637, 751 ; 75 *Ib.* (3), 915.

[5] 128 E. Hans. (3), 1129 ; 166 *Ib.* 1574, &c.

[6] 1 Todd, 445 ; 88 E. Com. J. 336 ; 94 *Ib.* 510 ; 102 *Ib.* 580 ; 103 *Ib.* 886 ; 229 E. Hans. (3), 778.

[7] Sir R. Peel, Mirror of P., 1830, vol. 7, p. 1032 ; also, March 26th, 1833 ; August 7, 1848 ; May 10th, 1849 ; May 10th, 1864. Also, 73 E. Hans. (3), 1052-56.

standing the opposition of the government.[1] The whole question came up in 1877 in the Canadian house, and Mr. Speaker Anglin decided, in accordance with English precedents, that it is open to a committee to whom a question of taxation is referred, "to express an abstract opinion as to the expediency or inexpediency of imposing a duty."[2]

The proceedings in ways and means are the same as in committee of supply or other committees of the whole. Changes in the tariff are proposed in the form of resolutions, each of which must be formally adopted by the committee, and reported to the house.[3] Any motion or resolution moved in committee must be relevant to the subject-matter referred to it.[4] An amendment, of which notice has been given, on going into committee of supply, cannot be moved on the question for going into ways and means.[5]

**IX. Reports of Committees of Supply and Ways and Means.**— The English House of Commons rigidly observes the rule which requires that "the resolutions of the committees of supply and ways and means shall be reported on a day appointed by the house, but not on the same day as that on which they are agreed to by the committee."[6] This practice is in accordance with the principle of giving every opportunity to the house to consider deliberately all measures relating to the expenditure or the taxation of the country. So strictly is this practice carried out in England that when a resolution of this character has been

[1] See 1 Todd, 444-451 for numerous cases in point.

[2] Committee on a petition to impose a coal duty ; Can. Hans. [1877], 380-398; Jour. pp. 91, 111. Also, British Columbia tariff, Can. Hans. [1877], 532 ; journals, March 7th. Petroleum duty, Can. Com. J. [1876], 233 ; *Ib.* [1877], 25; *Ib.* [1878], 215 (coal duty).

[3] 239 E. Hans. (3), 556, 605. Can. Com. J. [1883], 207, 216, 228.

[4] 156 *Ib.* 1473-4.

[5] 261 *Ib.* 474-6.

[6] May, 681 ; 129 E. Com. J. 107 ; 137 E. Hans. (3), 1639 ; Can. Com. J. [1877], 51, &c. ; *Ib.* [1883], 220.

received on the same day on which it was considered in committee, without any "urgency" having been shown, the house has ordered that this very irregular proceeding (as well as all the proceedings consequent thereon) be declared null and void, and the resolution in question reported on a future day.[1] In the Canadian house, however, at the close of the session, this wise rule is not always observed.[2]

The resolutions from committees of supply and ways and means are read a first and second time, and agreed to, after the order of the day for reporting the same has been read at the table. The practice of the Canadian Commons with reference to amendment and debate, at this stage, was variable up to the session of 1877, when it was decided to adopt the English practice. The procedure on the report of such resolutions is now as follows: The order of the day having been called and read, the speaker proposes the question—Shall these resolutions be read a first time? This is a purely formal motion, and is never discussed or amended. The speaker then proposes the next question—Shall these resolutions be read a second time?[3] The procedure at this stage with respect to amendment and debate, has been explained on more than one occasion by speakers of the English Commons. "When the question is put," said Mr. Speaker Denison, "it is open to any hon. member to make any general observations he may think necessary,"[4] but they should be "relevant to the subject-

[1] 158 E. Hans. (3), 1167, 1208. Here Lord Palmerston showed the wisdom of the rule. Only in cases of great urgency will this rule be departed from. Since the revolution, only one instance has occurred in England; and that was, in 1797, on the occasion of the mutiny at the Nore. 52 E. Com. J. 552, 605.

[2] Can. Com. J. (1882), 500-505. See *infra*, p. 497.

[3] Can. Com. J., [1878] 249, &c., (supply); *Ib.*, [1879], 193, (ways and means). In 1877 the question for the second reading was not regularly put, and an entry was made in the journals to guard against such irregularities in the future. Can. Hans. 1171; Jour. 97, 174, 224, 336.

[4] 174 E. Hans. (3), 1550-52.

matter."[1] With respect to amendment, Mr. Speaker Brand said on a subsequent occasion: "The established rule of debate is that the observations of hon. members should be relevant to the question put from the chair. There is one exception to that rule, and that is, when a motion is made that this house resolve itself into committee of supply; upon that occasion irrelevance of debate—that is, debate not relevant to the subject-matter proposed to be discussed in committee—is allowed; but I am not aware of irrelevant matter, generally speaking, being allowed upon any other occasion. No doubt considerable latitude of discussion has been allowed occasionally on the report of supply; but I know of no instance where an irrelevant amendment has been allowed on the motion that resolutions adopted in committee of supply be read a second time."[2] If the house agree to read the resolutions a second time the clerk in the Canadian house will proceed to read each separately. The speaker puts the question for concurrence in each resolution, and both amendments and debate must be relevant to the same in accordance with English practice.[3] For instance, on the question for agreeing to a resolution providing a sum of money for printing, in connection with the Queen's Colleges (Ireland), Mr. Parnell was proceeding to discuss the general subject, when he was interrupted by Mr. Speaker Brand and reminded that "on the question of a vote for stationery, it was not competent for him to enter into a general discussion on the subject of those colleges."[4]

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[1] 162 E. Hans (3), 622; 206 *Ib.*, 1367-8.

[2] 243 *Ib.* 1549.

[3] 174 *Ib.*, 1551.

[4] 240 *Ib.* 348. Also 231 *Ib.*, 749. For precedents of amendments and debate on reports of resolutions in English Commons, see 129 E. Com. J. 264 (supply); 115. E. Hans. (3), 1135, (ways and means); Mirror of Parl. vol. xiv., p. 4722 (supply); 144 E. Hans. (3), 2151 (supply). In the last case mentioned, Mr. Gladstone moved, on the second reading of resolutions for supply, (navy estimates), an amendment looking to the reduction of the public expenditures.

Resolutions reported from committees of supply or ways and means are frequently postponed after they have been read a second time.[1] Or, on the reading of the order for the reception of the report, it may be referred back to committee for the purpose of making certain amendments.[2] Or the resolutions, as in 1879—when the whole tariff was revised—may be all sent back to committee after the second reading.[3] Any resolution may be withdrawn on the second reading.[4]

Any resolution from supply may be reduced after report without going back into committee,[5] though it is sometimes convenient to do so for that purpose.[6] When resolutions are reported, members are restricted to one speech on each question.[7]

It is not allowable at this stage — more than at any other—to increase or alter the destination of a grant of money, recommended by the governor-general.[8] But it is always in order to propose an amendment stating the conditions under which the house makes a grant of money.[9]

It is also quite regular at this stage to move an amendment to an amendment to a resolution.[10]

In case it is proposed to increase a grant, it can only be done with the recommendation of the Crown, and in

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[1] Can. Com. J., [1874], 170; *Ib.*, [1877], 297; 119 E. Com. J. 324; 129 *Ib.* 197; 131 *Ib.* 60; 132 *Ib.* 360.

[2] Can. Com. J., (1874), 144. 113 E. Com. J. 211.

[3] Can. Com. J., [1879], 201.

[4] *Ib.* (1867-8), 94; *Ib.* (1879), 411. In the English house it is usual "to disagree" with a resolution not to be proceeded with; 129 E. Com. J., 100.

[5] 129 E. Com. J., 164; Can. Com. J., (1873), 374; *Ib.* (1878), 24.

[6] Can. Com. J., [1873], 356, 372; *Ib.* (1878), 249.

[7] Unless, as is sometimes done, it is agreed to allow the same latitude as in committee, for the convenience of the house. Can. Hans. 1878, May 2.

[8] Mennonite grant; Can. Com. J. (1875), 140. Can. Sp. D., No. 160, 10th of June, 1869; No. 176, 6th of May, 1870. 148 E. Hans. (3), 392; 170 *Ib.* 1884.

[9] Mennonite loan, 1875; Can. Pacific R. R., 1876; 78 E. Com. J. 443.

[10] Can. Com. J. (1875), 141; *Ib.* (1877), 105.

committee of supply.[1] The resolution is recommitted and the committee will report that a further sum has been voted in addition to that previously granted. But unless the government signify the recommendation of the governor-general, the committee cannot increase a grant.[2] In the session of 1883, when a report of the committee of supply was under consideration, it was pointed out that a resolution of $8,000 for the purchase of certain property required for government purposes did not represent the actual expense that would be incurred, but that the vote should be for $11,000. It was suggested that the premier give the recommendation of the Crown and increase the vote before the adoption of this particular item of the report. On consideration, however, it was seen that such a proceeding at that stage was irregular, and the leader of the government stated he would bring down a supplementary vote for $3,000.[3]

A precedent from English practice will show what is the correct proceeding when it is necessary to increase a grant after report. In 1858, a vote of £15,118 for the general register house at Edinburgh was reduced by £1,000 in committee of supply. The sense of the house, however, on further consideration of the matter, being opposed to the reduction, it was agreed on the report of the committee to recommit the reduced vote. Subsequently the vote was formally increased by the addition of £1,000, and reported to the house.[4] Here, it will be seen that the grant was not increased beyond the sum originally recommended by the Crown. In the case which occurred in the Canadian Commons, the committee could not have increased the vote, had it been recommitted, until a message was received authorizing the additional

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[1] 3 Hatsell, 179.

[2] Can. Sp. Dec., No. 199 ; 11th June, 1872.

[3] Author's notes. Can. Hans. (1883), 1316-17.

[4] 113 Com. J. 211, 314, 320 ; 150 E. Hans. (3), 1502, 1585.

sum required.[1] The most regular and convenient procedure under all the circumstances was that finally proposed by the premier.

On the same principle any increase in the imposts should be made in committee of ways and means.[2] But it must be remembered that it is always regular to propose an amendment on the report from the committee either for the repeal or reduction of proposed duties, even when those duties are actually reduced below what they had been previously.[3] Neither is it necessary to go back into committee to strike off certain articles from the free list, provided the duty is left as payable under the existing law.[4]

But every new duty must be voted in committee: "So strictly is the rule enforced which requires every new duty to be voted in committee, that even where the object of a bill is to reduce duties, and the aggregate amount of duties will, in fact, be reduced, yet if any new duty, however small, be imposed, or any existing duty be increased in the proposed scale of duties, such new or increased duty must be voted in committee either before or after the introduction of the bill."[5]

It is the ordinary practice in the Canadian house to propose to go back into committee when an amendment is moved, after report, for the reduction or repeal of duties.[6] In fact, it is considered the more convenient course to consider all changes in the tariff in committee of ways and means.[7]

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[1] *Supra*, p. 484.

[2] *Supra*, p. 488, 155 E. Hans. (3), 991; 3 Hatsell, 167; 124 E. Com. J. 203.

[3] May, 685-7; 101 E. Com. J. 323, 335, 349. In 1880 the house went back into committee (Jour. p. 212) to add certain goods to the free list—an altogether superfluous proceeding, arising from a misconception of the functions and meaning of a committee of the whole.

[4] Can. Com. J. (1882), 469, 470; item 3, books, charts, &c. See May, 685.

[5] May, 687; 109 E. Com. J. 330.

[6] Can. Com. J. (1867-8), 92; *Ib.* (1874), 241, &c.

[7] Can. Com. J. (1874), 144.

When there are a large number of items in a resolution reported from committee of ways and means—as was particularly the case in the tariff of 1879—it is most convenient to take up each item separately and discuss it as a distinct question, to be agreed to, amended, or negatived.[1] When the debate on a resolution cannot be terminated at a sitting, it is necessary to postpone the consideration of the remaining items before the adjournment of the house is moved.[2]

It is the practice in the Canadian House of Commons to give operation immediately to the resolutions embodying customs and excise changes, by agreeing to a resolution to that effect in committee of the whole.[3] Accordingly the new taxes are to be collected from the date mentioned in the resolution ; but in case the tariff is changed or fails to become law, then the duties " levied by anticipation " must be repaid to the parties from whom they had been collected.[4]

**X. Tax Bills.**—When the resolutions amending the tariff, or imposing any charges upon the people, have been agreed to by the house, they are embodied in one or more bills which should pass through the same stages as other bills.[5] Resolutions against the principle of such bills may be proposed at the different stages.[6] It is also regular to move amendments in the committee on the bill, for the repeal or reduction or modification of any charge or duty

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[1] Can. Com. J., (1879), 260-7 ; 271-6, &c.

[2] *Ib.* (1879), 276.

[3] Can. Com. J. (1874), 59, 146 ; *Ib.* (1879), 108. Sometimes certain alterations are deferred until a later date, and, if so, the resolution must expressly state it ; *Ib.* [1883], 236. In the English house the executive government, on their own responsibility, give immediate effect to the resolutions as soon as they are reported and agreed to by the house. I. Todd, 413.

[4] 1 Todd, 513-4 ; 99 E. Hans. (3), 1316 ; 156 *Ib.* 1274 ; 160 *Ib.* 1827.

[5] Can. Com. J. (1867-8) 93-94, 266 ; *Ib.* (1877), 226, &c.

[6] *Ib.* (1870), 298, 299.

upon the people.[1] When such amendments are necessary, after the bill has come up from committee, it is always proposed to go back into committee to make the contemplated changes.[2] But, it must be always borne in mind that any duty or increase of duty, must be previously voted in committee of ways and means, and then referred with instructions to the committee on the bill.[3] As the resolutions on which the bill is based are always discussed at great length, the members opposed to its policy are seldom disposed to raise further debate during its passage, though they may think proper at times to express dissent and even divide the house on the question.[4]

The committee of the whole is frequently dispensed with in the case of customs or tariff bills when they have been exhaustively discussed on the resolution,[5] and it is not necessary to make any alteration in the bills themselves. In the sessions of 1882 and 1883 the bill was committed, as it was necessary to make some immaterial amendments.[6]

**XI. The Appropriation or Supply Bill.**—When all the estimates have passed through committee of supply,[7] the finance minister will move to go again into committee of ways and means for the purpose of considering the usual formal resolutions for granting certain sums out of the consolidated revenue fund of Canada "towards making good the supply granted to her Majesty."[8] These resolu-

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[1] May, 687-8 ; 108 E. Com. J. 640 (committee on customs' acts).

[2] Can. Com. J. [1867-8], 403, 415 ; *Ib.* [1874], 241.

[3] *Supra*, p. 494, 155 E. Hans. 991 ; 132 E. Com. J. 112 ; 137 *Ib.* 365-6, &c.

[4] Can. Com. J. (1874), 241. Can. Hans. (1879), 1806.

[5] Can. Com. J. (1880-1), 367.

[6] *Ib.* (1882), 492 ; *Ib.* (1883), 408.

[7] But the practice is never to allow the committees of supply and ways and means to lapse but to keep them alive to the very last moment of the session. Can. Com. J. (1877), 341, 352 ; *Ib.* (1879), 384, 431.

[8] Can. Com. J. (1879), 431. By some inadvertency, the supply resolutions were in 1877 (p. 352) referred to committee of ways and means ; as the

tions must be reported and agreed to formally by the house before the bill founded thereon can be introduced.

When the resolutions in question have been agreed to by the Commons, the finance minister is able to present the appropriation or supply bill, which gives in detail all the grants made by Parliament. The preamble differs from that of other bills, inasmuch as it is in the form of an address to the sovereign—a subject which is more conveniently treated in the first section of the following chapter on bills.

It is enacted in the supply bill that a detailed account of the sums expended under the authority of the act shall be laid before the House of Commons during the first fifteen days of the following session of Parliament. In the last section of this chapter will be found a brief review of the law regulating the mode of auditing the appropriations under the act.[1]

The Canadian House of Commons frequently allows the supply bill to pass two or more stages on the same day. In 1867-8, it was passed with intervals of one or more days between each stage, and was amended in committee of the whole. In 1869 and 1870 it passed several stages on the same day, and was never committed. In 1871, it passed its second and third readings on different days, but was never considered in committee of the whole. In 1877 and 1882, the resolutions from ways and means were at once agreed to, and the bill passed through all its stages at one sitting.[2] In 1878[3] and 1879,[4] it passed all its stages on the same day. This practice is

house goes into that committee to provide the means to meet the sums already declared necessary for the public service the reference was not only unnecessary, but without precedent.

[1] Can. Com. J., (1883), 434; 46 Vict. c. 2. "An act for granting to her Majesty certain sums of money required for defraying certain expenses of the public service for the financial year," &c.

[2] *Ib.* [1877], 352, 353; *Ib.* [1882], 505.

[3] *Ib.* (1878), 296.

[4] *Ib.* (1879), 433.

entirely at variance with the wise principle—a principle only to be relaxed in cases of grave public necessity—which requires the resolutions to be reported, and the different stages of the bill to be taken on different days.[1] No instance can be found in the English journals of two stages of a money bill being taken at the same sitting.[2] Only two instances have occurred since 1867 in the Canadian house of an objection having been formally taken to immediate concurrence in the resolutions on which the supply bill is founded. One happened in 1877, and both speaker and house acquiesced in the force of the objection, as the motion for receiving the report of the committee was not pressed. Subsequently, however, during the same sitting, the member who had interposed withdrew his objection, and it was agreed *nem. con.* to allow the resolutions to be reported and the bill to be introduced and passed forthwith.[3] Again, in 1879, Mr. Holton objected to concurrence in the report, and it was accordingly held over until next day.[4]

It is now becoming unusual in the Commons to raise a debate or propose amendments at different stages of a supply bill, though it is perfectly regular to take that course. Many illustrations will be found in the English as well as in the Canadian Parliament of the length to which a debate may proceed on a bill of this character. It has been ruled frequently in the English Commons that amendments on the different stages of the appropriation bill are governed by the same rule as is applicable to other

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[1] 131 E. Com. J. 62, 65, 67, 74, 76, 79, &c; 239 E. Hans. (3), 1419.

[2] Mr. Speaker Brand, 239 E. Hans. (3), 1419.

[3] Author's notes. No mention of the fact, strange to say, is made in the Canadian Hansard.

[4] Can. Hans. (1879), 2001-3. The haste with which motions, involving public expenditures are constantly passed through the Canadian house of Commons, particularly at the end of the session, has been frequently deprecated by prominent members. Mr. Holton, 6th of May, 1879, p. 1799 Hansard.

bills. For instance, when a member was attempting to speak of the constitution of the country, he was at once interrupted by the speaker.[1]

An amendment must be applicable to the bill or some part of it, and discussion thereon should not be allowed the same latitude as on the motion for going into committees of supply and ways and means.[2] This rule, however, does not "preclude a member from bringing a question of foreign or domestic policy before the house upon any stage of the bill, if it be a question that arises out of any of the votes thereby appropriated."[3] Much latitude, however, has always been allowed in the Canadian Parliament. In the sessions of 1868 and 1869 members of the opposition reviewed the events of the session at considerable length and a debate followed on the motion for the third reading of the bill. In 1870 Mr. Mackenzie, then leading the opposition, refrained from making any remarks during the passage of the bill on account of the illness of the premier Sir John Macdonald.[4] Since then the old practice of raising discussions on the bill has only been followed at rare intervals. In 1879, a discussion of several hours took place on the Letellier affair, which had been referred to England.[5]

In a previous part of this work,[6] reference has been made to a practice, which cannot be justified, of tacking to a bill of supply certain enactments to which the members of the upper house might have strong objection, but which they would feel compelled to pass rather than take upon themselves the responsibility of rejecting a money bill,

[1] 231 E. Hans. (3), 1162.

[2] 211 E. Hans. (3), 1555; 231 *Ib.* 1118, 1158-62; 265 *Ib.* 735-6. Can. Sp. D., No. 77.

[3] 1 Todd, 529; 143 E. Hans. (3), 643; 176 *Ib.* 1859; 256 *Ib.* 967, 1232.

[4] Can. Parl. Deb. May 11, 1870. Amendments were proposed at different stages; pp. 1568-9.

[5] Can. Hans. (1879), 2011–2035.

[6] Chapter xiv., s. 6

and causing thereby grave inconvenience if not positive injury to the public service. No attempt has ever been made since the establishment of responsible government in Canada to renew a practice which was more than once attempted during the conflict between the assemblies and legislative councils. When recently it was proposed to move in the English Commons to instruct the committee on the appropriation bill to add to that bill a provision altogether foreign to its subject-matter, Mr. Speaker Brand said:

"If such an instruction were moved, I should not consider it my duty to decline to put it from the chair; but I am bound to say that such a motion would be in the nature of a tack to a money bill. I can say positively that no such proceeding has taken place in this house for a period of one hundred and fifty years. The House of Lords has always respected the rights and privileges of this house, and has abstained from amending money bills. So in like manner, has this house abstained from sending up money bills containing anything in the nature of a tack to a money bill."[1]

**XII. Supply Bill in the Senate.**—The supply bill is sent up immediately after its passage in the Commons to the upper house, where it receives its first reading at once. The bill is generally passed through its several stages on the same day, and is never considered in committee of the whole.[2] It is usual, however, sometimes to discuss the various questions arising out of the bill at considerable length.[3]

The House of Commons alone has the right to initiate measures for the imposition of taxes and the expenditure of public money. The 53rd section of the British North

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[1] 256 E. Hans. (3) 1058-9, 1209-10.

[2] Sen. J. (1878), 293; *Ib.* (1879), 293, *Ib.* (1883), 292 (all its stages on same day). In the Lords more time is given for consideration of the bill, and the question is always put whether the bill shall be committed, and resolved in the negative. Lords J. (1877), 401, 405.

[3] Sen. Deb. (1874), 359; *Ib.* (1875), 750; *Ib.* (1877), 487; *Ib.* (1878), 983.

America Act, 1867, enacts that "bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons."[1]

In the speech with which the governor-general opens and closes every session of Parliament, he recognizes the constitutional privileges of the House of Commons with respect to the estimates and supply; for he addresses its members only with respect to those matters.[2]

The supply bill can only be presented for the assent of the sovereign by the speaker of the House of Commons, and it will be seen by reference to another page that the address which he makes on such an occasion, like the preamble of the English appropriation act, is an emphatic assertion of the sole right of the Commons to vote the money, and that the governor-general, in her Majesty's name, gives, in the form of his answer, a recognition of this claim.[3]

The Canadian Commons have resolved, and placed the resolution among their standing orders, that "all aids and supplies granted to her Majesty by the Parliament of Canada are the sole gift of the House of Commons"—a resolution taken from that passed by their English prototype more than two centuries ago.[4]

The constitutional privileges of the Commons in this particular are now tacitly acknowledged by the Senate never attempting to amend the supply bill. If any alteration is now made in a money or taxation bill in the House of Lords, it is only of a verbal and unimportant character; but even such an alteration is of very unusual occurrence, and so jealous are the Commons of even an appearance of an infringement of their privileges, that they will make a special entry of their reasons for accept-

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[1] The same section is found in the Union Act, 1840.

[2] Sen. J. (1879), 298; 132 E. Com. J., 441.

[3] *Infra*, s. xiii.

[4] Chapter xviii., s. ii.

ing such amendments.[1] The supply bill when it comes back from the Senate bears the endorsement common to other bills "Passed by the Senate without amendment;"[2] and the propriety of such an endorsation has even been questioned in the Commons; but it is always considered a matter of form and is not noticed in the Commons' journals.

Though the upper house may not amend a supply bill, yet all the authorities go to show that theoretically it has the constitutional right to reject it in its entirety; but such a right will never be exercised by a legislative body, not immediately responsible to the people, except under circumstances of grave public necessity.[3] Either the direct or indirect concurrence of the upper house in every grant of money is constitutionally requisite.[4] When the Crown sends down a special message to the Commons asking that provision be made for some matter not included in the estimates, it is usual to forward a similar message to the Senate.[5] It is "a well understood principle that the consent of the Lords is indispensable to every legislative measure, whether of supply or otherwise," and it is desirable that they should have a full opportunity given them of considering the policy of all public expenditure and taxation, after it has been initiated and passed in the Commons.[6]

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[1] 112 E. Com. J. 393; 122 *Ib.* 426. See chapter on public bills.

[2] Sen. J., [1879], 293.

[3] Blackstone's C., 169. DeLolme, book 1, c. 4. Cox on British Institutions, pp. 188-9; 1 Todd, 459; see *supra*, p. 407, for a recent case of a supply bill rejected by the legislative council of the province of Quebec.

[4] See despatch of Earl of Bathurst, Aug. 31, 1817. Low. Can. Ass. Jour. II. Garneau, 334.

[5] Sen. J. (1867-8),212, 214; Can. Com. J. 187, 201; relief to the family of T. D'Arcy McGee, foully assassinated during the session of Parliament. Grant to Sir Garnet Wolseley, 1874, 218 E. Hans. (3), 622, 709.

[6] 1 Todd, 433-4. In 1879 resolutions setting forth the policy of the dominion government with respect to the Canada Pacific R.R. were introduced and passed in both houses. Sen. J. (1879), 276; Com. J. 418.

**XIII. Royal Assent to the Bill.**—The supply bill is always returned to the House of Commons,[1] and is taken up to the Senate chamber by the speaker, when his Excellency the Governor-General has summoned the Commons for the purpose of proroguing Parliament. When all the bills passed by both houses have been formally assented to, or reserved for the signification of her Majesty's pleasure thereon, Mr. Speaker will present the supply bill with the usual speech.

"May it please your Excellency: The Commons of Canada have voted the supplies required to enable the government to defray the expenses of the public service. In the name of the Commons, I present to your Excellency a bill intituled," etc.[2]

The clerk of the Senate will then proceed to the bar, and receive from the speaker the supply bill, with which he will return to the table; and the clerk of the crown in chancery will then read the title of the bill in the two languages. This done, the clerk of the Senate signifies the royal assent in the following words:

"In her Majesty's name his Excellency the Governor-General thanks her loyal subjects, accepts their benevolence, and assents to this bill."[3]

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[1] It is privately returned to the clerk, who hands it to the speaker. See 3 Hatsell, 161-2.

[2] In accordance with an old usage of the English Parliament (3 Hatsell, 163) the speakers of the legislative assemblies of Canada were accustomed, before presenting the supply bill, to deliver an address directing the attention of the governor-general to the most important measures that had been passed during the session. Leg. Ass. J. [1865], 386; *Ib.* [1866], 276. On the 22nd of June, 1854, when the legislature was suddenly prorogued by Lord Elgin, after only a week's session, the speaker took occasion, before the delivery of his Excellency's speech, to refer to the fact that no act had been passed or judgment of parliament obtained on any question since the house had been summoned a few days before; *Ib.* [1854], 31; II. Dent's Canada, 294. The last occasion on which the speaker availed himself of this old privilege was in 1869, and then he made only a brief reference to the importance of the measures of the session; Can. Com. J. [1869], 312.

[3] Sen. J. (1883), 297; Com. J. 441.

**XIV. Address to the Crown for a certain Expenditure, &c.**—It has happened on a few occasions in the English House of Commons when the estimates have all gone through the committee of supply, and when in consequence of the lateness of the session or for some other reason, it is not convenient to make a grant therein, the House of Commons will agree to an address to the sovereign for a certain expenditure of public money, with an assurance that "this house will make good the same." This practice has been followed only on one occasion in the Canadian Parliament since 1867; and that was at the close of the session of 1873, when the death of Sir George Etienne Cartier was announced. Sir John Macdonald, then premier, moved an address to the governor-general praying that "he would be graciously pleased to give directions that the remains of the deceased statesman be interred at the public expense," and assuring his Excellency that "this house will make good the expenses attending the same."[1] The course pursued on that occasion was in accordance with the precedents in the cases of Lord Chatham in 1778, and of Mr. Pitt in 1806, to whom monuments were voted by Parliament.[2] But since that time the House of Commons has adopted a standing order requiring that all such addresses should originate in committee;[3] and as the Canadian rule is, in all unprovided cases to follow English usage, the address for a public funeral to Sir George Cartier should obviously have been in conformity with the later English practice, and should have originated in committee of the whole.[4]

The right of a private member in the English Commons

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[1] Can. Com. J. [1873, first session], 430.

[2] 36 E. Com. J. [1778], 972; 61 *Ib.* (1806), 15. Also, Lord Nelson; 61 E. Com. J. 16. Sir R. Peel, 1850; 105 E. Com. J. 512. Vis. Palmerston, 1866; 121 E. Com, J. 100.

[3] May, 691. Vis. Palmerston, 1866; 121 E. Com. J. 100. See S. O., lxxiv.

[4] So particular is the English house in adhering to this practice that when an irregularity has been discovered, the order for an address has been discharged and proceedings commenced *de novo* in a regular manner.

to move an address to the Crown for a grant of public money to be provided by Parliament — such address as we have just seen, to originate in committee—appears to be admitted by all the English authorities. The form of the motion "that this house will make good the same," makes the royal recommendation unnecessary.[1] When the House of Commons amended their standing orders, as they appear now, the chancellor of the exchequer recognised the right of any member to move an address—"the ancient and truly constitutional method of expressing the desire of the house, that some public expenditure should be incurred." The effect of such a motion is not ultimately to bind the house, but to throw on the Crown the responsibility of accepting or declining that address.[2]

It must be remembered, however, that the express language of the 54th section of the B. N. A. Act, 1867, forbids any private member in the Canadian Commons to move for an address for a grant of public money, without a recommendation of the Crown.[3] It is still necessary, however, to insert the words, "that the house will make good the same," because the grant so authorized upon an address, must afterwards be included in a regular bill of appropriation.

**XV. Audit of Appropriation Accounts.**—For the more complete examination of the public accounts and the reporting thereon to the house, there is an officer, appointed under the great seal, called the auditor-general, who holds office

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See address for a statue to Viscount Gough, May, 692. 125 E. Com. J. 355, 362, 368. Also 98 E. Com. J. 321; 106 *Ib.* 189.

[1] 1 Todd, 436, *n.*; 437, *n.* and 438-444. Also 221 E. Hans. (3), 766, where a member moved, on motion for going into supply, that the house go into committee of the whole on a future day to consider the granting of a pension, and to assure her Majesty that the house would make good the same.

[2] 182 E. Hans. (3), 598. But this right should only be exercised under peculiar and exceptional circumstances; *Ib.* 593, Mr. Gladstone.

[3] *Supra*, p. 463.

during good behaviour, but is removable by the governor-general, on address of the Senate and House of Commons.[1] When any sums have been voted by Parliament for specified public purposes, the governor, from time to time, issues his warrant, authorizing the minister of finance to issue such sums as may be required to defray those expenses. The minister of finance will then, on the application of the auditor-general, cause credits to be opened in favour of the several departments or services charged with the expenditure of the moneys so authorized. These credits are issued on certain banks, authorized to receive public funds, and the law provides a thorough system of checks over all payments for public purposes. No credit can issue in favour of any department or service in excess of any vote sanctioned in the supply bill or any act of parliament. It is the duty of the auditor-general to see that no cheque goes out unless there is a parliamentary appropriation for the same. He is to certify, and report upon, the issues made from the consolidated revenue fund in the financial year ending the 30th of June preceding, for the interest and management of the public funded and unfunded debt, and all other expenditures for services under control of the minister of finance. He certifies as to the authority under which these issues are made, and his report thereon is laid before the House of Commons by the minister of finance on or before the 31st January, if Parliament be then sitting;[2] if not, then within one week after the houses have assembled.[3] The accounts of the appropriation of the several grants comprised in the appropriation, or any other act for the year ending the 30th of June preceding, are prepared by the several departments and transmitted for examination to the auditor-general, and to the deputy of the minister

[1] 41 Vict. c. 7. A summary of some of the more important provisions of this act follows in the text.

[2] Can. Com. J. (1880–81), 40. Parliament met on the 9th of December, and the report was presented on the 14th of the same month.

[3] *Ib.* (1883), 28.

of finance, and when certified and reported upon, they are laid before the House of Commons. These accounts are carefully examined by the auditor, who, in his report to the house, calls attention to every case in which cheques have been issued without his certificate, or in which it appears to him that a grant has been exceeded, or that money received by a department from other sources than the grants for the year to which the accounts relates has not been applied or accounted for according to the directions of Parliament, or that a sum charged against a grant is not supported by proof of payment, or that a payment so charged did not occur within the period of the account, or was for any other reason not properly chargeable against the grant. The act provides that if the minister of finance does not, within the time prescribed in the statute, present to the house the report of the auditor on these or other accounts, the latter shall immediately transmit it himself to the Commons. All balances of appropriation which remain unexpended at the end of the financial year lapse and are written off, but the time for closing these accounts may be continued for three months from the 30th of June, provided there is sufficient cause shown for doing so in an application to the governor in council. In case the money cannot be expended before the 1st of October, and it lapses accordingly under the law, a memorial may be addressed to the governor in council, setting forth the facts, and if it is found expedient to authorize the payment of the money, a warrant is issued in due form. Special warrants may issue, in any case, when any expenditure not foreseen or provided for by Parliament is urgently and immediately required for the public good; and a statement of all such warrants is laid before the house, not later than the third day of the next session.[1] As a rule, all grants, not expended within the financial year, and still required for the public service, are re-voted, in whole or in part, in the estimates

[1] Can. Com. J. (1883), 47; 41 Vict. c. 7, s. 32, sub. s. 4.

when they are brought down in the following year—the printed copies of the estimates having a column, when necessary, to indicate the amount of this re-vote.[1]

A detailed statement of all unforseen expenditures, made under order of council, is also laid before Parliament during the first fifteen days of each session.[2]

In the session of 1880, the committee of public accounts, to whom the report of the auditor-general is always referred, considered several matters therein mentioned, and made the following, among other recommendations, which were formally adopted by the house.[3]

*Orders concerning Grants of Supply.*

1. The description of the service for which a vote is given should be as definite as is practicable, so that no one vote may be applicable to the same purpose for which another vote is given.

2. The description of the sub-heads into which votes are divided should be as definite as is practicable, so as to avoid questions as to the particular sub-head to which any particular item of expenditure should be charged.

3. The supplementary votes[4] should be divided as near as may be into the same sub-heads as the main votes to which they are supplementary.

4. Where large votes are taken it is desirable to divide them into sub-heads, so as to give in the estimates as much detailed information as is possible.

5. Votes which are intended as grants to institutions or individuals should be distinctly so specified; and no vote should be considered as so intended unless so specified.

6. The supply bill should contain the sub-heads of the votes on which it is based.

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[1] See estimates for 1883 in Sess. P. for 1882, No. 2, pp. 44-5 &c.

[2] This statement appears in accordance with the provisions of the appropriation act of every year. Can. Com. J. (1883), 40; 45 Vict., c. 2, sched. B.

[3] Can. Com. J. (1880), 183.

[4] The reference here is to the supplementary estimates brought down with, or subsequent to, the main estimates.

7. It is the duty of those responsible for the estimates to make the calculations on which the main vote and its sub-divisions are founded as carefully and closely as practicable, and their attention to this duty will be increased by their being expected to furnish reasons for discrepancies.[1]

Previous to bringing down the foregoing report, the committee recommended the auditing by the auditor-general of the accounts of the two houses for salaries and contingencies, members' indemnity, printing and library. These recommendations were immediately adopted in the Senate and Commons. The committee, in their second report, suggested that the Audit Act should be so amended as to give effect to the recommendations in question; but Parliament has not as yet taken any steps in this direction.

[1] Sen. J. (1880), 96-7; Com. J. 125-6. See *supra*, pp. 184-5.

# CHAPTER XVIII.

## *PUBLIC BILLS.*

I. Explanatory.—II. Bills of appropriation and taxation must originate in the Commons.—III. Introduction of bills.—IV. Bills relating to trade. —V. Or involving public aid and charges on the people. VI. Second Reading.—VII. Order for committee of the whole.—VIII. Instructions. —IX. Reference to select committees.—X. Notice of proposed amendments in committee.—XI. Bills reported from select committees.—XII. Proceedings in committee of the whole.—XIII. Reports from such committees.—XIV. Bills not referred.—XV. Third Reading.—XVI. Motion that the bill do pass. XVII. Proceedings after passage; amendments; reasons for disagreeing to amendments.—XVIII.—Revival of a bill temporarily superseded.—XIX. Introduced by mistake.—XX. Expedition in the passage of bills.—XXI. Once introduced not altered except by authority of the house.—XXII. Correcting mistakes during progress.— XXIII. Loss of a bill by accident during a session.—XXIV. Once rejected not to be again offered in the same session; exceptions to general rule.—XXV. Royal assent; changes in governor-general's instructions as to reserving certain bills; assent always given in the presence of the two houses; cases of bills assented to by error.—XXVI. The assent in the provincial legislatures.—Practice of reserving and vetoing bills.— XXVII. Amendment or repeal of an act in same session.—XXVIII. Commencement of an act.—XXIX. The statutes and their distribution.

**I. Explanatory.**—According to parliamentary practice a bill is an incomplete act of Parliament. It is only when it receives the assent of all the branches of the legislative power that it becomes the law.[1] A bill is, generally speaking, divided into several distinct parts: 1, the title; 2, the preamble and statement of the enacting authority; 3, the body of the act, consisting of one or more propositions, known as clauses; 4, the provisions, and 5, the

[1] Sweet's Law Dictionary. II. Stephen's Comm. 383.

schedules.[1] The provisos and schedules may not be necessary in every act, while public statutes frequently omit any preamble, or recital of the reasons of the enactment, and contain only a statement of the enacting authority. The Interpretation Act[2] provides:

1. "The following words may be inserted in the preambles of statutes and shall indicate the authority by virtue of which they are passed: "Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

2. "After the insertion of the words aforesaid which shall follow the setting forth of the considerations or reasons upon which the law is grounded, and which shall, with these considerations or reasons, constitute the entire preamble, the various clauses of the statute shall follow in a concise and enunciative form."[3]

The only exception to this form of enactment is the preamble of the supply bill, which is in the form of an address to the queen:

"Most gracious Sovereign: whereas it appears by messages from his Excellency, the Governor-General, and the estimates accompanying the same, that the sums hereinafter mentioned are required to defray certain expenses of the public service of the dominion, not otherwise provided for, for the financial years, etc.

"*May it therefore please your Majesty that it may be enacted;* and be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Commons of Canada."

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[1] See 46 Vict. c. 30, (Liquor License Act, 1883), which contains all the parts of a complete act as given in the text.

[2] 31 Vict. c. 1, "An act respecting the statutes of Canada."

[3] In acts of Ontario, Quebec, Manitoba, and British Columbia, her Majesty's name is used as in acts of the Dominion Parliament. In Nova Scotia, New Brunswick and P. E. Island, bills are enacted by the lieut.-governor (governor simply in the former province) council and assembly. In the North West territories, ordinances are enacted by the lieut.-governor, by and with the advice and consent of the council. The same practice was followed in the legislatures of the old provinces before confederation.

This preamble appears in all bills of appropriation since the union of Canada in 1840,[1] and differs from the English form in similar bills since it does not assert in express terms the sole right of the Commons to grant supply. The preamble of the English act sets forth:

"We your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain, in Parliament assembled, towards making good the supply which we have cheerfully granted to your Majesty in this session of Parliament, have resolved to grant unto your Majesty the sums hereinafter mentioned, *and do therefore most humbly beseech your Majesty that it may be enacted;* and be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords', spiritual and temporal, and Commons," etc.

It will be seen that the form of the enacting authority, is substantially the same in each, and differs from that of bills in general since it contains a prayer to her Majesty, that it may be enacted. This form appears to be derived from the old practice of the English Commons centuries ago, when bills were presented in the shape of petitions to the king. While the language of a petition is still retained as above in certain bills, the declaration of the advice and consent of the two houses of Parliament has been added in the course of time in accordance with the modern form of statutes.[2]

Bills are divided into two classes. The first-class comprises all bills dealing with matters of a public nature,

[1] Before the union, the preamble in appropriation acts of the old assemblies of Lower and Upper Canada contained no reference to the governor's message, but this was the only difference in form. Upp. Can. Stat. 3 Will. IV., c. 26; Low. Can. Stat. 41 Geo. III., c. 17. After the union, the messages of the governor-general, recommending supply, were always mentioned in the preamble of the act; Can. Stat. 4 and 5 Vict. c. 12.

[2] See on this subject, which is interesting to students of legal archæology, an elaborate preface by Owen Ruffhead, to the first volume of his edition of the statutes at large. Towards the close of the reign of Henry VI., bills in the form of acts, according to modern custom, were first introduced. Cushing, pp. 796, 819.

and may be introduced for the most part directly on motion. The second class comprises such bills as relate to the affairs of corporations or individuals, and can only be presented on the petition of the parties interested, and in conformity with certain standing orders which are always strictly enforced. It is proposed in the present chapter to deal exclusively with public bills. Another part of this work will be devoted to the rules and practice governing the introduction and passage of private bills.

**II. Appropriation and Taxation Bills.**—As a general rule, public bills may originate in either house; but whenever they grant supplies of any kind, or involve directly or indirectly the levying or appropriation of any tax upon the people, they must be initiated in the popular branch, in accordance with law and English constitutional practice.[1] Section 53 of the British North America Act, 1867, expressly provides:

"Bills for appropriating any part of the public revenue, or for imposing any tax or impost shall originate in the House of Commons."

And a standing order of the House of Commons declares explicitly:

"All aids and supplies granted to her Majesty by the Parliament of Canada are the sole gift of the House of Commons, and all bills for granting such aids and supplies ought to begin with the house, as it is the undoubted right of the house to direct, limit, and appoint in all such bills, the ends, purposes, considerations, conditions, limitations, and qualifications of such grants which are not alterable by the Senate."[2]

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[1] III. Hatsell, 126, 154, 155, &c. Bramwell, 1, 150.

[2] This standing order is literally taken from the English resolution of 3rd of July, 1678 (9 E. Com. J. 235, 509). It was amended by the English Commons in 1860, when the Lords rejected the Paper Duties Repeal Bill, so as to assert more emphatically the constitutional rights of the Commons in this particular. 159 E. Hans. (3), 1383; May, 649-50; I. Todd, Parl. Govt. in England, 459 *et seq.* The same resolution always appeared among

If any bills are sent down from the Senate with clauses involving public expenditures or public taxation, the Commons cannot accept them. Such bills may be ordered to be laid aside.[1] The same practice is also strictly carried out in the case of amendments made by the Senate to Commons bills. Latterly, however, it is not always usual to lay such bills immediately aside, but to send them back to the Senate with reasons for disagreeing to such amendments, so that the upper house may have an opportunity of withdrawing them.[2] As an illustration of the strictness with which the Commons adhere to their constitutional privileges in this respect, it may be mentioned that on the 23rd of May, 1874, a bill was returned from the Senate, with an amendment providing for an increase in the quantity of land granted to certain settlers in the North West. The premier and other members doubted the right of the Senate to increase a grant of land —the public lands being, in the opinion of the house, in the same position as the public revenues. The amendment was only adopted with an entry in the journals that the Commons did not think it "necessary at that late period of the session, to insist on its privileges in respect thereto, but that the waiver of the said privileges was not to be drawn into a precedent."[3] Many other entries will also be found of the house accepting Senate amendments, rather than delay the passage of a bill at an advanced period of the session.[4] It is quite regular, however, to

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the rules of the old legislative assemblies of Canada. Low. Can. Ass. J. 19th April, 1793. Leg. Ass. J, (1841), 43.

[1] Railway Audit Bill (1850), 105 E. Com. J. 458; Parochial schoolmasters (Scotland Bill), 1857; 112 *Ib.* 404. May, 643.

[2] Can. Com. J. (1873), 429-30, Quebec harbour bill. The Senate did not insist, 431. 13 E. Com. J. 318; 105 *Ib.* 518.

[3] Can. Com. J. (1874), 336.

[4] Can. Com. J. (1867-8) 418, 470; *Ib.* (1873), 319. In cases where the amendments do not infringe materially on the Commons' privileges, it is also usual in the English Commons to agree to them with special entries. 80 E. Com. J. 579, 631; 122 *Ib.* 426, 456.

agree to amendments which "affect charges upon the people incidentally only, and have not been made with that object."[1]

In order, however, to expedite the business of the houses, the Commons have adopted the following rule:

"90. The house will not insist on the privilege claimed and exercised by them of laying aside bills sent from the Senate because they impose pecuniary penalties; nor of laying aside amendments made by the Senate because they introduce into or alter pecuniary penalties in bills sent to them by this house. Provided that all such penalties thereby imposed, are only to punish or prevent crimes and offences, and do not tend to lay a burden on the subject, either as aid or supply to her Majesty, or for any general or special purposes by rates, tolls, assessments or otherwise."

The foregoing rule does not, however, as clearly state the actual practice as the English standing orders. Under these the house does not insist on its "ancient and undoubted privileges:"

"1. When the object of such pecuniary penalty or forfeiture is to secure the execution of the act, or the punishment or prevention of offences.

"2. Where such fees are imposed in respect of benefit taken, or service rendered under the act, and in order to the execution of the act, and are not made payable into the treasury or exchequer, or in aid of the public revenue, and do not form the ground of the public accounting by the parties receiving the same, either in respect of deficit or surplus.

"3. When such bill shall be a private bill for a local or personal Act."[2]

It is frequently found convenient to introduce bills involving public expenditure in the Senate, and in such

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[1] 3 Hatsell, 155; E. Com. J., prisoners' removal bill, 1849; industrial schools' bill, 1861.

[2] 104 E. Com. J. 23. See debate in Senate on marine electric telegraph bill, 1875, pp. 422-3. Also, private bills, *infra*, chap. xxi., where it is shown that the Senate may pass rates of tolls.

a case, the money clauses are embodied in the bill as presented, in order to make it more intelligible. When the Senate goes into committee on the bill, these clauses are ordered to be left out. They are printed in red ink or italics in the engrossed bill sent up to the Commons, and are technically supposed to be blanks. These clauses are always considered in a previous committee by the Commons, and then regularly referred to the committee of the whole on the bill.[1] In the same way, resolutions imposing a tax or duty must be alone considered by the Commons, and referred to the committee on a Senate bill.[2]

**III. Introduction of Bills.**—In the Senate it is not necessary to give notice, or ask leave to bring in a bill. Their rules provide:

39. "It is the right of every senator to bring in a bill."

40. "Immediately after a bill is presented, it is read a first time and ordered to be printed."[3]

On the other hand in the House of Commons it is ordered:

39. "Every bill shall be introduced upon motion for leave, specifying the title of the bill; or upon motion to appoint a committee to prepare and bring it in."

In accordance with this rule, every member who wishes to introduce a public bill, must give two days' written notice of its title,[4] which appears in the votes and since

[1] Census and statistics bill, 1879. Sen. Min. of P., pp. 144, 148; clauses 22, 23, 24, 37; Com. J., p. 160. County court judges' bill, 1882, Sen. Min. of P., p. 108, clauses 10 and 11; Com. J. pp. 370-71. See also the journals of 1883 for civil service act, superannuation act and penitentiaries act. For a somewhat similar procedure in the English Parliament, see British North America act, 1867, introduced first in Lords; and Probates' act, 1858.

[2] Copyright bill (1872), 285. In this case the duty was imposed for the benefit of owners of British copyright works.

[3] Similar practice in Lords; 3 E. Hans. (3), 24; 13 *Ib.* 1188. Sen. J. (1878), 88.

[4] R. 31; *supra*, p. 309.

1880, on the orders of the day.[1] If the notice is not given, it is open to any member to object to the introduction of a bill, and the speaker will sustain the objection.[2] When the two days' notice has been given, the member in charge of a bill rises as soon as "Motions" are called and moves formally for "leave to introduce a bill, intituled, etc." He sends up to the speaker the motion in writing with a copy of the bill. The speaker will then propose the question "Is it the pleasure of the house that the honourable member have leave to introduce his bill." But if the speaker find that the bill is "in blank or in an imperfect shape" he will decline to put that question and will return the bill to the member who must take another opportunity of bringing it up in conformity with the rules.[3] It is usual on the introduction of a bill—on the motion for leave—to explain clearly and succinctly its main provisions[4]; but it is not the practice to debate it at length at that stage, such discussion being more properly and conveniently deferred to the second reading when the bill is printed and the house is in a position to discuss its principle. Sometimes, however, a short discussion may arise on some features of the bill on the motion for its introduction, as there is no rule to prevent a debate.[5] At this stage, it is within the right of any member to submit an amendment to the motion for leave, and even to alter the title of the proposed bill,[6] though such a course is very seldom followed. As in England, it is now a very rare thing for the house to refuse leave,

[1] Can. Hans. (1880), 79 (remarks of Mr. Holton).

[2] Can. Hans. (1878), 2226. Building societies bill.

[3] R. 40; Can. Speak. D., No. 50; Can. Hans. (1878), 1583.

[4] 159 E. Hans. (3), 360, 762; 218 *Ib.* 1699, 1706; 144 *Ib.* 329, 422; Can. Hans. (1878), 1582-1584; Sen. Deb. (1878), 160.

[5] 219 E. Hans. (3), 379; 144 *Ib.* 422-450; Sen. Deb. (1874), 112-119.

[6] 107 E. Com. J. 68, 131. On the 20th of Feb., 1852, the title of the militia bill was amended in this way, and the ministry, of which Lord John Russell was premier, resigned.

though, of course, it rests entirely in the discretion of the majority to do so."[1] When leave has been formally given the speaker will propose the next question in accordance with rule 42:

"When any bill shall be presented by a member, in pursuance of an order of the house, or shall be brought from the Senate, the question, 'That this bill be now read a first time,' shall be decided without amendment or debate."

Thereupon one of the clerks will read the title of the bill in English and French, in accordance with the modern practice which does not require a reading *in extenso*.[2] Though no amendment or debate is permissible on the question for reading the bill a first time, it is quite regular to divide the house thereon.[3]

**IV. Bills relating to Trade.**—But here it is most convenient to direct attention to the important fact that all public bills cannot be introduced directly on motion in the way just described. Bills relating to trade, or involving expenditure and taxation, must be initiated in committee of the whole before the house will give leave for their introduction. Rule 41 of the House of Commons provides:

"No bill relating to trade or to the alteration of the laws con-

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[1] Evidence of Sir T. E. May before Com. on public business, 22nd of March, 1878, pp. 13, 15. 70 E. Com. J. 62; 71 *Ib.* 430.

[2] The ancient usage of the English Parliament was to read bills at length, but according as printing was freely used in the proceedings of the houses, the practice became obsolete; and it is now considered quite sufficient to read a bill in short, that is by the title. 178 E. Hans. (3), 181; 192 *Ib.* 322. For the first time for many years, a bill was read at length in 1878 in the Canadian Commons, on the occasion of its introduction; but the speaker subsequently pointed out that the practice was not now allowable. In this case, members were not satisfied with the explanations given on the motion for leave, and wished to have more information with respect to the bill; Can. Hans. 1878, April 2nd, election bill (Mr. Macdougall). It is always competent, however, for a member to move formally that a bill be read; 192 E. Hans. (3), 323.

[3] 107 E. Com. J. 174, 201; Can. Com. J. (1877), 143, 144, 169.

cerning trade, is to be brought into this house, until the proposition shall have been first considered in a committee."

It is quite allowable, however, to introduce bills relating to trade in the Senate, without previously considering the subject in a committee of the whole.[1]

The rule, as generally understood in the Canadian House —and English practice bears it out—simply requires the house to go into committee to consider a general proposition, setting forth the expediency of bringing in a measure on a particular question affecting trade.[2]

Both in the English and Canadian Commons the rule, just cited, has been held to apply to trade *generally*, as well as to any particular trade, if directly affected by a bill.[3] It has also been decided that to bring a bill under the rule it should properly propose to regulate trade as a subject-matter.[4] Some diversity of practice has, however, arisen at different times on account of a variance of opinion as to the proper application of the rule. The following precedents will show how it has been worked out:

Mr. Speaker Cockburn held that the term trade "does not, in its general and popular sense, apply to insurance. Trade means buying, selling, importing and exporting goods to market. Banking, railways, navigation and telegraphs, in his opinion, all assist trade and are its auxiliaries, but are not branches of trade in the popular sense."[5] However, bills respecting insurance have been indifferently introduced on motion, or on resolutions adopted in committee.[6] Bills respecting interest have been introduced

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[1] Sen. J. (1867-8), 102. But a Lords' S. O. requires that every bill regulating a trade shall be considered by a select committee before it can be read a second time. 68 Lords' J. 836; 89 *Ib.* 192.

[2] Can. Speak. D. 24th of March, 1882; 120 E. Hans. (3), 784; Bourke's Precedents, p. 349; Can. Com. J. (1874), 135, &c.; 129 E. Com. J. 31, 109.

[3] May, 530.

[4] Can. Speak. D. 193; Jour. (1870), 120.

[5] Can. Speak. D., No. 177.

[6] Can. Com. J. (1874), 172; *Ib.* (1877), 64. But legal authorities call insurance business a "trade" and insurance companies "traders." Doutre, Const. of Canada, citing Judge Taschereau, pp. 274-6. See also 38 Vict.,

as a rule, on motion in the English as well as Canadian Commons.[1] In 1874 Mr. Anglin decided that general banking bills ought to be based on resolutions[2]—a decision quite in accordance with the recent practice of the English Parliament,[3] which is, however, variable, with respect to joint stock banks.[4] Bills respecting insolvency have been invariably introduced on motion for leave.[5] Bills to regulate the traffic on railways and to protect the interests of the public in connection therewith, have been almost invariably brought in on motion;[6] but in the session of 1877 a bill providing for the more effectual observance by railway companies of the law requiring the equality of treatment in the management of the traffic and the imposition of rates and tolls was founded on resolutions.[7] Bills relating to joint-stock and loan companies have been presented directly on motion;[8] but in England bills relating to joint-stock banks, companies, and partnership have originated in committee.[9] Bills respecting the inspection of staple articles of Canadian produce have generally been founded on resolutions;[10] but a bill to amend the same has been allowed on motion.[12] Bills to regulate weights and measures have generally been founded on resolutions;[12] but in England, as well as in Canada, it has been decided that as such bills deal with questions of public policy, affecting

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c. 16, s. 1, applying to "traders and trading companies, except insurance companies." The correct practice, no doubt, is to commence in committee. A recent judgment of the Canada Supreme Court considers that insurance falls under the constitutional provision affecting trade and commerce. See *infra*, chap. 19.

[1] Can. Speak. D. No. 177; Can. Com. J. (1870), 313; *Ib.* (1878), 31; *Ib.* 1879-67. Bills in English house in 1839 and 1854 on motion.

[2] Can. Com. J. (1874), 142.

[3] 94 E. Com. J. 468; 100 *Ib.* 468; 112 *Ib.* 239.

[4] 111 *Ib.* 13, 37, 119.

[5] Speak. D. 193; Can. Com. J. (1873), 287; *Ib.* (1876), 164; *Ib.* (1877), 21, 71, 94; *Ib.* (1878), 47; *Ib.* (1879), 19, &c.

[6] *Ib.* (1873), 60, 118; *Ib.* (1876), 70; *Ib.* (1877), 159; *Ib.* (1879), 301.

[7] Can. Com. J. (1877), 272. But in England such bills have been always introduced without a previous committee. 126 E. Com. J. 14; 128 *Ib.* 27. See 8 & 9 Vict., c. 20, and Jour. of 1845 (railways).

[8] Can. Com. J. (1877), 28, 107, 258.

[9] 111 E. Com. J. 13.

[10] Can. Com. J. (1873), 127; *Ib.* (1874), 184.

[11] Can. Com. J. (1876), 76.

[12] Can. Com. J. (1873), 83; *Ib.* (1877), 291; *Ib.* (1879), 289.

the whole community, and not merely the interests of trade, they may be directly presented on motion for leave.[1] Bills regulating harbours,[2] pilotage,[3] and shipping;[4] and providing for the preservation of good order on board, and for the inspection and measurement of steamers,[5] have always been based on resolutions passed in committee. Bills respecting the culling and measurement of timber should originate in committee of the whole.[6]. Bills respecting patents[7] and copyright[8] have been presented without a committee. Bills respecting bills of exchange and promissory notes need not originate in committee of the whole, unless they impose stamp duties.[9] A bill to regulate the sale and disposal of bottles used in the manufacture of mineral water and other drinks has not been allowed to pass to a second reading because it was not commenced in committee of the whole.[10] Bills to regulate generally the sale or prohibit the traffic in intoxicating liquors should originate in committee;[11] but bills which prevent liquor traffic on

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[1] 114 E. Com. J. 235; 115 *Ib.* 370; Can. Com. J. (1877), 44, 122.

[2] 117 E. Com. J. 271; Can. Com. J. (1873), 23, 55, 149; *Ib.* (1877), 136. A bill was withdrawn in 1879, because it was not founded on resolution. Hans. p. 649.

[3] Can. Com. J. (1873), 127; *Ib.* (1877), 136, 222; *Ib.* (1879), 290-1.

[4] 129 E. Com. J. 31; Can. Com. J. (1873), 24, 54, 245; *Ib.* (1874), 185; *Ib.* (1878), 108, 109, 116.

[5] Can. Com. J. (1873), 23; *Ib.* (1877), 117, 222.

[6] Can. Speak. D., No. 104; Can. Com. J. (1877), 207.

[7] Can. Com. J. (1873), 166. In 1872 a bill to amend and consolidate patent laws was based on resolution; and subsequently the same resolution was referred to the committee on the bill, on the ground apparently, that it imposed fees. This was clearly an irregularity; and indeed it was not necessary to consider in a previous committee resolutions imposing mere fees, necessary to the execution of an act and for services performed, if the English practice had been followed. Imp. Stat. 15 & 16 Vict., c. 83 (107 E. Com. J. 313) was brought from the Lords' with fees provided in schedule. A resolution to impose duties on stamps was only considered in committee and referred to the committee of whole on the bill.

[8] Mirror of P., 1840, p. 1110; 129 E. Com. J. 287.

[9] Can. Com. J. (1870), 33, 52; *Ib.* (1872), 125; *Ib.* (1873), 41, 175. Also, in 1874, 1875, 1879, 1882. See Can. Hans., April 24, 1878.

[10] Can. Com. J. (1878), 146.

[11] 125 E. Com. J. 62; 129 *Ib.* 31, 49, 109, 158; 132 *Ib.* 11, 12; Can. Speak. D. 22; Leg. Ass. J. (1855), 957-8; Can. Com. J. (1883), 377. In the last case, the liquor license bill was framed in a select committee, and reported to the house; but it was thought expedient to comply with the express

Sundays[1] have been regarded as measures of public concern and order, which do not come under this rule. On the other hand bills to regulate fairs and markets and to prevent trading on Sunday, have been allowed to be introduced without a previous committee on the ground that they were matters of police regulation and public decency.[2] Bills regulating the importation of cattle, with the view of preventing the spread of contagious diseases, are always initiated in committee of the whole.[3] Bills to amend or consolidate the customs acts are always founded on resolutions.[4] Bills reducing duties of customs originate invariably in committee on the ground evidently that all such measures affect trade.[5] Bills to grant certificates to pedlers,[6] and to regulate the sale of poisons[7] have not required committees. A bill to regulate the dimensions of apple barrels has originated in committee ;[8] also, one to regulate the sale of fertilizers.[9] A bill for regulating the employment of children in factories is not such a bill relating to trade as to require it to originate in committee.[10]

The rule does not apply to bills that originate in the Senate, for the reason as stated by Mr. Speaker Denison: "The object of the rule that bills relating to trade should be founded on a resolution of a preliminary committee is in order to give opportunity for a fuller discussion and a wider

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terms of the rule, and first pass a resolution in committee of the whole before formally bringing in the bill. Hans. p. 234 (Mr. Casgrain).

[1] See English Commons journals for 1855, 1863, 1868, 1878, 1881, &c.

[2] May, 532 ; Sunday trading bills, 1833, 1863, 1868, &c. Fairs and markets (Ireland) bill, 1854, 1855, 1857 and 1858.

[3] 103 E. Com. J. 857 ; 121 *Ib.* 55 ; 125 *Ib.* 267. In 1879, a bill respecting the contagious diseases of animals was brought in on simple motion by the minister of agriculture ; but the irregularity having been discovered in time, he withdrew the bill and brought in another, based on resolutions. Jour. pp. 114, 136.

[4] Can. Com. J. (1877), 129.

[5] For instance bills to repeal customs in Isle of Man, 125 E. Com. J. 96; to repeal duties on soap, 108 *Ib.* 590; shipping dues exemption act, 125 *Ib.* 303.

[6] 125 E. Com. J. 309.

[7] 125 *Ib.* 187.

[8] Can. Com. J. (1876), 248-9.

[9] *Ib.* (1880), 154-5.

[10] 72 E. Hans. (3) 286.

notice to the persons interested. Those objects have been already secured by the proceedings in the other house."[1]

When resolutions relating simply to trade have been reported from committee of the whole, they may be at once agreed to, and the bill introduced in accordance therewith.[2] The rule requiring the adoption of resolutions on another day only applies to money or tax resolutions.[3]

**V. Bills involving Public Aid or Charges.**—It is the invariable rule that all measures involving a charge upon the people, or any class thereof, should be first considered in a committee of the whole. Rule 88 orders :

"If any motion be made in the house for any public aid or charge upon the people, the consideration and debate thereof may not be presently entered upon, but shall be adjourned until such future day as the house may think fit to appoint; and then it shall be referred to a committee of the whole house, before any resolution or vote of the house do pass thereon."[4]

Under this rule, all bills providing for the payment of salaries, or for any expenditure whatever out of the public funds of the dominion must be first considered as resolutions in committee of the whole.[5] And all such resolutions necessary to the introduction of a bill, must first obtain the recommendation of the governor-general.[6]

It often happens that bills are introduced with certain clauses providing for salaries or other charges on the public revenue, and in that case the bill may be intro-

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[1] 172 E. Hans. (3), 1221. Nor is a previous resolution necessary in the case of a consolidation of existing laws ; but in case of changes, then it would be required. 57 *Ib.* 587.

[2] Contagious diseases, weights and measures bills, 1879. 129 E. Com. J. 31, &c.

[3] May, 539. See *supra*, 423.

[4] Res. of 1667 ; 3 Hatsell, 176. Such a motion cannot be discussed on the same day it is first presented; 164 E. Hans. (3) 996. Can. Pacific Res. Dec. 13, 1880-81 ; 1st Feb., 1884.

[5] Can. Com. J. [1873] 399; *Ib.* [1876] 84; *Ib.* [1877] 200; *Ib.* [1879] 313.

[6] See chapter xvii., ss. 2 and 3.

duced directly on motion, while the clauses in question (which should be distinguished by italics or brackets) are considered in the shape of resolutions in committee, and when agreed to, referred to the committee on the bill.[1] "Such clauses," said Mr. Speaker Brand on one occasion, "form no part of the bill as originally brought in, but are considered as blanks. Before any sanction is given to them, the recommendation of the Crown must be signified and a committee of the whole house consider on a future day the resolution authorizing the charge. Unless these proceedings are taken the chairman, under the standing orders, will pass over the money clauses without any question. Without such preliminary proceedings, the bill, so far as the public money is concerned, is entirely inoperative."[2] But it must be carefully borne in mind that this can only be regularly done when the money clauses are merely a part, and necessary to the operation of the bill. Whenever the main object of a bill is the payment of public money, it must directly originate in committee of the whole; or else the proceedings will be null and void the moment objection is taken.[3] In the session of 1874 one of the ministers introduced on motion a bill to appropriate certain lands in Manitoba, but objection was taken on the ground that all bills granting any part of the public domain should originate in the shape of resolutions, like all measures for the expenditure of public moneys. Accordingly he withdrew the bill, and introduced a series of resolutions on which he founded a bill.[4]

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[1] May, 533. Can. Com. J. [1872], 170; *Ib.* [1873], 269, 400; *Ib.* [1877], 128; *Ib.* [1883], 228.

[2] 209 E. Hans. (3), 1950-53.

[3] Can. Com. J. (1877), 200; *Ib.* (1879), 313.

[4] Can. Com. J. [1874], 112. Also, see a case in which a Canadian speaker (Sp. D. No. 121) decided that a private bill containing clauses granting public lands in aid of its object should originate in committee of the whole. On 7th March, 1878, resolutions granting certain lands for railway construction were referred to a committee of the whole, having first received the recommendation of the governor-general.

A bill transferring a government railway to a company has also been proceeded with in the same way.[1] The rule also applies to releasing or compounding any sum of money due to the Crown.[2]

The rule just cited also applies to the imposition of any state tax or charge upon the people or any class thereof.[3] But it is not held to apply to pecuniary penalties necessary to the operation of a bill.[4] In the Canadian house it is the customary practice to consider all fees and expenses imposed by a bill previously in a committee of the whole ;[5] but such bills are received from the Senate in conformity with the English practice which allows the house to accept any clauses from the Lords which refer to tolls and charges for service performed and which are not in the nature of a tax.[6] The practice of the English Commons is not to require a previous committee when the bill exacts fees for services performed, and when they are not payable into the treasury or in aid of the public revenue. For instance, the "act to regulate expenses and control charges of returning officers at parliamentary elections" (38 and 39 Vict., c. 84 Imp. Stat.) contains a schedule

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[1] Truro & Pictou R. R. Can. Com. J. 1877, pp. 93, 134.

[2] English S. O., 20th of March, 1707. See *supra*, p. 465.

[3] 174 E. Hans. (3), 1700-1. Can. Com. J. [1870], 285.

[4] Post-office act, 1867-8, s. 81, &c. ; wharves and docks bill, 1875 ; gaming houses bill, 1877. In England same practice obtains: petroleum bill, 1871 ; act granting certificates to pedlers, 1870 ; small penalties in Ireland bill, 1873, &c.

[5] Can. Com. J. (1874), 195, election law ; *Ib.* (1876), 83 ; *Ib.* (1879), 253-55, 346-7, 368. It is not an uncommon practice in the Canadian house in the case of bills containing clauses imposing fees and charges which go into the treasury, to consider such clauses in a previous committee and to refer them, when agreed to, to the committee on the bill. Can. Com. J. (1870), 242, 314 ; *Ib.* (1872), 254.

[6] *Supra*, p. 515. Patent bill, 1869 ; trade marks and designs bill, 1876. For Imperial acts, see patent law amendment act, 1852 ; also, 16 & 17 Vict., c. 78, commissioners under act relative to appointment of persons to administer oaths in chancery, &c. ; also, 35 Vict., c. 1, s. 5, Dom. Stat. ; also, railway bills imposing rates of tolls, 8 & 9 Vict., c. 10, s. 90 ; 21 & 22 Vict., c. 75.

of charges and expenses, which was not previously considered in committee.[1] But when any payment is made out of the consolidated revenue fund, or out of moneys to be provided by Parliament, the clauses providing for such payment must be first considered in committee. Under the act just cited, the candidates pay expenses ; but in another act providing for the trial of controverted elections by judges, the clauses paying judges and expenses were first considered in committee, as such payments are made out of the public funds.[2]

In 1883, the Liquor License Act contained a clause providing for the payment of certain fees by persons receiving licenses under the act. These fees, together with fines and penalties, form a license fund, applied, under regulations of the governor in council, for the payment of the salaries and expenses incurred under the law, and any residue is to be handed over to the treasurers of the various municipalities, except in the case of unorganized districts, where it shall be paid to the receiver-general. As these fees are only necessary to the execution of the act, and are not intended to be in aid of the public revenue, no previous committee was required.[3]

It has also been held that a bill merely declaratory in its nature, and involving no new charge, need not originate in committee of the whole.[4] Neither is a com-

[1] See also, "Act granting certificates to pedlers," in which fees are paid to police authorities ; 125 E. Com. J. 309 ; also, 29 & 30 Vict., c. 36, assessing railways by commissioners for special purposes ; also, sec. 11 of 9 & 10 Vict., c. 105 ; 11 & 12 Vic., c. 48 ; 12 & 13 Vict., c. 77 ; also, joint stock companies act, 40 Vict., c. 43, s. 74, Dom. Stat. ; also, railway acts of 1868 and 1879 requiring a payment of $10 for each mile for a fund for the purposes of the acts ; also, 151 E. Hans. (3), 1601 ; corrupt practices prevention bill, 1858.

[2] 123 E. Com. J. 109, 312.

[3] 46 Vict., c. 30, s. 56, &c.

[4] Bill to remove doubts as to the liability to stamp duties of premium notes, taken or held by Mutual Fire Insurance companies. Can. Speak. D. 183. See also promissory notes bill ; Can. Hans., April 24, 1878.

mittee necessary in the case of bills authorizing the levy or application of rates for local purposes by local authorities acting in behalf of the ratepayers.[1] Nor does the rule apply to bills imposing charges upon any particular class of persons for their own use and benefit.[2] Nor, to bills indemnifying members for penalties they may have incurred for the violation of an act.[3] Nor to bills having for their object the diminution or repeal of any public tax,[4] provided such bills do not affect trade; and then they come under the special rule on that subject. As an illustration of the strictness with which the Canadian Commons observe the rule respecting trade, it may be mentioned that in the session of 1871, the house went into committee on resolutions to exempt parafine wax, lubricating oil, and other articles from excise duty, and to reduce that duty on certain articles in the province of Manitoba. When the house had agreed to these resolutions, a bill was brought in; but before it had gone through committee, it was considered advisable by the government to reduce the duty on certain spirits manufactured from molasses in bond; and accordingly resolutions were passed in committee, and when adopted by the house, referred to the committee on the foregoing bill.[5] No previous vote in committee is necessary in the case of bills authorizing payments out of moneys already applicable to such objects,[6] nor in the case of bills appropriating the proceeds of an existing charge.[7]

Bills consolidating and amending statutes are frequently brought into the house with clauses containing charges

[1] 84 E. Com. J. 233; 94 *Ib.* 363; 151 E. Hans. (3), 1519. 174 *Ib.* 1701.

[2] 103 E. Com. J. 57; 105 *Ib.* 54; May, 536.

[3] 175 E. Hans. (3), 83.

[4] E. Com. J. 1860; Paper duties' bill; *Ib.* 1858, bill to reduce duties on passports. Can. Com. J. (1882), 87; bill to repeal duties on promissory notes.

[5] Can. Com. J. (1871), 119, 120, 234.

[6] Public works (I.) act, 9 Vict. c. 1; May, 534.

[7] Thames embankment bill, 1862 165 Hans. (3), 1826.

on the public revenue, but it is only when these clauses impose new burthens that it is necessary to consider them first in a committee of the whole. For instance, in the session of 1883 the house passed "an act consolidating and amending the several acts relating to the militia and defence of the dominion." The bill, as introduced, contained two classes of clauses affecting the public revenue: 1. Clauses taken from existing statutes. 2. Clauses entirely new. As to the second class, there was no doubt that they imposed a new burthen, and consequently resolutions were at once introduced with the recommendation of the governor-general, considered in committee of the whole, and when agreed to by the house, referred to the committee on the bill. With respect to the first class of clauses, they re-enacted simply the existing law and did not create any new charge on the treasury; and accordingly no previous committee was considered necessary.

The object aimed at in such bills of consolidation is to give the old law in a new and more convenient form of reference; and certain charges were merely continued, in the bill in question, in accordance with law at that time in force. The last clause of the act, in fact, expressly declares: "This act shall not be construed as a new law, but as a consolidation of so much of the said acts as is hereby re-enacted."[1]

**VI. Second Reading.**—With these explanations as to certain preliminary proceedings necessary to the introduction of public bills, we can now refer to the different readings and stages through which a bill must pass before it becomes law.

When the house has agreed to give a first reading to a bill, the speaker will at once proceed to propose the next motion:

"When shall the bill be read a second time?"

[1] 46 Vict., c. 11, ss. 28-45; Can. Com. J. (1883), 226.

This motion passes almost invariably *nemine contradicente*, as it is a purely formal motion proposed with the object of placing the bill on the orders for a second reading, when all discussion can most regularly and conveniently take place; but though it is unusual to raise a debate on the merits of the bill on such a motion, yet it is perfectly in order to divide the house on the question as at any other stage of a measure.[1]

When the bill comes up for consideration in its proper course, one of the clerks at the table will read the order aloud, and the member in charge of the measure will then move its second reading—a motion which does not require a seconder, according to strict English usage.[2] The member should take care to inform himself whether the bill is printed in the two languages, as that is absolutely necessary at this stage.[3] The letters E. F. on the order paper will show whether that has been done. If any objection be made on that ground, it will prevent the bill being taken up for its second reading on that day.[4] But if the motion has been made, and a debate allowed to proceed thereon, it will be too late then to raise an objection as to the printing in French.[5]

The second reading of a bill is that stage when it is proper to enter into a discussion and propose a motion relative to the principle of the measure.[6] The Senate has a rule on the subject:

"43. The principle of a bill is usually debated at its second reading."

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[1] Can. Com. J. [1876], 245; *Ib.* [1877], 160; Can. Hans. [1879], 1375-8, 1385; supreme court repealing bill.

[2] Orders of the day require no seconder, May, 545. Such motions, however, are generally seconded in the Canadian Commons.

[3] See *supra*, p. 219. R. 93.

[4] Can. Sp. D. Nos. 94, 118.

[5] Mr. Speaker Blanchet. Insolvency bill, Can. Hans. [1879], 1620.

[6] Mirror of Parl. 1840, vol. 17, p. 2629; 190 E. Hans. (3), 1869; Can. Hans. [1878], 599, common assaults bill; Sen. J. [1867-8], 248, 283, 296, &c.; *Ib.* [1874], 315-329; 216 E. Hans. (3), 1686; Can. Com. J. [1879], 327.

This rule, which is very vaguely expressed, is generally adhered to, although sometimes the Senate, like the Commons, may agree for convenience sake, to defer a general discussion of the merits of a measure until a later stage.[1]

The Commons have no rule on the subject, but the practice of the house is always to discuss the principle of a bill at this stage.[2] All amendments must "strictly relate to the bill which the house by its order has resolved upon considering."[3] If a resolution opposed to the principle of the bill be resolved in the affirmative;[4] or the motion, "that the bill be now read a second time," be simply negatived on a division, the measure will disappear from the order book, but it may be revived at any subsequent time, as the house has only decided that it should not *then* be read a second time, and the order previously made for the second reading remains good. When a bill disappears in this way from the order paper, it is competent for a member to move at any time,

"That it be read a second time on ——— next."

On this motion being agreed to, the bill takes its place on the orders. The same practice obtains with respect to the bill, at any previous or succeeding stage.[5]

It is customary for those who are opposed to a bill to move

"That the word 'now' be struck out, and the words 'this day three (or four or six) months' added at the end of the question."[6]

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[1] Sen. Deb. [1874], 297, 3rd R.; *Ib.* [1874], 364; Can. Com. J. [1875], 284.

[2] May, 546; 131 E. Com. J. 196; Can. Com. J. [1867-8], 425.

[3] 143 E. Hans. (3), 643; 179 *Ib.* 342; 251 *Ib.* 1070-71; 252 *Ib.* 955-70; 135 E. Com. J. 177. And according to the rules of debate, a member is bound to confine himself to matters which are relevant to the subject-matter of the bill, 213 E. Hans. (3), 644-6.

[4] 244 E. Hans. (3), 1384.

[5] Interest bill, 1870; insolvency bill, April 3, 1876. Acts for relief of Walter Scott and M. J. Bates, 21st March, 1877; interest bill, 4th May, 1883. See *infra*, s. xviii, where the question of giving notice is fully discussed.

[6] Can. Com. J. [1867-8], 40, 227; *Ib.* [1877], 71; *Ib.* [1879], 174, 182-3, &c. Sen. J. [1876], 105; *Ib.* [1878], 201; *Ib.* [1882], 177.

If this motion is carried, the bill disappears from the order paper, and is supposed to be killed for the current session; but it may happen that the session is prolonged beyond all expectations, and that the bill will again take its place on the paper in conformity with the order of the house.[1] In 1880, a bill respecting marriage with the sister of a deceased wife was postponed in the Senate by the passage of a resolution declaring it inexpedient to press the measure that session.[2]

When the order for the second reading has been read, a member may move, if he should not wish to proceed with the bill, that the order be discharged and the bill withdrawn.[3] Or if the motion has been actually made for the second reading, it must first, with leave of the house, be withdrawn.[4] It is irregular to go into the merits of a bill on a motion that the order for a second reading be postponed or discharged.[5] A member who has moved the second reading of a bill can only speak again at the close of the debate if he wishes to make an explanation as to the course he proposes to take with respect

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[1] Cases have occurred in the old Canadian assembly as well as in the English Parliament. In 1882, a bill was ordered to be read "this day month," and it came up accordingly, and was placed on the orders of the day after bills to which the house had, during the interval, given precedence. Fraud in contracts bill, Jour. p. 96; orders of the day, 3rd of April. See also Can. Leg. Ass. J. [1856], 435-444, 625 (separate school bill).

[2] Sen. J. (1880), 209.

[3] 129 E. Com. J. 307; Can. Com. J. [1879], 136; Sen. J. [1867-8], 297, 306. The order is simply discharged in the Senate as in the Lords (Lords' J. 1877, p. 297), when the bill is from the Commons. The practice in the Lords is, however, to withdraw the bill, when it has originated in their own house; in fact, the practice is the same as that of the Commons. Lords' J. [1877], 194, 243, 271.

[4] Can. Com. J. [1867-8], 40; *Ib.* [1877], 90; *Ib.* [1878], 146; *Ib.* [1882], 129; 129 E. Com. J. 309, &c.; Lords' J. [1877], 235, 271. An order may be discharged and made the first for a subsequent day. Can. Com. J. [1877], 39.

[5] 216 E. Hans. (3), 1648; 240 *Ib.* 858-9. The same rule applies to the order for committee of the whole, 226 *Ib.* 859-60.

to the measure.[1] Neither is it regular to propose on the second reading, or other stage of a bill, any amendment by way of addition to the question, when it has been decided by the house that the bill shall be read a second time.[2] On the motion for the second reading it is out of order to discuss the clauses *seriatim*.[3]

**VII. Order for Committee of the Whole.**—When a bill has been read a second time (short), by the clerk, the next question will be proposed.[4]

"That the house go into committee on the bill on —— next."

Which motion generally passes, *nem, con.*,[5] like all such formal motions; though it is quite regular to move an amendment as to the time of committal.[6]

When the order of the day for committee has been reached and called in due form, the speaker will put the question,

"That I do now leave the chair."

Now is the time to move any amendment to the question. Members opposed to the bill may move that the house resolve itself into committee on the bill that day three or six months; or may propose motions adverse some principle of the measure.[7]

It has been frequently decided in the English house that on the motion for the speaker to leave the chair, a member "is at liberty to discuss the main provisions, but not to proceed *in detail* through the clauses, nor to discuss amendments to the same, until the bill is regularly in committee."[8]

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[1] Rule 15, p. 354. 219 E. Hans. (3), 584; 220 *Ib.* 381; 223 *Ib.* 1764.

[2] 183 E. Hans. (3), 1918; 186 *Ib.* 1285.

[3] 224 E. Hans. (3), 1297; 225 *Ib.* 684; 238 *Ib.* 1593; 248 *Ib.* 590.

[4] *Supra*, p. 416.

[5] Can. Com. J. [1870], 300; *Ib.* [1877], 128.

[6] 129 E. Com. J. 140. But it is not regular to move that the house do adjourn, according to an English decision, 221 E. Hans. (3), 744.

[7] Supreme court bill, 25th of March, 1875.

[8] 223 E. Hans. (3), 35; 224 *Ib.* 1297; 232 *Ib.* 1195-6.

**VIII. Instructions.**—An "instruction," empowering a committee to make those changes in a bill which otherwise it could not make, should be moved as soon as the order for the committee has been read by the clerk, and before the question is put that the speaker do leave the chair.[1] An instruction, properly speaking, is not of the nature of an amendment, but of a substantive motion which ought to have precedence of the question that the speaker do leave the chair.[2] If an instruction is moved when the latter motion is proposed, then it becomes an amendment, which, if agreed to, supersedes the motion for the committee, and the bill consequently can not be proceeded with for the time being.[3]

Considerable misapprehension appears to exist among some members of the Canadian Commons as to the meaning of an instruction—a misapprehension by no means confined to that body, since English speakers have frequently found it necessary to give decisions and explanations on the subject. An instruction, according to these decisions, is given to a committee to confer on it that power which, without such instruction, it would not have. If the subject-matter of an instruction is relevant to the subject-matter, and within the scope and title of a bill, then such instruction is irregular since the committee has the power to make the required amendment. The following precedents will illustrate the correct practice with respect to these class of motions:

In 1854 the English Commons had before them a "Bill to abolish in England and Wales the compulsory removal of the poor on the ground of settlement," and a member proposed to introduce clauses into the bill to prevent the removal of Irish paupers in the different unions of the country. It was pointed out that the contemplated changes

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[1] 163 *Ib.* 5978; 212 *Ib.* 1075.

[2] 179 *Ib.* 116-7; 183 *Ib.* 920-1; Sen. J. [1882], 195.

[3] 163 E. Hans. 5978; 179 *Ib.* 116-7; Can. Com. J. [1875], 284.

would entirely alter the character of the bill, and could only be made by an instruction; the speaker being appealed to said,[1] "that the rule had been clearly stated, and if the noble lord intended to propose the addition of the new provisions alluded to, it would be necessary to move them as an instruction to the committee."[2]

In 1865, the order for committee on the Union Chargeability Bill having been read, Mr. Bentinck moved that "it be an instruction to the committee, with a view to render the working of the system of union chargeability more just and equal; that they have power to facilitate, in certain cases, the alteration of the limits of existing unions." An objection was at once taken, that under the Poor Law Board Act there was power to alter the boundary of unions, and therefore an instruction was not necessary. The speaker (Mr. Denison) decided: "The question is not as to whether the Poor Law Board has the power, but whether the committee would have it without the instruction; and, in my opinion, the committee would not have that power, because the subject-matter would not be relevant to the subject-matter of the bill. Therefore the motion is in order and should have precedence, because an instruction is not of the nature of an amendment, but of a substantive motion."[3]

In 1878, the order for committee on the Factories and Workshops Bill having been read, Mr. Fawcett rose to move an instruction extending the operation of the bill to children employed in agriculture. Mr. Speaker Brand stated in reply to an objection to the proceeding: "The motion of the hon. member is in the form of an instruction to the committee. The committee would not have power to deal with the question unless an instruction of this kind were passed."[4]

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[1] 74 E. Hans. (3), 107; 195 *Ib.* 847; 207 *Ib.* 401-2.
[2] 131 *Ib.* 1274.
[3] 179 E. Hans. (3), 116.
[4] 238 *Ib.* 63-4.

In 1881, the order for the committee of the whole on a bill respecting the sale of intoxicating liquors on Sunday, in Wales, having been read, it was moved as an instruction that "they have power to extend the same to Monmouthshire." [1]

In 1868, the speaker ruled that a select committee to which had been referred the Sale of Liquors on Sunday Bill would be confined to its subject-matter, and could not consider the question of the general licensing system without a special instruction from the house.[2]

In 1870, the order of the day having been read for committee on a bill respecting elections of members of the Commons, it was moved that the committee be instructed to provide that the qualifications of voters should continue to be regulated by the laws of the legislatures of the provinces. Mr. Speaker Cockburn decided that the committee had the power to do what was proposed, and that consequently the motion was irregular.[3]

In 1872, when the question for committee on the bill to repeal the insolvency laws was under consideration in the Canadian House of Commons, Mr. Harrison moved that it be an instruction to the committee to except the province of Ontario from the operation of the bill. Mr. Blake having made objection to the motion, Mr. Speaker Cockburn ruled: "As the bill affected the whole dominion the committee have already the power asked for in the motion, and consequently it is out of order." [4]

Decisions of English speakers have also laid down the following rules with respect to instructions:

"That it requires an instruction to divide a bill into two parts, or to consolidate two bills into one.[5]

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[1] 136 E. Com. J. 302.

[2] 190 E. Hans. (3), 1869.

[3] Can. Com. J. [1870], 120-21.

[4] Can. Com. J. [1872], 78-9.

[5] 86 E. Hans. (3), 154; also, 136 E. Com. J. 285; 137 *Ib.* 121.

"That notice should be given of an instruction when a member has proposed such as a substantive motion, and not as an amendment to the question, that the speaker do leave the chair.[1]

"That when a bill is simply a continuance bill of an act now in force, it is not competent for the committee to introduce a clause of a different nature to the simple scope of such bill, but it may be an instruction to the committee to introduce such a clause.[2]

"That it is not regular to instruct a committee to entertain a question which is outside of the bill before them. For instance, on the Representation of the People Bill, in 1860, a member moved an instruction that no borough should be deprived of one member until it had been ascertained by an actual census of the population of the borough, whether or not the number of its population fell below the limit of 7,000 inhabitants. Mr. Speaker ruled, as above, because it was not competent to the committee to inquire with regard to the census.[3]

"That any number of instructions may be moved successively to the committee on the same bill, as each question for an instruction is separate and independent of every other.[4]

"That it is regular to move amendments to a question for an instruction."[5]

If a motion for an instruction contains a proposition that ought to be considered in a preliminary committee, it cannot be entertained. For instance, when it was proposed on one occasion in the English house to instruct a committee on a bill respecting the sale of spirits to extend its operation to the sale of beer, wine and cider, Mr. Speaker Denison said: "The necessity for an instruction arose

[1] 175 E. Hans. (3), 1939-40; 158 *Ib.* 1951.

[2] 159 *Ib.* 1912, 1924.

[3] 158 E. Hans. (3), 1954-5.

In 1860, nine instructions were moved after the order for committee on the representation of people bill; the proceedings and rulings, on this occasion, illustrate the correct practice with respect to instructions. 158 E. Hans. (3), 1951-88. See Blackmore's decisions [1881], 116-17, where a summary is given of the decisions of Mr. Speaker Denison, on points that were raised.

[5] 101 E. Com. J. 113.

from the acts relating to spirits being considered quite a distinct class; and to deal with beer, cider and wine, would be to deal with separate trades. If the house should now deal with those trades by an instruction they would pass by a stage—that is a preliminary committee—that, in due order, ought first to have been taken."[1]

On the same principle, an instruction cannot be moved to make any provision which imposes a tax or charge upon the people; but the matter ought to be first considered in a committee of the whole.[2] It is the practice in the English Commons to give, according as it is necessary, instructions to the committee on customs and revenue bills to make provisions therein pursuant to resolutions passed in committee of ways and means.[3] In 1882, the house considered the Arrears of Rent (Ireland) Bill, as amended in committee of the whole, and it was ordered that the bill be recommitted, and that it be an instruction to the committee that they had power to make provision in accordance with a resolution, reported from a previous committee, authorizing the payment out of moneys to be provided by Parliament of the salaries of any officers appointed under the act, and also the payment out of the consolidated fund of the United Kingdom of any moneys required for the purpose of assisting emigration from Ireland.[4]

According to the modern practice of Parliament an instruction to a committee is not "mandatory," and it is therefore customary to state explicitly in the motion, as shown above, that the committee "have power" to make the provision required in a bill.[5] "For," as stated by Mr.

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[1] 167 E. Hans. (3), 696-700.

[2] 78 *Ib.* 904.

[3] 136 E. Com. J. 240, 304; 137 *Ib.* 366, 404.

[4] 137 *Ib.* 383.

[5] 137 *Ib.* 366, &c. Such mandatory instructions in the case of bills can be found in the English journals, but not for many years past. 21 E. Com. J. 836; 66 *Ib.* 299; 90 *Ib.* 451; May, 553.

Speaker Brand, "the intention of an instruction is to give a committee power to do a certain thing if they think proper, not to command them to do it."[1] It has been pointed out by an English authority in such matters, that even the commmittee cannot act upon the instruction, without a question put upon the thing to be done, which of itself implies that the instruction is not conclusive upon the committee.[2]

All instructions must be moved on the first occasion when the order for the committee on a bill has been read. If the bill has been partly considered in committee, it is not competent to propose an instruction when the order is read for the house "again in committee," as the rules require that the speaker leave the chair as soon as that order has been taken up.[3]

**IX.—Reference to Select Committees.**—It is becoming a frequent practice in England, as well as in Canada, to send important bills, requiring very careful and deliberate inquiry to a special or a select standing committee, before referring them to committee of the whole.[4] The practice of revising bills in committee of the whole only dates from 1700, and the most eminent English authorities have frequently advised, and the House of Commons has already attempted, a modified return to the old method of consider-

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[1] 158 E. Com. J. 1954-5.

[2] Mr. Addington cited by Lord Colchester (Mr. Speaker Abbot) in his diary, 431. May 553. See a case in the Canadian House where the committee did not amend a bill in accordance with an instruction, but adopted one proposed by Mr. Blake in amendment to that referred to them by the house. Jour. (1882), 248-49, (Presbyterian bill).

[3] *Supra*, p. 419.

[4] 129 E. Com. J. 103, 109, 265. Lords J. [1861], 263; *Ib.*[1873], 364. Can. Com. J., (1876), 120. Criminal procedure bill. *Ib.* [1875], 139, insolvency bill; *Ib.* [1877], 161, larceny bill; *Ib.* (1877), 75, insurance bill; *Ib.* [1878], evidence in common assaults bill. Several bills may be consolidated into one bill in this way; Leg. Ass. J. [1863], 296, 313, 320.

ing certain public bills in select committees.[1] Particularly in the case where several bills on the same subject are before the house has it been found convenient to refer them all to one committee.[2] Sometimes a committee will combine two bills in one.[3] In 1879, a number of bills relating to insolvency were presented, and in view of the great variance of opinion on a very perplexing question, it was decided to refer the whole matter to a select committee to report by bill or otherwise. In this case, as it was not intended to report back any of the bills before the house, the order for the second reading of each was read and discharged, and each was then formally referred to the committee, with the consent of course of the introducer in every case.[4]

Any bill may be referred to a select committee in amendment to the motion for the house to go into committee of the whole, or on the reading of the order for committee.[5]

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[1] House of Commons, Palgrave, notes at end of work. Bagehot, in his work on the English constitution, shows how difficult it is for a committee of the whole to give that patient, orderly examination which all bills should receive. The same question was discussed before a committee on public business in 1854 (Report p. 31), and in 1878 (Report pp. 21-22), and the opinion was expressed by Sir Erskine May and others, that bills are exposed to too many opportunities of discussion, and that if a bill is referred to a competent committee, the report of that committee ought to be accepted in the same way as a report of a committee of the whole. Of course, it could always be re-committed by an express order of the house. In the absence of such an order, it was suggested that the bill should stand for consideration of report, just as if it had gone through committee of the whole. This suggestion has been practically embodied in the new standing orders of 1st December, 1882, [Nos. xxii.-xxv.], providing for the appointment of standing committees to consider certain classes of bills, see *supra* p. 426.

[2] Can. Com. J., railway bills, 1870 and 1871, &c. Insolvency bill, 1870, criminal law bills, 1876; banking bills, 1871; 129 E. Com. J. 286.

[3] Can. Com. J. [1882], 285.

[4] Can. Com. J. [1879], 81. The insolvency laws have always been the result of the deliberations of select committees. See journals of 1867-8, 1869, 1870, 1871, 1875.

[5] Marine electric telegraphs' bill. Can. Hans. [1879], 1572 (Mr. Speak. Blanchet). May, 577.

It is also perfectly regular to refer a number of bills at the same time to one committee of the whole which may consider all on the one day without the chairman leaving the chair on each separate bill.[1]

**X.—Notice of Amendments in Committee.**—When a member intends to move an important amendment in committee of the whole to a bill, he may or may not, according to Canadian practice, give notice of such amendment; but latterly it has been found expedient in many cases to give notice, and this practice, obviously so convenient and useful, is gaining ground every session.[2] In the English house it is usual to give such notice; and in fact, on the consideration of the bill, as amended in committee, no new clause can be proposed unless the house has received a regular notice containing the words of the proposed amendment.[3]

**XI. Bills reported from Select Committees.**—When bills are reported from select committees after their second reading in the house, they go upon the orders of the day for consideration in committee of the whole, in pursuance of the following rule:

22. "Bills reported after second reading from any standing or select committee shall be placed on the orders of the day following the reception of the report, for reference to a committee of the whole house, in their proper order, next after bills reported

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[1] Eng. S. O. 19th July, 1854, No. liii. 114 E. Com. J. 253: "Provided that, with respect to any bill not in progress, if any member shall object to its consideration in committee with other bills, the order of the day for the committee on such bill shall be postponed." In the legislative assembly of Canada this practice was followed on several occasions. Leg. Ass. J. [1860], 445; *Ib.* [1861], 319; *Ib.* [1866], 195. In 1861 some nineteen bills were referred at one time. But it does not appear to be the practice of the Senate, Deb. [1880], 305.

[2] V. & P. [1877], 175, 200, 214, 225, 226, 233, 257. Railway act [1879], 250; militia act, 462. Notice is required in case of amendments to private bills.

[3] S. O. 1854, No. lviii.

from committees of the whole house. And bills ordered by the house for reference to a committee of the whole house shall be placed, for such reference, on the orders of the day following the order of reference, in their proper order, next after bills reported from any standing or select committee."[1]

**XII.—Proceedings in Committee of the Whole.**—When either house agrees to go into committee of the whole on a bill, the speaker calls a member to the chair, and the mace is put under the table. The practice in both houses is for the most part identical;[2] but there is an express order of the Senate which forbids "any arguments being admitted against the principle of a bill in a committee of the whole."[3]

Rule 46 of the Commons provides:

"In proceedings in committee of the whole house upon bills, the preamble shall be first postponed, and then every clause considered by the committee in its proper order; the preamble and title to be last considered."

In the Senate the title is regularly postponed;[4] but in the Commons it is never considered except when it is necessary to amend the same. The preamble is also postponed in both houses until after the consideration of the clauses.[5] The bill is then considered clause by clause. The chairman will call out the number of each clause, and read the marginal note as a rule, but he should give the clause at length when it is demanded by the committee. He will then put the question, "shall the clause be adopted," or, "stand part of the bill?" Each clause is a distinct question, and must be separately discussed. When a clause has been agreed to, it is irregular to discuss it

[1] 129 E. Com. J. 269, 314; Can. Com. J. [1877], 140, 207. Insurance bill.
[2] Sen. J. [1867-8], 121.
[3] R. 89.
[4] Sen. J. [1880], 166.
[5] *Ib.* [1880], 166. The English house has now a S. O. to postpone the preamble until after the consideration of the clauses, without question put, No. LV., 27th Nov., 1882.

again on the consideration of another clause.[1] Amendments must be made in the order of the lines of a clause. If the latter part of a clause is amended, it is not competent for a member to move to amend an earlier or antecedent part of the same clause. But if an amendment to the latter part of a clause is withdrawn, then it is competent to propose one to an earlier part.[2] When the committee have agreed to a clause, or to "a clause as amended," the chairman will sign his initials on the margin, and his name in full at the end of the bill, when it has been fully considered by the committee.

According to strict English practice, which is generally followed in the Senate, new clauses should be brought up and discussed after the consideration of the original clauses of the bill; but in the Canadian Commons, the practice is not rigorously followed, and the committee is generally guided by what is most convenient in each particular case. The schedules are the parts of the bill last considered. Clauses are frequently postponed, in order to give an opportunity until another meeting of the committee of considering the advisability of amending them, or taking any other course that may be found necessary with respect to them. If it be necessary, the title can be amended in accordance with English practice, in order to make it conform to changes in the bill, and in such a case a special report ought to be made;[3] but as a rule in the Canadian house, any change in the title is made the subject of a special motion after the third reading.[4] In the case of a Senate bill it is usual to amend it in committee,

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[1] 241 E. Hans. (3), 2112; May, 561. If a member move to omit a clause the chairman will simply put the usual question, shall the clause stand part of the bill? 164 E. Hans. (3), 1466.

[2] 46 E. Com. J. 175; 181 E. Hans. (3), 539.

[3] 127 E. Com. J. 352, parish constables abolition bill; Can. Com. J. [1882], 426, harbour and river police bill.

[4] Can. Com. J. [1876], 217; *Ib.* [1877], 212.

and report the fact to the house.[1] But in the Senate the title may be amended at this as at any other stage of the bill.[2]

A committee of the whole have now power to make amendments not within the scope and title of the bill. A rule of the English Commons[3] provides :

"That any amendment may be made to a clause, provided the same be relevant to the subject-matter of the bill, or pursuant to any instructions, and be otherwise in conformity with the rules and orders of the house ; but if any amendment be not within the title of the bill, the committee are to amend the title accordingly,[4] and report the same specially to the house.[5]

In the session of 1875, the house went into committee on a bill "to amend the general acts respecting railways," and a question arose whether it was competent to add a clause requiring the government to purchase goods for the use of dominion railways upon public tender and contract only ; and the committee having arisen for the purpose of receiving instructions from the house upon the point at issue, Mr. Speaker Anglin decided that such an amendment would be regular[6] without an instruction. A similar decision was given in committee of the whole on a bill to repeal the Insolvency Laws now in force in Canada. It was proposed to make some amendments which would have the effect of adding certain provisions with respect to preferential assignments and priority of judgment, and in that way avert certain dangers likely to result, in the opinion of many persons, from the total repeal of the act as provided for in the bill. The amendments were decided to be in order.[7]

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[1] Can. Com. J. [1882], 363.
[2] Sen. J. [1880], 166, 168.
[3] S. O. 19th July, 1854.
[4] Sen. J. [1877], 253.
[5] This order has always been held in the English house to apply to select committees. May, 578 ; 118 E. Com. J. 248 ; 127 *Ib.* 169, 342.
[6] Can. Com. J. [1875], 327.
[7] Can. Hans. [1879], 1775.

On the other hand, it has been decided that it is not within the scope of a committee to which a continuance bill has been referred, to amend the provisions of the acts which it is thereby proposed to continue, or to abridge the duration of the provisions contained in those acts.[1]

It is irregular to propose an amendment which is irrelevant to the subject-matter of a clause, but it should be submitted to the committee at the end of the bill, as a separate clause.[2]

The committee cannot agree to any clauses involving payments out of the public funds,[3] or imposing any dominion tax or charge upon the people,[4] unless such clauses have been previously considered in committee of the whole—a subject fully explained in the previous part of this chapter.[5] The committee on the bill cannot increase duties, without a previous resolution from a committee, but it may reduce them in accordance with the settled principle that gives every facility to the removal of public burthens.[6] It has also been ruled in the English house that amendments varying the incidence of a rate or tax come within the rule, requiring consideration in a previous committee, and the bill must be re-committed with respect to the clauses affected, in case there has been no previous committee on the subject.[7]

Such clauses, having been read a second time and agreed to, and referred to the committee on the bill, are not considered as amendments made in committee. Accordingly if no alteration be made therein in committee on the bill,

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[1] 129 E. Com. J. 353.

[2] 147 E. Hans. (3), 1190, 1198. In this case the amendment proposed to be made was relevant to the bill, but as it embodied a principle contrary to the clause, it could not be added.

[3] May, 563; Can. Com. J. [1876], 84, 185; *Ib.* [1877], 94, 128.

[4] Can. Com. J. [1870], 242, registration of timber marks; *Ib.* 285, copyright.

[5] *Supra*, s. v.

[6] May, 564.

[7] 217 E. Hans. (3), 402, 413.

the latter may be reported up without amendment.[1] The English Commons have the following order:—

"In going through a bill, no questions shall be put for the filling up of words already printed in italics, and commonly called 'blanks,' unless exception be taken thereto; and if no alterations have been made in the words so printed in italics, the bill is to be reported without amendments, unless other amendments have been made thereto."[2]

But an exception is always made in the case of a Senate bill. When such clauses are added to a Senate bill, they must be considered as amendments and reported up as such, in order to send them to the upper house for concurrence.[3]

After a bill has been considered clause by clause, and the preamble agreed to, the committee have sometimes found it expedient to reconsider the bill, either in whole or in part, and in order to do this, a motion for the reconsideration has been made and agreed to.[4] The Senate have a rule which appears to provide for such cases:

"44. A senator may, at any time before a bill has passed, move for the reconsideration of any clause thereof already passed."

The same practice sometimes obtains in Commons committees, but it is not one to be encouraged, since it is obviously at variance with the sound principle which prevents either the house or committee passing on the same question twice.[5] The proper time for the reconsideration of an amended bill is after report from committee, when, under English practice—which might advantage-

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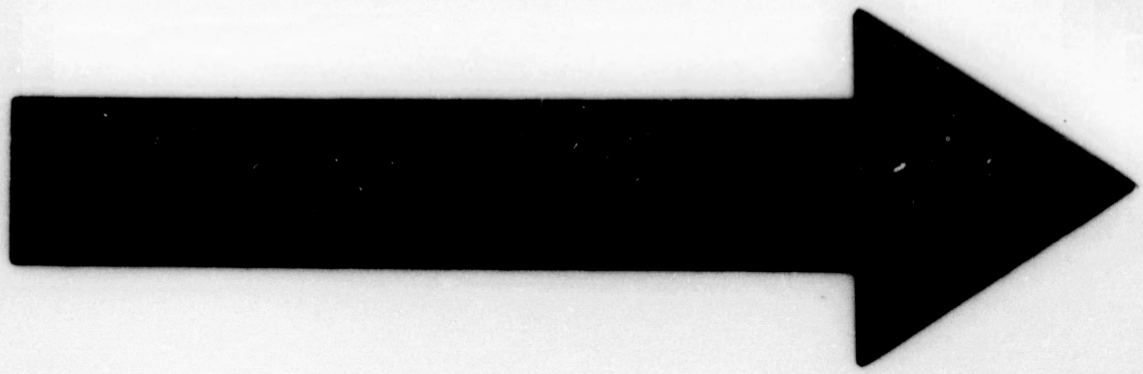
[1] Penitentiary act, 1876.

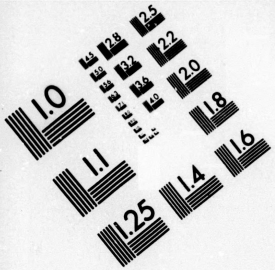
[2] S. O. 19th July, 1834, No. 57. In the English Commons money or taxation clauses are printed in italics in the bill as introduced. In the Canadian house they are generally given in the same way.

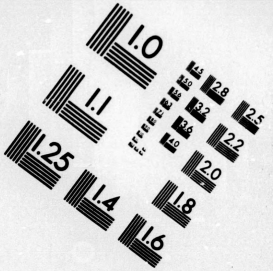
[3] Post-office bill, 1867-8; Sen. J. 155-8; Com. J. 128-9; census bill, 1879.

[4] Sen. J. 1882, March 6th and 13th, county judges' bill.

[5] See *supra*, p. 339 *note* and *infra*, p. 563.



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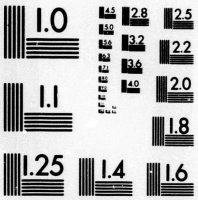


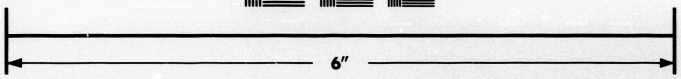


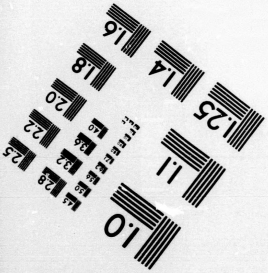


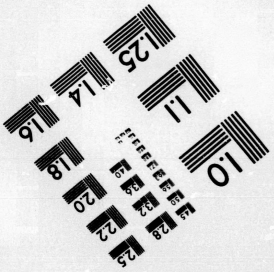


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ously be followed in the Canadian Commons—it is competent to make amendments, and "reconsider" the bill; or in any case, it may be sent back, and the committee regularly authorised to reconsider it in any particular.[1]

**XIII.—Report from Committee of the Whole.**—When the committee have only partly considered a bill and it is found advisable to postpone further proceedings until a future day, the chairman is instructed to report progress, and ask leave to sit again.[2] On receiving the report, the speaker will ask the house to appoint a future day for the further consideration of the bill. But when it is wished in committee to make no further progress with a bill, it is moved

"That the chairman do now leave the chair."

In this case no report is made to the house and the bill will disappear from the order book.[3] The same will happen if it is found that there is not a quorum present in the committee.[4] But the committee "have no power to extinguish a bill, that power is retained by the house itself."[5] Consequently the bill may be subsequently revived by a motion, without notice, to fix another day for the committee.[6]

But when the committee have fully considered the bill, the chairman reports "The committee have gone through the bill and made certain amendments thereto"; or "the committee have gone through the bill and directed me

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[1] *Infra*, p. 547.

[2] Can. Com. J. [1877], 186. Sometimes the committee may receive leave to sit again that same day. *Ib.* [1878], 147.

[3] *Ib.* [1869], 106, 288; *Ib.* [1874], 326; *Ib.* [1882], 229; Can. Hans. [1882], 615; Sen. J. [1880], 166.

[4] 110 E. Com. J. 449.

[5] 176 E. Hans. (3), 99.

[6] Can. Com. J. [1883], 159 (Mr. Speaker Fitzpatrick's ruling with respect to Criminal Law Amendment Bill). See *infra*, s. xviii., where the question of notice is discussed.

to report the same without amendment."[1] Rule 47 of the Commons provides:

"All amendments made in committee shall be reported by the chairman to the house, which shall receive the same forthwith. After report the bill shall be open to debate and amendment before it is ordered for a third reading. But when a bill is reported without amendment, it is forthwith ordered to be read a third time, at such time as may be appointed by the house."

Accordingly when a bill is reported without amendment, the speaker puts the question, "When shall the bill be read a third time?"

The bill is either read immediately, or on a future day, as the house may decide. But when a bill is reported with amendments the speaker will propose the usual question, "When shall the bill, as amended in committee, be taken into consideration?" On this question the only regular amendment is as to the time when the consideration should be taken, and the discussion must be relevant thereto.[2] Except in cases where the amendments are of an important character, and the house requires time to consider them,[3] the bill is immediately considered.[4] When the bill, as amended, is taken into consideration, the amendments are twice read and agreed to.[5] Up to very recently the amendments only were considered;[6] but now the whole bill is open to consideration, which is in conformity with the Canadian rule, and with the practice of the English Commons from which it is taken.[7]

In the Senate it is usual to follow the English practice and amend the bill, when necessary, on consideration of

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[1] Can. Com. J. [1877], 232.

[2] 217 E. Hans. (3), 345-58. It is not regular to discuss a particular clause, 256 *Ib.* 3.

[3] Maritime jurisdiction bill, 1877. Can. Com. J. [1878], 99.

[4] Can. Com. J. [1877], 224; *Ib.* [1878], 200; Sen. J. [1867-8], 225.

[5] Can. Com. J. [1877], 241.

[6] *Ib.* [1869], 253.

See for English procedure, 136 E. Com. J. 116-118.

the bill as amended in committee of the whole.[1] As a matter of fact, the Commons never amend the bill at this stage in accordance with the English practice. It is quite usual, however, for a member to move that the order for consideration be discharged and the bill recommitted for the purpose of amending the bill in any particular.[2] The bill may be ordered to be reprinted as amended, or re-committed to a committee of the whole, or to a select committee, immediately after reception of the report.[3] Or, on the order of the day having been read for the consideration of the bill, as amended, it may be recommitted to a select committee, and all petitions relating thereto may be so referred, and counsel may be heard before the committee on the subject.[4] Bills may be recommitted any number of times to a committee of the whole or to a special committee.[5] Bills may be recommitted *with* or *without* limitation; in the latter case the whole bill is open to reconsideration;[6] but in the former case, the committee can only consider the clauses or amendments or instructions referred to them.[7]

**XIV. Bills not referred to Committee of the Whole.**—It is not an uncommon practice in the Canadian houses to pass

[1] Sen. J. [1867-8], 222; *Ib.* [1877], 143-4; *Ib.* [1878], 180, 259, &c.

[2] Can. Com. J. [1869], 249-252; *Ib.* [1877], 208; 83 E. Com. J. 533; 128 *Ib.* 375.

[3] 129 E. Com. J. 228, 244; Can. Com. J. [1875]. 160; *Ib.* [1880], 124; *Ib.* [1882], 158 (reprinting); *Ib.* [1877], 149 (select com.); *Ib.* [1878], 172 (com. of whole). Sometimes the amendments, when they are short, are printed in the votes for the convenience of the house, when the bill has been amended by a select committee; common assaults' bill, 1878, p. 138, V. & P. In such a case no formal motion need be made; a verbal direction will be given to the clerk.

[4] 129 E. Com. J. 345.

[5] Can. Com. J. 1875, supreme court bill; *Ib.* 1877, Pickering harbour bill; 69 E. Com. J. 420, 444, 460; 128 *Ib.* 375.

[6] 129 E. Com. J. 284, 308; Can. Com. J. [1878], 170; *Ib.* [1880], 82.

[7] Can. Com. J. [1877], 115, criminal procedure bill; 216, joint stock companies' bill; *Ib.* [1878], 172, independence of parliament bill; 178, insurance bill, 129 E. Com. J. 364; 179 E. Hans. (3), 826; Can. Hans. [1875] 908.

bills without reference to a committee of the whole. This is almost invariably done in the case of the Appropriation or Supply Bill,[1] and not unfrequently in the case of other bills, also founded on resolutions passed in the committee of the whole.[2] Instances are also found in the Canadian journals of Commons' bills not based on resolutions, as well as of Senate bills having been passed without reference to a committee of the whole[3]—being read at length in such cases instead of being sent to a committee of the whole.[4] Supply and customs' bills, on the other hand, have been considered at times in committee, whenever it has been found necessary to amend them.[5] This proceeding is at variance with the general practice of the Canadian Commons, and is not sustained by the modern usage of the English house, where bills generally (except those reported from standing committees) are considered in committee of the whole.[6] It may be added, however, that the practice in the Canadian house appears to be followed only in cases where there is no wish or intention to propose an amendment in committee.

In the Senate, public bills are also sometimes considered without reference to a committee of the whole,[7] and invariably so in the case of the supply bill. In the Lords, bills are almost invariably committed, except towards the end of the session, and then the question for a committee is formally put and negatived.[8]

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[1] Chapter xvii., s. 11.

[2] Can. Com. J. [1867-8], 114 ; *Ib.* [1871], 117 ; *Ib.* [1877], 336 ; *Ib.* [1879], 374, &c. ; Sen. J. [1878], 205, 282.

[3] Can. Com. J. [1867-8], 37 (speaker's act); 226 (interpretation of statutes) ; *Ib.* [1873], insolvency bill, 314 ; *Ib.* [1873], 179, 216 (Senate bills).

[4] This is an obsolete practice of no utility, and may be traced to the exploded practice of reading bills at length. See *infra*, p. 518 *n.*

[5] Can. Com. J. [1867-8]. 421 ; *Ib.* [1874], 207.

[6] 241 E. Hans. (3), 1238-9. See *supra*, p. 539 *n.*

[7] Sen. J. [1867-8], 309.

[8] Lords' J. [1877], 393, 405, &c.

**XV. Third Reading.**—When the order of the day for the third reading has been read, it is competent to move that it be discharged and the bill withdrawn,[1] or that it be recommitted.[2] Formerly it was not unusual when the motion for the third reading had been agreed to, to add clauses, or make other amendments[3]; but of late years the house has followed the modern practice of the English Commons, which is stated in a standing order: "no amendments, not being merely verbal, shall be made to any bill on the third reading."[4] Whenever it is proposed to make important amendments, it is usual to move to discharge the order for the third reading, and to go back into committee for the purpose.[5] Or the house may be asked at this as at any other stage of a bill to divide on a resolution relative to the principle of the whole measure.[6]

In the Senate, bills are constantly amended on the third reading without going back to committee.[7] Previous to 1880-81 it was customary not to require a formal motion for the third reading,—a loose practice which sometimes gave rise to misunderstandings when members wished to move amendments. Since then, the third reading is moved regularly as in the Commons.[8] The practice in moving amendments is still very variable. Amendments are now moved after the reading of the order,[9] or on the motion for the third reading—the proper time when there is a diver-

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[1] Can. Com. J. [1874], 298; 112 E. Com. J. 380, &c.

[2] Can. Com. J. [1873], 311; 113 E. Com. J. 318, &c.

[3] Can. Com. J. [1867-8], 112, 180, 402.

[4] 21st July, 1856; 256 E. Hans. (3), 19, 20.

[5] Can. Com. J. [1877], 228.

[6] 131 E. Com. J. 229.

[7] Sen. J. [1867-8], 124, 278; *Ib.* [1876], 115, 183, 212; *Ib.* [1878], 186; *Ib.* [1880], 247; *Ib.* [1882], 334. Same practice in Lords; 151 E. Hans. (3), 1967, 2077; 209 *Ib.* 764; 20th Feb., 1862; Lords' J. [1877], 260.

[8] Sen. Hans. [1880-81], 401 (Mr. Speaker Macpherson's remarks).

[9] Sen. J. [1882], 136, 147, 187, 227, 257-9. This is generally the case with private bills and amendments to which there are no objections.

sity of opinion as to the bill and amendments.[1] Or they are moved after the third reading has been agreed to.[2] Sometimes it is found convenient to go back to committee.[3]

**XVI. Motion, that the Bill do pass.**—The next question put by the speaker is :

"That this bill do pass, and that the title be, etc."

This motion generally passes *nem. con.* immediately after the third reading,[4] though it is quite regular to defer the final passage until a future day ;[5] or to move that the further consideration of the bill be postponed ; or to propose other amendments against the principle of the measure with the view of preventing its passage.[6] On the 5th of April, 1877, in the Canadian Commons, a member proposed to send a bill respecting insolvency back to committee, but the speaker ruled that such an amendment was inadmissible at that stage—the third reading having been agreed to.[7] Any amendment to the title may now be made.[8]

**XVII. Proceedings after Passage, — Amendments, Reasons.** — When a bill has passed all its stages in one house, it is reprinted in proper form and communicated to the other house by one of the clerks at the table, who takes it up and presents it at the bar to a clerk.[9] Every bill has en-

[1] Sen. J. [1880-81], 203-6 ; *Ib.* [1880], 247 ; *Ib.* [1882], 199, 327.

[2] Sen. Hans. (1880), 281-2 ; Jour. 157, 160, 187 ; *Ib.* (1880-81), 188 ; *Ib.* (1882), 66.

[3] Sen. J. (1869), 151 ; *Ib.* (1876), 165-6.

[4] Can. Com. J. (1877). 223, &c.

[5] May, 484. In the Senate, 1879, the motion for the passage of a bill was negatived, the speaker coming down from his chair to speak and vote against the measure. Hans. p. 439.

[6] 86 E. Com. J. 86 ; 106 *Ib.* 335 ; 117 *Ib.* 383.

[7] Can. Com. J. (1877), 220.

[8] 129 E. Com. J. 60, 64, 115, 153, &c. ; Can. Com. J. (1874), 324 ; *Ib.* (1876) 217 ; *Ib.* (1879), 373.

[9] Sen. R. 100 ; Com. R. 97.

grossed on its back the order of the house, in the two languages: That the clerk do carry the bill to the Senate (or Commons) and desire their concurrence.[1] If the bill is passed by the Senate, to which it is sent, without any amendment, a written message is returned to that effect.[2] If the bill is amended, a message is sent desiring the concurrence of the other house to the amendments, which are always attached to the copy of the bill.[3] If the bill fail in either house, no message is sent back on the subject, and the fate of the measure can only be decided by reference to the records of the house, to which it was sent for concurrence.[4]

Rule 23 of the Commons provides:

"Amendments made by the Senate to bills originating in this house, shall be placed on the orders of the day next after bills reported on by select committees."

The practice in both houses with respect to amendments is the same. When the amendments are of an unimportant character, or there is no objection to their passage, they are generally read twice and agreed to forthwith;[5] but if they are important their consideration is deferred until a future day.[6] The speaker of the English Commons lays down the English practice as follows: "In cases where expedition is necessary, it has been the practice of the house occasionally—especially late in the session—to order that these amendments shall be considered forthwith. But on such occasions the member in charge of the bill is bound to satisfy the house that expedition is necessary."[7]

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[1] Sen. J. (1878), 187; Can. Com. J. (1878), 202, 265, &c.

[2] Sen. J. (1878), 216; Com. J. 224.

[3] Sen. J. (1878), 277; Com. J. [1877], 131, 322.

[4] Receiver-general and attorney-general of Canada bill; Com. J. 1878, p. 155; Sen. J. p. 201.

[5] Sen. J. (1878) 277.

[6] Sen. J. (1869), 170; Com. J. (1877), 183; *Ib.* (1878), 261, 292.

[7] 225 E. Hans. (3), 650. See also, 110 E. Com. J. 458, 464; 135 E. Hans. (3), 1411.

If one house agree to the amendments made in a bill by the other house, a message is returned to that effect, and the bill is consequently ready to be submitted to the governor-general.[1] In case the amendments are objected to, a member may propose: That the amendments be considered that day "three" or "six" months;[2] and, when such a motion is agreed to, the bill is practically defeated for that session. But under ordinary circumstances, when there is a desire to pass the bill if possible, a member will move that the amendments be "disagreed to" for certain "reasons," which are communicated by message to the other house where the amendments were made. These reasons are moved after the second reading of the amendments.[3] If the Senate or Commons do not adhere to their amendment, on the reasons being communicated to them, they return a message that "they do not insist, etc"[4]; and no further action need be taken on the subject. But if they "insist on their amendment,"[5] then the other house will be called upon to consider whether it will continue to disagree or waive its objection in order to save the bill. In the latter case, the house which takes strong ground against an amendment, will agree to a motion that it "does not insist on its disagreement," but concurs in the amendment made by the other house; and consequently the measure is saved.[6] In 1878, the Senate having insisted on their amendments to two Commons' bills, respecting the supreme and exchequer court and the Pembina branch of

[1] Can. Com. J. (1876), 153; *Ib.* (1878), 260; Sen. J. (1878), 177.

[2] Sen. J. (1876), 190; Can. Com. J. (1877), 350, Albert R. R. bill; *Ib.* (1877), 281.

[3] Can. Com. J. [1874], 319; *Ib.* [1877], 262; *Ib.* [1878], 263; *Ib.* [1882], 508; *Ib.* [1883], 326; Sen. J. [1878], 293, &c.

[4] Sen. J. [1878], 232, 289, 290; *Ib.* [1880], 277; Com. J. [1877], 328; *Ib.* [1882], 512.

[5] Sen. J. [1878], 289. In such a case the reasons are also given. *Ib.* 275-6.

[6] Sen. J. [1878], 295; *Ib.* [1882], 335, 341, 342; Can. Com. J. [1877], 328; *Ib.* [1878], 298; *Ib.* [1882], 515; 113 E. Com. J., 332.

the Pacific Railway, the government allowed them to drop; and the same was done in 1883 in the case of a bill further to amend the fisheries' act.[1] The old practice of resorting to a conference, in order to bring about an agreement between the two houses, is now virtually obsolete, though the Commons have still a rule on the subject.[2]

When amendments made by one house to a bill from the other house are received back, and are under consideration, it is not regular to discuss the bill itself, or its principle, or the policy of the government thereon; but the debate must be confined to the amendments.[3] Nor on a motion for disagreeing to an amendment of this kind, is it regular to enter into a general discussion of the principle of the bill, but all debate should be confined to the amendment and the reasons for the same.[4]

Neither house can regularly, at this stage, insert any new provision, or amend, or omit any part of a bill it has passed itself and sent up to the other house for concurrence.[5] But it is perfectly in order to propose any amendment to an amendment made by the one house to a bill of the other house, provided it is "consequential" in its nature; that is to say, consequent upon, or relevant to the amendment under consideration.[6] In 1879, a bill respecting petroleum was sent up to the Senate for concur-

[1] Sen. J. [1878], 277, 294; Com. J. 284, 298; Com. Hans. 2550, 2553; Sen. J. [1883], 288; Com. J. 436.

[2] Chapter xiv., s 2.

[3] 241 E. Hans. (3), 846; Can. Hans. [1880], 1985.

[4] Can. Hans. [1877], 1879, Albert R. R. bill; *Ib.* [1878], 2457, Canada Pacific R. R. bill.

[5] 9 E. Com. J. 547; 91 *Ib.* 592; 114 *Ib.* 375; 121 *Ib.* 472; 135 E. Hans. (3), 828; Can. Com. J. 1875, March 23, marine electric telegraphs bill; *Ib.* 1878, April 5, Canada Southern R. R. bill.

[6] May, 587; 193 E. Hans. (3), 1920; 129 E. Com. J. 299; 115 *Ib.* 494; 120 *Ib.* 197 (an amendment in body of bill, consequent upon a lords' amendment). Sen. J. [1877], 228; *Ib.* [1882], 328; Can. Com. J. [1869], 281; *Ib.* [1877], 201, 268; *Ib.* [1879] 415; *Ib.* [1882], 508, 509, 513, 514, 515; *Ib.* [1883], 323.

rence. It had been amended in the Senate and sent back to the Commons, when it was discovered that a very important matter had been left out of the bill. As it was impossible to alter the bill at that stage, since the requisite amendment was not consequent on the Senate amendment, it was necessary to introduce a short bill embodying the provision in question.[1]

Sometimes bills are returned from the Senate with amendments which appear to infringe on the privileges of the Commons. In such cases the bills are sent back with reasons for disagreeing to the amendments;[2] or if the amendments are of an unimportant character and the house is anxious to avoid all delay, they are at once agreed to with a special entry in the journals of the house, so that the agreement may not be drawn into a precedent.[3]

Bills originating in one house are brought down to the other house with a message, "That the Senate (or Commons) have passed a bill intituled, etc., to which they desire the concurrence of this house."[4] It is usual for the member who has charge of the bill to move immediately that it be read a first time, and placed for its second reading on the orders.[5] The motion for the first reading will be decided without amendment or debate, in accordance with rule 42 of the Commons. The moment a bill comes into possession of either house it is subject to all its rules with respect to bills.

**XVIII. Revival of a Bill temporarily superseded.**—The question has been frequently discussed in the Canadian House of Commons, whether it is necessary to give notice of a motion for the revival of a bill, which has *temporarily* dis-

[1] Can. Com. J. [1879], 422. The error was pointed out in the Senate, when the original bill had passed its final stage, but it was too late then to rectify it. Sen. Deb. [1879], 609.

[2] Can. Com. J. [1873] 430; Sen. J. 330; timber duties at Quebec.

[3] Can. Com. J. [1874], 336. See *supra*, p. 514.

[4] Sen. J. [1878], 231, &c.; Can. Com. J. [1878], 171; 129 E. Com. J. 281.

[5] Sen. J. [1878], 231; Com. J. [1878], 171; 132 E. Com. J. 110.

appeared from the order paper.[1] Rule 31 of the house, which requires two days' notice of a motion says distinctly that an exception shall be made of bills "after their introduction."[2] A notice of a motion for leave to introduce a bill does not go on the order paper among the ordinary notices of motions, but is placed at the head of the paper containing the daily order of business,[3] for the information of the house. When motions are called during the progress of routine business—always before calling of orders of the day[4]—the members propose their motions for leave to introduce bills, in the manner previously explained in the opening part of this chapter. If such motions were allowed to go on the notice paper, the introduction of many bills would necessarily be indefinitely postponed, since only particular days or parts of days are devoted to "notices of motions," and it not unfrequently happens that weeks elapse before a particular motion is reached. The practice in the Canadian house in reference to a bill temporarily superseded, has been to move that it be read a second or third time, or committed, (as the case may be), on a future day, as soon as motions have been called in their due order.[5] Such a motion prevents surprise and is equivalent to a notice. The same subject has also been considered in the English house, and the same conclusion arrived at in reference to a bill which had disappeared from the order paper, on account of a committee having arisen without reporting.[6] On another occasion it was decided :

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[1] *Supra*, p. 530.

[2] *Supra*, p. 309.

[3] This practice was commenced in the session of 1880, notices of bills having previously appeared only in the votes.

[4] *Supra*, p. 309.

[5] Can. Speak. D. 132. Interest bill, 1870 ; insolvency bill, April 3, 1876, Can. Hans. Bill for relief of Robert Campbell, April 24 and 26, 1877, Can. Hans. Albert railway company bill, April 27, 1877. Criminal law amendment bill, 30th March, 1883 (Mr. Speaker Kirkpatrick's decision).

[6] See remarks of Mr. Speaker Denison on this point. 176 E. Hans. (3), 99.

"If a member wishes to alter a bill his course is to ask leave of the house to withdraw the bill and present another instead thereof. Under such circumstances no notice on the part of the member in charge is necessary in order to raise the question whether he should, or should not, be permitted to present another bill."[1]

Again, when the motion for the second reading of a bill has been negatived, it has been immediately followed by another for reading it that day three or six months.[2] If a bill becomes a dropped order by the counting out of the house it is competent for a member to revive it on a subsequent day without notice.[3]

In the Senate, on one occasion, a private bill was referred to the supreme court for an opinion as to whether it came within the jurisdiction of the Parliament of Canada, and as this was done by an amendment to the motion for the third reading, the bill disappeared from the order paper. Consequently when the judges had reported favourably, it became necessary to restore the bill to the paper, which was done without notice.[4]

**XIX. Bill introduced by mistake.**—If a bill should be introduced by mistake, and the order made for the second reading, it will be necessary to move for the discharge of the order and the withdrawal of the bill. In the session of 1878, the minister of marine had two resolutions respecting merchants' shipping on the paper; the house agreed to one, and then he introduced a bill, which was ordered to be read a second time on a future day. It transpired, however, on the following day that he had inadvertently introduced a bill which was intended to be based on the second resolution, not then adopted by the

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[1] 215 E. Hans. (3), 303. Also, 214 *Ib.* 194.

[2] 107 E. Com. J. 267; 110 *Ib.* 199. This is done to prevent a revival of the bill during the same session.

[3] 262 E. Hans. (3), 1716; Blackmore's Sp. D. [1882], 34.

[4] Canada Provident Association bill, Sen. J. [1882], 273-4, 316; Hans. 698.

house. He was thereupon allowed to withdraw the bill and introduce the one properly consequent upon the passage of the first resolution.[1]

**XX. Expedition in passage of bills.**—It is the usual and correct practice to allow a day or two to intervene between the different stages of bills; but during the latter part of the session, when the house is anxious to dispose of the business before it, many bills are permitted to pass with unusual speed. The rules of the Senate provide:

41. "Every bill is to undergo three separate readings, each on a different day.

42. "Bills of an urgent nature are sometimes allowed to pass with unusual expedition through their several stages."[2]

And the invariable practice in the Senate is, whenever it is desired to read a bill more than once on the same day, to move formally the suspension of the rule, in conformity with the practice of the House of Lords.[3] This practice, however, only applies to the case of readings; when a bill has been read twice, the house may go immediately into committee thereon, without requiring the suspension of any rule.[4]

Rule 43 of the Commons provides:

"Every bill shall receive three several readings on different days, previously to being passed. On urgent or extraordinary occasions, a bill may be read twice or thrice, or advanced two or more stages on one day."

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[1] March 26, 1878. See Can. H[illegible]s. [1878] 801 for an illustration of a case where a private bill had been i[illegible]oduced before the application has been reported on by the committee [illegible] standing orders. Also, Can. Com. J. [1880], 59, 63 (marriage bill).

[2] In the session of 1882, a motion was passed in the Senate to the effect that government bills should be deemed "urgent" in accordance with the 42nd rule. Sen. Hans. pp. 698-700, 705; Jour. 318. Notice was given of this motion, Min. of P., p. 504.

[3] Sen. J. [1867-8], 293, 294, 299, 309, 312, &c.; *Ib.* [1878], 285-6; *Ib.* [1880], 274, 275; *Ib.* [1882], 56.

[4] *Ib.* [1869], 226, 230; *Ib.* [1878], 286.

When the question has been raised in the Commons, it has been generally decided that it is for the house to declare whether there is such urgency as to require the rapid passage of the measure;[1] and whenever the sense of the house is to take more than one stage on the same day, the speaker has permitted it to be done. As a rule, bills in the English Commons pass through their various stages with an interval of a day or two between each. If a bill is amended in committee, it will not be considered immediately and read a third time on the same day except under exceptional circumstances. Towards the close of the session, however, bills which have not been amended in committee are frequently allowed to be read a third time forthwith.[2] "It was at the option of any hon. member," said Mr. Speaker Denison on one occasion, "if he thought it inconvenient or improper, to interfere; but if the body of the house was satisfied that there was no objection, then it had not been unfrequent that a bill, if it had passed through committee without amendment or objection, should be read a third time and passed on the same day." On the same occasion the mover of the bill stated that he had given notice on a previous day that he should ask to be allowed to pass the bill through all its stages on that evening.[3] In fact in England, as in this country, when urgency can be shown, the house will

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[1] Can. Speak. D. Nos. 49, 139, 140; also, Can. Hans. (1878), 2006-7, 2157; also, 256 E. Hans. (3), 768. Speaker Brand said in 1880: "It is occasionally the custom to pass bills through their different stages at one and the same sitting. That course, however, is never taken except in cases of extreme urgency, and with the general assent of the house." 254 E. Hans. (3), 609-10, 646.

[2] R. 47 leaves it within the authority of the house to order the 3 R. immediately in such a case: "When a bill is reported without amendment, it is forthwith ordered to be read at such time as may be appointed by the house." Can. Hans. (1879), 1575, marine electric telegraphs bills.

[3] 184 E. Hans. (3), 2107. See also, Mr. Speaker Macpherson's decision; Sen. Deb. (1880), 216.

allow a bill to pass through several stages[1] (except money bills of course)[2] on one day; but such occasions seldom arise, and the wise practice is to give full consideration to every measure.

**XXI. Bills, once introduced, not altered except by authority of House.**—While a bill is in progress in the Commons, no alteration whatever can be made in its provisions except by the authority of the house. If it should be found that a bill has been materially altered since its introduction it will have to be withdrawn.[3] A clerical alteration, however, is admissible.[4] If it be necessary to make any changes in a bill before the second reading the member in charge of it will ask leave to "withdraw the bill and present another instead thereof."[5] In the Canadian house, 1874, the order for the second reading of a bill relative to usury was discharged, and the bill withdrawn. On the following day, the member interested in the bill was given leave to bring in another on the same subject, but with an amended title.[6] In the session of 1883, the attention of the speaker was directed to the fact that the representation bill had been materially altered since its introduction, and that it was not, in consequence of such alterations, the same bill that had been presented a few days before to the house. Mr. Speaker Blanchet at once decided that the bill could not be allowed to proceed, and that it was necessary "to follow strictly thereafter the practice of the English Parliament and not permit any changes, except mere clerical alterations, in a bill when once regu-

[1] May says "there are no orders to be found in the journals which forbid the passing of bills in this manner," p. 600. Also, 244 E. Hans. (3), 1491-2.

[2] See *supra*, p. 498. No instance of this course being taken in England with regard to money bills, 239 E. Hans. (3), 1419.

[3] 215 E. Hans. (3), 300.

[4] 108 *Ib.* 969; 237 *Ib.* 362-3.

[5] 111 E. Com. J. 211-3; 117 *Ib.* 202; 132 *Ib.* 84, 243.

[6] Can. Com. J. (1874), 123, 126.

larly before the house." The bill was accordingly withdrawn and another immediately presented.[1] No notice need be given in such cases, as the original order of leave for the introduction is still operative.[2]

**XXII. Mode of correcting mistakes during progress of a Bill.**—Sometimes mistakes are discovered in bills after they have been sent up to the other house. For instance bills may be sent without having passed all their stages, or without certain amendments that had been made therein. When a bill has been sent up by mistake to the Lords without certain amendments, a message has been transmitted to that house asking them to make the necessary amendments, either by adding the requisite provisions, or by expunging certain clauses or parts of clauses.[3] When a bill has been sent up without having been read a third time, a message has been received for its return; and in such a case, if the house agree to the request, the bill will be discharged from the orders.[4] On another occasion when several amendments made by the Commons were not in the bill sent to the Lords, the former have transmitted a correct copy of the bill.[5] In the session of 1875, a bill "to incorporate the Royal Mutual Life Assurance Company of Canada" was amended in the Senate and sent back to the Commons, where the amendments were concurred in. Subsequently the House of Commons was informed by message that an amendment to the title had been inadvertently left out in the copy of the bill sent

[1] Can. Com. J. (1882), 406.

[2] 215 E. Hans. (3), 307; *supra*, p. 537.

[3] 78 E. Com. J. 317; 91 *Ib.* 639; 92 *Ib.* 609, 646; 100 *Ib.* 804.

[4] 75 E. Com. J. 447; 80 *Ib.* 312; 92 *Ib.* 572.

[5] 101 *Ib.* 1277. In the old Canadian legislature the practice was generally to ask for the return of a bill, when it had been sent up without amendments or was otherwise inaccurate. Leg. Ass. J. (1866), 268, 274; 379, 380. When a bill has been sent down by mistake, a message is sent for its return, and a new one then brought down. Leg. Ass. J. (1854-5), 1014. In another session, amendments were agreed to in error, and the bill had to be brought back; *Ib.* (1865, 2nd session) 266, 269.

back to the Commons, and requesting that leave be given to the proper officer of the Senate to supply the omission. It was accordingly resolved by the house to give the necessary leave, and a message was returned to that effect. Then the omitted amendment was considered and regularly agreed to.[1] This is the ordinary practice now in the case of an amendment being omitted in any bill.[2] But when a bill has been sent to the other house without having passed through all the necessary stages, a message must be sent for the return of the bill; and when it has been brought back, it will be taken up at its proper stage and passed in due form—the standing orders being suspended when necessary.[3] When a bill has passed all its stages, and it is discovered that it should have previously received the royal consent, it will be necessary to strike out the entry, and give an opportunity to the member in charge of the bill to obtain the necessary assent.[4]

**XXIII. Accidental Loss of a Bill during a session.**—If a bill presented to the house should be accidentally lost during its progress, the house on being informed by a member that it is missing, will permit another bill to be presented; but the proceedings must begin *de novo*.[5] In the session of 1849 a large number of bills were destroyed by the burning of the parliament house at Montreal; and a committee was appointed to consider what was to be done under the circumstances. The committee reported: "Your

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[1] Can. Com. J. (1875), 354-5; Sen. J. 258, 267.

[2] 103 E. Com. J. 73; 112 *Ib.* 420.

[3] 119 *Ib.* 370, 374 (Lords' bill). In 1877 when an amendment had been made by a select committee of the Commons, but not agreed to by the house—not having been reported by the committee—the persons interested in the bill took steps to have the amendment made in the Senate forthwith; this plan saved time; Kincardine harbour bill. Otherwise it would have been necessary to ask for the return of the bill and commence proceedings *de novo*.

[4] 107 E. Com. J. 157; *supra* p. 473.

[5] 2 Hatsell, 267; Bramwell, 28; 63 E. Com. J. Jesuits' Bark bill.

committee consider that the substantial point to be ascertained with a view to the public interest is the actual stage in which each bill was under the consideration of the house at the time it was lost. When that is once ascertained to the satisfaction of the house, your committee can see no necessity upon any general principle to treat them as in any other stage of parliamentary progress towards completion than that in which the calamity by which they were overtaken found them."[1] By reference to the proceedings of the legislature it will be seen that in most cases a new bill was presented and passed immediately through all its stages. For instance, a bill in reference to marriages had been passed and returned by the legislative council with amendments previous to the fire. A message was afterwards sent to the council informing them that the bill had been destroyed; a new bill was then sent up and passed by both houses without delay.[2]

**XXIV.—A bill, once rejected, not to be again offered in the same session.—Exceptions to rule.**—It has been elsewhere[3] shown that it is a well established rule of parliamentary practice that no question or motion can regularly be offered upon which the judgment of the house has been expressed during the current session. But while this rule is recognized as a general one, it is limited in its application as respects bills. In reference to amendments to bills, Hatsell lays down the uniform practice which still obtains in the Canadian and English Parliaments: "That in every stage of a bill, every part of the bill is open to amendment, either for insertion or omission, whether the same amend-

[1] Leg. Ass. J. 1849, App. S.S.S.S. Mr. Baldwin was chairman.

[2] Leg. Ass. J. [1849], 287, 298. Also, Montreal Merchants' Exchange and Reading-room bill, 285, 301; Quebec St. George's Society, 223, 302; here the bill had finally passed both houses, and a new bill was ordered and rules suspended; Roman Catholic Archbishop of Quebec bill, 243, 287, 309, 313.

[3] Chap. xi., s. 9.

ment has been, in a former stage, accepted or rejected."[1] But if an amendment has been rejected in a committee of the whole on a bill, it cannot be proposed again during the pendency of the bill in the committee.[2]

The following illustrations of the practice with reference to bills are given by the English authorities, and are sufficient to show how far the application of the general rule is carried in such cases :

Where the house has merely come to a vote, refusing leave for the introduction of a bill, and a motion is afterwards made, which is objected to on the ground of its identity with the former, the question must be determined by comparing together the two propositions as they stand. Thus, where a motion was made for leave to bring in a bill "to relieve from the payment of church rates that portion of Her Majesty's subjects who conscientiously dissent from the established church," which was decided in the negative, a motion subsequently made "to relieve dissenters from the established church from the payment of church rates," was considered to be within the rule, and consequently inadmissible, on the ground, that the two propositions, though different in form and words, were substantially the same.[3]

If the second or third reading of a bill sent from one house to the other, be deferred for three or six months, or if it be rejected, it cannot be regularly revived in the same session.[4] Again when a bill has finally passed, it cannot be introduced again in the house where it was presented.[5] But there are ways of evading this rule, when

[1] 2 Hatsell, 135.

[2] May, 335 ; 211 E. Hans. (3), 137.

[3] 1 Hans. (3), 553.

[4] May, 337 ; Bramwell, 27 ; Hakewell, s. 5 ; June 22, 1821, forgery punishment ; Jan. 9, 1807, *Ibid.*

[5] May, 337. The Senate have a special rule on this point, No. 46 : "When a bill, originating in the Senate, has passed through its final stage therein, no new bill for the same object can be afterwards originated in the Senate during the same session." This rule came up for discussion in the Senate

the necessity arises. For instance, if a bill begun in one house be rejected in the other, "a new bill of the same matter may be drawn and commenced again in that house whereunto it was sent." Or, if a bill "being begun in either of the houses, and committed, it be thought by the committee that the matter may better proceed by a new bill, it is likewise holden agreeable to order, in such case, to draw a new bill, and to bring it into the house."[1] Or if a bill be altered in any material point, both in the body and title, it may be received a second time.[2] Or, when a bill has been rejected in the Lords on account of its multifarious provisions, the House of Commons has given leave for another bill to be brought in during the same session for some of the matters contained in the former bill, others being omitted; but the house has in such cases directed an entry to be made in the journals of the reasons which induced the house to pursue this course.[3] And when part of a bill has been omitted by the Lords, and the Commons have agreed to such amendment, the part so omitted has been renewed, in the same session, in the form of a separate bill.[4] Again when the Lords have inserted clauses in a Commons bill, which appear to infringe upon the privileges of the latter, the bill has been dropped; and in such a case, the Commons have allowed the introduction of another bill, containing the amendments to which they have been willing to agree; and the bill has been ultimately agreed to by both houses.[5]

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in 1883, when a bill in amendment of a Senate bill passed that session (booms in navigable waters bill) was introduced. It was considered advisable to suspend the rule; but the more correct course would have been to have presented the bill in the Commons. Sen. Hans. pp. 612-13.

[1] Lords' J. 17th of May, 1606; 2 Hatsell, 125; Bramwell, 27; 151 E. Hans. (3), 699.

[2] Bramwell, 27; Hakewell, sec. 5.

[3] Bramwell, 27; E. Com. J. 9th of Jan., 1807.

[4] May, 336, drainage (Ireland) bill; drainage and improvement of land (Ireland) bill, 1863.

[5] May, 337.

Or, in case the bill is brought up with amendments to which the Commons cannot agree consistently with a regard to their own privileges, they may lay the bill aside and bring in another.[1] But if a bill has been rejected during the session, and another bill is still before the house containing provisions similar to those in the former bill, it will be necessary for the house to strike out those provisions which have been already negatived.[2]

The foregoing examples illustrate cases where there is a public necessity for passing a bill; and it will be seen that the houses, in the means they took, did not practically violate the general rule, the wisdom of which is obvious. The rule has always been strictly enforced in the Canadian Commons; notably in the case of two Interest Bills in the session of 1870.[3]

In the session of 1877, Mr. Barthe introduced a bill to repeal the insolvency bill, which was ordered for a second reading on a future day. Some days later Mr. Palmer introduced a bill with the same title, and to the same purport. The question was raised, could the latter bill be regularly presented, since there was already one on the same subject before the house? By reference to the English authorities it was found that a similar question came up in the House of Lords during 1854, and Lord Lyndhurst stated the rule as follows: "Whilst a bill is still pending, and until it is completely disposed of, there is nothing whatever to prevent another bill for the same object being introduced." Lord Lyndhurst also quoted a memorandum from an eminent officer of the House of Commons (Sir T. E. May) to this effect—"No objection can be raised to the introduction of a bill into the House of Commons on the ground of there being a similar bill

[1] 91 E. Com. J. 777, 810; revenue charges bill, 1854.

[2] 203 E. Hans. (3), 563.

[3] Can. Com. J. [1870], 314; one bill was postponed for three months, and the speaker refused to allow the introduction of another. Also, Can. Sp. D. Nos. 51, 111; 123 E. Com. J. 132, 145.

already before the house. Indeed we have at present two India bills before us,—Lord Palmerston's and Lord Derby's —awaiting a second reading. It is the *rejection* and not the *pendency* of a bill that creates a difficulty as to the ulterior proceedings. The rule applies to both houses."[1] In the case of the insolvency bills just referred to, Mr. Barthe's was postponed for three months, and when the order for the second reading of the other came up, Mr. Palmer moved that it be discharged. Many cases of bills to the same effect having been introduced in the same session, will be found in the Canadian journals.[2]

**XXV. Royal Assent to Bills.**—The bills passed by both houses remain in the possession of the clerk of the Parliaments[3] or clerk of the Senate as he is commonly called, (with the exception of the supply bill which is always returned to the Commons)[4] until his Excellency, the Governor-General, comes down to give the royal assent in her Majesty's name. When his Excellency has taken his seat upon the throne and the Commons are present at the bar, the clerk of the crown in chancery reads *seriatim* the titles of the bills which are to receive the royal assent. Then the clerk of the Parliaments having made his obeisance to the governor-general gives the royal assent in the prescribed formula.[5]

As a rule all the bills receive the royal assent at the end of the session, when the governor-general comes down to prorogue Parliament. In 1867-8, however, it was found necessary to adjourn from December to March, and his Excellency consequently came down on the day of adjourn-

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[1] 151 E. Hans. (3), 699 ; 204 *Ib.* 2046.

[2] Leg. Ass. J., March 29, 1849 ; increase of representation bill, *Colonist* debates ; interest bill, 1870.

[3] *Supra*, p. 159.

[4] *Supra*, p. 503.

[5] Sen. J. [1878], 296-7 ; Com. J. 299-310, &c.

ment and assented to all the bills passed up to that time.[1] Sometimes in a great public emergency it is necessary to give immediate effect to an act. This was done in the session of 1870—the year of the Fenian difficulties—when a bill "to authorise the apprehension and detention of persons suspected of committing acts of hostility or conspiring against her Majesty's person and government" was passed through all its stages and received the royal assent on the same day.[2] In 1873, 1878, and 1880, 1880-1, and 1882, a number of bills were assented to in the course of the session.[3] On such occasions, when the House of Commons returns from the Senate chamber, the speaker (who has received a list from the clerk of the Senate) will report the acts to the house, so that the titles may appear on the journals.[4]

When any bills have been reserved the titles have also been read by the clerk of the crown in chancery, and the clerk of the Parliaments has announced the fact in these words in the two languages:

"His Excellency, the Governor-General, doth reserve these bills for the signification of her Majesty's pleasure thereon."

The following are the sections in the British North America Act, 1867, which refer to the royal assent and to reserved bills:

55. "Where a bill passed by the Houses of Parliament is presented to the governor-general for the queen's assent, he shall declare, according to his discretion, but subject to the provisions of this act and to her Majesty's instructions, either that he assents thereto in the queen's name, or that he withholds the queen's assent, or that he reserves the bill for the signification of the queen's pleasure.

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[1] Can. Com. J. [1867-8], 134.

[2] *Ib.* [1870], 186-8.

[3] *Ib.* [1873], 265; *Ib.* [1878], 177; *Ib.* [1880], 179, 288; *Ib.* [1880-1], 201; Sen. J. [1882], 69.

[4] Can. Com. J. [1878], 177; 131 E. Com. J. 103, &c.

56. "Where the governor-general assents to a bill in the queen's name, he shall, by the first convenient opportunity, send an authentic copy of the act to one of her Majesty's principal secretaries of state, and if the queen in council within two years after receipt thereof by the secretary of state thinks fit to disallow the act, such disallowance (with a certificate of the secretary of state of the day on which the act was received by him) being signified by the governor-general, by speech or message to each of the houses of the Parliament, or by proclamation, shall annul the act from and after the day of such signification.

57. "A bill reserved for the signification of the queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the governor-general for the queen's assent, the governor-general signifies by speech or message to each of the Houses of the Parliament or by proclamation that it has received the assent of the queen in council. An entry of every such speech, message, or proclamation, shall be made in the journals of each house, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the records of Canada."

The foregoing sections are also found in the union act of 1840, and the constitutional act of 1791.[1] The governor-general's instructions, previous to 1878, directed him not to assent in her Majesty's name to any bill within the following classes:

1. Any bill for the divorce of persons joined together in holy matrimony.

2. Any bill whereby any grant of money or land, or other donation or gratuity, may be made to the governor.

3. Any bill whereby any paper or other currency may be made a legal tender, except the coin of the realm or other gold or silver coin.

4. Any bill imposing differential duties.

5. Any bill, the provision of which shall appear inconsistent with obligations imposed on the sovereign by treaty.

[1] 3 & 4 Vict., c. 35, ss. 37, 38, 39; 31 Geo. III., c. 31, ss. 30, 31, 32 (*supra*, p. 17). See also, 14 Geo. III., c. 83, s. 14, as to his Majesty's approval of ordinances passed by the legislative council of those days; *supra*, p. 11.

6. Any bill interfering with the discipline or control of her Majesty's forces in the dominion by sea and land.

7. Any bill of an extraordinary nature and importance, whereby the royal prerogative, or the rights and property of her Majesty's subjects not residing in the dominion, or the trade and shipping of the United Kingdom, and its dependencies may be prejudiced.

8. Any bill containing provisions to which our assent has been once refused, or which has been disallowed by the queen.

"Unless such bill shall contain a clause suspending the operation of the same until the signification in our said dominion of our pleasure thereupon, or unless you shall have satisfied yourself that an urgent necessity exists, requiring that such bill be brought into immediate operation, in which case you are authorized to assent in our name to said bill, unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed on us by treaty. But you are to transmit to us, by the earliest opportunity, the bill assented to, together with your reasons for assenting thereto."[1]

In accordance with these instructions the governor-general, between 1867 and 1878 inclusive, reserved twenty-one bills of the Parliament of Canada.[2] Of these eleven related to divorce, and received the assent of the queen in council with little or no delay.[3]

Among the other bills was one to reduce the salary of the governor-general, to which her Majesty's advisers refused to give their approval, on the ground that a reduction in the salary would place the high office in question in the third class among colonial governments. In 1869, the dominion Parliament passed a bill, re-enacting the clause in the imperial statute of 1867, fixing the salary at £10,000 sterling; and this act subsequently became law

[1] Sen. J. [1873], 74; Sess. P. 1867-8, No. 22.

[2] See Sen. and Com. J. of 1867-8, 1869, 1872, 1873, 1874, 1875, 1877 & 1878.

[3] See the case of the Harris divorce bill disallowed in 1845, because the parties were not at the time domiciled in Canada—Mr. Harris being an officer in the army—and the courts of law would not on that account consider such an act as a valid divorce. Can. Leg. Ass. J. [1846], 29.

though it too was reserved, in accordance with the royal instructions.[1] In 1872, a bill respecting copyrights was reserved, and never received the approval of the imperial government because it conflicted with imperial legislation.[2]

In 1867-8, the governor-general reserved a bill "respecting the treaty between her Majesty and the United States of America, for the apprehension and surrender of certain offenders"; but, whilst necessarily reserved under the royal instructions, it subsequently received the royal assent as it was within the jurisdiction of the Canadian Parliament, and in accordance with the treaty obligations of England.[3] In 1873 and 1874, two other bills on the subject of extradition generally were reserved, and have never become law, though the dominion government has contended that it has full powers to deal with the question.[4]

In 1874, a bill to regulate the construction and maintenance of marine electric telegraphs was reserved, because it might "possibly be considered to prejudice the interests and rights of property of her Majesty's subjects not residing in Canada," as provided against in the seventh paragraph of the royal instructions; but all difficulty was removed by the passage of another bill in a subsequent session, in order to meet the views of the opposing parties.[5] In 1873 and 1878, the governor-general reserved three bills: 1. An act respecting the shipping of seamen; 2. An act relating to shipping, and for the registration, inspection and classification thereof; 3. An act to repeal section 23 of "the merchants' shipping act, 1876," as to

[1] 32-33 Vict., c. 74; Can. Sess. P. 1869, No. 73. See proclamation in the *Canada Gazette*, Oct. 16, 1869, and Can. Stat. 1870.

[2] Can. Sess. P. 1875, No. 28.

[3] 31 Vict., c. 94, amended by 33 Vict., c. 25.

[4] See Todd, Parl. Govt. in the colonies, 204, *et seq.*; Can. Sess. P. 1876, No. 49; *Ib.* 1877, No. 13, pp. 10-18.

[5] 38 Vict., c. 26; Can. Sess. P. 1875, No. 20; *Ib.* 1877, No. 119.

ships in Canadian waters. The first two acts subsequently received the royal assent in council, and proclamation thereof was duly made by the governor-general in the *Canada Gazette*,[1] but the third act (of 1878) never became law, as it was considered to contain provisions in excess of the powers of the Canadian Parliament.[2]

Since the session of 1878, no bills have been reserved, but the royal instructions have been amended in certain material particulars. These instructions were originally framed for provinces and colonies possessing limited powers of self-government, and could not possibly apply to a dependency of the Crown, "which is entitled to so full an application of the principles of constitutional freedom as the dominion of Canada."[3] When the commission and instructions of the governor-general were at last revised, the imperial authorities recognized the peculiar position of Canada and omitted the clause in the instructions relating to bills. These and other changes were the result of the action of the government of Canada in 1876 and 1877, when the minister of justice (Mr. Blake) made various suggestions, in an elaborate state-paper, which were practically adopted by the imperial ministry. In his memorandum on the subject he directed attention to the fact that "it would be better and more conformable to the spirit of the constitution of Canada, as actually framed, that the legislation should be completed on the advice and responsibility of her Majesty's privy council for Canada; and that as a protection to imperial interests, the reserved power of disallowance of such completed legislation is sufficient for all purposes." In the final despatch on the subject, the colonial secretary of state stated that

[1] See beginning of statutes of 1874. It has been the practice to print reserved bills, when subsequently sanctioned by the Crown in this way, in the statutes. The proclamation always appears in the *Canada Gazette*.

[2] Todd, Parl. Govt. in the colonies, 150.

[3] Can. Sess. P. 1877, No. 13, p. 4.

the clause in the former royal instructions, requiring that certain classes of bills should be reserved for her Majesty's approval, " was omitted from the revised instructions, because her Majesty's government thought it undesirable that they should contain anything which could be interpreted as limiting or defining the legislative powers conferred in 1867 on the dominion Parliament."[1]

Since 1878, an act passed by the Parliament of Canada to effect a judicial separation of certain parties from the bonds of matrimony has received the assent of the governor-general, though it would have been reserved in previous years, in accordance with the old instructions.[2]

It is now understood that the reserved power of disallowance which her Majesty in council possesses under the law, is sufficient for all possible purposes.[3] This power of disallowance can be exercised, not merely in cases where imperial interests are affected, but even in matters of a purely local character, when it is shown that the act is beyond the jurisdiction of the dominion Parliament. For instance, in 1873, the imperial government disallowed an act "to provide for the examination of witnesses on oath by committees of the Senate and House of Commons in certain cases," on the ground that it was beyond the competency of the Parliament of Canada. As shown elsewhere, doubts were expressed in the house during its passage as to its legality; but the governor-general, in view of the necessity that existed at that time for the measure, gave the royal assent, and then directed the attention of the imperial authorities to the subject, with the result just stated.[4] This precedent shows the value

[1] Can. Sess. P. 1877, No. 13. See despatch of Sir Michael Hicks Beach, colonial secretary of state, 3rd of May, 1879; Can. Sess. P. 1880, No. 51 (not printed).

[2] 42 Vict., c. 79; Sen. Deb. [1879], 287.

[3] Can. Sess. P. 1877, No. 13, p. 9.

[4] Can. Com. J. 1873, 2nd sess., 5, *et seq.* See *supra*, p. 459, where the history of the act is given.

of the power of disallowance under certain circumstances, and that it is equal to all exigencies.

In accordance with established usage no act of the Parliament of Canada can be disallowed, except upon the issue of an order of the queen in council.[1] The mode of informing Parliament of the disallowance has already been given in section 56 of the British North America Act.[2]

Acts are sometimes passed with suspending clauses; that is, although assented to by the governor-general they do not come into operation or take effect in the dominion until they shall have been specially confirmed by her Majesty in council. In this way, bills are practically reserved, since it is only by order in council that they become law. When approved and confirmed by the Crown, a proclamation will appear in due form in the *Gazette*, to bring the act into force.[3]

The following is the only paragraph in the amended instructions that refers to legislation in Canada:

IV. "Our said governor-general is to take care that all laws assented to by him in our name, or reserved for the signification of our pleasure thereon, shall, when transmitted by him, be fairly abstracted in the margins, and be accompanied in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such laws; and he shall also transmit fair copies of the journals and minutes of the proceedings of the Parliament of our said dominion, which he is to require from the clerks or other proper officers in that behalf, of the said Parliament."

The same paragraph has always appeared in substance in the instructions issued to the governor-generals of Canada since 1763.[4] An act of the Parliament of Canada

[1] Col. regulations, No. 51; col. office list, 1883, p. 256.

[2] Can. Com. J. 1873, 2nd sess., p. 5; Sen. J. p. 14. See Leg. Ass. J. 1860, p. vi. for a proclamation disallowing a Canadian act.

[3] Col. regulations, No. 49; col. office list, 1883, p. 256. See 33 Vict., c. 14, s. 3.

[4] See copy of instructions issued to Governor Murray, 7th of Dec., 1763, in Doutre et Lareau, Histoire du Droit Canadien, vol. i., p. 556.

requires the clerk of parliaments to certify and deliver to the governor-general a bound copy of the statutes for transmission to one of the secretaries of state, as required by section 56 of the B. N. A. Act, together with certified copies of all reserved bills. [1]

Hatsell quotes Sir Edward Coke as saying in 1621: "When bills have passed both houses, the king's royal assent is not to be given, but either by commission or in person, *in the presence of both houses.*" In his comments on this point, Hatsell shows that "the law of this realm is, and always hath been" to this effect.[2] The British North America Act, like previous imperial statutes providing constitutions for Canada, is silent on the question; but it has always been the practice to follow the ancient usage of the parent state in this respect, and to give the assent of the sovereign in the upper chamber in the presence of both houses.

In 1841, the governor-general, Lord Sydenham, was unable to come down to the legislative council, but sent a message on the 17th of September requesting the members of the two houses to adjourn on the afternoon of that day to government house, where he would declare the royal pleasure on the bills passed that session. But in consequence of the serious turn his illness had taken (he died two days later) the assent could not be given at government house. On the 18th of September a deputy-governor formally assented to all the bills in the chamber of the legislative council.[3] In this case it will be seen that the proposed departure from constitutional usage was only as to the place where the assent was to be given.

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[1] 35 Vict., c. 1, s. 4.

[2] 2 Hatsell, 338. Dr. Todd does not consider the practice of giving the assent in the presence of the two houses as "essential" (Parl. Gov. in the Colonies, 131). The practice, however, in this country has been uniform in accordance with the wise principle of following British constitutional usage in the opening and closing of the legislatures of this country.

[3] Leg. Ass. J. [1841], 638, 640.

In 1879, a dead-lock occurred between the two houses in the province of Quebec, and the assembly adjourned for two months, but the council remained in session for some time later. The lieutenant-governor came down to the council chamber a few days after the adjournment of the assembly, and gave the royal assent to the bills passed up to that time. The speaker, and officers of the house, including the serjeant-at-arms with the mace, were present outside of the bar. Subsequently, when the assembly met, it was proposed to pass a bill to remove doubts as to the legality of the assent, but the session came to a premature close on account of the defeat of the ministry, before any measure could become law. When the lieutenant-governor prorogued the legislature, he gave the assent again to all the bills in the presence of the two houses—his previous proceeding being deemed insufficient.[1]

Should a bill receive the royal assent without having, through some inadvertence, passed through all its stages in the two houses, then a serious question as to the validity of the statute may arise. Cases of this nature have occurred in the parliamentary practice of England and Canada. In 1829, the Lords amended a Commons' bill relating to the employment of children in factories, but did not send it back that the Commons might consider it as amended. After it had received the royal assent, the speaker of the Commons drew attention to the mistake. The amendment was agreed to by the house, after a conference on the subject, and a bill was passed to render valid and effectual the act in question. In 1843, Mr. Speaker Lefevre called attention to the fact that the Schoolmasters' Widows' Fund (Scotland) Bill had been returned

[1] Quebec Leg. Coun. J. [1879], 208, 221; Ass. J. 350, 352; Montreal *Gazette* and *Herald*, Oct. 28, and Nov. 1. It is stated on the authority of the first paper that when the speaker presented himself on the first occasion of the assent being given, he did not occupy the place specially provided for him at such ceremonies.

by the Lords to the Commons with amendments, but before these were agreed to, it was taken up by mistake to the other chamber, and though it had not the usual endorsement, *a ces amendmens les communes sont assentus*, the mistake was not noticed, but the bill received the royal assent in due form. In this case also, a new act was considered necessary to give validity to the measure.[1]

In 1877, the lieutenant-governor of Quebec assented to a bill intituled "an act to provide for the formation of joint-stock companies for the maintenance of roads and the destruction of noxious weeds," though it had only been read twice in the assembly. Apparently in the hurry of the last hours of the session, the clerk, by mistake, had certified it as passed without amendment. The error was immediately discovered by the attorney-general, who made a report to the authorities at Ottawa, and suggested that the act be disallowed. The minister of justice (Mr. Blake) declined to take this course because the bill was not an act, but only so much blank paper. He pointed out that, according to precedent, an act might be passed in the legislature to declare the act to be invalid, and that, meanwhile, it was in the power of the lieutenant-governor in council to refrain from putting it into operation. The Quebec government concurred in this opinion, and directed that the act should not be printed among the statutes of the session.[2] It will be remarked that, in the English cases cited above, Parliament was sitting when the mistakes were discovered, and was able to provide against the difficulty that might arise. In the Quebec case, the government had to deal with it at once on their own responsibility.

**XXVI. The Assent in the Provincial Legislatures.**—While the governor-general, and the lieutenant-governors of Ontario, Quebec, Manitoba and British Columbia assent to bills

[1] 69 E. Hans. (3), 427. See Bourke's Precedents, pp. 64-6. May, 601-3.
[2] Can. Com. Sess. P. 1879, No. 19, p. 20, and No. 26.

in her Majesty's name, a different practice prevails, now as before confederation, in the maritime provinces of the dominion. In Nova Scotia, New Brunswick, and P. E. Island, the lieutenant-governors give the assent in their own names; the reasons for this difference of practice have never been authoritatively explained.

By section 90 of the B. N. A. Act, 1867, it is provided that the provisions of sections 55, 56 and 57, are "made applicable in terms to the respective provinces and the legislatures thereof, with the substitution of the 'lieutenant-governor' of the province for the 'governor-general,' of the 'governor-general' for the 'queen' and for a 'secretary of state,' of 'one year,' for two years, and of the province for "Canada.'" Consequently it is now within the discretion of a lieutenant-governor in any province, when any bill is presented to him for the necessary assent, to reserve the same "for the signification of the pleasure of his Excellency the Governor-General thereon." Such a bill cannot go into operation unless, within one year from the date of its having been reserved, the governor-general shall issue his proclamation intimating that it has received the assent of the governor in council.[1] The governor-general in council also possesses the same power with respect to provincial acts that her Majesty in council can exercise in the case of dominion acts, and may at any time within a year from the passing of a provincial act, disallow it for good and sufficient reasons.[2] This important subject is briefly reviewed in the first chapter of this work.

The lieutenant-governors of all the provinces frequently reserve bills for the consideration of the governor-general in council.[3] In Nova Scotia, New Brunswick,

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[1] These proclamations always appear in the *Canada Gazette* and Canada Statutes.

[2] See *Canada Gazette*, Dec. 4, 1869, p. 386.

[3] Nova S. Ass. J. [1869], 126; New B. Ass. J. [1874], 224; P. E. I. Ass. J. [1879], 229; British C. Ass. J. [1873], 79; Man. Ass. J. [1879], 83; Ont. Ass. J. [1873], 374; Quebec Ass. J. [1878], 213.

and P. E. Island—but not in the other provinces—they have also, on several occasions, withheld their assent from bills passed by the legislature [1]—a power not exercised by the Crown in England since the days of Queen Anne.[2] The power is, however, expressly given to them as well as to the governor-general by sections 55 and 90 of the British North America Act; but the latter has never given the veto to an act of the Parliament of the dominion. Nor can we find any example of the exercise of the power in the records of the old legislatures of Canada, even in those times when the constitutional rights of the colony were limited. The minor power of reserving bills was always considered quite sufficient in those times,[3] just as it is now in the provinces of Quebec and Ontario.

Section 55 of the British North America Act now applies expressly to the provinces of the dominion, and consequently in reserving, or withholding the assent from bills the lieutenant-governors are to act not merely on their own "discretion," but "subject to instructions" which must necessarily emanate from the governor-general in council, since these high officials now occupy the same relation towards the dominion government that the governor-general occupies towards the imperial authorities.[4]

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[1] Nova S. Ass. J. [1875], 124; New B. Ass. J. [1870], 229; P. E. I. Ass. J. [1880], 284. See also, Nova Scotia J. for 1879 and 1883; New Brunswick J. for 1871, 1872, 1875, 1877 and 1882.

[2] In 1707, in the case of a bill respecting the militia in Scotland. See 18 Lords' J. 506.

[3] Between 1836 and 1864, three hundred and forty-one bills of the legislatures of the provinces of British North America were reserved or suspended in their operation, but the number diminished with the establishment and in the operation of responsible government. E. Com. P. 1864, vol. xl., p. 665; Todd, Parl. Govt. in the Colonies, 140.

[4] "The provision in the B. N. A. act, 1867, that the governor-general may reserve a bill for the signification of her Majesty's pleasure was solely made with a view to protection of imperial interests, and the maintenance of imperial policy, and in case the governor-general should exercise the power of reservation conferred on him, he would do so in his capacity as an imperial officer and under royal instructions. So in any province the

In the absence of these instructions, they are thrown on their own discretion and forced to come to a conclusion on such matters with the assistance of any advice that their ministry may give them under the circumstances. But whilst we may, by reference to the past practice of governor-generals in Canada come to some conclusion as to the position of lieutenant-governors with reference to reserving bills, we have nothing whatever before us as a guide to the principles which influence these functionaries in the not unfrequent exercise of the extreme power of veto. The section in question makes instructions as necessary, in the case of withholding assent, as in that of reserving bills. It might be supposed that the exercise of the minor power of reserving bills for the consideration of the governor-general, would suffice to meet the most extreme case where dominion interests would be imperilled by provincial legislation. In fact, the history of "disallowance" shows that the general power possessed by the general government of annulling such provincial acts as are considered objectionable is quite sufficient to meet all possible exigencies that may arise. Under these circumstances, it is impossible to arrive at any definite conclusion as to the necessity that exists for using at all so extreme a power. All that can be assumed is that, if the lieutenant-governors do not exercise the power by virtue of the instructions to which they are certainly subject under the British North America Act, then they are obliged at times to use their own discretion, under very exceptional circumstances, in order to prevent the further progress of measures, which contain provisions clearly unconstitutional or injurious to the interests

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lieutenant-governor should only reserve a bill in his capacity as an officer of the dominion, and under instructions from the governor-general." Sir John A. Macdonald, minister of justice, in his report on the Ontario Orange bills of 1873, Ont. Sess. P., 1st sess., 1874, No. 19. Also, Can. Sess. P., 1882, No. 141.

of the dominion, whose officers they are.[1] In this way they can no doubt relieve the general government of a delicate responsibility which otherwise would devolve on it.

The position of a lieutenant-governor's advisers, under these exceptional circumstances, is very difficult to explain in accordance with the principles of responsibility that govern a ministry in their relations with Parliament and the head of the executive. It is not possible to suppose in these times that a bill passed by the Lords and Commons should be formally presented to the sovereign to be refused ; for such a proceeding would be an acknowledgment that the ministers who advised it were no longer responsible for legislation, did not enjoy the confidence of Parliament, and consequently were not in a position to advise the Crown. But there is just this to be said when we come to consider the position of the lieutenant-governors: they are officers of the dominion, and bound to consider its interests in all legislation that comes under their review. Circumstances, therefore, may arise when a provincial administration may think themselves justified in concurring with the opinion of a lieutenant-governor, or even in extraordinary cases advising him, that a bill should not be assented to. The fact that no issues have yet been raised in the provincial legislatures as to the exercise of the veto is, perhaps, so much evidence that it may have its value, though it is not possible to explain satisfactorily the principles on which it has been or may be used.[2]

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[1] See Todd, Parl. Govt. in the colonies, p. 396, where he endeavours to explain the position of one lieutenant-governor from whom he had a private memorandum on the subject; the information he gives is vague though it justifies in a measure the assumption in the text.

[2] "It cannot be imagined that a law should have received the consent of both houses of Parliament, in which the responsible ministers of the Crown are sitting, debating, acting, and voting, unless those who advise the Crown have agreed to that law. and are therefore prepared to counsel the sovereign to assent to it. If a law were passed by the two houses

**XXVII. Amendment or Repeal of an Act in same Session.**—Section five of the Interpretation Act of 1867-8, provides that "any act of the Parliament of Canada may be amended, altered or repealed by any act to be passed in the same session thereof."[1]

By an act passed in 1883, the foregoing section was amended by adding the following as a sub-section: "The repeal of any act, or part of an act, shall not revive any act or provision of law repealed by such act, or part of an act, or prevent the effect of any saving clause therein."[2]

**XXVIII. Commencement of an Act.**—It is also provided by the same act that the clerk of the Senate shall endorse on every act of Parliament, immediately after the title, the day, month, and year when it received the assent of her Majesty, or was reserved for the signification of her pleasure thereon. In the latter case, the clerk shall also endorse thereon the date when the governor-general has signified either by speech or message to the two houses, or by a proclamation, that the bill had been laid before the queen in council, and she had been pleased to assent to the same. This endorsement is considered a part of the act; and the date of the assent or signification of the royal pleasure shall be the date of the commencement of the act, if no later commencement be therein provided.[3]

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against the will and opinion of the ministers of the day, those ministers must naturally resign their offices, and be replaced by men in whose wisdom Parliament reposed more confidence, and who agreed with the majorities in the two houses." Lord Palmerston, 159 E. Hans. (3), 1386.

[1] 31 Vict., c. 1; in conformity with the imperial statute 13 & 14 Vict., c. 21. See Can. Com. J. 1879, petroleum acts; 1882, Ontario Bank; 1883, booms and works in navigable waters bill.

[2] 46 Vict., c. 1; other amendments were made in the act of 1867-8, but they do not require special mention here.

[3] For instance, the Liquor License Act (46 Vict., c. 30, s. 147) was only to come into force on the 1st of January, 1884, and the licenses thereunder on the 1st of May in the same year.

**XXIX. Distribution of the Statutes.**—Certain acts passed since 1867 provide for the printing and distribution of the statutes of Canada by a queen's printer. They are printed in the two languages, in two separate parts or volumes, the first of which contains the general public acts of Canada, and such orders in council, proclamations, treaties, and acts of the Parliament of Great Britain, as the governor in council may deem to be of public interest in the dominion. The second volume contains the local and private acts. These two volumes are generally bound in one, and distributed to members of the two houses, administrative bodies, public departments and officials, in accordance with a list arranged in council; and the mode of distribution is annually reported to Parliament. Acts may be published in the *Gazette* previous to their publication in the printed volumes.[1] All the original acts of the Parliament of Canada, of the legislatures of Canada and of the late provinces of Upper Canada and Lower Canada, as well as all disallowed and reserved bills, remain in the custody of the clerk of the Parliaments, who can furnish certified copies to those persons who may require them.[2]

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[1] 38 Vict., c. 1, in amendment of 31 Vict., c. 1. See *supra*, p. 288 *n.* as to the office of queen's printer.

[2] 35 Vict., c. 1. See *supra*, p. 159 as to the duties of the clerk of the Parliaments.

# CHAPTER XIX.

## *PRIVATE BILLS.*

I. Importance of private bill legislation.—II. Definition of private bills.—III. Questions of legislative jurisdiction arising out of private legislation in Parliament.—IV. Reports of Supreme Court of Canada on private bills.—V. Questions of jurisdiction referred to standing orders committee in Senate.—VI. Classification of private bills; Hybrid bills, etc.—VII. General public acts affecting corporate bodies.—VIII. All acts deemed public, unless otherwise declared.

**I. Importance of private bill Legislation.**—In a country like Canada, with its immense extent of territory and varied material resources, private bill legislation must necessarily form a very important part of the work of the Parliament and the legislatures of the dominion. One of the advantages of the federal union has been the distribution among several legislative bodies of an immense amount of work that otherwise would have embarrassed a single legislature. One of the difficulties which the Imperial Parliament has had to encounter for a long while back is the impossibility of dealing practically or satisfactorily with the numerous matters of local or municipal or private interest that are constantly pressing upon its attention. Such a difficulty has been successfully surmounted by the Canadian system of confederation which, to speak in general terms, gives to each province control over all subjects of a purely local or provincial nature and to the dominion jurisdiction over all matters of a general and wider interest. Since 1867, the dominion Parliament has passed more than fourteen hundred acts, of which six hundred and fifty have been for private objects in the parliamentary sense

of the term ; that is to say, for the incorporation of railway, land, insurance, and other companies and bodies, many of which illustrate the development of the country from a material, intellectual and social point of view. During the same period, the legislatures of the provinces of Canada have passed, in the aggregate, between six and seven thousand acts,[1] of which upwards of two-thirds relate to local or private objects. These figures show not only the legislative activity of Canada, but the value of local or provincial freedom of action in all matters that necessarily and properly fall within the constitutional functions of the several legislatures.

**II. Definition of Private Bills.**—Private bills are distinguished from public bills inasmuch as they directly relate to the affairs of private individuals or of corporate bodies, and not to matters of public policy or to the community in general. They must pass through the same stages as public bills, but at the same time are subject to various standing orders in both houses of Parliament. Certain judicial functions have been entrusted to committees to which all petitions and bills of a private nature are referred, under the rules, with the view of carefully protecting all the interests involved in the proposed legislation. The parties whose private interests are to be promoted appear as suitors before a select committee, to whom the bill has been referred, whilst those who apprehend any injury, and are opposed to the legislation sought for, are admitted as adverse parties in the suit. The analogy which the proceedings bear to those of courts is sustained by the fact that certain fees must be paid by the promoters of a private bill before the house will permit its passage. All persons whose interests are affected by the measure must have due notice of its nature, so that they may have every opportunity to present themselves before

[1] See *supra*, p. 77 *n.*

the house and dispute, if necessary, its passage.[1] It will be the object of the writer to explain as clearly as possible in the following pages the rules and practice of the houses with respect to this important class of bills.

**III. Questions of Legislative Jurisdiction.**—Sections 91 and 92 of the British North America Act enumerate the various matters assigned to the jurisdiction of the Parliament and legislatures of the dominion. Among the matters within the exclusive jurisdiction of the general legislature we find the following, which embrace the various subjects which properly fall within the category of private bill legislation:

"13 Ferries between a province, and any British or Foreign country, or between two provinces.

15. Banking, incorporation of banks, and the issue of paper money.

16. Savings-Banks.

22. Patents of invention and discovery.

25. Naturalization and aliens.

26. Marriage and divorce.

29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this act assigned exclusively to the legislatures of the provinces; and any matter coming within any of the classes of subjects enumerated in this section (91) shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this act assigned exclusively to the legislatures of the provinces."

By section 92 the provincial legislatures may exclusively make laws in relation to the following subjects:

"10 Local works and undertakings other than such as are of the following classes.

(*a*) Lines of steam or other ships, railways, canals, telegraphs

[1] Courts of equity also look upon the solicitation of a bill in parliament in the light of an ordinary suit, and will in a proper case restrain the promoters by injunction from proceeding with a bill. May, 756.

and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province.

(*b*) Lines of steamships between the province and any British or Foreign country.

(*c*) Such works as, although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the provinces.

11. The incorporation of companies with provincial objects.

16. Generally all matters of a merely local or private nature in the province."

Though the constitutional provisions, just cited, have been framed with the avowed object of clearly defining the respective limits of dominion and provincial legislation, yet sixteen years' experience has proved incontestably that there is still much uncertainty as to the rules and principles that ought to govern the question of jurisdiction. In every session of Parliament, the issue has come up for discussion and from the difference of opinion that prevails in many cases it is easy to see that the question of jurisdiction is of a very perplexing character, even to those who have assisted in framing the constitution itself. So far as the writer, however, is concerned, he proposes to confine himself simply to a review of the legislation that has been at different times the subject of debate, and in this way show the tendency or direction of the legislation of the Parliament of the dominion.

During the first session of Parliament doubts arose as to the jurisdiction of the general legislature with respect to certain bills for the incorporation of railway, insurance, building and other companies. Railways, canals, telegraphs, and other works or undertakings, connecting a province with one or more of the provinces, or extending beyond the limits of a province, are expressly reserved for the jurisdiction of the general legislature. But in the case of railway companies within a single province, like

the St. Lawrence and Ottawa railway, which runs from Ottawa to Prescott on the St. Lawrence, or the Northern railway, which runs from Toronto to the north of Ontario,[1] it has been found necessary to declare them to be "for the general advantage of Canada," or "for the advantage of two or more provinces," in conformity with sub-section 10 of section 92, cited above. Since 1867, forty-eight charters have been granted to railways, expressly declared to be for the general advantage, or benefit, or interests of Canada. Some of these roads have been incorporated in the first instance by the provincial legislatures, but they have found it expedient to come under the provisions of the Act, in order to obtain extended powers. The policy of Parliament has been for sixteen years in the direction of practically controlling the entire railway system of the dominion, and during the session of 1883 the government brought in a bill,[2] which became law, with the object of giving effect to that policy. It is expressly declared to be "for the better and more uniform government of railways" that the Grand Trunk, Great Western, Intercolonial, North Shore, Northern, Hamilton & North Western, Canada Southern, Credit Valley, Ontario & Quebec and Canada Pacific railways, as well as all branch lines now or hereafter connecting with or crossing these railways or any one of them, "are works for the general advantage of Canada within the meaning of the British North America Act." Acts of the local legislatures, authorizing the construction and running of railways and branch lines, are to remain valid, but these roads are to be subject hereafter to the legislative authority of the Parliament of Canada.

By this law, some sixty-four Canadian railways have been already declared to be works for the general advan-

[1] 31 Vict., cc. 20 and 86.

[2] 46 Vict., c. 24. "An act further to amend the Consolidated Railway Act of 1879, and to declare certain lines of railway to be works for the general advantage of Canada."

tage of Canada, or of two or more provinces, and made subject, so far as the statute can make it, to dominion control.[1] The question was raised during the passage of the bill, whether the effect of so wide a provision was not practically to destroy the efficiency of provincial jurisdiction and control in the important matter of provincial railways; but it was urged on the other hand that there were manifest public advantages in having all the railways of Canada, as far as possible, under one control, especially in view of the fact that Parliament had heretofore been powerless to deal with many matters requiring legislation, in the general interest of the country.[2] It was not denied, however, even by the most earnest advocates of provincial rights that the dominion Parliament has full power to declare that a work is for the general benefit of Canada, and when it has been so declared, it may be assumed to be under dominion control. Of course, Parliament should exercise that power *bonâ fide*, and not declare arbitrarily what railways are works for the general advantage of Canada.[3] It is obviously difficult to draw the line, for there can be very few railways which may not be brought, for sufficient reasons, within the very wide scope of the section of the British North America Act giving Parliament the right to deal with such subjects. As a question of conveniency there can be no doubt that the policy of the dominion Parliament has decided advantages; and the only question is how far it can be carried without infringing provincial legislation with respect to local railways.

[1] In answer to an inquiry, the minister of railways, Sir Charles Tupper, stated that the roads excepted were the Carillon and Grenville; Fredericton, New Brunswick and Canada; St. John and Maine; Waterloo and Magog; Western Counties; Grand Southern; Windsor and Annapolis railways; but more than one of these it was added would probably be brought into the general category of dominion lines by legislation before the house. Hans. [1883], 1302.

[2] Can. Hans. [1883], 1293-1304.

[3] Can. Hans. [1883], 1294.

Since 1867, the houses have frequently found a difficulty in many cases in determining what class of bills comes within the meaning of the section assigning to the local legislatures the jurisdiction over "the incorporation of companies with provincial objects."

In the first session a bill to incorporate the Stratford Board of Trade was presented and referred to the committee on banking and commerce, where the question of jurisdiction was raised. The committee, after much discussion, came to the conclusion that though the Board to be created was a local body, yet the fact that trade and commerce was under the control of the dominion Parliament by section 91 of the British North America Act would justify them in reporting it favourably to the house. In examining the details of the bill, however, it was found to contain provisions for the establishment of a court of arbitration in commercial matters; and "as the constitution, maintenance, and organization of provincial courts, both of civil and criminal jurisdiction," are, by section 92 of the said act, assigned exclusively to the provincial legislatures, the committee expunged from the bill so much as related to that court, and it was then passed in the amended form.[1] In subsequent sessions several boards of trade were incorporated; and in the session of 1874 a general act was passed for the incorporation of such bodies throughout the dominion.[2]

In the same session the committee on standing orders reported with respect to the applications of the Gore District Mutual Fire Insurance Company, and of the Sorghum Growers' Association of the County of Essex, that these companies "came more properly within the jurisdiction of the local legislatures of the dominion of Canada."[3] The com-

[1] Can. Com. J. [1867-8], 357; Todd's Private Bill Practice, p. 19.

[2] 37 Vict., c. 51.

[3] Can. Com. J. [1867-8], 52, 177. The standing orders committee was clearly not justified in reporting on the question of jurisdiction; that is a matter for the house or committee on the bill.

mittee on standing orders also reported favourably on the petition for an "act to grant certain powers to the Civil Service Building and Savings Society;" but subsequently the committee to whom the bill was referred presented a report to the house, representing that "doubts had arisen as to whether the objects sought to be obtained by the promoters were not provincial in their character, and such as the local legislature is exclusively empowered to deal with," and at the same time soliciting instructions from the house as to the course to be pursued with reference to the bill. The result was that no further progress was made with the bill during that session.[1] Doubts were also expressed by the banking committee as to the jurisdiction of Parliament in the case of the Canada Life Stock Insurance Company Bill which was not proceeded with.[2] The whole question as to the jurisdiction of Parliament over insurance came up for discussion on a motion for the second reading of a public bill respecting insurance companies. It was moved in amendment that "the regulation of insurance companies is a subject properly within the jurisdiction of the provincial legislatures," and the house decided by a very large majority (44 to 5) against the amendment.[3]

Since the first session of the dominion Parliament until the end of that of 1883, between thirty and forty statutes have been passed relating to insurance and insurance companies. The local legislatures have also during the same period granted acts of incorporation to companies that do business within the limits of a province. In another part of this work reference is made to the fact that the highest courts in the dominion as well as the judicial committee of the privy council have had the question of jurisdiction under review with reference to the constitutionality of the Ontario Act of 1876, "to secure uniform conditions in poli-

[1] Can. Com. J. (1867-8), 60.
[2] *Ib.* 357.
[3] *Ib.* 426.

cies of fire insurance." It is now authoritatively decided that the terms of paragraph eleven of section 92 (giving powers to provincial legislatures for provincial objects) are considered sufficiently comprehensive to include insurance companies, whose object is to transact business within provincial limits. If a company desire to carry on operations outside of the province, it will come under the provisions of the general federal law, to which it must conform, and which contains special provisions for such purposes.[1] The dominion parliament may give power to contract for insurance against loss or damage by fire, but the form of the contract, and the rights of the parties thereunder, must depend upon the laws of the country or province in which the business is done.[2] Policies of insurance being mere contracts of indemnity against loss by fire, are, like any other personal contracts between parties, governed by local or provincial laws. The provincial legislature has the power to regulate the legal incidents of contracts to be enforced within its courts, and to prescribe the terms upon which corporations, either foreign or domestic, shall be permitted to transact business within the limits of the province—the power being given to local legislatures by the constitution to legislate over civil rights and property.[3]

The privy council, in their judgment, confirming that of the Canadian courts, made special reference to the fact that dominion legislation has distinctly recognized the right of the provincial legislatures to incorporate insurance companies for carrying on business within the province itself. The statute passed in 1875 enacts among other things :

" But nothing herein contained shall prevent any insurance company incorporated by or under any act of the legislature of

[1] Fournier, J., Sup. Court R. vol. iv., p. 277.

[2] Harrison, C. J., 43 U. C., Q. B. 261 ; Doutre, 267.

[3] 4 Ont. App. 109.

the late province of Canada, or of any province of the dominion of Canada, from carrying on any business of insurance within the limits of the late province of Canada, or of such province only, according to the powers granted to such insurance company within such limits as aforesaid, without such license as hereinafter mentioned."

Section 28 of the act of 1877[1] consolidating certain acts of the dominion Parliament respecting insurance also sets forth:

"This act shall not apply to any company within the exclusive legislative control of any one of the provinces of Canada, unless such company so desires; and it shall be lawful for any such company to avail itself of the provisions of this act; and if it do so avail itself, such company shall then have the power of transacting its business of insurance throughout Canada."

In the opinion of the privy council, this provision contains a distinct declaration by the dominion Parliament that each of the provinces had exclusive legislative control over the insurance companies incorporated by it; and therefore is an acknowledgment that such control was not deemed to be an infringement of the power of the dominion Parliament as to "the regulation of trade and commerce." The privy council add that "the declarations of the dominion Parliament are not, of course, conclusive upon the construction of the British North America Act; but when the proper construction of the language used in that act to define the distribution of legislative powers is doubtful, the interpretation put upon it by the dominion Parliament in its actual legislation may properly be considered."

In this connection it is necessary to refer to the fact that certain legislation in the province of Quebec affecting insurance companies has been declared beyond the competency of the local legislature. The act in question (39 Vict., chap. 7) imposed a tax upon the policies of such in-

[1] 40 Vict., c. 42.

surance companies as were doing business within the province. The statute enacts: That every assurer carrying on any business of assurance, other than that of marine assurance exclusively, shall be bound to take out a license in each year, and that the price of such license shall consist in the payment to the Crown for the use of the province at the time of the issue of any policy, or making or delivery of each premium, receipt, or renewal, of certain percentages on the amount received as premium on renewal of assurance, such payments to be made by means of adhesive stamps to be affixed on the policy of assurance, receipts or renewals. For each contravention of the act a penalty of fifty dollars is imposed.

The question of the constitutionality of the act came before the judicial committee of the privy council, who decided: That the act was not authorized by sub-sections two and nine of section ninety-two of the B. N. A. Act with respect to direct taxation and licenses for raising a revenue for provincial, local or municipal purposes. That a license act by which a licensee is compelled neither to take out nor pay for a license, but which merely provides that the price of a license shall consist of an adhesive stamp, to be paid in respect of each transaction, not by the licensee, but by the person who deals with him, is virtually a stamp act, and not a license act. That the imposition of a stamp duty on policies, renewals and receipts with provisions for avoiding the policy, renewal or receipt in a court of law, if the stamp is not affixed, is not warranted by the terms of sub-section two of section ninety-two which authorizes the imposition of direct taxation within a province in order to the raising of a revenue for provincial purposes.[1]

Since 1867 the two houses of Parliament have passed a

[1] 3 App. Cas. 1090; Cartwright, 117. On appeal from a judgment of the court of queen's bench of Quebec, affirming a judgment of the superior court of Lower Canada that the act is *ultra vires*. 16 L. C. J. 198; 21 *Ib.* 77; 22 *Ib.* 307.

large number of bills for the incorporation of building societies, insurance companies, joint-stock, loan, and investment companies. As all such corporations have been desirous to do business in more than one of the provinces, and to establish agencies throughout the dominion, they have found it not only convenient, but absolutely necessary in many cases, to obtain legislation from that Parliament which can give them the widest powers. Parliament has always been disposed to extend every possible facility to companies that claim to carry on business for the advantage of Canada, though, on more than one occasion, it has been questioned, whether it has not trenched on provincial jurisdiction. We have already seen that Parliament has been very liberal in its construction of the law enabling it to declare a railway a work for the general advantage of Canada, but in the session of 1882 it went a step further in making a similar declaration with respect to two electric light companies; the "Edison Electric Light Co." and the "Thompson & Houston Electric Light Co." A debate took place on the first named bill, and it was urged that the corporation was practically local in its character, since it was formed for the purpose of carrying on business within a certain locality. As the company asked for powers to take lands for the purposes of its business, and must be subject to municipal regulations, it should therefore receive its powers from local legislatures. If the subject-matter was essentially local in its character, the house could not alter that fact by a declaration like that in the preamble. It was stated in reply to these objections that when the bill was discussed in the private bill committee it was considered that the introduction of the electric light system was a work to the general advantage of Canada; that, inasmuch as the company would have to carry on their operations in every province, the best system was the granting of the necessary power to one central establishment from which operations could be carried on between two or more of the

provinces. When it was considered that the act gave the company power to manufacture and carry on business all over the dominion, the committee thought that this was a case when it might be properly declared that the work was for the benefit of Canada. The premier (Sir John Macdonald) took issue with those who argued against the right of the house to make the declaration in question in the case of such companies. It would be exceedingly unfortunate, in his opinion, if the promoters of any great undertaking or invention which they desired to introduce into the dominion were obliged to go to every legislature, and in this way obtain separate corporations with different conditions and restrictions. The object of the Imperial Parliament, in passing the law in question, was to prevent the expense and obstruction to material progress that would arise if the promoters of a work for the general advantage of Canada had to apply to the several provincial legislatures. They might obtain certain powers in one and be refused the same in another province; they might get large or restricted powers according to the policy of a particular legislature; they might be compelled to submit to conditions, varying and inconsistent in their nature.[1]

Whilst Parliament is disposed to give every legitimate facility to companies whose objects are of a dominion character, it has on several occasions refused legislation which appeared to be provincial in its character, or trenched upon matters clearly within provincial jurisdiction. The House of Commons refused in 1879 to permit the passage of a bill which contained some unusual provisions. This was a bill to permit one Nehemiah K. Clements of Yarmouth, Nova Scotia, and such other persons as might thereafter be associated with him, to be in-

[1] Can. Hans. [1882], 430-6. Mr. Blake, however, dissented from the view that the words in the British North America Act respecting an "undertaking" for the general advantage of Canada could be applied under any circumstances to a mere trading company, p. 434.

corporated for the purpose of building dykes across the Chebogue and Little Rivers. The premier and others took strong objections to the bill on the ground that it was a matter properly within the jurisdiction of the legislature of Nova Scotia. It was simply a bill to enable a single person to dyke two rivers in Nova Scotia, and was so completely of a provincial character that the last clause provided that the consent of the marsh owners in writing should be deposited in the office of the provincial secretary of Nova Scotia. It would be a novelty in dominion legislation, added the prime minister, if any single person could apply for a charter as a corporation to be formed of any parties whom he might subsequently induce to join him. All matters relating to the granting of lands reclaimed from the waters clearly fell under the head of property and civil rights which should be dealt with exclusively by the local legislatures. On the other hand, more than one speaker, including the minister of justice, thought there was some ground for the application to the general legislature since it had granted powers in other cases for the construction of works on navigable waters; but the difficulty appeared to be the fact that the main object of the proposed legislation was the obtaining of the possession of a large tract of land, which would be reclaimed, but which Parliament had no authority to convey.[1] The proper course, no doubt, was, as suggested in debate, to obtain an act of incorporation in the first instance from the local legislature, and then apply to the dominion Parliament for any additional powers that it could constitutionally grant.[2]

In the session of 1882 a bill respecting Pawn-brokers—to prevent them practising extortion—was withdrawn by the mover at the request of the minister of justice, as it was doubtful if it was within the jurisdiction of the

[1] Can. Hans. [1879], 921-24 ; Yarmouth Dyking Co. bill.

[2] See *infra*, p. 602 for a precedent in point.

dominion Parliament.[1] In 1869, a bill providing for vaccination was not proceeded with for a similar reason.[2]

In the session of 1883 the Senate amended a Commons bill respecting the Wesleyan Methodist Missionary Society by inserting the words, "and every such conveyance shall be subject to the laws relating to the conveyance of real estate to religious corporations which are in force at the time of such conveyance in the province or territory in which such real estate is situate." The private bill committee of the Commons to whom the amendment was referred, on the return of the bill, reported a recommendation that the amendment be disagreed to for the reason that "the Parliament of Canada not having jurisdiction in matters of civil right which belongs to the legislatures of the provinces, it ought not to prescribe the terms and conditions on which the conveyances are to be made to the society, but should leave all laws in each province to operate as to such conveyances." The Senate did not insist on its amendment.[3]

The following list of acts of the Parliament of Canada illustrates the wide range of dominion legislation :

An act to incorporate the Commercial Travellers' Association of Canada (37 Vic., chap. 96); "having for its objects the moral, intellectual, and financial improvement and advancement and welfare of its members."

An act to incorporate the St. Croix Printing and Publishing Company (37 Vict., chap. 116); "a corporation for printing a newspaper and other publications in the town of St. Stephen, New Brunswick.

An Act to incorporate Lamb's Waterproof Gum Manufacturing Company (37 Vic., chap. 117); with its principal office in London, Ontario.

An act to amend the act incorporating the Ottawa Gas Company, to confirm a resolution of their shareholders, placing pre-

[1] Can. Hans. [1882], 266.
[2] Com. Deb. [1869], 64 ; also, Sen. Deb. [1879], 47.
[3] Sen. J. [1883], 154, 241 ; Com. J. 317, 326, 351.

ferential and ordinary stock on the same footing, and to confirm, amend, and extend their corporate powers (39 Vic., chap. 71); a corporation originally created by an act of the late province of Canada.

Two acts with respect to the Mail Printing and Publishing Company of Toronto (35 Vict., chap. 111, and 39 Vict., chap. 73.)

An act to incorporate the "Dominion Grange of the Patrons of Husbandry" of Canada, (40 Vict., c. 83); "having for their object the improvement of agriculture and horticulture, the sale and disposal of their productions, and the procuring of their supplies to the best advantage, the systematizing of their work, the discountenancing of a system of credit, the encouragement of frugality, and the intellectual, social, and financial improvement, and welfare of its members in the various provinces of the dominion."

An act to amend the act to incorporate the Globe Printing Company of Toronto (40 Vict., c. 84), "desirous of establishing offices in various places outside of the province of Ontario."

An act to amend the act respecting the Canadian Engine and Machinery Company (46 Vict., c. 85); authorizing them to "exercise the powers conferred on them by their act of incorporation at any place or places in Canada."

An act to incorporate the Grange Trust (40 Vict., c. 86); an association incorporated as a loan company by Ontario letters-patent, but desirous of extending their business in the other provinces.

An act to incorporate the Dominion Phosphate and Mining Company (46 Vic., c. 91); associated for mining and manufacturing purposes at various points within the dominion of Canada.

The foregoing acts are cited here because they represent a large class of acts which, it has been sometimes questioned, do not legitimately fall within dominion jurisdiction,[1] but whenever a bill asks for powers as a trading or manufacturing company, to do business throughout the

[1] See reference to dominion phosphate act by private bill committee. Jour. [1883] 135. Also, Can. Hans. [1883], 701 (Grange Trust).

dominion, it has been considered to fall under the provision which places trade under the control of the general legislature. In this class must be placed the Dominion Grange Company, which obtained power to dispose of its products, agricultural and horticultural, in the several provinces. In the case of the Grange Trust Company, it required powers to deal with the question of interest, and so far had cause to apply to the general legislature. In other cases, like the printing and publishing corporations, it is not so clear why it was necessary to apply to Parliament for legislation. In all such matters, however, the general legislature has rarely hesitated to give powers to companies which make a claim to do business in more than one province.[1]

Corporations, established by acts of the provinces or of foreign countries, frequently apply for, and obtain, additional powers by statutes of the dominion Parliament. Joint legislative action, in fact, is necessary in many cases. A company may be obliged to receive certain rights and privileges from a foreign government which Canada cannot grant, and at the same time to resort to the dominion legislature for powers which the former government could not concede to it.[2] In 1881 and 1882, Parliament granted acts of incorporation to "Winslow, Jones & Company," and to the Quebec Timber Company, both formed under imperial acts, in order to enable them to carry on their business within the dominion.[3] In 1882, Parliament also passed an act respecting the New York & Ontario Furnace company, which is a corporation "duly incorporated under the general laws of the state of New Jersey, and of the United States of America, to mine, ship and manufacture iron in its various forms." It declared its

[1] Can. Hans. [1882], 435 (Sir John Macdonald).

[2] *Ib.* [1882], 429-30.

[3] 44 Vict., c. 63; 45 Vict., c. 119. See *infra* p. 606 for a report of the supreme court of Canada, as to the constitutionality of the Quebec timber bill.

desire in its application to Parliament, as set forth in the preamble of the act, to carry on business throughout Canada, and to have "its organization and corporate powers recognized by the Parliament of Canada and extended to the dominion."[1] Some objection was taken to the bill in the House of Commons on the ground that Parliament was asked to sanction exceptional legislation by recognizing a foreign entity and giving it certain powers. Dominion legislation, it was urged, ought to be in the direction of creating the corporation to which Parliament might legitimately give power. It was stated in the discussion that the question of the expediency of recognizing a foreign corporation in the way proposed had come up in the private bill committee, when the bill was before it, and it was found that the house had, in former sessions, passed more than one bill of a similar character, without insisting upon the companies being organized, according to the laws of Canada, or upon their stockholders being residents of the dominion.[2] No doubt, in all such cases, the desire to encourage the introduction of capital into the country prevails above other considerations, and inclines the house to facilitate the passage of acts like the one in question.

Several bills have been passed by Parliament to permit the construction and maintenance of bridges over various navigable rivers of the dominion—navigation and shipping being under the exclusive control of the general legislature.[3]

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[1] 45 Vict., c. 113.

[2] Can. Hans. [1882], 429-30.

[3] B. N. A. Act, s. 91, sub-s. 10; Doutre, p. 141. See Dom. Stat. 38 Vict., c. 97, bridge across river L'Assomption; Can. Hans. [1875], 893-896. The committee on this bill were of opinion that the Parliament of Canada had the power to deal with such matters, p. 895. Also, 40 Vict., c. 65, Rivière du Loup bridge; this river is only navigable at certain seasons in the neighborhood of the bridge; Can. Hans. [1877], 1041-2. Also, 37 Vict., c. 113 (River L'Assomption Toll-bridge); 45 Vict., c. 91 (Richelieu Bridge Co.) Also, 45 Vict., c. 37, "An act respecting bridges over navigable waters,

Whenever companies, incorporated under provincial acts, have required certain privileges upon navigable streams, they have always sought and obtained them from the general legislature. For instance, the Canadian Electric Light Company had received certain rights as a corporation from the legislature of Quebec, but in 1883 it was obliged to seek legislation from the dominion Parliament to define its powers as to the construction of dams, wharves, and other works necessary for the successful prosecution of its business. It was enacted in the Quebec act of incorporation that the "company shall not exercise any right or privilege which may be within the exclusive jurisdiction of the federal power without having first obtained the required authority from the government or parliament of Canada according to circumstances." Hence the application to the general legislature and the passage of a dominion act by which the company can construct works on navigable rivers with the approval of the governor in council.

In the session of 1883, a very instructive discussion took place on the question how far the general legislature may go in legislating in the case of companies already incorporated under provincial acts. Among the bills before the house was one to grant certain powers to the Acadia Powder Company, already incorporated by special acts of the province of Nova Scotia. The bill asked for power to extend the business of the company throughout the dominion; and, from the debate on the measure, it is evident that had its promoters been content with asking Parliament to grant this general power, there would have been little objection to its passage, except from those who had doubts as to the right of the dominion legislature to in-

constructed under authority of provincial acts." Sen. Hans. [1882], 373-77. See remarks of Sir J. A. Macdonald (Can. Hans. [1879], 923) in which he claimed that the local legislature could deal with navigable rivers. Parliament, however, had a right to legislate as to navigation and shipping, and could pass general laws in relation to obstructions.

terfere in any way with local legislation.[1] But the bill went still further, since it contained provisions with respect to the capital stock and directors, which were a clear infringement of the powers of the provincial legislature which created the company. The following summary of the views of some of the principal speakers on the points at issue will show that there was unanimity of opinion as to the principles that should guide the house in similar cases :

Mr. Ouimet said that it was quite clear that corporations created by the local legislatures might come to the general parliament to have their powers extended ; that is to say. to obtain powers, which could not be granted by the legislature of a province. For instance, the house had that session given power to the Crédit Foncier Franco-Canadien[2] to impose certain charges of interest, which were not within the power of the provincial legislature. No doubt the parliament had power to create corporations whose operations would be general or federal, but in cases like the bill under consideration it should only grant such powers as the legislature could not grant. Application should be made to the latter body for such powers as it could give.

Mr. Blake. There are two modes in which parliament can deal with a manufacturing company which wants more than a local legislature can give. We can either extend to the corporate entity, created by the local legislature, certain powers which we alone can give, or we can create a federal corporation complete and entire, created by and amenable to ourselves, *totus, teres, atque rotundus.* On general principles I strongly prefer the second of these two modes, because it gives a multiplicity of conveniences. I would refer all those who are interested whether as shareholders, creditors, or otherwise, in the constitu-

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[1] See speech by Mr. Amyot (Hans. pp. 422-25) in which he gave his objections at length to any legislation by the dominion parliament which would infringe, in his opinion, upon the exclusive jurisdiction of the provincial legislatures. If a company required rights in other provinces, it should apply to their respective legislatures. But, on the other hand, see (*supra*, p. 596), the argument of the premier in the very opposite direction.

[2] 46 Vict., c. 85.

tional powers of the company to the one statute or the amendments of the statute. The other mode exposes you to complications; but if we adopt the least convenient course, we ought to know the extent of the corporate entity, the sum of power, which it cannot obtain from the local legislature, and which will enable it to enlarge, if required, the sphere of its operations. We should not interfere with such details as can be arranged by the local legislature. Were some of the domestic arrangements to be altered by the Nova Scotia legislature and others by parliament, great confusion would necessarily arise.

Mr. McCarthy—For my part I entertain not the slightest doubt that we can give increased powers to a corporation, although it may owe its existence to one of the local legislatures, just as we give powers to English and American companies. But we should stop there; we should not interfere with such details of the organization, as are wholly within the jurisdiction of that sovereignty which has created the corporation. The legislature which had in the first instance made provisions with respect to the capital stock, had it now in its power to increase the same on such terms and conditions as it might deem expedient; and it was clearly from that body alone such power should be sought.

Sir John Macdonald—A complication arises when a local corporation having certain limited powers conferred on it by a provincial legislature seeks extended rights. Whilst we may extend these powers we cannot alter the constitution as arranged by the provincial legislature. Nay, I go further and say that, if a corporation, chartered under certain conditions and provisions by a local legislature, comes to the dominion parliament, and asks for increased powers, which the legislature considers contrary to the policy, under which they created the corporation originally, then I think it is quite within the jurisdiction of the provincial body to take steps to destroy it. If it wishes to have a dominion existence it should come here and obtain a new charter.

Mr. Weldon, who agreed with these views, pointed out how a conflict of authority might arise from the fact that the bill, as amended by the Commons committee, provided for an increase of capital stock by a two-thirds vote of the shareholders in accordance with the principle laid down by parliament in such cases, whilst the act of the provincial legislature left that matter to be decided by only a majority of votes.

In view of these opinions, so emphatically expressed by eminent constitutional authorities, the bill was amended in committee by striking out the clauses with respect to capital and directors, and giving the company simply power to do business throughout the dominion.[1]

**IV. Supreme Court Reports on Private Bills.**—By section 53 of the Supreme and Exchequer Court Act[2] it is provided that the supreme court or any two of its judges shall examine and report upon any private bill or petition for a private bill, referred to the court under any of the rules of either house of Parliament. The Senate at first adopted a standing order which provided for the reference to the court before the second reading of a bill, but now such bill may be referred at any time before final passage.[3] The opinion of the judges is placed on the journals as soon as it has been laid before the Senate by the speaker.[4]

In the session of 1876, a question arose in the Senate whether a bill for the incorporation of the Brothers of the Christian Schools in Canada was not a measure which fell within the class of subjects exclusively allotted to provincial legislatures under section 92, sub-s. 11 of the B. N. A. Act, 1867, relating to the incorporation of companies with provincial objects, and section 93 relating to education. Four of the judges reported their opinion that it was a measure included in the class of measures falling under provincial jurisdiction. Chief Justice Richards did not differ from the other judges in the conclusion arrived at, but declined to make a report on the ground that he doubted if section 53 of the Supreme Court Act intended that the judges should, on the reference of a

[1] 46 Vict., c. 94 ; Can. Hans. [1883], 262, 422, 499, 500.

[2] 38 Vict., c. 11, Dom. Stat.

[3] R. 55 amended in 1878, March 28, p. 337, Sen. Deb. Also, Deb. [1877], 260 ; *Ib.* [1878], 106, 137, 147, 293.

[4] Sen. J. [1876], 155, 206.

private bill to them, express an opinion on the constitutional right of the Canadian Parliament to pass the bill.[1]

In 1882, on the recommendation of the committee on private bills, the Senate referred to the Supreme Court a bill to incorporate the Quebec Timber Company in order to solve doubts that had arisen as to the constitutional right of Parliament to legislate in the matter. The points on which the house desired information were these:—

1st. Whether a company already incorporated under the "Companies' Act of 1862 to 1880," of the Imperial Parliament for the purposes mentioned in the bill, has a legal corporate existence in Canada, and, if so, whether a second corporate existence can, upon its own application as a company, be given to it by the Canadian Parliament, and

2nd. Whether the objects for which incorporation is sought are such as to take the bill out of the exclusive jurisdiction of the legislature of Quebec.

The judges, in their report on the bill, excused themselves from answering the first part of the first query on the ground that it affected private rights which might come before the court judicially. As to the second part of the query, the court was of opinion that the dominion Parliament can incorporate such a company for objects coming within the jurisdiction of the Parliament of Canada. As to the second query, the court was of opinion that the objects set forth in the bill are within the jurisdiction of the dominion Parliament, and out of the exclusive jurisdiction of the legislature of the province of Quebec.[2]

In the same session, on the motion for the third reading, a bill to incorporate the Canada Provident Association was referred to the Supreme Court. This association was formed "for the purpose of making provision in case of sickness, unavoidable misfortune, or death, and for substantially assisting the widows and orphans of deceased

[1] Sen. J. (1876), 207.

[2] Sen. J. (1882), 143, 158-9. The bill was, with the report, then referred to the committee on private bills, and subsequently passed by the Senate.

members." The judges reported that it did fall within the jurisdiction of the dominion Parliament, although they had doubts as to the first section which enabled the company to hold and deal in real estate, and also as to the second section which exempted from execution for the debts of any member the funds of the association—matters which should be argued before any positive opinion should be expressed by the court.[1]

**V. Questions of jurisdiction referred to Senate committees.**—In 1879 the Senate decided to make the experiment of giving authority to the committee on standing orders and private bills to consider the question of jurisdiction in the case of bills submitted to them. Rule 60 was rescinded and the following substituted :

"Any private bill shall, *if it be demanded by two members*, when read the first time, be referred to the committee on standing orders and private bills, to ascertain and report whether or not the said bill comes within the class of subjects assigned exclusively to the legislatures of the provinces.[2]

**VI. Classification of Private Bills.**—Sometimes doubts may arise whether a bill should be classed as public or private. Many cases of this nature occurred in the practice of the old Canadian legislature, but the houses generally allowed themselves to be guided by the decision of the committee to whom a bill might be referred. A committee has, under such circumstances, made some amendments to a bill in order to obviate a difficulty, and bring it under the category of a public or private bill.[3] In the session of 1865 a bill was brought up from the legislative council

[1] 45 Vict., c. 107 ; Sen. J. [1882], 273, 301-2 ; Hans. pp. 460-2, 698.

[2] Sen. J. [1879], 155, 170, 190, 206 ; Deb. 309, 340, 415 ; Jour. [1880], 79, 83, 85, 91, &c. The words in italics were added as an amendment in 1880. Jour. p. 92.

[3] Todd's Private Bill Practice, pp. 8-10 ; bill in reference to townships in Victoria county, Ass. Jour. [1858], 568, 684 ; Huron Indians, Ass. Jour. [1864], 391, 478.

intituled, "an act to enable the church societies and incorporated synods of the Church of England dioceses in Canada to sell the rectorial lands in the said dioceses;" and the objection was taken that it was private in its character and ought to have been introduced on petition. The speaker decided against the bill, on which no further progress was consequently made.[1] All bills respecting synods and religious corporations are considered private since 1867.[2]

In the session of 1879 a member asked leave to introduce, as a public measure, a bill "to empower R. G. Dalton, clerk of the court of queen's bench, Ontario, to pay to John Stewart, of the city of Kingston, surgeon, one thousand dollars,"—the money having been paid into court in accordance with the law requiring a certain deposit in the case of an election petition. The speaker at once decided that the bill was private in its character, and accordingly the motion for leave was withdrawn.[3] Subsequently a petition for a private bill was presented.[4]

Bills from the corporations of towns, and municipal bodies generally, are always treated as private bills, when they desire special legislation affecting their property or interests.[5] Though this class of measures now falls, as a rule, within the jurisdiction of the local legislatures, yet several cases will be found in the Commons' journals of applications from corporations of cities and towns for bills touching their interests; but on reference to the details of the measures it will be seen that they affect certain matters which properly come within the purview

[1] Speak. D. 134; Ass. Jour. [1865], 123.

[2] Saskatchewan Synod bill, Com. J. [1882], 64, &c.; 45 Vict. c. 126; also, 34 Vict., c. 58; Com. J. [1871], 71, &c.

[3] Can. Hans. 1879, March 5. By reference to the journals of 1878 (pp. 27, 36, 74), it will be seen that a private bill on the same subject had been presented that session, but not proceeded with.

[4] Can. Com. J. [1879], 56, 57.

[5] A bill to incorporate the city of Kingston was declared in 1847 to be a private bill, and subject to the payment of a fee; Jour. p. 150.

of the dominion Parliament. For instance, in the session of 1870, bills were passed to enable the town council of Belleville to levy harbour dues, and to give authority to the Collingwood Township Council to construct a harbour at the mouth of the Beaver river. Numerous bills of a similar character have been passed in other years; and as they have affected trade, navigation and shipping, matters within the jurisdiction of the dominion Parliament, they have been properly presented in the general legislature.[1]

In the English house, bills relating to the metropolis have been treated as public bills on many occasions on account of the general and large interests involved, although possessing many features characteristic of private bills. These measures have related to the vend and delivery of coals, ballast heavers, weighing of grain, main drainage, water-supply, besides many others which, had they been presented by other cities, would certainly have been regarded as private bills.[2]

As a rule, it may be stated that when bills treat of matters of general policy, such as sanitary, or police, or commercial, or fiscal regulations, they may be considered as public measures. In fact, all bills affecting the general interests of the community, and involving considerations of public policy, are out of the category of private bills dealing with the special interests of corporations or associations.

In the session of 1880-81, the government of Canada having decided to complete the Pacific railway by means of a company, brought in a public bill to incorporate certain persons under the name of the Canadian Pacific

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[1] 33 Vict., c. 45 and c. 46; Can. Com. J. [1870], 60, 81. Also, harbour dues in Owen Sound (34 Vict., c. 35); harbour dues in Trenton (34 Vict., c. 36); Grafton harbour continuance bill (46 Vict., c. 93); Kincardine bill (40 Vict., c. 52); Moira river bill (42 Vict., c. 51).

[2] 129 E. Com. J. 122; 131 *Ib.* 336; 132 *Ib.* 348, &c. Bills affecting the property, interests or jurisdiction of the city of London have been generally solicited as private bills. May, 747.

Railway Company.[1] In the same session a minister presented a public bill intituled "an act to provide for the incorporation of a company to establish a marine telegraph between the Pacific coast of Canada and Asia." This bill applied the provisions of the Joint Stock Companies' Act, and of the Marine Electric Telegraphs' Act to the company in question.[2]

Whenever public bills involve private interests which should be carefully guarded, they are subjected to the same examination provided for private bills.

A bill introduced in 1864 in the English Commons on the subject of the weighing of grain in the port of London was considered a public bill, as it concerned the home and foreign trade, and also the public revenue; but the speaker called attention to the fact that there were allegations in the preamble which were open to dispute and required to be established by evidence, and under such circumstances he deemed it advisable to commit the bill to a select committee, by whom these facts would be inquired into, and any local or private rights would be duly protected.[3]

A similar case occurred in the Canadian house in the session of 1883, when a member introduced, on motion, a bill, "to increase the harbour accommodation of the city of Toronto, to extend the esplanade, and to provide for the control of the use thereof by railway companies." This measure proposed that a board of commissioners should be established for the purpose of carrying out the objects, which were sufficiently set forth in the title. After the second reading it was referred to the railway committee with the understanding that due notice would be given to the private companies and great corporations which

[1] 44 Vict., c. 1.

[2] 44 Vict., c. 33; Hans. [1880-81], 1173-77. The bill was based on resolutions from the committee of the whole—an altogether superfluous proceeding.

[3] Mr. Speaker Denison, June 23, 1864; 176 E. Hans. (3), 163, 171.

would be affected by the proposed legislation. The committee did not, however, deal with so important a measure that session, but reported to the house that the preamble was not proven.[1]

In the English House of Commons, there is a class of local bills, *quasi* private, distinguished as "hybrid bills." They are brought in, by order, as public bills, but "their further progress is subject to the proof of compliance with the standing orders before the examiner, and to the payment of fees." They are generally "bills for carrying out national works, or relating to crown property, or other public works in which the government is concerned," or they sometimes deal with matters affecting the metropolis.[2] The rules of the Canadian houses do not make any special provision for this class of bills. The Toronto Esplanade bill, just mentioned, would probably belong to this class, since the house found it necessary to refer it to a select committee with a view to protect the private interests involved.[3] In other cases, where bills have affected both public and private interests, a different course has been followed. In the session of 1875, the premier (Mr. Mackenzie) moved for leave to introduce a public bill to rearrange the "capital of the Northern Railway of Canada, to enable the said company to change the gauge of its railway, and to provide for the release of the government lien on the road on certain conditions." Objection having been taken that some of the provisions affected private in-

[1] Can. Com. J. [1883], 203, 224 ; Hans. 709.

[2] May, 787. Windsor Castle approaches bill, 1848 ; Portland harbour and breakwater bill, 1850 ; Smithfield market removal bill, 1851 ; Belfast municipal boundaries bill, 1853 ; Thames embankment bills, 1862 and 1863 ; Metropolis gas bills, 1867 and 1868 ; Dover pier and harbour bill, 1875 ; public offices site bill, 1882.

[3] Though the committee reported the preamble not proven, the bill appeared in its proper place on the public orders. A strictly private bill would not have even appeared on the private business paper under the rules governing such bills (see *infra*, p. 660). In the English Commons hybrid bills always appear on the public orders.

terests and altered the powers of the company in very material points, the speaker decided that the bill ought to be withdrawn. Separate bills were subsequently passed by the house—one, relating to the government lien, was treated as a public bill, and the other, relating to the gauge and capital, as a private bill.[1]

In 1879, a bill of a very novel character was presented in the House of Commons. The solicitor-general of the province of Quebec came before the house as a petitioner for a private act to confer upon the government of that province "the powers granted to the Montreal, Ottawa and Western Railway Company, by several acts of the Parliament of Canada, in so far as related to the construction of a bridge over the Ottawa River, and likewise power to acquire all land and real estate situate in Ontario, necessary for the purposes of the said Railway." The executive government of Quebec, for the time being, was to be constituted a railway corporation and body politic and corporate, for the purposes of the act, by the title of the government of the province of Quebec. The bill was not discussed in the house, but sent at once to the railway committee, where the inconveniences that might arise from constituting the Quebec government a corporation under a dominion charter became obvious to the majority of the committee; and it was agreed to alter the bill very materially. The bill, as finally amended and passed authorized "the commissioner of agriculture and public works of the province of Quebec for the time being to construct a bridge over the waters of the Ottawa River, between the cities of Hull and Ottawa, and also a line of railway to connect the Quebec, Montreal, Ottawa, and Occidental Railway with any railway coming to the said city of Ottawa." It was also provided that the powers conferred upon the commissioner in question shall be vested in and may be exercised by any commissioner

[1] Can. Com. J. [1875], 213, 217; Hans. 662.

or public officer who may hereafter be substituted by the legislature of Quebec in place of the said commissioner.[1]

In 1880, the minister of justice introduced a bill to remove a difficulty that had arisen as to the title of the Quebec, Montreal, Ottawa, and Occidental railway, which had been already the subject of dominion legislation. The government of Quebec, by whom that road had been acquired, believed it to be necessary to obtain additional legislation from the dominion Parliament with respect to that portion of the railway extending from Montreal to Quebec, just as it had been previously obtained in the case of the part between Montreal and Aylmer. Objection was taken, on the second reading, that the bill affected private interests, and the case of the Northern Railway bill was adduced as a precedent. The bill was then withdrawn.[2]

It is perfectly regular to repeal or amend a public act by a private bill.[3] The policy of this mode of legislation has been sometimes questioned, and while the practice is allowable, such bills cannot be too closely scrutinized.

Many cases can be found in Canadian, as in English legislation, of companies or corporations being excepted in express terms from the provisions of certain public statutes. A new rule was adopted in the Canadian Commons in 1883, with the view of indicating in every bill any departure in its details from general acts.[4]

But a bill proposing to amend a public act in the interests of certain persons will not be allowed to proceed as a public bill. In the session of 1883 it was proposed to pass, as a public measure, a bill to enable the minister of

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[1] Can. Com. J. [1879], 65, 89, &c.; 42 Vict., c. 56. See Montreal *Gazette*, March 29, for summary of discussion on various points raised.

[2] Can. Hans. [1880], 1998.

[3] 176 E. Hans. (3), 16-19.

[4] Res. of 20th April, 1883; *infra*, p. 657.

the interior, notwithstanding the provisions of the act 43 Vict., chap. 7, to receive the applications of certain persons in Manitoba for the issue of letters-patent to them of various lots of land in that province; but it was withdrawn on the objection being taken that it was a private bill.[1]

It has been decided in the English House of Commons that a bill, commenced as a private bill, cannot be taken up and proceeded with as a public measure. In 1865, the promoters of the Middlesex Industrial Schools Bill, dissatisfied with some amendments relative to Roman Catholic Chaplains, made in committee, determined to abandon it; but subsequently Mr. Pope Hennessy gave notice that he proposed to proceed with it as a public bill; but this course was decided to be irregular.[2] Nor can a strictly private bill be t[illegible]ed into a hybrid.[3]

If it be found that a private bill affects the public revenue, it will be necessary to obtain the consent of the government to the clauses in question and have them first considered in committee of the whole, and then referred to the committee on the bill.[4] A private bill has not been allowed to proceed on the ground that it affected the public revenue,[5] but in the majority of cases where the property or interests of the Crown are concerned, the consent of the sovereign will be obtained at some stage before the final passage. If this consent be not obtained, all proceedings will be stayed.[6]

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[1] Can. Hans. [1883], 1034.

[2] May, 753. It has been decided in the English Commons that it is for the house, and not for the speaker, to decide whether the subject-matter of a bill is properly private or public. 177 E. Hans. (3) 642-653, (Liverpool Licensing Bill).

[3] 180 E. Hans. (3), 45.

[4] Canada vine growers' association bill, 1867-8.

[5] Bill to extend the time for paying debt of the county of Perth. Leg. Ass. J. [1866], 298.

[6] *Supra*, pp. 473-4.

**VII. General Public Acts affecting Corporate Bodies.**—In order to give greater facilities to the incorporation of companies for various purposes, and to obviate the necessity of so many applications for special legislation, Parliament has passed general statutes which provide all the necessary machinery by which a number of persons can form themselves into a body corporate. Under an act respecting Joint Stock Companies,[1] the governor in council may, by letters-patent under the great seal, grant a charter to any number of persons, not less than five, who may be constituted a corporation for any purpose to which the legislative authority of the Canadian Parliament extends, except the construction and working of railways, or the business of banking and the issue of paper money or insurance. In addition to the act previously mentioned, providing for the incorporation of boards of trade[2] throughout the dominion, a general statute authorizes the governor in council to grant a charter, under the great seal, to any company of persons who may be formed under any special act of the Imperial Parliament, or under the imperial joint stock companies act, or any other general act of Great Britain, or by royal charter, for the purpose of establishing and maintaining telegraphic communication in the waters within the jurisdiction of Canada.[3] A number of general statutes have also been passed by Parliament for the purpose of regulating the business of banking, insurance, railways, and trading and business companies generally, and with the view of protecting the various interests that the public have in all such associations and undertakings. The provisions of the general railway acts apply to every railway already constructed, or to be constructed, under the authority of any act of the Parliament of Canada, and must be incorporated with the

[1] 40 Vict., c. 43.

[2] *Supra*, p. 590.

[3] 33 Vict., c. 26.

special acts respecting these works, unless they are expressly varied or excepted by the terms of such acts.[1] In the same way the provisions of the Canada Joint Stock Companies Act apply to every company, unless it is otherwise expressly provided in its special act of incorporation.[2] Very stringent provisions have also been made for the careful working of monetary institutions, and for the security of the people of Canada who have assured their lives or property in insurance companies. General statutes have also been passed for the winding up of insolvent banks and trading companies.[3]

But notwithstanding the facilities afforded by the dominion Parliament as well as by the local legislatures for the incorporation of certain classes of companies by the governor or lieutenant-governor in council, the work of these various legislative bodies does not appear

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[1] 42 Vict., c. 9 ; 44 Vict., c. 24 ; 46 Vict., c. 24 (*supra*, p 588).

[2] 32-33 Vict., c. 12.

[3] For the legislation of the Canadian Parliament on trading and business companies, see in addition to the acts already cited : Carriers by water, 37 Vict., c. 25. Banks, 34 Vict., c. 5 ; 35 Vict., c. 8 ; 36 Vict., c. 43 ; 42 Vict., c. 47 ; (holidays, etc.) 36 Vict., c. 43 ; 38 Vict., c. 17 ; 40 Vict., c. 44, (right of voting) ; 42 Vict., c. 45 ; 43 Vict., c. 22 ; 44 Vict., c. 9 ; insolvent banks and trading companies, 45 Vict., c. 23) 46 Vict., c. 23. Savings banks in Ontario and Quebec, 34 Vict., c. 7 ; 35 Vict., c. 9 ; 36 Vict., c. 72 ; 43 Vict., c. 23 ; 44 Vict., c. 8. Railway passenger tickets, 45 Vict., c. 41. Telegraph companies in Quebec and Ontario, 32 & 33 Vict., c. 14 ; telephones, 45 Vict., c. 40 ; telegraph operators, 44 Vict., c. 26. Insurance companies, 38 Vict., c. 20 ; 40 Vict., c. 42 ; mutual, 34 Vict., c. 12. Permanent building societies in Ontario, 37 Vict., c. 50 ; 40 Vict., cc. 48, 49 ; 41 Vict. c. 22 ; 42 Vict., c. 49 ; 45 Vict., c. 24 ; building societies in Quebec, 40 Vict., c. 50 ; liquidation, 42 Vict., c. 48 ; permanent building and loan societies generally, 43 Vict., c. 43. Conveying timber down rivers, 36 Vict., c. 64 ; 43 Vict., c. 9. Inspection of bridges, 35 Vict., c. 25 ; bridges over navigable rivers under provincial legislation, 45 Vict., c. 37 ; booms and works in navigable waters, 46 Vict., cc. 43, 44. Interest and usury, certain corporations in Quebec and Ontario, 36 Vict., c. 70 ; in Nova Scotia, 36 Vict., c. 71 ; in New Brunswick, 38 Vict., c. 18 ; British and other foreign companies for lending money, 37 Vict. c. 49. See a useful little index to the general statutes of Canada published periodically by Mr. Wicksteed, law clerk to the Commons.

to diminish. On the contrary, as has been shown in the first part of this chapter, the number of special acts passed by the legislatures of the dominion for the incorporation of companies for various objects has never been so great as within the past five years. The necessity of obtaining powers not included in the general acts, continually forces companies to seek special legislation. Indeed, on a careful review of the statute book, it will be seen that, in not a few cases, companies have found it necessary to obtain special exemption from provisions of the general acts.

**VIII. All Acts deemed public, unless otherwise declared.**—Every local and private act passed in Canada previous to, and for some years after 1840, contained a clause declaring that it "shall be deemed a public act and shall be judicially taken notice of as such by all judges, justices of the peace and other persons whomsoever without being specially pleaded." From 1850 to 1868, the clause was shortened, and it was simply enacted that "it shall be deemed a public act."[1] In the first session of the dominion Parliament it was enacted that "every act shall, unless by express provision it is declared a private act, be deemed a public act, and shall be judicially noticed," and consequently the public clause has been ever since omitted from private acts. It is also provided in the same statute[2] that "all copies of acts, public or private, printed by the queen's printer, shall be evidence of such acts and of their contents, and every copy purporting to be printed by the queen's printer, shall be deemed to be so printed, unless the contrary be shown."[3]

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[1] See Consol. S. C., c. 5, s. 6, sub-s. 27.

[2] 31 Vict., c. 1, s. 7, sub-s. 38. This provision is in accordance with Lord Brougham's act of 1850, for shortening the language of acts of Parliament; 13 Vict., c. 21, s. 7.

[3] See Imp. Stat. 8 & 9 Vict., c. 113, s. 3.

# CHAPTER XX.

*PRIVATE BILLS.—Continued.*

I. English compared with Canadian procedure.—II. Promotion of private bills in Parliament.—III. Private bill days in the Commons.—IV. Petitions for private bills.—V. Committee on standing orders.—VI. First and second readings of bill.—VII. Fees and charges.—VIII. Committees on private bills.—IX. Reports of Committees.—X. Committee of the whole.—XI. Third reading.

**I. English compared with Canadian Procedure.**—The procedure in the Senate and House of Commons with respect to private bill legislation is more simple than that of the English houses. In Canada there are only twenty-four special rules or orders for the regulation of private bills, while in the English Commons there are no less than two hundred and fifty relating to that class of legislation. It is true that, in all unprovided cases, reference may be had to the practice of the English houses, but so far the system of the Imperial Parliament has only been adopted in a very modified form. The English orders provide for a much more thorough examination of all petitions and bills than is possible under Canadian rules. For instance, the chairman of the committee of ways and means, who is deputy speaker and a paid officer of the house, examines all private bills whether opposed or unopposed, and calls the attention of the house, and also of the chairman of the committee on every opposed bill, to all points which may appear to him to require it. He is also at liberty, at any period after a private bill shall have been referred to a committee, to report to the house any special circumstances relative

thereto, which may appear to him expedient. The important and onerous duties of the chairman of ways and means in these particulars are in practice performed by individual members of the Canadian committees on private bills.

The work of private bill legislation is also distributed as far as possible between the two houses. It is the duty of the chairman of the committee of ways and means, at the commencement of each session, to seek a conference with the chairman of committees of the house of Lords, for the purpose of determining in which house the respective private bills shall be first considered. Consequently a fair proportion of private bill legislation is now initiated in the Lords, and the work of the Commons is to this extent lessened. A similar practice is not possible in Canada, while the promoters of private bills are free to introduce their bills in either house. In 1882, out of 71 private acts that were passed, only eight were presented in the Senate.

The English house refers private bills to certain small committees, which may be compared to the sub-committees to which the large committees of the Canadian Commons find it occasionally convenient to refer some private bills for thorough scrutiny and amendment. A committee of selection, composed of eight members, classifies all bills, except those of railways, canals, or tramways, nominates the chairman and members of committees on such bills, and arranges the time of their sitting, as well as the bills to be considered by them. A general committee of railway and canal bills, usually composed of eight members, has duties analogous to those of the committee of selection. It arranges railway, canal and tramway bills into groups, and appoints the chairman of every committee on such bills from its own body. The main object of its constitution "is to ensure a communication between the several chairmen, and uniformity in the decisions of the committees." The committees to

whom the several classes of opposed bills are referred consist of four members.[1]

The system in the Canadian houses is to refer the different classes of bills to large standing committees, which consist of the following numbers :—

*In the Senate.*

| | | |
|---|---|---|
| Committee on | Standing Orders and Private Bills | 36 |
| " | Railways, Telegraph and Harbours | 32 |
| " | Banking and Commerce | 29 |

*In the Commons.*

| | | |
|---|---|---|
| Committee on | Standing Orders | 42 |
| " | Railways, Canals and Telegraph Lines | 136 |
| " | Miscellaneous Private Bills | 70 |
| " | Banking and Commerce | 98 |

The committees of the Commons, as already shown in the chapter on select committees, are nominated at the commencement of each session by a committee of selection, composed of leading men representing the political divisions in the house.

The writer has compared the Canadian with the English practice as respects the examination of bills and the constitution of committees, because it has been more than once debated whether the procedure of the Canadian houses might not be advantageously amended in these particulars.

With these remarks the writer may now proceed to consider the practice of the two houses of the Parliament of the dominion. As the orders of the houses are the same, it will be sufficient to give a summary of the procedure of the Commons, where the great mass of private bill legislation is initiated.[1] A separate place will be given to divorce bills, and to a few points of practice in the Senate which demand special mention.

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[1] May, 802-3 ; S. O. 98-118.

**II. Promotion of private legislation in Parliament.**—It is the practice of the Canadian Commons for members to take charge of private bills and to promote their progress through the house and its committees, but it is "contrary to the law and usage" of the English Parliament that any member of the house "should be permitted to engage, either by himself or any partner, in the management before this or the other house of Parliament for pecuniary reward."[1] So strictly is the principle of this usage carried out in England, that it is even provided in the Standing Orders of the Commons that no member, "locally or otherwise interested" in an opposed private bill, can sit in a committee thereon. Every member of a committee on such a bill must, before he is entitled to attend and vote on such committee, sign a declaration that his constituents have no "local interest" and that he himself has no "personal interest" in the proposed legislation. Nor can a member, locally or otherwise interested in an unopposed private bill, vote in a committee on any question that may arise, though he may attend and take part in the proceedings.[2]

It is a recognized principle in the Canadian, as in the English, Parliament, that ministers of the Crown should not initiate or promote private bills. But ministers sit on private bill committees in the Canadian Commons, and carefully scrutinize all private and local legislation with the view of guarding the public interests.[3]

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[1] Res. of 26th Feb., 1830; 85 E. Com. J. 107.

[2] Eng. S. O. 108-110, 137, 139; Can. Hans. [1883], 36-37. While some members have been inclined to adopt the English standing orders in these particulars, others have argued that in a very large committee like that on railways in the Canadian house, it is to the public advantage and convenience that all the railway interests should be represented and heard; of course, in small committees like those in the English Commons, it is inexpedient to have members locally interested in such works. See remarks of Sir J. A. Macdonald, p. 37.

[3] In England, the occupants of the Treasury bench are exempt from serving on private bill committees; 175 E. Hans. (3), 1545. See as to duties of ministers: Mirror of P. 1830, p. 2009 (Sir R. Peel); *Ib.* 1840,

Rules 72 and 73 of the Commons lay down certain regulations for the guidance of agents, to whom parties interested in private legislation may entrust their bills. Every agent is personally responsible to the house and to the speaker for the observance of the rules, orders and practice of Parliament, and also for the payment of all fees and charges. He cannot act until he shall have received the express sanction and authority of the speaker. If he shall act in violation of the rules of Parliament or of those prescribed by the speaker, or shall wilfully misconduct himself in prosecuting any proceedings before Parliament, "he shall be liable to an absolute or temporary prohibition to practice as a parliamentary agent, at the pleasure of the speaker; provided that, upon the application of such agent, the speaker shall state in writing the ground of such prohibition."

No officer of the house is allowed to transact private business for his emolument or advantage, either directly or indirectly.[1]

**III. Private Bill Days in the Commons.**—By rule 19, private bills come up for consideration in the House of Commons on Monday, Wednesday, and Friday in each week.[2] No limit is fixed to the discussion on such bills when they are reached on Monday, but on the other days they are not to occupy more than one hour, when the house resumes at half past seven o'clock in the evening. By general consent the hour may be extended,[3] but if objection be taken the house must go on with the other business on the order paper.[4] The rule is frequently suspended to-

p. 4657 (Mr. Baring, chancellor of the exchequer); 80 E. Hans. (3), 177 (Sir R. Peel). See also Sen. Deb. [1879], 186; *Ib.* [1883], 52.

[1] Parl. Rep. No. 648, of 1833, p. 9; No. 606, of 1835, pp. 17, 19. May, 782.

[2] *Supra*, p. 251.

[3] Canada Southern railway bill, March 22; and April 10, 1878; when two hours and a half were devoted to private bills.

[4] Campbell relief bill, Hans. [1879] 1883.

wards the close of the session by orders giving precedence to government or other business of importance. In case it is not proposed to supersede private bills, the motion to give priority to other matters should be so expressly worded.[1]

**IV. Petitions for Private Bills.**—Every private bill, presented in either house, should be first based upon a petition which states, succinctly, the object which the promoters have in view.[2] The rules that govern petitions generally, apply also to those for private bills; and it is therefore important that every applicant for private legislation should carefully observe these rules, as an informality may jeopardise the measure he is applying for. As the subject of petitions is treated fully elsewhere,[3] it is here necessary only to state that the signature must appear on the sheet containing the whole or part of the prayer; that the signature or signatures must be in the hand-writing of the party interested; that an agent cannot sign for another except in case of illness; that the petition of a corporation must contain the corporate seal;[4] that no member can present a petition from himself, but must do so through another member.[5] A member will present the petition in his place—confining himself to a simple statement of the prayer—and it must lie two days on the table before it can be read and received;[6] and it is then referred, as a matter of course, to the committee on standing orders, which takes cognizance of all such petitions, and it is only after a favourable report that the bill can be presented.

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[1] Can. Com. J. [1882], 231.

[2] Sen. R. 57; Com. R. 56.

[3] Chapter viii.

[4] In the Glasgow gas bill, 1843, an objection was taken that the seal attached to a petition was not the corporate seal of a company; and when this was proved to be the case, all the evidence in support of the petition was ordered to be expunged; May, 838.

[5] Bank of Manitoba, Can. Com. J. 1875, p. 235; Metropolitan Bank, *Ib.* 1876, p. 141.

[6] Sen. Deb. [1879], 120.

Petitions could formerly be presented within the first three weeks of the session: but in 1876 certain modifications and changes were made[1] in the rules, and it is now ordered:

"No petition for any private bill is received by the house after the first ten days of each session; nor may any private bill be presented to the house after the first two weeks of each session; nor may any report of any standing or select committee upon a private bill be received after the first six weeks of each session." (Sen. & Com. R. 49).

Under the amended rules, any person seeking to obtain the passage of a private bill is required to deposit with the clerk a copy of the bill eight days before the meeting of the house, together with a sum sufficient to pay for the printing and translation.[2] Under the old system, the time of the house was occupied even toward the latter part of the session with private bills, and the house was frequently unable to give them the full consideration all such measures should invariably receive. The time for presenting petitions and bills was practically extended throughout the whole session, and a very loose and careless system was encouraged. The object of the amended rule is to bring the bulk of petitions and bills within the first part of the session, but, though there is a decided improvement as compared with the old practice, the promoters of private bill legislation are still very remiss, and are likely to be so while they feel that the committee on standing orders is disposed to extend the time whenever an application is made for that purpose. When it becomes necessary to extend the time for receiving petitions, the regular course is for the committee on standing orders to make a report, recommending such an extension. The rule provides:

"No motion for the suspension of the rules upon any petition

[1] Can. Com. J. [1876], 108.

[2] *Infra*, p. 643.

for a private bill is entertained, unless the same has been reported upon by the committee on standing orders." (Sen. R. 18; Com. R. 55.)

Rule 69 of the Commons also provides that any motion in relation to the suspension of the rules, must be referred to the committees:

"Except in cases of urgent and pressing necessity, no motion for the suspension or modification of any rule applying to private bills or petitions[1] for private bills shall be entertained by the house until after reference is made to the several standing committees charged with the consideration of private bills, and a report made thereon by one or more of such committees."[1]

When the committee on standing orders, or other committee charged with private bills, has reported in favour of extending the time, it is the duty of the chairman to make a formal motion in accordance with the recommendation. This motion may also extend the time for presenting private bills, or receiving reports from committees—the latter recommendation being only necessary in rare cases.[2] In the session of 1879, the time expired before the committee on standing orders in the Commons was organized. A motion was then made in the house by the premier to extend the time, as a number of petitions would be brought up before the committee could report regularly in favour of an extension.[3] Subsequently the committee on standing orders reported in favour of extending the time for presenting bills, and the house agreed to the recommendation.[4]

When the usual time for receiving petitions has expired,

[1] The Senate have no such rule respecting bills, but in order to suspend a rule one day's notice should be properly given under rule 18. Sen. Deb. [1879], 500.

[2] Can. Com. J. [1876], 102, 107, 108; *Ib.* [1877], 38, 42, 44; *Ib.* [1878], 36, 93, 137; *Ib.* [1883], 104, 214, 235; Sen. J. [1879], 71, 83; *Ib.* [1883], 58, 76.

[3] Can. Com. J. [1879], 31; rule 55 was suspended by general consent.

[4] See also, Senate journals, pp. 51, 52, 102; Com. J. [1879], 39.

and the house is not disposed to extend it, occasions may arise when parties will be obliged to ask for legislation. Under such circumstances, the regular course is for the parties interested to present a petition praying to be permitted to lay before the house a petition for the passing of the necessary act, notwithstanding the expiration of the time for bringing up petitions for private bills. It is usual to allow such a petition to be read and received forthwith, and to refer it to the committee on standing orders. If the committee, after considering all the circumstances of the case, report favourably, the petition for the bill will be at once presented, and leave given to read and receive it forthwith.[1] When the committee find that the reasons for delay in coming to the house for legislation are not sufficient to justify a suspension of the rules, they will report accordingly, and no further progress can be made in the matter.[2] Cases will be found in the journals of the old legislature, of the house having allowed the presentation of petitions without the reference of a preliminary petition to the committee on standing orders.[3] In these cases the rules have been suspended by unanimous consent, and the petition at once received. In case, since 1867, a petition was immediately received and the bill at once presented and referred.[4] But such instances of departure from correct practice are of very rare occurrence, and can only be justified "in cases of urgent and pressing necessity."[5] In another case, stated to be of urgent necessity, the house consented to receive

[1] Can. Com. J. [1877], 263, 267, 268; *Ib.* [1879], 357, 363; *Ib.* [1880-1], 208; *Ib.* [1883], 111, 214, 244, 254. In the Senate it is not the practice to refer the preliminary petition to the committee on standing orders, but to receive it forthwith; Jour. [1879], 175, 254. Then the petition for the act is brought in and referred in due form to the standing orders committee; *Ib.* 208, 219.

[2] Can. Com. J. (1875), 246.

[3] Leg. Ass. J. (1852-3), 347; *Ib.* (1863, Feb. sess.), 320, 326.

[4] Can. Com. J. (1873), 280.

[5] R. 69, *supra*, p. 625.

forthwith a petition praying that the rule requiring previous notice of an application for a bill be suspended. The committee on standing orders considered the application, and when they had reported favourably the member in charge of the bill moved for the suspension of the 51st rule, and presented the bill.[1]

Petitions in favour of, or in opposition to, private bills may be received at any time while the bill is under the consideration of the house and its committees, and are referred to the committee on the bill, without a motion in the house, in accordance with rule 59 of the Commons, (Sen. R. 60).[2] There is no rule laid down in the Canadian houses as respects the time when such petitions should be presented;[3] they are frequently brought up and received after the bill has been referred to a select committee.[4]

**V. Committee on Standing Orders.**—This committee is appointed in both houses at the commencement of the session, and proceeds to work without delay. Under rule 53 of the Senate and Commons "petitions for private bills, when received by the house, are to be taken into consideration (without special reference) by the committee on standing orders, which is to report in each case whether the rule with regard to notice has been complied with; and in every case where the notice shall prove to have been insufficient, either as regards the petition as a whole or as to any matter therein which ought to have been specially referred to in the notice, the committee is to recommend to the house the course to be taken in consequence of such insufficiency of notice."

Under rule 51, common to both houses, notices must be

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[1] Can. Com. J. (1877), 79, 89, 90.

[2] Can. Com. J. (1873), 39; *Ib.* (1876), 170; southern railway petitions, Feb. 19, 1878.

[3] The time is limited for receiving petitions against bills in the English house. May, 816.

[4] Can. Com. J. (1876), 110, 171; *Ib.* (1876), 123, 139, 143, 197.

given of "all applications for private bills properly the subjects of legislation by the Parliament of Canada, within the purview of the British North America Act, 1867, whether for the erection of a bridge, the making of a railroad, turnpike road, or telegraph line; the construction or improvement of a harbour, canal, lock, dam or slide, or other like work; the granting of a right of ferry; the incorporation of any particular trade or calling, or of any banking or other joint stock company"; or "otherwise for granting to any individual or individuals any exclusive or peculiar rights or privileges whatever, or for doing any matter or thing which, in its operation, would affect the rights or property of other parties, or relate to any particular class of the community, or for making any amendment of a like nature to any former act." The notice must clearly and distinctly specify the nature and object of the application, and (except in the case of existing corporations) must be signed on behalf of the applicants. In the provinces of Quebec and Manitoba this notice must be inserted in the official Gazette, in the English and French language, and in one newspaper in the English, and one newspaper in the French language, in the district affected, or in both languages if there be but one paper; or if there be no paper published therein, then (in both languages) in the Official Gazette, and in a paper published in an adjoining district. In the other provinces, it is necessary to insert a notice in the Canada Gazette only, and in one newspaper published in the county, or union of counties affected, or if there be no paper published therein, then in a newspaper in the next nearest county in which a newspaper is published.

These notices must be continued in each case for a period of at least two months, during the interval of time between the close of the preceding session and the consideration of the petition, and copies of the newspapers containing the first and last insertion of such notice shall be sent by the parties inserting such notice to the clerk of the

house (or of the Senate) to be filed in the standing orders committee room.

By rule 52, before any petition praying for leave to bring in a private bill for the erection of a toll-bridge, is presented to the house, the person or persons intending to petition for such bill shall, upon giving the notice prescribed by the standing orders, at the same time and in the same manner, give notice also of the rates which they intend to ask, the extent of the privilege, the height of the arches, the interval between the abutments or piers, for the passage of rafts and vessels, and shall also state whether they intend to erect a drawbridge or not, and the dimensions of the same.

With a view to give full information of the orders on this subject, it is provided by the rule of both houses that the clerks shall during each recess of Parliament publish weekly in the Official Canada Gazette the rules respecting notices of intended applications for private bills and the substance thereof in the Official Gazette of each of the provinces; and that they shall also announce, by notice affixed in the committee rooms and lobbies of the house, by the first day of every session, the time limited for receiving petitions for private bills, and reports thereon.

The committee on standing orders have no authority to inquire into the merits of a petition; that is properly the duty of the committee to whom the bill, founded on the petition, is subsequently referred; but they must compare the petition with the notice, in order to see that the latter is not at variance with the former. If there be any informality in the notice or if the parties have neglected to give proper notice, the committee will report it to the house, and either recommend an enforcement or a relaxation of the rule, according to the circumstances of the case. It is the duty of the clerk of the committee to examine into all the facts with regard to the notice given on each petition, so that the committee will have before them such information as that officer can give. In case of insufficiency

in the notice, or other irregularity connected therewith, the promoters of the bill, or their authorized agents, will appear before the committee and make such explanations as are necessary to enable them to come to a conclusion.

The committee will always be guided in coming to a conclusion by the circumstances of the case under their consideration. It may not infrequently happen that they will dispense with the notice altogether or declare themselves satisfied with a partial and defective notice, when they are assured that no private interests will be affected injuriously by the irregularity. The reasons which generally lead them to a conclusion will, however, be best understood by referring to the cases since 1867, where they have reported in favour of dispensing with the notice, or have otherwise recommended a departure from strict usage.

When the application was based on resolutions unanimously adopted by the shareholders present at a special general meeting, convened for the purpose of considering the same.[1] When a notice has been sufficient in regard to time, but no mention has been made therein of the rates of toll to be levied by a Bridge Company; on condition that such provision be made in the bill as the private bill committee might consider necessary for restricting the rates of toll.[2] When the notice contained no mention of the proposed increase of capital, on condition that a provision was inserted in the bill requiring the consent of the shareholders to such increase before it went into operation.[3] When a railway to be incorporated did not interfere with any existing interest.[4] When the application has not been sufficiently explicit, but evidence was brought before the committee that the pro-

[1] Can. Com. J. (1867-8), 35.

[2] Can. Com. J. (1867-8), 168.

[3] *Ib.* (1869), 99. In other instances where the proposed amendments were not specifically stated in the notice, the committee have recommended invariably a similar provision in the bill; *Ib.* (1869), 113; *Ib.* (1871), 139; *Ib.* (1873), 82.

[4] *Ib.* (1870), 237.

posed changes were approved by the shareholders.[1] When the extension of a railway would run through an unsettled tract of country, where no private rights would be interfered with.[2] When a very numerously signed petition in favour of a bridge or other work in a public locality has been shown to the committee.[3] When there are no existing rights to be affected, and no opposition likely to be offered to the project.[4] When the necessity for the application has arisen too recently to admit of the notice being given in time.[5] Whenever no private interests other than those of the petitioners are affected.[6] When the committee have been convinced that the public in the locality specially affected has been made fully aware of the proposed legislation.[7] When they have had evidence that the consent of the shareholders had been signified.[8]

In 1871 the notice for the Coteau Landing and Ottawa Railway was given only a few days before the presentation of the petition; but the promoters explained that their action had been contingent on that of the legislature of Ontario, and on that of the corporation of Montreal City, and that as soon as they felt justified in going on with the work they published the requisite notice and held public meetings for the discussion of the project, at which it was most favourably received. Under these circumstances the rule was suspended.[9] In another case of short notice, the petitioners were under the erroneous impression that they could obtain a charter from the governor in council under the general banking act; and the rule was suspended especially in view of the fact that the whole banking system would come under review that session.[10] On the petition of the Commercial Bank of New Brunswick for an act to limit the time within which their notes would be redeemable the notice was not complete as to time; and to remedy this the committee suggested that in fixing

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[1] Can. Com. J. (1873), 67.
[2] *Ib.* (1873), 110; *Ib.* (1874), 147.
[3] *Ib.* (1874), 54.
[4] *Ib.* (1874), 89.
[5] *Ib.* (1874), 210; *Ib.* (1883), 100.
[6] *Ib.* (1877), 74; 272.
[7] *Ib.* (1870), 52.
[8] *Ib.* (1867-8), 177.
[9] *Ib.* (1871), 66.
[10] *Ib.* (1871), 78.

the time to be limited by the bill such a date be specified as would give to creditors ample notice of the limitation.[1] On the petition of the Great Western Railway for an act to legalize its issue of perpetual debenture stock under the act of a previous session, the committee found that the notice merely referred to an extension of powers without any specific mention of these debentures. They were issued under the authority of the act in question, after it had passed both houses, but before it had received the royal assent. They were issued through inadvertence, in consequence of information of the passage of the bill transmitted by telegraph, and the object of the application was to remedy the defect. Under these circumstances the notice was deemed sufficient.[2] In another case the committee found the notice sufficient for a railway bridge, but would not recommend a relaxation of the rule concerning tolls on vehicles and foot passengers, because they found there was opposition in the locality affected.[3] In the case of an act respecting the Canada Landed Credit Co., notice was first published of an application to the local legislature of Ontario through a misapprehension, and the notice of application to the dominion parliament was only published subsequently, and consequently was not complete; but the committee had no hesitation in reporting favourably.[4]

From the foregoing precedents it will be seen that notice was given irregularly, or was defective in point of time; but there are numerous instances where the committee have felt justified in dispensing with a notice altogether. The petition of a board of trade for amendments to its act of incorporation, and to legalize the appointment of an official assignee made previous to incorporation, was not considered one requiring the pubpublication of notice.[5] In the case of the Niagara Falls Gas Company in the state of New York, for authority to supply the town of Clifton with gas, no notice was given,

[1] Can. Com. J. (1871), 140.
[2] *Ib.* (1874), 148.
[3] *Ib.* (1874), 149.
[4] *Ib.* (1876), 102, 126.
[5] *Ib.* (1867-8), 39.

but the committee recommended a suspension of the rule in view of the fact that there was before the house a petition from the latter place, representing that it would be of great advantage to the town, and that no private rights would be interfered with.[1] The Vine Growers' Association petitioned the house for the repeal of section 171 of the act respecting the inland revenue (relating exclusively to the said association) and for certain amendments to the act incorporating that body. No notice had been given, but the committee recommended a suspension of the rule, as no other interests were likely to be affected, and as the act referred to was passed that same session, without the knowledge of the company whose interests were thereby most prejudicially affected.[2]

The committee have also dispensed with a notice under the following circumstances:

When no interests except those of the petitioners are likely to be affected by the proposed legislation.[3] When no exclusive privileges are asked for in the bill.[4] When the omission has arisen from some accident, and not from any negligence on the part of the petitioner, and the absence of notice would not be prejudicial to any private interests.[5] When it has been shown that the circumstances rendering legislation necessary were so recent that it was impossible to give the requisite notice;[6] but generally on condition of the insertion in the bill of a provision that so much thereof as might affect the interests of the shareholders should not take effect until their consent should have been obtained at a special general meeting.[7] When the committee have had abundant evidence that all parties likely to be affected were fully informed of the application, and that there was no opposition to

[1] Can. Com. J. (1867-8), 177.

[2] *Ib.* (1867-8), 207.

[3] *Ib.* (1875), 216; *Ib.* (1876), 102.

[4] *Ib.* (1867-8) 210.

[5] *Ib.* (1869), 85.

[6] *Ib.* (1874), 166; *Ib.* (1876), 170; Sen. J. (1883), 188, 232.

[7] Can. Com. J. (1869), 185.

the project.[1] When the committee have found that an act was necessary merely on account of some ambiguity of expression in an act of a previous session.[2] When it is, or can be, provided in the bill that no injury to any party shall arise from the absence of notice.[3] When it is shown that the project is one of urgency or of great public importance, and affects no vested rights.[4]

When the notice has been published in the *Gazette* but not in a local paper, and it has been shown that the only private interests to be affected are those of the shareholders, whose consent is provided for by a clause in the bill.[5] When no paper is published in the locality and the public has been otherwise fully made cognizant of the proposed application.[6] When no notice of the intended legislation could be given in the locality or in its neighbourhood.[7] When the petitioners have been willing to submit the matter to a vote of the shareholders before taking action upon it; and provision is inserted to that effect in the bill.[8] When the majority of the shareholders reside in Great Britain and similar provision is made.[9] When notice had been given in a local paper only, and it was shown that the proposed work was confined to a particular locality.[10] When no notice had been published in a local paper by the Montreal Northern Colonization Railway Company, the committee directed that notice of the application should be given to the St. Lawrence and Ottawa Railway Co. which had power to build a railway bridge in the same locality, and as the rights of the general public could not be prejudicially affected, the notice in the *Gazette* and Montreal papers, so supplemented, was considered sufficient.[11] When the

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[1] Can. Com. J. (1870), 44. In this case the company first applied to the Quebec legislature and gave the requisite notices; and then they determined to ask legislation from the dominion parliament.

[2] *Ib.* (1870), 113.

[3] *Ib.* (1873), 123; Sen. J. (1883), 76, 94, 232; *Ib.* (1875), 303.

[4] *Ib.* (1883), 116, 131, 262.

[5] Can. Com. J. (1869), 163.

[6] *Ib.* (1870), 82. In this case the notice was published in the Ottawa papers, but not in the adjoining city of Hull.

[7] *Ib.* (1871), 78.

[8] *Ib.* (1871), 102; *Ib.* (1873), 52.

[9] *Ib.* (1873), 162.

[10] *Ib.* (1874), 255.

[11] *Ib.* (1874), 218-9.

bill is not of a nature to require the publication of a notice.[1] On condition that provision be made in the bill for the assent of the shareholders at a general meeting;[2] when the legislation asked for related to companies or associations formed for benevolent, charitable, educational, social, literary or scientific purposes;[3] when the occasion for legislation has arisen on account of a very recent judicial decision and it was impossible to give sufficient notice;[4] when an act of naturalization is asked for.[5]

The foregoing precedents illustrate very clearly the principles that guide the committee in coming to a conclusion with respect to the absence or insufficiency of notice. They show that such irregularities are overlooked only when the committee are made fully aware that all parties interested have had sufficient notice, or that no interests are affected except those of the petitioners. In the case of banks and other incorporated companies, the consent of the shareholders is provided for by the insertion of a clause in the bill. When the committee have believed that the notice was really insufficient,[6] or that the consent of the shareholders had not been given,[7] they have always reported adversely. If the notice should be too general in its terms, or if no mention be made of certain matters included in the petition which require a specific notice, the facts should be specially reported, and the promoters restricted in the provisions of the bill within the terms of the notice; or if the matters so omitted are allowed to be inserted in the bill, due provision should

[1] Can. Com. J. (1879), 83; Sen. J. 83 (Geographical Society).

[2] Can. Com. J. (1879), 136.

[3] Woodstock Literary Institute, 1857. Montreal Natural History Society, 1862. Society of Canadian artists, Can. Com. J. (1870), 83; Sen. J. 145. Canadian Academy of Arts, Can. Com. J. (1882), 83; Sen. J. 72-3. Sisters of Charity in N. W. T., 7th March, 1882, Can. Com. J. Royal Society of Canada, Can. Com. J. (1883), 67; Sen. J., 76.

[4] Presbyterian Church bills, 2nd March, 1882.

[5] Can. Com. J. (1872), 80.

[6] Can. Com. J. (1869), 162; *Ib.* (1874), 148; *Ib.* (1883), 100.

[7] *Ib.* (1876), 170.

be made therein for the protection of all parties whose rights might be affected by the absence of a specific notice. When the notice has been given only in one county or district, the operations of the petitioners have been confined to that locality.[1]

The report of the committee is almost invariably accepted by the house as conclusive, and there cannot be found a single instance since 1867-8 where the house has overruled their decision. In the case of a bill from the Senate in 1877 the committee reported adversely, and the house subsequently negatived a motion to suspend the standing orders, and in this way overrule the report of the committee.[2]

In 1883, the Senate committee on standing orders reported unfavourably on a Commons' bill, of which no notice had been given, and which was referred to them in the absence of a petition; but the Senate suspended the rules and in this way nullified the action of their own committee.[3]

One case is recorded in the journals of the Canadian legislative assembly, where the committee having reported the notice as incomplete, recommended that it be not dispensed with. The house nevertheless suspended the rule, and referred the petition back to the committee, who subsequently reported favourably, and a bill on the subject was consequently introduced.[4] The same respect is paid in the English houses to the conclusions of the committee, and very few cases are reported of their decision having been reversed.[5]

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[1] Todd's Private Bill Practice, 49.

[2] Act for the relief of Robert and Eliza Maria Campbell; Can. Com. J. (1877), 313, 335.

[3] *Infra*, p. 666.

[4] Todd's Private Bill Practice, 47; Beauharnois plank road company, 1846.

[5] "In some few cases, (May, 793-4), the decision of the standing orders committee has been excepted to and overruled by the house, either upon the consideration of petitions from the promoters, or by a direct motion

There are instances in the journals of the old Canada assembly of the house referring petitions back to the committee after an unfavourable report, for the purpose of considering and reporting as to the expediency of suspending the rule. In one case only was their report favourable, and though in this instance the rule was suspended and the bill presented, it was subsequently abandoned.[1] When a petition had been reported by mistake, the committee asked that it be referred back to them for further consideration.[2] They have also reconsidered and amended a report, when further evidence has been adduced to satisfy them.[3]

When the committee report recommending the suspension of any standing order relative to a private bill, it is proper to make a motion in accordance with that recommendation, as the committee have no power of themselves to suspend a rule of the house.[4] The practice, however, has not been uniform in this respect, and cases will be found in the journals of bills having been immediately introduced after the presentation of the report without any formal motion for the suspension of the rule.[5] The correct practice, however, is to move formally concurrence in the report,[6] before the introduction of the bills founded on the petitions referred to the committee.[7]

In the session of 1880-1, the time for the reception of re-

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in the house, not founded upon any petition. But as the house has been generally disposed to support the committee, attempts to reverse or disturb its decisions have rarely been successful." See 80 E. Hans. (3), 158, 175.

[1] Elora Incorporation, 1856.

[2] Can. Com. J. (1876), 136.

[3] St. Bonaventure municipality, 1866; Galt and Guelph R. R. amendment, 1858; British Farmer's Insurance Co., 1859.

[4] Sen. Jour. (1879), 71, 83, 114, &c.; *Ib.* (1883), 188; Com. Jour. (1873), 267; *Ib.* (1877), 89, 90; *Ib.* (1878), 84, 85; *Ib.* (1879), 38, 324-5, 373.

[5] *Ib.* (1875), 146, 147.

[6] In the English Commons the committee's report is in the shape of various resolutions, which are formally read a second time and agreed to; 129 E. Com. J. 63, &c.

[7] Can. Com. J. (1880-1), 60, 68; *I.b* (1883) 100 etc.

ports on private bills in the Commons lapsed accidentally, and it was not competent for the standing orders committee to recommend an extension of time. It was then considered necessary to give a formal notice of a motion to revive the committee. The standing orders committee then met and made a report to extend the time for petitions as soon as the house had agreed to the above motion.[1]

In accordance with English practice, all inquiries as to compliance with the standing orders affecting private bills properly fall within the sphere of the functions of this committee, and not of the committee on a particular bill.[2]

**VI. First and Second Readings.**—When the committee on standing orders have reported favourably on a petition, the member who has the bill in charge, can present it immediately in accordance with the rule:

"All private bills are introduced on petition and presented to the house upon a motion for leave, after such petition has been favourably reported on by the committee on standing orders." (Com. R. 56, Sen. R. 57.)

It is usual to present such bills when motions are called during progress of routine business. The motion for leave must be in writing, as in the case of public bills, and the fees for printing must be paid before the bill can be presented.[3] All the rules that apply to public bills are applicable to private bills in their progress through the houses,[4] unless there are standing orders specially referring to the latter. For instance all bills are read a first time without amendment or debate in the Commons, though the house may divide on the question.[5] If a bill has been presented and read a first time before the com-

[1] V. & P. p. 196; Jour. pp. 150, 156.

[2] May, 872-3. *Infra*, p. 655.

[3] See *infra*, 643, sec. vii., where explanations are given as respects all fees and charges.

[4] See chapter xviii. on public bills.

[5] Com. R. 42; Can. Com. J. (1877), 143, 144, 169; Sen. J. (1883), 49.

mittee on standing orders have reported on the petition, the order for the second reading must be forthwith discharged, and the bill withdrawn until it can be introduced regularly.[1] If the committee on standing orders recommend a suspension of rule 51 respecting notice, the member in presenting the bill should also move in accordance with that recommendation.[2] If the time for receiving private bills has expired, a member cannot regularly present a bill, unless the committee on standing orders or other committee on private bills have first recommended a suspension of rule 49, on application having been made to them by the member interested. The rule having been suspended on motion, in accordance with the recommendation of the committee, the bill may then be regularly introduced.[3] The first and second readings take place almost invariably on separate days; only in cases of urgency, towards the close of session, and under exceptional circumstances, will the house deviate from this wise practice.[4]

It is necessary to have all proposed rates, tolls, fees, or fines printed in italics—technically considered as blanks to be filled up by the committee.[5] The bill "must also have attached to it a copy of any letters-patent or agreement" when its object is to confirm such.[6] When the rule has not been complied with, a private bill committee has reported adversely; but in such a case the omission may be rectified in committee of the whole on the bill.[7]

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[1] Can. Com. J. (1877), 50.

[2] *Ib.* (1876), 103; *Ib.* (1877), 90.

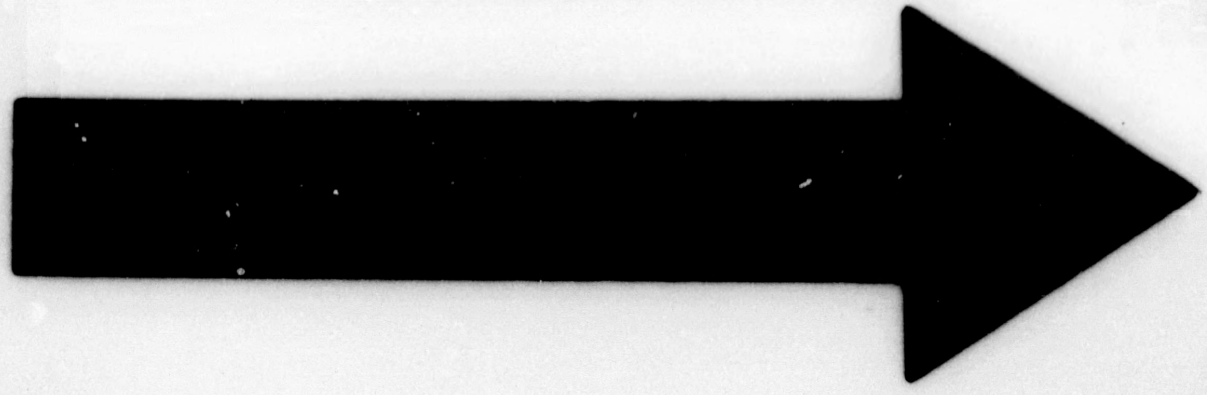
[3] Hochelaga Building Society, March 15, 1878. On a previous day Mr. Jetté moved for leave but had to withdraw his motion until the committee reported. Sometimes the standing orders committee, in a case of urgency, will report in favour of suspending both rules 49 and 60; Can. Com. J. (1873), 267.

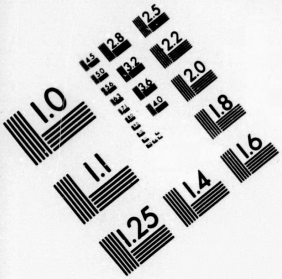
[4] Can. Com. J. (1879), 326, 373; Sen. J. (1879), 233. In the Senate the rules are formally dispensed with in such a case. *Ib.* (1883), 270.

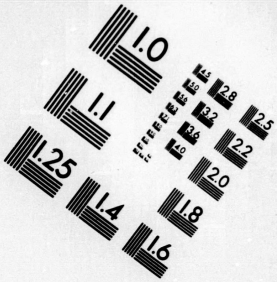
[5] Todd's Private Bill Practice; May, 797.

[6] Com. R. 57; Sen. R. 58.

[7] Bessemer's patent, 1857.



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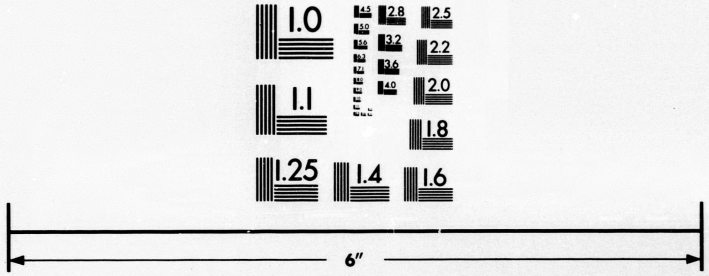


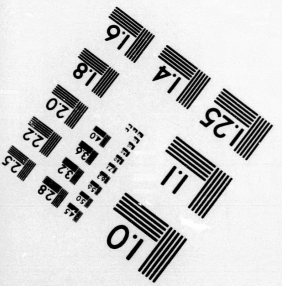


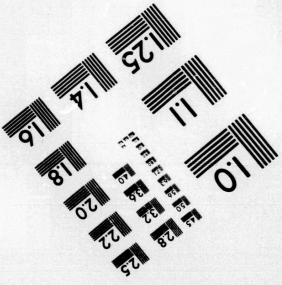


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Previous to 1867, private bills were referred to the select standing committees after the second reading, but in that year when the rules were revised and a new code adopted for the dominion Parliament, the reference was ordered to be made in the Commons after the first reading.[1] In 1873 the House of Commons reverted to the old and more correct practice of referring all bills after the second reading.[2] The Senate, however, never deviated from this practice.[3]

When the order of the day has been read for the second reading of a private bill, the member will make the usual motion. At this stage counsel may be heard at the bar for and against the bill, but the necessity for this step has only arisen in a few cases in Canada, and, in fact, there have been no instances since 1867.[4] The opponents of a bill find that the more convenient course is to explain their objections fully before the committee to which the bill may be referred. It is only on rare occasions that the second reading of a private bill is opposed; the practice is to allow all discussion as to its expediency to take place first in the committee.[5] Sometimes, however, if it is thought that the bill is properly one that ought to be dealt with by the local legislature of a province, objection may

[1] Can. Com. J. (1867-8), 43, 115, 125.

[2] *Ib.* (1873), 351, 384.

[3] In 1861 the legislative council of Canada adopted rules for private bills identical with those of the assembly. The Senate made no change in 1867-8, as to reference to select committees. The rules of the two houses are now practically the same; when amendments are made in the one house, it is usual to make similar changes in the other, so that there may be uniformity of practice.

[4] King's College, 1843, 1844-5 and 1846; Montreal Consumers Gas Co., 1846; Great Southern R. R., 1857.

[5] This practice has been found particularly convenient in the case of railway bills, involving necessarily many diverse interests of a complicated character in not a few instances. "If it was understood with regard to banking, insurance, canal and railway bills, that they were to have a long discussion in the house, on the principle involved, these committees would lose their chief practical value."—Sir J. A. Macdonald, 1879. See Can. Hans. (1879), 107-9; 1391-7. *Ib.* (1880), 588 (Mr. Holton).

be taken at this or at any other stage of the measure.[1] Or if there are other reasons of a public nature against the passage of a bill, its second reading may be very properly opposed.[2] The principles which should guide the house on the second reading of a private bill are thus clearly laid down by the most eminent English authority of modern times:

"The second reading corresponds with the same stage in other bills, and in agreeing to it, the house affirms the general principle, or expediency of the measure. There is, however, a distinction between the second reading of a public, and of a private bill, which should not be overlooked. A public bill being founded on reasons of state policy, the house, in agreeing to its second reading, accepts and affirms those reasons; but the expediency of a private bill, being mainly founded upon allegations of fact, which have not yet been proved, the house, in agreeing to its second reading, affirms the principle of the bill, conditionally, and subject to the proof of such allegations before the committee. Where irrespective of such facts, the principle is objectionable, the house will not consent to the second reading; but otherwise the expediency of the measure is usually left for the consideration of the committee. This is the first occasion on which the bill is brought before the house otherwise than *pro formâ*, or in connection with the standing orders; and if the bill be opposed upon its principle it is the proper time for attempting its defeat." [3]

When the bill has been read a second time, the member interested will move that it be referred in accordance with the rules of the two houses:

*Senate Rule* 60. [4]

"Every private bill, after its second reading, is referred to the standing committee on private bills if appointed, or to some other

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[1] Bridge over the river L'Assomption, 1875; Hans. 893-4.

[2] Street R. R. Co. bill in E. Commons, 16th April, 1861; 162 E Hans. (3), 641.

[3] May, 799-30.

[4] The rule of the Senate also contains a provision for reference of bills, after first reading in case of a question of jurisdiction arising. See *supra*, p. 607.

committee of the same character; and all petitions before the Senate, for or against the bill, are considered as referred to such committee."

*Commons' Rule* 59.

"Every private bill, when read a second time, is referred to the standing committee charged with the consideration of such bills. Bills relating to banks, insurance, trade and commerce to the committee on banking and commerce; bills relating to railways, canals, telegraphs, canal and railway bridges, to the committee on railways, the bills not coming under these classes to the committee on miscellaneous private bills,[1] and all petitions for or against the bills are considered as referred to such committee."

All the proceedings in the progress of a private bill are carefully provided for in the standing orders, with the view of informing all the parties interested. Under the rules of the two houses a private bill register is kept in one of the offices. A clerk enters regularly in this book "the name, description, and place of residence of the parties applying for the bill, or of their agent, and all the proceedings thereon, from the petition to the passing of the bill—such entry to specify briefly each proceeding in the house or in any committee to which the bill or the petition may be referred, and the day on which the committee is appointed to sit." This book is open to public inspection daily during office hours.[2]

Sometimes, when the house discovers that a bill has been referred to the wrong committee, or that it can be more conveniently considered by another committee, a motion will be made to discharge the previous order of reference, and send it to the proper committee.[3] Sometimes

[1] For instance, bills respecting bridges, not railway bridges, are referred to the committee on private bills. Can. Com. J. (1880), 100. But bills for incorporation of navigation and steamship companies [*Ib.* (1867-8), 216; *Ib.* (1873), 281; *Ib.* (1875), 153; *Ib.* (1880-1) Acadia S. S. Co.; *Ib.* (1882), 71, 146], have been generally sent to banking and commerce committee.

[2] Sen. R. 62; Com. R. 70.

[3] Can. Com. J. (1877), 127; also (1880), 77; also (1882), 290. In case of a new reference after the bill has been posted for a week, the terms of rule

the committee will themselves report that it should be so referred and a motion will be made accordingly.[1] Instructions are sometimes given to committees with reference to particular bills. In 1863, the committee on banking having under consideration a bill to repeal the acts incorporating the Colonial and certain other banks, that had forfeited their charters, made a report that they be empowered to extend their inquiries to any other banks that might be similarly situated; and the house immediately gave the necessary instructions.[2] If it should be necessary to withdraw a bill after it has been referred, a motion should be made first to discharge the order and then to withdraw the bill.[3]

In the session of 1882, it was ascertained in the Senate that a bill respecting the Quebec timber company, which had passed the private bill committee, and was on the order paper for the third reading, contained certain provisions empowering them to borrow money and make loans on the security of stock, deposit receipts, etc. The order was thereupon discharged and the bill referred to the committee on banking who made further amendments.[4]

**VII. Fees and Charges.**—Under the rules, as amended in 1876, all bills should be printed before the first reading, in the two languages, at the expense of the promoters. The rules provide for the printing expenses as follows:

"Any person seeking to obtain any private bill, *giving any exclusive privilege or profit, or private or corporate advantage, or for*

60, providing for such posting are considered sufficiently complied with. If the full week's notice has not been given when a new reference is made, then it will be necessary only to post it for the time required to make up a full week. Votes and P., 1875, p. 235; *Ib.* 1832, p. 370. In the last case the week's notice had long since been given, and hence there is no reference to bill at the end of the votes.

[1] Niagara District Bank, 1863.

[2] Ass. Jour. (1863, August session), 102. See also, *Ib.* (1852-3), 290, 340; *Ib.* (1854-5), 177, 197, 229.

[3] Can. Com. J. (1878) 60.

[4] Sen. J. (1882), 178; Hans. 285-6.

*any amendment of any former act*, shall be required to deposit with the clerk of the house, eight days before the meeting of the same, a copy of such bill in the English or French language—with a sum sufficient to pay for translating and printing the same—600 copies to be printed in English, and 200 copies to be printed in French—the translation to be done by the officers of the house, and the printing by the contractor."[1]

The concluding part of the same rule provides for the payment of a fee after the second reading:

"The applicant shall also be required to pay the accountant of the house (or clerk of the Senate), a sum of two hundred dollars, and the cost of printing the same for the statutes, and lodge the receipt for the same with the clerk of the committee to which such bill is referred—such payment to be made *immediately* after the second reading, and before the consideration of the bill by such committee."

Under the same rule "the fee payable on the second reading of any private bill is paid only in the house in which such bill originates, but the cost of printing the same is paid in each house."

In case the bill is withdrawn[2] or otherwise fails to become law, the fee of $200 is refunded, generally, and properly, on the recommendation of the committee on the bill.[3] Sometimes the committee will recommend that it be refunded on other grounds:

"Because a bill has been rendered necessary by the action of the general legislature.[4] Because the necessity for its passage arose from no fault of the promoter, but from circumstances

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[1] Sen. R. 59; Com. R. 58. The Senate rule omits the words in italics; but it is practically the same as that of the Commons.

[2] Can. Com. J. (1876), 212; also (1880-1), 355. If the bill fail or be withdrawn in the house, then the member will be allowed to move directly for refunding of fees. Yarmouth Dyking Co. bill, p. 181, Jour. 1879; also (1880), 266. Preamble not proven (1880), 299, 300; *Ib.* (1880-1), 215; *Ib.* (1882), 425.

[3] Can. Com. J. (1879), 224, 344; *Ib.* (1880), 99, &c.; *Ib.* (1880-1), 215, &c.; *Ib.* (1882), 297, &c.; Sen. J. (1882), 171.

[4] Can. Com. J. (1870), 175.

beyond his control.[1] Because the committee have materially diminished the powers asked for.[2] Because it is not liable to the fee and charges levied on private bills.[3] Because it is a mere amendment to the general act respecting banks and banking.[4] Because a project is a great public benefit to a locality.[5] Because the promoters of the bill have agreed to accept the provisions of a general act passed that session.[6] Because it has to a great extent been superseded by the provisions of a public bill.[7] Because a bill has been consolidated with another, on which fees are paid.[8] Because it is a mere amendment to a previous act."[9]

Sometimes the committee will make no report at all on a bill, and then the member interested may move that the fees be refunded "inasmuch as the committee have not reported on the same," or "it is impossible to obtain a quorum."[10] When a Commons' bill is lost or not proceeded with in the Senate, leave will be given in the Commons to refund the fees which are always payable in the house where the bill originates.[11] When a bill is lost in the house itself by an adverse motion, the fees are also generally refunded.[12] The fees paid on a bill that had not become law have been refunded in a subsequent session.[13] When it is not intended to go on with a bill, the regular course is to move at the same time for leave to withdraw it and to refund the fees.[14] It is also usual, though not necessary, to add, "less the cost of printing and transla-

[1] Can. Com. J. (1873), 212.
[2] *Ib.* (1874), 167.
[3] Geographical Society, 1879; Baptist Union, 1880; Sisters of Charity in the N. W. T., 1882; Royal Society of Canada, 1883.
[4] Can. Com. J. (1877), 93.
[5] *Ib.* (1877), 147; *Ib.* (1879), 425.
[6] *Ib.* (1877), 245.
[7] *Ib.* (1878), 148; Hans., April 5.
[8] *Ib.* (1879), 324; *Ib.* (1880-1), 213.
[9] *Ib.* (1883), 192.
[10] *Ib.* (1875), 343; *Ib.* (1880), 280 (no quorum).
[11] *Ib.* (1874), 349; *Ib.* (1880-1), 334; *Ib.* (1882), 409.
[12] *Ib.* (1877), 353.
[13] *Ib.* (1875), 170; *Ib.* (1882), 207 (bill lost in the Senate).
[14] *Ib.* (1877), 245.

tion"—the fee to be refunded being the $200 paid after second reading. In 1882, at the end of the session, a bill was deferred for three months on motion of the member in charge, who was unwilling to agree to amendments made by the Senate, and the fees were thereupon ordered to be refunded.[1]

**VIII. Committees on Private Bills.**—Lists of the committees to which private bills are referred under the rules[2] are hung up in conspicuous parts of the houses for the information of members and all interested parties. It is also ordered:

"No committee on any private bill originating in this house (in the Senate) of which notice is required to be given, is to consider the same until after one week's notice of the sitting of such committee has been first affixed in the lobby; nor in the case of any such bill originating in the Senate (House of Commons) until after twenty-four hours like notice." (Com. R. 60, Sen. R. 61.)

This rule is often suspended on the recommendation of one or more of the committees charged with the consideration of private bills.[3] In a case of urgency it is suspended on motion, especially in the case of Senate bills; but only when the session is drawing to a close, and there is no opposition to the bill.[4]

Rule 60 of the Commons also provides:

"On the day of the posting of any bill the clerk of the house shall cause a notice of such posting to be appended to the printed votes and proceedings of the day."[5]

And under a rule common to both houses:

"The clerk of the house shall cause lists of all private bills and

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[1] Can. Com. J. (1882), 511; Hans. 1571-2 (telegraph bill).

[2] *Supra*, pp. 641-2.

[3] Can. Com. J. (1874), 201, 203; *Ib.* (1880-1), 254 (S. O. Com.); *Ib.* (1883) 221; Sen. J. (1880) 220; Deb. 456-7.

[4] Can. Com. J. (1876), 231; Northern R. R. (1877), 267; Manitoba Junction R. R. (1877), 284; Senate bills (1878), 160.

[5] See V. & P. (1878), 101, 114, &c.

petitions for such bills upon which any committee is appointed to sit, to be prepared daily by the clerk of the committee to which such bills are referred, specifying the time of the meeting and the room where the committee shall sit, and shall cause the same to be hung up in the lobby." (Sen. R. 63, Com. R. 71.)

The rules that govern all committees have been fully explained in a previous chapter of this work.[1] Since the session of 1867-8 the committees on private bills have had the power to examine witnesses upon oath, to be administered by the chairman, or any member of such committee.[2]

The rules of the two houses order:—

"All questions before committees on private bills are decided by a majority of voices, including the voice of the chairman, and whenever the voices are equal the chairman has a second or casting vote." (Sen. R. 65, Com. R. 62).

When a committee has been regularly organized the clerk will lay before it the different matters referred to it, in the order of their consideration. Sometimes bills will be deferred, or a day fixed for their consideration by an arrangement between the parties interested. The committee may in such a case make the bill the first order of the day, just as is done in the house itself in similar matters.

All petitions for or against a bill are laid before the committee, and the petitioners, either by themselves or by their agents, will be present to promote their respective interests. Petitioners may pray to be heard against the preamble or clauses of the bill; some against certain clauses only; others may ask the insertion of protective clauses, or for compensation for damages which will arise under the bill. Unless petitioners pray to be heard against the preamble they will not be entitled to be heard, nor to cross-examine any of the witnesses of the promoters upon the general case, nor otherwise to appear in the proceed-

[1] Chapter xvi.

[2] 31 Vict., c. 24. See *supra*, p. 460.

ings of the committee until the preamble has been disposed of. Nor will a general prayer against the preamble entitle a petitioner to be heard against it, if his interest be merely affected by certain clauses of the bill.[1] If the petition against the bill is not sufficiently explicit the committee may direct a more specific statement to be given in writing, but limited to the grounds of objection which had been inaccurately specified.[2] If cases arise where an informal petition has been referred through inadvertency, the committee will take cognizance of the matter, and petitioners will not have the right to be heard on such a petition. It is not regular to add anything to a petition, in case a material part has been omitted by a mistake.[3] Sometimes petitions relative to a bill under the consideration of a committee will be received as soon as presented in the house, so that they may go immediately before the committee.[4]

It is ordered by the rule of the Senate and Commons:

"All persons whose interests or property may be affected by any private bill shall, when required so to do, appear before the standing committee touching their consent, or may send such consent in writing, proof of which may be demanded by such committee. And in every case the committee upon any bill for incorporating a company may require proof that the persons whose names appear in the bill as composing the company are of full age and in a position to effect the objects contemplated, and have consented to become incorporated." (Sen. R. 64, Com. R. 61.)

On the day appointed for the consideration of a private bill the parties interested will appear before the committee, and the chairman will first read the preamble, which should be always first considered in a select com-

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[1] May, 819.

[2] May, 819; E. Com. S. O. 128; Todd's Private Bill Practice, 73.

[3] 83 E. Hans. (3), 487.

[4] Can. Com. J. (1876), *Mail* Printing Co., 171. *Ib.* (1878), Ottawa Agricultural Insurance Co., 28 March.

mittee as well as in a committee of the whole.[1] The preamble of a private bill sets forth the facts upon which it is founded; and as these are the whole inducements for its enactment, it is necessary that they should be fully and truly stated and substantially proved and admitted.[2] The preamble may sometimes be postponed for special reasons, until after the consideration of certain details of a bill, but this course is inexpedient and is very rarely followed.[3] Any petitions against the bill are then read by the clerk, and an understanding arrived at with respect to the course of procedure. The promoters or their agents will first address the committee on the preamble; and then (if required) proceed to call witnesses, and examine them. At the conclusion of the evidence, when the counsel or agent for any petitioner rises to cross-examine a witness or to address any observations to the committee, this is the proper time for taking objections to the *locus standi* of such petitioner. Petitioners are said to have ou *locus standi* before a committee, when their property or interests are not directly and specially affected by the bill, or when, for other reasons, they are not entitled to oppose it.[4] For instance, it is provided by a standing order of the English Commons:

"Where a bill is promoted by an incorporated company, shareholders of such company shall not be heard against such bill, unless their interests, as affected thereby, shall be distinct from the general interests of such company."[5]

Preference shareholders are excepted from this rule, when it is shown that they have a special interest in the

[1] Grand Trunk arrangements' act, 1867-8, App. No. 3; Royal Canadian Bank, 1869, App. No. 8.

[2] The reasons upon which a public statute is passed are not generallyof such a nature that they can be defined with perfect precision, or enumerated in full hence there may be reasons for the passing of a public act, which are not given in the preamble. Cushing, § 2100.

[3] Todd, 76.

[4] May, 820.

[5] Com. S. O. 131.

bill.[1] In the Lords a different rule has prevailed and shareholders who have dissented from the bill at the meeting called in pursuance of certain orders of that house, are expressly permitted to be heard, and have even been heard without such dissent.[2]

The English authorities give very full details of the various proceedings before committees on opposed private bills. The reports of the committees of the Canadian legislatures, on the other hand, have always been very meagre, and it is impossible to make up any satisfactory summary of their procedure from the records of the two houses. The following summary, chiefly taken from Sir Erskine May's exhaustive treatise, will probably be sufficient for general purposes:[3]

"When a petitioner has established his *locus standi* to the satisfaction of the committee, he may proceed to address them either by himself or by counsel. Or he may reserve his speech until after the evidence. Witnesses may be called and examined in support of the petitions; cross-examined by the counsel for the bill, and re-examined by the counsel or the petitioners; but counsel can only be heard, and witnesses examined on behalf of petitioners, in relation to matters referred to in their petitions. As a general rule, each witness is to be examined or cross-examined by the same counsel. Committees have also resolved that no counsel should be permitted to cross-examine witnesses, who had not been present during the examination-in-chief, nor to re-examine them unless he had been present during the examination-in-chief, nor to re-examine them unless he had been present during the entire cross-examination. When the evidence against the preamble is conducted, the case of the petitioners is closed, unless an opening speech should have been waived; and the senior counsel for the bill replies on the whole case. If the petitioners do not examine witnesses, the counsel for the bill has no right to a reply; but in some special cases where new matters have been introduced by

[1] May, 837.
[2] May, 837, 881; Lord's S. O., Nos. 62-66.
[3] 859 *et seq.*

the opposing counsel (as for example, acts of Parliament, precedents, or documents not previously noticed) a reply strictly confined to such matters has been permitted. When the arguments and evidence upon the preamble have been heard, the room is cleared, and a question is put: "That the preamble has been proved," which is resolved in the affirmative or the negative, as the case may be. If the committee decide the foregoing question in the affirmative, the parties are called in, and made acquainted with the decision, and the clauses are then taken up one by one, and dealt with just as in the case of committees of the whole on public bills.[1] If petitions have been presented against a clause, the parties will be heard for and against. Tolls and rates are now inserted regularly in the bill—the same being indicated by italics as previously stated.[2]

When any amendments are made in a bill, or clauses added, they must be signed on the margin with the initials of the chairman's name in accordance with the following rule:

"The chairman of the committee shall sign with his name at length, a printed copy of the bill, on which the amendments are fairly written and shall also sign with the initials of his name, the several amendments made and clauses added in committee; and another copy of the bill, with the amendments written thereon, shall be prepared by the clerk of the committee, and filed in the private bill office or attached to the report." (Sen. R. 69, Com. R. 66.)

If the committee decide that the preamble has not been proven, no further proceedings will be had in the committee on the bill, but the fact must be reported to the house in conformity with the following rule:

"When the committee on any private bill report to the house that the preamble of such bill has not been proved to their satisfaction, they must also state the grounds upon which they have

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[1] Grand Trunk Arrangements' Act [1867-8], App. No. 3.

[2] No previous resolution passed in a committee of the whole as to rates, tolls, or penalties, is now necessary under modern practice; Todd's Private Bill Practice, 88-9. *Supra*, p. 525.

arrived at such a decision;[1] and no bill so reported upon shall be placed on the orders of the day, unless by special order of the house." (Sen. R. 68 ; Com. R. 65.)

The committees on private bills have reported against bills on various grounds, as follows :

Because no sufficient evidence was offered in favour of the preamble.[2] Insufficient information or antagonistic evidence.[3] No proof of the consent of the parties interested.[4] That the petitioners against the measure are as numerous as those in its favour or more numerous.[5] That there is great difference of opinion in the locality affected, as to the expediency of the measure.[6] That legislative interference is not desirable or necessary.[7] That it would interfere with law suits pending,[8] or with existing rights.[9] That the powers sought for would not advance the interests of the locality.[10] That the bill asked for an extension of the powers of a certain company to purposes entirely foreign to its original charter[11]. That it contained most unusual provisions.[12] That it was in the power of the executive government to carry into effect the objects contemplated by the bill ;[13] or in the power of the court of chancery to do so.[14] That the information was insufficient as to the possible effect upon the navigation of a navigable stream and upon private rights.[15] Because it was necessary to give certain bondholders abundant opportunity of

[1] Can. Hans. [1880], 1685 (Mr. Blake) ; Sen. J. [1880-81], 211 ; Hans. p. 621.

[2] Gatien estate, 1857 ; La Banque Jacques Cartier [1878], 99.

[3] Onslow survey, 1862.

[4] Lennox and Addington separation, 1860 ; Russell estate, 1865.

[5] Stanbridge division, 1866 ; Be n town limits, 1865.

[6] Clifton division, 1866.

[7] Quebec stevedores' incorpora n, 1861 ; Montreal licensed victuallers, 1865 ; Thunder Bay & Minneso R. R. Co., 1882 ; St. Lawrence Bridge and Manufacturing Co., 1883.

[8] Peterborough & Port Hope R. R., 1862.

[9] Etchemin bridge, 1862 ; Clifton suspension bridge, 1858.

[10] St. Lawrence and Bay Chaleurs land and lumber company, 1858.

[11] St. Clair and Rondeau plank road company, 1857.

[12] Richelieu Co., 1862.

[13] Bill to vest in certain persons a portion of Church street, London, 1852-3.

[14] Watson's Ayr mill dam, 1856.

[15] Cordwood on river St. Francis, [1877], 245.

considering the effect on their securities of the provisions of a bill.[1] Because the provisions of a general act afforded sufficient facilities to the promoters to obtain the powers asked for, and consequently a special act of incorporation was unnecessary without special reason.[2]

A committee will sometimes make changes in the preamble, and in such a case they must also report the fact to the house in conformity with the rule as follows:

"The committee to which a private bill is referred, shall report the same to the house in every case; and when any material alteration has been made in the preamble of the bill, such alteration, and the reasons for the same, are to be stated in the report."[3] (Sen. R. 67, Com. R. 64.)

The committee may sometimes propose such alterations in a bill that the promoters will abandon it rather than accept the new provisions. For instance, in the case of the Canadian Mutual Life Insurance, in 1868, the committee were unwilling to recommend its passage—the principle of mutual life insurance being then new to the country—unless the promoters were prepared to provide a guarantee capital with not less than $50,000 paid—a provision which was not accepted by the parties interested.[4]

By a rule of the two houses,

"It is the duty of the select committee to which any private bill may be referred by the house to call the attention of the house specially to any provision inserted in any such bill that does not appear to have been contemplated in the notice for the same, as reported upon by the committee on standing orders." (Sen. R. 66, Com. R. 63.)

In case the committee do not so report, and a member is of opinion that certain provisions of a bill are not con-

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[1] Canada Southern R. R. Co., (1876), 231.

[2] Jour. (1880-1), 215.

[3] Grand Trunk arrangements [1867-8], App. No. 3; Labrador Co. [1873], 252; American Electric Light Co. [1882], 165; Williams Manufacturing Co. [1882], 257; Wesleyan Methodist Society [1883], 176.

[4] Can. Com. J. (1867-8), 345.

templated in the notice for the same, he may raise a point of order, and it will be for the speaker to decide. In the case of a bill to amend the acts incorporating the Great Western R.R. Company, it was decided that the bill should be referred to the committee on standing orders to report as to the matter in doubt. That committee subsequently reported favourably on the bill.[1] In such a case it is the more regular course to discharge the order for consideration in committee of the whole, and then refer the bill to the committee on standing orders.

The committee on a bill have no authority to make any amendments therein which may involve an infraction of the standing orders, or which may affect the interests of the parties interested, without due notice having been given to the same.[2] The committee have sometimes, with the consent of the parties, made very material alterations in a bill, and in all such cases they will report the fact to the house. For instance, in 1868, the committee on miscellaneous private bills had under consideration a bill to authorize the Niagara Falls Gas Company to extend its works for the purpose of lighting the town of Clifton; and when they found that the Company was composed of Americans and could not be re-incorporated in Canada, they so amended the bill as to accomplish the object aimed at through the instrumentality of a Canadian company.[3] The committee have also frequently struck out certain provisions which have been contained in a public bill before the house, so as to leave certain societies, applying for private bills, to the operation of the said bill should it become law.[4] In other cases, when the committee have considered an amendment of the general law preferable to the passage of certain private bills, they have occasionally

[1] Can. Com. J. (1870), 116, 119.

[2] Frère, p. 64; Todd's Private Bills, 91.

[3] Can. Com. J. [1867-8], 212. The committee on standing orders had previously recommended a suspension of the rule respecting notice, p. 177.

[4] Building and savings' societies (1874), 307, 335.

made a special report to that effect, and postponed the consideration of the bills to which it had reference to enable the house to take action in the matter;[1] or they have expunged certain provisions, and recommended an amendment of the general law in these respects.[2]

It should be always remembered that the amendments made to a private bill by a committee ought not to be so extensive as to constitute a different bill from that which has been read a second time. A committee in the English Commons may not admit clauses or amendments which are not within the order of leave, or which are not authorized by a previous compliance with the standing orders applicable to them, unless the parties have received permission from the house to introduce certain provisions in accordance with petitions for additional provision. If the committee are of opinion that such provisions should be inserted, the further consideration of the bill will be postponed, in order to give the parties time to petition the house for additional provision. When a bill comes from a committee with extensive amendments affecting private rights and interests, it is the practice now in the English house to refer the bill as amended to the examiner to inquire whether the amendments involve any infraction of the standing orders. If he reports there is no infraction, the bill proceeds without interruption; but if he reports there has been an infraction, then his report together with the bill goes to the standing orders committee.[3] It will be seen from a Canadian precedent on a previous page that an analogous practice has obtained in the house, and in the absence of an examiner a bill has been referred at once to the standing orders committee.[4]

In the session of 1883, some important amendments

[1] Mining companies bills, 1854-5; Joliette incorporation, 1863.

[2] De Lery gold mining company, 1865; Quebec corporation, 1865.

[3] May, 871; 105 E. Com. J. 446, 481, 485; 108 *Ib.* 557; 230 E. Hans. (3) 1679-80.

[4] *Supra*, p. 654.

made by the Senate to the Credit Valley railway bill were referred on its return, in accordance with the rule governing such cases,[1] to the committee on railways, who, very properly made a report, calling attention to the fact that "no mention of the new provisions was contained in the notice, or in the petition for the said bill." The house, however, agreed to the amendments, though a motion was proposed to disagree to them for the reasons, among others, that no notice had been given of any intention to apply to Parliament for the legislation contained in the amendments, and that in the absence of petition and notice, it was not expedient to sanction such legislation.[2] Under English practice such important amendments would have been submitted to the scrutiny of the examiners and standing orders committee, and only allowed to pass on their favourable report. There can be no doubt that this practice is in the interest of safe legislation.

In case it is deemed inexpedient to proceed with a bill, a motion may be made to that effect on the question for adopting the preamble, and if it should be so decided, the committee will report accordingly.[3] Sometimes a committee, in cases of doubt, have asked instructions from the house as to the course they should take with reference to the bill before them.[4] When the committee have found it advisable to alter the title of the bill they will report the fact to the house;[5] and it will be amended in the motion for the final passage.[6] It will frequently be necessary for the committee to order that the bill be reprinted, as amended, and this is done at the expense of the promoters.[7] If a committee find that a bill should more properly, or

[1] *Infra*, p. 668.

[2] Can. Com. J. [1883], 317, 326; Sen. J. 187.

[3] Detroit River Bridge and Tunnel Co., 1869, App. No. 4.

[4] Civil Service Building Society (1867-8), 60.

[5] Can. Com. J. (1874), 240, 262; *Ib.* (1883), 172, 214.

[6] *Infra*, p. 663.

[7] Can. Com. J. (1877), 136. The bills are invariably reprinted in the Imperial Parliament before consideration by the house.

would more conveniently be considered by another committee, they will make a recommendation to that effect, and it will be so referred.[1] If the committee are of opinion that the bill falls under that class which requires the consent of the governor-general before it becomes law, they will report the fact to the house ; and the consent will be signified by the premier at a future stage of the proceedings.[2]

In the session of 1883,[3] the House of Commons passed the following resolution, and made it a standing order, with the view of facilitating the work of the committees on private bills, and preventing, as far as possible, any departure, without the knowledge of the committees, from the principles of the general acts which may apply to acts of incorporation :

"All private bills for acts of incorporation shall be so framed as to incorporate by reference the *clauses* of the *general acts* relating to the details to be provided for by such bills;—special grounds shall be established for any proposed departure from this principle, or for the introduction of other provisions as to such details, and a note shall be appended to the bill indicating the provisions thereof, in which the *general act* is proposed to be departed from;—bills which are not framed in accordance with this *rule*, shall be re-cast by the promoters, and reprinted at their expense, before any committee passes upon the *clauses*."

The proceedings of the committees on private bills should be entered regularly by the clerk in a book kept for that purpose. As a rule, the evidence and proceedings are not reported in full to the house ; but the committee confine themselves to giving the result of their deliberations. In important cases, however, they have reported their proceedings *in extenso*, and then it is the regular course for the committee to agree to a formal motion that they be so reported.[4]

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[1] Can. Com. J. (1875), 246, 247.

[2] Northern R. R. (1871), 135, 160 ; *supra*, p. 473.

[3] Res. of 20th April ; Hans. p. 741. (Sir H. Langevin).

[4] First report of railway committee (1867-8) App. No. 3 ; banking and commerce [1869], App. No. 8 ; railways (1869), App. No. 4.

**IX. Reports of Committees.**—By the rule previously cited[1] the committee to which a bill may have been referred, "shall report the same to the house in every case"; and when it is decided not to go on with the bill, it is proper to move in the house for its withdrawal.[2] In case the committee do not report with reference to a bill, the house should take cognizance of the matter. "It is the duty of every committee to report to the house the bill that has been committed to them," says the best English authority,[3] "and not by long adjournments, or by an informal discontinuance of their sittings to withhold from the house the result of their proceedings. If any attempt of this nature be made to defeat a bill, the house will interfere to prevent it." Sometimes, under such circumstances, a committee will be "ordered to meet" on a certain day, "to proceed with the bill."[4] When a committee cannot meet for want of a quorum, the attention of the house may be called to the fact, and its interposition invoked. In such a case, the house will order: "That the committee be revived and that leave be given to sit and proceed on a certain day."[5] Or the house may order, "That the committee have leave to sit and proceed with——members," in case there is no likelihood of obtaining a quorum.[6] In the legislative assembly of Canada, 1863, a member complained to the house that one of the standing committees had not met for some time, and would not assemble for several days to come, and requested that the house would order the committee to meet. The speaker said with respect to this point that "the house could instruct the committee to meet, and it was not necessary that the member who desired the meeting should give notice of a motion;" and the subject then

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[1] *Supra*, p. 653.
[2] Can. Com. J. (1877), 169, &c.; *Ib.* (1883), 205, 215.
[3] May, 869.
[4] 80 E. Com. J. 474; 91 *Ib.* 195.
[5] 105 E. Com. J. 201.
[6] 128 E. Com. J. 133.

dropped.[1] In the session of the House of Commons of 1877, a bill respecting the Albert Railway Company came up from the Senate with amendments and was referred to the committee on railways in accordance with the rules in such cases.[2] As it was then near the end of the session, there was a difficulty in obtaining a quorum of the committee, and the bill was not reported. The member in charge of the bill moved that the order of reference be discharged, and that the amendments made by the Senate to the bill be considered. The speaker decided that no notice was required of such a motion; and the bill was then taken up, and its further consideration deferred for three months—several members having strong objections to its passage.[3] Bills have also been referred back for reconsideration.[4]

Towards the end of the session, or in case of the proceedings of the house being interrupted by adjournments over holidays, the time for receiving reports on private bills is frequently extended on motion; but the more regular course is for a committee to make a formal recommendation in the first place.[5] The time is, as a rule, practically extended to the end of the session;[6] for the house will give every opportunity to their committees to consider fully the details of bills submitted to them. The object of the rules with reference to thepresentation of petitions and bills is to force outside parties to apply for legislation at the earliest possible time after the assembling of Parliament.

**X. Committee of the Whole.**—In the Senate, private bills are not considered in committee of the whole—their prac-

[1] Speak. p. D. 70.
[2] *Infra*, p. 668.
[3] Can. Com. J. (1877), 343, 350; Can. Hans. April 27, 1877.
[4] Can. Com. J. (1880), 252, 265.
[5] *Ib.* (1877), 38, 42, 44, 198, 237; Sen. J. (1882), 144.
[6] Can. Com. J., (1879), 155; *Ib.* (1883), 214, 235, 249, 282.

tice in this respect being similar to that of the English houses—but when a select committee reports a bill with amendments, these are considered as if they came from committee of the whole, and when they have been agreed to the bill is appointed for a third reading.[1] On consideration of a bill as amended, it may be further amended as in case of a bill reported from committee of the whole.[2] When a bill is reported without amendment, it is usually read a third time and passed forthwith.[3]

When a bill is reported to the House of Commons, with or without amendments, it is ordered by rule 65 to be "placed upon the orders of the day following the reception of the report, for consideration in committee of the whole, in its proper order, next after bills referred to a committee of the whole."[4] Towards the end of the session, it is not unusual to place bills reported from select committees immediately on the orders of the same day, but this can be done only by general assent.

Whenever a committee reports unfavourably on the preamble of a bill, it has no place on the order paper in either house.[5] Of course it is always open to the house to refer a bill back to a committee for further consideration, especially if the reasons given for not proceeding with it appear insufficient to the house.[6] Or the house may give instructions to the committee to strike out certain provisions and report the same as amended.[7]

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[1] Sen. J. [1878], 213-14; *Ib.* [1883], 210, 222, &c. When the report of the committee has been received, it is moved and agreed that the amendments be taken into consideration, generally on another day.

[2] *Ib.* [1876], 190, 193, 197; *Ib.* [1877], 116.

[3] *Ib.* (1883), 140, 145, 179, &c.

[4] Can. Com. J. (1877), 188; *Ib.* (1879), 344. The practice of the Senate is different, as shown above.

[5] *Supra*, p. 651.

[6] 91 E. Com. J. (S. W. Durham R. R.), 396; 116 *Ib.* (Midland & Denbigh Junction R. R.), 285; 129 *Ib.* (Midland & N. E. R. R.), 217, 225; Peterborough & Port Hope R. R., 1862, Can. Leg. Ass.

[7] Richelieu Co., 1862; 129 E. Com. J. (Bolton Le Sands, &c.), 174.

It has been decided in the English Commons :

"When a committee have resolved that the preamble of a private bill has not been proved, and ordered the chairman to report, it is not competent for them to reconsider and reverse their decision, but that the bill should be re-committed for that purpose."[1]

But it will be only in a very exceptional case that the house will depart from the general principle that guides them in the consideration of private bills, and that is, of interfering as little as possible with the decision of a committee which has had abundant opportunity of considering the whole question.

It is very rarely that the committee of the whole on a private bill will interfere with the bill, as it comes from a select committee.[2] The bill, as amended in a select committee, is not reported from committee of the whole with amendments ; that is only done, when it is actually amended in committee of the whole,[3] or when the bill has come from the Senate, as in the latter case, it is necessary to send the amendments for concurrence to the upper chamber.[4] Such amendments must be read a second time and concurred in, as in the case of public bills.[5] But the right of a committee of the whole to make any important amendment is limited by the following rule :

"No important amendment may be proposed to any private bill, in a committee of the whole house, or at the third reading of the bill, unless one day's notice of the same shall have been given."[6] (Sen. R. 70 ; Com. R. 67).

It is the correct course, in all cases where it is necessary to make material amendments, to refer the bill back to the select committee, to which it had been previously sent,

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[1] May, 862-3 ; Shrewsbury & Welchpool R. R. bill, 1858.
[2] Todd's Private Bill P., 102-3.
[3] Can. Com. J. (1877), Springhill & Parrsborough R. R. 122.
[4] *Ib.* (1878), Fishwick's Express Co., 160.
[5] *Supra*, p. 547.
[6] V. & P. (1878), 160, 178 ; Sen. Deb. (1878), 460.

instead of considering the proposed changes in committee of the whole.[1]

In the chapter on public bills, the rules in committees of the whole and on the third reading are fully explained, and as these apply to private bills—except where there is a standing order on any particular point,—it is not necessary to recapitulate them here. But there is one point to which reference may be made, and that is, in case it is necessary to make certain provisions in a private bill affecting the public revenues or expenditures, those provisions must be first introduced in the shape of resolutions with the consent of the government, and when these have been passed in committee of the whole and agreed to by the house, they must be referred to the committee of the whole on the bill.[2]

**XI. Third Reading.**—On the third reading in the Commons no amendment may be made except of a verbal nature; and if it is wished to make any material change the bill must be referred back to committee of the whole. Under the rule previously cited, a day's notice must be given of any important amendment at this stage.[3] A bill may, however, be amended in the Senate on the third reading after notice.[4] In accordance with English practice, the consent of the governor-general may now be signified in the case of a bill affecting the interests of the crown; but in the Canadian Commons this consent is given most frequently at the second reading.[5] The member in charge of the bill will move: "That the bill be now read a third

[1] Can. Com. J. (1877), 149, 178 (Springhill and Parrsborough, and Pickering harbour bills.]

[2] Leg. Ass. J. 1866; Com. J. 1867-8; Canada Vine Growers' Association. In this case parliament extended the period mentioned in an act of the old legislature of Canada, exempting the association from excise and other duties.

[3] *Supra*, p. 661.

[4] Sen. J. (1882), 277; *Ib.* (1883), 205. See *supra*, p. 661.

[5] *Supra*, p. 473.

time"; and when that motion has been agreed to, the final motion will be made, "That the bill do pass, and that the title be, etc."; and now is the usual time to amend the title.[1] Sometimes on the motion for the third reading a bill will be again referred to a select committee for the purpose of further considering it.[2]

It sometimes happens at the end of the session that there may be urgent necessity to pass a private bill through all its stages, without reference to the usual committees, and in such a case the first motion must be to suspend the rules—the house being always ready to acquiesce when the circumstances are such as to justify such a procedure.[3]

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[1] Can. Com. J. (1876), Trust Co. of Canada.

[3] Springhill & Parrsborough Co. Com. Hans. (1877), 813-4. The ground was taken that the allegation made in this bill, that the work was for the general advantage of Canada, was not strictly true.

[2] P. E. Island Bank, Com. Jour. (1882), 66; Hans. p. 72. Ontario Bank, 1882, Votes and Proceedings, p. 573. Sen. J. [1883], 270 (Railway Trust and Construction bill); Sen. Hans., p. 595.

# CHAPTER XXI.

*PRIVATE BILLS.—Concluded.*

I. Private Bills in the Senate.—Bills imposing rates and tolls.—II. Bills not based on a petition in the Senate and Commons.—III. Amendments made by either house.—IV. Divorce Bills—Publication of notice; presentation of petition; service of notice; exemplification of proceedings in courts; first reading of bill; cost of printing; second reading; committee proceedings; report.—V. Divorce bills in the Commons.

**I. Private bills in the Senate imposing Rates and Tolls.**—Private bills, which impose rates and tolls, may be introduced in the Senate and accepted by the House of Commons, in conformity with the standing order of the English House to the effect that it "will not insist on its privileges with respect to any clauses in private bills sent down from the House of Lords which refer to tolls and charges for services performed, and which are not in the nature of a tax, or which refer to rates assessed, and levied by local authorities for local purposes."[1] For instance, a bill respecting the Kincardine harbour was sent up from the Commons in 1877, but it transpired that the schedule of tolls had not been added in the private bill committee of the lower house. The schedule was thereupon quite regularly added in the Senate and agreed to by the Commons.[2]

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[1] S.O. No. 226; May, 758. *Supra*, p. 515.

[2] Sen. Deb. [1877], 300. It was first suggested in the Senate to send the bill back to the Commons, but the fact was overlooked that the latter could not amend their own bill, but were limited to consequential amendments. See also debate on the marine electric telegraph bill [1875], 422-3. Also, 35 Vict., c. 1, s. 5, Dom. Stat.

**II. Bills not based on Petitions.**—When a private bill is brought from the Commons it is at once read a first time without amendment and debate, and ordered for a second reading on a future day.[1] If the member in charge of the bill is absent, and no motion is consequently made for the second reading, he must take the first opportunity he has for placing it on the orders.[2] If no petition has been presented to the Senate and reported upon by the committee on standing orders, it must go before the second reading to that committee in accordance with the following rule, common to both houses :

56. "All private bills from the House of Commons (not being based on a petition which has already been so reported on by the committee) shall be first taken into consideration and reported on by the said committee in like manner, after the first reading of such bills, and before their consideration by any other standing committee."

In 1881 the Acadia Steamship Company Bill was referred under such circumstances to the committee on standing orders, who recommended the suspension of rule 51 on the ground that no private rights would be interfered with, and the undertaking would probably be a public benefit.[3]

In 1883 the Winnipeg and Hudson's Bay Railway and Steamship Company Bill was so referred, and the committee reported in favour of the suspension of the rule, because the necessity for legislation had only lately arisen and it would be competent for the committee to whom the bill would be referred to provide that no injury to any party should arise therefrom.[4]

In such cases the proper practice is first to move the suspension of the rule in accordance with the report, and,

[1] Sen. J. [1881], 195, etc.

[2] *Supra*, p. 257.

[3] Sen. J. [1880-81], 223, 227.

[4] Sen. J. [1883] 181, 188. Also, European, American and Asiatic Cable Co., p. 232.

when that is agreed to, to move the second reading of the bill so that it may go on the orders. In the first mentioned case, however, the motion for the second reading appears to have been made after the first reading and before the bill was considered by the standing orders committee. But it seems hardly regular to order the second reading before the committee report whether or not the rule with respect to notice should be suspended and the bill proceeded with. The procedure in the Commons, under the same rule, is to move the second reading after the report, if favourable, of the standing orders committee.[1] And in all the other cases that occurred in the Senate in 1883, the same practice was followed.

In the case of a bill in 1883 to authorize the Grand Trunk Railway Company to extend its traffic arrangements with the North Shore Railway Company, the committee on standing orders reported adversely, without giving any reason except that no notice had been published in the "Gazette," or in any local newspaper. Thereupon, notice was given of a motion to suspend the rules (51, 56 and 57), so far as they related to the bill; and this motion having been agreed to, the bill was placed on the orders for a second reading on a following day. This case shows that the motion for the second reading should properly follow the report of the committee.[2]

In the case of the "act to incorporate the board of management of the church and manse building fund of the Presbyterian Church in Canada, for Manitoba and the Northwest," no petition was presented in 1883 in the

[1] *Infra*, p. 667. It will also be seen that in the Senate in 1883,—but not in previous cases—a motion for the reference to the standing orders committee was made after the first reading. The rule seems to provide for a reference, as a matter of course, without a motion; and it is understood as *imperative* in the Commons. But it is immaterial evidently whether the motion is made or not.

[2] Sen. J. [1883] 208, 210, 221, etc.; Min. of P., p. 359. Notice to suspend the rules in pursuance of rule 18; *supra*, p. 215. For rule 51, see p. 627; rule 56, p. 638; 57, p. 638.

Senate, but no difficulty arose because the regular notices required by the rules had been given.[1] The committee's report to this effect was adopted, and the bill was ordered at once, by motion, for a second reading on a future day.

As a rule, however, petitions for private bills are simultaneously presented and reported upon in both houses; and in this way the progress of a bill is facilitated. It is only in exceptional cases like those just mentioned, that a petition is presented in one house and not in the other.

When any bill is brought down to the Commons from the Senate, the member interested will move, "That it be now read a first time," and this motion must be put without amendment or debate, as in the case of any public bill.[2] The bill must then be referred to the committee on standing orders, if that committee has not previously reported on a petition relative thereto, in accordance with rule 54, which is exactly the same as rule 56 of the Senate, cited on a previous page. If the standing orders committee report favourably, a motion will immediately be made for the second reading on a future day, as the rules of the Commons do not contain any provision for placing a bill on the orders after such report.[3] If the report is unfavourable the member may move (after notice) to suspend the standing orders relative thereto, and to have the bill read a second time; but in the only case of the kind that has occurred since 1867, the house refused to interfere with the decision of the committee.[4] If there is a petition favourably reported on by the standing orders committee of the House of Commons, the bill can be immediately ordered for a second reading after the first reading.[5] Very few cases occur of bills being presented without petitions having been first reported upon.

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[1] Sen. J. [1883] 145.

[2] Can. Com. J. [1883] 141.

[3] Can. Com. J. [1878] 98, 109. For cases in legislative assembly, see Toronto Boys' Home, 1861; Huron College, 1863.

[4] *Ib.* [1877] 313, 335.

[5] *Ib.* [1877] 54, 62, 131-2 (*Globe* Printing Co.'s bill), etc.

**III. Amendments made by either House.**—When a bill is returned from one house to the other with amendments, they are generally considered forthwith if they are merely verbal and not important.[1] The course with respect to amendments that are material is variable in the Senate; but ordinarily they are ordered to be taken into consideration on a future day; or immediately at the close of the session. Rule 68 of the Commons and rule 71 of the Senate, however, provide a different course in the case of material amendments to a private bill:

"When any private bill is returned from the Senate (or House of Commons) with amendments, the same not being merely verbal or unimportant, such amendments are, previous to their second reading, referred to the standing committee to which such bill was orginally referred,[2] (or, by the Senate rule, to a committee of the whole.")[3]

If the committee report favourably the amendments will be immediately read a second time and agreed to, and returned with the usual message. If the committee report that the amendments should be disagreed to for certain reasons, the house will consider the amendments forthwith, and having read them a second time will disagree to those on which the committee have reported unfavourably for the reasons set forth in their report.[4] The house will then either "insist" or "not insist" on their amendments when the message is received that the other house disagrees to them.[5] The proceedings in all such cases are fully explained in the chapter devoted to public bills.

**IV. Divorce Bills.**—The British North America Act of 1867 (s. 91, sub. s. 26), places Marriage and Divorce within the

[1] Sen. J. [1877] 152. Com. J. [1878] 120.

[2] *Ib.* [1883] 308 (Wesleyan Missionary Society bill).

[3] This rule is practically a dead letter as far as the Senate is concerned.

[4] London & Ontario Investment Co. [1877], 246, 262; Wesleyan Missionary Society [1883] 317, 326.

[5] Can. Com. J. [1877] 289, 298; Sen. J. 269, 282 (Union Life & Accident Assurance Co.]

exclusive legislative jurisdiction of the Parliament of Canada. In conformity with the practice of the legislature of Canada from 1840 to 1867, all such bills are initiated in the upper house of Parliament. The orders and practice of the Senate with respect to the prosecution of such bills will form the subject-matter of the rest of this chapter.

### *Publication of Notice.*

An applicant for a bill of divorce is required to give a certain notice of his proposed application to Parliament in accordance with the following rule :

72. "Every applicant for a bill of divorce is required to give notice of his intended application and to specify from whom and for what cause, by advertisement during six months in the *Canada Gazette*, and in two newspapers published in the district, in Quebec and Manitoba, or in the county or union of counties in the other provinces, where such applicant usually resided at the time of separation, or if the requisite numbers of papers cannot be found therein, then in the adjoining district or county or union of counties. The notice for the provinces of Quebec and Manitoba is to be published in the English and French languages."

### *Presentation of Petition.*

The first proceeding in the Senate is the presentation of a petition from the person seeking the bill of divorce.[1] This petition must be in the form provided for all applications for personal and private bills, and subject to all the rules regulating such matters. Immediately after the presentation of the petition, the certificate of the clerk that the fees have been paid, should be laid before the Senate in accordance with the following rule :

83. Every applicant for a bill of divorce, at the time of presenting the petition, is to pay into the hands of the clerk of the Senate, a sum of $200, to cover the expenses which may be incurred by the Senate during the progress of the bill.[2]

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[1] Sen. J. [1877] 35, 37, 42; *Ib.* [1882] 38; 37; *Ib.* [1883] 37.
[2] *Ib.* [1877] 36, 43; *Ib.* [1883] 38.

This certificate, which should be presented by the speaker like other returns, has sometimes been laid before the house after the reading of the order for reception of the petition;[1] but the more regular and usual course is to produce it on the day of the presentation of the petition.

*Service of Notice.*

When the petition has been before the house for two days, like all other petitions, it is brought up for reading and reception. The order having been called, the first proceeding will be to submit proof of the service of the notice of the application for the divorce. Rule 73 until the session of 1883 provided:

73. "A copy of the notice in writing is to be served, at the instance of the applicant, on the person from whom the divorce is sought, if the residence of such person can be ascertained; and proof on oath of such service, or of the attempts made to effect it, to the satisfaction of the Senate, is to be adduced before the Senate, on the reading of the petition."

The Senator in charge of the petition, must produce the notice and give proof of the service. The journals of the house show that this proof has been given sometimes on oath at the bar,[2] but generally by the production of an affidavit made before a justice of the peace,[3] or a commissioner of one of the courts.[4] The regularity of such affidavits was never questioned until the session of 1883, when, in accordance with the practice usual in such cases, there was laid before the house an affidavit sworn before a "com-

[1] Sen. J. [1882] 50-51.

[2] *Ib.* [1876] 33; *Ib.* [1877] 46-47.

[3] *Ib.* [1876] 33; *Ib.* [1878] 40.

[4] *Ib.* [1877] 47, 53; *Ib.* [1878] 35, 74. In 1882, two affidavits were presented; one to show that the notice had been served on the respondent a year before, on the occasion of the first proposed application to parliament, which was not proceeded with. Other attempts to serve the notice, prior to the second application in 1882, failed. These facts being set forth, the Senate agreed that all reasonable efforts had been made to effect the service. Jour., pp. 50-51; Hans. 30-31.

missioner for taking affidavits in the high court of justice in and for the county of Essex."[1] The objection was raised that an affidavit sworn before a commissioner of the high court can only be evidence, and can only be read in a proceeding before that court, and that therefore an oath under such circumstances was no oath at all since the said commissioner had no power to administer an oath to be used as evidence in the court of Parliament. It was pointed out that no person could be indicted for perjury for an oath so administered, and that consequently there was not the necessary security that the house should have for the truth of the evidence adduced at the most important stage of the inquiry in a judicial proceeding—the return of the service of the notice on the person whose rights are to be affected by the proposed legislation. The only oath that could be legally administered in connection with such a proceeding was at the bar by the clerk of the Senate, or by the chairman, or any member of the committee on the bill, in accordance with the law governing such cases.[2] The minister of justice admitted that the affidavit in question was one upon which perjury could not be assigned.[3] In order to meet the difficulty it was at last decided to alter the rule, cited above, so as to enable affidavits establishing the service of the notice, to be made before persons authorized to take them. The rule was accordingly amended by striking out the word *oath* in the fourth line thereof, and substituting the words "*declaration* under the act passed in the thirty-seventh year of Her Majesty's reign, (chap. 37), intituled 'an act for the suppression of voluntary and extra-judicial oaths.'"[4] This act substitutes for "voluntary

[1] Sen. J. [1883] 44.

[2] Remarks of Senator Miller (subsequently speaker), Hans. [1883] 58-60. See *supra*, p. 460.

[3] *Ib.* 61. When the bill came up for second reading, it was also considered expedient to give further evidence at the bar, under oath, of the service of the notice. Jour., pp. 78-80; Hans. 100-101.

[4] Jour. 98; Hans. 66, 136. The act sets forth (sec. 1): "And provided further that it shall be lawful for any judge, justice of the peace, public

and extra-judicial oaths," the right to make a "solemn declaration" under the legal penalties attaching to perjury. As the rule is now amended, evidence by such a declaration may be pronounced satisfactory to the Senate, without making it necessary to call to the bar the witness who served the notice.[1]

Before leaving this question, it is necessary to mention that a section was also added to an act,[2] passed this same session, amending the interpretation act as follows:

"The word oath shall be construed as meaning a solemn affirmation . . . . and where, by an act of Parliament, or by a rule of the Senate or House of Commons, or by an order, regulation or commission, made or issued by the governor in council, under any law authorizing him to require the taking of evidence under oath, an oath is authorized or directed to be made, taken or administered, such oath may be administered, and a certificate of its having been made, taken, or administered, may be given by any one named in such act, rule, order, regulation or commission, or by a judge of any court, a notary public, a justice of the peace, or a commissioner for taking affidavits, having jurisdiction or authority within the place where the oath is administered; and the wilful making of any false statement in any such oath or affirmation shall be wilful and corrupt perjury; and the wilful making of any false statement in any declaration required, or authorized by an act of Parliament shall be a misdemeanour punishable as wilful and corrupt perjury."

When evidence, satisfactory to the Senate, of the service of the notice on the respondent has been formally adduced,

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notary, or other functionary authorized by law to administer an oath, to receive the solemn declaration of any person, voluntarily making the same before him in the form of the schedule to this act annexed, in attestation of the execution of any written deed or instrument or allegations of fact or of any account rendered in writing; and if any such declaration be false or untrue in any material particular, the person making such false declaration shall be deemed guilty of a misdemeanour."

[1] Remarks of Sir A. Campbell, Minister of Justice, Hans. p. 136. See proceedings in the Graham Case, Jan. 28, 1884.

[2] 46 Vict., c. 1.

it is necessary then to have the petition read and received in the usual way.[1]

*Exemplification of proceedings in Court.*

The rules of the Senate provide for the production of evidence at this stage, with respect to proceedings that have taken place in any court of law previous to the application to Parliament:

74. "When proceedings in any courts of law have taken place prior to the petition, an exemplification of such proceedings to final judgment, duly certified, is to be presented to the Senate, on the reading of the petition."[2]

75. "In cases where damages have been awarded to the applicant, proof on oath must be adduced, to the satisfaction of the Senate, that such damages have been levied and retained, or explanation given to the Senate for neglect or inability to levy the same, under a writ of execution, as they may deem a sufficient excuse for such omission."

*First Reading of Bill.*

These necessary forms having been taken with respect to the petition, it goes, as a matter of course, to the committee on standing orders, who inquire whether the orders of the house with respect to such applications have been complied with. If the committee report favourably, the bill may be presented forthwith and read a first time.[3] The motion for the second reading on a future day must be in accordance with the following order:

76. "The second reading of the bill is not to take place until fourteen days after the first reading, and notice of such second reading is to be affixed upon the doors of the Senate during that period, and a copy thereof and of the bill duly served upon the party from whom the divorce is sought, and proof on oath of

[1] Sen. J. [1877] 48, 53; *Ib.* [1882] 51; *Ib.* [1883] 44 *Ib.* Jan. 28, 1884.

[2] Sen. J. (1873) 101; *Ib.* [1876] 63. [In these cases, no entry appears in the proper place of the presentation of the papers]; *Ib.* [1877] 48-9.

[3] *Ib.* [1877] 54-5, 57; *Ib.* [1882] 60-1; *Ib.* [1883] 48, 49.

such service, adduced at the bar of the Senate, before proceeding to the second reading, or sufficient proof adduced of the impossibility of complying with this regulation."

*Cost of Printing Bill.*

82. Every bill of divorce is to be prepared in the English and French languages by the party applying for the same, and printed by the contractor for the sessional printing of the Senate, at the expense of the party; and 600 copies thereof in English, and 200 copies in French, must be deposited in the office of the clerk of the Senate, and no such bill is to be read a third time until a certificate from the queen's printer shall have been filed with the clerk, that the cost of printing 500 copies of the act in English, and 250 copies in French for the government has been paid to him."

*Second Reading.*

The order of the day for the second reading of the bill having been reached and read, it is then necessary to show that all the formalities, required by the foregoing rule (76), have been duly complied with. The certificates of the clerk of the posting of the notice and other necessary preliminaries to the second reading, will be produced in due form. Evidence must next be given under oath at the bar with respect to the service of a copy of the bill and of the notice for the second reading, upon the respondent. The clerk administers the oath to the witness, whose answers to each question are duly recorded on the journals. When the examination is closed, the witness is ordered to withdraw.[1]

The next proceeding is to make a formal motion to dispense with rule 77, requiring the "petitioner to appear

[1] Sen. J. [1877] 90, 97, 99; *Ib.* [1882] 131-2; *Ib.* [1883] 79. In 1882 (Gardner's relief bill), on motion for second reading, only an affidavit of service was at first presented in accordance with the Peterson precedent of 1875 (Jour., p. 85); but it was pointed out that the rule requires proof under oath at the bar. The order was thereupon deferred until a later day, when the proper course was taken, Sen. Hans., pp. 102-4; 126-131. The last reference shows how the examination is conducted on such occasions.

below the bar of the Senate at the second reading, to be examined by the Senate, generally, or as to any collusion or connivance between the parties to obtain such separation."

The motion dispensing with the rule, will add that "it be an instruction to any select committee to whom the bill on the subject may be referred to make such examination."[1] This motion having been agreed to, the bill must then be read a second time in due form, and referred to a select committee.

*Proceedings before the Committee on the Bill.*

78. "After the second reading the bill is referred to a select committee of nine members;[2] witnesses are heard on oath, the evidence is taken down in writing and reported to the Senate, with all vouchers adduced before the committee, the preliminary evidence being that of the due celebration of the marriage between the parties, by legitimate testimony, either by witnesses present at the marriage or by complete and satisfactory proof of the certificate of the officiating minister or authority."

Both the petitioner and respondent are generally represented by counsel before the committee. The 79th rule provides:

79. "The counsel for the applicant, as well as the party from whom the divorce is sought may be heard at the Bar of the

[1] Sen. J. [1877] 91, 99; *Ib.* [1882] 132; *Ib.* [1883] 81. In the last case (Nicholson relief bill) the respondent sent a telegram to the clerk that she wished proceedings stayed until she could be present to defend herself. The clerk replied that the order for the second reading had been deferred (the reason being the necessity of meeting the objection taken to the affidavit by Senator Miller). The telegrams were laid before the Senate after the second reading of the bill, and entered on the journals; Hans. 104 (remarks of Sir A. Campbell).

[2] Sen. J. [1877] 98, 100; *Ib.* [1882] 132; *Ib.* [1883] 81. This committee was organized in 1883, with the assistance of Mr. Speaker, in accordance with a suggestion made in the house that it was desirable that a committee invested with judicial powers, should be struck with judicial fairness. Hans., pp. 51, 104.

Senate, as well on the evidence adduced as on the provisions for the future support of the wife, if deemed necessary."

Counsel only appear, as a rule, before the select committee on the bill. In judicial proceedings of this character, the Senate has, as far as possible, delegated its powers to the committee.

With respect to the attendance and expenses of witnesses it is provided:

80. "The witnesses are notified to attend by a summons, to issue under the hand and seal of the speaker, to the parties applying for the same, on application to the clerk of the Senate, and served at the expense of the said parties, by the usher of the black rod or his authorized deputy;[1] and every witness is allowed his reasonable expenses,[2] which, with those incurred by the usher of the black rod or his deputy, are to be taxed by the Senate or any officer thereof appointed for that purpose."

81. "Witnesses refusing to obey the summons are, by order of the Senate taken into the custody of the usher of the black rod, and not liberated therefrom, except by order of the Senate and after payment of the expenses incurred."[3]

Witnesses are examined under oath, and as far as possible in accordance with the rules governing evidence in courts;[4] and the questions and answers have generally of

[1] Sen. J. [1873] 116.

[2] *Ib.* [1883] 164. In this case one of the witnesses for the respondent was not paid his expenses under the order of the committee.

[3] As the powers of both houses are similar to those of the English Commons with respect to the attendance of witnesses, it is always competent for the Senate to compel them to obey the summons, and to punish them for contumacy. See *supra*, pp. 454–7.

[4] But a difficulty appears to exist sometimes in conducting the examination as in a law court. On a recent occasion the chairman of a divorce committee (Mr. Macfarlane), whilst submitting a report, said: "Our experience in this, more definitely than in any other case, brought under our notice the fact that it would be much the wiser course if examinations of this character were held before some other tribunal. While the committee have full opportunity of examining each witness most minutely, still there is a difficulty in submitting witnesses who are either unwilling or prepared to perjure themselves in fact, to that rigid and close examination which would be made in a court of justice. Sen. Hans. [1883] 288.

late years been given in full in conformity with the rules of the select committees of the Lords.[1] It is proper for the committee on a bill to obtain power from the house to employ a shorthand writer to take down evidence for the information of the committee and the house.[2]

In case of the poverty of the respondent, a petition may be presented to the house, praying that the applicant for the divorce may be ordered to supply the respondent with means to maintain a just defence. This petition should be forthwith referred to the committee on the bill, and when they have made the proper inquiry into the subject, they will report to the house a recommendation, when necessary, that a certain sum be allowed to the party seeking assistance. In 1883, the committee on the Nicholson divorce bill recommended—and the house agreed—that the husband, who was the petitioner, should allow his wife, on her petition, a certain sum as counsel's fee, and also pay so much for her daily expense of living at Ottawa.[3]

*Report of Committee and Proceedings in the House.*

When all the necessary evidence has been taken before the committee, the latter will come to a conclusion thereon, as in the case of any opposed private bill. When the evidence is sufficient to sustain the allegations set forth in the petition, they will report the bill. The report

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[1] Sen. J., 1876, app. No. 1. See *supra*, p. 457. Hans. [1883] 117 (Mr. Botsford). Previous to the regular employment of shorthand writers the evidence was generally given in condensed form; Jour. [1873] 106.

[2] *Ib.* [1883] 85. The same course is always followed by Commons committees; *supra*, p. 441.

[3] Sen. J. [1883] 95, 99, 105; Hans. pp. 121-4. In 1882, the committee also ordered that the husband pay the counsel fees of respondent, on a petition having been presented and referred to them; Sen. J., 96, 132, 150, 154. This is in accordance with the Lords' practice (Sen. Dickey, Hans., 1882, p. 200) in cases of the poverty of the parties. Fees have also been remitted in the Commons on account of the inability of the promoter of a divorce bill to pay them, 105 E. Com. J., 563.

and evidence are printed and considered with the bill on a future day. When the report has been considered and adopted, the bill may be read a third time in the usual way.[1] On the other hand, if the evidence is not satisfactory to the majority of the committee, the report will be that the preamble is not proven.[2] In 1882, the petitioner abandoned the bill, when called upon to adduce further evidence, and the committee so reported.[3] When the report contains a recommendation it must be considered and adopted or negatived, as the house may consider right after full consideration of the evidence and facts.[4] But the report is invariably final in all such cases.

In case the committee report against the prosecution of the bill, it is usual to return all vouchers and exhibits to the respective parties in order that they may be, if necessary, used in evidence in the courts.[5]

When the bill has passed the Senate, a message is ordered to be sent to the Commons, to communicate to that house the evidence and the papers referring to the bill, including the exemplification, when any, of proceedings in a court of law.[6]

It was formerly the practice in the Senate to publish the evidence in full in an appendix to the journals of that house; but the practice has been discontinued since 1877. The evidence, however, is kept among the records of the house, and is now printed for the information of members only.[7]

In all unprovided cases, reference must be had to the

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[1] Sen. J. [1877] 96, 117; 105, 118; 115, 137. *Ib.* [1878] 138.

[2] *Ib.* [1876] 137; *Ib.* [1883] 164.

[3] *Ib.* [1882] 170.

[4] *Ib.* [1876] 160; *Ib.* [1883] 173. In 1882, the report was not considered, as the petitioner abandoned the bill, but a recommendation that the fee be refunded to him was proposed and agreed to; Jour., p. 171.

[5] Sen. J. [1882] 170-1.

[6] *Ib.* [1877] 117, 118.

[7] Sen. J. [1877] 64; Deb. [1878] 513, 563. See app. to journals for 1878.

rules and decisions of the House of Lords.[1] Though there is now in England a court for the trial of matrimonial and divorce causes, the Lords have still jurisdiction over cases in India, Ireland, and other countries beyond the jurisdiction of the court.[2] Consequently both houses still continue their standing orders relative to divorce bills.[3]

**V. Divorce Bills in the House of Commons.**—The proceedings in the Commons relative to such bills may now be briefly explained. When a petition is read and received, it is referred, like all other applications for private legislation, to the committee on standing orders;[4] but when no petition has been presented and reported on by the committee on standing orders, the bill, when it comes up from the Senate, should be referred, in conformity with rule 54, to that committee.[5]

Divorce bills follow the practice usual in the case of all other private bills in the Commons. Up to 1867 divorce bills were referred after the second reading, in accordance with the general standing orders.[6] After 1867 divorce bills followed the practice which was adopted in that year of referring private bills to committees after the first reading.[7] In 1873, it was ordered that all private bills should be referred after the second reading; but it was not until 1875 that a divorce bill was brought up from the Senate, and it was then inadvertently referred after

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[1] R. 84.

[2] May, 767.

[3] Lords' S. O. 149, 175-8; Com. S. O. 189-92. In the Commons a select committee on divorce bills is nominated at the beginning of every session. In the Lords, divorce bills are committed like public bills to a committee of the whole house, and witnesses are examined at the bar. This was the practice of the Legislative Council of Canada.

[4] Can. Com. J. [1875] 82, 83; *Ib.* [1877] 62; *Ib.* [1878] 27, 35.

[5] *Supra*, p. 667. This was not done in Martin's case in 1873.

[6] Beresford, 1852-3; McLean, 1858 and 1859.

[7] J. R. Martin, 1873. This reference was made before the adoption of the rule referring private bills after the second reading.

first reading.[1] In the session of 1877 two divorce bills came up from the Senate, and the house followed the precedent in the Peterson case. On a subsequent day the bills were reported from the committee, and then there arose a question as to the future procedure. Under rule 65, reported bills should be referred to a committee of the whole, but that could not be done (except by a special motion) since the bills had not been read a second time. The incorrectness of the procedure in the Peterson case became obvious, and the house agreed that divorce bills ought to follow the practice laid down for all private bills.[2] Consequently all bills since then have been referred after second reading to a standing committee.[3]

Up to the session of 1877 it was the practice to refer these bills to a select committee in accordance with English practice;[4] but it is now usual to refer them to the standing committee on private bills. All the papers and evidence are referred with the bill to the committee.[5] When the bill comes back from committee, it is referred to the committee of the whole, and proceeded with like all other private bills. It was the practice until 1879 for the governor-general to reserve such bills for the signification of her Majesty's pleasure thereon, but this need not now be done since the change in the royal instructions with reference to bills.[6]

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[1] Can. Com. J. [1875] 215.

[2] Walter Scott and M. J. Bates relief bills, 1877; March 16, 19, 21; Can. Hansard; Com. Journals, pp. 148, 159, 771; 144, 153, 160, 172. In consequence of the mistake in the Peterson case, the journals of 1877 show very perplexing entries, but the above remarks will suffice to explain the way these contradictory precedents occurred.

[3] Can. Com. J. [1877] 171, 179; *Ib.* [1878] 119, 120.

[4] *Supra*, p. 679*n*.

[5] Can. Com. J. [1878] 120.

[6] *Supra*, pp. 569–73.

# CHAPTER XXII.

*RECENT PRIVY COUNCIL DECISIONS.*

I. Federal and Local Jurisdiction—Liquor License Act of 1877 (Ontario); Delegation of Powers to License Commissioners.—II. Lands in Canada escheated to the Crown for defect of heirs belong to the Provinces for the Purposes of Revenue and Government.—III. Concluding Remarks on Questions of Jurisdiction.

**I. Ontario Liquor License Act of 1877.**—After the earlier portion of this work had been printed, the judicial committee of the privy council rendered a judgment which is too important to be passed over without notice, bearing, as it does, upon the questions discussed in the tenth and eleventh sections of the introductory chapter, and more especially upon the case of Russell *v.* the Queen.

By reference to the eleventh section of the first chapter it will be seen that a digest is there given of the judgment rendered by the privy council in favour of the constitutionality of the Canada Temperance Act of 1878—a judgment immediately followed by the passage of an act in the general legislature to provide for the sale of intoxicating liquors, and the issue of licenses therefor in the provinces of Canada.

A later decision of the judicial committee of the privy council has undoubtedly an important bearing on the question of jurisdiction in the matter of the regulation of liquor traffic in a province. The fourth and fifth sections of the Liquor License Act[1] of Ontario, which has come under the review of the privy council on the appeal

[1] R. S. O., c. 181.

of Hodge *v.* the Queen from the court of appeal of the province, authorises the appointment of license commissioners to act in each municipality, and empowers them to pass resolutions for defining the conditions and qualifications requisite to obtain tavern or shop licenses for sale by retail of spirituous liquors within the municipality; for limiting the number of licenses; for declaring that a limited number of persons qualified to have tavern licenses may be exempted from having all the tavern accommodation required by law; for regulating licensed taverns and shops; for defining the duties and powers of license inspectors. These commissioners may also impose penalties for an infraction of their resolutions. The sale of intoxicating liquors is also prohibited in the act, under penalties, from Saturday evening, 7 o'clock, to Monday morning, 6 o'clock.

By virtue of this act, the license commissioners of Toronto passed certain resolutions for the regulation of taverns and shops in that city. Subsequently, M. Hodge a proprietor of an hotel, who was duly licensed to sell liquor, and to keep a billiard saloon, was convicted and fined before the police magistrate of Toronto, for unlawfully permitting a billiard table to be used, and a game to be played thereon, during the time prohibited by the act, and by the resolution of the commissioners; that is, after 7 o'clock on Saturday night. This conviction was quashed by the court of queen's bench as illegal. Assuming the right of the legislature of Ontario to legislate on the subject, the court held that it could not devolve or delegate its powers to the discretion of a local board of commissioners. The case was then taken to the court of appeal for Ontario, which reversed the decision of the queen's bench, and affirmed the conviction. The court decided substantially that the provincial legislature, and it alone, had the power to pass laws for the infliction of penalties or imprisonment for the enforcement of a law of a province in relation to a matter coming within a class of

subjects with which alone the province had the right to deal ;[1] and that the legislature had power to delegate its authority as it had done in the matter in question.

On the question at issue coming before the judicial committee of the privy council, their lordships were of opinion that the decision of the court of appeal of Ontario should be affirmed, and the appeal dismissed with costs. In their elaborate judgment, they state at the outset that they do not consider it necessary in the present case to lay down any general rule or rules for the construction of the British North America Act. They are impressed with the justice of an observation made by Chief Justice Hagarty in delivering the unanimous judgment of the court of queen's bench, "that in all these questions of *ultra vires*, it is the wisest course not to widen the discussion by considerations not necessarily involved in the decision of the point in controversy."[2] They then proceed to notice the argument of the appellants that the legislature of Ontario had no power to pass any act to regulate the liquor traffic; that the whole power to pass such an act was conferred on the dominion parliament, and consequently taken from the provincial legislature by section 91 of the British North America Act; and that it did not come within any of the classes of subjects assigned exclusively to the provincial legislatures by section 92. The clause in section 91 which the Liquor License Act, 1877, was said to infringe was No. 2, "the regulation of trade and commerce;" and it was urged that the decision of their lordships in Russell *v.* the Queen was conclusive —"that the whole subject of the liquor traffic was given to the dominion parliament, and consequently taken away from the provincial legislatures." It appears, however, to their lordships that the decision mentioned "has not the

[1] See sub. s. 15, s. 92; B. N. A. Act, 1867.

[2] Their lordships also referred to what they had previously recommended in determining such cases; see *supra*, p. 100.

effect supposed, and that, when properly considered, it should be taken rather as an authority in support of the judgment of the court of appeal." The sole question there was, "whether it was competent for the dominion Parliament, under its general powers to make laws for the peace, order, and good government of the dominion, to pass the Canada Temperance Act, 1878, which was intended to be applicable to the several provinces of the dominion, or to such parts of the provinces as should locally adopt it." They then proceed to quote portions of the previous judgment in Russell and the Queen to show that the matter of the act in question does not properly belong to the class of subjects, "property and civil rights," within the meaning of sub-section 13, but is rather one of those matters relating to public order and safety, which fall within the general authority of parliament to make laws for the order and good government of Canada.[1] It, therefore, appears to their lordships that "Russell *v.* the Queen, when properly understood, is not an authority in support of the appellant's contention, and their lordships do not intend to vary or depart from the reasons expressed for their judgment in that case. The principle which that case and the case of the Citizens' Insurance Company illustrate is, that subjects which in one aspect and for one purpose fall within section 92, may in another aspect and for another purpose fall within section 91."[2]

In considering the subject-matter and legislative character of sections four and five of the license act of Ontario (as given in a previous page) their lordships point out that the act "is so far confined in its operations to municipalities in the province of Ontario and is entirely local in its character and operation." The matters dealt with in the sections mentioned "seem to be of a purely local nature in the province, and to be similar to, though not identical in all respects with, the powers then belonging

[1] See *supra*, pp. 94-5, for the text of the decision on this point.
[2] *Supra*, pp. 99-100.

to municipal institutions under the previously existing laws passed by the local parliaments." Their lordships consequently decide: "The powers intended to be conferred by the act in question, when properly understood, are to make regulations in the nature of police or municipal regulations of a merely local character for the good government of taverns, etc., licensed for the sale of liquors by retail, and such as are calculated to preserve, in the municipality, peace and public decency, and repress drunkenness and disorderly and riotous conduct.[1] As such they cannot be said to interfere with the general regulation of trade and commerce which belongs to the dominion parliament, and do not conflict with the provisions of the Canada Temperance Act, which does not appear to have as yet been locally adopted. The subjects of legislation in the Ontario Act of 1877, sections 4 and 5, seem to come within the heads 8, 15, and 16[2] of section 92 of the British North America Act, 1867. Their lordships are, therefore, of opinion that in relation to sections 4 and 5 of the act in question, the legislature of Ontario acted within the powers conferred upon it by the Imperial Act of 1867, and that in this respect there is no conflict with the powers of the dominion parliament."

We have cited, in the foregoing paragraph, the most material part of the decision; but their lordships went further and considered the objection raised by the appellant—that the Imperial Parliament had conferred no

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[1] In the case of the corporation of Three Rivers and Sulte, the court of queen's bench of Quebec has given a decision, holding precisely in principle what the privy council has held in the Hodge case. See Mr. Justice Ramsay's judgment, 5 Legal News, 330. Also Poulin and the corporation of Quebec, 72 L.R., 387; 5 Legal News, 334; 6 *Ib.* 209, 214. The first mentioned case is now before the supreme court of Canada.

[2] 8. "Municipal institutions in the province." 15. "The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section." 16. "Generally all matters of a merely local or private nature in the province."

authority on the local legislature to delegate its powers to the license commissioners or any other persons. In other words, that the power conferred by the Imperial Parliament on the local legislature should be exercised in full by that body, and by it alone. This objection, in their opinion, is founded on an entire misconception of the true character and position of the provincial legislatures, "which are in no sense delegates of, or acting under any mandate from, the Imperial Parliament." Their lordships say emphatically that when the British North America Act enacted that there should be a legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the provinces and for provincial purposes in relation to the matters enumerated in section 92, "it conferred powers not in any sense to be exercised by delegation from, or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92, as the Imperial Parliament, in the plenitude of its power, possessed and could bestow." Within these limits of subjects and area, "the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of Canada would have had under like circumstances to confide to a municipal institution or a body of its own creation, authority to make by-laws or resolutions as to subjects specified in the enactment, and with the view of carrying the enactment into operation and effect." In their opinion such an authority is ancillary to legislation, and without it an attempt to provide for varying details and machinery to carry them out might become oppressive, or absolutely fail. A legislature, in committing certain regulations to agents or delegates like license commissioners, retains its powers intact, and can, whenever it pleases, destroy the agency it has created, and set up another, or take the matter directly into its own hands.[1]

[1] For text of judgment, see Legal News, January 19, 1884.

**II. Escheats.**—Among the matters that have recently come before the supreme court of Canada and the judicial committee of the privy council is the question, whether the government of Canada or the government of a province is entitled to estates escheated to the Crown for want of heirs. The controversy on this question first arose in 1874, when the legislature of Ontario passed an act[1] to amend the law respecting escheats and forfeitures. This act was disallowed by the governor-general in council, on the report of the minister of justice (Mr. Fournier, now one of the judges of the supreme court) on the following grounds:

1. "That escheat is a matter of prerogative which is not by the British North America Act vested in a provincial government or legislature.

2. That it is not one of the subjects coming within the enumeration of the subjects left exclusively to the provincial legislatures.

3. That a provincial legislature, by its very statutable position, has no power to deal with prerogatives of the Crown.

4. That the lieutenant-governor has not under the statute, or by his commission, any power to deal with the prerogatives of the Crown; and not being empowered to assent in the queen's name to any law of a provincial legislature, he cannot bind her Majesty's prerogative rights."[2]

Subsequently in 1876, by a decision of the court of queen's bench, of the province of Quebec, upon an appeal from a lower court, the right of the province to the control of escheats and forfeitures, within the province, was affirmed. Whereupon it was agreed between the dominion and provincial governments that—until or unless there should be a judicial decision establishing a contrary principle—"lands and personal property in any province, escheated or forfeited by reason of intestacy, without law-

[1] 27 Vict. c. 8, Ont. Stat. of 1874.

[2] Can. Sess. P., 1882, No. 141.

ful heirs or next of kin, or other parties entitled to succeed, are subjects appertaining to the province, and within its legislative competency," while, on the other hand, "lands and personal property forfeited to the Crown for treason, felony, or the like, are subjects appertaining to the dominion, and within its legislative competence."[1]

Accordingly the legislature of Ontario again passed an act,[2] which enables the attorney-general to take possession of escheated lands or cause an action of ejectment to be brought for the recovery thereof without any inquisition being first necessary. The lieutenant-governor may make grants of escheated or forfeited lands, or may release forfeited property, or waive the forfeiture. He may also make an assignment of personality to which the Crown has become entitled.

The question of the validity of this statute was brought before the courts in 1878, when the attorney-general of Ontario filed an information in the court of chancery for the purpose of obtaining possession of land in the city of Toronto, which was the property of one Andrew Mercer, who had died intestate and without leaving any heirs or next of kin, on the ground that it had escheated to the Crown for the benefit of the province. Andrew Mercer, a natural son of the deceased, demurred to this information for want of equity, and the court of chancery held that the Escheat Act of Ontario[3] was not *ultra vires*, but that the escheated property accrued to the benefit of Ontario. On appeal to the court of appeal for Ontario, that court held that the provincial governments are entitled, under the B. N. A. Act, to recover and appropriate escheats, and affirmed the order over-ruling the said demurrer, and dismissed the appeal with costs. Against this judgment the defendant, Andrew Mercer, appealed

[1] Can. Sess. P., 1877, No. 89, pp. 88-105.

[2] R. S. O., c. 94 (40 Vict. c. 3.) The legislature of New Brunswick passed a law to the same effect in 1877, c. 9.

[3] R. S. O., c. 94.

to the supreme court, and the parties agreed that the appeal should be limited to the broad question whether the government of Canada or of a province is entitled to estates escheated to the Crown. The dominion government, concurring in the view of the appellant's counsel, that the hereditary revenues of the Crown belong to the dominion, intervened in order to have the question determined.

The supreme court held that the province of Ontario does not represent her Majesty in matters of escheat in that province, and therefore the attorney-general could not appropriate the property escheated to the Crown in this case for the purposes of the province, and that the Escheat Act of Ontario was *ultra vires*.[1] That any revenue derived from escheats is by section 102 of the B. N. A. Act placed under the control of the Parliament of Canada as part of the consolidated revenue fund of Canada, and no other part of the act exempts it from that disposition.[2]

The case was brought finally before the privy council,[3] who came to the conclusion that the escheat in question belongs to the province of Ontario. Their lordships base their decision mainly on their interpretation of section 109, which is the only clause in the B. N. A. Act by which any sources of revenue appear to be distinctly reserved to the provinces, viz.:

"All lands, mines, minerals, and royalties, belonging to the several provinces of Canada, Nova Scotia, and New Brunswick, at the union, and all sums then due or payable for such lands, mines, minerals, or royalties, shall belong to the several provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the province in the same."

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[1] 5 Can. Sup. Court R. 538. The chief justice and another judge of the court dissented from the opinion of the majority.

[2] Per Fournier, Taschereau, and Gwynne, J.J.

[3] The attorney-general of Ontario *v.* Mercer; July 18, 1883.

The real question, in their lordships' opinion, is as to the effect of the words "lands, mines, minerals, and royalties" taken together. They see no reason why the word "royalties" in the context should not have its primary and appropriate sense as to all the subjects with which it is here associated,—lands, as well as mines and minerals. Even as to mines and minerals, it here necessarily signifies rights belonging to the crown, *jura coronæ*. The general subject of the section is of a high political nature; it is the attribution of royal territorial rights, for the purposes of revenue and government, to the provinces in which they are situate or arise. In its primary and natural sense, "royalties" is merely the English translation or equivalent of *regalitates*, *jura regalia*, *jura regia*. It stands on the same footing as the right to escheats, to the land between high and low watermark, to treasure trove, and other analogous rights. Their lordships find nothing in the subject or the context, or in any other part of the Act, to justify a restriction of its sense to the exclusion of royalties, such as escheats, in respect of lands. The larger interpretation (which they regard as in itself the more proper and natural) also seems to be that most consistent with the nature and general objects of this particular enactment, which certainly includes all other ordinary territorial revenues of the crown arising within the respective provinces.[1]

**III. Conclusion.**—In giving a digest of the most important judicial decisions on questions of legislative jurisdiction, the writer has not so far attempted any comment upon the many points that naturally suggest remarks, but has thought it the wisest course in a work of this character to allow the reader to study out each subject for himself, and form his own conclusions in matters of doubt. In reviewing these decisions, however, certain constitutional prin-

[1] See 6 Legal News, 234, 244.

ciples may be evolved for the guidance of those engaged in the working out the federal system of the dominion, and to some of these the writer may not inappropriately refer.

The dominion parliament and provincial legislatures are sovereign bodies within their respective constitutional limits. While the dominion parliament has entrusted to it a jurisdiction over matters of national import, and possesses besides a general power to legislate on matters not specifically reserved to the local legislatures, the latter, nevertheless, have had conferred upon them powers as plenary and ample within the limits prescribed by the constitutional law, as are possessed by the general parliament.[1]

In interpreting the constitution, prescribing the limits of the respective legislative authorities in the dominion, every care should be taken to consider each case as it arises, and to determine the true nature and character of the legislation in the particular instance under discussion in order to ascertain the class of subjects to which it really belongs.[2]

In all cases, each legislative body should act within the sphere of its clearly defined powers; and the dominion parliament should no more extend the limits of its jurisdiction by the generality of the application of its law, than a local legislature should extend its jurisdiction by localising the application of its own statute.[3]

The parliament of Canada has a right to interfere with

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[1] *Supra*, p. 686.

[2] *Ib.*, pp. 99-100.

[3] Legal News on Hodge *v* the Queen, Jan. 26, 1884. "The federal parliament cannot extend its own jurisdiction by a territorial extension of its laws, and legislate on subjects constitutionally provincial, by enacting them for the whole dominion, as a provincial legislature cannot extend its jurisdiction over matters constitutionally federal, by a territorial limitation of its laws, and legislate on matters left to the federal power, by enacting them for the province only, as, for instance, incorporate a bank for the province," Taschereau, J., Can. Sup. Court R., iv., 310.

matters of property, civil rights and procedure in a province, when it is necessary for the purpose of legislating generally and effectually in relation to matters which fall properly within the jurisdiction of the general legislature.[1]

The federal parliament must have "a free and unfettered exercise of its powers" with respect to matters placed under its control, even though such exercise may interfere with some of the powers left under provincial control.[2] The exercise of the powers of the local legislatures, in those cases, must necessarily be subject to such regulations as the dominion may lawfully prescribe.[3]

But it is reasonable to assume that the right of the federal parliament to legislate in this particular is limited to such legislation as is absolutely necessary to give full effect to its lawful powers. It cannot be argued from the most strained interpretation of the constitution that the federal legislature should, in the exercise, for instance, of its general power to regulate trade and commerce, or to provide for the peace, order, and good government of Canada, obliterate the jurisdiction of the local legislatures over matters of a purely provincial or municipal character, or assume full control over civil rights and property.[4]

Parliament may, for instance, give powers to a railway company to expropriate and hold lands, as a necessary incident to its right to create such companies;[5] but it cannot lawfully prescribe the terms and conditions on which the conveyance of real estate is to be made to a corporate body, but should leave all laws in each province to operate as to such conveyance.[6] Nor does its authority to legislate for the regulation of trade and commerce com-

[1] *Supra*, pp. 86, 95, 97-98.
[2] Can. Sup. Court R., iv., 308, Taschereau, J.
[3] *Ib.* 248, Ritchie, C.J.
[4] Can. Sup. Court, iv., 272, Fournier, J.
[5] Can. Hans. [1882], 434 (Mr. Blake).
[6] *Supra*, p. 598.

prehend the power to regulate by legislation the contracts of a particular business or trade, as such contracts are matters of civil rights which fall within the jurisdiction of the provincial legislatures.[1]

Parliament itself has, on more than one occasion, recognized the necessity of giving full scope to the powers of the provincial legislatures. For instance, it has refused to embody in an act such clauses as would practically nullify the provisions of a local statute, wholly within the jurisdiction of the local sovereignty, which had, in the first instance, created the corporation.[2]

On the other hand, the local legislatures, whose powers are limited compared with those of the general parliament, must be careful to confine the exercise of them to the particular subjects expressly placed under their jurisdiction, and not to encroach upon subjects which, being of national importance, are, for that very reason, placed under the exclusive control of parliament.[3]

No conflict of jurisdiction need arise because subjects which, in one aspect and for one purpose, fall within the powers of the dominion legislature, may, in another aspect and for another purpose, fall within the powers of the local legislatures.[4] The general authority, for instance, possessed by the dominion to make laws relating to public order and safety, or regulating trade and commerce, does not prevent the local legislatures from exercising its municipal powers with respect to the same subjects.

Laws designed for the promotion of public order, safety, or morals, belong to the subject of public wrongs rather than to that of civil rights. The primary matter dealt with by such legislation is the public order and safety—a matter clearly falling within the general authority of

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[1] *Supra*, pp. 88, 582.

[2] *Supra*, p. 397.

[3] Can. Sup. Court R., iv., 348, Gwynne, J.

[4] *Supra*, p. 684.

Parliament to make laws for the order and good government of Canada.[1] Consequently a uniform law passed by the general legislature to promote temperance in the dominion, does not conflict with the power possessed by a local legislature to pass an act authorizing the making of such police or municipal regulations of a merely local character as are necessary for the good government of taverns and other places licensed to sell liquor by retail.[2]

Where a power is specially granted to one legislature, that power will not be nullified by the fact that, indirectly, it affects a special power granted to the other legislature. "This is incontestable," says a learned judge, "as to the power granted to parliament (section 91, last paragraph),[3] and probably is equally so as to the power granted to the local legislature. In other words, it is only in the case of absolute incompatibility that the special power granted to the local legislature gives way." Such a principle seems absolutely necessary to the efficient operation of the federal constitution.

In the inception of the confederation it was believed by its authors that the care taken to define the respective powers of the several legislative bodies in the dominion would prevent any troublesome or dangerous conflict of authority arising between the central and local governments.[4] The experience of the past sixteen years has proved that it is inevitable in the case of every written constitution, especially in the operation of a federal system—that there should arise, sooner or later, perplexing questions of doubt as to where power exists with respect

[1] Meredith, C.J., in Blouin and the corporation of Quebec, 7 Q.L.R., 18; 5 Legal News, 333.

[2] *Ib.* pp. 95.

[3] "And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this act assigned exclusively to the legislatures of the provinces."

[4] See remarks of Sir John Macdonald in 1865, *supra*, p. 81 *n.*

to certain matters of legislation. It has been sometimes urged in Parliament[1] that committees should be organised in both houses to lay down rules or principles for legislation, in order to prevent, as far as possible, any conflict of jurisdiction. But it is questionable if political bodies can ever be the safest interpreters of constitutional law. It is in the courts that the solution must be sought for the difficulties that arise in the working of a federal constitution. As long as the courts of Canada continue to be respected as impartial, judicious interpreters of the law, and her statesmen are influenced by a desire to accord to each legislative authority in the dominion its legitimate share in legislation, dangerous complications can hardly arise to prevent the harmonious operation of a constitutional system, whose basis rests on the principle of giving due strength to the central government and at the same time every necessary freedom to the different provinces which compose the confederation.

[1] The Senate rules provide for the reference of bills on which the question of jurisdiction has been raised, to the committee of standing orders and private bills; see *supra*, p. 607.

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# APPENDIX.

## A.

### *THE BRITISH NORTH AMERICA ACT*, 1867.

ANNO TRICESIMO ET TRICESIMO-PRIMO VICTORIÆ REGINÆ, CAP. III.

*An Act for the Union of Canada, Nova Scotia and New Brunswick, and the Government thereof, and for Purposes connected therewith.*

[29th March, 1867.]

WHEREAS the Provinces of Canada, Nova Scotia and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America:

Be it therefore enacted and declared by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

## I.—PRELIMINARY.

Short Title. 1. This Act may be cited as the British North America Act, 1867.

Application of Provisions referring to the Queen. 2. The Provisions of this Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland.

## II.—UNION.

Declaration of Union. 3. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of Canada, Nova Scotia and New Brunswick shall form and be One Dominion under the name of Canada; and on and after that Day those Three Provinces shall form and be One Dominion under that Name accordingly.

Construction of subsequent Provisions of Act. 4. The subsequent Provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the Day appointed for the Union taking effect in the Queen's Proclamation; and in the same Provisions, unless it is otherwise expressed or implied, the Name Canada shall be taken to mean Canada as constituted under this Act.

Four Provinces. 5. Canada shall be divided into Four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick.

Provinces of Ontario and Quebec. 6. The Parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada, shall be deemed to be severed, and shall form Two Separate Provinces. The Part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the Part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

Provinces of Nova Scotia and New Brunswick. 7. The Provinces of Nova Scotia and New Brunswick shall have the same Limits as at the passing of this Act.

Decennial Census. 8. In the general Census of the Population of Canada which is hereby required to be taken in the Year One thousand eight hundred and seventy-one, and in every

Tenth Year thereafter, the respective Populations of the Four Provinces shall be distinguished.

### III.—EXECUTIVE POWER.

Declaration of Executive Power in the Queen.

9. The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

Application of Provisions referring to the Governor General.

10. The Provisions of this Act referring to the Governor-General extend and apply to the Governor-General for the Time being of Canada, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of Canada on behalf and in the Name of the Queen, by whatever title he is designated.

Constitution of Privy Council for Canada.

11. There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the Persons who are to be Members of that Council shall be from Time to Time chosen and summoned by the Governor-General and sworn in as Privy Councillors, and Members thereof may be from Time to Time removed by the Governor-General.

All Powers under Acts to be exercised by Governor General with advice of Privy Council, or alone.

12. All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any number of Members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exercisable by the Governor-General, with the Advice or with the Advice and Consent of or in conjunction with the Queen's Privy Council for Canada, or any Members thereof, or by the Governor-General individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.

Application of Provisions referring to Governor General in Council.

13. The Provisions of this Act, referring to the Governor-General in Council shall be construed as referring to

the Governor-General acting by and with the Advice of the Queen's Privy Council for Canada.

Power to Her Majesty to authorize Governor General to appoint Deputies.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor-General from Time to Time to appoint any Person or any Persons jointly or severally to be his Deputy or Deputies within any Part or Parts of Canada, and in that Capacity to exercise during the Pleasure of the Governor-General such of the Powers, Authorities and Functions of the Governor-General as the Governor-General deems it necessary or expedient to assign to him or them, subject to any Limitations or Directions expressed or given by the Queen; but the Appointment of such a Deputy or Deputies, shall not affect the Exercise by the Governor-General himself of any Power, Authority, or Function.

Command of Armed Forces to continue to be vested in the Queen.

15. The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

Seat of Government of Canada.

16. Until the Queen otherwise directs, the Seat of Government of Canada shall be Ottawa.

IV.—LEGISLATIVE POWER.

Constitution of Parliament of Canada.

17. There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Privileges &c., of Houses.

18. The Privileges, Immunities, and Powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from Time to Time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof.

First Session of the Parliament of Canada.

19. The Parliament of Canada shall be called together not later than Six Months after the Union.

Yearly Session of the Parliament of Canada.

20. There shall be a Session of the Parliament of Canada once at least in every Year, so that Twelve Months shall not intervene between the last sitting of the Parliament in one Session and its first Sitting in the next Session.

*The Senate.*

Number of Senators.

21. The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators.

Representation of Provinces in Senate.

22. In relation to the Constitution of the Senate, Canada shall be deemed to consist of Three Divisions—

1. Ontario;

2. Quebec;

3. The Maritime Provinces, Nova Scotia and New Brunswick; which Three Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: Ontario by Twenty-four Senators; Quebec by Twenty-four Senators; and the Maritime Provinces by Twenty-four Senators, Twelve thereof representing Nova Scotia, and Twelve thereof representing New Brunswick.

In the case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for one of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A, to Chapter One of Consolidated Statutes of Canada.

Qualifications of Senator.

23. The Qualifications of a Senator shall be as follows:

(1.) He shall be of the full Age of Thirty years.

(2.) He shall be either a Natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union or of the Parliament of Canada after the Union.

(3.) He shall be legally or equitably seized as of Freehold for his own Use and Benefit of Lands or Tenements held in free and Common Socage, or seized or possessed for his own use and Benefit of Lands or Tenements held in Franc-alleu or in Roture, within the Province for which he is appointed, of the value of Four Thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages and Incumbrances due or payable out of, or charged on or affecting the same;

(4.) His Real and Personal Property shall be together worth four Thousand Dollars over and above his Debts and Liabilities;

(5.) He shall be resident in the Province for which he is appointed;

(6.) In the Case of Quebec, he shall have his Real Property qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

Summons of Senator.

24. The Governor-General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified persons to the Senate; and, subject to the Provisions of this Act, every person so summoned shall become and be a Member of the Senate and a Senator.

Summons of First Body of Senators.

25. Such persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen's Proclamation of Union.

Addition of Senators in certain cases.

26. If at any Time, on the Recommendation of the Governor-General, the Queen thinks fit to direct that Three or Six Members be added to the Senate, the Governor-General may, by Summons to Three or Six Qualified Persons (as the case may be), representing equally the Three Divisions of Canada, add to the Senate accordingly.

Reduction of Senate to normal number.

27. In case of such Addition being at any Time made, the Governor-General shall not summon any Person to the Senate, except on a further like Direction by the Queen on the like Recommendation, until each of the Three Divisions of Canada is represented by Twenty-four Senators, and no more.

Maximum number of Senators.

28. The Number of Senators shall not at any time exceed Seventy-Eight.

Tenure of place in Senate.

29. A Senator shall, subject to the Provisions of this Act, hold his place in the Senate for life.

Resignation of place in Senate.

30. A Senator may, by writing under his hand, addressed to the Governor-General, resign his place in the Senate, and thereupon the same shall be vacant.

Disqualification of Senators.

31. The Place of a Senator shall become vacant in any of the following cases:—

(1.) If for Two Consecutive Sessions of the Parliament he fails to give his Attendance in the Senate:

(2.) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience or

Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen of a Foreign Power:

(3.) If he is adjudged Bankrupt or Insolvent, or applies for the benefit of any Law relating to Insolvent debtors, or becomes a public defaulter:

(4.) If he is attainted of Treason, or convicted of Felony or of any infamous Crime:

(5.) If he ceases to be qualified in respect of Property or of Residence; provided that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of Government of Canada while holding an Office under that Government requiring his Presence there.

Summons on vacancy in Senate.

32. When a Vacancy happens in the Senate, by Resignation, Death or otherwise, the Governor-General shall, by Summons to a fit and qualified Person, fill the Vacancy.

Questions as to qualifications and vacancies in Senate.

33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate, the same shall be heard and determined by the Senate.

Appointment of Speaker of Senate.

34. The Governor-General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead.

Quorum of Senate.

35. Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the exercise of its Powers.

Voting in Senate.

36. Questions arising in the Senate shall be decided by a majority of Voices, and the Speaker shall in all Cases have a Vote, and when the voices are equal the Decision shall be deemed to be in the Negative.

*The House of Commons.*

Constitution of House of Commons in Canada.

37. The House of Commons shall, subject to the Provisions of this Act, consist of One hundred and eighty-one Members, of whom Eighty-two shall be elected for Ontario, Sixty-five for Quebec, Nineteen for Nova Scotia, and Fifteen for New Brunswick.

Summoning of House of Commons.

38. The Governor-General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon and call together the House of Commons.

Senators not to sit in House of Commons.

39. A Senator shall not be capable of being elected or of sitting or voting as a Member of the House of Commons.

Electoral Districts of the four Provinces.

40. Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia and New Brunswick shall, for the Purposes of the Election of Members to serve in the House of Commons, be divided into Electoral Districts as follows:—

1.—ONTARIO.

Ontario shall be divided into the Counties, Ridings of Counties, Cities, Parts of Cities, and Towns enumerated in the First Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return One Member.

2.—QUEBEC.

Quebec shall be divided into Sixty-five Electoral Districts, composed of the Sixty-five Electoral Divisions into which Lower Canada is at the passing of this Act divided under Chapter Two of the Consolidated Statutes of Canada, Chapter Seventy-five of the Consolidated Statutes for Lower Canada, and the Act of the Province of Canada of the Twenty-third year of the Queen, Chapter One, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the Purposes of this Act an Electoral District entitled to return One Member.

3.—NOVA SCOTIA.

Each of the Eighteen Counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled to return Two Members, and each of the other Counties One Member.

4.—NEW BRUNSWICK.

Each of the Fourteen Counties into which New Brunswick is divided, including the City and County of St. John, shall be an Electoral District. The City of St.

John shall also be a separate Electoral District. Each of those Fifteen Electoral Districts shall be entitled to return One Member.

Continuance of existing Election Laws until Parliament of Canada otherwise provides.

41. Until the Parliament of Canada otherwise provides, all Laws in force in the several Provinces at the Union relative to the following Matters or any of them, namely, —the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which Elections may be continued, the Trial of Controverted Elections and Proceedings, incident thereto, the vacating of Seats of Members, and the Execution of new Writs, in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces.

Proviso as to Algoma

Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a Vote.

Writs for first Election.

42. For the First Election of Members to serve in the House of Commons the Governor-General shall cause Writs to be issued by such Person, in such Form and addressed to such Returning Officers as he thinks fit.

The Person issuing Writs under this Section shall have the like Powers as are possessed at the Union by the Officers charged with the issuing of Writs for the Election of Members to serve in the respective House of Assembly or Legislative Assembly of the Province of Canada, Nova Scotia or New Brunswick; and the Returning Officers to whom Writs are directed under this Section shall have the like Powers as are possessed at the Union by the Officers charged with the returning of Writs for the Election of Members to serve in the same respective House of Assembly or Legislative Assembly.

As to Casual Vacancies.

43. In case a vacancy in the Representation in the House of Commons of any Electoral District happens before the Meeting of the Parliament, or after the Meeting of the Parliament before Provision is made by the

Parliament in this Behalf, the Provisions of the last foregoing Section of this Act shall extend and apply to the issuing and returning of a Writ in respect of such vacant District.

As to Election of Speaker of House of Commons.

44. The House of Commons, on its first assembling after a general Election, shall proceed with all practicable Speed to elect One of its Members to be Speaker.

As to filling up Vacancy in Office of Speaker.

45. In case of a Vacancy happening in the Office of Speaker, by Death, Resignation or otherwise, the House of Commons shall, with all practicable Speed, proceed to elect another of its Members to be Speaker.

Speaker to preside.

46. The Speaker shall preside at all Meetings of the House of Commons.

Provision in case of absence of Speaker.

47. Until the Parliament of Canada otherwise provides, in case of the Absence, for any Reason, of the Speaker from the Chair of the House of Commons for a period of Forty-Eight Consecutive Hours, the House may elect another of its Members to act as Speaker, and the Member so elected shall, during the Continuance of such Absence of the Speaker, have and execute all the Powers, Privileges and Duties of Speaker.

Quorum of House of Commons.

48. The Presence of at least Twenty Members of the House of Commons shall be necessary to constitute a Meeting of the House for the Exercise of its Powers; and for that Purpose the Speaker shall be reckoned as a Member.

Voting in House of Commons.

49. Questions arising in the House of Commons shall be decided by a Majority of Voices other than that of the Speaker, and when the Voices are equal, but not otherwise, the Speaker shall have a Vote.

Duration of House of Commons.

50. Every House of Commons shall continue for Five Years from the day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor-General), and no longer.

Decennial Readjustment of Representation.

51. On the completion of the Census in the Year one thousand eight hundred and seventy-one, and of each subsequent decennial Census, the Representation of the Four Provinces shall be readjusted by such Authority, in such a manner, and from such time as the Parliament of Canada from Time to Time provides, subject and according to the following Rules:—

(1.) Quebec shall have the fixed Number of Sixty-five Members:

(2.) There shall be assigned to each of the other Provinces such a number of Members as will bear the same Proportion to the Number of its Population (ascertained at such Census) as the Number Sixty-five bears to the Number of the Population of Quebec, (so ascertained):

(3.) In the Computation of the Number of Members for a Province a fractional Part not exceeding One-half of the whole number requisite for entitling the Province to a Member shall be disregarded; but a fractional Part exceeding One-half of that number shall be equivalent to the whole number:

(4.) On any such Readjustment the Number of Members for a Province shall not be reduced unless the Proportion which the number of the Population of the Province bore to the Number of the aggregate population of Canada at the then last preceding Readjustment of the Number of Members for the Province is ascertained at the then latest Census to be diminished by One-Twentieth Part or upwards:

(5.) Such Readjustment shall not take effect until the Termination of the then existing Parliament.

Increase of number of House of Commons.

**52.** The Number of Members of the House of Commons may be from Time to Time increased by the Parliament of Canada, provided the proportionate Representation of the Province prescribed by this Act is not thereby disturbed.

*Money Votes; Royal Assent.*

Appropriation and Tax Bills.

**53.** Bills for appropriating any part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

Recommendation of money votes.

**54.** It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose, that has not been first recommended to that House by Message of the Governor-General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

Royal Assent to Bills, &c.

**55.** Where a Bill passed by the Houses of the Parliament is presented to the Governor-General for the Queen's Assent, he shall declare, according to his discretion, but subject to the Provisions of this Act and to Her Majesty's

Instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the Signification of the Queen's Pleasure.

Disallowance by Order in Council of Act assented to by Governor General.

56. Where the Governor-General assents to a Bill in the Queen's Name, he shall by the first convenient Opportunity send an authentic Copy of the Act to One of Her Majesty's Principal Secretaries of State, and if the Queen in Council within Two Years after receipt thereof by the Secretary of State thinks fit to disallow the Act, such Disallowance (with a certificate of the Secretary of State of the Day on which the Act was received by him) being signified by the Governor-General, by speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the Day of such Signification.

Signification of Queen's pleasure on Bill reserved.

57. A Bill reserved for the Signification of the Queen's Pleasure shall not have any Force unless and until within Two Years from the day on which it was presented to the Governor-General for the Queen's Assent, the Governor-General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the assent of the Queen in Council.

An Entry of every such Speech, Message, or Proclamation shall be made in the Journal of each House, and a Duplicate thereof duly attested shall be delivered to the proper officer to be kept among the Records of Canada.

## V.—PROVINCIAL CONSTITUTIONS.

### *Executive Power.*

Appointment of Lieutenant Governors of Provinces.

58. For each Province there shall be an Officer, styled the Lieutenant-Governor, appointed by the Governor-General in Council by Instrument under the Great Seal of Canada.

Tenure of office of Lieutenant Governor.

59. A Lieutenant-Governor shall hold Office during the Pleasure of the Governor-General; but any Lieutenant-Governor appointed after the Commencement of the First Session of the Parliament of Canada shall not be removeable within Five Years from his Appointment, except for cause assigned, which shall be communicated to him in Writing within One Month after the Order for his Removal is made, and shall be communicated by Message to the Senate and to the House of Commons within One Week thereafter if the Parliament is then

sitting, and if not then within One week after the Commencement of the next Session of the Parliament.

Salaries of Lieutenant Governors.

60. The Salaries of the Lieutenant-Governors shall be fixed and provided by the Parliament of Canada.

Oaths, &c., of Lieuten't Governor.

61. Every Lieutenant-Governor shall, before assuming the Duties of his office, make and subscribe before the Governor-General or some Person authorized by him, Oaths of Allegiance and Office similar to those taken by the Governor General.

Application of provisions referring to Lieutenant Governor.

62. The Provisions of this Act referring to the Lieutenant-Governor extend and apply to the Lieutenant-Governor for the Time being of each Province or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of the Province, by whatever Title he is designated.

Appointment of Executive Officers for Ontario and Quebec.

63. The Executive Council of Ontario and Quebec shall be composed of such Persons as the Lieutenant-Governor from Time to Time thinks fit, and in the first instance of the following Officers namely, the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, with in Quebec, the Speaker of the Legislative Council and the Solicitor General.

Executive Government of Nova Scotia and New Brunswick.

64. The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act.

Powers to be exercised by Lieutenant Governor of Ontario or Quebec with advice or alone.

65. All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exerciseable by the respective Governors or Lieutenant-Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils or with any Number of Members thereof, or by those Governors or Lieutenant-Governors individually shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant-Governor of

Ontario and Quebec respectively, with the Advice, or with the Advice and Consent of, or in conjunction with the respective Executive Councils or any Members thereof, or by the Lieutenant-Governor individually, as the Case requires, subject nevertheless, (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland), to be abolished or altered by the respective Legislatures of Ontario and Quebec.

Application of provisions referring to Lieutenant Governor in Council.

66. The Provisions of this Act referring to the Lieutenant-Governor in Council shall be construed as referring to the Lieutenant-Governor of the Province acting by and with the Advice of the Executive Council thereof.

Administration in absence, &c., of Lieutenant Governor.

67. The Governor-General in Council may from Time to Time appoint an Administrator to execute the Office and Functions of Lieutenant-Governor during his Absence, Illness, or other Inability.

Seats of Provincial Governments.

68. Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the Seats of Government of the Provinces shall be as follows, namely,—of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

*Legislative Power.*

1.—ONTARIO.

Legislature for Ontario.

69. There shall be a Legislature for Ontario consisting of the Lieutenant-Governor and of One House, styled the Legislative Assembly of Ontario.

Electoral Districts.

70. The Legislative Assembly of Ontario shall be composed of Eighty-two Members, to be elected to represent the Eighty-two Electoral Districts set forth in the First Schedule to this Act.

2.—QUEBEC.

Legislature for Quebec.

71. There shall be a Legislature for Quebec, consisting of the Lieutenant-Governor and Two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

Constitution of Legislative Council.

72. The Legislative Council of Quebec shall be composed of Twenty-four Members, to be appointed by the

Lieutenant-Governor in the Queen's Name by Instrument under the Great Seal of Quebec, one being appointed to represent each of the Twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding Office for the Term of his Life, unless the Legislature of Quebec otherwise provides under the Provisions of this Act.

Qualification of Legislative Councillors.

73. The Qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec.

Resignation, Disqualification, &c.

74. The Place of a Legislative Councillor of Quebec shall become vacant in the Cases, *mutatis mutandis*, in which the Place of Senator becomes vacant.

Vacancies.

75. When a vacancy happens in the Legislative Council of Quebec by Resignation, Death, or otherwise, the Lieutenant-Governor, in the Queen's name, by Instrument under the Great Seal of Quebec, shall appoint a fit and qualified Person to fill the Vacancy.

Questions as to Vacancies, &c.

76. If any Question arises respecting the Qualification of a Legislative Councillor of Quebec, or a vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council.

Speaker of Legislative Council.

77. The Lieutenant-Governor may, from Time to Time, by Instrument under the Great Seal of Quebec, appoint a Member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his Stead.

Quorum of Legislative Council.

78. Until the Legislature of Quebec otherwise provides, the Presence of at least Ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a Meeting for the Exercise of its Powers.

Voting in Legislative Council.

79. Questions arising in the Legislative Council of Quebec shall be decided by a Majority of Voices, and the Speaker shall in all cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the negative.

Constitution of Legislative Assembly of Quebec.

80. The Legislative Assembly of Quebec shall be composed of Sixty-five Members, to be elected to represent the Sixty-five Electoral Divisions or Districts of Lower Canada in this Act referred to, subject to Alteration thereof by the Legislature of Quebec: Provided that it

shall not be lawful to present to the Lieutenant-Governor of Quebec for Assent any Bill for altering the Limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule to this Act, unless the Second and Third Readings of such Bill have been passed in the Legislative Assembly with the Concurrence of the Majority of the Members representing all those Electoral Divisions or Districts, and the Assent shall not be given to such Bill unless an Address has been presented by the Legislative Assembly to the Lieutenant-Governor stating that it has been so passed.

## 3.—ONTARIO AND QUEBEC.

First Session of Legislatures.

81. The Legislatures of Ontario and Quebec respectively shall be called together not later than Six Months after the Union.

Summoning of Legislative Assemblies

82. The Lieutenant-Governor of Ontario and of Quebec shall, from time to time, in the Queen's Name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

Restriction on election of holders of offices.

83. Until the Legislature of Ontario or of Quebec otherwise provides, a Person accepting or holding in Ontario or in Quebec, any Office, Commission or Employment, permanent or temporary, at the nomination of the Lieutenant-Governor, to which an annual Salary, or any Fee, Allowance, Emolument or profit of any kind or Amount whatever from the Province is attached, shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this Section shall make ineligible any Person being a Member of the Executive Council of the respective Province, or holding any of the following offices, that is to say, the offices of Attorney-General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor-General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such office.

Continuance of existing election laws.

84. Until the Legislatures of Ontario and Quebec respectively otherwise provide, all Laws which at the Union are in force in those Provinces respectively, relative to the following matters or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected to sit or vote as Members of the

Assembly of Canada, the Qualifications or Disqualifications of Voters, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which such Elections may be continued, and the trial of Controverted Elections and the Proceedings incident thereto, the vacating of the Seats of Members, and the issuing and execution of new Writs in case of Seats vacated otherwise than by Dissolution, shall respectively apply to Elections of Members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Provided that until the Legislature of Ontario otherwise provides, at any Election for a Member of the Legislative Assembly of Ontario for the District of Algoma, in addition to persons qualified by the Law of the Province of Canada to vote, every male British Subject aged Twenty-one Years or upwards, being a Householder, shall have a Vote. Proviso as to Algoma.

85. Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for Four Years from the Day of the Return of the Writs for choosing the same (subject, nevertheless, to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant-Governor of the Province), and no longer. Duration of Legislative Assemblies.

86. There shall be a Session of the Legislature of Ontario and of that of Quebec once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first sitting in the next Session. Yearly Session of Legislature.

87. The following Provisions of this Act respecting the House of Commons of Canada, shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say,—the Provisions relating to the Election of a Speaker originally and on Vacancies, the Duties of the Speaker, the Absence of the Speaker, the Quorum, and to the Mode of Voting, as if those Provisions were here re-enacted and made applicable in terms to each such Legislative Assembly. Speaker, quorum, &c

## 4.—NOVA SCOTIA AND NEW BRUNSWICK.

88. The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of Constitutions of Legislatures of Nova Scotia and New Brunswick.

this Act; and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the period for which it was elected.

### 5.—ONTARIO, QUEBEC AND NOVA SCOTIA.

First elections.

89. Each of the Lieutenant-Governors of Ontario, Quebec, and Nova Scotia, shall cause Writs to be issued for the first Election of Members of the Legislative Assembly thereof in such Form and by such Person as he thinks fit, and at such Time and addressed to such Returning Officer as the Governor-General directs, and so that the first Election of Member of Assembly for any Electoral District or any Subdivision thereof shall be held at the same Time and at the same Places as the Election for a Member to serve in the House of Commons of Canada for that Electoral District.

### 6.—THE FOUR PROVINCES.

Application to Legislatures of provisions respecting money votes, &c.

90. The following Provisions of this Act respecting the Parliament of Canada, namely,—the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant-Governor of the Province for the Governor-General, of the Governor-General for the Queen, and for a Secretary of State, of One Year for Two Years, and of the Province for Canada.

## VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

### *Powers of the Parliament.*

Legislative Authority of Parliament of Canada.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and Good Government of Canada in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of

Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say:

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The Raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country, or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of the Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

*Exclusive Powers of Provincial Legislatures.*

Subjects of exclusive Provincial Legislation.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say:—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices, and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province, and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, and Auctioneer, and other Licenses, in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings, other than such as are of the following Classes,—

*a.* Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

*b.* Lines of Steam Ships between the Province and any British or Foreign Country:

*c.* Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.

12. Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of subjects enumerated in this Section.

16. Generally all matters of a merely local or private nature in the Province.

*Education.*

Legislation respecting education.

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

(1.) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union;

(2.) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects, shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec;

(3.) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor-General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education;

(4.) In case any such Provincial Law as from Time to Time seems to the Governor-General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor-General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section, and of any Decision of the Governor-General in Council under this Section.

*Uniformity of Laws in Ontario, Nova Scotia and New Brunswick.*

Legislation for uniformity of laws in three Provinces.

94. Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia and New Brunswick, and of the Procedure of all or any of the Courts in those Three Provinces, and from and after the passing of any Act in that behalf, the Power of the Parliament of Canada to make Laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

*Agriculture and Immigration.*

Concurrent powers of legislation respecting agriculture, &c.

95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province, relative to Agriculture or to Immigration, shall have effect in and for the Province, as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

VII.—JUDICATURE.

Appointment of Judges.

96. The Governor-General shall appoint the Judges of the Superior, District and County Courts in each Pro-

vince, except those of the Courts of Probate in Nova Scotia and New Brunswick.

Selection of Judges in Ontario, &c.

97. Until the Laws relative to Property and Civil Rights in Ontario, Nova Scotia and New Brunswick, and the Procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor-General shall be selected from the respective Bars of those Provinces.

Selection of Judges in Quebec.

98. The Judges of the Courts of Quebec, shall be selected from the Bar of that Province.

Tenure of office of Judges of Superior Courts.

99. The Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor-General on Address of the Senate and House of Commons.

Salaries, &c., of Judges.

100. The Salaries, Allowances and Pensions of the Judges of the Superior, District and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in cases where the Judges thereof are for the time being paid by Salary, shall be fixed and provided by the Parliament of Canada.

General Court of Appeal, &c.

101. The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time, provide for the Constitution, Maintenance and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.

VIII.—REVENUES; DEBTS; ASSETS; TAXATION.

Creation of Consolidated Revenue Fund.

102. All Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia and New Brunswick before and at the Union had and have power of Appropriation, except such Portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special Powers conferred on them by this Act, shall form One Consolidated Revenue Fund, to be appropriated for the Public Service of Canada in the Manner and subject to the Charges in this Act provided.

Expenses of collection, &c.

103. The Consolidated Revenue Fund of Canada shall be permanently charged with the Costs, Charges and Expenses incident to the Collection, Management, and Receipt thereof, and the same shall form the First Charge thereon, subject to be reviewed and audited in such Man-

ner as shall be ordered by the Governor General in Council until the Parliament otherwise provides.

Interest of Provincial public debts.

104. The annual Interest of the Public Debts of the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union shall form the Second Charge on the Consolidated Revenue Fund of Canada.

Salary of Governor General.

105. Unless altered by the Parliament of Canada, the Salary of the Governor General shall be Ten Thousand Pounds Sterling Money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of Canada, and the same shall form the Third Charge thereon.

Appropriation from time to time.

106. Subject to the several Payments by this Act charged on the Consolidated Revenue Fund of Canada, the same shall be appropriated by the Parliament of Canada for the Public Service.

Transfer of stocks, &c.

107. All Stocks, Cash, Bankers' Balances, and Securities for Money belonging to each Province at the Time of the Union, except as in this Act mentioned, shall be the Property of Canada, and shall be taken in Reduction of the amount of the respective Debts of the Provinces at the Union.

Transfer of property in Schedule.

108. The Public Works and Property of each Province enumerated in the Third Schedule to this Act shall be the Property of Canada.

Property in lands, mines, &c.

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the Union, and all sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.

Assets connected with Provincial debts.

110. All Assets connected with such Portions of the Public Debt of each Province as are assumed by that Province shall belong to that Province.

Canada to be liable for Provincial debts.

111. Canada shall be liable for the Debts and Liabilities of each Province existing at the Union.

Debts of Ontario and Quebec.

112. Ontario and Quebec conjointly shall be liable to Canada for the amount (if any) by which the Debt of the

Province of Canada exceeds at the Union Sixty-two million five hundred thousand Dollars, and shall be charged with Interest at the Rate of Five per centum per annum thereon.

Assets of Ontario and Quebec.

113. The Assets enumerated in the Fourth Schedule to this Act, belonging at the Union to the Province of Canada, shall be the Property of Ontario and Quebec conjointly.

Debt of Nova Scotia.

114. Nova Scotia shall be liable to Canada for the Amount (if any) by which its Public Debt exeeeds at the Union Eight million Dollars, and shall be charged with Interest at the rate of Five per Centum per Annum thereon.

Debt of New Brunswick.

115. New Brunswick shall be liable to Canada for the Amount (if any) by which its Public Debt exceeds at the Union Seven million Dollars, and shall be charged with Interest at the rate of Five per Centum per Annum thereon.

Payment of interest to Nova Scotia and New Brunswick.

116. In case the Public Debts of Nova Scotia and New Brunswick do not at the Union amount to Eight million and Seven million Dollars respectively, they shall respectively receive, by half-yearly Payments in advance from the Government of Canada, Interest at Five per Centum per Annum on the Difference between the actual Amounts of their respective Debts and such stipulated Amounts.

Provincial public property.

117. The several Provinces shall retain all their respective Public Property not otherwise disposed of in this Act, subject to the Right of Canada to assume any Lands or Public Property required for Fortifications or for the Defence of the Country.

Grants to Provinces.

118. The following sums shall be paid yearly by Canada to the several Provinces for the support of their Governments and Legislatures :

| | DOLLARS. |
|---|---|
| Ontario - - - - - - - - - - | Eighty thousand. |
| Quebec - - - - - - - - - - | Seventy thousand. |
| Nova Scotia - - - - - - - | Sixty thousand. |
| New Brunswick - - - - - - | Fifty thousand. |
| | Two hundred and Sixty thousand ; |

and an annual Grant in aid of each Province shall be made, equal to Eighty Cents per Head, of the Population as ascertained by the Census of One Thousand eight

hundred and Sixty-one, and in the case of Nova Scotia and New Brunswick, by each subsequent Decennial Census until the Population of each of those two Provinces amounts to Four hundred thousand Souls, at which Rate such Grant shall thereafter remain. Such Grant shall be in full Settlement of all future Demands on Canada, and shall be paid half-yearly in advance to each Province; but the Government of Canada shall deduct from such Grants, as against any Province, all Sums chargeable as Interest on the Public Debt of that Province in excess of the several amounts stipulated in this Act.

Further grant to New Brunswick.

119. New Brunswick shall receive, by half-yearly Payments in advance from Canada, for the Period of Ten Years from the Union, an additional Allowance of Sixty-three thousand Dollars per Annum; but as long as the Public Debt of that Province remains under Seven million dollars, a deduction equal to the Interest at Five per Centum per Annum on such Deficiency shall be made from that Allowance of Sixty-three thousand Dollars.

Form of payments.

120. All Payments to be made under this Act, or in discharge of Liabilities created under any Act of the Provinces of Canada, Nova Scotia and New Brunswick respectively, and assumed by Canada, shall until the Parliament of Canada otherwise directs, be made in such Form and Manner as may from Time to Time be ordered by the Governor General in Council.

Canadian manufactures, &c.

121. All Articles of the Growth, Produce or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

Continuance of customs and excise laws.

122. The Customs and Excise Laws of each Province shall, subject to the Provisions of this Act, continue in force until altered by the Parliament of Canada.

Exportation and importation as between two Provinces.

123. Where Customs Duties are, at the Union, leviable on any Goods, Wares or Merchandises in any Two Provinces, those Goods, Wares and Merchandises may, from and after the Union, be imported from one of those Provinces into the other of them, on Proof of Payment of the Customs Duty leviable thereon in the Province of Exportation, and on payment of such further amount (if any) of Customs Duty as is leviable thereon in the Province of Importation.

Lumber dues in New Brunswick.

124. Nothing in this Act shall affect the Right of New Brunswick to levy the Lumber Dues provided in Chapter Fifteen of Title Three of the Revised Statutes of New

Brunswick, or in any Act amending that Act before or after the Union, and not increasing the Amount of such Dues; but the Lumber of any of the Provinces other than New Brunswick shall not be subject to such Dues.

Exemption of public lands, &c.

125. No Lands or Property belonging to Canada or any Province shall be liable to Taxation.

Provincial consolidated revenue fund.

126. Such Portions of the Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia and New Brunswick had before the Union, Power of Appropriation, as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all Duties and Revenues raised by them in accordance with the Special Powers conferred upon them by this Act, shall in each Province form One Consolidated Revenue Fund to be appropriated for the Public Service of the Province.

## IX.—MISCELLANEOUS PROVISIONS.

### *General.*

As to Legislative Councillors of Provinces becoming Senators.

127. If any Person, being, at the passing of this Act a Member of the Legislative Council of Canada, Nova Scotia or New Brunswick, to whom a Place in the Senate is offered, does not within Thirty Days thereafter, by Writing under his Hand, addressed to the Governor-General of the Province of Canada or to the Lieutenant-Governor of Nova Scotia or New Brunswick (as the case may be), accept the same, he shall be deemed to have declined the same; and any Person who, being at the passing of this Act a Member of the Legislative Council of Nova Scotia or New Brunswick, accepts a Place in the Senate, shall thereby vacate his seat in such Legislative Council.

Oath of allegiance, &c.

128. Every Member of the Senate or House of Commons of Canada shall, before taking his Seat therein, take and subscribe before the Governor-General or some Person authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall, before taking his Seat therein, take and subscribe before the Lieutenant-Governor of the Province, or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor-General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule.

Continuance of existing laws, courts, officers, &c.

129. Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction, and all Legal Commissions, Powers and Authorities, and all Officers Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue, in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act.

Transfer of officers to Canada.

130. Until the Parliament of Canada otherwise provides, all Officers of the several Provinces having Duties to discharge in relation to Matters other than those coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces, shall be Officers of Canada, and shall continue to discharge the Duties of their respective Offices under the same Liabilities, Responsibilities and Penalties, as if the Union had not been made.

Appointment of new officers.

131. Until the Parliament of Canada otherwise provides, the Governor-General in Council may from Time to Time appoint such Officers as the Governor General in Council deems necessary or proper for the effectual Execution of this Act.

Treaty obligations.

132. The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

Use of English and French languages.

133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

*Ontario and Quebec.*

Appointment of executive officers for Ontario and Quebec.

134. Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant-Governors of Ontario and Quebec may each appoint under the Great Seal of the Province, the following officers, to hold office during Pleasure, that is to say,—the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands and the Commissioner of Agriculture and Public Works, and, in the case of Quebec, the Solicitor-General, and may, by Order of the Lieutenant-Governor in Council from Time to Time prescribe the Duties of those Officers and of the several Departments over which they shall preside, or to which they shall belong, and of the officers and Clerks thereof, and may also appoint other and additional Officers to hold Office during Pleasure, and may from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof.

Powers, duties, &c., of executive officers.

135. Until the Legislature of Ontario or Quebec otherwise provides, all Rights, Powers, Duties, Functions, Responsibilities, or Authorities at the passing of this Act vested in or imposed on the Attorney-General, Solicitor-General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works and Minister of Agriculture and Receiver-General, by any Law, Statute or Ordinance of Upper Canada, Lower Canada, or Canada, and not repugnant to this Act, shall be vested in or imposed on any officer to be appointed by the Lieutenant-Governor for the Discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the Duties and Functions of the Office of Minister of Agriculture at the passing of this Act imposed by the Law of the Province of Canada as well as those of the Commissioner of Public Works.

Great Seals.

136. Until altered by the Lieutenant-Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same Design, as those used in the Provinces of Upper Canada and Lower Canada respectively before their Union as the Province of Canada.

Construction of temporary Acts.

137. The words "and from thence to the End of the then next ensuing Session of the Legislature," or words to the same effect used in any temporary Act of the

Province of Canada not expired before the Union, shall be construed to extend and apply to the next Session of the Parliament of Canada, if the subject-matter of the Act is within the powers of the same as defined by this Act, or to the next Sessions of the Legislatures of Ontario and Quebec respectively, if the subject matter of the Act is within the powers of the same as defined by this Act.

As to errors in names.

138. From and after the Union, the use of the words "Upper Canada" instead of "Ontario," or "Lower Canada" instead of "Quebec," in any Deed, Writ, Process, Pleading, Document, Matter or Thing, shall not invalidate the same.

As to issue of Proclamations before Union, to commence after Union.

139. Any Proclamation under the Great Seal of the Province of Canada, issued before the Union, to take effect at a time which is subsequent to the Union, whether relating to that Province or to Upper Canada, or to Lower Canada, and the several matters and things therein proclaimed, shall be and continue of like force and effect as if the Union had not been made.

As to issue of Proclamations after Union.

140. Any Proclamation which is authorized by any Act of the Legislature of the Province of Canada, to be issued under the Great Seal of the Province of Canada, whether relating to that Province or to Upper Canada, or to Lower Canada, and which is not issued before the Union, may be issued by the Lieutenant-Governor of Ontario or of Quebec, as its subject-matter requires, under the Great Seal thereof; and from and after the issue of such Proclamation, the same and the several matters and things therein proclaimed, shall be and continue of the like force and effect in Ontario or Quebec as if the Union had not been made.

Penitentiary.

141. The Penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the Penitentiary of Ontario and of Quebec.

Arbitration respecting debts, &c.

142. The Division and Adjustment of the Debts, Credits, Liabilities, Properties and Assets of Upper Canada and Lower Canada shall be referred to the arbitrament of Three Arbitrators, One chosen by the Government of Ontario, One by the Government of Quebec, and One by the Government of Canada; and the Selection of the Arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the Arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or in Quebec.

Division of records.

143. The Governor-General in Council may from Time to Time, order that such and so many of the Records, Books, and Documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the property of that Province; and any copy thereof or extract therefrom, duly certified by the Officer having charge of the original thereof, shall be admitted as Evidence.

Constitution of townships in Quebec.

144. The Lieutenant-Governor of Quebec may from Time to Time, by Proclamation under the Great Seal of the Province, to take effect from a day to be appointed therein, constitute Townships in those Parts of the Province of Quebec in which Townships are not then already constituted, and fix the Metes and Bounds thereof.

X.—INTERCOLONIAL RAILWAY.

Duty of Government and Parliament of Canada to make Railway herein described.

145. Inasmuch as the Provinces of Canada, Nova Scotia, and New Brunswick have joined in a Declaration that the Construction of the Intercolonial Railway is essential to the Consolidation of the Union of British North America, and to the Assent thereto of Nova Scotia and New Brunswick, and have consequently agreed that Provision should be made for its immediate construction by the Government of Canada: Therefore, in order to give effect to that Agreement, it shall be the Duty of the Government and Parliament of Canada to provide for the Commencement, within Six Months after the Union, of a Railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the Construction thereof without Intermission, and the Completion thereof with all practicable Speed.

XI.—ADMISSION OF OTHER COLONIES.

Power to admit Newfoundland, &c., into the Union.

146. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honorable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions

of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

As to Representation of Newfoundland and Prince Edward Island in Senate.

147. In case of the Admission of Newfoundland and Prince Edward Island or either of them, each shall be entitled to a Representation, in the Senate of Canada, of Four Members, and (notwithstanding anything in this Act) in case of the Admission of Newfoundland, the Normal number of Senators shall be Seventy-six and their maximum Number shall be Eighty-two; but Prince Edward Island, when admitted, shall be deemed to be comprised in the third of the Three Divisions into which Canada is, in relation to the Constitution of the Senate, divided by this Act, and accordingly, after the Admission of Prince Edward Island, whether Newfoundland is admitted or not, the Representation of Nova Scotia and New Brunswick in the Senate shall, as Vacancies occur, be reduced from Twelve to Ten Members respectively, and the Representation of each of those Provinces shall not be increased at any Time beyond Ten, except under the Provisions of this Act, for the Appointment of Three or Six additional Senators under the Direction of the Queen.

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## SCHEDULES.

### THE FIRST SCHEDULE.

*Electoral Districts of Ontario.*

### A.

### EXISTING ELECTORAL DIVISIONS.

#### COUNTIES.

1. Prescott.
2. Glengarry.
3. Stormont.
4. Dundas.
5. Russell.
6. Carleton.
7. Prince Edward.
8. Halton.
9. Essex.

#### RIDINGS OF COUNTIES.

10. North Riding of Lanark.
11. South Riding of Lanark.

12. North Riding of Leeds and North Riding of Grenville.
13. South Riding of Leeds.
14. South Riding of Grenville.
15. East Riding of Northumberland.
16. West Riding of Northumberland (excepting therefrom the Township of South Monaghan.)
17. East Riding of Durham.
18. West Riding of Durham.
19. North Riding of Ontario.
20. South Riding of Ontario.
21. East Riding of York.
22. West Riding of York.
23. North Riding of York.
24. North Riding of Wentworth.
25. South Riding of Wentworth.
26. East Riding of Elgin.
27. West Riding of Elgin.
28. North Riding of Waterloo.
29. South Riding of Waterloo.
30. North Riding of Brant.
31. South Riding of Brant.
32. North Riding of Oxford.
33. South Riding of Oxford.
34 East Riding of Middlesex.

CITIES, PARTS OF CITIES AND TOWNS.

35. West Toronto.
36. East Toronto.
37. Hamilton.
38. Ottawa.
39. Kingston.
40. London.
41. Town of Brockville, with the Township of Elizabethtown thereto attached.
42 Town of Niagara, with the Township of Niagara thereto attached.
43. Town of Cornwall, with the Township of Cornwall thereto attached.

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B.

NEW ELECTORAL DIVISIONS.

44. The Provisional Judicial District of Algoma.

The County of BRUCE, divided into two Ridings, to be called respectively the North and South Ridings:—

45. The North Riding of Bruce to consist of the Townships of Bury, Lindsay, Eastnor, Albemarle, Amabel, Arran, Bruce, Elderslie, and Saugeen, and the Village of Southampton.

46. The South Riding of Bruce to consist of the Townships of Kincardine (including the Village of Kincardine), Greenock, Brant, Huron, Kinloss, Culross, and Carrick.

The County of HURON, divided into Two Ridings, to be called respectively the North and South Ridings:—

47. The North Riding to consist of the Townships of Ashfield, Wawanosh, Turnberry, Howick, Morris, Grey, Colborne, Hullett (including the Village of Clinton), and McKillop.

48. The South Riding to consist of the Town of Goderich, and the Townships of Goderich, Tuckersmith, Stanley, Hay, Usborne, and Stephen.

The County of MIDDLESEX, divided into Three Ridings, to be called respectively the North, West, and East Ridings:—

49. The North Riding to consist of the Townships of McGillivray and Biddulph (taken from the County of Huron), and Williams East, Williams West, Adelaide and Lobo.

50. The West Riding to consist of the Townships of Delaware, Caradoc, Metcalfe, Mosa and Ekfrid, and the Village of Strathroy.

[The East Riding to consist of the Townships now embraced therein, and be bounded as it is at present.]

51. The County of LAMBTON to consist of the Townships of Bosanquet, Warwick, Plympton, Sarnia, Moore, Enniskillen and Brooke, and the Town of Sarnia.

52. The County of KENT to consist of the Townships of Chatham, Dover, East Tilbury, Romney, Raleigh and Harwich, and the Town of Chatham.

53. The County of BOTHWELL, to consist of the Townships of Sombra, Dawn and Euphemia (taken from the County of Lambton), and the Townships of Zone, Camden with the Gore thereof, Orford and Howard (taken from the County of Kent).

The County of GREY, divided into Two Ridings, to be called respectively the South and North Ridings:

54. The South Riding to consist of the Townships of Bentinck, Glenelg, Artemesia, Osprey, Normanby, Egremont, Proton and Melancthon.

55. The North Riding to consist of the Townships of Collingwood, Euphrasia, Holland, St. Vincent, Sydenham, Sullivan, Derby and Keppel, Sarawak and Brooke, and the Town of Owen Sound.

The County of PERTH, divided into Two Ridings, to be called respectively the South and North Ridings:—

56. The North Riding to consist of the Townships of Wallace, Elma, Logan, Ellice, Mornington and North Easthope, and the Town of Stratford.

57. The South Riding to consist of the Townships of Blanchard, Downie, South Easthope, Fullarton, Hibbert, and the Villages of Mitchell and Ste. Marys.

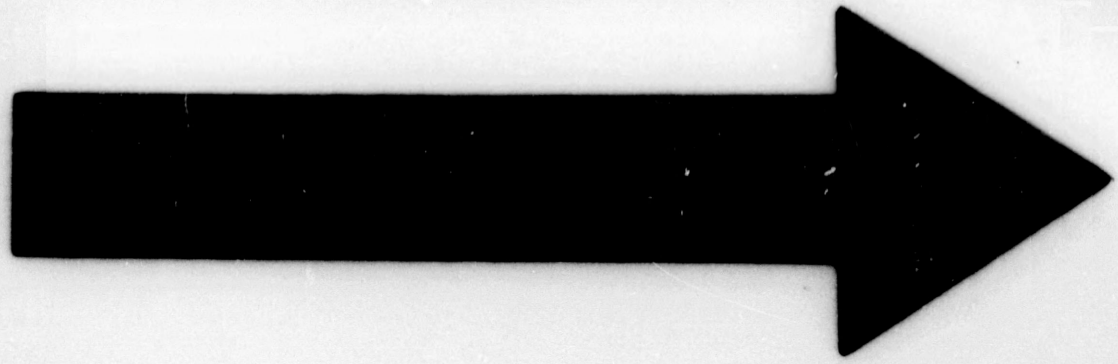
The County of WELLINGTON, divided into Three Ridings, to be called respectively North, South and Centre Ridings:—

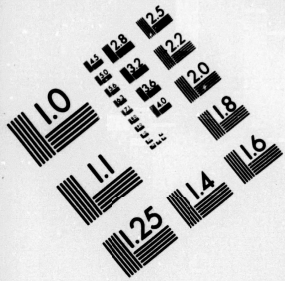
58. The North Riding to consist of the Townships of Amaranth, Arthur, Luther, Minto, Maryborough, Peel, and the Village of Mount Forest.

59. The Centre Riding to consist of the Townships of Garafraxa, Erin, Eramosa, Nichol and Pilkington, and the Villages of Fergus and Elora.

60. The South Riding to consist of the Town of Guelph and the Townships of Guelph and Puslinch.

The County of NORFOLK, divided into Two Ridings, to be called respectively the South and North Ridings:—





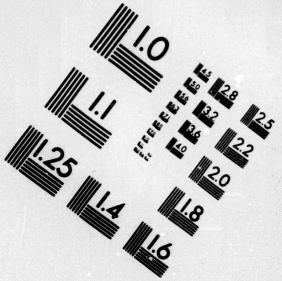
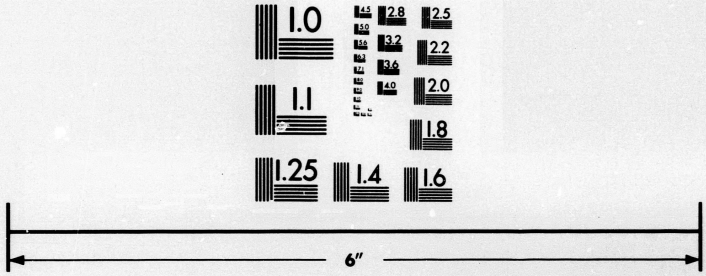
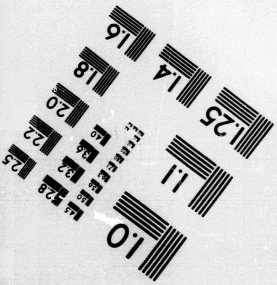
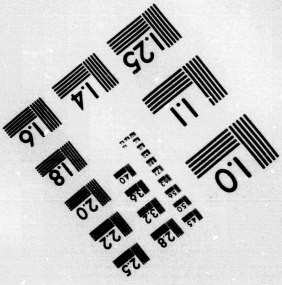




**IMAGE EVALUATION**
**TEST TARGET (MT-3)**

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61. The South Riding to consist of the Townships of Charlotteville, Houghton, Walsingham and Woodhouse, and with the Gore thereof.

62. The North Riding to consist of the Townships of Middleton, Townsend and Windham, and the Town of Simcoe.

63. The County of HALDIMAND to consist of the Townships of Oneida, Seneca, Cayuga North, Cayuga South, Rainham, Walpole and Dunn.

64. The County of MONCK to consist of the Townships of Canborough and Moulton, and Sherbrooke, and the Village of Dunnville (taken from the County of Haldimand), the Townships of Caister and Gainsborough (taken from the County of Lincoln), and the Townships of Pelham and Wainfleet (taken from the County of Welland).

65. The County of LINCOLN to consist of the Townships of Clinton, Grantham, Grimsby and Louth, and the Town of St. Catharines.

66. The County of WELLAND to consist of the Townships of Bertie, Crowland, Humberstone, Stamford, Thorold and Willoughby, and the Villages of Chippewa, Clifton, Fort Erie, Thorold and Welland.

67. The County of PEEL to consist of the Townships of Chinguacousy, Toronto and the Gore of Toronto, and the Villages of Brampton and Streetsville.

68. The County of CARDWELL, to consist of the Townships of Albion and Caledon (taken from the County of Peel), and the Townships of Adjala and Mono (taken from the County of Simcoe).

The County of SIMCOE, divided into Two Ridings, to be called respectively the South and the North Ridings:—

69. The South Riding to consist of the Townships of West Gwillimbury, Tecumseth, Innisfil, Essa, Tossorontio, Mulmur, and the Village of Bradford.

70. The North Riding to consist of the Townships of Nottawasaga, Sunnidale, Vespra, Flos, Oro, Medonte, Orillia and Matchedash, Tiny and Tay,

Balaklava and Robinson, and the Towns of Barrie and Collingwood.

The County of VICTORIA, divided into Two Ridings, to be called respectively the South and North Ridings:—

71. The South Riding to consist of the Townships of Ops, Mariposa, Emily, Verulam, and the Town of Lindsay.

72. The North Riding to consist of the Townships of Anson, Bexley, Carden, Dalton, Digby, Eldon, Fenelon, Hindon, Laxton, Lutterworth, Macaulay and Draper, Sommerville and Morrison, Muskoka, Monck and Watt (taken from the County of Simcoe), and any other surveyed Townships lying to the North of the said North Riding.

The County of PETERBOROUGH, divided into Two Ridings, to be called respectively the West and East Ridings:

73. The West Riding to consist of the Townships of South Monaghan (taken from the County of Northumberland), North Monaghan, Smith and Ennismore, and the Town of Peterborough.

74. The East Riding to consist of the Townships of Asphodel, Belmont and Methuen, Douro, Dummer, Galway, Harvey, Minden, Stanhope and Dysart, Otonabee and Snowden, and the Village of Ashburnham, and any other surveyed Townships lying to the North of the said East Riding.

The County of HASTINGS divided into Three Ridings, to be called respectively the West, East and North Ridings:—

75. The West Riding to consist of the Town of Belleville, the Township of Sydney, and the Village of Trenton.

76. The East Riding to consist of the Townships of Thurlow, Tyendinaga and Hungerford.

77. The North Riding to consist of the Townships of Rawdon, Huntingdon, Madoc, Elzevir, Tudor,

Marmora and Lake, and the Village of Stirling, and any other surveyed Townships lying to the North of the said North Riding.

78. The County of LENNOX to consist of the Townships of Richmond, Adolphustown, North Fredericksburgh, South Fredericksburgh, Ernest Town and Amherst Island, and the Village of Napanee.

79. The County of ADDINGTON to consist of the Townships of Camden, Portland, Sheffield, Hinchinbrooke, Kaladar, Kennebec, Olden, Oso, Anglesea, Barrie, Clarendon, Palmerston, Effingham, Abinger, Miller, Canonto, Denbigh, Loughborough and Bedford.

80. The County of FRONTENAC to consist of the Townships of Kingston, Wolfe Island, Pittsburgh and Howe Island and Storrington.

The County of RENFREW, divided into Two Ridings, to be called respectively the South and North Ridings :—

81. The South Riding to consist of the Townships of McNab, Bagot, Blithfield, Brougham, Horton, Adamston, Grattan, Matawatchan, Griffith, Lyndoch, Raglan, Radcliffe, Brudenell, Sebastopol, and the Villages of Arnprior and Renfrew.

82. The North Riding to consist of the Townships of Ross, Bromley, Westmeath, Stafford, Pembroke, Wilberforce, Alice, Petawawa, Buchanan, South Algona, North Algona, Fraser, McKay, Wylie, Rolph Head, Maria, Clara, Haggerty, Sherwood, Burns, and Richards and any other surveyed Townships lying North-westerly of the said North Riding.

Every Town and incorporated Village existing at the Union, not specially mentioned in this Schedule, is to be taken as part of the County or Riding within which it is locally situate.

THE SECOND SCHEDULE.

*Electoral Districts of Quebec specially fixed.*

COUNTIES OF

| | |
|---|---|
| Pontiac. | Shefford. |
| Ottawa. | Stanstead. |
| Argenteuil. | Compton. |
| Huntingdon. | Wolfe and Richmond. |
| Missisquoi. | Megantic. |
| Brome. | Town of Sherbrooke. |

THE THIRD SCHEDULE.

*Provincial Public Works and Property to be the Property of Canada.*

1. Canals with Lands and Water Power connected therewith.
2. Public Harbours.
3. Lighthouses and Piers, and Sable Island.
4. Steamboats, Dredges, and Public Vessels.
5. Rivers and Lake Improvements.
6. Railways and Railway Stocks, Mortgages, and other Debts due by Railway Companies.
7. Military Roads.
8. Custom Houses, Post Offices, and all other Public Buildings, except such as the Government of Canada appropriate for the Use of the Provincial Legislatures and Governments.
9. Property transferred by the Imperial Government, and known as Ordnance Property.
10. Armouries, Drill Sheds, Military Clothing and Munitions of War, and Lands set apart for General Public Purposes.

THE FOURTH SCHEDULE.

*Assets to be the Property of Ontario and Quebec conjointly.*

Upper Canada Building Fund.
Lunatic Asylums.

Normal Schools.
Court Houses in : } Lower Canada.
Aylmer.
Montreal.
Kamouraska.
Law Society, Upper Canada.
Montreal Turnpike Trust.
University Permanent Fund.
Royal Institution.
Consolidated Municipal Loan Fund, Upper Canada.
Consolidated Municipal Loan Fund, Lower Canada.
Agricultural Society, Upper Canada.
Lower Canada Legislative Grant.
Quebec Fire Loan.
Temiscouata Advance Account.
Quebec Turnpike Trust.
Education, East.
Building and Jury Fund, Lower Canada.
Municipalities Fund.
Lower Canada Superior Education Income Fund.

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## THE FIFTH SCHEDULE.

### OATH OF ALLEGIANCE.

I, *A. B.*, do swear, that I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.

NOTE.—*The Name of the King or Queen of the United Kingdom of Great Britain and Ireland for the Time being is to be substituted from Time to Time, with proper Terms of Reference thereto.*

### DECLARATION OF QUALIFICATION.

I, *A. B.*, do declare and testify, That I am by Law duly qualified to be appointed a Member of the Senate of Canada [*or as the case may be*], and that I am legally or equitably seized as of Freehold for my own Use and Benefit of Lands or Tenements held in Free and Common Socage [*or* seized or possessed for my own Use and Benefit of Lands or Tenements held in Franc-alleu or in Roture (*as the case may be*),] in the Province of Nova Scotia [*or as the case may be*] of the Value of Four Thousand Dollars over or above all Rents, Dues, Debts, Mortgages, Charges, and Incumbrances, due or payable out of or charged on or affecting the same, and that I have not collusively or

colourably obtained a Title to or become possessed of the said Lands and Tenements or any Part thereof for the Purpose of enabling me to become a Member of the Senate of Canada [*or as the case may be*], and that my Real and Personal Property are together worth Four thousand Dollars over and above my Debts and Liabilities.

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B.

34 *AND* 35 *VICTORIA.*

CHAP. XXVIII.

*An Act respecting the establishment of Provinces in the Dominion of Canada.*

[29*th June*, 1871.]

WHEREAS doubts have been entertained respecting the powers of the Parliament of Canada to establish Provinces in Territories admitted, or which may hereafter be admitted into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The British North America Act, 1871." Short Title.

2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament. Parliament of Canada may establish new Provinces and provide for the constitution, &c., thereof

3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting Alteration of limits of Provinces.

the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.

Parliament of Canada may legislate for any territory not included in a Province.

4. The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.

Confirmation of Acts of Parliament of Canada, 32 & 33 Vict. (Canadian), cap. 3, 33 V. (Canadian), cap. 3.

5. The following Acts passed by the said Parliament of Canada, and intituled respectively: "An Act for the "temporary government of Rupert's Land and the North "Western Territory when united with Canada," and "An "Act to amend and continue the Act thirty-two and "thirty-three Victoria, chapter three, and to establish "and provide for the government of the Province of "Manitoba," shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor-General of the said Dominion of Canada.

Limitation of powers of Parliament of Canada to legislate for an established Province.

6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last mentioned Act of the said Parliament, in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

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## C.

38–39 *VICTORIA.*

CHAP. XXXVIII.

*An Act to remove certain doubts with respect to the powers of the Parliament of Canada under Section Eighteen of the British North America Act*, 1867.

[19*th July*, 1875.]

30 and 31 Vict., c. 3.

WHEREAS by Section Eighteen of the British North America Act, 1867, it is provided as follows:

"The privileges, immunities and powers to be held, "enjoyed and exercised by the Senate and by the House "of Commons, and by the Members thereof respectively,

" shall be such as are from time to time defined by Act of " the Parliament of Canada, but so that the same shall " never exceed those at the passing of this Act, held, " enjoyed and exercised by the Commons House of Par- " liament of the United Kingdom of Great Britain and " Ireland and by the members thereof."

And whereas doubts have arisen with regard to the power of defining by an Act of the Parliament of Canada, in pursuance of the said section, the said privileges, powers, or immunities; and it is expedient to remove such doubts:

Be it, therefore, enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Substitution of new Section for Section 18 of 30 & 31 Vict., c. 3.

1. Section Eighteen of the British North America Act, 1867, is hereby repealed without prejudice to anything done under that section, and the following section shall be substituted for the section so repealed.

The privileges, immunities and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the Members thereof, respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities and powers shall not confer any privileges, immunities or power exceeding those at the passing of such Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof.

Confirmation of Act of Canadian Parliament.

2. The Act of the Parliament of Canada passed in the thirty-first year of the Reign of Her present Majesty, chapter twenty-four, intituled "An Act to provide for oaths to witnesses being administered in certain cases for the purposes of either House of Parliament" shall be deemed to be valid, and to have been valid as from the date at which the Royal assent was given thereto by the Governor-General of the Dominion of Canada.

Short Title

3. This Act may be cited as "The Parliament of Canada Act, 1875."

D.

*OFFICE OF GOVERNOR-GENERAL:*

COMMISSION, LETTERS-PATENT, ROYAL INSTRUCTIONS.

1.

## CANADA.

DRAFT OF LETTERS-PATENT passed under the Great Seal of the United Kingdom, constituting the Office of Governor-General of the Dominion of *Canada*.

*Letters Patent,*
*Dated 5th October*, 1878.

*Victoria*, by the Grace of God, of the United Kingdom of *Great Britain and Ireland*, Queen, Defender of the Faith, Empress of *India;* To all to whom these Presents shall come, Greeting.

WHEREAS We did, by certain Letters-Patent under the Great Seal of Our United Kingdom of *Great Britain* and *Ireland*, bearing date at *Westminster* the Twenty-second day of May, 1872, in the Thirty-fifth Year of Our Reign, constitute and appoint Our Right Trusty and Right Well-beloved Cousin and Councillor, *Frederick Temple*, Earl of *Dufferin*, Knight of Our Most Illustrious Order of *Saint Patrick*, Knight Commander of Our Most Honourable Order of the Bath (now Knight Grand Cross of Our Most Distinguished Order of *Saint Michael* and *Saint George*), to be Our Governor-General in and over Our Dominion of *Canada* for and during Our will and pleasure: And whereas by the 12th section of "The *British North America* Act, 1867," certain powers, authorities, and functions were declared to be vested in the Governor-General: and whereas we are desirous of making effectual and permanent provision for the office of Governor-General in and over Our said Dominion of *Canada*, without making new Letters-Patent on each demise of the said Office: Now know ye that We have revoked and determined, and by these presents do revoke and determine, the said recited Letters-Patent of the Twenty-second day of May, 1872, and every clause, article and thing therein contained: And further know ye that We, of our special grace, certain knowledge and mere motion, have thought fit to constitute, order, and declare, and do by these presents constitute, order and declare that there shall be a Governor-General (hereinafter called Our said Governor-General) in and over Our Dominion of *Canada* (hereinafter called our said Dominion) and that the

person who shall fill the said Office of the Governor-General shall be from time to time appointed by Commission under our Sign-Manual and Signet. And we do hereby authorize and command Our said Governor-General to do and execute, in due order, all things that shall belong to his said command, and to the trust we have reposed in him, according to the several powers and authorities granted or appointed him by virtue of "The *British North America* Act, 1867", and of these present Letters-Patent and of such Commission as may be issued to him under our Sign-Manual and Signet, and according to such Instructions as may from time to time be given to him, under Our Sign-Manual and Signet, or by Our Order in Our Privy Council, or by Us through one of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in Our said Dominion.

II. And We do hereby authorize and empower Our said Governor-General to keep and use the Great Seal of Our said Dominion for sealing all things whatsoever that shall pass the said Great Seal.

III. And We do further authorize and empower Our said Governor-General to constitute and appoint, in Our name and on Our behalf, all such Judges, Commissioners, Justices of the Peace, and other necessary Officers and Ministers of Our said Dominion, as may be lawfully constituted or appointed by Us.

IV. And We do further authorize and empower Our said Governor-General, so far as we lawfully may upon sufficient cause to him appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any office within Our said Dominion, under or by virtue of any Commission or Warrant granted, or which may be granted, by Us in Our name or under Our authority.

V. And We do further authorize and empower our said Governor-General to exercise all powers lawfully belonging to Us in respect of the summoning, proroguing, or dissolving the Parliament of Our said Dominion.

VI. And whereas by "The *British North America* Act, 1867." it is amongst other things enacted, that it shall be lawful for Us, if We think fit, to authorize the Governor-General of Our Dominion of *Canada* to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion, and in that capacity to exercise, during the pleasure of Our said Governor-General, such of the powers, authorities and functions of Our said Governor-General as he may deem it necessary or expedient to assign to such Deputy or Deputies, subject to any limitations or directions from time to time expressed

or given by Us: Now We do hereby authorize and empower Our said Governor-General, subject to such limitations and directions as aforesaid, to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion of *Canada*, and in that capacity to exercise, during his pleasure, such of his powers, functions and authorities, as he may deem it necessary or expedient to assign to him or them: Provided always, that the appointment of such a Deputy or Deputies shall not effect the exercise of any such power, authority or function by Our said Governor-General in person.

VII. And We do hereby declare Our pleasure to be that, in the event of the death, incapacity, removal or absence of Our said Governor-General out of Our said Dominion, all and every the powers and authorities herein granted to him shall, until our further pleasure is signified therein, be vested in such person as may be appointed by Us under Our Sign-Manual and Signet to be Our Lieutenant-Governor of Our said Dominion; or if there shall be no such Lieutenant-Governor in Our said Dominion, then in such person or persons as may be appointed by Us under Our Sign-Manual and Signet to administer the Government of the same; and in case there shall be no person or persons within Our said Dominion so appointed by Us, then in the Senior Officer for the time being in command of Our regular troops in Our said Dominion: Provided that no such powers or authorities shall vest in such Lieutenant-Governor, or such other person or persons, until he or they shall have taken the oaths appointed to be taken by the Governor-General of Our said Dominion, and in the manner provided by the instructions accompanying these Our Letters-Patent.

VIII. And We do hereby require and command all Our Officers and Ministers, Civil and Military, and all other the inhabitants of Our said Dominion, to be obedient, aiding and assisting unto our said Governor-General, or, in the event of his death, incapacity or absence, to such person or persons as may, from time to time, under the provisions of Our Letters-Patent, administer the Government of Our said Dominion.

IX. And We do hereby reserve to Ourselves, our heirs and successors, full power and authority from time to time to revoke, alter or amend these Our Letters-Patent as to Us or them shall seem meet.

X. And We do further direct and enjoin that these Our Letters-Patent shall be read and proclaimed at such place or places as Our said Governor-General shall think fit within Our said Dominion of *Canada*.

In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster, the fifth day of October, in the Forty-second Year of Our Reign.

By Warrant under the Queen's Sign-Manual.

C. ROMILLY.

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2

## CANADA.

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DRAFT OF INSTRUCTIONS passed under the Royal Sign-Manual and Signet to the Governor-General of the Dominion of *Canada.*

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*Dated 5th October*, 1878.

*VICTORIA* R.

Instructions to our Governor-General in and over Our Dominion of *Canada*, or, in his absence, to Our Lieutenant-Governor or the Officer for the time being administering the Government of Our said Dominion.

Given at Our Court at *Balmoral*, this Fifth day of October, 1878, in the Forty-second year of Our Reign.

WHEREAS by certain Letters-Patent bearing even date herewith, We have constituted, ordered and declared that there shall be a Governor-General (hereinafter called Our said Governor-General) in and over Our Dominion of *Canada* (hereinafter called Our said Dominion), And we have thereby authorized and commanded Our said Governor-General to do and execute in due manner all things that shall belong to his said command, and to the trust we have reposed in him, according to the several powers and authorities granted or appointed him by virtue of the said Letters-Patent and of such Commission as may be issued to him under Our Sign-Manual and Signet, and according to such Instructions as may from time to time be given to him, under Our Sign-Manual and Signet, or by Our Order in Our Privy Council, or by Us through One of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in Our said Dominion. Now, therefore, We do, by these Our Instructions under Our Sign-Manual and Signet, declare Our pleasure, to be, that Our said Governor-General for the time being shall, with all due solemnity, cause our

Commission, under Our Sign-Manual and Signet, appointing Our said Governor-General for the time being, to be read and published in the presence of the Chief Justice for the time being, or other Judge of the Supreme Court of Our said Dominion, and of the members of the Privy Council in Our said Dominion: And we do further declare Our pleasure to be that Our said Governor-General, and every other officer appointed to administer the Government of Our said Dominion, shall take the Oath of Allegiance in the form provided by an Act passed in the Session holden in the thirty-first and thirty-second years of Our Reign, intituled: "An Act to amend the Law relating to Promissory Oaths;" and likewise that he or they shall take the usual Oath for the due execution of the Office of Our Governor-General in and over Our said Dominion, and for the due and impartial administration of justice; which Oaths the said Chief Justice for the time being, of Our said Dominion, or, in his absence, or in the event of his being otherwise incapacitated, any Judge of the Supreme Court of Our said Dominion shall, and he is hereby required to tender and administer unto him or them.

II. And We do authorize and require Our said Governor-General from time to time by himself or by any other person to be authorized by him in that behalf, to administer to all and to every person or persons as he shall think fit, who shall hold any office or place of trust or profit in Our said Dominion, the said Oath or Allegiance, together with such other Oath or Oaths as may from time to time be prescribed by any Laws or Statutes in that behalf made and provided.

III. And We do require Our said Governor-General to communicate forthwith to the Privy Council for Our said Dominion these Our Instructions, and likewise all such others from time to time, as he shall find convenient for Our service to be imparted to them.

IV. Our said Governor-General is to take care that all laws assented to by him in Our name or reserved for the signification of Our pleasure thereon, shall, when transmitted by him, be fairly abstracted in the margins, and be accompanied, in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such Laws; and he shall also transmit fair copies of the Journals and minutes of the proceedings of the Parliament of Our said Dominion, which he is to require from the clerks, or other proper officers in that behalf, of the said Parliament.

V. And We do further authorize and empower Our said Governor-General, as he shall see occasion, in Our name and on Our behalf, when any crime has been committed for which the offender may be tried within our said Dominion, to grant a pardon to any

accomplice, not being the actual perpetrator of such crime, who shall give such information as shall lead to the conviction of the principal offender; and further to grant to any offender convicted of any crime in any Court, or before any Judge, Justice, or Magistrate, within Our said Dominion, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our said Governor-General may seem fit, and to remit any fines, penalties, or forfeitures, which may become due and payable to Us. Provided always, that Our said Governor-General shall not in any case, except where the offence has been of a political nature, make it a condition of any pardon or remission of sentence that the offender shall be banished from or shall absent himself from Our said Dominion. And We do hereby direct and enjoin that Our said Governor-General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of the Privy Council for Our said Dominion, and in other cases the advice of one, at least, of his Ministers; and in any case in which such pardon or reprieve might directly affect the interests of Our Empire, or of any country or place beyond the jurisdiction of the Government of our said Dominion, Our said Governor-General shall, before deciding as to either pardon or reprieve, take those interests specially into his own personal consideration in conjunction with such advice as aforesaid.

VI. And whereas great prejudice may happen to Our service and to the security of our said Dominion by the absence of Our said Governor-General, he shall not, upon any pretence whatever, quit Our said Dominion without having first obtained leave from Us for so doing under Our Sign-Manual and Signet, or through one of Our Principal Secretaries of State.

V.R.

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3.

## CANADA.

DRAFT OF A COMMISSION passed under the Royal Sign-Manual and Signet, appointing the Right Honourable the Marquis of *Lorne*, K.T., G.C.M.G., to be Governor-General of the Dominion of *Canada*.

*Dated 7th October*, 1878.

*VICTORIA* R.

*Victoria*, by the Grace of God, of the United Kingdom of *Great Britain* and *Ireland*, Queen, Defender of the Faith, Empress

of *India*, To our Right, Trusty, and Well-beloved Councillor Sir JOHN DOUGLAS SUTHERLAND CAMPBELL (commonly called the Marquis of *Lorne*), Knight of Our Most Ancient and Most Noble Order of the Thistle, Knight Grand Cross of Our Most Distinguished Order of *St. Michael* and *St. George*, Greeting:

WE do, by this Our Commission under Our Sign-Manual and Signet, appoint you, the said Sir JOHN DOUGLAS SUTHERLAND CAMPBELL (commonly called the Marquis of *Lorne*), until Our further pleasure shall be signified, to be Our Governor-General in and over Our Dominion of *Canada* during Our will and pleasure, with all and singular the powers and authorities granted to the Governor-General of our said Dominion in Our Letters-Patent under the Great Seal of Our United Kingdom of *Great Britain* and *Ireland*, constituting the office of Governor, bearing date at *Westminster* the Fifth day of October, 1878, in the Forty-second year of Our Reign, which said powers and authorities We do hereby authorize you to exercise and perform, according to such Orders and Instructions as Our said Governor-General for the time being hath already or may hereafter receive from Us. And for so doing this shall be your Warrant.

II. And we do hereby command all and singular Our officers, Ministers, and loving subjects in Our said Dominion, and all others whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

Given at Our Court at *Balmoral*, this Seventh day of October, 1878, in the Forty-second year of Our Reign.

By Her Majesty's Command,

M. E. HICKS BEACH.

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The Commission appointing the Marquis of Lansdowne Governor-General in the place of the Marquis of Lorne, under date of 18th August, 1883, recites the letters-patent as given above, and the Instructions of the 5th of October are also continued without change. See Can. Sess P. of 1884, No. 77, where is also given the oath of allegiance taken by his Excellency in accordance with the Imperial Statute 21 and 22 Vict., c. 48.

E.

*PROCLAMATION FOR ASSEMBLING PARLIAMENT FOR THE DESPATCH OF BUSINESS.*

LANSDOWNE.

[L.S.]

CANADA.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, &c., &c. &c.

To Our Beloved and Faithful the Senators of the Dominion of Canada, and the Members elected to serve in the House of Commons of Our said Dominion, and to each and every of you—GREETING:

A PROCLAMATION.

Whereas the Meeting of Our Parliament of Canada stands Prorogued to the Seventeenth day of the month of December next, Nevertheless, for certain causes and considerations, We have thought fit further to prorogue the same to Thursday the Seventeenth day of the month of January next, so that neither you nor any of you on the said Seventeenth day of December next at Our City of Ottawa to appear are to be held and constrained: for we do will that you and each of you, be as to Us, in this matter, entirely exonerated; commanding, and by the tenor of these presents, enjoining you, and each of you, and all others in this behalf interested, that on Thursday, the Seventeenth day of the month of January next, at Our City of Ottawa aforesaid, personally be and appear, for the despatch of business, to treat, do, act, and conclude upon those things which in Our said Parliament of Canada, by the Common Council of Our said Dominion, may, by the favour of God, be ordained.

In Testimony Whereof, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed. Witness, Our Right Trusty and Entirely-Beloved Cousin, the Most Honourable HENRY CHARLES KEITH PETTY-FITZMAURICE, Marquis of Lansdowne, in the County of Somerset, Earl of Wycombe, of Chipping Wycombe, in the County of Bucks, Viscount Caln of Calnstone in the County of Wiltz, and Lord Wycombe, Baron of Chipping, Wycombe, in the County of Bucks, in the Peerage of Great Britain; Earl of Kerry and Earl of Shelburne, Viscount Clanmaurice and Fitzmaurice, Baron of Kerry, Lixnaw, and Dunkerron, in the Peerage of Ireland; Governor-General of Canada, and Vice Admiral of the same, &c.

At Our Government House, in Our City of Ottawa, this Tenth day of November, in the year of Our Lord, one thousand eight hundred and eighty-three, and in the Forty-seventh year of Our Reign.

By Command,

RICHARD POPE,
Clerk of the Crown in Chancery,
Canada.

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F.

## PRAYERS OF THE HOUSE OF COMMONS.

"O Lord our Heavenly Father, high and mighty, King of kings, Lord of lords, the only Ruler of Princes, who dost from thy throne behold all the dwellers upon earth; Most heartily we beseech thee with thy favour to behold our most gracious Sovereign Lady Queen Victoria, and so replenish her with the grace of thy Holy Spirit that she may alway incline to thy will, and walk in thy way: Endue her plenteously with Heavenly gifts; grant her in health and wealth long to live; strengthen her that she may vanquish and overcome all her enemies; and finally, after this life, she may attain everlasting joy and felicity, through Jesus Christ Our Lord.—*Amen.*"

"Almighty God, the Fountain of all Goodness, we humbly beseech Thee to bless Albert Edward, Prince of Wales, the Princess of Wales, and all the Royal Family: Endue them with Thy Holy Spirit: Enrich them with Thy Heavenly Grace; prosper them with all happiness: and bring them to Thine everlasting Kingdom, through Jesus Christ Our Lord.—*Amen.*"

"Most Gracious God, we humbly beseech Thee, as for the United Kingdom of Great Britain and Ireland, and Her Majesty's other Dominions in general, so especially for this Dominion, and herein more particularly for the Governor-General, the Senate and the House of Commons, in their legislative capacity at this time assembled, that Thou wouldst be pleased to direct and prosper all their consultations, to the advancement of Thy glory, the safety, honour and welfare of our Sovereign and Her Dominions, that all things may be so ordered and settled by their endeavours upon the best and surest foundations, that peace and happiness, truth and justice, religion and piety, may be established among us for all generations. These, and all other necessaries for them, and for us, we humbly beg in the name, and through the mediation of Jesus Christ our most blessed Lord and Saviour.—*Amen.*"

"Our Father which art in Heaven, Hallowed be thy Name. Thy Kingdom come. Thy will be done in Earth as it is in Hea-

ven. Give us this day our daily bread. And forgive us our trespasses as we forgive them who trespass against us. And lead us not into temptation; but deliver us from evil.—*Amen.*"

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## G.

### *MODE OF PROPOSING MOTIONS AND AMENDMENTS.*

Mr. Blake moves, seconded by Mr. Mills,

"That a humble address be presented to Her Most Gracious Majesty, praying that she will be pleased to cause a measure to be submitted to the Imperial Parliament providing that the Parliament of Canada shall not have power to disturb the Financial relations, established by the British North America Act (1867) between Canada and the several Provinces, as altered by the Act respecting Nova Scotia."

Mr. Archibald moves in amendment, seconded by Mr. Macdonald (Middlesex),

That all the words after "That" to the end of the question be left out, and the following words inserted instead thereof:—

"This House adheres to the decision of the Parliament of Canada at its last session, as embodied in the Act intituled:—'An Act respecting Nova Scotia.'"

Sir John Macdonald moves in amendment to the amendment, seconded by Sir George E. Cartier,

That all the words after "thereof" in the said amendment be left out, and the following words inserted instead thereof:—

"It is the undoubted privilege of Parliament to fix and determine the amount of all expenditure chargeable on the public funds of the Dominion."

And the question having been put on the amendment to the said proposed amendment, it was resolved in the affirmative.

And the question on the amendment to the original question, so amended, being again proposed,

Mr. Oliver moves, in amendment thereto, seconded by Mr. Magill:—

That the following words be added at the end thereof:

"But this House is of opinion that no further grant or provision, beyond those made by the Union Act and the Act respecting Nova Scotia, should in future be made out of the Revenues of Canada, for the support of the Government or Legislature of any of the Provinces."

And the question being put, that those words be there added, the House divided, and it was so resolved in the affirmative.

And the question on the amendment to the original question, so amended, being again proposed;

Mr. Wood moved in amendment thereto, seconded by Mr. Magill:

That the following words be added at the end thereof:

"And that such steps should be taken, as to render impossible any such grant or provisions."

And the question being put that those words be there added, it passed in the negative.

And the question being put on the amendment to the original question, as amended, it was resolved in the affirmative.

Then the main question, as amended, being put:

"That it is the undoubted privilege of Parliament to fix and determine the amount of all expenditure chargeable on the public funds of the Dominion; but this House is of opinion that no further grant or provision beyond those made by the Union Act and the Act respecting Nova Scotia, should in the future be made out of the revenues of Canada, for the support of the Government or Legislature of any of the Provinces."

The house divided; and it was resolved in the affirmative. (*See Journals of the House of Commons*, 31*st March*, 1870.)

AMENDMENTS TO SUPPLY AND WAYS AND MEANS.

The order of the day being read for the House again in the Committee of Supply,

And the question being proposed, That Mr. Speaker do now leave the chair,

Mr. Laurier moves, in amendment, seconded by Mr. Blake:

"That all the words after 'That' to the end of the question be left out, and the following words added instead thereof: 'In the opinion of this House, the public interests would be promoted by the repeal of the duties imposed on coal, coke and breadstuffs, free under the former tariff,' etc."

*On Second Reading.*

Certain resolutions having been reported from Committee of Supply,

And a motion being made, and the question being proposed, That the said resolutions be now read a second time,

Mr. ——— moves, in amendment, seconded by Mr. ——— :

" That all the words after 'That' to the end of the question, be left out in order to add the following words instead thereof, etc."

*On Concurrence.*

A resolution having been read a second time, and the question being proposed, That the House do concur with the Committee in the said resolution ;

Mr. ——— moves in amendment, seconded by Mr. B———,

" That all the words after 'That' to the end of the question be left out, etc."

MOTIONS RESPECTING PUBLIC BILLS.

*On Introduction.*

Mr. Richey moves, seconded by Mr. Daly, for leave to bring in a bill to amend the Acts respecting Cruelty to Animals.

*At Other Stages.*

Mr. Richey moves, seconded by Mr. Daly, that the bill to amend the Acts respecting cruelty to animals, be now read a second time (or committed to a committee of the whole), or read a third time.

*On Reference to a Select Committee.*

Mr. Weldon moves, seconded by Mr. McCarthy:

" That the bill to amend the Act passed in the forty-fifth year of the reign of Her present Majesty intituled: An Act to repeal the duty on promissory notes and bills of exchange, &c., be referred to a select committee composed of Messrs. Weldon, McCarthy, Girouard (Jacques Cartier), Jamieson and Wells."

*Instruction.*

The order of the day being read, for the Committee on the County Courts (Ireland) Bill;

Mr. ——— moves, seconded by Mr. ———,

" That it be an instruction to the Committee, that they have power to make provision for the extension of the Equity jurisdiction of the Courts." (137 E. Com. J. 202.)

*On Second Reading.*

The order of the day being read for the second reading of the Thames River bill;

And a motion being made, and the question being proposed, That the bill be now read a second time:

Mr. A——— moves, in amendment, seconded by Mr. B———:

"That all the words after 'That' to the end of the question be left out, and that the following words be added instead thereof: 'The character and objects of this bill are such as to constitute it a measure of public policy which ought not to be dealt with by any private bill.'" (See 136 E. Com. J. 162; Can. Com. J. [1882] 410.)

*On Order for Committee of the Whole.*

The order of the day being read for the House in Committee on the bill to establish a Supreme Court and a Court of Exchequer for the Dominion of Canada;

And the question being proposed, That Mr. Speaker do now leave the chair;

Mr. Baby moves, in amendment, seconded by Mr. Mousseau:

"That all the words after 'That' to the end of the question be left out and the following words added instead thereof: 'In the resolutions adopted at the conference held at Quebec, etc.'" (Can. Com. J. [1875] 284-285.)

*To defer Consideration of a Bill.*

The order of the day being read, for the second reading of the bill to amend "An Act to enlarge and extend the powers of the Credit Foncier, Franco-Canadian."

And the question being proposed, That the bill be now read a second time;

Mr. Bourassa moves in amendment, seconded by Mr. Fiset:

"That the word 'now' be left out, and the words 'this day six months' added at the end of the question."

*In Case of a Bill temporarily Superseded.*

That the bill to amend the Insolvent Act of 1875 be read a second time on Thursday next. (Com. J., 1876, p. 245.)

That this House will, on Monday next, resolve itself into a committee to consider further of the bill (Com. J., 1883, p. 159.)

MOTIONS RESPECTING PRIVATE BILLS.

In case the Committee on Standing Orders recommend a suspension of the 51st rule respecting notice, the following proceeding is necessary:

Mr. Cameron, of Victoria, moves, seconded by Mr. Bergin:

"That the fifty-first rule of this House be suspended as regards a bill to incorporate the Qu'Appelle, Long Lake & Saskatchewan Railroad and Steamboat Company, in accordance with the recommendation of the Select Standing Committee on Standing Orders; and that he have leave to bring in the said bill."

The foregoing form of motion is commonly used in such cases, but sometimes, and more correctly, the motion is divided into two distinct propositions as below:

Mr. Killam moves, seconded by Mr. Brown,

"That the fifty-first rule of this House be suspended, in so far as it affects the petition of the Exchange Bank of Yarmouth, Nova Scotia, in accordance with the recommendation of the Select Standing Committee on Standing Orders."

This motion having been agreed, Mr. Killam moves, seconded by Mr. Brown, for leave to introduce the bill as above.

*Title amended on Motion for Passage.*

Mr. Gault moves, seconded by Mr. Coursol,

"That the bill do pass and that the title be 'An Act to amend the Act of incorporation of 'The Accident Insurance Company of Canada,' and to authorize the change of the name of the said Company to 'The Accident Insurance Company of North America.'"

*Disagreement to a Senate Amendment.*

The amendments made by the Senate to the bill intituled "An Act to incorporate the Missionary Society of the Wesleyan Methodist Church in Canada" were read a second time.

The first amendment having been agreed to, Mr. McCarthy moves, seconded by Mr. Cameron, of Victoria, to disagree to the second amendment for the following reason:

(Here state reason in full as on page 326, journals of 1883.)

*Refunding of Fees on a Private Bill.*

Mr. Williams moves, seconded by Mr. White, of East Hastings,

"That the fees and charges paid on the bill to incorporate the University of Saskatchewan and to authorize the establishment of colleges within the limits of the diocese of Saskatchewan be refunded, less the cost of printing and translation, in accordance with the recommendation of the Select Standing Committee on Miscellaneous Private bills."

## H.

### *FORM OF PETITION TO THE THREE BRANCHES OF PARLIAMENT FOR A PRIVATE BILL.*

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To His Excellency, the Most Honourable the Marquis of Lansdowne, Governor-General of Canada, etc., etc., etc., in Council.

The Petition of the undersigned of the of humbly sheweth:

That (*here state the object desired by the petitioner in soliciting an Act.*)

Wherefore your petitioner humbly prays that Your Excellency may be pleased to sanction the passing of an Act (*for the purposes above mentioned*).

And as in duty bound your petitioner will ever pray.

(Signature) { Seal, in the case of an existing Corporation.

(*Date.*)

(*To either House.*)

To the Honourable the { Senate, / House of Commons } of Canada, in Parliament assembled:

The Petition of the undersigned of the of humbly sheweth:

That (*here state the object desired by the petitioner in soliciting an Act.*)

Wherefore your petitioner humbly prays that your Honourable House may be pleased to pass an Act (*for the purposes above mentioned.*)

And as in duty bound, your petitioner will ever pray.

(Signature) { Seal, as above.

(*Date.*)

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I.

## *NOTIFICATION OF VACANCIES IN THE HOUSE OF COMMONS, AND OF SPEAKER'S WARRANTS FOR NEW WRITS.*

1. *Notification by two members in case of a vacancy by death or the acceptance of office.*

*Dominion of Canada.*
To wit: } HOUSE OF COMMONS.

To the Honourable the Speaker of the House of Commons:

We, the undersigned, hereby give notice that a vacancy hath occurred in the representation in the House of Commons, for the Electoral District of (*here state Electoral District, cause of vacancy and name of member vacating seat.*)

Given under Our Hands and Seals, at , this day of , 188

*Member for the Electoral District of*

*Member for the Electoral District of*

---

*Dominion of Canada,*
To wit: } HOUSE OF COMMONS.

2. *Notification by two members in case of absence of Speaker.*

To the Clerk of the Crown in Chancery.

The Speaker of the House of Commons being absent from Canada, these are to require you, under and in virtue of the 41st Vict., Cap. 5, sec. 14, subsection 2, to make out a new writ for the election of a Member to serve in the present Parliament for the Electoral District of in the Province of in the room and place of who, since his election for the said Electoral District, hath

Given under Our hands and Seals, at , this day of in the year of Our Lord one thousand eight hundred and

*Member for the Electoral District of*

*Member for the Electoral District of*

3. *Resignation of a Member.*

*Dominion of Canada,* }
To wit: } HOUSE OF COMMONS.

To the Honourable the Speaker of the House of Commons:

I, member of the House of Commons of Canada, for the electoral district of , do hereby resign my seat in the said House of Commons, for the constituency aforesaid.

Given under my hand and seal at the , this day of , 18

..... [L.S.]

Witness, &c.

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SPEAKER'S WARRANTS FOR NEW WRITS OF ELECTION.

1. *In case of death, resignation or acceptance of office.*

*Dominion of Canada,* }
To wit: } HOUSE OF COMMONS.

To the Clerk of the Crown in Chancery:

These are to require you to make out a new writ for the election of a Member to serve in this present Parliament for the Electoral District of ,
in the room of who, since this election for the said Electoral District hath (*here state reason for issue of warrant; acceptance of office, resignation or decease.*)

Given under my hand and seal at this day of in the year of our Lord one thousand eight hundred and

*Speaker.*

---

2. *In case of voiding of seat by decision of Election Court.*

*Dominion of Canada,* }
To wit: } HOUSE OF COMMONS.

To the Clerk of the Crown in Chancery:

These are to require you to make out a new writ for the election of a Member to serve in this present Parliament for the Electoral District of in the room of whose election for the said Electoral District has been declared void.

Given under my hand and seal at this day of in the year of our Lord one thousand eight hundred and .

*Speaker.*

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